

TESTIMONY OF JOHN KUNKLE
VICTIM SERVICES PROGRAM MANAGER
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
BEFORE THE HOUSE JUDICIARY COMMITTEE
PUBLIC HEARING ON VICTIM RIGHTS LEGISLATION

THURSDAY, SEPTEMBER 13, 1990

MR. CHAIRMAN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THE PROPOSED AMENDMENTS TO PENNSYLVANIA'S VICTIM RIGHTS LEGISLATION. MY NAME IS JOHN KUNKLE AND I AM THE PROGRAM MANAGER FOR VICTIM SERVICES IN THE PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY (PCCD). AS YOU KNOW, THE PCCD IS THE STATE AGENCY RESPONSIBLE FOR ADMINISTERING GRANTS AND PROVIDING TECHNICAL ASSISTANCE FOR LOCAL VICTIM/WITNESS SERVICES PROGRAMS UNDER THE PROVISIONS OF ACT 96 OF 1984. THE MONEY USED TO SUPPORT THESE PROGRAMS COMES FROM A SPECIAL PENALTY ASSESSMENT ON CONVICTED OFFENDERS AND PROVIDES AN ANNUAL FUND OF ABOUT ONE MILLION DOLLARS.

WHEN WE WERE GIVEN THE VICTIM SERVICES MANDATE BY THE LEGISLATURE IN 1984, WE SET ABOUT TO DESIGN A STATEWIDE PROGRAM WHICH WOULD OFFER SERVICES THAT WERE: COMPREHENSIVE, UNIFORM, COORDINATED AND GEOGRAPHICALLY BROAD-BASED.

TO PROMOTE COMPREHENSIVE AND UNIFORM SERVICES FOR VICTIMS AND WITNESSES WE USED A STATE-LEVEL ADVISORY COMMITTEE COMPRISED OF CRIMINAL JUSTICE AND VICTIM SERVICE REPRESENTATIVES TO COMPILE GUIDELINES FOR HOW EACH ELEMENT OF THE CRIMINAL JUSTICE SYSTEM AND EACH COMMUNITY-BASED VICTIM SERVICE AGENCY SHOULD TREAT VICTIMS AND WITNESSES OF CRIME. THE RESULTANT

DOCUMENT, FAIR TREATMENT FOR VICTIMS AND WITNESSES OF CRIME: AN ACTION STRATEGY FOR PENNSYLVANIA, HAS BEEN BROADLY DISTRIBUTED AND PROMOTED THROUGHOUT THE CRIMINAL JUSTICE AND VICTIM SERVICE COMMUNITY IN PENNSYLVANIA. I WILL LEAVE SEVERAL COPIES OF THIS BROCHURE WITH MY TESTIMONY.

TO ENSURE THAT THE SERVICES ARE COORDINATED AT THE LOCAL LEVEL, WE REQUIRE EACH COUNTY PARTICIPATING IN THE GRANT PROGRAM TO FORM A VICTIM/WITNESS POLICY BOARD COMPRISED OF CRIMINAL JUSTICE AND VICTIM SERVICE REPRESENTATIVES. THE PURPOSE OF THE LOCAL BOARD IS TO ASSESS THE MOST CRITICAL NEEDS FOR VICTIM/WITNESS ASSISTANCE AND TO RECOMMEND TO THE PCCD A COST-EFFECTIVE AND COORDINATED STRATEGY FOR CLOSING SERVICE GAPS.

FINALLY, TO PROVIDE AN OPPORTUNITY FOR MAXIMUM PARTICIPATION IN THIS PROGRAM, WE HAVE APPLIED A FORMULA ALLOCATION TO THE ROUGHLY ONE MILLION DOLLARS AVAILABLE EACH YEAR THAT SETS ASIDE A SPECIFIC ALLOCATION FOR EACH COUNTY BASED ON ITS POPULATION, CRIMES AND THE AMOUNT OF VICTIMS' PENALTY ASSESSMENTS COLLECTED. BY DISTRIBUTING THE DOLLARS IN THIS FASHION, WE EXTEND AN OPPORTUNITY TO ALL COUNTIES IN PENNSYLVANIA TO PARTICIPATE. AS OF THIS YEAR, 58 OF THE 67 COUNTIES ARE PARTICIPATING IN THIS PROGRAM.

WHILE WE FEEL THAT WE HAVE MADE SIGNIFICANT PROGRESS IN MEETING THE NEEDS OF THE COMMONWEALTH'S CRIME VICTIMS, WE RECOGNIZE THAT NOT ALL VICTIMS ARE PROPERLY INFORMED; NOT ALL VICTIMS ARE DULY RECOGNIZED; AND NOT ALL VICTIMS ARE EXTENDED APPROPRIATE OPPORTUNITIES TO PARTICIPATE IN THE CRIMINAL JUSTICE PROCESS. THEREFORE, WE WELCOME THE COMMITTEE'S INTEREST

IN ENHANCING VICTIM RIGHTS AND SERVICES AND APPRECIATE THE OPPORTUNITY TO OFFER OUR THOUGHTS ON HOUSE BILL 2513.

LET ME PREFACE OUR POSITION ON THE BILL WITH OUR PERCEPTION OF THE MOST CRITICAL NEED IN THE VICTIM RIGHTS MOVEMENT IN PENNSYLVANIA. OUR EXPERIENCE IN ADMINISTERING THE VICTIM ASSISTANCE PROGRAM OVER THE LAST FIVE YEARS SUGGESTS THAT THE SYSTEM IS WILLING TO EXTEND IMPORTANT CONSIDERATIONS FOR VICTIMS AND WITNESSES BUT LACKS THE RESOURCES TO DO SO. THUS, AS YOU KNOW, WE HAVE DOCUMENTED THE NEED FOR ADDITIONAL RESOURCES AND HAVE WORKED WITH THE ADMINISTRATION TO INTRODUCE LEGISLATION TO INCREASE THE CURRENT PENALTY ASSESSMENTS AND PROVIDE THIS MUCH NEEDED SUPPORT. WE SINCERELY APPRECIATE THE SUPPORT OF REPRESENTATIVE CALTAGIRONE, THE PRIME SPONSOR OF H.B. 2361, AND REPRESENTATIVE PRESSMANN AND OTHER MEMBERS OF THIS COMMITTEE WHO CO-SPONSORED THIS MEASURE. WE HOPE THAT WHEN THE LEGISLATURE RECONVENES ON SEPTEMBER 24 THAT THE HOUSE WILL APPROVE THE RECOMMENDATION OF THIS COMMITTEE AND FORWARD THE BILL FOR SENATE ACTION. THE ADDITIONAL SUPPORT THAT THIS BILL WILL PROVIDE WILL ENABLE PCCD TO PROMOTE A MUCH STRONGER COMMITMENT TO THE TYPES OF SERVICES WHICH ARE ENUMERATED IN HOUSE BILL 2513.

WITH RESPECT TO THE BILL UNDER CONSIDERATION TODAY, WE BELIEVE THAT THE BILL PUTS FORTH A COMPREHENSIVE SET OF MEASURES THAT, IF FOLLOWED, WOULD SIGNIFICANTLY ENHANCE THE TREATMENT OF CRIME VICTIMS IN PENNSYLVANIA. WE WOULD SUGGEST, HOWEVER, A GENERAL STREAMLINING OF THE BILL AND A SEPARATION OF THE RIGHTS AND RESPONSIBILITIES INTO TWO DISTINCT SUBSECTIONS IN THE INTEREST OF CLARITY.

FOR EXAMPLE, THE BILL AS CURRENTLY CONSTRUCTED CONTAINS THREE DEFINITIONS OF "CRIME" AND TWO DEFINITIONS OF "VICTIM." WE BELIEVE THAT THESE MULTIPLE DEFINITIONS WILL BE CONFUSING. WE WOULD LIMIT THE DEFINITIONS OF "CRIME" TO TWO--A GENERAL DEFINITION AND "PERSONAL INJURY CRIMES"--AND USE A SINGLE REFERENCE TO DEFINE "VICTIM." IN THE INTEREST OF TIME I WILL NOT DWELL ON THE TECHNICAL AMENDMENTS TO THE DEFINITIONS BUT WOULD RATHER REFER YOU TO THE SPECIFIC LANGUAGE RECOMMENDED IN APPENDIX A ATTACHED TO THIS TESTIMONY. WE BELIEVE THAT THE LANGUAGE RECOMMENDED SIMPLIFIES THE ISSUE OF WHO IS SERVED IN WHAT WAYS WITHOUT COMPROMISING THE INTENT OF THE MULTIPLE DEFINITIONS.

WITH RESPECT TO THE BILL OF RIGHTS AS ARTICULATED IN THE CURRENT BILL, WE BELIEVE AS I HAVE JUST STATED THAT A SEPARATION OF RIGHTS AND RESPONSIBILITIES WOULD HELP TO CLARIFY THE LAW. WE WOULD REDUCE THE NUMBER OF RIGHTS FROM THE CURRENT 14 TO THE FOLLOWING EIGHT:

VICTIMS OF CRIME SHALL HAVE THE FOLLOWING RIGHTS:

- 1) TO RECEIVE BASIC INFORMATION CONCERNING THE SERVICES AVAILABLE FOR VICTIMS OF CRIME.
- 2) TO BE PROTECTED FROM HARM AND THREATS OF HARM ARISING OUT OF THEIR COOPERATING WITH LAW ENFORCEMENT AND PROSECUTION EFFORTS.
- 3) TO BE NOTIFIED OF THE SIGNIFICANT ACTIONS WITHIN THE CRIMINAL JUSTICE SYSTEM PERTAINING TO THEIR CASE INCLUDING A) THE ARREST

OF THE SUSPECT; B) THE CHARGES FILED; AND C) THE DISPOSITION AND SENTENCE OF THE DEFENDANT.

- 4) TO BE PRESENT AND TO BE HEARD WHEN RELEVANT AT ALL CRITICAL STAGES OF JUDICIAL PROCEEDINGS IN A MANNER WHICH PRESERVES THE CONSTITUTIONAL RIGHTS OF THE ACCUSED.
- 5) TO PROVIDE INPUT TO THE DISPOSITION AND SENTENCE OF THE DEFENDANT TO INCLUDE THE SUBMISSION OF A VICTIM IMPACT STATEMENT DETAILING THE PHYSICAL, PSYCHOLOGICAL AND ECONOMIC EFFECTS OF THE CRIME ON THE VICTIM AND THE VICTIM'S FAMILY.
- 6) TO BE RESTORED, TO THE EXTENT POSSIBLE, TO THE PRE-CRIME ECONOMIC STATUS THROUGH THE PROVISION OF: A) RESTITUTION: B) COMPENSATION AS PROVIDED UNDER THE CRIME VICTIMS' COMPENSATION PROGRAM; AND C) THE EXPEDITIOUS RETURN OF PROPERTY WHICH IS SEIZED AS EVIDENCE IN THE CASE.
- 7) IN PERSONAL INJURY CRIMES, TO BE NOTIFIED OF THE PRE-TRIAL AND PRE-SENTENCE RELEASE OF THE DEFENDANT.
- 8) UPON REQUEST OF THE VICTIM IN PERSONAL INJURY CRIMES, TO BE GIVEN AN OPPORTUNITY TO PROVIDE INPUT TO ANY POST-CONVICTION RELEASE DECISIONS AND TO BE NOTIFIED OF SUCH DECISIONS AND/OR THE ESCAPE OF THE OFFENDER.

THE RESPONSIBILITY FOR IMPLEMENTING THESE RIGHTS WOULD FALL UNDER THREE AREAS: LAW ENFORCEMENT, PROSECUTION AND CORRECTIONS. AGAIN IN THE INTEREST OF TIME I WILL NOT READ THE RECOMMENDED LANGUAGE WHICH IS ATTACHED BUT OFFER THE HIGHLIGHTS OF THESE RESPONSIBILITIES.

THE POLICE WOULD BE RESPONSIBLE FOR PROVIDING BASIC INFORMATION ON SERVICES AVAILABLE INCLUDING: TELEPHONE NUMBERS OF SERVICE AGENCIES; PROCEDURES FOR DEALING WITH INTIMIDATION; AND COMPENSATION CLAIMS INFORMATION. THE POLICE REPORT WOULD BE REVISED TO PROVIDE FOR A VICTIM CHECK-OFF SIGNIFYING RECEIPT OF THIS INFORMATION. LAW ENFORCEMENT WOULD ALSO BE RESPONSIBLE FOR NOTIFYING VICTIMS OF THE ARREST OF THE SUSPECT, CHARGES FILED AND, IN PERSONAL INJURY CRIMES, THE PRE-TRIAL RELEASE OR ESCAPE OF THE DEFENDANT.

DISTRICT ATTORNEYS WOULD BE RESPONSIBLE ESSENTIALLY FOR COORDINATING SERVICES TO VICTIMS WHERE THE OFFENDER HAS BEEN APPREHENDED AND PROSECUTED. SERVICES WOULD INCLUDE:

- ORIENTATION TO THE CRIMINAL JUSTICE SYSTEM;
- NOTICE OF CONTINUANCES;
- ASSISTANCE WITH INPUT TO AND NOTICE OF DISPOSITION AND SENTENCE;
- IN PERSONAL INJURY CRIMES, ASSISTANCE WITH INPUT TO AND NOTICE OF POST-CONVICTION RELEASE;
- SECURE WAITING AREA DURING JUDICIAL PROCEEDINGS;
- COMPENSATION CLAIMS ASSISTANCE; AND
- AUXILIARY SERVICES SUCH AS TRANSPORTATION AND CHILD CARE.

COUNTY CORRECTIONAL AUTHORITIES WOULD BE RESPONSIBLE FOR INFORMATION ON THE RELEASE OF THE DEFENDANT/OFFENDER IN PERSONAL INJURY CRIMES. WARDENS WOULD BE RESPONSIBLE FOR NOTIFYING THE POLICE OF THE RELEASE OF THE DEFENDANT ON BAIL OR OF ANY ESCAPES. THE CHIEF PROBATION OFFICER WOULD BE RESPONSIBLE, UPON REQUEST OF THE VICTIM, FOR NOTIFYING THE DISTRICT ATTORNEY OR VICTIM OF THE IMPENDING OR ACTUAL PAROLE OF THE COUNTY INMATE.

FINALLY, WITH RESPECT TO THE STATE CORRECTIONAL AUTHORITIES, WE WOULD POINT OUT THAT THE AUTHORIZING STATUTE FOR THE PENNSYLVANIA BOARD OF PROBATION AND PAROLE CURRENTLY PROVIDES FOR VICTIM INPUT TO AND NOTICE OF THE RELEASE OF STATE INMATES ON PAROLE. WE UNDERSTAND THAT THE BOARD'S VICTIM INPUT PROGRAM IS WORKING WELL. THE DEPARTMENT OF CORRECTIONS, WHICH IS AUTHORIZED TO RELEASE INMATES TO A STATUS OTHER THAN PAROLE, E.G., TEMPORARY FURLOUGHS, HALFWAY HOUSES, HAS A POLICY OF INVITING VICTIM INPUT AND PROVIDING NOTICE OF RELEASE THROUGH COMMUNICATION FORWARD TO THE SENTENCING JUDGE AND COPIED TO THE DISTRICT ATTORNEY. WE WOULD RECOMMEND THAT THE DEPARTMENT'S POLICY BE DIRECTED BY STATUTE SEPARATE FROM HOUSE BILL 2513 AND WOULD WELCOME THE OPPORTUNITY TO WORK WITH THE DEPARTMENT ON THE SPECIFIC LANGUAGE.

IN CONCLUSION, LET ME STATE THAT THE COMMISSION IS COMMITTED TO THE FAIR TREATMENT OF ALL VICTIMS OF CRIME IN PENNSYLVANIA AND WELCOMES THE OPPORTUNITY TO WORK WITH THE LEGISLATURE ON STRATEGIES TO STRENGTHEN THAT COMMITMENT.

THANK YOU VERY MUCH.

APPENDIX ASUGGESTED AMENDMENTS TO HOUSE BILL 2513 P.N. 3475Definitions

- 1) Amend the definition of a "crime" to tailor it to potential service populations, i.e., drop violations of the Drug Act and add violations of driving under the influence statutes (75 Pa. C.S.A. §3731 & §3735). (p. 2, lines 9 - 19)
- 2) Strike "domestic violence crime" and incorporate this consideration under the umbrella of "personal injury crime." (p. 2, lines 20 - 24)
- 3) Strike definition of "family or household member" (only needed if you retain "domestic violence crime") (p. 3 lines 1 - 5).
- 4) Strike "feloniously assaultive crime" and replace with "personal injury crime" (p. 3 lines 6 - 15), e.g., "personal injury crime" means an act, or attempt, or threat to commit an act, which would constitute a misdemeanor or felony as defined in and proscribed by Chapters 25, 27, 29, 31 or 37 of the Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses).
- 5) Strike "personal risk victim" and incorporate elements into definition of a victim (p.3 lines 16 - 27); e.g., "Victim" means:
 - 1) a person against whom a crime is being or has been perpetrated or attempted; or
 - 2) a parent or guardian of a child who has been physically or sexually abused, threatened with such abuse or against whom such abuse has been attempted; or
 - 3) the family member of a homicide victim.

These adjustments would reduce the number of crimes defined to two and would limit the definition of a victim to a single reference without compromising the intent of the multiple definitions.

Responsibilities Under Basic Bill of RightsLaw Enforcement Agencies

- 1) All law enforcement agencies are responsible for providing basic information on services available for crime victims. Such information shall include:
 - a) the telephone numbers of agencies which provide appropriate services including community-based victim service agencies, rape crisis centers and domestic violence programs;
 - b) the procedures for dealing with intimidation and harassment under the Victim/Witness Intimidation Statute and the Protection from Abuse Act; and
 - c) notice of the availability of victims compensation as provided in Section 180 - 7.18 of this Act and the agency which can provide claims assistance.

Within one year of the effective date of this Act, all law enforcement agencies shall revise the police report to provide for a victim check-off signifying that the information required in this section has been given.

- 2) All law enforcement agencies are responsible for notifying victims of the arrest of the suspect and of the charges filed.
- 3) In personal injury crimes, all law enforcement agencies are responsible for notifying the victim of the defendant's pre-trial release as well as of any conditions imposed.
- 4) In personal injury crimes, all law enforcement agencies are responsible for notifying the victim of an inmate's escape from custody.

District Attorneys

- 1) The office of the district attorney shall coordinate the information provided to victims and other agencies under this act.
- 2) The office of the district attorney shall provide information to all law enforcement agencies concerning services available to victims in the county.

- 3) The office of the district attorney shall coordinate the provision of the following services for victims and witnesses of crime:
- a) an orientation to the court system including an explanation of the process, the role of the victim and the opportunities to participate as provided in the basic bill of rights;
 - b) advance notice of any dispositional proceedings scheduled including notice of continuances;
 - c) assistance with input to the key decisions regarding disposition, sentence and release to include the submission of victim impact statements;
 - d) a secure waiting area during judicial proceedings separate from the defendants and families and friends of defendants;
 - e) notice of the disposition and sentence of the defendant, including any sentence modifications;
 - f) assistance with victim compensation claims and return of property;
 - g) upon request of the victim in personal injury crimes, notice of the opportunity to provide input to, and to be notified of, post-conviction release decisions; and
 - h) services associated with the victim's or witness's ability to participate in the criminal justice process including, to the extent of available resources, transportation, child care and employer/creditor intercession.
- 4) When the victim in a personal injury crime requests an opportunity to provide input to a county parole decision, the office of the district attorney shall so notify the county adult probation department.

County Correctional Authorities

- 1) In personal injury crimes, the warden or administrator of the county prison or jail shall provide timely notice of the release of the defendant on bail to the police department in the jurisdiction in which the offense was committed. Likewise, the police department shall be notified of an inmate's escape from custody.
- 2) In personal injury crimes, when the victim has requested an opportunity to provide input to, and notice of, county parole, the chief adult probation officer shall notify the office of the district attorney or the victim of the impending and actual parole of a county inmate.