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Defining Drunk Driving

We have all seen the photographs on television of victims of drunk drivers. Family snapshots and videos from happy times, they are heartbreaking to watch. This year the legislature is on track to pass laws to reduce the number of such victims by keeping drunk drivers off the road or prosecuting the drivers before they cause injury and death.

The law has sophisticated terms for charges against a drunk driver – Driving while intoxicated (DWI) and Operating under the influence (OUI) are two of those terms. A follow-up question is, just what constitutes intoxication? Forty-nine states have laws stating that a blood alcohol level of .08% is “per se” proof of impairment. Massachusetts stands alone in having no such statute.

What does that mean for our residents? It means that although the legal limit is .08%, when a defendant has a blood alcohol level even higher than .1%, an attorney can offer the defense that such a level did not impair that particular driver.

It also means that the state stands to lose federal highway money. In an effort to reduce drunk driving throughout the nation, Congress has required states to enact “per se” laws by October of this year or face increasing reductions of federal highway dollars. Massachusetts stands to lose \$5.2 million in 2004, rising to \$21 million in 2007.

The federal incentive strengthens the chances for passage of the “per se” law this session, though I have worked with other legislators and the leadership of Mothers Against Drunk Driving for several years to align Massachusetts law with the rest of the nation. Governor Romney included the provision in his budget because of its fiscal impact, emphasizing at the same time its importance in reducing injuries and death by removing impaired drivers from our roads.

Enacting the “per se” law will take one step in the right direction. An additional measure will strengthen its usefulness by providing an incentive to submit to breathalyzer tests. Blood alcohol can be documented with a breathalyzer test, but drivers now lose their license for 120 days if they refuse the test and 90 days if they take it and fail. A new law will increase the suspension to 6 months for refusal while lowering it to one month if drivers take it and fail.

The purpose of both provisions is to remove drunk drivers from our roads before they cause injury and death to others. The nation has reduced drunk driving fatalities by a combination of public education and law enforcement initiatives. Massachusetts has participated in that reduction, but our percentages remain above the national average. In our state, 49% of traffic fatalities are alcohol-related, while other states average 41%.

In a year when government has little money to spend for humanitarian purposes, it will feel good to pass a law that saves money for the state and at the same time saves lives of innocent victims.