

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: House Bill 2513

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Stenographic report of hearing held
in Room 711, Lehigh County Courthouse,
Allentown, Pennsylvania

Thursday,
September 13, 1990
1:00 p.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin R. Blaum, Subcommittee Chairman on Crime
and Corrections
Hon. Gerard A. Kosinski, Subcommittee Chairman on
Courts

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Terrence R. McVerry Hon. Robert D. Reber
Hon. John Pressmann Hon. Karen A. Ritter

Also Present:

William R. Andring, Chief Counsel
David Krantz, Executive Director
Galina Milahov, Research Analyst
Paul Dunkelberger, Republican Research Analyst
Katherine Manucci, Staff

Reported by:
Ann-Marie P. Sweeney, Reporter

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+ 60 attachments
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1 CHAIRMAN CALTAGIRONE: All right, I'd
2 like to open the public hearing on House Bill 2513, and
3 this is the House Judiciary Committee from the
4 Pennsylvania General Assembly. I'm Chairman Tom
5 Caltagirone from Reading, Berks County, and I'd like
6 each of the members up at the panel here to introduce
7 themselves, if they're staff or members, just for the
8 record and the audience.

9 MR. DUNKELBERGER: I'm Paul Dunkelberger
10 from the House Republican staff.

11 REPRESENTATIVE REBER: Bob Reber, State
12 Representative from Montgomery County.

13 REPRESENTATIVE McVERRY: Terrence
14 McVerry, State Representative from Allegheny County.

15 REPRESENTATIVE PRESSMANN: John Pressmann
16 from Lehigh County.

17 MR. ANDRING: Bill Andring, Democratic
18 Legal Counsel.

19 MR. KRANTZ: Dave Krantz, Democratic
20 Executive Director of the House Judiciary Committee.

21 CHAIRMAN CALTAGIRONE: Now, we will have
22 other members joining us throughout the hearing, and as
23 is the practice that I've done in the past when I go
24 into a member's area, I'd like to turn this hearing
25 over to Jack, who is also a member of the committee and

1 your Representative from this area in Lehigh County,
2 and it is Jack's bill, so I think it would only be
3 proper and fitting to turn the rest of the hearing over
4 to Representative Pressmann.

5 (Whereupon, Representative Pressmann
6 assumed the Chair.)

7 ACTING CHAIRMAN PRESSMANN: I've prepared
8 opening remarks for the record about the bill.

9 In the United States, both on the
10 national and State level, pressure from the Justice
11 Administration, psychologists, sociologists, and social
12 service agencies have been growing to improve the
13 situations for victims of crime. Legislators are
14 becoming aware that victims deserve to be treated with
15 dignity, respect, courtesy, and sensitivity. Their
16 rights should be honored and protected by law
17 enforcement agencies, prosecutors, and judges in a
18 manner no less vigorous than the protections afforded
19 to criminal defendants.

20 About a year ago an organization called
21 V.O.I.C.E., for Victims Of Irreparable Crime
22 Experiences, asked me to attend a meeting that they
23 were having for legislators. At that meeting, members
24 told me of their experience as victims and the problems
25 they have had through the system in dealing with their

1 crime. I learned that evening that victims are not
2 just the persons to whom the crime is perpetrated but
3 also their families. The victims explained to me how
4 they felt the system could better have served them. I
5 decided to take action.

6 I worked with many agencies and
7 individuals to try to alleviate the problems that
8 victims of crime suffer. Many provisions of this bill
9 are based on Florida's law. Although some amendments
10 will be added to this bill, the Department of
11 Corrections could handle the timely notice of release
12 of defendants on bail, et cetera, the police department
13 to notify of an inmate's escape from custody, I believe
14 that this bill is a step in the right direction.

15 This bill would inform the victims of all
16 the services available to them through the system and
17 how the process works. Because of their fear of being
18 revictimized, they are apprehensive and fearful. By
19 letting victims know of the step-by-step process of the
20 judicial system, these fears and apprehensions can be
21 alleviated. The district attorney's offices would
22 compile and make available all services offered to the
23 crime victims, such as the availability of crime
24 victim's compensation, crisis intervention and support
25 services, information on the role a crime victim plays

1 in investigations and prosecutions, and other legal
2 rights and means available. At the crime scene, law
3 enforcement personnel would distribute a victim's
4 information card or brochure which describes the
5 above-mentioned services. The purpose of this card is
6 to explain to the victim and the family what their
7 rights are. At the time of domestic violence crime or
8 a homicide, victims are not in a clear-headed state of
9 mind. By presenting them with a card, they can later
10 refer to it when they need to do so.

11 The law enforcement, prosecution,
12 probation, parole, and prison personnel would keep the
13 victim informed of all actions involved in cases such
14 as arrest, pending bail hearing, preliminary
15 arraignments, trials, sentencing, appellate review,
16 modification of a sentence, parole or pre-release plans
17 and any escapes of a convicted offender. The victim
18 would also be informed 30 days prior to the release of
19 a defendant from imprisonment, furloughs, or parole,
20 except in emergency situations. The provision was
21 added because of the ever-present fear in victims that
22 the criminal will retaliate against them.

23 The district attorney would also consult
24 with victims concerning any disposition of a case. The
25 victims could voice their opinions on release of the

1 accused pending judicial action, plea bargains,
2 sentencing, and possible placement and post-conviction
3 programs.

4 I believe that the crime victims deserve
5 to have an active role in the criminal justice process
6 and not just relegated to the role of a mere witness in
7 the prosecution of the alleged offender. The bill also
8 mandates the prompt return of the victim's property
9 held for evidence, unless a compelling legal reason
10 exists to hold it. It also would have prosecutors
11 inform the victim's employer of the need for leave so
12 the victim can participate in court proceedings without
13 the risk of losing their job.

14 Furthermore, a victim suffers financially
15 because of their cooperation in investigation or
16 prosecution. District attorneys also can contact the
17 victim's creditors if necessary to explain the
18 situation and possibly devise a solution. The district
19 attorney would also refer the victim to all public
20 agencies that could provide financial help, provide
21 adequate witness compensation, and give the victim the
22 right to restitution as a condition of probation or
23 parole.

24 The victim also will be given the right
25 to seek medical assistance unhindered by law

1 enforcement agents or questioning about the crime.
2 Victims also would be provided with a translator's
3 services when necessary.

4 I'd also like to note that an amendment
5 will be presented to include victims of drunk driving
6 accidents by adding to the definition of crime 30 PA CS
7 5502, relating to operating water craft under the
8 influence, et cetera, et cetera.

9 I want to stress to you that the victims
10 who support this bill will not benefit from the
11 services provided. They want this bill because they
12 want future victims to be given the rights they
13 deserve. I believe, like they do, that society today
14 has an obligation to insure that the law abiding
15 citizens have as many rights as those who commit the
16 crimes. Recently, a senior citizen wrote to me about
17 her case as a victim of rape. After describing the
18 incompetency of the judicial system that she had to
19 face in dealing with a crime, she stated, "I feel that
20 I have suffered almost as much from the treatment of
21 the court system as I did at the hands of the rapist."

22 Victims do not need to be victimized
23 again by the structure of the criminal justice system
24 and the inequities of the administration of such. The
25 fearless signers of the Constitution of the United

1 States guaranteed to the people of this nation the
2 right of life, liberty, and the pursuit of happiness.
3 For the people of the Commonwealth, we as legislators
4 can do no less.

5 We will now call the first witness, Gail
6 Rawlings, Pennsylvania Coalition Against Rape.

7 Okay, if the media wants to move their
8 microphones down now, that would probably be
9 convenient. Most of the statements you will get now
10 will be from the witnesses.

11 Okay, we seem organized now. Ms.
12 Rawlings, you may continue with your testimony.

13 MS. RAWLINGS: Okay, thank you.

14 Hello. My name is Gail Rawlings. I am
15 the Public Policy Analyst of the Pennsylvania Coalition
16 Against Rape and pleased to present testimony on behalf
17 of PCAR and its member centers to this committee.

18 Pennsylvania's rape crisis movement began
19 in 1972 with a network of rape crisis centers organized
20 by a handful of women determined to see that rape
21 victims are treated with dignity, fairness, and
22 sensitivity. To broaden and unify their efforts, PCAR
23 was formed in 1975. The objectives of the coalition
24 and their members were and still are the elimination of
25 sexual violence, the provision of service to victims of

1 sexual violence, the education of the public and
2 systems to the effects of sexual violence for the
3 individual and society. Today, 45 centers funded
4 through PCAR by the Department of Public Welfare
5 provide service to and advocate for sexual assault
6 victims - women, children, and men - in 58 of
7 Pennsylvania's 67 counties. In fiscal year '89-'90,
8 these centers served over 27,000 victims and others
9 closely associated with the victim, including family
10 members.

11 Historically, PCAR has played a vital
12 role in the victim rights movement in Pennsylvania.
13 Less than 14 years ago it was an accepted practice that
14 a woman's sexual history was admissible evidence.
15 Women were required to report the crime of rape within
16 90 days of the incident, and juries were instructed by
17 judges to take "special care in view of the emotional
18 involvement of the witness...." Due to tenacity and
19 hard work by PCAR, volunteers, and victims, these
20 provisions were eliminated and the law changed. PCAR
21 was also instrumental in the passage of the spousal
22 sexual assault law, and just this year incest was
23 finally upgraded from a misdemeanor to a felony.
24 However, criminal law is only one part of our justice
25 system that impacts victims. The enforcement of that

1 law, the justice rendered to the offender and the
2 treatment of victims during the process, are equally
3 important.

4 Judge Ralph Adam Fine and Josephine
5 Gittler have traced the evolution of America's criminal
6 justice system and the victim's roles in their
7 respective books, "Escape of the Guilty," and
8 "Expanding the Role of the Victim in a Criminal
9 Action." In colonial times, the victim's interests
10 were paramount. In fact, victims hired officials to
11 investigate, make arrests, hire private attorneys to
12 prosecute the accused. Individuals found guilty were
13 required to pay the victim damages as well or were
14 placed into the victim's servitude. Throughout the
15 18th and 19th centuries, however, the role of the State
16 increased with the emergence of prisons, public police,
17 public prosecutors, restitution benefiting the State in
18 the form of fines, and States being the plaintiff in
19 criminal actions. In essence, these reforms changed
20 the role of the victim from a party to the criminal
21 justice action to witness in the criminal action
22 brought on behalf of the State.

23 By relegating the victim to the role of a
24 mere informational resource, the individual is too
25 often revictimized by the criminal justice system. The

1 this failure and through HB 2513 has proposed expanding
2 and strengthening Act 96. PCAR is pleased to support
3 his efforts and welcomes the opportunity to participate
4 in the process. However, as victim advocates, we
5 cannot unconditionally support the bill in its current
6 form and encourage the committee and Representative
7 Pressmann to consider the following recommendations:

8 We recommend eliminating the definition
9 of "personal risk victim" and reference to "personal
10 risk victim" in the bill. The current language in
11 House Bill 2513 gives personal risk victims sometimes
12 more rights than other victims of other crimes. Also,
13 we find it to be rather confusing. What we recommend
14 is that the definition of "victim" be expanded, and
15 that the crime victim should have equal access to
16 service, and the discretion to utilize these services
17 should be left up to the victim.

18 We suggest including language which
19 defines "victim" as:

20 - "A person against whom a crime or
21 feloniously assaultive or domestic crime is being or
22 has been perpetrated or attempted;

23 - "A parent, legal guardian or guardian
24 ad litem of a child so victimized;" or

25 - "A person who is next of kin of a

1 homicide victim or their lawful representative."

2 Recommendation two. In Section 1, number
3 six, which pertains to notifying the domestic violence
4 victims of their right to file for relief under the
5 Protection From Abuse Act, PCAR asks that sexual
6 assault victims be included in the language.
7 Pennsylvania's statute governing Protection From Abuse
8 Orders affords protections for both domestic violence
9 and sexual assault victims - specifically victims of
10 rape, spousal sexual assault, involuntary deviate
11 sexual intercourse or sexual abuse perpetrated by a
12 household member.

13 Number three. To ensure that the rights
14 of child victims or adults who have the developmental
15 age of a child are fully protected, we suggest defining
16 "child" and "guardian ad litem" as they would pertain
17 in the statute. Federal legislation sponsored by
18 Congressman Mike DeWine of Ohio has been introduced
19 which would create a victim bill of rights for these
20 individuals. We feel that we don't need a separate
21 bill as much as we would like a comprehensive bill and
22 to clarify to protect children. So what we've
23 suggested is defining "child" as "an individual who has
24 not attained the age of 18 years;" or "an individual
25 who, as determined by the court, has been documented by

1 the appropriate professionals to be of a developmental
2 age of less than 18 years."

3 The language regarding "guardian ad
4 litem" we recommend using is, "The court shall, at the
5 earliest possible stages, determine whether the
6 appointment of a guardian ad litem for a child in a
7 criminal proceeding would be in the best interest of
8 the child. In making the appointment, the court shall
9 consider the person's background in, and familiarity
10 with, the judicial process, social service systems and
11 child abuse issues. The guardian shall not be a person
12 who is or may be a witness in any proceeding with the
13 alleged offense. For purposes of this statute, the
14 guardian ad litem does not have to be a practicing
15 attorney."

16 "The guardian ad litem may attend all
17 depositions, hearings and trial proceedings and make
18 recommendations to the court. The guardian may have
19 access to all reports, evaluations and records, except
20 the attorney's work product, necessary to be an
21 effective advocate for the child."

22 "The guardian ad litem shall not be
23 compelled to testify in any court action or proceeding
24 about any information or opinion received from or about
25 the child in the course of serving as guardian."

1 "The guardian ad litem shall be immune
2 from civil and criminal liability for carrying out in
3 good faith such guardian's duties."

4 And number four, adult victims are often
5 fearful and very apprehensive regarding the formal
6 procedures that take place within a courtroom. These
7 emotions are compounded with the child victim. To help
8 allay these fears, we suggest including the provision
9 for use of a child attendant in the legislation. Once
10 again, the language we are suggesting is based on
11 Congressman DeWine's legislation:

12 "Child Attendant - A child victim
13 testifying at a criminal proceeding shall have the
14 right to be accompanied by a parent, legal guardian, or
15 guardian ad litem to provide emotional support for the
16 child. The court, at its discretion, may allow the
17 attending adult to remain in close physical proximity
18 to or in contact with the child while the child
19 testifies. The attending adult shall not provide the
20 child with an answer to any question directed toward
21 the child or otherwise prompt the child during the
22 course of the child's testimony."

23 Number five. To allay the fears and
24 anxieties experienced by victims during criminal
25 proceedings, victim service centers have trained

1 individuals to serve as advocates. These individuals
2 provide emotional support and court accompaniment for
3 the victim and their families during the process. To
4 ensure that the advocate is guaranteed to be with the
5 victim during the proceedings, we suggest specifically
6 stating a right which would assure victims given the
7 knowledge that the advocate will have open access to
8 accompany the victim to all court proceedings. We have
9 included language that clarifies the right that we're
10 recommending:

11 "The victim has the right to be
12 accompanied by a victim advocate during court
13 proceedings. The victim advocate's role is to provide
14 court accompaniment and emotional support to the
15 victim. The victim advocate shall be a representative
16 of a victim service center including, but not limited
17 to, a sexual assault center, a domestic violence
18 program or crime victim center."

19 Number six. We're uncomfortable with the
20 word contained in Section 4 pertaining to information
21 concerning charges filed, bail, and bail conditions.
22 As an advocate for sexual violence victims, PCAR on one
23 hand welcomes the understanding that victims should
24 have immediate notification of the outcome of these
25 types of proceedings. On the other hand, other victim

1 advocate groups, particularly homicide survivors, may
2 perceive the language as preferential treatment.
3 Therefore, PCAR suggests expanding the category of
4 victim which would receive prompt notification to
5 include victims of attempted murder or other crimes in
6 which the personal safety is at risk. PCAR also
7 suggests specifying that within 24 hours that all other
8 crime victims be notified as to the information
9 concerning the charges filed, bail, and bail
10 conditions.

11 Number seven. PCAR suggests language be
12 added to ensure the provision of rights as specified in
13 the bill to all crime victims. Under the current
14 system, there is no process in place for a victim to
15 follow if their rights have been denied. PCAR supports
16 language which would permit a victim to file a cause of
17 action with the Pennsylvania Court of Common Pleas if
18 their rights have been violated. We have also reviewed
19 similar bills that are pending in the legislature that
20 specify in addition to this and in recovery for
21 consequential damages, that the victim is required to a
22 civil penalty and not less than \$200 nor more than
23 \$500. If this approach is explored, we suggest that
24 the amounts of the fines be high enough to encourage
25 compliance with the law.

1 Number eight. We ask that language be
2 included to mandate training for district attorneys,
3 district justices, judges, law enforcement officials,
4 and victim witness personnel on the provisions of this
5 law and the needs of victims. The training should be
6 provided by the appropriate victim advocacy groups in
7 this State. To create a comprehensive victim bill of
8 rights is simply not enough. The implementation and
9 enforcement of that law are equally important.

10 Number nine. Once again, we have before
11 us a bill which does not specify how much money will be
12 appropriated to expand the rights of victims and
13 guarantee the services for the victims. To effectively
14 provide these services, a great deal of money will be
15 needed. The impact of this legislation will be minimal
16 and sporadic if not properly funded. PCAR recommends
17 including language in the bill that would specify
18 appropriation to institute these changes. Without
19 financial support, a successful implementation of the
20 statute will be difficult, if not impossible, in many
21 parts of the Commonwealth.

22 In testifying before the Senate Judiciary
23 Committee in Washington, Ronald Zweibel, Chair of the
24 New York State Crime Victim's Board, amply expressed
25 the importance of protecting the rights of victims. He

1 stated, "The information provided by the victim is
2 essential to the continuing function of the system. In
3 this vein, due process must be afforded to the victim
4 which is readily provided to the offender. It must be
5 acknowledged that the interests that the system has in
6 cooperation and assistance that the victim can provide
7 is no greater than the interest victims have in being
8 informed, notified, and in having their input
9 considered in matters which so fundamentally affect
10 their rights as people harmed by a society which failed
11 to protect them."

12 PCAR thanks you for the opportunity to
13 participate in this hearing. PCAR supports the intent
14 of House Bill 2513 and we hope to be strong advocates
15 for its passage once the amendments are offered.
16 Pennsylvania has made great strides in addressing the
17 needs and rights of victims. However, we have a long
18 way to go. A comprehensive victim bill of rights will
19 bring Pennsylvania much closer to the goal. With the
20 combined efforts of the legislature, victim advocacy
21 groups, and the criminal justice system, we can begin
22 to balance the scales of justice and help victims
23 become survivors.

24 Thank you.

25 ACTING CHAIRMAN PRESSMANN: Thank you.

1 Before any questions, several members
2 have joined us. Representative Karen Ritter from
3 Allentown, Representative Kevin Blaum from the city of
4 Wilkes-Barre, Representative Jerry Kosinski from the
5 city of Philadelphia. That's all that's joined us.

6 Questions from members of the committee
7 for Ms. Rawlings?

8 (No response.)

9 ACTING CHAIRMAN PRESSMANN: I think your
10 recommendations are well taken and be assured that I
11 will look at them very closely as we try to move this
12 bill forward and look forward to continuing to work
13 with you in getting this bill through the legislature.

14 MS. RAWLINGS: Okay, thank you.

15 ACTING CHAIRMAN PRESSMANN: Thank you for
16 your time.

17 Next witness is Freda Rafes, from the
18 Crime Victims' Council.

19 MS. RAFES: My testimony is located in
20 the packet in the folder.

21 ACTING CHAIRMAN PRESSMANN: Okay, the red
22 folder you have.

23 MS. RAFES: Well, different colors.

24 Good afternoon. My name is Freda Rafes,
25 and I'm representing the Crime Victims' Council of

1 Lehigh Valley. I am the outreach coordinator and have
2 been involved with Crime Victims' Council for seven
3 years.

4 I wish to thank the members of the
5 Pennsylvania House Judiciary Committee for inviting
6 Crime Victims' Council to be represented and to provide
7 the committee with testimony regarding House Bill 2513.
8 We at Crime Victims' Council commend your efforts in
9 considering amending the current basic bill of rights
10 for victims.

11 Crime Victims' Council is a private,
12 nonprofit organization which is dedicated to providing
13 comprehensive support and assistance to victims of all
14 violent and personal crime as well as to their
15 significant others. We serve clients in Lehigh and
16 Northampton Counties by providing two 24-hour hotlines,
17 crisis intervention, accompaniment services, individual
18 and group counseling, information and referrals, and
19 assistance in filing for Pennsylvania victims'
20 compensation.

21 I am an advocate for victims' rights
22 legislation to improve fair treatment for victims for
23 two reasons. One is that in my seven years' experience
24 in victim assistance, I have witnessed the frustration
25 and anxiety victims suffer as a result of the emotional

1 aftermath of crime victimization which is often
2 compounded by the limits, restrictions, and oversights
3 inherent in our criminal justice system and current
4 laws. Secondly, as a survivor of rape, I have
5 experienced both the societal stigma placed on victims
6 and also criminal justice system insensitivity.
7 Therefore, I wish to do whatever I can to improve the
8 plight of crime victims - whether providing direct
9 services, community education, or advocating the
10 legislative reforms.

11 Before I can specifically address areas
12 of concern that Crime Victims' Council has regarding
13 House Bill 2513, I must clarify the extent of crime
14 victimization particularly in the Lehigh Valley. If
15 you're interested in national statistics, I have
16 enclosed in the packet a very brief overview of crime
17 victimization in America, but I will talk about local
18 statistics.

19 During the one-year period between July
20 1, 1989 through June 30, 1990, Crime Victims' Council
21 assisted 1,363 clients - individuals directly or
22 indirectly victimized by violent crime, that is family,
23 friends, or other significant others of victims.
24 Almost 82 percent, or 1,117, of these clients were
25 victimized by some form of sexual assault or abuse. In

1 fact, 37 percent of those clients were children under
2 18 years old who had either been sexually assaulted or
3 sexually abused.

4 The next largest client group we served
5 in that same one-year period included 77 survivors of
6 homicide victims, that is family and/or friends of
7 murder victims. In addition, we assisted 65 victims of
8 aggravated or simple assault, 43 victims of attempted
9 homicide, and approximately 32 individuals victimized
10 by someone driving under the influence of alcohol or
11 drugs.

12 The scope of crime victimization in
13 Lehigh Valley, however, is not necessarily represented
14 by Crime Victims' Council's client population. First
15 of all, our clients do not include victims of spousal
16 abuse, with the exception of a very small number of
17 cases involving marital rape, that is spousal sexual
18 assault. In addition, not all violent crime victims
19 are seeking help from Crime Victims' Council or are
20 being referred to us for assistance. Furthermore, it
21 should be taken into account that national findings
22 show that approximately 50 percent of all violent crime
23 victimizations are reported to the police. We are
24 looking at a victim population that is at least twice
25 as large as it appears. But what is more significant

1 is that it is still growing and it will be growing. In
2 1987, it was estimated that about 80 percent of people
3 who were 12 years old in the United States would become
4 victims of completed or attempted violent crimes during
5 their lifetime if current crime rates continued
6 unchanged. It was also estimated that at current
7 homicide rates, 1 out of every 133 Americans would be a
8 murder victim. The implications of these statistics
9 are not only startling but they're frightening. In
10 terms of victims' rights legislation, it is evident
11 that in view of victimization trends, as well as
12 projections for the future, this is a population that
13 can no longer be ignored nor patronized.

14 Also, at first glance, local statistics,
15 meaning from Crime Victims' Council, may indicate that
16 the area of most importance or presenting the most
17 serious need would be sexual assault. Although we
18 certainly don't dismiss the obvious preponderance of
19 sexual assault victims, we also cannot diminish the
20 needs of victims of other violent crime, because behind
21 every statistic, every number, there is a person, a
22 human being, who has suffered physical, emotional, and
23 financial hardship as a result of the criminal acts
24 perpetrated upon him or her or a loved one. And
25 because they have all suffered from the physical,

1 emotional, and financial hardship, they must all be
2 extended the same rights and privileges.

3 We at Crime Victims' Council are pleased
4 to see an effort on the part of the legislature to
5 expand victims' rights. After reviewing the current
6 draft of House Bill 2513, we have identified certain
7 areas of weakness and wish to make the following
8 recommendations:

9 First of all, although we support the
10 recognition and inclusion of individuals previously not
11 represented as victims, we feel that either those
12 considered "personal risk victims" be added whenever a
13 provision is made for the victim only, or more
14 preferably, to expand the definition of "victim" to
15 include those listed in the draft under personal risk
16 victims. All individuals victimized by crime, whether
17 directly or indirectly, as I said before, suffer
18 physical, emotional, and financial injury. Therefore,
19 equal access to services is needed. Crime does not
20 discriminate, everyone suffers.

21 Secondly, the provision of information
22 concerning charges filed, bail, and bail condition
23 appears in this draft of House Bill 2513 to be a
24 privilege set aside only for victims of rape, sexual
25 assault, and domestic violence. We applaud the special

1 concern for these victims. However, if the intent of
2 this clause was to make it possible for a victim who
3 felt imminent threat of possible harm to have ample
4 time to prepare for their own protection and safety,
5 then others not represented need to be included.

6 Although retaliation is not a common
7 occurrence, it does happen. What needs to be
8 recognized is that it does not occur exclusively in
9 cases of rape, sexual assault, and domestic violence.
10 Furthermore, equal treatment of victims must be
11 ensured. Therefore, any victim who feels an imminent
12 threat of harm must be extended the privilege of
13 notification of charges filed, bail, and bail
14 conditions within one hour as well.

15 And thirdly, victim assistance
16 legislation has made many strides over the last 15
17 years. Each new act has expanded benefits to crime
18 victims, as well as increased efforts to provide fair
19 and just treatment of victims without depriving the
20 defendant of his or her rights. However, in every
21 piece of legislation enacted, there is a glaring
22 omission. There is no provision for enforcement.
23 There are no mechanisms to insure that these
24 stipulations are in fact carried out. Furthermore, if
25 the victim is intentionally or inadvertently denied any

1 of these rights or if there is any kind of violation of
2 a victim's rights, the victim has no recourse.

3 For instance, when a victim files a claim
4 to be compensated from medical expenses incurred as a
5 result of a crime, he or she is expected to be
6 responsible for being honest and follow the letter of
7 the law. Any infraction, for example, filing a false
8 claim, will result in that victim being charged with a
9 criminal offense. That is clearly a mechanism for
10 enforcement of filing honest claims. But on the other
11 hand, no such mechanism exists for victims' rights.
12 Victims must have legal recourse to insure that the
13 criminal justice system and law enforcement be
14 responsible in providing victims the rights they are
15 entitled to. If any of these rights are ignored,
16 forgotten, infringed upon, denied, or violated, a
17 victim must be given the right to either seek civil
18 reparations through fines, or preferably, have the
19 right to file a cause of action suit.

20 And just as a personal aside, my own
21 personal experience as a trainer of police,
22 particularly in what they call a victim assistance act,
23 part of their syllabus, I have met with incidents of
24 resistance and annoyance at having to notify a victim
25 of the possible eligibility for victims' compensation

1 and they feel it's a big inconvenience. Now, I'm not
2 speaking for all of them, but I have actually gotten
3 some comments from people who I have trained, and I
4 have done at least a half a dozen police trainings on
5 victim assistance or victims' compensation acts.

6 Okay. So quite frankly, if mechanisms
7 for enforcement are not included, every provision in
8 this piece of legislation, just as those that have been
9 enacted in the past, will be just lip service and --
10 I'm sorry I have to say this, but not worth the paper
11 on which it is printed.

12 We would hope that you as legislators
13 would want your constituents, as well as citizens
14 outside of your districts, to be aware and
15 knowledgeable about the proposed or pending legislation
16 which may impact directly on their lives or on the
17 lives of their family members. Some may even be
18 interested in the bill's benefit to the community as a
19 whole. We also hope that as legislators you would want
20 to invite the general public to such a hearing as this,
21 since there may be individuals who are particularly
22 interested in this issue but who are not involved with
23 those of us who are testifying. It is also an
24 opportunity for the public to witness part of the
25 legislative process without having to travel to

1 Harrisburg.

2 It seems, unfortunately, as though
3 publicity informing the general public in advance about
4 this hearing was greatly lacking. We at Crime Victims'
5 Council were told there would be news releases
6 distributed, and we respected requests that we not
7 contact the media on our own. As a result, the public
8 will know about this hearing after the fact, with the
9 exception of one little article in today's paper, not
10 having the opportunity of voicing their concerns or
11 hearing others.

12 We hope that if there are future hearings
13 regarding House Bill 2513 planned that ample advance
14 publicity be distributed. Victims need to be heard,
15 otherwise, this issue will be continually ignored.
16 After all, as I have learned in my seven years in
17 victim assistance, most people ignore or don't even
18 care about victims' issues and victims' rights until it
19 happens to them or a loved one.

20 Thank you again for this opportunity to
21 testify. We at Crime Victims' Council support the
22 intent of HB 2513. We hope you will consider the areas
23 of weakness we have identified because we see a strong
24 need for a fully comprehensive victims' rights bill.
25 Please contact us if you need further assistance.

1 Good afternoon.

2 ACTING CHAIRMAN PRESSMANN: Thank you.

3 Press releases were sent out both by my
4 office and the Chairman's office in advance of the
5 hearing. Yesterday I appeared on Channel 69 in advance
6 of the hearing. There was an article in today's paper.
7 I cannot control the media and what they choose to
8 print and not print.

9 I have one question for you before I ask
10 the other members if they have any.

11 BY ACTING CHAIRMAN PRESSMANN: (Of Ms. Rafes)

12 Q. How do the majority of the people who
13 come to you for services hear about your organization
14 and your services?

15 A. The majority are quite satisfied.

16 Q. No, no, how do they--

17 A. Oh, find out about us?

18 Q. Yeah, find out.

19 A. Well, there's many different sources.
20 Sometimes it's from contact with us in the hospital
21 emergency room right after they've been a victim,
22 sometimes it's a referral by the police, sometimes it's
23 a referral somewhere along the prosecution process,
24 sometimes it's at the point where they must appear at a
25 preliminary hearing and we go and accompany them to

1 that procedure, or at a trial. There's various stages
2 in the criminal justice system and the prosecution
3 process at which we would have an initial contact with
4 the victim. We publicize our hotlines, we do press
5 releases, we do several, well, many, many community
6 education programs in both Lehigh and Northampton
7 Counties to educate the public about our services if
8 they ever have the need for them.

9 ACTING CHAIRMAN PRESSMANN: Questions
10 from the committee or staff?

11 Kevin.

12 BY REPRESENTATIVE BLAUM: (Of Ms. Rafes)

13 Q. The notification you've pointed out for
14 victims of sexual assault, notification for bail and
15 other releases, limiting it to them you think is a bad
16 idea, and that should be expanded to other victims of
17 crime who may fear retaliation. Aside from
18 retaliation, how do you feel about the idea of
19 notifying crime victims simply from a standpoint of
20 justice, that they should be made aware? They may have
21 no fear of retaliation from the person who burglarized
22 their home while they were out but just for the
23 standpoint of respect for the crime victim that they
24 should be notified that the perpetrator of this crime
25 here's what's happening to that person, here's how the

1 process is moving forward. Do you think that should
2 also be included?

3 A. Yes, I would support that.

4 Q. Okay.

5 REPRESENTATIVE BLAUM: Thank you.

6 ACTING CHAIRMAN PRESSMANN: Any other
7 questions from the committee or staff?

8 (No response.)

9 ACTING CHAIRMAN PRESSMANN: Seeing none,
10 thank you for your testimony.

11 MS. RAFES: Thank you.

12 ACTING CHAIRMAN PRESSMANN: John Kunkle,
13 Pennsylvania Commission on Crime and Delinquency.

14 Do you want to state your name for the
15 record and also the gentleman with you, state his name
16 for the record, please?

17 MR. KUNKLE: My name is John Kunkle. I'm
18 the Program Manager for Victim Services of the
19 Commission on Crime and Delinquency. This is Rick
20 Reeser. Rick is the Director of the Bureau of Program
21 Development in the Commission, and that bureau houses
22 the victim services program.

23 ACTING CHAIRMAN PRESSMANN: Thank you.
24 You may continue.

25 MR. KUNKLE: Representative Pressmann,

1 Mr. Chairman, members of the House Judiciary Committee,
2 thank you for the opportunity to testify today on the
3 proposed amendments to Pennsylvania's victim rights
4 legislation. As you may know, PCCD is the State agency
5 that is responsible for administering the grants and
6 technical assistance program that provides support for
7 local victim witness services under the provisions of
8 Act 96 of 1984. The money used to support these
9 programs comes from a \$5 penalty assessment on
10 convicted offenders that provides about a million
11 dollars a year.

12 When we were given the victim services
13 mandate under Act 96, we set about to design a program
14 that was comprehensive, uniform, coordinated, and
15 geographically broad-based. To promote comprehensive
16 and uniform services for victims, we used the State
17 level advisory committee to compile a document that
18 speaks to the issues of fair treatment of victims in
19 both the criminal justice system and in the community
20 based victim service agencies. That document, which I
21 have here today, I'll leave several copies with my
22 testimony, has been broadly distributed and promoted
23 throughout the criminal justice and victim service
24 communities in Pennsylvania.

25 To ensure that the services are

1 coordinated at the local level, we have required that
2 those counties that participate in the program
3 establish a local policy board comprised of criminal
4 justice and victim service representatives. The
5 purpose of the board is to assess the most critical
6 needs for support for victims and to recommend to the
7 PCCD a cost effective and coordinated strategy for
8 closing service gaps.

9 Finally, to provide an opportunity for
10 maximum participation statewide, we have applied a
11 formula allocation to the roughly million dollars that
12 we have each year. And that allocation is based on a
13 county's population, crime, and the amount of penalty
14 assessments that that county collects. And we then
15 have a fixed allocation for each county, and by
16 distributing dollars in this fashion, we extend an
17 opportunity for every county to participate in this
18 program. And as of this date, 58 of 67 counties are
19 actively participating in the program.

20 While we feel we've made significant
21 progress in meeting the needs of the Commonwealth's
22 crime victims, we recognize that not all victims are
23 properly informed, not all victims are duly recognized,
24 and not all victims are extended the appropriate
25 opportunities to participate in the criminal justice

1 process. Therefore, we welcome the committee's
2 interest in enhancing victim rights and services and
3 appreciate the opportunity to offer our thoughts on
4 House Bill 2513.

5 Let me preface our position, however,
6 with our perception of the most critical need in the
7 victim rights movement in Pennsylvania. Our experience
8 in administering the program over the last five years
9 suggest that for the most part the system is willing to
10 extend important considerations to victims but lacks
11 the resources to do so. As many of you know, we have
12 documented the need for additional resources for
13 victims' services and have worked with the
14 administration to introduce legislation to increase the
15 penalty assessments that we currently use to fund these
16 programs. We sincerely appreciate the support of
17 Representative Caltagirone, the prime sponsor of House
18 Bill 2361, and Representative Pressmann and other
19 members of this committee who cosponsored this measure.
20 We hope that when the legislature reconvenes on
21 September 24th that the House will approve the
22 recommendation of this committee and forward the bill
23 for Senate action.

24 You heard many individuals speak today
25 about the need to provide support to see that these

1 services are upheld. The additional support that we
2 would receive through this bill will enable us to
3 promote a much stronger commitment to the types of
4 services that are called for under House Bill 2513.

5 With respect to the bill under
6 consideration today, we believe that it puts forth a
7 comprehensive strategy for serving and meeting the
8 needs of crime victims. If it is followed, it
9 certainly would go a long way to do that. We would
10 suggest, however, a general streamlining of the bill
11 and a separation of the rights and responsibilities
12 into two distinct subsections, in the interest of
13 clarity.

14 For example, the bill as currently
15 constructed contains three definitions of crime and two
16 definitions of victim. We believe that these multiple
17 definitions will be confusing to those that are to
18 carry out these services. We would limit the
19 definitions of crime to two, a general definition of
20 crime that indicates who a victim is in Pennsylvania
21 and eliminates the motor vehicle offenses and fish and
22 game laws and concentrates on the Crimes Code and drunk
23 driving offenses, and a personal injury crimes category
24 that would isolate those individuals, as you've heard
25 in the other testimony, who are victims of violence and

1 may need additional services beyond victims of
2 non-violent acts.

3 In the interest of time, I'll not dwell
4 on the technical amendments to the definitions but
5 would rather refer you to the specific language
6 recommended in Appendix A attached to this testimony.
7 We believe that the language recommended simplifies the
8 issue of who is served and in what ways without
9 compromising the intent of the multiple definitions.

10 With respect to the bill of rights as
11 articulated, we believe, as I've just stated, that a
12 separation of rights and responsibilities would help to
13 clarify the law. We would reduce the number of rights
14 from the current 14 to the following 8, and I will read
15 the rights that we would propose.

16 Victims of crime shall have the following
17 rights:

- 18 1. To receive basic information
19 concerning the services available for victims of crime.
- 20 2. To be protected from harm and threats
21 of harm arising out of their cooperating with law
22 enforcement and prosecution efforts.
- 23 3. To be notified of the significant
24 actions within the criminal justice system pertaining
25 to their case, including the arrest of the suspect, the

1 charges filed, and the disposition and sentence of the
2 defendant.

3 4. To be present and to be heard when
4 relevant at all critical stages of judicial proceedings
5 in a matter which preserves the Constitutional rights
6 of the accused.

7 5. To provide input to the disposition
8 and sentence of the defendant to include the submission
9 of a victim impact statement detailing the physical,
10 psychological, and economic consequences of the crime
11 to the victim and the victim's family.

12 6. To be restored, to the extent
13 possible, to the pre-crime economic status through the
14 provision of restitution, compensation as provided
15 under the compensation program, and the expeditious
16 return of property seized as evidence in the case.

17 7. In personal injury crimes, to be
18 notified of the pre-trial and pre-sentence release of
19 the defendant.

20 8. Upon request of the victim in
21 personal injury crimes, to be given an opportunity to
22 provide input to any post-conviction release decisions
23 and to be notified of such decisions and/or the escape
24 of the offender.

25 The responsibility for implementing these

1 rights would fall under three areas - law enforcement,
2 prosecution, and corrections. Again, in the interest
3 of time, I will not read the recommended language which
4 we offer today but refer you to the attachment that we
5 have to this testimony and simply offer the highlights
6 of these responsibilities.

7 The police would be responsible for
8 providing basic informational services available,
9 including telephone numbers of service agencies,
10 procedures for dealing with intimidation, and
11 compensation claims information. The police report
12 would be revised to provide for a victim check-off
13 signifying receipt of this information. Law
14 enforcement would also be responsible for notifying
15 victims of the arrest of the suspect, charges filed,
16 and in personal injury crimes the pretrial release or
17 escape of the defendant. District attorneys would be
18 responsible essentially for coordinating services to
19 victims where the offender has been apprehended and
20 prosecuted. Services would include an orientation to
21 the justice system, notice of continuances, assistance
22 with input to and notice of disposition and sentence.
23 In personal injury crimes, assistance with input to and
24 notice of post-conviction release, secure waiting area
25 during judicial proceedings, compensation claims

1 assistance, and auxiliary services, to the extent that
2 these serve resources are available, such as
3 transportation and child care.

4 County correctional authorities would be
5 responsible for information on the release of the
6 defendant or offender in personal injury crimes.
7 Wardens would be responsible for notifying the police
8 of their release of the defendant on bail or of any
9 escapes. The chief probation officer would be
10 responsible, upon request of the victim, for notifying
11 the district attorney or victim of the impending or
12 actual parole of the county inmate.

13 Finally, with respect to the State
14 correctional authorities, we would point out that the
15 authorizing statute of the Pennsylvania Board of
16 Probation and Parole currently provides for victim
17 input to and notice of the release of State inmates on
18 parole. We understand that the board's victim input
19 program is working fairly well. The Department of
20 Corrections, which is authorized to release inmates to
21 a status other than parole, like temporary furlough or
22 halfway house release, has a policy of inviting victim
23 input and providing notice of release through
24 communication forwarded to the sentencing judge and
25 copied to the district attorney. We would recommend

1 that the department's policy be directed by statutes
2 separate from House Bill 2513 and would welcome the
3 opportunity to work with the department on the specific
4 language.

5 In conclusion, let me state that the
6 Commission is committed to the fair treatment of all
7 victims of crime in Pennsylvania and welcomes the
8 opportunity to work with the legislature on strategies
9 to strengthen that commitment.

10 Thank you very much.

11 ACTING CHAIRMAN PRESSMANN: Thank you.

12 BY ACTING CHAIRMAN PRESSMANN: (Of Mr. Kunkle)

13 Q. Do you feel that if HB 2361 is passed
14 into law that that will provide an adequate amount of
15 money to handle what we're talking about in this bill
16 and the recommendations that have been made?

17 A. Let me respond by saying that the
18 research that was used as the basis for that bill was
19 not done on the basis of what's being discussed today.
20 However, much of what is contained in that bill is
21 already promoted in our fair treatment guidelines, and
22 we contacted the people in the field to discuss with
23 them how far they were falling short of what they
24 needed, and that is the basis of our request for
25 additional \$3 million. The bill has been amended in

1 the Appropriations Committee. We were originally
2 looking at a \$15 increase in PCCD's penalty assessment.
3 That has now been amended to a \$10 increase. So the
4 only way I can respond is to say that we would take a
5 \$1 million program and go to about a \$3.5 million
6 program. We would significantly achieve much of what
7 is requested and sought in House Bill 2513, but I would
8 be remiss to suggest that if we get that money we would
9 be able to carry out every service that's called for
10 here to the letter of the law.

11 Q. It is my understanding that we have
12 agreement on the appropriations bill that we need, it's
13 a matter now of the mechanics of moving through the
14 system, is that correct?

15 A. I believe. We understand that the bill
16 will be considered either on the 24th or 25th for
17 consideration, and it's our hope and expectation that
18 there will be a vote at that time.

19 Q. Is there agreement with the Senate on
20 moving the bill?

21 A. We haven't discussed the particulars of
22 House Bill 2361 with the Senate because we don't know
23 how it may emerge from the House. I mean, it's already
24 been changed over what was introduced. Once the bill
25 is passed in the House we plan to work very closely

1 with the Senate to ensure that they're comfortable.

2 I should point out that there was a
3 companion bill, Senate Bill 1514, introduced with House
4 Bill 2361 that has been referred to Judiciary in the
5 Senate, but no action has been taken on that and it's
6 our expectation that the Senate will look at the House
7 version.

8 ACTING CHAIRMAN PRESSMANN: Okay, thank
9 you.

10 Questions from the committee?

11 Kevin.

12 BY REPRESENTATIVE BLAUM: (Of Mr. Kunkle)

13 Q. John, I think Representative Pressmann
14 did a terrific job in putting this legislation
15 together, and I'm interested in your compaction of his
16 list of victims' rights. In number 5 you point out
17 that it is the right of a victim to submit a victim
18 impact statement, and you list for that reasons of
19 physical, psychological, and economic effects of crime,
20 which I think extends into the question I asked the
21 previous witness, to victims of crime other than those
22 who have been physically a victim. And down in number
23 7 you just point out in personal injury crimes that it
24 be the right of the victim to be notified of the
25 pre-trial and pre-sentence release of the defendant.

1 And my question is, I guess, shouldn't that be extended
2 to all victims of crimes, not just limited to those who
3 experience personal injury in a crime, physical injury?

4 A. Yeah. I think that it becomes a resource
5 issue. It involves a number of agencies and
6 significant coordination to provide for the notice of
7 release. Release can occur, as I'm sure you're aware,
8 at any time of the day or night, and I think if you
9 look at the purpose of release as being to inform
10 victims who may be threatened with harm or who may feel
11 intimidated, that we would be comfortable limiting the
12 notice of release to personal injury crime victims.
13 Where someone has property stolen, I don't know that
14 that victim, frankly, is that interested that someone
15 was released on bail. I think it's a concession that
16 you have to make realizing that the amount of resources
17 that need to be extended in order to cover this
18 particular right for all victims. I don't believe the
19 system, I'm sure the system could not accommodate this
20 right for all victims with the money that we're looking
21 for through House Bill 2361. So it's a concession. Up
22 until the seventh right, we're recommending that the
23 first six be extended to all victims, and we think
24 that's doable. As you start getting into release
25 notification, it becomes much more complicated and much

1 more difficult for the system to get that information
2 out on a timely basis, and it's a concession that we
3 think would not be terribly disturbing to property
4 crime victims.

5 Q. Okay. In the eighth right which you
6 list, you note that upon request of the victim in
7 personal income crimes to be given the opportunity to
8 provide input to any post-conviction release decisions.
9 My question, again, is the same two-fold here. Again
10 that you point out personal injury victims. You limit
11 it to that, and at the same point you put it upon the
12 victim for them to make the request to have this input.
13 My experience is that some victims don't know that they
14 have this opportunity to have this kind of input and
15 therefore would never even think to request the right
16 to have it, that shouldn't there be some kind of
17 notification to the victims that they have this
18 opportunity to have input?

19 A. I think if you look at number 5 talks
20 about the opportunity to provide input to the
21 disposition and sentence.

22 Q. Um-hum.

23 A. Well, let me answer the first part of
24 your question by the resource issue. Again, notice of
25 release is something that we see as costly and beyond

1 personal injury crimes we're not sure that the
2 resources that you would have to amass to do that is
3 justified by victim's interest. We understand, working
4 with the Board of Probation and Parole, that only I
5 think about 20 percent, 25 percent, of those who are
6 extended an opportunity to provide input when the board
7 is going to parole someone actually do. So this is
8 something that I think is important to extend to
9 personal injury crime victims, but not everyone is
10 interested in doing that. And there are some victims
11 who don't want to know. There is documented evidence
12 of instances where notifying the victim that an
13 individual is coming out of the State institution
14 traumatizes them again. They assume that there must be
15 a reason for telling them, that maybe this guy has said
16 that he's going to get them. Some victims, frankly, do
17 not want to know, and the system should not, in its
18 interest of serving victims, traumatize the victim
19 another time by providing information that, frankly,
20 the victim doesn't want to hear.

21 Q. But that suggests that the victim is
22 going to be traumatized more by the phone call from the
23 Parole Board that the perpetrator is going to be
24 released and bumping into that perpetrator at the mall.

25 A. I understand that. What we have promoted

1 and what we know is working in some counties is that
2 when the individual is sentenced to the institution,
3 the victim is given the opportunity to file the card
4 that indicates to the parole board that he or she is
5 interested in providing input or notice of release when
6 that individual is released. They have that
7 opportunity. All we're saying is they should elect
8 whether or not they receive that notification, and as
9 I'm saying, some of them don't know and would prefer to
10 take the chance of bumping into them in a grocery
11 store.

12 Q. Right. I agree with you. My point is
13 here is that they not have to take the initiative to
14 have that input, that if in fact they are notified that
15 there will be a day when you may want to have input. I
16 mean, to me, that's notification. That is that they
17 have had the opportunity, that it's not something they
18 had to understand that was written in Purdon's
19 somewhere that they have this right to do that, that
20 somebody told them, you know, under the law you will be
21 able to have input at certain proceedings involving
22 this perpetrator and if you want to have that input,
23 let us know. I mean, that's all I'm saying, and maybe
24 I just misunderstood what you mean by upon request.

25 A. Okay. Yeah, I think we're on the same

1 wave length.

2 Q. Okay.

3 REPRESENTATIVE BLAUM: Thank you, Mr.
4 Chairman.

5 ACTING CHAIRMAN PRESSMANN: Any other
6 questions?

7 (No response.)

8 BY ACTING CHAIRMAN PRESSMANN: (Of Mr. Kunkle)

9 Q. One question I have for you, and you
10 probably don't have this right at your fingertips, do
11 you have any estimate of what amount of money local
12 governments give to victims groups across the
13 Commonwealth?

14 A. It varies. We have, I would say, a dozen
15 counties that are providing financial support for the
16 victim witness programs that we are funding out of Act
17 96. I don't have as good a handle on how much money is
18 being provided by county government to, for example,
19 sexual assault programs or domestic violence programs.
20 I think that there is some county money made available
21 to those programs, but I have no idea how many counties
22 or how much money. Not very much is a good general
23 reaction. For the most part, the programs that were
24 operating operate strictly on what PCCD is providing,
25 and most of the programs that we operate are part-time

1 individuals in the district attorney's office. That's
2 why we see the additional resources as so critical.

3 Q. I was a county commissioner -- in fact,
4 you guys can take a look at my picture back there when
5 I was a lot thinner and had a lot more hair -- and I
6 served on the county board of commissioners because I
7 remember providing funding because it was like one of
8 the last things I did before I left the commissioners
9 was push for some extra funding. But as I recall, it
10 wasn't a whole lot of money.

11 A. Lehigh County is one of the more
12 progressive counties in the Commonwealth. The figure
13 that comes to mind is \$65,000 that I believe is
14 provided through Mr. Platt's budget in the district
15 attorney's office and is used to some extent through
16 the Crime Victims' Council for services. Lehigh
17 clearly would be one of the more progressive counties
18 with a figure in that range. Usually, I mean, in
19 fairness to the counties, the money that we're
20 providing is usually supporting simply salaries, so
21 there is an assumption of some costs. I mean, all of
22 the postage, operating expenses and what have you are
23 being absorbed by the county and the DA's office, but
24 in terms of a direct line allocation for the victim
25 witness program, very few counties have done that.

1 ACTING CHAIRMAN PRESSMANN: Okay. Thank
2 you.

3 Any other questions from the committee or
4 staff?

5 (No response.)

6 ACTING CHAIRMAN PRESSMANN: If none,
7 gentlemen, thank you for coming.

8 REPRESENTATIVE KOSINSKI: You mean if I
9 became a county commissioner I'd lose weight and get
10 hair?

11 ACTING CHAIRMAN PRESSMANN: That's it.
12 Nancy Poor, Pennsylvania Coalition
13 Against Domestic Violence. Is Nancy here?

14 MR. ANDRING: We do have written
15 testimony from her.

16 ACTING CHAIRMAN PRESSMANN: Oh, we
17 received written testimony from her.

18 MR. ANDRING: It was submitted for the
19 record.

20 ACTING CHAIRMAN PRESSMANN: Okay. She
21 isn't here.

22 I know that Debra Spungen, who is next
23 on the list, had to cancel out.

24 So Joseph Mascari, Co-chairperson of
25 V.O.I.C.E.. Joe?

1 MR. MASCARI: My name is Joe Mascari.
2 I'm the Co-chairperson of V.O.I.C.E.

3 On the unusually cold morning of October
4 7, 1986, I walked with my children to a local funeral
5 home. We stood at the open casket of a 39-year-old
6 woman who had been stabbed 11 times and strangled twice
7 because a young man wanted to see what was in her
8 purse. This woman was my wife for almost 19 years. I
9 leaned over the casket and I held her face between my
10 hands, kissed her forehead, and said goodbye. The lid
11 was then closed and I remember the intense feelings of
12 grief, fear, and anger piercing through my mind and
13 body. And it wasn't until I looked at her casket
14 sitting on top of the canvas straps that I realized
15 that my wife was not the only victim of her homicide.
16 I now had to be a father and a mother to my two teenage
17 children. I had to learn to run a household and to
18 depend on a lot of people I barely knew. I had to keep
19 my family from losing their minds. My partner in
20 business had been murdered, and that meant that my
21 income would suffer.

22 The preliminary hearings, the trial, the
23 sentencing, and the press were all to be dealt with
24 next. Having never been in a courtroom before, I knew
25 very little about what was to take place. I learned

1 very fast with a lot of research. Most people in my
2 situation are not that lucky. My life had been turned
3 into a nightmare, but I was fortunate because I was
4 able to keep my sanity, raise my children, and put my
5 life back into focus. I'm a college graduate, I own my
6 own house, I have my own business. I have never taken
7 drugs nor have I ever been arrested, yet my wife was
8 murdered in our home with our own kitchen knives.

9 Anyone can be a victim. Murder has no
10 boundaries, social or economic. Being a victim I
11 realized why our system is called the criminal justice
12 system. The criminal has rights, but what rights do
13 the victims have? The goal of V.O.I.C.E. is to give
14 our State a victims' justice system to parallel the
15 criminal justice system.

16 House Bill 2513 does three very important
17 things toward our goal. It defines who a victim is.
18 Most people in a homicide feel that the victim is dead
19 and therefore there is nothing more to do. The
20 mothers, fathers, sisters, brothers, wives and husbands
21 will all be covered under who is a victim. They are
22 affected in a way I hope and pray you may never fully
23 understand because to fully understand is to be a
24 victim.

25 The second area our group is concerned

1 with is information concerning services to victims,
2 information on the judicial processes, information on
3 what the victim can expect from the system and what the
4 system expects from the victim. The key word here is
5 "information". Most people are not lawyers and judges
6 and for the most part know very little about the
7 criminal justice system. It is very upsetting to read
8 the details of your loved one's murder in the morning
9 newspaper as you lose your breakfast. It is disturbing
10 to have to tell your children details of your mother's
11 murders that were in the newspaper, and then try to
12 explain why you didn't know before the press. "Why
13 didn't you know first, Dad?" "Why, Dad?" "What
14 happens next, Dad?" Now for the first time in our
15 family's history I don't have the answers. All victims
16 must have the answers. This bill will help to provide
17 these answers.

18 Information is the key to help with the
19 victim's grief. Information about the criminal's
20 release on parole or pardon or any pre-release, let the
21 victims know. We don't want to read it in the
22 newspaper first. We want to have the opportunity to
23 let our views be known to the proper agencies. The
24 need to know and not feel helpless is essential. We
25 need to act with the system, not react to it, because

1 most of the time the reaction is futile.

2 The last point that I would like to make
3 about bill 2513 is there must be enforcement and
4 funding of the bill. Without enforcement and funding,
5 this bill isn't worth the paper it's printed on, and
6 the victim will lose again. The victim has lost so
7 much already it just seems fair that they are given
8 these basic rights. We need enforcement of this bill
9 2513.

10 When you are writing or debating
11 legislation on victims' rights and you feel that you
12 might have a problem with certain fiscal or enforcement
13 issues for victims and you don't know how to vote, I
14 want you to go home and hold the face of a person you
15 love between your hands, kiss his or her forehead, and
16 say goodbye.

17 ACTING CHAIRMAN PRESSMANN: Thank you.

18 Any questions?

19 (No response.)

20 ACTING CHAIRMAN PRESSMANN: First of all,
21 I'd like to thank you for all the help that you've
22 given us in this bill and I think your testimony today
23 is very important in that we not forget that the victim
24 statistics that we see are not just statistics, that
25 they're real people such as yourself, your family, and

1 your wife, and we thank you for your interest not only
2 for what you've been through but for your interest for
3 the community. Thank you.

4 MR. MASCARI: Thank you very much.

5 ACTING CHAIRMAN PRESSMANN: Nancy Poor,
6 President of Pennsylvania Coalition Against Domestic
7 Violence.

8 MS. POOR: Good afternoon.

9 Representative Pressmann, cosponsors, and
10 staff, I'm pleased to be able to offer this testimony
11 on behalf of the Pennsylvania Coalition Against
12 Domestic Violence. My name is Nancy Poor, and I'm
13 President of PCADV, a statewide network of 57 domestic
14 violence programs which provides protection,
15 counseling, and advocacy to victims of domestic
16 violence and their children in every county of this
17 Commonwealth. I'd like to thank the House Judiciary
18 Committee for the opportunity to address the critical
19 issues of victims' rights. I'd also like to commend
20 Representative Pressmann and the 47 cosponsors of House
21 Bill 2513 for recognizing and responding to the need to
22 strengthen the rights and protections of crime victims
23 in this State.

24 PCADV endorses House Bill 2513 which
25 generously expands the Commonwealth's basic bill of

1 rights for victims. This expansion of victims' rights
2 is essential for the protection and restoration of
3 victims of crime in the Commonwealth. Without
4 information about the criminal justice system and the
5 essential rights and responsibilities of victims
6 participating in the prosecution of criminal conduct,
7 without notice of the protections available to victims
8 at risk of perpetrator retaliation for prosecution
9 participation, without information concerning charges
10 and bail, without information concerning escapes of
11 perpetrators from correctional institutions, without
12 notice of each phase of the judicial proceedings and
13 the custodial status of the perpetrator, without notice
14 about and assistance in preparing impact statements,
15 without consultation about the disposition of the
16 criminal case, without timely return of property,
17 without employer and creditor intercession, without
18 witness compensation, without timely and comprehensive
19 restitution and without medical and victim assistance,
20 crime victims cannot and will not be safe during the
21 pendency of prosecution, probation, and parole. Thus,
22 they will not be informed, effective actors in the
23 justice-seeking system. The 14 enumerated rights in HB
24 2513 will certainly enhance victim safety, victim
25 empowerment, and victim restoration. They will equip

1 the victim/witness with information that will
2 strengthen her commitment to prosecution and facilitate
3 the success thereof.

4 Victims of crime are entitled to these
5 protective rights. Victims who have been physically
6 assaulted, seriously injured, and terrorized have
7 suffered personal trauma and violation of their
8 integrity. Those victims of crime whose lives have
9 been jeopardized by partners or family members and who
10 are no longer safe in their homes have lost the
11 sanctuary and safety of their homes as refuges from
12 harm. Sometimes this means relocating. For other
13 victims this means that home is inescapably dangerous -
14 not a comfort, not safe, no longer a retreat for
15 personal restoration. For victims of crimes of
16 domestic violence there is a high risk of continued,
17 even escalating, violence after criminals charges are
18 filed and after separation from the perpetrator. Many
19 might urge upon you and your fellow legislators that
20 these 14 victim protections are not essential for
21 personal risk victims. This is not true. They are
22 especially critical for battered women and children.
23 Those who conclude that battered women and children do
24 not need the expanded rights this legislation would
25 provide harbor, as truth, two grievously erroneous

1 notions about domestic violence. These incorrect
2 assumptions are:

3 - One, once the police have arrested the
4 perpetrator of domestic violence, the battered women
5 and children are safe.

6 - And two, once a battered woman
7 separates from her partner, she and the children are no
8 longer at risk.

9 Empirical research demonstrates that
10 contrary to these fallacious assumptions, battered
11 women may not be safe after arrest of the perpetrator
12 and are perhaps at greater risk unless the justice
13 system works in a coordinated and meticulous manner to
14 afford additional victim protections. Data from
15 Pennsylvania and around the country demonstrate that
16 men who eventually kill their wives/partners have been
17 the subjects of repeated domestic dispute police
18 contacts. Thus, a significant risk marker for
19 wife/partner homicide is prior, ineffective
20 intervention by police for domestic violence. Beyond
21 this, national data reveal:

22 - That up to three-quarters of domestic
23 assaults reports to law enforcement agencies were
24 inflicted after separation of the couples.

25 - And that battering is a more common

1 source of injury to women than rape, mugging, and auto
2 accidents combined.

3 Most men who kill their wives/partners
4 have criminal records of violence, most particularly
5 domestic violence.

6 Many have asked why are some batterers
7 more dangerous after separation and/or after law
8 enforcement response to domestic violence? The data
9 reveal that men escalate their violence against women
10 partners when they apprehend that women are leaving the
11 relationship. Batterers believe that they are entitled
12 to continuing access to their battered partners and, in
13 fact, hold strong convictions that they own their
14 spouses. Thus, often devastated by the loss or
15 anticipated loss, they use more severe acts of violence
16 to terrorize battered women back to the relationships.
17 The most common motivation for the killing of wives by
18 husbands appears to be retaliation for leaving the
19 relationship and asserting control over their own
20 lives. But beyond this empirical evidence of the
21 danger of batterers post-criminal justice involvement
22 and post-separation, we have the evidence of our own
23 experience. The experiences of the following women and
24 children illustrate the danger of lethal retaliation by
25 batterers and the critical need for victim information,

1 notice, and protection by the criminal justice system:

2 - Jane Doe sought refuge in a Minnesota
3 shelter for her 16-year-old son who had been beaten by
4 his father. Five days after she went to shelter, the
5 batterer kidnaped her at her place of employment, took
6 her at gunpoint to his home and dragged her into the
7 bedroom. He held her at gunpoint for three hours
8 pleading with her to come back to him. She convinced
9 him she would return to the shelter to pack and then
10 reconcile. She did not return to him. Two days later,
11 the batterer followed the son to the shelter. The
12 mother got a protection order. Two days later, the
13 batterer came to the front door of the shelter. Three
14 days thereafter he took the battered woman and her son
15 hostage. Her son managed to escape and went back to
16 the shelter. Charges were then filed against the
17 batterer, and the next morning he was released on
18 \$10,000 bail. Jane was not notified of his release nor
19 were any conditions imposed upon his bail to protect
20 her or her son from further violence. A week later he
21 filed for divorce. Two days later, he found her at
22 work again, pulled out a sawed-off 30-30 rifle, shot
23 her and then committed suicide. Section 479.3(3)(B)
24 and (4) could have saved Jane Doe.

25 - Alan Matheney, who was serving time in

1 prison for assaulting his ex-wife, Lisa Marie Bianco,
2 was granted a short-term furlough during which he
3 traveled 120 north from the prison to his ex-wife's
4 home where he bludgeoned her to death with the butt of
5 a shotgun. He was a well-respected prisoner. The
6 district attorney and his ex-wife had both asked that
7 they be notified of any furlough so that his ex-wife
8 could go into hiding as they believed he was intent
9 upon killing her. And once again, Section 479.3 (3)(E)
10 could have saved Lisa Bianco's life.

11 - Joan Doe found out from her
12 ex-husband's uncle that he was being favorably
13 considered for parole after only two years of a
14 five-year sentence for kidnapping, maiming, and raping
15 her. Although the family and friends of her ex-husband
16 were encouraged to write letters to the Parole Board
17 supporting his release from incarceration, Joan was not
18 invited by the State to submit a statement. When she
19 learned of the impending parole, she asked for a
20 continuance on the parole hearing in order to prepare
21 her statement and to submit the statement of an expert
22 witness. Her request was denied until a great deal of
23 political pressure was exerted on her behalf. As a
24 consequence, her husband was not paroled and will not
25 be eligible for parole. Joan has asked that she be

1 placed in the witness protection program before he's
2 released because she's convinced that unless she can
3 totally block his access to her, he will kill her. And
4 again, Section 479.3(3)(D), (11) and (13) would have
5 offered a person like Joan some critical protections.

6 - Jean Doe was shot by her husband.

7 Prior to trial, he kidnaped their daughter and took her
8 out of the country. He attempted suicide rather than
9 coming back to the United States to face charges.

10 After conviction, he served 6 months of a 1 1/2-year
11 term for the assault. He was a model prisoner. During
12 the six months he was in prison, he plotted his wife's
13 homicide. She asked for restraints on his travel and
14 access to her upon release. Jean asked for the
15 opportunity to participate in his parole review. She
16 was not notified. She asked for notification of the
17 date of his release. She went into hiding immediately
18 after he was incarcerated in order to try to leave a
19 cold trail. She was not notified of his release. No
20 stay away order was imposed. Jack Doe spent two months
21 tracking Jean. He shot her in the stomach and the
22 head, killing her and her almost full-term unborn child
23 and his daughter whom he had previously kidnaped.
24 Section 479.3(3)(D), (11) and (13) could have saved the
25 lives of all of these victims.

1 - Ruby Powell was subpoenaed as a witness
2 for a hearing to determine whether her estranged
3 husband, Jerome Whyllly, had violated his parole on an
4 aggravated assault conviction by abusing the couple's
5 six-month-old son. As she waited in the courthouse
6 hallway, her husband approached and hustled her
7 outside. When she denied his request for her not to
8 testify, he doused her with gasoline and set her
9 ablaze, causing second- and third-degree burns over
10 nearly 50 percent of her body. Whyllly is serving a
11 114-year sentence for attempted first-degree murder and
12 witness tampering. Section 479.3(3), (2) and (13)
13 would have avoided the horrible pain and disfigurement
14 that Ruby will suffer for the rest of her life.

15 Most of the assaults and homicides above
16 could have been prevented. The lack of notice was a
17 critical factor in the deaths of several of these
18 battered women. The lack of vigorous victim protection
19 and safeguards clearly is another theme that plays
20 throughout these tragic stories. The most important
21 lesson for the criminal justice system is that when
22 battered women conclude that their partners are
23 potentially lethal, they're correct, and they need
24 vigorous protection.

25 An example of the extent to which the

1 criminal justice system must extend itself to tailor
2 comprehensive, individual safety and protection plans
3 for women and children arose this week. David R.'s
4 father doused him with gasoline and ignited it, burning
5 his whole body. David miraculously lived but is
6 gravely disfigured and will suffer major medical
7 problems stemming from this arson and attempted
8 homicide for the rest of his life. David is convinced,
9 as are therapists and law enforcement, that his father
10 will try to find him and kill him once he is released
11 from criminal justice supervision. The father served a
12 short sentence and was paroled under a plan for 24-hour
13 surveillance by State officials. This week he escaped
14 from the surveillance but was captured and returned to
15 prison. The State acted as House Bill 2513 would
16 require, and David is still safe. The constitutional
17 rights of life and liberty guaranteed by the U.S. and
18 Commonwealth Constitutions are not self-effectuating
19 for battered women and their children; for the Davids,
20 Rubys, Lisas, Janes, Joans, and Jeans of Pennsylvania.

21 Battered women and children can only
22 enjoy life and liberty if as crime victims they are
23 protected and empowered. The 14 elements set forth in
24 House Bill 2513 would substantially improve the
25 possibility of battered women achieving these

1 guaranteed freedoms.

2 Thank you for your leadership on this
3 issue and thank you for the opportunity to be heard.

4 ACTING CHAIRMAN PRESSMANN: Thank you.
5 Questions from the committee?

6 (No response.)

7 ACTING CHAIRMAN PRESSMANN: Hearing none,
8 thank you.

9 MS. POOR: Thank you.

10 ACTING CHAIRMAN PRESSMANN: Bonnie
11 McDonald, Turning Point of the Lehigh Valley.

12 MS. McDONALD: Good afternoon. I'm
13 Bonnie McDonald, and I'm the Executive Director of
14 Turning Point of the Lehigh Valley. We are the
15 domestic violence programs serving both Lehigh and
16 Northampton Counties. I'm here this afternoon to speak
17 on behalf of victims of domestic violence, specifically
18 spouse abuse victims. In the past few years, spouse
19 abuse has gotten widespread media coverage and we have
20 made much progress in the field of victim services, but
21 we still fight prejudice against battered women. We
22 still encounter the attitude that spouse abuse is not a
23 serious crime.

24 I want to stress to you that victims of
25 domestic violence experience post-traumatic stress

1 syndrome, we have the same nightmares, we have the same
2 feelings of insecurity as victims of "stranger" crimes.
3 If someone is choking you, as you're starting to pass
4 out, it really doesn't matter all that much to you
5 whether you know that person or not.

6 But afterwards, if you survive, you find
7 out that it does seem to matter to those you have to
8 deal with in the system as you quickly begin to realize
9 that there is an automatic suspicion that you are going
10 to reconcile with this person who has just tried to
11 kill you. You're confused and afraid. You've probably
12 never had to deal with the criminal justice system
13 before.

14 We at Turning Point believe that the
15 requirements of this bill would greatly help victims of
16 assault who are "personal risk victims," help them to
17 be better participants in the judicial process. We're
18 talking a lot about this definition of "personal risk
19 victims," so I'd like to give my own definition. A
20 "personal risk victim" is one whose attacker knows
21 where she lives, knows where she works, knows where her
22 children go to school, knows where her parents live,
23 and knows her daily routine. In short, a "personal
24 risk victim" can never really feel safe. It's easy to
25 get irritated when victims of domestic violence don't

1 follow through on charges, but you must understand that
2 pressing charges doesn't make her problem go away. It
3 won't keep her safe, and in fact, it may even make it
4 worse. When someone has battered you, possibly tried
5 to kill you, raped you, violated you in every possible
6 way, it's very hard to even think about doing something
7 that's going to make this person angry. But a few
8 brave battered women do try to pursue the criminal
9 process. They need our support and the support of the
10 criminal justice system at every step of the way.

11 Let me tell you about some of the
12 situations that we have encountered that would have
13 benefited from the proposed legislation. One was a
14 32-year-old woman who had obtained a protection order
15 against her husband, who she was also in the process of
16 divorcing. He was to be serving 60 days' imprisonment
17 for statutory rape. Because he was employed, the judge
18 ordered him to serve his sentence on weekends. She had
19 asked to be notified of his release times since he had
20 threatened to get her. He had even told people in the
21 prison that he intended to get her. One Sunday
22 evening, after leaving the prison, he went to her home
23 and beat her with a board so badly that she needed 75
24 staples in her head and face. Her jaw was wired shut
25 for 10 weeks. She indicated to our staff that had she

1 known he was being released Sunday evening instead of
2 Monday morning, as she assumed, she would never have
3 returned to her home that night. The notification
4 clause in this bill could have prevented this
5 horrendous act. These kinds of terroristic threats
6 almost always precede these kinds of assaults.

7 Another woman, age 45, was hit on the
8 head repeatedly with a hammer while she was asleep in
9 her own bed by her spouse. She will have a metal plate
10 in her head for the rest of her life and had at one
11 point been pronounced dead but miraculously survived,
12 but not without constant anxiety over the legal
13 technicalities. She spoke with the DA's office
14 initially, but over a year has passed since that
15 incident and she still is not aware of her rights as a
16 victim. She reports that sometimes she still awakes at
17 night afraid that he is going to be released from
18 prison. Her teenage son refuses to leave her home
19 alone and calls her daily now that she's gone back to
20 work part-time. The son is continually calling her
21 because he is afraid for her life.

22 Regarding the cooperation of employer
23 clause, victims often have to take off work only to
24 find out when they arrive at the hearing that the
25 defense counsel has been granted a continuance, or for

1 some other reason that the hearing isn't going to
2 proceed. With the abusers out of the home, many times
3 victims are working two jobs in order to maintain the
4 household. If the employer makes it difficult for a
5 witness to take off work, the victim is left feeling
6 torn between trying to keep her family fed and housed
7 and trying to cooperate with the criminal justice
8 system. Employers need to hear from the justice system
9 that it is their duty to cooperate.

10 In cases of spouse abuse, plea bargains
11 often occur without input from victims. Several
12 clients have told us of frustration and anger because
13 the abuser was able to plead to a lesser charge without
14 any input from them. Even severe beatings requiring
15 hospitalization have been plea bargained down to simple
16 assault. The U.S. Bureau of Justice Statistics found
17 that half the incidents of domestic violence classified
18 as "simple assaults" actually involved bodily harm at
19 least as serious as that inflicted in 90 percent of all
20 rapes, robberies, and aggravated assaults.

21 I just want to read a little piece right
22 out of one of our cases that I happened to come across
23 the other day. Friday he beat her until he passed out.
24 She has a left black eye. He aimed a loaded gun at her
25 while forcing her to lie in bed for several hours. He

1 shot the gun at her feet and at one point threw a lit
2 stick of dynamite near her. Probably this woman will
3 not press criminal charges, but my guess is that were
4 she to do so, the ultimate charge would be a
5 misdemeanor. These are the kinds of threatening
6 behaviors that don't result in kinds of injuries that
7 are aggravated assaults.

8 Again, the few battered women who do
9 choose to go through the criminal justice system need
10 all the support that we can offer them. You have heard
11 that the bill requires extra paperwork on the part of
12 government officials. We are only asking for
13 reasonable rights to notification and information so
14 that our victims can do everything possible to keep
15 themselves safe. When a battered woman finally musters
16 up the courage to pursue a criminal complaint and then
17 discovers that he is out on bail within hours without
18 her even being notified, she has the right to wonder
19 whether or not the criminal justice system is really
20 concerned about her safety. A few hours' notification
21 so that she has time to go into hiding, or possibly get
22 her locks changed, or at least to vary her routine so
23 that she is not caught totally unaware, can make the
24 difference between life and death for her and her
25 children.

1 I've heard before that wife killers are
2 often model prisoners. They look like perfectly nice
3 guys, the kinds of men you might want your daughter to
4 marry, and believe me, anyone can suddenly find
5 themselves in this kind of situation. These men have a
6 sickness that causes them to obsess on one individual,
7 tormenting her and making her life miserable, often
8 tracking her from State to State. The threats and
9 prior intimidation are almost always at the level of
10 misdemeanors. We must expend victim notification to
11 reach beyond felonious assaults. No one should be left
12 to fight this kind of a battle alone simply because
13 they married or possibly only dated the wrong person.

14 Wife killings are preventable homicides,
15 precisely because there are usually prior threats and
16 intimidation. When the criminal justice system has
17 prior knowledge that somebody is at personal risk by
18 another, it must give the potential victim the
19 information and notification she needs in order to deal
20 with this life-threatening problem. We must try to
21 give her every chance we can.

22 And I want to thank the committee for
23 hearing our testimony and allowing us the input.

24 ACTING CHAIRMAN PRESSMANN: Thank you.
25 BY ACTING CHAIRMAN PRESSMANN: (Of Ms. McDonald)

1 Q. You mentioned in the one case you thought
2 that if the woman does even testify, to bring charges
3 against her husband they will probably charge him with
4 some kind of misdemeanor instead of a felony?

5 A. That is right.

6 Q. Which raises in your mind the question if
7 we don't expand it beyond some kind of felony assault
8 that we're not going to be able to necessarily reach
9 the right people. In terms of notification?

10 A. I wouldn't say the right people.

11 Q. Or the people who need to know.

12 A. The point is that many of these kinds of
13 intimidating behaviors that precede a domestic homicide
14 are not considered felonious. You know, it's
15 harassment, maybe it's a simple assault.

16 Q. Um-hum. Okay.

17 A. Threats are almost always harassment, in
18 my experience, if you actually file.

19 Q. Okay.

20 ACTING CHAIRMAN PRESSMANN: Thank you.

21 Questions from the committee? Staff?

22 (No response.)

23 ACTING CHAIRMAN PRESSMANN: Okay, seeing
24 none, thank you, Bonnie.

25 MS. McDONALD: Okay.

1 ACTING CHAIRMAN PRESSMANN: Pat Madigan,
2 Pennsylvania Protection and Advocacy.

3 Okay, if the presenters would give their
4 name for the record.

5 MS. MADIGAN: My name is Patricia
6 Madigan. I'm with Pennsylvania Protection and
7 Advocacy.

8 MS. MAHAR-POTTER: I'm Sharon
9 Mahar-Potter, and I'm also with Pennsylvania Protection
10 and Advocacy.

11 ACTING CHAIRMAN PRESSMANN: Okay, you may
12 proceed.

13 MS. MAHAR-POTTER: Members of the House
14 Judiciary Committee, my name is Sharon Mahar-Potter. I
15 am the Systemic-Special Project Services Coordinator
16 for Pennsylvania Protection and Advocacy, Inc. PP&A is
17 the federally mandated, Governor designated,
18 independent system in Pennsylvania responsible for
19 protecting the rights of persons who are
20 developmentally disabled or diagnosed as mentally ill.

21 The Federal statute defines "abuse" as
22 any account or failure to act by an employee of a
23 facility rendering care or treatment which was
24 performed, or which was failed to be performed
25 knowingly, recklessly, or intentionally and which

1 caused or may have caused injury or death to a client,
2 includes such acts as:

- 3 - The rape or sexual assault of an
4 individual;
- 5 - The striking of an individual;
- 6 - The use of excessive force when placing
7 an individual in bodily restraints; and
- 8 - The use of bodily or chemical
9 restraints on an individual which is not in compliance
10 with the Federal and State law and regulations.

11 In accordance with our mandated service
12 role, we have a keen interest in House Bill 2513 and in
13 the continuation and much needed expansion of services
14 provided to individuals who are developmentally
15 disabled or diagnosed as mentally ill. It also
16 challenges us to continually advocate for a service
17 delivery system which is coordinated, accessible and
18 accountable. We want to express our appreciation to
19 the House Judiciary Committee for allowing us this
20 opportunity to testify.

21 Simply put, we're concerned about the
22 rights of individuals who may have difficulties
23 speaking for themselves. I'm referring to persons
24 mental retarded or mentally ill or perhaps have a
25 physical disability. Some of these individuals cannot

1 speak, walk, or hear. They may have cerebral palsy,
2 Down's syndrome, or perhaps due to a mental illness may
3 have difficulty understanding what has actually
4 occurred.

5 Briefly, if I may outline for you the
6 need for such services, service collaboration, those
7 services including but not limited to the State and
8 community based facilities of mental retardation-mental
9 health; specialized community based services such as
10 rape crisis or victim witness; legal representatives
11 such as police or district attorneys and others, and
12 the expanded victim protections as outlined in House
13 Bill 2513. Pennsylvania Protection and Advocacy may,
14 within a given year, receive approximately 800 consumer
15 contacts from the developmentally disabled population
16 and 250 contacts from the mental health population.
17 Twenty percent of these contacts, respectively, will
18 have dealt with some form of abuse and neglect.
19 Specifically, we foresee an increase of at least 2
20 percent in the coming fiscal year based on the
21 concurrent percent increase over the last several years
22 of rape, sexual assault disclosures to our system.

23 We're well aware of the fact, nationally
24 and statewide, of the underreporting of the incidents
25 of rape and sexual assault. Further, we're keenly

1 cognizant per our service role of the high
2 vulnerability and degradation of individuals who are
3 developmentally disabled or diagnosed as mentally ill
4 who become victims of rape-sexual assault or other
5 assaults. There is underreporting of these offenses
6 regardless of the individual's treatment program or
7 residential settings. Some of the reasons for the lack
8 of underreporting are: The lack of recognition and
9 sensitivity to sexual abuse by caretakers, the ongoing
10 aftermath of abuse in the development and
11 implementation of an individual treatment plan,
12 facility or local community barriers to access
13 specialized community services such as rape crisis
14 centers or legal representation, and incidents of
15 rape-sexual assault or other offenses by the caretaker
16 who has assumed the role of the protector. From our
17 perspective, this point could be stated in terms of the
18 need for increased regulatory accountability on the
19 State and county service system level in providing
20 appropriate responses to situations of abuse,
21 particularly sexual and physical, occurring within a
22 given facility or program. We suggest activating
23 comprehensive emergency planning and systems
24 collaboration which includes contact with specialized
25 community services such as rape crisis centers and

1 legal representation. This action helps to protect and
2 ensure the safety and well-being of individual victims
3 and to insure the individual's rights, that is
4 constitutional, State, residential, in pursuing any
5 civil or criminal action necessary as warranted by a
6 specific harm to the individual.

7 Secondly, the need for service systems
8 collaboration in the area of developing and
9 implementing individual treatment plans. This
10 mechanism would enable a common understanding among the
11 service providers of the issues involved with
12 rape-sexual assault, physical assault, or other
13 offenses. Therefore, the development of an individual
14 treatment plan would be proactive rather than
15 debilitating.

16 At this point, I'd like to direct your
17 attention to House Bill 2513 recommended revisions,
18 which you have. I'm not going to read all of them, but
19 I would just like to cite the two sections in
20 definitions and one under the basic bill of rights for
21 victims.

22 Under the definitions, we would suggest
23 adding an individual with a disability. The term
24 "disability" means with respect to an individual who,
25 A, has a physical or mental impairment that

1 substantially limits one or more of the major life
2 activities of such individual; or B, a record of such
3 impairment; or C, being regarded as having such an
4 impairment.

5 We'd also like to add auxiliary aids and
6 support services. The term "auxiliary aids and
7 services" includes, A, qualified interpreters or other
8 effective methods of making aurally delivered materials
9 available to individuals with hearing impairments; B,
10 qualified readers, taped texts, or other effective
11 methods of making available to individuals with visual
12 impairments; C, acquisition or modification of
13 equipment or devices; and, D, other similar services
14 and actions warranted by the needs of the individual
15 with a disability.

16 We'd also like to add support services
17 advocate, a person who provides assistance to or pleads
18 the cause of an individual with a disability at their
19 request. Under this section of the basic bill of
20 rights for victims we'd like to add that the
21 information shall include all auxiliary aids and
22 support services warranted by the needs of the
23 individual with the disability.

24 Victimization does not take place in a
25 vacuum, it permeates one's whole being. Individuals

1 who are developmentally disabled or diagnosed as
2 mentally ill do not exist in a vacuum and are or may
3 become victims of crime. Therefore, it is paramount
4 that we have a service delivery system which is
5 coordinated, collaborative, accessible and accountable.

6 In conclusion, we have several comments.
7 First, we bring to your attention the consistent
8 societal misconception that persons who are mentally or
9 developmentally disabled are asexual and do not become
10 victims of rape and sexual assault or victims of other
11 offenses. Similarly, such actions by those accountable
12 to the individual for whom they care or serve in a
13 public service capacity perpetuates these
14 misconceptions by not informing oneself on issues of
15 rape-sexual assault disability. In addition, we
16 believe that providers or individuals serving persons
17 with disabilities who do not provide sensitivity on
18 appropriate responses and accumulated information to
19 victims only reinforce the negative attitudinal
20 barriers for persons with disabilities which results in
21 a negation of their human dignity and a restriction of
22 their civil right.

23 Second, we request your consideration of
24 the need for increased service system collaboration.
25 This means a re-evaluation of existing resources within

1 a given facility or specialized community service. The
2 mind-set of parochialism on the part of many service
3 providers, particularly within a facility or community
4 based program, must be dispelled by the utmost
5 adherence to service care accountability to the
6 individual victim, especially when incidents of abuse,
7 rape-sexual assault or other offenses, occur.
8 Therefore, individual rights are assured and all
9 parties continue to have the well-being and best
10 interest of the individual victim in the forefront.

11 At this point, I'd again like to direct
12 your attention to the recommended revisions to House
13 Bill 2513 for full committee review and consideration.
14 And we'd like to say the Pennsylvania Protection and
15 Advocacy supports the intent of this legislation and we
16 acknowledge the commonalities that we all share as
17 civic, ethical and moral human beings to individuals
18 who are developmentally disabled or diagnosed as
19 mentally ill and who are or may become victims of crime
20 or who are survivors. We thank you for your time and
21 the effort put forth to protect and ensure the rights
22 of all victims and would look forward to working with
23 you in this legislation.

24 ACTING CHAIRMAN PRESSMANN: Thank you.

25 BY ACTING CHAIRMAN PRESSMANN: (Of Ms. Mahar-Potter)

1 Q. In your experience in working with people
2 who are disabled and you have a situation where a
3 person has had a crime committed against them such as
4 sexual assault, what has been the success or your
5 impressions of the success of getting convictions in
6 those types of situations?

7 A. I think it's very difficult. I can name
8 one or two incidents, but Patricia Madigan has served
9 as an advocate for individuals, has gone through the
10 court procedure. I know that particularly if you have
11 a person, for instance, who's nonverbal, a person who
12 has mental retardation and is nonverbal, it is a very
13 difficult issue to prove and you have to have someone
14 who is very familiar with this person in what her
15 behavior had been like if she hadn't in fact been
16 victimized, and you have to educate the court to begin
17 with, so it's an uphill battle.

18 One of the situations that I'm aware of
19 has to do with hearing impaired victims who, through
20 the use of sign language, their interpreter may
21 interpret in a way that is very graphic and the words
22 that may be used are very graphic words that we may not
23 use, we may or may not use in our conversation, but
24 they're the words available to that person, and
25 certainly in two or three cases that we're aware of the

1 victim ended up looking like she, in fact, had invited
2 the abuse just by the interpretation of her words, and
3 she in fact had been abused.

4 And maybe, Patricia, you can speak to
5 some cases you had.

6 MS. MADIGAN: I think another point to
7 bring out towards your question would be that persons
8 with disabilities, whether they're in a State facility
9 or a community based program, may not even have the
10 opportunity to get to the point of contacting the
11 police because a caretaker takes on the role of judge
12 and decides if it was a crime or not a crime and
13 therefore the individual, the victim, never has the
14 opportunity.

15 Number two would be that if the victim
16 does have the chance, with what I would see would be
17 the support service advocate being the person who is
18 able to give the technical assistance to immediately
19 the police who come to the scene and also to the
20 district attorney, and in my cases that's our role has
21 been to provide the district attorney in understanding
22 the workings of the facility and the treatment program
23 plus also providing support to the victim.

24 BY ACTING CHAIRMAN PRESSMANN: (Of Ms. Madigan)

25 Q. In facilities where you have an incident

1 of a criminal nature being committed by one patient
2 against another patient, are they usually not handled
3 in a criminal nature because the people are not
4 considered responsible for their actions or--

5 A. It's very difficult to answer, but from
6 our experience and the calls that we've received, what
7 I could say would be it's more readily that criminal
8 charges will be pressed when it is patient-to-patient
9 and such underrecording when it is
10 caretaker-to-patient.

11 Q. Is that because of the institution's
12 interest in protecting itself as an institution?

13 A. Yes. Yes.

14 Q. More than protecting maybe the individual
15 who perpetrated the crime but as an institution
16 protecting their image or their whatever?

17 A. Yes. If I may add also, Pennsylvania
18 Protection and Advocacy, we endeavored over the last
19 year and a half to do a co-op project with Pennsylvania
20 Coalition Against Rape to be able to divide some of the
21 systems collaboration in some of our testimony today
22 that hopefully will address some of these issues that
23 you just brought forward, the patient-to-patient and
24 caretaker-to-patient, so the educational component
25 would be there and the system collaboration of all

1 parties, understanding, disability and understanding
2 victimization.

3 Q. In a situation where a formal charge has
4 been made where the victim was a patient and the
5 perpetrator was a caretaker and you get to the court
6 system, I guess what you're saying is that when you get
7 to the system, the possibility of a conviction could
8 become rather slim because you don't have a good bid
9 usually because their communication skills are not very
10 good. Do you find in a courtroom setting that the
11 court protects them in the courtroom or--

12 A. The one particular case that I
13 experienced, the district attorney and the court
14 officials were very accommodating to the victim, and
15 that included the matter of the victim notification to
16 the district attorney and other court officials of a
17 hearing impairment so that in the one-on-one consult
18 with the district attorney he certainly was aware of
19 that and was able to provide the accommodation to the
20 victim. And also within the court that before court
21 started that the victim did not have, was in a separate
22 room so she would not have to face the abuser.

23 Q. Are juries a lot harder to convince than
24 judges and district attorneys in these matters?

25 A. That's hard to say.

1 Q. You don't know.

2 MS. MAHAR-POTTER: It might be
3 interesting to know that many of the abuses that are
4 reported to us are reported from staff within agencies.

5 ACTING CHAIRMAN PRESSMANN: Okay.

6 MS. MAHAR-POTTER: And so there certainly
7 is a move within, and one of the programs that Patricia
8 talked about is an effort to sensitize people within
9 agencies in what to look for and how to collaborate,
10 how to know what systems are available as resources to
11 them. That is a move forward.

12 MS. MADIGAN: Maybe one other example.
13 In the bill, 2513, where you have mentioned the
14 policeman giving cards to the victim about their
15 rights, one very basic example would be that so many of
16 those cards are printed in large print to be able to
17 assist persons who are visually impaired. Second would
18 be also to have available, if it's on an on-call basis,
19 an interpreter.

20 ACTING CHAIRMAN PRESSMANN: Okay. Thank
21 you.

22 Questions from the committee or staff?

23 (No response.)

24 ACTING CHAIRMAN PRESSMANN: Okay, seeing
25 none, thank you very much for coming down here today.

1 Next testimony will be from William
2 Platt, District Attorney, Lehigh County.

3 Bill, you may proceed.

4 MR. PLATT: Good afternoon. Thank you
5 for affording me the opportunity to speak to your
6 committee and express my views concerning House Bill
7 2513, which would amend the Pennsylvania victims bill
8 of rights law and significantly expand the statutory
9 rights of crime victims in this State.

10 Although in addition to having served as
11 the District Attorney of Lehigh County since 1976, I am
12 the Chairman of the Criminal Procedural Rules Committee
13 of the Supreme Court of Pennsylvania and a member of
14 the Victim Services Advisory Committee of the
15 Pennsylvania Commission on Crime and Delinquency, as
16 well as a past president of the Pennsylvania District
17 Attorneys Association. I want you to know that I'm
18 speaking here in my capacity as district attorney of
19 Lehigh County and I'm not purporting to represent the
20 District Attorneys Association or any other
21 organization with which I am affiliated. These are my
22 own views and not necessarily those of other
23 organizations.

24 House Bill 2513, Printer's Number 3475,
25 in essence appears aimed at increasing the involvement

1 of crime victims in the criminal process by expanding
2 upon the notice and opportunity for input statutorily
3 provided for crime victims. Of course, as a district
4 attorney I support such goals.

5 My major problem with the bill in its
6 present form is stylistic. That is, I believe the bill
7 is unnecessarily convoluted and disjointed as it is
8 written. For that reason, I favor reworking of the
9 language of the proposed legislation along the lines of
10 that submitted to the House Judiciary Committee by John
11 Kunkle, the Victim Services Project Manager for the
12 Pennsylvania Commission on Crime and Delinquency. Mr.
13 Kunkle's rewriting will not diminish, in my view, the
14 rights to be afforded the victims of crime and will,
15 because of its clearer delineation of both those rights
16 and the agencies responsible for implementing them,
17 insure greater compliance with the law.

18 The legislative rights contained in the
19 bill parallel, to a great extent, those contained in
20 the document entitled, "Fair Treatment for Victims and
21 Witnesses of Crime: An Action Strategy for
22 Pennsylvania," which I helped develop as member of the
23 PCCD's Victims Services Advisory Committee back in
24 1985. As I'm sure the committee members realize,
25 however, the implementation of such rights does not

1 come without costs. The brochures, notices and the
2 personnel necessary to insure compliance costs money -
3 money which local governments do not, in these days of
4 fiscal shortfalls, have. That is why I must tie my
5 full support for this proposed legislation to favorable
6 action on what must be viewed as the legislative
7 complement to House Bill 2513, the passage of House
8 Bill 2361, Printer's Number 3712, which would amend Act
9 96 by increasing the penalty assessments necessary to
10 fund the programs throughout the State which are a key
11 to the success of House Bill 2513.

12 As to notice of pre-release, parole, and
13 escape from incarceration, I believe that these
14 responsibilities lie with the State and county parole
15 and corrections departments, and that these matters
16 should be legislatively addressed in amendments to the
17 statutes governing those agencies, rather than in this
18 bill. The current requirements that we, as district
19 attorneys, provide those agencies with information
20 regarding victims desiring notice should, in my
21 opinion, carry forward in such legislative amendments.

22 Finally, I wish to draw to the
23 committee's attention language in a comparable Federal
24 piece of legislation pending before the Senate at the
25 present time, Senate Bill 1970, this is the United

1 States Senate, which I believe must be included in
2 House Bill 2513. Senate 1970, after establishing the
3 rights of Federal crime victims in requiring the
4 Department of Justice and others, quote, "to make their
5 best efforts to see that victims of crime are
6 accorded," unquote, their statutory rights in section
7 blank 02 (c) states, and I quote:

8 "No cause of action or defense.--This
9 section does not create a cause of action or defense in
10 favor of any person arising out of the failure to
11 accord to a victim the rights enumerated in subsection
12 (b)," end quote.

13 Such language is extremely important,
14 particularly in state legislation. As this committee
15 well knows, the bulk of criminal cases are handled in
16 State courts, and those courts, prosecutors' offices,
17 probation, parole and correctional facilities are
18 currently working well beyond reasonable capacities.
19 Mistakes and omissions will occur even in the most
20 well-run offices. Without such expressed language, I
21 fear that there will be lawsuits and perhaps even
22 judgments, costs, and attorney's fees attached thereto
23 - costs in both dollars and manhours which in the
24 broadest sense will adversely impact on the providing
25 of the specified notices and services to victims and

1 witnesses. Such civil actions would deter rather than
2 encourage compliance by diverting moneys and personnel
3 from these programs.

4 Further, I do not believe that inclusion
5 of such language will cause noncompliance. On the
6 contrary, I find that the vast majority of the
7 personnel and components of the criminal justice system
8 are today sensitive to and concerned about victim and
9 witness rights. Policing can be done by means of the
10 carrot rather than the stick. The Pennsylvania
11 Commission on Crime and Delinquency grants under Act
12 96, hopefully expanded by House Bill 2361, give that
13 agency oversight and pursestring controls which will
14 ensure compliance and effective implementation of the
15 law.

16 That's my formal statement. I'd be happy
17 to answer any questions you may have.

18 ACTING CHAIRMAN PRESSMANN: Thank you.

19 BY ACTING CHAIRMAN PRESSMANN: (Of Mr. Platt)

20 Q. The issue of enforcement of the law is
21 one that a number of victims' rights groups today have
22 spoken about that they think that's an important part
23 of any kind of law. The concerns have been raised that
24 if there is something with enforcement that district
25 attorneys would probably oppose the bill with that in,

1 police departments may oppose it with that section in.
2 From your experience, in other areas of the law, do we
3 have such noncompliance? I mean, that if you didn't
4 comply that you face no kind of penalty at all?

5 A. Well, you're dealing basically with
6 either elected officials' offices or personnel who are
7 accountable to elected officials, and I think you have,
8 you know, a great weapon known as the ballot box that
9 could be very, very effectively used to police these
10 rights.

11 In addition, as I said in my formal
12 statement, I don't know of a district attorney in
13 Pennsylvania that doesn't care, you know, about the
14 rights of victims and is not sensitive to the needs of
15 victims and witnesses in criminal proceedings. Ten, 15
16 years ago there was callous treatment of these
17 individuals. There was indifference. There was a view
18 in many prosecutors' office and many prosecutors' minds
19 that these were their cases and the victims of crime
20 and people like that were merely witnesses to be used
21 and abused as they please. That's not the case today.
22 District attorneys are very, very sensitive to the
23 needs and the victimization, if you will, of people a
24 second time through the court system. They care. Even
25 if they don't care for altruistic reasons, they care

1 for elective reasons. They care for the accountability
2 of their offices.

3 My concern, if you put a provision in
4 there for sanctions, or even if you don't put the
5 language of the type that the Senate is putting in
6 their Federal bill, is that you're going to divert a
7 vast amount of resources in the criminal justice system
8 to defending lawsuits. You're going to devote a vast
9 amount of moneys and lawyer time to defending these
10 lawsuits and perhaps paying off judgments. I speak
11 from experience because there is one area of the law
12 that district attorneys deal with all the time. I have
13 in my office at the present time two filing cabinets
14 filled with lawsuits against me. Now, they're not
15 filed by the victims of crime, but they're filed by the
16 defendants that we prosecuted. They're filed in
17 Federal court. We get sued all the time by defendants
18 who claim we violated their rights. We've never lost a
19 case, but we have to defend every one of those
20 lawsuits.

21 Even if you put a good faith exception in
22 this type of bill, that does not prevent the filing of
23 lawsuits, that does not prevent the process from going
24 on, that does not prevent time and effort being used to
25 defend or get these lawsuits dismissed. I mean, it

1 happens every day. And I'm on a first-name basis with
2 most of the U.S. Marshals in the Eastern District
3 because the defendants are suing us all the time. And
4 we're concerned about defendant's rights, and that's
5 part of our job. We're more concerned, I will tell
6 you, about the rights of victims and the plights of
7 victims because we're really the only ones in the
8 system that are in a position to shield those victims.
9 The courts are as well, but we are because we're with
10 them from the beginning of the case to the end of the
11 case.

12 We're going to try and do our jobs. I
13 think I have a pretty good DA's office in Lehigh
14 County. We have an excellent victim witness
15 coordinator funded through Act 96. We make every
16 effort to accommodate victims. We make every effort to
17 involve them in the process. We make every effort to
18 involve the police prosecutors in the process. But
19 because of the dynamics of the court system, errors
20 occur. Cases get called at times when we don't expect
21 them to be called. Victims aren't available, can't be
22 contacted. With the volume of cases we're running in
23 our office and in every other DA's office in
24 Pennsylvania, we're running 4,000 adult criminal cases
25 through a year right now with a staff that was designed

1 to handle half that number. There are going to be
2 mistakes, and we can act in good faith and still fall
3 short. But that's the exception, not the rule. We're
4 doing this without any sanctions. We're doing this
5 because we believe in the programs.

6 I'm just urging you, from a
7 cost-effectiveness and even from the perspective of
8 providing the services to the victim, that you not put
9 a sanctions sections in there and that you put a
10 release section similar to the Federal legislation in
11 there. I think that's the only way to go. I think
12 you'll hear that from anybody you talk about in the
13 system that they will require this, that they need that
14 protection. Because if I have to spend my time as a
15 lawyer and other lawyer time defending lawsuits from
16 both ends of the spectrum, that's all we'll be doing.
17 And as I say, prosecutors don't lose many of the civil
18 rights cases. We're absolutely immune when we perform
19 functions within our prosecutorial functions, yet I
20 have filing cabinets full of lawsuits and they're filed
21 every day and each one takes an analysis, it takes the
22 writing of briefs, memoranda, motions, it takes
23 appearances before the Federal judge. It takes a lot
24 of time. I don't want to see that monster happen in
25 the victim services area. I'm not trying to give DA's

1 an out, believe me. They are accountable to the
2 electorate. If they're not doing their job, things
3 will happen.

4 In addition, I'm advocating for
5 increasing the penalty assessment and I'm advocating
6 for more funds for PCCD. Our program is funded through
7 '96. We can expand the program through '96 in its
8 amendments. We can do a lot of good, we can prepare
9 the brochures, we can get more involved. We might be
10 able to hire more people to handle these programs, and
11 if we're accountable to PCCD as well we're going to do
12 those programs well because they monitor what's going
13 on in the programs. So I'm optimistic and I think I'm
14 genuine in my statement that DAs throughout this
15 Commonwealth care and will do their best to comply.

16 Q. I've got to admit, as no longer being an
17 elected official, one of the things I don't miss is
18 being sued on a regular basis, which was part of being
19 a local elected official. I didn't get to know all the
20 Marshals, but I got to know the processor by name when
21 I was a commissioner.

22 A. It's a fact of life, but it's a costly
23 fact of life.

24 Q. Yes, it is.

25 A. And I'm telling you, this is a situation

1 where I'm really absolutely immune from suit.

2 Q. And you feel that it is necessary to have
3 a clause in the bill that says specifically there is no
4 cause of action?

5 A. I would be able to support the bill 100
6 percent with that clause in it. I would have some
7 fears without the clause in it. I would probably still
8 support it anyway, but I would prefer to have it in.

9 Q. Can you imagine the situation where
10 sanctions should be considered against a law
11 enforcement official, DA?

12 A. I suspect that if there's a deliberate,
13 premeditated, willful violation or a complete
14 indifference to the programs--

15 Q. I think that's the concern is there are
16 still--

17 A. But I don't see that.

18 Q. In talking to people from across the
19 State, including people from PCCD, that there are still
20 some DAs who are indifferent.

21 A. There are some in the smaller DA's
22 offices perhaps that may be indifferent or just
23 uneducated or unaware, but the vast majority of
24 district attorneys dealing with the vast, vast majority
25 of victims in criminal cases and are part of this

1 program do care. PCCD has done a lot to enlighten,
2 educate, and inform district attorneys about the
3 advantages in having these programs. It relieves
4 assistant district attorneys from a lot of the
5 hand-holding burdens. It clears up a lot of the
6 functions in the court system. It gives you a better
7 witness in court, gives you a better case to prosecute.
8 It also gives you a better feeling about what you're
9 doing because, you know, you have to feel for these
10 people when you deal with them.

11 ACTING CHAIRMAN PRESSMANN: Questions
12 from the committee?

13 Karen.

14 BY REPRESENTATIVE RITTER: (Of Mr. Platt)

15 Q. Yeah, I'm wondering, Bill, if the cause
16 of action or the possibility of a victim being able to
17 sue is taken out of this, what do you feel would be the
18 enforcement? I mean, what makes this bill enforceable
19 if that's taken out and what guarantees--

20 A. Well, I think I just told you what my
21 feelings are, that it will self-execute. People will
22 do it.

23 Q. Well, I don't agree with you.

24 A. I can envision an injunctive relief type
25 action against a district attorney who totally fails to

1 implement a program and just says the legislature is
2 not going to run my office, they're not going to tell
3 me what to do. I have more difficulty imagining a DA
4 saying that than I do to some type of injunctive relief
5 being created.

6 What I'm concerned about are the suits
7 for money damages. You know, in Federal court police
8 agencies are sued all the time for violations of civil
9 rights and it sometimes ends up that there's a judgment
10 against the police department, against the municipality
11 for a hundred dollars or something like that. And
12 obviously, the jury felt, well, you know, he goofed but
13 it wasn't really malicious, it wasn't that severe
14 damage. And then you'll read in the paper that
15 attorney's fees are awarded in that case of \$10,000,
16 \$15,000, \$20,000 against the municipality. That's a
17 monster, and that happens all the time in these Federal
18 actions. Don't create another monster.

19 Q. Well, but what about the victims who are,
20 even if it's by accident, not given the proper notice
21 of their rights and that victim suffers harm because
22 even accidentally they didn't get the information that
23 they should have had or anything else under the bill?
24 What recourse do they have then?

25 A. Well, they have recourse. They can talk

1 to the district attorney, they can complain to the
2 press, they can complain as a member of the electorate.
3 I don't think money would really make them whole in a
4 circumstance like this. "I didn't get notice and a
5 case went in, I didn't know that this individual was on
6 the street and I should have." Sure, there's trauma
7 attached to that and it's wrong, but it happens today.
8 I mean, we get--

9 Q. What if there's another injury though? I
10 mean, in some of the cases that you weren't here when
11 they were describing some of the cases that occurred
12 because the victim didn't have the notification and was
13 killed or otherwise further assaulted, how do you, I
14 mean, what does that victim say? "Oh, sorry, we forgot
15 to tell you about it"? What do you say?

16 A. No, I think independent of this law there
17 may be civil actions that would exist. What I'm
18 concerned about is a lawsuit based on the fact that
19 there was a failure to give notice and that was a
20 violation of the law, there's a technical violation,
21 and that type of action. That's what I'm concerned
22 about. I think that would be the majority of the
23 problems.

24 ACTING CHAIRMAN PRESSMANN: A follow-up
25 question.

1 BY ACTING CHAIRMAN PRESSMANN: (Of Mr. Platt)

2 Q. Would the paragraph you're suggesting
3 though, would that protect a person from civil suit if
4 they, in like the case Karen said, somebody is not
5 notified of a release, the prisoner comes home,
6 assaults somebody, would this paragraph protect?

7 A. Well, you know, let's take a worse
8 scenario. Suppose the prisoner comes home and there is
9 notice and he assaults or rapes or kills. I mean,
10 there's no guarantee that because they got notice that
11 they're safe.

12 Q. True.

13 A. And I think there would be actions
14 independent of the statutory notice and all of that
15 that could conceivably exist.

16 Q. I think the concern you have is a
17 policeman doesn't hand out the card that we're
18 proposing and somebody brings a suit against the
19 policeman or the department because they didn't hand
20 them a card, right?

21 A. That's mainly what I'm concerned about,
22 yes.

23 Q. What we're concerned about is--

24 REPRESENTATIVE RITTER: It comes under
25 the Miranda reading.

1 ACTING CHAIRMAN PRESSMANN: Well, no,
2 that's something different.

3 BY ACTING CHAIRMAN PRESSMANN: (Of Mr. Platt)

4 Q. But if you said to somebody, okay, you
5 didn't notify somebody and then they come home and
6 assault somebody.

7 A. I think there may be an independent
8 action independent of this statute that could exist,
9 yes.

10 Q. I'm just wondering if your paragraph
11 you're proposing that would protect?

12 A. The paragraph talks about rights created
13 by any person arising from the failure of the rights
14 enumerated in here. I think, you know, the assault
15 didn't occur because they didn't get notice, the
16 assault occurred because someone wasn't properly
17 protected or because someone didn't take the proper
18 steps or someone was hell-bent on assaulting someone.
19 So I don't think it removes that type of action.

20 Q. Uh-huh.

21 A. But it's saying we're not creating new
22 actions.

23 Q. One thing I do know is that the fear of
24 lawsuits makes a lot of people do a lot of things they
25 normally don't do in terms of protecting people. We've

1 seen it from, you know, corporations to government. I
2 mean, I can't have a conversation with the city of
3 Allentown without them telling me they're being sued
4 for something, you know.

5 A. I understand that. What I'm saying is
6 that I'm concerned about--

7 Q. I think you and I are not as far apart as
8 we seem, but--

9 A. We're not far apart, I know that, Jack,
10 but what I'm concerned about is the frivolous lawsuit
11 because the frivolous lawsuit requires as much work as
12 the legitimate lawsuit.

13 Q. Yeah.

14 A. And I'm concerned about the lawsuits that
15 are based on technical violations, because those are
16 the ones we see. Those are the ones that occur.

17 Q. I got sued one time because a prisoner
18 didn't get his boots back when he got released.

19 A. I remember the case.

20 Q. You remember that one? We bought him a
21 new pair of boots and that settled it, but it took
22 time.

23 A. Sure. And it takes a lot of work and a
24 lot of energy. I don't want you to be creating new
25 causes of action, and I don't mean to appear to be

1 insensitive to someone who should have received notice
2 and as a result was injured or killed. And that's a
3 serious problem. But I think there are independent
4 causes of action and if you can come up with language,
5 and I'm sure you probably can, that meets both of
6 those, then I wouldn't have any problem with it.

7 ACTING CHAIRMAN PRESSMANN: Any other
8 questions from the committee or staff?

9 (No response.)

10 ACTING CHAIRMAN PRESSMANN: Okay, if
11 none, Bill, by the way, you were given some compliments
12 earlier by some groups about being one of the more
13 progressive district attorneys when it comes to this
14 whole--

15 MR. PLATT: Now I'm sorry I wasn't here.

16 ACTING CHAIRMAN PRESSMANN: So you did
17 get some compliments for your office.

18 MR. PLATT: And I think overall, I know
19 every district attorney in the State of Pennsylvania
20 and overwhelmingly they do care and they do try. These
21 are people who want to do what's right and they will do
22 and will attempt to comply with the law. If you can't
23 trust the district attorney to obey the law, who can
24 you trust?

25 ACTING CHAIRMAN PRESSMANN: We'll leave

1 that as a rhetorical question.

2 REPRESENTATIVE KOSINSKI: I'm going to
3 have to excuse myself or else I'm going to wind up in
4 district magistrate's court for an overtime meter
5 violation.

6 ACTING CHAIRMAN PRESSMANN: Okay.

7 All right, we have one testimony to go
8 yet, Richard Kipp, who is the Chief Lehigh County
9 Probation Officer.

10 All right, Mr. Kipp, if you could
11 proceed.

12 MR. KIPP: Thank you for the opportunity
13 to testify here today.

14 Since the mid-1970's involvement by adult
15 probation with crime victims has resulted in the
16 development of programs and services designed to meet
17 their physical, emotional, and financial needs. Many
18 of the services now provided by the district attorneys
19 and crime victim witness programs carried out, often
20 informally, by probation and parole departments. The
21 probation officer often became the service broker for
22 medical care and personal counseling. The probation
23 officer also became the victim's advocate in securing
24 recovered property and financial compensation through
25 restitution. There was a critical gap in victim

1 services. Probation is clearly grateful for the
2 victim-oriented services and programs now in operation
3 through our district attorney's office and private
4 victim service providers. Despite the suitability in
5 probation skills to provide victim services, I believe
6 that the impartiality of independent victim witness
7 programs offer greater expertise in both resources and
8 services.

9 All probation departments in
10 Pennsylvania, and most throughout the country, have
11 established policy procedure for interviewing victims
12 when appropriate and possible. The information
13 obtained is included in pre-sentence investigation
14 reports or is included in an officer's post-conviction
15 supervision and treatment plan. In Lehigh County, we
16 have been completing a victim's impact statement since
17 1979. We believe the single most important contact to
18 be made after interviewing the defendant is in fact the
19 victim. When a probation officer is assigned a
20 pre-sentence investigation or has been assigned a case
21 for supervision where there is no pre-sentence
22 investigation report, a certified victim
23 restitution/impact claim letter is sent to the victim.
24 In cases of personal injury, a personal letter is sent
25 followed with an interview in the victim's home. The

1 victim's impact statement is important because the
2 probation officer may often be the only person to whom
3 the victim is willing to communicate. Information
4 obtained includes:

5 - The negative repercussions that have
6 occurred as a result of the crime - medical bills, fear
7 of being alone, financial hardships, feeling of
8 worthlessness, the needs for repairing property damage;

9 - The type of sentence the victim feels
10 appropriate when interviewed for a pre-sentence
11 investigation report;

12 - The types of special conditions needed
13 to be imposed, such as the defendant having no further
14 contact with the victim;

15 - The victim's need for referral to
16 service providers for counseling; and

17 - The information required to establish
18 an order of restitution.

19 Interviewing the victim for a
20 pre-sentence investigation report or supervision
21 treatment plan allows the victim to not only tell his
22 or her own story in his or her own words but also
23 allows for an opportunity to vent anger and
24 frustration. The ability to express their feelings
25 about the type and length of punishment also gives the

1 victim a sentiment of being heard. At the same time,
2 the probation officer may also explain to the victim
3 information about the offender and his or her own
4 situation.

5 Although information about the victim is
6 ascertained through police reports and district
7 attorney records, the aforementioned victim's rights
8 have been within the domain of the probation office. I
9 am concerned with the legislation as written, page 10,
10 lines 20 through 21, which could result in the district
11 attorney's office assuming these responsibilities. I
12 would recommend that the intent and language be amended
13 as follows: That the district attorney shall assist in
14 providing information concerning any victim or victim's
15 family statement, if necessary.

16 The district attorney's office can be
17 construed as pro-prosecution, while probation as
18 impartial by virtue of being an arm of the judicial
19 branch. This change may vacate a possible argument
20 where defense counsel may suggest that the district
21 attorney has slanted or distorted the victim's
22 statements through his or her own biases or
23 interpretation.

24 With respect to a victim's input at any
25 parole hearing, Act 134 of 1986 placed this

1 responsibility on parole departments and the
2 Pennsylvania Board of Probation and Parole. In
3 practice, the following system was utilized.

4 First, there is a victim notification
5 letter. A certified letter sent to each victim
6 explaining Act 134 and its consequences to the victim.
7 It clearly identifies the offender's name and case
8 number. It also provides the parole officer's name and
9 phone number. The victim is explained that he or she
10 made provide oral or written input.

11 There's the victim interview/statement.
12 The victim is interviewed and a statement is taken that
13 is included in the offender's parole petition and
14 forwarded to the paroling authority.

15 The victim input letter is where the
16 victim will receive a copy of his or her statement.

17 Decision notification. The victim will
18 receive a letter which informs them of the paroling
19 authority's decision and the conditions of parole if
20 granted. If parole is denied, they will be notified of
21 future parole consideration dates.

22 And then the information filing is where
23 the information regarding the victim's input will
24 become a permanent record in the offender's case file.

25 Since the act's implementation in 1986,

1 Lehigh County Adult Probation has contacted 1,659
2 victims, regardless of the types of crimes, concerning
3 parole actions. Of this number, 10 victims have
4 provided input. Although I am surprised with the low
5 number of victim response, I do believe the intent of
6 Act 134 is being met.

7 As stated previously, I believe the
8 district attorney should assist in providing
9 information concerning any victim or victim's family
10 statement, if necessary, not assist in the preparation
11 of parole input. In addition, based upon the
12 requirements of Act 134, I would suggest that part D
13 and E, page 6, lines 22 through 30, be deleted as this
14 would be redundant.

15 In the event that the aforementioned
16 section is retained, a requirement to notify the victim
17 30 days prior to release may result in delays in
18 furlough, parole, and re-parole. Consequently, this
19 will have a significant effect on prison populations by
20 creating a block to inmate release. Many
21 jurisdictions, such as Lehigh County, will sentence
22 offenders to time served and grant immediate parole.
23 For example, a person may be in default of bail and
24 actually serve his or her minimum sentence prior to an
25 entry or a finding of guilt. Especially at a time when

1 many institutions face consent decrees because of
2 prison overcrowding, the use of furloughs, early
3 paroles, and re-paroles may be required to circumvent
4 penalties for violations of consent decrees where
5 prison populations may quickly rise. The concept of
6 "emergency leave" is vague and lacks an operational
7 definition. Is it the intent of "emergency leave" to
8 cover these scenarios?

9 Finally, I commend the legislature for
10 creating House Bill 2513 and encourage the legislature
11 to continue their recognition and focus on the rights
12 of crime victims.

13 Thank you.

14 ACTING CHAIRMAN PRESSMANN: Thank you.

15 BY ACTING CHAIRMAN PRESSMANN: (Of Mr. Kipp)

16 Q. In the section about the 30 days' notice
17 is giving a lot of people trouble, but it also, in many
18 ways, is one of the cruxes of the bill about the ample
19 and proper and enough advance notification to people.
20 Watching, and I wish Jerry was still here because he's
21 from Philadelphia, watching what's going on in
22 Philadelphia, it seems that a lot of people are being
23 released when they're emptying out the jails before the
24 Federal Marshals take over the jail or whatever, it
25 seems a lot of them are the crimes we're not talking

1 about - drug offenders, you know, petty drug offenders,
2 other crimes like that. I just wonder how often people
3 who have committed the crimes we're talking about -
4 assault crimes, rape, murder and that - are given this
5 quick release? That doesn't seem like that happens
6 very often.

7 A. That's hard to answer. I don't know, but
8 I think the possibilities exist. There are some States
9 who have an emergency release act, which is on the
10 State level. Consequently, based upon certain
11 criteria, the prison gates are opened and X amount of
12 people walk out. I believe Connecticut has that
13 legislation. Consequently, there isn't the
14 scrutinization of the type of offenders that I think
15 there should be.

16 The other concern that I have, and just
17 to maintain that I don't see it happening here in
18 Lehigh County, but the use of plea bargaining really
19 has reduced, I think, some serious crimes to lower type
20 crimes, and I think those situations can and will
21 exist.

22 One of the things I would recommend in
23 lieu of 30 days is that the victim must be notified
24 prior to release in some kind of confirmation
25 procedure, but I think the 30 days could, in effect,

1 cause some hardships to counties, especially where
2 they're under some Federal decree because of prison
3 overcrowding.

4 Q. Would you -- one of the points in your
5 testimony was that you thought there were certain areas
6 that in our legislation we're talking about the DA's
7 office handling and you thought was more properly under
8 your domain. The district attorney would probably
9 maybe agree with you of that because it would be one
10 less thing he'd have to worry about. And you do
11 handle, in essence, some of those right now?

12 A. Correct.

13 Q. How do you feel about the expanding of,
14 because you seem to be volunteering for additional
15 duties, do you feel that your office can handle those
16 additional duties?

17 A. I think what's being spelled out in the
18 legislation is what we're doing right now. I don't see
19 it as an expansion of function, I think just a
20 continuation of it. I think we're in a better position
21 to provide those functions than the district attorney
22 is because I think we have a better sense of the case,
23 the offender, and so forth, just by virtue of us doing
24 the pre-sentence investigation, pre-parole plans, and
25 so forth. So I think we have a better understanding.

1 And I think as opposed to the prosecuting attorney in
2 this case, I think we may have in a lot of cases a
3 better relationship and understanding of the victim.
4 So as a result of that, I think we're in a better
5 position to provide those services.

6 Q. In your experiences dealing with other
7 county probation departments, you're very active in
8 your State association, are a lot of the other offices
9 doing the same things you're doing?

10 A. Yes, they are.

11 Q. Because some of these things are not
12 required to by law that it sound like you're doing.

13 A. Well, Act 134 was fairly clear on the
14 responsibilities of paroling authorities. I believe in
15 some counties the county probation and parole
16 department might not be doing it, but I'm pretty sure
17 there's another agency or department within the county
18 that's providing that type of information. I know the
19 State Parole Board completes that for State sentences,
20 and obviously here in Lehigh County our department
21 takes it for the county paroles and releases.

22 Q. Does juvenile probation have the same
23 charge?

24 A. No, they do not, to my knowledge, because
25 there really isn't a formal sentencing, per se, and I

1 don't think they have the requirement to advise victims
2 or people being released from juvenile commitments. I
3 think rules of confidentiality prevent some of that
4 also.

5 Q. This is why we have public hearings. I
6 just learned something. Okay. That's very
7 interesting.

8 A. That's my understanding.

9 Q. Yeah, okay.

10 ACTING CHAIRMAN PRESSMANN: All right,
11 any questions from any members?

12 Galina?

13 MS. MILAHOV: Yes.

14 BY MS. MILAHOV: (Of Mr. Kipp)

15 Q. I was wondering, could you tell me at
16 what point in the continuum in dealing with the
17 offender is the victim notification letter sent out?

18 A. Okay. If we're doing a pre-sentence
19 investigation, as soon as the case is assigned to us we
20 will identify who the victim is usually by police
21 reports or by the district attorney's files. Right at
22 that point a letter is sent to the victim requesting
23 input both in sentencing and also information pursuant
24 to any form of restitution must be set up. When that
25 information comes in, and oftentimes it doesn't, we

1 then attach that to the pre-sentence investigation and
2 forward that to the court, where both defense counsel
3 and the district attorney have access to that.

4 In those cases where somebody is
5 sentenced where there has not been a pre-sentence
6 investigation, when the case is then assigned to a
7 probation officer, the first thing a probation officer
8 will do is then send out that victim letter and again
9 try to establish the extent of the victimization, what
10 type intervention might be needed, and also again to
11 set up restitution and counsel, as required.

12 With respect to the parole process, as
13 somebody is identified who will be coming up for parole
14 release, whether that be regular parole, early parole
15 by virtue of a good-time program we have here in Lehigh
16 County, the parole officer will at that time send out a
17 notice to the victim advising that the person is going
18 to be coming up for release and that the person has a
19 right to provide input. The only time that we have
20 problems in those cases where the court might grant an
21 immediate parole and after the fact we still send, in
22 most cases, the victims a letter requesting input. On
23 a couple of our orders to the court we've recommended
24 that the release be conditional upon receiving some
25 type of input from the victim.

1 Q. Would you say that of these 1,659 victims
2 notified that you only had 10 victims that provided
3 input, that those were victims that had very serious
4 crimes committed against them?

5 A. No, I can't say that.

6 Q. All right. Would you say that those
7 victims were aware of the fact that their input would
8 make a difference on the parole and probation of the
9 offender?

10 A. Yes, I do.

11 Q. Okay. And are any of these victims able
12 to get victims' compensation and because they do not
13 respond to you does that mean they also are not
14 responding to the victims' compensation part of the
15 law?

16 A. That I really do not know. What
17 transpires with the victim compensation, as a claim is
18 filed, we are advised by the Crime Victim's
19 Compensation Board, upon which time then if we have
20 notification of that we'll seek in the order of
21 restitution that the Crime Victim's Compensation Board
22 be reimbursed. Beyond that scope, we are not aware, in
23 many cases, whether or not a victim has requested
24 compensation from the Crime Victim's Compensation
25 Board.

1 Q. And is there only one contact point from
2 the parole officer to the victim when you're dealing
3 with an offender, you know, whether it's pre-sentencing
4 or once the parole officer has been assigned?

5 A. In most cases. One of the reasons we
6 send a certified letter is to insure that the victim
7 has received notice, and in the cases where we get a
8 return where the victim has not received notice, then
9 we'll seek other courses of action, try and contact the
10 victim. But in most cases with a certified letter we
11 are getting responses, acknowledgement that they have
12 in fact received notice.

13 Q. Okay, so in fact it's at this point it's
14 the parole and probation board that gets all the
15 information from the victim in Lehigh County?

16 A. Yes.

17 Q. And it can be pre-sentence or it can be
18 at--

19 A. Post-sentence. Post-conviction.

20 Q. --at a point where there would be parole
21 considered?

22 A. Also at post-conviction where the person
23 has been sentenced but there is no pre-sentence
24 investigation but there is an order for restitution we
25 will then contact the victim at that point also. Even

1 if somebody is placed on probation as opposed to being
2 incarcerated.

3 Q. Is it just by this letter or do you go
4 try to interview the people in the second case?

5 A. It really will depend upon the charge.
6 If it's a serious charge, one where there's a serious
7 personal injury, we will follow up that way. The
8 majority of those cases will end up in the State's
9 system and we would not be following up those cases
10 anyhow.

11 Q. Okay. So can I surmise that in your
12 opinion, because of your low number of victims
13 responding to this letter, it still doesn't matter
14 whether it's a serious crime or not that has been
15 perpetrated upon the victim, that that doesn't make a
16 difference as to what your response rate is from the
17 victims?

18 A. I'd have to say, yes, at this point. And
19 I'd have a hard time explaining why.

20 MS. MILAHOV: Thank you.

21 ACTING CHAIRMAN PRESSMANN: I bet you get
22 as many burglaries back -- I won't use that word
23 because people get upset about those things.

24 BY REPRESENTATIVE BLAUM: (Of Mr. Kipp)

25 Q. I would think that there's no crime more

1 serious than the one that's committed against you, and
2 that's why that people who do respond probably have
3 little bearing on how serious the crime may be listed
4 as far as felony one or misdemeanor three or whatever,
5 that it's just up to the individual how strongly they
6 feel and what their comments, what effect there
7 comments would have on the outcome, their trust in the
8 system?

9 A. I'd agree. You know, simple burglary,
10 even an unoccupied dwelling, the sense of violation of
11 one's residence for many people has really caused some
12 real serious psychological damage.

13 Q. Sure.

14 A. Problems. And in our experience, those
15 people need as much services as those who are, you
16 know, physically assaulted in many cases.

17 ACTING CHAIRMAN PRESSMANN: Okay. Any
18 other questions?

19 (No response.)

20 ACTING CHAIRMAN PRESSMANN: If not, thank
21 you.

22 Thank you to the committee, the court
23 reporter, and everyone here today. Thank you very
24 much.

25

1 (Whereupon, the proceedings were
2 concluded at 3:35 p.m.)
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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