

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE HEARING

BISHOP McDEVITT HIGH SCHOOL
1 CRUSADER WAY
HARRISBURG, PENNSYLVANIA

THURSDAY, SEPTEMBER 12, 2013
10:00 A.M.

IN RE: HOUSE BILL 1163
CYBERBULLYING

BEFORE:

HONORABLE RONALD MARSICO, MAJORITY CHAIRMAN
HONORABLE SHERYL M. DELOZIER
HONORABLE MARK K. KELLER
HONORABLE MIKE REGAN
HONORABLE TODD STEPHENS
HONORABLE BRYAN BARBIN
HONORABLE JOHN P. SABATINA, JR.

ALSO IN ATTENDANCE:

THOMAS W. DYMEK, ESQUIRE
MICHAEL KANE, ESQUIRE
DAVID V. VITALE

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3 MAJORITY CHAIRMAN MARSICO: I'm Representative
4 Ron Marsico, Chairman of the House Judiciary Committee.
5 Welcome, everyone here.

6 I just want to, first of all, thank Bishop
7 McDevitt High School here in Lower Paxton Township for
8 hosting us today. Sister Mary Anne Bednar, Principal here
9 at McDevitt, thank you very much for your hospitality for
10 having us here in the 105th Legislative District, which is
11 Lower Paxton Township, Dauphin County.

12 I'd like to welcome all the students that are
13 here. This is a very -- and I think a very good --
14 educational opportunity for you to see and hear a standing
15 committee of the House of Representatives conducting a
16 hearing on a very important issue.

17 On behalf of members and staff, they'll introduce
18 themselves.

19 MR. KANE: I'm Mike Kane. I'm legal counsel to
20 the Judiciary Committee.

21 MR. DYMEK: Tom Dymek, Executive Director of the
22 Committee.

23 REP. KELLER: Good morning. I'm Representative
24 Mark Keller from the 86th District.

25 REP. BARBIN: I'm Representative Bryan Barbin. I

1 represent the 71st District, which is Johnstown.

2 MR. VITALE: Dave Vitale, legal counsel to the
3 Committee.

4 MAJORITY CHAIRMAN MARSICO: I believe other
5 members will be coming in as the hearing gets moving along
6 here.

7 Once again, I mean, this is the first time that
8 there's a standing committee here at McDevitt. We're
9 certainly excited to be here and also this is a beautiful
10 campus. We congratulate Bishop McDevitt students on the
11 campus here. It's a beautiful campus here in Lower Paxton
12 Township.

13 Once again, we thank you.

14 This hearing, we're going to talk about House
15 Bill 1163. This is a bill from which I am the prime
16 sponsor in which the House Judiciary Committee approved
17 unanimously by a vote of 25 to 0. This bill is now being
18 considered by the House of Representatives as a whole.

19 House Bill 1163 addresses cyberbullying of
20 children. With the advent of e-mail and social networking,
21 such as Facebook, Twitter, and Instagram, the ability to
22 harass a child by repeatedly e-mailing or spreading
23 seriously disparaging comments using social media has
24 become all too prevalent.

25 Most members of the House of Representatives have

1 received letters, e-mails, and phone calls from
2 constituents about a child who has been harassed over the
3 Internet. I certainly have. Some members of the House of
4 Representatives may even have a member of their own family
5 who has been a victim of cyberbullying.

6 The consequences can be devastating to a child.
7 The Center for Disease Control and Prevention has
8 characterized cyberbullying as an emerging public health
9 problem. Cyberbullying can cause serious psychological
10 harm, including depression, anxiety, and suicidal
11 intentions. And youths are especially vulnerable to
12 cyberbullying because peer acceptance can be so crucial to
13 adolescents.

14 The negative consequences of cyberbullying can
15 spill over into victims' social, academic, and family
16 lives. There have been numerous cases across the country
17 where harassment has become so acute, so persistent, and so
18 vicious that a child took his own life as a result. This
19 has to end.

20 The current criminal harassment statute in
21 Pennsylvania is inadequate to address the ease with which a
22 child can be harassed by electronic communications. So
23 this bill amends the Pennsylvania Crimes Code to add the
24 offense of cyberharassment of a child.

25 This new offense would make it a misdemeanor of

1 the third degree for a person to use electronic
2 communications to repeatedly make statements or offer
3 opinions about a child's sexuality or sexual activity or
4 make statements to specifically ridicule, demean, or cause
5 serious embarrassment to a child under the circumstances.

6 The grading of this offense was chosen carefully
7 by making cyberharassment of a child a misdemeanor of the
8 third degree. This allows intervention by law enforcement
9 and Juvenile Probation officers who would initially review
10 the case if it involved a juvenile offender.

11 If appropriate, this case will be referred to
12 Juvenile Court where the juvenile offender can be placed in
13 a Diversion Program. An adult who engages in such conduct
14 will be prosecuted by the Court rather than be issued a
15 summary citation threatening seriousness of this form of
16 child abuse that distinguishes from harassment of another
17 adult.

18 There, of course, a careful balance needs to be
19 struck when introducing legislation like House Bill 1163
20 where teasing between children who should not be
21 criminalized where at the same time the destructive force
22 of true cyberbullying must be stopped.

23 We look forward to hearing from all the witnesses
24 today about the scope of the problem of cyberbullying and
25 about how to best craft a solution to that problem.

1 I'm very pleased to say that we have an excellent
2 lineup of witnesses with us today to talk about this bill,
3 including Sister Mary Anne Bednar from Bishop McDevitt High
4 School and Sarah Beeghley, a student here at Bishop
5 McDevitt High School; Michael Piecuch, Snyder County
6 District Attorney, who is appearing on behalf of the
7 Pennsylvania District Attorneys Association; Andy Hoover,
8 Legislative Director for the Pennsylvania Chapter of the
9 ACLU; Diane Moyer, Esquire, legal director for the
10 Pennsylvania Coalition Against Rape; and Carol Lavery,
11 Commonwealth of Pennsylvania Victim Advocate. We look
12 forward to all of your testimony.

13 Before we begin with the testimony, let me just
14 add a couple more comments. First, please be aware that
15 this hearing is being recorded and is being broadcast
16 statewide by PCN, Pennsylvania Cable Network. The hearing
17 will also be able to be accessed from the House of
18 Representatives's website. I want to thank PCN for being
19 here and taking the time to record this hearing.

20 The issue of cyberbullying is a concern to kids,
21 parents, educators, and many more people throughout
22 Pennsylvania. I hope everyone who has a concern about
23 cyberbullying takes the time to view the recording and goes
24 through the information we are about to hear today and
25 contact your legislators across this Commonwealth with your

1 concerns.

2 Second, I'd like for everyone to know that the
3 Committee will keep the record open after this hearing only
4 to receive written comments from other persons interested
5 on this topic at a later point.

6 There are many young people who have been victims
7 of vicious cyberbullying. I hope they would take this
8 opportunity to share their stories with the Committee.

9 Thank you.

10 We have another member joining us, Representative
11 Sabatina from Philadelphia County. Welcome,
12 Representative.

13 REP. SABATINA: Thank you, Mr. Chairman.

14 MAJORITY CHAIRMAN MARSICO: As I said, our
15 opening testifiers are Sister Mary Anne Bednar and Sarah
16 Beeghley, a student here at Bishop McDevitt. Welcome. And
17 thanks again for your hospitality.

18 You may begin your testimony.

19 SISTER MARY ANNE BEDNAR: Thank you. Good
20 morning. I'd like to extend a warm welcome to all of our
21 distinguished guests of the House Judiciary Committee. We
22 are thrilled to be hosting this hearing at Bishop McDevitt
23 this morning.

24 I think it's very appropriate that the site of
25 this hearing is a school with all the advances in

1 technology. And the advent of Facebook and Twitter and all
2 the social media, which can be good, has created a whole
3 host of issues and concerns for law enforcement, for
4 schools, and for other organizations.

5 Over the last several years, we, as a school --
6 and I dare to say all schools. I don't think there's
7 anyone who is exempt. -- have struggled with problems that
8 have arisen as a result of social media. We're really
9 traveling in uncharted waters.

10 So House Bill 1163 -- and hopefully other bills
11 like it -- will provide much needed support and guidance
12 for us as we struggle with these issues in school.

13 Representing Bishop McDevitt today is Sarah
14 Beeghley, one of our sophomore students. She's a wonderful
15 young woman. And she has her own story of cyberbullying to
16 tell. Sarah.

17 SARAH BEEGHLEY: Good morning.

18 Members of the Committee, my name is Sarah
19 Beeghley and I am a 10th grade student here at Bishop
20 McDevitt High School. Since I was 11 years old, I have
21 presented at local, state, national, and international
22 educational technology conferences both virtually and in
23 person.

24 I have won many awards, such as first place at
25 the Pennsylvania State Middle School Computer Fair in the

1 Web Page Design Category in 2009, second place in the
2 Multimedia category the following year. In 2009 I won an
3 international award when the Edublog awards named me as
4 best student blogger.

5 Due to my passion for history and the American
6 Civil War, I was named the 2012 Future Leader Award winner
7 for the Pennsylvania Council for the Social Studies. I
8 have been interviewed for newspapers and magazines and have
9 been published three times in educational technology
10 publications.

11 All of this recognition came about because of a
12 project I created in 2009 for the PA Middle School Computer
13 Fair called Civil War Sallie. Civil War Sallie is a
14 donated Boyd's Bear from Gettysburg who travels around
15 looking for Civil War battlefields, museums, and schools
16 learning about the Civil War.

17 Sallie reports back to home by writing blog posts
18 daily and posting pictures to Flickr. I became known as
19 Civil War Sallie because she took off from the first day
20 she went live at the Pennsylvania Educational Technology
21 Expo and Conference in 2009.

22 From there I began presenting on my Civil War
23 Sallie project and creating global projects, first with my
24 teacher/friend, Mr. Brandon Lutz, who is a teacher in
25 Philadelphia, and then on my own.

1 I became very, quote, unquote, famous in the
2 educational and teacher world. I was presenting and
3 speaking to educators about Civil War Sallie and how to
4 create a global project. Because of this project, I have
5 met people from around the world and have gotten to see
6 places that people would normally not be able to see,
7 including being given a private tour of Ford's Theatre and
8 Clara Barton's home.

9 It was because I was presenting and winning
10 awards that one of my friends got jealous and cyberbullied
11 me.

12 As you know, cyberbullying is the bullying that
13 takes place using electronic technology. Cyberbullying has
14 taken what used to happen on the playground to the
15 Internet. The playground bully is now the cyberbully.
16 While kids who are being cyberbullied are often bullied in
17 person, they have a much harder time getting away from
18 their bully.

19 Cyberbullying can happen 24 hours a day, 7 days a
20 week. Cyberbullying messages and images can be posted
21 anonymously and then quickly sent to others. It can be
22 difficult and sometimes impossible to trace the source.

23 In the research report Feeling Safe, the Girl
24 Scouts Research Institute found that 46 percent of girls
25 define safety as not having their feelings hurt; girls who

1 face cyberbullying or the threat of cyberbullying do not
2 feel safe.

3 Also, 32 percent of girls said their No. 1
4 concern was a fear of being teased or made fun of and 38
5 percent of girls surveyed worry about their emotional
6 safety when spending time with their peers. Also, more
7 girls than boys get cyberbullied. And girls my age are the
8 ones most likely to cyberbully.

9 Today's teen lives in a world filled with
10 technology and social media, everything from Facebook and
11 Twitter to Instagram and Tumblr. In addition to connecting
12 with friends and families, teens can follow their favorite
13 celebrities and artists. Teens can also join online groups
14 centered on their favorite musical group and discuss the
15 band's latest songs with others from around the globe.

16 However, the Internet can also have a dark side.
17 Cyberspace poses a number of other threats to young girls,
18 such as online sexual predators, inappropriate sharing of
19 information, and the disturbing new trend of sexting.

20 There are many heartbreaking cases where we hear stories
21 about girls like Megan Meier, Phoebe Prince, and Alexis
22 Pilkington, each of whom ended her life after unrelenting
23 bullying, including cyberbullying. Fortunately, my story
24 did not get that bad.

25 I am here today because I was the victim of

1 cyberbullying. In class, a girl who I thought was my
2 friend would say mean things to me or about me behind my
3 back when I talked about presenting or the things I was
4 doing. From this traditional bullying, the girl took it
5 online.

6 At first, she made an online quiz and sent it to
7 most of my classmates and friends. The quiz questions
8 were, who is weirdest? Who is the teacher's pet? Who does
9 that stupid thing with the bear? The correct answer to all
10 the questions was my name.

11 Many of my friends took the quiz. And when I
12 learned about it, I spent the next few days crying and
13 wondering why she would do this. The girl was supposed to
14 be my best friend. I learned that I couldn't trust
15 anybody. My parents talked to the girl's parents and they
16 promised it would end and never happen again. That lasted
17 only a few months until the girl again sent messages to me
18 online and started talking about me in school.

19 This time, my parents told the school and the
20 girl only got three days of in-school suspension and her
21 parents said she was grounded. She was only upset that she
22 missed the basketball playoffs. Her parents even got mad
23 at my parents for involving the school.

24 Because the school did nothing, I was forced to
25 switch schools. During my 8th grade year, I was

1 cyberbullied again, but this time my parents stopped it
2 right away. The girl and I were in a group for a science
3 project. The project required for us to build a mudslide
4 and I had asked my Discovery Channel education friends what
5 we would need to do to get a good grade.

6 She said something on group messaging on Facebook
7 and finished it off with, in your face. My mom saw it and
8 stepped in. I told the teacher after the project and she
9 never put us in a group again. This girl continued to post
10 inappropriate remarks about me on my Facebook page and say
11 things about me to her friends online.

12 The school said it was girls being girls and did
13 nothing. This online and in-school harassment continued
14 for months until the end of the year when we graduated to
15 different high schools.

16 While only a minor incident, there was one more
17 that took place this past summer. A neighbor friend and I
18 were planning a sleepover; however, I left the house
19 without telling my parents. Because of this, I was not
20 allowed to sleep over and she did not like that and sent
21 out a tweet to hundreds of her followers that contained
22 inappropriate remarks about my parents and myself.

23 I showed it to my parents and my mom went over to
24 the girl's house and told her mom. The girl blocked me on
25 all social media because now her mom knows what she does.

1 After all of these negative experiences, I took
2 the advice of one of my teacher/friends who told me to turn
3 my story around and become an advocate. So now I am
4 working with a company from England called the Cybersmile
5 Foundation, which is making teenagers everywhere aware of
6 cyberbullying. Today I am known online as the Geeky Girl
7 and I'm an advocate against cyberbullying.

8 Teachers are now asking me for my opinions on
9 talking to students and asking me if they can share my
10 story. I am also happy to say that I am once again
11 presenting to teachers and parents locally and nationally
12 about how to be aware of cyberbullying. And as of
13 yesterday, I was accepted to present at the National
14 Catholic Education Conference on this.

15 I support House Bill 1163 because it will make
16 cyberbullying a punishable offense. I think that we should
17 make it mandatory for all teachers to attend cyberbullying
18 training. While the Pennsylvania School Code has
19 information on bullying, the schools are left to create
20 different policies that vary in both the way they are
21 written and implemented.

22 Finally, we need to do more to educate parents,
23 teachers, administrators, students, and other school
24 personnel on recognizing, preventing, and mitigating the
25 effects of cyberbullying.

1 On behalf of my classmates here at Bishop
2 McDevitt High School and myself, I want to thank you for
3 your time and your support on this important topic.

4 MAJORITY CHAIRMAN MARSICO: Well, thank you very
5 much for being here. It takes a lot of courage for what
6 you're doing and strength. Thanks for what you're doing
7 for all the teenagers across the country, making them aware
8 that cyberbullying is a serious problem.

9 Do any members or staff have questions?
10 Representative Barbin.

11 REP. BARBIN: Thank you for your testimony.

12 Can you tell us what kind of steps are being
13 taken here that maybe we can use when we're crafting the
14 bill? What steps do they take at Bishop McDevitt to try to
15 address cyberbullying?

16 SISTER MARY ANNE BEDNAR: When a student is found
17 to be guilty of engaging in activity that would harass or
18 in any way demean or degrade a student that's done online,
19 that's dealt with very severely here. As I mentioned
20 earlier, we're in uncharted waters. We need help as far
21 as laws that would support what we're trying to do and what
22 we're trying to put in place.

23 When Sarah mentioned that, you know, many people
24 will just say, you know, it's girls being girls or guys
25 being guys, that's an attitude that we come up against

1 often with parents, with other people who would be involved
2 in the process of dealing with a student who is involved
3 with this kind of thing.

4 So, you know, as far as our Discipline Code, you
5 know, it would involve no use of Internet here. That would
6 be taken away. There would be suspension. There would be
7 involvement with the parents. And if it would continue,
8 that student would be dismissed from Bishop McDevitt.

9 REP. BARBIN: Thank you.

10 MR. DYMEK: Sister, may I ask, what sort of
11 limitation does a school face -- I'm Tom Dymek, the
12 Executive Director of the Committee -- in handling some of
13 these situations where, for example, a student is affected
14 by cyberbullying but it's not happening at the school or
15 with school resources, a school computer, or anything like
16 that, but you're seeing the effects with a student's
17 academic life?

18 SISTER MARY ANNE BEDNAR: Correct. It's a fine
19 line we walk there. And again, that's why we need the
20 support of bills like this that would make this kind of
21 thing a punishable offense.

22 In many instances, we don't have a leg to stand
23 on. We can deal with things that happen in our building.
24 We can deal with students who use our resources here, our
25 computers, you know, their accounts that they have here.

1 It's difficult.

2 We make every attempt to deal with it when it's
3 brought to us and it's happening outside. But we do walk a
4 fine line there. It's not always a black-and-white issue.
5 And that's when we meet great resistance from parents in
6 trying to deal with this.

7 And it really takes all of us. It takes the
8 school. It takes the family. It takes all of us working
9 together to deal with this issue. And while, you know, we
10 may have a student who is cyberbullying another, at some
11 point that's going to come around. It's going to come
12 around and things are going to be turned on them.

13 We try to help the parents to understand that,
14 you know, we don't want it to get to the point where their
15 son or daughter is being harassed. You know, we try to
16 make them understand that, you know, if this happens to
17 their son or daughter, they would certainly want the
18 actions that we're taking to be put in place for their son
19 or daughter also.

20 Again, there's much resistance that we meet. And
21 if we had something like this, you know, that it says, it
22 doesn't matter where it took place, this is an offense,
23 there can be legal action.

24 MR. DYMEK: Thank you.

25 MR. KANE: Hi, Sister. I'm Mike Kane. I'm legal

1 counsel to the Committee.

2 SISTER MARY ANNE BEDNAR: Hi.

3 MR. KANE: I can tell the frustration that you
4 have as a school administrator trying to deal with this
5 problem. And because Bishop McDevitt is a private Catholic
6 school, I don't know if you can answer this. But it would
7 seem that you probably even have more tools than the
8 average public school would have available because of
9 implications of government action if a public school is
10 facing the same type of a problem, trying to address it.

11 Could you comment on that.

12 SISTER MARY ANNE BEDNAR: I would agree with
13 that. It's probably a much harder issue to deal with in
14 the public sector than it is here in a private school.

15 You know, we have a little more leeway. You
16 know, we establish our Code of Conduct in our student
17 handbook which guides how we deal with issues such as this.
18 And, you know, if it's in our handbook, you know, we have
19 the ability to enforce that; whereas, I'm sure in the
20 public sector, that's not the same.

21 So I do recognize that. And I do realize that it
22 is a choice for the students who come here. And in order
23 for them to come -- one of the things we do right in the
24 beginning of the year is, you know, you need to read this
25 handbook, your parents, you need to sign this because this

1 is a contract you're entering into with the school.

2 So, you know, in that regard, yes, it's a bit
3 easier for us.

4 MR. KANE: Thank you.

5 MAJORITY CHAIRMAN MARSICO: Representative
6 Sabatina.

7 REP. SABATINA: Thank you, Mr. Chairman.

8 I just have a comment for Sarah. I just want to
9 thank you for your strength and your determination. You
10 keep going. Don't ever be afraid to be smart. The real
11 joke is on the people that don't try and be smart. I just
12 want to say it takes a lot of courage to be up here in 10th
13 grade and to do what you have done and to have gone through
14 what you have gone through.

15 So thank you for your courage and keep going.

16 SARAH BEEGHLEY: Thank you for putting this House
17 bill into effect. Because I know if it actually does
18 become a real bill that I will probably drop down and cry
19 because it will make cyberbullying a punishable offense.

20 MAJORITY CHAIRMAN MARSICO: I'd like to
21 acknowledge Rep. Regan from York County who is here with us
22 this morning.

23 Any other questions?

24 Once again, thanks for your time and what you
25 have done here today and what you're going to continue to

1 do.

2 Thank you very much, Sister.

3 SISTER MARY ANNE BEDNAR: Thank you.

4 MAJORITY CHAIRMAN MARSICO: The next testifier is
5 Michael Piecuch, Snyder County District Attorney. He is
6 here on behalf of the Pennsylvania District Attorneys
7 Association.

8 For those that remember, Michael was a part of
9 the Judiciary staff about five or six years ago or
10 something like that. We're trying to figure this out.
11 Seven years ago.

12 MR. PIECUCH: Yes.

13 MAJORITY CHAIRMAN MARSICO: It's good to see you.

14 Thanks again for the time that you're spending
15 with us today. We always look forward to hearing your
16 remarks and concerns and support from the DA's Association.

17 Thank you.

18 MR. PIECUCH: Thank you, Mr. Chairman.

19 MAJORITY CHAIRMAN MARSICO: Go ahead.

20 MR. PIECUCH: It's always a pleasure being in the
21 Committee's company. Thank you also for having me follow
22 Sarah. It's a tough act to follow and there's not much I
23 can add to what she did, but I'll try.

24 Again, good morning. My name is Mike Piecuch.
25 I'm the District Attorney for Snyder County. I'm here

1 testifying on behalf of the Pennsylvania District Attorneys
2 Association this morning in support of House Bill 1163.

3 We live in an era of incredible technological
4 advances which make our lives both more efficient and more
5 enjoyable, but it's a two-edged sword, so to speak. For
6 better or worse, technology shapes and impacts our lives
7 and those of our children as well.

8 Our children rely on this technology more than
9 ever, more than we ever did. It's an indispensable tool
10 for schoolwork, for recreation, and most importantly for
11 socializing, so much so that recent studies have shown that
12 demand for teens getting their driver's permits is dropping
13 because of the nature of socialization by teens these days.
14 It's done more and more online using technology than
15 face-to-face. And so they don't feel the same need to have
16 a driver's license to drive to socialize with their peers
17 as we did.

18 Socializing is done via social networking,
19 texting, and e-mail. The extent to which kids today are
20 plugged in boggles my mind. It's almost every moment of
21 the day. In 2010, it was estimated that 75 percent of 12-
22 to 17-year-olds had their own cell phones. That number is
23 even higher today.

24 As that technology becomes more available, more
25 accessible, more affordable, it's abuse becomes more

1 prevalent, particularly with respect to cyberharassment.

2 Technology is prone to abuse for two main
3 reasons: First, it operates instantaneously. The timing
4 of it offers no time for reflection -- gone are the days
5 where someone might write a nasty letter and then stick it
6 in a desk drawer -- disseminating any information, whether
7 it's correct or incorrect, innocent or hurtful, to
8 countless numbers of people immediately.

9 In the past, rumors circulated through the
10 schools over the course of days or weeks. Today it's done
11 in a matter of seconds. And imagine what this means in the
12 life of a teenager.

13 Humiliating rumors and taunts can be viewed not
14 just by their classmates but by millions of people. And it
15 is almost impossible, if not impossible, to remove that
16 information from the Internet.

17 Just one malicious Facebook posting can set off a
18 chain reaction, causing a dangerous situation that spirals
19 out of control before adults can intervene.

20 If any of the teenagers were here, they might
21 even laugh because Facebook, for example, is a little
22 passe. New technology and platforms are emerging almost
23 weekly. Twitter, Vine, Instagram are new ones that my kids
24 have heard of that I haven't heard of yet, I'm sure. And
25 those allow for even faster dissemination and wider

1 dissemination.

2 The second reason for the danger of abuse due to
3 technology is the anonymity of the online environment that
4 allows cyberharassment to flourish. A person can post and
5 spread information without disclosing their identity. And
6 this anonymity makes it difficult not only to stop the flow
7 of harmful information but it emboldens bullies to do
8 things and say things they ordinarily would not.

9 It just makes sense. It's easier to say
10 something online anonymously than it is to say something
11 face-to-face. That's a tool that a lot of teachers are
12 using to teach. If you wouldn't say it to someone's face,
13 then you sure shouldn't be posting it online. By hiding
14 behind a computer or a cell phone or a tablet, an offender
15 can strike without seeing the impact. And this only
16 exacerbates the cruelty.

17 Regardless of how or why it occurs, one thing is
18 certain, cyberbullying and cyberharassment has devastating
19 effects. The National Annenberg Survey of Youth found that
20 14 percent of adolescents and young adults have been
21 victims of cyberharassment. The strain and stress
22 experienced by these victims, quote, can manifest itself in
23 problematic emotions that lead to deviate behavior,
24 unquote, and possibly even delinquency.

25 The worse-case scenario, of course, are too many

1 victims of cyberbullying that are more likely to have
2 suicidal thoughts or actions. Victims of cyberbullying, in
3 fact, are four times more likely to engage in that behavior
4 or that ideation.

5 Perhaps no case illustrates that more than the
6 2006 case of Megan Meier in Missouri. She was a
7 13-year-old girl who had a MySpace account. And shortly
8 thereafter she was contacted by a teenage boy who lived in
9 a nearby town. Although the two never met in person --
10 which becomes increasingly more common, these online
11 relationships that the people involved with it are as real
12 as face-to-face relationships.

13 To her family, this friendship began to transform
14 Megan. But all that changed when months later, she began
15 to get disparaging messages from her new friend, including
16 the statement, the world would be a better place without
17 you. Twenty minutes later, Megan's body was found hanging
18 in her bedroom closet. She had hung herself.

19 A subsequent investigation revealed that Megan's
20 friend was, in fact, not a teenage boy. That identity,
21 that persona, was fictional. The MySpace page and the
22 messages were actually initiated by a woman who lived in
23 Megan's neighborhood. The woman was angry with Megan
24 because she was no longer friendly with the woman's
25 daughter. This was her way of getting back at her. The

1 perpetrator in this case was an adult, a woman who had
2 children of her own who obviously never considered the
3 consequences of her actions.

4 When Megan's parents turned to law enforcement
5 for help to prosecute the woman for her actions, they were
6 stunned to find out that there was little that could be
7 done at the time. And in response, the Missouri
8 Legislature amended the state's harassment statute to
9 penalize bullying through electronic media. And to date,
10 I'm happy to say that 20 other states have followed suit as
11 well and soon Pennsylvania.

12 The law must keep pace with technology. There
13 have been many revisions to the harassment and stalking
14 statutes over the past few years to keep up with
15 technology. House Bill 1163 joins that trend. This
16 legislation is urgently needed, considering the prevalence
17 of cyberharassment as well as the serious threat it poses
18 to our most vulnerable, our children.

19 Currently, no criminal offense in Pennsylvania
20 adequately addresses cyberharassment. Section 6321, for
21 example, addresses the issue of sexting, but it only
22 applies if there is dissemination of sexually explicit
23 images. Section 2709 addresses harassment generally but
24 often requires either repeated communications or
25 communications which are lewd, obscene, or threatening.

1 Since cyberharassment does not always involve repeated
2 communications nor does it always involve obscene language,
3 House Bill 1163 is definitely needed.

4 As you know, this legislation would amend Section
5 2709 of the Crimes Code, Title 18, the offense of
6 harassment to include specifically for the first time
7 cyberharassment of a child. It would provide that a person
8 who uses electronic communications to harass a child either
9 by threats or making disparaging comments could be charged
10 with a misdemeanor of the third degree.

11 Let's be clear. Our goal is not to imprison
12 these offenders, but to identify, punish, and deter these
13 crimes through education, diverse programs, and community
14 service. Certainly the precious resources of law
15 enforcement could not be and should not be extended to
16 negotiate isolated schoolyard gossip or rumors.

17 Accordingly, we anticipate that the vast majority
18 of cyberharassment incidents will be handled informally as
19 they are now with parents and schools working together.

20 But to do nothing is not an option. Incidents
21 that are most severe do warrant the involvement of law
22 enforcement. That is why House Bill 1163 is so needed.
23 Our children need to know that those who torment them will
24 be held accountable and that those who do the tormenting
25 have to be shown that there's a better way and that there

1 are consequences if they don't find that better way.

2 I understand that the bill has received some
3 comments regarding freedom of speech and claim that it
4 criminalizes typical childhood behavior. That is clearly
5 not the intention of this legislation. But with those
6 arguments in mind, I would like to offer a few suggestions,
7 if I might.

8 For example, the bill could be tweaked to mirror
9 the stalking statute, which is Section 2709.1, and apply
10 only in cases where there have been repeated acts or a
11 pattern of behavior. In this way, a communication that is
12 an isolated occurrence would not fall within the definition
13 of cyberharassment. For example, Arkansas's
14 cyberharassment statute requires that the communication be
15 in furtherance of, quote, severe, repeated, or hostile
16 behavior towards the child.

17 Also, the requisite criminal intent could be
18 heightened so that only the most serious cases are
19 criminalized. The bill currently require the perpetrator
20 merely intend to harass the child.

21 Another alternative could be that it could mirror
22 the Ethnic Intimidation statute, Section 2710, and require
23 the perpetrator to act, quote, with malicious intention.
24 By tweaking the intent in either of these ways, the
25 behavior that's merely harassing or annoying would not

1 constitute cyberharassment.

2 No matter what tweaks are made before final
3 passage, this bill will make a positive impact on the lives
4 of Pennsylvania's children. I congratulate Representative
5 Marsico on this legislation. And on behalf of the
6 Pennsylvania District Attorneys Association, we look
7 forward to working with you towards final passage of the
8 bill.

9 Thank you also for the opportunity to testify and
10 for the hospitality of Bishop McDevitt. I'm happy to
11 answer any questions you might have.

12 MAJORITY CHAIRMAN MARSICO: Once again, thanks,
13 Mike. I want to acknowledge Representative Stephens from
14 Montgomery County, who joined us.

15 Are there any questions?

16 Before we get to Representative Barbin, thanks
17 for pointing out those counterarguments to those critics
18 that are not supportive of the bill. And thank you also
19 for the suggestions, the recommendations, you just pointed
20 out too. We'll certainly look at those as well.

21 Representative Barbin for questions.

22 REP. BARBIN: Thank you for your testimony.

23 I'm looking at this and I've also read the
24 testimony of the next presenter, Mr. Hoover. I think there
25 is a real question as to, will there be a challenge to this

1 statute? I think your suggestions are good suggestions.

2 The Internet is a problem because it has so much
3 potential to be useful. The Internet gives us a lot of
4 benefits, but with that, we're also seeing there are some
5 problems. There are people hacking into our computer
6 systems. It's a problem.

7 When you look at these two things -- and we're
8 looking at intent -- which of these suggestions really
9 would be the best way to make sure that we can use this
10 statute to help? Because you're always going to have
11 discretion from a district attorney deciding whether to
12 charge somebody or not. This is supposed to set a
13 standard.

14 This law is supposed to set a standard that says
15 there's some type of intent. You always have to have
16 intent in furtherance of whatever the prohibited acts are.
17 The acts are going to be very -- they can occur sometimes
18 just once and then just be continued to be sent on to other
19 people. That's why I'm a little worried about the Arkansas
20 approach, which would require repeating.

21 Is the ethnic intimidation portion, which says
22 you'd have a malicious intent, a better answer to a court
23 challenge?

24 MR. PIECUCH: There's a lot in your question
25 there, Representative.

1 The answer is, could there be? Of course there
2 could be a challenge. There could always be a challenge.
3 And unfortunately, there's always people who are looking to
4 avoid accountability and stretch to find legal challenges
5 to avoid that accountability.

6 We are not breaking new ground here. What we're
7 doing is expanding existing statutes to deal with the new
8 platforms of technology.

9 Certainly, there's two instances, as you
10 mentioned, that we need to take into account. The first is
11 there may be instances that are so severe, although a
12 one-time shot, that need to be dealt with. The bill does
13 provide for that. It allows for both repeated behavior as
14 well as one-time incidents.

15 And there are situations where that's
16 appropriate. Any time we're dealing with legislation, my
17 experience with drafting is it's always better to adopt
18 terms of our legal phrases that we've already used in
19 existing statutes.

20 We have case law challenges that were brought
21 before and we know what to expect. We use our crystal ball
22 for appellate reviews. We say, well, the courts have
23 already addressed similar cases with similar language and
24 we know what to expect. So I would advocate towards
25 mirroring the statute over adopting language from other

1 states.

2 With that being said, I think we have to be
3 careful and have a good discussion about whether or not to
4 adopt repeated communication standards or intent versus
5 single-incident situations.

6 Certainly, the Ethic Intimidation Statute with
7 its malicious intention of the intent requirement would
8 capture both the repeated incidents as well as the one-time
9 incidents.

10 Would it face a challenge? Probably. I think
11 that's inevitable. Mr. Hoover is probably a better person
12 to ask about that.

13 REP. BARBIN: What I was trying to focus on is,
14 we want to make this work. We have to assume that there
15 will be a court challenge. What I'm trying to get at is, I
16 see a parallel but there was at one time a few years back a
17 mob reaction that occurred where people used their cell
18 phones to tell them, come to this corner. There's a fight.
19 It was an intimidation sort of thing. But the information
20 passed quickly because of all the cell phones. People came
21 to those locations to engage in a criminal activity. Flash
22 mobs.

23 If you looked at it from that perspective, there
24 are occurrences that can happen with cyberbullying that are
25 similar to flash mobs. So what we need to do is to be

1 aware that we need our statute to be capable of making sure
2 that doesn't occur in the context of cyberbullying.

3 And from my perspective, looking at those two
4 potential changes to the bill, the malicious intent would
5 be the best way to cover it.

6 Have the district attorneys been able to uphold
7 malicious intent in court challenges on the Ethnic
8 Intimidation Statute?

9 MR. PIECUCH: Yes.

10 REP. BARBIN: Thank you.

11 Thank you, Mr. Chairman.

12 MAJORITY CHAIRMAN MARSICO: Counsel Kane for
13 questions.

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

15 I just want to explore a little bit. The current
16 harassment statute has been litigated. It's been on the
17 books for a long time. It's been upheld on numerous
18 occasions. It uses the same language, intending to harass.

19 Is there a significance of having a bill, though,
20 that's specifically addressed to harassment of children and
21 specifically over the medium of social networking in making
22 it a misdemeanor as opposed to a summary offense that the
23 current statute is? Does that add any tools to address the
24 problem, in your view?

25 MR. PIECUCH: Oh, absolutely, in a couple of

1 different contexts. This could be applied not only to
2 peers but to adults. In the context of peers, the way our
3 criminal justice system works, as you know, summary
4 offenses never get into the Juvenile Justice System.
5 They're handled by the Magisterial District Judges. And
6 there are very limited tools available. Basically, there's
7 a fine in most cases of summary offense for harassment or
8 disorderly conduct, which are probably the two most-used
9 offenses to deal with this situation now.

10 And that's part of the problem. As prosecutors,
11 we are shoehorning our existing Crimes Code to deal with
12 the expansion of this behavior into this new technological
13 realm.

14 The misdemeanors would allow us to get into, for
15 the peers, for the juvenile, the Juvenile Justice System to
16 allow for informal adjustments, consent decrees,
17 adjudication of delinquency, if necessary, but it gives us
18 a lot more opportunities and tools for diversion and
19 education, which are the two big key components towards
20 prevention.

21 We can do everything we can on the back end. If
22 we're not working hard on the front end on the diversion
23 and education pieces, then it's going to be a revolving
24 door of this problem.

25 Again, another great reason, another reason to

1 compliment the Committee Chairman for this bill because it
2 increases awareness of this problem.

3 Sarah is doing a wonderful job in her advocacy,
4 going to groups, going to conferences, having her blog,
5 getting the word out that this is not the same old argument
6 on-the-playground situation. The technology itself changes
7 the complexity of this harassment. It takes it to a new
8 level. We need those tools to deal with it.

9 It also shows adults that if adults start
10 engaging in this and choosing our vulnerable population of
11 kids as their target, well, it should be a higher penalty,
12 a higher scope of accountability than a summary offense,
13 which again is generally a fine.

14 So we need to identify the tools and the
15 different ways to access those tools in the criminal
16 justice system. So moving it from a summary offense to a
17 misdemeanor offense does an excellent job of it.

18 MR. KANE: Thank you.

19 MAJORITY CHAIRMAN MARSICO: Mike, thanks again.

20 We appreciate you being here and your support and
21 your recommendations. Thank you. Good to see you.

22 MR. PIECUCH: Good to see you, sir.

23 Thank you.

24 MAJORITY CHAIRMAN MARSICO: The next testifier is
25 our good friend Andy Hoover, Legislative Director for the

1 Pennsylvania Chapter of the ACLU.

2 Joining us on stage is a good friend also, a
3 colleague, Representative Sheryl Delozier, from Cumberland
4 County. Welcome, Sheryl.

5 REP. DELOZIER: Thank you.

6 MAJORITY CHAIRMAN MARSICO: Andy, you may begin
7 when you wish.

8 MR. HOOVER: Chairman, it's good to be here
9 today. I feel like I'm in the hot seat opposing the
10 Chairman's bill. I'll take a shot here.

11 Members of the Committee, it's nice to see you
12 this morning. You've heard explanations of the bill, so I
13 don't need to go into any explanation of it.

14 I do want to be clear how much we appreciate
15 Chairman Marsico's intent. I am a father and an uncle of
16 minor children. And I appreciate your passion for
17 protecting kids. I think what we have to figure out here
18 is where are the lines on free speech. The previous
19 witness mentioned that. I'll talk a little bit about that.

20 The language of House Bill 1163 is so broad that
21 it would give virtually unlimited discretion to prosecutors
22 to file criminal charges against people for mere insults.
23 Speech that is insulting or offensive is entitled to First
24 Amendment protection.

25 As Justice Alito explained when he was a member

1 of the U.S. Court of Appeals for the Third Circuit, the
2 free speech clause protects a wide variety of speech that
3 listeners may consider deeply offensive, including
4 statements that impugn another's race or national origin or
5 that denigrate religious beliefs.

6 Justice Alito, as a judge, also said when laws
7 against harassment attempt to regulate oral or written
8 expression on such topics, however detestable the views
9 expressed may be, we cannot turn a blind eye to the First
10 Amendment implications.

11 So there is no question that House Bill 1163
12 would criminalize speech that is protected by the First
13 Amendment. As currently written, House Bill 1163 would
14 subject teenagers to prosecution simply for posting a
15 single negative comment about another teenager on a social
16 media site even if the subject of the post never learns
17 about it or if the message is private, not public.

18 While such comments may not be nice, the First
19 Amendment does not allow the government to criminalize
20 speech that is impolite.

21 The fact that the speaker must possess an intent
22 to harass does not change the constitutional analysis.
23 There is no categorical harassment exception to the First
24 Amendment's free speech clause. Statutes prohibiting
25 verbal harassment must be written or at least construed to

1 prohibit only that speech devoid of First Amendment
2 protection and subject to countervailing, compelling
3 interests.

4 Accordingly, the Pennsylvania Superior Court has
5 held that the repeated wearing of a T-shirt with an
6 expletive in an office open to the public, in spite of a
7 district justice's requests not to do so, was protected
8 speech under the First Amendment and could not form the
9 basis of a charge of harassment.

10 Only very narrow exceptions, such as obscenity,
11 defamation, and fighting words have been carved out of this
12 general guarantee of freedom. Any speech which does not
13 fit into one of these narrow exceptions is constitutionally
14 protected regardless of how vulgar or lacking in taste or
15 social, political, or artistic content.

16 Thus, the Court rejected the argument that the
17 T-shirt was unprotected because it did not express a social
18 or political belief, explaining that the right to free
19 speech encompasses the freedom to speak foolishly and
20 without moderation.

21 Because it targets constitutionally protected
22 speech, House Bill 1163 would be subject to strict
23 scrutiny. Although courts have recognized a compelling
24 interest in protecting the physical and psychological
25 well-being of minors, the government's chosen means must be

1 carefully tailored to achieve those ends.

2 The United States Supreme Court has repeatedly
3 struck down laws designed to protect minors from harmful
4 material. A state possesses legitimate power to protect
5 children from harm, but that does not include a
6 free-floating power to restrict the ideas to which children
7 may be exposed.

8 It is not at all clear that the Commonwealth of
9 Pennsylvania has a compelling interest in protecting minors
10 from statements or opinions about their sexuality or sexual
11 activity or from disparaging statements or opinions about
12 the minor's physical characteristics, mental or physical
13 health or condition.

14 But even if the Commonwealth has a compelling
15 interest in prohibiting certain statements about minors
16 from being posted to social media or repeatedly
17 communicated via electronic communication, the sweeping
18 restrictions of House Bill 1163 are not narrowly tailored
19 to that interest because the categories of prescribed
20 speech are so broad and the proscription applies whether or
21 not the minor who is the subject of the speech is even
22 aware of it.

23 The First Amendment does not permit the
24 government to censor speech merely because it is
25 mean-spirited, even if it concerns a minor.

1 I do want to mention a comment about something
2 that I heard earlier this morning. Chairman Marsico
3 mentioned the idea this is a public health issue and
4 mentioned that schools are left to create their own
5 bullying policies.

6 There is legislation in the House Education
7 Committee, House Bill 156, which implements standards for
8 public schools, not private schools like Bishop McDevitt,
9 but for public schools to follow in their bullying
10 policies.

11 And the ACLU of Pennsylvania has come to the
12 conclusion there are no constitutional problems with that
13 particular piece of legislation. So I would encourage
14 members to think about this in a comprehensive way and take
15 a look at House Bill 156 as well. Representative Truitt is
16 the prime sponsor.

17 In conclusion, the ACLU of Pennsylvania
18 appreciates the opportunity to wade through the nuances of
19 speech law and believes that it benefits the Committee to
20 vet these issues thoroughly. We are grateful for Chairman
21 Marsico's passion for protecting the Commonwealth's
22 children and look forward to working with the Committee to
23 explore how to do that in a way that is constitutionally
24 sound.

25 Thank you for the opportunity to be here today.

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MAJORITY CHAIRMAN MARSICO: Thanks, Andy.

It's always very interesting to hear your comments and your position on these issues.

Thanks for your time. We hope to work with you on this bill.

MR. HOOVER: Thank you.

MAJORITY CHAIRMAN MARSICO: Representative Keller.

REP. KELLER: Thank you, Mr. Chairman.

Thank you, Andy.

MR. HOOVER: Sure.

REP. KELLER: You know, I'm a firm believer in the fact that if we have bills in front of us, whether you are against or for that bill, and by your last closing statement are willing to work and everybody is agreeable and we don't offend either side. But I see in your testimony, you only refer to court cases. You didn't present anything that I see as how we can fix what we have here in front of us.

I think it would be very constructive to the Committee if we would hear from the different organizations, as we did from the DAS Association, of ideas of certain issues. You know, we see there are issues there that your affiliate is concerned about. It isn't that we're not concerned about them.

1 But it would be nice if you would offer
2 suggestions also, as the DAs Association. That, I think,
3 is how we get good legislation from the government,
4 whenever we work together to accomplish a goal.

5 As your testimony also indicates, as an uncle,
6 father, you certainly would not like to see that -- you're
7 concerned about it also as an individual. That's
8 commendable. I sort of know you personally. And I know
9 that that is true.

10 But that's what I look at when I hear testimony
11 from the different organizations. It's nice if we hear,
12 okay, this particular part of the bill we think we have a
13 problem with. Can we work through that? And you have
14 offered that. I know you have offered it. But I didn't
15 see anything in writing.

16 That's more or less not a question but just a
17 statement on my part.

18 But again, thank you for your testimony.

19 MR. HOOVER: Sure. And I would suggest --
20 Counsel Kane and I have had a couple conversations about
21 this bill privately. I'm intrigued by the DA's idea of
22 raising the intent, raising that bar. I don't want to make
23 a commitment on behalf of the ACLU of Pennsylvania. But I
24 can certainly take that back to our legal team.

25 I know when I read this bill, I looked at the

1 revision that if it's a threat of unlawful harm, certainly
2 that seems like that would be something that we can
3 definitely be okay with. So there are things in here that
4 we can definitely talk about.

5 I appreciate exactly what you're saying. If we
6 can find ways to make this better, in our opinion, we'd
7 love to work with you on that.

8 REP. KELLER: Thank you.

9 MAJORITY CHAIRMAN MARSICO: Representative
10 Stephens.

11 REP. STEPHENS: Thank you, Mr. Chairman.

12 Thank you, Andy, for your testimony.

13 MR. HOOVER: Sure.

14 REP. STEPHENS: And I guess to follow up a little
15 bit on what Representative Keller asked, does the ACLU
16 recognize the harm that comes from these statements, the
17 harm to children that come from this type of speech?

18 MR. HOOVER: Of course.

19 I guess -- does the ACLU believe that there are
20 any proscriptions on speech relative to -- aside from the
21 direct threat of physical harm that would apply
22 constitutionally?

23 REP. STEPHENS: That's a good question.

24 MR. HOOVER: Thanks.

25 I guess there's a couple things there. One is

1 that I think we, as Americans, have to ask ourselves if we
2 want to live with the First Amendment free speech clause
3 and that we have to recognize that we accept some speech we
4 don't like. That's just the reality of having the First
5 Amendment, the free speech clause.

6 Is there speech that could be criminalized
7 potentially? We need to keep in mind that criminalization
8 of speech is the highest bar. The case I mentioned in here
9 that Justice Alito wrote the opinion on when he was on the
10 Third Circuit is the Saxe case, Saxe versus State College
11 Area School District.

12 And in that case, it was a public school that had
13 a harassment policy. And a volunteer at the school, who
14 also was the guardian of two students in the school
15 district, challenged it under a facial challenge that the
16 students had not been disciplined under the policy.

17 And the Third Circuit came to the conclusion that
18 the harassment policy at State College was, indeed,
19 unconstitutional. Now, keep in mind that there are less
20 free speech protections in a school than there are under
21 the criminal codes. So criminalization is the highest bar.

22 That's not a direct answer to your question.

23 REP. STEPHENS: I guess maybe I can ask it a
24 different way. I'm just trying to understand. It's a
25 little bit, I think, following up on Representative

1 Keller's point.

2 Are we going to be able to find that place where
3 some of us feel like we are protecting children from
4 enduring harm but yet not stepping over the bounds the
5 Constitution proscribes, in the ACLU's opinion?

6 So I guess at the heart of it, does the ACLU feel
7 that there is a difference between speech that is harmful
8 or detrimental versus speech that is merely objectionable?

9 MR. HOOVER: There is speech -- there's certainly
10 speech that people could find hurtful that is still
11 protected under the First Amendment.

12 REP. STEPHENS: Not hurtful, harmful, that will
13 harm a child. And I guess that's what I'm asking. Do you
14 make that distinction that there is some speech that we may
15 not like that is objectionable, but then there is other
16 speech that we also may not like but that is actually
17 harmful to another individual?

18 Doesn't that person have some constitutional
19 protections afforded to them to not be injured by another
20 individual? So shouldn't we be equally concerned about
21 that constitutional analysis and protecting the person who
22 is being injured by someone else's speech?

23 So at the heart of that is, does the ACLU believe
24 that there is a difference between speech that might be
25 harmful versus simply objectionable?

1 MR. HOOVER: As I mentioned in my testimony, if
2 the state shows a compelling interest in criminalization of
3 speech, then maybe they would in a situation where it's
4 harmful. I don't want to say definitively that we are okay
5 with this but not okay with that.

6 I think in this situation I would like to
7 continue talking with Chairmen and counsel about where
8 tweaks can happen that maybe some speech could be
9 considered harassment and thus could be criminalized.

10 REP. STEPHENS: All right.

11 Well, I hope that you do. I hope that we can
12 find that place where we can protect people's
13 constitutional right to be free from other people's harmful
14 conduct.

15 MR. HOOVER: Sure.

16 MAJORITY CHAIRMAN MARSICO: Representative
17 Sabatina.

18 REP. SABATINA: Thank you, Mr. Chairman.

19 Mr. Hoover, you stated something about House Bill
20 1156 by Representative Truitt. We don't have the luxury of
21 having that bill in front of us today. I was wondering if
22 you could elaborate and enlighten us on the contents.

23 MR. HOOVER: Sure. If I said 1156, I meant 156,
24 House Bill 156. It is a bill that implements standards for
25 public schools to follow in their bullying policies.

1 To be honest, to be frank, the cyberharassment
2 piece outside of school was the most challenging part of
3 our analysis. But there are certain triggers in that bill
4 that occur that can lead to school action that we concluded
5 are constitutionally sound and do not infringe on protected
6 speech.

7 That bill is currently in the House Education
8 Committee. I don't have it in front of me. Some of you
9 may be co-sponsors. But as I listened to the conversation
10 earlier, I thought that it talked about a public health
11 issue. And the student who was here earlier mentioned that
12 schools are left to their own devices.

13 That is certainly a piece of legislation to look
14 at. You know, 1163, we're looking at this through a
15 criminal lens. And I would encourage members to think
16 about it more broadly, that there may be other ways to
17 address this type of bullying that go beyond the criminal
18 code.

19 REP. SABATINA: Thank you.

20 MAJORITY CHAIRMAN MARSICO: Representative
21 Barbin.

22 REP. BARBIN: Thank you.

23 Thank you, Mr. Hoover, for being here.

24 MR. HOOVER: Sure.

25 REP. BARBIN: I think by being here, you have

1 actually done a lot of good for this bill because there has
2 been a lot of discussion as too broad. The First Amendment
3 has to apply to all legislation.

4 Here's where I have my problem. I commend the
5 Chairman because you put in your testimony and so did the
6 District Attorney that the State has a legitimate interest
7 in preventing harm. That's standard.

8 And our courts have always said that freedom of
9 speech doesn't allow obscenity, defamation, or fighting
10 words. It also doesn't allow yelling out fire in a movie
11 theatre.

12 What we have here is we've got a new technology
13 that can instantaneously change a person's life. It can do
14 that by putting a mischaracterization about someone's
15 sexuality or just invading privacy in a way that goes to
16 not one person but a million people in a moment's notice.
17 Now, to me, that's real harm.

18 And if you don't have this wall to just
19 acknowledge the fact that technology has changed and the
20 amount of damage that can be done to a student -- and I do
21 think harm to a student should be a higher level of review
22 than to an adult. Because if you take someone who's, you
23 know, in 6th grade or 8th grade and you change their life
24 by saying something that isn't true or intimidating or
25 harassing, that's different than saying it to an adult.

1 So it's the context of the technology that's
2 creating the problem. And to me, that's exactly like
3 sitting in a movie theatre. When I was growing up, nobody
4 in the world would think about going into a movie theatre
5 and yelling the word fire.

6 And to me, cyberbullying is exactly what's
7 happening in a school context with some students. And
8 that's why I think it has to be dealt with even if it's
9 only once, because one time can change someone's life.

10 So if we don't have a standard that a district
11 attorney can say, you crossed the line so badly here that
12 you're going to have to show your school that this can't be
13 done by the next person, that to me is reasonable. You
14 can't do that if it's a summary offense. You can only do
15 that if there's a potential for incarceration.

16 Then the person on the other side, all right.
17 Yeah. I really messed up. What can I do to make this
18 right? That only happens if it's a Misdemeanor 3. And it
19 only happens if we can make this right, which means we have
20 to get the intent right.

21 Because there is a First Amendment protection and
22 nobody on this panel is looking to take the single text
23 from one person to another person that was mean-spirited
24 and turn it into a crime, I don't personally believe that
25 district attorneys would ever do that. I think it's the

1 tool that's necessary that keeps the text from going out to
2 the whole school for the sole purpose of making that person
3 feel less because it's covering one of these
4 characteristics, physical characteristics, mental or
5 physical disabilities, sexuality, or something of that
6 nature.

7 I think we have to do something about it. So I
8 think we have to come to an agreement as to, how do we make
9 this cover the really worst situation?

10 MR. HOOVER: Now, the bill as written, though,
11 would not necessarily reach just the instances where it
12 goes to thousands or a million people.

13 REP. BARBIN: Malicious intent. That was
14 Representative Keller's question. He said you need to work
15 with us so that this is a bill that will help solve the
16 problem.

17 So do you feel that malicious intent is the best
18 way to address this issue?

19 MR. HOOVER: I think it's an intriguing idea that
20 I will take back to our lawyers and we can talk about it.
21 There is a case related to Title 9 in which the Supreme
22 Court found that to bring a sexual harassment claim against
23 the school, it would have to be so severe, pervasive, and
24 objectionably offensive and that so undermines the victim's
25 educational experience and the victim students are

1 effectively denied equal access to institutions, resources,
2 and opportunities.

3 And the Court made the point that simply acts of
4 teasing and name-calling among school children -- it's not
5 in my testimony I don't think, but I have it here. It's
6 from the Saxe case.

7 REP. BARBIN: Is that a high school public
8 education case?

9 MR. HOOVER: It an education case. I don't know.
10 I can't say that it was high school.

11 REP. BARBIN: Where we're really trying to go is
12 to protect students. We're looking at, what can we do to
13 address this problem that's presented itself that is
14 affecting students from 6th grade, you know, through
15 secondary education? That's where the people that have
16 become suicide victims are coming from.

17 So there's no question there's a harm here. The
18 only question is how to limit this statute to protect that
19 harm from happening.

20 MR. HOOVER: I mentioned a case and it's also
21 noteworthy that that was a situation where there was a
22 private action where the bar is lower.

23 REP. BARBIN: Thank you.

24 MAJORITY CHAIRMAN MARSICO: Representative
25 Stephens for cross examination.

1 REP. STEPHENS: It's a bill that I would be able
2 to support, by the way.

3 Andy, I just had a chance to pull up House Bill
4 156.

5 MR. HOOVER: Yes.

6 REP. STEPHENS: Which you say the ACLU supports?

7 MR. HOOVER: Not supports. But we do not oppose
8 it. We have no position on it. We found that it is
9 constitutionally sound.

10 REP. STEPHENS: It's constitutionally sound?

11 MR. HOOVER: Yes.

12 REP. STEPHENS: Terrific. I may even be a
13 co-sponsor on that bill. I'll have to check. If not, I
14 think I'd like to be.

15 But either way, I'm particularly intrigued and
16 I'm curious as to why the ACLU would not object to that
17 bill yet would object to this bill when I read the
18 definition of bullying that is contained within that bill.

19 The definition reads: Shall mean any written,
20 verbal, or physical act or conduct which may, but shall not
21 be required to, be based on any actual or perceived
22 characteristic, including, but not limited to, race, color,
23 religion, national origin, ancestry, or ethnicity, sexual
24 orientation, physical, mental, emotional, or learning
25 disability, gender, gender identity, or expression,

1 financial status, or physical appearance, or based on an
2 association with a person who has or is perceived to have
3 one or more such characteristics that has or can be
4 reasonably predicted to have the effect of one or more of
5 the following: One, placing a reasonable student in fear
6 of physical harm to the student's person or property; two,
7 causing a substantially detrimental effect on a reasonable
8 student's physical or mental health; three, substantially
9 interfering with a reasonable student's ability to
10 participate in or benefit from the services, activities, or
11 privileges provided by a school.

12 Now, the bill that we're discussing today
13 requires the intent to cause harm, the intent to harass.
14 This definition of bullying only calls -- the standard is
15 that it can be reasonably predicted to have the effect. So
16 it seems to me that this bill requires a higher standard
17 than that bill does when it comes to bullying. And the
18 ACLU doesn't object to that definition of bullying and by
19 not objecting seems to recognize that there can be speech
20 which causes detrimental effects on a reasonable student's
21 physical or mental health.

22 So why do we not have -- if we recognize it can
23 be detrimental to a student's health, why don't we have a
24 compelling state interest to protect that student? And why
25 isn't this bill, which provides for a higher standard,

1 sufficient to satisfy the ACLU in regards to a
2 constitutional analysis that we are acting appropriately?

3 MR. HOOVER: I don't have 156 in front of me. I
4 think there's actually -- is there a fourth bullet point as
5 well with Roman numerals I, II, and III?

6 REP. STEPHENS: I don't see that. I see three
7 stars. And then it goes to the next page. And then it
8 defines cyberbullying.

9 MR. HOOVER: Okay.

10 REP. STEPHENS: Just so that folks watching at
11 home understand, this bill actually provides for training
12 for educators. And one of the things that they're to be
13 trained on is how to intervene and prevent this type of
14 behavior.

15 MR. HOOVER: Right.

16 REP. STEPHENS: So the ACLU doesn't object to
17 preventing this speech that is governed under this bullying
18 definition through the intervention of a public school
19 teacher.

20 MR. HOOVER: Right.

21 REP. STEPHENS: And I'm just trying to figure out
22 why or how, what the rationale is for objecting to this
23 particular statute or proposal but not objecting to that.
24 And I'm not hoping that you will then object to 156.

25 MR. HOOVER: The reason is because public schools

1 are not criminalizing kids.

2 Certainly there are situations where schools
3 probably are overusing law enforcement. But in that
4 situation, House Bill 156 is not a criminalization context.
5 And thus the free speech protection is lower because the
6 school has an interest in ensuring that kids have access
7 and equal opportunity to education. That's the main
8 difference.

9 The bar goes up when you're talking about
10 criminalization. And 1163 is about criminalization.

11 REP. STEPHENS: Thank you.

12 MAJORITY CHAIRMAN MARSICO: Any more cross
13 examination?

14 REP. STEPHENS: No.

15 MAJORITY CHAIRMAN MARSICO: Andy, you realize if
16 you stay here long enough, we're going to convince you to
17 support this bill.

18 MR. HOOVER: Twist my arm.

19 MAJORITY CHAIRMAN MARSICO: Thank you very much
20 for your time. It's always good to see you.

21 MR. HOOVER: Thank you, Mr. Chairman.

22 I appreciate it.

23 MAJORITY CHAIRMAN MARSICO: Our next testifiers
24 are Diane Moyer, Esquire, legal director for the
25 Pennsylvania Coalition Against Rape, and Carol Lavery,

1 Victim Advocate, Pennsylvania Office of the Victim
2 Advocate.

3 Welcome. Thanks for joining us today.

4 MS. MOYER: Well, it shouldn't be shocking to
5 anyone that I'm going to disagree with Mr. Hoover
6 respectfully on this one.

7 I would also like to present a little additional
8 information to the Committee. When I Googled
9 cyberharassment, I was directed to a tool kit for
10 preventing suicide in high schools. And that's one of the
11 reasons I think this legislation is so important.

12 First of all, I would like to thank the Committee
13 for advancing the very important Child Protection Task
14 Force recommendation package. You all have been diligent,
15 intentional, and thoughtful about it. And not to my
16 surprise, that package is ready to go. So I am anxiously
17 awaiting a similar due diligence in the other Chamber. And
18 I would like to thank you for all your hard work and
19 leadership on this issue.

20 I have a short presentation. But to be honest,
21 I'm a little taken aback by the whole First Amendment
22 controversy. I'll leave that resolution to my learned
23 colleagues at the Pennsylvania District Attorneys
24 Association and talk as a victim advocate.

25 Suicide which results from cyberharassment is a

1 compelling state interest. And as I used to say to my boys
2 when they were growing up, certainly the constitution does
3 not apply in the home. So what we need to have is parents
4 not allowing their children to have private Facebook pages
5 or Twitter accounts. We need parental involvement. I told
6 the boys, I said, you do not have any Fourth Amendment
7 rights regarding search and seizure.

8 I think that's a point of clarification that I
9 needed to make.

10 And I would encourage parent/teacher
11 organizations and the like to call on your local Rape
12 Crisis Center or Crime Victim Center to get training on
13 this issue. Because although this bill is a wonderful way
14 to address this issue, we need parents to be involved. I
15 mean, clearly the State can't do everything to protect
16 children. Parents need to learn about this technology and
17 invade the private space of their children. A, it's fun,
18 and, B, it's ardent of you to do that. And that's what's
19 going to help resolve this issue.

20 I'm going to be mercifully brief for a lawyer and
21 a lobbyist. On behalf of the 50 rape crisis programs
22 throughout the Commonwealth, I would like to thank Chairman
23 Marsico for inviting me to speak today on the topic of
24 House Bill 1163.

25 This legislation would serve a multitude of

1 purposes, not the least of which is protecting innocent
2 children from being maligned on Facebook, Twitter, and
3 other online public domain spaces, resulting in depression,
4 isolation, and sometimes death.

5 Cyberharassment, from our perspective, also
6 serves to taint jury pools, many of which are already
7 disposed to believe myths and stereotypes about victim
8 behavior.

9 Finally, in the absence of this legislation,
10 perpetrators and their associates cannot only impact a
11 victim in the case at hand but further discourage already
12 low reporting rates for sexual assault, which I'm sure you
13 are all aware of.

14 I would like to applaud the Chairman for
15 sponsoring this critical legislation, as we desperately
16 need to advocate for the rights and needs of victims
17 concomitantly with advancements in technology.

18 And I just would like to read one example that I
19 have permission to share with you. And I apologize for the
20 language, but this is what happens. And this is why we
21 need to be vigilant.

22 I won't say the name, although this individual
23 said I could. During the month of January 2013, I was
24 raped twice by an ex-boyfriend. In February, I took him to
25 court. However, the case was lost.

1 A few months later I received a text message in
2 the morning from an old friend informing me of a Facebook
3 profile by the name of karma karma. The purpose of this
4 profile was to put my story out there and harass me.

5 The girl who created the page added numerous
6 friends of mine as well as family members on the page. She
7 stated that I was a liar, a whore, and that karma will
8 eventually get to me for supposedly lying about being
9 raped.

10 This sort of harassment is unlike the typical
11 form. Cyberharassment is a much tougher form of bullying
12 to deal with because it can spread so quickly and there is
13 virtually no way of putting an end to it unless the person
14 who is harassing the individual stops, whereas regular
15 harassment is constantly in a person's face but also tends
16 to not spread from person to person as quickly.

17 Anyone can essentially see cyberharassment if
18 they know where to look. For example, on Facebook, the
19 person simply has to type in karma karma in the search bar
20 and the profile turns up with my picture as the profile
21 picture. I feel that this issue is becoming a major
22 concern for people of my generation and those coming after
23 mine.

24 So I'd like to applaud the courage of this
25 particular victim and restate support for this bill and

1 gratitude, once again, to the House Judiciary for looking
2 and being proactive in protecting our children and how
3 important that is.

4 So thank you very much.

5 MS. LAVERY: Good morning. My name is Carol
6 Lavery. I'm the victim advocate with the Commonwealth. I
7 would also like to introduce Sherri Kauffman, who is with
8 Women in Need of Franklin County, District Attorney's
9 Office. She is here representing the Alliance of
10 Pennsylvania because they are also supportive of this bill.
11 I did ask her to come and accompany me this morning.

12 Thank you, Chairman Marsico and members of the
13 House Judiciary Committee, for this opportunity to address
14 this issue and House Bill 1163.

15 As victim advocate of the Commonwealth, I wish to
16 add my support of the bill as well as the support of the
17 Crime Victims Alliance. The Crime Victims Alliance, if you
18 are not aware of it, is a rather recently formed coalition
19 of advocates, survivors, and victims who work to
20 collectively address issues that impact them.

21 In terms of the bill, first it's important to
22 acknowledge the fundamental change that has occurred over
23 the last ten years -- we are so aware of that -- concerning
24 issues of privacy and our vulnerability to harassment,
25 stalking, and bullying, due to social media and technology.

1 All those of us who are quoted in the news know very well
2 as we read those articles kind of cringe and go down to the
3 comment sections below what kinds of things are put out
4 there as far as in the media in general.

5 Although that's one form of that, certainly this
6 bill does not address that. It is the reality of what we
7 know and personally experience the comments and how
8 negative those kinds of comments are.

9 One of the things that I have learned through our
10 address confidentiality program at the Office of the Victim
11 Advocate is a difficulty that victims of sexual assault and
12 domestic violence face in trying to escape harassment and
13 stalking.

14 The ACP program is designed for victims,
15 including families who are really forced to go underground
16 or to hide out by creating a legal false address and
17 eliminating, absolutely eliminating, any public records of
18 their whereabouts to the relentless pursuit by their
19 offenders.

20 Those victims and, consequently, we at OVA have
21 become aware of the most difficult form of harassment with
22 which they must deal, which is social media, and the most
23 challenging means to maintain their privacy, and that's
24 technology. What they have learned is that they cannot in
25 any way respond, engage, deal with any form of social

1 media.

2 While I was aware on a personal and professional
3 level of our vulnerability as adults and the vulnerability
4 of our children to harassment and bullying once we step
5 into the world of social media, what I learned over the
6 last few weeks as I spent some time talking to counselors
7 at victim service agencies and rape crisis centers across
8 the State is the magnitude of this problem for those
9 children whom they serve.

10 While the research varies on the percentages of
11 teens in the general public who are faced with
12 cyberbullying, the average tends to be actually around 50
13 percent.

14 In contrast, the victim assistance counselors
15 talk of cyberbullying as a consistent and constant
16 experience reported by the vast majority, if not all, of
17 those teens who are in treatment for other forms of
18 victimization. So much so that the teens talk of it as a
19 normal experience and often don't even recognize it as
20 cyberbullying.

21 But what was also clear, too is their sense of
22 helplessness in addressing cyberbullying in any way, let
23 alone in the criminal or juvenile justice systems. That's
24 one of the key components here is the helplessness. That's
25 one of the important parts of this bill that it addresses,

1 that helplessness. It addresses it even if it's in a
2 symbolic way.

3 One of the very important parts about law is that
4 it names something as wrong. It names it as wrong in a way
5 in which our society, in particular teens, can grab onto
6 and know in their hearts that it is something that is
7 happening to them and that, therefore, they could do
8 something about it even if they choose not to.

9 House Bill 1163 creates a means to address that
10 helplessness by defining cyberharassment of a child as a
11 misdemeanor of the third degree. Law enforcement and
12 Juvenile Probation will have the means to intervene for
13 those victims. They will have the legal tools to do so.

14 While all of these children will not seek a legal
15 remedy for their victimization, they will be able to do so
16 if they choose or if their parents choose.

17 In the terminology of victim services, it will
18 create options where currently there are none. This is a
19 gap that must be closed on behalf of those children.

20 The other thing that I wanted to discuss is this
21 issue of information or pictures or negative information
22 that's out there and the cloud or wherever else it is is
23 the comment that in comparison to what we see with victims,
24 particularly in homicide cases, where crime scene photos
25 may end up online and so forth, it is out there. It can't

1 be pulled back. It is something that they can run into or
2 see at any particular time. And the level of pain of
3 seeing that type of information is so very hurtful. And
4 for those teens, this is their crime scene photo. This is
5 the detail of their life that is out there.

6 It isn't just -- you can call it free speech. We
7 can call it words. It does create harm that has a very,
8 very severe impact for those children, a lifetime impact.

9 I applaud the Committee for considering and
10 introducing this. Thank you.

11 MAJORITY CHAIRMAN MARSICO: Representative
12 Keller.

13 REP. KELLER: Ladies, thank you very much for
14 your testimony.

15 I want to direct a statement to Diane. It was
16 refreshing to me to hear you say parenting responsibility.
17 I say that so many times that, you know, parenting
18 responsibility, it seems like in our society, has gone to
19 the wayside. I think we need to get back to that. And a
20 lot of these issues I believe would leave if we had that.

21 I understand the dysfunctional families and those
22 types of things. But I always go back to what you said,
23 parenting responsibility and that government doesn't solve
24 everything for everyone.

25 Thank you so much. That was refreshing to me.

1 MAJORITY CHAIRMAN MARSICO: Representative
2 Delozier.

3 REP. DELOZIER: Thank you, Mr. Chairman.

4 To echo a lot of what Representative Keller just
5 mentioned, but also to bring out the point, certainly our
6 parents -- and I do like the fact that there are no
7 constitutional rights in your home. It really comes down
8 to honestly just being involved in your child's life,
9 understanding what they're saying, understanding what they
10 see as a priority, and really understanding that they know
11 right from wrong and what are the ramifications of their
12 words, whether it's between a brother and sister fighting,
13 which, you know, I have to deal with at home. And I'm
14 like, really? Would you like that to be said to you? And
15 understanding those implications.

16 One of the things that I wanted to point out also
17 was I had had an event in my District -- and I just want to
18 put that out there to others as well, to be aware of
19 this -- that a number of years ago, about five or six years
20 ago, the Attorney General's Office started a program to
21 train dealing with technology and dealing with
22 cyberbullying and those types of traits that are out there
23 when it was first in its infancy.

24 So I had that event come to my District. And I
25 put the information out for middle schools in two of my

1 school districts that wanted to participate. And I put it
2 out there primarily because, A, it's out there for others
3 to use to educate parents to understand what is on the
4 line. How can you get access to it? How do you not keep
5 it a private page? How do you know who your child is
6 interacting with or who they are interacting with possibly?

7 We had about 12 people show up. It was
8 advertised with five middle schools. Parents, it went home
9 with every child. And 12 parents showed up. Now, granted
10 this was about a year ago and it has become much more
11 prevalent in the news, which is good, that education needs
12 to get out there. But parents need to have that active
13 participation and be aware of what it is the child has
14 access to.

15 As young as elementary school, they're having
16 access to the computers. They are much more savvy than we
17 are. I'm still learning. I got a new phone recently. My
18 daughter found ten things to do on the phone that I didn't
19 even know was on there. They know how to get to that.
20 They know how to talk. They know how to communicate
21 online. And I need to know what they are talking about.

22 So I put that out there that the Attorney
23 General, their offices have started this for many years.
24 They have the experience and the officers that are willing
25 to come to school districts to train parents. The students

1 as well certainly. They can do a student program to
2 understand the implications. They also will stay late and
3 do an evening program with parents to educate.

4 So I put that out there. It's a good start.
5 It's something we need to understand. And I think the
6 parents need to take the initiative to be there to educate
7 themselves.

8 Thank you.

9 MAJORITY CHAIRMAN MARSICO: Any other questions?

10 Excellent. This was an excellent hearing. I
11 want to thank you for your support of the bill. The intent
12 of this hearing was to -- it did pass the Committee. It
13 was 25 to 0 -- gather support as we advance this bill from
14 the other members of the House and also the Senate. And it
15 was also, once again, to bring awareness to the public on
16 the seriousness of cyberbullying and how destructive it can
17 be towards young children.

18 So we thank you on behalf of the Committee for
19 your support here today and your time. You really brought
20 us some really good points. We're going to go from there.
21 We appreciate once again your support.

22 I want to thank once again Bishop McDevitt High
23 School, Sister Mary Anne Bednar. We're here in Finestra
24 Hall. Finestra Hall is named after Carmen Finestra, a
25 classmate of mine in 1965. I'm that old. Yes. Anyway,

1 it's really good to be at McDevitt and back here. It's an
2 exciting campus here. I'm delighted to have McDevitt in my
3 legislative District.

4 Once again, to all the testifiers and to the
5 students, thanks for attending this hearing. The hearing
6 is now concluded. Thank you very much. And also to the
7 members, thank you for being here.

8 (The hearing concluded at 11:40 a.m.)

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I hereby certify that the proceedings and
evidence are contained fully and accurately in the notes
taken by me on the within proceedings and that this is a
correct transcript of the same.

Jean M. Davis
Notary Public