



MEMORANDUM

TO: The Pennsylvania Senate Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 21, 2021

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](#)) that would allow prosecutors to try summary offenses separately from misdemeanor or felony offenses that arise from the same criminal episode, undermining double jeopardy protections under 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 arbitrarily eliminate protections against double jeopardy based on offense type.

Pennsylvania's compulsory joinder rule, also known as "[Rule 110](#)," is a rule grounded in the constitutional principle against double jeopardy that requires a prosecutor 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 misdemeanors and/or felonies arising from the same incident.

This stands in direct conflict with 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 leaving it to Philadelphia to fix its dysfunctional municipal court administration, SB 588 proposes to change the law, thereby eroding 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."¹ It did no such thing. At issue in *Perfetto* was Philadelphia prosecutors charging people with DUIs and traffic offenses and then prosecuting the traffic offenses separately in traffic court. 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 the traffic citations in the traffic division of the Philadelphia Municipal Court and the criminal case in the criminal division.

This is a problem unique to Philadelphia. It is an absurd and audacious conceit to propose a statutory change that erodes double jeopardy protections for **ALL** Pennsylvanians simply because Philadelphia cannot figure out how to run its traffic court and create an administrative solution to ensure the consolidation of summary offenses with underlying DUI charges in its criminal court.

¹ Rep Martina White, co-sponsorship memorandum, [Correcting a DUI prosecution loophole created by Commonwealth v. Perfetto](#), January 26, 2021.

Because the [Perfetto](#) decision is the impetus for this legislation, the case and the PA Supreme Court's ruling is summarized below:

On July 3, 2014, a driver (the defendant) 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 issuing the traffic tickets, they subsequently arrested him and charged him 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.

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