



**PENNSYLVANIA COALITION AGAINST RAPE**

*A state network of centers serving victims of sexual assault.*

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TESTIMONY PRESENTED BY

SUSAN J. CAMERON  
EXECUTIVE DIRECTOR

THE PENNSYLVANIA COALITION AGAINST RAPE

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HOUSE JUDICIARY COMMITTEE

HEARINGS ON

HOUSE BILL 2302

APRIL 15, 1992

Good morning, I am Susan J. Cameron, Executive Director of the Pennsylvania Coalition Against Rape (PCAR). Last year, the 45 sexual assault centers funded through PCAR provided direct service to more than 30,000 persons, and presented more than 8,800 prevention/education programs to nearly 225,000 students.

In the past, the General Assembly, and particularly the ~~House Judiciary Committee, have been supportive of services to~~ the victims of sexual violence and the PCAR centers funded to provide such service. Representatives Blaum, Hagarty and Ritter also served as members of the House Select Committee on Rape Crisis and Domestic Violence Services chaired by former Representative Connie Maine. Most often, PCAR, this Committee and its individual members have worked together as allies on behalf of the victims of sexual violence. Today, we welcome the opportunity to present testimony on HB 2302, because we believe that it offers another opportunity to directly impact the lives of the women, men and children who are the victims of sexual violence.

In 1972, Pennsylvania enacted major changes to the sex offense statutes. Only two rape crisis centers existed in Pennsylvania, Pittsburgh Action Against Rape and Women Organized Against Rape in Philadelphia. At that time, our knowledge about sexual violence was limited, most often bound by myths and stereotypes that we now know are false.

Today, we know that sexual violence is not only rape. It is far more pervasive and complex and intrudes into far more people's lives than we ever imagined in 1972.

The changes enacted then essentially defined four major offenses: rape, statutory rape, involuntary deviate sexual intercourse and voluntary deviate sexual intercourse. The penalty for rape was reduced from life to 20 years.

As our knowledge and understanding about sexual violence and its impact on victims increased, several significant changes in law have been enacted. The rape shield law protecting a victim's past sexual history and the confidentiality law protecting communication between a sexual assault counselor and a victim are two notable examples. Most recently, the legislature acted to extend the criminal statute of limitations for child sexual assault victims. All of these changes are important and demonstrate this legislature's sensitivity and increased knowledge about the impact of sexual violence on the lives of its victims.

However, the sex offense statutes remain essentially the same as they were twenty years ago. To accommodate our new knowledge about sexual violence, special circumstances have been added pertaining to the age of the victim, or the age of the perpetrator, or the circumstances of the crime, or the relationship of the victim to the perpetrator, or the type of weapon used. What once was offered as a simplification of offense statutes has become a complicated and often confusing

offense code - especially to victims who are desperately seeking clarity, rationality and justice.

For the last several years, one of PCAR's priorities has been the revision of the sex offense statutes. We presented testimony before the House Select Committee about the need for such reform. The Committee endorsed this recommendation as part of its final report. Our sense of urgency about this issues increased, when more than a year ago, we began to look at the reconsideration of the Sentencing Guidelines by the Pennsylvania Commission on Sentencing.

In reviewing the 1989/90 Annual Report of the Commission, we found that only 49% of rape sentences fall within the standard range. Of the remaining sentences, 29% are below the standard range due to mitigating and other circumstances. The length of sentences for rape, a first degree felony, ranged anywhere from one to 13 years of incarceration.

For statutory rape, the same report indicated that the length of incarceration ranged from less than one year to a little over five years. In fact, 21% of persons convicted of statutory rape received probation.

In reviewing this information, it would be easy to conclude that the sentencing guidelines are in need of change - and that is true. But, beyond that, we must look to what offenses can be initially charged. Changes in sentencing guidelines can and will be only as effective as the adequacy of the front end offense charges. It is here, at the beginning of the process, where the revisions of twenty years ago must be reexamined.

HB 2302 and the accompanying omnibus amendment represent a comprehensive rethinking of the Pennsylvania's sex offense statutes. It represents the culmination of research, discussion, lengthy meetings and negotiations among a victim advocacy groups such as PCAR, prosecutors, public defenders and the Attorney General's Office and the Sentencing Commission. The major players have been involved.

~~We are pleased to be a part of this process and strongly~~  
recommend HB 2302 and the omnibus amendments for consideration and swift passage. We commend Representative Ritter for her persistence and patience over the last months during the drafting process.

Twenty years ago, the goals of reform were: to increase the reporting of these crimes, to improve the system's treatment of and response to sexual violence victims, to improve case processing and disposition, increase deterrence; increase conviction rates; and change social attitudes about rape. These goals remain today. We believe that HB 2302 is a major step toward their achievement.

The changes proposed are lengthy and comprehensive. I would like to address only several specific changes from PCAR's perspective.

Several changes in language are important. Throughout the bill, the terms "victim" and "defendant" are used. The bill is gender neutral. Structurally, this avoids the awkward he/she construction. More importantly, it indicates the reality that males, both adults and children, are victims of sexual violence

and that victim and defendant may be of the same sex. While the majority of offenses are committed by males upon females, sexual violence is not gender limited. Approximately 7% to 10% of all victims are male. And males below the age of 18 account for 25% of children in sexual abuse cases.

The legislation proposes a major change in that the term rape and deviate sexual intercourse are replaced by the more encompassing term sexual assault. For many, the term rape is narrowly defined and limited to the act of sexual intercourse by a man against a woman. In fact, this is the definition used in many dictionaries. It is a common usage definition with which we are most familiar. It reinforces a narrowness of thinking about sexual violence and legitimizes old myths and stereotypes.

The term "sexual assault" is more truly reflective of the aggressive nature of the crime and the sexual violence that is used to control another person. These changes in language are important and more indicative of our knowledge about and understanding of sexual violence.

The legislation provides for what PCAR believes is a more appropriate and comprehensive tiering of offenses. Currently, sex offenses that can be charged include Felony 1 and Felony 2 offenses. No Felony 3 and only Misdemeanor 1 offense exist. Too often, prosecutors have only choices at the extremes for charging and for plea bargaining. There is little middle ground. We should not then be surprised when a felony is not charged, or when a felony charge is quickly pleaded to a misdemeanor, or when all reference to a sex offense is pleaded out in favor of simple

3

or aggravated assault. This system works, after a fashion. But, all too often, the victim is at a loss to understand how and why.

The proposed legislation provides for a more complete range or tiering of offenses from Felony 1 to Misdemeanor 2 status. More alternatives for charging are available. PCAR believes that this change will increase the number of cases charged and narrow the limits of plea bargaining.

Recent court decisions have made it increasingly more difficult to offer testimony regarding the reasons for a victim failing to promptly report a sexual offense and to offer testimony on behavior patterns of sexually victimized children. Our knowledge about the behavior of sexual assault victims, both adults and children, is far more comprehensive than the court has chosen to entertain. It is important that both general and specific knowledge, supported by research, be available to the jury as part of its deliberations. The bill provides for the introduction of such information in ways that encourage understanding and education, but control the battle of expert witnesses to carefully prescribed circumstances.

PCAR is pleased that HB 2302 provides direction on the use of lie detector tests by law enforcement officials with regard to the investigation of a sexual offense. Section 3110 does not prohibit the use of such tests, but clearly states that no jurisdiction require that a victim submit to a lie detector test as a condition for proceeding with an investigation, the charging or prosecuting of a sexual offense.

While certainly not a common practice nor one anywhere written in policy, sexual violence victims do report that investigations have ended or charges been dropped after a refusal to submit to a polygraph. PCAR believes that no investigation or prosecution should be dependant upon a victim's willingness or unwillingness to take a lie detector test.

Some may argue that this provision is unnecessary because requiring a victim to take a lie detector test as the quid pro quo for continuing an investigation or charging is not common practice and an unusual occurrence. PCAR maintains that it should not even be the uncommon practice or unusual occurrence. Section 3110 makes this position a matter of public policy that recognizes the usefulness of such tests as an investigative tool, but legislatively cautions its misuse. For those jurisdictions where this is not an issue, current practice is ratified. For those few jurisdictions or exceptions where the prohibition is appropriate, legislative notice and direction is given.

Section 5991 addresses the issue of the competency of children to testify. Currently, Pennsylvania statutes do not address this issue. However, case law assumes that all children under the age of 14 incompetent to testify unless proven competent. PCAR believes that this places an unnecessary burden on the prosecution and further discourages the reporting of child sexual abuse.

This case law assumption in Pennsylvania is contrary to the Federal Rules of Evidence which consider all individuals, with few exceptions, competent to testify including children.



Unfortunately, in many states including Pennsylvania, case law requirements based on age have made it necessary act through statute. To date, forty other states have enacted laws which either statutorily declare all children competent to testify unless proven otherwise or declare sexually and physically abused children competent to testify. Adoption of Section 5991 would make Pennsylvania the forty-first state to rectify this problem.

Finally, this bill provides for the elimination of the offense of spousal sexual assault. Eight years ago, PCAR was outspoken in our support of legislative action to include spousal sexual assault in the crimes code. Its adoption was hard fought and controversial. I hope that its proposed elimination will be less controversial and more easily won.

While the current spousal sexual assault law validates the fact that spouses can and do sexually victimize their spouses, its construction still limits the rights of the victim because of marital status. Individuals filing charges of spousal sexual assault are given only 90 days from the date of the assault, essentially a 90 day statute of limitations. The same person, if assaulted by a stranger, acquaintance or other family member would have five years from the date of the assault to file charges.

This restriction, enacted out of a fear of false allegations or manipulation of the law by a vengeful spouse has proved groundless after eight years of experience.

Since the mid 1970's, 18 states have eliminated the spousal exemption provisions of their law. PCAR believes that the time

has come for Pennsylvania to join these other states in declaring that the marital status of a victim does not lessen the severity of a crime nor deny the victim equal protection under the law.

As an attachment to this testimony, we have included a summary of the provisions of state sexual offense statutes. A quick review indicates that only the District of Columbia addresses fewer of the listed variables in statute than does current Pennsylvania law. The alternative to statutory action is a reliance on case law. In some instances, this has proven satisfactory and sufficient. But, it is also appropriate to periodically codify case law into statute and establish clear legislative direction for the future. In endorsing HB 2302, PCAR believes that an appropriate balance is struck between statute and case law. While the example of other states is instructive, Pennsylvania's experience over twenty years indicates that comprehensive action is required.

On behalf of the victims of sexual violence for whom PCAR advocates, we urge you to act favorably on HB 2302 and the omnibus amendment.

Thank you.

FELONY (F) AND MISDEMEANOR (M) CHARGES

CURRENT LAW		HOUSE BILL 2302
F-1	RAPE	AGGRAVATED SEXUAL ASSAULT
F-1	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE	<del>SEXUAL EXPLOITATION OF A CHILD</del>
F-2	STATUTORY RAPE	SEXUAL ASSAULT
F-2	AGGRAVATED INDECENT ASSAULT	SEXUAL ABUSE OF CHILDREN (Photographing, Filming)
F-2	SPOUSAL SEXUAL ASSAULT	
F-2	INCEST	
F-3		SEXUAL ABUSE OF CHILDREN (Dissemination, Possession)
M-1	INDECENT ASSAULT	INDECENT ASSAULT
M-1		INCEST
M-2	VOLUNTARY DEVIATE SEXUAL INTERCOURSE	INDECENT EXPOSURE
M-2	INDECENT ASSAULT	INDECENT CONTACT
M-2	INDECENT EXPOSURE	

VARIABLES USED IN UNITED STATES SEXUAL OFFENSE STATUTES  
(Adults and Children)\*\*

STATE	TYPE OF INTERCOURSE (Penetration)	SEXUAL CONTACT (No Penetration)	PHYSICAL FORCE (Defined)	COERCION (Defined)	USE OF WEAPON	PHYSICAL INJURY	AIDED OR ABETTED	POSITION OF AUTHORITY	FAMILIAL RELATIONSHIP TO VICTIM	MENTALLY INCAPACITATED	MENTALLY DISABLED	PHYSICALLY HELPLESS	AGE OR AGES OF VICTIM	MARITAL EXEMPTION (limited or unlimited)	GENDER NEUTRAL	LENGTH OF COURT TESTIMONY (children)	COMPETENCY TO TESTIFY (children)	SPEDDY TRIAL (children)
AL	X	X	X	X						X	X	X	16				X	X
AK	X	X	X	X		X		X	X	X	X	X	13, 14 15, 16	X	X		X	
AZ	X	X	X	X	X	X							15, 16 17	X	X		X	
AR	X	X	X	X				X		X	X	X	14, 16	X			X	X
CA	X	X	X	X				X		X	X	X	14, 16 18	X		X	X	X
CO	X	X	X	X	X	X	X	X	X	X		X	15, 18	X	X		X	X
CT	X	X	X	X	X			X		X	X	X	15, 16 18	X	X		X	
DE	X	X	X	X	X	X				X	X	X	16	X			X	X
DC	X	X	X	X									16					
FL	X	X	X	X	X	X	X	X	X	X	X	X	12 - 18		X		X	X
GA	X	X	X	X		X		X					14				X	
PA	X	X	X	X									14	X				

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STATE	TYPE OF INTERCOURSE (Penetration)	SEXUAL CONTACT (No Penetration)	PHYSICAL FORCE (Defined)	COERCION (Defined)	USE OF WEAPON	PHYSICAL INJURY	AIDED OR ABETTED	POSITION OF AUTHORITY	FAMILIAL RELATIONSHIP TO VICTIM	MENTALLY INCAPACITATED	MENTALLY DISABLED	PHYSICALLY HELPLESS	AGE OR AGES OF VICTIM	MARITAL EXEMPTION (limited or unlimited)	GENDER NEUTRAL	LENGTH OF COURT TESTIMONY (children)	COMPETENCY TO TESTIFY (children)	SPEDDY TRIAL (children)
HI	X	X	X	X		X		X		X	X	X	14	X	X		X	
ID	X	X	X	X						X	X		16, 18	X				
IL	X	X	X	X	X	X		X	X		X		13, 18	X	X			X
IN	X	X	X	X	X	X					X		12, 16		X		X	X
IA	X	X	X	X	X	X	X	X	X	X	X	X	12 - 15	X	X	X	X	X
KS	X	X	X					X		X	X	X	16	X			X	
KY	X	X	X	X						X	X	X	12, 14 16	X			X	X
LA	X	X	X		X		X			X	X		12, 15 17	X			X	
ME	X	X	X	X				X	X	X	X	X	14, 16 17		X		X	
MD	X	X	X	X	X	X	X			X	X	X	14, 15	X	X		X	
MA	X	X	X	X						X			14, 16		X		X	
PA	X	X	X										14	X				

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MI	X	X	X	X	X	X	X	X	X	X	X	X	13 - 15		X			X
MN	X	X	X	X	X	X	X	X	X	X	X	X	13 - 16	X	X		X	X
MS	X	X	X							X			14	X			X	
MO	X	X	X		X	X	X						12 - 16	X			X	X
MT	X	X	X	X		X				X	X	X	16	X			X	
NE	X	X	X	X		X					X	X	14, 16		X		X	
NV	X	X	X	X		X					X	X	14, 16				X	
NH	X	X	X	X		X		X	X	X	X	X	13 - 16	X	X		X	X
NJ	X	X	X	X	X	X	X	X	X	X	X	X	13 - 18		X		X	X
NI	X	X	X	X	X	X	X	X			X	X	13 - 18		X			
NY	X	X	X	X						X	X	X	11, 14 17		X			X
PA	X	X	X										14	X				

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NC	X	X	X		X	X	X	X	X	X	X	X	13	X	X	X	X	X
ND	X	X	X	X				X	X	X	X		15				X	X
OH	X	X	X	X			X	X	X	X			12 - 16	X	X			
OK	X	X	X	X		X		X		X	X		14, 16	X	X		X	
OR	X	X	X	X					X	X	X	X	12, 14 16, 18				X	
RI	X	X	X	X						X	X	X	14, 16	X	X			X
SC	X	X	X	X				X	X	X	X	X	11 - 16	X	X		X	
SD	X	X	X	X					X	X	X		10 - 16		X		X	
TN	X	X	X	X	X	X	X	X	X	X	X	X	13 - 18	X	X		X	
TX	X	X	X	X	X	X				X	X	X	17	X				
UT	X	X	X	X	X	X	X	X	X	X	X	X	14 - 18		X		X	
PA	X	X	X										14	X				

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VT	X	X	X	X		X				X			16		X		X	
VA	X	X	X	X	X	X				X	X	X	13 - 15	X	X		X	
WA	X	X	X	X	X	X		X	X	X	X	X	11 - 18	X	X			X
WV	X	X	X	X	X	X				X	X	X	11, 16	X	X		X	
WI	X	X	X		X	X	X				X	X	12 - 18	X	X		X	X
WY	X	X	X	X	X	X		X	X	X	X	X	12 - 16	X	X		X	
PA	X	X	X										14	X				

\*\*Current through December, 1990