

Approved: 3-7-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 16, 1996 in Room 514-S- of the Capitol.

All members were present except: Senator Vancrum (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Senator Nick Jordan
Mike Taylor, Director of Intergovernmental Relations, City of Wichita
Paul Morrison, District Attorney, Johnson County
David Debenham, Deputy Attorney General

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

A motion was made by Senator Bond, seconded by Senator Reynolds to approve the Senate Judiciary Minutes of February 6, 1996. The motion carried.

SB 609--Expand the definition of rape to include when the offender is in a position of authority over the victim.

Representative Nick Jordan testified in support of **SB 609**. The conferee stated that this bill closes a loophole in Kansas rape laws. The conferee described an actual incident that occurred where a man posed as a hospital employee and proceeded to examine women. The conferee stated that the man was charged with three counts of rape but the judge dismissed out the felony charges, stating that Kansas law requires that a rape victim be "overcome by force or fear." The conferee stated that language was written in lines 28-30 and 33-35 that would close this loophole. The conferee stated that this legislation is important to protect people who rely on the authority of others. (Attachment 1)

Paul Morrison, District Attorney, Johnson County, testified in support of **SB 609**. The conferee stated that under current Kansas law it is not illegal for an individual to abuse his or her position of authority to gain consent to sexual intercourse. The conferee stated that under present law a rape victim must be overcome by force or fear to classify as rape. The conferee stated that the current law provides opportunity for individuals to abuse their authority, either real or fictitious, in order to obtain permission for sex. The conferee concluded by stating that **SB 609** provides good public policy and fixes a loophole in current law. (Attachment 2)

The committee and conferee discussed issues concerning the quality and type of evidence necessary if **SB 609** were adopted. The conferee stated in answer to Committee members' questions that this would open up a whole new category of rape, but that rape cases are always tough to determine. The Committee members and conferee discussed issues concerning fictitious authority. The conferee stated that this bill was drafted for the case where the perpetrator used fictitious authority, however, the conferee stated that he deals with a number of situations where the perpetrator has real authority over his/her victim.

Mr. David Debenham, Deputy Attorney General, testified in support of **SB 609** on behalf of Attorney General Carla Stovall. The conferee stated that this bill would expand the definition of rape to include those situations in which a victim has submitted to "sexual intercourse" by reason of another person's position of authority. The conferee stated that in both conditions of real authority or fictitious authority the victim is victimized twice. Once when the sexual intercourse takes place and then when the victim discovers there was no basis for her submission, or no basis for her submission to that individual. The conferee stated that to have the perpetrators escape criminal liability for their actions, which only occurred because of the trust placed in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 16, 1996.

their apparent authority, places the responsibility for this demeaning act on the woman instead of the perpetrator where it belongs. The conferee concluded by stating that the Kansas Organization for Victim Assistance (KOVA) and the STOP Violence Against Women and Children's Committee are supportive of **SB 609**. (Attachment 3)

The Committee members and the conferee discussed issues concerning the charges under this law.

Having no other conferees listed to testify, the Chair closed the hearing on **SB 609**.

SB 578--Activities declared to be common nuisances

Mike Taylor, Director of Intergovernmental Relations, City of Wichita testified in support of **SB 578**. The conferee stated that this bill would allow police officers to shut down a business where repeated acts of violence have occurred, and the owner is unwilling to cooperate in the resolution of the problem. The conferee spoke of incidents in Wichita where gunshots and threats of violence occur frequently, such places as carwashes, nightclubs, or motels. The conferee stated that law enforcement officers have the legal power to close down places which foster or allow repeated crimes such as gambling, drug use, prostitution or obscenity to occur. The conferee asked that the law be expanded to include places where repeated acts of violence occur. The conferee continued by stating that in order to shut a place down, a court order would be necessary, providing proper checks and balances. The conferee stated that **SB 578** has the support of the Kansas Peace Officers and Sheriffs Association. (Attachment 4)

The Committee members and the conferee discussed using the licensing approach or taking other steps. The conferee stated that many facilities where violence reoccurs are not required to be licensed establishments. The conferee stated that the Police Chief of Wichita believes that since there are already laws making it possible to shut down places facilitating illegal activity, the activity of repeated violence should be included.

The Chair closed the hearing on **SB 578** and adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for February 19, 1996 on adjournment of the Senate.

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SENATE CHAMBER

TESTIMONY

SENATE JUDICIARY COMMITTEE
FRIDAY, FEBRUARY 16, 1996

SENATE BILL 609

Thank you, Mr. Chairman and members of the Committee.

Given that Johnson County District Attorney Paul Morrison is here today, I will make my testimony brief.

Senate Bill 609 closes a loophole in Kansas rape laws. The bill is a result of an actual incident, where a man posing as a hospital employee entered patient rooms and told women he was there to examine them, and proceeded to perform vaginal examinations. When the man was charged with three counts of rape in the Johnson County District Court, the judge threw out the felony charges, stating that Kansas law requires that a rape victim be "overcome by force or fear."

After meetings with District Attorney Paul Morrison and the Revisor's Office, language was written to close the loophole. The language is court tested and found in lines 28-30 and 33-35 of the bill.

This legislation is important to protect people who are in a very vulnerable position from one of the worse human abuses and violations. We ask that this bill be passed favorably by the Committee.

Thank you.

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ATTACH 1

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OFFICE OF DISTRICT ATTORNEY

PAUL J. MORRISON, DISTRICT ATTORNEY

COMMENTS

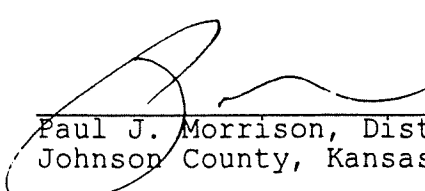
RE: Senate Bill 609
February 16, 1996

I'm here today to support passage of Senate Bill 609, otherwise known as the "authority rape" amendment to K.S.A 21-3502. Until now it has been perfectly legal in Kansas for an individual to abuse his or her position of authority to gain consent to sexual intercourse. Subject to a few exceptions that are not relevant here, under present law a rape victim's will must be overcome by force or fear before a person can be raped. This has totally left the door wide open for individuals to abuse their authority, either real or fictitious, in order to obtain permission for sex. Unfortunately, this has resulted in some serious injustices.

In 1994 an individual performed pelvic examinations on three female patients at Overland Park Regional Medical Center after telling them he was there to perform medical examinations. Not knowing any better, all three ladies allowed this man to penetrate them. It was later discovered he was a pervert who had bluffed his way into obtaining the consent of the victims. The permutations are endless. One can think of situations where teachers, psychologists, law enforcement officers, clergy, attorneys, and others could abuse their authority, either real or fictitious, with vulnerable people. Those victims are raped every bit as much as an individual who surrenders at knifepoint.

This law makes sense. It is the right thing to do. The language is borrowed from other states where it has been in effect for some time.

Thank you for your time.



Paul J. Morrison, District Attorney
Johnson County, Kansas

A:LEGISLATION:96SB609.WP

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State of Kansas

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STATEMENT OF
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 609
FEBRUARY 16, 1996

Chairman Tim Emert and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 609. This bill would expand the definition of rape to include those situations in which a victim has submitted to "sexual intercourse" by reason of another person's position of authority.

The crime of rape is one of the most traumatic and brutal crimes that can occur to a woman. Whether this crime takes place by force or deception does not deviate or diminish the fact that the crime has occurred. In fact, when the crime of rape takes place by a person in a position of apparent authority, the woman is victimized twice. Once when the sexual intercourse takes place and then when the victim discovers there was no basis for her submission or no basis for her submission to that individual.

The first example occurs when a professional in the health care area penetrates the female sex organs of a patient by use of the professional's finger, male sex organ or any other object and there was no basis for this penetration as part of a recognized health care practice. This could occur when a physician has sexual intercourse with a patient who came in for migraine headaches and was told this was the only way to alleviate the problem.

The second example occurs when a woman submits to a physical examination by an individual who was represented to be a doctor and then finds out that this individual is not a doctor.

Neither of these examples should be condoned as anything less than the rape of a woman. To have individuals escape criminal liability for their actions, which only occurred because of the trust placed in their apparent authority, places the responsibility for this demeaning act on the

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woman instead of with the perpetrator where it belongs.

Last year Attorney General Stovall was instrumental in forming the Kansas Organization for Victim Assistance (KOVA) and the STOP Violence Against Women and Children's Committee. KOVA and the Violence Against Women and Children's Committee are made up of professionals who work with crime victims and those who have been victims of crime. These two groups are also supportive of this bill.

On behalf of the Attorney General, I would urge your favorable consideration of Senate Bill 609.

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TESTIMONY FOR 1996 KANSAS LEGISLATURE
SENATE JUDICIARY COMMITTEE

2/16/96

FROM MIKE TAYLOR, GOVERNMENT RELATIONS DIRECTOR, CITY OF WICHITA

Everyday you can turn on the television news and watch police investigating another shooting, stabbing or assault. Many of these violent crimes happen at the same locations over and over again. And in many of these cases, the owners of the properties refuse to work with police or take steps to stop the violence.

Law enforcement authorities now have the legal power to close down places which foster or allow repeated crimes such as gambling, drug use, prostitution or obscenity to occur. They are according to the law, common public nuisances. The one type of crime the law does not consider a common nuisance is violence. The City of Wichita is asking your help in changing that by amending KSA 22-3901.

There are times when the parking lots of some nightclubs, car washes or motels in Wichita turn into shooting galleries as street gangs carry out their wars time after time, night after night. Police respond, make arrests and mop up the blood. But the next night, or the next week, they are again called by scared neighbors fearing the gunshots they hear, or by other customers endangered by the flash of a knife, or threatened by other kinds of physical violence. Being able to close a place like that down would help police and make cities safer.

Now that of course couldn't happen at the whim of the Police Chief, City Attorney or District Attorney. They would have to go to court, make their case and convince a Judge first. We believe that provides a proper check and balance to prevent this power from being abused.

Overall crime in Wichita is down 10 percent from 1994. Being able to shut down establishments which foster or fail to control violent acts, will help lower that number even more. Amending the law to declare repeated acts of violence as public nuisances will give Law Enforcement one more tool in their effort to keep our streets safe.

Thank you for your consideration of this issue.

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