



ACLU of Pennsylvania  
125 South 9th Street, P.O. Box 1161  
Philadelphia, PA 19105-1161  
(215) 592-1513  
fax: (215) 592-1343  
email: aclued@aol.com

James D. Crawford  
*President*

Larry Frankel  
*Executive Director*

**TESTIMONY OF DAVID JAROS**  
**LEGISLATIVE ASSISTANT**  
**AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA**  
**ON HOUSE BILLS 1717 AND 1718**  
**BEFORE THE SUBCOMMITTEE ON CRIME AND CORRECTIONS**  
**OF THE**  
**PENNSYLVANIA HOUSE JUDICIARY COMMITTEE**  
**NOVEMBER 18, 1997**

Good afternoon. My name is Dave Jaros. I am the Legislative Assistant at the American Civil Liberties Union of Pennsylvania. I would like to thank the Subcommittee for providing me with this opportunity to present testimony on House Bills 1717 and 1718.

The ACLU shares the Subcommittee's concern with protecting society from the dangers of sexual assault and violence. The Subcommittee's decision to explore creative solutions and various forms of treatment are to be commended in the face of the crucial need to prevent the tremendous harm which occurs as a result of sexual assault. We hope this Subcommittee's efforts will extend beyond the two bills in front of it today and that you will take a hard look at guaranteeing the availability of treatment from the *beginning* of incarceration. The ACLU believes the public is ill served by instituting treatment only at the point at which an offender is about to be released back into society.

House Bill 1718 grants the Parole Board the discretion, based on medical and psychiatric evaluations, to require an inmate to submit to drug treatment to suppress "aberrant sexual behavior" as a condition for receiving parole. House Bill 1717 grants similar authority to the court as a condition of receiving a sentence of probation. While "chemical castration" may be a valuable tool in the fight to prevent sexual assault, the ACLU believes this legislation should be considered with extreme caution. The prospect of encouraging, perhaps even coercing, individuals to take drugs which alter their thoughts and behavior raises profound ethical and constitutional issues which cannot be ignored. This moral dilemma is further exacerbated by the fact that the proposed drug treatment may have serious side effects. We think that the members of this Subcommittee must balance their responsibility to protect the public with their need to uphold the Constitution and the fundamental rights which it confers upon all people. With that

in mind, the ACLU has a number of suggestions which we believe will help you address this difficult balance.

According to Dr. Fred Berlin of the National Institute for the Study, Prevention, and Treatment of Sexual Trauma, the efficacy of drug treatment for sexual offenders is almost entirely dependent on the offender's voluntary involvement.<sup>1</sup> There is no evidence that involuntary drug treatment suppresses aberrant sexual behavior. In fact, numerous psychiatrists have surmised that the forced imposition of such a treatment may actually increase the likelihood of re-offense. The ACLU has consistently opposed forcible medication because the administration of behavior-modifying drugs by the state is open to far-reaching abuse.

However, in light of our respect for individual autonomy and our long standing support for the principle that punishment should be no more restrictive than necessary, the ACLU believes that an individual's choice whether to accept a monitored drug program in lieu of incarceration is entitled to considerable respect. We realize that these bills do raise a constitutional question regarding the right to procreate. Our research has not uncovered a clear line of authority in this area, and therefore, we make no predictions as to how a court may rule on this question.

For the decision to participate in the drug therapy to be truly voluntary (a pre-requisite which we believe is necessary for these bills to pass constitutional muster), it is essential that the inmate be fully informed of the effects that the drugs will have on him. We suggest that HB 1717 and 1718 be amended to include provisions which guarantee the defendant consultation

---

<sup>1</sup> Berlin, "Paraphilias and Depo-Provera: Some Medical, Ethical, and Legal Considerations" *Bull Am Acad Psychiatry and Law*, vol. 17, No.3. (1989) pgs. 233, 236, and 237.

with medical professionals, paid for by the state, in which the defendant is informed of the full impact of the drug therapies including possible long and short-term side effects, and the proposed course of psychotherapy which would accompany the treatment.

In addition, in the case of probation, it is also critical that the defendant be informed of the sentence which the court will impose if he exercises his right to refuse treatment. The defendant must also be informed of his right to discontinue treatment and to return to the court for sentencing.

I would like to now turn to some issues specifically related to the treatment. House Bills 1717 and 1718 do not specify which drugs may be required to be taken as a condition for parole or probation. We firmly believe that the bills should be amended to allow only non-experimental drugs which have limited known side effects and which are customarily prescribed by the medical community for the purpose of treating or suppressing aberrant sexual behavior. Furthermore, we think that the drugs must not impair cognitive capacities and their effects should be reversible when treatment ceases.

House Bills 1717 and 1718 also fail to outline any criteria for the board's medical examiners to use in their determination of the suitability of the proposed drug treatment. While such criteria must obviously be developed by experienced psychiatric professionals, we feel that such a criteria should be codified within the law. Furthermore, we believe the impact that the side effects of the drug treatment will have upon the defendant should be included as a mitigating factor among the criteria.

The imposition of chemical castration therapy as a condition for parole is a dramatic shift in the type of conditions which parole boards have typically been permitted to impose. The

ACLU believes that a provision should be added to HB 1718 which guarantees the defendant a right to an evidentiary hearing before the parole board in which he is afforded the opportunity to present arguments and evidence in opposition to the imposition of drug therapy as a condition for parole. Such a provision should also guarantee the defendant a right to counsel and to an outside psychiatrist of his choice who might refute the Parole Board's medical and psychiatric evaluation.

Because it is unclear who will pay for the cost of the drug injections and any medical complications which may occur as a result of the treatment, the ACLU believes the Subcommittee should also consider adding language to HB 1717 and HB 1718 to provide for financial assistance for indigent defendants who will be unable to afford the costs associated with the drug treatment. Not only is such a provision necessary to ensure that defendants are sentenced and paroled without regard to their financial status, it also would protect the public from a situation where a parolee violates the conditions of his parole due to the financial burden of the chemical treatment.

Further, the ACLU believes that House Bills 1717 and 1718 should be amended to include a mechanism for regular reevaluations of defendants in order to determine whether there exists a continued need for the drug treatment as a condition of parole or probation. This is particularly important in light of the fact that Pennsylvania law allows for lifetime parole for certain types of sex offenders. Such reevaluations might also provide psychiatrists with an opportunity to adjust the dosage required for the particular defendant.

In keeping with this legislation's goal of preventing former inmates from reoffending, we urge the subcommittee to ensure that other rehabilitative services are also available to the

defendants. Medical experts appear to agree that, in addition to the need for the defendant to voluntarily participate in the drug program, it is essential that other forms of therapy such as verbal counseling accompany the treatment. We commend the drafters of House Bills 1717 and 1718 for including provisions for requiring "appropriate psychiatric treatment" in conjunction with the mandatory drug program. We urge this committee to consider additional legislation which will provide for such counseling *prior to an inmate's release*.

Finally, it should be noted that while chemical therapies can help certain types of offenders who voluntarily engage in such treatment in conjunction with other forms of therapy, there is a significant portion of the offender population which will not benefit from chemical treatment. The motivations for crimes such as rape are often very complex and may have little to do with the type of paraphilia which can be treated with chemical therapy.<sup>2</sup> If the members of this Subcommittee are truly dedicated to reducing the incidence of sexual assault, we urge them to expand the services available to sexual offenders in prison. It is unconscionable that there is currently a waiting list for convicted offenders to receive the type of counseling which can help make all of society safer.

The ACLU believes that with some careful redrafting, these two bills can be significantly improved without jeopardizing their original intent. We urge the Subcommittee to include provisions which insure informed consent, financial support for indigent defendants, and a mechanism for reevaluating the appropriateness of the treatment over time. The bill can further

---

<sup>2</sup> Icenogle, "Sentencing Male Sex Offenders to the Use of Biological Treatments" p. 281 (1994) and Berlin and Meinecke, "Treatment of Sex Offenders with Antiandrogenic Medication: Conceptualization, Review of Treatment Modalities, and Preliminary Findings" *Amer. Journal of Psychiatry*, (May 1981) p. 602

be improved by outlining the criteria by which defendants will be judged to be suitable for chemical castration, and by detailing the types of drugs which will be acceptable for the treatment.

Let me conclude by stating that it is gratifying to see legislation which begins to recognize the important role that parole can play in safely reintegrating offenders back into the community. While policies which require criminals to “max out” their sentences appear to be tough on crime, in reality they may actually increase recidivism and endanger the law abiding public. As a citizen of this Commonwealth, I would feel safer if criminals were released a year or two earlier and reintegrated into the community under the watchful eye of a parole officer and under carefully crafted conditions rather than released a year or two later with no supervision whatsoever. I hope that this hearing and these two bills are the beginning of a more holistic approach to preventing crime in Pennsylvania; an approach which will include parole and a range of treatments in addition to prison time. That concludes the prepared portion of my testimony. I would be happy to answer any questions you might have to the best of my ability