

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARYThe meeting was called to order by Representative Bob Frey at  
Chairperson3:30 ~~am~~/p.m. on February 8, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Peterson 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: None.

The minutes of the meetings of January 31 and February 2, 1983, were approved. The minutes of February 3, 1983, were corrected.

HB 2008 - An act relating to certain sex offenses.

The Chairman brought the bill off the table for further discussion. Amendments in Attachment No.1 not acted upon at a previous meeting were considered. The motion was made and seconded to adopt the suggested amendment on page 4 of the attachment in lines 121 and 149. There was discussion on Section 8(b) regarding exposure and whether people on their private property would be covered. The Chairman explained the intent of the provision and stated prosecutors and law enforcement people believe this section is needed. The motion carried.

The amendments on page 6 of the attachment were explained. The motion was made and seconded to adopt the amendments on lines 207 and 220. Motion carried. Following further discussion on page 6 amendments, the motion was made, seconded, and carried to adopt the amendments in lines 227, 228, 229, 231, and 233.

Page 1 amendments were considered. It was noted the title of the bill should be changed to conform with the inclusion of both male and female penetration. Representative Solbach moved to change the title and remove "certain crimes", seconded by Representative Wunsch. Motion carried.

Representative Solbach's suggested amendments (Attachment No.2) were distributed. He moved that these amendments be adopted, stating that amendments adopted in other sections of the bill would not be affected by his motion. It was seconded by Representative Campbell. Representative Solbach explained his amendments. New Section 3 pertains to rape occurring when spouses are not separated. He added to his motion that the penalty for this section would be a Class D felony. New Section 4, pertaining to aggravated rape within marriage, includes bodily harm. He included in his motion that the penalty for this section would be a Class B felony. His second agreed to the penalty classifications. Representative Solbach listed the benefits of the amendments and believed they would result in a bill form that would be most acceptable politically. He moved his motion, and it carried.

Representative Duncan made a motion to recommend HB 2008 as further amended favorable for passage, seconded by Representative Justice. The motion carried with eleven votes in favor. Representatives Schweiker, Erne, Patrick, Douville, and Knopp voted against the motion.

All Committee amendments made on HB 2008 can be found in Attachment No.3.HB 2009 - An act concerning intimidation of witnesses.

Suggestions for amendments made by the Attorney General (Attachment No.4) were distributed. Representative Patrick moved to adopt amendments suggested for line 46, seconded by Representative Knopp. Motion carried.

The amendments suggested in lines 94-101, 112 and 113 regarding tort liability which law enforcement agencies may incur was discussed. Representative Wunsch made a conceptual motion to add in New Section 5 that protection comes under the definition of police protection as defined in the tort claims act, seconded by Representative Knopp. Motion carried. Repre-

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 526-S, Statehouse, at 3:30 ~~XXX~~ a.m./p.m. on February 8, 1983.

Representative Patrick moved to pass the bill as amended, seconded by Representative Erne. Motion carried.

HB 2058 - An act concerning judgments and delinquent personal property taxes.

Representative Patrick said the Kansas Bar Association committee reviewing the bill's amendments was not ready to report its findings.

The Chairman adjourned the meeting at 4:30 p.m.

# House Bill No. 2008

By Special Committee on Judiciary

Re Proposal No. 10

12-20

0018 AN ACT concerning crimes, punishments and criminal proce-  
 0019 dure; relating to certain ~~sex~~ offenses and evidence admissible  
 0020 in prosecutions therefor; defining and classifying ~~the crime of~~  
 0021 ~~sexual battery~~; amending K.S.A. 21-3501 through 21-3508,  
 0022 21-3512, 21-3515, 21-3602, 21-3603 and 60-447a and repealing  
 0023 the existing sections.

certain crimes

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. K.S.A. 21-3501 is hereby amended to read as fol-  
 0026 lows: 21-3501. The following definitions apply in this article  
 0027 unless a different meaning is plainly required:

0028 (1) "Sexual intercourse" means any penetration of the female  
 0029 sex organ by the male sex organ; or by any object. Any penetra-  
 0030 tion, however slight, is sufficient to constitute sexual inter-  
 0031 course. "Sexual intercourse" does not include penetration of the  
 0032 female sex organ by an object in the course of medical treatment  
 0033 or examination, performed in a manner and for purposes which  
 0034 are medically recognized as ethical and acceptable.

, or the causing of any penetration,

: (a)

, osteopathic or nursing

by the professions of medicine, osteopathy and nursing

0035 (2) "Sodomy" means oral or anal copulation; oral or anal  
 0036 copulation or sexual intercourse between a person and an an-  
 0037 imal; or any penetration of the anal opening by any object. Any  
 0038 penetration, however slight, is sufficient to constitute sodomy.

; or (b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto

0039 "Sodomy" does not include penetration of the anal opening by  
 0040 an object in the course of medical treatment or examination,  
 0041 performed in a manner and for purposes which are medically  
 0042 recognized as ethical and acceptable.

: (a)

, osteopathic or nursing

by the professions of medicine, osteopathy and nursing

0043 (3) ~~"Spouse" means a lawful husband or wife, unless the~~  
 0044 ~~couple is living apart in separate residences or either spouse has~~  
 0045 ~~filed an action for annulment, separate maintenance or divorce~~

; or (b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto

0046 ~~or for relief under the protection from abuse act.~~

0047 (4) "Unlawful sexual act" means any rape, indecent liberties

0048 with a child, ~~indecent liberties with a ward, criminal sodomy,~~

0049 aggravated sodomy, ~~or lewd and lascivious behavior or sexual~~

0050 battery, as defined in this article code.

0051 (3) "Woman" means any female human being.

0052 Sec. 2. K.S.A. 21-3502 is hereby amended to read as follows:

0053 21-3502. (1) Rape is the act of sexual intercourse committed by a

0054 man with a woman not his wife, and without her consent when

0055 committed sexual intercourse with a person ~~who is not one's~~

0056 ~~spouse and who does not consent to the sexual intercourse,~~ under

0057 any of the following circumstances:

0058 (a) When a woman's resistance the victim is overcome by  
0059 force or fear; or

0060 (b) when the woman victim is unconscious or physically  
0061 powerless to resist; or;

0062 (c) when the woman victim is incapable of giving her consent  
0063 because of mental deficiency or disease, which condition was  
0064 known by the man offender or was reasonably apparent to him  
0065 the offender; or

0066 (d) when the woman's resistance is prevented by victim is  
0067 incapable of giving consent because of the effect of any alcoholic  
0068 liquor, narcotic, drug or other substance administered to the  
0069 woman victim by the man offender, or by another for the purpose  
0070 of preventing the woman's resistance person with the offender's  
0071 knowledge, unless the woman victim voluntarily consumes or  
0072 allows the administration of the substance with knowledge of its  
0073 nature.

0074 (2) Rape is a class B felony.

0075 Sec. 3. K.S.A. 21-3503 is hereby amended to read as follows:

0076 21-3503. (1) Indecent liberties with a child is engaging in either

0077 of the following acts with a child under the age of sixteen (16)

0078 years who is not the spouse of the offender who is not one's  
0079 spouse and who is under 16 years of age:

0080 (a) The act of Sexual intercourse; or

0081 (b) any lewd fondling or touching of the person of either the  
0082 child or the offender, done or submitted to with the intent to

(3)

aggravated

1

or aggravated sexual battery

0083 arouse or to satisfy the sexual desires of either the child or the  
0084 offender or both.

0085 (2) Indecent liberties with a child is a class C felony.

0086 Sec. 4. K.S.A. 21-3504 is hereby amended to read as follows:

0087 21-3504. (1) ~~Indecent liberties with a ward is either of the~~  
0088 ~~following acts when committed with a child under the age of~~  
0089 ~~sixteen (16) years the commisston of indecent liberties with a~~  
0090 ~~child, as defined in K.S.A. 21-3503 and amendments thereto, by~~  
0091 ~~any guardian, proprietör or employee of any foster home, or-~~  
0092 ~~phanage; or other public or private institution for the care and~~  
0093 ~~custody of minor children, to whose charge such the child has~~  
0094 ~~been committed or entrusted by any court, probation officer,~~  
0095 ~~department of social and rehabilitation services or other agency~~  
0096 ~~acting under color of law;~~

0097 (a) The act of sexual intercourse;

0098 (b) Any lewd fondling or touching of the person of either the  
0099 child or the offender, done or submitted to with the intent to  
0100 arouse or satisfy the sexual desires of either the child or the  
0101 offender or both.

0102 (2) ~~Indecent liberties with a ward~~ is a class B felony.

0103 Sec. 5. K.S.A. 21-3505 is hereby amended to read as follows:

0104 21-3505. (1) ~~Criminal sodomy is oral or anal copulation sodomy~~  
0105 ~~between persons who are not husband and wife or consenting~~  
0106 ~~adult members of the opposite same sex; or between a person~~  
0107 ~~and an animal; or coitus with an animal. Any penetration, how-~~  
0108 ~~ever slight, is sufficient to complete the crime of sodomy.~~

0109 (2) Criminal sodomy is a class B misdemeanor.

0110 Sec. 6. K.S.A. 21-3506 is hereby amended to read as follows:

0111 21-3506. Aggravated sodomy is sodomy committed:

0112 (a) With force or threat of force, or where bodily harm is  
0113 inflicted on the victim during the commission of the crime; or

0114 (b) With a child under the age of sixteen (16) years:

0115 (a) Sodomy with a child who is not one's spouse and who is  
0116 under 16 years of age;

0117 (b) causing a child under 16 years of age to engage in sodomy  
0118 with an animal;

0119 (c) sodomy with a person who is not one's spouse and who

Aggravated

: (a) A parent, adoptive parent, stepparent or grandparent of the child;  
or (b)

Aggravated

any person or

or



0120 does not consent to the sodomy or causing a person, without the  
 0121 person's consent, to engage in sodomy with an animal, under any  
 0122 of the following circumstances:

0123 (i) When the victim is overcome by force or fear;

0124 (ii) when the victim is unconscious or physically powerless;

0125 (iii) when the victim is incapable of giving consent because  
 0126 of mental deficiency or disease, which condition was known by  
 0127 the offender or was reasonably apparent to the offender; or

0128 (iv) when the victim is incapable of giving consent because of  
 0129 the effect of any alcoholic liquor, narcotic, drug or other sub-  
 0130 stance administered to the victim by the offender, or by another  
 0131 person with the offender's knowledge, unless the victim volun-  
 0132 tarily consumes or allows the administration of the substance  
 0133 with knowledge of its nature.

0134 (2) Aggravated sodomy is a class B felony.

0135 Sec. 7. K.S.A. 21-3507 is hereby amended to read as follows:

0136 21-3507. (1) Adultery is engaging in sexual intercourse by or  
 0137 sodomy with a person with another who is not his the offender's

0138 spouse if:

0139 (a) Such person The offender is married; or

0140 (b) Such person the offender is not married and knows that  
 0141 the other person involved in such intercourse the act is married.

0142 (2) Adultery is a class C misdemeanor.

0143 Sec. 8. K.S.A. 21-3508 is hereby amended to read as follows:

0144 21-3508. (1) Lewd and lascivious behavior is:

0145 (a) The commission of an act of Engaging in sexual inter-  
 0146 course or sodomy with any person or animal with knowledge or  
 0147 reasonable anticipation that the participants are being viewed by

0148 others; or

0149 (b) the exposure of a sex organ in the presence of a person  
 0150 who is not the spouse of the offender or and who has not  
 0151 consented thereto, with intent to arouse or gratify the sexual  
 0152 desires of the offender or another.

0153 (2) Lewd and lascivious behavior is a class B misdemeanor.

0154 Sec. 9. K.S.A. 21-3512 is hereby amended to read as follows:

0155 21-3512. (1) Prostitution is performing for hire, or offering or  
 0156 agreeing to perform for hire where there is an exchange of value,

any person or

in a public place or

0157 any of the following acts:

0158 (a) Sexual intercourse; or

0159 (b) ~~oral or anal copulation~~ *sodomy*; or

0160 (c) manual or other bodily contact stimulation of the genitals

0161 of any person with the intent to arouse or gratify the sexual

0162 desires of the offender or another.

0163 (2) Prostitution is a class B misdemeanor.

0164 Sec. 10. K.S.A. 21-3515 is hereby amended to read as fol-

0165 lows: 21-3515. (1) Patronizing a prostitute is either:

0166 (a) Knowingly entering or remaining in a house of prostitu-

0167 tion with intent to engage in sexual intercourse, *sodomy* or any

0168 unlawful sexual act with a prostitute; or

0169 (b) knowingly hiring a prostitute to engage in sexual inter-

0170 course, *sodomy* or any unlawful sexual act.

0171 (2) Patronizing a prostitute is a class C misdemeanor.

0172 Sec. 11. K.S.A. 21-3602 is hereby amended to read as fol-

0173 lows: 21-3602. Incest is marriage to or engaging in sexual inter-

0174 course or *sodomy* with a person known to the defendant offender

0175 to be related to him the offender as brother or, sister of the

0176 one-half as well as the whole blood, half-brother, half-sister,

0177 uncle, aunt, nephew or niece.

0178 Incest is a class E felony.

0179 Sec. 12. K.S.A. 21-3603 is hereby amended to read as fol-

0180 lows: 21-3603. (1) Aggravated incest is *engaging in* sexual inter-

0181 course, *sodomy* or any unlawful sexual act by a parent with a

0182 person he ~~that the offender knows is his the offender's child.~~

0183 ~~(2) As used in this section, "parent" for the purposes of this~~

0184 section means a natural father or mother, an adoptive father or

0185 mother, a stepfather or stepmother or a grandfather or grand-

0186 mother ~~parent, adoptive parent, stepparent or grandparent of~~

0187 any degree.

0188 ~~(3) As used in this section, "child" for the purposes of this~~

0189 section means a son, daughter, grandson or granddaughter *natu-*

0190 *ral child or grandchild, regardless of legitimacy or age; and also*

0191 means a stepson or stepdaughter or adopted son or adopted

0192 daughter, ~~or a stepchild or adopted child under the age of~~

0193 eighteen (18) 18!

who is 16 or more years of age and who is

who is 16 or more years of age and who is known to the offender to be related to the offender as natural parent, or child, or as natural grandparent or grandchild of any degree, regardless of legitimacy

0194 ~~(4)~~ Aggravated incest is a class D felony.

(2)

0195 New Sec. 13. (1) Sexual battery is the unlawful, intentional  
0196 touching of the person of another who is not the spouse of the  
0197 offender and who does not consent thereto, with the intent to  
0198 arouse or satisfy the sexual desires of the offender or another.

0199 (2) Sexual battery is a class A misdemeanor.

0200 (3) This section shall be part of and supplemental to the  
0201 Kansas criminal code.

0202 New Sec. 14. (1) Aggravated sexual battery is:

0203 (a) The unlawful, intentional application of force to the per-  
0204 son of another who is not the spouse of the offender and who  
0205 does not consent thereto, with the intent to arouse or satisfy the  
0206 sexual desires of the offender or another; ~~or~~

0207 (b) sexual battery against a person under 16 years of age;

0208 (2) Aggravated sexual battery is a class D felony.

0209 (3) This section shall be part of and supplemental to the  
0210 Kansas criminal code.

0211 Sec. 15. K.S.A. 60-447a is hereby amended to read as fol-

0212 lows: 60-447a. (1) ~~Except as otherwise provided in subsection~~  
0213 ~~(2), in any~~ The provisions of this section shall apply only in a

0214 prosecution for the crime of: (a) Rape, as defined by K.S.A.

0215 21-3502, ~~or for aggravated assault with intent to commit rape, as~~  
0216 ~~provided in K.S.A. 21-3410, or for an attempt to commit rape, as~~

0217 ~~provided in K.S.A. 21-3301, or for conspiracy to commit rape, as~~  
0218 ~~provided in K.S.A. 21-3302 and amendments thereto; (b) inde-~~

0219 ~~cent liberties with a child, as defined in K.S.A. 21-3503 and~~  
0220 ~~amendments thereto; (c) ~~indecent liberties with a word~~, as de-~~

0221 ~~finied in K.S.A. 21-3504 and amendments thereto; (d) aggravated~~  
0222 ~~sodomy as defined by K.S.A. 21-3506 and amendments thereto;~~

0223 ~~(e) enticement of a child, as defined in K.S.A. 21-3509 and~~  
0224 ~~amendments thereto; (f) aggravated indecent solicitation of a~~

0225 ~~child, as defined in K.S.A. 21-3511 and amendments thereto; (g)~~  
0226 ~~sexual exploitation of a child as defined in K.S.A. 21-3516 and~~

0227 ~~amendments thereto; (h) incest, as defined in K.S.A. 21-3602 and~~  
0228 ~~amendments thereto; ~~(i) aggravated incest, as defined in K.S.A.~~~~

0229 ~~21-3603 and amendments thereto; ~~(j) aggravated assault, as~~~~  
0230 ~~defined in K.S.A. 21-3410 and amendments thereto, with intent~~

; (c) sexual battery committed in another's dwelling by one who entered into or remained in the dwelling without authority;  
(d) sexual battery of a person who is unconscious or physically powerless; or  
(e) sexual battery of a person who is incapable of giving consent because of mental deficiency or disease, which condition was known by, or was reasonably apparent to, the offender

aggravated

aggravated sexual battery, as defined in section 14 or amendments thereto; (i)

(j)

(k)



(1)

0231 to commit any crime specified above; ~~(k) indecent solicitation of~~  
 0232 a child, as defined in K.S.A. 21-3510 and amendments thereto; ~~or~~  
 0233 ~~(l) attempt, as defined in K.S.A. 21-3301 and amendments~~  
 0234 thereto, or conspiracy, as defined in K.S.A. 21-3302 and amend-  
 0235 ments thereto, to commit any crime specified above.

(m) sexual battery, as defined in section 13 or amendments thereto; or (n)

0236 (2) Except as provided in subsection (3), in any prosecution  
 0237 to which this section applies, evidence of the complaining wit-  
 0238 ness' previous sexual conduct with any person including the  
 0239 defendant shall not be admissible, ~~nor shall any and no~~ reference  
 0240 shall be made thereto in the presence of the jury, except under  
 0241 the following conditions: *The defendant shall make a written*  
 0242 *motion by the defendant shall be made at least seven days before*  
 0243 *the commencement of the trial to the court to admit evidence or*  
 0244 *testimony concerning the previous sexual conduct of the com-*  
 0245 *plaining witness. The seven-day notice required herein may be*  
 0246 *The motion must be made at least seven days before the com-*  
 0247 *mencement of the trial unless that requirement is waived by the*  
 0248 *court. The motion shall state the nature of such evidence or*  
 0249 *testimony and the its relevancy thereof, and shall be accompa-*  
 0250 *nied by an affidavit in which an offer of proof of such the*  
 0251 *previous sexual conduct of the complaining witness is stated.*  
 0252 The court shall conduct a hearing on the motion in camera. At the  
 0253 conclusion of the hearing, if the court finds that evidence pro-  
 0254 posed to be offered by the defendant regarding the previous  
 0255 sexual conduct of the complaining witness is relevant and is not  
 0256 otherwise inadmissible as evidence, the court may make an  
 0257 order stating what evidence may be introduced by the defendant  
 0258 and the nature of the questions to be permitted. The defendant  
 0259 may then offer evidence and question witnesses in accordance  
 0260 with the order of the court.

0261 ~~(2)~~ (3) In any prosecution for a crime designated in subsec-  
 0262 tion (1), the prosecuting attorney may introduce evidence con-  
 0263 cerning any previous sexual conduct of the complaining witness,  
 0264 and the complaining witness may testify as to any such previous  
 0265 sexual conduct. If such evidence or testimony is introduced, the  
 0266 defendant may cross-examine the witness who gives such testi-  
 0267 mony and offer relevant evidence limited specifically to the

0268 rebuttal of such evidence or testimony introduced by the prose-  
0269 cutor or given by the complaining witness.

0270 (3) (4) As used in this section, "complaining witness" means  
0271 the alleged victim of any crime designated in subsection (1), the  
0272 prosecution of which is subject to this section.

0273 Sec. 16. K.S.A. 21-3501 through 21-3508, 21-3512, 21-3515,  
0274 21-3602, 21-3603 and 60-447a are hereby repealed.

0275 Sec. 17. This act shall take effect and be in force from and  
0276 after its publication in the statute book.

Solbach  
2-8

ATTACHMENT # 2

**House Bill No. 2008**

By Special Committee on Judiciary

Re Proposal No. 10

12-20

0018 AN ACT concerning crimes, punishments and criminal proce-  
0019 dure; relating to certain sex offenses and evidence admissible  
0020 in prosecutions therefor; defining and classifying the crime of  
0021 sexual battery; amending K.S.A. 21-3501 through 21-3508,  
0022 21-3512, 21-3515, 21-3602, 21-3603 and 60-447a and repealing  
0023 the existing sections.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. K.S.A. 21-3501 is hereby amended to read as fol-  
0026 lows: 21-3501. The following definitions apply in this article  
0027 unless a different meaning is plainly required:

0028 (1) "Sexual intercourse" means any penetration of the female  
0029 sex organ by the male sex organ; or by any object. Any penetra-  
0030 tion, however slight, is sufficient to constitute sexual inter-  
0031 course. "Sexual intercourse" does not include penetration of the  
0032 female sex organ by an object in the course of medical treatment  
0033 or examination, performed in a manner and for purposes which  
0034 are medically recognized as ethical and acceptable.

0035 (2) "Sodomy" means oral or anal copulation; oral or anal  
0036 copulation or sexual intercourse between a person and an an-  
0037 imal; or any penetration of the anal opening by any object. Any  
0038 penetration, however slight, is sufficient to constitute sodomy.  
0039 "Sodomy" does not include penetration of the anal opening by  
0040 an object in the course of medical treatment or examination,  
0041 performed in a manner and for purposes which are medically  
0042 recognized as ethical and acceptable.

0043 (3) "Spouse" means a lawful husband or wife, unless the  
0044 couple is living apart in separate residences or either spouse has  
0045 filed an action for annulment, separate maintenance or divorce

ATTACHMENT # 2

0046 or for relief under the protection from abuse act.

0047 (4) "Unlawful sexual act" means any rape, indecent liberties  
0048 with a child, *indecent liberties with a ward, criminal sodomy,*  
0049 aggravated sodomy, or lewd and lascivious behavior or sexual  
0050 battery, as defined in this article code.

0051 (3) "Woman" means any female human being.

0052 Sec. 2. K.S.A. 21-3502 is hereby amended to read as follows:  
0053 21-3502. (1) Rape is the act of sexual intercourse committed by a  
0054 man with a woman not his wife, and without her consent when  
0055 committed sexual intercourse with a person who is not one's  
0056 spouse and who does not consent to the sexual intercourse, under  
0057 any of the following circumstances:

0058 (a) When a woman's resistance the victim is overcome by  
0059 force or fear; or

0060 (b) when the woman victim is unconscious or physically  
0061 powerless to resist; or;

0062 (c) when the woman victim is incapable of giving her consent  
0063 because of mental deficiency or disease, which condition was  
0064 known by the man offender or was reasonably apparent to him  
0065 the offender; or

0066 (d) when the woman's resistance is prevented by victim is  
0067 incapable of giving consent because of the effect of any alcoholic  
0068 liquor, narcotic, drug or other substance administered to the  
0069 woman victim by the man offender, or by another for the purpose  
0070 of preventing the woman's resistance person with the offender's  
0071 knowledge, unless the woman victim voluntarily consumes or  
0072 allows the administration of the substance with knowledge of its  
0073 nature.

0074 (2) Rape is a class B felony.

0075 Sec. 3. K.S.A. 21-3503 is hereby amended to read as follows:

Insert sections 3 and 4, attached

0076 21-3503. (1) Indecent liberties with a child is engaging in either  
0077 of the following acts with a child under the age of sixteen (16)  
0078 years who is not the spouse of the offender who is not one's  
0079 spouse and who is under 16 years of age:

5

married to the offender

0080 (a) The act of Sexual intercourse; or

0081 (b) any lewd fondling or touching of the person of either the  
0082 child or the offender, done or submitted to with the intent to

New Sec. 3. (1) Rape within a marriage is sexual intercourse with a person who is one's spouse and who does not consent to the sexual intercourse, under any of the following circumstances:

(a) When the victim is overcome by force or fear;  
(b) when the victim is unconscious or physically powerless;  
(c) when the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or was reasonably apparent to the offender; or

(d) when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance administered to the victim by the offender, or by another person with the offender's knowledge, unless the victim voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Rape within a marriage is a class \_\_\_\_\_ felony.

New Sec. 4. (1) Aggravated rape within a marriage is rape within a marriage, as defined by section 3, when the offender:

(a) Inflicts great bodily harm upon the victim;  
(b) causes any disfigurement or dismemberment to the victim;

(c) during the commission of the act, displays a deadly weapon in a threatening manner or uses or threatens to use force which may inflict great bodily harm, disfigurement, dismemberment or death; or

(d) is aided and abetted by one or more persons.

(2) Aggravated rape within a marriage is a class \_\_\_\_\_ felony.



0083 arouse or to satisfy the sexual desires of either the child or the  
0084 offender or both.

0085 (2) Indecent liberties with a child is a class C felony.

0086 Sec. ~~4~~ K.S.A. 21-3504 is hereby amended to read as follows: 6

0087 21-3504. (1) Indecent liberties with a ward is either of the  
0088 following acts when committed with a child under the age of  
0089 sixteen (16) years the commission of indecent liberties with a  
0090 child, as defined in K.S.A. 21-3503 and amendments thereto, by  
0091 any guardian, proprietor or employee of any foster home, or-  
0092 phanage, or other public or private institution for the care and  
0093 custody of minor children, to whose charge such the child has  
0094 been committed or entrusted by any court, probation officer,  
0095 department of social and rehabilitation services or other agency  
0096 acting under color of law:

0097 (a) The act of sexual intercourse;

0098 (b) Any lewd fondling or touching of the person of either the  
0099 child or the offender, done or submitted to with the intent to  
0100 arouse or satisfy the sexual desires of either the child or the  
0101 offender or both.

0102 (2) Indecent liberties with a ward is a class B felony.

0103 Sec. ~~5~~ K.S.A. 21-3505 is hereby amended to read as follows: 7

0104 21-3505. (1) ~~Criminal sodomy is oral or anal copulation sodomy~~  
0105 ~~between persons who are not husband and wife or consenting~~  
0106 ~~adult members of the opposite same sex; or between a person~~  
0107 ~~and an animal; or coitus with an animal. Any penetration, how-~~  
0108 ~~ever slight, is sufficient to complete the crime of sodomy.~~

0109 (2) ~~Criminal sodomy is a class B misdemeanor.~~

0110 Sec. ~~6~~ K.S.A. 21-3506 is hereby amended to read as follows: 8

0111 21-3506. Aggravated sodomy is sodomy committed:

0112 (a) With force or threat of force, or where bodily harm is  
0113 inflicted on the victim during the commission of the crime; or

0114 (b) With a child under the age of sixteen (16) years:

0115 (a) Sodomy with a child who is not ~~one's spouse~~ married to the offender  
0116 under 16 years of age;

0117 (b) causing a child under 16 years of age to engage in sodomy  
0118 with an animal;

0119 (c) sodomy with a person who is not one's spouse and who

0120 does not consent to the sodomy or causing a person, without the  
0121 person's consent, to engage in sodomy with an animal, under any  
0122 of the following circumstances:

- 0123 (i) When the victim is overcome by force or fear;
- 0124 (ii) when the victim is unconscious or physically powerless;
- 0125 (iii) when the victim is incapable of giving consent because  
0126 of mental deficiency or disease, which condition was known by  
0127 the offender or was reasonably apparent to the offender; or
- 0128 (iv) when the victim is incapable of giving consent because of  
0129 the effect of any alcoholic liquor, narcotic, drug or other sub-  
0130 stance administered to the victim by the offender, or by another  
0131 person with the offender's knowledge, unless the victim volun-  
0132 tarily consumes or allows the administration of the substance  
0133 with knowledge of its nature.

0134 (2) Aggravated sodomy is a class B felony. Insert sections 9 and 10

0135 ~~Sec. 7.~~ K.S.A. 21-3507 is hereby amended to read as follows:

0136 21-3507. (1) Adultery is engaging in sexual intercourse by or  
0137 sodomy with a person with another who is not ~~his the offender's~~  
0138 ~~spouse~~ if:

11

married to the offender

- 0139 (a) ~~Such person~~ The offender is married; or
- 0140 (b) ~~Such person the offender~~ is not married and knows that  
0141 the other person involved in such intercourse ~~the act~~ is married.

0142 (2) Adultery is a class C misdemeanor.

12

0143 ~~Sec. 8.~~ K.S.A. 21-3508 is hereby amended to read as follows:

0144 21-3508. (1) Lewd and lascivious behavior is:

- 0145 (a) ~~The commission of an act of~~ Engaging in sexual inter-  
0146 course or sodomy with any person or animal with knowledge or  
0147 reasonable anticipation that the participants are being viewed by  
0148 others; or
- 0149 (b) the exposure of a sex organ in the presence of a person  
0150 who is not the spouse of the offender ~~or and~~ who has not  
0151 consented thereto, with intent to arouse or gratify the sexual  
0152 desires of the offender or another.

0153 (2) Lewd and lascivious behavior is a class B misdemeanor.

13

0154 ~~Sec. 9.~~ K.S.A. 21-3512 is hereby amended to read as follows:

0155 21-3512. (1) Prostitution is performing for hire, or offering or  
0156 agreeing to perform for hire where there is an exchange of value,

New Sec. 9. (1) Sodomy within a marriage is sodomy with a person who is one's spouse and who does not consent to the sodomy, under any of the following circumstances:

- (a) When the victim is overcome by force or fear;
- (b) when the victim is unconscious or physically powerless;
- (c) when the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or was reasonably apparent to the offender; or
- (d) when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance administered to the victim by the offender, or by another person with the offender's knowledge, unless the victim voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Sodomy within a marriage is a class \_\_\_\_\_ felony.

New Sec. 10. (1) Aggravated sodomy within a marriage is sodomy within a marriage, as defined by section 9, when the offender:

- (a) Inflicts great bodily harm upon the victim;
- (b) causes any disfigurement or dismemberment to the victim;
- (c) during the commission of the act, displays a deadly weapon in a threatening manner or uses or threatens to use force which may inflict great bodily harm, disfigurement, dismemberment or death; or
- (d) is aided and abetted by one or more persons.

(2) Aggravated sodomy within a marriage is a class \_\_\_\_\_ felony.

ATTACHMENT # 3

## REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your committee on Judiciary

Recommends that House Bill No. 2003

"AN ACT concerning crimes, punishments and criminal procedure; relating to certain sex offenses and evidence admissible in prosecutions therefor; defining and classifying the crime of sexual battery; amending K.S.A. 21-3501 through 21-3508, 21-3512, 21-3515, 21-3602, 21-3603 and 60-447a and repealing the existing sections."

Be amended:

On page 2, in line 47, before "indecent", by inserting "rape within a marriage, aggravated rape within a marriage,"; in line 48, by striking "indecent liberties with a ward" and inserting "aggravated indecent liberties with a child"; in line 49, before "sodomy", by inserting "criminal"; also in line 49, before "lewd", by inserting "criminal sodomy within a marriage, aggravated criminal sodomy within a marriage,"; also in line 49, by striking "or" and inserting a comma; in line 50, after "battery", by inserting "or aggravated sexual battery"; following line 74, by inserting:

"New Sec. 3. (1) Rape within a marriage is sexual intercourse with a person who is one's spouse and who does not consent to the sexual intercourse, under any of the following circumstances:

- (a) when the victim is overcome by force or fear;
- (b) when the victim is unconscious or physically powerless;
- (c) when the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender.

voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Rape within a marriage is a class D felony.

New Sec. 4. (1) Aggravated rape within a marriage is rape within a marriage, as defined by section 3, when the offender:

(a) Inflicts great bodily harm upon the victim;

(b) causes any disfigurement or dismemberment to the victim;

(c) during the commission of the act, displays a deadly weapon in a threatening manner or uses or threatens to use force which may inflict great bodily harm, disfigurement, dismemberment or death; or

(d) is aided and abetted by one or more persons.

(2) Aggravated rape within a marriage is a class B felony.";

By renumbering sections 3 through 6 as sections 5 through 8;

Also on page 2, in line 78, by striking "one's spouse" and inserting "married to the offender";

On page 3, in line 87, by striking "Indecent liberties with a ward" and inserting "Aggravated indecent liberties with a child"; in line 90, after "by", by inserting ":

"(a) A parent, adoptive parent, stepparent or grandparent of the child; or

"(b)";

Also on page 3, in line 102, by striking "Indecent liberties with a ward" and inserting "Aggravated indecent liberties with a child"; in line 111, before "sodomy", by inserting "criminal"; in line 115, by striking "one's spouse" and inserting "married to the offender"; in line 118, before "an", by inserting "any person or"; also in line 118, after the semicolon, by inserting "or";



sodomy with a person who is one's spouse and who does not consent to the sodomy, under any of the following circumstances:

- (a) when the victim is overcome by force or fear;
- (b) when the victim is unconscious or physically powerless;
- (c) when the victim is incapable of giving consent because of mental deficiency or disease, which condition was known by the offender or was reasonably apparent to the offender; or

(d) when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance administered to the victim by the offender, or by another person with the offender's knowledge, unless the victim voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Criminal sodomy within a marriage is a class D felony.

New Sec. 10. (1) Aggravated criminal sodomy within a marriage is sodomy within a marriage, as defined by section 9, when the offender:

- (a) inflicts great bodily harm upon the victim;
- (b) causes any disfigurement or dismemberment to the victim;

(c) during the commission of the act, displays a deadly weapon in a threatening manner or uses or threatens to use force which may inflict great bodily harm, disfigurement, dismemberment or death; or

(d) is aided and abetted by one or more persons.

(2) Aggravated criminal sodomy within a marriage is a class B felony.";

By renumbering sections 8 through 17 as sections 11 through 20;

Also on page 4, in line 147, before "in", by inserting "in a

age and who is known to the offender to be related to the offender as natural parent or child, or as natural grandparent or grandchild of any degree, regardless of legitimacy";

On page 6, in line 194, by striking "(4)" and inserting "(2)"; in line 206, by striking the last "or"; in line 207, before the period, by inserting ";

"(c) sexual battery committed in another's dwelling by one who entered into or remained in the dwelling without authority;

"(d) sexual battery of a person who is unconscious or physically powerless; or

"(e) sexual battery of a person who is incapable of giving consent because of mental deficiency or disease, which condition was known by, or was reasonably apparent to, the offender";

Also on page 6, in line 218, after "(b)", by inserting "rape within a marriage, as defined in section 3 and amendments thereto; (c) aggravated rape within a marriage, as defined in section 4 and amendments thereto; (d)"; in line 220, by striking "(c) indecent liberties with a ward" and inserting "(e) aggravated indecent liberties with a child"; in line 221, by striking "(d)" and inserting "(f)"; in line 222, before "sodomy", by inserting "criminal"; in line 223, by striking "(e)" and inserting "(g) criminal sodomy within a marriage, as defined in section 9 and amendments thereto; (h) aggravated criminal sodomy within a marriage, as defined in section 10 and amendments thereto; (i)"; in line 224, by striking "(f)" and inserting "(j)"; in line 225, by striking "(g)" and inserting "(k)"; in line 227, by striking "(h)" and inserting "(l) aggravated sexual battery, as defined in section 14 and amendments thereto; (m)"; in line 228, by striking "(i)" and inserting "(n)"; in line 229, by striking "(j)" and inserting "(o)";

"and crimes affecting family relationships"; in line 20, by striking "the crime of"; in line 21, by striking "sexual battery" and inserting "certain crimes"; also in line 21, after "through", by inserting "21-3506,"; in line 23, after "sections", by inserting "; also repealing K.S.A. 21-3507";

And the bill be passed as amended.

-----Chairperson

MEMORANDUM

TO: House Judiciary Committee  
Robert Frey, Chariman

FROM: Brenda L. Hoyt, Assistant Attorney General BLH

SUBJECT: HB 2008, 2009

DATE: January 31, 1983

On behalf of the Attorney General, we submit the following comments on HB 2008 and 2009, for the committee's consideration.

HB 2008

Lines 0043-0046- The definition of "spouse" excludes lawful husband or wife if the couple is living apart. Because "adultery" is "engaging in sexual intercourse or sodomy with a person who is not the offender's spouse..." (Lines 0135-0142), a legally married couple not living together would be committing adultery by definition if the couple engages in consensual sexual intercourse or sodomy with each other.

At line 0143, Sec.8, we suggest that the committee include language which would make it a violation of this section to expose oneself in public place. We believe that the inclusion of such language would make it much easier to prosecute a person whose exhibitionist behavior is not directed toward a particular person or persons.

HB 2009

At line 0046, Sec. 1(d) (4), we suggest inclusion of the phrase, "or any other agency with subpoena power." Various licensure boards, ABC, and the Commissioner of Insurance, for example, conduct hearings and can impose penalties of significant financial impact upon individuals or corporations. We believe interference with witnesses for these proceedings should be treated in the same manner as if the hearings were to be conducted in court.

At lines 0094-0101 and 0112-0113, new sec.5(d) permits a court may order a law enforcement agency to provide protection for a victim or a witness. We are concerned about the possible tort liability which a law enforcement agency may incur if the victim or witness is harmed while the agency is providing protection. We suggest that the committee consider whether such agency should be liable in tort under the Tort Claims Act or whether an exclusion should be specified in Tort Claims.