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PENNSYLVANIA  FEDERATION

3A

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October 13, 1992

The Honorable Joseph A. Petrarca, Chairman  
Pennsylvania House of Representatives  
Transportation Committee  
Room 202, South Office Building  
Harrisburg, PA 17120

Re: House Transportation Committee Public Hearing Regarding House  
Bill 1942. P.N. 2342

Dear Representative Petrarca:

The Pennsylvania AAA Federation hereby submits the attached research regarding the above-referenced issue. As Richard Gmerek, the Federation's governmental representative, indicated to you and your staff, we would appreciate it if this letter and the attached research would be included as a matter of record for the above-referenced public hearing on October 13, 1992.

The stated policy of the Federation supports administrative suspension revocation of licenses when probable cause exists that driving under the influence of alcohol or other drugs has occurred. AAA endorses administrative license suspension laws allowing police officers to physically take possession of motorists' driver's licenses for probable cause and to replace them with limited, temporary permits and notices of suspension, providing that due process is assured through prompt administrative hearings and appeals to the courts on the merits of the charge. In addition, the Federation respectfully urges this Committee and the General Assembly to adopt an administrative suspension law which maintains statutory language that assures that motorists with substance abuse problems receive proper evaluation and referral to authorized drug and alcohol treatment programs.

We trust that this research which we are providing and the stated policy of the Federation will be of assistance to you and your Committee at the Public Hearing on October 13. At the same time, if there is any other information that is needed or if there are any questions regarding the Federation's policy on the

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issue of administrative suspension or the research which we have provided, please do not hesitate to contact me at (717) 238-7192 or Richard Gmerak at (717) 238-2900.

Sincerely,

A handwritten signature in cursive script that reads "Elaine Farrell".

Elaine Farrell, CAE  
Executive Director

EF/llp

Enclosures

cc: Paul Parsellis, Executive Director  
House Transportation Committee  
Richard Gmerak, Tucker Arensberg, P.C.



**STATEMENT OF  
AMBASSADOR JOHN GAVIN  
CHAIRMAN  
THE CENTURY COUNCIL**

**SUBMITTED TO  
THE HEARING OF THE SELECT SUBCOMMITTEE OF  
THE TRANSPORTATION COMMITTEE  
OF THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES  
HARRISBURG, PENNSYLVANIA**

**OCTOBER 13, 1992**

**Chairman Petrarca, distinguished members of the Transportation Committee:**

**My name is John Gavin. I am Chairman of The Century Council, a nonprofit organization dedicated to reducing alcohol abuse and misuse across the United States.**

**I am pleased to add the strong support of The Century Council for the Pennsylvania House of Representative's efforts to adopt administrative license revocation (ALR) legislation as provided in House Bill 1942.**

**Publicly announced in May, 1991, the Council is funded by more than 400 concerned distillers, vintners, brewers and licensed beverage wholesalers who are dedicated to combatting the abuse of their products.**

**We at the Council have chosen to commit our resources to the two areas of abuse that are of greatest concern to the American public: drunken driving and underage drinking problems.**

**Materials describing The Century Council and its programs appear as an attachment to my testimony. Not all licensed beverage companies support us. A list of those who do is included.**

**Pennsylvania was one of the first states in the nation to place our "Front Lines" retail point-of-sale materials in its state liquor stores to help prevent attempted purchase of alcohol by minors. Samples of these materials, which we are making available free-of-charge to retailers, are attached.**

Nationally, more than 100,000 concerned wholesalers and retailers have ordered more than 1.5 million pieces of these materials -- including posters, buttons, employee pledge forms and the like -- and we are receiving highly favorable comments about their effectiveness.

In addition to helping prevent underage access to alcohol at the point of sale, The Century Council is also combatting drunken driving by supporting passage of ALR laws in the 19 states that do not have them. We are adding our efforts to those of concerned citizens, insurers, government officials and others across the country to urge the adoption of tough uniform ALR laws. Thirty-one states and the District of Columbia already have ALR on their books. We were pleased to be involved in coalitions this year that helped enact ALR in Nebraska and New Hampshire. I respectfully urge that Pennsylvania waste no time in becoming the 32nd member of this club.

I doubt I am the first person to make this point, but it is so vitally important and bears repeating: across the country highway safety experts report that ALR is the single most effective step that state governments can take to attack the problem of drunken driving.

Research shows that ALR is a highly effective deterrent to drunken driving because it imposes stiff, swift and sure sanctions against DUI offenders. It gives the police increased motivation to enforce DUI laws because they know that the arrest will stick. It helps relieve court congestion by removing incentives to manipulate the system.

Arguments have been raised against ALR laws, but in our view, they do not hold up to close scrutiny.



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Arguments have been raised against ALR laws, but in our view, they do not hold up to close scrutiny.

Opponents of ALR have suggested, for example, that it is inconsistent with due process of law. However, ALR has consistently survived judicial review and was ruled constitutional by the U.S. Supreme Court. Courts have ruled that due process is protected by the assurance of a speedy administrative hearing that allows individuals to contest the facts of the arrest.

Opponents also claim that by depriving working men and women of their licenses, ALR can cost people their jobs. But in fact, research in several states has shown that ALR rarely leads to job loss. Moreover, by reducing the consequences of job loss and incapacitation that result from drunken driving accidents, ALR makes a net positive economic contribution.

I am aware of few anti-drunken driving laws that have been so thoroughly researched and scrutinized as has ALR over the past decade. And, to repeat, study after study reinforces the fundamental fact the ALR WORKS.

That is why The Century Council is committed to see ALR become law across the land.

The Century Council today respectfully adds its voice to those who call on Pennsylvania to adopt an effective administrative license revocation law. ALR is one important way to help put a halt to the drunken-driving tragedies that imperil your state's roads.

Thank you for the opportunity to share the views of The Century Council on this important issue.

1           CHAIRMAN LLOYD: The first witness who is here this  
2 morning to testify is the District Attorney of Lackawanna  
3 County, Michael Barrasse.

4           Mr. Barrasse.

5           MR. BARRASSE: Good morning.

6           Law enforcement no longer treats drunk driving as a  
7 victimless crime. No longer are police officers simply  
8 giving drunk drivers a ride home. No longer are they  
9 enabling the drunk driver by condoning his or her conduct.  
10 Statistics throughout the Commonwealth show that law  
11 enforcement has not only stepped up its enforcement of DUI,  
12 but, in fact, in many areas have tripled and quadrupled the  
13 number of arrests in the last four years. With this  
14 dramatic rise in enforcement, certain inherent problems  
15 have come to surface.

16           The criminal justice system has not come to grips  
17 with the manner in which to handle repeat offenders through  
18 effective treatment and punishment, nor is our criminal  
19 justice system equipped to handle the housing of the drunk  
20 offenders. However, there lies a problem of equally great  
21 importance, and that is the arresting of an individual for  
22 DUI homicide or DUI and allowing that person tomorrow to  
23 get back in the same vehicle in which he utilized to commit  
24 the heinous act the evening before.

25           While the comparison seems drastic, what really is

1 the difference between allowing an individual to drive a  
2 car after committing a homicide by motor vehicle DUI than  
3 the giving of a hand gun back to a defendant in a murder  
4 case following his slaughter of young children?

5           When you consider that it is the increased  
6 enforcement that is now allowing law enforcement to be  
7 aware of the identity of drunk offenders, it now becomes  
8 law enforcement and the Commonwealth's responsibility to  
9 protect innocent victims from this drunk driver who is  
10 already identified by law enforcement.

11           It is, therefore, ironic that the very enforcement  
12 procedures that have shown to work so effectively are also  
13 responsible for the Commonwealth's allowing repeat  
14 offenders back on the road within hours after their DUI  
15 conduct.

16           Since police officers are no longer closing their  
17 eyes to the DUI offenders, nor is it accepted thinking that  
18 the offender just needs a ride home and he will be okay,  
19 the police officers are now left with an administrative  
20 procedure that often fails to keep up with their  
21 enforcement procedures.

22           In Lackawanna County, within the last year arrests  
23 for DUI have tripled the figures of 1989. In 1992 there  
24 will be approximately 1,200 DUI arrests, while in 1989  
25 there were approximately 390. The remarkable statistic,

1 however, is not the increase of arrests but the number of  
2 second, third and fourth offenders within this last year-  
3 and-one-half period. Many of the offenders are not through  
4 the criminal justice system on the first DUI when they  
5 commit the second and subsequent offenses.

6 It is frustrating for a police officer who had  
7 competently and responsibly carried out his duties in  
8 arresting an individual for DUI to see that same person out  
9 on the highways the following day or week, again DUI, with  
10 no means to prevent this person from driving the same  
11 vehicle he was originally arrested for driving DUI. This  
12 problem is carried to the extreme when a police officer,  
13 or, even worse, a victim of a DUI sees the offender driving  
14 while this person is still recovering from injuries  
15 received.

16 The worse scenario is that of the family of a victim  
17 of a DUI homicide who knows that the drunk driver that  
18 killed their daughter is still driving on the highways.

19 Todd Reaser was arrested on September 8, 1990, for a  
20 homicide DUI that occurred on Mulberry Street in the City  
21 of Scranton. Mr. Reaser was prosecuted and was found  
22 guilty of Homicide by Motor Vehicle by a jury trial on  
23 March 15, 1991.

24 After the verdict, the defendant filed post-trial  
25 motions. Since that date, the post-trial motions have been

1 decided and sentencing is scheduled for October of this  
2 year. Technically, he, therefore, has not been "convicted"  
3 of this crime until he is sentenced. The DL-21 (Attach-  
4 ment A) report, therefore, has not been forwarded to the  
5 Pennsylvania Department of Transportation. However, as you  
6 can see by the attached inquiry (Attachment B) on Todd  
7 Reaser's license, he still has no suspension for this most  
8 heinous crime in which a nineteen year old girl died  
9 because of his drunk driving.

10 As is the case with defendant John Gomba, who on  
11 January 25, 1992, while driving under the influence, killed  
12 an off-duty Scranton policeman. Mr. Gomba had been  
13 prosecuted in 1977 for a DUI, had his license restored, and  
14 today, while awaiting trial, still drives without a  
15 suspension on his license (Attachment C).

16 As can be seen by the attached list (Attachment D)  
17 of repeat DUI offenders, the number of cases which this  
18 applies to reaches easily into the hundreds. The need for  
19 such a bill is clear upon review of horror cases like this  
20 throughout the Commonwealth.

21 In view of House Bill 1942, however, there are  
22 several questions which are both procedural and technical  
23 in nature. 1534.1(B) requires a police officer forward to  
24 the department within 24 hours of arrest a sworn or  
25 affirmed report numerating all information relative to the

1 enforcement action. The phrase "24 hours of arrest" should  
2 be changed to the "24 hours from time of filing complaint."  
3 This would alleviate any questions as to those individuals  
4 that are taken from the scene or into custody, therefore,  
5 technically under arrest but yet released and the paper not  
6 filed for several days later.

7 Further, there is no indication as to what penalty  
8 will occur if a police officer does not forward such  
9 information within 24 hours of arrest. The question that  
10 begs, therefore, would be: does the driver not receive a  
11 penalty because of the fact that the officer did not file  
12 within the prescribed time?

13 Section 1534.1(B)2 states: "On behalf of the  
14 department, the police officer directing the administration  
15 of the chemical test under Section 1547 relating to  
16 chemical testing to determine the amount of alcohol or  
17 controlled substance shall serve immediate notice of  
18 suspension personally on a person whose test results  
19 indicate an amount of alcohol by weight in the blood of .10  
20 percent or greater. There are several procedural problems  
21 with this.

22 First, in Lackawanna County there are two DUI  
23 Processing Centers. At the processing centers, there is a  
24 phlebotomist present at both sites drawing the blood. This  
25 blood is then transferred to Clinical Laboratories. Test

1 results are received approximately three to four days after  
2 the blood is taken. The police officer directing the  
3 administration of a chemical test, therefore, is unable to  
4 have knowledge as to the test results, and, therefore,  
5 would not be able to give them at the time the person is  
6 taken in. This report and notice procedure would place a  
7 cumbersome responsibility upon the officer to now go out  
8 upon receiving the test results and serve personal notice  
9 on each DUI offender.

10 On October 2 and 3, 1992, 25 individuals were  
11 processed through the DUI centers in Lackawanna County, of  
12 which 23 were over the legal limit of .10 percent. This  
13 information was not received until October 7, 1992, and  
14 with the passing of House Bill 1942 in its present state,  
15 it would require the police officers to go out immediately  
16 and serve all 23 of those individuals with such  
17 notification. This is not feasible.

18 While I believe that the period of suspension should  
19 start immediately for the drunk driver for the period of  
20 time as stated, and that those who refuse chemical testing  
21 should also have their license suspended immediately, I  
22 believe it is of equal importance that the license not be  
23 given back to the offender until they have been clinically  
24 evaluated.

25 The Legislature did a splendid job in dealing with



1 repeat offenders under Act 122. Don't let the first time  
2 offender receive his license back until he, too, is  
3 evaluated, and, if treatment is recommended, until he  
4 completes treatment. Waiting for the subsequent offenses  
5 is too late once we identify that the person is a drunk  
6 driver.

7           The Commonwealth issues the license to a person of  
8 age and competency to drive. Once the Commonwealth  
9 identifies that this person is a drunk driver, it is the  
10 Commonwealth's responsibility to withhold that driver's  
11 license until such time that the driver proves that he is  
12 competent (SOBER) to drive again.

13           Thank you.

14           (Whereupon, the attachments to Mr. Barrasse's  
15 written testimony follow:)

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1           CHAIRMAN LLOYD: Thank you.

2           One of the changes which this legislation would make  
3 is to make it easier for the government to take a license  
4 based on the evidence in the case. Under current law it is  
5 necessary to get a conviction in a criminal court, proved  
6 beyond a reasonable doubt. Under this legislation it would  
7 be possible to administratively take the license on a  
8 finding of preponderance of the evidence.

9           In order to understand whether that is a significant  
10 change, it would be helpful if you could give us some  
11 indication of the number of prosecutions which you don't  
12 bring or which you lose because you don't think you can  
13 prove it beyond a reasonable doubt, but which you think we  
14 could get a suspension if all we had to do was prove  
15 preponderance of the evidence.

16           MR. BARRASSE: I think we have recognized that --  
17 going through the criminal justice system with a case to a  
18 test of beyond a reasonable doubt, we have now drawn up  
19 guidelines such that below .10 we recommend a policeman  
20 make an arrest, or actually filing of a complaint. Then we  
21 review each arrest afterwards to see whether or not the  
22 police officer feels, along with the assistant specially  
23 assigned for DUI cases, feel they have enough evidence to  
24 get beyond a reasonable doubt.

25           If the case is such in which it is between .05

1 and .10, and there is an accident where there are some  
2 other problems with the case, we will usually pursue the  
3 arrest. If it is less than .10, though, and we feel that  
4 the presumption is not with us, and there is difficulty in  
5 proving it beyond a reasonable doubt, our standard,  
6 therefore, is that we do not go ahead with the DUI offense  
7 because of the responsibility that we have before the  
8 court.

9 We feel that if you did have a preponderance of the  
10 evidence, as compared to beyond a reasonable doubt, the  
11 taking of a license would be much, much easier if the proof  
12 was given. That we cannot do in criminal court. We could  
13 do that in an administrative hearing. And we feel that  
14 because of the fact that it is a privilege, a license, that  
15 it is the correct way to go.

16 CHAIRMAN LLOYD: Under the bill, however, we would  
17 not be giving the right to take a license administratively  
18 for under .10. That would have to be an amendment.

19 So I guess, to zero in on my question, assuming that  
20 the bill stays the way it is, that you lose your license  
21 only if you are at .10 or above, how many additional  
22 suspensions would we get that way with preponderance of the  
23 evidence that we do not get now through the criminal  
24 justice system?

25 MR. BARRASSE: I could not give you a specific

1 number. However, I could say to you that I feel that the  
2 percentages there would have to be between five and ten  
3 percent of the total numbers. And while that may not sound  
4 like a great number, I believe that our repeat offenders  
5 show that it is. When you have hundreds of cases a year  
6 that are repeat offenders, I think that the fact that we  
7 are now taking the license immediately would have a greater  
8 impact than that five or ten percent, because now we're  
9 talking about second and subsequent offenses. So I don't  
10 think we have to narrow in on which prosecutions go forward  
11 as compared to how is it going to affect further driving.  
12 And if we have those that are already in the 15 to 20  
13 percent total that we believe are definitely, in Lackawanna  
14 County alone, being DUI offenders, then we feel that that  
15 is a very substantial amount and has to be addressed  
16 immediately.

17 CHAIRMAN LLOYD: The second issue that I want to ask  
18 about before opening it up to other members is some people  
19 felt, when we considered this bill before, that this was an  
20 unnecessary cost to the Commonwealth. You have suggested  
21 that we might get five to ten percent more suspensions, and  
22 that may change their perception.

23 But in terms of the time, unless we lengthen -- and  
24 there is a proposal in this bill to lengthen the minimum  
25 suspension from one to three months, but unless we lengthen

1 the maximum suspension period, we are really dealing with a  
2 time machine problem. We're going to take the person's  
3 license sooner, but he is going to get it back sooner.

4 You suggest that we shouldn't give it back at all  
5 until we go through some other procedures. That is not in  
6 the bill at the present time.

7 Assume with me that we were going to focus strictly  
8 on the bill the way it is. What, if any, benefit is there  
9 to taking the person's license now and giving it back to  
10 him in a year, as opposed to taking it six months and  
11 giving it back 18 months from now?

12 MR. BARRASSE: Well, even though it may not seem  
13 logical -- I'm not sure what the state's statistics are --  
14 we find that our repeat offenders are usually within a very  
15 short period of time; that persons that are drunk driving  
16 don't necessarily wait until their ARD period is over with  
17 or their suspension time is over with; that, in fact,  
18 within the next three, six months, we have second and third  
19 offenses occurring.

20 Because of that I think the most effective way is to  
21 take that license immediately upon the person finding that  
22 they are .10 or above. But I think for the Legislature to  
23 ignore the fact that the numbers that we have don't call  
24 for some type of clinical evaluation is really -- we are  
25 putting the problem aside, and all you're going to be doing

1 then is taking the license and not addressing the real  
2 problem; that is that you do have these huge numbers that  
3 are second, third and fourth time offenders.

4 CHAIRMAN LLOYD: Other members who have questions?

5 REPRESENTATIVE FAIRCHILD: On your repeat DUI  
6 offenders attachment --

7 MR. BARRASSE: Yes.

8 REPRESENTATIVE FAIRCHILD: -- the names there, is  
9 that a compilation of over a --

10 MR. BARRASSE: It's a year-and-a-half. It should be  
11 to the beginning of 1991 -- 1991 to present. The blood  
12 alcohol on the right is the last test that we had on file.

13 As you can see there, there's over -- I believe  
14 there's over 120 there, and that was only what we were able  
15 to do on Thursday of last week.

16 REPRESENTATIVE FAIRCHILD: Were these people that  
17 were -- obviously repeat DUIs, but were these people who  
18 had their license in hand and were arrested, or is this  
19 just a list of repeat DUI offenders?

20 MR. BARRASSE: The most that we're able to show,  
21 almost all of these -- there were only two that we're able  
22 to show that had refusals, that did not have their license  
23 on them at the time. So in the year-and-a-half period  
24 we're over 120 in just a cursory review of our files.

25 REPRESENTATIVE FAIRCHILD: And 118 of those had

1 existing licenses?

2 MR. BARRASSE: Had existing licenses and were out  
3 with that license. As you can see, many of them are third  
4 and fourth time offenders.

5 REPRESENTATIVE FAIRCHILD: Just for instance, the  
6 fourth DUI, they had a license?

7 MR. BARRASSE: Had a license, and it wasn't until  
8 the last time, when Mr. Woodbridge had a refusal on the  
9 final one, he thought he would -- because the first couple  
10 were in excess of .10, he thought this time he would refuse  
11 it and that he would stand a better chance, and he's taking  
12 it to trial.

13 REPRESENTATIVE FAIRCHILD: What kind of previous  
14 suspensions did the judge issue in the Woodbridge --

15 MR. BARRASSE: That's my point to you, is it never  
16 made it to court. We never got that far in the criminal  
17 justice system.

18 REPRESENTATIVE FAIRCHILD: So he's had them bang,  
19 bang, bang, bang.

20 MR. BARRASSE: Correct. You'll find most of these  
21 that are in the last year-and-a-half period have been in  
22 that short time period. We're not talking about, in these  
23 cases where you see two and three DUIs, that they were two  
24 years ago or three years ago. This is our files of the  
25 last year-and-a-half or year and eight months.

1           REPRESENTATIVE FAIRCHILD: We are trying to do it,  
2 of course, through the Department of Transportation, but  
3 would it make any sense to give the court the same  
4 responsibility in a case like Mr. Woodbridge to say, "Wait  
5 a minute. You've had four DUIs in the last year," -- for  
6 example; I'm not sure of the time frame -- "your license is  
7 hereby suspended immediately"?

8           MR. BARRASSE: I think that that ability to do that  
9 is correct. However, I think the uniformity then would be  
10 lost, and I think the fact that you have whether it be a  
11 difference between Lackawanna County and Wayne and  
12 Philadelphia might come out, number one.

13           Second of all, there are differences in judges. We  
14 have some judges that give 30 days. We have some that give  
15 six months. I don't think that that is an adequate way of  
16 handling the problem.

17           REPRESENTATIVE FAIRCHILD: Thank you.

18           CHAIRMAN LLOYD: Other members?

19           Representative Tigue.

20           REPRESENTATIVE TIGUE: I'm sorry I missed your  
21 testimony, but looking through here, you put in here that  
22 between 1989 and 1992 in Lackawanna County there is triple  
23 the amount of arrests.

24           MR. BARRASSE: Correct.

25           REPRESENTATIVE TIGUE: That indicates to me, in



1 fact, the opposite of what you're saying; that the laws  
2 that we passed in the early '80s are not prohibiting people  
3 from driving. If we have increased the number of arrests  
4 threefold in three years, and we take away their licenses  
5 and you have repeat offenders, why, then, would 1942 solve  
6 the problem?

7 MR. BARRASSE: I think that the short range view  
8 would be that it is not working. I think that when you  
9 look at it, though, prior the arrests were not being made.  
10 Many police officers were not strictly enforcing the DUI,  
11 and there are still some officers out there who are not  
12 strongly enforcing it.

13 I think in the last five years you have seen a  
14 strength in enforcement. I think the awareness program, I  
15 think MADD, I think the Department of Transportation, I  
16 think a number of factors have variabed into this. I  
17 think it is now, because of that increased enforcement,  
18 that we are seeing the numbers that we have. I think until  
19 something is effectively done to deal with the problem --  
20 and that's what I've stated -- until those persons that  
21 have been arrested, their license suspended and some type  
22 of clinical evaluation be completed on them, we are not  
23 going to have any success, so, therefore, the second and  
24 third time offender, that they don't get their license  
25 back, as has been declared in Act 122, but, more

1 importantly, let's do it now on the first arrest so that we  
2 don't have these several hundred subsequent offenses.

3 REPRESENTATIVE TIGUE: But your numbers don't  
4 indicate that that is going to cut down the offenses. It  
5 seems that you're telling me people who've already had  
6 their licenses suspended, they're the ones you're picking  
7 up because of repeat offenses.

8 MR. BARRASSE: No. Their license is not suspended  
9 is my point to you.

10 REPRESENTATIVE TIGUE: No; that their license was  
11 suspended.

12 MR. BARRASSE: Well, several of them are not. As  
13 I'm saying to you, these are not through the criminal  
14 justice system yet; they have not been convicted. If you  
15 look at the bulk of them, the DUI homicide, Mr. Reaser has  
16 been driving for two-and-a-half years for someone that he  
17 killed in 1991 -- two years since the one that he killed in  
18 1990, I believe it is, and he has not had a suspension on  
19 his license because of the fact that he has not been  
20 sentenced; so, therefore, the DL-21 has not been sent in  
21 because technically he's not convicted until time of  
22 sentencing. Therefore, he's been driving this entire time.

23 Mr. Gomba is also awaiting trial on a DUI homicide,  
24 and, again, he has not gone through and there has not been  
25 a conviction in the matter, so, therefore, he has not been

1 suspended.

2 REPRESENTATIVE TIGUE: But couldn't, under 1942, if  
3 I appeal suspension, I could drag this on the same way  
4 because the courts are backlogged? How is that problem  
5 going to be solved?

6 MR. BARRASSE: The way I read it, there is not a  
7 correlation between the criminal case and the  
8 administrative proceeding taking the license. So,  
9 therefore, even if somebody was found not guilty of a DUI,  
10 homicide DUI, or DUI charge, it would not have an impact  
11 upon the suspension of his license. I think that that is  
12 important here when we go back to the original question of  
13 the difference between preponderance of the evidence or  
14 beyond a reasonable doubt. We are held to a much higher  
15 standard, as we should be, in criminal court. For a  
16 license, I believe it should be a difference.

17 The bill clearly, in its present form, states that  
18 there is a difference between the two, and there will be no  
19 effect on the administrative proceeding by the criminal  
20 case.

21 REPRESENTATIVE TIGUE: Thank you.

22 CHAIRMAN LLOYD: Any other questions?

23 (No response.)

24 CHAIRMAN LLOYD: If not, thank you very much.

25 MR. BARRASSE: Thank you.

1           CHAIRMAN LLOYD: The next witness is John Mancke.

2           MR. MANCKE: By way of introduction, my name is John  
3 Mancke, a partner in the law firm of Mancke and Wagner in  
4 Harrisburg. While my practice includes defending those  
5 charged with driving under the influence, I have lectured  
6 and participated in panel discussions on the subject of  
7 Traffic Law and Driving Under the Influence for such  
8 diverse groups as The Fraternal Order of Police, The  
9 Pennsylvania Bar Institute, The Pennsylvania Association of  
10 Criminal Defense Lawyers, The American Bar Institute, The  
11 National Highway Traffic and Safety Administration, The  
12 Dickinson School of Law, and currently serve as an Adjunct  
13 Professor at Widener School of Law.

14           I am personally concerned about the concept of  
15 taking a person's driving privileges regardless of whether  
16 the motorist is guilty of a crime and before the person has  
17 an opportunity to defend himself from criminal charges.

18           The proposed preadjudication suspension included in  
19 House Bill 1942 destroys the basic concepts of fundamental  
20 fairness and due process. It permits, without meaningful  
21 review, the "grabbing" of a motorist's license by an  
22 officer without even a hint of any constitutional  
23 guarantees.

24           It permits an officer to take a driver's license  
25 even though the officer's arrest was illegal or the test

1 result was improperly or illegally obtained.

2 The Amendment A2187 provides for the police officer  
3 to act for the Department when he takes the license. Then  
4 if the action of the officer is reviewed, another agent  
5 from the same Department reviews the officer's actions. If  
6 the motorist asks for a hearing, the hearing is held by a  
7 hearing officer designated by the Department's secretary.

8 This review process is as ridiculous as allowing Al  
9 Davis of the Oakland Raiders to pick his own referees, his  
10 own replay officials, and then have the final appeal heard  
11 by himself or his designee.

12 As written, House Bill 1942 and Amendment A2187  
13 presupposes the accuracy, correctness, and validity of  
14 blood alcohol tests. My experience, and the experience of  
15 the courts of this state, clearly indicates that police  
16 officers performing those tests often violate state  
17 mandated regulations on the use of chemical testing  
18 devices. These violations are not isolated incidents but  
19 are indicative of a lack of understanding of the  
20 Departments of Health and Transportation guidelines.

21 The concept of preadjudication suspension says "we  
22 don't care" if those regulations which were adopted to  
23 insure fundamental fairness are complied with by the  
24 arresting officer.

25 I want to give you some specific examples of the

1 potential abuses facing every motorist that travels on the  
2 highway. In the exhibits that I have provided, you will  
3 see log books from the West Shore Booking Center in  
4 Cumberland County, which reveal a failure to recognize that  
5 test results were obtained in direct violation of state  
6 law. A total of 39 consecutive tests were improperly  
7 obtained and became part of criminal prosecutions.

8 House Bill 1942 says "so what" and takes the  
9 person's driving privileges away from him without regard to  
10 the fact that a judge, in a criminal trial, would later  
11 declare a test illegal.

12 To further illustrate the problem, I've also  
13 included an example of an illegal test in Dauphin County  
14 and one from the State Police to show it is a problem with  
15 those departments as well.

16 I am not the only one concerned about the validity  
17 of blood alcohol test results that are improperly obtained.  
18 This year the Supreme Court of Pennsylvania reversed a DUI  
19 conviction because the State Police had been receiving  
20 shipments of simulator solutions used in breath testing  
21 that were so deficient that evidence led investigators to  
22 conclude the testing process was "unreliable." (See  
23 Commonwealth v. Brosnick, 607 A.2d 725 (Pa. 1992)).  
24 Previously, the same court had to reverse a conviction when  
25 it determined police were using an improper and unapproved

1 breath testing device. (See Commonwealth v. McGinnis,  
2 515 A.2d 847 (1986)).

3 Abuses have also been found by the Superior Court  
4 which has discovered breath testing devices in use in the  
5 western and eastern parts of this Commonwealth in total  
6 disregard to compliance with state law. (See Commonwealth  
7 v. Thill, 1964 Pitts. 1990, opinion dated August 6, 1992,  
8 and Commonwealth v. Mabrey, 594 A.2d 700 (Pa. Super.  
9 1991)).

10 These constitute only a few of the many abuses and  
11 illegalities that have occurred in obtaining test results.  
12 They are not limited to one defendant, one county, or one  
13 part of the Commonwealth.

14 The pathetic irony of this Bill and Amendment A2187  
15 is that the Department has trained the officers who are  
16 performing the illegal and improper tests. Now we have a  
17 bill that will permit these officers to continue the  
18 illegal testing without regard to the ultimate outcome of  
19 the criminal proceedings. Worse yet, the motorist will  
20 have his privileges suspended.

21 In 1989, I suggested that the Department of  
22 Transportation impose a regulation that would permit access  
23 to the log book records of breath testing devices to insure  
24 compliance with their own regulations. The Department of  
25 Transportation refused, but the Independent Regulatory

1 Review Commission strongly recommended the adoption of such  
2 a regulation in 1990 (see order attached). To date, the  
3 Department of Transportation has done nothing.

4 A very disappointing feature of this Bill is the  
5 total lack of consideration of rehabilitation for those  
6 motorists in need of help and assistance. Many counties  
7 have been using Interlock systems to prevent repeat  
8 offenders as part of their ARD programs. This program has  
9 been overwhelmingly successful on a national basis and in  
10 the counties where it is being used. This Bill will  
11 severely restrict its use in Pennsylvania.

12 The increase of the minimum loss of license in ARD  
13 cases to 90 days imposes a radical departure from current  
14 law. The Bill will make loss of jobs common occurrences  
15 for those accused of DUI regardless of whether they are  
16 guilty of the crime.

17 Any effort to add a refusal to take a chemical test  
18 as a reason for a preadjudication suspension will only  
19 magnify the lack of concern for any sense of fairness. I  
20 noted this past week that one of the County DUI  
21 coordinators proposed that police officers be given a 15-  
22 hour course and then be permitted to take blood from  
23 motorists traveling on our highways. You heard me  
24 correctly, the officer would be permitted to "grab and  
25 stab." These are not doctors and nurses, these are cops



1 playing "doctor" and "nurse."

2 Under the amendment, if a motorist were to refuse,  
3 he or she would lose his driving privileges even if he or  
4 she agreed to take a test at a hospital where a real doctor  
5 or nurse would be available.

6 While time does not permit me to point out the  
7 technical deficiencies of this Bill, I again state my very  
8 real concern for the concept of preadjudication suspensions  
9 which permit the taking of driving privileges without  
10 regard to fundamental fairness and due process.

11 Thank you for this opportunity to express my views  
12 on this very important matter.

13 (Whereupon, the attachments to Mr. Mancke's written  
14 testimony follow:)

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BREATH TEST LOG: Intoxilyzer 5000 Serial # 64-001274

CASE #	DATE	SUBJECT'S NAME	VIDEO OPER.	ARRESTING OFFICER	PD	CERTIFIED OPERATOR	PD	BAC	BAC	CAL.
	9-5-90	New Stanton Lot # 1710				DAY				
1-90-240	9/7/90		Bock	Franks	Worm	Hornberg		.172	.179	.098
1-90-241	9/7/90		Bock	Smee	NOON	Hornberg		.151	.149	.097
1-90-242	9/8/90		Reisman	Kozicki	UA	Akers	CCCB	.197	.183	.098
1-90-243	9/8/90		Reisman	Scott	Franklin	AKERS	CCCB	.202	.190	.098
1-90-244	9/8/90		Reisman	Shaffer	SS	Akers	CCCB	.210	.203	.096
1-90-245	9/9/90		Reisman	McAndrew	Hamp	Akers	CCCB	.106	.100	.095
	9/9/90			KRAMER	N.C.	MRKAY	LA.	.142	.143	.095
	9/10/90	Accuracy Test				MEISS	CCCB			
1-90-246	9/11/90		O'Leary	FERRER	MELH	WASS	CCCB	.168	.159	.093
	9/13/90			WHEELER	LE.	MRKAY	LA.	.207	.210	.095
1-90-247	9/13/90		SADLER	FANNING	W.B.	REISMAN	CCCB	.167	.176	.095
1-90-248	9-14-90		SADLER	POTTIEBER	SS.T	SPRINGER	CCCA	.191	.193	.095
1-90-249	9/14/90		Akers	Bock	Med	Hornberg	CCCB	.212	.211	.093
1-90-250	9/14/90		HOVE	Mentem	Med	Akers	CCCB	.109	.122	.093
1-90-250	9/16/90		O'Leary	Bock	Med	Akers	CCCB	.141	.141	.093
	9/16/90	New 10 Solo turn				Akers	CCCB			
1-90-251	9/18/90									
1-90-252	9/18/90		Kaufman	Bock	MICH	WASS	CCCB	.206	.204	.1007
1-90-253	9.22.90		WASS	Coleman	SS	Reisman	CCCB	.150	.152	.099
1-90-254	9.22.90		WASS	Odumwell	WF	Reisman	CCCB	.124	.126	.096
1-90-255	9.22.90		WASS	Coleman	SS	Reisman	CCCB	.117	.118	.096

BREATH TEST LOG: Intoxilyzer 5000 Serial # 64-001274

CASE #	DATE	SUBJECT'S NAME	VIDEO OPER.	ARRESTING OFFICER	PD	CERTIFIED OPERATOR	PD	BAC	BAC	CAL.
1-90-257	9/23/90		SADLER	KLUCK	SS	WASS	CCCB	.117	.123	.095
1-90-259	9/26/90		WASS	O'Donnell	WF	AKENS	CCCB	.137	.138	.097
1-90-260	9/26/90		WASS	Seikawan	Med	AKENS	CCCB	.256	.253	.097
1-90-261	9/27/90		Kaufmann	STRAYER	VENUE	DAY	CCCB	.116	.128	.096
1-90-262	9/29/90		Relit	O'Donnell	WF	AKENS	CCCB	.156	.151	.095
1-90-263	9/29/90	no charge filed	Relit	KLUCK	SS	AKENS	CCCB	.068	.065	.096
1-90-264	9/30/90		Relit	Coleman	SS	AKENS	CCCB	.125	.162	.093
1-90-265	9/30/90		Relit	O'Donnell	WF	AKENS	CCCB	.113	.114	.094
1-90-266	9/30/90		Relit	Fanning	Wm	AKENS	CCCB	.112	.117	.093
1-90-267	9/30/90		Relit	Potter	SS	AKENS	CCCB	.112	.113	.093
1-90-268	10/1/90		MS Andrew	Henry		AKENS	CCCB	Deficient	sample	*
1-90-269	10/2/90		Springer	Coleman	SS	AKENS	CCCB	.167	.166	.092
1-90-270	10/2/90		Springer	Potter	SS	AKENS	CCCB	.113	.117	.092
—	10-3-90	NEW CALIBRATION SOLUTION		107	2.7	1810	Sadler	CCCB	—	—
1-90-271	10-3-90		DAY	Fanning	Wm	Sadler	CCCB	.190	.193	.097
1-90-272	10/5/90		Goodhart	KLUCK	SS	Hornberg	CCCB	.170	.157	.097
1-90-273	10/6/90		WASS	Kellman	Med	AKENS	CCCB	.153	.152	.096
1-90-274	10/6/90		WASS	O'Donnell	WF	AKENS	CCCB	.170	.170	.097
1-90-275	10/7/90		Kesman	Branley	Venue	AKENS	CCCB	Deficient	Sample	*
1-90-276	10/7/90		Kesman	O'Donnell	WF	AKENS	CCCB	.131	.131	.097
1-90-278	10/7/90		Kesman	Hoffman	Venue	AKENS	CCCB	.178	.174	.096
—	10/7/90		—	Parsons	MECH	William	LA	.202	.215	.096

\* no refusal, MS Andrew took for blood. Device is not out of service 1-1/90 jma

## BREATH TEST LOG: Intoxilyzer 5000 Serial # 64-001274

CASE #	DATE	SUBJECT'S NAME	VIDEO OPER.	ARRESTING OFFICER	PD	CERTIFIED OPERATOR	PD	BAC	BAC	CAL.
<del>1-90-280</del>	<del>10/16/90</del>	<del>ACCURACY</del>				<del>WASS</del>	<del>CCCB</del>			
1-90-281	10/16/90		BOCK	PELLERIN	FECH	GOODHAET	CCCB	.070	.065	
1-90-282	10/16/90		BOCK	DONNELL	WF	GOODHAET	CCCB	.185	.182	.095
1-90-283	10/16/90		GOODHAET	FOX	WASS	BOCK	CCCB	.152	.121	.095
284	10/16/90		DAY	O'DONNELL	WF	SADLER	CCCB	.133	.133	.100
285	10/16/90		DAY	O'DONNELL	WSP	SADLER	CCCB	.220	.222	.095
	10/16/90		MATRS	O'DONNELL	WF	REISMAN	CCCB	.190	.187	.092
	10/12/90	FROM 10% LOT # 0810				SADLER	CCCB			
286	10/19/90		SADLER	SMEE	NC	HORNBERG	CCCB	.273	.000	.015
287	10/19/90		SADLER	DEMING	MECH	HORNBERG	CCCB	.208	.211	.095
288	10/19/90		SADLER	O'DONNELL	WF	HORNBERG	CCCB	.095	.096	.096
289	10/19/90		REISMAN	O'DONNELL	WF	WASS	CCCB	1.00	FF Sample	
290	10/24/90		BOCK	ADAMS	WA	WASS	CCCB	.142	.215	.096
	10/24/90	OUT OF SERVICE								
	10/24/90	ACCURACY & CALIBRATION TESTS	NEW SOLUTION			BOCK	CCCB			(SAMPLE DRAFT REPORT)
292	10/24/90		BOCK	SPANGLER	HAMP	WASS	CCCB			
293	10/24/90		SHREVER	O'DONNELL	WF	BOCK	CCCB	DEF. SAMPLE		.093
1-90-294	10/25/90		REISMAN	O'DONNELL	W.F.	AKERS	CCCB	.107	.026	.096
1-90-295	10/25/90		AKERS	STRAYER	LEM	AKERS	CCCB	.148	.151	.094
1-90-296	10/25/90		REISMAN	SHAFER	SS	AKERS	CCCB	.133	.132	.095
	10/26/90			CRESWELL	LA	BOCK		.05	.220	.091
1-90-297	10/27/90		WASS	O'DONNELL	WF	AKERS	CCCB	.190	.191	.095

### INTOXILYZER TEST RECORD

% ALCOHOL IN BLOOD    INTOXILYZER PRINT CODE

•		A - AIR BLANK
•		B - BREATH
		C - CALIBRATOR (Simulator)
A	0 0	OBSERVED SUBJECT FOR REQUIRED OBSERVATION PERIOD AND FOLLOWED CHECKLIST <i>AS</i> OPERATOR'S INITIAL
C	1 1	
A	0 0	
<b>B</b>	<b>1 54</b>	
A	0 0	
		INTOXILYZER LOCATION <i>PSP CARUSLE</i>
A	0 0	INTOXILYZER SERIAL NUMBER <i>27/102635</i>
B	1 57	
•		DATE <i>13 FEB 88</i>
A	0 0	

*[REDACTED]*  
SUBJECT'S NAME

*0056*                      *0150*  
TIME FIRST OBSERVED      TIME TEST STARTED


*AD. K. [Signature]*  
OPERATOR

ADDITIONAL INFORMATION AND/OR REMARKS  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FA MODEL 5000 CH 04-001.000  
04/10/92

TEST	LDAC	TIME
DIAGNOSTIC OI.		03:01
AIR BLANK	.000	03:01
SUBJECT TEST	.150	03:02
AIR BLANK	.000	03:02
SUBJECT TEST	.123	03:02
AIR BLANK	.000	03:03
CAL. CHECK	.096	03:03
AIR BLANK	.000	03:03

NO PFT DETECTED

  
 SUBJECT'S NAME  
 0200  
 TIME FIRST OBSERVED  
 Oster  
 ANALYZER LOCATION  
 Edward Wagner  
 OPERATOR  
 2nd test  
 ADDITIONAL INFORMATION AND/OR REMARKS

INDEPENDENT REGULATORY REVIEW COMMISSION  
 14th Floor, 333 Market Street  
 Harrisburg, PA 17101

Commissioners Present: Public Meeting Held December 6, 1989

Irvin G. Zimmerman, Acting Chairman  
 Robert J. Harbison, III  
 Mark D. Schwartz  
 Thomas P. Comerford, Jr.

Department of Transportation Docket No. #18-277  
 and Department of Health  
 Equipment and Training Required for Administering  
 Chemical Tests; Test Procedures and Accuracy  
 Certification for Breath Test Devices

BY ORDER OF THE COMMISSION

On November 8, 1989, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Departments of Transportation (PennDOT) and Health (Health). This proposal readopts the regulations which delineate the equipment and training required for the administration of chemical breath tests and the accuracy certification for breath test devices as contained in Title 67, Chapter 77, Subchapter B. This regulation was initially adopted under the authority of Sections 1547(c)(1) and 6103 of the Vehicle Code Act of June 17, 1976, P.L. 162, No. 81 (75 Pa. C.S. §§ 1547(c)(1) and 6103). These regulations will become effective upon publication in the Pennsylvania Bulletin, without notice of proposed rulemaking.

PennDOT and Health propose to readopt Chapter 77, Subchapter B as it currently exists prior to the December '22, 1989, sunset date. Readoption of this Chapter is necessary for the continuation of standards governing the training required for those individuals administering breath tests to determine the concentration of ethyl alcohol in a person's blood, the procedure for administering such tests and for certifying the accuracy of devices used to perform such tests. We note that Subchapter A of Chapter 77, entitled "Interim Regulations" will be allowed to expire (Pa.B. 2760 (July 1, 1989)). These regulations were enacted as emergency interim procedures for breath tests and accuracy verification required for the implementation of Act 289 of 1982 (P.L. 1268, No. 289).

A public notice of Transportation's and Health's intention to readopt these regulations was published in the July 1, 1989, Pennsylvania Bulletin (Pa.B. 2774). In response to this notice, comments were received from John B. Mancke, a Harrisburg attorney.

Mr. Mancke recommended that in cases where a test reveals that a person's blood alcohol level is below 0.15%, the officer administering the test should be required to advise motorists of their right to have a second series of tests within one-half hour after the original test was performed and that this test be performed by the officer instead of requiring the person to seek private testing as required by 75 C.S. § 1547(h). Mr. Mancke suggested that this second series of tests will give some indication of whether a person's blood alcohol level is rising (or falling) and will provide a more accurate estimate of the person's blood alcohol level at the time the driving occurred.

Since PennDOT's regulations only define the appropriate procedure for performing a breath test and do not delineate when tests should be administered, and since the statute (75 Pa. C.S. § 1547) clearly delineates when tests are to be performed and provides for subsequent tests, we feel that any changes pertaining to additional tests should be implemented through a legislative amendment to the statute, not by a change in the regulations.

Mr. Mancke has also recommended that the regulations be amended to provide that all log books that contain the test records for all breath equipment be made available "for public inspection during the normal course of business operations [at] the station in which the test is being performed." He further suggested that log books contain all breath tests and the results and the reasons for the equipment being taken out of service.

The current regulations only require that a "certificate of accuracy" be completed when accuracy inspection and calibration inspections are successfully completed. Accuracy inspections are required within thirty days of when equipment is used and whenever malfunctioning equipment is returned to service. Calibration tests are required to be performed annually. The regulations make no provision for recording breath test results or the results of the simulator test performed after each "breath test" (i.e. the two consecutive tests). Similarly, there are no requirements as to how these certificates are maintained or made available to persons who have been tested or to their attorneys.

As part of our follow-up investigation, Mr. Mancke explained that the availability of the records for the test equipment varies considerably depending on the position of the local district attorney. Usually, these records are not available until the parties enter into formal discovery. Consequently, persons charged with driving under the influence of alcohol may have to incur unnecessary legal expenses to determine if the breath test equipment was operating properly or if they had been tested properly. Moreover, some cases would not have to proceed beyond the preliminary hearing stage if the information concerning the accuracy of the breath test equipment or testing procedures made it clear that they did not comply with PennDOT regulations.

Therefore, we feel that in the interest of potentially reducing some of the legal costs incurred by affected persons and by our judicial system, these regulations should be amended to: require that a log book be maintained for each testing device; that the results of all accuracy inspection tests, simulator tests and breath tests be maintained in the log book; and that a copy of the log book be available to persons who have been tested, or their attorneys, during normal business hours. PennDOT should also address the necessity of developing procedures to preserve the confidentiality of individual breath test results.



PennDOT responded to Mr. Mancke's July 11, 1989, comments by letter dated August 30, 1989, which states, inter alia, that it was not their intention to make any substantive changes to the regulations in question. PennDOT further stated that Mr. Mancke's comments would be maintained on file and given consideration in the future should the Departments decide to pursue substantive changes to these regulations. We find that PennDOT's response to Mr. Mancke's comments to be contradictory to the fundamental purpose of the sunset process and to its invitation "to submit written comments, suggestions or objections to the Departments' intentions to readopt these regulations in their present form." (Pa.B. 2775). Since the Departments only received one set of comments on their proposed readoption of these regulations, we are disappointed that PennDOT did not make a more concerted effort to address these comments. We feel that a few minor changes to these regulations are warranted to make these regulations less procedurally burdensome and we urge PennDOT to promptly initiate these changes.

Since it is clearly in the public interest that these regulations remain in effect beyond the sunset deadline of December 22, 1989, and since PennDOT would require some time to conduct the research necessary to formulate a proposed rulemaking to amend these regulations, we feel that these regulations should be readopted in their existing form. However, we strongly recommend that PennDOT initiate a proposed rulemaking to implement the amendments to Chapter 67 discussed above.

**THEREFORE IT IS ORDERED THAT:**

- 1) IRRC Regulation #18-277, "Equipment and Training Required for Administering Chemical Tests; Test Procedures and Accuracy Certification for Breath Test Devices", submitted by the Departments of Health and Transportation, be approved as submitted to the Commission on November 8, 1989; and
- 2) A copy of this Order be transmitted to the Legislative Reference Bureau.

1           CHAIRMAN LLOYD: Why do you assume that just because  
2 there is an administrative hearing, that there is no  
3 concept of due process applicable; that, therefore, if you  
4 want to challenge the way in which the test was conducted,  
5 or if you want to challenge the solution that was used, or  
6 you want to challenge the credibility of the witness, that  
7 those are somehow options denied you?

8           MR. MANCKE: First of all, the amendments completely  
9 scare me because they suggest that the same people who have  
10 been doing, as I understand it, have been doing the reviews  
11 of speeding point cases will be the people who are going to  
12 hear these hearings.

13           Cumberland County, two judges have said those  
14 hearings are absolute violation of any sense of fairness;  
15 and, in fact, the other day, the last one I was in, I  
16 walked in and the person came over to me and said, "Why are  
17 you here, you know what I'm going to give him," even before  
18 we presented one iota of testimony. So past practice  
19 scares me in that regard.

20           CHAIRMAN LLOYD: I have had some experience in  
21 administrative agency law, and it seems to me if someone  
22 makes that kind of a statement, you've got a pretty  
23 compelling case on appeal. Have you attempted to appeal  
24 any of those to Commonwealth Court?

25           MR. MANCKE: We've appealed them to county courts as

1 they go under the present system in speeding cases, and  
2 they have been reversed, and then they are sent back down  
3 to the same hearing examiner who had held the first  
4 hearing. I am concerned about that.

5 CHAIRMAN LLOYD: I understand that. I just want to  
6 make clear -- most of the members of the Committee are not  
7 attorneys, and I don't want people to be left with the  
8 notion that if you establish an administrative process,  
9 that that means that there is no way to hold the hearing  
10 officer accountable for basic due process rights. I mean  
11 you may or may not be satisfied that that is being done,  
12 but the amendment indicates that appeals -- number one, you  
13 have to follow the Administrative Code in the Pennsylvania  
14 Consolidated Statutes, and, number two, that you have the  
15 right of appeal to Commonwealth Court.

16 So the issue of whether they were taking the test  
17 when it was an illegal stop and the issue of whether or not  
18 the person who gave the test followed the proper procedures  
19 are all issues which you would have an opportunity to  
20 litigate.

21 MR. MANCKE: Eventually, correct. And as far as the  
22 Bill is concerned, I will have lost my license perhaps up  
23 to 20 days during that process. That concerns me.

24 As far as the Amendment is concerned, I believe it  
25 was the Department of Transportation proposed, they take

1 away the Administrative Code review requirements, and I'm  
2 concerned about that.

3 I'm also concerned when it comes to the due process  
4 part, how is the evidence going to be presented? In one of  
5 the proposals by the Department it suggests I have to have  
6 the officer there. Why would I want to bring in somebody  
7 that I don't believe would be truthful, if, in fact, that's  
8 the case? Why would I want to bring that person in to  
9 testify on my behalf? I don't think it makes sense.

10 CHAIRMAN LLOYD: Other questions?

11 Representative Snyder.

12 REPRESENTATIVE SNYDER: Turning to your exhibits,  
13 I'm looking at one here that is highlighted in yellow and  
14 pink.

15 MR. MANCKE: Yes.

16 REPRESENTATIVE SNYDER: Explain to me what the  
17 highlights mean and what this exhibit is showing us?

18 MR. MANCKE: You will notice on 9/13/90 there was a  
19 test done which had a blood alcohol level of a .287 and  
20 a .260. The Department regulations require that unit to be  
21 taken immediately out of service, to be recalibrated and  
22 recertified.

23 REPRESENTATIVE SNYDER: Because it's so high it must  
24 be wrong?

25 MR. MANCKE: Because a deviation of .020 requires

1 that under the regulations.

2 Then you will notice that every officer that ran a  
3 test afterwards never went back to check whether the test  
4 before it was legal. That makes every one of those  
5 following tests illegal.

6 All of these prosecutions had to be discharged all  
7 the way over until you got to 10/04/90, in which those  
8 officers realized something is wrong with that unit because  
9 they got a .242 and a .215, which, again, showed a  
10 deviation of .020. So all of those prosecutions went by  
11 the wayside because people didn't even understand what they  
12 were doing.

13 REPRESENTATIVE SNYDER: Let's go on now I guess to  
14 the second exhibit. What is that showing?

15 MR. MANCKE: That's the State Police exhibit.  
16 You'll notice that the calibration is a .11, the C.11.  
17 That means that when they put a simulator solution in that  
18 unit, it read a .11. That is improper and in violation of  
19 the regulations, which indicate that if it reads a .11, the  
20 unit has to be taken out of service.

21 Ironically, this State Trooper, as the maintenance  
22 person with the Intoxilyzer, has more than the additional  
23 expertise available to someone who is just a breath test  
24 operator.

25 On the next test, again, you'll see a deviation of

1 the .020 or greater apart, where you have a .158 and a  
2 .123. Again, this one resulted in several others  
3 afterwards being improper as well when it was not  
4 discovered.

5 REPRESENTATIVE SNYDER: If I get the import of your  
6 testimony properly, I think your argument is that because  
7 of the vagaries of the testing process, that there is a  
8 very distinct possibility that people whose actual blood  
9 alcohol level is much lower than the .10 are going to be  
10 losing their license without any due process.

11 Is that a fair statement?

12 MR. MANCKE: I'm very concerned that what you're  
13 doing is making, number one, a civil burden of proof.  
14 Number two, I think you take away much of the evidentiary  
15 problems by simply saying they don't count. And number  
16 three, in answer to your direct question, I feel that due  
17 process is necessary; I think a person's driver's license  
18 is important in this day and age. I do note that the  
19 Supreme Court of this state has now suggested that a  
20 person's medical license is important enough that it should  
21 have all the due process requirements adhered to.

22 REPRESENTATIVE SNYDER: Let me pose this question  
23 then. If your concerns regarding the accuracy of the  
24 testing process and procedures were allayed, in a perfect  
25 world, would you still have a problem with this Bill? In

1 other words, if you were assured that every blood alcohol  
2 test that was given was accurate, would you, nonetheless,  
3 still have a problem with this concept of administrative  
4 suspension?

5 MR. MANCKE: Only from this standpoint, and this,  
6 perhaps, goes on the other side. And I know there's a Bill  
7 pending before the Legislature to change the time  
8 requirements, in other words, a test result of .10 within  
9 three hours.

10 I think when you look at this objectively you have  
11 to make it consistent with the DUI law. So if that's going  
12 to be amended to make .10 within three hours of -- I think  
13 it should be the arrest rather than they have now of  
14 driving, because I think that allows someone to be  
15 convicted even though they never drank and drove. I think  
16 that has to be corrected. But if you're going to put a  
17 time frame on it on the criminal side, you should have it  
18 on this side as well, because you do leave open all the  
19 issues of extrapolation, which are currently causing the  
20 criminal side a lot of problems at the present time.

21 REPRESENTATIVE SNYDER: Let me approach this another  
22 way. You mentioned the Interlock system that's in use in  
23 other counties.

24 MR. MANCKE: Yes.

25 REPRESENTATIVE SNYDER: That's a system whereby an

1 apparatus is put on the vehicle. If I've been drinking, I  
2 get in my vehicle, and that apparatus is there, I can't  
3 drive the vehicle.

4 Do you think that's a good system?

5 MR. MANCKE: Yes.

6 REPRESENTATIVE SNYDER: Let me ask you this then:  
7 instead of having the administrative suspension upon a  
8 blood alcohol of .10, why don't we just require that those  
9 individuals have that Interlock system put on their cars so  
10 that there's no question then? I mean they'll still be  
11 able to drive if they've not been drinking, but they won't  
12 be if they have been.

13 Would that be acceptable to you?

14 MR. MANCKE: Would that be acceptable to me? Yes,  
15 it would.

16 REPRESENTATIVE SNYDER: The point I'm trying to make  
17 here is your concern is regarding the accuracy of the  
18 testing procedures --

19 MR. MANCKE: That's correct.

20 REPRESENTATIVE SNYDER: -- more than the  
21 philosophical problems that you perhaps have with due  
22 process.

23 MR. MANCKE: I am concerned that ultimately the  
24 criminal side would adjudicate whether that suspension were  
25 proper or not. But to allay the fears that these people



1 are going to get out and are going to be driving and  
2 driving and driving, to allay those fears, I don't have a  
3 problem with the Guardian Interlock device. I think it's a  
4 good program. I think it has to be funded, however, so  
5 that all people would have equal access to it.

6 REPRESENTATIVE SNYDER: And you think doing that  
7 administratively, as is being proposed with the blood  
8 alcohol administrative suspension in this Bill, you have no  
9 problem with that as far as any due process?

10 MR. MANCKE: I would not, as a compromise to facing  
11 the problem -- and I'm on record as far as the Guardian  
12 Interlock device. I wrote I think the first article in  
13 Pennsylvania in The Pennsylvania Law Journal about the  
14 program. I think if you are concerned about helping those  
15 people who show a high blood alcohol level, I think it can  
16 be addressed through that type of mechanism as opposed to  
17 simply saying, "You have no recourse; we have your license.  
18 Oh, yes, you have this right to appeal, but it's through  
19 the Department and you have a very limited right to  
20 appeal."

21 REPRESENTATIVE SNYDER: So you have no problem with  
22 that even prior to conviction?

23 MR. MANCKE: I don't have a problem with that prior  
24 to conviction; that's correct.

25 REPRESENTATIVE SNYDER: Thank you.

1           CHAIRMAN LLOYD: Representative Lescovitz.

2           REPRESENTATIVE LESCOVITZ: Just one question dealing  
3 with the first-time arrest. Is there any medium where,  
4 possibly -- we had someone testify earlier where someone  
5 has gone two-and-a-half years through an appeal process.  
6 Would this possibly be a situation where we could say the  
7 second or the third time, that we could possibly suspend  
8 this individual's driver's license if they were caught two  
9 or three times in a row?

10           I mean I understand the due -- what I'm worried  
11 about is you have someone who is under appeal for six  
12 months or a year, they get caught second, third, fourth  
13 time in that period, and there's no way in the world right  
14 now we can take that person's license away  
15 administratively.

16           Is there a point in between there where we could --

17           MR. MANCKE: Again, I don't call them second, third  
18 offender. They've been charged, but they haven't been  
19 convicted. So in answer, again, to be consistent, I would  
20 think the Interlock device should be available to those  
21 people.

22           As far as these extreme examples, I sit here and I  
23 listen to a district attorney tell me it's two-and-a-half  
24 years until he gets a conviction in a matter heard by the  
25 court. I don't understand that. Why did it take them so

1 long? They have a 365-day rule that says you have to be  
2 tried within 365 days. Why wasn't he tried, and why wasn't  
3 the -- remember, when you talk about appeals -- and the  
4 Superior Court has just ruled this way; that at the time  
5 the local court makes its determination on post-trial  
6 motions, that license is taken and there is no right to  
7 hold onto that license. I don't know whether that's fair  
8 or not, but they just ruled that to be the case. So I  
9 don't think extreme examples of two-and-a-half years -- my  
10 response is: why did it take them so long?

11 REPRESENTATIVE LESCOVITZ: I'm not saying that this  
12 is an extreme example. There may be cases where there may  
13 be a second time in the second month, a third time in the  
14 third month. That does happen.

15 I'm saying you would not be in favor of any of those  
16 -- you want the due process to move along.

17 MR. MANCKE: Yes.

18 REPRESENTATIVE LESCOVITZ: If it happens two or  
19 three times in a month, or two months, or a year --

20 MR. MANCKE: Right, because you would have taken  
21 39 -- on this one in Cumberland County, which prides itself  
22 in its accuracy of everything dealing with DUI, you would  
23 have had 39 people's licenses, 39 of them.

24 Remember, I asked the Department of Transportation  
25 in 1989 to make those log books available. They didn't

1 want to do it. The Independent Regulatory Commission said  
2 it's a great idea; then we know whether this problem exists  
3 right away. But they did nothing with it.

4 CHAIRMAN LLOYD: I have a question. Why, in that  
5 Cumberland County example, if there were an administrative  
6 process, why would you not be able to challenge the taking  
7 of a license in that administrative proceeding on the same  
8 basis of the flaw in the testing that you would be able to  
9 challenge in a criminal case?

10 MR. MANCKE: I'm worried that they're going to come  
11 down -- and I saw Connecticut came down with an opinion  
12 that suggested, in these preadjudication suspension  
13 proceedings, that because there is a difference between a  
14 civil penalty and a criminal penalty, that many of the  
15 issues concerning breath testing devices aren't relevant.  
16 I'm concerned that that would happen in this case. That's  
17 what I'm concerned about.

18 There is no reference -- if you notice, there is  
19 absolutely no reference to compliance with the regulations  
20 of the Department of Transportation and the Department of  
21 Health in this Bill. That certainly, I think, is  
22 essential.

23 CHAIRMAN LLOYD: Any other questions?

24 (No response.)

25 CHAIRMAN LLOYD: If not, thank you very much.

1 MR. MANCKE: Thank you.

2 CHAIRMAN LLOYD: The next witness is Leo Doyle from  
3 the National Association of Independent Insurers.

4 Mr. Doyle.

5 MR. DOYLE: Good morning.

6 Mr. Chairman and members of the Committee, my name  
7 is Leo W. Doyle, and I represent the National Association  
8 of Independent Insurers, a property casualty trade  
9 association comprised of over 560 insurance companies, 79  
10 of which are licensed to write automobile coverage in the  
11 Commonwealth of Pennsylvania.

12 I am accompanied today by our local counsel,  
13 Mr. Ralph Tive, and his associate, Pam Witmer.

14 Our support of House Bill 1942 should come as no  
15 surprise, considering the consumer dissatisfaction over the  
16 cost of auto insurance and our own publicly-pronounced  
17 commitment to cost containment.

18 In this regard, our less than subtle exposure to  
19 losses resulting from alcohol-related vehicular accidents,  
20 while obvious, should require some embellishment.

21 During my own personal involvement in the settlement  
22 of insurance claims, I have represented the victims of auto  
23 accidents, and I have defended negligent operators. I also  
24 have represented a beleaguered industry seeking measures by  
25 which we can fairly and reasonably respond to our

1 contractual obligations while reducing the attendant cost  
2 of that process to our equally beleaguered policyholders.

3 Our attempts to moderate claims exposure has been  
4 significantly thwarted in part by the thoughtless and  
5 reckless drivers operating under the influence of drugs and  
6 alcohol.

7 But cost alone is not the overriding objective to  
8 us, nor should it be to this deliberative body. For over  
9 four decades the deaths and injuries to which our family,  
10 friends, and consumers have been subjected has been a  
11 national tragedy.

12 I submit we have little right to accept this as a  
13 normal sequence to high speed highways and high powered  
14 machinery. We have even less right to accept it because of  
15 thoughtlessness and irresponsibility of motor vehicle  
16 operators.

17 With it all, the righteousness of the purposes and  
18 intent of House Bill 1942 seems unequivocally clear. In  
19 this spirit we will limit our brief comments to what we  
20 perceive to be the legislative justification for its  
21 enactment.

22 First, let us emphatically state that we have  
23 confidence that, if enacted, this proposal will have a  
24 dramatic, measurable impact on the number and effect of  
25 alcohol-related motor vehicle accidents. According to

1 research conducted by the Insurance Institute of Highway  
2 Safety over two years ago, in those states in which  
3 administrative license revocation laws have been enacted,  
4 there was a nine percent reduction in fatal crashes during  
5 the late night and early morning hours when alcohol  
6 involvement in such crashes is especially high.

7 More close to home, in the neighboring state of  
8 Maryland, where the ALR law has been in effect for the last  
9 two years, over 37,000 operators have had their licenses  
10 suspended under the provisions of that law. This has  
11 prompted a spokesman from the Governor's Office to state,  
12 "It is saving lives. It is changing people's behavior on  
13 the road." This seems to follow a national trend.

14 Of more interest to this body would be a fact sheet  
15 distributed by the National Highway Safety Administration,  
16 a copy of which has been provided to this Committee.  
17 According to their projections, an ALR law in Pennsylvania  
18 could result in a yearly savings of between 44 and 66  
19 citizens' lives.

20 The Administration has estimated a direct cost  
21 savings from various sources to range from \$5 million to  
22 \$7.8 million, and a societal cost in excess of \$29 million.  
23 Additionally, enactment of this law also could make the  
24 state eligible for federal incentive grant funds.

25 Although these are estimates and could be challenged

1 on the basis of speculation, their authoritative source  
2 gives us confidence in mentioning them as a response to one  
3 of the traditional objections which seems to be raised  
4 against ALR proposals by legislators -- that being the  
5 administrative cost which will be confronted by enforcement  
6 officials, judicial processing and Department of  
7 Transportation implementation.

8         Prior to our published support for House Bill 1942,  
9 our local representatives have met with local officials on  
10 these concerns, and we are hopeful that dialogue has  
11 resulted in accommodating amendments which will be offered,  
12 both to allay those fears and produce an even more smoothly  
13 structured law. Certainly, we are hopeful that those  
14 changes, along with the National Highway Safety  
15 Administration projections, will provide sufficient offset  
16 so that the humanitarian purposes of the measure will carry  
17 it to an early enactment.

18         One other obstacle that is often raised questions  
19 whether the administrative revocation, separate from a  
20 judicial hearing, creates a constitutionally recognized  
21 deprivation of due process. We can assure you that the  
22 issue has been tested in the courts with the conclusion  
23 that there is an important interest served transcending any  
24 property interest relating to the possession of a driver's  
25 license.



1           Several states, including Idaho as early as 1985,  
2 have embraced the doctrine articulated by the U.S. Supreme  
3 Court in Mackey v. Montrym (443 US1-1979) and subsequent  
4 cases to hold that administrative license revocation is a  
5 rational exercise of the state in furtherance of a sound  
6 legislative purpose. We are aware of no case in which a  
7 contrary position has been taken. All the decisions, in  
8 fact, hold there are ample due process protections in the  
9 respective laws to sustain their validity.

10           Summing it up, we believe the enactment of House  
11 Bill 1942 produces many pluses, with no negatives.  
12 Economically, the law makes good sense, but the protection  
13 of citizens' lives and limbs is a far greater incentive.  
14 It would be difficult to argue against a measure that could  
15 spare one person injury or death, one family the attendant  
16 heartache of the loss of a loved one, or even the ultimate  
17 guilt of one irresponsible drinker, if the threat of  
18 license revocation could keep him away from the wheel of  
19 his car.

20           Naturally, good highway safety laws and practices  
21 directly benefit the automobile insurance industry. Claims  
22 are reduced and the premium cost to our consumers are  
23 moderated. But my association would be here to urge  
24 enactment of House Bill 1942 if not a penny could be saved.  
25 Too many of us as claims adjusters, actuaries, and simply

1 private citizens have observed what highway carnage does to  
2 our friends and ourselves. Every process which we can  
3 devise to reverse the accident trends should be developed  
4 and employed. On this principle alone we urge passage of  
5 House Bill 1942.

6 We express our appreciation for the opportunity to  
7 comment on this very important subject and extend to you  
8 and your associates the offer of our assistance in your  
9 future deliberations.

10 (Whereupon, the attachments to Mr. Doyle's written  
11 testimony follow:)

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# PENNSYLVANIA <sup>43A</sup>

## Administrative License Revocation Fact Sheet

In 1990 there were an estimated 735 alcohol-involved fatalities in Pennsylvania, according to Fatal Accident Reporting System data.

A Pennsylvania Administrative License Revocation (ALR) Law would produce the following benefits each year, based on estimates from current research.

### Yearly Savings

44 to 66	Lives
\$ 5.2 to 7.8 Million	Direct Costs (medical, rehabilitation, etc.)
\$29.9 to 44.9 Million	Societal Costs (lost productivity plus direct costs)

A Pennsylvania ALR law could make the State eligible for Federal incentive grant funds.

**\$2.34 Million annual Section 408 Grant, if Pennsylvania meets the basic and all supplemental grant criteria. The funds are available annually for five years.**

In addition, a Pennsylvania ALR law would help Pennsylvania qualify for Section 410 grant funds. The 1991 Highway Bill authorized \$25 million annually for all States from 1993 through 1997 for the Section 410 program.

For more information on Administrative License Revocation, contact:

Frank Altobelli, Regional Administrator  
National Highway Traffic Safety Administration  
Phone: 301-768-7111 Fax: 301-768-7118

- The fatality reduction estimates are based upon a National Highway Traffic Safety Administration-sponsored study of Administrative License Revocation (ALR) law effects on single vehicle nighttime fatal crashes (6% reduction) and an Insurance Institute for Highway Safety study of ALR effects on fatal crashes during periods of high alcohol involvement (9% reduction). If you assume that ALR has a similar effect on all alcohol-involved crashes, the yearly savings estimates in the Fact Sheet are obtained by applying these percentage reductions to the 1990 Fatal Accident Reporting System (FARS) estimates of alcohol-related fatalities in Pennsylvania.
- Cost estimates are based on figures developed for a 1991 Federal Highway Administration study, "The Costs of Highway Crashes."
- The direct cost estimate is composed of medical, property damage, legal and court, emergency services, insurance administration, workplace, and travel delay costs. Direct costs were \$118,400 per fatality in 1990 dollars. Lost productivity was estimated at \$561,800 per fatality in 1990. The total societal cost per fatality in 1990, both direct costs and lost productivity, was \$680,200.
- Although ALR reduces alcohol-involved injury and property damage crashes as well as fatalities, there are no studies that provide conclusive data on these reductions. Consequently, the savings estimates do not include any impact on property damage and injury crashes.



**REPORT OF THE CLERK OF COURTS  
SHOWING THE CONVICTION OR ACQUITTAL  
OF ANY VIOLATION OF THE VEHICLE CODE**

 AMENDED REPORT

**DEFENDANT INFORMATION (TYPE OR PRINT CLEARLY)**

<b>NAME</b>			<b>SEX</b>	<b>DATE OF BIRTH</b>		
<b>FIRST</b>	<b>MIDDLE</b>	<b>LAST</b>		<b>MONTH</b>	<b>DAY</b>	<b>YEAR</b>
<b>ADDRESS</b>						
<b>CITY</b>		<b>STATE</b>	<b>ZIP CODE</b>	<b>SOCIAL SECURITY NUMBER</b>		
<b>DRIVER NUMBER</b>		<b>STATE</b>	<b>LICENSE PLATE NUMBER</b>		<b>YEAR</b>	<b>STATE</b>

**VIOLATION INFORMATION**

<b>THE VEHICLE CODE</b>	Act of June 17, 1978 P.L. 182 as amended.	<b>SECTION</b>	<b>SUBSECTION</b>	<b>CLAUSE</b>		
<input type="checkbox"/> Check this block if the offense occurred while driving a Commercial Vehicle.		<input type="checkbox"/> Check this block if the offense occurred while transporting a Hazardous Material required to be Placarded				
<b>DATE OF VIOLATION</b>			<b>DATE OF CONVICTION</b>		<b>DATE LICENSE SURRENDERED TO COURT OR DISTRICT ATTORNEY</b>	
<b>MONTH</b>	<b>DAY</b>	<b>YEAR</b>	<b>MONTH</b>	<b>DAY</b>	<b>YEAR</b>	<b>MONTH</b>
						<b>DAY</b>
(Please use a separate form for each charge) <b>CHARGE:</b>						<b>YEAR</b>
						<b>DATE OF ACQUITTAL/MOLLE PROSEQUI</b>
						<b>MONTH</b>
						<b>DAY</b>
						<b>YEAR</b>

**VIOLATION COMMITTED (check one):**

Summary  Misdemeanor  Felony

Note: IF SUMMARY, ENTER ORIGINAL CITATION NUMBER IF AVAILABLE:

# \_\_\_\_\_

**SENTENCE:** If speed violation - enter traveling speed and legal speed.

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING IS A CERTIFIED RECORD OF A  
CONVICTION OR ACQUITTAL/MOLLE PROSEQUI

SEAL

\_\_\_\_\_  
Clerk of Courts

\_\_\_\_\_  
Date Certified

**COURT INFORMATION**

COURT OF

COUNTY OF

NUMBER

YEAR

OTN

Act 122 Treatment Required  
(check one)

YES  NO

Affix Act 122 Stamp Here

**NOTE:** Not for use with ARD DISP. (use DL-21A) or for a conviction of any act  
in which a Judge determines that a motor vehicle was essentially involved  
(use DL-21B).

**IMPORTANT:** Under Section 6323 of the Vehicle Code, it is mandatory that  
the Clerk of Courts report all violations of the Vehicle Code to  
the Bureau of Driver Licensing.

**SEND THIS** Bureau of Driver Licensing, P.O. Box 2253,  
**FORM TO:** Harrisburg, Pennsylvania 17105-2253

ADDITIONAL SUPPLIES OF THIS FORM  
MAY BE SECURED BY COMPLETING FORM OS-511A

4351-7971 - DLS 10/09/92 11:10:46 - 10/09/92 11:10:46 8D32NUT16D4N

RESPONSE FROM PENNSYLVANIA BUREAU OF MOTOR VEHICLES

OLN: 21610139. VALIDATED: 060192. EXPIRES: 0696.  
NAM: REASER, TODD DOB: 061867. SEX: M.  
116 SPRING GARDEN ST  
MOSCOW PA. 16444

RESTRICTIONS:  
SUSPENSION: NO  
OPERATOR CLASS: C = SINGLE VEH <= 26,000  
OPERATOR TYPE: REGULAR OPERATOR  
NUMBER OF DUPLICATES: 00

INFORMATION OBTAINED FROM PENNDOT FILES AND SHOULD BE VERIFIED

ATTACHMENT B

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\_DA351-7967 - OLS 10/09/92 11:09:39 - 10/09/92 11:08:34 8D32NUT1683B

RESPONSE FROM PENNSYLVANIA BUREAU OF MOTOR VEHICLES

OLN: 18472792. VALIDATED: 062189. EXPIRES: 0893.  
NAM: GOMBA, JOHN JAMES DOB: 080943. SEX: M.  
R.D.1 BOX 1891  
MOSCOW PA. 19444

RESTRICTIONS: L  
SUSPENSION: NC  
OPERATOR CLASS: C = SINGLE VEH <= 26,000  
OPERATOR TYPE: REGULAR OPERATOR  
NUMBER OF DUPLICATES: 00

INFORMATION OBTAINED FROM PENNDOT FILES AND SHOULD BE VERIFIED

ATTACHMENT C

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## REPEAT DUI OFFENDERS

DEFENDANTS	# OFFENSE	BLOOD ALCOHOL
Robert Woodbridge	4 DUI	Refusal
Kenneth Pugh	2 DUI	.157
Costic Laniewski	2 DUI	Refusal
Thomas Perfilio	2 DUI	Refusal
Joel Gurley	2 DUI	Refusal
Paul Kinney	2 DUI	.18 & .15
John Crawford	3 DUI	.16 & .20
Bernard Kasulis	2 DUI	.291
Peter Terzoni	2 DUI	Refusal
Marle Mc Dermott	2 DUI	.222
Jeffrey Manning	2 DUI	.198 & .163
Daniel O'Brien	2 DUI	.156
Gary Kane	2 DUI	Refusal & .21
Gary Lee	2 DUI	Refusals
Deborah Rabiega	3 DUI	.249 & .27
David Mraz	2 DUI	Refusal
Mark Sargent	2 DUI	Refusal
Marle Sermiale	2 DUI	.27
John Leonard	2 DUI	Refusal
Brian Durkin	2 DUI	.172
Fred Cramer	2 DUI	.223
David Godlewski	2 DUI	.328



Migrel Ortega	2 DUI	.126 & Refusal
John Harrity	3 DUI	Refusals
Nicholas Nottola	2 DUI	.20 & .134
Thomas J. Davis	3 DUI	.219 & .195 & .175
George Troutman	2 DUI	Refusal
Thomas Murphy	3 DUI	.166 & .27 & .201
Jeff Bielinski	2 DUI	.123
Patrick O'Brien	2 DUI	Refusal
Victor Olmedo	3 DUI	Refusals
Timothy Sheridan	2 DUI	Refusal
James Kell	2 DUI	.186 & Refusal
Richael Hermanovich	2 DUI	.180 & .126
chael Pronkco	2 DUI	.307
Raymond Ayalo	2 DUI	Refusal
Michael Hansell	2 DUI	.185 & Refusal
George DeHaven	2 DUI	.356
Witkor Minajew	2 DUI	.249
Jerry Goyne	3 DUI	.149 & .16 & .133
Cheryl Mynyle	2 DUI	.179
David Krokoc	2 DUI	.156
John Fitch	2 DUI	.216
Neil Sofrandco	2 DUI	.278
Frank Bomba	2 DUI	Refusal
George Daleunchak	2 DUI	.190 & Refusal
Kevin Donovan	2 DUI	.16
Richard Fanucci	2 DUI	.16

James Buck	2 DUI	REFUSAL
David Wilga	2 DUI	.20 & .183
Jeff Marcks	2 DUI	REFUSAL
Bruce Orloski	2 DUI	.161
Joseph Calabro	2 DUI	.133
John Memo	2 DUI	.286
Chris Stachnik	2 DUI	REFUSAL
Joseph Giannetti	2 DUI	.124 & .131
Thomas Luby	2 DUI	.107 & .20
Roy Ridgeway	2 DUI	.17 & .14
Joesph Wagner	2 DUI	.227 & .279
Leo Hughes	2 DUI	.307
ry Black	2 DUI	.203
Joseph Shorter	2 DUI	.363
Lisa Rubin	2 DUI	.20
Mary Griffin	2 DUI	.219 & .28
Michael Lynch	2 DUI	REFUSAL
David Shafer	2 DUI	.17
James Kapp	3 DUI	.188
Joanne Brajukea	2 DUI	REFUSAL
Esther Shafer	2 DUI	.191
Paul Sluck	2 DUI	.207
David Chichura	2 DUI	.209 & .263
James Kresly	2 DUI	REFUSAL
Armand Galea	2 DUI	.155 & .22
.ephen Seamon	2 DUI	REFUSAL

Vernon Decker	2 DUI	.154
Joseph Zrowlea	2 DUI	.251 & .21
John White	2 DUI	REFUSAL
Joseph Acosta	2 DUI	.30
Thomas Adamski	2 DUI	.222 & .226
Bernard Anderjack	2 DUI	REFUSAL
Candy Anderson	2 DUI	.23
Nick Anzelmi	2 DUI	.13
Ellis Heckler	2 DUI	REFUSAL
Gerard Moran	2 DUI	.19 & .331
Fred Dombkowski	3 DUI	.109 & .18
William Black	2 DUI	.164
trick O'Brein	2 DUI	REFUSAL
Carole Bentler	2 DUI	.171
Steven Anderson	2 DUI	.21
James Becker	2 DUI	.293
Daniel Bidwell	2 DUI	.189
John Blanchard	2 DUI	.14
Robert Christie	3 DUI	REFUSAL
Chris Cooper	3 DUI	REFUSAL
John Finch	2 DUI	REFUSAL
Carl Swingle Jr.	2 DUI	.227
Joseph O'Shea	2 DUI	.199
John Bilock	2 DUI	.28
Scott Allen	2 DUI	REFUSAL & .23
ary Ellen Mulally	4 DUI	.26 & .19 & .29 & .14

Edward Prendergast	2	.207; .20
Donald Phillips	2	.11
Samuel Pauciello	2	Refusal; .21
Michael Murphy	3	Ref.; .21; Ref.
Lawrence Gardner	2	.17
Dale Zawicki	2	.32
Joseph McCarthy	2	.18
Eugene Beckage	2	.14; .13
Gary Hunsinger	3or4	.18
Leroy Metzger	2	.24; .21
Edward Miller	2	.19; .19
cco Minicozzi	3or4	Refusals
Ralph Ricino	4	Ref.; .21
John Rowlands	2	.17; .11
George Sheerer	3	Refusals
Todd Swoyer	4	.23; .21; Ref.
Barbara White	2	.24; .21
Robert Ward	3	.16; .161
Willie Lewis	3or4	Ref; .42
Michael Ligorio	2	.14
Richard Volovitch	2	.142
Daniel Cleveland	4	.20
John Mooney	2	Refusal

<b>Eugene Gallagher</b>	<b>2 DUI</b>	<b>.79 &amp; Refusal</b>
<b>Ellis Heckler</b>	<b>3 DUI</b>	<b>Refusal &amp; .224</b>
<b>Michael Herbert</b>	<b>2 DUI</b>	<b>.170</b>
<b>James Rooney</b>	<b>2 DUI</b>	<b>Refusal</b>
<b>Joseph Worobey</b>	<b>2 DUI</b>	<b>.221</b>

Fred Clark	2 DUI	.13 & REFUSAL
Mike Kahanic	2 DUI	REFUSAL & .132
Joe Surdyrowski	2 DUI	.14 & .10
Jeff Bielinski	2 DUI	.16

1 CHAIRMAN LLOYD: Thank you very much, Mr. Doyle.

2 I'm having a problem coming to grips with why the  
3 statistics show the reduction. I can see a couple  
4 potential explanations for that, and let me put out this  
5 hypothetical and see whether I'm on target or not.

6 One is just heightened public awareness accompanying  
7 the enactment of this legislation, and some people believe,  
8 in the criminal justice system, that we would have a  
9 greater deterrent effect on other potential criminals if we  
10 prosecuted like the next day. So that maybe a combination  
11 of more public awareness and the fact that it's speedy  
12 justice sends a warning that otherwise isn't there.

13 Do you think that that's a partial explanation for  
14 the drop?

15 MR. DOYLE: I think a large measure of that is the  
16 answer. I think you've basically answered the question.

17 It has been my experience and my observation that  
18 the ultimate fear of walking out of that bar and getting in  
19 your automobile and being picked up in a roadblock or being  
20 picked up under the aegis of one of these measures, one of  
21 these Bills, has been sufficient for people to change their  
22 habits, and there's been a discernible difference in the  
23 states where I've seen these enacted.

24 CHAIRMAN LLOYD: That brings me to a follow-up,  
25 which is that my recollection is that the first couple

1 years after we passed the tougher drunk driving laws back  
2 in '82, '83, whenever that was, that we saw a fairly  
3 significant improvement, and now I gather, from what I'm  
4 hearing from a lot of people, that has kind of disappeared.

5 So the question would be: if we adopt this  
6 procedure we may have the same experience. I mean has this  
7 been in effect in any of these states for five or six years  
8 where we can see that there is a dip down, and at least  
9 once it went down it stayed there, or that the curve keeps  
10 going downward?

11 MR. DOYLE: I would have to check the curve, but I  
12 can tell you that it has been in effect in several states  
13 for more than two or three years.

14 I think that the big difference would be that you  
15 still have the criminal justice system that is directing  
16 their varying attentions to the ultimate outcome of these  
17 cases. I think what this does is somewhat unique in the  
18 fact that it has a consistent and perpetual Damocles  
19 Sword that hangs over your head, the very recognition that  
20 without regard to how adroit your defense attorney is going  
21 to be in protecting your interest, you know that you're  
22 going to lose your license promptly, decisively and  
23 immediately. It's completely different than anything we've  
24 tested before in these anti-drunk driving states.

25 CHAIRMAN LLOYD: But that just raises the very point



1 that the prior speaker made, which was -- and you suggested  
2 the courts have said that these state statutes have  
3 sufficient due process.

4 MR. DOYLE: Yes, sir.

5 CHAIRMAN LLOYD: I don't know what has to be in  
6 those Bills to make them meet that kind of administrative  
7 due process test, but certainly I think that some members  
8 would have a problem with a Bill if we were going to say,  
9 "You're going to lose your license based on the charge, and  
10 you have no opportunity to challenge whether the police  
11 officer conducted the test properly." I mean that  
12 certainly can't be what you're suggesting.

13 MR. DOYLE: No, sir. As a matter of fact, I think  
14 that this was the fallacy of the arguments that I heard  
15 Mr. Mancke articulate. You are not without the due  
16 process. As I understand the procedures that are  
17 undertaken, you will get a temporary license, which will  
18 permit you to raise a due process question if you think  
19 that somehow or other there has not been probable cause or  
20 some other reason why you should be brought within the  
21 aegis of this bill. Failing to do it, then justice will  
22 take its due course. You will have your license deprived.  
23 But you will always have that safeguard against that  
24 deprivation of due process.

25 I, frankly, thought that that argument fell flat.

1           CHAIRMAN LLOYD: I agree with you that I don't think  
2 you can just repeal the Constitution just because it's an  
3 administrative proceeding, but I guess I'm a little bit  
4 concerned that we not walk out of here with the notion that  
5 this is a sort of Damocles that is going to fall  
6 notwithstanding the skills of the counsel, because you're  
7 going to have counsel in the administrative hearing, and  
8 he's going to raise, or she's going to raise, basically the  
9 same kinds of arguments; and if counsel is sufficiently  
10 adept at doing that, the administrative process, or, on  
11 appeal, the Commonwealth Court, is going to have to  
12 recognize those arguments.

13           MR. DOYLE: No, I don't see that in this bill. I  
14 think the safeguards are there. And, frankly, my first  
15 reaction to these Bills when I saw them ran along the lines  
16 of Mr. Mancke. I do think that the due process is there.  
17 I think they are embodied in the Bill as it is now  
18 structured. I think that whatever additional amendments  
19 have been hammered out between the DOT and our counsel I  
20 think may further address that.

21           I have no question at all that there is no lack of  
22 due process, but it is an absolute assurance that we will  
23 be getting people off the road who have no business  
24 driving.

25           I don't see a great deal of difference, as a matter

1 of fact, between what this bill does and what has been done  
2 in other jurisdictions with regard to roadblocks and the  
3 implied consent law itself. We're, in effect, saying  
4 something a little bit different here. We're talking about  
5 an administrative privilege that the state gives to people  
6 to operate vehicles on the street. And we're saying as a  
7 condition of doing that, you have to assure us that if we  
8 put up certain safeguards, you follow them or it gives rise  
9 to a right to revoke your privileges.

10 That is merely, in my judgment, an extension of the  
11 implied consent law in that regard.

12 CHAIRMAN LLOYD: I hear what you're saying and I  
13 agree with part of it, but I'm still a little bit concerned  
14 that you are assuming that the success rate in these kinds  
15 of proceedings is going to be dramatically different from  
16 the success rate in a criminal prosecution.

17 MR. DOYLE: Yes, sir.

18 CHAIRMAN LLOYD: The testimony from the District  
19 Attorney of Lackawanna County is that we might have five to  
20 ten percent more people who are arrested for drunk driving  
21 would lose their license under this process as compared  
22 with the current law, which requires a finding beyond a  
23 reasonable doubt.

24 Do you agree with his estimate?

25 MR. DOYLE: No. Based upon the statistics that have

1 already been amassed in Maryland, it goes far beyond that.  
2 We're talking about 37,000 suspensions within the first two  
3 years.

4 CHAIRMAN LLOYD: Compared to what? I mean I guess  
5 we need to compare that to what would have happened if they  
6 hadn't done anything.

7 MR. DOYLE: No, sir. That is on the basis of the  
8 enactment of this law. The first year after this law was  
9 enacted they suspended 17,000-plus, the second year was  
10 20,000-plus, and it, indeed, has been working for the  
11 purpose of suspension because of violation of the ALR law.

12 CHAIRMAN LLOYD: I guess I'm not making myself  
13 clear.

14 MR. DOYLE: I'm sorry.

15 CHAIRMAN LLOYD: Let me try to make it simple. What  
16 we need to be able to see -- and I realize you may not have  
17 the statistics, but one of the things that we need to be  
18 able to see is: take a state which has a procedure like  
19 this; how many people lost their license through the  
20 criminal justice system as a result of a conviction for DUI  
21 in the last two years before this procedure went into  
22 effect, and then, after this procedure went into effect,  
23 how many people lost their license as a result of the  
24 criminal justice system, plus how many lost their license  
25 as a result of the administrative procedure, so that we can

1 make a comparison. Just saying that 37,000 people lost  
2 their license, without knowing -- maybe there were 35,000,  
3 or maybe there were 40,000 who lost them over the preceding  
4 two years. That's the comparison I'm looking for.

5 MR. DOYLE: I'll see if I can get that information  
6 for you, Mr. Chairman. I would only add to that, the other  
7 thing that probably we wouldn't be able to find out is how  
8 many of those people who have been suspended may  
9 conceivably have been kept off the road under other  
10 circumstances while they were waiting on the criminal  
11 justice system to discharge whatever their problems were.  
12 They may have gotten involved in a subsequent accident.

13 CHAIRMAN LLOYD: Well, you see, that's the other  
14 part. When you said deterrence is the major issue, I can  
15 understand that because otherwise it's a time machine. If  
16 I'm going to take the guy's license for a year, and I take  
17 it sooner, he's got it back sooner. And if he's a DUI guy,  
18 he's going to go out there and do that again. The only  
19 question is: is he going to do it while he's waiting  
20 trial, or is he going to do it in the first six months  
21 after he's gotten his license back from an administrative  
22 suspension? Nobody has presented any evidence to suggest  
23 that it makes any difference in terms of, over a five-year  
24 period of time, how many times that guy goes out and drives  
25 drunk.

1 MR. DOYLE: I don't know that it could be  
2 quantified. It just is our sense that the existence of  
3 this law tells people that this decisive reaction to their  
4 improper driving is something that deters them more than  
5 the probabilities that they may be picked up and convicted  
6 at some future time.

7 CHAIRMAN LLOYD: Other members who have questions?  
8 Representative Tigue.

9 REPRESENTATIVE TIGUE: Just to continue with what  
10 Bill Lloyd said, why would such a system in Maryland, or in  
11 Pennsylvania, or in any other state, cause more licenses to  
12 be suspended since you're not changing the law? You're  
13 still saying that if you're driving with .10, you're  
14 driving with .10, you're DUI. Why would this incur more  
15 arrests?

16 MR. DOYLE: Well, you are changing the law, because  
17 you're adding an administrative penalty or an  
18 administrative sanction where it didn't exist before, and  
19 it does nothing to eliminate the fact that you still have  
20 the criminal charges --

21 REPRESENTATIVE TIGUE: But we're not changing the  
22 law for the crime. The crime is DUI; that doesn't change.  
23 The only thing we change, or the only thing that is being  
24 proposed of changing -- I don't know what Maryland does --  
25 is that we've changed the minimum sentence in 1942, and in

1 the amendment, I understand, from one to three months.  
2 Other than that, the crime hasn't changed. In fact, this  
3 doesn't apply to all DUIs, because I can be arrested at  
4 .065 and be charged with DUI; under this that doesn't  
5 happen. So, in essence, this doesn't apply to all DUI  
6 arrests.

7 What I'm saying is, in spite of -- so beyond that,  
8 the crime of DUI exists today, and if we pass 1942 we don't  
9 change the criteria for DUI.

10 MR. DOYLE: Not the crime; that's correct.

11 REPRESENTATIVE TIGUE: That's right.

12 Why, then, would there be more arrests under that  
13 system than there currently is if we haven't changed what  
14 the crime is?

15 MR. DOYLE: I don't know that there will be any more  
16 arrests, but there will certainly be more suspensions. We  
17 will be getting more people who cause a threat on the  
18 roads, off the roads, decisively and immediately, once  
19 they've been picked up while they've been driving with  
20 alcohol.

21 REPRESENTATIVE TIGUE: But the point is, if the  
22 arrests are the same, why should there be more suspensions?  
23 The suspensions should be the same. The only thing this  
24 should change is -- and this is where I have a problem  
25 based on what you're saying. If the number of arrests are

1 the same, the number of the suspensions should be the same.  
2 If you're saying there will be more suspensions as a result  
3 of the same number of arrests, then that tells me that  
4 there's something that's going to cause people to lose  
5 their license that is later going to be overturned. There  
6 shouldn't be any difference.

7 MR. DOYLE: That's correct, because under the  
8 current system people who go before the court of justice,  
9 certainly, on the first go-around, oftentimes, in most  
10 cases, do not get a suspension. It's been my experience in  
11 the state in which I reside, that the first thing --

12 REPRESENTATIVE TIGUE: In Pennsylvania you have to  
13 get a suspension; it's mandated. It's mandated in  
14 Pennsylvania. You have to get a suspension.

15 MR. DOYLE: There is no such thing as probation  
16 before judgment?

17 REPRESENTATIVE TIGUE: No. You have to get a  
18 suspension. You could get a one-month suspension and ARD.

19 MR. DOYLE: With conviction.

20 REPRESENTATIVE TIGUE: Right.

21 REPRESENTATIVE SNYDER: Even without.

22 CHAIRMAN LLOYD: Even with ARD you're supposed to  
23 get a suspension.

24 MR. DOYLE: I'm not familiar with the local law  
25 there, and I apologize for that. I'll have my counsel



1 defer that, but I can't do it.

2 REPRESENTATIVE TIGUE: But getting back to the  
3 point, the point is that we're not changing the crime.  
4 We're changing the punishment, really. We're making the  
5 punishment up front, so that the crime, if I commit it  
6 now -- ironically, based on what Bill Lloyd, one of his  
7 questions, if you think about it, it may be more of a  
8 deterrent the way the system is now, because if I'm  
9 arrested for DUI, and I have a pending trial, I am more apt  
10 to be careful until after -- I don't want to get arrested  
11 again before my trial. If you do it this way, I'm going to  
12 get my license back faster, especially with a minimum  
13 sentence. If I get my license taken today, it begins  
14 today, by the time I even get to the court, even if the  
15 suspension is valid, even if I'm guilty, I may get my  
16 license back the day I go to court so I can drive legally  
17 again. My suspension has already been served.

18 I guess what I'm saying is, I don't see any  
19 advantage to taking a person's license now, because all  
20 it's going to do is cause another bureaucracy, and a bigger  
21 turnover in time and money, because now we're going to have  
22 a longer appeal system for the same thing.

23 MR. DOYLE: There's two things wrong with that.  
24 First of all, I don't think that the practical experience  
25 supports your contention that you're more careful between

1 the time that you're picked up and the time that you go to  
2 trial. There's too many experiences where there are repeat  
3 offenders during the pending period. I think that that was  
4 testified to by the district attorney here, and our own  
5 experience is that.

6 In addition to that, it seems to me that if there's  
7 anything that's going to bring a person under some kind of  
8 a review process for their own personal habits, their own  
9 driving habits, it's the realization that there's a  
10 suspension going on immediately, and you can start to talk  
11 about a rehabilitation process at that time, not after the  
12 fact. I think until we realize just how deep-seated the  
13 problem is with these people we're stopping, we need to do  
14 something to keep them off the road. I think this does  
15 that where your current system does not.

16 REPRESENTATIVE TIGUE: Your logic or your feeling  
17 doesn't come out in statistics that way. In fact, if you  
18 look at insurance-wise, one group of people least likely to  
19 have an accident are those who are in selective risk,  
20 because they want to get out of selective risk. Therefore,  
21 they're more careful.

22 I'm saying that if I have a pending trial ahead of  
23 me, chances are I'm going to be more careful. Is that  
24 going to happen to everybody? Of course not. We have  
25 people -- and I don't know if you've ever had your license

1 suspended, but most people who have their license suspended  
2 drive with a suspended license because they have to.

3 On the other hand, there is a small percentage of  
4 people who drive while they're under suspension because  
5 they're irresponsible. They're the same people who don't  
6 have insurance, and a lot of other things.

7 You are not going to stop criminals by passing  
8 something that's going to punish people with no particular  
9 gain from the bill.

10 MR. DOYLE: I can only go back to the statistics I  
11 gave before. In the states in which this has been enacted,  
12 there has been a discernible diminution in the amount of  
13 alcohol-related deaths. Now, that tells us something.  
14 What caused it...

15 REPRESENTATIVE TIGUE: Thank you.

16 CHAIRMAN LLOYD: Representative Fairchild.

17 REPRESENTATIVE FAIRCHILD: I have two questions,  
18 Mr. Doyle. In Texas I understand they have the Interlock  
19 system.

20 MR. DOYLE: I'm told that, yes, sir. I'm not  
21 familiar with --

22 REPRESENTATIVE FAIRCHILD: Does your association  
23 have any statistics on states which have implemented that  
24 type of system?

25 MR. DOYLE: Not to my knowledge. I can check and

1 find that out. I will make those available to the  
2 Committee if they are available.

3 REPRESENTATIVE FAIRCHILD: I would appreciate that.

4 The second thing is -- and I gathered from one of  
5 your answers you were not from this state, but I  
6 represent --

7 MR. DOYLE: I reside in Maryland at the present  
8 time, Annapolis.

9 REPRESENTATIVE FAIRCHILD: I represent two rural  
10 areas in Pennsylvania, and over the last few months we have  
11 had numerous stop-and-checks by the State Police at night.  
12 A lot of these were 700, 800 and 900 cars, with, I think  
13 the one was four arrests, and the other one may have been  
14 six. The one was return traffic from a Penn State game, by  
15 the way.

16 I guess in rural Pennsylvania we seem to be very  
17 aggressively pursuing DUI cases and those who drive on the  
18 road.

19 In contrast, your association constantly gives us  
20 figures on Philadelphia and the problems with insurance  
21 there.

22 We get statistics from the Pennsylvania Department  
23 of Transportation, or maybe it's the judicial system, that  
24 lists the DUI convictions. I took my two counties,  
25 compared those to Philadelphia County. Philadelphia County

1 has about five million, I think. My two counties have  
2 about 60,000.

3 I asked the district attorney of Philadelphia  
4 County, I said, "Wait a minute, something is not right here  
5 when you look at the percentage of DUI convictions."  
6 I think at that point the two counties had about the same  
7 as Philadelphia County. He just kind of laughed at me and  
8 he said, "Russ, if you think that our police officers are  
9 going to be charged in any way with stopping anybody for  
10 possible DUI," he said, "you're crazy. We're underfunded.  
11 We've got other serious crimes, and we just are sorry, but  
12 we cannot make that a priority."

13 I guess my question to you is: have your statistics  
14 -- or would you like to comment on how this affects rural  
15 Pennsylvania versus urban Pennsylvania, keeping in mind  
16 that in rural Pennsylvania my people have to drive -- it's  
17 not unusual for them to drive 30 or 40 miles to work. We  
18 have no mass transit system whatsoever. We do not have  
19 public taxis. A lot of times I think these people get hit  
20 extremely hard. Whereby, if you are in a major city that  
21 has mass transit and you lose your license, you can get on  
22 the bus, or the subway, or the train and get back and forth  
23 to work, shopping centers, et cetera, et cetera.

24 MR. DOYLE: Of course, no law is better than the  
25 enforcement of that law by the local authorities. I think

1 what you've talked about here are some policy problems that  
2 confront the State of Pennsylvania that transcend the issue  
3 of this bill.

4 I guess what I would say to you is I applaud the  
5 diligence of the people in your area that are trying to  
6 keep irresponsible drivers off the road. And I regret the  
7 fact that apparently they're not doing the same thing in  
8 Philadelphia. I hope that they will, and I hope that maybe  
9 somehow or other this will peak their attention a little  
10 bit more if it's enacted so that they will pursue more  
11 affirmatively getting these bad drivers identified and  
12 properly treated. I think this Bill brings that about.

13 CHAIRMAN LLOYD: Other questions?

14 MR. LANDIS: I would like to make a statement. I  
15 read two weeks ago that Governor Wilson, in the State of  
16 California, has signed legislation that mandates repeat  
17 offenders must have an Interlock system on their car, at  
18 least if they want to keep their driver's license, from  
19 there on out. They have a program that leases it for  
20 roughly \$900 a year.

21 REPRESENTATIVE FAIRCHILD: Is that after conviction?

22 MR. LANDIS: Repeat offenders. You have the first  
23 conviction. The second time, if you want to get your  
24 license back, you must have that Interlock system.

25 I have written to get a copy of that law so we can

1 look at it.

2 CHAIRMAN LLOYD: Okay. Thank you very much.

3 MR. DOYLE: Thank you, Mr. Chairman.

4 CHAIRMAN LLOYD: The next witness is Barry Sweedler  
5 from the Office of Safety Recommendations, National  
6 Transportation Safety Board.

7 REPRESENTATIVE PRESTON: Mr. Chairman, if I may,  
8 while the gentleman is setting up, in relationship to my  
9 good friend Mr. Fairchild's statement here -- and I'm not  
10 from Philadelphia, but I found out that, first of all, yes,  
11 the policemen do have an awful lot of other duties that  
12 they do versus some of the rural areas, but part of our  
13 greatest problem, coming from an urban area in Pittsburgh,  
14 is that most of the people that we're stopping for DUI are  
15 from outside the county and from outside the suburbs, so it  
16 is not area of public transportation that offers the  
17 choice. And most times, most people who are caught doing  
18 DUI are stopped for other reasons other than those  
19 roadblocks.

20 So while you have different roadblocks -- and I hate  
21 to put it like this, but you'll find a lot of your local  
22 police departments in some of the rural areas are going  
23 almost by a quota system and have certain days to write so  
24 many tickets to make up the revenue to support their local  
25 police department.

1 CHAIRMAN LLOYD: Thank you.

2 Mr. Sweedler.

3 MR. SWEEDLER: Mr. Chairman, members of the  
4 Committee, I would like to express my appreciation for  
5 allowing me to appear before the Committee on behalf of the  
6 National Transportation Safety Board to address a problem  
7 here in Pennsylvania that is also -- obviously, it's a  
8 nationwide problem. But the Bill that you're talking about  
9 today, Administrative License Revocation, the National  
10 Transportation Safety Board, believes is the most effective  
11 action, the most effective action, a state can take to  
12 reduce the drunk driving problem.

13 There are 31 states that now have this  
14 Administrative License Revocation. Many of them have had  
15 them for many years, Mr. Chairman, and I can address some  
16 of the questions. I'm familiar with what is happening on a  
17 nationwide basis. I'm also familiar with how some of these  
18 measures work, both in our country and in other countries.  
19 So I can address some of the questions and concerns that  
20 have been raised.

21 You made an excellent point. There were two  
22 different, distinct reasons for passing this law. One is a  
23 general deterrence measure, reason, because people do not  
24 want to lose their driving licenses. All the research  
25 shows that the driving license loss is the most effective



1 sanction to reduce drunk driving. It stops people before  
2 they commit the crime.

3 The second is it gets the person who does commit the  
4 crime off the road quickly. So it has two points. It's  
5 not one of the other, it's both.

6 Mr. Doyle mentioned about the nine percent  
7 reduction. That is across-the-board. Some states are 15  
8 or 20 percent, some are a little less. But across-the-  
9 board it is nine percent.

10 Now, in 1990, here in Pennsylvania, 735 people died  
11 in alcohol-involved crashes on your highways. If this law  
12 had been in effect in 1990, and you just had the same  
13 average reduction that other states had, there could have  
14 been as many as 66 Pennsylvanians that would still be alive  
15 today, and that's every year

16 There are a couple of other things that have come  
17 up. Does the person go right back and drive again even  
18 though his license has been taken away? A study conducted  
19 for the U.S. Justice Department looked at three states.  
20 The most dramatic was North Dakota. There was a 40 percent  
21 reduction in what we call recidivism, people that repeat  
22 the crime; 40 percent. And they looked at three years  
23 before the law went into effect and three years after the  
24 law went into effect, so it wasn't an immediate thing.

25 The other question you raised: do the benefits

1 continue after a certain break-in time? They do, and  
2 primarily because, in conjunction with the law, we have  
3 this publicity, there is advertising, there is public  
4 information; the public is aware of what is happening.

5 In the State of California -- you brought up in the  
6 State of California -- two years ago they passed  
7 Administrative License Revocation. Before the law went  
8 into effect, approximately 185,000 licenses had been taken  
9 away after conviction 185 000. The law went into effect.  
10 The first year the police arrested almost 300,000 drunk  
11 drivers, which is very similar to the number they arrested  
12 in the previous year, but they took away 300,000 licenses.  
13 So there was almost an increase of 100,000 licenses that  
14 were taken away that would not have been taken away under  
15 the old system. And there's many reasons. Every state is  
16 a little different.

17 And I agree, I'm not that familiar with exactly how  
18 it works here in Pennsylvania, but there are delaying  
19 tactics, there are situations where the judges, even though  
20 they're mandated by law to take away the license, they  
21 don't take away the license, or they take away the license  
22 and then suspend the suspension. But this system is sure.

23 A question was brought up about loss of jobs.  
24 Studies have been done that job loss does not happen. The  
25 one big study -- there was one in New Mexico, there was one

1 in your neighboring state of Delaware. One-and-a-half  
2 percent of the people who lost their licenses lost their  
3 jobs, and three of those people were bus drivers. They  
4 should have lost their jobs. But people seem to get  
5 around. They make arrangements.

6 There's a period of time where they have this  
7 temporary permit. They can make arrangements with family  
8 members, with friends. They do not lose jobs.

9 Another question. The state does not lose money.  
10 These are hard financial times for all states. You're not  
11 alone. This system is such that with the reinstatement  
12 fees and the monies that come from grants from the federal  
13 government, there is anywhere from upwards of \$3 million to  
14 \$4 million a year that Pennsylvania could be eligible for  
15 by passing this law.

16 It works. You don't lose jobs. All of what has  
17 been brought up before -- the Supreme Court and every court  
18 in states where this has been taken before state courts  
19 have said that it is constitutional. There have been no  
20 court cases which have not found the procedures in these  
21 laws to afford due process.

22 Now, what I would like to do, with the Chairman's  
23 permission, I have a 12-minute tape that has been put  
24 together by a coalition of 30 groups from the health,  
25 safety, police, private industry, government agencies. We

1 all got together and said, "What can we do to try to get  
2 this message out?"

3 CHAIRMAN LLOYD: We would be happy to look at the  
4 tape. My one request would be that if we're going to look  
5 at the tape, then if you might try to summarize your  
6 written testimony.

7 MR. SWEEDLER: After the tape, I would just answer  
8 questions.

9 (Whereupon, the videotape was shown.)

10 (Whereupon, the written testimony and attachments of  
11 Mr. Sweedler follow:)

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**National  
Transportation  
Safety Board**

Washington, D C 20594

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**Safety Information**

TESTIMONY OF  
BARRY SWEEDLER  
DIRECTOR, OFFICE OF SAFETY RECOMMENDATIONS  
NATIONAL TRANSPORTATION SAFETY BOARD  
BEFORE THE  
TRANSPORTATION COMMITTEE  
OF THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES  
REGARDING  
ADMINISTRATIVE LICENSE REVOCATION  
OCTOBER 13, 1992

Good morning Chairman Lloyd and Members of the Committee. It is a pleasure to be in Harrisburg today to discuss with you what the National Transportation Safety Board believes to be the single most important step you can take to save lives on the streets and highways of Pennsylvania -- the adoption of an effective administrative license revocation law.

My message to you today is simple: Administrative license revocation (ALR) is the single most effective measure you can adopt to reduce drunk driving. This measure saves lives. Further, there would be savings of millions of dollars in both direct medical costs and indirect societal costs.

The National Transportation Safety Board is an independent Federal agency charged by Congress to investigate transportation accidents, determine their probable cause and make recommendations to prevent their recurrence. The recommendations that arise from our investigations and safety studies are our most important product.

More than four years ago, the Safety Board launched a "Go Team" to Carrollton, Kentucky to investigate the worst alcohol-related highway collision in American history: the collision of a pick-up truck and a church activity bus.

The pick-up truck driver had been drinking and was going the wrong way on an Interstate highway. He survived the accident. The passengers on the bus were not as fortunate -- 27 innocent people died and 34 more suffered injuries when the bus burst into flames. Ninety minutes after the accident, the pick-up truck driver's blood alcohol content measured 0.26 percent.

On the night of the accident, news of the tragedy flashed across the TV screens; it was on the front pages of our newspapers. The deaths of those 27 people caught the nation's attention. People were outraged by the horror caused by one person's impairment and irresponsible behavior. They immediately called for action to prevent this kind of accident from happening again.

That is as it should be. Whenever a life is lost in a transportation accident, solutions to prevent similar incidents should be sought and implemented. Preventing loss of life or injuries is one of the Safety Board's most important missions.

But the problem goes far beyond that one tragedy. Traffic accidents-- about half of which involve alcohol -- are the fourth leading cause of death in our country today. Preventing these drunk driving related deaths would cost significantly less than what society pays as a consequence of drunk driving.

In 1990, 44,529 people were killed in traffic accidents in this country. Almost 20,000 of those fatalities involved alcohol. Another 355,000 people suffered injuries in alcohol-related accidents -- an increase from the previous year. In Pennsylvania, 735 persons died in accidents involving alcohol.

Who is a drunk driver? Drunk drivers come in all ages, sexes, shapes, sizes, and races and they drive all kinds of motor vehicles, from motorcycles to tractor trailers.

A recent Safety Board study found that one-third of fatally injured truck drivers tested positive for alcohol or other drugs. Four out of five of these drivers had a history of substance abuse.

The message is clear -- drinking and driving is unacceptable behavior. Only when people's behavior and attitudes are changed will we have done an adequate job of keeping alcohol-impaired drivers off the road. Motorists must be convinced that there is a strong likelihood that if they drive while impaired, they will be promptly penalized.

Most experts agree that many impaired drivers persist in their behavior because they believe they will not be caught and/or convicted. Unfortunately that perception is based on reality. In most jurisdictions that do not have administrative license revocation, experience proves that drivers have little reason to fear apprehension. In fact, the odds of being arrested for driving while impaired are as low as one in one thousand. Stated another way, an intoxicated person can drive from New York to Los Angeles and halfway back without being arrested.

And, even if arrested, their case crawls through the judicial system while the driver is still on the streets and highways. A typical drunk driving case takes an average of 90-120 days to complete. During that time, the driver retains his or her license. All too frequently the subject-- even before being tried for the first offense -- is arrested again for driving while impaired.

Following the Carrollton, Kentucky tragedy, the Safety Board issued a series of recommendations intended to help curb the threat of drunken drivers. The single most important one called for the states, including Pennsylvania, to adopt an administrative license revocation law.

An administrative license revocation law gives a law enforcement officer the authority, on behalf of the state driver licensing agency, to confiscate the license of any driver who either fails or refuses to take a chemical breath test. To be truly effective, the officer must be able to confiscate the license on the spot.

Once a driver's license has been confiscated, the driver is issued a temporary license that is valid for a short, specified period of time. During that time he or she may seek an administrative hearing -- a process that is independent of any criminal proceedings. That hearing addresses a single issue: Did the driver fail or refuse to take a breath test? If the answer is yes, the license is revoked.

The drunk driver is off the road, with no dilatory tactics, no mitigating circumstances, no plea bargaining and no pre-trial diversion. The offender may still face criminal proceedings, but the important thing is that they are off the road in very short order.

Based upon the extensive experience of the 32 jurisdictions that have adopted administrative license revocation, it works. It specifically deters those drivers who are caught drinking and driving from doing it again. And, it generally deters those who have not been caught, because they are afraid of losing their driving privileges.

Opponents of administrative license revocation argue that it is unconstitutional -- that it denies the drunk driver due process. However, not one state court decision on the issue has ruled that ALR is unconstitutional. To the contrary, the U.S. Supreme Court ruled that revocation of a license, prior to an administrative hearing, is not a violation of due process as long as there are provisions for a swift post-suspension hearing.

When the Federal Aviation Administration believes that public safety is endangered, it immediately revokes a pilot's license. If the action is appealed to the Safety Board, we are required to issue a decision within 60 days after notice of the revocation. The immediacy of the process helps to insure the safety of the nation's airways. There is no reason why we cannot and should not do at least as much to protect the public on our nation's streets and highways.

The Safety Board's support of ALR is based on sound research and evidence gathered from states that have adopted the procedure. Evidence on its effectiveness is now coming from several of the 32 jurisdictions where it is law. Those reports all reflect positive results.

The CALIFORNIA experience demonstrates how successful ALR can be in removing drunk drivers from our highways. Enacted in 1989, 300,000 drivers who failed or refused sobriety tests had their licenses taken on the spot in the program's first year. Significantly, there were requests for hearings in only three percent (about 8,000) of the cases -- far fewer than had been anticipated.

DELAWARE, when possible, tests all fatally injured drivers for alcohol. When the state compared the number of drinking drivers (those with a BAC greater than 0.05 percent) before and after implementation of its law, it found that number had decreased by 19.1 percent in just one year. A more recent study sponsored by the AAA Foundation for Traffic Safety found a 14 percent decline in the presence of alcohol among fatally injured drivers.

In MINNESOTA the law was aggressively implemented -- and it is working. Administration license revocations for alcohol-related offenses have increased every year since its implementation in 1976. Roadside surveys in 1975 and 1985 revealed a 60 percent reduction in the number of drivers on the road after midnight with a BAC level of 0.10 percent or higher -- a drop from one driver in ten to only one in 24.

OKLAHOMA, reports a "significant decrease" in the incidence of drinking and driving after implementation of its law in 1982. In the year after the law took effect, overall traffic fatalities decreased 20 percent and alcohol-



related fatalities declined 30 percent. And in the first two years of the program, alcohol involvement in all highway accidents declined 41 percent. Officials in Oklahoma consider administrative license revocation to be the single most important element in their anti-drunk driving program.

OREGON has experienced a reduction in the number of test refusal hearings since it enacted an administrative license revocation law. Prior to 1984, hearings were requested in 50 percent of the implied consent test refusal cases. Today only 19 percent of those drivers who have had their licenses suspended ask for a hearing.

The safety benefit to the state has been significant. The percentage of alcohol-related, night-time, single vehicle accidents with serious injury decreased 15-20 percent when the law was implemented. This reduction was still evident two years later. Also, DWI convictions reportedly have increased dramatically -- possibly because the penalty for refusing a test is more severe than the revocation penalty. An extensive public relations campaign was critical to the state's success -- 85 percent of those surveyed were aware of the law and its provisions.

It is interesting to compare Oregon's experience with that of its sister state of Washington, which does not have an ALR law. In 1982, in both states, 63 percent of all highway fatalities were alcohol-related. By 1990, progress had been made in both states. In Washington, alcohol-related fatalities had dropped to 57 percent, a reduction of 9.5 percent. However, in Oregon, alcohol-related fatalities had dropped to 47 percent, a reduction of 25 percent. Comparing drivers in fatal crashes with a BAC at or above .10 percent produces a similar result. Although we can not conclusively determine the reasons for these differences, the evidence points to ALR as a major causal factor.

WISCONSIN examined the general and specific deterrent effects of its 1982 law mandating a three to six month suspension for first time convictions. General deterrence effects were measured by examining a surrogate measure for alcohol involvement -- late night, single vehicle injury crashes involving male drivers. The results showed a substantial reduction in this surrogate measure for alcohol involved crashes. A companion study of those drivers whose licenses were suspended under the law had fewer subsequent convictions and accidents. The authors of this study concluded that "100% mandatory license suspension is an effective legal sanction against drinking and driving."

In addition, they experienced a substantial reduction in the number of night-time fatal single vehicle accidents. Based upon the success of license sanctions under its 1982 law, Wisconsin adopted a full administrative revocation law in 1987.

NEW MEXICO, has experienced only a one percent rate of hearing requests under its 1984 law. A time-series analysis by H. Laurence Ross in 1986 of alcohol-related fatal accident statistics, before and after implementation of the law, found that the percentage of fatally-injured drivers with a BAC greater than 0.05 percent fell from 66 to 56 percent.

Few NEVADA drivers were aware of the state's ALR law when it was enacted and, as a result, no change in the number of alcohol-related night-time accidents was noted in the first year. However, following a public information campaign that emphasized license revocation, alcohol-related accidents declined by 12 percent.

One of the most important studies of the issue was conducted by the Insurance Institute for Highway Safety (IIHS). This study examined the effects of administrative license revocation and other laws on fatal accidents in selected states. IIHS concluded that administrative license revocation laws were the most effective of the laws studied. Between 6:00 PM and 6:00 AM -- when more than half of all fatally injured drivers had BACs over 0.10 percent -- administrative license revocation is estimated to have reduced the involvement of drivers in fatal accidents by nine percent. That would have meant 66 lives saved in Pennsylvania in 1990.

A U.S. Department of Justice study demonstrates that states with an ALR law have reduced recidivism rates among drinking/driving offenders. The most startling effect was found in North Dakota. The rate of recidivism declined by nearly 40 percent, suggesting the potential for long-term behavior modification. This study is consistent with others that indicate, even though some drivers will continue to drive after revocation, they tend to drive less frequently and more cautiously. Most important, however, is the fact that most drivers adhere to the law and do not drive at all.

Mr. Chairman, the Safety Board recognizes that these are difficult financial times for most state governments. It recognizes the necessity for new legislation to be cost effective and at least revenue neutral. Start-up and first year operating expenses of an administrative license revocation law have been less than \$1 million, and rarely have they exceeded \$500,000. All states have been able to recover their costs by charging license reinstatement fees. In fact, a recent study in Illinois, Nevada and Mississippi found that each collected more in reinstatement fees than it spent in start-up and annual operating costs. Revenues generated were 1.3 to 2 times greater than required. Perhaps more significantly, the societal cost-savings realized from fewer highway accidents in the three states was over \$230 million -- \$230 million that could be used for other programs. In Pennsylvania, these savings would be \$44.9 million per year.

The concern that the loss of driving privileges, especially in rural areas, would result in the loss of a job, prompted studies in New Mexico, Mississippi and Delaware to determine whether the concern is justified. In all three states, the problem was minimal. For example, in Delaware, a rural state with little public transit, only 1.2 percent of all whose licenses were revoked lost their jobs -- a group that included two school bus drivers. Loss of employment resulting from the loss of a driver's license is unusual.

The public clearly recognizes the threat to public safety posed by drunk drivers. Public opinion surveys have shown that a large majority of the public supports administrative license revocation. According to a Louis Harris poll, 89 percent of those surveyed endorsed automatic license

revocation. In a survey published in the Journal of Public Health Policy, 67 percent of the respondents favored an immediate 90-day suspension of a driver's license for anyone arrested for DWI.

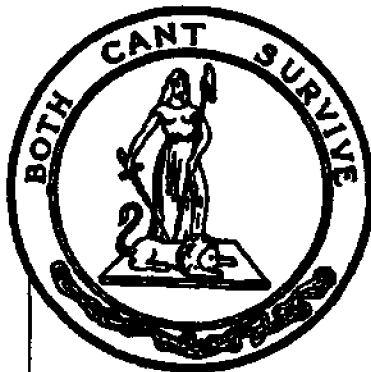
Likewise, administrative license revocation is supported by the U.S. Surgeon General. It has been adopted as a Year 2000 health goal by the Department of Health and Human Services.

The only opposition to ALR seems to come from those who perceive that ALR will cause them an economic loss. This includes some segments of the alcoholic beverage industry, and the trial and criminal defense bar. However, there is no credible evidence or study supporting the myth of economic loss.

In summary, the Safety Board urges Pennsylvania to adopt administrative license revocation. The program:

1. Revokes the licenses of dangerous drivers more expediently;
2. Dramatically increases the certainty of receiving a penalty for drunk driving;
3. Deters driving while drinking both by those whose licenses have been suspended and by those who have not;
4. Is cost effective and may even generate revenue; and
5. Is supported by the public, and most importantly,
6. It saves lives.

Thank you for inviting the Safety Board to testify about the single most important legislation you can enact to save lives on the streets and highways of Pennsylvania. I would be happy to answer any questions you may have, and please let me know if the Safety Board can be of further assistance.



# PENNSYLVANIA

## Administrative License Revocation Fact Sheet

In 1990 there were an estimated 735 alcohol-involved fatalities in Pennsylvania, according to Fatal Accident Reporting System data.

A Pennsylvania Administrative License Revocation (ALR) Law would produce the following benefits each year, based on estimates from current research.

### Yearly Savings

<b>44 to 66</b>	<b>Lives</b>
<b>\$ 5.2 to 7.8 Million</b>	<b>Direct Costs (medical, rehabilitation, etc.)</b>
<b>\$29.9 to 44.9 Million</b>	<b>Societal Costs (lost productivity plus direct costs)</b>

A Pennsylvania ALR law could make the State eligible for Federal incentive grant funds.

**\$2.34 Million annual Section 408 Grant, if Pennsylvania meets the basic and all supplemental grant criteria. The funds are available annually for five years.**

In addition, a Pennsylvania ALR law would help Pennsylvania qualify for Section 410 grant funds. The 1991 Highway Bill authorized \$25 million annually for all States from 1993 through 1997 for the Section 410 program.

For more information on Administrative License Revocation, contact:

**Frank Altobelli, Regional Administrator  
National Highway Traffic Safety Administration  
Phone: 301-768-7111 Fax: 301-768-7118**

- **The fatality reduction estimates are based upon a National Highway Traffic Safety Administration-sponsored study of Administrative License Revocation (ALR) law effects on single vehicle nighttime fatal crashes (6% reduction) and an Insurance Institute for Highway Safety study of ALR effects on fatal crashes during periods of high alcohol involvement (9% reduction). If you assume that ALR has a similar effect on all alcohol-involved crashes, the yearly savings estimates in the Fact Sheet are obtained by applying these percentage reductions to the 1990 Fatal Accident Reporting System (FARS) estimates of alcohol-related fatalities in Pennsylvania.**
- **Cost estimates are based on figures developed for a 1991 Federal Highway Administration study, "The Costs of Highway Crashes."**
- **The direct cost estimate is composed of medical, property damage, legal and court, emergency services, insurance administration, workplace, and travel delay costs. Direct costs were \$118,400 per fatality in 1990 dollars. Lost productivity was estimated at \$561,800 per fatality in 1990. The total societal cost per fatality in 1990, both direct costs and lost productivity, was \$680,200.**
- **Although ALR reduces alcohol-involved injury and property damage crashes as well as fatalities, there are no studies that provide conclusive data on these reductions. Consequently, the savings estimates do not include any impact on property damage and injury crashes.**

1 CHAIRMAN LLOYD: Thank you very much.

2 Other members questions?

3 REPRESENTATIVE LESCOVITZ: I just have a couple of  
4 questions, basically, two. I'm going on what you said  
5 earlier and on the videotape.

6 You said in California there were, in 1990, 180,000  
7 convictions.

8 MR. SWEEDLER: Right.

9 REPRESENTATIVE LESCOVITZ: And you said in 1991,  
10 there were 300,000 suspensions.

11 MR. SWEEDLER: Right -- no; I said that there were  
12 approximately 180,000 licenses taken away, of the people  
13 who were arrested. Because there were many more convicted  
14 who actually didn't lose their license. They were given  
15 hardship licenses, they were --

16 REPRESENTATIVE LESCOVITZ: How many would that be?

17 MR. SWEEDLER: I don't have that. I could get the  
18 numbers.

19 REPRESENTATIVE LESCOVITZ: Do you have a guess? Two  
20 hundred thousand?

21 MR. SWEEDLER: No, no.

22 REPRESENTATIVE LESCOVITZ: Ninety thousand?

23 MR. SWEEDLER: It was somewhere between the number  
24 that were arrested, approximately 300,000, and the 180,000  
25 that actually had their licenses suspended.

1           The suspensions were suspended. The cases never got  
2 to the final point. People were not convicted. All of  
3 these reasons added up to the --

4           REPRESENTATIVE LESCOVITZ: There were 180,000  
5 convictions --

6           MR. SWEEDLER: No, no. There were 180,000 who lost  
7 their licenses.

8           REPRESENTATIVE LESCOVITZ: Okay. So it means they  
9 had to be convicted in order to lose their license.

10          MR. SWEEDLER: But there were many more that were  
11 convicted that did not lose their license.

12          REPRESENTATIVE LESCOVITZ: How many? A guess.

13          MR. SWEEDLER: As I said, it would just be a guess.  
14 I don't know.

15          REPRESENTATIVE LESCOVITZ: Would it be closer to  
16 180,000 or closer to 300,000?

17          MR. SWEEDLER: It could have been 30,000 or 40,000.  
18 I don't know.

19          REPRESENTATIVE LESCOVITZ: So let's guess high; that  
20 would be 220,000, 225,000. So there were 75,000 people the  
21 next year that were suspended but not necessarily  
22 convicted.

23                 I don't understand how you get the 85 percent rate  
24 upheld that you had on the --

25          MR. SWEEDLER: These were of the 300,000 people who

1 had their licenses taken by the police officers.

2 REPRESENTATIVE LESCOVITZ: In 1991.

3 MR. SWEEDLER: In 1991. Of the people who asked for  
4 a hearing -- and that number was fairly low, the people who  
5 asked for a hearing; it was about seven percent of the  
6 people who had their licenses taken away asked for a  
7 hearing. Of those people who asked for a hearing, 85  
8 percent of them were upheld by the -- I mean the state was  
9 upheld. So in 15 percent of the cases there was a  
10 reversal. The hearing officer believed that there was not  
11 enough evidence. So in 15 percent of the cases that were  
12 brought before the administrative hearing process, the  
13 license was given back.

14 REPRESENTATIVE LESCOVITZ: I'm trying to figure this  
15 out percentwise. Two hundred fifty thousand, that still  
16 doesn't come up to 85 percent.

17 MR. SWEEDLER: It's only 85 percent of the small  
18 number that appealed. Most people did not appeal.

19 REPRESENTATIVE LESCOVITZ: Okay. It's not 85  
20 percent of the 300,000 --

21 MR. SWEEDLER: No; it's not 85 percent of the  
22 300,000. It's only 85 percent of the 20,000 that appealed.

23 REPRESENTATIVE LESCOVITZ: That was a little bit  
24 confusing.

25 The other question has to do with suspension. In



1 these states where someone is suspended as of day one when  
2 they are caught under DUI, and they have a 30-day temporary  
3 license, and then they appeal it and the Department of  
4 Transportation says, "No, you should lose your license," on  
5 the 31st day they get caught speeding, meaning they're  
6 driving under suspension" --

7 MR. SWEEDLER: Right.

8 REPRESENTATIVE LESCOVITZ: Do you know what happens  
9 if they are, in the future, proved innocent under the DUI?  
10 What happens to that suspension, the driving under  
11 suspension situation? Are they still suspended because  
12 they were driving under suspension or what?

13 MR. SWEEDLER: Well, it's rather technical. I'm  
14 sure it varies from state to state, but the main point is  
15 that they did not have the permission of the state to drive  
16 when they were picked up for speeding. That would be  
17 handled as an offense of driving without a permit.

18 REPRESENTATIVE LESCOVITZ: In most states then the  
19 driving under suspension would still be upheld even though  
20 they should have never been driving -- if we were under  
21 this process, they really wouldn't have been driving under  
22 suspension the way the law is now.

23 MR. SWEEDLER: The way the law is now they would  
24 have been awaiting their court date, say, so they would  
25 have been driving legally.

1 REPRESENTATIVE LESCOVITZ: So now we're going to  
2 suspend 75,000 people, and under that -- at least 75,000 in  
3 California.

4 MR. SWEEDLER: But keep in mind, these were people  
5 who were legally arrested by the police for DWI, for  
6 committing what the police feel is an indictable crime.

7 REPRESENTATIVE LESCOVITZ: I guess I'm looking at  
8 other amendments to this Bill, but there's no state that  
9 you know of that relieves that person from that suspension  
10 or conviction of driving while under suspension?

11 MR. SWEEDLER: I could do a check for you. I mean,  
12 no, not sitting here, off the top of my head, I don't, but  
13 I have a list of all the states and all the laws, and I can  
14 take a look at that and get back to the Committee on that.  
15 I will be glad to do that.

16 REPRESENTATIVE LESCOVITZ: Thank you.

17 CHAIRMAN LLOYD: Other questions?

18 Representative Fairchild.

19 REPRESENTATIVE FAIRCHILD: I saw on the program that  
20 San Antonio was one of the sponsors of the 12-minute video,  
21 at the end where they gave the credits.

22 MR. SWEEDLER: Yes. I think the police officers  
23 were from San Antonio, yes.

24 REPRESENTATIVE FAIRCHILD: Texas has an Interlock?

25 MR. SWEEDLER: They are starting to use Interlock.

1 REPRESENTATIVE FAIRCHILD: Does San Antonio have  
2 that?

3 MR. SWEEDLER: I think San Antonio may be one of the  
4 sites.

5 REPRESENTATIVE FAIRCHILD: Going back to Attorney  
6 Mancke, how are they tied in to the Interlock?

7 MR. SWEEDLER: Let me explain. We're starting to  
8 get some evaluation of the Interlock programs. It has been  
9 used in California and in some other places, and there have  
10 been some evaluations.

11 The Interlock seems to be effective in preventing  
12 the driving habits while someone is intoxicated while it is  
13 on the car. But as soon as you take it off the car, the  
14 people are back to their old behavior. So it's a temporary  
15 thing unless you put it on the car forever.

16 REPRESENTATIVE FAIRCHILD: So is suspending a  
17 license.

18 MR. SWEEDLER: But suspending a license -- as I was  
19 saying, we're talking about two different groups of people.  
20 The people that are actually offenders, are caught, and  
21 you're dealing with them through the Interlock, through  
22 rehabilitation, that's one group. And, by the way, that  
23 group is not the major cause of DWI crashes in this  
24 country. They only make up 25 percent of the fatalities,  
25 comes from the people who have offended once before and

1 been caught. Seventy-five percent of the fatalities are  
2 people who have never been caught. They are the ones that  
3 are deterred by this law. So we're deterring both. That's  
4 the big thing that sometimes people have a hard time in  
5 grasping.

6 REPRESENTATIVE FAIRCHILD: That contradicts what the  
7 district attorney said. He said the problem was the repeat  
8 DUIs. Now you say 75 percent of the problem --

9 MR. SWEEDLER: It's certainly a problem. Twenty-  
10 five percent of your 700 people who died, that's certainly  
11 many, many lives that are deterred.

12 REPRESENTATIVE FAIRCHILD: We all realize that.

13 MR. SWEEDLER: But it is two separate issues. So,  
14 certainly, we have to do something.

15 The district attorney brought up the question of  
16 seeing if a person was not addicted to alcohol before  
17 giving them back their license. They're now doing that in  
18 four countries in Europe. They're doing that in  
19 Great Britain, in Germany, the Netherlands and in Sweden;  
20 they're doing that. You just can't get your license back  
21 when your 90 days is up. You have to prove, through a  
22 medical doctor, that you're not addicted to the alcohol any  
23 longer to get your license back.

24 We don't have that in this country, but I think  
25 we're starting to think about things like that.

1           REPRESENTATIVE FAIRCHILD: Attorney Mancke kind of  
2 alluded to, I think, maybe a compromise situation here  
3 where you could have the ALR, but instead of immediately  
4 taking the license, you put the Interlock device on, let  
5 due process take its course. If that person wanted to  
6 appeal, I assume they would still have the Interlock on  
7 during the appeal.

8           Would you like to comment on that?

9           MR. SWEEDLER: I have never heard of that, but it is  
10 certainly an interesting proposal. It certainly would take  
11 the person -- that person would not drink and drive. But  
12 you are still losing the deterrent effect for the general  
13 population who don't want to lose their legal privilege to  
14 drive. This way, they've been picked up for DWI. If  
15 they've got the money, they can plunk down the \$800 or  
16 \$900, or I think the attorney mentioned that we ought to  
17 make funds available to pay for anyone that didn't have it,  
18 but they're not punished. They're still driving legally  
19 after having been detected, tested and arrested for DWI.  
20 That is one of the differences.

21           REPRESENTATIVE FAIRCHILD: I think a person, given a  
22 choice, would have to take a very good look at that choice,  
23 because, as you know, these devices are expensive. He or  
24 she would have upcoming court costs and an appeal. And  
25 going back to your statistic, and I think it was your

1 statistic, that only seven percent asked for hearings on  
2 appeals anyway --

3 MR. SWEEDLER: In that state, right.

4 REPRESENTATIVE FAIRCHILD: -- so we're dealing with  
5 less than seven percent --

6 MR. SWEEDLER: Well, it's the same thing like the  
7 choice, and you're recognizing it's a different level of  
8 proof that's needed. It's like if a health inspector went  
9 into a licensed food place and found some problems there,  
10 would he give the proprietor a choice and say, "Well, we'll  
11 let you have a choice"? You should shut that place down if  
12 it's a threat to people's health, just like having a person  
13 on the roads with a driver's license legally after the  
14 police know that person is a threat.

15 It's an interesting concept, and it can probably be  
16 built into any kind of a system, but if you don't have the  
17 threat of taking the license away on the spot, you're  
18 losing the general deterrent, which is probably the bigger  
19 effect, because it changes people's behavior before they  
20 commit the act.

21 REPRESENTATIVE FAIRCHILD: I agree with  
22 Representative Tigue's assumption, and I guess maybe we  
23 need a psychologist or whatnot, but it seems to me that if  
24 a person is arrested, and this is hanging on their head,  
25 that they are going to be very hesitant before they go out

1 and do the same crime while they are waiting.

2 MR. SWEEDLER: No disagreement, but we saw from the  
3 district attorney's figures that many, many, many people  
4 do. And we know, and I didn't -- in my long statement that  
5 I submitted for the record, we do cite some instances where  
6 terrible -- in fact, we did a study back in the early '80s  
7 where we looked at 50 cases where people had committed the  
8 crime of drunk driving and then committed another crash,  
9 many of them fatal crashes, and we looked at the second  
10 case to go back and find where did the system fail to allow  
11 that person to commit that offense again.

12 That certainly is a problem, but, as I say, you have  
13 to recognize that we're talking about two different things.  
14 We're talking about the person who does offend and the  
15 general public.

16 Just like you talked about the roadblocks. You  
17 don't have a sobriety checkpoint or roadblock to catch  
18 drunk drivers. If you caught four, three, out of 700 or  
19 800, you're deterring the general population, because they  
20 say, "I don't want to get caught, so I'll think about  
21 drinking and driving."

22 So it's a general deterrent on one hand, but it also  
23 works on the repeat offender to try to get that person to  
24 change their behavior. And they do.

25 REPRESENTATIVE FAIRCHILD: What did that report of

1 the 50 cases show?

2 MR. SWEEDLER: There were all kinds of different  
3 problems. There were some judicial problems. There were  
4 problems with people getting a slap on the wrist on the  
5 first offense. There were hardcore people who should have  
6 gotten treatment and got maybe an education course, where  
7 they really should have gone into long-term treatment.  
8 There was a whole host of problems.

9 But the study did show us that taking away the  
10 license is the most effective thing that can be done. The  
11 sureness and the certainty that the license will be taken  
12 away if the offense is committed turned out to be the  
13 number one deterrent that makes people think twice.

14 CHAIRMAN LLOYD: Representative Tigue.

15 REPRESENTATIVE TIGUE: I agree with you about taking  
16 away the license, but when you talk about Pennsylvania,  
17 you're not talking about California or Delaware or Texas.  
18 Pennsylvania currently, if you are found guilty of DUI, you  
19 lose your license. There are no exceptions. There is no  
20 bread-and-butter license or limited license; you lose your  
21 license. That is the deterrent.

22 When you say that you lose it immediately, that's  
23 not true, because according to the proposal, I don't lose  
24 my -- I hand my license, or I exchange my license --

25 MR. SWEEDLER: Your permanent license, yes.



1 REPRESENTATIVE TIGUE: So I can do everything I did  
2 yesterday for the next month.

3 MR. SWEEDLER: The difference is, that piece of  
4 plastic is a valuable asset to most people. When you go in  
5 to cash a check or use a credit card, you're going to show  
6 someone your temporary driver's license; it's embarrassing.  
7 They don't want that. That piece of plastic is so  
8 important to the individual --

9 REPRESENTATIVE TIGUE: But, again, the point is  
10 we're talking about taking people who may cause a danger  
11 off the highways. We're not talking about embarrassing  
12 them or putting them in a position where they can't cash  
13 checks, that they can't do their work, et cetera.

14 The point is, we do in Pennsylvania everything the  
15 ALR does, according to that screen, except our criminal  
16 justice system is delayed in hearing. All this proposal  
17 does is to take that delay and give it to someone else and  
18 set up another layer. It doesn't -- we can change the  
19 penalties without doing this, and this does change the  
20 penalties from one to three months minimum.

21 MR. SWEEDLER: But it has a different impression on  
22 the public.

23 REPRESENTATIVE TIGUE: I don't believe that. I mean  
24 I've had my license suspended. I've had one driving  
25 ticket, one ticket in my life, for speeding. I lost my

1 license. That's when the law was that we went to an  
2 administrative hearing board.

3 I was driving at 16 miles an hour over the speed  
4 limit on Interstate 81. I lost my license.

5 Was that a fair system? Well, I didn't think it was  
6 at the time, especially since it was my first offense.  
7 Secondly, that system has been changed. That had to do  
8 with interstates.

9 The point is that what we're saying -- I don't know  
10 anyone who wants someone who is driving drunk to be on the  
11 highways or roads or courts or whatever, but the point is  
12 that this proposal doesn't do anything more than what --  
13 the current law does what you want it to do. If you're  
14 found guilty, we suspend the license. Absolutely. No  
15 exceptions. Can't use California because it doesn't apply  
16 to Pennsylvania. If you go through the hearing system and  
17 you're found guilty, you lose your license. If you go  
18 through the hearing system and you're found not guilty, you  
19 should not lose your license.

20 The problem is, under this system, because -- those  
21 of us who deal with PennDOT can understand. When you get  
22 into administrative problems, we will have a number of  
23 cases, as Representative Lescovitz said, where we will have  
24 people who eventually will be found not guilty, who  
25 probably shouldn't have been stopped in the first place,

1 who now are driving on a temporary permit, or it may have  
2 been expired, but because of bureaucratic problems or  
3 problems with policemen filling out forms or getting it in  
4 the mail, et cetera, the person now is caught in limbo.

5 To use Illinois as an example. Mike Carroll was  
6 involved in a situation I had in Illinois where  
7 Pennsylvania, for six months, was allowing this driver for  
8 DUI to be put back on the roads. Illinois to this day will  
9 not allow him to drive in Illinois because he has to show  
10 proof that he has insurance for three years, even though he  
11 is carried on an insurance policy at his house.

12 These are the kind of bureaucratic problems we're  
13 going to run into. What I'm saying is if the criminal  
14 justice system is backlogged, and that's where the problem  
15 seems to be, why do we now want to take the chance of  
16 taking people's licenses, not for those who are guilty but  
17 for those who are going to be found not guilty?

18 MR. SWEEDLER: The experience in other states --

19 REPRESENTATIVE TIGUE: We're talking about  
20 Pennsylvania.

21 MR. SWEEDLER: Pennsylvania is not unique. I mean  
22 Pennsylvania is not the only state that has that system.  
23 There are many states that have the same system.

24 The thing is that the administrative hearings are  
25 not requested by most people. That has been proven in

1 every state, from Florida to California to Illinois to  
2 Maryland, Delaware. People accept it. "You got me. I'm  
3 caught. I'll serve out my suspension and get my license  
4 back." That's the difference.

5 REPRESENTATIVE TIGUE: That's done in Pennsylvania  
6 now, though. Most people -- the only reason --

7 MR. SWEEDLER: People do go to court.

8 REPRESENTATIVE TIGUE: The only reason people go to  
9 court in Pennsylvania now is because the court is the one  
10 who can give them the minimum sentence with the ARD.  
11 That's the only reason they go to court. They don't go to  
12 court and plead -- they don't plead not guilty, they plead  
13 guilty. But they have to go to court to be given the ARD  
14 and the minimum sentence; otherwise, they get the maximum  
15 penalty for a first-time offender. That's why you go to  
16 court.

17 MR. SWEEDLER: But that could be six months later,  
18 three months later, a year later, and the person is not  
19 connecting the offense with what is happening to them a  
20 year later.

21 REPRESENTATIVE TIGUE: Sure they are.

22 MR. SWEEDLER: Well, we have a difference of  
23 opinion.

24 REPRESENTATIVE TIGUE: I mean I get people every  
25 week, as do a number of other people, who come in my office

1 with a suspended license. They understand what the problem  
2 is.

3 MR. SWEEDLER: I can just tell you what happens in  
4 other places and how it's gone into effect and how it has  
5 worked, and how effective it has been.

6 REPRESENTATIVE TIGUE: I agree with that, but what  
7 I'm saying is we already do what ALR has put into place in  
8 a number of other states. The only difference is we have a  
9 backlog, and we look at Mike Barrasse's --

10 MR. SWEEDLER: But that's a major, major impact on  
11 the person's psyche about not knowing with sureness it is  
12 going to take place and how quickly it will take place.  
13 That's a big difference. You may not think so, but I guess  
14 the researchers tell us that it does.

15 REPRESENTATIVE TIGUE: One other comment. It has  
16 nothing to do, but just a comment Mr. Sweedler mentioned.  
17 When you mentioned the four countries, Germany, the  
18 Netherlands, Great Britain --

19 MR. SWEEDLER: Sweden.

20 REPRESENTATIVE TIGUE: -- and Sweden. It's  
21 interesting that you have to get approval by a medical  
22 doctor. It's also interesting that they have either  
23 socialized or national health insurance.

24 MR. SWEEDLER: I'm not sure all of them do.

25 REPRESENTATIVE TIGUE: Sure they do, absolutely do,

1 every one of them.

2 REPRESENTATIVE PRESTON: They also have a better  
3 health system.

4 MR. SWEEDLER: I'm not saying that you should do  
5 that. I'm just saying no one has done that in this  
6 country.

7 REPRESENTATIVE TIGUE: I'm just saying it's  
8 interesting that they all have the people who don't have to  
9 go to the doctor to pay for the rehabilitation.

10 CHAIRMAN LLOYD: Are there other questions?

11 REPRESENTATIVE PRESTON: Just a quick comment. I am  
12 in the middle of this whole thing, really, right now. But  
13 the only thing that I'm seeing, hearing the questions, is  
14 the greatest problem that we have in this state, and that I  
15 see about the driver's license, is that most of the people  
16 who know they're supposed to send it in, never send it in,  
17 don't give it up anyway. It's causing a large problem once  
18 they have been suspended. I can see an advantage to that  
19 point.

20 MR. SWEEDLER: Taking it on the spot. Yes, that's a  
21 good point.

22 REPRESENTATIVE PRESTON: Because it prohibits -- a  
23 lot of people would have had less problems, at least legal  
24 problems, if they had just taken it in anyway, because it  
25 starts compounding, versus if they had taken it, they would

1 have had to deal with the system. At some time the system  
2 would have worked in their favor just naturally.

3 CHAIRMAN LLOYD: Two quick questions of fact.  
4 Number one, the significant increase in suspensions in  
5 California, would I be correct that that was primarily  
6 attributable to a reduction in the burden of proof?

7 MR. SWEEDLER: And also the court system in  
8 California allowed judges, or, in many cases, even though  
9 they're not allowed, they still -- even though California  
10 had a similar law which required suspension, mandatory  
11 suspension, the judges would suspend the suspension. They  
12 would say, "You're suspended for 90 days. I suspend that  
13 suspension. Be good. If I see you back in here, then I'll  
14 take it." So a lot of the cases were those types of cases.

15 But there were a segment with a difference in level  
16 of evidence; yes, sir.

17 CHAIRMAN LLOYD: Do you have any idea -- we had  
18 testimony from the Lackawanna County district attorney  
19 estimating maybe five to ten percent more suspensions  
20 because of standard of evidence. Do you think that's a  
21 reasonable ballpark estimate?

22 MR. SWEEDLER: It varies from state to state and how  
23 the system works. I know I looked at the State of  
24 Washington and the State of Oregon, two states that are  
25 very close in the makeup of their population. They always

1 talk about the northwest. Oregon has ALR, Washington does  
2 not. Oregon suspends approximately the same number of  
3 licenses of those arrested, Washington was like half,  
4 through the legal system, through other means. Even though  
5 they were required by law to take the license, it just  
6 didn't happen.

7 CHAIRMAN LLOYD: The second question is if you could  
8 possibly provide us with some statistics, because the proof  
9 is in the pudding, whether this is a long-term effect.

10 MR. SWEEDLER: Sure.

11 CHAIRMAN LLOYD: I don't know if you've got states  
12 where you have five years' experience or something more  
13 than a couple.

14 MR. SWEEDLER: I do discuss some of those in my  
15 statement, and we'll try to put some additional information  
16 together for you.

17 CHAIRMAN LLOYD: Thank you very much.

18 REPRESENTATIVE TIGUE: Just one follow-up question.  
19 You mentioned Washington. Is Washington half of them?

20 MR. SWEEDLER: Almost half.

21 REPRESENTATIVE TIGUE: Are not suspended?

22 MR. SWEEDLER: Right.

23 REPRESENTATIVE TIGUE: Even though they're found  
24 guilty? They're the guilty people or number of arrests?

25 MR. SWEEDLER: Most of those are found guilty and



1 still not suspended.

2 REPRESENTATIVE TIGUE: But not half of them?

3 MR. SWEEDLER: Close to half in Washington.

4 REPRESENTATIVE TIGUE: Are found guilty and not  
5 suspended?

6 MR. SWEEDLER: Right.

7 REPRESENTATIVE TIGUE: Thank you.

8 CHAIRMAN LLOYD: Thank you.

9 MR. SWEEDLER: You're welcome.

10 CHAIRMAN LLOYD: The next witness is Sherry Walker  
11 from Mothers Against Drunk Driving.

12 MS. WALKER: MADD Pennsylvania thanks the  
13 distinguished members of this Committee for the opportunity  
14 to testify here today in support of administrative license  
15 suspension.

16 Any elementary school teacher will tell you that the  
17 most effective way to maintain order and discipline in the  
18 classroom is to insure that any necessary punishment is  
19 administered swiftly and uniformly. This same approach is  
20 acknowledged by many to be equally effective in reducing  
21 the incidence of certain undesirable, even criminal,  
22 behaviors -- including driving under the influence.

23 Most states have traditionally based licensing  
24 actions against drivers charged with DUI on a conviction  
25 for the offense. Unfortunately, the wheels of the criminal

1 justice system often grind extremely slowly so that  
2 convictions are not always swift and certain in drunk  
3 driving cases. Case backlogs, plea bargaining, dilatory  
4 tactics employed by a clever defense attorney, and pre-  
5 trial or pre-conviction diversion programs raise the  
6 national average time from arrest to license suspension  
7 based upon conviction to about 120 days. In many states,  
8 including Pennsylvania, the average is much higher -- from  
9 six to eight months.

10         Clearly, in order to insure the greatest impact, and  
11 to be an effective deterrent, sanctions must be applied as  
12 soon as possible after the offense. In order for license  
13 suspensions to be swift and sure, and thus have the desired  
14 deterrent effect, they just be imposed administratively  
15 rather than following a conviction.

16         Administrative license suspension allows the  
17 arresting officer to immediately confiscate the license of  
18 a driver who either fails an approved test for blood  
19 alcohol or refuses to be tested. The arresting officer  
20 issues a temporary driving permit, which affords the  
21 offender time to appeal the suspension in an administrative  
22 process.

23         If the offender does not appeal, or if the appeal is  
24 not upheld, the offender loses his or her license for the  
25 legally prescribed period.

1           The important point about this process is that  
2 license suspension occurs regardless of the outcome of a  
3 criminal trial. The consequences of the irresponsible act  
4 of drunk driving are thus immediate and can have a profound  
5 impact on the offender.

6           This impact has been measured in a study conducted  
7 by the Insurance Institute for Highway Safety. In this  
8 study, the number of traffic crashes in states with  
9 administrative suspension laws was compared to the number  
10 of crashes in states without such laws.

11           The study concluded that ALS laws reduced fatal  
12 nighttime crashes (those most likely to involve alcohol) by  
13 about nine percent. Several other studies have  
14 demonstrated similar findings.

15           Although nine percent seems like a small reduction,  
16 it translates in Pennsylvania alone into a yearly savings  
17 of 66 lives, \$7.8 million in direct medical and  
18 rehabilitation costs, and \$37.1 million in lost  
19 productivity.

20           These savings more than make up for the costs  
21 incurred in implementing an administrative license  
22 suspension program. Even the absolute highest estimate of  
23 \$750,000 pales in comparison to the potential lives saved  
24 and the reduced cost to society.

25           In addition to these significant savings, a

1 Pennsylvania ALS law could make the state eligible for  
2 federal incentive 408 grant funds in excess of  
3 \$2.34 million a year.

4 Finally, in many states where reinstatement fees  
5 were assessed against offenders, the amount of these fees  
6 received annually were nearly double the annual costs  
7 associated with the program. Clearly, ALS makes economic  
8 as well as administrative sense.

9 The final question which must be addressed when  
10 discussing the implementation of an ALS program is the  
11 question of constitutionality. In Pennsylvania, where a  
12 number of recent Supreme Court rulings have practically  
13 eviscerated the DUI and underage drinking laws, this is a  
14 particularly potent issue. In answer, it can only be said  
15 that, to date, all state court decisions regarding  
16 administrative suspension laws have ruled that such laws do  
17 not violate provisions of the United States or individual  
18 state constitutions.

19 In addition, the United States Supreme Court has  
20 ruled that suspension of a driving license prior to an  
21 administrative hearing is not a violation of due process so  
22 long as provisions are made for a swift post suspension  
23 hearing. The court went on to say that the summary and  
24 automatic character of the suspension was critical for the  
25 attainment of prompt removal of drunk drivers from the

1 highways, and, most importantly, for the safety of the  
2 public.

3 MADD Pennsylvania fully supports the implementation  
4 of administrative license suspension within the  
5 Commonwealth. We believe it makes sense -- judicially,  
6 economically, and administratively. We also believe it  
7 makes societal sense and common sense.

8 Thank you again for the opportunity to address this  
9 Committee on such an important issue.

10 CHAIRMAN LLOYD: Thank you.

11 Are there questions from members of the Committee?  
12 Representative Tigue.

13 REPRESENTATIVE TIGUE: Just a comment, and,  
14 Ms. Walker, you may want to respond. Part of your  
15 testimony says -- and this is one of the problems I have.  
16 "The important point about this" -- this is your words.  
17 "The important point about this process is that license  
18 suspension occurs regardless of the outcome of a criminal  
19 trial." And I think that is one of the major deficiencies  
20 in this proposal; that if I am stopped by a policeman, for  
21 whatever reason he deems necessary, and I am found not  
22 guilty, I have suffered a penalty for which I didn't commit  
23 a crime.

24 MS. WALKER: I guess I would have two comments about  
25 that. The first one is there is such a thing called

1 statistical morality, and that is the good of the majority  
2 must outweigh the good of the few.

3 I don't think that anyone can argue the fact that  
4 currently if you give thousands of children whooping cough  
5 vaccine, there will be approximately 100 kids per year that  
6 will end up ill or sick from that vaccine, that we would  
7 not dream of not giving them that whooping cough vaccine.

8 So I do feel very strongly that while there may be  
9 an argument for that, that we have to think in terms of the  
10 good of the majority.

11 The second point of that, I do feel that it has been  
12 upheld in the Supreme Court, not just nationally but also  
13 in all the states where it has been challenged, that it is  
14 completely separate from either the criminal or the civil  
15 case; and, therefore, it is a completely separate item  
16 we're talking about here. It is much simpler.

17 You have been found guilty of driving under the  
18 influence of alcohol because you either refused the test,  
19 or you blew over a .10, and it is determined  
20 administratively to be guilty, which is separate from the  
21 criminal part of it, which does require preponderance of  
22 the evidence.

23 REPRESENTATIVE TIGUE: I don't think it's  
24 unconstitutional. I wouldn't hold that it is  
25 unconstitutional. But I do think that in Pennsylvania we

1 have a system which does the same thing as ALS or ALR,  
2 whichever system you want to call it, except the only  
3 difference we have is that there is a delay in adjudicating  
4 the case. I don't think that anyone, whether they're  
5 guilty or not guilty, should suffer because we have a  
6 system that has a backlog which they're not able to handle.

7         If you drive under the influence and your license is  
8 suspended, that's fine, that's what it should be. In  
9 Pennsylvania we do that. We do many of the things the film  
10 mentioned and Mr. Sweedler testified on ALS except for that  
11 time period. And, again, we're not doing it immediately  
12 because we're giving somebody 30 days to go out and do  
13 whatever they want legally with the permit. We're not  
14 taking their license -- let me put it this way, more  
15 correctly. We are not suspending their right to drive  
16 immediately. We are allowing them to continue to drive.

17         So I don't understand how that can be a valid  
18 argument when we're giving the person a permit to drive, to  
19 operate tomorrow the same as they did today while they were  
20 intoxicated.

21         MS. WALKER: I admit I'm not a psychologist, but I  
22 think statistics have ruled that people in general do  
23 respond -- the quicker that the punishment is to the action  
24 that is considered punishable, the more apt they are to  
25 connect those two.

1 I know I have a lot of phone calls that come in from  
2 DUI offenders, that come into our office, and they  
3 complaint, "That was nine, ten months ago when I did that.  
4 I have worked hard. I have done this; I have done that to  
5 try to change my behavior. It's not fair."

6 So I do think people do have a tendency to look for  
7 a closer correlation between their punishment and their  
8 behavior.

9 REPRESENTATIVE TIGUE: I have the opposite in my  
10 experience, as someone who handles maybe 150 pieces with  
11 PennDOT a week, and I have people who come into my office  
12 for all kinds of suspensions; and most of the people want  
13 to have it done immediately, especially kids who are  
14 college students so that they can have it done while  
15 they're in school, so they can work during the summer,  
16 things of that nature.

17 I think it's a case of individuality where sometimes  
18 it helps me to get suspended during the winter, sometimes  
19 it may help me to get suspended during the summer.  
20 Obviously, if I have a job which requires me driving it  
21 makes no difference, because I'm going to lose, at least  
22 for a temporary period, my ability to earn a living.

23 MS. WALKER: I would just conclude something that  
24 your colleague did bring up, and that is the fact that  
25 often licenses are not being turned in. This ALS bill



1 would eliminate that problem. You would begin to see the  
2 licenses turned in.

3 REPRESENTATIVE TIGUE: But I think you missed his  
4 point. His point was, by not turning your license in, it  
5 causes you more trouble. You don't get away with a  
6 suspended license by not turning it in. In fact, your  
7 suspension is extended. Because when you receive  
8 notification from PennDOT to turn your license in, let's  
9 say on October 1, your suspension begins on October 1. If  
10 you don't turn the license in, you're driving under  
11 suspension. If you turn the license in on November 1,  
12 that's when the time starts counting for your service, the  
13 time you must serve. So if you don't turn the license in,  
14 his point was, it doesn't help the person, it's a  
15 hinderance to the person, because it extends the period  
16 under which they would drive under suspension. Also, it  
17 causes them more complicated problems.

18 So the problem is, if you don't turn your license  
19 in, it's a problem for you, not for the state or for anyone  
20 else.

21 MS. WALKER: I just know that there are an awful lot  
22 of people out there driving under the influence, and we  
23 must do something about it. This has been shown to be one  
24 of the strongest deterrents --

25 REPRESENTATIVE TIGUE: That's why we passed the bill

1 in 1982.

2 MS. WALKER: I think ALS has been shown to be one of  
3 the strongest deterrents that we have, and it's been  
4 approved and upheld in 31 states. Mothers Against Drunk  
5 Driving would like to see ALS here in Pennsylvania. We  
6 think we need it.

7 CHAIRMAN LLOYD: Other questions?

8 REPRESENTATIVE FAIRCHILD: Just a quick comment. I  
9 think, on the psychology of this thing, your statement,  
10 "Any elementary school teacher will tell you that the most  
11 effective way to maintain order and discipline in the  
12 classroom is to insure that any necessary punishment is  
13 administered swiftly and uniformly," I think where a lot of  
14 us are coming from is that that may be true in the  
15 classroom, but what many of us feared was going home to our  
16 parents later on in the day, and that punishment or  
17 whatever is usually much more long-lasting, even though it  
18 was not directly at the point of the infraction.

19 I think that's where I have some problems  
20 understanding that this quick process would be better than  
21 maybe the longer process, certainly not the way it is now.  
22 I think we can all agree that we've got major time delay  
23 problems. But I'm just not sure in this manner this is the  
24 exact, correct Bill that we should be pursuing.

25 One last quick question. The Interlock devices,

1 has MADD studied those and the effectiveness of those?

2 MS. WALKER: MADD does not currently have a position  
3 on Interlock devices as of this date. We have found that  
4 there have been some studies that are beginning to trickle  
5 in, and we will begin to develop a position on that.

6 We do have some concerns about the cost, which are  
7 obvious, but, also, this would enable the person then to go  
8 ahead and pick another car and drive that vehicle; and plus  
9 the expense here, when you're talking about a family, most  
10 people are multi-car families, so to speak, and I believe  
11 that a person who is thinking in terms of drinking and  
12 driving -- who is thinking in terms of being able to drive  
13 an automobile after he has been intoxicated, will perhaps  
14 still go look for a car and drive that vehicle.

15 REPRESENTATIVE FAIRCHILD: But they would be driving  
16 in violation.

17 MS. WALKER: They're still driving that vehicle.  
18 Where without a driver's license --

19 REPRESENTATIVE FAIRCHILD: Well, the same way now.  
20 I mean they can drive without a license.

21 MS. WALKER: I don't think you can mandate that the  
22 person has to put Interlock devices on all of their cars.

23 REPRESENTATIVE FAIRCHILD: No. I'm not saying that.

24 MS. WALKER: And I think you will find that more  
25 people will be apt to slip over and drive another vehicle

1 than drive without a license, unless in some way you're  
2 going to also mandate that they may not drive any other  
3 car.

4 Those are things that I'm sure willing to sit and  
5 talk about, but I don't see a way to make that work based  
6 on what I've seen with the Interlock devices in other  
7 states. But we do not have a position as of this time.

8 CHAIRMAN LLOYD: A question and a comment. The  
9 question is: let's assume that we enacted this legislation  
10 and someone gets apprehended and he's at the administrative  
11 hearing. Should that person, in your opinion, be allowed  
12 to challenge the accuracy of the test?

13 MS. WALKER: I would have to defer to the people  
14 here from the National Traffic Safety Board to know whether  
15 that is allowable in other states and how it is handled in  
16 other states.

17 CHAIRMAN LLOYD: As a matter of philosophy, a matter  
18 of policy, when we considered this Bill a couple months  
19 ago, I supported it; in other words, I made a motion to  
20 report the Bill out of Committee. I believe that  
21 administrative suspension is a good idea. But I'm just  
22 trying to make clear on the record, and, certainly, in my  
23 mind it has to be open for the driver to say, "Wait a  
24 minute," number one, "I'm not the guy. You've got the  
25 wrong person." Number two, "They didn't do the test right,

1 and here we've got the logs to show that they didn't do the  
2 test right."

3 MS. WALKER: But I don't know -- and I have to be  
4 honest with you. I don't know what exactly is determined  
5 to be a reason why that administrative hearing officer  
6 would not support it administratively. Do they in other  
7 states allow a person to try to make the claim that that  
8 breathalyzer device was not functioning, or is that not  
9 allowable doing it administratively?

10 MR. SWEEDLER: Mr. Chairman, may I comment?

11 CHAIRMAN LLOYD: Yes.

12 MR. SWEEDLER: Certainly. I think at the  
13 administrative hearing, was there probable cause for the  
14 officer to make the arrest? In other words, you can't just  
15 stop somebody for another reason and then find that maybe  
16 they're intoxicated and put them through the whole process.  
17 There had to be reasonable cause, the person is weaving  
18 down the road, driving at night without lights, some reason  
19 to suspect an impaired driver. That's number one. And was  
20 the test conducted properly, or did they not take the test?  
21 And if they did take the test, did they fail it?

22 I mean you're correct --

23 CHAIRMAN LLOYD: That's what I assumed. I just  
24 wanted to make sure that when we say that they blow across  
25 and it's .10 and above, you know, that doesn't meet

1 elemental basic due process, and that makes Mr. Mancke's  
2 argument for him that you are just trying to stampede the  
3 justice and not allowing people their rights.

4 MS. WALKER: That's why I needed some help with the  
5 clarification.

6 CHAIRMAN LLOYD: My comment would be that it's been  
7 over 20 years ago when I did this, but when I studied  
8 criminal law, there was a concept that we would deter all  
9 kinds of criminal conduct much better in this country if we  
10 did not delay between the time we apprehend somebody and  
11 the time we take them to trial; and that we have gotten so  
12 accustomed to the mind-set that there should be a big  
13 interregnum between arrest and trial that it's kind of hard  
14 to come to grips with the notion that we could actually --  
15 we've got the evidence when the evidence is most accurate,  
16 we've got all the bodies when they're most available; let's  
17 have at it and let's get it settled. I mean what purpose  
18 is served, other than to let the evidence get cold, let  
19 witnesses become unavailable, and to disjoin the connection  
20 between the crime and the punishment, what purposes is  
21 served by giving the guy three months, six months, eight  
22 months, before we bring him to trial.

23 So I think your point is well taken, and there is a  
24 body of scientific study which suggests that that's valid.

25 Representative Tigue.

1           REPRESENTATIVE TIGUE: Just in response to  
2 Mr. Sweedler about you can't stop someone without cause and  
3 then find out that they're DUI. Well, in Pennsylvania we  
4 do that. We are allowed to have roadblocks, and it's been  
5 upheld, my understanding is, so we do stop people not  
6 because we thought they were impaired, just because we set  
7 up a roadblock, and we then arrest them for DUI. So it  
8 isn't only a question of stopping someone for probable  
9 cause.

10           MR. SWEEDLER: Some states don't allow  
11 administrative revocation at roadblocks.

12           REPRESENTATIVE TIGUE: But the point is, we do.

13           CHAIRMAN LLOYD: The point to be made is not what  
14 the specifics are, but it has to be in compliance --  
15 whatever the state says with regard to a legal stop, this  
16 has to meet that definition. We're not suggesting that  
17 we're repealing administrative due process.

18           Are there any other comments or questions?

19           (No response.)

20           CHAIRMAN LLOYD: Thank you very much.

21           The final witness this morning is Mario Pirritano,  
22 who is Deputy Secretary of Transportation.

23           MR. PIRRITANO: My text says good morning, but since  
24 we're so close to lunch I'll say good afternoon. I'll be  
25 as swift as I think administrative license revocation can

1 be.

2 Let me first introduce, to my left, Doug Tobin,  
3 Director of the Bureau of Driver License, Tom Bryer,  
4 Director of Center for Highway Safety, and John Heaton, our  
5 Chief Counsel.

6 Bear with me. I'm suffering from a cold, pneumonia,  
7 and probably a fever at this point in time.

8 Thank you for the opportunity of testifying before  
9 you. My testimony today will focus on two areas. First, I  
10 will present a general background, and I will outline  
11 specific problems the Department finds with the language in  
12 House Bill 1942, Printers Number 2342.

13 Many of these concerns have been addressed in  
14 Amendment A2187, which was previously submitted to the  
15 Transportation Committee.

16 Current state law does not always provide a rapid or  
17 a certain method of withdrawing the driving privileges from  
18 a person who drives a motor vehicle while under the  
19 influence of alcohol.

20 Convictions, in criminal court, are not always fast  
21 and certain in drunk driving cases. A backlog of cases in  
22 the court may mean a delay of many months before the  
23 criminal charges come to trial. Also, in many cases  
24 charges are being avoided altogether through plea  
25 bargaining.



1           The Department is only able to impose license  
2 sanctions upon receipt of the conviction from the court.  
3 As a result of protracted proceedings within the criminal  
4 court system, currently, the average time between the date  
5 of violation and the effective date of suspension where a  
6 person has been convicted for driving under the influence  
7 is 10 to 11 months.

8           Not infrequently, the time frame between violation  
9 and conviction exceeds two years. For those persons placed  
10 in an ARD program for DUI offenses, the time period between  
11 violation and suspension dates average eight to nine  
12 months.

13           As a result of administrative delays in submitting  
14 reports to the Department for those drivers who refuse to  
15 submit to chemical testing at the time of their arrest for  
16 DUI, the one-year suspension under Section 1547 of the  
17 Vehicle Code takes effect on an average of three to four  
18 months after the DUI incident.

19           In order to deter drunk driving and to provide a  
20 better connection between the illegal act and its  
21 consequences for the persons, a means, a more efficient  
22 process, if you will, is needed to get drunk drivers off  
23 the highways quickly.

24           One solution is to provide for administrative  
25 license suspensions without waiting for an offender to be

1 convicted in court, that is, Administrative Per Se License  
2 Suspensions. In order to reduce crashes, the immediacy of  
3 a sanction is as important as its severity.

4 Currently, 31 states have adopted administrative per  
5 se license suspension laws, and research indicates that  
6 these programs are effective in reducing DUI-related  
7 accidents.

8 According to estimates based upon a National Highway  
9 Traffic Safety Administration study of administrative  
10 license suspension laws, states can achieve a six percent  
11 reduction of single vehicle nighttime fatal crashes. Also,  
12 according to an Insurance Institute for Highway Safety  
13 study, states can achieve a nine percent reduction in fatal  
14 crashes during periods of high alcohol involvement.

15 In terms of yearly savings in Pennsylvania, NHTSA  
16 calculates, based on 1990 Fatal Accident Reporting System  
17 data, 44 to 66 lives would be saved. In Pennsylvania  
18 \$5 million to \$8 million would be saved in direct costs,  
19 such as medical, property damage, emergency services,  
20 insurance administration and legal and court costs.

21 This would mean \$30 million to \$45 million could be  
22 saved in societal costs. These costs reflect lost  
23 productivity and direct costs.

24 Congress has long recognized the importance of  
25 administrative license suspension to deterring drunk

1 driving. Federal funds have been appropriated for states  
2 that adopted administrative license suspension along with  
3 other DUI counter measures.

4 If Pennsylvania enacts an administrative license  
5 suspension program, the Commonwealth would be eligible for  
6 federal incentive grant funds under the Section 408  
7 Program.

8 Pennsylvania can only qualify for the 408 incentive  
9 funds if we meet two specific criteria: (1) Prompt license  
10 suspension, by federal definition, within 45 days from the  
11 date of arrest, and (2) a mandatory minimum period of  
12 license suspension for a first offense of 90 days.

13 Each of these provisions are included in House Bill  
14 1942 and must be retained. According to NHTSA officials,  
15 the federal 408 incentive funds currently available will  
16 lapse within the next two years. The total 408 funds  
17 estimated to be available to the Commonwealth from the  
18 federal government are \$2.34 million in federal fiscal year  
19 '93 and \$2.34 million in federal fiscal year '94.

20 These funds are prorated only among the states that  
21 qualify for the federal monies, and are available upon  
22 implementation of the program.

23 The Department supports the concept of  
24 administrative per se and its objective of reducing the  
25 terrible toll of needless death by reducing the occurrences

1 of driving under the influence.

2           Administrative per se is certainly feasible;  
3 however, the program will require an investment of  
4 approximately \$1.2 million for initial implementation. In  
5 addition, the Department recommends changes to house Bill  
6 1942 to minimize costs and to improve its effectiveness.

7           These changes are based on information we obtained  
8 from other states, NHTSA, The American Association of Motor  
9 Vehicle Administrators, and PennDOT's Chief Counsel's  
10 Office.

11           One of the critical problems with the legislation as  
12 it is now written is that this legislation provides for  
13 administrative license suspension for persons who fail the  
14 alcohol test but not for those who refuse to take it.  
15 Otherwise, individuals requested to submit to testing will  
16 realize that if they take the test and the test shows they  
17 are under the influence of alcohol, their privileges will  
18 be suspended almost immediately; but if they refuse to take  
19 the test, by tying the matter up in the courts, they may be  
20 able to delay any suspension for a very long period of  
21 time, and may, indeed, be able to avoid the suspension  
22 entirely.

23           This legislation needs to include those who refuse  
24 as well, in order to close that potential loophole.

25           Also, although this Bill appears to be an

1 administrative per se bill which would speed up the  
2 suspension process, because appeals would be provided  
3 pursuant to Chapter 7 of the Administrative Code, this Bill  
4 would actually obstruct and slow down the process, because  
5 once the Departmental administrative hearing was over, the  
6 individual would have a right to appeal all over again to  
7 the Court of Common Pleas under the provisions of Section  
8 1550 of the Vehicle Code and obtain an automatic  
9 supersedeas.

10           If this Bill is to be effective, the language of the  
11 bill must be changed so that the administrative hearing  
12 takes the place of the hearing before the court and is not  
13 merely an additional step that must be taken before that  
14 court hearing can be held. Any further appeal must be  
15 directly to the Commonwealth Court.

16           In addition, start-up time is critical. The 90-day  
17 effective date in this Bill will be impossible to meet.  
18 The Department would require a minimum of 12 months due to  
19 reprogramming of our driver license computer system, hiring  
20 and training of appropriate staff, training of the  
21 Commonwealth's law enforcement officers, and acquisition of  
22 hearing sites involved with this program. This legislation  
23 should not take effect until at least one year after  
24 enactment.

25           Given the costs associated with the program, I

1 recommend that the abuser and not the taxpayer -- and I  
2 underline that -- not the taxpayer, be responsible for  
3 funding the program. This legislation provides only for  
4 a hearing filing fee equal to court costs; however, we  
5 recommend that the approximately \$3 million required for  
6 ongoing operational costs be funded through a \$100 hearing  
7 filing fee and an additional \$50 restoration fee.

8 We recommend that the restoration fee be increased  
9 at the time of passage of the legislation in order to help  
10 fund a portion of the implementation costs.

11 The hearing should be removed from the provisions of  
12 Pennsylvania's Administrative Agency Law. Without this  
13 change, a stenographic record of the proceedings must be  
14 kept.

15 The cost to the Commonwealth for stenographic  
16 records would exceed an additional \$1.5 million a year. We  
17 recommend that the hearing be taped, and if a stenographic  
18 record is required, the offender should pay for the  
19 transcription service. This has been used very  
20 successfully in other states.

21 This legislation should be amended to require pick-  
22 up and submission of administrative review and hearing  
23 requests to designated offices. An administrative review  
24 should be conducted prior to the effective date of  
25 suspension if received within eight days following service

1 of suspension.

2           Given this Bill's existing language, forms could be  
3 picked up and delivered, and reviews conducted at  
4 Department facilities and critical processing time would be  
5 lost. Also, it is not administratively reasonable to  
6 conduct administrative interviews/reviews on a walk-in  
7 basis, which this Bill would allow.

8           In addition, hearings should be held at a location  
9 designated by the Department. The Department must have  
10 this option due to the significant administrative costs  
11 associated with hearing sites.

12           The temporary driving permit should be valid for at  
13 least 30 days instead of 10 days, and the time frame for  
14 the effective date of suspension should be increased to at  
15 least 30 days. The Department needs at least 30 days to  
16 schedule and conduct the hearing.

17           California currently utilizes 35 days. Also, the  
18 hearing should be held as quickly as practicable, and the  
19 Department should issue a temporary license if the hearing  
20 cannot be scheduled within 30 days.

21           Finally, in order to conform with the current  
22 vehicle code, the word "revocation" should be replaced by  
23 the word "suspension" throughout this Bill. A revocation  
24 requires the driver to apply for a learner's permit in  
25 order to be restored.

1           Also, these periods of suspension should be  
2 determined by whether the person's driving record shows  
3 prior alcohol-related or drug-related offenses during the  
4 immediately preceding seven years, not five years as stated  
5 in this Bill. It must be seven years so that it matches  
6 the prohibition found in Section 3731(e) against a person  
7 being admitted to ARD if he had another offense within the  
8 preceding seven years. Otherwise, individuals whose last  
9 offense was ~~between the five~~ years provided in this Bill  
10 and the seven years already in the law will be encouraged  
11 to tie up the criminal justice system because of the nine-  
12 month difference in suspension between the suspension  
13 imposed under this Bill and that imposed because of a  
14 conviction under the current law.

15           Additionally, for consistency, the minimum  
16 suspension for ARD should be 90 days.

17           In closing my testimony, I wish to reiterate the  
18 Department's support for the concept of administrative  
19 license suspension. A Pennsylvania administrative license  
20 suspension law could produce a six percent reduction of  
21 single vehicle nighttime fatal crashes and a nine percent  
22 reduction in fatal crashes during periods of high alcohol  
23 involvement.

24           In yearly savings, Pennsylvania would save 44 to 66  
25 lives, \$5 million to \$8 million would be saved in direct



1 costs, and \$30 million to \$45 million saved in societal  
2 costs.

3 To maximize the effectiveness of a Pennsylvania  
4 administrative license suspension law, and to minimize its  
5 cost, it must include: administrative license suspensions  
6 for not only persons who fail the alcohol test but for  
7 those who refuse to take it; provisions for the abuser, not  
8 the taxpayer, to be responsible for funding the program;  
9 removal of hearings from the provisions of Pennsylvania's  
10 Administrative Agency Law; a minimum of 12 months start-up  
11 time.

12 In addition, we are concerned with the availability  
13 of adequate funding of our implementation costs.

14 I would be happy to make my staff available to work  
15 with you in refining the specific language of this bill to  
16 ensure that the program will be successful.

17 Thank you for affording me the opportunity to appear  
18 before your Committee and to provide this testimony.

19 CHAIRMAN LLOYD: Thank you. I have a number of  
20 questions.

21 You say on page 3 of your statement, if I'm  
22 understanding it correctly -- and maybe I'm not -- that  
23 suspensions today occur, on average, within three to four  
24 months after the incident. Is that accurate?

25 VOICE: Refusal.

1 CHAIRMAN LLOYD: Only in the case of a refusal?

2 MR. PIRRITANO: A refusal.

3 CHAIRMAN LLOYD: What is the average length of time  
4 if somebody has failed the breathalyzer test, what is the  
5 average length of time until there is actually a  
6 suspension?

7 MR. PIRRITANO: Ten to eleven months.

8 CHAIRMAN LLOYD: Now, you also made a pitch for  
9 making this system self-supporting. I agree with that in  
10 theory.

11 Is it your intention that the restoration fee for  
12 people who do not have a DUI conviction or a DUI case,  
13 administrative suspension or anything involving DUI, that  
14 that restoration fee also be raised from \$25 to \$50?

15 MR. PIRRITANO: It is not.

16 CHAIRMAN LLOYD: The amendment which you have  
17 presented to us appears to do precisely that where it says  
18 that if you're driving something else, and for some other  
19 reason you lose your license, the restoration fee is going  
20 to be raised to \$50. That's on page 9 of your amendment.

21 MR. PIRRITANO: That was the amendment provided to  
22 you under separate cover earlier?

23 CHAIRMAN LLOYD: A2187. That issue came up last  
24 year in the last session where the Department tried to  
25 raise the restoration fee across-the-board to \$50, and we

1 rejected that.

2 MR. PIRRITANO: Let me clarify that statement. I  
3 said no, it was not the intent, but this was prior to my  
4 tenure that this was sent, and evidently it was the intent.

5 CHAIRMAN LLOYD: Obviously, I can't speak for  
6 anybody else, but we visited this issue before. We  
7 rejected that point. If the argument is that this should  
8 be a self-supporting system, there is no justification then  
9 to bootstrap out and take other people who, for whatever  
10 reason, have had their license suspended and make them pay  
11 for it as well.

12 MR. PIRRITANO: The point is well taken.

13 CHAIRMAN LLOYD: On the same point, I am somewhat  
14 concerned that we have a system here that imposes fines,  
15 and imposes on top of the fines an EMS charge, a CAT Fund  
16 surcharge, court costs, and that what we're doing, if we  
17 actually counted all of the fine money that we collect from  
18 people who have DUIs, that we would have enough money to  
19 pay for this system; that the only reason you need  
20 additional fees is because that money is now going to do  
21 other things in the Department.

22 Subject to check -- and my guess is, if you look at  
23 the numbers, that is exactly what it shows.

24 My experience is that an awful lot of people who  
25 have these offenses are never going to be able to pay the

1 fines. And I'm wondering if to make this self-supporting  
2 it wouldn't be more sensible to say that all of the fine  
3 money, and all the restoration fee money, which is  
4 currently being collected from people with a DUI-type  
5 incident, is diverted into a special fund, a restricted  
6 fund, to pay for this program.

7 I recognize that that might be \$3 million or \$5  
8 million, or whatever it is, that's not available to patch  
9 potholes or do something else, but rather than coming back  
10 and -- the Department is probably already collecting enough  
11 money to pay for this program. Rather than coming back and  
12 imposing additional charges, it seems to me it would be  
13 more intellectually honest to sequester the money we  
14 already have and use it for that purpose.

15 MR. PIRRITANO: I understand what you're saying, and  
16 I cannot specifically state that the money is -- and  
17 "divert" would probably be the wrong term -- being utilized  
18 elsewhere. But I think the dedication of this source would  
19 be palatable.

20 CHAIRMAN LLOYD: Also, I recognize that we want  
21 these hearings to cost as little as possible, and if you  
22 make a stenographic record, that's expensive, and that may  
23 not be necessary, and that the lion's share of these cases  
24 are probably going to be lost. I am wondering, however, if  
25 a defendant successfully appeals, whether it would not be

1 appropriate for the Commonwealth to reimburse him the cost  
2 of the stenographic record, or, if either -- well, the  
3 record would be relevant only on appeal to the Commonwealth  
4 Court.

5 But it just strikes me -- I realize this is an  
6 administrative proceeding, not a criminal proceeding, but  
7 that goes back to case law 30 years ago in criminal law  
8 where it was viewed as a great advance in constitutional  
9 rights, that if you were convicted criminally, that the  
10 government was going to pay for a transcript.

11 MR. PIRRITANO: I think there may very well be some  
12 precedent for that in the Department.

13 John, would you want to speak to that?

14 MR. HEATON: No. I don't know of any other  
15 situation where the Department assesses the transcript  
16 costs. Now, in the administrative docket matters, we have  
17 recently reflected in the filing fees the costs of  
18 transcripts. The filing fees have recently been increased.

19 I think the minimum filing fee now for an  
20 administrative proceeding in front of our hearing judge is  
21 \$100, which reflects the additional cost of the transcript.

22 CHAIRMAN LLOYD: For the record, you are?

23 MR. HEATON: John Heaton, Chief Counsel, PennDOT.

24 CHAIRMAN LLOYD: The final point that I wanted to  
25 raise is that I also appreciate the need to bring everybody

1 to Harrisburg to have a hearing, and I support this idea.  
2 I have some concerns, however, that this really is -- I  
3 mean we're saying, "Well, we're going to give you a  
4 hearing, but," just as somebody previously said, "you know,  
5 there's not really much point of having one because we know  
6 how it's going to come out," and make the guy come to  
7 Harrisburg.

8 Here's a guy who can't afford to take a day off  
9 work, not going to hire a lawyer to come down to  
10 Harrisburg, and by saying this all has to be in Harrisburg  
11 or some central location, whether in Pittsburgh or  
12 Philadelphia, that does impose a burden, and it is  
13 basically imposing a price for my appealing even though I  
14 believe that the police officer was wrong.

15 MR. PIRRITANO: I don't think that's what we're  
16 saying here, and that's not the expectation. I believe we  
17 will have hearing officers throughout the state at various  
18 locations.

19 CHAIRMAN LLOYD: Other questions from members of the  
20 Committee?

21 Representative Tigue.

22 REPRESENTATIVE TIGUE: In your testimony you mention  
23 three to four months for someone who refuses to take a  
24 blood or breathalyzer.

25 What percentage of people don't appeal that? And

1 how long does that take? If I just say, "Okay" -- you get  
2 information from a police department saying I failed to  
3 take a breathalyzer. How long does it take to process that  
4 suspension?

5 MR. PIRRITANO: It's about two-thirds, but what's  
6 the time frame?

7 MR. TOBIN: For which, for when they do appeal?

8 REPRESENTATIVE TIGUE: For when they don't appeal.

9 MR. TOBIN: When they don't appeal. That would be,  
10 generally, three to four months.

11 REPRESENTATIVE TIGUE: See, that's the point. The  
12 point is that it takes three to four months and there's no  
13 administrative hearing or anything. Why, then, would we  
14 even contemplate doing this if right now PennDOT -- if I am  
15 stopped out here by the Harrisburg police and they submit  
16 to you that I refused the breathalyzer, it takes three to  
17 four months, based on what you said, it takes three to four  
18 months to get back to me to tell me I'm suspended. Why,  
19 then, do we think it's going to be faster under this system  
20 when there's no hearing, there's no administrative law  
21 judge, there's nothing except you processing the  
22 information from the police department.

23 MR. TOBIN: We process the paperwork. Keep in mind  
24 that within that three to four-month period you've got that  
25 -- we have a built in 35-day due process appeal period

1 before the suspension takes effect.

2 REPRESENTATIVE TIGUE: Okay. That would reduce it  
3 from three to four to two to three months.

4 But the point is, it takes three months to process  
5 something where I've already pled guilty, and I don't even  
6 want an administrative hearing.

7 CHAIRMAN LLOYD: No.

8 REPRESENTATIVE TIGUE: Yes.

9 CHAIRMAN LLOYD: In this instance, though, isn't the  
10 answer to that question that the temporary license is going  
11 to run out, and so it doesn't require, once that time has  
12 run, it doesn't require the Department, unlike the case  
13 that Representative Tigue is talking about, it doesn't  
14 require the Department to do anything else. Isn't that  
15 where the savings come?

16 MR. TOBIN: Yes. Plus --

17 REPRESENTATIVE TIGUE: No.

18 REPRESENTATIVE HESS: The temporary license is only  
19 good for 30 days.

20 CHAIRMAN LLOYD: That's right. At the end of 30  
21 days, PennDOT doesn't have to do anything; the person no  
22 longer has a license, period.

23 REPRESENTATIVE TIGUE: But the point is -- and all  
24 I've heard this morning is that the reason for doing this  
25 is because of the delay in the judicial proceedings that we



1 have. What I'm saying is we have a system in place now for  
2 various offenses, including one of refusing to take a  
3 breathalyzer, or that you can't blame the judicial system  
4 for the backup. You just are notified that I'm guilty and  
5 it takes -- even at that point it takes three to four  
6 months to suspend my license, with no hearing, with no cop  
7 involved, with no one taking my license.

8 Why should I then believe, under any scenario, that  
9 it is going to be faster with an administrative law judge  
10 when now you don't even have one, it's just me to you?

11 MR. TOBIN: Because with this Bill you would have a  
12 built-in time period. You've got 30 days for the temporary  
13 license. The activity takes place in 30 days.

14 REPRESENTATIVE TIGUE: Or you can extend it.

15 MR. TOBIN: Or you can extend it. If, for some  
16 reason, you schedule a hearing and we are unable to meet  
17 that date, then we would extend it, at least that's what we  
18 propose to do.

19 REPRESENTATIVE TIGUE: But that puts me, as the  
20 operator, at risk. Not the Department, me, as the  
21 operator.

22 MR. MUSTIN: Representative Tigue --

23 CHAIRMAN LLOYD: Would you identify yourself for the  
24 record?

25 MR. MUSTIN: Bob Mustin, Legislative Liaison for

1 PennDOT.

2 Right now the law does not prescribe any time for  
3 that police department who is submitting the refusal, any  
4 time frame in which it has to be submitted to the  
5 Department, so you may have some police department that is  
6 as quick as, you know, within a week, and you may have  
7 others that take two months to get it in, and longer even.  
8 That's why the average time that has been quoted here is  
9 three to four months.

10 REPRESENTATIVE TIGUE: Let's use another scenario  
11 under the current law. You're notified by an insurance  
12 company that I dropped my insurance on my vehicle. How  
13 long does it take to get a plate picked up and processed?  
14 Because, automatically, I am suspended from the time you're  
15 notified.

16 If my insurance company notifies PennDOT that I have  
17 a registration with no insurance, you're supposed to  
18 suspend my license, I'm supposed to be notified, et cetera,  
19 and we go through this. How long does it take to do that?

20 MR. TOBIN: That's about 90 days to 120 days.

21 REPRESENTATIVE TIGUE: Before what, Doug, before you  
22 notify me?

23 MR. TOBIN: No, no; before the suspension takes  
24 effect.

25 REPRESENTATIVE TIGUE: How long does it take you to

1 notify me?

2 MR. TOBIN: It is rather instantaneous with the  
3 receipt of information from the insurance company if they  
4 provide it on computer tape. We process the tape. Within  
5 a week we've got the letter out to you.

6 REPRESENTATIVE TIGUE: Okay, I will accept that.

7 What happens if I'm driving -- and there's a  
8 provision in this amendment -- and I say I don't have a  
9 driver's license; do you issue me a temporary license?

10 MR. TOBIN: Within this provision?

11 REPRESENTATIVE TIGUE: Within this amendment, yes.

12 MR. TOBIN: You're out driving --

13 REPRESENTATIVE TIGUE: I'm out driving, I'm stopped  
14 for DUI, and I say I don't have a license with me. Do you  
15 then issue me a temporary license?

16 MR. TOBIN: Under the law, the person has so many  
17 days to show up and present their license or the officer  
18 would also cite them for driving without a license.

19 REPRESENTATIVE TIGUE: Under the amendment, if the  
20 amendment goes into effect, if I'm driving and I get  
21 stopped and I say I don't have a license, do I get issued a  
22 temporary permit at that point?

23 MR. TOBIN: You will be issued a suspension notice  
24 by the officer, which takes effect --

25 REPRESENTATIVE TIGUE: I'm talking about right on

1 the spot. You're talking about taking someone's license  
2 when you're stopped. I'm saying you stop me and I say I  
3 don't have a license with me.

4 MR. TOBIN: In other states what they will do is  
5 they will tell the person that they have got to show up  
6 within a certain period of time, usually within a couple of  
7 days, show up with their license in hand. At the time they  
8 surrender it, then they're issued a temporary license. Or  
9 if for some reason the license has been lost or so on, then  
10 they must certify that it has been lost, and you go from  
11 there with a temporary license.

12 If they don't have a license whatsoever, then they  
13 are not issued a temporary license, obviously.

14 REPRESENTATIVE TIGUE: So if I don't have my license  
15 with me, I'm not issued a temporary license; obviously, I  
16 can't turn it in. Then I'm allowed a couple of days to go  
17 get my license and turn it in?

18 MR. TOBIN: Yes.

19 MR. MUSTIN: The amendment provides that if your  
20 license is not taken by the police officer, you will be  
21 notified by the department as to your administrative  
22 hearing and all those details, and your license would then  
23 ultimately be turned in as it is today.

24 REPRESENTATIVE TIGUE: I understand that. My  
25 question was do I get a temporary permit?

1 MR. MUSTIN: No, you will not. If the officer  
2 doesn't serve you with a suspension, you will not get a  
3 temporary permit. He will not serve you with a suspension  
4 if you do not have a license to turn in.

5 REPRESENTATIVE TIGUE: What made me think of this  
6 was a statement Representative Lloyd made before about  
7 identity. Mike Carroll can verify this. We just had a  
8 situation where one of my constituents received a  
9 notification from PennDOT that his license was suspended  
10 because he failed to respond to a citation. When I  
11 contacted PennDOT they said, "Yes, this is the operator  
12 number, this is his name." They gave me an address which  
13 was about 120 miles from where he lives.

14 Ironically, the person who was stopped for the  
15 infraction evidently knew this guy's name and date of  
16 birth. It wasn't him. What happened was, the magistrate  
17 then sent out a citation to the address which was given  
18 when the person was arrested under this guy's name and  
19 operator's number. The policeman never -- and it was a  
20 State Policeman -- never required the person to come back  
21 in and show proof of his license.

22 As a result, a policeman comes to the place of  
23 business and says, "I'm here to pick up your license." He  
24 says, "For what? I've never been notified. What are you  
25 talking about?"

1           This is a situation which has happened. I mean,  
2 these things occur. How do we prevent that from happening?  
3 If I say: I don't have my license. I'm Bob Mustin. My  
4 date of birth is whatever.

5           MR. PIRRITANO: Clearly, I think if this is approved  
6 we would have to train our people to ensure that these kind  
7 of things would not happen. Even at that, you're probably  
8 going to have the isolated incident that will occur, just  
9 like the infamous Mr. Smith in Philadelphia who we had  
10 listed as dead, which, by the way, the State Police had  
11 notified us of that. So we would certainly make every  
12 effort to ensure there are no abuses.

13           REPRESENTATIVE TIGUE: That doesn't solve the  
14 problem though. I would imagine you are making efforts  
15 now, but still, because of the volume of individuals, not  
16 only the pieces of registrations or infractions but we keep  
17 extending the layers, and that's my point; if we have more  
18 people involved in the process, we're apt to make more  
19 mistakes.

20           What happens currently if an out-of-state driver --  
21 for instance, a Pennsylvania driver is picked up in a state  
22 which has ALS or ALR, say, Maryland. If I'm driving to  
23 Baltimore this afternoon, I'm intoxicated, I get stopped by  
24 the Maryland State Police, what happens?

25           MR. TOBIN: It varies, and it really almost varies

1 on the police officer who picks you up. Although the other  
2 state really does not have a right to take that license  
3 from another state, it does happen and they will take the  
4 license; they would take the Pennsylvania license.

5 In some instances they send it back to us, and then  
6 we return it to the driver. In all instances they would  
7 file a DUI charge against that driver, and they would have  
8 to appear in court in the State of Maryland, go through the  
9 criminal process; and Maryland, at the end of it, would  
10 levy a suspension against that driver for operation within  
11 the State of Maryland.

12 REPRESENTATIVE TIGUE: But it doesn't apply to  
13 Pennsylvania?

14 MR. TOBIN: It does not apply to Pennsylvania at  
15 this time.

16 REPRESENTATIVE TIGUE: How could it apply to  
17 Pennsylvania?

18 MR. TOBIN: How could it?

19 REPRESENTATIVE TIGUE: Yes.

20 MR. TOBIN: If we entered a compact with the State  
21 of Maryland, then that could apply.

22 The situation is different for the State of Delaware  
23 where we do have a bilateral compact with them. If you are  
24 convicted of the offense of DUI in the State of Delaware,  
25 we will then take a suspension against your Pennsylvania

1 driver's license.

2 REPRESENTATIVE TIGUE: You will take a suspension  
3 based on the Delaware law?

4 MR. TOBIN: Yes.

5 REPRESENTATIVE TIGUE: I don't have any other  
6 questions.

7 CHAIRMAN LLOYD: Are there any other questions?

8 REPRESENTATIVE FAIRCHILD: A couple.

9 CHAIRMAN LLOYD: Representative Fairchild.

10 REPRESENTATIVE FAIRCHILD: The seizure of license,  
11 when a policeman seizes a license and issues the temporary  
12 permit, how long does the police department or the officer  
13 have to forward the information to the Department?

14 MR. LANDIS: Forty-eight hours, I think it is.

15 REPRESENTATIVE FAIRCHILD: Is it addressed in the  
16 bill? I didn't see it.

17 MR. PIRRITANO: Not the bill. It's in the  
18 amendment.

19 MR. HEATON: Section 4 says, "The police officer  
20 shall transmit to the Department, along with the report  
21 under paragraph one, a copy of the complete notice of  
22 suspension form, a copy of any completed temporary permit  
23 and driver's license." So there is no time frame.

24 REPRESENTATIVE FAIRCHILD: I think you're going to  
25 have to address that time frame, because you've got very



1 tight time frames for the -- you've only got 30 days to  
2 make this thing run, so you've got to put something in  
3 there.

4 MR. PIRRITANO: I don't know if it was addressed in  
5 the amendment or not, but we'll certainly follow that up.

6 REPRESENTATIVE FAIRCHILD: It is not in the  
7 amendment, that I see.

8 On page 5, "If the Department determines that the  
9 person is not subject to suspension, the Department shall  
10 notify the person of its administrative determination,  
11 shall rescind," et cetera, et cetera.

12 What is an example of the Department determines that  
13 the person is not subject to suspension given that there is  
14 a temporary license given?

15 MR. TOBIN: Representative Fairchild, it would be  
16 many of the same things we talked about here earlier. It  
17 would be an improper arrest, improper finding of --  
18 improper test results.

19 REPRESENTATIVE FAIRCHILD: So this is before the  
20 hearing process and everything else, that section?

21 MR. TOBIN: Yes.

22 REPRESENTATIVE FAIRCHILD: So that's kind of a first  
23 review the person would get?

24 MR. TOBIN: Right.

25 REPRESENTATIVE FAIRCHILD: Again, I just question:

1 how long will the Department take; in what form will they  
2 rescind it and how long will it take to get back to the  
3 driver? That's just a comment.

4 MR. PIRRITANO: I would like to maybe bring up a  
5 question. You were concerned about the individual  
6 abrogating their rights legally.

7 John, you might want to speak to that. I think  
8 there might be some --

9 REPRESENTATIVE FAIRCHILD: I don't have any further  
10 questions on that.

11 MR. PIRRITANO: I'm sorry.

12 REPRESENTATIVE FAIRCHILD: Any idea on the number of  
13 hearing sites that would be available to the citizens?  
14 Following up on Representative Lloyd's questions.

15 MR. PIRRITANO: I'll let Mr. Tobin speak on that in  
16 more detail, but as we take the Department forward,  
17 particularly with licensing and decentralization -- and I  
18 will just speak very briefly -- people want customer  
19 service, they want one-stop shopping, so it's going to have  
20 to be reasonably convenient.

21 We do have a budget laid out and the number of  
22 people that we would require, but I can't tell you  
23 specifically the locations, but certainly within reason.

24 REPRESENTATIVE FAIRCHILD: On the hearings it says,  
25 "The Department shall provide written notice of the time

1 and place of the hearing to the person requesting the  
2 hearing at least ten days prior to the scheduled hearing."  
3 I understand that.

4 Then it says, "It shall be the responsibility of the  
5 person challenging the suspension to arrange for the  
6 attendance of any witnesses, including the law enforcement  
7 officer who submitted the sworn report."

8 Is that fair to give somebody ten days -- if I  
9 receive it today, I've got a hearing in ten days -- to now  
10 go out and request that the law enforcement officer be  
11 there, any other witnesses? I assume that there may be  
12 some subpoenas possibly involved in here. What happens  
13 if -- I get complaints from my boroughs and law enforcement  
14 agencies that they are cutting down on personnel, their  
15 budgets are tight. One of their complaints is they are  
16 always ending up in hearings and that messes up their  
17 shifts and that type of thing.

18 MR. PIRRITANO: I'm not sure ten days is  
19 unreasonable, but if it is, there is some latitude for  
20 adjustment, and I'll defer to John on that.

21 MR. HEATON: It can be extended under the language,  
22 I believe.

23 REPRESENTATIVE FAIRCHILD: Yes. That's up to the  
24 hearing officer. I think that opens up a whole nother  
25 issue of extending this thing when, obviously, the intent

1 was to get it over with, bang.

2 I just wondered how many other -- are our courts  
3 filled up because of similar extensions where the one  
4 attorney has another date, the law enforcement officer is  
5 on vacation? Are we adequately fixing the problem at hand,  
6 or are we just putting a band-aid on an already-existing --

7 MR. PIRRITANO: Certainly, it's a very complex  
8 issue, I'm sure, but in doing all the analysis here I'm  
9 told that perhaps our legal staff could be reduced by  
10 several or more -- am I correct, John -- because of the  
11 time they're now spending appealing and dealing with the  
12 courts.

13 REPRESENTATIVE FAIRCHILD: Just one last comment on  
14 the decision. "The hearing and the cost of transcription  
15 service shall be borne by the Department. The decision of  
16 the hearing officer shall be rendered in writing and  
17 provided to the person who requested the hearing." I would  
18 like to request that you put a time frame in there so that  
19 we have it in black and white, somebody can't say, "Well,  
20 it was mailed 30 days ago." If we have it in statutory  
21 language, then each party will know the time frame.

22 Thank you.

23 CHAIRMAN LLOYD: Any other questions?

24 (No response.)

25 CHAIRMAN LLOYD: If not, thank you very much -- oh,

1 I'm sorry.

2 REPRESENTATIVE TIGUE: One other question I just  
3 thought of, and maybe Doug knows the answer to this.

4 An administrative hearing now, if I go to an  
5 administrative hearing now for cumulative points or  
6 habitual offender, from the time the hearing ends to the  
7 time my license, if it is going to be suspended, what is  
8 that time?

9 MR. TOBIN: Including your due process time, you're  
10 probably looking at 60 days, would be my guess.

11 REPRESENTATIVE TIGUE: Thank you.

12 MR. TOBIN: ~~Because you have that right to appeal~~  
13 our determination.

14 CHAIRMAN LLOYD: I would like to thank all the  
15 people who participated this morning. We will be, as soon  
16 as we get a transcript, forwarding that to the full  
17 Committee so that the members of the Committee have an  
18 opportunity to review it and determine what direction we  
19 want to go on this legislation.

20 The meeting is adjourned.

21 (Whereupon, at 12:25 p.m., the meeting was  
22 adjourned.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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By: Judith A. Valencik

Judith A. Valencik

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