

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 164

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House Judiciary Committee

Derry Township Municipal Building
600 Clearwater Road
Hershey, Pennsylvania

Tuesday, July 29, 2008 - 10:00 a.m.

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BEFORE:

Honorable Thomas Caltagirone, Majority Chairman
Honorable Deborah Kula
Honorable Bryan Lentz
Honorable Kathy Manderino
Honorable Sean Ramaley
Honorable Ron Marsico, Minority Chairman
Honorable Craig Dally
Honorable John Evans
Honorable Carl Mantz
Honorable Bernie O'Neill

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1 Also present:

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3 John Ryan, Majority Executive Director

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5 William Andring, Esquire,
Majority Counsel for Committee

6

7 Jetta Hartman,
Majority Committee Secretary/Legislative
Assistant

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9 Chris Winters,
Majority Legislative Assistant

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11 Karen Coates,
Minority Executive Director and
Chief Counsel for Committee

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1 CHAIRMAN CALTAGIRONE: We might as well
2 get started. We have a House Judicial hearing on House
3 Bill 164. The prime sponsor of the legislation is here
4 to testify. And I would like the members, if they
5 would, please introduce themselves and staff that are
6 here.

7 REPRESENTATIVE RAMALEY: Sean Ramaley,
8 16th District, Beaver and Allegheny County.

9 REPRESENTATIVE KULA: Deborah Kula, 52nd
10 District, Fayette and Westmoreland Counties.

11 MR. ANDRING: Bill Andring, chief
12 counsel.

13 CHAIRMAN CALTAGIRONE: Tom Caltagirone,
14 Reading, Berks County, 127th.

15 REPRESENTATIVE MARSICO: Ron Marsico,
16 Dauphin County.

17 REPRESENTATIVE O'NEILL: Bernie O'Neill,
18 29th District, Bucks County.

19 MS. COATES: Karen Coates, Chief Counsel,
20 Judiciary Committee.

21 MS. HARTMAN: Jetta Hartman, committee
22 secretary.

23 CHAIRMAN CALTAGIRONE: John, if you would
24 like to lead off, sir?

25 REPRESENTATIVE PAYNE: Good morning,

1 Chairman Caltagirone, Chairman Marsico, and fellow
2 colleagues. Welcome to Derry Township, Hershey, and
3 the 106th District. It's my pleasure to welcome you to
4 my District, my home District, where I was born and
5 raised. I am pleased that you have chosen the township
6 offices for the hearings.

7 Briefly, House Bill 164 amends Megan's
8 Law by increasing the penalties for sexual predators.
9 Megan's Law was created to help protect the public,
10 especially our children, from sexual predators and
11 crimes committed by adults. Children are our most
12 precious and volatile members of our society. Having
13 four kids myself, and three grandkids, I can't fathom
14 what I would do if somebody were to abuse one of my
15 kids.

16 As an elected official, we have a duty to
17 protect our children. This Bill would increase the
18 mandatory minimum sentence to 25 years up to a maximum
19 of 75 years for those convicted of raping a child 13 or
20 under. Convicted predators who rape a child less than
21 13 resulting in serious bodily injury face a minimum of
22 50 years to maximum of life in prison without parole.

23 The purpose of the Bill is very simple.
24 We see time and again in national news where the sexual
25 predators are out doing repeat offenses against our

1 children. Had they been locked up the first time,
2 would this have saved the child's life? And the answer
3 is yes.

4 The Bill would increase the mandatory
5 minimum 25 years to a maximum of 75 years for those
6 convicted of involuntary deviate sexual intercourse
7 with a child under 13. Also, on July 23rd, Auditor
8 General Jack Wagner held a press conference that I was
9 at to talk about recommendations on improving House
10 Bill 164.

11 As a result of that press conference and
12 the Auditor General's comments, I am amending my
13 legislation to include mandatory GPS monitoring of
14 certain sexual predators. According to the Attorney
15 General, in early June, the state has already lost
16 track of 923 sexual offenders or 10 percent of the
17 Commonwealth's approximately 9800 registered sexual
18 offenders.

19 Now, fellow members, I have to tell you
20 that's staggering to me that we can't find 923 of these
21 sexual predators who are walking the streets of
22 Pennsylvania because they took their ankle bracelets
23 off, got rid of them. They are not GPS tracking. They
24 don't know where they are at.

25 So I think the Auditor General hit on a

1 very important thing, and that is GPS monitoring. He
2 mentioned during the hearing that we can play golf and
3 have a golf cart and know where the golf cart is
4 located through GPS from the green, but we don't
5 require sexual predators to be monitored by GPS.

6 The monitoring devices are required to be
7 worn for five years by offenders who are caught after
8 failing to register their whereabouts and at least five
9 years for all sexual predators whose victims are
10 children. Essentially, this Bill tightens up current
11 law to send the message that the Commonwealth of
12 Pennsylvania and the citizens of Pennsylvania will not
13 tolerate violent acts against our children.

14 My amendment is being drafted at this
15 time. We plan on introducing it after this hearing in
16 case there's any additional input that would make the
17 Bill a better Bill. I am open to any and all
18 amendments. My goal is very simple, protect our
19 children. Thank you, Mr. Chairman.

20 CHAIRMAN CALTAGIRONE: Thank you, sir. I
21 do want to mention that we have two additional members.
22 If they would introduce themselves and the districts
23 that they represent.

24 REPRESENTATIVE DALLY: Craig Dally,
25 Northampton County, 130th District.

1 REPRESENTATIVE EVANS: John Evans from
2 Erie and Crawford Counties.

3 CHAIRMAN CALTAGIRONE: One of the things
4 I also wanted to do is I wanted to thank the township
5 officials and the manager here. They have been very,
6 very helpful in setting this up.

7 Are there any questions from the panel,
8 the members? Okay. Ron has one.

9 REPRESENTATIVE MARSICO: Thanks for
10 introducing this legislation. This was introduced a
11 couple years ago too?

12 REPRESENTATIVE PAYNE: That's correct.

13 REPRESENTATIVE MARSICO: What was the
14 process or progress, let's say?

15 REPRESENTATIVE PAYNE: There was none.

16 REPRESENTATIVE MARSICO: Any reasons why?

17 REPRESENTATIVE PAYNE: No. The Bill just
18 didn't move. This is my second go-around in trying to
19 get this Bill introduced and brought out of committee.
20 And it was introduced previously, but it was not
21 brought out of committee. And, Ron, I can't tell you
22 why.

23 REPRESENTATIVE MARSICO: Thanks.

24 CHAIRMAN CALTAGIRONE: I just want to
25 follow-up on that. It's my goal to bring this Bill out

1 of committee after this hearing and the amendment that
2 will be drafted, and with the agreement of the members,
3 if we can get the votes, I certainly support it. I
4 think the members will too. I don't want to speak for
5 them, but I would like to put it on the agenda so
6 we can get this Bill up and, hopefully, out of the
7 House and through the Senate.

8 REPRESENTATIVE PAYNE: And I thank you,
9 Mr. Chairman. I really do, and I appreciate you again
10 coming to Hershey. And I would like to join you, but I
11 am traveling to Philadelphia to a liquor hearing.
12 Thank you very much.

13 CHAIRMAN CALTAGIRONE: Thank you, sir.
14 We will next hear from John Tuttle, the Deputy
15 Executive Director, Pennsylvania Board of Probation and
16 Parole.

17 MR. TUTTLE: Good morning, Chairman
18 Caltagirone and Marsico and members of the House
19 Judiciary Committee. Thank you for the opportunity to
20 discuss the important public safety issue of how to
21 best manage and supervise sex offenders and the role of
22 global positioning satellite technology.

23 The Board would be willing to spend any
24 amount of money to protect our children from sex
25 offenders, but this technology cannot provide such

1 protection and could create a false sense of security
2 in the minds of parents.

3 Currently, there are over thirteen
4 thousand registered Megan's Law sex offenders, of which
5 960 are under the supervision of the Board. Of those
6 960, 12 are sexually violent predators. State parole
7 agents ensure that parolees comply with Megan's Law
8 registration requirements.

9 Furthermore, the counties are currently
10 supervising 1,667 Megan's Law sex offenders and 66 of
11 those are sexual violent predators. In addition, there
12 are 1,143 Megan's Law sex offenders in state prison and
13 143 sexually violent predators in jail or in state
14 prison. Over 6,000 of the sex offenders required to
15 register under Megan's Law have completed their
16 sentence and reside in the community. Of those, 34 are
17 sexually violent predators.

18 I mention all this to give you the scope
19 of this because we supervise a certain portion of
20 these; the county supervises a certain portion of
21 these; and some of these folks -- over 6,000 -- have
22 completed their sentences and are not being monitored
23 or under the registration requirements any longer.
24 Just to give you the scope of the problem.

25 The Board has long recognized the need to

1 manage all sex offenders differently from other
2 offenders in light of the devastating harm that their
3 offenses inflict on their victims and because of their
4 secretive and manipulative behavior.

5 We share the concerns of the legislature,
6 the Auditor General, and the public to protect our
7 children from these crime. Therefore, our conditions
8 of parole are determined on a case by case basis by
9 examining the parolee's offense history and behavior
10 pattern. To that extent, the Board imposes a sex
11 offender supervision protocol on all offenders
12 convicted of a sexual offense, either current or prior.
13 Because of our concerns for children, we have a
14 specific protocol for offenders whose victim was a
15 minor and special conditions we impose in those
16 situations.

17 Further, and very importantly, as part of
18 our sex offender supervision protocol, the Board
19 recognizes the importance of the containment approach
20 to sex offender management. The containment model is
21 based on clinical research and recommends managing this
22 difficult population through collaboration with law
23 enforcement, victim advocacies, supervising
24 authorities, treatment providers and the courts.

25 The community supervision aspect of

1 containment focuses on close communication between
2 supervising authorities and treatment providers, using
3 polygraph as an essential confirmation tool. GPS could
4 be used as another supervision tool, but there are
5 currently no clinical studies demonstrating that the
6 use of GPS stops sex offenders from committing new
7 crimes.

8 Last week, the Auditor General released a
9 report recommending use of GPS technology to keep track
10 of registered sex offenders. The Board appreciates and
11 understands the Auditor General's concerns and
12 recognizes the need to track offenders, which is why it
13 is interested in retesting this technology.

14 The Board completed a pilot GPS program
15 in 2006, in conjunction with the Department of
16 Corrections to determine how GPS can best serve the
17 interests of public safety. The results of the pilot
18 found that the technology had several problems that
19 needed to be addressed prior to full implementation.
20 The DOC will speak in detail about the pilot, but the
21 problems we found included the following:

22 The technology was not reliable.
23 Numerous alerts were generated due to equipment or
24 software malfunctions. The units required the offender
25 to recharge the battery, and in some cases, they did

1 not; Signals were repeatedly lost when offenders went
2 inside structures that could block the signal. The
3 signal could be blocked by the offender wrapping the
4 unit in aluminum foil. The system was manpower
5 intensive. Sufficient staff is necessary to respond to
6 alerts and require the assistance from local law
7 enforcement.

8 If there were evidence that GPS would
9 prevent such crimes, the Board would use it. We always
10 look for best practices that will keep Pennsylvanians
11 safe from sex offenders. But the evidence is just not
12 there. For example, states that have implemented GPS
13 indicate problems with the technology.

14 As New Jersey's report on their GPS
15 program stated, the majority of alerts they responded
16 to were false. Tennessee's GPS report outlined the
17 benefits of GPS, but also the limitations.
18 Specifically, the undue strain professionally and
19 personally on GPS officers. Spending a significant
20 amount of time working with the equipment, instead of
21 working with the offender, as well as staffing and
22 operational costs.

23 We contacted the Ohio Department of
24 Corrections, which identified problems such as
25 increased liability. And what I mean by that, if you

1 have an alert on a GPS system, you are certainly in a
2 position where you better respond. And with the amount
3 of alerts you get, it's sometimes very difficult,
4 without staffing, to be able to do that 24/7. So
5 increased liability, response consistency, and false
6 alerts.

7 The Florida Department of Corrections,
8 Probation, and Parole Services, which puts GPS on all
9 released sex offenders, had experienced approximately
10 21,000 alarms, of which 70 percent were false. They
11 now have a new vendor monitoring system that screens
12 the alerts for the agents. So they have kind of a
13 centralized operation where the alerts come in. They
14 screen them for the agents and try to determine which
15 are serious enough and which are accurate enough to
16 respond to.

17 Of the 33 Pennsylvania counties that use
18 GPS, 12 use passive systems, 12 active, and 9 use a
19 combination of both. We contacted representatives from
20 several counties, and they reiterated the same concerns
21 that we experienced previously regarding the technology
22 - false alerts, offenders not charging batteries, dead
23 zones, and costs.

24 I didn't say too much in here about
25 costs, but it's safe to say, generally, offenders have

1 a difficult time paying a \$25 or \$30 supervision fee,
2 costing \$10 a day or, if you do the math, \$30 a month.
3 This will cost the taxpayers. I think it's something
4 you ought to consider.

5 The Board developed a cost estimate about
6 two years ago for 100 active GPS units. For the first
7 year, the estimated cost was over \$600,000 with
8 \$292,000 of that being the responsibility of the
9 offender, if he had the ability to pay. But to use the
10 GPS properly, as I mentioned the containment approach,
11 we should also factor in the cost of treatment and
12 polygraph, which would add another \$400,000 for a total
13 cost over \$1 million to start a program going.
14 The second year cost would approach \$2 million. This
15 would be for a hundred units.

16 Because the Board shares the same
17 concerns you, the Auditor General, and so many others
18 have to help keep Pennsylvanians safe from sex
19 offenders, the Board has, since the last pilot program,
20 continued to monitor the reported advances in GPS
21 technology. A few months ago, we began planning for a
22 second pilot program, which is actually beginning this
23 week. In fact, I think it begins today.

24 We have eight GPS vendor products that
25 will be tested in four parole districts for 30 days.

1 For those of you Representatives, I believe that is
2 Philadelphia, Harrisburg, Allentown, and Altoona were
3 where the pilots were at. The participating offenders
4 will not be limited to sex offenders, but I believe
5 most will be sex offenders. We will share our results
6 with you so we all can have a meaningful discussion
7 about the findings from our study.

8 GPS is a location-recording device that
9 lets us know whether or not an offender is in a home,
10 workplace, or any other allowed location. Since we
11 know that most sex offenders victimize in their homes
12 and the homes of people they know, we must be careful
13 about trusting technology that not only hasn't been
14 proven to work, but also to not offer false protections
15 to our children and to the public.

16 According to the U.S. Department of
17 Justice, ninety-three percent of juvenile sexual
18 assault victims know their attacker. Thirty-four
19 percent of attackers were family members. Fifty-nine
20 percent were acquaintances; and only seven percent of
21 the perpetrators were strangers to the victim. More
22 than fifty percent of all rape and sexual assault
23 incidents were reported by victims to have occurred
24 within one mile of their home or at their home.

25 In summary, the management and

1 supervision of sex offenders is an extremely complex
2 issue. We cannot stress enough the value of
3 understanding these types of offenders and what is most
4 effective at deterring future crimes in order to keep
5 our children and our communities safe.

6 Chairman Caltagirone, Chairman Marsico,
7 and members of the committee, thank you for your time
8 and attention. I would be happy to answer any
9 questions you might have.

10 CHAIRMAN CALTAGIRONE: Thank you, sir.
11 We have had two additional members join us. If they
12 would please introduce themselves and the counties they
13 represent.

14 REPRESENTATIVE MANTZ: My name is
15 Representative Carl Mantz. I represent the 187th
16 Legislative District, straddling Berks and Lehigh
17 Counties.

18 REPRESENTATIVE MANDERINO: Good morning.
19 Kathy Manderino, representing parts of Philadelphia and
20 Montgomery Counties.

21 CHAIRMAN CALTAGIRONE: Members,
22 questions? Thank you. We will next hear from William
23 Sprenkle, Executive Deputy Secretary, Pennsylvania
24 Department of Corrections.

25 MR. SPRENKLE: Good morning, committee.

1 On behalf of the Department of Corrections, thank you
2 for the opportunity to provide testimony concerning the
3 GPS pilot program conducted by the Pennsylvania
4 Department of Corrections and the Pennsylvania Board of
5 Probation and Parole during the time period of October
6 27, 2005 and June 9, 2006.

7 The extensive pilot was intended to test
8 the effectiveness of five different companies'
9 equipment. Each company provided 10 units for a period
10 of 60 days at no cost to the Commonwealth. Each
11 company's equipment was used to track five pre-released
12 inmates and five parolees. And each company was
13 assigned to a different geographical region within the
14 Commonwealth.

15 GPS units are generally categorized as
16 passive or active monitoring devices. Passive
17 monitoring devices are intended to collect and store
18 data for later review, typically at the end of the day;
19 whereas, active monitoring devices are intended to
20 transmit data on the individual's movement in real time.
21 All of the units tested in our pilot were active
22 monitoring devices.

23 The sale price of the equipment at the
24 time of the pilot ranged from \$6 per day or \$2,190,000
25 per year for tracking 1,000 offenders to \$10 per day or

1 \$3,650,000 per year for tracking 1,000 offenders.

2 These costs do not include other GPS
3 tracking expenses such as equipment setup, maintenance,
4 and staffing to monitor the locations of offenders and
5 responding to equipment alarms.

6 As Director Tuttle mentioned in his
7 testimony, the overall findings of our study were not
8 encouraging. For instance, 60 percent of a vendor's
9 equipment failed during the first week of the pilot, 30
10 percent of another vendor's bracelet straps
11 disconnected, numerous units lost GPS signal and failed
12 to re-acquire a signal, batteries used by one of the
13 vendors rapidly discharged when in certain types of
14 buildings, 30 percent of a company's units failed due
15 to water damage, and some units were unable to connect
16 to the web-based software.

17 Despite the assertion that Active GPS
18 Monitoring Devices track offenders in real time, during
19 our study, the time frame between the GPS point
20 collection and upload frequency allowed gaps as long as
21 several hours without the device alarming.

22 In addition to technical problems, we had
23 a few instances when offenders defeated our tracking
24 capabilities by tampering with the equipment. For
25 example, one offender wrapped his bracelet with

1 cardboard and aluminum foil, which prevented us from
2 tracking him. In another instance, the offender
3 actually cut off his bracelet and threw it in a trash
4 container and escaped without any means to track his
5 location.

6 Based upon tampering issues and the
7 technical failures during our pilot, we suggest
8 reviewing the results of the current GPS study prior to
9 creating a legislative mandate to use it. It is
10 important to know that the vendors at the time of our
11 pilot made similar performance claims that we are now
12 hearing concerning their new technologies.

13 Even if we find that the current
14 technologies are more reliable and useable, we
15 encourage the legislature to also consider the crime
16 prevention limitations of GPS tracking and the
17 significant impact it would have on our current budgets
18 and public safety services if it becomes an unfunded
19 mandate.

20 Thank you, and I appreciate your time.

21 CHAIRMAN CALTAGIRONE: Thank you, sir.

22 One of the things I was curious about: Have we had any
23 success? I hear all of the negatives. Has there been
24 any situations that you know of in the studies or the
25 work that you have been involved with this, that

1 indicated that we have actually stopped the perpetrator
2 or caught a perpetrator? What is the result in that
3 side?

4 MR. SPRENKLE: That's an excellent
5 question. The problem is it's hard to determine or
6 measure our vendor success because it's hard to
7 determine the thinking of the offender. How many of
8 those that we were able to track, refused to tamper
9 with the equipment, behaved while monitoring, how many
10 of those would have re-offended if, in fact, they
11 didn't have the GPS tracking mechanism? That is an
12 unanswerable question at this point.

13 CHAIRMAN CALTAGIRONE: Members of the
14 committee?

15 REPRESENTATIVE DALLY: Thank you,
16 Mr. Chairman. Those are my concerns also. It seems
17 like we are being told all of the negative aspects of
18 this study. There were 50 units that were used. Are
19 you saying that all of the units provided by all
20 vendors you experienced problems with?

21 MR. SPRENKLE: No, sir. A significant
22 percentage of them did fail.

23 REPRESENTATIVE DALLY: How about those
24 that didn't?

25 MR. SPRENKLE: Those that didn't worked

1 accordingly, worked as they were supposed to work.

2 REPRESENTATIVE DALLY: And you also
3 express concern about unfunded mandate. You are a
4 state agency. I can't imagine that if the legislature
5 were to require these type of tracking, that there
6 wouldn't be funding that goes with it. I can see if
7 you were a school district or a municipality or
8 something like that, but I don't know how a state
9 agency can have an unfunded mandate. Thank you.

10 REPRESENTATIVE O'NEILL: Thank you,
11 Mr. Chairman. Thank you for being with us today. How
12 easy are they to tamper with? I am assuming they are
13 the ankle bracelets that you put on the ankle. Are
14 they that easy to cut off? Are they -- like you said,
15 a guy used tin foil and cardboard.

16 MR. SPRENKLE: It was a question that I
17 raised this week to one of my staff who actually
18 coordinated the pilot with the Board. And I asked him
19 that question. Because I am certainly not an expert
20 with GPS. But he mentioned bottom line is, if you want
21 to remove it, it's removable.

22 REPRESENTATIVE O'NEILL: Is it possible
23 to alter these, give a false location? Like, I guess
24 if they remove it and kept it in their home, that's
25 where they are at?

1 MR. SPRENKLE: Yeah. For instance, the
2 instance of escape that I mentioned, the individual was
3 actually at Harrisburg International Airport. He
4 removed his bracelet and threw it in the trash. And we
5 were able to track down the bracelet to the airport.
6 Unfortunately, he diverted us and went to, I believe,
7 Williamsport.

8 REPRESENTATIVE O'NEILL: What purpose
9 does it serve for someone to doctor it up with
10 cardboard and tin foil?

11 MR. SPRENKLE: Just to prevent the
12 tracking.

13 REPRESENTATIVE O'NEILL: Because he
14 didn't take it off?

15 MR. SPRENKLE: Exactly.

16 REPRESENTATIVE O'NEILL: Good enough.
17 Thank you.

18 MR. ANDRING: In your experience, if
19 somebody is on parole or probation and they are wearing
20 one of these, what kind of restrictions have been
21 imposed on their movement that you could track with one
22 of these?

23 MR. SPRENKLE: It would really depend
24 upon the case. But, certainly, it's programmable where
25 you could set it, for instance, to limit the movement

1 based upon a particular geographic area. You could
2 certainly program it to where the individual was not
3 able or supposed to be moving within a specific
4 location, for example, a particular home.

5 MR. ANDRING: I guess my question is: In
6 terms of real time monitoring, what exactly are you
7 monitoring with these things? I mean, if a sex
8 offender is on parole and he is wearing a bracelet, I
9 am sure he is going to be able to go home and go to
10 work and go to some other places. I don't think there
11 would be total restrictions --

12 MR. SPRENKLE: Right.

13 MR. ANDRING: -- on his movement. So I
14 am not sure exactly what you are going to be monitoring
15 if you are doing the real time type of monitoring?

16 MR. SPRENKLE: You are, basically,
17 monitoring the individual's movement. And, certainly,
18 if that offender moves into an area that's off limits
19 for that person, then there would be an alert.

20 MR. ANDRING: Now, some of the counties
21 in some other states are using these devices right now.
22 Do you know if they are using mostly active or passive
23 monitoring and how they are conducting their programs?

24 MR. SPRENKLE: I don't have the specific
25 information, but my sense is that most of the

1 organizations, the agencies, are using active
2 monitoring.

3 MR. ANDRING: Including counties in
4 Pennsylvania?

5 MR. SPRENKLE: Including counties in
6 Pennsylvania.

7 MR. ANDRING: Are they doing -- I mean,
8 they have a choice as to whether to do this or not
9 right now. If they are choosing to do it, there might
10 be some reason they believe it's effective. Have you
11 talked to any of those people or have any sense of
12 whether they are doing something in terms of limiting
13 the program or managing the program for specific
14 offenders to make it effective and to make it
15 worthwhile?

16 MR. SPRENKLE: I have not spoken
17 personally with them. My sense is they are attempting
18 to use it as an additional tool to track the offenders,
19 to minimize re-offending.

20 MR. ANDRING: Thank you.

21 CHAIRMAN CALTAGIRONE: Any other
22 questions? Thank you. Next hearing from Mark
23 Bergstrom, Executive Director, Pennsylvania Commission
24 on Sentencing.

25 MR. BERGSTROM: Good morning, Chairman

1 Caltagirone, Chairman Marsico, and members of the House
2 Judiciary Committee. I am Mark Bergstrom, Executive
3 Director of the Pennsylvania Commission on Sentencing.

4 Thank you for providing this opportunity
5 to comment briefly on House Bill 164, which modifies
6 the penalties for certain sex offenders and provides
7 for the use of GPS tracking devices.

8 At the outset, it is important to take
9 note of recent actions by the legislature and the
10 criminal justice community to enhance the public safety
11 through increased penalties for sex offenses and
12 improved sex offenders management.

13 Senate Bill 944, which passed the General
14 Assembly in 2006, (Act 178) and became effective
15 January 1, 2007, created the offense of conduct
16 relating to sex offenders; increased penalties for
17 failure to comply with registration of sexual offenders
18 requirements and unlawful contact with minors, created
19 or increased the mandatory minimum provisions available
20 to prosecutors for sentences for offenses against
21 infant children; sentences for sex offenders; and
22 sentences for failure to comply with registration of
23 sexual offenders, while also expanding the list of
24 offenses subject to registration under Pennsylvania's
25 Megan's Law.

1 While these efforts were underway in the
2 legislature, a federally-funded sex offender management
3 team comprised of representatives of state and local
4 government and community agencies from throughout the
5 Commonwealth were engaged in the development and
6 implementation of a sex offender containment model to
7 promote the use of evidence-based best practices in the
8 management of sex offenders.

9 A number of the issues addressed in Act
10 2006-178 are revisited in House Bill 164. I will limit
11 my remarks this morning to a review of the penalties
12 and sentencing amendments contained in the Bill. The
13 impact of the proposed amendments are substantial in
14 terms of reducing proportionality, limiting the
15 discretion presently available to prosecutors and
16 judges, and removing linkages between the grading of
17 offenses and the mandatory minimum sentences.

18 A summary of the proposed changes is
19 attached -- there are quite a few attachments there --
20 as well as fact sheets on sentences for rape,
21 involuntary deviate sexual intercourse, and aggravated
22 indecent assault reported to the Commission in 2007. I
23 have also included fact sheets for sentences reported
24 in 2004 just as a comparison. I also included a
25 research bulletin on a commission recently on Megan's

1 Law offenses.

2 The first set of amendments in the Bill
3 address the statutory maxima assigned to two offenses -
4 rape and involuntary deviate sexual intercourse.
5 Presently, the maximum sentence for rape or IDSI of a
6 child less than 13 years of age is 40 years and life
7 imprisonment if the child suffers serious bodily
8 injury. House Bill 164 would increase the maximum for
9 rape or IDSI of a child less than 13 years to 75 years
10 and retain life imprisonment if the child suffers
11 serious bodily injury.

12 However, of greater impact is the
13 addition of a mandatory minimum sentence of not less
14 than 25 years when the child is less than 13 years of
15 age and mandatory minimum sentence of 50 years if the
16 child suffers serious bodily injury.

17 This language requires, upon conviction,
18 the imposition of at least a 25 to 75 year sentence and
19 no more than a 37 and a half to 75 year sentence for
20 each conviction. When the victim suffers serious
21 bodily injury, the only sentence possible is a 50 year
22 to life sentence. In both cases, the Bill requires the
23 imposition of consecutive sentences when offenders
24 involve multiple victims.

25 The removal of all discretion at

1 sentencing and the imposition of substantially longer
2 minimum sentences may negative impact prosecutions,
3 especially in cases such as these involving child
4 victims.

5 In 2007, the average sentences imposed
6 are as follows: For rape of a child less than 13 years
7 of age, the average minimum sentence imposed in
8 Pennsylvania was 83.6 months and the maximum sentence
9 was 200.3 months.

10 For IDSI of a child less than 13 years,
11 the average minimum sentence was 88.3 months; average
12 maximum sentence, 188.4 months. And for aggravated
13 indecent assault on a child less than 13 years of age,
14 minimum sentence, 57.5 months; and the average maximum
15 sentence was 139.7 months.

16 However, the percentage of minimum
17 sentence served in state prison, based on first
18 releases during 2007, exceeded 175 percent of minimum
19 for these offenses. So just as an example, if someone
20 is -- if the court imposes a 10 to 20 year sentence,
21 and the person serves 150 percent of the min., the
22 person is serving 15 years on that 10 to 20 year
23 sentence. These cases for sex offenders, at least for
24 the released 2007, the individuals are exceeding 175
25 percent of the min.

1 So I think it's important, in addition to
2 looking at the min. and the max. that's proposed to
3 also take into effect the decisioning regarding parole
4 and community service and other factors that impact on
5 the actual sentence being served.

6 The next amendment creates a felony of
7 the third degree for the offense of harboring offenders
8 if a person knowingly or intentionally assists an
9 individual subject to evading the Megan's Law
10 requirements. This provision is similar to the felony
11 of the third degree Conduct Relating to Sex Offenders
12 enacted in 2006, which prohibits withholding
13 information, harboring, concealing, and/or providing
14 false information about an offender's non-compliance
15 with requirements. It is not clear from a preliminary
16 review of the Bill if the intent of this amendment is
17 to expand the existing statute or if this amendment was
18 inadvertently included.

19 A third series of amendments increases
20 the grading of violations of the ten-year registration
21 requirements from an F3 to an F2 and an F2 to an F1
22 while reducing the grading of violations for the
23 life-time registration requirements from an F2 to an F3
24 and from an F1 to an F2. The reasons for these changes
25 are not evident, especially as the current grading was

1 only established in 2006.

2 The final set of amendments involves the
3 mandatory provisions for Offenses Against Infant
4 Persons or Children. In effect, the amendments create
5 three tiers of mandatory minimum sentences: 10 years
6 for a first offense, 20 years for a second offense, and
7 40 years for a third offense.

8 These apply to all offenses, regardless
9 of the grade or the statutory maximum assigned to the
10 offense. So it doesn't matter if the statutory maximum
11 is 20 years or 40 years, the same 10, 20, and 40 year
12 mandatory minimums would apply in all cases. Under the
13 current statute, the long of the statutory maximum and
14 long of the statutory minimum might apply to it.

15 This new section would not apply to those
16 being sentenced for rape or IDSI in cases where the
17 victim is less than 13 years of age since the earlier
18 amendment I discussed requires the imposition of at
19 least a 25 year mandatory minimum sentence.

20 Additionally, there currently exists in
21 statute another mandatory provision, again one enacted
22 last year, in 2006, sentencing for sex offenders, which
23 provides a 25 year mandatory minimum for a second
24 Megan's Law offense and a life imprisonment sentence
25 for a third or subsequent Megan's Law offense.

1 The result is that this amended section
2 would only apply to offenders convicted of rape and
3 IDSI if the victim was 13 years of age or older and if
4 that offender had no prior Megan's Law conviction. It
5 would also apply to those convicted of aggravated
6 assault. The mandatory provisions require
7 prosecutorial notice prior to sentencing and,
8 therefore, may be waived by the prosecution.

9 So in that section where there is the
10 development of these three tiers and a lot of effort,
11 it really would have a minimal impact and actually adds
12 to what applies and how it applies.

13 Aside from the above, if there is support
14 to proceed with these amendments, I recommend a review
15 of the following three issues: First, IDSI with a
16 complainant who is less than 16 years of age and the
17 offender is four or more years older is included as a
18 listed offense; however, it appears inconsistent that
19 similar provisions under the statutory sexual assault
20 or aggravated indecent assault, again, where the
21 complainant is less than 16 years of age, and the
22 offender is four or more years older, those similar
23 provisions are not included. So it seems somewhat
24 inconsistent that one would be included and the other
25 two are not.

1 Second, another issue to consider, the 40
2 year mandatory minimum sentence applies only to a third
3 offense. Consideration may be given to expanding this
4 to include third and subsequent offenses. Because,
5 although we would have mandatory for first, second, and
6 third offenses, there would be no mandatory for a
7 fourth or fifth or a sixth offense. So, perhaps,
8 including a third or subsequent offense is the intent.

9 And, third, since the designation of a
10 person as a sexually violent predator is based on clear
11 and convincing evidence rather than proof beyond a
12 reasonable doubt, the maximum penalty imposed on the
13 offender cannot exceed the statutory maximum for the
14 offense.

15 The amendment to include mandatory
16 minimum tiers of 25 years, 50 years, 75 years based on
17 an SVP determination could only apply in those cases
18 where the statutory maximum was equal to or greater
19 than the mandatory minimum.

20 Considering the substantial changes
21 brought about by the enactment of Act 2006-178,
22 legislation that took effect less than two years ago,
23 it may be advisable to study those outcomes before
24 making further changes, particularly as related to
25 mandatory minimum sentences. As an agency to the

1 General Assembly, the Commission on Sentencing is
2 available to assist the committee as it considers these
3 important issues. Thank you, again, for providing this
4 opportunity.

5 CHAIRMAN CALTAGIRONE: Thank you.
6 Another member has joined us. If he would introduce
7 himself for the record.

8 REPRESENTATIVE LENTZ: Bryan Lentz from
9 Delaware County, and I apologize for being late.

10 CHAIRMAN CALTAGIRONE: Questions?

11 REPRESENTATIVE DALLY: Thank you,
12 Chairman. Thank you, Mark, for your testimony. I am
13 just trying to jog my memory back when that legislation
14 was passed two years ago. I know there was quite a
15 debate about having a 25 year minimum for the first
16 offense because I believe there were some states in the
17 country, Florida being one of them, that did pass that.

18 Did your organization weigh in on that
19 issue at that point in time?

20 MR. BERGSTROM: I know we had discussions
21 with the administration and with the committee staff.
22 I don't know that there was a public hearing on that,
23 but I remember having those discussions with committee
24 staff.

25 REPRESENTATIVE DALLY: Do you recall what

1 those issues were in terms of --

2 MR. BERGSTROM: From the prosecutors?

3 REPRESENTATIVE DALLY: Yes.

4 MR. BERGSTROM: I don't want to represent
5 or try to represent the prosecutors, but one of the
6 issues that came up both in those discussions and
7 discussions as part of the sex offender management team
8 was a concern that when you have a very young victim, a
9 victim under 13 years of age, it's very difficult to
10 have that person testify in a courtroom or even by
11 videotape. These are very difficult and trying
12 situations.

13 And that's especially true if it's a
14 family member, which is often the case. And one of the
15 concerns was if there was a hard and fast mandatory
16 minimum, like, a 25 year mandatory minimum with no
17 notice provision where the D.A. would not have any kind
18 of opportunity to try and negotiate or find some way in
19 resolving that matter, you might have cases where the
20 case was taken to trial, and, because the victim was
21 not able or willing to testify, you would lose the case
22 totally.

23 So the idea was to make sure that there
24 was some discretion with the prosecutor or others to
25 make sure that justice could be done, even if it

1 wasn't a hard and fast 25 year mandatory.

2 REPRESENTATIVE DALLY: Thank you.

3 REPRESENTATIVE MARSICO: Thank you,
4 Mr. Chairman. Mark, thank you for being here. Always
5 look forward to your comments and to your suggestions
6 and advice. You threw a lot at us here.

7 MR. BERGSTROM: Sorry.

8 REPRESENTATIVE MARSICO: And I think the
9 best thing that we can do or we should do is talk with
10 the Chairman here is perhaps sit down with legal staff.

11 MR. BERGSTROM: Sure. Absolutely. Any
12 time.

13 REPRESENTATIVE MARSICO: So spend some
14 further time with them with your investigations. I
15 think that's the best thing to do as well as we should
16 probably get some advice from the D.A. Association as
17 well, Attorney General.

18 MR. BERGSTROM: Absolutely.

19 REPRESENTATIVE MARSICO: So I wanted to
20 make that comment. Thanks for being here.

21 REPRESENTATIVE MANDERINO: Good morning,
22 Mr. Bergstrom. Thanks for being here. A couple of
23 quick points about your testimony. I want to make sure
24 I understand this.

25 Towards the bottom of page 3 when you

1 said with regard to IDSI that a complainant who is less
2 than 16 years of age with an offender who is more than
3 four years older is included in the list of offense,
4 help me out. Which part of the Bill are you talking
5 about? I thought it dealt only with folks under 13.

6 I want to make sure I understand. So if
7 I have a 20-year-old male and a 15-year-old female,
8 which provision of this Bill are they coming under?

9 MR. BERGSTROM: Right. This is in the
10 Bill starting at page 5. It's the amendments to
11 section 9718 of title 42, which is mandatory provisions
12 for offenses against children. And, in that section,
13 there are penalties that relate generally to aggravated
14 assault, rape, IDSI, and aggravated indecent assault.

15 And if you look at the three categories
16 that are in effect statutory provisions, statutory
17 sexual assault, IDSI, when the subsection is just an
18 age issue, the under 16 plus 4 years, and for
19 aggravated indecent assault, it's the same clause.

20 In one of the cases for IDSI, it's
21 included. And the other two cases, it's excluded. So
22 the question I was sort of raising the issue about the
23 inconsistency that, in effect, three statutory
24 provisions are potentially involved and only one of
25 them actually ends up mandatory.

1 REPRESENTATIVE MANDERINO: I thought the
2 first part of the Bill had mandatories, and this
3 section here was raising levels of offenses, but not
4 imposing mandatories. But this is imposing mandatories
5 as well?

6 MR. BERGSTROM: Yeah. In fact, they both
7 do that. I am not sure if that was the intent of the
8 Bill or not. But in the first section of the Bill
9 where it is dealing with the definition of rape and
10 IDSI, previously, that section was used just to define
11 the maximum sentence. But by including a minimum
12 sentence, a shell, and a minimum sentence, it creates a
13 mandatory minimum, and it creates one where there is no
14 discretion.

15 This section 9718 is also a mandatory
16 provision, but it's a notice mandatory. So it only
17 applies if the D.A. gives notice. If the D.A. doesn't
18 give notice, then the mandatory doesn't apply. So
19 that's, again, there's that inconsistency. I am not
20 saying right or wrong. It just seems inconsistent to
21 have applied to one and not to the others.

22 REPRESENTATIVE MANDERINO: You intimated
23 this in a response to Representative Dally, but I am
24 looking to see if we have any statistics. When you
25 have a sexual crime against a young child, we often

1 hear it usually -- it is often the case that it
2 involves a family member.

3 MR. BERGSTROM: Yeah.

4 REPRESENTATIVE MANDERINO: I looked at
5 the chart that you gave us on sentencing, but I don't
6 see anything. Do we have statistics in terms of the
7 relationship between the perpetrator and the victim
8 such that we can -- other than antidotally saying this
9 usually involves family members -- really understand
10 how much of it involves family dynamics versus stranger
11 crime, for lack of a better way to articulate it?

12 MR. BERGSTROM: From the commission's
13 point of view, we do not collect that. We do not have
14 that. I am not sure if some of the D.A.s would have
15 that because of the victim/witness coordinators in
16 their offices or some of the associations. And that's
17 something we can look into because I think that is a
18 good issue.

19 But I know during the research conducted
20 by the sexual offender management team and other
21 discussions around Senate Bill 944 a couple years ago,
22 that issue kept coming up. But I don't have it in our
23 data.

24 REPRESENTATIVE MANDERINO: My last
25 question goes towards the point that you made at the

1 very end of your testimony with regard to the
2 designation of a person that is a sexually violent
3 offender, the different standards and how that effects
4 penalties.

5 But remind me and other members when does
6 the designation of a sexually violent offender happen
7 and how does that happen? If I am remembering, is that
8 something that happens after incarceration as a
9 determination of corrections? Is that something that
10 happens before sentencing as a determination of the
11 trier of fact? Help me out with that label.

12 MR. BERGSTROM: Yeah. If you think in
13 terms of a bifurcated hearing where the first hearing
14 is the trial phase and the burden is beyond a
15 reasonable doubt, all the elements of the crime have to
16 be proven. And, based on that, there's a determination
17 of what the maximum sentence possible is.

18 The second part of that hearing, the
19 second area would be the sentencing hearing. And it
20 would be during that point or sort of part of that
21 where there would be -- there could be a hearing to
22 determine whether the person is a sexually violent
23 predator. So during sort of the post-conviction,
24 pre-sentencing period of time, an assessment would be
25 done by the sexual offender assessment board that would

1 be provided to the district attorney, the judge, and
2 the parties.

3 The district attorney would make a
4 determination about whether he or she sought to have a
5 hearing to try to prove that this person was a sexually
6 violent predator. The burden of proof on the D.A. at
7 that point is clear and convincing evidence. When you
8 get to sentencing, the burden is down to preponderance.
9 So you have, basically, three burdens, and they are
10 sort of decelerating, I guess.

11 The concern is that, at trial, based on
12 that highest burden is when you are determining what
13 the maximum sentence is. The concern is that middle
14 phase when there's an assessment and a hearing to
15 determine if a person is a sexually violent predator,
16 the burden of proof is lower and, therefore, it cannot
17 be used to extend or increase the statutory max.

18 So that's the concern with this section
19 of the Bill that some of those -- there are
20 circumstances which would lead to an SVP, a mandatory
21 minimum that would exceed the statutory max. for SVP.
22 So you would have to back up or one of the other things
23 that there has been a discussion about, but no movement
24 on, is to some disagree, a determination of SVP could
25 be used to enhance a sentence. It could be used to

1 enhance a mandatory minimum or enhance one of the
2 guidelines. But it would have to apply to the minimum
3 sentence increasing with what the minimum sentence is,
4 and it couldn't do anything to effect the maximum
5 sentence.

6 REPRESENTATIVE MANDERINO: Thank you.

7 CHAIRMAN CALTAGIRONE: Any other
8 questions?

9 We will next hear from Captain Janet McNeal, Director,
10 Operational Records Division, Pennsylvania State
11 Police, Bureau of Records and Identification.

12 CAPTAIN McNEAL: Good morning, Chairman
13 Caltagirone, Chairman Marsico, and members of the
14 committee. I am Captain Janet McNeal, Director of the
15 Operational Records Division of the Pennsylvania State
16 Police, Bureau of Records and Identification. With me
17 today is Cindy Guido, Director of the State Police
18 Policy Office.

19 On behalf of Colonel Jeffrey B. Miller,
20 Commissioner of the Pennsylvania State Police, I want
21 to thank you for the opportunity to participate in this
22 public hearing.

23 At the outset, I want to assure you that
24 the Pennsylvania State Police shares your concerns
25 about keeping Pennsylvania citizens safe from sex

1 offenders. We now have almost 13,000 sex offenders in
2 our Megan's Law registry with 255 of those individuals
3 being designated by the Courts as sexually violent
4 predators.

5 The Megan's Law section within the
6 Pennsylvania State Police of Bureau of Records is
7 responsible for the general administration of Megan's
8 Law. They maintain a registry of sex offender
9 information and disseminate the information in
10 accordance with applicable statutes. Over the last
11 couple of years, we have made significant improvements
12 to our operations. Within days after the General
13 Assembly authorized internet posting of all sex
14 offenders' street addresses, the addresses were
15 available on the State Police web site.

16 To assist the public in determining
17 whether a particular sex offender is still in prison,
18 the State Police has included links to federal and
19 state inmate locaters. We have also added a toll-free
20 telephone number and a "submit a tip" function on the
21 web site, enabling the public to provide information
22 about offenders who are not complying with Megan's Law
23 requirements. In the first month alone, the State
24 Police received 250 tips via "submit a tip".

25 The Megan's Law section provides training

1 to law enforcement agencies throughout the Commonwealth
2 to promote compliance and enhanced performance in
3 reporting, prosecution, and application of Megan's Law.
4 The Megan's Law section has established a network of
5 liaisons and contact persons for various other law
6 enforcement agencies. They also have State Police
7 Megan's Law Field Liaisons throughout the Commonwealth
8 that provide expert witness testimony for court
9 prosecution and act as subject matter experts for
10 Megan's Law issues encountered at the local level.

11 The State Police provides community
12 service educational speeches to promote Megan's Law
13 awareness, personal safety, community involvement in
14 assisting with identifying non-complaint offenders, and
15 instruction on the proper use of web information.

16 The State Police initiates and
17 participates in sex offender compliance initiatives
18 with local, county, state, and federal law enforcement
19 agencies. To track down non-compliant sex offenders,
20 the State Police formed a statewide task force that
21 successfully located and registered 297 non-compliant
22 sex offenders. A joint effort with the Federal
23 Marshals resulted in the arrest of 94 non-compliant
24 offenders.

25 As a result, our compliance rate is

1 substantially higher than the national average. On any
2 given day, our compliance rate varies between 90 and 95
3 percent, while the national average is 76 percent.
4 Significantly, all of the offenders who have been
5 designated as sexually violent predators are currently
6 in compliance with the requirements of Megan's Law.

7 On a weekly basis, the Megan's Law
8 section runs a report of all offenders who failed to
9 update as required the previous week. That list is
10 compared to information from correctional facilities to
11 identify those offenders who are incarcerated and
12 unable to report in person as required and bring them
13 into compliance. Per statute, a written request for
14 investigation is then mailed to the police department
15 with primary jurisdiction over the offender's last
16 residence advising that the offender failed to report
17 as required and requesting they locate and arrest the
18 offender for the violation.

19 Additionally, when the Megan's Law
20 section receives tip information from any source, they
21 act on the information by conducting some limited
22 investigation and contacting the appropriate law
23 enforcement entities for in-depth investigation and
24 enforcement.

25 The Megan's Law section tracks the

1 progress of the investigations and supports it with
2 documents, updated information as it comes to light and
3 court testimony as needed.

4 I note that House Bill 164 attempts to
5 bolster monitoring of sexually violent predators by
6 requiring them to be fitted with GPS tracking devices.
7 The State Police would then be required to combine data
8 collected from the GPS tracking device into a single
9 database that can be searched by date, time, and
10 location.

11 We already have 100 percent compliance
12 rate among our sexually violent predators. Thus, to
13 have any impact on compliance rates, all active
14 registered offenders would need to be monitored, not
15 just sexually violent predators. That would be an
16 enormous and costly undertaking. Yet, no study has
17 been able to identify any significant statistical
18 difference in recidivism by offenders monitored by GPS.

19 The simple fact is GPS cannot prevent
20 crime. Proponents argue that GPS is valuable for two
21 purposes: One, monitoring and supervising offenders to
22 ensure compliance with conditions of probation and
23 parole; and, secondly, investigating and prosecuting
24 offenders after a crime has been committed.

25 Yet, as we have heard today from the

1 Department of Corrections and Bureau of Parole and
2 Probation, other states have indicated significant
3 troubles with the technology, while our own pilot
4 program reported similar problematic results. Even in
5 each of the "success stories" referenced in the
6 Attorney General's report, a person with full knowledge
7 they were being monitored by GPS committed or attempted
8 to commit another crime, including parole violations.

9 I would like to take a moment to further
10 comment on the Special Report released by the Attorney
11 General. As always, we appreciate the work the Auditor
12 General and his staff put into reviewing Megan's Law.
13 And we take his suggestions very seriously.

14 However, it is important to note one
15 finding in his report that is misleading. The report
16 claims that in early June 2008, Pennsylvania had lost
17 track of approximately 923 sex offenders. The Auditor
18 General reached the conclusion by presuming an offender
19 is missing based on an outdated verification date
20 posted on the Megan's Law web site.

21 An outdated verification does not mean
22 the offender is missing or that we do not know where
23 the offender is living. Moreover, for a variety of
24 reasons, there may be a delay between the offender's
25 verification and our ability to update the web site.

1 Keep in mind the Megan's Law section receives more than
2 a 100 verification or change worksheets in the mail
3 every day.

4 The State Police recently rolled out the
5 first phase of a multi-phase electronic registration
6 system that will significantly increase the speed and
7 the efficiency of the sex offender registration
8 process. The new process utilizes existing Livescan
9 and CPIN technology in the Commonwealth to collect sex
10 offender's information at approved registration sites
11 that include both State Police and local law
12 enforcement.

13 The information is transmitted
14 electronically to the Megan's Law section for
15 verification, acceptance into the sex offender
16 registry, and updating the web site. And it is
17 expected that the second phase will roll out to the
18 first State Police location this week. Once fully
19 implemented, it will completely eliminate the current
20 inefficiencies and delays associated with offender
21 information reported on paper forms submitted via U.S.
22 mail. I would note that rolled out yesterday.

23 Further, the Auditor General suggests
24 that sex offenders will be able to foot the bill for
25 GPS tracking. Unfortunately, the reality is offenders

1 have an unemployment rate that is ten times the state
2 average; and most of the offenders who are employed,
3 have low-skill, low-paying jobs.

4 Next, the proposed legislation also makes
5 numerous changes to registration and verification
6 procedures. Procedural changes should not be made in a
7 vacuum, given the impending requirements of the federal
8 Adam Walsh Act. For example, this legislation would
9 require monthly verification of a sexually violent
10 predator's residence in compliance with counseling.

11 Under Walsh, however, all sexually
12 violent predators as well as approximately 85 percent
13 of our current registry will be required to report
14 quarterly. Since all of our sexually violent predators
15 are in compliance with quarterly reporting, it is
16 difficult to believe compliance rates will be improved
17 by burdening the criminal justice community with
18 monthly verification.

19 Considering the typical double digit
20 annual growth of the registry, the Megan's Law section
21 would see a 400 percent increase in workload.

22 Additionally, the proposed amendments of section 4915
23 of title 18 relating to failure to comply with
24 registration of sexual offenders requirements seek to
25 punish ten year offenders more harshly than lifetime

1 offenders and sexually violent predators.

2 Specifically, the proposed amendments
3 make it a felony of the second degree for a ten-year
4 offender to fail to register with the Pennsylvania
5 State Police. Yet, it would only be a felony of a
6 third degree for a lifetime offender or a sexually
7 violent predator who commits the same violation.
8 Minimally, the penalties should be the same for all sex
9 offenders who fail to comply with the requirements of
10 Megan's Law.

11 Neither the current law nor the proposed
12 amendments to section 4915 of title 18 provide a
13 penalty for out-of-state sex offenders who are required
14 to register pursuant section 9795.2 and fail to comply
15 with their registration requirement. This needs to be
16 addressed as soon as possible.

17 Likewise, as written, the legislation
18 only makes it a crime to harbor individuals required to
19 register under 42 Pa. Consolidated Statute section
20 9795.1. It would not be a crime to harbor an
21 out-of-state offender required to register under
22 section 9795.2.

23 The Bill, unfortunately, would actually
24 decrease the penalties for second or subsequent sex
25 crime convictions. Under current law, the mandatory

1 minimum for committing a second sex offense is 25 years
2 and a third or subsequent conviction carries a sentence
3 of life. The sentences provided in this Bill are for
4 less time. While we presume this was an inadvertent
5 drafting error, we wanted to bring this to the
6 committee's attention.

7 Without taking the time to go over each
8 and every drafting error of this type, I want to
9 emphasize the need for us to work to address any
10 oversights or unintended consequences of the Bill as
11 currently proposed.

12 In conclusion, on behalf of Colonel
13 Miller and Pennsylvania State Police, I thank you again
14 for this opportunity to testify before your committee.
15 The Administration and the State Police look forward to
16 working with you and other members of the legislature
17 to help refine and advance legislation on this issue.

18 CHAIRMAN CALTAGIRONE: Thank you,
19 Captain. You make some very good recommendations. And
20 I am sure our counsel will be looking at this. We
21 appreciate any assistance that you might want to give
22 to us.

23 Chairman Marsico and I both
24 agreed that we will correct those errors before the
25 Bill moves out of committee. We don't like to be
sloppy in our work when we move things out of

1 committee. We try to do the best possible job.

2 Questions from the committee?

3 REPRESENTATIVE O'NEILL: Thank you for
4 being here today. For my edification, because I find
5 sexual assault to be violent in any way, shape, or
6 form, you listed 13,00 sex offenders in Megan's Law.
7 You said 255 of them are considered to be sexually
8 violent predators. What is the difference? What makes
9 them a sexually violent predator?

10 CAPTAIN McNEAL: The sexually violent
11 designation is a determination by the Court after, as
12 Mark explained, after the conviction or the guilty plea
13 and prior to sentencing, there's an assessment done by
14 the sexual offender assessment board, and, if
15 warranted, a hearing held by the Court, and the Court
16 actually makes a determination of sexual violent
17 predator.

18 REPRESENTATIVE O'NEILL: I am not sure I
19 agree with that. My other question would be -- you
20 stated -- and it's good to know this. It was reported
21 that 923 sex offenders are missing. And you are saying
22 that probably is not true, based on the way they got
23 their information.

24 Do you have a real number as to how many
25 may be missing in Pennsylvania?

1 CAPTAIN McNEAL: I don't have --

2 REPRESENTATIVE O'NEILL: Is that able to
3 tracked?

4 CAPTAIN McNEAL: The number changes every
5 day because every day address worksheets come in,
6 records are updated. It cannot be determined just by
7 the mere fact they missed their registration
8 verification date by one day.

9 Currently, we are receiving those
10 documents in via U.S. mail. And there is a lag time
11 between the time the offender actually reports at the
12 approved registration site and the time that the
13 information is processed and posted to the web. They
14 have a designated reporting window. And if they appear
15 and report on the last day of that window, they are
16 technically in compliance, but that paperwork may not
17 be processed for some days and posted to the web.

18 REPRESENTATIVE O'NEILL: Do you have a
19 list of those missing? Not with you. Does the State
20 Police have a list?

21 CAPTAIN McNEAL: We have the ability to
22 generate a list of people who are not in compliance.
23 We could even generate a list of how long out of
24 compliance that they are, you know, one week, one
25 month, one year, two years beyond verification date. I

1 don't have any numbers as to how many of these are very
2 recent, but these numbers change daily as they continue
3 to process worksheets. And the flip side of that is
4 they will pass another verification date that someone
5 has been in, but theirs hasn't been processed.

6 There are also other things that impact
7 that. There are people who fail to report, but are not
8 necessarily lost or missing. There are times when we
9 know where offenders are located, but we are unable to
10 update their information in the registry or on the web
11 because we lack supporting documents. So we can have a
12 verbal report from a jail, from a police department,
13 from a citizen, from whatever source, but until we have
14 the supporting document, we cannot update our registry
15 or the web with the corrected and updated information.

16 Now, we do store that information, those
17 verbal reports. Within our database and registry, we
18 have a comment or investigative section associated with
19 each offender so we can know their whereabouts and have
20 even made contact to get the paperwork, but we cannot
21 change those until we have supporting documents.

22 There are other instances such as if a
23 person was reported deceased or whatever that, again,
24 they are not lost and they are not missing or if they
25 are incarcerated, maybe temporarily hospitalized or

1 whatever. There are all kinds of circumstances that
2 have them not appear on the correct date, but within a
3 short period of time, their information is updated with
4 correct information when they are available to do that.

5 REPRESENTATIVE O'NEILL: So you actually
6 don't have a list where you can say, here is 200 that
7 have been missing for two years? They are considered
8 missing, not --

9 CAPTAIN McNEAL: We do have that
10 information. It's not a list. We can create it. But
11 we have active investigations. We have 900
12 investigations out there. So, again, we would have to
13 look at the various investigative comments to see what
14 the most current information is for each.

15 In each and every case, we have requested
16 the local, the appropriate law enforcement entity to
17 conduct an investigation and have their investigative
18 information.

19 REPRESENTATIVE O'NEILL: One follow-up
20 question real quick. On your web site, do you post
21 offenders that have been missing for a year, two years,
22 if you see this person or whatever?

23 CAPTAIN McNEAL: We don't identify those
24 people as absconded unless we know a warrant exists.

25 REPRESENTATIVE MARSICO: Thanks,

1 Mr. Chairman. Thanks for your corrective legislative
2 recommendations. Appreciate that. I agree some of
3 those need to be done. With regard to the 900 and
4 some, 923 sex offenders that the Auditor General said
5 you can't find, obviously, that's an alarming number.

6 Have you had any contact since the
7 Auditor General made those comments with his office to
8 let him know that that number may be misleading and not
9 correct?

10 CAPTAIN McNEAL: Not to my knowledge. I
11 have not contacted them.

12 REPRESENTATIVE MARSICO: He will be here
13 soon, in a few minutes. That is certainly a
14 staggering, alarming number. And I can see where that
15 would be misleading, based upon your information. So I
16 wanted to make aware that he will be here soon and that
17 perhaps you can share that information. So I thank you
18 for coming today.

19 REPRESENTATIVE DALLY: Captain, thank you
20 for your testimony. On page 9 of the Auditor General's
21 report, he makes two recommendations; and, in both
22 instances, requests of the Pennsylvania State Police
23 and Board of Probation and Parole to request the
24 General Assembly require five years of GPS monitoring
25 for offenders who are caught after failing to register

1 their whereabouts and also to require at least five
2 years of GPS for all sexually violent predators whose
3 victims are children.

4 Now, in your testimony, you reference the
5 Auditor General's report, but you never touch on that
6 issue as far as whether you believe that is a
7 recommendation that's worth considering.

8 CAPTAIN McNEAL: Our concern regarding
9 those recommendations are that GPS, there's simply no
10 empirical data or study, to my knowledge, that
11 demonstrates that GPS prevents recidivism for crime.
12 The intent of Megan's Law is crime prevention. And
13 that's the goal of Megan's Law is to prevent
14 victimization.

15 Absent some kind of study or data or
16 something out there that tells us that GPS would
17 effectively aide in the prevention, then we would be
18 glad to consider it, if we were aware of some of those
19 types of reports. I am not aware of any of those. I
20 really can't, at this point in time, say one way or the
21 other.

22 REPRESENTATIVE DALLY: I believe his
23 report sites several what they term GPS success
24 stories, and they reference several newspaper articles
25 where it appears that GPS technology and GPS monitoring

1 have, indeed, brought about good results.

2 So is it the State Police's position that
3 GPS technology has no role in monitoring these kind of
4 offenders? Is it something you are willing to consider
5 in the future as technology improves?

6 CAPTAIN McNEAL: I have concerns about
7 monitoring someone who has completed their sentence for
8 their crime. I think that needs to be looked at and
9 considered by legal counsel prior to that. Anyone who
10 has not completed their sentence and perhaps under
11 supervision, it certainly would be an excellent tool
12 for someone under supervision. But for someone who has
13 completed their penalties, my concern regarding
14 exceeding the mandatory penalties for that is that
15 Megan's Law registration has been held consistently
16 held in court cases as administrative and not punitive.

17 I am a little concerned when we start
18 applying those things that are typically connected with
19 the punitive process to mirror Megan's Law registration
20 and administrative process. I think those issues need
21 to be carefully examined before a determination can be
22 made.

23 REPRESENTATIVE DALLY: Thank you very
24 much. Thank you, Mr. Chairman.

25 REPRESENTATIVE MANDERINO: Thank you very

1 much, Captain, for your testimony. A couple of
2 questions to kind of make sure that I am straight in my
3 mind. I don't want to make any wrong assumptions. If
4 someone is subject to registration requirements under
5 Megan's Law, am I correct in assuming from that that
6 they are under some sort of continuing -- obligation
7 isn't the right word -- they are somehow under a
8 jurisdiction of oversight of someone out there in our
9 law enforcement community. If they are incarcerated,
10 it would be DOC. If they are not incarcerated, it
11 would be probation and parole.

12 Or are there folks out there who are
13 totally out from any continuing probation and parole
14 requirements, but they still have registration
15 requirements?

16 CAPTAIN McNEAL: Most of them still have
17 completed all of their supervision requirements and are
18 under the registration reporting only. Remember, a lot
19 of our requirements for that are lifetime.

20 REPRESENTATIVE MANDERINO: So if I am
21 under a reporting requirement only, what causes me for
22 failure to timely report to then jump back into
23 somebody's else system? Anything?

24 CAPTAIN McNEAL: Could you clarify?

25 REPRESENTATIVE MANDERINO: We had this

1 whole discussion about the fact that now I am not
2 incarcerated. I am not under active supervision by the
3 department. I am not on probation any longer. I have
4 fulfilled all of those requirements. I am not out on
5 parole. My only requirement is registration.

6 Now, my registration form is no longer
7 timely. One day, one week, three months. At what
8 point, if any, does that time lag in reporting trigger
9 somebody saying, I better figure out where this person
10 is? And who is the somebody that triggered? State
11 Police? Probation and parole?

12 CAPTAIN McNEAL: In our computer database
13 system, we monitor that; and, each week, we run a list
14 of people who fail to report the previous week. And,
15 as I testified, we then compare it to corrections
16 information to see if they were incarcerated and merely
17 unable to appear in person as required.

18 If we do not locate them within the
19 correctional facility system, state or county, we
20 immediately send an investigation request to the police
21 department that has jurisdiction over the last address
22 of record and request that they immediately conduct an
23 investigation and locate and arrest, if appropriate.

24 REPRESENTATIVE MANDERINO: So it goes
25 from kind of an internal systems administrative check,

1 now back to here is somebody who has violated probation
2 and parole, assuming they were passed that stage, it
3 goes to local law enforcement --

4 CAPTAIN McNEAL: That's correct.

5 REPRESENTATIVE MANDERINO: Wherever they
6 were. With regard to --

7 CAPTAIN McNEAL: If I may, you asked
8 about the deterrent. Arrest is a felony violation. So
9 that does deter them.

10 REPRESENTATIVE MANDERINO: Sometimes
11 things don't occur to you to be questions until after
12 perhaps the person who might be better able to answer
13 has already gone. So I don't know if some of these
14 questions may have been bettered answered by probation
15 and parole.

16 But, again, going back to the failure to
17 properly timely resubmit your address, it's probably
18 fair to say that the smallest percentage of those folks
19 we might find within DOC, some other percentage of them
20 we might find in probation and parole, in terms of
21 whose responsibility it would be to figure out where
22 they are.

23 And then another big portion of them
24 would be with either the state or local police, whoever
25 has jurisdiction in that area.

1 Do we have any sense as to how those
2 breakdown -- how many of, let's use the example of at
3 the point in time when the Auditor General's auditors
4 looked at the data and concluded based on a lack of
5 timely update on the system, that there were 900 some
6 folks. Do we have any sense of those 900 and some
7 folks, assuming that they were all non-compliant, where
8 they would have been? DOC, probation and parole, local
9 or state enforcement?

10 CAPTAIN McNEAL: I don't have a
11 percentage breakdown. I don't know that information.
12 We would discover it, but I don't have it readily
13 available.

14 REPRESENTATIVE MANDERINO: Is it fair to
15 say, again, since the proponent of the legislation's
16 goal is protection and crime prevention, etc. of those,
17 that -- again, I would think because the strings are
18 either non-existent if you are incarcerated within
19 DOC's custody or the strings are very short because you
20 are on probation and parole, the ability to pull
21 somebody back in and figure out what is going on with
22 them is probably pretty quick or immediate in those
23 instances.

24 But, again, going to only that percentage
25 of folks who are under registration only requirements

1 and not under anybody else's string except for the
2 threat of only future potential arrest, does it really
3 then break down to -- I am trying to get a sense -- I
4 guess what I am trying to get a sense of -- this might
5 be something that we have to find out from local law
6 enforcement.

7 In some jurisdictions, that be might kind
8 of at the top of the radar screen in terms of
9 seriousness in terms of what I need to go out there and
10 find; and, in another jurisdiction, that might be
11 something that's way further down on the pecking order
12 because there's a murder on the street corner every
13 night.

14 Do we have any sense of what our ability
15 to respond in those instances is and how it varies
16 across the state?

17 CAPTAIN McNEAL: A lot of it depends on
18 the size and ability, coverage area, workload of the
19 individual departments. It's my belief that all of the
20 law enforcement community considers sex offender
21 enforcement a high priority incident. I know we have
22 liaisons in several of the local police departments.
23 Several of them have special victims or sex offender
24 investigation units that very actively pursue these.

25 Names come to mind for me that are

1 absolutely outstanding. We have some others that have
2 minimal, at best, instances when people go out of
3 compliance because of the aggressive enforcement. The
4 Megan's Law section provides expert witness testimony
5 for court and they are out there all of the time
6 providing the expert witness testimony for court.
7 These are being prosecuted, and these are taken
8 seriously by both the State Police and the entire law
9 enforcement community.

10 REPRESENTATIVE MANDERINO: Remind me, if
11 you know, what percentage of Pennsylvania's population
12 primary law enforcement is our Pennsylvania State
13 Police?

14 CAPTAIN McNEAL: Twenty-seven percent.

15 REPRESENTATIVE MANDERINO: What is our
16 Pennsylvania State Police's responsibility to that 27
17 percent of Pennsylvania's population where they are the
18 primary jurisdiction vis-a-vis Megan's Law violations?

19 CAPTAIN McNEAL: The State Police is very
20 aggressive in that. They are assigned investigations
21 and reply promptly. And, of course, we have a lot of
22 direct communication with them on that. They do only
23 respond to those where the primary jurisdiction is the
24 State Police. The State Police are not responding to
25 those investigations when the offense occurs in a local

1 police jurisdiction.

2 REPRESENTATIVE MANDERINO: So I am in an
3 area of Pennsylvania where primary jurisdiction is the
4 State Police. I don't know those areas per se. But
5 does this go out to the barracks in Mifflintown for the
6 local person in that barracks to do it or is there a
7 specialized unit within P.S.P. that does it?

8 CAPTAIN McNEAL: It's assigned to each
9 individual station where the offense, where we believe
10 the offense has occurred. And they have the assistance
11 of the Megan's Law field liaisons out there to help
12 them if they have any questions regarding the
13 prosecution or the law or violation or anything like
14 that. But the investigations are done at the local
15 level.

16 REPRESENTATIVE MANDERINO: Thank you. I
17 don't expect that you have them with you, but to the
18 extent that you have any sort of data or reports on
19 here is P.S.P.'s kind of response rate, timing,
20 reporting, statistics, so to speak, for the ones that
21 are under our jurisdiction that would help us get a
22 sense of either how good or how not good a job we are
23 doing out there now, I think that would be very helpful
24 to the members because I think that may be presumed in
25 the whole approach to this as we are not doing as good

1 a job as we should. We have some things that need to
2 be fixed. And so I am trying to get a sense of how
3 good a job we are doing. Thank you. Thank you,
4 Mr. Chairman.

5 CHAIRMAN CALTAGIRONE: Thank you,
6 Captain. We appreciate your testimony. We will next
7 hear from Pennsylvania State Auditor General Jack
8 Wagner.

9 AUDITOR GENERAL JACK WAGNER: Good
10 morning, Chairman Caltagirone, Chairman Marsico, and
11 members of the House Judiciary Committee. I would like
12 to thank you for the opportunity to express my support
13 for the use of GPS technology and House Bill 164. The
14 legislation would require the use of global positioning
15 system monitoring to keep track of the most dangerous
16 sex offenders in Pennsylvania.

17 I commend Representative Payne and the
18 co-sponsors of this Bill for providing Pennsylvania law
19 enforcement with the most advanced supervision and
20 monitoring tools available to keep our citizens safe,
21 especially children, the most precious and vulnerable
22 members of our society.

23 I strongly recommend the use of GPS
24 technology to monitor for at least 5 years all sexually
25 violent predators whose victims are children, as well

1 as registered sex offenders who fail to provide a valid
2 legal address and have violated Megan's Law.

3 Our state's Megan's Law, which was passed
4 in 1995, permits, but does not require the State
5 Police, the Board of Probation and Parole, or county
6 probation authorities to use GPS technology to track
7 sex offenders. However, at least 14 Pennsylvania
8 counties already are using GPS technology to monitor
9 sex offenders.

10 What I have recommended is that the
11 Pennsylvania State Police and the State Board of
12 Probation and Parole ask the General Assembly to amend
13 Megan's Law to require the use of GPS monitoring.
14 There's no reason why the residents of all 67 counties
15 in Pennsylvania should not receive the same level of
16 protection now available in 14 counties.

17 Nationally, at least 33 states are
18 already using the GPS technology to monitor sex
19 offenders. It's about time Pennsylvania move into the
20 future.

21 A special report issued last week by the
22 Department of Auditor General shows why GPS is needed.
23 Our auditors found that as of last month, the state had
24 lost track of nearly 10 percent or 923 of 9,800
25 registered sex offenders in Pennsylvania.

1 This is very disturbing to me, and it
2 should be disturbing to every Pennsylvanian, and I know
3 it's disturbing to each one of you. And, quite
4 frankly, it's unacceptable.

5 There are many advantages to GPS
6 monitoring. It provides the highest level of
7 supervision available short of incarceration. GPS data
8 can be used in court to secure convictions. And you
9 will see that example later in my testimony. GPS can
10 serve as a deterrent to crime.

11 There is no doubt if someone is wearing
12 an ankle bracelet and they know they are being
13 monitored, they will think twice about committing a
14 crime. GPS reassures Pennsylvanians that state
15 government is using every tool available to keep its
16 citizens safe. And GPS doesn't have to cost taxpayers
17 if offenders are required to pay fees for hook-up and
18 monitoring.

19 Pennsylvania counties now using GPS
20 typically charge sex offenders a one-time hookup fee of
21 30 to 50 dollars and daily rates of 5 to 20 dollars to
22 cover equipment costs. County officials said most
23 offenders could afford the fees. I have no doubt that
24 GPS would enhance the effectiveness of Pennsylvania's
25 Megan's Law, which has received disappointing marks for

1 two years in a year from Parents for Megan's Law, a
2 highly regarded national organization.

3 The Department of Auditor General's 2006
4 special performance audit of Megan's Law identified
5 several shortcomings in our law, including the lack of
6 information posted on the Megan's Law web site. There
7 were addresses only for sexually violent predators,
8 which account for less than 3 percent of the population
9 of offenders, and the site did not provide some very
10 important data previously including height, weight, eye
11 color, hair color, and whether the victim was a minor.

12 I commend the General Assembly for
13 adopting and Governor Rendell for signing into law many
14 of our recommendations in November 2006. Megan's Law
15 program and the web site are much improved and are
16 providing greater information than they were before. I
17 believe that it has been a team effort of the
18 Department of Auditor General, the Pennsylvania State
19 Police, the Attorney General, the General Assembly and
20 the Governor to improve Megan's Law.

21 However, there are still breakdowns in
22 the system. And the crimes are still being committed
23 by sexual offenders who skirt the law by concealing
24 their whereabouts. There have been two such incidents
25 in Pennsylvania that I am aware about in the past 2

1 months.

2 Last month in Westmoreland County, Joseph
3 Risher, a convicted sex offender, was arrested again
4 for sexually assaulting a 12-year-old boy. Risher was
5 listed on the Megan's Law web site as a sexual
6 offender, but he provided the wrong address. He told
7 police he was living in Hempfield Township near
8 Greensburg, when he was actually living in an apartment
9 in Jeannette. According to a newspaper report, Risher
10 said he had moved to a new address but forget -- I
11 repeat -- forgot to tell the police, which he is
12 required to do within 48 hours of moving.

13 In another incident early this month in
14 Steelton, James Kist, a convicted sex offender, was
15 arrested for peeping into an off-duty police officer's
16 home. Police found Kist through a GPS bracelet that
17 had been attached to Kist's ankle after he had been
18 released from prison on May 5th. As this case proves,
19 the GPS does work. And Kist was quickly apprehended
20 because Dauphin County is one of 14 counties already
21 using GPS to monitor sex offenders.

22 GPS technology is not new to law
23 enforcement. The Pennsylvania Department of
24 Corrections, whom I understand testified today, tested
25 GPS from October '05 to June '06. That pilot program

1 uncovered several technological shortcomings such as
2 dead zones in satellite coverage and limited battery
3 life for transmitters. However, technology advances
4 since then have made coverage much more reliable, and
5 the advantages now outweigh the disadvantages.

6 And proof of that is Lycoming County
7 Board of Probation has been successfully using GPS
8 technology to monitor sex offenders for over a decade.
9 One of our counties has been a true leader. Lycoming
10 County is the largest land-mass county in Pennsylvania.
11 As all of you know, it's also a rural county with a
12 population of about 110,000.

13 Ladies and gentlemen, if it works in
14 Lycoming County, it can work anywhere in Pennsylvania.
15 I strongly urge the General Assembly to require the use
16 of the most advanced tool available to monitor
17 violators of Megan's Law and sexually violent predators
18 who have committed serious crimes against children.

19 And I simply want to state a few examples
20 of where GPS technology is presently being utilized.
21 GPS is extensively being utilized in the United States
22 military to determine where planes are, where boats
23 are, troop movements, tank movements. As a matter of
24 fact, in Desert Storm, it was very successfully
25 utilized in Iraq even during sand storms and the

1 movement of our troops were constantly identified, and
2 we were aware because of GPS technology.

3 GPS technology enabled rescuers to drill
4 a shaft to free trapped minors in Somerset. The
5 precise location of drilling was with GPS technology.
6 GPS technology is utilized with emergency equipment,
7 for firefighters, for police officers, for paramedics.

8 GPS technology is used in mapping, in
9 construction, by survey companies extensively.
10 GPS technology is utilized by truck companies to
11 determine where their trucks are on the road. It
12 actually tells the company how fast the truck is moving
13 on a highway. They know whether or not the driver is
14 violating the speed limit with the use of GPS
15 technology.

16 The GPS technology is used and advertised
17 by automobile companies in terms of systems for safety
18 within the vehicle. All of you have heard about it,
19 have seen it on the T.V.s. GPS technology is utilized
20 in cell phones today. It has become that advanced.
21 GPS technology is utilized by archeologists to track
22 endangered species and to save endangered species.

23 GPS technology is used for navigation by
24 recreational boaters, by commercial fisherman also.
25 It's also used recreationally by hikers, by hunters, by

1 mountain bikers, by cross-country skiers. I could go
2 on and on.

3 My final example is GPS technology is
4 utilized in golf carts. And it will tell you precisely
5 where your golf cart is located on the golf course. It
6 will tell you precisely the number of yards from that
7 golf course to the pin, if you are a hundred yards or
8 you are 103 yards. If you get off the cart path, it
9 will tell you to get back on the cart path with your
10 golf cart.

11 With all of those uses of GPS technology,
12 don't you think it's about time that Pennsylvania
13 utilizes technology to protect our most vulnerable
14 people, children, against sexual offenders? Thank you.

15 CHAIRMAN CALTAGIRONE: Questions?

16 REPRESENTATIVE MANDERINO: Thank you,
17 Auditor General, for being here. This is probably not
18 so much a question, but a comment and maybe a request
19 of our staff. But the Auditor General referred to two
20 of the 14 counties, Lycoming and Dauphin, who are using
21 GPS in some way, shape, or form. I am sure it's easy,
22 either through him or information we already have, to
23 know who the other 14 counties are.

24 Given that the requirements of this Bill
25 for GPS were at least mandating that only in the cases

1 of those labeled sexually violent predators, and given
2 that, according to the information we have, that's a
3 small percentage, it's 300 statewide or less, my
4 question or my comment would be, I would be very
5 interested if we put together just a simple letter to
6 the 14 counties that are doing it in some way, shape,
7 or form and say here is the way we are thinking of
8 using this as a mandatory or as a requirement across
9 Pennsylvania.

10 Does that comport with what your county
11 is already doing? And what is the experience of your
12 county, if this was the law? I think that would be
13 very instructive for us. Because there's a huge
14 difference in the universe of 13,000 versus 300 and
15 what impact we might be able to have. I think that
16 information might help clarify and at least kind of
17 focus for us on this issue because the expert testimony
18 we have had so far seems to be all over the lot, not in
19 a bad way. But just because we are not so focused I
20 think.

21 So I thank you for your testimony. But,
22 as I have listened now to all of the different people,
23 I think that might be a way to proceed from a committee
24 point of view with some focus.

25 CHAIRMAN CALTAGIRONE: Yes. Of course,

1 you weren't here to hear the other testimony from the
2 other departments who have testified. But what I would
3 like to do is, if it's agreeable with my co-chair, is
4 to put together -- there's problems that we know that
5 have to be addressed in the legislation that have to be
6 ironed out.

7 I would like to bring together
8 representatives of the different departments that have
9 previously testified and the State Police certainty and
10 our legal counsel to sit down and try to work out some
11 of those particular issues that were raised to see if
12 we can come up with a Bill that would be acceptable.

13 There were some problems that have been
14 pointed out by previous testifiers that have to be
15 addressed with amendments to correct some of the
16 issues.

17 And certainly anybody that you would like
18 to have participate in that possibly within the next
19 two to three weeks, if we can get together a group to
20 sit down and address those concerns and come up with
21 some amendments, maybe we can work out a Bill that
22 could address those concerns and get it out of
23 committee and come back in September.

24 Do you have a list of the counties?

25 AUDITOR GENERAL JACK WAGNER: Yes, I do.

1 CHAIRMAN CALTAGIRONE: Could you repeat
2 those for the record?

3 AUDITOR GENERAL JACK WAGNER: The
4 counties are in alphabetical order Beaver, Bradford,
5 Butler, Chester, Columbia, Dauphin, Delaware,
6 Jefferson, Lebanon, Lehigh, Lycoming, Montgomery,
7 Northampton, and Northumberland.

8 If I could add, Mr. Chairman, what is
9 also important to note is -- and I know there were some
10 previous discussions about the number, the 10 percent
11 that are not registered for their address. We have
12 monitored that since our audit two years ago. And that
13 number has remained pretty constant at 10 percent.

14 When there were about 7800 total sexual
15 offenders and sexually violent predators, it was about
16 10 percent, by which you could not determine the
17 address of those individuals. That continues today.

18 The problem has not gotten any better.
19 And it's also important to note two other items related
20 to that. Those who have recorded an address similar to
21 Mr. Risher, may be a bad address.

22 So it's vitally important that a strong
23 message be sent by the Commonwealth of Pennsylvania
24 that if you violate the law, and these 900 plus people
25 are violating the law by not providing an address

1 annually. It's only required annually by a sexual
2 offender or quarterly by a sexual violent predator, if
3 you violate that law, you are going to wear a GPS
4 system.

5 And that message should be sent by this
6 government, very strongly to anyone who is a convicted
7 sex offender because it will also say to those who are
8 given a bad address, that you better give an accurate
9 address or you are going to wear this GPS ankle
10 bracelet for a long time.

11 REPRESENTATIVE DALLY: Thank you for your
12 testimony, Auditor General. The State Police Captain
13 Janet McNeal testified earlier, and I guess the agency
14 takes issue with your report as far as the number of
15 lost sex offenders and saying it could be attributed to
16 a variety of different things.

17 And one of the things they reference was
18 that they could receive more than 100 verifications or
19 change worksheets in the mail every day from offenders.

20 AUDITOR GENERAL JACK WAGNER: Um-hum.

21 REPRESENTATIVE DALLY: I guess the beauty
22 of the GPS system is that this is all real time
23 information, and it doesn't require any intervention by
24 any human to transfer that information to a database;
25 is that correct?

1 AUDITOR GENERAL JACK WAGNER: Well, it
2 does require personnel to monitor it. And the GPS
3 system works in a wide variety of ways where you can
4 put up a hot zone that a person cannot go outside of;
5 and you are alerted, if they do. You can identify
6 areas such as schools that people are not permitted to
7 go into zones within 500 yards of a school. It could
8 alert.

9 So it does require intensive monitoring.
10 And it would require a few people within the State
11 Police or the Board of Probation and Parole to do that.

12 REPRESENTATIVE DALLY: And you are
13 saying, your testimony today, in your June report you
14 mention about 923 sex offenders, which is around 10
15 percent. You are saying that 10 percent number has
16 remained fairly constant since your audit?

17 AUDITOR GENERAL JACK WAGNER: Yes. Yes,
18 it has. And I believe, as we sit here today, we don't
19 know where 10 percent of -- the minimum of 10 percent
20 of the convicted sex offenders, people who have served
21 time, have been convicted and served time or are on
22 probation and parole. We don't know where 10 percent
23 of those people are.

24 MR. ANDRING: Just briefly, in looking at
25 the testimony from the Pennsylvania State Police, they

1 indicate that we have 13,000 sex offenders in the
2 registry, 255 of those are designated by the Courts as
3 sexually violent predators. When we start discussing
4 this 900 missing person figure and talking about GPS,
5 to a certain extent, are we mixing apples and oranges
6 here?

7 If you are talking about imposing GPS
8 requirements on the sexually violent predators, you are
9 talking about 255 people. The only way the GPS issue
10 ties into these 900 people who aren't registering the
11 way they should have if you are going to require GPS
12 for 13,000 sex offenders. And, I mean, maybe you could
13 address this issue in a little more detail.

14 We have 13,000 sex offenders. Nobody is
15 suggesting putting GPS on all of them. Right now,
16 every county is allowed to use GPS if they so choose.
17 The parole board is allowed to use GPS, if they so
18 choose. They have done one demonstration project.
19 They are doing another demonstration project.

20 Obviously, there's some point in there
21 where we aren't going to use this for 13,000 people.
22 But it's going to be used for some people.
23 And how best should the legislature decide where to
24 draw that line or should the legislature be drawing a
25 line in terms of maintaining this usage or should they

1 be leaving that to the people on probation and parole
2 who are dealing with these people every day?

3 AUDITOR GENERAL JACK WAGNER: Well, first
4 off, Representative, I appreciate your question. Our
5 department has been auditing Megan's Law for a long
6 time. We have done several audits back to the previous
7 Auditor General and one of the most important audits
8 under my tenure.

9 And even since our audit, we have adopted
10 new procedures of continuing to monitor the
11 effectiveness of our audit and the implementation of
12 the findings and recommendations within the audit.

13 So I would sit here today, and not me
14 personally, but my staff knows a whole lot about
15 Megan's Law. And I would be happy to volunteer those
16 people to a committee that the Chairman is putting
17 together.

18 Our report is an update, not an audit, of
19 the Megan's Law audit we did two years ago. And it's
20 very brief, and it's very much to the point. And,
21 basically, we have two suggestions in that report. And
22 the one suggestion does relate to the sexually violent
23 predator, the number you just stated, approximately 250
24 people.

25 We are not suggesting that all sexually

1 violent predators have GPS monitoring. What we are
2 specifically stating is that sexually violent predators
3 who have committed sexual crimes against children of
4 which in that classification, I believe there are 67
5 out of the 200 plus be required to have GPS monitoring
6 after they serve their time in prison for five years.
7 Because we know that they are very prone towards
8 committing additional crime at a later point. So,
9 therefore, they should be monitored and we should know
10 where they are for all of the obvious reasons.

11 That's one issue. So that's a very
12 identifiable group of people, sixty some people,
13 sexually violent predators. The other group is also a
14 very identifiable group, those who violate the law by
15 not registering, of which we think that number is about
16 a thousand.

17 The State Police -- I wasn't here for
18 their testimony. They have said that number may be
19 less than that. We have differed with the State Police
20 on a number of issues in our audit. We work well with
21 them, but we have differed with them very respectfully.
22 And we differ with them today in regard to that number.

23 Because you cannot go on the Megan's Law
24 web site and tell us where those 1,000 people, 900 and
25 some live. Therefore, you cannot provide to your

1 child, to my daughter who is 14, or to your children or
2 grandchildren, the information necessary to make them
3 aware that a sexual offender lives in your
4 neighborhood, that they better keep an eye and make
5 sure that person doesn't approach them.

6 It's really the whole reason for Megan's
7 Law. I have a sex offender in my neighborhood. I have
8 alerted my daughter of who that person is and other
9 children in the neighborhood. Very vital, important
10 public safety information.

11 So our report has identified these couple
12 groups. Now, maybe that number is somewhere between
13 what the State Police have said and what we have said.
14 But it is an identifiable number and those people are
15 violating the law. Mr. Risher is violating the law
16 from Westmoreland County. And he committed a serious
17 crime to a 12-year-old boy who will be scarred mentally
18 for the rest of his life.

19 And what I am saying here today is not to
20 have GPS with 10,000 individuals, but for those who
21 continue to cause problems and those who have committed
22 serious crimes against children, we, as a government,
23 as a state government, needs to do more.

24 And the technology has evolved such that
25 it is now proven that it works. The argument could

1 have been made two or three years ago by the Board or
2 Probation and Parole or the State Police or any other
3 policing agency that the technology really wasn't where
4 it needed to be. And I think that could have been --
5 could have been -- a valid argument then. It is no
6 longer a valid argument.

7 REPRESENTATIVE LENTZ: No question. I
8 have a comment. I just want to say that I think I
9 agree with you the targeted use of this technology
10 should be expanded and its availability extended.

11 A lot of the other testimony that's been
12 represented today, there's been talk about the impact
13 that a specific action by the legislature would have
14 one way or another on the experience of the victim in a
15 case. In these cases, it's always the prosecutor's
16 inclination to spare the victim, child victim, the
17 second trauma of going through the court proceedings.

18 And I think that this technology and the
19 case that you cited in Westmoreland County helps in the
20 effort to spare people the necessity of testifying. If
21 we can prove through this technology where a person
22 was, that they were, you know, at the scene of the
23 crime with previsions and unchallenging accuracy, that,
24 in many cases, will comply, with other evidence, is
25 going to result in a guilty plea and spare the victim

1 the necessity to testify. So I think that's a second
2 additional benefit that might be highlighted. Thank
3 you.

4 AUDITOR GENERAL JACK WAGNER: Yes, it is.
5 Thank you, Chairman, members of the committee.

6 CHAIRMAN CALTAGIRONE: Any other
7 questions?

8 I am going to turn the hearing over to Representative
9 MANDERINO. I have to testify at the Gaming Committee
10 Hearing starting within the hour on my video poker
11 machine legislation. So I am going to turn everything
12 over to Kathy. It's in good hands. And thank you all.

13 REPRESENTATIVE MANDERINO: Thank you,
14 Tom. Our next testifier is Karl Baker, board member of
15 the Pennsylvania A.C.L.U. Good afternoon, Mr. Baker.
16 When you are ready, you may proceed.

17 MR. BAKER: Good afternoon,
18 Representative Manderino, and members of the Judiciary
19 Committee. My name is Karl Baker. I am the Chief of
20 the Appeals Division of the Defender Association of
21 Philadelphia.

22 I have been asked to speak on behalf of
23 the American Civil Liberties Union of Pennsylvania. I
24 currently serve as a board member of that organization.
25 And I recently completed a term on that organization's

1 national board. I do have two members of the Defender
2 Association, Appeals Division, who also will testify
3 separately for the Defender.

4 I have submitted, of course, written
5 testimony. And I will be presenting part of that
6 written testimony orally since it's somewhat lengthy.

7 From our perspective, we are greatly
8 concerned that, despite good intentions, the enactment
9 of House Bill 164 and similar Bills would do little to
10 protect women and children from the dangers of sexual
11 assault and that they be needlessly, unfairly, and
12 arbitrarily deprive thousand of individuals of their
13 liberty at great expense to the state.

14 I would like to address the mandatory
15 sentencing provisions first. House Bill 164 would
16 establish a mandatory minimum sentence of 25 years for
17 the crime of rape or involuntary sexual deviate sexual
18 intercourse against a child under 13 years of age with
19 a maximum permissible sentence of 75 years.

20 A report from the Bureau of Justice
21 Statistics indicated that two-thirds of all sexual
22 assaults reported to law enforcement agencies consisted
23 of victims under the age 18. Of those, nine out of ten
24 children knew their abusers. Thirty-four percent were
25 family members, indeed, where the child was under age

1 6; 49 percent of the reported abusers were family
2 members. Approximately 40 percent of all abusers of
3 children are children themselves under the age of 18.

4 Under the Juvenile Act, a prosecutor must
5 charge a child arrested of rape or involuntary deviate
6 sexual intercourse as an adult offender if they are
7 fifteen years of age or older. What this means is that
8 under House Bill 164, family members and friends,
9 including those who are children over the age 14, must
10 be sentenced to a minimum mandatory sentence of 25
11 years or 50 years to life for a second offense without
12 the possibility of parole.

13 In 1992, I testified before this
14 committee in opposition to a list of provisions
15 contained in Representative Karen Ritter's proposed
16 revision of the sexual assault codes. I noted certain
17 incongruous consequences the A.C.L.U. believed would
18 result from several provisions such as this.

19 My testimony was then followed by that of
20 Lynn Abraham, the Philadelphia District Attorney, whom,
21 to my pleasant surprise, seconded some of my concerns.
22 Her specific concerns were that the draconian impact of
23 certain provisions would make it increasingly difficult
24 for her office to obtain the cooperation of family
25 members in prosecuting sexual assaults.

1 Indeed, family members naturally would be
2 reluctant to testify or even to report a sexual offense
3 committed by another family member or friend, if it
4 meant the certain incarceration of that individual for
5 a quarter century or more. I might add that taxpayers
6 should also be reluctant to pay for the inevitable
7 consequence of mandatory statutes - an everlasting
8 prison population.

9 The considered policy of the A.C.L.U. is
10 to oppose all such mandatory sentences. We believe
11 that all sentencing statutes should allow the judge
12 that heard the case to consider the nature of the
13 offense and the relevant personal characteristics and
14 circumstances of the individual. The ultimate goal
15 should be that of successfully reintegrating the
16 offender into society as a law-abiding and productive
17 citizen.

18 I would like to turn to certain false
19 assumptions. Our organization has long contended that
20 the proliferation of statutes and ordinances broadly
21 categorized as Megan's Law was based on false
22 assumptions. Of those assumptions are the belief that
23 sex offenders -- sex offenses are committed by an
24 identifiable class of pre-determined sexual psychopaths
25 who share a common diagnosis and that former sex

1 offenders re-offend at a higher rate than other
2 criminals.

3 These assumptions, however, have not held
4 true. Government studies have long shown that former
5 sex offenders have a remarkably low rate of recidivism
6 of perhaps the most early study, from the point of view
7 of Megan's Law, was the 1950 report of the state of New
8 Jersey report, Commission of Habitual Sex Offenders.
9 That commission drew the following conclusion:

10 I quote, "Sex offenders have one of the
11 lowest rates as repeaters of all types of crime. Among
12 serious crimes, homicide alone has a lower rate of
13 recidivism. Careful studies of large samples of sex
14 criminals show that most of them get in trouble only
15 once. Of those who do repeat, a majority commit some
16 offense other than sex. Only 7 percent of those
17 convicted of serious crimes are arrested again for a
18 sex crime".

19 More recent government statistics
20 continue to support this conclusion. A report released
21 by the Bureau of Justice Statistics in 1989 declared
22 that rapists released from state prisons exhibited the
23 second lowest rate of re-arrest for the same offense of
24 all criminals evaluated in that major study. The rate
25 report in that study was 7.7 percent. Only released

1 murderers had a lower rate of re-arrest for the same
2 offense, and that was 6.6. percent. In contrast,
3 thieves were re-arrested at a rate of 35.5 percent.
4 Burglars had a 31.9 percent re-arrest rate. And
5 robbers had a rate of 19.6 percent.

6 A subsequent study of the Bureau of
7 Justice and Statistics released in 1992 reviewed
8 similar data on sex offenders sentenced to intermediate
9 punishment, in other words, placed on probation.
10 There, our Justice Department found that persons
11 released on probation for rape had the lowest
12 recidivism rate of all offenders, 2.9 percent.

13 In contrast, probationers released for
14 homicide, this is presumably homicide by vehicle, had
15 their rate of recidivism reported at 4.9 percent. Once
16 again, the highest rates of recidivism were for
17 robbery, burglary, and theft. Most recent comparative
18 study of the Bureau of Justice Statistics report comes
19 to a similar conclusion.

20 In 2002, the Bureau issued a report that
21 followed for three years, 9,681 sex offenders who had
22 been released by fifteen states in 1994. In the
23 summary, it stated: Compared to non-sex offenders
24 released from state prison, sex offenders had a lower
25 overall re-arrest rate. That re-arrest rate for a new

1 crime was 5.3 percent.

2 Released child molesters had a re-arrest
3 rate of 3.3 percent for a new sex crime against a
4 child. The statistics showed that older offenders,
5 over 45, had a lower recidivism rate of 3.3 percent,
6 and that the bulk of the arrests came in the first
7 year, 40 percent.

8 And this last point is consistent with
9 other studies. For example, a ten-year follow-up
10 conducted by Ohio Department of Rehabilitation and
11 Corrections states: And I quote, "Of all the sex
12 offenders who came back to an Ohio prison for a new sex
13 offense, one half did so within two years and
14 two-thirds within three years".

15 In other words, those who were going to
16 get re-arrested, generally, who are going to recidivate
17 are going to do so soon after they leave prison. If
18 they leave prison and stay clear of recidivism for a
19 period of time, they have an exceedingly low recidivism
20 rate.

21 Now, with that background, I would like
22 to turn to a very startling provision in this Bill,
23 which has to do with child protective zones. House
24 Bill 164 would prohibit every person who is registered
25 as a sex offender from knowingly entering any area

1 within 2,000 feet of a school, a playground, a park or
2 a daycare center.

3 And that offense would be punishable as a
4 felony in the third degree. The implementation of such
5 a scheme would drive former sex offenders from their
6 homes, their jobs, and their families in urban
7 communities into rural counties where such facilities
8 are less densely packed with one exception.

9 Under this statute, under this Bill, sex
10 offenders under probation or parole would be required
11 to remain in their county of residence in the absence
12 of specific permission from a Court.

13 Residential zoning restrictions against
14 former sex offenders have proliferated in municipal
15 ordinances and in a small number of states over the
16 past several years. These laws and related statutes
17 have spawned hundreds of legal challenges. In
18 California, state and federal courts have placed
19 Proposition 83 on hold or have limited the extent of
20 its reach.

21 In Iowa, the County Attorneys Association
22 and Iowa sheriffs have petitioned the legislature to
23 repeal the law as counterproductive. In New Jersey, an
24 appellate court struck down municipal residency
25 ordinances earlier this year. There are three problems

1 with these ordinances. They are not justified by the
2 recidivism rates of former sex offenders. They create
3 more problems with supervision than they solve. And
4 they have a negative impact on the ability of former
5 offenders to reintegrate into society and become
6 productive citizens.

7 As I noted above, former sex offenders,
8 as a group, have the lowest recidivism rates of all
9 offenders. Moreover, most of the sex crimes are not
10 committed by strangers lurking near schools and daycare
11 centers. What little research has been done indicates
12 that housing restrictions destabilize released
13 offenders and inadvertently increase the overall risk
14 of recidivism. In other words, re-arrest for an
15 array of offenses. And I suggest that you take a look
16 at some of the footnotes and studies that I refer to
17 that are quite revealing.

18 This research also suggests that where a
19 former sex offender lives appears to have no bearing on
20 whether he will commit another sex offense against a
21 child.

22 The original purpose of our registration
23 law was to allow law enforcement agencies to keep track
24 of former sex offenders. However, the practical effect
25 of the new residency laws has been to render

1 registrants homeless and to drive them underground. A
2 New York Times investigative report on the Iowa
3 residency restrictions has revealed that nearly three
4 times as many registered sex offenders were missing
5 after the enactment of the statute than before, many of
6 them because they were deprived of a home.

7 Furthermore, the negative impact on
8 former offenders cannot be overstated. Most are unable
9 to return to the homes of their wives and families.
10 Juvenile offenders cannot return to live with their
11 parents. Many newly released parolees are placed in
12 rural motels where they are isolated from jobs and
13 resources.

14 Indeed, the author of the Newark study
15 concluded that residential restrictions in Newark would
16 create, and I quote, "Longer or costlier travel routes
17 to reach mental health, substance use, or probation and
18 parole offices as well as places of employment and
19 supportive social networks, assuming they can get
20 access to public transit".

21 The protective child zone provision in
22 House Bill 164 goes considerably further. It would bar
23 all former sex offenders from entering, in addition to
24 living in, all child protective zones. Rather than
25 subjecting them to the punishment of a minor fine, it

1 would subject them to a felony conviction with a
2 maximum sentence of three and a half to seven years.
3 This raises a host of legal issues that would be the
4 grist of criminal appeals and civil suits for years.
5 Those issues fall within the realm of several
6 constitutional provisions, including the Ex Post Facto
7 Clause, the Bill of Attainder Clause, the Takings
8 Clause of the Fifth Amendment, the Due Process Clause
9 of the Fifth and Fourteenth Amendment, and the Eighth
10 Amendment Cruel and Unusual Punishment Clause.

11 I am going to skim over some of my
12 discussion on that, which is somewhat lengthy and go
13 onto the questioning of GPS monitoring.

14 The A.C.L.U. supports programs that
15 utilize electronic monitoring to restrict, for example,
16 the movements of an individual on house arrest, if that
17 monitoring is being used as an alternative to
18 incarceration. The present Bill, however, goes quite a
19 bit further. It is a step down the road toward
20 monitoring all former offenders who have finished their
21 sentences or served their time. It is a step down the
22 road toward that. What is more, it performs this
23 surveillance in a manner that brands former sex
24 offenders with a Scarlet Letter.

25 And I am going to skip over reference to

1 some case discussion where they address this issue of
2 the fact that people are identified to their peers and
3 community about the GPS equipment.

4 When the requirement of GPS monitoring is
5 combined with the offender's exclusion from child
6 protective zones, the punitive nature of the regulatory
7 scheme is beyond question. In addition to the
8 legality, however, there are other practical questions.
9 And these questions include: How many millions of
10 dollars and work hours will be expended before the
11 statute is struck down? Number two, will it have any
12 positive impact upon the ability of probation officers
13 to provide supervision? And, three, will it lower the
14 already low recidivism rate of persons to whom it
15 applies?

16 Only two studies have been published that
17 I have been able to find dealing with a pilot project.
18 A California report is available on line. And a report
19 issued by the Tennessee Board of Probation and Parole
20 is referenced in the press and the California report.
21 I don't have a copy of it.

22 But both appear to have reached similar
23 conclusions, according to the California study and what
24 I read in the press. Both efforts require, and I
25 quote, "extensive resource investment around GPS

1 technology", and extensive training of probation
2 officers, supervisors, and others. The cost of the
3 pilot program in Tennessee, which covered 34 case
4 workers and 493 sex offenders was \$2.5 million.

5 During the course of the study, the case
6 workers responded to a quarter of a million alerts,
7 although new criminal charges were filed against only
8 eight offenders, with two being sex related. The
9 report stated that, and I quote, "long and
10 unpredictable work hours have led to burnout and
11 frustration and some experienced officers asked to be
12 reassigned because of the added duties".

13 Neither report found evidence that GPS
14 monitoring reduced recidivism. The article on the
15 Tennessee report leads off by stating as follows: "A
16 \$2.5 million pilot program to monitor sex offenders in
17 Tennessee with a satellite tracking system seem to make
18 little difference as to whether offenders commit more
19 crimes according to the recent study".

20 The California report reviewed the
21 Tennessee data and reached the same conclusion stating,
22 and I quote, "An evaluation of a Tennessee pilot GPS
23 project similar to California did not find any
24 statistically significant differences in number of
25 parole violations, new criminal charges, or days before

1 first violation between GPS-monitored sex offenders and
2 a comparison group of sex offender parolees".

3 Moreover, its own data, California's own data, showed
4 that, and I quote, "GPS monitoring appeared to have
5 little effect on parolee recidivism".

6 Given the cost, the expenditure of labor,
7 and the lack of any measurable benefit, one must
8 question why a state would want to pursue such a
9 program on such a broad basis. Where a probation or
10 parole officer has a rational and supportable reason to
11 track an offender under supervision, the tools are
12 available.

13 In conclusion, for all of the above, we
14 urge this Committee to reject the punitive and
15 counterproductive measures contained in House Bill 164.
16 Before proceeding further, we urge you to review the
17 report that the Pennsylvania Sexual Offenders
18 Assessment Board has linked to the home page of its web
19 site. That report is "No Easy Answer; Sex Offender
20 Laws in the U.S.". This 132 page report was prepared
21 by Human Rights Watch with guidance from former member
22 of the Sexual Offenders Assessment Board, Dr. Robert
23 Prentky, who, for a time, an extended period, was the
24 director of clinical and forensic services at the
25 Joseph J. Peters Institute in Philadelphia, and now he

1 is back in Massachusetts, on a footnote in his
2 background.

3 I am making copies of the home page of
4 the SOAB web site. You can find that link available
5 attached to the summary of the link report.

6 And I have already provided that to you, but I do have
7 two full copies of that report for the committee to
8 review at your leisure. Thank you.

9 REPRESENTATIVE MANDERINO: Thank you,
10 Mr. Baker. We do have -- everyone has with their
11 testimony a copy of the web page and staff will get
12 from you those reports. Questions from any of the
13 members?

14 REPRESENTATIVE LENTZ: Good afternoon.
15 Thank you very much for your testimony. I have a
16 comment before a question. The recidivism rate of --
17 it just reminds me a little bit about the people in the
18 nuclear power industry say that they have the smallest
19 percentage of events or accidents.

20 Of course, when you are talking about
21 nuclear power, it only takes one accident to be
22 anything. I think the same could be said about crimes
23 against children. It only takes a small percentage of
24 those that commit violent sexual attacks against
25 children to recidivate, and that's a significant event.

1 Not to diminish the occurrence of robberies and other
2 types of crime, but that small percentage of these
3 Defendants that do it again is, obviously, very much
4 more significant in comparison.

5 And as you probably heard in the
6 testimony, this program is narrowly focused on (a)
7 violent offenders and (b) violent offenders who commit
8 crimes against children.

9 If the safety zone portion of it was
10 taken out, do you have any objection to the requirement
11 that violent offenders that commit those offenses
12 against children be required to wear GPS?

13 MR. BAKER: Well, if you take a look at
14 that small subset, which, apparently, from what we are
15 told, is a small subset of violent sexual predators,
16 something like 63 --

17 REPRESENTATIVE LENTZ: Sixty-six.

18 MR. BAKER: -- the question is, who did
19 they abuse? Are those people who abused strangers or
20 are those the typical sex offenders who abuse a family
21 member and/or close acquaintance? And if it's somebody
22 who abuses a family member, GPS has no role there.
23 Those people don't typically re-offend against
24 strangers. There's no statistical data that indicates
25 that. As a matter of fact, quite the opposite.

1 So the use of GPS does nothing. If you
2 find a situation -- if you have somebody who has been
3 declared a sexual violent predator because they present
4 a risk and they have predatory behavior against
5 strangers, then the tools are there for the probation
6 department to track those individuals.

7 Typically, somebody who has been
8 determined to be a sexual violent predator has a very
9 lengthy sentence of either incarceration or supervision
10 and is under the supervision of the Board of Probation
11 and Parole.

12 And if they feel that that is useful and
13 necessary, they have the tools to do that. And we
14 would have no objection to that. Our objection is to
15 use it essentially willy-nilly where it has no
16 rationale purpose.

17 And certainly when you go onto this
18 number that has been thrown out, 900 people who have
19 been lost in the system for at least -- for some period
20 of time, again, it's a question of who are they, what
21 risk do they present, and to whom? And why are they
22 lost in the system?

23 Many of these people are lost in the
24 system because they are without a home. They are
25 homeless. Many of those people are folks that live in

1 downtown Philadelphia on the street or in other
2 communities because they are without a home.

3 And the question is: Would that help you
4 protect children when the assault that they were
5 convicted for was against a family member? Again, I
6 think you have to take a look at the individual
7 circumstances of the person and determine whether it's
8 useful and rationale and the tools are there to do it.

9 REPRESENTATIVE LENTZ: I would say this,
10 one of the things you cited at the outset of your
11 testimony is that there is no standard psychological
12 profile for these offenders.

13 MR. BAKER: There is not one diagnosis.

14 REPRESENTATIVE LENTZ: There is not one
15 diagnosis.

16 MR. BAKER: Many diagnoses. And many of
17 the people who are convicted of sexual offenses have no
18 diagnosis, not mentally deficient or normal. They are
19 people who --

20 REPRESENTATIVE LENTZ: So if you start
21 with that premise, we cannot predict whether or not --
22 the only thing we know about the people is that they
23 have been convicted of a sexual offense; and in the
24 case of the 66 sexual offenses against children, so we
25 can't predict whether they will be restricted to family

1 members or to strangers. That can't be predicted.

2 It would be nice to know where they are.

3 And this device provides that. One of the cases where
4 they rejected it in the Sixth Circuit, I believe it
5 was, had to do with the largeness and the obviousness
6 of the device. I think that's one of the things that's
7 improving. You are going to get to where nobody other
8 than the offender wearing it knows that they have this
9 monitoring device on.

10 So I think if it's narrowly tailored, and
11 there are cases where we don't know where these people
12 are, this is a simple way to correct that and it's no
13 more obtrusive than use in other circumstances.

14 MR. BAKER: I would agree with you if you
15 put those two things together, that it was narrowly
16 tailored, if there's a determination that there's a
17 need because, in fact, the person poses a risk to
18 others; and there's been some determination of that.

19 And then, again, you have to consider
20 that all of these people are people who have gone
21 through the assessment process and within the sexual
22 offender assessment board have all gone through the
23 process. And so there's some basis to make a
24 determination of whether or not it would be useful.

25 If we narrowly tailor it, then the tools

1 are available because these people typically are under
2 a period of supervision. If you start imposing GPS
3 monitoring on people who are not under sentence, it's a
4 step down the road to implanting those chips in all of
5 our citizens. And I think we have to be very careful
6 about that.

7 REPRESENTATIVE LENTZ: If anybody
8 proposes chip legislation, I'll be sure to oppose that.
9 Thank you.

10 REPRESENTATIVE MANTZ: Thank you for your
11 testimony, Mr. Baker. I have a question. Can you
12 refresh us as to the statutory or legal definition in
13 Pennsylvania law of the sexually violent predator?
14 Perhaps I should have asked that question of the
15 Captain when she testified earlier.

16 MR. BAKER: Yes. I have the definition
17 here. Under the statute, a sexually violent predator
18 is a person who has been convicted of a sexually
19 violent offense as set forth in the statute,
20 registration statute, and who has been determined to be
21 a sexually violent predator under the provisions of the
22 statute and certain procedures due to mental
23 abnormality or personality disorder, which make the
24 person likely to engage in predatory sexual violent
25 offenses. And the term includes an individual

1 determined to be a sexually violent predator where that
2 determination has been made by other jurisdictions,
3 which generally use the same type of definition.

4 And there is a little bit more
5 definition, but not much more. For example, mental
6 abnormality is defined as a congenital or acquired
7 condition of a person that effects the emotional or
8 volitional capacity of that person in a matter that
9 pre-disposes a person to the commission of criminal,
10 sexual acts to a degree that makes the person a menace
11 to the health and safety of others.

12 That is the definition that the Sexual
13 Offender Assessment Board uses when it evaluates all
14 persons who are convicted of sexual offenses. And if
15 there's a recommendation that the person be classified
16 as a sexual violent predator, the district attorney
17 will normally ask for a hearing and present evidence
18 before a Judge, and that Judge will make a
19 determination under standard of clear and convincing
20 evidence as to whether that person is a sexual violent
21 predator.

22 REPRESENTATIVE MANTZ: It seems to be a
23 very precise definition and determination that's made
24 to characterize a sexually violent predator.
25 Given that definition and the restrictive nature of it,

1 is it likely -- and since we really seem to be dealing
2 in terms of risks and probabilities here, that such an
3 individual so determined could ever be successfully
4 reintegrated into society as a law-abiding and
5 productive citizens?

6 MR. BAKER: That's a very good question.
7 And, in the course of conducting these proceedings,
8 it's inevitably a battle of the experts. And the
9 definition is actually fairly ambiguous because it
10 doesn't set clear standards for either the psychiatric
11 community or the Judge. There's a lot of opinion
12 there. And it's very difficult to test an individual
13 for that reason. So often, it comes down to a
14 expression of the opinion by one expert against
15 another.

16 But then there are other things that are
17 relevant to this. One of the areas where there's been
18 a lot of research, for example, -- and I eluded to it
19 just briefly -- is that as people age, they become less
20 and less likely to recidivate. That's true of all
21 offenses. It is particularly true of sexual offenses.
22 As people age, after they get over the age of 45,
23 there's a decline in recidivism that actually tracks
24 the decline in testosterone in men.

25 And it's been shown that once a person

1 gets to about 60 or 70, there's almost no recidivism
2 after that. And levels of recidivism, the
3 statistically levels of recidivism are less and less
4 after you get to the age of 45. So there are a lot of
5 considerations.

6 The question is: Did this person commit
7 crime against an adult? Was that adult a stranger?
8 Was the adult a girlfriend? Was it an anger management
9 situation? Was the crime committed against a child?
10 If it was committed against a child, was it within the
11 family or was it a stranger?

12 Very few cases have to deal with
13 strangers, statistically speaking. But if the
14 individual has committed an offense against a child and
15 that child was a stranger, then there's a higher
16 probability ,and particularly if it was a male, there's
17 a higher probability that the person will commit
18 another offense. That might be the type of person that
19 you look to if you are the probation or parole officer
20 to have very close supervision for a period of time and
21 make use of whatever tools you have. But, eventually,
22 the recidivism rates of even that type of individual
23 will decline to the point where it's not measurable.

24 REPRESENTATIVE MANTZ: Such a device
25 seems to be -- it is a very -- the GPS system is a very

1 sophisticated, perspective crime control device it
2 seems.

3 Is there any doubt in your mind that it
4 would be -- I am getting into the right of association,
5 freedom of association, that while the individual who
6 has been diagnosed or determined to be, in fact, a
7 sexual violent predator, our concern with his freedom
8 of association, but also the freedom of association of
9 a perspective child victim and the neighborhood, even a
10 family member and the right of the parent to restrict
11 his or her child from associating with a perspective
12 risky individual such as a sexually violent predator.

13 That child and that child's parents also
14 it seems to me have a right not to associate with
15 someone who may present a risk. And the monitoring
16 device would assist possibly in warning such a parent
17 or custodian of dangers in the neighborhood; don't you
18 agree?

19 MR. BAKER: Well, I don't know that it
20 would assist THE community because I don't think we are
21 talking about putting up on the web the tracking data
22 real time of an individual with a GPS device. Do we
23 want to go that far ever?

24 REPRESENTATIVE MANTZ: I don't know.

25 MR. BAKER: I think what we are talking

1 about is we are providing a data to law enforcement to
2 determine whether or not a person --

3 REPRESENTATIVE MANTZ: Did a violation.

4 MR. BAKER: -- is violating some sort of
5 limitation that's placed upon them. And the probation
6 department has a right to place certain limitations on
7 individuals. Once they are off probation, you can't
8 place those limitations on an individual. Once that
9 leg of sentence of most of these predators is over,
10 usually in their 50's or 60's, 70's or 80's, then, you
11 know, the state can't place that type of limitation on
12 them without a very serious challenge. And that
13 challenge, again, falls under the Ex Post Facto clauses
14 of the United States and Pennsylvania Constitutions.

15 REPRESENTATIVE MANTZ: I guess does such
16 an individual who has been determined to be a sexually
17 violent predator, is he ultimately curable, not in a
18 legal sense, but I guess in a medical sense?

19 MR. BAKER: Well, there have been a lot
20 of studies on this and a lot of different types of
21 treatment that have been provided. And some treatments
22 have been more successful than others. And recidivism
23 rates of individuals who have gone through treatment
24 have also been tracked, different types of treatment.

25 It has been shown -- I don't have this at

1 my fingertips -- but it has been shown that certain
2 treatments will significantly reduce the recidivism
3 statistics of individuals who completed.

4 REPRESENTATIVE MANTZ: Thank you very
5 much.

6 REPRESENTATIVE MANDERINO: Thank you for
7 your testimony. Our final pair of presenters are Ellen
8 McBennett and Laurie Mach, Assistant Defenders from the
9 Defender Association of Philadelphia. Welcome.

10 MS. McBENNETT: Thank you, members of
11 committee. I am Ellen McBennett, and this is Laurie
12 Mach. And we are appellate attorneys with the Defender
13 Association of Philadelphia. Additionally, we act as
14 counsel in the sexually violent predator hearings that
15 you have heard so much about. So we are quite familiar
16 with the law in question being Megan's Law as well as
17 the legal and practical ramifications for the
18 individual clients as well as the community as a whole.

19 House Bill 164 proposes some significant
20 changes to Pennsylvania's Megan Law. However, in our
21 limited testimony here today, we would like to address
22 only one section of the proposed legislation, the
23 section that would adversely impact the largest number
24 of individuals, raise serious Constitutional questions,
25 and would have very grave unintended consequences.

1 Under House Bill 164, the Megan's Law
2 section would be amended to include a child protective
3 zone. That's at page 13. This proposed amendment
4 provides "a person subject to the registration
5 requirements of section 9795.1 who intentionally or
6 knowingly enters into an area within 2,000 feet of a
7 school, playground, park or daycare center commits a
8 felony of the third degree".

9 First, the definition of a child
10 protective zone casts a very wide net and would impact
11 thousands and thousands of individuals. As written,
12 the child protective zone would apply to all
13 individuals who are required to register under 42 Pa.
14 C.S. 9795.1.

15 According to the Pennsylvania State
16 Police web site, as we heard today, as of July 24,
17 2008, there were 9,906 registrants on the web site.
18 This number includes only 255 individuals who meet the
19 criteria of a sexually violent predator. The other
20 9,651 individuals are people who have been convicted of
21 a sexual offense, but have been found to be either by
22 the Sexual Offender Assessment Board or a Common Pleas
23 Court Judge.

24 Of course, this number does not include
25 those individuals who are still serving their jail

1 sentences. Thus, the number of registrants is sure to
2 rise in the years ahead -- again, as we have heard
3 today -- and as more people are convicted or as more
4 individuals are released from prison and placed on the
5 Megan's law registry.

6 There is, we believe, a public
7 misperception that the Megan's Law registry contains
8 only those individuals who are convicted of crimes
9 against children. This is just not so. Someone who
10 has been convicted of sexually assaulting his wife or
11 girlfriend is on the Megan's Law registry for life. A
12 college student who is convicted of date rape is on the
13 Megan's Law registry for life. A father who is
14 convicted of kidnapping his children during a
15 particularly bitter custody dispute is on the Megan's
16 Law registry for ten years, even where there is
17 absolutely no indication of sexual impropriety or
18 sexual motives for the kidnapping.

19 Furthermore, most sexual offenses against
20 children are committed by family members -- again, that
21 was referred here today -- and not predatory stalkers.
22 In short, the Megan's Law registry encompasses
23 thousands and thousands of Pennsylvania citizens, the
24 vast majority of whom have been determined not to be
25 sexually violent predators or whose crimes, while

1 sexual in nature, were not directed towards strangers.
2 The child protective zone contained in House Bill 164
3 would create draconian consequences for all these
4 thousands of individuals.

5 Second, the child protective zone is
6 overboard. Some states and municipalities have enacted
7 statutes or ordinances that limit where a convicted sex
8 offender can reside. However, this Bill goes far, far
9 beyond that. The child protective zones prevents any
10 registered sex offender from knowingly living, working,
11 shopping, worshipping, or even traveling within 2,000
12 feet of schools, playgrounds, parks, or daycare
13 centers. Such a law would lead to absurd and, no
14 doubt, unintended results in most urban areas of any
15 size, including small and medium cities.

16 As written, the child protective zone
17 amendment faces serious constitutional hurdles. It
18 effectively deprives those persons subject to the
19 ordinance the freedom to associate, travel, work or
20 worship. The clear constitutional infirmities
21 notwithstanding the amendment is a logistical nightmare
22 as it would apply to Philadelphia and presumably any
23 other urban or suburban area in the state.

24 With respect to Philadelphia, however, we
25 have been able, to some degree, illustrate the

1 impracticality of the amendment, if not its sheer
2 impossibility. By utilizing the state's own
3 statistical resources, we have estimated some numbers
4 for the areas subject to the 2,000 foot buffer zone.

5 While only 135 square miles, the city
6 contains roughly 346 public and charter schools, 200
7 parochial schools, 181 rec. centers and playgrounds,
8 and 868 licensed daycare facilities.

9 These estimated numbers alone would
10 indicate that each square mile of Philadelphia has an
11 average of more than 11 of the proscribed areas within
12 it. With a 2,000 foot buffer radius creating 4,000
13 foot diameter buffer covering more than two-thirds of a
14 mile, it is quickly apparent that the entire city
15 becomes effectively off limits for all Megan's Law
16 offenders. And that is easily illustrated by the map
17 that the City of Philadelphia, Division of Technology,
18 provided to us. That is the 2,000 foot buffer zones
19 for schools and recreation centers. And we have
20 attached a map as Exhibit A.

21 And because we have limited time and time
22 constraints, the enclosed map does not include the 868
23 daycare centers, nor the parks, nor the recreational
24 centers. Nevertheless, the preliminary map, indeed,
25 indicates that the vast majority of Philadelphia would

1 be off limits for living, working, worshipping, or
2 traveling. And I think it's clear to see if you look
3 at the map. You can't make it from the top of
4 Philadelphia to the bottom without violating this 2,000
5 square foot.

6 To further illustrate the problems of the
7 zone within Philadelphia, we took each of
8 Philadelphia's neighborhoods, as listed in a real
9 estate directory, and chose a random address from each
10 of these neighborhoods. And of the 23 neighborhoods
11 that we tested in Philadelphia, not one of the random
12 select addresses is outside of that 2,000 square foot
13 of either a park or a school.

14 Further, we examined the Philadelphia
15 addresses with many of the Megan's Law registrants
16 would have to go as part of probation or parole;
17 namely, the Criminal Justice Center, the Probation and
18 Parole Department, the Pennsylvania State Police
19 Barracks (where they have to register under Megan's
20 Law), our office, the public defender's office, and
21 Joseph J. Peters Institute where they receive their
22 counseling.

23 Under the proposed legislation, it would
24 be a felony of the third degree for our clients to
25 travel to any of these locations. The addresses and

1 the identified prohibitive parks or schools are, again,
2 attached to our testimony.

3 Various portions of Megan's Law have been
4 upheld from constitutional challenge because they have
5 been held to be civil or remedial in nature and not
6 criminal or punitive in nature. This provision
7 seemingly crosses the line from civil to punitive. In
8 effect, this Bill would make it virtually impossible
9 for many of the 10,000 individuals on the Megan's Law
10 registry to live, work, attend church, shop, or go
11 about normal day-to-day living. Indeed, the result
12 would be a virtual banishment from society.

13 MS. MACH: Beyond the obvious
14 constitutional implications, passage of the child
15 protective zones would result in many unintended
16 consequences which are not beneficial to either the
17 registrants or the citizens of Pennsylvania.

18 First, the all-encompassing nature of the
19 child protective zones may cause more people to drop
20 off the registry, fail to re-register or simply to go
21 underground. The purpose of the Megan's Law registry
22 is to help the public and law enforcement agencies know
23 where these individuals are living. If offenders,
24 because of these child protective zone, decide not to
25 register at all or move and do not provide their new

1 addresses, then the purpose of Megan's Law is thwarted.

2 Second, the effect of this law will be to
3 push some Megan's Law registrants into sex offender
4 colonies. In many states that have had imposed
5 residency restrictions on sexual offenders, the result
6 has been to create homeless camps of sexual offenders
7 under bridges or highways or create hotels, rooming
8 houses where sexual offenders congregate. This is
9 burdensome on those offenders, but also to Pennsylvania
10 citizens who live or travel near these areas.

11 Many sex offenders will be pushed into
12 rural areas and small towns of Pennsylvania where they
13 can live and possibly work without violating the
14 statute. For example, in Cedar Rapids, Iowa, the
15 state's residency requirement made almost the entire
16 small city uninhabitable for sex offenders.

17 So the Ced-Rel Motel in a rural area
18 outside of Cedar Rapids has just 24 rooms, but is now
19 home to 26 sex offenders. This is problematic for a
20 number of reasons. First, citizens of these rural and
21 small towns would likely be justifiably unhappy with an
22 influx of registered sex offenders into their
23 communities.

24 Second, by pushing registrants into rural
25 or small town areas, they are less likely to have the

1 family and emotional support or the treatment necessary
2 to help them avoid re-offending. Numerous studies have
3 shown that the familial and emotional support is
4 critical to rehabilitation and the aggravation of
5 stressors such as isolation or depression can cause
6 some offenders to relapse.

7 If a sex offender is forced to move from
8 his family, neighborhood, job, and city, it is beyond
9 question that his isolation will not have a positive
10 effect. Likewise, studies show that sex offender
11 treatment does help in preventing re-offense. If an
12 individual is forced into a rural area or small town,
13 it is unlikely that he will be able to find a sex
14 offender treatment program. So he will likely go
15 without treatment from trained professionals.

16 Finally, enforcement of a child
17 protective zone is untenable and not cost effective.
18 Enforcement of such a zone would require additional law
19 enforcement resources or the diversion of already
20 existing resources away from other law enforcement
21 needs.

22 We urge this committee to study the state
23 of Iowa's attempt to impose residency restrictions on
24 its citizenry. In 2002, Iowa passed a statute that
25 required law offenders not to live within 2,000 feet of

1 a school or daycare facility. Iowa's law dealt only
2 with where the offenders could live and did not
3 encompass all the work, travel, and worship zone
4 exclusions of this proposed statute. And Iowa's law,
5 unlike this one, was tailored for offenders who had
6 sexually assaulted children.

7 Yet, nonetheless, results in Iowa have
8 been disastrous. In fact, the Iowa State Sheriffs and
9 Deputies Association and the Iowa Association of County
10 Attorneys, the equivalent of our district attorneys in
11 Pennsylvania, are currently advocating for repeal of
12 their residency rules. Iowa's statute, while much more
13 focused and tailored than the other one we are
14 currently debating here, has resulted in increased
15 numbers of registrants simply disappearing, has created
16 de-facto sex offender camps, and has not made the
17 children of Iowa any safer.

18 We have attached to our testimony the
19 statement from the Iowa County Attorneys Association.
20 It is a detailed five-page statement outlining the
21 failings of the Iowa law. However, we would like to
22 draw particular attention to three points specifically
23 raised in their statement.

24 First, the Iowa County Attorney's
25 Association concedes that the research shows no

1 correlation between the residency restrictions and
2 reducing sex offenses against children.

3 Second, law enforcement in Iowa has
4 observed that the residence restriction is causing
5 offenders to become homeless, to change residences
6 without notifying authorities of their new locations,
7 to register false addresses or to simply disappear.

8 Finally, the Iowa County Attorney's
9 Association stated that there is no demonstrated
10 protective effect of the residency requirement that
11 justifies the huge draining of scarce law enforcement
12 resources in the effort to enforce the restriction.

13 The laudable purpose of legislation such
14 as this is to protect children from sexual predators.
15 Obviously, sexual offenders are not a monolithic group
16 and the vast majority currently on the Megan's Law
17 registry were deemed not to be sexually violent
18 predators or have a particularly high risk of
19 recidivism. And, indeed, even amongst the subset of
20 sexual offenders who abused a child, the Sexual
21 Offender Assessment Board's own web site concedes that
22 90 percent of child victims already know their
23 offender.

24 Trial judges who hear these cases and
25 impose sentences are in the best position to craft

1 restrictions that are suited to each individual sex
2 offender. Trial judges can, and do, impose
3 restrictions on some individual sex offenders such as
4 restricting their access to schools, playgrounds, or
5 other areas where children congregate. Usually, these
6 restrictions are imposed as conditions of probation.
7 Trial judges are able to evaluate which sex offenders
8 might target stranger children and craft their
9 sentences accordingly, by including some of the
10 restrictions contained in the child protective zone
11 provision.

12 Thus, we believe the child protective
13 zone as contained in House Bill 164 has serious
14 constitutional implications, unintended consequences,
15 and is unworkable and unnecessary. We urge the
16 committee to consider the child protective zone portion
17 of this Bill. Thank you for allowing us to speak on
18 this very important issue.

19 REPRESENTATIVE LENTZ: Thank you for your
20 time. You can tell you are appellate attorneys. Very
21 well written and organized. If you had to write the
22 brief, could you say anything positive about these
23 kinds of restrictions?

24 MS. McBENNETT: I think once you look at
25 the map, you can't. And, you know, we are speaking

1 specifically for our clients in Philadelphia. But I
2 don't think this serves any purpose. And logistically
3 speaking, it's unworkable.

4 MS. MACH: Although we provided the map,
5 of Philadelphia, it's effected all over the country.
6 If you get any sort of town of any size whatsoever,
7 basically, the entire town becomes off limits. That's
8 why you have small towns like Cedar Rapids all over the
9 country. Allentown, Erie, Harrisburg, Hershey,
10 anything with basically a town center, what it would do
11 is force people to either go underground or not abide
12 by the law, and not re-register or to be pushed out
13 into rural areas or very, very small towns.

14 And I think it's an unintended
15 consequence. That's unconstitutional to those who have
16 to register and actually unfair to the whole citizenry
17 of Pennsylvania.

18 REPRESENTATIVE MANTZ: This concept, I
19 have seen that in the news happening in Florida.
20 Didn't New Jersey take some action to repeal?

21 MS. MACH: Yes. The Appellate Court is
22 struggling to do some various local ordinances.
23 Basically, they are preempted by the state law, which
24 was a very focused and very tailored statute. So they
25 struck down various municipal residency restrictions.

1 They have a very -- the way New Jersey
2 law is very structured as to who is on how much
3 supervision and what level of crime they committed.
4 because the New Jersey Appellate Court said it was a
5 comprehensive statute, that these municipalities had
6 state authority to regulate Megan's Law as it a pleases
7 in New Jersey.

8 REPRESENTATIVE LENTZ: Thank you.

9 CHAIRMAN CALTAGIRONE: Any other members?
10 With that, we thank you very much for your testimony
11 and for everyone who came today. And this hearing is
12 now adjourned.

13 (At or about 12:50 p.m., the hearing
14 concluded.)

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CERTIFICATE

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

Michelle S. Parke
Court Reporter

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