

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

TRANSPORTATION COMMITTEE HEARING

STATE CAPITOL
IRVIS OFFICE BUILDING
ROOM G-50
HARRISBURG, PENNSYLVANIA

MONDAY, APRIL 20, 2009
11:05 A.M.

PRESENTATION ON
ACCIDENTS INVOLVING DEATH
OR PERSONAL INJURY

BEFORE:

HONORABLE JOSEPH F. MARKOSEK, MAJORITY CHAIRMAN
HONORABLE MIKE CARROLL
HONORABLE PAUL COSTA
HONORABLE R. TED HARHAI
HONORABLE MARK LONGIETTI
HONORABLE JOHN J. SIPTROTH
HONORABLE TIMOTHY J. SOLOBAY
HONORABLE JAKE WHEATLEY
HONORABLE RICHARD A. GEIST, MINORITY CHAIRMAN
HONORABLE KATE HARPER
HONORABLE DAVID S. HICKERNELL
HONORABLE MARK K. KELLER
HONORABLE RON MARSICO
HONORABLE RON MILLER
HONORABLE TINA PICKETT

ALSO IN ATTENDANCE:

HONORABLE PHYLLIS MUNDY

* * * * *

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ALSO PRESENT:

STACIA A. RITTER
MAJORITY EXECUTIVE DIRECTOR
AMANDA L. WOLFE
MAJORITY LEGISLATIVE ASSISTANT
ERIC C. BUGAILE
MINORITY EXECUTIVE DIRECTOR
GREGORY G. GRASA
MINORITY RESEARCH ANALYST

DEBRA B. MILLER
REPORTER

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I N D E X

TESTIFIERS

<u>NAME</u>	<u>PAGE</u>
REPRESENTATIVE PHYLLIS MUNDY CHAIRMAN OF AGING AND OLDER ADULT SERVICES COMMITTEE; PRIME SPONSOR OF HOUSE BILL 352.....	4, 5
ALBERT VANNUCCHI RESIDENT OF LUZERNE COUNTY.....	14
MARK H. BERGSTROM EXECUTIVE DIRECTOR, PA COMMISSION ON SENTENCING.....	29
LT. JEFFREY B. HOPKINS COMMANDER, VEHICLE CRASH AND DRIVER SAFETY SECTION, BUREAU OF PATROL, PA STATE POLICE.....	56

1 P R O C E E D I N G S

2 * * *

3 CHAIRMAN MARKOSEK: Good morning, everybody.
4 Welcome to the Pennsylvania House Transportation
5 Committee meeting today.

6 The first order of business, we will have
7 Chairman Mundy lead us in the Pledge of Allegiance to
8 the flag.

9 REPRESENTATIVE MUNDY: I'll be happy to do
10 it.

11 (The Pledge of Allegiance was recited.)

12 CHAIRMAN MARKOSEK: We are happy to call
13 this meeting today.

14 We will not take formal roll verbally,
15 although the members, as they come in, the staff will
16 check them off.

17 We have a hearing here today. There are
18 really three bills -- House Bill 197 by
19 Representative Reed; House Bill 352 by Representative
20 Mundy; and House Bill 748 by Representative Markosek
21 -- all dealing with hit-and-run violations of the
22 current law.

23 Before I call on Representative Mundy to
24 give brief remarks, let me say that Representative
25 Reed was invited and had every intention of being

1 here, and we received a phone call this morning that
2 he had a personal emergency, so he cannot be here
3 today.

4 I would like to ask Chairman Geist if he has
5 any comments before we start?

6 REPRESENTATIVE GEIST: No; let's get moving.

7 CHAIRMAN MARKOSEK: Okay.

8 With that, I would like to introduce
9 Chairman Phyllis Mundy, who is the author of
10 House Bill 352, and authored this bill based on
11 some events that occurred -- in your legislative
12 district?

13 REPRESENTATIVE MUNDY: In my county.

14 CHAIRMAN MARKOSEK: In your county nearby.

15 So Representative Mundy, please proceed.

16 REPRESENTATIVE MUNDY: Thank you, and good
17 morning, Chairman Markosek, Chairman Geist, members
18 of the committee.

19 Thank you so much for this opportunity to
20 testify on House Bill 352, a proposal I have
21 introduced to close a serious loophole in State law
22 with respect to those who flee the scene of an
23 accident.

24 All of us know how difficult it must be to
25 lose a loved one. Imagine how you would feel,

1 however, if the death of a relative or friend could
2 have been prevented had they received timely medical
3 attention.

4 When the driver of a hit-and-run accident
5 decides to flee, they're essentially imposing a death
6 sentence on the victim.

7 This selfish disregard for human life may
8 increase the time it takes for medical personnel to
9 be notified, especially if the accident occurs in an
10 isolated location or late at night, or lead to the
11 victim suffering additional injuries or even death
12 if no one is there to assist and alert oncoming
13 traffic.

14 I was very surprised to learn that
15 Pennsylvania law actually makes it advantageous for a
16 drunk driver to leave the scene of an injurious or
17 fatal accident rather than stay and render aid.

18 This legal loophole was brought to my
19 attention in 2007 following a fatal hit-and-run
20 accident in Luzerne County.

21 The victim, a 19-year-old man named
22 Erik Vannucchi, was struck while waiting on the side
23 of the road for a tow-truck operator. Erik's father,
24 Albert Vannucchi, and his family are here with us
25 today and will testify shortly.

1 Despite the fact that the driver who struck
2 Erik admitted to drinking the night of the accident,
3 police were unable to test her blood-alcohol level
4 because of the amount of time that had elapsed
5 between the accident and when the driver was taken
6 into custody.

7 Consequently, the driver ended up receiving
8 a lesser sentence because the penalty for a
9 hit-and-run offense is lower than it is for a
10 drunk-driving offense.

11 Current Pennsylvania law classifies a
12 "drunken driving" accident, where death or serious
13 bodily injury occurs, as a second-degree felony with
14 a mandatory minimum sentence of 3 years in prison per
15 victim in cases involving a fatality.

16 The "second-degree felony" designation
17 provides for a maximum sentence of 10 years in prison
18 and a \$25,000 fine under the Commonwealth's
19 sentencing provisions.

20 By contrast, a hit-and-run accident where
21 death or serious bodily injury occurs is merely
22 classified as a third-degree felony with the
23 following mandatory minimum sentences and fines:
24 90 days in prison and a \$1,000 fine if the victim
25 suffers serious bodily injury, and 1 year in prison

1 and a \$2,500 fine if the victim dies.

2 The "third-degree felony" designation
3 provides for a maximum sentence of only 7 years in
4 prison and a \$15,000 fine. This loophole in effect
5 makes it an incentive for a drunk driver to flee the
6 scene of an accident rather than stay and provide
7 information and administer aid.

8 House Bill 352 would eliminate this
9 incentive and strengthen current law by reclassifying
10 a hit-and-run accident where death or serious bodily
11 injury occurs to a second-degree felony, bringing it
12 more in line with drunk-driving penalties and the
13 seriousness of the offense.

14 Please note that my proposal does not
15 increase the mandatory minimum sentence for such an
16 offense. I generally oppose mandatory minimums
17 because I believe judges should have the ability to
18 exercise discretion given the particular facts of a
19 case. But my bill does increase the penalty and
20 thereby eliminate the incentive to flee if you have
21 been drinking.

22 After introducing this legislation last
23 session, I was again reminded of the absurdity of
24 this loophole when a 30-year-old woman from my area
25 was killed while attempting to cross the street.

1 The victim, Sharon Shaughnessy of Kingston,
2 was hit by three separate vehicles. While the driver
3 of the second vehicle did stop, the others simply
4 drove away.

5 Again, police were unable to determine if
6 the drivers who fled had been intoxicated given the
7 time that had passed when they came forward.

8 Perhaps if the first driver acted
9 responsibly and pulled over to offer assistance, the
10 victim would not have been hit by the other two cars
11 and might still be alive. Unfortunately, we will
12 never know.

13 I'm sure we all agree that something must
14 be done so that those who flee the scene of an
15 accident are not rewarded for their selfish actions.
16 The loophole in the current law is not only an
17 insult to our legal system, but it is an abomination
18 to the victims like the Vannucchis and their
19 families.

20 While closing this loophole may not
21 influence someone's decision to flee an accident, it
22 would certainly ensure that the punishment they
23 receive fits the crime.

24 House Bill 352 is my approach to addressing
25 this issue, and I'm very willing to work with the

1 committee to explore options in the Reed bill and the
2 Markosek bill.

3 Thank you again, Mr. Chairman, for holding
4 this hearing and for the opportunity to testify. I
5 would be happy to take any questions that the
6 committee has.

7 CHAIRMAN MARKOSEK: Okay. Thank you,
8 Chairman Mundy.

9 Let me just first mention that
10 Representative Harper, Representative Pickett,
11 Representative Wheatley, Representative Marsico,
12 Representative Keller, as well as Representative
13 Geist and I are here.

14 Also that Representative Reed, who I
15 mentioned could not be here, did submit written
16 testimony.

17 Is anybody from Representative Reed's office
18 here today?

19 Okay; would you tell the Representative that
20 we received his testimony. Hopefully everything is
21 well and he'll be with us soon.

22 Any questions for Representative Mundy?
23 Representative Wheatley.

24 REPRESENTATIVE WHEATLEY: Good morning.

25 REPRESENTATIVE MUNDY: Good morning.

1 REPRESENTATIVE WHEATLEY: And you may have
2 already mentioned it and I just missed it, but you
3 say that under your bill you would increase
4 penalties?

5 This is already a mandatory sentence for
6 this act; is that correct?

7 REPRESENTATIVE MUNDY: My bill increases the
8 offense from a third-degree felony to a second-degree
9 felony, thereby increasing the minimums with a second
10 degree -- it rises to the level of a second-degree
11 felony and the penalties associated with that.

12 REPRESENTATIVE WHEATLEY: Well, my only
13 question, because we are dealing with this whole
14 question around prison population and so on and so
15 forth, would you say that this would add pressure to
16 that or not?

17 And have you had any opportunity to talk
18 with some in the prison reform or a discussion around
19 this particular increase and its implications?

20 REPRESENTATIVE MUNDY: Well, it does
21 increase the penalty and the prison term. But again,
22 I believe that the penalty should fit the crime.

23 And as I said earlier, there is actually an
24 incentive in the current law to flee if you have been
25 drinking, to leave the scene of the accident and not

1 help the victim if you have been drinking, because
2 you can't be tested -- your blood alcohol can't be
3 tested and used in court against you.

4 So I share your concern about the prison
5 population. I was just at SCI Dallas on Friday for a
6 meeting, and we are over the maximum -- way over the
7 maximum.

8 So I share that concern, but I also think
9 that we can't have an incentive to flee in the law.

10 REPRESENTATIVE WHEATLEY: Okay.

11 REPRESENTATIVE MUNDY: And again, you know,
12 I'm not raising -- I'm not putting a mandatory
13 minimum in place. The Reed bill would do that.

14 REPRESENTATIVE WHEATLEY: Okay.

15 REPRESENTATIVE MUNDY: Chairman Markosek's
16 bill and I just increase the penalty from a
17 third-degree offense to a second-degree felony.

18 So again, hopefully that gives the judge
19 some discretion. And obviously, also the district
20 attorney has discretion as to what charges they
21 file.

22 REPRESENTATIVE WHEATLEY: Sure. Thank you.

23 And if I can, Mr. Chairman, just because I'm
24 inclined to support the lady's bill, but I would
25 raise the question on the floor to really be careful

1 on how we do this, because we do have to manage the
2 long-term implications of longer times in our
3 correctional facilities.

4 So I appreciate your statement clarifying
5 that for me, and thank you, Mr. Chairman.

6 CHAIRMAN MARKOSEK: Okay. Thank you.

7 Any other questions for Representative
8 Mundy?

9 Representative, thank you very much. Very
10 good testimony.

11 And you are welcome to come forward and join
12 the committee.

13 REPRESENTATIVE MUNDY: I will, Mr. Chairman.
14 I just would like to introduce Mr. Vannucchi.

15 CHAIRMAN MARKOSEK: Yes; we have him as the
16 next person on the list.

17 REPRESENTATIVE MUNDY: Okay. Well, I was
18 told that I was to introduce him, but I'll let you
19 introduce him.

20 CHAIRMAN MARKOSEK: Well, you might as well
21 now. Go ahead.

22 REPRESENTATIVE MUNDY: If Mr. Vannucchi
23 would come forward.

24 And perhaps Mr. Vannucchi can identify his
25 family members who are with him.

1 But Mr. Vannucchi's son, Erik, was the
2 tragic victim -- have a seat here, Mr. Vannucchi.
3 His son, Erik, was the victim of a hit-and-run
4 accident where the driver had been drinking and
5 admitted to that later, but of course it couldn't be
6 used against her in court because she couldn't be
7 tested.

8 So Mr. Vannucchi.

9 CHAIRMAN MARKOSEK: Okay. Thank you.

10 Phyllis, you are welcome to either stay
11 there or come join us up here.

12 I do want to mention that Representative
13 Hickernell and Representative Siptroth are here as
14 well.

15 Representative Pickett; yes, I did mention
16 her previously. She has got two mentions today,
17 which she deserves. So never underestimate
18 Representative Pickett.

19 Mr. Vannucchi, thank you very much. Our
20 sympathies from the committee to you and your family
21 for the tragic accident.

22 And you, sir, may proceed when you are
23 ready.

24 MR. VANNUCCHI: Okay. I've got a pretty
25 heavy voice.

1 That's my wife, Annemarie, Erik's mom, and
2 that's one of his brothers, Troy, and his only
3 sister, Keri.

4 And I promise I'll get through this, folks.
5 Just bear with me.

6 Good day. I would like to thank you all for
7 allowing me to speak to this committee today.

8 On May 29, 2007, my life and the lives
9 of my family were changed forever. Our son,
10 Erik Mark Vannucchi, was killed by a hit-and-run
11 driver.

12 On that morning, at approximately 1 a.m., we
13 received a phone call from Erik's girlfriend telling
14 us that he had been hit by a car. It was a phone
15 call that all parents dread.

16 We did not know at that time how serious it
17 was. We woke our daughter to tell her we were going
18 to the hospital and to let her younger brother remain
19 sleeping. We then proceeded to the hospital.

20 My wife and I arrived there before the
21 ambulance and we waited in the waiting room for the
22 arrival of our son. In what seemed like an eternity
23 with no one telling us anything, a side door opened
24 with several people standing there, and the emergency
25 room doctor asked, "Are you Erik's parents?"

1 My wife immediately knew that Erik was dead.
2 For some unknown reason, there was a delay in my head
3 until I realized why she was asking. There were
4 screams and many no-no-no-no-noes by both my wife and
5 myself.

6 The people who were there took us into the
7 emergency room and opened the curtain where our son,
8 Erik, was lying. We walked in, we gently held him,
9 we kissed him, and we held his hand. He was still
10 warm.

11 We spent several hours with him. He was
12 given the last rights by our parish priest. We spoke
13 with the emergency room doctor and asked some
14 questions. We also spoke with a representative of
15 the coroner's office and were given his clothes.

16 The coroner's representative said that they
17 had to take our son and perform an autopsy because of
18 the manner of his death.

19 It was at this point when we were told that
20 the person who had hit Erik and killed him never
21 stopped. Not even a brake light was seen or did she
22 stop to see what she had hit.

23 At some point in the early hours of that
24 morning, my wife and I said goodbye to Erik and
25 started the slow journey to our home, not knowing how

1 to tell his younger sister and brother or how we were
2 going to tell his older brother, who lived out of
3 town and was all by himself.

4 As my wife and I drove home, I kept thinking
5 to myself, how could anyone have done this terrible
6 act and not stopped to see if Erik needed some help.
7 We would soon find out why.

8 As my wife and I walked from our car to the
9 front door, it was the longest walk I had ever taken,
10 and it was only the distance of a few feet. We were
11 in pain; we were lost, but most of all, we did not
12 have any idea as to how we were going to break the
13 news to his sister and brothers.

14 When we went into the house, our daughter
15 was still awake and walked down the hallway. I don't
16 remember what we said exactly, but she screamed and
17 cried.

18 When we woke our youngest son and told him,
19 he told us that he was going back to bed because this
20 was only a bad dream, and when he would wake up,
21 everything would be okay.

22 This was to be the absolute worst day of our
23 lives. When our oldest son was called, he cried,
24 asked why, and said that he would be home in a few
25 hours.

1 Erik's friends started to come to our home
2 -- Erik's home. By 6 a.m. this same day, it was a
3 steady stream of both people, endless tears, and
4 endless hugs. We never knew how many lives Erik had
5 touched in his 19 short years. It was both the best
6 and the worst day of our lives.

7 In the days to follow, we were left to deal
8 with our local funeral director. Picking out burial
9 plots, writing his obituary, and choosing his coffin
10 are things no parent should ever have to do.

11 My mother had always said that the worst
12 thing that could happen to any family was for parents
13 to outlive their children. We were now living her
14 haunting words.

15 The news of Erik's accident was on the local
16 midday news reports. A description of the vehicle
17 that hit and killed Erik was given at these
18 newscasts. It was also given on local radio shows.

19 At this point, the person who had hit Erik
20 still had not been caught, but more importantly, they
21 had not turned themselves in to the police.

22 The girl who killed Erik was arrested later
23 that same day, not because she turned herself in, but
24 as we later found out from the Luzerne County
25 District Attorney, a concerned citizen who had

1 watched the news had seen the vehicle and notified
2 the police. The coward that hit our son was found
3 hiding in the corner of her room.

4 The pain of not knowing who killed our son
5 was unbearable. She knew that she had hit our son
6 but was only concerned about herself.

7 She had told the police in an interview that
8 the reason she ran was because she was scared. Did
9 she ever think that our son was scared also when he
10 saw her driving at him?

11 She also told the police that she had no
12 intention of turning herself in, but with her
13 boyfriend's help, she was trying to find a way to
14 flee.

15 In dealing with the day-to-day pain of
16 losing our son, we had to deal with the fact that the
17 person who killed him didn't think enough of him or
18 us to at least stop and help.

19 As we found out in the upcoming days,
20 because of the laws in the Commonwealth, it was to
21 her advantage to flee the scene of the accident
22 because she had been drinking. She even admitted
23 that she had drunk too much.

24 Because of the time between the accident and
25 her arrest, nothing could be done as far as a

1 blood-alcohol test. She broke so many laws in so
2 many ways that because of the law that was in effect,
3 it was to her advantage to not stop. What a shame.

4 Let me change gears for a moment and tell
5 you about the great young man that this coward killed
6 that morning in May 2007.

7 Erik Mark Vannucchi was a bright,
8 intelligent, well-mannered young man. He had
9 everything going for him.

10 He had graduated from Coughlin High School
11 in Wilkes-Barre in June of 2005. He was a 4-year
12 honor student who was inducted into the National
13 Honor Society in May of 2005.

14 He was then accepted at Penn State
15 Wilkes-Barre, where he learned to budget his time,
16 work, and spend time with his family. Erik was on
17 the Dean's List at the Penn State Wilkes-Barre
18 Campus.

19 He had attained his black belt in karate at
20 Huntzinger's Karate in Wilkes-Barre. He was also
21 training as a mixed martial artist while holding down
22 a job and going to school.

23 Erik was bilingual, being fluent in both
24 English and Spanish, and was in the process of
25 teaching himself Arabic.

1 His goal was to work for either the FBI or
2 the CIA. He also knew that he needed a law degree to
3 make him more appealing to those government agencies,
4 and he was looking at going to law school also.

5 He wanted it all, and I do believe that any
6 parent here today would have been proud to have
7 called him their son.

8 Erik was so concerned about his fellow man.
9 After the incident at Virginia Tech, in April, I
10 believe, of 2007, he authored a program that would
11 have provided self-defense tactics for both students
12 and teachers at the Penn State University
13 Wilkes-Barre Campus. He was to provide the training
14 during the summer of 2007. He was not to live that
15 long.

16 He was going to do all of this at the
17 tender age of 19. Erik was in the process of working
18 with campus security and the Dean of Students at
19 Penn State Wilkes-Barre.

20 Our son's wake was held on May 31, 2007. We
21 were to have calling hours from 5 p.m. until 8 p.m.
22 that warm May night.

23 Our family arrived at the funeral home at
24 about 4 p.m. for some private time with our family
25 and with Erik.

1 At 4:30, the funeral director suggested
2 that we should start seeing people early, as people
3 were already in line to greet us and pay their
4 respects.

5 We were to ultimately receive people from
6 4:30 p.m. until 11 p.m. that night. The average
7 wait, we were later told, was 2 1/2 hours in line, a
8 tribute to our son that was overwhelming.

9 As we were walking to our car at 11 o'clock
10 that night, the funeral director said we were not
11 done yet because people were still in the parking lot
12 waiting to see us. They were older people and people
13 who couldn't wait the 2 1/2 hours but still came back
14 when they knew we were leaving.

15 Erik was buried on June 1, 2007. The crowd
16 was overwhelming. It was standing room only in our
17 church -- a final tribute.

18 I tell you all these things today to give
19 you a sense of the pain and what we have had to
20 endure during this terrible ordeal. Also, what a
21 great child was lost.

22 During the late summer and early fall of
23 2007, we attended preliminary hearings, plea
24 hearings, and many other meetings with our local
25 district attorney concerning the criminal case.

1 Through this entire time, the person that
2 killed our son was free on bail while our son was in
3 a grave. Again, everything was in her favor.

4 While talking to the prosecutor and the
5 district attorney, we were told the different
6 scenarios that could take place at her sentencing.
7 The judge could only give her the sentence that the
8 law would allow.

9 This hurt as much as anything, knowing full
10 well that she drank too much and yet got into her
11 vehicle and ran down our son. Yet by running away
12 and leaving our son to die, she was given more
13 opportunities to have a lesser sentence given to
14 her.

15 On February 19, 2008, she pleaded guilty to
16 hitting and killing our son. She was sentenced based
17 upon a vehicular homicide charge and another charge
18 based upon the fact that she also hit another person
19 that night.

20 We were told by the other person who was hit
21 that it was our son's action that saved his life.
22 Erik's final act was to help save another man's
23 life.

24 As I said before, Erik was always concerned
25 about his fellow man.

1 Since she was given this sentence, she has
2 tried twice to have it reduced. In September of
3 2008, she tried to get into a boot-camp program. It
4 would have reduced her sentence upon completion of
5 the boot camp. It was denied.

6 Now again, in March of 2009, she is trying
7 to get a pre-release and an educational/work-release
8 program. The inmate would also have an opportunity
9 to go to a community corrections center. In both
10 cases, the inmate would be allowed to work and be in
11 the community. Our son will never be in the
12 community again.

13 I firmly believe that these inmates are
14 being rewarded for bad -- let me repeat -- bad
15 behavior. They ran, and therefore received a lesser
16 sentence because of a loophole in a law that has no
17 teeth.

18 As the days and weeks go by, we know our
19 lives and the lives of Erik's sister and brothers
20 will never be the same. We will never celebrate
21 another holiday the same way. There will always be
22 an empty seat at any special meal that we are to
23 have.

24 He will never marry. He will never have
25 children.

1 He will never, ever, ever have what his
2 killer will have someday. She will enjoy all these
3 things and more.

4 I just hope that everyone in this room
5 understands the pain our family is in because of his
6 death.

7 I have always felt that doing the right
8 thing says a lot about a person. Let me tell
9 everyone a final thing about our son's killer,
10 Sarah Ann Marquis, and all of these cowards that hit
11 and run.

12 She said in a recent deposition under oath,
13 when asked what she did after she hit and killed our
14 son, Erik, she said she went home, she told no one --
15 and please listen to what I'm about to say -- she
16 told no one, and went home and went to sleep. And by
17 her own admission, fell soundly asleep after killing
18 someone.

19 Now, let me repeat a previous comment I had
20 made: Doing the right thing says a lot about a
21 person.

22 I recognize that there were other casual
23 factors in Erik's death. For example, the police
24 offered no meaningful assistance and negligently left
25 the scene, and the towing company handled the matter

1 improperly as well. But Sarah Marquis had a role in
2 this tragedy.

3 I hope that everyone here has now felt my
4 pain and anger. If you didn't, then all of this was
5 for naught.

6 Also take a minute and just think if it were
7 your child that was hit and left to die. Maybe you
8 would understand.

9 In closing, again I say thank you for
10 allowing me this time to talk. I may not know much
11 about politics or how laws are put into effect, but I
12 am an expert at knowing pain and grief.

13 As elected officials, I'm sure all of you at
14 one time or another made promises while running for
15 election in your districts. I am asking you today to
16 make a promise to all the families like ours
17 throughout this Commonwealth who have lost loved ones
18 at the hands of hit-and-run drivers to pass the
19 strongest law possible and punish these cowards for
20 their devastating actions.

21 I ask one final question, ladies and
22 gentlemen: What if it were your child?

23 Thank you.

24 CHAIRMAN MARKOSEK: Thank you,
25 Mr. Vannucchi.

1 I have been doing this a long time and I've
2 heard plenty of folks testify, and I don't think I
3 have ever heard anybody testify quite like that and
4 make his point quite the way you did.

5 And I really -- I think my heart, and I
6 think I can speak for everybody here on this
7 committee certainly that our hearts go out to you and
8 your family for the tragic loss.

9 And I think your son would be proud of you,
10 the way you presented everything here today.

11 I think that Representative Geist would like
12 to say something.

13 REPRESENTATIVE GEIST: Thank you very much
14 for coming down. I thought you did an absolutely
15 excellent job under trying circumstances.

16 A have a couple of questions.

17 During the whole process of punishment and
18 limited punishment of the gal, did she ever share
19 remorse and apologize to your family?

20 MR. VANNUCCHI: I'm going to say no.

21 The only thing that I can remember -- I
22 shouldn't say the only thing I can remember; I can
23 remember lots. No, and she wouldn't allow any of her
24 family to speak at the sentencing.

25 I guess in so many words in a roundabout

1 way, she might have said she was sorry. But the
2 thing that I remember more than anything that she
3 said, Representative, was that she couldn't ask for
4 our forgiveness because she hadn't forgiven herself
5 yet. That's the kind of people you're dealing with.

6 If I ever killed someone, I'm not so sure I
7 would ever forgive myself, and especially in the way
8 that she did it.

9 But no -- I know I am rambling on here --
10 but no, I don't think she ever came right out and
11 said that she was sorry.

12 REPRESENTATIVE GEIST: Thank you.

13 This is really strange, we were talking
14 about this earlier, it has to be over 20 years ago
15 that we addressed this and we were talking about
16 changing this law. It is really good that we are
17 doing this today.

18 So thank you very, very much for what you
19 are doing.

20 MR. VANNUCCHI: Thank you.

21 REPRESENTATIVE GEIST: And I agree with Joe;
22 I think your son would be awfully proud of you. You
23 did a great job.

24 MR. VANNUCCHI: We were awfully proud of
25 him.

1 CHAIRMAN MARKOSEK: I have one question.

2 MR. VANNUCCHI: Sure.

3 CHAIRMAN MARKOSEK: The perpetrator of the
4 crime, how old was she?

5 MR. VANNUCCHI: I believe she was 26 at the
6 time of the incident, sir.

7 CHAIRMAN MARKOSEK: Okay.

8 Any other questions?

9 Sir, thank you very much.

10 MR. VANNUCCHI: Thank you, everyone, for
11 taking the time and for lending an open ear---

12 CHAIRMAN MARKOSEK: Sure.

13 MR. VANNUCCHI: ---because a good listener
14 is a silent flatterer.

15 Thank you.

16 CHAIRMAN MARKOSEK: Before we have our
17 next person testify, I would like to make sure that
18 folks are aware that Representatives Harhai, Costa,
19 Solobay, Longietti, and Carroll have also arrived.

20 With that, our next person is
21 Mr. Mark Bergstrom, Executive Director of the
22 Pennsylvania Commission on Sentencing.

23 Mr. Bergstrom, welcome.

24 MR. BERGSTROM: Thank you.

25 CHAIRMAN MARKOSEK: And you may proceed sir,

1 when you are ready.

2 MR. BERGSTROM: Thank you, Chairman Markosek
3 and Chairman Geist and members of the House
4 Transportation Committee.

5 I'm Mark Bergstrom, the Executive Director
6 of the Pennsylvania Commission on Sentencing.

7 Thank you for providing this opportunity to
8 comment briefly on the offense of accidents involving
9 death or personal injury and the amendments proposed
10 in the three bills introduced this session --
11 House Bill 197, House Bill 352, and House Bill 748.

12 For the purpose of this hearing, I thought
13 it would be most useful to provide you with
14 information on sentences imposed for this and the
15 related offense of accidents involving death or
16 personal injury while not properly licensed,
17 Section 3742.1, as well as the projected impact on
18 sentences imposed if the proposed changes are
19 enacted.

20 And out of respect for Mr. Vannucchi and his
21 family, I want to make clear at the outset that this
22 testimony is not intended as support for or criticism
23 of any of these proposals but only to provide
24 information on current sentencing patterns and the
25 projected impact, consistent with Representative

1 Wheatley's earlier comment.

2 As you may be aware, Section 3742 includes
3 three levels of penalties that address different
4 harms related to hit-and-run accidents.

5 Subsection (b)(1) classifies an offense as a
6 misdemeanor of the first degree if the victim suffers
7 harm less than serious bodily injury.

8 Subsection (b)(2) classifies an offense as a
9 felony of the third degree and provides a mandatory
10 minimum sentence of 90 days and a mandatory fine of
11 at least \$1,000 if the victim suffers serious bodily
12 injury.

13 And Subsection (b)(3) classifies an offense
14 as a felony of the third degree and provides a
15 mandatory minimum sentence of 1 year and a mandatory
16 fine of at least \$2,500 if the victim dies.

17 The sentencing guidelines which are included
18 in my written testimony generally track these
19 statutory provisions. However, it should be noted
20 that mandatory minimum sentencing provisions
21 supersede the guidelines. So guideline
22 recommendations can only be longer than a mandatory
23 minimum sentence, not shorter than that.

24 I should also note, since there was
25 reference to homicide by vehicle, that the commission

1 has subcategorized "homicide by vehicle."

2 Three are three different weights for it,
3 and the weights take into account whether there was a
4 driving-under-the-influence conviction in the same
5 incident, even if it were not related to that. And
6 it also takes into account whether a homicide by
7 vehicle occurs in a work zone.

8 While it does not include the intent of
9 leaving the scene of an accident, Section 3742.1
10 assigns the same grade, a felony 3, to accidents
11 involving death or serious bodily injury when the
12 defendant is not properly licensed. However, this
13 statute does not include mandatory sentencing
14 provisions.

15 During 2008, there were 19 cases in which an
16 offender was convicted of both violations of 3742 and
17 3742.1.

18 I have provided to your staff for
19 distribution -- I believe it is in the packet --
20 information or reports that summarize sentences
21 submitted to the commission for these two offenses
22 during the past 3 years, so 2006, '07, and '08.

23 For each of these years, there are four
24 separate tables based on different units of analysis.
25 One table is all of the offenses reported for that

1 offense, the second is all of the sentences for the
2 most serious offense of a criminal incident, the
3 third is the most serious offense of a judicial
4 proceeding, and then the fourth is in effect a body
5 count. It's a count of the most serious offense per
6 offender.

7 What is common to each of these tables that
8 I provided is the breakdown of the sentence by type
9 of sentence imposed. So you can look at the number
10 of sentences submitted to the commission and see how
11 many of those or what percentage of those were sent
12 to State prison versus county jail versus probation
13 versus intermediate punishment, and you can also see
14 the average minimum sentence imposed in each of those
15 cases. So it is a lot of information, but I wanted
16 to provide it just so that you would have some
17 background.

18 And if I may, in the packet in the section,
19 and these are the blue tables in my testimony, as you
20 get to those tables, actually the fourth table
21 represents 2008 sentencing data and it represents all
22 of the sentences imposed.

23 So the next information that I'm providing
24 will just sort of walk you through that table. I
25 hope that will be helpful.

1 So this would be 2008 sentences, and over in
2 the upper right-hand category, you will see the unit
3 of analysis as all offenses.

4 So as an example, during 2008, there were
5 247 sentences reported to the commission for
6 violations under 3742, Section 3742, and this
7 represented 159 different individual offenders.

8 Of the 200 sentences imposed under
9 Subsection (b)(1), 13 of those, or 7 percent,
10 received a State prison sentence with an average
11 minimum sentence of 7.5 months.

12 Of the 34 sentences under Subsection (b)(2)
13 -- and this is the subsection that addresses serious
14 bodily injury -- 20 individuals or 59 percent
15 received a State prison sentence with an average
16 minimum sentence of 12.1 months.

17 And of the 13 sentences imposed under (b)(3)
18 -- and that is where there is the death of a victim
19 -- 10 or 77 percent received a State prison sentence
20 with an average minimum sentence of 16.8 months.

21 Reflecting the mandatory minimum sentencing
22 provisions under Subsections (b)(2) and (b)(3), you
23 will note that the sentences under Subsection (b)(1)
24 include sentences for county intermediate punishment,
25 for probation, and for other restored sanctions,

1 while the sentences under (b) (2) and (b) (3) only
2 include county jail and State prison sentences.

3 The commission collects information on fines
4 and other economic sanctions imposed by Courts of
5 Common Pleas. While this is somewhat less reliable
6 information, it reflects relatively low amounts
7 of fines being imposed for convictions under
8 Section 3742 even when a mandatory fine is required
9 by statute.

10 During 2006-2007, a fine was imposed in
11 nearly 35 percent of the sentences under
12 Subsection (b) (1), with the average fine imposed
13 being \$331.

14 Approximately 55 percent of the (b) (2)
15 sentences included a fine, with the average being
16 \$978, notwithstanding the mandatory fine of \$1,000.

17 And the third of those sentences under
18 (b) (3) received a fine, the average being \$1,543,
19 again notwithstanding the mandatory minimum fine of
20 \$2,500.

21 It should be noted that fines are competing
22 with other economic sanctions, including restitution,
23 costs, fees, and forfeitures.

24 Additionally, fines may be waived if there
25 is a determination by the court that the defendant

1 does not have the ability to pay.

2 The commission is studying fines and other
3 economic sanctions, as well as the role of community
4 service, in response to additional responsibilities
5 assigned to it under Act 37 of 2007. And this should
6 help us to provide recommendations to the General
7 Assembly on steps that could be taken to improve the
8 reliability of the imposition and collection of
9 fines.

10 Each of the three bills noted earlier would
11 impact sentences imposed under Section 3742 due to
12 changes in the grading of the offense, increases in
13 the mandatory minimum sentences required, and/or
14 provisions which mandate the imposition of
15 consecutive sentences in certain circumstances.

16 I will briefly describe the proposed changes
17 contained in each of the three bills and provide an
18 estimate of the impact of the proposals on the number
19 of offenders and the average minimum sentence served
20 in State prison.

21 Again, as I said at the outset, this is not
22 intended as support for or criticism of any of the
23 proposals but rather to inform the committee of the
24 sentences anticipated should the legislation be
25 enacted. No impact estimates are provided for the

1 proposed increases in fines.

2 I have attached to the testimony that was
3 distributed a report that details the baseline and
4 impact information for each of the bills.

5 While the tables are based on all sentences
6 reported in 2008, only those sentences which included
7 certain offender identifiers were included in the
8 analysis to improve the accuracy of the projections.

9 As a result, the information provided is a
10 fairly conservative estimate. And I will try to go
11 through this pretty quickly and just assume that you
12 can read it in the written testimony and ask any
13 questions you may have.

14 First, for House Bill 197, the bill proposes
15 an increase in the mandatory minimum sentence from
16 1 year to 5 years when a victim dies as a result of
17 an accident, and that would be under the current
18 provision, 3742 (b) (3).

19 It may be helpful to note that the other
20 5-year mandatory minimum sentences include committing
21 a crime of violence with a firearm or committing a
22 crime of violence on public transportation.

23 But in both of those cases and others, the
24 mandatory requires prosecutorial notice. So the
25 district attorney has discretion on whether to invoke

1 the mandatory or not.

2 The mandatory proposed or the mandatory
3 under House Bill 197 and the proposed increase of
4 that does not require notice. It applies
5 automatically based on a conviction of the offense.

6 So one of the factors we see happening when
7 there is a mandatory and the D.A. has no discretion
8 is sometimes the offense is not charged. So one of
9 the issues to consider is that. And again, the
10 mandatory that is being proposed is consistent with
11 the mandatory for those crimes of violence.

12 Based on our simulation model, the proposed
13 change by only increasing the mandatory minimum from
14 1 year to 5 years and making no other changes would
15 increase the number of admissions to State prison
16 from 9 to 12, a relatively small number, and would
17 increase the average minimum sentence from 16 months
18 to 60 months.

19 The result would be the need for 17,280
20 additional bed-days, which translates to about
21 48 additional State prison beds each year.

22 House Bill 352 proposes an increase in the
23 grade from felony 3 to felony 2 when a victim suffers
24 serious bodily injury or dies as a result of an
25 accident. These apply to Subsections (b) (2) and

1 (b) (3) .

2 Based on simulation, the proposed changed
3 (b) (2), the serious bodily injury provision, would
4 increase the number of admissions to State prison
5 from 13 to 15 and would increase the average minimum
6 sentence from 14.2 months to 21.8 months.

7 The result would be the need for 4,272
8 additional bed-days, or about 12 additional State
9 prison beds each year.

10 Also based on the simulation, the proposed
11 change to Subsection (b) (3), which involves death of
12 a victim, would not change the number of admissions
13 to State prison. The same nine individuals in the
14 projection model would go to State prison, but there
15 would be a substantial increase or an increase in the
16 minimum sentence from 16 months to 19.9 months.

17 The result would be a need for 1,053
18 additional bed-days, or about 3 additional State
19 prison beds each year.

20 So the combined impact of both of these
21 sections under this bill would be about 15 additional
22 State prison beds per year.

23 The final bill, House Bill 748, is fairly
24 complicated, and I think I'll save both of us the
25 danger of trying to explain all of this briefly.

1 It's a bit complicated, and some have told
2 me it is mind-numbing. So I will just say that there
3 are two basic aspects to this bill.

4 The first is changes to the existing
5 legislation, the (b)(1), (b)(2), and (b)(3), some
6 enhancements there, and some of the enhancements
7 would take into account providing for consecutive
8 sentences automatically if someone had multiple
9 instances of the offense. There is also an increase
10 in the grade from a felony 3 to a felony 2 for the
11 (b)(3) provision.

12 So the bottom line in looking at just those
13 provisions that apply to existing legislation, not
14 anything related to DUI, just the other provisions,
15 we see an impact of about 15 additional State beds
16 per year for that provision.

17 What is more, I think, impactful and an
18 important part of the bill is the entirely new
19 provision, (b.1), that addresses concurrent
20 convictions for DUI and for accidents involving death
21 or serious bodily injury and leaving the scene of the
22 accident.

23 And in those kinds of situations, what we
24 have tried to do as a commission is look at the last
25 couple of years, and especially the past year, and

1 look for how many instances there were when someone
2 was convicted for both of those offenses and try to
3 understand what the proportion of cases would be that
4 would fall under this new provision where there are
5 enhanced penalties, because there is also a DUI
6 conviction, versus those that would fall under the
7 current provisions which would not require that DUI.
8 And so we are still working on that, because there is
9 a lot of interaction between the two models.

10 But I did include with this handout, as an
11 attachment, a chart, and perhaps if you just look at
12 the last page of the chart. This is what we call
13 Step B of the process. But what we have tried to do
14 is split out those cases for which there was a DUI
15 offense in the same transaction and those that there
16 were not.

17 And just for your information, under
18 Subsection (b)(1), no serious bodily injury, in our
19 projections there would be 13 individuals that would
20 be sentenced to State prison. Of those, eight would
21 have had sentences that included DUI, and five would
22 have had sentences that did not include DUI.

23 Under the (b)(2) provision, which is the
24 provision for which there is serious bodily injury,
25 there are also -- there are 13. Yeah, there are

1 13 in that category, too, and 4 of them would be
2 instances that included DUI, 9 without DUI.

3 And then the third category where there was
4 death, there are nine sentences that would be
5 projected to go to State prison, seven of which have
6 no DUI, two of which do have DUI.

7 So that is just sort of a high-level view of
8 some of the information related to the sentences that
9 have been imposed to date and what we project as the
10 outcomes.

11 I think at this point I will just close my
12 testimony. I hope this information has been helpful
13 as you consider the legislation before you.

14 As an agency of the General Assembly, the
15 Commission on Sentencing is always available to
16 provide data and information in an effort to promote
17 fair and more uniform sentencing practices in the
18 Commonwealth.

19 I thank you again for providing this
20 opportunity to testify.

21 CHAIRMAN MARKOSEK: Okay. Thank you very
22 much. Very good testimony.

23 Just for the record, the bill that you
24 referred to as being "mind-numbing" is my
25 legislation.

1 MR. BERGSTROM: Not the bill being
2 mind-numbing, my testimony.

3 CHAIRMAN MARKOSEK: But I am surrounded by
4 four attorneys on my staff, so that has something to
5 do with it.

6 MR. BERGSTROM: Not the bill, my testimony.
7 Mind-numbing, believe me.

8 CHAIRMAN MARKOSEK: Representative Wheatley.

9 REPRESENTATIVE WHEATLEY: Thank you,
10 Mr. Chairman.

11 And just so I'm clear on some of the stuff
12 that you outlined -- all right.

13 Where currently someone is killed in a
14 driving, a hit-and-run situation, the maximum
15 sentence that is allowable under our sentencing
16 guidelines right now for the incident, one, for
17 hitting and killing someone, but then for leaving the
18 scene, is what?

19 MR. BERGSTROM: Well, there are a couple of
20 different things there.

21 The current statute that we are discussing,
22 Section 3742, is just providing the leaving -- having
23 an accident, leaving the scene of that crime without
24 reporting it, and a victim dies. That is the (b)(3)
25 provision presently.

1 That is presently an F-3, so the maximum
2 penalty is 7 years. The sentencing guidelines
3 provide a recommendation about what the minimum
4 sentence should be.

5 And then the mandatory minimum that applies
6 right now, the 1-year mandatory minimum, sort of sets
7 a floor, so the court cannot impose a sentence any
8 less than that 1.

9 So there are times, especially if someone
10 has any kind of prior record, where the sentence
11 recommendation, the sentencing guideline
12 recommendation for that minimum sentence, will be
13 much higher than the mandatory minimum. But the
14 sentencing recommendation cannot be any lower than
15 the mandatory minimum.

16 So you are assured to have a 1-year minimum.
17 It could be longer. The longest minimum possible
18 would be 3 1/2 years, because the statutory max, the
19 longest max, is 7 years, and the min can't exceed
20 one-half of that.

21 REPRESENTATIVE WHEATLEY: Okay.

22 So under the scenario that we heard earlier
23 today where a young man was struck, was killed, the
24 perpetrator left the scene, didn't report, and
25 actually hit two people, the guidelines currently

1 have in place a minimum sentence for it, but the
2 judge and the court system could impose a greater
3 sentence?

4 MR. BERGSTROM: Right. And the guidelines
5 would impose or recommend a longer sentence if the
6 person was not a first-time offender, if the person
7 had prior conviction offenses, because that enhances
8 the sentence recommendation.

9 If I could just make one thing very clear,
10 and that is, the sentencing guidelines' starting
11 point is the conviction offense. So while there is,
12 you know, terrible, harmful behaviors out there, as
13 the gentleman spoke about earlier, you know, what
14 matters in terms of what sentence can be imposed is
15 what is the person convicted of, and then we look to
16 the mandatories under the guidelines for what kind of
17 sentence the court might impose.

18 So I think we have to be very careful when
19 we are talking about any of this, especially at
20 sentencing, our starting point is, what was the
21 person convicted of, not what was the person charged
22 with.

23 REPRESENTATIVE WHEATLEY: Okay; okay.

24 And maybe this is where I need to read more
25 into what each of the bills will provide, but from

1 what I heard from Representative Mundy, our
2 guidelines as they relate to this loophole that has
3 been spoken about with the drinking and driving,
4 there is no incentive to a person fleeing the scene
5 because of this fear of being exposed for drinking
6 and driving. So what currently do we have in place
7 that addresses that?

8 MR. BERGSTROM: Well, I think the
9 Representative's proposal does in part address that.
10 What she is talking about is this imbalance, that the
11 penalty for this type of behavior, leaving the scene
12 of a crime, especially if there's a death, is less
13 than the maximum penalty possible, is less than that
14 that would be provided in the other circumstance.

15 For instance, if someone is convicted of
16 homicide by vehicle while DUI, there's a 3-year
17 mandatory minimum sentence. You can't get anything
18 less than a 3- to 6-year sentence.

19 REPRESENTATIVE WHEATLEY: Okay.

20 MR. BERGSTROM: I believe the statutory max
21 for that offense is now an F-2, I believe, which
22 would be the longest maximum is 10 years. And I
23 think that's the disconnect that was cited, that
24 there's a lower grade, a lower maximum penalty
25 available based on conviction for this kind of

1 behavior resulting in death than for that type of
2 behavior.

3 REPRESENTATIVE WHEATLEY: So from the
4 Sentencing Commission -- and you may not be able to
5 answer this, but I'm just putting the question out
6 there.

7 MR. BERGSTROM: Okay.

8 REPRESENTATIVE WHEATLEY: You would not
9 necessarily be opposed to what Representative Mundy
10 is suggesting in her bill because you think it brings
11 it more in line with what we are ultimately trying to
12 prevent.

13 MR. BERGSTROM: Yeah.

14 I have to be careful. The commission has
15 not taken a position on this, but what I will say
16 that the commission often is looking for is
17 consistency and uniformity and proportionality in
18 sentencing.

19 I think what has been argued is a pretty
20 forceful argument that if there are incentives built
21 into the system that encourage people to leave the
22 scene of a crime, I think that is something the
23 General Assembly should be reviewing. And then based
24 on whatever action the General Assembly takes, the
25 commission will be responding to that.

1 REPRESENTATIVE WHEATLEY: Thank you, sir.

2 Thank you, Mr. Chairman.

3 CHAIRMAN MARKOSEK: Okay. Any other
4 questions?

5 REPRESENTATIVE GEIST: Yes; I have one
6 comment.

7 CHAIRMAN MARKOSEK: Representative Geist.

8 REPRESENTATIVE GEIST: One question.

9 A lot of times -- and I did a lot of work
10 with our former D.A., who is now the Attorney
11 General. We wrote some law that I thought was pretty
12 good.

13 During the time that we were working on
14 that, one of the things that kept coming up was that
15 if you have no latitude for sentencing, they a lot of
16 times won't bring the charge because they think the
17 jury would think that is too harsh and then throw the
18 whole thing, that the judicial balance is lost a lot
19 of times with what we think that we are doing really
20 good -- we think we are doing really good work.

21 Is that the case any way here at all?

22 MR. BERGSTROM: Well, I think that is
23 something that there has to be some concern or at
24 least thought given to, and especially in the case of
25 the 5-year mandatory minimum.

1 The mandatory minimums in these provisions
2 do not contain a notice provision, so if there is
3 conviction, that mandatory must be applied. And that
4 is quite different than some of the other
5 mandatories, like for drug trafficking or crimes of
6 violence, where the D.A. has more discretion.

7 If the D.A. feels that it is appropriate,
8 the D.A. may give notice, and if the D.A. gives
9 notice, then the court must impose the mandatory.

10 This doesn't work that way. This works much
11 like homicide by vehicle while DUI. If you are
12 convicted of the offense, the 3-year mandatory
13 minimum applies.

14 Sometimes what we see with homicide by
15 vehicle while DUI is that either prosecutors or
16 courts will find that they either can't or won't try
17 to prove the nexus, the link, between the DUI and the
18 homicide by vehicle, and failing to do that, they get
19 convictions on lesser offenses for which the
20 mandatories don't apply or much less mandatories
21 apply.

22 So you find sometimes these hydraulic things
23 occurring, where because there is so much pressure in
24 this area, there is something else that might happen
25 somewhere else.

1 So I think people are all trying to do the
2 right thing. I think we have, you know, great
3 prosecutors and judges, but I think that is one of
4 the issues that comes up. And if there is no notice
5 on the mandatory, if there is no discretion at all,
6 you may find negotiations about the charging of the
7 offense.

8 REPRESENTATIVE GEIST: It was really funny,
9 because I was asking the noted legal counsel here, I
10 just couldn't remember what the objections were, and
11 then as you said that, it all came back.

12 The objections were that you get a jury, and
13 if somebody on that jury has ever gone home from the
14 local tavern a little tuned and starts thinking,
15 there but by the grace of God go I, then you are not
16 going to get a conviction.

17 And what we tried to do was to get a lot of
18 latitude. In the days when we were doing that,
19 minimums and maximums were the thing, and now I think
20 we have learned our lesson a little bit over the
21 years to give judges the ability to do their job to
22 be judges.

23 MR. BERGSTROM: And I think -- well,
24 clearly, that is one of the reasons for sentencing
25 guidelines as an alternative to some degree to

1 mandatories.

2 But I think it is useful to have discretion
3 within the system, and whether the discretion lies
4 with the prosecutor or with the court, by tying
5 things too tightly that the individual circumstances
6 can't be considered, I think that is when you start
7 to see these work around.

8 So I think, you know, the length of the
9 mandatory can have a bearing or the lack of notice on
10 the mandatory can have a bearing. So those are
11 things worth considering.

12 REPRESENTATIVE GEIST: And then one more
13 comment.

14 I thought your testimony was excellent.

15 MR. BERGSTROM: Thank you.

16 It wasn't mind-numbing?

17 REPRESENTATIVE GEIST: Only Joe's
18 legislation is.

19 MR. BERGSTROM: No, no, no. Thank you.

20 CHAIRMAN MARKOSEK: Representative Harhai.

21 REPRESENTATIVE HARHAI: I thought you gave
22 good testimony.

23 MR. BERGSTROM: Thank you.

24 REPRESENTATIVE HARHAI: Thank you for being
25 here.

1 MR. BERGSTROM: Sure.

2 REPRESENTATIVE HARHAI: My question is, if
3 you get a good defense attorney -- you mentioned
4 priors -- can they work it to where they can prevent
5 or even block that even being brought up, and this
6 way the person might have 1, 2, 3, multiple beyond
7 that?

8 In your experience or your knowledge of it,
9 is there something that this person may have
10 committed, three or four, been accused of or even
11 served time, that won't be admissible in a court?

12 MR. BERGSTROM: I have learned never to say
13 never, but that shouldn't happen.

14 Under the sentencing guidelines, the court
15 is required to make a determination based on the
16 information provided. So if the district attorney
17 presents to the court, you know, these are the prior
18 conviction offenses, these are the prior offenses for
19 which the person was convicted, as part of the
20 calculation of the sentencing guidelines, those have
21 to be considered in the mix. Once that is
22 established, the court then has some discretion to
23 sentence outside of those recommendations.

24 But if for some reason there was a
25 negotiation away of prior convictions or they just

1 didn't make it into the mix, that is grounds -- well,
2 first, the court shouldn't accept that, but secondly,
3 if it occurs, it is grounds for appeal, because it
4 would be sort of an illegal use of the guidelines.

5 So I'm not going to say it never happens,
6 but there are a lot of efforts made to make sure that
7 the prior record score really reflects prior
8 conviction offenses.

9 REPRESENTATIVE HARHAI: Thanks.

10 CHAIRMAN MARKOSEK: Any more questions,
11 Representative?

12 REPRESENTATIVE HARHAI: That is all I have.
13 Thank you.

14 CHAIRMAN MARKOSEK: Representative
15 Longietti.

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

18 You mentioned in your testimony that there
19 are instances where the particular offense is not
20 charged as a way to avoid a mandatory minimum or what
21 have you.

22 Under the bills that we are looking at, do
23 you know, when you say "not charged," are we also
24 talking about instances where the crime was charged
25 but somewhere in the process there was a plea bargain

1 and so there is a withdrawal of a harsher charge and
2 a moving forward or a guilty plea on a lesser charge,
3 and do these bills address that situation at all?

4 MR. BERGSTROM: Well, I think that is always
5 possible. And the thing is, I think it is a mistake,
6 especially on my part, to try to understand in
7 individual cases what a prosecutor sees or what the
8 parties agree to or what the court accepts, because
9 there are some times cases that are very difficult to
10 prove at trial, and that may be an important
11 component of deciding whether to reduce the charge or
12 other things like that.

13 You know, in this kind of situation where
14 you have a hit and run and a victim is seriously
15 injured or dies, I have seen cases where, you know,
16 the defendant is only found a day or two later, and
17 even if the person was drunk, there is no way you
18 could prove it.

19 So you recognize that what you think might
20 have happened, you might not be able to prove, and
21 then I think that puts prosecutors in a situation of
22 trying to think, you know, how do they do justice?
23 How do they make the most of this, the best outcome
24 with this?

25 So I think these bills do a number of good

1 things, but I think, you know, I pointed out some
2 concerns in terms of just looking sort of
3 holistically and not being so tight in one area that
4 you might have abuses in another.

5 REPRESENTATIVE LONGIETTI: So it sounds like
6 there is still the ability to reduce charges as well
7 as not.

8 MR. BERGSTROM: I think there is. And I
9 think an argument could be made that that is
10 appropriate, or something along that line has to be
11 appropriate, to take into account the specific
12 activities that occurred, because you might not --
13 although you think you have the information, you
14 think you know what occurred, whether you can prove
15 that in court is really what you have to get to.
16 Because as I said, the starting point for sentencing
17 is what is the conviction offense, not what was the
18 person charged with.

19 So I think to the degree that you can find
20 ways to reduce that or to mitigate that, that is
21 great, but I'm not sure you can eliminate it.

22 REPRESENTATIVE LONGIETTI: Thank you,
23 Mr. Chairman.

24 CHAIRMAN MARKOSEK: Okay. Thank you.

25 Any other questions?

1 Okay, sir. Thank you very much.

2 MR. BERGSTROM: Thank you.

3 CHAIRMAN MARKOSEK: I appreciate it. Very
4 good testimony.

5 MR. BERGSTROM: Thank you.

6 CHAIRMAN MARKOSEK: The next person,
7 Lt. Jeffrey Hopkins, Commander of the Vehicle Crash
8 and Driver Safety Section of the Pennsylvania State
9 Police.

10 Lieutenant, thank you very much. I
11 appreciate it.

12 LIEUTENANT HOPKINS: Certainly.

13 CHAIRMAN MARKOSEK: And you may proceed when
14 you are ready.

15 LIEUTENANT HOPKINS: Thank you.

16 Good morning. I'm Lt. Jeffrey B. Hopkins,
17 Commander of the Vehicle Crash and Driver Safety
18 Section of the Bureau of Patrol for the Pennsylvania
19 State Police.

20 On behalf of Col. Frank E. Pawlowski, the
21 Commissioner of the Pennsylvania State Police, I
22 would like to thank you for the invitation to provide
23 testimony at this hearing concerning increased
24 penalties for hit-and-run crashes involving injuries
25 and fatalities.

1 In the Commonwealth, driving a vehicle is
2 a privilege, and with privilege comes
3 responsibility.

4 Each of the bills -- House Bill 197,
5 House Bill 352, and HB 748 -- proposed here will have
6 the effect on all drivers that ensures that they are
7 held responsible for their actions if they are
8 involved in a motor vehicle crash which injures or
9 kills another person.

10 People generally leave the scene of a crash
11 to avoid apprehension and the penalties for other
12 offenses they may have committed with the prior
13 knowledge that a police officer's arrival is
14 imminent.

15 They make a conscious choice to avoid taking
16 responsibility for their actions. The other offenses
17 that they may have committed could have serious
18 repercussions, but nothing is as serious as the
19 preservation of life.

20 Penalties for offenses should be imposed
21 which convey to everyone that their duty, not only as
22 a motorist but as a citizen of humanity, is to remain
23 at the scene of a crash and render whatever aid they
24 can and to summon any assistance that they can in
25 order to preserve life and mitigate injuries.

1 In 2008, the Pennsylvania State Police
2 investigated 7,635 hit-and-run accidents. Five
3 hundred and forty four of these accidents resulted in
4 death or serious bodily injury.

5 When penalties are too lax, there is little
6 incentive for anyone to take responsibility for their
7 actions. Through the judicious application of
8 enhanced penalties, people will be compelled to be
9 responsible for their own actions and will think
10 twice before choosing to put their own desires ahead
11 of the needs of others.

12 In conclusion, on behalf of Colonel
13 Pawlowski and the entire Pennsylvania State Police, I
14 again want to thank you for the opportunity to
15 address your committee.

16 I will be happy to answer any questions you
17 have.

18 CHAIRMAN MARKOSEK: Okay. Thank you very
19 much.

20 Representative Costa, I believe, has a
21 question.

22 REPRESENTATIVE COSTA: Thank you,
23 Mr. Chairman.

24 Lieutenant, thank you.

25 You see a lot on TV on those shows where

1 there is a lot of chasing going on with the police
2 chase. Has that been an increase over the years
3 where people are escaping from or at least trying to
4 escape?

5 Is there an increase lately, or is that just
6 because we are seeing more video now?

7 LIEUTENANT HOPKINS: I don't have the
8 statistics on pursuits that we've been involved in.

9 I can give you an estimation that it has
10 increased, although I can't say how significantly the
11 number of times that people flee and cause a pursuit.
12 But the public is much more aware of it through those
13 videos that you've referred to.

14 REPRESENTATIVE COSTA: Thank you.

15 CHAIRMAN MARKOSEK: Representative
16 Longietti.

17 REPRESENTATIVE LONGIETTI: Thank you,
18 Mr. Chairman.

19 You had mentioned that in 2008, I think you
20 shared some statistics that there were 7,635
21 hit-and-run accidents investigated by the State
22 Police, and 544 of those involved injury or death.

23 LIEUTENANT HOPKINS: Yes.

24 REPRESENTATIVE LONGIETTI: Now, I don't know
25 if you have the same statistics that we have, but our

1 stats showed that that same year there were zero
2 arrests for hit-and-run violations.

3 Do you know if that's accurate?

4 LIEUTENANT HOPKINS: Well, no, it is not
5 accurate. That was preliminary information that had
6 been provided by the Administrative Office of the
7 Pennsylvania Courts that essentially doing their
8 statistical research missed.

9 What we do have is that the total arrests
10 statewide, including local police, in 2008 was
11 839 arrests for violation of Section 3742, and 162 of
12 those arrests were made by the Pennsylvania State
13 Police.

14 REPRESENTATIVE LONGIETTI: Okay. So it
15 sounds as though the stats that you gave, of the
16 7,635 investigations, there were 162 arrests for hit
17 and run.

18 LIEUTENANT HOPKINS: That's correct. Yes.

19 REPRESENTATIVE LONGIETTI: Still, it sounds
20 like a rather high percentage are somehow able to
21 allude arrest.

22 LIEUTENANT HOPKINS: Well, not necessarily.

23 Out of the total number of hit-and-run
24 accidents, not all of them meet the criteria that
25 would put them under Section 3742. They can be

1 property damage only or hit-and-run accidents that
2 the injury is so minor as to not apply here.

3 And what I'm looking for is the
4 statistic---

5 REPRESENTATIVE LONGIETTI: While you are
6 looking for that, maybe a better measure is in 2008
7 you indicated that there were 544 hit and runs that
8 involved injury or death.

9 LIEUTENANT HOPKINS: Yes.

10 REPRESENTATIVE LONGIETTI: And about 162
11 arrests.

12 LIEUTENANT HOPKINS: Yes. And 13 of those
13 involved fatalities. So the other 531 involved
14 serious bodily injury in the fact that it would apply
15 to this Section 3742.

16 REPRESENTATIVE LONGIETTI: Still, it seems
17 like the majority of them are alluding prosecution.

18 LIEUTENANT HOPKINS: Well---

19 REPRESENTATIVE LONGIETTI: And I'm not
20 assessing blame at all on the investigation. I'm
21 just saying---

22 LIEUTENANT HOPKINS: No; the thing is, they
23 are not necessarily avoiding prosecution, because
24 this section deals specifically with the injury or
25 death.

1 There are other sections that are applicable
2 to leaving the scene of an accident, failing to make
3 notifications, and so on that are not included in
4 this statistical analysis.

5 REPRESENTATIVE LONGIETTI: Sure. But if
6 544 were serious bodily injury or death cases and
7 then 162 were the actual arrests, then more---

8 LIEUTENANT HOPKINS: Oh, there
9 certainly---

10 REPRESENTATIVE LONGIETTI: ---more than not
11 are avoiding.

12 LIEUTENANT HOPKINS: Yes. That is correct.

13 REPRESENTATIVE LONGIETTI: Okay. Thank
14 you.

15 CHAIRMAN MARKOSEK: Okay. Thank you.

16 Before I recognize Representative Carroll,
17 Lieutenant, if you could provide us some written
18 information backing up some of these numbers---

19 LIEUTENANT HOPKINS: Sure.

20 CHAIRMAN MARKOSEK: ---to the committee,
21 please.

22 LIEUTENANT HOPKINS: Certainly.

23 CHAIRMAN MARKOSEK: For '06 and '07 as well.

24 LIEUTENANT HOPKINS: I have that available.

25 Yes, sir.

1 CHAIRMAN MARKOSEK: Okay. Thank you.

2 Representative Mike Carroll.

3 REPRESENTATIVE CARROLL: Thank you,

4 Mr. Chairman.

5 Lieutenant, the folks who make the
6 determination to hit and run, when they make that
7 decision to leave the scene, do you think they are
8 making that decision because they know there's a
9 benefit to them from the perspective of the penalty,
10 or do you think they are making that decision because
11 they are just making a horrible choice that they
12 think is a self-preservation decision?

13 LIEUTENANT HOPKINS: I think a lot of it is
14 an immediate, what we'll call a knee-jerk reaction
15 for their own safety benefit -- preservation, as you
16 put it.

17 However, "immediate notice" has been
18 interpreted by the courts to be as late as 24 hours
19 after the accident has occurred in certain
20 circumstances.

21 There are people who may leave the scene of
22 an accident and go immediately home, rethink their
23 position or have the opportunity to talk to
24 somebody, and then make the notifications that are
25 required.

1 It's a traumatic set of circumstances as it
2 originally occurs and as time progresses. What we
3 need to do is make sure that the amount of time is so
4 slight and that the public has focused their
5 responsibility on making the notifications
6 instantly rather than having that window of, as I
7 said, up to 24 hours in certain cases that I'm
8 familiar with.

9 REPRESENTATIVE CARROLL: Okay. Thank you.

10 And it seems obvious that some change to the
11 law is required here, but I'm just not certain that
12 the decision is being made by somebody at an
13 accident that they know what the penalty is
14 comparatively.

15 So I think that, you know, we'll have to do
16 some real public service effort to try and educate
17 drivers, especially, with respect to what the
18 obligations are and what the penalties are to try and
19 make sure that they understand that it is important
20 to stop at the scene of an accident and not leave the
21 scene.

22 But I do think that, you know, just changing
23 the law to increase the penalty by itself probably
24 isn't going to change these numbers a great deal. I
25 think we have to try and add to that a level of

1 education for folks.

2 LIEUTENANT HOPKINS: Absolutely.

3 REPRESENTATIVE CARROLL: Thank you,
4 Mr. Chairman.

5 CHAIRMAN MARKOSEK: Okay. Thank you.

6 Will staff please note that Representative
7 Ron Miller has arrived.

8 Any other questions for the Lieutenant?

9 Okay.

10 Lieutenant, thank you very much. We
11 appreciate your testimony here today. It has all
12 been very interesting, and I also thank you.

13 LIEUTENANT HOPKINS: Thank you.

14 CHAIRMAN MARKOSEK: I want to just say to
15 the committee thank you for attending here today. I
16 think it was very productive, a lot of good
17 information.

18 And I also want to thank the Vannucchi
19 family for being here today. Wonderful, wonderful
20 testimony on behalf of your son.

21 And we will be discussing these three bills
22 in committee shortly with the staff and committee
23 members and come to some agreement and move forward
24 with this issue. I think it is a priority for this
25 committee that we do so.

1 So with that, hearing nothing else from any
2 of the members, the meeting is adjourned.

3 Thank you.

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5 (The hearing concluded at 12:22 p.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Debra B. Miller, Reporter

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