

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Driving Under the Influence Hearing

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House Judiciary Committee Task Force on DUI

Federal Courthouse
601 Market Street
Philadelphia, Pennsylvania

Tuesday, August 18, 1998 - 10:00 a.m.

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BEFORE:

Honorable Jane Orie, Majority Chairperson


IN ATTENDANCE:

Honorable Kathy Manderino
Honorable Thomas Caltagirone
Honorable Joseph Petrarca
Honorable Dennis O'Brien
Honorable LeAnna Washington

KEY REPORTERS

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1998-105



ALSO PRESENT:

Brian Preski, Esquire
Majority Chief Counsel

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1 CHAIRPERSON ORIE: Good morning,
2 everyone. Thank you for coming today. We have
3 a busy schedule so we'll get started right
4 away. Let me begin by saying, I'm State
5 Representative Jane Claire Orie, Chairman of
6 the House Task Force on Driving Under the
7 Influence. At this time I'll ask the other
8 members of the Judiciary Committee to introduce
9 themselves for the record.

10 REPRESENTATIVE MANDERINO: Good
11 morning. Kathy Manderino, Philadelphia County.

12 REPRESENTATIVE CALTAGIRONE:
13 Representative Caltagirone, Berks County. I do
14 have a guest with me, District Justice Gail
15 Greth, also from Berks County.

16 CHAIRPERSON ORIE: Today we'll be
17 hearing testimony from various experts on the
18 several pieces of legislation before the House
19 on DUI law. I thank you all in advance for
20 coming and participating.

21 At this time with no further ado, I'd
22 like to take this opportunity to introduce the
23 Honorable Lynne Abraham, the District Attorney
24 in Philadelphia County; Gary Tennis, Chief of
25 the Legislative Unit for the Philadelphia

1 D.A.'s Office; and a colleague of ours, State
2 Representative Dennis O'Brien.

3 DISTRICT ATTORNEY ABRAHAM: Good
4 morning to the Chair Orie and to members of the
5 committee and guests: My name is Lynne
6 Abraham. I'm the District Attorney in
7 Philadelphia. To my left is Gary Tennis, Chief
8 of our Legislative Unit. To my right, as the
9 record will reflect, is Representative Dennis
10 O'Brien.

11 I'm appreciative that the committee
12 has given me the opportunity to appear and
13 speak on the important issues of how this
14 committee and the task force can take positive
15 steps to combat drunk driving.

16 First, I want to note that I couldn't
17 possibly comment on all of the bills in the
18 packet. There were so many, and there is so
19 much to talk about. I had to make a decision.
20 However, I don't mean to indicate by the fact
21 that I may not touch at all or only touch
22 briefly on some bills that I'm not interested
23 in others. It's just the lack of time and the
24 heaviness of the schedule this morning.

25 I wanted to first pay my thanks not

1 only to the committee task force for holding
2 this hearing, but also I want to pay particular
3 tribute to the Mothers Against Drunk Driving.
4 I believe that this group has been primarily
5 responsible for transforming society's attitude
6 from tolerance about drunk driving to outrage
7 at the thousands of innocent human beings who
8 are frequently paying with their lives because
9 of the irresponsibility of the drunken driver.

10 Rarely has a single group been as
11 effective in changing the social climate and
12 attitudes of legislators, judges and citizens.
13 MADD's efforts have led to tough and
14 appropriate mandatory sentencing laws, potent
15 anti-DUI advertising campaigns, lobbying
16 efforts, and, of course, ultimately the saving
17 of thousands of lives that might otherwise have
18 been lost had these attitudes and other changes
19 not taken place.

20 Alcohol and crime still plays a major
21 role in the criminal justice system. According
22 to the most recent statistics available,
23 Americans died in alcohol-related fatalities at
24 an astounding rate of 24,000 Americans. Ten
25 years later the statistic dropped by a third,

1 to 17,000 lost, although that is still an
2 unacceptably high level. But, at least we know
3 that all these campaigns are having a positive
4 impact; that, plus intelligent law enforcement
5 activities and a strong judiciary and a good
6 treatment component all have a way of reducing
7 that 24,000 to 17,000.

8 However, recent events have indicated
9 that this figure may be changing and moving
10 upward, so therefore, we must be ever vigilant
11 to make sure that this record of our numbers of
12 deaths going down doesn't turn around and go
13 up.

14 I want to also call the attention of
15 the committee to a recent study in the Journal
16 of the American Medical Association of January
17 1997 which indicates that impaired driving due
18 to alcohol ingestion is much greater than we
19 think. Even their figures, using
20 extrapolation, demonstrate that we're
21 underestimating the problem of drunken drinking
22 as a nation because so few people get caught.
23 Therefore, we need to pay particular attention
24 to discourage alcohol-related accidents and
25 deaths in all of its complexities.

1 In 1983, for example, there was one
2 DUI arrest for every 80 licensed drivers in the
3 nation. In 1996, the figures have indicated
4 that the numbers dropped to one for every 122
5 licensed driver. But, as I mentioned a moment
6 ago, more needs to be done. 17,000 deaths in a
7 single year and a million and a half DUI
8 arrests are absolutely unacceptable. Nearly
9 500 Pennsylvanians died in 1996 as a result of
10 the impaired drunken driver. Thousands more
11 were injured, maimed, and rendered either
12 quadriplegic, hemiplegic or paraplegic due to
13 drunken driving.

14 We must be willing to take up the
15 challenge of the drunken driver anew, and we
16 must at the same time be more resourceful.
17 Several of the bills in this packet, about
18 which I have been asked to comment, contain
19 just such a combination of tougher, as well as
20 smarter approaches to the problem. There are
21 some inconsistencies within the bills. But
22 when considered in their entirety, I'm certain
23 that any consistencies that might appear would
24 be resolved.

25 The two bills I'd like to comment

1 first and more specifically are, House Bills
2 669 and 1165. Representative Dennis O'Brien
3 and Representative Sarafini, respectively, are
4 the prime holders of these bills. First, let
5 me talk about DUI, three strikes and you are on
6 the wagon, which is known as House Bill 669.

7 This bill has been endorsed by the
8 Pennsylvania District Attorneys Association,
9 Mothers Against Drunk Driving and the Drug and
10 Alcohol Service Providers of Pennsylvania.

11 This bill offers a tough and sensible approach
12 to the repeat drunken driver.

13 It creates a mandatory maximum
14 sentence of four years for those convicted of a
15 third or even a subsequent DUI. We could talk
16 about the maximum a little bit later, if you
17 like, but more importantly as a condition,
18 whatever the maximum will be when this bill is
19 finally finished, the condition of the parole
20 will include that the offender be and remain
21 free from drugs, illegal substances and alcohol
22 use. The successful completion of this
23 clinically-approved drug and alcohol treatment
24 protocol must be finished, and of course, there
25 will be appropriate strictly monitored

1 aftercare.

2 Everything we know about alcohol
3 treatment indicates that treatment has to be
4 intensive, lengthy, intrusive, and it also has
5 to have the strong arm of the courts behind it
6 for those who fall below the standard that we
7 find acceptable in the legislation as well as
8 the treatment protocol.

9 This bill, which was developed in
10 collaboration with its prime sponsor,
11 Representative Dennis O'Brien, reflects the
12 reality that anybody who is convicted of three
13 DUI's in a given period, such as seven years,
14 is undoubtedly an alcoholic and/or an addict.
15 It also reflects the clinical reality that
16 addicts and alcoholics, by the very nature of
17 their addiction and in contrast to those who
18 are sober, do not respond to just no
19 deterrents, whether they be jail sentences
20 alone or license suspensions.

21 Indeed, many Pennsylvanians, and I
22 know in particular many Philadelphians,
23 frequently drive without licenses to begin with
24 or on suspended or revoked licenses. So,
25 license suspension in and of itself is not a

1 deterrent.

2 Therefore, what we are going to do if
3 we want people to stop drinking and driving, we
4 have to get really serious about not only
5 punishment, but also the necessary treatment
6 protocol which is completed upon a clinical
7 assessment and an arromatic (phonetic) change
8 in the way we treat the addict and the alcohol
9 abuser. The only way to do that, of course, is
10 to have the full force of the law to motivate
11 and compel people to get into a treatment
12 regimen and into recovery. House Bill 669 does
13 just that.

14 I'd like to ask Representative
15 O'Brien, who really is the prime sponsor of
16 this bill and helped to draft it, to please
17 give greater detail about this very good
18 proposal.

19 REPRESENTATIVE O'BRIEN: Thank you,
20 Lynne. Thank you, members of the committee.
21 Gary Tennis and I presented testimony about two
22 years ago on this very same piece of
23 legislation. Since Lynne has touch very
24 articulately on most of the points, I'll just
25 skip over the top.

1 We all know that the overwhelming
2 majority of drunk drivers, once you are
3 convicted of more than three DUI's, you are a
4 chronic alcoholic. As Lynne said, these
5 drivers are supposed to complete their
6 treatment and they're suppose to lose their
7 license, but losing their license has no effect
8 on them.

9 I can relate to you a personal
10 experience that led to the passage, the
11 introduction and passage of the increased
12 penalties for leaving the scene of an accident
13 many years ago. That came on the heels of a
14 woman from Bucks County who came to me because
15 her son was hit by a drunk driver on a road in
16 Bucks County.

17 He was left on the side of the road
18 for the entire evening because his body had
19 been pushed off to the side on the shoulder
20 where no one could see him. If he had been
21 given immediate medical treatment, that boy
22 would be alive today.

23 They discovered that this man had
24 over 15 DUI's; didn't have a license and really
25 didn't care. That gets to the root of what

1 we're asking the Judiciary Committee and the
2 House to take under consideration. That is,
3 that we have to get these DUI offenders into
4 treatment while they're incarcerated. That's
5 the big hammer; that's the big stick.

6 If they are allowed to serve their
7 minimum and get out, they are not going to have
8 any respect for deterrents because, when you
9 are an alcoholic you do not respond to rational
10 deterrents. So, in essence, you get them while
11 they're in there. The medical coverage is paid
12 for, if they're employed, by their HMO. If
13 not, it's covered by Medicaid. Regardless, I
14 think it's absolutely essential that we
15 interdict that cycle of dependency.

16 Also, Tom, you'll remember when we
17 did the sentencing reform -- not the sentencing
18 reform, the prison reform legislation. During
19 that time we recognized that drugs were a
20 problem in prison as is alcohol. You can get
21 whatever you want. No matter how much we try
22 to stop that from being trafficked into the
23 prisons, you can still get whatever you want.
24 It's easier to get it in there than it is on
25 the outside in most cases.

1 What we found with those who were
2 substance addicted was, they were going to
3 leave prison earlier, commit a crime and come
4 back soon.

5 When you talk about the cost of
6 crime, I think you have to look at it in
7 different terms. I think you have to look at
8 the type of crime that these individuals are
9 engaged in and the result and cost. They
10 present themselves in an emergency room. That
11 drives up the cost of health care for all of
12 us. They are involved in serious and tragic
13 accidents, as I just related one personal story
14 to you.

15 They tend to abuse their spouses and
16 children. I'd like to congratulate
17 Representative Orie for the domestic violence
18 bill that she's introduced, that's worked its
19 way through the House and is now before the
20 Senate. I hope that receives consideration.
21 We're talking about that same type of offender.

22 We also talk about people who can't
23 hold a job because of absenteeism. They get
24 hurt on the job. That causes lack of
25 productivity and increased workplace costs.

1 Then a serious problem that we who
2 are interested in law enforcement are going to
3 live with for many, many years. That is, women
4 are giving birth to alcohol and drug-addicted
5 babies. The psychological effect and the human
6 cost that that's going to have on society is
7 immeasurable at this point. But all studies
8 point that it's going to be the type of issue
9 that we have never seen before in our lifetime.

10 So, for all of these reasons, I would
11 ask that -- It's a clinically appropriate
12 treatment. They believe as long as you have
13 the big hammer, and that is, you get the
14 treatment, but you have the force of the big
15 hammer of the criminal justice system behind
16 that treatment, so that, if you do not stay
17 with that assessment, then you're going to go
18 back and you're going to serve toward your four
19 years.

20 Are we going to have someone taking a
21 urine test following everybody that has a DUI?
22 That's not practical. But the absolute fact is
23 that these individuals are going to spin out of
24 control very quickly if they are not in
25 comprehensive treatment and remain sober for

1 the rest of their lives. You know that, and I
2 know that. They are going to present
3 themselves in the criminal justice system if
4 not for a DUI, in some other form, and then
5 their urine can be tested and then they can go
6 back for that violation of parole.

7 I guess I could go into other detail,
8 but I think that touches on the general
9 aspects. I will respectfully ask the district
10 attorney to continue her testimony and answer
11 any questions that you might have.

12 DISTRICT ATTORNEY ABRAHAM: Thank
13 you, Representative O'Brien. Just to
14 underscore a few things that the Representative
15 said, recently in a published report in the
16 Inquirer of March 26, 1998, four people died at
17 the hands of three different drunk drivers,
18 each of whom had his or her licenses suspended
19 previously. The fact that these people had
20 their licenses suspended or revoked did not
21 prevent them from driving, and certainly didn't
22 prevent them from driving while drunk, at the
23 loss of four lives in three different
24 accidents.

25 On the funding issue I want to

1 underscore something that Representative
2 O'Brien said, which is essential. Many of our
3 DUI offenders do have some kind of
4 hospitalization coverage, whether it's private
5 or public insurance or HMO coverage. Sometimes
6 it happens, however, that these providers
7 refuse to pay for this kind of coverage,
8 conditioning it as part of a sentence. They
9 say, well, it's a prison sentence or it's a
10 judicially imposed sentence so this is not for
11 us to do.

12 I believe this body, the legislature
13 of the Commonwealth of Pennsylvania, has to
14 make sure that these providers understand that
15 when a person pays for alcohol treatment as
16 part of their coverage or gets it by virtue of
17 the fact of the coverage itself, whether it's
18 publicly paid for or privately paid for, that
19 the provider has to pay for it assuming that
20 the assessment is clinically approved and, of
21 course, even though it is court ordered.

22 I think that this is a very important
23 thing that our legislature must embark on; is
24 making sure that nobody is denied these
25 benefits just because of the issue of the

1 drunken driver and the judicially imposed
2 treatment.

3 The second aspect of that is, some
4 feeling that, well, an addict can't be coerced
5 into recovery. While certainly not everybody
6 can be, quote, coerced in recovery, many people
7 are in total denial that they have a problem to
8 begin with, whether they're drunken drivers,
9 alcohol addicts, polysubstance abusers, or the
10 whole gamut of people who are engaged in
11 abusive drugs, alcohol and who become impaired.

12 However, the stories are legion where
13 people say, I was in total denial and this
14 judge forced me to get into recovery; monitored
15 my conduct very carefully; threatened me with
16 jail; taking me away from my family and
17 everything that I love if I didn't continue
18 with this treatment program. I now realize
19 after having been in the program that I really
20 was drunk, and I'm confessing to myself what
21 everybody knew and I denied. I believe that
22 while not everybody can be cured, I believe
23 that you can coerce a good number of people
24 into recovery.

25 I have also seen, and just so this

1 doesn't go unnoticed, that there are some
2 people who will come to a court and say, judge,
3 I really want recovery. I know I have a
4 problem. They're sort of nonspecific about it.
5 If you'll give me a program, I promise I won't
6 do this anymore. They're just lying to me and
7 I knew it. They were lying to themselves.

8 There are many people who will come
9 to the bar of the court, claim they want
10 treatment, but all they want is a break from
11 jail. I think our judges have to just smarten
12 up and say, listen, I've been there and done
13 that. If you want to get smartened up and
14 treated up, and if you want to really do
15 something good for yourself and your family and
16 not endanger the public and the lives of
17 innocent people, I'm going to make sure you get
18 treatment, and I'm going to carefully monitor
19 it.

20 It wouldn't be too far a stretch, by
21 the way, to have the same kind of courts for
22 drunken or impaired drivers, drunk slash drug
23 drivers, the same thing we're doing, for
24 example, in Philadelphia with a drug treatment
25 court. There's an assigned judge. Let's say

1 it's Judge Manderino. If I came before six
2 different judges, I can tell you I'm going to
3 give you six different stories.

4 If I come in front of Judge
5 Manderino, she's sitting there every single
6 time. I can't tell six different stories. I
7 made a mistake. I slipped. I was at a party.
8 Somebody importuned me. She's not going to
9 hear it. I'm only going to be able to get over
10 on the court once. Once is going to be enough
11 for the judge to say, as the judge should say,
12 listen, who do you think you're fooling with?
13 I think that's an important concept that we may
14 want to invest in. The dollars and the time of
15 the judiciary and the treatment people will be
16 well spent.

17 Just to emphasize that, at the first
18 graduation of the drug court treatment program,
19 it was amazing. I got up and I said to these
20 graduates, I said, is this a wonderful country
21 or what? A few months ago the whole weight of
22 the city was against you.

23 Now the representatives of City
24 Council, the Public Defender, the District
25 Attorney of Philadelphia, judges, treatment

1 personnel, your families are all here patting
2 you on the back that you stayed in this program
3 for a year and are now gainfully employed. I
4 think we can do the same with drunk drivers.

5 But I have to emphasize, in the drug
6 court when the person slips, the judge puts
7 them in prison. The judge has the right to
8 make sure that that person does what he or she
9 says he's going to do. This program will not
10 work if the defendant knows he can go in front
11 of a court, make some sappy excuse, and the
12 judge says, well, okay, I'll let this one pass.
13 It will not work, and it will defeat
14 Representative O'Brien's hard work. I think
15 that's an important fact.

16 I think also you have to understand
17 that we have an enormous number of people who
18 are killed, and many of our defendants are not
19 being convicted of or pleading guilty to
20 homicide by vehicle while DUA (sic). We also
21 have a number of judges who won't convict of
22 homicide by vehicle while DUA (sic). They will
23 only convict of homicide by vehicle and leave
24 the DUI out. I think we have to make sure that
25 our judges pay attention to that.

1 We also have a number of cases where
2 our defendants, including the one just I think
3 a week or two week ago, who pleaded to two
4 counts of third degree murder in connection
5 with two deaths that were occasioned by his
6 drunken driving.

7 I think House Bill 1165 needs some
8 comment, driving after drinking. We have a
9 terrible problem which was unintended, but
10 clever lawyers have thought of ways of getting
11 around with, first of all, what is the
12 definition of drunk? Also, when the alcohol
13 test was taken so that defendants' lawyers are
14 frequently complaining that when the test was
15 given that the alcohol level at the time of the
16 test was really rising; whereas, at the time of
17 the driving it was lower.

18 In other words, the claim is, I just
19 had my drinks a few minutes before getting into
20 my car and having the accident. At the very
21 moment while I was driving my car and getting
22 involved in this accident, my blood alcohol
23 level was much lower than it was when I took
24 the test an hour or two hours or even three
25 later.

1 Our Supreme Court has severely
2 limited the amount of time that can pass
3 between the time of the accident and the time
4 of the test. But in many jurisdictions the
5 time of the test cannot be given within the
6 limitations talked about by our Supreme Court.

7 I think what we then get into in
8 court is the battle of the experts. The
9 defendant calls his expert to say, well, at the
10 time of the accident his alcohol level was
11 lower. It was really on the way up at the time
12 of the test instead of the way down. The
13 Commonwealth would argue, no, no. It was at
14 .10 or .15 or .20 at the time of the accident.
15 By the time the test was given, it was really
16 much lower than it was at the time of the
17 accident.

18 This battle of the experts has
19 confused judges and juries and caused them in
20 good faith to go the wrong way. I think the
21 relation-back issue creates a problem.
22 Therefore, I think driving after drinking is a
23 very good alternative to that problem. It just
24 makes the problem go away because, when the
25 juries don't know what to do, they come down on

1 the side of the accused because they are giving
2 them the benefit of the doubt.

3 Therefore, I believe 1165 introduced
4 by Representative Serafini eliminates the
5 absurd result and simplifies the entire issue
6 because it makes it a violation of the law if
7 the person drives after drinking, if the amount
8 of alcohol is sufficient to raise the blood
9 alcohol content to at least .10 within three
10 hours of the person having driven his
11 automobile. This bill also has been endorsed
12 by the PDAA as well as others. I think this
13 will create a real way out of the problem.

14 Even, I might add, the Chief Public
15 Defender Ellen Greenlee said that:

16 This proposed statutory text clearly
17 defines the offense and does not, as can happen
18 through the use of loose language, create
19 criminal liability in unintended situations.
20 The proposed statute successfully accomplishes
21 the legislative purpose as articulated in the
22 findings prefacing 1165.

23 I think 1165 will go a long way in
24 creating fewer problems for us as well as for
25 the courts.

1 1889 increases DUI mandatories. As I
2 mentioned in my prefatory remarks, I believe
3 that everything that we are going to have to do
4 is going to have to be smarter. If treatment
5 is going to be intensive and intrusive and
6 lengthy, we also have to face the reality that
7 when someone is killed by a 3000-pound car,
8 it's the death that occurs with a half-ounce
9 bullet. The person is dead. A dangerous and
10 even lethal instrumentality has been employed.

11 1889 increases the DUI mandatory
12 minimum sentences. What it does is, it triples
13 the mandatory sentence for the second DUI from
14 30 days to 90 days. I want to make certain
15 that this second DUI offense comes after the
16 first offense, which essentially the DUI
17 offender is given a pass on if there's no
18 injury or serious bodily harm to somebody. I
19 think we have to understand that the second DUI
20 is not the second conviction. It's the second
21 offense for drunken driving after the first ARD
22 or DDPIP program. So, the mandatory would be
23 enhanced from 30 days to 90 days.

24 The third DUI would quadruple the
25 mandatory sentence from 90 days to one year.

1 And the fourth or subsequent DUI would triple
2 the mandatory minimum sentence from one year to
3 three years. I do believe that just as we have
4 to recognize that predatory repeat offenders
5 have to go to prison, so must the repeat
6 drunken drivers. They are out there killing,
7 maiming or injuring.

8 Frequently, and I regret to say, this
9 is a statement of fact, all too frequently the
10 drunken driver walks away without a scratch.
11 The people who are in his car or on the highway
12 or in their car or on the sidewalk are
13 frequently killed or absolutely devastated from
14 physical injuries for the rest of their lives.
15 I believe we have to get really strong and
16 tough on DUI. I think we also have to
17 recognize that we must do more.

18 I think there are a lot of other
19 things I could talk about. I do want to say
20 one last thing. My remarks are with the text,
21 and I'd ask that they be admitted to the record
22 in their entirety.

23 One of the things that we might want
24 to take a page out of is a book written by
25 North Carolina. I think that Pennsylvania can

1 do a lot, not only with these bills introduced
2 by the various legislators, Representative
3 Serafini, Representative O'Brien and others,
4 but Pennsylvania can really do a great thing
5 for itself. If we really want to have all
6 these issues stopped almost in their tracks, we
7 must really invest in a lot more preventive
8 work. Plus, we have to put a tremendous number
9 of police manhours on the highways doing many,
10 many, many random stops, road checks.

11 It's astounding how many people
12 throughout this Commonwealth we've found to
13 have been driving without a license, driving
14 without insurance, driving with an unregistered
15 car or a faulty registered car, stolen cars,
16 driving while drinking and a whole host of
17 other offenses, including being wanted on
18 warrants.

19 It would be nondiscriminatory because
20 it would be an absolute stop. You would have a
21 sign up saying "Roadblock Ahead," or whatever
22 you have to do to comply with whatever the
23 legislature's notion of what constitutional
24 requirements might be. They will still have to
25 stop you. You can't turn away and go down a

1 different highway. It's got to be the kind of
2 highway the person can't make a U-turn because,
3 otherwise, everybody will make a U-turn.

4 If you put a sign up and you have
5 officers there, and when you find an impaired
6 driver, you have what North Carolina has. It's
7 called a BAC mobile. It's a two hundred
8 thousand dollar, give or take, as prices go up,
9 vehicle which is your mobile DUI station.
10 There's no wait for a trooper to come. There's
11 no trying to find a doctor in a hospital or a
12 nurse, and they'll put the sample in the
13 refrigerator and someone will claim that it
14 deteriorated overnight or it got switched or it
15 got lost.

16 Right then and there, on the side of
17 the highway, you get out of your car because an
18 officer said so. Sir or madam, you are going
19 to have to take this test right now because I
20 smell alcohol or I see a container of alcohol.

21 They go right in the BAC mobile; they
22 blow the tube. No fooling around. None of
23 this, oh, I can't blow or I can't get enough
24 breath. You have to blow into the tube to get
25 a reading or do your sample. They do the test

1 right by the side of the road.

2 So, besides stopping the impaired
3 driver due to alcohol or drugs, you also deter
4 people who are driving without a license,
5 without insurance, without registration, wanted
6 people, people in a variety of circumstances,
7 people with guns, and all that other stuff.
8 It's a great deterrent.

9 I don't necessarily support
10 everything that North Carolina does, but this
11 program has shown to have worked miracles. I
12 think we might want to investigate not only
13 these things, but other things that this state
14 as well as our surrounding sister states and
15 across the country are doing to combat drunken
16 driving. I thank the committee.

17 CHAIRPERSON ORIE: At this time I'd
18 like to note for the record Representative
19 LeAnna Washington is present here today.

20 I just have a few questions for the
21 Chairman of the Health and Human Services
22 Committee, Dennis O'Brien. In regards to the
23 treatment, and I certainly agree that that's
24 one of the things that is lacking with DUI,
25 especially with the mandatories that there's no

1 enforcement or really stringent policy for
2 these individuals to stay on. Do you find
3 that, based on your experience, most health
4 plans won't cover DUI treatment? Do you
5 encounter that being the Chairman?

6 REPRESENTATIVE O'BRIEN: I think the
7 District Attorney has pointed to an issue that
8 has arisen in the last couple of years, and
9 that is, insurance companies are purposefully
10 restricting out any offense that will reflect
11 involvement with the criminal justice system.
12 I think that has to be corrected because, I
13 think they are the ultimate beneficiaries.

14 As I've talked about, the enormous
15 cost of emergent care, critical care, the cost
16 that's passed onto us as consumers can be
17 affected dramatically if we have these
18 substance abusers removed from the streets and
19 put into treatment, and they are, in fact,
20 clean and sober for the rest of their lives.

21 There are a couple studies. I think
22 Calabeta (phonetic) and the University of
23 Columbia has shown that for every dollar -- I
24 think the Calabeta (phonetic) study reflected
25 that for every dollar that they put into

1 treatment, they recovered five dollars. The
2 University of Columbia had a different ratio;
3 that was, for every dollar that was invested in
4 treatment they recovered seven dollars. So, I
5 think that information has to be understood by
6 us as policymakers as well.

7 CHAIRPERSON ORIE: This would be open
8 to either the District Attorney or yourself.
9 In regards to the drug and alcohol treatment in
10 drug court, or whatever, there's a fee
11 sometimes attached to their sentence, the
12 offender's sentence to go towards paying off
13 those types of programs or services. Would you
14 support that idea as well?

15 DISTRICT ATTORNEY ABRAHAM: Sure
16 would. Remember, I was a judge for almost 16
17 years. Whenever there was a fee I always
18 explained to the person, if you go out and have
19 one hamburger and a Coke a week, that will
20 cover your fee for the week, six or seven
21 bucks. Smoking a couple packs of cigarettes,
22 that will do the same thing. I believe that
23 when you make people pay for their own way,
24 that is an additional tool that you use to
25 appreciate that they are not on the dog.

1 There isn't anybody who can't pay for
2 treatment if they really want it. We do
3 indulge ourselves a lot. There's a lot of
4 expendable income out there. I believe, except
5 in the rarest of circumstances where a person
6 is absolutely destitute, that fee should be
7 imposed. After all, the person who is
8 destitute is driving a car, probably his car.
9 It may not be worth very much but it's his car.
10 They're putting gas in the car at a buck a
11 gallon, so they obviously have money to pay for
12 that. Now they won't be diverted by paying for
13 their car or paying for the gas. I think it's
14 the appropriate way to go.

15 CHAIRPERSON ORIE: Lastly to the
16 District Attorney in regards to, you indicated
17 you have individuals driving with suspended
18 license, without insurance. Another issue, and
19 as a prosecutor that I encountered, I'm curious
20 to hear your input on this, is with the
21 homicide by DUI-related where these individuals
22 are driving with a past history and they commit
23 a serious fatal accident, or have had a
24 fatality and they continued that drinking
25 history. Do you think that that needs to be

1 addressed as well?

2 DISTRICT ATTORNEY ABRAHAM: Of
3 course. This is a very complex issue. I think
4 your appreciation of the complexity of the
5 issue is manifested by the number of bills that
6 have been proposed trying to grapple with this
7 very serious problem.

8 I think also we have to recognize
9 that while there are good statutes on the
10 books, for example, Act 122, I don't think
11 there's a sense that there's a whole lot of
12 follow-up. I believe that there are a lot of
13 people getting over Act 122, that they have
14 gone through some sort of treatment, but their
15 license is restored without really making sure
16 that the program is successfully completed. I
17 think there's a lot of slipping and sliding.

18 The real test of our will to do
19 something about it is not only good legislators
20 like Representative O'Brien and this task force
21 trying to do something about a horrible
22 problem, but how much our judges, our probation
23 departments, our Department of Transportation
24 and everybody is willing to put their foot to
25 the pedal and say, okay, we're really going to

1 crack down on this issue. We're really going
2 to do a follow-through, the necessary
3 follow-through.

4 I believe an important and essential
5 element is the real relationship between the
6 judge and the probation department and the
7 alcohol or drug treatment provider. That has
8 to be real trounsic (phonetic). The judge is
9 not acting independent of them. They have to
10 work together towards a goal of treatment,
11 punishment, monitoring closely these
12 conditions. I think that if we pay attention
13 to that aspect of making sure this quality
14 control goes through, we will go a long way to
15 what North Carolina did; booze it, lose it.

16 CHAIRPERSON ORIE: We'll start to the
17 left. Representative Caltagirone.

18 REPRESENTATIVE CALTAGIRONE: No
19 questions.

20 CHAIRPERSON ORIE: Representative
21 Manderino.

22 REPRESENTATIVE MANDERINO: Thank you.
23 I guess both, Representative O'Brien and
24 District Attorney Abraham, if you could either
25 or both of you comment on this. I want to

1 understand because we're so use to thinking in
2 terms of mandatory minimums. I want to make
3 sure I understand in practicality a mandatory
4 maximum and how that would really work.

5 Under your legislation, if convicted
6 of a third DUI within the time period
7 subscribed, you have a mandatory maximum of
8 four years with a requirement for treatment, I
9 guess, before that four years expires? Am I
10 reading the bill right?

11 REPRESENTATIVE O'BRIEN: Maybe I can
12 just take a stab at that. One of the reasons
13 we are not increasing the mandatory minimum in
14 this bill and we're going to the mandatory
15 maximum is the big hammer and the big stick.

16 REPRESENTATIVE MANDERINO: What I'm
17 trying to do is, tell me how you envision it
18 working in real life.

19 DISTRICT ATTORNEY ABRAHAM: In real
20 life a judge might give, let's say, three to
21 ten months or three to 12 months. The judge
22 has the person under his or her direct control
23 as the judge.

24 Let me further suggest that, for
25 example, in Philadelphia with the prison

1 overcrowding, let's say I'm an offender. The
2 judge gives me three and a half to 12 months in
3 the county jail, something like that, or 11 and
4 a half months, whatever it is. I'm sent to the
5 county prison. Well, prison overcrowding, I'm
6 out. I'm out. I may make an appeal through my
7 lawyer for a reduced sentence, or I've been
8 here 30 or 60 days. Look at all the people
9 coming in or people who can't get in. My
10 client wants to get into a treatment program so
11 the judge lets me out.

12 Essentially, there's really no
13 follow-through. I'm out. I'm doing nothing.
14 There's really no hammer over me except for the
15 remainder of my term, 11 and a half or 12
16 months that I have left on my term. That's not
17 going to do anything.

18 When you have a state maximum of four
19 years and within that state maximum there's a
20 requirement, listen, Mr. Smith or Mrs. Jones,
21 you must enter into the treatment protocol.
22 You're going to have slipping and sliding.

23 In other words, suppose the treatment
24 for me, I'm a repeat chronic alcoholic, my
25 treatment program is at least a year. It might

1 be even longer. It's not to be expected that
2 I'm going to complete my program untouched by
3 any slip in the year. I may violate them. I
4 might take a urine and have drugs or alcohol in
5 my system. I may do a lot of things. I may
6 not report.

7 The judge has to have the authority
8 to say to me, listen, you've got a four-year
9 state correctional institution sentence looking
10 at you. This is not county prison. This is
11 not prison overcrowding. You're not going to
12 be released. This is the big hammer that a
13 judge can use to require that I have -- resolve
14 enough to get through a program or it's the big
15 or else. I can't appeal to the judge anymore
16 when I have a maximum sentence of four years.
17 I'm in Graterford, or whatever I am. I'm in a
18 state correctional institution.

19 I believe the big problem for us is
20 that, the county prison is just a way to get
21 over it. It's not long enough for the repeat
22 chronic offender. The hammer of the court is
23 not long enough. And I believe if you give a
24 sentence with a maximum sentence, whether it's
25 four years or five years, you have a mechanism

1 to ensure better compliance or else.

2 REPRESENTATIVE MANDERINO: Is the
3 maximum sentence serving at the outset to put
4 somebody in the state correctional system from
5 the beginning? Say, going back to your
6 example, or are they starting at the county
7 system and then going into treatment, but then
8 if they keep screwing up, the hammer is that
9 you have the rest of this potential term to
10 serve in the state correctional?

11 DISTRICT ATTORNEY ABRAHAM: You can't
12 start with the state correctional sentence.
13 Let Mr. Tennis go over the fine points of this
14 legislation.

15 MR. TENNIS: It was really envisioned
16 as, the mandatory minimum was 90 days.
17 Probably the most likely sentence would be 90
18 days to four years. The sentence gives
19 flexibility in some places. A lot of the
20 counties feel they have better facilities for
21 monitoring drunk-driving defendants on parole
22 than the state does. This actually gives
23 flexibility in any given county for the judge
24 and for that county to choose whether they want
25 to use the county parole or the state parole

1 system. I think in most instances, maybe not
2 Philadelphia, but in most instances they'll
3 choose to use the county parole system.

4 So, when the person finishes their 90
5 days, they'll be assessed for the level of
6 their addiction to, in most cases, alcohol.
7 The treatment they go through will be
8 clinically determined. The length of it, the
9 duration, whether it's residential or whether
10 it's intensive outpatient, or whatever it might
11 be, that's going to be determined clinically.

12 It will be a condition of that parole
13 that they go in and cooperate with treatment;
14 that they successfully complete the program,
15 and that will be, if they go to residential,
16 that means there will be follow-up with
17 intensive outpatient and outpatient, the whole
18 continuum of care that they have to participate
19 in.

20 If they blow it, there's also
21 flexibility here. The judge could put them
22 into the state system because the four-year
23 sentence is in that realm. It could be either
24 the county or state. The judge has that
25 flexibility too, and really could work

1 creatively with both parole and in drug and
2 alcohol treatment programs to try to figure out
3 what's going to be our most effective way to
4 get this person into recovery.

5 In some cases that may mean lowering
6 the boom. In other cases it may mean just a
7 certain amount of time to get their attention
8 so they can go back into treatment and
9 cooperate a little better. There's a good deal
10 of flexibility built into it.

11 REPRESENTATIVE MANDERINO: The other
12 question is, and I like the feature of the
13 requirement that if you have health insurance
14 that they have to pay for it. But, I'm
15 assuming --

16 DISTRICT ATTORNEY ABRAHAM: If you
17 have health insurance that includes paying for
18 treatment.

19 REPRESENTATIVE MANDERINO: That was
20 my point. I'm assuming that it doesn't go
21 beyond whatever the benefits provide. So, if
22 the ordered treatment goes beyond what the
23 benefits provide, then that is where, in order
24 for that person to be compliant, the
25 Commonwealth or through some other public

1 funding mechanism we would have to come up with
2 the money?

3 DISTRICT ATTORNEY ABRAHAM: Wait a
4 minute. It depends. Not every drunk driver is
5 destitute. The other day a banker just killed
6 a lady who was going out to get her morning
7 paper, I think. 8:30 in the morning he was
8 absolutely drunk. This is a man who not only
9 did work--he was fired from his job for reasons
10 we don't yet know according to the newspaper
11 report--but he can work. There are many people
12 who can work while they are in treatment.

13 In fact, the whole idea for many
14 people who are DUI offenders is that, many of
15 them are not only employed, but they are
16 employable. In fact, one of the most frequent
17 excuses used about not sending them to prison
18 or to jail is that, I have a wife and children
19 to support and I have a job. I'll lose my job.

20 Therefore, when there's a, to use an
21 expression a medigap between the coverage that
22 you're paying for and you get under every
23 health plan that I'm aware of in Pennsylvania
24 and the actual treatment costs you say, well,
25 Mrs. Jones or Mr. Smith, hey, you're working.

1 Part of your responsibility about getting you
2 into treatment and not sending you to prison
3 away from your family and your job is, fine.
4 We're going to allow you to go to work, but
5 part of your salary has to go to pay for your
6 treatment.

7 Those who have nothing, no health
8 care, who are really impoverished, well,
9 obviously, the state is going to have to pay
10 for some of this treatment protocol, but I
11 think a large number of people can be required
12 to pay for their own treatment or the gap in
13 treatment that is not covered by some other
14 health or benefit coverage.

15 MR. TENNIS: Just to emphasize one
16 point also made by Representative O'Brien. If
17 there does ultimately for the indigent
18 defendant have to be some expenditure, the
19 research is really overwhelming in terms of the
20 return, the reduced cost to state government
21 both in its health care and future criminal
22 justice costs. So, you can hardly find a more
23 sound investment.

24 It would be a lot better than the
25 stock market to put money into treatment for

1 these people. We do very, very well in terms
2 of reduced crime and what their costs,
3 workplace costs, probably better than any.
4 This crime more than any other crime is
5 probably going to have a higher percentage of
6 defendants that have some means.

7 REPRESENTATIVE MANDERINO: Thank you.
8 Thank you, Mr. Chairman.

9 CHAIRPERSON ORIE: Representative
10 Washington.

11 REPRESENTATIVE WASHINGTON: Thank
12 you, Representative. When we talked about
13 treatment, I'm not clear as to when you said if
14 their own medical coverage pays for treatment
15 and the treatment that the medical coverage
16 pays for is not enough, then who picks up the
17 costs? Is their treatment predicated on the
18 fact that their insurance will pay for them to
19 be in treatment for a month and this person
20 might require six months of treatment?

21 Because ultimately, people need
22 long-term treatment, and these two weeks,
23 three-weeks' programs are not going to make a
24 person alcohol free or drug free. We need to
25 look at the big, big picture. That big picture

1 is that long-term treatment is the end to drug
2 and alcohol addiction. We all need to face
3 that.

4 So, we need to look at, if indeed the
5 person only has medical coverage that pays for
6 them to stay for a 30-day program and the
7 person might need a 90-day inpatient program
8 and a one-year intensive outpatient program,
9 then we need to look on how to pay for that.

10 DISTRICT ATTORNEY ABRAHAM: Remember,
11 Representative Washington, there are a number
12 of groups that after a person has completed his
13 or her long-term care protocol and the
14 assessment and the follow-up and the
15 after-care, obviously, there's a price tag that
16 every legislative act has with it. Nothing
17 comes from nothing.

18 REPRESENTATIVE WASHINGTON: I
19 understand that.

20 DISTRICT ATTORNEY ABRAHAM: However,
21 there are also two things I'd like you to just
22 consider. Assuming the person gets the message
23 and goes to treatment and after-care and then
24 decides to go to Alcoholics Anonymous, Live and
25 Grin, there are a number of programs; some

1 faith based, some based on other concepts where
2 you can go yourself and you're with men and
3 women who are in the same situation you find
4 yourself in, which is not terribly costly.

5 When you lay on one hand the cost of
6 the program, whatever the length of the program
7 is, six months, a year, inpatient, outpatient,
8 after-care, whatever the costs are against the
9 life of -- for example, this advertising
10 campaign which really got my attention. It
11 impressed me so much that, even though it was
12 in 1996, I cut out at least one of these in the
13 newspaper. This was a full-page ad in the New
14 York Times. I'm sure it was in other papers
15 all over the country. Just look at these kids
16 and young men and young women who were killed
17 by a drunk driver.

18 So, when you say how much will this
19 cost, you can't measure the life of any -- I'm
20 not suggesting that you were. I'm just saying,
21 I don't know how much it's going to cost.
22 Maybe statisticians, treatment providers can
23 give this committee an idea how many cases we
24 have; how many cases we could have if we had,
25 let's say, road stops and so forth. Maybe we

1 can look to North Carolina as an example and
2 say, look, you've had 36,000 car stops since
3 your program went into effect. How much is
4 your treatment costing you? What is this
5 costing the Commonwealth? That might be a way
6 of doing it.

7 REPRESENTATIVE WASHINGTON: I
8 understand what you're saying. My sympathy
9 goes out to the families. I mean, I understand
10 that. But the bottom line is, in the
11 beginning, if we can deal with drug and alcohol
12 addiction in the beginning, maybe they would
13 never get to the point where they are killing
14 someone. That's the big picture.

15 I understand that you are a district
16 attorney and the position that you play, but
17 there's a lot of other things playing in this
18 picture as well. The bottom line is that, we
19 need to look at treatment before it gets to the
20 level that someone kills somebody in a car
21 accident.

22 DISTRICT ATTORNEY ABRAHAM: You're
23 absolutely right. I couldn't agree with you
24 more.

25 REPRESENTATIVE WASHINGTON:

1 Representative O'Brien, as we deal with drug
2 and alcohol issues in the House, maybe we'll
3 just consider some of these things.

4 REPRESENTATIVE O'BRIEN:

5 Representative Washington, as the District
6 Attorney just articulated, we can't agree with
7 you more that treatment is the first necessary
8 step. The other issue that Gary Tennis touched
9 on is that, the comprehensive evaluation and
10 assessment and treatment protocols are
11 important so that these individuals are placed
12 in a provider or with a provider that has
13 experience in dealing with these specific type
14 of offenders as well.

15 REPRESENTATIVE WASHINGTON: As well
16 as clinicians and people that they talk to in
17 terms of who the person that determines what
18 the treatment is that they are qualified to do
19 that.

20 REPRESENTATIVE O'BRIEN: Correct.

21 REPRESENTATIVE WASHINGTON: Thank
22 you.

23 CHAIRPERSON ORIE: I thank you for
24 your testimony. I appreciate that very much.

25 At this time we'll call Mark

1 Bergstrom, the Executive Director of the
2 Pennsylvania Commission on Sentencing and Larry
3 Frankel, the Executive Director of the American
4 Civil Liberties Union.

5 MR. BERGSTROM: Good morning,
6 Representative Orie, and members of the House
7 Judiciary Task Force on Driving Under the
8 Influence. I'm Mark Bergstrom. I'm the
9 Executive Director of the Pennsylvania
10 Commission on Sentencing. Thank you for
11 providing this opportunity to discuss the
12 packet of House bills under review and other
13 issues related to DUI.

14 I plan to limit my remarks this
15 morning to sentencing-related aspects of the
16 legislation, and in particular the amendments
17 to existing statutes. However, I would first
18 like to provide a brief history and perhaps a
19 context for the current sentencing scheme in
20 place for DUI-related offenses, somewhat of a
21 hierarchy between guidelines and mandatories.

22 Act 319 of 1978 established the
23 Pennsylvania Commission on Sentencing and
24 brought about a system of sentencing guidelines
25 intended, according to the House Journal at the

1 time, to make criminal sentences more rational
2 and consistent, to eliminate unwarranted
3 disparity in sentencing, and to restrict the
4 unfettered discretion we give to sentencing
5 judges.

6 At the time, guidelines were viewed
7 as an alternative to mandatorics, with
8 guidelines channeling, but not removing
9 judicial discretion. The intervening 20 years
10 have brought about a number of changes in the
11 original guidelines as well as an expanding
12 list of mandatory minimum sentencing statues,
13 including those related to DUI.

14 Under the guidelines, every offense
15 in statute is ranked in terms of seriousness,
16 with a sentence recommendation based primarily
17 on the current conviction offense, offense
18 gravity score and the offender's criminal
19 history, prior record score.

20 A matrix reflecting those
21 recommendations under the current guidelines
22 are attached to my remarks, the last page.

23 The courts are required to consider
24 guideline recommendations when imposing
25 sentences for each misdemeanor and felony

1 conviction. The court may depart from the
2 guideline recommendations but must provide
3 reasons on the record for doing so, and such
4 departures are subject to appeal.

5 Under the mandatories, which apply
6 only to selected offenses, the court is
7 required to impose a minimum sentence as
8 provided in the statute. For certain
9 mandatories, such as drug trafficking, the
10 mandatory provision is only triggered if the
11 district attorney gives notice of the
12 applicability. Other mandatories, such as DUI,
13 automatically apply upon conviction.

14 Pennsylvania's first sentencing
15 guidelines enacted in 1982 had specific
16 penalties for DUI. These were eliminated in
17 1986 because they were inconsistent with the
18 mandatory minimum sentencing provisions, and
19 subsequent editions to the guidelines simply
20 refer to the mandatories already in place for
21 DUI and homicide by vehicle while DUI.

22 In 1991, the Commission responded to
23 the enactment of the county intermediate
24 punishment legislation by recommending the
25 diversion of offenders with mandatory DUI

1 county sentences to designated programs. The
2 designated programs were identified as
3 Qualified Restrictive Intermediate Punishment
4 Programs, much like the programs discussed by
5 District Attorney Abraham and others, programs
6 such as residential inpatient drug and alcohol
7 treatment programs, residential rehabilitation
8 center programs and a third, house arrest and
9 electronic monitoring combined with drug and
10 alcohol treatment.

11 At the time the Commission put
12 recommendations in that were related to
13 intermediate punishment. The Commission also
14 provided enhanced recommendations for DUI
15 offenses involving accidents where there was
16 serious bodily injury, so as to reflect the
17 serious nature of the offense and recognizing
18 the impact such accidents have upon victims.

19 Last year the fifth edition of the
20 sentencing guidelines returned to the policy of
21 providing specific sentence recommendations for
22 DUI and for homicide by vehicle while DUI.
23 With the incorporation of DUI into the
24 sentencing guidelines, the prior record score,
25 based both on previous DUI and non-DUI offenses

1 is now used to determine an appropriate
2 sentence recommendation when the current
3 conviction is for DUI.

4 As with all convictions, the court is
5 required to first consider the sentence
6 recommendation based on the applicable offense
7 gravity score and prior record score. If the
8 mandatory minimum sentence requires a longer
9 period of incarceration, the mandatory statute
10 supersedes the guideline recommendations.

11 With the enactment of the aggravated
12 assault by vehicle while DUI statute in 1996, a
13 special enhancement that we had in the
14 guidelines was eliminated and the Commission
15 assigned a specific offense gravity score to
16 that new offense.

17 The decision to incorporate DUI
18 offenses into the sentencing guidelines after
19 an 11-year absence was adopted for several
20 reasons. First, as a misdemeanor offense the
21 Commission was required by statute to specify a
22 range of sentences applicable to DUI-related
23 offenses, and to provide increased severity for
24 defendants with any previous adjudications or
25 convictions. It had been argued that reliance

1 on the mandatory minimum and the statutory
2 limit did not satisfy this requirement.

3 Second, DUI-related offenses were the
4 only offenses with mandatory provisions which
5 the Commission excluded from the sentencing
6 guidelines.

7 Third, the increase in the grade of a
8 third or subsequent DUI offense from a
9 misdemeanor 2 to a misdemeanor 1 increased the
10 possibility of unwarranted disparity in the
11 absence of guideline sentence recommendations.

12 Previously, as you know, all DUI's
13 were a misdemeanor 2 offense with a statutory
14 limit or longest minimum sentence of one year.
15 Any DUI recommendation in addition to the
16 mandatory would have had little impact. When
17 you increase the statutory limit to two and a
18 half years because of a misdemeanor 1 offense,
19 you had more of a possibility for unwarranted
20 disparity.

21 As mentioned earlier, the court is
22 required to consider the sentencing guidelines
23 for all conviction offenses, including
24 DUI-related offenses, and to report those
25 sentences imposed to the Commission. No

1 guideline form is required if the defendant is
2 accepted into an ARD program.

3 During 1996, excluding those accepted
4 into the ARD program, 14,843 DUI sentences were
5 reported to the Commission. This represents
6 approximately 20 percent of the 70,990
7 sentences reported that year. Clearly, any
8 changes in DUI-related statutes, especially
9 changes that increase the mandatory penalties
10 and expand the behaviors covered by the
11 statutes, have the potential to substantially
12 impact correctional populations and
13 community-based services.

14 In order to address much of the
15 pending legislation in what I hope is a
16 somewhat systemically, timely and comprehensive
17 fashion, I will offer some brief comments
18 regarding five existing statutes and the
19 proposed amendments to those. In my prepared
20 remarks, I have included details regarding
21 these existing statutes, the applicable
22 mandatories, some guidelines, sentencing data
23 for 1996, a summary of the proposed amendments
24 and some comments as well. What I'll try to do
25 is very briefly summarize a couple of -- or

1 highlight some of the issues that fall into
2 that.

3 The first offense that I'll discuss
4 is Section 3731 of Title 75, driving under the
5 influence. As you know, there is -- Currently,
6 the first and second DUI is a misdemeanor 2,
7 third or subsequent is a misdemeanor 1. There
8 seems to be some confusion in the field
9 regarding whether the grading of that offense
10 applies to only during the seven-year look-back
11 period or for lifetime DUI's.

12 I have done 60 or 70 guideline
13 training sessions in the last year and there
14 are pockets of attorneys out in the
15 Commonwealth that will go to the hilt
16 suggesting that the grading is linked to the
17 seven-year look-back period. And then all the
18 others will say just the opposite, that the
19 grading, a third-time lifetime DUI is a
20 misdemeanor 1.

21 Whatever you do with this packet of
22 legislation, it might be an opportunity to at
23 least clarify the DUI, the General Assembly's
24 view on that issue; whether the third DUI in a
25 lifetime or a seven-year look-back period is

1 the misdemeanor 1.

2 Also under the DUI statute I did
3 identify the mandatory minimums as you've
4 already talked about.

5 On the next page I have identified
6 the guideline handling of DUI's. Basically, a
7 misdemeanor 2 DUI is assigned an offense
8 gravity score of 2; and a misdemeanor 1 DUI is
9 assigned an offense gravity score of 3. And
10 again, the mandatory minimum supersedes any of
11 the guideline recommendations.

12 The bottom line is, when the
13 Commission built the DUI offense back into the
14 guidelines, what we are trying to encourage
15 judges to do was look at an offender's entire
16 criminal history. If a person was convicted of
17 other offenses, burglary, theft, whatever it
18 would be, those should be considered as part of
19 a prior record score coming up with an
20 appropriate sentence for an offender, just like
21 we do with every other offense in Pennsylvania.

22 Until 1997 guidelines, we basically
23 only looked at prior DUI offenses coming with
24 the sentence recommendations. So, it was a
25 fairly significant change in our approach to

1 sentencing.

2 You'll notice the DUI sentencing data
3 in the handout; 14,843 DUI sentences imposed in
4 1996. Of those, 10,079 had no prior
5 convictions, so they were first-time DUI
6 offenses that resulted in incarceration.
7 Remember, we don't capture ARD's so there were
8 plenty of others that were ARD's. But, 10,079
9 had no prior convictions within the seven-year
10 look-back period and received incarceration.

11 REPRESENTATIVE MANDERINO: Mark, if I
12 may just interrupt?

13 MR. BERGSTROM: Sure.

14 REPRESENTATIVE MANDERINO: No prior
15 convictions of any kind? In other words, no --

16 MR. BERGSTROM: For DUI.

17 REPRESENTATIVE MANDERINO: Okay. So,
18 this was before the '97 changes?

19 MR. BERGSTROM: That's correct.

20 REPRESENTATIVE MANDERINO: Thank you.

21 MR. BERGSTROM: As I said, the
22 significance of that is, they did not get ARD.
23 And we know there are a lot of people who do
24 get ARD for the first-time DUI.

25 The next category then, 3,771

1 individuals whose current conviction was for
2 DUI had one prior DUI conviction. The next
3 category, 817 with two prior DUI convictions;
4 and the next category, 176 with three or more
5 prior DUI convictions. This data does not
6 include Philadelphia Municipal Court.

7 I've listed all the amendments that I
8 think from the packet attached to DUI. I'm
9 really going to sort of side step the first
10 one, which is the drinking and driving
11 provision because, as I see it, that's pretty
12 much an enforcement issue. I'm really going to
13 just focus on the sentencing issues.

14 One thing I will note, though, for a
15 number of years there's been a lot of
16 discussion of reduction in BAC to something
17 like .08. I was somewhat surprised in looking
18 at all the testimony or all the legislation
19 that that wasn't included in one of them
20 because it seemed to be a fairly popular
21 enforcement issue out there. I just sort of
22 throw that out for your interest.

23 Let me just address a couple of the
24 other issues that were on the table. I know
25 that previous testifiers had talked about some

1 of these. House Bill 669 adds a provision
2 requiring mandatory maximum four-year sentence
3 for misdemeanor 1 convictions, and then
4 authorizes county parole supervision of cases
5 that would otherwise be state cases. I guess I
6 raise two issues related to this.

7 The first one is a concern about
8 mandating in all cases for misdemeanor 1 DUI's
9 a four-year maximum sentence. While it may be
10 very beneficial in a number of cases, it seems
11 to me that the court should have the luxury or
12 the discretion to determine if four years is
13 appropriate or not.

14 My concern is as much because of the
15 numbers that we are talking about. You are
16 significantly enhancing the level of
17 supervision required by parole agents in the
18 field. Unless there are the resources there,
19 what may happen is, you'll have overloaded
20 caseloads with not enough field agents out
21 there supervising. On paper it might look
22 good. But unless the resources are there, I
23 think you might actually reduce the level of
24 supervision. I just throw that out as a
25 caution. If there are monies available, I

1 think it's a great idea.

2 I certainly support what the district
3 attorney said about treatment. We work with
4 the D.A.'s Association closely on a lot of
5 treatment issues. I'm supportive of that, but
6 clearly there has to be resources contributing
7 to that.

8 As far as the county supervision of
9 state sentences, I guess I just throw out a
10 caution. Clearly in Philadelphia there's a
11 different set of rules because of place
12 confinement issues where anyone with a state
13 sentence serves it in a state facility. That
14 is not the case in the other counties of the
15 Commonwealth. I would just be a little bit
16 concerned about blurring the line between what
17 is a state sentence and what is a county
18 sentence.

19 It may be helpful and maybe something
20 like this is appropriate but should only apply
21 to DUI? Do you want to apply it to other
22 offenses? I think you have to look at the
23 entire system rather than just a select
24 offense. I just throw that caution out.

25 Moving on then, doubling the

1 mandatory minimum -- I'm sorry, the mandatory
2 minimum for the DUI. If the person's license
3 is suspended at the time of the DUI, seems in
4 fact to be a fairly reasonable idea; someone
5 who is driving drunk and already has a
6 suspended license, I think enhancement of the
7 penalty does make some sense.

8 As we move down, though, the other
9 enhancements I again am concerned about just as
10 a resource issue. Looking at increasing the
11 grading of various levels of DUI's up towards
12 felony 1's, in fact, and also increasing the
13 mandatory minimums because of the numbers that
14 can have a significant impact.

15 One thing I just sort of point out as
16 just trying to provide some kind of context to
17 the discussion is that, back in 1982 when we
18 started enhancing penalties for DUI, DUI was a
19 misdemeanor 3 offense. Now there's a proposal
20 to provide a felony 1 offense for DUI's. It's
21 a big difference. Maybe it's an appropriate
22 difference, but it's a huge shift over a
23 relatively short period of time. I just ask
24 you to consider that carefully because of the
25 impacts.

1 Moving on to the next offense,
2 homicide by vehicle, Section 3732, again, I
3 summarize how the guidelines basically handle
4 that. I have really not a lot of comments
5 about it, but at least provide that in the
6 summary materials.

7 Next, homicide by vehicle while DUI.
8 This is the mandatory minimum of three years
9 with a recommendation of increasing it to five
10 years. I would point out something that I
11 think the district attorney had mentioned or
12 others on the panel had mentioned. That is, we
13 have heard anecdotically that oftentimes the
14 mandatory minimum is not used, and there's a
15 split between the homicide by vehicle and the
16 DUI and there's separate prosecution for it.
17 Our data somewhat bears that out.

18 If you look under the 1996 sentencing
19 data for this offense, there were only two
20 sentences reported to us in 1996 under this
21 section of the statute, while under homicide by
22 vehicle alone, there were 63 reported to us.

23 There may be some truth in the sense
24 that these offenses are split out. What we
25 have heard in the field just anecdotically is,

1 in the one case there may be a problem in
2 proving the nexus, and therefore, it's easier
3 or safer to prosecute separately. The other
4 thing we've heard is sometimes the mandatory
5 minimum seems inappropriate for the facts of
6 the case.

7 In either case I'm not sure if
8 increasing the mandatory minimum by two years
9 helps or hinders that, whatever you are trying
10 to do with that mandatory. I just throw it
11 out. It's not used very often. I'm not quite
12 sure why it's not used very often. Maybe
13 talking or working with the D.A.'s Association
14 would be helpful in getting to the heart of
15 that.

16 The next offense listed then is
17 aggravated assault by vehicle while DUI. This
18 is a fairly new piece of legislation. We had
19 no sentences reported under it in 1996.
20 However, at that time we did have a special
21 enhancement in our guidelines for serious
22 bodily injury linked to DUI, and we had 27
23 sentences reported under that.

24 The final issue that I'll raise and
25 sort of close with is not an offense, but

1 rather a section of the Sentencing Code,
2 Section 9763, Title 42, the sentence of
3 intermediate punishment. Ever since 1991, the
4 Commission has been working with PCCD, the
5 D.A.'s Association and others to try to
6 encourage courts to use intermediate
7 punishments and build them into our sentencing
8 scheme in Pennsylvania and particularly with
9 DUI's and with drug dependent offenders.

10 While most of the recommendations
11 regarding intermediate punishment I'll be
12 presenting to the Task Force on Intermediate
13 Punishment Thursday in Gettysburg, there's two
14 provisions that relate specifically to Section
15 9763 that I'd like to mention.

16 First, the Commission recommends that
17 eligible offenses under this section be
18 expanded to include driving under suspension
19 DUI-related; the 90-day mandatory minimum for
20 the summary offense of driving when your
21 license had been suspended because of a DUI
22 offense. The person is not drunk when driving,
23 but the reason for the suspension was a DUI
24 conviction.

25 That 90-day mandatory minimum

1 sentence and summary offense, it seems it would
2 be an appropriate offense to include in those
3 covered under intermediate punishment where the
4 court would at least have the option of
5 considering inpatient treatment, or house
6 arrest or other qualified intermediate
7 punishments in lieu of incarceration.

8 The second issue that I raise is
9 considering the inclusion of work release
10 confinement with drug and alcohol treatment as
11 an intermediate punishment program which could
12 qualify for the mandatory minimum period of
13 incarceration. This is somewhat of a technical
14 issue, but in at least our reading of the
15 statute is that, work release as partial
16 confinement is, in fact, presently being used
17 to satisfactory the DUI mandatory.

18 However, work release as the
19 intermediate punishment program, at least our
20 reading of the statute, does not meet that
21 because it's not included as one of the
22 programs that could be used in lieu of
23 incarceration. I'd ask you to look at that and
24 consider adding work release with drug alcohol
25 treatment as a program that could be used as an

1 intermediate punishment sentence in lieu of
2 incarceration.

3 In closing, the Commission on
4 Sentencing is an agency of the General
5 Assembly. We were created to provide the
6 Commonwealth with a structured sentencing
7 system which would in some way serve as an
8 alternative to mandatory minimums. In order to
9 develop such recommendations, the Commission,
10 and particularly the guideline adoption process
11 was purposely insulated for the normal
12 political process. For nearly 20 years the
13 Commission has provided that structured
14 sentencing system, albeit coexisting with a
15 number of mandatory minimums.

16 In recent years, and particularly
17 following the special session on crime, there's
18 been increased coordination between legislation
19 and guidelines. As an example, the offenses
20 designated as completed crimes of violence
21 under the three strikes statute are all
22 included in the top tier of the sentencing
23 guideline matrix, which exclusively recommends
24 state sentences for those offenders.

25 And similar to the three strikes

1 legislation, an offender with a current
2 conviction for a violent crime who has two
3 prior convictions for violent crimes is
4 exclusively recommended under the guidelines
5 for the statutory limit, the longest minimum
6 sentence permitted under statute. In effect,
7 we max out offenders in the guidelines that
8 have a current violent offense and two prior
9 violent offenses, much like three strikes we do
10 with the mandatory.

11 The guidelines also try to provide
12 for the most efficient use of correctional
13 resources. The Commission developed five
14 levels in the sentencing matrix which
15 correspond with the basic sentencing options
16 available in the court under the Judicial Code,
17 and encourage the consideration of intermediate
18 punishments and other community-based programs
19 in appropriate cases.

20 As you are well aware, it's very
21 difficult to eliminate or scale back mandatory
22 provision once enacted. My concern today is
23 that this packet of legislation relies heavily
24 on using mandatory provisions to increase
25 periods of incarceration and conditions of

1 parole for a very large group of offenders.
2 I'm afraid that the impact in terms of
3 increases in jail and prison populations,
4 parole caseloads and treatment resources will
5 be substantial.

6 If the Commonwealth is willing to
7 invest in this undertaking -- or, the question
8 is, is the Commonwealth willing to invest in
9 this undertaking? If so, what return do you
10 expect on this investment? How do these
11 actions compare to or impact other types of
12 offenders? Are the penalties proportional?

13 I encourage the committee to
14 carefully study the costs and benefits
15 associated with these proposals before taking
16 any action. Perhaps consider greater reliance
17 on guideline recommendations as a first step in
18 addressing your concerns.

19 The Commission is always available
20 and willing to assist the committee with any
21 kind of research in this area. I want to thank
22 you for your time, and certainly we welcome any
23 questions.

24 CHAIRPERSON ORIE: You may continue,
25 Mr. Frankel.

1 MR. FRANKEL: Thank you,
2 Representative Orie. Good morning, members of
3 the Task Force on Driving Under the Influence.
4 My name is Larry Frankel. I'm the Executive
5 Director of the American Civil Liberties Union
6 of Pennsylvania. I'm happy to be here to
7 present our testimony today.

8 I will begin with some general
9 observations about what we believe the General
10 Assembly should and should not do with regard
11 to the issue of driving under the influence. I
12 will then present some analysis of a number of
13 the bills in the packet provided to us.

14 I would concur with the District
15 Attorney of Philadelphia that there were too
16 many bills to offer an analysis on each one.
17 That doesn't mean that we don't have concerns
18 about some of them, but I'm also sensitive to
19 the need to keep my remarks brief and on point
20 on the more important bills.

21 First, the ACLU believes that the
22 General Assembly needs to expand its focus
23 beyond the enactment of even more criminal laws
24 in this area. This is a social problem; it is
25 not just a crime problem. There are other ways

1 to address issues affecting our society besides
2 adopting more criminal laws and enacting more
3 criminal penalties. I think this is a
4 particular area where those concerns can be
5 addressed in other manners.

6 In particular, we see no need for
7 more mandatory sentencing statutes. Driving
8 under the influence of alcohol is already a
9 crime, and Pennsylvania already has a host of
10 laws and already imposes a multiple variety of
11 sentences on those found guilty of this
12 offense. We believe that it's fairly widely
13 known that it is illegal to drink and drive,
14 and that we probably reached about the limit of
15 deterrents that we're going to see from
16 criminal statutes. We are skeptical that more
17 criminal laws will reduce the problems that
18 exist with people driving while under the
19 influence of alcohol.

20 We are particularly concerned with
21 any new mandatory sentences or increases to
22 existing mandatory sentencing laws. As a
23 general proposition, the ACLU has consistently
24 opposed mandatory sentences because we believe
25 that sentences should reflect, among other

1 things, the specific circumstances of the
2 criminal incident, as well as the background of
3 the defendant. Failure to consider those
4 individual characteristics leads to inequitable
5 sentences. Mandatory sentences diminish the
6 ability of the judges and even at times
7 prosecuting attorneys to exercise discretion in
8 order to devise what can be an appropriate and
9 even beneficial sentence.

10 With respect to DUI offenses,
11 mandatory sentences only make it harder for the
12 criminal justice system to distinguish between
13 the individual whose offense was an aberration
14 as opposed to the individual who has a serious
15 drinking problem. You get so many individuals
16 caught up in this system that it's difficult to
17 focus on those that really need help because
18 the court has to deal with so many people. The
19 probation officer has to deal with so many
20 people. The parole officers have to deal with
21 so many people.

22 As Mr. Bergstrom mentioned, if you
23 add more people in the parole system, are you
24 going to increase the number of parole officers
25 so everybody gets effectively supervised?

1 Mandatory sentences aggravate those problems.

2 Judges and attorneys are not provided
3 with the tools that may be necessary to
4 effectively trigger the necessary changes in
5 behavior. Important resources, such as court
6 time, prison space, parole resources, are
7 allocated on the basis of mandatory sentences
8 rather than maybe a rational view of what cases
9 are out there, where do we really need the
10 resources; rather, we are just responding to
11 mandatory sentencing provision.

12 Good anti-drinking programs may go
13 underfunded because the resources are all being
14 allocated to punishment and to prison space and
15 prison guards.

16 I find it interesting, I was here
17 yesterday as well, although I did not testify,
18 it sounds like it's only treatment week,
19 because there was discussion of treatment for
20 sex offenders and you now have treatment for
21 people with alcohol problems. I think it's
22 important to consider those issues of treatment
23 because I think they relate to the question of
24 resources. It's fine and good for advocates to
25 come in and say we need this -- We need this

1 new law. We need this new statute, and for
2 them not to address what's their priority. You
3 obviously can't do anything that we the
4 citizens of the Commonwealth would like you to
5 do.

6 I think it's incumbent to ask some of
7 the advocates at times, you know, we can't do
8 all 20 bills you'd like us to do. Which is the
9 most important one to you? Where would you
10 want us to spend the money? Do you have any
11 idea what the resources would be? I don't
12 think you can let the advocates get away
13 without talking about resource issues. I think
14 you have to consider the resource issues and
15 not just say, we'll wait and let the
16 Appropriations Committee do it.

17 I have been lobbying for six years
18 now, and I rarely see the Appropriations
19 Committee really break down what the potential
20 costs are going to be of Title 18 bill, Title
21 42 bills or Title 75 bills. It just doesn't
22 happen. It has to be done by this committee,
23 or else you're going to end up with everything
24 being underfunded and expectations not being
25 met and programs not working.

1 Because of these concerns, the ACLU
2 urges the task force to recommend against the
3 enactment of legislation that creates new
4 criminal laws or penalties for what the law
5 already covers. Rather, we believe this task
6 force should focus on the issue of providing
7 more financial resources to improve and expand
8 the range of programs. That would be the
9 priority in terms of resources in our minds.
10 That provides treatment to those individuals
11 who have problems with alcohol.

12 Meet some of the insurance issues.
13 Find a way to fund the gap. Find a way to help
14 those who cannot pay for treatment to get into
15 treatment. Don't let the cost issue be an
16 impediment to those who sincerely want to try
17 and deal with their problem.

18 We think that kind of crime
19 prevention approach, one that attempts to
20 reduce the number of individuals who drink and
21 drive will be far more effective than reducing
22 the occurrence of DUI than will the passage of
23 more criminal sanctions.

24 I was pleased to hear the district
25 attorney mention at least the possibility of

1 setting up a drinking court similar to the
2 driving court. Maybe if we do have a couple of
3 judges who are more focused on the problem and
4 other personnel who are more focused on the
5 problem. There seems to be some success here
6 in Philadelphia, other parts of the country,
7 with the new drug treatment courts. Maybe some
8 funding to try that experimentally to see if it
9 works is a way to address a problem that you
10 can maybe want to fund in the future rather
11 than imposing more criminal sentences again.

12 I know it's rare for the ACLU and the
13 district attorney to agree on something, but I
14 think that may be an area where you can find
15 some agreement. Maybe some work can be done
16 that will help all of us.

17 I also hope that the task force will
18 recommend an increase in mass transit funding.
19 I say this in all seriousness. We want to
20 discourage people from driving while they're
21 under the influence of alcohol. If they had
22 other ways to transport themselves other than
23 driving themselves--and it's not just a
24 Philadelphia issue. It may be a bigger issue
25 in other parts of the state--we may see a

1 reduction. I don't think you'll see an
2 absolute fall completely.

3 But I've had the opportunity to
4 travel around this state and know that in many
5 places of the state there aren't many other
6 social activities that one can engage in at
7 night other than go to a bar, and there aren't
8 many ways to get to those bars unless one
9 drives to them.

10 I also had the opportunity to
11 recently spend a two-week vacation in Europe
12 where the consumption of alcohol is in excess
13 of the consumption here, but the DUI rate is
14 much less because they provide more public
15 transportation for people to get to and from
16 places. I think it's an issue worth looking
17 at, and it's not just a Philadelphia issue.

18 With those considerations in mind, I
19 will now offer some comments on several of the
20 bills before the task force. The ACLU opposes
21 House Bill 1165 because it creates yet another
22 criminal offense, driving after drinking. I
23 already noted we do not support creation of
24 more crimes in this area.

25 In addition, we do not understand how

1 a police officer is suppose to determine
2 whether an individual has imbibed a sufficient
3 amount of alcohol so that the amount of alcohol
4 by weight in the blood of the person is 0.10
5 percent or greater within three hours after the
6 person has driven, operated or been in actual
7 physical control of the movement of the
8 vehicle. Maybe the police officers can explain
9 how they think they can do it. I'm intrigued
10 that the Public Defender thinks it's carefully
11 written.

12 But I have a hard time understanding
13 unless the officer has actually observed how
14 many drinks and kind of understands some of the
15 rate of absorption based on weight, how they're
16 going to make that determination. In some
17 cases they probably can because a blood alcohol
18 test is done in some point in time, but it's
19 not that clear to my mind in terms of reading
20 that particular bill.

21 The ACLU also opposes House Bill 1307
22 because it increases the minimum mandatory
23 sentence for the crime of homicide by vehicle
24 while driving under the influence. We oppose
25 House Bill 1795 which raises the grading of the

1 crime of homicide by vehicle. Both of these
2 bills seek to increase the penalties, an
3 ineffective method of addressing this problem
4 in our opinion.

5 We also oppose House Bill 1889 which
6 provides for the revocation of habitual
7 offenders' licenses. Obviously, people are
8 going to drive anyway. We know it's a problem
9 in the state. Again, may create an expectation
10 that we've solved the problem without really
11 denting the problem at all.

12 We do view House Bill 669 more
13 favorably, however. That is the bill that
14 Representative O'Brien discussed that creates a
15 mandatory maximum term; not a mandatory minimum
16 term. Although I do concur in at least the
17 suggestion that even a mandatory maximum term
18 may be binding the judge's hands too much.

19 The bill provides an incentive for a
20 defendant, convicted of a third or sequence
21 DUI, to engage and remain in a treatment
22 program and allows the judge to condition
23 parole based on participation in such a
24 program. Because the bill encourages, one
25 might say coerces a defendant to seek

1 assistance for the drinking problem, it at
2 least attempts to cure the behavior and not
3 merely lock up the offender. The benefits of
4 this legislation, however, will depend on the
5 availability and quality of treatment programs
6 in the Commonwealth.

7 In closing, on behalf of the more
8 than 10,000 members of the ACLU of
9 Pennsylvania, I urge you to seriously consider
10 how the Commonwealth can address the problem of
11 driving under the influence without resorting
12 to more criminal statutes and more criminal
13 penalties. We sincerely believe that there are
14 other means for addressing the problems
15 associated with alcohol abuse and that now is
16 the appropriate time to look at such
17 alternatives. Thank you.

18 CHAIRPERSON ORIE: Thank you very
19 much. My first question would go to Mr.
20 Bergstrom in regards to your testimony about
21 increasing mandatories or causing havoc, in
22 essence, with the criminal system. You
23 provided data from 1996 that indicates that
24 there were over 14,843 DUI sentences imposed
25 not counting Philadelphia. Of those, I find

1 this is of particular note, that 817 were
2 second -- had two prior convictions and 176 had
3 three or more. My experience as a prosecutor,
4 the ones that are repeating, it's a small
5 percentage.

6 In regards to increasing these
7 mandatories, you're really going after a small
8 segment of the entire DUI population. These
9 individuals, when you say wreaking havoc or
10 causing problems, I think when you look at your
11 own statistics--I have been privied to
12 PennDOT's as well, which is much more
13 extensive--you're dealing with that five
14 percent of the population of these individuals.
15 They are the repeat offenders, and the only way
16 you are going to get them is put them in a
17 longer period of time to get the intensive
18 treatment. I'm just wondering what your
19 comments would be on that.

20 MR. BERGSTROM: I guess a couple
21 comments. The first thing is that, 3,771 had
22 one prior conviction. I believe the increase
23 is from a 30-day mandatory minimum for one
24 prior to a 90-day mandatory minimum. At least
25 for 3,771 cases, that's a pretty significant

1 increase.

2 I very much agree that we should try
3 to move towards treatment. The Commission has
4 been very supportive of using intermediate
5 punishments, including residential phase of
6 treatment and intermediate punishments in lieu
7 of the incarceration for those offenders. I
8 would think the Commission would support those
9 moves.

10 I guess my caution is just the
11 expense and the numbers. DUI is a fairly
12 common offense even for second and subsequent
13 offenders. All I'm saying is, there's an
14 impact. I would hate to see the General
15 Assembly pass a statute that does increase
16 mandatories or has a huge fiscal impact without
17 addressing the fiscal side of it; providing for
18 treatment, providing for effective supervision.
19 Perhaps, what's worse than doing nothing is to
20 expand the penalties and then have no
21 supervision or no adequate supervision in the
22 field.

23 CHAIRPERSON ORIE: In regards to some
24 of the prosecutors I have spoken to about
25 enhancing mandatories and keeping them within

1 the system where they have no control over when
2 they're released for them getting this type of
3 treatment, that's the mechanism for the third
4 and fourth-time offenders. That's the only
5 mechanism that's going to keep them within the
6 system.

7 MR. BERGSTROM: I guess I'll go back
8 to discussions we've had with the D.A.'s
9 Association and our own guidelines. We have
10 really tried to adopt this comprehensive
11 treatment model where you look at the offender
12 and try to determine the level of care and
13 length of treatment required to meet the
14 clinical needs of the offender.

15 I guess my approach would be, as long
16 as you're providing that, the mandatory
17 minimums is less of an issue because you're
18 imposing a sentence that's linked to the
19 clinical needs of the offender. It gets back
20 to having adequate resources to do that
21 effectively. I think if you only do it
22 halfway, you're going to end up with
23 overcrowded prisons, and you're not going to
24 have much of an outcome from that investment.

25 CHAIRPERSON ORIE: I guess my point

1 is, most of these individuals, at least I'm
2 speaking in regards to my experience in
3 Allegheny County, they're released on a
4 work-release basis. They are getting the
5 treatment that's under the mandatory
6 sentencing, and they're working, but yet
7 there's a controlled factor there.

8 My second question, or comment I
9 guess would go to both of you. The most
10 disturbing aspect to this that I have found as
11 a prosecutor is the senselessness in regards to
12 these individuals that have had a history prior
13 to committing a homicide by vehicle
14 DUI-related, whether it's three, four. In
15 essence, in my district there was an individual
16 that had a total of 10 prior DUI's and then
17 committed a homicide by vehicle, or where these
18 individuals have committed a homicide by
19 vehicle and then continued to drunk drive after
20 that.

21 I think one of the pieces of
22 legislation, actually I'm the sponsor of,
23 changes that to a felony of the first degree.
24 I think the premise behind that is, it's an
25 intent to kill. It's no different from the

1 first degree homicide. You have the vehicle as
2 your deadly weapon, thousands and thousands of
3 tons and you are getting behind that weapon and
4 you are causing harm. You have the knowledge,
5 and you have the intent.

6 I just find that the most disturbing
7 aspect to this. If there is no addressing
8 that, then there's a problem there. Even with
9 the intensive treatment, the fatalities, and I
10 can tell you in the task force hearing out in
11 Allegheny County, that is not unusual with
12 these homicide by vehicle DUT-related.
13 Extensive history. I'm not talking about one,
14 two or three. I'm talking about five, six,
15 seven, eight prior. I just think that's
16 something that has to be addressed.

17 That's one of those issues that needs
18 to be addressed really with enhanced penalties
19 and really more seriously. I certainly
20 understand the treatment aspects in other
21 areas, but that's just one of those areas that
22 needs to be, I feel that needs to be addressed.

23 MR. BERGSTROM: I guess I do agree
24 with you in cases like that; that certainly the
25 judges and the court system as a whole needs to

1 Caltagirone.

2 REPRESENTATIVE CALTAGIRONE: No
3 questions.

4 MR. FRANKEL: Can I respond to that?

5 CHAIRPERSON ORIE: I'm sorry.

6 MR. FRANKEL: Again, I'm also
7 thinking about yesterday's hearing at the same
8 time in answering this question, and that's the
9 use of the habitual offender type approach and
10 possible sentencing enhancements. Rather than
11 create a big category that lots of people may
12 fall into, look at creating a narrow set of
13 circumstances where the repeat offender has
14 this sentencing enhancement that may be
15 imposed.

16 Part of that is what I see in House
17 Bill 669 or 6999--I don't remember right off
18 the top of my head--that you give the judge the
19 ability, because this is a repeat person who
20 may need treatment; to do something and do it
21 before they commit the homicide by vehicle.
22 But, have it more narrowly tailored so you are
23 enhancing the sentence of that person and not
24 necessarily enhancing the sentences of people
25 you aren't necessarily trying to pinpoint.

1 The fear is, and part of the problem
2 that we saw, that we anticipated with mandatory
3 sentencing statutes in general is, you end up,
4 sure, you end up locking up more people and you
5 don't differentiate people who maybe need a
6 even longer sentence because you are not using
7 the tools precisely enough. The problem with
8 mandatory sentences is that they are not
9 precise. They are very general answers and
10 discount in the characteristics.

11 Rather than maybe upgrading the
12 penalty, provide for a sentencing enhancement
13 that could be added on top of it regardless of
14 what the maximum for a misdemeanor of the first
15 degree might be, that might more carefully
16 target the population you need to go after.

17 Yes, those are the people that we all
18 should be concerned about in making decisions
19 about resources, making sure the resources are
20 targeted on those for the safety of all of us
21 rather than run out of resources by bringing
22 too many people in.

23 CHAIRPERSON ORIE: Representative
24 Manderino. Thank you very much.

25 REPRESENTATIVE MANDERINO: Thank you,

1 Mr. Bergstrom. I want to call your attention
2 to page 4 of your testimony, just so I can
3 understand the sentencing data that you
4 presented there in light of a couple of the
5 bills. You gave us the 1996 sentencing data.
6 When is '97 sentencing data ready?

7 MR. BERGSTROM: Hopefully soon, but
8 never as soon as we'd like it to be.

9 REPRESENTATIVE MANDERINO: Will the
10 '97 data reflect the changes you made in how
11 you count DUI's or do we have to wait for '98
12 for that?

13 MR. BERGSTROM: Actually, the data
14 reflected here is data sort of embedded in the
15 mandatories. We used the mandatory definition
16 for this data that we have here because, under
17 the '96 guidelines and everything -- In '96
18 everything would have fallen under the
19 mandatories. In the '97 data we would still
20 probably capture it this way, but we might have
21 a different table that also takes into account
22 other prior conviction offenses.

23 REPRESENTATIVE MANDERINO: I see what
24 you did in '97. Let me ask the question
25 differently. I'm looking at this '96 data and

1 I'm saying, which of these numbers are going to
2 be the numbers, the population that might be
3 captured if we took a House Bill 669 approach,
4 which is, third or subsequent DUI, knowing that
5 a first -- that is counted, maybe something
6 that someone did, got an ARD for. You are not
7 counting it right now in this data, right?

8 So, we wouldn't be capturing this
9 10,079 that had no prior DUI's. We can't
10 potentially be capturing this 3,771 if they had
11 one prior DUI, so now they're on their second
12 DUI as you count them and some percentage of
13 them may have actually had a DUI for which they
14 had gotten an ARD, so you weren't counting
15 them.

16 MR. BERGSTROM: Let me draw a
17 distinction. Under that data there we do, in
18 fact, count DUI's because that's data on the
19 mandatories. Under the mandatory provision,
20 the DUI statute requires counting ARD's as a
21 conviction for purposes of subsequent
22 mandatory. Under the guidelines we don't.

23 REPRESENTATIVE MANDERINO: ARD's are
24 counted in here. If I'm looking at the O'Brien
25 Bill 669, then it's reasonable for me to

1 conclude that 817 plus 176--somebody with
2 better math skills than I--just under a
3 thousand a year would be the potential
4 population that could be -- that a 669 approach
5 would be applied to?

6 MR. BERGSTROM: That is true if the
7 grading of the DUI's is based on the seven-year
8 look-back period. That's why I raised that as
9 an issue. If it's a lifetime third DUI gives
10 you an M-1, it could have a much bigger impact.
11 I think there has to be a clarification of that
12 issue.

13 REPRESENTATIVE MANDERINO: Explain to
14 me, because I wasn't really understanding when
15 you explained that there seems to be some legal
16 confusion with regard to the seven-year
17 look-back and a lifetime. Explain that again
18 and explain where the confusion is coming in.

19 MR. BERGSTROM: Under Subsection E of
20 DUI statute, the penalties section, the
21 introductory section was amended in, I guess
22 '96 to create a misdemeanor 1 DUI. And
23 basically says for any third or subsequent
24 DUI's is an M-1.

25 As you move down to the following

1 sections that deal with the mandatories,
2 embedded in each of following sections where it
3 says 48 hours is the mandatory min, it includes
4 the seven-year look-back period in each of
5 those clauses.

6 Most people interpret what the
7 General Assembly did as creating a misdemeanor
8 1 DUI for any third DUI, a lifetime -- third
9 and lifetime DUI, and then the mandatory
10 minimum still holds to seven-year look-back
11 period.

12 But there have been others that have
13 argued that the seven-year look-back period
14 also applies to the grading; that you only look
15 at the last seven years to determine if it's a
16 misdemeanor 1 or misdemeanor 2. Potentially
17 someone could have misdemeanor 1 and sometime
18 later end up with a misdemeanor 2 DUI. So,
19 that's clarified, then we would have an idea of
20 the numbers.

21 I think your point though is correct
22 that if you take, I guess the more conservative
23 approach, the assumption would be that if you
24 just look at a seven-year look-back period,
25 we're probably talking in the area of a

1 thousand cases a year that are reported to us.
2 The municipal court has not reported. There
3 may be some underreporting throughout the
4 Commonwealth. So, I think a thousand is a
5 pretty safe base line. It might be higher.

6 REPRESENTATIVE MANDERINO: Thank you.

7 CHAIRPERSON ORIE: Representative
8 Washington.

9 REPRESENTATIVE WASHINGTON: Thank
10 you, Madam Chairman. I just want to say to
11 you, Mr. Frankel, that I appreciate your
12 comments in regards to drug and alcohol
13 programs. I am not an attorney. I have a
14 Master's in human services, and my background
15 is drug and alcohol.

16 I just say that in regards to those
17 in prisons that it's okay if you incarcerate a
18 person, but incarceration without treatment.
19 If we look in terms of building prisons, we
20 should be building more intense inpatient
21 programs that deal with issues around drug and
22 alcohol.

23 Maybe on the first offense instead of
24 the ARD, the program releases them, it's from
25 the beginning. The first time that you realize

1 that a person has a drug or alcohol background,
2 that they are put into a treatment program at
3 that point; again, not a two-week program, but
4 an intense treatment program, and have some
5 kind of base with the Department of Motor
6 Vehicle. If, indeed, this person was to get a
7 ticket while driving without a license, at that
8 point that person was picked up and something
9 was done at that point, maybe it wouldn't go on
10 and on and on. I will always be an advocate
11 for intense inpatient drug and alcohol
12 treatment.

13 MR. FRANKEL: I applaud you for your
14 advocacy. I hope that this task force can push
15 this entire Judiciary Committee to push the
16 rest of the General Assembly to take the
17 treatment issues more seriously.

18 I remember every year it seems in the
19 budget debate that we want to put more money
20 into treatment but where is it going to come
21 from. If anybody suggested the Department of
22 Corrections, well, that's a no-no. I think it
23 requires this committee, which maybe has the
24 most clout on those kinds of issues, to be the
25 one that steps forward and say, you know, we've

1 looked at it. We've seen. We've done
2 everything we can with the criminal penalties,
3 or almost everything we can. Now is the time
4 to start investing in the treatment.

5 I applaud you and encourage you to
6 continue your fight for more funding in that
7 area.

8 REPRESENTATIVE WASHINGTON: We will
9 fight together on that. Thank you.

10 MR. FRANKEL: Thank you.

11 CHAIRPERSON ORIE: And now the
12 Executive Director, Brian Preski.

13 MR. PRESKI: Mr. Frankel, I'll direct
14 this question to you. The place where we get
15 the most comments about mandatory minimums not
16 working are DUI and drugs, basically those two
17 areas where it's just you're locking up someone
18 without a criminal record. The true criminals
19 you're not locking them -- You're not doing
20 anything except locking them up.

21 My question is this, and I'll paint
22 it with a broad brush. Have we stumbled upon a
23 more rational way today to sentence those types
24 of defendants with drug and alcohol problems
25 instead of a mandatory minimum, a mandatory

1 maximum, where they're not necessarily going to
2 be incarcerated, but certainly the courts will
3 have the ability to review or to have a greater
4 control over the future of those defendants
5 rather than simply the knee-jerk, okay, we
6 caught you? We've been convicted. We're going
7 to lock you up. When you've done your time,
8 you will now know because you have been locked
9 up how evil or how bad it is to drink or to do
10 drugs.

11 Do you think we might have a more
12 rational approach to go the other way and
13 basically say, you've been convicted. We're
14 going to order treatment; and we're going to
15 follow you to make sure that that treatment
16 takes?

17 MR. FRANKEL: I don't think you have
18 stumbled on it at all. As District Attorney
19 Abraham referred to the drug treatment court
20 here in Philadelphia, while it's still
21 relatively new, what I've read is it's getting
22 generally favorable reviews. That approach
23 could very well be tried with the person
24 arrested for DUI. That approach, which is what
25 you're talking about, Mr. Preski, where there

1 is the threat of a sentence that the judge can
2 use to encourage, coerce the person to go into
3 treatment. The people come to court regularly.
4 The judge knows who they are. The assistant
5 district attorney in the room knows the cases;
6 the public defender or defense counsel knows
7 the cases.

8 With that kind of intense approach
9 which does focus on treatment, using the
10 mandatory -- I'm not so sure I love the idea of
11 mandatory maximums, but it's a lot better than
12 the mandatory minimums. If you got conditions
13 of parole it may, indeed, be more effective.

14 I would certainly say on behalf of my
15 membership, we would not be dismayed if the
16 recommendation coming out of this task force
17 were of such that, let's take a look at this.
18 I think you looked at the O'Brien bill, but I
19 think you also have to look at funding an
20 experimental program. I don't think you can
21 start within the Commonwealth completely and
22 have it work effectively all at once. Those
23 can be recommendations that this committee
24 could indeed make.

25 As I said earlier where I think some

1 resource priority decisions have to be made, I
2 also think with this whole slew of bills, this
3 task force can only recommend one or two of
4 them to begin with. I would say if I were a
5 district attorney or a police officer, if I got
6 all of these bills all at once with all these
7 changes in the laws, I would just throw up my
8 hands and say, there's no way I can keep up
9 with it. I think that's another issue there.

10 I think you have hit something on the
11 head by saying, rather than stumbling upon it,
12 at least the witnesses you've heard today and I
13 would presume with the following witness, that
14 the Drug and Alcohol Service Providers will
15 also concur that this treatment approach, not
16 without some potential criminal sanction for
17 those who don't complete treatment, is a way at
18 least to go at this point.

19 MR. PRESKI: My follow-up question
20 is, we talk about mandatory maximums. Are they
21 really mandatories at all? If the traditional
22 way that we view them is, you get a one-year
23 mandatory, that means for 365 days you're going
24 to be in jail. If under the O'Brien proposal,
25 which you talked about, it's a four-year

1 mandatory maximum, you could spend one day in
2 jail or, you know, four-years' worth. That
3 basically becomes a decision that's made by the
4 defendant.

5 Have they complied with the
6 conditions the courts put down for them? If
7 they have, I assume then the legislation would
8 say you don't go to jail. If you don't comply,
9 that's the hammer. When we talk about this as
10 a mandatory, is it really a mandatory at all?

11 MR. FRANKEL: Semantically, I would
12 have to say it is because the judge couldn't
13 deviate from what the maximum sentence could
14 be. That makes it a mandatory on the judge at
15 least.

16 As I read the bill, the judge has to
17 impose a four-year maximum sentence. He
18 couldn't decide, well, this one really isn't so
19 bad. This one will get a three-year maximum
20 sentence. They have to do that. I don't want
21 to, and I'm not even thinking I'm being flip or
22 anything, there this is a mandatory element
23 here. It's mandatory possibly on the judge.

24 But the defendant certainly has in
25 his or her own capacity the keys to getting out

1 of jail more quickly if they will comply with
2 the conditions and the programming. In that
3 sense it's not a mandatory minimum by any
4 means. It could be a one-day sentence. It
5 could be a half-year sentence at that point.
6 Whether the treatment in the prison may go
7 into -- I happen to think you probably find
8 more effective treatment outside of prison.
9 You probably have to fund more of it, but it
10 certainly is a new philosophy.

11 MR. PRESKI: Let me ask this, and I
12 request the Chair's indulgence. You were here
13 for yesterday's testimony for the sex
14 offenders. Do you think that this translates
15 well for what we heard yesterday, which was, we
16 need a longer tail so we can follow these
17 people for many years after they're out?

18 MR. FRANKEL: I believe that there is
19 consistency there in terms of, we need to give,
20 not only the parole agents more resources, we
21 need to give them more tools, whether it's
22 somebody who's got an alcohol problem or
23 someone who is a sex predator; more tools to
24 make sure that they stay clean and are doing
25 what they have.

1 I think there's a tremendous amount
2 of consistency here. That rather than put in
3 place mandatory minimum sentences or mandatory
4 terms of sentence or in mandatory commitments
5 of people, we give the professionals the tools,
6 provided we give them the resources so their
7 caseloads aren't too big; the tools to
8 intensively, or probably with the alcohol
9 abusers not intensively as the sexual offender;
10 but to properly supervise them once they are
11 out, and don't expect incarceration to solve
12 the entire problem. The incarceration could
13 aggravate the problem if it's done arbitrarily.

14 REPRESENTATIVE PESCI: Mr. Bergstrom,
15 my question to you, with the proposal that
16 Representative O'Brien had brought today,
17 basically, as a representative from
18 Philadelphia he knows the problem here; in the
19 more suburban counties, are they ordering, if
20 you know, treatment at the first offense for
21 the DUI? If you know, are the people complying
22 with that treatment and you don't see secondary
23 offenders as much in the suburban counties as
24 you might in the cities? Do you have any kind
25 of information on that?

1 MR. BERGSTROM: Not very good
2 information. I think the sort of common
3 practice in the most suburban counties, most
4 counties in the Commonwealth is to use ARD for
5 the first-time DUI offenders. Then beyond
6 that, my sense is that drug treatment is really
7 being heavily used for drug offenders or drug
8 dependent offenders and, perhaps, a little less
9 so in a formal sense for the DUI offenders.
10 But, not much data came back yet on that.

11 MR. PRESKI: Thank you.

12 CHAIRPERSON ORIE: Thank you both
13 very much. At this time we'll hear from
14 Deborah Beck, the President of the Drug and
15 Alcohol Service Providers Organization of
16 Pennsylvania; and Stephen Erni, the Executive
17 Director of the Pennsylvania DUI Association.

18 MS. BECK: Good morning. I'm not
19 going to read you testimony. I think you
20 probably can do that. It's there in front of
21 you. I'm going to make a couple of general
22 comments.

23 Representative Orie, you asked about
24 health plans, and are they restricting access
25 if a DUI has occurred. Yes, they are. A

1 little more about that later.

2 I was very much pleased with the
3 comments from the D.A.'s Office here in
4 Philadelphia. A nice mixture of compassion and
5 toughness, very intelligent compassion I think
6 at work.

7 I bring you --

8 THE COURT REPORTER: Excuse me.
9 You're talking too fast.

10 MS. BECK: My association has written
11 up and there's enough in it to tell you who we
12 are; that we are statewide. We have a lot of
13 programs and people involved. I want to bring
14 you a peculiar expertise. I've worked in the
15 drug and alcohol field since 1971. I have the
16 habit of listening to people in recovery from
17 drug and alcohol problems. I've listened to
18 hundreds of folks with drug and alcohol
19 problems, I've asked them about DUI.

20 I can't remember anybody in all those
21 years who did not drive under the influence,
22 and yet, very few, very few were arrested. I
23 need to tell you that first-time offenders are
24 not first-time offenders in reality. I think
25 that's important to know.

1 I want to talk about accountability.
2 I want to commend you for revisiting the DUI
3 system because I think from a management
4 perspective, you have to go back and revisit
5 the laws once in awhile to see if they can be
6 improved. I also want to commend the Mothers
7 Against Drunk Driving because we wouldn't even
8 be here today if it were not for their efforts
9 years ago.

10 This is a prevention and treatment
11 kind of perspective on the problem. We think
12 the CRN is absolutely key. It provides an
13 indication of who should be further assessed
14 for drug and alcohol addiction and who's going
15 to need treatment in order to avert another
16 event.

17 You have two different populations.
18 The CRN picks up pretty good on that. It picks
19 up a pretty good indication of whether or not a
20 social drinker who was just stupid one night
21 versus someone who's already developing a
22 moderate to severe (inaudible word; talking too
23 fast) scale drug and alcohol problem. You need
24 to do public policy differently for these two
25 different populations.

1 The CRN back in the early years
2 already indicated that over 70 percent of
3 first-time arrests already had a moderate to
4 severe alcohol problem; meaning, frankly,
5 education isn't going to cut it.

6 PennDOT's data is great. The latest
7 data shows 82 percent have moderate to severe.
8 I do commend their database, although I think
9 we need some more data. In fact, that's the
10 number one problem I'm going to ask, if you
11 would, would you consider addressing?

12 The data on how many are getting
13 assessed and referred to treatment is not
14 available, and then how many complete
15 treatment, where did they go, what level of
16 care and length of stay is not available. One
17 more time, for the person who is drug and
18 alcohol addicted, that's 70 percent up. The
19 first thing that goes is the ability to
20 calculate consequences.

21 So, interlock devices and taking cars
22 and boats--it might be on better putting the
23 boot on me if I'm the untreated alcoholic or
24 addict--jail, all of that are really not going
25 to work unless they're combined with treatment.

1 admission either in a third-party insured
2 facility, an outpatient clinic, a detox or my
3 skid row program. There's no such thing as a
4 voluntary admission. We shouldn't be shy about
5 using criminal justice penalties to get people
6 into treatment. The only people we penalize if
7 we solely do criminal justice sanction here,
8 folks, is ourselves, because I will come back
9 out, and I will run over your kids.

10 This is a lifesaving kind of
11 intervention. I wanted to just read a little
12 bit from my testimony. I simply have said to
13 you, over the years I've heard from many
14 families who were relieved loved ones finally
15 got stopped for DUI. The opportunity for
16 outside intervention was seen by some as a gift
17 from the D.A., particularly in homes battered
18 into silence by domestic violence related to
19 drug and alcohol addiction. These components
20 are lifesaving, and I think we need to make
21 sure they work.

22 To my specific recommendations, and
23 you'll see a recommendation page, I would beg
24 of you, set the accountability system up. This
25 doesn't cost money. Ask the Legislative Budget

1 and Finance Audit Committee to look at, how is
2 the bill that's on the books now working? How
3 many are getting assessed? How many are
4 getting referred? Is it a licensed treatment
5 or some most kind of experimental buoy that's
6 out there that we know doesn't work? You see
7 the list of recommendations there for the
8 Legislative Budget and Finance Committee.

9 We think in the main, this is not
10 occurring. We think nowhere near the 70
11 percent up who have a drug and alcohol problem
12 are being assessed and referred to inpatient or
13 outpatient care. But we really rather not have
14 an argument about it. Let's collect the data
15 and take a look.

16 The second recommendation. I have
17 some recommended language on managed care. It
18 is absolutely the case that managed care
19 frequently intervenes when the court says
20 you're going to have to get care; we assessed
21 you. You have a DUI. You need to go to
22 outpatient services. Even for outpatient
23 services people have been denied care because
24 they were identified as a result of criminal
25 justice intervention.

1 I also have a letter here that I
2 cannot share the names. I can't share the
3 people's names for reasons that are obvious to
4 you. But two fellows picked up for DUI, and
5 their insurer, in essence, told them that they
6 were going to have to go to the rehab drunk in
7 order to get in. Now, we're dealing with
8 people who can't calculate consequences. How
9 many of the folks told that are going to drive
10 drunk to the rehab in order to get in? It's
11 kind of scary. They have gone to lawyers.
12 We'll be able to tell you more about that as
13 the case evolves.

14 We're hearing about outpatient fail
15 first schemes in managed care with DUI. That's
16 scary to me. There's a public safety issue at
17 work here.

18 REPRESENTATIVE MANDERINO: What's a
19 fail first scheme?

20 MS. BECK: You're going to have to
21 fail your outpatient in order to earn the right
22 to --

23 THE COURT REPORTER: Excuse me. I
24 need you to slow down. Last thing I have, earn
25 the right to --

1 MS. BECK: -- earn the right to
2 inpatient even though it's already covered in
3 your benefits. But having to be high at the
4 point of entering the facility is scary to me.
5 Many of the folks that are picked up for DUI
6 are single. They are not able to calculate
7 consequences, and they may drive there drunk.

8 Our third recommendation. There is
9 recommended language in the back of the
10 testimony that was put into effect in New York
11 State to deal with just this problem. We are
12 not asking for new benefit or new coverage;
13 just that you can get what you already have
14 under welfare, under insurance, under HMO's.

15 Our third recommendation is to back
16 Denny's bill. We think the longer tail, the
17 longer club is a useful thing to do,
18 particularly for the third and subsequent
19 offender. This poor guy or gal is going to
20 hurt himself or somebody else sure as hell if
21 we don't do something, and I think there's a
22 chance.

23 The fourth recommendation is, the
24 case in Pittsburgh I think should be opened up.
25 We've been unable to get our hands on

1 everything that happened there. I think a ball
2 was dropped somewhere. I'm not in a
3 blame-seeking mission. I just want to know
4 what happened because it may give us the
5 anatomy of what we need to do to fix the
6 problem. Was he assessed? Was he referred to
7 treatment? What were the qualifications of the
8 assessor? None of that stuff is clear to me.
9 And He may just have been an unusual guy.

10 Finally, we do support administrative
11 revocation of licenses and the .08. We think
12 these are early intervention tools, and that
13 the sooner you identify people, the more human
14 tragedy is going to be alleviated.

15 You will be interested to know that
16 people in recovery will tell you they drove
17 drunk, and that for some DUI was an early
18 intervention technique. They weren't happy
19 about it, but where it became the bridge for
20 them to get help, they now look back with
21 gratitude on the criminal justice system that
22 used the tool in that way.

23 Thank you for your time.

24 CHAIRPERSON ORIE: Thank you very
25 much. Mr. Erni.

1 MR. ERNI: Good morning, ladies and
2 gentlemen. My name is Stephen Erni. I'm the
3 Executive Director of Pennsylvania Driving
4 Under the Influence Association. We're an
5 independent, nonprofit organization founded in
6 1979 to reduce deaths and injuries caused by
7 impaired driving. We work closely with the
8 Department of Transportation in providing the
9 training and technical assistance to the
10 professionals in the drug and alcohol field,
11 law enforcement officials, and others committed
12 to highway safety. Basically we deal with the
13 professionals that deal with the DUI offender
14 itself.

15 On the behalf of the PA DUI
16 Association, it is a pleasure to come before
17 you today to testify in support of making
18 Pennsylvania roadways safer. I also have to
19 express to you my excitement. It is evident
20 from your questions, comments, and those who
21 testified before me that you are indeed very
22 familiar with the needs for treatment and
23 prevention, as well as the strong law
24 enforcement and correction piece.

25 For many years we have seen highway

1 fatalities and alcohol-related crashes and
2 fatalities decline in our Commonwealth. I do
3 not like to be the bearer of bad news, but I
4 must advise that highway fatalities are
5 significantly higher in 1997 as compared to
6 1996.

7 Also, for the first time in 1988
8 (sic), alcohol-related deaths are increasing
9 throughout the Commonwealth. The big question
10 here is, what can we do to reverse these
11 trends? In my testimony I would like to
12 suggest some changes, and more importantly,
13 encourage you to continue your current efforts
14 in enacting legislation that would make a
15 difference and reverse the trends that we have
16 observed last year.

17 Ladies and gentlemen, I can't pass up
18 on the opportunity to urge you for the two
19 pieces legislation that highway safety
20 advocates have been requesting for years. One
21 is the passage of .08. In my testimony I have
22 provided some information what .08 would mean.
23 I know all of you are familiar with that. So
24 we can get back on track for time, I'd like to
25 narrow it down basically to one comment. Lower

1 the BAC from .10 to .08 would basically mean
2 that we are requesting drivers to have one less
3 drink.

4 The other piece of legislation that
5 we have been requesting over the years is
6 administrative license suspension. You are
7 familiar with this also. This would be taking
8 a swift action rather than having long delays
9 while waiting for the criminal courts to take
10 action on the DUI offender.

11 I'm very encouraged with this
12 committee's awareness of the fact that many
13 convicted DUI offenders continue to drive after
14 their drivers' licenses were suspended or
15 revoked. Police officers call these the
16 invisible traffic violations mainly because,
17 unlike the DUI offender or speeders, they don't
18 really give any clues for their violation.

19 In fact, the National Highway Traffic
20 Safety Administration estimates that almost six
21 percent of the nation's total fatalities can be
22 attributed directly to suspended or revoked
23 drivers. In some states the toll is even
24 higher. California, for example, has a 12
25 percent rate of fatalities due to these type of

1 drivers.

2 As you may be aware, many of these
3 offenders committing such violations are
4 convicted DUI offenders with suspended
5 licenses. The proposed vehicle immobilization
6 statute in House Bill 1883 allows the
7 sentencing judge to deny a DUI offender access
8 to his or her vehicle for a period of time
9 equal to the duration of the DUI offender's
10 license suspension.

11 While this legislation would not
12 completely eliminate the above-mentioned
13 problem, it would make it harder for these
14 individuals to drive, especially since this
15 bill also addresses those who knowingly and
16 willingly provide vehicles to those whom should
17 not be driving.

18 The significance of these proposals
19 is not only measured by the number of lives we
20 would be able to save here in the Commonwealth,
21 but it would also help the Department of
22 Transportation to qualify for federal funds
23 under the Transportation Equity Act for the
24 21st Century, also referred to as TEA-21.

25 However, there are some other

1 legislative changes that we must pass to
2 qualify for federal funding. One such thing
3 would be the enactment of a law making it
4 illegal for a driver to possess and consume any
5 open alcoholic beverage container in the
6 passenger area of a motor vehicle on a public
7 highway. Currently, Pennsylvania does have a
8 consumption but not possession part of this
9 open container law requirement.

10 Another key element to meeting
11 federal requirements would be the passage of a
12 graduated driver licensing system. Easing
13 young drivers into the traffic environment
14 through more controlled exposure to
15 progressively more difficult driving
16 experiences can reduce their traffic crashes.

17 This provision also has a mandatory
18 safety belt requirement which would be met if
19 House Bill 2078 is passed. The PA DUI
20 Association would like to urge you to pass
21 standard enforcement of the seat belt law for
22 two main reasons. One, it would save about 400
23 people each year and also it would mean a
24 savings of about \$2.2 billion for the
25 Commonwealth of Pennsylvania.

1 I would like to comment on another
2 proposed legislation, House Bill 306. This
3 bill would amend Title 75 to remove the
4 mandated use of CRN, Court Reporting Network,
5 instruments in evaluating DUI offenders.
6 Passage of this bill, ladies and gentlemen,
7 would be a setback in our efforts to combat
8 impaired driving. The CRN is a coordinated and
9 integrated systems approach to the alcohol
10 highway safety problem and resultant driving
11 under the influence countermeasures in the
12 Commonwealth of Pennsylvania.

13 The principal purpose of the CRN is
14 to provide a computer-assisted information
15 system that links the various county DUI
16 programs into a comprehensive statewide network
17 and assists local directors, managers in
18 planning, implementation and maintaining of
19 their programs. It is also a concise yet
20 highly individualized summary of an offender's
21 alcohol highway safety history and
22 pre-screening evaluation. By removing the
23 mandatory provisions of this tool, this
24 integrated statewide information system will
25 almost be useless.

1 I would like to urge this task force
2 to recommend to the General Assembly to enact a
3 focused, formulated structure to support the
4 DUI-related highway safety programs in
5 Pennsylvania. Currently, there are not stable
6 and adequate funding sources committed for
7 continued development and maintenance of the
8 existing DUI and Highway Safety Programs.

9 Pennsylvania needs a self-sustaining
10 impaired driving law enforcement program that
11 is not solely dependent on federal funds.
12 Specifically, I am referring to the funding of
13 sobriety checkpoints and Cops in Shops, just to
14 name two.

15 By allocating funds for these
16 programs, these law enforcement efforts could
17 heighten the perceived risk of apprehension to
18 motorists who drive under the influence of
19 alcohol or to the young adults under 21 who
20 attempt to purchase alcohol throughout the
21 Commonwealth.

22 Finally, I would like to urge this
23 committee to incorporate evidential gas
24 standards with the current regulations
25 regarding evidential breath testing. I know

1 the state police were favor and, in fact, will
2 make some kind of reference to this. I have
3 brought here for you what is called the wet
4 bath that police officers are using to
5 calibrate these machines.

6 Basically, we have the technology now
7 to replace that with a can of gas, just a
8 little bit bigger than a blow torch. That I
9 don't have with me mainly because I am in a
10 federal building, and I wasn't sure if I would
11 be able to bring that through the security
12 gates. I would be more than happy to provide
13 you with that if you would like to look at it.

14 Finally, I would like to thank you
15 for the opportunity to allow me to address this
16 task force. It has been back in 1979 and 1982
17 when the DUI laws were enacted in Pennsylvania.
18 In fact, in the highway safety field you
19 refer -- One of the ways that we're able to
20 determine how long individuals have been in the
21 highway safety field is if, in fact, they still
22 refer to them as the new DUI laws. New DUI
23 laws were back in 1982.

24 I had an opportunity to ride up with
25 an individual that, in fact, had a lot to do

1 with the implementation of some of the laws
2 that were passed back then. He was telling me
3 about the excitement that they have had, the
4 members of the Department of Transportation,
5 the different DUI coordinators throughout the
6 state. I would like to express to you the same
7 excitement that we are having now, again
8 revisiting this issue and trying to make a
9 difference in having a healthier and safer
10 Pennsylvania. I thank you.

11 CHAIRPERSON ORIE: Thank you very
12 much. Deborah, I have a question for you in
13 regards to the ARD programs. There is a
14 significant number of individuals that are
15 qualifying and going through this program, and
16 perhaps examining that to see what type of drug
17 and alcohol, and how long the drug and alcohol
18 treatment is within that period of time. I
19 know they suspend their license for a small
20 amount of time, 30 days, whatever. Then
21 there's the treatment. Maybe that's an aspect
22 too that needs to be looked into and making
23 that much more extensive than it is right now.

24 MS. BECK: The ARD piece is not
25 treatment. The education piece would be

1 parallel to providing education of tuberculosis
2 to someone who already had it. I think the
3 alcohol highway safety classes are a great
4 idea. I think they are a good deterrent to
5 social drinkers.

6 But, we need to go back and make sure
7 that everyone enrolled has had an assessment
8 for addiction. If they have an addiction, the
9 ARD class won't touch it. I think that may be
10 one of the problems.

11 I have read the CRN. I'm an old
12 clinician. I will tell you, I think it errs on
13 the side of not spotting addiction, which is
14 probably appropriate given the criminal justice
15 involvement. There's some folks who are going
16 to end up in ARD whose addiction has not been
17 spotted.

18 However, if the ARD instructor is a
19 skilled drug and alcohol person, it will be
20 spotted then, and they'll be referred on. I'm
21 not sure that's happening routinely. I think
22 we are missing maybe the bones of a really good
23 thing here. And it's a matter of going back
24 and looking at the credentials of the ARD to
25 ensure that they can spot and refer, that going

1 back and making sure where a determination of
2 addiction is occurring.

3 If PennDOT's data is showing over 70
4 percent have moderate to severe problem -- or
5 moderate to severe problem drinkers, that's
6 code for drug and alcohol problems of some
7 sort. We should be able to show that 70
8 percent are being referred on. I don't think
9 the data is going to show that. Some counties
10 are doing a great job, and other counties are
11 not.

12 CHAIRPERSON ORIE: I guess that's one
13 of the things in regards to the task force that
14 we're hearing is that, the intervention and
15 prevention, making that much more of a --
16 really bolstering that at the beginning versus
17 at the tail end and really pushing it. All I
18 can think of is the ARD which most of these
19 people just see a movie or something. It's got
20 to be more geared to some type of treatment
21 and, perhaps, making them aware of much more.
22 That's one aspect that I have.

23 MS. BECK: I wouldn't mix that up. I
24 think the ARD works fine for social drinkers.
25 I'd just make darn sure there's no social

1 drinkers in the class. I mean, the licensed
2 treatment programs are already there.

3 You're absolutely right too. Some of
4 you have raised questions of cost. If we catch
5 this earlier, it costs less. You talked about
6 outpatient services. If you catch it late, you
7 are talking second and third time uncaught,
8 I've really been an offender multi-times before
9 that, now you're talking long-term rehab.

10 CHAIRPERSON ORIE: Representative
11 Manderino.

12 REPRESENTATIVE MANDERINO: Thank you.
13 I have one question for Mr. Erni. With regard
14 to the comments that you made about the federal
15 TEA-21 funds, other legislative changes that we
16 must pass to qualify for this federal funding
17 is the requirement to enact a law making it
18 illegal to possess and consume any open
19 alcoholic beverages. Then you talked about how
20 we have a consumption but not a possession in
21 our container. I'm just trying to figure out
22 what the federal law says.

23 If you are the driver and there's an
24 open container in the car, do you also have to
25 have consumed of it, or can you be alcohol free

1 but if there's an open container in the car,
2 this federal legislation would require us to
3 pass a law to make you subject to a penalty?

4 MR. ERNI: First of all, there's
5 going to be some law enforcement individuals
6 testifying here. They would be able perhaps to
7 give you a little bit better idea.

8 Let me preface it with the fact that
9 there really shouldn't be any kind of open
10 container. If an individual is driving
11 throughout Pennsylvania, if we are truly in the
12 sense of trying to make a difference in highway
13 safety, the driver should not be having an
14 open, let's say, beer can as they are
15 traveling.

16 REPRESENTATIVE MANDERINO: Right. I
17 understand that.

18 MR. ERNI: Currently, if the police
19 officer sees this individual drink, consume
20 alcoholic beverages, that person can be fined.
21 Regarding the passenger, we do not have a law
22 like that. In fact, it would be having
23 individuals who are in the vehicle with an open
24 container.

25 REPRESENTATIVE MANDERINO: I guess

1 just because of how your testimony was written
2 up, I'm confused. Let me give you an example.

3 I was just down at the shore this
4 weekend. It's very frequent at the shore that
5 a restaurant doesn't have a liquor license.
6 It's a BYOB. That's actually becoming a little
7 bit more frequent in Pennsylvania too. I have
8 a couple restaurants in my district that don't
9 have a liquor license that are BYOB.

10 I may go to dinner with a bottle of
11 wine. I as the driver may not have even had a
12 glass of wine, or maybe I had one glass of
13 wine, but either didn't drink at all or I had a
14 glass of wine but I'm nowhere near .08 or .1 in
15 my drinking. But we drive home from the
16 restaurant, having been responsible adults, and
17 we didn't even drink a whole bottle of wine. I
18 have a bottle of wine in the front of the car
19 that has a cork in it.

20 What impact would this federal law
21 have on that driver if they were pulled over
22 and there was an open bottle of wine?

23 MR. ERNI: Absolutely nothing.

24 REPRESENTATIVE MANDERINO: That was
25 what I was trying to understand because it said

1 we have consumption. I would have had to have
2 consumed and been impaired as the driver in
3 order for the possession part of it to impinge
4 upon me, for me to be open to penalties under
5 possession.

6 MR. ERNI: That is correct.

7 REPRESENTATIVE MANDERINO: That's all
8 I wanted to know. Thank you.

9 CHAIRPERSON ORIE: Representative
10 Washington.

11 REPRESENTATIVE WASHINGTON: Thank
12 you. This question is to Deborah Beck. Deb, I
13 want to ask you about managed care. Did I hear
14 earlier that if a person is having a problem
15 through the court system and that they are
16 referred to treatment, that managed care will
17 sometimes opt not to pay for that?

18 MS. BECK: Yes, ma'am. You'll
19 actually find it probably in some of the
20 policies. It will sometimes say that if you
21 are identified as a result of interaction with
22 the court that your policy is no longer
23 operative. Now, I suspect since mandated drug
24 and alcohol coverage is a law in the state that
25 that is in fact against the law to do that, but

1 it hasn't been tested.

2 Big enough issue is, it was the one
3 thing that folks added to the managed care bill
4 moving through New York State with that
5 language to bar that practice. We share many
6 of the same chores with the managed care
7 program.

8 REPRESENTATIVE WASHINGTON: Maybe the
9 task force might need to look into that as it
10 relates, because how can you compel a person to
11 go to treatment and then the managed care --
12 the insurance doesn't pay for it, then make a
13 person pay for it out of their pocket while, in
14 fact, in some cases people pay for insurance.
15 Thank you.

16 CHAIRPERSON ORIE: Executive Director
17 Brian Preski.

18 MR. PRESKI: Deb, one question.
19 What's the average for a, let's say an alcohol
20 dependent person inpatient for good treatment,
21 and then what's the average for an outpatient
22 treatment? What's the cost per year?

23 MS. BECK: The question is not as
24 simple as that. It depends on the level of
25 severity of the addiction. It's kind of like

1 the parallel to tuberculosis. If I'm not
2 identified until very late in the progression,
3 I'm absolutely going to need long-term
4 residential care, and it will be over a long
5 period of time, and it will be in a long-term
6 place for tuberculosis.

7 If I'm identified early and I still
8 have things going for me, family that cares,
9 job to go back to, my health is not unduly
10 impaired, you are talking outpatient medication
11 for tuberculosis. It's very similar to drug
12 and alcohol.

13 If we intervene early, the treatment
14 is shorter and less expensive. If we intervene
15 late, it gets longer. Long-term treatment in
16 my mind is six to eight to nine months to a
17 year; short-term rehab, maybe 30 days.

18 So having said that as parameters,
19 let's talk in the middle. For a 30-day rehab
20 for what we would consider kind of a high
21 bottom alcoholic or addict, not terribly
22 deteriorated and still has a job to go back to,
23 you're probably talking for the non-hospital
24 residential stay somewhere in the neighborhood
25 of four to seven thousand. You can shop. You

1 can buy a Cadillac or you can buy the other
2 side, a Volkswagen or whatever--Volkswagens are
3 expensive now--my car, my old car, my own
4 Fairlane. You can buy a Cadillac or very
5 inexpensive treatment in the State of
6 Pennsylvania in terms of where you want to go.

7 On the outpatient side you may be
8 talking three thousand over the course of a
9 year. On the other hand, if I need inpatient
10 and you put me in outpatient and I relapse, you
11 get to pay for the inpatient now as well and
12 the outpatient all over again. It's really
13 important that the assessment be done right in
14 the first place because it's going to cost you
15 more.

16 The stuff you hear from some fields
17 about least restrictive care is bogus in the
18 drug and alcohol field. You want to start with
19 the most restrictive care indicated by the
20 assessor because there's a public safety
21 problem here. The most restrictive might be
22 outpatient for someone who is high bottom.

23 MR. PRESKI: I understand the clients
24 are on a case-by-case basis. What would be the
25 average cost for the assessment? We're all

1 getting to it's \$22,000 a year to put somebody
2 in prison for a year. If we do the treatment
3 that everyone says are necessary, are we above
4 that; are we below that? Where are we?

5 MS. BECK: The cost of prison is much
6 higher because not to forget, I'm going to come
7 back and do it all over again. If you put me
8 in jail, I think that's a very good think to
9 do. We're going to treat an alcohol and
10 addict. It puts me closer to a better source
11 of supply than I probably had on the street.
12 I'm playing with you a little bit.

13 Absolutely the cost is higher on the
14 prison side, especially since in most prisons
15 you are not going to get full treatment with
16 that. Even if you get treatment in prison,
17 you're going to need treatment coming out of
18 prison to solidify those gains.

19 So again, if you're talking about
20 residential rehab long term, you're talking
21 probably six months, non-hospital rehab for the
22 most deteriorated; maybe three or four months
23 of outpatient, following that AA, (inaudible
24 words; talking too fast) the rest of their
25 lives cost nothing. It's still a cost

1 beneficial investment no matter how you cut it.

2 The other side is, my health care
3 utilization is very high. If I'm on Medicaid
4 and have an untreated addiction, there's no
5 disagreement in any of the studies out there
6 all the way back to when they started doing
7 studies. There's only one way to save those
8 dollars, and that is to do some treatment.

9 Even if it doesn't work a hundred
10 percent of the time, and it does not, you're
11 still going to cut crime. You're going to cut
12 health care costs. The addiction is
13 aggressive. Sometimes the recovery is as well.
14 Sometimes I'm going to need to go for a second
15 bite of that.

16 In a nutshell, \$22,000 a year, wow.
17 That's what it costs in prison. Gee, we could
18 certainly provide very excellent treatment for
19 far less than that.

20 MR. PRESKI: My final question is, in
21 your experience as a treatment provider, do you
22 come across those defendants or those people
23 where you say no, it's best for you to be in
24 jail?

25 MS. BECK: Absolutely. The criminal

1 justice hammer is very important. This is also
2 true in the workforce. When we have got an
3 employer who will say to the person, we love
4 you. You're an great employer--and by the way
5 they are often the best employee in the
6 workforce when they are there--we're going to
7 fire you unless you go to treatment and follow
8 directions. That's the most effective kind of
9 intervention you can do.

10 The same works in the prison side,
11 criminal justice side, if we know that the
12 courts are going to back us up. We have some
13 damage done to us when the law enforcement
14 doesn't back us up where we get someone in the
15 rehab who we have to throw out for a violation
16 of an elemental rule. If law enforcement
17 doesn't come and put that person in jail, they
18 undercut our entire program. We need law
19 enforcement to stay serious, back up the
20 penalties, stay law enforcement.

21 Often the criminal justice sanction
22 is the thing that gets their attention and they
23 cope with treatment. If they're starting to
24 fool around, we can call law enforcement to
25 reinforce that again. Many addicted people who

1 are friends of mine in recovery will tell you
2 that that's what saved their lives.

3 MR. PRESKI: Thank you.

4 CHAIRPERSON ORIE: We're going to
5 break until 12:35. We have one other panel.
6 For the record, the 1:30, Ms. Cathy Coleman and
7 Mr. Earl Hill from Allegheny County Alcohol
8 Highway Safety Council have canceled, but they
9 have submitted their written testimony for the
10 record. We will continue at 12:35 with the
11 final panel. Thank you.

12 (Short recess occurred)

13 CHAIRPERSON ORIE: We'll start with
14 our last panel. At this time I'd like to note
15 for the record Representative Joe Petrarca has
16 joined the panel.

17 We have before us Captain Coleman
18 McDonough from the Patrol Division,
19 Pennsylvania State Police; Captain Ted Sideras,
20 Philadelphia Police Department. I understand
21 that you have other individuals with you. For
22 the record, could you please indicate your name
23 and spell your last name for the record.

24 SERGEANT GOLDEN: I am Sergeant
25 George Golden, G-O-L-D-E-N, Philadelphia Police

1 Department. I am an advisor to Captain
2 Sideras.

3 TROOPER ANDRASCIK: I am Trooper
4 David Andrascik, A-N-D-R-A-S-C-I-K, from the
5 from Pennsylvania State Police. I'm the DUI
6 Coordinator and advisor for the Captain.

7 MAJOR MORRIS: I'm Major Richard
8 Morris. I'm Legislative Liaison for the state
9 police.

10 CHAIRPERSON ORIE: You may begin.

11 CAPTAIN McDONOUGH: Good afternoon.
12 I'm Captain Coleman McDonough, Director of the
13 Patrol Services Division of the Pennsylvania
14 State Police. I'm here today representing
15 Colonel Paul Evanko, the Commissioner of the
16 State Police. We'd like to thank the House
17 Judiciary Committee for the opportunity to
18 speak on the criminal offense of driving under
19 the influence of alcohol or controlled
20 substance, and on the various proposed House
21 bills related to that offense.

22 In 1997, 1,560 people died in fatal
23 crashes on Pennsylvania's highways. At least
24 514 of these deaths, or approximately 33
25 percent, occurred in alcohol-related crashes.

1 During the same year, the Pennsylvania State
2 Police arrested nearly 11,000 people for
3 driving under the influence of alcohol or
4 drugs.

5 This number, a 19 percent increase
6 over 1996 arrests totals, represents more
7 driving under the influence arrests than any
8 previous year in the history of the
9 Pennsylvania State Police. The number cited
10 does not include the thousands of DUI arrests
11 made in 1997 by municipal police agencies. If
12 the current trend in '98 holds true, the number
13 of DUI arrests made by the state police will
14 again increase by 12 percent.

15 Although arrest numbers continue to
16 rise, DUI-related deaths increased in 1997. It
17 is evident, then, that enforcement alone cannot
18 continue to reduce those instances when
19 motorists choose to operate a motor vehicle
20 after consuming alcohol or ingesting controlled
21 substances to the point of impairment.

22 Vigilant enforcement must be combined with
23 other measures to achieve further reductions.

24 Studies have shown that two primary
25 motivators exist to deter motorists from

1 choosing to operate a vehicle under the
2 influence. The first of these is the fear of
3 detection and arrest. In an ideal world,
4 motorists would not drink and drive out of fear
5 that they may maim or kill another innocent
6 citizen.

7 However, in our world, motorists
8 choose not to drink and drive when the
9 likelihood of apprehension is high. Through
10 aggressive enforcement tactics, and extensive
11 publicity of enforcement efforts, police
12 agencies in the Commonwealth attempt to use
13 this fear of apprehension to deter would-be DUI
14 violators.

15 The second most common motivating
16 factor is the fear of the penalties imposed
17 after conviction. Fear of arrest, coupled with
18 post-conviction penalties, serve as the most
19 effective deterrents to DUI violators. The
20 Pennsylvania State Police have reviewed a
21 number of House bills relating to the criminal
22 offense of driving under the influence of
23 alcohol or drugs. Several of these proposed
24 laws involve mandating higher post-conviction
25 penalties. House Bills 1307, 1795, 669, 1817

1 and 1889 propose more severe penalties for DUI,
2 homicide by vehicle while DUI, and homicide by
3 vehicle.

4 By increasing penalties associated
5 with these offenses, the legislature may be
6 able to take advantage of the public's fear of
7 post-conviction penalties.

8 While applauding the potential
9 deterrent value of greater penalties, the state
10 police also recognizes that more severe
11 penalties may increase the number of personnel
12 hours that police agencies devote to
13 DUI-related court attendance, as the potential
14 for severe penalties may encourage defendants
15 to forego guilty pleas. Any such increase in
16 court attendance by police officers, equates to
17 a decrease in time devoted to patrol duties.
18 With that said, the state police acknowledge
19 that the determination of appropriate penalties
20 falls to the legislature, and the imposition of
21 those penalties falls to the courts.

22 House Bill 1165 adds a new section to
23 the current DUI statute, driving after
24 drinking. This proposed law makes it unlawful
25 for a person to drive after drinking enough

1 alcohol to raise their BAC level to .10 percent
2 or greater, within three hours after the person
3 has driven, operated or was in actual physical
4 control of the movement of a vehicle.

5 This new section would enable police and
6 prosecutors to avoid the often onerous task of
7 rebutting defense claims that the defendant's
8 BAC was not at or in excess of .10 percent at
9 the time they were driving the vehicle.

10 Reimbursing experts for such rebuttal
11 testimony represents an expensive proposition
12 for many county district attorneys' offices
13 with limited financial resources. The need for
14 this relation-back testimony often arises
15 during the investigation of crashes in rural
16 areas, when police response, and subsequent
17 chemical testing, is often delayed.

18 The potential for a delay, at times
19 in excess of three hours, is especially high
20 for those law enforcement agencies who police
21 rural areas, where no immediate access to
22 hospitals or police station exists.

23 A trooper or police officer who
24 responds to a multi-vehicle crash, involving
25 injuries or deaths in a rural area, can be

1 inundated with investigative and public safety
2 responsibilities, not to mention the logistics
3 and time considerations involved in traveling
4 to and from a remote location.

5 In addition to interviewing the
6 driver or drivers involved, as well as any
7 available witnesses, the trooper may have to
8 conduct field sobriety tests and secure a
9 prisoner, if one or more of the drivers proves
10 to be impaired. If the driver is uncooperative
11 or combative, additional tasks arise.

12 In rural areas, backup assistance may
13 not always be available. The trooper is also
14 responsible for preserving and gathering any
15 evidence that may assist in the crash
16 investigation and in the DUI investigation.
17 Simultaneously, the trooper may need to summon
18 EMS or a county coroner, provide traffic
19 control and scene security, arrange for
20 transport of any uninjured passengers and for
21 towing of the involved vehicles. The trooper
22 is also accountable for the safety of motorists
23 approaching the scene, as the road may be
24 blocked on a hazardous curve, for example.

25 This scenario may sound like a worst

1 case, but I want to emphasize that a DUI arrest
2 is not always a simple matter of placing an
3 operator under arrest and leaving the scene to
4 obtain a blood or breath sample. Distance and
5 simultaneous investigative responsibilities
6 take time, and determining the exact time of
7 the crash is no easy investigative or
8 prosecutorial matter.

9 House Bill 1165 would help decrease
10 the likelihood that drunk drivers could escape
11 accountability for their actions because of
12 these necessary delays in response or
13 processing.

14 The Pennsylvania State Police is
15 taking on the problem of response in rural
16 areas through another means. The Department
17 has recently purchased new portable evidential
18 breath testing equipment that Mr. Stephen Erni
19 referred to, has the potential to reduce
20 processing time and increase enforcement, by
21 enabling officers to determine blood alcohol
22 concentrations at the location of the crash or
23 traffic stop.

24 However, because current Pennsylvania
25 Department of Transportation regulations in

1 Title 67 require the use of a wet bath
2 simulator to conduct a simulator test
3 immediately after a breath test is conducted,
4 the potential of these devices cannot yet be
5 fully realized.

6 The state police, in conjunction with
7 PennDOT, have taken preliminary steps to change
8 these regulations. By removing the requirement
9 for an immediate simulator test following the
10 evidential test, and by incorporating federal
11 evidential gas standards into Title 67, police
12 officers will be able to obtain an evidential
13 breath sample at the scene of a violation,
14 without the delay associated with transporting
15 DUI offenders to a hospital or police station.

16 These changes would help bring
17 Pennsylvania more in line with the established
18 testing standards of other states, and remove
19 some regulatory obstacles to the use of new
20 technologies, and to more effective DUI
21 enforcement.

22 House Bill 1470 proposes that if a
23 chemical test's results are .05 percent or
24 less, that person shall not be charged for the
25 administration of the chemical test. The

1 intent of the bill appears to be to remove any
2 financial responsibility from those suspects
3 whose test results indicate that prosecution is
4 unwarranted.

5 However, current statutes have
6 prohibited BAC levels lower than .05 percent
7 for specific offenders, such as commercial
8 drivers, minors, and drivers who use a
9 combination of alcohol and drugs.

10 For example, if during a DUI
11 investigation, an operator is disoriented, is
12 unsure, and visibly intoxicated, and a chemical
13 test conducted reveals a low blood alcohol of
14 .02 percent, a police officer would then have
15 reasonable suspicion to believe that the
16 operator is under the influence of drugs or a
17 combination of alcohol and drugs. At this time
18 an additional chemical test should be
19 conducted.

20 Pennsylvania Vehicle Code Section
21 3731(a)(3) is defined as driving while under
22 the influence of alcohol and any controlled
23 substance to a degree which renders the person
24 incapable of safe driving. In this case, the
25 BAC test results, though lower than .05

1 percent, when combined with a positive drug
2 test, would, in fact, substantiate the
3 defendant's impairment as a result of ingesting
4 drugs and alcohol together.

5 This low BAC test result might
6 provide valuable evidence in a prosecution, and
7 potentially lead to the conviction of the
8 defendant. Such a defendant, as well as minors
9 and commercial vehicle drivers who are subject
10 to lower per se BAC standards, should be held
11 responsible for costs incurred for chemical
12 testing.

13 Generally, the issue of testing costs
14 is one that deserves attention. Currently,
15 there are no provisions for user fees
16 associated with chemical breath testing.
17 Breath testing programs statewide are funded by
18 the individual law enforcement agencies. The
19 state police currently maintain nearly 100
20 evidential breath testing devices. The initial
21 purchase price of an evidential instrument
22 ranges from two thousand to \$7,000.00. These
23 instruments cost approximately one thousand
24 dollars per year to maintain.

25 Currently, hospitals and approved

1 laboratories charge the defendant costs
2 associated with blood or urine tests.
3 Consideration should be given to a user fee
4 imposed on convicted defendants for conducting
5 chemical breath tests. This user fee would
6 allow most Commonwealth police agencies to
7 participate in a breath-testing program to some
8 capacity.

9 House Bill 1883 would require
10 immobilization of a subject's vehicle after
11 conviction for a third or subsequent offense of
12 driving under the influence. DUI repeat
13 offenders remain a serious problem for the
14 criminal justice system. This bill would send
15 a strong message that such recidivism will no
16 longer be easily tolerated.

17 The state police support the intent
18 of the legislation, but not without some
19 concern regarding the responsibility for
20 implementation. With limited personnel
21 resources, police agencies may not be best
22 suited to administer penalty provisions of the
23 DUI laws. Monitoring of defendant's vehicles
24 to detect any tampering with immobilization
25 devices would be time consuming, especially

1 when defendants reside, again, in remote rural
2 areas.

3 The logistics of the immobilization
4 program may prove to be burdensome to police
5 agencies hard pressed to provide adequate
6 police services to citizens. The program may
7 be better managed by an entity of the criminal
8 justice system associated with post-conviction
9 processes. Again, any costs associated with
10 this program should fall upon those persons
11 whose recidivist behavior led to the
12 immobilization of their vehicles.

13 In closing, the Pennsylvania State
14 Police are committed to highway safety and the
15 reduction of alcohol-related crashes on our
16 highways through aggressive enforcement and
17 public awareness. Proposed laws to increase
18 sanctions for unlawful activities, if combined
19 with a strong public education effort, would
20 help deter motorists tempted to drive while
21 under the influence. But, calls for harsher
22 penalties must be coupled with the realization
23 that these sanctions may bring higher costs for
24 both police and prosecution.

25 I'd again like to thank the House

1 Judiciary Committee for the opportunity to
2 speak on some of these issues. And I'd be
3 happy to answer any questions.

4 CHAIRPERSON ORIE: Thank you very
5 much.

6 CAPTAIN SIDERAS: Good afternoon,
7 Chairman Orie--I apologize for that name
8 mixup--and members of the House Judiciary
9 Committee. My name is Captain Ted Sideras, and
10 I'm the Commanding Officer of the Philadelphia
11 Police Department's Accident Investigation
12 District. With me to my left is Sergeant
13 George Golden, who is also assigned to A.I.D.
14 Sergeant Golden is a state certified instructor
15 for breath alcohol analysis operators and also
16 coordinates all fatal auto investigations for
17 our department.

18 Our unit is responsible for investing
19 all fatal accidents and selected serious auto
20 accidents within the city. In addition, all of
21 the personnel in my unit are certified breath
22 alcohol analysis operators and perform this
23 test on persons arrested in the city for DUI.

24 I would like to thank you for
25 providing our department with the opportunity

1 to testify on this important topic. To
2 effectively reduce the incidents of driving
3 under the influence, there must continue to be
4 a coordinated effort between law enforcement,
5 prosecutors, the courts and lawmakers.

6 My comments will be brief, but
7 hopefully informative to the members of this
8 committee. I would like to first provide some
9 perspective for the problem of driving under
10 the influence on both a national and a local
11 level, followed by comments on specific House
12 bills which are under discussion today; and
13 finally, respectfully submit a recommendation
14 for this committee to consider.

15 I am sure that the members of this
16 committee are familiar with the National
17 Highway Traffic Safety Administration, or
18 NHTSA. For those here today that are not,
19 NHTSA is a governmental agency under the
20 Department of Transportation, which is
21 responsible for reducing deaths, injuries and
22 economic losses resulting from motor vehicle
23 crashes. One of NHTSA's specific
24 responsibilities is to help states and local
25 communities reduce the threat of drunk drivers.

1 NHTSA publishes a wealth of
2 information regarding motor vehicle accidents.
3 I have selected a few of the statistics
4 supplied by this agency to demonstrate the
5 nature and the extent of the DUI problem in
6 this country, as well as the progress being
7 made nationwide.

8 About three in every ten Americans
9 will be involved in an alcohol-related crash at
10 sometime in their lives. Over 17,000
11 fatalities in alcohol-related crashes occurred
12 during 1996. This represents an average of one
13 alcohol-related fatality every 31 minutes.

14 More than 321,000 persons were
15 injured in crashes during 1996. Police
16 reported that alcohol was present for an
17 average of one person injured about every two
18 minutes.

19 According to NHTSA, 60 percent of all
20 traffic fatalities were DUT-related during the
21 1980's. Recent figures show that DUI-related
22 traffic fatalities have been reduced to 40
23 percent of all traffic fatalities. In other
24 words, 7,000 less people are dying each year in
25 DUI-related accidents.

1 In a national seminar conducted in
2 1996, entitled Police Traffic Services in the
3 21st Century, sponsored by the Police Executive
4 Research Forum and by NHTSA, the Chief of
5 Research and Evaluation for NHTSA reported that
6 there is solid scientific evidence that certain
7 pieces of legislation do work to reduce
8 alcohol-related fatalities.

9 For example, administrative license
10 revocations, zero alcohol tolerances for youth,
11 and graduated licensing programs all have
12 resulted in lowering the level of DUI
13 fatalities after implementation.

14 Legislative changes made to the DUI
15 statutes in our state have certainly had an
16 impact on this problem as well. These changes
17 to the DUI statutes became profoundly apparent
18 to the police officers in this city,
19 particularly officers assigned to A.I.D, during
20 the mid 1980's after implementation of
21 mandatory jail sentences for convicted DUI
22 offenders.

23 Mandatory sentences have sent a
24 message to the public and to law enforcement
25 that driving under the influence is not just a

1 traffic offense, but is a real crime. Police
2 officers began receiving subpoenas or court
3 notices for arrests made of all DUI offenders.
4 Testimony of the arresting officer and the
5 breath analysis operator has become a necessity
6 for successful prosecutions and is often
7 subjected to the scrutiny of defense attorneys
8 searching for some way to vindicate their
9 client.

10 On any given day about one-third of
11 the police officers under my command are
12 subpoenaed to court to testify in DUI cases.
13 They must be prepared to respond to the most
14 detailed questions concerning the breath
15 alcohol analysis test of an offender, the
16 general operation and maintenance of breath
17 instruments, as well as to produce
18 administrative records concerning these
19 instruments.

20 Although laws and powers concerning
21 DUI arrests can be complex, I believe that
22 generally the police officers and prosecutors
23 involved in standing up DUI cases have done an
24 exceptional job. The evidence for this is in a
25 90 percent plus conviction rate for the

1 thousands of DUI arrests made each year in this
2 city.

3 Despite thousands of arrests each
4 year, there's always room for improvement.
5 Deaths, injuries and property damage continue
6 to occur as a result of individuals who drink
7 and drive. Dozens of DUI-related fatal auto
8 accidents are reported each year in this city.
9 Hundreds of accidents involving someone who is
10 DUI result in injuries.

11 I am optimistic that the proposals
12 concerning DUI which are under consideration
13 here today will ultimately remove more DUI
14 offenders from the state's roadways and will
15 discourage others from drinking and driving.

16 In the interest of saving time, I
17 would like to cite just two of the House bills
18 under consideration for some comments. The
19 first is House Bill 1165, driving after
20 drinking.

21 This bill will address a recurring
22 issue raised by defense attorneys regarding how
23 an individual's blood alcohol concentration,
24 obtained while in police custody, relates back
25 to the blood alcohol level at the time he or

1 she was operating a vehicle. Often the
2 argument is made that the results of a BAC test
3 are not valid because it does not reflect a
4 driver's BAC at the time he or she was actually
5 driving.

6 This bill demonstrates that the
7 legislators involved in crafting it are aware
8 of the issues which confront law enforcement
9 officers after DUI arrests and that they are
10 willing to act by closing loopholes which are
11 exploited by defense attorneys.

12 The second bill is House Bill 1143,
13 aggravated assault by vehicle and aggravated
14 homicide by vehicle. Although our department
15 has a restrictive pursuit policy which is
16 vigorously enforced, police pursuits are a fact
17 of life and continue to occur. House Bill 1143
18 will appropriately impose stiff penalties
19 for the reckless criminal conduct of those
20 individuals who attempt to flee police only to
21 cause serious bodily injury or death in the
22 process. This type of lawbreaker who thumbs
23 his nose at the rest of society when committing
24 such a crime, deserves no less than the felony
25 level charge this legislation will provide.

1 In closing, I would respectfully like
2 to submit a recommendation that vehicle
3 impoundment be used to supplement existing
4 penalties for selected DUI statutes.

5 Newly-enacted state law has enabled
6 Philadelphia to begin a pilot program for the
7 impoundment of vehicles. In designated areas
8 of the city, vehicles may be impounded when the
9 operator has no license or no registration for
10 the vehicle.

11 This past week a member of my own
12 unit impounded the vehicle of a 17-year old
13 driver who was involved in an accident
14 resulting in serious injuries to a child. The
15 teenage driver had no operator's license.
16 Although criminal charges were not appropriate
17 in this case, the car the teenager was driving
18 was impounded.

19 Prior to the impoundment law being
20 enacted, there was nothing to prevent that 17
21 year old from getting back into the same car
22 after the accident and continuing to drive
23 without a license. As it stands now, this
24 driver must pay the applicable fines, produce a
25 valid driver's license, vehicle registration,

1 and proof of insurance to obtain her vehicle.

2 It seems to me that the impoundment
3 strategy could be beneficial in selected
4 instances concerning DUI's. For example, those
5 who are arrested for DUI and subsequently
6 refuse to take a BAC test have really gained an
7 advantage over the system. DUI convictions can
8 and do occur for individuals who refuse to take
9 a breath test. However, without the results of
10 a test to introduce as evidence, a conviction
11 is more difficult to attain.

12 Perhaps those who refuse to take a
13 breath test could be persuaded to do so if they
14 realize that failure to comply would result in
15 the impoundment of their vehicle.

16 I encourage you to consider this
17 recommendation as a means of gaining further
18 compliance with DUI statutes.

19 This concludes my remarks. I'd be
20 happy to respond to any questions you may have.

21 CHAIRPERSON ORIE: Captain, I have a
22 question in regards to the impoundment. I come
23 from Allegheny County. One of the complaints
24 they have with the drug forfeiture that they
25 utilize there, where they're picking up these

1 cars, is really the cost that it's costing the
2 county to keep these vehicles there or to find
3 places to even store these vehicles. That it
4 ends up costing at least county detectives,
5 city detectives, the department so much money
6 that they seem to be opposed to that.

7 What you are doing that the costs
8 aren't affecting you?

9 CAPTAIN SIDERAS: I would just say
10 that was a consideration of our mayor when this
11 bill was first enacted. I think the way it has
12 been set up, it will relieve some of the costs
13 involved in actually impounding the vehicle.

14 For example, if the individual whose
15 car was impounded is not able to pay the fines,
16 or is unwilling to pay the fines, and is
17 willing to relinquish the vehicle, the vehicle
18 is sold with the proceeds going for payment of
19 any administrative costs, any fines that may
20 have been incurred by the driver; and if any
21 money is left over is returned to the
22 registered owner of the vehicle. That, in
23 essence, would counterbalance any cost that the
24 city would have for those failing to show up to
25 pay the applicable fines.

1 CHAIRPERSON ORIE: I guess my other
2 question would be the constitutional
3 challenges. For example, if this teenager was
4 driving a parent's vehicle or if somebody was
5 driving somebody else's vehicle without
6 knowledge that they were driving it, have you
7 encountered anything along those lines?

8 CAPTAIN SIDERAS: The program has
9 just begun. The pilot program is I think in
10 its third week. We haven't had that type of a
11 challenge, obviously, up to this point. It may
12 happen in the future. I assume that issue has
13 been researched prior to the bill being
14 enacted. However, if it comes, we deal with it
15 I guess.

16 CHAIRPERSON ORIE: What is your
17 procedure right now, for example, how do you
18 know which ones to impound? Do you impound
19 each and every one of them in a situation when
20 they come before you, or do you ask certain
21 information before you do it? How is that
22 done?

23 CAPTAIN SIDERAS: The impoundment is
24 restricted to those who do not have a valid
25 license or registration. Our police officers

1 after making a stop in the designated pilot
2 area will ask for that information. When it's
3 not supplied, they will verify whether or not
4 the person does not have a license or
5 registration through police radio.

6 Once that verification is obtained,
7 they will call for our parking authority to
8 send a tow truck to the location. Different
9 types of paperwork is processed. The driver of
10 the vehicle is issued a card stating how they
11 can obtain their car back, where they have to
12 go, what fines they have to pay. The car is
13 then taken to our impoundment lot in South
14 Philadelphia. From there it is up to the
15 operator or the owner whether or not they want
16 their vehicle back.

17 CHAIRPERSON ORIE: I thank you very
18 much. Representative Petrarca.

19 REPRESENTATIVE PETRARCA: No
20 questions.

21 CHAIRPERSON ORIE: Representative
22 Manderino.

23 REPRESENTATIVE MANDERINO: Thank you.
24 I'm trying to figure out if this is a
25 relationship between the whole problem that

1 both of you actually identified with regard to
2 relation-back testimony and the ability to do a
3 blood alcohol calibration using this new dry
4 gas method. Let me ask some real basic
5 questions because maybe part of my confusion is
6 coming in that, thank goodness, I've never been
7 stopped and asked to do a Breathalyzer, so I
8 don't really know the mechanics of it.

9 Do most police vehicles -- Maybe it's
10 different in the city versus when you're out in
11 the rural. Do most police vehicles have a
12 Breathalyzer in the vehicle so that you are
13 actually taking the sample on the spot and then
14 it's just the testing, the checking whether or
15 not you were accurately calibrated that causes
16 this time delay problem? Or, in some of the
17 rural areas, are you actually having to
18 transport somebody to where the machine is?
19 Can you help me with that first?

20 CAPTAIN McDONOUGH: Generally, I can
21 speak for the state police and most municipal
22 police agencies on this point. Generally, a
23 police car does not have a breath test, a
24 breath intoxilyzer in the car. We have
25 recently purchased some new equipment. It has

1 the potential for affordability. But, because
2 of these regulations, we can't realize that
3 affordability. But in general, no, they do not
4 have a portable breath test instrument in the
5 car.

6 REPRESENTATIVE MANDERINO: So the dry
7 gas method as compared to the wet bath method
8 that you're talking about that you can federal
9 law forms we would have to change state
10 statutes, that is something that would,
11 obviously, according to financial ability to
12 purchase them, allow for there to be more
13 portable machines, so to speak, on the scene?

14 CAPTAIN McDONOUGH: Yes. The gas
15 cylinders are compatible with certain breath
16 test devices that would be portable if the gas
17 was available and it was approved in Title 67.
18 The reason why we run into the problem with
19 relation-back testimony specifically in some of
20 the more remote areas, suburban and rural
21 areas, is because the time between the time the
22 defendant is operating the vehicle and the test
23 is conducted, the time is more extensive
24 because of the transport issues.

25 Presently, with the requirement for a

1 wet bath simulator, we have to transport in
2 order to conduct that simulator test
3 immediately after the two breath tests are
4 given.

5 REPRESENTATIVE MANDERINO: So first
6 you have to be where the breath test machinery
7 is, which may or may not be on the spot in a
8 police car. And then second, you have to be
9 where the equipment is that you check the
10 accuracy of what was used to take the blood
11 alcohol content measurement from the driver?

12 CAPTAIN McDONOUGH: Right. That
13 accuracy test, as you refer to, has to be
14 conducted immediately after the two breath
15 tests. In other words --

16 REPRESENTATIVE MANDERINO: Whether or
17 not we are using a wet or a dry method doesn't
18 really solve, in all cases, the relation-back
19 problem? It would only solve it where using a
20 dry test method allowed me to have the
21 equipment on the spot?

22 CAPTAIN McDONOUGH: It would not
23 solve it in all cases, that's correct. But, it
24 would substantially reduce the number of cases
25 where this extensive time between operation and

1 test becomes a factor and necessitates the
2 relation-back testimony later during
3 prosecution.

4 REPRESENTATIVE MANDERINO: With
5 regard to, in the city, where are the blood
6 alcohol tests given, and do you still have this
7 relation-back problem?

8 CAPTAIN SIDERAS: Yes, we still have
9 it. All of our instruments are located at
10 police headquarters at Eighth and Race. Even
11 though we decentralized the processing of
12 prisoners across the city over the last couple
13 of years, DUI's and certain other types of
14 crimes all go down to police headquarters where
15 our breath instruments are located.

16 The issue of carrying the instruments
17 in the patrol cars, I don't think would be as
18 practical for city police officers because
19 there are a lot of different issues. The
20 simulator test, the accuracy test that is
21 given, I think that one of the issues that we
22 spoke about earlier before testifying, the City
23 of Philadelphia processes thousands of DUI
24 arrests each year. That breaks down to maybe a
25 dozen or so each day.

1 If we were to wait until the end of
2 the day to conduct our simulator tests and
3 something were to be wrong with that simulator
4 test, we would jeopardize all the arrests in
5 the prior 24-hour period. For that reason, in
6 and of itself, it's not practical for the city
7 to pursue that.

8 CAPTAIN McDONOUGH: Captain Sideras
9 brings up a good point. When we talk about the
10 need for dry gas, we have no intention of
11 replacing wet bath as a testing device. In
12 fact, we would continue to use wet bath and the
13 state police would supplement the dry gas. But
14 because of the different needs in different
15 jurisdictions, we would like to have the
16 availability of both.

17 REPRESENTATIVE MANDERINO: I'm
18 assuming because it's now federally approved,
19 the dry gas, that it's as reliable or as
20 accurate. It's not subject to criticism with
21 to its accuracy.

22 CAPTAIN McDONOUGH: I'd defer to
23 Trooper Andrascik if you want to talk about the
24 federal dry gas.

25 TROOPER ANDRASICIK: The standard is

1 to read a .10. If your instrument does not
2 read within a tolerance .090 to .109, it fails
3 and the test is no good anyway. The gas
4 standards are just as accurate.

5 REPRESENTATIVE MANDERINO: Thank you.
6 My only other question is, I didn't understand
7 the point being made I think in, Captain
8 McDonough, your testimony. You were talking
9 about, something about .02 and .05, if chemical
10 test results are .05 or less --

11 CAPTAIN McDONOUGH: House Bill 1470?

12 REPRESENTATIVE MANDERINO: Yes, for
13 House Bill 1470. Can you just explain to me
14 again the point that you were making about .02
15 and .05, and in particular, my concern is, I
16 think you were asking us or the legislation is
17 asking us to lower the percentage -- I'm not
18 sure what you were asking us to lower the
19 percentage of, when you started out?

20 CAPTAIN McDONOUGH: As written, if I
21 understand the bill, if a defendant's chemical
22 test result reflects a result of .05 percent or
23 less, then by statute that defendant would not
24 be required to prove financial responsibility,
25 or to pay for the cost of the tests.

1 REPRESENTATIVE MANDERINO: Right now
2 you pull me over. You say, I suspect, so
3 therefore I'm going to give you a Breathalyzer
4 test. Even if it comes out zero, maybe I was
5 just being spacey that night and you thought I
6 looked like I was drunk, but I hadn't had a
7 drink at all. Right now I'm assessed the costs
8 regardless of whether or not -- what the
9 results are.

10 This was saying, well, if the result
11 wasn't really significant, I shouldn't even
12 have been assessed the costs?

13 CAPTAIN McDONOUGH: At first it would
14 be dependent on the type of test you were given
15 to determine that BAC level. What we're
16 suggesting here is, we want to remove the
17 possibility where a defendant who is -- should
18 be prosecuted because either they're using
19 alcohol and drugs together or they're a
20 commercial truck driver whose BAC might be only
21 .04 percent and per se prohibited by statute or
22 they are a minor whose BAC might be only .02
23 percent, again, per se prohibited by the
24 statute. The present language of the bill
25 would not allow the state to recoup the costs

1 for those individuals.

2 REPRESENTATIVE MANDERINO: I guess
3 the converse of that is, if I'm concerned about
4 safeguarding against whether it's prosecution
5 or fines for somebody who was not doing
6 anything illegal, let's say, I don't know. I
7 don't know whether or not somebody who is --
8 takes a prescription drug for some sort of
9 condition they have, whether it's a heart
10 condition or mental illness or something that
11 in and of itself taking that drug does not by
12 law render me incapable of driving, but yet,
13 the presence of that drug in my blood stream
14 may show up on a BAC test.

15 If I'm also equally concerned about
16 making sure that somebody who is taking heart
17 medication and is not restricted in their
18 driving because they take heart medication, but
19 the presence of that heart medication in their
20 bloodstream may show up on this BAC test, isn't
21 there another side to that story, or no?

22 CAPTAIN McDONOUGH: Exactly. That's
23 why we would specify that those costs, the
24 exception for the below .05 standards, those
25 costs would only be recouped from convicted

1 defendants. The conviction would be based on,
2 of course, the totality of the evidence.

3 REPRESENTATIVE MANDERINO: Do you
4 have something to add to that?

5 CAPTAIN SIDERAS: As a means of
6 clarifying it, I think all he's saying -- I
7 agree wholeheartedly. I think it's an omission
8 that needs to be corrected. You just need to
9 put the wording into the proposed legislation
10 that would not let those that are convicted
11 slip through the cracks.

12 As it stands now, you are letting
13 anybody with a controlled substance under that
14 bill slip through the cracks. If they are
15 convicted because they have a controlled
16 substance in their system or a juvenile or
17 somebody that operates a commercial vehicle.
18 If you just get specific and put those three
19 instances in there, I think it covers it.

20 REPRESENTATIVE MANDERINO: Okay. By
21 putting those instances in there, you're not
22 catching an innocent, unsuspecting or somebody
23 who didn't do anything wrong. Okay. I
24 understand your point now. Thank you.

25 CHAIRPERSON ORIE: I have no further

1 questions. I'd like to thank you all for your
2 testimony and your cooperation today. Thank
3 you. That will conclude the Task Force on DUI
4 hearing today.

5 (At or about 1:25 p.m. the hearing
6 concluded)

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C E R T I F I C A T E

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2
3 I, Karen J. Meister, Reporter, Notary
4 Public, duly commissioned and qualified in and
5 for the County of York, Commonwealth of
6 Pennsylvania, hereby certify that the foregoing
7 is a true and accurate transcript of my
8 stenotype notes taken by me and subsequently
9 reduced to computer printout under my
10 supervision, and that this copy is a correct
11 record of the same.

12 This certification does not apply to
13 any reproduction of the same by any means
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15 supervision.

16 Dated this 18th day of September,
17 1998.

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22 Karen J. Meister - Reporter
Notary Public

23 My commission
24 expires 10/19/00
25