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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: HB 2360

* * * * *

Stenographic report of hearing held
in Room 140, Majority Caucus Room,
Main Capitol Building, Harrisburg, PA

Wednesday,
May 2, 1990
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crime
and Corrections
Hon. Gerard Kosinski, Subcommittee Chairman on Courts

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Michael C. Gruitza Hon. Jeffrey E. Piccola
Hon. Joseph A. Lashinger Hon. John F. Pressmann
Hon. David J. Mayernik Hon. Karen A. Ritter
Hon. Nicholas B. Moehlmann

Also Present:

William Andring, Majority Counsel
David Krantz, Executive Director
Katherine Manucci, Staff
Ken Suter, Minority Counsel

Reported by:
Ann-Marie P. Sweeney, Reporter

ANN-MARIE P. SWEENEY
536 Orrs Bridge Road
Camp Hill, PA 17011

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1 CHAIRMAN CALTAGIRONE: I'd like to open the
2 hearing on House Bill 2360, and Chief Counsel Bill Andring
3 would like to mention a few words about the specifics of
4 the bill.

5 MR. ANDRING: To describe what the bill
6 does, presently the law provides that the maximum sentence
7 for a third-degree misdemeanor is one year. The law
8 further provides that district justices shall have
9 jurisdiction over third-degree misdemeanors if a
10 third-degree misdemeanor charge is not a result of a
11 reduced charge, if personal injury or property damage
12 resulting from the crime is less than \$500, and if the
13 defendant enters a guilty plea.

14 The purpose of House Bill 2360 is to attempt
15 to alleviate some of the backlog in the Common Pleas Court
16 systems by shifting the jurisdiction for third-degree
17 misdemeanors to the district justice level.

18 The bill does a number of things.

19 First, it would reduce the maximum sentence
20 for third-degree misdemeanors to six months. The result
21 of this provision is that it eliminates the constitutional
22 requirement for a jury trial. The six-month maximum is
23 also in accord with the standard range of the sentencing
24 guidelines which provides for zero internment to
25 confinement for a period of six months in the standard

1 range for third-degree misdemeanors.

2 The bill would then place jurisdiction for
3 all third-degree misdemeanors at the district justice
4 level. The result would be that anyone charged with a
5 third-degree misdemeanor would be entitled to a hearing
6 before a district justice who would make a determination
7 of guilt or innocence, and if the person were found
8 guilty, the district justice would impose sentence and the
9 offender would be entitled to a de novo plea to Common
10 Pleas Court for a hearing before a Common Pleas trial
11 judge, if he so chose.

12 The bill also provides that if a person were
13 sentenced under a third-degree misdemeanor they would be
14 eligible to be sentenced to serve community service for
15 the period of the sentence as an option to incarceration.
16 The bill does not establish any sort of community service
17 program. I believe it would be incumbent upon the county
18 to establish such a program for the district justices to
19 be able to sentence under this provision.

20 There's also been some discussion about the
21 general purpose of the bill, specifically as far as theft
22 offenses and some other minor offenses being the impetus
23 for the bill originally. Some theft offenses right now
24 would be third-degree misdemeanors and fall within the
25 parameters of the bill. There's also been some discussion

1 about the desirability of perhaps changing the
2 classifications of some other offenses, particularly in
3 the retail theft area from second-degree misdemeanors to
4 third-degree misdemeanors so that they would fall under
5 these provisions and initial jurisdiction would lie in the
6 district justice office.

7 CHAIRMAN CALTAGIRONE: Thank you, Bill.

8 I'd like to ask Jim McAneny to make a
9 comment on House Bill 2360. And if you'd indicate who you
10 represent, Jim, for the record.

11 MR. McANENY: Yes, I will.

12 Chairman Caltagirone, members of the
13 committee, my name is James McAneny. I am with the Office
14 of the Solicitor of the State Lodge of the Fraternal Order
15 of Police. Our organization represents more than 30,000
16 professional law enforcement officers within the
17 Commonwealth of Pennsylvania.

18 We have been asked to look at House Bill
19 2360 and have done so. The bill, as you all know, would
20 reduce the sentence for third-degree misdemeanors from the
21 current maximum of one year to a maximum of six months
22 imprisonment. Obviously, from the standpoint of law
23 enforcement, we do not favor the reduction of criminal
24 penalties for activities which are, in fact, crimes.

25 However, there is a letter with the packet

1 that was provided to everyone today from the Honorable
2 Forrest Schaefer, President Judge of the Court of Common
3 Pleas of Berks County, which specifically addresses a
4 concern dealing with theft offenses. At this point in
5 time, the classification of a summary offense is a theft
6 of less than \$50. And President Judge Schaeffer has
7 suggested that that amount be increased to \$150, thereby
8 rendering a greater number of what are and historically
9 have been minor theft offenses before inflation, reducing
10 those then to summary offenses which could be handled at
11 the district justice level. A concept of that nature
12 certainly would be a more efficient method of handling
13 minor crimes and, yes, a theft of up to \$150 nowadays is
14 probably the same real degree of a minor crime that \$50
15 was 15 or 20 years ago when the classification was first
16 established. And our organization would have no problem
17 with that.

18 The packet also includes a list of current
19 third-degree misdemeanors, and if you would review those,
20 I think you'll probably find that there are a number of
21 offenses listed in there which do not carry with them that
22 same concept of criminal intent and crime victim that our
23 organization is primarily concerned with. A possible
24 reclassification of various offenses from misdemeanor to
25 summary offense, or even a total reclassification within

1 the Criminal Code to create another classification of
2 offense with a different sentence would probably be
3 supported by our organization.

4 The bill, as written, also contains a
5 concept of community service in lieu of imprisonment.
6 Again, while we would not necessarily support a true
7 criminal being relieved of the criminal penalty of
8 imprisonment, we do recognize that prison overcrowding is
9 a major problem in the Commonwealth of Pennsylvania and
10 one that is unlikely to get better within the near future
11 and without the expenditure of millions of dollars.

12 The concept of community service in lieu of
13 imprisonment for non-violent offenders, early offenders,
14 has been around for a while already. I'm sure you've all
15 seen the people picking up the litter along the highways,
16 a number of whom are serving accelerated rehabilitation
17 disposition probations on drunk driving charges. This
18 concept is not new and it does work. And it's one that
19 the F.O.P. does support, but again, the one qualification
20 that we do have is that we limit that to those persons who
21 are not what would historically be considered to be a
22 criminal - those persons who are more likely to respond to
23 the rehabilitative aspects of community service rather
24 than needing to be incarcerated for the protection of the
25 public.

1 CHAIRMAN CALTAGIRONE: I'd like to have the
2 members introduce themselves that are here.

3 We'll start to my left.

4 REPRESENTATIVE RITTER: Karen Ritter from
5 Allentown.

6 MR. ANDRING: Bill Andring, Counsel to the
7 committee.

8 MR. SUTER: Ken Suter, Republican Counsel.

9 REPRESENTATIVE LASHINGER: Joe Lashinger
10 from Montgomery County.

11 REPRESENTATIVE BLAUM: Kevin Blaum, city of
12 Wilkes-Barre.

13 REPRESENTATIVE PICCOLA: Jeff Piccola,
14 Dauphin County.

15 CHAIRMAN CALTAGIRONE: Are there any
16 comments from the members?

17 (No response.)

18 CHAIRMAN CALTAGIRONE: I thought that that
19 list was rather interesting as that it indicated at the
20 top it is not meant to be all-inclusive, but there's some
21 very interesting issues that I think are being raised with
22 that list.

23 BY CHAIRMAN CALTAGIRONE: (Of Mr. McAneny)

24 Q. Can I take it then from your testimony, Jim,
25 that you're indicating that the F.O.P. really is not

1 opposed to the concept as long as from the F.O.P.'s point
2 of view criminals that are violent type criminals or that
3 really created serious problems for society that should be
4 incarcerated, they feel that they should also be
5 incarcerated but that along with community service -- and
6 by no stretch is this bill in final form, I want to
7 reassure everybody that. This was just a thought to
8 address the problem, number one, of overcrowding; and two,
9 relieving the excess work dockets in the Court of Common
10 Pleas and giving greater freedoms to the local district
11 justices in rendering their decisions, hopefully with the
12 thought that those cases wouldn't then also be plopped on
13 to the doorsteps of the Common Pleas Court and it could be
14 resolved at the district justice level.

15 A. Conceptually, we have no problem with that.
16 I don't know if the proper mechanism is to reduce the
17 maximum sentence for all third-degree misdemeanors as
18 opposed to reclassifying certain offenses and summaries.
19 And the concern that we have is that those persons who by
20 their actions have demonstrated that they are a danger to
21 the public, either a physical danger or financial danger
22 to the public, that those persons will be freed from
23 proper punishment for their actions. And as long as a
24 bill is drafted which adequately protects the interests of
25 the public, the people of the Commonwealth, and protects

1 them from true criminals, a reduction in classification of
2 a specific offense, and for an example, a second offense
3 retail theft, which again is limited in dollar amount, but
4 on your second offense that can right now change you from
5 a summary, your first offense retail theft is a summary -
6 shoplifting. Your second offense is a misdemeanor. Under
7 our current sentencing laws, your first offense could have
8 been as a juvenile for stealing a yo-yo, and your second
9 offense could be at the age of 40, but the passage of time
10 between the two offenses really doesn't do anything as far
11 as how the offense is classified. We obviously don't
12 favor reduction of maximum sentences but we do recognize
13 the need for the courts to have some leeway in their
14 sentencing and to have some alternatives to incarceration
15 besides, of course, simply suspending a sentence. So we
16 would support a bill which does that, yes.

17 CHAIRMAN CALTAGIRONE: Representative

18 Ritter.

19 REPRESENTATIVE RITTER: I came in late so
20 maybe you already covered this. I noticed that the crimes
21 show contempt for the General Assembly, and I want to note
22 that there probably will be some members of the press
23 serving some community time.

24 CHAIRMAN CALTAGIRONE: Ann's here. She took
25 note.

1 REPRESENTATIVE RITTER: Not Ann, of course.

2 REPRESENTATIVE GRUITZA: What section is
3 that?

4 CHAIRMAN CALTAGIRONE: Joe.

5 REPRESENTATIVE LASHINGER: Thanks, Tom.

6 Maybe Bill or Jim can answer this. I'm not
7 sure I understand, what is the current jurisdiction of DJs
8 on third degree? They can accept guilty pleas in
9 third-degree misdemeanor cases currently?

10 MR. MCANENY: The current jurisdiction of a
11 district justice is that they can try and determine all
12 summary offenses, basically. There are certain
13 misdemeanors that they are permitted to accept a guilty
14 plea on. The most common, of course, is the DUI offense,
15 driving under the influence. You can plead guilty at the
16 district justice level and they are allowed to accept a
17 guilty plea. That's probably half to two-thirds of all
18 the misdemeanors that are resolved at the district justice
19 level. But if the defendant wishes to contest that, if he
20 refuses to enter a guilty plea, all the district justice
21 can do in a misdemeanor case is to bind it over for trial.
22 So it goes to Common Pleas Court where you have the right
23 to a full jury trial. On the other hand, an appeal from a
24 summary offense is heard by a judge in Common Pleas Court
25 sitting without a jury, which does tend to be heard more

1 expediently and of course without the costs of the jury.

2 REPRESENTATIVE LASHINGER: Another question
3 for the Chairman, I guess, is that can we amend two titles
4 inside the same bill? Should the community service bill
5 be moving separately?

6 CHAIRMAN CALTAGIRONE: There was some
7 questions and concerns raised about that.

8 REPRESENTATIVE PICCOLA: We did that with
9 insurance. Three or four titles. But I agree with you.

10 CHAIRMAN CALTAGIRONE: Are there other
11 questions?

12 (No response.)

13 CHAIRMAN CALTAGIRONE: Thank you, Jim.

14 MR. McANENY: Thank you.

15 CHAIRMAN CALTAGIRONE: Joshua D. Lock.

16 MR. LOCK: Mr. Chairman, members of the
17 committee, my name is Joshua Lock. I'm the Vice President
18 of the Pennsylvania Association of Criminal Defense
19 Lawyers, which is a relatively new organization comprised
20 of approximately 350 private and public criminal defense
21 attorneys throughout the State of Pennsylvania.

22 I'd like to initially address some of the
23 practical considerations that I believe this bill
24 implicates and then perhaps address the philosophical
25 underpinnings of it, as I may.

1 As Mr. Andring indicated, the Judicial Code
2 of Pennsylvania presently permits a magisterial
3 disposition of misdemeanors of the third degree. Indeed,
4 drunk driving, which technically is not a misdemeanor of
5 the third degree at all, it's a grade of misdemeanor under
6 the Vehicle Code but it carries penalties similar to
7 misdemeanors of the second degree, can also be resolved
8 there. Arguably, certain possessory drug offenses can be
9 resolved there, too, and because of the fines, they are
10 technically not misdemeanors of the third degree, although
11 they're punishable by maximum periods of confinement of a
12 year. So you have a system in place that was designed
13 probably for purposes similar to this bill.

14 As a practical matter, throughout central
15 Pennsylvania I can tell you that that system is ignored.
16 It is not applied. Most district attorneys' offices
17 throughout the central part of the State have taken the
18 position that magistrates are not to invoke their
19 authority under -- they have recommended that they not
20 invoke their authority under the Judicial Code to dispose
21 of these cases. They want them into court for their own
22 purpose. Those purposes include recordkeeping, monitoring
23 the conduct of certain defendants, and probably some other
24 even more parochial interests of which I'm not aware, but
25 those are at least two policy considerations that are

1 perfectly legitimate for them to take into consideration.
2 And so as a practical matter you have very few magistrates
3 that are willing to do it.

4 Now, to take Dauphin County as just an
5 example, some of the magistrates within the city of
6 Harrisburg will do it regardless of the position which the
7 district attorney's office has taken. The ones throughout
8 the county, however, uniformly will refuse to do so. Many
9 times even when you have a magistrate who is willing to do
10 it you have a defendant who is unwilling to permit it to
11 be done because he would prefer to have his case disposed
12 of in court where ARD becomes a possibility. And so you
13 have opposition from the prosecution and you frequently
14 have concomitant reluctance on the part of the defense,
15 and so the existing system, while undoubtedly
16 well-intentioned and designed to promote efficiency,
17 simply has not accomplished that. And I, as somebody who
18 limits his practice to criminal defense work, see little
19 realistic expectation that this proposed change would
20 modify the existing system in any way at all.

21 Now, if I can just take an additional moment
22 of your time to address something that I know I have
23 brought to the attention of your counterparts in the
24 Senate on one or two occasions when I have appeared before
25 them and which other members of our association have

1 raised in the past, I don't believe that you will resolve
2 the problems that you wish to resolve by this bill, which
3 is, as I understand it, prison overcrowding and backlogs
4 in court dockets, in a piecemeal basis. I don't believe
5 that you can address problems that serious without a
6 systemic review of the Sentencing Code, which is
7 contained, of course, in the Judicial Code, and other
8 relevant sections of the Judicial Code, the Crimes Code,
9 the Controlled Substance, Drug, Device and Cosmetic Act,
10 and a variety of other incidental pieces of legislation as
11 a unit.

12 For example, in my opinion, the single most
13 significant cause of the backlogs of which you complained
14 and the overcrowded conditions in the prisons is the
15 unrealistic level at which mandatory minimum sentences
16 kick in for drug offenses. Now, I say that at the risk of
17 being perceived from the public as taking a very unpopular
18 position, but the plain and simple -- and when that point
19 was raised, for example, with Senator Greenleaf last
20 summer, he indicated that -- the level, by the way, is two
21 grams, and two grams weigh -- two grams is less than the
22 weight of a nickel. Now, two grams will get you a
23 mandatory one year minimum sentence in jail, which is, in
24 most cases, going to be served, some county judges in
25 central Pennsylvania at least take a more charitable

1 position, but will be served in most cases in the State
2 penitentiary, by and large. And so you have college kids
3 who are going to Camp Hill and were caught over there in
4 what happened over there because of the unrealistic
5 notion. Senator Greenleaf pointed out that when that
6 legislation was initially passed -- and there is nothing
7 wrong with mandatory minimums. The Federal government
8 has it. The levels at which they kick in are
9 substantially different than the State levels, however.
10 That the only input that they had was from the State
11 District Attorneys Association and they were told by --
12 our organization didn't exist at the time -- the State
13 District Attorneys Association told them that two grams, a
14 quantity that weighs no more than a nickel, was indicative
15 of somebody who was selling drugs. Probably
16 three-quarters of my practice is drugs. That is simply
17 inaccurate. And that is a fairly common and well-shared
18 perception, I think, at this point. And my suspicion is
19 that if you were to sit down in a room with
20 representatives from the Attorney General's Office, the
21 State District Attorneys Association, the criminal defense
22 bar and the legislature, as well as experts,
23 toxicologists, professors of medicine, and the like, drug
24 people, you would obtain a consensus that that figure is
25 unrealistic. Now, this legislation doesn't even come

1 close to dealing with it. And I realize that for present
2 purposes you can't do something as universal as being
3 contemplated, but as somebody who has done this for 18 1/2
4 years, I can virtually assure you, I hope this doesn't
5 sound presumptuous, but virtually assure you that unless
6 some sort of universal approach is taken, you're not going
7 to add these problems. It's simply not going to happen.

8 Now, the Federal government, when they set
9 up their Federal sentencing guidelines, institutionalized
10 their Sentencing Commission in a way that the State
11 legislature did not institutionalize its Sentencing
12 Commission, and the Federal Sentencing Commission is
13 authorized to accumulate data, directed to prepare reports
14 and make recommendations, and although it's only been in
15 existence for a relatively brief period of time, they're
16 going to be able to come up with some substantial
17 information for the United States Congress to consider in
18 deciding how to fine tune the system. It would be nice
19 if, in my opinion, if they would junk certain portions of
20 it. It's unrealistic to think that they will, but they
21 have a mechanism in place where they can review all
22 criminal sanctions imposed by the Federal trial courts,
23 they can monitor what effect that's having on the system,
24 prison overcrowding, case backloads, and the like, and
25 they can make appropriate adjustments. I'm unaware of any

1 similar institutionalized mechanism within State
2 government, and I really believe that you're not going to
3 get to the kinds of problems you're trying to address
4 which must be addressed, which are compelling, which
5 deserve a great deal of your attention without a much
6 broader approach.

7 Look, I represent criminal defendants. You
8 want to reduce penalties? That's fine, go ahead and
9 reduce penalties. This legislation, as far as I'm
10 concerned, is of no value to me or to my clients. I got
11 drafted into this at the last minute so I really don't
12 think I can speak on behalf of my organization. I touched
13 base with one or two people to see if I was
14 oversimplifying it or missing anything. The two people
15 that I talked to agreed with the position that I was
16 taking. I realize this isn't drafted for our convenience,
17 but let me just tell you practically how it's going to
18 apply, since it's going to require at least some
19 cooperation from the defense bar. I might point out that
20 there is a case in front of the Superior Court right now
21 which is deciding the issue. It's not particularly hard
22 to predict what the decision is going to be, whether a
23 defendant is entitled to a jury trial for an offense which
24 carries a maximum penalty of six months or less. This may
25 not even guarantee against that. That has not been

1 conclusively resolved in the appellate courts of
2 Pennsylvania yet.

3 So I think you have practical considerations
4 which mitigate against the implementation of that, and
5 that is that the existing system, albeit with higher
6 minimum penalties, simply does not work because the
7 prosecution and the defense by and large choose other
8 means. And then I think you have what I perceive to be at
9 least a more substantial consideration, and that is
10 whether you can impinge upon the serious problems which
11 you seek to address by this legislation in a piecemeal
12 basis, and I don't think that it can be done and if you
13 want to do it, I think the one single place where you may
14 be able to do it is by making realistic adjustments to the
15 levels at which mandatory minimums kick in for drug
16 offenses. And as I said, if you were to convene a body of
17 informed people on that subject, I suspect you'd get a
18 consensus with respect to that among prosecution-oriented
19 people, defense-oriented people, and the medical community
20 and treatment, drug and alcohol treatment people as well.

21 I'd be happy to answer any questions that
22 you have. I probably strayed somewhat from the subject
23 that you wanted to address.

24 CHAIRMAN CALTAGIRONE: No. Very good.
25 Questions?

1 Mike.

2 BY REPRESENTATIVE GRUTTZA: (Of Mr. Lock)

3 Q. Do you have any idea how many individuals we
4 might have in our State system that would have been
5 involved in two grams or less?

6 A. It's interesting you ask because our
7 organization at this moment is attempting to compile that
8 kind of information. We can't do it with mathematical
9 precision, we're reduced to sort of doing it on an
10 anecdotal basis by soliciting our members to inform a
11 particular individual. The number is rather high and I
12 guess you're just going to have to take my word, but as I
13 said, a substantial portion my practice, which is
14 restricted to criminal defense work, is devoted to drug
15 work, and I have represented an awful lot of people to
16 whom a judge has said, I don't think this is an
17 appropriate sentence but I have no choice. I've gone to
18 prosecutors, in a case for example I remember one very
19 well. A woman who had just found out she was pregnant,
20 college student, working over the summer as a lifeguard at
21 a YMCA, making a delivery to accommodate her boyfriend, no
22 prior criminal record, nobody doubted her story, and she
23 ends up getting a year, because that was the mandatory
24 minimum sentence. The prosecutor's position was, look,
25 this is the position that the legislature has taken. Who

1 am I to say that they are wrong? You may be right in this
2 case, but if I tell you you're right in this case, then
3 everybody and their brother is going to be here tomorrow
4 telling me they're right in their cases. It's much easier
5 for me to defer to the legislature. She ended up having a
6 miscarriage at the Dauphin County prison. And I can give
7 you at least several additional similar stories from
8 Dauphin County alone. And so the number is substantially
9 larger than you might think.

10 Q. I think if you got a handle on that this
11 committee might be interested.

12 A. I would be happy to provide it. And I don't
13 think, by the way, that this is a defense position. I
14 have a suspicion that if you were to convene some sort of
15 informal group to discuss this for your benefit, informing
16 you about potential legislation to address the problems
17 which this legislation seeks to address, you would find at
18 least some prosecutors who agree with it, you'd find
19 judges who I am sure agree with it, and you'd find medical
20 and treatment people who would agree with it. I find very
21 little argument about the reality, the realistic benefit
22 of that two gram thing. Once you get beyond that, maybe
23 that's okay. And there are quite a few.

24 You know, see, what the police do now, they
25 know about this and so what you want to do when you go out

1 on an undercover operation is you want to buy what is
2 called on the street an eight ball, one-eighth of an ounce
3 of cocaine, and that is 3 1/2 grams. So you don't go out
4 to buy a gram anymore. There are gram purchases because
5 sometimes that's all you can get in certain neighborhoods
6 of certain cities. You can't get more. People don't have
7 more money and the dealers accommodate the capacity of
8 their customers to purchase the stuff. But by and large,
9 when you get into suburban and rural areas, they want to
10 buy an eighth of an ounce, which they can get between \$220
11 and \$300, and they do that because they know that this
12 mandatory then kicks in and they can twist somebody's arm.
13 See, I didn't mention the police because the police love
14 this. You're going to the State penitentiary for a year
15 unless you do this, this, and this for us. So for them
16 it's a great tool, I can see that, but there's a real
17 question of equity on the one hand and efficacy on the
18 other hand. I'd be happy to try and get that, although I
19 must tell you, we're just starting to try and accumulate
20 that now.

21 CHAIRMAN CALTAGIRONE: Counsel Andring.

22 MR. ANDRING: Yeah, I just have one
23 question.

24 BY MR. ANDRING: (Of Mr. Lock)

25 Q. There seems to be a general consensus that

1 an effort has to be made to segregate the less severe
2 crimes and the least dangerous criminals and somehow treat
3 them somewhat differently simply because of the
4 overcrowding in the system, regardless of whether the
5 woman you used in the example should or should not be
6 serving prison time. Simply the overcrowding situation
7 mandates that we ought to have that cell space available
8 to incarcerate offenders, and be it in the drug area or
9 perhaps even with some of these retail theft offenses, in
10 terms of looking at that overall situation, do you think
11 the district justice court should play an expanded role in
12 disposing of minor cases?

13 A. Probably. Although I think what you would
14 find, not in this setting but if you were to sit down
15 informally, I think what you would find is the kinds of
16 resolutions that are mutually beneficial are not affected
17 in ways that this legislation would have any impact on.
18 It's the simple assault being reduced to harassment. It's
19 the prostitution being reduced to a summary disorderly
20 conduct rather than misdemeanor. It's that kind of, well,
21 look, this is a bunch of nonsense. There are 25 people
22 sitting out here. I'm going to be here all day and half
23 the night with hearings. Let's just get rid of this. The
24 police officer concurs, there's no DA there, the defense
25 attorney concurs, it's not a serious person, so that's how

1 they tend to get resolved.

2 But you can't rely on that kind of informal
3 resolution. And so some effort to get them more involved
4 probably would be very helpful, yeah. I just don't know
5 that, just having had a chance to read this this morning
6 for the first time, that this is the way to do it. And
7 furthermore, I'm absolutely convinced that it doesn't
8 address the serious underlying problems that you're trying
9 to get to. It won't accomplish that in any way at all.
10 That's going to require a significant effort and an effort
11 that includes a review of additional legislation such as
12 the Sentencing Code, the Judicial Code, the Juvenile Code,
13 the Crimes Code, Controlled Substance, Drug, Device and
14 Cosmetic Act, and a bunch of other legislation.

15 Q. Okay.

16 CHAIRMAN CALTAGIRONE: Thank you.

17 MR. LOCK: Thank you.

18 CHAIRMAN CALTAGIRONE: Katherine Rightmyer.

19 MS. RIGHTMYER: Good morning. My name
20 Katherine Rightmyer, and I am here on behalf of the
21 Honorable Forrest G. Schaeffer, President Judge of the
22 Berks County Court of Common Pleas. Judge Schaeffer has
23 asked me to read the following statement to you:

24 "To the Honorable members of the Judiciary
25 Committee of the House of Representatives of the

1 Commonwealth of Pennsylvania, ladies and gentlemen, it is
2 a distinct honor for me to be asked to share my views on
3 House Bill 2360 of the 1990 session.

4 "Preliminarily, let me say that I have
5 suggested to your Chairman, Mr. Caltagirone, that the
6 Crimes Code could be amended to make certain petty theft
7 offenses into summary offenses. House Bill 2360 will not
8 accomplish this end. In fact, as I review it, it seems
9 that the only change in existing law is that a misdemeanor
10 of the third degree is redefined as an offense rather than
11 a crime, and the maximum prison sentence is six months
12 instead of one year. I fail to see how this will
13 accomplish anything. Unless there would be a complete
14 change in the rules of criminal procedure, the case would
15 still proceed in the same manner in which it is handled.
16 For example, you'd have a complaint filed with the
17 district justice, the district justice would have
18 preliminary arraignment, preliminary hearing, a district
19 justice would make a determination of whether or not a
20 prima facie case has been established, and if so, there
21 would be preparation of the transcript and return of the
22 matter to court. There would then be preparation of
23 information, pretrial motions for discovery and/or
24 suppression of evidence, a jury trial if not waived,
25 post-verdict motions, sentencing, and lastly appeal, if

1 that should be the case. The sole advantage, as I see it,
2 is that the penalty now being a maximum of six months, a
3 jury trial is not constitutionally required and therefore
4 the Courts of Common Pleas could try such cases without a
5 jury.

6 "House Bill 2360 would not speed up the
7 process by guilty pleas. District justices are already
8 authorized to take guilty pleas involving third-degree
9 misdemeanors in situations where, for example, number one,
10 the misdemeanor is not the result of a reduced charge or
11 the misdemeanor does not involve personal injury or
12 property damage in excess of \$500, or where the defendant
13 pleads guilty. And finally, for example, where the
14 defendant is not subject to the provisions of Chapter 63.
15 Therefore, I am opposed to House Bill 2360 in its present
16 form.

17 "My suggestion was that any first offense
18 theft involving property with a value of less than \$150 be
19 made a summary offense with the maximum penalty of six
20 months and a maximum fine of \$500. This would treat all
21 petty thefts of tangible property in the same manner. For
22 example, currently, a first offense shoplifting charge
23 with merchandise taken that is valued at less than \$150 is
24 now a summary offense. I would suggest a bill which would
25 make all first offense third-degree misdemeanors summary

1 offenses with a maximum jail term of six months and a
2 maximum fine of \$500, except in situations involving:

3 "1. A reduced charge.

4 "2. Personal injury or property damage in
5 excess of \$500 or more.

6 "3. Any third-degree misdemeanor involving
7 violation of Chapter 63.

8 "4. Any such offense involving a violation
9 of Section 4303 which relates to concealing the death of a
10 child born out of wedlock.

11 "5. A violation of Section 4321 relating to
12 willful separation or nonsupport; and

13 "6. A violation of Section 5103 relating to
14 unlawful listening in to jury deliberations.

15 "I see definite advantages in regrading
16 petty theft cases, or for that matter all third-degree
17 misdemeanors of summary offenses. As I see it, these
18 advantages are as follows:

19 "Number one, the procedures before district
20 justices would be shortened. Presently, a third-degree
21 misdemeanor is handled by the district justice by, number
22 one, approval of the complaint and preliminary
23 arraignment, preliminary hearing, determination of whether
24 or not a prima facie case has been established, and so
25 forth.

1 "On the other hand, summary offense would be
2 instituted with a citation. There would be no need for
3 the district justice to hold a bail hearing unless the
4 defendant ignored the citation. The district justice
5 could then take a guilty plea or hold a summary trial. In
6 the event of a summary trial, the district justice would
7 then make a final determination as to whether or not the
8 defendant is guilty or not guilty. The defendant would
9 still have the constitutional right to appeal to the Court
10 of Common Pleas if he should wish, and in that case the
11 defendant would be entitled to a hearing, a new hearing
12 before a judge but without a jury. The defendant would
13 still retain his post-trial and appellate rights, the same
14 as those which are currently available to him.

15 "We feel that this procedure would also save
16 an immense amount of time and paper work on the Common
17 Pleas level. For instance, the district attorney would
18 not need to prepare information, and only those cases
19 appealed from the district justice would be heard in the
20 Court of Common Pleas. I believe the District Attorneys
21 Association would support this measure also. Indeed,
22 President Judge Cirillo of the Superior Court has
23 indicated his support for this type of legislation.

24 "I believe if the district justices are
25 properly apprised of what the legislation will do, they

1 will also support it because it will not add work for them
2 but rather it will reduce work for them. They will not
3 have to review complaints or affidavits of probable cause
4 or hold bail hearings or preliminary hearings. They will,
5 instead, have only to accept guilty pleas and hold summary
6 trials and lay preliminary arraignments at preliminary
7 hearings.

8 "While it is true that in many third-degree
9 misdemeanor cases the defendant waves a preliminary
10 hearing and asks that the case be bound over to court,
11 those are cases where the defendant usually intends to
12 take a guilty plea or go into ARD. Guilty pleas could be
13 handled by the district justice more easily than by
14 preparation of a transcript and court hearing. Most
15 third-degree misdemeanors would then no longer crowd the
16 ARD docket. The district justice could still, in a proper
17 case, sentence the defendant to jail. On appeal, of
18 course, the Court of Common Pleas could do the same.
19 Under our current sentencing guidelines, a first offender
20 guilty of a third-degree misdemeanor now receives an
21 offense score of one, a mitigated range of probation, and
22 a standard or aggravated range of probation to six months.
23 The net effect of change in a first offense third-degree
24 misdemeanor to a summary offense would be to reduce the
25 longest minimum sentence possible from six months to three

1 months. In practice, no first offender receives a jail
2 sentence for a third-degree misdemeanor, much less a jail
3 sentence with a minimum of more than three months.

4 "Thank you."

5 CHAIRMAN CALTAGIRONE: Questions from the
6 committee?

7 (No response.)

8 CHAIRMAN CALTAGIRONE: Thank you, Katherine.
9 I appreciate it.

10 Sue. District Justice Sue Walley from Berks
11 County would like to make some comments to the committee.

12 MS. WALLEY: Thank you for listening to me.

13 My name is District Justice Susanne Walley from Berks
14 County. I just would like to express a few of the
15 concerns that I have, and I want to make it especially
16 clear that I am here today as my own representative, not
17 representing the whole association.

18 A district justice right now, the office in
19 each county is staffed differently with different amounts
20 of people, and I can only relate to you what I personally
21 know in Berks County in my office. I am a county district
22 justice, which means my misdemeanor three's are not as
23 frequent in my area as they would be in the city of
24 Reading, so I have heard some of our county DJs in Reading
25 saying how busy they are. My fear would be not so much

1 for me to have added workload on my secretarial staff but
2 it would be for, I would think, in the district justice
3 offices that have quite a few, they would be the ones that
4 would need more help, although the way it stands now and
5 the way the bill has been read, the original version, I
6 think that we all would probably be needing more staff.
7 That is a concern because we want to do a fair and honest
8 job with all the defendants.

9 And the other thing we were also discussing
10 today, my friend and I as we came up here, is that there
11 is a chance that this is not going to eliminate the prison
12 problem because if we get the first-time offenders, they
13 don't usually go to jail anyway.

14 It's just a few comments. I hope this adds
15 to your insight as you review this, and I will try to
16 answer any questions if you have any.

17 CHAIRMAN CALTAGIRONE: Thank you, Sue.

18 Are there any questions from the committee?

19 (No response.)

20 CHAIRMAN CALTAGIRONE: Okay, thank you.

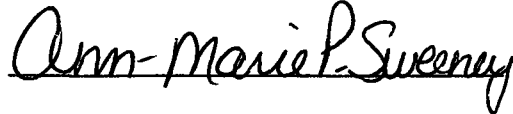
21 We'll adjourn the committee meeting and
22 thank those persons for testifying.

23 (Whereupon, the proceedings were concluded
24 at 11:07 a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.



ANN-MARIE P. SWEENEY

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Ann-Marie P. Sweeney
536 Orrs Bridge Road
Camp Hill, PA 17011

LIST OF THIRD DEGREE MISDEMEANORS
(not exhaustive: includes all Title 18 offenses and
certain other offenses)

18 Pa. C.S.

- §5902 Prostitution
- §5507 Obstructing highways and other public passages
(generally used for prostitution)
- §3923 Theft by extortion (less than \$50)
- §2701(1) Simple assault-fight or scuffle entered into mutual
consent
- §2102 Desecration of flag
- §2710 Ethnic intimidation - if other offense is classified
as a summary offense
- §3211 Viability (abortion)-unprofessional conduct -
Intentional, knowing or reckless falsification of
any report required under this section
- §3301(6) Disclosure of true owner (arson of property)
- §3304 Criminal mischief - if actor intentionally or
recklessly causes pecuniary loss in excess of
\$500.
- §3305 Injuring or tampering with fire apparatus or
hydrants
- §3309 Agricultural vandalism
- §3503(B) Defiant trespass - of offender defies an order to
leave personally communicated to him by owner of
premises
- §3903(2) Theft amount less than \$50.
- §4303 Concealing death of child born out of wedlock
- §4904(B) Statements "under penalty" (perjury)

§4906(B) Fictitious reports

§5103 Unlawfully listening into deliberations of jury

§5109 Barratry (vexing others with unjust and vexations suits)

§5110 Contempt of General Assembly

§5123(B) Money to inmates prohibited (provided notice is posted at institution)

§5125 Absconding witnesses

§5503(B) Disorderly conduct

§5504 Harassment by communication or address

§5506 Loitering and prowling at night time

§5508 Disrupting meetings and processions

§5901 Open lewdness

§6162 Shipping explosives

§6306 Furnishing cigarettes or cigarette papers-3d or subsequent offense

§6307 Misrepresentations of age to secure liquor or malt or brewed beverages (2nd violation, etc.)

§6309 Representing that minor is of age (liquor, etc.)

§6310 Inducement of minors to buy liquor, etc.

§6310.1 Selling or furnishing liquor or malt or brewed beverages to minors.

§6310.3 Carry false I.D. 2nd violation, etc.

§6311 Tattooing minors without consent of parent or guardian.

§6703 Dealing in military decorations

§6707 False registration of domestic animals

§6709 Use of union labels

§6901 Extension of water line

§7103 Horse racing

§7104 Fortune telling
 §7303 Sale or illegal use of certain solvents
 §7310 Furnishing free insurance as inducement for purchases
 §7311 Unlawful collection agency practices
 §7312 Debt pooling
 §7313 Buying or exchanging federal food order stamps
 §7316 Keeping bucket-shop (betting on the stock market)
 §7317 Accessories in conduct of bucket-shop
 §7318 Maintaining of premises in which bucket-shop operated
 §7319 Bucket-shop contracts
 §7322 Demanding property to secure employment
 §7324 Unlawful sale of dissertations, theses & term papers
 §7503 Interest of certain architects & engineers in public work contracts
 §7504 Appointment of special policemen (not a citizen of Commonwealth)

35 P.S.

§6020.1105(B) Hazardous sites (cleanup violations)
 §6018-606(B) Transport of solid waste contraband (other than a municipal official exercising his official duties)
 §691-602(B) Nuisances (clean streams law)
 §6021-1306(B) Storage tank & spill

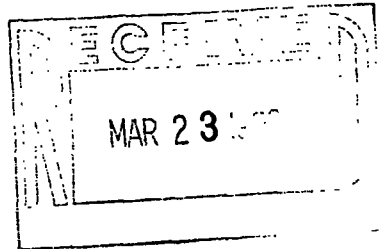
53 P.S.

§4000.1705B Municipal waste, recycling - violations of act
 §302(B) Failure to report release of hazardous substance

Katherine Rightmyer

JUDGES' CHAMBERS
COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
(23D JUDICIAL DISTRICT)
COURTHOUSE
READING, PENNSYLVANIA 19601-3563

→ FORREST G. SCHAEFFER
PRESIDENT JUDGE
THOMAS J. ESHELMAN
JUDGE
ELIZABETH EHRLICH
JUDGE
CALVIN E. SMITH
JUDGE
ALBERT A. STALLONE
JUDGE
ARTHUR E. GRIM
JUDGE
SCOTT D. KELLER
JUDGE
LINDA K.M. LUDGATE
JUDGE



March 20, 1990

Thomas R. Caltagirone, Chairman
House Judiciary Committee
House Post Office Box 209
Room 214, South Office Building
Harrisburg, PA 17120-0028

Dear Tom:

Last week our Board of Judges was discussing the increase in criminal cases and the burden it is placing on an already strained court system.

Judge Calvin Smith, of our Bench, pointed out the number of petty theft cases which he must deal with, particularly thefts of leased property. For example, a video store operator leases a television tape and the lessee, after notice, does not return the tape. This is now a theft crime, a third degree or, possibly, even a second degree misdemeanor (depending on whether the value of the tape is less than \$50.00 or \$50.00 or more). Prosecution requires a criminal complaint, preliminary arraignment, preliminary hearing before a district justice, the filing of an Information, arraignment before the court, full fledged pretrial procedures, and a jury trial. For a first offense, these sentences rarely, if ever, involve a jail sentence. They almost always result in probation with an order of restitution and an order to pay the fines and costs.

If minor thefts were made summary offenses, they could be handled much more quickly, effectively and less expensively.

The action could be started before a district justice by the filing of a citation or complaint and the district justice would hold a summary trial and find the defendant guilty or not guilty. If the defendant were found guilty, the defendant would have a right to appeal to court and the court would hold a de novo hearing before a judge without a jury.

Thomas R. Caltagirone, Chairman
House Judiciary Committee
March 20, 1990

This procedure would give a simple and less time consuming remedy to the shop owner and any victim of a small theft. The victim would have to appear at most twice, once before the district justice and once before the court, if there were an appeal.

I have reviewed the proposed bill draft which you sent me. It does not really make a minor theft a summary offense. It merely reduces the maximum sentence to 6 months, thus eliminating the constitutional requirement for a jury trial. A district justice could only act in making a final disposition of the case, if, in certain circumstances, the defendant pleaded guilty.

Might it not be better to designate thefts involving the taking of less than \$150.00 a summary offense, if the offense charged is a first offense? I suggest \$150.00 demarcation line between the summary offense and the second degree misdemeanor offense, because that is the present demarcation line between the summary offense of retail theft (shoplifting) and the second degree misdemeanor retail theft. Thus, the law would be treating retail thefts and other petty thefts in the same way, which seems logical to me.

The type of thefts involved could include theft by unlawful taking (Crimes Code, section 3921), receiving stolen property (Crimes Code, section 3925), theft by deception (Crimes Code, section 3922), theft of property lost, mislaid or delivered by mistake (Crimes Code, section 3924), theft by failure to make required disposition of funds received (Crimes Code, section 3927), and theft of leased property (Crimes Code, section 3932).

I suggest the result be achieved by amending section 3903(b) of the Crimes Code to read as follows:

"(b) Other Grades - Theft not within subsection (a) of this section, constitutes a misdemeanor of the first degree, except that if the property was not taken from the person or by threat, or in breach of fiduciary obligation, and:

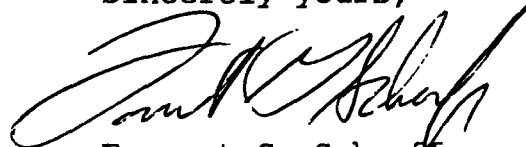
(1) the amount involved was \$150.00 or more but less than \$500.00, and the person charged was not previously convicted of, and sentenced for, a theft offense, the offense constitutes a misdemeanor of the second degree;
or

Thomas R. Caltagirone, Chairman
House Judiciary Committee
March 20, 1990

(2) the amount involved is less than \$150.00 and the person charged was not previously convicted of, and sentenced for, a theft offense, the offense constitutes a summary offense.

If the legislature desires the penalty for theft to be enhanced, they could increase the fine and could increase the prison sentence to a maximum of not more than 6 months. This, as I understand it, would meet constitutional requirements.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Forrest G. Schaeffer", written in a cursive style.

Forrest G. Schaeffer
President Judge

FGS/vw