



***TESTIMONY OF  
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BUREAU OF LABORATORIES  
PENNSYLVANIA DEPARTMENT OF HEALTH  
ON  
HOUSE BILL 1269  
BEFORE THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE  
SUBCOMMITTEE ON CRIMES AND CORRECTIONS  
SEPTEMBER 17, 1997***

I am Dr. Jeffery Shoemaker, Director of Division of Chemistry and Toxicology in the Bureau of Laboratories of the Pennsylvania Department of Health. I have been responsible for activities at the Bureau relating to alcohol and drug testing for more than 25 years.

I would like to thank the House Judiciary Committee for this opportunity to offer testimony on behalf of the Department and to present comments on House Bill 1269, which amends § 5505 of Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes. My comments will focus on § 5505.1 (Driving While Impaired) of this bill since our agency's involvement with issues relating to public drunkenness has been primary in supporting efforts to prevent driving while intoxicated.

The Department of Health understands the need to address the problem of driving while intoxicated. Injuries sustained in accidents are the leading cause of death and disability, especially in young people, and vehicular collisions account for approximately half of the accidents which occur. Although alcohol intoxication is the primary contributing factor in nearly 50% of highway fatalities, impairment resulting from administration of controlled substances is also a significant problem. In many instances, both alcohol and drugs are present in these individuals, and the impairment produced by these substances in combination is often greater than the effect of any one of these agents acting alone.

The Bureau of Laboratories of the Department of Health receives blood specimens taken by county coroners and medical examiners from the bodies of drivers and pedestrians over 15 years of age who die within four hours following a highway accident in accordance with the Commonwealth's Motor Vehicle code (75 P.a. C.S. § 3749(b)). This blood is routinely tested for alcohol content and the results are reported to the coroners or medical examiners who submitted the specimens, and to the Pennsylvania Department of Transportation which uses the findings for highway accident epidemiology purposes.

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

The Pennsylvania Department of Health supports the intent of this legislation. However, it appears that the provisions contained in § 5505.1 to a great extent duplicate provisions already included in the Commonwealth's Motor Vehicle Code (Title 75). Placing similar legislation in a different code (Title 18) may complicate enforcement of the Motor Vehicle Code and jeopardize prosecutions which are in progress under this statute.

Further, the Crimes Code does not have provisions for chemical testing which is necessary to provide evidence in Commonwealth Courts that a person drove, operated or was in actual physical control of the movement of a motor vehicle while under the influence of alcohol or a controlled substance. The Motor Vehicle Code also contains penalties for refusing to submit to chemical testing which was not included in the revision of § 5505 of the Crimes Code.

The Pennsylvania Department of Health licenses laboratories that test materials from the human body in accordance with the Commonwealth's Clinical Laboratories Act (35 P.S. § § 2151 - 2165). In addition to this licensure requirement, laboratories that perform analyses of blood or urine for alcohol or controlled substance content, must be specifically approved by the Department to provide these services. The Commonwealth's Superior Court has taken judicial notice (631 A. 2d 1014 (1993)) of these approval programs so that in criminal DUI prosecutions, no scientific foundation needs to be laid to establish a presumption of the validity of a blood or urine test result obtained by an approved laboratory. Accordingly, in § 1547 (c) (2) (Test results admissible in evidence) of the Vehicle Code, it is specified that chemical tests of blood or urine shall be performed by a clinical laboratory licensed and approved by the Department of Health.

A further concern, which could be a problem in amending current statutes to expand testing to include other substances, relates to the amount of a substance which must be present in a person's body for them to be considered under the influence of the substance to a degree that would significantly impair their ability to drive. Even in the case of alcohol which has been extensively studied for many years, there is still some uncertainty about the level at which it impairs a person to the extent that they should not drive. In the case of drugs, there are many hundreds of substances which could be present either alone or in combination with alcohol or other drugs in persons apprehended on suspicion of driving while intoxicated, and generally there is a paucity of information correlating their concentrations in body fluids with the ability to drive safely. Until this problem is solved, it may impede the successful enforcement of any statute which attempts to address this issue.

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

Hopefully, the previous discussion has provided some insight into the problems inherent in amending existing statutes to address the problem of driving under the influence of drugs. As a result of biological individuality, the effects of drugs vary from person to person which renders it difficult to generalize with regard to dose-response relationships. Because of the wide spectrum of responses which different drugs produce, it is unreasonable to expect police officers to be able to discern these effects and relate them to ability to drive safely. Devices which are available for initial screening are limited to frequently abused substances (e.g. amphetamines, cocaine, opiates and marijuana) and are generally not practical for pre-arrest testing purposes at the roadside.

Lethargy resulting from use of prescription or over-the-counter medications may be difficult to distinguish from the conditions for which these pharmaceutical products are being taken. Caution must also be exercised not to equate all drug effects with intoxication which usually is considered to be a state which occurs when the therapeutic dosage is exceeded. To avoid the pitfalls of attempting to address all drugs and substances which could affect driving ability, it may be more prudent and practical to develop enforcement provisions for those which studies have shown to present a significant threat to highway safety. Adding additional substances to the Motor Vehicle Code could create a difficult enforcement problem which needs to be carefully evaluated. I am hopeful that the committee will undertake such an evaluation as part of its review of this legislation.

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*Analysis of Drugs in Postmortem Blood  
Motor Vehicle Accident Fatality Victims*

SUBSTANCE	YEARLY NUMBER OF POSITIVE RESULTS*		
	1994	1995	1996
Amphetamines	5 (5%)	3 (4%)	5 (8%)
Barbiturates	9 (10%)	3 (4%)	0 (0%)
Benzodiazepines	16 (18%)	20 (30%)	10 (17%)
Cannabinoids	16 (18%)	23 (34%)	17 (29%)
Cocaine	34 (37%)	17 (25%)	23 (39%)
Opiates	8 (9%)	2 (3%)	1 (2%)
Tricyclic Antidepressants	3 (3%)	0 (0%)	3 (5%)
<i>Total Positive ** Specimens</i>	91 (20%)	68 (17%)	59 (16%)
<i>Total Specimens Tested</i>	448	413	377

\* Percentages of the total number of positive specimens are shown in parentheses after the number of annual positive findings for each drug or class of drugs.

\*\* Percentages of the total number of specimens tested is shown in parentheses after the total number of positive specimens for each year.