

November 19th 2009

I was unable to attend Thursday's public testimony before the Judiciary Committee on House bill 40; however I did watch the proceedings later in the evening. I see that the Committee has extended a 24 hour period of testimony to accept additional written statements.

I have prepared some statements and a few direct responses to testimony. I respectfully request that my comments be included in that record.

House Bill 40 is a piece of legislation Pennsylvanians deserve to have enacted. The reason we find ourselves today deliberating this bill is a direct result of the failure of the criminal justice system to do its job. For several decades now we have seen Pennsylvania's most violent criminals receive plea bargains, reduced sentencing, and light punishments. Predators quickly get recycled back out into our neighborhoods, where we work, live, go to school and enjoy the fruits of our labor. The failing of our system to properly punish unlawful behavior emboldens those criminals, and once released they continue to victimize us with impunity. The rise of the concealed carry movement throughout the nation in the 1990's was a direct response to public pressure from good citizens demanding to have the right to an effective means of self-defense. House Bill 40 will provide additional protections to the good citizens of the Commonwealth by recognizing that we have a right to defend ourselves and meet the unlawful use of force with lawful force.

In addition to light criminal penalties and punishments, these criminals also recognize they can take advantage of tort law. They understand if they become injured or killed by their victim in the performance of a crime, they or their families can find a willing attorney to initiate a civil case, usually done on contingency fees. After being victimized once, the victim is victimized yet again, only this time it is by the very system which the people put in place to serve justice. This situation is both unjust and immoral. The civil law protections in House Bill 40 will right that injustice.

This Committee has an opportunity before it to restore confidence in our system. As Frederic Bastiat wrote,

When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law.

Criminals have no respect for the law, society, and the people they prey upon. But with each and every fresh story on the evening news of a violent, repeat felon still out on the streets of our state and preying upon the good citizens of Pennsylvania, we lose more respect for the public servants we entrusted with the duty to end their criminal careers. This elected body should be as equally outraged of the ability of the criminal to profit from his victim through the manipulation of tort law for perverse means. Vote to pass House Bill 40 to end that travesty.

Although this bill is not solely concerned with the justifiable use of deadly force with a firearm, this issue is where the concerns about its passage lie. Citizens who have made the choice to lawfully keep and carry a firearm do not enter into that decision lightly. The citizen must make considerable efforts to obtain a license to carry from his Sheriff. And many who make that decision have thought about the consequences if he has to use it far ahead of time. The current situation leaves Pennsylvanians with anxiety and fear over what an overzealous local District Attorney might choose to do to a citizen who used deadly force to protect himself.

If a citizen kills his assailant, that action will follow him for the rest of his life. Because there is no statute of limitations on murder, the possibility of a defender being charged with a felony will pass on from one District Attorney's administration onto the next, until he is either charged or becomes deceased. Opponents of this bill will point out that if the defender was justified, he will be vindicated when he gets his day in court. Unfortunately those in that camp don't appreciate the power of the District Attorney's office.

A murder charge qualifies for a no bail, pretrial confinement. This tool is very often used against the career criminal as a way to wear him down into accepting a plea deal on a lesser charge. When used against the peaceable citizen, one's day in court may be many months or even years away. The victim may very well get his day in court and be vindicated, but upon his release he'll have both massive legal debts coupled with the loss of income. This sort of anxiety, coupled with a fear of civil litigation, can be enough to create hesitation in the mind of a victim at the very instant when no time exists for detached deliberation. Criminals initiate their attack on us, and they surprise us with their violence.

What House Bill 40 will do is allow the peaceable citizen to know and plan ahead of time exactly the conditions under which he will and will not use justifiable self-defense. Additionally, he will have the assurance that if the force was justifiable, he will not face an unnecessary arrest, pre-trial confinement, and overzealous prosecution.

With my comments concluded, allow me to briefly address the direct testimony previously offered:

- Ed Marsico, District Attorney of Dauphin County, expressed fears that this bill will make it harder to prosecute career criminals. This bill does nothing to change the current law on the unjustifiable use of force; it directly addresses justifiable use of force. But even if it did make the job of the District Attorney's job harder, I'll remind him of the words of the great English jurist William Blackstone –

Better that ten guilty persons escape than that one innocent suffer.

- Mr. Marsico also made a disturbing comment that concerned not only me, but also the Honorable Kathy Manderino, enough so that she felt compelled to address it for the record. His comments revolved around the profession of defense attorneys working for the "dark side", coupled with a light-hearted jab at welcoming a former defense attorney over to the

“good side”. I understand that he tried to clear it up later, but the attitude it reflects is important and should not be dismissed.

Committee members questioned and pressed John Hohenwarter to specifically name who he was referring to when he mentioned overzealous prosecutors. He was too polite to do that in testimony, but I'll put Ed Marisco on that list. The attitude expressed, even if it was expressed as a joke, that the defense is somehow working for the “dark side” **illustrates precisely** why we good citizens feel the need to have the protective language you have before you today.

I understand that Mr. Marsico works hard to prosecute and incarcerate bad people. But just because he's doing the right job doesn't mean he's always right. The defense exists for a reason, just like the judge and jury. Attitudes like his make us apprehensive. We won't take your word at it and trust you to do the right thing. Right now we're in the midst of a fight with cities passing their own firearms laws in defiance of the well-established state pre-emption statute. The promise to do the right thing doesn't mean much to me when these various cities are brazenly defying existing law themselves.

- The Honorable Ronald Waters made a comment that this bill “makes him nervous.” The intent of this bill isn't specifically to make anyone nervous, but if it makes the criminal population nervous and apprehensive, I'd consider that a welcomed unintended consequence.
- Honorable Chairman Caltagirone made a statement that the Committee might need to clear up some language before this can move. Once again we citizens find ourselves in the position of being angry at the state not doing its job. This bill has been in the Committee's hands all year long! Just like the battle over the budget, the Legislature seems to have a time management issue. It was submitted to the Committee on January 26th 2009. You've had enough time to deliberate over it. Hold the vote.

I beseech the Judiciary Committee to hold the vote for this bill in the most expeditious manner and pass it with full support to the General Assembly.

Best regards,

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