

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARYThe meeting was called to order by Representative Bob Frey at
Chairperson3:30 ~~am~~ p.m. on January 27, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Whitaker was excused.

Committee staff present:

Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Elizabeth Taylor, Kansas Association of Domestic Violence and Topeka YWCA
Battered Women Task Force
Joan Wilson, President, Kansas Association of Domestic Violence and mem-
ber of the Kansas Organization of Sexual Assault Centers
John Brookens, Kansas Bar Association and former Judge
Jim Clark, Kansas County and District Attorneys Association
Joan Hamilton, Assistant District Attorney, Shawnee County
Brenda Hoyt, Office of the Attorney General
Chris Graves, Associated Students of Kansas
Nickie Stein, RN, Kansas State Nurses Association
Adrian Farver, Kansas Shorthand Reporters Association
Jay Suddreth, Past President, Kansas Shorthand Reporters AssociationHB 2008 - An act relating to certain sex offenses.

The hearing on the bill was continued from the previous meeting.

The Chairman said Ann Rowland of the Governor's Committee on Domestic
Violence was unable to be present. Her report on "Statutory and Common
Law Exception of Marital Rape from Legal Prosecution", prepared for the
Governor's Committee, is attached (Attachment No.1).Elizabeth Taylor, representing the Kansas Association of Domestic Violence
Programs and the Topeka YWCA Battered Women Task Force, gave a statement
in support of HB 2008 (Attachment No.2) which her groups feel is an ac-
ceptable compromise to complete elimination of spousal immunity to rape
laws. Ms. Taylor said that most of the women who contact the Topeka Cen-
ter are raped by their husbands after they have already left the home.Joan Wilson, President of the Kansas Association of Domestic Violence
Programs and a member of the Kansas Organization of Sexual Assault Centers,
spoke in support of HB 2008. Her statement is attached (Attachment No.3).
During questioning, Ms. Wilson said there are 15 assault centers in Kan-
sas, and most of these deal with rape victims, most of whom are not yet
separated from their husbands. Eighty percent say they have been raped
both before and after filing for separation.John Brookens, a former judge, representing the Kansas Bar Association,
pointed out a technical matter concerning HB 2008 on page 5, starting
with line 179. He said most trial judges would interpret the wording to
mean a single male parent could engage in sexual intercourse or sodomy
with an adopted or a stepchild if it was over 18 years of age. He ques-
tioned if this was legislative intent.During questioning, Judge Brookens said he believed HB 2008, in its pres-
ent form, is workable, and the majority of the people would agree with
its concepts. He had no solution to the difficulty in prosecuting mari-
tal rape cases. The question was raised if the word "residences" on
line 44 should be changed to "place of abode". Judge Brookens suggested
omitting "in separate residences" and refer to living apart, either perma-

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

room 526-S, Statehouse, at 3:30 ~~am~~ ^{XXX}/p.m. on January 27, 1983.

nently or temporarily, since the word "residence" has a specific meaning in the law.

The Class B felony penalty and leniency allowed judges in sentencing were discussed. The point was made by a member that there are different categories of rape than that done by a husband and sometimes the victim may be at fault. The suggestion was made that a percentage of fault be established in determining the sentence. The difficulty of proof or disproof with no corroborating evidence was noted.

Judge Brookens did not believe passage of HB 2008 would strengthen family ties or encourage people to stay together.

Jim Clark, representing the Kansas County and District Attorneys Association, said his organization supports HB 2008 as written which is a compromise on his testimony during the interim hearings. He noted a recent case in Wichita has brought up a need to provide in New Sections 13 and 14 concerning sexual battery to include entrance into a dwelling or place of abode without consent. A member suggested that this amendment be made through the burglary statute. Mr. Clark also questioned if the definition of "sexual intercourse" would cover situations of male rape. In regard to the suggested amendment to eliminate spousal immunity, Mr. Clark pointed out that 40% of the police fatalities occur when they investigate domestic disturbances. This amendment might add to the percentage. It would also increase the caseload for county attorneys, most of whom are part-time. Cases would be impossible to prosecute, especially in rural areas where the husband/wife concept and Christian doctrines on marriage would conflict with the amendment. Mr. Clark did not believe eliminating spousal immunity would be a weapon for the woman in divorce proceedings.

A member expressed concern that there was no equal protection provision in HB 2008.

Joan Hamilton, Assistant District Attorney for Shawnee County, assigned to sexual assault cases spoke in support of HB 2008, stating that, as a prosecutor, she was opposed to complete elimination of spousal immunity. She did not believe the bill would pass with this amendment. It would be impossible to prosecute, as a Class B felony, a rape occurring within marriage unless there is some intent of separation shown. In regard to equal protection, this law has been argued before the Supreme Court 15 to 20 times, and each time the court has ruled there is a difference. Ms. Hamilton did not believe women would be able to use spousal immunity as a weapon in divorce proceedings.

Ms. Hamilton said there should be different levels of punishment in HB 2008 for incest and aggravated incest as the latter is seldom charged. She noted the penalties in HB 2008 were less for incest with a neighbor's child than with one's own child. She questioned if this was the intent. She suggested some provision be made to include the mentally deficient under the aggravated sexual battery section since her office is experiencing more cases of sexual abuse concerning mentally deficient children under 18 years of age. She objected to using a sexual assault in lieu of a rape charge. The Chairman requested Ms. Hamilton to put her suggestions for HB 2008 in writing for the Committee's consideration.

Brenda Hoyt, representing the Attorney General's office, said the Attorney General supports the changes in HB 2008. She questioned the intent in Section 7 relating to the adult definition of spouse which may mean that if two married people, under provisions of this section, choose to have intercourse, they are committing adultery. If they are not living together, they are not under the definition of spouse. Ms. Hoyt also questioned the intent regarding Section 8 and indecent exposure. She did not believe the Attorney General would object if the Kansas adultery statute was repealed. The Chairman requested Ms. Hoyt to put her suggestions in writing for the Committee's consideration.

Chris Graves, representing the Associated Students of Kansas, gave a statement in support of HB 2008 (Attachment No.4).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~XX~~ a.m./p.m. on January 27, 1983.

Nickie Stein, representing the Kansas State Nurses Association, gave a statement in support of HB 2008 (Attachment No.5), noting nurses are concerned about rape because of work-shift hours. She suggested an amendment for lines 32 and 40 and 31 and 41 (Attachment No.6) which would give nurses more protection than present provisions of HB 2008. Ms. Stein said the nursing profession does certain kinds of treatments on their own and not as part of a medicine team, and they should be protected.

HB 2009 - An act concerning intimidation of witnesses.

Mr. Clark spoke in support of HB 2009, noting it would assist trial lawyers. The Chairman said the bill was tailored to Kansas needs and drafted from a model bill of the American Bar Association.

Ms. Hoyt said the Attorney General supports HB 2009 and feels it has a broader scope than present law. She offered two suggestions for amendments: Section 1(d)(4), page 2, line 46, regarding subpoena power, the words "or in any other government agency with subpoena power" be added; and, in Section 5 (e), page 3, line 114, she questioned if the intent was to include a tort liability on law enforcement agencies.

HB 2033 - An act concerning civil procedure and depositions.

Adrian Farver, representing the Kansas Shorthand Reporters Association, distributed amendments to the bill as suggested by this group (Attachment No.7).

Jay Suddreth, a past president of the Kansas Shorthand Reporters Association, explained the amendments. A member expressed concern regarding (f)(2) of the amendments and the meaning of "respective attorney". Mr. Suddreth said many times the attorney will tell the reporter to collect for the deposition from the attorney's client which reporters believe is the attorney's responsibility.

The Chairman said the amendments to HB 2033 would be discussed further at a later meeting.

The Chairman adjourned the meeting at 5:15 p.m.

Report on the Statutory and Common Law Exception
of Marital Rape from Legal Prosecution

ATTACHMENT # 1

Prepared for the Governor's Committee on Domestic Violence
by Anne Rowland, Staff Assistant

The Kentucky conference on marital rape was very thorough and informative. The most important topics were the public policy issues involved in marital rape, the legal background for exempting marital rape from prosecution, and the present status of marital rape under state laws. The general theme of the conference was that marital rape should be criminalized.

The public policy discussion began with the speaker defining rape as an act of dominance and abuse rather than one of desire or sexual gratification. The intent of the rapist is to hurt and humiliate the victim. In that sense marital rape is closely related to domestic violence in general. Because rape is a crime of violence, the speaker maintained its legal definition should be "sexual assault" rather than "intercourse without consent".

The discussion then turned to the general trivializing of the issue of marital rape both quantitatively and qualitatively. The speakers attempted to counter some of the arguments made for exempting marital rape from prosecution.

Quantitatively it is hard to tell how widespread the problem is. Women have only recently had any recourse at all, and police departments have few records. A study done of women at shelter homes by Dr. Mildred Daley Pagelow of the University of California at Riverside, revealed that out of an N of 375 women, 37% had been raped by their husbands. A similar study of battered wives by Professor Irene Hanson Frieze of the University of Pittsburgh found 47% of the women had been raped. A study of the general public in the San Francisco area by Dr. Diana E. H. Russell found that out of an N of 644 women, 12% had been forced into vaginal intercourse by their husbands. These findings were cited to indicate that the problem of marital rape may be of more serious proportions than generally assumed.

The qualitative trivializations of marital rape are several. One is that it is just another adjustment to the loss of autonomy experience when one gets married. Basically, this theory says married people have to put up with a lot of grief, and this is just one facet of that grief. This ignores the fact that rape is a crime, and that under the law married people are not exempt from other crimes against

their spouse. Although not always enforced, criminal offenses including assault and battery are still crimes between spouses.

A second argument is that without the marital rape exemption, the family unit would be less stable; i.e., criminalization of marital rape would break up families. A marriage cannot be very stable, however, if a woman is willing to charge her husband with rape. For her to do so is an indication of serious problems in the marriage. This argument is related to the third argument that women would use marital rape for spite or to achieve a superior bargaining position. This ignores the grief and ridicule a woman would have to endure to carry through with the prosecution of such charges. Her pain and anger from the emotional and physical trauma of rape would have to strongly outweigh the exposure and embarrassment of a public trial.

Another argument is that the divorce law is the best way to handle the situation. This denies the damage and humiliation caused by rape, the need to atone for such damage, and society's need to prevent further incidents. Divorce would simply be an escape hatch.

The final argument is the proof argument. Rape within marriage would be difficult to prove as are a high percentage of non-marital rape cases when the rapist and victim are friends or acquaintances. It is up to the prosecutor to weigh the sufficiency of the evidence in deciding whether to prosecute. In many cases the evidence might not be sufficient, but that isn't always the case, and should not be used to excuse all such behavior.

The discussion then turned to the legal background for the marital exemption and the present state of the law. I will present this as much as possible in light of Kansas and its position on marital rape in relation to other states.

For centuries the English common law has assumed that there can be no rape within the bonds of marriage. This exclusion of husbands from the rape law is the marital rape exemption. The basis for the exemption comes from two common law sources. First, until the last century, the common law relied on the fiction that a woman loses her identity when she marries. Marriage was viewed as the bonding of two people into one, and the one was the husband. Hence, women could not own property, make contracts, or even sue or be sued without her husband's participation. It would therefore be impossible to make it

a crime for a man to rape his wife since the crime would be only against himself. The myth of one entity has been abandoned, but the rape exemption remains.

Another common law source of the rape exemption is a gratuitous statement by Sir Mathew Hale in the 1600's that when a woman marries she gives up her right to consent to sexual intercourse. "Her husband always has constructive consent." He based his statement on the contract theory of the marriage agreement. Sexual availability is a consideration the woman gives when she marries. This doctrine has been extensively cited to support the marital rape exception.

An American Law Reports annotation (84 ALR2d 1017) cites a long list of cases claimed to support the common law marital rape exemption. However, the authorities listed there have been challenged in by Dennis Drucker in his article, "The Common Law Does Not Support A Marital Exception for Forcible Rape", 5 Women's Rights Law Reporter 181 (1979). The article maintains that only two out of one hundred cases cited actually support the exception when the husband is the sole actor. The other cases involve statutory rape, dictum, or a statutory spousal exemption. A majority of the cases are examples of a defendant attempting to get the case dismissed by claiming that the prosecution did not allege that the defendant and the victim were not married. This would be an element of the crime if the spousal exemption prevailed. This annotation will be superceded in ALR4 according to Mr. Drucker who was a speaker at the conference.

Many states, including Kansas have codified the common law exemption. K.S.A 21-3502 defines rape as "the act of sexual intercourse committed by a man with a woman not his wife, and without her consent. . ." At present forty-three states have some form of statutory exemption for marital rape. However, the extent of the exemption varies quite widely among states, and Kansas is one of the nine most restrictive.

In those states which do not have the statutory exemption the viability of the common law exemption is very important. The general rule is that a common law rule will control if the statute is silent on an issue. Therefore, if the common law exemption is followed, even those states without a marital rape exemption in their statutes will have a basis for exempting marital rape from their rape laws.

Marital rape cases have recently been tried in three states without the statutory exemption. In all three states, Florida, New Jersey, and Massachusetts, the common law exemption was held not to control. The New Jersey court specifically found the common law exemption to be invalid in New Jersey v. Smith, 85 N.J. 193 (1981). In Florida and Massachusetts the courts relied on the intent of sexual abuse statutes to deny the marital rape exemption. Florida v. Smith, 401 So.2d 1126 (5th D.C.A., 1981), reh. denied July 30, 1981; Commonwealth of Massachusetts v. Chretien, Mass. Adv. Sh (1981) 661, 417 N.E.2d 1203 (Mass., 1981). These decisions further derogate the common law marital exception.

In other states changes have been made. Oregon and Nebraska recently deleted the marital rape exemption from their rape statutes, clearly intending to terminate the marital exemption. Given that intent the common law exception would no longer control. Connecticut has deleted the marital and cohabitation exemption from first degree and forcible rape. New Hampshire deleted the marital rape and cohabitation exemption except for statutory rape and "mentally defective victims and wives". Iowa exempts third degree sexual abuse, but not first and second degree sexual abuse. Minnesota states in its statute that "nothing in this section shall be construed to prohibit or restrain prosecution for any other offense committed by any person against his spouse." California has gone the farthest by codifying spousal rape as a separate crime.

In those states which maintain express statutory exemptions for marital rape there is a variance in the breadth of the exclusion. Only nine states, including Kansas, exempt marital rape without exception. In most states there is an exception for marital rape if the parties are separated under a court order or are living apart. Eleven states require a court order. Six require that a petition for divorce, annulment, separation or separate maintenance has been filed. Two states grant no marital rape exemption when the parties are living apart or one spouse has initiated legal proceedings. (Presumably under these statutes the parties could be living together if the proceeding has been initiated.) Ten states deny the marital rape exemption when the parties are living apart. In Kansas and eight other states as long as the parties are legally married, there is no exception to the marital rape exemption.

Texas and Alabama even go so far as to provide that there is no exception to the exemption for cohabitants.

New Mexico is an example of a state which ends its exemption when the parties are living apart. The rape statute, New Mexico Statutes 30-9-11, defines criminal penetration as "unlawful and intentional causing of a person other than one's spouse, to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse." The preceding section, N.M. Statutes 30-9-10 defines "spouse" as legal husband or wife unless the couple is living apart." This definition effectively protects separated women without abrogating the exemption entirely.

The New Mexico sexual abuse statute includes a variety of forced sexual acts under its purview. Kansas does not. The sodomy statute which in combination with the rape statute covers relevant sexual abuse, defines sodomy as "oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex." (K.S.A. 21-3505) K.S.A. 31-3506 defines aggravated sodomy as "sodomy committed with force or where bodily harm is inflicted." Given the exclusion of wives from the definition of sodomy, a husband is exempt from prosecution for aggravated sodomy when his wife is the victim, even if they are separated with divorce imminent. It clearly does not protect a wife while she is living with her husband.

In order to eliminate the exemption entirely from both the rape and sodomy statutes all that would be necessary is to delete "not his wife" in K.S.A. 21-3102 and "who are not husband and wife" from K.S.A. 21-3505. Given the family orientation of the present Kansas legislature, however, this may not be an alternative. It may be possible to eliminate separated couples from the exemption. This could be done by adding a definition of "husband and wife" to K.S.A. 21-3501, the definition section of the Sexual Offenses Article. "Husband and wife" could be defined as a legally married couple unless they are living apart. This would eliminate the rape exception when couples are separated and make aggravated sodomy a prosecutable offense when the couple is separated. Sodomy would not be a crime when the couple is separated because this would be covered by the "consenting adults of the opposite sex" language of 21-3505. This protection would certainly be preferable to no protection at all for married women.



Attachment No 2
Young Women's
Christian Association

225 W. 12th St., Topeka, Kansas 66612
913-233-1750

TESTIMONY on H. B. 2008

ATTACHMENT # 2

January 26, 1983

My name is Elizabeth Taylor. Even though I am also a representative of the Kansas Association of Domestic Violence Programs, I am here today to speak for the Topeka Y.W.C.A. which sponsors the Topeka Battered Women Task Force. My experience with domestic violence includes advocacy as well as crisis counseling and intake of women who are the victims of family violence.

The Y.W.C.A. and the Battered Women Task Force support the passage of H. B. 2008. We feel that this piece of legislation gives this legislature an opportunity to act substantively on a very important issue of concern to all women.

Although we would ultimately prefer that spousal immunity be eliminated completely from the rape statute, we feel that the qualifying definition of marital rape in section 1, subsection 3 on page 1 in lines 43-46 is an acceptable compromise. It is my experience in counseling battered women, some of whom were still in the home and some who have taken the step to leave, that those who would have the courage and the strength to prosecute the abuser are those who have already gained the strength to leave the abusive situation. Women who have been physically and sexually abused are often in a state of very low self esteem. First, they are often dependent and fearful that they must not do anything to anger the spouse for fear of further retaliation. Once that woman has decided to leave the situation, she becomes more self-confident and realizes that the abuse she withstood is not a part of normal marriage behavior. This is the woman who will be helped by H. B. 2008. The affect of the qualified marital rape exemption is to allow the woman who has taken action to alleviate the abuse to file rape charges against the spouse who comes to her residence and rapes her. The current total spousal immunity does not allow any woman who is still married, even if dissolution of that marriage has been initiated, to file rape charges against her spouse.

Further, we are very pleased with the elimination of the element of resistance since we feel that this will most often place the victim in less danger of addition harm. We also agree with the importance of including rape with an object as has been discussed in earlier testimony.

Thank you for the opportunity to present to you the concerns of the Topeka Y.W.C.A. and the Topeka Battered Women Task Force on H. B. 2008. Again we would urge its passage.

Respectfully submitted,



Member Agency United Way

Elizabeth E. Taylor



Kansas Association Domestic Violence Programs

Joan M. Wilson
651 E. Prescott
Salina, KS. 67401

ATTACHMENT # 3

TESTIMONY ON HB NO. 2008 TO SPECIAL COMMITTEE ON JUDICIARY:

I am testifying before you as President of the Kansas Association of Domestic Violence Programs and as a member of the Kansas Organization of Sexual Assault Centers.

The act of rape is the most degrading crime that can be inflicted on one person by another. The trauma of rape can affect the victim's life for many years thereafter, whether or not the offender is a spouse, acquaintance, or stranger to the victim.

The crime of incest and sexual abuse of children is deplorable, albeit prevalent in our society. It can and does affect our children for the rest of their lives and sorely needs to be addressed by more punitive measures.

The time has come when we must view certain individuals as truly victims and hold the offenders responsible for their behavior.

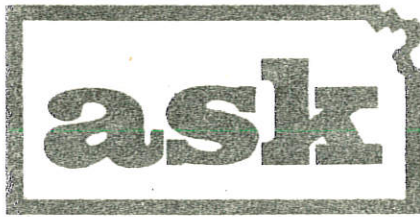
It is a credit to the state of Kansas that the Special Judiciary Committee has seen fit to make changes in the statutes to include issues such as:

Eliminating the element of victim resistance from the rape statute, expanding the definition of rape to include rape with an object, creating a qualified spousal exemption in the rape statute to include at least those who have seperated or taken legal civil action, expand the rape shield to apply to sex-related crimes other than rape, create the offenses of sexual battery and aggravated sexual battery, and make women as well as men subject to the provision of the rape statute.

The Kansas Association supports the legislation of HB 2008 and urges passage in the 1983 session.

Joan M. Wilson





ASSOCIATED STUDENTS OF KANSAS

1700 College
Topeka, Kansas 66621
(913) 354-1394

ATTACHMENT # 4

STATEMENT BY
CHRIS GRAVES
ASSOCIATED STUDENTS OF KANSAS
(ASK)

BEFORE THE
HOUSE JUDICIARY COMMITTEE
ON

HB2008

An Act concerning crimes, punishments and criminal procedure; relating to certain sex offenses

JANUARY 26, 1983

Representing the Students of:

Emporia State • Fort Hays State • Kansas State • Pittsburg State • University of Kansas • Washburn University • Wichita State

INTRODUCTORY REMARKS

Mr. Chairman and members of the House Judiciary Committee, I would like to thank you for the opportunity to be with you today and express to you the views of the Associated Students of Kansas. My name is Chris Graves and I am the Legislative Director of ASK.

ASK is the only active state student association in Kansas and represents the over 83,000 university students at the seven public four-year universities in Kansas.

I am appearing before you today to express our support for the proposed revised rape statutes in HB 2008.

STATEMENT

The Associated Students of Kansas has been monitoring this topic since the Special Committee on Judiciary began their work this past summer. ASK's interest on this subject is reflective of the concern and attention this topic generates on the campuses. At our November Legislative Assembly, a resolution passed overwhelmingly to support these proposed revisions.

Currently, 52% of the college population is female. Each year, campuses offer such services as self-defense classes, Rape Survivors Groups and campus escort service as well as Rape Awareness Series, an "Operation Porch Light" program and other campus safety activities in an effort to help men and women educate themselves, protect themselves and cope with the physical and psychological aspects of such a violent and humiliating crime.

Obviously the arguments and need for enacting tougher rape laws have been made several times. We concur. In preparing for my testimony today, I was urged by students and staff members of the women resource centers to stress to you the difficulty and humiliation ex-

perenced by an individual in reporting a rape -- that in fact, a stigma still exists which discourages a person from stepping forward and reporting this crime. We would further urge you to amend the proposed revisions to include marital rape. The Special Committee on Judiciary reported that they believed marital rape "is most likely to occur when marital discord is evident and the parties are estranged;" however, eleven states currently recognize the rape of a wife by a cohabiting husband as a crime. And finally, an article in the December 12, 1982 edition of the Kansas City Star discussed a three year study conducted by an assistant professor of sociology at Wheaton College in Norton, Massachusetts and the assistant director of the Family Violence Research Program at the University of New Hampshire which suggested "that marital rape is more widespread than previously believed -- it may be a common form of family violence. It is often associated with physical brutality and, in many cases, the husband's goal appears to be humiliation or retaliation." A copy of the above mentioned article is attached.

CONCLUSION

ASK supports the revised rape statutes in HB 2008 and urges your adoption with the proposed amendment. If you have any questions, I will be happy to answer them.

Thank you for your time and consideration.

KC Times
12/10/82

Sociologists are studying marital rape

*Forced sex found
to be common form
of family violence*

The New York Times

NEW YORK — What is the difference between victims of marital rape and other rape victims?

"It's the difference between living with the frightening memory of having been raped, which is bad enough, and actually living with the rapist," said Kersti Yllo, assistant professor of sociology at Wheaton College in Norton, Mass. "The effect on these women is profound."

The marital rape trials of John Edleson in Oregon and James Christian in Massachusetts have received much publicity, as have the attempts of state legislatures, especially in Minnesota and California, to change the laws regarding forced sex in marriage. But it is a phenomenon little studied by social scientists.

Now, however, a three-year study of the victims of forced sex in marriage by Ms. Yllo and David Finkelhor, assistant director of the Family Violence Research Program at the University of New Hampshire, suggests that marital rape is more widespread than previously believed.

"On the basis of the media attention, one could easily form a judgment that such events are unusual — bizarre perversions of marriage," Ms. Yllo said. "In reality, accumulating evidence about marital rape suggests that it may be a common form of family violence."

Ms. Yllo and Mr. Finkelhor interviewed 50 victims of marital rape at family planning agencies in northern New England. A preliminary report of their research was published in the latest issue of *Crime and Delinquency*, the quarterly scholarly journal of the National Council on Crime and Delinquency.

Marital rape is often associated with physical brutality, and in many cases the husband's goal appears to be humiliation or retaliation. Although there are complex legal definitions of marital rape, Ms. Yllo defined it simply as "forced sex without a woman's consent." Hospital personnel, social workers, police officers and doctors often do not take reports of marital rape seriously, she said.

However, a 1980 study by Diana Russell, presented at the American Sociological Association, showed that it occurs remarkably often. In a random sample of 830 women 18 years old and older, rape by a husband was reported more than twice as often as rape by a stranger. Twelve percent of the 644 married women in the sample reported rape by a husband.

Those interviewed by Mr. Finkelhor and Ms. Yllo reflected society's confusion about recognizing forced sex in marriage as a form of rape. "Many women described to me very brutal sexual assaults committed by their husbands over a period of years," Ms. Yllo said, "and yet they did not realize that the rape label could apply to something in their marriage. Women have the stereotype of rape as an assault in an alley by a stranger, but frequently it's by people you know."

Battered wives are at highest risk. Three recent studies of assault victims, including a survey of 304 battered women in 10 shelters in Minnesota, showed that 33 percent had been raped by their husbands or cohabiting partners. Often these men had problems with alcohol and drugs.

Among the 50 women studied by Mr. Finkelhor and Ms. Yllo, in cases where marital rape was not accompanied by a high level of physical abuse in the relationship as a whole, it often resulted from longstanding disagreements about the frequency or the nature of sexual intercourse. It also can be a consequence of the withholding of sex.

Forms of coercion other than physical violence are sometimes used, as in the case of a woman the researchers interviewed who was separated from her husband. "He kidnapped the couple's baby," Ms. Yllo related, "and then demanded that his wife come to a motel with him. He kept her there for two days. She went because she was terrified for the baby."

According to Joanne Schulman, staff attorney for the National Center on Women and Family Law in New York, 11 states recognize the rape of a wife by a cohabiting husband as a crime.



Statement of the Kansas State Nurses' Association
Before the House Judiciary Committee
January 26, 1983
Regarding House Bill 2008: an act concerning sex offenses

Mr. Chairman and members of the committee:

My name is Nickie Stein, R.N., M.Ed. and I am a member of the Board of the Kansas State Nurse' Association. I speak in general support of most of the changes in the present statute on sex offenses which are proposed in House Bill 2008.

Nurses are concerned about rape and other sex offenses both because of their concern for the physical and mental health of their patients and because they themselves are often easily targeted victims as they leave hospitals or nursing homes at predictable nighttime shift change hours.

In hospital emergency rooms they are often the first persons to deal with the physical and deep emotional trauma following such an attack. As professional volunteer rape counselors and as mental health nurses, they often see the trauma continuing for months or even years later, sometimes leaving permanent scars on the personality. Part of the trauma has in the past been caused by the traumatic court proceedings themselves. The mandate that the victim prove that he/she resisted is particularly cruel and often leaves the victim feeling he/she somehow caused the crime. The attendant guilt and fear can linger for years, staining self-confidence and self-esteem and raising barriers to friendship. Currently, this is the only crime where it is required that the victim resist in order to gain a conviction.

The addition of rape or sodomy with an object is needed in the law. The emotional damage done may be as great as that produced by the more usual rape or sodomy. The physical damage done can sometimes be irreparable. The terrible pain and suffering experienced by a Topeka youth last year, which has left him with a colostomy (or artificial intestinal opening), will never be forgotten by the nurses who cared for him, and cannot be forgotten by him or his family.

The extension of the "rape shield" provision and the addition of sexual battery and aggravated sexual battery are also needed additions which can guard the victim's mental health.

Creating a qualified spousal exemption, so that at least some situations between spouses can be described as rape, is important, since this often socially invisible but widespread crime leads to as much damage than rape or sodomy performed upon non-married persons. Indeed, the damage is usually more, since it is repeated and the victim is entrapped in the situation.

In the definitions of sexual intercourse and sodomy in lines 32 and 40 I should like to suggest that the words "or nursing" be added after the word "medical", to exempt the treatments and examinations which are nursing treatments and examinations not part of a prescribed medical regimen, and in lines 34 and 41 that the word "medically" be struck and the words "by the health professions" be inserted after the word "recognized". Some examples of such treatments and examinations are douches, enemas, insertions of rectal tubes to relieve flatus, insertion of a

rectal thermometer, digital removal of fecal impactions, and digital vaginal and rectal examinations during obstetrical labor.

In addition, there may need to be a phrase exempting the body cavity searching done in jails and penitentiaries for security, but not for medical or nursing reasons.

I will try to answer questions if you like, and thank you for letting me appear.

NS/lw

Proposed amendment for H.B. 2008

offered to the House Judiciary Committee

by the Kansas State Nurses' Association

Nickie Stein, R.N., M.Ed.

1. 31 "Sexual intercourse" does not include penetration of the female sex organ by an object in the course of medical or nursing treatment or examination, performed in a manner and for purposes which are medically recognized by the professions of medicine, osteopathy, and nursing as ethical and acceptable or (pursuant to K.S.A. 22-2522) in the course of body cavity searches at the direction of a law enforcement officer.

1. 38 "Sodomy" does not include penetration of the anal opening by an object in the course of medical or nursing treatment or examination, performed in a manner and for purposes which are medically recognized by the professions of medicine, osteopathy, and nursing as ethical and acceptable or (pursuant to K.S.A. 22-2522) in the course of body cavity searches at the direction of a law enforcement officer.

ATTACHMENT # 7

REFERENCE: HOUSE BILL 2033

(e) Submission to witness, changes, signing. When the testimony is fully transcribed the deposition shall be submitted made available to the witness for examination and shall be read to or by the witness, unless the examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon ~~the deposition~~ a form provided by the officer with a statement of the reasons given by the witness, unless the parties by stipulation waive the signing, the witness is ill, cannot be found or refuses to sign. ~~The officer before whom the deposition is taken shall submit the deposition by sending it by restricted mail or by hand delivering it, either to the witness or to the attorney for the witness if the witness is a party to the lawsuit.~~

If the deposition is not signed by the witness or not returned within the time limitation provided in this subsection, the officer shall sign it or a copy of it and state on the record the waiver, the illness or absence of the witness or the refusal to sign together with the reason given, if any, or the failure to return the deposition within 30 days after having been submitted made available or within a reasonable time prior to trial. The costs of any replacement copy shall be chargeable to the attorney taking the deposition. The

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deposition may be used as though signed, unless on a motion to suppress, under K.S.A. 60-232(d)(4) and amendments thereto, the judge holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f)(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent, and all ~~other~~ reasonable charges for depositions or copies thereof shall be paid by the respective attorney or attorneys.