

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson10:00 a.m./p.m. on March 17, 1983 in room 514-S of the Capitol.~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Hein, Mulich and Werts.Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Hein, Legislative Research Department  
Mark Burghart, Legislative Research Department

## Conferees appearing before the committee:

Representative Robert Frey  
Jim Clark, Kansas County and District Attorneys Association  
Bonnie Buchele, Kansas Women's Political Caucus  
Barbara Sue Hawver, Kansas Women's Political Caucus  
Elizabeth Taylor, Kansas Association of Domestic Violence Programs  
Representative Wanda FullerHouse Bill 2008 - Sex offenses; crimes, punishments and criminal procedure.

The chairman explained this bill is a result of an interim committee study that deals with rape and other sex crimes.

Representative Robert Frey stated this bill has been refined to the point that it will meet with the approval of the people of Kansas. He explained the bill, the summer committee's recommendation, and the changes the bill had gone through to reach the form it is in now. Discussion was had concerning the language in the bill in line 32, and the definition of spouse concerning common law marriages.

Jim Clark testified his association does support the bill, particularly those sections containing the definition which adds penetration by an object. They also support broadening the definition. He stated they support recognizing some of the deviate conduct in Section 15 and 16(c) in sexual battery crimes. They support Section 17, broadening the rape shield statute. They support Section 2, the removal of resistance from the definition; they do support the desexing the crime of rape.

Bonnie Buchele appeared in support of the bill. She explained she is a consultant on sexual assault at the Menninger Foundation. She testified rape is not a sexual crime, it is a violent crime. She has seen 150 rape victims, and there are six elements that are very important to them. A copy of her remarks is attached (See Attachment #1). A committee member inquired about retaining the elimination of spousal immunity. Bonnie Buchele answered, their organization believes rape is rape and is interested in a statute that is enforceable. They are supporting the elimination of spousal immunity, but doubt the votes are present to pass it in that form.Barbara Sue Hawver testified in support of the bill as it is now; would rather take this step now, of passing the bill, than losing the bill. A copy of her remarks is attached (See Attachment #2). A committee member inquired about aggravated rape within marriage. She replied, she thinks bodily harm exists when one person has been violated by another. Committee discussion with her followed.

Elizabeth Taylor appeared in support of the bill. Her organization's main concerns are: the addition of object rape in Section 1, and Subsection 1, removal of resistance, and inclusion of rape within a marriage. The chairman inquired

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~xxx~~ on March 17, 1983.

House Bill 2008 continued

if they would support the removal of spousal immunity. She replied, they would, but they are very happy with the bill. The chairman inquired of instances of mistreatment of a wife by a husband that would not reach the standard of great physical harm. She replied, they do include in abuse, mental abuse; women who have mental abuse also have had physical abuse. Committee discussion continued concerning what is considered bodily harm. Representative Frey commented that it depends whether you can get a doctor to come forward to state whether it is great bodily harm. It is difficult to get a doctor to say that was great bodily harm. He tends to think that is conservative; psychological damages would follow body harm.

Representative Wanda Fuller stated she was disappointed in the testimony by most of the women she heard this morning. She read to the committee of three particular rape cases and stated, in 11 states rape laws apply to wives. She also read cases concerning rape in marriage. She testified Kansas is one of the states that still does not recognize that rape can occur in marriage. She presented a proposed amendment to the bill to totally eliminate spousal immunity (See Attachment #3). The chairman explained if the committee is supportive of this amendment, they could get the bill worked in that form, and explained procedures which would permit a vote by the full House without jeopardizing the bill. Representative Fuller added, it is a problem how to define extreme bodily harm; the statutes from the Iowa law has one of the model laws that is acceptable and is working. A committee member inquired if she thought the bill would be lost if the House amendment is left in. She answered, she would prefer, if the spousal amendment is taken out but suggested as an alternative the one, two and three degrees of type of rape. During the discussion, Roberta Hawver stated she would prefer no distinction between marital rape and non-marital rape. Jim Clark added, from a prosecution standpoint, it is an easier case if change aggravated battery against a spouse, rather than making it aggravated rape within the marriage. Kathleen Sebelius pointed out that if spousal examination were eliminated, there still would be the prosecutorial discretion, the judgment of the prosecutor as well as the victim. Considerable committee discussion followed.

Senator Gaar moved to approve the minutes of February 21, 1983; Senator Winter seconded the motion, and the motion carried.

The meeting adjourned.

3-17-83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
Wendy Andrews	Topeka	Kan Bar Assn
Barbara Eder	Topeka	
J. Daley	Topeka	
Joseph George	Topeka	Sen. Feliciano
Dr. Fred	Liberal	House
Manda Taylor	Archita	House of Rep.
Jim Clark	Topeka	KCDAA
Cathy Behan		AP
Elizabeth E. Taylor	Topeka	ICADVP
Sheryl L. Blutz	Topeka	Ks. Dept. of Admin
Melissa Hess	Topeka	Ks. NARAL
Mary McMill	Topeka	Ks. NARAL
Kamy Hines	Lawrence	Steinegers staff
Randa B. White	Lawrence	Senator Winter's Secretary
M. Haaver	Topeka	Cap. Journal
<b>A Home</b>	<b>Wichita</b>	<b>Eagle-Beam</b>
Phil Jennings	Topeka	Kansas Trial Lawyers
Lanning Johnson	"	Legislative Intern
Michael Green	Baldwin	"
Dore Ann Collins	Junction City	
Matt McElathlin	Columbia, Mo	Page
Beth Wiebma	Topeka	Grid Seat
Rob McNeely	Topeka	KIN
Kelly	"	UPI
Ruth Ann Hawman	Topeka	Women's Political Caucus
Bryan Krantz	Topeka	ACLU

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

*Jean Penney  
Katharine Sullivan*

*Ann Selman*

*Inter*

*Cindy Entube*

*Sen. Hous*

*Barry W. York*

*SAS*



# 1

Testimony of Bonnie, J. Buchele on Behalf of the Kansas Women's Political  
Caucus to the Senate Judiciary Committee, March 17, 1983--Regarding House  
Bill #2008:

Chairman Pomeroy and Members of the Committee:

My name is Bonnie Buchele. I am here on behalf of the Kansas  
Women's Political Caucus to state our general support for House Bill #2008.

I have been asked to speak to the committee because of my professional  
interest and experience in the area of sexual assault. I am the consultant  
on sexual assault at The Menninger Foundation where I am a psychotherapist  
in the Adult Outpatient Department. My educational background is that  
I have a Master's Degree in Counseling from the University of Kansas  
and with a little luck I will receive my Ph.D. in Counseling Psychology  
from the University of Kansas in May. I have written and researched in  
the area of sexual assault and am familiar with the current literature  
and thinking on the subject. During the last 10 years as a therapist and  
consultant, I have seen over 150 rape victims and have trained volunteer  
rape counselors for Topekans Against Crime in the City of Topeka. I also  
serve as their professional consultant.

We have monitored, studied, conferred, strategized, and worried  
more over this bill than any other pending legislation so far this session.  
Six of its elements are very important to us and are important revisions  
of the law because they are based on the research literature covering rape  
victims as well as the fact that rape is a violent crime not a sexual one.  
Those elements are:

Atch. 1

1. Elimination of victim resistance: A person filled with terror as is the case of the victim in a rape often finds it impossible to physically resist an assailant. Due to differences in physical size and/or the presence of a weapon, active resistance can be life threatening and thus is an unwise course.
2. Creating the crimes of sexual battery and aggravated sexual battery expands the law to make sexual assaults that are not actual rape in violation of the law.
3. Expanding the rape shield statute to apply to other sex-related offenses is necessary because assaults are often comprised of multiple offenses.
4. Including rape with an object in the definition of rape is proper because this does occur, can cause severe physical damage and trauma, and has previously not been chargeable as a crime.
5. Stating the law in terms that are not gender specific makes women offenders subject to the provisions of the statute. This is appropriate because within the last two years verified accounts of men raped by women have appeared in the literature. This change in the law will make it possible to charge women assailants.
6. Creating the category of aggravated rape within a marriage and rape when spouses are separated and living apart establishes protection for a sizable group of persons who have had none heretofore and who are often the victims of rape.

The brevity of my statement should not be construed as a lack of strong support and commitment to the passage of this bill. I would be happy to entertain any questions that you might have.



3-17-83  
# 2

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KANSAS WOMEN'S POLITICAL CAUCUS

My name is Roberta Sue Hawver. I am an attorney in private practice here in Topeka. A substantial portion of my work involves domestic relations. Additionally, I serve as a resource person for The Battered Women's Center.

My testimony will be focused primarily on §§3 and 9 of H.B. 2008, concerning diminished spousal immunity, but I will be happy to answer questions on any portion of the bill and would like to comment on that portion dealing with gender neutrality.

While my experience has been entirely limited to female rape victims, the literature is recording a growing number of male rape victims. Just as I believe the law should provide redress for married victims, I believe female offenders should be held accountable.

Ideally the law would recognize that nonconsensual sex is rape and prohibit it regardless of marital status. Realistically, H.B. 2008 provides redress for most victims of marital rape/sodomy as in most instances violence is a factor. For myself it brings us one big step closer to the day when I can rest assured I need never tell another client that her husband's violation of her was not a violation of the law.

Atch. 2



[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1983

## HOUSE BILL No. 2008

By Special Committee on Judiciary

Re Proposal No. 10

12-20

0020 AN ACT concerning crimes, punishments and criminal proce-  
0021 dure; relating to certain sex offenses and crimes affecting  
0022 family relationships, and evidence admissible in prosecutions  
0023 therefor; defining and classifying the crime of sexual battery  
0024 certain crimes; amending K.S.A. 21-3501 through 21-3506,  
0025 21-3508, 21-3512, 21-3515, 21-3602, 21-3603 and 60-447a and  
0026 repealing the existing sections; also repealing K.S.A. 21-3507.

0027 *Be it enacted by the Legislature of the State of Kansas:*

0028 Section 1. K.S.A. 21-3501 is hereby amended to read as fol-  
0029 lows: 21-3501. The following definitions apply in this article  
0030 unless a different meaning is plainly required:

0031 (1) "Sexual intercourse" means any penetration of the female  
0032 sex organ by the male sex organ; or by any object. Any penetra-  
0033 tion, however slight, is sufficient to constitute sexual intercourse.  
0034 "Sexual intercourse" does not include penetration of the female  
0035 sex organ by an object in the course of medical treatment or  
0036 examination, performed in a manner and for purposes which are  
0037 medically recognized as ethical and acceptable.

0038 (2) "Sodomy" means oral or anal copulation; oral or anal  
0039 copulation or sexual intercourse between a person and an animal;  
0040 or any penetration of the anal opening by any object. Any pene-  
0041 tration, however slight, is sufficient to constitute sodomy. "Sod-  
0042 omy" does not include penetration of the anal opening by an  
0043 object in the course of medical treatment or examination, per-  
0044 formed in a manner and for purposes which are medically rec-  
0045 ognized as ethical and acceptable.

\* indicates where language is deleted

Atch. 3

0046 (3) "Spouse" means a lawful husband or wife, unless the  
0047 couple is living apart in separate residences or either spouse has  
0048 filed an action for annulment, separate maintenance or divorce or  
0049 for relief under the protection from abuse act.

0050 (4) "Unlawful sexual act" means any rape, ~~rape within a~~  
0051 ~~marriage, aggravated rape within a marriage,~~ indecent liberties  
0052 with a child, ~~indecent liberties with a ward~~ aggravated indecent  
0053 liberties with a child, criminal sodomy, aggravated criminal  
0054 sodomy, ~~or criminal sodomy within a marriage, aggravated crim-~~  
0055 ~~inal sodomy within a marriage,~~ lewd and lascivious behavior ~~or,~~  
0056 sexual battery or aggravated sexual battery, as defined in this  
0057 article code.

0058 (3) "Woman" means any female human being.

0059 Sec. 2. K.S.A. 21-3502 is hereby amended to read as follows:  
0060 21-3502. (1) Rape is the act of sexual intercourse committed by a  
0061 man with a woman not his wife, and without her consent when  
0062 committed sexual intercourse with a person ~~who is not one's~~  
0063 ~~spouse and who does not consent to the sexual intercourse,~~ under  
0064 any of the following circumstances:

0065 (a) When a woman's resistance ~~the victim~~ is overcome by  
0066 force or fear; or

0067 (b) when the woman ~~victim~~ is unconscious or physically  
0068 powerless to resist; or;

0069 (c) when the woman ~~victim~~ is incapable of giving her consent  
0070 because of mental deficiency or disease, which condition was  
0071 known by the man ~~offender~~ or was reasonably apparent to ~~him~~ the  
0072 offender; or

0073 (d) when the woman's resistance is prevented by ~~victim is~~  
0074 ~~incapable of giving consent because of~~ the effect of any alcoholic  
0075 liquor, narcotic, drug or other substance administered to the  
0076 woman ~~victim~~ by the man ~~offender~~, or by another for the purpose  
0077 of preventing the woman's resistance ~~person with the offender's~~  
0078 knowledge, unless the woman ~~victim~~ voluntarily consumes or  
0079 allows the administration of the substance with knowledge of its  
0080 nature.

0081 (2) Rape is a class B felony.

0082 ~~New Sec. 3. (1) [Aggravated] Rape within a marriage is sex~~

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0083 ual intercourse with a person who is one's spouse and who does  
 0084 not consent to the sexual intercourse, *under any of the following*  
 0085 *circumstances* [if]:

0086 [(a) The victim is]

0087 (a) *When the victim is* [(i) overcome by force or fear;

0088 (b) *when the victim is* [(ii) unconscious or physically pow-  
 0089 erless;

0090 (c) *when the victim is* [(iii) incapable of giving consent  
 0091 because of mental deficiency or disease, which condition was  
 0092 known by the offender or was reasonably apparent to the of-  
 0093 fender; or

0094 (d) *when the victim is* [(iv) incapable of giving consent  
 0095 because of the effect of any alcoholic liquor, narcotic, drug or  
 0096 other substance administered to the victim by the offender, or by  
 0097 another person with the offender's knowledge, unless the victim  
 0098 voluntarily consumes or allows the administration of the sub-  
 0099 stance with knowledge of its nature; and]

0100 ~~(2) Rape within a marriage is a class D felony.~~

0101 ~~New Sec. 4. (1) Aggravated rape within a marriage is rape~~  
 0102 ~~within a marriage, as defined by section 3, when~~

0103 [(b) the offender:

0104 (a) [(i) Inflicts great bodily harm upon the victim;

0105 (b) [(ii) causes any disfigurement or dismemberment to the  
 0106 victim;

0107 (c) [(iii) during the commission of the act, displays a deadly  
 0108 weapon in a threatening manner or uses or threatens to use force  
 0109 which may inflict great bodily harm, disfigurement, dismem-  
 0110 berment or death; or

0111 (d) [(iv) is aided and abetted by one or more persons.

0112 ~~(2) Aggravated rape within a marriage is a class B felony.~~

0113 ~~Sec. 3 5 [4]. K.S.A. 21-3503 is hereby amended to read as~~  
 0114 ~~follows: 21-3503. (1) Indecent liberties with a child is engaging in~~  
 0115 ~~either of the following acts with a child under the age of sixteen~~  
 0116 ~~(16) years who is not the spouse of the offender who is not one's~~  
 0117 ~~spouse married to the offender and who is under 16 years of age:~~

0118 (a) The act of Sexual intercourse; or

0119 (b) any lewd fondling or touching of the person of either the

0120 child or the offender, done or submitted to with the intent to  
0121 arouse or to satisfy the sexual desires of either the child or the  
0122 offender or both.

0123 (2) Indecent liberties with a child is a class C felony.

0124 Sec. 4 6 [5]. K.S.A. 21-3504 is hereby amended to read as  
0125 follows: 21-3504. (1) ~~Indecent liberties with a ward~~ Aggravated  
0126 ~~indecent liberties with a child is either of the following acts~~  
0127 ~~when committed with a child under the age of sixteen (16) years~~  
0128 ~~the commission of indecent liberties with a child, as defined in~~  
0129 ~~K.S.A. 21-3503 and amendments thereto, by:~~

0130 (a) A parent, adoptive parent, stepparent or grandparent of the  
0131 child; or

0132 (b) any guardian, proprietor or employee of any foster home,  
0133 orphanage; or other public or private institution for the care and  
0134 custody of minor children, to whose charge such ~~the~~ child has  
0135 been committed or entrusted by any court, probation officer,  
0136 department of social and rehabilitation services or other agency  
0137 acting under color of law:

0138 (a) The act of sexual intercourse;

0139 (b) Any lewd fondling or touching of the person of either the  
0140 child or the offender, done or submitted to with the intent to  
0141 arouse or satisfy the sexual desires of either the child or the  
0142 offender or both.

0143 (2) ~~Indecent liberties with a ward~~ Aggravated indecent liber-  
0144 ~~ties with a child is a class B felony.~~

0145 Sec. 5 7 [6]. K.S.A. 21-3505 is hereby amended to read as  
0146 follows: 21-3505. (1) ~~Criminal sodomy is oral or anal copulation~~  
0147 ~~sodomy between persons who are not husband and wife or~~  
0148 ~~consenting adult members of the opposite same sex; or between a~~  
0149 ~~person and an animal; or coitus with an animal. Any penetration;~~  
0150 ~~however slight, is sufficient to complete the crime of sodomy.~~

0151 (2) ~~Criminal sodomy is a class B misdemeanor.~~

0152 Sec. 6 8 [7]. K.S.A. 21-3506 is hereby amended to read as  
0153 follows: 21-3506. Aggravated criminal sodomy is ~~sodomy com-~~  
0154 ~~mitted:~~

0155 (a) With force or threat of force; or where bodily harm is  
0156 inflicted on the victim during the commission of the crime; or

0157 (b) With a child under the age of sixteen (16) years:

0158 (a) Sodomy with a child who is not ~~one's spouse~~ married to the  
0159 offender and who is under 16 years of age;

0160 (b) causing a child under 16 years of age to engage in sodomy  
0161 with any person or an animal; or

0162 (c) sodomy with a person ~~who is not one's spouse and~~ who  
0163 does not consent to the sodomy or causing a person, without the  
0164 person's consent, to engage in sodomy with any person or an  
0165 animal, under any of the following circumstances:

0166 (i) When the victim is overcome by force or fear;

0167 (ii) when the victim is unconscious or physically powerless;

0168 (iii) when the victim is incapable of giving consent because of  
0169 mental deficiency or disease, which condition was known by the  
0170 offender or was reasonably apparent to the offender; or

0171 (iv) when the victim is incapable of giving consent because of  
0172 the effect of any alcoholic liquor, narcotic, drug or other sub-  
0173 stance administered to the victim by the offender, or by another  
0174 person with the offender's knowledge, unless the victim voluntar-  
0175 ily consumes or allows the administration of the substance with  
0176 knowledge of its nature.

0177 (2) Aggravated criminal sodomy is a class B felony.

0178 Sec. 7. K.S.A. 21-3507 is hereby amended to read as follows:

0179 21-3507. (1) Adultery is *engaging in* sexual intercourse by or  
0180 sodomy with a person with another who is not his *the offender's*  
0181 spouse if:

0182 (a) Such person *The offender* is married; or

0183 (b) Such person *the offender* is not married and knows that  
0184 the other person involved in such intercourse *the act* is married.

0185 (2) Adultery is a class C misdemeanor.

0186 [Sec. 8. K.S.A. 21-3507 is hereby amended to read as fol-  
0187 lows: 21-3507. (1) Adultery is *engaging in* sexual intercourse by  
0188 or sodomy with a person with another who is not his spouse *who*  
0189 *is not married to the offender* if:

0190 (a) Such person *The offender* is married; or

0191 (b) Such person *The offender* is not married and knows that  
0192 the other person involved in such intercourse *the act* is married.

0193 (2) Adultery is a class C misdemeanor.]

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0194 New Sec. 9. (1) [Aggravated] Criminal sodomy within a  
0195 marriage is sodomy with a person who is one's spouse and who  
0196 does not consent to the sodomy, *under any of the following*  
0197 *circumstances* [if]:

- 0198 [(a) The victim is
- 0199 (a) ~~When the victim is~~ [(i)] overcome by force or fear;
- 0200 (b) ~~when the victim is~~ [(ii)] unconscious or physically pow-  
0201 erless;
- 0202 (c) ~~when the victim is~~ [(iii)] incapable of giving consent  
0203 because of mental deficiency or disease, which condition was  
0204 known by the offender or was reasonably apparent to the of-  
0205 fender; or
- 0206 (d) ~~when the victim is~~ [(iv)] incapable of giving consent  
0207 because of the effect of any alcoholic liquor, narcotic, drug or  
0208 other substance administered to the victim by the offender, or by  
0209 another person with the offender's knowledge, unless the victim  
0210 voluntarily consumes or allows the administration of the sub-  
0211 stance with knowledge of its nature [; and]

0212 (2) ~~Criminal sodomy within a marriage is a class D felony.~~

0213 ~~New Sec. 10. (1) Aggravated criminal sodomy within a mar-  
0214 riage is sodomy within a marriage, as defined by section 9, when~~

- 0215 [(b)] the offender:
- 0216 (a) [(i)] Inflicts great bodily harm upon the victim;
- 0217 (b) [(ii)] causes any disfigurement or dismemberment to the  
0218 victim;
- 0219 (c) [(iii)] during the commission of the act, displays a deadly  
0220 weapon in a threatening manner or uses or threatens to use force  
0221 which may inflict great bodily harm, disfigurement, dismem-  
0222 berment or death; or
- 0223 (d) [(iv)] is aided and abetted by one or more persons.

0224 (2) ~~Aggravated criminal sodomy within a marriage is a class B  
0225 felony.~~

0226 Sec. 8 ~~11~~ [10]. K.S.A. 21-3508 is hereby amended to read as  
0227 follows: 21-3508. (1) Lewd and lascivious behavior is:

- 0228 (a) The ~~commission of an act of~~ *Engaging in* sexual inter-  
0229 course or sodomy with any person or animal with knowledge or  
0230 reasonable anticipation that the participants are being viewed by

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0231 others; or

0232 (b) the exposure of a sex organ in a public place, or in the  
0233 presence of a person who is not the spouse of the offender ~~or~~ and  
0234 who has not consented thereto, with intent to arouse or gratify the  
0235 sexual desires of the offender or another.

0236 (2) Lewd and lascivious behavior is a class B misdemeanor.

0237 Sec. ~~9 12 [H]~~ K.S.A. 21-3512 is hereby amended to read as  
0238 follows: 21-3512. (1) Prostitution is performing for hire, or offer-  
0239 ing or agreeing to perform for hire where there is an exchange of  
0240 value, any of the following acts:

0241 (a) Sexual intercourse; ~~or~~

0242 (b) ~~oral or anal copulation sodomy~~; or

0243 (c) manual or other bodily contact stimulation of the genitals  
0244 of any person with the intent to arouse or gratify the sexual  
0245 desires of the offender or another.

0246 (2) Prostitution is a class B misdemeanor.

0247 Sec. ~~10 13 [H]~~ K.S.A. 21-3515 is hereby amended to read as  
0248 follows: 21-3515. (1) Patronizing a prostitute is either:

0249 (a) Knowingly entering or remaining in a house of prostitu-  
0250 tion with intent to engage in sexual intercourse, *sodomy* or any  
0251 unlawful sexual act with a prostitute; or

0252 (b) knowingly hiring a prostitute to engage in sexual inter-  
0253 course, *sodomy* or any unlawful sexual act.

0254 (2) Patronizing a prostitute is a class C misdemeanor.

0255 Sec. ~~11 14 [H]~~ K.S.A. 21-3602 is hereby amended to read as  
0256 follows: 21-3602. Incest is marriage to or engaging in sexual  
0257 intercourse *or sodomy* with a person who is 16 or more years of  
0258 age and who is known to the ~~defendant~~ *offender* to be related to  
0259 ~~him~~ *the offender* as brother ~~or~~, sister of the ~~one-half~~ as well as the  
0260 ~~whole blood, half-brother, half-sister~~, uncle, aunt, nephew or  
0261 niece.

0262 Incest is a class E felony.

0263 Sec. ~~12 15 [H]~~ K.S.A. 21-3603 is hereby amended to read as  
0264 follows: 21-3603. (1) Aggravated incest is *engaging in* sexual  
0265 intercourse, *sodomy* or any unlawful sexual act ~~by a parent~~ with a  
0266 person ~~he~~ *that the offender* knows is his ~~the offender's~~ child.

0267 (2) *As used in this section, "parent" for the purposes of this*

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0268 section means a natural father or mother, an adoptive father or  
0269 mother, a stepfather or stepmother or a grandfather or grand-  
0270 mother parent, adoptive parent, stepparent or grandparent of any  
0271 degree.

0272 (3) As used in this section, "child" for the purposes of this  
0273 section means a son, daughter, grandson or granddaughter natu-  
0274 ral child or grandchild, regardless of legitimacy or age; and also  
0275 means a stepson or stepdaughter or adopted son or adopted  
0276 daughter, or a stepchild or adopted child under the age of eigh-  
0277 teen (18) 18 who is 16 or more years of age and who is known to  
0278 the offender to be related to the offender as natural parent or  
0279 child, or as natural grandparent or grandchild of any degree,  
0280 regardless of legitimacy.

0281 (4) (2) Aggravated incest is a class D felony.

0282 New Sec. ~~13 16 [15]~~ (1) Sexual battery is the unlawful, in-  
0283 tentional touching of the person of another who is not the spouse  
0284 of the offender and who does not consent thereto, with the intent  
0285 to arouse or satisfy the sexual desires of the offender or another.

0286 (2) Sexual battery is a class A misdemeanor.

0287 (3) This section shall be part of and supplemental to the  
0288 Kansas criminal code.

0289 New Sec. ~~14 17 [16]~~ (1) Aggravated sexual battery is:

0290 (a) The unlawful, intentional application of force to the per-  
0291 son of another who is not the spouse of the offender and who does  
0292 not consent thereto, with the intent to arouse or satisfy the sexual  
0293 desires of the offender or another; or

0294 (b) sexual battery against a person under 16 years of age;

0295 (c) sexual battery committed in another's dwelling by one who  
0296 entered into or remained in the dwelling without authority;

0297 (d) sexual battery of a person who is unconscious or physically  
0298 powerless; or

0299 (e) sexual battery of a person who is incapable of giving  
0300 consent because of mental deficiency or disease, which condi-  
0301 tion was known by, or was reasonably apparent to, the offender.

0302 (2) Aggravated sexual battery is a class D felony.

0303 (3) This section shall be part of and supplemental to the  
0304 Kansas criminal code.

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0305 Sec. ~~15 18~~ ~~[17]~~. K.S.A. 60-447a is hereby amended to read as  
0306 follows: 60-447a. (1) Except as otherwise provided in subsection  
0307 ~~(2)~~, in any *The provisions of this section shall apply only in a*  
0308 prosecution for the crime of: (a) Rape, as defined by K.S.A.  
0309 21-3502; or for aggravated assault with intent to commit rape, as  
0310 ~~§0201~~ provided in K.S.A. 21-3410; or for an attempt to commit  
0311 rape, as provided in K.S.A. 21-3301, or for conspiracy to commit  
0312 rape, as provided in K.S.A. 21-3302 and amendments thereto; (b)  
0313 ~~[aggravated] rape within a marriage, as defined in section 3 and~~  
0314 ~~amendments thereto; (c) aggravated rape within a marriage, as~~  
0315 ~~defined in section 4 and amendments thereto; (d) indecent liber-~~  
0316 ~~ties with a child, as defined in K.S.A. 21-3503 and amendments~~  
0317 ~~thereto; (e) indecent liberties with a ward (e) ~~[(d)]~~ aggravated~~  
0318 ~~indecent liberties with a child, as defined in K.S.A. 21-3504 and~~  
0319 ~~amendments thereto; (d) (f) ~~[(e)]~~ aggravated criminal sodomy as~~  
0320 ~~defined by K.S.A. 21-3506 and amendments thereto; (e) (g) crimi-~~  
0321 ~~nal sodomy within a marriage, as defined in section 9 and~~  
0322 ~~amendments thereto; (h) ~~[(f)]~~ aggravated criminal sodomy within~~  
0323 ~~a marriage, as defined in section 10[9] and amendments thereto;~~  
0324 ~~(t) ~~[(g)]~~ enticement of a child, as defined in K.S.A. 21-3509 and~~  
0325 ~~amendments thereto; (f) (j) ~~[(h)]~~ aggravated indecent solicitation~~  
0326 ~~of a child, as defined in K.S.A. 21-3511 and amendments thereto;~~  
0327 ~~(g) (k) ~~[(i)]~~ sexual exploitation of a child as defined in K.S.A.~~  
0328 ~~21-3516 and amendments thereto; (h) (l) ~~[(j)]~~ aggravated sexual~~  
0329 ~~battery, as defined in section 14 ~~[16]~~ and amendments thereto;~~  
0330 ~~(m) ~~[(k)]~~ incest, as defined in K.S.A. 21-3602 and amendments~~  
0331 ~~thereto; (i) (n) ~~[(l)]~~ aggravated incest, as defined in K.S.A. 21-3603~~  
0332 ~~and amendments thereto; (j) (o) ~~[(m)]~~ aggravated assault, as~~  
0333 ~~defined in K.S.A. 21-3410 and amendments thereto, with intent to~~  
0334 ~~commit any crime specified above; (k) (p) ~~[(n)]~~ indecent solicita-~~  
0335 ~~tion of a child, as defined in K.S.A. 21-3510 and amendments~~  
0336 ~~thereto; or (l) (q) ~~[(o)]~~ sexual battery, as defined in section 13 ~~[15]~~~~  
0337 ~~and amendments thereto; or (r) ~~[(p)]~~ attempt, as defined in K.S.A.~~  
0338 ~~21-3301 and amendments thereto, or conspiracy, as defined in~~  
0339 ~~K.S.A. 21-3302 and amendments thereto, to commit any crime~~  
0340 ~~specified above.~~

(c)  
(d)  
\*  
(e)  
(f)  
(g)  
(h)  
(14)  
(i)  
(j)  
(k)  
(1)  
(m)  
13  
(n)

0341 (2) Except as provided in subsection (3), in any prosecution to

0342 *which this section applies*, evidence of the complaining witness'  
0343 previous sexual conduct with any person including the defendant  
0344 shall not be admissible, ~~nor shall any and no~~ reference shall be  
0345 made thereto in the presence of the jury, except under the fol-  
0346 lowing conditions: *The defendant shall make a written motion by*  
0347 *the defendant shall be made at least seven days before the*  
0348 ~~commencement of the trial~~ to the court to admit evidence or  
0349 testimony concerning the previous sexual conduct of the com-  
0350 plaining witness. ~~The seven-day notice required herein may be~~  
0351 *The motion must be made at least seven days before the com-*  
0352 *mencement of the trial unless that requirement is waived by the*  
0353 court. The motion shall state the nature of such evidence or  
0354 testimony and ~~the its relevancy thereof~~, and shall be accompanied  
0355 by an affidavit in which an offer of proof of ~~such the~~ previous  
0356 sexual conduct of the complaining witness is stated. The court  
0357 shall conduct a hearing on the motion in camera. At the conclu-  
0358 sion of the hearing, if the court finds that evidence proposed to be  
0359 offered by the defendant regarding the previous sexual conduct  
0360 of the complaining witness is relevant and is not otherwise  
0361 inadmissible as evidence, the court may make an order stating  
0362 what evidence may be introduced by the defendant and the  
0363 nature of the questions to be permitted. The defendant may then  
0364 offer evidence and question witnesses in accordance with the  
0365 order of the court.

0366 (2) (3) In any prosecution for a crime designated in subsec-  
0367 tion (1), the prosecuting attorney may introduce evidence con-  
0368 cerning any previous sexual conduct of the complaining witness,  
0369 and the complaining witness may testify as to any such previous  
0370 sexual conduct. If such evidence or testimony is introduced, the  
0371 defendant may cross-examine the witness who gives such testi-  
0372 mony and offer relevant evidence limited specifically to the  
0373 rebuttal of such evidence or testimony introduced by the prose-  
0374 cutor or given by the complaining witness.

0375 (3) (4) As used in this section, "complaining witness" means  
0376 the alleged victim of any crime designated in subsection (1), the  
0377 prosecution of which is subject to this section.

0378 Sec. 16 10 [16] K.S.A. 21-3501 through 21-3508, 21-3512,

0379 21-3515, 21-3602, 21-3603 and 60-447a are hereby repealed.

0380 Sec. ~~17 20~~<sup>19</sup> This act shall take effect and be in force from

0381 and after its publication in the statute book.

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