



March 1, 2021

Chair Limmer and Members of the Senate Judiciary and Public Safety Finance and Policy Committee:

The Minnesota DWI Task Force supports S.F. 2854, which eliminates a loophole in Minnesota's DWI laws and creates a pilot project for oral fluid roadside testing to detect the presence of drugs. Drug-impaired driving is on the rise, and these two changes are necessary to ensure uniformity in the application of DWI laws and provide law enforcement officers with the tools necessary for investigations.

In 2017, the Minnesota DWI Task Force drafted the bill to amend Minn. Stat. § 169A.51 and create Minn. Stat. § 171.177 to comply with new United States Supreme Court case law. The drafting language referenced Minnesota's search warrant statutes, Sections 626.04 to 626.18, 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. Law enforcement then works with the agency in that adjacent state to obtain a search warrant for a blood or urine sample. If the results 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, and Minn. Stat. § 171.177 only references Minnesota statutes, the Department of Public Safety cannot process a license revocation based on the positive test result as it would in other cases in which 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.

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. Minnesota has fallen behind a number of states which are already utilizing this technology, and Minnesota needs to catch up.



However, it is still incumbent upon the state of Minnesota to conduct its own analysis on the efficacy and accuracy of the oral fluid testing.

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. Given the significant increase in drug-based DWIs, it is important to start this statistical analysis as soon as possible. Therefore, the DWI Task Force respectfully encourages members of the Committee to support S.F. 2854.

Sincerely,

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