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**To: The Subcommittee on Crimes and Corrections  
Public Hearing -- House Bill 1269**

Last May I prosecuted the first drunk driver in the United States for first degree felony murder who had to face the death penalty. Thomas Richard Jones killed two 19 year old college sophomores at Wake Forest University. Jones was driving recklessly and drunk on a mixture of prescription drugs and alcohol. He had three different prescription drugs in his system: Percocet, Fioricet, and Xanax. His alcohol level was .04, an amount less than the .08 required to prove *per se* driving while impaired. However, he had 9.8 mcg/mL of Fioricet, the brand name of Butalbital, a narcotic barbiturate -- enough to kill a normal person. About one half of the fatal overdoses in North Carolina with this drug alone as the sole cause of death are reported at less concentrations than Jones had in his blood. Yet in Pennsylvania, this man could not have been prosecuted for impaired driving, much less murder, because he had a prescription for the drugs he was taking and these kinds of drugs are not a legal basis for criminal prosecution in Pennsylvania.

This proposed bill can and should be adopted to cover cases like Jones. Over-the-counter (OTC) drugs and prescription medication can be used and abused for recreational highs and are just as dangerous as alcohol and other illegal drugs, such as cocaine, heroin and marijuana. Many persons who are chronic users of alcohol often discover that they can get a greater rush by combining alcohol with OTC and prescription medication. Prescription medication and OTC drugs often contain warning labels affixed by manufacturers and pharmacists warning about the dangers of mixing medications with alcohol, and the impairing effects of these drugs on one's ability to drive a car.

Thomas Jones was a man who was drinking himself to death for twenty years, by his own admission. He abused drugs of all kinds for recreational highs. He shopped doctors and hospitals on a daily basis, roaming the interstates, going from the Veterans Administration Hospital in Salisbury, North Carolina, to the emergency room in Statesville, to private medical clinics in Winston-Salem, where he was given a variety of narcotic painkillers which he routinely took in amounts far in excess of the prescribed dosage. He disregarded written warnings and the advice of doctors and pharmacists in all three cities. He mixed these medications with alcohol, knowing it was impairing his ability to drive, because he was being stopped by the police over and over and charged with driving while impaired.

On July 30, 1996, Jones consumed eight times the prescribed dose of Hydrocodone and

mixed it with beer in Winston-Salem, drove for over an hour on Interstate 40, and, as he approached his home in Statesville, ran a deputy sheriff off the road. On September 4, 1996, while this case was pending and he was out on bond, he drove to Winston-Salem, and at 10:30 pm, crashed his car head-on into a vehicle occupied by six Wake Forest University coeds.

Maia Witzl and Julie Hansen were beautiful, bright, talented, involved in their communities, and volunteers at clinics and alcohol rehabilitation centers. They were both committed to pursuing careers in public service and they were needlessly killed by a man who was knowingly committing dangerous and reckless acts: speeding, driving on the wrong side of the road, and disregarding specific medical advice not to drive after taking the medicine he was given for valid medical reasons. He was disregarding specific medical advice not to combine the three drugs he was given, not to mix any of these drugs with alcohol, and not to drive at all while consuming these drugs.

Because Jones had a history of abusing drugs and alcohol while driving I knew, as a prosecutor, that I could not protect society by charging this man with a crime which would leave him on probation or doing very little time in prison. In desperation over the prospects of his release and certain continual danger, I realized that we, as a society, were being backed against the wall by men like Thomas Jones. Determined not to shrug my shoulders at survivors and three other seriously injured classmates, I decided to take a stand. Jones would be charged with three counts of assault with a deadly weapon inflicting serious injury, where his intent to assault was implied by law from his reckless and culpably negligent acts in driving while impaired. Because he committed two homicides during the perpetration of these felony assaults, he came within the North Carolina felony-murder rule and was charged and convicted of two counts of first degree murder.

Because under North Carolina law driving drunk on the wrong side of the road at a high speed constitutes the use of a car as a weapon of mass destruction, Jones was required to be tried capitally. The jury had to consider the death penalty as a possible sentence because this circumstance was a mandatory aggravating factor. Prior to the fatal accident, Jones had rammed another car and left the scene, which constituted another aggravating factor. Mercifully, the jury sentenced him to two life sentences without parole, still the stiffest sentence ever given in a case like this.

The Jones case, I hope, will serve as a wake up call to prosecutors and law-makers across the country that people are dying at the hands of drivers impaired by the reckless abuse of OTC drugs and prescription medications just as much as they are dying at the hands of those who abuse alcohol alone. These people are crime victims who are dying violent, horrible deaths, unexpectedly and usually when they are minding their own business. It is our business as lawmakers and law enforcers to do our business to protect these innocent people.

There are great problems, however, in giving law enforcement and prosecutors effective tools in proving violations which occur from abusing drugs and prescription medication. Most

state crime labs are not equipped to perform quantitative testing which can show judges and juries precise blood levels of drugs consumed, and state crime labs cannot always recognize the chemical signatures of many drugs as they appear in blood, because they lack adequate reference materials and usually have no PhD-level toxicologist on staff to interpret data and testify that a defendant was impaired due to particular levels of a drug in their blood.

In North Carolina, we are forced in routine DWI cases to rely on ineffective “presumptive” or “positive or negative” tests for the presence of drugs in blood. These tests cannot tell the court whether there is a trace amount or a toxic amount of the drug present. Another problem is that lawmakers cannot set *per se* illegal amounts of drugs in a person’s blood who is driving, as they do for alcohol, due to the large range of therapeutic response of individuals who must take various medications just to function normally.

In cases involving death or serious injury, my office tries to utilize National Medical Services, in Willow Grove, Pennsylvania. It is one of five forensic drug labs in the country which can do quantitative testing and provide the prosecutor with expert witness services to interpret the results for the court. Pennsylvania and North Carolina may need to develop and enter into a contractual relationship with a private forensic drug lab such as National Medical Services, just as North Carolina does now for DNA paternity testing with other labs.

The cost of using a private forensic drug lab to provide prosecutors with effective evidence in serious cases can range from \$1,000 to \$12,000, depending on the number of analyses required. The cost of setting up a state lab to do quantitative testing could be over \$250,000 excluding personnel costs. It is a serious problem.

There are other problems. Every prosecutorial district needs to work closely with every law enforcement agency to develop specific protocol in deciding when to collect blood samples, how to collect the blood samples, and how to properly store and transport the samples to the appropriate lab. Unless these agencies determine exactly how to properly collect evidence, this proposed bill will have little or no effect in saving lives or in achieving conviction and treatment of drug offenders.

The final point I want to make is that prosecutors may hear about tolerance to drugs from the defense bar. Defense lawyers will attempt to introduce evidence that chronic alcohol drinkers develop cross-tolerances to other drugs. However, one thing they will not tell the courts is that this is only true to some degree when the chronic drinker is **not** currently consuming the alcohol along with the drug. It is a well-recognized principle of medical toxicology that consuming any amount of alcohol and combining it with any amount of most other kinds of prescription medication or OTC medication increases the impairing effects of alcohol and drugs (See Gitman and Gellman, Medical Toxicology, 1996). That is all the more reason why Pennsylvania needs this law.