

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 249 and 359

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House Judiciary Committee  
Task Force on Domestic Relations

Room 205  
Capitol Annex  
Harrisburg, Pennsylvania

Monday, September 27, 1999 - 9:05 a.m.

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BEFORE:

Honorable Lita Cohen, Majority Chairperson  
Honorable Albert Masland  
Honorable Andrew Carn  
Honorable Pete Daley

**ALSO PRESENT:**

**Karen Dalton**  
Majority Counsel to Judiciary Committee

**Judy Sedesse**  
Majority Administrative Assistant

**Jane Mendlow**  
Minority Research Analyst

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Written Testimony Submitted by:

Annamarie Kaiser, Executive Director  
Pennsylvania District Attorneys Association

1 CHAIRPERSON COHEN: Good morning. I'm  
2 Representative Lita Cohen. I'm the Chair of the Domestic  
3 Relations Task Force in -- here in the House of  
4 Representatives in Pennsylvania. As most of you know, we  
5 have been studying various aspects of domestic relations  
6 throughout the last several years.

7 We have been examining the Divorce Code and,  
8 most recently, the Adoption Code and also issues of  
9 domestic violence. Today's public hearing will be  
10 examining issues relating to domestic relations, House  
11 Bills 249 and House Bill 359.

12 House Bill 249 is prime sponsored by  
13 Representative Orié, and House Bill 359 is prime sponsored  
14 by Representative Brett Feese. First, I would like to  
15 introduce the members of the panel that are with us today.  
16 We have Representative Al Masland from Cumberland County.  
17 Good morning, Representative.

18 REPRESENTATIVE MASLAND: Good morning.

19 CHAIRPERSON COHEN: We have Karen Dalton, who  
20 is the Counsel to the Task Force. And we have Jane  
21 Mendlow, Counsel to the Minority, to the Democrats --  
22 Research Analyst. Okay. Those of you that know me know I  
23 like to get started right away. So here we go.

24 We are honored to have for the second time  
25 around on a different subject one of our star witnesses

1 from several months ago. And that's the Honorable  
2 Stephanie Domitrovich, the Court of Common Pleas of Erie  
3 County. And we want to welcome you back. We always enjoy  
4 your testimony and enjoy having you.

5           You always provide us with extraordinarily  
6 interesting insights, and we look forward to hearing from  
7 you today. You may begin whenever you'd like.

8           JUDGE DOMITROVICH: Thank you. Thank you.  
9 Your Honor, it's indeed an honor to be here today. When I  
10 talk to my constituents from time to time who appear before  
11 the court, I often tell them I do not make the law. I  
12 enforce the law. But today, I have this rare opportunity  
13 to impact on the making of the law. And I really do  
14 appreciate this opportunity.

15           Pennsylvania's Legislature indeed deserves  
16 praise for a protection from abuse statute which was  
17 considered at its inception in 1976 to be more thorough and  
18 innovative than any other protection statute of its time  
19 enacted by legislators in the United States.

20           Throughout the years, our Pennsylvania  
21 Legislature has amended this statute to improve, to improve  
22 the statute's application and enforcement and meet the  
23 changing needs of society. I'm here to offer suggestions  
24 for a more effective application of the statute.

25           We, first of all, recognize that due to

1 concerns over sexually transmitted diseases, romantic  
2 partners are choosing to delay sexual intimacy. When abuse  
3 occurs between romantic partners who are not sexually  
4 intimate, our current statute does not include these  
5 plaintiffs for protection under the statute.

6 I agree with the amendment which would read as  
7 follows: Persons found by the court to be currently or  
8 fairly recently engaged in a relationship: Number one, in  
9 which there is a possible sexual attraction for either  
10 party which has been ongoing for a substantial period of  
11 time and in which there was reasonably frequent interaction  
12 between the parties.

13 Furthermore, judges -- the other area that I'm  
14 also advocating is that judges be permitted the broad  
15 discretion to require the parties to attend therapeutic  
16 sessions such as psychological counseling, batterer's  
17 intervention counseling, anger management treatment, and  
18 drug and alcohol treatment.

19 This would improve the perception and the  
20 effectiveness of our PFA, or Protection From Abuse Statute,  
21 and also would meet the goals that we now have from the  
22 three branches of government. The legislative, judicial,  
23 and executive branches need to address the needs of the  
24 parties in a therapeutic and holistic fashion.

25 And in allowing the courts to, in essence,

1 have this broad discretion, we would be consistent with  
2 those goals. There is also a recent case that I have given  
3 you a copy of. It's D.H. v. B.O. from the Superior Court  
4 of Pennsylvania. It was filed June 15th, 1999.

5           And it just illustrates how the courts are  
6 having to make sure that there's a record about the sexual  
7 or intimate partners portion of the statute and how the  
8 courts have to make that determination about intimacy when  
9 indeed, you know, if there are parties that have not been  
10 sexually intimate, then these parties would not be entitled  
11 to protection under the statute. And that seems to be  
12 unfair.

13           CHAIRPERSON COHEN: Okay. Thank you again for  
14 providing us with more insight. I know that the PFA issue  
15 came up when we had our public hearing in Edinboro several  
16 months ago.

17           JUDGE DOMITROVICH: Yes, yes. And it is an  
18 important area that the courts have to deal with on a daily  
19 basis, including indirect criminal contempt provisions. I  
20 also want to support House Bill 249 in regard to the  
21 penalties that are being added for these violations.

22           It seems appropriate to also make sure that  
23 parties understand that when the order comes out, the order  
24 needs to be enforced and it is very effective. And it  
25 seems that the increase in the penalties is very

1 appropriate. And I just wanted to add that in support.

2 CHAIRPERSON COHEN: I appreciate that. I  
3 think something in your comments -- and of course, it does  
4 not pertain to you; but it does -- is that the end of your  
5 comments where you talk about judges being permitted broad  
6 discretion.

7 JUDGE DOMITROVICH: Yes.

8 CHAIRPERSON COHEN: One of the aspects of the  
9 entire package that we're working on in revising the  
10 domestic relations, particularly the divorce aspect, is  
11 judicial training.

12 JUDGE DOMITROVICH: Yes.

13 CHAIRPERSON COHEN: And that's why I said it  
14 doesn't apply to you because you are right up there with  
15 the most sensitive of all of the judges. But it is -- it  
16 is urgent that the judges be provided with training into  
17 sensitivity and sensitive areas such as these so that they  
18 can more adequately deal with victims and people who are  
19 suffering and those that are perpetrators as well.

20 JUDGE DOMITROVICH: I agree with you. And  
21 when I ran for judge, my -- my slogan, so to speak, was  
22 that a judge is a teacher of the law as well as a student  
23 of the law. And every day, we teach people how they have  
24 to act and how they have to be accountable. And they're  
25 punished appropriately; and they're also guided, depending



1 upon what court we're in.

2 But I think that a judge, in order to be a  
3 better judge, has to go on for education. And I'm the  
4 first judge that ever graduated from the Master's Program  
5 at the National Judicial College in Reno, Nevada. And so I  
6 firmly believe that judges should continue with their  
7 education.

8 And I also believe that -- what you were  
9 saying about sensitivity training. I'm the cochair of the  
10 Gender Fairness Task Force in Pennsylvania with the  
11 Pennsylvania Bar Association and the State Trial Judges  
12 Conference. And we will be going throughout the state  
13 sensitizing individuals about these issues and especially  
14 court personnel.

15 So judges and court personnel will be affected  
16 by the importance of being aware of these issues.

17 CHAIRPERSON COHEN: I'm glad to hear that.  
18 Thank you.

19 JUDGE DOMITROVICH: Thank you.

20 CHAIRPERSON COHEN: We appreciate your  
21 leadership in these areas.

22 JUDGE DOMITROVICH: Thank you.

23 CHAIRPERSON COHEN: Representative Masland, do  
24 you have a question?

25 REPRESENTATIVE MASLAND: Yes, just a couple

1 questions. Judge Domitrovich, I appreciate your comments  
2 on these two proposals. Maybe you could illuminate us a  
3 little bit more as to any specific examples of problems  
4 you've had, first of all, with House Bill 249, a violation  
5 within 72 hours of conviction.

6           It makes sense to me. I think it makes sense  
7 to most people when you consider the fact that immediate  
8 punishment is generally going to be more effective. But is  
9 that a common occurrence for someone to violate a  
10 protection from abuse order within 72 hours?

11           Is that -- I don't know if there's any bell  
12 curve out there to show when someone is more likely  
13 to -- to do that. I've certainly seen and heard of  
14 instances. But I didn't know if there might be some more,  
15 you know, detailed facts or figures that you might have or  
16 maybe just some anecdotal evidence of that?

17           JUDGE DOMITROVICH: I just have anecdotal  
18 evidence to that effect. I do see individuals who appear  
19 before the court who, in essence, are very upset that the  
20 law says that they have to go out of their homes. And so  
21 they think that it's a mere piece of paper and that they  
22 can, in essence, just disregard it.

23           And it happens early when the PFA does take  
24 effect. And so then we have the police officers getting  
25 involved. And they're at a crisis situation when these

1 individuals are at their highest moment of rage, so to  
2 speak, that someone has taken them out of their home, which  
3 is the courts.

4 And of course, they blame the plaintiff who  
5 had initially filed the pleading. And so it is a very  
6 volatile stage of the PFA. And, you know, I don't know why  
7 it shouldn't be extended to five days. I mean, I don't  
8 know why 72 hours was selected. But, you know, at the very  
9 inception of the PFA is when we see much rage.

10 REPRESENTATIVE MASLAND: Yeah. I don't know  
11 that there's a magic time frame for cooling off. Will  
12 someone be any less upset four days later, five days later  
13 than they are -- if they're told by their attorney at least  
14 make sure you don't do anything within 72 hours, are they  
15 going to set the alarm clock for 73 hours?

16 JUDGE DOMITROVICH: Right. Exactly.

17 REPRESENTATIVE MASLAND: Hopefully, that  
18 doesn't occur. You're right. That might be something we  
19 could get the prime sponsor and the others to consider  
20 possibly an amendment to make that five days or a week.

21 JUDGE DOMITROVICH: Yes. And I think they're  
22 upset because -- the defendants are upset because they  
23 don't know the status of their belongings. They don't know  
24 what's happening with their personal possessions. And  
25 that's -- there's a miscommunication there as to what

1 they're supposed to do.

2           So we try to tell our sheriffs to tell the  
3 individuals that they have to go through a civil proceeding  
4 of replevin to get their items back, and that's through the  
5 district justice level, or try to have a constable be  
6 hired. And the constable would go out and try to pick up  
7 the belongings so that this individual defendant who is  
8 ordered off the property will not be in violation of the  
9 statute.

10           And that's something they don't understand  
11 many times in the beginning of the -- of the PFA. And so  
12 once they do go on the property, then more things escalate;  
13 and everything goes from there. But I think it's because  
14 they want their personal possessions, or at least that's  
15 what they tell me before the court. And that's how the  
16 ball starts to roll.

17           REPRESENTATIVE MASLAND: If I could just turn  
18 to House Bill 359 for a second. This is the one that deals  
19 with the substantive dating relationships. Again, you  
20 mentioned the one -- I think the one Superior Court case.  
21 Do we have -- I don't have a copy of that. Okay. We do  
22 have a copy.

23           JUDGE DOMITROVICH: Yes, yes.

24           REPRESENTATIVE MASLAND: Fine. I won't do my  
25 speed reading attempt right now.

1 JUDGE DOMITROVICH: Okay. I'm sorry.

2 REPRESENTATIVE MASLAND: Now, obviously, there  
3 may be several cases around the Commonwealth in the various  
4 courts of common pleas. Are you familiar with other  
5 instances where common pleas courts have said, Sorry. You  
6 don't come under the purview of the act because there was  
7 no consummation through sexual relations?

8 JUDGE DOMITROVICH: I'm not aware of any cases  
9 on that point. I think what happens is the PFA or the  
10 protection from abuse coordinator, who originally takes the  
11 petition from the individual, screens those cases. And  
12 every once in a while, I'll have the individuals come  
13 before me.

14 And they'll say -- the coordinator says,  
15 Judge, I had to bring them because of the abuse being so  
16 escalated; and there's no other relief. We don't have a  
17 stalking type of -- anti-stalking statute like they have in  
18 Ohio which extends the civil protective relief. And so  
19 they try to come under the statute.

20 And I have to say, I'm sorry, but we cannot  
21 give you relief because of the situation.

22 REPRESENTATIVE MASLAND: And so in those  
23 situations --

24 JUDGE DOMITROVICH: I've turned them away.  
25 Yes, I have literally turned them away myself.

1           REPRESENTATIVE MASLAND: And that's probably  
2 important for people to understand who may be listening to  
3 this and think of protection from abuse as a criminal  
4 matter. It is -- quasi criminal certainly is civil in its  
5 inception.

6           But an individual who doesn't have that sexual  
7 relation would still be able to hopefully, depending on the  
8 circumstances, at least have some criminal charges pursued,  
9 whether they be simple assault, aggravated assault, or any  
10 number of other lesser offenses. But they do not have the  
11 same protection under a PFA.

12           JUDGE DOMITROVICH: Right. They must meet the  
13 criminal statute's --

14           REPRESENTATIVE MASLAND: Right.

15           JUDGE DOMITROVICH: -- level, and that's very  
16 difficult to do.

17           REPRESENTATIVE MASLAND: Yes.

18           JUDGE DOMITROVICH: And the protection from  
19 abuse statute is more preventative in nature and is trying  
20 to stop the criminal acts from occurring and escalating.  
21 So yes. And the PFA statute on the civil side had grown  
22 up, so to speak, out of the peace bond situation that we  
23 used to have at the district justice level.

24           And the peace bond situation was put aside  
25 because of it not being able to be enforced literally. And

1 so it was resurrected in the family court situation through  
2 the Protection From Abuse Statute.

3 REPRESENTATIVE MASLAND: Thank you very much.  
4 I have no further questions.

5 JUDGE DOMITROVICH: Thank you.

6 CHAIRPERSON COHEN: Thank you, Representative  
7 Masland. I believe that Counsel Dalton has a few  
8 questions.

9 JUDGE DOMITROVICH: Yes. Okay. Now, this is  
10 going to be even harder. Go ahead.

11 MS. DALTON: Good morning, Your Honor. I just  
12 have a couple of substantive questions. And your  
13 perspective would really help people like me who are  
14 actually going to have to go back and maybe draft some  
15 amendments, but we'll see.

16 You had originally given me language from  
17 Massachusetts upon which House Bill 359 is based, the idea  
18 about a substantive dating relationship being broken down  
19 into elements regarding, well, these three, where there's  
20 possible sexual attraction for either party which has been  
21 going on for a substantial period of time and in which  
22 there was reasonably frequent interaction between the  
23 parties.

24 In talking with advocates for battered women  
25 and men -- and we're trying to, as you know, make the best

1 statute we can -- they have said to me that perhaps that is  
2 too big a burden of persuasion to place on the plaintiff,  
3 all of those elements.

4 And when you have a defendant saying one thing  
5 and you have a plaintiff saying another, I'm just  
6 wondering, Your Honor -- because you'll be the person  
7 making these decisions and others like you -- whether we  
8 should go with different language.

9 For example, in New Hampshire, they have a  
10 statute which reads like this in the definition section of  
11 abuse: "Intimate partners means persons currently or  
12 formerly involved in a romantic relationship whether or not  
13 such a relationship is ever sexually consummated." And so  
14 that --

15 JUDGE DOMITROVICH: Oh, I like it.

16 MS. DALTON: Yeah. I mean, that is a lot  
17 simpler.

18 JUDGE DOMITROVICH: It's cleaner.

19 MS. DALTON: It's cleaner. Right.

20 JUDGE DOMITROVICH: Yes.

21 MS. DALTON: And then New Jersey, for example,  
22 has a definition of a victim of domestic violence. And it  
23 goes through quite a bit of things. And then at the end,  
24 it says, "Also includes any person who has been subjected  
25 to domestic violence by a person with whom the victim has



1 had a dating relationship."

2 JUDGE DOMITROVICH: Excellent. Either one.

3 MS. DALTON: Either one?

4 JUDGE DOMITROVICH: Yes.

5 MS. DALTON: Okay. And then, Your Honor, I  
6 have another question. And I really don't know the answer  
7 to this, and I would like to know. Like other states, our  
8 protection from abuse statute talks about household  
9 members. You have to be related by blood or be a sexual or  
10 intimate partner or have had children in common, that kind  
11 of thing.

12 JUDGE DOMITROVICH: That's why I'm proposing  
13 this, yes.

14 MS. DALTON: Right. But let me pose another  
15 question. It has also come to my attention that in some  
16 cases, there's been people who have wanted to file for PFAs  
17 because they've been -- not necessarily stalked. I mean,  
18 the activity by the defendant, by the potential defendant  
19 has not risen to the stalking level --

20 JUDGE DOMITROVICH: Right.

21 MS. DALTON: -- as we have set down in our  
22 Crimes Code. But that person has been -- I don't want to  
23 use the word harassed either because that has also a  
24 criminal connotation. But it doesn't -- what a potential  
25 defendant does does not rise to the level of a PFA statute.

1 And there's no consanguinity.

2 JUDGE DOMITROVICH: Right.

3 MS. DALTON: And there's no -- so is there  
4 anything that a person like that can do with the court? Is  
5 there -- under the general equity powers of the court, is  
6 there a power to issue a temporary restraining order?

7 JUDGE DOMITROVICH: No, no. Under the present  
8 statute in Pennsylvania, no. However, I have been  
9 searching for other statutes that you can look at. I  
10 called a friend of mine, who I met through the National  
11 Judicial College, Judge Leslie Splain from Hamilton County,  
12 Ohio.

13 And when I told her that I was proposing this  
14 amendment, she said to me, Well, why don't you do what Ohio  
15 has done? We have opened up the statute to all parties who  
16 are in these violent situations of stalking, et cetera.  
17 And so Ohio now has a civil statute called the  
18 anti-stalking statute that gives civil protection.

19 But we do not have that power in Pennsylvania.  
20 And it emanated from a situation. Apparently, there was a  
21 woman who appeared before a judge in Ohio on Judge Splain's  
22 bench in Hamilton County. The judge had to say to her, I'm  
23 sorry. The statute does not allow me to give you  
24 protection because you have not been in a sexually intimate  
25 relationship nor are you related to the defendant.

1 She walks out of the courthouse; and several  
2 minutes later down the road, she is killed. And the judge  
3 to this day regrets the situation, but he had to deal with  
4 the legislative statute. So I think that was what she  
5 tells me, Judge Splain, that it was the inception of the  
6 anti-stalking statute.

7 So I guess what I'm proposing is very  
8 conservative compared to what Ohio has. So this would be a  
9 good -- this would be a step in the right direction, what  
10 I'm proposing. But if you want to extend it, we'll look at  
11 it.

12 MS. DALTON: Okay. Well, Your Honor, I will  
13 pull the Ohio statute. I'm just wondering, though, the  
14 general equity powers of the court would not extend --

15 JUDGE DOMITROVICH: No.

16 MS. DALTON: -- in such a case then?

17 JUDGE DOMITROVICH: No, I do not have that  
18 power.

19 MS. DALTON: And you would also ask that we  
20 add a treatment component --

21 JUDGE DOMITROVICH: Yes.

22 MS. DALTON: -- to House Bill 359?

23 JUDGE DOMITROVICH: Yes.

24 MS. DALTON: My question becomes then, Your  
25 Honor, if the defendant says I'm not going to go, how would

1 the court enforce that, or if the defendant said okay, I'll  
2 go and then didn't follow up? Now, I've looked at some of  
3 these other statutes; and they ask for proof to be given to  
4 the court.

5 JUDGE DOMITROVICH: Yes. So we would have  
6 review hearings. After three months, we would have a  
7 review hearing, see if the defendant has complied with the  
8 court's directive. And if he or she hasn't, then the court  
9 can impose quasi criminal sanctions.

10 Too often, I have individuals who come before  
11 the court. And they say, well -- the plaintiff says,  
12 Judge, I want to withdraw the PFA order because he or she  
13 on the other side claims that they will get counseling.  
14 They claim that they will follow through, but they haven't  
15 I say.

16 So until he or she follows through, you know,  
17 I'm not going to do anything. And I have to wait. And I  
18 have to wait and see if they're going to follow through.  
19 And I don't have the power to order them into it so that I  
20 can review it and make them go through it.

21 Now, there is a section, I think, Counsel,  
22 that you asked me to look at, which is the catchall section  
23 in the PFA statute, which is very good. A very difficult  
24 question that you posed to me on the phone, which was  
25 there's a catchall section that says plaintiff can seek any

1 other relief.

2           And the difficulty is the plaintiff isn't  
3 seeking many times that type of relief. They're seeking,  
4 perhaps, other relief. Many times, they are enablers.  
5 Many times, they are dependent as far as the alcohol  
6 addiction, et cetera.

7           So I would like to have the power to address  
8 it in a holistic fashion for plaintiff and defendant. And  
9 as we know, addictions are very difficult items. And they  
10 are parents to children. And the children see this that  
11 the parents are addicted.

12           And it would be nice to offer the therapeutic  
13 counseling so that we can help the children ultimately.

14           MS. DALTON: Right. I just have one more  
15 question, Your Honor, if I might. When you talk about the  
16 three-month review, is that something that you would set at  
17 the date of the PFA hearing itself?

18           JUDGE DOMITROVICH: Yes.

19           MS. DALTON: You're coming back here in three  
20 months, and we're going to look at this.

21           JUDGE DOMITROVICH: Yes.

22           MS. DALTON: And if not, then you're either  
23 going to pay a fine or you're going to jail?

24           JUDGE DOMITROVICH: Yes, yes.

25           MS. DALTON: And do you think other judges

1 would have a problem with enforcing that, with saying,  
2 Okay, you're going to jail or you're going to pay a fine?

3 JUDGE DOMITROVICH: I think when it comes to  
4 enforcing a court order, I don't think judges have a  
5 difficult time doing that because it's the authenticity and  
6 it's the power of the order that they have to enforce. And  
7 if they don't show the constituents that they can do that,  
8 it really has an effect on what the court can do for their  
9 constituents.

10 So I think it's important, and the judges will  
11 follow through.

12 MS. DALTON: Thank you very much, Your Honor.

13 JUDGE DOMITROVICH: Thank you.

14 MS. DALTON: Thank you, Chairman.

15 CHAIRPERSON COHEN: Thank you, Judge  
16 Domitrovich. It's always a pleasure to have you and to  
17 hear from you. We certainly will be in touch with you  
18 because you've been one of the guiding lights in our -- in  
19 our pursuit of justice and fairness for everyone. We thank  
20 you for coming all the way from Erie.

21 JUDGE DOMITROVICH: Thank you. Could I just  
22 add one more thing?

23 CHAIRPERSON COHEN: Please. By all means.

24 JUDGE DOMITROVICH: Some people might say,  
25 Well, how will you be able to enforce this other than the

1 three-month reviews? If we have the one judge/one family  
2 concept of the unified family court, we would, in essence,  
3 have judges really knowing the families and being able to  
4 have the broad discretion in domestic violence cases to  
5 implement the therapeutic needs, the therapeutic sessions  
6 that are necessary.

7           And the judge would really have a hold of the  
8 family. In a unified family court system, a judge is  
9 assigned to a particular family. And a judge addresses all  
10 needs that are related to the family from womb to tomb  
11 issues, from adoption to decedents' estates, including  
12 support and custody and all matters, protection from abuse.  
13 And it's a wonderful system.

14           And we hope that perhaps some day the  
15 legislature would do that statewide, and we can address the  
16 families' needs in a more preventative fashion. And this  
17 is one step. This PFA amendment would help the judge if we  
18 do have a statewide unified family court system some day.

19           MS. DALTON: Thank you.

20           CHAIRPERSON COHEN: We are determined that it  
21 will indeed happen.

22           JUDGE DOMITROVICH: Good.

23           CHAIRPERSON COHEN: Absolutely.

24           JUDGE DOMITROVICH: Excellent.

25           CHAIRPERSON COHEN: We are determined.

1 JUDGE DOMITROVICH: Great. Thank you.

2 CHAIRPERSON COHEN: Thank you. Thanks again.

3 JUDGE DOMITROVICH: Thank you.

4 CHAIRPERSON COHEN: We are honored today  
5 because we have an addition to the schedule. Major Ralph  
6 Periandi, the Director of the Bureau of Criminal  
7 Investigation from the State Police is with us. But in  
8 addition, our -- I won't say old friend -- but longtime  
9 friend, Major Richard Morris, who's the Director of  
10 Legislative Affairs for the Pennsylvania State Police.  
11 Gentlemen, welcome.

12 MAJOR MORRIS: Good morning.

13 MAJOR PERIANDI: Good morning.

14 CHAIRPERSON COHEN: And are you both going to  
15 be testifying?

16 MAJOR MORRIS: Major Periandi will present the  
17 testimony this morning.

18 CHAIRPERSON COHEN: Okay. You may begin any  
19 time you're ready. Thank you.

20 MAJOR PERIANDI: Good morning. I am Major  
21 Ralph Periandi, Director of the Bureau of Criminal  
22 Investigation for the Pennsylvania State Police. And I  
23 will be testifying this morning on domestic violence. The  
24 Pennsylvania State Police and the law enforcement community  
25 continue to recognize the seriousness of domestic violence.



1                   In this area, the State Police  
2 responsibilities extend beyond just the enforcement of a  
3 valid protection from abuse order, commonly referred to as  
4 a PFA, and Titles 18 and 23 of the Pennsylvania  
5 Consolidated Statutes.

6                   As you may be aware, the State Police is  
7 required by law to maintain a computerized registry of all  
8 active protection from abuse orders issued in the  
9 Commonwealth. From April of 1998 to April of 1999, a  
10 period of 13 months, 48,626 PFA orders were filed. This  
11 represents an approximate monthly average of 3,740.

12                   The PFA registry is made available to all law  
13 enforcement through the CLEAN, Commonwealth Law Enforcement  
14 Assistance Network. The availability of the PFA registry  
15 through CLEAN enables law enforcement to instantly verify  
16 the existence of an active PFA order and enforce the  
17 conditions contained in that order.

18                   In addition, the PFA registry is also  
19 connected to the Pennsylvania Instant Check System, acronym  
20 of which is PICS. PICS is used by all firearms dealers and  
21 sheriffs in the Commonwealth to determine an individual's  
22 eligibility to purchase or transfer a firearm or receive a  
23 license to carry a firearm permit.

24                   PICS, therefore, prevents an individual from  
25 purchasing or receiving a firearm if they have an active

1 PFA against them which prohibits their possession of a  
2 firearm. From a law enforcement perspective, domestic  
3 violence calls are among the most threatening calls  
4 responded to by law enforcement officers.

5 In many cases, responding officers are often  
6 required to act as a mediator for the feuding parties.  
7 This unenviable position of trying to bring order to an  
8 emotionally charged confrontation often results in the  
9 individuals turning their aggression on the responding  
10 officer or officers.

11 At this point, if I could briefly digress from  
12 my prepared remarks, I was able to obtain the Pennsylvania  
13 State Police response statistics to domestic violence  
14 incidents. This is strictly for Pennsylvania State Police  
15 officers. During the calendar year of 1998, State Police  
16 troopers responded to 21,562 domestic violence incidents.  
17 This represents an approximate monthly average of 1,800.

18 Procedurally, troopers responding to domestic  
19 violence calls will first take control of the situation and  
20 then attempt to determine if one of the individuals has a  
21 PFA. Once the PFA is confirmed through CLEAN, the trooper  
22 will immediately enforce the conditions contained in the  
23 specific PFA order.

24 Where appropriate, an individual violating the  
25 PFA order will be arrested for an indirect criminal

1 contempt violation of the PFA order. In some cases, the  
2 arresting troopers may charge the individual with other  
3 appropriate violations of the Crimes Code.

4 In accordance, any laws that are passed  
5 amending Title 23 will be enforced by the department. Due  
6 to the seriousness of domestic violence and the realities  
7 of enforcing existing laws in domestic violence cases, the  
8 department supports appropriate proposals that will  
9 penalize repeat offenders.

10 With regards to House Bill 249, the department  
11 suggests removing the 72-hour limitation on charging a  
12 repeat offender and making any subsequent violation of a  
13 valid PFA order a repeat offense regardless of when it is  
14 committed. This concludes my testimony on this issue.

15 I will now be glad to answer any questions the  
16 Chairman or members of the Committee may have regarding my  
17 testimony. Thank you.

18 CHAIRPERSON COHEN: Thank you, Major  
19 Periandi -- Periandi.

20 MAJOR PERIANDI: Yes.

21 CHAIRPERSON COHEN: Correct?

22 MAJOR PERIANDI: Yes.

23 CHAIRPERSON COHEN: Okay. I just have a  
24 question on the statistics, the 21,562 State Police  
25 responses to domestic violence incidents. How many

1 municipalities do you cover, municipalities that don't in  
2 and of themselves have their own local police force?

3 MAJOR PERIANDI: I don't have that information  
4 readily available. But to impress those statistics, the  
5 seriousness of those statistics, you hit on an important  
6 point. This does not include virtually any large urban  
7 area within the Commonwealth.

8 It doesn't include any statistics from any  
9 municipality that has a local police department. I don't  
10 know off the top of my head exactly how many municipalities  
11 we provide full-time or part-time police service, but we'll  
12 get you that information in writing and forward it to you.

13 CHAIRPERSON COHEN: I'd like to see that.  
14 Just as a personal note, before, I represented five  
15 municipalities. And by the way, all five of my  
16 municipalities do have their own police force. My district  
17 is directly adjacent to the City of Philadelphia.

18 But I was the vice chair of the Police  
19 Committee when I was a township commissioner and often rode  
20 with the police. And this -- I can tell you that there  
21 were several calls that I participated in, domestic  
22 violence situations. And I think you are correct, that it  
23 then becomes the obligation of the officer to become  
24 mediator, protector, et cetera.

25 And often, the parties involved, both the

1 perpetrator and the victim, turn on the police. The first  
2 time I went on a domestic violence call, when we rang the  
3 doorbell, the captain that I was with said, Stand back  
4 because when the door is opened, it's quite possible that a  
5 frying pan will come flying through the door.

6           And first, I thought it was humorous. But  
7 then I realized that often, because of the interpersonal  
8 connections, the police are put at risk and are in danger  
9 when they're handling domestic abuse cases. I think what  
10 you've pointed out -- and domestic violence is new to our  
11 task force; although, we are pursuing the issue with vigor  
12 because it is of epidemic proportions, unfortunately, in  
13 the Commonwealth.

14           I think that 21,000 cases in the year is  
15 absolutely frightening, especially when you consider that  
16 of our over 5,000 municipalities in the state, so many of  
17 them have their own police forces. Do you get the  
18 statistics from the local police force?

19           MAJOR PERIANDI: No, we don't on domestic  
20 violence responses. We have UCR reports that come in that  
21 don't always accurately reflect strictly domestic  
22 violence-type responses. And we do get the information  
23 through the PFA registry on PFAs that are filed but not  
24 strictly on domestic violence responses.

25           That's part of the reason that we recommended

1 for consideration the elimination of the 72-hour rule, to  
2 try to reduce the likelihood of repeat offenses and,  
3 therefore, repeat responses by police departments to  
4 domestic violence incidents.

5 CHAIRPERSON COHEN: Do you know if these  
6 21,000 cases that you've responded to are -- are they all  
7 in the local municipalities that you cover, the  
8 municipalities that don't have their own police forces?

9 MAJOR PERIANDI: They could be either in  
10 municipalities where we're full time or municipalities  
11 where we're part time and at certain times of the day or  
12 throughout the week would provide initial response and  
13 full -- full service police enforcement in those areas.  
14 That's what it would include.

15 CHAIRPERSON COHEN: Are there times when you  
16 work with local municipal police forces on domestic  
17 violence issues?

18 MAJOR PERIANDI: That's correct. If we were  
19 to respond, that normally would be -- would be considered  
20 an assist and might not show up in these statistics.

21 CHAIRPERSON COHEN: I see. Okay. If you  
22 could provide us with those kinds of statistics, I think  
23 that would be helpful to us. Representative Masland, do  
24 you have any questions?

25 REPRESENTATIVE MASLAND: Yes. Thank you.

1 Just really picking up where Representative Cohen left off.  
2 It would be interesting to know the general breakdown  
3 between rural and urban areas with respect to these  
4 statistics.

5 Now, granted, most of the areas that you cover  
6 that are not represented by a police force are going to be  
7 considered rural. But I know that that's -- that there are  
8 some exceptions. And it would be interesting to know how  
9 that -- how that breaks down.

10 Now, I don't say that from the perspective of  
11 someone who would think that rural areas would be immune.  
12 I represent rural areas. I know there's plenty of problems  
13 there with respect to domestic violence. But it would be  
14 interesting to see what kind of a breakdown there is.

15 In any event, you know, the 21,000 that you  
16 handle, plus the 20-, 30,000 maybe or more that you don't  
17 handle, the statistic, the first one you gave me just  
18 absolutely boggled the mind. Maybe because I haven't been  
19 looking at statistics on this lately.

20 And I'm familiar from being an Assistant DA  
21 that this is a significant problem. But 48,000 PFA orders  
22 filed over a 12-month period is just incredible and really  
23 unnerving to know that there is that -- that high number of  
24 PFAs out there. Now, is that -- these are the actual  
25 orders filed, signed by the judge. This is not just the

1 number of petitions that have been filed for a PFA?

2 MAJOR PERIANDI: That's correct. These are  
3 temporary PFA orders and then the standard PFA orders. And  
4 that was over a 13-month period, sir. Your --

5 REPRESENTATIVE MASLAND: Well, 12, 13 months,  
6 it doesn't make me feel a whole lot better.

7 MAJOR PERIANDI: Well, you're right, your  
8 statement relative to the numbers. Also, certainly these  
9 statistics are a function of population. In the urban  
10 areas with more population, you're going to have a greater  
11 likelihood for -- for a greater number of domestic violence  
12 incidents or domestic violence calls.

13 One statistic that I do have -- I brought the  
14 statistics relative to all our troops and all our stations  
15 also, which may give you some example. If I use Troop B,  
16 which is in the southwestern part of the state, Troop B  
17 Washington as an example, in Troop B Washington last year,  
18 they handled 3,095, almost 3,100 domestic violence calls.

19 The Finley Station, which is one of five  
20 stations in that troop, handled 2,437 of those calls. So  
21 you can see the Finley Station handles an area that is much  
22 more heavily populated, much more urbanized than some of  
23 the other stations within that particular troop.

24 Troop K Philadelphia handled 4,900. The  
25 Philadelphia Station handled 3,200 of the 4,900. And the



1 Philadelphia Station is responsible for areas particularly  
2 right outside Philadelphia in the Montgomery County area.  
3 Skippack Station handled almost 1,400 of that total for  
4 Troop K.

5           So I think your -- your observation is -- is  
6 extremely accurate, that if you add in the statistics from  
7 all of the police departments in Pennsylvania, particularly  
8 some of the larger urban departments, I don't think you  
9 would -- you would be going too far out on a limb to talk  
10 about many of these statistics on domestic violence  
11 response calls.

12           Now, the PFAs we know is an accurate number  
13 because they all come into the PFA registry. But domestic  
14 violence response calls, the number that I gave you would  
15 easily double, very possibly triple.

16           REPRESENTATIVE MASLAND: Thank you. One other  
17 question. You talked about the 72-hour limitation of House  
18 Bill 249. We've gone from 72 hours as written to 5 days,  
19 maybe 7 days with the first testifier. And now you've said  
20 to open it up completely.

21           I guess you could say that we have other  
22 criminal statutes that recognize repeat offenders or have  
23 some -- some penalty, I think, of the DUI laws. Certainly,  
24 if you have a second offense within 7 years, you have  
25 heightened penalties. And maybe it's akin to that.

1           We ought to think about expanding this. But I  
2 think at least the 72-hour suggestion was a good idea as to  
3 what the -- what the perfect number of days or months is.  
4 That's something that at least I'm sure our staff will be  
5 looking at over the next -- next few weeks.

6           MAJOR PERIANDI: Well, we considered also that  
7 many PFA orders are for a period of one year. So we  
8 thought it would be good at least for the duration of the  
9 PFA order to extend it throughout the duration of that  
10 order, which might be one year.

11           The second thing that we -- that we looked at  
12 that you may want to consider is the way the 72-hour  
13 written -- or 72-hour rule is written currently, it talks  
14 about within 72 hours of a conviction of a -- for a prior  
15 violation of the PFA order.

16           And you may want to consider wording that  
17 would cover that period of time between when an individual  
18 violates the order and when in fact they're actually  
19 convicted of that violation to include that any offense  
20 subsequent to that original offense, if in fact the  
21 individual is found guilty and convicted of the -- of the  
22 initial offense, that then they would -- they would be  
23 susceptible to the repeat violator provision to cover that  
24 gap between the date -- or the time of the offense and when  
25 the individual's actually convicted.

1                   REPRESENTATIVE MASLAND: That might be tough  
2 to do. I'm just trying to think. Again, going back to DUI  
3 law, it's my recollection that some people have been lucky  
4 enough, if you will, defendants who actually go out and get  
5 arrested two or three times before they've actually gone to  
6 court on the first charge. So they technically have two or  
7 three first offenses.

8                   MAJOR PERIANDI: That's correct.

9                   REPRESENTATIVE MASLAND: I guess we'd have to  
10 look at what the Sentencing Commission, some of those other  
11 folks might say about that -- that general analogous  
12 issue. That's a good thought. Thank you.

13                  CHAIRPERSON COHEN: Thank you, Representative  
14 Masland. Gentlemen, thank you very much. I think your  
15 testimony was quite insightful and very helpful in our  
16 quest for helping people and victims of domestic violence.  
17 We thank you.

18                  MAJOR MORRIS: Thank you.

19                  MAJOR PERIANDI: Thank you very much. And  
20 we'll get those responses back to you.

21                  CHAIRPERSON COHEN: Oh, please. Yes. Thanks.  
22 I think just for own basic knowledge, again, for us to be  
23 able to tell our fellow legislators about the epidemic of  
24 domestic violence because there's certainly those of us on  
25 the Task Force who are not aware of how dangerous and how

1 running rampant the situation is until we started to delve  
2 into it. So I think it's important that we have as much,  
3 if you will, ammunition as possible to extend the  
4 information to our fellow legislators. Thank you.

5 The next two people to testify will be Susan  
6 Emmons, Esquire, a Senior Attorney, and Mark Zaccarelli,  
7 Esquire, a Staff Attorney with the Pennsylvania Coalition  
8 Against Domestic Violence. Thank you again for being here.

9 MS. EMMONS: Good morning.

10 MR. ZACCARELLI: Good morning.

11 CHAIRPERSON COHEN: Good morning. Ms. Emmons,  
12 I assume you're going first?

13 MS. EMMONS: Yes.

14 CHAIRPERSON COHEN: Okay. You may proceed at  
15 any time.

16 MS. EMMONS: On behalf of the Pennsylvania  
17 Coalition Against Domestic Violence, I'd like to thank you  
18 for providing us with the opportunity to respond to House  
19 Bill No. 249, Session of 1999. First, I'd like to thank  
20 you for your interest in the issue of enhanced penalties  
21 for repeated violations of a protection from abuse order.

22 As a former prosecutor, I handled many cases  
23 where I felt some type of mandatory enhanced penalty for a  
24 repeat offender would have made an immediate impression on  
25 a defendant who continued to disregard a judge's order.

1 And I applaud your intent in that regard.

2           However, as a former prosecutor with five  
3 years of experience in enforcing protection from abuse  
4 orders, five years of experience in the criminal justice  
5 system and, even more importantly, five years of  
6 prosecuting crimes of violence against women, I'm here to  
7 speak against the proposed legislation as it is presently  
8 drafted.

9           Presently, the Protection From Abuse Act  
10 provides for a maximum penalty of a \$1,000 fine and a  
11 6-month period of incarceration for a violation of a  
12 protection from abuse order which is an indirect criminal  
13 contempt. Since the penalty is less than one year, this  
14 kind of case does not require a jury to decide the facts in  
15 the case. And of course, defendants are entitled to have  
16 counsel.

17           An indirect criminal contempt charge is heard  
18 by a judge of the court of common pleas and, in most  
19 counties, will be heard by the issuing judge who has the  
20 benefit of the knowledge of the case history. The statute  
21 requires a hearing on this charge to be held within ten  
22 days of the filing of the charge.

23           By the swift nature of the intervention,  
24 measures can be taken by the court to fashion protection  
25 for a petitioner under the act to ensure the petitioner's

1 immediate safety. The court has, again, the discretion to  
2 have swift intervention to consider the needs of the family  
3 members at the time that the sentence is imposed.

4 House Bill 249 would take away the immediate  
5 and preventative aspect of this relief. The Commonwealth  
6 has up to one year after the filing of a criminal complaint  
7 to proceed with the charges. More often than not, justice  
8 in the criminal legal system is not swift.

9 The present window of ten days for indirect  
10 criminal contempt charges allows for proper investigation  
11 as well as immediate intervention. The criminal justice  
12 system, of course, intervenes after an offense occurs and  
13 isn't designed to prevent an offense from occurring,  
14 whereas the Protection From Abuse Act is designed to  
15 prevent further abuse from occurring.

16 Additionally, case dispositions are more  
17 likely than not to be disposed of by a plea agreement; and  
18 those agreements must fit within the sentencing guidelines.  
19 And the guidelines for what you have proposed for an  
20 individual with no criminal history would call for  
21 restorative sanctions which means restitution and community  
22 service.

23 And I believe it was the intent of the bill to  
24 provide some teeth, some stiffer penalties such as more  
25 jail time. And in fact, under the sentencing guidelines,

1 this would not be the case. Furthermore, as time does go  
2 on, as the case takes longer and longer to get through the  
3 system, pressure is brought to bear upon a complainant to  
4 drop charges. And without witness and evidence, there can  
5 be no prosecution.

6 In Pennsylvania, the Protection From Abuse Act  
7 as it presently stands does provide adequate measures to  
8 protect petitioners. A repeat offender can be sentenced up  
9 to six months for each -- of incarceration for each  
10 offense. An offender who stalks a victim can be prosecuted  
11 for stalking.

12 And if the offender has previously been  
13 convicted of an indirect criminal contempt, the offense is  
14 graded as a felony. An offender who commits an act of  
15 physical violence or who threatens physical harm can be  
16 charged with assault or terroristic threats.

17 A prosecutor can charge an offender with both  
18 a substantive criminal offense and a PFA violation when the  
19 charges are properly drafted. Police officers,  
20 prosecutors, and judges have the tools they need to put  
21 teeth in the enforcement of the Protection From Abuse Act.

22 Police officers, prosecutors, judges, and  
23 probation officers need training to avoid certain pitfalls  
24 such as improper charging of violations, improper bringing  
25 of criminal charges which results in double jeopardy,

1 inflexible sentences rather than creative sentencing, and  
2 inappropriate or inadequate supervision of an offender.

3           Pennsylvania courts need training in the  
4 federal laws which prohibit any defendant who has a final  
5 PFA from possessing weapons. With additional training,  
6 Pennsylvania does have the tools it needs to make the  
7 Commonwealth safer for its victims of domestic violence.

8           The intent of this legislation is to provide  
9 stiffer penalties for repeat violators of protection  
10 orders. We would support a mandatory minimum sentence for  
11 a second noneconomic violation of a protection from abuse  
12 order of 48 hours of incarceration.

13           And again, this is sort of going along with  
14 what Representative Masland talked about with the mandatory  
15 sentencing with DUI. It's similar to that concept. While  
16 this takes a small measure of discretion away from the  
17 sentencing judge, this would still allow the sentencing  
18 judge to craft an appropriate sentence considering all of  
19 the relevant factors presented to and known by the court.

20           The Pennsylvania Coalition Against Domestic  
21 Violence applauds your efforts to make the Commonwealth  
22 safer and will work with you to fashion an even better  
23 Protection From Abuse Statute to protect victims of  
24 domestic violence. Thank you.

25           CHAIRPERSON COHEN: Thank you, Ms. Emmons.



1 Before we indulge in questioning, I think, Mr. Zaccarelli,  
2 why don't we hear from you. And then we can question, and  
3 you can decide who wants to answer our questions.

4 MR. ZACCARELLI: Okay. I will be addressing  
5 specifically House Bill 359, both the addition of the  
6 substantive dating relationship to the Protection From  
7 Abuse Act as well as the addition to court ordered  
8 counseling for defendants.

9 It has been the position of the Coalition that  
10 Pennsylvania is among one of 20 states that currently  
11 provide protections to individuals in dating relationships.  
12 Title 23, Section 6102(a) covers family or household  
13 members, sexual or intimate partners, or persons who share  
14 biological parenthood.

15 It is the language "intimate partners" which  
16 has traditionally been interpreted by Pennsylvania courts  
17 to include sexually un consummated dating relationships.  
18 The use of the word "or" suggests that the legislature  
19 wished to protect abused persons in relationships not  
20 sexual in nature.

21 The word "intimate" covers those relationships  
22 that were never sexually consummated and, thus, would  
23 include dating relationships. To interpret the statute any  
24 other way would give no protection to abused women in  
25 un consummated dating relationships and would, in effect,

1 penalize or leave unprotected those women who are not  
2 sexually active or cohabiting with their battering partner.

3           Some judges in the Commonwealth have agreed  
4 that it would be unreasonable to assert that the  
5 legislature intended to create such a sexual litmus test  
6 requiring proof of sexual intercourse by nonmarried,  
7 noncohabiting dating parties in order to obtain protection  
8 from abuse under the current language of the act.

9           It would be contrary to the public interest  
10 and unreasonably discriminate against this class of  
11 vulnerable victims. In my own practice as an attorney of  
12 legal services for several years, this exact interpretation  
13 came into question during a protection from abuse hearing.

14           I was representing a woman who had only been  
15 dating the individual for a very short period of time. The  
16 respondent's defense attorney asserted that the  
17 relationship was not covered under the statute because they  
18 had never been sexually active nor were they currently  
19 cohabiting.

20           I expressed the same interpretation to the  
21 court that I just presented to this Committee, and the  
22 court agreed and allowed my client to proceed with her  
23 protection order. The court recognized the importance of  
24 broad interpretation of persons eligible for protection  
25 under the act in order to achieve the greater goal of

1 safety and protections for persons at risk of future  
2 violence from batterers whom they had dated.

3           The Coalition recognizes that there are some  
4 jurisdictions within the Commonwealth that may not agree  
5 with this interpretation. Since there is no appellate case  
6 law that definitively addresses this issue, interpretation  
7 of this provision will continue to vary among jurisdictions  
8 within the Commonwealth. For that reason, the Coalition  
9 appreciates the work of this Committee to clarify the  
10 ambiguity in the statute but urges the Committee to amend  
11 the proposed language.

12           Currently, the proposed language of House Bill  
13 359 attempts to definitively include dating relationships  
14 under the safeguards of the Protection From Abuse Act.  
15 However, it would actually sharply limit as -- currently,  
16 as written, it would sharply limit the covered  
17 relationships by requiring courts to determine that the  
18 relationship is a substantive one.

19           This language would require courts to use a  
20 three-pronged analysis to determine whether or not there is  
21 a dating relationship that qualifies the abused person for  
22 the protections under the act. Such an analysis could  
23 actually result in less protection for those in dating  
24 relationships than they are given under the interpretation  
25 of the act that is currently embraced by most courts.

1           The judge would be asked to determine if the  
2 relationship was current or fairly recent. Such a time  
3 frame restriction could actually prevent a woman who is  
4 stalked or assaulted after the relationship has ended from  
5 getting protection.

6           The current language of this act places no  
7 such time restriction on any of the relationships now  
8 covered under the act. Please note my colleagues inform me  
9 that the time limitations related to eligibility for  
10 protection were explicitly rejected by the original framers  
11 of the statute.

12           Under the proposed language, if a woman is  
13 assaulted by her ex-sexual partner a year after the end of  
14 the relationship, she would still be covered by the act,  
15 while a nonsexual dating relationship may not be covered.  
16 Courts might determine that a dating relationship which  
17 occurred one year prior to the assault was not fairly  
18 recent regardless of the harm to the woman who had been in  
19 the nonsexual dating relationship.

20           National data and more than 20 years of  
21 experience under the act reveal that stalking and assault  
22 by a former spouse or intimate partners may occur years  
23 after separation, thus compelling a compassionate and just  
24 society to extend protections for the full period of risk.

25           Furthermore, the requirement that the courts

1 must determine if there is a possible sexual attraction  
2 presents obvious difficulties for the judiciary. Do we  
3 really want judges to have to determine if hand-holding, a  
4 set number of kisses, spoken words, or giving of gifts  
5 would constitute a sexual attraction?

6 I'm not sure if anyone in this room would be  
7 able to adequately determine what constitutes a sexual  
8 attraction. Such language would surely result in  
9 litigation to clarify this requirement. The proposed  
10 language also requires that the court determine that the  
11 relationship has been ongoing for a substantial period of  
12 time.

13 Again, such a requirement would result in  
14 litigation in order to clarify what constitutes a  
15 substantial period of time in a dating relationship. I  
16 must also add that no such durational requirement exists  
17 for any other relationship under the act.

18 For example, a woman could be beaten by her  
19 live-in boyfriend of three weeks; and she would be covered  
20 under the act, while a woman who is egregiously assaulted  
21 and threatened with continuing violence after only a  
22 three-week nonsexual dating relationship may be forced to  
23 argue to the court that the relationship lasted for a  
24 substantial period of time.

25 Again, the proposed language could result in a

1 denial of her protection order. The relief that would be  
2 thus available under the act would be unrelated to the  
3 risk. Notwithstanding the peril of future abuse, an abused  
4 person who had been in a nonsexual dating relationship for  
5 a short period would be beyond the protections of the act  
6 and virtually without remedy.

7           The final step of the proposed three-prong  
8 test requires the court to determine if there was  
9 reasonably frequent interaction between the parties.  
10 Again, the legislation is asking the court to examine  
11 dating relationships in a way that none of the other  
12 relationships must be examined.

13           This requirement again potentially causes  
14 confusion for the courts and could result in litigation to  
15 determine what is reasonably frequent interaction. The act  
16 puts no such qualifiers on any of the other protected  
17 relationships.

18           I must point out that a person who is  
19 assaulted by their sexual partner after a onetime only  
20 sexual encounter would be covered under the act, while the  
21 proposed legislation could actually prevent someone in a  
22 longer term, nonsexual dating relationship from being  
23 protected.

24           I believe that if it is the goal of the  
25 proposed legislation to broaden the relationships covered

1 under the act, then we must not create legislation which  
2 could actually limit it. Twenty states currently include  
3 dating relationships under their protection order statutes.

4 Of these 20 states, approximately 14 use  
5 simple straightforward language to specifically cover  
6 dating relationships. States like Illinois and Michigan  
7 simply use the term "dating relationship" without any  
8 restrictive language.

9 Other jurisdictions, such as the District of  
10 Columbia, use language such as "romantic relationship not  
11 necessarily including a sexual relationship" with no  
12 further qualifying language. These jurisdictions include  
13 dating relationships by simply stating it and not requiring  
14 any restrictive language.

15 Other states, like New Hampshire, simply  
16 define the term "intimate" to include "persons currently or  
17 formerly involved in a romantic relationship whether or not  
18 such relationships were ever sexually consummated."

19 The Coalition recommends alternative direct  
20 language similar to a majority of states which would read  
21 as follows: Persons currently or formerly in a dating  
22 relationship, whether or not such relationship included  
23 sexual activity.

24 Such language clearly indicates the coverage  
25 of dating relationships without setting up any cumbersome

1 interpretive test that may prevent persons in dating  
2 relationships from being protected.

3 I will now address the proposed change to  
4 Title 23, Section 6108. The proposed language seeks to  
5 clearly allow the courts to order a defendant in a  
6 protection from abuse action into counseling. Again, the  
7 courts currently have such discretion under the existing  
8 provisions of the act.

9 Title 23, Section 6108(10) allows the courts  
10 to grant any other appropriate relief sought by the  
11 plaintiff. This would include counseling, if requested, by  
12 the plaintiff. The Coalition does not oppose this  
13 clarification but again suggests alternative language.

14 The Coalition would suggest that the language  
15 read as follows: Directing the defendant to participate in  
16 a batterer intervention program which is compliant with  
17 statewide standards. The Coalition has promulgated  
18 standards that are in effect statewide and are currently  
19 followed by the Batterer Intervention Services Network, the  
20 statewide professional association of providers.

21 Please note that PCCD has accepted these  
22 standards as interim operating guidelines. The Coalition  
23 feels strongly that batterers be treated in appropriate  
24 program centers which deal specifically with domestic abuse  
25 and comply with standards universally followed by these



1 specialist service providers.

2           Such programs work with batterers to hold them  
3 accountable and operate with great concern for the safety  
4 of domestic violence victims. In closing, I would again  
5 like to thank the Task Force for its efforts to provide  
6 leadership and clarification on these issues related to  
7 domestic violence. And I would be happy to answer any of  
8 your questions.

9           CHAIRPERSON COHEN: Thank you very much. I  
10 think it's interesting -- and I don't know if you were here  
11 when Counsel Dalton -- when Judge Domitrovich, our first  
12 person to testify, was speaking. Counsel Dalton had  
13 mentioned New Hampshire, and I'm glad to see you've also  
14 mentioned it.

15           She also mentioned New Jersey, the New Jersey  
16 statute which includes any person who has been subjected to  
17 domestic violence by a person with whom the victim has had  
18 a dating relationship. So I think that we can add that.  
19 And I appreciate your adding some of these -- these other  
20 states as well.

21           MR. ZACCARELLI: The Coalition does have all  
22 of the protection order statutes for the entire country.  
23 So I mean, we could provide any information that would be  
24 helpful to the Committee.

25           CHAIRPERSON COHEN: Fine. We appreciate it.

1 I believe Representative Masland has some questions.

2 REPRESENTATIVE MASLAND: Yes. Thank you. I  
3 guess we see the reason why we have hearings such as this  
4 this morning. Thank you both for your input. I guess the  
5 best thing is that we don't need to change the number of  
6 House Bill 359. The number is okay. It's just everything  
7 in it. Seriously --

8 MR. ZACCARELLI: We just have some  
9 suggestions.

10 REPRESENTATIVE MASLAND: Well, those are good  
11 suggestions. And as I read over it, I mean, I have to  
12 admit, I looked at substantive and some other things. And  
13 I hadn't looked at the New Hampshire statute as Counsel  
14 Dalton has. But I think you point out some very good  
15 things. And we always need to be careful about unintended  
16 consequences.

17 Certainly, the intent of the prime sponsor was  
18 laudable. But the fact that you might just open up more  
19 questions and really using your -- your legal minds, just  
20 give the -- the defense attorneys more opportunity to  
21 nitpick on how long this relationship was and when it  
22 actually started.

23 And I know some people that occasionally -- a  
24 couple that occasionally will argue over when their first  
25 date was. Was it when they had that dinner in the

1 revolving restaurant, or was it when they took a bike ride  
2 to the cemetery? Well, the wife contends that a bike ride  
3 to a cemetery is not a date. The husband differs.

4 But, you know, you get into those kind of  
5 issues. So I think some clear-cut language, as you suggest  
6 and as we see with New Hampshire, is certainly the way to  
7 address House Bill 359. So I thank you for that, Mr.  
8 Zaccarelli.

9 Turning to 249. Ms. Emmons, you're basically  
10 saying that you feel the law is best the way it is right  
11 now because of the more immediate opportunity to address  
12 the situation?

13 MS. EMMONS: Yes. Essentially, the way that  
14 the statute's presently drafted, you're kicking that up  
15 into the criminal system --

16 REPRESENTATIVE MASLAND: Right.

17 MS. EMMONS: -- because you've got a one-year  
18 penalty. And with all the protections, rights, and length  
19 of time it takes to prosecute those cases, if you leave it  
20 in the contempt arena, the judges who are familiar with the  
21 cases can act on those in an appropriate fashion.

22 There are -- if, for example, you have a  
23 repeated offender who's just, like, say sending dozens of  
24 love letters, you can charge stalking on that. And if he's  
25 already got a conviction, that becomes a felony. So we

1 have some excellent penalties and some statutes in  
2 Pennsylvania. People need to use those.

3           It was really rare for a judge to impose six  
4 months of incarceration for a violation. You don't get six  
5 months of incarceration on a misdemeanor offense in the  
6 criminal justice system. So the intent, I understand the  
7 intent. And I felt that way myself.

8           I wish they'd just send him to jail for six  
9 months so he'd get the point and to protect the victim.  
10 But you can do that without -- without the -- without  
11 kicking it up into the criminal. If you want to have an  
12 enhanced penalty, have a 48 hours mandatory minimum. That  
13 way, you're still allowing the person to have their job.

14           I mean, you're still putting some teeth into  
15 it; but you're not taking away the swift remedy that  
16 already exists under the statute.

17           REPRESENTATIVE MASLAND: Well, as with Mr.  
18 Zaccarelli, I want to thank you for that input because we  
19 do want to make it tougher. But we want to make it  
20 effective, too. And allowing for the wheels of justice to  
21 grind forward or waiting for them to grind forward is  
22 sometimes -- it takes a little bit too long.

23           So I'm going to have to look more closely at  
24 the proposal myself. I like the idea of 48 hours mandatory  
25 minimum. That -- that, I think, is a good suggestion. How

1 we incorporate that into the -- to the proposal is -- is  
2 something we'll have to think about. But thank you for  
3 your input.

4 CHAIRPERSON COHEN: Thank you, Representative  
5 Masland. I'd like to also note the presence of  
6 Representative Carn from Philadelphia. Welcome. Do you  
7 have any comments or questions?

8 REPRESENTATIVE CARN: No.

9 CHAIRPERSON COHEN: Okay. Representative  
10 Daley?

11 REPRESENTATIVE DALEY: No. Thank you.

12 CHAIRPERSON COHEN: Counsel Dalton?

13 MS. DALTON: No.

14 CHAIRPERSON COHEN: Well, we want to thank you  
15 again. Your input has been exceedingly helpful to us. We  
16 do have good intentions. And we want to write a model  
17 statute. So certainly, your input is very, very helpful.  
18 And we thank you for that.

19 MS. EMMONS: Thank you.

20 MR. ZACCARELLI: Thank you.

21 CHAIRPERSON COHEN: Anyone else that is  
22 present may -- and not scheduled to testify -- may submit  
23 written information to the Task Force. And we'd be  
24 certainly happy to examine it and take your suggestions  
25 into consideration. We have no one else scheduled to

1 testify this morning.

2                   So I want to thank all of you for being  
3 present. And those of you that testified, your input has  
4 certainly been very, very helpful. Thanks to the  
5 Representatives and members of the Task Force for being  
6 here. That concludes this hearing from the Domestic  
7 Relations Task Force.

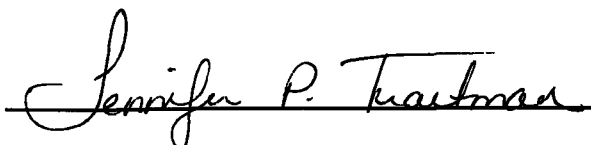
8                   (Whereupon, at 10:14 a.m., the hearing  
9 adjourned.)

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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  
P.O. Box 1383  
2nd & W. Norwegian Streets  
Pottsville, Pennsylvania 17901