

NOT VOTING—15

Blanner	Myers	Rieger	Tayoun
Bo	Pievsky	Saloom	Turner
Bohman	Prendergast	Schulze	Valicenti
Boomer	Renninger	Shelton	

The majority required by the constitution having voted in the affirmative, the question was determined in the affirmative.

Ordered, That the clerk present the same to the Senate for concurrence.

QUESTION OF PERSONAL PRIVILEGE

The SPEAKER. The Chair recognizes the gentleman from Bradford, Mr. Turner. For what purpose does the gentleman rise?

Mr. TURNER. I rise to a question of personal privilege.

The SPEAKER. The gentleman will state it.

Mr. TURNER. Mr. Speaker, on House bill No. 947, number's No. 1127, my button was not working. I would like to be voted in the affirmative, please.

The SPEAKER. The remarks of the gentleman will be placed upon the record.

Agreeable to order,

The bill having been called up from the postponed calendar by Mr. SCHEAFFER, the House resumed third consideration of **HOUSE BILL No. 959, PRINTER'S No. 492**, entitled:

An Act amending "The Vehicle Code," approved April 1959 (P. L. 58, No. 32), changing the penalty for failing to stop in the event of an accident.

On the question,

Will the House agree to the bill on third consideration?

As was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provision of the Constitution, the yeas and nays will now be taken.

YEAS—187

Blanner, J. H.	Geisler	Malady	Semanoff
Bo	Gekas	Maloney	Shane
Bohman	Gelfand	Manderino	Shelhamer
Boomer	Gillette	Martino	Shuman
Boyer	Gleason	McClatchy	Shupnik
Boyer	Gleeson	McCue	Smith, C.
Boyer	Goodman	McCurdy	Smith, E.
Boyer	Greenfield	McGinnis	Smith, L.
Boyer	Grieco	McGraw	Spencer
Boyer	Gring	McMonagle	Stahl
Boyer	Halverson	Mebus	Stout
Boyer	Hamilton, J. H.	Miller, M. E.	Sullivan
Boyer	Hammock	Miller, M. E., Jr.	Taddonio
Boyer	Harrier	Morris	Thomas
Boyer	Hasay	Mullen, M. P.	Toll
Boyer	Haskell	Murtha	Trusio
Boyer	Hayes, D. S.	Musto	Turner
Boyer	Hayes, S. E.	Myers	Ustynoski
Boyer	Hepford	Novak	Vacca
Boyer	Hill	Nove	Vann
Boyer	Hopkins	O'Brien	Vipond
Boyer	Hutchinson, A.	O'Connell	Volpe
Boyer	Hutchinson, W.	Pancoast	Wagner
Boyer	Irvis	Parker, H. S.	Walsh, J. T.
Boyer	Itkin	Perri	Walsh, T. P.
Boyer	Johnson, J.	Perry	Wargo
Boyer	Jones	Petrarca	Weidner
Boyer	Kahle	Piper	Wells
Boyer	Katz	Pitts	Westerberg
Boyer	Kelly, A. P.	Polite	Whittlesey
Boyer	Kelly, J. B.	Rappaport	Williams

Doyle	Kennedy	Renwick	Wilson
Dreibelbis	Kester	Rhodes	Wilt, R. W.
Early	Kistler	Richardson	Wilt, W. W.
Eckensberger	Klingaman	Ritter	Wise
Englehart	Knepper	Romanelli	Wojdak
Fawcett	Kolter	Rowe	Worrilow
Fenrich	Kowalshyn	Ruane	Wright
Fischer	Kusse	Ruggiero	Yahner
Foor	LaMarca	Ryan	Yohn
Foster, A.	Laudadio	Salvatore	Zearfoss
Foster, W.	Laughlin	Savitt	Zeller
Fox	Lederer	Scanlon	Zimmerman
Frankenburg	Lehr	Scheaffer	Zord
Fryer	Letterman	Schmitt	
Gallagher	Lincoln	Scirica	
Gallen	Lynch, Frank	Seltzer	
Geesey			

Lee, Speaker

NAYS—1

Caputo

NOT VOTING—13

Brunner	Pievsky	Rieger	Shelton
Fee	Prendergast	Saloom	Tayoun
Fineman	Renninger	Schulze	Valicenti
Homer			

The majority required by the constitution having voted in the affirmative, the question was determined in the affirmative.

Ordered, That the clerk present the same to the Senate for concurrence.

STATEMENT

The SPEAKER. The Chair recognizes the gentleman from Cambria, Mr. Englehart.

Mr. ENGLEHART. Mr. Speaker, could I make just a quick statement on Senate bill No. 9?

At the request of several members I have been asked to withhold calling this up this week, but I do expect to call it up for the vote next Monday.

Agreeable to order,

The bill having been called up from the postponed calendar by Mr. BUTERA, the House resumed third consideration of **SENATE BILL No. 117, PRINTER'S No. 492**, entitled:

A Joint Resolution proposing an amendment to article one, section ten of the Constitution of the Commonwealth of Pennsylvania authorizing courts of common pleas to provide for the initiation of criminal charges by information.

On the question,

Will the House agree to the bill on third consideration? Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage. The question is, shall the bill pass finally?

The Chair recognizes the gentleman from Lehigh, Mr. Eckensberger.

Mr. ECKENSBERGER. Mr. Speaker, I wonder if someone would consent to a brief interrogation about this bill?

The SPEAKER. Will the gentleman from Montgomery, Mr. Scirica, consent to interrogation?

Mr. SCIRICA. Yes, Mr. Speaker.

The SPEAKER. The gentleman may proceed.

Mr. ECKENSBERGER. Mr. Speaker, would you advise the members as to whether a bill containing identical language to Senate bill No. 117 passed both chambers in the previous legislative session?

Mr. SCIRICA. That is my understanding, Mr. Speaker.

Mr. ECKENSBERGER. So, therefore, if this bill passes the House today, the question posed by Senate bill No. 117 will be placed on the ballot in this forthcoming election? Is that correct?

Mr. SCIRICA. In the general election this fall, yes, Mr. Speaker.

Mr. ECKENSBERGER. Now I believe, Mr. Speaker, that this bill purportedly will do away with the grand jury. Is that the representation made concerning the content of Senate bill No. 117? Is that the purpose of Senate bill No. 117?

Mr. SCIRICA. Mr. Speaker, my understanding is that this is a "may" bill which will give authority to the courts of common pleas of each county to initiate criminal proceedings without grand jury action.

Mr. ECKENSBERGER. Mr. Speaker, you raise the very question that I would like to get to, that is, precisely what is it that the court of common pleas may do with regard to establishing rules for the initiation of criminal proceedings? That is the general question. More specifically, Mr. Speaker, might the court make a rule pursuant to this provision, such that might bypass the lodging of a criminal action or information in the office of a district magistrate?

Mr. SCIRICA. No, Mr. Speaker. On the second page, line 2, it provides that the courts may "provide for the initiation of criminal proceedings therein by information filed in the manner provided by law."

My understanding of the present law is that in order to begin a criminal proceeding, you have to file a complaint with the district justice or the appropriate courts in Philadelphia.

If I can respond further, all this bill will do will eliminate the indicting grand jury after the initiation of the information, after the preliminary hearing is held, at which time a determination of whether or not a prima facie case exists will be made.

Mr. ECKENSBERGER. Mr. Speaker, if the bill in fact said that, I would not be at the microphone, because I believe I am ready to support an amendment to the constitution which would eliminate the grand jury. However, I am apprehensive in that I believe the language in Senate bill No. 117 would go beyond that. At no place do I read in Senate bill No. 117 that there must be a preliminary hearing before the district magistrate. I believe—and you correct me if I am wrong—that you interpret the language "in the manner provided by law" as meaning that the criminal process must still be initiated in the office of the district magistrate. Is that correct?

Mr. SCIRICA. That is correct, Mr. Speaker.

Mr. ECKENSBERGER. I thank the gentleman.

Mr. Speaker, I suppose we can accept that interpretation and on that basis I think I will reluctantly vote for the bill. However, I feel compelled to make this one statement, that is, I think all of you are aware of the fact that by the Constitutional Convention, by the adoption of the judiciary article in the amended Constitution of Pennsylvania, we have given the courts of the Commonwealth extensive powers, and I think those of you who are lawyers here in the chamber will recognize the extent to which the courts have used those powers. I believe that I am ready to call a halt to giving additional powers to the court system. I think that this legislative body and the other chamber must begin to stand up and say that we, too, are a part of the governmental process, and I do not think

that we ought to be giving away any more power than we have already done so.

I will listen to more debate on this measure, Mr. Speaker, and if it can be shown that the interpretation that was given by Mr. Scirica is questionable, I feel free to vote in the negative.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Rappaport.

Mr. RAPPAPORT. Thank you, Mr. Speaker.

I rise in opposition to this constitutional amendment. In the past four or five years we have seen an erosion of the basic rights and liberties of American citizens. Some will argue it is in the interest of efficiency, it is in the interest of economy, and every other argument that is traditionally given for change for its own sake.

It may surprise some members to know that in most of these matters I am extremely conservative and I do not like change for its own sake. Change is good if it can be justified.

We have seen an erosion of the jury system. A constitutional amendment was passed reducing the size and reducing the unanimity requirement of juries. I opposed those.

Two recent cases spring to mind. There is a case now pending in New York involving a mercy killing by a doctor and a case which has arisen in northern New Jersey involving the same thing where one brother killed another.

We all recognize in cases such as these, it is in the gray area of where the law meets morals. No judge could discharge the defendants in those cases. Under the law they must be held for court. However, a grand jury is in a position to make that moral judgment, to judge their fellowman, and they must do that. I do not know what the grand juries will do in those cases; I will not hear the facts. But it is only the grand jury that could discharge and refuse to indict.

We are regaled with statistics about how grand juries indict 97 percent of the cases that are brought before them. I am not interested in the 97 percent; I am interested in the three percent.

The grand jury is an institution in our law that goes back over 1,000 years, and it is not something to be lightly dispensed with by the quoting of a few statistics by several ambitious district attorneys who are interested in a high conviction rate.

I believe in law and order; I believe in it very strongly. I need it desperately in my district. But I think to be judged preliminarily by 23 members of the community—which is what the grand jury is—is something that is very important, and perhaps much more important in the less populated areas of the state than in my own neighborhood. I would urge a "no" vote.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Lycoming, Mr. Wise.

Mr. WISE. Mr. Speaker, I had not planned to speak on this bill, but the remarks of the gentleman from Philadelphia brought me to my feet.

Briefly, the fact that we have a system for several hundred years or many more years than that does not mean that we cannot improve on that system. There is nothing sacrosanct about it. The fact of the matter is that the indicting grand juries are largely a tool of the district

attorney to use as he sees fit. They more or less rubber-stamp his recommendations.

Now if the district attorney's office did the job they should do before the committee magistrate—that is, before the district justice—there would be no need for the grand jury.

The old days when the district justices were so political and "JP" stood for justice for the plaintiff—or in this case, justice for the prosecution—hopefully, are over. And if we are going to make our system work, we should work within the system and make those committee magistrates do the job. The indicting grand jury is an anachronism of the past which has outlived its usefulness.

Now let us make clear what this bill is not. This bill would not eliminate an investigatory grand jury which could be convened at any time. We are talking about indicting grand juries. The defendant is safeguarded at the preliminary hearing if he is held for court, and basically all an indicting grand jury does is the same thing the committee magistrate does—is there a prima facie case; should the defendant stand trial? And if you are not satisfied with that decision, you can always file a habeas corpus to touch the question as to whether there is a prima facie case.

In the final analysis what we are saying here is, let us put the matter up to a vote of the people; let the people decide. I think this is a matter that is worthwhile debating across this state and letting the people decide.

Let us vote "yes" for Senate bill No. 117.

The SPEAKER. The Chair recognizes the gentleman from Berks, Mr. LaMarca.

Mr. LaMARCA. Mr. Speaker, I regret having to disagree with my good friend, Mr. Wise, but I am violently opposed to this bill, and not just because we have a sacred system. I practice law and earn a living under that system and I find there are many things wrong with it, but I find there are too many changes being made so quickly today in that system which worked for so long without our taking the time to examine what we are about to replace it with. I am sure there are many, many, many figures that will point to the ineptitude of the present grand jury system, but let us examine what we are going to do if you replace the grand jury system.

As it presently stands, if you are accused of a crime, you go before a justice and you have a preliminary hearing. If he binds you over, you are not immediately subjected to having to engage full-time counsel, to being subjected to a court trial; you have one more chance. You have 20 of your peers who will sit as a body and determine whether or not there really is sufficient evidence to send you into court and to engage all the expense that is going to be burdened upon you.

Beyond that, let us ask ourselves: If we eliminate this, what will be the determining factor? Let us suppose we have a one- or two-man county court, and let us suppose he, the judge, does not feel like working too hard this term. Without the grand jury handing over the instructions for him to conduct the trials, he is going to be the party to decide whether or not there are going to be many trials. He is going to be the sole judge; he is going to throw them out or he is going to throw them in. It is going to be his policy dictated in that county.

We talk about pornography possibly getting to be a community-basis decision, a community attitude. If you do this very thing that you want to do here, you will

not have a community deciding the policy; you will have a judge, and a judge alone, deciding the policy in your community. If the JP binds him over and you still have a grand jury system, it is entirely possible that people may not think there is enough evidence or they may not think that a crime has been committed, and you have the ordinary citizen making that decision, people like you and me; not judges who, incidentally, in our wisdom, this legislature sought to perpetuate by subjecting them to elections every 10 years, but saying that once they are elected, all they have to do is use deodorant and they will stay in for life.

I beg you to stop and think about what we are doing. It is well and good for all of us to talk about change, and it is well and good to say that the present system does not work, but that is what is wrong with America today. Too many people get up and say the present system does not work, but they do not come up with one that is more workable or better.

I submit to you that you have no right to tamper with the grand jury system until you are absolutely sure that you have something better and until you are sure that you do not want one man deciding an entire community policy. I urge that we defeat Senate bill No. 117.

The SPEAKER. The Chair recognizes the gentleman from Delaware, Mr. Doyle.

Mr. DOYLE. Mr. Speaker, I would just like to call the attention of the members to a fact that I do not think has been mentioned so far. Before the grand jury, the defendant or the defendant's counsel has no input. He has absolutely no chance to extricate himself or his case, whatever the facts might be, from the judicial process.

The grand jury is nothing more than, in most cases, a rubber stamp for the district attorney bringing it in, because the only testimony the grand jury hears is only what the district attorney wants them to hear. It will not be a judge's decision and a judge's decision alone that will determine the cases. The matter still has to come before a jury, a regular jury of 12 men.

The grand jury is an anachronism—I agree with Mr. Wise—and it could be done away with expeditiously to promote the speedy justice that we are looking for.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Speaker.

I rise to oppose the bill. I strongly agree with the comments by Mr. LaMarca and Mr. Rappaport. It has been said that the grand jury is a rubber stamp for the district attorney's office. Whose fault is that? It is our fault and we want to act as though it is not.

The grand jury is made up of citizens, whether presently or not it acts as a "rubber stamp." We can come to the day, if our public and our citizens who are in that body are sufficiently aware of the problems we have in the justice system, to ask the hard questions and to do the job. That is what they are there for.

It seems to me that we follow the philosophy that because we have allowed some people to gather to themselves a large bit of power—and they exercise that judgment—where the public, in many cases, has not, that, therefore, we should do away with the function of the public.

I do not think it is just fundamental and traditional, but

I think the idea, the very idea, of the grand jury system, was placed there in order to provide a safety valve. In many cases, that safety valve works.

I think it is incumbent upon us as members of this body to reenforce not only our confidence in the use and utilization of the grand jury system, but also it should be incumbent upon us to indicate the education that is necessary for our citizens to perform that function.

I want to say one final thing. One of the things that our court system is crushed by is the weight of cases. It seems to me that sooner or later we will be looking around for something dramatic and traumatic to filter out what should not be in the courtroom. I do not know of any device that could be better used than the grand jury system, if we make up our minds to utilize it that way, to make it work that way, in order to reduce the crushing backlog of cases. It may very well be that next year we may come up with some new device, not called a grand jury but called something else, whose job it will be to filter it out.

Today we are suggesting that we eliminate something that has that very purpose and also something that has been quite fundamental to law. It scares me that we would make a proposition like this in a blithe manner. It scares me because too many of us do not know what that function is or could be.

It has been said that we should throw it out to the voters. If the citizens that you say are rubber stamps now for the district attorney are not performing that function, some education is lacking in terms of the definition of their jobs. How then could a public any better judge by having a constitutional amendment of this nature on a ballot with several other items? I think we should defeat this bill.

The SPEAKER. The Chair recognizes the gentleman from Lebanon, Mr. Rowe.

Mr. ROWE. Mr. Speaker, I agree partially with the gentleman from Berks, Mr. LaMarca, that we should preserve many of our legal institutions.

I disagree though with his conclusion, because when that institution deteriorates, then we should do away with it.

As a matter of fact, the grand jury system as it works in Pennsylvania now has 23 people meeting, 12 to indict. They can hear only one side of the case, the district attorney's side. They crank through the grand jury 300 or 400 cases a day, and then they go visit the jailhouse and make recommendations to the court. The evidence they do hear, as presented by the district attorney, as sanctioned by the Supreme Court of Pennsylvania, can even be based upon hearsay.

I think this grand jury system as we know it now, as a matter of fact, in Pennsylvania has deteriorated into an anachronism. It no longer preserves the right to the individual. I would like to remind the members that this is a "may" bill, as mentioned by Mr. Scirica, that in those very few counties where the system does work the way it should, to protect the rights of the individual, the courts have the option to keep this system.

In those counties, as in mine, where both defense lawyers and the district attorney's office and the judge think it is an anachronism, we should do away with it. We should have that option.

I remind the members again that it is a "may" bill. The

people will have the right to vote on it, and I think we ought to pass this legislation.

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Checchio.

Mr. CHECCHIO. Mr. Speaker, as we do not travel to Harrisburg by horse and buggy, so should we not perpetuate an archaic, obsolete and ineffective system. It is time for a change. I strongly urge that we give an affirmative vote.

Thank you.

On the question recurring,
Shall the bill pass finally?

Agreeable to the provisions of the constitution, the yeas and nays were taken and were as follows:

YEAS—106

Anderson, J. H.	Geisler	Lehr	Scheaffer
Beren	Gekas	Letterman	Scirica
Berkes	Gleason	Lincoln	Seltzer
Brandt	Gleeson	Maloney	Semanoff
Burkardt	Goodman	Martino	Shane
Burns	Grieco	McClatchy	Smith, E.
Butera	Gring	McCurdy	Smith, L.
Byerly	Hamilton, J. H.	McGinnis	Spencer
Caputo	Hasay	Mebus	Stahl
Cessar	Haskell	Miller, M. E.	Taddonio
Checchio	Hayes, D. S.	Miller, M. E., Jr.	Thomas
Crawford	Hepford	Morris	Turner
Dager	Hill	Murtha	Vacca
Deverter	Hopkins	Noye	Vipond
Dicarlo	Hutchinson, W.	Pancoast	Wells
Dorr	Jones	Parker, H. S.	Westerberg
Doyle	Kahle	Perri	Whittlesey
Early	Katz	Perry	Wilson
Eckensberger	Kelly, A. P.	Pitts	Wilt, R. W.
Fawcett	Kelly, J. B.	Polite	Wise
Fischer	Kennedy	Renwick	Wright
Foor	Klingaman	Ritter	Yohn
Foster, A.	Knepper	Rowe	Zearfoss
Foster, W.	Kolter	Ruane	Zeller
Frankenburg	Kowalyszyn	Ruggiero	
Gallagher	Kusse	Ryan	
Geesey	Laudadio	Salvatore	Lee, Speaker

NAYS—83

Arthurs	Gallen	McGraw	Smith, C.
Barber	Gelfand	McMonagle	Stout
Bellomini	Gillette	Mullen, M. P.	Sullivan
Bennett	Greenfield	Musto	Toll
Berson	Halverson	Myers	Trusio
Bittle	Hammock	Novak	Ustynoski
Bixler	Harrier	O'Brien	Vann
Blackwell	Hayes, S. E.	O'Connell	Volpe
Bonetto	Homer	Petrarca	Wagner
Comer	Hutchinson, A.	Piper	Walsh, J. T.
Davis, D. M.	Irviss	Prendergast	Walsh, T. P.
Davis, R.	Johnson, J.	Rappaport	Wargo
DeMedio	Kester	Rhodes	Weidner
Dininni	Kistler	Richardson	Williams
Dombrowski	LaMarca	Romanelli	Wilt, W. W.
Dorsey	Laughlin	Savitt	Wojdak
Dreibelbis	Lederer	Scanlon	Worrilow
Englehart	Lynch, Frank	Schmitt	Zahner
Fenrich	Malady	Shelhamer	Zimmerman
Fox	Manderino	Shuman	Zord
Fryer	McCue	Shupnik	

NOT VOTING—12

Brunner	Itkin	Rieger	Shelton
Fee	Pievsky	Saloom	Tayoun
Finemmer	Renninger	Schulze	Valicenti

The majority required by the constitution having voted in the affirmative, the question was determined in the affirmative.

Ordered, That the clerk return the same to the Senate with information that the House has passed the same without amendment.