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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

IRVIS OFFICE BUILDING  
ROOM G-50  
HARRISBURG, PENNSYLVANIA

PUBLIC HEARING ON  
HOUSE BILL 1957

WEDNESDAY, FEBRUARY 24, 2010  
11:03 A.M.

BEFORE:

- HONORABLE THOMAS R. CALTAGIRONE,  
MAJORITY CHAIRMAN
- HONORABLE JOSEPH A. PETRARCA
- HONORABLE RONALD G. WATERS
- HONORABLE RON MARSICO, MINORITY CHAIRMAN
- HONORABLE GLEN R. GRELL

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ALSO PRESENT:

HONORABLE EUGENE DEPASQUALE  
HONORABLE DONTE SANTONI  
HONORABLE CHRIS SAINATO

DAVID D. TYLER, EXECUTIVE DIRECTOR (D)  
V. KURT BELLMAN, LEGISLATIVE ASSISTANT (D)  
WENDELL HANNAFORD, LEGISLATIVE ASSISTANT (D)

BRENDA J. PARDUN, RPR  
REPORTER - NOTARY PUBLIC

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## P R O C E E D I N G S

1  
2 CHAIRMAN CALTAGIRONE: We might as  
3 well get started, because I know that the  
4 members have several other meetings that they  
5 have scheduled to get to, so we'll open up the  
6 House Judiciary Committee hearing dealing with  
7 House Bill 1957.

8 And if the staff members would  
9 introduce themselves for the record, starting  
10 from my right.

11 MR. TYLER: Good morning. I'm David  
12 Tyler, Democratic executive director.

13 REPRESENTATIVE MARSICO: Good  
14 morning. Ron Marsico, Republican chair,  
15 minority chair, Dauphin County.

16 CHAIRMAN CALTAGIRONE: Tom  
17 Caltagirone, Berks County.

18 REPRESENTATIVE DEPASQUALE: Eugene  
19 DePasquale, 95th District, York County.

20 REPRESENTATIVE SAINATO:  
21 Representative Chris Sainato. I represent the  
22 9th Legislative District, which is parts of  
23 Lawrence and small section of Beaver County.

24 REPRESENTATIVE SANTONI: And I'm  
25 Donte Santoni, a member from Berks County.

1                   CHAIRMAN CALTAGIRONE: And I'd like  
2 to open with my good friend, Gene, to make  
3 opening comments, and then we will take your  
4 testimony.

5                   REPRESENTATIVE DEPASQUALE: Thank  
6 you, Mr. Chairman and Chairman Marsico and the  
7 members that were able to make it and for  
8 everyone that's going to be testifying.

9                   This issue really came to light to me  
10 from a constituent that had had an issue with  
11 a family member who had been threatened by  
12 someone that did not fall under worthy P.F.A.  
13 protection, enable some legal course there,  
14 and what we ended up doing was researching  
15 what some other states have done to basically  
16 fill in this gap. And the peace order  
17 legislation that's existing in some other  
18 states, but specifically Maryland, is where we  
19 modeled this legislation after. And it's  
20 really to help people that are either  
21 threatened or potentially threatened that do  
22 not fall under P.F.A. protection.

23                   So I want to stress to the committee  
24 that this is not done in any way to try to  
25 weaken the P.F.A. law. It's really to try to

1       enhance protection for people that have  
2       potential violators out there against them.  
3       That's A. B, anyone that is seeking a peace  
4       order must present information to the  
5       appropriate legal authorities, and it has to  
6       be under oath, so if they, you know, lie,  
7       there are stiff penalties for that. So we  
8       have a protection there for someone that is  
9       accused. We want to make sure that someone --  
10      if they're accused improperly, that there's a  
11      stiff punishment for that person as well.

12                But as anyone -- and most judiciary  
13      members would certainly be aware of this, that  
14      the P.F.A. there are certain specific  
15      categories of people that are protected, but  
16      there are a whole host of people and a whole  
17      host of relationships that are not protected  
18      by the P.F.A. And we are seeking a course of  
19      action that would protect them.

20                And the final point, and then I'll  
21      turn it back over to the chairman, and that  
22      is, there has been, you know, in discussing  
23      with other groups the pros and cons of this  
24      legislation, like every legislation has, the  
25      peace order can be turned over relatively

1 quickly, so that is a strength. And also, in  
2 speaking to the law enforcement I have -- and  
3 that is most people follow judicial orders, so  
4 if a judge issues a peace order for a person,  
5 most people follow that. The ones that don't,  
6 obviously they're a whole different threat to  
7 society.

8           So, I believe strongly, that --  
9 again, we are going to work with the committee  
10 and the various groups that are involved in  
11 this and law enforcement to make sure that we  
12 have the language that's right, but there are,  
13 again, a whole host of people, and especially  
14 in today's day and age, that you could be  
15 attacked, you know, in a sense threatened via  
16 Twitter, Facebook, text messaging on the  
17 phone, want to make sure that people have as  
18 much protection as possible, because  
19 threatening anybody is not acceptable.

20           I want to, again, thank the chairman,  
21 and your staff has been great in working and  
22 putting this together, and I appreciate the  
23 opportunity.

24           CHAIRMAN CALTAGIRONE: Thank you.

25           And we've been joined by

1 Representative Grell.

2 If you'd like to start, and we can  
3 start off with Detective Stewart Kozak from  
4 the York County District Attorney's office.

5 DETECTIVE KOZAK: Good morning.  
6 Thank you for the opportunity, in my career of  
7 thirty-three years, an opportunity to come  
8 before a board of legislators to at least  
9 speak on my behalf and the behalf the citizens  
10 that I serve right now in York County. I want  
11 to thank everybody. I appreciate it.

12 Like I said, I've been involved in  
13 law enforcement, just started the other day,  
14 thirty-three years. I did most of my career  
15 in Maryland. I retired out of Westminster  
16 city. I was captain there for twenty-six  
17 years. We have the peace order and have had  
18 the peace order.

19 At no time did I feel that that  
20 reflected any mirrorization of the information  
21 in the protective order, which is called a  
22 protective order in Maryland, which is a  
23 P.F.A. here. They kind of mirror in different  
24 means, but they're not -- there is their own  
25 language which describes what it is going to

1 be used for.

2 I'm going to talk briefly in my area  
3 which I'm working now. I work all the sexual  
4 assaults, adult sexual assaults and rapes and  
5 all the domestic violence against adults. In  
6 talking with the -- in protection for abuse  
7 order, they have a lot of areas that fit,  
8 which is that, as you guys know, they have to  
9 live together, cohabitate, have sexual  
10 relations.

11 I believe that in the peace order  
12 itself, it's specifically used -- I would use  
13 the example such as a young lady's been  
14 sexually assaulted, and I would use an area,  
15 this is an example of a college campus. This  
16 person or male or female was sexually  
17 assaulted, doesn't choose to go before law  
18 enforcement or file any type of criminal  
19 complaint, but yet is around this person all  
20 the time. That person they would see or not  
21 see on the campus. This would give them the  
22 anonymity to a point where they could actually  
23 say they wanted -- what the reasons were for  
24 somebody to get the peace order, that they  
25 would be reflected in actually filing the

1 charges. So I think that's positive.

2 Also in the area of law enforcement,  
3 there's other steps that we talk about, the  
4 whole idea that I believe is one more avenue  
5 for a victim to be safe. I think that,  
6 nowadays, with, like you said, the technology  
7 of tweeter, the stalking and stuff like that,  
8 there's a lot of times law enforcement goes  
9 out, and this gives the avenue, I believe,  
10 that you're not trying to -- again, as a  
11 police officer, going to a resident or a  
12 victim, saying, Hey, we can't help you because  
13 you don't fit in this peg. This peg doesn't  
14 fit there. We cannot get you something for  
15 stalking, harassment.

16 It could be the employee-employer,  
17 that, you know, is -- you know, following up  
18 by sending messages, as you said, or coming to  
19 the house or sending phone things that just  
20 doesn't meet to the harassment or anything  
21 else that would be provided in stalking or  
22 other laws that we have.

23 So I think that this, in itself, is  
24 an avenue for a victim, for law enforcement,  
25 another tool that I can speak about,

1 especially in the area of the sexual assaults  
2 and domestic violence.

3 Even if it does mirror the P.F.A.,  
4 and the P.F.A. is a great piece of legislation  
5 for the victim, that it has no -- it's  
6 comparing apples and oranges, because of the  
7 wording. And what -- that I think that some  
8 people worry about, if we go to a call, that  
9 we would say to the person, Well, you really  
10 don't want this. You want a peace order.  
11 Well, that has to be done through, I think,  
12 educational pieces and law enforcement  
13 educational pieces, so everybody is on the  
14 same playing area, that we understand what a  
15 peace order is, looking up a piece of  
16 legislation that you guys approved.

17 And I'll end it out by the GPS. I  
18 understand the GPS has become an issue that --  
19 another part of this bill that I think is  
20 another great tool. I mean, that leaving  
21 legislation, an opening for the judge on the  
22 GPS that he can say, Hey, I want to put a GPS  
23 on.

24 Now, some counties may not have the  
25 availability to have those at a cost. Our

1 county does because it's through probation,  
2 under house arrest.

3 So, again, it's just another tool  
4 that we can make the victim aware, that along  
5 with probation is a tool, and the P.F.A. is a  
6 tool and everything else, I think it gives the  
7 victim an extra step that they can -- that  
8 that person needs to be monitored, that that's  
9 a way to monitor them.

10 And that's all I have for right now.  
11 I appreciate the time.

12 CHAIRMAN CALTAGIRONE: Thank you,  
13 sir.

14 If we could, we'll hear the other two  
15 witnesses, and then we'll open it up to  
16 questions.

17 We'll next hear from Art Smith, West  
18 Manchester Township Police.

19 CHIEF SMITH: Good morning,  
20 gentlemen.

21 I'm Art Smith. I am the chief of  
22 police at West Manchester Township in York. I  
23 have been in law enforcement for thirty-five  
24 years, twenty-four years as a detective, a  
25 detective sergeant. So I've had twenty-four

1 years of dealing with victims, which is the  
2 most difficult part of any police officer's  
3 job.

4 When these people become victims,  
5 basically, we, as a society, have failed. And  
6 we have a responsibility and obligation to  
7 help them out. Our part is to seek justice  
8 for them by filing charges and, hopefully,  
9 getting convictions.

10 So what I'd like to do is just read a  
11 prepared statement at this point, and  
12 certainly we'll be available for questioning  
13 following that.

14 I would like to extend my thanks to  
15 this committee for allowing me to spend some  
16 time with you today to express my thoughts on  
17 this very important piece of proposed  
18 legislation. As a police officer in this  
19 commonwealth since 1975, I think of the many  
20 crime victims that I have come to know  
21 throughout the years. I think back and  
22 envision the many faces of people who  
23 emotionally recount the horrific details of  
24 what happened to them and wonder how this  
25 could occur in this, quote, civilized society

1 in which we live. I begin to think, what can  
2 we do, as a society, to restore the wholeness  
3 of these individuals to a life as they knew it  
4 prior to becoming victimized.

5 The answer to that, frankly, is,  
6 despite the best efforts of all of the  
7 combined components within the criminal  
8 justice system, we most likely will fail in  
9 that endeavor. There's definitely a common  
10 thread among law enforcement officers as to  
11 why we entered our profession in the first  
12 place. That thread is simply that they all  
13 have a great desire to help people, and by  
14 doing so, they believe that they can make a  
15 difference in the world in which we live.

16 Police officers are also generally  
17 "can do" people and believe that, most cases,  
18 all problems have a solution.

19 Keeping this in mind, I think back  
20 over the many times whereby a victim was  
21 fearful for their well being for good reason,  
22 however the actor in question has not yet  
23 crossed the threshold whereby a crime has been  
24 committed. These folks come to the police,  
25 desperately seeking help and relief from the

1 fears. It is little solace to them to explain  
2 that the actor has not broken any laws and  
3 that the police cannot respond to an illegal  
4 act which may not even ever happen. The usual  
5 response is, Does this person have to kill me  
6 before you're willing to do something about  
7 it?

8           Having these types of experience  
9 happen time and again over a career begins to  
10 have a detrimental effect on most police  
11 officers, and that they feel that they are  
12 failing in their desire and duty to help  
13 people. They cannot always make a difference  
14 in the world. They, in some cases, become  
15 disillusioned and have found not all problems  
16 have solution. These issues have caused many  
17 good men and women to leave the ranks of  
18 policing.

19           American policing has evolved from  
20 the old standard reactive-style policing,  
21 whereby officers respond after a crime was  
22 committed, focusing resources on apprehending  
23 the responsible criminal element, to a more  
24 efficient, effective proactive style of  
25 policing, focusing on resources of preventing

1 crimes from occurring. Obviously, a proactive  
2 approach is the preferred approach today.

3 As a police administrator, I can  
4 place great emphasis on transforming  
5 departmental operations into a more proactive  
6 approach, realizing it is all still necessary  
7 to respond in a reactive mode when proactive  
8 approaches fail to prevent criminal activity.

9 However, police departments cannot go  
10 into this transformation alone. As a  
11 legislative body, you can respond to this  
12 challenge by enacting legislation such as  
13 peace orders and global position satellite  
14 monitoring of abusers.

15 This legislation is proactive  
16 legislation, which, by its design, will deter  
17 criminal activity. For every crime prevented  
18 by this legislation, we no longer need to hear  
19 the horrific detailed experienced by a crime  
20 victim or worry about how to restore them to  
21 wholeness or hear from a person that they  
22 cannot get help until they become a homicide  
23 statistic.

24 We no longer will lose good men and  
25 women from the police ranks because they

1 cannot fulfill their dreams as to why they  
2 became a police officer in the first place.

3 From the perspective of police  
4 administration, there are other benefits to  
5 this legislation. From a crime prevention  
6 standpoint, police services and the cost  
7 related to providing police services can be  
8 cut. The hours of manpower needed to address  
9 these crimes, if this legislation does not  
10 exist, can be significantly reduced by the  
11 enactment of this legislation. These hours  
12 could then be used to address other concerns  
13 and needs of the public.

14 Needless to say, service reduction  
15 for a police department equates to cost  
16 reduction, a very important benefit in these  
17 economically challenging times.

18 In policing today, we are very  
19 centered on the concept of community-oriented  
20 policing. A definition of community-oriented  
21 policing is delivering police services that  
22 are customized to the needs of the  
23 neighborhoods being served, and an essential  
24 component of quality is customer focus.  
25 Simply put, listen to the public, understand

1 and respond to their needs with a plan of  
2 action.

3 Without a doubt, there's a very real  
4 need for this legislation, and that need has  
5 been voiced by many people looking for  
6 government to protect them and help them  
7 through very difficult times. As our  
8 legislators, you obviously listen to the  
9 public and understand. Your plan of action is  
10 and should be the enactment of this  
11 legislation. In doing so, as a legislative  
12 body, you will have done the right thing at  
13 the right time for the right reasons, and no  
14 one could expect more from you.

15 I believe that the concept of  
16 community-oriented policing is not unique to  
17 police service but should be a philosophy  
18 adopted by all people working in the public  
19 service sector.

20 In that regard, I would like to  
21 commend Representative DePasquale and all the  
22 other sponsors and supporters of this piece of  
23 legislation for listening to that segment of  
24 society who cannot be served by our current  
25 Protection From Abuse law and be responding to

1 their needs by crafting this important  
2 legislation. You have demonstrated that you  
3 have adopted the concepts of community-  
4 oriented policing and applied them to the very  
5 important work you all do in Harrisburg.

6 Thank you for this opportunity.

7 CHAIRMAN CALTAGIRONE: Thank you,  
8 Chief Smith.

9 I do want to recognize Representative  
10 Waters from Philadelphia, who has joined the  
11 panel.

12 REPRESENTATIVE WATERS: Thank you.

13 CHAIRMAN CALTAGIRONE: And if we  
14 could, we'll next go to Jennifer Russell,  
15 who's the senior deputy prosecutor, Special  
16 Case Unit, York County District Attorney's  
17 office.

18 MS. RUSSELL: Thank you.

19 My name is Jennifer Russell. I am an  
20 assistant district attorney in the York County  
21 District Attorney's office, so I'm here on  
22 behalf of the office. In my position, I am in  
23 charge of the Special Case Unit, which  
24 prosecutes child abuse and sexual abuse  
25 crimes.

1           Like the Chief, I have some comments  
2 prepared that I will be reading from.

3           In my time in the York County  
4 District Attorney's office, I have had the  
5 experience of prosecuting all kinds of crimes,  
6 ranging from DUIs to thefts, drug cases,  
7 rapes, and child abuse. I have also had the  
8 opportunity to handle the prosecution of ICCs,  
9 the violation of Protection From Abuse  
10 orders.

11           While I have prosecuted and worked  
12 extensively with victims of -- while I have  
13 prosecuted cases, I have worked extensively  
14 with victims of abuse. Our office works to  
15 prepare victims for successful prosecutions.  
16 Our ultimate goal is to seek justice for the  
17 victims of those cases.

18           In our efforts to seek justice, it is  
19 paramount that we make every effort to help  
20 protect those victims and keep them safe. The  
21 worst thing during the course of a prosecution  
22 that happens is that, during the course of my  
23 interaction with the victims, they are  
24 sometimes asking for help, asking for  
25 restraining orders, and, unfortunately, my

1 position, there are times when I tell them  
2 that they don't qualify for P.F.A.s and there  
3 is nothing that we can do for them at that  
4 time.

5 In these cases where they don't  
6 qualify for a P.F.A. or there is no no-contact  
7 provision of bail in their case, the answer,  
8 unfortunately, is normally we can't do  
9 anything. And these cases are not just  
10 talking about minor cases or things. We're  
11 talking about rapes or sexual assaults. As  
12 Detective Kozak indicated, often the vast  
13 majority of rape cases, of sexual assault  
14 cases, these victims do not qualify for  
15 Protection From Abuse orders.

16 In these case we do not file charges  
17 immediately. We cannot filed charges  
18 immediately, which would enact bail, which  
19 would allow us to order that the perpetrator  
20 have no contact with the victim. These cases  
21 take time to investigate, and in order for  
22 successful prosecution, it's important that we  
23 have our ducks in a row before we file these  
24 charges.

25 While we're in the process of the

1 investigation, these victims are asking us,  
2 How can I be ensured that that person will  
3 stay away from me? And, unfortunately, we  
4 just tell them, If something happens, call the  
5 police. But we don't really have anything  
6 that they can proactively do to make  
7 themselves feel safer in the meantime.

8 This legislation would allow  
9 prosecutors and law enforcement to have the  
10 ability to reach out to victims and have the  
11 ability, when they ask those questions, to  
12 say, Yes, there is something that you can do.  
13 There is something that we can do to help  
14 you.

15 Peace orders would work hand in hand  
16 with P.F.A. They would not take away from  
17 Protection From Abuse orders. Victims who  
18 currently fall under a P.F.A. would still be  
19 able to seek protection of a Protection From  
20 Abuse order. These peace orders would simply  
21 allow people who currently have no way to seek  
22 protection that they need an opportunity to  
23 seek it.

24 The more tools that law enforcement,  
25 prosecutors, and the courts have to protect

1 victims, the better. One of these tools would  
2 be the use of the GPS that is proposed in this  
3 legislation. This -- the use of GPS would not  
4 be mandated. It would not be mandatory for a  
5 judge to order it. However, it would be an  
6 option for a judge. And this would be a great  
7 tool to use to keep victims feel safer in  
8 their homes and in their businesses.

9           There is no legislation in the world  
10 that would be able to 100 percent guarantee  
11 the complete protection of victims in the  
12 future. But if legislation can make one  
13 person feel safer and more secure, keep one  
14 person from getting hurt, or save one life,  
15 isn't it worth it? And the answer is, of  
16 course it is. It is all of our duties to do  
17 whatever it is that's in our power to make  
18 victims feel safer and more secure and keep  
19 them safe.

20           I am personally very excited about  
21 the prospect of these two very important  
22 pieces of legislation becoming law. I feel  
23 that any tools that we can utilize to help  
24 protect victims is important. And this  
25 legislation would be a great addition to our

1           arsenal that we use in our -- to seek justice  
2           for victims.

3                   CHAIRMAN CALTAGIRONE: Thank you.

4                   Chairman Marsico.

5                   REPRESENTATIVE MARSICO: Thank you,  
6           Mr. Chairman.

7                   And thank you for coming today, for  
8           your testimony, and thank you for what you do  
9           for the citizens of York County and citizens  
10          of the commonwealth.

11                  With respect to the legislation, the  
12          DA's office, does this have the support --  
13          does the legislation have the support of the  
14          PDAA association?

15                  CHAIRMAN CALTAGIRONE: State  
16          association.

17                  REPRESENTATIVE MARSICO: State  
18          association.

19                  DETECTIVE KOZAK: I can't answer  
20          that. I don't --

21                  MS. RUSSELL: I do not -- I'm not  
22          aware of whether or not we've taken that  
23          before the state district attorney's office.

24                  REPRESENTATIVE DEPASQUALE: I don't  
25          think there's been, to be clear, a full

1 endorsement, although many DAs have written --  
2 the actual elected DAs have written in support  
3 of the legislation, but we should probably  
4 present that to the actual association.

5 REPRESENTATIVE MARSICO: That would  
6 be my suggestion, if we present it to the  
7 association. And also with the chiefs of  
8 police association.

9 CHAIRMAN CALTAGIRONE: Yes.

10 REPRESENTATIVE MARSICO: Has this  
11 legislation been -- is it supported by them or  
12 endorsed by them or is it under  
13 consideration? Do you know?

14 CHIEF SMITH: Actually, I haven't  
15 taken it to the York County chiefs of police  
16 association. But we can do that

17 CHAIRMAN CALTAGIRONE: And the --

18 REPRESENTATIVE MARSICO: And the  
19 Pennsylvania chief of police.

20 CHIEF SMITH: We can do that. But  
21 what I did do is, when I got the legislation,  
22 knew I'd be coming here today, I presented it  
23 to our officers to read and understand what's  
24 being proposed. The president of the York  
25 County Fraternal Order of Police happens to be

1 one of my officers. And he talked to their  
2 executive board, and they wholeheartedly  
3 support this legislation. And they agree that  
4 it's a great piece, and we're hopeful that we  
5 can see it through.

6 REPRESENTATIVE MARSICO: It would be  
7 good to have a statement from them and also  
8 from the Pennsylvania Chief of Police  
9 Association as well regarding this.

10 REPRESENTATIVE DEPASQUALE: Tend to  
11 be very helpful.

12 CHIEF SMITH: And I can tell you that  
13 the president of the Pennsylvania Chiefs of  
14 Police Association is Jim Childs, who is the  
15 chief in Southern York County Regional Police,  
16 and I'd be happy to take this to him.

17 REPRESENTATIVE MARSICO: What about  
18 the cost of implementing a GPS system to the  
19 counties? Any clue on cost involved with  
20 this?

21 MS. RUSSELL: Well --

22 DETECTIVE KOZAK: I can just speak to  
23 what I know. I know that we have it already  
24 implemented in York County, because of  
25 probation of the home detention. Now, I'm

1       sure in some of the smaller counties, which  
2       I'm not aware of, they may not have the  
3       resources to have it. I think that in that  
4       area, then, it's still -- in both areas, it's  
5       up to the judge to decide what he wants, but  
6       we do have costs.

7               In York County, it would be deferred,  
8       like any other home detention or stuff like  
9       that that the judge decided would run through  
10      probation, and that's how they do it. Now, I  
11      can't speak for any other county, but I do  
12      know that.

13             MS. RUSSELL: In addition, as -- with  
14      looking at this bill, it's not something that  
15      the judges in every single case would have to  
16      implement. So it could be used at the judge's  
17      discretion, considering the costs that would  
18      be incurred, perhaps on the county, if the  
19      perpetrator is indigent, is unable to pay the  
20      costs. However, you know, it could be a case-  
21      by-case basis.

22             If there are limited resources, you  
23      know, it would be up to the judge to decide  
24      if this is a case that warrants this kind of  
25      protection. But I do, as Detective Kozak

1 indicated, in our county, we do believe that  
2 we'd be able to, since we already do have it  
3 implemented through other cases.

4 REPRESENTATIVE MARSICO: Do we have  
5 an idea of what the cost per unit of GPS unit  
6 is, a clue?

7 DETECTIVE KOZAK: I have no idea. I  
8 can get that. I mean, I know that I get -- I  
9 have an article here that I obtained, and I'll  
10 take a second to look. It may be in this  
11 article.

12 CHAIRMAN CALTAGIRONE: While you're  
13 looking for that, if I could just, we were  
14 supposed to meet with the chiefs of police  
15 tomorrow, but because of the weather  
16 situation, they were concerned about it. I  
17 was concerned about it. But I sent a memo out  
18 to all the members that -- and the chiefs.  
19 They agreed that we're not going to do it  
20 tomorrow. Probably, we rescheduled that  
21 for --

22 MR. TYLER: We are looking for the  
23 end of March, Mr. Chairman.

24 CHAIRMAN CALTAGIRONE: Somewhere the  
25 end of March. But -- as a matter of fact, I

1 just met with the F.O.P. yesterday. We  
2 probably should run this by these other  
3 groups. Chairman Marsico is absolutely on  
4 target with the DA's association. We did meet  
5 with them yesterday. And we could certainly  
6 have them, you know -- probably be more  
7 appropriate if your office went to Ed Marsico,  
8 who happens to be this guy's cousin, as the  
9 president in Dauphin County, and the same way  
10 with the chiefs and maybe even the F.O.P.

11 I don't foresee that anybody -- and  
12 maybe we ought to think about the state  
13 police, because in many of the communities,  
14 they don't have police departments, and they  
15 would be the ones that would be involved. I  
16 could imagine they probably -- and I don't  
17 want to speak for any of them -- they would  
18 probably endorse this, which would be  
19 helpful. And I think that Chairman Marsico's  
20 right on point.

21 REPRESENTATIVE MARSICO: We can get  
22 that information later, if you want to send it  
23 to us.

24 DETECTIVE KOZAK: Yeah. I apologize.  
25 It's not in this article. It talks about

1 monitoring sex offenders and what all that  
2 runs.

3 CHAIRMAN CALTAGIRONE: Dave.

4 MR. TYLER: To follow up on Chairman  
5 Marsico's comments, obviously we've dealt with  
6 the GPS issue over the last couple years, and  
7 one of the findings that came out, regardless  
8 of cost -- obviously, that's a huge issue  
9 right now -- but was the failure of the GPS  
10 systems themselves. All the data that we've  
11 seen -- and there's a lot that we have in our  
12 committee -- shows that they're inconsistent  
13 and they're unreliable.

14 So that would obviously have to be a  
15 huge issue we address even before moving  
16 forward with this legislation. We need to  
17 find GPS systems that actually work. So  
18 that's something we need to talk about, if  
19 we're going to move forward with this issue.

20 I did have a question for Miss  
21 Russell, if I may, Mr. Chairman.

22 CHAIRMAN CALTAGIRONE: Sure.

23 MR. TYLER: We're talking about how  
24 quite often people whom are victims of sexual  
25 assault and rape don't qualify for P.F.A.s.

1           Could you elaborate on that? Why aren't they  
2           qualifying?

3                   MS. RUSSELL: Well, for a P.F.A.,  
4           they would have to be sexual partners or blood  
5           relatives. Oftentimes rapes or sexual  
6           assaults are people, perhaps they're out on a  
7           date or -- so they don't really qualify as  
8           somebody who would be considered to be sexual  
9           partners. They maybe have never had sex or  
10          anything like that. So if they're just out,  
11          casual friends or out in on date, they  
12          wouldn't qualify.

13                   MR. TYLER: I guess with that said,  
14          being that the range of remedies available are  
15          substantially greater for P.F.A. than a peace  
16          order, would it perhaps make more sense to  
17          perhaps consider tweaking the P.F.A. laws that  
18          we have so that people receive the same amount  
19          of protection or just give them a different  
20          type of protection under the peace order?

21                   It kind of seems, I guess like --  
22          when I was reading through PCADV's comments,  
23          they're afraid that we're diluting the  
24          protections that a P.F.A. has by giving them a  
25          peace order. So I guess I'm asking a lot of

1 questions all at once, but --

2 DETECTIVE KOZAK: If I can address  
3 something, if I could. They mirror one  
4 another, but as Jen respectfully said, there's  
5 elements that you cannot do with a P.F.A. that  
6 you can do with a peace order and vice-verse.  
7 One is, like she explained with the P.F.A.,  
8 P.F.A. is, you have to be cohabitating, living  
9 together. You have to have sexual relations  
10 or be blood relative, one or the other, or  
11 share a child or whatever.

12 Some of the cases that I'm looking at  
13 in the peace order in -- from Maryland side  
14 that is, as the chief spoke about, the  
15 resources for neighbor dispute. He's cutting  
16 down my tree limb. He's throwing snow in my  
17 yard. He's this and that. It give avenues  
18 that are completely different from the P.F.A.

19 And I strikely believe that the  
20 P.F.A. can stand on its own. The P.F.A has  
21 been around long enough that, through  
22 educational pieces to the public and to law  
23 enforcement, that we can truly get across that  
24 when you come before a person in a county --  
25 and all counties may not have the luxury that

1 York County has, because we have a luxury  
2 where we have a P.F.A. office in the  
3 courthouse, and it's kind of like everybody's  
4 in one area, which is fantastic for the  
5 citizenry.

6 But the point of it is, is when a law  
7 enforcement officer goes out for a P.F.A.  
8 violation or a person who needs a P.F.A.  
9 protection, that's spelled out. It's spelled  
10 out what you qualify for. You go before the  
11 judge for a hearing, and that's what it's  
12 spelled out for.

13 Where I see as a peace orders is an  
14 area of responsibility that it -- it gives law  
15 enforcement another tool for the other victim  
16 of such as I'm using, you know, generically,  
17 neighbors.

18 MR. TYLER: I guess I will ask a more  
19 direct question. Would you agree or disagree  
20 that the protections for a peace order are  
21 less than the protections available for  
22 someone who has a P.F.A.?

23 DETECTIVE KOZAK: That's correct.

24 MR. TYLER: So I guess, going back to  
25 what I was asking you, why would we not

1 provide the same amount of protections for  
2 someone who's a rape victim or assault victim  
3 just because they may not be cohabiting in the  
4 same dwelling or blood relative, et cetera?

5 MS. RUSSELL: Well, for me, I -- I  
6 just would like to see them get some  
7 protection. Now, I don't think that -- I  
8 don't think it would be appropriate to expand  
9 P.F.A.s for, as Detective Kozak indicated,  
10 neighbor disputes, which do happen. We see a  
11 lot of those where -- and at times there  
12 actually may be harassment charges filed,  
13 summary harassment charges filed between the  
14 two neighbors, but there's nothing that, you  
15 know, that -- if this feud or whatever keeps  
16 going on, there's nothing that, if the police  
17 keep getting called out, if it's just rising  
18 to the level of summary harassment as far as  
19 no-contact kind of provisions.

20 MR. TYLER: But I guess, in what  
21 we're doing, with all due respect, is -- then  
22 it seems as though, by creating this peace  
23 order legislation, we're putting people who  
24 have been abused in the same category as  
25 disputes between neighbors.

1                   DETECTIVE KOZAK:  No.  No, you're  
2                   not.  I disagree with that, the same way that  
3                   I disagree with the fact that the area of a  
4                   rape victim -- a rape victim gets charged with  
5                   a crime, then we attached the no-contact bail  
6                   piece to that.  So that alleviates that  
7                   responsibility.

8                   What ADA Russell was talking about  
9                   was an area where you have the law enforcement  
10                  and still doing their investigation or it's  
11                  still building the case, and they're looking  
12                  for protection, or if the case doesn't go or  
13                  the case gets dismissed, because we have a lot  
14                  of rape cases that get dismissed, and I've  
15                  been with the victim when that happens too.

16                  I think we are just adding another  
17                  tool to the tool bag for law enforcement.  I  
18                  think there's no clouding area, I'll reiterate  
19                  again, in the P.F.A., in the protection  
20                  against a person of abuse.  We're setting a  
21                  different standard.  I think you're reading  
22                  the part about where, how long, limitation  
23                  where it is a year, where P.F.A. is now three  
24                  years.  There's mirroring differences.

25                  And I think the mirroring differences

1 that can be decided on what we're looking at  
2 doesn't reflect in any less of a P.F.A.,  
3 because I think the P.F.A., a person is  
4 protection from abuse, gets protection from  
5 abuse, and that's why that order's in effect.  
6 That's what I believe.

7 MR. TYLER: Thank you all.

8 REPRESENTATIVE DEPASQUALE: And I do  
9 believe that all we have to do is look, you  
10 know, thirty-five miles to our south, and that  
11 is Maryland, which both laws exist now, and  
12 these issues do not -- I mean the prosecution  
13 and law enforcement community have developed  
14 which ones are appropriate for the protection  
15 orders in Maryland, P.F.A.s here, and the  
16 peace orders. So that stuff gets worked out  
17 through the law enforcement.

18 And, you know, just knowing at least  
19 the York County DA's office, they're not  
20 looking to go soft on any criminals. So if  
21 there's one that the tougher P.F.A. is  
22 appropriate, they're going to get -- they're  
23 going seek that.

24 CHAIRMAN CALTAGIRONE: You know --  
25 you know, if I could, it would be

1 interesting -- and maybe we ought to have our  
2 staff look at this -- see what other states  
3 have this legislation on the books. Because  
4 you mentioned Maryland. I don't know if you  
5 know if there are other states, but we ought  
6 to just catalog that, so the members can  
7 understand that, you know, there are other  
8 states that have already put this legislation  
9 on the books.

10 And I do want to mention, for the  
11 record, we have our good friends from the  
12 F.O.P., the president and one of the other  
13 officers.

14 MR. KOCH: Thank you, Mr. Chairman.

15 CHAIRMAN CALTAGIRONE: And possibly  
16 they could take a look at it with their  
17 organization to see if they could --

18 MR. KOCH: Yes, sir.

19 CHAIRMAN CALTAGIRONE: -- support  
20 this legislation along with the other groups  
21 that I have mentioned, the DA's association,  
22 the state police, and certainly the chiefs.  
23 Because I can imagine that they probably -- I  
24 don't want to speak for them -- but I would  
25 think that they'd probably be in favor of

1 this, which would add a little bit more weight  
2 to try to get this legislation moving.  
3 Because, from your testimony, Chief and  
4 Detective and DA, that you see that there's  
5 worthwhile merit in getting this thing  
6 approved and getting it on the books so that  
7 you have another tool to work with.

8 MR. TYLER: And real quick, for the  
9 record, we did reach out to a lot of these  
10 organizations, the chiefs of police, et  
11 cetera. And there were some technical changes  
12 to scheduling this hearing, and unfortunately,  
13 because of the short turnaround, they weren't  
14 able to provide some comments, but they  
15 promised that they will get back to us in the  
16 future.

17 So I don't want them to look like --  
18 I don't want it to look like they didn't try  
19 to get to it. I apologize.

20 CHAIRMAN CALTAGIRONE: We'll make  
21 sure that they get copies of your testimony  
22 and the legislation and stuff.

23 Representative Waters.

24 REPRESENTATIVE WATERS: Yes. Thank  
25 you, Mr. Chairman.

1           And thank you for the testifiers who  
2           are here today.

3           Following up on what chairman  
4           mentioned, the other states, if you do get  
5           information from them, can you also see if  
6           there's any testimony or any responses from  
7           people who have participated in this? And I  
8           don't know if the abused person, the victim  
9           themselves, may have anything that they want  
10          to say about it.

11          But if these guys have overwhelming  
12          support from the -- from the victim side and  
13          make them feel more comfortable, then, I  
14          believe, that, in and of itself, is worth it,  
15          because a lot of people do get nervous, you  
16          know, that there's a predator out there.

17          There was a recent case, and I can't  
18          think of it right now, where something bad  
19          happened to a person trying to get  
20          protection. It was in the news. And they  
21          didn't get the response as quickly as they  
22          should have and ended up turning into a real  
23          tragedy.

24          So I support that, and I just want to  
25          let the sponsor, Representative DePasquale,

1 know that I -- I think that it is a great  
2 piece of legislation, a great measure in terms  
3 of getting safety out to the people who need  
4 it.

5           And -- but I know we talked about the  
6 cost factor. The chairman brought that up,  
7 too, and -- and in the monitoring of it. I'm  
8 not sure about how it is monitored. It's  
9 being monitored by an existing monitoring --  
10 for people who are monitoring people who have  
11 other GPS systems attached to them for them  
12 being as a predator with other sorts. Would  
13 they all be forced into the same monitoring  
14 system?

15           DETECTIVE KOZAK: Well, I can speak  
16 for York County. That's how they would do  
17 it. It would be run out of probation office.  
18 But I wouldn't know -- like I said, if there's  
19 counties that don't have the home detention  
20 areas like that, I can't give you an answer to  
21 that, sir.

22           REPRESENTATIVE WATERS: Okay. So I  
23 want -- who would be responsible for  
24 monitoring it, if it was in place?

25           REPRESENTATIVE DEPASQUALE: That is

1 something that we would probably have to  
2 figure into the language, because I'm used to  
3 dealing with the York County situation that  
4 already has a system in place. But that is  
5 raising a good issue, that especially some of  
6 our smaller counties probably don't have a  
7 system in place. So that's why I drafted it  
8 to not have to be mandatory, so there is no  
9 mandate that it have to apply.

10 But we should have -- for the  
11 counties that are smaller and don't have a  
12 system, we should probably at least give some  
13 model of how they can implement it. So it's  
14 certainly -- it's raising -- it's raising an  
15 important issue that I think we are going to  
16 need to address.

17 And also, just to -- because I think  
18 we've been discussing the two as one bill.  
19 There actually are -- the GPS and the peace  
20 order bill are two separate bills. So we  
21 would have to, you know, sort of deal with the  
22 additional language on the GPS bill, but it is  
23 a separate bill from the peace order bill.

24 REPRESENTATIVE WATERS: Okay.

25 Thank you, Mr. Chairman. Thank you.

1 CHAIRMAN CALTAGIRONE: Other

2 questions?

3 Representative Grell.

4 REPRESENTATIVE GRELL: Just one --

5 just one quick question. Thank you,

6 Mr. Chairman.

7 And this is more for the sponsor,

8 Representative DePasquale. I'm certainly

9 supportive of giving law enforcement and

10 prosecutors all the tools available that we

11 can make available.

12 I am concerned a little bit that the

13 Coalition Against Domestic Violence has some

14 concerns, and I would hope that those concerns

15 could be reconciled before we move forward

16 with this. I'm particularly interested in the

17 second and third of their concerns, which

18 deals with mandatory mediation, I believe, and

19 the cost of yet another state-wide registry.

20 And just ask the sponsor, what is the

21 status of any discussions with the coalition

22 and what are the prospects of resolving their

23 concerns?

24 REPRESENTATIVE DEPASQUALE: We have

25 met with them. I can't predict the status of

1 resolution. I did ask them in some of the  
2 issues that they had raised that if they could  
3 pinpoint, from the other states that have both  
4 laws on the books, any instances of where  
5 those problems actually existed, that they  
6 could get back to me on that. And that was, I  
7 think, what was that, about two months ago?

8 MR. TYLER: Yes. It was before  
9 Christmas.

10 REPRESENTATIVE DEPASQUALE: So I  
11 haven't had any feedback since then.

12 REPRESENTATIVE GRELL: Okay. Well, I  
13 would just hope that we could at least reach  
14 out to them again. Apparently they're,  
15 obviously, still interested and concerned,  
16 because they just wrote a letter on the 24th  
17 of February. So I'd at least hope that we  
18 would take another shot at trying to reconcile  
19 those positions.

20 REPRESENTATIVE DEPASQUALE: Couple --  
21 one thing I'll want to state off line with  
22 you, at least regarding the local domestic  
23 violence. But we did reach out. And they  
24 were supposed to testify here today, and not  
25 sure what happened there.

1           And, again, two months ago I did ask  
2           them for specific examples of the issues they  
3           were raising and the states where both laws  
4           are on the books of just whether it be one or  
5           a thousand of examples of where their concerns  
6           happen. And there could be ten million, for  
7           all I know. But that was several months ago  
8           and still waiting for a response back, but  
9           I'll continue to reach out.

10                   REPRESENTATIVE GRELL: Okay. Thank  
11           you.

12                   CHAIRMAN CALTAGIRONE: Are there any  
13           other questions?

14                   Thank you for your testimony. It was  
15           very enlightening. And I would hope that we  
16           could get this bill considered when we get  
17           back into the committee mode to vote this  
18           out.

19                   Thank you.

20                   (Whereupon, the hearing concluded at  
21           11:44 a.m.)

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WRITTEN TESTIMONY SUBMITTED

(The following letter has been submitted by the Pennsylvania Coalition Against Domestic Violence.)

Dear Chairman Caltagirone and Judiciary Committee Members:

On behalf of our 61 domestic violence programs throughout the Commonwealth and the hundreds of thousands of victims our programs serve, the Pennsylvania Coalition Against Domestic Violence (PCADV) would like to draw attention to our concerns surrounding House Bill 1957, concerns that compel us to take a position in opposition to the enactment of the bill.

First, we want to express our heartfelt gratitude to Representative DePasquale, the lead sponsor of HB 1957. We know well that Representative DePasquale is a steadfast ally in our efforts to end domestic violence and to ensure both victim safety and perpetrator accountability, and we have met with him and discussed our concerns about this

1 bill. Our opposition to HB 1957 is due to  
2 what we foresee to be the unintended  
3 consequences of the bill, based on our  
4 programs' collective, decades-long experience  
5 serving domestic violence victims throughout  
6 the state. While we do oppose HB 1957, at the  
7 same time we applaud Representative  
8 DePasquale's continued efforts to enhance  
9 victim safety.

10 As you know, HB 1957, would: Create  
11 a new chapter within Title 42, proposed  
12 Chapter 62, entitled Peace Orders, providing  
13 the statutory framework for a new civil  
14 protection order that does not require a  
15 family or household relationship between the  
16 victim/petitioner and the  
17 perpetrator/defendant; require the PSP to  
18 establish and maintain a statewide registry  
19 for peace orders; amend the existing criminal  
20 harassment statute (Title 18, Section 2709) by  
21 adding two new types of conduct constituting  
22 the offense and changing the grading  
23 provisions in the existing harassment statute.

24 The PCADV has several concerns about  
25 the bill. Paramount of these concerns is the

1 significant risk that creating a new Peace  
2 Order option would divert domestic violence  
3 victims away from PFA Orders. Victims may not  
4 be aware of all of their options, and may not  
5 understand the differences between a PFA order  
6 and a Peace Order. We acknowledge that  
7 proposed section 6202(b)(1) of HB 1957 states  
8 that the Peace Order chapter "does not apply  
9 to a petitioner eligible for relief under the  
10 PFA Act." However, domestic violence victims  
11 may not identify as such and, again, may not  
12 be aware of all their options and thus may not  
13 understand the import of such a disclosure.  
14 Thus, we do not believe that including  
15 statutory language that excludes domestic  
16 violence victims from the purview of the Peace  
17 Order chapter would effectively remedy the  
18 risk of diverting domestic violence victims  
19 away from the protections of the PFA system.

20 If diverted to a peace order,  
21 domestic violence victims would not have  
22 access to the range of relief in the PFA Act  
23 that have been specifically designed to  
24 address the needs of domestic violence victims  
25 and the safety risks they face. For example,

1       there would be no firearms relinquishment for  
2       peace orders, yet we know how crucial such  
3       protections are in domestic violence cases.  
4       More than half of all domestic violence  
5       related fatalities are committed using  
6       firearms; ensuring guns are removed from  
7       situations in which it is proven that the  
8       abuser poses a high risk of lethality is a  
9       critical protection offered in PFA Act (as  
10      well as federal law) yet would not be  
11      available in Peace Order cases.

12                 Similarly, there is also significant  
13      risk that by treating Peace Orders and PFAs as  
14      comparable, the types of conduct underlying  
15      each are also viewed as comparable -- when the  
16      reality is that domestic violence is  
17      qualitatively distinct from general violence.  
18      Domestic violence presents the acute risk of  
19      separation assault, and commonly involves a  
20      shared household and children in common; peace  
21      orders may involve near strangers, with none  
22      of the separation assault risks and power and  
23      control issues present in domestic violence.  
24      In effect, Peace Orders may minimize the  
25      severity and priority of PFAs and domestic

1 violence issues.

2           Additionally, HB 1957 provides that  
3 the court may direct the respondent or  
4 *petitioner* (i.e., the victim seeking  
5 protection) to participate in counseling or  
6 mediation. Mandatory counseling or mediation  
7 is well-established as inappropriate and  
8 potentially dangerous in cases involving  
9 domestic violence. For example, Rule  
10 1940.3(b) of the PA Rules of Civil Procedure,  
11 applicable in custody actions, states that,  
12 "The court may not order an orientation  
13 session if a party or a child of either party  
14 is or has been the subject of domestic  
15 violence or child abuse either during the  
16 pendency of the action or within 24 months  
17 preceding the filing of the action." See *Pa.*  
18 *R.C.P.* No. 1940.3 (2009). Likewise, the same  
19 prohibition on mediation in domestic violence  
20 cases also applies in the context of divorce  
21 proceedings. See *23 Pa. C.S. Section*  
22 *3901(c)(2)*.

23           As the Explanatory Comment to Rule  
24 1940.3 states, such mediation or counseling is  
25 prohibited in cases involving abuse "because

1        *of the substantial imbalance of negotiating*  
2        *power that exists between the parties"*  
3        (emphasis added). Additionally, for victims  
4        who have fled abusers and are trying to avoid  
5        further contact with them, being court-ordered  
6        to interact with an abuser is counter to  
7        victims' own protective measures. In sum, it  
8        is well-established in law that mandatory  
9        counseling or mediation in domestic violence  
10       cases should not be allowed because it is not  
11       a safe option for victims.

12                        Finally, the PCADV has concerns about  
13       the statewide registry required by HB 1957.  
14       The enormous investment of time, effort, and  
15       money involved in creating and implementing a  
16       statewide registry is something the PCADV has  
17       substantial expertise in due to our creation  
18       and implementation of the existing Protection  
19       From Abuse Database (PFAD). PFAD is a  
20       computer archival system for the electronic  
21       entry of all pleadings and orders relating to  
22       Protection From Abuse (PFA) Act cases in  
23       Pennsylvania. Records from PFAD are  
24       immediately available 24 hours a day, 365 days  
25       a year to authorized users via a secured

1 internet website.

2 The PCADV created and implemented  
3 PFAD until it very recently turned the project  
4 over to the PSP. We know from hard-earned  
5 experience that it takes years of collective  
6 work and millions of dollars to establish a  
7 statewide registry like PFAD, or like the one  
8 called for in HB 1957. Because PFAD is  
9 already operational, there is the possibility  
10 that Peace Orders would simply be entered into  
11 PFAD, resulting in further strain on limited  
12 resources, and diverting time and attention  
13 from PFAs and the acute safety risks they  
14 involve. Even if a separate registry were  
15 established, it is likely to cause  
16 considerable confusion among the various  
17 entities involved as to the scope of remedy  
18 and response required from law enforcement.

19 In sum, we believe that HB 1957 poses  
20 a substantial risk of weakening existing  
21 protections for domestic violence victims, and  
22 therefore we must oppose the bill. We thank  
23 you for your consideration of our concerns  
24 about HB 1957, and we welcome inquires or  
25 request of further information.

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Sincerely, Peg Dierkers, Executive  
Director.

(This concludes the letter submitted  
by Pennsylvania Coalition Against Domestic  
Violence. The content was not altered to  
correct any errors in spelling, grammar, or  
punctuation.)

\* \* \* \* \*

## REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct transcript of my said stenographic notes.

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BRENDA J. PARDUN, RPR  
Court Reporter  
Notary Public