

7 pages

TESTIMONY OF
The Pennsylvania Coalition Against Domestic Violence

HOUSE BILL 2513 -
BASIC BILL OF RIGHTS FOR VICTIMS

House Judiciary Committee Hearing
September 13, 1990
Allentown, Pennsylvania

Offered by:

Nancy F. Poor
President of PCADV

and

Barbara J. Hart, Esq.
Staff Counsel
524 McKnight Street
Reading, PA 19601
215/373-5697

Good afternoon, Representative Pressman, co-sponsors and staff; I am pleased to be able to offer this testimony on behalf of the Pennsylvania Coalition Against Domestic Violence.

I am Nancy Poor, President of PCADV, a statewide network of 57 domestic violence programs which provides protection, counseling and advocacy to victims of domestic violence and their children in every county of this Commonwealth. I would like to thank the House Judiciary Committee for the opportunity to address the critical issue of victims' rights. I would also like to commend Representative Pressman and the 47 co-sponsors of H.B. 2513 for recognizing and responding to the need to strengthen the rights and protections of crime victims in this state.

PCADV endorses H.B. 2513 which generously expands the Commonwealth's Basic Bill of Rights for Victims. This expansion of victims rights is essential for the protection and restoration of victims of crime in the Commonwealth. Without information about the criminal justice system and the essential rights and responsibilities of victims participating in prosecution of criminal conduct, without notice of the protections available to victims at risk of perpetrator retaliation for prosecution participation, without information concerning charges and bail, without information concerning escapes of perpetrators from correctional institutions, without notice of each phase of the judicial proceedings and the custodial status of the perpetrator, without notice about and assistance in preparing impact statements, without consultation about the disposition of the criminal case, without timely return of property, without employer and creditor intercession, without witness compensation, without timely and comprehensive restitution and without medical and victim assistance, crime victims cannot and will not be safe during the pendency of prosecution, probation and parole. Thus, they will not be informed, effective actors in the justice-seeking process. The 14 enumerated rights in H.B. 2513 will certainly enhance victim safety, victim empowerment, and victim restoration. They will equip the victim/witness with information that will strengthen her commitment to prosecution and facilitate the success thereof.

VICTIMS OF CRIME ARE ENTITLED TO THESE PROTECTIVE RIGHTS. Victims who have been physically assaulted, seriously injured and terrorized have suffered personal trauma and violation of their integrity. Those victims of crime whose lives have been jeopardized by partners or family members and who are no longer

safe in their homes, have lost the sanctuary and safety of their homes as refuges from harm. Sometimes this means relocating. For other victims this means that home is inescapably dangerous - not a comfort, not safe, no longer a retreat for personal restoration. For victims of crimes of domestic violence there is a high risk of continued, even escalated, violence after criminal charges are filed and after separation from the perpetrator.

Many might urge upon you and your fellow legislators that these 14 victim protections are not essential for personal risk victims. This is not true. They are especially critical for battered women and children. Those who conclude that battered women and children do not need the expanded rights this legislation would provide harbor, as truth, two grievously erroneous notions about domestic violence. These incorrect assumptions are:

- Once the police have arrested the perpetrator of domestic violence, the battered women and children are safe.
- Once a battered woman separates from her partner, she and the children are no longer at risk.

Empirical research demonstrates that, contrary to these fallacious assumptions, battered women may not be safe after arrest of the perpetrator and are perhaps at greater risk unless the justice system works in a coordinated and meticulous manner to afford additional victim protections. Data from Pennsylvania and around the country demonstrate that men who eventually kill their wives/partners have been the subjects of repeated domestic dispute police contacts. Thus, a significant risk marker for wife/partner homicide is prior, ineffective intervention by police for domestic violence. (1, 2) Beyond this, national data reveal:

- Up to 3/4 of domestic assaults reported to law enforcement agencies were inflicted after separation of the couples. (3)
- Battering is a more common source of injury to women than rape, mugging and auto accidents combined. (4)

- Most men who kill their wives/partners have criminal records of violence, most particularly domestic violence. (5)

Many have asked – Why are some batterers more dangerous after separation and/or after law enforcement response to domestic violence? The data reveal that men escalate their violence against women partners when they apprehend that women are leaving the relationship. Batterers believe that they are entitled to continuing access to their battered partners and, in fact, hold strong convictions that they “own” their spouses. Thus, often devastated by the loss or anticipated loss, they use more severe acts of violence to terrorize battered women back into relationship. The most common motivation for the killing of wives by husbands appears to be retaliation for leaving the relationship and asserting control over their own lives. (6, 7)

But beyond this empirical evidence of the danger of batterers post-criminal justice involvement and post-separation, we have the evidence of our own experience. The experiences of the following women and children illustrate the danger of lethal retaliation by batterers and the critical need for victim information, notice, and protection by the criminal justice system.

- Jane Doe sought refuge in a Minnesota shelter to protect her 16 year old son who had been beaten by his father. Five days after she went to shelter, the batterer kidnapped her at her place of employment, took her at gunpoint to his home and dragged her into the bedroom. He held her at gunpoint for three hours, pleading with her to come back to him. She convinced him she would return to the shelter to pack and then reconcile. She did not return to him. Two days later the batterer followed the son to the shelter. The mother got a protection order. Two days later the batterer came to the front door of the shelter. Three days thereafter he took the battered woman and her son hostage. Her son managed to escape and went back to the shelter. Charges were filed against the batterer and the next morning he was released on \$10,000 bail. Jane was not notified of his release nor were any conditions imposed upon his bail to protect her or her son from further violence. A week later he filed for divorce. Two days later he found her at work again, pulled out a sawed-off 30-30 rifle, shot her and committed suicide. (Section 479.3 (3)(B) and (4) could have saved Jane Doe.)

- Alan Matheney, who was serving time in prison for assaulting his ex-wife, Lisa Marie Bianco, was granted a short-term furlough during which he traveled 120 miles north from the prison to his ex-wife's home where he bludgeoned her to death with the butt of a shotgun. He was a well-respected prisoner. The district attorney and his ex-wife had both asked that they be notified of any furloughs so that the ex-wife could go into hiding as they believed he was intent upon killing her. (Section 479.3 (3)(E) could have saved Lisa Bianco's life.)
- Joan Doe found out from her ex-husband's uncle that he was being favorably considered for parole after only two years of a five-year sentence for kidnapping, maiming and raping her. Although the family and friends of her ex-husband were encouraged to write letters to the parole board supporting his release from incarceration, Joan was not invited by the state to submit a statement. When she learned of the impending parole, she asked for a continuance on the parole hearing in order to prepare her statement and to submit the statement of an expert witness. Her request was denied until a great deal of political pressure was exerted on her behalf. As a consequence, her ex-husband was not paroled and will not be eligible for parole. Joan has asked that she be placed in the witness protection program before he is released because she is convinced that unless she can totally block his access to her, he will kill her. (Section 479.3 (3)(D), (11), and (13) would offer a person like Joan critical protections.)
- Jean Doe was shot by her husband. Prior to trial, he kidnapped their daughter and took her out of the country. He attempted suicide rather than coming back to the United States to face charges. After conviction, he served 6 months of a 1 1/2 year term for the assault. He was a model prisoner. During the six months he was in prison, he plotted his wife's homicide. She asked for restraints on his travel and access to her upon release. Jean asked for the opportunity to participate in his parole review. She was not notified. She asked for notification of the date of his release. She went into hiding immediately after he was incarcerated in order to try to leave a "cold trail." She was not notified of his release. No stay away order was imposed. Jack Doe spent two months tracking Jean. He shot her in the stomach and the head, killing her and her almost full-term unborn child and his daughter whom he

had previously kidnapped. (Section 479.3 (3)(D), (11), and (13) could have saved the lives of all these victims.

- Ruby Powell was subpoenaed as a witness for a hearing to determine whether her estranged husband, Jerome Whyly, had violated his parole on an aggravated assault conviction by abusing the couple's 6-month-old son. As she waited in the courthouse hallway, her husband approached and hustled her outside. When she denied his request for her not to testify, he doused her with gasoline and set her ablaze, causing second- and third-degree burns over nearly 50 percent of her body. Whyly is serving a 114-year sentence for attempted first-degree murder and witness tampering. (Section 479.3 (3)(2) and (13) would have avoided the horrible pain and disfigurement that Ruby will suffer for the rest of her life.)

Most of the assaults and homicides above could have been prevented. The lack of notice was a critical factor in the deaths of several of these battered women. The lack of vigorous victim protection and safeguards clearly is another theme that plays throughout these tragic stories. The most important lesson for the criminal justice system is that when battered women conclude that their partners are potentially lethal, they are correct, and they need vigorous protection.

An example of the extent to which the criminal justice system must extend itself to tailor comprehensive, individual safety and protection plans for women and children arose this week. David R.'s father doused him with gasoline and ignited it, burning his whole body. David miraculously lived but is gravely disfigured and will suffer major medical problems stemming from this arson and attempted homicide for the rest of his life. David is convinced, as are therapists and law enforcement, that his father will try to find him and kill him once he is released from criminal justice supervision. The father served a short sentence and was paroled under a plan for 24-hour surveillance by state officials. This week he escaped from surveillance but was captured and returned to prison. The state acted as H.B. 2513 would require. David is still safe.

The constitutional rights of life and liberty guaranteed by the U.S. and Commonwealth Constitutions are not self-effectuating for battered women and their children; for the Davids, Rubys, Lisas, Janes, Joans and Jeans of Pennsylvania.

Battered women and children can only enjoy life and liberty if as crime victims they are protected and empowered. The 14 elements set forth in H.B. 2513 would substantially improve the possibility of battered women achieving these guaranteed freedoms.

Thank you for your leadership on this issue. Thank you for the opportunity to be heard.

1. Stark, E. "Rethinking Homicide: Violence, Race, and the Politics of Gender." **International Journal of Health Services**, Vol. 20, No. 1, 3-26, 1990.
2. Saltzman, L. E., Mercy, J. A., Rosenberg, M. L., Elsea, W. R., Napper, G., Sikes, R. K., Waxweiler, R. F., and the Collaborative Working Group for the Study of Family and Intimate Assaults in Atlanta. "Magnitude and Patterns of Family and Intimate Assault in Atlanta, Georgia, 1984." **Violence and Victims**, Vol. 5, No. 1, 3-18, Spring, 1990.
3. U.S. Dept. of Justice. **Report to the Nation on Crime and Justice: The Data**. Washington, DC: Govt. Printing Office, 1983.
4. Straus, M., Gelles, R. and Steinmetz, S. K. **Behind Closed Doors: A Survey of Family Violence in America**. Doubleday, New York, 1980.
5. Coker, Donna. "Causality and Patriarchy." Paper for Lawyering Theory and Section 1983 Workshop, 1990.
6. Casanave, N. & Zahn, M. "Women, Murder and Male Domination: Police Reports of Domestic Homicide in Chicago and Philadelphia." Paper presented at the Annual Meeting of the American Society of Criminology, Atlanta, October 31, 1986.
7. Bernard, Zimring, Mukherjee, Winkle. "Intimate Violence: A Study of Intersexual Homicide," **50 U. of Chicago Law Review**, 910, 1983.