

PCADV

PENNSYLVANIA

COALITION

AGAINST

DOMESTIC

VIOLENCE

dedicated

to ending

violence against

women and

children

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TO: Members of the Senate Judiciary Committee
Commonwealth of Pennsylvania

FROM: Barbara J. Hart,
Legal Director PCADV

RE: Senate Bill 555;
establishing the Commonwealth's right to jury trial

DATE: 03/24/98

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Jury - this
also needs to
be included
in the record
also

Although the Pennsylvania Coalition Against Domestic Violence (PCADV) did not offer testimony on S. B. 555, we wish to advise you of our significant concerns related to this proposed constitutional amendment.

As you are aware, the constituency of PCADV includes both battered women who are victim-witnesses to crimes and battered women who are defendants. In our evaluation of the proposed constitutional amendment, we viewed the proposal from both the side of prosecution and of defense in light of our mixed constituency.

Our deliberations related to S. B. 555 suggest that the prosecution of domestic violence assaults, as well as property crimes and other crimes of violence in the context of domestic violence, has not been significantly impeded by the absence of the power of prosecutors to compel jury trials. The Commonwealth and the interests of the public appear to fare as well before judges.

Advocates for battered women on both sides of the legal system note that there is significant interest in battered women in expedited disposition of criminal matters; that justice delayed may be justice denied. Thus, both the delays and protracted proceedings often entailed in jury trials may significantly jeopardize the interest of battered women in timely justice and safety.

Many of our members are in jurisdictions with sharply limited judicial resources. An increase in the number of jury trials in these districts will greatly interfere with the availability of judges to hear critical family law matters, including civil protection orders, custody disputes, tort actions and divorces. Reallocation of scarce judicial resources for jury trials will likely occasion a diminution of access to civil justice for domestic violence litigants and the general public.

Clearly, had the Commonwealth the right to demand a jury trial, even if it exercised the right only in extraordinary circumstances...

Those who cannot afford counsel and who must rely on the resources of the public defenders of the Commonwealth, which are now unable to meet the need for informed, expert defenders particularly in cases where battered women are charged with crimes, would find this additional tool in the hands of prosecution a vice grip compelling pleas and forcing relinquishment of meritorious defenses because of the increased time involved in jury trials. Battered women are less likely to be able to make cash or property bail. They are usually the primary parent of their children and protracted, costly litigation impairs their ability to nurture and maintain stable homes for their children. They typically have few assets and most of these are not liquid. They would be in the class of defendants most compelled to plead to avoid jury trial, weighing their responsibilities to family and children more heavily than their interests in establishing their innocence via a protracted jury trial.

PCADV is not convinced that prosecutors require the additional leverage in plea negotiations that this proposal would afford. Although many prosecutors have suggested to us that this constitutional amendment would only level the playing field, we are not persuaded that the playing field is tilted in favor of poor, or even middle-income, defendants. Rather it appears to us that prosecutors are more than able to hold their own and achieve significant justice on behalf of citizens of the Commonwealth with the tools they now possess.

Furthermore, our discourse revealed that when battered women are charged with crimes, from assault through homicide, defense counsel often opt for bench trials because of the pervasiveness of gender bias in juries, particularly related to crimes involving conduct that is outside the parameters of traditional "gender scripts". Gender bias is powerful, so much so that most jurors are not aware of the fact that gender assumptions construct the way they experience the world. It is our observation that when battered women defendants step outside of gender script, they are too often penalized severely, notwithstanding meritorious defenses to the crimes charged. Trials before the bench may enable the defense to more succinctly address issues that bear on gender bias.

PCADV supports all efforts to build confidence in the legal system, to assure that the rights of the accused and victims alike are given due consideration and to enhance the cause of justice for all. We, therefore, respectfully request that this august body give further consideration to the impediment that this proposed constitutional amendment might erect to access to justice for all citizens of the Commonwealth. Thank you for your consideration of our concerns.