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SB 29 - SB 67

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STATE	CATEGORY	STATUS OF MARITAL RAPE LAW	CITATION*
Rhode Island	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	G.L. § 11-37-1
South Carolina	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	C. § 16-3-658
South Dakota	1	Husband can <i>never</i> be charged with rape of wife.	C.L.A. § 22-22-1
Tennessee	2	Husband cannot be charged with rape <i>unless</i> court action for divorce or separation started (petition filed).	C.A. § 39-3702
Texas	1, 3	Husbands and cohabitor can <i>never</i> be charged with rape of wife/mate.	§ 21-02(a) § 21-12
Utah	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	Crim. C.A. § 76-5-402, 407
Vermont	1	Husband can <i>never</i> be charged with rape of wife.	S.A. Title 13 § 3252
Virginia	5	Unknown if marital rape is a crime.	Code 18.2-61, <i>et seq.</i> (effective 7/1/81)
Washington	1	Husband can <i>never</i> be charged with rape of wife.	R.C.A. Ch. 9A.44.010, <i>et seq.</i> (Supp., 1979)
West Virginia	1, 3, 4	Husbands and cohabitants can <i>never</i> be charged with rape of mate. "Voluntary social companion" cannot be charged with 1st degree sexual assault (date-rape exemption).	Code § 61-8B-1
Wisconsin	2	Husband cannot be charged with rape of wife <i>unless</i> parties live apart and court action for divorce or separation started (petition filed).	S.A. § 940.225(6)
Wyoming	2	Husband cannot be charged with rape of wife <i>unless</i> court order of separation.	S.A. § 6-4-307

\*The citations are included so interested readers can more easily obtain full details of these laws.

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MARITAL RAPE EXEMPTION

The National Center on Women and Family Law, Inc. collects information on the marital rape exemption in state criminal statutes. The following chart outlines current statutory law. The categories are general and cursory, and states may fall into more than one category. We have tried to give general breakdowns of where each state stands on this issue. Since this issue is in a state of flux, this chart may be outdated in some instances. If any of our information is inaccurate, please advise us.

CURRENT STATUTORY LAW

As of January, 1984, at least 28 states bar prosecution of a husband for rape of his wife if they are living together. 12 states additionally bar unmarried cohabitants from being charged with rape of the women with whom they live\* 18 states have abolished the exemption and permit prosecution of husbands who rape their wives under all or most circumstances.

-- 5 states: bar husbands from being charged with rape of their wives, and no exception is made even where separation agreements or interlocutory decrees exist (i.e., there must be a final decree of divorce):

\*Alabama - Title 13A-6-60-(4), 13A-6-61 (1978)

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\*See Expansion Section, infra.

\*\*California, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, North Dakota, Oregon, Virginia, Washington, Wisconsin, Wyoming.

- \* North Dakota - Code Ann. §§12.01-20-01, 12.01-20-02 (1983). (orders of protection included. Exemption eliminated in first degree rape, §12-1-20-03, "Gross Sexual Imposition.")
- Rhode Island - Gen. Law §§11-37-1, 11-37-2.1 (amended 1982) (Note: Exemption eliminated in first degree sexual assault if the parties have been living apart for more than 90 days or pursuant to a court order, and the assault is reported to the police within 24 hours.)
- South Carolina - Code §16-3-658 (1977)
- Utah - Crim. Code Ann. §§76-6-402, 76-6-407 (1979)

-- 6 states: marital exemption ends if parties are living apart AND one spouse has filed a petition for annulment, divorce, separation or separate maintenance:

- Indiana - Stat. Ann.. §35-42-4-1-(b) (amended 1983) (or a petition for a protective order has been filed)
- Michigan - Second Rev. Crim. Code, Ch. 23, §2340 (1980)
- Nevada - Rev. Stat. §20.373 (1977)
- Ohio - Rev. Code §§2907.01(L), 2907.02 (or if parties have entered into a written settlement agreement)
- Rhode Island - Gen. Laws §§11-37-1, 11-37-2.1 (amended 1982) (Note: exemption eliminated in first degree sexual assault if the parties have been living apart for more than 90 days or pursuant to a court order, and the assault is reported to the police within 24 hours.)
- Tennessee - Code Ann. §39-2-610 (1979)

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# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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\* Illinois - Rev. Stat. 1983 Supp., Ch. 38,  
§12-18(c). Exemption abolished in  
"aggravated criminal sexual assault"  
if the assault is reported in 30 days.  
(R.S.A. §12-14, effective 7/1/84).

South Dakota - Compiled Laws Ann. §22-22-1 (1979)  
(Note: South Dakota amended its  
statute to eliminate the marital rape  
rape exemption, but the following  
year repealed that amendment.)

Vermont - Stat. Ann., Title 13 §3252 (effective  
7/1/77)

\* West Virginia - W. Va. Code §61-8B-1 (1977)

--10 states: marital rape exemption ends when parties are separated  
under a court order:

\* Kentucky - Rev. Stat. §510.010(3) (1975)

Louisiana - Rev. Stat. Ann. §14.41 (1978)  
(Note: 1984 amendment abolished exemption  
in "aggravated sexual battery" only,  
§14:43.2.)

Maryland - Ann. Code §27-464D (1979)

Missouri - Ann. Stat. §566.010:2 (1979).

New York - N.Y. Pen. Law §130.00 (1983)  
(Note: Exemption also ends if orders of  
protection exist, or parties have  
entered into a separation agreement which  
includes an express provision that husband  
will be criminally liable for raping his  
wife.)

North Carolina - Gen. Stat. §14-27.8 (1979)  
(or living apart pursuant to  
a written separation agreement)

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\* See Expansion Section, infra.

\*North Dakota - Code Ann. §§12.01-20-01, 12.01-20-02 (1983). (orders of protection included. Exemption eliminated in first degree rape, §12-1-20-03, "Gross Sexual Imposition.")

Rhode Island - Gen. Law §§11-37-1, 11-37-2.1 (amended 1982) (Note: Exemption eliminated in first degree sexual assault if the parties have been living apart for more than 90 days or pursuant to a court order, and the assault is reported to the police within 24 hours.)

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-- 6 states: marital exemption ends if parties are living apart AND one spouse has filed a petition for annulment, divorce, separation or separate maintenance:

Indiana - Stat. Ann., §35-42-4-1-(b) (amended 1983) (or a petition for a protective order has been filed)

Michigan - Second Rev. Crim. Code, Ch. 23, §2340 (1980)

Nevada - Rev. Stat. §200.373 (1977)

Ohio - Rev. Code §§2907.01(L), 2907.02 (or if parties have entered into a written settlement agreement)

Rhode Island - Gen. Laws §§11-37-1, 11-37-2.1 (amended 1982) (Note: exemption eliminated in first degree sexual assault if the parties have been living apart for more than 90 days or pursuant to a court order, and the assault is reported to the police within 24 hours.)

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-- 4 states: marital exemption ends if parties are living apart  
OR one spouse has initiated legal proceedings:

Idaho - Code §18-6107 (1977) (parties must be living  
apart at least 180 days)

New Mexico - Stat. §30-9-10 (1978)

Oklahoma - Stat. Ann. Title 21 §1111(B) (amended by  
Sec. 1, Ch. 41, O.S.L. 1983; effective  
11/1/84). (orders of protection included)

Texas - Pen. Code §22.011(c) (amended 1983)

-- 12 states: marital exemption ends when parties are living  
apart (no court order or separation agreement needed):

Alaska - Stat. §11-41.445(a) (effective 1, 1980)  
(marriage is an affirmative defense  
except where parties are living apart  
or defendant caused serious physical  
injury)

Arizona - Rev. Stat. §§13-1401.4, 13-1404 to  
13-1406 (1978)

Colorado - Rev. Stat. §18-3-409 (1975)

Idaho - Code §18-6107 (1977) (parties must be  
living apart at least 180 days)

Iowa - Code Ann. §§709.2, 709.3, 709.4 (1978)

\*Maine - Rev. Stat. Ann. Title 17A, §§11-251,  
11-252 (1979)

Mississippi - Code Ann. §97-3-95 (1981)  
(Sexual Battery)

\*Montana - Rev. Code §45-5-506 (1979)

New Mexico - Stat. Ann. §§30-9-10E, 30-9-11 (1978)

Oklahoma - Stat. Ann. Title 21 §1111(B) (amended by  
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\* Pennsylvania - Stat. Ann. Title 18 §3103 (1977)  
(Note: no exemption if parties have entered into written separation agreement, even if they are still living together.)

Texas - Pen. Code §22.011(c) (amended 1983)

-- 4 states: have no express marital rape exemption in their statutes (are "silent"). Whether the alleged "common law" exemption barring prosecution is applied depends upon judicial decision and/or legislative intent. See LITIGATION Section.

Arkansas - Stat. §§41-1801, 41-1803 (1976)  
(Note: Express exemption in statutory rape, §§41-1804 to 1810)

Georgia - Code Ann. §26-2001 (amended 1978)  
(Note: Express exemption in statutory rape, §26-2018)

Mississippi - Code Ann. §97-3-65(2) (1979) (Rape statute silent; compare with express exemption in "sexual battery" statute, §97-3-99)

Washington, D.C. - R.S.D.C. §22-2801 (1967) (Note: Letter from Office of D.C. Corp. Counsel dated 6/4/84, stating that cases "involving marital rape" are prosecuted. On file with NCOWFL.)

STATES WHICH HAVE STATUTORILY LIMITED OR STRICKEN  
THE MARITAL RAPE EXEMPTION

-- 8 states: abolished the marital rape exemption altogether. Rape by a spouse is treated the same as rape by a stranger.

Florida - Stat. Ann. §794-011 (1979). No express exemption; spouses can be charged the same as strangers, State v. Larry Smith, 401 So.2d 1126 (5th DCA 1981), and People v. Rider, 9 FLW 887 (3d DCA 1984).  
(See LITIGATION Section)

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\* See Expansion Section, infra

- \* Kansas - Stat Ann. §§21-3501, 21-3502, effective L. 1983 (HB 2008, Ch. 109), deleting the marital rape exemption as it applies to the crime of rape.

However, a spousal exemption remains applicable to crime of indecent liberties with a child under sixteen, K.S.A. §21-3503. This exemption ends if the parties are living apart or either spouse has filed for annulment, separate maintenance, divorce or an order of protection.

- Massachusetts - Ann. Laws. Ch. 265 §22, Ch. 277 §39 (1979). No exemption; spouses can be charged the same as strangers. Commonwealth v. Chretien, 417 N.E.2d 1203 (1981). (See LITIGATION Section).

- New Jersey - Stat. Ann §2C:14-5(b), effective 9/1/79. This state has affirmatively abrogated the alleged "common law" exemption:

→ "No actor shall be presumed to be incapable of committing a crime under this Chapter [Sexual Offenses] because of age or impotency or marriage to the victim." N.J.S.A. §2C:14-5(b), emphasis added.

- Nebraska - Rev. Stat. §§28-319, 28-320, effective 1/1/76 (repealing and replacing §28-403.03 and §28-403.04 which included the exemption.)

- Oregon - Rev. Stat. §163.305 (amended by 1977 C. 844, deleting the marital rape exemption.)

- Virginia - Va. Code. §18.2-61 (1981 amendments). No express exemption; no "common law" exemption pursuant to Weishaupt v. Commonwealth of Virginia, Va. Supreme Ct., Slip. Op. 830616 (decided April 27, 1984). (See LITIGATION Section)

- Wisconsin - Stat. Ann. §940.225(6), effective 5/1/82. Wisconsin followed New Jersey's example by expressly and affirmatively abrogating the exemption (rather than merely deleting the exemption as in Oregon). This method is preferable because it does not leave open to question (and litigation) whether the so-called "common law exemption" (Hale's Doctrine) applies once the statute becomes "silent."

--8 states: have partially stricken, or limited, the marital rape exemption so that rape by a spouse is a crime under most circumstances:

California - Pen. Code §262, effective 1/1/80. Establishes a separate crime of spousal rape. However, the marital exemption is still applicable where the victim is "incapable" of giving legal consent (i.e., mentally or physically handicapped; intoxicated or drugged, even when the victim's state is due to acts of the defendant; unconscious of the nature of the act). Effective 9/28/83, the thirty (30) day reporting requirement extended to 90 days (the victim must report the rape to the police or district attorney within this time period).

Connecticut - Pen. Code 53A-67(b), effective 10/1/81 (HB 5247). Marital and cohabitant exemption deleted from first-degree forcible rape. Exemption remains as an affirmative defense to lesser degrees of rape and sexual assault.

\* Delaware - exemption deleted from first and second degree rape (D.C.A. §§763, 764). However, D.C.A. §764 (first degree rape) includes a "voluntary social companion" exemption which may operate to exempt spouses and cohabitants.

Exemption remains in Sexual Assault (D.C.A. §761, Class A Misdemeanor) and Sexual Misconduct (D.C. .762, Class E Felony). Additionally, the exemption, where applicable, is expanded to cover unmarried cohabitants. D.C.A. §772(b).

\* Hawaii - Rev. Stat. §§707-730, 707-731, 707-732, effective 6/21/79. By amending statutes to gender-neutral terms, marital rape exemptions were deleted.

However, "voluntary social companion" exemption in §707-730 (first degree rape) may operate to exempt spouses and cohabitants. This section, as amended in 1981, reduced the period relating to previous sexual intercourse with a "social companion" from one year to thirty days.

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\* See Expansion Section, infra

• Iowa - Code Ann. §§709.2-709.4. No exemption in first and second degree sexual abuse; exemption remains in third degree sexual abuse.

\* Minnesota - Stat. Ann §609.349, amended 1980. Expressly deletes marital rape exemption in most cases: "Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by any person against his legal spouse."

However, exemption (which includes cohabitants) still applies in statutory rape, and cases where the victim is mentally or physically disabled.

New Hampshire - Rev. Stat. Ann. §632-A:5 (amended by HB 516, effective September 1981). Exemption deleted, except in statutory rape cases, or cases involving "mentally defective" victim-wives. (R.S.A. §632-A:2 and :3).

\* North Dakota - Code Ann. §12.01-20-01, 12.01-20-02, effective 7/1/83 (SB 2249). Exemption deleted from first degree rape (§12.1-20-03:3, "Gross Sexual Imposition"). However, "voluntary social companion" exemption may operate to exempt spouses and cohabitants. Exemption remains in all lesser offenses.

Washington - Rev. Code Ann. Ch. 9A.44.010, 9A.44.040, 9A.44.050, 9A.44.060 (amended in 1983). Exemption abolished in first and second degree rape, but remains in third degree rape.

Wyoming - Stat. §6-2-307 (1983). Exemption abolished in first and second degree sexual assault (§§6-2-301, 302). Exemption remains in third and fourth degrees (§§6-2-304, 305).

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\* See Expansion Section, infra

EXPANSION OF THE MARITAL RAPE EXEMPTION

--12 states have expanded this marital "privilege" or "right" of rape to unmarried cohabitants, (hereinafter referred to as "cohabitators"), e.g., "the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship." Rev. Code of Montana, §45-5-5-6(2).

Additionally, 5 states\* have also provided a partial exemption to "voluntary social companions" (thereby, to an extent, legalizing "date rape"):

Alabama - Crim. Code §13A-6-60(4) (exemption extends to cohabitators).

Connecticut - Pen. Code §53a-67(b) (cohabitation is an affirmative defense, except to first degree rape).

\* Delaware - Code Ann. §772(b) (exemption for cohabitators in sexual assault and sexual misconduct); and Code Ann. §764(2) (exemption in first degree rape where defendant was victim's "voluntary social companion" on the occasion of the crime and victim had previously permitted him sexual contact, OR defendant caused serious physical, mental or emotional injury).

\* Hawaii - Rev. Stat. §707-730(1)(a)(i). Exemption in first degree rape where victim was defendant's "voluntary social companion who had within the previous thirty days permitted him sexual intercourse; "voluntary social companion" exemption does not apply if defendant inflicts "serious bodily injury." No exemption in second or third degree rape.

Iowa - Code Ann. §709.4 (cohabitators exemption in third degree Sexual Abuse; no exemption in first and second degree Sexual Abuse).

Kentucky - Rev. Stat. Ann. §510.010(3) (exemption extended to cohabitators; marriage defined as "persons living together as man and wife regardless of the legal status of their relationship.")

- \*Maine - Rev. Stat. Ann. Title 17-A §252.2 (cohabitation as an affirmative defense) and §252.3 ("voluntary social companion" defense to prosecution for Rape as Class A crime; exemption reduces to Class B crime).
- Minnesota - Stat. Ann. §609.342 (1979) (exemption for cohabitators in statutory rape, and cases where victim is mentally or physically disabled).
- Montana - Rev. Code §45-5-506 (exemption extended to cohabitators).
- \*North Dakota - Code Ann. §12.01-20-03:3 ("voluntary social companion" exemption to Class A Felony of "Gross Sexual Imposition" reducing crime to Class B Felony. Exemption applies if victim has "at any time previously" permitted defendant "sexual liberties".)
- Pennsylvania - Stat. Ann., Title 18 §3103 (exemption extended to cohabitators).
- \*West Virginia - W. Va. Code §61-8B-1(2) (cohabitor exemption; marriage defined as including "persons living together as man and wife regardless of the legal status of their relationship"), and §61-8B-3(a)(iii), "voluntary social companion" exemption to first degree Sexual Assault.

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MARITAL RAPE FACT SHEET\*

1. Fact or Fiction? "MARITAL RAPE ISN'T AS SERIOUS AS RAPE BY A STRANGER--IT'S JUST A WOMAN NOT BEING IN THE MOOD AND HER HUSBAND INSISTING."

As a matter of fact, marital rape is often just as violent, just as degrading, and oftentimes more traumatic than rape by a stranger. It is perpetrated with knives, at gunpoint, repeatedly, brutally, in front of others, and most often is the final violent act culminating a series of physical abuses. One woman has reported being beaten and raped by her husband virtually every day for six months, anally raped 9 or 10 times. He told her that, if she ever tried to leave, he would kill her. In terror she fled to another state, changed her name, and lived there for a year in cognito.

2. Fact or Fiction? "MARITAL RAPE ISN'T OFFENSIVE--AFTER ALL, A WIFE HAS HAD SEX WITH HER HUSBAND BEFORE, WHAT'S ONE MORE TIME?"

As a matter of fact, a woman raped by a stranger has to live with the memory of that experience. A woman raped by her husband has to live with her rapist. Many wife victims, trapped in a reign of terror, experience repeated sexual assaults over a number of years. What happens to a capacity for intimacy when the person who has promised to love and protect, and on whom one may be economically dependent, commits such a brutal and violent violation?

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\* Prepared and distributed by the Pennsylvania Commission on the Status of Women.

3. Fact or Fiction? "MARITAL RAPE IS A BIZARRE AND UNUSUAL ACT AND DOESN'T NEED LEGISLATIVE ACTION."

As a matter of fact, most experts consider rape to be the most underreported of all crimes and marital rape even more so. Over a third of women who appear at battered women's shelters report being sexually assaulted by their husbands. It is seldom discussed. Humiliated and ashamed, marital rape victims don't talk about it. They don't report it because the law does not help them.

4. Fact or Fiction? "WHEN A WOMAN MARRIES, SHE CONSENTS TO SEXUAL INTERCOURSE WITH HER HUSBAND."

As a matter of fact, sexual expression in love is one thing. Forced, brutalized sex is another. No one consents to violence by marrying. Under current law prosecution is impossible for even the most brutal rapes in marriage.

5. Fact or Fiction? "IF PROSECUTIONS ARE ALLOWED FOR MARITAL RAPE, A LOT OF INNOCENT HUSBANDS WILL HAVE RAPE CHARGES FILED AGAINST THEM BY ANGRY, VENGEFUL WIVES WHO HOPE TO BARGAIN FOR A BETTER PROPERTY SETTLEMENT IN A DIVORCE ACTION."

As a matter of fact, this myth is built on the ill-founded belief that women are innately vengeful and willing to go through the tortures of a courtroom trial in order to "get back" at a man, and that somehow women should be treated as less credible victims of crime than others. Actually, there are many other types of complaints which a woman could file for retaliation that would require less public self-exposure and trauma. Further, our legal system has built in mechanisms to determine the merits of a complaint. Police investigations, prosecutor discretion, and jury deliberations are employed to determine the truth or falsity of other allegations. Why should marital rape be treated any differently? Finally, no such misuse has been documented by the states that have eliminated immunity of spouses from prosecution for rape. Only the most extremely brutal and horrifying incidents of marital rape have been reported.

6. Fact or Fiction? "MARITAL RAPE IS SIMPLY ONE SPOUSE'S WORD AGAINST THE OTHER, HENCE IT WILL BE DIFFICULT TO PROSECUTE."

As a matter of fact, when has difficulty to prosecute determined what a crime is? Treason, conspiracy, child abuse, and incest are difficult to prove, but there is no outcry to decriminalize them.

7. Fact or Fiction? "THERE ALREADY EXIST REMEDIES FOR MARITAL RAPE--A WOMAN CAN FILE ASSAULT CHARGES OR GET A DIVORCE."

As a matter of fact, all rapists assault their victims. Rape is a crime different from assault. That is why special rape laws exist. Rape involves a special humiliation and special violation. Assault is a less serious crime, its penalty less a deterrent. Even though a woman might escape as a victim by filing for divorce, should the committer of the criminal acts escape punishment for them? An appropriate deterrent to this type of violent behavior is not now available.

8. Fact or Fiction? "MARITAL RAPE LAWS WOULD HAVE THE STATE MEDDLING IN PEOPLE'S BEDROOM AFFAIRS."

As a matter of fact, the state is meddling in the bedroom whether there is a marital rape law or not. In one case the state allows husbands to rape their wives. In the other, the state protects wives from this type of violence. Should murder and assault between spouses be decriminalized just because it's a family affair? A husband should no more fear criminalization of marital rape than a parent fears laws on incest or child abuse. The law should condemn a brutal, hostile, revengeful, hateful, and anti-social act whether it happens within a marriage or without.

9. Fact or Fiction? "MARITAL RAPE LAWS WILL DESTROY MARRIAGES BY PREVENTING ANY POSSIBLE RECONCILIATION."

As a matter of fact, isn't a marriage in which a husband rapes his wife and she presses charges already destroyed? Withholding justice and equal protection to try to hold together such a marriage is an unrealistic and improper goal for the criminal law. The law now protects a raping husband rather than a victim wife, and women can be coerced into staying in violent marriages. Should the law encourage such forced cohabitation?

10. Fact or Fiction? "SINCE SO FEW CASES ARE BROUGHT TO TRIAL, WHY BOTHER WITH A MARITAL RAPE LAW?"

As a matter of fact, the law protects either the victim or the rapist. Husbands who commit acts of violence against wives now receive special protection from the law in Pennsylvania. Should such special protection more rightly belong with the victim? Passage of H.B. 1122 would call attention to the problem, let the victims know there can be help, and, by removing society's sanction for such behavior, work to deter it.

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CAN  
THERE BE  
RAPE  
IN  
MARRIAGE

SOME FACTS  
AND FICTIONS  
ABOUT  
MARITAL RAPE

1. Fact or Fiction? "MARITAL RAPE ISN'T AS SERIOUS AS RAPE BY A STRANGER -- IT'S JUST A WOMAN NOT BEING IN THE MOOD AND HER HUSBAND INSISTING."

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love and protect, and on whom one may be economically dependent, commits such a brutal and violent violation?

3. Fact or Fiction? "MARITAL RAPE IS A BIZARRE AND UNUSUAL ACT AND DOESN'T NEED LEGISLATIVE ACTION."

As a matter of fact, most experts consider rape to be the most under-reported of all crimes and marital rape even more so. Over a third of women who appear at battered women's shelters report being sexually assaulted by their husbands. It is seldom discussed. Humiliated and ashamed, marital rape victims don't talk about it. They don't report it because the law does not help them.

4. Fact or Fiction? "WHEN A WOMAN MARRIES, SHE CONSENTS TO SEXUAL INTERCOURSE WITH HER HUSBAND."

As a matter of fact, sexual expression in love is one thing. Forced, brutalized sex is another. No one consents to violence by marrying. Under current law prosecution is impossible for even the most brutal rapes in marriage.

5. Fact or Fiction? "IF PROSECUTIONS ARE ALLOWED FOR MARITAL RAPE, A LOT OF INNOCENT HUSBANDS WILL HAVE RAPE CHARGES FILED AGAINST THEM BY ANGRY, VENGEFUL WIVES WHO HOPE TO BARGAIN FOR A BETTER PROPERTY SETTLEMENT IN A DIVORCE ACTION."

As a matter of fact, this myth is built on the ill-founded belief that women are innately vengeful and willing to go through the tortures of a courtroom trial in order to "get back" at a man, and that somehow women should be treated as less credible victims of crime than others. Actually, there are many other types of complaints which a woman could file for retaliation that would require less public self-exposure and trauma. Further, our legal system has built in mechanisms to determine the merits of a complaint. Police investigations, prosecutor discretion, and jury deliberations are employed to determine the truth or falsity of other allegations. Why should marital rape be treated any differently? Finally, no such misuse has been documented by the states that have eliminated immunity of spouses from prosecution for rape. Only the most extremely brutal and horrifying incidents of marital rape have been reported.

6. Fact or Fiction? "MARITAL RAPE IS SIMPLY ONE SPOUSE'S WORD AGAINST THE OTHER. HENCE IT WILL BE DIFFICULT TO PROSECUTE."

As a matter of fact, when has difficulty to prosecute determined what a crime is? Treason, conspiracy, child abuse, and incest are difficult to prove, but there is no outcry to decriminalize them.

marital rape

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June, 1984

THE PROSECUTION OF MARITAL RAPE:  
THE CALIFORNIA EXPERIENCE #1

David Finkelhor  
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University of New Hampshire  
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Kersti Yllo  
Wheaton College  
Norton, MA

Carol Richards  
brought these  
articles back  
from a conference  
she attended.  
I thought these  
were the best of the  
lot

Barbara  
Finkelhor

In the debate over removing the spousal exemption to rape, much concern has been expressed over how or even whether a law criminalizing rape would work. (\*2) Opponents of the change have raised several different specters of insidious consequences that would ensue if marital rape is criminalized. For example, they have warned that deleting the spousal exemption would risk flooding the criminal justice system with frivolous complaints brought by "vindictive" wives. (\*3) They have also raised the fear that cases brought under such a law would be impossible to prosecute, either because wives would be unreliable witnesses or because the cases would boil down to her word against his. (\*4) In short, they have predicted that marital assault prosecutions would bog down and frustrate the criminal justice system.

Until recently, arguments over these claims have been mostly hypothetical. There has been little empirical evidence against which to judge them. However, now that several states have eliminated the spousal exemption, and have gained experience about what happens once the exemption is removed, it is possible to see how a spousal rape law works in actuality.

A state well situated for a study of the effects of criminalizing marital rape is California. California changed its law as early as January, 1980, and has had a total of more than four years experience without the spousal exemption. As the most populous state in the country, California has also generated a large number and variety of spousal rape cases. Moreover, since the change of the law was hotly debated and widely publicized in California, public attention to marital rape cases has been relatively high there, making information on the subject easier to collect.

On the other hand, using California to study the operation of marital rape prosecutions has some drawbacks. California's legal situation with regard to marital rape is not entirely parallel to that of other states which have criminalized rape between a husband and a wife who are still living together. When California changed the law on spousal rape, the legislators did not merely delete the spousal exemption. Instead, they drafted a totally new section of the criminal code on the matter of spousal rape. One important special condition attached to the California spousal rape law is that victims were limited (until recently) to bringing such charges within 30 days of their occurrence. Another is that marital rape, unlike non-marital rape, can be a misdemeanor rather than a felony. Nonetheless, a great deal of valuable insight into the question of whether marital rape is a viable legal concept can be gleaned by looking at the situation in California.

#### GATHERING DATA

Gathering the needed data on the operation of the marital rape law in California has not been a simple task. Unfortunately, the state Bureau of Criminal Statistics does not keep very thorough or very detailed information on marital rape prosecutions in spite of the fact that an important public policy issue is at stake. (\*5)

So the staff of the National Clearinghouse on Marital Rape (NCFR) has been forced to compile data on its own -- a frustrating and cumbersome task. Marital rape cases have been identified in a variety of ways -- but primarily through a newspaper clipping service. The staff of the Clearinghouse, after hearing about a marital rape prosecution, made contacts with the journalists, attorneys, prosecutors, court officials, probation officers and sometimes rape crisis

workers familiar with the case, in an effort to get as much detail as possible about the events of the case, the backgrounds of the offender and the victim, and the disposition of the case within the legal system. District attorneys were generally the best and most reliable sources of information. Occasionally, these officials referred NCMR staff to other cases which had not been identified through the news clipping service.

Altogether, NCMR staff identified 39 cases of marital rape which came to the attention of the police or courts from January, 1980 through December, 1981. This is not necessarily a complete inventory of all such cases, however.

One piece of evidence suggests it is fairly thorough, though. The state Bureau of Criminal Statistics did compile what it believed to be a complete tally of all arrests for marital rape in 1980. This official tally showed 11 arrests. For the comparable time period, the NCMR inventory showed 17 cases that even the official reporting statistics did not pick up.

Nonetheless, it must be said that although NCMR believes it to be fairly complete, there is no way of knowing how totally complete the NCMR inventory of rape cases is. Moreover, without the information about its completeness, we cannot vouch for its representativeness either. There is every reason to believe that the cases not identified, if there were any, would be less sensational cases that did not proceed as far in the criminal justice system.

In other words, the cases that were identified would be more brutal, contain more evidence, and be more likely to result in a hearing or trial that would bring it to greater public attention than other cases. Whether this group of cases is biased in this way, we do not know.

With these possible caveats in mind, we present the information on the California cases. One advantage of generating data through calls to District Attorneys, newspapers and so forth, rather than through the state reporting system, was that a great deal more information could be gathered. The NCMR, by diligent sleuthing, was able to inform itself about age, race, occupations of the husband and wife, and the nature of the incident in addition to all the data about the court disposition.

#### NATURE OF THE CASES

A first thing to note about the cases is that they were, on the whole, extremely brutal. Especially brutal cases are probably more apt to end up on the police blotter and in the newspaper, and that may account in part for the array of incredible violence illustrated in the chart. The cases include one where a woman was raped with a crowbar and a sixteen inch tire iron and then had her breasts slashed with the same instruments. In another, a woman complained that her husband forced her to have sex with other men and dogs. In still another, the fugitive husband murdered the victim before he could be apprehended for her rape. The use of knives and guns was a common feature among these cases and several included very severe beatings.

A second important feature of the cases was that a majority of the rapes occurred between spouses who were separated, sometimes very recently so. In only 18 percent of the cases were the couple still living together (See Table 1). It is not surprising that cohabiting couples constitute a minority of cases. Wives who are still living with their husbands no doubt have a much more

difficult time seeing what happened to them as a rape and choosing to present such charges to the police. Also, a woman who is living in a separate household would expect less skepticism and ridicule on the part of police when she made such a charge. And it may be easier for such women to establish evidence of force and non-consent. As time goes on, normative standards change, and women become more aware of their rights, the proportion of cases involving cohabiting spouses may increase.

The deletion of the exemption for cohabiting spouses also has a "multiplier" effect, we suspect, on the prosecution of estranged husbands. When the exemption for cohabiting spouses is removed, there is generally a great deal of publicity about the problem. Prosecutors, police officers and women in general learn about the possibility of charging spouses with rape. This no doubt leads to an increased number of cases involving estranged husbands as well as cohabiting husbands.

Incidentally, there are some interesting similarities among the cases of women raped by estranged husbands. A number of them were kidnapped before they were raped, driven somewhere in a car against their will or taken somewhere at gunpoint. Others were deceived by husbands who told them they wanted to see them in order to talk with them about their children or about their finances.

#### THE OFFENDERS

The NCMR researchers were able to gather some valuable information about the offenders as well as about the court disposition (See Table 1). The offenders were, by and large, young. Sixty-four percent were under 30 and 33 percent under 25. This corresponds to what we found in our interview population of marital rape victims.<sup>(25)</sup> Marital rape coming to public attention is predominantly a younger man's crime.

Occupationally, the offenders whose marital rapes come to public attention were also a lower status group. Large numbers, 31 percent, were unemployed, and another 31 percent were blue-collar workers. This may not tell us anything about marital rape in general, however. We have to remember that it is typically men from lower social classes who are the clientele of the criminal justice system. Well-to-do criminals tend to be more successful at evading detection and prosecution. Nonetheless, this inventory of cases shows that some middle-class marital rapists are being prosecuted. The law is being applied to a spectrum of husbands, not just one class.

The racial and ethnic breakdown of the offenders shows a distribution roughly typical of the California population as a whole. Of those whose race we could ascertain, about two-thirds were white and the remaining third divided between Black and Hispanic.

#### DISPOSITION OF CASES

The most interesting information we can glean from these cases is not so much about the phenomenon of marital rape itself but rather about how the phenomenon is handled in the criminal justice system. The cases are certainly not a representative set of marital rapes, the vast majority of which we know are never reported. But they are in all likelihood a representative sample of cases that make their way into the legal system. What happens to marital rape

cases once they arrive there? (See Table 2)

First of all, a substantial number of cases get dropped before they go very far, often before trial, and sometimes before arraignment. In 28 percent of the cases in this sample the charges were dropped.

Unfortunately, the information on why the charges were dropped is not among the most reliable in the chart. Many times the reason given depends on the perspective of the person giving the information. District attorneys often choose to drop charges because they think they do not have a good case but then blame it on lack of cooperation by the wife. From the wife's perspective, she may see the dropping of charges as the decision of the D.A. The real state of affairs is difficult to determine.

It is certain that in some cases charges are dropped at the request of the wife. Where NCMR researchers could ascertain the reasons the wife gave for such requests they included such things as: 1) the wife was pressured by relatives of the offender to drop the charge, 2) the wife did not want to face the embarrassment of a trial, 3) the wife forgave her husband and wanted him back or 4) the wife got what she most wanted (divorce and protection) in other ways.

Of course, another common reason for wives dropping charges, especially in wife abuse cases, is fear of further retaliation by the husband.

It does not appear from the available information that the cases where the charges were dropped were frivolous or fraudulent. Some of these dropped charges involved severe assaults, replete with injuries and witnesses. In fact, one involved the woman who was raped and battered with the tire iron.

The remaining cases (72 percent) went on for prosecution, and of these a remarkable 89 percent (25 out of 28) resulted in a conviction. There were several routes to a conviction. The most common was a simple guilty plea on the part of the offender: 60 percent (17 of 28) of the offenders pleaded guilty, usually to the charge of spousal rape itself. In a little less than a third of such pleas, though, the charge was bargained down to another charge, usually the less onerous one of assault or battery.

In 11 cases the offender pleaded not guilty and went to trial. Of these, eight resulted in a guilty verdict -- seven by a jury and one by a judge. There were three non-guilty verdicts handed down to marital rape charges, two by a jury and one by a judge. (Actually in the one jury acquittal, there were two jury trials: one ended in a deadlock, the other in an acquittal.)

#### SENTENCING

All together, 25 of the 28 cases brought to trial in the two year period resulted in a guilty finding, and all offenders received sentences of some sort. The sentences were not particularly severe. Ten of the convicted men received no jail term whatsoever. Most of these got off with suspended sentences and fines. Some were remanded to counseling and one was ordered to do community service.

Fifteen of the 25 did go to jail or prison, however, with sentences ranging from 30 days to 16 years. The severe sentences tended to be meted out only when other crimes had been committed in tandem with the marital rape. In the case

where one judge imposed a 16 year sentence, the offender had abducted and raped another unrelated woman during the same episode where the spousal rape had occurred. A man who held his son hostage with a sawed off shotgun was sentenced to four years. The longest sentence meted out for a marital rape uncomplicated by other crimes and weapon violations was three years. The maximum possible term for felony spousal rape is eight years.

#### IMPLICATIONS: NO FLOOD OF CASES

From an analysis of these 39 cases, it is possible to draw some important conclusions about how the criminal justice system deals with the issue of marital rape once it is criminalized. They are conclusions which contribute directly to the debate on policy which for the last few years has been taking place in legislatures and courts.

First, there is little evidence that the courts will be swamped by a large number of marital rape complaints. Thirty, forty or even fifty cases reaching the courts over a two-year period in a state of 30 million people is a miniscule burden on the system. In the case of California, the load works out, as far as we can tell, to be approximately one case per year per million inhabitants. At that rate, most states in the country can probably expect less than a dozen prosecutions per year following the criminalization of spousal rape. If we are talking about states where the exemption only applies to a husband and wife living together, the increase in cases will be even smaller.

As to the matter of these cases being non-serious, the opposite would appear to be true. If California's experience holds true elsewhere, the type of cases that will come to court will tend to be the most blatant, the most brutal and the most heinous.

Of course, these conclusions only apply to cases in the courts. Those opposed to criminalizing marital rape also are concerned about the police being inundated with a large number of frivolous complaints. From the data we have collected, we cannot draw any conclusions about the experience of the police. However, we are skeptical that the police experience in California has been much different.

#### IMPLICATION: DROPPING OF CHARGES

Clearly a large number of marital rape charges later get dropped. As in the case of wife abuse, where similarly large numbers of cases are dropped, there is controversy about why the attrition rate is so high. Police and prosecutors tend to blame the wives for being fickle. Advocates for battered women tend to blame the criminal justice system for being insensitive.

The key problem, however, is not in determining who is to blame but in improving the level of mutual cooperation between victims and the criminal justice system. Where special victim assistance programs have been set up around the country, for example, and where prosecutors have learned more about the dilemmas facing victims, this level of cooperation has increased.<sup>(27)</sup>

If the cases noted here are any indication, women do not drop charges because they were trumped up in the first place. Rather, they retract these charges after having suffered from fear, from embarrassment, or from pressure by

relatives. Sometimes sensitive and on-going personal contact between the prosecutor and the victim is enough to prevent case attrition. As prosecutors recognize marital rape as a legitimate crime and gain more experience with marital rape cases, we expect that their record will improve as they learn how best to work with victims to insure their participation.

#### IMPLICATION: HIGH CONVICTION RATE

Perhaps the most impressive finding from our analysis of the California experience is that, contrary to what many opponents have claimed, marital rape prosecutions can be very effective indeed.

The number of convictions as a percentage of the number of cases brought in California was actually extraordinarily high. In 64 percent of all cases where a charge was lodged, a conviction was obtained. In fully 89 percent of all cases which reached the prosecution stage a conviction was obtained.

Compare this, for example, to non-marital rape prosecutions. According to statistics for 1980 gathered by the California State Department of Justice, of 3,126 cases of forcible rape where arrests were made, 1,368 or 44 percent resulted in a conviction. Of all forcible rape cases reaching actual prosecution (2,026), the percentage resulting in conviction was 67 percent. (\*8) In short, the prosecution of marital rape cases in California was more likely to result in success than the prosecution of non-marital rape.

This is an extremely important finding since a main concern of prosecutors is that their time will be wasted in pursuing marital rape cases. It is often imagined that the prosecution of such cases will be hampered by lack of evidence, doubt about whether sex was forced or consensual and prejudice among jurors against the idea of convicting a husband on the word of his wife. Based on California cases, these concerns do not seem to be well founded. Marital rape cases, once they get to the stage of prosecution, do not seem to be extraordinarily time consuming. In three-fifths of the cases, the offenders pleaded guilty (this was true of only one-fifth of the ordinary rape cases in Philadelphia), avoiding the necessity of a trial altogether. Hence the system actually worked very efficiently from a prosecutor's point of view.

It is significant that so many offenders pleaded guilty to the spousal rape charge. Defendants and their attorneys did not automatically think that it was an easy charge to beat. Nor did prosecutors. Otherwise, they might have been more likely to bargain away the spousal rape charge. The prosecutors used the charge and they convinced the defendants to plead guilty to it. This shows that the charge of spousal rape can be an effective piece of ammunition in the prosecutor's possession.

The number of guilty pleadings meant that there were rather few jury trials involving marital rape charges, making it harder to tell from the California experience how juries react to marital rape. However, there was a small amount of evidence. Of the nine jury trials, seven ended in convictions, showing that juries are not averse to bringing in a conviction against a husband, as some might have thought. Moreover, the fact that there was at least two acquittals, too, may relieve others of the fear that no man will ever receive a fair hearing in front of a jury on such a charge -- a difficult position for us to believe given the amount of popular skepticism that exists about marital rape.

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# New York court strikes law, convicts husband for raping wife

By DAVID MARGOLICK  
The New York Times

ALBANY — New York's highest court ruled Thursday that married men may be prosecuted for raping their wives.

In a 6-0 decision, the court of appeals struck down sections of the state's penal code that generally exempt men from prosecution for acts with their wives that would constitute rape or sodomy if done by a man with a woman other than his wife.

The decision apparently marks the first time the highest court in any state has invalidated an explicit statutory exemption for marital rape.

"There is no rational basis for distinguishing between marital rape and

nonmarital rape," the court held. By making such a distinction, it continued, the law violated constitutional guarantees of equal protection.

For the same reason, the court struck down a provision of the law under which any man could be convicted of forcible rape if a woman rarely commit rape. It held, there was no justification to exempt those who do from criminal sanction.

"The marital and gender exemptions must be read out of the statutes prohibiting forcible rape and sodomy," Associate Judge Sol Wachtler wrote for the court.

With the court's decision, New York joins 17 other states, including New Jersey, Connecticut and California,

that have abolished the marital rape exemption in some or all cases. In most of those states, the changes were made through legislative action.

Previously, a husband in New York could be convicted of raping his wife only if the couple were legally separated or living apart by court order.

"A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity,"

Wachtler wrote in a 25-page opinion. "A married woman has the same right to control her own body as does an unmarried woman."

Rape "is a degrading, violent act which violates the bodily integrity of the victim and frequently causes severe, long-lasting physical and

psychic harm," he wrote. "To ever imply consent to such an act is irrational and absurd."

Rape had been defined under New York law as "sexual intercourse with a female by forcible compulsion." The statute went on, however, to specify that any woman who is the victim of such an act committed by her husband is not considered a "female" under the rape law.

The marital exemption dates to 17th-century England, a time when the law viewed women as the property of their husbands. It has been part of the criminal law of New York since colonial days.

While discarding portions of the state's rape law, the court left intact

the conviction of Mario Liberta, a 26-year-old Buffalo man who was found guilty of raping his wife in front of their 2-year-old son in a hotel room nearly four years ago.

He had appealed the conviction, claiming he was unfairly singled out under the law. He is the only husband in the history of New York to be convicted of raping his wife. Because he was technically considered "unmarried" under the old law, the court held, his conviction need not be disturbed by its decision.

The Liberta case had generated intense interest throughout the state, notably among women's groups. Several elected officials, including the New York city council president, Carol

Bellamy, and the Brooklyn district attorney, Elizabeth Holtzman, had urged the court to invalidate it.

Sarah Wunsch of the Center for Constitutional Rights, which had filed a friend-of-the-court brief on behalf of 26 women's organizations seeking to abolish the exemption, called the ruling "an important step in the continuing effort to end violence against women." She predicted it would have national ramifications.

In his opinion, Wachtler took issue with arguments that existing criminal sanctions were sufficient to deal with the problem of marital rape. While husbands could often be charged with assault, he noted, that offense was generally only a misdemeanor.



## IN THE COURTS

### MARITAL EXEMPTION FOR RAPE, SODOMY UNCONSTITUTIONAL, NEW YORK HOLDS

*Court applies statutes in gender-neutral,  
marriage-neutral fashion.*

The marital and gender exceptions contained in New York's forcible rape statute deny unmarried males equal protection of the laws, the New York Court of Appeals decides. But this conclusion will help no rape defendant, whether married or unmarried, male or female; the court's solution to the constitutional problem is to strike the offending provisions and enforce the rest of the statute. (*People v. Liberta*, 12/20/84)

There is no rational basis for distinguishing marital from non-marital rape. Rape committed by males upon females from the rape of males by females, the court rules. The traditional notion that a married woman has given irrevocable implied consent to sexual intercourse with her husband cannot justify the marital exemption, the court stresses; rape is not a sex act but a degrading, violent assault to which a victim does not consent. To the argument that a female physically cannot rape a man, the court points to the statutory definition of "sexual intercourse" as "any penetration, however slight." This degree of contact, the court determines, can be achieved without male arousal, and, therefore, without consent. The marital exemption is also eliminated from the sodomy statute, which was already drawn in gender-neutral terms.

*Digest of Opinion:* The defendant, Mario Liberta, while living apart from his wife Denise pursuant to a Family Court protection order, forcibly raped and sodomized her in the presence of their 2½-year-old son. Under the temporary order of protection issued to the wife some two years after the defendant began beating her, the defendant was to move out and remain away from the family home, and stay away from Denise. The defendant was convicted of first-degree rape and first-degree sodomy.

*[Text]* Section 130.35 of the Penal Law provides in relevant part that "A male is guilty of rape in the first degree when he engages in sexual intercourse with a female . . . by forcible compulsion." "Female," for purposes of the rape statute, is defined as "any female person not married to the actor" (Penal Law 130.00, subd 4). Section 130.50 of the Penal Law provides in relevant part that "a person is guilty of sodomy in the first degree when he engages in deviate sexual intercourse with another person . . . by forcible compulsion." "Deviate sexual intercourse" is defined as "sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva" (Penal Law 130.00, subd 2). Thus, due to the "not married" language in the definitions of "female" and "deviate sexual intercourse," there is a "marital exemption" for both forcible rape and forcible sodomy. The marital exemption

itself, however, has certain exceptions. For purposes of the rape and sodomy statutes, a husband and wife are considered to be "not married" if at the time of the sexual assault they "are living apart . . . pursuant to a valid and effective (i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart, or (ii) decree or judgment of separation, or (iii) written agreement of separation . . ." (Penal Law 130.00, subd 4). [*End text*]

The defendant asserts on this appeal that the temporary order of protection is not the type of order that enables a court to treat him and Denise as "not married" and that thus he is within the marital exemption. Also, he contends that both statutes violate equal protection because they burden some, but not all males, and that the rape statute also violates equal protection by burdening only men, and not women.

The defendant's first argument is undermined by a legislative memorandum, submitted with the original version of the 1978 amendment, that took an expansive view of the "not married" provision. Also, the plain language of the statute indicates that an order of protection is within the meaning of an order "which by its terms or in its effect requires [the spouses to live] apart." This language would be virtually meaningless if it did not encompass an order of protection, as the statute separately provides for the other obvious situation where a court order would require spouses to live apart. Accordingly, the defendant was properly found to have been statutorily "not married" to Denise at the time of the rape.

We turn now to the defendant's constitutional challenges. [*Text*] Presently, over forty states still retain some form of marital exemption for rape. . . . Where a statute draws a distinction based upon marital status, the classification must be reasonable and must be based upon "some ground of difference that rationally explains the different treatment . . ." (*Eisenstadt v. Baird*, 405 U.S. 437, 447 [1972]) . . .

We find that there is no rational basis for distinguishing between marital rape and non-marital rape. The various rationales which have been asserted in defense of the exemption are either based upon archaic notions about the consent and property rights incident to marriage or are simply unable to withstand even the slightest scrutiny. We therefore declare the marital exemption for rape in the New York statute to be unconstitutional.

Lord Hale's notion of an irrevocable implied consent by a married woman to sexual intercourse has been cited most frequently in support of the marital exemption . . . Any argument based on a supposed consent, however, is untenable. Rape is not simply a sexual act to which one party does not consent. Rather, it is a degrading, violent act which violates the bodily integrity of the victim and frequently causes severe, long-lasting physical and psychic harm . . . To ever imply consent to such an act is irrational and absurd. . . . A married woman has the same right to control her own body as does an unmarried woman . . . If a husband feels "aggrieved" by his wife's refusal to engage in sexual intercourse, he should seek relief in the courts governing domestic relations, not in "violent or forceful self-help" . . .

The other traditional justifications for the marital exemption were the common law doctrines that a woman was the property of her husband and that the legal existence of the woman was "incorporated and consolidated into that of the husband" (1 Blackstone, Commentaries on the Laws of England, 430 [1966

... Both these doctrines, of course, have long been rejected in this state. [End Text]

More recent rationales advanced in support of the marital exemption includes marital privacy and promotion of reconciliation of the spouses. There is, however, no rational relation between allowing a husband to forcibly rape his wife and these interests. The right to privacy protects consensual acts, not violent sexual assaults. Just as a husband cannot invoke a right of marital privacy to escape liability for raping his wife, he cannot justifiably rape his wife under the guise of a right to privacy. As for reconciliation, if the marriage has already reached the point where intercourse is accomplished by violent assault it is doubtful that there is anything left to reconcile. This is particularly true if the wife is willing to bring criminal charges against her husband.

Another rationale is that marital rape would be difficult to prove and lead to fabricated complaints by vindictive wives. Proving lack of consent to sexual intercourse, however is often the most difficult part of any rape prosecution, particularly when the rapist and victim have had a prior relationship. Similarly, the likelihood that married women will fabricate complaints would seem to be no greater than the possibility of unmarried women doing so. The criminal justice system is presumed to be capable of handling false complaints.

The final argument in defense of the marital exemption is that marital rape is not as serious an offense as other rapes and is adequately dealt with under other criminal statutes, such as the assault statutes, which provide for less severe punishment. The fact that rape statutes exist, however, is a recognition that the harm caused by a forcible rape is different and more severe than the harm caused by ordinary assault, which is generally a misdemeanor unless the victim suffers serious bodily injury or a deadly or dangerous weapon is used. There is no evidence to support the argument that marital rape has less severe consequences than other rape. On the contrary, numerous studies have shown that marital rape is frequently violent and has more severe, traumatic effects on the victim than other rape. See, e.g., D. Russell, Rape in Marriage, 190-199.

Among the recent decisions in this country, only one court has concluded that there is a rational basis for the marital exemption. See *People v. Brown*, 632 P2d 1025, 7 FLR 2791 (Colo 1981).

Presently New York is one of only ten jurisdictions that does not have a gender-neutral statute for forcible rape. A statute which treats males and females differently violates equal protection unless the classification is substantially related to the achievement of an important governmental objective. *Caban v. Mohammed*, 441 U.S. 380, 388 (1979).

The state first argues that it may constitutionally differentiate between forcible rapes of females and males because only females can become pregnant. This rationale has been accepted by this court and the U.S. Supreme Court in upholding statutory rape statutes directed at males alone. There is no evidence, however, that preventing pregnancies is a primary purpose of the statute forbidding forcible rape, nor does such a purpose seem likely. The very language of the statute shows that its overriding purpose is to protect a woman from an unwanted, often violent intrusion of her body.

The state further claims that the discrimination is justified by the "probability of medical, sociological, and psychological problems unique" to females. This is an archaic generalization grounded in long-standing stereotypical notions that simply cannot serve as a legitimate rationale for a penal statute.

Finally, the state suggests that a gender-neutral rape law is unnecessary because a woman either cannot actually rape a man or, if she can, such attacks are extremely rare. The argument is premised on the notion that a man can only engage in sexual intercourse if aroused, and if he is aroused, then he is consenting. But "sexual intercourse occurs upon any penetration, however slight," Penal Law 130.00. This degree of contact can be achieved without a male being aroused and thus without his consent. Nor can the rarity of such attacks support gender discrimination. Otherwise, females would be exempt from many serious offenses that they rarely commit. Accordingly, we hold that § 130.35 violates the Equal Protection Clause because it exempts females from criminal liability for forcible rape.

[Text] When a statute is constitutionally defective because of underinclusion, a court may either strike the statute, and thus make it applicable to nobody, or extend the coverage of the statute to those formerly excluded. . . .

This court's task is to discern what course the Legislature would have chosen to follow if it had foreseen our conclusions as to underinclusiveness. . . .

The inevitable conclusion is that the Legislature would prefer to eliminate the exemptions and thereby preserve the statutes. Accordingly we choose the remedy of striking the marital exemption from Penal Law 130.35 and Penal Law 130.50 and the gender exemption from Penal Law 130.35, so that it is now the law of this state that any person who engages in sexual intercourse or deviate sexual intercourse with any other person by forcible compulsion is guilty of either rape in the first degree or sodomy in the first degree. Because the statutes under which the defendant was convicted are not being struck down, his conviction is affirmed. [End Text] — Wachtler, J.

(*People v. Liberta*; NY CtApp, 12/20/84)

### SALARIED DOCTORS LACK DIVISIBLE GOODWILL

*Court must disclose factors and methods used to determine goodwill; factors listed.*

A salaried physician does not have goodwill that can be divided upon divorce, the Washington Supreme Court holds. The goodwill of a professional is separate from his earning capacity and is a product of his practice before the public, the court says, so a physician who does not practice cannot have goodwill. The court also decides that a trial court must disclose the factors and methods used to determine goodwill, and it explains five commonly accepted methods. (In re Hall, 12/13/84)

*Digest of Opinion:* At the time of trial, Phillip, age 41, had a good reputation in the community as a consulting cardiologist. His average gross yearly earnings in the three years preceding trial were \$52,412. Judith, age 40, was an untenured professor at the University of Washington with no expectation of tenure in the foreseeable future. Her average gross yearly earnings were \$32,750 in the three years preceding trial. She testified that her decision to pursue an academic career was attributable primarily to the need for a flexible schedule to care for the Halls' children. Although she is widely published and enjoys a reputation as one of the 10 top physicians in the nation in the field of pediatric genetics, there are few, if any, medical career opportunities outside academia, especially in the Seattle area. Numerous medical schools across the nation have offered her employment with salaries up to \$60,000.

Evaluation of professor's goodwill is a troublesome issue. Since 1976, professional goodwill has been recognized in Washington as property of an intangible nature subject to division in a marriage dissolution. In 1979, reviewing the decisions of other courts, this court noted that a number of states had refused, in a divorce proceeding, to assign a value to goodwill of a professional practice, but recognized it as a marital asset. In *In re Fleege*, 588 P2d 1136 (1979), we held that although professional goodwill is not readily salable, the important consideration is not whether the goodwill of the practice could be sold without the personal services of the professional but whether it has value to him. In *Fleege*, this court set out the factors for valuing goodwill: the practitioner's age; health; past demonstrated earning power; and professional reputation in the community as to his judgment, skill, knowledge and his comparative professional success. These have become known as the *Fleege* factors. Two areas surrounding these factors must be clarified: (1) the first step in evaluation under the *Fleege* factors is the determination of the existence of goodwill; (2) several accounting or appraisal methods may be used by the trial court in conjunction with these factors.

November 1984

## COURTS DECLARE MARITAL RAPE A CRIME IN NEW YORK, FLORIDA AND VIRGINIA

by Monica Rickenberg, Legal Intern, NCOWFL  
and Joanne Schulman, Staff Attorney, NCOWFL

Rape is widely recognized as a serious felony—second in seriousness to murder in most states. However, one particular kind of rape—marital rape—has been treated very differently. As of January 1984, the rape laws of 28 states still provide an express marital rape exemption; only eight states have entirely abandoned the exemption.<sup>1</sup> The courts, however, have been more responsive. In 1981, courts in New Jersey,<sup>2</sup> Massachusetts,<sup>3</sup> and Florida<sup>4</sup> refused to apply the alleged "common law" marital rape exemption to their rape laws and held that husbands were not immune from prosecution for the rape of their wives. In 1983 and 1984, three more courts rejected the exemption, *People v. De Stefano*,<sup>5</sup> *State v. Rider*,<sup>6</sup> *Weishaupt v. Virginia*.<sup>7</sup> These cases form a substantial and unanimous body of case law which recognizes that a husband's forcing sexual intercourse upon his wife is rape.

### *People v. De Stefano*

*People v. De Stefano* is the first case in the country to examine the constitutionality of an express statutory marital rape exemption.<sup>8</sup> Although *De Stefano* is a lower court decision, it is a landmark case that lays the groundwork for future constitutional challenges to the marital rape exemption. In reaching its decision that New York's marital rape exemption violates the equal protection rights of married women, the court examined and rejected the traditional justifications for the exemption in clear powerful language, going further than any previous case in pointing out the absurdity and inherent sexism of the exemption and the arguments used to defend it.

The defendant was alleged to have entered the residence in violation of an Order of Protection and, at knifepoint, raped his wife. Defendant moved to dismiss the rape indictment, and it is upon this pre-trial motion that the case was decided.

Because the spouses were living apart at the time of the attack and the victim-wife had obtained an Order of Protection, the husband was considered "not married" under New York's spousal exemption.<sup>9</sup> The defendant claimed that his equal protection rights were violated because New York law deprived him of the right to unconsented sexual intercourse with his wife, a right the law grants to other husbands. Defendant also claimed that New York's rape law violated his due process rights by failing to notify him that he was not allowed to engage in nonconsensual sexual intercourse with his estranged wife and that such action could result in a rape charge.

The court examined the traditional justifications for the marital rape exemption, and determined that none constituted a governmental interest sufficient to meet any of the three tests associated with equal protection analysis (rational basis, middle tier and strict scrutiny).

The court examined the origins of the marital rape

exemption. The court found that Hale's Doctrine<sup>10</sup> was not judicial authority and thus "should not have been considered a binding and definitive statement of the common law." *De Stefano* at 510.

The court held invalid the "implied consent" argument, that upon marriage a woman irrevocably consents to sexual intercourse with her husband and relinquishes the right to say "no" in any and all situations. The court relied on the recognized constitutional right of a woman to have an abortion and use birth control without her husband's approval. The court found that the "logical extension" of those rights is that a woman has the right to refuse the physical act that leads to pregnancy, and that a woman's right to individual autonomy and to control procreation are but part of the more comprehensive right to bodily integrity." *De Stefano*, at 513-514.

The argument that a wife is the property of her husband was dismissed by the court as having "no validity" in the United States. *De Stefano*, at 512. The court rejected the related theory that, upon marriage, husband and wife become one legal entity and that a man cannot therefore be guilty of raping himself. The court noted that wives' separate legal identity was established as long ago as 1848 by the "Married Women's Act."

The court addressed the argument that the abandonment of the marital rape exemption would cause insurmountable evidentiary problems and invite fabricated complaints of marital rape. The court noted that lack of consent is the most difficult element to prove in all rape cases, not merely interspousal rape cases. Further, fabricated complaints of marital rape would be unlikely given the stigma society attaches to rape victims. The court also pointed out that false reports of other crimes occur, but "(o)nly in marital rape do we remove an entire class of potential victims from the protection of the law in order to protect some abstract possibility of a false claim that the criminal justice system is unable to deal with appropriately." *De Stefano*, at 515.

The court dismissed as "ludicrous" the argument that the prosecution of husbands for raping their wives would impede reconciliation of marriages. *De Stefano*, at 515. The court rejected the argument that other remedies are available to the victim of interspousal rape, pointing out that in the case before the court the victim had already obtained an Order of Protection and was nevertheless raped at knifepoint.

Finding that there was no governmental interest or basis for the marital rape exemption so as to justify treating victims of marital rape differently from all other rape victims, the court struck down New York's statutory marital rape exemption as violative of the equal protection clauses of the state and federal constitutions. The court disposed of defendant-

(cont'd. on p. 4)

## CHILD SUPPORT ENFORCEMENT AMENDMENTS (cont'd. from p. 2)

these services. Consequently, programs should now be more responsive to non-AFDC families. However, there is still a cap on federal reimbursement of non-AFDC cases, so that some IV-D offices may still resist offering services.

### Publicizing Availability of Services

States must publish information about the availability of enforcement services, so that the public will be better informed concerning use of the state's office of child support. Also, states may provide payment tracking for anyone who requests it at a fee no greater than \$25.

### AFDC Families

Several provisions will benefit welfare families who have assigned their child support to the state. When a family leaves the welfare rolls as a result of child support collection, it will be entitled to a four month extension of medicaid eligibility, and to continued use of enforcement services. Annual notice of the child support collected must be given to each AFDC family.

The Deficit Reduction Act (P.L. 98-369) passed earlier this year provides that \$50 of child support collected per month can be kept by families applying for or receiving AFDC without any concomitant deduction from their AFDC grant. Although child support collection decreases food stamp eligibility by an amount depending on income, there will still be a net benefit. The effective date is October 1, 1984.

### Other Provisions

Other significant provisions of the 1984 Amendments include the establishment of broadly representative Child Support Commissions in each state by December 1, 1984 to study child support systems and to report by October 1, 1985; creation of special federal funds for grants to promote interstate collections; and incentive payments to the states for interstate collections.

It is important for child support advocates to monitor the IV-D Agencies and participate on Commissions, in order to help make these Amendments effective for poor women and children. ■

A more detailed summary of the Child Support Enforcement Amendments and a copy of the Amendments are available from NCOFWL for \$3.00 to cover the costs of copying and postage.

## MARITAL RAPE A CRIME IN NEW YORK, FLORIDA, AND VIRGINIA (cont'd. from p. 3)

husband's other constitutional claims in holding that the Order of Protection which directed the defendant-husband to stay away from his estranged wife and to refrain from violence toward her constituted sufficient notice that he could be charged with rape. Furthermore, the court held that no specific notice was neces-

sary since the defendant never had a right to engage in forced sexual intercourse with his wife.

### State v. Rider

On April 17, 1984, the Florida Court of Appeals Third District held in *State v. Rider* that Florida's sexual battery statute, which contains no express spousal exemption, does not incorporate a "common law" exemption.

The *Rider* case involved spouses who were living together as husband and wife at the time of the rape. No divorce or separation proceedings had been initiated, and no temporary restraining order or separation agreement existed. Defendant moved to dismiss the sexual battery charges on the basis of a common law interspousal rape exemption. The trial court granted defendant's motion on the basis that no objective manifestation of the wife's withdrawal consent to sexual intercourse with her husband existed, such as legal or physical separation of the parties. The State appealed the dismissal and the Court of Appeals reversed and remanded for prosecution.

*Rider* is the second Florida case to address the marital rape exemption. In the 1981 case of *Florida v. Smith*,<sup>11</sup> the Fifth District held that no "common law" exemption exists in Florida. *Smith* involved spouses who were living apart at the time of the alleged attack. Although the *Smith* court explicitly stated that its decision was based on a finding that no common law spousal exemption exists in Florida (not on the theory that the victim-wife had revoked her "implied consent" by obtaining a restraining order and filing for a divorce), it was nevertheless unclear whether future courts would limit *Smith* to separated spouses only. The Court of Appeals in its decision in *Rider* adopted a broad interpretation of *Smith*, refusing to distinguish between spouses living together and those living apart, for purposes of eliminating the marital rape exemption. *Rider* joins a 1981 Massachusetts case, *Commonwealth v. Chretien*,<sup>12</sup> in expressly holding that no "common law" marital exemption exists even in the case of cohabitating spouses.

As in *De Stefano*, the *Rider* court found that Sir Matthew Hale's "single statement, which stands alone, naked of citation to any authority judicial or otherwise," provides no reasonable basis for the exemption, *Rider* at 887. The court held that no common-law spousal exemption had ever been adopted in Florida. The court hypothesized that even if such an exemption had at one time existed in Florida, the repeal of Florida's rape law and its replacement with a "sexual battery" statute would have abolished the exemption by "abrogat(ing) any common-law assumptions concerning the crime of rape." *Rider* at 888.

The court found that "even if we were to assume that a common law implied consent interspousal exception once existed and still exists . . . it does not follow . . . that such consent can never be withdrawn . . ." *Rider* at 888. The court found that since a spouse may terminate the marriage contract, she may terminate a "term" of the contract, consent to sexual intercourse. The court noted that the husband's remedy for this "breach of contract" is in court, not in violence against

(cont'd. on p. 5)

## MARITAL RAPE A CRIME IN NEW YORK, FLORIDA, AND VIRGINIA

(cont'd. from p. 4)

his wife. Finally, in refusing to adopt a common law exemption, the court noted that when the validity of a common law doctrine is extremely dubious the court can take into account societal changes in determining whether to apply the doctrine.

The two Florida cases are the first in the country to expressly find that a common law spousal exemption was never adopted in their state. While the landmark cases of *Commonwealth v. Chretien* and *State of New Jersey v. Smith*<sup>13</sup> severely criticized the Hale Doctrine, they assumed that it was part of the common law. Thus, the Florida cases are extremely significant in states which have no express statutory exemption, for they suggest that when courts of such states adjudicate marital rape cases they are not confronted with a choice of applying or abolishing a legitimate common law doctrine, but rather of whether or not to adopt an antiquated doctrine of dubious origins, one which is incompatible with 20th century legal and societal concepts of marriage and women's autonomy.

### *Weishaupt v. Virginia*

*Weishaupt v. Virginia*, involves a rape statute which, like Florida's, contains no express spousal exemption. The Virginia Supreme Court held that a "common law" marital rape exemption does not apply when there has been a *de facto* end to the marriage. The court refused to decide whether a "common law" exemption should be abandoned altogether, limiting its holding to the particular facts of the case before it.

In *Weishaupt*, the victim-wife had been living apart from her husband and had not engaged in sexual intercourse with him for almost a year prior to the attack. She had not filed for or obtained a divorce, order of protection or separation agreement. However, she had consulted a lawyer regarding a divorce and was advised to wait until she had been separated for one year before initiating divorce proceedings. Defendant-husband's motion to dismiss the rape indictment on the basis of a common law marital rape exemption was rejected by the trial court. Defendant was tried before a jury and convicted of attempted rape. The Virginia Supreme Court affirmed the conviction, holding that a common law exemption did not apply where, as in the instant case, the victim-wife had clearly manifested her intent to end the marriage.

The *Weishaupt* court examined the history of the "common law" exemption and determined that Hale's absolute exemption is not and never was English common law. The court found that under English common law a wife could revoke her implied consent to sexual intercourse with her husband by obtaining a court order of separation. The Court found that a written separation agreement entered by both parties constituted a revocation of the wife's "implied consent," although living apart from one's husband and having filed for, but not having obtained, a divorce did not.

Thus, under the *Weishaupt* court's understanding of the English common law, the defendant in the instant case could not be guilty of raping his wife. However,

the court found that both Virginia statutory law and case law empower courts "to adopt from English common law those principles that fit our way of life and reject those which do not." *Weishaupt*, at 12. It found that Virginia cases "suggest that if a woman's independent control over her property is protected by law, then her independent control over her physical person should likewise be protected." *Weishaupt*, at 14.

The court also found that an absolute marital rape exemption is inconsistent with Virginia's no-fault divorce law which requires spouses to live apart for a specified time without cohabitation before obtaining a no-fault divorce. Since the law contemplates a voluntary withdrawal by either spouse from the marital relationship, it "embodies a legislative endorsement of a woman's unilateral right to withdraw an implied consent to marital sex." *Weishaupt*, at 15. Since a wife has a statutory right to make a *de facto* withdrawal from the marriage contract, it would be irrational to forbid her from revoking a "term" of the contract, consent to sexual intercourse.

The court deemed "absurd" defendant-husband's contention that abandonment of the marital rape exemption would be disruptive to marriages. "[I]t is hard to imagine how charging a husband with the violent crime of rape can be more disruptive of marriage than the violent act itself." *Weishaupt*, p. 19.

The *Weishaupt* court refused to address the argument that a marital rape exemption should be abandoned altogether, and thus left open the question of whether an exemption would apply if the spouses were cohabiting at the time of the rape.

While *Weishaupt* does not go as far as *De Stefano* or *Rider*, the majority opinion does reject the application of the exemption where there has been a *de facto* end to the marriage; it does not require the victim to have obtained or filed for a divorce, separation or order of protection. Thus, *Weishaupt* is an important step in the right direction.

### Conclusion

There has been significant progress in the courts in abolishing the marital rape exemption. *De Stefano*, *Rider* and *Weishaupt* offer a basis to hope that courts will no longer condone rape.

Both the *De Stefano* and *Weishaupt* courts scornfully reject the argument that marital rape prosecutions will injure marriages by preventing reconciliation. As the *Weishaupt* court pointed out, it is the husband's violence, not society's recognition and punishment of that violence, which is destructive to marriage. *Weishaupt*, at 19.

*De Stefano*, *Weishaupt* and *Rider* recognize that it is time that rape laws be employed to protect women's autonomy. ■

The next issue of the *Women's Advocate* will present an update on state statutory changes in the last three years. For state-by-state summary of the exemption in criminal statutes see NCOWFL's *Marital Rape Exemption Packet*. Price \$9.00 for copying and postage.

(cont'd. on p. 6)

FOOTNOTES FOR MARITAL RAPE A CRIME

(cont'd. from p. 5)

FOOTNOTES

- <sup>1</sup> See NCOWFL's *Marital Rape Exemption Packet* which includes a state-by-state summary of the exemption in criminal statutes. Price: \$9.00.
- <sup>2</sup> *State v. Smith*, 426 A.2d 38 (N.J. 1981); *State v. Morrison*, 426 A.2d 47 (N.J. 1981).
- <sup>3</sup> *Commonwealth v. Chretien*, 417 N.E.2d 1203 (Mass. 1981).
- <sup>4</sup> *State v. Smith*, 401 So.2D 1126 (Fla. Ct. App. 5th Dist. 1981).
- <sup>5</sup> 467 N.Y.S.2d 506, 121 Misc.2d 113 (1983), Clearinghouse No. 36,388.
- <sup>6</sup> 449 So. 903 (1984), Clearinghouse No. 36,890.
- <sup>7</sup> 315 SE2d 847 (1984), Clearinghouse No. 36,889.
- <sup>8</sup> New York Penal Law Section 130.00(4). New York's marital rape exemption is "partial." Under certain circumstances spouses are defined as "not married" for purposes of the exemption, and therefore certain husbands are *not* granted immunity for the

rape of their wives. New York Penal Law 130.00(4) defines "not married" as spouses who are living apart pursuant to "(i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart, or (ii) decree or judgment of separation, or (iii) written agreement of separation . . . which contains provisions specifically indicating that the actor may be guilty of the commission of a crime for engaging in conduct which constitutes an offense prescribed by this article against and without the consent of the female."

- <sup>9</sup> New York Penal Law § 130.00(4)(b)(i); see note 8, *supra*.
- <sup>10</sup> "[T]he husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract . . . [I]n marriage she hath given up her body to her husband. . . ." 1 Hale, *Pleas of the Crown* 628-29 (1735). This statement, known as Hale's Doctrine, first appeared in a treatise (not a case) written by Lord Matthew Hale, a 17th century English jurist. Lord Hale provided no supporting authority for his statement, and this lack of authority was subsequently criticized by several English justices.
- <sup>11</sup> See footnote 4, *supra*.
- <sup>12</sup> See footnote 3, *supra*.
- <sup>13</sup> See footnote 2, *supra*. ■

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# When husband rapes wife

By ALLEN HOUSTON  
United Press International

PORTLAND Ore.—Six years after Greta Rideout became a "sacrificial lamb" and charged her husband with raping her in their bedroom, more and more states are making it illegal for men to force their wives into sex.

Experts disagree, though, over the effectiveness of the laws and whether the nationally publicized Rideout trial helped or hurt efforts to pass marital-rape legislation.

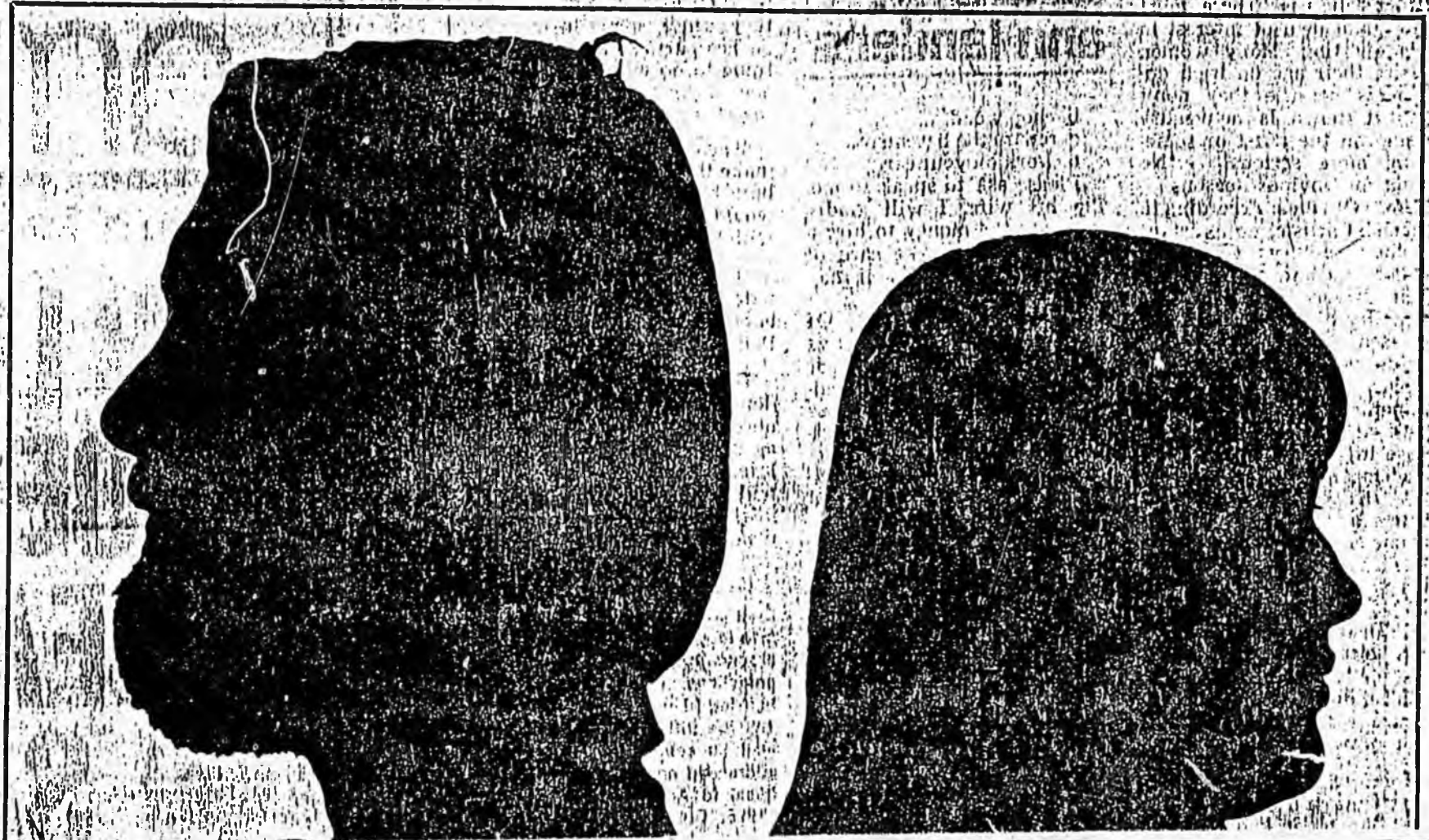
A Miami man was found guilty last month of raping his wife, but convictions have been relatively scarce nationwide.

Supporters of marital-rape laws complain police and prosecutors are not taking advantage of the new penalties. Opponents argue that other legal remedies are sufficient, and that juries are reluctant to send a husband to prison for 20 years and brand him forever as a rapist.

Greta Rideout was the first woman to charge a husband with rape while they were married and living together. John Rideout was acquitted in Salem, Ore., but the couple later divorced and Rideout pleaded guilty to subsequently forcing his way into his ex-wife's apartment.

"Those were the dark ages before Greta became a sacrificial lamb," said Laura X, who founded the National Clearinghouse on Marital Rape in Berkeley, Calif., and took her last name to signify the "anonymity" of women throughout history.

Oregon was the third state to allow prosecution of husbands for raping their wives. Husbands now can be prosecuted in 20



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Oregon was the third state to allow prosecution of husbands for raping their wives. Husbands now can be prosecuted in 20 states and the District of Columbia, according to the clearinghouse.

In another 26 states, including Pennsylvania, New York, Ohio and Michigan, prosecution is possible only if the man and woman are living apart or have filed for separation or divorce. Four states, Alabama, South Dakota, Vermont and West Virginia, do not recognize marital rape as a crime.

Pennsylvania's legislature is considering a measure to toughen its law to apply when husbands and wives live together. The bill, which has twice failed to gain approval, has passed the state House and is awaiting action in the Senate, although it will die unless it comes up for a vote soon.

Carol Coady, a lobbyist pushing for passage of the bill, said part of the battle has been getting across the idea that rape does not have to be by a stranger.

"The act of rape is never sex; it's always an act of violence," she said. "It doesn't matter that the man has the title of husband — rape is rape. That's hard to convince some legislators."

Marital rape carries a special mental trauma for women, she said.

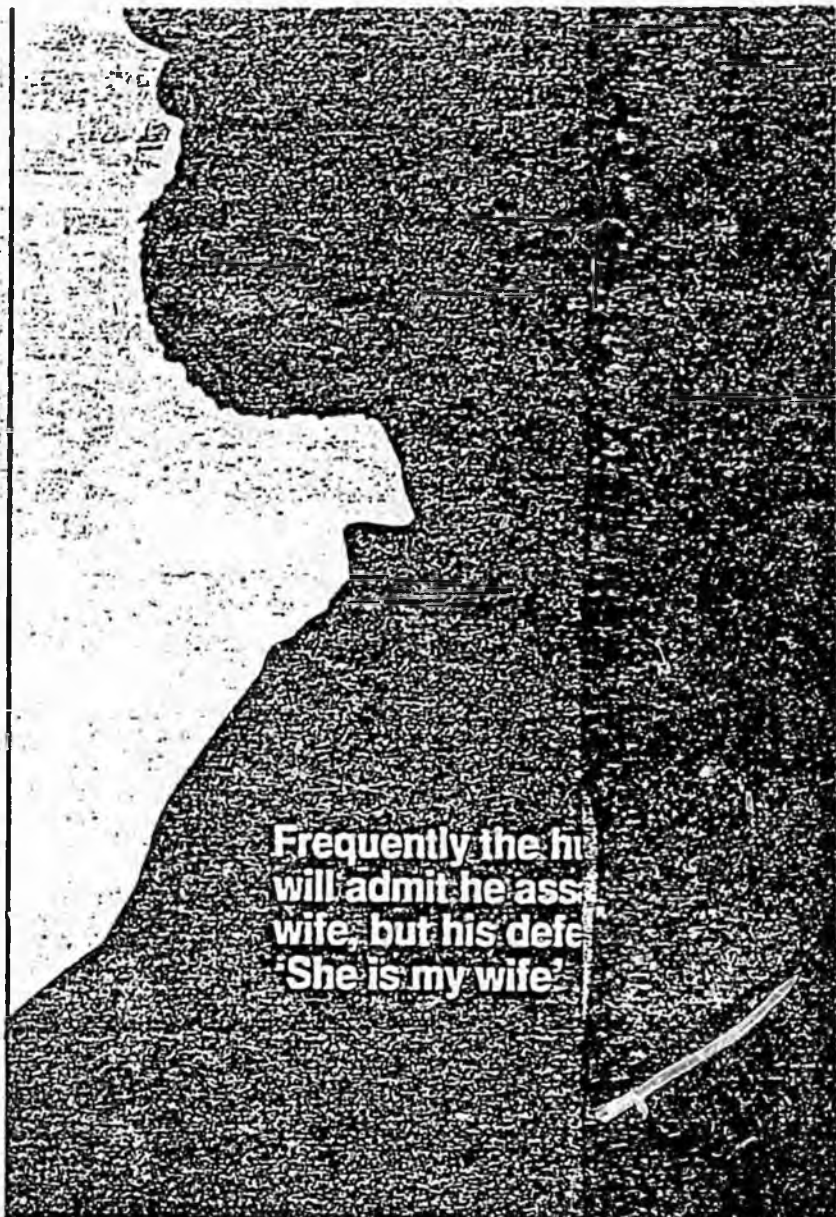
"When you are raped by a stranger, you have to live with the memory," she said. "When you are raped by your husband, you have to live with the rapist."

David Finkelhor, associate director of the Family Violence Research Program at the University of New Hampshire, said the mental damage can be profound.

"It stems in part from betrayal: a woman thought this man she married was going to love and protect her and have her best interests at heart," he said. "She trusted him in a very intimate way, and he violated that trust."

Finkelhor estimates as many as 10 percent to 14 percent of all married women are victims of marital rape, based on studies in Boston and San Francisco. And he says that of 50 women he studied who had been raped by their husbands, almost half suffered battering rapes.

"One of the misconceptions about marital rape is that people imagine it's a marital tiff: He wants to have sex, she doesn't, he wins," Finkelhor said. "In fact, in a lot of marital



Frequently the husband will admit he assaulted his wife, but his defense is "She is my wife."

rapes, it's heavy duty stuff — knives and guns and blackjacks and bruises and injuries and terror."

One victim said her husband started to assault her a year after they were married and the beatings continued for years, culminating in a rape in front of their 2-year-old son.

"He beat me up for a half hour for burning the eggs," she said. "He ripped off my pajamas in one pull, beat me up and told me if I didn't do what he said, he was going to kill me and kill my son."

She said he raped her 12 more times in the six weeks before she moved out. They eventually divorced, and "it took me a long time to get over it. I had a hard time for a while trusting guys."

Finkelhor said the brutality makes it possible to obtain convictions in many cases, despite opponents' claims that juries are reluctant to take one side's word over another.

Finkelhor studied 39 cases in California over a two-year period, and while about one-fourth of the cases were dropped, the conviction

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Many marital rapes involve  
knives and guns and  
blackjacks and bruises  
and injuries and terror

3

tion rate was 87 percent for the ones that were prosecuted, higher than for other rape charges.

Coady said many times the husband will admit he assaulted his wife, "but his defense is, 'She is my wife.'"

Finkelhor said the "modest" number of cases in California during the two-year period he studied negates another argument of opponents: that the courts would be flooded by vindictive wives out to gain leverage in divorce proceedings.

In fact, California and Oregon have had relatively few prosecutions.

Steve White, former executive director of the California District Attorneys Association, said he advised legislators that many cases would be rejected by prosecutors because they would be hard to prove.

"Overall, I think it's a positive statute, good to have on the books," said White, who now the state's chief assistant attorney general.

"I think people should not expect too much from it, though: Most of these cases are never reported. Of those that are reported,

it's difficult to prosecute, and relatively few prosecutions successfully result."

He estimated that no more than 100 to 200 cases are prosecuted annually in the state, and fewer than half probably go to trial.

Nevertheless, the law acts as a deterrent, White said. By passing it, the state was saying, "We find this behavior absolutely intolerable and criminal," he said. "Incredibly, some people felt there was nothing criminally wrong with it."

In Oregon, only four cases have been prosecuted, including a hideout. One resulted in a rape conviction, with two others ending in convictions on other charges, said Peter Sandrock, a prosecutor in Benton County, Ore., who speaks on behalf of marital-rape laws to legislatures around the country.

"Probably the moral statement is the most important aspect of it, that we're now willing to say the marriage license is not a license to do with your spouse as you wish,"

See Page J-3, MARITAL

# Marital rape: Legislatures and courts move in on abusive mates

Continued from Page J-1

he said. Marlon Rider of Miami, whose husband was found guilty last month of raping her, said afterward that she wishes other abused women would file charges against their husbands.

"I hope they have the courage to do what is right," she said.

Oregon lawyer Charles Burt, who defended John Rideout six years ago, thinks the law should be changed so the crime is not called rape and the penalty is not so severe. That could lead to

more successful prosecutions, he said.

"I don't want to say that a husband has a right to rape his wife. That's reprehensible, criminal. But it should not be rape," he said. "Rape is a stranger assaulting a woman and forcing sex. It's more serious than a husband who has had sex for years forcing sex. I think jurors think that way."

Pennsylvania State Rep. Lois Hagarty of Philadelphia, a former assistant district attorney, said she voted against her state's bill because "I don't feel that in a married situation, where there once

**When you are raped by a stranger, you have to live with the memory. When you are raped by your husband, you have to live with the rapist**

— Carol Coady

has been consent to intercourse, that the nature of the crime is the same as rape."

"What (married) women are really objecting to is forced sexual intercourse is the physical violence that accompanies it," she said. "Our

assault laws cover that."

Not only are more legislatures passing laws, but the quality of their debate has improved over the years, supporters say. In Oregon, the debate was "reasonably crude" at times, said Oregon prosecutor Sandrock.

"I see a greater willingness to debate on the merits," he said, "as opposed to the traditional and Neanderthal attitudes about phony complaints and vindictive, bitchy women and, 'What's the state doing in the bedroom, anyway?'"

Passing laws is just the start, though, said researcher Finkelhor. Doctors and counselors need to be more aware of the problem, he said, and prosecutors should apply the laws more.

"Passage of the law is fine, but it's out of the news in a week," he said. "Prosecutions serve a very important consciousness-raising function."

Yet even some supporters believe the Rideout prosecution still is impeding marital rape legislation in many states by raising fears of another media circus like the one created in that case.

"As I have gone to these various other states, the Rideout case is a question that comes up," said Sandrock. "They all want to avoid the spectacle of Rideout."

Many, though, believe the case brought the subject out of the closet and gave other women the courage to stand

up to sexual abuse at home.

"The Rideout case was really a watershed," said Finkelhor. "Whatever happened in that case, it was a powerful eye-opener to a lot of people."

The Rideouts have disappeared from public view. Greta Rideout has moved from the Northwest and works for a newspaper and goes to school, but she "has not gotten over it," said lobbyist Coady, who spoke to her recently. "She refuses to talk publicly."

John Rideout has worked as a cook in restaurants in the Salem area, but it is hard to find jobs, said defense attorney Burt.

"John and Greta were not bad people," Burt said. "They were nice young people. Another time, another place, they were the kind of kids you'd like to know. They were good-looking youngsters, bright. This thing just got overwhelming."

## Viking trail lures adventurers in old-style ship

Continued from Page J-1

tional devices such as a compass, radar and a radio, are also on board.

"Before I started I had no experience sailing except as a small boy at home," Thorseth says. "But my experience in the open sea is wide and long. I like the challenge."

In the past he has taken a series of expeditions to the Arctic and around Iceland and Greenland. In 1982 he led the first Norwegian expedition to reach the North Pole across ice.

One of the main purposes of the current expedition, called Operation Viking, is to learn as much as possible about the capabilities of the ancient knarrs: how seaworthy they are, what kind of

expectations of most of the scholars. We can sail into the wind with an angle of 50-60 degrees and it can sail 179 nautical miles in 24 hours. For short periods we reached a top speed of 12 knots."

In addition to gaining scientific knowledge, another purpose of the expedition is to acquaint people with Norwegian history and to dispel the notion that all the Vikings were fierce warriors. According to Thorseth, many Norsemen were farmers, merchants and navigators.

Thorseth will have many opportunities to share his knowledge as the Saga Siglar makes its way up the Hudson River, through the Great Lakes and down the Mississippi River, stopping at ports along the way. When the boat

sets sail from Florida heading for the Panama Canal and the Pacific Ocean, Thorseth's whole family — his wife, Karl, and his two sons, Erik and 9-year-old Njaal — will be on board.

Looking back on the trip so far, he says, "I've been on several expeditions and know about many other people's expeditions. Very often there is a tendency to have conflicts on board after some time. I've been so happy with the guys."

"Everyone contributed equally. They're all so clever. We've had fresh bread or a cake every day even during the storm. They are so professional. So for me as an expedition leader it has been really great. The experience is so special — I can't think of anything better."

**GUESS WHO BEAT AMERICA'S #1 INSTANT COFFEE FOR BEST TASTE?**

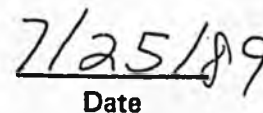




# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

S B

G 7

HOUSE  
COMMITTEE REPORT

(7)

Date referred: 1/31/86

FURTHER REFERRALS: JUDICIARY

DATE: March 4, 1986

HEALTH, EDUCATION AND  
The SOCIAL SERVICES Committee has considered CSSB 67 (Jud)

"An Act relating to arrest by a peace officer without a warrant and service of process in cases of domestic violence."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CSSB 67 (HESS)  same title
- new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

[Signature]

[Signature]

Vice Chair Robin Taylor

[Signature]

David W. Johnson

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING OTHER RECOMMENDATIONS.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
Co-Chairman  
[Signature]  
Vice Chair

FORD

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 67 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to arrest by a peace officer without  
7 a warrant and service of process in cases of domestic  
8 violence."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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19 person who committed the crime; a member of the social unit comprised  
20 of those living together in the same dwelling as the person who com-  
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26  
27  
28  
29

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSSB 67 (Jud)  
 Title : "An Act relating to arrest by a  
 peace officer without a warrant and  
 service of process..."  
 Sponsor : Rules/Finance  
 Requestor : H. HESS  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Alaska State Troopers  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : K. Niles  
 Kathy Niles, Admin. Assistant  
 Division : Commissioner's Office

Phone : 465-4336  
 Date : 2/19/86

Approved by Commissioner : [Signature]  
 Agency : Public Safety

Date : 3/19/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - CSSB 67(JUD)

Support

February 12, 1986

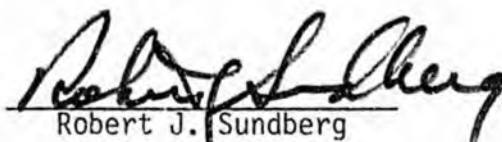
CSSB 67(JUD) - "An act relating to the service of domestic violence injunctions."

It is our interpretation that this legislation will require municipal police agencies to serve domestic violence injunctions that are initiated as a result of their investigations within their jurisdiction. It will also allow peace officers to make arrests without warrants in certain cases related to domestic violence and other felonies.

Domestic violence injunctions are served by Troopers assigned to the Judicial Services section of the Alaska State Troopers. This section is also responsible for courtroom security, prisoner transportation and the service of subpoenas and warrants. The Alaska State Troopers have never received funding to cover the costs associated with the service of domestic violence orders. Thus, this increased work load falls on an already overloaded unit and the service of these orders must sometimes be subordinated to other law enforcement demands.

During the last several years the tremendous increase in the number of domestic violence orders to be served has placed a severe drain upon the manpower of the Alaska State Troopers and has caused some delay in the service of these orders. This legislation transfers the primary responsibility for the service of these injunctions from the State Troopers to local police departments. State Troopers would continue to serve these orders when local officers are not available.

The majority of domestic violence orders are served within the boundaries of political subdivisions which have their own police agencies. The local police are often more familiar with the locations and individuals involved in domestic violence situations and therefore can more safely and efficiently serve the orders.

  
Robert J. Sundberg  
Commissioner

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER -CSSB 67(HESS)

Support

April 26, 1985

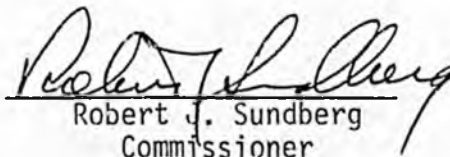
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The majority of domestic violence orders are served within the boundaries of political subdivisions which have their own police agencies. The local police are often more familiar with the locations and individuals involved in domestic violence situations and therefore can more safely and efficiently serve the orders.

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Robert J. Sundberg  
Commissioner



# ALASKA BAR ASSOCIATION

P.O. BOX 100279, ANCHORAGE, ALASKA 99510, (907) 272-7469

## FAMILY LAW SECTION

April 22, 1985

Senator Rodey  
Alaska Senate  
Senate Judiciary Committee  
Juneau AK 99811

RE: Senate Bill No. 67

Dear Senator Rodey:

The Family Law Committee of the Alaska Bar Association strongly urges your support of Senate Bill 67. The Domestic Violence Act is one of the most effective legal tools available to victims of family violence. However, the effectiveness of domestic violence orders is seriously undercut when there are delays in the service of these orders upon the perpetrator of the violence. This is particularly true with domestic violence orders which are not enforceable against the respondent until the respondent has actually been served with the papers. As practitioners and judges in the area of family violence, we have seen too many occasions when the issuance of emergency restraining orders has been delayed because of the unavailability of Alaska State Troopers Judicial Services Branch to serve the papers in a timely fashion. Local law enforcement personnel are the logical people to serve the domestic violence orders. Local law enforcement personnel are also charged with enforcing the domestic violence restraining orders and therefore their service of the orders would not only assure prompter delivery of these critical papers but would also increase enforcement of the orders by alerting the officers to the orders existence from the very beginning.

Please pass Senate Bill 67 so that victims of family violence and their children can receive reliable service and enforcement of the domestic violence restraining orders.

While the Family Law Committee is encouraged by the Municipality of Anchorage's recent formation of a committee to study the multi-faceted issue of domestic violence and the Municipality's responses to domestic violence; it is still the firm belief of the Family Law Committee that the needs of the victims of family violence would be best served by the immediate passage of SB 67. The municipalities of the state



# ALASKA BAR ASSOCIATION

P.O. BOX 100279, ANCHORAGE, ALASKA 99510, (907) 272-7469

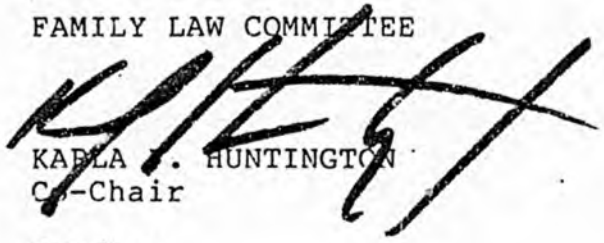
## FAMILY LAW SECTION

April 22, 1985  
Page Two

could be given time to prepare for the onset of this new burden if the bill was given a late effective date. This would give Anchorage several months for its taskforce to assemble a total response that would increase the speed and effectiveness of the service of domestic violence papers.

Sincerely,

FAMILY LAW COMMITTEE

  
KABLA J. HUNTINGTON  
Co-Chair

KFH/trc

cc: Full Committee

Prepared for Tony Knowles, Mayor

Municipality of Anchorage

Prepared by the Special Committee

on Domestic Violence,

Anchorage Women's Commission

16. Service of domestic violence restraining orders in the Municipality of Anchorage should be by the Anchorage Police Department. (Adopted 6/14/85)

The Committee adopted the philosophy that protection of victims should be the primary consideration in the Municipality of Anchorage's domestic violence intervention system. Restraining orders are civil orders and are currently served by the Alaska State Troopers as charged by State Statutes.

The APD is charged with enforcement of criminal violations. Violations of restraining orders is a criminal offense and must therefore be enforced by the Anchorage Police Department.

The system works in the following manner: APD responds to the initial abuse incident. APD often transports the victim to the court for a restraining order, and then returns to enforce violations of the restraining orders. It appears to the Committee that the same police officer should serve the domestic violence restraining order since he/she is already familiar with the subjects involved. It does not appear efficient for the officer nor for the victims to have a different officer, an Alaska State Trooper, involved in only the third of four police officer contacts.

In making this recommendation the Committee also considered the following facts: 1) of the 1300-1400 domestic violence restraining orders served in 1984, over 90% originated within the Municipality. 2) APD received 5-7 calls of domestic violence each day. 3) The APD has a backlog of 9,000 citations, if parking and traffic warrants are included. 4) The current APD contract does not allow contracting out police services such as service of subpoenas. 5) The average cost for private service of a subpoena is \$26. 6) The Alaska State Troopers received an 8 person reduction to the Anchorage post since 1985.

Offered: 1/22/86  
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 67 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to arrest by a peace officer without  
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Ford  
3/4/86

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 67 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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14-1971  
Ford  
3/1/86 ✓

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 HOUSE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Suspending Uniform Rules 41(b), 24(c),  
6 and 35 of the Alaska State Legislature  
7 concerning Senate Bill 67.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 That under Rule 54 of the Uniform Rules of the Alaska State Legisla-  
10 ture the provisions of Rule 41(b) of the Uniform Rules and the provisions  
11 of Rule 24(c) and Rule 35, regarding changes to the title of a bill, are  
12 suspended in consideration of Senate Bill 67, relating to service of pro-  
13 cess in domestic violence actions.

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*Amendment in sec. 2 allowing judge to order process by other state peace officer.*

Ford  
3/3/86 ✓

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 67 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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29 not available, a superior court, district court, or magistrate may

1 designate any other peace officer to serve and execute process issued  
2 under AS 25.35.010 or 25.35.020. A state peace officer shall serve  
3 process in any area that is not within the jurisdiction of a peace  
4 officer of a municipality or unincorporated community. A peace offi-  
5 cer shall use every reasonable means to serve process issued under  
6 AS 25.35.010 or 25.35.020.

7 \* Sec. 3. AS 25.35.040 is amended by adding a new subsection to read:

8 (b) Service of process required under this section does not  
9 preclude a petitioner from using any other available means to serve  
10 process issued under AS 25.35.010 or 25.35.020.  
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Offered: 1/22/86  
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 67 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to arrest by a peace officer without  
7 a warrant and service of process in cases of domestic  
8 violence."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 12.25.030(b) is amended to read:

11 (b) In addition to the authority granted under (a) of this  
12 section, a peace officer without a warrant may arrest a person when  
13 the peace officer has reasonable cause for believing that the person  
14 has committed a crime under AS 11.41, AS 11.46.330, or AS 11.61.120,  
15 or has violated an ordinance with elements substantially similar to  
16 the elements of a crime under AS 11.41, AS 11.46.330, or AS 11.61.120,  
17 when the victim is a spouse or former spouse of the person who commit-  
18 ted the crime; a parent, grandparent, child, or grandchild of the  
19 person who committed the crime; a member of the social unit comprised  
20 of those living together in the same dwelling as the person who com-  
21 mitted the crime; or another person who is not a spouse or former  
22 spouse of the person who committed the crime but who previously lived  
23 in a spousal relationship with the person who committed the crime.

24 \* Sec. 2. AS 22.20.110 is amended to read:

25 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF AP-  
26 PEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the  
27 supreme court, and except as otherwise provided in AS 25.35.040, the  
28 commissioner shall serve and execute all process issued by the court  
29 of appeals, the superior court, and the district courts, (,) attend to

COMMITTEE COPY

1 and wait upon grand and petit juries; [,] maintain order; [,] attend  
2 the sessions of the courts; [,] and exercise the power and perform the  
3 duties concerning all matters within the jurisdiction of the courts as  
4 may be assigned. The commissioner is the executive officer of the  
5 court of appeals, the superior court, and district courts.

6 \* Sec. 3. AS 25.35.040 is amended to read:

7 Sec. 25.35.040. SERVICE OF PROCESS. Process issued under  
8 AS 25.35.010 or 25.35.020 shall be promptly served and executed. If  
9 process is to be served upon a person believed to be present or resid-  
10 ing in a municipality, as defined in AS 29.78.010, or in an unincor-  
11 porated community, process shall be served by a peace officer of that  
12 municipality or unincorporated community who has jurisdiction within  
13 the area of service. If a peace officer of the municipality or unia-  
14 corporated community who has jurisdiction (A STATE PEACE OFFICER) is  
15 not available, a superior court, district court, or magistrate may  
16 designate any other peace officer to serve and execute process issued  
17 under AS 25.35.010 or 25.35.020. A state peace officer shall serve  
18 process in any area that is not within the jurisdiction of a peace  
19 officer of a municipality or unincorporated community. A peace offi-  
20 cer shall use every reasonable means to serve process issued under  
21 AS 25.35.010 or 25.35.020.

MEMORANDUM

TO: HOUSE HESS COMMITTEE MEMBERS  
FROM: NANCY BENNETT, COMMITTEE STAFF  
DATE: MARCH 4, 1986  
RE: TODAY'S AGENDA

We have three bills scheduled for today:

SB 67 relating to arrest by a police officer without a warrant and service of process in cases of domestic violence

We have a draft committee substitute which makes two changes

1. page 2, line 15 - adds the phrase "or for other good cause" to section 3, to give the judge more discretion in who should be ordered to handle service of process.
2. page 2, lines 22-25 - adds a new section ~~4~~ which provides that a petitioner may use process servers.

HCR 50 establishing a joint committee on mental health trust land.

This resolution proposes to set up a joint committee of three senators and representatives to hold public hearings for the purpose of resolving the mental health trust litigation and make recommendations for appropriations. The committee is to meet during the interim and report its findings back to the legislature on the first day of the 15th session, and terminate on the 10th day of the session.

HCR 43 relating to the University of Alaska School of Mineral Industry, Mineral Industry Research Laboratory and Mining Extension Program.

This resolution proposes that the U of A School of Mineral Industry conduct innovative research in mineral industry wastewater management and other techniques which would enable the placer miner to meet federal and state water quality regulations.

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 21, 1985

The Honorable Don Bennett  
President of the Senate  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will transfer primary responsibility for the service of process for domestic violence injunctions from the state troopers to local police departments. Current law places primary responsibility for service of these court orders on the state troopers, but provides that a court may order any other peace officer to serve them if a state trooper is not available. AS 25.35.040. This bill would require local officers to serve the orders if the person to be served is present or resides within the local department's jurisdiction. If a local officer is not available, the court may direct a state trooper to serve the court order.

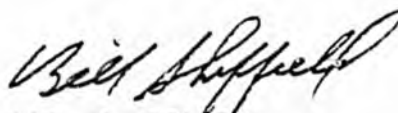
This change in the law is needed because the number of domestic violence orders issued by courts each year has increased dramatically since AS 25.35.010 -- 25.35.060 (formerly AS 09.55.600 -- 09.55.640) took effect in September of 1980. In Anchorage alone, the number of domestic violence orders that must be served has climbed from an average of 15 to an average of 100 a month. The vast majority of these orders (approximately 90 percent) is directed to persons who reside within municipalities that have local police departments.

In many cases, a local police officer was called to the domestic disturbance that gave rise to the need to obtain a domestic violence injunction. The officer may even have transported the victim of the assault to the local magistrate or judge to obtain the order. To require that the resulting court order be served by a state trooper whose primary patrol area is often outside of the city or borough and who has had no previous contact with the victim or the case is not an efficient use of law enforcement.

resources, and may cause a delay in the service of the order. In the larger cities, service of these injunctions is made by officers in the judicial services section of the state troopers. The need to ensure adequate security in courtrooms, transport prisoners, and serve criminal arrest warrants and subpoenas severely limits the amount of time and effort a judicial services officer may devote to service of domestic violence injunctions.

In the interests of providing the quickest and best possible protection for victims of domestic violence, and of making the wisest possible use of available law enforcement resources, I urge your prompt passage of this bill.

Sincerely,



Bill Sheffield  
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: 67  
 Title: SERVICE OF DOMESTIC  
 VIOLENCE INJUNCTIONS  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: PUBLIC SAFETY  
 Program Category Affected: \_\_\_\_\_  
ALASKA STATE TROOPERS  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

NO FISCAL IMPACT

Prepared By: PAUL CONGER Phone: 465-4338  
 Division: ADMINISTRATIVE SERVICES Date: 12-6-84  
 Approved by Commissioner: [Signature] Date: 12/11/84  
 Agency: PUBLIC SAFETY

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSSB67 (Jud)  
 Title : "An Act Relating to Arrest by a Peace Officer without a Warrant & Service of process in cases of D.V."  
 Sponsor : Senate Judiciary  
 Requestor : Governor/ HOUSE HESS  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Council on Domestic Violence and Sexual Assault  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Barbara Miklos, Exec. Dir.  
 Division : Council on Domestic Violence & S.A.

Phone : 465-4356  
 Date : 1/31/86

Approved by Commissioner : [Signature]  
 Agency : Dept. of Public Safety

Date : 2/2/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CS for SB 67 (Jud)

January 31, 1986

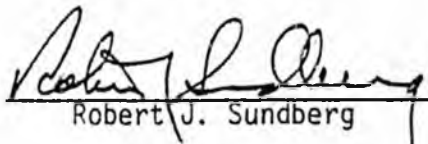
Support

CS for SB 67 - "An Act relating to arrest by a peace officer without a warrant and service of process in cases of domestic violence."

The Council on Domestic Violence and Sexual Assault supports CS for SB 67.

Section 1 amends AS 12.25.030(b) to allow warrantless arrests for certain domestic violence cases under municipal ordinance. It is already permissible under state statute. This change is important for the larger communities so police officers may arrest and municipal prosecutors may prosecute under municipal code.

Section 3 amends AS 25.35.040 so municipal police officers of a specific jurisdiction have the responsibility to serve domestic violence restraining orders in their jurisdiction. The Council on Domestic Violence and Sexual Assault is concerned about the rights of victims to be protected as soon as a domestic violence restraining order is issued. When available, local police officers are in the best position to respond quickly to the need to serve orders. Delays in service of the orders could mean that specific orders of no violence, no contact, etc. are not given as quickly as possible and therefore the victim is kept in jeopardy of harm for longer than necessary. If there are no local peace officers in a municipality, this revision in the legislation enables the court to designate any other peace officer as the server. Thus state peace officers could concentrate on areas with no other police protection.

  
Robert J. Sundberg

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSSB 67 (Jud)  
 Title : "An Act relating to arrest by a  
 peace officer without a warrant and  
 service of process..."  
 Sponsor : Rules/Finance  
 Requestor : H. HESS  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Alaska State Troopers  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by: K. Niles Kathy Niles, Admin. Assistant Phone : 465-4336  
 Division : Commissioner's Office Date : 2/19/86

Approved by Commissioner : [Signature] Date : 3/19/86  
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - CSSB 67(JUD)

Support

February 12, 1986

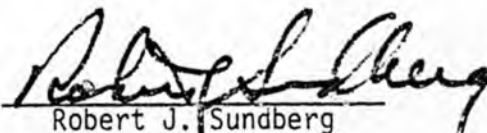
CSSB 67(JUD) - "An act relating to the service of domestic violence injunctions."

It is our interpretation that this legislation will require municipal police agencies to serve domestic violence injunctions that are initiated as a result of their investigations within their jurisdiction. It will also allow peace officers to make arrests without warrants in certain cases related to domestic violence and other felonies.

Domestic violence injunctions are served by Troopers assigned to the Judicial Services section of the Alaska State Troopers. This section is also responsible for courtroom security, prisoner transportation and the service of subpoenas and warrants. The Alaska State Troopers have never received funding to cover the costs associated with the service of domestic violence orders. Thus, this increased work load falls on an already overloaded unit and the service of these orders must sometimes be subordinated to other law enforcement demands.

During the last several years the tremendous increase in the number of domestic violence orders to be served has placed a severe drain upon the manpower of the Alaska State Troopers and has caused some delay in the service of these orders. This legislation transfers the primary responsibility for the service of these injunctions from the State Troopers to local police departments. State Troopers would continue to serve these orders when local officers are not available.

The majority of domestic violence orders are served within the boundaries of political subdivisions which have their own police agencies. The local police are often more familiar with the locations and individuals involved in domestic violence situations and therefore can more safely and efficiently serve the orders.

  
Robert J. Sundberg  
Commissioner

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER -CSSB 67(HESS)

Support

April 26, 1985

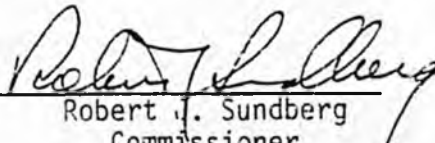
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Robert J. Sundberg  
Commissioner



# ALASKA BAR ASSOCIATION

P.O. BOX 100279, ANCHORAGE, ALASKA 99510. (907) 272-7469

## FAMILY LAW SECTION

April 22, 1985

Senator Rodey  
Alaska Senate  
Senate Judiciary Committee  
Juneau AK 99811

RE: Senate Bill No. 67

Dear Senator Rodey:

The Family Law Committee of the Alaska Bar Association strongly urges your support of Senate Bill 67. The Domestic Violence Act is one of the most effective legal tools available to victims of family violence. However, the effectiveness of domestic violence orders is seriously undercut when there are delays in the service of these orders upon the perpetrator of the violence. This is particularly true with domestic violence orders which are not enforceable against the respondent until the respondent has actually been served with the papers. As practitioners and judges in the area of family violence, we have seen too many occasions when the issuance of emergency restraining orders has been delayed because of the unavailability of Alaska State Troopers Judicial Services Branch to serve the papers in a timely fashion. Local law enforcement personnel are the logical people to serve the domestic violence orders. Local law enforcement personnel are also charged with enforcing the domestic violence restraining orders and therefore their service of the orders would not only assure prompter delivery of these critical papers but would also increase enforcement of the orders by alerting the officers to the orders existence from the very beginning.

Please pass Senate Bill 67 so that victims of family violence and their children can receive reliable service and enforcement of the domestic violence restraining orders.

While the Family Law Committee is encouraged by the Municipality of Anchorage's recent formation of a committee to study the multi-faceted issue of domestic violence and the Municipality's responses to domestic violence; it is still the firm belief of the Family Law Committee that the needs of the victims of family violence would be best served by the immediate passage of SB 67. The municipalities of the state



# ALASKA BAR ASSOCIATION

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P.O. BOX 100279, ANCHORAGE, ALASKA 99510, (907) 272-7469

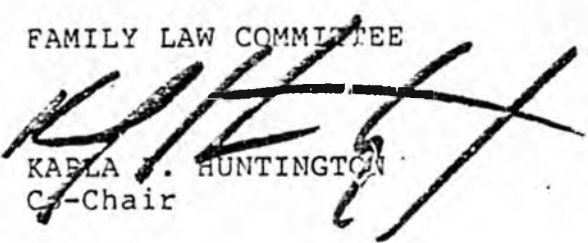
## FAMILY LAW SECTION

April 22, 1985  
Page Two

could be given time to prepare for the onset of this new burden if the bill was given a late effective date. This would give Anchorage several months for its taskforce to assemble a total response that would increase the speed and effectiveness of the service of domestic violence papers.

Sincerely,

FAMILY LAW COMMITTEE

  
KABLA J. HUNTINGTON  
Co-Chair

KFH/trc

cc: Full Committee

Prepared for Tony Knowles, Mayor  
Municipality of Anchorage

Prepared by the Special Committee  
on Domestic Violence,  
Anchorage Women's Commission

16. Service of domestic violence restraining orders in the Municipality of Anchorage should be by the Anchorage Police Department. (Adopted 6/14/85)

The Committee adopted the philosophy that protection of victims should be the primary consideration in the Municipality of Anchorage's domestic violence intervention system. Restraining orders are civil orders and are currently served by the Alaska State Troopers as charged by State Statutes.

The APD is charged with enforcement of criminal violations. Violations of restraining orders is a criminal offense and must therefore be enforced by the Anchorage Police Department.

The system works in the following manner: APD responds to the initial abuse incident. APD often transports the victim to the court for a restraining order, and then returns to enforce violations of the restraining orders. It appears to the Committee that the same police officer should serve the domestic violence restraining order since he/she is already familiar with the subjects involved. It does not appear efficient for the officer nor for the victims to have a different officer, an Alaska State Trooper, involved in only the third of four police officer contacts.

In making this recommendation the Committee also considered the following facts: 1) of the 1300-1400 domestic violence restraining orders served in 1984, over 90% originated within the Municipality. 2) APD received 5-7 calls of domestic violence each day. 3) The APD has a backlog of 9,000 citations, if parking and traffic warrants are included. 4) The current APD contract does not allow contracting out police services such as service of subpoenas. 5) The average cost for private service of a subpoena is \$26. 6) The Alaska State Troopers received an 8 person reduction to the Anchorage post since 1985.