

**Testimony on Drunk Driving Legislation
by
The Honorable Howard Denis
Montgomery County Council**

**Judicial Proceedings Committee
February 15, 2001**

Good afternoon, Mr. Chairman and Members of the Committee. It is a pleasure to return to this committee and to have the opportunity to discuss a subject so very important to all Marylanders. It is an issue so important that it transcends party lines. You have before you today ten bills which, in various ways, address the issue of drunk driving. With the Chairman's consent, rather than testify on each individual bill, I will direct my remarks to the overall problem we face.

It is undisputed that progress has been made to reduce alcohol-impaired driving and underage drinking. However as a nation, we're a long way from solving this problem. In its 2000 report to Congress, the NIAAA¹ states that in an average year up to 46 million people in the United States drive after consuming some alcohol. They estimate that up to 4 million of those people are driving with a blood alcohol concentration (BAC) at the .08 level. In 1999 alone, over 15,000 people were killed as a result of alcohol-related traffic accidents. Statewide drunken drivers cost Maryland victims and taxpayers \$1.4 billion in 1998, including emergency services and lost wages.² I know how hard this committee has worked over the last two decades on this issue. It is clear to me, however, that we need to do more.

The bills you are considering today represent a step in the right direction for Maryland. In various ways, they address the penalties and mandatory alcoholic treatment incurred following a drunk driving conviction. While no one disputes that alcohol treatment should be a part of the solution, treatment alone is not sufficient. **We need a combination of treatment and traditional sanctions to effectively address the problem. Several of the bills do just that and I support this approach.**

Although the primary objectives of the bills are to reduce alcohol related fatalities and injuries, we also need to be mindful of the potential loss of federal aid if state statutory changes related to BAC, open containers, and repeat offenders are not made.

¹ National Institute on Alcohol Abuse and Alcoholism, National Institute of Health, U. S. Department of Health and Human Services

² National Public Services Research Institute, Landover, Maryland

- We have already lost \$2.6 million in incentive funding because we failed to pass .08 last year.³ We stand to lose another \$2 million a year through 2003. **In 17 states (including Virginia) and the District of Columbia, the per se BAC limit for drivers aged 21 and above has already been reduced to 0.08.** A look at the limits in other countries is instructive: Australia, the Netherlands, Finland, France and Germany have .05 limits, Sweden is set at .02 and the legal limit in Japan is .005. Clearly, enactment of a .08 limit would not place Maryland out of the mainstream.
- As a result of the recently passed transportation spending bill, beginning in 2004, Maryland stands to lose up to \$55 million in federal highway funding through 2007⁴ due to our failure to enact .08 BAC.
- As a result of The Transportation Equity Act for the 21st Century (TEA-21), Maryland has already had \$7.7 million of federal highway construction money transferred to highway safety programs due to our inadequate open container and repeat offender laws. This transfer of funds will continue, with increasing percentages of dollars transferred to highway safety programs. The Maryland Department of Transportation estimates that losses will exceed \$17 million without Maryland's conformance to the federal statutes.

We cannot afford to squander these federal dollars. Some of the bills before you will conform Maryland to the federal guidelines. I urge you to give them a favorable report.

While not affecting federal funding, Maryland's law on the admissibility into evidence of a defendant's refusal to submit to a blood-alcohol test – a Breathalyzer – needs to be changed. Forty-four states and the District of Columbia permit a suspect's refusal to take a chemical test to be admitted into evidence. **Maryland is one of only six states that prohibit the refusal to take a chemical test from being used against a suspect during the DWI trial.** In Maryland, the evidence is only admissible if the defendant presents the evidence. As long ago as 1983, the Supreme Court of the United States decided that admission into evidence of a defendant's refusal to submit to a blood-alcohol test does not offend his Fifth Amendment right against self-incrimination (*South Dakota v. Neville*). The accuracy of these tests has been demonstrated both in laboratory and field tests. It's time for Maryland to move into the 21st century on this and enact legislation to permit admissibility of Breathalyzer tests into evidence.

I have come back here today to testify on this issue because I feel very strongly that Maryland needs to make some serious changes to our drunk driving laws. The costs to the State and the losses to our citizens are simply too high for us to ignore. I urge you to take appropriate action on the bills before you today for the good of all Marylanders.

Thank you, Mr. Chairman. I will be happy to answer any questions.

³ Source: National Highway Transportation Safety Administration

⁴ Source: National Conference of State Legislatures