



MEMORANDUM

TO: The Pennsylvania House

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: July 1, 2022

RE: OPPOSITION TO SB 588 P.N. 648 (GORDNER)

Bill summary: [SB 588](#) (PN 648) would create an exception to Pennsylvania's compulsory joinder rule ([18 Pa.C.S. § 110](#))—also known as Rule 110) that would allow prosecutors to try summary offenses separately from misdemeanor or felony offenses that arise from the same criminal episode,¹ narrowing the double jeopardy protections contained within Rule 110.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 588.

SB 588 would eliminate protections against double jeopardy for those charged with summary offenses.

Pennsylvania's compulsory joinder rule, also known as "[Rule 110](#)," is a rule grounded in the constitutional principle against double jeopardy that requires the Commonwealth to "bring in a single proceeding, all known charges against a defendant." [Com. v. Campana](#), 304 A.2d 432 (Pa. 1973). SB 588 would create an arbitrary exception to that rule for summary offenses.

If enacted, SB 588 would have disastrous consequences. SB 588 proposes to eliminate ENTIRELY the compulsory joinder rule for ALL summary offenses. This would allow someone to be separately prosecuted for a summary offense—which still carries a potential maximum of 90 days of incarceration—and then ALSO be prosecuted for the felonies arising from the same incident.

This conflicts with the current statutory protections under Rule 110 and constitutional protections against double jeopardy enshrined in our state and federal constitutions: "No person shall, for the same offense, be twice put in jeopardy of life or limb." [Pa. Const. art. I, § 10](#) and [U.S. Const. amend. V](#).

Rather than requiring counties to fix how their courts are administered, SB 588 instead proposes to change the law in ways that would erode double jeopardy protections for all Pennsylvanians.

The sponsor of the House companion bill, [HB 1231](#), [argues](#) that the ruling in [Commonwealth v. Perfetto](#) (2019) created a "loophole" resulting from a "hyper-technicality."² It did no such thing.

At issue in *Perfetto* was a problem not unique to, but chronic in, Philadelphia—prosecutors charging people with DUIs and traffic offenses and then prosecuting the offenses separately in two different courts. In Philadelphia, when someone is issued a traffic citation and charged with a more serious criminal offense at the same time, the cases are not usually joined together. Instead, defendants have traditionally had to resolve traffic citations in the traffic division of the Philadelphia Municipal Court and the criminal case in the criminal division.

¹ This problem was referred to as "serial prosecutions of single-criminal-episode summary offenses (triable at the magisterial district court level) and greater crimes (over which magisterial district courts lack jurisdiction)." [Commonwealth v. Johnson](#), 247 A.3d 981, 983 (Pa. 2021).

² Rep. Martina White, co-sponsorship memorandum, [Correcting a DUI prosecution loophole created by Commonwealth v. Perfetto](#), January 26, 2021.

The defendant in the *Perfetto* case was stopped by a Philadelphia police officer who issued him a citation because he was driving without his lights on. The officer then determined that the defendant was also driving under the influence. In addition to being issued the traffic ticket, Perfetto was subsequently arrested and charged with a DUI.

Prior to the resolution of the criminal charges, the defendant was found guilty, *in absentia*, of the summary traffic offense in the *traffic division* of the Philadelphia Municipal Court. After his conviction, the defendant had a preliminary hearing for his DUI charges and he was held for court on all charges. In Philadelphia, if a defendant is charged with a felony, he will have a preliminary hearing in the *criminal* division of Municipal Court. If the court determines there is enough evidence for a case to go to trial, then the defendant will be held for court, and the case will be transferred to the Court of Common Pleas.

At his trial, the defendant filed a motion to dismiss the DUI charge against him because he had already been found guilty of the traffic offense. His defense attorney argued that [Rule 110](#) prohibits subsequent prosecutions that arise from the same criminal episode when the defendant has previously been convicted in the same court. Thus, he argued that because the defendant was found guilty in Municipal Court Traffic Division for his traffic offense, and his traffic offense was part of the same incident as his alleged DUI, the Municipal Court Criminal Division should dismiss the DUI case.

The case was appealed to the Pennsylvania Supreme Court, where the majority opinion found that this was a straightforward case of statutory interpretation and that the language of Rule 110 is clear and unambiguous.

The Court found that all four elements of Rule 110 were met in the defendant's case:

1. The defendant was found guilty for driving without lights;
2. His DUI case arose out of the same episode as his driving without lights conviction;
3. The prosecutor was aware of this conviction; and
4. His traffic conviction occurred in the same judicial district as his DUI case.

Because all of the elements of Rule 110 were met, the Court barred the Commonwealth from prosecuting the defendant's DUI case due to the prior traffic case.

The Commonwealth's argument was that traffic cases in Philadelphia must be prosecuted in the traffic division of Municipal Court. **But the majority opinion found that there was no rule that prohibited the Commonwealth from joining the offenses and prosecuting the defendant's traffic offense with his DUI charge.** In other words, there was no (legal) reason preventing Philadelphia from trying the defendant for the summary traffic citations as part of the criminal case.

The majority opinion also **reiterated that a summary offense can trigger double jeopardy protections**, even though the consequences are usually less severe than those of a misdemeanor or a felony. The majority opinion did acknowledge that this may cause problems for the Philadelphia District Attorney's Office, but nonetheless precluded the Commonwealth from prosecuting the defendant's case due to Rule 110 and the double jeopardy clause of the Pennsylvania Constitution.

A related and subsequent case, [Commonwealth v. Johnson](#) (2021),³ also addressed the compulsory joinder aspect of Rule 110 (again, the rule that requires the Commonwealth to try all offenses stemming from one incident together). In this case, Johnson was charged with both PWID (possession with intent to deliver) and driving with a suspended license. Like in Perfetto's case, a Philadelphia traffic court judge found Johnson guilty, *in absentia*, of the summary traffic offense. Traffic court falls within Philadelphia's Municipal Court. The Municipal Court's jurisdiction is capped at 5 years, which means it did not have jurisdiction to hear the felony

³ [Commonwealth v. Johnson](#), 247 A.3d 981 (Pa. 2021).

PWID. The court held, however, that because the Common Pleas Court **did have the authority** to hear the felony PWID, and because the Commonwealth could have consolidated the traffic summary offense with the PWID, Rule 110 and Rule 112 barred the subsequent prosecution of the PWID.

The *Johnson* opinion looked at Pennsylvania's case law and legislative history of double jeopardy and compulsory joinder. Chief Justice Saylor, writing for the majority, held: "The ultimate purport, with respect to the summary-and-greater-offenses paradigm, is that the Commonwealth must generally assure that known offenses are consolidated at the common pleas level, when they arise out of a single criminal episode and occur in the same judicial district."⁴ In other words, after considering the history of double jeopardy law in Pennsylvania and the PA Constitution's greater protection against double jeopardy, Chief Justice Saylor concluded that **the Commonwealth must bring all the charges against a person together, even summaries.**

However, Saylor made an explicit opening to the legislature, noting, "Of course the General Assembly remains free to amend the joinder requirements to align with its current intentions, subject to constitutional limitations."⁵

SB 588 is the legislature's answer to the Court's invitation—rewriting [Rule 110](#) to permit serial prosecution for summary and felony offenses, which means the Commonwealth can charge a person with, for example, summary harassment and then later **charge them again** with felony stalking for the **same event**. Similarly, the Commonwealth could charge and convict a person with driving with a suspended license, sentence them to 90 days of mandatory incarceration and then permit the Commonwealth to bring a subsequent felony DUI for the same incident.

At the very least, SB 588 could avoid opening the door to ALL summary offenses with one strikethrough:

(ii) any offense...unless the court ordered a separate trial of the charge of such offense or the offense of which the defendant was formerly convicted or acquitted was a summary offense or a summary traffic offense"
(page 2, line 10)

For these reasons, we urge you to oppose Senate Bill 588.

⁴ *Commonwealth v. Johnson*, 247 A.3d 981, 987 (Pa. 2021) (internal citations omitted).

⁵ *Id.*