

**National Conference of State Legislatures (NCSL)  
Responses to Public Policy Technical Panel Questions  
For**

**National Transportation Safety Board Public Hearing on  
Medical Oversight of Noncommercial Drivers  
March 19, 2003**

*(Responses prepared by James B. Reed, Program Director for Transportation, NCSL, with assistance from Molly Allen, Legal Intern. These responses represent the views of NCSL staff and have not been adopted or reviewed by the NCSL Transportation Committee.)*

**1. Should this topic be a concern/responsibility? If so, whose concern/responsibility should it be?**

Yes, it is a concern, but an independent study of the extent of the problem is needed, beyond the anecdotal incidents. How many deaths and injuries are caused by people who have medical conditions that impair driving? More information is needed to define the problem and assess the current system of addressing it. State legislatures are ultimately responsible for any reforms in concert with the state departments of motor vehicles, and with input from affected parties. Any work produced by the NTSB would be welcome. Certainly NHTSA is a source of funding for such a study as well as a resource for statistics.

**2. This public hearing has included discussions about a Maryland crash caused by a driver with epilepsy. What are your top five suggestions for reducing these types of crashes (especially if you are against other suggestions that have been proposed today)?**

*A. Unified state laws requiring mandatory physician reporting.* As a state organization, NCSL generally believes that individual states have the right and prerogative to legislate according to each state's individual needs. However, this might be an area where more uniformity among the states would serve the public policy goal of safer public highways and roads. Most states have established policies for identifying drivers with physical or mental impairments, but the majority provide an opportunity for doctors and others with knowledge of the driver's condition to report on only a permissive, not mandatory, basis. If every state were to require physicians to report medical impairments affecting a person's ability to drive safely, there could potentially be a decrease in the number of crashes related to medical impairments, since information about an individual driver's debilitating condition would be reported through a prescribed procedure, and not be overlooked or unreported. Further research would be needed to quantify this hypothesis. In addition, research is needed to determine what kind of conditions should be reported. Many believe the degree of impairment and actual symptoms are more important than a diagnosis alone.

The hesitation against mandating this in every state may be reluctance by physicians to breach the physician-patient confidential relationship. Indeed, if a physician is required to report these conditions, people may be less likely to go in for physician visits unless required to because of an emergency. Moreover, physicians may find such reporting requirements to be an administrative

burden. However, states with mandatory reporting believe public safety outweighs these concerns. States with mandatory reporting include California, New Jersey, Oregon, Delaware, and Pennsylvania. (See Attachment A containing these state statutes and Attachment B, Pennsylvania Physician Reporting Fact Sheet.) These states provide confidentiality for reports filed with the state and many states, including those with permissive reporting, grant immunity from civil and criminal liability.

B. *Driving assessments for at risk drivers.* See discussion of Arizona bill in question #4 below. In addition, consider the notion of impairment questionnaires – Every individual seeking to get their license for the first time or renewing their license would have to fill out a questionnaire, which addresses potentially debilitating conditions. Some form of this is done now, but it could be enhanced. The problem of deception by an individual may be solved by including a liability disclaimer on each questionnaire, which imposes upon the individual liability in the event that any of the information proves to be false. Although, the problem with such disclaimer is that people may still lie and could ultimately not be held liable until they actually caused an accident and it was established that such accident was due to some medical impairment. Nonetheless, the imposition of liability may be enough to deter some or most individuals from providing deceptive answers. The questionnaires would likely be developed by the Medical Advisory Boards in each state and reviewed by such Boards who would determine whether or not the individual is eligible for receipt of a driver's license. The individual could be allowed to attend the review and explain their conditions.

C. *Subsidized alternative transportation for drivers determined to have significant medical impairments.* The driver who either admits to a significant impairment or who is reported to have a significant impairment should be eligible for subsidized or free transportation. Perhaps, if drivers with medical impairments were offered this type of "incentive" they would be less likely to get behind the wheel.

D. *Specialized training for elderly drivers.* States might consider requiring that older drivers, through their driver licensing authorities, partake of training such as the "55 Alive/Mature Driving" course offered through the American Association of Retired Persons. The courses consist of two four-hour sessions that incorporate videos, self-assessment quizzes, and class discussion of problems plaguing older drivers. The program teaches older drivers how to compensate for the mental and physiological changes that occur with aging, reviews principles of safe driving and accident avoidance and identifies warning signs that indicate when it may be time to stop driving.

### **3. What rights/recourse would a medically disqualified person have?**

- What is due process for the driver's license?**
- What would be an appropriate appeals process?**

### *Due Process*

The Equal Protection Clause of the Fourteenth Amendment mandates that states treat similarly situated people in a similar way. It does not prevent state legislatures from drawing classifications, but it does require that all classifications be based on permissible considerations rather than on invidious grounds. In addition, the Due Process Clause of the Fourteenth Amendment protects certain property rights by placing limitations on a state's ability to interfere with an individual's rights and provides procedural safeguards before a person can be deprived of certain rights. These constitutional protections do affect the ability of states to suspend a driver's license based on an individual's medical conditions. In *Bell v. Burson*, 402 U.S. 539 (1971), the U.S. Supreme Court held that a driver's license, whether denominated a right or a privilege, is a constitutionally protected property interest under the Due Process Clause of the Fourteenth Amendment. The Court held that, except in emergency situations, due process requires that when a state seeks to terminate a driver's license, it must first afford notice and an opportunity for a hearing appropriate to the nature of the case. Nonetheless, the Court failed to clarify exactly what kind of procedural due process is required when a state determines that an individual may be medically unfit to drive, as well as what constitutes an "emergency." Currently, it appears the provisions for notice and hearing differ from one state to another.

Several state courts have addressed the type of procedural hearing required when one's license is suspended on the grounds of medical impairment. For example, in *DMV v. Granziel*, 565 A.2d 404 (N.J. Super. 1989), the DMV in New Jersey suspended Granziel's license because of his epileptic disorder, but permitted his application for re-licensing after a year period during which he is seizure free. Granziel challenged this decision, specifically the fact that the state had created an irrebuttable/conclusive presumption that a person with recurring seizures within a one period is an unsafe driver. The New Jersey Court of Appeals held that if the state wanted to take an individual's license away on the grounds of the individual's medical condition, they has to consider, evaluate and decide each case on a wholly individualized basis. The court seemed to rely on other state laws, finding that "the general rule appears to be that the administrative decision to withhold driver's licensing will be affirmed if it was fairly based on an individualized consideration of the applicant's medical situation and its probable effect on driving safely."

### *State Liability for Issuing Licenses to Medically Impaired or Incompetent Drivers*

States have traditionally granted immunity to government officials for their administrative decisions, including the issuance of licenses to certain drivers. In some states, however, case law suggests that there has been a trend in the other direction. For example, in California, the DMV has been held responsible for issuing a driver's license to an older driver **known** to suffer from physical and mental deficiencies. In *Trewin v. State*, 198 Cal. Rptr. 263 (Cal. App. 1984), an 87-year-old man was issued a license despite a determination that he suffered from general debilities. The man ended up causing a collision with another car, which resulted in injuries. The court held that the DMV had a mandatory duty, in this case, to refrain from issuing a license to a driver with known physical or mental impairments. The court reasoned that because the DMV was responsible for licensing drivers, it had to protect other motorists on the road from people posing safety risks. The court distinguished other cases decided in the same jurisdiction that had provided immunity to the DMV on the grounds that in those cases, the states had not **known** or determined that the driver was unable to safely operate a vehicle.

The question is how is a state licensing commission supposed to **know** when they have a medically impaired driver? Well, as of 1999, forty one states have established Medical Advisory Board which assist local licensing agencies in identifying disorders or other mental or physical disabilities that affect the ability of a person to drive safely. In addition, some states instituted mandatory physician reporting requirements. Currently, six states, California, Delaware, Nevada, New Jersey, Oregon and Pennsylvania, have statutes, which require mandatory physician reporting requirements. In at least one state, Pennsylvania, a physician who fails to report a medically impaired patient who may pose serious driving risks could be found negligent if the driver is involved in an accident.

### Appeals Rights

All individuals whose license has been suspended by virtue of their medical condition should be entitled to not only a hearing with regard to this suspension but also a right to appeal. These procedures are required by the Fourteenth Amendment of the United States. Because a driver's license is a property right or entitlement, if state power limits that entitlement, procedural due process is required, whether the entitlement is denominated a right or a privilege. Due process requires not just "any" hearing but rather an "appropriate" hearing. *See Fiore v. Cmmw. of Pennsylvania*, 633 A.2d 1111, 1114 (1993). As such, a right to appeal is needed to ensure that an "appropriate" hearing was in fact held. Indeed, the appeals process does not necessarily need to involve a repeat of the hearing itself, but may be limited to determining whether necessary findings are supported by competent evidence and whether there has been an error of law.

#### **4. What are your opinions about implementing a fitness-for-driving (like fitness-for-duty) approach instead of restricting drivers based on specific medical conditions?**

This makes sense and is being developed several ways. Three are mentioned below.

##### *--Oregon Medically At-Risk Driver Program*

In 1999 the Oregon Legislature approved a bill authorizing the DMV to convene a committee to study the effects of aging on driving ability. The committee met over the course of two years and developed a set of [26 comprehensive recommendations](#), which were presented to the 2001 Legislature. The members of the Older Driver Advisory Committee concluded that chronological age alone does not represent a valid or reliable criterion for assessing risk of being involved in a motor vehicle crash. Similarly, the presence of various medical conditions does not support the conclusion that a driver lacks the ability to drive.

The DMV submitted legislation arising from the Older Driver Advisory Committee's report: House Bill 3071, which was approved during Oregon's 2001 Legislative Session. HB 3071 states that determinations regarding a person's ability to safely operate a motor vehicle may NOT be based solely on diagnosis of a medical condition, but must be based on the **actual effect of a cognitive or functional impairment on the person's ability to safely operate a motor vehicle.**

A Medical Work Group, comprised of both physicians and health care providers, was recruited to work in consultation with DMV to identify cognitive and functional impairments likely to affect a person's ability to safely operate a motor vehicle, and to designate physicians and health care providers required to report a person demonstrating these impairments to DMV.

What is required to be reported?

Cognitive and functional impairments that are defined as:

- Severe and/or uncontrollable to a degree that precludes (or may preclude) the safe operation of a motor vehicle
- The impairment cannot be corrected by medication, therapy or surgery; or by driving device or technique.

**Functional Impairments:** vision, peripheral sensation of the extremities, strength, flexibility, motor planning and coordination For example, a strength impairment may affect driving ability in the following manner: inability to maintain a firm grip on the steering wheel could compromise ability to maintain lane position or execute turns.

**Cognitive Impairments:** attention, judgement and problem solving, reaction time, planning and sequencing, impulsivity, visio-spatial, memory, lapses of consciousness or control For example, an attention impairment may affect driving ability in the following manner: inability to switch attention between multiple objects may endanger pedestrians, bicyclists or other motorists on the roadway. (See <http://www.oregondmv.com/DriverLicensing/atriskquestions.htm> for more information.)

A random survey conducted among Oregon adults last year found that 77 percent believed doctors and medical professionals should be required to report medically impaired drivers to DMV. These findings validate the approach that Oregon DMV is taking by working in conjunction with the Oregon Medical Association and a Medical Work Group. The result of this collaboration is expected to produce a comprehensive approach to reporting that respects the role of the physician and the confidentiality of the doctor-patient relationship, while promoting public safety.

--*Arizona HB 2079, 2002.* Passed House, but did not make it through the rest of the process.

House Bill 2079 would have required the Arizona Department of Transportation Motor Vehicle Division (MVD) to establish an "assessment center pilot program" in Maricopa County by January 1, 2003. The assessment center is a physician supervised health care entity providing competency and physical testing for licensed drivers of any age if MVD has good cause to believe that the driver is incapable of operating a motor vehicle or is otherwise not qualified. As of July 1, 2004, HB 2079 requires drivers seventy-five years and older to attend educational sessions for the first moving violation reported to MVD within a twelve month period. Drivers in this age group receiving a second moving violation within one year are required to submit to an examination or assessment as prescribed by MVD. HB 2079 also reduces the validity period of a driver's license from five years to two years for drivers seventy-five years of age and older. (For full summary see Attachment C.)

*--DriveABLE*

According to information on the DriveABLE web site (<http://www.driveable.com/what.htm>): Natural decline, illnesses, and medications all can contribute to reducing driving competence. These conditions may affect mental abilities, changing how decisions are made and whether reactions to surrounding traffic are made in a rapid and appropriate way.

Physicians, medical review boards, government agencies, private insurance companies, and other interested parties have long lamented the lack of effective criteria for evaluating the fitness-to-drive of medically-at-risk drivers. A radical new approach to developing evaluation procedures was needed, with research providing new knowledge and validating the procedures.

In answer to the call for a radical new approach, a team of researchers, physicians and driving experts collaborated to answer the question of how best to assess fitness to drive. Eight years and over a thousand subjects later, the result was a tool of unprecedented predictability: The DriveABLE Assessment.

DriveABLE is a University of Alberta spin-off company established to deliver, on a world-wide basis, scientifically developed driver evaluation procedures for medically at-risk drivers.

**5. How do varying State laws affect enforcement (e.g., one state may allow someone to drive and another state doesn't)?**

- Is there a need to standardize state laws and, if so, how can this be accomplished?**
- Would standardization best be handled with a model law or a Federal law?**

Enforcement can become an issue when drivers cross state lines. However, the primary impact is on other drivers in the same state. As noted, some uniformity of state laws, regarding physician reporting in particular, may be desirable. NCSL would recommend against a federal law mandating the states to do something. Rather, we would endorse a working group approach whereby state officials would convene (with federal funding support) to study the problem and compile a best practices approach, perhaps including model legislation. This approach allows elected and appointed officials who are expert on the issue to come up with the solution.

**6. Is/Should the driver's license a right or a privilege?**

Because a driver's license is a property right or entitlement, if state power limits that entitlement, procedural due process is required, whether the entitlement is denominated a right or a privilege.

**7. How can we balance the privacy rights of the individual against the safety of the motoring public? (Medical records privacy, for example).**

- How can States monitor the efficacy of Medical Review Boards if their evaluations may be protected by law for privacy reasons?**

Under the police power doctrine, states have the authority to enact and enforce laws in order to protect the health, safety, and welfare of their citizens. As such, while the confidential nature of the physician patient relationship is important, a physician's obligations to his/her patients may be suspended where a patient poses a threat to the welfare of society. This is true in the area of medically impaired drivers. Some states specifically mention that physicians may voluntarily report persons whose conditions would affect their ability to drive safely. Other states also provide physicians who report in good faith are immune from liability for their actions.

Monitoring Medical Review Boards is a thorny question due to confidentiality rules. In fact, the names of the members of Delaware's board are kept secret to ensure confidential and impartial actions. The duties of the boards vary in the states as well, ranging from making determinations on individual drivers to simply hearing appeals. No particular solutions come to mind at this time.

**8. How do you balance the need to ensure public safety by regulating driver's licenses with the rights guaranteed under the Americans with Disabilities Act?**

No response. This is beyond the scope of our expertise.

**9. What kind of funding is currently committed to this issue? What types of future funding initiatives are planned?**

Not known at this point. However, a survey of state DMVs and scrutiny of state budget documents would reveal this information. As one example, see attachment D for a "Fiscal Note" on Arizona bill HB 2079 in 2002 that would have created an assessment center pilot program.

**10. What methods should be used to evaluate the success of programs designed to address medical oversight of noncommercial drivers?**

Performance audits are routinely undertaken by state legislatures to ensure that an agency or department of the state is conducting authorized activities and programs in a manner consistent with objectives intended by the state legislature. This includes an analysis of expenditures, an assessment of operating efficiency, the status of any pending legislative recommendations or directives. Methodology includes surveys, interviews, an examination of records, and comparison of key variables to benchmarks set by outside authorities.

Attachment A: MANDATORY PHYSICIAN REPORTING

<u>State</u>	<u>Statute</u>	<b>Statutory Mandate</b>
California	Cal Health & Saf Code § 103900 (2003)	<p>(a) Every physician and surgeon shall report immediately to the local health officer in writing, the name, date of birth, and address of every patient at least 14 years of age or older whom the physician and surgeon has diagnosed as having a case of a disorder characterized by lapses of consciousness. However, if a physician and surgeon reasonably and in good faith believes that the reporting of a patient will serve the public interest, he or she may report a patient's condition even if it may not be required under the department's definition of disorders characterized by lapses of consciousness pursuant to subdivision (d).</p> <p>(b) The local health officer shall report in writing to the Department of Motor Vehicles the name, age, and address, of every person reported to it as a case of a disorder characterized by lapses of consciousness.</p> <p>(c) These reports shall be for the information of the Department of Motor Vehicles in enforcing the Vehicle Code, and shall be kept confidential and used solely for the purpose of determining the eligibility</p>

		<p>of any person to operate a motor vehicle on the highways of this state.</p> <p>(d) The department, in cooperation with the Department of Motor Vehicles, shall define disorders characterized by lapses of consciousness based upon existing clinical standards for that definition for purposes of this section and shall include Alzheimer's disease and those related disorders that are severe enough to be likely to impair a person's ability to operate a motor vehicle in the definition. The department, in cooperation with the Department of Motor Vehicles, shall list those circumstances that shall not require reporting pursuant to subdivision (a) because the patient is unable to ever operate a motor vehicle or is otherwise unlikely to represent a danger that requires reporting. The department shall consult with professional medical organizations whose members have specific expertise in the diagnosis and treatment of those disorders in the development of the definition of what constitutes a disorder characterized by lapses of consciousness as well as definitions of functional severity to guide reporting</p>
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		<p>so that diagnosed cases reported pursuant to this section are only those where there is reason to believe that the patients' conditions are likely to impair their ability to operate a motor vehicle. The department shall complete the definition on or before January 1, 1992.</p> <p>(e) The Department of Motor Vehicles shall, in consultation with the professional medical organizations specified in subdivision (d), develop guidelines designed to enhance the monitoring of patients affected with disorders specified in this section in order to assist with the patients' compliance with restrictions imposed by the Department of Motor Vehicles on the patients' licenses to operate a motor vehicle. The guidelines shall be completed on or before January 1, 1992.</p> <p>(f) A physician and surgeon who reports a patient diagnosed as a case of a disorder characterized by lapses of consciousness pursuant to this section shall not be civilly or criminally liable to any patient for making any report required or authorized by this section.</p>
Oregon	ORS § 807.710 (2001)	(1) All persons authorized

		<p>to diagnose and treat disorders of the nervous system shall report immediately to the Department of Transportation every person over 14 years of age diagnosed as having a disorder characterized by momentary or prolonged lapses of consciousness or control that is, or may become, chronic.</p> <p>(2) Reports required under this section shall be upon forms prescribed or provided by the department. Each report shall include the person's name, address, date of birth, sex, and the name of the disorder.</p> <p>(3) The reports required by this section are confidential and shall be used by the department only to determine the qualifications of persons to operate motor vehicles upon the highways.</p>
<p>Pennsylvania</p>	<p>75 Pa.C.S. § 1518 (2002)</p>	<p>(a) DEFINITION OF DISORDERS AND DISABILITIES.--THE MEDICAL ADVISORY BOARD SHALL DEFINE DISORDERS CHARACTERIZED BY LAPSES OF CONSCIOUSNESS OR OTHER MENTAL OR PHYSICAL DISABILITIES AFFECTING THE ABILITY OF A PERSON TO DRIVE SAFELY FOR</p>

		<p>THE PURPOSE OF THE REPORTS REQUIRED BY THIS SECTION.</p> <p>(b) REPORTS BY MEDICAL PERSONNEL. - ALL PHYSICIANS AND OTHER PERSONS AUTHORIZED TO DIAGNOSE OR TREAT DISORDERS AND DISABILITIES DEFINED BY THE MEDICAL ADVISORY BOARD SHALL REPORT TO THE DEPARTMENT, IN WRITING, THE FULL NAME, DATE OF BIRTH AND ADDRESS OF EVERY PERSON OVER 15 YEARS OF AGE DIAGNOSED AS HAVING ANY SPECIFIED DISORDER OR DISABILITY WITHIN TEN DAYS.</p> <p>(c) RESPONSIBILITY OF INSTITUTION HEADS.-- THE PERSON IN CHARGE OF EVERY MENTAL HOSPITAL, INSTITUTION OR CLINIC, OR ANY ALCOHOL OR DRUG TREATMENT FACILITY, SHALL BE RESPONSIBLE TO ASSURE THAT REPORTS ARE FILED IN ACCORDANCE WITH SUBSECTION (B).</p> <p>(d) CONFIDENTIALITY OF REPORTS.--THE REPORTS REQUIRED BY</p>
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		<p>THIS SECTION SHALL BE CONFIDENTIAL AND SHALL BE USED SOLELY FOR THE PURPOSE OF DETERMINING THE QUALIFICATIONS OF ANY PERSON TO DRIVE A MOTOR VEHICLE ON THE HIGHWAYS OF THIS COMMONWEALTH.</p> <p>(e) USE OF REPORT AS EVIDENCE.--NO REPORT FORWARDED UNDER THE PROVISIONS OF THIS SECTION SHALL BE USED AS EVIDENCE IN ANY CIVIL OR CRIMINAL TRIAL EXCEPT IN ANY PROCEEDING UNDER SECTION 1519(C) (RELATING TO DETERMINATION OF INCOMPETENCY).</p> <p>(f) IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY.--NO CIVIL OR CRIMINAL ACTION MAY BE BROUGHT AGAINST ANY PERSON OR AGENCY FOR PROVIDING THE INFORMATION REQUIRED UNDER THIS SYSTEM.</p>
<p>New Jersey</p>	<p>N.J. Stat. § 39:3-10.4 (2002)</p>	<p>Each physician treating any person 16 years of age or older for recurrent convulsive seizures or for recurrent periods of</p>

		<p>unconsciousness or for impairment or loss of motor coordination due to conditions such as, but not limited to, epilepsy in any of its forms, when such conditions persist or recur despite medical treatments, shall, within 24 hours after his determination of such fact, report the same to the Director of the Division of Motor Vehicles. The director, in consultation with the State Commissioner of Health, shall prescribe and furnish the forms on which such reports shall be made.</p>
<p>Delaware</p>	<p>24 Del. C. § 1763 (2002)</p>	<p>Every physician attending or treating persons who are subject to losses of consciousness due to disease of the central nervous system shall report within 1 week to the Division of Motor Vehicles the names, ages and addresses of all such persons unless such person's infirmity is under sufficient control to permit the person to operate a motor vehicle with safety to person and property.                  The reports shall be for the information of the Division of Motor Vehicles in enforcing the Motor Vehicle Law. Said reports shall be kept confidential and used solely for the purpose of determining the eligibility of any person to</p>

		<p>operate a motor vehicle on the highways of this State. A physician failing to make such a report shall be fined not less than \$ 5 nor more than \$ 50 and costs for each such report the physician fails to make.</p>
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PENNSYLVANIA DEPARTMENT OF  
TRANSPORTATION

## **PHYSICIAN REPORTING FACT SHEET**

**Historically, physician reporting has provided a highly effective mechanism for removing impaired drivers from our roads. In accordance with Section 1518(b) of the Pennsylvania Vehicle Code, all physicians and other persons authorized to diagnose or treat disorders and disabilities must report to the Department of Transportation any patient over 15 years of age diagnosed as having a condition that could impair their ability to drive safely.**

These are some of the most frequently asked questions about Physician Reporting:

### **WHAT IS THE PURPOSE OF PHYSICIAN REPORTING?**

Physician Reporting assists the Department of Transportation in determining whether those individuals applying for a driver's license or those individuals already possessing a driver's license are medically qualified to safely operate a motor vehicle.

### **HOW EFFECTIVE IS PHYSICIAN REPORTING?**

Physician Reporting is a very effective mechanism for identifying medically impaired drivers. Over 40,000 reports are submitted each year. Overall, approximately 72% of these individuals have medical impairments significant enough to merit temporary or permanent recall of their driving privilege. 51% of these recalls are due to seizure disorders and 16% to other neurological disorders. An additional 9% of physician reports result in restrictions placed on the individuals driving privilege. 60% of these restrictions involve special equipment needs. These reports also cross the age spectrum – 51% involve drivers under 45 years of age.

### **WHAT OCCURS WHEN A REPORT IS MADE?**

The receipt of a report triggers an evaluation process. Based on the information submitted, restrictions to the person's driving privilege may be added or deleted, the person's license may be recalled or restored, the person may be asked to provide more specific medical information or to complete a driver's examination, or no action may be taken. The Department, not the physician, makes the final licensing determination.

### **ARE THERE OTHER OPTIONS?**

No other options are as effective as Physician Reporting. Some other states have statutory requirements for self-reporting, but research indicates an extremely high rate of non-compliance. Given the enormous social and economic pressure to drive, the impaired driver has a vested interest in not reporting conditions that impair the ability to drive safely when it will result in the recall of their license. In addition, the driver is not the most objective judge of their own level of impairment.

### **ARE THESE REPORTS CONFIDENTIAL?**

Reports submitted to the Department are confidential and used solely to determine the qualification of an individual to drive a motor vehicle. The Department actively supports this provision and will not release information regarding the source or content of the report, even when the inquiry is from the patient.

### **HOW DO THESE REPORTS AFFECT PATIENT/PHYSICIAN CONFIDENTIALITY?**

There are many circumstances under which the obligation to maintain patient confidentiality must give way to a duty to protect other persons from harm (e.g. reporting gunshot wounds, child abuse, venereal disease, etc...). The current statement of ethics of the American Medical Association contains the following provision:

A physician may not reveal the confidences entrusted to him in the course of medical attendance or the deficiencies he may observe in the character of patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the community.

Pennsylvania's Physician Reporting Program clearly is consistent with this statement.

### **WHAT IS MY LIABILITY IF I DO OR DO NOT REPORT?**

If you DO report you are immune from any civil or criminal liability. No action may be brought against any person or agency for providing the required information; however, if you DO NOT report, there is a possibility that you could be held responsible as a proximate cause of an accident resulting in death, injury or property loss caused by your patient. Also, physicians who do not comply with their legal requirement to report may be convicted of a summary criminal offense.

### **ARE THERE ESTABLISHED MEDICAL CRITERIA?**

The Department of Transportation has a Medical Advisory Board that is responsible for the formulation of physical and mental criteria, including vision standards for the licensing of drivers. This Board consists of a neurologist, a cardiologist, an internist, a general practitioner, an ophthalmologist, a psychiatrist, an orthopedic surgeon, an optometrist, and members from the Department of Transportation, Department of Justice, Department of Health, and the Pennsylvania State Police. The formulation of these regulations is open for public review and comment through the Commonwealth's Regulatory Review Process.

### **HOW DO I SUBMIT REPORTS TO THE DEPARTMENT?**

According to Section 1518(b) of the Pennsylvania Vehicle Code all physicians and other persons authorized to diagnose or treat disorders and disabilities shall report within 10 days, in writing, the full name, address, and date of birth of every person over 15 years of age diagnosed as having a condition that could impair their ability to drive. It is helpful to the Department in making a licensing determination if you include the condition and any specific information about the condition. The report may be made by writing a letter or the Department has an Initial Reporting Form which may be utilized if that is more convenient.

Without the cooperation of physicians, thousands of impaired drivers would remain undetected by the Department. The public has a right to protection from death, injury, or property loss caused by impaired drivers. Physician Reporting plays a vital role in providing this protection.

For more information please contact:

Bureau of Driver Licensing  
Driver Qualifications Section  
P O Box 68682  
Harrisburg, PA 17106-8682  
(717) 787-9662

Attachment C

Arizona House of Representatives HB 2079 driver license renewal; education; testing, 2002

**Sponsors: Representative Gleason**

DP	Committee on Transportation	
DP	Caucus and COW	
DP	Third Read	
x	As Passed the House	

Summary

House Bill 2079 requires the Arizona Department of Transportation Motor Vehicle Division (MVD) to establish an “assessment center pilot program” in Maricopa County by January 1, 2003. The assessment center is a physician supervised health care entity providing competency and physical testing for licensed drivers of any age if MVD has good cause to believe that the driver is incapable of operating a motor vehicle or is otherwise not qualified. As of July 1, 2004, HB 2079 requires drivers seventy-five years and older to attend educational sessions for the first moving violation reported to MVD within a twelve month period. Drivers in this age group receiving a second moving violation within one year are required to submit to an examination or assessment as prescribed by MVD. HB 2079 also reduces the validity period of a driver’s license from five years to two years for drivers seventy-five years of age and older.

History Current statute provides that the department may use information received from physicians psychologists, law enforcement officers, other governmental agencies, accident report information or other information received by the department to determine if a driver should be required to submit to an examination of driving skills or undergo a review of their medical condition. Based on the examination results, the department may permit the person to retain full driving privileges, restrict the person’s driving privilege or suspend or revoke a person’s license.

According to the Federal Highway Administration (FHA), given the number of miles driven, drivers 75 years of age and older have higher rates of fatal motor vehicle crashes than other drivers in other age groups except teenagers, and that per licensed driver, fatal crash rates rise sharply at age 70 and older. The FHA also states that about half of fatal crashes involving drivers 80 years of age and older occur at intersections and involve more than one vehicle. This compares with 23% among drivers up to fifty years of age.

The Administration on Aging reports that the proportion of older drivers on our streets will increase significantly as will the number of vehicle miles driven. Based on current rates, the number of elderly traffic fatalities will more than triple by the year 2030. The AAA Foundation for Traffic Safety reports that older drivers have a crash rate second only to that of teenagers. According to the AARP 55 Alive Driver Safety Program, drivers age 55 and older generally drive fewer miles each year than younger drivers. Therefore when annual miles driven are considered, drivers age 55 and older do better than younger drivers, but not as well as drivers age 35-54. AARP states that failure to yield the right-of-way and improper left turns are the number one and two problems for older drivers. The common aging factors, which affect older drivers,

are loss of visual acuity, diminished hearing, and changes in physical strength, psychological changes and slower reaction time.

The Maricopa Association of Governments (MAG) Regional Action Plan on Aging and Mobility Recommendation # 19 pertaining to “Older Driver Competency” states that a “pilot driver screening battery” should be developed, and upon completion and evaluation of the pilot, develop and implement Cognitive/Physical Testing Centers across the Valley using certified geriatric physicians and certified driving specialists. Recommendation #21 states that development of a Comprehensive Driver Intervention Program is necessary and should include components such as assessment, education, retraining, mobility management and linkage to other services.

The states of Pennsylvania, Rhode Island, Iowa, Illinois and Hawaii issue driver’s licenses valid from two to three years for older drivers between 65 to 80 years of age. Several jurisdictions, such as the District of Columbia, Illinois, New Hampshire and Nevada require additional testing or review of drivers over 75 years of age.

The Enforcement Subcommittee of the Governor’s Traffic Safety Advisory Council has endorsed this legislation.

Provisions · Requires the department to establish an “assessment center pilot program” in Maricopa County by July 1, 2003.

- Defines “assessment center” as a physician supervised health care entity providing competency and physical testing for licensed drivers of any age if MVD has good cause to believe that the driver is incapable of operating a motor vehicle or is otherwise not qualified.
- Requires the department to refer a portion of the drivers the department believes are incapable of operating a motor vehicle or are otherwise not qualified.
- Allows a person referred to an assessment center to have the assessment preformed by the department.
- Requires the Department to submit a report regarding the assessment center pilot program to the Governor, President of the Senate, speaker of the House of Representatives and the Department of Library and Archives by July 1, 2004.
- Defines assessment Center
- Makes drivers up to age 75 eligible for a five-year validity period for driver’s licenses.
- Reduces the driver’s license validity period for drivers 75 years of age and older from five years to two years.
- Establishes a fee of \$4.00 for a two-year license issued to a driver 75 years of age or older (currently, the fee for a five year license is \$10.00).
- Allows a driver’s license applicant who is 75 years of age or older to renew by mail every two years provided the applicant meets eligibility requirements.
- Requires a licensed driver, 75 years of age or older who is found responsible for a civil or criminal moving violation that is reported by the court to MVD, to do the following:
  1. For the first violation reported to MVD by the court within a twelve-month period, successfully complete educational training as prescribed by MVD.
  2. For the second violation reported to MVD by the court within a twelve-month period, successfully complete an examination as prescribed by the department. The examination could

include referral to an assessment center, an examination performed by MVD or referral for an examination by an authorized third party.

- Specifies that MVD shall not assign drivers 75 years of age or older to traffic survival school for qualifying violations, but shall require the driver to successfully complete an assessment.
- Requires MVD to suspend the license of a person for up to one year if the person fails to successfully complete the educational training or assessment prescribed by MVD.
- Failure to successfully complete training or assessment within one year results in cancellation of the driver's license. The cancelled license may not be reinstated until the driver successfully completes the requirements.
- Specifies that a second judgement or conviction does not include a judgement or conviction arising out of the same series of acts.
- Provides that a person successfully completing a driving examination within six months of driver license renewal shall receive a license valid for thirty months.
- Allows MVD to grant ninety-day extensions to persons who are out-of-state when required to attend educational training or complete a driving examination provided the person submits a report by a physician stating that the person is physically capable of operating a motor vehicle.
- Specifies administrative hearing procedures if a driver disagrees with MVD's requirement to attend educational training or other action regarding the license.
- Repeals the assessment center pilot program on December 31, 2004.

45th Legislature  
Second Regular Session 3 February 19, 2002

## Attachment D

Fiscal Note Arizona BILL # HB 2079, 2002

TITLE: driver license renewal; education; testing  
SPONSOR: Gleason  
STATUS: As Introduced  
REQUESTED BY: House  
PREPARED BY: Bob Hull

## FISCAL ANALYSIS

### Description

Effective July 1, 2004, the bill would change from 5-year driver licenses to 2-year driver licenses for people 75 years and older. The bill would also require the Arizona Department of Transportation (ADOT) to implement an assessment center pilot program in Maricopa County by January 1, 2003, and to report on the assessment center pilot program to the Legislature and the Governor by July 1, 2004.

### Estimated Impact

The bill would have a one-time cost of \$76,400 to the State Highway Fund in FY 2004, followed by an annual increased cost totaling about \$194,000 to the State Highway Fund beginning in FY 2005, due to delayed effective dates. See the "Summary of Revenues and Expenditures for State Highway Fund" table in the Assumptions section, for a year-by-year breakout of costs for FY 2004 through FY 2010. In addition, Highway User Revenue Fund distributions to local governments would decrease by \$(154,400) in both FY 2005 and FY 2006, and by \$(51,500) in both FY 2007 and FY 2008, before stabilizing around the current level in FY 2009.

### Assumptions

Currently people pay \$10 for 5-year driver licenses beginning at age 65. The bill would change this to charging people \$4 for 2-year driver licenses beginning at age 75, effective July 1, 2004 (FY 2005). During the phase-in of the new rate structure, revenue to the State Highway Fund would decrease by \$(115,600) in both FY 2005 and FY 2006, and by \$(38,500) in both FY 2007 and FY 2008, before stabilizing around the current level in FY 2009, due to a delayed effective date.

ADOT currently uses a Motor Vehicle Division Medical Review Board to evaluate the fitness of drivers, who are referred for review by medical personnel, law enforcement, or the person's relatives. The bill would require ADOT to implement an assessment center pilot program in Maricopa County by January 1, 2003, and would allow the department to refer a portion of the competency examinations to assessment centers. The bill would define an assessment center, as a doctor supervised entity that provides driver mental and physical competency testing. The bill would require ADOT to report on the assessment center pilot program to the Legislature and the Governor by July 1, 2004, and would repeal the assessment center pilot program January 1, 2005. Effective July 1, 2004, the bill would also require ADOT to order a person age 75 or older to take educational training, and in some instances to undergo a competence examination for certain traffic violations.

Total estimated one-time cost to implement these changes is \$76,400 to the State Highway Fund in FY 2004, including \$61,400 for computer programming and \$15,000 for publicity and training. Annual increased costs are estimated at \$78,400 to the State Highway Fund and 2 FTE Positions beginning in FY 2005 for administering additional medical reviews. Additional increased costs are estimated at \$77,400 to the State Highway Fund in FY 2007 and FY 2008, before stabilizing around an annual cost of \$116,100 in FY 2009, for the production of more driver license credentials.

#### Local Government Impact

Highway User Revenue Fund distributions to local governments would decrease by \$(154,400) in both FY 2005 and FY 2006, including decreases of \$(82,400) to cities, \$(51,300) to counties, and \$(20,700) to controlled access highways in Maricopa and Pima counties. Revenue to local governments would decrease by \$(51,500) in both FY 2007 and FY 2008 to the Highway User Revenue Fund distribution, including decreases of \$(27,500) to cities, \$(17,100) to counties, and \$(6,900) to controlled access highways in Maricopa and Pima counties, before stabilizing around the current level in FY 2009.