

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson

10:00 a.m. ~~pm~~ on March 18, 1983 in room 514-S of the Capitol.

All members were present ~~except~~: Senators Pomeroy, Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Rusty Davis, Kansas Trial Lawyers Association  
Chris Groves, Associated Students of Kansas  
Joan Hamilton, Assistant Shawnee County District Attorney  
Nickie Stein, Kansas State Nurses Association  
Judy Davis, Manhattan, Kansas  
Brenda Hoyt, Office of Attorney General

House Bill 2008 - Sex Offenses; crimes, punishments and criminal procedure.

Rusty Davis testified the position of the Criminal Law Committee of the Kansas Trial Lawyers is in support of the bill with the following exceptions. He pointed out a technical problem under paragraph 4, a duplication in the title that needs to be struck. He urged the committee to strike the wording in line 147 of the bill "between persons who are members of the same sex". He suggested omitting specific language in Section 8. He urged repeal of the adultery statute.

Chris Groves appeared in support of the bill. A copy of her remarks is attached (See Attachment #1). A committee member inquired, if you are going to take a position on this, where do you stop on talking about issues? She answered, these are the issues the students feel are important and have brought to them.

The chairman inquired of Rusty Davis if the trial lawyers support complete removal of spousal immunity. Mr. Davis answered, no sir, the reason is this is a legislative problem. With complete immunity, it gives a tremendous club to one party in a relationship. The bill provides some modicum of verifiability. A committee member inquired, what do you believe is bodily harm? Mr. Davis answered, this is a difficult question; this is a thing the jury wrestles with for hours to reach a decision. Same problem with battery, it goes to the weight of the evidence; always have that problem. He stated it is not going to avoid that problem by eliminating the immunity. A committee member inquired, why not put the marital rape statute in the battery statute? Mr. Davis answered, why is rape not classed as a simple battery; the surrounding circumstances are different. Further committee discussion followed.

Joan Hamilton testified she has handled rape and sodomy cases, and she has represented clients from four months to 90 yearsold. She thinks this bill has some extremely relevant and important issues. Regarding the elimination of the element of victim resistance in the crime of rape, she stated resistance is not required of any other crime; why should it be for rape? In referring to rape with an object, she commented, this is a good addition to the rape statute. Considerable discussion followed. She spoke to the issue of expanding the rape shield statute and feels it is very important; the provisions of sexual battery are important. In regard to spousal immunity, she is opposed to aggravated marital rape. She would like to see a redefinition of spouse. She testified, if you are going to eliminate spousal immunity, do it across the board. A committee member inquired, if we would eliminate it across the board, what impact would it have on cases

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 18, 1983.

House Bill 2008 continued

being filed with rape in marriages; how would it affect them? She replied, they can refuse prosecution; in Kansas they won't allow prosecution to be abused. Another committee member inquired, are you in favor of eliminating spousal immunity. She answered, no, prefer redefinition of spouse.

Nickie Stein testified in general support of the proposed changes in the present statute on sex offenses described in the bill. A copy of her remarks and a proposed amendment is attached (See Attachments #2, #3).

Judy Davis stated she was appearing as a human being, wife and mother, and she would support Joan Hamilton's remarks. She said she has five children, and one of her girls has been raped. She reminded the committee, we are all in this together, and it could affect you personally.

Brenda Hoyt stated she supports Joan Hamilton's remarks. She testified the office encourages support of the bill with the definition of spouse as written. Rape in marriage should be across the board. She stated they support the rape shield statute, elimination of victim resistance and rape with an object.

For further questions, the chairman recognized Joan Hamilton. A committee member inquired if the definition of intercourse is defined enough in line 32, should the word object be broadened; is finger included as an object? Committee discussion followed. Another committee member inquired if she has had cases prosecuted with prior consensual intercourse with their victims? She answered, yes, across the board elimination of spousal immunity will not be abused. It's the word of the victim against the defender. A committee member referred to her 89% winning rape record, and inquired how is it working in other counties; are the county attorneys coming up with programs? She answered, rape counseling groups have expanded to our small communities.

The meeting adjourned.

Copies of two newspapers articles are attached (See Attachments #4, #5).

3-18-80

## GUESTS

## SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

C. Behan

AP

Nancy Arkamill

Topeka

Ks NARAL

Nikkie Stein

Topeka

KS ST. Nurses' Assn.

Shari L. Alitz

Topeka

Ks. Dept Admin

Fusch Davis

El Dorado

KTLA

Phil Pennington

Topeka

KTLA

Elizabeth E. Taylor

Topeka

No Assn Remanti Welfare

Kelly

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UPI

Larry Huns

Lawrence

Senator Soremege's staff

Jimmy Hanson

Topeka

Legislative Intech

Dor Ann Collins

Junction City

Joan R Krou

Topeka, Ks

Chris Seaves

Topeka, Ks

Assoc Students of Ks

Max E. Adams

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Rob Raine

Wichita, Ks.

Wichita State Univ.

Wanda Fuller

Wichita

House of Rep.

Joan Hamilton

Topeka

Topeka P.A.'s office

Brenda Hoyt

Topeka

A.G.'s office

Sophie Kozga

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Per. Secs

Eric Kareyjan

"-"

W. U.

Melissa Dress

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Ks NARAL

Joyce H. Coffman

Otoewa

District Court

Wilson Gilman

KANU

Judy Green Davis

Manhattan

M. Hawer

Topeka

Cov-Juven

Ann Salomons

Intern

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

Robt. M. Kelly  
Lance Ross

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KW  
KSN TV

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INTRODUCTORY REMARKS

Mr. Chairman and members of the Senate 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, the student association which represents the over 85,000 students at the seven public four-year institutions in Kansas: I am appearing before you today to express our support for the revised rape statutes in HB :

STATEMENT

The Associated Students of Kansas has been monitoring this topic since the Special Committee on Judiciary began their work this past summer. You may be wondering why ASK is concerned about such a topic when our primary focus has been on more directly educational-related issues. I can only respond that ASK's interest on this subject is reflective of the attention, concern and fear this topic generates on the campuses. At our November Legislative Assembly, a resolution passed overwhelmingly to support these revisions and at our February Legislative Assembly, this position was reaffirmed.

Currently, 52% of the college population is female. Each year, campuses around the state offer such services as self-defense classes Rape Survivors Groups and campus escort service as well as Rape Awareness Series, "Operation Porch Light" programs 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. At one campus in particular, KU, a student has suggested going as far as spending between \$16,000 and \$1 of student activity monies to fund and implement more programs on the campus.

Atch. 1

Obviously the arguments and need for enacting tougher rape laws have been made several times. We concur. In preparing for my testimony on this subject, I was repeatedly urged by students and staff members of the women resource centers on the campuses to stress to you the difficulty and humiliation experienced 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 bill to toughen still the penalties for marital rape. The resolution which was passed at our Legislative Assembly call for the complete removal of spousal immunity. Eleven states currently recognize the rape of a wife by a cohabiting husband as a crime. And for your information, I have attached copies of an article which appeared in the December 12, 1982 edition of the Kansas City Star and 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." I have also included copies of two editorials which have just recently appeared in a campus newspaper about this subject.

CONCLUSION

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

Thank you for your time and consideration.

Statement of the Kansas State Nurses' Association  
before the Senate Judiciary Committee  
March 18, 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 Directors and Legislative Chairman of the Kansas State Nurses' Association. I speak in general support of the proposed changes in the present statute on sex offenses described 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, battered women 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 has been 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 has been 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 left him with a colostomy (an artificial intestinal opening), will never be forgotten by the nurses and doctors 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 battery are also needed additions which can guard the victim's mental health.

Admitting rape and criminal sodomy within a marriage to the crime category is an important legal advance and an advance in the mental health rehabilitation of the victims of those attacks, since these widespread and often socially invisible crimes lead to as much damage as rape or criminal sodomy outside of marriage. Indeed, the damage is usually more, since it is repeated and the vistim is entrapped in the situation.

In the definitions of sexual intercourse and sodomy beginning on lines 31 and 38, I should like to suggest that the words "or nursing" be added after the word "medical" in lines 35 and 43, to exempt the treatments and examinations which are nursing treatments and examinations not part of a prescribed medical regimen, and in lines 37 and 44 that the word "medically" be struck and the words "by the professions of medicine and nursing" be inserted after the word "recognized". Some examples of such treatments and examinations are douches without prescribed medication, 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 searches done in jails and penitentiaries for security reasons, but not for medical or nursing diagnostic or therapeutic reasons. The attached proposed wording of amendments speaks to these issues.

I will be glad to respond to questions if you like, and thank you for letting me appear.



Proposed amendment for H.B. 2008

offered by Nickie Stein, R.N., M.Ed. for the Kansas State Nurses' Association

1. 34 "Sexual intercourse" does not include penetration of the female sex organ by an object in the course of: (a) medical or nursing treatment or examination, performed in a manner and for purposes which are medically recognized by the professions of medicine and nursing as ethical and acceptable; or (b) a body cavity search conducted in accordance with K. S. A. 22-2520 through 22-2524, and amendments thereto.

1. 41 "Sodomy" does not include penetration of the anal opening by an object in the course of: (a) medical or nursing treatment or examination, performed in a manner and for purposes which are medically recognized by the professions of medicine and nursing as ethical and acceptable; or (b) a body cavity search conducted in accordance with K. S. A. 22-2520 through 22-2524, and amendments thereto.

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 Rideout in Oregon and James Chretien 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 930 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.

# 4  
Atch. 4

# 5

# 'Legal' rape must end

Public understanding of rape has changed in recent years. It is time for Kansas laws to catch up.

The state rape statute now completely protects spouses from prosecution for rape. Last week the House Judiciary Committee, by a single vote, passed an amendment to a bill revising the statute that would eliminate spousal exemption. But it may be awhile before the bill gets out of committee.

A few legislators oppose any change in the rape laws. Some would limit the extent of spousal protection. Others would introduce a separate category for marital rape. Hours of debate have already been spent on the statute. The arguments against recommending the bill as amended were numerous.

One representative questioned the effect of the change on family ties. Rape takes place in an atmosphere of brutality. Family ties have already disintegrated when it occurs.

Other opponents fear that courts will not be able to handle cases of rape by a spouse and warn that convictions will be unlikely. Conviction is usually difficult in rape cases. The same standards of evidence are likely to be required for all cases of rape, and a case will not get to court if there is no

Some argue that wives (or husbands) might bring charges of rape against their spouses simply for retaliation when there is marital discord. Charges of rape already spring from discord in relationships. As in any other case, it will be up to the court to discern when charges have no basis and are brought out of malice.

Along the same lines, legislators are concerned that cases will be brought in time of stress and then dismissed if marital problems are resolved. This is no different from other instances in which criminal charges are dropped and cases resolved out of court.

Perhaps most repugnant of all is the proposal to create a separate statutory category for marital rape in place of eliminating spousal exemption. Marital rape would be considered a lesser crime than "ordinary" rape. We might as well say that a husband who beats or murders his wife should receive a lesser punishment than a stranger who assaults or murders.

So long as the law refuses to recognize sexual assault by spouses as criminal, this violence against wives will continue. Elimination of spousal exemption would state unequivocally that it is never permissible to rape — under any circumstances.

Arch. 5

# KU grapples with rape

A gruesome, violent monster called rape has taken up residence in the dark, unprotected fields of the KU campus and city parks. His lair is unpatrolled, and those who venture into it are unprotected. Every year at least a few Lawrence women, most of them KU students, fall prey to the beast.

Two KU forces — the KU Police Department and a watch patrol currently being formed — have chosen to battle the monster. Both need help.

“Today, police officers fight crime with a pen,” complains Jim Denney, director of KU police. He said the police department needs more money and personnel so that officers can spend more time on patrol and less time doing paperwork.

The department needs about five more officers to have five officers on patrol at all times, which Denney said was the optimal number. Last year, the KUPD averaged about 3.5 officers on patrol at all times.

But the money just is not there.

The beast seems to be breaking through the front lines of defense; but KU students and Lawrence residents still have another force preparing to go into battle.

John Beldock, Durango, Colo., senior, is organizing the Runner's Rape Watch Patrol. The patrol, made up of joggers, will run through parts of campus and South Park.

Eventually there will be different routes run each hour through each trouble spot. Information from police and rape seminars will be given to runners so they will be prepared, Beldock said.

All that is needed are volunteers — male or female. Those interested can call Beldock at 841-6389 after 11 a.m.

With support from concerned students and citizens, we can begin to hunt the monster, to overrun his lair. And perhaps, someday soon, the monster will be vanquished.