

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1724

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House Judiciary Committee  
Subcommittee on Crime and Corrections

Room 205  
Capitol Annex  
Harrisburg, Pennsylvania

Tuesday, September 21, 1999, 1:15 p.m.

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BEFORE:

Honorable Jerry Birmelin, Majority Chairperson  
Honorable Pat Browne  
Honorable Craig Dally  
Honorable Albert Masland  
Honorable Harold James, Minority Chairperson  
Honorable Peter Daley  
Honorable Babette Josephs  
Honorable Dave Mayernik  
Honorable Joe Petrarca  
Honorable Don Walko  
Honorable Kathy Manderino

ALSO PRESENT:

Brian Preski  
Majority Chief Counsel

Judy Sedesse  
Majority Administrative Assistant

Mike Rish  
Minority Executive Director

LeAnne Bronstein  
Minority Research Analyst

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1                   CHAIRPERSON BIRMELIN: Good afternoon. I want  
2 to welcome you to the House Judiciary Subcommittee on Crime  
3 and Corrections hearing on House Bill 1724, of which I am  
4 the prime sponsor. Before we get started on the bill  
5 itself, I want to introduce the members of the panel or,  
6 rather, have them introduce themselves.

7                   And I'll start to the far right of me, if you  
8 would please introduce yourself. And there's a little  
9 button there on your microphone. And when you see the  
10 green light on, that means your microphone is working.

11                   REPRESENTATIVE DALEY: Thank you, Mr.  
12 Chairman. My name is Pete Daley. I'm from Washington and  
13 Fayette County, the 49th Legislative District.

14                   REPRESENTATIVE JOSEPHS: Babette Josephs,  
15 182nd District, the middle of Philadelphia.

16                   REPRESENTATIVE WALKO: Don Walko, Allegheny  
17 County, representing parts of the City of Pittsburgh and  
18 Reserve Township.

19                   REPRESENTATIVE MASLAND: Al Masland, and I  
20 represent parts of Cumberland and York Counties.

21                   REPRESENTATIVE BROWNE: Pat Browne, 131st  
22 District, Lehigh County.

23                   CHAIRPERSON BIRMELIN: As the hearing proceeds  
24 today, I'm sure there will be additional members who will  
25 be joining us. And I will do my best to try to introduce

1 them, not only for those of you who are present, but for  
2 our television audience.

3           House Bill 1724, of which I'm the prime  
4 sponsor, is entitled the Community Reparative Board Bill.  
5 It's really an old concept. It actually dates back in  
6 America to the colonial days when citizen involvement in  
7 the punishment for defenders and offenders, not only in  
8 Pennsylvania but in our other colonies, was the norm.

9           And today, we see this idea being revised as a  
10 part of what has been historically called the restorative  
11 justice movement. This particular legislation will  
12 establish citizen panels throughout Pennsylvania to divert  
13 first- or second-time offenders who are guilty of low level  
14 crimes from continuing down a lifetime path of crime.

15           It's been done successfully in Vermont for  
16 several years and with juvenile offenders in Philadelphia  
17 where they're known as youth aid panels in Bucks County.  
18 The community reparative boards are comprised of average  
19 citizens who interact with offenders to show them the  
20 impact of their crimes, not only on the victim, but on the  
21 community as a whole as well as themselves and their own  
22 family members.

23           These boards then assign tasks for the  
24 offender that may include community service, restitution  
25 payments, repairing damages, public apologies, and other

1 appropriate measures that will hopefully restore their  
2 victims and instill in them a desire to refrain from any  
3 future offenses.

4 This process is intended to do the two most  
5 critical things that we ask of our criminal justice system:  
6 Number one, provide justice for victims; and number two,  
7 prevent the offender from committing further crimes. And  
8 with this hearing today, we will be taking testimony from a  
9 broad spectrum of the criminal justice community.

10 We'll hear their comments, their criticisms,  
11 their suggestions for improvements. And we will do our  
12 best to work with those on the front lines in the war  
13 against crime to draft the bill that will be in the best  
14 interest of all Pennsylvanians.

15 Our first testifiers today are John Delaney.  
16 John is the Chief Assistant District Attorney in the  
17 Juvenile Unit, Philadelphia District Attorney's Office, and  
18 very instrumental, I might add, in the youth aid panels of  
19 Philadelphia.

20 And Gary Tennis, who is the Legislative  
21 Director for the Pennsylvania District Attorneys  
22 Associations. And gentlemen, you each have a microphone.  
23 I'm not sure which of you wishes to go first. Gary, I  
24 guess you're going to at least introduce our guest, Mr.  
25 Delaney.

1                   But we would welcome you to this subcommittee  
2 meeting and ask you to give your testimony at this time.

3                   MR. TENNIS: Thank you very much,  
4 Representative Birmelin. We appreciate the opportunity to  
5 come here and comment on the bill. I will make just a  
6 couple of preliminary comments and then leave it to John  
7 Delaney to make most of the -- give most of the testimony  
8 because he does direct the youth aid panels, which is a  
9 very similar concept that we carried out in Philadelphia.

10                   First of all, I just would like to commend  
11 you, Representative Birmelin, for your initiative on this.  
12 You have always been -- put public safety first and been a  
13 strong supporter of anti-crime measures in every force and  
14 not just lock them up, get tough; although, you've been  
15 supportive of that.

16                   But I think your sponsorship of this important  
17 initiative shows that you're willing to take a very  
18 comprehensive broad view of all the measures that need to  
19 be taken in order to launch a successful fight against  
20 crime.

21                   I was invited -- I think, Representative  
22 Birmelin, you invited me to join a number of other people  
23 to look at the Vermont experiment, the reparations boards  
24 that occur up there. And we got a chance at that time to  
25 go to three or four -- to visit three or four sets of

1 hearings or sets of board hearings that were occurring  
2 where people that have been -- have committed certain  
3 crimes were going through the reparations process that  
4 you've just started to describe.

5           And I think that there were a lot of positive  
6 things that we saw there, the concept of personal  
7 responsibility that was placed upon these individuals  
8 rather than just cycling through the system and never  
9 seeing a human face on the wrongs that they've done.

10           They were put face-to-face with the victims;  
11 they were put face-to-face with the community. And they  
12 were able to -- they were forced to really deal in close-up  
13 with the consequences of their actions. They were forced  
14 to answer for and actually come to a much, much more  
15 in-depth understanding of what kind of damage was done by  
16 the crimes that they committed.

17           At the same time, though, another positive  
18 aspect -- and you've already mentioned it -- was that that  
19 did give satisfaction to the community for their desire for  
20 justice because often in the less serious offenses, the  
21 types of offenses that don't result in incarceration where  
22 individuals get ARD, accelerated rehabilitative  
23 disposition, or they get probation, often the public feels  
24 or the people that are involved in the case, the victims or  
25 their friends often feel that not enough was done.



1           In this instance, it was very clear that the  
2 community that was affected by the offenses that were  
3 committed did get a better sense of satisfaction that some  
4 kind of justice was done. One concern I had from watching  
5 those boards that was conducted up in Vermont was it seemed  
6 that a significant percentage of the offenders that were  
7 cycling through this process appeared to be -- and I'm not  
8 an expert in the area -- but appeared to be that they  
9 looked like they had drug or drug and alcohol problems.

10           And there didn't seem to be any kind of  
11 training of the individuals, and there didn't seem to be  
12 any screening. And I don't think any process is going to  
13 work with them. They're not going to really be able to  
14 take personal responsibility or really be able to change  
15 their behavior until that -- whatever addiction issues are  
16 there are also addressed.

17           In Pennsylvania, I think that this concept has  
18 real potential value. And one of the things we're also  
19 looking at is trying to take offenders when they commit  
20 less serious offenses and trying to interrupt their  
21 criminal careers before they advance on to more serious  
22 crimes.

23           And by making them feel in a somewhat painful  
24 way the consequences of their actions, I think we really do  
25 increase the prospects that they'll see the error of their

1 ways and not come back into the criminal justice system  
2 with more serious offenses.

3           There are a number of problems -- there are a  
4 number of issues that have to be addressed, and we've  
5 already begun working. And, Representative, you and I have  
6 talked about them. And we're working with the House  
7 Judiciary counsel to try to come up with ways of addressing  
8 them.

9           One of the -- the key one is going to be the  
10 motivation of defendants or offenders to engage in the  
11 community reparations process. Currently, if an offender  
12 is getting ARD -- which most of the offenders would be that  
13 are listed in the bill now. They may get ARD now --  
14 they're not going to be motivated to enter into a process  
15 where they have to meet a lot of additional requirements  
16 and they have to do community service.

17           They have to come to hearings and write papers  
18 and do all of the requirements of the community reparations  
19 board. So we need to design a system so it provides some  
20 motivation so that it's less painful to do this than to not  
21 do it. Right now, the way the system is set up or the way  
22 the proposal sits, it would be easier for a defendant just  
23 to say, Well, we'll just take ARD or we'll just take the  
24 conviction and probation because that's all that will  
25 happen from these offenses.

1           So that's one issue that we got to iron  
2 through. And I think it can be solved. We need to look at  
3 it. The other issue that occurs to me real briefly -- and  
4 John Delaney is going to go into all this in more  
5 detail -- is that there probably isn't a one-size-fits-all  
6 approach to a community reparations board.

7           We have -- Pennsylvania has incredible  
8 diversity in its communities between the most urban  
9 communities of Pittsburgh and Philadelphia and many of the  
10 other cities that we have in the Commonwealth and then some  
11 very rural environments where the concept of sort of what  
12 offends the community morality, where the concepts of  
13 justice somewhat vary.

14           And one of the suggestions that we would have  
15 is rather than try to do a one-size-fits-all for this is  
16 that, perhaps, something we worked out with PCCD to set up  
17 pilot projects in the different types of communities, pilot  
18 projects in the urban community and a suburban county and a  
19 rural county where we get a chance to run a diversity of  
20 programs, run them different ways and get a sense of what  
21 works best because this -- this really is going back. I  
22 mean, it's a big change in how we do things.

23           And in a way, it is going back to the way  
24 things probably were and ought to have always stayed. But  
25 to do it right, we need to ease into it. And I think the

1 idea of pilot projects may be a way of doing that. It's  
2 just a concept for the Representatives' consideration.

3 At this point, I just want to introduce Mr.  
4 Delaney. John Delaney has been the Deputy of our Juvenile  
5 Division, I think, for I don't know how many -- probably  
6 somewhere around eight, ten years. He'll correct that. He  
7 is responsible for the youth aid panels that do basically  
8 carry out this concept, and he will talk more about what we  
9 do with youth aid panels.

10 He's been a prosecutor, I think, for about 16,  
11 17 years. So he knows the system pretty well in  
12 Philadelphia. He tends to be the lead person for the PDAA  
13 on juvenile justice issues. One of the things I need to  
14 clarify, too, is my testimony here today is not  
15 representing the Pennsylvania DAs Association.

16 It's representing today the Philadelphia DA's  
17 office. We're planning to bring this proposal, as well as  
18 any additional language that we work up, to the DA's  
19 executive committee meetings, which are occurring in about  
20 two weeks, to get the DAs Association position.

21 But at this point, we're just testifying kind  
22 of on behalf of the Philadelphia District Attorney's  
23 Office. I'd just like that clarified.

24 MR. DELANEY: Good afternoon. I'm happy to be  
25 here on behalf of District Attorney Lynne Abraham. And I

1 think she asked me to appear for two reasons. One, I do  
2 supervise the youth aid panels which are community-based  
3 neighborhood, neighbor-staffed, diversion opportunities for  
4 juvenile offenders in Philadelphia.

5           And I know Representative Birmelin and other  
6 members of the committee have visited the youth aid panels  
7 and seen them in action. Through the youth aid panels,  
8 we're able to divert almost 10 percent of the juvenile  
9 misdemeanants and felons who are arrested in the city of  
10 Philadelphia every year.

11           And the second reason is because of the act of  
12 the legislature in 1995 that mandate by law now in the  
13 juvenile justice system is one of restorative justice.  
14 It's a recognition of the fact that when a young person  
15 commits a crime, they take something from the community so  
16 that an inherent part of their sanction ought to be giving  
17 back something to the community.

18           And as Representative Birmelin mentioned, it  
19 is something that's very old. Since the juvenile court was  
20 created in Pennsylvania, prosecutors have been forced by  
21 law to allege that the offender, through his actions,  
22 robbed or took away the peace and dignity of the  
23 Commonwealth.

24           And in the legislative restructuring of the  
25 Juvenile Act, it's been almost three and a half years now

1 since restorative justice has been made a mandate. We  
2 tried in a variety of ways to put that in action and, in  
3 essence, to do three simple things, which I think is one of  
4 the reasons that the community reparative boards makes  
5 sense to us; and that is, if you -- in every case in which  
6 a crime is committed, if you can protect the community,  
7 hold the offender accountable, and help the offender come  
8 out of the experience better than he or she went in, then  
9 you're hitting a grand slam.

10           And I think that's what this legislation is  
11 intended to do. We've run a diversion program for  
12 juveniles in our office as long as I've been the Deputy for  
13 the Juvenile Division and even before that. We also have  
14 other diversion programs for adults.

15           And I would suggest that for a diversion  
16 program like this to be successful, there are a couple of  
17 ingredients that have to be included. One is community  
18 involvement, which the bill is very strong on. It mandates  
19 that cases be heard by members of the offended community.

20           Second, for the diversion program to be  
21 successful, it has to offer something that's more  
22 meaningful than what already exists. And in the criminal  
23 justice system, people who get arrested for summary  
24 offenses and misdemeanor 3's have options open to them.  
25 The courts have options open to them.

1           But most of us would agree that there are more  
2 meaningful opportunities, and that's what the bill strives  
3 to achieve. And the idea of involving the community and  
4 having the community sanction the offender either through  
5 requiring a letter of apology, the payment of restitution,  
6 or the performance of relevant community service is very  
7 laudable.

8           But for a diversion program to be successful,  
9 there also has to be an incentive for the offender to want  
10 to do it. And I think that's where the bill gets a little  
11 bogged down. There also has to be an incentive for the  
12 system to want to do it because although we would like to  
13 start the justice system from scratch, unfortunately, we  
14 can't do that.

15           So we have to do it in the context that exists  
16 now. And the way the bill was written, it's very  
17 litigation intensive. It requires motions and court  
18 hearings that could cause the process to be both longer in  
19 time and more expensive for the system and the offender.

20           We've already begun speaking with the  
21 subcommittee staff with our suggestions how those problems  
22 can be remedied and to streamline this process so that it  
23 is both shorter in time and less expensive in cost to the  
24 system to have offenders appear before community reparative  
25 boards.

1           And I think there also has to be an incentive  
2 to the community. The community has to see this as better  
3 than what is out there. And I think while it's certainly  
4 intended to do that in the mechanics of its operation,  
5 there may be areas where it tends to get bogged down.

6           So in terms of making community reparative  
7 boards more attractive to the community and more attractive  
8 to the victim and more attractive to the offender, I think  
9 there are details in the bill that can be worked on to  
10 accomplish all of those things.

11           One of the successes, I think, that we've  
12 experienced in Philadelphia with the youth aid panels is  
13 that we're able to do it much more quickly than the regular  
14 core system operates so that normally within 35 or 40 days  
15 of the offense, the offender has appeared in front of the  
16 youth aid panel; they have devised a contract for him or  
17 her; and the offender has begun performing the terms of  
18 those contracts.

19           Whereas, in the regular court system for a  
20 similar type of offense, there hasn't even been the initial  
21 court listing. So the sanctioning in the formal juvenile  
22 system may take 45, 60, 90, 120 days to begin; and the  
23 community-based system is much quicker.

24           And I think the way you make that happen is  
25 somebody is in control. And that's what Gary was referring



1 to when he talked about our suggestion that PCCD be given  
2 the opportunity to enable pilot projects to occur. Youth  
3 aid panels exist in a number of counties in Pennsylvania.

4 As a matter of fact, on October 2nd, we will  
5 have the second statewide conference of youth aid panels to  
6 bring volunteers together from all over the state to talk  
7 about the successes and failures of the programs. And I  
8 think it's interesting because in Philadelphia, the panels  
9 are run by the prosecutor's office.

10 It's the District Attorney who takes the lead.  
11 In Bucks County, it's the juvenile court who runs the youth  
12 aid panels and takes the lead. In Lancaster County, it's a  
13 township police department that takes the lead. And what I  
14 would hate to see is for the legislature to come up with a  
15 very good system that because there's no local leadership,  
16 the project never gets off the ground.

17 So by PCCD being involved and identifying the  
18 leaders who would be willing to run with this, who would be  
19 willing to make the necessary investment, I think it  
20 greatly increases the likelihood of success. And at least  
21 with youth aid panels from that limited perspective, one  
22 size does not fit all so that to the extent the committee  
23 and the legislature can allow for that flexibility and  
24 allow for different variations on the theme to take off  
25 throughout the Commonwealth, as long as the goals are the

1 same, I think we would all be better served.

2 CHAIRPERSON BIRMELIN: Thank you, Mr. Delaney.  
3 And thank you, Mr. Tennis. Just in a quick response to  
4 that one point that you have both raised about the pilot  
5 programs, I think what you're going to see happen is that  
6 should the legislation be passed, it will be applicable to  
7 the entire state.

8 But nobody -- not too many areas, perhaps,  
9 would be interested in doing it unless they had some  
10 funding to do it. And that is the area in which we will be  
11 working with the Governor's office to try to fund four or  
12 five pilot programs. It's my intention that, as Mr. Tennis  
13 said, that we walk before we run.

14 Even though I don't think you can  
15 legislatively pass pilot programs -- I think there's a  
16 problem with doing that in legislation -- the reality is if  
17 this is in place as law, then you have the ability to use  
18 this. Then you fund the pilot programs, you monitor them  
19 for three or four years or whatever, and make the  
20 corrections you need to make.

21 And that is the game plan at this point in  
22 time. So to answer, you know, just that one point that  
23 you've raised. And then, Mr. Delaney, I would also invite  
24 you to, you know, be free to give your suggestions as to  
25 how you think the bill ought to be improved in writing,

1 share that with myself or with Counsel Preski, who I will  
2 introduce here in a minute as soon as he sits down. And  
3 we're willing to work with you.

4 We'd like this to be a good bill. We'd like  
5 this to work. And that's why we're interested in your  
6 comments. And you, perhaps, more than anyone in  
7 Pennsylvania is in a position that knows how to do that.  
8 So we want to thank you for coming.

9 And again, I will offer to you my desire to  
10 continually communicate with you, not even after we get the  
11 legislation, but once we're up and running. If you'd like  
12 to, you know, check out what's going on in these community  
13 reparative boards throughout the state, we'd be more than  
14 happy to work with you and to share with your expertise in  
15 making the system work because I think it serves all of us  
16 to do that.

17 So thank you, gentlemen, both for your  
18 testimony. Don't leave yet. There may be questions from  
19 the members of the committee. I also want to introduce the  
20 members who have come in since I originally introduced you.  
21 She always sits to my far right. It's Representative Kathy  
22 Manderino. She's from Philadelphia County.

23 And immediately to my right is my counterpart,  
24 the Democratic Chairman of the Subcommittee on Crime and  
25 Corrections, Representative Harold James from Philadelphia

1 County as well. To my immediate left is Brian Preski, who  
2 is Chief Counsel for the House Judiciary Committee.

3 And far off on the left there is  
4 Representative Craig Dally, I guess, from Northampton  
5 County and Monroe. With all that -- all the introductions  
6 now having been made and hopefully not too many more to  
7 make, I'll turn this portion of the process over to the  
8 members of the House Judiciary Committee if they have any  
9 questions. And I'll begin with Harold James.

10 Representative Walko.

11 REPRESENTATIVE WALKO: Thank you, Mr.  
12 Chairman. For either of you gentlemen, what sorts of  
13 crimes -- or could you give it in a nutshell the types of  
14 crimes that an offender would have committed to be eligible  
15 for participation in this sort of endeavor?

16 MR. DELANEY: As the bill is written and if  
17 I'm not mistaken, it includes summary offenses and  
18 misdemeanors of the third degree. So in Philadelphia, for  
19 example, commonly committed summary offenses are retail  
20 theft of something worth less than \$150, underage drinking,  
21 violation of a curfew ordinance, disorderly conduct,  
22 obstructing the highway.

23 Those are probably the most commonly committed  
24 in our city.

25 REPRESENTATIVE WALKO: Do you think that we go

1 far enough with regard to crimes that actually do take away  
2 from communities; for example, graffiti and vandalism? I  
3 guess those would all fit in the categories you've  
4 discussed. Do you think we go far enough as to requiring  
5 them to be -- or allowing the kinds of crime that actually  
6 do take away value from the community, do you think those  
7 are wrapped within the definition as we have it?

8 MR. DELANEY: I would say to start, yes. Our  
9 experience when we started the youth aid panels is we  
10 limited ourselves to misdemeanors. And unlike a lot of  
11 other places in Pennsylvania, our youth aid panels do not  
12 hear summary cases. We hear misdemeanors.

13 And after we were comfortable and the  
14 volunteers were comfortable dealing with summary  
15 offenses -- and that took several years -- we began to take  
16 very selected felonies. So I think to start the pilot  
17 projects -- and I agree with Representative Birmelin, the  
18 money will attract people to this -- to start out sort of  
19 on the less serious offenses and see how they go, see how  
20 the communities feel about how they're handled there.

21 But our experience is they worked well and  
22 enabled us to go to more serious offenses.

23 REPRESENTATIVE WALKO: Mr. Delaney, one other  
24 brief question. Your youth aid panels, how are the members  
25 or the participants in the panels selected? Are they

1 members of active community groups, block watch networks,  
2 have they expressed an interest in other areas, are they  
3 attorneys? Who are those people?

4 MR. DELANEY: I say with some pride,  
5 fortunately, the vast majority are not attorneys. They  
6 are -- we strive to have them represent the neighborhoods  
7 where the kids come from. And they do that for the most  
8 part. They -- we attract them through various  
9 announcements.

10 We are drafting brochures that we are going to  
11 ask Philadelphia elected representatives to keep in their  
12 waiting rooms, which is a tremendous place for people to  
13 get information to continue to attract them. But we  
14 recruit through public service announcements and our radio  
15 and newspapers, particularly the neighborhood newspapers.

16 And the other primary way we attract people is  
17 word of mouth from the current panelists. And a panel -- a  
18 perspective panelist only has to be a resident of the city,  
19 at least 18 years of age, and not currently supervised by  
20 the justice system.

21 We have former offenders who are panelists,  
22 but we don't have anybody who's currently on probation. So  
23 we try to run the gamut. And there's a fellow who works  
24 for me, Mike Cleary, that some of you met, who actually  
25 runs the panels day to day.

1           And he says something that I agree with: We  
2 want somebody who has experience dealing with kids, and  
3 that experience not necessarily in the court setting or in  
4 an academic setting.

5           REPRESENTATIVE WALKO: Thank you very much.  
6 Thank you, Mr. Chairman -- Vice Chair.

7           REPRESENTATIVE JAMES: Okay. Thank you. The  
8 Chairman stepped out for a minute. Okay. The Chairman  
9 stepped out, but he's on his way back. Representative  
10 Masland, then Manderino.

11           REPRESENTATIVE MASLAND: Thank you, Mr.  
12 Chairman. Just real briefly. From your testimony -- I'm  
13 talking to both of you -- it appears that your main  
14 concern, number one, is that there's no real drug and  
15 alcohol component in this legislation to deal with people  
16 with that type of problem. And the other is the incentive.

17           Now, you may not have gone over the bill with  
18 a fine-tooth comb to specify exactly what part of the  
19 procedure can be taken out to speed it up so that you don't  
20 have added costs or added time to take away the incentive  
21 of going into this as opposed to ARD.

22           But how do you supply that type of incentive  
23 in Philadelphia? How do you speed these things through?

24           MR. DELANEY: Well, the way we do it in the  
25 youth aid -- with the youth aid panels is there's a funnel

1 point in the juvenile justice system. Every kid who's  
2 arrested and alleged to have committed a misdemeanor or  
3 felony has what we call an intake interview.

4           It's a meeting where he's supposed to be there  
5 with his parent and a juvenile probation officer within 48  
6 hours of his arrest. So between the time of his arrest and  
7 the time of his intake interview, we have several different  
8 agencies screen that case to see if we agree that it's  
9 appropriate to offer the panel.

10           An Assistant District Attorney looks at it  
11 first, a representative of the police department, a  
12 representative of juvenile probation, and a representative  
13 of the school district because the vast majority of the  
14 offenders are enrolled in the Philadelphia School District.

15           So we try and make sure that the offense and  
16 the offender both present a situation that's going to be  
17 readily handled by volunteers. As Gary pointed out, if we  
18 get a kid who commits an offense who would otherwise be  
19 eligible for a youth aid panel but who has a severe drug or  
20 alcohol abuse problem, community volunteers seeing that kid  
21 several times over three months are not going to be  
22 sufficient to deal with it.

23           So he's not going to be offered the youth aid  
24 panel option. And the incentive we give to the kid is  
25 within 30 days of your arrest, you're going to meet with



1 people in your community who are going to offer you a  
2 contract that you can complete within another three months.

3 And if you go beyond that, you complete your  
4 contract, remain arrest free for another six months, we  
5 will petition the court to expunge your court and police  
6 record.

7 REPRESENTATIVE MASLAND: Okay. I can see how  
8 you do it there. I'm just trying to think in terms of the  
9 adult system, how we might be able to speed things along.

10 MR. TENNIS: One of the concepts -- it's  
11 probably not necessary to have the court hearings.  
12 Representative Masland, it's probably not necessary to have  
13 the court hearings. And we've had lengthy discussions with  
14 Mr. Preski about this in trying to -- similar youth aid  
15 panels, trying to get these issues resolved by staff  
16 both -- I think we were identifying either police or court  
17 staff to identify and screen out the appropriate cases  
18 right at the very beginning.

19 REPRESENTATIVE MASLAND: At the preliminary  
20 hearing stage you're thinking?

21 MR. TENNIS: Yeah. Right.

22 REPRESENTATIVE MASLAND: Or at the time  
23 they're charged?

24 MR. DELANEY: We were suggesting at the time  
25 they're charged because if you can do it there and avoid

1 further court listings for the system and further court  
2 appearances for the offender, there's more incentive.

3           REPRESENTATIVE MASLAND: And that makes sense  
4 because a lot of the ARD cases actually become ARD cases,  
5 so to speak, at the preliminary hearing stage. That's when  
6 the officer says, Well, I think this is okay for ARD. The  
7 defendant says, Well, then I'll waive it over to court; and  
8 I'll sign this form. We'll send it to the DA's office  
9 saying I'm agreeable to ARD if you say, you know, I  
10 qualify.

11           So that makes sense then if we can do that at  
12 the time of charging. That might give the needed incentive  
13 to speed things along and save on costs.

14           MR. DELANEY: And we have had -- we've ran a  
15 small pilot project in Representative Manderino's district  
16 where we've asked the police in the 5th police district,  
17 one police district in Philadelphia, to do that with  
18 summary offenders, to identify offenders that they thought  
19 were appropriate for the diversion program. And they did a  
20 wonderful job.

21           I think it goes back to our point of who can  
22 you find locally that will be investing in this and help to  
23 build the infrastructure that you're talking about.

24           REPRESENTATIVE MASLAND: Okay. Thank you very  
25 much.

1                   CHAIRPERSON BIRMELIN: Representative  
2 Manderino.

3                   REPRESENTATIVE MANDERINO: Thank you. Thank  
4 you for your testimony. My question may dovetail a little  
5 bit into what you were just discussing with Representative  
6 Masland. Staff and I were talking about kind of how the  
7 bill is written and what impact it would have. And I'm not  
8 quite sure if I have this right.

9                   So here's my read of what it says. And if I'm  
10 right or wrong, if you know, and if you have some  
11 suggestions for it. But it seems to me that unlike what  
12 we're doing in Philadelphia now where, you know, with the  
13 youth aid panels where you have the sole discretion to  
14 decide to divert something, this bill talks about summaries  
15 and third degree misdemeanors and having to petition the  
16 court in order to get this to be diverted to a community  
17 reparative board.

18                   And I'm assuming petition of the court means  
19 petition to the court of common pleas, which is not  
20 the -- at least summaries. I mean, they go to municipal  
21 court for us. But I'm sure they go to magistrates in most  
22 other counties, too.

23                   And so is there a potential for backlog here?  
24 Are you reading it the same way I am? And what suggestions  
25 might you have for that issue?

1 MR. DELANEY: Well, I think we are reading it  
2 the same way. And I made mention of that earlier when I  
3 said as written, it's litigation intensive. The DA has to  
4 file a motion. There has to be a colloquy in the  
5 courtroom.

6 If there were screening authorities set up at  
7 or close to the time of the arrest, like our office would  
8 be in Philadelphia, where you can divert the offender at  
9 the earliest point in the processing out of formal  
10 processing to the community reparative board, have the  
11 board enter a contract.

12 And if you're concerned about who has the  
13 initial screening possibilities, you can create oversight  
14 of some point for the problem cases. But the way it's  
15 structured now, it's as if every case could be a potential  
16 problem. So you have to have prosecutor input; and you  
17 have to have court review, which makes it for the system  
18 not as attractive as if you took that case out of the  
19 system very early on.

20 And that's what we've been engaged in  
21 conversations with staff about how to structure it so that  
22 that could occur.

23 REPRESENTATIVE MANDERINO: Thank you.

24 MR. PRESKI: If I could add to that,  
25 Representative Manderino. I think what we envision now is

1 that in Pennsylvania, the charging authority in most  
2 counties falls with the police and not the prosecutor. In  
3 Philadelphia, the charging authority is the prosecutor.

4           What we wanted to do with these community  
5 reparative boards is basically give that -- almost that  
6 deferral, that first shot for the community reparative  
7 board to the charging authority. That way the police, when  
8 they pick somebody up, they'll know, Hey, this is a low  
9 level crime.

10           I can shoot this right over to the community  
11 reparative board. And the whole judicial economy that we  
12 see from this will be able to take it. And that takes the  
13 prosecutors out of the loop, not so much that we didn't  
14 want their oversight.

15           But I think it takes them out of the loop so  
16 they don't have to expand resources now where they're going  
17 to say we agree with this anyway.

18           CHAIRPERSON BIRMELIN: Representative Josephs.

19           REPRESENTATIVE JOSEPHS: Thank you, Mr.  
20 Chairman. I think that my question was -- questions have  
21 really been answered. But I also went to observe a youth  
22 aid board -- I just wanted to say -- in my district,  
23 discovered neighbors I knew were on it.

24           I watched a case in which the victim showed  
25 up, which I understand is fairly unusual. But I thought it

1 was done very well, and I was very impressed by it. So I  
2 want to thank you for your -- your work in this area. I  
3 find it to be very valuable.

4 MR. DELANEY: Thank you.

5 MR. TENNIS: Thank you.

6 CHAIRPERSON BIRMELIN: Representative James.

7 REPRESENTATIVE JAMES: Thank you, Mr.

8 Chairman. Brian, you just said that -- that you want the  
9 police to be the one that makes the decision because that's  
10 what happened in other counties. And if that's true, then  
11 how is it going to be in Philadelphia? Are we going to  
12 stay the same or --

13 MR. PRESKI: What happens is this, is that the  
14 charging authority under the Pennsylvania Statute basically  
15 allows for the police to do the majority of the work unless  
16 they're almost preempted by the prosecutor. That's what's  
17 happening in Philadelphia. The prosecutor has preempted  
18 the police the charging authority. They do the charging.

19 What we've worked out in the language that  
20 we're basically kind of flying back and forth is that since  
21 in the majority of places the police make the call and  
22 they're going to be the ones who stand before the district  
23 justice and say, Look, this case isn't that big, give them  
24 a fine, let them walk, throw the case out, we will not  
25 allow a nuisance value case but almost of such a low level

1 that we really don't want to have police resources go to  
2 the prosecution of it.

3 Let them make the call so that it goes to the  
4 community reparative board. Now, what we've discussed in  
5 Philadelphia is -- and I think this is important to bring  
6 out -- ARD won't go away if we have the community  
7 reparative board. So almost there will be two side-by-side  
8 systems for the siphoning off of what are, for lack of a  
9 better term, low level cases.

10 REPRESENTATIVE JAMES: And that will be just  
11 only in Philadelphia?

12 MR. PRESKI: Well, no. That would be  
13 everywhere that the DA has established an ARD program. One  
14 of the things that we do in Philadelphia -- and I speak for  
15 you guys now -- is that you have -- police have the ability  
16 to list someone right into the ARD room.

17 What would go on in Philadelphia is  
18 that -- assume now that I'm arrested for some low level  
19 crime. I would get a court date to appear before a judge  
20 in the ARD room. Someone comes in from the District  
21 Attorney's office.

22 They say, Look, you've been offered a program  
23 here today. The program basically is that if you keep your  
24 nose clean for six months, nine months, as determined by  
25 the judge, we're going to withdraw prosecution. Your

1 record will be expunged.

2           If you wish to participate, please stay.  
3 We'll see the judge. We'll go over the particulars of the  
4 case. If not, let us know now; and we will schedule you to  
5 another room. What they'll do in Philadelphia is that  
6 there will be basically some criteria that's set up in  
7 conjunction with the police, in conjunction with the  
8 prosecutors and everybody else that's on that community  
9 reparative, kind of almost advisory board, to use that  
10 term.

11           You'll have the police, when they arrest, be  
12 able to list someone right into the community reparative  
13 program or if the way that it's set up they think it's  
14 better for ARD, to send them into ARD. And then when they  
15 get into ARD, all of the protections that are applicable,  
16 ARD would take over; that the prosecutor would agree that  
17 the judge would be involved, that kind of stuff.

18           REPRESENTATIVE JAMES: Okay. So just that I  
19 can be clear then, in Philadelphia then, you would have  
20 the -- the District Attorneys would not be involved in the  
21 charging because they are now?

22           MR. PRESKI: Well, no. What would happen I  
23 think -- and Mr. Delaney --

24           REPRESENTATIVE JAMES: Assign them to an ARD  
25 room?



1 MR. PRESKI: The police basically on these low  
2 level cases would be able to say this is a case for the  
3 community reparative board. I don't think that the DA's  
4 office is going to change the charging procedure. But I  
5 think there would probably be some directions within the  
6 charging unit that if this was a police-recommended  
7 community reparative board case, that that recommendation  
8 would be followed.

9 REPRESENTATIVE JAMES: Is that correct?

10 MR. DELANEY: Yes and no. One of the  
11 distinctions -- and I don't want to get too bogged down in  
12 detail -- but one of the distinctions in Philadelphia is  
13 the District Attorney has no involvement in the charging of  
14 summary offenses.

15 So if you leave misdemeanors aside -- and the  
16 bulk of what this bill would apply to are summary  
17 offenses -- those are charged by the police. And that's  
18 true in most jurisdictions in Pennsylvania. The DA has no  
19 involvement in the charging or even the initial stages of  
20 prosecution of summary offenses.

21 So one of the issues I had with the bill is  
22 this would force us to be involved, where instead of that,  
23 I would recommend --

24 REPRESENTATIVE JAMES: This, unfortunately,  
25 would be involving summary offenses now?

1 MR. DELANEY: As the bill is written, we would  
2 have to petition the court to put a summary offense in  
3 front of a community reparative board. And I'm  
4 suggesting --

5 REPRESENTATIVE JAMES: So if we take this out  
6 of the bill, that would be helpful?

7 MR. DELANEY: Yes. If that decision could be  
8 made by the police in the first instance, that would  
9 streamline the process. And what I think would happen in  
10 Philadelphia as a practical matter is if this were to  
11 become law or a version of it would become law, we would  
12 sit down with the police and identify the category of  
13 crimes that we felt were appropriate for this.

14 And then within those categories, the police  
15 would make the decision whether to refer the case or not.

16 REPRESENTATIVE JAMES: So then if a police  
17 officer has some person under arrest and it's maybe a  
18 misdemeanor, would they decide that or --

19 MR. DELANEY: No. We charge misdemeanors.

20 REPRESENTATIVE JAMES: You would have to take  
21 that if it's a misdemeanor?

22 MR. DELANEY: Yes.

23 REPRESENTATIVE JAMES: Okay. I think, you  
24 know, I just want to say that the youth aid panel has been  
25 working good in Phillie. And I just want to commend you

1 for doing an outstanding job. And I heard you say  
2 something earlier in regards to you wanted to get something  
3 into elected officials' offices.

4 Is that so that we can make sure more people  
5 know about it and become involved in it?

6 MR. DELANEY: The only criticism I've ever  
7 heard of the youth aid panel, Representative James, is  
8 people don't know about it. So the District Attorney has  
9 instructed me to do brochures on colored paper -- they got  
10 delivered yesterday -- that we will then ask folks like you  
11 to put in the waiting rooms of your community offices so  
12 that people can begin to learn more about it.

13 REPRESENTATIVE JAMES: Well, I think that's  
14 good because I know the DA started a program where they  
15 allowed the District Attorneys to come into our offices. I  
16 don't know if that's still ongoing. But I'm glad it's a  
17 good program. Is that still going on?

18 MR. TENNIS: I don't know.

19 MR. DELANEY: Not on a regular basis.  
20 Occasionally, yes.

21 REPRESENTATIVE JAMES: I guess probably on  
22 request maybe. Okay. Thank you. Thank you.

23 CHAIRPERSON BIRMELIN: Representative Masland  
24 has one quick follow-up.

25 REPRESENTATIVE MASLAND: What do you do on

1 your youth aid panels with respect to underage drinking  
2 offenses?

3 MR. DELANEY: We don't handle them because  
4 they're summaries.

5 REPRESENTATIVE MASLAND: Okay. You --

6 MR. DELANEY: The delinquent system doesn't  
7 handle summary offenders.

8 REPRESENTATIVE MASLAND: I just was curious  
9 because we were talking about the drug and alcohol  
10 component. And obviously, in underage drinking, you have  
11 an alcohol component that you have to somehow deal with  
12 that these boards may not be able to handle.

13 MR. TENNIS: They would for offenders who are  
14 18, 19, or 20 years of age.

15 REPRESENTATIVE MASLAND: Right.

16 MR. TENNIS: If they were younger than that, I  
17 don't know how that would --

18 MR. DELANEY: Well, one way is you could do --

19 MR. TENNIS: They would be handled by this.  
20 It would go into this system because as a summary  
21 offender -- and they're not -- underage drinking wouldn't  
22 go to the youth aid panels. It would go to the community  
23 reparations course.

24 MR. DELANEY: But the youth aid panel in  
25 Philadelphia, we have a relationship with the City's Office

1 of Drug and Alcohol Programs. So if we have a kid who has  
2 a drug or alcohol abuse problem, the panel can mandate the  
3 kid go for an evaluation and, if indicated, treatment as a  
4 condition of his contract.

5           REPRESENTATIVE MASLAND: Okay. Let me just  
6 suggest to staff and to Representative Birmelin, the prime  
7 sponsor, we might want to look at the language in  
8 Representative Clark's bill dealing with underage drinking  
9 which provides some incentives for people to undergo  
10 alcohol counseling to shorten the length of their  
11 suspension.

12           And one of the reasons for having that in law  
13 is the fact that some police officers will just not charge  
14 underage drinking because they don't want the kid -- to  
15 give them disorderly conduct or this or that because they  
16 don't want the kid to have his license suspended. That  
17 bill offers a shortened suspension.

18           That might be -- there might be some way to  
19 dovetail that into some of the language in this bill to a  
20 pilot program. It's worth looking at.

21           CHAIRPERSON BIRMELIN: And just, you know, in  
22 response to your comment, Representative Masland, a lot of  
23 the substance of what these community reparative boards  
24 will be able to do and how they will operate is going to be  
25 determined by the PCCD which is going to establish them.

1           And they're going to set up some guidelines as  
2 to what kind of offenders you can hear and what forms of  
3 restitution will take and things of that sort.

4 Representative Dally has a question.

5           REPRESENTATIVE DALLY: Thank you, Mr.  
6 Chairman. I may have missed this in your earlier  
7 testimony. But where do you find the authority for the  
8 program that you have now in Philadelphia, is that in the  
9 first class city code or -- in order to start the  
10 program -- or the sentencing boards that you have?

11           MR. DELANEY: To the best of my knowledge,  
12 it's not written in law other than we have the charging  
13 authority. So we believe inherent in the ability to charge  
14 and prosecute somebody is the ability to do something less  
15 than that.

16           REPRESENTATIVE DALLY: I see. Okay. So in  
17 your eyes, any county in the state can develop the same  
18 type programs without any type of --

19           MR. DELANEY: Yes. And in the juvenile  
20 system, many counties have.

21           REPRESENTATIVE DALLY: I see. Thank you.

22           CHAIRPERSON BIRMELIN: We want to thank you  
23 gentlemen for your testimony today and for your ongoing  
24 participation with this legislation and for your offerings  
25 of assistance. We thank you very much for coming.

1 MR. DELANEY: Thank you.

2 MR. TENNIS: Thank you, Representative  
3 Birmelin.

4 CHAIRPERSON BIRMELIN: Our next testifier is  
5 Mark Bergstrom. He's the Executive Director of the  
6 Pennsylvania Commission on Sentencing. Welcome, Mr.  
7 Bergstrom. You're a frequent visitor to the Judiciary  
8 Committee meetings. And when you're prepared, you may give  
9 your testimony.

10 MR. BERGSTROM: Good afternoon, Mr. Chairman  
11 and members of the subcommittee. I'm Mark Bergstrom,  
12 Executive Director of the Committee on Sentencing. And  
13 thank you again for this opportunity to provide some brief  
14 comments regarding House Bill 1724.

15 House Bill 1724, if enacted, would establish  
16 in each county a Community Reparative Disposition Program  
17 to enhance the collection of restitution, to educate  
18 offenders about the impact of their alleged crimes, to  
19 discourage continued criminal activity, and to provide  
20 offenders with an incentive to engage in reparative  
21 activities.

22 In each county, the Department would appoint  
23 five citizens to serve on a community reparative  
24 disposition board. I'd just note in the legislation, it  
25 indicates that the -- that the Department is the

1 Pennsylvania Commission on Crime and Corrections.

2 And I think it probably was PCCD, the  
3 Pennsylvania Commission on Crime and Delinquency.

4 CHAIRPERSON BIRMELIN: You're very astute in  
5 noticing that. We noticed that today as well, and we will  
6 make that correction. Thank you.

7 MR. BERGSTROM: I assumed it was PCCD. So my  
8 comments are based on PCCD. These boards administered by  
9 the court of common pleas would coordinate all program  
10 activities in the county, including organizing  
11 victim/offender panels for the purpose of negotiating and  
12 entering into written agreements for specific reparative  
13 activities to be performed by the offenders.

14 The purpose of the reparative activity would  
15 be to repair the harm caused to the victim or the community  
16 by the offender. Only a person charged with a summary or  
17 misdemeanor of the third degree would be eligible for  
18 program participation, and the court would be required to  
19 approve the offender's participation in the program as well  
20 as the specific conditions.

21 The board would be responsible for supervising  
22 the offender's compliance with the conditions of the  
23 agreement and certifying satisfactory completion of the  
24 conditions. Successful completion of all conditions of the  
25 agreement would result in a dismissal -- excuse me -- a



1 dismissal of the original charges.

2           Based on this understanding of House Bill  
3 1724, the Community Reparative Disposition Program would  
4 serve as a pretrial diversion rather than a sentencing  
5 program. And thus, the activities and procedures proposed  
6 in the bill would not be affected by the sentencing  
7 guidelines nor be limited by the sentencing alternatives  
8 already provided in statute.

9           Since this type of program generally falls  
10 outside of the Commission's purview, I will limit my  
11 remarks to discussion of current utilization of reparative  
12 programs identified in the legislation and of existing  
13 pretrial diversion programs provided by statute or rule.

14           The Commission's required by statute to adopt  
15 guidelines that identify offenders who would be eligible  
16 and appropriate for participation in county intermediate  
17 punishment programs.

18           Since the county intermediate punishment  
19 legislation broadly defined the types of programs that  
20 could be used by counties, the Commission created two  
21 categories as part of the 1994 guideline revisions:  
22 Restrictive intermediate punishment programs, which were  
23 programs that confine or significantly restrict the  
24 movement of offenders; and restorative sanction programs,  
25 which were all other less restrictive, non-confinement

1 programs.

2           Recognizing that intermediate punishment  
3 programs vary by county regarding the level of supervision  
4 and the number of controls placed upon the offender, the  
5 Commission chose to allow the county intermediate  
6 punishment board, in conjunction with the courts, to  
7 classify local programs as either restrictive or  
8 restorative.

9           I have attached a summary of the intermediate  
10 punishment programs presently operating throughout the  
11 Commonwealth. Of particular relevance to today's  
12 discussion are the number of formal programs involved in  
13 reparative activities: Community service program, 53  
14 formal programs throughout the Commonwealth; a fines  
15 program, 38 county programs; and a formal restitution  
16 program found in 39 counties.

17           Most of these programs are classified by the  
18 counties as restorative sanction programs. Both the 1994  
19 sentencing guidelines and the more recent 1997 edition  
20 include restorative sanctions as the exclusive standard  
21 sentence recommendation for Level 1 offenders.

22           And you'll find the final attachment in my  
23 handout is the Sentencing Matrix under the guidelines.  
24 Level 1 offenders -- or Level 1 sentences under the  
25 sentencing guidelines target offenders with minor

1 conviction offenses such as third degree misdemeanors and,  
2 in the case of the 1997 guidelines, no prior record.

3           The Commission's position is that offenders at  
4 this level generally should not be incarcerated but rather,  
5 be required to restore the victim and the community to  
6 pre-offense status through restitution, community service,  
7 fines, costs, and similar sanctions.

8           Probation supervision is also recommended in  
9 order to ensure compliance with the court order. Most  
10 offenders at Level 1 have been convicted of misdemeanor  
11 drug charges such as possession of small amounts of  
12 marijuana or minor property crimes such as theft of less  
13 than \$50 or retail theft.

14           During 1997, 10,398 Level 1 sentences were  
15 reported to the Commission, of which 78.9 percent or 8,205  
16 received a restorative sanction sentence. House Bill 1724  
17 would target a similar population for pretrial diversion  
18 via community reparative disposition and would also provide  
19 this program to those arrested for summary offenses.

20           And due to the expungement provision, it could  
21 be argued that the program not only provides  
22 restoration -- provides for restoration of the victim and  
23 the community to pre-offense status but also the offender.

24           In tandem with the Commission's recent efforts  
25 to encourage greater use of restorative sanctions for

1 certain nonviolent offenders, the General Assembly has  
2 taken steps to make victims more central to the criminal  
3 justice process and victim concerns more prominent -- a  
4 more prominent consideration at the time of sentencing.

5           One aspect of this is victim restitution.  
6 During the 1995 Special Session on Crime, the General  
7 Assembly amended Title 42, Section 9721 to require the  
8 court to order an offender to pay restitution in all cases  
9 where a victim has sustained damage or injury.

10           In 1996 and again in 1998, the General  
11 Assembly enacted legislation that greatly increased the  
12 courts' ability to collect restitution, reparation, and  
13 other economic sanctions, and provided standards for the  
14 disbursement of monies collected from sentenced offenders.

15           House Bill 1724 would similarly rise -- or  
16 raise the level of victim involvement and address concerns  
17 regarding restitution and reparation, but in this case as  
18 part of a pretrial diversion program. The Community  
19 Reparative Disposition Program would provide for supervised  
20 meetings between victims and pretrial defendants to  
21 negotiate a package of reparative activities and program  
22 conditions to be completed as an alternative to formal  
23 prosecution of the charges.

24           Moving on to diversion programs, the Judicial  
25 Code and the Rules of Criminal Procedure provide several

1 pretrial diversion programs that may be used for  
2 individuals charged with summary misdemeanor offenses.  
3 You've already heard of ARD court cases, accelerated  
4 rehabilitative disposition, which is authorized under Rules  
5 175 through 186 of the Rules of Criminal Procedure.

6           ARD for court cases targets first-time  
7 offenders charged with relatively minor offenses that do  
8 not involve a serious breach of public trust that would  
9 otherwise be prosecuted in common pleas court. The  
10 District Attorney has the responsibility for determining  
11 which cases will be recommended for program participation  
12 with the court making a final decision on acceptance.

13           The defendant is subject to conditions similar  
14 to probation and may be required to pay costs and  
15 restitution and to participate in treatment and  
16 rehabilitation programs. The court procedures, program  
17 period, and consequences for successful completion or  
18 violation are similar to those contained in the House Bill.

19           There are two other diversion programs,  
20 though, that deal with property offenders: Accelerated  
21 rehabilitative disposition, ARD, for summary cases and  
22 sentencing for criminal mischief. Summary ARD, which is  
23 also authorized under the Rules of Criminal Procedure,  
24 Rules 160 to 162, provide pretrial diversion for summary  
25 offenses under procedures similar to that found for court

1 cases.

2           Depending on the local rules, the case may be  
3 handled directly before the district justice rather than  
4 before the common pleas court. Sentencing for criminal  
5 mischief, which is authorized under statute, Title 42,  
6 Section 9720, provides for the use of community service,  
7 including repairing or restoring damaged property for  
8 individuals convicted of criminal mischief or of  
9 institutional vandalism.

10           Satisfactory completion of the community  
11 service work results in the dismissal of the charges and an  
12 expungement of the record under the procedures similar to  
13 those established for ARD.

14           None of the existing diversion programs  
15 discussed require a meeting with the victim, and the ARD  
16 programs do not require reparative activity. As noted in  
17 House Bill -- as noted earlier, House Bill 1724 would raise  
18 the level of victim involvement and would more directly  
19 address concerns regarding restitution and reparation as  
20 part of a pretrial diversion program.

21           A question appropriately before this committee  
22 is whether it is necessary to establish a separate  
23 Community Reparative Disposition Program with the  
24 regulations, duties, and procedures provided in the bill to  
25 reach this end.

1           Would modifications of the procedures in  
2 existing diversion programs to include victim/offender  
3 panels and to require reparative activities provide the  
4 same result? And if so, would the Supreme Court's Criminal  
5 Procedural Rules Committee be willing to adopt such changes  
6 to the ARD; or would legislation be required?

7           As you continue to discuss this bill, it may  
8 be helpful to address -- to also address the following  
9 items: Since board members are appointed by the PCCD for  
10 each county, how would the board operate if the court or  
11 the District Attorney is not supportive of the program?

12           Does the state agency have to provide  
13 the -- be the appointing authority? Could the DA or the  
14 judge in each county appoint those individuals? Also, are  
15 the appointed board members -- 335 statewide -- paid or  
16 volunteers? Assuming they are volunteers, the duties  
17 outlined in the bill, including sitting on panels,  
18 reporting to the court on the conditions of the agreement,  
19 and supervising the offenders' compliance with program  
20 conditions that may last two years, are substantial.

21           Since the program conditions may  
22 require -- may include requirements similar to those placed  
23 on a probationer, it is important that the committee  
24 address liability and training issues as well as to define  
25 the role of the county probation department in the

1 operations of the program.

2 Just in closing, I'd like to echo some of the  
3 comments made by the District Attorneys earlier. At least  
4 our sense is summary ARD is not used very much throughout  
5 the Commonwealth. And one of the concerns, I believe, is  
6 that it's a bulky process.

7 There's a lot of litigation involved. And I  
8 think the efforts to streamline this process are noble  
9 efforts. On the other hand, I think this provides a great  
10 opportunity to clearly address victim issues that are not  
11 presently addressed in diversion programs.

12 So thank you for this opportunity, and I'd be  
13 willing to answer any questions.

14 CHAIRPERSON BIRMELIN: Thank you, Mr.  
15 Bergstrom. And I'll give that opportunity to the members  
16 of the panel at this time. Representative Josephs?

17 REPRESENTATIVE JOSEPHS: No. Thank you.

18 CHAIRPERSON BIRMELIN: Representative Walko?

19 REPRESENTATIVE WALKO: No thanks.

20 CHAIRPERSON BIRMELIN: I guess they don't have  
21 any questions for you. So let me take just a few minutes  
22 to respond to some of the comments that you made since I'm  
23 the prime sponsor of the bill. And though I don't know  
24 everything I should know about it and I'm learning more  
25 each day, you did in your closing few paragraphs raise some



1 points that I think I could answer for you.

2           The question is whether or not we should be  
3 establishing a new program or trying to incorporate what  
4 we're trying to do in other programs. To the best of my  
5 knowledge, none of these other programs today in  
6 Pennsylvania at least have the citizen involvement and  
7 interfacing that a defendant would have with five or six or  
8 seven members of the local community.

9           By the way, it says a panel of at least five.  
10 It could be much more than five. You know, if they had  
11 enough people volunteering, they could have 10 or 11 people  
12 on this panel. And I think that that's what's missing to a  
13 great degree in a lot of our dealings with criminals is  
14 they face a nameless, faceless shuffle of people who they  
15 only need for a few minutes and are trembling in front of  
16 but never really converse with.

17           They're talked at and not with. And one of  
18 the prime motivations of the reparative boards is to help  
19 this person understand what he or she has done that is  
20 harmful to themselves, to the victim, to the community.  
21 Apart from the tongue lashing from a judge, that rarely  
22 happens.

23           And so I think that's a very valuable part of  
24 what we're trying to do. And I don't see that happening in  
25 any other program that deals with defendants in

1 Pennsylvania.

2 MR. BERGSTROM: I agree with you, Mr.  
3 Chairman. I don't think that does occur. And I guess one  
4 of the things I was trying to recommend was that we look at  
5 existing models out there and see if there may be a means  
6 of adjusting those models, perhaps building those panels  
7 with that kind of a procedure into summary ARD or ARD or  
8 some of the other type of the other legislation that I  
9 mentioned instead of creating something new and different.

10 Maybe that's not -- maybe that won't work. So  
11 I just sort of throw that out as a suggestion that there  
12 are some -- some rules and procedures in place already. To  
13 the degree that they can be modified to include the victim  
14 involvement in that type of panel thing, it might be a bit  
15 less bureaucratic.

16 I guess the other concern I had was -- and I  
17 believe this is consistent with the DA's position as  
18 stated -- is sort of a concern about some local control or  
19 local involvement. I think it's helpful to have some state  
20 oversight, PCCD or others providing some sort of a  
21 framework for activities.

22 But to the degree that the activities are  
23 occurring locally and it's either the -- the DA or the  
24 police making the decision to divert this person, it seems  
25 to me maybe they should be more involved in determining who

1 is -- who are on the panels, what citizens are sitting on  
2 the panels.

3 CHAIRPERSON BIRMELIN: And that's a point  
4 well-taken. The legislation currently says they must be a  
5 resident of the county. But we're going to be working on  
6 this with PCCD and ask that a part of their process of  
7 appointing the panels is to take the recommendations of the  
8 president judge, of the District Attorney, of whatever  
9 police organizations that happen to exist in that county.

10 I don't think PCCD would feel qualified to  
11 reach down into a county and pick five noble citizens or  
12 more than five and say that you are our anointed ones. I  
13 think they will depend heavily on local suggestions from  
14 people that the local --

15 MR. BERGSTROM: One other board or panel  
16 that's out there that might be of interest to look at is in  
17 each county, or I believe in most counties, there's a  
18 victim witness board. And the purpose of that  
19 board -- and it's run through the DA's office -- is to  
20 basically distribute money to victim groups, federal  
21 monies, BOCA monies, things like that.

22 But it's also a policy board that develops  
23 some victim-related policies at the local level. Most  
24 counties have a victim witness coordinator that helps in  
25 that process. And there may be some benefit to linking

1 some of these discussions or some of the activities of the  
2 bill to the victim witness board which is already in place  
3 in most of the counties.

4 CHAIRPERSON BIRMELIN: One other point that  
5 you raised was, What happens if the District Attorney or  
6 the court is not supportive of the program? Well, that's  
7 probably my job to sell them on the virtue of this  
8 community reparative board.

9 I'm assuming that our pilot program, which may  
10 include four or five counties, will obviously be people who  
11 want to do it, who want it to work, who will show that if  
12 you work at it, it can be done. And I suppose the bottom  
13 line answer to that question is, this is all optional.

14 This is not mandatory. This is optional for  
15 the counties that want to do it. And if they're dead set  
16 against it, they don't have to do it. But I think they're  
17 going to be so convinced by the positive results after a  
18 3- or 4-year test run of these pilot programs that they're  
19 going to say, Hey, maybe we should try it in our county.

20 So that's my response to that question. But I  
21 want to thank you, Mr. Bergstrom, for your testimony. We  
22 appreciate you coming here before us today. Thank you.

23 MR. BERGSTROM: Sure. Thank you.

24 CHAIRPERSON BIRMELIN: Our next testifier is  
25 the Honorable Mark Keller. He's a Commissioner from Perry

1 County. He'll be accompanied by Diane Bosak, who's the  
2 Director of the Government Relations of the County  
3 Commissioners Association of Pennsylvania.

4 Commissioner Keller and Director Bosak, we  
5 welcome you. And I'm not sure which one of you wants to  
6 speak first or -- Commissioner Keller, we want to thank you  
7 for coming to our House Judiciary Subcommittee hearing.  
8 And when you're ready, you may present your testimony.

9 MR. KELLER: Okay. Very well. Thank you very  
10 much. Good afternoon, members of the Judiciary Committee  
11 and guests. Thank you for the opportunity to present our  
12 comments concerning House Bill 1724 providing for Community  
13 Reporative Disposition Programs.

14 I am Mark Keller, Perry County Commissioner.  
15 And I'm here today representing the County Commissioners  
16 Association of Pennsylvania, a nonpartisan association  
17 promoting the common interests of the Commonwealth's 67  
18 counties.

19 In my capacity as a member of CCAP, I serve as  
20 Chair of the Courts and Corrections Committee. The  
21 committee has jurisdiction over criminal justice and  
22 correctional issues. I want to take a few moments to  
23 discuss our general views of alternative forms of  
24 sentencing and then focus on a more specific -- specifics  
25 of the House Bill 1724.

1           The County Commissioners Association has  
2 supported the creation of the new programs and sanctions as  
3 alternatives to incarceration for nonviolent offenders when  
4 these programs are coupled with funding. In the last  
5 several years, we have offered support for the community  
6 corrections and juvenile restorative justice legislation.

7           The Association has also supported the  
8 development with the state of legislation and related  
9 implementation strategies providing for a continuum of care  
10 of sufficient capacity that treatment, education, and life  
11 skills training are available, along with intensive  
12 probation and aftercare for both adults and juveniles.

13           If I may take a few moments, I want to draw  
14 your attention to a few interesting findings. In a study  
15 conducted by the Public Agenda Foundation in 1991, 66  
16 percent of Pennsylvanians surveyed felt nonprison sanctions  
17 improved the chance that an offender would be  
18 rehabilitated.

19           In that same study, of five alternatives to  
20 prison, strict probation, house arrest, boot camp, strict  
21 probation plus community service, and strict probation plus  
22 restitution, respondents indicated a strong preference for  
23 programs that coupled supervision with restitution and/or  
24 work.

25           In a nationwide study conducted in 1991 by the

1 Wirthlin Group, 35 percent were strongly in favor and 45  
2 somewhat in favor of intermediate sanctions in which  
3 nonviolent offenders are required to hold a job, perform  
4 community service, pay restitution to their victims, and  
5 receive counseling.

6           These figures mirror what has been  
7 demonstrated through study after study over the last decade  
8 in that the public supports alternatives to incarceration.  
9 However, establishing or creating the right type of  
10 alternatives for each state and/or each community might be  
11 vastly different.

12           Community reparative boards are another  
13 concept that would fall under the category of restorative  
14 justice, a philosophy which continues to gain popularity  
15 within the criminal justice circle. The restorative  
16 justice movement seeks to shift the focus of criminal  
17 justice systems away from merely dealing with the offender  
18 to more of addressing the needs of the crime victims and  
19 the community.

20           Much like Pennsylvania's current balanced and  
21 restorative justice programs for juvenile offenders and the  
22 current use of ARD or accelerated rehabilitative  
23 disposition, these community reparative boards would  
24 continue to hold offenders accountable while providing them  
25 an opportunity to discard the offender status and be

1 reintegrated into the community.

2           These types of programs are obviously less  
3 restrictive but, nevertheless, can have an important impact  
4 on the life of the offender. By holding offenders  
5 accountable and heightening their chances for  
6 rehabilitation, we may be able to deter them from a life of  
7 crime and the greater cost impact on the criminal justice  
8 system later on in time.

9           The concept of the community reparative boards  
10 also reflect a new face on the criminal justice system, and  
11 that is the collaboration between the courts or judiciary  
12 and the community. Citizens want to feel safe, and they  
13 want to be sure offenders are punished and make amends or  
14 restitution for the crimes they commit. The involvement of  
15 the community in serving justice can provide a benefit to a  
16 judicial system often stretched by the volume of cases.

17           As for current Bill 1724, the County  
18 Commissioners Association is currently opposed to the  
19 legislation in its current form but can be supportive if  
20 several specific issues are addressed. These being  
21 funding, mandatory versus voluntary, and the appointment  
22 process.

23           We are concerned about the absence of funding  
24 as well as the mandatory nature of the legislation. On  
25 page 2, Section 3 of the bill, it appears to require that



1 community reparative boards be created in each of the  
2 counties. But nowhere in the legislation is there a level  
3 of funding recommended.

4           The mandatory nature of the bill will place  
5 county commissioners in a difficult position and may force  
6 counties to sacrifice other vital programs in their  
7 communities. The ability of counties to fund these new  
8 programs is very limited, even if they offer viable options  
9 to many costly incarcerations.

10           We would urge a funding stream similar to that  
11 provided with the enactment of the intermediate punishment  
12 law. With adequate funding, more counties would be able to  
13 offer such programs. Another option would be to offer a  
14 funded pilot program through the Commission on Crime and  
15 Delinquency as a way to test the acceptance or viability of  
16 the program in a varying group of Pennsylvania's counties.

17           Something similar has been done with the  
18 intermediate punishment drug and alcohol funding. When  
19 this component of the program came into effect, counties  
20 were solicited for proposals on how they would administer  
21 the funds. A group was then selected for initial  
22 implementation.

23           Our other areas of concern centers on the  
24 appointment of these boards by the PA Crime -- the  
25 Commission on Crime and Delinquency. We remain concerned

1 with the language on page 3, Section 4, which would allow  
2 for the Commission to select the members of these county  
3 boards.

4           It is not clear in the legislation what  
5 criteria would be used for the selection of these members  
6 and what are to be the qualifications of the members. It  
7 is also not stated if the local president judge or  
8 commissioners will be consulted in determining the  
9 appropriate members nor how the Commission will solicit  
10 interested parties for membership.

11           The Association would request the legislature  
12 to reconsider the appointment process for the board  
13 membership. We strongly express the need to have  
14 commissioner and president judge involvement in these  
15 appointments.

16           However, perhaps we also ought to take the  
17 opportunity to define in more details appropriate board  
18 membership or, at a minimum, the Commission's development  
19 of rules and regulations relating to the boards provided  
20 for on page 2, Section 3.

21           I am certain that if we can work together to  
22 address these issues, the County Commissioners Association  
23 would offer support for House Bill 1724. Thank you for the  
24 opportunity to present these comments. We welcome further  
25 dialogue with the members of the subcommittee and the

1 legislature on this and any other issue.

2           At this time, I would be happy to respond to  
3 any questions.

4           CHAIRPERSON BIRMELIN: Thank you, sir. We  
5 appreciate you coming today. And just for some  
6 clarification, I know that you weren't here through all the  
7 testimony that came before you. And some of the issues  
8 that you just raised were addressed earlier by me.

9           But for your benefit, let me do that. On page  
10 3, last paragraph, you talk about the mandatory nature of  
11 the legislation. It's not clear in the way that it was  
12 written that it's supposed to be a made provision and not a  
13 mandatory.

14           And we will make sure that that is clarified  
15 when we amend the bill that this is not a mandated system  
16 of reparative boards for anybody to have to impose on their  
17 taxpayers. We will make sure that that's addressed in the  
18 amended form before it's voted on by the committee.

19           The funding, as I mentioned earlier to Mr.  
20 Bergstrom, we're currently going to be seeking funding for  
21 four, perhaps five counties that would wish to do it on a  
22 pilot program to make sure that it's funded adequately,  
23 probably run those pilot programs for a minimum of three  
24 years, maybe longer, and then after that 3- or 4-year time  
25 period, determine whether or not it's effective.

1           If it isn't, we'll scrap it. If it is,  
2 perhaps expand it and find some way to fund it statewide.  
3 So hopefully, that addresses these two issues for you. And  
4 then on page 4, your last or second paragraph, we put that  
5 wrong word in there just to see if you people were actually  
6 reading this bill.

7           Several of you actually read the bill. So we  
8 appreciate that. It is supposed to be the Pennsylvania  
9 Commission on Crime and Delinquency, not the Department of  
10 Corrections. So thank you for showing us how sharp the  
11 County Commissioners are.

12           And then lastly, dealing with the selecting of  
13 the members of the county boards, we're going to put in  
14 legislative form in an amendment some language that will  
15 ultimately not only give the president judge the ability to  
16 nominate people to the board, but will give him veto power  
17 so that if there's somebody been appointed or at least if  
18 they've been suggested to have been appointed by the PCCD,  
19 the judge can veto that.

20           But he will be more involved in the process  
21 through an amendment that we are going to incorporate that  
22 is currently not in the bill. So we thank you for bringing  
23 that to our attention. And with that conversation with the  
24 President Judges Association, we think that would resolve  
25 the problem.

1 I think I've addressed the major issues that  
2 you've raised. And I will give the opportunity now to the  
3 rest of the members of this panel to ask questions if they  
4 would like to do so. Pat Browne. Representative Pat  
5 Browne.

6 REPRESENTATIVE BROWNE: Thank you, Mr.  
7 Chairman. Thank you both for your testimony today. Just  
8 on the issue of funding, the one issue you had with the  
9 bill, one of the things that you mentioned is that this  
10 would be an alternative to incarceration.

11 And I would feel that any alternative  
12 incarceration could provide some cost savings in terms of  
13 what this would -- from a fiscal perspective -- what this  
14 would cost in Perry County and any other county. I know  
15 there's always fixed costs in terms of incarceration that  
16 cannot be saved.

17 But would the County Commissioners Association  
18 be at least willing to look at the possibility of what  
19 savings would be provided by this program as a means to  
20 fund the mandate currently?

21 MS. BOSAK: Unfortunately, what is happening  
22 and has been happening over the last decade is that the  
23 population in county prisons has continued to grow. So  
24 unfortunately, while you could argue yeah, it's a cost  
25 savings, it really -- it really isn't because our

1 population continues to grow.

2           And we have to deal with that issue somehow.  
3 And so I can't view this as an opportunity to save money on  
4 that end. But, you know, it certainly is -- and some of  
5 these people probably would have ended up in the system  
6 anyway initially as first-time offenders.

7           So I think you have to view this outside the  
8 context of, you know, what we -- cost savings we might  
9 have.

10           REPRESENTATIVE BROWNE: Thank you very much.

11           CHAIRPERSON BIRMELIN: Let me respond to that  
12 question as well. I think the overview of this in terms of  
13 money is probably not the primary objective for why we want  
14 to do this. But I think it ultimately will be a cost  
15 savings in that maybe the accelerated rate of defendants  
16 and people in jails will slow down somewhat.

17           Diversionsary programs in general are  
18 attempting to try to keep people out of prisons. In  
19 Pennsylvania, for instance, in our state correction system,  
20 we have over 35,000 prisoners. And that's been growing and  
21 growing and growing.

22           I suspect that if you can divert people from  
23 the life of crime through this program or other types of  
24 diversionsary programs, yes, there is some cost savings.  
25 Can you quantify it? No, probably not. Does it mean that

1 we're not going to keep incarcerating more and more people?  
2 Maybe not.

3           But maybe we're not going to be incarcerating  
4 quite as many quite as fast. One of the most discouraging  
5 things if you take tours of prisons, which I've done over  
6 the last several years as Chairman of the subcommittee  
7 along with Representative James and some of the other  
8 members, is to hear them talk about how many of these  
9 prisoners are repeat offenders. I mean, it's over and over  
10 and over again.

11           And if you can do anything in a cost-effective  
12 way to reduce the number of people who are going to prison,  
13 I think an ounce of prevention is worth a pound of cure in  
14 these types of situations. So no, I don't think we can  
15 quantify a dollar cost if this program were in effect  
16 today.

17           I feel confident that it is going to at least  
18 slow down the accelerated rate of crime and people being  
19 incarcerated in Pennsylvania. But that's not really the  
20 main purpose for the legislation; although, I think that's  
21 a benefit to taxpayers.

22           MS. BOSAK: Well, I think we can certainly  
23 agree with that. And, you know, obviously, it's more of  
24 something you would look at like a decade or so down the  
25 road if you were to implement such a program as this. I

1 mean, it's something, you know, far off in the future to  
2 see really if you've got the repeats, if there are any up  
3 in the system.

4           So I mean, certainly in the future, we, you  
5 know -- obviously, if this were to go through, we'd welcome  
6 the opportunity to go back and continue to refine and look  
7 at opportunities.

8           CHAIRPERSON BIRMELIN: And you'll notice in  
9 the legislation that it requires PCCD to do a good  
10 follow-up study of the people who are in the program, what  
11 its effects are, and then make some comparisons to the  
12 general criminal population. And maybe we can extrapolate  
13 the effectiveness of this program.

14           Having been to Vermont on two different  
15 occasions in the last year and talking with the Vermont  
16 Department of Corrections, who runs their reparative board  
17 system, I find that they are very confident that they are  
18 diverting people away from a life of crime.

19           Now, that may be more intuitive than  
20 quantitative. But these are people who deal with the  
21 criminals every day. And so, you know, most criminals  
22 don't start out a life of crime by committing murder or  
23 bank robberies.

24           It's oftentimes something else on a lesser  
25 level that is addressed by community reparative boards. So



1 to that extent, we're hopeful that it is helpful. It  
2 certainly shouldn't be harmful. Representative Masland,  
3 you had a question?

4           REPRESENTATIVE MASLAND: Just briefly a  
5 comment. And I'm speaking as a member, a Commissioner on  
6 the Pennsylvania Commission on Crime and Delinquency, not  
7 on Crime and Corrections. Thank you. Maybe I should be a  
8 subcommittee member of that.

9           But as a member of PCCD, if any state  
10 organization can evaluate a program, it's PCCD. That's  
11 what we really task the staff to do with respect to  
12 everything. And sometimes we find out it's hard to  
13 quantify.

14           But if we can do it with respect to these type  
15 programs, I'm sure they're up to the task. But I would  
16 agree that it will be -- it will be difficult to say  
17 definitively that we have prevented X number of criminals  
18 from going on and committing murder.

19           But whatever we can do at the front  
20 end -- and I see this as being pretty close to the front  
21 end of the criminal justice pipeline -- we're better off  
22 doing that. And just one other comment. You talked about  
23 the new face on the criminal justice system that this  
24 provides and how we need to have the involvement in the  
25 community in serving justice.

1           Maybe the reason the community needs to be  
2 involved, maybe because there's some problems in the  
3 families in some cases, not all. It's sometimes just a  
4 problem kid and not necessarily the family's fault. But  
5 there's been a lot of talk about communities and villages  
6 and things like that.

7           And as I was looking at this, I think this may  
8 be a corollary to a phrase we often heard; and that is that  
9 it takes a community to punish a child. And I don't say  
10 that jokingly because I think sometimes everybody does have  
11 to be involved.

12           I know for me, growing up in my neighborhood,  
13 if I did something wrong, I knew about it not just from my  
14 parents but all the other parents in the neighborhood, too.  
15 So the extent that you have that -- that sense of guilt or  
16 element of shame involved from the community as a whole,  
17 then that can help those kids so that they don't turn  
18 around and do something worse.

19           And I think that's beneficial. And the kids  
20 can get beyond that and be productive members of society  
21 thereafter. Thank you.

22           CHAIRPERSON BIRMELIN: I want to thank you  
23 folks for testifying today and appreciate you coming here.  
24 Thank you very much.

25           MR. KELLER: Thank you very much.

1                   CHAIRPERSON BIRMELIN: Our next testifier is  
2 Captain John Thierwechter. And if I mispronounced that,  
3 please correct me. He's the Director of the Operational  
4 Records Division, The Bureau of Records and Identification  
5 for the Pennsylvania State Police. Welcome, Captain. Did  
6 I pronounce your name correctly?

7                   MR. THIERWECHTER: Very close, yes.

8                   CHAIRPERSON BIRMELIN: That's like my name.  
9 If you get close, I accept it. But we want to thank you  
10 for coming to testify today. And when you're ready, you  
11 may begin your testimony.

12                   MR. THIERWECHTER: Good afternoon. As you  
13 stated, I'm Captain John Thierwechter. I'm the Director of  
14 the Operational Records Division, Bureau of Records and  
15 Identification for the Pennsylvania State Police. On  
16 behalf of Colonel Paul J. Evanko, Commissioner of the  
17 Pennsylvania State Police, I would like to thank you for  
18 this opportunity to present testimony at this public  
19 hearing.

20                   The Bureau of Records and Identification is  
21 tasked with a wide variety of responsibilities. The Bureau  
22 is responsible for the administration of Megan's Law, the  
23 Pennsylvania Instant Check System, the Automated  
24 Fingerprint Identification System, and is designated by law  
25 as the Central Repository for the state's criminal history

1 record information.

2           Additionally, the Bureau is the department  
3 entity that is responsible for maintaining copies of  
4 accident reports as well as criminal investigative reports  
5 for investigations conducted by the Pennsylvania State  
6 Police. All these tasks require extensive recordkeeping.

7           Each year, the Bureau processes over 500,000  
8 requests for criminal history information from individuals  
9 and noncriminal justice agencies. This number has  
10 increased dramatically in the recent years, partly as a  
11 result of legislation which requires these checks for  
12 employment purposes.

13           Because of the dual dissemination requirements  
14 contained in Chapter 91 of the Pennsylvania Crimes Code,  
15 these requests often take considerable manual processing.  
16 As you may be aware, criminal justice agencies may access  
17 any information contained in our criminal history files.

18           Individuals and noncriminal justice agencies  
19 are only entitled to conviction information. They may also  
20 receive arrest information which is less than three years  
21 old for which the Pennsylvania State Police has not  
22 received a disposition.

23           When noncriminal justice requests are received  
24 for a record that contains arrests that are over three  
25 years old for which no disposition has been received, we

1 always attempt to acquire the disposition prior to  
2 responding to the request.

3           Generally, this involves contacting the  
4 appropriate clerk of court and requesting a disposition.  
5 Some of the clerks are very cooperative and respond  
6 quickly. Others are less cooperative and the process takes  
7 weeks. Or in some cases, we never receive a response.

8           In these cases, depending on the offense, we  
9 delete it from the record prior to mailing it out. As part  
10 of our duties, we process court-ordered expungements.  
11 These expungements require that certain records be  
12 annotated so that inquiries will result in a no-record  
13 response to any requests for criminal history.

14           Additionally, fingerprint records are  
15 destroyed or are marked to indicate they are being retained  
16 within the strict guidelines for their usage. Again, this  
17 is a very labor intensive process. Frequently, we must  
18 contact the appropriate court, the individual's attorney,  
19 or the individual for clarification because some of the  
20 information required by Rule 9017 of the Rules of Criminal  
21 Procedure is not provided for on the expungement order. We  
22 expect to process 20,000 of these requests this calendar  
23 year.

24           House Bill 1724 provides the -- proposes the  
25 establishment of a Community Reparative Disposition

1 Program. The program is designed to allow criminal  
2 offenders charged with a summary or misdemeanor 3 offense a  
3 chance to earn a dismissal of the charges.

4 Under this plan, each county would establish a  
5 five-member board to conduct the business of this program.  
6 Among their duties is the responsibility to enter into  
7 written agreements with offenders and to supervise  
8 offenders participating in the program.

9 The bill states the purposes of this program.  
10 They are: One, to provide a mechanism for the victims of  
11 crime and the community to receive restitution from  
12 offenders; two, to educate offenders about the impact their  
13 alleged crimes have made on victims and the community;  
14 three, to provide a means by which offenders may learn not  
15 to commit the alleged crimes in the future; and four, to  
16 provide offenders with an incentive to engage in reparative  
17 activities as an alternative to prosecution for the  
18 criminal offenses allegedly committed by them.

19 One concern from our perspective has to do  
20 with the consistency of this program when implemented  
21 across the 67 counties. While these boards are supervised  
22 by the court and the Pennsylvania Commission on Crime and  
23 Delinquency, this arrangement has the potential to allow  
24 for vast differences in its implementation across the  
25 state.

1           Additionally, this bill is anticipated to  
2 increase the number of expungements received by this Bureau  
3 by 25 to 30 percent. An increase of this nature would  
4 translate into an increased need for State Police  
5 personnel.

6           The three clerical positions required to  
7 handle the additional work load would cost approximately  
8 \$104,000 per year to cover salaries, benefits, and  
9 operating costs. A second area of concern has to do with  
10 the fact that this bill does not adequately address a way  
11 to manage records for offenders involved in these programs.

12           Procedures should be established to monitor  
13 how many times an individual has been admitted into the  
14 program, not only at the individual county level, but at  
15 the state level as well. Additionally, this system should  
16 identify the status of offenders who entered the program  
17 but were removed due to violations or failures to meet  
18 program criteria.

19           It is readily apparent that much of the  
20 language in this bill is modeled after the current  
21 Accelerated Rehabilitative Disposition -- ARD -- Section  
22 of Pennsylvania's Rules of Criminal Procedure. As such,  
23 much of what this bill proposes is currently available  
24 under the ARD program.

25           Successful completion of this program also

1 allows offenders to earn a dismissal of the charges.  
2 Additionally, judges may order restitution and community  
3 service as a condition for admittance to this program.  
4 Also similar to the ARD statute is the ability of the judge  
5 to order an expungement of the charges upon their  
6 dismissal.

7                   This is not an automatic process, however.  
8 And the attorney for the Commonwealth has the ability to  
9 file an objection to these expungement requests. This  
10 seems to be an area that confuses offenders who think that  
11 their charges will automatically be removed from their  
12 records upon successful completion of the program.

13                   In reality, until the court orders an  
14 expungement, the record remains. Since ARD is not  
15 considered a conviction, it is available to criminal  
16 justice agencies only, however. As noted previously, often  
17 these expungement orders do not contain all the required  
18 information.

19                   Passage of this bill would certainly compound  
20 this problem. Another current area with the ARD  
21 program -- I'm sorry. Another current problem with the ARD  
22 program is that we often do not receive information that  
23 the offender has successfully met the conditions of the ARD  
24 program.

25                   The lack of this information negatively



1 impacts the Pennsylvania Instant Check System as well as  
2 our ability to answer noncriminal requests for criminal  
3 history information. If conviction of an offense would  
4 prohibit the purchase of a firearm, successful completion  
5 of ARD will not.

6           When the information is unavailable, the  
7 request to purchase often must be put into research,  
8 unnecessarily delaying the transaction. The State Police  
9 recognizes the meritorious intentions of this legislation  
10 to make victims and communities whole again after an act of  
11 crime.

12           Without question, it represents continuation  
13 of the commitment Pennsylvania's General Assembly has made  
14 to victims of crime. However, since this legislation is  
15 modeled after the current ARD system, we urge the  
16 legislature to be mindful of the existing system and any  
17 changes to that system which could be beneficial.

18           As stated in our concerns, this legislation  
19 would significantly impact the work load of the State  
20 Police, specifically the Bureau of Records and  
21 Identification, and could adversely affect current  
22 deficiencies within the program.

23           On behalf of the Commissioner and the State  
24 Police, thank you very much for this opportunity to discuss  
25 House Bill 1724. If there are any questions, I would be

1 pleased to answer them at this time.

2 CHAIRPERSON BIRMELIN: Thank you, Captain.

3 I'll leave that opportunity to our members now.

4 Representative Manderino.

5 REPRESENTATIVE MANDERINO: Thank you. I want  
6 to go back to the part of your testimony where you talk  
7 about an approximate cost of \$104,000 a year. That's a  
8 cost that you're seeing only to the State Police in order  
9 to process things?

10 MR. THIERWECHTER: Yes.

11 REPRESENTATIVE MANDERINO: There was -- I'm  
12 very supportive of this legislation but also very mindful  
13 of the point that you made. There was an interesting  
14 article -- you probably saw it -- in The Inquirer in the  
15 past couple days about all the new records that we've  
16 required on DNA and how we've never appropriated any money  
17 to allow that to happen and so -- how the backlogs are  
18 really growing.

19 So thank you very much for bringing this out  
20 because I really do think that if we want to make a  
21 difference, we have to be realistic about what the costs  
22 are and provide for that as well. Thank you.

23 MR. THIERWECHTER: Yes, ma'am.

24 CHAIRPERSON BIRMELIN: Representative James.

25 REPRESENTATIVE JAMES: Thank you, Mr.

1 Chairman. And thank you for testifying. I just want to go  
2 back to something you said in the testimony that raises a  
3 question of concern to me. I think it's on page 3. You  
4 said something about, "Additionally, fingerprint records  
5 are destroyed or are marked to indicate they are being  
6 retained within the strict guidelines for their usage."

7 Is this -- I just need some clarification  
8 because are you saying -- does this mean that if a record  
9 is expunged, there's a possibility that the complete record  
10 is not expunged under certain guidelines?

11 MR. THIERWECHTER: Yes. There are certain  
12 times, particularly some of the ARD offenses, that the  
13 record is allowed to be maintained to determine future  
14 offenses. But they are only used for those purposes.

15 REPRESENTATIVE JAMES: Can you give me an  
16 example of what that -- which -- what one of them would be?

17 MR. THIERWECHTER: Well, an example is driving  
18 under the influence where the first charge may be given  
19 ARD; however, the second offense requires a stiffer  
20 sentence. The only way to determine that is to have a  
21 record of that. And that would be the circumstance I'm  
22 referring to.

23 REPRESENTATIVE JAMES: Okay. So therefore,  
24 now, if someone was to check and the ARD -- and they went  
25 through the ARD process and their record is expunged and

1 this person comes up, like an example you just stated, then  
2 you would be able to show that this is the second offense?

3 MR. THIERWECHTER: Yes, sir.

4 REPRESENTATIVE JAMES: Right. Then if there  
5 was a job, say the person was seeking employment, and they  
6 indicate on their job application that they don't have no  
7 record because they have had it expunged, would that show  
8 up then?

9 MR. THIERWECHTER: No, sir.

10 REPRESENTATIVE JAMES: Because of some code  
11 that you have that you have not released it because of  
12 whatever?

13 MR. THIERWECHTER: Yes, sir. There's actually  
14 two reasons it wouldn't show up. First of all, an ARD is  
15 considered a nonconviction. So employment requests are  
16 disseminated to noncriminal justice agencies so it would  
17 not be on there to start with.

18 And the fact that it is expunged is an  
19 additional reason that it would not be on there. But once  
20 the ARD is assigned to that DUI, it's no longer on the  
21 employment request criminal history information.

22 REPRESENTATIVE JAMES: You also said something  
23 about under the ARD program, you're not getting some kind  
24 of information because the constituent or the person under  
25 the ARD program assumed that the record's expunged and they

1 should not assume that?

2 MR. THIERWECHTER: The -- the way the law  
3 works, the charges can be dismissed; and then we would  
4 carry that as dismissed on the criminal history. At that  
5 point in time, the only people that have access to that are  
6 law enforcement agencies, criminal justice agencies.

7 People cannot assume, however, that their  
8 records have been expunged unless they have a court order  
9 for expungement. So again, it wouldn't show on a request  
10 for a noncriminal justice agency. But a law enforcement  
11 agency would still be able to see that offense.

12 REPRESENTATIVE JAMES: So then you would  
13 suggest that people on the ARD program must also get a  
14 court order to get their record expunged after they finish  
15 the program?

16 MR. THIERWECHTER: Correct.

17 REPRESENTATIVE JAMES: Okay. Thank you.

18 CHAIRPERSON BIRMELIN: Representative Josephs.

19 REPRESENTATIVE JOSEPHS: Thank you, Mr.  
20 Chairman. Thank you for being here. You don't have pages,  
21 but let me try and refer to -- none of your testimony  
22 paginated is what I meant to say. When you say procedures  
23 should be established to monitor how many times an  
24 individual's been admitted into this program not only at  
25 the county level but at the state level, my conception of

1 this kind of program is that if you are an individual and  
2 you complete the program and do re-offend at a low level  
3 and go through the program again and complete it, that it's  
4 not a DUI situation; that we know, particularly with people  
5 who have substance abuse problems, that they may go through  
6 drug treatment or rehabilitation or preventative education  
7 several times before they finally, one way or another,  
8 settle their lives for better or for worse.

9           As a policy issue, do you think that we ought  
10 to be keeping track of people who successfully complete the  
11 program in case one or some small percentage of them come  
12 back through the program again?

13           MR. THIERWECHTER: Well, I think that's a  
14 decision that the legislature has to make. But from my  
15 reading of the proposed legislation, to me it didn't  
16 clearly indicate can people do this, you know, 15 times, 20  
17 times. And if they can, do we care?

18           Again, depending on the decision that's made,  
19 that may be what the intent of the law is. But our  
20 question was, Is that the intent of the law to allow  
21 somebody to do this, you know, that many times and not keep  
22 track of it all? That's the point I was trying to make.

23           REPRESENTATIVE JOSEPHS: It's a very good  
24 question. I appreciate that. It hadn't occurred to me.  
25 Your second sentence there, though, I think is taken care

1 of by the very nature of the program where you say it  
2 should -- the system should identify the status of  
3 offenders who have entered the program but were removed.

4 This is a pretrial. It's a diversion  
5 pretrial. If the person doesn't complete the program  
6 because of -- just doesn't -- fails to complete the  
7 program, that person will end up, as I understand it, in  
8 court where we will have all of these kinds of records.

9 I think the difference -- one of the major  
10 differences between the ARD and some of the other programs  
11 that you have cited is that this one is diversion before  
12 trial. Those, as I understand it, are punishments after  
13 some kind of an adjudication.

14 MR. THIERWECHTER: I think that it -- the  
15 statement you're making is correct, that this program is  
16 designed as you're perceiving it; that if the person fails  
17 at this program, they would go through court and that would  
18 take care of that statement.

19 REPRESENTATIVE JOSEPHS: Thank you. Thank  
20 you, Mr. Chairman.

21 CHAIRPERSON BIRMELIN: Brian Preski, counsel  
22 for the committee, has a few comments he'd like to make  
23 that would help to clarify some of the issues that have  
24 been raised.

25 MR. PRESKI: Yeah. I'm the captain

1 respectively for the members. I think one of the things  
2 that we talked about -- and I've heard it come out in the  
3 question, just so you know what we plan on doing -- at the  
4 end of this, I think what Mr. Birmelin wants is that the  
5 record for someone who has been in this program will be  
6 expunged.

7                   However, what we will want is we will want a  
8 record to be maintained by the State Police or by someone,  
9 basically, to give the people who operate the community  
10 reparative boards the ability to know, Has this person been  
11 through before?

12                   The question that's a matter of drafting  
13 simply becomes, How long do we have you maintain that  
14 record? At what point does it become stale? Do we keep it  
15 for seven years; and after seven years, it's so stale that  
16 it's meaningless? Or how long do we keep it?

17                   But it certainly is the intention of the  
18 Chairman that in the amendment that he drafts basically to  
19 have the record expunged automatically by order of the  
20 court so that the citizen will know if they complete the  
21 program that that -- it's gone and it won't be reported  
22 anywhere.

23                   However, there will be, I guess, a secondary  
24 or minor record so that the facilitators or the people who  
25 run the program will be able to know, Is this guy coming



1 through for the fifth time? If so, it's probably not the  
2 right person that we want coming through again.

3 CHAIRPERSON BIRMELIN: And just  
4 parenthetically to add to that, there is -- we have by  
5 design not limited the number of times that you can go  
6 before the reparative board. However, it is going to be  
7 helpful to each county that has a reparative board to know  
8 whether or not that person's been through it.

9 And as Counsel Preski said, if they've been  
10 through it seven, eight times before, I guess that's a  
11 pretty good indication that it didn't work. So there's no  
12 sense in doing it again. Well, the odds would be against  
13 that person.

14 REPRESENTATIVE JOSEPHS: I don't know.  
15 Maybe. I mean --

16 CHAIRPERSON BIRMELIN: Well, that would be  
17 their call, though. But they need to know that. They  
18 don't need to know everything about the case, but they  
19 would need to know that this person has been before the  
20 reparative boards before.

21 That's the only reason that we would keep any  
22 records at all. But there would be no criminal record  
23 against him. It would only be the record that they went  
24 through the community reparative board and successfully  
25 completed it or unsuccessfully completed it.

1                   REPRESENTATIVE JOSEPHS: Well, unsuccessfully,  
2 you end up in court.

3                   CHAIRPERSON BIRMELIN: Yeah.

4                   REPRESENTATIVE JOSEPHS: So then you would  
5 know --

6                   CHAIRPERSON BIRMELIN: But you wouldn't  
7 know -- the court wouldn't necessarily tell you that they  
8 went to the community reparative board first.

9                   REPRESENTATIVE JOSEPHS: No. But you would  
10 know that this person had been through the criminal justice  
11 system --

12                   CHAIRPERSON BIRMELIN: Yeah, that's right.

13                   REPRESENTATIVE JOSEPHS: -- if this person had  
14 failed to complete the program. But I can see situations  
15 where, Why not? I mean, so long as we're keeping this  
16 person out of prison and if he or she is finishing the  
17 program, I would hope that would be dealt with on a  
18 case-by-case basis by the individual boards with good sense  
19 because I can see situations in which that should not be  
20 automatically treated as this qualification for --

21                   CHAIRPERSON BIRMELIN: No. We're not saying  
22 they should be. But we're also saying that the board  
23 should be aware of the fact that this person has gone  
24 through the community reparative board process before and  
25 how many times.

1                   So it's knowledge that they can operate off  
2 of, and they can use their best judgment to make that  
3 decision.

4                   REPRESENTATIVE JOSEPHS: I understand. Thank  
5 you, Mr. Chairman.

6                   CHAIRPERSON BIRMELIN: Representative Walko.

7                   REPRESENTATIVE WALKO: Thank you, Mr.  
8 Chairman. Captain, other than the fiscal impact due to a  
9 possible increase in expungement applications,  
10 would -- does your -- do the State Police have a major  
11 problem with this if current problems with the ARD program  
12 are addressed?

13                   It seems to me that your main concerns, other  
14 than the fiscal impact, are existing concerns in any case  
15 with the ARD programs now; is that correct?

16                   MR. THIERWECHTER: I think that's probably a  
17 pretty accurate assessment. If we can work through some of  
18 the problems that we currently have, it would be much less  
19 an impact on us than current.

20                   REPRESENTATIVE WALKO: I'm sure that certainly  
21 our committee would be willing to entertain suggestions for  
22 improvements to the ARD program. Thank you. Thank you,  
23 Mr. Chairman.

24                   CHAIRPERSON BIRMELIN: Thank you, Captain. We  
25 appreciate your coming here today and for giving your

1 testimony. Our next testifier is Mary Achilles. She's the  
2 Victim Advocate, works for the Pennsylvania Board of  
3 Probation and Parole.

4 And as she's coming forward, let me introduce  
5 a couple members who have joined us in these last minutes.  
6 To my far left is Representative Petrarca. And I can never  
7 remember which county you're from.

8 REPRESENTATIVE PETRARCA: Wayne.

9 CHAIRPERSON BIRMELIN: I know you're not  
10 from Wayne County.

11 REPRESENTATIVE PETRARCA: Westmoreland.

12 CHAIRPERSON BIRMELIN: You haven't met the  
13 qualifications yet to be from Wayne County. But what  
14 county?

15 REPRESENTATIVE PETRARCA: Westmoreland.

16 CHAIRPERSON BIRMELIN: And seated two seats  
17 away from me is Representative Mayernik, and he's from  
18 Allegheny County. Mary Achilles and I have had some  
19 conversations in the past, dealt with legislation on a  
20 broad range of subjects. And we always appreciate her  
21 opportunity to come and testify before this panel.

22 And she's here again today. And as I  
23 mentioned earlier, she's the Victim Advocate representative  
24 for the Pennsylvania Board of Probation and Parole and has  
25 done an excellent job there. Mary, we welcome you to our

1 committee and ask that you would give your testimony at  
2 this time.

3 MS. ACHILLES: Thank you. My comments are  
4 actually rather brief today in light of all the great  
5 testimony you've already had in the hour. Thank you for  
6 the opportunity to testify here today in support of House  
7 Bill 1742, the Community Reparative Disposition Program  
8 Act.

9 I am pleased to see an attempt to bring  
10 community participation into the process of justice in the  
11 adult criminal justice system. This program of community  
12 reparative panel provides an opportunity for citizen  
13 involvement and also victim participation, if they so  
14 choose.

15 As you know, citizens of this Commonwealth  
16 have been participating in our juvenile justice system  
17 through local youth aid panels for over ten years. This  
18 highly successful program has not only involved citizens in  
19 the process of justice, it has provided intensive  
20 monitoring of cases involving first-time juvenile  
21 offenders.

22 I know from my own work in Philadelphia ten  
23 years ago on the youth aid panel that some of these  
24 first-time juvenile offenders in fact got more attention  
25 and more care from local youth aid panels than they would

1 have from the larger justice system.

2 I am a great supporter of the concept of  
3 restorative justice upon which I believe this legislation  
4 is based. A cornerstone of restorative justice is its  
5 intent on the involvement and empowerment of the affected  
6 community, that community affected by crime.

7 By attempting to involve the community, we  
8 create an opportunity to increase the community's capacity  
9 to recognize and respond to the bases of crime. The value  
10 of community involvement, in my opinion, cannot be  
11 underscored enough.

12 There are a few issues that I have previously  
13 discussed with Representative Birmelin that I would like to  
14 focus your attention on today. A fundamental element of  
15 programs designed within a restorative justice framework is  
16 that opportunity for victim involvement is maximized and  
17 victims are provided with choices.

18 I would suggest that you consider not only the  
19 appearance of victims at the court hearing and reparative  
20 panel meetings, but also consider their involvement through  
21 written statement. Providing victims with an option of  
22 appearance or written statement may in fact increase victim  
23 involvement.

24 Many victims may not have the time, energy, or  
25 inclination to participate in the reparative panel process

1 if they have to attend the panel hearing but may be willing  
2 to identify the harm done and their needs for reparation in  
3 writing to panel members.

4 I would also ask that you provide in greater  
5 clarity the need for victim notification at each critical  
6 step of the process. In the general description of the  
7 panel meetings, it is not clear to me that in fact the  
8 panel may meet with the victim and the offender separately.

9 It seems to imply that the meeting should be  
10 held jointly. Although the cases defined as eligible for  
11 inclusion in this program seem minimal in nature, simple  
12 assault and corrupting the morals of a minor do fall into  
13 this category.

14 These types of personal injury crimes must  
15 have a process that is sensitive to both the physical and  
16 emotional safety and security needs of the victim. Prior  
17 to bringing victims and offenders together, there is a  
18 great need for training of reparative panel members.

19 I am assuming that this would be addressed in  
20 the curriculum and training program to be established by  
21 the Commission on Crime and Delinquency. I would feel more  
22 comfortable if the legislation specifically stated that the  
23 meetings between the victim and the panel could be separate  
24 from the meeting between the offender and the panel.

25 I propose that any joint meetings of the

1 victim and the offender be only upon the request and  
2 agreement of the victim. One of the last issues that I  
3 believe needs further clarification in the legislation is  
4 the question of who monitors the conditions imposed by the  
5 reparative board.

6           It is not clear to me that that entity is  
7 clearly identified in the legislation. Is it the court,  
8 probation, or the reparative panel members? Follow-up on  
9 compliance to the reparative conditions is crucial to the  
10 success of the program and also to the sense of justice  
11 experienced by the victim.

12           There needs to be someone clearly identified  
13 as responsible for follow-up to ensure compliance or to  
14 file a violation should the offender fail to comply. The  
15 offenders need that sense of accountability, and victims  
16 need to know that the system is holding the offender  
17 accountable.

18           Twenty-five years of history and research in  
19 victim/offender mediation has taught us that  
20 contract/agreement monitoring is crucial in offender  
21 compliance that ultimately impacts victim satisfaction with  
22 the justice process.

23           Earlier today, you heard from my colleagues,  
24 the Pennsylvania State Police, who have concerns with this  
25 legislation. As a member of the legislation, I would be



1 happy to work with Representative Birmelin on this  
2 legislation to address those issues.

3 CHAIRPERSON BIRMELIN: Thank you, Mary. Are  
4 there members of the panel who have questions for the  
5 representative? Representative James.

6 REPRESENTATIVE JAMES: Thank you, Mr.  
7 Chairman. And thank you again for testifying. It's good  
8 to see you. And I'd just commend you again on the  
9 outstanding job you've done in Philadelphia on behalf of  
10 the victims. And I know that's why you're here.

11 You raised a good point in terms of -- because  
12 one of the frustrations I hear from victims is having to go  
13 to court and not getting the case heard and that kind of  
14 thing until they get frustrated and some sharp lawyers make  
15 them get frustrated until they don't want to come at all.

16 So I like that idea that you talk about that  
17 maybe the victim can have some kind of a statement. Would  
18 your organization be willing to help them prepare a  
19 statement or -- in terms of being able to be presented? Or  
20 would that increase the cost to you or --

21 MS. ACHILLES: Well, actually, I operate a  
22 statewide program. So I think this is more of a  
23 locally-run initiative. So I think it would be better  
24 served at the local level. But I think that should be  
25 built into the design of the program to have assistance to

1 victims. And I don't think that's so difficult to do.

2 REPRESENTATIVE JAMES: All right. Thank you.

3 CHAIRPERSON BIRMELIN: Representative Josephs.

4 REPRESENTATIVE JOSEPHS: Thank you, Mr.

5 Chairman. I think also that it's a good idea to provide

6 some other means for the victim to be in this process

7 besides actually appearing. Someone in my family in

8 another state was a victim. And she followed it, but she

9 never appeared.

10 She had two little children, and they had to

11 go on business and her husband and all of that kind of

12 stuff. And the District Attorney -- I don't know whether

13 it was a pre- or a post-adjudication program, but she was

14 kept informed by phone by the District Attorney. And she's

15 very happy but never appeared.

16 What I'm wondering is that if the situation is

17 so fraught with emotion for the victim that he or she

18 doesn't want to appear in a meeting along with the alleged

19 perpetrator, that maybe that's a signal to us that that is

20 a case that doesn't belong in the system; that whatever the

21 interaction was, it was so difficult for the victim that no

22 matter how this person was charged, maybe he or she just

23 doesn't qualify.

24 Because the way I'm sort of seeing how this

25 would work would be more or less the one that I'm familiar

1 with in my family where the victim was annoyed and put to a  
2 great deal of inconvenience. But she had no fear or  
3 hesitation among the perpetrator.

4 She just went -- didn't go because she didn't  
5 have time. So thank you, Mr. Chairman.

6 CHAIRPERSON BIRMELIN: Feel free to comment.

7 MS. ACHILLES: Oh, no. I agree. I think  
8 there are cases in fact where that would be true. I think  
9 it's just a matter of giving people options how they  
10 participate.

11 CHAIRPERSON BIRMELIN: Representative  
12 Manderino.

13 REPRESENTATIVE MANDERINO: Following up on  
14 the -- your suggestion for other alternatives for victim  
15 input and Representative James's comments. Probably the  
16 local victim service agencies which now help in terms of  
17 having victim advocates that go to court with people, this  
18 would be a natural kind of segue for the kinds of things  
19 that they do.

20 They're not coordinated out of PCCD, if I'm  
21 not mistaken. And maybe by way of suggestion for input  
22 into this bill for our committee before we put a final  
23 version together would also be to have a discussion with  
24 the appropriate people at PCCD who serve the victim service  
25 advocates and coordinators and the various agencies because

1 I think they're out there in all or most of our counties --

2 MS. ACHILLES: Yeah.

3 REPRESENTATIVE MANDERINO: -- and see if this  
4 is an appropriate match.

5 MS. ACHILLES: I think clearly that the  
6 victims are better served by the local victim service  
7 program. And it is in line, as you say. I know you're  
8 very familiar with that. And the individuals at PCCD do  
9 help fund and provide training for local programs.

10 And I think that the local programs should be  
11 involved in the training of the panel members and the  
12 design of the reparative board. We really need to ensure.  
13 And that's why I attached to my testimony a bookmark that I  
14 developed with Howard Zehr from the Mennonite Central  
15 Committee on appropriate victim involvement because I think  
16 that we need to safeguard victims' concern.

17 And then we can easily, as it already does to  
18 a great degree in the legislation, address the victim  
19 issues.

20 CHAIRPERSON BIRMELIN: I guess you're  
21 finished?

22 REPRESENTATIVE MANDERINO: Yes. That was more  
23 just a comment and suggestion. But thank you.

24 CHAIRPERSON BIRMELIN: Okay. Thank you. We  
25 want to thank you, Mary, for your testimony. And please be

1 assured that I and other members of the committee will work  
2 with you to try to address some of these concerns and maybe  
3 find some language that helps you to feel more comfortable  
4 with victim involvement.

5           We do know from the many discussions we had  
6 with the people in Vermont that they felt the one critical  
7 element that was missing from their system was victim  
8 involvement. And they -- I forget the statistic, but it  
9 was something like less than 10 percent of the victims ever  
10 showed up.

11           And I think part of that was the function of  
12 how long it was between when the crime was committed and  
13 the reparative board actually met with the defendant. And  
14 we're trying to compress that time period because they did  
15 it post-conviction. We want to do it pre-conviction.

16           So we think that we can decrease that time  
17 immeasurably, which we're hoping will want victims to be  
18 more involved instead of just saying forget it and put it  
19 behind themselves. So we thank you for your testimony and  
20 appreciate you coming here today.

21           MS. ACHILLES: Thank you.

22           CHAIRPERSON BIRMELIN: For the members of the  
23 committee, we are meeting tomorrow at 9:30. It will be  
24 short. We only have one or possibly two or three witnesses  
25 at the most. It will be -- I guarantee you it will be

1 under an hour. So if you come at 9:30 and you're on time,  
2 I guarantee you you will be out of here by 10:30, if not  
3 sooner.

4 So we look forward to meeting with you  
5 tomorrow. This meeting is adjourned for today.

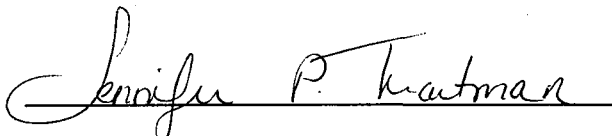
6 (Whereupon, at 3:05 p.m., the hearing  
7 adjourned.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause and that this is a true and correct transcript of the same.



JENNIFER P. TROUTMAN

Registered Professional Reporter

My Commission Expires:  
April 30, 2001

JENNIFER P. TROUTMAN, RPR  
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