

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1269

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House Judiciary Subcommittee On Crime & Corrections

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Room 8-E-A, East Wing  
Main Capitol Building  
Harrisburg, Pennsylvania

Wednesday, September 17, 1997 - 9:30 a.m.

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BEFORE:

Honorable Jerry Birmelin, Majority Chairperson  
Honorable Brett Feese  
Honorable Stephen Maitland  
Honorable Al Masland, Acting Chairperson  
Honorable Robert Reber  
Honorable Harold James, Minority Chairperson  
Honorable Thomas Caltagirone  
Honorable Peter Daley  
Honorable Frank Dermody  
Honorable Kathy Manderino  
Honorable Don Walko

KEY REPORTERS

1300 Garrison Drive, York, PA 17404  
(717) 764-7801 Fax (717) 764-6367

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1       ALSO PRESENT:

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      Judy Sedesse  
      Committee Administrative Assistant

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      Heather Barnhart  
      Majority Research Analyst

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      Galina Milohov,  
      Minority Research Analyst

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1 MAJORITY CHAIRPERSON JERRY BIRMELIN:

2 Good morning. I would like to welcome  
3 you to the Judiciary Committee Subcommittee on  
4 Crimes and Corrections this morning. We are  
5 having a public hearing on legislation that  
6 deals with the issue of driving while impaired.  
7 It is House Bill 1269. This bill was in the  
8 Judiciary Committee earlier this year, was  
9 amended, and then referred to this Subcommittee  
10 for public hearings today. We have a list of  
11 those who are going to testify, available, if  
12 you are interested in that.

13 Before we have our first witness, I am  
14 going to introduce myself. I am Representative  
15 Birmelin from Wayne and Pike County, Chairman of  
16 the Subcommittee. And if the members would  
17 please introduce themselves, to my far left  
18 first.

19 REP. REBER: Good morning, Mr.  
20 Chairman. Bob Reber, Montgomery County, 146th  
21 Legislative District.

22 REP. CALTAGIRONE: Tom Caltagirone,  
23 127th, Berks County.

24 REP. FEESE: Brett Feese, 84th  
25 District, Lycoming County.

1           REP. MASLAND: Al Masland, 199th  
2 District, Cumberland and York Counties.

3           REP. MAITLAND: Steve Maitland, the  
4 91st District, Adams County.

5           CHAIRPERSON BIRMELIN: As other members  
6 come in, I will be attempting to introduce them  
7 as well. I would also like to let the Members  
8 of the Committee know that because of my  
9 personal schedule, I may not be here to run the  
10 final lap of the Committee meeting today and I  
11 will be turning over the gavel and the temporary  
12 Chair of the Committee to Representative Masland  
13 and asking him to finish up for me, if he would.

14           At this point, we are going to call on  
15 Vincent Rabil. He is the Assistant District  
16 Attorney in Forsyth County in North Carolina.  
17 Mr. Rabil has made a long trip, obviously, to be  
18 here with us and we put him up first.

19           And, Mr. Rabil, after you have  
20 presented your testimony, we normally would ask  
21 you if you would then submit to some questions  
22 that the Members of the Committee may have. And  
23 also before you begin, I would advise the  
24 Committee Members that we do have a little bit  
25 tighter than normal schedule, somewhat, for some

1 of our testifiers, so we will try to keep things  
2 moving expeditiously if at all possible.

3 Mr. Rabil, thank you for coming and you  
4 may begin.

5 MR. RABIL: I want to thank the  
6 Committee for inviting me. Representative  
7 Maitland. Representative Masland. We stayed at  
8 Gettysburg, Pennsylvania, last night and I had a  
9 very enjoyable stay.

10 Last May, I prosecuted the first drunk  
11 driver in the United States for first degree  
12 felony murder who had to face the death penalty.  
13 Thomas Richard Jones killed two 19-year-old  
14 college sophomores at Wake Forest University.  
15 He was driving recklessly and drunk on a mixture  
16 of Fioricet, Percocet and Xanax. His alcohol  
17 level, however, was only a .04, which is an  
18 amount less than the .08 required to prove per  
19 se driving while impaired in North Carolina.  
20 However, he had 9.8 micrograms per milliliter  
21 (or .98 micrograms per liter) of Fioricet, which  
22 is the brand name of Butalbital. This is a  
23 narcotic barbiturate, a central nervous system  
24 depressant and that was enough to kill a normal  
25 person.

1           Mr. Jones was a man who had been  
2           abusing alcohol and prescription medication for  
3           over 15 years. The amount of Butalbital he had  
4           in his system was a per se fatal amount; and  
5           about half, or a little less than half, of the  
6           fatal overdoses that are reported in North  
7           Carolina on Butalbital or Fioricet had less than  
8           the amount that Mr. Jones had in his system.

9           The Butalbital was the sole cause of  
10          death so we knew that he had a per se amount  
11          that would impair someone that was not in a  
12          therapeutic range that any doctor would  
13          prescribe. Our evidence was that he had  
14          probably taken over four times the recommended  
15          dosage of that drug.

16          And I understand that, in Pennsylvania,  
17          the fact that he had a prescription for  
18          Butalbital may have prevented a similar person  
19          from being prosecuted for driving while  
20          impaired, or even for murder, because he had a  
21          right to possess that prescription drug.

22          And that was the primary cause of his  
23          impairment.

24          And my understanding is that would be  
25          the purpose of this bill, to encompass drugs

1 that people have a legal prescription for like  
2 he did but was abusing.

3 Over-the-counter drugs and prescription  
4 medication can be used or abused for  
5 recreational highs and are just as dangerous as  
6 alcohol and other illegal drugs such as cocaine,  
7 heroine and marijuana. Many persons who are  
8 chronic users of alcohol often discover that  
9 they can get a greater rush by combining alcohol  
10 with over-the-counter prescription medication.  
11 These drugs often contain warning labels affixed  
12 by either the manufacturer or a pharmacist,  
13 warning about the dangers of mixing medications  
14 with alcohol and the impairing effects of these  
15 drugs on one's ability to drive a car.

16 Thomas Jones, as I said, was drinking  
17 himself to death for 20 years, by his own  
18 admission at trial. He abused all kinds of  
19 drugs. He shopped doctors and hospitals on a  
20 daily basis. He roamed the interstates going  
21 from the VA Hospital in Salisbury, North  
22 Carolina, to the emergency room in Statesville,  
23 to private medical clinics in Winston-Salem  
24 where he was given a variety of narcotic  
25 painkillers which he routinely took in amounts



1 far in excess of the prescribed dosage.

2 It also came out that he often lied to  
3 doctors and medical providers and said that one  
4 hospital had taken X rays and found out he had  
5 broken ribs and he would go to another clinic  
6 and say could I get a refill on this for my  
7 broken ribs, they have already taken X rays. He  
8 was even arrested in Statesville a month before  
9 with stolen prescription pads where he was  
10 trying to get refills on Hydrocodone.

11 He had disregarded warning labels from  
12 nurses that he signed off on in the ER that we  
13 had medical records where he was specifically  
14 counseled and instructed by his personal doctor  
15 at the VA not to drive while taking the  
16 medication, not to combine the medications that  
17 he was given, not to combine it with alcohol or  
18 drive and he, nevertheless, did that.

19 On July 30th, Mr. Jones consumed eight  
20 times the prescribed dose of Hydrocodone and  
21 mixed it with beer in Winston-Salem, drove for  
22 over an hour on Interstate 40, and, as he  
23 approached his home in Statesville, he ran a  
24 deputy sheriff off the road. On September 4th,  
25 1996, while this case was pending in another

1 county, he was out on bond, he drove to my town  
2 in Winston-Salem, and, at 10:30 p.m., crashed  
3 his car head-on into a vehicle occupied by six  
4 Wake Forest University coeds.

5           Maia Witzl and Julie Hansen were  
6 beautiful, bright, talented, involved in their  
7 communities, and volunteers at clinics and  
8 ironically alcohol rehabilitation centers. They  
9 were both committed to pursuing careers in  
10 public service and they were needlessly killed  
11 by a man who was knowingly committing dangerous  
12 and reckless acts: speeding, driving on the  
13 wrong side of the road, and disregarding  
14 specific medical advice not to drive after  
15 taking the medicine he was given for valid  
16 medical reasons.

17           Because Mr. Jones had a long history of  
18 abusing drugs and alcohol while driving, I, as a  
19 prosecutor, knew that I could not protect  
20 society by charging this man with a crime which  
21 would leave him on probation or doing very  
22 little time in prison, and that charge would  
23 have been involuntary manslaughter or even  
24 second degree murder. And in our state, despite  
25 the fact that he had numerous DWI convictions,

1 these would not give him points under our  
2 structured sentencing act, so that he would  
3 still be eligible for one of the lowest levels  
4 of punishment and could be out on the streets  
5 within five or six years even on a second degree  
6 murder conviction.

7           So in desperation over these prospects,  
8 I realized that we, as a society, were being  
9 backed against the wall by men like Thomas  
10 Jones. Determined not to shrug my shoulders at  
11 the parents of the dead girls and the other  
12 seriously injured classmates, I decided that we  
13 needed to take a stand. I elected to charge him  
14 with three counts of assault with a deadly  
15 weapon inflicting serious injury, where his  
16 intent to assault was implied by law, such as  
17 implied malice in a second degree murder case,  
18 and this would be implied from his reckless and  
19 culpably negligent acts in driving while  
20 impaired. Because he committed two homicides  
21 during the perpetration of these felony  
22 assaults, he came within the North Carolina  
23 felony-murder rule and was charged and convicted  
24 of two counts of first degree murder.

25           Under North Carolina law, drunk driving

1 on the wrong side of the road at a high rate of  
2 speed, according to our Appellate decisions,  
3 constitutes the use of a car as a weapon of mass  
4 destruction. And this is an aggravating factor.  
5 And, in North Carolina, when you have an  
6 aggravating factor, the prosecutor has no  
7 discretion. If you are going to prosecute  
8 someone for first degree murder, you are  
9 required to present the aggravating evidence to  
10 a jury and they are required to decide life or  
11 death.

12 There was another aggravating factor,  
13 which is that he rammed his vehicle into another  
14 car prior to the fatal crash and that caused,  
15 created a course of conduct that was another  
16 aggravating factor. The jury ended up  
17 sentencing the two life sentences without  
18 parole. That is still the stiffest sentence  
19 ever given in a case like this.

20 I hope the Jones case can serve as a  
21 wake up call to prosecutors and lawmakers across  
22 the country that people are dying at the hands  
23 of drivers impaired by the reckless abuse of  
24 over-the-counter drugs and prescription  
25 medication just as they are dying at the hands

1 of those who abuse alcohol alone. And these  
2 people are crime victims who are dying violent,  
3 horrible deaths, unexpectedly, usually when they  
4 are minding their own business. And it is our  
5 business as lawmakers and law enforcers to do  
6 our business to protect these innocent people.

7 I would like the Committee to  
8 understand that there are problems, however, in  
9 giving law enforcement and prosecutors effective  
10 tools in proving violations which occur from  
11 abusing drugs and prescription medication. Most  
12 state crime labs are not equipped to perform  
13 quantitative testing which can show judges and  
14 juries precise blood levels of drugs consumed  
15 and state crime labs cannot always recognize the  
16 chemical signatures of many drugs as they appear  
17 in blood, because they lack adequate reference  
18 materials and usually have no PhD-level  
19 toxicologist on staff -- and I am speaking of  
20 like our SBI crime lab in North Carolina -- to  
21 interpret data and testify that a defendant was  
22 impaired due to particular levels of a drug in  
23 their blood.

24 In North Carolina, we are forced in  
25 routine DWI cases to rely on ineffective

1 presumptive or positive or negative tests for  
2 the presence of drugs in blood. And I would  
3 point out that these are the same kinds of tests  
4 that hospitals would perform. We see, as Mr.  
5 Jones' hospital records -- and I brought a copy  
6 of that -- and on the drug screen, it just says  
7 barbiturate, presumptive; benzodiazepine,  
8 presumptive; alcohol, .051. And if that was a  
9 state test, it would be at .04. But on the  
10 toxicology drug screen that a hospital does, it  
11 will not give you the amount -- you don't know  
12 if it is a trace amount or a toxic amount and  
13 you don't know which prescription drug it is --  
14 so it has very little weight with a judge or a  
15 jury.

16 Another problem is that a legislature  
17 cannot set per se illegal amounts of drugs in a  
18 person's blood who is driving, as we do for  
19 alcohol, because many of these drugs are given  
20 for valid medical reasons and the therapeutic  
21 response of individuals who take various  
22 medications just to function normally goes all  
23 over the place. Mr. Jones was able to survive,  
24 although impaired, at what would be a fatal  
25 level of Butalbital for other people, because he

1 had taken it so long and had developed cross-  
2 tolerances from the chronic abuse of alcohol.

3 In cases involving death or serious  
4 injury, my office tries to utilize National  
5 Medical Services, in Willow Grove, Pennsylvania.  
6 This is one of the five forensic drug labs in  
7 the country which can do quantitative testing  
8 and provide the prosecutor with expert witness  
9 services to interpret the results for court. I  
10 would suggest Pennsylvania and North Carolina  
11 may need to develop and enter into a contractual  
12 relationship with a private forensic drug lab  
13 such as National Medical Services, as we do with  
14 other labs like Roche (phonetic) for DNA  
15 paternity testing.

16 The cost of using a private forensic  
17 lab to provide prosecutors with the effective  
18 evidence in serious cases can range from \$1,000  
19 to \$12,000, depending on the number of analyses  
20 required which would be depending on the number  
21 of drugs you are suspecting the person had been  
22 on. And I was told that the cost of setting up  
23 a state lab, such as a State Bureau of  
24 Investigation lab, or a local crime lab, could  
25 be as much as \$250,000 for the hemaspectrometer

1 (phonetic) and the other equipment that is  
2 needed. And this creates a very serious problem  
3 in the routine DWI case.

4 There are also other problems that I  
5 have run into, which is that every law  
6 enforcement agency needs to develop specific  
7 protocol in deciding when to collect blood  
8 samples. Right now, the United States Supreme  
9 Court, in a case where there has been an  
10 accident or serious injury or death, law  
11 enforcement are allowed to just take a defendant  
12 or a suspect to a hospital, without a search  
13 warrant, under exigent circumstances, and ask a  
14 nurse or a doctor to withdraw the blood. Some  
15 states utilize that (the exception, under  
16 exigent circumstances), some do not. And all  
17 too frequently, our law enforcement refuse to do  
18 that: doctors and nurses refuse to take the  
19 blood without a search warrant. But, that is  
20 something that needs to be looked into.

21 Many law enforcement officers have no  
22 idea how to collect trace evidence such as blood  
23 samples, they have no idea how you are supposed  
24 to store it, how you are supposed to transmit it  
25 to a lab. They may or may not call a district



1 attorney and find out: do you want this to go to  
2 a state lab or a routine presumptive test? Or  
3 do you want it to go to the National Medical  
4 Services or a private lab for a detailed  
5 analysis? And it is usually hit or miss. That  
6 needs to be looked into.

7 The final point I want to make, is  
8 that: you may hear in this hearing or even in  
9 other cases coming to trial after you pass this  
10 law, assuming it is passed, about tolerance  
11 levels to drugs from the defense bar. This came  
12 out in our trial and it was attempted to be  
13 introduced in my case that chronic alcohol  
14 drinkers develop cross-tolerances to other  
15 drugs, but this is only true in cases where the  
16 chronic drinker is not currently consuming the  
17 alcohol along with the drugs.

18 And I brought copies of some of the  
19 medical toxicology books with me today.

20 And one of the principles that is  
21 overlooked in making that defense, is that: when  
22 you are consuming alcohol, that statement is not  
23 true that the alcohol continues to enhance the  
24 impairing effect of both the alcohol and the  
25 drugs when combined; and that is one reason why

1 I think there is all the more reason for a law  
2 like this.

3 People who abuse drugs, in my  
4 experience, 90 percent of the time they also  
5 abuse alcohol and combine the alcohol with the  
6 drugs because they have discovered that they get  
7 a stronger high. The longer you use just one  
8 substance, the less impairing effect it has, but  
9 even if you are tolerant, the impairing effect  
10 continues to go up.

11 And I brought a little chart here that  
12 I will pass around. This is from the Medical  
13 Toxicology textbook and it shows the relative  
14 effect of tolerance in repeated use. And you  
15 can see that the line always goes up. And this  
16 is a general diagram meant to describe the  
17 effect of most over-the-counter medication and  
18 other prescribed narcotics and other prescribed  
19 medications.

20 The effect of the drug always goes up  
21 even if you have tolerance, so you cannot level  
22 out and just take a drug and be perfectly  
23 normal, you are going to have some impairing  
24 effect. And if you combine that drug with  
25 alcohol, many different things happen. On page

1 1131 of Gitman and Gellman's Medical Toxicology  
2 textbook, from 1996, he gives a chart in here  
3 where he describes every category of  
4 prescription medication and the effects of  
5 combining any of these drugs with alcohol.

6 And it just goes all over the place. I  
7 won't read that entire thing. But you can see  
8 that you are in a very dangerous situation when  
9 you combine alcohol with any of these things.  
10 The range can be less or greater in the case of  
11 Xanax. If you combine alcohol with any amount  
12 of Xanax, it is known to kill you; so that  
13 combination, in itself, is just suspected to be  
14 per se fatal, almost.

15 I brought pictures of the case we had  
16 where this is caused by a man who was on drugs  
17 and I would just ask to pass those to the  
18 Committee, if anybody wants to see these, just  
19 to see what the effects of abusing prescription  
20 medication are.

21 And to prove the point I was making  
22 about instantly people dying, Maia Witzl's  
23 parents prepared a summary of her life and the  
24 things that she was doing. She was killed  
25 totally unsuspecting on that night, it was going

1 to be the last night of her life. I would like  
2 to pass that up to the Committee. You may wish  
3 to see that.

4 Now, I am not sure where this will go  
5 in Pennsylvania, as far as if someone kills, who  
6 is impaired by drugs. I am not familiar with  
7 Pennsylvania murder law. But I would point out  
8 that in Payne versus Tennessee, a United States  
9 Supreme Court case from 1991, states that: the  
10 assessment of harm caused by the defendant as  
11 the result of the crime charged is an important  
12 concern of criminal law, both in determining the  
13 elements of the offense and in determining the  
14 appropriate punishment. Two equally  
15 blame-worthy criminal defendants may be guilty  
16 of different offenses simply because their acts  
17 caused differing amounts of harm.

18 In North Carolina, the felony-murder  
19 rule came into play because of the amount of  
20 harm. Mr. Jones killed two people, he seriously  
21 injured three others; that amount of harm  
22 created by his intentionally reckless acts, in  
23 abusing these drugs, getting behind the wheel of  
24 a car, in my mind, made him more criminally  
25 liable than just your typical person who has had

1 one beer too many, who is trying to do the right  
2 thing but just cannot keep their car in the lane  
3 and swerves over the center line, perhaps even  
4 at a slow speed. I am not advocating a felony  
5 murder prosecution in every DWI crash that kills  
6 someone, but prosecutors, I think, should at  
7 least have that charge and option in the worse  
8 case scenarios where you have got people who are  
9 reckless, being charged over and over again with  
10 DWI, who totally disregard doctors, nurses and  
11 pharmacists over and over again, who abuse these  
12 medications.

13 I will be happy to answer any questions  
14 the Committee has.

15 CHAIRPERSON BIRMELIN: Thank you, Mr.  
16 Rabil. We will get questions in just a moment.  
17 We have some additional Members of the Committee  
18 who are here and I would like to introduce them.  
19 Representative Kathy Manderino is here from  
20 Philadelphia County and also Representative Pete  
21 Daley from Washington County and to the far end  
22 of this table is Representative Tom Walko from  
23 Allegheny County.

24 I overlooked the fact that I had given  
25 Mr. Masland the opportunity to have some opening

1 remarks and I am going to give them to him now.  
2 They are not exactly opening remarks any longer,  
3 but I am going to ask him to make the remarks  
4 that he would like to concerning the legislation  
5 and then we will begin our questioning with Mr.  
6 Masland.

7 MR. RABIL: Okay.

8 REP. MASLAND: Thank you, Chairman  
9 Bermilin. And I imagine the Members of the  
10 Committee would have wished you would have  
11 further overlooked that. In fact, Mr. Walko is  
12 very happy to be here, now that he can hear my  
13 few remarks.

14 I just want to say a few things, very  
15 briefly, because I think the most important  
16 thing that we are going to hear today is going  
17 to be from the folks that are here to testify.

18 I am not an expert in this area, but I  
19 am familiar with the driving under the influence  
20 laws that we have in Pennsylvania and basically  
21 familiar with some of the problems. And I want  
22 to thank Mr. Rabil for basically giving us more  
23 than just a view of what happened in North  
24 Carolina, but an overview of the situation.  
25 Because when it comes right down to it, this

1 amendment that I put into House Bill 1269, deals  
2 with just one area of our DUI laws.

3 And I just made a real quick look  
4 through the computer listing of all the various  
5 bills that are affecting the Title 75 bill. I  
6 didn't even look under Title 18 bills, which  
7 this is.

8 And there are probably over 20 bills  
9 that have been introduced that will deal with  
10 one aspect or another of our driving under the  
11 influence laws. Some may be just with fines and  
12 penalties, but certainly others with changing  
13 the substance. So it is important to think of  
14 the overall context today in this legislation.

15 And I will say at the outset, because  
16 this issue may come up: why do we have it in a  
17 Title 18 bill as opposed to a Title 75 bill  
18 where the rest of the DUI laws are? Well, quite  
19 frankly, this is one way to afford us an  
20 opportunity for a hearing. I have introduced  
21 separate legislation, that is, Title 75. We  
22 have not gotten a hearing or anything, just at  
23 this point, through the Transportation  
24 Committee. And I want to thank Chairman Gannon  
25 for at least giving us that opportunity here.

1           But you have touched on a number of  
2 things that raise some significant questions.  
3 It may be answered this morning. And I would  
4 encourage all Members of the Committee to  
5 critically examine those issues. Some are  
6 obviously: what, how do you define impairment?  
7 At what level of impairment is someone culpable?  
8 Those are some issues that, perhaps, the folks  
9 from the Department of Health, from the Division  
10 of Chemistry and Toxicology can help us with, in  
11 terms of gauging when somebody is significantly  
12 impaired.

13           Obviously, there is a problem of  
14 enforcement, as to the education of the police  
15 officers to know to look for these types of  
16 things as opposed to just the smell of alcohol  
17 on the breath. So I am anxious to hear from the  
18 State Police as to what their thoughts are in  
19 that area.

20           And you also had the question of what  
21 the appropriate penalties are. Now, the case  
22 Mr. Rabil has spoken most eloquently about is a  
23 very, very serious case. This amendment, this  
24 separate bill that I introduced, was not  
25 introduced to deal really with those situations



1 specifically and did not have them in mind,  
2 although your problems highlight some of the  
3 reason for it at a lesser level, but there may  
4 be a difference between various types of driving  
5 under the influence or driving while impaired  
6 and maybe we will need to make those differences  
7 known in the types of penalties that we assign  
8 to them. For instance, this proposal that we  
9 are dealing with today sets it up as a  
10 misdemeanor II but does not involve any of the  
11 mandatory minimum sentences which we have for  
12 our normal driving under the influence  
13 penalties. Again, that is something we need to  
14 look at.

15           And I say all of that because we may be  
16 looking at an isolated issue here, but we may  
17 ultimately have to just overhaul Section 3731 of  
18 the Vehicle Code. Our DUI laws have been in  
19 effect, the current laws, basically since 1982.  
20 But when you have a number of changes being  
21 offered repeatedly and proposed for a variety of  
22 reasons to address a variety of problems, we may  
23 be better off just, instead of doing it piece  
24 meal, looking at it from a broader perspective.

25           Fortunately, though, Pennsylvania, in

1 this issue, in terms of impairment, is not out  
2 in front of the crowd. There are 31 other  
3 states that have some type of statute on the  
4 books dealing with impairment and we have the  
5 opportunity to learn from them as well as from  
6 the folks here testifying today.

7 And with that, let me just close those  
8 remarks and ask Mr. Rabil one question: if you  
9 could fill us in on a little bit about the North  
10 Carolina statute? for instance, do you have  
11 different levels of culpability depending on the  
12 amount of alcohol or the amount of a substance  
13 in someone's system? And do you have a  
14 different range of penalties for the various  
15 DWIs? Now, I am not talking about the first or  
16 second offense, but I am talking about what they  
17 have done.

18 MR. RABIL: Well, first of all, you are  
19 in violation of the North Carolina driving while  
20 impaired statute if you are impaired to the  
21 degree that you no longer have normal control of  
22 your physical or mental faculties or both  
23 regardless of whether that impairment occurs  
24 from alcohol or drugs or any other psychoactive  
25 substance.

1           REP. MASLAND:  So it is a very broadly  
2 worded statute?

3           MR. RABIL:  It is a very broadly  
4 worded, it covers all of the, any conceivable  
5 impairing substance basically under that  
6 definition, except maybe water and food.

7           But the penalties for DWIs are handled  
8 as if you are over a point -- I cannot remember  
9 exactly what it is now -- .15, say, on the  
10 alcohol scale, that could be counted as an  
11 aggravating factor for a misdemeanor punishment.  
12 If you are below that or you are significantly  
13 but slightly impaired, then that counts as a  
14 mitigating factor, provided that you are drunk  
15 enough to be in violation.  So it is the amount  
16 of alcohol could be an aggravating or mitigating  
17 factor, but it does not increase the crime  
18 itself, it is still the same misdemeanor driving  
19 while impaired conviction.

20           Then punishment goes up if you become a  
21 repeat offender, by either drugs or alcohol.  So  
22 if you have had three prior DWI convictions in  
23 the last seven years, then you are guilty of a  
24 felony habitual driving while impaired offense.  
25 Mr. Jones would have been guilty of that, had he

1       been convicted of the last arrest he had had.

2                   And then if you have three felony DWIs,  
3       you could be prosecuted as an habitual felon.

4       And I have done that on occasion to people who  
5       have had 15 DWI arrests and they have gotten  
6       sentences up to ten years. So that's how we  
7       handle that.

8                   We don't differentiate between the kind  
9       of impairing substance.

10                  But I would say, ten years of  
11       prosecuting, it is rare that I can get a  
12       conviction on drugs alone, as the cause, because  
13       we do not have the lab work that can prove it to  
14       a judge in district court, for one thing; and  
15       then by the time they appeal it to a jury trial,  
16       the jury has difficulty with it, unless they are  
17       just falling down, passed out behind the wheel  
18       and you know they are on Valium or something. I  
19       have seen juries let people go who were passed  
20       out on Valium because there is no good lab work  
21       and they do not want to accept circumstantial  
22       evidence that they were not just asleep behind  
23       the wheel as opposed to passed out on a drug.

24                  REP. MASLAND: So you have attempted  
25       prosecutions on drug-alone situations and

1 over-the-counter drug situations, but ...?

2 MR. RABIL: Right, they are extremely  
3 difficult to get district court judges to go  
4 with. They are easy to defend.

5 REP. MASLAND: I have some other  
6 questions, but I am sure there are a number of  
7 other questions from other Members of the  
8 Committee. So, thank you, Mr. Chairman.

9 CHAIRPERSON BIRMELIN: We have been  
10 joined by two other Members of the Committee.  
11 To the far end of the right wing of the table is  
12 Representative Harold James from Philadelphia  
13 County, and next to him is Frank Dermody, a  
14 representative from Allegheny County.

15 Normally, when I conduct these  
16 meetings, I like to give, call on everybody and  
17 ask them if they want to take the opportunity to  
18 ask questions. But because we have so many  
19 members here today, which is refreshing -- it is  
20 not unusual -- I am going to ask the members if  
21 they would indicate, ahead of time, their desire  
22 to ask questions.

23 If you don't get my ear or eye, I will  
24 assume you did not want to ask a question. And  
25 for those of you who do wish to ask questions, I

1 am going to ask you to make them poignant, make  
2 them brief, make them easily answered, and try  
3 to move the process along as quickly as  
4 possible.

5 As I have indicated earlier, we have a  
6 half hour allowed for each testifier, but by the  
7 time they give their testimony, that consumes a  
8 good 15, 20 minutes of it. So that if all 11 of  
9 us are asking questions and they are redundant,  
10 or not to the point, then we may waste the time  
11 of the other Committee Members as well as those  
12 that are testifying.

13 So all that having been said, and  
14 strongly asking for your cooperation in this  
15 matter, I will, through this first round, call  
16 on each member. But in subsequent testifiers,  
17 if you would just please let me know that you  
18 want to ask questions, I will recognize you. If  
19 you do not let me know, I won't. But we will go  
20 around the table for this particular testifier  
21 to give each of you that opportunity and I will  
22 begin with Representative Daley.

23 REP. DALEY: No questions.

24 CHAIRPERSON BIRMELIN: Representative  
25 Feese.

1           REP. FEESE: Thank you, Mr. Chairman.  
2 I will be as brief as a lawyer/politician can  
3 be.

4           Mr. Rabil, you are to be congratulated,  
5 obviously, on your prosecution. That is a fine  
6 job that you did in a tragic situation.

7           The questions I have really focus upon:  
8 I think, if I am not mistaken, Pennsylvania law  
9 right now as it exists covers the situation that  
10 you had and I just want to make sure, in my  
11 mind, I understand the charges in North Carolina  
12 and how they would translate in Pennsylvania.

13           As I understand it, you charged the  
14 defendant with essentially first degree murder?

15           MR. RABIL: Correct.

16           REP. FEESE: Which is an intentional  
17 premeditated killing?

18           MR. RABIL: Well, it is first degree  
19 felony murder, which, under the felony murder  
20 statute, we did not have to prove premeditation  
21 or deliberation, nor did we have to prove intent  
22 to kill; and it contemplates that the killing  
23 could have been accidental, as long as there was  
24 an intentionally reckless act constituting  
25 another felony, which I found to be the assault

1 with a deadly weapon and inflicting serious  
2 injury arising from his intentionally impairing  
3 himself on drugs and alcohol, intentionally  
4 speeding, driving recklessly, on the wrong side  
5 of the road. All of those things went into  
6 that, those intentional acts.

7 REP. FEESE: So that is a crime that is  
8 in your, generally, in your homicide statute, I  
9 would assume?

10 MR. RABIL: Right. And in our homicide  
11 statute, -- and, in Pennsylvania, it may be true  
12 also -- that if you have a felony-murder rule,  
13 it will say a murder which occurs during the  
14 commission of a rape, kidnapping, armed robbery.

15 REP. FEESE: That is correct, that is  
16 our second degree murder.

17 MR. RABIL: And then we have a  
18 catch-all phrase which says: ... or during the  
19 commission of any other felony committed with  
20 the use of a deadly weapon.

21 In this case, the jury found that his  
22 car was used as a deadly weapon because it was  
23 used so dangerously. And the assault, being a  
24 general intent crime, which the intent is  
25 implied or presumed, is a matter of law, it



1 became a felony assault. And there we were, in  
2 the felony murder statute.

3 REP. FEESE: And we have essentially  
4 the same type of criminal code, although it is  
5 categorized differently as far as your homicides  
6 are concerned.

7 Does North Carolina also have homicide  
8 by motor vehicle while driving under the  
9 influence with a mandatory three year minimum  
10 penalty?

11 MR. RABIL: Well, we have a  
12 watered-down version of that called felony death  
13 by vehicle, which are really the same elements  
14 that you would have in an involuntary  
15 manslaughter charge, except it is specifically  
16 for alcohol or driving while impaired charges.  
17 The punishment is less than it is for  
18 involuntary manslaughter. And, in North  
19 Carolina, you could get probation for a felony  
20 death by vehicle. It is a very weak law, the  
21 punishment has no mandatory jail time. It  
22 depends on their record.

23 REP. FEESE: In Pennsylvania, driving  
24 under the influence causing the death of another  
25 is a mandatory three year minimum prison

1 sentence. Did you charge the defendant with  
2 that crime, from North Carolina, that you just  
3 referred to?

4 MR. RABIL: No, we just charged him  
5 with first degree murder under the felony-murder  
6 rule.

7 REP. FEESE: And does North Carolina  
8 have homicide by motor vehicle not driving under  
9 the influence, that is, any traffic violation  
10 ...

11 MR. RABIL: Correct.

12 REP. FEESE: ... which causes a death  
13 is a homicide by motor vehicle, do you have  
14 that?

15 MR. RABIL: We have something called  
16 misdemeanor death by a vehicle which would be  
17 any other killing, in your routine traffic case,  
18 in which there is just simple negligence, simple  
19 violation of other traffic laws. But if it is,  
20 if you are driving while impaired or you violate  
21 the reckless driving statute, what we call  
22 culpably or criminally negligent traffic laws,  
23 then that can become an element of manslaughter,  
24 so it is prosecuted as a felony then.

25 REP. FEESE: So what role did North

1 Carolina's criminal statute involving driving  
2 under the influence of an impairing substance  
3 play in your prosecution?

4 MR. RABIL: It laid the foundation to  
5 charge the felony assaults because he was  
6 committing culpably negligent, criminally  
7 negligent acts in driving while impaired; that  
8 implied the intent to assault, so I did not have  
9 to prove that he actually intended to run his  
10 car into the people; and that then became the  
11 basis for felony murder in the first degree for  
12 the two girls who died.

13 REP. FEESE: I know you are not  
14 familiar with Pennsylvania law, and, when I was  
15 a prosecutor, I was not familiar with North  
16 Carolina. But under Pennsylvania law, driving  
17 under the combined influence of a controlled  
18 substance and alcohol, such as Percocet, is a  
19 violation of our DUI laws now as it exists.

20 MR. RABIL: Right.

21 REP. FEESE: I just have one other  
22 question. When Representative Masland was  
23 asking you some questions, you answered it and  
24 then he responded by saying over-the-counter  
25 drug prosecutions. Have you prosecuted

1 individuals for driving while impaired for  
2 taking an antihistamine, a beta blocker, an  
3 antiseizure drug, a Tagament HB? Have you  
4 prosecuted people for that?

5 MR. RABIL: No, I have not.

6 REP. FEESE: Is that a problem, do you  
7 know?

8 MR. RABIL: Well, usually, those kinds  
9 of over-the-counter medication do not cause  
10 impairment of your driving skills, so you rarely  
11 see people unfit to drive based on  
12 antihistamines and things like that, unless they  
13 are drinking a quart of the stuff and then you  
14 are going to get impaired on the alcohol that is  
15 added to Benadryls and cold medicine and that  
16 kind of thing. There is often ethanol in many  
17 over-the-counter medications, so you would end  
18 up prosecuting for the alcohol, anyway, if they  
19 take enough. So ...

20 REP. FEESE: But, at least in your  
21 experience, in North Carolina, you have not seen  
22 this problem where police are coming to you and  
23 citizens are coming to you saying there is  
24 everyone out there driving under the influence  
25 of antihistamines?

1 MR. RABIL: No.

2 REP. FEESE: Which is really the  
3 driving, quite frankly, force behind this  
4 Pennsylvania proposal right now.

5 MR. RABIL: Okay.

6 REP. FEESE: A histamine lobby.

7 MR. RABIL: No, I am not aware of a big  
8 problem or even been having that asked of me in  
9 North Carolina.

10 REP. FEESE: Thank you.

11 CHAIRPERSON BIRMELIN: Representative  
12 Maitland.

13 REP. MAITLAND: Yes. Thank you, Mr.  
14 Rabil. And I am glad to see you stayed in  
15 Gettysburg and had an enjoyable experience. I  
16 have been in Winston-Salem a number of times and  
17 enjoyed it there, also.

18 I just have two questions for you. One  
19 is: due to the expense and the difficulty and  
20 expertise of this testing, would it be fair to  
21 say that you seldom use it in a case of somebody  
22 using marijuana and driving?

23 MR. RABIL: Yes, it is rarely used. I  
24 only use it in just very exceptional cases,  
25 usually involving death or very serious injury,

1 due to the expense of. Our judges would be  
2 reluctant to authorize payment of very expensive  
3 lab fees in their routine DUI stuff.

4 REP. MAITLAND: And then secondly, the  
5 people that do use drugs and drive, do they  
6 typically have them with them? I mean, will you  
7 find marijuana, cocaine, prescription pills on  
8 the driver at the time of the accident more  
9 often than not, is that an indicator for you to  
10 check their blood for that?

11 MR. RABIL: Yes, that is. Usually, the  
12 police will find a prescription bottle in their  
13 pocket or in the glove compartment of the car,  
14 somewhere out in the open and there will be a  
15 recent prescription label on there saying they  
16 just got it filled, so they know they are  
17 probably using it. And without evidence like  
18 that, unless the person just tells the officer  
19 that he has been on it, then we do not know.  
20 You cannot just look at them and know like you  
21 might for alcohol.

22 REP. MAITLAND: Thank you.

23 CHAIRPERSON BIRMELIN: Representative  
24 Caltagirone.

25 REP. CATAGIRONE: No questions.

1                   CHAIRPERSON BIRMELIN: Representative  
2 Walko.

3                   REP. WALKO: No questions.

4                   CHAIRPERSON BIRMELIN: Representative  
5 Reber.

6                   REP. REBER: No questions.

7                   CHAIRPERSON BIRMELIN: Representative  
8 Dermody.

9                   REP. DERMODY: No questions.

10                  CHAIRPERSON BIRMELIN: Representative  
11 Manderino.

12                  REP. MANDERINO: Thank you, Mr.  
13 Chairman. Just one question.

14                   I noticed when you explained the case  
15 of Thomas Richard Jones, you repeatedly  
16 emphasized in your testimony and in your  
17 extemporaneous remarks, the intentionally  
18 reckless nature of his act, the knowledge of his  
19 impairment, his intent to abuse for recreational  
20 purposes, the substance. Do you think that that  
21 was, that intent element, was an important  
22 element in your case?

23                   And then further, particularly in the  
24 case where what we are looking at, doing here in  
25 Pennsylvania, what is being proposed, is putting

1 over-the-counter or legal prescription drugs on  
2 this list, whether an intent element would be  
3 necessary or advised in making that an offense?

4 MR. RABIL: Well, I emphasize the  
5 intent, intentional recklessness in my case,  
6 because Jones was prosecuted for first degree  
7 murder and he was charged with felony assaults.  
8 And I wanted to be sure that I was not abusing  
9 my discretion as a prosecutor to charge or try  
10 someone for their life for an inadvertent  
11 violation.

12 In fact, the jury is instructed, under  
13 North Carolina law, when you are using culpable  
14 negligence or criminal negligence, that they are  
15 not committing an inadvertent violation of the  
16 law, of the traffic law. And I think the jury  
17 would understand that to be even the driving  
18 while impaired statute.

19 I also, personally, I feel you have to  
20 have some personal, intentional culpability, you  
21 have to know that you are creating a danger for  
22 people, to be tried for your life or life  
23 without parole even, so that's why I emphasize  
24 that.

25 For your statute, I think you are



1 contemplating a misdemeanor charge which is a  
2 lot like other strict liability traffic  
3 violations. In North Carolina, you are strictly  
4 liable if you are driving while impaired on  
5 alcohol, whether you know you are impaired or  
6 not. You might feel perfectly normal and look  
7 perfectly normal at a .10 on alcohol, but there  
8 is no medical reason to have that much alcohol  
9 and be behind the wheel of a car, so it is  
10 illegal, just as a matter of public policy.

11 So I think the way your statute is  
12 worded in its proposed law is good because it  
13 does create a higher standard of care, it puts  
14 the responsibility on citizens to be sure that  
15 they are not impaired by these medications. And  
16 that, since it is only a misdemeanor punishment  
17 that you are looking at, you are contemplating  
18 treatment and fine as opposed to jail time, so I  
19 think it is okay, and not to require any higher  
20 degree of intent.

21 I was just trying to emphasize why you  
22 would prosecute people who were inadvertently  
23 violating this for a full-blooded murder charge.

24 REP. MANDERINO: I guess just one  
25 follow up on what you just said. This is what's

1 really troubling me. Because in your own  
2 testimony, you talk about the fact that tests  
3 will tell you whether you have this particular  
4 element in your blood, but it won't tell you  
5 whether it is a trace amount or a gross  
6 impairing amount. So you are talking about  
7 making a strict liability crime, not for  
8 something that I know to be an impairing  
9 substance, such as alcohol or drugs, controlled  
10 drugs, that are abused, but something that I  
11 know to be a healthy drug that keeps me healthy,  
12 breathing, functioning at a normal level. And I  
13 guess that's where I am having some difficulty.

14 And you don't seem to be bothered by  
15 that distinction. And that kind of surprises  
16 me, based on your saying that a blood test can  
17 tell me that you have X, Y, Z in your blood, but  
18 not whether it is a trace amount that is just my  
19 normal two antihistamines every four hours that  
20 the doctor prescribed or whether I popped a  
21 bottle of 16 of them in my mouth.

22 MR. RABIL: Well, that is a problem.  
23 If someone is going to be charged with this in  
24 Pennsylvania, what would a police officer or a  
25 State Trooper, for example, bring to court,

1 other than the half-consumed pill bottle and  
2 maybe the person's admission?

3           You are going to be prosecuting 90  
4 percent of the time under circumstantial  
5 evidence where you have got to prove that the  
6 person was impaired and had lost normal control  
7 due to the effects of that drug and not some  
8 other health problem or physical infirmity. And  
9 those are the matters that the courts have to  
10 deal with every day in almost all DWI  
11 prosecutions when it is not a per se .08 or .10.

12           I mean, the point you are making is  
13 true with alcohol as well. I mean, someone  
14 could be impaired at a .03 or .04 alcohol  
15 because that is just the way their body reacts.  
16 Young women, perhaps, studies show, get impaired  
17 on a lot less amounts of wine than men do. But  
18 they are impaired and they are dangerous, so  
19 they get behind the wheel and it is up to a  
20 prosecutor to prove that. So those are things  
21 that will just have to be worked out in the  
22 courts, in the trenches, on a case-by-case  
23 basis, based on the evidence.

24           And I don't think you can draw a bright  
25 line. I don't think you can make it a per se

1 illegal amount. Maybe you could pick out  
2 certain narcotics and have a schedule of maybe  
3 five of the strongest central nervous system  
4 depressants that you know are going to impair  
5 driving ability and give that a schedule, but  
6 that gets to be so complex. And, how do you  
7 fund the testing? And, how do you get the  
8 testing to show that level? There is not  
9 available technology to show anyone what the  
10 appropriate level is of Butalbital in someone's  
11 system without going to private labs like I do  
12 it.

13 So I think if you are talking about  
14 misdemeanor prosecutions, you should have faith  
15 in your courts and your judicial system to  
16 identify those people who truly were impaired  
17 due to the effects of either the  
18 over-the-counter medication or prescribed  
19 medication. But, even so, it is going to be  
20 difficult and I can see that and I don't want to  
21 hide that problem from the Committee.

22 REP. MANDERINO: Thank you.

23 Thank you, Mr. Chairman.

24 CHAIRPERSON BIRMELIN: Representative  
25 James.

1 REP. JAMES: No questions.

2 CHAIRPERSON BIRMELIN: I want to thank  
3 you, Mr. Rabil, for your testimony. And you may  
4 be interested in staying for the rest of the  
5 hearing and have the opportunity to converse  
6 with some of the other testifiers, if you would  
7 like.

8 MR. RABIL: All right. Thank you.

9 CHAIRPERSON BIRMELIN: Our next  
10 testifier is Dr. Jeffery Shoemaker, who is the  
11 Director, Division of Chemistry and Toxicology  
12 and Bureau of Laboratories for the Pennsylvania  
13 Department of Health.

14 Welcome, Dr. Shoemaker. Did you bring  
15 written testimony with you for the Members of  
16 the Committee?

17 DR. SHOEMAKER: Yes, I did.

18 CHAIRPERSON BIRMELIN: If you could  
19 just hold off for a second, we will get that  
20 distributed.

21 Dr. Shoemaker, again, I would welcome  
22 you to our Committee meeting on this subject.  
23 And after you have presented your testimony, I  
24 would invite you to stay and answer any  
25 questions the Committee Members would have for

1 you. And if you are ready, you may begin.

2 DR. SHOEMAKER: Yes, thank you.

3 Good morning. I am Dr. Jeffery  
4 Shoemaker, Director of the Division of Chemistry  
5 and Toxicology in the Bureau of Laboratories of  
6 the Pennsylvania Department of Health. I have  
7 been responsible for activities at the Bureau of  
8 Laboratories relating to alcohol and drug  
9 testing for more than 25 years.

10 I would like to thank the House  
11 Judiciary Committee for this opportunity to  
12 offer testimony on behalf of the Department and  
13 to present comments on House Bill 1269, which  
14 amend Section 5505 of Title 18 (Crimes and  
15 Offenses) of the Pennsylvania Consolidated  
16 Statutes. My comments will focus on Section  
17 5505.1 (Driving While Impaired) of this bill  
18 since our agency's involvement with issues  
19 relating to public drunkenness has been  
20 primarily in supporting efforts to prevent  
21 driving while intoxicated.

22 The Department of Health understands a  
23 need to address the problems of driving while  
24 intoxicated. Injuries sustained in accidents  
25 are the leading cause of death and disability,

1 especially in young people, and vehicular  
2 collisions account for approximately half of the  
3 accidents which occur. Although alcohol  
4 intoxication is the primary contributing factor  
5 in nearly 50 percent of highway fatalities,  
6 impairment resulting from administration of  
7 controlled substances is also a significant  
8 problem. In many instances, both alcohol and  
9 drugs are present in these individuals, and the  
10 impairment produced by these substances in  
11 combination is often greater than the effect of  
12 any one of these agents acting alone.

13           The Bureau of Laboratories of the  
14 Department of Health receives blood specimens  
15 taken by county coroners and medical examiners  
16 from the bodies of drivers and pedestrians over  
17 15 years of age who die within four hours  
18 following highway accidents in accordance with  
19 the Commonwealth's Motor Vehicle Code [75 Pa.  
20 C.S. Section 3749(b)]. This blood is routinely  
21 tested for alcohol content and the results are  
22 reported to the coroners or medical examiners  
23 who submitted the specimens, and to the  
24 Pennsylvania Department of Transportation which  
25 uses the findings for highway accident

1 epidemiology purposes.

2 A further study utilizing these  
3 specimens was recently conducted to determine  
4 the involvement of seven types of controlled  
5 substances in vehicular accidents. This study  
6 revealed that annually between 15 and 20 percent  
7 of the people who die in highway accidents have  
8 one or more of these drugs in their blood often  
9 in combination with alcohol. A summary of the  
10 findings in this study for 1994 through 1996 is  
11 contained on the attached chart. The substances  
12 selected for testing were chosen based on their  
13 prevalence of abuse or misuse. A more  
14 exhaustive study will likely show the presence  
15 of other substances in some individuals. On the  
16 basis of information obtained in this study, it  
17 is evident that driving under the influence of  
18 drugs is both a significant public health and  
19 highway safety problem.

20 The Pennsylvania Department of Health  
21 supports the intent of this legislation.  
22 However, it appears that the provisions  
23 contained in Section 5505.1 to a great extent  
24 duplicate provisions already included in the  
25 Commonwealth's Motor Vehicle Code Title 75.



1 Placing similar legislation in a different code  
2 (Title 18) may complicate enforcement of the  
3 Motor Vehicle Code and jeopardize prosecutions  
4 which are in progress under this statute.

5 Further, the Crimes Code does not have  
6 provisions for chemical testing which is  
7 necessary to provide evidence in Commonwealth  
8 courts that a person drove, operated or was in  
9 actual physical control of the movement of a  
10 motor vehicle while under the influence of  
11 alcohol or a controlled substance. The Motor  
12 Vehicle Code also contains penalties for  
13 refusing to submit to chemical testing which was  
14 not included in the revision of Section 5505 of  
15 the Crimes Code.

16 The Pennsylvania Department of Health  
17 licenses laboratories that test materials from  
18 the human body in accordance with the  
19 Commonwealth's Clinical Laboratories Act (35  
20 P.S. Sections 2151 through 2165). In addition  
21 to this licensure requirement, laboratories that  
22 perform analyses of blood or urine for alcohol  
23 or controlled substance content, must be  
24 specifically approved by the Department to  
25 provide these services. The Commonwealth's

1 Superior Court has taken judicial notice [631  
2 A.2d 1014 (1993)] of these approval programs so  
3 that in criminal DUI prosecutions, no scientific  
4 foundation needs to be laid to establish a  
5 presumption of the validity of a blood or urine  
6 test result obtained by an approved laboratory.  
7 Accordingly, in Section 1547 (c) (2) (test  
8 results admissible in evidence) of the Vehicle  
9 Code, it is specified that chemical tests of  
10 blood or urine shall be performed by clinical  
11 laboratories licensed and approved by the  
12 Department of Health.

13 A further concern, which could be a  
14 problem in amending current statutes to expand  
15 testing to include other substances, relates to  
16 the amount of a substance which must be present  
17 in a person's body for them to be considered  
18 under the influence of the substance to a degree  
19 that would significantly impair their ability to  
20 drive. Even in the case of alcohol which has  
21 been extensively studied for many years, there  
22 is still some uncertainty about the level at  
23 which it impairs a person to the extent that  
24 they should not drive. In the case of drugs,  
25 there are many hundreds of substances which

1       could be present either alone or in combination  
2       with alcohol or other drugs and persons  
3       apprehended on suspicion of driving while  
4       intoxicated, and generally there is a paucity of  
5       information correlating their concentrations in  
6       body fluids with the ability to drive safely.  
7       Until this problem is solved, it may impede  
8       successful enforcement of any statute which  
9       attempts to address this issue.

10               One possible solution to the lack of  
11       information relating drug levels to impairment  
12       of driving ability may be the enactment of zero  
13       tolerance laws in which the presence of  
14       detectable levels of drugs along with evidence  
15       of impaired driving would be used to prosecute  
16       persons charged with DUI. However, this  
17       approach will almost certainly result in legal  
18       challenges, and its successful application in  
19       other jurisdictions should be investigated  
20       before attempts are made to apply it in  
21       Pennsylvania. A study should also be conducted  
22       to determine if there are other ways to  
23       circumvent this problem.

24               Hopefully, the previous discussion has  
25       provided some insight into the problems inherent

1 in amending existing statutes to address the  
2 problem of driving under the influence of drugs.  
3 As a result of biological individuality, the  
4 effects of drugs vary from person to person  
5 which renders it difficult to generalize with  
6 regard to dose-response relationships. Because  
7 of the wide spectrum of drug responses which  
8 different drugs produce, it is unreasonable to  
9 expect police officers to be able to discern  
10 these effects and relate them to ability to  
11 drive safely. Devices which are available for  
12 initial screening are limited to frequently  
13 abused substances (for example, amphetamines,  
14 cocaine, opiates and marijuana) and are  
15 generally not practical for pre-arrest testing  
16 purposes at the roadside.

17 Lethargy resulting from the use of  
18 prescription or over-the-counter medications may  
19 be difficult to distinguish from the conditions  
20 for which these pharmaceutical products are  
21 being taken. Caution must also be exercised not  
22 to equate all drug effects with intoxication  
23 which is usually considered to be a state which  
24 occurs when the therapeutic dosage is exceeded.  
25 To avoid the pitfalls of attempting to address

1 all drugs and substances which could affect  
2 driving ability, it may be more prudent and  
3 practical to develop enforcement provisions for  
4 those which studies have shown to present a  
5 significant threat to highway safety. Adding  
6 additional substances to the Motor Vehicle Code  
7 could create a difficult enforcement problem  
8 which needs to be carefully evaluated. I am  
9 hopeful that the Committee will undertake such  
10 an evaluation as part of its review of this  
11 legislation.

12 CHAIRPERSON BIRMELIN: Thank you, Dr.  
13 Shoemaker.

14 Representative Masland.

15 REP. MASLAND: Thank you, Mr. Chairman.

16 Dr. Shoemaker, you may have missed my  
17 earlier testimony where I talked earlier,  
18 remarks, where I talked about the fact that this  
19 is in Title 18, probably should be in Title 75,  
20 ultimately, so there is really no disagreement  
21 there.

22 And I think, really, your testimony  
23 underscores the fact that it would be difficult  
24 to put any per se levels on impairing substances  
25 other than alcohol because there is such a wide

1 range of effects, so we are not in this statute  
2 looking to have a .10 per se level. And for  
3 that matter, we are not really expecting. As  
4 you say, it would be difficult for officers to  
5 discern. I am anxious to hear what the State  
6 Police have to say.

7 But we are not really looking for a  
8 situation where anybody who has taken a  
9 Co-Tylenol is going to be pulled over the side  
10 of the road. Those normal situations where  
11 people are taking substances generally are not  
12 even coming to the attention of the police, so  
13 we are not really expecting them to discern that  
14 in those types of circumstances.

15 But that aside and the problem with  
16 correlation aside, your lab is capable of  
17 testing for the presence of these various  
18 substances: prescription drugs, over-the-counter  
19 medications?

20 DR. SHOEMAKER: Well, at this time, we  
21 are not prepared to test for all drugs. We only  
22 test for about a total of about 10 drugs,  
23 totally, under our present capability.

24 REP. MASLAND: Well, I guess I am not  
25 saying whether you are prepared. But you would

1 be able to test, for instance, if there was a  
2 statute that dealt with driving while impaired  
3 and would bring in other substances than those  
4 that you currently test for, would you be able  
5 to do that?

6 DR. SHOEMAKER: Yes, that would be  
7 possible.

8 REP. MASLAND: That's really the only  
9 question I have. Thank you.

10 CHAIRPERSON BIRMELIN: Representative  
11 Caltagirone.

12 REP. CALTAGIRONE: Thank you, Mr.  
13 Chairman.

14 Doctor, are you familiar with the case  
15 involving Pfizer, Inc., UCV Pharma., Inc.  
16 (phonetic) versus Schering Corporation?

17 DR. SHOEMAKER: No, I am not.

18 REP. CALTAGIRONE: Are you familiar  
19 with Claritin, the drug?

20 DR. SHOEMAKER: I know what it is, yes.

21 REP. CALTAGIRONE: Is it a prescribed  
22 drug, by doctors?

23 DR. SHOEMAKER: Yes.

24 REP. CALTAGIRONE: A controlled  
25 substance?

1 DR. SHOEMAKER: Yes. I am not sure  
2 what schedule. It certainly is a controlled  
3 substance.

4 REP. CALTAGIRONE: I am reading this  
5 brief evidently concerning this case and it is  
6 kind of interesting reading because of the  
7 advertising that is taking place with the  
8 pharmacies, doctors and the industry evidently  
9 doing battle with one another about what is and  
10 is not a dangerous drug and whether or not  
11 antihistamines, depressants, sleep medications,  
12 all of the above, can affect somebody's ability  
13 to safely travel and drive on the road. And,  
14 giving me the appearance, I could be wrong, but  
15 I didn't completely read this, this is just  
16 something I had gotten recently within the last  
17 few minutes, but I am getting the impression  
18 that there is a drive going on to try to get  
19 doctors and particularly individuals, who are  
20 taking these kinds of medications, to taking  
21 Claritin which would be safer, and that these  
22 ads evidently are backing up: You Snooze, You  
23 Lose.

24 And I am just curious, they are saying  
25 the laws of 35 states prohibit driving under the



1 influence of any substance that impairs driving  
2 ability. Be sure to read the medicine labels  
3 carefully for warnings about drowsiness. Ask  
4 your physician and/or pharmacist if the  
5 medication will impair your ability to drive.  
6 And it lists a candid group of them. But this  
7 ad was paid for by the Schering Corporation,  
8 okay?

9           There is another ad similar to that:  
10 drug impaired driving can be hazardous to your  
11 health. And, of course, this lawsuit involves  
12 the disparaging of pharmaceuticals that are  
13 being promoted by one corporation as opposed to  
14 the other, giving the inference that Schering's  
15 medication for Claritin would be safer and you  
16 would be not liable for prosecution evidently  
17 for violating the laws.

18           There is some real, real meaty  
19 substance in this. I didn't get to go through  
20 all of this. But do you know anything about  
21 what's going on with these issues, with these  
22 pharmaceutical companies?

23           DR. SHOEMAKER: I have just heard  
24 essentially what you have told me, really. And  
25 I really can't comment on it because I don't

1 really have any background information relating  
2 to it.

3 REP. CALTAGIRONE: Well, Doctor, how  
4 long have you been practicing medicine in this  
5 state?

6 DR. SHOEMAKER: Excuse me. I am not a  
7 physician. I have a Doctorate in  
8 Chemistry. I am primarily familiar with the  
9 clinical chemistry part of --

10 REP. CALTAGIRONE: So you are not a  
11 medical doctor, but you are a doctor of --

12 (Interruption by reporter, both  
13 speakers talking at the same time.)

14 DR. SHOEMAKER: I just wanted to  
15 clarify: I am not a physician. I have a  
16 Doctoral Degree in Chemistry. I primarily am  
17 involved with clinical chemistry and the  
18 analysis of materials in the human body.

19 REP. CALTAGIRONE: Who did you work  
20 with before you came to the state?

21 DR. SHOEMAKER: Immediately before  
22 coming to the state, I was at the University of  
23 Pittsburgh in a teaching position.

24 REP. CALTAGIRONE: But did you ever  
25 work for a pharmaceutical company?

1 DR. SHOEMAKER: I worked for a company  
2 which made excipients for the pharmaceutical  
3 industry for a brief time. We prepared chemical  
4 preparations. It was not a pharmaceutical  
5 company, per se.

6 REP. CALTAGIRONE: What pharmaceutical  
7 company would have been involved in that?

8 DR. SHOEMAKER: Well, they made  
9 materials for many different companies. It has  
10 been so long, though, I can't remember really  
11 who they did. So it applies to, within many  
12 different companies.

13 REP. CALTAGIRONE: I am a little bit  
14 concerned about the all-consuming nature of this  
15 particular legislation and the prescriptions  
16 that people take and how that can be implied.  
17 And we are not saying that just because you take  
18 a prescription that you are also drinking  
19 alcohol. I don't think that can be presumed by  
20 anybody. Because anybody that has a cold or any  
21 kind of a sickness or a life-threatening  
22 situation where they have been prescribed by the  
23 doctor to take that medication, there is an  
24 inference that they may be violating the law by  
25 driving a vehicle; do you agree with that

1 assumption in this legislation?

2 DR. SHOEMAKER: I am not really sure I  
3 understand your question. Could you kind of  
4 rephrase it for me, please?

5 REP. CALTAGIRONE: Anybody taking  
6 prescribed medication that has been authorized  
7 by a doctor would be violating this law by  
8 driving the vehicle?

9 DR. SHOEMAKER: That may be, depending  
10 on how it is interpreted, yes. I am also not an  
11 attorney, so I really am hesitant to interpret  
12 laws.

13 REP. CALTAGIRONE: How would you  
14 interpret it, sir? You know pharmacology  
15 evidently through the tests that you conduct,  
16 correct?

17 DR. SHOEMAKER: Yes. Well, our concern  
18 with this is that it does appear to be all-  
19 encompassing and it may not be appropriate to  
20 have that statute on the books in that form.

21 REP. CALTAGIRONE: The concern that I  
22 have and I have expressed this yesterday to  
23 certain Representatives and I still have that  
24 concern, is that: there are people that take  
25 medication, anybody that has a cold, the flu

1 season is coming upon us, and they go and get a  
2 prescription and that type of prescription,  
3 according to this legislation, would be covered  
4 under that. Because there could be codeine in  
5 that prescription or other types of controlled  
6 substances that are issued by the doctor,  
7 meaning that that person could legally be  
8 considered impaired and should not be driving  
9 that vehicle, correct?

10 DR. SHOEMAKER: Well, generally, like  
11 when medications such as this are dispensed,  
12 there is an advisory label placed on the  
13 prescription bottle which advises them not to  
14 drive or perform dangerous tasks or operate  
15 dangerous machinery. And, generally, I think  
16 people have to exercise some judgment with  
17 regard to that, depending on how the particular  
18 condition which they have is affecting them, and  
19 also when they take the medication, how it is  
20 affecting them as an individual.

21 I think it is very hard to blanketly  
22 say that if a certain medication is taken, you  
23 absolutely should not drive. I think it  
24 depends, to some extent, on the dosage as well  
25 as the individual response to that medication.

1           REP. CALTAGIRONE: Let's say, Doctor,  
2 if you were driving, you just had ingested some  
3 prescribed medication from your medical doctor  
4 and you got involved in an accident, the  
5 toxicology test was conducted on you and it  
6 showed that you had those substances in your  
7 system, with this legislation, would you not be  
8 guilty?

9           DR. SHOEMAKER: I would imagine you  
10 could be prosecuted under this, yes.

11          REP. CALTAGIRONE: Okay. That is the  
12 point that I am making. Because I think  
13 everybody in this room at some point or another  
14 has had prescribed medicines that they have been  
15 taking or even continue to take, through the  
16 senior citizens, the vast numbers of senior  
17 citizens in this state, people with mental  
18 health problems and others for whatever health  
19 reasons they have to take that. I am viewing  
20 this as a potential that they would not or  
21 should not be driving, period. How do you view  
22 it?

23          DR. SHOEMAKER: Well, I can only give  
24 you my personal opinion.

25          REP. CALTAGIRONE: That is what I would

1 like.

2 DR. SHOEMAKER: I mean, if it were  
3 myself and I knew that I was going to be taking  
4 medication which would affect my driving, I  
5 personally would not drive. But I really cannot  
6 speak for everyone.

7 REP. CALTAGIRONE: Well, let me ask you  
8 this, then: have you ever driven while you were  
9 under medications?

10 DR. SHOEMAKER: Not medication that  
11 would affect my ability to drive, no.

12 REP. CALTAGIRONE: Not affecting your  
13 ability to drive, but if it was medication that  
14 the doctor gave you that was a controlled  
15 substance, even though it did not affect your  
16 ability, did you, in fact, still drive?

17 DR. SHOEMAKER: Yes.

18 REP. CALTAGIRONE: Thank you.

19 Thank you, Mr. Chairman.

20 CHAIRPERSON BIRMELIN: Representative  
21 Feese.

22 REP. FEESE: Thank you, Mr. Chairman.

23 Doctor, I just have a few questions  
24 about the chart that was attached to your  
25 testimony.

1 DR. SHOEMAKER: Okay.

2 REP. FEESE: I believe your testimony,  
3 you state at one point, upon questioning, that  
4 there were ten drugs that the lab tests for, is  
5 that correct?

6 DR. SHOEMAKER: Yes, the drugs that we  
7 look for in the deceased, fatal accident  
8 victims, did not include all of those. We just  
9 looked at the ones we considered to be most  
10 likely to be present.

11 There are some additional substances  
12 such as LSD, which frankly are not that  
13 prevalent as far as abuse at this time.

14 REP. FEESE: But on your chart, for  
15 example, the first one is amphetamines. Would  
16 that be something like methamphetamine, speed,  
17 something like that?

18 DR. SHOEMAKER: Right, yes.

19 REP. FEESE: Barbiturates, what would  
20 that include, the common street name for drugs  
21 taken that are barbiturate?

22 DR. SHOEMAKER: Haldol, Amobarbital,  
23 Phenobarbital. Phenobarbital is taken by a lot  
24 of people who have epilepsy and other diseases  
25 which produce seizures, would be in that



1 category.

2 REP. FEESE: It looks like cocaine, is  
3 that the highest substance that you find, is  
4 that correct?

5 DR. SHOEMAKER: Generally. There is  
6 some variation over the years. But sometimes,  
7 it is cocaine. Sometimes, it is cannabinoids  
8 which are the active ingredients in marijuana.  
9 There is also a significant amount of use of  
10 benzodiazepines which are the drugs such as  
11 Valium and Librium.

12 REP. FEESE: So the vast majority of  
13 these substances you find, however, involve pot,  
14 coke, opium, methamphetamine?

15 DR. SHOEMAKER: Right, right, these are  
16 more or less the drugs which are traditionally  
17 abused now and which people take for the express  
18 intent of altering their mental state, which  
19 would, of course, make it unsafe to drive.

20 REP. FEESE: So these, so you test for  
21 the drugs which it is generally the express  
22 intent of people to take to alter their mental  
23 state, is that correct?

24 DR. SHOEMAKER: Yes.

25 REP. FEESE: And you are not testing

1 for the drugs, over-the-counter medications or  
2 that it be antihistamines or beta blockers or  
3 anything like that, you are not testing for  
4 those substances?

5 DR. SHOEMAKER: Generally not.  
6 Although the things like the benzodiazepines,  
7 which are Valium and Librium, primarily, and  
8 tricyclic antidepressants are used by large  
9 segments of the population for legitimate  
10 medical purposes.

11 REP. FEESE: And Valium, I believe is  
12 also one of the major prescription medications  
13 that are abused on, as I would say, on the  
14 street, also, illegally?

15 DR. SHOEMAKER: Yes, that's correct.

16 REP. FEESE: That's all the questions I  
17 have.

18 CHAIRPERSON BIRMELIN: I want to thank  
19 you, Dr. Shoemaker, for your testimony. A few  
20 of us here, probably we had a hard time keeping  
21 up with all the drugs that you kept throwing at  
22 us; including our stenographers, I believe.  
23 But, hopefully, it will make sense to us as we  
24 read the testimony at a later time.

25 Our next testifier is Major Kathryn

1       Doutt, Director of the Bureau of Patrol from the  
2       Pennsylvania State Police.

3               Major Doutt, if you would come forward.  
4       And we will get your testimony distributed here  
5       in just a minute.

6               And, Major, after you have presented  
7       your testimony, I hope you, too, would remain  
8       for questions from Members of the Committee.  
9       You may begin

10              MAJOR DOUTT:   Certainly.

11              I am Major Kathryn Doutt, Director of  
12       the Bureau of Patrol of the Pennsylvania State  
13       Police.  Colonel Paul J. Evanko, Commissioner of  
14       the State Police, and I would like to thank the  
15       House Judiciary Committee for this opportunity  
16       today to speak about House Bill 1269, amending  
17       the Crimes Code Section 5505 Public Drunkenness  
18       to Under Influence of Alcohol or Controlled  
19       Substance in Public Place.

20              The Pennsylvania State Police supports  
21       stronger laws to prevent persons from reaching  
22       dangerous levels of intoxication to protect the  
23       public safety.  Obviously, individuals can  
24       induce a state of intoxication or impairment  
25       using substances other than alcohol; for

1       example, controlled substances or even  
2       over-the-counter drugs, which could result in  
3       behavior which endangers themselves or others,  
4       endangers property or annoys persons in their  
5       vicinity.

6               The current public drunkenness section  
7       was designed to restore tranquility to a public  
8       place if a person's state of intoxication  
9       creates a public nuisance. According to the  
10       Pennsylvania Uniform Crime Report, there have  
11       been 123,888 arrests for public drunkenness in  
12       the past five years. In 1996, there were 20,417  
13       arrests for public drunkenness.

14              Although the term under the influence  
15       in both the current and proposed sections of the  
16       law is somewhat subjective, it commonly refers  
17       to a state in which the person's physical and  
18       mental actions are altered from the presence of  
19       intoxicants introduced to their system. It is  
20       generally accepted that a person with a blood  
21       alcohol content of .03 percent is actually  
22       considered under the influence. This is because  
23       studies have shown that physical motor skills  
24       are affected by alcohol at this level. This  
25       individual, however, is not usually considered

1       intoxicated and generally would not create a  
2       problem in a public place.

3               On the other hand, the per se blood  
4       alcohol limit for driving in Pennsylvania is .10  
5       percent blood alcohol content. It has been  
6       determined that a .10 percent BAC, a person's  
7       physical motor skills are affected to the point  
8       that driving is unsafe. BACs between .05  
9       percent and .10 percent are recognized  
10      nationally as levels of impairment for driving,  
11      but are directly tied to certain behavior which  
12      triggers an enforcement action.

13              We acknowledge the difficulty, if not  
14      the impossibility, of having such precise  
15      measurements and guidelines available to law  
16      enforcement for all of the controlled substances  
17      covered by the Controlled Substance, Drug,  
18      Device and Cosmetic Act. As is the case with  
19      enforcement of the Vehicle Code Section 3731  
20      (driving while under the influence of alcohol or  
21      controlled substances), police officers will  
22      have to base their enforcement action on their  
23      observations of the person whose actions are  
24      being questioned. They will use these  
25      observations as probable cause for their

1 decision to arrest or cite the subject.

2           However, the difficulties which will  
3 exist for enforcement should be mentioned.

4 While police are trained to discern the smell of  
5 alcoholic beverages on a person's breath, which  
6 actually become one of the observations I have  
7 mentioned, controlled substances usually have no  
8 smell. Therefore, a violation of this section  
9 would also have to include drug testing for  
10 successful prosecution.

11           This is an expensive proposition.  
12 Phone calls to a hospital laboratory in Central  
13 Pennsylvania and a private laboratory in Western  
14 Pennsylvania revealed costs associated with such  
15 tests ranging from \$150 to \$200.

16           The drug screens available from these  
17 laboratories also differed. While the hospital  
18 laboratory had the ability to screen 300  
19 different drug compounds from a drug sample, the  
20 private laboratory was able to screen only 150  
21 different compounds.

22           At the present time, the laboratory  
23 services of the Pennsylvania State Police cannot  
24 perform this type of drug screening. Therefore,  
25 State and local police will have to seek these

1 services from hospitals and private  
2 laboratories. I cannot offer you the projected  
3 costs for either the State Police or local  
4 police departments for these tests, since we do  
5 not have any readily available data of how many  
6 enforcement actions might result from passage of  
7 this amendment.

8           Since the term intoxication generally  
9 refers to reduced physical and/or mental  
10 capabilities, which substantially or materially  
11 impair a sense of responsibility resulting from  
12 the excessive ingestion of alcoholic beverages  
13 and/or the ingestion of controlled substances,  
14 you might consider a simple refinement of the  
15 current title of the section from Public  
16 Drunkenness to Public Intoxication. The current  
17 language, when coupled with a definition of  
18 intoxication, would help police officers tie  
19 behavior to probable causative factors, making  
20 enforcement somewhat less difficult.

21           The issues I would particularly like to  
22 address, however, are not the proposed  
23 amendments which retitle public drunkenness to  
24 under influence of alcohol or controlled  
25 substance in public place or the addition of

1 controlled substance to the basic section, but  
2 the proposed subsection of driving while  
3 impaired. If passed, this subsection will  
4 prohibit a person from operating a motor vehicle  
5 while under the influence of any drug, if the  
6 drug renders the person incapable of driving  
7 safely.

8 As we all know, there is a current  
9 section of the Vehicle Code, 3731 (a) (2), which  
10 encompasses driving while under the influence of  
11 alcohol or controlled substances, generically  
12 referred to as the DUI law. There is only a  
13 three word difference between the proposed  
14 subsection to the Crimes Code and the current  
15 subsection under the Vehicle Code 3731 (a) (2),  
16 referring to controlled substances. Basically,  
17 the proposed amendment substitutes any drug for  
18 controlled substance. This change in wording  
19 has been suggested to permit the inclusion of  
20 over-the-counter drugs for enforcement action,  
21 recognizing that over-the-counter drugs can  
22 cause drowsiness, or inattentiveness, which  
23 could result in a driver not being physically  
24 capable of operating a motor vehicle safely.

25 The Pennsylvania State Police supports



1 the intent of this legislation. However,  
2 Colonel Evanko and the State Police believe the  
3 new subsection 5505.1 belongs in the Vehicle  
4 Code, not the Crimes Code.

5 In 1996, the Pennsylvania State Police  
6 arrested 9,969 people for driving under the  
7 influence of alcohol or controlled substances.  
8 Of these, a total of 3,722 people were involved  
9 in traffic crashes. Over 37 percent of these  
10 DUI arrests were arrests of individuals that  
11 were involved in a crash. It is evident that  
12 alcohol and drugs lead to senseless deaths on  
13 our highways, something we are all trying to  
14 prevent. It is our position, the appropriate  
15 legislation already exists. By placing related  
16 legislation in a different code, the Crimes  
17 Code, an already successful enforcement and  
18 compliance program may be jeopardized.

19 For example, DUI sentencing guidelines  
20 and DUI-related administrative policies are  
21 already in place for enforcement under the  
22 Vehicle Code. Without further amendment and/or  
23 regulation, DUI violators charged under Title 75  
24 could attempt to make plea bargains to the  
25 driving while impaired charge in the Crimes Code

1 to avoid the sentencing guidelines and mandatory  
2 license suspension, not to mention the automatic  
3 insurance rate increases. Such guidelines and  
4 license suspension mandates are not included in  
5 the Crimes Code, nor are the communications  
6 links established between any Commonwealth  
7 agency and insurance company similar to those  
8 which currently exist between the Department of  
9 Transportation and insurance companies.

10 Section 1547 of the Vehicle Code,  
11 entitled chemical testing to determine the  
12 amount of alcohol or controlled substance, also  
13 known as the implied consent section, is not  
14 applicable to the Crimes Code. This section  
15 states that if a person fails to submit to a  
16 chemical test to determine the amount of alcohol  
17 or controlled substance within their blood,  
18 their operating privilege is suspended for a  
19 period of 12 months. Also, the refusal to  
20 submit to the testing may be used as evidence  
21 during DUI proceedings. A person violating the  
22 section proposed by the bill in the Crimes Code  
23 may refuse any chemical testing without penalty.

24 The procedures for approving hospitals  
25 and laboratories for blood screening are in the

1 Department of Transportation's regulations.  
2 Would an additional set of regulations under  
3 another agency's authority now be needed?

4 As has been previously discussed,  
5 detection of driving while under the influence  
6 of a drug presents challenges to a police  
7 community, and will not be as easily proved as  
8 intoxication with alcohol. Drugs react  
9 differently with each individual. Warnings  
10 about particular drugs which may cause  
11 drowsiness and operating machinery or driving  
12 while taking various over-the-counter drugs seem  
13 to be more common than not. We must be careful  
14 to not automatically equate the taking of  
15 certain drugs with producing intoxication.  
16 Instead, it must be the driver's behavior which  
17 predicates further investigation and, if  
18 appropriate, enforcement action.

19 As mentioned earlier, when a person is  
20 suspected of driving under the influence of  
21 alcohol, several observations of physical  
22 characteristics are used to determine the level  
23 of intoxication, such as walking, speech,  
24 demeanor, dexterity and if an odor of an  
25 alcoholic beverage is on the breath. When a

1 person is under the influence of a controlled  
2 substance, nearly the same indicators are  
3 observed, absent the odor of an alcoholic  
4 beverage. These observations must be documented  
5 by police officers in order to place a person  
6 under arrest. The proposed driving while  
7 impaired prohibits a driver from being under the  
8 influence of any drug which renders the person  
9 incapable of safe driving. Many  
10 over-the-counter drugs will have effects on a  
11 person, but the physical characteristics may not  
12 be obvious, nor will they be consistent between  
13 drivers. A police officer, without an actual  
14 statement from an operator, may not have  
15 sufficient cause to place the subject under  
16 arrest.

17           There is no statistical data that is  
18 currently collected in Pennsylvania on the scope  
19 of problems associated with driving under the  
20 influence of any/all drugs. However, we suspect  
21 it probably is a factor in some crashes. Also,  
22 DUI statistical data is not separated by alcohol  
23 or controlled substance categories. All DUI  
24 charges are grouped together. It is unknown  
25 what percentage of DUI violators are arrested in

1        Pennsylvania for being under the influence of  
2        controlled substances.

3                However, we did contact the Mississippi  
4        State Police to ascertain if they had any data  
5        available, since Mississippi's DUI law includes  
6        intoxicating liquor or any substance which can  
7        impair a person's ability to drive safely.  
8        Within the last two years, a total of 421  
9        drivers were tested for being under the  
10       influence of a substance other than alcohol in  
11       Mississippi. Of these 421 individuals, only 7  
12       (1.7 percent) were detected to have an  
13       uncontrolled substance, that is, an  
14       over-the-counter drug in their system.

15               The Maryland State Police was also  
16        contacted because Maryland has a law prohibiting  
17        driving under the influence of any drug. The  
18        Maryland State Police enforced their law through  
19        the use of officers trained as drug recognition  
20        experts. A major portion of their training and  
21        subsequent expertise is based on a test referred  
22        to as horizontal gaze and nystagmus. This test  
23        has not been universally accepted by  
24        Pennsylvania courts, thereby reducing its  
25        effectiveness for Pennsylvania police officers

1 in our enforcement efforts. The costs of the  
2 intense training effort associated with a drug  
3 recognition expert program and the need for  
4 subsequent, continual use of the related  
5 detection techniques cannot be justified at this  
6 time, when the results of such procedures are  
7 not accepted as evidence in the majority of  
8 Pennsylvania's courtrooms.

9 The proposed provision concerning  
10 driving under the influence of any drug is, in  
11 fact, an excellent concept. A person increases  
12 their chances of being involved in a traffic  
13 crash if they drive while under the influence of  
14 any drug that impairs their cognitive and  
15 physical motor skills. However, by placing this  
16 proposed legislation in the Pennsylvania Crimes  
17 Code, the need for developing regulations and  
18 procedures that mirror those already in place in  
19 the Vehicle Code appears to be unwarranted.  
20 Therefore, Colonel Evanko and the Pennsylvania  
21 State Police feel it would be more appropriate  
22 to modify the Pennsylvania Vehicle Code, Title  
23 75, Section 3731 (a) (2) to include prohibitions  
24 on driving while under the influence of any  
25 drug. Otherwise, we support the changes to

1 Title 18, Section 5505, contained in House Bill  
2 1269.

3 Thank you.

4 CHAIRPERSON BIRMELIN: Thank you.

5 Representative Masland, do you have any  
6 questions?

7 REP. MASLAND: Yes. Thank you, Mr.  
8 Chairman.

9 And thank you, Major Doutt. I had said  
10 earlier, and I am sure you heard, that this is  
11 probably more appropriate under Title 75. And  
12 there is a bill in there. But you have very  
13 clearly laid out a number of succinct reasons  
14 why it is more appropriate in Title 75. But, as  
15 I said, having it in here affords us an  
16 opportunity to look at the issue in general.

17 The issue about plea bargaining, which  
18 I think is an important one to consider, I  
19 believe is going to be addressed by the next  
20 testifier so I won't talk about that.

21 And I can concur with the problems with  
22 horizontal gaze and nystagmus. I had a case  
23 that I thought we were going to win, was a DUI  
24 case (and that's a test that is very helpful  
25 with drinking, not just with other drugs) and,

1       unfortunately, the expert opinion that we had,  
2       the expert testimony was not enough to convince  
3       the jury. Because we didn't have the test in  
4       that case, that hurt us. Because it is a  
5       difficult concept just to understand the  
6       vibrations of the eye.

7                   MAJOR DOUTT: Yes, sir.

8                   REP. MASLAND: The previous witness,  
9       Dr. Shoemaker, was asked some questions by  
10      Representative Caltagirone, which I think based  
11      on his training, he wasn't really prepared to  
12      answer. But you really addressed them, I think  
13      succinctly, on the bottom of page three where  
14      you say it must be the driver's behavior which  
15      predicates further investigation, and if  
16      appropriate, enforcement action.

17                   I do not propose this bill to pull over  
18      everybody that walks out of a drug store chain  
19      with any type of prescription drug or any type  
20      of over-the-counter drug. Most DUI cases, by  
21      your statistics, have some type of precipitating  
22      event: there has to be probable cause or some  
23      type of accident or something that attracts the  
24      officer's attention. That is not going to  
25      change under this. I don't know what your



1 thoughts are on that. But, as to whether or  
2 not, I don't think that we would have details of  
3 State Police or local police hanging outside of  
4 a drug store, just waiting for people to walk  
5 out, just because they have something in their  
6 possession.

7 MAJOR DOUTT: Certainly not.

8 REP. MASLAND: That is a little bit  
9 ludicrous.

10 MAJOR DOUTT: I don't know how it would  
11 affect a sobriety checkpoint, though, sir, just  
12 as another issue.

13 REP. MASLAND: Well, sobriety  
14 checkpoints, sure. Sobriety checkpoints, they  
15 are generally, from my experience, they are  
16 generally set up usually from about 11 or 12 at  
17 night until the wee hours of the morning.  
18 Again, I don't think that the local police would  
19 want to set them up, particularly near any mall  
20 or shopping center, because there is a high  
21 concentration of drug stores there. I don't  
22 know.

23 MAJOR DOUTT: That is correct, that is  
24 not the concept.

25 REP. MASLAND: I think you get what I

1 am saying. So, again, you were on patrol ...

2 MAJOR DOUTT: Yes.

3 REP. MASLAND: ... at some point, were  
4 able to pull people over at various times for  
5 driving violations of driving under the  
6 influence statutes?

7 MAJOR DOUTT: Yes, sir.

8 REP. MASLAND: You looked for different  
9 things. What did you look for.

10 MAJOR DOUTT: First, would be the  
11 initial violation which precipitates the traffic  
12 stop, at what kind of a violation is it.  
13 Weaving over the highway and over the center  
14 line may be more indicative than just the fact  
15 that somebody is speeding, although speeding can  
16 also be indicative of somebody being impaired or  
17 under the influence.

18 When you make the approach and speak to  
19 the driver, that becomes ultimately important in  
20 what your future decisions are going to be. If  
21 you detect the odor of alcohol or if they are  
22 not able to respond to you in a manner that is  
23 normal, then you would continue on in dealing  
24 with that driver. Obviously, you would ask for  
25 a license and a registration check. In doing

1 so, you may or may not find that they have a  
2 history of DUI offenses. That is just another  
3 factor in the scheme of things.

4 If you feel that it is warranted, you  
5 could ask that driver to step out and take a  
6 field test to find out if they could walk, if  
7 they had their coordination, if there were  
8 reasons why they did not seem to. Or they may  
9 be borderline, you may ask further questions:  
10 have you been drinking, have you taken any  
11 drugs, along those lines, till you make your  
12 decision whether you are going to make an arrest  
13 based on DUI or not.

14 REP. MASLAND: And what you are  
15 ultimately looking for is to establish probable  
16 cause, that that person is under the influence  
17 and incapable of driving safely?

18 MAJOR DOUTT: That is correct, sir.

19 REP. MASLAND: And that, I guess in  
20 response to Representative Caltagirone's  
21 concerns, is the main thing that we are looking  
22 at: are people that are, number one, under the  
23 influence to the extent that they are incapable  
24 of safe driving. And there are going to have to  
25 actually be some circumstances to back that up

1 or they are not going to be pulled over in the  
2 first place.

3 MAJOR DOUTT: That's correct. And even  
4 if they were pulled over, you would not get a  
5 successful prosecution. You have to have  
6 probable cause.

7 REP. MASLAND: Thank you very much.

8 CHAIRPERSON BIRMELIN: Representative  
9 Feese.

10 REP. FEESE: Thank you, Mr. Chairman.

11 Major, I will follow up on  
12 Representative Masland's probable cause  
13 questions just with a real simple hypothetical  
14 on the issue of probable cause.

15 How are you going to get a conviction  
16 if the issue of arresting one of our citizens,  
17 and I use myself for example: I leave here at  
18 11:00 at night and I am not that tired and I  
19 took a Coricidin D which was given to us by the  
20 nurse down the hall here, because I have a cold  
21 or something, which can cause drowsiness, and,  
22 unfortunately, I have to take a detour through  
23 Laurelton, Pennsylvania (where Laurelton's the  
24 traffic arrest record) and for some reason, I  
25 fall asleep and I hit a guardrail and the police

1 officer walks up to the car and starts his  
2 investigation (his or hers) and the officer says  
3 to me: what happened?

4 I fell asleep. I must have been  
5 drowsy.

6 Did you take any medication today?

7 Well, yeah, I took Coricidin D.

8 Well, could that have made you drowsy?

9 Well, yeah, it may have.

10 Probable cause.

11 MAJOR DOUTT: Good leg up on it, sir.

12 REP. FEESE: Sure, it is.

13 And so I go to the magistrate, of  
14 course. That is the testimony. And I am bound  
15 over for Court. And I have a misdemeanor  
16 hanging over my head, which means I might not be  
17 able to be a school teacher, be bonded and work  
18 in bank and all of those other problems that go  
19 along with a misdemeanor, the conviction,  
20 because I took a Coricidin D and was honest with  
21 the officer and said, gee, you know, that might  
22 have made me drowsy.

23 But that is really where it starts the  
24 prosecution, isn't it, that probable cause?

25 MAJOR DOUTT: That is correct, sir.

1           REP. FEESE: The other question I have  
2 is: the Pennsylvania State Police have a  
3 regulation, as I understand it, which indicates  
4 that if an officer is prescribed medication,  
5 that he or she must, I think check maybe with  
6 the Department's medical officer to see if that  
7 medication impacts on their ability to drive a  
8 vehicle or to perform their duties, is that a  
9 Pennsylvania State Police regulation?

10           MAJOR DOUTT: That is a paraphrase but  
11 not exactly correct.

12           The officer has to advise their  
13 commanding officer that they are under some kind  
14 of controlled substance, prescription. Often  
15 times, a trooper may or may not know whether it  
16 would affect their performance ability.

17           The commanding officer, if they would  
18 know whether it does or not, they may make a  
19 decision based on that, or, they would contact  
20 the Department medical officer for further input  
21 as to whether this individual's, their duties  
22 should be changed because of that controlled  
23 substance, because of that prescription.

24           REP. FEESE: Okay. And I think that is  
25 a good regulation. But I guess what I want to

1 focus in on: in your testimony, you said  
2 over-the-counter drugs can cause drowsiness, or  
3 inattentitiveness, which could result in driver  
4 not being physically capable of operating a  
5 motor vehicle safely. Does the State Police  
6 regulation cover over-the-counter drugs?

7 MAJOR DOUTT: Yes, sir, it does.

8 REP. FEESE: Yes?

9 MAJOR DOUTT: Yes, it does.

10 REP. FEESE: Then I have got bad  
11 information through the Department the other  
12 day.

13 Finally, the Mississippi test.  
14 Mississippi's law states that it is any, I think  
15 it is substance or drug which impairs a person's  
16 ability which is a little bit different than our  
17 statute which renders a person incapable of safe  
18 driving which their's is impairs the ability.  
19 Do you know if in that test, where 1.7 percent  
20 were detected, do you know whether there were  
21 other drugs in those individuals' systems, other  
22 types of drugs or alcohol or anything of that  
23 nature?

24 MAJOR DOUTT: The inference to me, sir,  
25 was there was not. But that is only -- I cannot

1 say for sure.

2 REP. FEESE: And do you know if there  
3 were prosecutions or that resulted from this or  
4 was this all screening that was done?

5 MAJOR DOUTT: No, those would have been  
6 based on arrests, sir.

7 REP. FEESE: Arrests.

8 MAJOR DOUTT: That is my understanding.

9 CHAIRPERSON BIRMELIN: That's all the  
10 questions I have.

11 CHAIRPERSON BIRMELIN: Representative  
12 Manderino. You may begin.

13 REP. MANDERINO: Thank you.

14 Good morning, Major.

15 MAJOR DOUTT: Good morning.

16 REP. MANDERINO: Following up on the  
17 fact pattern that Representative Feese gave you,  
18 he's driving home at 11:00 at night on the  
19 Turnpike and is observed by a State Trooper on  
20 the Turnpike, swerving across the dotted line in  
21 the middle of the road, based on that  
22 observation, he can be pulled over, correct?

23 MAJOR DOUTT: Yes.

24 REP. MANDERINO: Can he, based on that  
25 observation alone, be cited and/or arrested for



1 any violation?

2 MAJOR DOUTT: Yes.

3 REP. MANDERINO: What is that  
4 violation?

5 MAJOR DOUTT: Failing to stay -- I am  
6 not going to be able to quote it, okay? But,  
7 basically, it is failing to stay in their lane  
8 of traffic.

9 REP. MANDERINO: And what do you get, a  
10 ticket?

11 MAJOR DOUTT: You get a citation.

12 REP. MANDERINO: A citation. And is  
13 that a summary offense?

14 MAJOR DOUTT: Yes, ma'am.

15 REP. MANDERINO: It's a summary  
16 offense.

17 Now, the observation stays the same and  
18 the reason that he swerved across that dotted  
19 line was because he was drowsy, does what he can  
20 be cited for change?

21 MAJOR DOUTT: Not at that point.

22 REP. MANDERINO: If in addition to  
23 swerving across the line, he hit a guardrail,  
24 does what he can be cited for change?

25 MAJOR DOUTT: It depends upon what else

1 the officer is asking him, and that goes for the  
2 previous question also.

3 When he says he's drowsy, the officer  
4 may then ask some other question, such as: well,  
5 have you taken any medication that may cause you  
6 to be drowsy? So those things can start leading  
7 into something other than just failure to stay  
8 in their lane of traffic.

9 REP. MANDERINO: If I fail to stay in  
10 my lane of traffic and as a result of failing to  
11 stay in my lane of traffic, God forbid, cause an  
12 accident ...

13 MAJOR DOUTT: Right.

14 REP. MANDERINO: ... now what happens?  
15 What can I be charged with?

16 MAJOR DOUTT: It depends upon what all  
17 happens with that crash. I would say that  
18 normally -- and, of course, this is all  
19 hypothetical -- normally, once a crash occurs,  
20 you would have more investigation than is done  
21 just when you pull a driver over for a  
22 violation. So because a crash occurred, I would  
23 expect further questioning, which may or may not  
24 lead to further enforcement action.

25 REP. MANDERINO: The further

1 enforcement action may be a summary offense or  
2 it may be a misdemeanor offense or it may be a  
3 felony offense, depending on what the result  
4 was?

5 MAJOR DOUTT: That's correct.

6 REP. MANDERINO: And that would be  
7 irrespective of whether I was driving drowsy,  
8 whether I was driving and got distracted,  
9 whether I took a Coricidin earlier that day or  
10 whether I didn't take the Coricidin and could  
11 not breathe and so I was drowsy because I didn't  
12 take the Coricidin; those factors wouldn't  
13 necessarily matter in what you would have  
14 charged him with or would they?

15 MAJOR DOUTT: They would matter, as far  
16 as what further charges you might make.

17 REP. MANDERINO: Why? Why would they  
18 matter?

19 MAJOR DOUTT: Well, you just, actually  
20 the very things you said make them matter.

21 We know that drowsiness and fatigue and  
22 inattentiveness cause crashes. We don't know to  
23 the extent. And studies are only now being  
24 done, looking at those factors. We are very  
25 concerned about that, though.

1           The fact that they cause crashes, now  
2           you have to look at: why, why does this fatigue  
3           occur? And there is obviously a whole lot of  
4           reasons for it, including drugs, whether they be  
5           controlled substances or whether they be  
6           over-the-counter drugs. And, obviously, drugs  
7           in combination with another drug, alcohol, would  
8           very often heighten the level of intoxication.  
9           So anything that has happened along the way  
10          makes a difference on what might or might not  
11          happen in enforcement action. Does that answer  
12          your question?

13                 REP. MANDERINO: Yes. Although I  
14                 thought you were going to tell me that the  
15                 reason that you asked those questions and they  
16                 make a difference may also have something to do  
17                 with the intent or the behavior of the driver  
18                 and you didn't say that.

19                 MAJOR DOUTT: Well, if I come onto a  
20                 crash, and I am sorry, but if I come onto a  
21                 crash, I am not observing the behavior. All  
22                 right. The behavior has already happened. Now  
23                 I am going to observe the behavior of the  
24                 individual after the crash.

25                 And there are other things that come

1       into play then. Number one, are they physically  
2       hurt? Could they be in shock? All of those  
3       things the officer is trained to think about,  
4       look at, take under consideration while they are  
5       doing their investigation.

6               REP. MANDERINO: Okay. Thank you.

7               Thank you, Mr. Chairman.

8               CHAIRPERSON BIRMELIN: Thank you, Major  
9       Doutt. We appreciate your coming here this  
10       morning and testifying.

11              MAJOR DOUTT: Thank you, sir.

12              CHAIRPERSON BIRMELIN: At this point in  
13       time, I am going to turn over the Chairmanship  
14       of this Committee meeting to Representative  
15       Masland for the remainder of the hearing.

16              ACTING CHAIRPERSON MASLAND: The next  
17       individual to testify is Mr. C. Stephen Erni,  
18       the Executive Director of the Pennsylvania  
19       Driving Under the Influence Association. You  
20       may begin.

21              MR. ERNI: Good morning, Mr. Chairman,  
22       Members of the Committee. My name is Stephen  
23       Erni and I am the Executive Director of the  
24       Pennsylvania Driving Under the Influence (PA  
25       DUI) Association. The Pennsylvania DUI

1 Association is an independent, nonprofit  
2 organization founded in 1979 to reduce the  
3 deaths and injuries caused by impaired driving.  
4 We work closely with the Department of  
5 Transportation, and our membership includes  
6 professionals in the drug and alcohol field, law  
7 enforcement officials, and others committed to  
8 highway safety.

9 On behalf of the Pennsylvania DUI  
10 Association, it is a pleasure to come before you  
11 here today to testify in support of legislation  
12 to prohibit drug-impaired driving. The PA DUI  
13 Association considers the problem of impaired  
14 driving, including drug-impaired driving, to be  
15 such a threat to the safety of Pennsylvania  
16 roadways that we have designated House Bill  
17 1269, as amended, to be our highest legislative  
18 priority for the current legislative session.

19 I commend the House Judiciary Committee  
20 Chairman, Tom Gannon, for introducing House Bill  
21 1269, and Representative Masland for offering  
22 the drug-impaired driver amendment for which  
23 this Committee incorporated into the bill in  
24 June.

25 The PA DUI Association would also like

1 to recognize Representative Masland's continuous  
2 commitment to highway safety. Over the years,  
3 Representative Masland has introduced  
4 legislation to make our roadways safer. And for  
5 that, Representative Masland, I commend your  
6 efforts for your longstanding interest in this  
7 issue.

8 Ladies and gentlemen, I believe that we  
9 are on the brink of an historic moment in  
10 highway safety. Twenty or thirty years ago,  
11 driving under the influence of alcohol was a  
12 widely accepted practice, often punished with a  
13 little more than a slap on the wrist. Since  
14 that time, the sea of change in societal  
15 attitudes has occurred. Our laws and the way  
16 that these laws are enforced now more clearly  
17 recognize the serious dangers posed by drunk  
18 drivers.

19 I am convinced that another profound  
20 change in societal attitude is taking place. I  
21 believe that Americans are becoming increasingly  
22 aware of the dangers posed by a wide range of  
23 impairments to safe driving. Our society is  
24 beginning to recognize that driving a motor  
25 vehicle while impaired by any substance is a

1 threat to highway safety.

2 Evidence of this increased awareness of  
3 this problem is the fact that 31 other states  
4 have enacted laws which prohibit driving while  
5 impaired by prescription or over-the-counter  
6 drugs or other impairing substances not already  
7 covered by alcohol and controlled substance DUI  
8 laws. House Bill 1269 offers Pennsylvania the  
9 chance to become part of this historic and  
10 welcome trend which will make our roadways  
11 safer.

12 The dangers posed by drug-impaired  
13 driving was dramatically demonstrated by the  
14 tragic auto accident which resulted in the death  
15 of Princess Diana. According to the recent news  
16 accounts, laboratory tests have indicated that  
17 the driver of the car in which Diana was riding  
18 tested positive for two antidepressants. One of  
19 them Fluoxetine and Tiapride. The side effects  
20 of one of these drugs (Fluoxetine) includes  
21 shaking, anxiety and impaired vision. Both  
22 medications can cause drowsiness on their own,  
23 according to medical experts. When combined  
24 with alcohol, as was in the case of Diana's  
25 driver, they become even a more lethal cocktail.



1           And our example of these dangers is  
2           even much closer to home. In the not too  
3           distant past, a small airplane took off from the  
4           Lancaster Airport in Lancaster County, my home.  
5           On board were the groom and the best man  
6           enroute to a wedding scheduled for the following  
7           day. The wedding celebration was transformed  
8           into a funeral when the airplane crashed into  
9           the bordering Berks County. The Federal  
10          Aviation Administration determined the cause of  
11          the crash to be the impairment of the pilot  
12          resulting from drowse-inducing cold medications.

13                 Unlike the FAA, the Pennsylvania  
14          Department of Transportation does not routinely  
15          test for a wide range of impairing substances so  
16          we can't pinpoint the precise number of  
17          accidents caused by impairments other than  
18          alcohol and controlled substances.

19                 We do know, however, that such  
20          tragedies are all too commonplace in  
21          Pennsylvania. According to the records which  
22          PennDOT does keep, drowsiness, sleep and fatigue  
23          contributed to nearly 15,000 automobile  
24          accidents statewide from 1991 through 1995. As  
25          I have indicated, PennDOT does not specifically

1 track the number of these accidents attributable  
2 to drug-impaired driving. Nevertheless, one  
3 only looks at the underlying causes of these  
4 accidents, very often the controlled substance,  
5 the impairing substance was to blame.

6 In fact, a recent Department of Health  
7 study indicated that, in 1994, 20 percent of the  
8 persons killed in highway accidents in  
9 Pennsylvania had controlled substances in their  
10 blood. Please note that this 20 percent figure  
11 probably understates the scope of the problem.  
12 If, for example, the driver, a single  
13 drug-impaired driver caused a highway accident  
14 which resulted in five fatalities, only one of  
15 those deceased bodies would show drug  
16 impairment, even though all five died as a  
17 result of drug impaired driving. We can infer  
18 from these figures, then, that the percentage of  
19 fatal auto accidents caused by impairing drugs,  
20 whether controlled substances, prescription or  
21 over-the-counter medications, is very high,  
22 indeed.

23 Unless that impairing substance was  
24 alcohol or a controlled substance, however,  
25 nothing in the current Pennsylvania law would

1 prohibit someone from driving under its  
2 influence. Pennsylvania's DUI statute outlaws  
3 driving under the influence of alcohol or  
4 controlled substances such as cocaine or  
5 marijuana, but no statutory provision prohibits  
6 driving under the influence of an impairing  
7 over-the-counter medications, even though the  
8 result can be just as tragic. Ladies and  
9 gentlemen, it will matter little to the victim  
10 of an impaired driving crash whether the driver  
11 at fault was impaired by alcohol, a prescription  
12 drug or an over-the-counter medication or the  
13 sniffing of chemical substances such as glue.

14 If the impaired driver provision of  
15 House Bill 1269 becomes law, however, then law  
16 enforcement officials will have an additional  
17 weapon in which to combat unsafe driving on  
18 Pennsylvania roadways.

19 This weapon, as I have mentioned  
20 earlier, is already available to law enforcement  
21 officers in 31 other states. The effectiveness  
22 of a law similar to this bill is dramatically  
23 illustrated by the example of North Carolina.  
24 As you have already heard from other witnesses  
25 today, North Carolina's impaired driver statute

1 is significantly broader than what is being  
2 proposed here today.

3 Since Mr. Rabil has already given you  
4 some of the details in reference to North  
5 Carolina case, I would like to pass on that part  
6 of testimony that I have prepared today.

7 But what I would like to point out to  
8 you: that we are not proposing to go as far as  
9 the North Carolina law. The penalty for  
10 violating the impaired-driver provision of House  
11 Bill 1269 is a second degree misdemeanor,  
12 without an upgrade to a felony for subsequent  
13 offenses. But we think it is important to give  
14 law enforcement officials an additional tool to  
15 go after dangerous drivers who might otherwise  
16 escape prosecution under Pennsylvania law. This  
17 bill is such a tool. Enactment of House Bill  
18 1269 would send a strong message to would-be  
19 offenders not to drive under the influence of  
20 impairing substances.

21 In building support for House Bill  
22 1269, I have met with representatives of the law  
23 enforcement community, prosecutors, highway  
24 safety advocates and others knowledgeable about  
25 Pennsylvania's DUI law. These diverse groups

1 have analyzed this legislation and offered  
2 suggestions to make it even stronger. Based  
3 upon their input, ladies and gentlemen, I would  
4 like to offer some recommendations to make the  
5 legislative proposal, House Bill 1269, even  
6 better.

7           Specifically, I think that the intent  
8 of the legislation might be made even clearer by  
9 substituting the words, and I quote, substance  
10 which has impaired such person's ability to  
11 operate a motor vehicle, end quote, for the  
12 reference to, quote, drug, as defined in ... the  
13 Controlled Substance, Drug, Device and Cosmetic  
14 Act. Using the definition of drug found in the  
15 Controlled Substance Drug, Device and Cosmetic  
16 Act was certainly sound legislative drafting and  
17 was broad enough to include virtually all  
18 pharmaceutical products whether prescription or  
19 over-the-counter. But this reference had the  
20 unintended effect of confusing many who were  
21 reading the bill for the first time. (Some have  
22 mistakenly concluded that the provisions of  
23 Section 2 of this bill would only apply to  
24 controlled substances, thereby duplicating  
25 current law.)

1           In addition, the phrase, quote,  
2       substance which has impaired such person's  
3       ability to operate a motor vehicle, end quote,  
4       would bring the practice of sniffing glue or  
5       inhaling other dangerous chemicals under the  
6       scope of House Bill 1269. This way,  
7       Pennsylvania roadways can be further protected  
8       from an additional category of deadly drivers.

9           To preclude the possibility the  
10       defendant might seek to exploit the provisions  
11       of House Bill 1269 in plea bargaining  
12       negotiations -- which I believe that the Major  
13       from the State Police was referring to earlier  
14       -- I recommend the language to make clear that  
15       the impaired driver provisions of this bill  
16       would apply only to defendants who would not be  
17       charge under Section 3731 of Title 75. We also  
18       suggest an implied consent provision to this  
19       legislation. This language also highlights the  
20       fact that House Bill 1269 empowers law  
21       enforcement officials to reach dangerous drivers  
22       who might otherwise continue to threaten highway  
23       safety.

24           Another addition which might make a  
25       good bill even better deals with the issue of

1       custodial arrest, the first part of this bill.  
2       Currently, police officers face something of a  
3       dilemma when confronted by a person who is  
4       intoxicated but not behind the wheel of a motor  
5       vehicle. The language which I suggest would  
6       enable police officers to make a custodial  
7       arrest for the purpose of contacting a  
8       responsible person to whom to hand over the  
9       inebriated detainee, or in those cases where  
10      such a responsible party cannot be located.

11               I have taken the liberty to attach to  
12      my testimony a preliminary draft of a possible  
13      amendment to this bill and incorporate some of  
14      the suggestions that I have just described.

15               In summary, ladies and gentlemen, the  
16      Pennsylvania DUI Association enthusiastically  
17      supports House Bill 1269. We are looking  
18      forward to working with you toward a healthier  
19      and safer Pennsylvania.

20               And thank you again, Mr. Chairman and  
21      Members of the Committee, for this opportunity  
22      to address such an important issue. At this  
23      point, I would be more than happy to respond to  
24      any questions which you may have.

25               ACTING CHAIRPERSON MASLAND: Thank you,

1 Mr. Erni. We will start with Representative  
2 Feese.

3 REP. FEESE: Thank you, Mr. Chairman.

4 And thank you, Mr. Erni, for your  
5 testimony. And I appreciated the opportunity to  
6 visit with you on, I think Monday, in my office,  
7 and the gentleman who is representing Schering  
8 Drug Company. And that's what I would like to  
9 talk to you a little bit about, first of all.

10 Schering Drug Company produces  
11 Claritin, is that correct?

12 MR. ERNI: I have no idea, sir.

13 REP. FEESE: Well, you were there in my  
14 office with a representative of Schering Drug  
15 Company, were you not?

16 MR. ERNI: Yes, I was but I do not know  
17 what that company, what kind of drugs they make.

18 REP. FEESE: Well, we talked about ...

19 MR. ERNI: Right.

20 REP. FEESE: ... Schering making  
21 Claritin at that time, did we not?

22 MR. ERNI: Yes, we talked about  
23 numerous medications.

24 REP. FEESE: And Claritin was one, is  
25 that correct?



1 MR. ERNI: Yeah.

2 REP. FEESE: You can answer: I have no  
3 recollection, Senator ... or something like  
4 that.

5 MR. ERNI: I have no recollection. I  
6 am a Liberal Arts major, so.

7 REP. FEESE: The Schering Drug Company  
8 produces Claritin, which is a nondrowsy  
9 antihistamine, is that correct?

10 MR. ERNI: Yes.

11 REP. FEESE: Okay. And it is correct,  
12 is it not, that Schering Drug Company promotes  
13 legislation such as this, so when it is enacted,  
14 they use it as a marketing tool, marketing  
15 Claritin, is that correct?

16 MR. ERNI: It is not Claritin. I have  
17 not been aware that there is such an attempt by  
18 this company.

19 REP. FEESE: So you are not aware that  
20 what Schering's drug representatives do, in  
21 states that enact legislation like this, is to  
22 go to the doctor's office and warn the doctors  
23 that the medication they may be recommending to  
24 the patients could subject their patients to  
25 criminal prosecution, you are not aware of that?

1           MR. ERNI: You are absolutely correct,  
2 I am not aware.

3           REP. FEESE: You are not. I assume  
4 then you are not aware of the group called  
5 CANDID, Citizens Against Drug-Impaired Drivers,  
6 are you aware of that organization?

7           MR. ERNI: Yes, I have come to knowlege  
8 of CANDID this summer. And, in fact, I believe  
9 there was some reference to this organization in  
10 some of the Worldwide Web pages that I have  
11 visited during the summer, over the --

12           REP. FEESE: And that's a group that  
13 runs advertisements, I think in print -- I don't  
14 know if it's in other forms of media -- warning  
15 individuals about taking antihistamines and  
16 antihypertensives and antidepressants which  
17 cause drowsiness, is that correct?

18           MR. ERNI: I have learned this morning  
19 from you that they are doing such advertising.

20           REP. FEESE: And are you aware that  
21 CANDID is funded by Schering Drug Company?

22           MR. ERNI: No, sir. And we have  
23 absolutely no connection to CANDID.

24           And if I may continue, I might as well  
25 cut to the chase. The Pennsylvania DUI

1 Association this morning is here for a highway  
2 safety issue. We are not here --

3 Now, over the past couple of years of  
4 working here in Harrisburg, I realize that there  
5 are numerous organizations where we can be in  
6 contact with manufacturers or companies that  
7 both fight for the same issue. This morning, I  
8 am here for the reason of highway safety. And  
9 although it may sound kind of different, but  
10 should Jack Daniels or Anheizer Bush support  
11 this bill, I would be more than happy to visit  
12 you with those representatives, representatives  
13 of those companies.

14 REP. FEESE: The DUI Association, when  
15 did they meet and designate House Bill -- when  
16 did the Executive Committee or the Board of  
17 Directors meet to designate House Bill 1269 as  
18 the top legislative priority?

19 MR. ERNI: That would have been at the  
20 last board meeting.

21 REP. FEESE: The last board meeting.

22 MR. ERNI: Which would have been in  
23 June -- I am sorry, July.

24 REP. FEESE: Your testimony refers to  
25 the fact that 31 other states have enacted laws

1       which prohibit driving while impaired by  
2       prescription or over-the-counter drugs. That is  
3       not quite accurate, is it? And, in fact, there  
4       is at least three states that specifically  
5       exclude that drugs if taken as prescribed by a  
6       physician, are you aware of that?

7               MR. ERNI: No, I am not.

8               REP. FEESE: And are you aware that  
9       there is another state, for example, South  
10       Dakota, that specifically exempts certain types  
11       of drugs, including antihistamines, are you  
12       aware of that?

13              MR. ERNI: No, I am not aware of that  
14       either.

15              REP. FEESE: Your testimony referred to  
16       the fact that -- referred to the Department of  
17       Health study and you concluded that --

18              Well, let me back up.

19              Just by way of background, the  
20       Department of Health study on page three of your  
21       testimony, where you quote it as stating there  
22       were 20 percent of persons killed in highway  
23       accidents had controlled substances in their  
24       blood, that study is the one that I am referring  
25       to.

1           With that as background, you state,  
2     quote, we can infer from these figures then that  
3     the percentage of fatal auto accidents caused by  
4     impairing drugs, whether controlled substances,  
5     prescription or over-the-counter medications is  
6     very high, indeed. How in the world do you  
7     infer from a study involving controlled  
8     substances, most of which are abused street  
9     substances, that that, the percentage of fatal  
10    auto accidents from over-the-counter medications  
11    is high?

12           MR. ERNI: Actually, sir, we have made  
13    reference to the study by the Department of  
14    Health. But there is also other studies that  
15    suggest that, in fact, the use of marijuana,  
16    cocaine or other medications, prescription, is  
17    high. Some of these studies, in fact, come from  
18    the State of Tennessee, where they have had  
19    numerous sobriety checkpoints, and rather than  
20    drawing blood, they have, they have conducted  
21    urinalysis and were looking for controlled  
22    substances.

23           What they have found is that a majority  
24    of DUI offenders that they have arrested, with  
25    enough alcohol to arrest them for just a

1 straight DUI for alcohol charge, also had a very  
2 high percentage of marijuana -- a high  
3 percentage of these individuals had traces of  
4 marijuana and cocaine and other substances.

5 REP. FEESE: Okay. I don't dispute  
6 that. What about over-the-counter? What  
7 percentage of those people were taking  
8 medications to control their seizures?

9 MR. ERNI: (No response.)

10 REP. FEESE: It is your statement. It  
11 is your statement that ...

12 MR. ERNI: Right.

13 REP. FEESE: ... prescription,  
14 prescription drugs, the fatal accidents due to  
15 -- excuse me, over-the-counter medications is  
16 very high. It is your statement. I am just  
17 trying to understand the basis of it.

18 MR. ERNI: Well, when you combine  
19 everything together, alcohol, controlled  
20 substances, prescription, over-the-counter, yes,  
21 I have made that remark, that it is high,  
22 indeed.

23 REP. FEESE: And what study shows that  
24 there is a large percentage of fatal accidents  
25 caused by over-the-counter medications?

1           MR. ERNI: Of over-the-counter  
2 medications alone?

3           REP. FEESE: Yes.

4           MR. ERNI: I cannot recall.

5           REP. FEESE: That's all the questions I  
6 have, Mr. Chairman.

7           ACTING CHAIRPERSON MASLAND:  
8 Representative Caltagirone.

9           Representative Reber.

10          REP. REBER: Thank you, Mr. Acting  
11 Chairman.

12          Mr. Erni, attached to your testimony is  
13 a suggested amendment. I am just curious, who  
14 prepared that amendment?

15          MR. ERNI: Okay. On August 12th, the  
16 Pennsylvania DUI Association has met with some  
17 other groups here in Harrisburg.  
18 Representatives at that meeting was a  
19 representative from the Traffic Institutes for  
20 Police Services, a representative from the AAA  
21 Foundation of Pennsylvania, a representative  
22 from Mother's Against Drunk Driving, a  
23 representative from the Chiefs of Police, a  
24 representative of the Pennsylvania State Police  
25 Bureau of Liquor Control Enforcement, a

1 representative from the Pennsylvania District  
2 Attorneys Association, and I believe that would  
3 be all. Oh, and also a representative from the  
4 firm Lench and Crisci.

5 REP. REBER: And then as a result of  
6 that meeting, I assume that a draft of  
7 legislation was written by someone. Who was it  
8 that actually participated in the physical  
9 writing of that draft legislation?

10 MR. ERNI: Actually, at that time, at  
11 that time we all sat down and we were making the  
12 suggestions, we had dissected this bill. When  
13 it actually came down to the writing part of  
14 this, it was myself and Paul Eyer.

15 REP. REBER: And then when yourself and  
16 Mr. Eyer prepared that draft, how did that draft  
17 find its way into your packet, prepared by the  
18 State General Assembly's Legislative Reference  
19 Bureau?

20 MR. ERNI: The actual printing of this  
21 bill was given to me to attach to my testimony.  
22 I have no idea.

23 REP. REBER: Well, let's just back up  
24 one step. The reason I say it is: I have a  
25 difficult time myself getting amendments from



1 the Legislative Reference Bureau, and whether  
2 you accept it or not, I think I have a little  
3 bit of priority status, over yourself, as a  
4 gentleman being an elected member of the General  
5 Assembly in the Commonwealth of Pennsylvania.

6 MR. ERNI: Absolutely.

7 REP. REBER: And I am just curious as  
8 to how a duly computerized-entered, formal  
9 amendment, pursuant to the Rules of the House of  
10 Representatives, found its way to an  
11 independent, nonprofit organization and how that  
12 took place. And I am just curious. I mean, did  
13 you deliver this to them and have contact with  
14 them?

15 MR. ERNI: No.

16 REP. REBER: And Mr. -- what was the  
17 gentleman's name?

18 MR. ERNI: Mr. Eyer.

19 REP. REBER: Mr. Eyer. To the best of  
20 your knowledge, did Mr. Eyer have any input or  
21 contact or in some way, shape or form request  
22 the drafting of this particular document?

23 MR. ERNI: No, I am not aware of how  
24 this got typed up.

25 REP. REBER: Is Mr. Eyer present with

1       you today?

2                   MR. ERNI: I believe he is.

3                   REP. REBER: Could you possibly take a  
4       few moments and confer with him and see if he  
5       can enlighten you as to the miraculous drafting  
6       of this public document?

7                   MR. ERNI: Absolutely, sir.

8                   ACTING CHAIRPERSON MASLAND: While they  
9       are conferring, let me say that Mr. Erni did show  
10      me a preliminary, typed-up -- not by the  
11      Legislative Reference Bureau -- draft of this  
12      amendment. We discussed it and he told me he  
13      was going to be in touch with other people  
14      involved in that earlier meeting.

15                   My impression was that -- I don't know  
16      -- maybe somehow this was given to Brian Preski,  
17      a member of our staff, and he might have done  
18      that, feeling that it would have been on my  
19      behalf. I don't know. That's possible.

20                   MR. ERNI: That is correct, Brian  
21      Preski was in charge of overseeing that this is  
22      coming in this form.

23                   REP. REBER: Very good. Thank you very  
24      much.

25                   Thank you, Mr. Chairman.

1           ACTING CHAIRPERSON MASLAND: Thank you.  
2           Representative Manderino.

3           REP. MANDERINO: Thank you, Mr.  
4           Chairman.

5           And thank you, Mr. Erni. I heard a  
6           couple assumptions in earlier questions asked  
7           that I am not quite sure, either maybe people  
8           know more about your group than I do or maybe we  
9           were going on assumptions that haven't actually  
10          been cleared up.

11          The Pennsylvania Driving Under the  
12          Influence Association, when were you first  
13          formed?

14          MR. ERNI: In 1979.

15          REP. MANDERINO: Okay. And are you a  
16          private, nonprofit corporation?

17          MR. ERNI: That is correct.

18          REP. MANDERINO: Governed by a board of  
19          directors?

20          MR. ERNI: That is correct.

21          REP. MANDERINO: How large is your  
22          Board of Directors?

23          MR. ERNI: Currently 14.

24          REP. MANDERINO: Okay. And who, not  
25          necessarily by name but by -- or by

1 representation, who comprises the Board of  
2 Directors of the Pennsylvania DUI Association?  
3 Or, if you have a listing, could you share that  
4 with us?

5 MR. ERNI: I do not have a listing with  
6 me here today. If you wish, I would be able to  
7 mention every single one of them by name and  
8 title.

9 The President is Jerome Wood, who is a  
10 detective at the Dauphin County Criminal  
11 Investigations Unit; the Vice President is  
12 Michael Wahman, who is the Chief Detective at  
13 the Lebanon County District Attorney's Office,  
14 he also happens to be the DUI Coordinator for  
15 Lebanon County; the Secretary is Maryann Bowman,  
16 who happens to be in charge of prevention at the  
17 Twin Lakes Center for D & A (drug and alcohol)  
18 treatment; and the Treasurer {Carl McKee}  
19 happens to be the Chief Probation Officer of  
20 Warren County, Adult Probation and DUI Unit.

21 Further, if you wish me to continue,  
22 our organization is divided into four regions.

23 Region I Board Members would include  
24 Bud Mauger, who happens to be a police officer  
25 at Uwchlan Police Department; the other Board

1 Member from Region I would be Jamie Rittenhaus,  
2 who is the Deputy DUI Director at the Montgomery  
3 County DUI Program; and the other representative  
4 from Region I would be Susan Gearheart, who  
5 happens to be the DUI Coordinator in Chester  
6 County.

7           Region II, we have Jake Zaguzewski, who  
8 is the DUI Coordinator in Bradford County; we  
9 have Don Aucker, who is a police officer at the  
10 Allentown Police Department (Region II is one of  
11 our largest ones); and the third person from  
12 Region II -- you are really testing me on who my  
13 bosses are -- I would have to pass on that for  
14 now.

15           Let's move on to Region III. Region  
16 III would have John Victor, who happens to be  
17 working for the Pennsylvania Liquor Control  
18 Board; Marilyn Stein, who is the Deputy  
19 Coordinator at the Lancaster County DUI Program;  
20 and Wayne Harper, who is the Director of the  
21 Comprehensive Highway Safety programs of York  
22 County.

23           And then finally Region IV, we have  
24 Betty McBride, who works for the Allegheny  
25 County Alcohol Highway Safety Program; Rich

1       Wozniak, who works for Beaver County, Director  
2       of the Beaver County DUI Program; and Sue  
3       Soroko, who is the DUI Coordinator in  
4       Westmoreland County.

5               REP. MANDERINO:  DUI coordinators, are  
6       those under the County Law Enforcement Agency,  
7       District Attorneys' Offices?

8               MR. ERNI:  Well, it depends.  It  
9       depends on which county you are talking about.  
10       Normally -- oh, I should say, historically, it  
11       is the President Judge of each county that  
12       appoints the DUI Coordinator.

13              REP. MANDERINO:  And with regard to how  
14       the Pennsylvania DUI Association is funded,  
15       where does the funding for the DUI Association  
16       come from?  Do the members, who are the Members  
17       of the Board of Directors and their agencies,  
18       whether it is law enforcement, judiciary, LCB,  
19       treatment, do they contribute to the Association  
20       to fund it?

21              MR. ERNI:  Yes.  We also have an annual  
22       meeting, which draws over 300 individuals, so we  
23       have registration fees; we also offer about 80  
24       different workshops throughout the Commonwealth,  
25       some free-of-charge and some that we do charge

1 for; and, furthermore, we also run the contract  
2 for the Department of Transportation,  
3 specifically dealing with offering training for  
4 DUI instructors and print evaluators. This  
5 would be the evaluation that people put DUI  
6 offenders through, throughout the Commonwealth

7 REP. MANDERINO: And does any of your  
8 funding come from the pharmaceutical companies?

9 MR. ERNI: Absolutely not. Every  
10 single one of the donations, by the way, ma'am,  
11 is being reviewed by the Board of Directors. We  
12 have not accepted any money from the alcohol  
13 industry and we have not accepted any money from  
14 the pharmaceutical industry, nor do we have any  
15 kinds of investments in any of these companies.

16 REP. MANDERINO: Okay. We talked a lot  
17 today about over-the-counter and prescribed  
18 drugs, at least in the antihistamine category,  
19 and at least it has been suggested both today  
20 and in the conversation I had with you  
21 yesterday, that: in that category of  
22 antihistamines, there are both drowsy and  
23 nondrowsy formulas that could be prescribed.

24 MR. ERNI: That's right.

25 REP. MANDERINO: Other areas of

1 commonly used drugs that can impair driving, at  
2 least based on the literature that I have read,  
3 include cholesterol lowering drugs. Are you  
4 familiar, do you know if there are distinctions  
5 in cholesterol lowering drugs as well, that  
6 there are drowsy versions and nondrowsy  
7 versions?

8 MR. ERNI: Ma'am, I am not familiar,  
9 and that would have been -- Dr. Shoemaker would  
10 have been able to answer this.

11 REP. MANDERINO: Okay. And the other  
12 area of category, just to your knowledge, that I  
13 found surprising and common, meaning commonly  
14 used by the general population that is  
15 supposedly able to impair your driving, are  
16 nonsteroidal anti-inflammatory drugs such as  
17 what somebody would take for arthritis or a  
18 sports injury. Are you aware of whether there  
19 are drowsy and nondrowsy formulas for those?

20 MR. ERNI: I am not aware of it.

21 REP. MANDERINO: Okay. Thank you.

22 Thank you, Mr. Chairman.

23 ACTING CHAIRPERSON MASLAND: Thank you  
24 very much, Mr. Erni. The only thing I would  
25 just like to confirm is: you are not paid for or



1 present here today on behalf of any  
2 pharmaceutical company, is that correct?

3 MR. ERNI: Absolutely not. I am here  
4 to represent highway safety. As I have  
5 mentioned to you, I am aware that there are some  
6 drug companies are interested in this issue. In  
7 fact, I am almost -- I will just leave it with  
8 that.

9 ACTING CHAIRPERSON MASLAND: Well, go  
10 ahead, go ahead.

11 MR. ERNI: I felt myself that --

12 ACTING CHAIRPERSON MASLAND: I mean,  
13 that is really, unfortunately, unfortunately --

14 MR. ERNI: To believe that I would be  
15 taking money for that.

16 ACTING CHAIRPERSON MASLAND:  
17 Unfortunately, the issue here this morning is  
18 not just whether or not this would make sense,  
19 but who is involved, whether it is Pfizer or  
20 Schering or things like that, so expound.

21 MR. ERNI: Yes. Again, we have, we are  
22 here in front of you testifying in the name of  
23 highway safety and we are not representing any  
24 pharmaceutical company whether they make drowsy  
25 or nondrowsy or any form of medications.

1           ACTING CHAIRPERSON MASLAND: Thank you  
2 very much.

3           MR. ERNI: Thank you, sir.

4           ACTING CHAIRPERSON MASLAND: Now, the  
5 last individual to testify is Mary Ellen Rehrman  
6 for the Alliance for the Mentally Ill.

7           MS. REHRMAN: Thank you, and good  
8 morning. I would like to thank you for the  
9 opportunity to comment on House Bill 1269.

10          ACTING CHAIRPERSON MASLAND: Excuse me,  
11 ma'am. Do you have written testimony?

12          MS. REHRMAN: I apologize. That's my  
13 next sentence. I would be glad to, later. But  
14 I have nothing really technical.

15          ACTING CHAIRPERSON MASLAND: Okay.  
16 That's fine.

17          MR. REHRMAN: I have a very marked-up  
18 copy, because I have been listening to the  
19 testimony.

20                 We are troubled that this amendment  
21 would be too broadly interpreted. As it is  
22 presently written, it would unfairly criminalize  
23 persons for driving while using a wide variety  
24 of prescription, of over-the-counter  
25 medications. Many medications such as

1 antihistamines list drowsiness as a side effect.

2 Medications commonly prescribed for  
3 persons with a brain disease such as the  
4 antidepressants, antipsychotics and  
5 anticonvulsants, including antihistamines, too,  
6 also list drowsiness as a side effect.

7 However, the effect of a medication has  
8 on an individual varies greatly. While some  
9 people may become impaired, others may suffer no  
10 adverse symptoms from such dosage of the same  
11 medication. Same dosage, same medication, the  
12 reaction would vary.

13 We are afraid that individuals could be  
14 penalized for taking a medication that has the  
15 potential to impair even if that individual is  
16 not impaired.

17 What criteria would be used to  
18 determine impairment on an individual basis?  
19 The broad prohibition against driving while  
20 taking any of these medications would result in  
21 responsible drivers being forced to choose every  
22 day between breaking the law and going to work.

23 It is ironic that the very medication  
24 that enables a person to work, if they became  
25 involved in an accident, that it could

1 criminalize them, even though that medication  
2 didn't impair. It just could have, you know,  
3 not paid attention.

4 So I think we believe that it needs  
5 further study and deliberation before any  
6 further action is taken on House Bill 1269 in  
7 order to ensure that individuals, who must take  
8 medication, are not penalized without cause.

9 And we thank you for your  
10 consideration.

11 ACTING CHAIRPERSON MASLAND: Thank you,  
12 ma'am. If you could just hold for a second, in  
13 case we have any questions.

14 REP. FEESE: No questions. Thank you.

15 ACTING CHAIRPERSON MASLAND: And I  
16 would agree that, as the sponsor of the  
17 amendment, that we, the purpose is not to affect  
18 those individuals with mental illnesses or  
19 otherwise who need to take these drugs. If you  
20 were here, perhaps for Major Douth's testimony,  
21 were you here for that?

22 MS. REHRMAN: Um-hum (yes).

23 ACTING CHAIRPERSON MASLAND: Of course,  
24 we are looking at situations where there is  
25 probable cause, where something may precipitate

1 it. But if there is some way that we can ensure  
2 the protection of those individuals who have to  
3 take medications to function, we will do that.

4 MS. REHRMAN: Okay. Thank you.

5 ACTING CHAIRPERSON MASLAND: Thank you.  
6 That closes the hearing.

7 (Whereupon, the public hearing  
8 adjourned at 11:50 a.m.)

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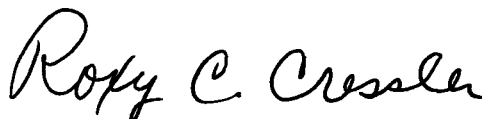
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I, Roxy C. Cressler, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.

Dated this 16th day of November, 1997.



Roxy C. Cressler - Reporter  
Notary Public

My commission  
expires 12/11/00