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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

In re: House Bill 2346, Crime of Stalking

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Stenographic record of hearing held in  
Room 140, Main Capitol, Harrisburg,  
Pennsylvania

Tuesday, April 21, 1992, 10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE

- Hon. Jeffrey E. Piccola
- Hon. Gerard A. Kosinski
- Hon. Gregory C. Fajt
- Hon. Jerry Birmelin
- Hon. James Gerlach
- Hon. Robert D. Reber, Jr.
- Hon. David W. Heckler

Also Present:

- Hon. Michael P. McGeehan, Prime Sponsor
- Mary Woolley, Esquire, Republican Counsel
- Galena Milahov, Research Analyst
- David Krantz, Executive Director,  
House Judiciary Committee
- Katherine Em Manucci, Secretary

Reported by:  
Emily R. Clark, RPR

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1           CHAIRMAN CALTAGIRONE: I would like to get  
2 started with the Judiciary Committee hearing on House Bill  
3 2346, the crime of stalking.

4           I might add that there have been a number of  
5 incidents that continue to grow nationwide, prompting other  
6 states and hopefully Pennsylvania to consider legislation,  
7 as we have before us today, to make it a crime.

8           We will hear from witnesses today and groups  
9 testifying on behalf of the legislation, and I would like  
10 for the members of the panel and staff that are present here  
11 today to please introduce themselves.

12           I'm Chairman Tom Caltagirone from Berks County,  
13 and if we start from my left.

14           REPRESENTATIVE GERLACH: Representative Jim  
15 Gerlach from Chester County.

16           REPRESENTATIVE BIRMELIN: Representative  
17 Birmelin, Wayne County.

18           REPRESENTATIVE MCGEEHAN: I'm Representative  
19 Mike McGeehan from Philadelphia and the prime sponsor of the  
20 stalking legislation.

21           MS. WOOLLEY: Mary Woolley, counsel to the  
22 Republican Caucus.

23           REPRESENTATIVE REBER: Representative Bob Reber,  
24 Montgomery County.

25           MS. MILAHOV: Galena Milahov, research analyst

1 to the Committee.

2 REPRESENTATIVE FAJT: Representative Greg Fajt,  
3 Allegheny County.

4 CHAIRMAN CALTAGIRONE: At this time I would like  
5 to have the prime sponsor, who is here with us today, make  
6 some statements on his bill.

7 Representative McGeehan?

8 REPRESENTATIVE MCGEEHAN: Thank you, Mr.  
9 Chairman. I first want to thank the Committee and thank  
10 you, Mr. Chairman, for your concern in dealing with this  
11 serious problem, as you said, not only in Pennsylvania but  
12 the problem is fairly nationwide, and for the expeditious  
13 way in which this Committee has dealt with this  
14 legislation.

15 The intent of the anti-stalking legislation is  
16 to close a serious gap in the Pennsylvania criminal justice  
17 system, in that there has been no legal remedy to stop a  
18 stalker from threatening and terrorizing an innocent  
19 victim. In too, too many of these cases violence is the end  
20 result of the stalking.

21 I became aware of this problem through a  
22 California case where a woman was menaced, terrorized and  
23 stalked by a former lover, but could get no adequate  
24 protection under existing laws in that state.

25 Most of us have been familiar with celebrity

1 stalking cases. Most but not all stalkers are men. The  
2 stalkers of celebrities like David Letterman and Michael J.  
3 Fox are recent examples of female stalkers.

4           What you may not be aware of is that too many of  
5 these stalkers, whether they be obsessed fans or jilted  
6 lovers or former spouses or an acquaintance, end in some  
7 form of physical violence.

8           The most notorious cases involve actresses,  
9 Teresa Saldano and Rebecca Schaeffer. Ms. Saldano was  
10 stalked repeatedly, she was threatened, harassed, and then  
11 finally brutally attacked and permanently disfigured by her  
12 stalker.

13           Rebecca Schaeffer was a successful young actress  
14 who also was terrorized and victimized and stalked. Her  
15 stalker shot her at point blank range when she answered the  
16 door at her home.

17           These tragedies help to heighten the concern for  
18 victims of stalking, and heighten the concern about  
19 legislation criminalizing this offense. But for every  
20 celebrity that is stalked, there are hundreds of women like  
21 Pia Peretta, and I want to take this opportunity to thank  
22 her family for coming here today. This soft-spoken  
23 Philadelphia woman had beaten a lot of odds and established  
24 a successful career at a local hospital. Her personal life,  
25 though, was far from rosie. I'm speaking not only as a

1 Philadelphia legislator, but as a person who certainly  
2 sympathizes with this family and certainly shares in the  
3 concern for the family's plight and for Ms. Peretta's  
4 plight.

5 She had been involved in a relationship that had  
6 ended some time ago, but the stalker repeatedly contacted  
7 her, followed her, harassed her, stalked her, and just weeks  
8 ago, Ms. Peretta was also killed by this stalker.

9 Mr. Chairman, this is just one case of the  
10 hundreds that happen every year in Philadelphia, in this  
11 Commonwealth and around this country. That's why  
12 anti-stalking legislation is pending in 27 other states and  
13 is now law in California.

14 Our intent is to save future Rebecca Schaeffers  
15 and Pia Perettas from the terror of stalking and to stop it  
16 before it's too late. When our police are forced to tell a  
17 victim, once he attacks you physically then we can act, it's  
18 clear that our laws need to be changed.

19 This legislation, which was co-written by  
20 Philadelphia District Attorney Lynne Abraham and  
21 Representative Karen Ritter, will do three important  
22 things. First, it puts teeth into what are today inadequate  
23 protection orders, by providing for a felony conviction upon  
24 the stalking conviction in violation of a protection order.

25 Secondly, it empowers police to intervene in

1 these cases, again, before it's too late.

2 And third, it gives judges the tools to put  
3 violent criminals behind bars.

4 Our colleagues have acted in California, our  
5 colleagues have acted in Florida and Virginia, where the  
6 legislation has passed both houses in the legislature and is  
7 now waiting the signature of the governor. Our colleagues  
8 have acted in 25 other states by introducing this  
9 legislation. I think it's about time that Pennsylvania gets  
10 in step with the rest of the country and protects women to  
11 the fullest.

12 Thank you, Mr. Chairman.

13 CHAIRMAN CALTAGIRONE: Thank you.

14 We next hear from the Peretta family. If you  
15 would care to come over to the table and open your  
16 testimony.

17 For the record, if you would please want to  
18 introduce yourself, and starting from one end and running to  
19 the other for the members of the panel.

20 MS. BETH PERETTA: My name is Beth Peretta. I'm  
21 one of Pia's sisters.

22 MS. DONNA PERETTA: Donna Peretta, Pia's  
23 sister.

24 MS. NATALIE PERETTA: Natalie Peretta, the  
25 youngest sister.

1 MR. PERETTA SR.: Jim Peretta, Pia's father.

2 MR. PERETTA JR.: James Peretta, Pia's brother.

3 MR. JOSEPH: Arnold Joseph, Beth's fiance.

4 CHAIRMAN CALTAGIRONE: You can start.

5 MR. PERETTA SR.: Good morning, panel members.

6 If it please the Committee, I would like to make the  
7 following statement.

8 We're here today because we failed Pia. We  
9 failed Pia as parents, we failed Pia as a family, we failed  
10 Pia as a community and we failed Pia as a city and we failed  
11 Pia as a state. We failed Pia because we did not do what  
12 needed to be done to ensure her most basic right, her right  
13 to live.

14 Pia did what she needed to. She did what we as  
15 parents, family, as a community, as a city and as a state  
16 told her to do. She did her part, but we did not do our.  
17 We left her alone.

18 She took an apartment next to her mother. She  
19 reported the abuse to the police. She told the police that  
20 he was armed and that he had threatened to shoot it out with  
21 them. She told the police that he held a gun to her head.  
22 She told the police that he threatened to kill her and her  
23 children.

24 She warned her employer that she was in danger  
25 and had received harassing calls at work.



1           She filed a protection order. She appeared in  
2 court. She pressed charges. Every step of the way Pia  
3 followed the advice of those she trusted, of those in  
4 authority. Yet all Pia's efforts did not protect her from  
5 her abuser. Ultimately, Pia was alone.

6           As parents we thought long and hard about our  
7 failure. We suffer and we grieve and we know what we must  
8 do differently. It's the same with our family. We failed  
9 Pia when we left her alone, and we left her alone by not  
10 providing her with the appropriate protection. We left her  
11 alone to, and make no mistake about that, terribly alone and  
12 horribly alone. Abused for months, harassed for weeks,  
13 stalked for days, and then alone those last few minutes,  
14 perhaps only a few seconds, face-to-face with her murderer.  
15 Nothing, no one between her and her murderer. Parents, not  
16 there. Family, not there. Community, not there. City, not  
17 there. State, not there.

18           I ask you to think now, as I have all too often,  
19 of what her last thoughts might have been when she knew, if  
20 only for a split second, what was about to happen to her.  
21 What could she feel? She must have felt so terribly alone.  
22 We were the ones she loved. We were the ones she trusted.  
23 We were those in authority whose advice she took. No one  
24 was there. Pia was alone.

25           So for her now, we can do nothing, but there are

1 others like her. Young women abused, in a flight from their  
2 abusers, stalked and vulnerable. We all know that no law  
3 can prevent what happened to Pia from ever happening again,  
4 but we can help. We can make such things more difficult and  
5 so less likely. We can pass House Bill 2346, the stalker  
6 bill, a bill with teeth in it so we'll let it be known that  
7 such craven acts are more than just misdemeanors. We can  
8 make stalking a felony. We owe that to Pia and we owe that  
9 to every young woman in Pia's circumstances. We must now  
10 act together so that they are not left alone. Thank you.

11 CHAIRMAN CALTAGIRONE: Were there others that  
12 wanted to testify?

13 MS. NATALIE PERETTA: I want to say that  
14 criminal charges were brought against this man, Stephen  
15 Boyd, on the 20th of February. Seven days later, he stalked  
16 and murdered my sister, for reasons and causes unknown and  
17 we'll never have answers to. And something has got to be  
18 done about this. This can no longer go on. Women can no  
19 longer be unprotected by these crazed men that stalk these  
20 women. Something has to be done. Whatever it's going to  
21 be, it has to be done and I'm hoping it can get done as soon  
22 as possible.

23 MS. BETH PERETTA: I think that I would just  
24 like to add at this time that the legislation and this bill  
25 is a good bill, but I want to make sure that we aren't here

1 five years from now asking that we try to amend what we've  
2 already passed to make it more enforceable.

3           And as my father stated, we don't feel that this  
4 is a misdemeanor crime. We feel that it is a more serious  
5 crime. If we make it a more serious crime, then it maybe  
6 won't stop it from ever happening again, like we said, but  
7 it would be more of a deterrent and we think that that's  
8 really important and we would like to just reiterate that  
9 point.

10           REPRESENTATIVE MCGEEHAN: I want to again thank  
11 the Peretta family. A tragic event certainly brings a human  
12 side to the paper on our desks and the language in the  
13 bill.

14           I want to ask Mr. Peretta, would your daughter's  
15 killer have been prevented from killing her or would  
16 stalking, the anti-stalking legislation helped in this  
17 incident?

18           MR. PERETTA SR.: Well, if it could have gotten  
19 him off the streets, if it could have brought him to the  
20 attention of the police, and if it had made her plight be  
21 taken more seriously by everybody concerned, certainly it  
22 would.

23           So to raise it from a misdemeanor to a felony I  
24 think would be effective. Perhaps that would raise a red  
25 flag in front of everybody in the law enforcement community

1 that now we have a felon here, not just a person who has  
2 committed a misdemeanor. So I believe in that aspect it  
3 would.

4 REPRESENTATIVE MCGEEHAN: We have  
5 representatives from the Pennsylvania Coalition Against  
6 Domestic Violence here, who can probably give us a better  
7 sense of what's happening citywide, statewide and nationwide  
8 as far as this is concerned.

9 But again, to the Peretta family, what did the  
10 police tell you? What did the courts tell your daughter  
11 that could be done?

12 MR. PERETTA SR.: Well, I think when he didn't  
13 show for the hearing, that was I guess kind of a statement  
14 on his part that he was not going to cooperate with law  
15 enforcement or he didn't care enough about what the court  
16 said to appear. So we were told at that time that it would  
17 take three days to issue a bench warrant. So there he was,  
18 you know, and it happened the next day, the next day after  
19 the court appearance.

20 I don't know what it takes to issue a bench  
21 warrant. I don't know whether it takes three days to  
22 prepare such paperwork. Had it been issued on the spot, I  
23 mean, his address was known, they knew where he was. They  
24 were informed that he was armed, he had made death threats,  
25 he threatened her children, and yet the next legal step was

1 two days too late to prevent what happened. So I guess the  
2 fact that it expedited that would be helpful, too.

3 REPRESENTATIVE MCGEEHAN: How did the threats  
4 and the stalking manifest themselves? Had he been stalking  
5 her for days before that? Lurked at home?

6 MR. PERETTA SR.: She had gotten harassing phone  
7 calls at work. She was being extra careful, you know,  
8 getting rides places and so forth. So she was aware that he  
9 was on the scene. Apparently she had seen him a few times  
10 previous at one place or another. I don't know. I mean,  
11 this was her usual routine, she was on her way to work. She  
12 had informed her employer to be on the lookout for him. It  
13 did happen on hospital property. They do have a security  
14 force. So I mean, she certainly was aware that he was  
15 stalking her, and still, even, as I say, she did everything  
16 she could and none of it did her any good.

17 CHAIRMAN CALTAGIRONE: There are some other  
18 questions from the rest of the panel. We did have Chairman  
19 Piccola also join us, and I think Representative Kosinski is  
20 over there and Representative Heckler has also joined us.

21 REPRESENTATIVE GERLACH: Thank you, Mr.  
22 Chairman.

23 Can I get a little bit more in depth factually  
24 with what happened in your daughter's situation? Would that  
25 be all right with you?

1 MR. PERETTA SR.: As I'm aware of them, I'll be  
2 more than happy to.

3 REPRESENTATIVE GERLACH: The killer of your  
4 daughter was a prior boyfriend?

5 MR. PERETTA SR.: Right, correct.

6 REPRESENTATIVE GERLACH: And at some point they  
7 separated their relationship and that is what started the  
8 stalking and the threats and the harassment by the killer?

9 MR. PERETTA SR.: That's right.

10 REPRESENTATIVE GERLACH: By Boyd?

11 MR. PERETTA SR.: Right.

12 REPRESENTATIVE GERLACH: At some point did your  
13 daughter then file criminal charges of harassment and other  
14 charges against him?

15 MR. PERETTA SR.: Yes.

16 REPRESENTATIVE GERLACH: What were the nature of  
17 the charges that were filed?

18 MR. PERETTA SR.: I think my daughter Beth was  
19 present when the order for protection was filed. She can  
20 probably speak to that.

21 MS. BETH PERETTA: That took place the day after  
22 everything began. Myself, Pia, Natalie and Jilda, my other  
23 sister, Jilda, all went down to city hall to get an order of  
24 protection. At that time Pia reported everything that  
25 happened, that he had already threatened her life, that he

1 possessed a gun, that he threatened to kill her and her  
2 children, and at that point had given no reason why but that  
3 that's what he intended to do.

4 At that time Pia was told right then and there  
5 that she should have come the day that it happened, and she  
6 had to wait until she went before, I'm not sure who actually  
7 gives the order, and they would decide at that time, because  
8 Pia didn't act quick enough.

9 So at that point we were pretty much already  
10 discouraged. And I want to make a point of that, that in  
11 other words, it was just another frivolous domestic type of  
12 situation, and it was not. It was life threatening at that  
13 time.

14 They did give us the protection order, did give  
15 her the protection order that night. We did wait and we did  
16 get it.

17 The next day, I believe --

18 REPRESENTATIVE GERLACH: Can I interrupt you  
19 there, just to get all this in line factually?

20 What you're referring to is a protection-from-  
21 abuse order; is that correct?

22 MS. BETH PERETTA: Right.

23 REPRESENTATIVE GERLACH: At that point had Pia  
24 or any of the family members been in contact with the  
25 district attorney's office to file any criminal charges of

1 either assault or harassment or terroristic threats,  
2 anything of that nature? Other than the  
3 protection-from-abuse order that you sought and did get?

4 MS. BETH PERETTA: No.

5 MS. NATALIE PERETTA: On the 20th is when the  
6 criminal charges were filed, on the 20th of February.

7 REPRESENTATIVE GERLACH: When were you before  
8 the court in getting a protection-from-abuse order in  
9 relation to February 20th?

10 MS. BETH PERETTA: That was the 17th.

11 REPRESENTATIVE GERLACH: Okay. As of the 17th  
12 when the order issued that evening, what were the  
13 particulars of the order itself? What did it require of  
14 Boyd, of Stephen Boyd?

15 MS. BETH PERETTA: I'm not sure. I know that  
16 there was just something basic where he had to stay away  
17 from her. There was some sort of distance, specific  
18 distance that he was to stay away from her. I'm not sure of  
19 the particulars of the exact order that was presented. I  
20 didn't actually see it on paper.

21 REPRESENTATIVE GERLACH: Okay. Do you know  
22 whether or not he was actually served with that  
23 protection-from-abuse order?

24 MS. NATALIE PERETTA: Yes. Well, you pick it  
25 up, because he was served before.



1 REPRESENTATIVE GERLACH: He was served with it  
2 and you know that he had gotten it?

3 MS. DONNA PERETTA: Yes.

4 REPRESENTATIVE GERLACH: When was that in  
5 relation to the date of the murder?

6 MS. DONNA PERETTA: February 18th.

7 REPRESENTATIVE GERLACH: The next day then he  
8 got the order?

9 MS. DONNA PERETTA: Yes. Yes.

10 REPRESENTATIVE GERLACH: Then on the 20th you  
11 indicated that charges were filed with the district  
12 attorney's office?

13 MS. NATALIE PERETTA: Right.

14 REPRESENTATIVE GERLACH: Is that correct?

15 MS. NATALIE PERETTA: Um-hum.

16 REPRESENTATIVE GERLACH: Were they in the nature  
17 of harassment and terroristic threats?

18 MS. PEUFRPBG: Terroristic threats, harassment  
19 and abuse.

20 REPRESENTATIVE GERLACH: After Boyd got service  
21 of the order, other than the actual incident that occurred,  
22 the murder incident, was there any other contact that he had  
23 with your sister where he continued to threaten her in some  
24 manner, in person or by phone or letter or whatever?

25 MS. NATALIE PERETTA: By phone.

1 MS. BETH PERETTA: By phone, it continued. By  
2 phone they continued. And she also said when I spoke with  
3 her the night before, that the murder took place, that he  
4 had been calling her at her job, and her supervisor was  
5 refusing to give her the phone calls because she knew who he  
6 was.

7 He then was calling and disguising his voice,  
8 saying that he was from the child welfare department or  
9 something or other, and the calls then at one point went  
10 through. And at that point he said that eventually he was  
11 going to kill her.

12 REPRESENTATIVE GERLACH: Upon receipt of that  
13 threat or series of threats, did your sister take any steps  
14 then either through the court or through the district  
15 attorney's office to report those threats and see if action  
16 could be taken on the order that had been issued?

17 MS. BETH PERETTA: I'm assuming that, and I'm  
18 assuming that once the bench warrant when she went to court,  
19 after they were filed, that that would have been the next  
20 step, with the bench warrant. In other words, she took the  
21 one, the second and the third step when she went and filed  
22 the charges with the district attorney's office and he  
23 didn't show up, and then the bench warrant was issued, then  
24 that is the next step.

25 REPRESENTATIVE GERLACH: What was the date of

1 the hearing that he didn't show up?

2 MS. DONNA PERETTA: February 26th.

3 REPRESENTATIVE GERLACH: 26th. And that  
4 hearing, was it a preliminary hearing on those charges --

5 MS. DONNA PERETTA: Yes.

6 REPRESENTATIVE GERLACH: -- that were filed?  
7 Okay. And then the actual murder took place on what day,  
8 February?

9 MS. DONNA PERETTA: February 27th.

10 REPRESENTATIVE GERLACH: What was the position  
11 of the assistant district attorney that was present for the  
12 preliminary hearing about what could be done when he didn't  
13 show up for that preliminary hearing? Just that we'll try  
14 to get a bench warrant issued?

15 MS. DONNA PERETTA: Right, and it takes three  
16 days.

17 MS. BETH PERETTA: And it takes three days.

18 REPRESENTATIVE GERLACH: Was he aware of the  
19 outstanding protection-from-abuse order that had already  
20 been filed?

21 MS. BETH PERETTA: Yes.

22 MS. DONNA PERETTA: Yes.

23 REPRESENTATIVE GERLACH: Did he offer any  
24 assistance or advice as to what your sister ought to do, in  
25 light of the circumstances that were then presented, to

1 protect herself between now and the point when he could be  
2 arrested for failing to appear for the preliminary hearing?

3 MS. BETH PERETTA: No.

4 REPRESENTATIVE GERLACH: Just we'll try to issue  
5 a bench warrant, see if we can get him picked up and  
6 otherwise you're off on your own?

7 MS. BETH PERETTA: The normal procedure.

8 REPRESENTATIVE GERLACH: Up until the point then  
9 of the 27th, had Boyd been convicted of any prior offense?

10 MS. BETH PERETTA: As far as to my knowledge,  
11 no, he hadn't been convicted of anything, that I  
12 specifically know of.

13 REPRESENTATIVE GERLACH: So that prior to the  
14 27th, the system was just moving along on the charges that  
15 had been filed, and you're not certain at this point if any  
16 further action was undertaken with regard to that  
17 protection-from-abuse order? Was that reported back to the  
18 judge that he was still threatening your sister and that  
19 could, therefore, be a contempt of his order and he ought to  
20 be picked up on that as well?

21 MS. BETH PERETTA: She did report that.

22 REPRESENTATIVE GERLACH: Okay. And what was the  
23 response, if you know, what was the response to that  
24 complaint that she raised?

25 MS. BETH PERETTA: In all honesty I don't know

1 if there was any response at all. She did continually  
2 report the threats, and they were continual, continuous.  
3 They were just about every day.

4 REPRESENTATIVE GERLACH: Did anyone at that  
5 point intercede and say, look, you know, we don't know  
6 what's going to happen in this case but given the history  
7 here of threats and protection from abuse, this is what your  
8 sister ought to try to do to protect herself until this  
9 person can be arrested and placed into confinement in a jail  
10 system pending determination of the criminal charges? Did  
11 anyone try to intercede and participate in protecting her at  
12 that point?

13 MS. BETH PERETTA: No. She, not we, she took it  
14 upon herself to make sure that she was not alone. In other  
15 words, instead of taking the bus to work, my grandmother  
16 drove her to work. Instead of staying at her own apartment  
17 that night, she stayed at my father's house and then went to  
18 work.

19 So we did different things. She had her phone  
20 number changed and not listed. Things to that nature. But  
21 nothing as far as legal advice as to what you should do to  
22 protect yourself.

23 REPRESENTATIVE GERLACH: As far as I recall your  
24 last or your response a few moments ago, up until this point  
25 you don't have any knowledge of whether or not Stephen Boyd

1 had been convicted of any other crime of violence or had  
2 been convicted of any crime, I guess I should say?

3 MS. BETH PERETTA: I don't know for sure.

4 REPRESENTATIVE GERLACH: What, in your opinion,  
5 as I read this stalker legislation, I think it's good  
6 legislation, it's needed in Pennsylvania, but as I read it  
7 it deals with situations where, number one, a person commits  
8 the crime of stalking, where under circumstances  
9 demonstrating the intent to place the person in fear of  
10 bodily harm. If it's a first offense it would be a  
11 misdemeanor I suppose of the first degree. And then  
12 depending whether or not the person had a prior criminal  
13 history it might be a felony of the third degree. That also  
14 would be amended with the ability of the court to issue an  
15 anti-stalking order against that person if there is already  
16 a conviction or a guilty plea or a plea of no contest. So  
17 that would mean before an anti-stalking order could be  
18 issued, the conviction or the guilty plea would have to have  
19 already been entered, which had not happened in this case.

20 What from your perspective should be done prior  
21 to the conviction of somebody for a stalking offense, what  
22 can be done in the system to assist better those victims who  
23 are obviously under a stalking situation, but that stalking  
24 offense has not yet been adjudicated for which that person  
25 has been found guilty or that person has pled guilty? What

1 can be done in the system to provide better protection for  
2 people like your sister?

3 MS. BETH PERETTA: Let me ask a question. I  
4 want to find out if I'm clear on what you're saying. In  
5 other words, then, if I go to the district attorney's office  
6 or whatever and I say, he's been stalking me, he's been  
7 following me, but at this point he hasn't been convicted of  
8 stalking, so in other words, he's still free to walk around  
9 and eventually kill me, because that's what will happen if  
10 there's nothing to intervene, so you're asking us what do we  
11 think needs to be done to intervene at that point?

12 REPRESENTATIVE GERLACH: Yes.

13 MS. BETH PERETTA: We need to put something else  
14 in here that's going to prevent me from being stalked at  
15 that point. Maybe there's a way that you can enforce the  
16 protection order.

17 REPRESENTATIVE GERLACH: That's what I'm  
18 thinking.

19 MS. BETH PERETTA: Maybe that should not be  
20 taken so lightly. Maybe it should not be me and my husband  
21 just having an argument and I don't want to get involved,  
22 because that's the attitude. So maybe there's a way to  
23 enforce that protection.

24 REPRESENTATIVE GERLACH: Strengthen the  
25 protection order process better.

1 MS. BETH PERETTA: In other words, if he's not  
2 supposed to be within 500 feet of me and I call 911 and he's  
3 within a hundred feet of me, then get him off the street.

4 REPRESENTATIVE GERLACH: I think you're right,  
5 particularly with regard if in this instance, assuming the  
6 protection-from-abuse order had provisions that he was not  
7 to come in contact with your sister, either verbally or in  
8 person, had to maintain a certain distance, if at such point  
9 your sister did have such contact and did then report that  
10 back to the authorities, either the court or whatever,  
11 should there not be an immediate mechanism to allow for the  
12 arrest of that individual; maybe some hearing afterwards to  
13 see whether or not there was enough evidence to establish  
14 that contact, but at least to provide protection under that  
15 protection order by immediate arrest, not a three-day bench  
16 warrant process or what have you, that as soon as a  
17 verification or certification is signed that there was that  
18 contact, allow for the immediate pickup of that individual  
19 violating that protection order.

20 Would that be something that would have  
21 provided, at least in this instance, better protection for  
22 your sister?

23 MS. BETH PERETTA: Yes, it would. Yes, it  
24 would.

25 REPRESENTATIVE GERLACH: Thanks very much for



1 your time. I appreciate it.

2 CHAIRMAN CALTAGIRONE: Other questions from the  
3 panel?

4 (No audible response.)

5 CHAIRMAN CALTAGIRONE: Thank you. Thank you  
6 very much.

7 We'll next hear from the Pennsylvania Coalition  
8 Against Domestic Violence. If you would please identify  
9 yourself for the stenographer.

10 MS. DURBUROW: My name is Nancy Durburow. I'm  
11 representing the Pennsylvania Coalition Against Domestic  
12 Violence. Good morning, Chairman Caltagirone, members of  
13 the Committee and staff.

14 The Pennsylvania Coalition Against Domestic  
15 Violence urges your support of House Bill 2346 with  
16 amendments to upgrade penalties for subsequent stalking  
17 offenses, to expand the scope and enforcement of the victim  
18 witness protection orders, to create post-conviction  
19 anti-stalking orders, and to mandate training on this law  
20 for all relevant personnel in the criminal justice system.

21 Stalkers, according to an editorial in U.S.A.  
22 Today, are obsessed ex-boyfriends, ex-hubands or fans who  
23 persistently menace the objects of their desire. Data from  
24 around the country reveals that stalking behavior often  
25 begins with the stalker conspicuously following the victim

1 and all too often ends with homicide, as the Peretta family  
2 has pointedly demonstrated today.

3           The 1992 Pulitzer Prize-winning editorials of  
4 Maria Henson in the Lexington, Kentucky, Herald Leader more  
5 specifically identifies the ultimate dangers attendant upon  
6 stalking. Miss Henson writes: "Betty Jean Ashby's life was  
7 in danger. She knew it. Her family knew it. Her neighbors  
8 knew it. In fear, Betty Ashby turned to the law." Like Ms.  
9 Peretta, "she went through all the steps. She appeared in  
10 court, signed sworn statements, told her story to the  
11 police. But nothing, it seemed, could keep Carl away.

12           "When Carl showed up at her apartment on  
13 February 10th, 1989, the only protection she had was a sofa  
14 propped up against a door and a pot of scalding hot water on  
15 the stove. Betty climbed out a window, clad only in a  
16 shirt, and ran for her life.

17           "Carl, wielding an orange crowbar, pursued her  
18 across the street. He cornered her in the bedroom of a  
19 neighbor's apartment. The neighbor could only hug her  
20 four-year-old daughter and cry as Carl hit Betty in the head  
21 again and again until she sank to the floor, dead at age  
22 22.

23           Myrtle Whitaker was stalked by her husband for  
24 almost a year and a half after she left him because he had  
25 beaten and sexually abused their three children. He

1 followed her everywhere. On December 15th, 1990, when Mr.  
2 Whitaker came to her apartment to pick up the youngest child  
3 for an overnight visit, he shot and killed their two sons,  
4 shot at their daughter, shot Myrtle and then killed  
5 himself. Mrs. Whitaker is paralyzed from the neck down and  
6 lives in a neck and head brace that is attached to her  
7 skull. She believes her husband tried to kill them all  
8 because "he thought we would all be together then."

9 Sharon Wiggs was killed and her husband was  
10 wounded in February of 1992. The killer was an ex-boyfriend  
11 who had stalked Mrs. Wiggs for eight years, repeatedly  
12 threatening her and vandalizing her car.

13 These and other stories are the impetus for  
14 anti-stalking legislation in California, Kentucky, Virginia,  
15 Florida, West Virginia, Ohio, Wisconsin and Maryland.  
16 Legislators and prosecutors in these states have concluded  
17 that anti-stalking laws will change the consciousness of the  
18 community about the danger proposed by stalkers, and will  
19 authorize police to intervene earlier in the stalking  
20 pattern, before the obsessive following and terrorizing  
21 becomes kidnapping, violent assaults, lethal attacks and  
22 homicide.

23 Most stalking occurs in the context of domestic  
24 violence, as we've heard already today. Many, perhaps most  
25 people believe that victims of domestic violence will be

1 safe once they have separated from their abuser. They also  
2 believe that women are free to leave abusers at any time.  
3 However, leaving does not usually put an end to the  
4 violence. Batterers may, in fact, escalate their violence  
5 to coerce battered women into reconciliation or to retaliate  
6 for her abandonment of the batterer.

7           The evidence of the gravity of the  
8 post-separation violence is overwhelming. As many as 75  
9 percent of domestic assaults reported to law enforcement  
10 agencies are inflicted after the separation of the couples.

11           Research reveals that almost 75 percent of the  
12 women seeking emergency medical services relating to  
13 domestic violence were entered after leaving the batterer.

14           One study of homicide that was done in  
15 Philadelphia suggested 25 percent of the men who killed  
16 their female partners were separated or divorced from the  
17 women when they killed, and an additional 25 percent killed  
18 women who were attempting to end the relationships.

19           Women are most likely to be murdered when  
20 attempting to report an abuse or to leave the abusive  
21 situation. Stalking almost invariably precedes  
22 post-separation violence.

23           Why do men stalk women? Stalking is a method of  
24 coercive control by which a person, usually a man, attempts  
25 to establish or re-establish control, usually with an

1 intimate partner or spouse, but sometimes with a person who  
2 has been chosen as a love object but who has never  
3 reciprocated, as Representative McGeehan addressed earlier.  
4 More often batterers believe that they're entitled to  
5 relationships with the women that they batter. They believe  
6 themselves to be the owners of their intimate partners.  
7 They conclude that their partners have no right to autonomy,  
8 independence, separation or self determination. They  
9 experience the partner's termination of the violent  
10 relationship as profound abandonment, and that abandonment  
11 precipitates great despair and rage.

12           The batterer who is firmly committed to his  
13 claim of ownership believes that any tactic is justified in  
14 reclaiming what belongs to him. Stalking is a tactic that  
15 is intended to recapture the lost intimate. Stalking serves  
16 to let the victim know that she cannot escape or hide from  
17 the stalker, she is ultimately vulnerable to him. Stalking  
18 reminds her of his claim of irrevocable ownership. Stalking  
19 serves to frighten others away from her, so that once  
20 isolated, she is more receptive to reconciliation to protect  
21 herself from certain impending escalation of violence.

22           If stalking fails, if the victim is not  
23 recaptured, then the stalker often turns to lethal  
24 violence.

25           Without interruption of the stalker's attempt at

1 coercive control, his obsession with the victim insidiously  
2 grow. Eventually the stalker deprives himself of basic  
3 necessities and becomes totally focused on pursuit, as we've  
4 heard today. He directs all of his resources and energies  
5 towards regaining control over the victim, and either  
6 enforcing his ownership upon her or committing the final act  
7 of ownership, homicide.

8           Newspaper clippings that we have collected from  
9 major Pennsylvania newspapers for 1990 and '91 reveal that  
10 many of homicides of women by their partners in this state  
11 occurred after a pattern of stalking and terrorism that was  
12 uninterrupted by law enforcement or the criminal justice  
13 system. Police officers, commenting on these domestic  
14 homicides, report that the absence of any statutory  
15 authority to intervene before stalking becomes homicide  
16 renders them helpless to safeguard victims and restrain the  
17 stalkers. House Bill 2346 might very well offer law  
18 enforcement the tools necessary to prevent homicides.

19           On the other hand, national data reveals that  
20 law enforcement routinely classifies domestic assaults as  
21 marginal crime, as misdemeanors, even though the criminal  
22 conduct involved actually includes bodily injuries serious  
23 or more serious than 90 percent of all rapes, robberies and  
24 aggravated assaults combined. It's not surprising that law  
25 enforcement has not responded to domestic violence as

1 serious criminal behavior, since our culture has  
2 historically condoned or at least tolerated violence within  
3 the family, particularly toward partners.

4           We are not naive. We understand that House Bill  
5 2346 will not prevent domestic homicide unless it is  
6 vigorously utilized by law enforcement. Therefore, the  
7 training piece of the legislation is essential. Only when  
8 police, prosecutors and courts understand the predatory and  
9 escalating nature of stalking and view it as a serious crime  
10 instead of nuisance behavior, will the safeguards promised  
11 by this legislation become reality.

12           Anti-stalking legislation is a vehicle for  
13 interrupting this obsessive, desperate escalating conduct  
14 before it escalates into lethal violence. When interrupted,  
15 stalkers must thereafter engage in a psychological process  
16 of divestiture. They must give up their claim to ownership  
17 of the victim. They must begin to move out of the despair  
18 of their loss into hope for future relationships. If  
19 they're not interrupted, they will too often commit  
20 themselves to lethal assaults as a means to bring to closure  
21 the intolerable separation from their victim. Often the  
22 homicidal stalker then takes his own life.

23           Data from around the country reveals that about  
24 one-third of the men who killed their intimate parents or  
25 ex-partners also kill themselves. These homicides are not

1 inevitable. They can be prevented. Early intervention  
2 against escalating criminal conduct, however, is very  
3 critical. Anti-stalking legislation permits that early  
4 intervention, which if followed by incapacitation and  
5 rehabilitation, can avert the disaster of homicide. We must  
6 stop the assailant before he is irreversibly committed to  
7 homicide. House Bill 2346 offers an invaluable tool both  
8 for harnessing the violence and batterers and for  
9 safeguarding battered women and their children.

10 Not only will House Bill 2346 permit the  
11 obsessed stalking person to confront the criminal nature of  
12 his conduct before serious escalation, it will safeguard  
13 victims and witnesses who are intimidated by a stalker or  
14 her agents by authorizing the police to arrest for violation  
15 of the pretrial restraints issued against defendants.

16 About 30 percent of domestic violence  
17 perpetrators inflict further assaults in the pre-trial phase  
18 of the criminal process. Thus, instead of hiding at  
19 undisclosed protected locations, victims and witnesses will  
20 be able to conduct their lives free of the disruptions of  
21 intimidation and coercion, if attendants fail to comply with  
22 section 4954 relating to protective orders.

23 Beyond this, the registry provision in the  
24 amendments will give law enforcement swift and reliable  
25 information about the enforceability of section 4954 again



1 relating to civil orders, as well as civil protection orders  
2 and post-conviction anti-stalking orders, thus to empower  
3 police to take decisive action when they conclude a  
4 protective injunction has been violated.

5           Since many domestic violence perpetrators do not  
6 desist even after incarceration, post-conviction  
7 anti-stalking orders are critical to permit decisive police  
8 intervention upon the recidivism by the 60 percent of  
9 domestic violence perpetrators who will assault again even  
10 after conviction or incarceration and often years after the  
11 prior criminal conduct.

12           A story of one of our own colleagues in the  
13 Coalition reminds us that absent this legislation, battered  
14 women and children will have to flee for their lives.  
15 Flight is not possible or even successful for all women. An  
16 employee of the Pennsylvania Coalition Against Domestic  
17 Violence was stalked for one and a half years after she left  
18 her batterer. He appeared at her place of work routinely  
19 and called her parents' home daily, seeking reconciliation.  
20 He followed her to restaurants, movie theatres, church,  
21 political activities, quietly threatening her and her  
22 friends and insisting that she reconcile.

23           One evening while she and her parents were away  
24 from their home, he broke into their house in a secured  
25 complex and removed all of her possessions. He called the

1 next day to inquire about her wellbeing and to assure her  
2 that her possessions would be restored if she reconciled  
3 with him.

4           Recognizing that the batterer was exposing  
5 himself to sharply escalated risk of criminal justice  
6 involvement, and concluding that his desperation had  
7 intensified, thus portending the possibility of sharply  
8 heightened violence, the battered woman went into hiding  
9 halfway across the country. The batterer followed friends  
10 and family for about two months after she had left.  
11 Thereafter, he stopped, apparently concluding that he could  
12 not locate the battered woman.

13           Should this be the only recourse for women  
14 stalked by men who claim ownership? Clearly not. Most  
15 women cannot relocate. Even if they have the resources to  
16 do so, the law compels women to stay in contact with the  
17 fathers of their children, even if this contact imperils  
18 their lives.

19           Most women find it very difficult to leave  
20 family, friends, church and home to flee to a place where  
21 they may be found or where the community may be less  
22 committed to their protection.

23           Anti-stalking legislation can fill the gap in  
24 the statutory law permitting early intervention and  
25 progression of stalking conduct, so as to impede the

1 dangerous and criminal actions of the stalker and to  
2 safeguard the victim against life-imperiling escalation of  
3 violence.

4           It can no longer be the public policy of this  
5 Commonwealth that people who fantasize or assert ownership  
6 over others are allowed to terrorize them with impunity as  
7 long as they refrain from assault or from homicide.

8           These statutory provisions articulate the  
9 commitment of this legislature to the premise that the  
10 citizenry of Pennsylvania, particularly victims of violent  
11 crime, must be free of intrusive, terrorizing stalking and  
12 that those who persist in this heinous conduct will be  
13 firmly incapacitated.

14           Thank you for this opportunity to enumerate our  
15 support for House Bill 2346 and for the amendments that are  
16 being offered by Representative McGeehan.

17           CHAIRMAN CALTAGIRONE: Thank you.

18           Questions from the members of the panel?

19           REPRESENTATIVE MCGEEHAN: Thanks for your  
20 testimony. I'm interested in what your knowledge of, and I  
21 recognize that this varies from county to county, but the  
22 issue raised by Representative Gerlach's questioning on  
23 conduct that violates a protection-from-abuse order and the  
24 turn-around time for the woman going back in, alleging the  
25 violation of the order and her ability to obtain a contempt

1 order in a timely fashion so that he's picked up rather  
2 quickly, and now on the criminal side, the three-day  
3 turn-around time in Philadelphia on the issuance of the  
4 bench warrant.

5 MS. DURBUROW: I think, as you had indicated,  
6 enforcement of protection orders across the state vary very  
7 much from county to county. Our experience, unfortunately,  
8 is it's very difficult to have contempt of a protection  
9 order enforced. The protection-from-abuse law does give  
10 judges the discretion to jail offenders when they are in  
11 contempt. We find that judges are reluctant to do so. Most  
12 often judges are very reluctant even to impose a fine upon a  
13 batterer who has a violated protection order. Jail time is  
14 pretty rare for a contempt violation of the protection  
15 order. It does occur, but again, it really varies from  
16 county to county. It's the enforcement of the law that  
17 really seems to place women in continuing jeopardy, even  
18 after they've obtained protection orders.

19 We just recently had in Wayne County a judge who  
20 was imposing a fine upon a batterer for contempt of the  
21 order, apologize to the batterer for even having to impose a  
22 fine. You know, so when you have that kind of enforcement  
23 of the law, women such as Ms. Peretta are very much in  
24 danger.

25 I can't speak directly to the time constraints

1 in Philadelphia, although I would say that Philadelphia,  
2 really, of all the jurisdictions, is one of the more model  
3 jurisdictions in the state where enforcement does occur and  
4 where protection orders are issued. So you know, and there  
5 are other counties where that is not the case. But in terms  
6 of the exact time, I can't speak to that directly.

7 REPRESENTATIVE MCGEEHAN: Thank you.

8 REPRESENTATIVE REBER: I might be missing  
9 something, but it seems to me that current law and current  
10 procedures under current law in my opinion, even if this  
11 statute or this proposed set of legislation was, in fact,  
12 statutory law, we really, from an enforcement standpoint,  
13 aren't doing anything to enhance the getting of the  
14 individual who is perpetrating the act into a protective  
15 custody setting. Are we? Am I missing something? Is there  
16 something in this proposed legislation that would have  
17 guaranteed that the person being picked up any quicker in  
18 the scenario we heard earlier from the last set of  
19 witnesses?

20 MS. DURBUROW: I can't tell you that it would  
21 guarantee it. I think it would create, it could create a  
22 situation where that would be more likely to occur.

23 REPRESENTATIVE REBER: How?

24 MS. DURBUROW: By giving police officers the  
25 tools to intervene.

1                   REPRESENTATIVE REBER: What tool? Let me  
2 backtrack.

3                   As I understood in the other case, there was a  
4 protection-from-abuse application filed and order entered,  
5 so there's an outstanding order. That order violated sets  
6 the stage, in my opinion, for enforcement that would have  
7 allowed that person to be picked up. Whether he's picked up  
8 under a protection from abuse, whether he's picked up on a  
9 bench warrant, whether he's picked up on a warrant for  
10 arrest of criminal charges outstanding, it's still  
11 attempting to effectuate the physical custody of that  
12 individual. And until that's done, the ultimate issue is  
13 not resolved.

14                   In my opinion, I don't see how this legislation  
15 in any way, shape or form is going to effectuate the  
16 enforcement of a violation of an order of legal process. Am  
17 I wrong in what I'm saying? Because as far as I'm  
18 concerned, I don't want to sit here and let that poor family  
19 and other poor people think that this in any way, shape or  
20 form could have escalated the enhancement of that person  
21 being picked up, and I don't see that being the case.

22                   Now, if I'm wrong I would like to certainly be  
23 shown where I'm wrong.

24                   MS. DURBUROW: I think the protection-from-abuse  
25 order, there certainly is a need for more, for stronger

1 enforcement of those orders. But I think individuals who  
2 are stalked don't necessarily all have protection-from-abuse  
3 orders.

4           REPRESENTATIVE REBER: I understand that, but  
5 those persons that are, in fact, stalked, if this is an  
6 operative piece of legislation that's on the books, then  
7 those individuals, those victims, if you will, that are  
8 having that perpetrated on them, do they then think or  
9 should they then be comforted by the fact that this is on  
10 the books and some miraculous judicial process is going to  
11 intervene and get this person off the street and into  
12 custody? That's really the jugular issue. That's what I  
13 think we should be about in looking at how to effectuate the  
14 enforcement of a lawful issued order of process, or order as  
15 the case might be.

16           MS. DURBUROW: Part of the amendments that  
17 Representative McGeehan is offering addresses training of  
18 law enforcement. I mean, I don't need to tell you that  
19 passage of the law and enforcement of the law are two very  
20 different things. And from our perspective in the  
21 Coalition, training police officers on what their  
22 responsibilities are under the protection-from-abuse law or  
23 under this law and making them aware of the tools that they  
24 have, of what their liability is if they do not enforce the  
25 law, is real key. And that is something that the Coalition

1 has been doing for many years, is training law enforcement  
2 officers, and we think that is the key, is in providing the  
3 training and making sure that law enforcement understands  
4 what their responsibilities are under the law. And I  
5 include judicial, the judicial branch of law enforcement  
6 there, too.

7           REPRESENTATIVE REBER: I guess what bothers me  
8 is that in the set of facts that we heard earlier here  
9 today, it seems to me that that's about as close the system  
10 currently gets to operating in attempting to do something.  
11 As you said, it's almost a model jurisdiction. And I would  
12 parrot your particular analysis of that from my experience  
13 with Philadelphia and some of the counties in the  
14 hinterlands, that it probably is from an effectuating  
15 process, you know, as good as you're probably going to get,  
16 or close to it, anyway.

17           But I think my concern is if we're going to do  
18 something, we have to do something to get these people  
19 captivated where they can't perpetrate the acts that we're  
20 really concerned about.

21           I'm wondering if when that order was entered, I  
22 think they said it was on February 17th and, again, that  
23 there were criminal charges issued and a bench warrant for  
24 failure to appear at the preliminary hearing on or about the  
25 20th or the 26th, if somewhere between there, under that



1 order that was entered, this individual or individuals like  
2 the one that perpetrated this criminal act, had some type of  
3 surveillance device or some type of monitoring device that  
4 we've seen used in other instances, if this be part and  
5 parcel of the procedure, so somehow the appropriate  
6 departments that can enforce that can oversee somehow, can  
7 do what, frankly, I think a victim feels that they're in  
8 some way, shape or form having done for them out there in  
9 attempting to keep these people away from them.

10 MS. DURBUROW: I would agree. Electronic  
11 monitoring is something the Coalition has been talking about  
12 taking a look at. And actually we were just at a meeting  
13 last week with probation and parole folks at the state  
14 level, because batterers, as we've indicated, incarceration  
15 does not make them cease and desist from their behavior, and  
16 we actually talked to probation and parole folks about if  
17 someone is released, is electronic monitoring an alternative  
18 so that, you know, if he goes from work to home and that's  
19 it, so that there is some sort of protection for a battered  
20 woman, and that maybe that's a possibility.

21 We have actually had police officers suggest to  
22 battered women who have protection orders, that they buy a  
23 gun to protect themselves, because the police officers  
24 really feel that they can't protect her. So on more than  
25 one occasion we've had women in our shelters report that

1 that's what the police had to offer her, buy yourself a  
2 gun. And obviously that's not a solution.

3 REPRESENTATIVE REBER: Let me ask you this  
4 question. Again, using a set of facts that we heard  
5 earlier, that the protection-from-abuse order in the Peretta  
6 case was entered on February 17th. The stalking, if you  
7 will, took place immediately thereafter.

8 Maybe we should simply amend the  
9 protection-from-abuse act, that if such an order is entered,  
10 as was the case, and the stalking occurs, stalking, occurs,  
11 that it's automatic contempt and that the defendant can, in  
12 fact, automatically be picked up pursuant to that order and  
13 goes directly to jail pending hearing, et cetera, et cetera,  
14 or whatever. Maybe that's the way we have to go. Because  
15 what we're dealing with is a situation where there now has  
16 been an order entered and there has been the continuing  
17 violation. It seems to me that's the real problem here as  
18 to the stalking. Stalking is something that's ongoing, and  
19 once it begins to become an ongoing situation, there should  
20 be immediate redress on to that order, and maybe that's the  
21 kind of direction we should be going.

22 My own personal opinion is you can call it a  
23 first degree felony, you can have the death penalty imposed,  
24 that's not going to stop these kind of people with that kind  
25 of so-called threat hanging out there over their heads.

1 What we have to do is come up with the mechanics, the  
2 procedure and the process to immediately implement the  
3 scenario to take that person out of what they are doing, and  
4 that's the stalking act itself.

5 MS. DURBUROW: I would agree. I think, you  
6 know, you can always take a look at amending the  
7 protection-from-abuse act, but I would suggest that the act  
8 already provides for that to happen. It's the enforcement  
9 that doesn't occur.

10 REPRESENTATIVE REBER: That's what we come back  
11 to and that's what I'm trying get to. I don't see any sense  
12 sitting here creating 35 new crimes or 35 new penalties and  
13 adding, you know, a number of additional sections to the  
14 Crimes Code if, in fact, what we're really about, if what  
15 we're to really be about is to somehow not allow these  
16 senseless procedures to be ignored in some way, shape or  
17 form, that these kind of tragedies can continue to happen.

18 I've dwelled on it long enough. I think the  
19 issue is made on the record. Thank you Mr. Chairman.

20 CHAIRMAN CALTAGIRONE: Representative Heckler?

21 REPRESENTATIVE HECKLER: Thank you, Mr.  
22 Chairman.

23 Just to follow up on that, I have sort of the  
24 same feeling that Bob just expressed, that in particularly  
25 the situation we've heard about this morning, what was

1 lacking on, and I don't fault the system for this  
2 realistically, but what was lacking is a police officer who  
3 made a determination that this fellow was going, would  
4 represent an immediate threat and, therefore, was going  
5 immediately to jail.

6 I'm certain it is possible if somebody knows the  
7 bench warrant has been authorized, to expedite its issuance  
8 and to go find the individual involved. Certainly it is  
9 possible. I mean, I didn't hear anybody discuss the issue  
10 of whether or not this gentleman had the firearm legally.  
11 The odds are that he did not.

12 The fact that a protection-from-abuse order had  
13 been issued, as you indicated, would be my understanding  
14 that stalking would constitute menacing behavior, which  
15 could certainly be construed as a violation of that. And if  
16 we need to clarify that, that might be an appropriate thing  
17 to do.

18 I suspect that probably the best part of what  
19 we're talking about today is the educational component,  
20 getting people in law enforcement to understand that this is  
21 serious, potentially extremely dangerous behavior, and to  
22 behave accordingly. And I say that, again, you know, the  
23 difficulties which we confront among them, the fact that  
24 courts are used to dealing with disputes about facts, and  
25 almost always these situations involve oath on oath. The

1 stalker has a host of potential defenses to offer, and very  
2 likely there will be very little in the way of corroborating  
3 evidence. So that there's every reason from habit for the  
4 system to behave very tentatively towards this individual,  
5 where, in fact, what's needed is the intervention at the  
6 enforcement level, the intervention of somebody to say, no,  
7 Your Honor, I observed this guy, he was right across the  
8 street and when we took him into custody he had a firearm.  
9 That closes an awful lot of loops.

10 To get to the question that I wanted to pose  
11 specifically, as I look at this legislation, the thing that  
12 occurred to me about the basic definition of the crime is  
13 that it does not appear to involve any repetitive element,  
14 and I'm wondering whether that might not be appropriate.

15 Again, remembering that we are creating, if this  
16 legislation is, in fact, enacted, we are creating laws that  
17 cannot, that we're concerned with stopping stalking  
18 behavior, which certainly occurs. When we create a law, we  
19 create something that has to be lived with by everybody in  
20 society, and I'm just wondering as a practical matter, maybe  
21 we'll hear from the district attorney's office, I  
22 understand, what we can expect in terms of the potential  
23 that other people, innocent people, let's say, may be  
24 convicted of this offense. Do you have any comment about  
25 that?

1 MS. DURBUROW: I think the district attorney  
2 would probably be best to comment upon that.

3 I think some of the amendments that  
4 Representative McGeehan is offering do address the  
5 repetitive nature of stalking, and the educational component  
6 is very key.

7 We also from our perspective, all of the  
8 legislation is very important. It provides more protection  
9 to victims and we think that's very positive.

10 Also, the anti-stalking order after conviction  
11 is real key from our perspective. Again, because our  
12 experience and I think the experience nationwide is even  
13 after a conviction or after someone has been incarcerated,  
14 the behavior doesn't stop. And again, at least the  
15 anti-stalking order creates a situation where there is more  
16 opportunity for intervention, as the whole bill does, and  
17 creating that opportunity for intervention for enforcement.

18 I think we certainly can never guarantee that  
19 someone will be absolutely protected, but this at least  
20 enhances that opportunity to protect the victims.

21 I think, too, the anti-stalking order being  
22 given after conviction addresses somewhat your concern about  
23 someone who's innocent being hit with a stalking conviction  
24 or stalking order.

25 REPRESENTATIVE HECKLER: Thank you, and I will

1 take this up with the next witness.

2 My concern is, it would appear that even in the  
3 amendment there is not the requirement of a repetitive  
4 element to the offense itself. My inclination is certainly  
5 if I were a judge, to be very liberal in issuing orders  
6 restraining somebody from having contact with people that  
7 don't want to have contact with them. That should be very  
8 easy to get and if they violate that, that is in itself a  
9 demonstration of their misconduct.

10 My concern is that when I see an offense, a  
11 person commits the crime of stalking when he follows another  
12 person under circumstances which demonstrate an intent to  
13 put that, to place that person in fear of bodily injury, I'm  
14 just not sure what that means when I try and translate that  
15 into real world, what kinds of conduct does that encompass.

16 I have some misgivings. So my concern would be,  
17 well, I'm not going to belabor this, Bob focused on it very  
18 well. I think the issue is to intervene quickly. The issue  
19 is to have the system involved, and I'm not sure in a lot of  
20 cases where people in the system say, oh, if I only had  
21 another law machine we could solve this problem. It's not a  
22 lack of will or perhaps a lack of ingenuity, it's a lack of  
23 commitment more than it is the lack of another statute.  
24 Thank you.

25 CHAIRMAN CALTAGIRONE: Any others?

1 MS. MILAHOV: I have a question that I would  
2 like to bring up, and it's along the same vein.

3 ACLU was unable to attend today because they're  
4 gearing up for a major hearing before the Superior Court,  
5 but they were going to bring up concerns on the rights of  
6 the defendant, and one of the things that you touched upon  
7 in your testimony was that a person who is a stalker, is  
8 obsessed, often the person escalates their behavior when  
9 there are legal sanctions brought against him or when he  
10 feels that his time frame is closing in on him and he's  
11 being trapped, and their perception is because they haven't  
12 physically hurt anyone, they haven't done anything. In  
13 fact, that's a quote that I hear over and over again from  
14 activist groups that feel that their rights are curtailed  
15 when a PFA is brought against them and they do not consider  
16 themselves as abusers.

17 The word that you kept using was legal  
18 intervention by the police, which I feel is a misnomer,  
19 because temporary incapacitation doesn't intervene with the  
20 psychological make-up of the person so that they can  
21 redirect their need for intimacy or find inner strength to  
22 overcome this great loss.

23 I'm wondering, one, how can you educate people  
24 who are picked up for stalking so that they can get help?  
25 And is there any way that we can further, you know, give



1 them their rights but at the same time educate them and  
2 change their course? Because legal steps against them seems  
3 to escalate rather than de-escalate their behavior.

4 MS. DURBUROW: Legal steps may escalate. I  
5 think, too, that there have been studies done in terms of  
6 domestic violence where arrest has been shown to be a  
7 deterrent to continued acts of domestic violence. I mean,  
8 I'm not going to say that's a guarantee that there won't be  
9 any acts, but that has been shown to be the single greatest  
10 deterrent continuing is arrest. So I think in that respect  
11 there is the possibility that these legal interventions may  
12 have the effect of having someone cease and desist.

13 In terms of educating these stalkers about what  
14 they're doing and what kind of escalation they may face,  
15 maybe there is the opportunity for educational programming.  
16 The meeting I had mentioned that we were at with probation  
17 and parole last week and also with the Department of  
18 Corrections, they are considering a new undertaking for  
19 individuals who are incarcerated. It's an educational  
20 process whereby they are, and it's not therapy, it's an  
21 educational process, where they are taught about what the  
22 impact of their crime is on victims in terms of the loss to  
23 the victim. And also, you know, victims come into that  
24 program to tell these folks who are incarcerated exactly  
25 what the impact has been. And there has been some success

1 with that program in California where they are using that  
2 with youthful offenders. Maybe that kind of an educational  
3 process is something that would work here.

4 Other than that, I'm not real sure in terms of  
5 how one would go about changing the behavior.

6 In Pennsylvania there are a number of batterers  
7 programs whose goal it is to change behavior of batterers,  
8 and, you know, there's limited success with those programs,  
9 too. They certainly are very worthwhile because there is  
10 success, too, where batterers, and again, that operates on  
11 an educational model where the batterers are confronted with  
12 their behavior and need to look at what the impact is and,  
13 you know, basically have to take a look at that they did not  
14 have the right to violence. So even those type of models  
15 that already do exist in the state may be a possibility,  
16 too.

17 Does that answer your question?

18 MS. MILAHOV: Yes, thanks.

19 CHAIRMAN CALTAGIRONE: Representative McGeehan?

20 REPRESENTATIVE MCGEEHAN: No.

21 CHAIRMAN CALTAGIRONE: Do you have a question?

22 REPRESENTATIVE GERLACH: No.

23 REPRESENTATIVE MCGEEHAN: I have a question, and  
24 tell me if your experience or your expertise in this field  
25 bears this out.

1           I have a sense about people who engage in this  
2 type of activity, and after an initial breakup, say, of a  
3 relationship, my sense is about stalking, in the initial  
4 stages, I think as this person is more rebuffed, I think the  
5 acts become more outrageous. And I'm wondering if we  
6 defined this crime early enough in this whole process of  
7 anti-stalking, can that prevent somebody who is rational and  
8 has the full faculties in, say, the initial stages of this  
9 breakup, my sense about it is that the longer this goes on,  
10 the more irrational that person becomes. And if we can  
11 define the crime of stalking initially and enforce it and  
12 make the crime something where a rational individual knows  
13 the full force of the law, has your experience borne that  
14 out?

15           MS. DURBUROW: I think it would. I would agree  
16 with you. In domestic violence I think the earlier there is  
17 intervention, and with domestic violence, when there is  
18 arrest, that again, the studies that I had mentioned  
19 previously that have been done across the country is that  
20 that early intervention, that the possibility of that  
21 behavior ceasing is much greater than it is ten years down  
22 the road or twenty years down the road.

23           So I would agree with you that the earlier the  
24 intervention, the earlier there are consequences, the  
25 greater the chance of having the behavior stopped, or at

1 least not escalate.

2           We've had women in shelters who have been  
3 stalked for one year, five years, ten years, twenty years.  
4 And those who have been stalked for twenty years, there was  
5 no intervention twenty years ago, there was very little  
6 intervention ten years ago. There is intervention now, and  
7 that's our best bet is the early intervention.

8           REPRESENTATIVE MCGEEHAN: I think many of these  
9 offenders don't think they're doing anything wrong. They're  
10 just trying to communicate with the person who doesn't want  
11 anything to do with them. If we define this crime as,  
12 again, the definition itself says --

13           MS. DURBUROW: They may not think they're doing  
14 anything wrong. They also think they have every right to do  
15 what they're doing. The intervention is important to let  
16 them know that they do not have a right to do what they're  
17 doing. So those two things I think go hand in hand.

18           REPRESENTATIVE MCGEEHAN: Thank you.

19           CHAIRMAN CALTAGIRONE: Thank you. We'll take a  
20 half-hour break and give the district attorney's office from  
21 Philadelphia a chance to get here. So if anybody wants to  
22 get a quick bite to eat or just coffee, please do so, and  
23 we'll be back within a half hour.

24           (Recess taken from 11:48 a.m. until 12:25 p.m.)

25           CHAIRMAN CALTAGIRONE: I would like to mention

1 for the record that we have District Justice Sam Magaro, a  
2 personal friend of the chairman, from Dauphin County, who  
3 has joined the panel. He has some experience in dealing  
4 with some of the issues that we've discussed here this  
5 morning and he would like to participate when the district  
6 attorneys from Philadelphia make their presentation.

7 If you would like to come forward and join us at  
8 the panel here, and for the record, just indicate who you  
9 are and the office you represent.

10 MS. ROSE: Certainly. I'm Mimi Rose, I'm an  
11 assistant district attorney in Philadelphia County and I am  
12 chief of the special assault unit.

13 MS. McDONNELL: My name is Kathleen McDonnell  
14 and I'm the acting chief of the legislation unit,  
15 Philadelphia District Attorney's office.

16 MR. BARATTA: My name is Tony Baratta and I'm an  
17 assistant district attorney in Philadelphia and I work under  
18 Mimi Rose in the special assault unit.

19 MS. ROSE: Good afternoon.

20 MR. BARATTA: Good afternoon.

21 MS. ROSE: As I've already told you, my name is  
22 Mimi Rose and I'm chief of the Philadelphia District  
23 Attorney's Office special assault unit. Our unit is  
24 responsible for the prosecution of all cases involving child  
25 abuse and domestic violence in Philadelphia County.

1           With me here today is my colleague, Tony  
2 Baratta. Tony is the line DA who actually does our  
3 prosecutions.

4           To give you an idea of numbers, if we're talking  
5 about contempt cases from violation of protection-from-abuse  
6 orders, misdemeanors and preliminary hearings alone, in  
7 Philadelphia County we're talking about approximately 225  
8 cases per week. That's not including felony trials.

9           He is just a guy. An ordinary face in the  
10 crowd. Nothing special, not doing anything, not bothering  
11 anybody. Unless you happen to be the anybody who used to be  
12 married to him. The anybody he knocked around and beat.  
13 The anybody who had been terrorized by him as a way of  
14 life.

15           You have the strength and the courage to get  
16 away and start over, but he found you and the phone calls  
17 began. He told you that if he can't have you, nobody can,  
18 and that one day, he would kill you. You believe him and  
19 you're scared. You know he's capable of anything.

20           You quickly get a stay-away order from court and  
21 you change your phone number. And he found you again. Now,  
22 this time there's no beating, there's now abusive language  
23 anymore. He just stands across the street, a reminder of  
24 old fears and old beatings. At the supermarket, at the  
25 movies, at church and at work, you turn around and he's

1 following you and he's making you crazy.

2           And I'll tell the members here today that  
3 yesterday I received two phone calls, one from a woman who  
4 was a social worker at the Department of Human Services,  
5 telling me that her ex-husband was sitting in the lobby of  
6 the Department of Human Services when she walked into work,  
7 and that she was told by the guard downstairs that he was  
8 there at five o'clock ready for her to leave. He wasn't  
9 doing anything, he was just sitting in the lobby of the  
10 Department of Human Services, a public building.

11           I got another call late in the afternoon by a  
12 woman who told me that her ex-boyfriend was driving around  
13 her block. He wasn't saying anything. He had a legitimate  
14 right to be there. But he kept driving around her block.  
15 And every time that he got close to her house, he would slow  
16 down. And she said to me, I have a child and my child is  
17 scared to go out. She won't even go out and play anymore  
18 because she's afraid.

19           What is plainly assaultive, terroristic behavior  
20 is profoundly disruptive and unsettling to its victims.  
21 It's often a precursor to violence, and as we all know,  
22 sometimes to murder. The conduct has a name, and the name  
23 is stalking.

24           House Bill 2346 proposes to underscore the  
25 criminality of stalking, prohibiting this conduct simply and

1 unambiguously. Existing criminal penalties for stalking  
2 type behavior carry about as much punch as a parking  
3 ticket. Harassment is a summary offense, that if you fail  
4 to appear for harassment, as a general rule nothing is  
5 done. You can't get a warrant for crimes of harassment if  
6 that crime is committed outside the presence of the police.  
7 That's harassment.

8           House Bill 2346 proposes enhanced penalties for  
9 those who stalk their victim. Passage of this bill will  
10 send a clear message not only to offenders, but also to law  
11 enforcement officers that victim safety is of the highest  
12 priority for lawmakers in Pennsylvania.

13           House Bill 2346 also includes a much needed  
14 change to the Crimes Code, allowing warrantless arrests for  
15 violations of criminal protective orders. Under present  
16 law, criminal court orders prohibiting the defendant from  
17 contacting or harassing a victim have little more than  
18 placebo effect. It's not uncommon to hear frustrated  
19 prosecutors come back from court and tell me the judge  
20 discharged the case but he gave the woman a protective  
21 order, and he pointed his finger at the defendant and said,  
22 there is a protective order and if you ever do this again.  
23 The protective order has no effect other than placebo value  
24 in criminal court, for unless the defendant violates a  
25 protective order in the presence of a police officer, the



1 officer cannot make an immediate, on-the-spot arrest of the  
2 offender.

3           Victims who have criminal protective orders and  
4 call 911 can get no immediate assistance. The victim  
5 remains vulnerable and the offender sees that he can  
6 continue to terrorize his victim with little fear of  
7 sanction. House Bill 2346 permits swift and certain police  
8 response to criminal protective order violations. Under the  
9 proposed legislation, police would be authorized to make  
10 warrantless arrests for protective order violations  
11 supported by probable cause.

12           Stalking incidents continue to grow nationwide,  
13 prompting several states to propose or enact legislation, in  
14 the case of California and Virginia, similar to House Bill  
15 2346, which is co-sponsored by State Representatives Michael  
16 McGeehan of Philadelphia and Karen Ritter of Lehigh County.

17           We in the Philadelphia District Attorney's  
18 Office are proud to have helped draft this powerful and  
19 enforceable new anti-stalking statute, and appreciate the  
20 opportunity to comment before this Committee today.

21           CHAIRMAN CALTAGIRONE: Thank you. Will you  
22 stand for the questions?

23           District Justice Sam Magaro, my friend from  
24 Dauphin County, had some questions that he would like to  
25 ask.

1 JUSTICE MAGARO: One of the questions that I had  
2 is you have 2709 that is basically being suggested it be  
3 harassment and stalking. Is there any reason why you just  
4 couldn't have harassment and then you have 1, 2 and 3 and  
5 then 4, have stalking as an enhanced penalty?

6 MS. McDONNELL: In answer to that, sir, I think  
7 the description of stalking has to be set forth specifically  
8 and separately under the harassment statute. I don't think  
9 that 1, 2 and 3 --

10 JUSTICE MAGARO: That defines the different  
11 elements for harassment, but if you add a 4.

12 MS. McDONNELL: In other words, instead of a B,  
13 have a 4?

14 JUSTICE MAGARO: If you added a 4. And then  
15 when he follows another person under circumstances which  
16 demonstrate intent to place that person in fear of bodily  
17 injury, and then under grading, would there be any  
18 difference? In your opinion.

19 MS. McDONNELL: No, I don't think there would be  
20 any difference. It would be just be a matter of changing  
21 the B to a 4; is that correct?

22 JUSTICE MAGARO: Right.

23 MS. McDONNELL: I don't think there would be any  
24 difference there. It would be the definition harassment to  
25 including stalking behavior.

1 JUSTICE MAGARO: Right.

2 The other question that I had, if you don't  
3 mind, Mr. Chairman.

4 CHAIRMAN CALTAGIRONE: Certainly.

5 JUSTICE MAGARO: A lot of these problems happen  
6 at night and on weekends. How do you have people available  
7 at nights or on weekends to address these problems? In  
8 particular, you know, night court -- now, Philadelphia, of  
9 course, operates on the bail commissioners, bail  
10 commissioners, I guess, and are they always available?

11 MS. ROSE: That's correct. In Philadelphia the  
12 bail commissioners work 24 hours a day, seven days a week.  
13 In addition, we have a unique and one of the nation's first  
14 protection-from-abuse courts which is open 24 hours a day,  
15 seven days a week, and there are police who are working  
16 those same hours.

17 JUSTICE MAGARO: One of the comments that you  
18 made really struck me, and that was that even in the  
19 harassment charge you made the comment where someone is  
20 charged for a summary offense of harassment, that a warrant  
21 would not even be issued? You're referring just to  
22 Philadelphia, of course.

23 MS. ROSE: Under the Rules of Criminal  
24 Procedure, I do not believe that a warrant is lawful when  
25 the defense is a harassment.

1 MS. McDONNELL: I think it's Rule 101 if a  
2 misdemeanor is committed --

3 JUSTICE MAGARO: You're talking in the  
4 presense --

5 MS. McDONNELL: Without, yeah.

6 JUSTICE MAGARO: But warrants could be issued,  
7 depending on the circumstances, I guess.

8 MS. McDONNELL: For a summary offense I would  
9 say it would be highly unlikely in Philadelphia that a  
10 warrant would issue.

11 JUSTICE MAGARO: Doesn't Philadelphia have a  
12 particular problem on issuing of warrants, whether it's for  
13 summary offenses under traffic and non-traffic at the  
14 present time?

15 MS. ROSE: I think that the volume in  
16 Philadelphia certainly is more dramatic than anywhere else  
17 in the state, but I also think that in the eyes of a law  
18 enforcement officer, whether he's from Philadelphia or  
19 another place, that when we call something a summary, we're  
20 saying it's diminimus. So the value of saying that this  
21 crime is more than diminimus because we're calling it a  
22 misdemeanor, it has a name and it's more serious, I think  
23 that there's great value in that.

24 Police officers, wherever they're from, know  
25 that a summary means we don't care very much about the

1 activity.

2 JUSTICE MAGARO: Well, okay. That's all.

3 CHAIRMAN CALTAGIRONE: Thank you, Judge.

4 Bob?

5 REPRESENTATIVE REBER: Thank you, Mr. Chairman.

6 Ms. Rose, could you walk me through the  
7 procedure that you referenced on the second page of your  
8 testimony relative to the provisions of House Bill 2346  
9 allowing for warrantless arrests for violations of criminal  
10 protective order? Give me the scenario as to how that would  
11 procedurally unfold, what has to precede. Put that into  
12 motion, what has to take place then, to put that into an  
13 affirmative action. What's the procedure, what's the  
14 procedure that would be carried out? Walk me through a  
15 factual scenario, if you will, as to how that would be  
16 implemented.

17 MR. BARATTA: I can address that question.

18 Right now we like to call those orders, I think  
19 Ms. Rose referred to them as criminal protective orders.  
20 These are protective orders that are issued in a  
21 non-domestic violence situation. The situation that we see  
22 come up often is someone comes into court on a criminal  
23 charge, a witness, let's say, particularly in drug cases, in  
24 neighborhood disputes, where there's been a lot of rivalry  
25 going on, and they will say to the judge, either at the

1 preliminary hearing or at the completion of the trial, I'm  
2 afraid that person is going to come around my house and  
3 terrorize me, I'm in fear for my children, I don't want them  
4 coming around and bothering me, or their agents. And the  
5 judge now will say, I'm going to issue a stay-away order so  
6 that this defendant will not bother these people.

7           Okay. Right now that is not worth anything,  
8 because the person who is then terrorized by the witness who  
9 has been ordered to stay away has no recourse.

10           The action takes place not in the presence of a  
11 police officer. They call up and say, I have a protective  
12 order here the judge issued me in my criminal case. The  
13 police don't have it on their computers as they do  
14 protection-from-abuse orders, and the person is then forced,  
15 and sometimes in imminent danger, to go in and get a  
16 warrant, and you lose precious and valuable time.

17           So the effect of these stay-away or protective  
18 orders is that they serve to offer no protection or no  
19 safety for non-domestic violence situations.

20           MS. ROSE: Let me add something. It also has  
21 application to domestic violence situations. It gets very  
22 confusing, and I think that that's part of the problem. Let  
23 me do it in a domestic violence --

24           REPRESENTATIVE REBER: Let me ask you, first of  
25 all, the procedure that you're operating under is an

1 activity under 4954 of the protective order section first,  
2 correct?

3 MS. ROSE: That's correct.

4 REPRESENTATIVE REBER: That can then be  
5 implemented you're saying at any type of hearing, where the  
6 so-called defendant under that order may or may not be  
7 present?

8 MS. ROSE: No. The defendant has to be  
9 present.

10 REPRESENTATIVE REBER: That's what I'm saying.  
11 When I say walk me through, I want to know exactly the  
12 procedural due process that is afforded to the individual  
13 under order.

14 MS. ROSE: At any stage of a criminal  
15 proceeding, a criminal protective order may issue. Even at  
16 the time of setting of bail the magistrate can issue a  
17 stay-away order pursuant to the criminal statute. They can  
18 issue a protective order at the first listing of the case.  
19 The case might be continued; they can issue it if they  
20 choose at the conclusion of the case.

21 That's always a remedy that the court may offer  
22 a complainant. The defendant is always present when that  
23 order is issued.

24 REPRESENTATIVE REBER: Let's stop there. Let's  
25 move in now to the quasi-criminal protection-from-abuse

1 setting. Okay? Application filed, petition filed, order  
2 under that particular section, which escapes me right at  
3 this minute.

4 MS. ROSE: Under Title 23 you're talking about.

5 REPRESENTATIVE REBER: That's right. Could this  
6 particular scenario also then follow where there would be a  
7 criminal protective order contemporaneous with the issuance  
8 of the protect from abuse?

9 MS. ROSE: Certainly.

10 REPRESENTATIVE REBER: Is that done in  
11 Philadelphia?

12 MS. ROSE: It can be. Sometimes it is,  
13 sometimes it isn't.

14 Tony, how many times would you say that the  
15 victims have concurrent orders, have protection-from-abuse  
16 orders and criminal protective orders?

17 MR. BARATTA: It depends whether or not a crime  
18 has been committed.

19 REPRESENTATIVE REBER: I was going to ask you  
20 what would be the basic elements that would necessarily be  
21 present that would trigger that bifurcated entry?

22 MR. BARATTA: It would not be a bifurcated  
23 entry. It's two different processes. One is a criminal  
24 process and one is a civil process.

25 REPRESENTATIVE REBER: I understand. Okay.



1 MR. BARATTA: So that the --

2 REPRESENTATIVE REBER: That's why I bifurcated  
3 civil from the criminal, but go ahead.

4 MR. BARATTA: How it would happen is if a crime  
5 was actually committed, such as a simple assault, that would  
6 come into municipal court. Then the municipal court judge  
7 could issue, after hearing the facts of the case or getting  
8 some understanding of what's going on in the case, while the  
9 defendant is there, issue a stay-away order telling this  
10 defendant to stay away from the complainant.

11 REPRESENTATIVE REBER: Let me ask you this  
12 question. Suppose on let's say Monday there's a  
13 protection-from-abuse order entered. Let's say about three  
14 or four days later there's a plethora of criminal charges  
15 filed against that defendant. Obviously, many of the  
16 aspects of the criminal charges relate to terroristic  
17 threats, you know, attempts to commit other types of  
18 physical actions to an individual.

19 Would then that in essence be a basis for a  
20 stay-away order to also be entered by the --

21 MS. ROSE: Yes.

22 REPRESENTATIVE REBER: One is shaking his head  
23 no and the other is shaking his head yes.

24 MR. BARATTA: It would certainly be the basis  
25 for an order, but since a civil protection order already

1 existed there is no need for that stay-away order, because  
2 then they would be duplicative.

3 REPRESENTATIVE REBER: That's what I'm getting  
4 to. The ultimate bottom line, though, under current law and  
5 current procedures is that for all intents and purposes the  
6 ultimate enforcement is going to track identically, isn't  
7 it?

8 MR. BARATTA: Absolutely not.

9 MS. ROSE: The problem is simply this, I think.  
10 If I'm a woman and I am assaulted by an intimate or somebody  
11 who I can get a protection-from-abuse order, I go down and I  
12 get a PFA.

13 REPRESENTATIVE REBER: Let's talk in terms of  
14 I'm a woman who is stalked under current law as we currently  
15 know it, okay? And we may not have the jargon existing  
16 under the harassment statute, but we want to bring about  
17 redress for that type of activity.

18 MS. ROSE: With all due respect, maybe I'll be  
19 able to clear it up here, because I think that violation of  
20 protection orders is a separate issue than stalking. It has  
21 to do with this. People who get protective orders shouldn't  
22 have to go to law school or shouldn't have to work in the  
23 prosecutor's office to understand does this order enable me  
24 to call 911 and have the police, or is this the kind of  
25 order when I call 911 they're going to tell me to go down to

1 the district attorney's office and it's going to take six  
2 weeks? It's simply not fair to victims when we're talking  
3 about the same kind of conduct, which is people who have  
4 been arrested for doing harm to them are allowed to come  
5 back and bother them or hurt them and harass them.

6           If they have one kind of order, and they don't  
7 know what they have, they can get immediate help. But if  
8 they have this criminal protective order, they can't. We  
9 expect too much from victims, and we over-complicate the  
10 system.

11           The remedies that are given to people who have  
12 protection-from-abuse orders who are trying to get the  
13 criminal contempt orders on parity with them so any victim  
14 can call 911, "Officer, I have a protective order and I need  
15 your help now," and the officer being empowered to come and  
16 make an arrest if appropriate. That's what we're looking  
17 for, to give them the same force and effect. Now they're  
18 not.

19           And a victim, if you have police -- victims call  
20 police all the time, "Police, help me, the judge said  
21 there's a protective order." Well, the judge puts it in the  
22 computer, and he doesn't see any protective order, because  
23 only protection-from-abuse orders are on the computer.

24           REPRESENTATIVE REBER: You're saying the person  
25 is actually better off with a protection from abuse?

1 MS. ROSE: You bet. In terms of this, that's  
2 absolutely correct. The problem is that many victims are  
3 not entitled to protection-from-abuse orders because if  
4 their relationship is not one of intimacy or household  
5 members, they can't get it. And some victims come into the  
6 system, in the criminal system before they even have a  
7 chance to file a protection-from-abuse order.

8 REPRESENTATIVE REBER: Let me ask you another  
9 question. We had some lengthy testimony earlier this  
10 morning regarding the Peretta situation in Philadelphia, and  
11 there was under my hearing, a protection-from-abuse order  
12 entered in that case.

13 Where did that fall through the cracks, then,  
14 that allowed the issue to go to the tragedy that it went  
15 to?

16 MS. ROSE: I'm going to let Mr. Baratta, who is  
17 very familiar with the contempt system, explain to you  
18 procedurally what occurred.

19 MR. BARATTA: My understanding of what occurred  
20 is that when getting a civil protection-from-abuse order,  
21 it's an extended process, it's not a one-time thing. You  
22 have to go in and you have to make allegations that you are  
23 afraid of this person, that there has been some violent  
24 conduct within the past 30 days. Then an ex parte order,  
25 which lasts for 24 hours, is then issued.

1           After that, a temporary hearing must be held  
2 where the defendant is present, because this order is very  
3 powerful. It has the ability to evict someone from their  
4 own home. So the defendant has to be given notification of  
5 a hearing where he is entitled to present a defense, within  
6 24 hours after the emergency protection-from-abuse order is  
7 entered.

8           Oftentimes it is the responsibility of the  
9 complainant herself to serve the defendant with this  
10 emergency order. Now, if you can understand the problem --

11           REPRESENTATIVE REBER: Can I interrupt you for a  
12 second? Basically you're giving me textbook procedure as to  
13 what goes on. I'm really concerned with if you could tie  
14 this directly to be the contemptuous conduct that immediately  
15 preceded the homicide and in the Peretta case and existed,  
16 you know, prior to thereto. That seems to me to be to the  
17 jugular issue that we're trying to narrow. Because I think  
18 the real import of these hearings is to come up with a way  
19 that we can implement the procedures and the enforcement  
20 mechanism so these things don't happen so that we don't, you  
21 know, need a law degree if you are a victim to enforce an  
22 order already entered, and all those kind of things. I'm  
23 interested in where this broke down, because obviously  
24 something broke down somewhere.

25           MR. BARATTA: I wasn't here for the Peretta

1 testimony and I don't know exactly what you're referring  
2 to. If you could pinpoint exactly where you think --

3 REPRESENTATIVE REBER: There was an order  
4 entered, correct? There was a protection-from-abuse order  
5 entered on February 17th in that particular case, as I  
6 understand it.

7 MR. BARATTA: It's my understanding that a final  
8 protection-from-abuse order was never entered in the case.  
9 It's my understanding that the defendant did not show up for  
10 his hearing where he was supposed to come in, and at that  
11 time --

12 REPRESENTATIVE REBER: What was that conduct  
13 then adjudged, his failure to appear?

14 MR. BARATTA: It depends on whether or not at  
15 that point a judge -- because there's no prosecution  
16 involved in this particular matter. It's all civil. The  
17 defendant doesn't have to have an attorney. The complainant  
18 doesn't have to have an attorney. They can, if they want  
19 to.

20 In this particular matter, if the defendant  
21 doesn't appear, the complainant then has to prove to the  
22 judge that she or he made service on the defendant, letting  
23 that defendant, letting that person know that he had to come  
24 to court. If the judge is not satisfied that the  
25 complainant has made the requisite efforts and actually gave

1 service to the defendant, a bench warrant will not be issued  
2 for his failure to appear, and the judge will issue a new  
3 date for the complainant to come back to court again to give  
4 the defendant service for that new date.

5           That's what I think happened in the Peretta  
6 case, where the complainant came in and said -- and the  
7 defendant did not appear, and therefore, because the  
8 defendant did not appear, a final protection-from-abuse  
9 order cannot be entered. A new date has to be given.  
10 That's my understanding of what happened in this particular  
11 case.

12           REPRESENTATIVE REBER: I'm going to yield to  
13 Representative Gerlach, if you have something that's on  
14 point with that. I do want to follow up on this.

15           REPRESENTATIVE GERLACH: Thanks. I want to make  
16 sure I understood exactly. I will try to follow along with  
17 your line of questioning.

18           Had a temporary ex parte order been entered?

19           MR. BARATTA: Yes.

20           REPRESENTATIVE GERLACH: And you're taking about  
21 the hearing then with both the complainant and the  
22 respondent present. Should there not be a provision that in  
23 the event during that hearing that the respondent does not  
24 appear, that there shall be a continuation of that temporary  
25 order until such time as the hearing is held?

1 MR. BARATTA: That's correct, and it was.

2 REPRESENTATIVE GERLACH: Was that done in this  
3 point?

4 MR. BARATTA: Yes, it was.

5 REPRESENTATIVE GERLACH: At that point, then,  
6 assuming then that the respondent is served with that order,  
7 what are the provisions in the current law in the event the  
8 respondent violates that temporary ex parte order? And what  
9 can be the reaction on the part of the system to deal with  
10 that contempt immediately without having to have some other  
11 hearing later on down the road?

12 MR. BARATTA: What happens is that the defendant  
13 is arrested for violating that temporary protection-from-  
14 abuse order. The same --

15 REPRESENTATIVE GERLACH: The person that has the  
16 protection of the order calls in to somebody's office.  
17 Whose office would they call into?

18 MR. BARATTA: They would call the police.

19 REPRESENTATIVE GERLACH: Okay. And the civil  
20 protection order would be on a registry?

21 MR. BARATTA: It would be on the computer, on  
22 the police computer.

23 REPRESENTATIVE GERLACH: And then the police  
24 automatically check the registry, and that in and of itself  
25 gives them grounds to go out and make an arrest?



1 MR. BARATTA: That's correct.

2 REPRESENTATIVE KOSINSKI: Could I interrupt  
3 here, Jim?

4 REPRESENTATIVE GERLACH: Sure.

5 REPRESENTATIVE KOSINSKI: Also the victim is  
6 asked to keep the original or a copy of the order that was  
7 issued, in some cases at the round house to show the police  
8 when the person is stalking her. So that's another way to  
9 do it.

10 REPRESENTATIVE GERLACH: What if the victim does  
11 not call the police but instead calls the court who issued  
12 the order, or calls the district attorney's office where  
13 ancillary criminal charges had been filed? Do those  
14 individuals know then to immediately call the police to make  
15 an arrest?

16 What if the victim doesn't call the police?  
17 Says, I'm getting threats and everything, I'm going back to  
18 the court who issued the temporary order, and they get ahold  
19 of a secretary in the judge's chambers, or they don't call  
20 the judge's chamber, they call the DA because they also have  
21 ancillary criminal charges? Do those people then contact  
22 the police and make an arrest?

23 MS. ROSE: I can't speak for everybody in the  
24 court system; I don't think any one of us can. All I can  
25 tell you, I think that what you're raising is perhaps a

1 training issue. I don't know what judges' secretaries  
2 know. I can assure you that people who work in my unit know  
3 that when there's a call, that the response is to call the  
4 police, and we instruct them on that.

5 REPRESENTATIVE KOSINSKI: Okay. Could I just  
6 say a few things here that may help you and Bob understand  
7 the situation?

8 When you're talking about criminal charges in  
9 Philadelphia filed on harassment, terroristic threats, a  
10 number of these cases, we have a system of private criminal  
11 complaints that's handled through the district attorney's  
12 office. And before criminal charges are brought in front of  
13 the municipal court, what the district attorney's office  
14 likes to do is send the parties in front of a trial  
15 commissioner to see if it warrants municipal court action.

16 So a person can go down to Arch Street, file a  
17 private criminal complaint, and it may take four to six  
18 weeks before that matter is heard by a trial commissioner,  
19 before they even get their day in court. So even upon  
20 filing of criminal charges, the only expeditious way you  
21 have of getting a person who is stalking you is the  
22 protection-from-abuse situation, and that  
23 protection-from-abuse situation is far from perfect.

24 The court has no authority to go out, send their  
25 own people out, to enforce the order. The district

1 attorney's office only has detectives, and usually they only  
2 act upon the issuance of a body warrant from the DA'S office  
3 or an arrest warrant from the DA's office. In none of these  
4 cases that we brought up today would there be sufficient  
5 grounds for the DA's detective to go out and get the  
6 people.

7           The Philadelphia police department is the only  
8 way to go, and God bless them, they have enough problems as  
9 it is. So it normally gets very, very low priority so you  
10 have situations like you had. Unfortunate situations happen  
11 all the time.

12           REPRESENTATIVE GERLACH: Are you saying, then,  
13 that as I understand the testimony from the DA's office is  
14 if there is a PFA, and regardless if it's temporary ex parte  
15 or a final order, if there is a violation of that order, the  
16 victim can call the police, that is registered on some  
17 registry, the police then have the automatic arrest power  
18 without warrant to go out and pick up that person? If they  
19 arrest that person, the person can then have a hearing on  
20 whether or not there was basis for this? Is that right?

21           MR. BARATTA: That's correct.

22           REPRESENTATIVE GERLACH: The same statute.

23           MR. BARATTA: Um-hum.

24           REPRESENTATIVE GERLACH: So in the question of  
25 the Peretta case, where according to the family members, a

1 PFA was issued on 2/17, February 17, service of that order  
2 was on 2/18, the next day, and then criminal charges were  
3 filed on the 20th of September, and then there was  
4 additional argument or complaints that there was continuing  
5 harassment, continuing threats, where in that process should  
6 have been picked up so that person was arrested, Boyd was  
7 arrested, before the 27th when the murder occurred?

8 MS. ROSE: I think that where there's an issue  
9 it has to do with having victims having to serve defendants,  
10 and I think that that might be something that this body  
11 might have serious discussions about. It has nothing to do  
12 with the criminal justice system. It has to do I think with  
13 the civil nature of this and our expectations that victims  
14 are going to be able to go to offenders and hand them  
15 orders, and that's a problem and that's I think the issue  
16 here.

17 REPRESENTATIVE GERLACH: I'm sorry,  
18 Representative Reber, just one other comment.

19 The fact that it happens within a domestic  
20 setting to me doesn't make it a civil matter. If someone is  
21 threatening another person or is physically abusing another  
22 person, it's automatically a criminal conduct. It may not  
23 be in the criminal system, but it is criminal conduct that  
24 somebody has to be protected from.

25 MS. ROSE: I agree. I misspoke, it's a civil

1 order.

2 REPRESENTATIVE GERLACH: Right.

3 MS. ROSE: And to my knowledge, there was no  
4 arrest involved in this case, that the procedure was civil,  
5 that the parties were served, that the police and the  
6 prosecution were not involved and that the remedy was  
7 pursued in another way, pursuant to law.

8 But the problem is here a problem with service,  
9 that if I come and I say, Judge, I want a final order, which  
10 is powerful. It allows someone to remove someone from their  
11 house for a year. The judge's position is, well, this  
12 defendant's due process rights are being profoundly impacted  
13 on and I want to make sure that he knew that there was a  
14 hearing today and he had an opportunity to defend himself.  
15 And here, the judge, according to court rule or whatever, I  
16 suppose, didn't feel that at that point she could issue a  
17 permanent order. So then the case was continued and three  
18 days later the bench warrant was, in fact, issued.

19 I don't know whether the complainant or the  
20 plaintiff was able to satisfy the judge's need to show that  
21 she served him. But that's the problem, it's a problem of  
22 service.

23 REPRESENTATIVE GERLACH: Thank you,  
24 Representative Reber, for letting me interject.

25 REPRESENTATIVE REBER: Why the three-day delay

1 in issuance of the bench warrant?

2 MS. ROSE: Again, I think that, Tony, do you  
3 want to respond to this?

4 MR. BARATTA: Yes. A bench warrant should issue  
5 immediately upon proof of service. Okay. That's an  
6 important issue, whether or not there has been service.

7 Now, this three-day delay that has been  
8 testified to may have been a three-day continuance date for  
9 the complainant to bring back proof of service at that time,  
10 and then a bench warrant would be issued if she proved that  
11 the defendant was served.

12 REPRESENTATIVE KOSINSKI: Jim, if I might add, I  
13 don't want this to become a 17-way conversation, but bench  
14 warrants can also be issued for service only, where the  
15 judge may find it necessary in certain situations to issue  
16 the bench warrant with a subpoena, for the respondent, in  
17 this case, to sign and come in, and that way you can prove  
18 service.

19 So that may have happened in this case. I don't  
20 know if that's true or not. Wasn't there a holiday in  
21 between, too? One of the president's birthdays or something  
22 like that? Knowing Philadelphia's penchant for taking even  
23 Flag Day off.

24 REPRESENTATIVE REBER: Let's move more in a  
25 futuristic mode now.

1           House Bill 2346, how, and again, let's use the  
2 Peretta case as an example from which to walk this  
3 particular statute, how is this, if this proposed  
4 legislation is on the books, statutory law, how would this  
5 be of assistance to this dilemma that we see have developed  
6 in in a particular homicide that we've been using as an  
7 example here? Or would it not have provided any guidelines  
8 under the same set of circumstances that existed in that  
9 particular case?

10           MS. ROSE: From what I know about this case, I  
11 don't know whether the stalking statute, if it were on the  
12 books, would have been helpful. I don't know that.

13           I think that we can say that about any law, that  
14 any statute, any protection order, I mean, ultimately is a  
15 law, it's an order. I mean, it's not going to shield  
16 somebody from an assassin's bullet. It simply won't do  
17 that.

18           What the stalking statute does is, number one,  
19 it educates, and I think that that is such an important  
20 aspect of this, that we take a behavior that police officers  
21 and judges and prosecutors and maybe even victims  
22 themselves, I think, that this isn't very important. I  
23 mean, it's bothering me a whole lot and I can't --

24           REPRESENTATIVE REBER: Can I interrupt you a  
25 second? The education process, you're suggesting the

1 education is to the people that have to implement the  
2 procedures of the system? Is that what we're talking  
3 about?

4 MS. ROSE: I think --

5 REPRESENTATIVE REBER: If they haven't been  
6 educated under all the trials and tribulations and problems  
7 that we see come and go under protection from abuse, what  
8 makes the education process that we've attempted to  
9 implement for the workings of that allow us now to be  
10 implemented for the workings under this particular so-called  
11 stalking statute?

12 MS. ROSE: I think that in terms of domestic  
13 violence, I think that this state, I think nationally, I  
14 think that we are doing better. I really do. I think we  
15 see it in court, I think we see it from judges, I think that  
16 we see it -- and it's going to take a long time but I think  
17 we're moving in a more positive direction, number one.

18 Number two, that the idea of stalking and saying  
19 this is criminal activity. Well, your Honor, I wasn't doing  
20 anything, I was just sitting across the street minding my  
21 own business. No, you're not, sir. You're committing a  
22 crime and it has a name and its name is stalking.

23 And when I call the police and I say, he's  
24 stalking me, they'll know that that behavior is criminal and  
25 it has a name and it's a violation. And Your Honor, when I



1 go to the judge and say, I need a bail increase, or, I need  
2 this guy convicted because he's stalking her, that we're  
3 going to educate our bench, and prosecutors are going to  
4 understand that this kind of behavior is criminal.

5 I don't think that there are issues that we  
6 haven't really considered before. I think that we're  
7 learning. I think advocacy groups are teaching us. I think  
8 that we're all becoming educated, and I think the law should  
9 reflect that education by saying this behavior, and it is  
10 behavior that has application to non-domestic violence  
11 situations, but at its heart it really speaks I think in  
12 large part to that. And we can call it harassment. Well,  
13 it's annoying. No, it's more than annoying; it's stalking  
14 and it's a crime.

15 REPRESENTATIVE REBER: Short of the education  
16 scenario, short of the creation of the new crime, certain  
17 unique elements to the particular concerns that you're  
18 expressing, what else? What else does this do in the way of  
19 enforcement? What else does this do in the way of putting  
20 up an immediate Berlin wall between the defendant  
21 perpetrator and what may be a very serious situation with  
22 the victim? What does the statute do immediately to prevent  
23 that from happening, the preventive aspect of it?

24 MS. ROSE: First of all, what it does is there's  
25 a penalty.

1                   REPRESENTATIVE REBER: If you know.

2                   MS. ROSE: Well, we would call it if there's  
3 already a protection-from-abuse order outstanding, or if the  
4 defendant has committed crimes of violence against the  
5 victim, then the activity of stalking would then be deemed a  
6 felony and a police officer could, in fact, make an  
7 immediate police response. I think that's very important.

8                   There are enhancement provisions in this statute  
9 that the first time it's a misdemeanor, and our laws say,  
10 yes, unless it's committed within the presence of a police  
11 officer you have to get a warrant.

12                   REPRESENTATIVE REBER: Aren't there other types  
13 of felonious conduct already on the books, that if you have  
14 that same set of circumstances that a person could be  
15 adjudged --

16                   MS. ROSE: Not that I'm aware of, sir. I don't  
17 think that there's a law against sitting in the lobby of the  
18 Department of Human Services. I think that anybody is  
19 allowed to do that.

20                   REPRESENTATIVE REBER: The mere fact that we're  
21 now going to have some criminalized statute which has  
22 certain types of elements that I guess is what circumstances  
23 which demonstrate an intent to place, that's going to be  
24 magic language that's going to viciate the nonexistence of  
25 the First Amendment violation and allow this to be --

1 MS. ROSE: You're talking about vagueness  
2 arguments.

3 REPRESENTATIVE REBER: Among other things.

4 MS. ROSE: We were talking about this on the  
5 train. I would invite this body to look at the harassment  
6 statute as it now stands. Someone harasses somebody if he  
7 bothers him with the intent to harass, or terroristic  
8 threats, you know, terrorizing someone with the intent to  
9 terrorize, and it passed Constitutional muster.

10 I think here more than lip service that we have  
11 criteria that it is not, in fact, vague.

12 I jotted some -- you have requirement of intent,  
13 you need fear of bodily injury on the part of the victim,  
14 and you also need circumstances. I mean, you have I think a  
15 crime much more substantial than ones that have already  
16 passed Constitutional muster.

17 REPRESENTATIVE REBER: Because I was looking at  
18 it and it escaped me. The current harassment statute  
19 actually talks about, you know, the conduct with intent to  
20 harass or alarm the other person whereby either he follow a  
21 person in or about a public place or places. But you're  
22 suggesting that because it's a summary offense it doesn't  
23 provide the same type of procedural aspects that this  
24 would. Okay.

25 All right, Mr. Chairman. I'm sorry for being so

1 long and laborious.

2 CHAIRMAN CALTAGIRONE: Thank you.

3 Other members?

4 MS. ROSE: May I just --

5 CHAIRMAN CALTAGIRONE: Sure. Chief counsel,  
6 Mary?

7 MS. WOOLLEY: Did you want to say something?

8 MS. ROSE: I would just like to make a brief  
9 comment on the amendments, if I may, for the proposed  
10 amendments.

11 MS. WOOLLEY: That was going to be my second  
12 question. Can I ask you one more question that relates to  
13 the bill as drafted and then we can move on to your comments  
14 to the amendments?

15 Representative Heckler asked me to raise this  
16 issue. He apologizes for not being able to be here for your  
17 testimony; he has a conflict. And that's his concern where  
18 we were talking about the elements of the offense, that  
19 there's no requirement of repetitive conduct, and his  
20 feeling that the general impression of stalking is  
21 repetitive conduct, not just once.

22 MS. McDONNELL: Having been involved in the  
23 original drafting, we thought after discussions with Mimi  
24 and the chief of our domestic violence unit, thought that  
25 the language "under circumstances which demonstrate," you

1 could bring in the persistant pattern there, you could bring  
2 it in if you have a PFA, you can bring in prior conduct  
3 there. And I think with that language you could prove the  
4 repetitiveness and the persistence and a course of conduct.

5 MS. WOOLLEY: But you're not requiring  
6 repetitiveness?

7 MS. McDONNELL: No.

8 MS. WOOLLEY: I think that was more his concern,  
9 that raising the criminality to a felony charge or to the,  
10 in the first instance, there should be more than one  
11 incident. Driving around the block once.

12 MS. McDONNELL: I actually don't think that a  
13 repetitive, for the level that you're at when someone is  
14 following you and putting you in terror, fear of bodily  
15 injury, I don't think they need to keep repeating that  
16 behavior. I think once should be sufficient. I think  
17 that's a pretty high threshold, and I think that repeating  
18 that conduct is unnecessary.

19 MS. WOOLLEY: Now, we'll move on. I'll tell  
20 Dave what you said.

21 MS. ROSE: Just to add, I think that we have to  
22 very carefully, as we would in any crime, look at the facts  
23 and circumstances, because I can see one episode of somebody  
24 driving around the block 30 times, that we all might agree  
25 would be sufficient. So I think it requires care in terms

1 of enforcement, as any criminal statute does, but I think we  
2 want to take a look at the facts of every particular case.

3 REPRESENTATIVE GERLACH: I just wanted to add --  
4 thank you, Mary -- that it would seem to me using the term  
5 under the circumstances which demonstrate, might be a  
6 preferable way, as compared to using the word repeated or  
7 repetitive, because you may have a continuous act which you  
8 could define as not being repetitive because there was no  
9 break in the conduct, but the continuity of the act  
10 demonstrates a circumstance by which the person intends to  
11 instill fear and bodily harm, and it would be just as  
12 actionable criminally as a repetitive series of events.

13 So maybe that's why, at least in my mind, the  
14 current language might be a better way rather than inserting  
15 repetitiveness as a criteria.

16 MS. WOOLLEY: Now for the comment on the  
17 amendments?

18 MS. ROSE: First of all, I'm going to be candid  
19 with this Committee and I will tell you it's difficult  
20 because I'm going to tell you that I don't like the  
21 amendments, and what's hard is because they were proposed by  
22 what I think is an outstanding organization, Pennsylvania  
23 Coalition Against Domestic Violence, which has personally  
24 done more for me in terms of educating me about domestic  
25 violence than anyone, and I'm very grateful to them and

1 they're a terrific organization.

2           However, the problem is this. Look at the  
3 go-around that we've had this afternoon in terms of the  
4 complexity of criminal orders and civil orders and stay-away  
5 orders and what this can do and what that can do. What  
6 we're doing by advocating for anti-stalking orders is yet  
7 again putting another level of order involved. It's simply  
8 too complicated.

9           I don't want people who are crime victims to  
10 have to have an advanced degree to know what order means  
11 what and what will push what button. We need I think to  
12 simplify. We need to make everything uniform. I don't  
13 think that adding an anti-stalking order serves that  
14 purpose.

15           I think that once a defendant is convicted, that  
16 there are then lots of protections involved. Upon  
17 conviction there is the probation department, there is the  
18 parole board. The defendant is already under the court, and  
19 the victim should be able to get immediate assistance. I  
20 don't think that another order, an anti-stalking order is  
21 going to be helpful.

22           The second issue has to do with notification,  
23 the notification upon release, that the district attorney  
24 should take on an affirmative duty of notifying victims when  
25 defendants are released. I think that the idea of

1 notification of victims is profoundly important. However, I  
2 don't think for practical reasons that that responsibility  
3 should be lodged in the district attorney's office, and I'll  
4 tell you why: Because I don't incarcerate defendants. I  
5 have to rely on the prison. The responsibility must be  
6 vested there.

7 MS. WOOLLEY: I think in our separate amendments  
8 in all the work we've done on the Crime Victims Bill of  
9 Rights, which we passed out of this Committee, we made the  
10 same decision and placed the responsibility with the county  
11 prison authority and the State Department of Corrections in  
12 terms of at least recognizing that the DA didn't know when a  
13 person was being released.

14 MS. ROSE: The third issue is training. I think  
15 that of all the things that need to be done in the area of  
16 domestic violence, I think training is far and away the most  
17 important for everybody involved in this issue. However, if  
18 we don't have the money, we can't do the training. And I  
19 think if you're going to add funding to this bill, then I  
20 think my office and myself would give it unequivocal  
21 support.

22 CHAIRMAN CALTAGIRONE: Are there any other  
23 questions? Representative Gerloch?

24 REPRESENTATIVE GERLACH: As a follow-up to your  
25 last comments there on the anti-stalking order after



1 conviction, as I read this, this is a "may" provision, that  
2 the sentencing court may issue an anti-stalking order.

3           What is your sense about what's happening now in  
4 criminal sentencing situations? Does the court now enter  
5 some sort of condition as part of the sentence that that  
6 person shall stay away from the victim either for a  
7 temporary or permanent period of time so that part of the  
8 sentence now mirrors what would otherwise be an  
9 anti-stalking order under this provision?

10           MR. BARATTA: That's correct. As a condition of  
11 any sentence in the domestic violence situation as well as  
12 other situations, but particularly in the domestic violence  
13 situation, the judge would instruct the defendant as a  
14 condition of that sentence, and whether that be probation or  
15 incarceration followed by some period of parole, that a  
16 condition of that sentence would be to stay away from this  
17 person, do not annoy, harass, bother, follow, stalk, this  
18 particular person, as part of the criminal protection  
19 order. It could be embodied in the criminal protection  
20 order.

21           But we as prosecutors in our office always ask  
22 the judges, and oftentimes the judges do it of their own  
23 accord without being instructed to do so, and oftentimes  
24 we're -- not oftentimes, but we have had circumstances in  
25 our office where we've called a probation officer, based on

1 the allegation of a victim that the defendant is following  
2 her, and we've said to the probation officer, this is a  
3 condition of his sentence, bring him back for a violation of  
4 probation hearing and let's let the judge hear what this  
5 victim is saying is happening now.

6 REPRESENTATIVE GERLACH: How often in these  
7 kinds of cases is that part or a condition of the sentencing  
8 order?

9 MR. BARATTA: How often?

10 REPRESENTATIVE GERLACH: Yes. Roughly.

11 MR. BARATTA: It depends. In every instance  
12 where the complainant wants it, it's done. There are  
13 instances where someone is convicted of simple assault and  
14 they're still living with the person, so of course, that  
15 order couldn't be entered then. So those are the only  
16 exceptions.

17 REPRESENTATIVE GERLACH: How often are those  
18 conditions in the sentencing order broken or violated by a  
19 defendant? In other words, how many times do you see these  
20 defendants coming back in, coming back before the probation  
21 and parole officer on the specific reason that they violated  
22 the condition of the sentencing order?

23 MR. BARATTA: With regard to any percentage of  
24 cases I couldn't even begin to give you a number, but it  
25 does happen.

1           REPRESENTATIVE GERLACH: As I understand, this  
2 anti-stalking, if the order is entered by the sentencing  
3 court and then there's a violation of that order, first of  
4 all, that sets up a separate criminal offense of a felony of  
5 the second degree. But as I understand also, that order  
6 takes the same kind of precedence as a PFA or otherwise a  
7 criminal stalking or a protection order, and that if the  
8 victim then feels as if that has been violated, to call 911  
9 and the police can go out and arrest the guy. Is that  
10 right?

11           MR. BARATTA: That's correct.

12           REPRESENTATIVE GERLACH: If this order is  
13 entered under this provision. Whereas, if the system were  
14 to be allowed to continue as it presently stands without  
15 section 2713, anti-stalking order, if it's part of the  
16 sentencing order as a condition and that condition is  
17 violated, the victim then essentially has to raise that  
18 complaint with the parole or probation officer, who then has  
19 to go through a process of hearing as to whether or not that  
20 has or hasn't occurred, before a decision can be made  
21 whether to revoke, well, to determine whether there's been a  
22 violation of the sentencing order and, therefore, bring  
23 about the penalties that that would entail. Is that right?

24           MR. BARATTA: If I may, I think what you're  
25 asking is does this anti-stalking order give powers that the

1 victim would not ordinarily have currently?

2 REPRESENTATIVE GERLACH: Right.

3 MR. BARATTA: The answer to your question is  
4 yes, but it's duplicative of what the bill as stated for the  
5 criminal protective order would do, because as a condition  
6 of the sentence, the judge would issue the criminal  
7 protective order, and that would have exactly the same  
8 effect as the anti-stalking section.

9 REPRESENTATIVE GERLACH: He would issue that  
10 when? Or she? Whatever.

11 MR. BARATTA: That would be done at sentencing,  
12 in this scenario.

13 There are instances, sir, where the complainant  
14 does not want to see the offender go to jail and does not  
15 want to prosecute but does want him to stay away from her.  
16 So the criminal protective order would be issued in that  
17 circumstance.

18 So criminal protective orders would not be  
19 issued solely in sentencing, but they certainly would be  
20 entered in sentencing.

21 REPRESENTATIVE GERLACH: So you're saying if the  
22 judge as part of the sentencing enters a criminal protection  
23 order and that order is subsequently violated, then that  
24 person can immediately call the police and an arrest can be  
25 effected separately, regardless of whether or not this

1 anti-stalking order provision is brought into law or not?

2 MR. BARATTA: Under this proposed bill without  
3 the anti-stalking section, yes.

4 REPRESENTATIVE GERLACH: Okay.

5 MS. McDONNELL: Another problem with the  
6 separate anti-stalking order is that I'm sure you're going  
7 to hear victims who are saying, well, why isn't there an  
8 anti-aggravated assault order or anti-simple assault order  
9 or any of the other kinds of crimes that arise in a domestic  
10 violence situation. To set up one new and different order  
11 system for a specific crime is something that I think may  
12 cause more problems than it's worth.

13 REPRESENTATIVE GERLACH: The other one is a  
14 practical question, and that is, whenever these orders issue  
15 and the victim gets a copy of it, is there anything on those  
16 orders that really clearly and specifically delineates what  
17 their rights might be in the event, like in the case of an  
18 emergency, do this? Is there any kind of language --

19 MS. ROSE: No.

20 REPRESENTATIVE GERLACH: -- that ought to be  
21 made part of those orders? Even though you may think a  
22 reasonable person would know what to do, sometimes the  
23 emotionalism that's occurring as part of that domestic or  
24 non-domestic situation, they just might start shaking, what  
25 do I do.

1           Is there anything on those orders that ought to  
2 be placed there? Just to give the victim a little clear  
3 indication of what they ought to do in the event a violation  
4 occurs?

5           MS. ROSE: I think we all agree that that would  
6 be an excellent idea, and there is nothing that I'm aware of  
7 now --

8           MS. McDONNELL: There's nothing that I'm aware  
9 of, either. It seems to me merely a matter of photocopying  
10 some very basic instructions and attaching them to the  
11 order.

12          REPRESENTATIVE GERLACH: Yeah. Yeah, much like  
13 instructions on the face sheet of a civil complaint, you  
14 know, you have judgment can be entered in 20 days if you  
15 don't do this, this, this.

16          Is there some face sheet or some instruction you  
17 think that might be useful to be worked out to place on the  
18 front of these orders so the victims know what to do?

19          MS. ROSE: Right now the law is that when the  
20 police respond to a domestic violence call and they make an  
21 arrest, that they're required by statute to give the victim  
22 information about what she or he should do next. And I  
23 think it's very powerful, and I think that your idea, which  
24 is take that a step further --

25          REPRESENTATIVE GERLACH: I get the sense that

1 sometimes victims, they're in a situation where something's  
2 happening, they pull out that order and they want to read  
3 what does this say, what can I do, and it may not actually  
4 be on there as to what they can do. They might think, maybe  
5 I'll call the police, or maybe I'll do this or that, but it  
6 ought to be specified on the order what they can do and who  
7 they ought to call in the case of violation of the order.

8 MS. ROSE: I agree with you. And I think,  
9 though, ideally and simply, if I'm a victim and I have a  
10 problem, that I want to call 911 and I want the police to  
11 come and I want the police to come now.

12 REPRESENTATIVE GERLACH: Chester County doesn't  
13 have 911.

14 MS. ROSE: Really? I didn't know that.

15 REPRESENTATIVE GERLACH: A lot of parts of the  
16 state don't have 911. That's part of the whole situation.  
17 Philadelphia obviously you definitely have that and you have  
18 a direct way you might be able to make contact, but 911  
19 doesn't exist, at least right now, in Chester County. We're  
20 in the process of getting it. That's why I'm saying there  
21 ought to be some sort of instructional information on there  
22 to assist the victim, regardless if they live in Chester,  
23 Bradford, Elk, or any of the other counties.

24 MS. McDONNELL: It would be a function of the  
25 court system when they issue the order to have a photocopy,

1 it might be something we can work out administratively.

2 REPRESENTATIVE GERLACH: Thank you.

3 MS. McDONNELL: Thanks for the idea.

4 CHAIRMAN CALTAGIRONE: Thank you. Thank you  
5 very, very much for your testimony. I think it was  
6 extremely helpful.

7 MS. McDONNELL: Thank you for the opportunity.

8 CHAIRMAN CALTAGIRONE: We appreciate your taking  
9 the time to come up.

10 Mr. Peretta had some follow-up comments.

11 MR. PERETTA SR.: Thank you for the extra time.  
12 I was really getting to the point where I was dazzled over  
13 the discussion over the legal points, and now I just want to  
14 speak as a parent and layperson.

15 One thing I would like to point out, a fact that  
16 the warrant for Boyd was issued after he had murdered my  
17 daughter and after he himself was dead, the warrant was  
18 useless because the crime took place within three days of  
19 the hearing that he didn't attend.

20 My point is that if you give something a name,  
21 you give it a life, and I feel you should define stalking  
22 and make stalking a crime. That's the first step in having  
23 this conduct taken seriously. I think at the heart of the  
24 matter is this conduct stalking is not taken seriously.  
25 That's the central issue.



1           I just want to relate to you an incident that  
2 happened. Pia moved from the house she lived with Boyd and  
3 she got the restraining order and PFA, whatever it was, and  
4 he came on the scene and he wanted his things. And we told  
5 him to go away, we were going to take what was Pia's and  
6 when we left he could get what he wanted.

7           The police officers came on the scene and he  
8 came back, and I'm not exactly sure, but somehow he was  
9 threatening to the police officer, a woman police officer,  
10 and maybe he rushed by her or he reached over to point at us  
11 or to shout something at Pia. And before that point the  
12 police officers said to us, why don't you let him in, why  
13 don't you let him get his stuff, he'll go away, what's the  
14 matter with that. And we said, no, we're doing it this way,  
15 we're going to take our things and we're going. He can have  
16 what's his.

17           When he reached over that police officer, maybe  
18 he brushed her, maybe he said something to her. She whirled  
19 to him and she said, you think you're bad? I'll show you  
20 you're not bad. And at that point he knew it was a serious  
21 situation and he backed down. He walked away.

22           So what we have to do is make the law  
23 enforcement community take those threats to Pia, that  
24 stalking of Pia, as seriously as that police officer took  
25 his abuse, his threat, and if you can do that, I don't know

1 how you craft your law, how you craft your law, but however  
2 you craft it, if you can do it in such a way that people who  
3 stalk know that that's a serious thing, then I think that  
4 however the law comes to be, it will have served its  
5 purpose. Because I say at the heart of this I believe is  
6 the fact that that conduct was just not taken seriously. I  
7 thank you for your time.

8 CHAIRMAN CALTAGIRONE: Thank you very much,  
9 sir.

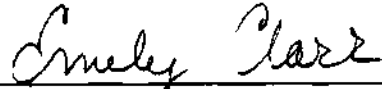
10 I want to thank everybody for participating in  
11 the hearing today, and we'll now conclude these  
12 proceedings. Thank you.

13 (Whereupon, the hearing was adjourned at  
14 1:26 p.m.)

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