

Justice Seamus McCaffery Testimony

Good morning, and thank you for the opportunity to address the members of this committee about the pending legislation dealing with the growing epidemic of domestic violence, and in particular, the Klobuchar (S.1290) and Blumenthal (S.2483) Bills.

It appears to me that the above Bills look to strengthen current federal domestic violence laws to bring them more in line with the current laws that many states have dealing with crimes of violence toward women/same-sex partners, a clearly laudable goal. Effectively strengthening such laws would seem to be an even more laudable goal.

I have spent most of my adult life in law enforcement. Those years include twenty as a Philadelphia police officer/detective, ten years as a trial judge in Philadelphia, four years as a statewide Superior Court (appellate) judge, and I am now serving my seventh year as a Justice of the Supreme Court of Pennsylvania.

I have dealt with domestic violence at literally every level of our system. Sadly, I can say with the certainty born of experience that our law enforcement community finds itself in a “reactive,” not “proactive” posture, and operates as a reactive defense force. By that I mean that more often than not, law enforcement’s involvement occurs “after the fact,” i.e., after the violence has already occurred.

I fully support any efforts aimed toward helping to prevent/curtail domestic violence, including, for instance, your proposal to include “dating partners” as individuals subject to federal laws designed to prevent domestic violence. However, while there is no doubt that legislation of this kind is always well-intentioned, sometimes it can have unfortunate consequences that are neither foreseen nor anticipated.

During my evolution and journey from the role of police officer to appellate jurist, I have encountered many instances where society’s collective effort to improve a given situation results in unintended harm. For example, for years, Pennsylvania had a 1.2 Blood Alcohol Content (“BAC”) requirement in DUI cases. As a result of political pressure, that number was lowered and then lowered again to the current 0.8 BAC. Clearly, the aim of the legislation lowering the BAC was to help reduce the number of intoxicated drivers on our roads, an inarguably laudable goal that was achieved. Predictably, there was an increase in arrests. In Pennsylvania, when one is convicted of DUI, there is a mandatory suspension of driving privileges. Because our Commonwealth is primarily rural, with limited mass transit, many individuals with suspended licenses could not get to work, became unable to provide for their families or pay court-ordered child support, and ended up in yet another court for failure to pay. This is not to say that the BAC should be raised; it is just to provide an example of unintended consequences that can be quite unfortunate.

I understand that an individual's ability to obtain firearms is, and should be, of great concern in the context of domestic violence. However, I do not believe that additional legislation making it illegal for more categories of individuals to "possess" a firearm would necessarily contribute to increased deterrence for those individuals who will simply continue to do what they already do: obtain a firearm "off the street".

I do not believe that prohibiting "ownership and/or possession" of a firearm is the way to find an effective solution to the problem of domestic violence. As mentioned, individuals who possess "unlawful" firearms are unlikely to be deterred by these expanded laws. In my experience, when a firearm is used in a domestic violence crime, because it is often lethal, it garners the most press coverage. But I believe, based on what I have observed as a police officer and as a jurist at the trial and appellate levels, that assaults committed with knives, blunt objects, fists, etc., are far more common than those committed with guns. I further believe that there is a much more effective way to address assaults on women and same-sex partners, and to do so in a way without legislation that could have unanticipated, unintended, and negative consequences.

My suggestion to deal with the epidemic of domestic violence is to help law enforcement become more "proactive". Nothing is more frustrating for a police officer than to arrive at the scene of a crime where the perpetrator is known but cannot be found in the proximate vicinity of the victim. As I know from personal experience, police are on the front lines of the effort to combat domestic violence. Philadelphia has redesigned its police procedures to proactively confront domestic violence by requiring responding police officers to complete a detailed "Domestic Violence Report" after every domestic incident to which police are called. The police work with community organizations like Women Against Abuse to provide follow-up services for domestic violence victims, and the police also do their own follow-up investigations with the victims. All of these procedures are designed to reduce domestic violence assaults and homicides.

Further, If there is a protection from abuse order in place, and if the officer can be made aware both of the existence of the outstanding PFA **and** the fact that the individual is in close proximity, then the officer has a chance to make a real difference. Today, the technology exists for our probation and parole community to be able to monitor the exact location of individuals under their supervision by using GPS guidance systems connected to court-ordered "ankle bracelets". It is my belief that creating legislation, with adequate funding, that would require abusers to wear a GPS-capable device, monitored by local law enforcement and connected to the smart phone of the victim, who would receive a notification that the individual in question was within a specified range, would go much farther to decrease the number of assaults on women or same-sex partners than would yet more gun-prohibiting legislation that is so regularly ignored by those who would do their victims harm.

In my opinion, for real and effective deterrence, a GPS device, worn by an abuser and monitored by both police and the victim complainant, would help immensely.

Give law enforcement the tools and the ability to **prevent** a crime of domestic violence. Let law enforcement monitor the abusers and let the abusers know they are being monitored and the consequences of violating the orders against them.

Rather than making it ever easier to arrest/convict individuals and thus create a society where far too many individuals with convictions will find themselves incarcerated and be unable to get jobs, I believe the government should be thinking outside the box. When it comes to crime, technology can go a long way to help law enforcement become a “proactive” force instead of a “reactive” force. When it comes to domestic violence, an ounce of prevention, such as GPS-capable monitors would provide, will literally be worth more than hundreds of pounds of pages of legislation that simply continue to narrow the categories of individuals who may legitimately possess firearms. As has been shown over and over again, such legislation is routinely ignored by those truly looking to do harm to women and same-sex partners.

Thank you all for your diligent efforts to tackle this epidemic of domestic violence in our great nation.