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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE

MAIN CAPITOL BUILDING
ROOM 140
HARRISBURG, PENNSYLVANIA

THURSDAY, NOVEMBER 19, 2009
10:00 A.M.

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, CHAIRMAN
HONORABLE RON MARSICO
HONORABLE TOM C. CREIGHTON
HONORABLE PAUL J. DRUCKER
HONORABLE WILL GABIG
HONORABLE GLEN GRELL
HONORABLE KATE HARPER
HONORABLE DEBERAH KULA
HONORABLE KATHY MANDERINO
HONORABLE TODD ROCK
HONORABLE RICHARD STEVENSON
HONORABLE RONALD G. WATERS

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(REPRESENTATIVES ALSO IN ATTENDANCE)

- HONORABLE KAREN BOBACK
- HONORABLE BRENDAN BOYLE
- HONORABLE SCOTT HUTCHINSON
- HONORABLE JOHN PAYNE
- HONORABLE TIM SEIP
- HONORABLE ROSEMARIE SWANGER
- HONORABLE WILL TALLMAN
- HONORABLE MICHAEL TURZAI

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ALSO PRESENT:

WILLIAM ANDRING, CHIEF COUNSEL
DAVID TYLER, MAJORITY EXECUTIVE DIRECTOR
KAREN COATES, COUNSEL
DAVID McGLAUGHLIN, SENIOR RESEARCH ANALYST
WENDALL HANNAFORD, LEGISLATIVE ASSISTANT
KURT BELLMAN, LEGISLATIVE ANALYST
CAROLYN MYERS, DEMOCRATIC COMMUNICATION'S WRITER

BRENDA S. HAMILTON, RPR
REPORTER - NOTARY PUBLIC

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P R O C E E D I N G S

- - -

CHAIRMAN CALTAGIRONE: I'd like to start the House Judiciary hearing on House Bill 40, Representative Perry.

I would like -- I'm Chairman Tom Caltagirone, and I'd like to introduce the rest of the members and staff that are here. Sitting to my left is Chairman Marsico. Go ahead.

REPRESENTATIVE MARSICO: Thank you, Mr. Chairman.

Ron Marsico, Dauphin County, Republican Chair of the Committee.

MS. COATES: Karen Coates, counsel to the committee.

CHAIRMAN CALTAGIRONE: Go ahead. Sure.

REPRESENTATIVE SWANGER: Hi. RoseMarie Swanger, House District 102, Lebanon County.

REPRESENTATIVE TALLMAN: Will Tallman, Adams and York Counties.

REPRESENTATIVE ROCK: Todd Rock, Franklin County.

REPRESENTATIVE HUTCHINSON: Representative Scott Hutchinson, Venango and a portion of Butler County, 64th District.

1 REPRESENTATIVE PAYNE: John Payne, 106th
2 District, Southern Dauphin County.

3 REPRESENTATIVE GRELL: Representative
4 Glen Grell, 87th District, Cumberland County.

5 REPRESENTATIVE CREIGHTON: Tom Creighton,
6 Lancaster County.

7 REPRESENTATIVE HARPER: Kate Harper,
8 Montgomery County.

9 REPRESENTATIVE STEVENSON: Dick
10 Stevenson, Mercer and Butler Counties.

11 REPRESENTATIVE MANDERINO: Kathy
12 Manderino. I represent parts of Philadelphia and
13 Montgomery Counties.

14 REPRESENTATIVE BOBACK: Karen Boback,
15 parts of Wyoming, Luzerne and Columbia Counties.

16 REPRESENTATIVE KULA: Deberah Kula,
17 Fayette and Westmoreland Counties.

18 REPRESENTATIVE DRUCKER: Paul Drucker,
19 Chester and a little bit of Montgomery.

20 MR. ANDRING: Bill Andring, counsel to
21 the committee.

22 CHAIRMAN CALTAGIRONE: With that, what
23 I'd like to do is allow counsel to give an overview
24 of the current law and also the bill itself briefly
25 and we'll get started with the -- the hearing.

1 MR. ANDRING: Yeah. A brief overview of
2 the current law relating to use of force for
3 self-protection and for protection of property.

4 Now, this bill would essentially impact
5 two sections of the Crimes Code, Section 505, the
6 use of force and self-protection, and 507, use of
7 force for protection of property.

8 Current law is that a person is -- is
9 justified in the use of force towards another
10 person if they believe that such force is
11 immediately necessary for the purpose of protecting
12 himself against the use of unlawful force by such
13 other person.

14 An issue that often comes up is a duty to
15 retreat when one is faced with the option of using
16 force in self-protection or self-defense.

17 There is no duty to retreat in
18 Pennsylvania involving the use of any force in
19 self-protection other than deadly force.

20 The law relating to the use of deadly
21 force for self-protection is that such force is
22 justified if the person believes it is necessary to
23 protect himself against death, serious bodily
24 injury, kidnapping, or sexual intercourse compelled
25 by force.

1 It is not justifiable if the person
2 acting or allegedly acting in self-defense provoked
3 the entire series of events that led to the use of
4 self force -- of self-defense.

5 We also have a duty to retreat in cases
6 of self-defense involving the use of deadly force.
7 A person is required to retreat if the actor knows
8 that he can avoid the necessity of using deadly
9 force with complete safety by retreating or
10 asserting a claim of right thereto.

11 It also should be noted that no actor is
12 obliged to retreat from his dwelling or place of
13 work. So there's no duty to retreat even for the
14 use of deadly force in a dwelling or place of
15 work.

16 There's one other aspect of this that --
17 that the members need to be aware of. In
18 Pennsylvania, if a person makes a justification of
19 self-defense or puts that issue in any way before
20 the jury, the burden of proof shifts to the
21 prosecution. That's the law right now.

22 If the person places the issue of
23 self-defense before the jury, the prosecution is
24 required to disprove self-defense beyond a
25 reasonable doubt.

1 And I don't think a lot of people
2 understand that, and that's a very important part
3 of our law. Because it places tremendous burden on
4 the prosecution to overcome a claim of self-defense
5 and it gives, frankly, a very beneficial take on
6 things to the defendant who raises an issue of
7 self-defense.

8 We also have Section 507 of the Crime
9 Codes which provides the justifiable use --
10 justifiable use of force in the protection of
11 property.

12 Again, force is justifiable to prevent or
13 terminate an unlawful entry onto your land or the
14 unlawful carrying away of tangible personal
15 property.

16 In most instances it -- there is a
17 requirement that the person against whom such force
18 is used be asked to leave the property, if it's
19 real property, or not take for the property. Such
20 a request is not required if it would be useless,
21 if it would be dangerous to the person asserting
22 the self-defense, or if substantial harm would be
23 done to the physical condition of the property.

24 Again, in protecting property, we have
25 special rules for deadly force. Deadly force is

1 justifiable if there has been an entry into the
2 actor's dwelling and the actor believes that
3 such -- using -- use of deadly force is necessary
4 to present -- prevent the dispossession from his
5 property or to prevent the commission of a felony
6 in the dwelling.

7 The deadly force would not be authorized
8 if the actor believes that less than deadly force
9 would be adequate to terminate the entry.

10 House Bill 40 amends Section 505, the use
11 of force in self-defense or for self-protection, by
12 repealing this Section, Subparagraph (ii), which
13 relates to the use of deadly force and providing
14 that if an actor would be presumed to have a
15 reasonable belief that deadly force is necessary to
16 protect against death, serious bodily injury,
17 kidnapping, or sexual intercourse, if the person
18 against whom the force is used was in the process
19 of unlawfully and forcefully entering the dwelling
20 or an occupied vehicle.

21 Again, this presents some considerable
22 problems in Pennsylvania. A presumption in --
23 under law is rebuttable by a preponderance of
24 evidence.

25 So this bill would actually create a

1 presumption on behalf of the defendant which the
2 prosecutor could rebut by a preponderance of
3 evidence, when under current law, the prosecutor
4 would be required to disprove this assertion beyond
5 a reasonable doubt.

6 The bill also contains a section relating
7 to the duty to retreat, and it provides that an
8 actor who is not engaged in criminal activity has
9 no duty to retreat if the actor believes it
10 immediately necessary to do so to protect himself
11 against death, serious bodily injury, kidnapping,
12 or sexual intercourse.

13 Again, what this does is remove any duty
14 to retreat in cases of using deadly force for
15 self-protection, which is the current law in
16 Pennsylvania; but the way it's worded, it may also
17 change the law and impose a duty to retreat in
18 situations where such a duty does not currently
19 exist.

20 So that's a -- that's a quick overview,
21 and I think it illustrates some of the issues and
22 some of the problems we're going to face in
23 addressing those issues.

24 CHAIRMAN CALTAGIRONE: Thank you,
25 counsel.

1 I do want to recognize Representative
2 Brendon Boyle from Philadelphia who has joined the
3 panel.

4 I'd like to start off with Joe Grace, the
5 executive director of CeaseFire Pennsylvania, and
6 Rick Gray, Mayor of the city of Lancaster.

7 You can start.

8 MR. GRACE: Good morning, Chairman
9 Caltagirone, Chairman Marsico, members of the
10 committee.

11 I'm the executive director of CeaseFire
12 Pennsylvania, Pennsylvania's largest gun violence
13 prevention organization. Thank you for the
14 opportunity to testify this morning on House Bill
15 40 which expands the so-called Castle Doctrine
16 concerning the use of deadly force in
17 self-defense.

18 I'm sharing my time before the committee
19 with Mayor Richard Gray, the mayor of Lancaster, an
20 experienced advocate in our efforts to prevent gun
21 violence in Pennsylvania.

22 CeaseFire Pennsylvania opposes House Bill
23 40, an unjustified, unnecessary expansion of
24 existing Pennsylvania law which already includes
25 the Castle Doctrine, relieving residents of the

1 duty to retreat before using deadly force to
2 protect their homes from intruders.

3 Before detailing our reasons further for
4 opposing H.B. 40, a few words about the state of
5 gun violence in the state of Pennsylvania.

6 Gun violence is rising in Pennsylvania
7 not just in urban areas. Some say gun fire is just
8 a Philadelphia problem and doesn't affect the vast
9 majority of Pennsylvanians.

10 The facts say that is not true.
11 Homicides involving guns increased by 30 percent
12 last year in Pittsburgh. The city of Harrisburg
13 has a terrible gun violence problem. Sixteen
14 people murdered in the capital this year, a 60
15 percent increase over last year. In York, a
16 nine-year-old girl was caught in gang crossfire and
17 killed on Mother's Day.

18 Twelve hundred people die each year
19 across the Commonwealth in gun incidents,
20 homicides, suicides, and accidental shootings. Gun
21 violence is an urgent public health problem
22 statewide that needs addressing.

23 H.B. 40 fording does nothing -- H.B.
24 40 -- excuse me -- does nothing in our view to help
25 address this epidemic of growing gun violence.

1 Pennsylvania police officers are in
2 harm's way every day and are increasingly shot at,
3 or worse, killed in the line of duty.

4 Since 2002 assaults on Pennsylvania
5 police officers have increased by 76 percent.
6 Worse, 18 police and law enforcement officers have
7 been shot and killed in the line of duty statewide
8 in the past seven years.

9 There's an attachment listing the names
10 of each of those officers.

11 Three of Pittsburgh's finest shot and
12 killed in one day in the spring. A Pennsylvania
13 State Policemen was shot this summer during a car
14 chase and stop.

15 Our police officers put their lives on
16 the line each day to protect us. Why in the world,
17 respectfully, are we considering legislation that
18 condones or perpetrates a shooting culture in our
19 state?

20 It is significant, we believe, that the
21 leading police and law enforcement organizations in
22 Pennsylvania are here to testify on H.B. 40, and
23 they are likely opposing this bill as unneeded,
24 unwarranted, and potentially dangerous to police
25 and law enforcement.

1 The Pennsylvania District Attorney
2 Association, the Pennsylvania State Police, the
3 Pennsylvania Chiefs of Police Association, these
4 are three leading police and law enforcement
5 organizations in the Commonwealth, they each oppose
6 H.B. 40.

7 Why? Because H.B. 40 will make it harder
8 for police and prosecutors to do their jobs.
9 Police officers are already under fire. If we
10 remove the duty to retreat for individuals and
11 expand that zone outside a person's home to include
12 the front porch, the deck, the lawn, all the way
13 down to the corner, it will make domestic
14 situations more hazardous, potentially deadlier.
15 That's a terrible public policy.

16 For prosecutors, H.B. 40 will make a
17 tough job tougher. Clever criminal defense
18 attorneys will have a field day crafting defenses
19 using this expanded Castle Doctrine for their
20 clients, whether the shooting took place in a
21 domestic dispute, a road rage incident, or even
22 gang activity in which the prosecutor won't be able
23 to prove that the shooting took place during
24 criminal activity.

25 Why are we considering placing a heavier

1 burden on prosecutors whose job it is to prosecute
2 the bad guys and help get criminals and illegal
3 guns off the streets?

4 H.B. 40 does not make sense to us. It's
5 a solution in search of a problem, and it may wind
6 up creating more problems than it solves.

7 CeaseFire supports responsible gun
8 ownership, and we respect the Second Amendment.
9 But we also support, as the Supreme Court decision
10 in Heller upheld, reasonable restrictions on guns
11 to help reduce gun violence.

12 We believe one reasonable regulation
13 would be a requirement that lost or stolen handguns
14 be reported to police to help crack down on straw
15 buying.

16 Fifteen Pennsylvania municipalities have
17 passed local laws requiring lost or stolen handgun
18 reporting. Significantly, each of the three
19 leading police and law enforcement organizations
20 here today to testify against H.B. 40 have come out
21 in support publicly in favor of lost or stolen
22 handgun reporting.

23 Our mission at CeaseFire PA is preventing
24 gun violence through education and advocacy for
25 commonsense policies. Lost or stolen handgun

1 reporting is one such commonsense policy.

2 H.B. 40 is a solution in search of a
3 problem. We respectfully request this committee to
4 oppose the bill. It's unwise policy, dangerous for
5 our citizens and our police.

6 One year ago there were six mayors in
7 Pennsylvania in a new coalition dedicated to
8 ridding the streets of our state of illegal guns in
9 criminal hands. Six mayors. Today there are a 160
10 mayors in a coalition that stretches the state,
11 Republican, Democrat, and Independent, small towns,
12 large cities, third class cities.

13 One such mayor is Mayor Richard Gray,
14 city of Lancaster, who is here with us this
15 morning. Thank you, Mr. Chairman and
16 Mr. Chairman.

17 MAYOR GRAY: Thank you. And good
18 morning. Again I'm Richard Gray. I'm the mayor of
19 the city of Lancaster.

20 I'm here -- I'm not necessarily speaking
21 as the mayor of the city of Lanc -- of the city of
22 Lancaster. By way of further introduction, I'm the
23 past president of the Pennsylvania Association of
24 Criminal Defense Lawyers.

25 In my previous life, I litigated just

1 about everything and a lot of criminal -- criminal
2 cases from a defense perspective.

3 Your counsel, learned counsel, has dealt
4 with a lot of things that I wanted to address
5 today. More from the technical aspect than a --
6 a -- than a gun violence aspect, because deadly
7 force, of course, can be a knife, it can be a bat.
8 You know, it can be a lot of things.

9 I don't think this is a gun question.
10 There's a lot of deadly force that can be used
11 without a gun being involved.

12 The first thing I think ought to be
13 pointed out, in cases involving deadly -- deadly
14 force, there's no legal duty to retreat in cases
15 not involving deadly force. Excuse me. So, in
16 other words, the duty to retreat is only in those
17 situations where deadly force is about to be used.

18 Now, what's the applicable duty to
19 retreat? Well, the law says one must retreat only
20 when he or she can do so, quote, with complete
21 safety, end quote.

22 So you don't have to retreat unless you
23 can do that with complete safety. Therefore, one
24 who would in any way endanger themselves by
25 retreating is not required to do so under the

1 current law.

2 Complete safety. How often do you see
3 complete in -- in any statute?

4 Now, also a reasonable belief that no
5 safe retreat was available satisfies the
6 requirement. There's cases that say even if you
7 objectively look and the person could have gone in
8 one direction and retreated, if they had a
9 reasonable belief there wasn't an avenue to
10 retreat, they don't have to retreat.

11 And my experience has been trying cases,
12 and I've tried cases where these issues have come
13 up. Generally juries are very, very sympathetic to
14 the use of self-defense. And rightfully so.

15 So, again, retreat only with complete
16 safety and a reasonable belief that you can't
17 retreat is enough to satisfy the requirement.

18 Now, there's no requirement to retreat
19 from one's dwelling or place of work. But in
20 estimating the force that you use, there's a
21 subjective standard. And it's, quote, a person
22 employing protective force may estimate the
23 necessity thereof under the circumstances as he
24 believes them to be when the current force is used
25 without retreating.

1 As he believes them to be, it's a
2 subjective standard. What do you think at the
3 time?

4 So, again, you have you have a very
5 limited duty to retreat, you have a reasonable
6 belief that you can't retreat, and subjective
7 standard as to what force is necessary to respond.

8 Now, as your counsel mentioned, not
9 contained in the statute is the question of who has
10 the burden of proof. Self-defense is an
11 affirmative defense and when you -- an affirmative
12 defense is basically when you say, what the
13 Commonwealth is saying is correct, but I -- I acted
14 in a justified manner.

15 It's extremely important when dealing
16 with an affirmative defense of this nature that,
17 once the defense is raised, the Constitution
18 requires that the Commonwealth prove beyond a
19 reasonable doubt that it was not self-defense.

20 In other words, the defendant doesn't
21 have to prove that this was an appropriate use of
22 force, but the Commonwealth must prove beyond a
23 reasonable doubt that it was not.

24 Try to prove negatives. Try to prove a
25 negative. Especially, again, when you have a

1 subjective standard. This requirement that a
2 negative be proven is extremely difficult,
3 especially when the Commonwealth must prove that
4 the defendant did not believe that such force was
5 necessary based on the facts known to the
6 defendant.

7 And I'll give you an example from a case
8 I had. A guy came at another guy with a gun. The
9 defendant, my client, shot the person with the
10 gun. The gun was unloaded that the victim had.

11 Well, how did he know it was unloaded?
12 How did the defendant know it was unloaded? Those
13 were the circumstances known to him at the time,
14 and really they didn't even bring the charges
15 basically is what happened.

16 We met with the police and the District
17 Attorney and they agreed, that based on a
18 subjective standard, though he wasn't threatened
19 with deadly force, how did he know? That's under
20 the current law.

21 Now, when requiring retreating outside
22 one's house as they are required to do only when
23 retreating can be done with complete safety, that's
24 the current law.

25 Therefore, if House Bill 40 is adopted,

1 one outside their dwelling who could retreat with
2 complete safety could now elect to use deadly
3 force.

4 A person can retreat with complete
5 safety, but they decide, no, I'm going to -- I'm
6 going to -- as known by them, as known to them,
7 they could retreat with complete safety, now they
8 can use deadly force if House Bill 40 is passed.
9 Is that what you want?

10 Now, what's a dwelling? The doorway to a
11 home is a no retreat area. And, again, I had a
12 defendant who was acquitted when there was an
13 argument at his doorway.

14 The victim, if you want to call him that,
15 left, turned around and came back. And it was in
16 an apartment building. My client stood maybe a --
17 a foot inside the door. The guy was coming at
18 him. He shot him and killed him. He didn't have
19 any -- any specific weapon but the defendant
20 believed he was armed.

21 The front lawn under the current law is
22 neither a dwelling place nor a place of work
23 exempting one from the duty to retreat.

24 Now, House Bill 40 makes your porch or
25 deck a dwelling. An old lawyer that I used to

1 practice with told me there's two kinds of cases
2 you never take, water in the basement and bad
3 neighbors, because neither of them are ever
4 resolved because they just go on forever.

5 As mayor, believe me, I know all about
6 bad mayors -- I'll get a couple -- or bad -- bad
7 mayors, too -- but bad neighbors, because I get a
8 call a couple times a week, you know, they're doing
9 this, they're doing that, you know.

10 And how about if you entice a guy onto
11 the property? How about if the argument is going
12 on and he comes into your yard? You now shoot
13 him? How about if he's there with the hedge
14 clippers and he was clipping the hedge and he
15 clipped your hedge?

16 Another thing in reading House Bill 40,
17 what is a vehicle? It's a presumption and a
18 reasonable belief that dead -- deadly force is
19 necessary if another attempts to remove one from a
20 vehicle.

21 A vehicle is defined as, quote, a
22 conveyance of any kind, whether or not motorized,
23 which is designated to transport -- transport
24 people or property.

25 Well, I just jotted down some things,

1 skateboards, skis, wheelbarrows, roller skates,
2 motorcycle. I mean a wheelbarrow is intended to
3 transport property.

4 And the only reason I do that, you say,
5 well, that's foolishness. Let me tell you, defense
6 attorneys will jump on this. They will jump on
7 it.

8 And, you know, the Pennsylvania
9 Association of Criminal Defense Lawyers, when I was
10 president, hadn't come out against the death
11 penalty. Everybody pretty much knew where they
12 stood if there was a vote on that.

13 Similarly with this, if they were here to
14 testify, my guess would be they'd say it would be a
15 gold mine.

16 House Bill 40 is a defense attorney's
17 dream that will permit creative counsel numerous
18 ways of justifying homicide and forcing the
19 Commonwealth to try to prove beyond a reasonable
20 doubt that a killer does not fit into the numerous
21 justifications allowed.

22 The bill does not support our police or
23 protect our public. It will certainly result in
24 the Commonwealth having a more difficult time
25 getting convictions in homicide cases. It's

1 tinkering with long -- long-established law that,
2 if adopted, will have far-reaching unintended
3 consequences.

4 And let's be clear -- clear. This bill
5 provides additional defenses, for all those, not
6 just the innocent citizens, all those accused of a
7 homicide. And if there was any question at all, a
8 defense attorney would jump on this, explore it,
9 and there will be Law Review articles written about
10 justification defense in this situation.

11 Thank you.

12 CHAIRMAN CALTAGIRONE: Thank you,
13 gentlemen.

14 Members, any questions?

15 I notice we've also been joined by
16 Representative Will Gabig who is a member of the
17 Committee. Will.

18 No questions? Thank you, gentlemen.

19 MR. GRAY: Thank you.

20 CHAIRMAN CALTAGIRONE: Appreciate your
21 testimony.

22 MR. GRAY: Thank you.

23 MR. GRACE: Thank you, Mr. Chairman and
24 Mr. Chairman.

25 CHAIRMAN CALTAGIRONE: We'll next hear

1 from John Hohenwarter, National Rifle Association,
2 and Kim Stolfer, citizen -- wait. Jim, I'm sorry.
3 Chairman of the Legislative Committee, Allegheny
4 County, Sportsmen's League and Chairman of the
5 Firearms Owners Against Crime.

6 MR. STOLFER: Good morning. Good
7 morning, Mr. Chairman.

8 CHAIRMAN CALTAGIRONE: Good morning, sir.

9 MR. HOHENWARTER: Good morning.

10 CHAIRMAN CALTAGIRONE: Good morning,
11 John.

12 MR. HOHENWARTER: And thank you for
13 allowing us to change the schedule around a little
14 bit.

15 The -- the sponsor of this bill -- I
16 don't think it was mentioned -- he cannot be here
17 because he is overseas. So I'd, first of all, like
18 to start off by thanking Representative Perry for
19 introducing this bill.

20 You're going to -- after hearing the
21 testimony before us, you may be a little bit of --
22 confused after we present our testimony here
23 today.

24 This bill simply restores the human right
25 of self-defense that has been eroded over the last

1 several years by our court system and by our
2 prosecutors. You know, in Pennsylvania, you really
3 don't have a right to self-defense as much as you
4 have a right of defense of self-defense.

5 I'll say it again. You -- we really
6 don't have a right of self-defense. You have a
7 right of defense of self-defense.

8 You know, Kim and I are not sitting here
9 today for our health. You know, we keep hearing
10 this bill is not needed. That's absolutely false.

11 You know, NRA, back in 2005, it took up
12 the initiative of restoring a wrong, and that is
13 going into states where it's necessary to beef up
14 self-defense laws. It started in Florida, by our
15 first woman president of the NRA, Marion Hammer.

16 Back in 2005, you know, Marion had
17 witnessed years of -- of trials of law-abiding
18 citizens defending themselves and being drug into
19 the courtrooms. So Marion introduced with the
20 legislature, with some of our supporters, a bill to
21 correct that problem.

22 It eventually passed overwhelmingly in
23 Florida. And that legislation is very similar to
24 the legislation that you have in front of you
25 today.

1 Since that time there's been 24 states
2 across the country that enacted similar legislation
3 that's before you today. Twenty-four states. Many
4 of those states going well beyond the legislation
5 that you're looking at here today in Pennsylvania.

6 I mean, really, Pennsylvania is a hybrid
7 of, let's say, Florida and a few other states. It
8 doesn't even go as far as the other states when it
9 comes to protecting the innocent. We're talking
10 about protecting the innocent. Not protecting the
11 criminals.

12 And that's what we've been seeing. Not
13 only in Pennsylvania, but it's been taking place
14 around the country. And I think it's time that the
15 pendulum starts swinging a different direction here
16 in Pennsylvania.

17 I mean the testimony that you just heard
18 is an instant replay -- an instant replay of what
19 we heard in states across the country. The parade
20 of horrors. What's going to happen.

21 You know, we heard some testimony about
22 this does nothing to address criminal violence.
23 Well, of course, it doesn't. This bill addresses
24 self-defense. It doesn't address criminal
25 violence.

1 So you have a bill that really -- and I
2 think Bill did a good job of explaining some of the
3 parts of the bill, and I think he has a few,
4 perhaps, technical concerns in the bill, but
5 basically this bill changes presumption. It
6 changes the duty to retreat to stand your ground.

7 Now, we heard some scenarios about duty
8 to retreat versus stand your ground. You know,
9 there's nothing more dangerous than turning your
10 back on a violent criminal. I mean there's nothing
11 more dangerous than doing that.

12 That's why we're looking at changing duty
13 to retreat to stand your ground. And it also
14 provides civil immunity. And I'll talk a little
15 bit about that in a few minutes.

16 You know, without these changes -- and I
17 hear this time and time again, that Pennsylvania is
18 a shoot'em and drag'em in state. I mean that's
19 where you are in Pennsylvania. I think everybody
20 knows what that means.

21 And you heard the old joke if someone is
22 coming through your window and you shoot him coming
23 in the window and he falls out, well, make sure to
24 drag him in. And I hear it time and time again
25 that Pennsylvania, again, is a

1 shoot-them-drag-them-in state.

2 And I think you need to keep in mind when
3 the debate on this bill goes on from here, and that
4 is, you know, that law enforcement is not
5 responsible to defend the individual. They are not
6 responsible.

7 And I'll give you an example, and there's
8 been plenty of -- of court cases that support
9 that. The Warren versus D.C. court case. This is
10 what the court concluded. The courts have, without
11 exception, concluded that when a municipality or
12 other government entity undertakes to provide
13 public services, it assumes a duty only to the
14 public at large and not to the individual members
15 of the community.

16 And there's been plenty of case law that,
17 bottom line, law enforcement cannot be held liable
18 for not protecting you because they can't protect
19 everybody.

20 There's right now, on average, 23 state
21 and local law enforcement officers per 10,000
22 population. Now, if you take that, you know, the
23 number of actual officers that are on duty, you're
24 talking maybe eight, you know, officers that are
25 actually on duty at one time to protect 10,000

1 people.

2 Obviously it can't be done, and they
3 can't be held liable for it. You know, 2.5 million
4 times a year, because of the lack of law
5 enforcement being able to protect everybody, which
6 I think everybody believes that's unreasonable, 2.5
7 million times a year only guns, guns are used in
8 self-defense.

9 We're not -- you know, this not only
10 involves guns this involves other ways of defending
11 yourself.

12 For instance martial arts, if you go
13 on -- and I'd be happy to provide the committee
14 with some information -- there have been a number
15 of problems with self-defense cases with martial
16 arts. Because you're not really involving any
17 weapon, yet they sometimes may kill an individual.

18 And it actually happened down in
19 Philadelphia which in a blind man defended himself
20 and flipped the guy over his shoulder and ended up
21 killing an individual.

22 So we're -- you know, this not only is
23 about defending oneself with guns but it's other
24 instruments and 2.5 million times a year firearms
25 are used.

1 Out of that, 90 percent of them,
2 brandishing the firearm is sufficient enough to --
3 to break up the attack. Less than 10 percent of
4 the individuals actually have to fire the -- the
5 gun and actually kill the violent attacker.

6 Now, we talk about how many officers that
7 are out there, and I think you'll find this
8 interesting why you need to have the ability to
9 defend yourself without worrying about going --
10 well, going to jail.

11 Response times. Now, these statistics,
12 they were put together by the Department of
13 Justice. Approximately -- well, I'll go through
14 this with you because I think it's -- it's worth
15 doing.

16 Twenty-six percent of law enforcement --
17 as far as -- this is only violent crimes. Once you
18 pick up the phone. A 26 percent response time
19 within five minutes, 32 response -- percent
20 response time six to ten minutes, 30 percent
21 response times 11 minutes to an hour, and then you
22 have approximately another 20 percent for more than
23 an hour.

24 Clearly, when you pick that phone up, you
25 have anywhere from five minutes to an hour before a

1 law enforcement officer gets there. So it -- the
2 responsibility of defending yourself and your
3 family, it -- it falls on you -- on your
4 shoulders.

5 And I think it -- you know, we keep
6 hearing and you're going to hear it, I'm sure, as
7 the day goes on, about there's no need -- I think
8 the term was it's a solution to a problem that
9 doesn't exist.

10 Well, the reason Kim Stolfer is sitting
11 up with me today is because the individual that was
12 going to testify with me could not attend today
13 because he's still fighting his case out in Venango
14 County.

15 And I'll give you a quick run down of
16 the -- of the story. We have a 68-year-old school
17 teacher two years ago at 3:30 in the morning wakes
18 up from a sound sleep. Someone is trying to break
19 into his house through the back door.

20 His wife picks up the phone, calls the
21 police. He takes his .22 revolver and goes
22 downstairs. This individual -- he tells the
23 individual he has a gun. He continues to try to
24 break in through the door, goes to the window to
25 break in, and then goes back to the door.

1 He ends up firing a shot through the
2 door, warning shoot, to scare the perpetrator off.
3 Well, he -- he continues to come through the door.
4 He shoots another round through the door. And this
5 is a .22.

6 He ends up hitting the -- the assailant,
7 and the individual ends up dying. State Police
8 show up about five or ten minutes later. They rule
9 it a justified self-defense case.

10 And you have this article. It should be
11 in your packets.

12 Well -- six -- six months later -- now,
13 think about this. Six months later he is contacted
14 by the D.A. and he's going to be prosecuted for
15 manslaughter. They try to get him to plea bargain
16 and he refuses to plea bargain. He goes to a jury
17 trial. Spends tens of thousands of dollars to
18 defend himself.

19 Well, here's a 68-year-old retired school
20 teacher, defending his wife at 3:30 in the morning,
21 and he has to spend tens of thousands of dollars to
22 defend himself.

23 Well, after a three-day trial, the jury
24 deliberates for one hour, one hour. Not guilty.
25 So I contacted Roger to come out and testify

1 today. Well, he informs me he cannot do that and I
2 said, well, why, Roger? He's being sued civilly.

3 And I can tell you it's in excess of a
4 million dollars. So here's a guy found not guilty,
5 and now he's being sued civilly.

6 And I have more cases. So to say that
7 this is not needed, I mean it's -- 24 states did
8 not pass this legislation because it is not
9 needed.

10 Now, you know, I'll leave you with one
11 final thought. You know, this legislature for
12 years has pushed the courts in the right direction,
13 and you've done it a number of different ways.

14 You've done it in mandatory sentencing.
15 I worked with a number of you in putting together
16 mandatory sentencing for the criminal use of
17 firearms or other violent offenses.

18 It's kind of ironic. You're going to see
19 a lot of the people that are here today have
20 opposed mandatory sentences. So they're here today
21 opposing self-defense, beefing up the self-defense
22 laws, yet they opposed mandatory sentencing.

23 So they -- they're saying, okay, let's
24 leave the violent felons out on the streets earlier
25 but we don't want you to defend yourself. And

1 that's what you're going to hear today. And it's
2 quite ironic.

3 So I -- you know, I ask you once again to
4 step up to the plate. Let's lead the court in the
5 right direction, and let's pass this legislation.
6 It's been around. I believe this is the second
7 session. It's a good bill, and it deserves
8 passage.

9 I'll leave it to you, Kim.

10 MR. STOLFER: Okay.

11 Good morning. Mr. Chairman, members of
12 the committee, I am Kim Stolfer, chairman of the
13 Legislative Committee of the Allegheny County
14 Sportsmen's League and vice chairman of the
15 Pennsylvania Sportsmen Association, as well as
16 chairman of the Firearm Owners against Crime, and I
17 appreciate the opportunity to appear before you
18 today.

19 The right of citizens to protect
20 themselves is critical -- critically important to
21 our society. It is a right enshrined in many state
22 constitutions, and it needs to be jealous --
23 zealously protected by all, especially elected
24 representatives.

25 If this right becomes uncertain, murky,

1 or counter-intuitive, citizens will be, and in some
2 cases already are, reluctant to take action to
3 protect themselves and others for fear of criminal
4 prosecution.

5 That fear and the consequent passivity
6 will lead to the alienation of people from one
7 another, an alienation -- an alienation
8 encapsulated by the incomprehensible Genovese, New
9 York incident.

10 The fear of involvement to oneself if one
11 answered a call for help would be added to the fear
12 of possible criminal prosecution. And that case is
13 where 38 neighbors ignored a woman who was being
14 murdered, and the case is cited here.

15 It is an indisputable fact that law
16 enforcement officers cannot protect citizens at all
17 time and, in fact, have no legal duty to do so.

18 It is also a fact that the Pennsylvania
19 District Attorney Association is well aware of the
20 failings of our current justice system in holding
21 accountable the most violent in our society.

22 The quote below from the U.S. Attorney
23 Kubo illustrates this problem and point, and he
24 refers to an officer that was murdered at the hands
25 of violent criminals that currently roam our

1 streets today.

2 And I'll leave his statement speak for
3 itself. That was Hawaiian police officer Glen
4 Gaspar who was murdered at the hands of individuals
5 that murdered Pennsylvania police officers today
6 which should be in jail.

7 Here in Pennsylvania, we share this same
8 environment. Police officer Steven Liczbinski,
9 Mariano Santiago, Gary Skerski, and Trooper Pokorny
10 and too many other fallen officers all share one
11 common element. They would all be alive today if
12 not for being murdered by criminals who should have
13 been in prison for committing crimes they were not
14 held accountable for.

15 Any criminal with the temerity to attack
16 and murder police officers is not going to
17 recognize and abide by a citizen's duty to
18 retreat.

19 Anyone believing this is hopeless --
20 believing this is hopelessly locked in fantasyland,
21 and yet the PDAA is conspicuously silent on the
22 failure of the justice system to keep these
23 recidivist violent criminals behind bars.

24 As a matter of fact, I have the records
25 here today, in case anybody wants to review them,

1 of the individuals who murdered some police
2 officers, 40 and 50 times individuals violated the
3 Uniform Firearm Act alone and were not held
4 accountable.

5 House Bill 40 does three things. It
6 establishes, in law, the presumption that a
7 criminal who forcibly enters or intrudes into your
8 home, already current PA law and was also opposed,
9 by the way, over three decades ago by the PDAA, or
10 occupied vehicle is there to cause death or great
11 bodily harm, therefore, a person may use force,
12 including deadly force against that person.

13 Two, it modifies the duty to retreat if
14 you are attacked in any place you have a right to
15 be. You no longer have to turn your back on a
16 criminal and try to run when attacked.

17 As my wife tells me all the time, I'm not
18 20-years-old anymore and I can't outrun those young
19 people.

20 Instead you may stand your ground and
21 fight back, meeting force with force, including
22 deadly force if you reasonably believe it is
23 necessary to prevent death or great bodily harm to
24 yourself or others.

25 Not for the protection of property as it

1 is in some other states.

2 It provides the person using force
3 authorized by law shall not be prosecuted for using
4 such force.

5 And as John stated, it also provides for
6 civil immunity against unfounded, frivolous
7 lawsuits filed by criminals and/or their families
8 for injuring or killing the criminals who have
9 attacked them.

10 This was intentionally written to also
11 include police officers, like the two state
12 troopers who were found innocent in Pittsburgh of
13 shooting that young boy and then have been sued for
14 millions of dollars.

15 The legislation, House Bill 40, does not
16 eliminate the duty to retreat and neither does it
17 eliminate the Pennsylvania use of force laws
18 despite the deceptive protestations of PDAA and
19 other self-defense organizations.

20 Section 2 (ii) still provides the use of
21 deadly force is not justifiable if, quote, the
22 actor knows that he can avoid the necessity of
23 using deadly force with complete safety by
24 retreating.

25 Citizens of Pennsylvania have for many

1 years had the defense of justification,
2 self-defense, available where deadly force was used
3 on the street provided the citizen reasonably
4 believed such force was necessary to prevent
5 imminent, serious bodily injury or death to
6 themselves or another human being, which includes
7 kidnapping or forceable rape, the citizen did not
8 provoke the incident, the citizen was not the
9 initial aggressor, the person against whom the
10 force is being used is not a public official
11 performing his duty -- which we protect police
12 officers in this law, too -- and one could not
13 safely avoid the problem by retreating or
14 surrendering a possession to one who claimed it was
15 his.

16 It is important to understand the concept
17 of retreating in complete safety and how it impacts
18 citizens who have been attacked and why retreat is
19 oftentimes not practical or why the actor was not
20 aware of an escape route.

21 Courts and prosecutors sometimes offer
22 odd ideas about possible avenues of retreat in an
23 unrealistic sterilized of the courtroom distant
24 from the elements of the incident.

25 Reasonable retreat for a young, healthy

1 person will most likely not be the same for someone
2 who is overweight, injured, or disabled.

3 Unless there is a well-established
4 presumption of the right to self-defense that
5 protects the law-abiding citizen and establishes
6 that the individual has no duty to retreat and the
7 right to stand his or her ground, the possibility
8 of interpretation and prejudice have the distinct
9 likelihood of devastating the victim of a violent
10 crime twice.

11 The mere fact of arguable interpretation
12 of what the actor knew or should have known about
13 the possible avenue of retreat or whether the
14 avenue of retreat was even a viable option can
15 devastate the citizen.

16 I would add off the cuff that a director
17 of the Allegheny County Sportsmen's League
18 colloquially known by the media, called the tomato
19 patch killer, who had repeatedly filed police
20 reports about abusive neighbors, had a man break
21 down his door.

22 He used lethal force. He felt his life
23 was in danger. He was in his late 50s. He shot
24 the man. The man died. And he served five years
25 in prison. And he has tens of thousands of dollars

1 still in legal fees, bills.

2 This was after repeated notification of
3 law enforcement that these people were dangerous
4 and they were threatening.

5 House Bill 40 does contain the following
6 language: An actor who is not engaged in a
7 criminal activity and who is attacked in any place
8 where the actor has a right to be has no duty to
9 retreat and has the right to stand his ground and
10 use protective force, including deadly force, if
11 the actor believes it is immediately necessary to
12 do so to protect himself against death, serious
13 bodily injury, kidnapping, or forceable rape.

14 What this language does do in this regard
15 is to raise a presumption that a person's belief
16 that the deadly force was necessary and was
17 reasonable under certain conditions.

18 If the individual to which lethal force
19 was applied was unlawfully and forcefully entering
20 a dwelling, residence, or occupied vehicle, for
21 example, there will now be a presumption the actor
22 reasonably believed that deadly force was
23 immediately necessary to protect themselves against
24 death, et cetera.

25 These laws, Castle Doctrine, have been

1 enacted in 23 states, and in virtually each
2 instance the media and anti-self-defense groups
3 loudly proclaimed -- claimed that the sky was
4 falling and that there would be blood in the
5 streets, Dirty Harry vigilantes, irrational mass
6 murders, mythologies, lies and claims that new law
7 will turn Pennsylvania into the Wild West and are
8 an insult to intelligent people.

9 Take, for example, the follow-up comments
10 of Indiana lawmakers who supported and opposed this
11 very same law in 2006 who said they had not heard
12 of any problems in its application.

13 Citation is here of the article, if you'd
14 like to see it.

15 Indeed, Colorado law holds that, if
16 defendant is not the initial aggressor or engaged
17 in mutual combat, he is not obliged to retreat or
18 flee to save his life but may stand his ground and
19 even, in some circumstances, pursue his assailant
20 until the latter has been disarmed or disabled from
21 carrying into effect his unlawful purpose.

22 This right of the defendant goes even to
23 the extent, if necessary, of taking human life. A
24 far greater extension of the Castle Doctrine
25 concept in the street in Pennsylvania than we're

1 considering here today.

2 It's also important to note the appeals
3 for the Third Circuit where they referred to the
4 officer having no time for the calm, thoughtful
5 deliberation typical of an academic setting.

6 And they said -- and this is a quote --
7 similar logic should apply to citizens as well.
8 This is current case law, and the citation is also
9 here. That's from 2004.

10 The record of gun owner experiences in
11 self-defense cases are filled with being victimized
12 by some of the very prosecutors who bemoan this
13 legislation.

14 Take, for example, the case of Eraldo
15 Iannitelli of Langeloth, Pennsylvania who stopped
16 two teenagers wearing masks and carrying baseball
17 bats and one carrying a BB gun from robbing him for
18 the second time.

19 Mr. Iannitelli was arrested on charges of
20 attempted homicide, aggravated assault, and
21 recklessly endangering another person after
22 shooting one of the boys in the back early
23 Saturday, September 1st, 2007.

24 Ironically, all charges were dropped
25 against the sixteen-year-old teenager who was

1 shot. Mr. Iannitelli was found innocent and
2 charges were dropped later on.

3 The above treatment is not an isolated
4 case and is emblematic of a justice system that has
5 lost its focus on the most important role of this
6 system in society, to protect the innocent and
7 aggressively prosecute the guilty to the fullest
8 extent of the law.

9 Examples abound of how rhetoric is
10 obscuring the PDAA actions. Brad Foulk, former
11 president of PDAA, stated in June of 2009, whether
12 in the courtroom arguing a case...one role of
13 district attorneys is to ensure the victims of
14 crime aren't victimized again, especially by the
15 criminal justice system.

16 But as you're going to hear today, that's
17 not happening. It -- they are being victimized.

18 Pennsylvania prosecutors are committed to
19 ensuring the victims of crime are never lost in the
20 process of the larger debate. I would submit that
21 they haven't fully embraced that concept.

22 Yet this is exactly what is happening
23 across Pennsylvania. Where were the members of the
24 PDAA when Jack Noble was arrested and later found
25 not guilty for lawfully carrying a firearm in

1 public? They were prosecuting him.

2 Where were the charges for illegal arrest
3 and detention and unlawful seizure of Mr. Noble's
4 property? According to the judge, they did
5 nothing. But he was innocent and was lawful in
6 what he was doing. Somebody broke the law.

7 Where was the public outrage when
8 honorably discharged Marine Corps veteran Robert
9 Russell was stopped for a traffic citation in
10 Chester County that escalated into the seizure of
11 his lawfully owned firearms because local police
12 could not find him in the Pennsylvania State Police
13 database and contacted the wrong county to verify
14 his license to carry a firearm, even though the
15 phone number is on the license?

16 When the county District Attorney fails
17 to protect Mr. Russell's rights, who then becomes
18 his advocate?

19 In another PDAA press release, Centre
20 County District Attorney Michael Madeira said,
21 District Attorneys are bound by the law as it is
22 currently written. And yet the Pennsylvania
23 Commission on Sentencing report on the enforcement
24 of the Uniform Firearms Act reveals the lackluster
25 enforcement of PA gun laws. From straw purchase

1 prosecutions to theft of firearms to mandatory
2 sentencing for the use of a gun in a crime,
3 virtually every Pennsylvania firearms law has been
4 ignored, rendered useless, or plea bargained away
5 by a significant number of prosecutors within
6 Pennsylvania.

7 One of the most outrageous examples of
8 selective enforcement of PA laws is Title 18
9 Section 6120, preemption of local firearms laws.
10 Since 1994 local communities, townships, boroughs,
11 and counties have engaged in systematic rejection
12 of authority and civil disobedience by enacting
13 local firearms laws in defiance of state preemption
14 law, without the objection of a single District
15 Attorney in this Commonwealth.

16 In many areas of the Commonwealth
17 overzealous law enforcement is turning the lives
18 upside down of the average individual who owns
19 firearms.

20 These enforcement actions originate
21 almost entirely in the offices of District
22 Attorneys. They are very real cases of prejudice
23 and unfairness that reflect poorly on the
24 traditions we all hold dear.

25 Some of the legislature are calling for

1 responsible gun ownership, all the while ignoring
2 the importance of responsible and fair government.

3 The PDAA has chosen a path, not uniformly
4 supported by its own members, of selective
5 enforcement of laws and a dim view of
6 constitutional freedoms as well as refusing
7 accountability for their actions.

8 On behalf of the organizations I
9 represent, I thank you, Mr. Chairman, and the
10 committee members, for the opportunity to testify
11 here today.

12 We beseech you to set aside this --
13 unsupported allegations and innuendo of those
14 opposed to House Bill 40, and we ask each of you
15 for your support for this measure.

16 Pennsylvania citizens deserve the right
17 to choose self-defense over victimization at the
18 hands of criminals and their own government.

19 Thank you.

20 CHAIRMAN CALTAGIRONE: Thank you, Kim.

21 I also want to recognize Representative
22 Seip who is from Schuylkill County. Representative
23 Waters, a member of the Committee, is also here
24 with us.

25 And, John, I did want to mention -- and

1 you were right -- Scott Perry is a member of this
2 body. He's honorably serving this county. He was
3 called up. He's over in Iraq. And -- and we wish
4 him -- wish him well and this is his piece of
5 legislation.

6 Questions from the Committee. Any?

7 Chairman Marsico.

8 REPRESENTATIVE MARSICO: Thank you,
9 Mr. Chair.

10 John, thanks for your testimony today.
11 You mentioned 24 other states recently enacted
12 similar legislation. Is that what you said?

13 MR. HOHENWARTER: Yeah. I can run them
14 through real quick.

15 REPRESENTATIVE MARSICO: If you don't
16 mind just mentioning some of the states.

17 MR. HOHENWARTER: Sure. I'll run them
18 down here.

19 Alabama, Alaska, Arizona, Florida,
20 Georgia, Idaho, Indiana, Louisiana, Kansas,
21 Kentucky, Michigan, Maine, Mississippi, Missouri,
22 North Dakota, Ohio, Oklahoma, South Carolina, South
23 Dakota, Tennessee, Texas, West Virginia, Wyoming,
24 and Montana.

25 And, again, keep in mind, just because

1 there wasn't more than 24 states doesn't mean
2 anything, because a lot of these other states
3 actually had stand-your-ground legislation. And
4 Pennsylvania at this point is -- is one of the few
5 that -- that does not at this point.

6 REPRESENTATIVE MARSICO: Similar leg --
7 similar to --

8 MR. HOHENWARTER: Similar, correct. I
9 mean all -- the 24 states changed their laws
10 because their laws were inadequate. A lot of the
11 other states have not because their laws already
12 dealt with the issues that we're trying to deal
13 with here today.

14 REPRESENTATIVE MARSICO: Okay. Thank
15 you.

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

18 Thank you both for your testimony today.
19 I have a question that was raised by Mr. Gray, the
20 earlier test -- testifier, when he said that there
21 are many unintended consequences, he believes, in
22 this House Bill 40 and that it was, in his words, a
23 defense attorney's dream.

24 Could you address that issue for us
25 and a --

1 MR. HOHENWARTER: I would -- I would love
2 to --

3 REPRESENTATIVE STEVENSON: All right.
4 Thank you.

5 MR. HOHENWARTER: -- Representative. I
6 can sum it up very quick. Anti-gun rhetoric and
7 hyperbole. That's all it is.

8 We hear it in other states. I mean
9 you're going to hear that we've had problems in
10 these 24 states. Well, we're not -- we're not
11 talking about just 24 states. There is -- again,
12 as I had said, other states already have strong
13 self-defense laws.

14 The only problems that we've been having
15 in the new 24 states is problems with the
16 prosecutors and the lower courts not following the
17 law. We've -- we have a number of cases that -- on
18 appeal that can make it to the appellate court, for
19 instance, in Florida that have corrected a wrong
20 that actually was brought forth by the -- the
21 prosecutors.

22 So that's the problems we're having. Not
23 with a -- a gang member shooting another gang
24 member and claiming self-defense. That is
25 ridiculous. It's ridiculous.

1 REPRESENTATIVE STEVENSON: Thank you.

2 Thank you, Mr. Chairman.

3 CHAIRMAN CALTAGIRONE: Representative

4 Gabig.

5 REPRESENTATIVE GABIG: Thank you,

6 Mr. Chairman.

7 I guess I would -- I would ask a question
8 on -- on, you know, the state of the law in
9 America. You went over some that had made recent
10 changes, but it's -- it seems to me this duty to
11 retreat is a minority position in American
12 self-defense law. Is that right?

13 MR. HOHENWARTER: I would say yes. I
14 mean I can tell you that the majority of the 24
15 states that recently upgraded I guess -- for
16 lack -- I guess we could call that upgraded their
17 laws, most of them, all of them -- most of them all
18 put this stand-your-ground language in.

19 REPRESENTATIVE GABIG: And there is those
20 that changed it. They might have not had a duty to
21 retreat already and they've adopted some more
22 modern language.

23 But there's many others that do not have
24 a duty to retreat in their self-defense law.

25 MR. HOHENWARTER: That's exactly --

1 REPRESENTATIVE GABIG: Is that correct?

2 MR. HOHENWARTER: That's correct.

3 REPRESENTATIVE GABIG: And also there's
4 another, you know, part of American law, under the
5 federal system. Are you aware what the federal law
6 is on self-defense? Do they have a duty to retreat
7 as we do or are they more in line with the majority
8 of the states in America?

9 Do you know?

10 MR. HOHENWARTER: Well, I -- I would like
11 to get back to you on that because I -- I don't
12 want to --

13 REPRESENTATIVE GABIG: Okay. That would
14 be fair. That would be fair.

15 MR. HOHENWARTER: I know under the
16 Uniform Code of Military Justice, which is another
17 federal system of criminal law, that there's no
18 duty to retreat as we have here in Pennsylvania.

19 But if I -- I'm not sure on the federal
20 law. Maybe there's a lot of attorneys here.

21 So, to me, it's somewhat of a -- a
22 technical question. I was -- I was a prosecutor
23 for a long time, a member of the D.A. Association,
24 and I -- and I have read briefly their testimony
25 here and I know they have some issues with the

1 current language in the legislation.

2 But I think it's a little strong to call
3 the D.A.'s Association an anti-self-defense
4 organization or the District Attorneys, as a whole,
5 here in Pennsylvania, maybe even to a person,
6 but -- and -- and so I want to get in it. Because
7 I support this general legislation.

8 You know, there are some issues that are
9 pointed out, and I guess they'll be worked out as
10 we move this through.

11 So I support it. And I know the D.A.s
12 are going to have some issues because they're
13 worried about these gang things and how it's going
14 to work on there. You say it's not going to have
15 an impact and they do.

16 I tend on the whole to side with
17 Representative Perry on the issue generally. And I
18 voted that way. It's been here before and I voted
19 for it before.

20 But the D.A.s are elected in Pennsylvania
21 on all the county levels. There's 67 counties in
22 Pennsylvania. Right?

23 And I know that the -- many of them, I
24 know personally, and they are very pro Second
25 Amendment, many of them that I know. And, in fact,

1 as the -- as the NRA knows, many of them are pro
2 Second Amendment.

3 So I know you didn't say that; but I
4 would guess as the representative of the NRA you
5 cannot -- do you share that language, that
6 rhetoric, that the D.A.'s Association, because
7 they're opposing this or having some issues with
8 the language, is an anti-self-defense organization
9 here in Pennsylvania?

10 MR. HOHENWARTER: No.

11 REPRESENTATIVE GABIG: I know we're in a
12 battle here, but I'm just looking at the bigger
13 picture.

14 MR. HOHENWARTER: I wouldn't necessarily
15 stereotype obviously all of them. I think -- you
16 know, I think without question there's a number of
17 them, without doubt, are anti-gun,
18 anti-self-defense.

19 I -- overall, I -- you know, just like in
20 anything else, in any association, you -- you have
21 members that agree on certain issues and --

22 REPRESENTATIVE GABIG: Correct.

23 MR. HOHENWARTER: -- you know, members
24 that disagree.

25 I will tell you that the cases -- a

1 number of the cases and problems that we've had,
2 not only in Pennsylvania and around the country,
3 those problems were caused by overzealous
4 prosecutors.

5 REPRESENTATIVE GABIG: Right. I -- I --
6 you cited a couple cases, and that happens. Or
7 maybe not even overzealous, maybe just a bad -- bad
8 call.

9 MR. HOHENWARTER: Right.

10 REPRESENTATIVE GABIG: You know, they get
11 to deal with a lot of cases and they don't get them
12 -- every single one right.

13 But, in fact, I imagine that the D.A. --
14 the NRA endorses candidates in some of these
15 races.

16 MR. HOHENWARTER: In -- well, we -- we
17 take a look at all races that affect our membership
18 and the Second Amendment.

19 REPRESENTATIVE GABIG: That's right. And
20 so I'm sure it can be somebody that's endorsed by
21 the NRA certainly supports the Second Amendment and
22 supports self-defense might have some problems with
23 the particular language of this legislation.

24 Just because they're opposing us today
25 doesn't mean they're against us in the larger

1 battle of trying to protect the citizens, both
2 corporately, as you indicated, and individually,
3 and I'm sure that's why you have supported many of
4 the D.A.s that have sought election in the
5 Commonwealth of Pennsylvania. Is that correct?

6 MR. HOHENWARTER: That's correct. But
7 I -- I also would -- would like to say that, you
8 know, there's a difference between opposing a bill
9 and asking for changes to a bill.

10 Now, you know --

11 REPRESENTATIVE GABIG: I agree with
12 that.

13 MR. HOHENWARTER: Well, I'm not saying --

14 REPRESENTATIVE GABIG: We're early on
15 here.

16 MR. HOHENWARTER: Right.

17 REPRESENTATIVE GABIG: We're -- this is
18 information. We're not voting.

19 MR. HOHENWARTER: Right. We're opening
20 up the debate on this issue.

21 REPRESENTATIVE GABIG: Okay.

22 MR. HOHENWARTER: And I -- I'm not going
23 to sit here and tell you that --

24 REPRESENTATIVE GABIG: Okay. So we could
25 keep the door open to the PDAA as we move through

1 here, I guess is what I'm trying to say here. And
2 we don't --

3 MR. HOHENWARTER: Absolutely.

4 REPRESENTATIVE GABIG: We don't have to
5 die on our sword today, I don't think --

6 MR. HOHENWARTER: No.

7 REPRESENTATIVE GABIG: And say this is
8 going to be the NRA versus the PDAA. Now,
9 CeaseFire and the -- the NRA, I doubt -- I doubt if
10 they're ever going to come to terms on this, any
11 piece of this or of many, many of these issues down
12 the road.

13 But I guess I just wanted to get that on
14 the -- on the record since I have good friends on
15 both sides of this issue and I wanted to --

16 MR. HOHENWARTER: As we do.

17 REPRESENTATIVE GABIG: Sure.

18 MR. HOHENWARTER: And I'm agreeing with
19 you.

20 REPRESENTATIVE GABIG: Okay. Thank you
21 very much.

22 CHAIRMAN CALTAGIRONE: Thank you, Will.
23 Representative Drucker.

24 REPRESENTATIVE DRUCKER: Mr. Hohenwarter,
25 if I -- if I heard you correctly, you just said

1 that there are -- I'm not sure if you said many,
2 but district attorneys that are anti-self-defense
3 in Pennsylvania.

4 MR. HOHENWARTER: Uh-huh.

5 REPRESENTATIVE DRUCKER: The elected
6 officials that are -- that you --

7 MR. HOHENWARTER: I would classify them
8 as that.

9 REPRESENTATIVE DRUCKER: Would you tell
10 me who?

11 MR. HOHENWARTER: Well, I am not -- I
12 don't think this is the time or place to actually
13 give, you know, name calling.

14 REPRESENTATIVE DRUCKER: Well, you made a
15 statement collectively against the Pennsylvania
16 district attorneys.

17 MR. HOHENWARTER: Correct.

18 REPRESENTATIVE DRUCKER: Some of them are
19 anti-self-defense. I'm asking you, which ones?

20 MR. HOHENWARTER: And -- and I will
21 respond by this is not the time and place.

22 REPRESENTATIVE DRUCKER: It -- it's the
23 time and place to attack them, but it's not the
24 time and place --

25 MR. HOHENWARTER: I have not attacked an

1 individual.

2 REPRESENTATIVE DRUCKER: I understand
3 that. You attacked a group.

4 MR. HOHENWARTER: I -- I -- I had
5 attacked -- and I won't even say attacked.
6 Statement of fact. I mean I gave you a statement
7 of fact that the problems, the reason we're here
8 today, a large part of that problem,
9 representative, is from overzealous prosecutors and
10 that is a statement of fact.

11 REPRESENTATIVE DRUCKER: Well, you also
12 said that several prosecutors -- you did say
13 several -- district attorneys are
14 anti-self-defense, and I asked you to name --

15 MR. HOHENWARTER: Well, I would classify
16 an individual -- an overzealous prosecutor in a
17 self-defense case as being anti-self-defense.

18 I don't know how else you can classify
19 it. And I think for me to sit here and -- and give
20 you names of people who I believe fit that
21 description is -- is wrong and I'm -- it's not the
22 time nor place to do it, representative.

23 REPRESENTATIVE DRUCKER: Mr. Stolfer, I
24 have a question for you. In the beginning of your
25 testimony you gave the names of several police

1 officers that were killed in the line of duty.

2 MR. STOLFER: Yes, sir.

3 REPRESENTATIVE DRUCKER: In support of
4 passage of H.B. 40. Are you --

5 MR. STOLFER: No, that was -- I'm sorry,
6 sir. That was actually to restate the fact that
7 they pass -- they were killed by individuals who
8 were recidivist criminals.

9 REPRESENTATIVE DRUCKER: All right.
10 What -- what does that have to do with the passage
11 of H.B. 40? I mean are you suggesting that they
12 would be alive if this bill had been passed?

13 MR. STOLFER: No. I suggest that we
14 would have violent criminals on the streets that
15 are willing to target police officers and the duty
16 to retreat, if not modified, puts citizens in
17 harm's way.

18 Because if they choose not to defend
19 themselves or to retreat in the face of an
20 individual willing to kill a police officer, how
21 much harm can be extended to that average citizen
22 who doesn't have that kind of training?

23 I teach people -- I'm an NRA firearms
24 training counselor. I also teach law enforcement
25 in the military.

1 REPRESENTATIVE DRUCKER: I understand
2 that. I'm missing the connection between the death
3 of these police officers and the passage of this
4 bill.

5 MR. HOHENWARTER: If I -- may I?

6 MR. STOLFER: Sure.

7 MR. HOHENWARTER: Well, I think, you know
8 that's another debate. What you had -- that is a
9 debate on the revolving door courtroom that we have
10 in Pennsylvania, which we could spend all day
11 talking about that.

12 But I think this goes back to the earlier
13 testifiers stating that -- I'm trying to think of
14 the exact language. This is a -- this has nothing
15 to deal with gun violence. Well, you know, of
16 course -- you know, I -- I sat and listened to
17 testimony dealing with gun violence in
18 Pennsylvania.

19 This bill has nothing to do with gun
20 violence. It has to do with closing loopholes in
21 the self-defense laws. So I don't know if that
22 answers your question or not.

23 REPRESENTATIVE DRUCKER: I -- I don't
24 think it does, but that -- that's okay.

25 Thank you.

1 CHAIRMAN CALTAGIRONE: Okay. I'd just
2 like to remind the members that Appropriations is
3 going to be in here at 1:30 today, and we're
4 grinding this out. And I -- I do want to hear from
5 everybody else that's going to be testifying before
6 the panel.

7 Thank you, John.

8 MR. HOHENWARTER: Thank you.

9 CHAIRMAN CALTAGIRONE: Thank you, Kim.

10 MR. STOLFER: Thank you.

11 MR. HOHENWARTER: Thank you.

12 CHAIRMAN CALTAGIRONE: We'll next hear
13 from my dear friend, District Attorney and
14 President of the District Attorney's Association,
15 Ed Marsico, and Kathy McDonnell, legislative
16 liaison for PDAA.

17 MS. McDONNELL: And Chief Armstrong, too,
18 Chairman.

19 CHAIRMAN CALTAGIRONE: Oh, I'm sorry.
20 I'm sorry. I apologize.

21 DISTRICT ATTORNEY MARSICO: Good morning,
22 Chairman. I'm also joined with Chief Armstrong,
23 for the Pennsylvania Chiefs of Police here this
24 morning.

25 My name is Ed Marsico. I am District

1 Attorney in Dauphin County and President of the
2 Pennsylvania District Attorney Association.

3 I'm pleased to have the opportunity today
4 to offer testimony on behalf of my association
5 concerning House Bill 40, which as we all know,
6 contains proposed amendments to Pennsylvania's
7 self-defense or justification statute.

8 As a representative of the District
9 Attorneys, I recognize and respect the right of all
10 citizens of Pennsylvania to bear arms and defend
11 themselves and their homes.

12 As Representative Gabig has said, to me
13 this is not a gun rights issue. It has nothing to
14 do with the Second Amendment. Nothing to do with
15 the right to bear arms. I think we have to focus
16 on what this legislation does and doesn't do at
17 this time.

18 As a District Attorney I'm entrusted by
19 voters of my county with the duty of ensuring
20 public safety throughout the community, which is
21 Dauphin County.

22 I believe Pennsylvania's current law
23 demonstrably provides residents -- or protects
24 residents in their use of force and self-defense
25 and that House Bill 40 provides an overbroad, vague

1 and dangerous expansion for the use of deadly force
2 on the streets of our state. That's why the
3 Pennsylvania District Attorney Association opposes
4 this legislation.

5 I'm glad that Mayor Gray has seen the
6 light after his years as a defense attorney and has
7 come over to the good side from the dark side
8 and -- and agrees now as mayor of the city of
9 Lancaster that there are problems out there that
10 this legislation would exacerbate.

11 The principal purpose of House Bill 40 --
12 and I believe Representative Perry -- I've known
13 Representative Perry for a long time -- I believe
14 he's well intentioned with introducing House Bill
15 40. I just believe his intentions, while well
16 intentioned, will have disastrous effects.

17 House Bill 40 would eliminate the duty to
18 retreat from Pennsylvania statutory provisions that
19 require one who is going to use deadly force and
20 self-defense in the defense of others to retreat
21 with complete safety if they could.

22 These changes are unprompted. I know of
23 no widespread problem. We heard from
24 Mr. Hohenwarter about a -- a few cases, but I know
25 of no widespread problem with this application of

1 the law throughout the state. And, again, I'd say
2 show me the cases, show me the problems.

3 The one case he cited from Venango County
4 wouldn't be affected by House Bill 40. It was a
5 case where the guy was in his home, according to
6 Mr. Hohenwarter's version. And fired a .22 through
7 the door.

8 House Bill 40 would not have the duty to
9 retreat -- the retreat portion of House Bill 40
10 would not have been affected. Some of the other
11 provisions may have.

12 So in my mind House Bill 40 does nothing
13 to strengthen the rights of an individual to defend
14 his or her home or his place of work. In fact, the
15 proposed amendments, as counsel stated,
16 Mr. Andring, are going to eliminate some of the
17 special importance that we placed over the years on
18 one's home.

19 And this law, this duty to retreat, while
20 there has been some recent changes -- I mean I went
21 to law school a long time ago, and -- and the duty
22 to retreat has been around for a long time outside
23 of one's home if you can retreat with complete
24 safety.

25 You know, calling this the Castle

1 Doctrine is -- is a misnomer. It really is. We
2 have a Castle Doctrine, and no one wants to tinker
3 with that. Your home is your castle. You can
4 protect it.

5 What this is all about is -- is a shoot
6 first doctrine and ask questions later. These new
7 subsections I believe -- I'm not saying they'd
8 create the Wild West as, you know, Mr. Hohenwarter
9 said, some advocates in other states have said, oh,
10 this will lead to a Wild West. It -- it -- it
11 probably wouldn't.

12 But what you're not going to see are the
13 cases we try in courts in Lancaster, York, Reading,
14 Harrisburg, every day. The drug dealer on the
15 street who shoots another drug dealer, who now, as
16 Mr. -- Mayor Gray said, the defense attorney is
17 going to have a tool to raise -- that's going to be
18 that he didn't have the duty to retreat, that he
19 acted in self-defense and we'll have that guy,
20 probably an illegal gun owner -- illegal gun
21 carrier who will be acquitted and be released back
22 on the streets to purvey violence, to provide more
23 drugs.

24 That's what's going to happen. No, it's
25 not going to be big news every time when we lose

1 these cases. But as a practical matter, that's
2 where we're going to go.

3 Under current Pennsylvania law, a
4 resident never has the duty to retreat, as we've
5 said, inside the home or place of work regardless
6 of whether that retreat could be safely made.

7 This new law -- the current law -- I'm
8 sorry -- should say to create protection to
9 residents who are threaten by deadly force while
10 also balancing the need to reduce violent physical
11 confrontations and the associated threat to public
12 safety.

13 Our current right to self-defense only
14 excludes a resident who engages in wholly avoidable
15 and the unnecessary taking of another human life.

16 By expanding this concept or stand your
17 ground or eliminating the duty to retreat, what I
18 think you're doing is, the duty to retreat was
19 designed to protect the value of human life.

20 I was going to use Ms. Coates when she
21 was sitting there but she left. Mrs. Coates and I
22 went to law school together.

23 But I'll -- I'll use the chairman,
24 Chairman Caltagirone. If you were to come up to me
25 on the street with a pocket knife and I have my 9

1 millimeter that I legally own and pull that out,
2 legally have a permit to carry, against
3 Representative Caltagirone, you know, today I could
4 retreat in complete safety.

5 Now, he might be a little faster than
6 me. Might be able to catch me. But there's no
7 requirement that I turn my back and run. The duty
8 to retreat is only if I can do so with complete
9 safety.

10 So if I can pull out my -- legally
11 carried firearm when he pulls that knife on me and
12 I can back away in complete safety, then what have
13 we -- what have we accomplished? We saved his
14 life.

15 What this law is saying is now, when he
16 pulls that pocketknife, even though I can retreat
17 with complete safety, I could fire away and kill
18 him. And I have a defense.

19 CHAIRMAN CALTAGIRONE: You got to
20 remember, you never bring a knife to a gun fight.

21 DISTRICT ATTORNEY MARSICO: Exactly. And
22 you know what? That's -- when I think about it, I
23 teach police officers these provisions here in our
24 local municipal police academy, and really our
25 force laws are all designed about you meet force

1 with force.

2 You know, if someone goes to punch me, I
3 can't pull out a gun and shoot him. I can't use
4 deadly force in that scenario. No one is
5 advocating that -- that type of expansion today.

6 But the law was designed reasonably to
7 try to minimize the catastrophic effects you could
8 have in that scenario, the knife at the gun fight.

9 I truly believe the largest impact of
10 House Bill 40 will be to provide both gang killers
11 or other -- other drug killers in the Commonwealth
12 with a ready defense for the use of violence
13 against one another.

14 You know, most of our prosecutions for
15 murder -- you heard about our murder rate.
16 Harrisburg has the highest per capita murder rate
17 in the state. We've passed my good friends in
18 Philadelphia, and we're right there with -- a
19 little bit above Reading.

20 Most of our killings are one drug dealer,
21 someone involved in the drug trade or someone
22 involved in illegal activity, shooting others.

23 This is going to open -- and I know
24 there's a provision in there about, well, if
25 they're engaged in illegal activity they can't

1 avail themselves of the defense. It's really going
2 to make it difficult to prosecute those cases.

3 The probability of successful prosecution
4 under current law remains high because the duty to
5 retreat negates the availability, that ready
6 availability of a self-defense claim.

7 With the proposed shoot-first provisions
8 of House Bill 40, these guys, these thugs on the
9 street will have a legitimate claim of
10 self-defense, even though the shooting could have
11 been avoided altogether.

12 Street violence impacts more than gang
13 members. We all know that. Oftentimes there's
14 innocent bystanders that are -- are struck and
15 killed in the exchange of gun fire -- gun fire.

16 In Philly, as a ten-year-old boy, Faheem
17 Thomas-Childs, the killers of him, asserted
18 self-defense to justify their shooting at rival
19 gang members.

20 The homicide prosecutor who tried
21 Faheem's killers has indicated that had House 40 --
22 House Bill 40 been in effect at the time that young
23 Faheem was killed in that crossfire the killers may
24 well have been acquitted and back on the street
25 today.

1 To quote the prosecutor, Mr. Gilson, if
2 the duty to retreat is removed, then many violent,
3 ruthless killers will be permitted to get away with
4 murder.

5 In Florida, where there is this expansion
6 of the Castle Doctrine, prosecutors were unable to
7 convict Dame -- Damon Darling on the murder charge
8 for the death of nine-year-old Sherdavia Jenkin
9 because of Florida's no-duty-to-retreat law.

10 She was -- the young girl was killed
11 while playing with her dolls in the courtyard of
12 her housing community when Darling exchanged
13 gunfire with a rival.

14 I think another impact of House Bill 40
15 would be to encourage overly aggressive behavior.
16 The law-abiding citizen probably isn't paying
17 attention to this. But the thugs on the street
18 know when there's changes in the law and know how
19 to exploit the loopholes. Word gets around.

20 Road rage is another area where tempers
21 flare, and hot-tempered motorists threaten and
22 menace one another. If one driver is larger than
23 another or has a tire iron or jack in his hand, the
24 other could feel they're facing a potentially
25 life-threatening situation. If they could retreat,

1 I think we want to encourage that retreat in a road
2 rage situation rather than violence that could be
3 avoided.

4 The provisions of this bill would
5 substantial -- substantially increase the use of
6 deadly force to instances where no threat of deadly
7 force was made against the actor or the use of
8 deadly force was unnecessary.

9 And as Counsel Andring pointed out, this
10 uses the -- this is one of these presumptions to
11 do, that's generally a practice disfavored by the
12 Pennsylvania Supreme Court, but under the
13 provisions of House Bill 40 the resident has the
14 benefit of a presumption of reasonable fear of
15 deadly force if the resident knew or had reason to
16 believe an intruder has unlawfully entered or
17 attempted to enter the resident's dwelling,
18 residence, or occupied vehicle.

19 The presumption, new presumptions would
20 allow residents the use of deadly force even when
21 an unarmed thief is fleeing from the resident's
22 home. Again, are we encouraging that type of
23 violence, expanding the right to kill solely in
24 defense of property?

25 I can't speak for every prosecutor across

1 the street -- the state; but I can tell you, you
2 know, someone that's in their home, who is
3 defending themselves, is going to get the benefit
4 of every doubt in a charging decision, I think
5 whether it's the State Police or a local municipal
6 police department or a prosecutor ultimately make
7 that decision.

8 I have had situations where I have not
9 charged drug dealers with homicide because I
10 legitimately believe they were acting in
11 self-defense and are self -- and had no opportunity
12 to retreat with complete safety.

13 We had a case in Harrisburg where a guy
14 was robbing another drug dealer, was pistol
15 whipping him to the point that he was bloody, had a
16 broken nose, was threatening to shoot him. The guy
17 pulled out his gun, shot and killed his assailant.
18 We didn't charge him with the homicide. He had no
19 ability to retreat. He was backed up against a
20 wall.

21 Charged him with violating the Uniform
22 Firearms Act. Contrary to previous testimony here,
23 we try to strictly enforce drug violence -- gun
24 violence crimes here when there's illegal carriers
25 of firearms, and I think most of my colleagues do

1 the same.

2 And I'd invite the two gentlemen who were
3 up here previously to join with us and the members
4 of this committee, Representative Boyle and others,
5 in crafting repeat violent offenders legislation
6 this committee is working -- working hard on.

7 So, you know, we're -- we stand ready to
8 work with them on efforts like that.

9 There's no doubt that House Bill 40 will
10 encourage residents to take the law into their own
11 hands, even when not threatened with deadly force.
12 In Texas, there's a widely reported case where an
13 individual shot and killed two men who he saw
14 breaking into his next-door neighbor's home, even
15 after the 911 operator advised him the police would
16 soon be on hand. An officer had already reached
17 the scene as the individual shot the two men from
18 the rear because they were coming into his front
19 yard.

20 In incidents of lethal shootings of
21 unarmed and fleeing suspects, I think you're seeing
22 anecdotal evidence of those in these states that
23 have passed such laws.

24 A 2008 University of Miami Law Review
25 article studied the consequences of Florida's new

1 law and among those problems cited are difficulties
2 the prosecutors now face in charging violent
3 crimes.

4 Within eight months of enactment, a Duval
5 County State Attorney cited at least five cases
6 where the law had influenced the State Attorney
7 office's decisions in violent charges, including
8 two road rage incidents, one where a woman was
9 stabbed to death by another woman.

10 Again, self-defense doesn't just include
11 use of firearms. This isn't about gun rights. It
12 could be any type of weapon. So there's problems
13 in interpretation of these statutes.

14 In Florida -- and Mr. Hohenwarter alluded
15 to this -- a circuit split exists as to the
16 availability of the use of force under shoot
17 first. You know, even in our old bill, I think
18 Mr. Andring pointed out some problems just looking
19 at it right now.

20 I firmly believe that House Bill 40 is an
21 unwieldy expansion of self-defense that provides
22 drug dealing thugs, gang members, road rage killers
23 with a valid defense and that encourages a
24 disproportionately aggressive response by these
25 individuals.

1 The bill also -- the language of the
2 statute allows for conflicting interpretations and
3 applications of our self-defense law which is going
4 to lead to inconsistency throughout the state.

5 I recognize that there are some proposed
6 amendments in House Bill 40 that I have not
7 addressed today, such as civil immunity, and I've
8 talked to the members of the committee about, you
9 know, looking at those more in depth and with
10 Mr. Hohenwarter in the future. But I wanted to use
11 my time today to focus on the problematic issues
12 within the -- the bill.

13 I really think this is an unnecessary and
14 dangerous addition to the self-defense law. At a
15 time we have expanding violence in Pennsylvania,
16 unfortunately, why do we want to encourage more
17 carnage, more damage on our streets? Shouldn't we
18 be trying to prevent added violence?

19 Again, all this case will do is make it
20 difficult to prosecute those individuals that
21 choose to engage in violence every day in the
22 boroughs, towns, and cities of our Commonwealth.

23 Thank you.

24 CHAIRMAN CALTAGIRONE: Thank you, Eddie.

25 MS. McDONNELL: I don't have anything to

1 add.

2 CHAIRMAN CALTAGIRONE: Chief?

3 CHIEF ARMSTRONG: I'm here representing
4 the Pennsylvania Chiefs of Police Association.

5 We don't have any formal testimony. We
6 support the position of the District Attorney's
7 Association and you have a letter from us --

8 CHAIRMAN CALTAGIRONE: Yes, sir.

9 CHIEF ARMSTRONG: -- in opposition of
10 this bill. Thank you.

11 CHAIRMAN CALTAGIRONE: Thank you.

12 Members, questions?

13 Representative Waters.

14 REPRESENTATIVE WATERS: Thank you. Thank
15 you for your testimony.

16 I just want to say a couple things. Like
17 I say, I'm kind of contrary in my approach to it,
18 but I just want to make it -- make it known that
19 I'm a true believer that a person should have a
20 right to protect themselves and their family under
21 all circumstances.

22 Anybody who comes inside of your property
23 and presents harm to you, your family, you have a
24 right to defend yourself and that person is -- put
25 -- has put their life in jeopardy by doing so.

1 I have a -- am someone who has been --
2 and also on the flip side of that -- an advocate
3 for reasonable gun legislation at the same time.
4 Because I want to see people behave appropriately
5 with a weapon.

6 I don't know if this bill has anything in
7 there that would recommend increased training of a
8 person who owns a firearm if you do increase the
9 ability to use a firearm.

10 I also believe that we have -- we run on
11 dangerous ground because in my neighborhood we have
12 people who work for the post office, for instance,
13 who might come to your house and they don't always
14 have a post office uniform on and sometimes they
15 look a common person on the street and a stranger.

16 So people could get nervous when someone
17 comes to their door. In a couple months I'm going
18 to be knocking on doors circulating petitions,
19 members, and sometimes you might knock on
20 somebody's door who you don't know. And -- and I
21 don't want them to be nervous when they go to their
22 door. I don't want them to think they have an
23 expanded ability to use deadly force when they go
24 to their door and don't recognize who's knocking at
25 their doors.

1 I come in peace. I don't want them to
2 make a mistake and get gun happy because now
3 there's a new law that says they will be able to
4 justify their reaction.

5 I'm also concerned about police officers,
6 too, in this. Because we know police officers have
7 made the mistake of going to the wrong house, and a
8 person -- and that they raid someone's house and
9 now a person has a right to -- to act first and
10 think later, I'm concerned about the safety of
11 police officers.

12 I think that having the stand your ground
13 is important but I also believe you should think,
14 too.

15 I'm a little -- I get nervous about
16 expanded gun use because we live in a dangerous
17 climate right now and I believe people should have
18 the right to defend themselves but at the same time
19 if we don't have reasonable, responsible gun laws
20 in place this could get out of hand.

21 So, Mr. Chairman, I just want to say
22 that, for the record, I support a person's right to
23 defend themselves and protect themselves and their
24 family and their property, but I also get nervous
25 when a person has a right to interpret what they

1 consider as a threat approaching them and use
2 deadly gun force.

3 So I just want to say that as a matter of
4 record. And glad that you came here to give the
5 flip side of how we should have -- be viewing this
6 legislation that is pending today.

7 And I thank you.

8 DISTRICT ATTORNEY MARSICO: Thank you.

9 CHIEF ARMSTRONG: Thank you.

10 CHAIRMAN CALTAGIRONE: Thank you.

11 I do want to recognize the presence of
12 Representative Turzai, Republican Whip of the floor
13 of the House.

14 REPRESENTATIVE TURZAI: Thank you very
15 much.

16 CHAIRMAN CALTAGIRONE: Certainly.

17 Richard.

18 REPRESENTATIVE STEVENSON: Thank you,
19 Mr. Chairman.

20 I noticed -- thank you for your testimony
21 today, Mr. Marsico. I -- at the end of your
22 testimony, you said you didn't address the civil
23 immunity issue here.

24 Do you feel prepared to address that at
25 all today and what -- the value of that change?

1 DISTRICT ATTORNEY MARSICO: Again, it's
2 not something that's going to relate to most of us
3 in our job as prosecutors. So I probably
4 shouldn't.

5 But I would be willing to sit down and
6 take a look at that. I --

7 REPRESENTATIVE STEVENSON: I think you
8 would agree that's a major change in the --

9 DISTRICT ATTORNEY MARSICO: Yes.

10 REPRESENTATIVE STEVENSON: -- in the
11 law?

12 DISTRICT ATTORNEY MARSICO: It is
13 certainly a major change --

14 MS. McDONNELL: Yes.

15 DISTRICT ATTORNEY MARSICO: -- you know,
16 in civil liability from my read of it.

17 REPRESENTATIVE STEVENSON: And can you
18 say -- do you feel that's a good change in that
19 direction or not?

20 DISTRICT ATTORNEY MARSICO: I'd rather
21 take a better look at that, representative --

22 REPRESENTATIVE STEVENSON: All right.

23 DISTRICT ATTORNEY MARSICO: -- before I
24 speak to that.

25 REPRESENTATIVE STEVENSON: Thank you.

1 DISTRICT ATTORNEY MARSICO: Sorry.

2 REPRESENTATIVE STEVENSON: Thank you,
3 Mr. Chairman.

4 DISTRICT ATTORNEY MARSICO: I'm sorry.

5 CHAIRMAN CALTAGIRONE: Certainly.
6 Kathy.

7 REPRESENTATIVE MANDERINO: Thank you.

8 Thank you for your testimony.

9 I guess this is more of a statement, but
10 I still feel compelled to make it since this is
11 being recorded by a stenographer, and I know
12 Mr. Marsico that you were kind of tongue-in-cheek
13 teasing the -- the Mayor of Lancaster about coming
14 over from the dark side.

15 So I am acknowledging that I'm sure you
16 were being tongue-in-cheek but I don't think the
17 tongue-in-cheek would come across on --

18 DISTRICT ATTORNEY MARSICO: On the
19 record.

20 REPRESENTATIVE MANDERINO: -- on the
21 record. And so I feel compelled to say that I
22 don't --

23 DISTRICT ATTORNEY MARSICO: Thank you.

24 REPRESENTATIVE MANDERINO: -- see
25 somebody who is doing their job in their capacity

1 as a criminal defense attorney and defending their
2 client as necessarily being on the dark side.

3 Nor do I see a mayor in his capacity as a
4 mayor doing and advocating for policies that he
5 thinks is in the best interests of the citizens as
6 being necessarily in -- inconsistent.

7 DISTRICT ATTORNEY MARSICO: And I
8 totally a -- just -- I'm sorry to interrupt,
9 representative.

10 I totally agree. I didn't mean that.
11 And knowing Mayor Gray and his history as a defense
12 attorney, and being a prosecutor for many years --

13 REPRESENTATIVE MANDERINO: Right.

14 DISTRICT ATTORNEY MARSICO: -- I meant it
15 in that spirit. So -- and as a prosecutor I should
16 have known that that would not be reflected in the
17 record.

18 So I thank you for correcting that.

19 REPRESENTATIVE MANDERINO: Sure. But --
20 but it also -- it -- it -- the -- the -- the prior
21 testimony, too -- and I know we have a tendency
22 when we feel emotional about things to be maybe a
23 little bit more heated or passionate, that we do,
24 but I think when we use words that tend to
25 demonize, whether we demonize the -- the District

1 Attorney's Association or -- or we -- we use
2 language that could demonize a criminal defense
3 attorney, we -- we take away from the weight of the
4 work that we do.

5 And so I -- I would hope that we would
6 all be careful to -- to not inflame unnecessarily
7 and paint with a broad brush because I think it
8 takes away from our message.

9 But I thank you, and everyone who has
10 come so far to testify, for being here.

11 MS. McDONNELL: Thank you.

12 DISTRICT ATTORNEY MARSICO: Thank you.

13 CHAIRMAN CALTAGIRONE: Any other
14 members?

15 Counsel.

16 MR. ANDRING: Just something to point out
17 quickly. You indicated clearly this bill isn't so
18 much about the Castle Doctrine, because we already
19 have a Castle Doctrine, and have since common law.

20 It's about what are called
21 stand-your-ground laws, removing the duty to
22 retreat in all situations.

23 And just to clarify some -- some earlier
24 comments, my understanding, that at this point
25 there are only 13 states that have

1 stand-your-ground laws, have removed the duty to
2 retreat.

3 DISTRICT ATTORNEY MARSICO: That's what
4 our research revealed. But I --

5 MR. ANDRING: And so this is not
6 something that's sweeping over the county.

7 DISTRICT ATTORNEY MARSICO: No. And
8 Representative Gabig brought that up. I -- I --
9 my -- our research revealed that there was 13
10 states.

11 MS. McDONNELL: Yes.

12 DISTRICT ATTORNEY MARSICO: Now, I guess,
13 you know, there's different versions of it,
14 different shades of -- of the legislation, and
15 that's something we can probably gather some
16 more --

17 MS. McDONNELL: Yeah. Yes, I would offer
18 my services to put together a chart about which
19 states have what and whether it's stand your ground
20 or not. I think it would be helpful to the
21 Committee.

22 MR. ANDRING: Thank you.

23 CHAIRMAN CALTAGIRONE: Thank you. That
24 would be great.

25 Any other questions?

1 Thank you.

2 DISTRICT ATTORNEY MARSICO: Thank you,
3 Mr. Chairman.

4 MS. McDONNELL: Thank you.

5 CHAIRMAN CALTAGIRONE: Appreciate your
6 testimony.

7 We'll next hear from Fred Shaffer,
8 citizens in support of House Bill 40, and Michael
9 Charles, Philadelphia Democratic Executive
10 Committee, 54th Ward, 16th District.

11 MR. SHAFFER: Mr. Chairman and committee
12 members, I'm Frank Shaffer, and I thank you for the
13 opportunity to be here today pertaining to House
14 Bill 40.

15 First, I want to make clear I
16 unequivocally believe in God-Jesus Christ, the
17 Pennsylvania and United States Constitution, the
18 Bill of Rights, life, liberty, the pursuit of
19 happiness and freedom for all people.

20 Second, it is important to note that at
21 the time of the following incident I was recovering
22 from neck surgery performed just 90 days earlier,
23 and I was in no physical condition to defend myself
24 or to fight.

25 I have experience dealing with the use of

1 a firearm to defend myself and my wife from an
2 angry assailant during an incident that took place
3 on a Pennsylvania public highway.

4 We were first placed in serious imminent
5 danger by an 80,000 pound tractor-trailer driven
6 within inches of the rear of our car for about a
7 mile; pelted with an unknown, hard substance, which
8 scratched the paint on the car; and then physically
9 attacked by the driver of the truck after pulling
10 off the road while summoning police help. And the
11 police took about 20 minutes to get there.

12 Unbeknownst to my wife and I, the driver
13 had stopped his truck after we thought he had gone
14 the opposite direction from our route of travel.

15 Suddenly, my attention was drawn to loud
16 profane language, threats to kill me, and other
17 incoherent speech emanating from the assailant as
18 he ran across the highway barrier toward our car,
19 so angry his face was bright red.

20 He carried an unidentified black object
21 in his hand. He was so angry he either didn't care
22 or didn't hear me when I repeatedly warned him that
23 I had a gun.

24 After two verbal warnings, I warned him a
25 third time and also raised my shirt to expose the

1 gun holstered on my belt. After getting within
2 about three to four feet from me, while I was
3 walking backwards, attempting to get into my car, I
4 pulled the gun from the holster and told him I
5 would shoot him.

6 He immediately, and without hesitation,
7 stopped moving toward me and retreated back to his
8 truck. No shots were fired that day. Nobody was
9 injured.

10 Three people, that would be my wife,
11 myself, and the truck driver, were placed out of
12 harm's way because, and only because, I had
13 possession of a gun and the right to use it.

14 House Bill Number 40 is very important
15 legislation. It is long overdue that the rights of
16 citizens, all of their rights, but, in my opinion,
17 especially the right to carry and bear arms, not be
18 challenged, nor infringed upon by anyone,
19 especially, and most importantly, the government
20 with specific emphasis placed on police
21 organizations.

22 Except for oppression, control, and
23 governing dominance by some, directed toward the
24 people, the police and other government officials
25 need to understand, uphold, defend, and respect the

1 right of the people to carry and bear arms.

2 The aforementioned incident, because of
3 police and sheriff actions against me that day,
4 created embarrassment to me and my family, loss of
5 income, violation of my rights.

6 House Bill Number 40 is good legislation
7 upholding the God given rights of the people and it
8 supports and clarifies -- and clarifies is the
9 important word here -- the rights given to the
10 people by the Founding Fathers of our country and
11 this Commonwealth.

12 House Bill Number 40 is a must pass
13 bill. However, in my opinion, there is critical
14 need for expansion of this bill and/or other
15 separate legislation to strongly and effectively
16 control police powers and authority within this
17 Commonwealth.

18 Before I close, the reference by the
19 previous speaker about being bloodied and beaten
20 before you can defend yourself shouldn't have to
21 occur in this state.

22 That is exactly what the State Police
23 told me when they showed up on the scene. I ended
24 up the victim. That officer told me I wasn't
25 bleeding, near dead, laying on the ground, so I was

1 a criminal for pulling that gun.

2 This is why this House Bill has to pass
3 and this is why clarification is so extremely
4 important in this law. There shouldn't be any more
5 cloud by whomever it is, whether it's the District
6 Attorney's Association, other prosecutors or
7 anybody else. The cloud needs to be lifted.
8 Clarity needs to be provided on what the citizens
9 of this state -- what their rights are and their
10 authority to protect themselves, their family and
11 their homes.

12 So, in closing, I respectfully thank you
13 for the opportunity to speak here today. I support
14 House Bill Number 40. I urge you to pass it
15 without hesitation, unless that hesitation is
16 consideration to reduce police power. We need
17 police and I respect them. I have relatives that
18 are police officers and I have attorneys that are
19 relatives.

20 But be cautious of organized police
21 powers. You do not have to look too far back in
22 history to realize that organized police efforts
23 and organized police powers as a group are
24 dangerous to the society as a whole, and citizens
25 in general.

1 Thank you very much.

2 CHAIRMAN CALTAGIRONE: Thank you.

3 Mike.

4 MR. CHARLES: Good morning. My name is
5 Michael Charles. I'm a Democratic committeeman in
6 the 54th Ward, 16th Division of Philadelphia, which
7 is in the lower northeast.

8 I came here today because I thought it
9 was important to present a point of view from the
10 Philadelphia area that I don't believe is usually
11 expressed. And that is that I am completely and
12 absolutely for House Bill 40 in its entirety,
13 because I believe that it, importantly, clarifies a
14 number of areas of ambiguity or areas which I'll
15 get into in a -- in a few minutes where there's too
16 much area for interpretation and how the law is
17 applied to a Pennsylvanian depends on either where
18 they live or where an incident happens. And this
19 is why I'm here.

20 I want to thank the committee for giving
21 me the opportunity to testify, especially since
22 I got -- sort of got on the list last minute.

23 I ask the Committee's indulgence in terms
24 of me being a little nervous. I've given, you
25 know, talks -- spoke in front of public hearings

1 before, but I've never given formal testimony
2 before such an august body.

3 I want to address each of the areas that
4 this bill covers in turn and then draw some
5 conclusions.

6 With regard to the Castle Doctrine
7 portion of the bill, for lack of a better term, the
8 problems with the law as it exists today is it puts
9 the onus on the homeowner or resident to justify
10 their actions.

11 When you're in a situation, 3:00 in the
12 morning, you hear the glass -- some glass break,
13 you hear some noise, you hear that thump in the
14 night, the only thing that you're concerned about
15 is protecting yourself and your family.

16 And in those few minutes, possibly even
17 seconds, your thought should not be on what is my
18 legal liability if I defend myself against an
19 unknown assailant that definitely should not be in
20 my home. This is patently unfair.

21 The only thing that a legitimate, lawful
22 homeowner or resident should be thinking about is
23 defending themselves and their family.

24 Having to worry about that and then
25 having other people second guess or Monday morning

1 quarterback after the fact what happened in that
2 very brief period of time when someone felt their
3 life was at risk is unfair.

4 Also it puts an unnecessary amount of
5 distraction on somebody. When you're in a
6 life-and-death situation, under the reasonable man
7 theory, most people would agree it's a reasonable
8 interpretation.

9 Any distraction could be the difference
10 between life and death. One has to remain focused
11 on what's going on and how you're going to handle
12 it. Legal issues should not factor into the -- the
13 issue at point.

14 Also, as I mentioned about the unfair or
15 uneven application of the law, as it is now, yes,
16 we do have a Castle Doctrine of sorts. But the
17 justification has to be proven, and there can be a
18 difference, depending upon where you are.

19 I doubt if the District Attorney in
20 Potter County would look at it the same way as the
21 District Attorney of Philadelphia County or Adams
22 as opposed to Allegheny.

23 There has to be, to be fair and equal
24 justice for all Pennsylvanians, a uniform, clear,
25 black letter law description of what's acceptable

1 and what's not and leave a lot of the ability to
2 interpret on the side.

3 House Bill 40 improves the law by
4 allowing residents to focus only on defending
5 themselves. There is no other issue that would be
6 in their mind. No legal ramifications whatsoever.

7 I can speak being a committeeman, knowing
8 a lot of police, and I have the upmost respect for
9 police, but the rank and file officers that I know
10 are not the ones that make the policy but they have
11 to abide by it.

12 In Philadelphia, in any shooting
13 whatsoever, even if it appears to be on the surface
14 a defensive shooting, the police department's
15 policy is arrest them all, let the District
16 Attorney sort it out, because the police department
17 is very afraid that they might let somebody go and
18 then be culpable for that issue.

19 Other counties don't have that attitude.
20 My justice is not the same as someone else's.
21 That's unfair.

22 Moving on to the stand-your-ground
23 portion, which apparent -- apparently is a very
24 contentious portion of the bill.

25 The problem right now with the law as it

1 stands is: Duty to retreat consistent with
2 maintaining one's safety. What does that mean?

3 Also something open to wide
4 interpretation depending upon where you are, where
5 the incident happened and what the political or
6 ideological leanings are of the District Attorney
7 or the entire legal system as a whole in that
8 particular county or area.

9 Again, that's unfair. It's unequal
10 justice depending upon where you live.

11 Any time you have a law that's open to
12 too great a range of interpretation there's always
13 the possibility of if not -- I don't want to say
14 corruption, but it's too subject to the leanings of
15 whatever the ideologies are in that particular
16 area.

17 That's the reason why Pennsylvania has a
18 Uniform Firearms Act, because it was too varied
19 from county to county and the Commonwealth wanted
20 it uniform, even though Philadelphia to this day
21 fights it.

22 There are many people that cannot retreat
23 consistent with their safety. You're looking at
24 one such person. While I don't present as such, I
25 have torn ligament -- cruciate ligaments in my

1 knee. A little over a year and a half ago I had
2 brain surgery. My left leg has been numb ever
3 since. I also have problems with my balance.

4 There is no way that this 50-year-old
5 person could possibly outrun a 25-year-old
6 assailant. But under the current law, I would
7 be -- the way it would be in Philadelphia, I would
8 most likely be arrested and I would have to justify
9 it in court that I could not retreat consistent
10 with my safety. That to me is absolutely absurd.

11 I have been licensed to carry a concealed
12 firearm for almost ten years. The worst offense
13 I've ever committed was a moving violation under
14 Title 75. I'm not exactly a great threat.

15 Law-abiding citizens should have the
16 right to be wherever they are, that they lawfully
17 can be, without having to worry about retreating
18 because someone is trying to do them harm. That's
19 tantamount to allowing criminals to dictate where
20 law-abiding citizens can go. That's just bad
21 public policy.

22 House Bill 40 makes several improvements,
23 and it eliminates the duty to retreat. It removes,
24 again, a serious source of distraction from
25 law-abiding citizens that are in a potentially

1 life-threatening situation, as they perceive it,
2 reasonably so.

3 And while most of us consider this issue
4 inexplicable with firearms, it could be any form of
5 defense.

6 Ironically, this particular portion of
7 the bill would actually benefit people that are
8 unarmed, even anti-gunners and hoplophones, because
9 a criminal can rarely tell an unarmed -- a
10 potential unarmed victim from a -- one that -- that
11 has a concealed weapon.

12 Talking to a number of police officers I
13 know in Philadelphia, including my district
14 captain, the only group of people that criminals
15 fear more than the police are lawfully armed
16 citizens. Because the criminal can't tell one from
17 the other, it should give them pause irrespective
18 of who they're thinking of attacking next because
19 they never know.

20 Moving on to civil immunity.

21 The problems with the laws as they exist
22 today, whether you're at home, on the street, in a
23 car, a justified defensive shooting is almost
24 always costly to the victim. The victim.

25 A victim involved in a justifiable

1 defensive act, be it a shooting, stabbing,
2 what-have-you, may be found not guilty of any
3 criminal wrongdoing or even not billed by that
4 District Attorney, and still be subject to civil
5 suits by the attacker or their family.

6 I can't understand how something that's
7 justifiable legally could be wrong civilly,
8 especially in the case where someone is simply
9 defending their life and they've been held to a
10 higher standard of criminal law and passed the
11 test.

12 Even if a law-abiding citizen is found to
13 not have committed a crime, say, in a defensive
14 shooting, they could be bankrupted by civil
15 judgments. Once again, this is a patently unfair
16 situation to the law-abiding citizen.

17 The improvements that House Bill 40 would
18 make to our current law would be that law-abiding
19 citizens that are lawfully defending themselves,
20 their family, their friends, their home, would no
21 longer have to fear financial ruin.

22 They would also be spared the stress and
23 costs of a civil trial, which is almost like
24 assaulting them again.

25 I'm going to draw your attention to some

1 comparisons that I came up with in my mind. In the
2 beginning it might sound irrelevant, but I'm going
3 to draw them to a relevant conclusion.

4 Some confl -- comparisons with our state
5 of Florida. I believe it's a good analogue to the
6 Commonwealth because of so many similarities. And
7 since all the laws we're talking about here are
8 already the law there, I think we can have a pretty
9 good idea of what effect it will take on the
10 society by looking at what's going on in Florida
11 now.

12 The state has a -- I'm sorry. Oddly
13 enough, Florida has 67 counties just as we do.
14 Oddly enough, one of their cities incorporated the
15 entire county to make them one and the same.
16 Jacksonville and Duval County are now one and the
17 same, such as Philadelphia.

18 Florida has large racially, ethnically,
19 and culturally diverse metropolitan regions with
20 all the attendant challenges, the same as we do.

21 But also a large portion of the state is
22 rural, just as ours. Consequently, both tourism
23 and agricultural are both important sectors to
24 Florida's economy, as it is here.

25 Miami once held the title of murder

1 capital of U.S., something that I think Harrisburg
2 is now battling with Philadelphia for.

3 The similarities go on even though
4 they're not readily apparent, although they do have
5 more sunshine.

6 Drawing the more important comparisons,
7 Florida has state preemption and a uniform firearms
8 code, as we do.

9 Florida was the first state in the union
10 to go from discretionary issuance of concealed
11 firearms licenses to shall issue in 1987.

12 Oddly enough, through the '80s into the
13 '90s, while the -- according to the FBI crimes
14 statistics over those several years, while the U.S.
15 violent crime rates were going up, Florida's was
16 going down. The only difference, anybody that met
17 standard legislatively enacted criteria could get a
18 concealed handgun permit.

19 They have a strong Castle Doctrine. Much
20 as we're debating now.

21 They enacted stand your ground in 2005.
22 It's almost the same as what we're talking about
23 here in House Bill 40.

24 Law-abiding citizens in Florida have
25 immunity from civil -- criminal and civil

1 prosecution related to a defensive shooting.

2 And they also have immunity from arrest
3 unless there's clear probable cause that the deadly
4 use of force was in violation of the law.

5 Many people in Florida, anti-gunners,
6 naysayers, people that always look for the bad side
7 of things, feared in 1987 when Florida first passed
8 the shall issue law that it was a return to the
9 Wild West, that to be -- would be like shootouts at
10 the O.K. Corral and the streets would be running
11 red with blood.

12 None of that ever happened. The crime
13 rate went down. Reality never justifies their
14 fears.

15 When we went shall issue in '95 there was
16 much the same -- people decrying the same
17 problems. But it never happened.

18 I think we can look to Florida as a very
19 good example of what would happen if House Bill 40
20 were passed in its entirety. Nothing bad.

21 I do have some small suggestions that
22 might make a very good piece of legislation that
23 much better.

24 First, I wouldn't want to see it watered
25 down with my amendments. That would actually

1 diminish what it's giving back to the citizens.
2 Giving back. Because according to both the U.S.
3 and state constitutions, we should have them all to
4 begin with.

5 I do believe that clearer, more explicit
6 language needs to be included that any cities of
7 any class, with or without a home rule charter, are
8 not exempt from this law.

9 And while, yes, I'm directing it
10 specifically to Philadelphia, at the rate of
11 population loss, Philadelphia may not be a first
12 class city in the future. And from people that
13 I've spoken to in the Pittsburgh and Allegheny
14 County area, the problem is developing there much
15 as we've been handling in Philadelphia but to a
16 lesser extent.

17 This would handle it all by making sure
18 that everyone in the Commonwealth understands this
19 applies to everybody and all political
20 subdivisions.

21 I would also suggest that you eliminate
22 the 60-day waiting period from the time that it's
23 signed into law to make it immediately effective
24 or as soon as practicable after the signing.
25 There's no need to wait to give people more

1 protection and ability to defend themselves in
2 life-and-death situations.

3 To conclude, I believe that any time a
4 law is set up it should always give the broadest
5 interpretation in terms of what people can do; and
6 if it's a restrictive law, always be interpreted in
7 the narrowest possible way.

8 That's the point of a democracy. To
9 always let people do what they think is best
10 provided it doesn't adversely affect another
11 law-abiding citizen. That principle is keystone to
12 our whole method of government.

13 House Bill 40 gives far ranging
14 protections to law-abiding citizens but it gives
15 nothing to criminals. The burden of proof under
16 this bill would shift more so back from the citizen
17 to the state where it belongs.

18 Citizens should not have to justify to
19 the state why they did something. The state should
20 have to justify to the citizenry why what they did
21 shouldn't have been done.

22 As I understand it, the Supreme Court of
23 the United States ruled that police have a duty to
24 protect society as a whole but not individuals.

25 Law-abiding citizens must be allowed to

1 defend themselves without fear of legal
2 ramifications or arrest. The only other
3 alternative would have -- would be to hire so many
4 police to cover everybody that we would live in a
5 police state, something I don't believe anybody
6 would want.

7 Samuel Colt once called his invention the
8 great equalizer. Even the 78-year-old granny, the
9 handicapped individual that can't run, can't fight,
10 can still hold their own and defend themselves
11 lawfully.

12 I want to add a comment, which is out of
13 sequence, that a comment was made earlier about
14 there being more shootings. Well, as far as stand
15 your ground, which seems to be the most contentious
16 issue of the three parts of this bill, for the most
17 part that would be people that are licensed to
18 carry firearms.

19 And I put it to this committee that if
20 you were to look at the rate of crime committed by
21 the people that are licensed to carry firearms, not
22 just crimes with firearms, any crime, I think
23 you'll find that as a group we are more law-abiding
24 than the population as a whole.

25 Mr. Mars -- Marsico's argument against

1 that I believe is specious. There's no additional
2 risk.

3 I'd like to leave you with two -- two
4 other quotes that I've always felt were very
5 important and right on point with this issue.

6 The noted author, Robert A. Heinlein from
7 his book Beyond This Horizon said, an armed society
8 is a polite society. Manners are good when one may
9 have to back up his acts with his life.

10 It's not as scary as it sounds. It
11 basically is a statement of enforcement of good
12 behavior.

13 My own personal quote is society has
14 nothing to fear from armed law-abiding citizens.

15 Once again, I want to thank the Committee
16 for giving me this opportunity to testify before
17 it, and I want to give special thanks to
18 Representative Caltagirone and his staff for making
19 the accommodations necessary so I could be here
20 today.

21 Thank you.

22 CHAIRMAN CALTAGIRONE: Thank you, Mike.

23 Are there any questions?

24 Thank you, gentlemen.

25 We'll next hear from Reverends Mary Wade,

1 Jim Brown, Carl Choper, Heeding God's Call.

2 DR. WADE: Thank you, Mr. Chairman.

3 REVEREND BROWN: Okay.

4 DR. WADE: I am Dr. Mary Wade, associate
5 minister from Wayland Temple Baptist Church in
6 north Philadelphia and a member of Heeding God's
7 Call.

8 Thank you for permitting Heeding God's
9 Call to address you today.

10 As I ponder this day, I realize that in
11 just one week we will be celebrating Thanksgiving,
12 a day of appreciation for all of the bounties and
13 blessings that we have received and continue to
14 receive as a nation. So it is incredible that we
15 are even considering something so inhumane as House
16 Bill 40, which we call a shoot first.

17 I think of how -- how dis -- how despite
18 our differences we have struggled to be a people
19 united, a people of heart, a moral people, a people
20 who, for the most part, believe in the common
21 good.

22 I think of how we are still appalled at
23 brutality and senseless acts of murder and
24 destruction of human life.

25 Yes, we still have many problems. Racism

1 continues to undermine us as a people. Economic
2 disparity and even religious differences undermine
3 us as a people and as a nation.

4 But despite these differences we are at
5 heart a good people, a Godly people, who just want
6 to live in safety and security for ourselves, our
7 families, and our communities.

8 But the one thing that weakens, that
9 diminishes this good is fear, which we've heard
10 mentioned quite a bit here today. We have been
11 taught to live out of fear. This fear makes us
12 unstable. It prevents us from taking actions that
13 we should take to protect our lives, our
14 well-being, and humanity.

15 On the other hand, fear causes us to give
16 into pressures that threatens life itself and
17 threatens our moral values and the humanity that we
18 say we respect and prize.

19 This fear drives us to misjudge, suspect,
20 and even to plot against those who have no intent
21 on harming of us.

22 It is this same appeal to fear that now
23 drives this bill before you today. It is not like
24 us. Those of us who consider ourselves moral and
25 ethical do not live by the gun. Nor are we ruled

1 by snap judgment and fear. We hold onto our
2 ability to reason, discern, and understand
3 judgments that can and will forever changes our
4 lives and the lives of others.

5 I am a Disciple of Christ. The laws
6 governing my life is to love the Lord with all of
7 my heart and soul, to lean not to my own
8 understanding and in all my ways acknowledge God
9 trusting that he will direct my path. The
10 extension of that law is to love my neighbor as
11 myself.

12 Shoot first does not honor God, and it
13 does not honor our neighbor. It does not honor
14 ourselves. Shoot first is not humane. It's not
15 decent. It's not orderly, and it is not Godly.
16 Shoot first is just not right.

17 I implore you to extend the rule -- not
18 to extend the rule of fear that governs our nation
19 but rather reject House Bill 40.

20 Thank you.

21 REVEREND BROWN: I'm the Reverend James
22 D. Brown, pastor of the Market Square Presbyterian
23 Church here in Harrisburg.

24 The denomination to which I belong, the
25 Presbyterian Church (U.S.A.) at its most recent

1 national meeting adopted this pastoral
2 recommendation for all Presbyterians. We are
3 encouraged -- and I quote -- to monitor diligently
4 the political processes in cities, states, and the
5 nation for opportunities to work for the passage of
6 laws that control gun access and to seize those
7 opportunities that support legislation that will
8 make our streets, schools, and places of worship
9 free from gun violence.

10 It is in this spirit that I come before
11 you today to argue that House Bill 40 does not meet
12 the standard of lessening gun violence in our
13 nation. To the contrary, to grant -- to grant a
14 legal right to use lethal force, including gunfire,
15 against any person felt to be threatening in the
16 streets in our cities, is an open invitation for
17 more carnage in a country where 80 persons die from
18 guns every day, including the average of eight
19 children.

20 You must be aware, according to an FBI
21 finding, that the family handgun purchased for
22 protection is 22 times -- more times likely to be
23 used against a family member or friend than to stop
24 an intruder. That's an important fact for us to
25 understand.

1 To take the life of another person is a
2 soul-shuddering event. Presbyterians believe in
3 the right to self-defense. But we also believe in
4 a commonsense philosophy of life.

5 To turn our citizenry loose with a shoot
6 first, ask questions later law in a day and age
7 when we are awash in handguns in a city like
8 Harrisburg is an endorsement of continuing violence
9 as a way of life.

10 We as citizens are not equipped in terms
11 of training or temperament to make life-and-death
12 decisions in the fashion outlined in House Bill
13 40.

14 I'll use one pastoral illustration out of
15 my ministry. I counseled a police officer who was
16 called into a domestic dispute, and in the
17 confusion and violence of that situation he shot
18 and killed a man. He was placed on leave, and then
19 he was exonerated.

20 But he spent the rest of his life
21 agonizing over what he had done. Had he fired too
22 quickly? Was his a necessary use of lethal force?

23 Here was a man with superior training who
24 killed another human being and was left with
25 agonizing doubt. Surely we can't expect our

1 untrained citizenry to exercise the necessary
2 commonsense and judgment that H.B. 40 assumes were
3 it to become law.

4 I encourage you to vote no. Thank you
5 for this opportunity to share with you today.

6 RABBI CHOPER: Honorable representatives,
7 I am Rabbi Carl Choper. I've been a rabbi in the
8 Harrisburg area for about 20 years now and now
9 chair the Interfaith Alliance of Pennsylvania, a --
10 a network of religious voices from across the state
11 for social values marked by compassion, justice,
12 and equality.

13 I'm here as a rabbi, not a lawyer, and so
14 I am concerned about how this bill will affect our
15 culture.

16 I come before you to testify on behalf of
17 the sanctity of human life. Judaism, my tradition,
18 speaks of each human being as created in the image
19 of God. The Torah implores us to chose life. It
20 is a grave thing to take the life of another or
21 injure or maim another human being.

22 If in the course of self-defense the use
23 of strong force becomes necessary, only the most
24 minimal possible force should be used and only as a
25 last resort.

1 The right of self-defense is a very
2 strong one, and the laws of our Commonwealth, as
3 we've heard today, clearly allow us that right. We
4 have and -- and will hear horror stories; but as
5 currently written, our laws allow for self-defense
6 and direct us first to remember that human life is
7 of paramount value.

8 Whenever we can, when we are encountering
9 someone who has -- who is not already breaking into
10 our homes, we must first retreat so as to avoid
11 being party to severely injuring or killing another
12 human being.

13 Any problems that exist in the law as
14 they are now can be remedied by wise application of
15 current laws.

16 The law unamended, as it is written now,
17 finds a balance between our right to self-defense
18 and the principle of the sanctity of human life.
19 Changing the law, in the manner proposed, will
20 promote a change in the way we train ourselves to
21 view each other.

22 No longer will our laws require us to
23 consider human life to be important enough that we
24 must first seek ways to respond other than by
25 taking human life. Instead, as a first resort, we

1 can use deadly force, putting lives at risk and
2 possibly taking life even when unnecessary.

3 By allowing an armed individual to
4 believe that they have the right to shoot as a
5 first option, each person with a gun is now a
6 deputized law enforcer without training.

7 We want our police officers to be armed.
8 We want them trained before they are armed. And
9 they go through significant training.

10 We cannot be assured that others who
11 carry guns into our public areas will be equally
12 trained or equally well supervised.

13 Whether or not carrying a gun is a right,
14 it is certainly a heavy responsibility.

15 Discharging a gun in public is a serious act with
16 serious potential consequences, even if done in
17 self-defense.

18 Under all circumstances other options to
19 discharging a weapon should be sought first, if
20 only for the protection of innocent bystanders, and
21 the law should and currently does require this
22 standard.

23 Changing the law as proposed would
24 minimize the significance of discharging a gun in
25 public and could make our society even more violent

1 than it already is and our society unfortunately is
2 violent.

3 We were scanned twice in -- before coming
4 into this room. We have a terrible problem here in
5 Harrisburg, and I am not one who is afraid that the
6 streets will be running with blood.

7 I'm actually concerned that in many parts
8 of our Commonwealth the streets already do run with
9 blood and we have not yet taken notice.

10 After hearing representative -- Mr. Ed
11 Marsico, I'm concerned that we -- we don't need
12 something -- an act that could be known as the
13 defensive drug shooter's law.

14 But more to the point, this is a serious
15 readdressing of the balance between the right to
16 self-defense and the sanctity of human life. And I
17 would ask you to chose life.

18 Thank you.

19 CHAIRMAN CALTAGIRONE: Thank you,
20 Reverend.

21 Questions?

22 REPRESENTATIVE WATERS: Thank you,
23 Mr. Chairman.

24 Just briefly, I just want to thank the
25 three of you for coming up here and speaking from

1 a -- from a -- I guess you could say from a
2 spiritual or a --a religious perspective to add
3 some moral concept to what we are addressing right
4 here today.

5 I'm just a little concerned, too, as you
6 are, that pretty soon it -- there will be no reason
7 to call 911 anymore. And if we do, they say, you
8 need an ambulance? No, send a hearse, because I
9 just killed somebody.

10 And -- and I don't want us to take the
11 law into our own hands to that level if we don't
12 have to. As I said earlier, I'm a true believer
13 that once a person enters your property or is -- is
14 definitely presenting a threat to you and your
15 family you should have a right to defend yourself.

16 I'm just a little cautious as we move
17 forward with this that if we're not careful we're
18 going to open up something that we will regret,
19 including the shooter, the homeowner, who -- who
20 shoots somebody and then finds later on that
21 they -- they acted too quickly, that we might
22 create something that we would regret one day.

23 So thank you for your testimony.

24 Thank you, Mr. Chairman.

25 CHAIRMAN CALTAGIRONE: Thank you.

1 Thank you, Reverends. I appreciate your
2 testimony.

3 CHAIRMAN CALTAGIRONE: We'll next hear
4 from Captain Marshall Martin, Director of the
5 Pennsylvania State Police Office of Risk
6 Management.

7 CAPTAIN MARTIN: Good afternoon.

8 CHAIRMAN CALTAGIRONE: Good afternoon.

9 CAPTAIN MARTIN: Chairman Caltagirone,
10 Chairman Marsico, and members of the Committee. I
11 am Captain Marshall Martin, Director of the
12 Pennsylvania State Police Risk Management Office.

13 On behalf of Colonel Frank Pawlowski,
14 Commissioner of the Pennsylvania State Police, I
15 want to thank you for the opportunity to
16 participate in this public hearing concerning House
17 Bill 40.

18 At the outset, it's important to
19 recognize that our citizens do have the absolute
20 right to be safe and secure in their homes. For
21 that reason, Pennsylvania's Crimes Code contains a
22 strong Castle Doctrine authorizing people to
23 protect themselves, their homes, and others using
24 force, even deadly force, when reasonably
25 necessary.

1 The State Police believes our existing
2 laws are sufficient and the provisions of House
3 Bill 40 problematic.

4 As District Attorney Marsico testified,
5 House Bill 40 seemingly eliminates the duty to
6 retreat in public places, thereby encouraging the
7 use of deadly force when it could be otherwise
8 avoided.

9 Mr. Marsico has explained the bill's
10 potential impact on street violence and the
11 incidents of road rage, as well as the disturbing
12 fact that House Bill 40 appears to allow a
13 homeowner to shoot an unarmed burglar who is
14 already fleeing from the residence. The State
15 Police shares these concerns.

16 In addition, we oppose House Bill 40
17 because it's broad, vague, and confusing language
18 could pose inherent dangers for law enforcement.
19 Every day, police officers serve warrants, quell
20 domestic violence, and respond to a myriad of other
21 emergencies and disturbances in people's homes.

22 Police officers must make split second
23 decisions in situations that are often dynamic and
24 dangerous.

25 Further, officers encounter dwellings

1 with many different, and often confusing, types of
2 entrances and officers must routinely enter onto
3 people's porches, patios, and decks.

4 Unfortunately, House Bill 40 could be
5 interpreted to mean a person is justified in using
6 deadly force against a police officer unless the
7 officer has identified himself or is clearly
8 identified as a police officer. Officers are not
9 always in uniform, and as a practical matter may
10 not be able to immediately identify themselves.

11 For example, in a scenario, the police
12 are called to a domestic disturbance from someone
13 inside the home. The first officer available is a
14 criminal investigator -- criminal investigator
15 wearing civilian attire.

16 When the officer gets to the house he
17 encounters exigent circumstances, such as shots
18 fired or screaming inside the house. There could
19 be any number of reasons the officer should not
20 identify himself as he enters the home, much less
21 if he's standing on the porch, patio, or on the
22 deck.

23 The officer may need to assess the best
24 way to stopping a violent attack without
25 jeopardizing his own safety by revealing his

1 tactical position.

2 The State Police certainly respects the
3 constitutional right of our citizens to bear arms
4 to protect themselves, their families, and their
5 homes through the use of force. As police officers
6 we also use force to protect ourselves and the
7 people in our communities.

8 However, the hallmark of our use of force
9 laws should require individual determination on how
10 much force is reasonably necessary under the
11 totality of the circumstances. When talking about
12 deadly force, this balancing is critical.

13 As worded, House Bill 40 appears to
14 encourage people to shoot first and ask questions
15 later, a concept we can simply not support because
16 it jeopardizes the safety of our citizens and law
17 enforcement.

18 Again, I want to thank you for this
19 opportunity to appear before you here today. And
20 I'm certainly happy to answer any questions that
21 you may have.

22 CHAIRMAN CALTAGIRONE: Thank you,
23 Captain.

24 Members.

25 Yes, Dick.

1 REPRESENTATIVE STEVENSON: Thank you,
2 Mr. Chairman.

3 And thank you, Captain, for your
4 testimony.

5 I believe you were here earlier when
6 Mr. Frank Shaffer testified about what happened to
7 him when the trucker was following him --

8 CAPTAIN MARTIN: Yes, sir. I heard
9 that.

10 REPRESENTATIVE STEVENSON: -- on the
11 interstate. Were you present?

12 CAPTAIN MARTIN: Yes, sir.

13 REPRESENTATIVE STEVENSON: And at that
14 time he was arrested or detained. I'm not sure
15 what happened there. Was it an arrest? He was
16 arrested. He was arrested because he had not yet
17 been bloodied or shown any signs of a fight when
18 all he did was show his gun to the person who was
19 being very aggressive toward him.

20 Can you talk about that situation and
21 whether or not that is the standard procedure in
22 those cases?

23 CAPTAIN MARTIN: You know, that's a very
24 difficult situation. And I -- and I listened to
25 him very intently.

1 However, it's very difficult for me to
2 weigh in on a -- on a circumstances such as that.
3 Frankly, there can be any number of circumstances
4 and -- and issues that were not brought up that
5 were associated with it.

6 So I think it would be unfair for me to
7 necessarily weigh in on the pluses or minuses of
8 how that particular case was handled. But I -- but
9 I understand the concern that he had.

10 REPRESENTATIVE STEVENSON: Thank you.

11 Thank you, Mr. Chairman.

12 CHAIRMAN CALTAGIRONE: Certainly.

13 Any other questions?

14 Thank you, Captain. Appreciate your
15 testimony, sir.

16 CAPTAIN MARTIN: Thank you, sir.

17 CHAIRMAN CALTAGIRONE: The last testifier
18 will be Carl Stevenson, the Executive Director of
19 the Pennsylvania Self-Defense Rights League.

20 DIRECTOR STEVENSON: Mr. Chairman and
21 members of the committee, thank you for the
22 opportunity to testify before the Committee today
23 in support of House Bill 40.

24 I'd also like to thank the drafters and
25 sponsors of this much needed legislation. My name

1 is Carl R. Stevenson and I reside at 4991
2 Shimerville Road in Emmaus, Pennsylvania.

3 I'm a former law enforcement officer from
4 the time when I lived in Colorado some years ago.
5 I'm a holder of a Pennsylvania license to carry
6 firearms, an avid hunter and shooting sports
7 enthusiast, a strong supporter of the Second
8 Amendment, and, more recently, the founder of
9 the advocacy -- excuse me -- advocacy group called
10 the Pennsylvania Self-Defense Rights League.

11 While I make no pretense of speaking on
12 their behalf today, I'm also an active member of
13 the National Rifle Association, Gun Owners of
14 America, Jews for the Preservation of Firearms
15 Ownership, and the Front Sight Firearms Training
16 Institute. I'm a life member of all of those.

17 I'm also a member of the National
18 Association for Gun Rights, the United States
19 Concealed Carry Association, and the Upper Milford
20 Field and Stream Association.

21 Needless to say, I believe strongly in
22 the firearms and self-defense rights elaborated in
23 the Second Amendment of the U.S. Constitution and
24 the Pennsylvania Constitution.

25 I'm here today to voice my support for

1 House Bill 40 and to respectfully urge you all in
2 the strongest terms to pass it on to the full House
3 with unanimous support and a recommendation for
4 swift passage by the larger body.

5 I'd like to make a couple of comments, if
6 I may, in response to some of the previous
7 testimony.

8 Our representative from the District
9 Attorney's Association contends that the probability
10 of prosecution under current law remains high
11 because the duty to retreat negates the
12 availability of self-defense claims.

13 This sort of conflicts with his assertion
14 that we already have a perfectly adequate Castle
15 Doctrine law. This negation of the availability of
16 self-defense claims impacts negatively law-abiding
17 citizens who find themselves in a situation where
18 their lives or the lives of their family or other
19 innocents are in jeopardy.

20 The solution here, I think, is to
21 prosecute the gun violations and -- and use other
22 means to demonstrate that the perpetrator in the
23 situation that he alluded to was, in fact, in the
24 process of a criminal act and, therefore, would not
25 be covered by a presumption of -- of innocence

1 under House Bill 40, as I understand the language
2 as it's written today.

3 A representative from the State Police
4 said in his testimony that police officers must
5 make split-second decisions in situations that are
6 often dynamic and dangerous.

7 Citizens also must frequently make
8 split-second decisions in dynamic and dangerous
9 situations when they're attacked by violent
10 criminals.

11 So with that I'll return to my prepared
12 testimony.

13 Self-defense is a natural inalienable
14 right. It is and has throughout the history of
15 civilization been recognized by theologians,
16 scholars, lawmakers, the broad body of the
17 citizenry, and the founding documents of both this
18 nation and this Commonwealth as an inalienable
19 right given to all people by the creator.

20 This inalienable right is necessary to
21 maintain our civilization, because without the
22 right of self-defense, we would be totally at the
23 mercy of those criminals amongst us who, unlike
24 most, have no reservation about employing violence
25 against us.

1 With respect to the good rabbi, Judaism
2 and Judaic law support the right of self-defense.
3 In the Ten Commandments God did not say thou shall
4 not kill but thou shall not murder.

5 The original Hebrew word specifically
6 refers to murder and is never used in reference to
7 executing a criminal or slaying an enemy in
8 battle. And I would submit to you that defending
9 one's self against a violent criminal attack is
10 most definitely a form of a battle.

11 The Torah says if someone comes to kill
12 you, preemptively strike him first.

13 God clearly distinguishes between killing
14 and murder. Thus self-defense, even if it
15 necessary -- necessitates the use of deadly force,
16 is permissible according to the Old Testament and
17 the Torah.

18 Likewise, Christianity supports the right
19 of self-defense. In Luke 23.36: Jesus commanded
20 his disciples to be armed for self-defense.

21 Then said he unto them, but now, he that
22 hath a purse, let him take it, and likewise his
23 scrip; and he that hath no sword, let him sell a
24 garment, and buy one.

25 Jesus commanded the disciples to buy

1 swords if they had none. The point is that Jesus
2 commanded his followers to be prepared and willing
3 to defend themselves.

4 In Proverbs 23 -- or 25:26 -- excuse
5 me -- it states: A righteous man who falters
6 before the wicked is like a murky spring and a
7 polluted well.

8 Certainly, we would be faltering before
9 the wicked if we chose to be unarmed and unable to
10 resist an assailant who might be threatening our
11 life or the life of other innocents. In other
12 words, we have no right to hand over our life,
13 which is a gift from God, to the unrighteous.

14 It is a serious mistake to equate a
15 civilize -- civilized society with one in which the
16 decent people are doormats for the evil to trample
17 on. Thus, self-defense, even if it necessi --
18 necessitates the use of deadly force, is likewise
19 permissible according to the doctrines of
20 Christianity.

21 The founders also recognized that
22 self-defense is a natural inalienable right.
23 Witness the following quote from the Declaration of
24 Independence. We hold these truths to be
25 self-evident, that all men are created equal, that

1 they are endowed by their creator with certain
2 inalienable rights, that among these are life,
3 liberty, and the pursuit of happiness, where, by no
4 accident, life is the first and unquestionably the
5 most important, for without life the others are
6 irrelevant.

7 The Judaeo-Christian moral values upon
8 this -- on which this nation was founded recognize,
9 and furthermore demand, when necessary and
10 justifiable, the exercise of the inherent right of
11 self-defense.

12 And self-defense is an individual,
13 personal responsibility. Some people will say, we
14 have no need to defend ourselves in today's
15 society. We have the police to protect us. That
16 is, not to disparage the best efforts of our
17 police, a fallacy for several reasons.

18 First, neither the government, nor any of
19 its agencies, has an absolute duty to protect the
20 individual citizen from crime or harm. If a
21 citizen is harmed by a criminal during the
22 commission of a crime, he or she cannot hold the
23 police or the courts responsible. And if he or she
24 is killed, neither can their family, not that the
25 payment of damages or punishment would in either

1 case make things right.

2 In Warren v. District of Columbia in
3 1981, the D.C. Court of Appeals ruled: Official
4 police personnel and the government employing them
5 are not generally liable to victims of criminal
6 acts for failure to provide adequate police
7 protection. A government and its agents are under
8 no general duty to provide public services, such as
9 police protection, to any particular citizen.

10 In Bowers v. DeVito in 1982, the Seventh
11 Circuit Court of Appeals ruled, there is no
12 constitutional right to be protected by the state
13 against being murdered by criminals and madmen.

14 And even if they did have a
15 responsibility to protect everyone, the police do
16 not have enough resources, manpower, patrol cars,
17 et cetera, to be everywhere at all times. Thus, as
18 a practical matter, they simply can't protect
19 everyone.

20 It would be impractical to provide enough
21 police to protect everyone, nor do I believe it
22 would be desirable to expand our police forces to
23 the extent if it -- even if it were possible.

24 Additionally, violent criminals have a
25 nasty tendency to avoid acting in the presence of

1 armed law enforcement officers. For reasons that
2 are obvious, they don't want to get caught or
3 worse, they operate by stealth or surprise and seek
4 out victims they believe are unlikely to be able to
5 mount an effective resistance to their violent
6 aggression.

7 Because of criminals' strong preference
8 for acting in the absence of law enforcement
9 personnel, the unfortunate reality is that in the
10 vast majority of cases the police arrive after the
11 fact and are limited to investigating and trying to
12 apprehend the perpetrators after the damage is
13 done.

14 This is of virtually no practical value
15 to the victims of violent attacks. Dead is dead,
16 maimed is maimed, and punishing the perpetrators
17 won't bring you back or make you whole.

18 Because of the reality of police response
19 times, the unfortunate truth is that dial 911 and
20 die is in far too many cases a truism that has been
21 proven over and over again.

22 Thus, it is clear that the individual
23 free citizen of the United States must be
24 responsible for his or her own personal safety and
25 well-being.

1 House Bill 40 is a step in the right
2 direction towards further enabling Pennsylvanians
3 to exercise that responsibility without fear of
4 undue criminal prosecution or civil liability.

5 And I would submit to you that citizens
6 can be trusted with expanded rights of
7 self-defense.

8 While not directly the subject of House
9 Bill 40, a corollary can be found in the experience
10 in the 40 states that allow individual citizens to
11 carry firearms for protection. This experience
12 over many years illustrates that average citizens,
13 permitted to carry firearms for self-defense, have
14 been remarkably responsible.

15 Despite the protests of self-appointed,
16 radical, anti-gun groups, such as the Violence
17 Policy Center, the Brady Center to Prevent Gun
18 Violence, and others that the streets will run with
19 blood, minor traffic accidents will turn into Wild
20 West shootouts, and et cetera, that has not been
21 the experience in the 40 states that have
22 right-to-carry laws.

23 On the contrary, in particular, in the 36
24 states that have shall issue right-to-carry laws,
25 violent crime has dropped dramatically since those

1 laws took effect.

2 To illustrate the prudence of allowing
3 citizens the means to defend themselves, Florida's
4 experience is compelling. Florida has issued more
5 carry permits than any other state due to its large
6 population and having had a right-to-carry law
7 since 1987.

8 Also Florida reports its permit
9 statistics statewide. Most right-to-carry states
10 do not. And is the only state that reports permit
11 revocation due to gun crimes by permit holders.

12 Florida has issued more than 1.36 million
13 permits and revoked only 165 -- that's one
14 one-hundredth of one percent -- due to gun crimes
15 by permit owners.

16 As another example, for the last 18 years
17 Montana has tested a public policy of trusting
18 citizens to behave well if allowed to carry
19 concealed firearms for self-defense. That
20 experiment has worked stunningly well.

21 Since 1991, a concealed weapon permit has
22 not been required for a person to legally carry a
23 concealed firearm outside of the limits of a city
24 or town, which amounts to 99.4 percent of Montana,
25 according to the Montana League of Cities and

1 Towns.

2 There are zero reported incidents in the
3 past 18 years of people abusing this right in the
4 99.4 percent of Montana where it applies. The
5 Montana legislature did the right thing in 1991 to
6 trust its citizens to behave well, and there is a
7 movement to extend this to the remaining .6 percent
8 of the state.

9 Importantly, self-defense works.

10 Analyzing National Crime Victimization Survey data,
11 analyst Gary Kleck found, robbery and assault
12 victims who used a gun to resist were less likely
13 to be attacked or to suffer an injury than those
14 who used any other methods of self-protection or
15 those who did not resist at all. Kleck and Marc
16 Gertz found that guns were used for self-protection
17 about 2.5 million times annually.

18 Marvin E. Wolfgang, self-described as a
19 strong a gun-control advocate as can be found among
20 the criminologists in this county, who wanted to
21 eliminate all guns from the civilian population and
22 maybe even from the police, said the methodological
23 soundness of the current Kleck and Gertz study is
24 clear. I cannot further debate it. I cannot fault
25 their methodology.

1 The point of this is that all the
2 experience of the past 20 years indicates that the
3 wailings of radical anti-gun groups
4 notwithstanding, average citizens are remarkably
5 responsible with firearms and can and should be
6 trusted to take a larger measure of responsibility
7 for their own self-defense.

8 Enabling citizens to provide for their
9 own self-defense both reduces the risk of death,
10 serious injury, and other victimization and reduces
11 crime and the costs thereof to society overall.

12 Additionally, it's both interesting and
13 enlight -- enlightening to note a couple of
14 additional facts from government statistics.

15 While nationwide the majority of the
16 two-and-a-half million estimated annual civilian
17 gun uses to foil crime result in no shots being
18 fired; nevertheless, in a typical year average
19 citizens exercising their right of self-defense
20 legitimately and justifiably kill two to three
21 thousand criminals. Three times the number killed
22 by police.

23 This is not because average citizens are
24 trigger happy. It's simply because the would-be
25 victims -- as the would-be victims, they're present

1 at the crime scene as it goes down, when the threat
2 is present and before the perpetrator has made good
3 his attack and escaped.

4 Furthermore, in the entire United States
5 during the year, only about 30 people are killed by
6 private citizens who mistakenly believe the victim
7 was an intruder or aggressor. By comparison,
8 police annually kill as many as 330 innocent
9 individuals annually, a factor of 11 more.

10 It is reasonable to attribute this higher
11 error rate for police to the fact that, through no
12 fault of their own and the behavior of criminals,
13 they almost arrive late in the game to a crime
14 scene, making it more difficult for them to
15 determine who's who in the heat of the moment on
16 those comparatively rare occasions while a crime is
17 still in progress when they arrive.

18 The private citizen, the would-be victim,
19 on the other hand, acting in self-defense, has a
20 much greater ability to accurately ascertain who is
21 the perpetrator.

22 To summarize, average citizens have
23 demonstrated their behavior under right-to-carry
24 laws, and also the Castle Doctrines in other
25 states, that their exercise of the right of

1 self-defense has been remarkably responsible.

2 There is no legitimate, rational reason
3 to expect this pattern of responsible behavior to
4 change for the worse in any way if House Bill 40 is
5 enacted.

6 Crimes that justify the use self-de -- of
7 force in self-defense or the defense of others
8 almost invariably share most or all of the
9 characteristics listed below that require immediate
10 defensive action.

11 They are sudden and unexpected.

12 They are from the outset, or can easily
13 and suddenly become, brutally violent.

14 They are calculated for success. Victim
15 selection. No police presence. Location.

16 Perpetrators seldom have any regard for
17 victim's welfare.

18 Thugs, gang bangers, drug cartels,
19 rapists and even common robbers and burglars have,
20 unfortunately, become more vicious in today's
21 society.

22 For example, when I was much younger, a
23 liquor or convenience store robbery was generally
24 give-me-the-money-and-I'll-run-away event.

25 Today, however, in all too many cases,

1 the perpetrators endeavor to coldly execute the
2 clerk and customers present, not because they
3 present an immediate threat to the perpetrators,
4 but simply to prevent them from being able to
5 testify against them in the event they're caught by
6 the police after the fact.

7 Duty to retreat versus stand your ground
8 and fear of civil liability versus indemnification
9 both increase victims' risk of death or serious
10 injury.

11 There should be no duty to retreat in the
12 face of criminal aggression in one's home, in one's
13 place of business, in one's vehicle and, in fact,
14 anywhere one has a legal right to be.

15 By virtue of the element of surprise, and
16 the fact that criminals are generally prepared from
17 the outset to use force to further their ends,
18 criminals almost invariably have a tactical
19 advantage from the start.

20 Because of this, being able to legally
21 stand your ground and actually use force, if
22 necessary, to defend yourself or others is also
23 important. A duty to retreat is an affront to the
24 value of human life, the victim's, of course, not
25 the perpetrator's.

1 First, it is rarely possible to just run
2 away from a violent attack. By their very nature
3 such attacks usually occur with little or no
4 warning. Perpetrators look for victims who are
5 unprepared and appear defenseless, and they
6 generally attempt to use the element of surprise to
7 their advantage.

8 Also because criminals prefer defenseless
9 victims, many would-be victims are incapable, due
10 to age or physical infirmity, to escape, or have
11 other vulnerabilities, or will simply be
12 overwhelmed by superior strength of force.

13 For example, at 59 years of age I have an
14 implanted defibrillator, which if struck forcefully
15 or otherwise damaged in an attack, could result in
16 fatal injuries. Additionally, the underlying heart
17 condition that prompted the implantation of the
18 defibrillator would likely render me unable to
19 outrun or physically overpower a younger, stronger
20 attacker, let alone multiple attackers.

21 Finally, lawfully defending oneself or
22 others in the face of death, grave bodily injury,
23 kidnapping, or rape should not subject one to the
24 threat of ruinous civil lawsuits by the would-be
25 perpetrator, or if deceased, his or her family.

1 Please note, I am not suggesting that
2 anyone should be given a pass for any act that is
3 not fully justifiable. However, when deadly force
4 is legally justified, it generally must be employed
5 with a moment's notice.

6 For example, it is well-known in law
7 enforcement and other reputable self-defense
8 training circles that a physically fit assailant
9 with a knife at seven yards, 21 feet, can generally
10 close that distance and press an attack in
11 approximately 1 to 1.5 seconds.

12 The hesitation caused by processing the
13 thought, this guy charging at me with a knife is
14 trying to kill me, that if I shoot him in
15 self-defense, will I be tied up in civil litigation
16 for the next five years and end up losing
17 everything I've ever worked for just because I
18 chose to defend my life, is all too likely to be a
19 fatal hesitation for the victim.

20 So, in conclusion, as stated above,
21 average citizens have demonstrated remarkable
22 responsibility in their use of force in
23 self-defense, as evidenced by the overwhelming body
24 of data from the past two decades in states with
25 right-to-carry laws.

1 It is time that the citizens of
2 Pennsylvania are likewise trusted by their
3 legislative representatives to exercise that same
4 good judgment and behavior under the improved
5 precisions -- provisions of this proposed Castle
6 Doctrine bill.

7 Please uphold the inherent God-given
8 right of self-defense recognized clearly by the
9 founders by supporting House Bill 40 and working
10 diligently and expeditiously to see it is enacted
11 into law as soon as possible.

12 Thank you again, Mr. Chairman and members
13 of the Committee, for affording me the opportunity
14 to testify on this matter today.

15 CHAIRMAN CALTAGIRONE: Thank you, sir.

16 Any other questions?

17 Thank you.

18 There is one last testifier, and I
19 apologize. Because I had Kim go with John.

20 Daniel Pehrson, founder, president,
21 Pennsylvania Firearm Owners Association.

22 MR. PEHRSON: Hello. Good afternoon.

23 Mr. Chairman, House Judiciary Committee, thank you
24 for affording me the time to speak today.

25 My name is Daniel Pehrson. I'm a

1 resident of Philadelphia. Again, maybe providing
2 an opportunity that you don't usually see.

3 I'm the founder and current president of
4 the Pennsylvania Firearm Owners Association, an
5 organization that represents about 25,000 gun
6 owners.

7 I'm also the victim of a potentially
8 violent attack in Philadelphia, which is mostly
9 what I'm going to be talking about to you today.

10 On the evening of September 4th, 2008 I
11 was walking in northeast Philadelphia in the
12 Northern Liberties section where I was followed by
13 a group of young men who followed me for a few
14 blocks and eventually when they got me to the right
15 place, I guess that they would -- what they would
16 consider the right place, where I was most
17 vulnerable, they surrounded me, pulled out a stun
18 gun, and threatened me with it.

19 You know, in this case, a split second, I
20 had to make a choice. I am a lawfully, you know,
21 licensed firearm carrier. And in this case, I drew
22 my firearm. I thankfully did not even have to
23 point it at them before they decided that, you
24 know, that was not -- they did not want to continue
25 that action, and they ran away faster than I've

1 ever seen people run away in my life.

2 You know, I thank God every day that in
3 this case the simple threat of, you know,
4 deterrence was enough to end this confrontation and
5 make sure that I did not become, you know, other
6 statistic, whether that be a murder victim, a
7 robbery victim.

8 I have no idea what they intended for
9 me. But I'm pretty sure it wasn't to bring me
10 cupcakes or something.

11 You know, in this case, as I said, thank
12 God no one was hurt. Me. Most importantly, me.

13 But what I want to bring up is that in
14 certain circumstances, you know, if the events had
15 been slightly different, if the variables had
16 changed slightly, my life could have been
17 absolutely ruined in one of a couple ways.

18 One, maybe I wasn't armed. Maybe they
19 stun-gunned me. I'm incapacitated. Who knows what
20 they do to me next?

21 The other case is, you know, what if, God
22 forbid, they didn't get the message and they
23 decided to continue their assault on me? You know,
24 this is at 10:30 at night. It's dark out. I'm
25 alone. There's no one around. It's just me versus

1 three people with a deadly weapon, which I might
2 add is prohibited in Philadelphia. It is illegal
3 to possess or carry a stun gun in Philadelphia. So
4 where they got that I have no idea.

5 Had I been forced to defend myself
6 because they did not want to cease their attack,
7 God forbid I had had to shoot one of these young
8 men, something which I'm glad I didn't have to do
9 and hope I never have to experience, the problem
10 here is under the current law, you know, it says
11 that I have a duty to retreat and it says that I
12 have to do that on complete -- if I can do so in
13 complete safety. And the problem is -- is, for me,
14 I have to make that decision in a fraction of a
15 second.

16 These men were literally three feet away
17 from me. I had less than a fraction of a second to
18 decide how I was going to, you know, move next.

19 It's very easy later in a courtroom, you
20 know, in an office for, you know, attorneys and
21 judge and juries to sit down and look at everything
22 that happened and second guess, and, you know, for
23 lack of a better term, Monday morning quarterback
24 my decision.

25 You know, my moment in time I have a

1 fraction of a second to just look at every single
2 surrounding around me and make a split-second
3 decision as to whether I can, you know, retreat
4 with reasonable safety.

5 You know, in a courtroom, where you're
6 not there, you don't have the full scope of exactly
7 what's going on and you have days and weeks to look
8 back at that event, someone could come up with a
9 very different decision. It's completely
10 subjective.

11 You know, for example, you know, if, for
12 instance, you know, I did have to go up against an
13 overaggressive district attorney or prosecutor,
14 they may look for any reason, oh, there was a
15 street to your right. There was a street to your
16 left. You could have turned. It's -- it's easy to
17 make that guess when you're not in the situation.

18 You know, so I'm very confident that I
19 was completely justified even under current law,
20 but there's always the chance that, you know, if
21 someone disagrees, I'm on trial.

22 You know, I don't know about any of the
23 lawyers here, but I doubt you all work for free.
24 You know, even if I was justified and I did
25 successfully get off of a criminal trial, I'd still

1 have to pay that money because someone second
2 guessed my ability to defend myself.

3 The second point is -- is after the
4 criminal action, you know, that I've just spoken
5 about, there's always the opportunity under the
6 current law for civil action.

7 God forbid I had had to shoot one of
8 these kids and whether they lived or died, their
9 family comes after me. You know, I'm cleared of
10 any civil [sic] charges. Maybe I'm not even
11 charged. Maybe I'm not convicted.

12 The next step is -- is I get a lawsuit
13 from someone for a million dollars for wrongful
14 death or negligence or something. So even though
15 I've been cleared of a criminal charge, I now have
16 to pay my lawyers again potentially tens of
17 thousands more dollars, even if I win a civil
18 suit.

19 What -- and if I lose it, what you've
20 just done is told criminals that you can profit
21 from your criminal activity. You can try to rob
22 someone and if they defend themselves, you can then
23 sue them in court and maybe even take their house
24 away from them.

25 To me, that -- I mean to me it's -- it's

1 unbelievable that you could -- that our current
2 system potentially allows violent attackers to
3 profit from their violent attacks. You know, so
4 specifically the civil immunity, you know, in the
5 House Bill 40 is very important to me.

6 It's the idea that if I've met the burden
7 that I did not commit a crime, it's absolutely
8 ridiculous that I should have to defend myself
9 again in civil court, you know, being attacked
10 again a second time by the same criminal.

11 I also wanted to bring up some counter
12 points. You know, the advantage of going last is
13 that I get to hear everybody's argument and I get
14 to -- and I would like to respond to a couple of
15 those.

16 The first, the State Police made the
17 argument that potentially this bill could protect
18 people who shoot a suspect fleeing from their
19 house.

20 The one point I'd like to make in that
21 case, you know, this also goes back to the phrasing
22 and hyperbole as a shoot first law. This law does
23 not change the general principles of, you know,
24 justifications for self-defense.

25 If someone is fleeing from me and they no

1 longer present an imminent danger to my life or
2 bodily harm, so the idea and the claim that this
3 law is immediately going to, you know, make it so
4 that I can shoot people in the back as they run
5 away is -- I don't know whether it's disingenuous
6 or just misinformed, but, you know, this law does
7 not change the justifications you need to make it a
8 self-defense claim.

9 Additionally, one of the other claims
10 made is that this law is going to protect drug
11 dealers who shoot each other in the street and then
12 both claim self-defense.

13 The point that I don't think was raised
14 is I think that, you know, it's pretty common, at
15 least in Philadelphia where I live, that the drug
16 dealers don't go overnight from being choir boys to
17 drug dealers. They have long rap sheets. In many
18 cases pages and pages and pages and pages of
19 felonies, robberies, et cetera.

20 Under the law, if you are engaged in a
21 criminal act, you -- your -- your immunity is
22 immediately removed. And in the case that you have
23 a convicted felon shooting another convicted felon,
24 his simple possession of a firearm is an additional
25 felony. It is a crime.

1 So as such he would not be able to claim
2 any of the immunities provided by this law because
3 he's engaging in the act of illegally possessing a
4 firearm at the time.

5 The other case that I'd like to point
6 out, and this was only brought up by one, is the
7 Texas case, Joe Horn shooting two intruders that
8 were on his neighbor's property.

9 The one thing that I would like to point
10 out there is that had nothing to do with the Castle
11 Doctrine. That had to do with the fact that Texas
12 has very expansive laws in the case of self-defense
13 and you can actually use lethal force in Texas to
14 protect property and, in certain circumstances,
15 your neighbor's property.

16 So while he act -- he did, in fact, act
17 under, you know, the -- you know, within the bounds
18 of Texas law, it had nothing to do with Castle
19 Doctrine. It had actually to do with property law
20 and self-defense law that had gone back to the
21 1800s.

22 I would like to close with just saying
23 that I hope my story and the points that I've
24 raised here will stay with you as you consider the
25 future of House Bill 40, which I would like to add

1 at this time, has 118 cosponsors.

2 This is not a bill that doesn't have wide
3 support. This is -- you know, a majority of people
4 are supporting this bill, representing a majority
5 of citizens in this -- you know, in this state.

6 You know, sadly my story is not unique
7 and while I'm glad it worked out very well for me,
8 that's not always the case. For other people this
9 has not worked out as well, as we heard the story
10 of Venango County, which I won't, you know,
11 repeat.

12 This can go very badly for people who are
13 put into a sition -- position they didn't ask for.
14 I was walking to my girlfriend's house. Three
15 criminals put me in a position that I didn't want
16 to have to be in. I don't ever want to have to
17 make that choice.

18 But they forced me into it, and
19 thankfully my position worked out. For some people
20 it does not.

21 So I would strongly encourage that you
22 guys consider, you know, supporting House Bill 40
23 and letting us get this out and passed.

24 Thank you.

25 CHAIRMAN CALTAGIRONE: Thank you, sir.

1 Questions?

2 Chairman Marsico.

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

5 As I -- as you made some of your
6 statements, I noticed that some of the law
7 enforcement officials that are here with us were
8 shaking their heads and, of course, you had the
9 opportunity to provide your -- the last point, the
10 last argument here, with all the testifiers.

11 So I was wondering -- and you made some
12 very good points. I was wondering if some of those
13 law enforcement officials, if you wouldn't mind,
14 Mr. Chairman, would like to make a counterpoint to
15 your arguments.

16 MR. PEHRSON: Understandably.

17 REPRESENTATIVE MARSICO: Anyone here that
18 would like to respond to the --

19 MR. ANDRING: Let me respond to this
20 briefly.

21 REPRESENTATIVE MARSICO: Would you like
22 to? Sure, Counsel.

23 MR. ANDRING: Yeah. Because I think I
24 know what -- what we're talking about here now, in
25 fact, and, again, it's part of the overall problem

1 with this bill that it's not about whether or not
2 we have a right to self-defense or whether or not
3 we have a Castle Doctrine. We have those things.

4 We're talking about the parameters and
5 how they apply and we're playing around the edges.

6 The way this is worded on Page 6 of the
7 bill, literally you have a right to use deadly
8 force if a person -- if forced entry or unlawful
9 entry was occurring or had occurred. That's the
10 way the bill was worded. It's abysmal wording.

11 And really it literally does, taken in
12 this context, authorize shooting the guy when he's
13 running down the sidewalk out of your house.

14 That's why people have problems with this
15 bill. Not because they're opposed to self-defense,
16 not because they're opposed to the Castle Doctrine,
17 but a lot of the things involving the way this is
18 drafted.

19 And -- and, frankly, the committee needs
20 to deal with a lot of these issues.

21 REPRESENTATIVE MARSICO: Thank you.

22 CHAIRMAN CALTAGIRONE: Yes, sir. Go
23 ahead.

24 MR. MICHAEL CHARLES: Just to address
25 Representative [sic] Andring's comment.

1 CHAIRMAN CALTAGIRONE: He's the chief
2 counsel.

3 MR. CHARLES: I'm sorry. I didn't mean
4 to promote you. I don't dispute that there may be
5 some issues with the exact wording and revising
6 something is easy to do.

7 But it came across to me as though you
8 were saying that -- my impression was that since
9 the wording is such perhaps the bill shouldn't go
10 forth, rather than say let's make the wording
11 clearer and put the bill forward.

12 MR. ANDRING: No, I don't --

13 CHAIRMAN CALTAGIRONE: Honestly, I don't
14 think he said that. You know, our business here is
15 anybody as -- as -- as anybody that deals with
16 words, whether it's legal or business, the press,
17 you've got to be careful, very, very careful.

18 And -- and after chairing this committee
19 for quite a number of years, I know legally words
20 mean a lot. And -- and you've got to be very, very
21 specific as to what your meaning is.

22 I had reviewed this bill very carefully
23 with counsel. There's a lot of flaws. There's a
24 lot of technical issues that have to be dealt
25 with.

1 I mean whether it becomes law or doesn't,
2 I'm sure everybody in this room would agree that
3 you don't want a lot of little issues that could
4 arise because legally it could present nightmares
5 for both sides.

6 And -- and I think what Chief Counsel
7 Andring is trying to point out, there are
8 unintended consequences in some of the way the
9 drafting language appears in this -- in this
10 legislation, and that's one of the things that the
11 attorneys on the committee, and others, try to
12 rectify and hopefully we do a good job. Or we want
13 bills that we don't make those kind of mistakes.

14 But let me just say, you know, we're not
15 perfect. I've seen errors come down from the
16 Reference Bureau, and that's the heart of our
17 operation here. They're basically all attorneys.

18 And from time to time -- they're good
19 people, don't misunderstand me -- but they make
20 mistakes, too.

21 There are a lot of concerns about -- and
22 it was pointed out by several of the testifiers
23 here today -- that this bill, if it were to move
24 forward, has got to be cleaned up. There's a lot
25 of technical issues that have to be addressed. And

1 I think that's -- I'm not speaking for you,
2 counsel. You can certainly do that on your own.

3 MR. ANDRING: I work for you.

4 MR. CHARLES: I'm sorry. One thing I
5 just want to point out, because I think it's an
6 important technical point, as Mr. Pehrson said, and
7 what was testified earlier by myself and others,
8 gun owners in general, and especially those that
9 have permits to carry, are statistically more
10 law-abiding than the general public.

11 Even if it was not in the law and it
12 somehow got by the -- as you said, you could make
13 an interpretation you can shoot them down the block
14 if -- I doubt any of us being responsible citizens
15 and responsible gun owners, once that person is
16 hightailing it out, would shoot someone in the
17 back, because, again, there's the overriding
18 principle of they're no longer a threat and that's
19 using the reasonable man theory.

20 And you have to give some credi --
21 credence and credibility to the intelligence of the
22 people that do own guns, because we do take the law
23 seriously.

24 CHAIRMAN CALTAGIRONE: I've just been
25 reminded, gentlemen and ladies, they are waiting to

1 get into the room, and I do have to -- to wrap it
2 up today.

3 But I do appreciate all the testimony and
4 everybody that -- that proceeded here today with
5 their testimony.

6 MR. DAVID TYLER: Mr. Chairman, real
7 quick, if there's anyone in the audience who didn't
8 get to say what they want to say, we'll keep the
9 record open for another 24 hours. So if you have
10 some written comments that you want to submit,
11 Mr. Chairman, if it's okay with you, we can keep
12 the record open for a while longer.

13 CHAIRMAN CALTAGIRONE: Sure. It is.

14 This hearing is adjourned. Thank you
15 very much.

16 (The following is written testimony
17 submitted to the Committee at the time of this
18 hearing.)

19 (The following is written testimony of
20 Jeffrey R. Souders, Legislative Liaison of the
21 Pennsylvania Federation of Sportsmen's Clubs:)

22 A wise man once said, "A man's house is
23 his castle, and God's law, as well as man's, set a
24 guard upon it; he that assaults it does so at his
25 peril." Matthew Henry's commentary on Exodus 22.

1 Good morning, Chairman Caltagirone and
2 members of the committee. My name is Jeff Souders.
3 I am the Legislative Liaison for the Pennsylvania
4 Federation of Sportsmen's Clubs (PFSC). The PFSC is
5 one of the oldest and largest sportsmen's
6 organizations in Pennsylvania. The federation
7 represents nearly 100,000 sportsmen and
8 conservationists in the Commonwealth.

9 I come here today to offer the
10 Pennsylvania Federation of Sportsmen's Clubs'
11 steadfast support for House Bill 40. We believe
12 every law-abiding citizen should have the right to
13 protect themselves, their families, and their
14 property.

15 We also believe it is time to stop
16 protecting the criminal, and give law-abiding
17 citizens the right to protect themselves, free from
18 the burdens of civil or criminal actions. House
19 Bill 40, the Castle Doctrine, will ensure honest
20 Pennsylvanians are guaranteed these rights.

21 With 110 co-sponsors, House Bill 40 enjoys
22 overwhelming bipartisan support. It is reassuring
23 to note that so many of our elected officials
24 recognize the value of an individual's right to
25 protect themselves from molestation or bodily harm.

1 As stated in this bill, no person should
2 be required to surrender his or her personal safety
3 to a criminal, nor should a person be required to
4 needlessly retreat in the face of intrusion or
5 attack outside the person's home or vehicle.

6 The Pennsylvania Federation of Sportsmen's
7 Clubs would like to thank Representative Scott Perry
8 for introducing this important piece of legislation,
9 and the 110 co-sponsors of House Bill 40. With this
10 overwhelming bipartisan support, House Bill 40 will
11 have a positive impact on cutting crime and making
12 Pennsylvania a safer state to visit and live in.

13 Thank you.

14 Jeffrey R. Souders, PFSC Legislative
15 Liaison.

16 (This concludes the written testimony
17 submitted by Jeffrey R. Souders, Legislative Liaison
18 of the Pennsylvania Federation of Sportsmen's Club.)

19 (The following is written testimony
20 submitted by Amy K. Rosenberry, Executive Director
21 of the Pennsylvania Chiefs of Police Association:)

22 Dear Chairman Caltagirone and members of
23 the House Judiciary Committee:

24 On behalf of the membership of the
25 Pennsylvania Chiefs of Police Association, we write

1 to express our strong opposition to House Bill 40,
2 which would unnecessarily expand the circumstances
3 under which a person could use deadly force against
4 another.

5 Citizens of the Commonwealth have lived
6 with a long-standing duty to retreat which requires
7 persons who are being threatened to retreat if they
8 can do so safely, instead of resorting to the use of
9 deadly force against another.

10 There is absolutely no need to expand on
11 this law and doing so will create an unsafe threat
12 to the safety of the public. The law governing the
13 taking of a human life by another should remain as a
14 last resort. House Bill 40, very sadly and
15 unnecessarily, moves that option from last to one of
16 the first.

17 Additionally, this bill would add further
18 potential threats and hazards to law enforcement
19 officers. Not only police officers, but also
20 probation officers, sheriff's deputies, SERT/QRT
21 teams and others who may find themselves on
22 someone's porch in the lawful course of their
23 duties, facing gunfire as someone inside is unaware
24 of who they are, and now has a defense written into
25 the law.

1 This type of shoot first, ask questions
2 later law would create a serious risk for law
3 enforcement officers and will add a whole new
4 dimension to trying to serve a body or search
5 warrant at or on a residence.

6 The Pennsylvania Chiefs of Police
7 Association stands with our law enforcement partners
8 from across the Commonwealth in opposition to the
9 House Bill 40.

10 Sincerely,

11 Amy K. Rosenberry, Executive Director.

12 (This concludes the written testimony
13 submitted by Amy K. Rosenberry, Executive Director
14 of the Pennsylvania Chiefs of Police Association.)

15 (The following is the written testimony
16 submitted by Peg Dierkers, Executive Director of the
17 Pennsylvania Coalition Against Domestic Violence:)

18 In Re: Opposition to House Bill 40,
19 expanding the Castle Doctrine/Right to Use Lethal
20 Force against Home Invaders.

21 Dear Chairman Caltagirone and Judiciary
22 Committee Members:

23 On behalf of our 61 domestic violence
24 programs throughout the Commonwealth and the
25 hundreds of thousands of victims those programs

1 serve, the Pennsylvania Coalition Against Domestic
2 Violence (PCADV) submits this written testimony in
3 steadfast opposition to House Bill 40, a bill to
4 expand Pennsylvania's existing Castle Doctrine.

5 As you know, the Castle Doctrine is based
6 in the medieval principle that the home is one's
7 castle, and one may defend that castle with force,
8 including lethal force. Based in principles of
9 proportionality and the sanctity of human life, the
10 law imposes a reasonable restriction on the right of
11 self-protection by lethal force via the duty to
12 retreat from trespassers where it is safe to do so.

13 Under current law, one does not have a
14 duty to retreat in one's own home -- unless the
15 attacker has equal access to the home. Where the
16 victim and attacker are both on the mortgage or
17 lease and thus both have a legal right to be present
18 in the home, then the duty to retreat does apply.

19 House Bill 40 would eviscerate that duty
20 to retreat by presuming that all trespassers are
21 appropriate targets of lethal force -- even where
22 there are safe alternatives to killing.

23 In considering the prudence of the
24 proposed expansion of Pennsylvania's Castle
25 Doctrine, we believe it is imperative that members

1 of this Committee and all legislators understand
2 two key points of essential relevance to the Castle
3 Doctrine.

4 First, contrary to stereotype, the vast
5 majority of violence in the home is not committed
6 by dangerous criminals who are strangers to their
7 victims, against who innocent residents must stand
8 their ground and shoot to defend themselves.

9 Rather, the overwhelming majority of
10 violence in the home -- the locus of the Castle
11 Doctrine -- is committed by dangerously violent
12 abusers who have an established family or household
13 relationship with their victims, most commonly as a
14 current or former intimate partner.

15 They are husbands, boyfriends, wives,
16 girlfriends, sons, daughters, parents, and others
17 with whom we have shared bonds of love and trust,
18 yet who have become those we justifiably fear most.

19 Study after study illustrates the tragic
20 reality that most lethal violence in the home is
21 committed against women by the men they have shared
22 their lives with. For example, in 2007, there were
23 1,865 females murdered by males in single
24 victim/single offender incidents that were submitted
25 to the FBI for its Supplementary Homicide Report.

1 For homicides in which the
2 victim-to-offender relationship could be identified,
3 91 percent of female victims (1,587 out of 1,743)
4 were murdered by someone they knew. That number of
5 females murdered by a male they knew (1,587 victims)
6 is more than ten times greater than the number of
7 females killed by male strangers (156 victims).

8 For victims who knew their offenders, 62
9 percent (990 of 1,587) of female homicide victims
10 were the wives, common-law wives, ex-wives, or
11 girlfriends of their killers.

12 The number of females shot and killed by
13 their husband or intimate acquaintance (545 victims)
14 was more than three times higher than the total
15 number murdered by male strangers using all weapons
16 combined (156 victims) in single victim/single
17 offender incidents in 2007.

18 There were 315 women shot and killed by
19 either their husband or intimate acquaintance during
20 the course of an argument.

21 In 88 percent of all incidents where the
22 circumstances could be determined, homicides were
23 not related to the commission of any other felony,
24 such as rape or robbery.

25 The bottom line is that when thinking of

1 the persons against whom lethal force in the home is
2 used, the image of the scary stranger breaking in a
3 window must be replaced with the image of those who
4 victims' know and have relationships with, for they
5 are the ones who commit most of the violence
6 occurring in our castles.

7 Second, contrary to stereotype once again,
8 firearms are rarely used to effectively protect
9 one's self against attack. While many presume that
10 having a gun in the home will protect one's self
11 against attack, quite the opposite is true.

12 In homes with guns, the homicide of a
13 household member is almost three times more likely
14 to occur than in homes without guns.

15 The risk of a family member's suicide is
16 increased by nearly five times in homes with guns;
17 the risk of suicide is higher still for adolescents
18 and young adults.

19 These known risks of injury and lethality
20 strongly outweigh the presumed benefit of
21 self-protection -- which is relatively minuscule.

22 According to the U.S. Bureau of Justice
23 Statistics, there are an average of about 108,000
24 defensive uses of guns each year, compared to about
25 1.3 million crimes committed with guns.

1 In 1998, for every one woman who used a
2 handgun to kill an intimate acquaintance in
3 self-defense, 83 women were murdered by an intimate
4 acquaintance using a handgun.

5 In a first-of-its-kind study,
6 epidemiologists at the University of Pennsylvania
7 School of medicine found that, on average, guns did
8 not protect those who possessed them from being shot
9 in an assault. The study estimated that people with
10 a gun were 4.5 times more likely to be shot in an
11 assault than those not possessing a gun.

12 In the particular context of homes
13 affected by domestic violence, promoting the use of
14 firearms by domestic violence victims against their
15 perpetrators -- as expanding the Castle Doctrine
16 necessarily does -- in fact, increase the risk that
17 incidents of domestic violence will result in
18 homicide. Family and intimate assaults involving
19 firearms are twelve times more likely to result in
20 death than non-firearm-related assaults.

21 In the context of these tragic and
22 tragically common incidents of lethal domestic
23 violence, the Castle Doctrine is nearly useless to
24 abuse victims in claims of self-defense because
25 abuse victims are the ones killed.

1 If House Bill 40 is purported to be a
2 measure to strengthen crime victims' rights to use
3 deadly force for self-protection, then this
4 Committee must be aware that it simply does not
5 reflect the reality that most lethal violence in the
6 home is committed by the current and former intimate
7 partners of victims. The myth that arming yourself
8 will protect you against violent attack must give
9 way to this reality.

10 Expanding the Castle Doctrine is no
11 solution to the epidemic of domestic violence, which
12 comprises the vast majority of violent assaults in
13 the home. House Bill 40 is a misguided proposal,
14 and we urge this Committee to reject it.

15 Sincerely,

16 Peg Dierkers, Executive Director.

17 (This concludes the written testimony
18 submitted by Peg Dierkers, Executive Director of the
19 Pennsylvania Coalition Against Domestic Violence.)

20 (This concludes the written testimony
21 submitted to the Committee at the time of this
22 hearing.)

23 (The proceedings were concluded at
24 1:04 p.m.)

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

Brenda S. Hamilton, RPR
Reporter - Notary Public