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DUI: THREE STRIKES AND YOU'RE ON THE WAGON

JOINT HEARINGS OF THE HOUSE JUDICIARY AND TRANSPORTATION COMMITTEES ON DRUNK DRIVING

TESTIMONY OF HONORABLE DENNIS O'BRIEN

Problem statement. The overwhelming majority of drunk driving offenders convicted three or more times of DUI are chronic alcoholics. Although such offenders serve mandatory minimum sentences and are not supposed to get their driver's license back until they successfully complete alcoholism treatment, chronic alcoholics are out of control and will not let the mere lack of a driver's license keep them from driving; more likely than not, they will be picked up for more DUIs and will keep driving drunk until they are dead or in recovery.¹ These "three+-timers" are the most dangerous drunk drivers of all, as well as the most likely group to be committing domestic violence and disrupting their workplaces (through absenteeism, accidents, theft, and disciplinary problems).

As a result of this problem, several months ago I discussed this issue with the District Attorney's Office in my city, and we have collaborated in developing a strong legislative response to this problem, a response which has been endorsed by the Pennsylvania District Attorneys Association and which I have reason to believe will be endorsed by MADD and the drug and alcohol treatment community.

General Proposal. The proposed Three Strikes/DUI legislative initiative would have a real impact on the DUI problem as well as other serious alcohol-rooted violent crime. The heart of the proposal is that a person convicted of a third or subsequent DUI would, after serving the current mandatory minimum, be facing a full four year term of total confinement (including the time served under the mandatory minimum) unless they succeed in treatment and maintain sobriety.

The mechanism for this would be as follows:

¹ Incarceration is another option, but that protects the public only until they are released.

1. The DUI law has recently been amended to upgrade a third or subsequent DUI conviction to an M-1 (under old law, DUI was always an M-2).
2. The DUI statute would be further amended to require a mandatory maximum of four years imprisonment for third or subsequent DUI convictions.²
3. The DUI statute would be further amended to state that successful involvement in and completion of the appropriate level of treatment, followed by maintenance of sobriety (as determined by random urine tests and periodic assessments by drug and alcohol clinicians), would be strict conditions of parole. The statute would need to be carefully crafted so that the county (or state) parole board and the D & A clinicians could aggressively use the four year maximum sentence as leverage to motivate the recalcitrant alcoholic to comply. If the alcoholic absolutely persists in failing to cooperate with treatment, then society receives the benefit of having a very dangerous chronically drunk driver off the streets and in prison for four years.

Clinical efficacy. Treatment experts have confirmed that this "DUI: Three Strikes and You're on the Wagon" is a very sound plan from a clinical perspective. The treatment providers' perspective reflects common sense; the bigger the hammer, the better their chances of success.

Funding. For the majority of three-timers, their treatment should be covered by their health insurers or HMOs. These include most of those who are employed (they will have HMO coverage through their employers) and all of those who are on Medicaid (who will have a Medicaid HMO). State law requires private health insurance to cover up to 30 or 60 days of residential rehab, and requires Medicaid HMOs to cover up to 180 days of residential rehab.

² Having the mandatory maximum less than five years would cause the parole jurisdiction to rest with the county probation departments, which are better equipped to administer the more aggressive parole policies mandated by this proposed legislation. However, if a given county did not believe itself to have the resources to carry out these policies, parole jurisdiction could be given to the state parole board simply by having the court sentence the offender to the full five year maximum allowable by law.

Summary. It is important that we hold drunk drivers accountable. This legislation does that by keeping intact the mandatory minimums in the current statute. However, with repeat DUI offenders this bill will go much further by addressing the heart of the problem: their obvious drinking problem.

I am convinced that this legislation will result in a significant drop in drunk-driving in Pennsylvania. Because it will use the full force of the criminal justice system to compel chronic alcoholics to tackle the drinking problem, I am also convinced it will also result in a reduction of other types of crime, including third degree murders, aggravated assaults, and domestic violence.

I have attached a copy of our latest draft of this legislation.

Thank you for allowing me to present this important proposal for your review.

DUI: THREE STRIKES AND YOU'RE ON THE WAGON

1 75 Pa.C.S. § 3731. Driving under influence of alcohol
2 or controlled substance.
3

4
5 * * * * *
6 (e) Penalty. -
7

8 (1) Any person violating any of the provisions of this section
9 is guilty of a misdemeanor of the second degree, except that a
10 person convicted of a third or subsequent offense is guilty of a
11 misdemeanor of the first degree, and the sentencing court shall
12 order the person to pay a fine of not less than \$300 and serve a
13 minimum term of imprisonment of:
14

15 (i) Not less than 48 consecutive hours.
16

17 (ii) Not less than 30 days if the person has previously accepted
18 Accelerated Rehabilitative Disposition or any other form of
19 preliminary disposition, been convicted of, adjudicated delinquent
20 or granted a consent decree under the Juvenile Act (42 Pa.C.S. §
21 6301 et seq.) based on an offense under this section or of an
22 equivalent offense in this or other jurisdictions within the
23 previous seven years.
24

25 (iii) Not less than 90 days if the person has twice previously
26 been convicted of, adjudicated delinquent or granted a consent
27 decree under the Juvenile Act based on an offense under this
28 section or of an equivalent offense in this or other jurisdictions
29 within the previous seven years.
30

31 (iv) Not less than one year if the person has three times
32 previously been convicted of, adjudicated delinquent or granted a
33 consent decree under the Juvenile Act based on an offense under
34 this section or of an equivalent offense in this or other
35 jurisdictions within the previous seven years.
36

37 (1.1) The sentencing court shall order any person convicted of
38 a first degree misdemeanor under this section to a mandatory
39 maximum term of imprisonment of four years.
40

41 (2) Acceptance of Accelerated Rehabilitative Disposition, an
42 adjudication of delinquency or a consent decree under the Juvenile
43 Act or any other form of preliminary disposition of any charge
44 brought under this section shall be considered a first conviction
45 for the purpose of computing whether a subsequent conviction of a

1 violation of this section shall be considered a second, third,
2 fourth or subsequent conviction.

3 * * * * *

4
5
6 (e.1) Treatment and sobriety as condition of parole for third
7 and subsequent offenders.-

8
9 (1) Any person convicted of a misdemeanor of the first degree
10 under this section must refrain from the use of alcohol or illegal
11 controlled substances, and must refrain from the abuse of
12 prescription drugs, over-the-counter drugs, or any other substances
13 as a condition of parole.

14
15 (2) Any person convicted of a misdemeanor of the first degree
16 under this section shall be assessed for alcohol and other drug
17 abuse and addiction, prior to being released on parole. This
18 assessment shall take into consideration issues of public safety.
19 It shall be conducted by one of the following: the Pennsylvania
20 Department of Health Office of Drug and Alcohol Programs or its
21 designee; the county authority on drugs and alcohol or a designee;
22 or clinical personnel of a facility licensed by the Office of Drug
23 and Alcohol Programs. This assessment shall include recommen-
24 dations for length of stay, levels of care, and follow-up care and
25 monitoring. All persons assessed to be in need of alcohol and/or
26 drug treatment must participate in and cooperate with a licensed
27 drug and alcohol treatment program, in accordance with the
28 assessment, as a condition of parole.

29
30 (3) Nothing in this section shall prevent a treatment program
31 from refusing to accept a criminal justice referral if the program
32 administrator deems the person to be inappropriate for admission to
33 the program. Additionally a treatment program shall retain the
34 right to immediately discharge into the custody of the assigned
35 parole officer any individual who fails to comply with program
36 rules and treatment expectations or who refuses to constructively
37 engage in the treatment process.

38
39 (4) If a parolee has been ordered pursuant to this section to
40 participate in a treatment program, the designated treatment
41 program shall report periodically to the assigned parole officer on
42 the parolee's progress in the treatment program. The designated
43 treatment program shall promptly notify the parole officer if the
44 parolee:

45
46 (i) fails to comply with program rules and treatment
47 expectations; or

48
49 (ii) refuses to constructively engage in the treatment process;
50 or

1 (iii) without authorization, terminates his or her participation
2 in the treatment program.

3
4 Upon such notification, the parole officer shall promptly report
5 the parolee's actions to the parole board, which shall immediately
6 schedule a revocation hearing, at which the board shall give due
7 consideration to the recommendation of the parole officer and the
8 treatment program.

9
10 (5) Notwithstanding any other provision of law, any person
11 ordered to participate in a treatment program pursuant to this
12 section who fails to comply with program rules and treatment
13 expectations, who refuses to constructively engage in the treatment
14 process or who, without authorization, terminates his or her
15 participation in the treatment program, shall be ineligible for
16 parole, prerelease, work release or any other release from the
17 correctional facility prior to the expiration of his or her maximum
18 term, unless or until such person is permitted to be re-admitted to
19 a treatment program in accordance with paragraph (2). Nothing in
20 this paragraph shall be construed to grant a legal right to parole
21 to a person previously ineligible for parole under this paragraph,
22 on the grounds that such person is currently prepared to
23 participate in, comply with and constructively engage in the
24 treatment process. Under such circumstances, parole or re-parole
25 of the person shall be at the parole board's discretion.

26
27
28 (6) After a person has completed the treatment program, the
29 parole officer shall take reasonable steps to ensure that the
30 person does not use alcohol or illegal controlled substances, or
31 abuse prescription drugs, over-the-counter drugs, or any other
32 substances. Such steps may include, but are not limited to,
33 requiring verification of regular participation in twelve step
34 meetings, chemical testing and periodic re-assessment of the person
35 by the treatment program.

36
37 (7) The parole board shall impose upon a person subject to this
38 subsection reasonable fees to cover the cost of:

39
40 (i) any chemical testing of the person required or ordered
41 under this subsection;

42
43 (ii) any assessment of the person required or ordered under
44 this subsection; and

45
46 (iii) any drug and alcohol treatment provided in accordance
47 with such an assessment.

48
49 If the board finds the person to be indigent, the board shall
50 require the person to pay as much of the fee as is consistent with
51 the person's ability to pay.

1 (8) In order to support and augment the diagnostic assessment
2 and treatment services provided pursuant to this subsection, the
3 Department of Health Office of Alcohol and Drug Programs, the
4 Department of Transportation, and the Pennsylvania Commission on
5 Crime and Delinquency shall pursue all federal funding available
6 through the Department of Justice Bureau of Justice Assistance, the
7 Department of Transportation National Highway Traffic Safety
8 Administration, the Medicaid program, and other federal sources and
9 programs.