

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

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In re: House Bill 319

Stenographic report of hearing,
held in Room 418, Main Capitol
Building, Harrisburg, Pennsylvania,
on Tuesday,

February 22, 1994
10:00 a.m.

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HON. THOMAS R. CALTAGIRONE, CHAIRMAN
HON. KATHY M. MANDERINO, SECRETARY

MEMBERS OF JUDICIARY COMMITTEE

Hon. Peter J. Daley, II
Hon. Frank LaGrotta

ALSO PRESENT:

Ken Sutter, Esquire, Minority Counsel
Karen Dalton, Esquire, Minority Counsel
William Andring, Esquire, Majority Chief Counsel
Galina Milonov, Search Analyst
Michael Carroll, Assistant Director, Office of
Legislative Affairs, Department of Transportation

Reported by:
Nancy J. Grega, RPR

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CHAIRMAN CALTAGIRONE: This is the House
1 Judiciary Committee.

2 I'm Chairman Tom Caltagirone. We are
3 going to be taking testimony on House Bill 319, and
4 it's basically going to be workshop.

5 Members of the staff who are present, if
6 you would like to introduce yourselves for the
7 record. We'll start to my left.

8 REPRESENTATIVE LaGROTTA: Representative
9 LaGrotta, Lawrence, Butler, Beaver Counties.

10 MR. SUTTER: Ken Sutter, Republican
11 Counsel.

12 MS. DALTON: Karen Dalton, Republican
13 Counsel.

14 REPRESENTATIVE DALEY: Representative
15 Daley of Washington and Fayette.

16 MS. MILONOV: And my name is Galina
17 Milonov, Research Analyst for the Judiciary
18 Committee.

19 CHAIRMAN CALTAGIRONE: And we do have
20 PennDOT representatives here today. Would the
21 three of you like to introduce yourselves for the
22 record?

23 MR. HEATON: My name is John Heaton,
24 Chief Counsel, PennDOT.
25

1 MR. MUSTIN: Bob Mustin, Director of
2 Legislative Affairs, PennDOT.

3 MR. CARROLL: I'm Michael Carroll, and
4 I'm Bob's assistant for Legislative Affairs.

5 CHAIRMAN CALTAGIRONE: Thank you.
6 If you'd like to start with your
7 presentation.

8 MR. HEATON: Good morning.

9 "I am here this morning in support of
10 House Bill 319, Printers Number 346.

11 The Department favors this provision and
12 believes that it is necessary to increase the
13 effectiveness of traffic safety measures
14 contained elsewhere in the law.

15 In addition to supporting the change to
16 Section 5553(e) of the Judicial Code, to
17 increase the period within which summary
18 proceedings under the Vehicle Code must be
19 completed from two years to four years, I
20 would also today like to urge this body to
21 consider two additional Amendments to Section
22 5553(3) of the Judicial Code that will make
23 the enforcement much more effective.

24 These two changes which I have appended
25 to the exhibits I presented with my testimony

1 would, number one, add language to Section
2 5553(e) so that it is absolutely clear that
3 the proceeding intended to be completed
4 within the two or four-year period would be
5 before the issuing authority only, and not
6 including its continuation through a
7 statutory appeal to the Court of Common Pleas
8 or an Appellate Court.

9 And, two, adding language to the effect
10 that the serious traffic violations
11 enumerated in Section 6503 of the Vehicle
12 Code are excluded even from the four-year
13 limitation, I have appended hereto draft
14 language to accomplish not only these two
15 objectives, but also the objectives set forth
16 in House Bill 319 in the draft language I
17 have appended.

18 I can speak with some experience about
19 the enactment or the creation of Section
20 5553(3) of the Judicial Code.

21 This was enacted as part of the Vehicle
22 Code of 1976, and at the time I was an
23 Assistant Attorney General with PennDOT and
24 was working with the then Department of
25 Justice concerning hearings all over the

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State of Pennsylvania.

The genesis of this provision is that at those hearings a number of District Justices came forward, particularly District Justices located along the interstate highways, complaining that they had old Citations and what am I going to do with them?

There was no provision anywhere in the law that allowed them to purge old Citations and, essentially, these were speeding tickets issued to people out of state.

And I might also add that this happened prior to the Non-Resident Violator Compact which was just at its beginning in the mid-'70's.

I don't think that tickets to out of state motorists are nearly the problem now that they were then because of the Non-Resident Violator Compact, which I don't know if the Committee is aware of this, but under the Compact, if a resident of another state is issued a ticket in Pennsylvania and ignores it, we contact the Motor Vehicle Department of the state of residence and they suspend that person's license until they come

1 to Pennsylvania and pay the Citation, which
2 really has been very effective in not only
3 bringing in revenue to this state, but also
4 to cutting down the problem of these
5 unresponded to, out of state Citations.

6 So just going back to the '70's again, as
7 I recall, the Vehicle Code Revision Project
8 at the behest of District Justices, and they
9 were the only persons pushing for this,
10 didn't include a discretionary provision in
11 the draft project that came out of the
12 Department of Justice that then went to the
13 Legislature, and it included a provision
14 which was then 6302 of the Vehicle Code which
15 was discretionary rather than mandatory.

16 So the District Justices had the
17 discretion to purge old tickets without being
18 required to.

19 Now, somehow or other that discretionary
20 provision became mandatory in the final
21 enactment and all these years we have had a
22 mandatory provision which sort of -- it's not
23 really a statute of limitations in the
24 traditional sense.

25 A statute of limitations says a

1 prosecution must be commenced with "X" period
2 from the date of the offense. This is an
3 outside limit which says that the prosecution
4 must be completed within two years of the
5 date of this offense and earlier cases from
6 the Superior Court construed it absolutely
7 consistently and strictly. I mean that's it,
8 no proceedings can be held at all after that
9 two years.

10 Now I want to make another point because
11 I think it's relevant.

12 When the Vehicle Code Revision Project
13 was convening hearings back during the mid-
14 '70's, they were also besieged by people from
15 the courts who felt that too many vehicle
16 code cases were in the Common Pleas Court and
17 that a lot of offenses which really should
18 have been summary offenses or misdemeanors
19 were clogging the courts.

20 So there was a movement at the same time
21 to take a lot of offenses, and I have six in
22 particular that are right in front of my mind
23 that are listed in Section 6503 of the
24 Vehicle Code. They are enumerated in there.
25 And they all carry a fine of not less than

1 \$200 nor more than a thousand dollars, and
2 imprisonment of not more than six months, or
3 both. And there are six offenses listed
4 there. These offenses, at least second
5 offenses of these, were all misdemeanors
6 under the old Vehicle Code.

7 What we did was we made second offense of
8 driving without a license, driving while
9 license is suspended, racing on the highways
10 relating to fleeing or attempting to elude a
11 police officer, and relating to driving with
12 lights out to avoid identification, we made
13 these summary offenses for the first time in
14 the mid-1970's and even for second and
15 subsequent offenses, although we provided for
16 fines up to a thousand dollars and up to six
17 months in jail, or both.

18 Never prior to that had Vehicle Code
19 offenses of this gravity been summary
20 offenses in Pennsylvania.

21 It was sort of ironic that the
22 Legislature at the same time, and I'm certain
23 that this body didn't realize that it was
24 creating a whole lot more summary offenses
25 and much more serious summary offenses, yet

1 at the same time putting this outside limit
2 on when prosecutions can be completed.

3 So even with these serious offenses,
4 driving under suspension, fleeing and eluding
5 an officer, if the person could somehow or
6 another avoid the authorities for two years,
7 they had an absolute defense and they would
8 get off.

9 That may be good policy when it comes to
10 speeding, red lights, et cetera, for the
11 purpose of cleaning out the Courts, but I
12 don't think it's good policy when it comes to
13 some of these more serious, intentional
14 offenses.

15 So that's something to keep in mind, and
16 it goes to the recommendations I have made.

17 Now the Vehicle Code Revision Project
18 when it entertained this back in the '70's,
19 and I was involved in those discussions and I
20 know that it was contemplated that 5553(e)
21 was only contemplated to apply to District
22 Justices, if the thing wasn't completed in
23 front of the District Justice within two
24 years, it would be thrown out because it was
25 the District Justices who wanted this

1 amendment.

2 It was never contemplated that somebody
3 could take an appeal from a District Justice
4 up to Common Pleas Court and if it isn't
5 completed in the Common Pleas Court or a
6 subsequent appeal to Superior Court, or a
7 subsequent appeal to the Supreme Court, and
8 keep the thing going until two years is up
9 and then come in screaming after he took the
10 appeal that this two-year statute limitations
11 quote, unquote, is intended to get him off
12 the hook.

13 But that is exactly what happened when
14 the Superior Court decided Commonwealth v.
15 Jannenga, J-A-N-N-E-N-G-A, in 1984.

16 The Superior Court held that the language
17 of 5553(e) concerning the two-year limitation
18 applied to summary appeals to the Court of
19 Common Pleas as well as to proceedings before
20 the issuing authorities.

21 Now in that case, the Judge was
22 responsible for the delay.

23 The Defendant took a timely appeal from
24 conviction by the Magistrate to the Common
25 Pleas Court about a month before the two

1 years was up and the Judge heard the case
2 within the two-year statute and then took it
3 under advisement and didn't do anything for
4 about a year and a half.

5 The Superior Court held that that delay
6 by the Court was chargeable against the
7 Commonwealth because the Commonwealth's
8 attorney knew the status of that case and
9 could have requested the Court to rule on it
10 or have it listed at any point in time.

11 That case of Jannenga was reaffirmed in
12 Commonwealth v. Markley several years later
13 where it was a very serious offense. A
14 person was convicted of driving under
15 suspension during an alcohol-related
16 suspension and there is a penalty of a
17 thousand dollars and imprisonment of 90 days
18 which was involved.

19 He was convicted in front of the District
20 Justice within the two-year period and filed
21 an appeal, a timely appeal to Common Pleas
22 Court and, once again, was convicted within
23 the two-year period before the Common Pleas
24 Court.

25 Markley then filed post-trial motions

1 which were not disposed of until after the
2 two-year period and the Superior Court held
3 that because he had not been sentenced within
4 the two-year period by the Court of Common
5 Pleas, that the charges had to be dismissed.

6 That was Commonwealth v. Markley.

7 The Court felt constrained to reach that
8 result, although they said in the last
9 paragraph of their Opinion, "The mischief
10 which is being caused by 42 Pa. C.S. 5553(e)
11 may suggest to the Legislature that the
12 provisions thereof should be repealed, or at
13 least amended so as to prevent a dilatory
14 Defendant from benefitting from his or her
15 own delay.

16 So throughout the 1980's, this provision
17 was being very strictly construed against the
18 Commonwealth and any effort to pursue
19 prosecution after two years, whether it was
20 the Defendant's fault or not, was resulting
21 in prosecution being terminated.

22 Now I must tell this body that the
23 Superior Court has backed off of that strict
24 interpretation and within the last two or
25 three years here, we have two decisions

1 coming out of the Superior Court which
2 arguably overrule Jannenga and Markley, at
3 least to the extent that the period of delay
4 directly attributable to the accused doesn't
5 toll the limitation found in 5553(e).

6 The first case is Commonwealth v. Quinn,
7 which was decided in 1991, which was appealed
8 to the Supreme Court and the appeal was
9 denied.

10 It's still unclear, though, as to which
11 delays are directly attributable to the
12 accused.

13 In Quinn, the Defendant failed to timely
14 appeal the summary conviction for over five
15 months and then he was convicted by the
16 Magistrate within the two-year period. Then
17 he waited five months and didn't do a thing.
18 Then he comes in and files a nunc pro tunc
19 appeal to Common Pleas Court after five
20 months elapses and the County Court allowed
21 the appeal nunc pro tunc, subsequently set a
22 hearing, found him guilty, and at some point
23 in time after the nunc pro tunc appeal was
24 allowed, the two-year period expired.

25 At that point in time he goes to Superior

1 Court and he says I want the whole thing
2 thrown out.

3 In that particular case the five months
4 he waited between the conviction in front of
5 the Magistrate and the nunc pro tunc appeal,
6 it was the crucial time period and the
7 Superior Court had just been pushed too far
8 on that one and they said that this is crazy,
9 to allow somebody to take a nunc pro tunc
10 appeal and beat this thing that way because,
11 number one, it's going to discourage Judges
12 from allowing nunc pro tunc appeals because
13 what they are going to be doing is signing a
14 not guilty by allowing the nunc pro tunc
15 appeal because it will be too late to hear
16 the case.

17 In Quinn, the Court held that any period
18 of delay directly attributable to the accused
19 tolls the statute of limitations and in that
20 case it was a nunc pro tunc appeal where the
21 Defendant obviously was negligent in not
22 filing an appeal for five months. They did
23 not get into, and we still don't have any
24 guidance on what directly attributable to the
25 accused means, and it's a total morass at

1 this point in time and it creates a situation
2 where when these appeals are taken to the
3 Court of Common Pleas in order to address
4 this issue, you are going to have the
5 Defendant and the Commonwealth pointing
6 fingers at each other over whose fault it was
7 that it was delayed.

8 Every continuance is going to be
9 scrutinized for who caused it, who requested
10 it, and you are also going to have the
11 complicity of the Judge, because how many
12 times is it going to be his fault because of
13 a calendar problem or whatever that the case
14 has to be continued.

15 I think it's just an absolutely untenable
16 situation to have, whether or not somebody is
17 prosecuted under the law depending on whose
18 fault and whose blame the delay is.

19 Now if the Defendant does file a timely
20 appeal and the two-year statute or the two-
21 year deadline expires before the matter is
22 completed, as I said, the Court is now forced
23 to assess blame for the delay among the
24 Defendant, the Commonwealth and itself.

25 Only if the delay can be blamed on the

1 Defendant and it used solely and attributable
2 to the Defendant can the matter proceed.

3 I would submit to this body that the
4 assessment of blame for Court delays is not a
5 productive exercise or one that this body
6 should sanction; it's a complete waste of
7 time.

8 In Commonwealth v. Marr which is a case
9 that came down in 1993 subsequent to Quinn,
10 it did reaffirm Quinn and went on to say that
11 mere collection of the fine or payment under
12 a schedule entered into before the two-year
13 deadline does not constitute a proceeding or
14 an action taken under Section 5553(e).

15 So, it is consistent with Quinn and this
16 body may say to me in light of these two
17 recent cases, what do we need to amend this
18 statute for. And I would say I still think
19 we need to amend it because it's on the books
20 and in the past many, many, many people have
21 evaded writ servers and police officers for a
22 period of two years and then come in to
23 District Justices and say you can't prosecute
24 me, you can't do anything further, I want
25 this charge dismissed.

1 District Justices all over the State have
2 done that and just because of the two
3 Superior Court cases, I'm not sure that the
4 District Justices are going to be aware
5 enough to say no, there are two cases which
6 say you have been evading the police.

7 And how do you prove that they've been
8 evading the police? They're likely to come
9 in and say I didn't know about it, so we
10 don't want to get into a situation like that.

11 So I think this statute still needs to be
12 addressed. And it is respectfully submitted
13 that both HB 319 and the alternative which we
14 have suggested, would essentially eliminate
15 the finger pointing of blame for delay and,
16 instead, substitute a sensible, rational way
17 to terminate prosecution for minor summary
18 offenses within a fair time frame.

19 So to summarize here, what we are
20 suggesting here is the four-year outside
21 limit that is contained in House Bill 319 is
22 a sound idea. Two years is too short; that's
23 been proven. Four years I think we can, with
24 some confidence that if somebody hasn't been
25 brought before the Bar of Justice and

1 convicted within four years, he shouldn't be.
2 There's something wrong with the system;
3 either with the police officer, with the writ
4 service -- there is something wrong if
5 someone hasn't been brought before the Bar of
6 Justice in four years.

7 I have no problem in saying let's dismiss
8 minor summary offenses under the Vehicle
9 Code; speeding, red light, et cetera, after
10 four years. But let's just put a couple of
11 limits on that.

12 Number one, let's make it absolutely
13 clear that that applies only in front of the
14 District Justice, because four years isn't an
15 unreasonable delay when you consider going
16 all the way through the Appellate Courts, and
17 it's possible to do that.

18 Under Jannenga, those four years are
19 going to count against the Commonwealth.
20 That's not right. It was never the intent --
21 it was always the intent that it only apply
22 to proceedings in front of District Justices.

23 The second thing that we are suggesting,
24 let's take the four serious offenses that
25 used to be misdemeanors, the six serious

1 offenses that are enumerated in 6503 of the
2 Vehicle Code, which are serious offenses that
3 somebody should not be able to be excused of
4 just because of a delay, regardless of whose
5 fault it is. Because they are serious
6 offenses and let's just eliminate them from
7 its scope.

8 I have captured all three of those points
9 in the proposed draft language that I have
10 submitted with my testimony. I think the
11 Bill is necessary and a good idea and will be
12 even better if we attach those two amendments
13 to it."

14 CHAIRMAN CALTAGIRONE: Excuse me.

15 If we could, that packet --

16 MR. HEATON: It's not attached, it's
17 right here. There is the existing 319 with my
18 proposed language appended to it.

19 CHAIRMAN CALTAGIRONE: Questions from the
20 Committee? Representative Daley?

21 BY REPRESENTATIVE DALEY:

22 Q How many cases are we talking about
23 total? I might have missed that. How many cases
24 are we talking about that are out there in this
25 precarious situation?

1 do we know exactly how many are falling through the
2 cracks here; do we know how many cases are falling
3 of the two-year edge and, quite honestly, this is a
4 statute of limitations I think to some degree in
5 terms of prosecution.

6 I mean the Court, the Legislature, has
7 very succinctly stated in the Code what statute of
8 limitations are for various offenses, and I really
9 don't believe that four years is really necessary
10 here unless it can be shown to me that we have a
11 lot of cases out there that are falling through the
12 cracks; a lot of people are falling off the edge.

13 Four years is a long time to extend the
14 period.

15 CHAIRMAN CALTAGIRONE: Counsel tells me
16 that she does have some answers, some figures that
17 she could give us.

18 MS. DALTON: That is, if you don't.

19 MR. HEATON: I'd like to defer to you for
20 the answers, but may I just address the first point
21 about burdening the Court with a lot of extra
22 cases?

23 As I think I made clear in my testimony,
24 Commonwealth v. Quinn does, in fact, undo this
25 provision to a large extent. It says that any

1 delay which is caused by the Defendant does not
2 toll the statute of limitations.

3 So the Commonwealth could raise that.
4 Any time somebody came in and tried to have the
5 prosecution thrown out, if indeed it was his fault,
6 like he ignored the Citation or evaded the writ
7 server for two years, then he can't get credit for
8 it under Quinn.

9 What we are doing here is we are just
10 recognizing the way the Superior Court has already
11 interpreted it. And I don't think it's going to
12 add any more cases that shouldn't already be in the
13 pipeline; I don't think these cases should be
14 dismissed any more under Quinn.

15 This will ensure that they won't be
16 dismissed and it will ensure that they are treated
17 equally all over the State, not just by District
18 Justices who are aware of the Quinn case, which I
19 think is very bad to have the law say one thing and
20 a Superior Court case say just the opposite and
21 have total confusion out there.

22 BY REPRESENTATIVE DALEY:

23 Q Well, the threshold may be two years and
24 there's going to be another Quinn, Quinn II
25 somewhere when we are at the four-year threshold,

1 and they are going to say the same thing.

2 I mean this thing could go on and on and
3 on for six, seven or eight years maybe; I don't
4 know. I'm just offering this as an argument.

5 Let me ask you a question. Let me ask
6 you the question then, counsel.

7 MS. DALTON: I have some statistics.

8 According to the Philadelphia Inquirer
9 who I love to quote, 87 percent of all drivers
10 ticketed in Philadelphia never pay. This amounts
11 to \$75,000,000 of uncollected fines over the past
12 two years. \$43.5 million would go to the State.
13 Those are for people not responding within two
14 years.

15 MR. HEATON: But that includes parking.

16 MS. DALTON: I'm reading from a
17 co-sponsorship memo dated January 6, 1993.

18 REPRESENTATIVE DALEY: Is that traffic
19 citations, moving citations, all moving citations?

20 MS. DALTON: And I have --

21 MR. MUSTIN: Philadelphia Parking
22 Authority does the adjudication of parking
23 violations.

24 Am I correct with that, Representative
25 Manderino?

1 REPRESENTATIVE MANDERINO: That's
2 correct.

3 MR. MUSTIN: So traffic violations,
4 moving violations, are solely adjudicated by
5 Traffic Court?

6 REPRESENTATIVE DALEY: You are saying \$75
7 million?

8 MS. DALTON: Yes. I just gave my
9 material to --

10 CHAIRMAN CALTAGIRONE: She's going to
11 make copies for us.

12 MR. MUSTIN: That's dollars, I think.

13 MS. DALTON: \$75,000,000.

14 REPRESENTATIVE DALEY: \$75,000,000 of
15 fines which would parking tickets?

16 MR. MUSTIN: No, no, strictly moving.

17 REPRESENTATIVE DALEY: Strictly moving
18 citations.

19 Doesn't it seem like there is an
20 enforcement problem here in terms of --

21 MR. MUSTIN: If I could just tell you,
22 Representative Daley, we suspend somewhere in the
23 neighborhood of about 200 to 225 to 250,000 people
24 every year for failure to respond to citations here
25 in Pennsylvania. Of that, probably 75 percent of

1 those come from Philadelphia.

2 REPRESENTATIVE DALEY: And probably of
3 that, 90 percent of those people are still driving
4 without their license, probably.

5 I know I can't prove that fact, but I
6 read somewhere where there is a tremendous amount
7 of people driving without a license.

8 MR. MUSTIN: We believe that 75 percent
9 of the people who get suspended drive anyhow.

10 MR. HEATON: You are correct about the
11 enforcement problem.

12 I view this as the criminal side of it
13 and the civil side of it.

14 The criminal side of it involves what
15 happens in front of the District Justice, and
16 they're issued a Citation and they ignore it.

17 Now as soon as they ignore it, that's
18 transmitted to PennDOT, who suspends the license
19 for 1533, failure to respond to a citation.

20 But that doesn't help that Citation get
21 responded to a lot of times. They are just going
22 to drive under suspension and continue to ignore
23 it.

24 At that point in time the criminal
25 process should be following up and there should be

1 a warrant issued and there should be either a
2 Constable or a Sheriff or somebody should be going
3 out and serving process on these people and
4 dragging them in front of the District Justice.

5 Because of the busy nature of the Police
6 Departments, the Constables, et cetera, it just
7 isn't happening.

8 REPRESENTATIVE DALEY: Well, I don't see
9 how this legislation is going to fix that.

10 I mean I don't see how this legislation
11 is going to put more punch into the enforcement
12 aspect because our problem is, number one, in
13 Philadelphia you have \$75,000,000 out there being
14 uncollected. You're suspended 250,000 people in
15 Pennsylvania, of which approximately 190,000 of
16 those are Philadelphia, of which approximately
17 150,000 are still driving.

18 By making this four years or forty-five
19 years, you are still not enforcing the law.

20 MR. HEATON: It will give the police and
21 the Criminal Justice System two more years to catch
22 up with these folks and get the money, whereas now
23 the two years comes awfully quick and then the
24 people are in front of the Magistrate asking that
25 the case be dismissed.

1 There would be two more years that the
2 warrant could be served and the persons could be
3 dragged in. It would also coincide with the four-
4 year renewal of the license.

5 These people are driving under suspension
6 but they have a license in their pocket because it
7 only comes up for renewal once every two years. If
8 we could keep this going for four years, the
9 renewal would come up. PennDOT would not renew the
10 license and they wouldn't have an actual physical
11 license in their pockets to drive with and show the
12 police officer.

13 And most police officers when they stop a
14 violator are satisfied to look at a license; they
15 don't run everybody up on the tube to find out
16 whether they are under suspension or not. People
17 know that. As long as they have a license in their
18 pocket, they are comfortable going out to drive.

19 Now if we extend this to four years, you
20 are going to have half the people out there driving
21 under suspension who won't have a license in their
22 pocket because they can't get it renewed and can't
23 get the actual physical license in their
24 possession.

25 So I think there are ways that this is

1 effective and will go at the problem.

2 The criminal side needs to throw more
3 effort at it, you're right.

4 REPRESENTATIVE DALEY: I'm not trying to
5 throw mud on your proposal here, but I was Mayor
6 for eight years and my cops had more important
7 things to do than to continue to chase around
8 people that really in essence -- I mean the way you
9 catch them is you pull them over for another
10 citation, you run a check and then you've caught
11 them.

12 The police officers today on the street,
13 especially in Philadelphia, have more important
14 things to do than pull people over for traffic
15 citations, quite honestly, and I really don't
16 believe by adding two years you are going to have
17 better enforcement.

18 I think you are just going to have more
19 problems. I'm not saying I'm opposed to the
20 proposal; I'm just offering some arguments here
21 that need to at least be heard and discussed.

22 CHAIRMAN CALTAGIRONE: Do we happen to
23 have a counselor from the City of Philadelphia?

24 REPRESENTATIVE MANDERINO: I'm just
25 listening.

1 CHAIRMAN CALTAGIRONE: Just listening.
2 How about counsel for the Committee
3 and --

4 REPRESENTATIVE MANDERINO: However, if
5 you help us solve our insurance problem in
6 Philadelphia, we can probably help get those
7 numbers down on people driving without licenses,
8 because I think -- I mean with suspended licenses,
9 because I think that's where a lot of it comes
10 from.

11 REPRESENTATIVE DALEY: Annexation?

12 REPRESENTATIVE MANDERINO: Pardon me?

13 REPRESENTATIVE DALEY: Annexation.

14 BY MS. DALTON:

15 Q Mr. Heaton, if I understand you
16 correctly, what the law currently says is if we
17 don't have the adjudication in its final
18 disposition within two years the person goes free;
19 is that right?

20 A It says no action shall be taken or
21 proceeding held more than two years from the date
22 of the offense.

23 Q Isn't it fair to say that the practical
24 effect is if we get somebody before a District
25 Justice within two years and they appeal it and

1 they don't go into court, Court of Common Pleas
2 within that time frame, they are off the hook; is
3 that right?

4 A That's when the Jennanga case says, yes.

5 Q Then the language --

6 A But that's not what the Quinn case says.

7 The Quinn case says if that delay in the
8 Common Pleas Court is attributable to them, that it
9 tolls the statute.

10 Q Okay, okay.

11 And the language that you are proposing
12 to add, an additional two years to four years, I
13 just want to be clear that -- what effect that
14 would have.

15 Would that mean that if a person got into
16 court, if we caught somebody within four years,
17 would that toll the statute, or would we have to
18 have the disposition final?

19 A You would have to have the disposition
20 final within four years.

21 Now it may well be that --

22 Q It means all appeals have run?

23 A The Quinn case might be invoked there by
24 the Commonwealth to say that even the four years
25 isn't an absolute bar because the delay was the

1 Defendant's fault.

2 Q Okay.

3 But in other words there has to be a
4 final disposition within four years; all appeals
5 must have run?

6 A It doesn't say that.

7 Q No, but under the language you are
8 proposing?

9 A It doesn't say that.

10 I would think that four years should be
11 enough time, and you may well feel that you want to
12 amend it again.

13 Q Right.

14 I guess where I am confused --

15 MR. MUSTIN: It says the four years only
16 apply to the issuing authority who is the District
17 Justice. It doesn't apply to any Appellate Courts.

18 MS. DALTON: Okay.

19 MR. HEATON: Under my proposal, if it
20 comes out of the District Justice's office by an
21 appeal to Common Pleas Court within four years,
22 then the statute is met.

23 MS. DALTON: Which is the normal way the
24 statute of limitations is tolled, say on the civil
25 side, as long as you serve process within a certain

1 amount of time?

2 MR. HEATON: Yes.

3 BY MS. DALTON:

4 Q So this does change the law, then?

5 A Yes.

6 Q Okay.

7 BY REPRESENTATIVE MANDERINO:

8 Q I'm just confused.

9 If the problem is with the statute as
10 currently being written, completion within two
11 years, why are we still staying with the completion
12 type of language?

13 Why aren't we just saying commenced
14 within two years, which then keeps the burden on
15 the Commonwealth to act timely but doesn't catch
16 you on the rear end if somebody else delays?

17 Why are we still staying with the notion
18 of completion if that's where the catch 22 is?

19 A Well, that's where the catch 22 is, but
20 the only reason in answer to that, the only reason
21 I can think of for leaving this in is we are still
22 going to have the District Justices out there who
23 are going to have these more than two year old, or
24 more than four year old citations piling up in
25 their files and they want some mechanism to be able

1 to purge them or terminate them.

2 As it stands right now, this is the only
3 method of doing it.

4 Q All right.

5 So you are saying the completion date
6 allows the purging of old and not timely cases but
7 right now a two year purge is too short?

8 A Yes.

9 Q In your estimation?

10 A Yes.

11 Q Okay.

12 MR. ANDRING: I can understand why you
13 would have such a concern about this two-year
14 period being applied to an appeal to Common Pleas
15 Court. I mean that is unreasonable I think on its
16 face to complete the D.J. proceedings and then go
17 into Common Pleas Court on a de novo appeal and get
18 that all done within two years is really pressing
19 it.

20 On the other hand, there apparently is a
21 problem in Philadelphia.

22 In most of the rest of the state that I
23 am familiar with, if you get a traffic ticket and
24 you don't pay it, the District Justice sends out
25 the Constable and they come and arrest you.

1 I can't understand why that can't be done
2 within three years. I mean I think it's rather
3 ridiculous that four years after getting a Citation
4 you can be sitting in your living room and a
5 Constable comes knocking on your door to take you
6 to the District Justice after they let it sit there
7 for four years.

8 I really can't reconcile that in my mind.

9 If there is a problem in Philadelphia, I
10 don't know how they handle these in Traffic Court
11 in Philadelphia; they don't have Constables. I
12 don't know if they are using all of the police
13 officers or what, but if there's a problem with the
14 system there, then maybe that ought to be
15 addressed. Maybe they ought to use Constables; I
16 don't know.

17 MR. MUSTIN: They historically do not use
18 Constables in other parts of the state. Very
19 rarely are they used.

20 What is happening is when the Vehicle
21 Code was enacted back in '76, it provided for as
22 Mr. Heaton says, the provisions of Section 1533,
23 failure to respond to a citation, what happens is
24 the District Justice notifies the Defendant that he
25 hasn't responded to this Citation according to

1 court rules, general rules, and he is supposed to
2 give the Defendant fifteen days in which to
3 respond. If he doesn't respond within those
4 fifteen days, he then sends a Notice to the
5 Department to initiate suspension of the license.

6 They feel that that works better in
7 getting a hold of the person rather than having a
8 Constable going out knocking on doors looking for
9 somebody, because the Constable knocks on the door,
10 asks for the person and they say nobody lives here.

11 I mean people become attuned in how to
12 avoid Citations.

13 MR. ANDRING: That is done to enforce
14 parking tickets.

15 One article even mentions Philadelphia is
16 collecting 70 or 80 percent of their parking
17 tickets and Constables are used all the time to
18 collect parking tickets.

19 MR. MUSTIN: They don't use Constables
20 there, they use Parking Authority --

21 MR. ANDRING: I don't care if there
22 aren't Constables in Philadelphia. In the rest of
23 the State they use Constables to collect tickets.

24 MR. MUSTIN: They don't use them --

25 MR. ANDRING: They come out to your

1 house. They have all of their warrants and they
2 say you owe \$600 in parking tickets; you pay it now
3 or we go to court.

4 MR. MUSTIN: If they can actually find
5 you.

6 MR. ANDRING: They do.

7 MR. MUSTIN: Well, people historically
8 when you knock on the door will say I'm sorry, he
9 doesn't live here.

10 We find that when the State Police go out
11 to get a driver's license.

12 MR. ANDRING: But I'm saying this one
13 newspaper articles makes it clear. They are
14 collecting the parking tickets in Philadelphia.
15 What they aren't collecting are the moving fines.

16 Now apparently they have a system that
17 works for parking tickets.

18 You know, I think Pete had a point. I
19 don't see where you are going to really solve
20 anything by doing this. You are just going to drag
21 it out for another two years and you are not going
22 to collect any more than you were collecting
23 before.

24 If the problem is these people are just
25 ripping up the tickets, you obviously need a new

1 system to bring them in. Your suspension system
2 isn't working.

3 MR. MUSTIN: Well, on the parking
4 violations, one reason they are able to collect
5 those is they boot the vehicle or they tow it. I
6 mean they have some incentive to make sure that you
7 pay up. There is no similar incentive on the
8 driver licensing side.

9 MR. ANDRING: Well, maybe that's what we
10 need then is a similar incentive. I mean if you
11 are actually serious about collecting the money.

12 I just don't see where you are going to
13 get any significantly increased amount of money by
14 stretching this out to four years.

15 What's the difference going to be? I
16 just can't --

17 MR. HEATON: You are eliminating the
18 incentive for people to avoid the Constable or
19 avoid the police officer with the warrant for two
20 years.

21 MR. ANDRING: They would just avoid them
22 for four years.

23 MR. HEATON: Well, they have become very
24 successful in avoiding them for two years and then
25 they are going in and having the Citations

1 dismissed, and that is not a proper result.

2 MR. ANDRING: No, but I suspect they are
3 not avoiding them so much as just nobody is making
4 any effort to go out after them.

5 MR. HEATON: It's a combination of the
6 two.

7 MR. ANDRING: And if they are not going
8 after them in two years, they are not going out
9 after them in four years.

10 I mean I certainly understand your point,
11 but if the idea is to increase the enforcement and
12 get more revenue, I think you have to address the
13 reason as to why you are not collecting them right
14 now.

15 And obviously, at least in Philadelphia,
16 there doesn't seem to be much effort to collect
17 these, and I don't think increasing to two years
18 across the board is going to result in more money
19 coming in.

20 MR. HEATON: The intent of this provision
21 in the very first place going back to 1976, was to
22 allow Magistrates, J.P.'s, a means of terminating
23 prosecutions which had no chance of being completed
24 and the money collected. That was the intent of
25 it. It wasn't to allow people a safe haven if they

1 could avoid a writ server for two years.

2 That's what it's evolved into and I think
3 that's what this Bill has the ability to terminate,
4 particularly in the case of the serious offenses.

5 I mean we have a traffic safety interest
6 here. People who race on the highway and elude a
7 police officer and driver under suspension and the
8 like shouldn't be able to completely walk away from
9 that. And not only the conviction and the fine up
10 to a thousand dollars, but the license suspension.

11 These are all serious offenses that go
12 into the Habitual Offender Act. I mean they
13 shouldn't be able to walk away from that just by
14 avoiding the criminal authorities for two years;
15 it's just not right.

16 MR. ANDRING: I agree with you they
17 shouldn't, but I also think there is an obligation
18 on the criminal authorities to attempt to process
19 these things in an expeditious manner. And I
20 suspect that is more of your problem than it is
21 that you have all of these people out there dodging
22 the law enforcement authorities.

23 MR. HEATON: That's the problem.

24 The documents are being transmitted to
25 PennDOT and we are suspending the license and

1 people are ignoring it and driving under
2 suspension.

3 Why don't you give some incentive to the
4 Constables, perhaps giving them more of a fee, or
5 more of a share of the money collected to go out
6 and find these people?

7 Maybe that's a way of doing it.

8 MR. ANDRING: I think that might be a
9 good idea.

10 MR. HEATON: Maybe you should get some
11 more Constables into the system. Maybe that's what
12 -- why don't you talk to Philadelphia Traffic Court
13 and ask them why the parking violations are being
14 treated more seriously than some of the serious
15 moving offenses?

16 CHAIRMAN CALTAGIRONE: If I could
17 interject here, I understand you don't have
18 Constables in Philadelphia like they do in the rest
19 of the State.

20 Is it writ servers or Sheriff's Deputies?

21 REPRESENTATIVE MANDERINO: That do what?

22 CHAIRMAN CALTAGIRONE: That do the
23 service in Traffic Court.

24 REPRESENTATIVE MANDERINO: Traffic Court
25 is the wretched computer.

1 MR. MUSTIN: The Parking Authority has
2 their own enforcement personnel that go out for
3 parking violations.

4 CHAIRMAN CALTAGIRONE: With the City of
5 Philadelphia parking violations?

6 MR. MUSTIN: Yes.

7 CHAIRMAN CALTAGIRONE: Does it cover the
8 State?

9 MR. MUSTIN: No, they are strictly City
10 of Philadelphia parking violations.

11 MR. HEATON: So you can ignore them with
12 impunity except for PennDOT suspending your
13 license.

14 CHAIRMAN CALTAGIRONE: And evidently from
15 what Counsel Andring is saying, they are doing a
16 pretty good job at collecting that money for the
17 City of Philadelphia but not for the State of
18 Pennsylvania as it applies to State violations.

19 MR. MUSTIN: Well, for the State and the
20 City of Philadelphia they get half the money.

21 CHAIRMAN CALTAGIRONE: Yes.

22 And I just noticed this one article that
23 said --

24 MR. MUSTIN: That's money they are not
25 getting today.

1 CHAIRMAN CALTAGIRONE: Parking tickets,
2 they have -- I think it said a 76 percent
3 collection rate on the parking tickets.

4 MR. MUSTIN: I mean if you look at the
5 one article here, they talked to the computer
6 liaison at the Traffic Violations Bureau in Chicago
7 and he says that a two-year statute of limitations,
8 and he's quoted, wow, I think I'll move to
9 Philadelphia.

10 I mean he seems to feel that that is
11 ludicrous, two years.

12 What Mr. Heaton said about the fact that
13 at least it should be limited to the issuing
14 authority, surely it shouldn't apply to appeals.

15 CHAIRMAN CALTAGIRONE: You feel that this
16 is going to be one of the tools that would better
17 equip you at least to try and go after it, but I
18 think Counsel Andring's point is even with the
19 additional time, how do we get, or who do we get to
20 go out and really make the collections and do the
21 enforcement?

22 And what inducement do we add to it? I
23 mean if we can patch this area of the law that you
24 are addressing here today, we also have to take a
25 look at how do we patch the other part that Bill

1 brought up.

2 MR. HEATON: You can't do one without the
3 other.

4 I mean with a two-year statute, you are
5 wasting your time empowering people and giving them
6 a cut of the take and all of the rest because they
7 are not going to get there in two years.

8 These people have an incentive to avoid
9 them.

10 Four years I don't think it's that easy.
11 If they are here in the State, you could get them
12 in four years.

13 CHAIRMAN CALTAGIRONE: We are talking
14 about graded offenses?

15 MR. HEATON: And I also think that if
16 they didn't have a driver's license in their
17 pocket, whether it be suspended or not suspended,
18 they would be more likely to come forward and pay
19 because they'd pay the fine in order to get their
20 driver's license back.

21 CHAIRMAN CALTAGIRONE: Do you have any
22 suggestions on how to improve this system of
23 collection?

24 MR. HEATON: I haven't thought about it,
25 but I'm thinking that perhaps the Constables --

1 Philadelphia Traffic Court probably needs some
2 incentive to hire Constables, number one, and then
3 the Constables need some incentive in order to go
4 out and collect the money.

5 Now I'm not sure what amount of money
6 that is owed is good versus what is bad, but
7 assuming there is a certain amount of it there that
8 is good, perhaps the Constable needs to get a fee
9 based on total collections, not just on an
10 individual ticket because if it's based on an
11 individual ticket, then all his effort if he
12 doesn't succeed, is down the tubes.

13 You know, you need to make an incentive
14 which is more in tune with how difficult it is to
15 collect.

16 CHAIRMAN CALTAGIRONE: Maybe what we
17 really need to do is sit down and talk with some of
18 the people of Philadelphia Traffic Court.

19 We had taken a tour down there a year or
20 two ago. We were very impressed with their
21 operation, with their computerization, brand new
22 building and the way it looked like it was supposed
23 to function.

24 They were a little short of staff. That
25 was one of the problems at that time. I don't know

1 if anybody here was with us on the tour. It was a
2 very impressive tour and we looked very closely
3 with the Traffic Court Judges down there and we had
4 a pretty decent relationship with the folks down
5 there.

6 Maybe what we need to do is communicate
7 with them to see exactly what thoughts they have of
8 improving that system of collections.

9 MS. DALTON: Mr. Chairman, it might be a
10 good idea to try to get them on the witness list.

11 CHAIRMAN CALTAGIRONE: That's an
12 excellent idea.

13 If you would -- I'm sure that they would
14 cooperate with us. They have given us very good
15 cooperation in the past on issues that we have
16 dealt with, so we can certainly address that issue.

17 Are there other questions, comments?

18 (No response.)

19 Gentlemen, thank you very, very much. I
20 thought this was a very good exercise in getting
21 the air cleared on this particular issue and we'll
22 take these thoughts into consideration.

23 MR. HEATON: Thank you.

24 CHAIRMAN CALTAGIRONE: Counsel is going
25 to talk to the prime sponsor of the Bill.

1 I imagine you worked with Matt initially
2 in addressing this issue?

3 MR. MUSTIN: We did not.

4 This I understand is his own initiative.
5 I understand he may have talked to somebody in the
6 Department, but I'm not clear at this point who he
7 talked to?

8 CHAIRMAN CALTAGIRONE: All right.

9 What we would like to be able to do is
10 talk with Representative Wright and see if he would
11 agree with your suggestion on the Amendment and at
12 the same time also try to work out something to
13 deal with the collection issue.

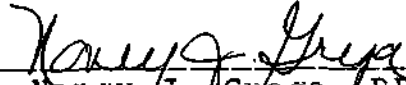
14 MR. HEATON: That's a good idea.

15 CHAIRMAN CALTAGIRONE: Thank you for your
16 time.

17 (The hearing concluded at 10:50 a.m.)

18 - - -

19 I hereby certify that the proceedings and
20 evidence taken by me in the above-entitled matter
21 are fully and accurately indicated in my notes and
22 that this is a true and correct transcript of same.

23
24 
25 Nancy J. Grega, RPK/slg