

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bills 454, 1640 & 1666

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House Judiciary Subcommittee
on Crime and Corrections

The Penn Stater Conference Center Hotel
Forum Room G
215 Innovation Boulevard
State College, Pennsylvania

Wednesday, September 1, 1999 - 10:00 a.m.

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BEFORE:

Honorable Jerry Birmelin, Majority Chairperson
Honorable Brett Feese
Honorable Stephen Maitland
Honorable Albert Masland

IN ATTENDANCE:

Honorable Peter Daley

ORIGINAL

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ALSO PRESENT:

James Mann
Majority Research Analyst

Michael Rish
Minority Executive Director

C O N T E N T S

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1 CHAIRPERSON BIRMELIN: Good morning.
2 We want to welcome you to the House of
3 Representatives Judiciary Committee Subcommittee
4 on Crime and Corrections hearing today on House
5 Bills 454, 1640 and 1666. They are bills that
6 deal with personal protection devices, and we're
7 going to be having an abbreviated public hearing
8 today, but we have a few witnesses who are going
9 to share with us their analysis of these bills
10 and their support or opposition to them as they
11 present their testimony. We'll be hearing that
12 in just a few minutes.

13 I'm the Chair. I'm Representative
14 Birmelin from Wayne and Pike Counties, and I'll
15 ask those who are sitting with me here on the
16 panel to introduce themselves starting with my
17 far right.

18 REPRESENTATIVE MASLAND: My name is
19 Al Masland and I represent the 199th District of
20 Cumberland and York Counties.

21 REPRESENTATIVE FEESE: Brett Feese
22 representing the 84th District in Lycoming
23 County.

24 MR. MANN: Jim Mann with the House
25 Research Staff.

1 MR. RISH: Mike Rish with
2 Representative Kevin Blaum's office.

3 CHAIRPERSON BIRMELIN: Our first
4 testifier today is Scott Bradley. He's the
5 Assistant District Attorney of the Allegheny
6 County District Attorney's Office, and Mr.
7 Bradley, welcome to our committee meeting. We
8 want to thank you for driving as far as you did
9 to get here today. The presentation you're
10 going to be making, I understand we do have it
11 in writing. You may feel free to stray from the
12 written text, if you wish. Then after you're
13 done with that, if you would be willing to, we'd
14 like to give the committee the opportunity to
15 ask you some questions after you have given your
16 testimony.

17 So without any further ado, Mr.
18 Bradley, you may begin.

19 MR. BRADLEY: Thank you. I'm glad
20 to see by the fact that the panel outnumbered the
21 presenters, that there is some interest in the
22 legislature in this issue. I would commend the
23 committee and this panel on its efforts to hold
24 this hearing on an issue of particular concern
25 for the law enforcement community in

1 Pennsylvania.

2 The Allegheny County Office of the
3 District Attorney supports the efforts of this
4 panel and the legislature to develop an
5 appropriate response to the potential problem
6 posed by the offensive use of personal
7 protection devices. I would also pass along Mr.
8 Zappala's personal regrets in regards other
9 commitments prevented his appearance here this
10 morning; however, he fully supports the efforts
11 being undertaken here today.

12 Several months ago we got a request.
13 We have a pretrial department that handles
14 screening of criminal complaints and search and
15 arrest warrants by the city police, City of
16 Pittsburgh Police. They had noticed that there
17 were a number of incidents involving stun guns
18 that were cropping up. They passed along the
19 word to the administration that they thought
20 that, perhaps, a legislative response was
21 necessary to deal with some of the issues they
22 were finding.

23 As a result, we had undertaken an
24 analysis and review of the existing law in
25 Pennsylvania and the law -- laws in other

1 jurisdictions that speak to this issue. Of
2 course, as you are aware, I'm sure, there are no
3 Pennsylvania laws which specifically cover the
4 use or possession of stun guns, or for that
5 matter, the personal protection spray devices
6 that are also the subject of this hearing.

7 Shortly after the request came up
8 from our pretrial screening and warrant office,
9 there were two incidents in Allegheny County
10 which kind of gave the final push to the efforts
11 we have undertaken in respect to these devices.

12 The first was the robbery of a
13 Mellon Bank employee who was filling an ATM
14 machine, reloading the cash into the machine,
15 and I believe it was a woman. She was accosted
16 by an individual who had a stun gun, immobilized
17 by the use of the stun gun and had over \$60,000
18 in cash stolen. She was unable to make any
19 identification because the robber was, I
20 believe, wearing a mask and also because she had
21 been immobilized by this stun gun.

22 Shortly thereafter, I think it was
23 less than two weeks, there was an incident in a
24 suburban high school in Allegheny County where a
25 student set off a pepper spray device in a men's

1 room and it went out -- the irritant went out
2 through the school. A number of students were
3 affected, a number had to be transported by
4 ambulance and treated at local hospitals. There
5 were no serious or lasting injuries as a result,
6 but it caused a potentially dangerous situation.

7 Based on these incidents, we in the
8 Allegheny County District Attorney's Office
9 believed that there was a definite need to
10 develop a legislative response to ensure that
11 these types of devices, the stun gun, the
12 electronic or electric weapons and the personal
13 protection spray devices, that they should be
14 properly regulated.

15 As I indicated, there are currently
16 no laws, no regulations in effect on these types
17 of devices, so the extent of the problem is not
18 readily ascertained. Based on these two
19 incidents and based on the reports we had heard
20 from our people that dealt with the police
21 officers on a day-to-day basis, there was
22 certainly anecdotal evidence to support the need
23 for the legislation that's being proposed.

24 One case in particular that was
25 forwarded to us by our warrant department, there

1 was a situation where a female victim was
2 accosted by two individuals, one female and one
3 male. The female defendant initiated the
4 assault, and during the course of the
5 altercation between the two females, he went to
6 his car, retrieved a stun gun and brought it
7 back to the altercation.

8 But, whenever the victim would try
9 to get up to either defend herself or flee from
10 the assault, the man would step in, immobilize
11 her, knock her to the ground with the stun gun;
12 whereupon, the female defendant would resume the
13 attack.

14 She suffered as a result of this --
15 serious injuries that resulted in the filing of
16 aggravated assault charges against both the male
17 and female actors. However, the police were a
18 little concerned that they were not able to
19 charge any additional crime based upon the use
20 of the stun gun in this -- in this incident.

21 There have been other situations
22 identified to us where stun guns, in particular,
23 have become part of the criminal scenario, being
24 used to threaten, intimidate or immobilize
25 victims in assaults, domestic violence and

1 robbery cases. As well, police officers in the
2 course of affecting and executing search
3 warrants and arrest warrants have come across
4 stun guns on the person of the -- actually,
5 physically on a person they were about to arrest
6 or they'll come across a stun gun in connection
7 with other contraband which is the subject of
8 the search warrant.

9 Again, without specific legislation
10 to cover these scenarios, the police are only
11 allowed to secure these items temporarily for
12 their own personal safety, but they remain in
13 the location, and as such, remain a threat
14 eventually or potentially to law enforcement
15 officers or to the community at large.

16 We would submit then that the
17 current condition not only presents an immediate
18 threat -- I'm sorry. Strike that.

19 CHAIRPERSON BIRMELIN: This isn't
20 court.

21 MR. BRADLEY: They don't strike it
22 in court either. As I indicated, although most
23 of the evidence is anecdotal in this regard,
24 it's certainly supportive of the position that
25 regulation of these devices is needed. In

1 contrast, in my experience I have not read or
2 heard of any incidents where a stun gun was
3 actually used or that they are widely used for
4 personal protection purposes. In my 12 years in
5 the Allegheny County District Attorney's Office,
6 I'm not aware of a case in Allegheny County
7 where somebody actually used one of these
8 weapons to thwart a robbery or an assault.

9 That brings me to another point
10 that's not covered in the testimony. When I was
11 doing the research for this project, I was on
12 the Internet and I was struck by the number
13 of -- You know, if you just put stun gun into
14 one of the search engines, you get a lot of hits
15 and a lot of them are retailers of these items.

16 Now, they're generally marketed as
17 defensive weapons for law enforcement purposes,
18 but there don't appear to be any restrictions in
19 terms of an individual who wanted to purchase
20 these items would not have to certify that they
21 are a law enforcement official or that they
22 would intend to use these only for protective
23 purposes.

24 Again, I think that's another -- or
25 further evidence of the potential problem that

1 we face here in Pennsylvania.

2 With respect to stun guns, back in
3 1976 the Attorney General's Office issued an
4 official opinion. The citation to that is
5 contained in the written testimony. The opinion
6 stated that Section 908 of the Crimes Code, the
7 section prohibiting use or possession of
8 offensive weapons, would include a taser, which
9 is a brand name of a stun gun. So there is
10 certainly historical precedence for the proposal
11 suggested by Section 1 of, I believe it's 16 --
12 House Bill 1666 of 1999.

13 However, interestingly, several
14 years ago the Pittsburgh Police actually charged
15 an individual who was in possession of a stun
16 gun with a Section 908 violation with prohibited
17 offensive weapons. When it came for preliminary
18 hearing before the city court magistrate, and I
19 want to get this part right, he dismissed that
20 particular charge stating that he was not
21 persuaded that the opinion of the Attorney
22 General had effective law and said that it was
23 instead up to the legislature to speak to the
24 legality of such devices. Today, the Office of
25 the District Attorney of Allegheny County urges

1 the legislature to speak to this point.

2 When I was doing the research to
3 this, I did find that several other states,
4 including Michigan, Wisconsin, Minnesota and
5 Florida, also had legislation in place in effect
6 that either bans the stun gun, the electronic
7 weapons, or regulated their use. Several of
8 these jurisdictions, in conjunction with that
9 legislation, had legislation which regulated the
10 use and possession of the pepper spray or OC
11 spray devices.

12 As I indicated before, when we were
13 working through this process in our office, we
14 had these two incidents, first with the stun gun
15 and then with the pepper spray in the high
16 school. Seeing that other jurisdictions had
17 followed this approach, we felt that it was a
18 good approach to follow here in Pennsylvania,
19 and that is, to present a comprehensive
20 regulation of personal protection devices.

21 The benefit to that too is, you
22 know, technology is always moving forward. In
23 the event additional personal protection
24 devices, or devices marketed as personal
25 protection devices but with an offensive

1 capability, if they would come down the road we
2 would have legislation in place to speak to
3 those.

4 I guess in conclusion, based on
5 those efforts, based on those incidents in
6 Allegheny County, based on the history we've
7 been able to develop through our police officers
8 that are out on the streets in the community, we
9 believe that there is a need to regulate these
10 kinds of devices, and we fully support the
11 initiatives that are the subject of the hearing
12 today, and we pledge the full support of the
13 Office of the District Attorney of Allegheny
14 County in furtherance of these measures.

15 At this time I'll be happy to answer
16 any questions you may have.

17 CHAIRPERSON BIRMELIN: Thank you,
18 Mr. Bradley, and I'm sure there will be some.
19 I'll ask Representative Feese if he has any.

20 REPRESENTATIVE FEESE: Yes. Thank
21 you, Mr. Chairman. Mr. Bradley, thank you for
22 coming today and presenting your testimony and
23 the District Attorney's position.

24 I don't have a problem with making
25 it a crime to use these devices, whether it be

1 pepper spray or a stun gun or, you know, weapons
2 enhancement, or something along that -- this
3 issue.

4 My concern with both of the bills
5 before us, the one dealing with stun guns and
6 the one addressing, I'll just call it pepper
7 spray and other types of devices, is the section
8 which says that a person may possess those
9 devices if the device is labeled with or
10 accompanied by clearly written instructions.

11 And so, as I read it, it would mean
12 that a person, a law-abiding citizen, would
13 commit a M-1, Misdemeanor 1, if they had a
14 pepper spray device or some sort of device like
15 that and the manufacturer failed to place
16 warnings on the side, or they failed to have
17 clearly written instructions accompanying it.

18 So, I can see a housewife, my wife,
19 gets pulled over for a traffic violation and on
20 her key ring is one of those pepper devices.
21 Officer says, well, gee, Mrs. Feese, is there
22 warnings printed on the -- or instructions
23 printed on the side of it? She says no. Well,
24 did it come with warnings or instructions? She
25 says, gee, I don't know. My husband bought it

1 for me. M-1.

2 I mean, that section to me doesn't
3 do anything but go after the law-abiding people
4 rather than the people who are using these
5 devices inappropriately. I'd just like your
6 thoughts on it because I guess it was drafted
7 out of your office.

8 MR. BRADLEY: I think it
9 demonstrates certainly an intent that there's --
10 that there's -- I lost my train of thought.

11 I think the intent of it is to make
12 sure that when these devices get in the hands of
13 law-abiding citizens, that they are aware of the
14 inherent danger and the potential for abuse and
15 that they are properly trained, so to speak, as
16 to their proper use.

17 I certainly agree with you that,
18 perhaps, that language could be moved to a
19 different part of the statute so that it doesn't
20 become a misdemeanor offense simply to possess a
21 device that's not properly labeled. Perhaps, we
22 need to shift the -- shift the onus on that
23 responsibility to the manufacturer so that
24 people that are dealing in Pennsylvania in these
25 devices meet their responsibility of making sure

1 that they're putting safe devices into the --
2 into the stream of commerce.

3 REPRESENTATIVE FEESE: You see my
4 concern. We can take it another step and say,
5 well, it's not printed on the side but it did
6 come with instructions, officer, and the
7 instruction was, do not use this, you know, in a
8 criminal activity. I don't know. I just -- So
9 then all of a sudden, it's a jury question in a
10 criminal case whether that was clearly written
11 instructions.

12 I think you're right. I think maybe
13 we are focusing on the instruction of the wrong
14 sort of entity. It shouldn't be a person.
15 Maybe it should be a retailer and manufacturer.

16 MR. BRADLEY: And as I read it now,
17 I think you're absolutely correct that that does
18 create a problem. I would certainly hope if a
19 law like this were actually put into effect as
20 it is, that the police would exercise
21 appropriate discretion, but we can't always rely
22 on that.

23 REPRESENTATIVE FEESE: Yeah. I was
24 a district attorney, and you hope that, but that
25 doesn't -- that doesn't always happen. Just the

1 fact that a person is charged, Mrs. Housewife is
2 charged because her pepper spray didn't have
3 clearly written instructions on it and the
4 district attorney exercises his or her
5 discretion and dismisses it, and all the stigma,
6 I would hope (inaudible words; drops voice).

7 MR. BRADLEY: Oh, sure.

8 REPRESENTATIVE FEESE: One other
9 issue about that is, you know, we assume that
10 people under -- know criminal law, that they
11 have notice of them. That's the assumption.

12 I think you know that you shouldn't
13 steal. You know you shouldn't assault. You
14 know you shouldn't do A, B, C. You know you
15 shouldn't have pepper spray without clearly
16 written instructions. This is something that
17 the general populous would assume, don't you
18 think?

19 MR. BRADLEY: It's certainly not one
20 of the Ten Commandments or part of the golden
21 rule, but I certainly agree with your point and
22 I think that part of it could definitely be
23 enhanced to address that. And I don't know
24 anything other than the few things I came across
25 on the Internet in terms of the industry in this

1 regard, whether that's --

2 There may be a regulation governing
3 them which requires them to have these things,
4 in which case this language is probably
5 superfluous, at least a part of this.

6 But, I certainly think that that
7 language should be moved to a different part,
8 perhaps, but it should not be certainly an
9 element of an unauthorized possession charge.

10 REPRESENTATIVE FEESE: Thank you.

11 CHAIRPERSON BIRMELIN:

12 Representative Masland.

13 REPRESENTATIVE MASLAND: Thank you,
14 Mr. Chairman. Just briefly on that same issue.
15 As I read through I had some similar thoughts,
16 and it actually conjured up visions of the
17 so-called mattress police who would go and
18 inspect to see whether you removed the label
19 from the bottom of your mattress, and you
20 couldn't have people doing that.

21 Now, I guess the question here is,
22 if you had the instructions do you have 24 hours
23 to go home and get them to bring it back, or
24 something like that. I mean, we do have to be
25 careful that we don't --

1 MR. BRADLEY: Just as I was thinking
2 about that question, it creates -- Again, it
3 becomes an element of a charge and then it
4 creates all kinds of problems for proving that
5 element. When you create a statute that
6 criminalizes behavior, I think you want to make
7 it as clear as possible. And, speaking as a
8 prosecutor, you want to make it as easy to prove
9 for the prosecutor as is reasonable.

10 REPRESENTATIVE MASLAND: Yeah, you
11 don't want to go into court with something like
12 that. You'd probably hope it would be thrown
13 out at the preliminary hearing before it got to
14 you up in the D.A.'s office.

15 Secondly, I just wanted to make sure
16 I'm clear on this. It looks like from the
17 written testimony that your preference is to
18 just have it declared prohibitive offensive
19 weapon in Section 1 without Section 2
20 authorizing certain uses. Is that correct?

21 MR. BRADLEY: 1666, as I read it, is
22 alternative approaches. Section 1 essentially
23 makes a complete ban on the electric/electronic
24 weapons. Section 2 creates a system of
25 regulation where certain persons would be

1 prohibited but others would not.

2 REPRESENTATIVE MASLAND: You don't
3 see those two as possibly working together; that
4 it's either one or the other?

5 MR. BRADLEY: The only way is if
6 there was some component of Section 2 that
7 limited it to home or personal property -- to
8 home residence or property.

9 REPRESENTATIVE MASLAND: Okay. And
10 just one last comment. You probably do need
11 instructions with these things because I know a
12 principal at the middle school my wife taught at
13 last year was swinging around his wife's key
14 chain, and the next thing you know, the pepper
15 spray went off in his face and his boss's face
16 much to his chagrin.

17 REPRESENTATIVE FEESE: His former
18 boss.

19 REPRESENTATIVE MASLAND: He's
20 actually at a different school this year. It
21 probably wouldn't hurt to have some type of
22 instruction or at least don't swing it around on
23 a key chain. But, thank you. That's all.

24 CHAIRPERSON BIRMELIN: I just wanted
25 to follow-up a little bit on what Representative

1 Feese mentioned. He talked about addressing
2 this issue on the manufacturing level.

3 Where are these different stun guns
4 and pepper spray devices manufactured? Are they
5 all over the country, all over the world? Do
6 you have any idea where they are made?

7 MR. BRADLEY: My recollection from
8 looking at the Internet, I think California was
9 one of the -- at least a location of the
10 retailers. I have no other information
11 regarding the point of manufacturer or
12 distribution of these items.

13 CHAIRPERSON BIRMELIN: Wouldn't it
14 be difficult for us to, in Pennsylvania law,
15 require manufacturers who are out of state to
16 put certain warning labels, et cetera, on these
17 items? I mean, are they going to know what
18 Pennsylvania law requires of them if they're not
19 a Pennsylvania-based business?

20 MR. BRADLEY: Well, some of this
21 language was imported from other jurisdictions,
22 so I know other jurisdictions are requiring them
23 to do that. Again, I'm not familiar enough with
24 the industry to know whether they do this as a
25 matter of course or whether there's federal

1 requirements related to these devices.

2 CHAIRPERSON BIRMELIN: Accepting the
3 fact that we wouldn't probably -- I don't want
4 the legislature to ban these things. Is it your
5 fall-back position then that you would support
6 any clarification in the law that offensive uses
7 of these items then should be criminalized
8 specifically by statute?

9 MR. BRADLEY: That's what Section 2
10 of 1666 does. The first part, Section 1, simply
11 by amending the prohibitive -- prohibited
12 offensive weapons section would make the stun
13 guns in the same class as switch blade knives,
14 ninjan stars, numchucks, all those other items
15 that have generally been banned by Section 908.

16 The alternative, 908.1, creates an
17 offense for the offensive use of these items and
18 then prohibits possession by minors or persons
19 under the age -- under 18 years of age and
20 persons prohibited from owning firearms under
21 6105.

22 So, the regulation is somewhat
23 limited, but it still creates a criminal offense
24 for using these in an offensive manner in
25 addition to committing another crime or to

1 assist in committing another crime.

2 CHAIRPERSON BIRMELIN: I think
3 that's all the questions I have for you. We
4 want to thank you, Mr. Bradley, for your
5 testimony and for answering the questions for
6 the panel. Thank you very much for being with
7 us today.

8 For the record, we'd like also to
9 have the name of Representative Stephen Maitland
10 as attending this morning's hearing.

11 Representative Herman, is District
12 Justice Lunsford here?

13 REPRESENTATIVE HERMAN: It's not 11
14 o'clock yet.

15 CHAIRPERSON BIRMELIN: Is he here
16 yet?

17 REPRESENTATIVE HERMAN: It's not 11
18 o'clock.

19 CHAIRPERSON BIRMELIN: Can you
20 answer the question?

21 REPRESENTATIVE HERMAN: I --

22 (Short recess occurred).

23 CHAIRPERSON BIRMELIN: Recess is
24 over, and our next testifier is Thomas King,
25 Chief of Police for the State College Borough

1 Police Department. I know you had a long way to
2 go and that's probably why you're late.

3 We do want to thank you for
4 testifying today, and the members of the
5 committee have your written testimony. You can
6 read that or give your testimony if you'd like
7 to, whichever, but after you are finished with
8 your testimony, I understand you have a
9 gentleman with you who would also like to speak
10 to the issue at hand. And after both of you are
11 finished, if you would, please stay for a few
12 minutes. We may have some questions for you.

13 CHIEF OF POLICE KING: Certainly,
14 thank you. First, I'd like to apologize to the
15 subcommittee to force you into an early recess
16 and being a few minutes late. Getting this off
17 the printer, it still should be a little warm.

18 My name is Thomas King. I'm the
19 Chief of Police for the State College Police
20 Department. I'd like to comment on House Bills
21 454, 1640 and 1666. First, I'd like to thank
22 Representative Thomas Gannon, Chair of the House
23 Judiciary Committee, and Representative Jerry
24 Birmelin, Chair of the Subcommittee on Crime and
25 Corrections of the House Judiciary Committee,

1 for holding this public hearing on these three
2 very important bills.

3 The State College Police Department
4 is comprised of 60 sworn officers who provide
5 full police services to the Borough of State
6 College and the Townships of College and Harris.
7 We have a population of about 60,000 residents,
8 many of which are students at the Penn State
9 University. Our community hosts many special
10 events such as the annual Central Pennsylvania
11 Festival of the Arts, and six, or in this year's
12 case, seven home Penn State football games which
13 attract hundreds of thousands of visitors
14 annually.

15 Our department investigates
16 approximately 21,000 incidents each year. Of
17 these 21,000 incidents, approximately 3,000 of
18 them are disorderly conduct incidents that
19 involve noise disturbances or fights.

20 Many of our police calls during the
21 overnight hours, particularly between ten in the
22 evening and six in the morning, are alcohol
23 related which results in officers regularly
24 interacting with persons substantially under the
25 influence of alcohol. Persons who have consumed

1 alcohol can become more aggressive towards other
2 persons, including police officers. One of the
3 tools we provide to our police officers to
4 minimize physical force in arrest situations is
5 Oleoresin Capsicum, or it's referred to as OC.

6 Though OC can have very irritating
7 effects for a short duration, it is a non-lethal
8 product and reduces the likelihood of lasting
9 injury to persons being arrested and to police
10 officers. Following my comments, Officer Joe
11 Grego, an officer with the State College Police
12 Department and an instructor on OC, will explain
13 the effects OC has on persons sprayed with this
14 agent.

15 OC and similar products are readily
16 available on the open market. Many persons
17 elect to carry OC, mace, or other products to
18 defend themselves from assault. The product is
19 contained in a small container and is delivered
20 in spray form. Some persons carry OC or mace on
21 their key chain so it is readily available when
22 walking to their vehicle.

23 Though most persons possess OC or
24 mace solely for defensive purposes, there have
25 been cases in which OC or mace were -- have been

1 used against law enforcement officers who were
2 acting in the scope of their duty.

3 In 1993, Officer Tony Lopinsky of
4 the State College Police Department, while
5 attempting to effect a lawful arrest, was
6 sprayed with mace. District Justice Brad
7 Lunsford will provide more detail about this
8 specific incident following our testimony.

9 The State College Police Department
10 is in support of House Bill 454, House Bill 1640
11 and House Bill 1666. Due to substantial effects
12 OC or mace can have on a person, we need
13 specific legislation that makes it a felony
14 offense to spray any police officer, or other 27
15 classes of occupations that are listed in House
16 Bill 454, while acting in the scope of their
17 employment.

18 I'd like to make some other
19 comments, but before that, I would like to
20 introduce Officer Grego, who will provide the
21 subcommittee with details relating to the
22 effects OC has on persons sprayed.

23 OFFICER GREGO: As Chief King
24 mentioned, OC stands for Oleoresin Capsicum, and
25 the key thing here is that, the active

1 ingredient in the OC is this Capsicum and
2 that's a derivative of cayenne pepper. We've
3 all heard of CS and CN. CS and CN are tearing
4 agents that mainly affect the tear ducts of an
5 individual or somebody that's sprayed.

6 OC is a little different. OC
7 doesn't affect the tear ducts. OC is what they
8 call an inflammatory. It inflames the mucous
9 membranes. That's why CS and CN isn't effective
10 on animals. You can't spray a dog with it. It
11 isn't effective because dogs don't have tear
12 ducts. So, OC can be sprayed on a dog or some
13 type of animal because it inflames the mucous
14 membranes.

15 So, the key here is that, when an
16 officer acting in the performance of his duties
17 is sprayed with OC, there's a number of effects
18 that he's going to undergo.

19 The first one is, it produces rapid
20 physiological and psychological actions. Mainly
21 if it's sprayed in the eyes or in the face area,
22 and that's where most people are sprayed with
23 OC, it affects the eyes, it affects the
24 respiratory system, the skin, lips, and, of
25 course, the face. The key here, again, is the

1 swelling of the mucous membranes. We have
2 mucous membranes around our eyes and our nose,
3 mouth, ear cavities, mainly the entire face, and
4 it will swell these membranes.

5 I've been sprayed. Every time I get
6 recertified as an instructor I have to be
7 sprayed so I know the effects. I've been
8 sprayed probably five or six times with OC, and
9 it hurts every single time.

10 Aside from the swelling of mucous
11 membranes, it actually closes your -- it
12 actually shuts down your vision completely. My
13 eyes close. It's an involuntary thing where
14 your eyes -- You want to close your eyes. You
15 cannot open your eyes. There can be
16 uncontrollable coughing, gagging, gasping for
17 breath. It creates the sensation of intense
18 burning of the skin, the mucous membranes in the
19 nose and in the mouth.

20 I can speak from personal
21 experience. Again, my eyes are basically shut
22 tight. Your nasal passages just basically open
23 and you can imagine what would come out of your
24 nose. You have the sensation of -- It's very
25 hard to breathe. It's almost like you're

1 hyperventilating, and you basically shut
2 everything else out. Your entire intentions go
3 to the discomfort in your face and in your nose
4 and in your mouth. So you shut everything else
5 down.

6 For a police officer in the
7 performance of his duties, wearing a firearm, I
8 cannot imagine being out alone with somebody
9 that you're trying to arrest, they spray this
10 with you -- they spray you with OC, you go to
11 the ground, and all your sight has been taken
12 away, your breathing. You cannot function and
13 you're laying there with a firearm on.

14 I teach the officers that if this
15 should happen, I tell them to roll onto their
16 firearm and try to stay on top of their firearm
17 or put their hands on their firearm. But again,
18 your vision is completely gone and you have all
19 this discomfort.

20 If the assailant would run away,
21 yeah, that would be great, but then you have
22 other bystanders standing around that would also
23 be there to take advantage of you. It becomes
24 very dangerous when the officer's vision is
25 taken away, somebody reaches down and pulls his

1 firearm off and uses it on him.

2 Let's say on a traffic stop, that
3 would be a good example of a time when officer
4 would be alone. The assailant could spray the
5 officer on a traffic stop, the officer goes
6 down, the assailant pulls his firearm and shoots
7 him or her. That would be a case in which it
8 could be used.

9 Basically, the effects of the OC
10 will last, they can last up to an hour. What we
11 do is, we train our officers that if we spray
12 somebody we have to obviously stay with that
13 person, and there's a series of things that we
14 do, some care that we give the person that we've
15 sprayed and that care begins immediately.

16 When somebody is sprayed, we move
17 them into a well-ventilated area, preferably
18 outside. If they were sprayed indoors, we'll
19 move them outside. And without much delay, we
20 take them to the police station and we use
21 water. We flush their face with water either
22 with a spray hose or we duck their face in, you
23 know, a bucket of water to remove the cayenne
24 pepper particles from their skin. Obviously, if
25 an officer is out there he wouldn't be able to

1 do that.

2 We provide immediate care to anybody
3 that we spray, and within 45 minutes we should
4 see the person coming around; the person being
5 able to open their eyes, the redness and the
6 swelling going down somewhat. So, within 45
7 minutes we should see some improvement in the
8 person.

9 If not, that person is transported
10 to the hospital because there may be some type
11 of allergic reaction. If that particular person
12 is allergic to peppers or some type of
13 derivative of a pepper, then there could be some
14 medical implications. But, that's pretty much
15 what an officer who is sprayed could look
16 forward to, so to speak.

17 CHIEF OF POLICE KING: As you can
18 see, the effects on a police officer, as Officer
19 Grego testified to, can be very substantial for
20 anywhere from ten minutes to an hour.
21 Certainly, the State College Police Department
22 and other officers, I believe, across the
23 Commonwealth feel very strongly that we need to
24 have legislation that makes it very clear that
25 if you spray an officer, and I certainly agree

1 with the other occupations that are listed in
2 the bill, but I'm coming from a police officer's
3 standpoint today, that it should be a felony
4 offense.

5 It's probably more significant than
6 a person that comes up and punches a police
7 officer multiple times in the face and maybe
8 causes some bleeding. At least in that
9 situation, which is a felony offense by the way,
10 as aggravated assault, in that situation you
11 have a little more opportunity to defend
12 yourself. You don't have the closed eyes, you
13 don't have the breathing problems. You don't --
14 aren't as immediately impacted by several blows
15 to the face. I'm not asking you to lower that
16 grading, that's appropriate.

17 But certainly, if that's a felony
18 offense when you get sprayed and you literally
19 go to the ground, you can have breathing
20 discomfort, you can have irritated eyes, you can
21 be coughing and bringing up all types of
22 substances, you're not going to be able to
23 defend yourself, whether it's grabbing a firearm
24 or continuing to beat you or escape an arrest,
25 if that's what you are attempting to do, we feel

1 strongly that that needs to be a felony offense
2 and any legislation -- House Bill 454 was
3 sponsored by Representative Herman. We're in
4 full support of and feel strongly that that
5 needs to be legislation in the future.

6 I would like to just offer a few
7 comments on the three House bills as I've read
8 through them just to -- as reading them to try
9 to, if these pass, to minimize any type of
10 loopholes or challenges or debates that often
11 can occur because of wording. In House Bill
12 454, I want to be careful against is that,
13 that's any time pepper spray is used in an
14 offensive manner. I want to make sure that
15 people don't think they have the right to
16 defend, that they can use it in a defensive
17 manner to defend themselves against an arrest or
18 defend themselves against a school teacher
19 attempting to do their lawful duty.

20 In an offensive manner, as long as
21 it's understood that that -- that doesn't mean
22 you have the right to defend yourself from an
23 otherwise legal interaction. Maybe that's
24 paranoid on my part, but I see these kind of
25 off-the-wall challenges that, well, it wasn't

1 offensive, it was defensive.

2 And I imagine to say, using it
3 against any of these 28 professions in the
4 performance of their duty is illegal. I mean,
5 maybe the phrase "in an offensive manner" has to
6 be in there to not make it so broad. Is there
7 any time it could be used against these people
8 that it wouldn't be considered offensive?

9 That's the only comment on 454. I
10 really like the bill. I think it's short and to
11 the point, and we're very, very supportive of it
12 and our officers are very excited to see
13 something go forward on this. We appreciate
14 Representative Herman and District Justice
15 Lunsford's work on this bill.

16 House Bill 1640, 908.1(a) is the
17 offense defined, and I wasn't an English major
18 so I'm not sure where these prepositional
19 phrases get attached to, but it says that when
20 you spray -- A person commits an offense by
21 using a personal protection spray device on a
22 law enforcement officer or another person with
23 the intent to commit any crime.

24 Is that, with the intent to commit
25 any crime, attached to just another person, or

1 is it also you have to be committing another
2 crime against a police officer? In other words,
3 what I would encourage is that, you spray a
4 police officer, end of story, it's an offense.

5 Now, you spray another person not in
6 that category of 28 occupations, if you do that
7 in the commission of another offense, if you
8 commit a robbery, if you commit an assault, you
9 commit some other -- a theft, that would make
10 sense, but I don't want to say that we have to
11 prove some other crime like we do in the case of
12 burglary in order to hold it against a police
13 officer.

14 Is there interest on the part of the
15 sponsors to have any penalty section to 908 --
16 908(b)? I don't know that -- It seems 908(b)
17 and (c) don't have penalties attached to them
18 and that may be purposely.

19 Grading as an offense under
20 Subsection (a) is a felony but there is no other
21 grading, or maybe it goes back to the original
22 statute.

23 CHAIRPERSON BIRMELIN: That would be
24 covered under page 2, line 10 -- Yeah, the
25 section begins on 10 but it's actually lines 12

1 and 13. Otherwise, any offense under this
2 section --

3 CHIEF OF POLICE KING: Okay.

4 CHAIRPERSON BIRMELIN: -- is a
5 misdemeanor of the first degree.

6 CHIEF OF POLICE KING: Thank you for
7 recalling that. Then it's already in the
8 statute.

9 CHAIRPERSON BIRMELIN: No, it's not
10 in the statute. It's in this bill. Statute
11 being law that's already in existence.

12 CHIEF OF POLICE KING: Okay. And
13 with 1640, I think there's similar wording about
14 whether or not it is with the intent to commit
15 any crime. Again, does that mean any other
16 crime against a police officer, or is it the
17 mere spraying of a police officer or other
18 persons in those categories is illegal? It's
19 the same issue as in Bill 1640.

20 Reviewed those, a number of officers
21 reviewed them. We really like what we see and
22 would encourage any support the subcommittee and
23 the full committee can provide to police
24 officers in the Commonwealth in support of all
25 three of these bills.

1 CHAIRPERSON BIRMELIN: Thank you,
2 Chief King. Would you care to introduce the
3 officer?

4 CHIEF OF POLICE KING: Yes. Joining
5 us today is Officer Tony Lopinsky, who has been
6 with our department for about 15 -- 17 years,
7 time flies, and was the victim of the pepper
8 spray incident that, I believe, District Justice
9 Lunsford is going to speak about in November of
10 1993.

11 CHAIRPERSON BIRMELIN: Officer
12 Lopinsky, do you have anything you'd like to
13 say?

14 OFFICER LOPINSKY: I'd just like to
15 reiterate Officer Grego and Chief King and what
16 they're talking about. In any event, you know,
17 I have been sprayed numerous times. I was an
18 instructor and I wrote the initial policy with
19 Officer Grego for our department on training
20 officers, and I've been sprayed.

21 Luckily, I was able to work through
22 the scenario, or the situation when that
23 happened because I was not sprayed in the eyes.
24 I ate a half a can of it, and I didn't feel real
25 good for a couple days and my lungs were on

1 fire.

2 To give you an idea, again, of what
3 it feels like, it feels like your eyes are on
4 fire. You have a million needles in your eyes.
5 There's so many ways to describe it. Let's just
6 say, you know, you're not going to work through
7 it. That's why we train our officers that if
8 they're sprayed and it's a spray that's
9 incapacitating, and nine times out of ten it's
10 going to be, we teach them to lay down on their
11 weapon and wait until they hear somebody's voice
12 that's familiar to them.

13 I had four other officers at the
14 scene with me when this young lady produced a
15 can of OC. The OC that she had, when we finally
16 took it off of her, was a one percent solution
17 to the best of my knowledge that I remember.
18 They come in different strengths. One percent,
19 five percent, ten percent, and there's even a 20
20 percent out there for grizzly bears that they
21 use in California, the Rockies in California.

22 But, this stuff is readily available
23 on the market. I can go to Boots Dairiette
24 (phonetic) downtown and buy what they call a
25 shocker. It gets attached to your key chain and

1 it can be used against anyone, so this stuff is
2 out on the street. It's not just issued to law
3 enforcement so, you know. It's quite nasty.

4 I was lucky that night. I hope that
5 I don't have to go through it again, and I hope
6 no other officer has to go through it again.
7 Like I said, I was the first one I think sprayed
8 with this stuff in this state. I don't know if
9 that's a distinction that I should be proud of.
10 I don't think I am, but nevertheless, I guess
11 maybe better me than someone else.

12 CHAIRPERSON BIRMELIN: I just wanted
13 to thank you for your testimony, and if you
14 gentlemen would be willing to sit for some
15 questions, the panel may have some for you.

16 I just have one comment for Officer
17 Grego. I hope they don't use the same standards
18 for lethal weapons testers and instructors that
19 they do for when you went through for pepper
20 spray.

21 OFFICER GREGO: You should have
22 heard the flak I got. When I came back when I
23 was initially trained back in 1992, I came back
24 and our first training session I told the
25 officers that were there, I said, you know, I

1 said, I'd like to make it mandatory that
2 everybody that -- every officer that I train I'd
3 like to spray so they know what to expect in the
4 event they are accidentally sprayed by one of
5 their fellow officers or they are sprayed on the
6 street that they know what the effects are going
7 to be. One of our seasoned veterans raised his
8 hand and said, I'm not going to be sprayed. He
9 said, I don't have to be shot with a gun to know
10 what a gun can do. So, he had a point there.
11 But, I strongly think that every officer should
12 be sprayed at least once.

13 CHAIRPERSON BIRMELIN: Just to
14 follow-up on that, what is the rationale for you
15 having to be sprayed every time you need to be
16 recertified?

17 OFFICER GREGO: That's just the --
18 I've been certified by two companies now. We
19 basically go back to the same two companies to
20 get recertified, and that's just one of their
21 requirements is they want us to, I guess,
22 refresh our memories on what to expect in the
23 event that you are sprayed.

24 And, it helps us to be able to teach
25 to the people, the officers that we're

1 instructing what the effects are going to be and
2 what these effects can do to somebody,
3 especially an officer working the street.

4 CHAIRPERSON BIRMELIN: Officer
5 Lopinsky.

6 OFFICER LOPINSKY: We also want the
7 officers to know what our defendants are going
8 through. I mean, that's important because, once
9 you spray someone, you should know kind of what
10 it feels like because you want to be able to
11 help that person as quick as you can.

12 I mean, this isn't something like
13 getting punched, you know, beat up. Most
14 everybody that is on our department, and other
15 departments for that matter, have been in street
16 fights so they know what it's like to get hurt.
17 Being sprayed with OC is completely different.

18 CHAIRPERSON BIRMELIN: Yeah, I
19 understand that, but I think I'd have a lasting
20 memory of one incident.

21 OFFICER LOPINSKY: To know what your
22 defendant is going through makes you a little
23 more sympathetic to what's going on with him and
24 that way, you know, it helps the officer. And I
25 don't want to use the word first-aid because

1 it's not first-aid we are giving them. What
2 we're giving them is fresh air and water, and
3 that's what counteracts the effects of OC.

4 So it makes us more sensitive to get
5 him what he needs to get himself well again so
6 that we can deal with him, get the paperwork
7 done and get it filed, and do what we have to do
8 with him.

9 CHAIRPERSON BIRMELIN: In
10 conclusion, I would just say I'm glad I'm not a
11 registered teacher of the use of these things.

12 OFFICER LOPINSKY: I have a can with
13 me. Would you like --

14 CHAIRPERSON BIRMELIN: No, but one
15 of the other members of the panel may wish to.
16 They're certainly free to do that and we'll be
17 here for at least another hour for them to
18 recover. Representative Masland.

19 REPRESENTATIVE MASLAND: I'm not
20 volunteering and I am -- I was really heartened
21 to hear your testimony when you arrived, Officer
22 Lopinsky. I was worried that the other two were
23 going to talk and you were going to give us some
24 demonstrative evidence of how that works, so I'm
25 glad to see that that's not the case.

1 I agree with Chairman Birmelin. I
2 actually was stupid enough to be cutting some
3 very hot peppers once and just rubbed my eye
4 quickly. It was not totally debilitating, but
5 if you magnify that by a few times, I can't
6 imagine how you can -- how you can deal with
7 that.

8 I guess this is a little bit off the
9 subject of the bill. I'm not -- Looking at the
10 bills that are being proposed, I have no problem
11 with saying that if you use it against an
12 officer, one of these things, that's an offense.
13 If you use it against an individual in an
14 attempt to commit a crime, yes, there should be
15 an offense there. Actually how we word that is
16 another thing.

17 I guess there's no way you can build
18 up any kind of tolerance. I guess there's no
19 type of vaccination or anything you can really
20 do with respect to these sprays other than wear
21 a shield. I don't know whether you've got
22 shields or goggles when you go into these
23 riot-type situations.

24 OFFICER LOPINSKY: There's probably
25 one percent of the population that's immuned to

1 this. And for people that are high on PCP they
2 also may not react to it, which poses a whole
3 world of other problems for us. There's still
4 99 percent --

5 REPRESENTATIVE MASLAND: You don't
6 need law enforcement to use that type of
7 preventive.

8 I really don't have any other
9 questions. I think you cleared a lot of things
10 up from the questions that I had. It was
11 interesting to know the difference between OC
12 and CS and CN. I didn't know that, so I do
13 appreciate your testimony. I don't have
14 anything else, Mr. Chairman.

15 CHAIRPERSON BIRMELIN:

16 Representative Feese.

17 REPRESENTATIVE FEESE: Thank you,
18 Mr. Chairman. I agree with Representative
19 Masland. The only concern I raised with our
20 last testifier about 1640 and -- I can't
21 remember the bill number. Not Representative
22 Herman's bill, but the other bill, was the
23 section which essentially made it a Misdemeanor
24 1 if a law-abiding citizen possessed, say OC,
25 and didn't have instructions on the side or they

1 didn't get instructions with it.

2 I'm troubled by that because you can
3 have -- I used the example of the housewife has
4 it on a key chain and is stopped for a traffic
5 offense and there are no instructions on the
6 side and she doesn't have written instructions
7 and now she's committed a misdemeanor. I'm
8 concerned about that.

9 CHIEF OF POLICE KING: I'm guessing
10 that -- I'm guessing they want to make sure that
11 it's an over-the-counter market product versus
12 maybe some concoction created by somebody, to
13 make sure that it's a product that's for sale
14 and it's safe. Maybe it's, you know -- There's
15 poor canisters where the labels wear off and
16 fall off and maybe there should be a defense
17 that --

18 REPRESENTATIVE FEESE: Maybe we
19 should look at the retailers --

20 CHIEF OF POLICE KING: Right.

21 REPRESENTATIVE FEESE: -- and put
22 the burden on them.

23 CHIEF OF POLICE KING: We certainly
24 have a defense that if it's otherwise proven to
25 be an over-the-counter product that's accepted

1 by the merchants, whatever that is, that you
2 wouldn't prosecute.

3 REPRESENTATIVE FEESE: But even in
4 that situation, if it's a defense the person
5 could still be charged, and along with that goes
6 all the publicity and the costs and humiliation.
7 I'm talking about the law-abiding person. It
8 just doesn't have instructions.

9 CHIEF OF POLICE KING: I know our
10 officers would not want to be in that kind of
11 position where you have an otherwise law-abiding
12 person just because something wore off or fell
13 off.

14 REPRESENTATIVE FEESE: It places you
15 in a difficult situation.

16 CHIEF OF POLICE KING: Right.

17 REPRESENTATIVE FEESE: If it
18 violates the law, I mean --

19 CHIEF OF POLICE KING: If we could
20 minimize that, we don't need any more difficult
21 interactions, but that's not what we were trying
22 to get at, but I appreciate and have the same
23 concern. How we handle that, I don't know. I
24 don't have a suggestion. I think that's why I
25 didn't bring it up, but I agree.

1 REPRESENTATIVE FEESE: Thank you.

2 CHAIRPERSON BIRMELIN:

3 Representative Maitland.

4 REPRESENTATIVE MAITLAND: I just
5 have a couple questions about the OC itself. Is
6 there any time delay from the time it hits you?
7 Do you have a couple seconds, or are you like --

8 OFFICER LOPINSKY: Like that (snap
9 of fingers).

10 OFFICER GREGO: With CS and CN there
11 is a time delay before it takes effect, but with
12 OC it's almost immediate. If it's sprayed in
13 the facial area, it's almost immediate. The
14 small pepper particles latch onto the membranes
15 and then the blood vessels are dilated, blood
16 rushes to that area and that causes the
17 swelling, and then like I said, literally your
18 eyes just slam shut and you can't really control
19 that.

20 REPRESENTATIVE MAITLAND: It's like
21 when I mow the lawn, that happens to me.

22 OFFICER GREGO: Yeah, like those
23 allergies.

24 REPRESENTATIVE MAITLAND: If you
25 were to block it with your hands or maybe get

1 hit in the chest, is there a reaction if it
2 doesn't hit you in the eyes or in the face?

3 OFFICER GREGO: See, that's the
4 problem. You wear glasses. Like with Tony, if
5 I spray Tony in the face, even with his glasses
6 blocking it, it's still -- It just envelops your
7 head. It's not only, you know, what directly
8 hits the glasses. It falls over top and it
9 floats around.

10 CHIEF OF POLICE KING: It's a mist.

11 OFFICER LOPINSKY: Imagine hair
12 spray. When you spray hair spray, it's the same
13 effect except it shoots a little further.

14 OFFICER GREGO: When we spray a
15 defendant, I tell the officers to wait. You
16 know, if you can't handcuff them, get them
17 outside, but wait at least ten to -- around ten
18 minutes before you even put them in the car to
19 let what's loose on their clothing, you know,
20 fall off or let the wind blow away.

21 Because, if you rush them into the
22 car and you jump in to take them to the station,
23 you can't wait to get there because you're
24 overcome by what's floating in the air and it
25 can be bad that way. So, again, it's pretty

1 much immediate.

2 REPRESENTATIVE MAITLAND: The little
3 shocker container that you spoke about, for your
4 typical amateur, how many people could you --
5 how many doses or whatever are in it?

6 OFFICER GREGO: It depends on how
7 much is in it, how many ounces or parts of an
8 ounce. I'm not sure. The ones we carry, Tony,
9 how much -- We teach our officers like a
10 one-second burst is plenty, a one-second, you
11 know, spray.

12 OFFICER LOPINSKY: 2.4 ounces.

13 OFFICER GREGO: Ours are only 2.4
14 ounces and the shockers are much smaller than
15 that, so I would think one of the shockers may
16 be a one-time use.

17 OFFICER LOPINSKY: The half a can
18 that I was sprayed with at that incident, she
19 could probably have used on six people.

20 REPRESENTATIVE MAITLAND: If you
21 knew what you were doing with it, I guess.

22 OFFICER LOPINSKY: Right. If you
23 use it the way it's recommended, a one-second
24 burst.

25 REPRESENTATIVE MAITLAND: And

1 finally, what's the effective range? Can I get
2 you from here or would I have to be in your
3 face?

4 OFFICER GREGO: Well, the wind, you
5 know -- Obviously if you're outside, you have
6 breezes and the air moving. You have to account
7 for that. But, the range is -- you know, like
8 four feet is the recommended distance, four to
9 six feet. If you go much beyond that, a lot of
10 it falls before it reaches the intended target,
11 but usually four to six feet.

12 CHIEF OF POLICE KING: If Officer
13 Lopinsky sprayed that right now just in the
14 center of the room, none of us would have that
15 immediate effect in a second, but what would
16 happen probably within 30 to 60 seconds is,
17 we're all going to start coughing --

18 OFFICER LOPINSKY: We're going to
19 leave.

20 CHIEF OF POLICE KING: -- and our
21 eyes are going to start burning so it would --
22 Really, a burst that would affect everybody in
23 this room if not that immediate effect is not as
24 devastating as one in the face.

25 REPRESENTATIVE MAITLAND: I have had

1 meetings where that would be useful. I have no
2 more questions. Thank you, gentlemen.

3 CHAIRPERSON BIRMELIN: We're going
4 to have to be careful when Representative
5 Maitland becomes a chairman.

6 REPRESENTATIVE MASLAND: One quick
7 question. Are those canisters anything like say
8 fire extinguishers that need to be checked every
9 year or two? Do they lose their potency and
10 somehow dissipate if it just hangs around on a
11 key chain?

12 OFFICER LOPINSKY: What the real
13 concern is, is not so much the contents, but the
14 canister itself rusting around the seams and
15 then leaking and then you have a problem that
16 way, too.

17 OFFICER GREGO: They have an
18 expiration date on them. It's recommended that
19 you purchase new canisters when the expiration
20 date is used.

21 CHAIRPERSON BIRMELIN: I want to
22 thank you gentlemen for your testimony and what
23 appears to be a lot of insight for the members
24 of the committee that are not that familiar with
25 pepper spray. We do want to thank you for

1 coming today.

2 CHIEF OF POLICE KING: Thank you.

3 Thank you, very much.

4 CHAIRPERSON BIRMELIN: Our next
5 testifier is the host of the committee and the
6 sponsor of one of the bills that we're
7 discussing today and a long-time member of the
8 Pennsylvania House of Representatives,
9 Representative Lynn Herman, who will be
10 accompanied by the Honorable Brad Lunsford,
11 District Justice. We'll let the gentlemen have
12 a few seconds.

13 (A short recess occurred)

14 CHAIRPERSON BIRMELIN: We're ready
15 to begin again. Representative Herman, it's
16 good to be in your district again. It's nice to
17 have you here before the Judiciary Subcommittee
18 on Crime and Corrections, and I understand you
19 have written testimony and you'd like to present
20 that now, and introduce your guest and speak up
21 we'd appreciate that. Thank you.

22 REPRESENTATIVE HERMAN: Thank you,
23 and good morning, Chairman Birmelin, and members
24 of the House Judiciary Committee's Subcommittee
25 on Crime and Corrections. I thank you for

1 holding this hearing today on the issue of
2 personal protection devices and particularly, on
3 my House Bill 454.

4 I'm joined today on my left by Brad
5 Lunsford, who is the Centre Region District
6 Justice. He's also a former district attorney
7 and former solicitor for the Bald Eagle Lodge
8 Number 51 Fraternal Order of Police. District
9 Justice Lunsford, when he was a solicitor for
10 the local FOP, was very instrumental in helping
11 me draft the language of House Bill 454.

12 The language in House Bill 454 was
13 originally introduced in 1994, during the
14 1993-94 Legislative Session and I reintroduced
15 the legislation in subsequent legislative
16 sessions and was able to have the House
17 Judiciary Committee approve it in 1998.

18 This bill would stiffen the
19 penalties for persons convicted of using
20 chemical agents, commonly referred to as mace or
21 tear gas, against certain public officials while
22 they carry out their duties. Specifically, a
23 person would commit an aggravated assault if a
24 person uses tear or noxious gas in an offensive
25 manner against any officer, employee or other

1 person enumerated in the aggravated assault
2 statute while the victim is acting within the
3 scope of his or her employment. Such an offense
4 would be considered a felony in the second
5 degree, punishable by a maximum term of
6 imprisonment of up to ten years and fines of up
7 to \$25,000, or both.

8 The list of public officials
9 protected by this legislation includes police
10 officers, firefighters, judicial officers,
11 emergency medical technicians and 23 other
12 public servants who routinely find themselves in
13 harms way. My legislation also expands the
14 existing list of protected persons to also
15 include the Governor of Pennsylvania, the
16 Lieutenant Governor, Auditor General, State
17 Treasurer, and, of course, the members of the
18 General Assembly.

19 Justice Lunsford originally
20 suggested this legislation to me when it became
21 apparent that the increased availability of mace
22 and tear gas could pose a threat to our public
23 servants.

24 Passage of this bill will help
25 protect law enforcement personnel and potential

1 victims of crime. There has been at least one
2 incident in Centre County where mace was used in
3 an offensive manner against law enforcement
4 personnel, and you've already heard that because
5 you've heard the testimony from the State
6 College Police Chief and the officer who was
7 victimized by it. However, the suspect could
8 not be charged with aggravated assault because
9 the weapon was not part of any Pennsylvania
10 statute.

11 This is proactive legislation
12 designed to deal with a serious offense before
13 it becomes more widespread. And, of course,
14 since that time, since I originally introduced
15 this bill in 1994, it has become widespread and
16 that's necessitating the introduction of the
17 other two pieces of legislation which you are
18 hearing about today.

19 Under no circumstances, and I want
20 to stress this, under no circumstances do we
21 want to ban the sale of legitimate personal
22 protection devices and in no way does House Bill
23 454 ban or even mitigate the use of such devices
24 when they're used for defensive purposes.
25 However, we must take steps necessary to prevent

1 their misuse by criminals. The bill is needed
2 because, short of banning them entirely, which
3 we do not want to do, it is not designed under
4 this bill, the best way to defend the
5 law-abiding citizens from their improper use is
6 to stiffen the penalties for would-be offenders.

7 Before District Justice Lunsford
8 speaks, I would thank him for his help in
9 providing background for this legislation and
10 for participating today. Not here today, and I
11 certainly would think they deserve a great deal
12 of appreciation for their support of this
13 legislation, are members of the Bald Eagle Lodge
14 51 of the Fraternal Order of Police. I'd like
15 to thank each and every one of you for coming
16 here to the Centre Region to be part of a public
17 hearing to address this very important issue.

18 And now I'd like to introduce Centre
19 Region District Justice Brad Lunsford.

20 DISTRICT JUSTICE LUNSFORD: Thank
21 you, Lynn. Good morning, gentlemen.

22 Just a little background of why I'm
23 here and the progression of events that occurred
24 to give rise to this legislation. When I
25 resigned my position as an Assistant District

1 Attorney here in Centre County in 1992, I did so
2 to go into private practice. It was at that
3 time that the local Fraternal Order of Police
4 Lodge asked me to be their solicitor, an
5 assignment that I was very eager to pursue and
6 did so and enjoyed my term as their solicitor.

7 Obviously, with my position that I
8 currently hold as a district justice, I could
9 not be their solicitor because of the impartial
10 nature of my job. In spite of that, I am here
11 on their behalf and with their authority to
12 convey to you that this legislation is fully
13 endorsed by not only local Fraternal Order of
14 Police lodges, but also local police departments
15 and, obviously, you've heard from State College,
16 the location of the incident which gave rise to
17 this legislation.

18 I want to tell you about that
19 incident that occurred back in 1993. On
20 November 5th of that year, local State College
21 police were called to what was termed as a
22 domestic violence incident in downtown State
23 College in front of a local bar. When the
24 police arrived, they found a man and a woman
25 engaged in a physical confrontation. The police

1 separated the two individuals, at which time the
2 male suspect became combative with the police.

3 When the police officers finally had
4 the suspect under control, the female suspect
5 intervened and caused the police officers to
6 lose control of the male suspect. The male
7 suspect fled on foot causing a foot chase that
8 lasted for several blocks in downtown State
9 College. Once the police caught the fleeing
10 suspect, they put him on the ground and began to
11 handcuff him.

12 It was at this time that the female
13 suspect again intervened and sprayed the
14 arresting officers with OC spray. You've
15 already met one of the officers today, Officer
16 Lopinsky, who is not here at this point in time.
17 He was one of the individuals who was sprayed.
18 There were several other officers who were
19 involved in that attack.

20 The female defendant was charged
21 with aggravated assault, simple assault,
22 obstructing administration of law or other
23 governmental function, resisting arrest and
24 disorderly conduct. Certainly, in looking at
25 that list of charges, you would think that there

1 would, at the very least, be a substantial
2 penalty for the crime or the alleged crime that
3 was committed on that day.

4 The aggravated assault statute which
5 relates to this incident indicates that, a
6 person is guilty of aggravated assault if he
7 attempts to cause or intentionally or knowingly
8 causes bodily injury to any of the officers
9 listed in Subsection C. I'm certain that you
10 are aware of all the different professions that
11 are listed. The key word is bodily injury.

12 Because there was no actual physical
13 bodily injury, the aggravated assault and simple
14 assault charges were dismissed by the courts.
15 The jury found the defendant not guilty of
16 obstructing -- of the obstruction charge because
17 there was no interference by physical force or
18 physical violence. Again, the key word is
19 physical.

20 In addition, the defendant was found
21 not guilty on the resisting arrest charge
22 because she did not create a substantial risk of
23 physical bodily injury.

24 The defendant was ultimately found
25 guilty by the jury of disorderly conduct, which

1 is a misdemeanor of the third degree. As you
2 may be aware, the statutory limits for a
3 misdemeanor of the third degree mandate no more
4 than one year in prison and no more than two
5 hundred dollar fine, which in all reality means
6 no greater than six months in prison with a
7 six-month tail.

8 Even though I'm disappointed in
9 these verdicts, I cannot disagree with the
10 rulings. As you are all aware, the Pennsylvania
11 Crimes Code is made up of crimes that contain
12 specific elements. Each element must be proven
13 beyond a reasonable doubt before a conviction
14 can be obtained against a criminal defendant in
15 this state and any other state.

16 Both assault statutes require at
17 least an attempt to inflict physical bodily
18 injury. Chemical agents like OC spray only
19 cause a great deal of discomfort. However, if
20 used properly, the individual who it is used
21 against can be rendered totally incapacitated.

22 I had a little experience and I know
23 you've heard from Officer Lopinsky and several
24 other officers about their experience with OC
25 spray. I'm not trained on OC spray, although I

1 participated in a training exercise where I was
2 asked to walk through a cloud of OC spray that
3 was sprayed several seconds before I walked
4 through it. I can tell you, without having a
5 direct hit, a direct burst of OC spray, in spite
6 of that and in spite of the fact that I was
7 outdoors, I still suffered a great deal. I was
8 blinded. I had a very difficult time breathing
9 and took about 45 minutes to recover from that
10 incident.

11 I've also seen individuals who have
12 been brought to my court in the early hours of
13 the morning who are highly intoxicated. I've
14 had people attempt to rush the Bench after I
15 established a bail that they were not
16 comfortable with. I've had to have police
17 officers in the courtroom physically spray
18 people and put them on the ground. I can tell
19 you that even with a small dosage of OC spray,
20 it is very, very powerful.

21 It's during the time that an officer
22 is sprayed that they can lose their gun, their
23 PR-24's. And if you not aware of what PR-24 is,
24 it's essentially a club that officers use to
25 gain control of individuals; any other weapons

1 that are on their body and possibly his or her
2 life, and that's ultimately what I'm concerned
3 about.

4 The spray that is currently used by
5 most law enforcement agencies is what we call OC
6 spray. I know you've heard about the contents
7 of OC spray. OC stands for Oleoresin Capcicum,
8 essentially red cayenne pepper spray. It was
9 initially created to put down bears and other
10 large animals.

11 The reason that OC spray was
12 developed was because in many instances the old
13 chemical sprays, which still many people use,
14 were ineffective against individuals who were
15 tripping on crack or cocaine or any other type
16 of chemicals.

17 The current aggravated assault
18 statute mandates a felony conviction for
19 physical injury or attempted physical injury
20 administered to a police officer or other public
21 servant. Even though OC spray does not cause
22 physical injury, the incapacitation brought on
23 by its use can be even greater and have greater
24 adverse consequences because a police officer
25 cannot see or breathe and, in addition, will

1 experience a great deal of growing pain.

2 An individual in this Commonwealth
3 can be convicted of aggravated or simple assault
4 by simply attempting to strike an officer, even
5 if they fail in their attempt. A kick, a punch
6 or an unsuccessful attempt to do either will
7 bring about a felony conviction, and it should.
8 But totally incapacitating an officer by use of
9 OC or other chemical spray only mandates a
10 disorderly conduct conviction, as I said is a
11 misdemeanor of the third degree.

12 This is why I assisted in drafting
13 this legislation. I come to this subcommittee
14 with the full support of the local police
15 departments and the local Fraternal Order of
16 Police, and we are strongly encouraging you to
17 pass this legislation.

18 One of the things that I learned
19 while being a district attorney, and even more
20 so in being a solicitor of the local police, is
21 that they face a lot of different problems both
22 on the street and off. We're dealing with
23 problems that they face on the street here, and
24 it is abhorrent to me that you can administer
25 this type of spray on a police officer and get

1 away with it, like the woman who did in this
2 situation.

3 She is no longer on probation or
4 parole. I don't think she did any jail time,
5 and based on her conduct and the circumstances
6 surrounding the incident, police officers really
7 really need your protection and your help, so
8 we're asking you to pass this legislation.

9 CHAIRPERSON BIRMELIN: Thank you,
10 gentlemen. I also want to introduce another
11 member who has arrived and that's Representative
12 Pete Daley from Washington County. We'll start
13 our questions with Representative Maitland.

14 REPRESENTATIVE MAITLAND: Thank you.
15 Mr. Lunsford, you'll have to excuse me. I'm not
16 an attorney, one of the few on the committee,
17 but there's an offense called possession of an
18 instrument of a crime. Where would these
19 instruments, the sprays and the tasers and
20 things fall under that statute? Would that
21 statute be relevant to some of the cases that
22 you have discussed?

23 DISTRICT JUSTICE LUNSFORD: I'd feel
24 a lot more comfortable if I had that statute in
25 front of me because, as I said, we have to meet

1 certain elements. Without the benefit of
2 that -- You're obviously a lawyer, correct?

3 MR. MANN: Not yet (producing a
4 document).

5 DISTRICT JUSTICE LUNSFORD: It would
6 not fit in that statute, not at all. I
7 understand one of the bills that are before the
8 committee for consideration is a bill that would
9 amend the statute to put that in, and I have no
10 problem with including chemical or noxious tear
11 gas or OC spray in that, nor do I have any
12 problem incorporating the tasers.

13 The only thing that I would caution
14 the committee on is to ensure that the language
15 is tight enough that it does not prohibit
16 law-abiding citizens from using at least OC
17 spray. Tasers are a different story. I'm real
18 uncomfortable with people using those, but OC
19 spray is a very inexpensive way to protect
20 oneself.

21 To answer your question, it would
22 not fit in here. Statutory construction
23 mandates that when you read a statute it has to
24 be strictly construed. And if you look in the
25 section entitled "Offensive Weapons", if it's

1 not there, then it is not the intent of the
2 legislation to make it criminal. So if you want
3 to make it criminal, you've got to put it in.

4 REPRESENTATIVE MAITLAND: Thank you.
5 That's my only question, Mr. Chairman.

6 CHAIRPERSON BIRMELIN: Repre-
7 sentative Feese.

8 REPRESENTATIVE FEESE: Thank you,
9 Mr. Chairman. Just following up on two things.
10 First of all, Chief King brought up a pretty
11 good point. The language in the bill that says,
12 in an offensive manner against any officer.

13 DISTRICT JUSTICE LUNSFORD: Which
14 bill are you looking at?

15 REPRESENTATIVE FEESE: Repre-
16 sentative Herman's bill, page 2, beginning at
17 line 23, it would make it a crime to use tear or
18 noxious gases defined in Section 2708(b) in an
19 offensive manner against any officer.

20 I think, if I understand the chief's
21 concern, it was an offense that, well, I was
22 protecting myself from the officer, and
23 therefore, I used it. I'm a former district
24 attorney and I know defense attorneys, and I
25 think you're going to hear that.

1 DISTRICT JUSTICE LUNSFORD: I

2 guarantee you.

3 REPRESENTATIVE FEESE: I wonder if
4 we deleted in an offensive manner, and just
5 said, against any officer while acting in the
6 scope of his employment.

7 DISTRICT JUSTICE LUNSFORD: I would
8 absolutely support that.

9 REPRESENTATIVE FEESE: Then we could
10 maybe tack on, or other person enumerated in
11 Subsection C -- excuse me, or in an offensive
12 manner against any other person, because I think
13 maybe that language is in there so that there's
14 other people that are enumerated.

15 Well, I'm not sure why that language
16 is in there, but at least maybe we should delete
17 it for the police officers.

18 DISTRICT JUSTICE LUNSFORD: I would
19 support that. You know, the one -- You and I
20 have very similar experiences. I can also tell
21 you that I served as a defense attorney too.
22 So, I've been on both sides, and that is
23 certainly something that when you're trying to
24 construct or reconstruct a statute and trying to
25 determine what the legislative attempt was, any

1 ammunition you give to someone to attack they're
2 going to take it, especially if a serious
3 offense is levied against their client or the
4 defendant. So, the tighter you can make this
5 legislation, I think that would be greatly
6 appreciated by local police.

7 REPRESENTATIVE FEESE: The only
8 other -- I guess maybe it's a concern, is,
9 Representative Herman, I understand why you want
10 to include members of the House, but I don't
11 necessarily agree with including the Senate.

12 REPRESENTATIVE HERMAN: I think
13 you'll find a lot of agreement on that in the
14 House Chamber.

15 CHAIRPERSON BIRMELIN: We need their
16 votes to pass it, so we kind of got to --

17 REPRESENTATIVE HERMAN: There's the
18 politician there, the Chairman. He has a
19 political strategy involved here.

20 REPRESENTATIVE MASLAND: I don't
21 know that -- Well, fortunately, after that last
22 comment, we're not on PCN; not that the Senate
23 watches it anyhow.

24 The part on the defensive manner, I
25 was going to raise that also. I just was

1 thinking, relating to the anecdotal story that I
2 told earlier on, that maybe we do need to have
3 something like that in for nonofficers because
4 there was the one incident where a school
5 principal was twirling his wife's key chain and
6 accidentally set this off spraying his boss in
7 the face and it got him a little bit.

8 Now, technically, if we don't say in
9 an offensive manner -- I don't know. That's
10 something to think about, but I do think that it
11 makes sense to either move that language with
12 respect to officers.

13 DISTRICT JUSTICE LUNSFORD: Within
14 the Crimes Code, there always needs to be an
15 attempt to commit the act, an intent to commit
16 harm. And if the person doesn't have the
17 appropriate mensrea, then there cannot be a
18 conviction.

19 REPRESENTATIVE MASLAND: Well, I
20 think it's safe to say this guy had no mensrea
21 and everybody else felt that way, too.

22 The only thing I was thinking is,
23 this was drafted I guess several years ago by
24 Representative Herman. On page 5 where you have
25 the language, including but not limited to red

1 pepper spray, I'm wondering if we might just
2 want to consider expanding that a little bit to
3 throw in OC or the CS or CN, something like
4 that? That's a minor drafting point, but we
5 might just want to include some of those. Even
6 though it says, but not limited to, I'd hate to
7 have somebody say, well, it wasn't red pepper
8 spray.

9 REPRESENTATIVE HERMAN: Right. I'd
10 like to address that as well, because since we
11 first -- Since Brad and I did our first drafting
12 and then introduction in the legislation in
13 1994, there have been many suggestions for
14 expanding the scope of the legislation.

15 When this bill was approved by the
16 House Judiciary Committee in 1998, the last
17 year, someone suggested we should put stun guns
18 in there too. So, I had an amendment ready to
19 include stun guns if it came up on the House
20 floor.

21 Now, the other bills that you have,
22 that you are addressing today deal with
23 incidents regarding pepper spray and another one
24 regarding stun guns. I don't know what the
25 intent of the subcommittee is, but certainly

1 since they are all somewhat related, I am
2 certainly amenable to any amendments where we
3 can accomplish our goal of providing the
4 protection to our law enforcement personnel and
5 public servants in this capacity.

6 And, obviously, there are other
7 types of chemical agents on the market that are
8 referred to commonly as this and that and the
9 other thing that maybe this committee or
10 subcommittee should consider.

11 You know, I -- You may want to,
12 rather than pass all these bills and/or
13 recommend the Judiciary Committee pass all these
14 bills on their own, that maybe they can all be
15 incorporated into House Bill 454 in some way.
16 I'm certainly more than willing to work with you
17 toward that end.

18 REPRESENTATIVE MASLAND: Thank you.

19 CHAIRPERSON BIRMELIN:

20 Representative Daley.

21 REPRESENTATIVE DALEY: I have no
22 comment, Mr. Chairman, other than I know Lynn
23 and I were elected together 17 years ago and he
24 has for many years been a proponent of this
25 concept. As we know, if you've been in the

1 process as long as we are, sometimes your ideas
2 end up with someone else's name on it when we
3 process bills, but I know Lynn has been -- sort
4 of been the master of this issue for several
5 years now, and I do support him.

6 CHAIRPERSON BIRMELIN: I want to
7 thank you, gentlemen, for your testimony.

8 REPRESENTATIVE HERMAN: I have one
9 more comment to make, and that is, I was remiss
10 in not introducing my intern for this summer,
11 Michael Chiswick Patterson. He's going back to
12 Princeton University next week. He's studying
13 international government -- or I guess
14 government, international government and some
15 public policy. So I told him, yeah, I would
16 take him to all these hearings. I told him, I
17 said, you know, if you're bored you better get
18 another major. So, he's still coming around so
19 I must be okay.

20 REPRESENTATIVE DALEY: You mean
21 there's people in Centre County that don't go to
22 Penn State?

23 REPRESENTATIVE HERMAN: Do you want
24 to explain that?

25 CHAIRPERSON BIRMELIN: He's not

1 taking the stand today. He's just observing. I
2 want to thank you, gentlemen, for coming and we
3 appreciate your testimony.

4 REPRESENTATIVE HERMAN: And thank
5 you for your attention and your willingness to
6 come to Centre County and the State College area
7 to address this issue where an incident that
8 happened almost ten years ago now, actually
9 eight years ago, has not yet been addressed in
10 legislative statute. It needs to be because, as
11 you can see, what has prompted Representative
12 Kaiser and Representative Orié to introduce
13 similar bills is because other incidents across
14 Pennsylvania are occurring this way and there
15 needs to be substantial statute to provide for a
16 commensurate penalty for these kinds of
17 violations. Thank you.

18 CHAIRPERSON BIRMELIN: Thank you.
19 Our next testifier is Thomas Harmon, who is the
20 Director of the University Police here at Penn
21 State University. Mr. Harmon, would you please
22 come forward? I believe that there is a
23 printout of his testimony available for members
24 of the committee. If you need that, let us know
25 and we can get that.

1 Mr. Harmon, welcome to the House
2 Judiciary Subcommittee on Crime and Corrections.
3 We welcome you to our public hearing today, and
4 whenever you are ready, you may begin.

5 MR. HARMON: Thank you for the
6 opportunity to present a few comments and
7 observations to the subcommittee regarding House
8 Bills 454, 1640 and 1666 of 1999.

9 Let me begin by observing that I
10 would certainly interpret existing statutes to
11 define the use of products containing CN, CS and
12 Oleoresin Capsicum, commonly known as pepper
13 spray, against another person as being use of
14 force. These substances can cause bodily
15 injury. Let me interject that, I'm not familiar
16 with what rationale the local district justices
17 use to find to the contrary, but I cannot
18 imagine why these would not be seen as
19 inflicting bodily injury.

20 Therefore, the use of such products
21 may be justified by the laws governing the use
22 of force. Many citizens who acquire these
23 products may not recognize and appreciate the
24 risks and liabilities imposed by the use of
25 chemical weapons. Those most likely to fail to

1 recognize these risks and liabilities are
2 juveniles. For this reason, it is important to
3 ensure that juveniles possess these weapons only
4 with parental approval and supervision.

5 At Penn State our campus weapons
6 regulations prohibited the possession of these
7 personal protection spray devices prior to about
8 ten years ago. At that time we changed the
9 regulations to permit persons on the campus to
10 carry these chemical weapons for personal
11 protection. We did so because we knew that many
12 persons, particularly women students, were
13 carrying these devices in violation of the
14 regulation. Most of these students probably
15 were not even aware that the possession of the
16 spray device was prohibited.

17 While we do not know how many women
18 today carry personal protection spray devices,
19 we know from daily observations that a
20 substantial proportion of women students carry
21 them. You frequently see them being carried on
22 key chains by women on the campus.

23 When we changed our policy to
24 prohibit -- permit these weapons to be carried
25 on the campus, we also had no record of their

1 misuse that would dictate continuing the
2 prohibition. I cannot personally recall any
3 incidents other than use by law enforcement
4 officers in which chemical weapons have been
5 used on the campus. These weapons, in the hands
6 of a responsible adult, provide a reasonable
7 safe -- a reasonably safe and effective means of
8 self-protection from assault and may enhance
9 feelings of personal safety.

10 House Bill 16 -- I think I
11 mislabeled that. I think it should be the 454.
12 House Bill 454, amending Title 18 by adding
13 Section 908.1, use or possession of personal
14 protection spray devices, Subsection (b),
15 authorizes possession of such spray devices,
16 only if the personal protection spray device is
17 labeled with or accompanied by clearly written
18 instructions as to its use and the danger
19 involved in its use.

20 The proposed statute, however, does
21 not appear to prohibit the mere possession of a
22 device that is not labeled with or accompanied
23 by such instructions nor impose any penalty.
24 The application of this provision is thus
25 confusing. If a person in violation of any

1 prohibition -- or is a person in violation of
2 any prohibition if the personal protection spray
3 device he or she possesses is not labeled with
4 or accompanied by the required instructions?

5 Providing instructions with such
6 devices in their proper use, as well as
7 first-aid instructions for the treatment of
8 those exposed to the chemical agent, is a
9 desirable objective. However, the provisions of
10 Subsection (b) appear to place the duty of such
11 labeling or acquiring instructions on the
12 persons who possesses the device; not the
13 manufacturers or retailers selling the devices.

14 Would a law-abiding citizen
15 purchasing a personal protection device be aware
16 that he or she would need to ensure that the
17 device comes with the required instructions to
18 lawfully possess the device? In my judgment, it
19 would be more appropriate to impose the duty to
20 provide these instructions with the product upon
21 manufacturers and retailers.

22 The same concern might be raised
23 with respect to Subsection (b) of Section 908.1,
24 possession or use of electric or electronic
25 incapacitation devices, as introduced in House

1 Bill 1666, which appears to impose a similar
2 duty on the possessor of the device to acquire
3 or be in possession of instructions in order to
4 lawfully possess the particular weapon.

5 The prohibition in House Bill 454
6 against juveniles possessing chemical weapons
7 without written consent of a parent or guardian
8 appears to present some questions about
9 enforcement practices.

10 Does this written consent have to be
11 in the possession of a juvenile when in
12 possession of the device?

13 Does the written consent have to be
14 presented to a police officer on demand?

15 If a juvenile is found to be in
16 possession of such a device, does a police
17 officer have probable cause to seize the device
18 if the juvenile cannot produce the written
19 consent?

20 Can a parent present the written
21 consent after a juvenile is found to be in
22 possession of the device? It would appear that
23 a prosecution of a juvenile under this section,
24 or actually subsection, would require the
25 cooperation and testimony of a parent to prove

1 that a juvenile either did not have or could not
2 obtain the written consent of a parent.

3 With respect to the prohibition in
4 House Bill 454 against those individuals who
5 cannot purchase or possess a firearm from
6 possessing or -- purchasing or possessing
7 personal protection devices, how would these
8 individuals reasonably be given notice against
9 such purchase and possession? These devices are
10 readily available across the counter from many
11 retailers. There is apparently no requirement
12 that retailers provide such notice.

13 Finally, many of our students begin
14 their education at Penn State while they are
15 still 17 years of age. The requirement that
16 those who are 17 years of age have written
17 permission of a parent or guardian may provide
18 some entitlement to acquiring the device for
19 some women students. I don't say that in
20 objection to the provision, but only to point
21 out that that may be an impediment for some of
22 our students.

23 CHAIRPERSON BIRMELIN: Thank you,
24 Mr. Harmon. We appreciate your testimony. I
25 just have a question about your University

1 Police. What is their legal capacity? Are they
2 just a security force here? Do they have arrest
3 powers in the borough or what exactly can they
4 do or not do?

5 MR. HARMON: Our officers are armed
6 and sworn as police officers under an act of the
7 legislature which provides that they have the
8 same authority and powers as the municipal
9 officers in the municipality in which we're
10 located, and our officers are required to
11 complete the course of training under the
12 Municipal Police Officers Education and Training
13 Act.

14 CHAIRPERSON BIRMELIN: And what does
15 your area of jurisdiction include?

16 MR. HARMON: Our jurisdiction is
17 limited to the grounds of the university,
18 although the statute provides for our
19 jurisdiction to extend up to 500 yards from the
20 property line.

21 CHAIRPERSON BIRMELIN: Do any of
22 your officers carry any of this OC spray?

23 MR. HARMON: All of our officers are
24 issued OC spray and do undergo a similar course
25 of training as the borough officers.

1 CHAIRPERSON BIRMELIN: How often do
2 they have to use it?

3 MR. HARMON: I would estimate that
4 we probably use OC spray in the line of duty
5 maybe once or twice a year.

6 CHAIRPERSON BIRMELIN: Is it
7 normally with students who are out of control,
8 that sort of thing?

9 MR. HARMON: It is usually with a
10 student who is intoxicated, although it could
11 also involve a nonstudent who is resisting
12 arrest. But, as a practical matter, it's most
13 likely to be a student.

14 CHAIRPERSON BIRMELIN: Thank you for
15 answering questions. I'll give an opportunity
16 to members of the panel to ask questions if they
17 would like. Representative Daley.

18 REPRESENTATIVE DALEY: Do you have
19 co-jurisdiction with the State Police on campus?

20 MR. HARMON: Yes. Again, it would
21 be a rare occasion that the State Police would
22 come on campus. The one exception being that
23 the liquor control enforcement personnel are
24 typically present at our football games, at
25 least half of them they usually make, so there

1 is some law enforcement activity on the part of
2 the State Police on those days.

3 REPRESENTATIVE DALEY: On criminal
4 investigations like the shooting incident on
5 campus, typically, the State Police would do the
6 criminal investigation or would that be done by
7 your police department?

8 MR. HARMON: No, that was entirely
9 handled by our department.

10 REPRESENTATIVE DALEY: Do you have
11 any intergovernmental cooperation agreement with
12 the Borough of State College so you can go on
13 their property and they can go on yours if you
14 are called upon to do so?

15 MR. HARMON: At this time we have a
16 mutual-aid agreement that is under consideration
17 although it has not been effected. Of course,
18 the central campus is within the geographic
19 boundaries of the Borough of State College and
20 officers of the Borough of State College Police
21 Department do have authority on the campus.

22 REPRESENTATIVE DALEY: I thought
23 that was only to do criminal investigations.

24 MR. HARMON: No. We do all criminal
25 investigations on the campus.

1 REPRESENTATIVE DALEY: Okay. When
2 you had the so-called riots, did the local
3 police department assist you in traffic control,
4 riot control --

5 MR. HARMON: Well, we actually
6 assisted them because the riot occurred down on
7 Beaver Avenue in front of State College. I
8 might add that, it was absent a mutual-aid
9 agreement. It was fortuitous, I guess, if you
10 would use that term, that that location was
11 within 500 yards of the campus and our legal
12 jurisdiction to act at that location was within
13 the scope of the law.

14 REPRESENTATIVE DALEY: I was a mayor
15 of California and my responsibility prior to
16 being in the legislature was being in charge of
17 the police department. California University
18 was within our confines. I would strongly urge
19 that the mutual agreement be enacted so you do
20 not run into legal or jurisdictional questions
21 in terms of enforcement and cooperation. I
22 think it's a great way of working together.

23 MR. HARMON: We agree with that. I
24 might add, up until just a few years ago when
25 our enabling legislation was modified, we really

1 didn't have any statutory authority to enter
2 into a mutual-aid agreement. At this time
3 there's really no impediment other than just
4 getting the two bodies together to sign a
5 functional agreement.

6 REPRESENTATIVE DALEY: Thank you,
7 Mr. Chairman.

8 CHAIRPERSON BIRMELIN: Repre-
9 sentative Masland.

10 REPRESENTATIVE MASLAND: Thank you,
11 Mr. Chairman. Actually, I don't have any
12 questions. I'd just say that you've raised some
13 good issues, some of which were raised earlier,
14 with respect to the labeling, and certainly the
15 question of what you do in case of juveniles is
16 important as well.

17 Thank you for taking the time to
18 study this as closely as you did.

19 CHAIRPERSON BIRMELIN: Repre-
20 sentative Feese.

21 REPRESENTATIVE FEESE: No questions,
22 but thank you very much for your testimony.

23 CHAIRPERSON BIRMELIN: Repre-
24 sentative Maitland.

25 REPRESENTATIVE MAITLAND: I'll

1 second what Representative Masland said. I
2 appreciate your input and you did raise some
3 good issues. Thank you for testifying.

4 CHAIRPERSON BIRMELIN: I want to
5 thank you again, Mr. Harmon, for your testimony
6 and your input today at our committee meeting.

7 MR. HARMON: Thank you.

8 CHAIRPERSON BIRMELIN: It's my
9 understanding that our last testifier is not
10 going to be here. So at this point in time,
11 I'll adjourn this meeting.

12 (At or about 11:55 a.m. the hearing
13 concluded).

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C E R T I F I C A T E

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3 I, Karen J. Meister, Reporter, Notary
4 Public, duly commissioned and qualified in and
5 for the County of York, Commonwealth of
6 Pennsylvania, hereby certify that the foregoing
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23 My commission
24 expires 10/19/00 ask
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