

2015 HOUSE JUDICIARY

HB 1084

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1084
1/26/2015
22543

Subcommittee

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to requiring reasonable suspicion for certain traffic stops.

Minutes:

Testimony #1,2;5,6,7,8,9` Proposed amendments 3,4

Chairman K. Koppelman: Opened the hearing with testimony in support.

Rep. Rick C. Becker: This bill requires there to be reason cause for law enforcement to stop a vehicle. (Testimony #1,2; proposed amendments 3, 4) Went over handouts. (00:27-8:36)

Rep. Lois Delmore: Do you have similar statistics on these for ND on what is happened with our stops?

Rick Becker: I do not. We can get statistics from DOT but I am not aware of studies specifically for ND.

Rep. Lois Delmore: Do they have these DUI stops in all states?

Rep. Rick Becker: 12 states feel it is against the law to have sobriety checkpoints or have traffic stops without due cause. The thirteenth state of Alaska can, but they feel it is not good policy.

Rep. Lois Delmore: They have passed statues similar to this?

Rep. Rick Becker: Yes. This short and simple bill is taken from Wyoming.

Rep. L. Klemin: There is nothing in ND that would say in ND that we could decide to do this without a statue prohibiting it is there?

Rep. Becker: I think the DOT and Highway Patrol could chose and sheriff and police departments also. The officers I know personally feel their time could be better spent than saturation patrols. This is not intended to be permissive for drunk driving. It is not intended

to be anti-law enforcement. We obviously respect what law enforcement does and we want to give them the tools to do it. The nature of the executive branch in all its agencies including the law enforcement agency is that they want to have the maximum ability to do their job. They will not readily relinquish powers. It is the legislative branch's job to make sure that we have restraints on the executive branch and its agency and departments. They probably won't stop this. There are funds to pay for some of the equipment and some of the offices overtime with the requirement that there has to be sobriety checkpoints so it is a bit of a federal direction.

Rep. L. Klemin: Do you know how much federal money is involved we would lose if we passed this law? No fiscal note on this bill?

Rep. Becker: I do not. The monies from the federal government are specifically for sobriety checkpoints so it wouldn't be lost.

Chairman K. Koppelman: The bill talks about sobriety checkpoints but the bill says nothing about that. It talks about simply having reasonable suspicion to stop someone. Are there other instances where this would come into play in your view?

Rep. Becker: I have been asked that question. I am not aware of things that are going on for routine stops. The one notable exception being Game & Fish; however the way the bill is written that would exclude the Game & Fish stops too. That is why I have submitted another bill. The Game & Fish stops are equally concerning with regard to stop without due cause.

Chairman K. Koppelman: This bill actually references specific sections of code, but if the bill were broader it could involve anything. There would be a reason to stop someone. You mentioned earlier something about constitutional rights and I am sure you are talking about fourth amendment concerns but also that there was a Supreme Court decision on this. Is that a state Supreme Court decision?

Rep. Becker: Both ND and the National Supreme Court have acknowledged that this has not considered unconstitutional.

Chairman K. Koppelman: So in states the prohibit this it is not a constitutional concern or is it a mild disagreement with those court decisions?

Rep. Becker: Individuals may disagree with court decision, but the idea is that the state laws we have are not only to say anything that is determined not determined unconstitutional is permissible.

Chairman K. Koppelman: Explain your amendment.

Rep. Becker: The shorter amendment allows for safety checks and inspections of commercial vehicles. If you were to pass my bill it is important to pass this amendment. The second amendment includes the first but adds on the Game and Fish stops.

Jackson Lefgren, ND Association of Criminal Defense Attorneys: I am here today on behalf of the ND Association of Criminal Defense Attorneys. We support HB 1084. The bill is fairly simple. Essentially they have to have a reason to believe that the person is violation of the law. Sobriety checkpoints have a lot of problems that come with them. Of the two cases in my career as a prosecutor that I lost one was a sobriety checkpoint. They have place a number of restrictions on them. There has to be a detailed plan in place. It has to be announced to the public and a reason they are conducting the checkpoint. There has been a movement away from them for this reason. Saturation patrols puts more officers on the road; lets the public know that if you are going to drink this week end there are going to be officers out there looking for you, but they don't have the negative that sobriety checkpoints have. They impede everyone. We ask and urge a do pass on this bill.

Opposition:

Arik Spencer, Executive Vice President of the ND Motor Carriers Association:
(Testimony #5) (23:18-24:33)

Rep. G. Paur: So with this amendment 001 that allows safety checkpoints etc. with that being adopted would you have any objections to this bill?

Arik Spencer: If the amendment is adopted we would remove our objection to the bill.

Rep. K. Wallman: Rep. Becker testified he wasn't sure how much federal funding would be lost if they took away the DUI checkpoint. Is this millions in lost federal dollars that you referenced; does it have anything to do with that or is this a separate pool of money?

Arik Spencer: I don't have any knowledge about the sobriety checkpoint. This is a separate pool of money given by the federal motor carrier's safety administration to state highway patrol generally to provide motor carrier enforcement. The exact dollar amount I would defer to the highway patrol. That is a federal entity under the US DOT and their sole purpose is to regulate federal motor carriers.

Captain Eldon Mehrer: (Testimony #6) (26:40-34:00)

Rep. D. Larson: Does the highway patrol participate in DUI checkpoints?

Cap. Mehrer: Yes we do.

Rep. D. Larson: Do you have any information on how effective the DUI checkpoints are?

Cap. Mehrer: Cap. Pederson is here and I would defer to them.

Rep. Kretschmar: Does the highway patrol stop people for no reason?

Cap. Mehrer: Absolutely not.

Rep. Lois Delmore: Have you seen the amendment that was offered?

Cap. Mehrer: No I have not had an opportunity to read that yet.

Chairman K.Koppelman: What is the status the weigh stations. Some were closed or their operation was curtailed and there was an increase in the in motion stops etc. Could you tell us what the status of that is?

Cap. Mehrer: Several years ago there were some funding issues. The FTE's that supported the functions at the weigh in inspections stations around the state the funding for those went away. Through attrition and directing some other efforts they were taken out of the scales and put into the various inspection processes that were funded by the federal grant that I referred to. DOT implemented more of a weigh in motion technology. There were the 15 sites I eluded to in my earlier testimony that is stationed at various areas around that state. Those are screening devices only. We cannot take any enforcement action based on any information obtained from those weigh in motion sites.

Chairman K.Koppelman: What is more effective? The weight in motion or having the fixed checkpoints?

Cap. Mehrer: I think there is value in both. It is more of an efficiency thing.

Karin Mongeon, Safety Division Director, NDDOT: (See testimony #7) (39:00-43:40)

Vice Chairman Karls: You made a comment in your testimony about NHTSA special dollars that are specific? What does that stand for and what are the dollars we are talking about?

Karin Mongeon: NHTSA (National Highway Traffic Safety Administration) Those dollars come into the DOT specifically into the safety division which is the area I represent. Those dollars are used for all traffic safety issues including impaired driving. Dollars can be used for education and enforcement or other strategies identified. Our new dollars under the NHTSA program are \$4.5 million each year.

Rep. Lois Delmore: As amended however; and not do anything with changing what we do with the oversized vehicles and all the trucks right now; would there be a cost to the state if we simply adopted the other part of the bill?

Karin Mongeon: There would be no loss of NHTSA dollars.

Rep. P. Anderson: Do communities and counties do sobriety checkpoints?

Karin Mongeon: No they do not. The NHTSA dollars we do grants to state, county and city law enforcement in support of impaired driving enforcement. They decide what they want to do with them.

Rep. Brabandt: What percentage of your funding comes from the federal government?

Karin Mongeon: The safety division is nearly 100% funded by federal funds.

Rep. D. Larson: Rep. Becker referred to roving saturation patrols. Would if the NHTSA dollars were no longer available to be spent on sobriety checkpoints would they be able to be used for extra patrol for saturation patrols?

Karin Mongeon: Yes they could just use them strictly for the saturation patrols.

Chairman K .Koppelman: You indicated that stopping motor vehicles for the purpose of investigating suspected drunk driving constitutes a seizure under the fourth amendment of the US constitution there it must be supported by reasonable suspicion with the exception and then you go on to say the courts have upheld them because they act as a substitute for reasonable suspicion when it meets constitutional requirements and has a reasonable design and then you went on to say that the way we conduct them in ND does that. What constitutes reasonable design?

Karin Mongeon: I would defer to highway patrol to answer that.

Rep. D. Larson: Are there any communities that are currently excessing NHTSA funds for those roving saturations enforcement purposes?

Karin Mongeon: Yes the majority of the county and city law enforcement agencies in the state do request funding through our office to conduct the impaired driving enforcement.

Rep. Mary Johnson: What is alcohol related. Can you define that?

Karin Mongeon: Yes. When we use the term alcohol related that is any level of alcohol within the system of a driver confirmed through a toxicology test. I do have the data requested related to drivers involved in fatal crashes. (Handout #8) These are the drivers that were actually tested. Those that were actually impaired or above the .08 that is 23.4% that were tested in 2013.

Rep. Mary Johnson: So the majority of fatal crashes that are alcohol related only 23% were over the legal limit? Am I understanding this correctly?

Karin Mongeon: Yes that is correct. Half of the fatal crashes involved alcohol at some point or level. This result is only the results of known and received that were tested.

Rep. Mary Johnson: How many occurred on residential streets? I would like to see that.

Karin Mongeon: That is not something we have readily available. We can see what we can do.

Rep. Lois Delmore: If there is a fatality involved the driver must be tested?

Karin Mongeon: You are correct that that is the law. In some situations a test is still not received and we don't know exactly the reasons behind that.

Cap. Eric Pederson, ND Highway Patrol: (See Testimony #9) (53:20-55:00)

Rep. Lois Delmore: It doesn't seem like what we are doing is working to bring that down.

Captain Eric Pederson: Our fatal crash with alcohol has stayed the same. It is slightly down over years past. There are several components. It is just not the enforcement; it is the education and getting into the schools. We don't gage the success of the sobriety checkpoint by arresting somebody. We gage it by the fact that we got the news out and people do thank us for being there and we don't arrest anybody. The goal for sobriety checkpoints is the media; education and enforcement if necessary.

Rep. Lois Delmore: Are every one of those alcohol related over .08 or are we looking at any amount of alcohol involved?

Cap. Pederson: It is a federal definition of what an alcohol related crash is and we go along with them. Some of the reasons that drivers aren't tested; physically we may be unable to due to injury. Sometimes we cannot find the driver in time.

Rep. P. Anderson: The current law doesn't require we do sobriety checkpoints?

Cap. Pederson: We view it as one more tool in our tool box. The nice thing about sobriety checkpoints uses education and then enforcement. This ties them both together.

Rep. Lois Delmore: Can you provide the information on the tests and what levels they were and drivers involved in fatal accidents.

Cap. Pederson: Yes along with DOT we can make an effort to find you those.

Rep. K. Wallman: This bill mandates law enforcement take a tool out of their tool box that they may or may not use?

Cap. Pederson: Yes

Rep. K. Wallman: I am not in favor of that. Some of the states that have passed similar legislation has done so because there has been a problem with racial profiling. Is there a problem in ND with officers pulling people of color over because they suspect that person of something?

Cap. Pederson: Have been a supervisor with the highway patrol for 12 years and I don't recall a single one in. We have a detailed checklist that we go through. It is a very systematic process and the entire thing is recorded.

Chairman K.Koppelman: In your testimony you talked about your concern the bill may have an impact on amber alerts and signal 100s. Maybe you could identify those and how they could impact.

Cap. Pederson: Amber alert you probably are more aware of; if you have an endangered child that has been taken by somebody; either non-custodial or custodial abduction where that child is in danger. Sign 100 can deal with a violent crime or severe aggravated assault

situation. I can give you an example. In 2011 in March we had a 2-3 day snow storm they had a homicide in Minot. That was put out by Minot Police Department very quickly; the troopers that we had working to get the highways open were done and we mobilized them on a signal 100; and within 45 minutes we stopped the vehicle between Washburn and Bismarck. We had a very good description and we had somebody that had just committed a homicide.

Chairman K.Koppelman: If this occurs and you are on patrol and you are told we have a 2005 Chevy Impala driven by a tall gentleman with gray hair. Does that not constitute reasonable suspicion if you pull over a vehicle matching that description and a driver matching that description?

Cap. Pederson: It gets muddled. As time goes on you may not have that specific information and then you found a vehicle that might match that one you would have to have reasonable suspicion to stop that exact vehicle for a traffic violation. Not to stop that vehicle for what might have transpired down the road.

Chairman K.Koppelman: We have heard testimony that twelve other states have laws similar to this or practices similar to this. Would they in Wyoming not be able to pull over that vehicle?

Cap. Pederson: I would have to check if they would have any associated legal basis to do that. I don't know at this time.

Chairman K.Koppelman: Would there be any help with the amendments?

Cap. Pederson: I have not seen those amendments?

Chairman K. Koppelman: I would ask you to take a look or you may have an amendment to deal with that concern if the committee does wish to move the bill forward.

Rep. G. Paur: What you are telling us about reasonable suspicion and what seems to be at being practiced in the field seems to be at odds. Discussed fact that highway patrolmen seem to manufacture ways to stop people.

Cap. Pederson: I cannot comment on those specific instances. The first thing that is challenged is the validity of the traffic stop. The interest of the public on a sobriety checkpoint does outweigh the fourth amendment intrusion on that driver. It is a narrowly focused time and place matter.

Chairman K.Koppelman: I did get pulled over at one checkpoint and held good they are checking people, but at the same time what you just described about the intent and operation of them does make me wonder. If the intent is not to stop anyone that is impaired; the intent is primary education and visibility how effective are they in really curtailing impaired driving versus saturation patrols.

Cap. Pederson: I have seen some studies that say it does deter impaired driving.

Chairman K. Koppelman: If you have someone that is thinking of drinking too much

Cap. Pederson: I think you have to look at the total package. Our sobriety checkpoints are very large in a rural area and then those officers will transaction into a saturation patrol. Enforcement is not stand alone. You need education.

Lynn Mickelson: Private Citizen: I am the father of Allison Deutscher; father in law of Aaron Deutscher; grandfather of Brielle and also an unborn baby. This was a young West Fargo family that was killed by a drunk driver west of Jamestown on I-94 about 2 ½ years ago. (1:11:14-1:19:42) I am in opposition of this bill. If one person is caught it is worth it. Senator Campbell It took one impaired driver to wipe out our family. Showed the picture of the car) why did a drunk driver have to do this? That is frustration. Sobriety checkpoints are not mandated by law so let's not remove them if they want to use them. If it takes one impaired driver off the rod it would be worth it. One impaired driver wiped out our family. (Showed picture of headstone).

Rep. D. Larson: I want to thank you for your testimony.

Chairman K.Koppelman: We appreciate all your work and that of the Deutscher family as well.

Neutral: None

Closed

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

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Subcommittee

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Committee Clerk Signature



Minutes:

Chairman K.Koppelman: Reopened the hearing on HB 1084 with additional information.

Robert Timian, Chief Game Warden, ND Game & Fish Dept.: I am here to discuss the amendment that was offered to correct the bill to include Game & Fish is prohibited from check stations. Your question was the Supreme Court had ruled on this, but there was a little more to it than just saying it was legal. Check stations as Game & Fish run them and most law enforcement are simply a tool that we use to enforce the laws that are passed by the Legislature. Generally as a tool the court are the bodies that determine for law enforcement what the balance is between an individual's rights and the rights of the public in general and their benefits. They weigh in and say law enforcement to maintain this balance this is how you have to operate. ND Supreme Court has actually in 1997 in the state versus Albaugh specifically taken up the issue of Game & Fish check stations and the authority of game wardens. In that ruling they did say the state does have an interest and check stations were legal, but not without restrictions. They essentially said they apply a three part test to law enforcement to make sure these check stations are operated within that balance between the individuals constitutional rights for unreasonable search and seizure and the public right of they need to protect the public in general. They said our check stations met the test. You either get it all right or you flunk. All law enforcement is subject to the same regulations.

Chairman K. Koppelman: You are referring to the amendment that was presented by Rep. Becker when he introduced the bill. That is the one you should have a copy of numbered 15.0247.01002 which specifically refers to Game Warden's etc.

Robert Timian: We have adopted operating policies for check stations to make sure when we set up a check station it does met the standards for protection of rights. We use these stations not only for uncovering violations; we have a small force of officers who do this and we find them to be effective. It allows us to judge certain violation rates. It also helps us point out where we may need to put more emphasis. It provides a wider deterrent effort. In

doing these things we have to make sure we stay within the boundaries of protecting and recognizing and individual's rights for unreasonable search and seizure and the Supreme Court gave us very specific things we need to do.

Rep. G. Paur: It looks like you are focusing on the legality of your current practices and I don't believe there is any question that they are legal. The point of this bill is to make them illegal.

Robert Timian: If that amendment were to be adopted and then that passed our check stations which are now legal; would become illegal.

Chairman K. Koppelman: The original bill did not do that, but the amendment that is proposed would.

Robert Timian: They are already regulated by the Supreme Court. We think they are a legal and valuable tool and we would like to keep it that way.

Chairman K. Koppelman: What are your limitations? You can stop every vehicle, but you can't pick one here or there. How does that work?

Robert Timian: There are a number of restrictions that the Supreme Court has put on us. Officers at the check station can't just exercise their own whatever they want to do. It has to be a predetermined pattern prior to the check station. Unless there is probable cause beyond the check station that you would check.

Rep. Mary Johnson: You already require reasonable suspicion. You are talking about check points where you do comply with the randomness of searches. Say there is a game warden out driving around and he sees what he believes to be a violation; that is required that they have reasonable suspicion is required to stop a vehicle?

Robert Timian: Yes I was speaking in terms of this in the proposed amendment. Our officers in the field are subject to all the same restrictions that the courts and the constitution put on us as any other law enforcement officer.

Hearing closed.

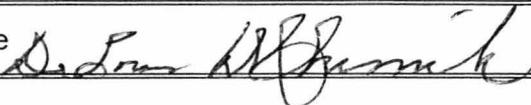
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Judiciary Committee
Prairie Room, State Capitol

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Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1084. This is the bill that deals with DUI checkpoints. There were three amendments recommended. Mr. Timian had an amendment but I don't see that here now and from Rep. Becker. Where do we want to go with the bill? Maybe we should get Mr. Timian a chance? I signed onto the bill but I didn't know the section of law it was amending. I was prepared for a discussion on the entire fourth amendment issue and whether we should ever stop someone without reasonable suspicion? This strictly talks about the DUI checkpoints.

Rep. P. Anderson: Every law enforcement person who came in and said don't take this away from us. They don't have to do it but they can do it and if it is one life OK. I also received several emails from my constitutions that said please keep these checkpoints.

Rep. Mary Johnson: I think that the local communities, if they truly don't want these will put enough pressure on local law enforcement not to have them and they have to make a decision at that point and I don't see much opposition on this. The amendment was specifically regarding Game & Fish and I don't know enough about that part of it.

Rep. D. Larson: We were given information on how many were deaths and then I asked how many were arrested at DUI checkpoints. That means it would be over .08 and 2014 there were 12 checkpoints and 3 DUI arrests so that means 3 people were taken off the road that were driving around over a .08 BAC. There is not much opposition and I think it is a good safety deterrent even as amendment I will be opposing this bill.

Rep. G. Paur: I live close to the border and I heard some years ago in Minnesota some of the local police would take a game warden along because they could not stop and search a vehicle, but the game warden could.

Rep. L. Klemin: Notes from Rep. Becker's notes said 12 states including Montana and Minnesota do not allow sobriety checkpoints.

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Chairman K. Koppelman: Looking at the amendments that Rep. Becker amendment .01002 had proposed one of those excluded the Game Warden stops as well.

Rep. Mary Johnson moved a do not pass; Seconded by Rep. D. Larson:

Roll Call Vote: 8 Yes 4 No 1 Absent Carrier: Rep. D. Larson:

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL NO. HB 1084**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Mary Johnson: Seconded By Rep. D. Larson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls		X	Rep. Delmore	X	
Rep. Brabandt		x	Rep. K. Wallman	X	
Rep. Hawken	-----				
Rep. Mary Johnson	X				
Rep. Klemin		x			
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur		x			

Total (Yes) 8 No 4

Absent 1

Floor Assignment: Rep. D. Larson:

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1084: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1084 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HB 1084

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<http://www.americanlawyeracademy.com/california-dui-checkpoints-effectiveness>

DUI Checkpoints: Reconsidering Their Effectiveness

California traffic safety officials declared 2010 the “year of the checkpoint,” and dramatically increased the number of DUI checkpoints held across the state.

However, California DUI checkpoints have come under increased scrutiny lately, in large part due to a study by California Watch and the Investigative Reporting Program at UC Berkeley that found that officers impounded six cars for every one DUI arrest made. The investigation highlighted that DUI checkpoints are highly profitable operations for cities and towns and questioned the disproportionate impact of DUI impound policies on unlicensed minorities.

The California Watch study also reconfirmed that DUI checkpoints net relatively few DUI arrests when compared to the number of vehicles stopped. This has lead many to question whether DUI checkpoints are the most effective means of preventing drunk driving in California, particularly in light of the mounting legal concerns.

Therefore, it may be time to examine whether state funding would be better invested in saturation patrols, during which police patrol high-risk areas for drivers that appear to be impaired.

In support of that argument, consider the following:

In 2008, only 5,000 of the total 215,000 California DUI arrests took place at sobriety checkpoints (2.3%).

- ★ Law enforcement officials concede that DUI checkpoints are not the best way to prevent drunk driving. As Riverside County (Calif.) Sheriff Stanley Sniff told USA Today: “We make light-years more arrests on random patrols than at checkpoints.”
 - ★ A comparative study by the FBI found that saturation patrols were the most effective means of apprehending drunk drivers.
 - ★ A 2009 University of Maryland study found that checkpoints do not have “any impact on public perceptions, driver behaviors or alcohol-related crashes, police citations for impaired driving, and public perceptions of alcohol-impaired driving risk.”
- This is not to suggest that DUI checkpoints do not have value in deterring drunk driving in California. However, given that they do not raise the same legal concerns as DUI checkpoints and have proven to be more effective in arresting drunk drivers, saturation patrols may be a better option.**

Further information about DUI checkpoints and saturation patrols can be found at the California DUI Guide website. Drivers facing a California DUI arrest are also encouraged to contact experienced DUI defense attorney Thomas Wallin for a free consultation.

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Arizona Daily Star®

www.dailystar.com® www.azstarnet.com®

Published: 08.26.2007

DUI checkpoints costly, catch few

46,000 drivers stopped, but only 75 are convicted

By Jack Gillum

ARIZONA DAILY STAR

Pima County sobriety checkpoints have netted a tiny number of DUI arrests despite stopping tens of thousands of drivers since 2005, an Arizona Daily Star investigation has found.

Since the Sheriff's Department began staging checkpoints nearly two years ago — overriding authorities' previous concerns that the stops yielded few arrests — fewer than 1 percent of the more than 46,000 drivers stopped have been arrested on suspicion of DUI.

And fewer than half of those arrested have been convicted.

Even with the low arrest rates, proponents defend the checkpoints, saying they deter drunken driving by educating people about its dangers. Every person deputies stop receives anti-drunken-driving pamphlets, which they say means one more person who may avoid driving under the influence.

Still, the number of DUI arrests has remained constant since the stops were reinstated in September 2005 after a 10-year hiatus. In other words, it doesn't appear fewer drivers are driving while drunk.

"It's a good sign that we've arrested so few people," Sheriff's Lt. Karl Woolridge, who supervises the agency's special operations, including checkpoints, said when presented with the Star's findings. "At least we've removed nearly 300 impaired drivers off the road."

But critics of the checkpoints, including defense attorneys and civil libertarians, question their effectiveness and legality. They say police have more sure-fire methods for spotting drunken drivers, such as concentrated patrols.

The Sheriff's Department has spent more than \$140,000, mostly in federal and state money, on 63 staffed checkpoints though May.

DUI checkpoints force drivers to stop and talk with a deputy, who asks them if they've consumed alcohol or taken drugs. Depending on the driver's answer, the deputy will inspect the driver for bloodshot eyes, alcohol-tinged breath and other telltale signs of impairment.

How effective those procedures are, and to what degree critics say they constitute an unreasonable search and seizure, is up for debate.

Checkpoints are "feel-good measures that are costly," said Alessandra Soler Meetze, executive director of the American Civil Liberties Union of Arizona. "It gives the impression that they're reducing the amount of drunk driving, but it doesn't seem to be the case."

Questions of effectiveness

By the numbers

- Drivers stopped at checkpoints: **46,781**
- **Field-sobriety tests: 1,168**
- **DUI- related arrests: 282**
- **DUI cases dismissed: 105***
- **DUI convictions: 75***

***102 cases still pending.**

Source: Arizona Daily Star analysis of Pima County Sheriff's Department DUI checkpoint arrest data and Pima County Consolidated Justice Court records, from September 2005 to May 2007.

Did you Know ...

The Legislature changed Arizona's DUI blood-alcohol content from 0.10 percent to 0.08 percent in September 2001. The new law was prompted partly by a 2000 federal law that withholds some highway money to states that have not adopted the lower limit.

OUT Next WEEKEND

Officers will be on special weekend DUI enforcement details Labor Day weekend, the Pima County Sheriff's Department said, which will include sobriety checkpoints and saturation patrols. The enforcement is part of a national anti-DUI campaign that began in mid-August.

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As Independence Day neared its close this summer, sheriff's deputies at a Southwest Side DUI checkpoint had spent more than two hours stopping cars on West Valencia Road near South Westover Avenue.

The lines of vehicles, sometimes more than a dozen deep, rolled by as deputies repeated a familiar line: "Good evening. Have you consumed any alcohol or drugs today?"

The answer, by and large, was "no." But for the few who said "yes" or looked suspicious, deputies asked the driver to pull into the median and perform a field-sobriety test.

Between September 2005 and May 2007, the Sheriff's Department conducted 1,168 such tests at DUI checkpoints, records show. That means that for every four drivers who were screened, deputies arrested one.

One of those tested that July 4 night was a woman in her 20s who registered 0.119 percent blood-alcohol level on a Breathalyzer, above the state's 0.08 percent DUI level.

In the back seat sat two minors drinking beer, the remnants of a 24-pack between them.

"Yeah," said Woolridge as he observed the woman. "This is why we do checkpoints."

Still, at this stop, the unidentified woman was one of only three DUI suspects, the Sheriff's Department reported. From 9:15 p.m. to 12:15 a.m., deputies counted 1,239 cars that passed through, an arrest rate of less than one-tenth of 1 percent. Thirteen deputies staffed that checkpoint.

Such low rates, critics say, are why authorities should be shifting tactics.

Police officers are well-trained in how to spot drunken drivers, "and then they just stop everyone who's driving along," said Joe St. Louis, a local attorney who specializes in drunken-driving cases, including some that began at checkpoints.

"It's just crazy. If you stop people at random, it's not an efficient use of your time or of taxpayer dollars," he said. Such random stops, critics argue, just waste the time of sober drivers and law enforcement.

While it's hard to say just how effective DUI checkpoints are compared with other enforcement methods, statistics show that their educational component is also debatable: DUI arrests have remained relatively constant each month since they began in September 2005.

That month, the department recorded 125 DUI arrests; in June 2007, there were 127. The most between those months was this May, at 175.

The department stopped DUI checkpoints in the mid-'90s amid concerns of low arrest rates, Woolridge said. But after sheriff's officials examined studies that showed checkpoints have a deterrent effect, the department restarted the program.

Few arrests, fewer convictions

The Arizona Daily Star reviewed court cases of those arrested at the checkpoints from September 2005 through May 2007 and compared the data with checkpoint statistics from the Sheriff's Department. The newspaper obtained the list of checkpoint arrests through a public-records request in June.

Among the Star's findings:

- Sheriff's officials counted 46,781 drivers who went through the checkpoints, most of whom were not arrested or even tested for being impaired.
- Of those drivers who were stopped, deputies arrested 282 on suspicion of drunken driving. That accounts for 0.6 percent of all drivers who went through the checkpoints.
- Of the 180 DUI cases that have been through the courts, 105 have been dismissed. Defense lawyers point to weak evidence, such as a lack of reasonable suspicion, and constitutional violations as reasons why, although they say each case is different.
- While deputies were able to stop drivers who were perhaps the most egregious offenders, they also snagged some who were far below the DUI level. Still, Arizona law prohibits drivers from getting behind the wheel if they're impaired to the slightest degree.

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pg 3

• Although most of the arrests or citations at checkpoints were DUI-related, more than 100 were not. Citations ranged from possession of marijuana to driving on a suspended license.

Outcomes in 22 cases couldn't be determined because corresponding court records couldn't be found despite an extensive search. The Sheriff's Department also could not find records in those cases.

Five to 30 deputies can staff a checkpoint, statistics show, with a few sergeants at each checkpoint, too. Six to 12 sheriff's volunteers assist the officers, Woolridge said.

In the last two years, the agency has spent about \$142,000 on overtime pay for checkpoints, data show. If divided up yearly, that accounts for a sizable amount of the funds from the National Highway Traffic Safety Administration and the state, according to a calculation of budget figures.

About \$120,000 of the federal money given to Arizona went to the Sheriff's Department in fiscal 2007 to help pay for deputies' overtime at checkpoints and DUI patrols, said Michael Hegarty, the deputy director of the Governor's Office of Highway Safety. The state gives the money to Pima County, which then divvies it up to local agencies, including the Sheriff's Department.

Among the checkpoints with the most deputies was one conducted during Labor Day weekend in 2005. Records show 27 deputies staffed the checkpoint for more than three hours, netting four arrests at North La Cholla Boulevard and West Ruthrauff Road out of 571 drivers who passed through.

But to some DUI-checkpoint proponents, hassles for so many sober drivers are worth it even if the stops cause delays.

"Inconvenience is a way of life," said Kelly Larkin, executive director of the Tucson affiliate of Mothers Against Drunk Driving. Even if the cases against drivers get dismissed, she said, "It got them off the streets that night."

Increased enforcement

Pal Ham approached the DUI checkpoint on West Picture Rocks Road near Saguaro National Park West on Sept. 4, 2006. Before he got behind the wheel, he'd had a few beers — three to be exact, he said.

Deputies arrested Ham, 74, on a drunken-driving charge, court records show. He pleaded guilty after blowing a 0.105 percent blood-alcohol content, and said he spent a night in jail.

To this date, he has mixed feelings about the checkpoints.

"I could get along without them," he said, "until one of my loved ones gets killed."

Ham's case epitomizes why checkpoints are worth the time, proponents say.

Still, the most widely cited alternative to sobriety checkpoints are "saturation patrols," which increase the number of police officers on the streets to look for drunken drivers.

Thus, lawyers and checkpoint critics say, defendants have more evidence against them as officers can observe more telltale signs of impairment, such as weaving or stopping at a green light.

Some agencies, including the Tucson Police Department, have stopped conducting checkpoints, a spokesman said, but he could not elaborate.

Nonetheless, Hegarty, the Governor's Office of Highway Safety official, said a DUI checkpoint is "not about arresting; it's about having a presence and educating the community."

Here and in other states, authorities plan to continue using checkpoints as part of their arsenal against drunken driving.

In fact, state and local officials are planning a crackdown on drunken driving this Labor Day weekend that will include a checkpoint in Pima County.

"We're here to catch impaired drivers," Woolridge said at the July 4 checkpoint. "This isn't a fishing expedition."

One professor who has studied the effectiveness of DUI checkpoints said his results show that checkpoints

were associated with a 20 percent reduction in drunken-driving crashes in the Maryland-Virginia-Washington, D.C., area.

But that's only "if they are done often enough and publicized," said Kenneth H. Beck, a professor of public and community health at the University of Maryland. "Otherwise, they're not likely to get the deterrent effect."

Today, Beck said, checkpoints are much more common nationwide. But of the more than 1.5 million people who are arrested for drinking and driving each year, he said, "far more are arrested outside of checkpoints."

The question of such checkpoints' effectiveness, then, comes down to perspective.

"One of the arguments is that there is a general public-awareness factor," said Roger Hartley, an associate professor of public administration and policy at the University of Arizona's Eller College of Management.

"But if it was worth the cost, they'd do it all the time."

Compare how effective various DUI checkpoints have been over the past two years in an interactive map at www.azstarnet.com/crime.

By the numbers

- Drivers stopped at checkpoints: **46,781**
- **Field-sobriety tests: 1,168**
- **DUI- related arrests: 282**
- **DUI cases dismissed: 105***
- **DUI convictions: 75***

***102 cases still pending.**

Source: Arizona Daily Star analysis of Pima County Sheriff's Department DUI checkpoint arrest data and Pima County Consolidated Justice Court records, from September 2005 to May 2007.

Did you Know ...

The Legislature changed Arizona's DUI blood-alcohol content from 0.10 percent to 0.08 percent in September 2001. The new law was prompted partly by a 2000 federal law that withholds some highway money to states that have not adopted the lower limit.

OUT Next WEEKEND

Officers will be on special weekend DUI enforcement details Labor Day weekend, the Pima County Sheriff's Department said, which will include sobriety checkpoints and saturation patrols. The enforcement is part of a national anti-DUI campaign that began in mid-August.

- Contact reporter Jack Gillum at 573-4178 or at jgillum@azstarnet.com.

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15.0247.01002
Title.

Prepared by the Legislative Council staff for
Representative Rick C. Becker
January 12, 2015

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pg 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1084

Page 1, line 1, replace "chapter" with "chapters 20.1-02 and"

Page 1, line 2, after "stops" insert "and stops for violations of laws relating to wildlife"

Page 1, after line 3, insert:

"SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Halting requires reasonable suspicion.

Notwithstanding any other provision of law, the director, deputy director, chief game warden, district game warden, or bonded appointees of the director may not halt an operator of a vehicle solely to determine compliance with any of the provisions of this title and any other state laws relating to wildlife, unless the officer has a reasonable suspicion to believe that there is a violation of this title or any other state laws relating to wildlife."

Page 1, line 10, after the underscored period insert "This section does not apply to inspections and safety checkpoints for commercial motor vehicles."

Renumber accordingly

15.0247.01001
Title.

Prepared by the Legislative Council staff for
Representative Rick C. Becker
January 7, 2015

~~HB~~
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P 21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1084

Page 1, line 10, after the underscored period insert "This section does not apply to inspections and safety checkpoints for commercial motor vehicles."

Renumber accordingly

**TESTIMONY
HOUSE BILL 1084
HOUSE JUDICIARY COMMITTEE**

#5
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1-26-15
Pg 1

Mr. Chairman and members of the House Judiciary Committee my name is Arik Spencer, executive vice president of the North Dakota Motor Carriers Association. I am here this morning to testify in opposition of House Bill 1084.

Motor Carrier safety ratings are managed by the Federal Motor Carrier Safety Administration (FMCSA) . Safety ratings are determined by weighing good road side inspections verses poor road side inspections. If North Dakota motor carriers are only pulled over in instances of reasonable suspicion, then we will no longer have the good road side inspections generated by random inspections. This will ensure ND motor carriers are frequently audited by FMCSA. North Dakota motor carriers will also be targeted for inspections when they leave the state because our inspection program will not meet federal requirements.

In addition, the ND Highway Patrol may lose millions in federal motor carrier enforcement funds should FMCSA deem North Dakota's Motor Carrier Enforcement Program out of compliance with federal requirements.

The amendment brought forward by Representative Becker exempting commercial motor carriers from the bill addresses this issue and should the amendment be adopted, we will remove out opposition to the bill.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.

House Bill 1084
House Judiciary Committee
Representative Kim Koppelman, Chairman
January 26, 2015

#6
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pg 1

Mr. Chairman and members of the House Judiciary Committee, my name is Captain Eldon Mehrer, commander of the North Dakota Highway Patrol motor carrier division. I am here to provide testimony opposing House Bill 1084. This bill would adversely affect commercial motor vehicle safety.

The Highway Patrol is the lead agency for the federal Motor Carrier Assistance Program (MCSAP), along with size and weight enforcement on state and federal highways.

The MCSAP program implements the federal motor carrier regulations that affect interstate commerce. The purpose is to reduce commercial motor vehicle (CMV) crashes through proper vehicle maintenance and driver behavior, accomplished through inspections at roadside and fixed locations. The NDHP drafts and implements the state size and weight enforcement plan which is submitted to the Federal Highway Administration. The motor carrier division focuses its efforts on these two programs.

N.D.C.C. 39-03-09 section 4 under Powers of the Highway Patrol, states: *To facilitate compliance with the provisions of this title, to require the driver of a vehicle to stop and exhibit the driver's operator's license and the registration cards issued for the vehicle, if any are required, and to submit to an inspection and test of the equipment of such vehicle.*

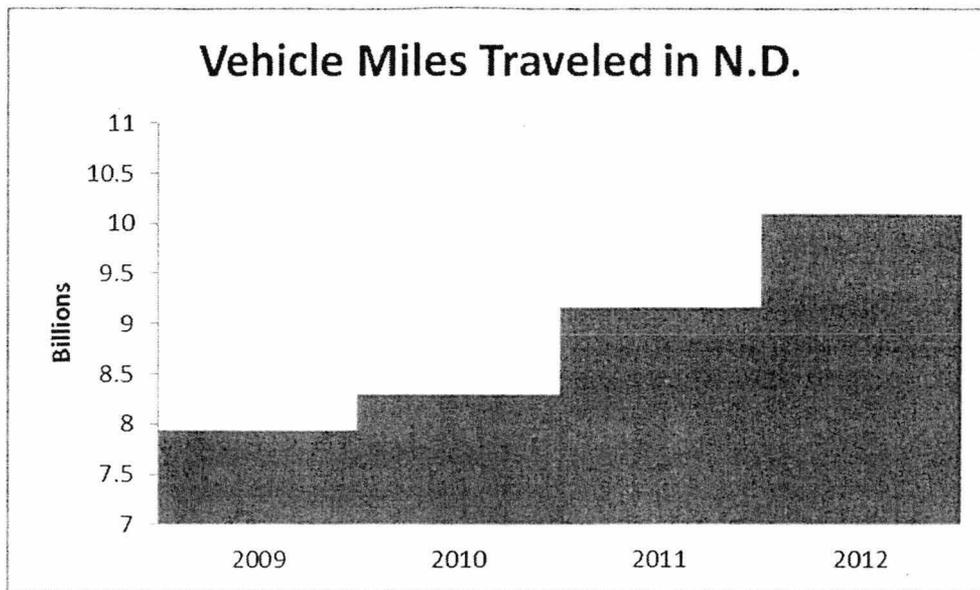
Under MCSAP, the NDHP uses roadside inspections to implement federal motor carrier regulations and hazardous material regulations, enhancing commercial motor vehicle safety and overall traffic safety in N.D. Throughout the past five years, the NDHP has conducted thousands of commercial motor vehicle inspections, ranging from 13,000 to 16,000 each year.

The NDHP could be found non-compliant with the FMCRs and lose funding for our MCSAP program. This would significantly impact the NDHP in the following ways:

1. Loss of funding for 14 full-time MCSAP employees.
2. Loss of funding for 3 full-time employees conducting inspections on international CMV carriers under the Border Enforcement Grant (BEG).
3. Loss of \$2.4 million in federal funding (MCSAP and BEG).
4. Loss of access to a federal data network tracking commercial motor vehicle safety of carriers.
5. N.D. motor carriers entering other states would be targeted due to our non-participation in the national safety program.

Overall traffic safety would be compromised, as we are in a time of rising CMV traffic and overall vehicle miles traveled.

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Large Truck Fatal Crashes		
	Crashes	Victims
2009	25	27
2010	17	23
2011	26	36
2012	37	45
2013	53	53
2014	38	43

CMV Inspections

In FY 2014, 18 percent of CMVs going through a full level 1 inspection and 4.8 percent of drivers were out-of-service.

The majority of truck and bus inspections would not be completed if HB 1084 is enacted unless we see an obvious violation. In 2014, only 1,465 inspections or 12 percent of the 12,380 total inspections could have been completed due to an observed traffic violation.

MCSAP is a national safety program in which all 50 states participate. HB 1084 could place N.D. out of compliance with federal regulation as we could not adequately implement the MCSAP commercial vehicle safety plan. In order to participate in the federally funded MCSAP program, N.D. must certify that we "provide legal authority for a right of entry and inspection adequate to carry out the Commercial Vehicle Safety Plan."

The Highway Patrol weighs vehicles at nine fixed scale locations around N.D. The NDHP staffs the fixed scales on a limited basis to monitor weight to protect the investment of the state's highway infrastructure and to limit damage to roads and bridges. Trucks are required to stop on the fixed scale to weigh for compliance. This is generally not completed based on reasonable suspicion. The fixed scales are used to assure compliance and take enforcement action when a violation is discovered. HB 1084 could limit the ability of the NDHP to use these weigh stations.

An average of 27,000 vehicles each year have been weighed at these fixed scale locations.

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- 2010—26,369
- 2011—11,319
- 2012—29,776
- 2013—30,030
- 2014—37,919

Weigh-in-motion (WIM) or other available pre-screening systems would need to be used to establish reasonable suspicion to direct vehicles off of the main highway to be weighed. N.D. currently has 15 WIM sites at various locations around N.D. to screen vehicles on the mainline roadway for weight. This method alone does not replace the need for fixed weigh stations.

In the past two federal fiscal years, the NDHP has weighed approximately 68,000 vehicles at fixed scales with 878 overloaded vehicles. More than \$1.16 million was collected from fees.

Overweight vehicles pose a safety risk to other vehicles. An overweight vehicle takes longer to stop, accelerate and take evasive action. The stability and integrity of an overweight vehicle is compromised due to maximum axle, wheel and suspension capabilities being exceeded.

HB 1084 has an adverse impact on CMV safety and for all those traveling on our roadways.

This concludes my testimony. I would be happy to answer questions.

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pg 1

HOUSE JUDICIARY COMMITTEE
January 26th – 9:15 AM – Prairie Room

North Dakota Department of Transportation
Karin Mongeon - Director, Safety Division

HB 1084

Mr. Chairman and members of the Committee, my name is Karin Mongeon. I serve as the Safety Division Director for the North Dakota Department of Transportation (NDDOT).

I am here today on behalf of the Department in opposition of House Bill 1084, a bill that would enact a new section to chapter 39-07 of the North Dakota Century Code relating to requiring reasonable suspicion for certain traffic stops.

This bill, if passed into law, would have two significant detrimental effects to traffic safety.

Sobriety Checkpoints

First, it would prevent law enforcement from conducting sobriety checkpoints to deter impaired driving.

Impaired driving continues to be a significant problem in North Dakota. Each year, about 50 percent of all fatal crashes are alcohol-related. This statistic has held constant for many years. The North Dakota Strategic Highway Safety Plan (SHSP) – a statewide, comprehensive traffic safety plan developed by a broad range of North Dakota experts and stakeholders concerned about traffic safety – identifies impaired driving as a priority emphasis area that must be addressed in order to significantly reduce severe crashes resulting in fatalities and serious injuries in North Dakota. The SHSP further identifies evidence-based strategies for implementation in the areas of education, enforcement, prosecution, and adjudication to deter impaired driving. Sobriety checkpoints are identified in the SHSP as a proven-effective enforcement strategy to reduce impaired driving in the state.

A study of the effectiveness of sobriety checkpoints¹ reviewed 23 high quality studies on checkpoint effectiveness in both urban and rural locations. The studies consistently demonstrated the deterrent effect of sobriety checkpoints and found that sobriety checkpoints resulted in a median decline in alcohol-involved fatal crashes of 22 percent.

According to a survey conducted in 2007 by the National Traffic Law Center, some form of sobriety checkpoint is being conducted in 38 states and the District of Columbia.

Sobriety checkpoints have been upheld as constitutional through many state Supreme Court decisions and through the U.S. Supreme Court decision *Michigan v. Sitz (1990)*. Stopping motor vehicles for the purpose of investigating suspected drunk driving constitutes a seizure under the Fourth Amendment of the U.S. Constitution and therefore must be supported by reasonable suspicion. Courts have upheld that a sobriety checkpoint acts as a substitute for reasonable suspicion when it meets constitutional requirements and has a reasonable design.

North Dakota law enforcement conducts sobriety checkpoints consistent with identified procedures to assure they are legal and constitutional.

¹Elder, R.W.; Schults, R.A.; Sleet, D.A.; Nichols, J.L.; Zaza, S.; and Thompson, R.A. 2002. Effectiveness of sobriety checkpoints for reducing alcohol-involved crashes. *Traffic Injury Prevention* 3:266-74.

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Commercial Vehicle Weight Enforcement

The second detrimental impact of this bill is that it would deter the North Dakota Highway Patrol and local law enforcement agencies from conducting stops for commercial vehicle weight enforcement.

Repeat overweight loads damage asphalt pavement by overstressing the pavement structure causing cracking and eventually potholes which create safety issues. Concrete pavements also break and crack under repeated overweight loads making them rough which decreases the life of the pavement and increases costs for resurfacing.

Federal Highway Administration (FHWA) policy (CFR 657.5) states that each State should enforce vehicle size and weight laws to assure that violations are discouraged and vehicles traveling the highway system do not exceed the limits specified by law. These size and weight limits are based upon road design specifications and safety considerations. Further, FHWA policy states that enforcement shall be developed and maintained both to prevent premature deterioration of the highway pavement and structures and to provide a safe driving environment.

This concludes my testimony. I would be glad to respond to any questions you may have.

Fars Data Requests

BAC limits of drivers involved in alcohol related crashes
fatal
 - from NDHP

001 PD 1004

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Back to Step 1

Report:

DATE: NDYEAR: 2013 COUNT: Number of Persons

INPUT OPTIONS:

Alcohol Test Result	Person Type	
	Driver Of A Motor Vehicle In-Transport	Total
0.00 % BAC	74	74
0.01 % BAC	1	1
0.02 % BAC	1	1
0.04 % BAC	1	1
0.06 % BAC	4	4
0.07 % BAC	3	3
0.08 % BAC	1	1
0.09 % BAC	2	2
0.11 % BAC	1	1
0.12 % BAC	1	1
0.13 % BAC	1	1
0.14 % BAC	1	1
0.16 % BAC	5	5
0.17 % BAC	4	4
0.18 % BAC	1	1
0.19 % BAC	3	3
0.20 % BAC	4	4
0.21 % BAC	3	3
0.22 % BAC	3	3
0.23 % BAC	4	4
0.25 % BAC	1	1
0.26 % BAC	4	4
0.27 % BAC	3	3
0.28 % BAC	2	2
0.29 % BAC	3	3
0.31 % BAC	2	2
0.33 % BAC	1	1
0.40 % BAC	1	1
Test Not Given	77	77
Test Performed, Results Unknown	1	1
Total	213	213

2013

Search Criteria:

Year 2013
 Person Type 1
 State 38
 Sex 1, 2

Fars Data Requests

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Back to Step 1

Report:

DATE: NDYEAR: 2014 COUNT: Number of Persons

INPUT OPTIONS:

Alcohol Test Result	Person Type		Total
	Driver Of A Motor Vehicle In-Transport		
0.00 % BAC	46		46
0.01 % BAC	1		1
0.02 % BAC	1		1
0.04 % BAC	2		2
0.05 % BAC	1		1
0.09 % BAC	3		3
0.10 % BAC	3		3
0.11 % BAC	2		2
0.12 % BAC	3		3
0.13 % BAC	2		2
0.14 % BAC	2		2
0.15 % BAC	3		3
0.16 % BAC	2		2
0.17 % BAC	3		3
0.18 % BAC	2		2
0.19 % BAC	2		2
0.20 % BAC	2		2
0.21 % BAC	2		2
0.22 % BAC	4		4
0.23 % BAC	1		1
0.25 % BAC	3		3
0.26 % BAC	2		2
0.29 % BAC	1		1
0.37 % BAC	1		1
0.45 % BAC	1		1
Test Not Given	61		61
Total	156		156

through
November
2014

Search Criteria:
Year 2014
? 38
on Type 1

House Bill 1084
House Judiciary Committee
Representative Kim Koppelman, Chairman
January 26, 2015

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pg 1

Mr. Chairman and members of the House Judiciary Committee, my name is Captain Eric Pederson, western division commander for the North Dakota Highway Patrol. I am here to provide testimony opposing House Bill 1084. This bill would adversely affect public and traffic safety.

If enacted, HB 1084 would prevent law enforcement from conducting sobriety checkpoints. These checkpoints are important enforcement and public education tools to deter impaired driving. From 2004-2013, 47.34% of the fatal crashes were alcohol related.

In a survey on our website, citizens consistently voice their concerns about impaired drivers. Most drivers who pass through a checkpoint are more than cooperative; they thank troopers and other law enforcement officers for their efforts in stopping drunk drivers. The amount of time it takes to pass through a typical sobriety checkpoint is minimal and has been deemed constitutional by the North Dakota Supreme Court.

Sobriety checkpoints are not the only tool that law enforcement uses against impaired driving, but they are a key component. Impaired driving continues to threaten the safety of the motoring public. Taking away a proven method of deterring impaired drivers could have devastating outcomes.

In addition to eliminating sobriety checkpoints, HB 1084 may have negative implications to other public safety procedures such as AMBER Alerts and Signal 100s. This bill would limit law enforcements ability to set up temporary roadblocks in an attempt to apprehend criminal suspects.

HB 1084 has many negative consequences to law enforcement's ability to enhance public safety.

This concludes my testimony. I'd be happy to answer any questions.