FINAL PASSAGE CALENDAR

BILL OVER IN ORDER

HB 227 — Without objection, the bill was passed over in its order at the request of Senator STAUFFER.

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 61 (Pr. No. 941) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrezeski	Holl	Mellow	Scanlon
Bell	Hopper	Messinger	Shaffer
Bodack	Howard	Moore	Singel
Corman	Kelley	Murray	Smith
Early	Kusse	O'Connell	Snyder
Fisher	Lewis	O'Pake	Stapleton
Gekas	Lincoln	Pecora	Stauffer
Greenleaf	Lloyd	Price	Stout
Hager	Loeper	Reibman	Street
Hankins	Lynch	Rhoades	Tilghman
Helfrick	McKinney	Romanelli	Wilt
Hess	Manbeck	Ross	Zemprelli

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

BILLS OVER IN ORDER

HB 106, SB 147 and **361** — Without objection, the bills were passed over in their order at the request of Senator STAUFFER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 496 (Pr. No. 503) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

Senator ZEMPRELLI. Mr. President, I rise in opposition to Senate Bill No. 496. The reason I would oppose Senate Bill No. 496 is that having had some experience with suppressions of voluntary admissions and understanding what they are, the reasons that are given and upon which the court acts to suppress an admission are the very same reasons that should not be used to impeach the credibility of a witness.

Case in point, Mr. President: If a confession or admission is taken under duress or a law enforcement agency has used force or other means to acquire a confession or an admission and the court suppresses that admission or confession, and it is consistent to say that when the issue comes before the court on the trial of the defendant or any other person who is involved that testimony of necessity would be different than what it was when he gave the admission or the confession. Then, of course, if this act were passed, it would allow, as a matter of right, the prosecuting officer to offer the same statement or admission that was suppressed against that particular witness or defendant as a matter of impeaching his credibility.

Mr. President, it is ludicrous. The admission or the confession would not be suppressed in the first instance if it was not detrimental to the defendant. It would be hard to conceive of a situation where the statement made by a defendant in a criminal trial would be consistent with the admission that was given. If the admission, in fact, as I have said before and will repeat one more time, was suppressed because it was not received under circumstances, whether voluntary or involuntary, that allowed for a free statement on the part of the defendant, then most certainly it should not be used in any instance to impeach his credibility.

The credibility infers the fact that what he said the first time may have some credibility to it and that is the reason why it has been suppressed. Why then, Mr. President, would we travel in a circle and say then that because he made that statement what he is saying later is not correct.

Mr. President, I think this is a very, very serious matter and one certainly that assists in the prosecution of these matters, but certainly one that is absent of the element of fairness and giving a defendant in any situation an opportunity for which the court has passed on that admission or credibility in saying it does not have the standing of proper evidence. Not having the standing of proper evidence in the first instance, Mr. President, speaks for its admissibility as an element of credibility of a defendant's witnessed statement at a trial of the issue.

Mr. President, I ask that Senate Bill No. 496 be voted down.

Senator GREENLEAF. Mr. President, I rise in support of this bill, particularly its origin and its purpose is to avoid what is going on now in the State of Pennsylvania and that is legalized perjury.

Mr. President, we are permitting defendants to take the stand and commit literal perjury. For example, in the case that arose that brought my attention to this particular issue was the Bucks County rape case, in which the individual confessed to the commission of the rape for reasons other than voluntariness. I would like to refer to them as technical reasons, as District Attorney Rendell uses an example of let us say the arrest being applied six hours and ten minutes rather than within the six-hour limits, then the confession can be suppressed. This individual was then brought to trial, his confession was suppressed, the girl who was raped testified as to the incident. He then took the stand and told a completely different story than he had when he made his original statement. The Commonwealth was prevented from using that statement for impeachment purposes to present to the jury which time that individual was telling the truth.

Mr. President, I think it is for the jury to decide whether that individual was telling the truth when he originally made his statement or whether it was when he was on the stand. The

Commonwealth should have the opportunity to test and impeach that individual's and the defendant's credibility by presenting to him that confession. This particular individual was ultimately acquitted and the jury never had the opportunity to test his credibility and test his truthfulness by looking at and having access to the original confession.

Mr. President, this does not change the law. This only changes the situation where an individual chooses to take the stand. If he does not take the stand, the statement is not admissible, whether it is voluntary or whether it has been suppressed for technical reasons or what have you. Once that individual takes the stand, he waives his rights to the Fifth Amendment and self-incrimination. He then puts his credibility at issue and certainly the jury and the Commonwealth should have the opportunity to review that.

Mr. President, Senate Bill No. 496 is in support of and in conformance with the United States Supreme Court decision of Harris v. New York in which the majority opinion held that it is not a violation of the United States Constitution to introduce a previously suppressed voluntary statement of a defendant to impeach his credibility once he takes the stand. They reasoned to allow otherwise would allow legalized perjury.

Mr. President, if I can quote from the opinion, and I think it is applicable here, the court held, "Every criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury. Having voluntarily taken the stand, petitioner was under an obligation to speak truthfully and accurately and the prosecution here did no more than utilize the traditional truth-testing devices of the adversary process. Had consistent statements been made by the accused to some third person, it could hardly be contended that the conflict could not be laid before the jury by way of cross-examination and impeachment.

"The shield provided by Miranda cannot be perverted into a license to use perjury by way of a defense, free from the risk and confrontation with prior inconsistent utterances. We hold, therefore, that the petitioner's credibility was appropriately impeached by the use of this earlier conflicting statements."

The Pennsylvania Supreme Court, ultimately, in the Triplett case, came down with a different decision and found that such a procedure was a violation of the Pennsylvania Constitution, although the United States Supreme Court, as I indicated before, has found that it was not a violation of the United States Constitution.

A review of both provisions would indicate that they are almost identical and that it was really a difference of philosophy rather than a difference in law.

Mr. President, I think it is incumbent upon this Legislature to rectify this wrong. I have submitted this proposal to the Pennsylvania District Attorney's Association at the last Session when this bill passed last Session, and it was approved and endorsed by the Pennsylvania District Attorney's Association including District Attorney Rendell, who was quite supportive of the proposal. It was also recommended and supported by the Pennsylvania Chiefs of Police Association.

Mr. President, I would hope the Senate would take into consideration, and my honored and able colleague, the gentleman from Allegheny, Senator Zemprelli, has mentioned the defendant. I would like to mention the victim, particularly this victim that was involved in the rape case that I mentioned or all the other future victims of criminal activity in this Commonwealth. They should be given the opportunity just as they are put to the test in regard to credibility and impeachment and whether that rape victim is put to the test of whether she is telling the truth, that defendant should be put to the test in determining whether he is telling the truth. If she has given prior inconsistent statements and can be challenged by those inconsistencies, so too the defendant should be placed to that same test. If he has given prior inconsistent statements, he should be put to that test as well.

Senator BELL. Mr. President, I listened closely to the Minority Leader and I did not hear him make any charge that the constitutional amendment to the Pennsylvania Constitution would be unconstitutional from the Federal constitutional point of view. Therefore, there is no constitutional question here. The only thing is, should the people of Pennsylvania be given the opportunity to tighten down on the rights afforded to criminal defendants. I think we now come to the question in front of us: Should the Pennsylvania Legislature continue to give more rights to the criminal defendant than is given by the Supreme Court of the United States? From my district, from my contacts with my district, I find people on the street feel the defendant has too many rights and it is time that not only the Legislators, the Congress and the various courts, all of them, should start to protect the rights of the victim.

Mr. President, I am voting to let the people of Pennsylvania decide.

Senator ZEMPRELLI. Mr. President, it seems of late I have been the champion of some very unpopular positions and I do not suggest after the emotional situation related by the gentleman from Montgomery, Senator Greenleaf, that he has come upon a particular situation. I would have to agree with him that I wish a prior inconsistent statement were used to impeach the credibility of that particular defendant. Nobody would argue with that. Justice was not done. He said it was not done.

Mr. President, let me give you a couple situations where justice would be done and it would not be done in the opposite direction. As any attorney in this Body knows and probably many others know, there is such a right of suppression when a statement is secured from a defendant under duress. That does happen. We do not have to read the newspapers very often, we do not have to look at some emotional television program or believe in Santa Claus to know these things happen in our society. Hopefully it would not happen to any of the Members. What we are suggesting is, the inability of this particular bill is to separate the good from the bad, we are dealing with the principle that has been sacred in this society. It is not upon the defendant to prove his innocence, it is upon the Commonwealth to prove the guilt of an individual. There are rules and regulations prescribed for following in that. One

is qualified evidence, Mr. President, or the qualification of evidence. Consider a petition to suppress evidence because that statement was acquired under a situation of duress, or the statement would not have been made except for duress, maybe duress in a threat, maybe duress in a form of actual violence against the defendant.

What the gentleman is suggesting, Mr. President, is that any such statement when suppressed may be used as evidence against that defendant if he elects to take the stand to impeach his credibility. Then the gentleman suggests with all the wisdom of a prosecutor that he should, in fact, he does not necessarily have to take the stand to defend himself if he wants to avoid the use of a suppressed statement.

Mr. President, I am disappointed the gentleman would think that. It suggests the defense should not have the opportunity of presenting its case or telling its side of the story in spite of his example. The issue here is given every reason for suppression and understanding there must be some wisdom in defense as against an admission or confession when a court elects to suppress that evidence as being unfair or illegal under the laws established, that it should not be allowed to come in the back door. It is ludicrous to suggest once a jury has heard evidence of that kind that it can casually disregard it because some judge in his charge suggests disregard this statement you have heard. It just does not happen in the practicum of life. We do not operate that way. We sometimes like to remember everything we are told that we are not supposed to remember and forget those things we should remember.

Mr. President, I suggest to you Senate Bill No. 496 before us is not only a dangerous one, not only one that would deprive innocent people of their rights, but also one that is contrary to the basic and fundamental tenets of what democratic process for criminal indictment and prosecution is in these United States.

Senator O'PAKE. Mr. President, the distinguished Minority Leader's argument would be very persuasive if the word "voluntary" were not in the proposal before us. I will read what it says. "The use of a suppressed voluntary admission or voluntary confession to impeach the credibility..." and so forth. So the situations of confessions and admissions obtained under duress are not the kinds of situations we are talking about. The court has gone so far in some cases, some courts have, to suppress the use of any statement given not because the statement was extracted under duress but because the statement was given after some artificially imposed rule set down subsequently by the United States or some Appellate Court.

We are not talking about confessions that are coerced or extracted under duress, Mr. President. We are talking about only confessions that were voluntary or admissions that were voluntary and I would urge support of this.

Senator GREENLEAF. Mr. President, I was just going to reiterate what the gentleman from Berks, Senator O'Pake, indicated, that we have attempted to phrase it and it does not apply to duressed, coerced statements. It only deals with those statements that are given by persons who are making their statements voluntarily, although may be suppressed because of a technical violation such as the example District Attorney Rendell gave in regard to the time limit between their arraignment and arrest, the six hour rule, and if we are in violation of it by five minutes the statement can be suppressed even though it is truthful. We are only dealing with truthful statements. We are only dealing with the guilty, not the innocent. These are people who have made voluntarily intelligent knowing statements of their guilt and then because of a technicality have had their confessions suppressed. We are not dealing with those statements that are tinged by coercion or duress. This rule would not apply. They could not use that type of a statement because by the very use and means that that statement was obtained impinges the very credibility of that statement. Senate Bill No. 496 does not apply to those types of statements. It only applies to those persons who admitted their guilt voluntarily and then denied it on the stand later.

Finally, Mr. President, I would like to bring out that thirty-four States in this Nation have followed the United States Supreme Court Rule, so we are in the minority in regard to that particular issue. The reason we have not taken these steps before is that invariably it has been the United States Supreme Court that has said this particular practice is in violation of the United States Constitution. Here we have an opportunity where the United States Supreme Court has said this practice is not in violation of the Constitution. This gives us the opportunity to change the rule now when before if they had found there was a violation of the United States Constitution, of course, we would be powerless to do anything about the expansion of "defendant's rights." On this particular issue, we do have the opportunity and the right to take some steps to rectify this situation. We are not dealing with any time-honored principle. There certainly is no time-honored principle to allow defendants to take the stand and commit perjury.

Senator ZEMPRELLI. Mr. President, I thank the Chair for recognizing me again.

Mr. President, there may be some confusion in the minds of a lot of people here and certainly the language of the bill and the amendment that is set forth speaks as follows: "The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person..." et cetera.

Mr. President, I see no provision defining voluntary in terms of that which has been argued by both the gentleman from Montgomery, Senator Greenleaf, and the gentleman from Berks, Senator O'Pake. If voluntary, and it appears it is a word of art, then it certainly means something different to them than it does to me, absent a specific definition. A statement that is secured under certain circumstances of suppression may be a voluntary statement made by the defendant but not of such a quality that could be used for impeachment purposes as it would be consistent with any statement made thereafter by that defendant.

Secondly, Mr. President, what bothers me, it is easy to look with hindsight after a guilty verdict or a not guilty verdict as to what should or should not have happened. We are dealing in a free society where there is a presumption of innocence on

every defendant in a fair society that prescribes fair rules. I do not see in this legislation the exclusion of voluntary admissions acquired under duress or voluntary confessions acquired under circumstances of fear of bodily harm or statements that have been made under circumstances where a person was not of a free will or a free mind. Absent of that definition, Mr. President, I have every reason to believe voluntary would include many, many circumstances that would mitigate against the defendant in a fair trial involving situations where a statement may have been given that was innocent to alleviate a particular circumstance that existed at that time and thereafter reflecting in truth could be used against that person to thwart or otherwise confuse the truth.

For these reasons, Mr. President, I would either ask the gentleman to withdraw his bill and amend it so as to speak to the fact that a voluntary statement is one that is acquired under certain circumstances that would exclude the possibility of those kinds of suppressed evidence that dealt with confessions that were made under circumstances that may be voluntary but still not fair to use to attack the person's credibility.

Senator GREENLEAF. One final comment, Mr. President. The gentleman I am sure is aware of the whole body of law, particularly pre-Miranda decisions that go into great detail of what a voluntary statement is. It is a term of art that there has been a tremendous amount of writing and opinions issued upon. That is what the bill incorporates. There will be a tremendous body of law the courts can fall back on to interpret what a voluntary statement is. There is no need for an additional definition of it.

And the question recurring,
Shall the bill pass finally?

(During the calling of the roll, the following occurred:)

Senator TILGHMAN. Mr. President, I would like to change my vote from "aye" to "no."

The PRESIDENT. The gentleman will be so recorded.

Senator STREET. Mr. President, I would like to change my vote from "aye" to "no."

The PRESIDENT. The gentleman will be so recorded.

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—35

Bell	Helfrick	Loeper	Reibman
Bodack	Hess	McKinney	Rhoades
Corman	Holl	Manbeck	Shaffer
Early	Hopper	Messinger	Singel
Fisher	Howard	Moore	Snyder
Gekas	Kelley	O'Connell	Stapleton
Greenleaf	Kusse	O'Pake	Stauffer
Hager	Lewis	Pecora	Stout
Hankins	Lincoln	Price	

NAYS—12

Andrezeski	Mellow	Ross	Tilghman
Lloyd	Murray	Scanlon	Wilt
Lynch	Romanelli	Street	Zemprelli

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

BILLS OVER IN ORDER

SB 529 and **532** — Without objection, the bills were passed over in their order at the request of Senator STAUFFER.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 710 (Pr. No. 746) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—48

Andrezeski	Holl	Mellow	Scanlon
Bell	Hopper	Messinger	Shaffer
Bodack	Howard	Moore	Singel
Corman	Kelley	Murray	Smith
Early	Kusse	O'Connell	Snyder
Fisher	Lewis	O'Pake	Stapleton
Gekas	Lincoln	Pecora	Stauffer
Greenleaf	Lloyd	Price	Stout
Hager	Loeper	Reibman	Street
Hankins	Lynch	Rhoades	Tilghman
Helfrick	McKinney	Romanelli	Wilt
Hess	Manbeck	Ross	Zemprelli

NAYS—0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

BILL LAID ON THE TABLE

SB 711 (Pr. No. 747) — Upon motion of Senator STAUFFER, and agreed to, the bill was laid on the table.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 712 (Pr. No. 748) — Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—29

Corman	Kusse	Messinger	Scanlon
Gekas	Lewis	Murray	Shaffer
Hager	Lloyd	O'Pake	Singel
Hess	Loeper	Price	Snyder
Holl	Lynch	Reibman	Stapleton
Hopper	Manbeck	Romanelli	Tilghman
Howard	Mellow	Ross	Zemprelli
Kelley			

NAYS—19

Andrezeski	Greenleaf	Moore	Stauffer
Bell	Hankins	O'Connell	Stout
Bodack	Helfrick	Pecora	Street
Early	Lincoln	Rhoades	Wilt
Fisher	McKinney	Smith	