

# Pennsylvania Coalition Against Domestic Violence

The Nation's First State Domestic Violence Coalition • Founded 1976

The Honorable Thomas P. Caltagirone  
Chair, House Judiciary Committee  
106 Irvis Office Building  
PO Box 202127  
Harrisburg, PA 17120-2127

February 24, 2010

Re: HB 1957

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

As you know, HB 1957 would:

- Create a new chapter within Title 42, proposed Chapter 62, entitled Peace Orders, providing the statutory framework for a new civil protection order that does not require a family or household relationship between the victim/petitioner and the perpetrator/defendant;
- Require the PSP to establish and maintain a statewide registry for peace orders;
- Amend the existing criminal harassment statute (Title 18, Section 2709) by adding two new types of conduct constituting the offense and changing the grading provisions in the existing harassment statute.

The PCADV has several concerns about the bill. Paramount of these concerns is the significant risk that creating a new Peace Order option would divert domestic violence victims away from PFA Orders. Victims may not be aware of all of their options, and may not understand the differences between a PFA order and a Peace Order. We acknowledge that proposed section 6202(b)(1) of HB 1957 states that the Peace Order chapter "does not apply to a petitioner eligible for relief under the PFA Act." However, domestic violence victims may not identify as such and, again, may not be aware of all their options and thus may not understand the import of such

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a disclosure. Thus, we do not believe that including statutory language that excludes domestic violence victims from the purview of the Peace Order chapter would effectively remedy the risk of diverting domestic violence victims away from the protections of the PFA system.

If diverted to a peace order, domestic violence victims would not have access to the range of relief in the PFA Act that have been specifically designed to address the needs of domestic violence victims and the safety risks they face. For example, there would be no firearms relinquishment for peace orders, yet we know how crucial such protections are in domestic violence cases. More than half of all domestic violence related fatalities are committed using firearms; ensuring guns are removed from situations in which it is proven that the abuser poses a high risk of lethality is a critical protection offered in PFA Act (as well as federal law) yet would not be available in Peace Order cases.

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

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

As the Explanatory Comment to Rule 1940.3 states, such mediation or counseling is prohibited in cases involving abuse “*because of the substantial imbalance of negotiating power that exists between the parties*” (emphasis added). Additionally, for victims who have fled abusers and are trying to avoid further contact with them, being court-ordered to interact with an abuser is counter to victims’ own protective measures. In sum, it is well-established in law that mandatory counseling or mediation in domestic violence cases should not be allowed because it is not a safe option for victims.

Finally, the PCADV has concerns about the statewide registry required by HB 1957. The enormous investment of time, effort, and money involved in creating and implementing a statewide registry is something the PCADV has substantial expertise in due to our creation and implementation of the existing Protection From Abuse Database (PFAD). PFAD is a computer archival system for the electronic entry of all pleadings and orders relating to Protection From

Abuse (PFA) Act cases in Pennsylvania. Records from PFAD are immediately available 24 hours a day, 365 days a year to authorized users via a secured internet website.

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

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

Sincerely,

Peg Dierkers  
Executive Director