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TESTIMONY ON HOUSE BILL 2389

PRESENTED BY THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA BEFORE THE PENNSYLVANIA HOUSE JUDICIARY COMMITTEE ON MARCH 21, 1996

Good morning. My name is Larry Frankel and I am the Acting Executive Director as well as the Legislative Director of the American Civil Liberties Union of Pennsylvania. I would like to thank Representative Gannon and the other members of the House Judiciary Committee for providing me with this opportunity to testify on House Bill 2389 which proposes to make changes to the insanity defense.

The ACLU opposes either the abolition of the insanity defense or the weakening of that defense. We believe that criminal defendants have the right to put before the trier of fact evidence of their mental state at the time the crime was committed. We think that juries should continue to have the discretion for determining whether a defendant is legally insane and should not be confined to a consideration of criminal intent.

The General Assembly should not attempt to criminalize behavior which is beyond the proper reach of the criminal law. The irreducible basis for criminal liability, and the consequent

deprivation of liberty, in the Anglo-American legal system has long been individual responsibility for acts and decisions. A diminishing of the insanity defense conflicts with that tradition. This legislation, if enacted, will result in the imposition of criminal responsibility on individuals who, due to their mental state, are not blameworthy.

We believe that the insanity defense permits society to distinguish among those cases in which a punitive-correctional disposition is appropriate from those cases in which a medical-custodial disposition is appropriate. The insanity defense, and the distinction it attempts to draw between the guilty and the ill is deeply rooted in American and English history. It reflects a shared belief that it is fundamentally unfair to hold an individual responsible for actions which are the result of illness.

House Bill 2389, in attempting to limit the use of the insanity defense, essentially undermines the distinction between those who should be deemed culpable and those who should not be found guilty because they suffer from a mental disease. House Bill 2389 inappropriately focuses on the ability to form intent rather than illness. Certainly a delusional person can form an intent even if he or she cannot distinguish between right and wrong. House Bill 2389 would result in punishment, rather than treatment, being inflicted on the mentally ill. It is a direct assault on our humanitarian values.

The ACLU suspects that the proposed changes will merely add to the public's confusion regarding which individuals the law does not consider responsible for their criminal acts because of their mental illness. Several years ago the General Assembly adopted the guilty but mentally ill verdict. Now, some prosecutors are suggesting that we need to make even further changes, even though very few defendants attempt an insanity defense and only a handful of those

defenses are successful.

In August of 1993, the American Psychiatric Association published a fact sheet on the insanity defense. That sheet noted that:

> the insanity defense is not often used. According to one recent eight-state study (funded by the National Institute of Mental Health and reported in the *Bulletin of the American Academy of Psychiatry and the Law,* Vol. 19, No.4, 1991), the insanity defense was used in less than one percent of the cases in a representative sampling of cases before those states' county courts. The study showed that only 26 percent of those insanity please were argued successfully, and further emphasized that 90 percent of those who employed the defense were diagnosed with a mental illness. Most studies show that approximately 80 percent of the cases where a defendant is acquitted on a 'not guilty by reason of insanity' finding, it is because the prosecution and defense have agreed on the appropriateness of the pleas before trial.

We sincerely doubt a legislative manipulation of the definition of insanity will radically change these numbers or make it any easier for jurors or judges to differentiate between the criminal and the person in need of treatment in those small number of cases where the insanity defense is raised.

We also know that the kind of change contemplated by this legislation will be ineffective at making Pennsylvania any safer. Diverting more people with mental health problems into our prisons will only compound the existing tragic situation which finds too many people with mental illnesses languishing in prisons and jails. The National Association of Counties estimated in 1988 that people with mental illnesses make up approximately 10 percent of the population in local jails. Many observers believe that there is a similarly high proportion of state prison inmates who suffer from some mental illness. Our prisons are already overcrowded and face significant management problems. The General Assembly need not aggravate this problem by

narrowing the insanity defense.

Instead, the ACLU encourages you to take a hard look at the proposed state budget as it affects mental health services. According to the Department of Public Welfare, Office of Mental Health, Governor Ridge has proposed a decrease of more than $43 million in the amount of state and federal funds budgeted for mental health services. Certainly if there is a concern about the risks posed by those with mental illnesses, the more logical response would be to increase the funding for mental health services rather than experimenting with the insanity defense.

Finally, we think there may be a need to take a closer look at what treatment and supervision Pennsylvania provides to those who are found not guilty by reason of insanity. Compared with other states, our laws appear to be rather limited in the area of post-verdict disposition. We support an important component of the present procedure. Certainly a defendant who is not guilty as a result of insanity may be subject of immediate proceeding for involuntary commitment to a mental treatment facility. We believe, however, that it might be productive to create a more extensive set of options and programs for the post-verdict disposition of those acquitted by reason of insanity. Such programs could include ongoing outpatient treatment after discharge from an institution, special evaluation, review and monitoring procedures, conditional discharges from institutions and more intensive supervision upon discharge.

In establishing such alternatives, due consideration should be given to guaranteeing that constitutionally adequate standards and procedures are not sacrificed. A finding of not guilty by reason of insanity should not become a basis for a deprivation of liberty that is greater than the deprivation suffered by one who is found guilty of committing a crime or one who has been

civilly committed through a procedure unconnected to any criminal episode.

Thank you again for allowing me to testify today. I will be happy to try to answer any questions that any members of the Judiciary Committee may have.