

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE HEARING

STATE CAPITOL
MINORITY CAUCUS ROOM
ROOM 418
HARRISBURG, PENNSYLVANIA

TUESDAY, JULY 22, 2008
10:05 A.M.

PRESENTATION ON HB 2407
KIMBERLEE'S LAW

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, MAJORITY CHAIRMAN
HONORABLE RON MARSICO, MINORITY CHAIRMAN
HONORABLE DEBERAH KULA
HONORABLE CARL W. MANTZ
HONORABLE BERNIE O'NEILL
HONORABLE JOHN E. PALLONE
HONORABLE JOSEPH A. PETRARCA

ALSO IN ATTENDANCE:

HONORABLE DOUGLAS G. REICHLEY

ALSO PRESENT:

WILLIAM H. ANDRING, ESQ.
MAJORITY LEGAL COUNSEL
DAVID M. McGLAUGHLIN
MAJORITY SENIOR RESEARCH ANALYST

DEBRA B. MILLER
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P R O C E E D I N G S

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CHAIRMAN CALTAGIRONE: This is the House Judiciary Committee. We are going to be holding a public hearing on House Bill 2407 today, Representative Doug Reichley's bill.

And if we could, for the record, if the staff and members would introduce themselves, starting at my right and just go right down.

MR. McGLAUGHLIN: Good morning, Mr. Chairman. David McGlaughlin, Majority Judiciary Committee staff.

REPRESENTATIVE MANTZ: Carl Mantz, 187th Legislative District, Berks and Lehigh Counties.

MR. ANDRING: Bill Andring, Chief Counsel.

CHAIRMAN CALTAGIRONE: Tom Caltagirone, Chairman, House Judiciary.

REPRESENTATIVE MARSICO: Ron Marsico, Minority Chairman.

REPRESENTATIVE REICHLEY: Doug Reichley, former member of the House Judiciary Committee, until this session, 134th District, Lehigh and Berks Counties.

REPRESENTATIVE O'NEILL: Bernie O'Neill from the 29th Legislative District in the center of

1 Bucks County.

2 REPRESENTATIVE KULA: Deberah Kula,
3 52nd District, from Fayette and Westmoreland
4 Counties.

5 CHAIRMAN CALTAGIRONE: And for the record,
6 Ronny and I work very well as a team together. I do
7 not consider him the Minority Chairman. We are
8 co-chairmen of this committee, and we have done a lot
9 of good work this session, and I want to thank him
10 and the members of the committee.

11 REPRESENTATIVE MARSICO: Thank you,
12 Mr. Chairman.

13 CHAIRMAN CALTAGIRONE: We will start off
14 with Representative Reichley with the opening
15 remarks.

16 REPRESENTATIVE REICHLEY: Thank you,
17 Mr. Chairman.

18 I do not have any prepared remarks, just a
19 very brief introduction.

20 I think going back maybe 6 or 9 months ago,
21 Mrs. Godshall approached my office, as well as State
22 Senator Pat Browne, with a matter which was of
23 intense personal interest and great emotional trauma
24 for her regarding a family situation in which her
25 daughter had been a homicide victim.

1 The offender, the murderer, a convicted
2 murderer in the first degree, was the husband of the
3 young lady, who has been sentenced to life in prison.

4 And there is a young child who is the
5 product of that union, and Mrs. Godshall brought to
6 me the issue of her concern that there not be a legal
7 ability for a person who is convicted of murder in
8 the first degree, where domestic violence had
9 previously been involved, have contact with that
10 child.

11 Ms. Markow, who is sitting to
12 Mrs. Godshall's right, I think was recently
13 recognized by *People Magazine* as one of the 100 most
14 influential women in the country and has been a great
15 leader of the victims' rights movement, certainly in
16 the Lehigh Valley, and I appreciate them coming out
17 here today.

18 In describing the challenge that lays before
19 the Legislature in considering any kind of
20 legislation which would preclude contact between a
21 person convicted of murder in the first degree and a
22 minor child of that same person, I did explain to
23 Mrs. Godshall that uniform changes in law can be
24 difficult when the objections are related to an
25 individual case, but believe that she also -- and

1 Ms. Markow -- has the ability to articulate for the
2 committee the significant personal issues that are at
3 hand that may very well have an application outside
4 of their immediate case.

5 So I appreciate the consideration of the
6 Chairman for scheduling this informational hearing on
7 the bill, and we will take it away from there.

8 Thank you.

9 CHAIRMAN CALTAGIRONE: Thank you.

10 If you would, do you want to start, and just
11 identify yourself for the record then.

12 You can go ahead.

13 MRS. GODSHALL: Well, good morning,
14 Mr. Chairman of the House of Representatives.

15 My name is Fairlie Godshall. I thank you
16 for the opportunity to appear before you to offer
17 comments on House Bill 2407.

18 I am a mother who lost her daughter to an
19 act of domestic violence and a concerned grandmother
20 and citizen.

21 I am asking for your support of Kimberlee's
22 Law. House Bill 2407 has clarifying language that no
23 court shall award custody, partial custody,
24 visitation, contact, or communication, verbal or
25 written, by a parent who has been convicted of murder

1 under 18 Pa.C.S. §2502(a), relating to murder of the
2 first degree, of the other parent of the child who is
3 the subject of the order, unless the child is of
4 suitable age and consents to the order.

5 We believe that it would be in the best
6 interests of all the children that all parental
7 rights are terminated. When one parent murders the
8 other, we take children out of the homes where abuse
9 is prevalent, so why would any judge allow a violent
10 offender to have any contact with an innocent child?

11 Kimberlee's Law would take away that contact
12 communication, written or verbal, with the predator.
13 We are talking about taking away 100 percent of their
14 rights, not 99 percent.

15 Imagine being 1 years old and having your
16 mother murdered in the next room. The court system
17 then makes the decision, in this case, to give the
18 violent criminal rights to draw and send pictures to
19 his daughter. This does more harm than good.

20 Let us put the best interests of the child
21 first. Let us let the loving family that is raising
22 this child as mother and father give her the normal
23 life that she deserves, not a life that is forced
24 onto her by a judicial system. It is a constant
25 reminder of what she has lost.

1 House Bill 2407 is not only about my
2 granddaughter but is for any child who finds
3 themselves in this situation.

4 On November 13, 2001, Kimberlee Godshall
5 Carl lost her life at the hands of her husband,
6 Joel Carl, while their 1-year-old daughter was in her
7 crib in the next room.

8 The Godshall family has come together to
9 provide a safe, loving, nurturing, healing home to
10 this innocent child who was left without a mother.

11 The stability offered in their protective
12 arms has been shattered in the custody ruling. The
13 criminal was given rights to communicate with this
14 child.

15 It was proven that Carl constructively
16 premeditated the murder, therefore deciding to
17 abandon his little girl, which should have terminated
18 his rights.

19 Court documents and statements from the
20 judge state that he believes both the victim's family
21 and the criminal's family are feeling the same pain.
22 Our family can't go visit her in prison, reach over
23 and hold her hand, talk on the phone, or receive
24 letters in the mail. All we can do is visit her
25 grave, look at pictures, and reminisce about the

1 happy times we shared. It is ludicrous to think that
2 the Carl family feels the same pain.

3 Now the disturbing part, Joel Carl's
4 parental rights per State law: Carl may have no
5 custody, partial custody, or visitation. However,
6 the judge said he would not grant a provision
7 recommended by a parole officer that Carl have no
8 contact. "I would rather leave it in the hands of
9 the child therapists as to whether you should have
10 any contact and what the nature of that would be,"
11 the judge told Carl.

12 When it came to the custody part, this judge
13 in the Lehigh Valley and the child psychologist
14 agreed that the man convicted of first-degree murder
15 who was sent to jail with no chance of parole should
16 be allowed to communicate with an innocent little
17 girl.

18 How could it possibly be in this child's
19 best interests to have contact with a man who killed
20 her mother? How could a judge and a professional
21 not see that such contact would or could do more
22 harm than good? If this criminal could abuse, then
23 murder her mother while she was in the next room,
24 what stability and support could he offer this
25 child?

1 Of all the roles one plays in life, that of
2 being a parent is perhaps most important. The role
3 requires a huge commitment of time and emotional
4 support. However, when a parent is unable to meet a
5 child's basic needs due to murder, neglect, or abuse,
6 the parent's rights to custody of that child, upon
7 finding a parent to be unfit, we believe that the
8 parent's rights in these instances should be
9 terminated. House Bill 2407 would close the loophole
10 in the law and terminate any and all rights.

11 My granddaughter suffers from trauma-related
12 development. Children who lose a parent to murder
13 face serious adjustment problems -- Dr. Alan Wolfelt,
14 Ph.D.

15 There are indications that my
16 granddaughter's early family history has negatively
17 impacted her academic and social functioning. I have
18 documents on her related development issues, and as
19 you see, I have them all written there, and I have
20 documents if you want to see any of them. There were
21 just too many -- there have been hundreds of papers
22 to have to fax to you. So I have books here for you
23 to be able to look at all these documents.

24 I have the letters and drawings from
25 Joel Carl. I have over a thousand signed petitions.

1 It is my hope that this House Bill 2407 will
2 become law, not only to benefit my granddaughter but
3 for any child who finds themselves in these
4 circumstances. If this will help one other child, my
5 efforts will be worthwhile.

6 Thank you for the opportunity to explain
7 House Bill 2407. If you have any questions, I would
8 be happy to answer them.

9 CHAIRMAN CALTAGIRONE: Thank you.

10 If it is okay with the panel, we will hear
11 from the next testifier.

12 MS. MARKOW: Good morning, and thank you for
13 having me here today.

14 My name is Heidi Markow, and I am the
15 founder of the Beginning Over Foundation.

16 The Beginning Over Foundation is a nonprofit
17 organization providing help, hope, and support to
18 those touched by domestic abuse across the
19 Commonwealth of Pennsylvania.

20 Our goal is to help shelter and protect
21 families in crisis and support long-term solutions to
22 help them rebuild and sustain healthy lives.

23 Thank you for the opportunity to appear
24 before you today to offer my comments on House Bill
25 2407.

1 It is important for you to know that I lost
2 my sister, Robin Shaffer, on June 15, 2005, to an act
3 of domestic abuse.

4 Shortly after that, I met Fairlie Godshall
5 and started to research the domestic abuse laws here
6 in the Commonwealth. To my dismay, the research
7 revealed that there were many loopholes in our
8 system which grant criminals more rights than their
9 victims.

10 We are testifying before you today because
11 we have hope and faith in you, our legislators. In
12 fact, you are our only hope and help right now, and
13 your decision on this bill could be some child's
14 lifeline.

15 You can help families and children rebuild
16 their lives without the outside influence of
17 convicted felons. You can help make a child's life
18 more stable and secure. You can help them feel as
19 one with their new families. You can help take away
20 the turmoil from their innocent minds and give them a
21 chance to find peace and to be able to heal. You can
22 send a signal that you care about families who are
23 left to pick up the pieces of home shattered by
24 domestic violence and who will raise these children
25 through the devastation.

1 Coping with the death of a loved one is
2 never easy, regardless of how old you are when the
3 loss occurs. For children who lose a parent,
4 however, the effects can be devastating and a plan
5 will need to be put into place so that they can learn
6 to accept this part of the life cycle and move on in
7 a healthy, balanced manner.

8 We cannot undo the murder, but we can decide
9 how the children will live afterwards. Hopefully you
10 will never be confronted with the pain or the anguish
11 of losing a loved one so violently.

12 My wish for today is that you can put
13 yourselves in our shoes and think about having a
14 child put in danger and being totally unable to do
15 anything about it. That is what has been done to the
16 Godshall family and what may happen to other families
17 faced with this tragedy.

18 We are here in the name of Kimberlee
19 Godshall Carl, but we are really here on behalf of
20 all the children of this Commonwealth.

21 We cannot bring Kimberlee back and we
22 cannot change the ruling and the fate that
23 Judge Edward Reibman and social worker Mary Louise
24 Bross of Lehigh County handed down to the Godshall
25 family. What we can do is protect and make sure that

1 the same inane ruling is not perpetrated on another
2 family or child in the Commonwealth of Pennsylvania.

3 I spend a lot of my days researching
4 domestic abuse, and it is appalling to me to find
5 that out of the 50 States, Pennsylvania is one of
6 8 States that does not terminate parental rights for
7 a felony conviction. Our surrounding States do.

8 Forty-two other States understand that a
9 person convicted of murdering their spouse or someone
10 they have had an intimate relationship with should
11 have their parental rights terminated.

12 In my cases, if an animal is abused, the
13 SPCA is called in and the animal is taken into
14 custody and adopted, never to have contact with the
15 abuser again. Why should animals be afforded more
16 consideration than our children?

17 What kind of example did Judge
18 Edward Reibman and social worker Mary Louise Bross
19 send to families in our Commonwealth? Their message
20 needs to be used as an example of injustice.

21 We protect our children from violent sexual
22 predators through Megan's Law; why shouldn't we do
23 the same for family violence?

24 Domestic abuse is not a private family
25 matter. The impact of domestic abuse on the police,

1 the community, the courts, and businesses is
2 staggering. Why is there no law in Pennsylvania,
3 especially for domestic abuse?

4 How can it be that there is no separate law
5 for domestic abuse when the statistics show that many
6 9-1-1 calls are domestic complaints?

7 Domestic abuse is not going to end. Do you
8 know why? Because perpetrators are laughing at the
9 system. They know they will get a slap on the wrist,
10 told to go to anger management or some other class,
11 and they are often free to simply walk out of the
12 courtroom.

13 As long as there are no real consequences,
14 abusers will continue to abuse. We will never get to
15 the real cause of domestic violence until it is
16 treated as what it is -- domestic violence.

17 It is a fact that when a parent is abused,
18 the children are directly or indirectly abused
19 themselves. We are here today with our hearts on our
20 sleeves. If you do not change the laws, then how can
21 we expect family violence to end?

22 We are spending billions of dollars a year
23 on health insurance and shelter for victims of
24 domestic abuse. Did you ever stop to think that by
25 changing laws, we will be setting an example and

1 sending a message that domestic abuse is being
2 tackled by the Legislators of the Commonwealth and
3 that they are treating family violence like any other
4 crime?

5 A few weeks back, I had the opportunity to
6 sit with a psychiatrist for 5 hours. This was a man
7 of true integrity. After telling him the story of
8 Kimberlee Godshall Carl, he looked at me with such
9 sincerity and said, "That is the most ridiculous
10 thing I have" ever "heard in my 25 years of
11 practice."

12 He stated that any child who would be
13 subjected to any kind of contact with a criminal will
14 face a life of unending problems. He went on to
15 mention learning disabilities, behavior problems, and
16 being misdiagnosed with disabilities such as ADHD and
17 other issues.

18 The main issue lies with childhood trauma.
19 Children are being treated for disorders when
20 essentially they should be looked at for experiencing
21 childhood trauma.

22 We take guns out of the hands of felons to
23 protect our society, but yet we allow these same
24 felons to have contact or communication with an
25 innocent child?

1 In closing, it is our hope that you will
2 make the decision to look out for the best interests
3 of the children here in the Commonwealth of
4 Pennsylvania.

5 I also believe that Pennsylvania should
6 consider adopting legislation as 42 other States have
7 done and terminate the parental rights of a person
8 convicted of a violent felony, particularly if that
9 violence is directed toward a family member or
10 intimate partner.

11 It is and always has been the mission of the
12 Beginning Over Foundation to protect victims and
13 support legislation to provide more safety and
14 justice for our domestic abuse survivors and their
15 families.

16 This is our cancer. It eats away at us on a
17 daily basis. One element is different here: You can
18 cure this cancer for another family.

19 Fairlie and I can't bring our loved ones
20 back, but you certainly can play a role in the lives
21 of innocent children.

22 Thank you for listening and allowing us the
23 opportunity to try and effect change, which in turn
24 we hope will save innocent lives.

25 If you have any questions, I would be happy

1 to answer them. Thank you.

2 CHAIRMAN CALTAGIRONE: Thank you.

3 Representative Reichley.

4 REPRESENTATIVE REICHLEY: Thank you to both
5 of you.

6 I think, as I said in the beginning, this is
7 a topic of extreme emotional and personal importance
8 to both of you.

9 I think I owe it to the members of the
10 committee to also clarify some issues.

11 After some initial media attention of the
12 issues surrounding your particular case, I was
13 contacted by Mr. Carl's family, and it would not be
14 of any surprise that they hold a diametrically
15 opposite viewpoint than yours, that they believe that
16 the order rendered by the judge addressed various
17 issues.

18 Would it be correct to state that the
19 communication between Mr. Carl and his daughter is
20 reviewed by a psychologist before it goes to the
21 child?

22 MRS. GODSHALL: Yes, Mary Louise Bross.

23 REPRESENTATIVE REICHLEY: And that was part
24 of the judge's order that there not be any direct
25 contact from Mr. Carl to the child?

1 MRS. GODSHALL: I have them in here if you
2 want to see them.

3 REPRESENTATIVE REICHLEY: I'm just trying to
4 put all the facts on the record so that the members
5 of the committee understand what the particulars of
6 the court order were. But there is a portion of that
7 order that says that communications are to be
8 reviewed before they go to the child.

9 MRS. GODSHALL: Yes, and it goes to the
10 Carls and it also goes to my son and daughter-in-law,
11 which this is going -- that is two times a month plus
12 holidays of having "I love you," "My princess," all
13 this kind of stuff from Daddy Joel.

14 To me, this is just more harm. She has to
15 relive this every day. She tells me she doesn't
16 want to listen to it, that she walks away and watches
17 TV.

18 She is hearing about him; they are
19 candy-coating him. She comes to me the other day and
20 says, "Daddy Joel bought me a color TV." She was all
21 happy. And I go, "No, Daddy Joel can't buy you a
22 color TV; he's in prison, Brylee." And she goes,
23 "Yeah, he sent it to me." And I just explained to
24 her that "they" had to have bought that and said it
25 was coming from him.

1 To me, this is hurting her, all these
2 things. She tells me that there is a picture in her
3 bedroom there at the house and she doesn't want it
4 there; it scares her. And then she took it out, and
5 then they put one in, another one, and she says to
6 me, "Yeah, there's one of Daddy Joel, Mommy Kim, and
7 me, but that's okay, Grammy, because Mommy Kim is in
8 that one."

9 So, I mean, she is so torn with all this and
10 to have to hear, you know, every month, twice a month
11 plus holidays, these letters coming in, you know, to
12 hear from her father knowing what he did to her
13 mother, this has got to be traumatizing. And I have
14 a book full of nothing but all the troubles she's
15 having now.

16 REPRESENTATIVE REICHLEY: I understand that.

17 MRS. GODSHALL: And it is all coming out
18 since she's in school, and I'm going to have to go to
19 Hillside School now.

20 REPRESENTATIVE REICHLEY: And this was a
21 matter that was, and may actually still be actively
22 litigated---

23 MRS. GODSHALL: Right.

24 REPRESENTATIVE REICHLEY: ---that you have
25 attempted to preclude that contact. Is that correct?

1 MRS. GODSHALL: Yes.

2 REPRESENTATIVE REICHLEY: Okay.

3 Now, Ms. Markow, let me ask you a couple of
4 questions.

5 You may have seen -- I think you did before
6 the hearing started -- that there were written
7 letters submitted by the Women's Law Project and the
8 Coalition Against Domestic Violence who have urged
9 the members of the committee to vote against the bill
10 or to, at the very least, include current language, I
11 think -- Mr. Andring, would that be correct?

12 MR. ANDRING: Yes.

13 REPRESENTATIVE REICHLEY: ---that says that
14 a child, based upon a court's determination, I
15 suppose, of suitable age is allowed to receive
16 communication. What is your feeling about that?

17 MS. MARKOW: We also have "of suitable age,"
18 you know, but we are talking about convicted felons
19 here. We are not talking about somebody who, you
20 know, was not convicted of murder of the first
21 degree. Our language states that until the child is
22 of a suitable age.

23 This little girl was 1 years old when this
24 happened. She had no time to heal. There was no
25 real bond with the father here. You know, she could

1 have been able to live in a healthy home and rebuild
2 her life and decide later on if she wanted to have
3 contact with the man who killed her mother.

4 I believe it is up to us to protect the
5 children. Why is family violence any different than
6 any other type of violence here in the Commonwealth?

7 You know, and one of the things, too, with
8 the drawings and pictures, if you look in some of the
9 paperwork we have, it says "drawings, pictures, et
10 cetera." You know, "et cetera," to me, could mean
11 anything.

12 REPRESENTATIVE REICHLEY: The bill as it is
13 currently drafted does eliminate the current
14 provision for allowing a child of suitable age to
15 consent to the order based upon the language, I
16 believe, that Senator Browne had also drafted to the
17 bill. So it would be a prohibition until the child
18 reaches an age of majority at 18. Is that what you
19 are asking?

20 MRS. GODSHALL: Yes.

21 MS. MARKOW: That is what we are asking,
22 but, you know, we are open to letting a child heal.

23 You know, if somebody came to me and said
24 "16," then 16 would be the number then. You know, it
25 is just that I do not believe that a child who is not

1 able to make this decision should have this decision
2 forced upon her when the family knows what is best
3 for her.

4 This is a family that has basically --
5 Fairlie was the caregiver for this little girl when
6 her daughter worked. These people know what this
7 little girl needs.

8 You know, of course there is going to be
9 opposition from the Carl family. Did we not expect
10 anything other than that? You know, they still love
11 their son, and I understand that, and it is not even
12 about Joel Carl anymore; it is about all the children
13 across the Commonwealth of Pennsylvania.

14 This is family violence. This is the most
15 devastating form of violence. This is something that
16 ruins our children for the rest of their lives,
17 and we wonder why there is so much trouble out on
18 our streets today. It stems from our home
19 environment.

20 Do you think that Joel Carl learned this
21 behavior after he got out of high school? He didn't
22 learn this behavior after high school.

23 REPRESENTATIVE REICHLLEY: Well, I think I
24 would urge you to avoid making specific references to
25 anything related to the case or to the names of

1 anybody. It is a little late for now. But I think
2 going into---

3 MS. MARKOW: Okay. I'm just trying to use
4 an example. I'm sorry.

5 REPRESENTATIVE REICHLEY: I understand.

6 Okay. Thank you, Mr. Chairman.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 Bernie.

9 REPRESENTATIVE O'NEILL: Thank you, and
10 thank you for being here today. I certainly can
11 sympathize with you.

12 I have kind of lived this story a little
13 bit. I was a former teacher and I'm a trained
14 psychologist and a behavior specialist, and I dealt
15 with a young man who had to deal with this. His
16 father was in prison, not for the murder of his
17 mother but for the murder of his mother's sister, and
18 I can see a lot of what you are talking about.

19 I have some questions. One of them would
20 be, does your granddaughter have any contact directly
21 with her father?

22 MRS. GODSHALL: No.

23 REPRESENTATIVE O'NEILL: In other words,
24 there are no forced phone calls? Like if he called,
25 she has to accept the phone call or something like

1 that?

2 MRS. GODSHALL: No; they just tried to do it
3 one time, and we caught it, my daughter-in-law caught
4 it, because she came back and said that she was going
5 to the Post Office and she was talking on the phone.
6 And that is a court order; he is not allowed to talk
7 to her.

8 REPRESENTATIVE O'NEILL: Oh; okay.

9 MRS. GODSHALL: And that was brought to the
10 attention of the judge at the time.

11 REPRESENTATIVE O'NEILL: But he is allowed
12 to write to her?

13 MRS. GODSHALL: He is allowed to draw and
14 write letters to her.

15 REPRESENTATIVE O'NEILL: I see. Okay. It
16 does not mean she has to open them though, I would
17 assume.

18 MRS. GODSHALL: Well, the Carls---

19 REPRESENTATIVE O'NEILL: But I guess they go
20 to her family---

21 MRS. GODSHALL: The Carls, the grandparents,
22 will do this every time. I'm not saying my
23 daughter-in-law will every time, but.

24 REPRESENTATIVE O'NEILL: Right; okay.

25 I guess my question is, I understand why you

1 want to terminate the rights of the parent who
2 committed the crime. Do you also want to terminate
3 the rights of the family of that parent? Is that
4 what you are also trying to do?

5 MRS. GODSHALL: Just Joel.

6 REPRESENTATIVE O'NEILL: Just him.

7 MRS. GODSHALL: Just Joel.

8 REPRESENTATIVE O'NEILL: Okay. And then the
9 family, the parents, would have to meet the law, if
10 this became law, and if not, then they would be
11 putting, I guess, their rights in jeopardy then, I
12 would assume.

13 MRS. GODSHALL: I do not understand the
14 question.

15 REPRESENTATIVE O'NEILL: Well, for example,
16 they may have contact -- say it is their son, and
17 they may have contact with their son in prison, and
18 he calls them and she is over at the house visiting
19 and he is not allowed contact with her, and they are
20 on the phone with him, oh, here, and put her on.

21 MRS. GODSHALL: But they are not allowed to
22 do that by court order either.

23 REPRESENTATIVE O'NEILL: Right, so if they
24 got caught doing something like that, they could put
25 their---

1 MRS. GODSHALL: Then they lose their rights,
2 too.

3 REPRESENTATIVE O'NEILL: Okay. All right.
4 They would lose--- Okay; great.

5 I guess one of my other questions, too, as
6 I'm reading here the information from the Women's Law
7 Project, they state in here, you are talking about
8 suitable age and all that sort of thing. One of
9 their arguments is that the child should have the
10 right to determine if they want to visit or have any
11 kind of contact, and I understand what they are
12 saying; they may need closure or something like that.

13 I guess I just want to put on the record
14 that I think they are making a case for your case
15 actually by doing that.

16 MS. MARKOW: Yeah.

17 REPRESENTATIVE O'NEILL: Because if the
18 child does need to make closure or something like
19 that, that should be the child's choice when they
20 reach a suitable age---

21 MS. MARKOW: Yes; yes.

22 REPRESENTATIVE O'NEILL: ---and then they
23 can make the contact themselves.

24 So for them to say for us not to pass this
25 law and terminate someone's rights based on that, I

1 just think it is kind of ludicrous.

2 All right. Thank you. I appreciate it.
3 And I'm sorry to hear what you have been going
4 through, but I appreciate what you are trying to do
5 for the other children.

6 Oh, and one other question I have for
7 Mr. Reichley: If this does become law, is there
8 anything retroactive that they would have the right
9 to appeal to the courts to have his rights
10 terminated?

11 REPRESENTATIVE REICHLEY: Well, I will defer
12 to Attorney Andring's help, but my understanding of
13 this would be that this would be solely prospective.
14 They would not be able to overturn the current terms
15 of the order.

16 I suppose they could petition to argue that
17 it is in the best interests of the child, which is
18 the prevailing standard, that the contact be
19 terminated. But it could not automatically have a
20 change in the terms of the visitation or contact
21 order, I think.

22 MR. ANDRING: Yeah.

23 CHAIRMAN CALTAGIRONE: Counsel Andring.

24 MR. ANDRING: Yeah; I would agree with that.

25 I think if there were a change in the terms

1 of the order or a petition were filed, then the court
2 would be bound by the current status of the law on a
3 custody issue. But there would be no automatic
4 modification of existing orders.

5 REPRESENTATIVE O'NEILL: Okay.

6 CHAIRMAN CALTAGIRONE: For the record, I
7 would like to introduce Representatives John Pallone
8 and Joseph Petrarca, who have joined the panel.

9 And also for the record, as part of the
10 official record, the Women's Law Project and the
11 Pennsylvania Coalition Against Domestic Violence have
12 submitted testimony that we would like to have filed
13 for the record.

14 Representative Pallone.

15 REPRESENTATIVE PALLONE: Thank you,
16 Mr. Chairman.

17 I apologize for missing the earliest part of
18 the testimony. However, you know, the discussions,
19 while I recognize and acknowledge the dilemma that
20 you are suggesting, that you may have a felonious
21 individual having contact with minor children, I'm
22 curious as to the -- when you say the age separation
23 in terms of allowing them to have contact when the
24 child is able to make that decision, do you have any
25 objective criteria that would determine what that age

1 point would be?

2 MRS. GODSHALL: I personally feel 18.

3 REPRESENTATIVE PALLONE: But are there any,
4 I do not know, maybe studies, psychological studies,
5 or anything to that effect that would suggest that
6 18 is better than 16 or better than 14?

7 MRS. GODSHALL: No, I haven't read anything
8 like that.

9 REPRESENTATIVE PALLONE: And also on the
10 flip side of that, on the youngest end of the
11 spectrum, while an infant, for example -- it could be
12 mother or father who is the victim of domestic
13 violence resulting in catastrophic loss -- on the
14 other end of the spectrum, the infant or the
15 1-year-old who would have either little or no
16 recollection of that at all, would you suggest then
17 that you are precluding them from any contact with
18 the actor as well? They certainly would not have a
19 memory or a recollection of it.

20 MS. MARKOW: A recollection of the murder
21 itself?

22 REPRESENTATIVE PALLONE: Or whatever the
23 domestic violence is that resulted in catastrophic
24 loss. It is not always murder.

25 MS. MARKOW: Yeah.

1 REPRESENTATIVE PALLONE: It could be
2 something else that resulted in the loss.

3 MS. MARKOW: Well, I can tell you this, that
4 there are studies right now -- I just had a call from
5 a prosecutor that prosecutes domestic abuse, and
6 there was a woman who shot her husband and killed him
7 and the baby was an infant, and today, this baby
8 still, I mean, the memory is there. I mean, they
9 were little, but it does not mean that they do not
10 remember. There is always something, you know, that
11 triggers the memory. It does not matter how small
12 you are.

13 REPRESENTATIVE PALLONE: And that is what
14 I'm saying. I do not know that; that is why I'm
15 asking. I'm certainly not trained or skilled in that
16 type of mind appreciation, so that is why I'm asking
17 if it applies on the very lowest end of the spectrum
18 as well with the youngest of children.

19 MS. MARKOW: Yes, and in this case, I guess,
20 that is where we pulled all this together, was
21 because this little girl was 1 years old, and it just
22 goes to show you that there is the trauma later on,
23 no matter how old you are when this occurs.

24 And I think to protect the children of that
25 age that are so young, that cannot make the decision

1 for themselves, that the people have to take the best
2 interests of the child and do what is right for the
3 children that do not have the voice until they are
4 old enough.

5 REPRESENTATIVE PALLONE: Right, and I
6 believe, if I'm not mistaken, that is the current
7 state of the law, is the highest and best interests
8 of the child is of paramount importance in any kind
9 of a custodial visitation or whatever type of child
10 arrangement. Whether it be an incarcerated or a
11 nonincarcerated parent, the same principles apply, is
12 my understanding.

13 The second component to that. My question
14 would be then, is there any objective proof relative
15 to a study or a psychological analysis or something
16 to that effect that suggests that keeping the
17 felonious parent away from the child is better than
18 trying to mend that relationship with the felonious
19 parent and the child through counseling and
20 supervised contact and things to that effect? Has
21 there been any balancing or weighing in on that
22 component of the fix, if you want to call it that?

23 MRS. GODSHALL: I have MMPIs from all of us
24 from Gordon, Dr. Gordon in Allentown, and he didn't
25 want any contact.

1 Now, you had three different psychologists
2 at the time, and his was kind of like---

3 REPRESENTATIVE PALLONE: Well, psychologists
4 are like lawyers: If you ask three of them, you will
5 get three different opinions.

6 MRS. GODSHALL: Well, he was the
7 psychiatrist. He is the one that does that with
8 the---

9 MS. MARKOW: He's the psychiatrist.

10 MRS. GODSHALL: Yeah; the psychiatrist that
11 does the MMPIs, and he did them on all of us, and he
12 felt that there should be no contact. He felt there
13 should be supervision with the Carls, and the judge
14 didn't listen to anything he said, or Margolis; he
15 went with Mary Louise Bross. For what reason, I do
16 not know.

17 She felt that the contact should be there so
18 that Brylee can never come back at us and say, you
19 know, later on in life, you never left me have
20 contact with my father, which I think is ridiculous,
21 because at 18, she can go talk to him and say what
22 she wants.

23 And I feel at this young age, she should be
24 free of all this and live a normal life with my son
25 and their family. And the judge has not even made a

1 decision on the name change yet, which their boys are
2 suffering, because when they go to school, they are
3 asking, why is her name "Carl" and ours "Godshall"?

4 I mean, the whole family is feeling it, and
5 I just feel like if all this contact would be
6 stopped, the name changed, they could go on as a
7 family and just be left go and be happy.

8 You know, I just feel with these drawings
9 and stuff, it is hurting Brylee. You can see, I have
10 loads of reports from dyslexia to eye problems, OCD
11 -- oh, what are they all that she has --
12 audio/visual.

13 Now she is being tested for post-trauma, you
14 know, to see -- and she is also going to have to go
15 to a neurological, have her brain done, because there
16 are so many different things happening, you know,
17 ever since school started.

18 REPRESENTATIVE PALLONE: And I have one last
19 question, which really is kind of a convoluted
20 thought, and I apologize for it, but it is sometimes
21 how I think.

22 Under traditional catastrophic loss
23 circumstances, it is usually the result of violent
24 behavior of some sort, whether it be voluntary or
25 involuntary.

1 The converse of that would be, the victim of
2 domestic abuse, whether it be the man or the woman,
3 retaliates against the actor, and it results in the
4 death of the actor, who is otherwise the violent
5 family member, and it is the victim who, for lack of
6 any other word, is self-defending. It would be a
7 felony also.

8 The same principles then, if we narrow the
9 law too narrow, would apply to that person who is
10 actually acting with the highest and best interests
11 of the child at hand to protect rather than to
12 otherwise act violent. They were protecting. How
13 would we or how could we or should we or have you
14 considered that as a reaction? How do we address
15 that with this type of legislation?

16 MRS. GODSHALL: I just felt first-degree
17 murder without parole says it in itself. It is not
18 like, you know, if you are getting first degree and
19 premeditated and you are not going to ever come out
20 again, why should you have contact with that child?
21 What good is it? It just confuses them.

22 REPRESENTATIVE PALLONE: The circumstances
23 are relevant; it is what the classification of the
24 crime is. If it is first-degree murder, then all
25 bets are off. If it is something else, involuntary

1 manslaughter---

2 MRS. GODSHALL: Right.

3 REPRESENTATIVE PALLONE: ---I don't know,
4 second degree, whatever, then it could be treated
5 differently.

6 MRS. GODSHALL: Right.

7 REPRESENTATIVE PALLONE: I understand that.
8 Thank you very much, and thank you for your
9 testimony, and I'm sorry for the dilemma that your
10 family is experiencing.

11 MRS. GODSHALL: Thank you.

12 REPRESENTATIVE PALLONE: Thank you,
13 Mr. Chairman.

14 CHAIRMAN CALTAGIRONE: Representative
15 Reichley.

16 REPRESENTATIVE REICHLEY: Just a follow-up
17 to Representative Pallone's last comment.

18 Actually, that is one of the points the
19 letter testimony from the Coalition Against Domestic
20 Violence feels, and I was going to ask Ms. Markow, or
21 Mrs. Godshall, about that, that in fact this
22 legislation would apply to just the situation that
23 Representative Pallone has described where, and we
24 will take the stereotypical example of a woman who is
25 in an abusive situation; kills the abusive husband;

1 she goes to prison for life after being convicted of
2 murder in the first degree. You are comfortable with
3 the idea of that person being precluded from contact
4 with their minor child as well?

5 MRS. GODSHALL: Just what I have been
6 seeing, I don't think she would get first degree.
7 She would probably get second degree. Just
8 everything I have seen, you know, self-defense and---

9 REPRESENTATIVE REICHLEY: I prosecuted a
10 woman on a case where she set fire to a trailer in
11 which her abusive boyfriend lived with another woman
12 and their child, killed the other woman and the
13 child, and she was convicted of life in prison, and
14 that would preclude contact.

15 I mean, under the scenario we are talking
16 about, if in fact you are going to have complete
17 uniformity and equanimity, it would apply in all the
18 situations you are discussing here, and that is why,
19 when we talked about this legislation originally, I
20 said there are a number of hurdles we face.

21 MRS. GODSHALL: I guess first degree without
22 parole is first degree without parole, and if it is
23 premeditated---

24 MS. MARKOW: Yeah; it seems that if she
25 would have premeditated, planned the murder, then she

1 is dangerous. She has a criminal mind, you know.

2 MRS. GODSHALL: Right. That is a mindset
3 that won't change.

4 MS. MARKOW: So that is where I stand; yes.

5 REPRESENTATIVE REICHLEY: Okay.

6 Well, again, I appreciate your honesty in
7 that part, and I do want to underscore, and I do not
8 know if it is necessary for the members under the
9 Speech or Debate Clause, but the defendant's family
10 -- I'm not going to say family names -- feel exactly
11 the opposite in terms of allegations about the nature
12 of the contact. So if in fact there is any assertion
13 later on that somehow not all the facts were
14 presented to the committee---

15 MRS. GODSHALL: They are in total denial.

16 REPRESENTATIVE REICHLEY: Pardon me?

17 MRS. GODSHALL: They are in total denial.
18 You can ask the psychologist that.

19 REPRESENTATIVE REICHLEY: And,
20 Mrs. Godshall, I understand your point about that,
21 and again, they felt differently. They presented
22 their testimony to the judge, who ruled contrary to
23 how you would like the law to be, which is why we are
24 here. We propose legislation to amend the law to the
25 way you would like it.

1 But to make sure we are absolutely clear, so
2 that nobody gets sued after the fact or something
3 like that, that the other side in this situation
4 has a factual difference in how this matter is
5 portrayed.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CALTAGIRONE: Thank you.

8 Chairman Marsico.

9 REPRESENTATIVE MARSICO: Thank you,
10 Mr. Chairman.

11 Thank you for coming this morning. We
12 appreciate your testimony.

13 The other States that you referenced, I
14 think there are like 42 other States, I think you
15 said, that have this law?

16 MS. MARKOW: Yes.

17 REPRESENTATIVE MARSICO: Similar to this
18 law.

19 MS. MARKOW: Yes.

20 Actually, termination of parental rights in
21 42 other States would be those convicted of a felony.
22 They terminate all parental rights, and that is our
23 surrounding States -- New Jersey, New York.

24 If someone is convicted of a felony, their
25 parental rights are terminated. Forty-two other

1 States---

2 REPRESENTATIVE MARSICO: Is there any
3 language within the law that will allow then a
4 convicted parent or a murderer to then contact, be
5 able to contact, the child?

6 MS. MARKOW: Not---

7 REPRESENTATIVE MARSICO: Within a certain
8 age or something like that?

9 MS. MARKOW: It varies from State to State.

10 REPRESENTATIVE MARSICO: What is the---

11 MS. MARKOW: 16, 18, 13. I do not have that
12 all written down.

13 REPRESENTATIVE MARSICO: Okay, but it is
14 13 to 18 or so?

15 MS. MARKOW: Yes.

16 REPRESENTATIVE MARSICO: Okay.

17 It is a shame that the Pennsylvania
18 Coalition Against Domestic Violence and the Women's
19 Law Project are not here for some questions. They
20 gave us testimony, written testimony.

21 Perhaps this question, Mr. Chairman, would
22 go to Representative Reichley.

23 Is there a way to amend your legislation
24 that they would support anything? The Coalition does
25 say that they would propose an amendment that would

1 keep the language "unless the child is of suitable
2 age and consents to the order" on the first page
3 there.

4 REPRESENTATIVE REICHLEY: Yeah.

5 REPRESENTATIVE MARSICO: Do you think that
6 that would open up a way for them to support this
7 bill?

8 REPRESENTATIVE REICHLEY: Thank you,
9 Representative Marsico.

10 I think that that would, apparently from the
11 letter they submitted, enable them to support this
12 legislation. But to be quite honest, that is more or
13 less the current status of the law, because the judge
14 could then make a determination -- and again I'm
15 going to refer to Counsel Andring -- that, based upon
16 the nature of the circumstances, the age of the child
17 and the best interests of the child, whether contact
18 is appropriate. And it was the interests of
19 Mrs. Godshall to preclude that kind of discretion for
20 the court to make this an absolute ban on contact
21 until the child was technically no longer a child,
22 when the child reaches the age of majority. But I
23 will refer to Bill if that is correct.

24 MR. ANDRING: Yes; yes.

25 REPRESENTATIVE REICHLEY: So by amending the

1 bill to put the language back in that the Coalition
2 Against Domestic Violence is advocating, you would
3 more or less have the current law. You really would
4 not be changing anything.

5 REPRESENTATIVE MARSICO: Would you like to
6 make comment on that at all?

7 MS. MARKOW: Well, then if that is the
8 current law, I guess we may want an explanation of
9 how this could have happened to the Godshall
10 family.

11 REPRESENTATIVE REICHLEY: Well, when you say
12 what happened to the Godshall family, the objections
13 -- I'm not going to speak for Mrs. Godshall on this
14 part -- the objections that she described for me deal
15 with the fact that she didn't want the defendant in
16 this matter to have contact with her granddaughter.
17 The judge was applying current law in evaluating what
18 he deemed the best interests of the child to permit
19 the supervised limited contact.

20 Now, I do not have any problem if
21 Mrs. Godshall says, I think that is going too far;
22 I don't think there should be any contact, and that
23 is how we introduced this legislation, to take away
24 that ability of a judge to make that consideration.
25 But the fact is that the judge acted within the scope

1 of what current law allows.

2 MS. MARKOW: How do we move forward here to
3 change that? If you are saying what the Pennsylvania
4 Coalition is asking, I mean, how can we change that?

5 REPRESENTATIVE REICHLEY: Well, and again, I
6 think it is important to understand that the
7 Coalition Against Domestic Violence, in referencing,
8 frankly, what Representative Pallone mentioned, there
9 is a famous case of the Pennsylvania Supreme Court
10 outlawing the use of the battered-woman syndrome, I
11 think, as absolute self-defense, and they are coming
12 at it from the perspective that there are women in
13 abusive situations who may in fact be convicted of
14 murder in the first degree who would be then, under
15 the language of our bill, be precluded from having
16 contact with their minor children.

17 And I think they are looking at it from the
18 aspect that there are women out there who would fall
19 within the circumstance of not being able to talk to
20 their children. Even though the defendant in that
21 case is a battered spouse, parent, or whatever it
22 might be, he was still convicted of murder in the
23 first degree.

24 And I think that they have tried to
25 determine that the best interests of the child is to

1 go with what current law allows for, which is where
2 you and we would part ways from what their viewpoint
3 is.

4 MS. MARKOW: So we let this child just, I
5 guess, go on? These children, I should say.

6 CHAIRMAN CALTAGIRONE: Well, you know, if I
7 could, I'm just rummaging through, because we have
8 dealt with stickier issues than this over the many
9 years that we have served together, and I'm just
10 wondering if we could carve out some exceptions in
11 the bill to indicate that in situations where there
12 have been battered women and they have defended
13 themselves and they have taken the life of a loved
14 one, a paramour or a husband, that that might be one
15 of the conditions for an exception---

16 MS. MARKOW: Self-defense?

17 CHAIRMAN CALTAGIRONE: ---for a child to be
18 able to have access to that mother who would be
19 incarcerated.

20 MS. MARKOW: Yeah.

21 CHAIRMAN CALTAGIRONE: I am just thinking
22 that that may be a possibility. I do not know how
23 many other exceptions here that you would have to
24 look at, but I would think that maybe that might
25 satisfy these two groups that basically represent a

1 lot of the battered women in those situations.

2 MS. MARKOW: And I feel the same way. I
3 feel that if, you know, it is self-defense and you
4 get convicted of murder, if it is self-defense, I
5 mean, can there be a stipulation in the law?

6 REPRESENTATIVE REICHLEY: Well, if a jury
7 determines self-defense, there wouldn't be a
8 conviction, because it says you are legally entitled
9 to use deadly force.

10 And I admire Chairman Caltagirone's
11 ingenuity, and that is certainly something we could
12 look at.

13 I think in terms of the Equal Protection
14 Clause, we would have to make it gender neutral,
15 because there are men out there---

16 CHAIRMAN CALTAGIRONE: Sure.

17 REPRESENTATIVE REICHLEY: ---albeit a very
18 small number probably, who would argue that they
19 are battered or abused and may resort to deadly
20 force, who would find themselves in a similar
21 circumstance.

22 But I think the staff on each side of this
23 committee are very capable of being able to engage in
24 the legal draftsmanship to be able to create an
25 exception or a limited exception for a judge to

1 prohibit contact.

2 REPRESENTATIVE MARSICO: I have one more
3 question.

4 CHAIRMAN CALTAGIRONE: Chairman Marsico.

5 REPRESENTATIVE MARSICO: Just maybe staff or
6 Representative Reichley would know this: Have there
7 been attempts in the past to change this law here in
8 Pennsylvania? Does anyone know that?

9 MR. ANDRING: I'm not sure when the current
10 language was put into the law, but I believe this was
11 in fact a response to situations back a number of
12 years ago.

13 I remember newspaper accounts of some
14 situations involving parents who had been convicted
15 of murdering the spouse and were still given custody
16 and visitation rights and things to that respect with
17 the children involved.

18 So I don't -- and off the top of my head I
19 do not know the exact date this was added, but I
20 think the current language was added in response to
21 these types of problems, and this was the language
22 that was arrived at as an appropriate response at
23 that time.

24 REPRESENTATIVE MARSICO: Okay. Thanks.

25 CHAIRMAN CALTAGIRONE: Bernie, did you have

1 a question?

2 REPRESENTATIVE O'NEILL: Yeah; I'm trying to
3 siphon through some of my confusion right now.

4 I'm not the legal mind on the committee; I
5 consider myself the commonsense type of mind, I
6 guess. I don't know.

7 But if the child is of suitable age, and I
8 guess what we need to do is determine in this bill
9 what "suitable age" is -- and I think that should be
10 defined in the law for every judge across this
11 Commonwealth, what "suitable age" is -- then that
12 would eliminate the Pennsylvania Coalition Against
13 Domestic Violence's argument, because if they are of
14 suitable age, then they have the right to consent to
15 either not seeing or to seeing that parent
16 regardless.

17 But I think you are trying to create one
18 gray area with another gray area with the conviction.
19 I have a lot of faith with our district attorneys and
20 courts, and I truly believe that if a woman is
21 accused of first-degree murder in an abusive
22 situation, I believe there are circumstances in there
23 that the courts or the district attorney's office has
24 deemed that they should be charged as a first-degree
25 felon rather than someone second degree or whatever

1 it is for domestic violence.

2 So, you know, I do not think you should
3 create another gray area. I just think if it is
4 first degree and that is what the courts say, then it
5 is first degree and you terminate your rights.

6 I would argue that most women who have a
7 history of domestic violence and have resulted to the
8 last resort like that, I would like to see the
9 statistics of how many of them are actually convicted
10 or charged with first degree. So if you are not
11 charged with first degree, then they would have those
12 rights to have contact with their minor children
13 until they are suitable and then the kids decide if
14 they want to continue.

15 So I think we should go that route and leave
16 it up to the courts as to what you are being charged
17 with, and if it is first degree, then you lose that
18 right, you know. But I think what we need to do is
19 to set an age of what "suitable age" is, and then
20 that eliminates part of their argument, because once
21 you reach that age, then it is up to the child
22 whether they want to or not.

23 REPRESENTATIVE REICHLLEY: And that is a good
24 suggestion, too. But there is a difficulty -- and
25 John, Representative Pallone, I think did some

1 domestic work -- the difficulty, I think, might be
2 that you are really placing an incredible burden on
3 the child.

4 Let us say we say suitable age is 10. Then
5 right after the 10th birthday, the defendant parent
6 is going to petition the court to be able to have
7 contact with the child, and if it is coming down to a
8 choice of the child, there is going to be an
9 incredible amount of pressure placed on that child to
10 side with one family or another.

11 They are going to inevitably make one side
12 unhappy, and frankly, that is what judges are in the
13 business of doing. They are the ones that we say
14 under the Constitution, under law, are to make the
15 decisions to take it away from the family members.
16 And frankly, those of us up here, too. We are the
17 ones that are supposed to make the tough calls and
18 not place a young child in that position of choosing
19 one parent or one side of the family over another.

20 But I think we probably could benefit from
21 hearing more from perhaps the psychological
22 association or others who might have some expertise
23 into determining how the best interests of a child
24 could be factored in, if possible, to this
25 language.

1 Thank you, Bernie.

2 CHAIRMAN CALTAGIRONE: Members? Counsel
3 Andring? Oh, Carl; I'm sorry.

4 Representative Mantz.

5 REPRESENTATIVE MANTZ: Yes; I would endorse
6 the proposal of hearing from advocates from the
7 Pennsylvania Coalition Against Domestic Violence and
8 also the Women's Law Project as to the detail of
9 their arguments for allowing the child to participate
10 in this very, very important decision and their
11 arguments for or against curtailing the opportunity
12 for the court to exercise complete discretion under
13 the case-by-case basis. I think that would be very
14 productive and enlightening for the entire Judiciary
15 Committee.

16 Thank you very much, Mr. Chairman.

17 CHAIRMAN CALTAGIRONE: Thank you.
18 Counsel Andring.

19 MR. ANDRING: Thank you, Mr. Chairman.

20 Just first, as a point of clarification and
21 emphasis, this bill is strictly limited to
22 first-degree murder, which involves not only
23 premeditation, as has been mentioned several times
24 here today, but also malice, which the courts define
25 as a hardness of heart. So we are not talking about

1 situations when both premeditation and malice are not
2 present in terms of the original situation.

3 My question goes to somebody in this whole
4 scenario who really has not even been mentioned here
5 today. I'm going to ask you, who actually has
6 custody of the child right now?

7 MRS. GODSHALL: My son and daughter-in-law.

8 MR. ANDRING: And they have physical and
9 legal custody at this point?

10 MRS. GODSHALL: Yes.

11 MR. ANDRING: And the other grandparents,
12 the Carl grandparents, have visitation rights. Is
13 that the scenario?

14 MRS. GODSHALL: Yes.

15 MR. ANDRING: So your son and his family
16 have accepted the full responsibility for raising
17 this child?

18 MRS. GODSHALL: The judge made it that my
19 son and daughter-in-law have her, because they were
20 young and have siblings, and the Carls and us get
21 visitation of equal amount.

22 MR. ANDRING: All right. But your son and
23 his family were willing to accept this
24 responsibility?

25 MRS. GODSHALL: Right.

1 MR. ANDRING: And what is their position in
2 regard to the communication with the father of the
3 child?

4 MRS. GODSHALL: They do not want it either,
5 because like I said before, when these letters come
6 in, the boys ask questions.

7 The boys are older; they understand. They
8 get upset for what happened to their Aunt Kim and get
9 very upset that she is even being able to hear that
10 the name even gets to the boys. Do you know what I'm
11 saying? It is detrimental to them, too.

12 MR. ANDRING: Yes; I understand that.

13 And like I said, I think the people who have
14 been completely left out of this discussion are the
15 people who have actually been willing to assume
16 custody of these children, who have accepted that
17 responsibility, who don't want the contact, and yet
18 whose wishes are being overturned by the judge.

19 And again, there seems to be a presumption
20 that children have some sort of inherent right to
21 communicate with whomever they wish, which is
22 certainly not the case. Parents have an absolute
23 right to limit the communications of their child, of
24 their children. They have the right to control their
25 telephone contacts; they have the right to control

1 what mail they receive and don't receive, and in this
2 situation, the people who have accepted that parental
3 responsibility have been denied that right by the
4 court system.

5 MRS. GODSHALL: Right; right.

6 MR. ANDRING: I think you have to take into
7 consideration the people who are raising the
8 children, and if they are going to accept that
9 responsibility, I think we have to give them the
10 opportunity to make some decisions about what is best
11 for the children.

12 MRS. GODSHALL: They just want her name
13 changed, that they can be a family and be left to go
14 and not have to live this every day, you know, every
15 week.

16 MR. ANDRING: And to follow up on that,
17 you mentioned other States provide for termination
18 of parental rights. Do they do that in a context
19 where the child could actually be adopted, do you
20 know?

21 MS. MARKOW: I started getting into that.
22 But, you know, even here in the State of
23 Pennsylvania, I have people that are on my board who
24 have lost loved ones, and this one case in particular
25 got third-degree murder and the sister now is raising

1 these children, and in that case, all the parental
2 rights were terminated.

3 You know, I guess that is where we are
4 confused here. We have so many people that have lost
5 loved ones that belong to the Beginning Over
6 Foundation, and there is no consistency, and I guess
7 that is what spurred this whole thing.

8 And there are some States that get into the
9 adoption and all of that, but I didn't have, you
10 know, that much time to do that much research. You
11 know, I got into the States that do terminate their
12 parental rights for a felony conviction.

13 MR. ANDRING: But in this particular
14 scenario, the child could not be adopted because
15 the father's parental rights have not been
16 terminated?

17 MRS. GODSHALL: You see, that is where they
18 are confused themselves. They don't know, how much
19 rights does he have? No one knows. The lawyers
20 don't know. It is very confusing to me.

21 MR. ANDRING: Thank you.

22 CHAIRMAN CALTAGIRONE: Representative
23 Reichley.

24 REPRESENTATIVE REICHLEY: And just to be
25 fair to Counsel Andring, I should point out that

1 the custodial parents have never contacted me
2 indicating their position on this one way or the
3 other, whether they regard their interests being
4 abrogated or not.

5 MRS. GODSHALL: They are afraid to. They
6 are afraid to because of this judge. They are in a
7 position, they are going by the court order doing
8 exactly what they are supposed to do.

9 REPRESENTATIVE REICHLEY: Okay, but---

10 MRS. GODSHALL: Because they are afraid.
11 Their lawyer is afraid to contact the judge right
12 now.

13 There was a hearing for the name change, and
14 in this hearing he said, because Joel Carl was
15 appealing, he said when his appeal was over, it would
16 then come into place, the name change.

17 Well, over 7 months went by until that
18 appeal. He had to make that decision. Seven months
19 he held that appeal, and this child is now out of
20 kindergarten, going into first, and her name change
21 has not even come up. The lawyer is not even going
22 to contact the judge. She is waiting for the judge
23 to contact her.

24 And in that hearing, I remember the judge
25 saying to Mary Louise Bross, "What kind of

1 credentials do you have?" Now, he chose her, and in
2 that hearing he is asking her, what kind of
3 credentials do you have? I mean, it just blew my
4 mind away at that hearing.

5 And I just thought that with the right
6 psychologist -- she needs a good psychologist. She
7 gets to see her once a year. You know, she needs a
8 good psychologist.

9 She is going to one now because of checking
10 into Hillside School and having to go to get more
11 help. Because State School is not going to be able
12 to help her, I don't think, so they are looking into
13 Hillside. And now she is going to this other
14 psychologist, I guess because Hillside wants it, you
15 know, to see the evaluation.

16 REPRESENTATIVE REICHLEY: Well,
17 Mrs. Godshall, I think---

18 MRS. GODSHALL: That is all the statistics
19 that we have in the bag here.

20 REPRESENTATIVE REICHLEY: To be completely
21 clear and on the record, and perhaps because it was a
22 matter of active litigation and possible appeal, it
23 is important to note that the custodial parents have
24 never contacted me. They have never indicated to me
25 a fear of contacting me.

1 I wrote to both counsel asking for the
2 status of the case. One attorney and I attempted to
3 have a couple of different phone conferences, and it
4 didn't work out.

5 But I know that Attorney Andring had said
6 that their interests were being abrogated. I don't
7 want there to be any misinformation put out here,
8 that no one has contacted me to characterize it in
9 that fashion.

10 MRS. GODSHALL: Well, you understood what I
11 said; they are afraid of the judge.

12 REPRESENTATIVE REICHLEY: I understand what
13 you are saying, but I should emphasize that they have
14 not indicated that, okay?

15 Thank you.

16 CHAIRMAN CALTAGIRONE: Are there any other
17 questions?

18 Let me just say that as Chairman of the
19 Judiciary Committee, I have taken this position with
20 a great deal of concern about our judiciary in the
21 State, and I have the greatest respect for the job
22 that our judges do, and it is a difficult job at
23 best.

24 And one of the things that I have always
25 kept uppermost in my mind is that we as Legislators

1 should try, if at all possible, not to micromanage
2 the judiciary or to impose our will on them, except
3 through policy. We are the policymakers; we do make
4 the laws, and of course they have to uphold those
5 laws in courts of law.

6 And I just keep that uppermost in my mind
7 that, you know, we change things. And, of course, I
8 think this is one of those issues where we should
9 definitely take a look at it. We need to get some
10 more information. We are going to do that.

11 I would like to deal with this issue when we
12 come back in the fall. I have never been afraid to
13 deal with any issue, ever. I don't think I can ever
14 be accused of that.

15 And I really do wish that we could get the
16 groups together to try to work out the kind of
17 language that would be acceptable, because you do not
18 want to go onto the floor of the House on an issue
19 like this and have certain groups tearing apart at
20 it. It would make our job that much more difficult
21 to try to get something accomplished.

22 So we do want to work with you, and on
23 behalf of myself and the members of the committee, we
24 would like to extend our deepest sympathy for your
25 losses.

1 With that, we will conclude the hearing and
2 adjourn. Thank you.

3 MRS. GODSHALL: Thank you.

4 MS. MARKOW: Thank you.

5
6 (The hearing concluded at 11:07 a.m.)

7
8 SUBMITTED WRITTEN TESTIMONY

9 * * *

10 TERRY L. FROMSON, Managing Attorney, Women's
11 Law Project, submitted the following written
12 testimony:

13 Dear Representative Caltagirone:

14 Thank you for inviting the Women's Law
15 Project to testify at the hearing on House Bill 2407
16 on July 22, 2008. Although we are unable to appear
17 in person, we submit this letter to you to share some
18 concerns we have about adoption of the amendments to
19 23 Pa. C.S.A. §5303(b.2) which House Bill 2407 seeks
20 to effectuate. We would appreciate it if you would
21 share this letter with members of the Judiciary
22 Committee.

23 The Women's Law Project (WLP) is a nonprofit
24 legal advocacy organization that seeks to advance the
25 legal, economic, and health status of women through

1 litigation, public education, and individual
2 counseling. Since its founding in 1974, WLP has
3 worked to eliminate gender discrimination in our laws
4 and institutions, to promote changes in the legal
5 system that will directly affect the status and
6 opportunities of women and their families, and to
7 provide women with the knowledge by which they
8 can empower themselves to address the problems in
9 their lives. An essential component of WLP's
10 advocacy is helping women in Family Court matters,
11 including custody, protection from abuse, and
12 support.

13 The vast majority of women served by WLP are
14 unable to afford legal representation. We provide
15 them with individual counseling to assist them in
16 navigating the complicated maze of family law and
17 procedures. We also prepare and disseminate
18 informational brochures and booklets. When
19 necessary, we pursue litigation and engage in policy
20 advocacy to address systemic problems. In the
21 service of these goals, the WLP published *Deciding*
22 *Child Custody When There is Domestic Violence:*
23 *A Benchbook for Pennsylvania Courts (2005,*
24 *rev'd February, 2008, available at [http://www.womens](http://www.womenslawproject.org/pages/issue_family_benchbook.htm)*
25 *lawproject.org/pages/issue_family_benchbook.htm)* and

1 *Family Violence & The Child Custody Process: A Legal*
2 *Guide for Protecting Children* (1996).

3 Under 23 Pa. C.S.A. §5303(b.2), as currently
4 written, a court is not permitted to award custody,
5 partial custody or visitation to a parent convicted
6 of first degree murder of the other parent of the
7 child, unless the child is of suitable age and
8 consents to the order. The amendments contained in
9 House Bill 2407 would extend this prohibition to the
10 first degree murder of a guardian or other custodian,
11 bar any contact whatsoever between the convicted
12 parent and the child, and eliminate the opportunity
13 for a child of suitable age to consent to such
14 custody or contact. The WLP has several concerns
15 about changing the law in these ways.

16 First, we oppose the removal of the
17 provision permitting a child of a suitable age to
18 consent to an order of custody, visitation or some
19 other form of contact. Children who lose one parent
20 to violence and the other parent to incarceration
21 face a double loss that may be difficult for them to
22 comprehend. The needs of children, who are
23 profoundly affected by the incarceration of a parent,
24 often go unheard in family court proceedings
25 involving an incarcerated parent. While some

1 children in this situation may not want contact,
2 others may want contact as a way of seeking closure;
3 they may want to confront or talk to the incarcerated
4 parent. Without achieving some resolution, these
5 children may remain traumatized. Denying children
6 any role in the determination of whether they will
7 have contact with this parent may perpetuate both the
8 trauma and a sense of helplessness and "frozen
9 grief". See generally, Pauline Boss, *Loss, Trauma,*
10 *and Resilience, Therapeutic Work with Ambiguous Loss*
11 *(1999)*. Allowing a child who has been determined by
12 a judge on a case by case basis to be of a suitable
13 age to make a mature decision about custody,
14 visitation or other contact to consent or not will
15 further the child's recovery. See Oliver Robertson,
16 *The Impact of Parental Imprisonment on Children 8-9*
17 *(April 2007)* (recommending that "the child
18 her/himself should always be consulted when
19 determining her/his best interests, in accordance
20 with her/his age and maturity"); see, e.g., Elaine
21 Spencer-Carver, *Social Support for Children Who Had a*
22 *Parent Killed By Intimate Partner Violence:*
23 *Interviews with Mental Health Workers, An Abstract of*
24 *Dissertation 54* (Kansas State U. 2008) (describing
25 work with child who wanted contact with father who

1 had killed his mother and benefited from such
2 contact).

3 In addition, while we appreciate that the
4 intent behind this bill is to protect children, we
5 are concerned that the unintended but probable impact
6 of this bill on contact between battered women and
7 their children. While intimate partner murder is
8 usually committed by men who have battered their
9 partners, sometimes domestic violence survivors use
10 violence in self-defense. Ingrained gender bias and
11 lack of understanding about domestic violence has
12 deprived battered women of equal treatment with
13 respect to judicial trial decisions, jury
14 instructions, and even representation in court. As a
15 result, battered women charged with murder have been
16 impeded in their ability to establish defenses that
17 would eliminate or ameliorate their responsibility
18 for the crime. *See e.g., Commonwealth v. Stonehouse,*
19 *555 A.2d 772 (Pa. 1989) (reversing murder conviction*
20 *where counsel failed to request jury instruction or*
21 *present effective evidence of past abusive behavior*
22 *inflicted by victim on defendant); see also,*
23 *Elizabeth Schneider, Battered Women Who Kill,*
24 *Battered Women and Feminist Lawmaking, 112-140*
25 *(2000); Holly Maguigan, Battered Women and*

1 *Self-Defense: Myths and Misconceptions in Current*
2 *Reform Proposals*, 140 U. Pa. L. Rev. 279, 382-87,
3 439-43 (1991). For the hundreds of battered women
4 who are in prison for killing their batterers in self
5 defense, this legislation would completely cut off
6 all contact between them and their children, an
7 unjust and cruel outcome.

8 For these reasons, WLP urges the members of
9 the Judiciary Committee to vote against House Bill
10 2407. WLP recommends that the committee instead
11 consider legislation that would insure that the best
12 interests of the child are properly considered in
13 custody and visitation proceedings involving
14 incarcerated parents. This objective could be
15 accomplished by requiring the appointment of an
16 attorney to represent the child and the input of a
17 licensed forensic psychologist who appreciates the
18 impact on a child of having an incarcerated parent.
19 See, Rachel Sims, *Can My Daddy Hug Me?: Deciding*
20 *Whether Visiting Dad in a Prison Facility is in the*
21 *Best Interest of the Child*, 66 Brooklyn L. Rev. 933,
22 968-69 (Winter 2000/Spring 2001).

23 Thank you for your consideration.

24 Very truly yours,
25 Terry L. Fromson

1 * * *

2 NICOLE A. LINDEMYER, ESQ., Policy and
3 Special Projects Manager, Pennsylvania Coalition
4 Against Domestic Violence, submitted the following
5 written testimony:

6 Dear Chairman Caltagirone:

7 On behalf of the Pennsylvania Coalition
8 Against Domestic Violence (PCADV), our 61 domestic
9 violence programs throughout the Commonwealth, and
10 the thousands of domestic violence victims we serve
11 each year, we thank you for your consideration of our
12 input on House Bill 2407. This bill would Amend
13 Title 23 to prohibit courts from allowing a parent
14 convicted of first-degree murder of their child's
15 co-parent from having any contact or communications
16 with that child.

17 While PCADV supports the intention of
18 HB 2407 to protect children from further potential
19 trauma caused by contact with the abuser who killed
20 their parent, we do not support the bill as written
21 due to its inevitable adverse consequences to
22 battered parents. The great majority of domestic
23 violence homicides are committed by abusers against
24 their current or former spouses or intimate partners.
25 However, as the frontline service providers to

1 hundreds of thousands of victims over decades of
2 work, we know from tragic experience that there are
3 incidents in which the abused parent has resorted to
4 killing her abuser as a desperate measure to end the
5 abuse. In such cases, if HB 2407 were passed as
6 written, the convicted battered parent would be
7 completely prevented from having any contact with her
8 children.

9 To prevent this unjust result, **we propose an**
10 **amendment that would keep the language "unless the**
11 **child is of suitable age and consents to the order."**

12 For victims who resort to killing their abusers,
13 retaining this language would allow them to have some
14 degree of contact with their children who are of an
15 appropriate age to consent to such contact.

16 To understand the context of our opposition
17 and request for an amendment to HB 2407, it is
18 critical to realize that many intimate partner
19 homicides are preceded by a history of abuse, and
20 women imprisoned for killing their intimate partners
21 frequently were beaten by them for years prior to the
22 killing. The majority of these homicides occurred
23 during an ongoing confrontation with the batterer.
24 Many of these women sought help from the police or
25 others prior to the lethal incident but either the

1 urgency of their situation was not understood, or the
2 alternatives offered were inadequate to allow them to
3 escape.

4 There have been several studies of women
5 convicted of killing their spouses or intimate
6 partners, all concluding that the great majority of
7 battered women who kill have previously been the
8 victims of severe abuse.

- 9 - One study at the Women's Correctional
10 Facility in Chicago revealed that 40% of
11 the women serving time for killing a
12 spouse or intimate partner had previously
13 been beaten by that partner.
- 14 - In a sample of 150 women incarcerated in
15 Bedford Hills Maximum Security
16 Correctional Facility in New York,
17 75% reported severe physical intimate
18 partner violence: 60% reported being
19 kicked, bitten, or hit with a fist; over
20 half (57%) reported being beaten up;
21 50% reported being hit with an object
22 abuse to do damage. Even when only the
23 most severe sounding items are considered,
24 40% of all respondents reported being
25 choked, strangled, or smothered;

1 36% reported being threatened with a knife
2 or gun; and one-quarter reported being cut
3 with a knife or shot at by an intimate
4 partner. In addition, over one-third
5 (35%) reported that they had experienced
6 marital rape or been forced to participate
7 in other sexual activity. 36% of the
8 women reported that their partners had
9 threatened them with death and
10 16% reported that their partners had
11 threatened to kill the women's family
12 members.

13 - In another study surveying 30 women who
14 killed their spouse or intimate partner,
15 29 of the 30 had been abused by them, and
16 20 of those indicated that the homicide
17 had resulted from their attempt *to protect*
18 *themselves or their children from further*
19 *harm.*

20 Numerous myths and misconceptions about
21 domestic violence, battering and its effects, and the
22 relationship between information about this history
23 of abuse and a battered women's legal defense,
24 continue to prevail. There is no "battered women's
25 defense" or "battered woman defense syndrome," nor

1 are advocates arguing that there should be one.
2 Rather, as is true for other defendants, information
3 about the history of abuse is introduced in
4 self-defense, duress, and other types of cases to
5 support existing defense claims, not to replace
6 them.

7 Despite the myths and misconceptions, the
8 reality is that a high percentage of battered women
9 who kill their abusers are found guilty or plead
10 guilty. Studies indicate that approximately 75-80%
11 are convicted or take pleas. Not only do battered
12 women go to prison for killing their perpetrators,
13 they stay in prison longer than their male
14 counterparts: the average prison sentence for men who
15 kill their intimate partners is between two and six
16 years, yet women who kill their partners are
17 sentenced, on average, to 15 years.

18 Of particular relevance here is the fact
19 that **most women (between 60-80%) in prison are**
20 **mothers** and many of these are the children's primary
21 care-taker. Most women's prisons are located long
22 distances from major urban settings, where the
23 majority of prisoners had lived before coming to
24 prison and where their children continue to reside.
25 Even when they are allowed to continue a relationship

1 with their children, the lack of transportation
2 services and visitation programs is a frequent
3 barrier to incarcerated mothers attempting to
4 maintain relationships with their children. For many
5 incarcerated mothers, letters and phone calls may be
6 their only means of regular contact with their
7 children.

8 HB 2407 would foreclose even letters and
9 phone calls to children from battered parents
10 convicted of killing their abusers -- and even where
11 the children of the abused, incarcerated parents
12 actually *want* to maintain their parent-child
13 relationship. Such a harsh result seems
14 unconscionable, both to parents driven to use lethal
15 force to survive, and to the children who have
16 already endured exposure to domestic violence and the
17 loss of one parent.

18 We urge you consider the impact of this bill
19 on battered parents convicted for resorting to
20 killing their abusers, and on the children, who may
21 wish to continue contact with them while
22 incarcerated. We ask that you amend HB 2407 to
23 retain the clause "unless the child is of suitable
24 age and consents to the order."

25 Thank you for your attention to our

1 concerns. We sincerely appreciate your consideration
2 of our input, and your continued efforts to end
3 domestic violence and protect its victims.

4 Sincerely,

5 Nicole A. Lindemyer, Esq.

6 PCADV Policy & Special Projects Manager

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

Debra B. Miller, Reporter