

1 COMMONWEALTH OF PENNSYLVANIA
 2 HOUSE OF REPRESENTATIVES
 3 JUDICIARY COMMITTEE

4 In Re: Informational Meeting on Protection From Abuse
 5 House Bills 375, 2143, 2316, 2401, and 2403

6 * * * * *

7 Stenographic record of hearing held Hershey Public
 8 Library, 701 Cocoa Avenue, Hershey, Pennsylvania

9 Thursday,
 10 March 25, 2004
 11 10:00 a.m.

12 * * * * *

13 HON. DENNIS O'BRIEN, CHAIRMAN

14 MEMBERS OF HOUSE OF REPRESENTATIVES

15 Hon. Kevin Blaum Hon. Katie True
 16 Hon. Patrick Browne Hon. Melissa Murphy Weber
 17 Hon. Mark McNaughton

18 Also Present:

19 Hon. John Payne
 20 Michael Swoyer, Executive Director
 21 David Thomas, Majority Counsel
 22 Michael Fink, Research Assistant
 23 Michael Manzo, Minority Executive Director
 24 Jane Mendlow, Minority
 25 Beryl Kuhr, Minority Counsel

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1 CHAIRMAN O'BRIEN: Good morning, everyone. I
2 would like to call this informational hearing of the
3 Judiciary Committee to order. My name is Representative
4 Dennis O'Brien. I am the Chairman of the committee. I
5 would like to introduce from my left Representative True,
6 Representative Weber, Representative Payne. We have a very
7 important issue that compelled us to call this hearing to
8 order. It deals with protection from abuse orders, which
9 is a very serious issue facing our society.

10 There's a package of bills that we're going to
11 discuss today. The first is sponsored by Representative
12 Weber, that's House Bill 2403. It deals with comprehensive
13 amendments to the protection from abuse orders. House Bill
14 2143 is Representative Payne's bill. That also deals with
15 comprehensive reform. We have House Bill 2401, which is
16 Representative Gannon's bill, which will call for a license
17 suspension for PFA violators. House Bill 2316,
18 Representative Cruz's bill, that applies for Masters for
19 emergency PFAs, and Representative Youngblood's bill, House
20 Bill 375, employment leave for domestic violence victims.

21 At this point, I know that we're expecting other
22 legislators to join us. I would just like to ask
23 Representative Weber if she would like to have some opening
24 remarks.

25 REPRESENTATIVE WEBER: Thank you, Mr. Chairman.

1 I want to thank everyone who is here today.
2 This legislation that I have introduced and the companion
3 legislation that other members both in the House have
4 introduced deal directly with some of the shortcomings, as
5 I will call them, in battling domestic violence. And I
6 come before the panel today as a member of the House, as a
7 member of Judiciary, but also as an individual who was a
8 former prosecutor in Montgomery County who ran our domestic
9 violence unit, and this was a unit in Montgomery County
10 that grew out of the STOP grant money that I know many of
11 you in this room were influential in us having. It was an
12 opportunity for me to learn firsthand what we still need to
13 battle, and it's not just convincing a victim to leave her
14 abuser, but it is convincing police, it is convincing
15 courts, it is convincing employers on down the line of just
16 the serious magnitude and the full scale assault both
17 physically, mentally, emotionally that domestic violence
18 has on the victim and on the victim's family.

19 Interestingly enough, because we had a later
20 hour today, I had an opportunity to watch "Good Morning,
21 America," and just this morning there was a woman on the TV
22 who was interviewed, she was able to escape from her
23 husband after 10 years of being locked in her home. He
24 nailed the windows shut, had tin foil over the windows, and
25 had double-bolted the doors so that when he left in the

1 morning with the kids to take to school, she was left
2 inside the home. He would never let her out of his sight
3 when they did go outside of the home.

4 And it was interesting because the interviewer,
5 in a compassionate way, said many people are going to say
6 to you why, how, where was your family, how is it that you
7 didn't try to get out after over 10 years? And she was
8 actually speechless, which I expected her actually to be,
9 given my knowledge of the issue, in that she will never be
10 able to explain to those who don't understand it. However,
11 we can hope that she can be used as an example to maybe
12 somebody who is just at that point of maybe wanting to get
13 their arms around it.

14 So I would like to commend actually
15 Representative Payne for taking the lead on pushing some of
16 the legislation and allowing, and the Chairman who allowed
17 this package of bills to move. Because my bill I know has
18 already been the subject of quite a lot of controversy
19 because I'm attacking the weapons provision, as well as a
20 few others, provisions that I battled as a prosecutor and I
21 am sure will continue to battle now as a member, but it is
22 certainly these are amendments that need to happen to our
23 protection from abuse laws because they will only seek to
24 strengthen a victim's rights and help others who want to
25 help a victim and the family.

1 So, thank you, Mr. Chairman.

2 CHAIRMAN O'BRIEN: Thank you, Representative
3 Weber, for your expertise and your interest in this very
4 important issue.

5 As Representative Weber has just said,
6 Representative Payne has been dogged in his interest and
7 lobbying to have a hearing and have some action taken on
8 this issue, so I'd like to recognize Representative Payne
9 for some opening remarks.

10 REPRESENTATIVE PAYNE: Thank you, Mr. Chairman.

11 First, official greetings and welcome to the
12 beautiful community of Hershey and Derry Township, part of
13 the 106th District. I'm proud to welcome my colleagues to
14 my community where I was born and raised. I might also
15 point out that the Chairman has been very kind in his
16 remarks. There were times on the House floor when he
17 referred to me by my last name, Payne, because I would
18 constantly turn around, he sits behind me, and say, I need
19 this hearing. We need more work on PFAs. And I'm very,
20 very pleased to see my colleagues here, that this is not
21 just a bill by one individual, by one Representative, it is
22 a package of bills that we've worked together as a team,
23 and I'm proud of that. I'm proud of the Chairman's
24 leadership in holding this hearing and all my colleagues'
25 efforts in developing a team approach to this issue,

1 because it is not a single source issue.

2 In closing, I must tell you that this is a
3 personal issue for me. Not only did I have a constituent
4 murdered in Middletown with her two children on Christmas
5 day in 2002, but my current wife, when she was married the
6 first time, was abused, and I can personally attest to
7 those problems that exist out there and the problems we
8 have with PFAs and the fact that they just appear not to
9 carry the weight of what we think they should and be
10 enforced the way we think they should.

11 So again, Mr. Chairman, thanks very much.

12 CHAIRMAN O'BRIEN: Thank you, Representative.

13 And Representative Payne reminded me of
14 something that I normally do. He welcomed me to his
15 legislative district and to Hershey. I usually confess
16 that I'm from Philadelphia flat out because people tend to
17 hold it against me later.

18 But I'd like to recognize Representative Kevin
19 Blaum, the Democratic Chair.

20 REPRESENTATIVE BLAUM: Thank you, Mr. Chairman.

21 I hail from Wilkes-Barre, Pennsylvania, and when
22 the Wilkes-Barre Penguins come to Hershey, we're usually
23 not very welcomed. We certainly weren't treated very
24 kindly a few days ago. However, tomorrow night it's our
25 turn in Wilkes-Barre.

1 This is a very serious day, a very serious issue
2 that this committee undertakes. It is important to all the
3 members here, too. To listen to what you have to say, to
4 take that testimony and incorporate it into this
5 legislation, if necessary to keep improving it. I too
6 congratulate Chairman O'Brien for convening this.
7 Representative Payne, I think it's important that we come
8 here to his district and to consider these bills. We thank
9 all of you for being here today. As I said, this is a very
10 important issue to all of us which we take very seriously,
11 and it is our intent and our hope to move this legislation
12 in the near future.

13 With that, Mr. Chairman, I think we can begin.

14 CHAIRMAN O'BRIEN: Thank you, Representative
15 Blaum.

16 At this time I would like to open the hearing by
17 asking Judy Yupcavage, who is the Public Policy and
18 Information Manager for the Pennsylvania Coalition Against
19 Domestic Violence; Amy Sousa, the Policy Specialist for the
20 Pennsylvania Coalition Against Domestic Violence; and Kathy
21 Dyabelko to come forward to present testimony.

22 MS. YUPCAVAGE: Could we also invite Susan
23 Evans, our senior staff attorney, to come and sit with us
24 also?

25 CHAIRMAN O'BRIEN: She'd be most welcome. Thank

1 you.

2 MS. YUPCAVAGE: Good morning.

3 CHAIRMAN O'BRIEN: Good morning.

4 MS. YUPCAVAGE: This is my hometown also, so
5 it's nice not to have to come too far, and I thank
6 Representative Payne for hosting this very important
7 hearing. We do a series of educational programs in school
8 to children, and it's called, "It's not Always Happy at my
9 House." And regrettably, there are so many homes in this
10 Commonwealth that there is so much unhappiness and so much
11 violence. I've had the responsibility for more than 15
12 years of tracking and chronicling the fatal incidents of
13 domestic violence, and we've had them right here in the
14 sweetest place on earth, and this past year we've had the
15 unfortunate homicides to occur in places like Normalville,
16 where one woman was burned to death. Someone else was
17 fatally shot in Harmony Township. One victim was brutally
18 beaten and strangled in Prospect, while another person lost
19 his life on Liberty Street. I mean, there are so many
20 places in this Commonwealth where families are not safe.
21 So I appreciate the opportunity to come this morning to
22 talk about the protections and legal strategies that we
23 would like to work with you on to make Pennsylvania safer.
24 So, let me start with my comments here.

25 I want to start, I think, first by thanking you.

1 We have been invited before this committee before, and it
2 is an honor and a privilege to be able to talk with you and
3 to convey the critical nature of domestic violence. And we
4 appreciate the fact that you respect and respond to the
5 voices of both victims and advocates and that, moreover,
6 you use the power of your office to make a positive
7 difference in the lives of victims and your constituents,
8 and these are lives that but for your actions could be lost
9 to the crime that we know as domestic violence in this
10 State.

11 Today we want to talk about proposals before the
12 committee that will strengthen civil protection orders,
13 impose additional sanctions for repeat violators of these
14 orders, and establish reasonable employment protections for
15 victims. Pennsylvania made legislative history in 1976
16 with the passage of the most comprehensive Protection From
17 Abuse Act in the nation. From the outset, this law was a
18 work in progress. Its implementation, enforcement, is
19 continuously monitored and gaps are identified, remedies
20 are deliberated, drafted, and enacted. One of my very first
21 tasks when I joined the coalition 17 years ago was to come
22 before the House Judiciary Committee to resolve issues
23 around a package of amendments to the Protection From Abuse
24 Act and to convince the committee to move forward, which it
25 did, and that was comprehensive amendments in 1988. We

1 have since amended the Protection From Abuse Act with
2 significant amendments in 1994, and here we are 10 years
3 later back at the table looking for increased protections.
4 So here I am today.

5 So what can I tell you about the proposed
6 legislation? I can tell you that it is the product of
7 extensive discussion and deliberation by a cross-section of
8 advocates and professionals, including Judiciary staff who
9 are here today, Pennsylvania State Police, the Office of
10 Victim Advocate, Pennsylvania District Attorneys and
11 Sheriffs Association, and, of course, significant input
12 came from the victims who seek protections and relief
13 through the act.

14 I can also tell you that despite our very best
15 intentions, regrettably, this law is never going to save
16 every person who obtains a protection order. We can only
17 hope that with each improvement we make to the law, more
18 can be saved. On the other hand, Pennsylvania's PFA law
19 will continue to have a powerful and positive impact on the
20 greatest majority of individuals who pursue this civil
21 remedy. Because of the unique relief available under the
22 PFA Act, families are often spared the prospect of poverty
23 and homelessness, and children don't have to be uprooted
24 from their homes, schools, and neighborhoods.

25 I think it's even more important today with a

1 pending law in the Senate that would accelerate the
2 eviction process for families in this State for tenants,
3 and it's going to have a tremendous impact if it's enacted
4 and signed into law on families of domestic violence.

5 In addition, communities across the Commonwealth
6 are enacting nuisance ordinances that actually fine
7 landlords for failure to evict tenants where police have to
8 come to their homes. It's been happening in different
9 parts of the State. And victims, if police are called for
10 domestic violence, if they're called more than several
11 times, these ordinances call for a fine on landlords for
12 failure to evict. The PFA law is a very unique remedy
13 because plaintiffs can have the troublesome and battering
14 and abusive partner evicted and they're allowed to remain
15 in the home and to have that safety and security of not
16 being uprooted. It's very important in today's climate of
17 what's going on.

18 So we see the PFA act as holding the promise of
19 justice for victims of domestic violence, and we see it up
20 to you to ensure that that promise of justice is attainable
21 and available. And I think I would like to introduce Kathy
22 Dyabelko, and we provided some information about the
23 circumstances of her daughter's death. Her daughter did
24 attempt to seek relief under the Protection From Abuse Act,
25 and unfortunately, the protections just weren't enough to

1 save her daughter, and Kathy is here today to talk about
2 her support for the amendments and how she sees them
3 preventing future tragedies.

4 MS. DYABELKO: Thank you, and I would like to
5 thank each and every one of you for allowing me to be here
6 today, but for each of you being here so that another
7 mother might not have to sit here in front of anyone else.

8 As Melissa had stated, as a victim of domestic
9 violence, there are no words, and I sit here and I go
10 through everything in my head and prepare wonderful
11 speeches for all of you, but the words just won't come.

12 The dates are very similar. Two years ago today
13 I was without a daughter. Three years ago today I planned
14 on going to a funeral home to view her body for the first
15 time. I don't want another mother to have to do that. I
16 look at the domestic violence reports that come out on
17 homicide and I can go back for the last 3 years and on
18 March 23 of each year, somebody's life was lost. I don't
19 know why, that's ironic, I don't know why, but I'm here so
20 that maybe one more person's life won't go.

21 When we talk about the gun laws, I'm not against
22 guns. I mean, personally now have all my own feelings.
23 Somebody wants to hunt or fish and have these things at
24 their disposal, that's fine, but we have these other folks
25 who are out there, if they commit a crime in the local

1 convenience store with a water pistol, we're going after
2 them for a look-alike gun. My daughter was raped with a
3 gun held at her head, and we weren't allowed to take that
4 gun from this man. He was able to say I don't have it. He
5 was able to give it away to somebody else and he was able
6 to walk back out in the community, and then he was allowed
7 to murder her with the same gun that he used. Somehow
8 there's just something that's real unfair about somebody's
9 money being taken from a cash register with a water pistol
10 and them getting sent to prison forever, and my daughter's
11 life. It's gone. And she was my only child. I don't know
12 what else to say.

13 CHAIRMAN O'BRIEN: Kathy, I just want to thank
14 you. I want to express to you that we're all very
15 sensitive to the fact that this is very difficult for you
16 to bring a personal tragedy before this committee in a very
17 public way. I know it doesn't suffice to say that your
18 telling this story brings reality to this issue, and it
19 will hopefully drive the issue in a more positive way so
20 that we can achieve some of the goals that you're trying to
21 express here today.

22 Would you like to continue?

23 MS. SOUSA: Good morning. My name is Amy Sousa.
24 I'm a policy specialist for the Domestic Violence
25 Coalition. I want to go over a little bit about each of

1 the bills and some of the things that the coalition has
2 been coming forward looking for, comprehensive reforms of
3 the Protection From Abuse Act. I think Representative
4 Murphy Weber absolutely described our needs as
5 comprehensive.

6 First, and foremost, we are looking to eliminate
7 victim generated fees from the Protection From Abuse Act.
8 Currently, there are many counties who are charging victims
9 fees for getting a protection order. Safety should not be
10 a fee-for-service activity. The Commonwealth should
11 provide safety for free.

12 In addition to the certainly principled argument
13 that victims shouldn't be paying fees, the Federal
14 government has said that victims shouldn't be paying fees.
15 Pennsylvania receives about \$4 million every year from the
16 Federal programs, specifically the STOP grant program, as
17 well as the Grants to Encourage Arrest Program. Both of
18 these require that Pennsylvania not charge victims fees for
19 getting protection. So this is a critical provision both
20 for safety and to make sure that we maintain that critical
21 money to provide victims for services and prevention
22 activities.

23 Second, I think it's important to note that both
24 Representative Payne's bill and Representative Murphy
25 Weber's bill expand the duration of protection orders from

1 18 months to 36 months. This is also critical,
2 particularly for victims who are going through the divorce
3 process, for victims who are going through the custody
4 process. If any one of you have gone through this process,
5 you know that it's not an 18-month process. There have
6 been some divorces that take 8 years. And for domestic
7 violence victims and their children, this is a very
8 dangerous time. Batterers try to maintain control, and
9 getting a divorce or seeking custody is a direct threat to
10 that control. This is an incredibly dangerous time.
11 Victims need to be protected.

12 By extending the orders to 36 months, we also
13 make sure that victims are repeatedly coming into court.
14 They are not continuously having to miss work to come in
15 and seek protection, they're not continuously coming in in
16 front of the batterer and having that confrontation in the
17 courtroom. So this is a critical provision for battered
18 women and for male victims of domestic violence.

19 The coalition is also seeking increasing the
20 discretion of judges in protection from abuse cases,
21 specifically in terms of the relinquishment of firearms.
22 Currently, our Protection From Abuse Act says that judges
23 may order the relinquishment of weapons if that weapon was
24 used or threatened to be used in the commission of an
25 abusive act. Well, for the batterer who has 20 weapons,

1 giving up 1 weapon is not going to stop that person from
2 using the 19 others. There's no reasonable way that we can
3 think that he or she would stop. They've already managed
4 to use one weapon, why not the other 19? Again, Federal
5 law allows for this, Pennsylvania law should allow for this
6 as well.

7 I think it's also important to note that the
8 confiscation or the relinquishment of firearms currently in
9 Protection From Abuse Act cases is not uniformly applied.
10 There's no real provision as to when that person needs to
11 turn over that weapon. It could be 5 days from now, it
12 could be 10 days from now. They could turn it over 60 days
13 from now, and there's no clear way of notifying victims
14 that that weapon hasn't been turned over. There's no clear
15 way for sheriffs to go in and collect that weapon if it
16 hasn't been turned over. There's no timeframe.

17 The coalition believes that it's necessary, if
18 weapons have been ordered relinquished by a judge, those
19 weapons be turned over within 24 hours. Again, breaking
20 away from an abuser is a dangerous time. You are at that
21 point taking away their control, taking back their control.
22 So that 24-hour period is critical. We need to get those
23 weapon immediately. If you're going to take them, take
24 them fast.

25 I think it's also important to note to whom we

1 give protection orders. Currently, we give protection
2 orders to spouses, parents, and children, people who have
3 intimate relationships. People who don't get protection
4 under the current act are people who are in dating
5 relationships who aren't intimate. So for our young people
6 who are in abusive relationships, and they are, are we
7 saying that they need to be intimate before they're allowed
8 to seek protection? For our religious citizens who don't
9 believe in premarital sex, are we saying that they need to
10 be intimate before they get protection from this
11 Commonwealth? Dating violence needs to be addressed in
12 this act, and so we would request that the Protection From
13 Abuse Act include dating violence.

14 There are a number of other provisions. And
15 again, in Representative Payne's bill and Representative
16 Murphy Weber's bill, all of which I'm sure they would love
17 to speak to, I would just like to talk a little bit about
18 Representative Gannon's bill. Representative Gannon is
19 currently trying to enhance accountability for batterers.
20 If you repeatedly violate a protection order, there should
21 be consequences. And Representative Gannon is saying that
22 those consequences should include losing your driver's
23 license. You should not be able to continue to use your
24 vehicle if you're constantly stopping, harassing, going to
25 the workplace of that victim. It's an unusual response.

1 There's nothing like it. And so the Coalition really
2 commends any innovative response to hold batterers
3 accountable for their action.

4 Representative Youngblood's bill, also an
5 incredible step forward for Pennsylvania. House Bill 375,
6 Representative Youngblood is trying to make sure that we
7 are dealing with domestic violence in the workplace. We
8 know that domestic violence just doesn't happen in the
9 home. We've seen murders on street corners, in workplaces,
10 in schools. Representative Youngblood, in House Bill 375,
11 is acknowledging the fact that domestic violence follows
12 the victim into the workplace, follows the perpetrator into
13 the workplace. And so if that is the connection between
14 the batterer and the victim, if that batterer knows that
15 victim, even if he or she moves out to a shelter or moves
16 to a friend's house, that batterer knows the victim is
17 going to show up for work every morning. That's a place to
18 stop and harass, and employers need to be responsive to
19 that type of violence.

20 House Bill 375 would allow victims of domestic
21 violence to get to take leave from work without being
22 fired, unpaid leave, 30 days unpaid leave. This would
23 allow victims to go into shelter, this would allow a victim
24 to attend the legal proceedings to put this person in jail.
25 It would allow this victim to get a protection order, to go

1 through the counseling processes. In getting over a
2 domestic violence relationship for 10 years, as we talked
3 about this morning, and to be able to take the time that's
4 needed to deal with the issue, to get safe, to get help, to
5 make sure that you're following through with the legal
6 process, it involves more time than most of us have in
7 vacation leave.

8 One suggestion that we have in terms of House
9 Bill 375, which again, is a phenomenal step forward, is
10 that we would include employees who have minor children who
11 have been victims. So if your 14-year-old child is going
12 through this process and needs a protection order and needs
13 to file criminal charges, if your 14-year-old daughter has
14 been raped, you're going to want to be there, and I'm
15 pretty sure she's going to want you to be there too as a
16 responsive parent. So enabling employees to take that 30
17 days off to attend to a child victim I think is important
18 and should be included in House Bill 375.

19 I've been talking a while now about the
20 specifics of legislation, and I think it's really
21 important, especially for a hearing of this type, to make
22 sure that we are focused on what's happening in our
23 counties, what's happening in our communities, and so I
24 would really like to turn this over to Susan Evans. Susan
25 is our senior attorney for the protection from abuse

1 database, and she's also a former prosecutor and has
2 extensive experience in protection from abuse matters.

3 Susan.

4 MS. EVANS: Good morning. I'm Susan Evans. I
5 am the senior attorney with Pennsylvania's Protection From
6 Abuse Database Project. As a former STOP prosecutor,
7 Representative, your story where the woman didn't have any
8 words but the fact that she was there was her personal
9 testimony to the fact that her strategy to survive worked.
10 And one of great things about the remedy that we're working
11 on today, the PFA Act, it gives the plaintiff, who knows
12 the situation, the batterer, better than we do, it gives
13 her an opportunity to craft the protections that she needs
14 as part of her civil lawsuit, and the protections that
15 you're adding give the courts additional remedies for her
16 so that she can survive. We can't second guess her
17 strategy, we can't second guess what he said about killing
18 the children, her mother, we can't second guess her. And
19 the protections that you are working on in this landmark,
20 vanguard piece of legislation, Pennsylvania's PFA Act, is
21 such a good piece of legislation, is really important.

22 I work on the database project. We're in the
23 process of automating the PFA process with the courts
24 throughout the Commonwealth. We're in conversations with
25 the Pennsylvania State Police, who operate the official

1 statewide registry, to have some sort of electronic
2 interface so that this information that the courts, the
3 relief the courts have granted can be available even more
4 immediately throughout the entire nation. Our database
5 makes this information available to law enforcement, the
6 courts, the advocates who are working with the domestic
7 violence victims to put together their strategy to be safe,
8 and all of these protections are built upon the legislative
9 base.

10 I wish there were some other members of the
11 community that were here. We have a great statute. We
12 have some wonderful judges in the Commonwealth that use
13 these remedies to provide the protection. We also have
14 some other members that aren't taking advantage of all of
15 the pieces of the legislation and the statutes that they
16 could to really make this a strong protection and keep the
17 guns out of the hands of the murderers. We have good laws;
18 this makes them better, and we need the courts to use those
19 tools to provide the protections that you have put into
20 place.

21 This legislation that you have introduced and
22 that you're working on just makes the PFA Act, it gives it
23 more strength, it gives the judges more tools, and it will
24 be a great remedy to try and address some of the situations
25 where victims have come to the court and the pieces did not

1 fall into place and people were murdered. So we thank you
2 for your work on these efforts, and we appreciate the
3 strength of the family members that have survived. Thank
4 you.

5 CHAIRMAN O'BRIEN: Thank you.

6 Your comment about the judges that are doing
7 this very well, speaking to that, it's my understanding
8 that the Supreme Court is considering organized ongoing
9 training for judges. So we will continue to monitor that
10 as well. I think that's a very important recommendation,
11 along with the other recommendations that you have
12 collectively brought before the committee.

13 At this time, I ask Representative Weber if she
14 has any questions.

15 REPRESENTATIVE WEBER: Just first a comment to
16 Kathy. I can't imagine what you have gone through.
17 However, I can say that like any mother, you should be
18 equally, if not more, proud of the fact that your daughter
19 did stand up for herself by going and taking that step and
20 getting the protection from abuse order, because that is
21 one of the what I consider to be a very brave act for any
22 woman that's going through what she has, and she was very
23 young, so that she had that courage obviously came from her
24 upbringing, and I commend you on that and my deep
25 sympathies for what you had to endure for your daughter

1 also. But the fact that you are now willing and in a
2 position to come forward and not to educate us here but to
3 continue to educate those who are willing to listen,
4 perhaps you will then, through your daughter, be an angel
5 in saving more lives for some other women. So I appreciate
6 the fact that you did come today.

7 My only, in following up on Representative
8 Youngblood's legislation, while I agree with it and I like
9 it, my concern is whether or not there is the risk that
10 employers are going to somehow penalize the victim.
11 Meaning, has this been thought, have you explored this,
12 have you spoken with some employers, have you reached out?
13 And if you have, what is it that you have gotten in return
14 or in response?

15 MS. SOUSA: Representative Youngblood has
16 included a nondiscrimination clause in there, and there is
17 a cause of action for discriminating against an employee
18 who exercises his or her right to use this leave, so that
19 has been included. Other States, California, Maine,
20 Colorado, all have similar provisions and have had great
21 success with it, even among their business communities.
22 Congress right now is considering a similar provision in
23 their work, formerly called VESA, a now called SAFE, and I
24 would be happy to forward along that legislation so the
25 members can take a look.

1 But in terms of, you raise a great point in
2 terms of the business community, and I think it's a good
3 time to mention that domestic violence plays a huge toll in
4 terms of worker productivity, and so by having domestic
5 violence in the workplace, and it's constantly in the
6 workplace, employers are losing something. It's not just
7 the safety of a victim; however, that is paramount, it's
8 also the business, the security of the business, the
9 productivity of the business. So this bill helps in
10 engineering a way for victims to get safe and then come
11 back to work. These are trained employees, these are
12 knowledgeable employees, these are people that companies
13 have taken time to invest training and education. You
14 don't want to lose those people and start all over again.
15 That's costly. And so this is an opportunity to retain.

16 It's also worth noting that about 70 percent of
17 welfare recipients have experienced domestic violence, so
18 if we can find a way to keep victims at work, through
19 Representative Youngblood's bill, through increased
20 protections, we are helping our community, our taxpayers
21 reduce costs. And this is not only a safe provision, it's
22 a cost-effective provision. It's a benefit to everyone in
23 the community.

24 MS. YUPCAVAGE: I might also add that what we
25 have heard from our programs is that right now employers

1 are prohibiting victims from taking the time off to go get
2 protection orders or to participate in court proceedings,
3 and therefore, they don't follow through with the
4 opportunities that the courts offer them. They're not
5 going. They may get an emergency order; when they find out
6 they can't get time off, they drop the PFA. They don't
7 follow through, they don't file charges because they'll
8 lose their job. So we see this as actually an additional
9 protection and incentive for folks to move forward with
10 prosecution and seeking justice.

11 MS. SOUSA: When the Representative introduced
12 this bill, we sent out a request to our programs. We have
13 62 domestic violence programs across the State, and we sent
14 out just a request to see how is domestic violence
15 affecting victims' employment? And if I could beg your
16 indulgence, I just have a few responses that I think would
17 really shed some light on the questions that are being
18 posed.

19 One of them, there was a client who was working
20 as a waitress who had come to work several times with
21 bruises. She was told by her employer that if she came in
22 with another bruise, she would be fired because it's
23 upsetting to customers. We've had several clients who are
24 concerned about attending court for a PFA because their
25 employers wouldn't excuse them, even with a letter from the

1 court, from the victim's advocate. We've had clients who
2 were fired because the abuser kept harassing her at work
3 and her employer felt it was too scary for the other
4 employees. And a client who resigned from her job because
5 her abuser knew how to find her there and she was
6 ineligible for unemployment compensation, so she quit
7 rather than waiting to be fired. There's a client who
8 worked in a drugstore with her abuser. After she got a
9 protection order, they moved her to another store, not him,
10 her. We've had many, many clients who have been somehow
11 penalized for missing work because they were getting a PFA,
12 because they were attending criminal court proceedings,
13 because they were doing whatever it is they could to stay
14 safe.

15 This is a wonderful first step in offering
16 victims with security and safety in the workplace and for
17 helping our employers maintain a safe and secure workplace.

18 MS. YUPCAVAGE: You also might be interested in
19 knowing that several years ago the department of the
20 Auditor General implemented a statewide domestic violence
21 leave policy, and they've actually had training for all of
22 their management and supervision staff by our folks, and we
23 have asked Governor Rendell to do a statewide State
24 departments policy, similar policy. You might want to see
25 how it's working with the Auditor General.

1 MS. DYABELKO: One other thing I would like to
2 add in support of Amy and what she has said, I don't have
3 it in black and white to prove, but I know on the occasions
4 that my daughter came home and said that she had been
5 talked to at work because her abuser was calling, and she
6 was getting too many personal phone calls. And he was
7 showing up at her place of employment and he would come in
8 and he'd bring his 6-year-old daughter along so that my
9 daughter would not do anything or say anything because she
10 wouldn't hurt this little child's feelings. And she was
11 reprimanded for that. And he did go to her place of
12 employment, from what we can tell, and abducted her. Had
13 she had the ability to not have to be there at that time,
14 maybe we wouldn't be here today.

15 REPRESENTATIVE WEBER: Thank you, Mr. Chairman.

16 CHAIRMAN O'BRIEN: Thank you.

17 Representative True.

18 REPRESENTATIVE TRUE: Thank you, Mr. Chairman.

19 My heartfelt sympathy. I won't say I can
20 imagine, because I cannot.

21 MS. DYABELKO: And I don't ever want you to.

22 REPRESENTATIVE TRUE: And I appreciate that, and
23 I thank you very much for coming before the committee. My
24 background is very prevention oriented, and we had a
25 terrible incident in New Holland, Pennsylvania, kind of off

1 the charts for violent, well, people don't think of
2 violence. We had a young woman shot and killed outside of
3 her gym. There was a PFA order against him, his ex-wife
4 had a PFA, and he murdered his son, he came and murdered
5 her, and then he, in my opinion, and I can't say that I'm
6 sorry, took his own life later on. I was listening to what
7 people in Lancaster County were saying about this, and my
8 question and asking for your comments is how are we doing
9 in the whole prevention end of this? Are people aware,
10 over the years, of all the work that you have done, how are
11 we really doing in Pennsylvania with people understanding
12 domestic violence? I mean, because people are saying,
13 well, you know, why isn't he locked up? Why did he get to
14 go this far, et cetera, et cetera, and then go along with
15 their day and not think about it again.

16 So I'm just curious what your feeling is over
17 the years, and I know the many years that you all have
18 dealt with this, are we doing enough aside from trying to
19 work with law enforcement, because I know how very
20 frustrating it is for police officers to come in on the end
21 of something like that. But just the general public,
22 talking about it, it's really upsetting to hear what you
23 have to say about employers, which sort of goes into the
24 community, the heart of the community itself. So what more
25 can we do or do you feel that we're any better off? I

1 mean, feel free--

2 MS. YUPCAVAGE: I think we are better off.

3 REPRESENTATIVE TRUE: We are.

4 MS. YUPCAVAGE: We believe we're much better
5 off. Legally, we're much better off. Unfortunately, our
6 homicide rate has remained fairly static; however, the
7 number of people who have received services and obtained
8 help has increased dramatically through the years. So
9 while more people are getting help and staying safe, there
10 are still far too many people who are not.

11 What we know is that nationally, less than 4
12 percent of people who are killed in acts of domestic
13 violence have access services of a domestic violence
14 program. Is that because they didn't know that the
15 services were available? Is that because they weren't
16 aware that it was free, confidential? We're not sure.
17 We're trying to do a fatality review project right now in
18 Pennsylvania, and we are looking to the legislature to
19 support us with this in looking at what's going on? What's
20 wrong and what's not happening?

21 It's interesting that the plight of our programs
22 financially is critical because funding is more and more
23 difficult to obtain at the local level, and as you know,
24 services for domestic violence were cut 5 percent in the
25 budget last year, and that's what's proposed this year.

1 It's cumulative, because Federal funding has also been
2 reduced. One of the first things that goes, and we've done
3 a survey of all of our programs, the most expendable
4 service is prevention and community outreach, because
5 crisis services need to be in place. The shelter needs to
6 be open, the hotline needs to be staffed. It's the
7 community education and prevention services that are
8 expendable. And ultimately, that's what's so important.
9 You've got to get into the schools, you've got to start
10 from the very young age. You've got to be out in the
11 community. Last time I was before the committee, I read
12 some newspaper clippings that talked, and I could show you
13 clipping after clipping from when people are murdered that
14 the neighbors say, we just minded our own business around
15 here. Everybody minds their own business.

16 REPRESENTATIVE TRUE: That's where I was getting
17 to.

18 MS. YUPCAVAGE: Yeah, they all say that.

19 REPRESENTATIVE TRUE: Where are we in the
20 community? And I understand all the good work you've done,
21 but what is your overall feeling about the understanding?

22 MS. YUPCAVAGE: The community, people still
23 don't know what to do or how to do it.

24 REPRESENTATIVE TRUE: Or want to.

25 MS. YUPCAVAGE: Exactly. They don't call the

1 police. They're afraid of stepping into somebody's
2 business. One woman was murdered and neighbors heard the
3 scream, they waited for 11 hours to call the police before
4 the anybody arrived to help; 11 hours. They heard the
5 screams, they waited 11 hours until somebody decided they'd
6 better call the police and try to do something. And I
7 don't know, we don't know how to do it, but we welcome
8 input in trying to figure it out, from the community, from
9 the legislature, from families. We want to figure it out.

10 REPRESENTATIVE TRUE: Thank you, Judy.

11 MS. YUPCAVAGE: And I want to say that I think
12 what you're doing with your address confidentiality
13 legislation is going to be an additional safety and
14 protection for victims. We are so hoping that after six
15 years we're getting it through this Session.

16 REPRESENTATIVE TRUE: We're getting closer.

17 MS. YUPCAVAGE: For some people, you have to
18 relocate. That's the reality. Somebody, if they're trying
19 to kill you, they will use whatever means necessary, and
20 for that victim it means going to relocate, going into
21 hiding. We have to be able to help them do that safely.
22 So we are really hoping that we can get it through this
23 time. And we appreciate you hanging in there all these
24 years.

25 REPRESENTATIVE TRUE: Oh, sure. Absolutely.

1 MS. SOUSA: On a high note, what Representative
2 Payne is doing right now is educational. We have a room
3 full of people who don't normally talk about domestic
4 violence every day, and so the more all of you can use your
5 authority and your leadership skills and your office to
6 educate, the more help it is for us and for the community.
7 So thank you, Representative Payne, and everyone who has
8 attended today.

9 REPRESENTATIVE PAYNE: Thank you.

10 CHAIRMAN O'BRIEN: Thank you very, very much,
11 and I think we want to add some of your recommendations.

12 MS. YUPCAVAGE: Great.

13 CHAIRMAN O'BRIEN: At this time, I would ask
14 Lieutenant James D. Scott from the Bureau of Technology
15 Services, CLEAN Administrative Section, Pennsylvania State
16 Police, to come forward.

17 LIEUTENANT SCOTT: Good morning. I am
18 Lieutenant James Scott, Commander and Control Terminal
19 Officer for the Commonwealth Law Enforcement Assistance
20 Network, Computer Operations Division, Bureau of Technology
21 Services of the Pennsylvania State Police. On behalf of
22 the Commissioner of the Pennsylvania State Police, Colonel
23 Jeffrey B. Miller, I would like to thank the House
24 Judiciary Committee for this opportunity to speak to you
25 about protection from abuse.

1 The department commends the Pennsylvania
2 legislature for recognizing the need to continually review
3 and take the steps to improve existing statutes of our
4 Commonwealth. The Pennsylvania State Police supports your
5 efforts to improve Title 23, Domestic Relations, Chapter
6 61, Protection From Abuse, of the Pennsylvania Consolidated
7 Statutes, by the introduction of the House Bills here
8 before us today. Pennsylvania State Police, State registry
9 of protection orders implemented in April of 1998 gives
10 notice to all law enforcement officers, not just in
11 Pennsylvania, but throughout the country and Canada, by way
12 of the Commonwealth Law Enforcement Assistance Network,
13 that a protection from abuse order is in existence and
14 valid. CLEAN is the connectivity for law enforcement to
15 other States and the Federal Bureau of Investigations,
16 National Crime Information Center, to inquire if a form
17 protection order is on file.

18 The PFA State registry is tied to CLEAN and
19 offers law enforcement immediate notice that a PFA is on
20 file, even when a police officer completes only a driver's
21 license or registration inquiry, the inquiry searches the
22 PFA database and alerts the inquiring officer that a valid
23 and current protection order related to that name or
24 vehicle registration is immediately known, providing
25 additional safety to protected persons and officers. To

1 date, there are approximately 60,000 PFAs in the
2 Pennsylvania State registry. At present, the PFA is either
3 hand-carried or faxed from the county prothonotary to the
4 Pennsylvania State Police for entry into the State
5 registry.

6 The Commissioner of the Pennsylvania State
7 Police, Colonel Jeffrey B. Miller, has recognized the need
8 for improvement and has implemented a review of existing
9 policy of how the Pennsylvania State Police receives PFAs.
10 Colonel Miller has suggested enhancements in existing
11 technology to receive PFAs electronically for immediate
12 entry into the State registry in eliminating the time it
13 may take to fax or hand carry the PFA to the Pennsylvania
14 State Police for entry.

15 Pennsylvania is a leader in the protection of
16 victims of domestic violence. As you know, State
17 legislation has enhanced the Federal Violence Against Women
18 Act by recognizing all foreign protection orders and giving
19 them the same enforcement authority as if they were issued
20 in the enforcing State. The concern of the Pennsylvania
21 legislature in creating a centrally controlled State
22 protection order registry has removed any doubt by law
23 enforcement that a valid PFA exists when there is suspicion
24 of a violation of a PFA.

25 The House Bills presented before us here today

1 enhances the present act to include a dating relationship
2 outside the parameters of intimate partners. This new
3 definition will offer protection to those persons in a
4 current or former dating relationship, whether or not that
5 relationship included sexual activity. The recognition of
6 these victims will offer law enforcement a means of
7 immediately removing the defendant and taking him or her
8 before a court for disposition, rather than just issuing a
9 citation for a summary violation of harassment and
10 releasing the defendant.

11 The inclusion of the definitions of firearm and
12 weapon leave little room for legal interpretation and gives
13 police officers a reference for enforcement. The option,
14 when deemed appropriate by the court, to require the
15 defendant to relinquish any firearms, other weapons,
16 ammunition, and any firearm license, including temporary or
17 ex parte orders, offers additional safety to plaintiffs and
18 police officers and may prevent a tragic occurrence during
19 the existence of a temporary order. Extending the term
20 from 18 months to 3 years for all PFA orders and amendments
21 will offer additional protection to the plaintiff or victim
22 against those defendants who are not willing to accept the
23 conditions and may give additional time to secure outbursts
24 of anger by the defendant which may have been the cause of
25 a PFA. Through this legislation, law enforcement will

1 continue to improve the level of protection our citizens
2 and visitors deserve.

3 Thank you for the opportunity to provide our
4 input on this very important topic. I am more than willing
5 to respond to any questions or comments that you may have
6 at this time.

7 CHAIRMAN O'BRIEN: Thank you very much,
8 Lieutenant.

9 I am especially interested, first, I should say
10 the 60,000 number that you have in your registry appears to
11 be staggering, but from the testimony that we've just
12 heard, it's not surprising. I also am very interested in
13 the proposal to remove the intimacy requirement from a
14 protection order. That just brings back to mind the whole
15 television coverage of the rape shield law in the Kobe
16 Bryant issue and why should someone have to publicly
17 display that they've been intimate with another partner in
18 order to get a protection from abuse order? Again, insight
19 that we thank you for.

20 Anybody have questions?

21 REPRESENTATIVE PAYNE: I have one. Just one
22 question, if I may.

23 CHAIRMAN O'BRIEN: Representative Payne.

24 REPRESENTATIVE PAYNE: You commented that right
25 now they are hand carried or faxed.

1 LIEUTENANT SCOTT: That's correct.

2 REPRESENTATIVE PAYNE: And there's a study
3 underway to look at it. Hopefully, that will include the
4 computerization of the record directly from the courthouse
5 to the State Police.

6 LIEUTENANT SCOTT: That's what we're trying to
7 accomplish.

8 REPRESENTATIVE PAYNE: Would that also include
9 local jurisdictions, police?

10 LIEUTENANT SCOTT: The local jurisdiction would
11 have access to that record immediately is what we're trying
12 to accomplish. At present, as I'm sure you're aware, the
13 prothonotary has a total of 24 hours to get the PFA order
14 to the State Police. Upon getting the PFA to the State
15 Police, the State Police a has a total of 8 hours for
16 entry. Our desires are the moment that that PFA is
17 finalized by the judge, goes to the prothonotary's office
18 and they enter that worksheet, that that worksheet is
19 electronically transmitted to a holding base, a database,
20 notification is then sent over to our police communication
21 operators that there's a PFA on file for immediate entry.
22 The programming is as such that we're hoping that the data
23 that the prothonotary collects will already be in format
24 form that we can immediately send it down to NCIC. So what
25 that eliminates is a PCU at the State Police station having

1 to read over the PFA, then make a manual entry of the same
2 data that the prothonotary accomplished, but just review
3 the entry and click the button and say it's acceptable and
4 it's now immediately in. It eliminates those hours of
5 process that many times, as you well know, the victim is
6 still out there without that order in a registry.

7 REPRESENTATIVE PAYNE: Thank you very much.
8 That's what I was asking.

9 CHAIRMAN O'BRIEN: Representative Weber.

10 REPRESENTATIVE WEBER: I just wanted to make
11 sure that I understand the system, but also in case there's
12 individuals here that don't with respect to CLEAN, and to
13 follow up on Representative Payne. After the information
14 is entered into the CLEAN system, when an officer does
15 something as minor as a traffic stop and they have all of
16 their mobile terminals in their computer or they even call
17 in if the police department in the respective municipality
18 does not have that, they will immediately be alerted that
19 there is a protection from abuse order against that
20 particular person, correct?

21 LIEUTENANT SCOTT: That's correct. If I may,
22 just to follow up with that, that's the importance of
23 getting that information into the system, the State
24 registry, as soon as possible. If the victim goes before a
25 court and requests a PFA, you don't have any timeframe that

1 if the defendant would, for whatever reason, you know, we
2 were talking about the victim's employment, they would go
3 and grab the victim on their way to work or whatever the
4 case may be, if they're stopped for a simple speeding
5 violation, the officer does a query only on the speeding
6 violation of the driver's name or the registration of the
7 vehicle. Immediately, whenever that information comes in
8 and goes over to PennDOT searching for that data
9 information on that operator or vehicle, it also goes over
10 to the PFA State registry and searches that database, and
11 if there's a PFA registry on file, that officer out on the
12 street immediately is notified that, yes, there's a PFA,
13 and it also recognizes what conditions that PFA has in
14 place.

15 REPRESENTATIVE WEBER: And would also, if the
16 officers are responding to a call to a certain location,
17 that that location could come up as a location where that
18 is the subject of a protection from abuse order or
19 otherwise an incident to be on alert, correct?

20 LIEUTENANT SCOTT: Right now it does not search
21 on a location. It searches on a name, the name and date of
22 birth, or name and Social Security Number is what it
23 searches on right now, but it does not search on a location
24 as of right now.

25 REPRESENTATIVE WEBER: So if the police were

1 called to respond to a certain address but they didn't know
2 the name of the caller, they would not necessarily know
3 that there is a protection from abuse order on or against
4 somebody at that address where they were going?

5 LIEUTENANT SCOTT: What's the beauty now with
6 the new central dispatch centers that the consolidated
7 dispatch centers that the Pennsylvania State Police has in
8 operation and building, when they get a phone call coming
9 in, that phone number in itself will identify the
10 resident's name of that particular phone number, so the
11 moment that they would get that and they would do an
12 inquiry for that name, at the consolidated dispatch center,
13 they would then detect it and that information would be
14 sent to the officer responding to that call, yes.

15 REPRESENTATIVE WEBER: The reason I ask is
16 separate and apart from but connected to what we're here
17 today: Police officers are more in danger of being killed
18 or otherwise hurt and in responding to a call of domestic
19 violence because they may not have known that that was the
20 particular household or location where there were issues,
21 as much as we're also looking to, through this hearing,
22 protect the victims. I just want to make sure that we
23 have, or if there's something that we need to do to make
24 sure that the police do have all that information, and I
25 know that it's happened, and actually there's cases where

1 the particular individual who had a protection from abuse
2 order against him purposely called in a call, a mock 911
3 call, and I think murdered three police officers. I forget
4 what State, I'm embarrassed to say I forget what State
5 right now, but that's why I want to make sure
6 Pennsylvania's system, and that was my knowledge, my
7 thought pattern on what it was, but I wanted to make sure
8 that I was clear, but also that others who are here today
9 know that that is the type of technology that we do have,
10 that we are looking out for giving as much information to
11 those responding that we have at our disposal.

12 LIEUTENANT SCOTT: With what they call the
13 records management systems that the local agencies have in
14 place today, that searches again addresses, names of
15 victim, name of complainants as well as defendants and so
16 forth. That database would then search against whenever
17 they would do a query into the PFA, that would search
18 against those names in that PFA database.

19 REPRESENTATIVE WEBER: Thank you.

20 LIEUTENANT SCOTT: So it's two separate systems
21 searching against one another is what would happen.

22 REPRESENTATIVE WEBER: Okay. Great. Thank you.

23 CHAIRMAN O'BRIEN: I'm going to ask our chief
24 counsel, Mike Swoyer, to pose a few questions regarding
25 systems and projected time lines.

1 Michael.

2 MR. SWOYER: Yes. I attended the House
3 Committee on Appropriations meeting, and Commissioner
4 Miller was asked about the relationship between the State
5 Police registry and PFAB and where that stood, and he
6 indicated he was supportive of integrating the two systems,
7 and I believe the last question that he was asked with
8 regard to the computer systems is what the timeframe was
9 when he thought this would occur, and he indicated January
10 1, 2006, he thought that the integration would be complete.
11 And in speaking with the committee members and Chairman
12 O'Brien, could you please explain what it is that is going
13 to take until January of 2006?

14 LIEUTENANT SCOTT: Yes. At present, not all 67
15 counties are participating from the prothonotary's office
16 or the courts into the PFAB database. So we're projecting
17 to January 2006 in order to be able to accomplish
18 convincing those local courts or those county courts to
19 participate in the PFAB database. And that's why. We're
20 moving along very quickly with various meetings that we're
21 having with the Pennsylvania Coalition Against Domestic
22 Violence representatives and moving along very quickly in
23 setting a standard and a process in order to get that
24 information to the State registry. I think we've really
25 accomplish a lot there, and hopefully before too long

1 that's in place for those counties who participate. But if
2 we're looking at statewide, we're projecting that it's
3 going to take a while, because we still have some
4 convincing to the local courts and so forth.

5 MR. SWOYER: So at some point much sooner than
6 January 1, 2006, for those counties already utilizing PFAB
7 this immediate posting will begin to occur?

8 LIEUTENANT SCOTT: I'm hoping so, yes. The
9 consolidated dispatch center of the Pennsylvania State
10 Police for the Harrisburg area is supposed to be up and
11 running in May of 2004. We're hoping to accomplish where
12 the programming and the resources are available that we can
13 start dumping those PFAs from the three counties that are
14 involved with the initial opening of the consolidated
15 dispatch, which will be Lancaster, Cumberland, and Dauphin,
16 that we can get those over to the consolidated dispatch
17 center as quickly as possible. For those counties where
18 the consolidated dispatch centers are not operational as of
19 yet, we're going to create where that message will go out
20 to the local station and they'll be notified of the PFA.
21 So yes, we're hoping to get it on board and up and running
22 as quickly as possible.

23 MR. SWOYER: All right, so again, I'm just
24 trying to understand, because the way the date was
25 conveyed, and there was no follow-up discussion, many were

1 left with the question, as I stated earlier, what in the
2 world is going to take two years to get this thing done?

3 LIEUTENANT SCOTT: Right.

4 MR. SWOYER: So you're indicating that it's
5 going to begin as early as May?

6 LIEUTENANT SCOTT: We're hoping as early as May,
7 yes, and then the roll-out throughout the entire State, we
8 want the entire State in operation by January of 2006.

9 MR. SWOYER: Are the State Police, your unit, or
10 Commissioner Miller or any other unit of the State Police
11 assisting the coalition in advocating the worthiness of
12 PFAB to the local jurisdictions, to municipalities?

13 LIEUTENANT SCOTT: Yes. As a matter of fact,
14 we're having monthly meetings with the Pennsylvania
15 Coalition Against Domestic Violence, and we discussed as
16 far as going out and even training the prothonotaries and
17 giving them an update of where we're at and things of that
18 sort, so yes.

19 CHAIRMAN O'BRIEN: Thank you.

20 MR. SWOYER: With regard to the legislation,
21 have you or anyone with the State Police or Office of
22 General Counsel or your policy office had an opportunity to
23 review the specifics of the legislation?

24 LIEUTENANT SCOTT: I had an opportunity. Yes, I
25 had the opportunity to review the specifics.

1 MR. SWOYER: And I participated in some meetings
2 as the legislation was developed and I know the State
3 Police had concerns and I know that efforts were made to
4 address the concerns. Can you tell us whether or not the
5 concerns of the State Police with regards to PFA orders and
6 the expansion to include dating relationships and the
7 firearms language in there, have the concerns of the State
8 Police been adequately addressed either in the legislation
9 or the proposed amendments?

10 LIEUTENANT SCOTT: I can't answer that question.
11 I don't know. My understanding that the way the
12 legislation is written, we're very much in participation
13 and very much for the particular legislation. It
14 definitely gives an opportunity to expand the protection of
15 a PFA to those individuals that we've overlooked for
16 decades.

17 MR. SWOYER: There's an amendment that was
18 circulated to House Bill 2403 today. I don't want to put
19 you on the spot, because I know many people were just
20 reading this today.

21 LIEUTENANT SCOTT: That's the first I had an
22 opportunity.

23 MR. SWOYER: We would appreciate it if you could
24 have the amendment reviewed and get any comments back to
25 the committee through me as soon as possible. The Chairman

1 has--

2 CHAIRMAN O'BRIEN: For the record, that's Mike
3 Swoyer.

4 MR. SWOYER: Yes, I'm Mike Swoyer, because I
5 believe it was sunshined yesterday, if not, it will be
6 today, that the committee would like to take up this
7 package of legislation as early as next week. So the
8 sooner you're able to get comments back, the sooner we'll
9 try to address your concerns.

10 LIEUTENANT SCOTT: But if I may, and I was
11 listening to the young ladies here giving testimony and so
12 forth, and a lot of what they had to say was certainly
13 valid. Me being a Trooper for 32 years, and a daughter in
14 college, I think it's very important that there's stringent
15 laws out there to protect our victims in domestic violence.
16 I can remember whenever I first came on this job 32 years
17 ago responding to a domestic violence where there was
18 assaults and as a law enforcement officer, as the
19 prosecutors and as the courts, nobody wanted to recognize
20 that violence was occurring inside those doors. And back
21 then if we would have made an arrest, the courts would have
22 laughed us out of the courtroom.

23 So I really do want to commend our legislature
24 for recognizing a strong need for strong, stringent laws
25 such as this and defining and not allowing the local

1 court's interpretation.

2 CHAIRMAN O'BRIEN: Thank you, Lieutenant.

3 And at this time I would ask Christopher
4 Mallios, the assistant district attorney for the
5 Philadelphia's District Attorney's Office, to come forward
6 and present testimony.

7 MR. MALLIOS: Thank you, Mr. Chairman, members
8 of the committee. I'm here on behalf of Lynne Abraham and
9 the Philadelphia District Attorney's Office, and I'm really
10 grateful for this opportunity to address the committee. We
11 have a great Protection From Abuse Act in Pennsylvania, and
12 I think we owe that to the members of this committee, the
13 members of the General Assembly. It's not a perfect act.
14 And there are some things that we could do to make it a
15 little better, and I think that some of these amendments go
16 a long way to doing that.

17 First, I want to talk a little bit about how
18 things are working in Philadelphia right now. And as you
19 know, the district attorneys are not involved in PFA
20 litigation. That's civil litigation. In Philadelphia,
21 victims of domestic violence who are seeking protection,
22 they'll go to our Family Court Building at 34 South 11th
23 Street, many of them are pro se, some are represented by
24 attorneys, and some are represented by the excellent legal
25 center at Women Against Abuse in Philadelphia. There is

1 assistance in filling out pleadings, you can get a
2 temporary order immediately, and that's followed by a
3 10-day hearing. The judge of the temporary hearing will,
4 if they find that there's reason to, will issue a temporary
5 order and will also sign an order for a hearing which has
6 to be served on the defendant and he has to show up for the
7 hearing 10 days later.

8 Now, I'm saying "he" and "she" because the vast
9 majority of cases we're dealing with are female victims and
10 male abusers, but the truth is that we have female abusers
11 committing crimes against men, we have domestic violence in
12 same sex couples, and those are much smaller numbers, but I
13 just want to say that by constantly referring to "he" and
14 "she," because that's the vast number of the cases, I don't
15 mean to exclude anyone.

16 Now, we get the cases after that permanent order
17 has been issued and there has then been a violation, and
18 sometimes we get them if there's a violation of a temporary
19 order. We get involved when the violence is so bad and the
20 violence continues to the point that there's now a
21 violation and there's a charge of criminal content as well
22 as frequently other charges such as simple assault,
23 aggravated assault, terroristic threats, and stalking.

24 I can tell you just by in terms of numbers that
25 the laws that you're passing really affect Philadelphia in

1 disproportionately large numbers. Last year there were
2 about 15,000 protection from abuse petitions filed in
3 Philadelphia. Now, of those 15,000, about half of them
4 were dismissed for lack of prosecution. And the vast
5 majority of the ones that went forward were resolved
6 without an evidentiary hearing, either by agreement, or the
7 petitioner decided to withdraw the petition, or the
8 defendant, the Respondent, did not show up in court and the
9 case was resolved by way of a permanent protection from
10 abuse order by default. But some of those cases do go to
11 hearings, and they're pretty bitterly contested hearings.

12 But the act is working and people are getting
13 protection. And what someone gets when they have this
14 order, first of all, is a heightened response from the
15 police. When the police know that there is an order in
16 effect, they're going to take that case much more
17 seriously. They will be able to make an arrest just for
18 the defendant being there if he's there in violation for
19 the order, and that's a powerful tool. It's shifting power
20 and control back to the victim.

21 We see all kinds of domestic violence cases in
22 Philadelphia, and some as the ones that you heard about in
23 some of the earlier testimony, are the type of systematic,
24 controlling, oppressive, violent domestic violence
25 relationships. But the other side of the spectrum is the

1 outburst, the one incident that was not proceeded by any
2 domestic violence. I'm not saying that that one outburst
3 is any less serious than the controlling, oppressive one.
4 That one outburst incident could be a shooting, it could be
5 a homicide. But I think that the response of the system
6 and the agencies who are catering to the needs of victims
7 need to take those things into account, and we need to
8 protect the people who need to get out of those oppressive,
9 controlling relationships as well the people who may be
10 victimized by that one explosive outburst but who could be
11 extremely, extremely violent.

12 Representative Payne, we really like the bill
13 that you proposed, but Representative Weber, we love yours
14 because you're addressing the guns, and we need to address
15 the guns in a meaningful way. Look, the law is based on
16 common sense, and it should be based on common sense. And
17 common sense tells us that if someone is committing
18 violence against someone, whether it's a member of their
19 family, somebody that they're in a dating relationship
20 with, we shouldn't let them have this access to these most
21 lethal, deadly weapons. So if they are using a weapon to
22 commit violence, then that weapon of course should be
23 confiscated. In fact, it should be confiscated, it should
24 be forfeited and it should be destroyed. It's derivative
25 contraband under Pennsylvania law.

1 But if they have a whole other arsenal of
2 weapons and we're going to say, well, we're just going to
3 take the one you used that day but we're not going to take
4 the other ones, that really defies common sense, and we're
5 really setting victims up, we're setting up survivors of
6 domestic violence with an untenable situation, and we're
7 really not giving the Protection From Abuse Act the tools
8 that it needs. And frankly, I would like to see
9 confiscation of weapons when that temporary order is
10 issued, because the time when someone just leaves that
11 relationship, the time when someone is trying to get away,
12 that's the most dangerous time. That's the time where the
13 rage and the obsession and the jealousy can really
14 escalate, and that's when they're most likely to use those
15 deadly weapons.

16 Now, we're talking about the act, but I wouldn't
17 be a good prosecutor and a good advocate on behalf of
18 Philadelphia if I didn't say the law is great, but we need
19 some money in Philadelphia. We have three animal shelters
20 in Philadelphia and one shelter for domestic violence
21 victims. Our family court is a dump, and I know that's not
22 directly under your jurisdiction. The Supreme Court needs
23 to help us and maybe Appropriations and local government,
24 but we really need money.

25 Representative True, you asked about training

1 and education and changing attitudes. There's a lot of
2 great work going on, but again, money is the key. Public
3 service announcements, programs in the schools, faith based
4 initiatives. We could get things done, but we really need
5 money to do it.

6 I was asked to speak to the new detective class
7 in Philadelphia, and these are new detectives graduating,
8 they have a two-week class at the police academy, and I
9 went and talked to them, there were about 80 of them, and I
10 started talking about the Protection From Abuse Act and how
11 it works and what we're looking for in making arrests and
12 charging decisions, and all of a sudden a lot of hands
13 started going up and saying, well, what about when she has
14 an order but invites him over to her house, and what about
15 when she's abusing the system to try and get over on him?
16 And I couldn't believe that they were asking me all these
17 questions, and I said you know what, let us just stop it
18 right now, because is it true that someone is going to be
19 abusing the system out there? Because it's a powerful act,
20 and some people occasionally do abuse it, but let's talk
21 about all those other victims that are home terrified to
22 come out looking for help. Don't let your starting point
23 be that people are abusing the system. Let your starting
24 point be that there are hundreds and thousands of people
25 out there that need the protection - victims of domestic

1 violence, sexual assault, child abuse - who are not coming
2 forward because they're afraid to, because they're
3 embarrassed, because they're financially dependent upon
4 their abuser, because they're emotionally dependent upon
5 their abuser. So even within the police department, even
6 within law enforcement, we still have a long way to go to
7 change attitudes to the point that people take a more
8 enlightened approach the way our law does.

9 Dating relationships, should the Protection From
10 Abuse Act include dating relationships that are not
11 intimate? Absolutely. What's the difference? It is
12 already embarrassing enough for somebody to have to go in
13 and talk to complete strangers about the abuse that's being
14 inflicted upon them. Why should they have to talk about
15 their sex life too? It doesn't matter, it shouldn't
16 matter, and I think in Philadelphia there are some cases
17 where the intimate relationship, if there's kissing
18 involved, I mean, they actually ask these questions, well,
19 are you kissing? Are you petting? It shouldn't matter.
20 It's absurd. Again, if the law is really based on common
21 sense, which it should be, then we shouldn't be asking
22 these questions. It shouldn't matter.

23 This abuse occurs in dating relationships,
24 especially stalking. Someone who dates someone a couple
25 times and then becomes suffering from erotomania, this

1 obsessive belief that you're in love with someone.

2 Sometimes it happens with someone that you don't know,
3 really know. Sometimes celebrities are victims. But we
4 have to protect people, and sometimes that first or second
5 date could be enough to trigger the type of abuse in
6 stalking behavior that they need protection from. So we
7 absolutely support that.

8 So there's also a jurisdictional issue in the
9 bill which would allow both the jurisdiction issuing the
10 protection from abuse order as well as the jurisdiction
11 where abuse occurred to both be able to prosecute that
12 case, and we like that. In Philadelphia, we're bordered by
13 Montgomery County, Delaware County, Chester, Bucks County.
14 We have a lot of cases where the violence goes back and
15 forth across the border. I'm talking to the Delaware
16 County District Attorney's Office all the time about these
17 cases, and sometimes we say, well, we'll take this one and
18 this one, but you take that one and that one. And if there
19 is a contempt charge, it makes sense to give both counties
20 the ability to do it. Let the prosecutors work it out.
21 It's just giving prosecutors another tool to work together
22 to help victims and maybe not run them all over the State
23 just because the call was made to another jurisdiction.

24 Costs. No victim of domestic violence should be
25 paying for costs in this type of litigation. We absolutely

1 support the portion of the bill that says that victims
2 should not have to pay these costs. We had a judge in
3 Philadelphia who came through family court a few years ago
4 and probably shouldn't have, and he decided he was getting
5 fed up with people trying to use the PFA system in an
6 abusive way, and he started making survivors of domestic
7 violence post a bond in order to get a protection from
8 abuse order. It's just crazy. He was doing it when people
9 had already initiated the proceedings once, didn't follow
10 through and then came back a second time. Well, and that's
11 even worse because some of these people are truly victims,
12 they're truly trying to take that step to help themselves
13 but couldn't go through all the way, and then when they
14 come back a second time and now they're really ready to do
15 it, this guy was making them pay money. And a lot of these
16 people are indigent. And fortunately, the law changed in
17 response to that and we can't do that, but no one should
18 have to change. There are already enough obstacles to
19 prevent people from getting help that no one should be
20 putting one more obstacle up.

21 I already talked about firearms, but I did want
22 to address the amendment that we got today that makes it a
23 crime not to relinquish firearms. And what this basically
24 does is it says that if you're ordered to surrender your
25 firearms and you don't do that, not only are you guilty of

1 contempt for violating the order, but you're also now
2 guilty of a crime under the Crimes Code, and it would be a
3 misdemeanor of the second or third degree, depending on the
4 circumstances. We love this. This is giving the gun
5 confiscation provisions of the Protection From Abuse Act
6 some teeth. It's letting people know that there are
7 consequences, and not just consequences of up to six months
8 incarceration or supervised probation, but you could go up
9 to jail for a year or two if you don't do that. So we like
10 this. We think it gives the statute some teeth, and we
11 would urge the committee to do some form of this. I don't
12 know, it may need to be tweaked a little bit. I didn't
13 have time to go through all the details, but we like what
14 it's trying to do.

15 Representative Gannon's bill that calls for a
16 license suspension is another step in the right direction.
17 It would not call for a license suspension for the first
18 violation of a PFA order for contempt, but it would be for
19 the second one, and no one should ever be violating these
20 orders, let alone doing it a second time. We're always a
21 little bit concerned that judges may be less likely to
22 convict if they perceive this as being some sort of
23 mandatory minimum sentence and that it could in some ways
24 hurt us, but I think the plus side here is it's a pretty
25 powerful deterrent, because six months possible in jail,

1 most people don't get jail in these cases. Most people
2 with no prior records who are guilty of contempt usually
3 get some sort of probation. I was surprised to learn that
4 some judges are not imposing supervised probation because
5 the act doesn't specifically say that. We are getting
6 supervised probation in Philadelphia, and if there are any
7 sections of the State where judges are not supervising
8 probation, that needs to be done and that needs to be put
9 in the act so they know they can do that.

10 And the supervision should include batterers'
11 counseling. We have agencies in Philadelphia, we're lucky,
12 we work with Women Against Abuse, Women In Transition,
13 Congresso de Latino, Lutheran Settlement House, the Women's
14 Law Project, and we have batterers' programs. In fact, we
15 have been able to get local funding to get defendants in
16 criminal cases into batterers' counseling, because one of
17 the problems we had was that if someone was indigent and
18 they couldn't afford the counseling, what could we do? So
19 we got together, our office got together with the advocacy
20 groups, with the health department, and now there is
21 funding for people in that area, and I think that that type
22 of supervised probation with those types of conditions is
23 important and should be part of the statute.

24 House Bill 2316 deals with Masters. That's not
25 really a Philadelphia issue. I know that there's a need

1 sometimes in the middle of the night or after hours to get
2 protection from abuse orders, and in Philadelphia we have
3 bail commissioners working around the clock due solely to
4 the nature of the volume of the crime we have in
5 Philadelphia, and they do our temporary emergency PFA
6 petitions. But if in the counties the district justice or
7 the district magistrate is not available, there needs to be
8 some way for someone to get emergency temporary relief at
9 any time of day. This act is a powerful act. It carries
10 the power to evict an abuser from their home, and sometimes
11 if someone can't relocate, if there's not a shelter
12 available, then eviction is the next best step. And to be
13 able to evict someone and go back to your home with the
14 police is a great tool and it needs to be available after
15 hours. And if Masters go further toward getting that done,
16 that's a great thing to do.

17 Something else I also want to suggest which we
18 don't have in Pennsylvania but is standard in New York is
19 changing locks. New York, every county in New York has an
20 agency that when someone obtains a protection from abuse
21 order, if the victim wants it, can get their locks changed
22 and they can have someone work with them to call their
23 credit card companies, the credit reporting companies, the
24 telephone company so that their number becomes changed
25 and/or unlisted, so that their address will not show up on

1 their credit report, because we've seen cases where
2 stalkers use credit cards, credit reporting agencies to
3 find out where their victim lives. And New York has
4 funding for an agency in every county to get that done at
5 the same time, one-stop shopping. When you get the PFA, if
6 you want to, you can go next door and get all these
7 additional services. Again, it's a funding issue I know,
8 but it would really go a long way to help protecting
9 people.

10 The last thing I want to talk about was
11 Representative Youngblood's bill allowing for employment
12 leave in domestic violence cases. I like the idea. I like
13 what Representative Youngblood is trying to do, and I'm not
14 so sure about the way he proposes it, and what I would--

15 CHAIRMAN O'BRIEN: She.

16 MR. MALLIOS: I'm sorry, she. Sexism rears its
17 ugly head again. I would like the members of the committee
18 to take a look at the Crimes Code. If an employer doesn't
19 allow an employee to attend court for a criminal
20 proceeding, that's a crime. It's a summary offense. And
21 criminal proceedings often drag out a lot more than PFA
22 proceedings. Usually it's a temporary, you go to court for
23 your temporary, you go to court for your permanent, there
24 may be a hearing, there may not. It's not the type of
25 litigation that goes on and on and on like a criminal case

1 does, and that works. I mean, I have called employers for
2 victims when people are telling me that they don't want to
3 come to court because their employer won't let them.
4 Sometimes they're lying to me, they just don't want to come
5 to court, but sometimes it's true. Sometimes their
6 employer is really telling them that, and sometimes a call
7 from the chief of the Family Violence and Sexual Assault
8 Unit at the DA's office shakes things loose a little bit.
9 So that gives us a tool as prosecutors in criminal cases,
10 and I think it would give victims and victim advocates the
11 same type of tool in protection from abuse litigation.

12 That's all I have to say. I'd be happy to
13 answer any questions. We're very busy in Philadelphia,
14 we've got a lot of cases. We have 19 attorneys in our unit
15 working on rape, child abuse, and domestic violence cases,
16 felony domestic violence cases. We have another 3 in our
17 municipal court unit who are just doing our preliminary
18 hearings and misdemeanor trials, and we're bust. We have
19 about 125 criminal cases every week coming into the system
20 of domestic violence. We don't have it broken down by how
21 many of those are contempt and how many are just domestic
22 violence crimes without contempt, but as I said, what you
23 do in Harrisburg really affects us in Philadelphia to a
24 great extent.

25 CHAIRMAN O'BRIEN: Chris, let me thank you for

1 your testimony, and if I can make one suggestion, let lose
2 a little. Show some passion on this issue.

3 (Laughter.)

4 CHAIRMAN O'BRIEN: And I would also like to
5 thank you for shedding some light on those perpetrators in
6 those four surrounding counties that are spilling over into
7 the sanctuary that we know as Philadelphia.

8 (Laughter.)

9 CHAIRMAN O'BRIEN: I would also like to
10 recognize that Representative McNaughton has joined us at
11 the hearing.

12 Do we have any questions?

13 REPRESENTATIVE TRUE: I just have one.

14 CHAIRMAN O'BRIEN: Representative True.

15 REPRESENTATIVE TRUE: Thank you, Mr. Chairman.

16 Did you say that you only have one shelter in
17 Philadelphia?

18 MR. MALLIOS: Yes. We have one domestic
19 violence shelter. We have a couple other homeless
20 shelters, but, yes, we only have one, it's run by Women
21 Against Abuse.

22 REPRESENTATIVE TRUE: How large is it?

23 MR. MALLIOS: I think it's about 50 beds. It's
24 terrible. And we're trying to get money, I'm a member of
25 the Marriage Domestic Violence Task Force, and that's one

1 of the issues that we're dealing with, but it's hard to get
2 into that shelter, and it's hard to stay in. It's really
3 just for emergencies, it's emergency transitional housing
4 to get someone where they can live safely. And a lot of
5 these people are told that your best shot, because there
6 aren't enough shelters, is just to leave Philadelphia, take
7 your child and leave, leave your job, and it just shouldn't
8 be that way. I don't know what we can do, and I don't know
9 what Harrisburg can do to help us. I don't know whether
10 it's a local issue or State issue, but I think it really
11 needs work.

12 REPRESENTATIVE TRUE: I can think of two very
13 top high ranking political people in the State from
14 Philadelphia that perhaps would help. You might want to go
15 visit. And they're not at this table. That's just a
16 suggestion.

17 MR. MALLIOS: No, we have problems, and that's
18 one of the issues that our task force is working on.

19 REPRESENTATIVE TRUE: You might try that.

20 MR. MALLIOS: Thank you.

21 CHAIRMAN O'BRIEN: Mike Swoyer.

22 MR. SWOYER: Are you familiar with some of the
23 State and Federal funding streams that are available for
24 victims services?

25 MR. MALLIOS: Yes.

1 MR. SWOYER: Such as the RSA funds and was the
2 old State grant funds for victim services. Do you know
3 whether or not any of those funds are permitted to be used
4 to do things like change locks? I know that there are
5 funds, I don't think it's through crime comp, I think it's
6 through the Rights to Services Act.

7 MR. MALLIOS: Mike, I don't know. I know that
8 our office has a person that works on grants almost
9 full-time. The police department does, the Women Against
10 Abuse Legal Center does. All the agencies that we work
11 with are all out there scrambling, but everyone is
12 scrambling for every dime they can get their hands on.
13 There's just not enough money out there to help people with
14 this problem. And part of it may just be the old ingrained
15 attitudes of why is she staying? Instead of saying why is
16 he abusing and what can we do to help her, there are still
17 a lot of people, that just like those detectives that all
18 raised their hands.

19 and there's something else I want to point
20 out, it's not in response to your question, some of the
21 people that we see in domestic violence court are very
22 violent, dangerous criminals that are out on the street
23 selling drugs, they're committing other types of violent
24 crimes, and they're committing violent street crimes, and
25 then they're carrying on their life of violence into their

1 own homes too. So this is not just people whose only crime
2 is domestic violence. We see some very, very dangerous
3 criminals coming through those domestic violence
4 courtrooms. And our agencies that we're working with are
5 having a very hard time with funding to fill the needs. I
6 don't know if they're looking at the funds that you
7 mentioned. I can look into it when I get back.

8 MR. SWOYER: I would suggest that you do,
9 because I know, just for the benefit of the members of the
10 committee, there are State funds available for which that
11 is a permitted use. I'm not professing or commenting as to
12 the adequacy of that funding, but there are funding streams
13 to set up programs like you're talking about which are
14 occurring in New York which may be something the committee
15 may be interested in looking at.

16 CHAIRMAN O'BRIEN: Thank you very much.

17 MR. MALLIOS: Thank you.

18 CHAIRMAN O'BRIEN: Thank you, Christopher.

19 At this time, I would just like to reshuffle the
20 deck a little bit and ask some of the testifiers to rejoin
21 us at the table for an informal discussion. So I would ask
22 Amy Sousa, Susan Evans, Lieutenant Scott, Chris Mallios,
23 anyone else. And I would like to also ask James Hazen, the
24 Executive Director of the Pennsylvania Sheriff's
25 Association, to come forward and participate, and Jack

1 Lotwick, who is the sheriff from Dauphin County, to come
2 forward.

3 What we really wanted to do is talk about
4 Representative Weber's firearm provisions and also the
5 mechanics of this legislation and get your input on whether
6 you think this legislation is appropriate and whether it
7 will work.

8 MR. SWOYER: In the past where we've held sort
9 of panel type discussions, some of the most valuable
10 information comes from us sitting and observing you talking
11 amongst yourselves. As the Chairman indicated, some of the
12 provisions about their ability to own, possess, and retain
13 firearms and those groups and their issues balance against
14 the needs of victims, and at the same time the needs of law
15 enforcement and their need to have the tools necessary to
16 enforce court orders, and there has been an effort to
17 address those issues in this legislation, specifically in
18 House Bill 2403 and the amendment that was circulated here
19 this morning. And if we could just hear your thoughts or
20 comments as to what that is, because again, I believe that
21 notice has gone out that the committee would like to try to
22 address this legislation as early as next week, and to the
23 extent that there needs to be some recrafting, I'm not
24 suggesting that there needs to be, but if there needs to be
25 recrafting, now is the time.

1 MR. HAZEN: Mr. Chairman, I am Jim Hazen from
2 the Sheriff's Association. I even predate Jim Scott. I'm
3 in my 36th year, even though I'm no longer with the State
4 Police. What has happened in the span of time that Jim
5 talked about is light years from when we came on in
6 policing Pennsylvania. The efforts of the committee in the
7 past and work with your staff, the members of the
8 committee, in drafting this legislation is outstanding. I
9 did six years as legislative liaison from the State Police,
10 so from the late '70s to the mid-'80s, I was doing and
11 watching and attending the Judiciary Committee meetings.
12 We are light years ahead of what we were, and that's a
13 commendation to the members of the General Assembly and the
14 Governors that have signed the legislation. It is much
15 better. Is there room for improvement? Of course.

16 The sheriffs of Pennsylvania, the reason we
17 didn't testify is, part of what Mike was alluding to. I
18 have sheriffs, of course Jack Lotwick here from Dauphin
19 County, the sheriff of our county, I don't want to speak
20 for him, but the sheriffs are divided on the issue of the
21 second amendment as well, and that's one of the reasons we
22 didn't formally testify. The issue of relinquishment,
23 whether it's in 24 hours, some of my sheriffs think it
24 should be done immediately upon the issuance of an order
25 that firearms and other weapons should be confiscated. So

1 there is diversity.

2 The main thing though and what I think is so
3 important, regardless of what their personal feelings are,
4 this legislation - good, bad, or otherwise - is giving
5 direction not only to the sheriffs, law enforcement, but
6 what we have seen the courts, because, and Mike, there are
7 what, 59 judicial districts in Pennsylvania. While there's
8 not 59 different opinions, there is a great deal of
9 differences in how these issues are handled at the court
10 level as well. The sheriffs of Pennsylvania are happy that
11 we're going to be partnering with and included in the
12 legislation so it clearly defines what their role is in
13 regard to Title 23, particularly in regard to Protection
14 From Abuse Act.

15 The amendment that we got today, which was
16 introduced or soon will be introduced, we have talked
17 about, and I think that that's probably adding a crime
18 helps. Not just the contempt, but actually having a
19 misdemeanor for law enforcement. While I can't speak for
20 police and anymore than State Police, it does afford law
21 enforcement another tool when they run into these issues,
22 especially on relinquishment of firearms. So we're happy
23 to be formally joining, in many of the counties we're
24 informally involved in these processes of course, now we're
25 very much involved on issues going out and serving the

1 order. And frankly, I think everyone knows when a police
2 officer, law enforcement officer, deputy sheriff goes to a
3 house, very dangerous, and especially, and that's why I
4 mentioned personally more so than organizationally as far
5 as the organization, talking to the issue of the 24 hours.
6 I leave that up to the legislature. But things are so
7 volatile when a police officer or a deputy sheriff is
8 there. And if the relinquishment is within 24 hours.

9 On the reverse side, and this is something I
10 don't believe, Mike, we've talked about at our informal as
11 well as formal meeting, but some of the sheriffs would
12 really like to see the ability to do a PICs check, that's
13 the Pennsylvania Instinct Check, before they give the guns
14 back. So that's a little bit of a difference. Frankly,
15 some of them are doing it now. Is that in?

16 MR. SWOYER: I believe it's addressed in the
17 legislation.

18 MR. HAZEN: Good. If it's not, please, Dave,
19 Mike, make sure it is. As you know, those licenses are now
20 issued for five years and things can happen in that five
21 years, in addition to PFAs. So Pennsylvania Instant Check,
22 the sheriffs would be much more comfortable if they had an
23 ability to do those checks before they give the guns and
24 firearms back. So if it's not, please, if it would be
25 included.

1 We're very happy that we're working with our
2 associates, law enforcement, and frankly, you guys are
3 doing a tremendous job and we're glad to be partnered with
4 you, staff of the committee as well as the members, for the
5 sheriffs in Pennsylvania are very interested in this
6 legislation.

7 CHAIRMAN O'BRIEN: Sheriff Lotwick, do you have
8 anything to add?

9 SHERIFF LOTWICK: Yeah, I was really surprised
10 to find out that we didn't, throughout the Commonwealth,
11 take everybody's guns. In Dauphin County, when we get an
12 order, it says all weapons. I have two box vaults in the
13 basement filled right now, and I'm running out of space,
14 with crossbows, swords, daggers, hunting guns, and
15 handguns. And I was really surprised to see that it's
16 being addressed right that everybody is going to be working
17 uniformly on this.

18 The only issue I think that has me a little
19 nervous is that with State Police and with the local
20 police, that they're going to try to make this law a
21 sheriff's law, where they're going to try to say anything
22 with domestic violence, anything with confiscation, that's
23 not our job, that's the sheriff's job, and we have to be
24 very careful to make sure that the legislation does include
25 local and State Police officers.

1 CHAIRMAN O'BRIEN: I think we'll call it Payne-
2 Weber, or something like that.

3 (Laughter.)

4 SHERIFF LOTWICK: That's all I have to say, and
5 I was a State Trooper for 23 years before I became a
6 sheriff, and I know we've climbed huge hills and you need
7 to do it. I work very closely with our victim witness
8 program, as a matter of fact, we just got a grant where two
9 of my deputies will be assigned full-time to victim
10 witnesses to handle PFAs. So we're very concerned in
11 Dauphin County, and I want to thank you very much for
12 addressing these issues.

13 MR. SWOYER: If I could just direct your
14 attention, page 17, lines 8 through 10 of House Bill 2403 I
15 believe addresses your concern in that it requires that the
16 return be in accordance with Title 18, Chapter 61.

17 MR. HAZEN: Michael, I agree with you. I would
18 like to see it more specific because there's some question
19 as to whether or not the sheriffs are allowed to use the
20 PICs check on the relinquishment. So I'm saying I would
21 like that. Even though it says, I would like to see that
22 very specifically added. All it is is just the same way as
23 most of you know, when a sheriff issues a license to carry,
24 they do a PICs check. Same token, when the gun is
25 returned, they're authorized so there is absolutely no

1 question about it. That's what I'm asking. I actually had
2 that page underlined.

3 MR. SWOYER: All right. And then just for the
4 benefit of everyone, some of the sheriffs, when we first
5 started meeting, some of the issues raised by the sheriffs
6 were the issue that was already alluded to, when the order
7 says all weapons, what does that mean, what do you do, how
8 do you get them, how do you know when you got them all?
9 There are provisions in the legislation as I read it to
10 give some direction to the board to specify what weapons
11 they're talking about.

12 MR. HAZEN: That's what I meant when I said this
13 really does help. When they're out there and it says
14 "all," the question you and I have talked about many times
15 still some of the courts view the PFA order as grounds to
16 go in and actually search for weapons. Other counties
17 believe still is that in order to do that, you need to have
18 a search warrant. So that issue is still not resolved.

19 MR. SWOYER: But as I understand this
20 legislation in that the judge would specify or the judge
21 would specify all firearms, for instance, and you would
22 have reason to believe that it hasn't happened, with the
23 Title 18 provisions, that would entitle you to get a search
24 warrant to get any weapons that were not turned over.

25 MR. HAZEN: That's the other reason that we

1 would like the crime, because that gives you something more
2 than this. That if you have reasonable probable cause,
3 that then a police officer, a deputy sheriff, whoever, if
4 based on probable cause can get the search warrant,
5 actually go in and search. Now in some counties, the
6 judges are so specific in their PFAs that our sheriffs are
7 confident that based on the PFA they in fact do that.

8 MR. SWOYER: And that may well be the case.

9 MR. HAZEN: So again, we need to bring all of
10 this so that it's, and I know we'll never have uniformity
11 in the Commonwealth, I'm well aware of that from different
12 jobs I've had.

13 REPRESENTATIVE TRUE: Smart man.

14 MR. HAZEN: But this certainly helps. It really
15 moves it forward.

16 MR. SWOYER: And another issue that the sheriffs
17 raised had to do with storage fees, costs.

18 MR. HAZEN: I think you've done a pretty good
19 job on that, except for the ones that want you to say,
20 well, it's a dollar a day or it's \$2 a day, and I won't
21 even go near that. It's what they believe is reasonable to
22 maintain any of the things that are taken so that they do
23 not, what, they're in the same condition when they're
24 returned as when they're taken. I think you've addressed
25 that, other than with the specificity that some of my

1 people want which none of us could ever come up with. I
2 mean, should a gun be cleaned in Jack Lotwick's dingy
3 basement twice a week, and in the pristine new York County
4 Criminal Justice Center that it's once every month? I
5 mean, come on, common sense prevails so that the guns,
6 whatever, the implements are returned in the same condition
7 that they were taken. So I think, Michael, we've done
8 that.

9 CHAIRMAN O'BRIEN: Representative McNaughton.

10 REPRESENTATIVE McNAUGHTON: That's a great lead
11 into one of my questions. If someone has a collector's
12 item firearm that has to be turned over and you damage that
13 in transfer or in storage, how do you compensate that
14 person for the damage? Because you can take a priceless
15 weapon value wise and truly make it priceless.

16 MR. HAZEN: Absolutely.

17 REPRESENTATIVE McNAUGHTON: Okay, so how do you
18 prevent that from occurring? And do you carry insurance
19 that on these firearms would be my second question. And my
20 third question would be is that one of the costs that
21 you're going to associate to the defendant when he comes up
22 to pick up his weapons at the end, should you have to carry
23 insurance on the firearms? Because that could be a huge
24 dollar amount.

25 MR. HAZEN: I believe the answer to the first

1 question is that's provided for now in the Uniform Firearms
2 Act. If a weapon is seized under criminal provisions of
3 the Uniform Firearms Act, it's the responsibility for us to
4 maintain in the condition it was taken.

5 Now, your second or third, insurance, I'm not
6 sure. Other than the counties would probably be sued
7 and/or the sheriff, deep pocket, wherever that would go. I
8 don't know.

9 REPRESENTATIVE McNAUGHTON: And how do you
10 prevent potential damage, since you have two vaults filled
11 with various kinds of weaponry and somebody adds something
12 to that vault, do you keep them all separate in their own
13 protection? Do you know what I mean? Because you're going
14 to be confiscating potentially very, very, very valuable
15 firearms.

16 MR. HAZEN: I know that we, Representative
17 McNaughton, had that at the State Police in our evidence
18 room, that very issue, and again, the 67 sheriffs I'm
19 willing to bet you, there are probably 40 different ways of
20 doing it.

21 REPRESENTATIVE McNAUGHTON: I guess my other
22 question, Mr. Chairman, if I can have one more, it says you
23 have to relinquish all firearms, and that's on page 12, it
24 says any other weapons or ammunition threatened to be used.
25 So potentially a gentleman or a woman could have a crossbow

1 that has not been used or threatened to be used and that
2 would remain in that home because that's not necessarily
3 considered a firearm, or you could have a long bow, which
4 is not a firearm, which also would remain in the home and
5 would not fall under the provisions of this act. So if you
6 want to truly protect someone to be all inclusive, or i.e.
7 a knife, you say you have sabers or whatever the case may
8 be, they seem to fall outside of the language of this bill.
9 So my question is, what do you do in those instances?

10 CHAIRMAN O'BRIEN: I think at this point under
11 the legislation it's up to the discretion of the judge, but
12 I know Amy would have a comment on that.

13 REPRESENTATIVE McNAUGHTON: But how would the
14 judge know?

15 MS. SOUSA: You can tell by me jumping out of my
16 chair.

17 REPRESENTATIVE McNAUGHTON: I saw you fidgeting
18 a little.

19 MS. SOUSA: Thank you for bringing it up,
20 Representative McNaughton. I think the last time we talked
21 we had included all weapons in addition to firearms, so
22 things like crossbows, sabers, nunchuks, any weapon that
23 you can imagine would have been included, and that was in
24 our ideal world. What we then learned was that what could
25 be used as a weapon, could be defined as a weapon, could be

1 something as simple as a shoe or a baseball bat or a steak
2 knife. Because if we said all weapons, we were getting
3 sucked into taking anything sharp out of the house.

4 REPRESENTATIVE McNAUGHTON: You could go for a
5 whip, a rope, anything.

6 MS. SOUSA: Right. And so we really struggled
7 with trying to figure out how do you define "weapon," how
8 do you get around that. So if the victim is sent home
9 afraid of that crossbow, if in any way you can make that
10 nexus, then absolutely it should be taken. But we don't
11 want to take all the steak knives out of the house either.

12 REPRESENTATIVE McNAUGHTON: Then that gentleman
13 or woman who relinquishes the firearm still has the ability
14 to go purchase a crossbow or a long bow.

15 MS. SOUSA: Right, and that's the other thing.
16 The person still has the ability to purchase other weapons,
17 ammunition, because there's no licensing. If you want to
18 buy 14 boxes of ammo, you can do that and the cops are
19 never going to find out. And so trying to make a law that
20 is based on common sense, as Chris said, we were really
21 trying to figure out how we can best protect, within the
22 confines of the law, and this is what we achieved.

23 Even if you take all of my crossbows, my
24 nunchuks, everything, I could still use the trash can to be
25 a weapon. We're not going to save every victim,

1 unfortunately, but we can do the best that we can using
2 common sense approach.

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

5 CHAIRMAN O'BRIEN: Thank you.

6 MS. SOUSA: I don't think it's a shock, but the
7 Coalition absolutely supports the amendments. I think as
8 Mr. Hazen pointed out, right now when you're talking about
9 relinquishment of firearms, there's confusion as to whether
10 that's confiscation, relinquishment. What does the sheriff
11 do? What does the police officer do? This both, 2403 and
12 the proposed amendment, really make it clear what's
13 supposed to be done. Whether or not we could do more or
14 better, I think that remains to be seen, but the clarity is
15 what's really important right now. Twenty-four hours, it's
16 a set timeframe. We don't have that right now. So it
17 could be the 60-day timeframe, it could be 10 minutes.
18 And, boy, would I love to see that 10 minutes, but the
19 practical reality, as Mike has convinced me, is that you
20 can't do 10 minutes for everyone. What if my gun is a two
21 hours' drive away? We need to be practical, use a common
22 sense approach while protecting citizens. So 24 hours,
23 with some exceptions for the folks who have guns in Alaska,
24 was the common sense approach that we could find.

25 The amendments in terms of criminal prosecution.

1 What we have really found is that batterers will say, well,
2 I have my gun, but I gave it to Susan to hold, so I don't
3 really have it to hold anymore. But the judge doesn't know
4 that Susan's going to give it right back to me as soon as I
5 walk out that door. This extra amendment makes sure that I
6 am held responsible for that, and makes sure that Susan is
7 held responsible for that, for not following through with
8 protection of a victim. So if Susan doesn't right away
9 call the police and say, hey, listen, I have this gun, I
10 know that there's a PFA against Amy, and what do I do with
11 it, Susan can be held accountable, and I think that's
12 really important, because we're not letting batterers give
13 their guns to their brother, mothers, sisters, hunting
14 buddies. And so we need to be really clear about what
15 relinquishment really means, and the amendment and
16 Representative Weber's bill do this.

17 MR. SWOYER: And then just another point of
18 clarity, that the legislation also then provides for that
19 person who has relinquished their firearm to immediately
20 petition the court for sale or transfer. The amendment
21 also provides an alternative for delivering to the sheriff
22 to avoid, if they know that's their intent, to avoid having
23 to go through the court process to relinquish the firearms.

24 MS. SOUSA: And we talked about initially you
25 opened up your comments, Mr. Chairman, with some second

1 amendment issues, and I understand the importance. But I
2 always refer back to a statement made by Wayne LaPierre of
3 the NRA. The NRA, at least according to Mr. LaPierre,
4 supports lawful gun users, lawfully used guns in the hands
5 of citizens. So if you are a domestic abuser, if you are
6 raping, if you are beating, you are not a lawful gun user.
7 You should not be a lawful gun user in the Commonwealth.
8 These things are crimes. Whether or not they're being
9 prosecuted, they are crimes, and you should not have access
10 to those as weapons. And I don't think it's a conflict
11 with the Second Amendment, I don't think it's a conflict
12 with Mr. LaPierre's statement to take guns away from
13 batterers. Only lawful citizens have the right to have
14 guns.

15 CHAIRMAN O'BRIEN: Representative True.

16 REPRESENTATIVE TRUE: Thank you, Mr. Chairman.

17 I'm just curious, since I come from an area
18 where you just have to have several guns in your house,
19 people are very passionate about them, so how do you think
20 the reaction will be for that 24 hours? I understand the
21 need for that 24 hours, but will that escalate things more?
22 I mean, you know, if someone is told, okay, we're going to
23 take your guns, I mean, people get very disturbed about
24 that, and they're already disturbed to begin with, they're
25 already breaking the law, so what is the risk?

1 MS. SOUSA: It is a huge risk. It can be a huge
2 risk.

3 REPRESENTATIVE TRUE: Okay.

4 MS. SOUSA: And here was the thought process in
5 terms of thinking this through. The bill as it's drafted
6 right now does not say that all weapons must be removed,
7 all firearms must be removed. What it says is that a judge
8 has the discretion to order that all weapons be removed,
9 all firearms be removed. So if I as a battered woman go
10 into a courtroom and say, I don't want those weapons to be
11 removed because I know that these are his prize possessions
12 and he will kill me if you take those guns, please don't
13 take the guns, I want him to stay away from me, I want him
14 to stay away from my workplace, but the guns are fine, I
15 have the ability, as the victim, as the plaintiff, to go in
16 and ask for that. The judge then has the ability to decide
17 whether or not that's a reasonable claim.

18 So if the judge thinks that it's just fine that
19 the defendant keeps his weapon, then that's okay. If the
20 judge then says I still think it's a risk, the judge also
21 has the discretion to say, no, I really think we need to
22 confiscate these weapons and write it into the protection
23 order. So there is some flexibility in there, and
24 basically upon exactly what you're saying, it could
25 escalate the violence.

1 REPRESENTATIVE TRUE: It goes back to the victim
2 knows the abuser better than anybody else.

3 MS. SOUSA: Right. And the PFA itself may not
4 escalate the violence, but the removal of guns may.

5 REPRESENTATIVE TRUE: And that's what I was
6 getting at.

7 MS. EVANS: I just wanted to say that once
8 Commissioner Miller notifies the prothonotaries and the
9 courts that they're working with PCAV to get an electronic
10 transfer and we get into 67 counties, including
11 Philadelphia, with the protection from abuse database, we
12 have a vision and we're putting the contempts on the
13 system, it's not a criminal history, but that's part of the
14 civil action, that with the messaging system that's going
15 to notify the CDC center that there's a PFA in place, that
16 we could use that messaging system, for instance, where the
17 24-hour time period has passed, if the sheriff says it
18 didn't happen, that we'll be able to use the automated
19 system to move the information more quickly to get the
20 complaints processed more quickly so that those that
21 haven't complied with the orders can get processed more
22 quickly. A lot of things have to fall into place to get
23 that, but we have that in mind as an enhancement. In
24 Delaware they have something like that, when the guns
25 aren't returned, the police are notified and out they can

1 go to go get the guns. So we have a vision and we're
2 waiting for the steps to get into place, and the statute
3 will be a great help towards that.

4 MR. SWOYER: And just to clarify, Federal law
5 prohibits anybody who has a valid protection order from
6 possessing a firearm, whether or not that order mentions a
7 firearm, isn't that true?

8 MS. SOUSA: That is absolutely correct. There
9 is a difference between what Pennsylvania law says and what
10 the Federal law says, and you have aptly described it. The
11 only separate difference that I wanted to highlight is the
12 dating relationship. The dating relationship that we are
13 talking about adding to our PFA act would be covered only
14 by the Pennsylvania firearms provisions and would not be
15 covered by the Federal provisions.

16 MS. EVANS: Just to clarify, Brady is a little
17 bit narrower in the relationship as it covers in
18 Pennsylvania. For example, brother and sister could get a
19 PFA against each other. Brady isn't a prohibitor against
20 that. It's against intimate relationships and parents and
21 children, so their relationships are covered a little
22 narrower than the Pennsylvania law.

23 MR. MALLIOS: As you said, Mike, not
24 withstanding that language in the Federal law, we have seen
25 that the U.S. attorneys will not prosecute a case for

1 violating Federal law if the State judge did not
2 specifically state in the order that the guns had to be
3 confiscated. So it's there, but we still need the State
4 court judges. It's a matter of practicality the judge has
5 to order it or the Feds won't prosecute the case.

6 MR. HAZEN: And candidly, Chris, the Feds aren't
7 prosecuting cases anyway.

8 MS. SOUSA: They're absolutely not.

9 MR. MALLIOS: Then there's that.

10 CHAIRMAN O'BRIEN: Thank you for that
11 clarification.

12 Any other questions?

13 (No response.)

14 CHAIRMAN O'BRIEN: Well, firstly, I'd like to
15 thank all those who participated. Your testimony today has
16 been one of the best informational hearings that I've
17 attended in a long time. It certainly brings the urgency
18 of the issue before us. We have also announced that it's
19 our intention to move on this legislation quickly. So if
20 those that have been asked for comments, if they can
21 contact Mike Swoyer ASAP, that would help this process
22 significantly.

23 I would like to thank my co-chair,
24 Representative Blaum, for again presenting a nonpartisan
25 approach to these important issues, and I'd like to again

1 recognize the Payne-Weber coalition on these issues, and
2 really impressed upon us the urgency to have this important
3 hearing. So I will close this hearing, and thank you all.

4 MR. HAZEN: Mr. Chairman, just again, thanks to
5 all of you.

6 (Whereupon, the proceedings were concluded at
7 12:11 p.m.)

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

5
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