

PREPARED STATEMENT
OF
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BUREAU OF PATROL

BEFORE THE
HOUSE JUDICIARY COMMITTEE
TASK FORCE ON DRIVING UNDER THE INFLUENCE

AUGUST 18, 1998

Good morning(afternoon). I am Captain Coleman McDonough, Director of the Patrol Services Division of the Bureau of Patrol of the Pennsylvania State Police. I am here today representing Colonel Paul J. Evanko, Commissioner of the Pennsylvania State Police. We would like to thank the House Judiciary Committee for the opportunity to speak on the criminal offense of driving under the influence of alcohol or controlled substance, and on the various proposed House bills related to that offense.

In 1997, 1,562 people died in fatal crashes on Pennsylvania's highways. At least 514 of these deaths, or approximately 33%, occurred in alcohol-related crashes. During the same year, the Pennsylvania State Police arrested nearly 11,000 people for Driving Under the Influence of Alcohol or Drugs. This number, a 19%

increase over 1996 arrest totals, represents more Driving Under the Influence arrests than any previous year in the history of the Pennsylvania State Police. The number cited does not include the thousands of DUI arrests made in 1997 by municipal police agencies. If the current trend in 1998 holds true, the number of DUI arrests made by the State Police will again increase, by approximately 12%.

Although arrest numbers continue to rise, DUI-related deaths increased in 1997. It is evident, then, that enforcement alone cannot continue to reduce those instances when motorists ~~attempt~~^{choose} to operate a motor vehicle after consuming alcohol or ingesting controlled substances to the point of impairment. Vigilant enforcement must be combined with other measures to achieve further reductions.

Studies have shown two primary motivators exist to deter motorists from choosing to operate a vehicle under the influence.

The first of these is the fear of detection and arrest. In an ideal world, motorists would not drink and drive out of fear that they may maim or kill another innocent citizen. However, in our world, motorists choose not to drink and drive when the perceived likelihood of apprehension is high. Through aggressive enforcement tactics, and extensive publicity of enforcement efforts, police agencies in the Commonwealth attempt to use this fear of apprehension to deter would-be DUI violators.

The second most common motivating factor is the fear of the penalties imposed upon conviction. Fear of arrest, coupled with post-conviction penalties, serve as the most effective deterrents to DUI violators. The Pennsylvania State Police have reviewed several House Bills relating to the criminal offense of Driving Under The Influence of Alcohol or Drugs. Several of these proposed laws involve mandating higher post-conviction penalties. House Bills 1307, 1795, 669, 1817, and 1889 propose more severe penalties for

DUI, Homicide By Vehicle While DUI, and Homicide By Vehicle. By increasing penalties associated with these offenses, the legislature may be able to take advantage of the public's fear of post-conviction penalties. While applauding the potential deterrent value of greater penalties, the State Police also recognizes that more severe penalties may increase the number of personnel hours that police agencies devote to DUI-related court attendance, as the potential for severe penalties may encourage defendants to forego guilty pleas. Any such increase in court attendance by police officers equates to a decrease in time devoted to patrol duties. With that said, the State Police acknowledge that the determination of appropriate penalties falls to the Legislature, and the imposition of those penalties falls to the courts.

House Bill 1165 adds a new section to the current DUI statute,

Driving after Drinking. This proposed law makes it unlawful for a person to drive after drinking enough alcohol to raise their BAC level to .10% or greater, within three hours after the person has driven, operated or was in actual physical control of the movement of a vehicle. This new section would enable police and prosecutors to avoid the often onerous task of rebutting defense claims that the defendant's BAC was not at or in excess of .10% at the time they were driving the vehicle. Reimbursing experts for such rebuttal testimony represents an expensive proposition for many county district attorneys' offices with limited financial resources. The need for this "relation back" testimony often arises during the investigation of crashes in rural areas, when police response, and subsequent chemical testing, is often delayed.

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

exists. A Trooper or police officer who responds to a multi-vehicle crash, involving injuries or deaths in a rural area, can be inundated with investigative and public safety responsibilities, not to mention the logistics and time considerations involved in traveling to and from a remote location. In addition to interviewing the driver or drivers involved, as well as any available witnesses, the Trooper may have to conduct field sobriety tests and secure a prisoner, if one or more of the drivers proves to be impaired. If the driver is uncooperative or combative, additional tasks arise. In rural areas, backup assistance may not always be available. The Trooper is also responsible for preserving and gathering any physical evidence that may assist in the crash investigation, and in the DUI investigation. Simultaneously, the Trooper may need to summon EMS or a county coroner, provide traffic control and scene security, arrange for transport of any uninjured passengers and for towing of the involved vehicles. The Trooper is also accountable for the safety

of motorists approaching the scene, as the road may be blocked on a hazardous curve, for example. This scenario may sound like a worst case, but I want to emphasize that a DUI arrest is not always a simple matter of placing an impaired operator under arrest and leaving the scene to obtain a blood or breath sample. Distance and simultaneous investigative responsibilities take time, and determining the exact time of the crash is no easy investigative or prosecutorial matter. House Bill 1165 would help decrease the likelihood that drunk drivers could escape accountability for their actions because of necessary delays in response or processing. I do have a concern, however, that some of the same constitutional issues that arose when Section 3731 (a) (5) was voided may rise again, when the new Drinking After Driving section is considered.

The Pennsylvania State Police is taking on the problem of response in rural areas through another means. The Department

has recently purchased new portable evidential breath testing equipment that has the potential to reduce processing time and increase enforcement, by enabling officers to determine blood alcohol concentrations at the location of the crash or traffic stop.

However, because current Pennsylvania Department of Transportation Regulations in Title 67 require the use of a wet bath simulator to conduct a simulator test immediately after a breath test is conducted, the potential of these devices can not yet be fully realized.

The State Police, in conjunction with PennDot, have taken preliminary steps to change Title 67. By removing the requirement for an immediate simulator test following the evidential test, and by incorporating federal evidential gas standards into Title 67, police officers will be able to obtain an evidential breath sample at the scene of a violation, without the delay associated with transporting DUI offenders to a hospital or police station. These changes would

bring Pennsylvania more in line with the established testing standards of other states, and remove regulatory obstacles to the use of new technologies, and more effective DUI enforcement.

House Bill 1470 proposes that if a chemical test's results are .05% or less, the person shall not be charged for the administration of the chemical test. The intent of the bill appears to be to remove any financial responsibility from those suspects whose test results indicate that prosecution is unwarranted. However, current statutes have prohibited BAC levels lower than .05% for specific offenders, such as commercial drivers, minors, or drivers who use a combination of alcohol and drugs. For example, if during a DUI investigation, an operator is disoriented, unsure, and visibly intoxicated, and a chemical test reveals a low Blood Alcohol Content of .020%, the officer would have reasonable suspicion to believe that the operator is under the influence of other drugs or a combination

of alcohol and drugs. At this time, an additional chemical test would be conducted. A violation of the Pennsylvania Vehicle Code § 3731 (a)(3) is defined as driving while “under the influence of alcohol and any controlled substance to a degree which renders the person incapable of safe driving.” In this case, the BAC test result, though lower than .05%, when combined with a positive drug test, would in fact help substantiate the defendant’s impairment as a result of ingesting drugs and alcohol together. This low BAC test result might provide valuable evidence in a prosecution, and potentially lead to the conviction of the defendant. Such a defendant, as well as minors or commercial vehicle drivers subject to lower per se BAC standards, should be held responsible for costs incurred for chemical testing.

The issue of testing costs generally is one that deserves attention. Currently, there are no provisions for user fees associated with chemical breath testing. Breath testing programs statewide are

funded by the individual law enforcement agencies. The Pennsylvania State Police currently maintain nearly 100 evidential breath testing devices. The initial purchase price of an evidential instrument ranges from \$2,000 to \$7,000. These instruments cost approximately \$1,000 per year to maintain. Currently, hospitals and approved laboratories charge the defendant costs associated with blood or urine tests. Consideration should be given to a user fee imposed on convicted defendants for conducting chemical breath tests. This user fee would allow most Commonwealth police agencies to participate in a breath testing program to some capacity.

House Bill 1883 would require immobilization of a subject's vehicle after conviction for a third or subsequent offense of Driving Under the Influence. DUI repeat offenders remain a serious problem for the criminal justice system. This bill would send a strong message that such recidivism will no longer be easily tolerated. The

Pennsylvania State Police support the intent of the legislation, but not without some concern regarding the responsibility for implementation of the program. With limited personnel resources, police agencies may not be best suited to administer penalty provisions of the DUI laws. Monitoring of defendant's vehicles to detect any tampering with immobilization devices would be time consuming, especially when defendants reside in remote rural areas. The logistics of the immobilization program may prove to be burdensome to police agencies hard-pressed to provide adequate police services to citizens. The immobilization program may be better managed by an entity of the criminal justice system associated with post-conviction processes. Again, any costs associated with this program should fall upon those persons whose recidivist behavior led to the immobilization of their vehicles.

The Pennsylvania State Police are committed to highway safety and the reduction of alcohol-related crashes on our highways

through aggressive enforcement and public awareness. Proposed laws to increase sanctions for unlawful activities, if combined with a strong public education effort, would help deter motorists tempted to drive while under the influence. But calls for harsher penalties must be coupled with the realization that these sanctions may bring higher costs for both policing and prosecution.

I'd again like to thank the House Judiciary Committee for the opportunity to speak on some of these issues today, and I'd be happy to attempt to answer any questions the Committee members might have.