Federal Courthouse
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LEGISLATION TO COMBAT DRUNK DRINKING
HOUSE JUDICIARY TASK FORCE ON DRUNK DRIVING

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Good morning, Chairman Orie and other members of the Task Force. My name is Lynne Abraham and I am the District Attorney of Philadelphia. Thank you for the opportunity to speak about this important issue.[1]

MOTHERS AGAINST DRUNK DRIVING. Over the past two decades, the Commonwealth of Pennsylvania has, along with the rest of the nation, taken great strides in battling the dangerous and deadly practice of driving under the influence of alcohol or other drugs. We all owe a huge debt of gratitude to Mothers Against Drunk Driving, the group primarily responsible for transforming society's attitude from tolerance (often characterized by the cynical phrase "There but for the grace of God go I") to outrage at the thousands of innocent human beings who frequently pay with their lives because of the irresponsibility of drunk drivers.

Rarely has a single group been as effective at effecting such a sea-change in the social climate. MADD's efforts have led to tough and appropriate mandatory sentencing laws, potent anti-DUI advertising campaigns, and most importantly, to the saving of thousands of lives that might have been lost had these changes not occurred.

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[1] The list of bills listed for today's hearing is formidable. If I were to testify about them all, I'd be keeping you here longer than you'd like. I'm limiting my testimony to certain of the DUI-related bills. I strongly support some of the non-DUI related bills, but I'm simply not able to testify on all of the bills listed for today. Please do not interpret my inability to address some of these bills as any indication that they are not important.

The numbers tell all. According to the Bureau of Justice Statistics 1998 publication, Alcohol and Crime (citing statistics from the National Highway Traffic Safety Administration), 24,000 Americans died in 1986 in alcohol-related traffic fatalities. Ten years later, this tragic statistic dropped by almost a third, to 17,000 lives lost. (Of those 17,000, 13,400 actually involved drivers with a blood alcohol content of .10% or higher.)

According to the same national statistics, the percentage of drunk drivers in fatal accidents dropped during the same period from 25.8% to 18.8%. In 1986, there was one intoxicated driver in a fatal accident for every 10,500 licensed drivers. This dropped to one out of 17,200 by 1996.

In 1983 there was one DUI arrest for every 80 licensed drivers in the nation (nearly 2 million arrests); in 1996 this dropped to one for every 122 licensed drivers (under 1 1/2 million arrests).

MORE WORK TO BE DONE. Seventeen thousand deaths in a single year and a million and a half DUI arrests, however, is still unacceptable. Nearly five hundred Pennsylvanians died in 1996 as a result of drunk driving . Thousands more were injured, maimed, and rendered quadriplegics or paraplegics.

We must be willing to take up the challenge of the drunk driver anew; we must at the same time be more resourceful. Several of the bills in the package about which I've been asked to comment contain just such a combination of tougher and smarter approaches to the problem. I'd like first to comment on two bills, House Bills 669 and 1165, which were initially drafted by my Office, modified by House Judiciary staff, and introduced at my request by Representative O'Brien, Representative Serafini, and others respectfully.

DUI/THREE STRIKES AND YOU'RE ON THE WAGON (House Bill 669). House Bill 669, endorsed by the Pennsylvania District Attorneys Association, Mothers Against Drunk Driving, and the Drug and Alcohol Service Providers of Pennsylvania, offers a tough and sensible approach to repeat drunk drivers. It creates a mandatory maximum sentence of four years for those convicted of a third or subsequent DUI and requires, as conditions of parole *inter alia* that the offender (i) be, and remain, free from drug, illegal substance and alcohol use, and (ii) successfully complete clinically appropriate drug and alcohol treatment, including participation in monitored aftercare.

This bill, which was developed in collaboration with its prime sponsor, Representative Dennis O'Brien, reflects the reality that anyone convicted of three DUIs in a seven year period is an alcoholic or addict. It also reflects the clinical reality that addicts and alcoholics, by the very nature of their addiction and

in contrast to those who are sober, do not respond to traditional deterrents (be they jail sentences or license suspensions). The best - and often the only - way to stop them from driving drunk is to get them to stop drinking alcohol or abusing drugs. And the only way to do that is to use the full force of the law to motivate them into a treatment regimen and into recovery. House Bill 669 does that.

Representative O'Brien is with me today, and is prepared to testify in greater detail about this sound proposal. At this time I'd like to turn the floor over to Representative Dennis O'Brien.

[State Rep. O'Brien addresses the Task Force].

Before I move onto some of the other bills before the Task Force, I'd like to make three additional points about House Bill 669.

First, I'd like to address the funding issue. As Rep. O'Brien stated, most DUI offenders will have private or public insurance (or HMO) coverage to pay for their treatment - the coverage is mandated by state insurance laws. However, some insurers or HMOs refuse to pay these benefits - even though the policy they've issued includes this kind of therapy - saying that they aren't obliged to pay for court-ordered treatment. Perhaps their rationale is that the treatment may not be clinically appropriate, but instead be more akin to a jail sentence which health insurers shouldn't have to pay for. However, House Bill 669 provides for treatment only as clinically needed. The level and duration of treatment is based entirely on a clinical assessment. Where the level and duration of treatment is clinically determined, there is no persuasive argument which can be advanced for denying benefits. I urge the General Assembly to make clear that under such circumstances, these insurance benefits - covered by the insured's premiums - must be provided.

Second, there may be an argument advanced that drug and alcohol abusers cannot be "coerced" into recovery. But research shows slightly higher recovery rates among those mandated into treatment than among those who seek treatment on their own volition. *Addictions Treatment in General clinical Populations*, Chapter 4 in SOCIOECONOMIC EVALUATIONS OF ADDICTIONS TREATMENT (Center of Alcohol Studies, Rutgers University, 1993) While it may be true that the alcoholic or addict ultimately decides for himself that he wants to change his life, this usually happens after treatment has begun, not before. At the time of going into court ordered treatment, most addicted offenders believe they can "game" the system in order to avoid a jail sentence, loss of a job, or some other harsh consequence. Experienced treatment clinicians expect and know how to work with this kind of patient and they can still succeed in a large number of cases. When they fail, however, the

full weight of the court must be felt by the recalcitrant offender.

Third, I'd like to underscore Representative O'Brien's point that leveraging repeat drunk drivers into recovery will impact on more than just drunk driving. Some of these offenders, left untreated, will engage in other serious, violent, alcohol-related crime. According to BJS' Alcohol and Crime, cited above, nearly 3 million victims of violent crime a year report that their attackers were using alcohol or other drugs at the time of the crime. Since an additional 30% of the annual 11 million victims of violent crime each year couldn't tell whether or not their attacker was drinking, the number may very likely be higher.

As Philadelphia District Attorney and as a former judge in the homicide program of the Philadelphia Court of Common Pleas, I have seen many third-degree murders committed by alcoholics who got drunk, got angry, and killed innocent strangers, acquaintances, friends, or family members. My own experience is confirmed by BJS, Alcohol and Crime, at p. 30 (convicted murders in state prisons report that alcohol was a factor in about half the murders committed, with an estimated blood alcohol content of .30%)

The bottom line is this: House Bill 669 likely will result in a reduction not just of repeat drunk driving offenses, but may also serve to reduce violent crime by criminals who commit such crimes when they are drinking.

DRIVING AFTER DRINKING (House Bill 1165). In most drunk driving cases, the Commonwealth proves its case by introducing evidence that the offender's blood alcohol content was .10% or higher, as established by blood, breath or urine tests taken after the offender was stopped. As a result of a line of state Supreme Court cases[2], most trials then enter into the Alice in Wonderland realm of "relation back."

Under the "relation back" defense, the defendant can argue that although the defendant's blood alcohol content was .10% or higher at the time the testing occurred, it may have been lower at the time the defendant was driving. and went up only after his arrest.

This defense is based on an assertion that much of the alcohol was consumed immediately before his arrest for drunk driving, so that the alcohol had not yet sufficiently entered the blood stream at the moment he was stopped by the police.

Presented with this defense, the judge and jury are dragged into the confusing and Byzantine world of "relation back:" opposing

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[2] These cases culminated in Commonwealth v. Barud, 545 Pa. 297, 681 A.2d 162 (1996).

expert witnesses haggle over the precise time of arrest, how much time elapsed before the blood or breathalyzer test was administered, how long it would take the guzzled alcohol to enter the bloodstream, and whether the blood alcohol content might or might not have reached .10% when the defendant was arrested for drunk driving. This complex and time-consuming issue takes up most of the case. Aside from the time spent, if the defense can successfully cause enough confusion, the defendant is acquitted notwithstanding the blood alcohol tests and the arresting officer's opinion that he was drunk when arrested. He is acquitted because of the doubt created by this testimony.

It doesn't take much commonsense to realize that this situation is completely ridiculous. If a person consumes a large quantity of alcohol and then immediately gets behind the wheel, he is a menace to everyone on the road. Unfortunately under the current law, such an individual is driving legally until that magic moment when a sufficient amount of the alcohol passes through the digestive lining into the blood stream. Apparently the ever more intoxicated driver is expected to somehow know when that magic moment occurs, to realize they've passed the bounds of legal behavior, to stop the car and get out and walk or call a cab!

House Bill 1165, introduced by Representative Serafini, eliminates this absurd result and simplifies the entire issue. H.B. 1165 makes it a violation of law if the person drives after drinking if the quantity of alcohol consumed is sufficient to raise the blood alcohol content to at least.10% within three hours after the person has driven. The bill is unanimously endorsed by the Pennsylvania District Attorneys Association.

This proposed 75 Pa.C.S. §3731.2 ("Driving after drinking") is graded the same, and in every other way is treated the same under the law as §3731 (DUI). (The length of the bill simply reflects the various references in the statutes to DUI to which we've added references to the proposed new offense.)

House Bill 1165 will end the huge waste of judicial resources on arcane and confusing "battle of the experts" about "relation back" issues. More importantly, it will ensure that those who drink too much and drive will no longer be able to exploit the current absurdity in the law to avoid accountability for their dangerous, criminal behavior.

Finally, we agree with the Philadelphia Public Defender that House Bill 1165 has been precisely drafted. In her August 5th letter to House Judiciary Counsel Brian Preski, Chief Defender Ellen Greenlee states:

> The proposed statutory text clearly defines the offense, and does not (as can happen through use of loose language) create criminal liability in unintended situations. The proposed

statute successfully accomplishes the legislative purpose as articulated in the "legislative findings" prefacing H.B. 1165.

We also agree to Public Defender's proposed amendments in that letter, which would prohibit multiple sentences or any other double-counting where an offender has been convicted of both §3731 (DUI) and the proposed §3731.2 ("Driving after drinking") for a single episode.

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I'd also like to take the opportunity to comment on some of the other bills being considered by the Task Force.

House Bill 1889 (increasing DUI mandatories). This bill, sponsored by the Task Force chair, contains tough new measures to punish drunk drivers. It proposes the following:

Second DUI: triple the mandatory sentence - from 30 days to 90 days.[3]

Third DUI: quadruple the mandatory sentence - from 90 days to one year.

Fourth DUI: triple the mandatory sentence - from one year to three years.

Additionally, if a person is convicted of DUI after having been convicted of DUI/homicide by vehicle (§3735) or DUI/aggravated assault (§3735.1), the mandatory sentence would be increased from 30 days to three years.

I support increases in the mandatory sentences for DUI. However, I urge this Task Force to carefully review what other states are doing in this area so that Pennsylvania can be, roughly speaking, in step with other jurisdictions which have addressed this issue. I urge you to review, as well, as well as any research that may exist in this area correlating the severity of mandatory sentences for DUI with decreases in the incidence of the crime.

House Bill 1889 would also suspend a person's driver's license for life if convicted of three DUIs, or convicted of a combination of a) DUI/homicide or DUI/aggravated assault and b) two other serious traffic offenses. I support this concept. Unfortunately, many people drive without having ever obtained a license, while others drive with a suspended or revoked license.

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[3] In each instance, all of the previous DUIs must have occurred in the seven years previous to the current offense.

The likely result of this provision is that people will simply drive without a license. A better first step in this area may be to strengthen our response to those who are now driving even though their licenses have been suspended, revoked, or never obtained. I regret to say we have not done a good enough job in this area and appropriate sanctions have not been imposed.

Second, as stated above with reference to House Bill 669, offenders with three DUI convictions within seven years are most likely alcoholics. Realistically, there are only two ways we can keep such individuals from drunk driving: keep them locked up (this works only as long as they're locked up), or get them into recovery.

House Bill 1817 (drunk driving with suspended license). House Bill 1817, sponsored by Representative Fairchild, would double the DUI mandatories where the offender is driving with a suspended license. I unequivocally support this wise measure.

I would, however, offer one technical drafting suggestion. I would eliminate the words "up to" on line 15 of page 1, and line 1 of page 2. Those words might be construed by the courts to de-mandatorize these provisions, which I do not believe Representative Fairchild intends to do.

House Bill 306 (eliminating requirement for CRN evaluation). Current law requires a CRN ("Court Reporting Network") evaluation of those convicted or receiving ARD for DUI. This CRN evaluation provides critical information about the offender's involvement in substance abuse, so that the court can have the continuing information flow it needs. In the context of ARD, when the CRN indicates that treatment is called for, the period of court supervision is increased from six months to twelve months.

House Bill 306 would make the CRN evaluation discretionary rather than automatic. I believe this is ill-advised. Courts should <u>always</u> have this information available, so that it can require treatment if necessary and avoid the potential for future offenses.

The bill also eliminates the twelve month court supervision period for ARD where the CRN indicates treatment is in order. Again, I believe this to be a mistake since the 12 months gives the court and the treatment program the time needed to assure compliance with mandated recovery and appropriate court supervision and oversight.

Implementation of Act 122 of 1990. In 1990, the General Assembly enacted Act 122, which required that, in addition to the set one year license suspension period, an alcoholic defendant convicted of a second or subsequent DUI must successfully complete drug and alcohol treatment before his license is restored.

Unfortunately, it appears that the implementation of Act 122 is spotty at best. This Act has great potential to reduce repeat DUI offenses, if properly implemented as it should be. Indeed, many of the bills we are speaking to today require constant monitoring to assure compliance and to maintain safe driving practices. If we are not vigilant with Act 122, the chances are that the legislation proposed in this package will have solved little and saved fewer of our citizens from the consequences of the impaired driver.

May I respectfully request that this Task Force investigate the implementation of Act 122, find out where it's working as anticipated and where it's not, and then take appropriate steps to assure its full compliance.

Thank you for inviting me here to speak today.