

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 1625

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House Judiciary Committee

Irvis Office Building
Room G-50
Harrisburg, Pennsylvania

Monday, March 1, 2010 - 10:00 a.m.

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BEFORE:

Honorable Thomas Caltagirone, Majority Chairman
Honorable Ron Marsico, Minority Chairman
Honorable Richard R. Stevenson

ALSO PRESENT:

Honorable Bryan Barbin
Honorable Dante Santoni, Jr.
Honorable John J. Siptroth

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1 ALSO PRESENT:

2

 David D. Tyler

3 Majority Executive Director

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 William Andring, Esquire

5 Majority Chief Counsel for Committee

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 Tamara Fox

7 Minority Staff

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1 CHAIRMAN CALTAGIRONE: We'll open the
2 hearing. I'm Tom Caltagirone, Chairman of
3 Judiciary. Public hearing on House Bill 1625.
4 For the record, if the members would just
5 please introduce themselves, starting from my
6 right and stating --

7 REPRESENTATIVE SANTONI: Good
8 morning, I'm Dante Santoni, a member from Berks
9 County.

10 MR. TYLER: David Tyler, Executive
11 Director of Judiciary Committee.

12 REPRESENTATIVE SIPTROTH:
13 Representative John Siptroth, 189th District,
14 and sponsor of the bill.

15 CHAIRMAN MARSICO: Representative Ron
16 Marsico, Dauphin County.

17 MR. FOX: Tammy Fox, staff to the
18 Judiciary Committee.

19 REPRESENTATIVE STEVENSON:
20 Representative Dick Stevenson, Mercer and
21 Butler counties.

22 REPRESENTATIVE BARBIN:
23 Representative Bryan Barbin, Cambria County.

24 CHAIRMAN CALTAGIRONE: For the
25 record, it is Chairman Marsico.

1 CHAIRMAN MARSICO: Thank you. That's
2 right.

3 CHAIRMAN CALTAGIRONE: We'll open up
4 with Representative Siptroth for opening
5 comments.

6 REPRESENTATIVE SIPTROTH: Thank you
7 Mr. Chairman, Chairman Caltagirone, Chairman
8 Marsico, and members of the Judiciary Committee
9 and attendees of this hearing. I thank you for
10 granting me this hearing on legislation, House
11 Bill 1625.

12 There needs to be a law that
13 increases protection of our children.
14 Depending on the circumstances, indecent
15 assault can be graded as a misdemeanor of the
16 first or second degree or a felony of the third
17 degree. My legislation would increase the
18 grading to a felony of the third degree under
19 two circumstances: The victim is younger than
20 13, the victim is younger than 16, and the
21 person committing the indecent assault is four
22 or more years older than that victim.

23 In this case the higher grading would
24 be applied to the victim and perpetrator are
25 not married to each other. Legislation would

1 increase the penalties and serve as a deterrent
2 to this crime. The maximum penalty for a
3 misdemeanor of the second degree is two years
4 in jail and a 5000-dollar fine. It increases
5 to five years in prison and a 10,000-dollar
6 fine for a first degree misdemeanor. The
7 maximum penalty for a third degree misdemeanor
8 is seven years in prison and a 13,000-dollar
9 fine.

10 During the last session, Mr.
11 Chairman, a number of amendments were built
12 into this bill and has been refined. I hope
13 that it's satisfactory to the committee. Thank
14 you very much.

15 CHAIRMAN CALTAGIRONE: Thank you,
16 Representative. We'll now start with the
17 testimony, Angela Bayer, Heads Held High, and
18 Bruce Bayer, Chairman of Heads Held High.

19 MS. BAYER: Good morning, ladies and
20 gentlemen. My name is Angela Bayer. I'm a
21 child advocate, preschool teacher and mother.
22 That's how I'm coming here to address you. I
23 thank you for giving me this chance to speak to
24 everyone today. I'm here speaking because
25 children do not have a voice and they're not

1 here speaking, so I'm their voice here.

2 Charles Manson, Jack the Ripper.
3 Infamous names because of the atrocities of
4 their crimes. We know these men were serial
5 killers. We know they were vicious, depraved
6 and violent criminals, but did you know that
7 they have the same personality characteristics
8 as a sex offender against children?

9 Sex offenders live among us as
10 everyday citizens. About five percent of our
11 population molests children. Their behavior is
12 the most repetitive, to the point of
13 compulsion, rather than lacking -- from a lack
14 of judgment.

15 Rarely are offenders of young victims
16 a stranger to them. Ninety percent of sexual
17 assault cases involve persons known to the
18 child such as a parent or a familiar
19 acquaintance. Thirty to 40 percent of victims
20 are abused by a family member. Another 50
21 percent are abused by someone outside of the
22 family whom they know or trust. Forty percent
23 are abused by older and larger children whom
24 they know. Therefore, only 10 percent are
25 abused by strangers. That's according to FBI

1 statistics.

2 One in four girls is sexually abused
3 before the age of 18. Let's put some
4 perspective on this. We hear stats every day.
5 You're hearing stats right now. I'm a
6 preschool teacher and I have four girls in my
7 classroom under the age of six. One of those
8 four may be sexually molested by the time they
9 are 18. Let's look at it a little bit more
10 personally.

11 Amongst you right now, do you have
12 daughters, nieces, granddaughters, neighbors;
13 any girls under the age of 18? Four of them,
14 just think about those. One of those four may
15 be molested by the time they're 18. That's
16 what I'm talking about right now.

17 (A poster was produced). I want to
18 put a face to this. One of these four girls
19 will be molested by the time they're 18. It
20 doesn't matter their age or gender, socio-
21 economical status, anything. Somebody will be
22 molested. That's what we're dealing with right
23 now.

24 I've worked as a preschool teacher
25 for over 10 years now. I have seen my share of

1 child abuse, unfortunately. Children are the
2 most vulnerable people in our society; they're
3 our future too. Abused children tell
4 heart-wrenching stories, their eyes, their
5 souls, they cry. I have seen cigarette marks
6 on children, malnourished and neglected
7 children. I've seen it all. But by far worse
8 is the case of a child all close age are here.

9 She was a rather beautiful tall girl.
10 She was three years old. She was potty-trained
11 but she started having accidents again. One
12 day when I was changing her I noticed she was
13 red and bruised in her genital area. She
14 started crying and she said it hurts. I held
15 her after I changed her, and she said, my daddy
16 peed on me. Those words have haunted me ever
17 since she said those words.

18 She tried telling people about that.
19 No matter how much she said all those things,
20 nobody ever heard her. Despite the forensic
21 evidence, those child's words were twisted and
22 turned by the defense. The child and her
23 mother came to live with my family. The mother
24 got a protection from abuse order. Dad finally
25 moved out. Eventually he left the country

1 after my husband told him never to show his
2 face around my preschool again. But, the
3 system failed her. The dad never got any jail
4 time, nor was any justice done.

5 This child had nightmares at nap
6 time. She was creaming, crying. She needed to
7 be held and soothed and consoled. She moved
8 cowering in corners. She did not socialize
9 with other children. Picture a classroom of
10 children playing with Legos. Everyone content,
11 everyone interacting, and then picture a child
12 cowering in a corner, hunched over, eyes down.
13 That was her now. Gone was the happy child who
14 jumped and danced during music time or listened
15 to stories. Intensive therapy was required to
16 get her semblance of her life back. Her
17 innocence was gone, her childhood was ripped
18 apart.

19 Remember, though, molestation does
20 not discriminate genders. One in six boys are
21 sexually abused before the age of 18. Can you
22 think of six boys in your lives under the age
23 of 18? Do you have sons, grandsons, nephews?

24 (Poster is produced). One in six,
25 look at the faces; one of these six, random

1 pictures. One of these six may be molested by
2 the time they're 18.

3 No child is psychologically prepared
4 to deal with child sexual abuse. Children five
5 or older who know and care for the abuser
6 become trapped between affection and loyalty
7 for the person, and the sense that the sexual
8 activities are terribly wrong. If children try
9 to break away from this type of relationship,
10 the abuser tries to threaten them with violence
11 or loss of love. There's shame, there's fear,
12 there's jealousy, and the child is afraid the
13 family will break apart if the secret is told.

14 Long-term emotional and psychological
15 damage of sexual abuse is devastating to a
16 child. A child who is a victim of prolonged
17 sexual abuse develops a low self-esteem, a
18 feeling of worthlessness, and an abnormal or
19 distorted view of sex. A child may become
20 withdrawn and mistrustful of adults, and can
21 even become suicidal.

22 Some children who have been sexually
23 abused have difficulty relating to others
24 except on sexual terms. They may become child
25 abusers, prostitutes, or have other serious

1 problems.

2 Often there are no external signs of
3 sexual abuse, but they may develop some of the
4 following unusual interests and avoidance of
5 sexual nature things: Sleep problems,
6 nightmares, depression, withdrawal,
7 seductiveness, thinking that their bodies are
8 dirty or damaged, and even refusal to go to
9 school.

10 Let's take a moment to think about
11 this. Any of those four girls you thought
12 about earlier display any of those signs I just
13 mentioned? Any of those six boys displaying
14 any of those signs? Are you wondering now what
15 if? Do you want to help these children?

16 Let's say you're one of the few
17 people present here today that do not know any
18 four girls under the age of 18 or six under 18.
19 And you're thinking to yourself that these
20 children don't affect your life at all.
21 They're just faces. Maybe the welfare of
22 children is not your priority because there are
23 so many issues in our state. But let me assure
24 you, though, child abuse does affect your
25 personally.

1 Maybe the bottom dollar would open up
2 your eyes to the need for reform and proper
3 legislation needs to be enacted now. Did you
4 know that their abuse impacts society?
5 Consequences of child sexual abuse begins
6 affecting children and families immediately.
7 They affect society in innumerable negative
8 ways. Their effects continue through the life
9 of the survivor. Try to impact 39 million
10 survivors in our nation.

11 (Poster is produced). Long-term
12 effects of child sexual abuse. Sexually-abused
13 children who keep it a secret or who tell are
14 not believed are at greater risk than the
15 general population for psychological,
16 emotional, social and physical problems. We're
17 putting faces to these statistics.

18 Victims of sexual abuse report more
19 symptoms of post-traumatic stress disorder.
20 Victims are more likely to experience
21 depressive disorders. They're more likely to
22 develop eating disorders. They often have
23 violent crimes.

24 Drug and alcohol problems, 70 to 80
25 percent of survivors report excessive drug and

1 alcohol use. Their reasons, trying to dull the
2 pain.

3 Young girl who are sexually abused
4 are three times more likely to develop
5 psychiatric disorders.

6 Male survivors, more than 70 percent
7 seek psychological treatment for substance
8 abuse. Children who have been victims of
9 sexual abuse exhibit long-term, frequent
10 behavioral problems. An estimated 60 percent
11 of first teenage pregnancies are preceded by
12 experience of molestation. Victims of child
13 sexual abuse are more likely to be sexually
14 promiscuous. Seventy-five percent of teenage
15 prostitutes were molested. This gives you an
16 idea, seeing some faces. Those beautiful
17 children you saw before, this is them now.

18 We're talking about 39 million sexual
19 abuse survivors living here in United States.
20 We are not talking worldwide. Thirty-nine
21 million survivors of scars that go deep down
22 inside.

23 Most children don't tell if the
24 they've been asked. Evidence shows that a
25 child who has been sexually abused is not

1 always obvious, and many children do not report
2 it. Thirty percent of victims never disclose
3 the experience to anyone. Young victims may
4 not recognize victimization as sexual abuse.
5 Eighty percent deny abuse or very tentative in
6 disclosing. Seventy-five percent disclose
7 accidentally. Additionally, those who may
8 disclose, more than 20 percent eventually
9 recant that the abuse ever occurred.

10 Some people think about fabricated
11 sexual abuse cases, but there's only one to
12 four percent of all of those fabricated sexual
13 abuse cases. Seventy-five percent of those one
14 to four are only reported by adults.
15 Twenty-five percent are reported by children.

16 Sexual abuse has been reported more
17 than 80,000 times a year, but the number of
18 unreported instances is far greater because
19 children are afraid to tell anyone.

20 Let's go back to CJ, remember her,
21 the beautiful three-year-old girl. She had to
22 be examined and probed by forensic doctors.
23 She had to tell complete strangers what had
24 happened to her. Her mother felt powerless to
25 help her, especially when the defense lawyer

1 already told mom that the father was going to
2 get off with no jail time. He was just being
3 plea bargained. How fair is that? How fair is
4 that to that poor child? How is it possible to
5 let someone walk after they have hurt a child
6 in the worst possible way?

7 House Bill 1625 is a big step in the
8 right direction of getting justice for abused
9 children. (Poster is produced). I think I'll
10 leave you off with these instead of the other
11 pictures. This is what could happen. There's
12 one in four or one in six children, we could be
13 looking at this instead of the drug abusers,
14 the prostitutes, the teenage pregnancies. We
15 could look at happiness. We could look at
16 gainful employment, adults in caring and loving
17 relationships.

18 Pedophiles need to know that PA is a
19 state where child molestation is not accepted
20 and penalties are stiff. I stand before you
21 today as a mother, teacher and advocate to ask
22 you this question. Does our future society
23 mean something to you? If so, please consider
24 voting in favor of House Bill 1625 to make a
25 difference for abused children everywhere.

1 I thank you for your time and your
2 attention.

3 CHAIRMAN CALTAGIRONE: Thank you.
4 Bruce, if you'd like to testify, and then we'll
5 be open for questions.

6 MR. BAYER: My name is Bruce Bayer.
7 I'm the Chairman of Heads Held High, a
8 nonprofit advocates for Pennsylvania. I'm also
9 a member of the newly-formed Citizens Review
10 Panel for northeast PA, which takes in several
11 counties. I am also a voting member of POCC
12 here in Harrisburg area, Kathleen
13 Paulman (phonetic) and the like. We meet over
14 in Mechanicsburg once a month.

15 In the big picture of life I'm a
16 nobody. But today I come before you as a child
17 advocate. In that role I will not be a nobody.
18 I'll be a voice for the children who cannot
19 speak.

20 You all have my speech in front of
21 you. The way I do things, gentlemen, you have
22 it, you can read it. I'd rather look you in
23 the eye and talk to you, okay?

24 Kids are being hurt all throughout
25 this state. Not in any particular county.

1 It's all over the state. The problem with it
2 is, nobody listens. Children are children.
3 You heard the story about CJ. She was a
4 beautiful young lady. There was also a child
5 with cigarette burns up and down her arm. We
6 took them to the system. We were told to stay
7 out of both of these cases because they were a
8 custody issue. This is not a custody issue
9 when a child is hurt.

10 Then it came to -- That was two
11 strikes. I'm a baseball fanatic. Then one day
12 two of my children -- my stepchildren told the
13 therapist they were molested by a person
14 nowhere near our home, so we went to the system
15 with strike three. They were moved from our
16 home, held incommunicado for 41 days, and then
17 sent home and said it's unfounded. So they
18 were abused once and then the system abused
19 them again. Different ways, yes. An abuse,
20 yes. Do we need to correct both things, yes.
21 I'm working on that with the Citizens Review
22 Panel.

23 I'm also working on that, I have
24 testified in front of the Licensure Bureau to
25 get our caseworkers licensed and more informed.

1 I know you're all going to say that's going to
2 cost money. You're spending the money already,
3 gentlemen. Am I keeping you awake, am I?
4 (Speaking to a Representative). I'm sorry, I'm
5 rude. When I talk I like people to speak (sic)
6 because it takes a lot to get here. I like
7 people to pay attention.

8 Eighty-five percent of cases that are
9 reported are unfounded. Are we to believe that
10 85 percent of the children are lying to us when
11 they say they're hurt? It can't possibly be.
12 I've met that 85 percent. And any member up
13 here that would like to come with me one day on
14 a petition signing will meet that 85 percent.
15 They come out of group homes, they come out of
16 mental health places, right downtown
17 Wilkes-Barre, Scranton. They walk up to you
18 and tell you these stories, they tell you how
19 they were hurt and nobody would help them.
20 These people are costing us money.

21 What I'm proposing is, we switch
22 that. We don't let these people get hurt. We
23 give them -- I'm not naive enough to believe
24 that if you pass House Bill 1625 that it will
25 all go away. It's not going to. It's like the

1 death penalty, murder is still committed. But
2 if we can cut into it just a bit, instead of
3 putting the victims in prison for the rest of
4 their lives in their minds, we can switch that
5 and put the perpetrator in prison. One
6 perpetrator in a lifetime will last about
7 40 people, so we've got a 40-to-1 ratio, so we
8 can switch the money around that way. I don't
9 know if you follow me on that, but that's my
10 take on things.

11 Now, if one perpetrator -- I hear --
12 I live in Monroe County, and I want to thank
13 Representative Siptroth for doing this for us.
14 Three times a week I hear about a molestation
15 in our area on the TV or in the newspaper. You
16 multiple that three times four you've got 12.
17 You take that 12, 52 weeks, it's 144. If we
18 could cut it down to only one a week, we're
19 down to 48, and it would be a lot less burden
20 on our system, our infrastructure and
21 everything else, because we have less victims.

22 Molestation will last with you
23 forever. One petition signing I was in the
24 middle of Wilkes-Barre square and an elderly
25 gentleman came up to me. He had a little

1 baseball cap on that we all wear when we get
2 older and stuff, nice shirt, slacks. And he
3 said, can I have some blank petitions? I said,
4 you can. What do you need them for? He says,
5 just can I have some? I gave him about seven
6 of them.

7 A week later I got them back in the
8 mail. They were completely filled out by
9 people in his neighborhood, with a little note
10 on it, thank you, I was molested as a child.
11 No one would speak for me.

12 There are so many people out there, I
13 mean, even our age, that anyone here could have
14 been molested as a child. We need to stop
15 molesters. It is a crime. It's a
16 constitutional right for our children to be
17 able to grow up for the pursuit of happiness
18 and not be hurt. Just because they're young
19 and nobody wants to listen to them and they
20 can't speak, they still have rights not to be
21 hurt.

22 Yes, the perpetrator is going to have
23 their rights, and people are going to jump up
24 and down and say, you can't do this to them.
25 But there's two people in this country that

1 can't help themselves, the really elderly and
2 the really young. We need to protect both of
3 them.

4 I had a gentleman come to my office.
5 It befuddles me why he showed up. He came with
6 a woman who wanted -- had a problem with
7 Children and Youth and wanted to discuss it.
8 He got there, and she was saying her 13 year
9 old, now 14, had a baby. First she told me it
10 was somebody at school, a student in the
11 school. I was like, that's not too great,
12 but -- All of a sudden the conversation
13 progressed, and she's telling me her boyfriend
14 fathered the child. So I look at this 37 year
15 old sitting on the couch and I said, did you
16 father this child? I looked him in the eye.
17 He said, yes, I did. It took everything I have
18 in my body not to destroy this person, because
19 I would be in jail right now if I would have
20 hit him. And he also thought he still had a
21 connection with this child.

22 Now, I ask you. Do you know any 13
23 year olds that know what love is, what
24 commitment is? You talk about money, how much
25 money is that going to cost us when this child

1 goes on welfare, the mother goes on welfare.
2 The father is going to jail like I told him.
3 He's in jail right now. What is that costing
4 us? Certainly we could have put one
5 perpetrator in jail; not had to pay the welfare
6 money for the child, the mother, had we had
7 protection out there. Had the system known --
8 Because he was been accused two other times
9 prior to this. Had the system reacted in the
10 beginning, we wouldn't have had this situation
11 now.

12 Children and Youth were involved back
13 in the other two incidents. We could have
14 stopped this person. It took two months before
15 they finally locked this guy up. So for two
16 months somebody that didn't mind going to bed
17 with a 13 year old was walking the streets of
18 Pike County--I'm sorry, John--it was Pike
19 County.

20 I beg you to back this bill. I beg
21 you to protect the children. If there's
22 anything you need for me to do, I will do it.
23 I'm an old rugged Marine. I believe in one
24 thing, get it done. Gentlemen, I ask you to
25 support the bill. Help us make the streets

1 safer for children.

2 CHAIRMAN CALTAGIRONE: Thank you,
3 Bruce. Members any questions?

4 REPRESENTATIVE SIPTROTH: Just one.
5 You had testified that one to four percent of
6 individuals that are molested are somewhat
7 cured in their minds. Those individuals that
8 are penalized for child molestation, what's the
9 recidivism of that? How often do they do it
10 again? Do you have any statistics on that at
11 all? Repeat offenders, do you know, that have
12 already gone through the system?

13 MS. BAYER: Actually I do. I think I
14 have -- Nearly 70 percent of child sexual
15 offenders have between one and nine victims, at
16 least 20 percent of 10 to 20 victims. Is that
17 what you're looking for?

18 REPRESENTATIVE SIPTROTH: I was
19 looking more directly to those that --

20 MR. BAYER: There's no cure.

21 REPRESENTATIVE SIPTROTH: You say
22 there's no cure, but there may be a mind set.
23 I think that's the difference. I think that's
24 the reason for penalizing an individual for
25 sexual abuse, whether it be of minors or not.

1 But there is a mind set of that individual that
2 if they commit the crime again, that they will
3 go through the system and be penalized.

4 MS. BAYER: It's a repetitive
5 compulsive disorder, yes.

6 MR. BAYER: I think I heard the
7 statistic I think you're looking for. People
8 that do not commit the crime again?

9 REPRESENTATIVE SIPTROTH: Yes, that's
10 what I'm looking for.

11 MR. BAYER: Out of the ones -- And I
12 don't have the exact. I can send you the exact
13 quote, but it's about 15 percent of those that
14 have been convicted before that do not, so it's
15 about 85 percent.

16 REPRESENTATIVE SIPTROTH: So there is
17 some progress that can be made.

18 MR. BAYER: Can be, yes.

19 MS. BAYER: With behavior
20 modification and a lot of therapy for the
21 molesters, yes.

22 REPRESENTATIVE SIPTROTH: Do you
23 know, is that being offered at the present time
24 for individuals that are paying the price in
25 our prisons?

1 MR. BAYER: In Pennsylvania I don't
2 believe we have a program for that. I believe
3 there's about three or four states around the
4 nation that do.

5 REPRESENTATIVE SIPTROTH: The
6 ultimate goal is certainly to protect the
7 children.

8 MR. BAYER: Yes.

9 REPRESENTATIVE SIPTROTH: The second
10 goal is to prevent individuals from committing
11 the same crime again, and that's what we need
12 to look at here in the State of Pennsylvania so
13 that we can keep our costs considerably less.

14 MS. BAYER: On top of that you have
15 to consider the fact that mental health
16 hospitals around the state have been closing
17 down. So those services that would have been
18 there for child abuses are not there now.

19 REPRESENTATIVE SIPTROTH: And that's
20 an institution, but there still can be the
21 counseling.

22 MS. BAYER: Right, through private
23 counseling.

24 REPRESENTATIVE SIPTROTH: Private
25 counseling can go along with it, and that can

1 be had in a correctional facility as well as in
2 a mental health institution.

3 MS. BAYER: Yes.

4 REPRESENTATIVE SIPTROTH: That's all.
5 Thank you very much. I appreciate you
6 traveling to Harrisburg to testify.

7 CHAIRMAN CALTAGIRONE: Thank you,
8 John. I think Representative Stevenson has a
9 question.

10 REPRESENTATIVE STEVENSON: Thank you
11 for your testimony today. If I understand your
12 testimony correctly, what you're saying is that
13 these people are -- the molesters there's no
14 cure for that, so the legislation proposed
15 would not be a deterrent to someone. It would
16 just be to get them off the streets and keep
17 them away from people rather than --

18 By increasing the strength of the
19 law, you don't see that as a deterrent to --

20 MR. BAYER: Yes, I do. I do see it
21 as a deterrent.

22 REPRESENTATIVE STEVENSON: Explain
23 that to me, because if they cannot be cured,
24 how do they -- Even though they know the law is
25 stronger, I think you testified a --

1 MR. BAYER: A crook will always --

2 REPRESENTATIVE STEVENSON: Let me
3 finish my question, please. If they cannot be
4 changed, their personality, by increasing the
5 strength of the law, there are many people who,
6 for instance now, commit murders and other
7 crimes, even though they know there's a death
8 penalty for it, they somehow believe that that
9 penalty will never apply to them or they will
10 never get caught, whatever it might be. By
11 strengthening the law it doesn't necessarily
12 provide a deterrent.

13 You're saying in this case, even
14 though they cannot be changed, and this is a
15 part of their personality forever, they can be
16 deterred by this law. Can you explain that to
17 me, please?

18 MR. BAYER: Yes. A crook will always
19 be a crook, a murderer will always be a
20 murderer. The deterrence of the crime is the
21 sentence. Right now it's a joke out there.
22 I'll tell you what angered me the most.

23 I don't know if anybody from Dauphin
24 County is here. A D.A. -- I'm sorry. This
25 isn't against you. I was sitting in a meeting

1 with the POCC and we brought this bill up. The
2 D.A. from Dauphin County was sitting in the
3 room. He said, we want to keep this as a
4 misdemeanor so we can plea bargain it down.

5 Out there right now it is a joke,
6 because if you get caught for child molestation
7 it will come down to a misdemeanor. We had a
8 judge in Monroe County molested his daughter in
9 the middle of a Hillary Duff concert right in
10 the front row. He got sworn in, because why?
11 It was a misdemeanor. He would have never
12 become a sworn-in judge. He wouldn't have been
13 paid \$127,000 a year had it been a stronger
14 crime. He might not have even done what he did
15 publicly.

16 It is a deterrent if you know that
17 you're going away to jail for a while. It is a
18 deterrent just like any other -- That's why we
19 have laws. All laws are a deterrent. Those
20 that might be on the borderline, especially as
21 children, that might molest other children, I
22 don't want to go to jail. So yes, I believe
23 that it's a deterrent.

24 REPRESENTATIVE STEVENSON: Thank you.
25 Thank you, Mr. Chairman.

1 CHAIRMAN CALTAGIRONE: Chairman
2 Marsico.

3 CHAIRMAN MARSICO: Thank you very
4 much. Thanks for your presentation today. It
5 was very well done, and thank you for being
6 here. I guess a number of things.

7 You referred to the D.A. of Dauphin
8 County, and that case that was plea bargained
9 you said, right?

10 MR. BAYER: No. They wanted to keep
11 the law as a misdemeanor so that it could be
12 plea bargained down.

13 CHAIRMAN MARSICO: Do you know the
14 specifics of that case?

15 MR. BAYER: It wasn't a case. The
16 statement was, they like it as a misdemeanor so
17 that they can plea bargain these things down.

18 CHAIRMAN MARSICO: Do you know who
19 made that statement? Was that the Assistant
20 D.A.; do you know?

21 MR. BAYER: He's a good-looking guy.
22 I can get his name.

23 CHAIRMAN MARSICO: I know who you
24 mean.

25 MR. BAYER: Okay. There you go.

1 CHAIRMAN MARSICO: That same D.A.
2 actually came to me a few years ago where we
3 increased the sentencing for raping a child
4 under 13 with bodily injury, that had bodily
5 injury, and that sentence was -- It was
6 actually a mandatory sentence that was passed
7 in the law probably, I'd say five or six years
8 ago, something like that. I find it hard to
9 believe that that same D.A. would make that
10 kind of a statement. If he did, we'll
11 certainly have a conversation with him.

12 MR. BAYER: I would have (sic) the
13 conversation, and there were about how many
14 people in the room (looking at Ms. Bayer)?
15 There had to be 15 of us in the room.

16 CHAIRMAN MARSICO: Anyway, we'll do
17 some further research into that. Like I said
18 before, that same D.A. came to us and we passed
19 a law several years ago creating a mandatory
20 sentence.

21 MR. BAYER: He was a good-looking guy
22 out of there.

23 CHAIRMAN MARSICO: Yeah, I know which
24 one you mean.

25 MR. BAYER: Our meeting ended because

1 him and I got into a heated exchange and they
2 said, you guys finish this outside.

3 CHAIRMAN MARSICO: Anyway, I thank
4 you for coming here today, and certainly
5 looking to supporting this maybe with some
6 modifications or things like that. Thank you,
7 Mr. Chairman.

8 CHAIRMAN CALTAGIRONE: Thank you, Mr.
9 Chairman. Thank you both for your testimony.
10 We appreciate it.

11 MR. BAYER: Thank you, gentlemen, and
12 lady.

13 Oh, one last thing, I'm sorry. In
14 here is a sample of what voters in Pennsylvania
15 believe. These are petitions. We have
16 approximately twenty-five to 30,000 signatures
17 on petitions asking that this law be tightened.
18 That's just out of the Wilkes-Barre, Scranton
19 and Monroe County.

20 CHAIRMAN CALTAGIRONE: Did you want
21 to leave those with us?

22 MS. BAYER: Yes, we do.

23 CHAIRMAN CALTAGIRONE: We'll make
24 them part of the record that those petitions
25 were received. Is that all of the petitions?

1 MR. BAYER: No. This is just a
2 sampling.

3 REPRESENTATIVE SIPTROTH: So it's
4 clear on the record it's a sampling.

5 MR. BAYER: The Secretary of State is
6 on there and our Commission has signed it.

7 CHAIRMAN CALTAGIRONE: Thank you.
8 Thank you both for your testimony. We
9 appreciate it.

10 Next we'll hear from Mark Bergstrom,
11 Executive Director of the Pennsylvania
12 Commission on Sentencing.

13 MR. TYLER: While Mark is getting set
14 up, if I can for the committee members,
15 obviously, with all the attention on
16 corrections, the sentencing commission has been
17 very busy. I want to note for all of you that
18 Mark, even though he's working a quadrillion
19 hours for the commission, he's always been
20 there and answered every question presented to
21 him within 24 hours. He's been very helpful
22 and we appreciate his hard work.

23 MR. BERGSTROM: Good morning,
24 Chairman Caltagirone, Chairman Marsico, and
25 members of the House Judiciary Committee. I'm

1 Mark Bergstrom, Executive Director of the
2 Pennsylvania Commission on Sentencing. Thank
3 you for providing this opportunity to comment
4 very briefly on the offense of indecent assault
5 and the amendments proposed in House Bill 1625.

6 I believe the testimony of Mr. and
7 Mrs. Bayer raise important concerns about
8 sexual offenses against children. As you may
9 be aware, the indecent assault statute, this
10 was substantially amended during the 1995
11 special session on crime as a result of a
12 comprehensive rewriting of sexual offenses,
13 Chapter 31 of Title 18. Those discussions that
14 led to that comprehensive rewriting included
15 the District Attorneys Association, Law
16 Enforcement, PA Coalition Against Rape, and
17 many, many other groups.

18 The effort was to rewrite the
19 elements of sexual offenses so there would be a
20 continuum of offenses starting with very
21 serious penalties for very serious offenses,
22 and having sort of a gradation of offenses down
23 to what would include some misdemeanor offenses
24 so it was a very thoughtful and comprehensive
25 process in 2005 -- I'm sorry, 1995.

1 As a result of those amendments,
2 indecent assault was generally classified as a
3 misdemeanor of the second degree, with one
4 exception being, indecent assault of less than
5 13 years of age which is classified as an M1.

6 In 2005 -- And I believe Chairman
7 Marsico was referring to this. In 2005 there
8 were other changes in legislation, including
9 the increasing of the statutory maximum for
10 rape and IDSI of a victim under 13. But at
11 that time the indecent assault statute was also
12 amended, resulting in the reclassification of
13 numerous sections.

14 I won't go into a lot of detail, but,
15 in effect, indecent assault without consent and
16 indecent assault when the victim is less than
17 16 years of age, with that four-year difference
18 remained classified as M2's. Most other
19 indecent assaults, which included forceful
20 compulsion or victim impairment, were increased
21 to M1's. And then certain circumstances
22 involving victims under 13 were increased to a
23 felony 3.

24 Based on those amendments in the
25 statute, the Commission provided three levels

1 of recommendations in the sentencing
2 guidelines: offense gravity score 4 for M2
3 convictions, 5 for M1's, and 6 for F3's. The
4 details are provided in the testimony.

5 House Bill 1625, if adopted, would
6 increase the grading of an offense under
7 Sections (a)(1) without consent, from a
8 misdemeanor 2 to a misdemeanor 1, so the
9 maximum sentence would increase from two years
10 to five years. It would increase the grading
11 of an offense under Subsection (a)(7) where the
12 victim is under 13 years of age and there's no
13 aggravating factors from an M1 to an F3. So
14 all offenses involving victims under 13 would
15 be felony 3's, which has a maximum sentence of
16 seven years, and would increase the grading of
17 offenses under Section (a)(8), the victim under
18 16 years of age, from an M2 to an F3. That
19 would be the most substantial change. It would
20 be an increase from the maximum sentence of two
21 years to a maximum sentence of seven years.

22 Only the proposed change to the
23 grading of Subsection (a)(8) would trigger an
24 immediate change in sentencing guidelines, with
25 an increase from M2 to F3 automatically

1 increase the offense gravity score assignment
2 from a 4 to a 5.

3 Aside from sentencing, this bill
4 would also amend the Juvenile Act to include
5 all convictions for indecent assault by a
6 parent under the definition of aggravated
7 circumstances in matters relating to dependent
8 children.

9 I defer to the Juvenile Court Judges
10 Commission for a recommendation regarding
11 changes to the Juvenile Act, but it does appear
12 that the present Juvenile Act does not include
13 the felony 3, indecent assault, so it may be a
14 very worthwhile issue to consider.

15 During calendar year 2008, 1,148
16 sentences were reported to the Commission for
17 convictions under the indecent assault statute,
18 and there are attachments with the testimony
19 that provides some details. Those 1,148
20 sentences represented 438 unique offenders.

21 Of the 25 individuals convicted under
22 Subsection (a)(8), the section that deals with
23 the victim under 16 years of age, two of those
24 individuals received a state prison sentence
25 with an average minimum sentence of one year,

1 12 months, which would be under the statute the
2 longest sentence possible for an M2. Eleven
3 received a county jail sentence, with an
4 average minimum sentence of 4 point 1 months,
5 and 12 received a probation sentence with an
6 average term of 21 point 9 months.

7 Based on a simulation of sentences
8 imposed for similar offenses, the changes
9 proposed in House Bill 1625 would increase the
10 number of admissions to state prison from two
11 to seven; it would increase the average minimum
12 sentence for those presently receiving a
13 Department of Corrections' sentence from 12
14 months to 15 point 2 months. The result would
15 be a need for 2,505 additional bed days, or
16 approximately seven additional state prison
17 beds each year.

18 While this is a relatively small
19 impact, I think it is important to note that
20 changes to the grade of one offense or one
21 subsection statute may have ripple effects
22 across other statutes. It may be appropriate
23 and necessary to change the grading of indecent
24 assault as recommended today, but it should be
25 done as part of a broader process.

1 A decision to apply the penalties for
2 indecent assault involving a victim less than
3 13 years of age to an incident involving a
4 victim less than 16 years of age could bring
5 into question the age-based provisions of rape
6 and IDSI, as well as the age-based mandatory
7 sentencing statutes where we have separate
8 penalties for those under 13 years of age.

9 As noted in a recent report submitted
10 to this committee by law students of the
11 University of Pennsylvania, there may be a need
12 for a comprehensive review of the
13 classifications of offenses in Pennsylvania,
14 and as part of such a review should address any
15 changes to the assignment of grades for
16 indecent assault and other Chapter 31 sexual
17 offenses.

18 I hope this information is helpful as
19 you review this legislation. Thank you.

20 CHAIRMAN CALTAGIRONE: Any there any
21 questions from the panel? Yes.

22 REPRESENTATIVE STEVENSON: Thank you
23 for your time today and your testimony. I'd
24 liked to focus on the issue mentioned toward
25 the end of your testimony about how the ripple

1 effect might affect other sentencing
2 guidelines.

3 We heard a month or so ago from a
4 professor and students from the University of
5 Pennsylvania that did the study on sentencing
6 guidelines and penalties across the board in
7 Pennsylvania, and pointed out a number of areas
8 in our sentencing code which could put in front
9 of us a number of inequities that were there in
10 the sentencing guidelines.

11 Could you comment a little more on
12 that and how this legislation, what effect that
13 would have on this? And certainly, legislation
14 I think we all understand the need for, but
15 what are the unintended consequences, if you
16 preface it that way.

17 MR. BERGSTROM: Sure. I mentioned at
18 the start of my testimony some of the
19 legislation enacted during the special session
20 on crime in 1995. I guess I see that as a best
21 practice in enacting legislation because it
22 took all of the chapter that dealt with sexual
23 offenses, and in a comprehensive way with all
24 of the people at the table really rebuilt that
25 so that there would be this continuum.

1 One of the things that was mentioned
2 earlier this morning in the discussions here
3 was, you know, a district attorney saying that
4 maybe it's helpful to have misdemeanor offenses
5 available under this sexual offense statutes.
6 One of the things that is really important to
7 consider is the difficult job of law
8 enforcement and of prosecutors in prosecuting
9 these cases. One of the very difficult things
10 is when you have a very young victim trying to
11 go to trial and have that victim testify and
12 gain a conviction.

13 So, there are situations where I
14 think law enforcement prosecution are doing
15 whatever they can to obtain justice in a case,
16 recognizing that it's not a perfect system and
17 it's very difficult to prove some things at
18 trial, especially with very young victims.

19 I use that as an example, because I
20 think during the 1995 special session when
21 there were efforts to codify or re-codify the
22 sexual offense statutes, there was this sense
23 of this continuum; trying to make sure the
24 elements of crime were there and they linked to
25 the grading of the offense. Over time there

1 have been increases in some of those grades.

2 What I think has not been so good of
3 a practice is sort of an ad hoc increase of
4 offenses, grading of offenses, redefining of
5 offenses that sort of take us away from the
6 model penal code, but also sort of, sometime
7 break down sort of this comprehensive view or
8 structure for sentencing. I think that's what
9 the students at Penn were getting to.

10 And I don't think it was so much the
11 guidelines, but the statutory framework that we
12 have; that over time when you're sort of nickel
13 and diming, or making these changes, the change
14 seems totally appropriate at that time for that
15 offense, but it doesn't quite fit into the
16 overall structure. I think they were
17 recommending that there be sort of this review
18 of how everything stands out. And maybe some
19 principles about what type of offenses should
20 we have four-year statutory maxes, or 20 year
21 or 10, or so forth. I think that was a really
22 important point, a good take away from their
23 report.

24 REPRESENTATIVE STEVENSON: I think
25 they pointed out very well how -- And I don't

1 remember specific examples, but how some very
2 serious crimes, perhaps a lower penalty than
3 some of a less serious, perhaps, in terms of
4 how they were looked at. That came about I
5 guess in our sentencing code by making changes
6 based on specific issue that might have come up
7 at a specific time. But it set up a process of
8 creating inequities throughout the penal code.

9 Are you recommending that we go back
10 to that University of Pennsylvania study and
11 look at the whole code? Is that what --

12 MR. BERGSTROM: I think that would be
13 really helpful now. It's a very difficult
14 budget time and staffing time. I think that's
15 a really worthwhile consideration.

16 I have some differences with some of
17 the specifics in the report, but I think the
18 general theme of the report is correct; that to
19 some degree we don't have standards in place
20 that we use when assigning grades to offenses.

21 I teach some course at Penn State,
22 and one of things we talk about is the
23 difference between assigning a grade to an
24 offense, then assigning guidelines or mandatory
25 minimums. A grade is usually assigned based on

1 what we think is the most serious offense
2 intended by the legislature to be covered by
3 that so you have enough latitude to give the
4 appropriate punishment for the worst kind of
5 behavior under that statute.

6 I think sometimes when we're writing
7 statutes, the elements of the crime we put in
8 there are sometimes very, sort of broad, and
9 maybe unclear. And it sort of pushes the point
10 of saying, well, there is this like worst case
11 scenario that I can envision, and because of
12 that scenario we want to make this a felony 1
13 offense, but the bulk of that statute might be
14 used to deal with people that are in the
15 mid-range. Maybe a misdemeanor 1 would be
16 appropriate.

17 Part of the process is sort of
18 weeding that out, trying to figure that out.
19 But part of it is also trying to refine some of
20 the language that is used, the elements of the
21 crime, so that we're much more specific about
22 what's intended and then have the grade of the
23 offense linked to that. I think that's where
24 it gets maybe a little bit difficult. When we
25 are doing it on an ad hoc basis, we're sort of

1 trying to put in everything that addresses the
2 issue and without looking at other statutes
3 that might be impacted by that.

4 REPRESENTATIVE STEVENSON: Thank you
5 very much and thanks for your testimony. Thank
6 you, Mr. Chairman.

7 CHAIRMAN CALTAGIRONE: Thank you,
8 John.

9 Mark, I think one of the things have
10 been pointed out, and I have been thinking on
11 this since the Penn law students gave us the
12 overview that they did, the area that they had
13 looked at. I do think that -- I know with
14 budget constraints and everything that's been
15 going on up here financially, there needs to be
16 some type of comprehensive review of the
17 classification of offenses, because, we react
18 to situations and we put the laws on the book
19 to different statutes, especially on the penal
20 code.

21 The Representative was actually on
22 target with what he's saying because, it varies
23 across the board. Do you remember the one
24 comment that was made about a date rape; some
25 kind of a knock-out brawl, or whatever they

1 call it, that were used, regular rape. I'm
2 sitting here thinking, rape is rape is rape;
3 not so. There's a different grade of the
4 offense, and it's evidently lower if some kind
5 of narcotic, or whatever, is used as compared
6 to a rape without one. I'm thinking, what have
7 we done?

8 These are the kinds of things, all
9 good intentions meant, with legislation that we
10 deal with. This is where you start splitting
11 the hair. It's a rush to judgment that you
12 jump on these things, and you do them without
13 realizing the unintended consequences later on
14 as to what was meant by that legislation and
15 how it's applied and the grading of these
16 offenses. That gets to be very hairy, because
17 the words do mean a lot and you've got to be
18 very, very specific when you're crafting
19 legislation no matter what it is that we do up
20 here.

21 The review of a lot of the
22 legislation that we've done over all these
23 years, they're saying, I think Washington, they
24 have checks and balances on legislation that
25 they deal with down there. Pennsylvania

1 doesn't have that kind of check and balance.

2 Do you want to expand on that?

3 MR. BERGSTROM: Again, I think the
4 point of the Penn report was a good point,
5 which is, that there could be more order
6 brought to the whole process.

7 It's not that there aren't examples
8 of very thoughtful legislation. It's just,
9 sometimes it's a bit disconnected from other
10 parts of the statute. I think to the degree
11 that there's the ability, I think it makes all
12 the sense in the world for this committee and
13 others to figure out a way to do that kind of
14 review involving Legislative Reference Bureau,
15 perhaps the Commission and others to, really,
16 maybe take a chapter at a time, or all of
17 Title 18 and try to sort of look at that, but
18 then also look at other related things.

19 For instance, all the drugs offenses
20 are in Title 35. There should be some kind of
21 relationship between the penalties that we talk
22 about for drugs and the penalties we talk about
23 for other crimes. So, looking at all of this
24 and trying to sort of figure out some
25 principles that would guide this. That's

1 something I think the committee could do in
2 trying to establish what are sort of the
3 guiding principles when we want to use state
4 prison versus county jail versus community
5 options. That could help to sort of guide what
6 some of the grades are assigned to these
7 offenses.

8 One other thing that comes to mind
9 is, because of the reform legislation of 2008,
10 and some of the new duties of the commission,
11 and some legislation that's out there this
12 session, I think there's a real move in
13 sentencing to start to look at public safety
14 differently. We used to always think in terms
15 of more is better in terms of penalties; that
16 if it seems like a little bit more serious
17 offense, then the way to deal with it is give a
18 higher penalty or a longer period of
19 incarceration. And there's part of that. It's
20 important to think in terms of holding someone
21 accountable and more serious does equate to
22 more serious penalties.

23 But, on the other hand, when you're
24 thinking about public safety, the real focus is
25 on, how are you going to keep people from

1 re-offending? How do you use the opportunity
2 of arresting and convicting someone and
3 sentencing them to improve the chances that
4 that's not going to happen down the road?
5 That's certainly true of sex offenses, but it's
6 true for all offenses.

7 I think the real focus is try to
8 identify those risk factors and other things
9 like that and make sure they're being
10 considering by courts at sentencing. We went
11 through some really bad experiences with
12 parole, and I think the parole board is doing
13 an incredible job under a lot of pressure with
14 a lot of cases.

15 But you look at some of the cases
16 that went wrong, and you look back at the
17 sentencing and you say, why did the person get
18 such a short sentence? You look at the case,
19 what you find is, well, the judge did probably
20 what's right based on the information the judge
21 had, but maybe the judge should have had more
22 information, or maybe some of the information
23 regarding the risk of the offender. The person
24 had 60 prior arrests, but no convictions, so
25 the person is not seeing as having a prior

1 record because there's no convictions.

2 Well, that's something that maybe we
3 should look at as part of the reform efforts
4 we're doing; try to figure out how you take
5 into account the risk of a person re-offending
6 and either build that into sentencing and
7 parole, but also build that into what kind of
8 services you're going to try to link to that
9 person to reduce bad outcomes. I think all
10 these things are related.

11 CHAIRMAN CALTAGIRONE: I couldn't
12 agree with you more. Just for the benefit of
13 the members, we passed and we'll continue to
14 pass longer laws and this could be one of them.
15 But as was testified to earlier, these people
16 do come out and come back into society, as do
17 all of those except for lifers. Then you have
18 to say, how do you modify that behavior while
19 we have them in our custody, and what kind of
20 treatment modalities can be implemented to try
21 to change that behavior, if it can be changed?

22 You hold that fifty some thousand,
23 God knows how many are on probation, could be
24 two to 300,000 that have been put out into
25 society again. A percentage that recommit

1 whatever type of crimes and come back in. You
2 think we have a revolving door going on here
3 unless we do something. I don't know what that
4 something is right now to change what we're
5 doing.

6 You know, repeat offender, repeat
7 offender, repeat offender, and you think to
8 yourself, it isn't working. We've got to get
9 smart, and the expense involved by the way. We
10 can lock a lot of people up, God knows we are.
11 Sometimes I think we're locking the wrong
12 people up, I mean, what was testified to here
13 today, with what was said here.

14 Other offenses, you begin to wonder
15 that is valuable prison space and it's very,
16 very costly. Who are we putting in there and
17 for what and for what period of time, both at
18 the county level and the state level? I just
19 wish sometimes we could take a pause and review
20 what we're doing, because the costs are just
21 eating us alive both at the county level and at
22 the state level.

23 I share your concerns. We can pass
24 all these different mandatories, trust me, and
25 we do. But I keep stepping back from it and

1 saying, are we making a difference? Because it
2 was testified to, these people come out and
3 they re-offend. They come out and they
4 re-offend. Something is wrong.

5 MR. BERGSTROM: Mr. Chairman, I was
6 just going to say that I think in sentencing
7 and in parole decision making as well, it's
8 really this sort of resorting of what we do,
9 Because there are some offenders we should be
10 incarcerating longer. There are serious and
11 violent and repeat offenders that we should
12 increase incarceration for, because some of the
13 only ways to deal effectively with them is
14 incapacitation. Sometimes that's to get them
15 to sort of past an aging period, and sometimes
16 it's just because they're serious violent
17 offenders that aren't going to change. That's
18 why we have state prisons.

19 I think part of sorting is
20 identifying those people that really do require
21 incarceration, and maybe long periods of
22 incarceration, and making sure that happens.
23 But, you also need the resources to deal with
24 people that maybe incarceration isn't the best
25 fit. Maybe it's having comprehensive drug and

1 alcohol treatment. Maybe it's other kinds of
2 things, but we have to do a better job of
3 identifying those people.

4 Because what we found, and this was
5 through the H.R. 12 study was, sometimes it
6 feels good to lock away drug dealers. But if
7 you're talking about especially a lower-level
8 person who sells drug to supports their habit,
9 who is drug dependent, what we find is that
10 using prison as sort of the first step in the
11 process actually increases the chances of that
12 person being re-arrested. Using drug
13 treatment, comprehensive drug treatment,
14 inpatient treatment, a lot of supervision and
15 other things can actually end up with better
16 outcomes.

17 So, it's not popular to say, we want
18 to provide treatment to someone who sold drugs
19 to someone else, but I think it's that kind
20 of -- sorted of looking at the offender,
21 figuring out the risk level, figuring out
22 what's best to do is important.

23 CHAIRMAN CALTAGIRONE: Just like this
24 legislation we're talking about, so 1500, 2000
25 that's another prison. We're building four

1 more at the cost of 800 million. The budget
2 this year is going to be close to two billion,
3 seven point some percent increase.

4 When those prisons come on-line, by
5 the way, it's another 15 million to operate
6 them. There are programs that we know we're
7 not going to be able to fund. We're having a
8 problem with the legislative budget let alone
9 the court budget, which is one-half of one
10 percent. The Governor gets close to 99
11 percent, 98 or 99 percent, and they whack the
12 legislature, for our brothers and sisters here,
13 and the courts, and we get the smallest,
14 smallest piece of the pie; and yet, they're
15 asking for humongous increases in welfare,
16 education, corrections, probation and parole.

17 I look at this and I say, what kind
18 of return are we getting on that money as
19 investment to help with jobs, economic
20 development, maybe some tax reductions for our
21 businesses so they can expand and hire more
22 people or keep them in the state that they
23 won't leave? These are all tough, tough
24 decisions.

25 This committee is only one of 23

1 committees. We deal with some really meaty
2 issues as far as incarcerating people, putting
3 people in prison. But I agree with you, Mark,
4 we ought to get smarter who we are
5 incarcerating, and whether or not we should be
6 dealing with these issues a little bit
7 differently.

8 You've made some good recommendations
9 and I've talked to the D.A. Association about
10 some of those recommendations to see if we can
11 get some wiggle room to start to get some of
12 this stuff under consideration. Being an
13 election year, it's going to be kind of
14 different and hard to sell. I don't want to
15 quit because I think we need to look at what we
16 are doing differently. That's my spiel.

17 Chairman Marsico.

18 CHAIRMAN MARSICO: Thank you, Mr.
19 Chairman. Thanks very much for your testimony.

20 I certainly agree with having -- we
21 need a comprehensive review of the sentencing
22 structure. We haven't had a chance to talk
23 about this, but our Subcommittee on Courts,
24 I'm not quite sure what they would be -- going
25 to instruct them to perhaps have some

1 meetings --

2 CHAIRMAN CALTAGIRONE: Sure.

3 CHAIRMAN MARSICO: -- with Mark and
4 others that would come up with some
5 recommendations.

6 MR. BERGSTROM: Sure. We'd be very
7 happy to.

8 CHAIRMAN MARSICO: Are you hearing
9 anything from the Senate? Is the Senate doing
10 anything with this at all?

11 MR. BERGSTROM: With this specific
12 bill or this issue generally on sentencing?

13 CHAIRMAN MARSICO: Both, the bill and
14 also sentencing.

15 MR. BERGSTROM: I'm not familiar with
16 anything on this specific bill. I know that
17 Senator Greenleaf has introduced legislation
18 and I believe is moving in the Senate, Senate
19 Bill 1145, that would empower the commission to
20 build into sentencing guidelines consideration
21 of risk and need. It's moving in that
22 direction.

23 As you know, the reform legislation
24 in 2008 gave the commission responsibility for
25 developing parole guidelines for consideration

1 by both judges at the county level and the
2 parole board at state level. I think one of
3 the purposes there was to better coordinate
4 sentencing and parole-decision making.

5 One of the things the parole board
6 has traditionally done is really focus on risk.
7 They have looked at making decisions on release
8 or not, and what kind of conditions and
9 supervision based on risk. I think we have to
10 bring at least some of those risk factors up to
11 the sentencing part. I think Chairman
12 Greenleaf's bill would move us ahead in that
13 area.

14 CHAIRMAN MARSICO: Is there any
15 statistics that would give us how many -- or
16 just incarcerated in our state prisons by
17 mandatory sentencing?

18 MR. BERGSTROM: Yes. We just
19 completed --

20 CHAIRMAN MARSICO: Are they mandated
21 there and what the crimes are?

22 MR. BERGSTROM: Sure. We just
23 completed a report submitted last fall to the
24 House under House Resolution 12. In that we
25 did try to identify some of those.

1 One thing that's a little tricky, as
2 you know, in Pennsylvania many of a mandatories
3 we have provide prosecutorial notice. So,
4 mandatory only applies if the D.A. gives
5 notice. D.A.'s have to negotiate a lot of
6 things. Sometime the negotiation of the
7 mandatory is sort of blended in with the
8 negotiation on the conviction offense itself.
9 So, it's not a nice clean category of people
10 that are there under the mandatory.

11 What we did for the purpose of the
12 study was to identify people who received a
13 sentence that was equal to or greater than
14 mandatory, and we can provide that back to you
15 from the report.

16 CHAIRMAN MARSICO: I remember that
17 report. I just wanted to get that out to the
18 public.

19 MR. BERGSTROM: Absolutely.

20 CHAIRMAN MARSICO: Many of those
21 mandatory sentences are hard core criminals,
22 correct?

23 MR. BERGSTROM: Yes, absolutely.

24 CHAIRMAN MARSICO: Last three or four
25 months the mandatory sentencing those

1 responsible, just sentencing itself is taking a
2 big hit. That mandatory sentencing is
3 responsible for prison overcrowding, et cetera.
4 But if you look at some of the mandatory
5 sentences for those hard core criminals, they
6 deserve to be in prison for a long time.

7 MR. BERGSTROM: Yes, I agree with
8 you, especially on the violent offense side. I
9 think there could be some work done in that
10 area, but generally speaking, for violent
11 offenders I think the mandatory sentence is a
12 useful tool.

13 Where the commission raised some
14 issues and concerns were, especially on the
15 drug side, where there could be a little bit
16 different separation of -- based on risk and so
17 effort. Also what we found that was a little
18 disturbing was, especially with certain
19 mandatories like this, school zone mandatory,
20 there were practices that varied dramatically
21 from county to county and that was one of the
22 concerns that was raised.

23 CHAIRMAN MARSICO: With mandatory
24 sentencing, you mentioned this before, that the
25 prosecutors do have some discretion.

1 MR. BERGSTROM: Absolutely.

2 CHAIRMAN MARSICO: So that should be
3 brought up by a committee as well.

4 MR. BERGSTROM: Absolutely, they do
5 have the discretion. But when we were just
6 looking at the time actual sentence imposed,
7 and particularly for the school zone, the
8 application of that mandatory we found dramatic
9 differences from county to county that were
10 really hard to understand.

11 CHAIRMAN MARSICO: One of the
12 mandatories for drug dealers, I authored
13 legislation a number of years ago that would
14 create a mandatory for heroin dealers based on
15 the weight of the grams. Before that was in,
16 that was a fact, the one drug dealer actually
17 was sentenced to, I think it was nine months in
18 jail, where he left a young lady in a creek
19 bed, overdosed. That was one instance in
20 Pennsylvania. So that, because of the amount
21 sold, that triggered a mandatory. Those were
22 the folks we are going after.

23 MR. BERGSTROM: Absolutely. We heard
24 that from members of this chamber and the
25 Senate when we were doing the study, that the

1 real focus or the king pins or those that are
2 engaged in with guns and other things like
3 that, very violent and dangerous offenders.

4 On the heroin the threshold was
5 reduced from two grams down to one gram.
6 That's in place.

7 As I said, I think it's a useful
8 tool. We do have concerns about, on the one
9 hand, the General Assembly created a lot of
10 very useful sentencing programs like state IP
11 and county IP. And on the other hand, some of
12 the offenders that can benefit most from that,
13 especially the lower thresholds would be the
14 drug trafficking offender. So, trying to find
15 some middle ground there I think would be
16 helpful in terms of better outcomes and good
17 use of resources.

18 CHAIRMAN MARSICO: Thank you very
19 much. Once again, Mr. Chairman, would it be
20 possible to have the Subcommittee on Courts
21 perhaps take this and start moving with it?

22 CHAIRMAN CALTAGIRONE: We'll have a
23 meeting with our chairs and discuss this. Good
24 suggestion.

25 Representative Siptroth.

1 REPRESENTATIVE SIPTROTH: Thank you
2 very much, Mr. Chairman.

3 I just wanted to remind folks that we
4 don't want to lose focus necessarily on this
5 bill. I do appreciate the dialogue with the
6 overall sentencing. I think as we move forward
7 with overall sentencing, that this particular
8 sexual offense, and especially indecent assault
9 on our children, because they're just as
10 scarred as someone that receives a bullet to
11 the shoulder, or whatever. I think that
12 certainly needs to be taken into consideration,
13 and there are other options to incarceration.
14 I think we really need to look at some of those
15 options.

16 MR. BERGSTROM: Sure.

17 REPRESENTATIVE SIPTROTH: Thank you
18 very much. Thank you everyone for attending.

19 CHAIRMAN CALTAGIRONE: Thank you.
20 We'll adjourn the hearing.

21 (At 11:15 a.m., the public hearing
22 concluded).

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C E R T I F I C A T E

I, Karen J. Meister, Reporter, Notary Public, duly commissioned and qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the foregoing is a true and accurate transcript of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision, and that this copy is a correct record of the same.

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Dated this 5th day of March, 2010.

Karen J. Meister - Reporter
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