

I am Major Kathryn Doult, Director of the Bureau of Patrol of the Pennsylvania State Police. Colonel Paul J. Evanko, Commissioner of the State Police, and I would like to thank the House Judiciary Committee for this opportunity today to speak about House Bill 1269, amending the Crimes Code, Section 5505, Public Drunkenness to "Under influence of alcohol or controlled substance in public place."

The Pennsylvania State Police supports stronger laws to prevent persons from reaching dangerous levels of intoxication to protect public safety. Obviously, individuals can induce a state of intoxication or impairment using substances other than alcohol; e.g., controlled substances or even "over the counter" drugs, which could result in behavior which: endangers themselves or others; endangers property; or, annoys persons in their vicinity.

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

Although the term "under the influence" in both the current and proposed sections of the law is somewhat subjective, it commonly refers to a state in which the person's physical and mental actions are altered from the presence of intoxicants introduced to their system. It is generally accepted that a person with a blood alcohol content of .03% is actually considered under the influence. This is because studies have shown that physical motor skills are affected by the alcohol at this level. This individual, however, is not usually considered intoxicated and generally would not create a problem in a public place. On the other hand, the per se blood alcohol limit for driving in Pennsylvania is .10% blood alcohol content (BAC). It has been determined that at a .10% BAC, a person's physical motor skills are affected to the point that driving is unsafe. BAC's between .05% and .10% are recognized nationally as levels of impairment for driving, but are directly tied to certain behavior which triggers an enforcement action.

We acknowledge the difficulty, if not the impossibility, of having such precise measurements and guidelines available to law enforcement for all of the controlled substances covered by the Controlled Substance, Drug, Device and Cosmetic Act. As is the case with enforcement of the Vehicle Code § 3731, "Driving while under the influence of alcohol or controlled substances," police officers will have to base their enforcement action on their observations of the person whose actions are being questioned. They will use these observations as probable cause for their decision to arrest/cite the subject. However, the difficulties which will exist for enforcement should be mentioned. While police are trained to discern the smell of alcoholic beverages on a person's breath, which actually becomes one of the observations I have mentioned, controlled substances have no smell. Therefore, a

violation of this section would also have to include drug testing for successful prosecution. This is an expensive proposition.

Phone calls to a hospital laboratory in Central Pennsylvania and a private laboratory in Western Pennsylvania revealed costs associated with such tests ranging from \$150-\$200. The drug screens available from these laboratories also differed. While the hospital laboratory had the ability to screen 300 different drug compounds from a blood sample, the private laboratory was able to screen only 150 different compounds. At the present time, the laboratory services of the Pennsylvania State Police cannot perform this type of drug screening. Therefore, State and local police will have to seek these services from hospitals and private laboratories. I cannot offer you the projected costs for either the State Police or local police departments for these tests, since we do not have any readily available data of how many enforcement actions might result from passage of this amendment.

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

The issues I would particularly like to address, however, are not the proposed amendments which retitle "Public Drunkenness" to "Under influence of alcohol or controlled substance in public place," or the addition of "controlled substance" to the basic section, but the proposed subsection of "Driving while impaired." If passed, this subsection will prohibit a person from operating a motor vehicle while under the influence of any drug, if the drug renders the person incapable of driving safely.

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

The Pennsylvania State Police supports the intent of this legislation. However, Colonel Evanko and the State Police believe the new § 5505.1 belongs in the Vehicle Code, not the Crimes Code.

In 1996 the Pennsylvania State Police arrested 9,969 people for Driving Under the Influence of Alcohol or Controlled Substances. Of these, a total of 3,722 people were involved in traffic crashes. Over 37% of these DUI arrests were arrests of individuals that were involved in a crash. It is evident that alcohol and drugs lead to senseless deaths on our highways, something we are all trying to prevent. It is our position the appropriate legislation already exists. By placing related legislation in a different Code, the Crimes Code, an already successful enforcement and compliance program may be jeopardized.

For example, DUI sentencing guidelines and DUI-related administrative policies are already in place for enforcement under the Vehicle Code. Without further amendment and/or regulation, DUI violators charged under Title 75 could attempt to make plea bargains to the "Driving while impaired" charge in the Crimes Code to avoid the sentencing guidelines and mandatory license suspensions, not to mention the automatic insurance rate increases. Such guidelines and license suspension mandates are not included in the Crimes Code, nor are the communications links established between any Commonwealth agency and insurance companies similar to those which currently exist between the Department of Transportation and insurance companies.

§1547 of the Vehicle Code, entitled "Chemical testing to determine the amount of alcohol or controlled substance," also known as the "Implied Consent" section, is not applicable to the Crimes Code. This section states that if a person fails to submit to a chemical test to determine the amount of alcohol or controlled substance within their blood, their operating privilege is suspended for a period of 12 months. Also, the refusal to submit to the testing may be used as evidence during DUI proceedings. A person violating the section proposed by the bill in the Crimes Code may refuse any chemical testing without penalty.

The procedures for approving hospitals and laboratories for blood screening are in the Department of Transportation's regulations. Would an additional set of regulations, under another agency's authority, be needed?

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

As mentioned earlier, when a person is suspected of driving under the influence of alcohol, several observations of physical characteristics are used to determine the level of intoxication, such as walking, speech, demeanor, dexterity and the odor of an alcoholic beverage on the breath. When a person is under the influence of a controlled substance, nearly the same indicators are observed, absent the odor of an alcoholic beverage. These observations must be documented by police officers in order to place a person under arrest. The proposed "Driving while impaired" prohibits a driver from being under the influence of any drug, which renders the person incapable of safe driving. Many "over the counter" drugs will have effects on a person, but the physical characteristics may not be obvious nor will they be consistent between drivers. A police officer, without an actual statement from an operator, may not have sufficient cause to place the subject under arrest.

There is no statistical data that is currently collected in Pennsylvania on the scope of problems associated with driving under the influence of any/all drugs; however, we suspect it probably is a factor in some crashes. Also, DUI statistical data is not separated by alcohol or controlled substance categories. All DUI charges are grouped together. It is unknown what percentage of DUI violators are arrested in Pennsylvania for being under the influence of controlled substances.

However, we did contact the Mississippi State Police to ascertain if they had any data available, since Mississippi's DUI law includes intoxicating liquor or any substance which can impair a person's ability to drive safely. Within the last two years, a total of 421 drivers were tested for being under the influence of a substance other than alcohol. Of these 421 individuals, only 7 (1.7%) were detected to have an uncontrolled substance, i.e., an "over the counter" drug, in their system.

The Maryland State Police was also contacted, because Maryland has a law prohibiting driving under the influence of any drug. The Maryland State Police enforce their law through the use of officers trained as drug recognition experts. A major portion of their training and subsequent expertise is based on a test referred to as horizontal gaze and nystagmus. This test has not been universally accepted by Pennsylvania courts, thereby reducing its effectiveness for Pennsylvania police officers in our enforcement efforts. The costs of the intense training effort associated with a drug recognition expert program and the need for subsequent, continual use of the related detection techniques cannot be justified at this time, when the results of such procedures are not accepted as evidence in the majority of Pennsylvania's courtrooms.

The proposed provision concerning driving under the influence of any drug is, in fact, an excellent concept. A person increases their chances of being involved in a traffic crash if they drive while under the influence of any drug that impairs their cognitive and physical motor skills. However, by placing this proposed legislation in the Pennsylvania Crimes Code, the need for developing regulations and procedures that mirror those already in place in the Vehicle Code appears to be unwarranted.

Therefore, Colonel Evanko and the Pennsylvania State Police feel it would be more appropriate to modify the Pennsylvania Vehicle Code, Title 75 § 3731 (a) (2) to include prohibitions on driving while under the influence of any drug. Otherwise, we support the changes to 18 Pa. C.S. § 5505 contained in House Bill 1269.