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House Bill 2513 - Testimony

Members of the House Judiciary Committee, my name is Sharon Mahar-Potter. I am the Systemic-Special Project Services Coordinator for Pennsylvania Protection and Advocacy, Inc. (PP&A, Inc.). PP&A, Inc. is the federally mandated, Governor designated, independent system in Pennsylvania responsible for the protection of rights of persons who are developmentally disabled or diagnosed as mentally ill.

The federal statute defined "abuse" as any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed knowingly, recklessly, or intentionally, and which caused or may have caused, injury or death to a client, and includes acts such as:

- A. the rape or sexual assault of an individual;
- B. the striking of an individual;
- C. the use of excessive force when placing an individual in bodily restraints; and
- D. the use of bodily or chemical restraints on an individual which is not in compliance with Federal and State laws and regulations.

In accordance with our mandated service role, we have a keen interest in H.B. 2513 and in the continuation and much needed expansion of services provided to individuals who are developmentally disabled or diagnosed as mentally ill. It also challenges us to continually advocate for a service delivery system which is coordinated, accessible and accountable. We want to express our appreciation to the House Judiciary Committee for allowing us this opportunity to provide testimony.

Briefly, if I may outline for you the need of such services, service collaboration (i.e. systems including but not limited to state-community based facilities of mental retardation-mental health; specialized community based services like rape crisis or victim witness; legal representatives like police force or district attorney and others) and the expanded victim protections as outlined in H.B. 2513. PP&A, Inc. may within a given year receive approximately 800 consumer contacts from the developmentally disabled population and 250 contacts from the mental health population. Twenty percent (20%) of these contacts, respectively, will have dealt with some form of abuse and neglect. Specifically, we propose an increase of at least 2% in the coming fiscal year based upon the concurrent % increase over the last several years of rape-sexual assault disclosures to our system.

We are well aware of the fact, nationally and statewide, of the under-reporting of incidents of rape-sexual assault. Moreover, we are keenly cognizant per our service role of the high vulnerability and degradation of individuals who are developmentally disabled or diagnosed as mentally ill who become victims of rape-sexual assault or other assaults. There is under-reporting of these offenses regardless of the individual's treatment program or residential setting. Some of the reasons for the lack of under-reporting are: lack of recognition-sensitivity to sexual abuse by caretakers, the ongoing aftermath of abuse per development and implementation of the individual treatment plan, facility or local community barriers to access specialized community services like rape crisis centers or legal representatives, and incidents of rape-sexual assault or other offenses by the caretaker who has assumed the role of provided-protector. From our perspective, this point could be stated in terms of the need for increased regulatory accountability on the

state-county service system level in providing appropriate responses to situations of abuse, particularly sexual and physical, occurring within a given facility or program. That is to activate comprehensive emergency planning and systems collaboration which includes contact with specialized community services like rape crisis centers and the legal representatives in order to protect and ensure the safety and well being of the individual-victim and to ensure the individual's right (i.e. constitutional, state, residential) in pursuing any civil or criminal action necessary as warranted by a specific harm to the individual.

Secondly, the need for service systems collaboration in the area of developing and implementing individual treatment plans. This mechanism would enable a common understanding among the service providers of the issues involved with rape-sexual assault, physical assault, or other offenses. Therefore, the development of the individual treatment plan would be pro-active, rather than debilitating.

At this point, I would direct your attention to H.B. 2513 Recommended Revisions. Specifically, I refer to the following points:

Page 1 Definitions Section 479.1
Page 2 Basic Bill of Rights for victims Section 479.3, Point (3)(1)
line 17 and the following:

Page 3 Section 479.3 Point (3)(1)(v) line 5
Page 5 Section 479.3 Point (5) line 9-13
Page 6 Section 479.3 Point (7) line 27-30
Page 7 Section 479.3 Point (8)(i),(ii) lines 7-22
Page 8 Section 479.3 Point (10) lines 26-30
Page 8 Section 279.3 Point (10) lines 1-7
Page 9 Section 479.3 Point (11) lines 8-15
Page 9 Section 479.3 Point (11) lines 16-17 (i)
Page 10 Section 479.3 Point (13) lines 25-28

Victimization does not take place in a vacuum. It permeates one's whole being. Individuals who are developmentally disabled or diagnosed as mentally

ill do not exist in a vacuum and are or may become victims of crime. Therefore, it is paramount that we have a service delivery system which is coordinated, collaborative, accessible and accountable.

In conclusion, we have several comments: first, we bring to your attention the consistent societal misconception that persons who are mentally- developmentally disabled are asexual or do not become victims of rape-sexual assault or victims of other offenses. Similarly, such actions by those accountable to the individual for whom they care or serve in a public service capacity perpetuate these misconceptions by not informing oneself on issues of rape-sexual assault-disability. Additionally, individuals in positions of caretakers or public service capacity who do not provide the appropriate responses and information to the victim by continual use of inappropriate conversation or the written word only reinforce the negative attitudinal barrier for persons with disabilities which results in a negation of their human dignity and a restriction of their civil rights.

Second, we request your consideration of the need for increased service system collaboration. This means a re-evaluation of existing resources within a given facility or specialized community service. The mind-set of parochialism on the part of service providers, particularly within a facility or community based program, must be dispelled by the utmost adherence to service care accountability to the individual-victim especially when incidents of abuse (rape-sexual assault or other offenses) occur. Therefore, individual rights are assured and all parties continue to have the well-being and best interest of the individual-victim in the forefront.

At this point, I would again direct your attention to the Recommended Revisions to H.B. 2513 for full Committee review and consideration.

PP&A, Inc. solicits your continual attention and accountability per your service role and respectful of the commonalities we share as civic, ethical and moral human beings to individuals who are developmentally disabled or diagnosed as mentally ill and who are or may become victims of crime or who are survivors.

We thank you again for your time, the effort put forth to protect and ensure the rights of all victims as evidenced in this legislation and your due consideration of our testimony.

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HOUSE BILL NO. 2513 RECOMMENDED REVISIONS

DEFINITIONS

Section 479.1 Definitions, page 3, line 16

We suggest adding:

Individual with a disability - The term "disability" means with respect to an individual -

- A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- B) a record of such an impairment; or
- C) being regarded as having such an impairment.

Auxiliary aids and support services - The term "auxiliary aids and services" includes -

- A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- C) acquisition or modification of equipment or devices; and
- D) other similar services and actions warranted by the needs of the individual with a disability.

Support services advocate - A person(s) who provides assistance to or pleads the cause of an individual with a disability at their request.

Basic Bill of Rights For Victims

Section 479.3, page 4, point (3) (1) line 17

Basic Bill of Rights for Victims. Victims of crime have the following rights:

We suggest adding:

Line 17 District attorney offices shall gather information regarding the following services in their respective jurisdictions and shall provide such information to each law enforcement agency within the county.

The information shall include all auxiliary aids and support services warranted by the needs of the individual with a disability.

Law enforcement personnel shall ensure ...

Section 479.3, page 5, point (3) (1) (v) line 5
Basic Bill of Rights for Victims. Victims of crime have the following rights:

We suggest adding:

Line 5 *The rights of a victim who is not incarcerated, including the next-of-kin of a homicide victim, and any designated support services advocate, to be informed, to be present and to be heard, when relevant, at all crucial stages of a criminal proceeding, to the extent that this right does not interfere with constitutional rights of the accused.*

*Section 479.3, page 7, point (3) (i) (F) Lines 1-4
Advance notification to personal risk victims concerning judicial proceedings and
defendant status.*

*Lines 1-4 We find (3)(i)(F) unobjectionable. For similar language see Senate
Bill 5,* subchapter B Records and Immunities Section 112.
Confidentiality of records. (c) Privileged communications (1), (2),
(3), (4).*

* Senate Bill 5 Printer's NO. 1173

Section 479.3, page 7, point (3)(i)(G), Lines 5-8.

We suggest adding:

*Line 5 (G) Unlawful escape of an offender from a state correctional
institution, county jail, regional facility, juvenile detention
center or involuntary commitment facility; notification to be
immediate.*

Section 479.3, page 8, point (5), line 9-13.

We suggest adding:

Notification of scheduling changes. Each victim who has been scheduled or subpoenaed to attend a criminal justice proceeding and their designated support service advocate shall be notified as soon as possible by the appropriate agency of any change in scheduling which will affect his or her appearance.

Section 479.3, page 8, point (6), line 14-18.

We suggest adding:

Consultation with personal risk victim and any designated support services advocate. A personal risk victim and any designated support services advocate shall be consulted by the district attorney in order to obtain the views of the victim or family about the disposition of any criminal case brought as a result of the crime, including the views of the victim or family about:

Section 479.3, page 8, point (7), line 27-30.

We suggest adding:

Return of property to victim . Law enforcement agencies and the district attorney shall promptly return a victim's property held for evidentiary purposes unless there is compelling law enforcement reason for retaining it.

If retention of victim's property, particularly any assistive device or auxiliary aid, is warranted, the law enforcement agency and the district attorney shall promptly notify the victim the personal risk victim, parent or legal guardian and any designated support services advocate of this retention so as to facilitate prompt replacement.

Section 479.3, page 9, point (8), line 7.

We suggest adding:

Intercession with employer, creditor and others.

Section 479.3, page 9, point (8)(i),(ii) lines 7-22.

We suggest adding:

(iii) A victim who so requests shall be assisted by law enforcement agencies and the district attorney in informing his supervisor of rehabilitative programming or director of individual treatment that the need for victim cooperation in the prosecution of the case may necessitate the temporary absence from the designated facility of that victim from their specific program or treatment.

Section 479.3, page 9, point (10), lines 26-30.

We suggest adding:

(10) Right to restitution as a condition of probation or parole. Law enforcement agencies and the district attorney shall inform the victim and any designated support services advocate of this victim's right to request and receive restitution and the procedure to enforce an order for restitution in the event an offender does not comply.

Page 10, point (10), lines 1-3

The district attorney shall seek the assistance of the victim and any designated support services advocate in the documentation of the victim's losses for the purpose of requesting restitution.

Page 10, point (10), lines 5-7

In addition, the district attorney shall inform the victim and any designated support services advocate if restitution is ordered and shall seek timely compliance by an offender with any order of restitution.

Section 479.3, page 10, point 11, lines 8-15.

We suggest adding:

(11) Right to submit impact statement. The district attorney shall inform a personal risk victim and any designated support services advocate of the victim's right to have information included in the presentence report and at any parole hearing about the impact the crime, committed by the defendant, has had upon the victim, including any physical or psychological harm, any disruption to individualized program of rehabilitation or treatment or financial loss suffered by the victim or on the victim's family, to the extent that such information is available from the victim or other sources by either:

(11) Lines 16-17 (1)

(1) a written or oral statement prepared by the victim, the victim's family or any designated support services advocate; or

Section 479.3, page 10, point 13, lines 25-28.

We suggest adding:

General victim assistance. The district attorney shall assure that victims are provided with other assistance as may be practicable, such as transportation, parking, separate pre-trial waiting areas, translator services and other support services and auxiliary aids.

Section 479.3, page 11, point (14), lines 6-9.

We suggest adding:

The district attorney shall thereupon immediately make every effort to notify personal risk victim, any material witness, parents or legal guardian of a minor who is a victim or material witness and any designated support services advocate.