

with Federal regulations. Many small manufacturers of children's sleepwear, devastated by the losses imposed by the recall, are faced with bankruptcy. This legislation is an attempt to address this problem. In a time when we are all concerned with the demise of small, community-based businesses, and ever-rising unemployment, enactment of this legislation is crucial. This bill provides reimbursement not for lost profits, but only for the losses incurred by the recall and removal of the products from the market. It will allow these small businesses to remain solvent, to retain employees, and to continue to provide a service for their community. These businesses have in the past acted in good faith. It is now time for the House to act in good faith, and to rectify this situation, by passing the bill, S. 1503. ●

Mr. MOORHEAD of California. Mr. Speaker, I yield back the balance of my time.

Mr. DANIELSON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. DANIELSON) that the House suspend the rules and pass the Senate bill S. 1503, as amended.

The question was taken.

Mr. VOLKMER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 3, rule XXVII, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PRIVACY PROTECTION FOR RAPE VICTIMS ACT OF 1977

Mr. MANN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4727) to amend the Federal Rules of Evidence to provide for the protection of the privacy of rape victims, as amended.

The Clerk read as follows:

H.R. 4727

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Protection for Rape Victims Act of 1977".

Sec. 2 (a) Article IV of the Federal Rules of Evidence is amended by adding at the end thereof the following new rule:

"Rule 412. Rape Cases; Relevance of Victim's past Behavior

"(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behavior of an alleged victim of such rape or assault is not admissible.

"(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape or of assault with intent to commit rape, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is—

"(1) admitted in accordance with subdivisions (c) (1) and (c) (2) and is constitutionally required to be admitted; or

"(2) admitted in accordance with subdivision (c) and is evidence of—

"(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

"(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which rape or assault is alleged.

"(c) (1) If the person accused of committing rape or assault with intent to commit rape intends to offer under subdivision (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and on the alleged victim.

"(2) The motion described in paragraph (1) shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subdivision (b), the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding subdivision (b) of rule 104, if the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

"(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

"(d) For purposes of this rule, the term 'past sexual behavior' means sexual behavior other than the sexual behavior with respect to which rape or assault with intent to commit rape is alleged."

(b) The table of contents for the Federal Rules of Evidence is amended by inserting immediately after the item relating to rule 411 the following new item:

"Rule 412. Rape cases; relevance of victim's past behavior."

Sec. 3. The amendments made by this Act shall apply to trials which begin more than thirty days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. WIGGINS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from South Carolina (Mr. MANN) will be recognized for 20 minutes, and the gentleman from California (Mr. WIGGINS) will be recognized for 20 minutes.

The Chair recognizes the gentleman from South Carolina (Mr. MANN).

Mr. MANN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, for many years in this country, evidentiary rules have permitted

the introduction of evidence about a rape victim's prior sexual conduct. Defense lawyers were permitted great latitude in bringing out intimate details about a rape victim's life. Such evidence quite often serves no real purpose and only results in embarrassment to the rape victim and unwarranted public intrusion into her private life.

The evidentiary rules that permit such inquiry have in recent years come under question; and the States have taken the lead to change and modernize their evidentiary rules about evidence of a rape victim's prior sexual behavior. The bill before us similarly seeks to modernize the Federal evidentiary rules.

The present Federal Rules of Evidence reflect the traditional approach. If a defendant in a rape case raises the defense of consent, that defendant may then offer evidence about the victim's prior sexual behavior. Such evidence may be in the form of opinion evidence, evidence of reputation, or evidence of specific instances of behavior. Rule 404(a) (2) of the Federal Rules of Evidence permits the introduction of evidence of a "pertinent character trait." The advisory committee note to that rule cites, as an example of what the rule covers, the character of a rape victim when the issue is consent. Rule 405 of the Federal Rules of Evidence permits the use of opinion or reputation evidence or the use of evidence of specific behavior to show a character trait."

Thus, Federal evidentiary rules permit a wide ranging inquiry into the private conduct of a rape victim, even though that conduct may have at best a tenuous connection to the offense for which the defendant is being tried.

H.R. 4727 amends the Federal Rules of Evidence to add a new rule, applicable only in criminal cases, to spell out when, and under what conditions, evidence of a rape victim's prior sexual behavior can be admitted. The new rule provides that reputation or opinion evidence about a rape victim's prior sexual behavior is not admissible. The new rule also provides that a court cannot admit evidence of specific instances of a rape victim's prior sexual conduct except in three circumstances.

The first circumstance is where the Constitution requires that the evidence be admitted. This exception is intended to cover those infrequent instances where, because of an unusual chain of circumstances, the general rule of inadmissibility, if followed, would result in denying the defendant a constitutional right.

The second circumstance in which the defendant can offer evidence of specific instances of a rape victim's prior sexual behavior is where the defendant raises the issue of consent and the evidence is of sexual behavior with the defendant. To admit such evidence, however, the court must find that the evidence is relevant and that its probative value outweighs the danger of unfair prejudice.

The third circumstance in which a court can admit evidence of specific instances of a rape victim's prior sexual behavior is where the evidence is of behavior with someone other than the defendant and is offered by the defendant

on the issue of whether or not he was the source of semen or injury. Again, such evidence will be admitted only if the court finds that the evidence is relevant and that its probative value outweighs the danger of unfair prejudice.

The new rule further provides that before evidence is admitted under any of these exceptions, there must be an in camera hearing—that is, a proceeding that takes place in the judge's chambers out of the presence of the jury and the general public. At this hearing, the defendant will present the evidence he intends to offer and be able to argue why it should be admitted. The prosecution, of course, will be able to argue against that evidence being admitted.

The purpose of the in camera hearing is twofold. It gives the defendant an opportunity to demonstrate to the court why certain evidence is admissible and ought to be presented to the jury. At the same time, it protects the privacy of the rape victim in those instances when the court finds that evidence is inadmissible. Of course, if the court finds the evidence to be admissible, the evidence will be presented to the jury in open court.

The effect of this legislation, therefore, is to preclude the routine use of evidence of specific instances of a rape victim's prior sexual behavior. Such evidence will be admitted only in clearly and narrowly defined circumstances and only after an in camera hearing. In determining the admissibility of such evidence, the court will consider all of the facts and circumstances surrounding the evidence, such as the amount of time that lapsed between the alleged prior act and the rape charged in the prosecution. The greater the lapse of time, of course, the less likely it is that such evidence will be admitted.

Mr. Speaker, the principal purpose of this legislation is to protect rape victims from the degrading and embarrassing disclosure of intimate details about their private lives. It does so by narrowly circumscribing when such evidence may be admitted. It does not do so, however, by sacrificing any constitutional right possessed by the defendant. The bill before us fairly balances the interests involved—the rape victim's interest in protecting her private life from unwarranted public exposure; the defendant's interest in being able adequately to present a defense by offering relevant and probative evidence; and society's interest in a fair trial, one where unduly prejudicial evidence is not permitted to bedevil the issues before the jury.

I urge support of the bill.

Mr. WIGGINS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation addresses itself to a subject that is certainly a proper one for our consideration. Many of us have been troubled for years about the indiscriminate and prejudicial use of testimony with respect to a victim's prior sexual behavior in rape and similar cases. This bill deals with that problem. It is not, in my opinion, Mr. Speaker, a perfect bill in the manner in which it deals with the problem, but my objections are not so fundamental as would lead me to oppose the bill.

I think, Mr. Speaker, that it is unwise to adopt a per se rule absolutely exclud-

ing evidence of reputation and opinion with respect to the victim—and this bill does that—but it is difficult for me to foresee the specific case in which such evidence might be admissible. The trouble is this, Mr. Speaker: None of us can foresee perfectly all of the various circumstances under which the propriety of evidence might be before the court. If this bill has a defect, in my view it is because it adopts a per se rule with respect to opinion and reputation evidence.

Alternatively we might have permitted that evidence to be considered in camera as we do other evidence under the bill.

I should note, however, in fairness, having expressed minor reservations, that the bill before the House at this time does improve significantly upon the bill which was presented to our committee.

I will not detail all of those improvements but simply observe that the bill upon which we shall soon vote is a superior product to that which was initially considered by our subcommittee.

Mr. Speaker, I ask my colleagues to vote for this legislation as being, on balance, worthy of their support, and urge its adoption.

I reserve the balance of my time.

Mr. MANN. Mr. Speaker, this legislation has more than 100 cosponsors, but its principal sponsor, as well as its architect is the gentlewoman from New York (Ms. HOLTZMAN). As the drafter of the legislation she will be able to provide additional information about the probable scope and effect of the legislation.

I yield such time as she may consume to the gentlewoman from New York (Ms. HOLTZMAN).

Ms. HOLTZMAN. Mr. Speaker, I would like to begin first by complimenting the distinguished gentleman from South Carolina (Mr. MANN), the chairman of the subcommittee, for his understanding of the need for corrective legislation in this area and for the fairness with which he has conducted the subcommittee hearings. I would like also to compliment the other members of the subcommittee, including the gentleman from California (Mr. WIGGINS).

Too often in this country victims of rape are humiliated and harrassed when they report and prosecute the rape. Bullied and cross-examined about their prior sexual experiences, many find the trial almost as degrading as the rape itself. Since rape trials become inquisitions into the victim's morality, not trials of the defendant's innocence or guilt, it is not surprising that it is the least reported crime. It is estimated that as few as one in ten rapes is ever reported.

Mr. Speaker, over 30 States have taken some action to limit the vulnerability of rape victims to such humiliating cross-examination of their past sexual experiences and intimate personal histories. In federal courts, however, it is permissible still to subject rape victims to brutal cross-examination about their past sexual histories. H.R. 4727 would rectify this problem in Federal courts and I hope, also serve as a model to suggest to the remaining states that reform of existing rape laws is important to the equity of our criminal justice system.

H.R. 4727 applies only to criminal rape cases in Federal courts. The bill provides that neither the prosecution nor the defense can introduce any reputation or opinion evidence about the victim's past sexual conduct. It does permit, however, the introduction of specific evidence about the victim's past sexual conduct in three very limited circumstances.

First, this evidence can be introduced if it deals with the victim's past sexual relations with the defendant and is relevant to the issue of whether she consented. Second, when the defendant claims he had no relations with the victim, he can use evidence of the victim's past sexual relations with others if the evidence rebuts the victim's claim that the rape caused certain physical consequences, such as semen or injury. Finally, the evidence can be introduced if it is constitutionally required. This last exception, added in subcommittee, will insure that the defendant's constitutional rights are protected.

Before any such evidence can be introduced, however, the court must determine at a hearing in chambers that the evidence falls within one of the exceptions.

Furthermore, unless constitutionally required, the evidence of specific instances of prior sexual conduct cannot be introduced at all if it would be more prejudicial and inflammatory than probative.

Mr. Speaker, I urge adoption of this bill. It will protect women from both injustice and indignity.

Mr. MANN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WIGGINS. Mr. Speaker, I have no further requests for time, and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Carolina (Mr. MANN) that the House suspend the rules and pass the bill H.R. 4727, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Chirton, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On September 29, 1978:

H.R. 7814. An act to authorize Federal agencies to experiment with flexible and compressed employee work schedules.

On September 30, 1978:

H.J. Res. 1140. Joint resolution to amend section 8 of the Export-Import Bank Act of 1945;

H.R. 1427. An act for the relief of Marie Grant;

H.R. 3460. An act for the relief of William J. Elder and the estate of Stephen M. Owens, deceased;

H.R. 3702. An act to amend title 10, United States Code, to make certain changes in the Retired Serviceman's Family Pro-