STATE OF MAINE
113TH LEGISLATURE
SECOND REGULAR SESSION

REPORT OF THE SUBCOMMITTEE TO STUDY DRIVING UNDER THE INFLUENCE OF ILLEGAL DRUGS TO THE JUDICIARY COMMITTEE

JANUARY 1988

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PREFACE BY THE JUDICIARY COMMITTEE

The Judiciary Committee wishes to thank the Subcommittee for the fine work represented in the following report. We commend the report to all those concerned with driving under the influence of drugs in Maine.

PREFACE

TO THE SUBCOMMITTEE

REPORT

The Subcommittee to Study Driving Under the Influence of Illegal Drugs of the Joint Standing Committee on Judiciary of the 113th Maine Legislature conducted this study from September to December of 1987. Representative Patrick Paradis served as chair of the Subcommittee. Sen. Henry Black, Rep. Jeanne Begley, Rep. Gerard Conley, Rep. Francis Marsano, Rep. Harry Vose, and Rep. Dan Warren also served as Subcommittee members. Gilbert Brewer, Legal Analyst, and Carolyn Chick, Legal Assistant, served as the Subcommittee's staff.

BACKGROUND OF THE STUDY

LD 1618, AN ACT to Clarify the Offense of Driving under the Influence of Illegal Drugs, was introduced during the First Regular Session of the 113th Legislature by Sponsor Rep. Warren and co-sponsors Rep. MacBride, Rep. Lebowitz and Rep. Stevenson. The bill proposed to amend the operating under the influence law to include additional provisions relating to operation of a motor vehicle under the influence of illegal drugs. The bill clarified the implied consent and penalty provisions to include operating under the influence of drugs and required mandatory blood testing of individuals involved in fatal automobile accidents.

After review of this bill, members of the Judiciary Committee felt there was insufficient time during the session to completely study the important issue of driving while under the influence of drugs. Therefore, the Judiciary Committee requested, and the Legislative Council approved, a subcommittee of the full Judiciary Committee to conduct a study of this issue. Accordingly, LD 1618 was carried over to permit this study.

The Subcommittee conducted its study in four meetings from September through December, 1987, and focused its study on the provisions included in LD 1618. Specifically addressed were two issues of testing: 1) by methods that would be considered constitutional, and 2) by methods effective in determining impairment.

In its study, the Subcommittee solicited testimony from several participants who spoke to the Subcommittee on testing issues. Testimony was received from Dr. Stanley Evans; John Krueger of the Public Health Lab; Dr. Ronald Roy, the Deputy State Medical Examiner; John Atwood, Commissioner of Public Safety; Lieutenant Thomas F. Reardon of the State Police; Patrick Demers of Demers Laboratory; and James Young of Young Laboratories.

SUMMARY RECOMMENDATIONS

After careful consideration of the facts, research, and testimony presented to the Subcommittee, the Subcommittee decided not to present legislation to the full Judiciary Committee. The major reason for the Subcommittee's hesitancy to submit legislation was concern about the lack of data on the magnitude of the operating under the influence of drugs problem. In addition, while some Subcommittee members favored an outright ban on driving with any amount of drugs in the system, consensus was reached that further information should be obtained before legislation is proposed.

The Subcommittee, in its decision, considered testimony from Albert Anderson, director of the Alcohol and Drug Abuse Planning Committee. The Alcohol and Drug Abuse Planning Committee has been directed by resolve[1] to study impairment levels for drugs other than alcohol. Information about the Alcohol and Drug Abuse Planning Committee and its study and expected results follows in a separate section. Subcommittee members felt that information obtained by the ADPC study and by the model resulting from the study would be essential to any legislation presented in the area of driving under the influence of drugs. We recommend a report of leave to withdraw for LD 1618 by the Committee.

HISTORY OF THE PROBLEM

There is growing concern among many law enforcement officials and members of the public that drugs other than alcohol are becoming serious highway safety problems. Thus far, there has been little research on driving under the influence of drugs; most attention has focused on operating under the influence of alcohol. The National Highway Traffic Safety Administration collected preliminary data which indicates that between 10 percent and 22 percent of the motor vehicle drivers in injury and fatal crashes have drugs in their system at the time of the crash. Some police agencies report that up to 25 percent of their driving while intoxicated arrests involve drugs.[2]

Nearly all drugs that affect the central nervous system have the potential to impair driving ability. For many years, however, alcohol (ethanol) has been the drug of greatest concern, since it is the most frequently recognized cause of drug-impaired driving. As social use of drugs such as marijuana increases and as more therapeutic agents are introduced however, attention must be directed toward other drugs.[3]

According to testimony received by the Subcommittee, while some drugs may not be a problem in a rural state such as Maine, use of other drugs is evidently occurring. For instance, use of marijuana and cocaine appears to be fairly common in Maine.[4]

The National Institute on Drug Abuse sponsored a conference on drugs and driving in 1983.[5] This panel addressed the problem of relationship between body fluid concentration of drugs (both licit and illicit) and the degree of driving impairment. The licit drugs considered in the panel's discussions included benzodiazepines, sedative-hypnotics, other psychotherapeutic agents, stimulants, and some antihistamines. Illicit drugs of concern included cannabis, cocaine, opiates, and hallucinogens. Subcommittee members heard testimony describing some of these drugs and their affects on users. A report from Virginia on drug-impaired driving offers the following definitions of these drugs and includes definitions of other drugs not mentioned in the panel's report.[6]

Benzodiazepines

Anti-anxiety agents, or tranquilizers. Among the most well-known members of this group are diazepam, which appears under the trade name valium, and chlordiazepoxide, also known as librium. The benzodiazepines are of particular concern in driving under the influence of drugs because they are among the most frequently prescribed medications in the US.

Benzodiazepines produce effects very similar to those of alcohol, and impairment increases as the dosage taken increases.

Barbituates

Include many substances, all central nervous system depressants or sedatives. Effects resemble those of alcohol and benzodiazepines, including powerful hypnotic effects and significant hangover impairment.

Amphetamines

Stimulants. May improve driving performance if taken in therapeutic doses and for short periods of time. However, there is sometimes a problem with the user overestimating his performance and underestimating the risks of a situation. Abuse results in mental exhaustion and impaired concentration.

Opiates (Narcotics)

Analgesics or pain killers. Included are codeine, morphine and heroin. Effects are know to produce impairment. Most opiates are central nervous system depressants, so their use in combination with alcohol prolongs the effect of both.

Marijuana

Those portions of the cannabis plant likely to include a high concentration of THC. One of the most frequently abused drugs and one of the most frequently encountered in drivers. The effect of marijuana use on driving is controversial, however.

Hallucinogens

Includes LSD, mushrooms and peyote. Effects may be long-lasting and may reoccur without warning. The effects are often unpredictable and frequently result in significant distortions of the user's perception of reality.

Antihistamines

Widely used medication available over the counter in many forms. Used to treat hay fever allergic reactions, insomnia and ulcers. Principal side effects are drowsiness and, at high dose, sedation.

Cocaine

May be the most commonly abused illegal drug, next to marijuana, and has recently displayed a surge in popularity.

TESTING

The Panel's report admits, however, that while it is technically possible to measure all these drugs quantitatively in body fluids, practical considerations limit the number to be tested in an initial screen. There are very few laboratories, the report says, that are prepared to identify and quantify the low concentrations of drugs that are expected to be found in impaired drivers. Indeed, in an advisory report received by the Subcommittee from Maine's Office of the Chief Medical Officer, problems are anticipated with full testing for all drugs as being "technically not feasible." The report explains that "the cost of even approaching comprehensive drug testing, including specific tests for those drugs not included in screening panels, is prohibitive."[7]

While efforts involved in testing those suspected of driving under the influence of drugs may present a problem, so too does the definition of impairment. Impairment has been defined, in the most general sense, as a failure to exercise the expected degree of prudence or control to ensure safe operation of the vehicle.[8] Because levels of impairment

are different for everyone, the Subcommittee agreed that a data base created from a sampling of drivers who are impaired by drugs will be essential to any legislation submitted to the Legislature.

CURRENT MAINE LAW

29 MRSA §1312-B, sub-§1 provides:

> 1. Offense. A person is guilty of a criminal violation under this section if he operates or attempts to operate a motor vehicle:
>
> A. While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs.

As is true with all other states, (See Figure 1.) current law sets the blood-alcohol concentration level at a point at which a person is considered under the influence of alcohol (29 MRSA §1312 (5)). However, there is no such level for any other drug, even though the law under 29 §1312-B (1) prohibits operating a motor vehicle under the influence of any intoxicating drug. Without such a standard, enforcement of the law and subsequent prosecutions are very difficult.

One of the greatest impediments to enforcement of Maine's driving under the influence of drugs statute (29 MRSA §1312-B (1)) is the lack of certain statutory provisions. Specifically, Maine's implied consent law (29 MRSA §1312) does not allow a police officer to require a motorist to submit to a

chemical analysis of bodily fluids to determine drug content. Also, the offense of driving under the influence of drugs does not include a definition of impairment level. The Subcommittee was concerned with this lack of definition and realized the importance of creating a uniform standard similar to the blood alcohol level.

TESTIMONY

Because the Subcommittee was especially concerned about the methods of testing for driving under the influence of drugs and the definition of impairment, members solicited testimony which would enlighten them about current practices (see preface for list of participants). These testimonies reinforced the Subcommittee's desire for more concrete information on the magnitude of the driving under the influence of drugs problem in Maine.

Dr. Stanley Evans indicated that Maine people have increased their usage of psychoactive drugs, as evidenced by the 60-70% incidence of polydrug use seen in individuals admitted to treatment facilities.[10] In an informal, unscientific study done by the Maine State Police,[11] numbers seem to indicate that about 7% of the people stopped for operating under the influence may actually have been driving under the influence of drugs (the study was conducted in a limited area and no actual testing was administered).

Most testimonies stressed the importance of collecting a data base to determine the magnitude of the problem of driving under the influence of drugs.

ADPC STUDY

The Alcohol and Drug Abuse Planning Committee (ADPC) is comprised of the Commissioners of the Departments of Corrections, Educational and Cultural Services, Human Services, and Mental Health & Mental Retardation. The primary purpose of the ADPC is to coordinate the planning, evaluation, and monitoring of the State alcohol and drug abuse prevention, education, and treatment services.

A resolve from the 113th Legislature directed ADPC to help fill a loophole in Maine's operating under the influence laws by requiring the ADPC to study impairment levels for drugs other than alcohol.

As part of its research, ADPC is considering the collection of data on driving under the influence of drugs based on a program created in Los Angeles.[12] In a drug detection procedure developed by the Los Angeles Police Department, certain officers have been specially trained in the recognition of established symptoms associated with commonly abused drugs. These officers examine and rate suspects brought to the police station and are able to identify many drivers who have taken moderate to large doses of drugs, as well as being capable of

identifying the drug involved. The LAPD drug recognition problem involves training officers to detect the patterns of behavioral and physiological symptoms associated with major drug categories (stimulants, depressants, hallucinogens). Special attention is given to abused substances, such as cocaine, marijuana and PCP, which appear to be used extensively. The certified officers are known as Drug Recognition Experts.

The National Highway Traffic Safety Administration, in cooperation with the Los Angeles Police Department, conducted a two-part evaluation of the LAPD drug recognition procedure. Results showed that the LAPD officers were more than 98 percent accurate when they identified a subject as having taken a drug. In 92 percent of these cases, the officers also correctly identified the class of drug.[13]

Al Anderson, Director of ADPC, addressed the Subcommittee concerning ADPC's progress in the development of a model for use in Maine based on the LA model described above. The Subcommittee requested copies of that model when developed, and will ask for an oral report from ADPC in January. ADPC is directed under its resolve to report to the Legislature no later than March 1, 1988.

CONCLUSIONS

The Subcommittee, after careful consideration of the facts, research and testimony presented to the Subcommittee, decided not to propose legislation at this time for driving under the influence of drugs. Instead, the Subcommittee will wait until ADPC develops its model, based on the LA model, and until that model can be reviewed by the entire Judiciary Committee.

1. Some Subcommittee members were in favor of an outright ban on driving with any amount of drugs in the system.

2. The majority of Subcommittee members felt that more data was needed before legislation could be introduced.

NOTES

1. 1985 Me. Acts 964, Resolve, to Establish a Study to Set Standards For Driving When Under the Influence of Drugs Other than Alcohol.

2. NHTSA News, Volume 1, No. 1, Fall, 1986 pg. 2

3. "Drug Concentrations and Driving Impairment." Consensus Report from the Research Technology Branch, National Institute on Drug Abuse, JAMA, Nov. 8, 1985 Vol. 254, No. 18, pg 2618.

4. Oral testimony of Lieutenant Thomas F. Reardon, Maine State Police, November 30, 1987.

5. "Drug Concentrations and Driving Impairment" pg. 2618.

6. "Combating the Drug-Impaired Driver," Report of the Virginia Department of Motor Vehicles by Eric Paltell and Mark L. Booz, VA Highway and Transportation Research Council, 1986 pg. 11-15.

7. Advisory report from Office of Chief Medical Examiner to Subcommittee, December 7, 1987.

8. "Drug Concentrations and Driving Impairment" pg. 2619.

9. Adapted from Insurance Institute for Highway Safety, National Commission Against Drunk Driving, as reprinted in USA Today, December 10, 1987.

10. Written testimony of Dr. Stanley Evans before the Subcommittee, November 30, 1987, pg. 7.

11. Informal study-OUI arrests in September of 1987 by the Maine State Police.

12. Field Evaluation of the Los Angeles Police Department Drug Detection Procedure, U.S. Department of Transportation, National Highway Traffic Safety Administration, February, 1986.

13. NHTSA News, pg. 2.

Figure 1

Blood Alcohol Levels in Other States

State	BAC (%)	State	BAC (%)
Alabama	0.10%	Nebraska	0.10%
Alaska	0.10	Nevada	0.10
Arizona	0.10	New Hampshire	0.10
Arkansas	0.10	New Jersey	0.10
California	0.10	New Mexico	0.10
Colorado	0.15	New York	0.10
Connecticut	0.10	North Carolina	0.10
Delaware	0.10	North Dakota	0.10
D.C.	0.10	Ohio	0.10
Florida	0.10	Oklahoma	0.10
Georgia	0.12	Oregon	0.08
Hawaii	0.10	Pennsylvania	0.10
Idaho	0.10	Rhode Island	0.10
Illinois	0.10	South Carolina	0.10
Indiana	0.10	South Dakota	0.10
Iowa	0.10	Tennessee	0.10
Kansas	0.10	Texas	0.10
Kentucky	0.10	Utah	0.08
Louisiana	0.10	Vermont	0.10
Maine	0.10	Virginia	0.10
Maryland	0.13	Washington	0.10
Massachusetts	0.10	West Virginia	0.10
Michigan	0.10	Wisconsin	0.10
Minnesota	0.10	Wyoming	0.10
Mississippi	0.10		
Missouri	0.10		
Montana	0.10		

Source: Adapted from Insurance Institute for Highway Safety, National Commission Against Drunk Driving, as reprinted in USA Today, December 10, 1987.