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Lisa M. Cavage

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Hit and Run: The Paralyzing Effect of Pennsylvania's Habitual Offender Statute

I. Introduction

Jim Brown, the father of three small children, is a steelworker in a small plant twenty-five miles from his home. He drives back and forth to work on a daily basis. On September 27, he received notice from the Pennsylvania Department of Transportation that he had violated several provisions of Pennsylvania's Vehicle Code. Mr. Brown was surprised by this notice and attributed it to a bureaucratic mix-up. He called his local police department, but was told that his only remedy was to either pay the fines or go through the timely and costly process of challenging the charges. Mr. Brown chose not to challenge the notice. Instead, he paid the three fines in order to end the controversy quietly and quickly. Two weeks later, he was notified that because he had cooperated and paid the fines, his driver's license was being revoked. Under Pennsylvania state law, Jim Brown had unknowingly become what the law defines a habitual offender.

What the unsuspecting Jim Brown encountered was the insidious effect of the current habitual offender statute of the Pennsylvania Vehicle Code.¹ Under this statute, the Department of Transport-

1. The Pennsylvania Vehicle Code is contained in 75 PA. CONS. STAT. §§ 101-9910 (1984). The habitual offender statute is found in 75 PA. CONS. STAT. § 1542 (1984). It provides:

§ 1542. Revocation of habitual offender's license.

(a) General rule.—The department shall revoke the operating privilege of any person found to be a habitual offender pursuant to the provisions of this section. A "habitual offender" shall be any person whose driving record, as maintained in the department, shows that such person has accumulated the requisite number of convictions for the separate and distinct offenses described and enumerated in subsection (b) committed after the effective date of this title and within any period of five years thereafter.

(b) Offenses enumerated.—Three convictions arising from separate acts of any one or more of the following offenses committed either singularly or in combination by any person shall result in such person being designated as a habitual offender:

(1) Any offense set forth in section 1532 (relating to revocation or suspension of operating privilege).

(2) Operation following suspension of registration as defined in section 1371 (relating to operation following suspension of registration).

(3) Making use of or operating any vehicle without the knowledge or consent of the owner or custodian thereof.

(4) Utilizing a vehicle in the unlawful transportation or unlawful sale of alcohol or any controlled substance.

tation must revoke the operating privilege² of any Pennsylvania motorist³ who meets its requirements.⁴ While the statute at first appears simple and straightforward, the above hypothetical situation is illustrative of just one of the statute's many subtleties and complexities that have resulted in a multitude of litigation and confusion over its precise meanings and ramifications.

This Comment will address those subtleties and complexities. First, it will examine the language of Section 1542 and the relevant case law construing it in order to provide a basic understanding of the scope and nature of the statute.⁵ Next, it will discuss the challenges that have been made to the procedural aspects of Section 1542 and the attacks that have been made on its constitutionality.⁶ It will then compare the habitual traffic offender statutes of other states in order to determine whether better or fairer alternatives exist to regulate habitual traffic offenders and resolve the dilemma presently faced in Pennsylvania.⁷ Finally, this Comment will conclude with recommendations on how Pennsylvania can improve Section 1542 in order to afford its habitual traffic offenders fairer procedural treatment.⁸

(5) Any felony in the commission of which a court determines that a vehicle was essentially involved.

(c) Accelerative Rehabilitative Disposition as an offense.—Acceptance of Accelerative Rehabilitative Disposition for any offense enumerated in subsection (b) shall be considered an offense for the purposes of this section.

(d) Period of revocation.—The operating privilege of any person found to be a habitual offender under the provisions of this section shall be revoked by the department for a period of five years.

(e) Additional offenses.—Any additional offense committed within a period of five years shall result in a revocation for an additional period of two years.

2. The term "operating privilege," as defined by the Vehicle Code, is "[t]he privilege to apply for and obtain a license to use as well as the privilege to use a vehicle on a highway as authorized in this title, but not a contract, property right or civil right." 75 PA. CONS. STAT. § 102 (1984). For purposes of this Comment, the terms "operating privilege" and "driver's license" will be synonymous.

3. The Department of Transportation may also revoke the operating privilege of an out-of-state motorist if that motorist is a citizen of a state which has a reciprocity agreement with the Commonwealth. See 75 PA. CONS. STAT. §§ 6141-6153 (1984).

4. See 75 PA. CONS. STAT. § 1542(d).
5. See *infra* notes 9-82 and accompanying text.
6. See *infra* notes 83-124 and accompanying text.
7. See *infra* notes 151-77 and accompanying text.
8. See *infra* notes 184-211 and accompanying text.

II. Pennsylvania's "Habitual Offender" Statute: Its Meaning and Operation

A. *Habitual Offender Defined*

Section 1542⁹ requires the Department of Transportation to revoke¹⁰ the operating privilege of any motorist found to be a habitual offender under its provisions. The statute defines a "habitual offender" as any motorist who has accumulated the requisite number of convictions for the separate and distinct offenses specifically enumerated within the statute.¹¹ It defines the requisite number of convictions as three convictions¹² committed within either the effective date of the statute's title¹³ or within five years thereafter.¹⁴ When these requirements are met, the Department of Transportation is compelled to revoke the operating privilege of the habitual offender for a mandatory period of five years.¹⁵

1. *Offenses that Result in Designation of Motorist as a Habitual Offender.*—Section 1542 specifically lists the offenses which are to be counted in determining whether a motorist qualifies as a habit-

9. 75 PA. CONS. STAT. § 1542 (1984). See *supra* note 1 for full text.

10. Initially, a distinction must be made between a "revocation" and a "suspension" as they are defined by the Vehicle Code. "Revoke" is defined as "terminat[ing] by formal action of the department any license, registration or privilege issued or granted by the department. Following a period of revocation, the license, registration or privilege may not be restored except upon submission and acceptance of a new application." 75 PA. CONS. STAT. § 102 (1984).

"Suspend" is defined as "withdraw[ing] temporarily by formal action of the department any license, registration or privilege issued or granted by the department. Following a period of suspension, the department shall restore the license, registration or privilege." *Id.*

A revocation, which Section 1542 mandates, is clearly the harsher of the two penalties. This is further illustrated by the requirements imposed by the Vehicle Code for restoration of a revoked operating privilege:

Any person whose operating privilege has been revoked pursuant to section 1542 (relating to revocation of habitual offender's license) or 1543 (relating to driving while operating privilege is suspended or revoked) is not entitled to automatic restoration of the operation privilege. Such person may apply for a learner's permit, if permitted under the provisions of this chapter, upon expiration of the revocation.

75 PA. CONS. STAT. § 1541(c) (Cum. Supp. 1987).

11. 75 PA. CONS. STAT. § 1542(a).

12. 75 PA. CONST. STAT. § 1542(b).

13. See Act of June 17, 1976, Pub. L. 162, No. 81 § 8(b), 1976 Pa. Laws 162, 386 (providing that Section 1542 is to take effect immediately). *But see* Act of June 17, 1976, Pub. L. 162, No. 81 § 8(a), 1976 Pa. Laws 162,386 (providing that the Vehicle Code was to generally become effective July 1, 1977). See also *Lutz v. Commonwealth*, No. 744 C.D. 1982 (Pa. Commw. Ct. filed April 25, 1984) (in which Section 1542 was held to take effect immediately). *Accord Commonwealth v. Eichhorn*, 73 Pa. Commw. 425, 458 A.2d 322 (1983).

14. 75 PA. CONS. STAT. § 1542(a).

15. 75 PA. CONS. STAT. § 1542(d).

ual offender.¹⁶ Three convictions arising from separate acts of any one or more of the enumerated offenses, committed either singularly or in combination within a five year period, will result in the designation of a motorist as a habitual offender.¹⁷ These offenses include (1) any offense set forth in Section 1532;¹⁸ (2) the operation of a vehicle following the suspension of its registration;¹⁹ (3) the use or operation of any vehicle without the knowledge or consent of the owner or custodian;²⁰ (4) the use of a vehicle for the unlawful transportation or sale of either alcohol or controlled substances;²¹ (5) the commission of any felony in which a court determines that a vehicle was essentially involved;²² and (6) the acceptance of Accelerative Rehabilitative Disposition for any of the above enumerated offenses.²³

In addition to these specifically enumerated offenses, any offense committed under the prior Vehicle Code,²⁴ which essentially includes the offenses presently included in Section 1542, may also be considered in the determination of a motorist's habitual offender status.²⁵ This is true even if the language of the old statute and that of the new differ substantially.²⁶ Thus, a motorist convicted of an offense under the prior Vehicle Code and then convicted of two or more offenses under the present Vehicle Code can be classified as a habitual offender if all three of the offenses occurred within a five year period.

2. *Problems in Interpretations of Offenses.*—While the offenses specifically identified in Section 1542 seem understandable, it has been specifically about these offenses that most of the confusion and litigation over the statute has occurred. Motorists are confused by what constitutes a conviction under Section 1542,²⁷ by how many

16. 75 PA. CONS. STAT. § 1542(b).

17. *Id.*

18. 75 PA. CONS. STAT. § 1532 (1984) (relating to revocation or suspension of operating privilege).

19. 75 PA. CONS. STAT. § 1371 (1984) (operation following suspension of registration).

20. 75 PA. CONS. STAT. § 1542(b)(3).

21. 75 PA. CONS. STAT. § 1542(b)(4).

22. *Supra* note 1, at § 1542(b)(5). *See, e.g.,* *Mishler v. Commonwealth*, 102 Pa. Commw. 618, 519 A.2d 565 (1986) (police officers indicated that motorist's crimes substantially involved a motorcycle theft operation).

23. 75 PA. CONS. STAT. § 1542(c).

24. Act of April 29, 1959, Pub. L. 58, 1959 Pa. Laws 58, *repealed by* Act of June 17, 1976, Pub. L. 162 § 7(a), 1976 Pa. Laws 162, 386.

25. *See* *Commonwealth v. Conner*, 96 Pa. Commw. 26, 28-29, 506 A.2d 514, 516 (1986); *Commonwealth v. Eichhorn*, 73 Pa. Commw. 425, 429, 458 A.2d 322, 324 (1983).

26. *Conner*, 96 Pa. Commw. at 28-29, 506 A.2d at 516; *Eichhorn*, 73 Pa. Commw. at 429, 458 A.2d at 324.

27. *See infra* notes 31-43 and accompanying text.

HABITUAL OFFENDER STATUTE

offenses can be committed within a single incident under Section 1542,²⁸ by how many offenses are required under Section 1542's provisions,²⁹ and by the consequences of accepting Accelerative Rehabilitative Disposition.³⁰

(a) *Convictions*.—Under the Vehicle Code, a “conviction” is not merely a finding of guilt by a court.³¹ It may also be an unvacated forfeiture of bail or collateral that was deposited to secure a motorist's appearance in court,³² or any entry of a guilty plea or a plea of *nolo contendere*.³³ More importantly, it may also be a payment of a fine³⁴ and, under Section 1542, an acceptance of Accelerative Rehabilitative Disposition.³⁵ Any one of these convictions will be considered in the determination of a motorist's habitual offender status. In all instances, however, neither the courts nor the Department of Transportation has the duty to warn a motorist that his operating privilege will be revoked if he chooses to pursue any of the above courses of action.³⁶ Thus, a motorist who is unaware of such subtleties can easily and unknowingly pursue a cause of action which will ultimately result in the revocation of his operating privilege.

In addition to the subtleties involved in determining what will ultimately constitute a conviction under Section 1542, there is one other important point camouflaged within the concept of “conviction.” Although a motorist does have to be convicted of three offenses in order to obtain the unenviable status of a habitual offender, it is not the dates of these convictions that are controlling in making

28. See *infra* notes 44-49 and accompanying text.

29. See *infra* notes 50-61 and accompanying text.

30. See *infra* notes 62-69 and accompanying text.

31. 75 PA. CONS. STAT. § 6501(a) (1984).

32. *Id.*

33. *Id.*

34. 75 PA. CONS. STAT. § 6501(b) (1984). See also *Commonwealth v. Chrzanowski*, 95 Pa. Commw. 568, 505 A.2d 1129 (1986); *Commonwealth v. Valentine*, 71 Pa. Commw. 8, 453 A.2d 742 (1982); *Commonwealth v. Gray*, 59 Pa. Commw. 590, 430 A.2d 407 (1981).

35. See 75 PA. CONS. STAT. § 1542(c). See also *Commonwealth v. Becker*, 366 Pa. Super. 54, 530 A.2d 888 (1987); *Mitchell v. Commonwealth*, No. 2933 C.D. 1984 (Pa. Commw. Ct. Feb. 12, 1987); *Lutz v. Commonwealth*, No. 744 C.D. 1982 (Pa. Commw. Ct. April 25, 1984); *Commonwealth v. Rice*, 77 Pa. Commw. 34, 465 A.2d 68 (1983); *In re Elias*, 70 Pa. Commw. 404, 453 A.2d 372 (1982); *Commonwealth v. McDevitt*, 57 Pa. Commw. 589, 427 A.2d 280 (1980), *aff'd per curiam*, 500 Pa. 530, 453 A.2d 939 (1983).

36. See *Werner v. Commonwealth*, No. 2913 C.D. 1985 (Pa. Commw. Ct. July 13, 1987); *Hillwig v. Commonwealth*, No. 141 C.D. 1986 (Pa. Commw. Ct. April 27, 1987); *Brophy v. Commonwealth*, 94 Pa. Commw. 310, 503 A.2d 1010 (1986); *Brewster v. Commonwealth*, 94 Pa. Commw. 277, 503 A.2d 497 (1986); *Zanotto v. Commonwealth*, 83 Pa. Commw. 69, 475 A.2d 1375 (1984); *Yeckley v. Commonwealth*, 81 Pa. Commw. 576, 474 A.2d 71 (1984). *Cf.* *Commonwealth v. Englert*, 457 Pa. Super. 121, 457 A.2d 121 (1983) (suspension of operation privilege is a collateral consequence, civil in nature, of a conviction, and a trial court's failure to inform a motorist of a potential collateral consequence does not invalidate a guilty plea).

this determination. Rather, it is the dates of the violations that control.³⁷

For example, in *Sanders v. Commonwealth*,³⁸ a motorist committed three violations of the Vehicle Code — on January 11, 1978, on June 14, 1981, and on September 25, 1982, respectively.³⁹ All three violations, therefore, occurred within the requisite five year period. Sanders, however, was not convicted of his last violation until March 21, 1983,⁴⁰ well over five years from the date of his initial violation. Sanders thus argued that since his last conviction fell outside of the five year period, he should not be classified as a habitual offender.⁴¹ The Pennsylvania Commonwealth Court disagreed and held that the dates of the violations, rather than the dates of the convictions, control in a determination of a motorist's habitual offender status.⁴² The actual convictions are used only for the records of the Department of Transportation to confirm the commission of the offenses by the motorist.⁴³

(b) *Number of offenses committed within a single incident.*—Section 1542 states that a habitual offender is a motorist whose driving record shows that he has accumulated the requisite number of convictions for the separate and distinct offenses specifically enumerated in the statute.⁴⁴ Moreover, it states that the convictions of these offenses must arise from separate acts of any one or more of the identified offenses committed either singularly or in combination.⁴⁵ As a result, the courts have determined that within a single incident, irrespective of a time, a motorist can commit the three offenses needed to be classified as a habitual offender.⁴⁶

37. See *Wainer v. Commonwealth*, No. 1461 C.D. 1984 (Pa. Commw. Ct. Jan. 27, 1987).

38. 89 Pa. Commw. 609, 493 A.2d 794 (1985).

39. *Id.* at 610, 493 A.2d at 795.

40. *Id.*

41. *Id.* at 611, 493 A.2d at 795.

42. *Id.* The Pennsylvania Commonwealth Court held that "the clear reading of the section [1542] shows that the commission of the offenses, and not the convictions which result, must occur within the five year period." *Id.* The recent case of *Hewitt v. Commonwealth*, ___ Pa. Commw. ___, ___ A.2d ___ (1988) (to be reported at 541 A.2d 1183) reaffirms the *Sanders* holding. In dismissing the appeal, Commonwealth Court rejected Hewitt's argument that *Sanders* was not controlling with respect to the dates of his violations being determinative of his habitual offender status. The court declared the argument to be frivolous and therefore imposed attorney's fees against Hewitt pursuant to PA. R. APP. P. 2744.

43. *Wainer v. Commonwealth*, No. 1461 C.D. 1984, slip op. at 4 (Pa. Commw. Ct. Jan. 27, 1987).

44. 75 PA. CONS. STAT. § 1542(a).

45. 75 PA. CONS. STAT. § 1542(b).

46. See *Wainer v. Commonwealth*, No. 1461 C.D. 1984 (Pa. Commw. Ct. Jan. 27, 1987); *Poole v. Commonwealth*, No. 419 C.D. 1982 (Pa. Commw. Ct. Aug. 1, 1986); *Murdy*

HABITUAL OFFENDER STATUTE

For example, in *Johnson v. Commonwealth*,⁴⁷ a motorist who drove his vehicle through three different jurisdictions without his headlights on in order to avoid detection by the authorities was held to have committed the three separate offenses necessary to be classified as a habitual offender,⁴⁸ despite the fact that he committed those three offenses within three minutes and the fact that two of the three offenses resulted from violations of the same section of the Vehicle Code.⁴⁹

(c) *Number of offenses required under Section 1532(b)(2).*—Section 1542 specifically requires that a motorist be designated a habitual offender if that motorist violates three of its specifically enumerated offenses⁵⁰ within a five year period⁵¹ and the motorist is convicted of those violations.⁵² There is, however, one exception to this general requirement.⁵³

Section 1542(b)(1) specifically includes in its enumerated offenses “[a]ny offense set forth in section 1532 (relating to revocation or suspension of operating privilege).”⁵⁴ Section 1532,⁵⁵ in turn, lists those offenses which, upon conviction, will result in either the suspension of that motorist’s operating privilege for six months⁵⁶ or the revocation of that motorist’s operating privilege for a period of one year.⁵⁷

It is within the offenses listed in Section 1532 that the exception

v. Commonwealth, No. 3218 C.D. 1984 (Pa. Commw. Ct. Oct. 24, 1986); *Brewster v. Commonwealth*, 94 Pa. Commw. 277, 503 A.2d 497 (1986); *Commonwealth v. Frye*, 88 Pa. Commw. 380, 489 A.2d 984 (1985), *appeal granted*, 508 Pa. 356, 497 A.2d 1330 (1985); *Mantangos v. Commonwealth*, No. 276 C.D. 1982 (Pa. Commw. June 26, 1985); *Johns v. Commonwealth*, No. 128 C.D. 1983 (Pa. Commw. Ct. June 7, 1985); *Melcher v. Commonwealth*, 58 Pa. Commw. 634, 428 A.2d 773 (1984); *Notl v. Commonwealth*, 64 Pa. Commw. 144, 439 A.2d 874 (1982); *Commonwealth v. Auman*, 59 Pa. Commw. 468, 430 A.2d 373 (1981); *Commonwealth v. Byers*, 59 Pa. Commw. 404, 429 A.2d 1274 (1981); *Commonwealth v. McDevitt*, 57 Pa. Commw. 589, 427 A.2d 280 (1980), *aff’d*, 500 Pa. 530, 458 A.2d 939 (1983); *Weaver v. Commonwealth*, 52 Pa. Commw. 625, 416 A.2d 628 (1980).

47. 68 Pa. Commw. 384, 449 A.2d 121 (1982).

48. *Id.* at 387, 449 A.2d at 123. *See also* *Reese v. Commonwealth*, 71 Pa. Commw. 244, 455 A.2d 232 (1983) (two violations occurred arising from a single incident but within two different jurisdictions count as two separate offenses in determining motorist’s habitual offender status).

49. 68 Pa. Commw. at 387, 449 A.2d at 123.

50. 75 PA. CONS. STAT. § 1542(b).

51. *Id.* § 1542(a).

52. *See supra* notes 31-43 and accompanying text.

53. *See infra* notes 54-61 and accompanying text.

54. 75 PA. CONS. STAT. § 1542(b)(1).

55. *Id.* § 1532.

56. *Id.* § 1532(b).

57. *Id.* § 1532(a).

to the general requirement of three convictions is found.⁵⁸ Section 1532(b)(2) requires the suspension of a motorist's operating privilege for a period of six months if that motorist is convicted of a *subsequent* offense of either driving without a license⁵⁹ or driving while that motorist's operating privilege is either suspended or revoked.⁶⁰ In these two instances, the requirement of a "subsequent offense" has the result of requiring one additional offense over and above the usual requirement of three.⁶¹ This is the only exception to the general requirement of three convictions under Section 1542.

(d) *Acceptance of Accelerative Rehabilitative Disposition.*—Section 1542 expressly states that an acceptance of Accelerative Rehabilitative Disposition⁶² (A.R.D.) will be considered an offense under its habitual offender provisions.⁶³ More importantly, even though formal convictions of the driving violations underlying a motorist's admission into the program will never be obtained because A.R.D. is technically an alternative to prosecution,⁶⁴ the Pennsylvania Commonwealth Court has consistently adhered to the declaration of Section 1542 that acceptance of A.R.D. is an offense under the provisions of the statute.⁶⁵ The court has further held that such

58. See *id.* § 1532(b)(2), which states:

(2) The department shall suspend the operating privilege of any driver for six months upon receiving a certified record of the driver's conviction of a subsequent offense under the following provisions:

Section 1501(a) (relating to drivers required to be licensed).

Section 1543 (relating to driving while operating privilege is suspended or revoked).

59. *Id.* § 1501(a).

60. *Id.* 75 PA. CONS. STAT. § 1543 (Cum. Supp. 1987).

61. See *Werner v. Commonwealth*, No. 2913 C.D. 1985 (Pa. Commw. Ct. July 13, 1987) (in which the Pennsylvania Commonwealth Court stated that although *Werner* believed that Section 1532(b)(2) confused the interpretation of Section 1542, the Court's reading of the two statutes clearly required only subsequent violations of the offenses committed under Section 1532(b)(2) to be counted in determining a motorist's status as a habitual offender); *Commonwealth v. Gray*, 59 Pa. Commw. 590, 430 A.2d 407 (1981) (in which the Pennsylvania Commonwealth Court held that only a fourth offense of Section 1543 will result in a determination of a motorist as a habitual offender).

62. See PA. R. CRIM. P. 175-85.

63. 75 PA. CONS. STAT. § 1542(c).

64. See *Commonwealth v. McDevitt*, 57 Pa. Commw. 589, 427 A.2d 280 (1980), *aff'd*, 500 Pa. 530, 458 A.2d 939 (1983). See also *Commonwealth v. Burdge*, 345 Pa. Super. 187, 497 A.2d 1367 (1985).

65. *Commonwealth v. Scheinert*, 519 A.2d 422, 359 Pa. Super. 423 (1986). *McDevitt*, 57 Pa. Commw. 589, 427 A.2d 280. See also *Hillwig v. Commonwealth*, No. 141 C.D. 1986 (Pa. Commw. Ct. April 27, 1987); *Mitchell v. Commonwealth*, No. 2933 C.D. 1984 (Pa. Commw. Ct. Jan. 12, 1987); *Brophy v. Commonwealth*, 94 Pa. Commw. 310, 503 A.2d 1010 (1986); *Neumann v. Commonwealth*, No. 2637 C.D. 1984 (Pa. Commw. Ct. Nov. 28, 1986); *Brewster v. Commonwealth*, 94 Pa. Commw. 277, 503 A.2d 497 (1986); *Lutz v. Commonwealth*, No. 744 C.D. 1982 (Pa. Commw. Ct. April 25, 1984); *Commonwealth v. Rice*, 77 Pa. Commw. 34, 465 A.2d 68 (1983); *In re Elias*, 70 Pa. Commw. 404, 453 A.2d 372 (1982).

HABITUAL OFFENDER STATUTE

an acceptance is a conviction to be used in calculating a motorist's habitual offender status.⁶⁶ Thus, in *Commonwealth v. McDevitt*,⁶⁷ the Pennsylvania Commonwealth Court, in rejecting McDevitt's argument that his acceptance into the A.R.D. program should not constitute a conviction under Section 1542, stated:

[McDevitt] argues that the mandate of Section 1542(c), to consider acceptance of A.R.D. as an *offense*, is meaningless in view of the declared policy of Sections 1542(a) and 1542(b) that only *convictions* of offenses will result in a driver's being designated an habitual offender. [McDevitt's] interpretation of the [Vehicle] Code would, in effect, nullify Section 1542(c) and exonerate [McDevitt] with respect to his multiple driving violations of April 8 and May 21. This argument would entirely insulate from censure a driver such as [McDevitt], who was admitted to the A.R.D. program despite his having committed a new driving violation only a few weeks after his initial offenses. [McDevitt] chose a program where formal convictions could not be obtained. Before this Court [McDevitt] now wrongfully argues that the offenses underlying his admission into the A.R.D. program cannot be used to determine whether he was an habitual offender solely because he was not formally convicted of the underlying offenses. Such a result would be contrary to the legislative intent of Section 1542 to protect the public from repeated incidences of careless driving by assessing additional penalties against persons categorized as habitual offenders. Moreover, rules of statutory construction require (1) that whenever possible, effect must be given to all provisions of a legislative act, and (2) that statutory language may not be supposed supererogatory.⁶⁸

Since the court's interpretation was upheld by the Pennsylvania Supreme Court,⁶⁹ there is no doubt that acceptance of the program, which technically is not a conviction, becomes a conviction for habitual offender purposes.

B. Revocation

Once it has been determined that a motorist is a habitual offender under the provisions of Section 1542,⁷⁰ the Department of

66. See *supra* note 65.

67. 57 Pa. Commw. 589, 427 A.2d 280 (1980), *aff'd*, 500 Pa. 530, 458 A.2d 939 (1983).

68. *Id.* at 592-93, 427 A.2d at 282 (emphasis in original) (footnotes omitted).

69. 500 Pa. 530, 458 A.2d 939.

70. 75 PA. CONS. STAT. § 1542 (1984).

Transportation must revoke that motorist's operating privilege.⁷¹ While the statute specifies what offenses are to be counted in determining if a motorist is a habitual offender,⁷² it fails to provide any requirements as to when the Department of Transportation must make this revocation.⁷³ It has therefore been left primarily to the courts to make this determination. The Pennsylvania Commonwealth Court has stated:

The provisions of Section 1542(a) must be construed to impliedly require the Department to give notice of revocation as a habitual offender within a "reasonable" time after it receives the triggering third conviction notice. Naturally, what will constitute a "reasonable" time in a given case cannot be established in a vacuum and we believe, therefore, that this meaning will depend upon the circumstances of each case.⁷⁴

Thus, it has been held that a revocation may not be reversed merely because a period of time has elapsed between the time the Department of Transportation was notified of the third conviction and the time it took the Department of Transportation to act.⁷⁵ Nor will the Department of Transportation be held accountable for any delays caused by district justices.⁷⁶ Rather, for a revocation to be found improper, the delay in making the revocation must be chargeable to the Department of Transportation and unreasonable.⁷⁷ More importantly, the motorist has the burden to prove unreasonableness by bringing forth evidence of actual prejudice to himself due to his reliance on the Department of Transportation's failure to act within a

71. *Id.* § 1542(b).

72. See *supra* notes 16-26 and accompanying text.

73. 75 PA. CONS. STAT. § 1542(a).

74. *Lemley v. Commonwealth*, 97 Pa. Commw. 469, 473, 509 A.2d 1380, 1382 (1986), *appeal denied*, 415 Pa. 620, 521 A.2d 934 (1987).

75. See *Poole v. Commonwealth*, No. 419 C.D. 1982, slip op. at 2 (Pa. Commw. Ct. Aug. 1, 1986). See also *Gilson v. Commonwealth*, 75 Pa. Commw. 616, 462 A.2d 357 (1983).

76. See *Commonwealth v. Parr*, 56 Pa. Commw. 203, 424 A.2d 604 (1981), in which the Pennsylvania Commonwealth Court stated:

The Department correctly argues that the [t]rial [c]ourt erred because the delay in issuing the notice was caused by the district justice's failure to notify the Department of the conviction for 17 months. Even if the Department somehow knew of Parr's conviction, it could not act until it received a certified record of his conviction. 75 Pa. C.S. § 1532(b). We have held that no delay can be chargeable to the Department before it is in receipt of the certification of conviction.

Id. at 206, 424 A.2d at 605. See also *Commonwealth v. Lyons*, 70 Pa. Commw. 604, 453 A.2d 730 (1982); *Chappel v. Commonwealth*, 59 Pa. Commw. 504, 430 A.2d 377 (1981); *Commonwealth v. Coller*, 59 Pa. Commw. 488, 430 A.2d 358 (1981); *Saron v. Commonwealth*, 55 Pa. Commw. 477, 423 A.2d 1099 (1980).

77. *Commonwealth v. Chrzanowski*, 95 Pa. Commw. 568, 571, 505 A.2d 1129, 1130-31 (1986).

HABITUAL OFFENDER STATUTE

reasonable time.⁷⁸

C. *Subsequent Convictions*

Once a motorist has been determined to be a habitual offender and his operating privilege has been revoked, that motorist is not immune from the imposition of further sanctions.⁷⁹ Section 1542(e) specifically states that any additional offense committed within a five year period will result in a revocation of the motorist's operating privilege for an additional two years.⁸⁰ The Pennsylvania Commonwealth Court has interpreted this provision to mean that any offense committed over and above the requisite number of offenses initially needed to classify a motorist as a habitual offender will result in an automatic revocation of that motorist's operating privilege for an additional period of two years,⁸¹ regardless of whether that motorist has been formally convicted of the initial charges or formally notified of his habitual offender status.⁸²

D. *Procedure*

More than just the technical mechanics of Section 1542⁸³ must be addressed in order to obtain a full comprehension of the statute. Both administrative actions and judicial review also have an important impact on how Section 1542 functions.

Under the Vehicle Code, the Department of Transportation is required to administer all of the Code's provisions and to keep records of convictions under the Vehicle Code of all motorists in the Commonwealth.⁸⁴ With respect to Section 1542, this means that the Department of Transportation must revoke the operating privilege of any motorist for a period of five years if it receives three certified copies indicating three convictions of the motorist.⁸⁵ As the Department of Transportation's actions are mandatory, it has no discretion with respect to the revocation.⁸⁶

78. *Id.* at 571, 505 A.2d at 1131.

79. 75 PA. CONS. STAT. § 1542(e).

80. *Id.* See also *infra* notes 81-82 and accompanying text.

81. See *Martino v. Commonwealth*, ____ Pa. Commw. ____, ____ A.2d ____ (1988) (to be reported at 541 A.2d 524). See also *Commonwealth v. Gray*, 59 Pa. Commw. 590, 430 A.2d 407 (1981); *Commonwealth v. Garvin*, 67 Pa. Commw. 425, 447 A.2d 695 (1982).

82. See *In re Rock*, 102 Pa. Commw. 449, 518 A.2d 1303 (1986); *Commonwealth v. Frye*, 88 Pa. Commw. 380, 489 A.2d 984, *appeal granted*, 508 Pa. 356, 497 A.2d 1330 (1985); *Commonwealth v. Altimus*, 49 Pa. Commw. 245, 410 A.2d 1303 (1980).

83. 75 PA. CONS. STAT. § 1542.

84. *Id.* § 1531 (administration of system by department).

85. *Id.* § 1542(a).

86. See *Martino v. Commonwealth*, ____ Pa. Commw. ____, ____ A.2d ____ (1988)

The Department of Transportation is required to notify a motorist of this revocation.⁸⁷ Once the motorist receives that notice, the Vehicle Code permits the motorist to appeal to a court vested with competent jurisdiction.⁸⁸ Once an appeal is filed it will act as a supersedeas,⁸⁹ and no revocation of the motorist's operating privilege may be imposed until there has been a final determination of the matter.⁹⁰

If a motorist does choose to appeal his revocation, the Department of Transportation has the burden of demonstrating by a preponderance of the evidence that the motorist's driving record, as maintained by the Department, shows three convictions for enumerated offenses within a five year period. To meet this burden, the Department of Transportation must introduce the motorist's certified driving record into evidence.⁹¹ Once the Department of Transportation establishes a prima facie case, the burden then shifts to the motorist to prove that there should be no revocation.⁹² The motorist, however, may not meet this burden of proof by collaterally attacking any one of the underlying criminal convictions that were considered in the determination of his status as a habitual offender.⁹³

E. Attacks on Constitutionality

There have been many constitutional challenges to Section 1542.⁹⁴ In fact, litigation surrounding this statute has been so abundant that not even the title⁹⁵ of the statute has been immune.⁹⁶ The

(to be reported at 541 A.2d 425); *Johnson v. Commonwealth*, 68 Pa. Commw. 384, 449 A.2d 121 (1982); *Commonwealth v. Nyman*, 218 Pa. Super. 221, 275 A.2d 836 (1971).

87. 75 PA. CONS. STAT. § 1540 (Cum. Supp. 1987).

88. 75 PA. CONS. STAT. § 1550 (1984). *See also* 42 PA. CONS. STAT. § 933(a)(1)(ii) (1982) (courts of common pleas shall hear appeals from government agencies).

89. A supersedeas is "[t]he name of a writ containing a command to stay the proceedings at law." BLACK'S LAW DICTIONARY 1289 (5th ed. 1979).

90. 75 PA. CONS. STAT. § 1550(b).

91. *See Commonwealth v. Shero*, 5 Pa. Commw. 473, 475, 291 A.2d 342, 343 (1972).

92. *See Commonwealth v. Siedlecki*, 7 Pa. Commw. 130, 300 A.2d 287 (1975). *See also Commonwealth v. Gerhart*, 96 Pa. Commw. 561, 507 A.2d 1309 (1986) (testimony of a motorist's former attorney did not constitute substantial evidence to support the trial court's conclusion that that motorist successfully rebutted the Department of Transportation's evidence of a conviction).

93. *See Hillwig v. Commonwealth*, No. 141 C.D. 1986 (Pa. Comm. Ct. April 27, 1987); *Wainer v. Commonwealth*, No. 1461 C.D. 1984 (Pa. Commw. Ct. Jan. 27, 1987); *Neumann v. Commonwealth*, No. 2637 C.D. 1984 (Pa. Commw. Ct. Nov. 28, 1986); *Commonwealth v. Valentine*, 71 Pa. Commw. 8, 453 A.2d 742 (1982); *Commonwealth v. Gray*, 59 Pa. Commw. 590, 430 A.2d 407 (1981).

94. 75 PA. CONS. STAT. § 1542.

95. The title of Section 1542 is "Revocation of habitual offender's license." *See id.*

96. In *Weaver v. Commonwealth*, 52 Pa. Commw. 625, 416 A.2d 628 (1980), the Pennsylvania Commonwealth Court rejected the challenge of a motorist who claimed that the title

courts, however, commencing their analysis of Section 1542 from a view which presumes the constitutionality of legislation,⁹⁷ have consistently upheld its constitutionality in light of both the Pennsylvania Constitution and the federal constitution.

1. *Due Process.*—The Pennsylvania Commonwealth Court has held that, as long as a motorist is guaranteed a prompt post-suspension hearing, Section 1542 meets the constitutional requirements of due process,⁹⁸ even though it initially revokes a motorist's operating privilege without affording the motorist a hearing.⁹⁹ Moreover, this prompt post-suspension hearing, which affords a motorist both notice and an opportunity to be heard, is adequate only if it takes the form of a *de novo* hearing.¹⁰⁰ Thus, in *Liebler v. Commonwealth, Department of Transportation, Bureau of Traffic Safety*,¹⁰¹ the Pennsylvania Commonwealth Court, reprimanding a trial court for summarily dismissing a motorist's appeal and denying the motorist a hearing, stated:

License suspensions under Section 1542 of the [Vehicle] Code are . . . summary in nature, and Section 1550 provides the means for a motorist to challenge the merits of the suspension. To deny a hearing for [a motorist] under Section 1550 would be to deny the process that is due him. We hold that Section 1550 entitles [a motorist] to a *de novo* hearing on the merits of his suspension.¹⁰²

The Pennsylvania Commonwealth Court has also held that due process does not require that a motorist be warned in a criminal proceeding of any possible civil consequences that may result from his actions.¹⁰³ For example, in *Brewster v. Commonwealth, Department*

of Section 1542 violated article III, section three of the Pennsylvania Constitution, which prohibits a bill from having a title which does not clearly express its meaning. The motorist contended that the ordinary meaning of "habitual" refers to one who errs often over a period of time, while Section 1542 can apply to a motorist who receives three convictions from one singular act. *Id.* See also *Nolt v. Commonwealth*, 64 Pa. Commw. 144, 439 A.2d 874 (1982).

97. See *Lehigh Foundations v. Workmen's Compensation Appeal Board*, 39 Pa. Commw. 416, 423, 395 A.2d 576, 580 (1978).

98. U.S. CONST. amend. XIV, § 1.

99. See *Liebler v. Commonwealth*, 83 Pa. Commw. 270, 476 A.2d 1389 (1984).

100. See *Yeckley v. Commonwealth*, 81 Pa. Commw. 576, 474 A.2d 71 (1984). See also *Werner v. Commonwealth*, No. 2913 C.D. 1985 (Pa. Commw. Ct. filed July 13, 1987); *Brophy v. Commonwealth*, 94 Pa. Commw. 310, 503 A.2d 1010 (1986); *Brewster v. Commonwealth*, 94 Pa. Commw. 277, 503 A.2d 497 (1986); *Zanotto v. Commonwealth*, 83 Pa. Commw. 69, 475 A.2d 1375 (1984); *In re Elias*, 70 Pa. Commw. 404, 453 A.2d 372 (1982).

101. See *supra* note 99.

102. *Id.* at 273-74, 476 A.2d at 1391 (emphasis in original) (footnotes omitted).

103. See *Hillwig v. Commonwealth*, No. 141 C.D. 1986 (Pa. Commw. Ct. filed April 27, 1987); *Commonwealth v. McDevitt*, 57 Pa. Commw. 589, 427 A.2d 2890 (1980), *aff'd*,

of *Transportation*,¹⁰⁴ the Commonwealth Court held that Brewster's rights under due process were not violated when no one told him that the civil consequence of his acceptance of Accelerative Rehabilitative Disposition¹⁰⁵ would be the revocation of his license.¹⁰⁶ The court reasoned that Brewster's due process rights were adequately protected in his post-suspension de novo hearing.¹⁰⁷

2. *Equal Protection*.—Section 1542 has also been held to be constitutionally sound under an equal protection analysis.¹⁰⁸ In *Yeckley v. Commonwealth*,¹⁰⁹ the motorist argued that the revocation of his operating privilege pursuant to Section 1542 denied him equal protection of the law.¹¹⁰ The Pennsylvania Commonwealth Court did not agree for two reasons. First, the Department of Transportation, in revoking a motorist's operating privilege pursuant to Section 1542, must do so pursuant to the mandate of the statute. It may not exercise its discretion in making the revocation.¹¹¹ Second, and more importantly, habitual offenders are not a suspect class nor is driving a fundamental right.¹¹² Thus, under a rational relationship standard, Section 1542 passes constitutional muster.¹¹³

3. *Cruel and Unusual Punishment*.—Section 1542 has also been found to be constitutionally sound in terms of the constitutional prohibition against cruel and unusual punishment.¹¹⁴ In *Drogowski v. Commonwealth*,¹¹⁵ the motorist argued that the revocation of his operating privilege pursuant to Section 1542 constituted cruel and unusual punishment, because the convictions that gave rise to his revocation were all the result of a single incident, caused by his schizophrenia and alcohol addiction for which he later received treatment.¹¹⁶ The Commonwealth Court, however, held that under the Pennsylvania Constitution, the concept of cruel and unusual punishment was only applicable to criminal proceedings and not to civil

500 Pa. 530, 458 A.2d 939 (1983).

104. 94 Pa. Commw. 277, 503 A.2d 497 (1986).

105. See *supra* note 62.

106. *Brewster v. Commonwealth*, 94 Pa. Commw. 277, 281, 503 A.2d 497, 498.

107. *Id.*

108. U.S. CONST. amend. XIV, § 1.

109. 81 Pa. Commw. 576, 474 A.2d 71 (1984).

110. *Id.* at 578, 474 A.2d at 72.

111. *Id.*

112. *Id.*

113. *Id.*

114. See U.S. CONST. amend VIII; PA. CONST. art. 1, § 13.

115. 94 Pa. Commw. 205, 503 A.2d 104 (1986).

116. *Id.* at 208, 503 A.2d at 106.

proceedings such as operating privilege revocation cases.¹¹⁷ Moreover, even if it were applicable, under both the Pennsylvania Constitution and the United States Constitution, Section 1542 is not cruel and unusual punishment, because the revocation of a habitual offender's operating privilege is not primarily imposed because of a motorist's culpability. Rather, the revocation's purpose is to protect the public from the type of conduct demonstrated by that motorist's driving habits.¹¹⁸ In *Yeckley*,¹¹⁹ the Commonwealth Court further held that a revocation of a motorist's operating privilege does not "shock the general conscience"¹²⁰ and therefore cannot amount to cruel and unusual punishment.¹²¹

4. *Double Jeopardy*.—The Commonwealth Court addressed the issue of whether Section 1542 violated the double jeopardy clause of the Pennsylvania Constitution¹²² in *Zanotto v. Commonwealth*.¹²³ In rejecting Zanotto's challenge of double jeopardy, the court held that since revocation of a motorist's operating privilege is a remedial sanction that is civil in nature and is designed primarily to protect the public from unsafe drivers, it cannot be grounds for a double jeopardy challenge.¹²⁴

III. Inherent Problems with Section 1542

Although Section 1542¹²⁵ has met constitutional muster, close scrutiny of the section nevertheless reveals several inherent problems and weaknesses that require the Pennsylvania Legislature's reconsideration and compel correction.

A. *Mandatory Revocation*

Once the Department of Transportation receives notice that a motorist has been convicted of three violations of any of Section 1542's enumerated offenses within a five year period, the Department of Transportation is compelled to revoke that motorist's operat-

117. PA. CONST. art. 1, § 13. See *Drogowski*, 94 Pa. Commw. at 208-09, 503 A.2d at 106.

118. *Drogowski*, 94 Pa. Commw. at 209, 503 A.2d at 107.

119. 81 Pa. Commw. 576, 474 A.2d 71 (1984).

120. *Id.* at 578, 474 A.2d at 72.

121. *Id.*

122. PA. CONST. art. 1, § 10.

123. 83 Pa. Commw. 69, 475 A.2d 1375 (1984).

124. *Id.* at 71, 475 A.2d at 1376.

125. 75 PA. CONS. STAT. § 1542 (1984).

ing privilege.¹²⁶ The Department of Transportation has no discretion with respect to imposing this revocation.¹²⁷ It is obliged to impose the mandatory penalty regardless of any mitigating circumstances.¹²⁸

Courts also have no leeway to modify the five-year revocation imposed on a motorist by the Department of Transportation pursuant to Section 1542. The only proper grounds for any appeal are limited solely to a determination of whether the Department of Transportation adequately proved that the motorist's record showed that that motorist had accumulated three convictions, and whether the Department of Transportation acted accordingly in revoking that motorist's operating privilege.¹²⁹ Under such narrow strictures, therefore, courts are powerless to modify the mandatory revocation imposed by the Department, despite the hardships that such an inflexible sanction may impose.¹³⁰ Under Section 1542, all motorists, regardless of the differences in the severities of the violations that they have committed, are treated in the same unbending and constant fashion. Thus, irrespective of such differences or even the presence of mitigating factors, all habitual offenders lose their operating privileges for a mandatory five year period.¹³¹

B. No Duty to Warn of Civil Consequences of Conviction

The revocation of a motorist's operating privilege is a civil proceeding¹³² and, therefore, a motorist does not have the right to court-appointed counsel.¹³³ A motorist also does not have the right to be warned that a payment of a fine will result in a conviction¹³⁴ or that

126. *Id.*

127. *See supra* notes 84-86 and accompanying text.

128. *Id.*

129. *See Johnson v. Commonwealth*, 68 Pa. Commw. 384, 449 A.2d 121 (1982).

130. *Id.* *See also Commonwealth v. Vernon*, 23 Pa. Commw. 260, 262, 351 A.2d 694, 695 (1976) (a trial court "may not, because of the possible unfairness or inequity of the result, reverse the Department or modify the penalties imposed.").

131. *See 75 PA. CONS. STAT. § 1542(a).*

132. *See Wainer v. Commonwealth*, No. 1461 C.D. 1984 (Pa. Commw. Ct. filed Jan. 27, 1987); *Drogowski v. Commonwealth*, 94 Pa. Commw. 205, 503 A.2d 104 (1986); *Commonwealth v. Conner*, 96 Pa. Commw. 26, 506 A.2d 514 (1986); *Brewster v. Commonwealth*, 94 Pa. Commw. 277, 503 A.2d 497 (1986); *Zanotto v. Commonwealth*, 83 Pa. Commw. 69, 475 A.2d 1375 (1984); *Commonwealth v. Valentine*, 71 Pa. Commw. 8, 453 A.2d 742 (1982); *Callan v. Commonwealth*, 19 Pa. Commw. 635, 339 A.2d 163 (1975).

133. *See Kase v. Commonwealth*, 88 Pa. Commw. 414, 489 A.2d 986 (1985) (the substantive due process right to effective assistance of counsel is not extended to civil or administrative proceedings, but rather is limited to criminal prosecutions). *See also Johnson v. Workmen's Compensation Appeal Board*, 14 Pa. Commw. 220, 321 A.2d 728 (1974).

134. *See cases cited supra* note 34. *See also Martino v. Commonwealth*, ___ A.2d ___, ___ Pa. Commw. ___ (1988) (to be reported at 541 A.2d 425) (reaffirming that a payment of a fine constitutes a conviction under Section 1542). In *Martino*, the motorist argued that she did not know at the time she paid her fines that they would constitute convic-

his acceptance into Accelerative Rehabilitative Disposition will also constitute a conviction.¹³⁵ Further, a motorist has no right to be warned that the civil consequence of such actions will be the revocation of his operating privilege.¹³⁶

In addition, after a motorist receives notice that his operating privilege has been revoked (and therefore finally realizes the severity of his circumstances), he cannot collaterally attack any of the underlying criminal convictions which were calculated in the determination of his habitual offender status, regardless of his ignorance during the prior proceedings or even the inaccuracy of the convictions themselves.¹³⁷ The case of *Commonwealth v. Ra*¹³⁸ is a perfect example of how severe this restriction on collateral attacks can be on an ignorantly but innocently made conviction. In that case, a Korean motorist's car was stolen and then allegedly involved in a traffic offense.¹³⁹ Because the motorist knew little English, he misunderstood the authorities and paid the fine for that offense because he thought that he was required to do so.¹⁴⁰ Because he paid this fine, he was subsequently convicted of violating Section 3743¹⁴¹ of the Vehicle Code, and his license was suspended.¹⁴² On appeal, the Pennsylvania Commonwealth Court upheld his conviction and refused to allow him to collaterally attack it.¹⁴³

C. Habitual Offender Status Can Result from a Single Incident

Under Section 1542, a motorist can become a habitual offender in the span of three minutes¹⁴⁴ or even less.¹⁴⁵ Although this inter-

tions. Moreover, she also argued that she paid the fines because she was not afforded the opportunity to seek legal assistance. The court not only rejected both of her arguments, but also imposed attorney's fees against her for pursuing what it termed a frivolous appeal. *Id.*

135. See cases cited *supra* note 35.

136. See *supra* note 36.

137. See *supra* note 93.

138. No. 2321 C.D. 1985 (Pa. Commw. Ct. Sept. 11, 1987).

139. *Id.* slip op. at 2.

140. *Id.*

141. 75 PA. CONS. STAT. § 3743 (1984) (accidents involving damage to attended vehicle or property).

142. *Commonwealth v. Ra*, No. 2321 C.D. 1985, slip op. at 1 (Pa. Commw. Ct. Sept. 11, 1987).

143. *Id.* at 3. The trial court had determined that the motorist's guilty plea — his payment of the fine — was not intelligently made and that it would have been a manifest injustice to deprive him of his operating privilege. The Commonwealth Court, however, in overturning the decision, stated that "[a]lthough the trial judge's compassion toward an individual who had difficulty comprehending the consequence of paying a fine on a traffic citation is understandable, collateral review of the criminal conviction in the suspension appeal is not allowable." *Id.*

144. See *Johnson v. Commonwealth*, 68 Pa. Commw. 384, 449 A.2d 121 (1982).

145. See *supra* notes 44-49 and accompanying text.

pretation has been held to be constitutional,¹⁴⁶ it is questionable whether it is fair or even proper to penalize equally a motorist who has committed three traffic violations within a single incident and a motorist who repeatedly has violated and disregarded the traffic laws over a five year period.

Despite these problems, Section 1542 has continuously withstood attacks to its constitutionality and has been found to meet the minimum requirements of fairness and due process.¹⁴⁷ The question that naturally arises, however, is whether the Commonwealth of Pennsylvania should be satisfied with this statute when it barely meets minimum requirements of constitutionality and fairness. Perhaps there is a better and more effective way to constitutionally regulate habitual traffic offenders in this Commonwealth and at the same time afford these offenders more than the minimum safeguards present under Section 1542.

IV. Alternative Methods of Dealing with the Habitual Traffic Offender

It has always been recognized that one of the functions of state governments is to license and regulate their motorists.¹⁴⁸ It is not surprising, therefore, that Pennsylvania is not the only state to have a specific habitual offender statute within its traffic regulations¹⁴⁹ or that Pennsylvania's method of regulating those offenders is not the only way in which it is done.¹⁵⁰

A. Habitual Offender Statutes in Other States

Presently, twenty-four other states have enacted specific habitual offender statutes.¹⁵¹ Several other states, while not enacting spe-

146. See *supra* notes 95-96 and accompanying text.

147. See *supra* notes 94-124 and accompanying text.

148. AUTOMOTIVE SAFETY FOUNDATION, *SUSPENSION AND REVOCATION OF DRIVER'S LICENSES* (1966).

149. See *infra* note 151.

150. See *infra* notes 156-77 and accompanying text.

151. See CAL. VEH. CODE § 1460.3 (Deering Supp. 1987); COLO. REV. STAT. § 42-2-201 to -207 (1984); DEL. CODE ANN. tit. 28, § 2801 (1985); FLA. STAT. ANN. § 322.264 (West Supp. 1987); GA. CODE ANN. § 68B-308 (Harrison Supp. 1987); IND. CODE ANN. § 9-12-1-1 to -7 (Burns 1987); IOWA CODE ANN. § 321.555 (West 1985); KAN. STAT. ANN. § 8-284 to -293 (1982); LA. REV. STAT. ANN. § 32.1471 to .1481 (West Supp. 1987); MASS. GEN. LAWS ANN. ch. 90, § 22f (West Supp. 1987); ME. REV. STAT. ANN. tit. 29, § 2291-2298B (Supp. 1986); MINN. STAT. ANN. § 171.18 (West 1986); MONT. CODE ANN. § 61-11-201 to -205 (1987); N.H. REV. STAT. ANN. § 262:18-262:25 (Supp. 1986); N.J. STAT. ANN. § 39:5-30a to -30e (West Supp. 1987); OR. REV. STAT. § 809.600 to .660 (1985); R.I. GEN. LAWS § 31-40-1 to -13 (1982); S.C. CODE ANN. § 56-1-1010 to -1130 (Law. Co-op. 1977); TENN. CODE ANN. § 55-10-601 to -617 (1987 Supp.); TEX. HIGH. CODE ANN. § 6687b (Vernon Supp. 1987); VA.

cific habitual offender provisions, have met their regulatory function by imposing a mandatory suspension or revocation on a motorist's operating privilege for either specifically enumerated single offenses or three convictions within varying time periods of reckless driving.¹⁵² Still other states rely solely on a point system in order to regulate their licensed motorists.¹⁵³

Among those states that have enacted specific habitual offender provisions, no two statutes are identical.¹⁵⁴ Thus, while twenty-five states have decided that they do have a legitimate interest in protecting their motorists and promoting public safety¹⁵⁵ through such habitual offender provisions, there is considerable disagreement on how to determine who habitual offenders are and just how to penalize them. Some of the prevalent differences found among these habitual offender statutes are as follows:

1. *Length of Time in Which Offenses Must Occur.*—The length of time in which the offenses must occur in order for a motorist to be classified as a habitual offender varies greatly, ranging from one year in Texas¹⁵⁶ to an unidentified period of time in Montana.¹⁵⁷ In Pennsylvania, the requisite number of convictions must occur within a five year period.¹⁵⁸

2. *Number of Convictions Needed to Obtain Habitual Offender Status.*—The number of convictions needed in order for a motorist to become a habitual offender ranges from two convictions

CODE ANN. § 46.1-387.1 to -387.12 (1986); VT. STAT. ANN. tit. 23, § 673 (1986); WASH. REV. CODE ANN. § 46.65.010 to .910 (1987); WIS. STAT. ANN. § 351.01 to .11 (West Supp. 1987).

152. See ALA. CODE § 32-5A-195 (1983); ALASKA STAT. § 28-15-191 (1987); ARIZ. REV. STAT. ANN. § 28-446 (Supp. 1986); ARK. STAT. ANN. § 75-1029 (1979); CONN. GEN. STAT. ANN. § 14-111 (West Supp. 1987); IDAHO CODE § 49-329 (1980); ILL. ANN. STAT. ch. 95 ½, para. 6-205 (Smith-Hurd Supp. 1987); MD. ANN. CODE art. 16, § 205 (1977); MICH. STAT. ANN. § 9.2003 (Callaghan 1985); MINN. STAT. ANN. § 171.18 (West 1986); MISS. CODE ANN. § 63-1-51 (Supp. 1987); N.C. GEN. STAT. § 20-17 (1983); N.D. CENT. CODE § 39-06-31 (1987); NEB. REV. STAT. § 60-424 (1984); NEV. REV. STAT. ANN. § 483.460 (Michi 1986); N.M. STAT. ANN. § 66-5-29 (1978); N.Y. VEH. & TRAF. LAW § 510 (McKinney 1986); OHIO REV. CODE ANN. § 4507.16 (1983); OKLA. STAT. ANN. tit. 47, § 6-205 (West Supp. 1987); S.D. CODIFIED LAWS ANN. § 32-12-52 (1984); UTAH CODE ANN. § 41-2-127 (Supp. 1987); W. VA. CODE § 17B-3-6 (1986); WYO. STAT. § 31-7-126 (1984).

153. See HAW. REV. STAT. § 286-128 (1985); MO. ANN. STAT. § 302.304 (Vernon Supp. 1987).

154. See *supra* note 151.

155. Reese, *Summary Suspension of Driver Licenses of Drunken Drivers—Constitutional Dimensions*, REDUCING HIGHWAY CRASHES THROUGH ADMINISTRATIVE LICENSE REVOCATION (U.S. Dep't. of Transp. ed. 1986) [hereinafter "Reese"].

156. See TEX. HIGH. CODE ANN. § 6687b (Vernon Supp. 1987).

157. See MONT. CODE ANN. § 61-11-201 to -205 (1987) (a motorist obtains habitual offender status only by accumulating thirty points).

158. 75 PA. CONS. STAT. § 1542 (1984).

in Indiana¹⁵⁹ to twenty convictions in Washington.¹⁶⁰ Most statutes dictate that the more serious offenses require a lesser number of convictions in order for habitual offender status to be obtained, while a higher number of convictions for lesser traffic offenses and moving violations are required in order for a motorist to become a habitual offender.¹⁶¹ Pennsylvania requires three convictions in order for a motorist to be classified a habitual offender and does not distinguish between major and minor offenses.¹⁶²

3. *Multiple Offenses During a Single Incident.*—Like Pennsylvania, some states allow habitual offender status to result from one incident as long as the requisite number of convictions result.¹⁶³ Other states, however, specifically prohibit such a result by expressly wording their statutes to make the occurrence of multiple offenses during a single event equal only one offense for the purpose of their habitual offender statutes, as long as the offenses occur within a specified period of time.¹⁶⁴

4. *Mandatory Revocation Versus Suspension.*—Most states require the mandatory revocation of a motorist's operating privilege once that motorist is determined to be a habitual offender.¹⁶⁵ Penn-

159. IND. CODE ANN. § 9-12-1-1 to -7 (Burns 1987).

160. WASH. REV. CODE ANN. § 46.654.010 (1987).

161. See, e.g., OR. REV. STAT. § 809.600 (1985) (requiring three convictions of major offenses within five years before habitual offender status is attained; providing for habitual offender status after twenty minor violations). See also GA. CODE ANN. § 68B-308 (Harrison Supp. 1987) (requiring three convictions for major offenses or 15 violations of lesser offenses within five years to attain habitual offender status).

162. See *supra* note 1.

163. See, e.g., N.J. STAT. ANN. § 39:5-30a to -30e (West Supp. 1987); IOWA CODE ANN. § 321.555 (West 1985).

164. See, e.g., COLO. REV. STAT. § 42-2-201 to -207 (1984) (multiple offenses committed within twenty-four hours are only counted as one offense for the purpose of its habitual offender statute); DEL. CODE ANN. tit. 28, § 2801 (1985) (multiple offenses committed within twenty-four hours are only counted as one offense for the purpose of the habitual offender statute); LA. REV. STAT. ANN. § 32.1471 to .1481 (West Supp. 1987) (multiple offenses committed within a twelve-hour period are only counted as one offense for the purpose of the habitual offender statute); MASS. GEN. LAWS ANN. ch. 90, § 22f (West Supp. 1987 Cum. Supp.) (multiple offenses committed in a six-hour period are only counted as one offense for the purpose of the habitual offender statute); R.I. GEN. LAWS § 31-40-1 to -13 (1982) (the first time that a motorist commits multiple offenses with a six-hour period, they are counted as one offense for the purpose of the habitual offender statute); S.C. CODE ANN. § 56-1-1010 to -1130 (Law. Co-op. 1977) (multiple offenses committed within a twenty-four-hour period are counted as only one offense for the purpose of the habitual offender statute); VA. CODE ANN. § 46.1-387.1 to -387.12 (1986) (multiple offenses committed within a six-hour period are counted as only one offense for the purpose of the habitual offender statute); WASH. REV. CODE ANN. § 46.65.010 to .910 (1987) (multiple offenses committed within a six-hour period are counted as only one offense for the purpose of the habitual offender statute).

165. See, e.g., FLA. STAT. ANN. § 322.264 (West Supp. 1987); WIS. STAT. ANN. § 351.01 to .11 (West Supp. 1987).

HABITUAL OFFENDER STATUTE

sylvania is among these states.¹⁶⁶ However, a minority of states do not even revoke the operating privilege of their habitual traffic offenders. Instead, they merely suspend such offenders' operating privileges.¹⁶⁷

5. *Administrative or Judicial Discretion.*—Several states, even those who require a mandatory revocation of a habitual offender's operating privilege, allow either administrative or judicial discretion to be exercised once a minimum period of revocation has been served.¹⁶⁸ These states permit the issuance of a probationary or restricted license if a motorist is able to demonstrate an "undue hardship"¹⁶⁹ or a "special need"¹⁷⁰ to have a license issued before the period of revocation is terminated.¹⁷¹ Pennsylvania is not among these states.¹⁷²

6. *Length of Revocation.*—There also exist disparities in the length of the revocation or suspension of a habitual offender's operating privilege from state to state.¹⁷³ In Texas, for example, a habitual offender cannot lose his license for more than one year.¹⁷⁴ By contrast, a habitual offender in Maine can lose his license for an indefinite period of time, and the reinstatement of such a privilege is contingent upon the performance of several driving improvement programs and court discretion.¹⁷⁵ Virginia has the longest expressly stated period of revocation, which equals ten years.¹⁷⁶ Pennsylvania revokes the operating privilege of its habitual offender for a period of five years.¹⁷⁷

166. See *supra* notes 85-86 and accompanying text.

167. See IND. CODE ANN. § 91-12-1-1 to -7 (Burns 1987); TEX. HIGH. CODE ANN. § 6678b (Vernon Supp. 1987). See *supra* note 10 for the distinction between a revocation and a suspension.

168. Some states permit the issuance of a probationary license. See GA. CODE ANN. § 68B-308 (Harrison Supp. 1987) (allows issuance of a probationary license); IND. CODE ANN. § 9-12-1-1 to -7 (Burns 1987); OR. REV. STAT. 809.600 to .660 (1985); WASH. REV. CODE ANN. § 46.65.010 to .910 (1987).

169. See MASS. GEN. LAWS ANN. ch. 90, § 22f (West Supp. 1987); WIS. STAT. ANN. § 351.01 to .11 (West Supp. 1987).

170. See TEX. HIGH. CODE ANN. § 6687b (Vernon Supp. 1987).

171. For example, "undue hardship" or "special need" exists when a motorist needs his license in order to work or to get to work. See ME. REV. STAT. ANN. tit. 29, § 2291-2298B (Supp. 1986).

172. See *supra* notes 126-31 and accompanying text.

173. See *supra* note 151. See also U.S. DEP'T. OF TRANSP., A DIGEST OF STATE ALCOHOL HIGHWAY SAFETY RELATED LEGISLATION (March 1986).

174. TEX. HIGH. CODE ANN. § 6687b (Vernon Supp. 1987).

175. ME. REV. STAT. ANN. tit. 29, § 2291-2298B (Supp. 1986).

176. VA. CODE ANN. § 46.1-387.1 to -387.12 (1986).

177. See 75 PA. CONS. STAT. § 1542(d) (1984).

B. Other Suggested Standards

In addition to the varying approaches taken by other state legislatures, other methods of regulating habitual traffic offenders have been espoused. The American Bar Association, in promulgating its recommendations on suggested traffic regulations, has recognized the need for a motorist to be fully advised of the consequences of any guilty plea, any plea of *nolo contendere*, or any type of forfeiture that that motorist might enter as a result of violating a traffic law.¹⁷⁸ It has further recommended that a motorist, even though he may have no constitutional right to be represented by counsel, should at least be advised that he may retain his own legal counsel if he so desires.¹⁷⁹

Moreover, the American Bar Association has endorsed the proposition that courts, rather than having absolutely no power to modify mandatory penalties, should have the right to exercise their discretion in imposing traffic penalties.¹⁸⁰ In its commentary addressed to this provision, the American Bar Association stated:

A number of states have passed statutes requiring incarceration and/or license suspension upon conviction of major violations, such as drunk driving and unlicensed driving. Such mandatory sentence statutes cause distortion throughout the traffic enforcement system, from arrest to trial. They foster plea-bargaining, which subverts confidence in the enforcement system and driver records. They cause inequities to drivers charged in similar circumstances, and subvert rehabilitation efforts. Serious traffic cases should be heard only by fully qualified judges, and the discretion of such judges to alleviate penalties should be no more limited in traffic cases than in other forms of antisocial behavior.¹⁸¹

178. See STANDARDS FOR TRAFFIC JUSTICE § 3.2, at 6 (1975) [hereinafter STANDARDS]. The commentary, noted that

[t]he vast majority of traffic cases are terminated by pleas of guilty, or an equivalent. A defendant, whether or not he appears in court, should be advised of his rights or the consequences of his plea, including sanctions imposed for repeated offenses (i.e., point system; habitual offender acts) by some other means, so that an intelligent and knowing plea can be made, but "guilty with explanation" pleas should be discouraged. Careful explanation of the consequences of bail forfeiture or failure to appear is required because of local variations. Defendant's rights should not be abridged in the name of efficiency or expediency.

Id.

179. *Id.* at § 3.8, at 7.

180. *Id.* at § 4.3, at 9.

181. *Id.* at § 4.3, at 9.

HABITUAL OFFENDER STATUTE

The American Bar Association has not been alone in voicing its opinion on what rights motorists should be afforded in traffic regulations. Professor John Reese¹⁸² recommends that state statutes which allow the suspension or revocation of a motorist's operating privilege should clearly indicate that the government's sole interest in such legislation is the removal of hazardous motorists from the highways, that they should give a motorist notice of any possible collateral consequences that they might face, and they they should allow for a prompt post-suspension hearing.¹⁸³

V. Recommendations: Toward a Fairer Result

After analyzing Section 1542,¹⁸⁴ the habitual traffic offender statutes of other states,¹⁸⁵ and other suggested standards on what rights should be afforded motorists under traffic regulations,¹⁸⁶ it must be concluded that while Section 1542¹⁸⁷ is both constitutional and minimally fair,¹⁸⁸ it falls short of satisfactorily regulating habitual offenders and promoting the state interest of public safety. Several changes would effectively enhance the adequacy of the statute.

A. *Judicial Discretion Should Be Allowed*

As it presently stands, Section 1542 is a mandatory statute which leaves absolutely no discretion to either the Department of Transportation or any court to modify its five-year revocation of a motorist's operating privilege.¹⁸⁹ Several states do not see the need to have such a rigid statutory requirement.¹⁹⁰ Likewise, the American Bar Association discourages limiting a court's discretion in this matter.¹⁹¹ Section 1542, therefore, should not be so rigid. Courts should be allowed to take into consideration mitigating circumstances and undue hardships¹⁹² and to impose a penalty of revocation on a motorist between a fixed maximum and minimum number of years. Under such a provision, the deterrent effect of revocation would still be present, while at the same time, the unique circumstances of indi-

182. John H. Reese is a Professor of Law at the University of Denver.

183. Reese, *supra* note 155, at 58.

184. See *supra* notes 9-93 and accompanying text.

185. See *supra* notes 151-77 and accompanying text.

186. See *supra* notes 178-83 and accompanying text.

187. 75 PA. CONS. STAT. § 1542 (1984).

188. See *supra* notes 94-124 and accompanying text.

189. See *supra* notes 126-31 and accompanying text.

190. See *supra* notes 168-72 and accompanying text.

191. See *supra* notes 180-81 and accompanying text.

192. See *supra* note 171.

vidual motorists could be considered.

B. Restricted Licenses Should Be Made Available in Limited Circumstances

In addition to the presence of judicial discretion under Section 1542, courts should also have the option of allowing a motorist to receive a restricted license if that motorist can prove the need for one.¹⁹³ The most obvious circumstance in which a motorist would be able to meet this burden of proof would be when a motorist must either drive to work or travel a great distance in order to get there.¹⁹⁴ There is, however, some authority to suggest that the availability of a restricted license before at least some of the total revocation period is served detracts from the deterrent effect of the revocation.¹⁹⁵ This option, therefore, should be made available to the court's discretion only after a specific time period of the revocation has been served.

C. A Motorist Should Not Be Classified as a Habitual Offender for Multiple Offenses Committed During a Single Incident

Under the present provisions of Section 1542, a motorist who commits three offenses within three minutes is treated as harsh as a motorist who consistently shows total disregard for the law and the safety of the public over a five-year period.¹⁹⁶ As a result, habitual offender status is attained whenever a motorist is convicted of three violations of the traffic laws, regardless of whether those violations take three minutes or a period of five years to occur.¹⁹⁷ While this

193. For the states that do allow the issuance of a probationary or restricted license, see footnotes 169-71 and accompanying text.

The issuance of a restricted license is a practical consideration. James Latchaw of the National Highway Traffic Administration, in a brief presented at the Tenth International Forum on Traffic Records Systems in Orlando, Florida, readily admitted that close to 80% of the motorists who have their operating privileges revoked or suspended drive anyway. See Latchaw, *The Federal Position on Administrative License Suspensions and Other Issues*, NOTABLE PAPERS ON ALCOHOL AND HIGHWAY SAFETY—1984, at 2 (U.S. Dep't of Transp. ed. 1985). It therefore would not be unreasonable to suggest that people who need to drive in order to work and/or to continue to work are among this number.

194. See ME. REV. STAT. ANN. tit. 29, § 2291-2298B (Supp. 1986) (permitting the issuance of a working license).

195. See Chrystal, *Avoidable Pitfalls in Administrative Suspension Programs*, REDUCING HIGHWAY CRASHES THROUGH ADMINISTRATIVE LICENSE REVOCATION, at 21-23 (U.S. Dep't of Transp. ed. 1986).

196. See *supra* notes 44-49 and accompanying text. The Pennsylvania Commonwealth Court has consistently upheld this interpretation. See *supra* notes 95-96 and accompanying text.

197. *Id.*

HABITUAL OFFENDER STATUTE

interpretation of Section 1542 has been held constitutional,¹⁹⁸ its practicality is questionable. Other states that have enacted habitual traffic offender statutes have specific provisions within their statutes to prohibit such an illogical result.¹⁹⁹ Pennsylvania should not hesitate from doing the same.

D. A Motorist Should Be Given Limited Warnings on the Consequences of His Actions

Since the law prohibiting collateral attacks on improper criminal convictions in a civil proceeding is too firmly engrained in our legal system,²⁰⁰ it appears that the only way to alleviate the manifest unfairness faced by a motorist who has been improperly convicted and who cannot then collaterally attack that conviction on appeal is to prevent that initial conviction from ever occurring. This result, however, can be achieved only if a motorist is fully advised of his legal rights and the other nuances of the law, such as the fact that a payment of a fine will result in a conviction which will be counted in a determination of a motorist's habitual offender status.²⁰¹ Presently, neither the courts nor the Department of Transportation has the duty to warn a motorist of such collateral consequences.²⁰² The American Bar Association recognizes the unfairness of such a lack of duty and suggests that someone²⁰³ should at least advise a motorist of his right to retain an attorney if he has the means to do so.²⁰⁴ The American Bar Association also suggests that a motorist should be informed that the payment of a fine or a forfeiture of bail will constitute a conviction.²⁰⁵ The amount of time that it would take for a clerk or a judge to inform a motorist of such consequences and the amount of money that it would take to put an informational statement on a citation to inform motorists that a payment of the fine will equate a conviction are outweighed by the fairness and justness that

198. See *supra* notes 96-97 and accompanying text.

199. See *supra* note 164.

200. See *supra* note 36. For a good discussion on the applicability of collateral attacks to habitual offender statutes in general, see Feldman, *The Habitual Offender Laws of Tennessee*, 14 MEM. ST. U. L. REV. 302 (1984).

201. See cases cited *supra* note 34.

202. See *supra* note 36.

203. See STANDARDS, *supra* note 178, § 3.8, at 7. The ABA does not specify who this "somebody" should be. Since its commentary to this provision is addressed to traffic courts, however, it seems to imply that this "somebody" should be either the courts or their administrative personnel.

204. *Id.*

205. *Id.* at § 3.2, at 6.

the motorists in Pennsylvania would realize by such actions.²⁰⁶

E. More Information Should Be Made Available to the Public About Section 1542

Perhaps the best way to achieve the above goals is through a public educational campaign to promote an awareness and a better understanding of the existence of Section 1542.²⁰⁷ First, citizens should know that Pennsylvania has a habitual offender statute in its Vehicle Code.²⁰⁸ Also, the general public must be provided with a least a general understanding of how the statute operates and what rights they have under it.²⁰⁹ This goal may be accomplished through the distribution of printed materials such as pamphlets, the use of public announcements through the media, and instruction in the State's schools.²¹⁰ Motorists should not learn of the existence of the statute for the first time when they receive notice from the Department of Transportation that their operating privilege has been revoked pursuant its mandate.²¹¹

VI. Conclusion

As it exists today, Section 1542 is a harsh provision concealed

206. As the ABA effectively states, "Defendant's rights should not be abridged in the name of efficiency or expediency." *Id.* at 8.

207. For an excellent overview of the administrative licensing process, see J.H. REESE, POWER, POLICY, PEOPLE—A STUDY OF DRIVER LICENSING ADMINISTRATION (1971). With specific regard to the right of motorists to have access to information, Reese stated,

[W]hat is also needed is mass information as to how driver licensing agencies are exercising their power. The formal legal protections provided may be more illusory than real, for most people who are subjected to license denial or withdrawal decisions do not resort to them to vindicate their interests. Furthermore, not all members of the regulated group have effective access to the formal legal processes. That is, minority groups and persons of limited financial means may be aware of formal legal mechanisms but afraid or unable to utilize them. In addition, the driving public is an inarticulate amorphous group that has not had an effective voice advocating its interests to policy makers. Lacking this opportunity, however, some other means must be found by which to provide some modicum of protection for the interests of such unheard citizens.

Id. at 181.

208. Of course, the Vehicle Code and its provisions are available to all citizens, and they are assumed to know what the law is. See *People v. McKnight*, 200 Colo. 486, 617 P.2d 1178 (1980) (publication of a statute is constitutionally sufficient notice). Even a cursory glance at the cases citing Section 1542, however, reveals that the same issues are constantly being relitigated. See *supra* notes 16-69. This wealth of litigation suggests that little or nothing is known about the statute.

209. See *supra* notes 9-124 and accompanying text.

210. See generally *The Role of Communications in an Effective Comprehensive State Alcohol Safety Program*, in NOTABLE PAPERS ON ALCOHOL AND HIGHWAY SAFETY—1984, 7-25 (U.S. Dep't of Transp. ed. 1985).

211. See 75 PA. CONS. STAT. § 1542(a).

HABITUAL OFFENDER STATUTE

within the Pennsylvania Vehicle Code that is uniformly and inflexibly imposed upon all motorists who come within its startling grasp. Yet despite its harshness and apparent unfairness, the statute has repeatedly withstood attacks to its constitutionality. The inescapable question that must be addressed, therefore, is whether Pennsylvania should be satisfied with a statute that, although constitutional, is merely adequate in terms of fairness to the motorists who are regulated under its provisions.

The answer to this simple but important question is obviously no. There are better and fairer ways to regulate habitual traffic offenders, which at the same time protect and promote the important governmental interest of maintaining public safety. The Pennsylvania Legislature should consider adopting such changes in Section 1542, since the courts are rendered powerless to afford a judicial remedy. The rights of Pennsylvania's motorists should not be restricted to their bare minimum in the face of viable alternatives, particularly when many individual's livelihoods depend on being able to drive on the Commonwealth's highways.

Lisa M. Cavage

