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**TESTIMONY OF THE AMERICAN CIVIL LIBERTIES UNION
OF PENNSYLVANIA PRESENTED TO THE TASK FORCE ON DUI
OF THE PENNSYLVANIA HOUSE JUDICIARY COMMITTEE**

AUGUST 18, 1998

**CEREMONIAL COURTROOM, FEDERAL COURTHOUSE
601 MARKET STREET, PHILADELPHIA, PENNSYLVANIA**

Good morning Representative Orié and other members of the Task Force on Driving Under the Influence. My name is Larry Frankel and I am the Executive Director of the American Civil Liberties Union of Pennsylvania. I thank you for inviting us to present testimony at today's hearing.

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

First, the ACLU believes that the General Assembly needs to expand its focus beyond the enactment of even more criminal laws in this area. In particular we see no need for more mandatory sentencing statutes. Driving under the influence of alcohol is already a crime and Pennsylvania has many laws that already impose sentences on those found guilty of this offense. We think that there is fairly widespread awareness that it is illegal to drink and drive and that

there are consequences to pay for that behavior. We are skeptical that more criminal laws will act as a better deterrent. We do not believe that such laws are the best way to reduce the incidence of people driving while under the influence.

We are particularly concerned with any new mandatory sentences or increases to existing mandatory sentencing laws. As a general proposition, the ACLU has consistently opposed mandatory sentences because we believe that sentences should reflect, *inter alia*, the specific circumstances of the criminal incident as well as the background of the defendant. Failure to consider the individual characteristics of a specific case leads to inequitable sentences. Mandatory sentences diminish the ability of judges and even prosecuting attorneys to exercise discretion in order to devise what can be an appropriate and even beneficial sentence.

With respect to DUI offenses, mandatory sentences only make it harder for the criminal justice system to distinguish between the individual whose offense was an aberration as opposed to the individual who has a serious drinking problem. Judges and attorneys are not provided with the tools that may be necessary to effectively trigger the necessary changes in behavior. Important resources (such as court time and prison space) are misallocated and good anti-drinking programs are, therefore, under funded.

Because of these concerns, the ACLU urges this Task Force to recommend against the enactment of legislation that creates new criminal laws or penalties for what the law already covers. Rather, this Task Force should focus on the issue of providing more financial resources to improve and expand the range of programs that provide treatment to those individuals who have problems with alcohol. We think that kind of crime prevention approach, one that attempts

to reduce the number of individuals who drink and drive, will be far more effective in reducing the occurrence of DUI than will the passage of more criminal sanctions.

The ACLU also hopes that the Task Force will recommend an increase in mass transit funding. If there were more public transportation alternatives (particularly outside the Philadelphia area), then people could go to bars, cocktail parties, restaurants, and their friends' homes, have something to drink and then be able to return home without having to drive. As it stands now, many people are deprived of an opportunity to go out and enjoy themselves and find a way back to their own residence without putting themselves in legal and physical jeopardy. The Commonwealth could make it easier for those folks to arrive at home safely were it to provide some real transportation alternatives.

With those considerations in mind I will now offer some comments on several of the bills before this Task Force. The ACLU opposes House Bill 1165 because it creates yet another criminal offense - driving after drinking. As I have already noted, we do not support the creation of more crimes in this area. In addition, we do not understand how a police officer is supposed to determine whether an individual has imbibed "a sufficient amount of alcohol so that the amount of alcohol by weight in the blood of the person is 0.10% or greater within three hours after the person has driven, operated or been in actual physical control of the movement of the vehicle."

The ACLU also opposes House Bill 1307 because it increases the minimum mandatory sentence for the crime of homicide by vehicle while driving under the influence. We oppose House Bill 1795 which raises the grading of the crime of homicide by vehicle. Both of these bills seek to increase the penalties, an ineffective method of addressing this problem in our

opinion. We also oppose House Bill 1889 which provides for the revocation of habitual offenders' licenses. Once again, this bill relies on penalties and punishment, an approach that has been repeatedly tried in this area.

The ACLU views House Bill 669 more favorably. That bill creates a mandatory maximum term. However, that bill provides incentives for a defendant, convicted of a third or subsequent DUI, to engage in a treatment program and allows a judge to condition parole based on participation in such a program. Because this bill encourages, one might say coerces, a defendant to seek assistance for the drinking problem, this bill at least attempts to cure the behavior and not merely lock up the offender. The benefits of this legislation, however, will depend on the availability and quality of treatment programs.

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