



May 9, 2022

Chairs Limmer and Mariani, and Members of the Omnibus Public Safety Policy and Supplemental Appropriations Conference Committee:

The Senate and House Public Safety Omnibus bills, S.F. 2673 and H.F. 4608, each contain provisions that address or implicate Minnesota's DWI laws. The Minnesota DWI Task Force, which is a nonprofit, unaffiliated, volunteer organization of statewide stakeholders, wishes to provide support and input, including a concern and a recommendation, regarding some of these provisions.

**In Senate File 2673, the Minnesota DWI Task Force supports the provisions contained in Article 2, Section 45, paragraphs (a) through (e)**, which authorize an oral fluid roadside testing pilot project. Drug-based DWIs have been on the rise for the past several years because of the opioid crisis and other reasons. Officers are equipped to test for the presence of alcohol using a roadside preliminary breath test (PBT), which helps the officer determine probable cause to arrest, but do not have a similar tool to detect the presence of drugs. Oral fluid roadside testing presents this opportunity. This pilot project is intended for statistical purposes to determine the efficacy and accuracy of oral fluid testing to detect the presence of several categories of drugs. During the pilot project, submitting oral fluid samples would be voluntary, and the samples would be inadmissible in court. The samples would be used to gather statistics and prepare a summarized report to the legislature. There are currently 22 states using this technology, and Minnesota needs to catch up. Given the significant increase in drug-based DWIs, it is important to start this statistical analysis as soon as possible.

**In Senate File 2673, the Minnesota DWI Task Force supports the provisions contained in Article 3, Sections 1-4, 9, and 10**, which make conforming changes to Minnesota's DWI search warrant laws. Minnesota's laws currently provide for revocation of an individual's driver's license upon a positive test result of an alcohol concentration of 0.08 or greater, or the presence of a Schedule I or II controlled substance. In 2017, the Minnesota DWI Task Force drafted a bill to amend Minnesota's license revocation laws to comply with new United States Supreme Court case law. The drafting language referenced Minnesota's search warrant statutes, which resulted in unintended consequences. When investigations occur in outstate Minnesota, sometimes the nearest hospital to obtain a blood or urine sample is in an adjacent state, so the search warrant is



obtained in that state with the cooperation of another law enforcement agency. If the results of the forensic testing of the sample support a DWI charge, all DWI processing and prosecution occurs in Minnesota because that is where the incident occurred. However, since the search warrant was obtained in the adjacent state, the Department of Public Safety cannot process a license revocation based on the positive test result as it would if the search warrant was obtained in Minnesota. This results in an inequity for the same behavioral conduct, which was unforeseen and unintended in the drafting of the original bill. Amending the statutes to refer to a search warrant, without reference to Minnesota statutes, will close this loophole and result in equal treatment of drivers for the same behavioral conduct.

**In Senate File 2673, the Minnesota DWI Task Force supports the provisions contained in Article 2, Sections 3 and 5,** which authorize ignition interlock as an alternative to electronic alcohol monitoring conditions of release. Some DWIs require abstention from alcohol and an electronic alcohol monitoring as conditions of release. The electronic alcohol monitor can be costly, and abstention from alcohol is difficult for someone with a longstanding addiction. Ignition interlock is a cheaper alternative that does not prevent drinking entirely, but prevents drinking and driving, which addresses public safety concerns. Some counties already use this alternative and believe the current statute is ambiguous, while other counties believe the current statute precludes the use of ignition interlock as an alternative. This proposal codifies the alternative while also precluding a county from exclusively using one ignition interlock vendor.

**In House File 4608, the Minnesota DWI Task Force does not take a position but has a concern and input regarding the provisions contained in Article 5, Sections 22 and 23,** which authorize automatic expungement of records without a petition. (The DWI Task Force's input is only applicable to DWI-related considerations.) These provisions explicitly exclude misdemeanor and gross misdemeanor DWIs from automatic expungement, and the DWI Task Force supports those exclusions. DWIs can be charged as gross misdemeanor Criminal Vehicular Operation (CVO) if the offense resulted in bodily harm. *See* Minn. Stat. § 609.2113, subd. 3(2)-(6). The DWI Task Force is concerned that the crime of CVO this was not listed on the exclusion list and recommends adding it to the list. Other crimes, such as Underage Drinking and Driving (Minn. Stat. § 169A.33) and Tampering with Ignition Interlock (Minn. Stat. § 171.306, subd. 6) may warrant additional discussion as to whether or not they should also be included on the exclusion list. (The DWI Task Force has not discussed these in depth and cannot represent a consensus position at this time.)



**In House File 4608, the Minnesota DWI Task Force does not take a position but has a recommendation regarding the provision contained in Article 4, Section 22**, which creates a Task Force on Abuse of Controlled Substances. This provision explicitly includes a list of members from a variety of state agencies. The DWI Task Force recommends including a representative from the Minnesota Bureau of Criminal Apprehension's (BCA's) Toxicology Laboratory as an additional member of this task force. The BCA's toxicology laboratory is responsible for testing an individual's blood or urine sample for controlled substances. Therefore, they can help with gathering statistics and identifying trends. However, their testing capabilities are limited by resources. Minnesota's DWI laws require an offender to undergo a chemical dependency evaluation to determine the appropriate level of education and/or treatment the offender needs. Currently, the BCA is unable to test for certain substances, and the forensic laboratory does not have the capacity or resources to complete full spectrums of testing for all offenders. This can result in substances present in an individual that are not being identified, which would result in incomplete statistics and treatment recommendations. A representative from the BCA's toxicology laboratory would provide very important input on which substances are and not identified in testing, and what funding is necessary to test for additional substances. This would result in professionals being able to adequately identify controlled substances that contribute to substance abuse and recommend appropriate treatment to individuals.

The DWI Task Force thanks you for your time and attention to these matters. Please feel free to contact me if you have any questions or would like to discuss any of these provisions further.

Sincerely,

*David Bernstein*

David Bernstein  
Chair, Minnesota DWI Task Force  
[david.bernstein@dwitaskforce.com](mailto:david.bernstein@dwitaskforce.com)  
612-673-2610