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**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA  
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**MEMORANDUM**

**To:** All House Members  
**From:** Representative Seth Grove  
196<sup>th</sup> Legislative District  
**Date:** January 5, 2011  
**Subject:** Co-sponsorship - Prior Offenses in Driving Under the Influence (**Former HB 2261**)

In the near future, I am planning to reintroduce House Bill 2261 from the 2009-2010 session which will amend section 3806(b) of the Vehicle Code (Title 75) relating to driving under the influence prior offenses. The Supreme Court of Pennsylvania in Commonwealth v. Haag, 981 A.2d 902, has held that under current law an offender must have a conviction or other specified form of judicial process on a precedent offense prior to the commission of a subsequent offense in order for the subsequent offense to be considered a "second offense" for sentencing purposes.

In Haag, the offender was arrested at 11:40pm for driving under the influence with a blood alcohol content of 0.16% and was released to the custody of his wife. At 1:00am, approximately one and a half hours after the first arrest, the police again witnessed the same offender driving the same vehicle. The offender was again arrested for driving under the influence with a blood alcohol content of .0146%. The offender was charged with a second DUI offense. The trial court characterized the 11:40pm offense as a first offense and the 1:00am offense as a second offense. The trial court's decision was overturned by the Supreme Court stating that since there was no conviction prior to the commission of the second offense, both offenses must be sentenced as if they were first offenses.

The Supreme Court decision creates a loophole in the DUI sentencing law, making it possible for a person to commit multiple DUIs and be sentenced as if each DUI was a first offense. My legislation will correct this loophole and will amend Section 3806(b) so that the conviction of a previous violation must occur prior to sentencing on the subsequent violation, rather than prior to the commission of the subsequent violation. This change will allow for any DUI violation which occurs after the commission of a prior offense, but before sentencing for the prior offense, to be considered a subsequent offense.

If you would like to cosponsor this legislation, please contact Lisa Burkholder at [lburkhol@pahousegop.com](mailto:lburkhol@pahousegop.com) or 717-783-2655. Thank you for your consideration.

**Previous Cosponsors:**

Belfanti, Briggs, D. Costa, Creighton, Daley, Farry, Gillespie, Gingrich, Harris, Homaman, Miller, Moul, Murt, Pyle, Readshaw, Siptroth, Swanger, Waters and Watson