



PENNSYLVANIA COALITION AGAINST RAPE

A state network of centers serving victims of sexual assault.

**TESTIMONY
BEFORE THE
HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE**

**HOUSE BILL 160
SEPTEMBER 1, 1993**

**PRESENTED BY
SUSAN J. CAMERON, EXECUTIVE DIRECTOR
PA COALITION AGAINST RAPE**

As Executive Director of the Pennsylvania Coalition Against Rape (PCAR), I am pleased to submit testimony in support of House Bill 160. This proposal, being sponsored by Representative Karen Ritter (D-Lehigh), will comprehensively alter our state's sexual offense statutes and accompanying evidentiary rules. Passage of House Bill 160 will greatly enhance Pennsylvania's response to sexual violence by expanding and strengthening protections under the law.

Rep. Ritter's present proposal is a result of research, meetings, discussions, negotiations and a previous public hearing conducted by this Committee. The proposal to change Pennsylvania's sexual offense laws has initiated a dialogue between victim advocates, prosecutors, law enforcement officials, defense attorneys, judges and legislators to review the adequacies and inadequacies of our laws and make recommendations. This dialogue is welcomed and is long overdue. Throughout the process the essence and spirit of the legislation has remained constant while being refined for clarity and to address valid concerns that have been raised.

The comprehensive revision of Pennsylvania's sexual offense laws has always been a priority for PCAR. The Coalition has long supported the adoption of laws, regulations and policies that effectively address sexual violence and treat victims/survivors justly. Proposals impacting the lives of sexual violence victims/survivors are critically evaluated by the PCAR as to whether the proposal: 1) uses language that clearly implies that anyone, regardless of gender, can become a victim of sexual violence; 2) focuses on the act itself and not the actions or lifestyle of the sexual violence victim; 3) holds all perpetrators equally accountable for their actions; and 4) recognizes that children have

unique vulnerabilities requiring unique protections. PCAR believes that these are important standards by which to judge any proposal addressing sexual violence and impacting the treatment of the victims/survivors and the offenders. House Bill 160 addresses each one of these standards appropriately and adequately.

The gender neutral terms in which House Bill 160 is written recognize the undeniable fact that anyone, regardless of gender, can be either a victim or a perpetrator. The sexual victimization of women, children and men must be addressed equally by our laws. Using the phrase "sexual assault" in lieu of rape is also an example of using language to convey the reality that anyone is a potential victim. The public misconception that rape victims are only adult women must not be re-enforced in law.

Pennsylvania's sexual offense statutes are currently governed by such factors as the familial relationship between a victim and the offender, resistance or lack thereof by the victim, and the marital status of the victim. None of these qualifiers have anything to do with the act of sexual violence itself. Accountability for one's actions must be placed squarely on the shoulders of the offender. House Bill 160 does that by eliminating all spousal exemptions, the spousal sexual assault offense, and the judgmental and demeaning phrase "prevent resistance by a person of reasonable resolution." House Bill 160 also provides guidelines regarding the administering of lie detector tests and prohibits defense counsel from suggesting that the clothing of the victim provoked the assault.

The vulnerabilities and needs of children are not ignored by this legislation. House Bill 160 would change the competency rules governing children by deeming all alleged child victims of sexual assault and physical abuse competent to testify unless proven

otherwise. According to the National Center for Missing and Exploited Children, Pennsylvania is in the minority of states which still have threshold provisions. In addition, the Federal Rules of Evidence considers every person competent to be a witness regardless of age. The bill would also require judges to consider any adverse implications for the child before granting continuances in criminal proceedings. Eighteen states have passed similar laws. The bill's provisions will ensure that sexual offenses committed against children will be dealt with swiftly and severely.

Currently the Pennsylvania Supreme Court has before it the case of ***Commonwealth v. Berkowitz*** which raises several questions critical to the prosecution of rape - what constitutes forcible compulsion, consent and resistance. In ***Commonwealth v. Berkowitz***, the defendant's rape conviction was overturned by the Superior Court on the basis that the victim's verbal pronouncements of "no" were not enough to sustain the conviction. While the legal specifics of the case are best explained by an attorney; the fact that this case is even before the court is of grave concern. The Superior Court ruling, if upheld, has the potential of so narrowly defining the law as to make it next to impossible to obtain a rape conviction in Pennsylvania.

Pennsylvania's statutes fail to define or provide clear direction as to what is meant by the terms "forcible compulsion," "reasonable resistance," and "consent." The interpretation and applicability of these words has been left up to the courts to decide. To the detriment of justice, case law has been slow to emerge and the decisions too often have been convoluted. While prosecutors await the outcome of cases such as ***Berkowitz***, they are often reluctant to proceed with similar cases. Whenever the

interpretation of law is in a state of flux, the state's interest in prosecuting sexual violence is not well served. Statutes that contain clear and complete definitions or otherwise signify legislative intent better serve the interests of all.

House Bill 160 represents a comprehensive and progressive approach to addressing sexual violence by the state of Pennsylvania. In the last twenty years, our knowledge regarding the pervasiveness of sexual violence and the accompanying short and long-term consequences has increased greatly. This knowledge requires us to do no less than change the way in which our criminal justice system responds. Pennsylvania's policies and laws must clearly support the premise that sexual violence will not be tolerated regardless of the manner in which it is manifested.

Last session, PCAR testified in support of House Bill 2302, the original form of the legislation before you today - House Bill 160. As part of your deliberations, the Committee may want to reference PCAR's testimony on House Bill 2302. All of the issues discussed in that testimony are again addressed in House Bill 160.

Once again, PCAR commends Representative Ritter for her persistence and patience over the last months during the drafting and discussion process.

Once again, on behalf of victims of sexual violence for whom PCAR advocates, we urge you to act favorably on House Bill 160. PCAR believes that its passage represents a major step in the achievement of goals established more than twenty years ago.