Thus, Federal evidentiary rules permit the introduction of evidence of the character of a rape victim when the defense of consent, that defendant may offer evidence of specific behavior of the alleged 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 introduces the rule that evidence of a defendant's prior relevant behavior is admissible to show 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 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 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 mischief provided for 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 the evidence is inadmissible. Of course, if the court finds the evidence to be admissible, the evidence will be presented in open court in open session.

The effect of this legislation, therefore, is to preclude the routine use of evidence of specific instances of a rape victim's priors 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 elapsed 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 often brutal 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 addresses 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 cloud the issues before the jury.

I urge support of the bill.

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 concern of 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 conduct. In rape and similar cases, this bill deals with that problem. It is not, in my opinion, Mr. Speaker, a perfect bill, in which it is impossible to deal 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 excluding evidence of reputation and opinion with respect to the victim—and this bill does that. 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 precisely 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 is not framed with respect to opinion and reputation evidence.

Alternatively we might have permitted that evidence to be considered in camera as it was considered under the bill which was presented to our committee.

I will not detail all of those improvements but simply observe that the bill upon which I am to vote is not 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, worth 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 Mr. mann, the chairman of the subcommittee, for his understanding of the need for corrective legislation in this area and his work with which he has conducted the subcommittee hearings. I would like to join to supplement 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. Improper rape trials become inquisitional; the amount of time that elapsed between rape and the prosecution can 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 finds that it is not surprising that it is the least reported crime. It is estimated that 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, 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).

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

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

MESSAGE FROM THE PRESIDENT

A message in writing from the President was received from the United States Senate and communicated to the House by Mr. Chidron, 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:

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 in trials involving 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 she consented. Finally, if it is constitutionally required. This last exception is to adopt a per se rule absolutely excluding evidence of reputation and opinion with respect to the victim's past sexual conduct.

There are any such evidence can be introduced, 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.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman 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 bill was passed and the bill, as amended, was passed.

A motion to reconsider was laid on the table.