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Before the House Judiciary Committee,
Subcommittee on Family Law

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Pennsylvania Coalition Against Domestic Violence

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The Pennsylvania Coalition Against Domestic Violence (“PCADV”) is a private, nonprofit organization that provides services and advocacy on behalf of victims of domestic violence and their minor children. PCADV was established in 1976 and, 38 years later, supports a network of 60 community-based domestic violence programs serving victims in every county in Pennsylvania. Our programs provide a range of holistic services, including emergency hotlines, shelters, counseling programs, safe home networks, legal and medical advocacy, and transitional housing. These services help victims rebuild their lives with safety and economic measures that empower them to say no more to domestic violence. So far this year, our programs have provided services to over 85,000 individuals – including over 7,000 children.

Homicide is a harsh reality of domestic violence. Last year in Pennsylvania, there were 158 domestic violence fatalities; 107 of these deaths were victims, and 51 of these deaths were perpetrators. The victims were men and women, elderly and children, and spanned the socio-economic spectrum. Each death left behind loved ones struggling to cope with their loss. PCADV supports the cause of state and national organ donor proponents to provide a second chance at life for individuals in need. However, we cannot overlook the likelihood of trauma to surviving children and other family members as a result of an organ procurement process that may fail to prioritize the needs of survivors. It is essential for surviving loved ones to have the opportunity to pursue justice and overcome the trauma from such a devastating loss.

Against this grim backdrop, PCADV is concerned that the proposed amendments to Pennsylvania’s laws regulating organ and tissue donations jeopardize the likelihood that a domestic violence perpetrator who murders his or her victim will be brought to justice.

PCADV therefore proposes amendments to House Bill 30, PN 2125, that:

- 1. Preclude a domestic violence abuser from providing consent to donate a spouse’s organs and tissues;**
- 2. Prioritize the investigation of suspicious deaths over the expediencies surrounding timely harvesting of viable organs and tissues in order to preserve the body for evidence collection;**
- 3. Safeguard meaningful informed consent and confidentiality for deceased victims and their survivors; and**
- 4. Require training and protocols that are victim-sensitive, promote justice and do not further exacerbate the trauma of surviving family and friends.**

The amended law must balance the rights of crime victims with support to organ procurement organizations’ interests in improving the procurement process.

Divest Authority of Abusive Spouse to Donate Decedent’s Organs

HB 30 allows a spouse of a decedent to authorize an anatomical gift. It is disturbing that the spouse can consent even if they may be under investigation for the homicide that made a victim’s body viable for the donation. If an abusive partner were in fact the person responsible for the death of a victim, it would be in their best interest to donate the

victim's body and preclude a thorough investigation. Therefore, **in cases of domestic violence-related homicide, an abusive spouse must not have the authority to consent to organ donation and thereby compromise potential evidence.**

Even if the spouse has not been the cause of a victim's death, abusive partners will oftentimes go to great and insidious lengths to control a victim. Allowing an abusive spouse to make an anatomical gift of the victim's body perpetuates the abuser's ability to assert power and control over the victim, even in death. At the same time, the deceased victim's survivors are deprived of the ability to regain that control on behalf of their loved one. An abusive partner should not have the final say regarding a victim's anatomical gift and the bill should be further amended to mitigate the opportunity for perpetrator manipulation.

Prioritize Investigation of Suspicious Deaths

A victim and their family must have access to justice. Therefore, if there is reasonable cause to believe criminal activity is associated with a death, a thorough investigation should be allowed to take place. Amendments to §8627 of the law substantially support this prioritization, but still place the burden on the coroner or medical examiner to provide written justification of the decision to withhold organs from transplant. PCADV supports the collaborations reflected in this section in order to ensure that investigators maintain de facto control of the body and only relinquish control of the body when it is determined that the death is not suspicious or that sufficient evidence has been collected. **The prioritization of criminal investigations could be strengthened through further amendment authorizing a delay in the notification of an organ procurement organization in cases where the cause of death is ruled suspicious by an investigating body.** A delay in notification ensures the opportunity for evidence collection before the body is subject to testing and extractions.

PCADV proposes further amendment to require the organ procurement representative to make a reasonable inquiry into any civil, criminal or pending investigations where there is an allegation of abuse or other act of violence. Inquiries can and should be made to the following entities: law enforcement; Coroner; victim services agencies; District Attorney; and family members of the decedent. This measure will go far in ensuring that potential evidence is preserved in order to promote justice for the victim and their family.

Protect Confidentiality and Informed Consent

Although HB 30 protects the identity of a donor and recipient under §8623, PCADV believes that **organ procurement representatives must be bound by confidentiality regarding the details and information surrounding an anatomical gift and/or a potential donor.** The term "organ procurement representative" describes staff members of an organ procurement organization that will be present during the organ procurement process. Although coroners, law enforcement officers, attorneys and medical personnel are subject to confidentiality requirements, it is unclear whether an organ procurement

representative is also prohibited from disclosing information to the public, including notes and photographs, regarding an anatomical gift and the circumstances surrounding a donor's death. PCADV and our community of victim advocates have learned the hard way that the prurient interests of the media and the public all too often call for the details of a decedent's life and untimely demise. Protecting this information from disclosure not only benefits the survivors, but also is sound public policy.

Furthermore, domestic abusers often go to great lengths to find the location and information of a victim and their children. The ability of an abuser to locate surviving family members may place those relatives in significant danger. Therefore, **PCADV requests amendments to HB 30 and Pennsylvania's Right-to-Know Law that protect information retained in the donor registry from public inquiry, to the extent that those registries are maintained by any Pennsylvania government agency.**

Establish Procedures and Enact Penalties for Intrusive Protocols

It must be a priority for organ procurement personnel to perform their duties in a manner that provides dignity and respect for crime victims and their families. HB 30 amends current law by eliminating the expectation for victim-sensitive procurement protocols. In order to interact with the families of decedents in a sensitive and discrete way, organ procurement personnel must receive training and follow strict protocols. The opportunity for emotional trauma of crime victims and their families is just too great to ignore. **Mandatory discrete and sensitive protocols must be reintroduced into the law.**

Furthermore, the ease and speed with which organs could be harvested under HB 30 requires increased protections against pressured consent or fraud. There is no provision for assessing penalties against the procurement organization in the event that personnel fail to abide by these expectations. PCADV submits that **there must be significant and meaningful penalties for organ procurement organizations that fail to abide by the standards set forth by the legislature.**

Thank you for this opportunity to address our concerns regarding HB 30. We want to be clear that we support organ procurement organizations and the reasonable streamlining of policies and procedures that govern them. These organizations play a vital role in saving lives and furthering medical research. We also acknowledge that their representatives have been engaged and sympathetic partners as we advocate on behalf of the victims of domestic violence and other crimes in this Commonwealth. We believe that our recommendations today will go a long way toward striking a balance between saving lives and ensuring justice for those lives that come to an untimely end. While time is a critical factor in organ procurement, so too is it essential that we give law enforcement adequate time to preserve evidence in cases of suspicious deaths. We call upon this committee to ensure that the procurement process is victim-sensitive and consistent with criminal justice priorities in order to preserve critical evidence and facilitate justice for homicide victims and their families. We appreciate your consideration of these recommendations and invite your questions and further inquiry.