

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

\* \* \* \* \*

House Bill 2078

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House Judiciary Committee

Main Capitol Building  
Room 140, Main Capitol  
Harrisburg, Pennsylvania

Tuesday, July 14, 1998 - 1:10 p.m.

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BEFORE:

Honorable Thomas Gannon, Majority Chairperson  
Honorable Jerry Birmelin  
Honorable Brett Feese  
Honorable Timothy Hennessey  
Honorable Robert Reber  
Honorable Thomas Caltagirone, Minority Chairperson  
Honorable Peter Daley  
Honorable Harold James  
Honorable Kathy Manderino

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ALSO PRESENT:

Brian Preski, Esquire  
Majority Chief Counsel

Judy Sedesse  
Majority Administrative Assistant

David L. Krantz  
Minority Executive Director

Paul E. Parsells  
Minority Executive Director  
House Transportation Committee

Roseann Cadau  
Minority Administrative Assistant to  
Representative Battisto

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1                   ACTING CHAIRPERSON CALTAGIRONE:

2                   We'll get started with the hearing today. I'm  
3                   Tom Caltagirone, Democratic Chair. My  
4                   colleague, Tom Gannon, Republican Chair, will  
5                   be joining us shortly. He's on the turnpike  
6                   and will be here in a little bit.

7                   I'd like the members of the staff to  
8                   please introduce themselves for the record.  
9                   Then Chief Counsel Preski will be reading a  
10                  statement.

11                  REPRESENTATIVE DALEY: I'm  
12                  Representative Daley from Washington and  
13                  Fayette County.

14                  MR. PARSELLS: Paul Parsells,  
15                  Executive Director of the House Transportation  
16                  Committee.

17                  REPRESENTATIVE REBER: Representative  
18                  Bob Reber from Montgomery County.

19                  REPRESENTATIVE FEESE: Representative  
20                  Brett Feese from Lycoming County.

21                  MR. PRESKI: Brian Preski, Chief  
22                  Counsel for the committee.

23                  If I may, Representative Godshall was  
24                  not able to be with us today. He is the prime  
25                  sponsor of the legislation. He has a brief

1 statement that he has asked to be read into the  
2 record.

3 "Members of the House Judiciary  
4 Committee, I apologize for not being able to be  
5 with you today in person, but I appreciate  
6 having the opportunity to present testimony.

7 "Upgrading our seat belt law from  
8 secondary enforcement to standard enforcement  
9 is a law whose time has come. We deal in the  
10 legislature on a regular basis with issues  
11 affecting the lives and safety of our  
12 constituents. We establish staffing levels and  
13 safety standards for our nursing homes, day  
14 care centers and hospitals. For health and  
15 safety reasons we regulate the use of  
16 pesticides, drugs and alcohol usage, and now we  
17 will be addressing the issue of safety in our  
18 schools, all through further regulation.

19 "In 1996, 25 children were killed in  
20 classrooms in the United States. In that same  
21 year, approximately 200 children were killed in  
22 motor vehicle crashes on Pennsylvania's  
23 highways. Utilizing PennDOT's statistics,  
24 close to 100 children could have survived had  
25 standard enforcement of seat belt use been in

1 force.

2 "Some may argue that they have a  
3 personal right to risk injury by not wearing a  
4 seat belt, but the thousands of preventable  
5 injuries all cost monies that society, namely  
6 taxpayers, must pay. The preventable  
7 fatalities, injuries, head trauma cases, et  
8 cetera, et cetera, are at your and my expense.

9 "I recently appeared with Doctor  
10 Ricardo Martinez, Administrator for the  
11 National Highway Traffic Safety Administration,  
12 at a NASCAR press conference promoting seat  
13 belt use. He said it best, your freedom ends  
14 where my wallet begins. The insurance and  
15 medical costs for unbelted crash victims  
16 amounts to 14.3 billion a year. PennDOT has  
17 stated, based on their own statistics, that if  
18 everyone buckled up, the savings would be 400  
19 lives and thousands of injuries.

20 "A 15 to 20 percent increase in seat  
21 belt usage is typical following a state's  
22 upgrade to standard enforcement. PennDOT  
23 estimates that the economic impact on not  
24 buckling up in Pennsylvania costs our citizens  
25 in excess of 2.2 billion annually. Eighty-five

1 percent of the injury crash costs are directly  
2 borne by society in the way of increased  
3 insurance cost, health costs, and welfare  
4 benefits, to mention just a few.

5 "Highway deaths in Pennsylvania  
6 increased by six percent in 1997 over 1996  
7 figures. Interesting enough is the statistic  
8 that speeding was a factor in only two  
9 additional fatalities, while fatalities  
10 relating to those not buckled up increased 19  
11 percent or an additional 113 fatalities over  
12 1996. These figures have lead Transportation  
13 Secretary Brad Mallory to indicate that 400 of  
14 these lives could have been saved if the seat  
15 belt, you paid for when you bought your car,  
16 was fully utilized.

17 "I do want to react to a few of the  
18 anti-seat belt arguments I have seen and heard.  
19 The arguments of a spokesman from the ACLU that  
20 the decision of what you do in your own car  
21 should be left up to you and we don't need big  
22 brother telling us that we should do something  
23 because it is good for us is ludicrous. The  
24 Pennsylvania Consolidated Statutes Title 75  
25 Vehicle Code Book dictates rules and



1 regulations to be followed on our highways, and  
2 it's two inches thick. It deals with speed  
3 limits, the use of turn signals, headlights,  
4 safety inspections, et cetera, et cetera. Why  
5 not do away with all of these infringements and  
6 just turn everybody loose?

7 "The ACLU says that the provision in  
8 the legislation that would allow the evidence  
9 of not wearing a seat belt to be entered in any  
10 civil action is an attempt to reduce damage  
11 awards. The real reason for the inclusion of  
12 the provision is to allow a jury of  
13 Pennsylvania citizens the opportunity to know  
14 all the facts as they debate a crash scene.

15 "If a person breaks our current seat  
16 belt law and does not wear a seat belt, then  
17 let the jury decide the damages based on all  
18 the facts. By hiding evidence, it is more  
19 likely that the person who broke the law will  
20 be rewarded with a larger award. That impacts  
21 all motorists and we all pay for those awards  
22 through higher insurance premiums.

23 "Lastly, every state that embraces  
24 this legislation encounters the argument of  
25 police harassment of minority motorists. I

1 support Representative Harold James for  
2 introducing legislation in the House to study  
3 police harassment of minority motorists.  
4 However, according to the National Safety  
5 Council, there has been no reported incidents  
6 of seat belt violation police stops associated  
7 with police harassment. This legislation  
8 simply saves lives.

9 "If common sense doesn't come into  
10 play, legislation eventually will. The trial  
11 lawyers have thrown out yet another argument;  
12 the contend that an innocent child may have a  
13 monetary award reduced in a civil action if the  
14 fact were known that the child was not  
15 restrained or not properly restrained. They  
16 add that the responsibility lies with the  
17 driver and not the child. This, in fact, could  
18 be true, but the reality is that, standard  
19 enforcement will save hundreds of lives and  
20 prevent thousands of injuries from ever  
21 happening.

22 "When the General Assembly passes  
23 standard enforcement and the Governor signs  
24 this legislation, we will have far fewer awards  
25 to worry about because there will be far fewer

1 awards handed out.

2 "States that have standard  
3 enforcement average about 80 percent usage.  
4 Today, 14 states and the District of Columbia  
5 have standard enforcement. New York and  
6 Maryland have standard enforcement of seat  
7 belts use. New Jersey is halfway there,  
8 awaiting Senate action.

9 "The Governor of Delaware has  
10 recently called for standard enforcement after  
11 a series of accidents resulted in the violent  
12 deaths of a number of young people, all ejected  
13 from their vehicles. Pennsylvania's seat belt  
14 usage has decreased from 71 percent to 65  
15 percent. Standard enforcement would almost  
16 automatically increase the numbers to between  
17 80 percent and 90 percent.

18 "The National Highway Traffic Safety  
19 Administration and NASCAR have just kicked off  
20 a seat belt awareness campaign to capture the  
21 attention of the 31 percent of the motorist who  
22 still don't buckle up. Unless you have been in  
23 a crash, no one knows better than a NASCAR  
24 driver the value of a seat belt.

25 "There is no question that the

1 carnage on our highways will have to be  
2 addressed. The question is, as a mother who  
3 lost a daughter ejected from a car recently  
4 asked me, how many more Pennsylvanians will die  
5 or must die before you will act? The mother  
6 felt very strongly that with standard  
7 enforcement her daughter would have been in a  
8 seat belt and alive today."

9 Representative Godshall again  
10 expresses his concern that he was not able to  
11 be here today.

12 ACTING CHAIRPERSON CALTAGIRONE:

13 Thank you, Counsel Preski. We have had some  
14 additional members join the panel. If they  
15 would just please introduce themselves for the  
16 record.

17 REPRESENTATIVE BIRMELIN:

18 Representative Birmelin, Wayne County.

19 REPRESENTATIVE HENNESSEY:

20 Representative Tim Hennessey, Chester County.

21 REPRESENTATIVE MANDERINO: Kathy

22 Manderino, Philadelphia County.

23 ACTING CHAIRPERSON CALTAGIRONE:

24 Thank you. We'll start the testimony with Tim  
25 Shollenberger, Vice President, Pennsylvania

1 Trial Lawyers and Mark Phenicie, Legislative  
2 Counsel for the Pennsylvania Trial Lawyers.

3 MR. PHENICIE: Thank you very much,  
4 Chairman Caltagirone. At this time I would  
5 like to introduce the Vice President of the  
6 Pennsylvania Trial Lawyers and a recognized  
7 leading expert on auto insurance issues in  
8 Pennsylvania. Tim Shollenberger.

9 MR. SHOLLENBERGER: Thank you, Mark.  
10 Good afternoon, Chairman Caltagirone, and  
11 members of the House Judiciary Committee. I'd  
12 like to read a brief statement and then make a  
13 few editorial comments if I might, and then you  
14 can direct some questions to Mark and I.

15 Thank you for giving the Pennsylvania  
16 Trial Lawyers Association the opportunity to  
17 testify on House Bill 2078.

18 The Pennsylvania Trial Lawyers  
19 Association unalterably opposes this bill. We  
20 believe that changing the law in this area will  
21 insert significant additional cost in the  
22 resolution of this type of case. Jurors will  
23 not be able to assess the difference without  
24 expert testimony. Biomechanical engineers are  
25 extremely expensive.

1           The effect of this language will be  
2           to create a scientific debate on what  
3           percentage of an injury caused by a negligent  
4           defendant might have been prevented by a seat  
5           belt or child restraint system.

6           This conflicting testimony would  
7           raise the transaction costs related to  
8           resolution of claims; thereby increasing the  
9           cost of premiums to consumers and reducing the  
10          amount of recovery for injured parties. This  
11          language would also provoke debate at the  
12          claims level where the threat of raising this  
13          defense will be used, so that claims which  
14          ordinarily are resolved efficiently will become  
15          embroiled in litigation.

16          The resolution of claims would also  
17          be impacted as insurers debate whether the  
18          treatment is causally related to the collision  
19          itself or the nonuse of the restraint system.  
20          Private health plans or workers' compensation  
21          carriers asserting subrogation claims against  
22          auto tort recoveries would be less likely to  
23          recover amounts paid for collision-related  
24          medical treatment which is later attributed to  
25          the nonuse of a restraint system to the

1           detriment of its policyholders.

2                   Proponents of this change may argue  
3           that an individual who strikes a windshield in  
4           an accident would be subject to this section  
5           and the difference could be easily proven.  
6           However, it would be difficult or impossible to  
7           say what other injuries would have been caused  
8           by a force violent enough to throw the  
9           individual through a windshield had the  
10          restraint system been in use. Belts  
11          themselves, of course, can cause serious  
12          injury.

13                   In addition, the violent force  
14          causing sudden acceleration and deceleration  
15          can result in crushed vertebrae and ruptured  
16          cervical disk. Such a discussion would extend  
17          the argument from a basic tort claims such as,  
18          what injuries were caused by the defendant's  
19          negligence--and I might add, you'd also need to  
20          establish substantial factor--to what injuries  
21          were caused by the defendant's negligence, then  
22          subtract the portion of those injuries that  
23          might (sic) have been caused had the plaintiff  
24          been wearing the seat belt; further, to what  
25          injuries were caused by the defendant's

1 negligence, subtracting those injuries which  
2 were caused by the plaintiff's failure to wear  
3 a seat belt; but then add the injuries the  
4 plaintiff would have suffered if he or she had  
5 been wearing a seat belt, which I'm not sure I  
6 even follow.

7 Any evidence that would be associated  
8 with determining in a given case whether  
9 certain injuries would or would not have been  
10 caused by a seat belt and other injuries might  
11 have been prevented by the use of the seat belt  
12 is highly speculative at best.

13 Clearly, it will increase the  
14 transaction costs to the detriment of both the  
15 injured consumer and the insurance company.

16 Such a bill is also unfair to the  
17 innocent child who may or may not be belted  
18 into a restraining seat. Should such an  
19 individual have reduced rights because of this  
20 legislation and because his parent was in a  
21 hurry and/or had not purchased the necessary  
22 seat?

23 Finally, there is absolutely no  
24 statistical information that we are aware of  
25 that would suggest that people would more



1           likely wear their seat belt if they knew that  
2           their claim for damages would be limited if  
3           they were not wearing a seat belt. Whether or  
4           not to wear a seat belt is more a matter of  
5           public education and habit. I will  
6           editorialize on that in a moment.

7                         There is absolutely no incentive  
8           provided by this language. We believe it is  
9           essentially language which will increase the  
10          cost of litigation, reduce the recovery of  
11          injured consumers, including innocent children,  
12          and benefit only insurance companies writing  
13          automobile insurance policies and those auto  
14          manufacturers who are lobbying for this  
15          legislation.

16                        If I may, I come here not only as a  
17          lawyer but as a father of an 11-year old son  
18          and a 7-year old daughter. I have some  
19          perspective as a father as well. I can tell  
20          you that I was listening to Representative  
21          Godshall's statement. I think it's good that  
22          we're debating this issue. It's a very  
23          important issue. It deserves a lot of debate.  
24          But, I was struck by the statement that juries  
25          and judges need to know all the facts and this

1           notion of hiding evidence. What struck me was,  
2           this certainly isn't a situation that's  
3           exclusive to this issue.

4                     I'd like to give the committee a  
5           couple of examples of that, if I might. For  
6           example, if there's a dangerous condition and  
7           then the person who is theoretically liable,  
8           subsequently fixes that condition, that's  
9           called a subsequent remedial measures. Those  
10          are not admissible, because there are public  
11          policy reasons not to admit that evidence.

12                    In the workers' compensation realm,  
13          if you have an injury that is caused by a  
14          fellow co-employee or is on the job, I think we  
15          all know what we have. We have exclusivity,  
16          don't we? And the exclusivity provision for  
17          the workers' compensation law will prevent a  
18          suit. In fact, it even extends to borrowed  
19          service. People who are hired by temporary  
20          employment agencies are not paid by those  
21          agencies, and then are injured at the workplace  
22          where they are sent to work, even that person  
23          gets the protection of the exclusivity  
24          provision. And, obviously, there are public  
25          policy reasons for that.

1                   The third example I would give you  
2                   is, there's certain presumptions that relate to  
3                   the negligence of children. Under  
4                   Pennsylvania's law as it is now constructed,  
5                   children under the age of seven is conclusively  
6                   presumed to be incapable of negligence. A  
7                   child between the ages of seven and 14, it's a  
8                   rebuttable presumption, and a child 14 and  
9                   above gets the same evidentiary standard as an  
10                  adult. So, to say that there's no precedent  
11                  for valid public policy supporting the  
12                  exclusivity -- not admitting certain evidence,  
13                  really, it's not an unprecedented thing, is the  
14                  point I wanted to make.

15                  The point I said I wanted to also  
16                  editorialize about was this notion of  
17                  education. I happen to serve on the Board of  
18                  Directors of the local chapter of the American  
19                  Heart Association. In conjunction with the  
20                  state agency, the drug and alcohol agency of  
21                  the state, we do a lot of work on educating  
22                  children in the schools.

23                  What we do is, we put on mock trials  
24                  and smoking trials where we actually have the  
25                  principal and different people on trial. We

1           arrest them and we charge them with not doing  
2           enough to prevent smoking. You'd be amazed of  
3           the impact that this has on those children.

4                     Anecdotically I can tell you, and I  
5           will admit to you that I didn't wear a seat  
6           belt until my son who is now 11--he was six  
7           years old, in the first grade--he said dad, we  
8           learned in school about seat belts. Put your  
9           seat belt on. Then I put my seat belt on.

10                    I guess what I'm trying to say is, I  
11           think on first blush, you know, to say we're  
12           going to put a civil penalty to those who are  
13           injured by seat belt, that knee jerk seems like  
14           it's something to debate. But when you look at  
15           all the potential cost, the additional cost of  
16           litigation, biomechanical engineers cost  
17           thousands of dollars, and they're going to come  
18           on both sides because seat belts cause injury.  
19           We all know that.

20                    I also was struck -- I had a  
21           conversation once with a coroner because I was  
22           handling a death case. It so happened that the  
23           person who was killed, they were severed by the  
24           seat belt. He taught me something. He said,  
25           Tim, the key is not so much that you have the

1 seat belt on. You have to wear it properly.  
2 He taught me, you have to wear it down over  
3 your hips. He said it's a lot better to break  
4 your hip bone and walk away from the accident.  
5 So then, does the plaintiff then call an expert  
6 to say in a real violent collision, had they  
7 been wearing seat belts they might have died?  
8 I mean, it gets really complicated.

9 Then, is the playing field level when  
10 one side can get experts in a multitude of  
11 cases, while the plaintiff can only get an  
12 expert in one case, you see, in that particular  
13 case, where in many of these cases the  
14 plaintiffs front the cost -- not front the  
15 cost, but the cost come out of their recovery.  
16 You have to ask yourself all these questions.

17 The other thing I would tell you as a  
18 father, and then I'll be done and open it up  
19 for questions, I don't know how many of you  
20 know -- Do you know the device called the Safe  
21 Fit, S-A-F-E F-I-T? There's this -- I call  
22 them tweeners. They're kids between the --  
23 They're older than four, but less than ten.

24 Did you ever see a seat belt on a  
25 child like that? Did you ever see where the

1           shoulder harness comes? It comes right under  
2           the neck. What the Safe Fit does, it readjusts  
3           that seat belt so that it fits better.

4                        So, what I'm trying to say to you is,  
5           there's a lot more to this issue than meets the  
6           eye. I think it's a good issue for good lively  
7           public debate, but I think just to make a knee  
8           jerk reaction here would be a big mistake.  
9           That's what I have to say on the issue.

10                      MR. PHENICIE: I have one comment to  
11           add to Mr. Shollenberger's statement today.  
12           One of your committee members, who is not  
13           present today, Representative Joe Petrarca used  
14           to work for Attorney General's Tort Division  
15           which, of course, is the Commonwealth defense  
16           in tort claims against the Commonwealth.

17                      If he were here today he would tell  
18           you, if this bill does progress to the floor,  
19           that the standard rate for a biomechanical  
20           engineer paid by the Commonwealth was \$2,000 an  
21           hour. If you're looking at a biomechanical  
22           engineer on either side of the issues, you  
23           certainly can see where that would indeed drive  
24           up the cost of litigation and the friction  
25           costs.

1                   Additionally, the evidentiary piece  
2                   was Senate Bill 1393, which was last session in  
3                   the Senate Transportation Committee, was not  
4                   reported out of committee, but during the  
5                   public hearing on Senate Bill 1393, a  
6                   representative of one of the auto manufacturers  
7                   testified under cross-examination that, indeed,  
8                   if Senate Bill 1393, or in this case House Bill  
9                   2078, would be enacted into law, indeed, the  
10                  court costs would increase for specifically the  
11                  reason I mentioned as quoted by Representative  
12                  Petrarca.

13                   CHAIRPERSON GANNON: Thank you, Mr.  
14                   Shollenberger and Mark Phenicie.  
15                   Representative Manderino.

16                   REPRESENTATIVE MANDERINO: No  
17                   questions.

18                   CHAIRPERSON GANNON: Representative  
19                   Hennessey.

20                   REPRESENTATIVE HENNESSEY: Thank you,  
21                   Mr. Chairman. Mr. Shollenberger, the proposal  
22                   that's before us could be easily separated; one  
23                   provision being, making seat belt use a primary  
24                   offense rather than secondary offense as it is  
25                   currently.

1           Then the second being the question of  
2           whether or not usage or nonusage of seats belts  
3           should be admissible evidence; whether that  
4           would be admissible in the litigation, if  
5           litigation were to occur.

6           If that second provision, which is  
7           not one of the things that is frequently talked  
8           about when this is advertised, this kind of  
9           proposal that is advertised; if that were to be  
10          deleted so the present law would be maintained  
11          and usage or nonusage of the seat belt would be  
12          not admissible in the subsequent litigation,  
13          would the association still be opposed? Do you  
14          have opposition to the principle of making seat  
15          belt usage a first offense or cited as a  
16          primary offense?

17                 MR. SHOLLENBERGER: I can answer you  
18                 this way. I think if you look at the current  
19                 law, I mean, which the trial lawyers did not  
20                 oppose, which does include the protection, the  
21                 preclusion of the admissibility of the civil  
22                 standards, we don't oppose that. So, I think  
23                 at the moment it is separated.

24                 I think as to whether or not it ought  
25                 to include a primary offense, we don't take any



1 strong position against it or for it. I think  
2 that's for others to decide.

3 MR. PHENICIE: I would say, we have  
4 never taken a vote specifically on whether or  
5 not non-wearing should be a primary offense or  
6 not. I would say probably, just as a sampling  
7 of our membership, we have a lot of -- and our  
8 association basically stands for the concept of  
9 individual rights. I would guess if I did a  
10 poll of our membership they would probably be  
11 opposed to that, although the association per  
12 se, Representative Hennessey, does not have a  
13 position.

14 I think another thing that was not  
15 mentioned here and will not be mentioned here  
16 is the concept that, while the legislation may  
17 talk about a 20 or 25 dollar fine, I think it's  
18 important the legislature and the public  
19 realize that it will not be \$25 out of their  
20 pocket. You will have court costs; you will  
21 have CAT Fund costs in addition to the language  
22 that is in the legislation.

23 Certainly, a number of legislators  
24 that I have spoken to privately said that their  
25 constituents would be very, very angry if they

1           were pulled over not wearing a seat belt and  
2           ended up with a hundred and two or a hundred  
3           and four dollar bill and would probably take it  
4           out on you if you were one of those  
5           individuals. As the association, we have no  
6           position on that issue.

7                    REPRESENTATIVE HENNESSEY: Is it fair  
8           to say then, if the evidentiary question was  
9           removed from that provision, the deletion of  
10          that provision was removed from the proposal,  
11          that you would withdraw your opposition to the  
12          bill, and at least at the present not having a  
13          position for or against the question of primary  
14          enforcement?

15                   MR. PHENICIE: I couldn't answer  
16          that, Representative. In all honesty, I  
17          couldn't answer that. I would have to take  
18          that in front of our policy committee.

19                   REPRESENTATIVE HENNESSEY: I  
20          understand. At this point your association  
21          hasn't dealt with that kind of question, that  
22          separation of these proposals within this bill?

23                   MR. PHENICIE: The only position we  
24          have addressed today has been opposition to  
25          House Bill 2078.

1 MR. SHOLLENBERGER: I can expand on  
2 that. I think when the prior bill was debated  
3 I think that was our position as well. That  
4 was the point I was trying to make.

5 MR. PHENICIE: This is the first time  
6 we've seen the two concepts molded into one  
7 bill. Certainly, House Bill 140 dealt only  
8 with the evidentiary standard. Senate Bill  
9 1393 was exclusively the evidentiary standard.

10 MR. SHOLLENBERGER: Yes, but I want  
11 to correct my friend here for just a second.  
12 At the time that the bill was last addressed,  
13 case law suggested that the seat belt defense  
14 was available, so we really did have to deal  
15 with both issues. What happened was, there was  
16 language included in the bill at that time so  
17 that the evidence was not admissible. In a  
18 sense the two were at that point tied, but  
19 there were tied in a sense that it was not  
20 legislation, you see. It was legislation and  
21 then case law because the way a statute works  
22 is, if you are found to have violated the  
23 statute, then that forms the basis for  
24 negligence and the concept being it's  
25 negligence per se.

1                   That's why it's really important in  
2 the drafting here, if what you want to do is  
3 truly separate, you really have to engraft back  
4 onto the bill the language that is currently in  
5 the statute. Do you follow what I'm saying?

6                   REPRESENTATIVE HENNESSEY: I do.  
7 Thank you. Thank you, Mr. Chairman. No other  
8 questions.

9                   CHAIRPERSON GANNON: Representative  
10 Daley.

11                   REPRESENTATIVE DALEY: Thank you, Mr.  
12 Chairman. I read your commentary and it seemed  
13 you are taking -- setting forth the argument  
14 it's going to go from what injuries were caused  
15 by the defendant's negligent act to a twofold  
16 step, which of those injuries may have been  
17 caused by the seat belt if the plaintiff was  
18 wearing that seat belt and what was not caused  
19 by the plaintiff not wearing that seat belt.  
20 Is that what you are saying? It would take  
21 that sort of two-step evaluation to determine  
22 the negligent standard?

23                   MR. SHOLLENBERGER: Let me give you a  
24 six-step process. If anybody has ever tried a  
25 case, they know that there is negligence, then

1           you must also prove that the negligence of the  
2           defendant was a substantial factor in causing  
3           the harm. It's not enough to just prove  
4           negligence. Even our own testimony doesn't  
5           really address the substantial factor issue.  
6           That's why I wanted to add that.

7                         If I'm driving down the road and a  
8           drunk driver hits my car down the road, not  
9           only do I have to prove under existing law that  
10          the drunk driver was negligent, but then I also  
11          have to prove that the drunk driver's  
12          negligence was approximate cause of the  
13          injuries, you see.

14                        Before, this legislation prohibited  
15          the admissibility of the evidence, that's how  
16          the seat belt defense would come in. You would  
17          come in and you are the defendant and you say,  
18          well, Mr. Plaintiff, you weren't wearing your  
19          seat belt. Therefore, the injuries that you  
20          sustained were not substantially caused by the  
21          drunk driver; they were substantially caused by  
22          the fact that you weren't wearing a seat belt.  
23          Therefore, that shifts the burden away from the  
24          drunk driver onto the person that was occupying  
25          the vehicle, including the children in that

1 vehicle.

2 What we're saying is, not only do you  
3 have negligence and substantial factor with  
4 regard to the defendant, but then you have  
5 whether or not -- the third and fourth issues  
6 are whether or not the failure to wear the seat  
7 belt was negligence on the part of the person  
8 who wore it, and then whether that negligence  
9 was a substantial factor. Then the fifth and  
10 sixth steps are, the plaintiff comes back and  
11 says, well, I would have received these  
12 injuries had I been wearing the seat belt and  
13 whether those were substantial factors.

14 So, you take a two-step process and  
15 you make it a six-step process. That's what we  
16 are alluding to in this testimony.

17 REPRESENTATIVE DALEY: Would it not  
18 be considered like an intervening factor as  
19 opposed to a substantial factor?

20 MR. SHOLLENBERGER: No. The law in  
21 Pennsylvania -- what we used to have was  
22 negligence and then we used to have a concept  
23 known as approximate cause, did the injuries  
24 approximately cause the harm. At least that's  
25 the way I learned it in back 1981 and the '70's

1 when I was a lawyer -- a lawsuit. In any  
2 event, the concept in Pennsylvania law,  
3 approximate cause was replaced by substantial  
4 factor. Believe me, that is a tough hurdle for  
5 a plaintiff in a civil case to overcome, that  
6 substantial factor hurdle.

7 Now you're going to jump negligence  
8 not once but three times and you're going to be  
9 jumping substantial factor. I can tell you,  
10 juries don't understand a lot of times. I have  
11 talked to a lot of them after trial. They have  
12 a hard time with that concept; even having to  
13 decide it once. You can imagine if they have  
14 to decide it three times within the context of  
15 the same case. It's tough.

16 REPRESENTATIVE DALEY: Thank you, Mr.  
17 Chairman.

18 CHAIRPERSON GANNON: Do you know  
19 whether or not -- Let me preface this with a  
20 remark. Several years ago--I'm going back to  
21 during the Reagan Administration--the Secretary  
22 of Transportation issued some kind of an  
23 executive order. Basically he said: The  
24 states with two-thirds of the population enact  
25 a mandatory seat belt law--and there was

1           several criteria, one being it had to be a  
2           primary offense--that the automobile industry,  
3           people that manufacture automobiles, which have  
4           been defined by the courts as inherently  
5           dangerous instrumentalities, that the  
6           automobile manufacturers would no longer have  
7           to provide for a lot of safety features in  
8           automobiles.

9                     At that time there was a lot of  
10           research going on with respect to the knobs and  
11           dials, the interior of the car, the resistance  
12           of the interior car to a skull. If you hit the  
13           interior of the car, the interior of the car  
14           would give before your brains were splattered  
15           all over the inside. That would kind of be  
16           (pause) left gut if we had a mandatory seat  
17           belt law. Do you know whether or not that  
18           executive order is still in effect?

19                    MR. SHOLLENBERGER: I'm sorry, Mr.  
20           Chairman. We could find that out for you if  
21           you'd like.

22                    CHAIRPERSON GANNON: That's all  
23           right. You don't have to find it out. We'll  
24           find it out eventually.

25                    MR. SHOLLENBERGER: I'm sorry, I



1 don't know.

2 CHAIRPERSON GANNON: Back then during  
3 the debate I felt that that was the key  
4 component because, it literally meant if we,  
5 Pennsylvania enacted a primary seat belt law,  
6 that the automobile manufacturers could make  
7 cars that were less safe. I think it's  
8 important --

9 MR. PHENICIE: This is almost the  
10 same line of logic as the cigarette  
11 manufacturers getting federal preemption with  
12 the warning patch, Mr. Chairman. It's the same  
13 sort of logic, I think.

14 MR. SHOLLENBERGER: He's thinking  
15 with me.

16 CHAIRPERSON GANNON: I didn't know  
17 whether you were aware of that. Let me ask a  
18 question. I think the answer is going to be  
19 self-evident, but I do want to get it on the  
20 record because I think it's important. Do you  
21 agree that seat belts can save lives and reduce  
22 injury?

23 MR. SHOLLENBERGER: Yes.

24 CHAIRPERSON GANNON: So we don't have  
25 any question about that.

1 MR. SHOLLENBERGER: No question about  
2 it.

3 CHAIRPERSON GANNON: That was the  
4 only question that I have. Does any other  
5 members have a question?

6 REPRESENTATIVE MANDERINO: Mr.  
7 Chairman.

8 CHAIRPERSON GANNON: Representative  
9 Manderino.

10 REPRESENTATIVE MANDERINO: Thank you.  
11 A couple of questions occurred to me during the  
12 dialogue. Mr. Shollenberger, you mentioned  
13 that there are devices out there. I think you  
14 called one brand name Sure (sic) Fit that  
15 helped to adjust a seat belt so it's not  
16 choking off the child. I also know that there  
17 are different kinds of devices out there that  
18 do the same for adults. I have myself been  
19 choked off, depending on where the seat belt  
20 comes from. Over the years I have used  
21 everything from little plastic clips that  
22 adjust where your seat belt hits, et cetera.

23 I'm pretty sure that the automobile  
24 manufacturers would tell you that was a  
25 modification of my use of the proper adjustment

1 of their seat belt, so therefore, by having  
2 done that I have rendered ineffective the  
3 safety features of their seat belt. You may  
4 have a different perspective from case law, but  
5 that's going to be my guess. Unless they  
6 manufactured that clip themselves and gave it  
7 to me, that that is going to make ineffective  
8 the whole seat belt issue.

9 My question is, put that in the  
10 context of a lawsuit where now we're using seat  
11 belt use and the effectiveness of the seat belt  
12 to work in a litigation situation, what happens  
13 to me as the injured party if either I had on  
14 my child one of these things that prevented  
15 them from being choked or I had on my own belt  
16 one of these clips that adjusted the -- across  
17 the shoulder restraint so it wasn't choking me  
18 in the neck?

19 MR. SHOLLENBERGER: That's an  
20 excellent -- That's really an excellent  
21 question. I could answer it two ways. It will  
22 probably play out, Representative Manderino,  
23 one of two ways. It will be part of that  
24 six-prong test we were talking about when  
25 you're talking about the negligence of the

1 person who is bringing the claim. It might go  
2 to the issue of whether they were negligent and  
3 whether their negligence was a substantial  
4 factor.

5 Or, it might create issues seven and  
6 eight. And certainly, in the context of any  
7 products liability case under 402(A), you're  
8 right. Product modification or product misuse  
9 is a defense. So, certainly in a 402(A) case  
10 it's going to be relevant when we have this  
11 anything-goes type of situation.

12 MR. PHENICIE: Which, of course,  
13 would additionally complicate what is now a  
14 very simple procedure.

15 MR. SHOLLENBERGER: Anecdotically if  
16 I may say one more thing. It was in our  
17 testimony but I really didn't talk about it all  
18 that much. Obviously, we all have different  
19 perspectives on things. We all come with our  
20 own perspectives. Mine is, I see people after  
21 the fact, okay? I see them after the injury.

22 This notion that they're suddenly  
23 going to wear a seat belt because they're going  
24 to have this idea that their rights to bring a  
25 lawsuit or claim damages is going to be

1 affected, I don't know of any statistical proof  
2 for that, number 1. Anecdotically, I can tell  
3 you that I highly doubt that anybody would be  
4 that sophisticated except maybe for someone  
5 like Mark here or all of you who have a special  
6 sophistication in the law to know what the law  
7 even is.

8 My anecdotal proof of that is this:  
9 I get calls all the time from people who were  
10 in accidents. The first question we ask in the  
11 office is, what tort option do you have?  
12 Invariably you get the answer, I have full  
13 coverage. I say, okay, who is your agent?  
14 That's my second question because I never take  
15 their word for it because they never know.

16 The shock on their face or on their  
17 voice, as the case may be, when they find out  
18 that full coverage is limited tort and what  
19 they -- They don't know, is my point, even  
20 what's on their own insurance policy, let alone  
21 some minute section of Section 4581 of Title,  
22 whatever title this is, 75.

23 I mean, I really wonder if the  
24 teenage boys that were killed in the township  
25 that I live in, Hampton Township, last year,

1 that was a big story. You probably all heard  
2 about that last year around this time. Those  
3 boys weren't thinking about their tort rights  
4 when they got in the car, were they? I really  
5 wonder where the statistical evidence is, where  
6 A is going to lead to B.

7 CHAIRPERSON GANNON: Representative  
8 Feese.

9 REPRESENTATIVE FEESE: Thank you, Mr.  
10 Chairman. Mr. Shollenberger, something that  
11 you said earlier and something Representative  
12 Manderino said brought a question to mind. You  
13 had mentioned about the injuries caused by not  
14 properly wearing the seat belt, wearing it too  
15 high. Representative Manderino's question just  
16 now brought up a question or a concern that  
17 maybe you could comment on it.

18 As I read the bill, it says that the  
19 seat belt must be properly adjusted and  
20 fastened. Obviously, that's the law. Then the  
21 section you're concerned with, failure to use  
22 as required by the subchapter may be admitted  
23 as evidence.

24 Even if the person has the seat belt  
25 on, as I'm reading this, the insurance carrier-

1           defendant, whoever is involved in the  
2           litigation, could raise a defense that you did  
3           not have it on properly. You wore it too high  
4           as opposed to across the hips as maybe your car  
5           manual says, et cetera. You still are  
6           introducing that evidence then into the case  
7           even though the person had a seat belt on.  
8           Would that be your reading of that?

9                   MR. SHOLLENBERGER: You see, that's  
10           why we are here debating this. As we look at  
11           this bill, we see more and more things about  
12           it. As Mark just commented, that's probably  
13           step 9. I think that's absolutely correct. I  
14           read this bill probably 25 times. I never  
15           picked that up. But yes, absolutely, that  
16           could be a defense.

17                   REPRESENTATIVE FEESE: Every case  
18           regardless whether you have a seat belt on?

19                   MR. SHOLLENBERGER: Yes, because the  
20           failure includes improper wearing.

21                   REPRESENTATIVE FEESE: Thank you.

22                   CHAIRPERSON GANNON: Thank you very  
23           much, Mr. Shollenberger and Mr. Phenicie, for  
24           coming before the committee today and sharing  
25           your testimony and information with us. We

1 appreciate it.

2 MR. SHOLLENBERGER: Thank you.

3 MR. PHENICIE: Thank you very much.

4 CHAIRPERSON GANNON: Our next  
5 witnesses, we're going to break it down into  
6 two groups. The first ones will be Doctor H.  
7 Arnold Muller, Primary/Urgent Care, Veterans  
8 Administration Medical Center; Doctor John M.  
9 Templeton, Junior, American Trauma Society,  
10 Pennsylvania Division; and Doctor Ricard  
11 Townsend, Director, Trauma Center, Allegheny  
12 General Hospital.

13 Welcome, Doctor Muller, Doctor  
14 Templeton and Doctor Townsend. You may proceed  
15 when you are ready.

16 DOCTOR MULLER: I have, of course, a  
17 prepared script, but I was struck by the  
18 antecedent comments and have a new script  
19 commenting on my own. As an emergency  
20 physician who deals with trauma firsthand in  
21 the Emergency Department in the trauma bay, I  
22 find that the patients who come in are not  
23 worried about the financial implications. They  
24 simply want relief from pain and they want to  
25 breathe and they want to live. None of them



1 has a concern over the immediate financial  
2 matters. I think that's understandable.

3 I also know, as you do, that 14  
4 states and the District of Columbia has taken  
5 this step and have gone to standard  
6 enforcement. I'm not aware that any of them  
7 have rescinded or backed up. I presume they  
8 have as diligent follow-up associations as we  
9 do, and I wonder how is it that they haven't  
10 found fault with their laws over this time.  
11 New York goes as far back as 1984. Something  
12 must be right about a law that allows, in our  
13 case, a 20 percent reduction in serious  
14 injuries and death were we to institute it.

15 I was here, as was some of you, more  
16 than a decade ago when the present law was  
17 enacted. Most of us in the medical community  
18 realize that standard enforcement would be the  
19 pay dirt, but politically and realistically it  
20 wasn't achievable if we wouldn't have had a  
21 law. We got our foot into the door as any  
22 groups who aspire to change the law do. We  
23 look forward to the day, and hopefully this is  
24 the day, when that law may be upgraded. New  
25 York did it. Maryland has done it. Delaware

1 is thinking about it. New Jersey's House has  
2 passed and is waiting for Senate action.

3 I represent myself and my long  
4 interest in this area, as well as the  
5 2.9 million citizens who are represented by the  
6 Pennsylvanians United for Safety Coalition.  
7 That in turn is comprised of 49 organizations  
8 supported by the National Safety Council.

9 Pennsylvanians have already voted in  
10 a way, in that, 65 percent do buckle up. Most  
11 of them see that their kids buckle up. That's  
12 in our zenith as we pointed out. We achieved  
13 that in 1994 or 5 when we got to 71 percent but  
14 that's falling off. Usage is falling off.  
15 Some think because people think cars are safer  
16 and others think just because it passed zenith  
17 and maybe the air bag will take its place.

18 Two days ago I saw a young man. The  
19 air bag had deployed. He was traveling with  
20 his buddy. They just pulled out of a bank.  
21 They had taken a few minutes off from work.  
22 They were within a mile of their workplace and  
23 they ran head-on into another car. The air bag  
24 deployed; the patient arrived in the Emergency  
25 Department and he had a red face. His face was

1 red because of the impact of the air bag. He  
2 had no visual impairment, no hearing loss, no  
3 problems with speaking. He simply had a red  
4 face.

5 Air bags do work. They are one thing  
6 that protects us, but air bags offer you no  
7 protection at all with side crashes and when  
8 you are thrown out or rear-end collisions.  
9 Your chance of dying is 13 times greater if you  
10 are ejected from a vehicle. The air bag does  
11 not prevent you from being ejected from a  
12 vehicle. You need them both. We're going to  
13 have to put up with some of the negatives such  
14 as the red faces and the burnings.

15 I see people who have injuries  
16 secondary to seat belts. Not one of them has  
17 ever said, boy, I wish I hadn't worn that seat  
18 belt. Intuitively they recognize, if they  
19 weren't wearing that seat belt, their injuries  
20 would be far greater. They can put up with a  
21 belt burn, a strap burn across the chest far  
22 better than a crushed chest or a broken heart.

23 I'm hopeful that you folks will see  
24 fit to move this bill to the General Assembly.  
25 The General Assembly has been faced with health

1 matters before. It took action in the '50's  
2 when we had polio, measles and whooping cough.

3 One of my buddies in medical school  
4 had polio when he was a kid. He limped in  
5 medical school. He limped when he was on the  
6 swimming team. He's limping his way through  
7 life, and he's one of the foremost experts in  
8 the world on multiple melanomas (phonetic), but  
9 he's still limping. He could have had a little  
10 better quality of life if he didn't have polio.

11 I lived medicine in the time of the  
12 iron lung. I saw the iron lung in Hanover, New  
13 Hampshire. I saw the iron lung in Seattle. A  
14 talking head is all you have. That's all there  
15 was and those people ultimately died.

16 We don't have polio, or we don't have  
17 bulbar polio. That's behind us. We can put  
18 unnecessary injuries and death behind us as  
19 well. We cannot eliminate all of life's  
20 threats. For those who want to take the risk,  
21 there's plenty of risks left for them take.  
22 Just ride in the car with your seat belt and  
23 your shoulder strap and your air bag, you're  
24 still likely to die under some circumstances.

25 This bill has room for (inaudible

1 word; drops voice), or what have you.

2 The money involved in this is  
3 substantial. If we can cut our serious  
4 injuries and our deaths by 20 percent, that's a  
5 lot of savings. But the real saving that we  
6 all recognize is in the saving of suffering,  
7 losses and deaths.

8 Teenagers have to be protected at  
9 their wild time of life. The automatic seat  
10 belt does help in those circumstances. We are  
11 hopeful more can be done to cut down on such  
12 things.

13 It was brought to my attention that  
14 in 1996, there was 671 murders in this  
15 Commonwealth, but there was 1,470 traffic  
16 fatalities. There were 22,617 cases of  
17 aggravated assault, but there were 51,802  
18 crashes involving property damages.

19 Mr. Chairman, I speak for the people  
20 and their hurts and their deaths and their  
21 families. I speak for those of us who see fit  
22 to carry the banner, and I hope you see fit to  
23 give real serious thought to taking the extra  
24 step. We'll have a healthier public. I think  
25 the revenue situation may even improve, but the

1 real pay dirt here is saving lives, reducing  
2 injuries.

3 I'm available for any questions you  
4 might have.

5 CHAIRPERSON GANNON: Thank you,  
6 Doctor Muller. Does anyone else have any  
7 testimony to present? Doctor Templeton.

8 DOCTOR TEMPLETON: Thank you. Good  
9 afternoon, ladies and gentlemen, of the  
10 Judiciary Committee. I will share with you  
11 some prepared comments. Then I'll be happy to  
12 answer any questions that come up from the  
13 preceding testimony and what we've covered  
14 today.

15 For me, as a long-standing trauma  
16 surgeon and pediatric surgeon taking care of  
17 injured children, it's an honor and a privilege  
18 to testify today on behalf of the standard  
19 enforcement provisions of House Bill 2078.  
20 This standard enforcement of seat belt usage is  
21 the single most effective way to save lives and  
22 reduce injuries, particularly serious injuries,  
23 and to protect the families from the trauma of  
24 what happens if a loved one is injured.

25 As a doctor, this is trauma that I

1 have experienced all too often. My comments  
2 are related to my 20 years of taking care of  
3 injured children, children who were exposed to  
4 needless trauma brought on by motor vehicle  
5 crashes. That care extended to their families  
6 and their parents who have to endure the pain  
7 and suffering that results from their child  
8 being involved in a motor vehicle crash,  
9 particularly if they were not adequately  
10 protected.

11           Enforcing our seat belt law  
12 provisions makes sense. It's important to look  
13 at it in regards to the correlation that this  
14 law would address between whether the adult who  
15 was driving the car is properly buckled up or  
16 not.

17           National Safety Council studies have  
18 discovered the fact that if the driver is  
19 buckled up, there is a 90 percent compliance  
20 with the child being properly buckled up and  
21 secured. On the other hand, if the adult  
22 driver is not buckled up, then 70 percent of  
23 the cases the child would not be adequately  
24 buckled up or secured.

25           I've heard that some adult drivers,

1           who don't use their seat belt, state that in  
2           the event of a crash, all they need to do is  
3           just put out an arm and be able to protect the  
4           child from hurdling forward and hitting against  
5           the dashboard. In actuality, if you have a  
6           child as small as 15 pounds and a 30-mile-per-  
7           hour crash, that child becomes a 300-pound  
8           missile that hurdles forward against the  
9           dashboard or the next available object.

10                   Even more frightening is the front-  
11           seat passenger who might weigh 180 pounds who  
12           is holding a child in his or her lap. In the  
13           event of a crash, that 180-pound passenger  
14           suddenly becomes a 3,600-pound projectile. If  
15           the passenger is wearing a seat belt, it would  
16           still not be able to hold the now magnified  
17           300-pound weight of that infant in their hands.  
18           They would lose control of the infant and the  
19           infant would crash into the dashboard.

20                   If the passenger holding the child is  
21           not wearing a seat belt, that becomes the  
22           crusher as we call it in medicine. The  
23           3,600-pound passenger will fly forward and  
24           crush the child against the dashboard, most  
25           likely killing the child.



1           In our experience at Children's  
2           Hospital in Philadelphia, two-thirds of the  
3           children who are brought in today involved in a  
4           motor vehicle crash with injuries serious  
5           enough to be admitted were not properly buckled  
6           up or properly secured.

7           Standard enforcement of seat belt  
8           usage protects all Pennsylvanians, including  
9           those who have not been involved in a crash  
10          because there are secondary victims involved in  
11          a crash. Those are family members and  
12          relatives who have to handle the heavy burden  
13          of managing the injuries and the long-term  
14          consequences of their loved one who was not  
15          properly protected and is now grievously  
16          injured.

17          At Children's Hospital we experience  
18          on average two critical trauma cases due to  
19          motor vehicle crashes each month. On average  
20          one of those children are so seriously injured,  
21          and as I noted, most likely there are not  
22          adequately buckled up or buckled up at all, one  
23          of those children will die. The other one will  
24          have such serious critical injuries that their  
25          problems of rehabilitation and lifetime health

1 problems may continue over an indefinite period  
2 because of the nature of their injuries.

3 That's particularly those who get head injury  
4 or spinal cord injury. If you have injuries in  
5 those two categories, the lifetime cost can be  
6 three to \$5 million.

7 Few families have enough insurance to  
8 support that level of care. My job as the  
9 trauma surgeon at Children's Hospital, I found  
10 for the first six months I was often signing  
11 private insurance forms, but after that time I  
12 was beginning to sign state and federal  
13 insurance forms, and all of us became the  
14 participants in the care of that child, which  
15 as I say, in some cases can continue over a  
16 lifetime.

17 The most important responsibility  
18 that all of us can do in the private as well as  
19 the government sector is to provide appropriate  
20 protection for our citizens. Standard  
21 enforcement of seat belt use provides that  
22 protection.

23 Dealing with children, Pennsylvania  
24 lost 108 children under the age of 16 in 1996  
25 due to motor vehicle crashes. This issue

1 crosses all the barriers of economic level of  
2 income, races and religion. The arguments  
3 against this legislation fail to equate their  
4 position with the loss of life that actually  
5 occurs.

6 Children will not be properly  
7 protected in motor vehicles when involved in a  
8 crash if they aren't secured. And if the adult  
9 is not motivated to be properly secured, that  
10 child will not be secured enough to protect  
11 them against serious injury. The simple click  
12 of a seat belt can mean the difference between  
13 a family attending a picnic or a family  
14 attending a funeral. The simple click may mean  
15 the difference between a child playing a game  
16 of baseball or watching that game from the  
17 sidelines in a wheelchair.

18 The current seat belt law needs to be  
19 upgraded in order to save lives and reduce  
20 unnecessary long-term serious injuries. The  
21 only way is to increase enforcement.

22 As noted, 14 states and the District  
23 of Columbia have already passed this  
24 legislation. They have generally done it with  
25 the emphasis on primary enforcement. That has

1 provided substantial motivation to the citizens  
2 of those states.

3 When Pennsylvania had no law at all  
4 about seat belts, the provision, the citizens  
5 only buckled up 20 percent of the time. When  
6 the secondary enforcement went in, that went up  
7 to 65 percent. It is now estimated that  
8 another 20 percent of the population will  
9 buckle up with primary enforcement.

10 This law will save 400 lives a year  
11 according to PennDOT and result in savings of  
12 \$2.2 billion a year.

13 I would ask, therefore, that you  
14 report House Bill 2078 in regard to its  
15 standard enforcement provisions out of the  
16 Judiciary Committee and permit the House to  
17 vote on this critical legislation.

18 In addition, if the House leadership  
19 would decide there would only be one  
20 transportation bill this year dealing with  
21 safety, I would urge that the standard  
22 enforcement provision of seat belts be included  
23 in that legislation. This legislation will  
24 save lives and improve the health and safety of  
25 all of our fellow citizens in Pennsylvania.

1 I thank you for the opportunity to  
2 testify and will be very happy to address any  
3 questions you may have.

4 CHAIRPERSON GANNON: Thank you,  
5 Doctor Templeton. Doctor Townsend.

6 DOCTOR TOWNSEND: Thank you. I'm  
7 Rick Townsend. I'm the Trauma Director at  
8 Allegheny General Hospital in Pittsburgh. I'm  
9 testifying on behalf of myself and also the  
10 Hospital and Healthsystem Association of  
11 Pennsylvania. HAP represents 225 hospitals and  
12 health systems and the patients and communities  
13 they serve across the Commonwealth. I'm on the  
14 Executive Committee of the Section of  
15 Accredited Trauma Centers of that organization.

16 I express my strong support for this  
17 bill. I'm here first and foremost, as my  
18 colleagues are, as a physician that has seen  
19 the loss of life, diminished quality of life  
20 and the total upheaval in families as a result  
21 of crashes when seat belts were not worn. You  
22 may note that I don't use the word accident. I  
23 believe that an event can be predicted and  
24 prevented should not be considered an accident.  
25 The cause of a crash can always be explained,

1 and the word accident I don't believe applies.

2 Traffic crashes are a leading threat  
3 to public health. Increasing seat belt use is  
4 the single most effective and immediate way we  
5 can save lives. You may not understand trauma  
6 is a public health problem that can be treated  
7 as other diseases. If I came before you and  
8 told you I was an infectious disease specialist  
9 working on AIDS, you would know I was fighting  
10 against the AIDS virus.

11 But, I'm a trauma surgeon. The  
12 disease agent that I fight against is energy.  
13 Just as you need to control the AIDS virus in  
14 multiple ways, the control of energy in a motor  
15 vehicle crash occurs in multiple ways. Seat  
16 belts are one of the most effective weapons we  
17 have of controlling the injury that occurs as a  
18 result of the energy of a motor vehicle crash.

19 As a physician, if I could claim  
20 every day of the year that I save a life, I  
21 would be a pretty damn good doctor. You have  
22 the opportunity to be able to save one life a  
23 day. As Doctor Templeton mentioned, 400 lives  
24 a year can be saved using seat belts in the  
25 Commonwealth. That works out to be one life a

1 day or more.

2 Maybe some of your constituents, as  
3 was mentioned earlier, would be unhappy about a  
4 possibility of a hundred dollar fine or a  
5 twenty-five dollar fine, but they'll be alive.

6 Restraints make sense. Do any of you  
7 have children or grandchildren? Would you ever  
8 allow them to be transported in a car without a  
9 properly applied seat belt? After you train  
10 them, would they ever let you drive a car  
11 without being properly restrained either?

12 The use of seat belts clearly reduces  
13 the severity of injuries. I know that some  
14 patients are injured by their seat belts as a  
15 result of high energy crashes, but many, many  
16 more are injured when they are unrestrained and  
17 are injured by the steering wheel, the  
18 dashboard, the windshield, or being ejected  
19 from the car.

20 In addition, we certainly have to  
21 consider the cost of the failure to use seat  
22 belts to our society. The State Department of  
23 Health reports that the differences in hospital  
24 charges for unrestrained victims is about  
25 \$2,500 more for every hospitalization than

1 restrained victims; \$3,000 more for roll-over  
2 crashes.

3 Another side effect of this  
4 legislation is, we are only talking about  
5 deaths. There's actually three times as many  
6 severe injuries that have to be treated for  
7 every death that occurs. Another side effect  
8 is, maybe it will put me out of business. I'm  
9 not speaking to try to help myself. If you can  
10 put us out of work and put us on the  
11 unemployment lines, that will be good for the  
12 Commonwealth. I want you to put me out of  
13 work.

14 As a taxpayer I'm amazed that we are  
15 willing to pay for this folly. It costs a lot  
16 more to treat unrestrained motor vehicle crash  
17 victims than restrained ones. Two state  
18 programs demonstrate significantly higher  
19 charges for unbelted crash victims. Medical  
20 Assistance and workers' compensation program  
21 face significantly increased costs related to  
22 unrestrained victims.

23 There's a disproportionate effect on  
24 the health care delivery system when it comes  
25 to younger drivers. I recently treated a



1           teenager who was driving a car way too fast,  
2           causing an injury to his thoracic aorta;  
3           usually a fatal injury. He was saved by the  
4           last or final line of treatment for trauma;  
5           that was, to have me treat him. If he survived  
6           long enough to make it to the hospital, there  
7           are things that we can do to help him.

8                         But, the first two lines of treatment  
9           are more effective and far less costly. The  
10          first is prevention. Keep this teenager under  
11          tighter driver license control until he  
12          demonstrates that he can drive the car safely  
13          and responsibly and make him earn the privilege  
14          of driving.

15                        The second line of defense is to  
16          reduce the severity of injury by manipulating  
17          what happens if the crash does occur. Design  
18          the cars so they can improve the chances of  
19          your survival. Engineer death out of the cars.

20                        House Bill 2078 is the simplest and  
21          cheapest way to engineer death out of a car.  
22          Require the use of the simplest and most  
23          effective tool available--a seat belt.

24                        If California can attain a 90 percent  
25          seat belt usage rate, certainly we can do the

1 same in Pennsylvania.

2 Pennsylvania's hospitals and health  
3 systems recognize the need to counter the  
4 carnage on our highways. It is everyone's  
5 problem. Society at large pays the cost for  
6 this.

7 I believe that House Bill 2078 can be  
8 of valuable tool in reducing that and we  
9 support that. Seat belts save lives. You can  
10 save a life today. Thank you for your time.

11 CHAIRPERSON GANNON: Thank you,  
12 Doctor Townsend. Representative Manderino.

13 REPRESENTATIVE MANDERINO: Thank you.  
14 Thank you for your testimony. All three of you  
15 urge the passage of House Bill 2078, but each  
16 of you in your testimony talked only about the  
17 one aspect of the bill that deals with primary  
18 seat belt enforcement and not about the aspect  
19 of the bill which is the change in liability  
20 under tort law.

21 Am I correct in assuming from your  
22 testimony that your focus is 2078 and that when  
23 you say that you are in support of 2078, what  
24 you're referring to is that portion that deals  
25 with primary enforcement of seat belts?

1 DOCTOR MULLER: Yes.

2 DOCTOR TEMPLETON: Yes.

3 DOCTOR TOWNSEND: Correct.

4 REPRESENTATIVE MANDERINO: I guess  
5 the other thing I want to say is not so much a  
6 question, although, quite frankly, I would  
7 welcome anybody to respond after this comment.  
8 Sometimes you have to share a little bit of  
9 yourself to make people realize that sometimes  
10 there's more than meets the eye.

11 I guess what prompted my saying this  
12 is that, one of the testifiers mentioned that  
13 people have already voted to a certain extent  
14 because 65 percent of Pennsylvanians wear their  
15 seat belts. I will count myself among those 65  
16 percent who wear their seat belts. However, I  
17 will also tell you that I only wear my seat  
18 belt 95 percent of the time. Let me tell you  
19 about the five percent of the time that I don't  
20 use my seat belt.

21 All of these are examples that  
22 happened to me within the last six months. I  
23 rented a rental car. It's the same size  
24 vehicle, although a different manufacturer of  
25 the car I currently drive. I never suspected I

1 would have a problem until I drove away from  
2 the rental lot and realized that the car that I  
3 had rented, the seat belt wasn't long enough to  
4 get around my body. Now, being fat may not be  
5 a good healthy thing, but it also shouldn't be  
6 a crime. I'm not quite sure that I should have  
7 myself or other similar situated people be  
8 subject to being pulled over on a primary  
9 enforcement because the seat belt wasn't long  
10 enough.

11 I've also had that situation when I  
12 have gotten into a friend's car. The seat belt  
13 just wasn't long enough for me. I would have  
14 felt guilty as all get-out if they got pulled  
15 over and they got the ticket because I was too  
16 big to fit in the seat belt in their front  
17 seat. The kids were all strapped in the back,  
18 so that wasn't even an option to me.

19 This weekend I drove on a trip with a  
20 friend who had a car whose seat belts fit me  
21 fine, except for the fact that just like those  
22 little kids, they choke me around the neck. I  
23 wore my seat belt with my thumb hooked into the  
24 seat belt the whole time pulling that away from  
25 my body. I could do that because I was sitting

1 in the passenger side seat. But, had I been  
2 driving that same vehicle, I know that I would  
3 tell you that I would have driven that vehicle  
4 unfastened because I couldn't drive the car  
5 safely with one hand nor could I drive the car  
6 being choked.

7 Again, I bring those up as examples  
8 of even on its face I originally thought, well,  
9 what is the harm if it serves to protect people  
10 more from a primary enforcement bill? But then  
11 I thought of situations that I can think of in  
12 my own experience where I don't think a primary  
13 enforcement law and the penalties that would be  
14 against me or somebody in a similar situation  
15 as me would be proper.

16 I am struggling with, how do you  
17 educate people? How do you get them to comply?  
18 And is the best way to get them to comply is to  
19 make them do something that is illegal? That  
20 really bothers me that we are making another  
21 thing be illegal for the purposes of educating  
22 people to do the right thing. That's kind of  
23 where I'm stuck with this bill now. Thank you,  
24 Mr. Chairman.

25 CHAIRPERSON GANNON: Thank you,

1 Representative Manderino. Representative  
2 Hennessey.

3 REPRESENTATIVE HENNESSEY: Thank you,  
4 Mr. Chairman. Doctor Templeton, I believe it  
5 was you in this panel that cited the statistics  
6 that 14 states plus the District of Columbia  
7 currently have a requirement, I guess primary  
8 usage of seat belts.

9 As Representative Manderino has  
10 alluded in some of the earlier questions of  
11 other testifiers who obviously pointed out,  
12 there are two parts of this bill. Would we  
13 satisfy your concerns if we simply made seat  
14 belt usage a primary offense, and thereby  
15 encourage more people to wear seat belts--  
16 hopefully everyone will wear seat belts--and  
17 forgot about the question of changing the  
18 evidentiary standard in subsequent litigation?

19 DOCTOR TEMPLETON: Yes, I think  
20 that's the key element. That's what happened  
21 when we even got a secondary offense law.  
22 There was a tremendous amount of public  
23 education about the importance of seat belts,  
24 but yet, only 20 percent of the populous use  
25 them. People put a lot of weight into the

1           deliberation of the legislature in passing  
2           laws. I think they respect those laws.  
3           Therefore, the compliance went up actually over  
4           70 percent when the secondary offense was  
5           passed in Pennsylvania. Since then, since the  
6           complacency has slipped in, the usage has  
7           dropped off.

8                       The other states' experience shows  
9           that there will be probably another 20 percent  
10          usage, if not more, with primary enforcement of  
11          the seat belt legislation. I think that's the  
12          most important component of this bill.

13                      REPRESENTATIVE HENNESSEY: Thank you.

14                      DOCTOR TOWNSEND: In response also  
15          for Representative Manderino and for you, what  
16          we're after is making sure that people have the  
17          option of being able to be appropriately  
18          restrained.

19                      What you were saying, Representative  
20          Manderino, was that, the option really wasn't  
21          there because you weren't really being required  
22          to do it. You know, I believe, that you'd much  
23          rather be able to put the restraining device  
24          on. What was going on was, the rental company  
25          didn't provide you with the appropriate

1 options. If they had a recognition that they  
2 had to provide the appropriate options for you,  
3 because a hundred percent of people are  
4 supposed to wear appropriate restraints when  
5 they drive out of the parking lot, they'd do  
6 it. If you want to wear it, you should be able  
7 to have the option of wearing it.

8 DOCTOR MULLER: Mr. Chairman, may I  
9 respond to Representative Manderino's concerns  
10 as well?

11 CHAIRPERSON GANNON: Yes.

12 DOCTOR MULLER: I agree with the  
13 prior comment, but I also feel that the  
14 manufacturers given the knowledge of need of  
15 yours is not unique. There are other people of  
16 different statures and what have you that for  
17 one reason or another seat belts aren't  
18 comfortable or usable. I would think could  
19 respond more inventative (phonetic) society,  
20 maybe changes could be made from a technical  
21 point of view for people.

22 REPRESENTATIVE MANDERINO: I would  
23 suspect -- Not to argue with you, but I would  
24 suspect that what an automobile manufacturer  
25 would tell us today is that, our belt is



1           designed to meet the 95 percent or the 90  
2           percent or the 80 percent, whatever it is, in  
3           the middle of the bell curve, and the people on  
4           the smaller end or on the larger end, one  
5           system can't fit all. So, we have designed a  
6           system that meets the vast majority.

7                     All I'm saying is, now we're devising  
8           the law that's to apply to a hundred percent of  
9           the people when, what we're already recognizing  
10          is that, in most cases somebody who is smaller  
11          than average or somebody who is larger than the  
12          average is going to have that problem.

13                    DOCTOR TOWNSEND: This problem is  
14          being addressed, and there's actually a  
15          multimillion dollar effort being put out --  
16          sponsored surprising by General Motors, being  
17          run by NHTSA, and actually one of the pediatric  
18          surgeons from Washington D.C., Marty  
19          Eichelberger is involved heavily in that. They  
20          are trying to get a hundred percent of the  
21          people under that curve fixed.

22                    The reason the pediatricians got  
23          involved was, someone was calling them  
24          betweeners. My kids have Safe Fits in their  
25          car and they all work very well. Everybody

1           isn't exactly the same. We do need to answer  
2           some of those technical questions.

3                       I think the first question that needs  
4           to be asked is, do we want to make sure  
5           everybody is wearing them? I think if we say  
6           that they should be wearing them, then I think  
7           it will be a lot easier to make sure that the  
8           appropriate options to be able to do that will  
9           be available.

10                      REPRESENTATIVE MANDERINO: Are you  
11           familiar with any of the other 14 states that  
12           you cite that already have laws and whether or  
13           not they deal with that particular issue? We  
14           don't have any exceptions written into this  
15           law. As a matter of fact, we have this vague  
16           language that says appropriately fastened, so I  
17           suspect that not only are the Sure (sic) Fits  
18           and the tweeners, and the little clips but also  
19           my thumb hooked into the seat belt, none of  
20           those would have been appropriate fastenings as  
21           we define in our law. You may not be familiar  
22           with the technical end, but if you were I was  
23           curious.

24                      CHAIRPERSON GANNON: Representative  
25           Caltagirone.

1                   REPRESENTATIVE CALTAGIRONE: We were  
2 just discussing a side bar up here, current law  
3 where rental and leasing vehicles are exempted  
4 under the law dealing with the legal obligation  
5 on civil liability with seat belts.

6                   We were just wondering what your  
7 reaction would be if we would mandate that all  
8 cars coming into Pennsylvania, new ones of  
9 course, be equipped with the air bags both  
10 front and side impact along with the proper  
11 restraints for all vehicles if we're talking  
12 about true safety? Let the car manufacturers  
13 come up with what really should be rather than  
14 ducking and dodging the bullet from Washington  
15 mandating certain states to come up with seat  
16 belts and give us real protection inside these  
17 vehicles.

18                  DOCTOR TEMPLETON: I want to just put  
19 it into perspective. The possibility of being  
20 saved in a serious front-end crash with an air  
21 bag is about 20 percent. If you wearing a  
22 three-point seat belt, the possibility of being  
23 saved in a front-end crash is 40 percent or  
24 better.

25                  REPRESENTATIVE CALTAGIRONE: I'm

1 saying both.

2 DOCTOR TEMPLETON: I know. I'm just  
3 emphasizing that the seat belts add a dimension  
4 that even aren't provided by the air bags. I  
5 personally feel that the air bags are an  
6 important addition and would hope that the  
7 manufacturers would continue their momentum,  
8 which is not only to make them in the front-end  
9 crashes but in side crashes as well. But I  
10 think this law should stay focused on the seat  
11 belt usage because that pays bigger dividends.

12 DOCTOR TOWNSEND: The stimulus to  
13 design safer cars is going to come from the  
14 consumers. One of the ways that the consumers  
15 are going to be stimulated is recognizing how  
16 important this sort of thing is. This is a  
17 part of, as it's been described, public health  
18 education about the disease of trauma.

19 In order to put us out of business,  
20 you have to recognize that people have to  
21 understand that trauma is a disease that can be  
22 engineered out. It can be removed. One of the  
23 ways you can do it is to make a car so safe  
24 that people don't get injured.

25 Another way you can do it, as I

1 mentioned, is to make the cars that we have use  
2 appropriately in terms of the restraining  
3 devices that are available. That might include  
4 modifications.

5 REPRESENTATIVE CALTAGIRONE: The  
6 problem we have with the automobile  
7 manufactures is, they lobby so well and so  
8 intently. They make sure that the kind of  
9 safety that I think the American public wants  
10 as well as the citizens of this Commonwealth,  
11 they preempt us continuously by not giving us  
12 what we really want. We're talking about the  
13 best possible protections that we need inside  
14 the automobiles that we're all driving. If  
15 every vehicle is manufactured in this state  
16 forward have the air bags, fully equipped in  
17 all American vehicles and the proper  
18 restraints, we might even save a lot more  
19 lives.

20 What are we really talking about  
21 here? Are we interested in saving lives? If  
22 we are dealing with the legislation, then let's  
23 deal with it. Let's put it where it really  
24 lies. If there's responsibility about saving  
25 lives, children or adults, then why don't we

1 really tell them, force them to give us what we  
2 really need and want?

3 DOCTOR MULLER: I don't think any of  
4 us know how formidable the automobile  
5 manufacturer industry is. I suspect it would  
6 take some time to win that battle. In the  
7 meantime, we're losing people and people are  
8 suffering. You have it within your power to at  
9 least take us one more step in the right  
10 direction. That doesn't obviate the desire and  
11 need to see if we can get the manufacturers to  
12 ante up and do what they should be doing. I  
13 think it will take a long, long time to perfect  
14 that.

15 CHAIRPERSON GANNON: Thank you,  
16 Representative Caltagirone.

17 Doctor Templeton, in your written  
18 statement and in your remarks, on page 5 you  
19 say the arguments against this legislation fail  
20 to equate their position with loss of life.  
21 Would you elaborate on what you mean by that?

22 DOCTOR TEMPLETON: Yes. I know that  
23 there are individuals who are concerned about  
24 whether this is an impingement on personal  
25 liberty about choices, about whether one wants

1 to buckle up or not. If there's more than one  
2 occupant in a motor vehicle and that person is  
3 not buckled up, when the crash occurs that  
4 person becomes a missile and can crash into the  
5 other occupant creating serious injury and  
6 possibly even death. I think there is an  
7 injury and life-threatening injury component  
8 about whether people are buckled up or not.

9 The second part is the cost. I  
10 alluded already in my experience with what it  
11 means to have a child or an adult whose private  
12 health insurance gives out after six months and  
13 because they're critically injured from brain  
14 damage or spinal cord injury, all of us become  
15 participants in the care of that individual.

16 I think that is reflected in other  
17 legislation that the state has passed such as  
18 the importance of kids wearing bicycle helmets.  
19 Because of that law, which is fairly mild--it's  
20 not a very harsh law--more than 40, 45 percent  
21 of children wear bicycle helmets. I think the  
22 law would have a very positive effect on the  
23 results in reducing death and injury.

24 CHAIRPERSON GANNON: Does that cross  
25 all public policy issues? For example, I don't

1 smoke. I don't necessary like to be around  
2 people who do. I'm opposed to making a law  
3 prohibiting people from smoking. Does that  
4 necessarily mean I don't equate my position  
5 with possible loss of life and reduce smoking  
6 because I'm opposed to a law that prohibits  
7 smoking?

8 I don't sky dive. I think sky diving  
9 is dangerous. People lose their life in sky  
10 diving, but I'm opposed to a law that says you  
11 can't sky dive. Does that same argument apply  
12 that I don't equate my position to loss of life  
13 that I'm opposed to a law that prohibits sky  
14 diving?

15 DOCTOR TEMPLETON: We have provisions  
16 both in state law and local law dealing with  
17 cigarette smoking because of its impact on  
18 other people. None of the law specifies that  
19 the individual in a safe circumstance couldn't  
20 smoke cigarettes.

21 I don't think it's a comparable  
22 situation when the difference is a 20 percent  
23 increase in savings of lives that can apply  
24 instantly as soon as 85 or 90 percent of the  
25 population were to buckle up.



1                   CHAIRPERSON GANNON: A question for  
2                   the panel; perhaps you can answer this. Each  
3                   of you has given very detailed testimony about  
4                   the consequences of somebody being injured if  
5                   they were not wearing a seat belt; serious  
6                   fractures, long, life-threatening injuries, I  
7                   think some quadriplegia.

8                   Now, that's the consequence of not  
9                   wearing a seat belt. This bill calls for a  
10                  twenty-five dollar fine. The argument that I  
11                  hear that possible impairment for the rest of  
12                  my life, broken bones, death, possible  
13                  quadriplegia, which means I can't use my arms  
14                  or hands for the rest of my life. That's  
15                  insignificant as to wearing a seat belt  
16                  compared to a twenty-five dollar fine. What's  
17                  the rationale for that? That's what the bill  
18                  says. If you don't wear a seat belt you will  
19                  pay 25 bucks.

20                  The argument that I'm hearing is,  
21                  that will really put people over the edge and  
22                  we'll get close to 85, 90 percent compliance  
23                  because of this twenty-five dollar fine. All  
24                  the other reasons why they should wear seat  
25                  belts, which you elaborated on in your

1 testimony, are really not sufficient and  
2 compelling. We, as a matter of public policy,  
3 need to make this a primary offense. Maybe you  
4 could respond to that. Maybe I'm wrong, but  
5 that's what I'm hearing.

6 DOCTOR TEMPLETON: I think the most  
7 important component is that there will be  
8 standard enforcement. I think the provision of  
9 the twenty-five dollar fine is very average  
10 across the nation in terms of states, but there  
11 are states that have fines as high as \$200.00.  
12 Those state jurisdictions have obviously taken  
13 the position that a higher fine might provide  
14 an added motivation. It may be that those  
15 states have the compliance that goes up another  
16 five percent because of the level of the fine.  
17 I think the biggest component is primary  
18 enforcement.

19 CHAIRPERSON GANNON: Are you  
20 advocating a higher fine?

21 DOCTOR TEMPLETON: No, sir.

22 DOCTOR TOWNSEND: I think the thing  
23 we would advocate is a fine that would be  
24 appropriate to stimulate people to increase  
25 their use of seat belts. I think a twenty-five

1           dollar fine would do that. That's what we are  
2           after, the stimulation to do it.

3                   Public education hasn't been  
4           sufficient and a fine for a primary offense has  
5           worked in other states. There's no reason to  
6           believe that it wouldn't work just as well in  
7           Pennsylvania. A twenty-five dollar fine seems  
8           terribly appropriate starting point to me.

9                   CHAIRPERSON GANNON: Thank you  
10          very -- Yes, Doctor Muller.

11                   DOCTOR MULLER: On a lighter note,  
12          maybe, I have often wondered how many people  
13          obey the law because they don't want to be  
14          pulled over on the side by somebody with a  
15          flashing light and they're sitting there as  
16          this flashing light goes on forever and their  
17          friends go by and see it and have no idea what  
18          the effect is of police pulling a person over.  
19          I agree \$25 is immaterial. It's the idea of  
20          whether it's enforced.

21                   CHAIRPERSON GANNON: I want to state  
22          while I have you up here for the record, I'm in  
23          Representative Manderino's case. I wear a seat  
24          belt driving. There are times when I don't  
25          wear it, about five, maybe 10 percent, just

1           guessing. The reason I wear a seat belt, I  
2           don't want to get hurt if somebody plows into  
3           me or, perhaps, somebody follows me too close.  
4           That's my motivation, saving myself from  
5           injury. And when I'm in my vehicle I want to  
6           make sure my passengers are also belted.

7                        Thank you for coming before the  
8           committee today and sharing your testimony and  
9           taking your time.

10                      Our next panel is Mr. Rick Flinn,  
11           Executive Director, Pennsylvania Emergency  
12           Health Services Council; and James McCaslin,  
13           Director of the Chestnut Hill Rehabilitation  
14           Hospital and the Pennsylvania Association of  
15           Rehabilitation Facilities. Welcome, Mr. Flinn  
16           and Mr. McCaslin. You may proceed when you are  
17           ready.

18                      MR. FLINN: Thank you. Good  
19           afternoon. My name is Rick Flinn. I'm the  
20           Executive Director of Pennsylvania Emergency  
21           Health Services Council. I thank you for the  
22           opportunity to comment on House Bill 2078 on  
23           behalf of Pennsylvania's Emergency Medical  
24           Service providers. I'm going to comment, my  
25           testimony is for the primary standard

1 enforcement, and not on any other aspect of the  
2 bill.

3 Just to provide a brief background of  
4 myself for you. I have been actively involved  
5 in emergency services since 1972. Like the  
6 majority of the Commonwealth's prehospital care  
7 providers, I began my career in a volunteer  
8 fire department. I have been trained as a  
9 combat medic, licensed practical nurse, an  
10 emergency medical technician, a paramedic, a  
11 firefighter and a rescue technician.

12 I've worked in an Emergency  
13 Department and responded to thousands of  
14 emergency calls as an EMT and medic in the past  
15 26 years. I took an avocation and turned it  
16 into a vocation and received a bachelor's  
17 degree from Penn State in health planning and  
18 became a staff member of the state EMS Council  
19 19 years ago. I've since received a Master's  
20 in governmental administration from the  
21 University of Pennsylvania.

22 I continue to participate in the  
23 emergency service community by volunteering as  
24 a deputy fire chief for the Hampden Township  
25 Volunteer Fire Company in Cumberland County as

1 well as teaching fire, rescue and emergency  
2 care programs for the Harrisburg Area Community  
3 College and the State Fire Academy.

4 Pennsylvania Emergency Health  
5 Services Council, which, by the way, was  
6 organized by Doctor Muller in 1974, prior to  
7 him being the Secretary of Health, is  
8 identified in law as Act 45 of 1985, as the  
9 state advisory council to the Pennsylvania  
10 Department of Health on all aspects of  
11 emergency health care. Our membership, which I  
12 have attached to this testimony, represents  
13 organizations of physicians, nurses,  
14 firefighters, emergency medical technicians,  
15 paramedics and state, regional and local  
16 organizations involved or interested in  
17 emergency health care issues.

18 Pennsylvania has one of the most  
19 developed EMS systems in the nation. With  
20 thousands of trained first response, basic life  
21 support, rescue and advanced life support  
22 organizations, along with 23 trauma centers,  
23 hundreds of accredited medical command  
24 facilities and receiving facilities and 13  
25 medical evacuation helicopter programs, linked

1 with an ever-advancing 911 telecommunications  
2 systems, Pennsylvania citizens and visitors  
3 have available to them an outstanding safety  
4 net when sudden illness or injury occurs.

5 As good as it is, the Commonwealth's  
6 system designed to save lives can be better,  
7 and continues to strive towards improvement.  
8 These improvements include research for new  
9 skills, enhancing training opportunities and  
10 conducting system evaluation and planning.  
11 This evening the state advisory council and the  
12 Department of Health will conclude a series of  
13 17 town meetings which have been conducted  
14 throughout the state on a revised statewide EMS  
15 plan.

16 The foundation of the plan is the  
17 National EMS Agenda for the Future, which was  
18 developed by EMS experts throughout the  
19 country, many of whom are from Pennsylvania.  
20 In fact, the project leader has been Doctor Ted  
21 Delbridge from the University of Pittsburgh.

22 This document is being described as  
23 the EMS White Paper of the '90's. In the early  
24 1960's, another famous document was published  
25 and described as EMS White Paper, which forged

1 the development of modern day EMS systems.

2 This document is titled, Accidental Death and  
3 Disability: The Neglected Disease of Modern  
4 Society.

5 The EMS Agenda for the Future has a  
6 vision statement that Pennsylvania's EMS  
7 community is considering adopting:

8 Emergency medical services of the  
9 future will be community-based health  
10 management that is fully integrated with the  
11 overall health care system. It will have the  
12 ability to identify and modify illness and  
13 injury risks, provide acute illness and injury  
14 care and follow-up, and contribute to treatment  
15 of chronic conditions and community health  
16 monitoring. This new entity will be developed  
17 from redistribution of existing health care  
18 resources and will be integrated with other  
19 health care providers and public health and  
20 public safety agencies. It will improve  
21 community health and result in more appropriate  
22 use of acute health care resources. EMS will  
23 remain the public's emergency medical safety  
24 net.

25 The reason I say that is simply



1           because a component of this agenda, and the  
2           proposed state EMS plan, is one of the main  
3           reasons I am here today, and that is speaking  
4           on behalf of Pennsylvania's EMS community and  
5           that component is prevention.

6                     EMS experts recognize that if we do  
7           more to prevent injury or illness, many more  
8           lives can be saved than simply concentrating on  
9           taking care of the problem after the injury or  
10          illness occurs.

11                    We are slowly learning from our  
12          brothers and sisters in the Fire Service that  
13          prevention works. Although fire departments  
14          may be busier than in the past, the actual  
15          number of fires continues to drop through  
16          enactment of tough building codes and fire  
17          prevention programs that continue throughout  
18          the year; not just on Fire Prevention Week.  
19          Fire departments are actually responding to  
20          more rescue and EMS calls, as well as motor  
21          vehicle crashes and hazardous material  
22          incidents on our state and local roads.

23                    Let me discuss the vehicle crash and  
24          lack of safety belt use problem from the EMS  
25          provider's perspective.

1                   On all emergency calls, licensed EMS  
2 services are required to complete a patient  
3 care record. The EMS manager for billing,  
4 quality assurance and planning purposes uses  
5 the information from this record. It is used  
6 by regional EMS councils and the state for  
7 research, quality improvement and planning.

8                   Statistics from the 1995 statewide  
9 patient care record system show the following:

10                   Of the 1.2 million EMS calls,  
11 126,842, or 12 percent, were responses to motor  
12 vehicle crashes.

13                   Of the approximate 127,000 crashes  
14 that EMS responded to, 47,267 patients were  
15 wearing their safety belts. This equates to  
16 only 38 percent of the crash victims identified  
17 in the data were using safety belts.

18                   Of the 79,575 patients not using  
19 safety belts, 12,359, or 16 percent, had blunt  
20 head trauma; and 26,533, or 33 percent,  
21 experienced open and closed facial injuries  
22 including lacerations, fractures and  
23 dislocations.

24                   There are many other injuries that  
25 they sustain that I didn't provide at this

1 time.

2 You have and will see throughout this  
3 hearing many other statistics that describe the  
4 morbidity, mortality, and the cost to  
5 individuals and society as a whole, for crashes  
6 that individuals did not wear their seat belt.  
7 But let me put it in a different perspective  
8 for you.

9 I previously mentioned that  
10 Pennsylvania's EMS system is one of the best in  
11 the country. We have made great strides in  
12 reducing mortality and morbidity with cardiac  
13 emergencies by providing the knowledge and  
14 skills necessary to recognize and treat  
15 patients to prehospital providers using medical  
16 direction.

17 In motor vehicle crashes we have also  
18 made great strides in giving patients a greater  
19 chance of survival; however, we can only do so  
20 much.

21 Let's take a look at the typical EMS  
22 response to a motor vehicle crash. With the  
23 advent of cellular phones, and the technology  
24 in some new vehicles with alerting devices  
25 using global positioning systems, detection and

1 recognition, as well as accessing the EMS  
2 system, is becoming more efficient. Although  
3 no one knows for sure, let's say that in urban  
4 and suburban Pennsylvania communities, access  
5 to 911 happens within a few minutes of the  
6 crash. Rural Pennsylvania clearly could take  
7 longer, depending on the location of the  
8 incident and the availability of cellular  
9 service. Once 911 has been alerted, police,  
10 fire and EMS respond depending upon the  
11 description of the accident.

12 Pennsylvania's emergency responders,  
13 fire and EMS, are primarily volunteer in rural  
14 Pennsylvania; part volunteer, part paid in many  
15 suburban communities; and mostly paid in urban  
16 areas. From dispatch to arrival on the scene,  
17 length of times vary from one to five minutes  
18 to 10 to 20 minutes; and in some communities it  
19 may take 30 minutes depending on the time of  
20 the day.

21 Pennsylvania's emergency responders  
22 are trained to do certain things at vehicle  
23 accidents:

24 They receive the information which  
25 hopefully will identify the location of the

1 crash, number and type of vehicles involved,  
2 number of patients, any hazards involved, and  
3 whether the patient is entrapped in the vehicle  
4 or not and maybe their extent of injuries.

5 If they have that information, they  
6 determine whether additional resources are  
7 needed and safely respond to the scene.

8 Upon arrival, they park the vehicle  
9 safely, identify all existing hazards and  
10 potential hazards and control for them.

11 They attempt to determine the number  
12 of patients involved, confirm confinement or  
13 entrapment, and initiate triage which is the  
14 sorting of those who are more seriously  
15 injured.

16 After that vehicle has been  
17 stabilized and hazards controlled, they access  
18 the patient, which could be as simple as  
19 talking to the patient through the window or as  
20 complex as going through the trunk to get to  
21 that patient.

22 Once the patient has been reached,  
23 EMS performs a trauma assessment and provides  
24 basic care and spinal immobilization.

25 If the patient is entrapped, rescue

1 personnel must remove the vehicle from the  
2 patient and create a pathway for extrication.  
3 Extrication of the packaged patient is the next  
4 step.

5 Paramedics or advanced life support  
6 personnel may already or will now intervene by  
7 doing advanced airway procedures, if necessary,  
8 such as chest decompression or intravenous  
9 therapy. The patient is either loaded into an  
10 ambulance or a helicopter, and depending on the  
11 extent of injuries, taken to the nearest trauma  
12 center.

13 EMS personnel use various skills to  
14 determine the extent of injuries in the  
15 patient. In addition to what is found on their  
16 assessment of the patient, EMT's and paramedics  
17 are taught to determine what's called the  
18 mechanism of injury; in other words, looking at  
19 the vehicle to see what could be wrong with the  
20 patient.

21 Examples of those mechanisms of  
22 injury where patients were not wearing their  
23 safety belts include, bent steering wheels,  
24 spider formations on the windshield where the  
25 patient's head struck it, indentations in the

1 dash, placement of the headrest, as well as  
2 looking at what the vehicle struck or what  
3 struck the vehicle. In essence, we're playing  
4 detective to find some indication that could  
5 cause the patient to be bleeding out internally  
6 or have no feeling or sensation in their  
7 extremities because of a serious neck injury.

8 Time is clearly the most significant  
9 factor with a trauma patient. In an ideal  
10 world, we try to strive to have the patient  
11 accessed, freed from entrapment, packaged and  
12 extricated within 15 minutes upon arrival on  
13 the scene.

14 The concept has been coined the  
15 golden hour. In other words, the patient who  
16 has multiple systems trauma, should be in the  
17 operating room within one hour from the moment  
18 the injury occurs to have the greatest chance  
19 of survival.

20 The reality is that, despite a  
21 community having the best trained and equipped  
22 EMS and rescue personnel, a medical evacuation  
23 helicopter that can fly in most weather  
24 conditions, and a trauma center within a  
25 reasonable distance, Pennsylvanians are dying

1           needlessly; needlessly, because the most  
2           serious injuries that cause death are because  
3           they did not wear their safety belts.

4                       As mentioned, EMS can save many lives  
5           as a result of taking the E.R. to the patient,  
6           using highly trained EMT's, paramedics and  
7           prehospital registered nurses using medical  
8           direction. However, we have not brought the  
9           trauma center operating room to the field to  
10          stop someone from bleeding internally. We can  
11          only manage their airway, give them some fluids  
12          and get them to the O.R. as quickly as we can.

13                      Education has worked for some in  
14          convincing them that safety belts save lives.  
15          Frankly, I believe that having nonbelievers  
16          ride along on some of the crash incidents, they  
17          too would soon become believers. It is sad but  
18          the only alternative, as proven by other  
19          states, is to standard or primarily enforce  
20          safety belt use.

21                      On aside, can you imagine boarding an  
22          airplane and not buckling up? First, because  
23          of law, the plane would not be able to take  
24          off. But secondly, and more importantly, an  
25          unbuckled passenger be it in a car or an



1 airplane, either at 30 miles an hour or 300  
2 involved in a crash, the outcome may very  
3 easily be the same--a needless death.

4 Speaking on behalf of the thousands  
5 of emergency responders, we need your help in  
6 eliminating this needless death and disability  
7 by supporting House Bill 2078.

8 I mentioned that I have had 26 years  
9 of experience in emergency services. And  
10 although I clearly do not remember them all and  
11 some I want to forget but can't, the most  
12 serious vehicle crashes that I have been on  
13 which resulted in death of the drivers or  
14 occupants, were those that safety belts were  
15 not used.

16 From my very first fatality in 1973  
17 of a little 10-year old boy not buckled in the  
18 back seat of a Corvair, to the young woman  
19 whose car hit a patch of ice and ended up  
20 wrapped around the large tree in my front yard,  
21 she too was not wearing a safety belt. You can  
22 review the research, analyze the statistics and  
23 hear the debates, but unless you have seen --  
24 not seen the faces of the family and friends of  
25 the victims, you really do not understand.

1                   A few years ago the Department of  
2                   Transportation was airing a public service  
3                   announcement of a police officer describing the  
4                   importance of using safety belts. The point of  
5                   the PSA was that, in his years of law  
6                   enforcement experience, he had never unbuckled  
7                   a dead person from a vehicle crash.

8                   I can attest to a similar record,  
9                   except for one, and that was, when I was  
10                  assigned as the rescue officer of the incident  
11                  that occurred last year when a portion of a  
12                  bridge collapsed on a young woman's car on the  
13                  West Shore. That was the only incident that I  
14                  have been on that safety belts would not have  
15                  made the difference.

16                 Finally, when you ask the average  
17                 person, what is the most important part of  
18                 their life, and we've heard it here in the  
19                 testimony this afternoon, my guess, as it would  
20                 be mine, their answer is their children.  
21                 Purely from my own experience, it seems that  
22                 teenagers do not see it as cool to wear safety  
23                 belts. Maybe if it were primarily enforced,  
24                 peer pressure and fashion would not be an  
25                 issue.

1                   Worse yet, how many times have you  
2                   looked in other cars and saw the parents  
3                   buckled, but the kids in the back were standing  
4                   up? Given the current law, there is no way  
5                   that that disaster waiting to happen can be  
6                   corrected. So the final message is, as the  
7                   saying goes, do it for the children. Thank  
8                   you.

9                   REPRESENTATIVE CALTAGIRONE: If you  
10                  would like to present your testimony, then  
11                  we'll take questions.

12                  MR. McCASLIN: Ladies and gentlemen  
13                  of the Judiciary Committee: I'm Jim McCaslin,  
14                  the Director of Chestnut Hill Rehabilitation  
15                  Hospital in Wyndmoor, Pennsylvania. I am  
16                  testifying today on behalf of the Hospital and  
17                  Healthsystem Association of Pennsylvania.

18                  I'm pleased to have the opportunity  
19                  to come before you and express support for  
20                  passage of House Bill 2078 which would  
21                  establish standard enforcement of our existing  
22                  safety belt law. My role is to discuss the  
23                  importance of standard enforcement of seat belt  
24                  use from the perspective of a rehabilitation  
25                  organization.

1                   Rehabilitation is the process by  
2                   which biologic, psychologic and social  
3                   functions are restored or developed to permit  
4                   an injured person to achieve maximum personal  
5                   autonomy. More persons survive injuries today  
6                   than ever before. In response, rehabilitation  
7                   providers have developed improved procedures  
8                   for amputation, prosthetics, management of  
9                   multiple musculoskeletal injury and  
10                  neurotrauma, or head injury.

11                  Providing therapy to optimize  
12                  functioning in the aftermath of tragic injuries  
13                  is part of our mission. The frustration lies  
14                  in knowing that for many of these patients the  
15                  tragedy that altered their life could have been  
16                  avoided or minimized by the simple buckling of  
17                  a seat belt.

18                  Rehabilitation centers were developed  
19                  because, even though more injury victims are  
20                  surviving the initial trauma due to  
21                  improvements in prehospital and trauma care,  
22                  mere survival is not enough. Children and  
23                  adults with injuries need rehabilitation  
24                  services to help them regain function. These  
25                  services are comprehensive, longitudinal, and

1 coordinated. Rehabilitation is an integral  
2 part of the continuum of care for injured  
3 individuals, beginning after medical  
4 stabilization and continuing, at times, to the  
5 end of a person's life.

6 Earlier you heard from Doctor Ricard  
7 Townsend from Allegheny General Hospital who  
8 was able to relay solid statistics about the  
9 costs of providing care to victims of car  
10 crashes who do not wear seat belts.  
11 Unfortunately, the data that is collected  
12 across the country focuses primarily on  
13 inpatient costs. The data does not capture the  
14 costs of rehabilitation services that come  
15 after the acute care is provided, perhaps,  
16 because rehabilitation can go on for months and  
17 even years, and involve teams of caregivers  
18 providing numerous services.

19 The rehabilitation process is  
20 different for everyone, and while I do not have  
21 hard data, I can tell you that based on my  
22 experience and those of my colleagues, the  
23 patients we treat who were fortunate enough to  
24 survive an accident in which they were not  
25 wearing a seat belt generally have more serious

1 injuries than their counterparts who were in  
2 similar accidents with a seat belt in place.  
3 They also have a much longer course of  
4 rehabilitation. One of the most likely  
5 injuries sustained by an unrestrained passenger  
6 in a vehicular accident is traumatic brain  
7 injury.

8 You might know someone who has  
9 sustained a brain injury. If so, you know how  
10 dramatically this changes not only the  
11 individual's life, but also impacts the family  
12 and the community as well. When a person  
13 sustains a traumatic brain injury, his or her  
14 life will never, let me reemphasize never, be  
15 the same. And this change is extremely  
16 difficult. The quality of life issues are  
17 difficult to quantify. Their family members'  
18 lives, along with their own, are turned on end.

19 Spouses may have to quit their jobs  
20 to transport victims to and from therapies.  
21 Economic losses ensue. Siblings may have to  
22 learn to live with less attention while parents  
23 focus on the rehabilitative care of an injured  
24 child, creating greater turmoil. Injury to  
25 parents leads to a loss of not only income, but

1           in many cases the stability of the family. The  
2           stress, both financial and emotional, placed on  
3           the family of the brain injured is tremendous.

4                    Vehicular crashes are the leading  
5           cause of traumatic brain injury, accounting for  
6           50 percent of all those injuries--both for  
7           those who die and those who end up with the  
8           lifetime challenge of brain injury. Among  
9           Americans under 45 years of age, injury is the  
10          leading cause of mortality and traumatic brain  
11          injury is responsible for the majority of these  
12          deaths, claiming more than 56,000 American  
13          lives annually.

14                   Each year, 99,000 individuals sustain  
15          moderate to severe brain injuries resulting in  
16          lifelong disabling conditions. How many of  
17          these individuals could have been spared and  
18          their families spared the devastating  
19          consequences of brain injury by wearing a seat  
20          belt? In the 15 seconds it takes to read these  
21          statistics, one person in the United States  
22          sustains a traumatic brain injury.

23                   Many of these injuries are  
24          preventable. The number would be even more  
25          dramatic if we were to add the spinal cord

1 injuries resulting in paralysis, and the other  
2 injuries sustained by a body flying  
3 unrestrained during a collision.

4 Even though we do not have hard data  
5 on the cost of rehabilitation for victims of  
6 unrestrained vehicular accidents, I can tell  
7 you they are high. I have already indicated  
8 the need for rehabilitation is often prolonged  
9 or lifelong.

10 Who supports those costs? We all do;  
11 not only victims and their families, but the  
12 public at large. We pay in increased insurance  
13 premiums. We pay when we need to pick up the  
14 cost through public insurance programs. We pay  
15 in the loss of the individual's contribution to  
16 society, and we pay in many other ways also.  
17 The simple act of wearing a seat could minimize  
18 these costs, and requiring the use of a seat  
19 belt is good stewardship of limited public  
20 money.

21 I am a firm believer in preventative  
22 medicine, and passage of House Bill 2078 will,  
23 indeed, provide another form of preventative  
24 medicine for Pennsylvanians. The experience of  
25 other states that have passed such a bill prove



1 standard enforcement saves lives. I urge you,  
2 on behalf of the rehabilitation providers in  
3 this Commonwealth; to join them in this  
4 important effort.

5 I thank you for the opportunity to  
6 appear today, and would be glad to answer any  
7 questions the members of the committee might  
8 have.

9 CHAIRPERSON GANNON: Thank you  
10 James. I just have one question. Currently,  
11 if you receive a citation for a motor vehicle  
12 violation, is there not a charge for emergency  
13 medical services, an added cost to that?

14 MR. FLINN: Yes.

15 CHAIRPERSON GANNON: How much is  
16 that?

17 MR. FLINN: Ten dollars; \$7.50 goes  
18 to the EMS Fund and \$2.50 goes to the  
19 Catastrophic Medical Rehabilitation Fund.

20 CHAIRPERSON GANNON: Is that included  
21 in the twenty-five dollar fine that's in this  
22 legislation?

23 MR. FLINN: I do not know the answer  
24 to that question.

25 CHAIRPERSON GANNON: It's possible

1           that we're really talking about \$35 at this  
2           point; twenty-five dollar fine and ten dollar  
3           additional costs?

4                   MR. FLINN:  It's possible.  I don't  
5           know.

6                   CHAIRPERSON GANNON:  Thank you very  
7           much for appearing before the committee today  
8           and sharing your testimony and the time you  
9           gave.  Thank you.

10                   Our next witness is Larry Frankel,  
11           Executive Director of the American Civil  
12           Liberties Union of Pennsylvania.  Welcome, Mr.  
13           Frankel, and you may begin when you are ready.

14                   MR. FRANKEL:  Good afternoon,  
15           Chairman Gannon, Representative Caltagirone,  
16           Representative Manderino.  I am Larry Frankel.  
17           I'm the Executive Director of the ACLU of  
18           Pennsylvania.  I thank you for inviting us to  
19           present testimony today.

20                   Representative Gannon, like you, I do  
21           not sky dive.  I'll be blunt.  I'm chicken.  It  
22           scares me, the thought of doing it, but I'm not  
23           ready for them to pass a law to prevent others  
24           from doing it as well.

25                   Unlike current Pennsylvania law,

1           which permits a police officer to issue a  
2           citation for failing to wear a seat belt only  
3           as a secondary offense, this legislation would  
4           authorize police officers to detain motorists  
5           and issue them a traffic citation for the grave  
6           offense for failing to buckle up. This  
7           legislation embodies the kind of big brother  
8           mentality that one usually associates with a  
9           totalitarian society rather than a free  
10          country. It provides the government with the  
11          power to penalize people for not taking safety  
12          precautions to protect themselves.

13                        This legislation is not intended to  
14          prevent drivers from hurting others on the  
15          road. The examples in Representative  
16          Godshall's statement of what's already in the  
17          Motor Vehicle Code, those affect the safety of  
18          others. Those are about driving behavior that  
19          would impact on the safety of others. That's  
20          not what this legislation does.

21                        This legislation will not prevent  
22          people from driving too fast, changing lanes  
23          too frequently or engaging in other forms of  
24          behavior that endanger others. Rather, this  
25          legislation is premised on what we believe is a

1           misguided belief that it is okay to give the  
2           government the power to compel people to do  
3           what is good for them. It's really, I guess, a  
4           philosophical question, for at least my  
5           organization and I think many others.

6                       While I don't disagree that wearing a  
7           seat is a good idea, saves lives, reduces  
8           injuries--I think most of the members of the  
9           ACLU would agree with that--we do not believe  
10          it's the role of government to compel people  
11          under the threat of penalty, under the threat  
12          of being forced to pay a fine, under the threat  
13          of being detained by a police officer to force  
14          them to do what is good for themselves.

15                      To the members of the ACLU, this  
16          sounds like an irrational abandonment of the  
17          notions of individual responsibility and  
18          individual freedom.

19                      Two weeks ago in the Philadelphia  
20          Inquirer was a story about the legislation. My  
21          association was mentioned in that article as  
22          one of the opponents of this legislation. As a  
23          result of that article, our office was  
24          contacted by several people expressing their  
25          strong opposition to this bill. I will note,

1 when people do call our office, I suggest that  
2 they contact their legislators to state their  
3 opposition, and stating it to us probably  
4 doesn't have the same kind of impact as trying  
5 to communicate with those who have the power to  
6 vote of these bills.

7 But, it gave me further insight into  
8 how I think some Pennsylvanians feel. They  
9 agree with us that it is not the role of  
10 government to penalize people for not wearing  
11 seat belts. One of the callers analogized the  
12 legislation to the controversial helmet  
13 legislation, I'm sure a piece of work that most  
14 of you have not forgotten and probably will not  
15 be allowed to forget for a few years, at least.  
16 But, I think that caller's reference is an  
17 appropriate reminder that the belief in  
18 individual freedom and responsibility is rather  
19 widespread in the Commonwealth of Pennsylvania.

20 Supporters of this kind of  
21 legislation argue that health care costs  
22 associated with injuries resulting from the  
23 failure to wear seat belts are proper  
24 justification for this legislation. However,  
25 nowhere in the legislation do I see a

1           guaranteed reduction in insurance premiums if  
2           this bill is enacted. There will be no  
3           guarantee that any cost savings will be passed  
4           on to the drivers or the taxpayers of  
5           Pennsylvania.

6                       Furthermore, I can think of a lot of  
7           other behaviors that many people engage in that  
8           increase the cost of health care insurance for  
9           all the rest of us. Are we ready to outlaw the  
10          drinking of sugar sweetened beverages? Is  
11          someone ready to propose a set of penalties for  
12          those who do not exercise enough? Are we going  
13          to deny dental insurance to those who do not  
14          brush twice a day and floss their teeth  
15          frequently? There are now indication that  
16          those who don't floss are more likely to suffer  
17          heart problems. There are connections between  
18          what we as individuals do and the health care  
19          costs that all of us pay. The reality is, we  
20          are human beings.

21                      We engage in lots of activities that  
22          may not be good for us, may increase the cost  
23          for others, but as long as we do not engage in  
24          acts that harm or risk injury to other humans  
25          or their property, do we really need government

1 intervention?

2 It has also been argued that many  
3 other states have made failing to wear a seat  
4 belt a primary offense. Perhaps, the citizens  
5 of those other states value their independence  
6 and privacy far less than the citizens of  
7 Pennsylvania. I can tell you, however, that  
8 based on my experience of speaking to a variety  
9 of groups across the entire state, along the  
10 with the mail and phone calls my office  
11 receives from people of an array of ideologies;  
12 not just this bill, but I'm talking my general  
13 experience over the last several years, there  
14 is little sediment among the average working  
15 Pennsylvanian for laws such as the proposal  
16 before you today.

17 The ACLU is also concerned about the  
18 impact this legislation would have on drivers  
19 who are minorities. Recently, several news  
20 commentators have been discussing the fact that  
21 an alarming number of motorists are being  
22 arrested for what has been termed driving while  
23 black. In fact, I recently attended a forum  
24 put on by the Philadelphia Bar Association on  
25 race, crime and the media.

1 PCN has a tape. I know they have  
2 been televising it around the state. One of  
3 the issues that was discussed was that, for  
4 African-Americans, no matter what your income  
5 level, no matter what your status, you are  
6 likely to be subjected to being stopped in  
7 certain neighborhoods merely by the fact that  
8 you are black and driving a vehicle. That's  
9 one area that crosses all income levels.

10 Again, it's proportionate that  
11 African-Americans who are making enough money  
12 that they can purchase a nice car, they are  
13 stopped more frequently. The commentators were  
14 referring to cases where African-Americans  
15 athletes, actors, lawyers, policemen, business  
16 leaders are randomly stopped while driving,  
17 detained and searched by law enforcement  
18 authorities who are using racial profiles to  
19 look for drug traffickers.

20 Racially discriminatory traffic stops  
21 happen all over the country. I am aware of  
22 significant litigation that has taken place in  
23 Maryland and New Jersey over this very issue in  
24 last few years. In 1995 my organization filed  
25 a lawsuit on behalf of African-Americans who



1 were driving on Interstate 95 through Tinicum  
2 Township. It must be fairly close to the area  
3 that you represent, Representative Gannon.

4 CHAIRPERSON GANNON: Not in my  
5 district.

6 MR. FRANKEL: Not in your district,  
7 but close. I didn't indicate it was in your  
8 district.

9 The litigation grew out of an  
10 incident in which four young African-Americans  
11 who were returning from church were stopped,  
12 pulled from their car and searched by Tinicum  
13 Township Police. ACLU attorneys negotiated a  
14 detailed consent decree to ensure that persons  
15 would no longer be stopped by Tinicum Township  
16 police simply because of their race. That  
17 decree was approved by a federal district  
18 court.

19 I seriously doubt, however, that that  
20 consent decree has resulted in the end of all  
21 race-based traffic stops in the Commonwealth of  
22 Pennsylvania.

23 Several weeks ago I was contacted by  
24 a young man who works in the district office of  
25 a member of this legislature. He told me that

1 he and several others had been experiencing  
2 what they believed to be unwarranted stops for  
3 driving while black in the suburbs of  
4 Philadelphia.

5 The problem of discriminatory  
6 enforcement of our traffic laws exist. That is  
7 why legislation to address this issue has been  
8 introduced in Congress and also in this General  
9 Assembly. The ACLU fears that, were this seat  
10 belt legislation enacted, we would hear  
11 frequent complaints from African-Americans who  
12 would be experiencing a disproportionately high  
13 rate of stops for violation of this law.

14 I was interested to hear the term  
15 standard enforcement be used. We fear standard  
16 enforcement would not be evenhanded  
17 enforcement.

18 In closing, we urge you to not enact  
19 this legislation. The people of Pennsylvania  
20 don't need government expanding its authority  
21 over the use of seat belts. None of us need to  
22 hear about more problems with unfair  
23 application of traffic laws.

24 Thank you again for inviting me to  
25 testify today.

1                   CHAIRPERSON GANNON: Thank you, Mr.  
2 Frankel. Representative Hennessey.

3                   REPRESENTATIVE HENNESSEY: Thank you,  
4 Mr. Chairman. Good afternoon, Larry. I'm  
5 sorry I missed the very beginning of your  
6 testimony. I think I caught most of it. I  
7 understand your concerns and the concerns of  
8 your organization with regard to the issue of  
9 making it a primary versus secondary offense.

10                   Let me move beyond that, if I can,  
11 and ask you about the second part of this  
12 proposal which I don't think you addressed in  
13 your comments to the panel. That is the  
14 question of whether or not asserting -- a  
15 person asserting what I think your association  
16 would say is their freedom to drive without  
17 putting a seat belt on could be construed under  
18 the second half of this proposal as a matter of  
19 contributory negligence and severely impact  
20 their rights when they found themselves in a  
21 court of law. Does the association not want to  
22 address that issue, or have you simply not  
23 formulated a position with regard to that?

24                   MR. FRANKEL: There's a few parts to  
25 the answer. First of all, the letter I

1 received inviting me today indicated they  
2 wanted our position on the primary enforcement  
3 issue which is why I focused on that particular  
4 issue.

5 I also would like to characterize our  
6 position to the freedom to drive without being  
7 stopped by a police officer merely for  
8 enforcement of a law, not wearing seat belts;  
9 not necessarily the freedom to choose whether  
10 or not to wear a seat belt, but the freedom to  
11 be able to move around on the highways without  
12 being stopped and detained for that particular  
13 purpose.

14 Now to answer your question. We are  
15 very concerned that the provision as it is  
16 drafted for some of the reasons articulated by  
17 the first witnesses here today and by some of  
18 the questions from the panel would impinge on  
19 people's access to court and the right to  
20 really bring a lawsuit.

21 If, indeed, it is going to cost  
22 thousands of dollars and expert witness  
23 testimony to present evidence as to what the  
24 nature of the injuries would have been were it  
25 not for the fact that the person was not

1 wearing a seat belt and then puts many people  
2 out of court because they can't afford that  
3 kind of expert testimony, or they can't find a  
4 lawyer who is willing to help fund that kind of  
5 expert testimony because the injuries were not  
6 that severe, we would be very concerned about  
7 the impact that would have on putting people  
8 out of court completely.

9 In addition, I think it's interesting  
10 the focus today is somewhat on the primary  
11 enforcement issue because, as I understood  
12 before I got here today and if I followed some  
13 of the testimony earlier correctly, the issue  
14 about introduction of evidence of not wearing a  
15 seat belt had been before the legislature for  
16 quite a number of years and has never managed  
17 to be enacted.

18 Now we have it, I would say, dressed  
19 up with the issue of primary enforcement put  
20 all in one bill to see if that may be what they  
21 can piggyback the other issue on. I don't  
22 think it's any surprise to us that there isn't  
23 a separate piece of legislation merely on  
24 primary enforcement. I think it is coupled  
25 with this other provision for reason best known

1 to the supporters of the legislation.

2 REPRESENTATIVE HENNESSEY: Okay.

3 Thank you. Thank you, Mr. Chairman.

4 CHAIRPERSON GANNON: Representative  
5 Manderino.

6 REPRESENTATIVE MANDERINO: Thank you.  
7 I also caught on PCN the panel that you talked  
8 about on racism and crime and the discussion  
9 about driving while black. I don't know that  
10 anybody has done this. I don't know if you  
11 have the ability to, but we're told that  
12 there's at least 14 states that have primary  
13 seat belt enforcement.

14 I know there are some studies that  
15 have been done not in Pennsylvania, but other  
16 states about the phenomenon of driving while  
17 black. I wondered if anybody compared if there  
18 were any states that crossed over with those  
19 two issues and whether or not there is any  
20 indication that one impacted the other? At  
21 least the driving while black may not be a good  
22 enough phenomenon at least in terms of research  
23 that that hasn't been looked at. I was just  
24 curious.

25 MR. FRANKEL: I'm not aware of any

1 specific research in that particular area. I  
2 know at least -- I'm more familiar actually  
3 with a case in New Jersey. It was not an ACLU  
4 case, but that's because a friend of mine was  
5 one of the attorneys that tried that case.  
6 They had a hearing for about four to six months  
7 just on the issue of whether the stops by the  
8 state troopers themselves were discriminatory  
9 in nature. That's where I think the level of  
10 study is at this point.

11 Perhaps, if more states take what we  
12 believe to be the wrong step and operate this  
13 through primary enforcement, there will  
14 inevitably be a research study on whether there  
15 is a discriminatory, racial impact enforcement  
16 of that law. But, nothing has been done today  
17 that I know of.

18 REPRESENTATIVE MANDERINO: Thank you.  
19 Thank you, Mr. Chairman.

20 CHAIRPERSON GANNON: Mr. Frankel, on  
21 page 2, line 7 and 8 of the bill, it says shall  
22 wear a properly adjusted and fastened safety  
23 seat belt system. Would that language provide  
24 that you could be stopped -- you're wearing a  
25 seat belt, but you could be pulled over to

1 determine whether or not the seat belt was  
2 properly adjusted and fastened to see if you  
3 were violating that provision of the statute?

4 MR. FRANKEL: I certainly think it  
5 could. Let's go back to what the current state  
6 of the law is, which is that, if a police  
7 officer pulls you over for another traffic  
8 offense, then they can issue a citation after  
9 having made that determination. I think that's  
10 what's really alarming here that, what is the  
11 standard upon which a police officer can say,  
12 I'm not so sure whether that person has their  
13 seat belt properly adjusted and fastened? Is  
14 it going to require that they not see a  
15 shoulder harness? That's unclear to me.

16 But, I think the question you're  
17 asking, Representative, and I think it's a very  
18 good question, is that there's some vagueness  
19 to that in terms of when is the determination  
20 made, and can it be made without pulling  
21 somebody over? Will this lead to -- Frankly,  
22 from Philadelphia, I have a hard time thinking  
23 that many police officers are interested at all  
24 in trying to pull people over to determine  
25 whether they are wearing seat belts, when



1 statistics in Philadelphia that one of the most  
2 dangerous situation for police officers is in  
3 the traffic stops.

4 But in other areas where there may  
5 not be as much crime, I would not be surprised  
6 to see a lot of motorists being pulled over so  
7 it could be determined whether it's properly  
8 adjusted and fastened.

9 CHAIRPERSON GANNON: The way I read  
10 this bill is that, not wearing a seat belt or  
11 driving while under suspicion of wearing the  
12 seat belt improperly would be a routine traffic  
13 stop.

14 MR. FRANKEL: I would agree.

15 CHAIRPERSON GANNON: Maybe you can  
16 correct me if I'm wrong. Is it now under, I  
17 think it's Supreme Court, that it's reasonable  
18 for the police to require the occupants of an  
19 automobile to get out of the automobile in a  
20 routine traffic stop?

21 MR. FRANKEL: I don't know the  
22 specific answer to where the source of that is.  
23 I don't think I want to venture down that road.

24 CHAIRPERSON GANNON: That was my  
25 understanding; that there was apparently a

1 challenge in the Supreme Court that said that.

2 MR. FRANKEL: I think there's another  
3 witness who is here who may be able to answer  
4 that question better. If I read the list of  
5 witnesses correctly, it's the next witness to  
6 come.

7 CHAIRPERSON GANNON: Representative  
8 Hennessey.

9 REPRESENTATIVE HENNESSEY: Thank you,  
10 Mr. Chairman. Larry, just to follow up on some  
11 of the questions that Chairman Gannon just  
12 asked. I don't know that I would agree with  
13 you that there could be, even if we passed this  
14 proposal, there could be a rash of routine  
15 stops, because it seems to me that under our  
16 state and federal Constitution there has to be  
17 some indication of a likely violation before a  
18 routine stop could be properly based in the  
19 first place; isn't that right?

20 MR. FRANKEL: That is correct in the  
21 abstract.

22 REPRESENTATIVE HENNESSEY: I  
23 understand your point. If the police officer  
24 sees a person wearing a seat belt, the shoulder  
25 strap is away from the side pillar of his car

1 and appears to be across his or her shoulder,  
2 it seems to me that a police officer would not  
3 have under those circumstances the right to  
4 pull a person over and say, I just want to make  
5 sure whether or not it's properly buckled;  
6 whether the buckle was inserted into the holder  
7 or whether or not it was properly positioned  
8 over your hips as opposed to up on your  
9 abdomen.

10 Realistically, I don't think your  
11 association is worried that police are likely  
12 to take that step, are they?

13 MR. FRANKEL: I would agree with you  
14 that probably 95 to 98 percent of the police  
15 officers would not. But my association worries  
16 about the one or two or five percent who might  
17 be overly aggressive or overly zealous in  
18 seeking to enforce this provision.

19 REPRESENTATIVE HENNESSEY: You were  
20 reciting some other incidents in which we can  
21 cite some safety studies or the health benefits  
22 of doing certain things. One of the things you  
23 talked about was dental insurance. Let me  
24 state for the record, I want to make sure you  
25 are not telling me it's safer to floss your

1 teeth when you are wearing a seat belt, right?

2 MR. FRANKEL: No. I'm positive that  
3 that is the philosophical argument that you may  
4 be faced with some day that we are now at seat  
5 belts, but where do we stop when we have some  
6 studies that show, if everybody did this we  
7 would all save money? Where do we stop? Where  
8 do we draw the line?

9 The philosophical framework in which  
10 my organization approaches this and individuals  
11 who have called my organization is, if it is  
12 endangering the safety of others there's a role  
13 for government to play in terms of creating  
14 penalties and imposing fines and using law  
15 enforcement.

16 But, where we're talking about the  
17 health and safety of one's self, that is not  
18 the role of the government, at least with those  
19 kinds of provisions. To us and to the people  
20 who call the organization, that's the  
21 freedom -- individual freedom and individual  
22 responsibility is all about.

23 REPRESENTATIVE HENNESSEY: I can  
24 agree with you again in the abstract. As a  
25 matter of personal experience, people who

1           assert their freedoms in some respects and then  
2           get injured and then run out of their insurance  
3           coverage come to the state and say -- become,  
4           in a sense, wards of the state. The state  
5           picks up some of their hospitalization costs;  
6           the state picks up some of their other  
7           generalized medical costs.

8                         It seems to me that we can't take  
9           that as an absolute that there's no -- the  
10          state has no interest in any kind of regulation  
11          as long as the only person that might get hurt  
12          is one's self because that person can then turn  
13          to the state later on and say, I'm out of  
14          insurance coverage. Take care of me.

15                        We don't say to somebody on the  
16          turnpike, you can't go over 65 miles an hour  
17          when there's other traffic coming towards you  
18          on the highway. If you are doing it at three  
19          o'clock in the morning, it's perfectly okay  
20          because there's not much traffic. You are not  
21          likely to hurt anybody else. If you go off the  
22          road you only hurt yourself. The prohibition  
23          is there and it stays there regardless of the  
24          fact that at that time of the night you  
25          probably are not going to hurt anybody else.

1 MR. FRANKEL: I'm not sure the gist  
2 of your final point, but when you are talking  
3 about people coming to the state for assuming  
4 medical expenses, I don't know if it was two or  
5 three years ago that the law was changed  
6 considerably in this Commonwealth to respond to  
7 the state picking up people's medical expenses.

8 I would submit that if that were the  
9 problem we needed to address, there are other  
10 ways to do it without authorizing law  
11 enforcement officers to stop and detain people  
12 and write them traffic citations for not  
13 wearing a seat belt. That seems to be a  
14 convoluted way to approaching that problem.

15 REPRESENTATIVE HENNESSEY: Okay.  
16 Thank you for your perspective.

17 MR. FRANKEL: Thank you.

18 CHAIRPERSON GANNON: Mr. Preski.

19 MR. PRESKI: Just two questions, Mr.  
20 Frankel. The first one is, how would you  
21 respond to the arguments we heard before from  
22 the doctors, basically -- and this follows up  
23 on your argument that this is a matter of  
24 personal responsibility for personal freedom.

25 If I'm driving along and I hit a

1 telephone pole, I'm not wearing my seat belt  
2 and I'm ejected from the vehicle and I'm  
3 ejected onto the highway, and now -- me being  
4 ejected causes me to cause other accidents.  
5 Could you respond to that, how that decision of  
6 mine not to wear a seat belt and that personal  
7 freedom in me not doing that has not affected  
8 others?

9 MR. FRANKEL: Maybe there are cases  
10 like that, but I will be frank. This is the  
11 first time I heard that argument that a person  
12 not wearing a seat belt becomes some kind of a  
13 projectile that endangers others. I'm not  
14 saying it isn't there; it's a new one to me. I  
15 would like to see some more hard evidence that  
16 maybe that is occurring to a sufficient degree  
17 to justify this type of legislation.

18 I have been following this since the  
19 idea first surfaced earlier this year, and  
20 today was the first time that I heard that  
21 particular argument. I would want to see more  
22 hard data about how many cases that really  
23 occurs in. Maybe that will cause some  
24 reevaluation.

25 MR. PRESKI: My second question:

1 Building upon what Representative Gannon said  
2 to you and what Representative Manderino had  
3 said earlier, if the police or the defendants  
4 in the Tinicum Township case had available to  
5 them a defense of, we were checking to see if  
6 the seat belts were properly adjusted and were  
7 worn in the proper manner, do you think you  
8 would have been able to get the settlement in  
9 that case that you did?

10 MR. FRANKEL: I think the settlement  
11 in that case dealt with the fact they were  
12 being stopped. It had nothing to do with seat  
13 belts. It had to do with the fact they were  
14 being stopped because they had a racial  
15 profile.

16 MR. PRESKI: I guess my question is:  
17 The availability of the defense had this been  
18 law at the time that we weren't stopping them  
19 because they were black or we weren't stopping  
20 them because they fit a profile, we stopped  
21 them because the law allowed us to stop them  
22 because we wanted to check and make sure that  
23 they complied with Title 75, 4581, do you think  
24 that would have compelled a different result?

25 MR. FRANKEL: That would have made it



1 much more difficult to achieve that result.  
2 What this law presents is yet another pretext  
3 for those kind of stops. Whether we would have  
4 been able to overcome their argument and show  
5 it was a pretext and not the real reason that  
6 was being used is hard to conjecture, but I can  
7 only imagine as a defense lawyer for the police  
8 department, I certainly would have told them  
9 that sounds like a good reason for stopping  
10 people.

11 MR. PRESKI: Thank you.

12 CHAIRPERSON GANNON: Thank you, Mr.  
13 Frankel, for appearing before the committee and  
14 taking time from your day to provide us with  
15 your testimony.

16 MR. FRANKEL: It's always a pleasure  
17 for me.

18 CHAIRPERSON GANNON: It's always a  
19 pleasure to see you.

20 Our next witness is Mr. John Mancke,  
21 Esquire, with Mancke, Wagner, Hershey and  
22 Tully. Welcome, Mr. Mancke, and you may  
23 proceed when you are ready.

24 MR. MANCKE: Good afternoon, Chairman  
25 Gannon, and members of the House Judiciary

1 Committee. I welcome the opportunity to  
2 testify and express my views on House Bill  
3 2078. My views have received the endorsement  
4 of the Pennsylvania Association of Criminal  
5 Defense Lawyers. As an attorney whose practice  
6 concentrates in the area of motor vehicle law,  
7 I have serious reservations about the inherent  
8 unfairness of the provisions of House Bill  
9 2078.

10 Under the current law, I deal with  
11 defendants who are charged with speeding and an  
12 accompanying charge of a seat belt violation.  
13 In many of these cases, the seat belt violation  
14 is unjustified and factually in error.

15 An officer simply believes that if a  
16 person does not have a seat belt on when the  
17 officer approaches the defendant's vehicle, it  
18 means automatically the driver did not have it  
19 on while driving. No consideration is given to  
20 the fact that the motorist may have released  
21 the seat belt to secure a wallet to provide  
22 identification for the officer as the officer  
23 approaches. The unjustified conclusion that  
24 the motorist failed to have a seat belt  
25 fastened is not based on observations of the

1 motorist while driving. Instead, the erroneous  
2 conclusion is based on observations made after  
3 the motorist is stopped.

4 House Bill 2078 will allow a further  
5 abuse with officers stopping motorists on the  
6 whim that the motorist is not wearing a seat  
7 belt. To those that say it won't happen, I say  
8 that if an officer is willing to bring an  
9 unjustified charge under the current law, the  
10 officer will certainly use the proposed law to  
11 improperly justify a stop of a motorist.

12 At this point I'd like to respond to  
13 what was asked earlier about, I believe, as to  
14 whether somebody would be stopped with the  
15 concept of the officer just simply believing  
16 that there is or was not a seat belt usage. I  
17 remind the panel that approximately three years  
18 ago the Superior Court had to deal with a case  
19 involving a mirror where a police officer used  
20 his belief that he didn't see a mirror in the  
21 car and said that's in violation of the  
22 regulation. On cross-examination it was proven  
23 that he didn't know whether there was a mirror;  
24 didn't know what the regulations were  
25 concerning the mirror, and the Superior Court

1 had to reverse the conviction in that case.

2 There are cases of flickering lights  
3 that were used as justification, hanging  
4 devices from mirrors in which the officers  
5 contended that it seriously impaired the view  
6 that the driver would have. All of these cases  
7 went up and had to be reversed by the Superior  
8 Court.

9 Abuse of the proposed legislation  
10 will result in numerous cases of questionable  
11 probable cause.

12 This, however, is only part of my  
13 concern for the bill. The bill would allow in  
14 civil cases for a defendant to admit the  
15 plaintiff's failure to comply to prove the  
16 extent to which plaintiff's injuries would have  
17 been reduced or avoided.

18 No provision exists for a defendant  
19 in a criminal case to admit such evidence for  
20 the same purpose in an effort to reduce the  
21 extent of the penalty that the defendant might  
22 face.

23 While it may not be popular to  
24 espouse concern for a criminal defendant, it is  
25 inherently unfair to allow an insurance company

1 to avoid or reduce its civil liability without  
2 allowing an individual citizen to avoid or  
3 reduce his or her potential criminal liability  
4 by similarly proving the victim was in  
5 violation of the law.

6 I might add that I noted  
7 Representative Robert Godshall's comments were  
8 initially read into the record. I quote from  
9 him, his exact language, when he talked about  
10 this, he said: In reference to the civil side,  
11 the real reason for the inclusion of the  
12 provision is to allow a jury of Pennsylvania  
13 citizens the opportunity to note all the facts  
14 as they debate a crash case. If a person  
15 breaks our current seat belt law and does not  
16 wear his seat belt, then let the jury decide  
17 the damages based on all the facts. I suggest  
18 the same should apply on the criminal side.

19 This legislature has systematically  
20 increased the nature of penalties based on the  
21 extent of injuries inflicted in motor vehicle  
22 violation cases. For example, in 1996, Section  
23 3742.1 of the vehicle code dealing with  
24 accidents involving death or personal injury,  
25 while not properly licensed, mandates that a

1 charge is increased from a misdemeanor to a  
2 felony if the motorist/victim suffers a serious  
3 injury or death.

4 Likewise, in 1996, Section 3742  
5 dealing with accidents involving death or  
6 personal injury was amended to provide that a  
7 mandatory jail term of either 90 days for  
8 serious bodily injury, or one year for death is  
9 required upon conviction. This mandatory jail  
10 sentence would apply even if in that instance  
11 the defendant was not at fault for the accident  
12 or the injury and the victim violated the  
13 proposed law and caused or increased the injury  
14 by not wearing a seat belt.

15 Under House Bill 2078, the  
16 defendant's insurance company could reduce its  
17 liability, but a criminal defendant could not.  
18 The already complicated issue of restitution  
19 has not been addressed by this bill. It  
20 appears that under House Bill 2078, a  
21 defendant's insurance company, who has been  
22 paid a premium by the defendant, could reduce  
23 the protection that was to be provided for the  
24 injury and leave the victim and the defendant  
25 at the mercy of a restitution order. This

1 would be unfair both to the victim and to the  
2 defendant.

3 I do not believe that House Bill 2078  
4 should be enacted. Section 4581 should not  
5 become a mechanism for insurance companies to  
6 avoid their full responsibilities. To be fair,  
7 if House Bill 2078 is to be adopted, it must  
8 provide for the failure to use a child  
9 passenger restraint system or safety belt  
10 system to be admitted in a criminal action to  
11 prove the extent to which the injuries  
12 sustained would have been avoided or reduced by  
13 compliance with the proposed law.

14 I cite for an example a 10,000 dollar  
15 claim for medical bills that's unreimbursed.  
16 It's a DUI case. Unfortunately, I deal with  
17 those on a regular basis. Two concerns: Get  
18 the defendant help through counseling, and then  
19 make the victims whole.

20 How do you do that under this  
21 proposal? Ten thousand dollar claim for meds,  
22 for which there's no insurance because, a jury  
23 in a civil case after that victim had to fight  
24 through everything that Tim Shollenberger  
25 explained, provides for expert testimony

1 perhaps to fight the insurance company, gets a  
2 five thousand dollar award out of a potential  
3 \$10,000 that it should have been because the  
4 jury mitigated that down to 5,000. Who pays  
5 the 5,000? Where is that going to come from?  
6 Well, let's get it from the defendant, the DUI  
7 defendant. I betcha. He ought to pay it. He  
8 should not be DUI.

9 Now what do I do? I say to my  
10 client, cough up \$5,000.00. The judge says,  
11 Mr. Mancke, your client will have to cough up  
12 the \$5,000.00. I say, we don't have it. He  
13 says, I'm ordering and I'm sentencing you to  
14 have your client pay the \$5,000 because the  
15 Superior Court ruled in 1998 in Pennsylvania  
16 that the victim is entitled to full  
17 restitution.

18 There's a five thousand dollar order  
19 and the victim has now had to go through the  
20 civil side, now into the criminal side, shows  
21 up at sentencing, testifies, and the judge  
22 doesn't have the opportunity to say the same  
23 thing that happened in the civil side because  
24 it's not provided for in the bill. There's  
25 \$5,000 awarded and the victim walks out of the



1 courtroom thinking that he or she is going to  
2 be fully compensated.

3 The defendant doesn't have \$5,000.00.  
4 He was paying premiums to the insurance company  
5 that took off with the \$5,000 because of this  
6 bill. So, three months later, four months  
7 later when my client can't pay it, my client is  
8 brought back now for a hearing on default for  
9 the restitution. The victim has to show up  
10 again. You can't put people in jail if they  
11 are indigent. Where is this going?

12 This is created because this bill has  
13 absolutely no concern or consideration for that  
14 problem, which is a daily problem that we deal  
15 with whenever we're looking to compensate. I  
16 realize that it may sound unusual for a defense  
17 attorney to say compensate the victim, but it  
18 is obvious at time of sentencing that's one of  
19 the things we want to see done. This bill does  
20 not consider that aspect of the law.

21 I'll entertain any questions.

22 CHAIRPERSON GANNON: Thank you, Mr.  
23 Mancke. Quick question. You may or may not  
24 know the answer about the routine traffic stop  
25 is requiring passengers and drivers to get out

1 of the vehicle?

2 MR. MANCKE: That is correct. You  
3 are correct on that.

4 CHAIRPERSON GANNON: That would be  
5 permissible under this particular proposal?

6 MR. MANCKE: Yes, it would be, under  
7 the current status of the law.

8 CHAIRPERSON GANNON: Thank you. And  
9 thank you for taking time from your schedule to  
10 be here today and to give testimony.

11 MR. MANCKE: Certainly.

12 CHAIRPERSON GANNON: We are going to  
13 give our court reporter a five-minute break.

14 (Short recess occurred)

15 CHAIRPERSON GANNON: Our next panel  
16 of witnesses, Captain Robert Haught, Director,  
17 Safety Program Division, Pennsylvania State  
18 Police, and Trooper Marian S. Adams with the  
19 Pennsylvania State will provide written  
20 testimony.

21 With us today is the Honorable  
22 Michael L. Norris, Cumberland County Coroner;  
23 Howard E. Dougherty, Chief of Police, West  
24 Shore Regional Police Department, Pennsylvania  
25 Chiefs of Police Association; and Gary Whitman,

1 Senior Engineer, Engineering Crash Safety  
2 Division of ARCCA, Inc. Welcome, gentlemen.  
3 You may proceed when you are ready.

4 MR. NORRIS: Good afternoon, ladies  
5 and gentlemen. If I may start, my name is Mike  
6 Norris. I'm the Cumberland County Coroner, and  
7 I'm representing the Pennsylvania State  
8 Coroners Association in my remarks to you  
9 today. I do want to mention that the Coroners  
10 Association has taken a position solely on the  
11 basis of primary enforcement, and we have not  
12 taken a position on the civil litigation side  
13 of this. We don't feel that's something that  
14 involves our organization.

15 But we do believe that a secondary  
16 offense seat belt enforcement law is simply an  
17 effort to encourage voluntary compliance.  
18 Primary offense law will provide for mandated  
19 compliance and save countless lives.

20 As coroners, it is our responsibility  
21 to respond to every traffic death scene and,  
22 therefore, we have a unique viewpoint regarding  
23 the seat belt issue. While individual police  
24 officers may have the occasion to investigate  
25 fatal traffic crashes and persons in the

1 emergency medical services may respond to an  
2 occasional fatal crash, the county coroner sees  
3 them all.

4 I refer to the subject that was  
5 mentioned earlier today of people who say they  
6 have only unbuckled one or have only ever seen  
7 one or two that died in seat belts. People do  
8 die in seat belts. If you see them all, you  
9 will see this happen. There are circumstances  
10 that that's the case. Even seeing people who  
11 have died in seat belts, I have the conviction  
12 that seat belts make the difference.

13 I am in my 17th year as coroner. I  
14 was a deputy coroner for six years prior to  
15 that. I was a police officer for 10 years. I  
16 ran with a volunteer ambulance service in my  
17 county for more than 30 years and was certified  
18 as an emergency medical technician.

19 As a part of my current coroner's  
20 office, I am the Project Director for the  
21 PennDOT Comprehensive Highway Safety Program  
22 for a four-county area. One of the  
23 responsibilities of this program is on-site,  
24 visual surveys of seat belt usage in each of  
25 our counties.

1                   While we have made great strides in  
2                   increasing seat belt usage in Pennsylvania, we  
3                   appear to have reached a glass ceiling. In  
4                   fact, we're bouncing backwards slightly, which  
5                   does not seem to be able to be broken by public  
6                   education efforts of many agencies and the  
7                   limited enforcement efforts allowed by the  
8                   current seat belt laws. We need to improve our  
9                   numbers to save lives.

10                   I appear here as a seat belt  
11                   advocate, but this was not always my position.  
12                   When the seat belts first appeared, I was among  
13                   those who took the position that seat belt use  
14                   should be a matter of personal choice; not  
15                   mandated by law.

16                   My view changed as I watched people  
17                   dying needlessly simply because they hadn't  
18                   made the decision or taken the time to buckle  
19                   up. I became a believer in seat belts and  
20                   then, with more experience, a seat belt  
21                   advocate. I speak publicly on the issue. I  
22                   present slide programs which graphically  
23                   display the need for seat belts. I carry  
24                   buttons and key chains--which I've distributed  
25                   to you prior to my testimony here today--with

1 me wherever I go to remind people of the  
2 importance of seat belts. Basically, I'll talk  
3 to anyone who will listen to me.

4 As I said, I originally thought that  
5 seat belts should be a personal choice. Then I  
6 reached the point that I became an advocate  
7 that the people who road in my vehicle should  
8 wear a seat belt. I reached a point were I  
9 mandate it. I reached a point finally in my  
10 life which is, probably tells you my  
11 conviction, my own mother, who is not a seat  
12 belt advocate, was told if she didn't wear her  
13 belt she couldn't ride in my car. That tells  
14 you what my position is.

15 Since 1990, as part of the  
16 investigation into traffic fatalities in my  
17 county, we have been keeping a separate box  
18 score. After determining whether or not the  
19 deceased persons were wearing seat belts at the  
20 time of the crash and if they were available,  
21 we attempt to make a determination as to  
22 whether the seat belt usage would have made a  
23 difference. In other words, would they have  
24 survived if they had buckled up? The results  
25 are somewhat amazing.

1                   From 1990 to 1997, 119 persons died  
2 with seat belts available that were not using  
3 them -- excuse me, with seat belts available.  
4 Of those, 28 died in belts. For 26 of them it  
5 was determined that seat belts probably would  
6 not have saved them, would not have made the  
7 difference. For nine persons we weren't able  
8 to make a clear determination as to whether or  
9 not seat belt use would have made a difference.  
10 However, 56 people died simply because they  
11 failed to make the decision to buckle up.

12                   It's a phenomenal number. Forty-  
13 seven percent of all of those persons who had  
14 seat belts available to them died simply  
15 because they didn't use them. These numbers  
16 are based on actual traffic death  
17 investigations conducted by the Cumberland  
18 County Coroner's Office.

19                   I don't represent them to be more  
20 than that. But, when a county of 200,000  
21 people has had an average of seven deaths each  
22 year for the last eight years simply because  
23 people failed to buckle up, it clearly gives  
24 you 56 more reasons why we need to enact a  
25 primary enforcement seat belt law.

1                   Coroners across this Commonwealth can  
2 tell you similar tales of needless and  
3 unnecessary deaths occurring regularly because  
4 of the failure of citizens to voluntarily  
5 comply with our current seat belt law.

6                   I also want to take a moment and  
7 remind everyone here today that as we talk  
8 numbers, numbers killed, numbers that could  
9 have survived, numbers that would have  
10 survived, numbers that were seriously injured  
11 and had long-term injuries and illnesses, we  
12 need to remember that each of these numbers  
13 represents a person, a family member, a loved  
14 one, someone who was and is sorely missed by  
15 family and friends. I don't think there's  
16 anyone who has not been there who can truly  
17 comprehend what it's like to knock on a door  
18 and tell a family that a loved one is not  
19 coming home.

20                   To know as you deliver this message  
21 that the simple effort of buckling a seat belt  
22 could have prevented the grief, the pain that  
23 you are witnessing as the family absorbs this  
24 message makes you wonder what it will take to  
25 stop the carnage. We believe a primary



1 enforcement seat belt law which allows  
2 enforcement of mandatory seat belt usage will  
3 help.

4 I've talked about the number of  
5 people who died because they didn't wear a seat  
6 belt. I've told you that I believe that you  
7 can help in reducing these numbers by enacting  
8 a primary law. But, I want to make another  
9 comparison. We all seem to recognize that new  
10 tools are regularly needed in the war against  
11 crime. This session of the legislature has  
12 enacted numerous laws for that specific  
13 purpose.

14 Homicide is one of the most serious  
15 crimes one can commit today, and again, these  
16 needless deaths cause countless family members  
17 and friends to suffer grief and pain. It is,  
18 therefore, important to recognize that in the  
19 same eight-year period that I mentioned above,  
20 the Cumberland County Coroner's Office  
21 investigated only 30 homicides. Nearly twice  
22 as many people died because they weren't  
23 wearing seat belts as were killed by others in  
24 our most serious criminal offense.

25 Laws to protect citizens from

1 criminal acts and prosecute murderers gain  
2 strong bipartisan support while a law that may  
3 save nearly twice as many lives has had tough  
4 sledding. Again, I make comparisons based on  
5 statistics from my county, but as you talk to  
6 the coroners in your own county, you will hear  
7 similar numbers and the same concerns.

8 I'd like to tell you a short personal  
9 anecdote. Two years ago in early December I  
10 presented a slide program on the dual subjects  
11 of drinking and driving and the use of seat  
12 belts to a group of parents from a local high  
13 school. They were reviewing programs that were  
14 being presented to the students. Upon the  
15 completion of my presentation there was  
16 considerable discussion about the message, the  
17 content and the graphic presentation.

18 About three weeks later, just one  
19 week before Christmas, I received a message on  
20 my office phone from a lady who told me that  
21 she had attended my presentation and that she  
22 was one of those who objected to the  
23 graphicness of that presentation, but that it  
24 had convinced her to begin wearing her seat  
25 belt.

1                   She went on to say that she had  
2                   recently been involved in a serious traffic  
3                   crash, and that although she had been injured,  
4                   she had been told by her doctor that she  
5                   probably would not have survived had she not  
6                   been wearing a seat belt.

7                   She closed by saying that her family  
8                   had asked her to call me and thank me for their  
9                   Merry Christmas. You can't imagine the feeling  
10                  that I had as I listened to that message. I  
11                  can tell you I still have the tape.

12                  I believe that your decision  
13                  regarding this pending legislation can give  
14                  each of you the feeling that you personally  
15                  contributed to the saving of someone's life.

16                  Ladies and gentlemen, as a corner  
17                  representing the Coroners Association, I would  
18                  like to close by encouraging, or rather  
19                  imploring you to find it in your heart and soul  
20                  to vote to enact this legislation and make the  
21                  use of seat belts enforceable as a primary  
22                  offense in the Commonwealth of Pennsylvania.  
23                  It is the only way to convince some people to  
24                  wear the seat belt that may save their life.  
25                  Thank you.

1 CHAIRPERSON GANNON: Thank you, Mr.  
2 Norris. Chief Dougherty.

3 CHIEF DOUGHERTY: Good afternoon, Mr.  
4 Chairman, and other committee members. I'm  
5 Howard Dougherty, of the West Shore Regional  
6 Police Department, which is Wormleysburg and  
7 Lemoyne Boroughs in Cumberland County. I've  
8 been a police officer for 27 years. So, I've  
9 been around a long time and seen an awful lot  
10 happen.

11 I am here today on behalf of the  
12 Pennsylvania Chiefs of Police Association. The  
13 Association, and its 1,300 members, represents  
14 police chiefs and management level personnel  
15 and all law enforcement agencies across the  
16 Commonwealth.

17 Thank you for granting the  
18 Pennsylvania Chiefs the opportunity to testify  
19 before your committee on this critical  
20 legislation. We hope our testimony will  
21 provide insight to you on the law enforcement  
22 perception of the proposed legislation  
23 regarding House Bill 2078, amending the vehicle  
24 code, Section 4581, Restraint Systems.

25 I was reading the Patriot News on

1 July 7, 1998, and there was an article on the  
2 Class Acts from the Graduates of 1998. I was  
3 reading through all of them and I found one by  
4 Matthew Rokita--I believe his name is--of  
5 Central Dauphin High School. He was quoted as  
6 saying: Newspapers every day are filled with  
7 stories of people unexpectedly killed in an  
8 accident, a tornado or even murdered. The  
9 victims of these unfortunate events had no way  
10 of knowing that such a fate was slated for  
11 them, and most likely, they were not prepared  
12 to leave their family, their friends, their  
13 jobs--their lives.

14 The quote made me think about the  
15 statistics comparing traffic accidents to  
16 murder with a firearm. We're 32 percent more  
17 likely to die in a traffic accident than we are  
18 with a gun. If you live in Cumberland County,  
19 you heard our coroner Mike Norris just tell  
20 you, that nearly twice as many people die there  
21 because they weren't wearing their seat belts  
22 compared to those who were killed by others in  
23 our most serious criminal offense--homicide.

24 Every 14 seconds someone in America  
25 is injured in a traffic accident; every 12

1 minutes someone is killed.

2 At the current time, with the  
3 secondary seat belt law now in effect, a police  
4 officer can't stop a vehicle if they see a  
5 child over four years of age unbuckled, sitting  
6 on the parent's lap or even standing in the  
7 front seat. This came about with Commonwealth  
8 versus Henderson, a Superior Court decision in  
9 1995, which was very specific when it stated:  
10 Since a citizen cannot be convicted of  
11 violating the seat belt law, the violation of  
12 that law alone, without the presence of another  
13 Motor Vehicle Code violation, is not a legal  
14 basis for a traffic stop. Therefore, a police  
15 officer may not stop a vehicle for a seat belt  
16 violation alone, even for a verbal warning.

17 The statistics are showing us that 20  
18 percent of the traffic fatalities in 1996, in  
19 Pennsylvania, the victims are under 21 years  
20 old. But, with Commonwealth versus Henderson,  
21 law enforcement can't even stop a vehicle to  
22 give a verbal warning which could save a young,  
23 innocent life.

24 On July 11, 1989, the police  
25 community of the Susquehanna Valley experienced

1 a tragic death with a 14-year veteran of the  
2 Lemoyne Police Department dying in a traffic  
3 accident on Market Street in the Borough of  
4 Camp Hill. I'm here to tell you that I was the  
5 Police Chief of Lemoyne at that particular time  
6 and it was tragic. The veteran officer was not  
7 wearing a seat belt.

8 The coroner was Michael Norris.  
9 Michael Norris said it was a survival accident  
10 had my officer been wearing a seat belt. The  
11 officer was a good friend. He was an excellent  
12 policeman, and he was a very devoted father.  
13 He has and will continue to be missed by the  
14 community, by the police department, and, of  
15 course, his family. If only he had buckled his  
16 seat belt. We really have to think about that.

17 One of the things that was talked  
18 about here earlier today was how much a fine  
19 was. Well, if you get a ticket in Pennsylvania  
20 under the proposed legislation, there will a  
21 twenty-five dollar fine. There will an EMS  
22 surcharge of \$10.00. There will a thirty  
23 dollar surcharge for the CAT Fund. There will  
24 a one dollar and fifty cent surcharge for the  
25 JPC Fund, and there will be a twenty-seven

1           dollar cost, for a total of \$94.50 (sic).

2           However, I think we're looking at this in the  
3           wrong perspective of giving traffic citations.

4                       I'm very enforcement minded, but I  
5           don't think that you are going to see everybody  
6           stopped to get a traffic citation for not  
7           wearing a seat belt. You are going to see a  
8           lot of verbal warnings. You are going to see a  
9           lot of written warnings come out of this. This  
10          is not all going to be a traffic citation. I  
11          think that's a misconception on a lot of  
12          people's part. That's not really going to  
13          happen. The officers are going to stop them.  
14          Buckle your seat belt; please move on.

15                      Another perception that was asked if  
16          they were properly buckled. I think properly  
17          buckled is what we're looking at. I think it's  
18          the way the current law is structured right  
19          now. Properly (sic) buckled could be someone  
20          who would buckle their seat belt and sit on it.  
21          We've seen it happen. Properly buckled is --  
22          or not properly buckled is a person who will  
23          take the seat belt and they'll clasp it and  
24          they'll put their arm over and put it under,  
25          which can cause more damage to the individual



1 and hurt them even worse than if they hadn't  
2 worn the belt at all.

3 I think that's what we're talking  
4 about in properly buckled. I don't think we're  
5 talking about spacers. I don't think we're  
6 talking about any of those things. We're  
7 looking at the other part of it.

8 The Pennsylvania Chiefs of Police  
9 Association supports House Bill 2078 which will  
10 make a seat belt violation a primary  
11 enforcement law. With primary enforcement we  
12 feel seat belt usage will increase and the  
13 death rate will decrease.

14 We appreciate the opportunity of  
15 working with you to confront an issue that is  
16 important to all Pennsylvanians.

17 If you have any questions, I'll be  
18 happy to answer them when you are ready for  
19 them.

20 CHAIRPERSON GANNON: Thank you, Chief  
21 Dougherty. Mr. Whitman.

22 MR. WHITMAN: Thank you very much Mr.  
23 Chairman. Thank you for allowing me to speak  
24 today. I have been given the simple task of  
25 talking about why seat belts work and why they

1 are effective. After hearing everyone today, I  
2 don't think there's any questions among the  
3 opponents and the proponents of this bill that  
4 they do, in fact, work. With that said, I will  
5 talk to you a little bit more about the  
6 technical aspects of seat belts.

7 In protecting the occupant in a  
8 crash, you obviously have a first impact  
9 between the vehicle and whatever object it  
10 strikes. We refer to that in the engineering  
11 community as the first impact.

12 When unbelted there's a second  
13 collision that occurs. That collision is  
14 between the occupant and the structure within  
15 the vehicle. If you are unfortunate enough to  
16 be thrown from the vehicle, that second  
17 collision actually occurs outside the vehicle  
18 into some other object.

19 There's a third role of seat belts in  
20 protecting the occupant in the crash, and that  
21 is what we refer to as ride down of the crash.  
22 As the crash begins, if you are unrestrained,  
23 your vehicle begins to decelerate. Your body  
24 continues forward until it strikes that other  
25 object. If you are seat belted, it loads into

1 the seat belts, into structures of the body  
2 that are strong enough to sustain the load that  
3 the seat belts are applying and decelerates the  
4 body with the crash. When you strike that  
5 object on a restraining human in the vehicle,  
6 the strike is very violent and very rapid in  
7 deceleration.

8 When you decelerate with the car even  
9 though that seems like instantaneous events  
10 when you observe it, it actually occurs over a  
11 tenth of a second which allows your body to  
12 decelerate, and those decelerations are not as  
13 injurious as if you were striking the interior.

14 As I mentioned, ejection is really  
15 the first role of a restraint system. When the  
16 restraint system was first introduced and the  
17 air bag in the automobile, the reason was to  
18 prevent ejections. People hadn't even  
19 considered one of the greatest ends to the  
20 hazard of striking the interior of a vehicle.

21 Once they stopped the ejection from  
22 occurring, it was seen that the occupant was  
23 striking the interior with lap belt only  
24 systems. Then they introduced the upper torso  
25 restraint provided by the shoulder belt. They

1 began to become more sophisticated in their  
2 approach to occupant protection of having to  
3 strike the interior, and also the fact in some  
4 inertia forces where the accelerations are too  
5 great for the body to withstand. All of those  
6 things are considered when designing seat  
7 belts.

8 You see the summary here which is  
9 prevention of ejection, allowing the occupant  
10 to ride that crash down and then prevent the  
11 second collision in the interior of the  
12 vehicle.

13 Someone else had provided these  
14 numbers earlier today, but if we review them,  
15 in a typical 30, 35 mile per hour frontal crash  
16 you're looking at acceleration generated to the  
17 body at 25 to 30 times your own weight or 25 to  
18 30 times the pull of gravity on earth. When  
19 that happens, if you are a 150-pound person--I  
20 remember those days. I was 150 pounds once--  
21 the load produced is 3,750 to 4,500 pounds of  
22 force. No one can restrain themselves from  
23 these kind of forces. So, for anyone to  
24 believe they can restrain themselves without  
25 using seat belts to help them, just does not

1 understand physics.

2 If you are talking about a 10-pound  
3 children -- We all love our children and like  
4 to hold them close. Unfortunately, that  
5 10-pound child will suddenly produce a force of  
6 250 to 300 pounds during a 30 to 35 mile per  
7 hour crash. Again, no one can expect to hold  
8 that child in that crash. They are going to  
9 become a projectile.

10 If you are ejected from the vehicle,  
11 your chances of being killed or seriously  
12 injured increase 40 fold.

13 The effectiveness of the lap shoulder  
14 belt, which is basically the state-of-the-art  
15 seat belt system and, of course, the  
16 supplemental air bag increases the  
17 effectiveness of the lap shoulder belt.

18 As was pointed out earlier, you  
19 cannot compensate the effectiveness of the lap  
20 shoulder belt with air bag systems. Air bag  
21 systems are supplements. They do not approach  
22 the effectiveness of a lap shoulder belt  
23 restraint system. That effectiveness is 59  
24 percent in frontal crashes for reducing serious  
25 injury and fatality. That is a phenomenal

1           increase. Any time you look at safety devices  
2           of any kind, when you can get that kind of a  
3           success rate, you're a very pleased engineer.

4                        Now, if we look at the general  
5           kinematics of the crash, as I talked about  
6           earlier, at zero seconds you begin your impact.  
7           At about 50 milliseconds the occupant begins to  
8           move forward, and at about a tenth of a second  
9           you have impact with the objects in front of  
10          you. It's easy to sit here and talk about what  
11          that looks like and how violent that is. But  
12          rather than waste my breath I brought with me a  
13          video which will allow you to look over a crash  
14          test which compare belted and unbelted  
15          occupants. If you don't mind, I'll put that on  
16          now.

17                        (Video presentation occurred)

18                        MR. WHITMAN: With well-designed lap  
19          shoulder belt, you didn't see anything more  
20          than bruises and abrasions. There were  
21          problems with lap belts causing serious  
22          abdominal and lumbar injuries; the shoulder  
23          belt only systems causing broken necks. Those  
24          systems are acknowledged by just everybody in  
25          the community to be insufficient and are

1           fortunately disappearing from the marketplace.  
2           The lap shoulder belt is not going to cause a  
3           significant increase of injuries of any  
4           significance.

5                         I'll be happy to take any questions.

6                         CHAIRPERSON GANNON: Thank you, Mr.  
7           Whitman. Representative Manderino.

8                         REPRESENTATIVE MANDERINO: Thank you.  
9           Mr. Whitman, do you know why there is not one  
10          standard -- why automobile manufacturers aren't  
11          required to all make seat belts and their  
12          fasteners to the same standard? What I mean is  
13          that -- I'm not saying it right.

14                        Let me go specifically to the example  
15          that I used earlier where I have had the  
16          experience of getting in an automobile that the  
17          seat belt wasn't long enough for me. I know  
18          there are such things as seat belt extenders,  
19          but I also know that one seat belt extender  
20          does not fit all because the parts that fit in  
21          vary from car to car. You can't as a person  
22          take personal responsibility and say, I know  
23          this is a problem with me. I'll carry a seat  
24          belt extender with me because it doesn't fit.  
25          Each manufacturer has their own, whether it's

1 on an airline or in a car. I'm wondering why  
2 something as simple as that isn't something  
3 that's required.

4 My other question on the seat belt  
5 design when we're talking about a seat belt  
6 harness situation, a couple of people said to  
7 me during the break, I've had similar problems  
8 like that because I'm taller than average or  
9 I'm much shorter than average, or I'm much  
10 smaller than average.

11 My question is, is there -- How are  
12 belts designed? I made an assumption that they  
13 were designed to fit 80 percent of the norm and  
14 that you can't design one belt to fit all. One  
15 of the physicians seemed to at least intimate  
16 that, oh, they could design one to fit all if  
17 they wanted to.

18 I would like to hear your thoughts  
19 from an engineering perspective on those  
20 issues. If we're going to make something a  
21 requirement of personal responsibility, how  
22 much responsibility do we have to make sure  
23 that people can comply?

24 MR. WHITMAN: The federal standards  
25 says that belts must be designed to accommodate



1 a fifth percentile female to a 95th percentile  
2 male. All or most do provide the extender that  
3 you are referring to. I was going to mention  
4 that to you.

5 REPRESENTATIVE MANDERINO: No, I'm  
6 aware of that, but if it's not your own car --

7 MR. WHITMAN: Right. Compatibility  
8 is a problem.

9 REPRESENTATIVE MANDERINO: That's  
10 exactly right.

11 MR. WHITMAN: The reason you don't  
12 specifically see standards specify specific  
13 hardware dimensions, they do not want to stifle  
14 creativity in the design. That's double edged.  
15 Sometimes you get some new designs that were  
16 better than the old, but at the same time, you  
17 don't enjoy compatibility between the systems.  
18 That's the problem you have with extenders.  
19 You have to use the one designed for that  
20 vehicle.

21 The rental car company that you  
22 talked about earlier certainly should be  
23 stocking those extenders. I don't know whether  
24 they do or not. They do stock child  
25 restraints. But where you find you could not

1 get your belt on and went into a rental car  
2 company and they said they did not have an  
3 extender, I personally would be furious with  
4 that because they should certainly anticipate  
5 people above and below the fifth and 95th  
6 percentile.

7 REPRESENTATIVE MANDERINO: Say that  
8 again? The fifth --

9 MR. WHITMAN: -- female. Your small  
10 female would be a fifth percentile and your  
11 large male, 95th. They are suppose to  
12 accommodate everyone that falls between that  
13 range.

14 REPRESENTATIVE MANDERINO: You're  
15 saying that there's only five percent on either  
16 end of the spectrum that every system should  
17 fit but these folks?

18 MR. WHITMAN: Right.

19 REPRESENTATIVE MANDERINO: Unless you  
20 are a 4 foot 10, 90-pound woman or a 6 foot 6,  
21 350-pound man, these should all fit in there?

22 MR. WHITMAN: Should is the important  
23 word. When you talk about getting into an  
24 automobile and finding the shoulder strap going  
25 across your neck, I don't consider that

1           accommodating. I think you are above the fifth  
2           percentile in height female, so you should be  
3           accommodated.

4                       They may argue that it may be  
5           uncomfortable but not injurious. That is in  
6           fact true. You can have some casual contract  
7           with the shoulder belt during normal use and it  
8           will not cause you an injury in a crash. As  
9           you articulate forward into that belt, it moves  
10          onto the shoulder region. The only time you  
11          should be seriously concerned about the  
12          shoulder belt on the neck is when it comes  
13          right across the neck and can become a problem  
14          with high cervical injury. But, typically, you  
15          don't see that kind of a problem.

16                      Nonetheless, who wants to ride with  
17          the shoulder belt right up against the neck  
18          continually? So, people come up with creative  
19          solutions like the Safe Fit that was mentioned  
20          earlier. NHTSA does not, by the way, recommend  
21          that as the alternative for children who don't  
22          fit the lap shoulder belt after they have  
23          outgrown convertible seats. Their  
24          recommendation, and I concur, is that you put  
25          children in a belt-positioning booster which

1 elevates their height to proper seated height.

2           These, I think it was referred to as  
3 between children that were between the adult  
4 belt and child restraint should be in a belt-  
5 positioning booster; not using these aptly  
6 marketed devices that don't have to meet any  
7 federal standard to be marketed. I wouldn't  
8 say that any of those are necessarily safe. I  
9 have concerns about some of them.

10           Did I answer all those questions?

11           REPRESENTATIVE MANDERINO: I think  
12 so. The question that I have to ask in my  
13 mind, which is, given all that, is this primary  
14 enforcement still an overwhelmingly positive  
15 effect? I'm sure you will say yes. I'm  
16 just --

17           MR. WHITMAN: If I can add to that.  
18 If you find somebody who's of a size either  
19 because of their weight or their height that  
20 does not fit, I believe there's an allowance  
21 for a medical excuse not to be wearing your  
22 belt. I think that would fall into that area.

23           REPRESENTATIVE MANDERINO: I don't  
24 want to be argumentative, but that's all well  
25 and good when you're talking about you in your

1 own car and you make the decision. That's not  
2 reality in a lot of places. I don't have any  
3 kids, but I cart nieces and nephews and  
4 children of friends around. I try to do all  
5 the right things. I won't let a child who's  
6 under 5 foot 6 and 150 pounds sit in my front  
7 passenger because I know I have an air bag. I  
8 put them in the back.

9 But the reality of it is -- Again,  
10 I'm not talking about what's proper education.  
11 I'm talking about whether it's right to put  
12 folks in a situation of being pulled over for a  
13 traffic stop. I'm not quite sure that it's  
14 right to put somebody in a position where they  
15 will be pulled over for a traffic stop, for  
16 things that graphically don't make a lot of  
17 sense.

18 I'm a passenger in somebody else's  
19 car. I make sure that my car fits me, but  
20 somebody else's car might not fit me. But  
21 they, as the driver, are liable for the fact  
22 that I'm sitting in their car unfastened. The  
23 same thing with kids. That's where I'm stuck.

24 MR. WHITMAN: I'm especially  
25 concerned about children. When you talk about

1 children, now you are talking about a person  
2 that you can't expect to be educated well  
3 enough to know it's to their own good, and  
4 you're relying on the parent.

5 Now, do we have a responsibility of  
6 protecting that child over the parent's  
7 responsibility? I know that certainly  
8 government steps in when a family denies  
9 medical care for their child because of  
10 religious reasons or other. I think this is  
11 analogous where we have more knowledge than,  
12 perhaps, the parents and we are obligated to  
13 step in and say here's what's best for your  
14 child.

15 REPRESENTATIVE MANDERINO: I'm not  
16 sure I disagree with you. For example, we have  
17 made laws that are age specific. We have made  
18 bicycle helmet laws that have an age specific  
19 requirement. We have made skate boarding and  
20 bicycling helmet laws, and we have made even  
21 motorcycle laws that have an age limit that  
22 kind of says if you are under an age -- a  
23 certain age of a child that it is the adult  
24 responsibility to protect you. If you are over  
25 that age and you are an adult, then it's your

1 responsibility to protect yourself. We have  
2 made those distinctions in other laws.

3 Here we're not making that  
4 distinction. Here we're saying that we're  
5 going to have the primary enforcement for not  
6 just children or minors, but for everyone.

7 MR. WHITMAN: Because of the societal  
8 costs in addition to those arguments, yes, you  
9 are right.

10 CHAIRPERSON GANNON: Representative  
11 Hennessey.

12 REPRESENTATIVE HENNESSEY: Thank you,  
13 Mr. Chairman. Mr. Whitman, in terms of side  
14 impact crashes, help me answer the argument  
15 that some people would say, there are certain  
16 circumstances in which you are safer without a  
17 seat belt. If you have a standard car without  
18 side air bags, is there ever a time that you  
19 would be better off being thrown across the  
20 passenger seat than strapped in as the door  
21 collapses inward?

22 MR. WHITMAN: You probably could come  
23 up with some rare instances where --

24 REPRESENTATIVE HENNESSEY:  
25 Statistically, are there tests?

1 MR. WHITMAN: I couldn't give you a  
2 statistic for that. As a matter of fact, Volvo  
3 designs their automobiles so that as the side  
4 impact occurs, the entire seating system is  
5 displaced inward as a system.

6 There's some merit to the argument,  
7 but the physics of a side impact like that are,  
8 you are going to bear the brunt of the side  
9 impact before you displace to the right because  
10 the vehicle is actually being displaced towards  
11 you, so you're relatively speaking moving into  
12 the impact. It's not until you get struck by  
13 that impact and you'll then rebound away from  
14 it subsequently, but you'll see the brunt of it  
15 anyway. What you won't perhaps have happen is,  
16 you won't be held in place while the intrusion  
17 comes upon you. Those are rare instances I'm  
18 talking about.

19 Statistically speaking, I would have  
20 to categorize a person who looks at the  
21 statistics and decides not wear their belt  
22 would be a fool because they are much better  
23 protected in the seat belt in most all  
24 perspectives.

25 REPRESENTATIVE HENNESSEY: I would



1 think so. I think those are probably  
2 statistically insignificant cases. That might  
3 be a problem rather than saving -- or a health  
4 (drops voice).

5 MR. WHITMAN: We do quite a bit of  
6 crash investigations and rarely do we see that  
7 type of a crash.

8 REPRESENTATIVE HENNESSEY: To carry  
9 on the test you told us about, I'm assuming  
10 that the seat belts that were videoed were  
11 snugly fit around a person at the hips.

12 MR. WHITMAN: Yes. I heard that  
13 discussion earlier when you talked about a  
14 properly fitted belt system.

15 REPRESENTATIVE HENNESSEY: Some  
16 people say they prefer to have it loose, have  
17 four or five inches or six inches between their  
18 abdomen.

19 MR. WHITMAN: You're scaring me.

20 REPRESENTATIVE HENNESSEY: What  
21 happens? Tell us what would happen with an  
22 impact --

23 MR. WHITMAN: If you are talking  
24 about in the lap belt versus the shoulder belt,  
25 it makes a difference as to which part of the

1 belt. If it's in the lap belt, not on the hips  
2 properly, the belt system is designed to engage  
3 the pelvis, the specific part of the anatomy,  
4 the pelvis. If there's slack in the belt, as  
5 you move forward you also move downward and you  
6 compress the seat cushion. By the belt not  
7 engaging the pelvis, it will move up into the  
8 abdominal region and now the load is being  
9 applied to the abdomen, and the abdomen cannot  
10 sustain nearly as much load without injury as  
11 the strong pelvic bone region.

12 Fortunately, we still have the  
13 shoulder belt sharing the load and is not as  
14 bad as the lap belt only situation, but it's a  
15 compromise situation and you end up with some  
16 abdominal abuse.

17 REPRESENTATIVE HENNESSEY: With  
18 regard the shoulder belts, some of the older  
19 styles you used to be able to -- had to pull  
20 them away from your chest and there would be  
21 some sort of a ratcheting effect that would  
22 stop them after an inch or two. Now the seat  
23 belt seems to be sort of free flowing.

24 How do you know -- I have often  
25 wondered as I drove along whether or not the

1 belt is really going to work. How do you know  
2 that the ratchet system, or whatever has  
3 replaced that as a gripping mechanism, is going  
4 to work upon impact?

5 MR. WHITMAN: What you were saying  
6 when you put slack in those old belts is not  
7 the locking mechanism that sustains your blow.  
8 All that is doing was degrading your protection  
9 and, thankfully, those systems are gone except  
10 for those that are still on the road today.  
11 Hopefully, people aren't setting a lot of slack  
12 in their seat belt because it does degrade  
13 performance.

14 To know whether your seat belt really  
15 works, you're relying upon the engineer who  
16 designed it. The only way you practically can  
17 test is not by pulling rapidly on the belt.  
18 There are some belts that will lock like that;  
19 primarily, European vehicles which are required  
20 in Europe to lock up not only by the rate of  
21 belt payout, but also by the deceleration of  
22 the vehicle.

23 In this country our belts are  
24 required to lock when it senses deceleration of  
25 the vehicle. The only way you can practically

1 test it would be to use an abrupt breaking and  
2 see whether or not your belt locks up. I know  
3 people who have tried it and couldn't get it to  
4 do it. We checked their car and the retract  
5 was fine. It takes a rather abrupt breaking.  
6 I'm not trying to recommend people go out and  
7 start slamming their brakes on all around.

8 REPRESENTATIVE HENNESSEY: It's a  
9 possibility to take it to the dealer and say  
10 check it. Do those people know much more about  
11 how to test those things than the driver that's  
12 been driving that for five or ten --

13 MR. WHITMAN: It probably varies from  
14 mechanic to mechanic. To check whether your  
15 retractor locks, to really do it you need to  
16 remove your retractor, tip it, which causes the  
17 mechanism -- it senses acceleration to move  
18 that toward the deceleration of the vehicle.  
19 And when it tips it should lock and not allow  
20 anymore belt to pay out. Now you're asking the  
21 mechanic who is probably less skilled in  
22 putting it back into your car, and you may be  
23 just introducing lesser liability simply by  
24 playing around with it.

25 REPRESENTATIVE HENNESSEY: Thank you

1 very much.

2 MR. WHITMAN: Thank you.

3 CHAIRPERSON GANNON: Mr. Preski.

4 MR. PRESKI: Mr. Norris, did you have  
5 some comments you wanted to make on the side  
6 impact?

7 MR. NORRIS: I agree with his  
8 statement. I've looked at a lot of accidents.  
9 I think one of the things that may not be  
10 recognized is, his agency is not just in  
11 engineering and design. They do a lot of  
12 investigations of accidents after they have  
13 occurred. They are involved in investigations.  
14 They are involved in accidents.

15 The statistics he's talking about is  
16 not just based on abstracts of design, but  
17 investigation of accidents and the injuries  
18 resulting from accidents after those accidents  
19 occurred and seeing how they happened. There's  
20 a big difference in looking at an engineer who  
21 is talking in abstract about what he learned in  
22 a book, and an engineer who's been in the field  
23 and examined and looked at these things.

24 I agree completely with his statement  
25 that the side impact situation with a seat belt

1 on, you're waiting until you get the impact  
2 before you begin to move away from it and  
3 you'll get a lot more damage right away, so you  
4 would be better off to have the belt on still  
5 in my opinion.

6 MR. PRESKI: Thank you.

7 CHAIRPERSON GANNON: Mr. Norris, on  
8 page 3 of your testimony, you say 56 people  
9 died simply because they failed to make a  
10 decision to buckle up. Of that number, do you  
11 know what percent were involved in auto  
12 accidents where exceeding the speed limit was  
13 also a fact?

14 MR. NORRIS: No, sir, I can't tell  
15 you that right off the top of my head.

16 CHAIRPERSON GANNON: Also, you say 47  
17 percent of those persons who had seat belts  
18 available to them died simply because they  
19 didn't use them. If you take that 56 --

20 MR. NORRIS: That is the same number.

21 CHAIRPERSON GANNON: Forty-seven  
22 percent of that is 26.

23 MR. NORRIS: No. Fifty-six of the  
24 total -- Of the total of 119 who had seat belts  
25 available, 47 percent --

1 CHAIRPERSON GANNON: I'm sorry.

2 MR. NORRIS: -- 47 percent, or a  
3 number of 56, died because they didn't use  
4 them.

5 CHAIRPERSON GANNON: It seems to me  
6 from reading this, and I may be misreading  
7 this, there was a fairly substantial number who  
8 didn't even have a seat belt available to them.

9 MR. NORRIS: No, no. The number I  
10 list here, 119 that I listed in total is those  
11 people who died with seat belts available to  
12 them, period. Of those, 28 died with a seat  
13 belt in use; 47 percent, or 56, died because  
14 they did not use the belts. That's where that  
15 47 percent came from.

16 CHAIRPERSON GANNON: 47 is the 56.  
17 Okay.

18 MR. NORRIS: 47 percent is the 56.

19 CHAIRPERSON GANNON: I understand  
20 that. You don't know how many of those  
21 accidents where those folks -- of the 119 that  
22 were killed, how many were exceeding the speed  
23 limit?

24 MR. NORRIS: No, sir, I can't give  
25 you the answer to that question.

1                   CHAIRPERSON GANNON: Thank you very  
2 much, gentlemen, for appearing before the  
3 committee and taking time from your day to  
4 present your testimony. We appreciate it.

5                   Just a little bit of housekeeping  
6 before I call the next witness, we have written  
7 testimony from Penny W. Staver, State Executive  
8 Director of Mothers Against Drunk Driving which  
9 we'll submit for the record.

10                   Our next witness is Sam Marshall,  
11 Esquire, Insurance Federation of Pennsylvania.  
12 Welcome, Mr. Marshall, and you may proceed when  
13 you are ready.

14                   MR. MARSHALL: Welcome. Chairman  
15 Gannon, members of the committee: Sam Marshall  
16 with the Insurance Federation. We are a  
17 nonprofit trade. We represent insurance  
18 companies.

19                   CHAIRPERSON GANNON: Off the record.  
20 Did you get a promotion?

21                   MR. MARSHALL: Yes, I did. That  
22 would actually be on the record.

23                   CHAIRPERSON GANNON: On the record  
24 then. Title, President-Elect of Pennsylvania  
25 Insurance Federation. Congratulations.



1                   MR. MARSHALL: Thank you, Mr.  
2                   Chairman. I'm here today to recommend approval  
3                   of House Bill 2078 for some very simple  
4                   reasons. We're auto insurers. We insure  
5                   drivers and passengers of cars that operate in  
6                   the Commonwealth. Because of that, we have a  
7                   concern with the cost of that insurance in  
8                   trying to keep it down and with promoting the  
9                   safety of those drivers and passengers. Those  
10                  are actually two related concerns.

11                  Sometimes we're on the losing side of  
12                  some auto safety issues. The speed limit bill  
13                  was one of the most recent vivid examples. I  
14                  hope here we're going to be on the winning  
15                  side. This bill doesn't cost the Commonwealth,  
16                  consumers or business or any such interest  
17                  group money. Just the opposite. It actually  
18                  saves money and it will save lives. To me that  
19                  seems like a no-brainer.

20                  Henry Hager, who remains the  
21                  President of the Federation, sent a memorandum  
22                  out when the bill was originally introduced. I  
23                  attached it to my testimony. The studies he  
24                  cited in it are available. The memorandum is  
25                  there. The studies were done by some pretty

1 objective outfits: The U.S. Department of  
2 Transportation and by PennDOT. They're clear  
3 and I think the people today testified both on  
4 the general level and a very personal level  
5 with some considerable eloquence and poignancy.

6           Seat belts save lives. It reduces  
7 the severity and it reduces the number of auto  
8 accidents. We already recognize that in this  
9 Commonwealth. We do it in theory because we  
10 already mandate the use of seat belts.

11           A lot of the questions, particularly  
12 Representative Manderino asked, what makes  
13 sense -- we are questioning whether seat belt  
14 use should be mandatory? But it is. It  
15 already is. I don't remember the exact vote  
16 count, but I bet it was pretty unanimous when  
17 that bill passed this legislature.

18           The fact is, that law, while  
19 mandatory in theory, doesn't really do much in  
20 reality. The penalty is minimal and it's only  
21 a secondary offense. There is also the  
22 evidentiary question. If you're not wearing  
23 your seat belt, you couldn't introduce it into  
24 evidence.

25           I testified on that second part of

1 the problem in March of 1996 with respect to  
2 Senate Bill 1393. I'll be happy to go over  
3 those points again or resubmit that testimony  
4 to all of you, but as I think some others have  
5 mentioned, our invitation here was to talk  
6 about the primary versus secondary enforcement.

7 I would note one thing. If you have  
8 primary enforcement, you're not going to have  
9 that many occasions looking at -- far fewer  
10 occasions to introduce evidence of failure to  
11 wear a seat belt into evidence for the simple  
12 reason that more people will be wearing a seat  
13 belt. In some sense, we're only taking care of  
14 the primary aspect. Making it a primary  
15 enforcement law is going to obviate some and  
16 maybe even most of the question about whether  
17 it should be introduced into evidence.

18 Secondary enforcement in the current  
19 law is weak tea if we are really serious about  
20 getting people to use seat belts. It is a  
21 minimal add-on to primary driving offenses;  
22 offenses that, although maybe not more serious  
23 in terms of potential danger, or subject to  
24 more serious enforcement.

25 I suspect each of us have to look no

1 further than our own use of seat belts to see  
2 the weakness of secondary enforcement. My use  
3 of seat belts are pretty typical. I don't hit  
4 the 95 percent that Representative Manderino  
5 mentioned for herself. I may be in that 35  
6 percent of the people who don't always use seat  
7 belts, don't regularly use seat belts.  
8 Frankly, it's usually my kids or the weather  
9 that compel me to use them.

10 I can tell you right now, it's never  
11 the fear or the inspiration of secondary  
12 enforcement offense. That's never been a  
13 motivating factor in my use of seat belts.  
14 From an informal survey of people I know, I  
15 never heard somebody say it's that secondary  
16 enforcement that gets me to strap one on.

17 I can also tell you, the primary  
18 enforcement would be far more effective in  
19 creating either that fear or inspiration.

20 I think the real question for this  
21 committee is, why not make the failure to use  
22 seat belts a primary offense? It's not an  
23 issue of personal freedom, whatever the merits  
24 of that argument the ACLU testified on. That  
25 was really decided when the General Assembly

1           said seat belt use will be mandatory.

2                     It isn't an issue of limiting one's  
3 potential recovery. Primary versus secondary  
4 enforcement doesn't have anything to do with  
5 that, and primary enforcement, as I mentioned,  
6 will further the goal of limiting the injuries  
7 that lead to recovery.

8                     One argument I have heard is that  
9 it's going to upset otherwise law-abiding  
10 motorist. The key word here is otherwise. The  
11 fact is, if you are not using your seat belt,  
12 you are not obeying the law, and the danger and  
13 the cost that you create for yourself and for  
14 others are just as great as a lot of other  
15 driving offenses. It is time to make that make  
16 sense, frankly; to make that penalty for that  
17 failure to obey the law just as meaningful.

18                    The other argument I've heard is  
19 that, failure to use seat belts really isn't  
20 that big a deal. I hope the record here today  
21 shows that it is a big deal. That's true in  
22 terms of savings. We as insurance companies  
23 are always accused of being lean candid, soft  
24 candid. That would be savings of dollars and  
25 we do pass those savings onto consumers. Our

1 rates are regulated by law. We have to do  
2 that. We're subject to review.

3 It is also--I, like anybody else, can  
4 speak on a very personal level--it's a savings  
5 in terms of lives. Primary enforcement is  
6 going to go a long way toward realizing those  
7 savings, and I hope you take quick action to  
8 get it done.

9 I do also have attached to my  
10 testimony something out of this Sunday's New  
11 York Times. It happened in New York; not in  
12 Pennsylvania. It's a story and there was a van  
13 carrying a bunch of kids. It said, "No Seat  
14 Belts Worn in crash That Killed Two Children."  
15 The reason the kids died was because they  
16 weren't wearing seat belts.

17 One of the things when you talk about  
18 trying to get enforcement in there, it's one  
19 thing if I don't wear a seat belt. Somebody  
20 can say, Sam, that's your own decision; that's  
21 your personal freedom. We're going to have a  
22 law that says you are supposed to, but we're  
23 not going to really enforce it.

24 It's one thing when you want to do  
25 that. But, if I'm not wearing it, it's a good

1 chance the passengers in my car, be they kids,  
2 friends, or whoever they might be, also aren't  
3 going to do it. I'm obviously not making it a  
4 requirement to ride in my car.

5 It's a type of thing when you  
6 understand -- When you talk about enforcement,  
7 you're not just affecting the adult in the car,  
8 the person who appear to be making -- it's  
9 their decision, although some of us don't  
10 always do that; you're also affecting the  
11 conduct of the passengers in his car, because  
12 if the driver isn't doing it, chances are the  
13 passengers aren't going to as well.

14 Thank you for the opportunity to be  
15 here, and I'll be so happy to answer any  
16 questions.

17 CHAIRPERSON GANNON: Thank you, Mr.  
18 Marshall.

19 MR. MARSHALL: If I could,  
20 Representative Gannon, just a couple points on  
21 some of things that did come up. The trial  
22 lawyers spoke about the need for awareness and  
23 education. I would agree with that. I think  
24 you can also have enforcement. Those who  
25 regulate insurance companies, and many on this

1 committee do, understand it's not just making  
2 us aware and educating us. Sometimes you do  
3 legislate rules upon us. I think it's  
4 appropriate with seat belts as well.

5 I think the most interesting quote  
6 came from the ACLU when the gentleman was  
7 speaking, he said, what they really want is  
8 freedom to drive an automobile. It struck me  
9 so I wrote it down. They wanted the freedom to  
10 drive without laws being enforced.

11 Well, I guess in some sense we all  
12 do. If I'm going 75 miles an hour down the  
13 road, I prefer an officer wouldn't enforce that  
14 65-mile-an-hour speed limit. Nonetheless, they  
15 do. When you have a law, it makes sense to  
16 enforce it. It's not just, here's a guiding  
17 principle. It's meant to be a law.

18 On the ability to use a seat belt,  
19 whether it's there in the car and  
20 Representative Manderino spoke about some of  
21 the problems, I think that's the type of thing  
22 that can be sort of an affirmative defense and  
23 exception to the rule. I don't think that  
24 should deter you from acting on this bill. You  
25 may need to make a modification.



1                   The question of unlawful  
2 discrimination, I think that's a bit of an  
3 unfair hypothetical against the police  
4 departments in this Commonwealth. I'll let  
5 them speak to that. I would note, and actually  
6 some of the civil rights actions that have been  
7 filed against them for what's labeled as  
8 driving while black offense, there are  
9 obviously other means to punish that.

10                   Certainly, in this case you would be  
11 very able to monitor that in terms of, did you  
12 just pull over black people as opposed to white  
13 people; poor people as opposed to rich people?  
14 That would be one of the most knowledgeable  
15 potential abuses of law enforcement that you  
16 would have.

17                   Those are my comments on some of the  
18 people that spoke against the bill. I would  
19 urge on behalf of all of us interested in auto  
20 safety that this be something you get done in  
21 this session.

22                   CHAIRPERSON GANNON: Thank you.  
23 Representative Hennessey.

24                   REPRESENTATIVE HENNESSEY: Mr.  
25 Marshall, thank you very much for your

1 testimony. Let me hearken back to some of what  
2 the trial lawyers were talking about, and  
3 that's what they perceived as an unfair  
4 advantage of insurance companies having the  
5 financial ability to easily hire biomechanical  
6 engineers. It would seem to me that's a matter  
7 of substantial concern.

8           Aside from the really big law firms,  
9 I wonder whether or not across the state in  
10 some of the less developed areas whether or not  
11 there are firms out there that would be capably  
12 able to represent plaintiffs against the  
13 resources that are available to insurance  
14 companies?

15           MR. MARSHALL: That was the first I  
16 ever heard inability to pay for a proper suit  
17 on the part of the Pennsylvania Bar. I never  
18 heard that before, so I was interested in that  
19 as well.

20           Understand that when you are dealing  
21 with injuries of the type that we're talking  
22 about here, where failure to use the seat belt  
23 would be introduced as contributory negligence  
24 as evidence on that one point, I suspect you  
25 gentlemen are talking about some fairly

1 substantial cases.

2 I would think that plaintiff firms  
3 have just as much money to put into it as do  
4 defense firms or insurance companies. I would  
5 note plaintiff's bar when they do lawsuits, a  
6 lot of the litigation is expensive. We all  
7 realize that. In terms of things like mock  
8 juries, they have experts right now, maybe not  
9 experts on seat belts but they have other  
10 experts.

11 I really don't think that their  
12 argument -- I think they need to really  
13 establish, gee, that's going to put an unfair  
14 burden on the cost of litigation. Therefore,  
15 we're not going to be able to go into court.  
16 That struck me as sort of an easy thing to say  
17 and maybe a harder thing to show. I would be  
18 interested in seeing it.

19 I've never seen plaintiffs' lawyers  
20 say, we can't afford the experts. Therefore,  
21 you shouldn't allow this evidence to be  
22 discussed because we can't afford people to  
23 come in and intelligently discuss it. I don't  
24 think that makes the evidence any less  
25 compelling or worthy of consideration. I'm not

1           sure -- I'd be interested in seeing studies as  
2           to why they really don't feel they can afford  
3           it. Whether it's worthwhile evidence should  
4           stand on its own; not how much it will cost to  
5           find people to come in and talk about it.

6                        REPRESENTATIVE HENNESSEY: It would  
7           seem to me a fair concern that, perhaps,  
8           small-town law firms might not have the  
9           financial ability to go out and front the  
10          monies, substantial thousands of dollars for  
11          expert testimony; whereas, the large insurance  
12          company would have those kind of experts at  
13          their beckon call and probably will establish  
14          unfair advantage right from the get-go,  
15          especially on major cases.

16                       MR. MARSHALL: If it's major cases  
17          and you're talking about a couple of thousand  
18          dollars, I'd assume there's even that  
19          small-town firm that, when you're talking about  
20          suing for hundreds of thousands of dollars, you  
21          are going to invest more than a couple thousand  
22          dollars in putting on your case. It's just the  
23          economics of a legal practice. That lawyer is  
24          probably going to -- He hopes to get paid more  
25          than a couple thousand of dollars himself.

1           I don't think it would be a deterrent  
2           in major cases. I could see it possibly in  
3           some minor, relatively small cases that it  
4           might be a factor.

5           Understand, though, if we are talking  
6           about a five thousand dollar case and it's  
7           going to cost the insurance company \$3,000 to  
8           get the expert, it's going to be a deterrent on  
9           us as well. There's a point where the cost is  
10          not worth whatever the potential for victory.

11          I think we need -- That's one of  
12          those things that have a lot of superficial  
13          appeal. I think, really, the focus of this  
14          committee in terms of whether to just rule on  
15          the evidentiary aspect of it, I think there  
16          needs a lot more probing on that.

17          I can tell you I'm not -- I'm trying  
18          to think in terms of any other type of evidence  
19          that is admissible. I've never seen in the  
20          rules of evidence certain pieces withheld  
21          because it would cost too much to have -- for  
22          one side or the other, cost too much money to  
23          intelligently talk about it. That's an odd  
24          standard for whether evidence ought to be  
25          introduced. I suggest that that not be one

1           that our Judiciary Committee give countenance  
2           to.

3                         REPRESENTATIVE HENNESSEY:    I  
4           understand your comments, but I'm not so sure I  
5           would agree with you in terms of some of the  
6           practical aspects that enter into this,  
7           management of those kind of cases.

8                         Let me ask you this:    If I understood  
9           your testimony before, from your federation  
10          viewpoint you got the first prong of this  
11          proposal, which is primary enforcement.    I  
12          understood your testimony to be essentially  
13          that you thought there would be enough  
14          compliance that you would recognize savings,  
15          people would be safer in their cars.    If they  
16          were injured, they would be less severely  
17          injured.

18                        Really, the insurance companies would  
19          save money just by the primary enforcement if  
20          we left the evidentiary standard the way it is  
21          today.

22                        MR. MARSHALL:    That's correct.    I  
23          know you asked a number of witnesses the  
24          question, if it was just the primary  
25          enforcement, would you support the bill?    Our

1 answer is yes. Do you think it ought to be  
2 both? Yes.

3 We do also recognize, while sometimes  
4 a full loaf it is (inaudible words; mumbling),  
5 sometimes half a loaf is pretty good. This is  
6 one of those cases. As I said in my testimony,  
7 if you really had good enforcement, you  
8 wouldn't have the question of introducing the  
9 failure to use seat belts into evidence because  
10 people would be using seat belts.

11 REPRESENTATIVE HENNESSEY: Certainly  
12 not so often.

13 MR. MARSHALL: Yes.

14 REPRESENTATIVE HENNESSEY: Thank you  
15 very much. Thank you, Mr. Chairman.

16 CHAIRPERSON GANNON: Thank you for  
17 coming before the committee today, Mr.  
18 Marshall, and presenting your testimony. We  
19 appreciate it.

20 MR. MARSHALL: Thank you,  
21 Representative.

22 CHAIRPERSON GANNON: Our next witness  
23 is Traci L. Derr and Leon Eshleman. Welcome.  
24 Thank you for your patience. You may proceed  
25 when you are ready.

1 MS. DERR: Good afternoon. My name  
2 is Traci Derr and I'm a registered nurse with  
3 the Dialysis Unit located in Carlisle,  
4 Pennsylvania. I have been a practicing  
5 registered nurse for the past two years with a  
6 Bachelor's of Science in nursing from York  
7 College of Pennsylvania.

8 I would like to talk to you about the  
9 importance of standard or primary enforcement  
10 and how my life was saved because I was wearing  
11 a safety belt.

12 About eight years ago, a friend and  
13 myself were involved in a rather serious car  
14 accident. We were traveling on Westley Drive  
15 in Mechanicsburg when another car swerved over  
16 the double yellow line and hit us head-on.  
17 Fortunately, both the driver and myself were  
18 wearing our safety belts.

19 Although I did receive a fractured  
20 sternum as a result of wearing my safety belt,  
21 the police officers at the scene of the  
22 accident informed by parents that I probably  
23 would not have survived the accident without  
24 the belt. As a result, my injuries were  
25 insignificant. I was treated at the Emergency



1 Room and released that same night. The driver  
2 of the car I was in sustained a mild concussion  
3 and a laceration on her chin. She was also  
4 treated and released the next day.

5 Unfortunately, the driver who caused  
6 the accident was not restrained and was  
7 lifelined to York Hospital. Although I do not  
8 know the details of her injuries or her  
9 recovery, I can say that the accident occurred  
10 on February 7th of that year, and at the end of  
11 May the driver of the other car was still in a  
12 rehab hospital recovering from her injuries.

13 Thank you very much, and at this  
14 point I will answer any questions you may have  
15 on my testimony.

16 CHAIRPERSON GANNON: Thank you,  
17 Traci. There are no questions from the  
18 committee. Congratulations on having your seat  
19 belt on.

20 MS. DERR: Thank you.

21 CHAIRPERSON GANNON: Wear it all the  
22 time. It does save lives and prevent injuries.  
23 Thank you for taking time from your day to be  
24 here and present testimony.

25 Mr. Eshleman, do you have any

1           comments that you'd like to present to the  
2           committee?

3                       MR. ESHLEMAN: My name is Leon  
4           Eshleman. I live in Stevens, Pennsylvania.  
5           I'm Senator Noah Wenger's neighbor. I was  
6           asked to come and testify.

7                       I was involved in a very serious  
8           accident on February the 19th of this year. I  
9           was on my way home from work, and it was  
10          already dark. The roads were dry. It was a  
11          clear night. I seen a car coming toward me at  
12          a high rate of speed.

13                      In fact, the State Police of  
14          Pennsylvania reconstructed the accident and  
15          they said the car was moving at least 90 miles  
16          per hour. We were in a 45-mile-per-hour speed  
17          zone. I estimated at the time when I first  
18          seen the car I was doing somewhere between 35  
19          and 40 because I was rounding a small bend.  
20          What speed I was doing when I was hit I do not  
21          know.

22                      But, when I first seen the other car  
23          it was airborne. When it hit the road it  
24          swerved toward me. I knew I was going to be  
25          hit. Then it swerved the other way. And for a

1           few seconds, and it was probably not even a few  
2           seconds, I thought he was going to miss me and  
3           then he went broadside right in front of me and  
4           hit the front end of my van. His car split in  
5           two and continued past me into the field.

6                        When he hit me at this point I do not  
7           know if I blacked out or not. But after I got  
8           my senses I unbuckled my seat belt, walked out  
9           of my van which was demolished, walked across  
10          the road into an Amish schoolyard and stood up  
11          against the maple tree. At that time I didn't  
12          even go back to my van. I just stood there. I  
13          didn't think I was even hurt.

14                       By that time Senator Noah Wenger was  
15          there with me because he was following me,  
16          which I didn't know at the time. He said, are  
17          you all right? I know Senator Noah Wenger for  
18          about 35 years because I used to be a barber  
19          and I used to cut his hair. He knew who he was  
20          talking to and I knew who I was talking to. He  
21          had his cell phone with him. He said, Leon,  
22          should I call your wife? I said, yes, would  
23          you please. He called by wife. I talked to my  
24          wife and I told her I was fine, and I was only  
25          three-quarters of a mile from home.

1           By that time the ambulance crew was  
2           there and Senator Wenger and the EMT's helped  
3           me to the ambulance. I still didn't think I  
4           was hurt. I said, I just want to go home.  
5           Well, when I tried to step up into the  
6           ambulance I discovered my one foot had been  
7           hurt from applying pressure to the brake, and  
8           my shoulder blade was broke under my seat belt  
9           so I couldn't get into the ambulance. After  
10          that things started to happen real fast.

11                 I don't think there's any doubt to  
12          it, if I wouldn't have had my seat belt on, I  
13          probably won't be sitting here today. To show  
14          what the seat belt did and how much pressure it  
15          took, when the seat belt came down across my  
16          shoulder, of course like I said, it broke my  
17          collar bone, but I had a black and blue mark  
18          from the shoulder all the way across my  
19          stomach, down to my waist where by body weight  
20          went into that seat belt and held me into the  
21          van.

22                 Other than a broken collar bone, a  
23          damaged foot from applying pressure to the  
24          brake, and being black and blue all over, I  
25          figured I was a very, very lucky man. I can

1           accredit it all to my seat belt.

2                         Unfortunately, the four boys in the  
3           other car were riding in a very small sports  
4           car and I did not know them. I do not know if  
5           they had seat belts on or not. Unfortunately,  
6           every one of them lost their life. I feel if I  
7           wouldn't have had my seat belt on, instead of  
8           being four casualties, I would have probably  
9           been number five.

10                        CHAIRPERSON GANNON: Thank you, Mr.  
11           Eshleman. One question. Did you have an air  
12           bag in your van?

13                        MR. ESHLEMAN: No. My van was  
14           manufactured one year before the air bags came  
15           out. So, all the force of my body weight went  
16           into my seat belt.

17                        CHAIRPERSON GANNON: Thank you very  
18           much for appearing before the committee and  
19           presenting your testimony. We appreciate it.

20                        MR. ESHLEMAN: Thank you for the  
21           opportunity.

22                        CHAIRPERSON GANNON: Ms. Derr,  
23           question. Did you have air bag in your  
24           vehicle?

25                        MS. DERR: No.

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CHAIRPERSON GANNON: Thank you very  
much. There being no further business, this  
public hearing on House Bill 2078 is adjourned.

(At or about 4:45 p.m. the hearing  
concluded)

\* \* \* \* \*

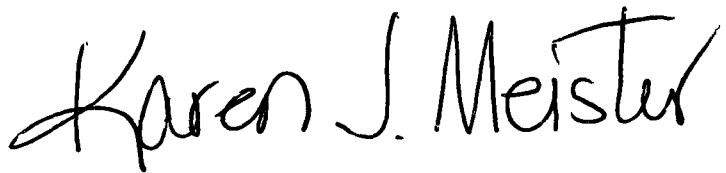
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I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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Karen J. Meister - Reporter  
Notary Public

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