U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

06 JUN 1984

Ms. Nancy Risque
Special Assistant to the President
for Legislative Affairs
The White House
Washington, D.C. 20500

Dear Nancy:

Enclosed is a copy of a letter that the Department of Justice submitted to Chairman Rodino on H.R. 4876, "The Sexual Assault Act of 1984."

As you recall, Representative Fiedler suggested to Mr. Michael Deaver that the President consider endorsing H.R. 4876. This report was prepared in response to that request. A copy of the Department's report has been sent to Representative Fiedler. Prior to that, we met with the Congresswoman to review our proposed amendments and, subsequently, staff from the Department met with her staff for a detailed discussion of our proposals.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

Enclosure

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

06 JUN 1984

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This presents the views of the Department of Justice on H.R. 4876, the "Sexual Assault Act of 1984."

The Department supports the concept behind H.R. 4876 since it would provide a needed reform of the current sexual offense laws. However, there are certain aspects of the bill, as currently drafted, which we do not favor and, therefore, we can support the bill's enactment only if H.R. 4876 is amended in certain respects.

H.R. 4876 is a reform of the federal rape and carnal knowledge laws and would replace current chapter 99 of title 18, United States Code, with a series of graded sexual offenses. The bill would also replace the terms "rape" and "carnal knowledge" with the term "sexual assault" and a precise description of the conduct prohibited. Moreover, H.R. 4876 would eliminate the spousal exception of current law and would make the federal provisions sex neutral.

The series of graded offenses provided in H.R. 4876 would be as follows:

° The most serious offense would be aggravated sexual assault, which consists of compelling another person to engage in a sexual act through the use of physical force or a threat of death, serious bodily injury, or kidnaping; engaging in a sexual act with a person under the age of 12 if the offender is at least four years older; or engaging in a sexual act with a person whose ability to appraise or control conduct has been substantially impaired through an intoxicant or other similar substance administered against the victim's will by the offender. The penalty for aggravated sexual assault would be 25 years of imprisonment or life imprisonment in certain circumstances.

° The next serious offense is sexual assault, which consists of engaging in a sexual act with another person known by the offender to be incapable of appraising the nature of the conduct or physically incapable of declining participation in it. It also includes compelled sexual acts with any person threatened or placed in fear of present or future physical harm to any person. This offense would be punishable by up to 15 years of imprisonment. The bill also provides for sexual abuse of a minor, which prohibits engaging in sexual acts or sexual contacts with a minor between 12 and 16 years of age (not the offender's spouse) if the offender is at least four years older. This offense would be punishable by up to five years of imprisonment for sexual acts and one year for sexual contacts. In addition, the bill prohibits aggravated sexual battery, which consists of engaging in or compelling sexual contact if the conduct would violate the aggravated sexual assault or the sexual assault offenses had the sexual contact been a sexual act. Aggravated sexual battery would be punishable by up to ten years of imprisonment.

° Finally, the least serious offense provided is sexual battery, which is defined as knowingly engaging in a sexual contact with another person without that person's consent; it would be punishable by a fine of not more than $500 or imprisonment for not more than one year, or both. The bill explicitly defines the terms "sexual act" and "sexual contact," the latter term meaning the intentional touching either directly or through the clothing of certain parts of the body with the intent to arouse or gratify the sexual desire of or to abuse any person. The bill would apply to offenses within the special maritime and territorial jurisdiction of the United States.

The need for reform of the federal sexual offense statutes is not a new concept. Current law in chapter 99 of title 18, United States Code, is very limited. Although the federal rape statute, 18 U.S.C. § 2031, does not expressly protect only female victims and punish only male offenders, it has been construed as prohibiting rape as defined in the common law -- carnal knowledge of a female (not the offender's wife) by force or threat of bodily harm and without her consent. It has been held that this statute does not cover homosexual rapes. United States v. Smith, 574 F.2d 988 (9th Cir. 1978); cert. denied, 439 U.S. 852 (1978). Moreover, section 2032 of title 18, United States Code, expressly protects only females (not the offender's wife) under the age of 16 from carnal knowledge committed within the special maritime and territorial jurisdiction of the United States. The language of this provision also makes it clear that this offense only applies to male offenders. Not only is the current federal law gender biased, it does not provide the appropriate grading to take into account the seriousness of the offense.

The need for reform of the sex offense law has been recognized by many States, and to some extent these State offenses may be

applicable through the Assimilative Crimes Act, 18 U.S.C. § 13, to areas within the special maritime and territorial jurisdiction of the United States. However, this is not always the case, as with respect to the high seas and other areas not situated within any State, territory, or possession of the United States.

It is the opinion of the Department of Justice that H.R. 4876 should be amended:

(1) to provide for the imposition of fines for each offense;

(2) to expand the jurisdictional scope of the bill to cover offenses committed against any person in official detention in a federal facility;

(3) to include an attempt offense applicable to the two sexual assault provisions;

(4) to correct a flaw in the sexual assault provision, which includes an element not present in the aggravated sexual assault provision;

(5) to eliminate the overlap between the aggravated sexual assault and sexual assault provisions;

(6) to provide for an affirmative defense applicable to the crime of sexual abuse of a minor;

(7) to reduce the maximum prison term applicable to aggravated sexual battery;

(8) to provide that corroboration of the victim's testimony is not required to prove the offenses under the bill; and

(9) to provide conforming amendments necessitated by the striking of the current rape and carnal knowledge provisions from title 18 of the United States Code.

A discussion of each of these amendments follows.

Appropriate fines should be provided for each of the offenses. The bill currently only provides for a fine (of $500) for violation of proposed 18 U.S.C. § 2245 concerning sexual battery, but not for the more serious offenses in the bill.

The jurisdictional scope of H.R. 4876 should be expanded to cover offenses committed against any person in official detention in a federal facility. We understand that there are seven federal prisons which are not currently within the special maritime and territorial jurisdiction of the United States, although plans exist to bring them within such jurisdiction. Extension of jurisdiction to persons in official detention in a federal facility

would assure coverage of sex offenses committed against inmates of a federal detention facility following, for example, arrest, charge or conviction of an offense, or an allegation or finding of juvenile delinquency. Such an extension of jurisdiction would also include coverage of persons in official detention in a federal facility pursuant to a State sentence.

We believe that H.R. 4876 should be amended to include an attempt offense applicable to the two sexual assault provisions, proposed 18 U.S.C. §§ 2241 and 2242. Despite the fact that H.R. 4876 provides a series of graded offenses, it does not cover the situation where the offender, for example, uses physical force against the victim for the purpose of compelling a sexual act but is prevented by a bystander or law enforcement official from actually engaging in the sexual act or in sexual contact as defined by the bill. Such conduct should not escape new federal sex offense laws if the offender intentionally engages in the conduct and if the conduct constitutes a substantial step toward the commission of the crime.

H.R. 4876 is flawed by the fact that it includes an element in the offense of sexual assault which is not present in the more serious offense of aggravated sexual assault. Specifically, proposed section 2242(b) would make it unlawful to compel a sexual act by threatening present or future physical harm to any person in circumstances in which the person threatened or placed in fear reasonably believes the offender has the ability to effectuate such harm. However, the analogous provision in the more aggravated offense, proposed section 2241(a), makes it unlawful to compel a sexual act by threatening imminent death, serious bodily injury, or kidnaping but does not require proof that the victim's fear was reasonable. If an objective standard with respect to the fear inflicted is imposed on the sexual assault offense punishable by imprisonment for 15 years, the absence of this element in the aggravated sexual assault offense, punishable by 25 years of imprisonment or life imprisonment in certain cases, is illogical.

Section 2242(b) of H.R. 4876, the sexual assault offense, should be amended to eliminate the overlap with proposed section 2241, the aggravated sexual assault provision. Section 2242(b) should be clarified to provide that compelling a sexual act by threat or by placing another person in fear of harm constitutes an offense under this section only if such conduct is not of the type described in proposed section 2241(a)(1) prohibiting aggravated sexual assault. That is, if physical force is used to compel a sexual act or if the victim is threatened or placed in fear that any person will be imminently subjected to death, serious bodily injury, or kidnaping, then only the aggravated offense should apply.

H.R. 4876 does not provide for an affirmative defense to the crime of sexual abuse of a minor regarding the defendant's belief

as to the victim's age. H.R. 4876 takes the approach of older statutory provisions, such as the current federal provision in 18 U.S.C. § 2032, in this respect. We believe that a reform of the federal sex offense laws should reflect the view that reasonable belief as to age is a defense to a prosecution under proposed section 2243. A person who reasonably believed that another person with whom he or she has engaged in sexual activity was 16 years of age or older does not pose the same danger to society as persons who aim to have sexual relations with children, particularly in view of the fact that some teenagers take steps to appear older and claim a greater age. We recommend that proposed section 2243 be amended to include, as an affirmative defense, the belief that the other person was 16 years of age or older. The availability of this affirmative defense should be limited to cases in which the course of conduct did not also constitute an offense under 18 U.S.C. § 2251, sexual exploitation of children, 18 U.S.C. Chap. 117, the White Slave Traffic Act, or 18 U.S.C. § 1952, the Travel Act, but only to the extent that this last provision is violated with respect to prostitution activities.

The ten-year prison term applicable to the offense "aggravated sexual battery" in H.R. 4876 (proposed 18 U.S.C. § 2244) is too high in our view. Aggravated sexual battery is a significantly less serious offense than sexual assault, which would be punishable by 15 years of imprisonment under proposed section 2242. Thus, we believe that a maximum term of imprisonment of five years for aggravated sexual battery would be more appropriate. Moreover, the Department's recommended attempt provision would generally fill any gaps in the sentencing scheme under H.R. 4876.

H.R. 4876 includes no provision regarding corroboration. We believe that H.R. 4876 should include a specific provision stating that corroboration is not required to prove the offenses under the bill. We express no view as to whether corroboration should be required in interspousal cases since this issue is best left for determination by the Congress. Corroboration is not currently required for statutory rape under 18 U.S.C. § 2032, United States v. Shipp, 409 F.2d 33 (4th Cir. 1969), cert. denied, 396 U.S. 864 (1969). However, the issue has not been decided under the federal rape statute, 18 U.S.C. § 2031. (See Arnold v. United States, 358 A.2d 335 (D.C. App. 1976), eliminating the need for corroboration under the District of Columbia rape statute.) Without a clear statement on this point, H.R. 4876 would leave courts to fashion their own rules on corroboration. We believe that rape victims should be treated like victims of any other crime, and that the reasonable doubt standard is sufficient to protect the accused when questions of credibility arise.

H.R. 4876 should contain conforming amendments since other provisions of the United States Code refer to terms (such as rape and carnal knowledge) or to provisions in title 18 which would be eliminated by H.R. 4876. Such provisions include, among others,

18 U.S.C. § 113(a), assault with intent to commit rape; § 1111, murder; § 1153, offenses committed by an Indian in Indian country; § 3185, fugitives from a country under the control of the United States; § 3567, death sentence; § 4251, definitions applicable to the commitment of narcotics addicts; 49 U.S.C. § 1472(k), certain crimes committed aboard an aircraft within the special aircraft jurisdiction of the United States; and Rule 412 of the Federal Rules of Evidence, relevance of a victim's past behavior in rape cases.

An amendment of 18 U.S.C. § 1153, referring to the sex offenses proposed in H.R. 4876, is needed for substantive reasons as well. This provision expressly includes, among the major crimes subject to federal jurisdiction if committed by an Indian in Indian country, rape, carnal knowledge of a female under the age of 16 who is not the defendant's wife, and assault with intent to commit rape. Particular problems with regard to crimes that are committed between Indians in Indian country result from the relevant jurisdictional statutes and the current federal provisions on rape and carnal knowledge because of their limited applicability to male perpetrators and female victims. Under the pertinent statutes, 18 U.S.C. §§ 1152-1153 and 25 U.S.C. § 1302(7), an Indian who commits a homosexual rape of another Indian within Indian country would generally be subject only to tribal jurisdiction and to a maximum penalty of six months of imprisonment and a $500 fine; State sodomy laws are inapplicable in this context. To remedy this problem, this provision should be amended to refer to the sex offenses (or certain of them) which H.R. 4876 would add to title 18.

The Department of Justice recommends enactment of this legislation if amended as suggested above.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs

U.S. Department of Justice
Office of Legislative and
Intergovernmental Affairs

Office of the
Assistant Attorney General

Washington, D.C. 20530

May 11, 1984

To: Nancy Risque
Special Assistant to the President
for Legislative Affairs
The White House

From: Robert A. McConnell
Assistant Attorney General

We are working with her on the Sexual Assault Act - this is just a follow-up on a related outgrowth of one of the meetings.

Attachment

U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 11, 1984

Honorable Bobbi Fiedler
House of Representatives
Washington, D. C. 20515

Attention: J. Barton Seitz

Dear Congresswoman Fiedler:

Following our meeting with you and members of your staff, I pulled together several documents relative to efforts of the Administration in the crime area. Enclosed are the following: (a) A Fact Sheet On The Administration's Comprehensive Legislative Proposal For Crime Control; (b) House Action On The President's Anti-Crime Legislation As Passed By The Senate (Updated To 5/3/84); and (c) A copy of the first Annual Report of the Organized Crime Drug Enforcement Task Force Program (March 1984).

With reference to our discussions on domestic violence, the Department of Justice recognizes that it is a serious problem in the United States and has been deeply involved through the Law Enforcement Assistance Administration and other programs since 1975. LEAA between 1975 and 1980, devoted approximately $13 million of its discretionary resources and a large amount of block grant funds to family violence-related programs. LEAA funded projects provided a comprehensive approach to the problems of spouse abuse, child abuse, sexual abuse of children and other forms of intra-family violence. It encouraged the development of community-wide approaches involving the active participation of relevant criminal justice, social service, medical and mental health agencies. Among its activities, LEAA provided funding for twenty model programs of services for battered wives which included emergency housing, counseling, advocacy and legal services.

The President's Task Force on Victims of Crime recommended a new Presidential Task Force to "throughly study the problem of family violence, paying particular attention to the integration of government and other community resources to assist these victims." Pursuant to such recommendations the Attorney General announced the creation of the Task Force on Family Violence in September 1983 with the objective of making specific recommendations concerning family violence and the attendant problems of abuse and molestation of children, spouse abuse and mistreatment of the elderly.

Hearings have been conducted in various sections of the nation and the Task Force's final report will be published later this year. It is contemplated that after the findings and recommendations of the Task Force have been received, the Department will draft appropriate legislation relative to the problems of family violence.

We appreciate your interest in this area and look forward to working with you in developing appropriate legislative proposals.

Sincerely,

Robert A. McConnell
Assistant Attorney General

bc: Nancy Risque
Special Assistant to the
President for Legislative Affairs

THE WHITE HOUSE

WASHINGTON

April 16, 1984

Dear Bobbi:

This responds to your request for the President's endorsement of H.R. 4876, the "Sexual Assault Act of 1984."

The Administration is sympathetic to the intent of this bill. We believe, however, that certain of its provisions merit careful scrutiny. I do want to assure you that the Administration looks forward to working with you and the other sponsors of H.R. 4876 to develop legislation that is satisfactory to all concerned.

In view of the interest that you have expressed, I have asked Assistant Attorney General Bob McConnell to consult with you personally on H.R. 4876.

Best personal regards,

Sincerely,

Mike

MICHAEL K. DEAVER
Assistant to the President
Deputy Chief of Staff

The Honorable Bobbi Fiedler
House of Representatives
Washington, D.C. 20515

bcc: Bob McConnell
Dennis Thomas

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 16, 1984

MEMORANDUM FOR MIKE DEAVER

FROM: NANCY RISQUE

SUBJECT: Correspondence to you from Bobbi Fiedler (R-California) re: request for support for the "Sexual Assault Act of 1984"

I recommend that you sign the attached.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ASSISTANT DIRECTOR
FOR LEGISLATIVE AFFAIRS

April 12, 1984

NOTE FOR NANCY RISQUE

FROM: LYNN SKOLNICK

Attached is a recommended draft of the proposed letter from Deaver to Fiedler on the sexual assault bill. The redraft is based on discussion between OMB and Justice staff.

(Jim Murr in the Legislative Reference Division of OMB, x4870, had the lead on clearing this letter.)

1. Do Informal:
2. Ask Donna for the complete file back.

DRAFT LETTER TO FIEDLER

Dear Bobbi:

This responds to your request for the President's endorsement of H.R. 4876, the "Sexual Assault Act of 1984."

The Administration is sympathetic to the intent of this bill. We believe, however, that certain of its provisions merit careful scrutiny. I do want to assure you that the Administration looks forward to working with you and the other sponsors of H.R. 4876 to develop legislation that is satisfactory to all concerned.

In view of the interest that you have expressed, I have asked Assistant Attorney General Bob McConnell to consult with you personally on H.R. 4876.

Best personal regards,

Sincerely,

bcc: Bob McConnell
Department of Justice
Dennis Thomas
WH/LA

DRAFT letter to Bobbi Fiedler from Deaver

Dear Bobbi:

This is in response to your request for the President to consider endorsing H.R. 4876, the "Sexual Assault Act of 1984."

The Administration supports the concept behind this bill since it would provide needed reform of the current sexual offense laws. However, there are certain aspects of the bill as currently drafted that we believe need to be changed. I want to assure you that we will work with the committee to achieve mutually acceptable legislation. In light of your personal interest in this issue, I have asked Assistant Attorney General Bob McConnell to consult with you on the legislation.

Best personal regards,

Sincerely,

bcc: Bob McConnell
Dept. of Justice

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 5, 1984

Honorable Nancy Risque
Special Assistant to the President
for Legislative Affairs
The White House
Washington, D.C. 20500

Dear Nancy:

Attached is a draft response to Representative Fiedler for Michael Deaver's signature on H.R. 4876, the "Sexual Assault Act of 1984." I have also included the Department's analysis of the bill for your consideration.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Attachments

It may well be that you would prefer a less detailed letter from Mr. Deaver that mentions something that would then come from the Department. We can do it anyway you'd like — but the concerns for amendment are real.

Draft to 80
Position needs to
have clearance

Honorable Bobbi Fiedler
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Fiedler:

This is in response to your request for the President to consider endorsing H.R. 4876, the "Sexual Assault Act of 1984."

The Administration supports the concept behind H.R. 4876 since it would provide a needed reform of the current sexual offense laws. However, there are certain aspects of the bill, as currently drafted, which we do not favor and, therefore, we can support the bill's enactment only if H.R. 4876 is amended in certain respects. Specifically, we believe the bill should be amended:

(1) To provide for the imposition of fines for each offense;

(2) To expand the jurisdictional scope of the bill to cover offenses committed against any person in official detention in a federal facility;

(3) To include an attempt as an offense applicable to the two sexual assault provisions;

(4) To eliminate the requirement of proving that the victim's fear was reasonable from the sexual assault provision, since it is not a requirement of the aggravated sexual assault provision.

(5) To eliminate the overlap between the aggravated sexual assault and the sexual assault provisions;

(6) To provide for an affirmative defense applicable to the crime of sexual abuse of a minor;

(7) To reduce the maximum prison term applicable to aggravated sexual battery;

(8) To provide that corroboration of the victim's testimony is not required to prove offenses under the bill; and

(9) To provide the conforming amendments that are necessitated by the striking of the current rape and carnal knowledge provisions from title 18 of the United States Code.

With these amendments, H.R. 4876 would represent a fair and complete reform of the federal sex offense laws.

We share your belief that this Nation's sexual offense laws must be updated. With these amendments, H.R. 4876 will be the most appropriate vehicle for revising our laws.

Sincerely,

Michael K. Deaver
Deputy Chief of Staff

H.R. 4876, The Sexual Assault Act of 1984

ANALYSIS

H.R. 4876, the "Sexual Assault Act of 1984," is a reform of the federal rape and carnal knowledge laws and would replace current chapter 99 of title 18, United States Code, with a series of graded sexual offenses. The bill would also replace the terms "rape" and "carnal knowledge" with the term sexual assault and a precise description of the conduct prohibited. Moreover, H.R. 4876 would eliminate the spousal exception of current law and would make the federal provisions sex neutral.

The series of graded offenses provided in H.R. 4876 would be as follows. The most serious would be aggravated sexual assault, which consists of compelling another person to engage in a sexual act through the use of physical force or a threat of death, serious bodily injury, or kidnaping; engaging in a sexual act with a person under the age of 12 if the offender is at least four years older; or engaging in a sexual act with a person whose ability to appraise or control conduct has been substantially impaired through an intoxicant or other similar substance administered against the victim's will by the offender. The penalty for aggravated sexual assault is 25 years of imprisonment or life imprisonment in certain circumstances. The next serious offense is sexual assault, which consists of engaging in a sexual act with another person known by the offender to be incapable of appraising the nature of the conduct or physically incapable of declining participation in it. It also includes compelled sexual acts with any person threatened or placed in fear of present or future physical harm to any person. This offense is punishable by up to 15 years of imprisonment. The bill also provides for sexual abuse of a minor, which prohibits the engaging in sexual acts or sexual contacts with a minor between 12 and 16 years of age (not the offender's spouse) if the offender is at least four years older. This offense is punishable by up to five years of imprisonment for sexual acts and one year for sexual contacts. In addition, the bill prohibits aggravated sexual battery, which consists of engaging in or compelling sexual contact if the conduct would violate the aggravated sexual assault or the sexual assault offenses had the sexual contact been a sexual act. Aggravated sexual battery is punishable by up to ten years of imprisonment. Finally, the least serious offense provided is sexual battery, which is defined as knowingly engaging in a sexual contact with another person without that person's consent;

it is punishable by a fine of not more than $500 or imprisonment for not more than one year, or both. The bill explicitly defines the terms "sexual act" and "sexual contact," the latter term meaning the intentional touching either directly or through the clothing of certain parts of the body with the intent to arouse or gratify the sexual desire of or to abuse any person. The bill would apply to offenses within the special maritime and territorial jurisdiction of the United States.

The need for reform of the federal sexual offense statutes is not a new concept. Current law in chapter 99 of title 18, United States Code, is very limited. Although the federal rape statute, 18 U.S.C. §2031, does not expressly protect only female victims and punish only male offenders, it has been construed as prohibiting rape as defined in the common law -- carnal knowledge of a female (not the offender's wife) by force or threat of bodily harm and without her consent. It has been held that this statute does not cover homosexual rapes. United States v. Smith, 574 F.2d 988 (9th Cir. 1978); cert. denied, 439 U.S. 852 (1978). Moreover, section 2032 of title 18, United States Code, expressly protects only females (not the offender's wife) under the age of 16 from carnal knowledge committed within the special maritime and territorial jurisdiction of the United States. The language of this provision also makes clear that this offense only applies to male offenders. Not only is the current federal law gender-biased, it does not provide appropriate grading to take into account the seriousness of the offense.

The need for reform of sex offense laws has been recognized by many States, and to some extent these State offenses may be applicable through the Assimilative Crimes Act, 18 U.S.C. §13, to areas within the special maritime and territorial jurisdiction of the United States. However, this is not always the case, as with respect to the high seas and other areas not situated within any State, territory, or possession of the United States. Because of the need to reform the federal sexual offense statutes, the Criminal Code Reform bill, S. 1630, 97th Congress, included provisions similar in many respects to those of H.R. 4876. However, there are some significant differences between the sex offense provisions in S. 1630 and H.R. 4876, which will be discussed below.

Recommended Amendments of H.R. 4876

In our view, H.R. 4876 should be amended with regard to the following issues: (1) fines; (2) jurisdiction; (3) attempted offenses; (4) an element in the sexual assault offense not included in aggravated sexual assault; (5) overlap between aggravated sexual assault and sexual assault; (6) an affirmative defense applicable to sexual abuse of a minor; (7) the penalty for aggravated sexual battery; (8) corroboration; and (9) conforming amendments.

First, appropriate fines should be provided for each of the offenses. The bill currently only provides for a fine (of $500) for violation of proposed 18 U.S.C. §2245 concerning sexual battery but not for the more serious offenses in the bill. Fines are likely to become an important form of punishment in the federal system if the Congress approves the sentencing provisions in Title II of the Administration's Comprehensive Crime Control Act. Punishing by fines as well as imprisonment can be an effective deterrent to criminal activity. S. 1630 would provide substantial fines for the sex offenses proscribed.

Second, the jurisdictional scope of H.R. 4876 should be expanded to cover offenses committed against any person in official detention in a federal facility. We understand that there are seven federal prisons which are not currently within the special maritime and territorial jurisdiction of the United States, although plans exist to bring them within such jurisdiction. Extension of jurisdiction to persons in official detention in a federal facility would assure coverage of sex offenses committed against inmates of a federal detention facility following, for example, arrest, surrender in lieu of arrest, charge or conviction of an offense, or an allegation or finding of juvenile delinquency. Such an extension of jurisdiction would also include coverage of persons in official detention in a federal facility pursuant to a State sentence.

Third, we believe that H.R. 4876 should be amended to include an attempt offense applicable to the two sexual assault provisions, proposed 18 U.S.C. §§2241 and 2242. Despite the fact that H.R. 4876 provides a series of graded offenses, it does not cover the situation where the offender, for example, uses physical force against the victim for the purpose of compelling a sexual act but is prevented by a bystander or law enforcement official from actually engaging in the sexual act or in sexual contact as defined by the bill. Such conduct should not escape new federal sex offense laws if the offender intentionally engages in the conduct and if the conduct constitutes a substantial step toward the commission of the crime.

Fourth, H.R. 4876 is flawed by the fact that it includes an element in the offense of sexual assault which is not present in the more serious offense of aggravated sexual assault. Specifically, proposed section 2242(b) would make it unlawful to compel a sexual act by threatening present or future physical harm to any person in circumstances in which the person threatened or placed in fear reasonably believes the offender has the ability to effectuate such harm. However, the analogous provision in the more aggravated offense, proposed section 2241(a), makes it unlawful to compel a sexual act by threatening imminent death, serious bodily injury, or kidnaping but does not require proof that the victim's fear was reasonable. If an objective standard with respect to the fear inflicted is imposed on the sexual

assault offense punishable by imprisonment for 15 years, the absence of this element in the aggravated sexual assault offense, punishable by 25 years of imprisonment or life imprisonment in certain cases, is illogical. We note that in S. 1630 no such element was present with respect to either of the two offenses.

Fifth, an amendment of proposed section 2242(b), the sexual assault offense, in H.R. 4876 is needed in order to eliminate certain overlap with proposed section 2241, the aggravated sexual assault provision. Section 2242(b) should be clarified to provide that compelling a sexual act by threat or by placing another person in fear of harm constitutes an offense under this section only if such conduct is not of the type described in proposed section 2241(a)(1) prohibiting aggravated sexual assault. That is, if physical force is used to compel a sexual act or if the victim is threatened or placed in fear that any person will be imminently subjected to death, serious bodily injury, or kidnaping, then only the aggravated offense should apply. This approach is taken in proposed section 1642(a)(5) in S. 1630, as reported by the Senate Judiciary Committee, and clearly differentiates between the two offenses.

Sixth, unlike S. 1630 (proposed section 1643(b)), H.R. 4876 does not provide for an affirmative defense to the crime of sexual abuse of a minor regarding the defendant's belief as to the victim's age. H.R. 4876 takes the approach of older statutory provisions, such as the current federal provision in 18 U.S.C. §2032, in this respect. We believe that a reform of the federal sex offense laws should reflect the view that reasonable belief as to age is a defense to a prosecution under proposed section 2243. A person who reasonably believed that another person with whom he or she has engaged in sexual activity was 16 years of age or older does not pose the same danger to society as persons who aim to have sexual relations with children, particularly in view of the fact that some teenagers take steps to appear older and to claim a greater age. We recommend that an affirmative defense to proposed section 2243 include the criteria set forth in S. 1630, as reported by the Senate Judiciary Committee. That is, the defendant must have believed, and have had substantial reason to believe, that the other person was 16 or older. In addition, the defense under S. 1630, as amended by the Senate Judiciary Committee, would not have been available if the course of conduct involving the other person also constituted an offense under provisions of S. 1630 prohibiting engaging in a prostitution business or sexually exploiting a minor. This limitation was designed to prevent the manufacturing of a defense by persons who commercially exploit teenage victims by developing false documentary evidence indicating the victim's age to be over 16. S. Rep. No. 97-307, 97th Cong., 1st Sess. 631 (1981). H.R. 4876 should reflect these same concerns and limit the availability of the affirmative defense to cases in which the course of conduct did not also constitute an offense under

18 U.S.C. §2251, sexual exploitation of children, 18 U.S.C. Chap. 117, the White Slave Traffic Act, or 18 U.S.C. §1952, the Travel Act, but only to the extent that this last provision is violated with respect to prostitution activities.

Seventh, the ten-year prison term applicable to the offense "aggravated sexual battery" in H.R. 4876 (proposed 18 U.S.C. §2244) is too high in our view. Aggravated sexual battery is a significantly less serious offense than sexual assault, which is punishable by 15 years of imprisonment under proposed section 2242. Thus, we believe that a maximum term of imprisonment of five years for aggravated sexual battery would be more appropriate. Moreover, our recommended attempt provision would generally fill any gaps in the sentencing scheme under H.R. 4876.

Eighth, H.R. 4876 includes no provision regarding corroboration. In contrast, proposed section 1646(b) in S. 1630 expressly provides that corroboration of the victim's testimony is not required under the sex offense provisions of the bill (except in interspousal cases, as amended by the Senate Judiciary Committee). We believe that H.R. 4876 should include a specific provision stating that corroboration is not required to prove the offenses under the bill. We express no view as to whether corroboration should, nevertheless, be required in interspousal cases since this issue is best left for determination by the Congress. Corroboration is not currently required for statutory rape under 18 U.S.C. §2032, United States v. Shipp, 409 F.2d 33 (4th Cir. 1969), cert. denied, 396 U.S. 864 (1969). However, the issue has not been decided under the federal rape statute, 18 U.S.C. §2031. (See Arnold v. United States, 358 A.2d 335 (D.C. App. 1976), eliminating the need for corroboration under the District of Columbia rape statute.) Without a clear statement on this point, H.R. 4876 would leave courts to fashion their own rules on corroboration. We believe that rape victims should be treated like victims of any other crime and that the reasonable doubt standard is sufficient to protect the accused when questions of credibility arise.

Finally, H.R. 4876 should contain conforming amendments since other provisions of the United States Code refer to terms (such as rape and carnal knowledge) or to provisions in title 18 which would be eliminated by H.R. 4876. Such provisions include, among others, 18 U.S.C. §113(a), assault with intent to commit rape; §1111, murder; §1153, offenses committed by an Indian in Indian country; §3185, fugitives from a country under the control of the United States; §3567, death sentence; §4251, definitions applicable to the commitment of narcotics addicts; 49 U.S.C. §1472(k), certain crimes committed aboard an aircraft within the special aircraft jurisdiction of the United States; and Rule 412 of the Federal Rules of Evidence, relevance of a victim's past behavior in rape cases.

An amendment of 18 U.S.C. §1153 referring to the proposed sex offenses is needed for substantive reasons as well. This provision expressly includes rape, carnal knowledge of a female under the age of 16 who is not the defendant's wife, and assault with intent to commit rape among the major crimes subject to federal jurisdiction if committed by an Indian in Indian country. Particular problems with regard to crimes between Indians in Indian country result from the relevant jurisdictional statutes and the current federal provisions on rape and carnal knowledge because of their limited applicability to male perpetrators and female victims. Under the pertinent statutes, 18 U.S.C. §§1152-1153 and 25 U.S.C. §1302(7), an Indian who commits a homosexual rape of another Indian within Indian country would generally be subject only to tribal jurisdiction and to a maximum penalty of six months of imprisonment and a $500 fine; State sodomy laws are inapplicable in this context. To remedy this problem, Title X of S. 1762 adds involuntary sodomy to the list of major crimes in 18 U.S.C. §1153. Similar results could be accomplished through an amendment of this provision which would refer to the sex offenses (or certain of them) which H.R. 4876 would add to title 18.

Differences with S. 1630 for which No Amendments are Recommended

H.R. 4876 raises other policy issues brought to light by a comparison with the sex offense provisions of S. 1630. The following points out the more noteworthy remaining differences and addresses the following issues: (1) jurisdiction, (2) the marital exception, (3) sexual battery, and (4) sexual abuse of a ward. Although these issues are treated differently in the two bills, we believe they are most appropriate for resolution by the Congress and that these differences with S. 1630 do not prevent our support of H.R. 4876. Each issue will be addressed.

As stated above, S. 1630 has greater jurisdictional scope than does H.R. 4876. Not only does S. 1630 apply to offenses committed within the special maritime and territorial jurisdiction of the United States and to offenses committed against persons in official detention in a federal facility, it also applies if the offense occured during the commission of certain enumerated federal offenses. While this added jurisdiction under S. 1630 regarding sex offenses committed during the commission of certain other offenses may be useful in some cases, we believe that its absence from H.R. 4876 is not a serious flaw.

H.R. 4876 does not provide for any marital exception except under proposed section 2243, sexual abuse of a minor. In contrast, S. 1630 provides a spousal exception for all the sex offenses except the most serious. The term "spouse" is defined in S. 1630 (proposed section 1646 of title 18) for purposes of the sex offense provisions in the bill to mean "a person to whom the actor is legally married and from whom the actor is not

legally separated." This definition is meant to refer to applicable State law and could include a common law marriage if recognized as a legal form of marriage by the State. S. Rep. No. 97-307, 97th Cong., 1st Sess. 628 (1981). The across-the-board elimination of the spousal exception by H.R. 4876 (except for sexual abuse of a minor) would mean, for example, that one spouse could commit a sexual battery by knowingly engaging in a sexual contact with the other spouse without the latter's consent. The bill does not define the term "consent" or indicate whether implied consent would be included. The elimination of the marital exception from the bill would in effect remove the presumption of consent in cases involving married couples and would result in equal treatment between married couples and others involved in intimate relationships. Of course, prosecutorial discretion would be an important factor under this bill.

Another difference between H.R. 4876 and the sex offense provisions in S. 1630 is that the former includes the offense sexual battery in proposed 18 U.S.C. §2245. Under this provision it is an offense knowingly to engage in a sexual contact with another person without the latter's consent. The sexual contact offense in S. 1630 (proposed section 1645) requires that the conduct must constitute an offense under one of the other sexual offense provisions, except that a sexual contact rather than a sexual act takes place; S. 1630's sexual contact provision is similar to the aggravated sexual battery offense in H.R. 4876 (proposed section 2244). Thus, for example, under S. 1630 there must be the use of force or threat, the offender must know that the other person is incapable of understanding the nature of the contact, or any of the other applicable criteria must be met. H.R. 4876 reflects the view that a person should not be subjected to nonconsensual contact involving certain parts of the body, even in the absence of force or other similar means, but that this offense should be punished only as a misdemeanor.

Finally, S. 1630 includes an offense not found in H.R. 4876 -- sexual abuse of a ward. This offense in proposed 18 U.S.C. §1644 prohibits the engaging in a sexual act with another person not the offender's spouse who is in official detention and who is under the custodial, supervisory, or disciplinary authority of the offender.

cc: D. Lowell Jensen

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR ROBERT MCCONNELL

FROM: NANCY RISQUE

SUBJECT: Attached correspondence (Fiedler-Deaver)

Thanks in advance for providing us with a draft response for Mike Deaver's signature. I am not including the bill that was attached, just Bobbi's letter.

Congress of the United States

House of Representatives

Bobbi Fiedler

Can we give this a response?

February 24, 1984

208866

The Honorable Michael K. Deaver
Deputy Chief of Staff
The White House
Washington, D.C. 20500

Dear Mike:

I believe the President should consider endorsing a new bill introduced this week by Congressman Hoyer, with my support as an original sponsor. H.R. 4876, the Sexual Assault Act of 1984, should be reviewed as a possible new component of the President's legislative agenda for women.

Although rape and sexual offense laws were reformed in most states over the last decade, that reform has not reached the federal level. Significant federal law enforcement problems with sexual offense prosecutions may occur within federal jurisdictions, which include military bases, federal prisons, national parks and ships at sea, for example.

In addition to proposing a reformulation with the term rape and grading a series of sexual offenses, the bill also addresses another issue not yet reformed by most states---spousal immunity in rape cases---and eliminates the spousal exception.

The attached materials outline the bills provisions. I have also communicatied with Ed Meese on this matter. I would urge your consideration of the bill.

Sincerely,

Bobbi

BOBBI FIEDLER
Member of Congress

21053 Devonshire Street, #204
Chatsworth, California 91311

1607 Longworth House Office Building
Washington, D.C. 20515

100 E. Thousand Oaks Boulevard, #165
Thousand Oaks, California 91360

Congress of the United States
House of Representatives
Washington, D.C. 20515

APPROPRIATIONS COMMITTEE
TREASURY, POSTAL SERVICE
GENERAL GOVERNMENT
LABOR,
HEALTH AND HUMAN SERVICES
EDUCATION

February 22, 1984

THE SEXUAL ASSAULT ACT OF 1984

Dear Colleague,

Yesterday we introduced legislation reforming current federal laws as they pertain to sexual offenses. In brief, "The Sexual Assault Act of 1984" would replace the current single crime of "rape" with a series of graded offenses ranging from sexual battery, which would be a misdemanor punishable by imprisonment not to exceed one year, to aggravated sexual assault, which would be a felony punishable by up to life imprisonment.

Another significant change would be to replace the term "rape" with a reformulation of the offense in terms of assault. This proposed change carries with it a substantial rethinking in how we view the crime of rape as well as how it is prosecuted. By defining the offense in terms of assault, which by definition implies nonconsent, the legislation attempts to redirect the factfinder's focus away from the victim to the actions of the offender. In addition, the proposed legislation would eliminate the spousal exception and thus would permit the prosecution of a spouse for sexually assaulting the other spouse. Moreover, the proposed legislation is sex neutral, that is, it would apply both to hetero and homosexual forcible circumstances as well as expanding the scope of the law's protection to males. Please see the attached sheet for a more detailed summary of the bill.

Although sexual offense crimes are principally a concern of State law enforcement, these crimes become a significant Federal law enforcement problem as well when they occur within the special maritime and territorial federal jurisdiction. It is imperative that we update Federal sexual offense laws in order to facilitate prosecution of these heinous crimes and, secondly, to ensure that the interests of victims are respected in the criminal justice process.

If you would like to join us as cosponsors of this legislation, or if you would like further information, please call Jill Minneman, 5-4131 (Hoyer).

Sincerely,

STENY H. HOYER

BOBBI FIEDLER

ID # 208866

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING
☐ H - INTERNAL
☒ I - INCOMING
Date Correspondence received (YY/MM/DD) 84/10/28

NAME OF CORRESPONDENT: Bobbi Fiedler

☒ DC Mail Report User Codes: (A) _____ (B) _____ (C) _____

SUBJECT: wants POTUS to endorse H.R. 4876, the Sexual Assault Act of 1984

ROUTE TO:		ACTION			DISPOSITION		
Office/Agency (Staff Name)		Action Code	Tracking Date YY/MM/DD		Type of Response	Code	Completion Date YY/MM/DD
DC Staff	ORIGINATOR		84/10/29	PY		C	84/10/29
	Referral Note:						
KARISA		D	84/10/28	PY		S	84/10/29
	Referral Note:		money - mkd would like you to draft response for him. Thanks!				
	Referral Note:						
			/ /				/ /
	Referral Note:						

ACTION CODES:		DISPOSITION CODES:	FOR OUTGOING CORRESPONDENCE:
A - Appropriate Action	I - Info Copy Only/No Action Necessary	A - Answered	Type of Response = Initials of Signer
C - Comment/Recommendation	R - Direct Reply w/Copy	B - Non-Special Referral	Code = "A"
D - Draft Response	S - For Signature	C - Completed	Completion Date = Date of Outgoing
F - Furnish Fact Sheet to be	X - Interim Reply	S - Suspended	

COMMENTS: _____

Keep this worksheet attached to the original incoming letter. Send all routing updates to Central Reference (Room 75, OEOB). Always return completed correspondence record to Central Files. Refer questions about the Correspondence Tracking system to Central Reference, ext. 2590

5/83

Congress of the United States

House of Representatives

Bobbi Fiedler

February 24, 1984

Can W. Rostenkowski give me a response?

208866

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Deputy Chief of Staff
The White House
Washington, D.C. 20500

Dear Mike:

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Bobbi

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Member of Congress

21053 Devonshire Street, #204
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STENY H. HOYER
5TH DISTRICT, MARYLAND

Congress of the United States
House of Representatives
Washington, D.C. 20515

APPROPRIATIONS COMMITTEE
TREASURY, POSTAL SERVICE, GENERAL GOVERNMENT
LABOR, HEALTH AND HUMAN SERVICES, EDUCATION

February 22, 1984

THE SEXUAL ASSAULT ACT OF 1984

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If you would like to join us as cosponsors of this legislation, or if you would like further information, please call Jill Minneman, 5-4131 (Hoyer).

Sincerely,

STENY H. HOYER

BOBBI FIEDLER

BARBARA MIKULSKI

BOB CARR

98th CONGRESS
2d SESSION

H.R. 4876

(Original signature of Member)

HLC

Insert title here ☞

To amend title 18 of the United States Code with respect to sexual assaults.

IN THE HOUSE OF REPRESENTATIVES

_____, 19__

Insert sponsor's names here ☞

Mr. HOYER (for himself and Mr. CARR) (Ms Fiedler and Ms Mikulski) introduced the following bill; which was referred to the Committee on _____

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the ''Sexual Assault Act of 1984''.

SEC. 2. Title 18 of the United States Code is amended by inserting after chapter 109 the following new chapter:

''CHAPTER 109A--SEXUAL ASSAULTS

''Sec.
''2241. Aggravated sexual assault.
''2242. Sexual assault.
''2243. Sexual abuse of a minor.
''2244. Aggravated sexual battery.
''2245. Sexual battery.
''2246. Definitions for chapter.

''§2241. Aggravated sexual assault

''(a) Whoever, in the special maritime and territorial jurisdiction of the United States--

''(1)(A) knowingly uses physical force against another person; or

''(B) knowingly threatens or places another person in fear that any person will be imminently subjected to death, serious bodily injury, or kidnaping; and

''(2) thereby knowingly compels such other person to engage in a sexual act with any person;

shall be punished as is provided in subsection (d) of this section.

''(b) Whoever, in the special maritime and territorial jurisdiction of the United States, knowingly engages in a sexual act with another person who--

''(1) has not attained the age of twelve years; and

''(2) whose age is at least four years younger than the person so engaging;

shall be punished as is provided in subsection (d) of this section.

''(c) Whoever, in the special maritime and territorial jurisdiction of the United States, knowingly administers to another person by force, threat of force, or without that person's knowledge or consent an intoxicant or other similar substance and thereby--

(1) knowingly substantially impairs the ability of that other person to appraise or control conduct; and

(2) knowingly engages in a sexual act with that other person;

shall be punished as is provided in subsection (d) of this section.

''(d) The punishment for an offense under this section is imprisonment for not more than twenty-five years, but if during the offense the offender inflicts severe bodily injury, disfigurement, permanent disease, or protracted incapacitating mental anguish on any person, the punishment for an offense under this section is imprisonment for life, or any term of years.

''§2242. Sexual assault

''(a) Whoever, in the special maritime and territorial jurisdiction of the United States, knowingly engages in a

sexual act with another person if such other person is known by the offender to be--

''(1) incapable of appraising the nature of the conduct; or

''(2) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

shall be imprisoned not more than fifteen years.

''(b) Whoever, in the special maritime and territiorial jurisdiction of the United States, knowingly threatens another person or places another person in fear of present or future physical harm to any person in circumstances in which the person so threatened or placed in fear reasonably believes the offender has the ability to effectuate such harm, and thereby compels the person so threatened or placed in fear to engage in a sexual act shall be imprisoned not more than fifteen years.

''§2243. Sexual abuse of a minor

''(a) Whoever, in the special maritime and territorial jurisdiction of the United States, knowingly engages in a sexual act with another person who--

''(1) is not the offender's spouse;

''(2) who has attained the age of twelve years but has not attained the age of sixteen years; and

''(3) is at least four years younger than the

offender;

shall be imprisoned not more than five years.

''(b) Whoever, in the special maritime and territorial jurisdiction of the United States, knowingly engages in sexual contact with another person, if so to do would violate subsection (a) of this section had the sexual contact been a sexual act, shall be imprisoned not more than one year.

''§2244. Aggravated sexual battery

''Whoever engages in or compels sexual contact with or by another person, if so to do would violate section 2241 or 2242 of this title had the sexual contact been a sexual act, shall be imprisoned not more than ten years.

''§2245. Sexual battery

''Whoever, in the special maritime and territorial jurisdiction of the United States, knowingly engages in sexual contact with another person without that person's consent shall be fined not more than $500 or imprisoned not more than one year, or both.

''§2036. Definitions for chapter

''As used in this chapter--

''(1) the term 'sexual act' means genital intercourse, cunnilingus, analingus, fellatio, anal intercourse, and any penetration by any object of any person's genital or anal opening with the intent to

arouse or gratify the sexual desire of or to abuse any person; and

''(2) the term 'sexual contact' means the intentional touching either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with the intent to arouse or gratify the sexual desire of or to abuse any person.''.

SEC. 3. (a) Title 18 of the United States Code is amended by striking out chapter 99.

(b) The table of chapters at the beginning of part I of title 18 of the United States Code is amended--

(1) by striking out the item relating to chapter 99; and

(2) by inserting after the item relating to chapter 109 the following item:

''109A. Sexual assaults.....2241''.

approximately $43,367,883 for 1982, or 10% of the cost of coal excluding transportation costs. As transportation costs can nearly double the price of coal, severance taxes can be considered as 5% of the final price paid. The accompanying tables provide specific data on prices and severance taxes for coal delivered to Illinois utilities.

With regard to your question about Illinois' imposition of severance taxes, there is at present a 4% tax on timber production in the state but this is the only tax on a natural resource now imposed. Proposals impose a severance tax on exports from Illinois have been introduced in recent sessions of the Illinois General Assembly. However, the bills have not passed either house.

Severance taxes are, of course, among a wide array of taxes affecting utilities in the state. A member of our staff is currently compiling information on the impact of taxation on selected Illinois utilities in terms of consumer costs. We will be happy to provide you with this material as it becomes available. In the mean time, please contact us with any questions regarding issues and the enclosed information on severance taxes.

If I can be of any further assistance to you or your constituents, please do not hesitate to contact me.

Sincerely,

PHILIP R. O'CONNOR,
Chairman.

H.R. 4869

A bill prohibiting States from imposing coal severance taxes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Coal Severance Tax Prohibition Act of 1984".

(b) The Congress finds that—

(1) certain States impose severance taxes on coal, while other States impose no such taxes;

(2) much of the coal subject to severance taxes is destined for shipment in interstate commerce;

(3) coal is one of of our Nation's most valuable natural resources;

(4) production and use of this valuable natural resource must be encouraged; and

(5) increased costs due to coal severance taxes are passed on to consumers.

(c) Title V of the Energy Policy and Conservation Act, relating to general provisions, is amended by adding after part C of the following new part:

"PART D—PROHIBITION OF IMPOSITION OF COAL SEVERANCE TAX

"COAL SEVERANCE TAX PROHIBITION

"SEC. 571. (a) A State may not impose a severance tax with respect to any coal produced in such State and destined for shipment in interstate commerce.

"(b) For purposes of subsection (a), the term 'severance tax' means any tax or fee established by any State (or any political subdivision thereof) and levied on, measured by, or otherwise imposed with respect to coal. Such term shall not include any income tax, sales tax, property tax, or any other similar tax or fee if such tax or fee—

"(1) applies with respect to a broad range of business activities or types of property, and

"(2) does not result in a significantly higher rate of tax or fee than is generally applicable to the other activities or property with respect to which it is imposed.".

(d) The table of contents of such Act is amended by adding at the end thereof the following:

"PART D—PROHIBITION OF IMPOSITION OF COAL SEVERANCE TAX

"Sec. 571. Coal severance tax prohibition.".

(e) The amendments made by subsections (c) and (d) of this Act shall take effect on the first day of the first month beginning more than 30 days after the date of the enactment of this Act.

THE SEXUAL ASSAULT ACT OF 1984

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOYER) is recognized for 60 minutes.

(Mr. HOYER asked and was given permission to revise and extend his remarks.)

Mr. HOYER. Mr. Speaker, prior to my coming to the Congress, when I served as president of the Maryland Senate, I also acted as chairman of the Maryland General Assembly's special legislative committee on rape and related offenses.

Out of the work of this committee came the adoption in 1976 of a major revision and reform of the State's laws and evidentiary rules concerning rape and sexual offenses. This development was clearly the result of the recognition at the time of the marked increase in the incidence of rape, together with a growing concern in society about the emotional trauma and treatment experienced by the victims of this crime.

This heightened awareness, Mr. Speaker, both of the difficulty faced by the prosecutors in successfully prosecuting rape cases and in the mistreatment and handling of victims of these crimes by the very system that should protect them prompted Maryland to modernize and reform its rape and sexual offense laws.

Unfortunately, the positive reform undertaken by the States has not yet reached the Federal level. Although sexual offense crimes are principally a concern of State law enforcement to the extent that they occur within the special maritime and territorial Federal jurisdiction, they become a significant Federal law enforcement problem as well. It is imperative, in my opinion, and in the opinion of my cosponsors, Congressman CARR of Michigan, Congresswoman MIKULSKI of Maryland, and Congresswoman FIEDLER of California, for Federal sexual offense laws also to be updated in order to insure the availability of effective prosecutional tools.

To this end, Mr. Speaker, I and my colleagues are introducing legislation which seeks to reform existing Federal laws as they pertain to sexual offenses. In brief, our bill would replace the current law by adopting a series of graded sexual offenses. A second significant change would be to replace the term "rape" with a reformulation of the offense in terms of a sexual assault. In addition, it would eliminate the spousal exception and would make the statute "sex neutral"; that is, it would apply to both hetero and homosexual forcible circumstances as well as expanding the scope of the law's protection to males.

Let me for a moment, Mr. Speaker, review the current Federal statute as it pertains to this crime.

Title 18, United States Code, section 2032, which punishes statutory rape, sets the age of consent at 16 years. Under the provision, only females can be victims, and the age of the perpetrator is not an element in the crime. Thus, it is possible to have a defendant younger than the victim.

I would stress that this is in a consensual relationship.

Second, title 18 of United States Code, section 113(a), which punishes assault with intent to rape, requires a specific intent to have intercourse as an element of that crime. The touching of a person's intimate parts will not sustain a conviction, without proof that the perpetrator intended to have intercourse.

Title 18, United States Code, section 2031, provides for a rape conviction to carry the death penalty or any term of years up to life imprisonment. The Federal statute has been interpreted by the courts to incorporate the common law definition of rape. Thus, it has been held that rape involves carnal knowledge of a female, not the offender's wife, by force or threat of bodily harm and without her consent.

In my bill, the adoption of graded sexual offenses is based upon the theory that these crimes should be categorized and dealt with in terms of the seriousness of the offense, the degree of criminal activity undertaken by the assailant, and the extent of harm suffered by the victim. The appropriate penalty then would be based upon the character and circumstance of the commission of the offense.

Presently, Mr. Speaker, Federal law fails to acknowledge that the factual circumstances of all sexual offenses are not the same and are thus not subject to the same penalty. This series of gradation would reflect the reality of the actual situation and would permit a greater latitude of discretion among the prosecutor, defense attorney, and presiding judge, in determining the outcome of the individual cases.

In setting out the different gradations, I relief upon, first, the degree of sexual imposition, and second, the gravity of harm inflicted upon the victim. These determinants are, to a large degree, identifiable and measurable.

Thus, the proposed legislation would replace the current single crime of "rape" with a series of graded offenses ranging from sexual battery, which would be a misdemeanor punishable by imprisonment not to exceed 1 year, to aggravated sexual assault, which would be a felony punishable by up to life imprisonment.

The gradations, Mr. Speaker, are as follows:

Sexual battery is defined as an intentional touching, either directly or through the clothing of any person's

intimate parts without that person's consent.

Aggravated sexual battery involves the same intentional touching as sexual battery, but the magnitude of harm caused by the perpetrator in many cases will be greater. In certain instances, contact will be aggravated by the use of actual force, intoxicants, or other similar substances, or as is so often the case, the threat of body harm. Additional aggravating circumstances are where the contact is performed upon certain segments of society that are deserving of societal protection, such as children under the age of 12 and those who are known by the offender to be unable to appraise the nature of such conduct, whether by reason of mental disease or defect or intoxication. The presence of aggravating circumstances raises the likelihood of harm to the victim and measures the degree of criminal activity undertaken by the assailant. Thus, the offense is punishable in this case by imprisonment of up to 10 years.

Sexual assault involves a significantly greater degree of sexual imposition. The term "sexual act" is defined, and in this instance would call for a term of years up to 15 years.

Aggravated sexual assault occurs where the sexual assault is accomplished by the use of physical force or by a threat that any person will be imminently subjected to death, serious bodily injury or kidnaping, such as where the assailant employs or displays a dangerous or deadly weapon or is aided and abetted by one or more other persons.

□ 1520

Obviously the presence of multiple assailants heightens both the dangers to the victim and the psychological trauma to which the victim is subjected.

Additional aggravating circumstances are when the assault is performed upon a child not yet 12 years of age if the offender is at least 4 years older and where the assault is performed upon an individual whose ability to appraise his or her conduct has been substantially impaired by the imposition of intoxicants or other similar substances by the offender. The crime in this instance is punishable by imprisonment not to exceed 25 years.

Unquestionably, a victim of aggravated sexual assault suffers personal humiliation, degradation, substantial emotional trauma, and often physical harm. Under the legislation proposed if during the offense of aggravated sexual assault the offender inflicts severe bodily injury, disfigurement, permanent disease, or protracted incapacitating mental anguish upon the victim or any person, then the offender is subject to a term of life imprisonment.

Lastly, there is a provision dealing with sexual abuse of minors, a particularly vulnerable section of our society. Under my bill, anyone who knowingly engages in a sexual act with a minor who has attained the age of 12 years but has not attained the age of 16 and who is at least 4 years younger than the offender commits sexual abuse of a minor and may be imprisoned up to 5 years.

In addition to gradation, a second significant change imposed by the legislation is to replace the term "rape" with a reformulation of the offense in terms of sexual assault. This is more than a symbolic gesture or a simple renaming of a violent crime, for it does represent a significant break with tradition and with the connotations surrounding the word "rape."

The change carries with it a substantial rethinking both in how we view the crime of rape as well as how it is prosecuted. By defining the offense in terms of assault, which by definition implies nonconsent, the legislation attempts to redirect the factfinder's focus away from the victim to the offender's actions.

The problem of eliminating sexist traditions, which have evolved around the concepts of "consent" and "against her will" is enormous. Historically, the overriding significance attached to determining whether the victim has consented has had serious repercussions upon the victim who often felt as if she were the offender.

The third change is elimination of the spousal exception. Under English common law a man could not be found guilty of raping his wife. This justification has been explained in terms of consent, which has been deemed a matrimonial privilege existing for as long as the term of marriage. The theory that a woman possessed the right to deny her spouse sexual access was, and is still, viewed by many State statutes as being inconsistent with the social expectations regarding marriage. Another justification for the spousal exception is that historically women were regarded as the property, and I will repeat that, historically women were regarded as the property of their husbands, just as children were regarded as property of their fathers.

When American State legislators enacted laws dealing with the crime of rape, the spousal exception was, in many instances, written into the statutory definition of rape or, in other States, was adopted by case law. Many States have reformed their rape laws in this area, following the lead of Michigan, the State of my cosponsor, the gentleman from Michigan (Mr. CARR), under whose statute marriage is a defense except in those cases where the couple was living apart and one had filed for separate maintenance or divorce. Maryland also permits marriage as a bar to prosecution for rape except where the defendant and victim at the time of the offense were living separate and apart pursuant to a decree of divorce "a mensa et thoro," more commonly known as legal separation.

Presently State laws vary widely as to the extent to which spouses may be prosecuted for the crime of rape. The majority of States have statutory provision which shield spouses from protection. Let me repeat that. The majority of the States shield spouses from prosecution for the rape of their spouse. A number of these States, however, do eliminate this shield where the couple is living apart or has filed for divorce, separate maintenance or legal separation. Six States, in fact, have enacted legislation which totally abolishes spousal immunity.

The justifications for eliminating this immunity are compelling, in my opinion, however rational the arguments may be for retaining the exception. Violent crimes against spouses are a national problem. Such crimes committed within the privacy of homes by those who publically profess love and then brutalize their spouse in private moments needs to be addressed. It has been estimated that one-third of the women who seek shelters have also been sexually assaulted by their spouses. The problem that confronts legislators when considering the spousal exception is deciding at what point, if any, should the government intervene in a marital relationship.

It is true that marriage involves a prior and continuing relation of intimacy. The law does not recognize, however, the right of a spouse to beat the other nor does the law erect legal shields behind which spouses may engage in otherwise violent behavior. In this instance, sexual assault carries additional burdens. It involves violence as well as a specific kind of degrading and unwanted intimacy. The law does not sanction sexual violence between strangers or among friends. There is no justification for permitting it between spouses.

Last, as I indicated previously, the legislation is sex neutral and thus applies both to hetero and homosexual forcible circumstances as well as expanding the scope of the law's protection to males.

Mr. Speaker, the goals of reforming Federal law in the area of sexual offenses are these: To facilitate prosecution of these heinous crimes, and, second, to insure that the interests of victims are respected in the criminal justice process.

I believe that the legislation introduced by the gentleman from Michigan (Mr. CARR), the gentlewoman from Maryland (Ms. MIKULSKI), the gentlewoman from California (Ms. FIEDLER), is a significant, important, and needed step forward in the reform of our criminal statutes and the protection of innocent victims.

Mr. CARR. Mr. Speaker, will the gentleman yield?

Mr. HOYER. At this time I will be glad to yield to the distinguished cosponsor of the bill from the State of Michigan (Mr. CARR).

(Mr. CARR asked and was given permission to revise and extend his remarks.)

Mr. CARR. Mr. Speaker, I want to congratulate the gentleman on the leadership he has taken in this very important issue which I know is important to all of us.

Mr. Speaker, I am joining Mr. HOYER today in introducing a bill to fight one of the most serious violent crimes in America today—the crime of rape.

In the past few years, our society has experienced a revolution in our thinking about rape. We are finally coming to realize that this very personal violation of privacy is fundamentally a crime of violence. Its victims come from every age group, every sex, and every walk of life. We have realized that this crime is a grave threat to the safety and well-being of all our citizens.

We have also realized that it is often not easy to put the sexual assault criminal behind bars. Some of society's most violent criminals are walking the streets today because the laws in many parts of our country—and on the Federal books—are not adequate to address crimes of sexual assault.

We need laws that acknowledge the complexity of sexual assault. Just as not every murder is a first degree murder, not every sexual assault is a first degree offense. We try the crime of murder by degree, and we should do the same with the crime of sexual assault.

On that score, I am proud to commend my State of Michigan for its leading role in bringing rape laws into the 20th century. In 1975 my State set an example for many other States by putting a staircase of sexual assault laws into our State code.

The most violent sexual assaults in Michigan continue to draw a very severe penalty—life imprisonment. However, cases involving little or no violence—cases which once might have been thrown out of court—are now prosecuted as well, and a conviction often results.

Let me offer a brief picture of the progress this law has brought about in Michigan. In Detroit, the conviction rate for rape has held steady at 70 percent since 1975, when the sexual conduct statute went into effect. The number of convictions in Michigan as a whole jumped from 8 per month before 1975 to 21 per month between 1976 and 1978.

Many States have followed this example, resulting in improved conviction rates across the country. However, the Federal code maintains the archaic view of rape as a one-dimensional crime. It is crucial that we bring our Federal standard into line with the progressive laws of States such as Michigan, Maryland, and California.

This is not only important in the few sexual assault cases tried under Federal jurisdiction, it is important in setting the pace for thinking across our Nation, in creating a model for States which have not updated their laws.

Why is this so important? Because there is one forcible rape in our Nation every 7 minutes. The number of rapes reported has climbed steadily over the past decade. However, the number of convictions nationwide remains at about 50 percent. Too many sexual criminals continue to walk the streets in our country.

By modernizing sexual assault laws on the Federal books, we are saying that 50 percent is not enough. We are putting the Federal Government solidly behind the States' efforts to fight this unspeakable crime. We are helping set a standard that puts violent criminals behind bars, and we are assuring that all Americans can walk the streets and live their lives safely and without fear.

□ 1530

And convictions are up. Whereas the national average of 50-percent conviction rate, in Detroit the conviction rate for rape has been held steady at 70 percent since the law was passed in 1975. When the sexual conduct statute went into effect the number of convictions in Michigan as a whole jumped from 8 per month to 21 per month in a period between 1976 and 1978.

If we can have victims step forward, have the defendant treated as the problem rather than the victim, if we can have assurance of swift, speedy, and forceful justice, I am confident that the requirement and the deterrent against criminal sexual assault will be improved. It is a most important problem. Once again, I want to congratulate Congressman HOYER for bringing this to the attention of the Nation.

Mr. HOYER. I thank the gentleman for his statement and congratulate him as well for his leadership and hard work in the formulation of this legislation. His office has been very much involved. Mr. CARR personally has been involved. We think many of the suggestions he has made and brought to this legislation have significantly improved it.

I want to thank the gentleman from Michigan. And I point out that what he says is absolutely correct, the Michigan statute which was one of the first adopted if not the first adopted in the Nation, which recognized the necessity to more specifically define the actual crimes that were involved in this case and also to protect the victim from what historically was in trials dealing with the crimes of rape, an attack on the victim, uniquely in terms of criminal defense law; that statute was a great step forward for the Nation; it was the basis of the Maryland reform.

And I might say it was also given great attention by the States of California and New York which, very shortly after Michigan adopted its statute, followed suit. I congratulate the gentleman from Michigan for his real contribution in this effort.

Mr. CARR. By congratulating me you really congratulate the State legislators in the State of Michigan, the principal sponsor of the bill being State Representative Mary Brown.

I might ask you to rehearse for us just briefly the jurisdiction. As you both know, the Federal law is not the primary law of criminal sexual assault in America. But there are important areas of criminal jurisdiction. I think it would be helpful on the record for you to enumerate that.

Mr. HOYER. I appreciate the gentleman's question.

The jurisdiction to which this reform bill will apply is defined in 18 U.S.C. 7 as those lands over which there is Federal jurisdiction now or will occur in the future; primarily in an area that is well known to most persons, such as the military bases of our Armed Forces either here or around the world. So that would be a principal situs.

In addition, it will also apply to the maritime jurisdiction of the United States, as pointed out by Congresswoman MIKULSKI, who serves on the Committee on Merchant Marine and Fisheries. She pointed out that vessels at sea under the U.S. flag and U.S. jurisdiction will fall under this legislation as well.

The gentleman (Mr. CARR) is correct that the primary responsibility for the enforcement and formulation of the criminal laws of this land are at the State level. However, as the gentleman also knows, there were a significant number of prosecutions for rape in this country under Federal law and we believe this statute will facilitate the U.S. attorneys in the prosecution of those cases and will also make more confident victims which, as the gentleman points out, are very reluctant to come forward, confident in the fact that because of the broad range of offenses and the definition of those offenses legislatively, that the probability of conviction of their assailants has been substantially heightened.

Mr. CARR. I thank the gentleman.

One other area where the gentleman enumerated the value of this bill earlier today was in the Federal prison system. I think that needs to be said as well. The bill we introduce today is sex-neutral. It matters not the sex of the victim or indeed the sex of the offender; what makes a difference is the sexual nature of the assault.

And as we know, in prisons throughout America, no less the Federal penal system, there is a problem of homosexual rape which may, in fact, be only a violation of prison rules at this point in time. If this bill is passed into law it would, in fact, be an additional Federal criminal offense.

Mr. HOYER. I think the gentleman makes a very good point. Certain Federal correctional facilities, over which the Federal Government may have ju-

risdiction, will be included. During the time that we had hearings in the State of Maryland in 1975, we had some 20 hearings; many local correctional facility personnel testified before us on the rising incidence of sexual assaults committed by inmates against one another.

And we had many psychologists and psychiatrists testify as to the very significant nature of the trauma that such crimes perpetrated on the victims. In many instances because of the fact they were homosexual rapes, the trauma on the victim was much greater than it would have been in a heterosexual rape. I think the gentleman makes a good point. This bill will apply to homosexual rape and it will point out the seriousness of those kinds of attacks in correctional facilities and will provide additional tools for prosecutors to go after that kind of criminal conduct.

Mr. CARR. I thank the gentleman for his comment and I think one final discussion should be had on the record.

In the State of Michigan, and I believe in the State of Maryland and in other States, their criminal sexual offense laws have shielded the victim from having his or her past sexual conduct be made in evidence in a court of law, in a so-called rape trial. That is not included in this particular piece of legislation. It was done so intentionally.

I think the gentleman from Maryland ought to explain to those people who will be looking on as interested parties, they might be interested in knowing why.

Mr. HOYER. In Maryland and in Michigan we proceeded on sort of a two-track system. One dealt with the substantive definition of the crime and the penalties for violation thereof.

The other, the second track dealt with the evidence that could be introduced in the prosecution or defense of that crime. The gentleman from Michigan is referring to the latter aspect with which we did not deal in this legislation.

We did not do so because Federal rule 412 already prohibits the introduction of reputation or opinion evidence of the victim regarding past sexual behavior. Under that rule specific acts of sexual behavior by the victim are also not admissible except for very limited purposes. Now, one of the things that we were interested to find in the course of our hearings is that historically, chastity was not defined as the lack of sexual relations with others.

Chastity in effect, historically, was a state of mind. So the reputation for chastity was effectively a reputation for clean minds. Obviously, over the years, that changed. What would happen in the defense of a rape trial is that the defense attorney would try to undermine the reputation of the victim; not really to say whether or not that victim had been attacked or viciously assaulted but in effect to say this victim somehow, because of past experiences, is not as eligible for the protection of the law as she otherwise might be.

Clearly, that was, from our perspective, a prejudiced view. It was also a view which undermined the quest for truth, which tried to focus attention upon the victim rather than at the crime that had been perpetrated against the victim.

□ 1540

But, luckily, we did not have to deal with it in this legislation because Public Law 95-540 which added rule 412 to the Federal rules of evidence addressed that issue.

Mr. CARR. I thank the gentleman for his explanation.

Mr. HOYER. Mr. Speaker, I urge the Members to give very serious attention to this legislation which we believe is a needed and effective step forward in the prosecution of crimes of great concern to our society.

GENERAL THADDEUS KOSCIUSZKO—VALIANT SOLDIER, COURAGEOUS PATRIOT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

● Mr. ANNUNZIO. Mr. Speaker, February 12 marked the 238th anniversary of the birth of Gen. Thaddeus Kosciuszko, the great Polish patriot and soldier, who made significant contributions to the cause of American independence. Although he was not a native American, General Kosciuszko's heroic and selfless actions during the American Revolution were held in such high esteem that Congress bestowed on him the rights and privileges of American citizenship and the rank of brigadier general.

Tadeusz Andrzej Bonawentura Kosciuszko was born in Mereczowczyzna, Poland, in 1746, and began his education in military strategy and engineering at the Warsaw Corps of Cadets. The King of Poland, impressed with Kosciuszko's natural ability in military matters, sent him to France to pursue further studies, and he developed an expertise in military fortification.

The news of the outbreak of hostilities in America kindled Kosciuszko's imagination and his desire to fight for the cause of liberty. He abandoned his commission in the royal Polish forces, leaving his homeland temporarily to serve under General Washington in the American response to British oppression.

His first assignment was the construction of a fortification against the expected attack near the Delaware River, and for his efforts Kosciuszko was given a colonel's commission and was appointed to the staff of General Gates at Ticonderoga. Kosciuszko was again able to display his brilliance as a military strategist at the Battle of Saratoga. The British plan was to isolate New England from the other colonies, and by helping to defeat this strategy and force the surrender of Britian's general "Gentleman Johnny" Burgoyne, Kosciuszko helped bring France and Spain into the struggle for American independence, because these countries now felt that the colonies had the potential to win.

Perhaps Kosciuszko's most important undertaking was the construction of an American fortification at West Point. His talent lay in his ability to make use of an area's terrain for defense purposes, and the British were forced to change their plans when they realized that this fortification was impregnable. Consequently, the British abandoned the North and the Hudson Valley and attempted their defeat of the colonies from the South. However, Kosciuszko also moved to the South, and continued to use the same military tactics, which ultimately led to the defeat of the British.

Kosciuszko spent 6 years in the American Army. His long, faithful, and meritorious service was recognized in 1783 when Congress made him a brigadier general, and his brave and resourceful actions were not overlooked by America's Founding Fathers. He became a true friend of Thomas Jefferson, whom he made executor of his will. As a final act of gratitude and respect, Gen. George Washington nominated General Kosciuszko for membership in the Order of the Cincinnati, which has been formed by the officers of the Continental Army. His induction into the order was the highest compliment the Continental Army could award.

Mr. Speaker, I am proud to join Polish-Americans in the 11th Congressional District of Illinois which I am honored to represent, and Americans of Polish descent all over this Nation, in commemorating the birth of Thaddeus Kosciuszko, a great and true friend of the United States. His name will forever remain a symbol of courage for Americans, and people all over the world, who are dedicated to the cause of freedom.●

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 30 minutes.

[Mr. GONZALEZ addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

RAY CLOUGHERTY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. COYNE) is recognized for 5 minutes.

● Mr. COYNE. Mr. Speaker, in these political times it has become somewhat fashionable to speak disparagingly of the contributions by civil servants to our national well being. Often