

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

TRANSPORTATION COMMITTEE HEARING

STATE CAPITOL
IRVIS OFFICE BUILDING
ROOM G-50
HARRISBURG, PENNSYLVANIA

TUESDAY, OCTOBER 13, 2009
9:06 A.M.

PRESENTATION ON ALTERNATIVES
TO DRIVER'S LICENSE SUSPENSIONS,
INCLUDING OCCUPATIONAL LIMITED LICENSES

BEFORE:

HONORABLE JOSEPH F. MARKOSEK, MAJORITY CHAIRMAN
HONORABLE MIKE CARROLL
HONORABLE PAUL COSTA
HONORABLE JOHN P. SABATINA, JR.
HONORABLE JOHN J. SIPTROTH
HONORABLE JAKE WHEATLEY
HONORABLE RICHARD A. GEIST, MINORITY CHAIRMAN
HONORABLE JOHN R. EVANS
HONORABLE DICK L. HESS
HONORABLE DAVID S. HICKERNELL
HONORABLE RON MILLER

ALSO IN ATTENDANCE:

HONORABLE VANESSA LOWERY BROWN
HONORABLE DANTE SANTONI, JR.
HONORABLE RONALD G. WATERS

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ALSO PRESENT:
ANNE D. BALOGA
MAJORITY RESEARCH ANALYST
AMANDA L. WOLFE
MAJORITY LEGISLATIVE ASSISTANT
ERIC C. BUGAILE
MINORITY EXECUTIVE DIRECTOR
VICKIE L. TROSTLE
MINORITY LEGISLATIVE ADMINISTRATIVE ASSISTANT

DEBRA B. MILLER
REPORTER

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1 P R O C E E D I N G S

2 * * *

3 CHAIRMAN MARKOSEK: Good morning, everybody.

4 Welcome to the hearing, the Transportation
5 Committee hearing today, on alternatives to driver's
6 license suspensions, including occupational limited
7 licenses.8 As you perhaps can tell, the sound system is
9 not working. Somebody is on their way today. So we
10 will just have to speak up a little bit.11 I would like to start the meeting by wishing
12 happy birthday to Cindy Cashman from PENNDOT and have
13 her lead us in the Pledge of Allegiance.

14 (The Pledge of Allegiance was recited.)

15 CHAIRMAN MARKOSEK: I would like to thank
16 the members who are here.17 You know, we had kind of a skewed session
18 schedule. We thought today would be a session day,
19 and obviously it's not now since we passed the
20 budget.21 But we kept the meeting on because we know
22 we have a lot of folks who are here to testify that
23 had made arrangements to be here, and we wanted to
24 honor their efforts. So with that, we will get
25 started.

1 Let's see, does Representative Chairman
2 Geist have any remarks to make early on?

3 REPRESENTATIVE GEIST: No; I think it's time
4 to get about the business.

5 CHAIRMAN MARKOSEK: Okay. Thank you.

6 REPRESENTATIVE GEIST: Wait; wait; wait.

7 Happy birthday, Cindy.

8 CHAIRMAN MARKOSEK: The first person we have
9 on deck here is Mr. Deputy Secretary Kurt Myers, who
10 is Deputy Secretary for Safety Administration in the
11 Pennsylvania Department of Transportation, an
12 oftentimes testifier here who we are always glad to
13 see.

14 Kurt, welcome. And introduce your staff, if
15 you will.

16 DEPUTY SECRETARY MYERS: Thank you,
17 Mr. Chairman.

18 Yes; with me is Janet Dolan, the Director of
19 Driver Licensing.

20 Well, good morning all. On behalf of
21 Secretary Biehler, I appreciate the opportunity to
22 testify today on House Bill 1323, related to the
23 eligibility requirements for an occupational limited
24 license.

25 As the law currently exists, an individual

1 who has been convicted of driving under the influence
2 of alcohol or a controlled substance is eligible for
3 an occupational limited license provided the
4 violation is the individual's first offense and the
5 individual meets additional eligibility requirements.

6 In a very unique situation, however, an
7 individual who has been convicted of a second DUI
8 offense may be eligible for an OLL.

9 The OLL authorizes the individual to drive a
10 designated vehicle under certain conditions, only
11 when it is necessary for the individual's occupation,
12 work, trade, medical treatment, or study.

13 However, under the current law, an
14 individual is not eligible for an OLL if their
15 driving privilege has been suspended upon conviction
16 of a nonmoving violation for the possession, sale,
17 delivery, offering for sale, and holding for sale or
18 giving away of any controlled substance under the
19 laws of the United States.

20 Clearly this seems contradictory, as an
21 individual whose driving privilege has been suspended
22 upon conviction of driving under the influence of
23 drugs is eligible for an OLL, but an individual whose
24 driving privilege has been suspended upon conviction
25 of possessing the same drugs on a nonmoving violation

1 is not eligible for an OLL.

2 Also, an individual whose driving privileges
3 were suspended for an underage drinking violation,
4 which is a nonmoving violation, is eligible for an
5 OLL provided it's the individual's first offense.

6 House Bill 1323 would allow for those whose
7 driver's licenses have been suspended upon conviction
8 of an offense of possessing, sale, delivery, offering
9 for sale, or holding for sale or giving away of any
10 controlled substance under the laws of the
11 United States to be eligible for an OLL, provided it
12 is the individual's first offense and the individual
13 meets additional eligibility requirements.

14 PENNDOT does not oppose this legislation as
15 long as it does not violate Federal laws or
16 regulations. The consequence would be the
17 withholding of Federal highway funding from
18 Pennsylvania.

19 On a yearly basis, the Governor must certify
20 that the Commonwealth of Pennsylvania suspends
21 driving privileges upon conviction of drug offenses
22 per the Federal Drug Offender's Driver License
23 Suspension Law.

24 This is a requirement of the Federal Highway
25 Administration. If Pennsylvania was unable to

1 certify or if its certification was rejected by the
2 FHWA, it would lead to the loss of Federal highway
3 funding.

4 In Federal fiscal year 2009, if the Governor
5 had not been able to certify or the certification had
6 been rejected, Pennsylvania would have lost an
7 estimated \$69.5 million of Federal highway funding.

8 As additional detail, while Federal law
9 requires suspensions for drug offenses, there is an
10 exception for compelling circumstances set forth on a
11 State statute requiring establishment of exceptional
12 circumstances specific to the offender.

13 Pennsylvania has statutes that impose
14 suspensions for drug offenses. The Pennsylvania OLL
15 statute, which is applicable to certain drug
16 offenses, requires a petition setting forth the
17 individual circumstances supporting the request for
18 an OLL.

19 PENNDOT believes a good argument can be made
20 that this satisfies the Federal law. If that
21 category of drug offense is eligible for an OLL and
22 is expanded, we could argue as well that Federal law
23 is satisfied.

24 Having said that, it is imperative that any
25 questions concerning this legislation and whether the

1 Federal law will be satisfied need to be determined
2 in advance of its passing, since potential penalty is
3 an unacceptable outcome for the Commonwealth.

4 Also, assuming this bill does get moved
5 forward, PENNDOT would suggest an amendment to
6 section 1532(c)(2) of the Pennsylvania Vehicle Code
7 relating to suspensions.

8 We suggest the section be amended to read
9 "For the purposes of this subsection, the term
10 'conviction' shall include any conviction, probation
11 without verdict or adjudication of delinquency for
12 any of the offenses listed in paragraph (1), whether
13 in this Commonwealth or any other Federal or state
14 court."

15 There is a provision in the Pennsylvania
16 Drug Act for the disposition of criminal charges
17 called "probation without verdict."

18 In earlier decisions, the Commonwealth Court
19 held that these dispositions were "convictions" for
20 discipline against doctors, real estate brokers,
21 et cetera, for suspensions of their professional
22 licenses. But in PENNDOT's case, for no apparent
23 reason, they held that they are not convictions.

24 As you know, it was the Pennsylvania
25 Legislature that first determined that Pennsylvania's

1 drivers should be protected from those arrested and
2 adjudicated for the Drug Act violations.

3 Recently, the courts held that suspensions
4 should not be imposed for "probations without
5 verdicts." Since a large number of offenders enter
6 pleas under this provision, they cannot be suspended
7 unless the Legislature corrects the law to include
8 probation-without-verdict adjudications.

9 We think that for the safety of the motoring
10 public, this provision should be passed and enacted.
11 This amendment makes sense, because under House Bill
12 1323, these individuals would be eligible for an OLL.

13 I thank you for the opportunity to testify
14 today concerning House Bill 1323, and Janet and I
15 would be happy to take any questions that you may
16 have at this time.

17 CHAIRMAN MARKOSEK: Thank you very much.
18 Representative Wheatley.

19 REPRESENTATIVE WHEATLEY: Thank you,
20 Mr. Chairman.

21 And I appreciate your testimony this
22 morning, Mr. Myers.

23 A question: Am I hearing you and reading
24 right that you want to expand those individuals who
25 can be suspended, who can have their license

1 suspended, if we move this forward?

2 DEPUTY SECRETARY MYERS: Well, we are
3 certainly saying that we believe the law should be
4 amended to address this issue that we have
5 experienced in the past where we have not been able
6 to suspend people if they have been found under
7 probation without verdict.

8 REPRESENTATIVE WHEATLEY: Are these people
9 found, under this probation without verdict, do they
10 discipline doctors when they drive if they did
11 something wrong or something?

12 DEPUTY SECRETARY MYERS: Janet, do you want
13 to answer?

14 DIRECTOR DOLAN: Sometimes they are.

15 REPRESENTATIVE WHEATLEY: Sometimes they
16 are, meaning -- give me an example of when that
17 happens.

18 DIRECTOR DOLAN: Well, sometimes they
19 are---

20 CHAIRMAN MARKOSEK: Excuse me.

21 Jake, can you speak up when you ask the
22 question, and also Janet?

23 DIRECTOR DOLAN: Yes. Thank you.

24 CHAIRMAN MARKOSEK: I'm sorry about this,
25 but the system isn't working.

1 REPRESENTATIVE WHEATLEY: Sure.

2 Basically what I had asked is to clarify
3 what I was hearing was correct, that they want to
4 expand the ability to suspend folk who they currently
5 cannot suspend now.

6 And part of the question, and I asked, just
7 for example, give me an example of a doctor who is
8 driving, who he has this verdict or has a disposition
9 "probation without verdict," give me an example of
10 when that is a case when he is driving where that
11 becomes an issue.

12 DIRECTOR DOLAN: The issue is, let us try
13 and start from the beginning.

14 REPRESENTATIVE WHEATLEY: Okay.

15 DIRECTOR DOLAN: If you are cited for being
16 drunk and you are driving, then you can enter into,
17 this is what we are calling a plea bargain.

18 REPRESENTATIVE WHEATLEY: Right.

19 DIRECTOR DOLAN: So instead of a plea
20 bargain, they do this probation without verdict.

21 REPRESENTATIVE WHEATLEY: Right.

22 DIRECTOR DOLAN: So the circumstances behind
23 that can be different.

24 To us, it is all the same when we get it --
25 it's probation without verdict.

1 DEPUTY SECRETARY MYERS: And the courts have
2 held that it is not a conviction, and as such, we
3 cannot suspend.

4 REPRESENTATIVE WHEATLEY: And just so I'm
5 clear on why, on a bill that is trying to make it so
6 that folk who are suspended can still have the
7 ability to get an occupational limited license so
8 they can get to and from work, why would it be
9 necessary to capture these other folk if in fact they
10 are not entering pleas or their crime or acts of
11 concerns aren't related to driving?

12 DEPUTY SECRETARY MYERS: Well, we believe
13 it's a safety issue. And the fact of the matter is
14 that and what we have said here is that if this bill
15 should move forward, we think this is a commonsense
16 amendment that addresses the safety issue and a
17 loophole in the law currently where individuals are
18 given probation without verdict and the courts have
19 not considered that a conviction, so therefore, we
20 cannot suspend somebody for that.

21 And we think from our standpoint that if the
22 bill should move forward, this is an opportunity to
23 amend the Vehicle Code to close this loophole.

24 REPRESENTATIVE WHEATLEY: Thank you.

25 CHAIRMAN MARKOSEK: Representative Sabatina.

1 REPRESENTATIVE SABATINA: Thank you.

2 Hi. I'm John Sabatina from Philadelphia
3 County.

4 I was a prosecutor in Philadelphia before I
5 came to the Legislature. And I caught half, not even
6 half your testimony, but what I did catch, correct me
7 if I'm wrong.

8 If I understand your testimony, if you are
9 driving while under the influence of narcotics or
10 alcohol, that is a DUI. So your license, you would
11 be prosecuted for DUI and your license would be
12 suspended under the DUI laws.

13 If you are driving while in possession of
14 narcotics, not necessarily under the influence of
15 narcotics, you would just be arrested for possession
16 of narcotics.

17 Is it your intention or is it your argument
18 that being in possession of narcotics should lead to
19 a suspension of your license?

20 DEPUTY SECRETARY MYERS: That is what
21 happens today.

22 REPRESENTATIVE SABATINA: Okay; okay.

23 DEPUTY SECRETARY MYERS: And that is the
24 core issue here, that if you are driving under the
25 influence, you can qualify for an OLL if it's your

1 first offense. All right? But if you are in
2 possession of drugs, not under the influence, you
3 can't qualify for an OLL.

4 REPRESENTATIVE SABATINA: Okay.

5 If you're not driving, you are also subject
6 to, even if you are standing on a street corner,
7 you are still subject to your suspension of your
8 license even though it had nothing to do with
9 driving.

10 DEPUTY SECRETARY MYERS: That is correct.

11 And to give you some perspective here, that
12 amounts to somewhere around 26,000 cases a year that
13 we see.

14 REPRESENTATIVE SABATINA: Okay.

15 Thank you.

16 CHAIRMAN MARKOSEK: Representative Carroll.

17 REPRESENTATIVE CARROLL: Thank you.

18 Thank you for your testimony.

19 My first question is, do other States
20 provide an OLL equivalent and still comply with the
21 FHWA guidelines so that they don't lose their Federal
22 highway funding?

23 DEPUTY SECRETARY MYERS: I don't know the
24 specific answer to that, but I can certainly look
25 into that and get back to you on the question.

1 REPRESENTATIVE CARROLL: Well, it may be a
2 question for one of the other testifiers. I just
3 wasn't sure if PENNDOT had knowledge of that.

4 I have to believe that you did a little bit
5 of research when you suggested that you supported the
6 bill, and somebody over there must have looked at
7 whether some of the other 49 States have an
8 equivalent to an OLL in some of the cases.

9 DEPUTY SECRETARY MYERS: Yes.

10 Just for a point of clarification, what we
11 have said is PENNDOT's position on this is that we
12 don't oppose the bill if, and only if, it does not
13 violate Federal laws or regulations specific to the
14 ability for the Commonwealth to be able to do the
15 certification.

16 REPRESENTATIVE CARROLL: Well, it is my
17 knowledge, and you can confirm it and correct me if I
18 am wrong, other States have OLL equivalents.

19 DEPUTY SECRETARY MYERS: That is correct.

20 REPRESENTATIVE CARROLL: Okay.

21 Thank you, Mr. Chairman.

22 CHAIRMAN MARKOSEK: Thank you.

23 Representative Siptroth.

24 REPRESENTATIVE SIPTROTH: Just one question
25 for clarification.

1 The probation without verdict would only be
2 the first offense, or would there be subsequent
3 offenses as well?

4 DEPUTY SECRETARY MYERS: Janet, it would
5 only be the first offense. Is that correct?

6 DIRECTOR DOLAN: I'm not sure.

7 DEPUTY SECRETARY MYERS: You gave for the
8 purposes of qualifying for an OLL?

9 REPRESENTATIVE SIPTROTH: Yes.

10 DEPUTY SECRETARY MYERS: It would have to be
11 under the same standards. It would only be the first
12 offense after serving a 60-day suspension.

13 REPRESENTATIVE SIPTROTH: Okay.

14 Thank you, Mr. Chairman.

15 CHAIRMAN MARKOSEK: Thank you.

16 Representative Wheatley.

17 REPRESENTATIVE WHEATLEY: Just for clarity
18 purposes, going back to PENNDOT's position, you said
19 only if it doesn't jeopardize any of the Federal
20 highway transportation dollars.

21 It was my understanding, after having a
22 conversation with you and subsequent conversations
23 with others, that because we have an allowance in our
24 suspension laws, so to speak, for alcohol-related
25 offenses, that, you know, having the same process put

1 in place for drug-related offenses would not violate
2 our Federal transportation dollars.

3 DEPUTY SECRETARY MYERS: Well, we have
4 looked at this from PENNDOT's standpoint, and we
5 believe that a strong argument can be made that we
6 can do a certification that meets the Federal
7 requirement.

8 Having said that, the ultimate decider in
9 this is FHWA, and that is why in my testimony I noted
10 that this issue really needs to be addressed before
11 this legislation moves forward from the standpoint of
12 being enacted.

13 Because the consequences, quite frankly, of
14 not having certification either accepted or the
15 Commonwealth being able to make this certification,
16 again, is around, you know, \$69 million.

17 REPRESENTATIVE WHEATLEY: Out of how big of
18 a -- you said \$69 million. Out of?

19 DEPUTY SECRETARY MYERS: Well, that
20 represents 10 percent, so that would be \$690 million,
21 a 10-percent penalty. So it's a huge number.

22 Obviously, that is a significant concern to
23 the department if we were to lose that funding.

24 REPRESENTATIVE WHEATLEY: Okay.

25 Thank you, Mr. Chairman.

1 CHAIRMAN MARKOSEK: Okay.

2 Seeing no other questions, thank you, Kurt.
3 Thank you, Janet. Thank you for testifying.

4 DEPUTY SECRETARY MYERS: You're welcome.
5 Thank you for the opportunity.

6 CHAIRMAN MARKOSEK: I'm told that the mikes
7 are down for the count here today, so we are going to
8 have to all speak up, unfortunately. That's not a
9 problem for Rick and I, but for some of the rest of
10 you---

11 I would like to introduce our next person:
12 Ms. Melissa Savage, Program Director in the
13 Environment, Energy and Transportation Program for
14 the National Conference of State Legislatures.

15 Melissa, thank you very much for traveling
16 here today and presenting testimony. You may proceed
17 when you're ready. Thank you.

18 MS. SAVAGE: Thank you.

19 Good morning, Chairman Markosek and Chairman
20 Geist and members of the committee.

21 I will speak as loudly as I can. I have two
22 small children, so it shouldn't be a problem, but if
23 you have problems hearing me, just let me know.

24 My name is Melissa Savage, and as was
25 mentioned, I work in the Environment, Energy and

1 Transportation Program at NCSL.

2 For those of you unfamiliar with this
3 organization, we are your membership organization.
4 Our key mission is to provide information to State
5 Legislatures on policy issues ranging from health to
6 children and families, and, of course, issues
7 involving energy, environment, and transportation.

8 We have two offices, one in Denver. And for
9 those of you from the Philadelphia area, I am happy
10 for your win, sorry for our loss.

11 I work in the Denver office. I do their
12 policy research. And we have an office in DC also
13 there to lobby Congress and the Administration on
14 behalf of States' rights.

15 The NCSL Transportation Program provides
16 information to State Legislators and legislative
17 staff on a variety of topics. We track hot topics
18 and make sure we have the information readily
19 available on those topics to share with our
20 constituents.

21 One tool that we use is a legislative
22 tracking database that tracks traffic safety
23 legislation, including driver's licensing issues.
24 And based on the number of information requests that
25 we receive each year from Legislators and staff, I

1 can tell you that driver's licensing is one of the
2 biggest issues that we track, second only to
3 distracted driving.

4 Historically, State Governments have been
5 responsible for administering all aspects of driver's
6 licensing systems, including skills and knowledge
7 testing.

8 According to the Federal Highway
9 Administration, State DMV offices license more than
10 200 million drivers in the United States.

11 In the last few years, passage of REAL ID at
12 the Federal level has initiated many license
13 administration changes in the States. State DMVs
14 have had to look at how they were collecting their
15 identification information and how they were storing
16 it as well, and additionally, how the licenses were
17 manufactured and the security aspects of all the
18 licensing processes.

19 As you know, every State has statutes and
20 administrative rules and agency policy that governs
21 the license application process. These rules and
22 laws govern all aspects of the process, beginning
23 with graduated driver's licensing laws for teens and
24 ending with licensing procedures and rules for older
25 drivers.

1 All States have laws allowing for driver's
2 license suspension for drivers convicted of serious
3 traffic offenses, including driving under the
4 influence and repeat or habitual offenders.

5 They also have laws allowing for the license
6 suspension of non-driving-related offenses, which is
7 the reason that we are here today.

8 For drivers convicted of serious driving
9 offenses like DUI, State Legislatures have enacted
10 various laws to penalize those drivers, including
11 license suspension. And intuitively, this makes
12 sense, since the driver is considered dangerous.
13 They have exhibited dangerous driving habits, and to
14 keep the rest of the public safe, it's used as good
15 practice to penalize those drivers by keeping them
16 off the road.

17 The problem is that in most States, those
18 unlicensed drivers continue to drive. All States
19 have sanctions for driving without a license and most
20 involve a longer suspension period and additional
21 fines.

22 Typical fines for unlicensed driving range
23 between \$500 and \$1,000. Repeat offenders face
24 additional severe penalties, and in some cases, will
25 face a felony charge, including jail time. And some

1 do allow for vehicle seizure.

2 But the issue is that most of these drivers
3 that are driving without a license are already
4 driving without a license, so additional license
5 suspension time often doesn't work.

6 This problem of unlicensed driving causes
7 about 20 percent of fatal crashes in the country, and
8 most unlicensed drivers are also uninsured.

9 A difficulty with enforcing State unlicensed
10 driving laws is that it can be an undetectable
11 offense. Unless the driver is committing some moving
12 violation, like speeding or reckless driving, if they
13 are driving safely, it is difficult for law
14 enforcement officers to identify those drivers.

15 Some law enforcement agencies just started
16 using "hot sheets" with the names of habitual
17 unlicensed drivers, including possible vehicles they
18 may be driving, to help ease enforcement efforts.

19 But, as you know, the unlicensed driving
20 problem isn't exclusive to dangerous drivers. Over
21 the last several years, driver's license suspension
22 for non-driving-related offenses has increased.

23 Drivers can lose their right to drive for a
24 number of reasons, including failure to pay a fine,
25 failure to appear, failure to pay court costs,

1 failure to comply with a court-ordered child support
2 order, failure to maintain insurance, and if you are
3 a teen driver, you can lose your license for having
4 bad grades, being truant, or not graduating. The
5 driver's license can be a powerful tool in trying to
6 elicit certain behavior.

7 Another Federal piece of legislation that
8 requires the State to suspend licenses is the
9 Personal Responsibility and Work Opportunity
10 Reconciliation Act, and this act, like the Drug
11 Offense Act, required all States to suspend the
12 drivers' professional, occupational, and recreational
13 licenses of those not paying child support.

14 Many States view this to be successful. The
15 license, the withholding of a driver's license, can
16 get some folks to get current with their child
17 support.

18 But one of the big issues with this kind of
19 license suspension is the economic hardship that this
20 places on certain people. And the economic hardship
21 piece is something that is being looked at today by
22 organizations, including the GAO and Mobility Agenda.

23 And I know that you have publications from
24 them as well. They explain this a little bit more in
25 depth.

1 Most States have provisions in place to
2 issue hardship or conditional licenses to drivers
3 with a suspended license. These licenses allow
4 offenders to get to and from essential places, like
5 work and school.

6 Most often, these licenses are granted to
7 drivers convicted of traffic-related offenses like
8 DUI or those who have committed a number of traffic
9 offenses and have reached their points limit.

10 In most States, hardship licenses are not
11 available to drivers who have lost their license due
12 to a non-traffic-related conviction.

13 Since loss of a license in those cases is to
14 elicit a certain behavior change -- more explicitly,
15 to get the person to make payments or appear in court
16 -- granting a conditional license is often seen to be
17 counterproductive.

18 State Legislatures grapple with this issue
19 each year, debating hundreds of bills relating to
20 driver's license suspensions. In 2009, 31 States
21 considered such legislation. Eight States passed
22 laws relating to license suspension.

23 Illinois passed a law establishing a
24 lifetime license suspension for drivers convicted for
25 a third time of unlicensed driving, and the Utah

1 Legislature passed a law that allows for hardship
2 licenses for certain DUI offenders.

3 The issue of unlicensed drivers for these
4 non-traffic-related offenses has garnered national
5 attention. Recently, in the last few years, in
6 partnership with the National Highway Traffic Safety
7 Administration, the American Association of Motor
8 Vehicle Administrators brought together a group of
9 representatives from national organizations like AAA,
10 the Federal Motor Carriers Safety Administration,
11 NCSL has a seat at the table as well, law enforcement
12 groups, prosecutors, Judges, and driver's license
13 administrators to analyze the issue of suspended and
14 revoked licenses and unlicensed drivers.

15 The group first met in the spring of 2007
16 and have met twice this year. We have completed a
17 literature review, developed a white paper, and are
18 working with researchers to further analyze
19 information on the scope of this problem.

20 Now, the ultimate purpose of the working
21 group is to conduct research and data and gather data
22 on the issue. I can tell you that the focus of our
23 conversation is always around this issue of license
24 suspensions for non-driving-related offenses,
25 specifically that these individuals aren't -- in most

1 States, the only occupational hardship conditional
2 licenses are granted to are DUI offenders. And
3 compliance issues like failure to pay, failure to
4 appear, failure to pay child support, those kinds of
5 things are not eligible for conditional licenses.

6 That concludes my testimony. I would be
7 happy to answer any questions that you might have.

8 CHAIRMAN MARKOSEK: Okay. Thank you.

9 In the packets, we have your white paper,
10 and it does mention, there is a little chart on there
11 for the members relative to the other States
12 non-driving-related offenses and certain reasons for
13 suspension, and I appreciate that a lot.

14 Any questions?

15 Representative Mike Carroll.

16 REPRESENTATIVE CARROLL: Just to follow up
17 with the question I asked of the previous panel.

18 Are you aware -- well, if you heard the
19 question, I will not restate the question.

20 MS. SAVAGE: Yes, I did hear the question,
21 and we were asked a few months ago to look into this
22 issue by your staff, and it's a tricky question.

23 I have no hard information to give you other
24 than based on statute analysis, we can tell you that
25 compliance issues aren't, in most States, the

1 majority, aren't allowed to get occupational
2 licenses.

3 However, this law that you are specifically
4 looking at at the Federal level, I can tell you that
5 I did check with my contact at the American
6 Association of Motor Vehicle Administrators, because
7 that is the DMV's membership organization, and they
8 do survey their members regularly on these kinds of
9 issues, and they could provide nothing.

10 Also, at my last working group meeting of
11 this national group, there were members from the
12 Federal Highway, Federal Motor Carriers, and NHTSA
13 there, and as the previous presenter said, that they
14 will be the ultimate decider, they were also unaware
15 of this.

16 REPRESENTATIVE CARROLL: Well, just as a
17 follow-up.

18 While you were testifying, I had a chance to
19 look over the letter that is in our packets from the
20 U.S. Department of Transportation dated
21 October 9, and in that letter there is a sentence
22 that seems to suggest that this bill, if it were to
23 be enacted, could comply with the Federal
24 requirements and allow us to continue to maintain our
25 full allocation of Federal highway funds.

1 I will not reread the sentence in the letter
2 but just call to the members' attention that it's on
3 page 2 at the bottom of the page, and it seems to me,
4 based on my reading of that paragraph, that we can
5 find a way to make this work and still comply and
6 receive our Federal highway funds.

7 Thank you.

8 CHAIRMAN MARKOSEK: Thank you.

9 Representative Jake Wheatley.

10 REPRESENTATIVE WHEATLEY: Thank you.

11 And it's probably a question that I should
12 have asked to PENNDOT, but just help me understand,
13 in your experience, because this legislation is very
14 narrowly focused towards those who are convicted of
15 drug-related offenses, it's not all of the other
16 non-driving-related offenses that would cause a
17 person to lose their license and not be able to apply
18 for the OLL but drug-related.

19 And I think that Pennsylvania at one point
20 had it so that you couldn't receive an OLL if you
21 were alcohol-related or drug-related. And I think in
22 the nineties, the early nineties, we went in and we
23 changed it to meet, under the first Federal law, we
24 thought we had to ban everyone from being able to get
25 an occupational limited license. But in the early

1 nineties, we went and we changed it for the
2 alcohol-related, and it was able to pass muster, but
3 we did not change it for drug-related.

4 So help me understand the rationale. If we
5 know, and as we heard from the previous presenters,
6 there are 26,000 cases every year of folk who are hit
7 with this drug-related type of offense that causes
8 them to lose their license. In your testimony you
9 talked about those people, many of those people who
10 will still drive and then upon driving will end up,
11 if they are caught driving, suspended for longer
12 periods.

13 Help me understand why we wouldn't try to
14 have parallel tracks that allow for these folk -- and
15 with conditions. Because if the purpose is to get
16 them to pay their fines and to meet their court
17 arrangement, why couldn't we arrange a law that puts
18 stipulations and allows for people to still have an
19 opportunity on first offenses to still continue to
20 get to and from work?

21 Just help me understand the rationale behind
22 that. Why wouldn't the Federal Government not want
23 that to happen? Why wouldn't States not want that to
24 happen? Why would your workgroup not want that to
25 happen?

1 MS. SAVAGE: Yes, I think that that is
2 definitely something that we are looking at.

3 And many States even have policies in place
4 that if you lose your license for one of these
5 non-driving-related offenses, if you go and make an
6 effort -- if you either pay your parking ticket, for
7 example, or, you know, you reschedule your court date
8 that perhaps you missed for your license suspension
9 -- most States do have policies in place that will
10 work with the person so they can get their driving
11 privileges reinstated.

12 For DUI offenders, a number of States are
13 looking at ignition interlocking devices for the
14 first time, well, really all offenders, which would,
15 you know, give them an opportunity to drive certainly
16 with these, you know, special circumstances and with
17 the device attached.

18 The problem that some States are running
19 into with that is the cost of implementing such a
20 program and then enforcing it, making sure the
21 drivers are in fact not selling their devices.

22 Because, I mean, I think broadly the issue
23 is that this can often be an undetectable offense,
24 driving without a license, driving without an
25 interlock, and so on, because the only way you are

1 going to get pulled over is if you are committing,
2 you know, some other offense.

3 But I do think that what you are talking
4 about is definitely something that works and will
5 likely come out of our working group as a
6 recommendation to States; that, you know, these folks
7 are going to continue to drive, most of them when
8 they lose their license, and they are unable to get
9 insurance as well, which causes another problem if
10 they get into a crash.

11 So I think that that will definitely be
12 something included in our recommendations when they
13 come out.

14 REPRESENTATIVE WHEATLEY: Thank you,
15 Mr. Chairman.

16 CHAIRMAN MARKOSEK: Thank you.

17 Representative Vanessa Brown, one of our
18 visiting members here today. Welcome.

19 REPRESENTATIVE BROWN: Thank you. Thank
20 you, Mr. Chairman.

21 I think what I have to say is more of a
22 statement or just an example of what is going on in
23 my district.

24 And I'm glad that you pulled in the piece
25 about the insurance, because for most people in my

1 community, if ever there is an accident, they almost
2 guarantee in their mind immediately that that person
3 is uninsured, because we have so many young people
4 who fall into the category for not paying their child
5 support, having a drug conviction.

6 So for numerous people in our community who
7 are driving right now without a driver's license, and
8 like you said, it's an undetectable crime until there
9 is an incident that occurs, and at that point if
10 someone has an accident, I can almost guarantee they
11 will not be able to get adequate compensation. And
12 God forbid that person hits a pedestrian and they
13 don't have insurance.

14 So this is very crucial for me, and I want
15 to thank the Chairman for having this hearing, and
16 that is why I thought it was important for me to
17 come, because this is enormous in our district.

18 Thank you.

19 CHAIRMAN MARKOSEK: Thank you.

20 Any other questions?

21 Okay. Melissa, thank you very much. It's
22 nice and cold back in Denver.

23 MS. SAVAGE: Yes, it is.

24 CHAIRMAN MARKOSEK: And you are here where
25 it's nice and warm.

1 MS. SAVAGE: I know. Thank you for this
2 balmy vacation.

3 CHAIRMAN MARKOSEK: Thank you very much.

4 We have a couple of other guest members here
5 today. We have Chairman Ron Waters and also Chairman
6 and former Transportation member Dante Santoni
7 joining us today here as well.

8 Next, we are very honored to have two
9 Common Pleas Court Judges with us today, and I would
10 like them both to come up -- Judge Peter Schmehl and
11 the Honorable Judge Ebert.

12 Gentlemen, thank you. Thanks for taking
13 time out of your busy schedules.

14 JUDGE EBERT: Thank you for having us.

15 CHAIRMAN MARKOSEK: Thank you, gentlemen.

16 If you have not met before--- And we
17 appreciate you coming before the committee.

18 And I have not met both of you formerly
19 before this morning either, so if you want to
20 introduce yourselves, particularly for the
21 stenographer and the committee.

22 JUDGE SCHMEHL: My name is Peter W. Schmehl.
23 I'm a Common Pleas Judge from Berks County and also
24 the Administrative Head of the Treatment Courts in
25 Berks County.

1 JUDGE EBERT: I'm Skip Ebert. I'm a Common
2 Pleas Judge in Cumberland County. I have only
3 recently, oh, this is completing my fourth year now
4 in doing that.

5 I had previously been the District Attorney
6 in Cumberland County, the Executive Deputy Attorney
7 General for the Criminal Law Division, First
8 Assistant D.A., and I was the President of the
9 Pennsylvania District Attorneys Association in
10 2004-2005.

11 CHAIRMAN MARKOSEK: Well, thank you very
12 much.

13 I stay in Cumberland County when I'm here in
14 Harrisburg.

15 JUDGE EBERT: You're always welcome.

16 CHAIRMAN MARKOSEK: Good to get to know you
17 under these circumstances and not others.

18 So, Judge Ebert, if you would like to, or
19 Judge Schmehl, either one of you, if you would like
20 to start.

21 JUDGE SCHMEHL: First of all, Mr. Chairman
22 and members of the committee, I appreciate very much
23 being here.

24 You should understand that DUI Courts were
25 started by a joint effort of the Pennsylvania

1 Department of Transportation and the National Highway
2 Traffic Safety Administration about 5 years ago.

3 NHTSA, as we call them, came to us with
4 representatives from PENNDOT and asked us to create
5 these problem-solving courts involving multiple
6 offenders of DUI, the reason being that the National
7 Highway Traffic Safety Administration was concerned
8 that they had reached a plateau where all their
9 efforts had been brought to bear to reduce traffic
10 fatalities as a result of impaired driving. It
11 couldn't get any lower than that, and they wanted to
12 try these problem-solving courts -- Treatment Courts,
13 if you will -- to see if they could lower that.

14 I read in the paper over the weekend that
15 apparently the fatalities are down. I hope that
16 these specialized courts have some bearing on that.

17 Let me give you an overview.

18 The Berks County Court of Common Pleas has
19 since instituted a voluntary DUI Treatment Court
20 based upon proven national research and program
21 models.

22 This program provides participants an
23 opportunity to seek treatment for his or her
24 addiction and/or mental health diagnosis while
25 productively addressing associated legal problems.

1 Program participants, once accepted, can
2 expect frequent contact with the Adult Treatment
3 Court Judge, probation officer, and treatment
4 providers.

5 The participants are required to complete a
6 three-phase program, culminating with graduation.
7 The three-phase program involves a minimum time
8 commitment of 18 months and may include an aftercare
9 component consisting of up to an additional
10 36 months.

11 Program participants will be expected to
12 complete and participate in numerous social
13 treatment-oriented activities. These will include
14 but may not be limited to AA/NA meetings, group and
15 individual therapy, case management if needed,
16 biweekly court appearances, probation appointments,
17 and urine and/or breath testing.

18 The aforementioned ideas represent typical
19 participant activities. Other activities should be
20 expected as each individual may require different
21 levels of intervention based on their progress in
22 Treatment Court.

23 Parenthetically, a month ago we started a
24 Veterans Court, dealing specifically with veterans
25 who are dealing with these issues.

1 DUI Treatment Court participants can also
2 expect to receive sanctions if they violate DUI
3 Treatment Court program goals or fail to achieve
4 phase requirements.

5 Possible violations include but may not be
6 limited to missed appointments, missed or failed or
7 adulterated urine tests, new arrests, charges, and
8 lack of participation in treatment.

9 Sanctions will be imposed relative to the
10 violation but will be graduated or progressive in
11 nature.

12 Sanctions may include but are not limited to
13 holding a person in the phase in which they are
14 currently participating, curfew restrictions,
15 incarceration, community service, written
16 assignments, essays, and termination in the Adult
17 Treatment Court program.

18 The DUI Treatment Court team reserves the
19 right to impose sanctions as appropriate to each
20 individual and violation.

21 Participants who maintain positive
22 participation in the Berks County Court of Common
23 Pleas DUI Treatment Court may receive appropriate
24 incentives as well. These incentives will be
25 determined by the Adult Treatment Court team and will

1 be dependent on available resources.

2 That's a nice segue into a concern that this
3 committee obviously has with respect to Federal
4 funding. And I appreciate your highlighting the
5 comments made in the letter, which says, "According
6 to the Office of Chief Counsel of PENNDOT, if the
7 category of drug offenses for OLLs is expanded,
8 Pennsylvania's existing process would continue to
9 ensure that Federal requirements are met." Obviously
10 it's a concern for you not to lose that highway
11 funding.

12 We don't think anything in our program would
13 do offense to the concerns that the Federals have,
14 especially in light of the fact that they came to us
15 asking us to start these courts.

16 Since they took the initiative to do it, I
17 think they would be happy to cooperate with members
18 of this committee and Legislature at large to
19 predetermine, if you will, that whatever it is that
20 you pass here would pass muster with the Federals in
21 terms of control and what goes on.

22 In terms of what we would do -- let's see if
23 I can find it quickly for you.

24 Things that we would do in terms of
25 Treatment Court:

1 They would have to be involved in the
2 Treatment Court program at least 6 months or
3 one-third of the program, and they would have to
4 be obviously sober for that entire period of
5 time.

6 They would complete all of their criminal
7 network requirements and recommendations as well as
8 complete the alcohol highway safety school.

9 They would have a letter from the Treatment
10 Court Judge -- myself -- on behalf of the offender
11 stating that they are in agreement that the person
12 could have a problem-solving court license, if you
13 will.

14 They must complete all PENNDOT requirements
15 to obtain such a license.

16 They must have an approved ignition
17 interlock device installed in their vehicle to use
18 the problem-solving court license, and this to ensure
19 the public safety, which is obviously a concern of
20 the Pennsylvania Department of Transportation and all
21 of us here.

22 All of the rules of the current legislation
23 would have to be abided by, and that is an overview
24 of what we propose to do.

25 I defer now to Judge Ebert.

1 JUDGE EBERT: Thank you.

2 In all my career now -- it has been over
3 like 25 years as a prosecutor -- this is probably the
4 first time I have been in front of one of these
5 committees asking for something for people who are in
6 trouble.

7 But I have really come around to believing
8 in this program, and it's unlike anything else. If
9 anyone is equating this to normal probation or even
10 incarceration, that is not what we are talking about
11 here.

12 And the problem that I'm having at this
13 point, if you just look down the mandatory
14 requirements of this in my county, it is weekly court
15 sessions; mandatory drug and alcohol treatment, which
16 means you have to go someplace else; mandatory drug
17 and alcohol testing at least two times a week, and
18 sometimes I have them in there every day going to
19 reporting, and they have to come to Carlisle; a
20 minimum of four NA or AA meetings per week, and in
21 our first phase, you go to a meeting every day, so
22 you have to travel to that.

23 Most of these people, I have a third that
24 have dual diagnosis that they have to go to mental
25 health counseling and then follow up with their

1 medication treatment analysis to make sure their meds
2 are okay.

3 We have a mandatory work requirement that if
4 you are not at a job that employs you 40 hours a
5 week, you either come into the county work crew or
6 you do community service for that time, so you have
7 to get to that.

8 Most of these people have never budgeted in
9 their life, so they end up in programs where they
10 have to turn in their checks, turn in their bills,
11 et cetera, each time.

12 And then some of them are in intensive case
13 management, which talks about retraining them or
14 getting them an education, moving them through to a
15 GED or other educational purposes.

16 Now, in Cumberland County -- and, you know,
17 if you look down the list, there are 21 Drug Courts.
18 I would say about 21 counties are involved in this
19 across the State with varying degrees.

20 Ours is dual; we have both DUI and drug
21 people in it. There are separate counties that have
22 DUI and drugs separately.

23 There are veterans courts. There are
24 juvenile drug courts. So there are a lot of
25 different avenues that talk about this.

1 But we have very limited public
2 transportation in this. Now, you go through that
3 list that I just mentioned and how many times you
4 have got to travel around to get jobs, get rides.
5 You know, a lot of these people are driving bikes,
6 and they deserve that. I'm not saying any of that.
7 They brought all of this on themselves. But here,
8 there is a concentrated effort to change your life.

9 Now, 50 percent of my participants, at least
10 generally speaking, and in Cumberland County 61 have
11 suspended licenses with probably little hope of
12 getting them back.

13 And I brought in some records, and this is
14 one of my recent graduates who, well, he graduated
15 last December -- Eddie Everett. He got a good job,
16 is maintaining his family. He's only got a four-page
17 driving record. But, you know, he probably now got
18 his -- his privileges could have been restored in
19 2009.

20 So he was doing all of that stuff. So I
21 guess you could look at me and say, hey, these guys
22 can do it; they just have to suck it up because they
23 were criminals before.

24 Some of the people, though, like this
25 gentleman, Barry Myers, just a wonderful guy, but it

1 is probably his fourth DUI. He is 54 now. He now is
2 working at a golf course. He got one of the new
3 incentive jobs. They do the interstates, et cetera
4 -- great job, pays \$28. But he lives in upper
5 Pennsboro Township and far away from where he can get
6 rides, et cetera, to do that. And again, he deserves
7 this.

8 But now I have had the guy for almost -- he
9 is going to graduate in June of next year. He is in
10 phase 3. He has not had a drink during that
11 particular time. I see him, every week monitor him.

12 These people are checked. They have nightly
13 curfews. Our probation officer is out literally
14 going to their homes and checking that they are
15 there, giving them portable breath tests all the
16 time.

17 This is unlike typical probation or what any
18 of us view probation really is. And I have to tell
19 you, these programs are so vigorous that I just have
20 plenty of defense attorneys, you know, they are not
21 walking in to me but they are walking into the D.A.
22 and saying, I would rather do the jail time. You
23 know, it's just a whole lot easier than putting
24 2 years into truly reconstructing your life to be
25 hardworking and drug free.

1 Now, in reality, these people face long
2 periods of suspension, and I guess as it was said
3 previously, look, you are not going to get your
4 license back. That one gentleman I said, he is
5 eligible to get his back in 2026. All right?

6 Now, anybody knows that in this day and age,
7 if you want to work or you want to lead a normal
8 life, you are going to drive. And I think the
9 highest penalty we have for driving under suspension,
10 even DUI-related, is a \$1,000 fine and 90 days in
11 jail.

12 Now, guys like this, 90 days in jail, it is
13 just, huh, good, we are getting some free meals by
14 all of us taxpayers paying it instead of them out
15 working to pay their fines, costs, child support.
16 And, you know, I'm just not sure it's cost effective,
17 because it's just that the likelihood of getting
18 caught is low and pretty limited.

19 Now, I guess you could look at me and say,
20 maybe we ought to jack up the penalties for driving
21 under suspension. We can't fill the State prisons
22 with people who are driving under suspension. I
23 think we have just about reached a limit on that.

24 Now, the positive point about granting this
25 limited license, it's an unbelievably great incentive

1 to get the person back and saying, okay, the Judge
2 believes you, trusts you; the Commonwealth believes
3 that you can do a good job and that you are really
4 serious about turning your life around. The
5 problem-solving court license can act as an
6 incentive.

7 As my colleague indicated, you know, I can
8 give this out. The bills that I saw and I helped
9 provide drafting for, the idea of that is you are
10 going to have like specific restrictions from me on a
11 daily basis. You mess up one thing, whether it has
12 anything to do with driving, I will take it away from
13 you. I can add to it when you are good to increase
14 the hours that you can drive or anything. All of
15 that is within my discretion.

16 I could, you know, initially say, and again,
17 most of our people, DUI, they are in work release for
18 the first 120 days of the program, so they are
19 obviously not driving and are just using the county
20 prison van to get to their jobs. But after that I
21 can say, okay, you have done very well; you've been
22 clean; I'm going to allow you to just drive to work,
23 not any other time.

24 And that letter, that certified thing, has
25 to be with you if you are stopped by the police. A

1 violation, you could be tossed out of the entire
2 program altogether.

3 So I could modify it on a daily basis about
4 when it could be used, and that is good, because it
5 requires minimal administrative hearing time.

6 All of you know that when you lose your
7 license, you know, a notice gets sent to PENNDOT.
8 They send you an administrative notice. This has
9 nothing to do with the criminal conviction; this is
10 purely administrative.

11 You then immediately can take an appeal.
12 Because you took the appeal, the law says, oh, there
13 was a supersedeas granted; the suspension doesn't go
14 into effect. Normally, I don't know what it's like
15 in Berks County, but in Cumberland County, I think
16 we're pretty efficient.

17 You're not going to have your hearing on
18 that revocation for probably 4 to 5 months. So you
19 are going to be well out of a year from the time you
20 did any violation until somebody even hears whether
21 or not it's going to go into effect, and then it can
22 be appealed again.

23 In Treatment Court, we have specific
24 conditions, and it's like you are being placed -- you
25 know, each person has to sign this and agree to it:

1 You are being placed into the Cumberland County
2 Treatment Court program as a result of your plea. Do
3 you understand that you will not be permitted to
4 withdraw the guilty plea after being placed in
5 Treatment Court? Treatment Court has very strict
6 conditions and rules. Do you understand that if you
7 violate these conditions or rules, you are subject to
8 sanctions immediately and that the court alone
9 determines the appropriate sanction, and without the
10 requirement of any formal adversarial hearing.

11 So we're not going into getting a whole lot
12 of lawyers back into this about, oh, give my guy a
13 break; the facts aren't correct. We decide in the
14 Treatment Court team whether this happened, and then
15 the person, by wanting to be in the program, says,
16 you got me; I'll take my sanction without any other
17 administrative process.

18 Having a driver's license, I mean, this
19 makes a person more employable, and when they're
20 employable, they benefit by the fact that I collect
21 the money for the fines; I get the costs. And so
22 many of these people owe child support that it's
23 better to have them employed.

24 Now, what are the practical considerations
25 about all this? We are not talking about 50,000

1 drivers. I mean, add up the number of people in
2 these programs at any one time.

3 I don't know what yours is, Judge---

4 JUDGE SCHMEHL: About 80.

5 JUDGE EBERT: Okay. And Berks County is
6 probably twice as big as Cumberland County. I'm
7 usually at 30. I'm sure Philadelphia and Allegheny
8 County have a lot more.

9 But I cannot believe that it's over 1,200
10 people that could even be eligible for what we are
11 talking about here. So it's not wholesale granting
12 of licenses to people who have killed people on the
13 road.

14 I mean, the district attorneys, of course,
15 in every one of these counties that has one of these,
16 has an absolute veto, and I assure you that no one,
17 and I can't speak for every county, but I assure you
18 that most district attorneys, if there was a serious
19 accident or you have been around the block so many
20 times, you don't even get into this.

21 We don't take young people, who are the ones
22 who are generally the most prone to do this. The
23 crime-prone ages are generally 18 to 32. I stay away
24 from the youngest ones, because they haven't hit that
25 idea about, gee, I've really got to get serious about

1 turning my life around; it's time now.

2 Like I said, the Barry Myers's and most of
3 my people are over 30. They've been through the
4 regular system and it hasn't worked for them. Now we
5 are watching them constantly for 18 months to 2 years
6 and looking at everything they do every day.

7 And I will tell you, I mean, it's a sad
8 fact, and I don't know what your statistics are, but
9 probably I graduate less than 50 percent. And those
10 that don't graduate, they are all going to State
11 prison because of their prior record scores in this
12 particular thing.

13 I think I can count, in the 3 years that I
14 have done this, two people that got to stay in the
15 county after it was over. So this is not an easy
16 thing in any way, shape, or form.

17 I just want to say in conclusion, Treatment
18 Court is incredibly difficult. People with long
19 histories of substance abuse need to totally change
20 their lives, and that requires a daily commitment to
21 being drug and alcohol free and an understanding that
22 ordinary life, real life, constructive citizenship,
23 requires you to go to work and maintain a job.

24 You can't really maintain a good job or
25 improve your condition in this life unless you have a

1 driver's license, and I'm willing to take on that
2 responsibility before all of you to say, these people
3 are going to be monitored closely and they are not
4 going to be out there causing havoc on our highways.
5 Again, there are so few of them.

6 I would urge you to take this under
7 consideration and grant me the opportunity to help
8 these people.

9 CHAIRMAN MARKOSEK: All right.

10 Gentlemen, great testimony. Very good.

11 Do we have questions?

12 Representative Mike Carroll.

13 REPRESENTATIVE CARROLL: Thank you,
14 Mr. Chairman.

15 And Judges, I appreciate the testimony.

16 I get the sense, after listening to your
17 testimony, that you are asking for an authority even
18 beyond what Representative Wheatley's bill does.

19 As I understand his bill, he is seeking an
20 occupational limited license in very specific
21 instances with respect to a controlled substance.
22 And I get the sense, especially from Judge Ebert,
23 that you're asking for even broader authority to
24 issue licenses to graduates, or participants --
25 I guess that's a better way to say it -- in the

1 Drug Court.

2 Now, are you clear on the distinctions
3 between what his bill does and what your testimony is
4 saying?

5 JUDGE EBERT: I have seen various versions
6 of this. I am definitely advocating that the
7 criteria should be that you are in a drug, again, the
8 bills I saw were called problem-solving courts, and
9 that if you don't have a license under, you know, the
10 strict controls that I'm asking for, I will govern
11 that on a daily basis.

12 So I guess the answer to your question is
13 probably yes.

14 REPRESENTATIVE CARROLL: Okay.

15 Can you outline for me in an elementary way
16 how someone ends up in Drug Court? Is it for a first
17 offense, or are first offenders generally not
18 appearing in court?

19 JUDGE SCHMEHL: In my court, it's the third
20 offender and only the third offender. We have a STOP
21 program, which is the Second Time Offender Program.
22 If they don't make it there -- we are a court of last
23 resort for these folks, okay? That is what we are.

24 So when I am speaking to the committee, I'm
25 trying to say that in conjunction with the Federal

1 regulations, not only for people who have possession
2 with intent to deliver charges, other felonies, that
3 we be included, Drug Courts be included, so long as
4 appropriate restrictions are imposed upon these
5 drivers and so long as, in my view, they successfully
6 complete the court.

7 If after 6 months my team, which involves
8 probation officers, district attorneys, and so on and
9 so forth, treatment providers, says that this person
10 is an A-plus individual, participant, and they
11 recommend to me that they get permission to apply for
12 a limited license, that we participate in that
13 process and see to it that they get the license.

14 We continue to monitor them, as Judge Ebert
15 has said. And if they backslide, the carrot that we
16 gave them is gone.

17 JUDGE EBERT: And that includes
18 reinstatement of all the suspensions.

19 If I threw someone out of here, this all
20 comes back. It's not like your driving record is
21 going away. You are literally on probation for the
22 rest of your life, from my point of view.

23 And one thing that would trigger, and again,
24 in one of the bills that I read, one mistake that
25 would call for another suspension ends that license.

1 And from my perspective, it would also terminate you
2 from the Treatment Court.

3 The answer to your question is, and this is
4 general, I can't think of any first-time offenders --
5 I take that back. I have a doctor, a medical doctor
6 right now, who was addicted to OxyContin, and he pled
7 guilty to misdemeanor drug offenses; however, with a
8 sentence of 2 1/2 to 5 years in State prison if he
9 fails his program. Now, you can imagine what the
10 incentive of him is to stay straight in this
11 particular life.

12 Now, he is a first-time offender. Almost
13 all of the others, especially with DUI, have gone
14 through -- you know, the first time they could maybe
15 get probation. Then you go to the accelerated
16 rehabilitative disposition program. Then you go to
17 county intermediate punishment after that. And then
18 probably you are going to be, you know, the people
19 who are coming in here on DUI cases with me, they've
20 already got one foot in the State prison.

21 And, you know, it's that close, so there can
22 be no errors.

23 REPRESENTATIVE CARROLL: I appreciate it.
24 Thank you.

25 CHAIRMAN MARKOSEK: Representative Wheatley.

1 REPRESENTATIVE WHEATLEY: Well, first let me
2 begin by thanking you, Judge Ebert, for your service
3 to our country. I read in here that you were Army.

4 But to Representative Carroll's point, I
5 mean, I'm amenable to expanding, because I think
6 allowing for opportunities, more opportunities, for
7 folk who have lost licenses, and it seems like your
8 problem-solving court program really is intensive,
9 not only around getting them back to driving but
10 getting their life back in order.

11 JUDGE EBERT: And that's the key.

12 I mean, this isn't about -- it's being a
13 normal citizen and not having to every 6 months or,
14 I mean, we all know that with these
15 driving-under-the-influence charges, generally
16 speaking, if you take 100 people, 20 of them will be
17 recidivists. They will come back. They are the
18 problem here. Not that everybody else who gets
19 arrested for DUI is not a problem drinker, but they
20 are going to be the serious people.

21 I mean, they are addicted to alcohol. They
22 are alcoholics and they'll be coming back. This is
23 the only way to modify that kind of behavior, because
24 normal probation or even prison probably isn't going
25 to do it.

1 I mean, some people grow out of it, but if
2 you are in your fifties or sixties by the time that
3 happens, you'll be dead.

4 REPRESENTATIVE WHEATLEY: Sure.

5 And you made an interesting point around the
6 cost, if it is cost effective the way we currently
7 operate our system versus having something similar to
8 this, in a graduated type of case.

9 Again, I don't know what the arguments would
10 be against that. Maybe there is some danger to
11 Federal funding, maybe there might be some debate
12 around if we are being lenient on folk who have
13 committed some of these crimes or acts.

14 But I think it is certainly worth just the
15 graduated approach that you outlined. It is
16 definitely worth, I think, to explore the possibility
17 of doing it.

18 So I just appreciate your testimony. I
19 mean, you really lifted up -- I was very limited in
20 what I was talking about, because I thought the
21 first-time offenders should be given the same as we
22 currently give DUI offenders.

23 But what you are talking about, I think it's
24 a more systematic change of how we can really change
25 behavior, change culture, save the State some dollars

1 possibly, and really put some things in place to
2 really try to correct some of these problems out
3 there. So I appreciate your testimony.

4 CHAIRMAN MARKOSEK: Chairman Ron Waters.

5 REPRESENTATIVE WATERS: Thank you.

6 Thank you, Your Honors, both Judges, and
7 thank you, Mr. Chairman.

8 My question is just, I notice this affects
9 Federal funding. Some States have different DUI
10 levels. Pennsylvania is 0.8.

11 JUDGE SCHMEHL: It's .08.

12 REPRESENTATIVE WATERS: Point what?

13 JUDGE SCHMEHL: I think it is .08.

14 REPRESENTATIVE WATERS: You are right; yes,
15 .08. That is what I meant. And in some States it is
16 higher. I think that Delaware is higher, a
17 neighboring State.

18 CHAIRMAN MARKOSEK: It's all Federal law,
19 .08.

20 REPRESENTATIVE WATERS: Okay; .08.

21 JUDGE EBERT: If you want the Federal money,
22 you have to pass it at .08. In the State, you can
23 actually be convicted for lower levels. But, I mean,
24 it's much more difficult.

25 REPRESENTATIVE WATERS: Okay.

1 The systems that you have in Cumberland and
2 Berks Counties, now, other States might not have this
3 same process?

4 JUDGE EBERT: Their Treatment Courts, I
5 believe there are in excess of 1,700 now across the
6 country. They began, I believe, in 1989 in Miami
7 actually. So I'm sure they are all different.

8 I guess the one interesting point is that to
9 have a Treatment Court, every member of your
10 Treatment Court team, so the probation officer, the
11 district attorney, the public defender, the drug and
12 alcohol providers, they all have to go to a standard
13 school.

14 So I as a Judge went to the Judicial College
15 and I was there with Judges from all over the
16 country. So the curriculum is taught the same way
17 and then we take it home and probably apply our local
18 statutes to the way it's going to be run.

19 But it's pretty uniform, I would believe.
20 Again, every Judge is different. The number of
21 people, the population, like Philadelphia, I mean,
22 they probably have a much more pressing problem than
23 we do here in Cumberland.

24 JUDGE SCHMEHL: There are DUI Courts that
25 are very specific to driving-under-the-influence

1 offenses, either drugs or alcohol, and then there's
2 the generalized Treatment Courts which have an
3 expanded population, many of whom have all kinds of
4 problems treating their drug habit, with treating
5 their mental illness with drugs and then dealing with
6 drugs, which have to be treated as well.

7 But the DUI Courts are a relatively new
8 phenomena. There were only four counties that first
9 started 5 years ago, two in Pennsylvania and two I
10 think in Arizona. And since then, as he had said,
11 Judge Ebert, they have expanded across the country.

12 REPRESENTATIVE WATERS: Okay. So the
13 program, the reciprocity would be a matter that your
14 license would be recognized no matter where.

15 JUDGE SCHMEHL: Oh, I don't think that would
16 be an issue.

17 REPRESENTATIVE WATERS: Okay.

18 JUDGE SCHMEHL: If the participant in a DUI
19 Court in Pennsylvania carried that affidavit, I think
20 full faith and credit would permit or force other
21 jurisdictions to honor it.

22 REPRESENTATIVE WATERS: Okay. That is the
23 only question I have. Because if you had jobs
24 outside of the city and State, they would be safe?
25 Okay.

1 Thank you, Mr. Chairman.

2 CHAIRMAN MARKOSEK: You're welcome.

3 Representative John Siptroth.

4 REPRESENTATIVE SIPTROTH: Thank you,

5 Mr. Chairman.

6 Judge Schmehl and Judge Ebert, thank you
7 very much for joining us.

8 Since it's a relatively new program, did you
9 say about 5 years this has been in place?

10 JUDGE SCHMEHL: Yes; that is correct.

11 REPRESENTATIVE SIPTROTH: And you indicated
12 that about 20 percent of those individuals that go
13 through the normal process and have reoccurring
14 habits are found guilty again. Do you have any
15 statistics that indicate those individuals that have
16 completed your program statistically weighed against
17 those that---

18 JUDGE EBERT: Again, it's relatively new in
19 Pennsylvania, so I cannot -- I haven't had any
20 failures yet. I'm going to look you straight in the
21 eye and say I expect somebody that will slip up
22 again. So, you know, there is no way I could ever
23 guarantee anything like that.

24 You have to look, though, at the completed
25 process of this program when people graduate. And,

1 you know, I remember one young lady in particular,
2 and I actually ended up even marrying her in my
3 courtroom.

4 But, I mean, not to be crass---

5 REPRESENTATIVE GEIST: Did she marry you or
6 did she marry somebody else?

7 JUDGE EBERT: No; she did. But she had two
8 children, and they were in trouble with Children and
9 Youth. She didn't have a job.

10 I mean, I remember in one of our individual
11 sessions with her, she was basically like, I enjoy
12 being a crack whore; you know, it was easy and fun
13 and people would take me to the islands and
14 everything.

15 That girl works now at Carlisle Tire & Wheel
16 assembling tires and packaging them for that. She
17 has been at that now for 2 years. She had gone
18 through the program for budgeting -- and hated that,
19 you know, absolutely. She now has savings, a
20 husband. Her kids are not under the auspices, they
21 aren't dependent on Children and Youth. And she is
22 pretty happy with, gee, this is what it's like to be
23 a normal person.

24 Can I look at you and say, you know, that
25 won't change? But it's pretty remarkable, again, I'm

1 saying less than half finish. You really see what it
2 takes to change someone's life.

3 Regular criminal justice, I'll be the first
4 guy to sit here and say that most of my life has
5 been, you have got to be punitive, you are not going
6 to change these people, and they are just going to
7 keep coming back and hurting people, okay? This is
8 one opportunity where we say, with this limited
9 group, there might be a chance to really turn them
10 into productive citizens.

11 JUDGE SCHMEHL: We can't, we can't follow
12 up, because once the probation period expires, they
13 have no obligation to report to us. The only way we
14 can check is with the national crime reporting
15 network where we can pick up any additional arrests.

16 Nationally, without Treatment Courts, the
17 recidivist rate, returning to drinking or drugs, is
18 about 94 percent of people go back, okay? In
19 Treatment Courts, approximately 50 percent of the
20 people have long-term sobriety.

21 So it's too early for our courts to make
22 that determination, as Judge Ebert has told you. But
23 when I first heard that statistic, it was grim, but
24 comparing that to the 90 percent nationally when you
25 don't have Treatment Courts and the 50 percent when

1 you do, I'll opt for that Treatment Court every
2 time.

3 JUDGE EBERT: And I guess my point also is,
4 okay, then we're going to reinstate all of your
5 restrictions, your license. We haven't lost anything
6 per se.

7 You know, everyone would look at me and say,
8 oh, that one accident where someone gets killed by a
9 person in Treatment Court, nobody wants to take that
10 risk, that is probably true. But then you have to
11 statistically analyze the entire, you know, locus of
12 people that are in this and where they are in their
13 particular life and reforming themselves and say,
14 that risk is pretty low compared with the fact that,
15 you know, if you are on suspension until 2027 and you
16 are an alcoholic, I'll bet you are going to be
17 driving again whether or not you are in Treatment
18 Court or not.

19 REPRESENTATIVE SIPTROTH: One last question.

20 What would be the cost comparison?

21 Certainly this is additional costs to the county,
22 because now you have individuals who are applying
23 time outside of their normal work.

24 Is there any estimate as to what the
25 initial---

1 JUDGE SCHMEHL: Not so. Not so in Berks
2 County.

3 REPRESENTATIVE SIPTROTH: Well, okay, set
4 aside, set aside those folks who are incarcerated and
5 that type of thing.

6 JUDGE SCHMEHL: First of all, the treatment
7 providers are taken care of by the Council on
8 Chemical Abuse. They have Federal funding that they
9 get, and they use the Federal funding to hire
10 Treatment Court providers for us.

11 The probation officers don't do any extra
12 work to take care of our defendants. The district
13 attorney and the public defender do this in the
14 normal course of their day.

15 I start court at 1 o'clock, which I have to
16 start actually this afternoon, and they are there
17 along with the public defenders from 1 to 1:30 in my
18 court so they can go to regular court time later. So
19 there are no additional expenses to the county.

20 We have also solicited funds from the Berks
21 County Community Foundation and they have provided us
22 with funds. What for? Well, if someone is desperate
23 for rent, we will get them rent.

24 We want to scholarship some of the people
25 who will be involved in this program, because if we

1 put them on interlock, it is going to cost them
2 75 bucks a month. If they are good participants,
3 then the court will come and scholarship them with
4 the money that we get from the Community Foundation
5 and from the Bar Foundation of Berks County.

6 REPRESENTATIVE SIPTROTH: Okay.

7 Since this isn't a statewide program yet,
8 and we certainly hope that there will be expansion,
9 and this is going to be a State law change, there
10 would have to be exceptions built into the provision
11 in order for this to be applicable.

12 JUDGE SCHMEHL: That is correct. That is
13 correct.

14 And I think, I don't know how Pennsylvania
15 liaises with the Federals, but it would seem to me
16 that you could get what we call an advisory opinion
17 from them saying, this is the way our legislation
18 looks right now, and we would like to know, before we
19 put it to the House at large and the Senate, that we
20 are in conformity with the Federal regulations so
21 that we don't lose those Federal funds.

22 REPRESENTATIVE SIPTROTH: Thank you very
23 much, gentlemen.

24 Thank you, Mr. Chairman.

25 CHAIRMAN MARKOSEK: Okay. Thank you.

1 Chairman Dick Hess.

2 REPRESENTATIVE HESS: Thank you,
3 Mr. Chairman.

4 My question was asked by Representative
5 Siptroth. Thank you.

6 CHAIRMAN MARKOSEK: Okay.

7 Representative John Sabatina.

8 REPRESENTATIVE SABATINA: Thank you, Your
9 Honors. I appreciate your testimony.

10 I do agree with your expansion of
11 Representative Wheatley's idea. I'm from
12 Philadelphia, and as I mentioned before, I was a
13 prosecutor.

14 The only, I guess, hurdle I see would be
15 that the caseload of Philadelphia is so much more, I
16 guess, that I don't think the Judge would have a
17 personal relationship with their, not clients, with
18 their participants, I guess, as the two of you may.
19 Just because of the volume, the sheer volume, you
20 just may not get that interpersonal relationship when
21 you know what this person is capable of or not.

22 JUDGE EBERT: And there's a gentleman who
23 was one of the founders---

24 JUDGE SCHMEHL: Yeah; I know.

25 JUDGE EBERT: It starts with a "P."

1 JUDGE SCHMEHL: He's a Judge down there.

2 But let me say that even with the expanded
3 caseload, and quite obviously this is true for
4 Philadelphia County, the team meets before every
5 court session and we go over every single detail.

6 So while he or she will not have a
7 particular ability to have the closer relationship
8 that we have with these people, he will still be very
9 familiar with these folks, because on a weekly basis
10 he will be reviewing that file.

11 JUDGE EBERT: I would be surprised that
12 there is not some common interaction, because that is
13 the fundamental cornerstone of Treatment Court. It
14 is the idea that someone, and I'm not bragging, but
15 it's the idea that a Judge has actually taken a
16 personal involvement in each life.

17 So every week they are coming up, and, you
18 know, you have heard this; it's interesting that
19 you're a prosecutor. I mean, they still make fun of
20 me, you know, about clapping your way to freedom and,
21 you know, hugs and all that kind of stuff.

22 But I'm not kidding you, these people do
23 respond when you call them by their first name and
24 "What happened this week? Tell me what went wrong."
25 And when you have to punish them, it's a sad day, but

1 they know it and they know that they deserve it.

2 So I can't remember the gentleman's name who
3 was---

4 REPRESENTATIVE SABATINA: Presenza.

5 JUDGE SCHMEHL: Lou Presenza; yes.

6 JUDGE EBERT: And he was one of the primary,
7 you know--- So I would be interested in hearing, you
8 know, again, there are so many people that, I don't
9 know, it would stagger me, because it takes a lot of
10 time to do this. And you just go through and "how
11 did you do this week," "tell me what's going on,"
12 "how is work," all of that, and they really respond
13 to it.

14 So everyplace you go, the training is you
15 have to do that. So I would be surprised if it is
16 just more -- you know, I'm realistic also in the fact
17 that, okay, we're going through the motions maybe,
18 but I kind of doubt whether that happens. I don't
19 know.

20 REPRESENTATIVE SABATINA: Well, thank you
21 for your testimony.

22 CHAIRMAN MARKOSEK: Representative
23 Ron Miller.

24 REPRESENTATIVE MILLER: Thank you,
25 Mr. Chairman.

1 For the Judges, basically what I'm hearing
2 you say is if we expanded this, especially what you
3 are proposing, and a person was allowed to get their
4 OLL and go through your program, at the end of that
5 program, what kind of driver's license would you
6 envision them having?

7 JUDGE EBERT: From my perspective, it was
8 always their OLL under a Treatment Court proviso,
9 that you were a graduate of the Treatment Court but
10 that is still probationary until the end of your
11 life.

12 I mean, you mess up, as my colleague has
13 indicated, it all goes back. It all comes back on --
14 I mean, it never converts to a regular license where
15 you wipe your slate clean with regard to PENNDOT
16 records.

17 I mean, we do grant expungement of the
18 criminal conviction, of which you are in Treatment
19 Court -- not all of your convictions. But I think
20 for this, the privilege of being able to participate
21 and having the privilege of driving to make your
22 life, A, normal, and B, responsible, is you have got
23 to know that you are under that court requirement for
24 the rest of your life.

25 REPRESENTATIVE MILLER: So if they complete

1 your program, and the example in Berks for the person
2 who wasn't eligible to get their license restored
3 until 2026, you would propose that they are still on
4 an OLL until 2026 and at that time they could get
5 full restoration?

6 JUDGE EBERT: I wouldn't even say -- I mean,
7 I would say no, because this is a daily requirement
8 of sobriety. And it's just like you know that if you
9 mess up, then all of that is going to come back to
10 you, and you don't want that to happen to your life.

11 And I know one of these bills that I saw
12 generally said that, that it remains in effect but it
13 is still provisional as long as you don't have a
14 violation that would otherwise require your license
15 to be suspended or revoked, and if it does, you are
16 back.

17 REPRESENTATIVE MILLER: The main thing I
18 wanted to clarify is, you are not proposing that
19 somehow it would almost be better for a person to get
20 caught again, going through your system, and get a
21 restoration before 2026. We don't want to create
22 that situation.

23 JUDGE EBERT: I assure you that given the
24 vigorousness of this, there aren't people beating
25 down the door to get into this.

1 They are looking at State prison. And
2 again, the D.A.s, they get an absolute deed on
3 participation. The teams themselves, some people say
4 no, this person's heart is not into reforming their
5 life; we are not going to waste our time. So it is
6 very selective.

7 REPRESENTATIVE MILLER: Thank you.

8 Thank you, Mr. Chairman.

9 CHAIRMAN MARKOSEK: Thank you.

10 Following up on that line of questioning,
11 for folks that decide not to go into your program but
12 decide that perhaps, you know, a year or two in State
13 prison is actually a better choice for them, when
14 they come out, they have a suspension, do they not?

15 JUDGE EBERT: Yes.

16 CHAIRMAN MARKOSEK: Now, generally the
17 problem we all face, I know, with our constituents is
18 people with suspensions, irregardless of whether it's
19 a total suspension or an occupational suspension,
20 they pretty much drive anyway all the time, or, you
21 know, whenever they feel they need to.

22 So I guess maybe I'm just kind of thinking
23 out loud a little bit here. With your DUI Court,
24 when they go into that, okay, now they get through
25 that, as difficult as it is, and they get an OLL,

1 they get an occupational limited license for the rest
2 of their lives, according to what I understood was
3 just answered to his question, then what happens when
4 they drive, you know, go on vacation, which is not
5 part of their occupation?

6 JUDGE EBERT: I think that was, you know,
7 again, and I don't know who I worked with on this,
8 probably Michael Schwoyer, and I think it was one of
9 my assistant D.A.s, it wasn't called occupational. I
10 know that PENNDOT immediately came down and said, we
11 could fit this into occupational limited license.
12 One of the bills I saw called it the problem-solving
13 court license, which was a subcategory of an
14 occupational limit.

15 I would really be of the fact that if you
16 are one of our graduates, your occupational limited
17 license is full; you can drive 24 hours a day, as
18 long as you are not violating the law. It is no
19 longer limited to just your job. You have earned
20 that right to drive; however, you never are going to
21 get by the proviso that, you know, if you have
22 another mistake, another crime or whatever it is,
23 you're revoked. It is gone, you know, forever.

24 And again, those provisions that I saw in
25 here, you can never apply to Treatment Court again.

1 You can't -- that's the essence.

2 If you have earned your right back and you
3 have reformed your life, then what the Commonwealth
4 is saying is, all right, we'll trust you, but you are
5 always on probation.

6 CHAIRMAN MARKOSEK: Just to summarize in my
7 own mind so I know we are on the right page, if you
8 go through Treatment Court and now you are awarded a
9 license to drive, essentially what I think I just
10 heard you say was that it is a full license, not
11 really an occupational license.

12 JUDGE EBERT: It's a problem-solving court
13 license, and it will always have that letter, you
14 know, and you must carry it.

15 So when the police come, you know, when you
16 run the record, it will say "Problem-Solving Court
17 License," which means there are restrictions on it
18 forever.

19 CHAIRMAN MARKOSEK: All right.

20 Well, very compelling testimony, both of
21 you.

22 Rick, would you like to say something?
23 Representative Geist.

24 REPRESENTATIVE GEIST: Judges, as successful
25 as you are in your program, if your recidivism rate

1 is tremendous, only 50 percent, that story needs to
2 get out and be told to the public.

3 Maybe Joe and I can help you do that. I
4 have never heard it put so well as you put it.

5 JUDGE EBERT: This is not giving away
6 anything.

7 I mean, literally, when the defense counsel
8 comes in and they have seen what happens to other
9 people who fail and they are like "My guy will do the
10 time," what does that tell you? I'm not interested
11 in being a good citizen or working or doing anything
12 else; I want to drink, party, and do drugs. And they
13 are going to do that whether we have this or not for
14 those kinds of individuals.

15 I'm just saying for the ones who really want
16 to take the effort and be totally monitored by the
17 courts, I'm willing to take this chance.

18 REPRESENTATIVE GEIST: Well, I think you
19 guys have done a great job, and I like the way you
20 tell the story.

21 JUDGE EBERT: Thank you.

22 CHAIRMAN MARKOSEK: Gentlemen, thank you
23 very much.

24 JUDGE SCHMEHL: Two quick comments.

25 CHAIRMAN MARKOSEK: Sure.

1 JUDGE SCHMEHL: One, there is an element of
2 criminality here, but I do think it is important for
3 all of you to remember that it is an addiction and it
4 is a disease and it is treatable, okay?

5 And the second thing is, I neglected to
6 write in that I had 5 years in the United States
7 Navy.

8 REPRESENTATIVE WHEATLEY: I apologize, and I
9 want to thank you for your service.

10 JUDGE EBERT: Thank you all for your time.

11 JUDGE SCHMEHL: Thank you.

12 CHAIRMAN MARKOSEK: Thank you.

13 We have folks from Neighborhood Legal
14 Services here who have submitted testimony,
15 written testimony. But would they like to say
16 something briefly? Are they still here? Nicole
17 Scialabba?

18 MS. SCIALABBA: Yes.

19 CHAIRMAN MARKOSEK: Is Nicole here?

20 MS. SCIALABBA: Yes. If I'm permitted to
21 say something?

22 CHAIRMAN MARKOSEK: You can make a brief
23 statement, if you would like, Nicole.

24 MS. SCIALABBA: Thank you.

25 Good morning.

1 CHAIRMAN MARKOSEK: Good morning.

2 MS. SCIALABBA: Thank you for allowing me
3 the opportunity to speak this morning.

4 Sorry; I apologize. I did not supply anyone
5 with a biography of myself or a resumé, so just a
6 brief background of who I am.

7 My name is Nicole Scialabba. I am an
8 attorney at Neighborhood Legal Services in
9 Pittsburgh, PA.

10 I am a graduate, a 2006 graduate, from
11 Duquesne University School of Law---

12 REPRESENTATIVE COSTA: Yeah.

13 MS. SCIALABBA: ---and I have been working
14 at Neighborhood Legal Services since graduation. I
15 received a 2006 fellowship, the Martin Luther King,
16 Jr., Fellowship from Pennsylvania Legal Aid Network,
17 and they had hired me on after the 2-year fellowship
18 was completed.

19 I do have a brief statement to make here
20 today, and some of it does touch upon what other
21 people have said today.

22 And I think some of the information that I
23 have submitted to you all as exhibits also provides
24 further information about maybe what other States are
25 doing as far as license suspension is concerned for a

1 first-time drug offender.

2 I do want to focus mainly on that part of my
3 testimony, so I am going to refer to the second page,
4 letter B, "What Other States Do."

5 In 2004, the Legal Action Center published a
6 report called *After Prison: Roadblocks to Reentry*.
7 Now, this report evaluated State legal barriers
8 facing people with criminal records, including
9 a section specifically examining driver's
10 licenses.

11 Their findings show that 27 States
12 automatically suspend or revoke licenses for some or
13 all drug offenses.

14 Conversely, 23 States either suspend or
15 revoke licenses only for driving-related offenses or
16 have opted out of the Federal law.

17 Lastly, while people have suspended
18 licenses, 32 States currently offer restrictive
19 licenses for individuals whose licenses would
20 otherwise be suspended so that they can go to work,
21 attend drug treatment, or obtain an education, while
22 there are 18 States that do not offer any type of
23 restrictive license.

24 Pennsylvania does not currently offer a
25 limited license to individuals with drug-related

1 convictions.

2 Maryland and Missouri offer two examples of
3 how other States have addressed this issue.

4 Maryland State authorizes the revocation or
5 suspension of licenses only when the offense is
6 related to the ability to drive safely. It limits
7 the length of revocation or suspension to not more
8 than 60 days for a first offense and not more than
9 120 days for two or more offenses.

10 Now, Missouri's law on granting a limited
11 license allows the court or the Director of Revenue
12 discretion in granting limited licenses to
13 individuals based on the strength of that
14 individual's need.

15 The court or director is to consider the
16 individual's employment circumstances, their medical
17 treatment, educational activities, alcohol or drug
18 treatment programs, or other circumstances which may
19 create an undue hardship on the operator.

20 I have included those two laws with all of
21 these documents as well.

22 Now, a first-time drug offender's access to
23 an OLL may have a "trickle-down" effect for that
24 offender. A first-time drug offender may have to
25 satisfy conditions of their sentence, including

1 maintaining employment, attend a drug and alcohol
2 facility, payment of court-imposed penalties
3 including fines, fees, and restitution.

4 As such, access to the OLL can be critical
5 for the offender to merely complete their sentence.
6 For example, the inability to obtain an OLL during a
7 suspension may impact that individual's ability to
8 maintain employment, which could in turn translate
9 into the nonpayment of fines or other court-related
10 fees.

11 A first-time offender may also struggle with
12 obtaining or maintaining employment. Employers often
13 inquire into an applicant's driver's license status
14 when making their hiring decisions. It indicates an
15 employee's reliability, and in some cases it's
16 required to get to and from the job.

17 For example, we are discovering that there
18 are a lot of union jobs that the locations are
19 outside of public transportation, and they require
20 that an individual has a license to get to and from
21 the worksite.

22 Further, a first-time drug offender may
23 struggle with obtaining drug and alcohol treatment or
24 other necessary medical treatment if they are unable
25 to obtain an OLL so that they can get to and from

1 their treatment location.

2 There are treatment facilities in Allegheny
3 County that are a little outside of access to public
4 transportation.

5 Obtaining or continuing their education
6 opportunities may also be impeded. Individuals may
7 be unable to attend college, other workforce
8 development programs, or job training due to the
9 inability to find alternative transportation to and
10 from those facilities.

11 While our office is not permitted to handle
12 the criminal aspects of the individual's case, we do
13 give advice to individuals regarding driver's license
14 suspension problems as they relate to that
15 individual's employment.

16 Many clients are in need of a driver's
17 license so that they are able to get to work.
18 Individuals are often asked during the job
19 application and interview process about whether they
20 have a driver's license.

21 Ultimately, first-time DUI offenders,
22 first-time underage drinkers, and first-time drug
23 offenders face similar sentencing penalties and thus
24 similar real-life barriers if they are unable to
25 obtain a limited license.

1 In Allegheny County right now currently,
2 there is an organization called the Pittsburgh
3 Foundation, and they have sort of approached us to
4 request a grant from them in order to produce a
5 driver's license manual, because they are finding
6 that in our community, there are so many workers that
7 are out of jobs, and one of the main problems and one
8 of the top reasons is because they don't have a
9 license or they have license-suspension issues that
10 they need to deal with and they frankly don't know
11 how to navigate PENNDOT's system.

12 So they have provided us with a grant, and
13 we are currently working on such a manual that will
14 be distributed to individuals in Allegheny County who
15 are seeking advice and information on driver's
16 license suspension problems.

17 Thank you very much for allowing me to speak
18 today, even though I am not on the agenda, and I can
19 answer any questions that you guys may have.

20 CHAIRMAN MARKOSEK: Thank you very much.
21 Representative Paul Costa from Allegheny
22 County.

23 REPRESENTATIVE COSTA: Thank you.

24 Do you work with Frank Pistella?

25 MS. SCIALABBA: Yes, I do.

1 REPRESENTATIVE COSTA: How's he doing? I
2 haven't seen him in a while.

3 MS. SCIALABBA: You haven't? He's our
4 public benefits attorney.

5 REPRESENTATIVE GEIST: Tell him we all miss
6 him.

7 MS. SCIALABBA: I will.

8 CHAIRMAN MARKOSEK: Representative Waters.

9 REPRESENTATIVE WATERS: Thank you. Thank
10 you for coming in.

11 I just want to ask you, based on what you
12 just said, it made me think about a couple of
13 things.

14 A person who goes to -- I don't know if you
15 can answer this; maybe the Judges can answer it a
16 little bit better.

17 A person who goes to get a job, a new job,
18 and they have one of these licenses, how does the
19 employer look at the person? Do they look at them
20 any different than a person who comes in and doesn't
21 have a special license?

22 MS. SCIALABBA: I honestly haven't had a
23 client yet who has an OLL, so I would not be able to
24 answer that question.

25 I know that the OLL provides them, allows

1 them to drive only during certain hours as it
2 pertains to work or to their education or medical
3 treatment. So it is limiting as far as the hours
4 that you can drive during the day.

5 I believe that even in an OLL application --
6 which I don't have it here today; I have a fact sheet
7 that I have included from PENNDOT -- there is
8 information that the individual applying for the OLL
9 has to complete about the times that they work, the
10 times that they go to get treatment, those kinds of
11 things, so that PENNDOT is aware of those and they
12 will grant a license based on those hours that they
13 requested, from what I have seen.

14 REPRESENTATIVE WATERS: Okay. Thank you.
15 Thank you, Mr. Chairman.

16 CHAIRMAN MARKOSEK: Thank you.

17 Representative Vanessa Brown has a
18 question.

19 The sound system is not working, so---

20 REPRESENTATIVE BROWN: Okay. Thank you.

21 I have asked our Chairman if I could present
22 something to you, because the issue of folks driving
23 without a license, as I stated earlier, it is a very
24 large issue in Philadelphia.

25 And after looking at this also on my own,

1 one of the things that I would like to do is stop
2 folks from actually having to be in a situation where
3 they are coming out of prison, because we talked a
4 lot about the reentry rate and folks not having their
5 license, and I'm looking at our young people.

6 And a lot of the young adults that are 16,
7 18 years old are driving right now without a license.
8 And when I started to look at this issue and I looked
9 at the Pennsylvania Driver's Manual, I started to
10 question some of these young people and I said, why
11 don't you have a license? They were having trouble
12 getting through the driver's manual itself. So we
13 have a lot of children who are learning disabled
14 or are undereducated in our educational system and
15 they can't get through this book to get their
16 license.

17 So I crafted this legislation that would ask
18 us to improve the way that we present the driver's
19 manual to our individuals in the Commonwealth, and
20 that is to make sure that we have large print in the
21 book to then help people who are learning disabled
22 and who need large print, to adapt an audio version
23 of the book, and to also allow folks to take a verbal
24 test.

25 So I'm asking, I just wanted to bring this

1 to your attention to ask you for your support for
2 cosponsorship, and I would like to put that to
3 another time to discuss this more.

4 MS. SCIALABBA: Sure.

5 CHAIRMAN MARKOSEK: Okay. Thank you.

6 And, Representative, we have the folks from
7 the Bureau of Motor Vehicles here, so I think perhaps
8 the first thing after the meeting would be to meet
9 with them, and there may be things that they can help
10 you with really before we get to a legislative
11 solution.

12 But we will certainly work with you and them
13 in trying to address this problem.

14 REPRESENTATIVE BROWN: Thank you.

15 CHAIRMAN MARKOSEK: Thank you for bringing
16 this to our attention.

17 I have two quick announcements for the
18 members, and I'll be darned if I didn't lose my note.
19 Here it is.

20 The committee will have an informational
21 briefing with the Associated Pennsylvania
22 Constructors, APC, tomorrow morning from 9:30 to
23 10:30 a.m. The topic will be an update on Federal
24 transportation funding. Keep an eye on your e-mail
25 for the location of this event.

1 And that is formerly it. I would like to
2 see the members privately after the meeting, and I
3 want to thank you all for attending.

4 Meeting adjourned. Thank you.

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6 (The hearing concluded at 10:41 a.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Debra B. Miller, Reporter

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