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PENNSYLVANIA COALITION AGAINST RAPE

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TESTIMONY PRESENTED BY

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BEFORE

THE HOUSE JUDICIARY COMMITTEE

ON

**HOUSE BILL 2513
BASIC BILL OF RIGHTS FOR CRIME VICTIMS**

September 13, 1990

Hello. My name is Gail Rawlings. I am the Public Policy Analyst of the Pennsylvania Coalition Against Rape (PCAR). I am pleased to present testimony on behalf of PCAR and its member centers to this Committee.

Pennsylvania's rape crisis movement began in 1972 with a network of rape crisis centers organized by a handful of women determined to see that rape victims were treated with dignity, fairness and sensitivity. To broaden and unify their efforts, the Pennsylvania Coalition Against Rape was formed in 1975. The objectives of the Coalition and their members were and still are: 1) the elimination of sexual violence; 2) the provision of service to all victims of sexual violence; and 3) the education of the public and systems to the effects of sexual violence for the individual and society. Today 45 centers funded through PCAR by the Department of Public Welfare provide service to and advocate for sexual assault victims - women, children and men - in 58 of Pennsylvania's 67 counties. In Fiscal Year 1989/1990, these centers served 27,405 victims and others closely associated with the victim, including family members.

Historically, PCAR has played a vital part in the victim rights movement in Pennsylvania. Less than 14 years ago, it was accepted practice that a woman's sexual history was admissible evidence; women were required to report the crime of rape within 90 days of the incident; and juries were instructed by judges to take "special care in view of the emotional involvement of the witness (the rape victim) and the difficulty of determining the truth with respect to alleged sexual activities carried out in private." Due to tenacity and hard work by PCAR, volunteers and victims, these provisions were eliminated and the law changed. PCAR was also instrumental in the passage of the spousal sexual assault law and just this year the crime of incest was finally upgraded from a misdemeanor to a felony.

However, criminal law is only one part of our justice system that impacts victims. The enforcement of that law, the justice rendered to the offender and the treatment of victims during the process are equally important.

Judge Ralph Adam Fine and Josephine Gittler, J.D. have traced the evolution of America's criminal justice system and the victim's role in it in their respective books *Escape of the Guilty* and *Expanding the Role of the Victim In a Criminal Action*. In colonial times, the victim's interests were paramount. In fact, victims themselves hired officials to investigate and make arrests. Victims hired private attorneys to prosecute the accused. Individuals found guilty were required to pay treble damages to the victim or placed into the victim's servitude. Throughout the 18th and 19th centuries the role of the state increased with the emergence of prisons, public police, public prosecutors, restitution benefiting the state in the form of fines, and states being the plaintiff in criminal actions. In essence, these reforms changed the role of the victim from a party to the criminal justice action to a witness in the criminal action brought on behalf of the state.

By relegating the victim to the role of a mere informational resource, the individual is too often revictimized by the criminal justice system. The victim's initial trauma and frustration are compounded by having to tell their story over and over again; appearing in court in anticipation of testifying to find out the proceeding has been postponed; finding out the disposition of a case through a newspaper report; and learning the accused has plea bargained to a lesser charge. It is the collective experiences and concerns of individual victim advocacy groups that have formed the victim rights movement of today. A movement whose purpose is to change the role of the victim from a mere informational source to a role in which revictimization is eliminated and the criminal is not the sole recipient of justice.

In 1984, Pennsylvania passed Act 96 which established a Basic Bill of Rights for Victims which included notification and protection services, expedited the return of the personal property, and allowed participation in the presentence report. Act 96 was viewed as a beginning in elevating the status of victims in Pennsylvania. However, the current statute does not provide a comprehensive approach and fails to give victims recourse if the provisions are not upheld. The definitions within the statute are longer than the rights given to victims. The current system varies from county to county.

Representative Pressman has recognized this failure and through H.B. 2513 has proposed expanding and strengthening Act 96. PCAR is pleased to support his efforts and welcomes the opportunity to participate in this process. However, as victim advocates, we cannot unconditionally support the bill in its current form. and encourage the committee and Representative Pressman to consider the following recommendations.

RECOMMENDATION #1

Eliminate the definition of personal risk victim and reference to personal risk victim in the bill. Personal risk victims receive more rights in the current language of H.B. 2513 than victims of other crimes. While not all services or rights may be applicable to every crime victim, PCAR believes that each crime victim should have equal access to service. The discretion to utilize these services should be left to the victim.

PCAR suggests, in lieu of the personal risk victim definition, expanding the definition of victim as contained in the bill to read as follows.

"Victim" means:

- (1) a person against whom a crime or feloniously assaultive or domestic violence crime is being or has been perpetrated or attempted;**
- (2) a parent, legal guardian or guardian ad litem of a child so victimized; or**
- (3) a person who is next of kin of a homicide victim or their lawful representative.**

RECOMMENDATION #2

In section one, number six which pertains to notifying the domestic violence victims of their right to file for relief under the Protection From Abuse Act, PCAR asks that sexual assault victims be included in the language. Pennsylvania's statute governing protection from abuse orders affords protections for both domestic violence and sexual assault victims - specifically victims of rape, spousal sexual assault, involuntary deviate sexual intercourse or sexual abuse perpetrated by a household member.

RECOMMENDATION #3

To ensure that the rights of child victims or adults who have the developmental age of a child are fully protected, PCAR suggests defining child and guardian ad litem as they would pertain in this statute. Federal legislation sponsored by Congressman Mike DeWine of Ohio has been introduced which would create a victim bill of rights for these individuals. PCAR has modeled the definitions below after this legislation.

"Child" means:

- (1) an individual who has not attained the age of 18 years: or**
- (2) an individual who, as determined by the court, has been documented by the appropriate professionals to be of a developmental age of less than 18 years.**

"Guardian Ad Litem"

(A) Appointment. The court shall, at the earliest possible stages, determine whether the appointment of a guardian ad litem for a child in a criminal proceeding would be in the best interest of the child. In making the appointment, the court shall consider the person's background in, and familiarity with, the judicial process, social service programs and child abuse issues. The guardian shall not be a person who is or may be a witness in any proceeding with the alleged offense. For purposes of this statute, the guardian ad litem does not have to be a practicing attorney.

(B) Duties. The guardian ad litem may attend all depositions, hearings and trial proceedings and make recommendations to the court. The guardian may have access to all reports, evaluations and records, except attorney's work product, necessary to be an effective advocate for the child.

(C) The guardian ad litem shall not be compelled to testify in any court action or proceeding about any information or opinion received from or about the child in the course of serving as guardian.

(D) The guardian ad litem shall be immune from civil and criminal liability for carrying out in good faith such guardian's duties.

RECOMMENDATION #4

Adult victims are often fearful and apprehensive regarding the formal procedures that take place within the court room. These emotions are compounded for the child victim. To help allay these fears, PCAR suggests including the provision for use of a child attendant in the legislation. PCAR suggests the following language which is based on Congressman's DeWine's legislation:

Child Attendant. -A child victim testifying at a criminal proceeding shall have the right to be accompanied by a parent, legal guardian or guardian ad litem to provide emotional support to the child. The court, at its discretion, may allow the attending adult to remain in close physical proximity to or in contact with the child while the child testifies. The attending adult shall not provide the child with an answer to any question directed toward the child or otherwise prompt the child during the course of the child's testimony.

RECOMMENDATION #5

To allay the fears and anxieties experienced by victims during criminal proceedings, victim service centers have trained individuals to serve as advocates. These individuals provide emotional support and court accompaniment for the victim and their families during the process. A specifically stated right of victims must include the knowledge and assurance that a victim advocate will have open access to accompany the victim to all court proceedings.

PCAR recommends the following language:

The victim has the right to be accompanied by a victim advocate during court proceedings. The victim advocate's role is to provide court accompaniment and emotional support to the victim. The victim advocate shall be a representative of a victim service center including, but not limited to, a sexual assault center, a domestic violence program or crime victim center.

RECOMMENDATION #6

PCAR is uncomfortable with the wording contained in section four pertaining to information concerning charges filed, bail and bail conditions. As an advocate for sexual violence victims, PCAR on one hand welcomes the understanding that victims should have immediate notification of the outcome of these type of proceedings. On the other hand, other victim advocate groups, particularly homicide survivors, may perceive this language as preferential treatment. Therefore, PCAR suggests expanding the category of victim which would receive prompt notification to include victims of attempted murder or other crimes in which their personal safety is at risk. PCAR also suggests specifying that within 24 hours all other crime victims should be notified as to information concerning charges filed, bail and bail conditions.

RECOMMENDATION #7

PCAR suggests language be added to ensure the provision of these rights as specified in the bill to all crime victims. Under the current system there is no process in place for a victim to follow if their rights have been denied. PCAR supports language that will permit the victim to file a cause of action with the Pennsylvania Court of Common Pleas if their rights have been violated.

PCAR has also reviewed similar bills that are pending in the Pennsylvania legislature that specify in addition to any recovery for consequential damages, that the victim is entitled to a civil penalty of not less than \$200 or more than \$500. We recommend that, if this approach is explored, that the amounts of the fine be high enough to encourage compliance with the law.

RECOMMENDATION #8

H.B. 2513 should mandate training for district attorneys, district justices, judges, law enforcement officials and victim/witness personnel on the provisions of this law and the needs of victims. Training should be provided by the appropriate victim advocacy groups in the state. To create a comprehensive Victim Bill of Rights is simply not enough, the implementation and enforcement of that law are equally important.

RECOMMENDATION #9

Once again we have before us a bill which does not specify how much money will be appropriated to expand the rights of and services for victims. To effectively provide these services, a great deal of money will be needed. The impact this legislation will be minimal and sporadic if not properly funded.

PCAR recommends including in the language of the bill a specific appropriation to institute these changes. Without financial support, a successful implementation of this statute will be difficult, if not impossible, in many parts of the Commonwealth.

In testifying before Senate Judiciary Committee in Washington, Ronald Zweibel, Chair of the New York State Crime Victims Board, aptly expressed the importance of protecting the rights of victims. Zweibel stated, "...The information provided by the victim is essential to the continued functioning of the system. In this vein, due process must be afforded to the victim which is readily provided to the offender. It must be acknowledged that the interests which the system has in

the cooperation and assistance that the victim can provide is no greater than the interests victims have in being informed, notified, and in having their input considered in matters which so fundamentally affect their rights as people harmed by a society which failed to protect them."

PCAR thanks you for the opportunity to participate in this hearing. PCAR supports the intent of H.B. 2513. We hope to be strong advocates for its passage once amendments are offered. Pennsylvania has made great strides in addressing the needs and rights of victims. However, we have a long way to go. A comprehensive Victim Bill of Rights will bring Pennsylvania much closer to that goal. With the combined efforts of the Pennsylvania legislature, victim advocacy groups, and the criminal justice system, we can begin to balance the scales of justice and help victims become survivors.

Thank You.