

**TESTIMONY BEFORE THE HOUSE
JUDICIARY COMMITTEE**

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GOOD AFTERNOON, CHAIRMAN GANNON, AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE. I WELCOME THE OPPORTUNITY TO TESTIFY AND EXPRESS MY VIEWS ON HOUSE BILL 2078. MY VIEWS HAVE RECEIVED THE ENDORSEMENT OF THE PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. AS AN ATTORNEY WHOSE PRACTICE CONCENTRATES IN THE AREA OF MOTOR VEHICLE LAW, I HAVE SERIOUS RESERVATIONS ABOUT THE INHERENT UNFAIRNESS OF THE PROVISIONS OF HOUSE BILL 2078.

UNDER THE CURRENT LAW, I DEAL WITH DEFENDANTS WHO ARE CHARGED WITH SPEEDING AND AN ACCOMPANYING CHARGE OF A SEATBELT VIOLATION. IN MANY OF THESE CASES, THE SEATBELT VIOLATION IS UNJUSTIFIED AND FACTUALLY IN ERROR.

AN OFFICER SIMPLY BELIEVES THAT IF A PERSON DOES NOT HAVE A SEATBELT ON WHEN THE OFFICER APPROACHES THE DEFENDANT'S VEHICLE, IT MEANS AUTOMATICALLY THE DRIVER DID NOT HAVE IT ON WHILE DRIVING. NO CONSIDERATION IS GIVEN TO THE FACT THAT THE MOTORIST MAY HAVE RELEASED THE SEATBELT TO SECURE A WALLET TO PROVIDE IDENTIFICATION FOR THE OFFICER. THE UNJUSTIFIED CONCLUSION, THAT THE MOTORIST FAILED TO HAVE A SEATBELT FASTENED, IS NOT BASED ON OBSERVATIONS OF THE MOTORIST WHILE DRIVING. INSTEAD, THE ERRONEOUS CONCLUSION IS BASED ON OBSERVATIONS MADE AFTER THE MOTORIST IS STOPPED.

HOUSE BILL 2078 WILL ALLOW A FURTHER ABUSE WITH OFFICERS STOPPING MOTORISTS ON THE WHIM THAT THE MOTORIST IS NOT WEARING A SEATBELT. TO THOSE THAT SAY IT WON'T HAPPEN, I SAY THAT IF AN OFFICER IS WILLING TO BRING AN UNJUSTIFIED CHARGE UNDER CURRENT LAW, THE

OFFICER WILL CERTAINLY USE THE PROPOSED LAW TO IMPROPERLY JUSTIFY A STOP OF A MOTORIST. ABUSE OF THE PROPOSED LEGISLATION WILL RESULT IN NUMEROUS CASES OF QUESTIONABLE PROBABLE CAUSE. ~~W~~

THIS, HOWEVER, IS ONLY PART OF MY CONCERN FOR THE BILL. THE BILL WOULD ALLOW, IN CIVIL CASES, FOR A DEFENDANT TO ADMIT THE PLAINTIFF'S FAILURE TO COMPLY TO PROVE THE EXTENT TO WHICH PLAINTIFF'S INJURIES WOULD HAVE BEEN REDUCED OR AVOIDED.

NO PROVISION EXISTS FOR A DEFENDANT IN A CRIMINAL CASE TO ADMIT SUCH EVIDENCE FOR THE SAME PURPOSE IN AN EFFORT TO REDUCE THE EXTENT OF THE PENALTY THAT THE DEFENDANT MIGHT FACE.

WHILE IT MAY NOT BE POPULAR TO ESPOUSE CONCERN FOR A CRIMINAL DEFENDANT, IT IS INHERENTLY UNFAIR TO ALLOW AN INSURANCE COMPANY TO AVOID OR REDUCE ITS CIVIL LIABILITY WITHOUT ALLOWING AN INDIVIDUAL CITIZEN TO AVOID OR REDUCE HIS OR HER POTENTIAL CRIMINAL LIABILITY BY SIMILARLY PROVING THE VICTIM WAS IN VIOLATION OF THE LAW.

THIS LEGISLATURE HAS SYSTEMATICALLY INCREASED THE NATURE OF PENALTIES BASED ON THE EXTENT OF INJURIES INFLICTED. FOR EXAMPLE, IN 1996, SECTION 3742.1 OF THE VEHICLE CODE (ACCIDENTS INVOLVING DEATH OR PERSONAL INJURY WHILE NOT PROPERLY LICENSED) MANDATES THAT A CHARGE INCREASES FROM A MISDEMEANOR TO A FELONY IF THE MOTORIST SUFFERS A SERIOUS INJURY OR DEATH. LIKewise, IN 1996, SECTION 3742 (ACCIDENTS INVOLVING DEATH OR PERSONAL INJURY) WAS AMENDED TO PROVIDE THAT A MANDATORY JAIL TERM OF EITHER 90 DAYS (FOR SERIOUS BODILY INJURY) OR ONE YEAR (FOR DEATH) IS REQUIRED UPON CONVICTION.

THIS MANDATORY JAIL SENTENCE WOULD APPLY EVEN IF ^{in that instance} THE DEFENDANT WAS NOT AT FAULT FOR THE ACCIDENT OR INJURY AND THE VICTIM VIOLATED THE PROPOSED LAW AND CAUSED OR INCREASED THE INJURY BY NOT WEARING A SEATBELT.

UNDER HOUSE BILL 2078, THE DEFENDANT'S INSURANCE COMPANY COULD REDUCE ITS LIABILITY BUT A CRIMINAL DEFENDANT COULD NOT. THE ALREADY COMPLICATED ISSUE OF RESTITUTION HAS NOT BEEN ADDRESSED BY THE BILL. IT APPEARS THAT UNDER HOUSE BILL 2078, A DEFENDANT'S INSURANCE COMPANY, WHO HAS BEEN PAID A PREMIUM BY THE DEFENDANT, COULD REDUCE THE PROTECTION THAT WAS TO BE PROVIDED FOR THE INJURY AND LEAVE THE VICTIM AND THE DEFENDANT AT THE MERCY OF A RESTITUTION ORDER. THIS WOULD BE UNFAIR TO BOTH THE VICTIM AND THE DEFENDANT.

I DO NOT BELIEVE THAT HOUSE BILL 2078 SHOULD BE ENACTED. SECTION 4581 SHOULD NOT BECOME A MECHANISM FOR INSURANCE COMPANIES TO AVOID THEIR FULL RESPONSIBILITIES. TO BE FAIR, IF HOUSE BILL 2078 IS TO BE ADOPTED, IT MUST PROVIDE FOR THE FAILURE TO USE A CHILD PASSENGER RESTRAINT SYSTEM OR SAFETY BELT SYSTEM TO BE ADMITTED IN A CRIMINAL ACTION TO PROVE THE EXTENT TO WHICH INJURIES SUSTAINED WOULD HAVE BEEN AVOIDED OR REDUCED BY COMPLIANCE WITH THE PROPOSED LAW.