

Legislative History for Connecticut Act

HB 5056	PA 82-230	1982
House - 3529-3538		10
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CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1982

VOL. 25  
PART 11  
3452-3824

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3529

House of Representatives                      Wednesday, April 21, 1982

CLERK:

Calendar page 12, Calendar 386, Substitute for House Bill 5056, AN ACT CONCERNING ADMISSIBILITY OF EVIDENCE OF PRIOR SEXUAL CONDUCT. Favorable Report of the Committee on Judiciary.

REP. ONORATO: (97th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Alfred Onorato.

REP. ONORATO: (97th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill. Will you remark, sir?

REP. ONORATO: (97th)

Thank you, Mr. Speaker. The Clerk has an amendment, LCO No. 3623. May the amendment be called, and may I be given permission to summarize.

DEPUTY SPEAKER FRANKEL:

The Clerk has an amendment, LCO No. 3623, which will be designated House Amendment Schedule "A". Would the Clerk please call the amendment only.

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CLERK:

LCO No. 3623, House Amendment Schedule "A", offered by Rep. Tulisano 29th District, et al.

DEPUTY SPEAKER FRANKEL:

The gentleman seeks leave of this Chamber to summarize this amendment in lieu of Clerk's reading. Is there objection? Hearing none, you may proceed, Rep. Onorato.

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, in lines 21 and 22 and 23, when the bill was JFd out of the Judiciary Committee, the language was supposed to have been eliminated, and in line 23, the language was supposed to have been added.

In line 30, this is new language, which explains that during a hearing on the motion to offer evidence, under Section 3, if the motion is denied, the evidence will not be used in the main trial against the defendant. I move adoption of the amendment, Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

The question is on adoption of House Amendment Schedule "A". Will you remark on its adoption? Will you remark on the adoption of House Amendment Schedule "A"? If not, all those in favor please signify by saying aye.

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REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

Those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER FRANKEL:

The ayes have it. House "A" is adopted and it is ruled technical.

\*\*\*\*\*

House Amendment Schedule "A".

In line 21, delete the words "accompanied by an offer of"

In line 22, delete "proof"

In line 23, after "camera" insert the following: ", subject to the provisions of section 51-164x of the general statutes, as amended by public act 81-89"

In line 30, after the period, insert the following: "The testimony of the defendant during a hearing on a motion to offer evidence under this section may not be used against the defendant during the trial if such motion is denied."

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DEPUTY SPEAKER FRANKEL:

Will you remark further on this bill as amended by House Amendment Schedule "A"?

REP. ONORATO: (97th)

Thank you, Mr. Speaker. Mr. Speaker, I move passage

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of the bill as amended.

Basically what this bill would do, and this concerns admissibility of evidence of prior sexual conduct. There are 3 subsections in the bill which would limit what evidence could come in, and during the course of a sexual assault trial.

The first 2 subsections would deal with evidence in sexual conduct with persons other than the defendant, and would be admissible only under certain conditions, as explained in the file copy.

The third would deal with evidence which may come in when the prior sexual conduct happens with the defendant, in that particular case. It also sets out a procedure whereby, if the defendant raises the question of consent, particularly on consent, an evidentiary hearing may be held, either in camera, on motion of either the state or the defendant, and a ruling would be made on probative value of the evidence, and whether or not it outweighs the prejudicial value.

There's also protection under the amendment for the violation of constitutional rights, public trial, as opposes the freedom of the press issue.

Finally, what it would do, is if the evidence was

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not going to come in, or would not be admissible, that evidence could not be used in the trial, in the main of the trail against the defendant, sir.

I would move passage of the bill as amended.

DEPUTY SPEAKER FRANKEL:

Will you remark further?

REP. BERMAN: (92nd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Rosalind Berman.

REP. BERMAN: (92nd)

Thank you very much, Mr. Speaker.

I just wanted to say that this is a very big day for the women in the State of Connecticut. Because this is the first opportunity that we have had to have an open discussion and a vote on a bill of enormous importance to the people of the State of Connecticut.

One has only to pick up the daily newspaper to see that the crime of sexual assault has been on the rise in recent years.

The primary purpose of this bill is to spare

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sexual assault victims from a second traumatic victimization of trial.

Victims of sexual assault have suffered enough and yet today our criminal justice system encourages degrading and unwarranted probe into a victim's private life.

Which results in non-reporting and failure to prosecute and these have been the big obstacles in getting people to report the crime and to be willing to prosecute.

Sexual assault is a unique crime, in that the victim is often the only witness.

The victim's testimony is essential to a successful prosecution, and yet we sanction an unnecessary fear of being questioned about prior sexual conduct when we allow admission of this evidence.

We had, as many of you may remember, we had a trial lawyer at the public hearing who admitted that there is a double standard in the Courts of Connecticut.

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He told us that he was able to have his rape defendant acquitted on the basis of prejudicial evidence that was presented to the jury.

The Commanding Officer of the State Police said that this bill, when enacted, will provide protection and encouragement for victims of sexual assault to report their experience to the police and to participate in the subsequent legal process without infringing on the rights of the accused.

I will not go into a lengthy statement that I had prepared, but I do want to say that this bill will bring Connecticut in line with 46 other states who have already passed similar legislation to protection victims' rights.

And I urge the General Assembly to follow the lead of 46 of our sister states.

These statutes have been tested and remain constitutional.

To be victimized by a sexual assaulter is a crime committed by one individual, to be victimized by a callous and unresponsive justice system is a crime that we must

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all take responsibility for. And I urge passage of this bill to help in the fight against a most heinous crime.

Thank you.

REP. KEZER: (22nd)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Pauline Kezer.

REP. KEZER: (22nd)

Just briefly comment on this bill. This bill has the active and vocal support of most all of the women legislators in this body. We have followed it along its course and have worked out language changes that seem to be acceptable to everybody. And I would hope that we would find a unanimous vote on this measure today. I think we've worked well together to come to this agreement and this point in time. And I think that Connecticut will be acting wisely in supporting this bill.

REP. YACAVONE: (9th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Yacavone.

REP. YACAVONE: (9th)

Mr. Speaker, I'm very pleased with the way this

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bill has been presented from the Judiciary Committee, and I want to commend the leadership of that Committee for being so willing to listen and discuss these issues and for coming out with such a good bill at this point.

REP. OSLER: (150th)      Mr. Speaker.

DEPUTY SPEAKER FRANKEL:      Rep. Osler.

REP. OSLER: (150th)      I, too, would just like to make a brief statement

in favor of this bill. I understand that not all judges are happy with it, feeling that we are getting into a judge's prerogative. But on the other hand it is only because many judges have not done what they should have done and already prevented such admission of evidence that the Legislature is forced to act and put this into effect through legislation.

I hope you will all give it your support.

DEPUTY SPEAKER FRANKEL:      Will you remark further? If not, staff and guests

please come to the well of the House. Would the members please take their seats. The machine will be opened.

The House of Representatives is now voting by roll.

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Would the members please return to the Chamber. There is a roll call vote pending in the Hall of the House. Would the members return to the Chamber immediately.

Have all the members voted? Have all the members voted and is your vote properly cast? If so, the machine will be locked. The Clerk will take a tally.

Will the Clerk please announce the tally.

CLERK:

House Bill No. 5056, as amended by House "A".

Total number voting	144
Necessary for passage	73
Those voting yea	144
Those voting nay	0
Those absent and not voting	7

DEPUTY SPEAKER FRANKEL:

The bill as amended is passed.

CLERK:

Page 12, Calendar No. 394, Substitute for House Bill No. 5559, AN ACT CONCERNING COMPUTATION OF GOOD TIME CREDIT. Favorable Report of the Committee on Judiciary.

REP. FOX: (144th)

Mr. Speaker.

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PART 10  
2992-3393

## SENATE

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THE CLERK:

Prior to calling the next item on the Calendar, Clerk would like to make the following notation. On page 3, Calendar 420 which was originally a passed temporarily, is now PR'd and on page 17, Calendar 562 which was originally marked a go for today has been PR'd.

Moving along on the Calendar to Calendar 521, File 543, 749, Substitute for House Bill 5056, AN ACT CONCERNING THE ADMISSIBILITY OF EVIDENCE OF PRIOR SEXUAL CONDUCT, as amended by House Amendment, Schedule A, with a Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

THE CHAIR:

Will you remark Senator?

SENATOR OWENS:

I move adoption of House Amendment A and I'd like to explain it very briefly.

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THE CHAIR:

Proceed Senator.

SENATOR OWENS:

House Amendment A added the provisions relating to the use of testimony by the defendant at the hearing specifying that people excluded from the hearing could appeal under already existing procedures. This would provide that--for a full evidentiary hearing in the absence of the jury to determine whether or not the evidence of lack of consensual activity would be admitted during the course of a trial. I move adoption of House Amendment A.

THE CHAIR:

Further remarks on House Amendment A? Hearing none, all in favor of House Amendment A please signify by saying aye. Opposed, nay. The ayes have it. The Amendment is adopted. Will you remark Senator?

SENATOR OWENS:

Yes. On this Bill, this Bill would prohibit in any prosecution for sexual assault, admissibility of evidence of the prior sexual conduct of the victim unless explicitly authorized by the Bill. The Bill would authorize such evidence when its value (inaudible) has prejudicial effect

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on the victim and the evidence is relevant and material to a critical issue of the case that excluding it would violate the defendant's constitutional rights. For example, if an individual were to claim--if an individual would to claim as part of his defense that the person that he had the contact with was in fact a prostitute and then there was later a claim of rape or a situation where someone was hanging around an army base or an air force base and enticed people into these types of situations that would be one of the situations that would call for constitutional confrontation and due process would require that.

What this Bill really does is and when we get to the heart of it, is that we want to make certain that when someone is called upon, testifying in a criminal prosecution of serious sexual offenses or rapes specifically, that they can't get into the woman's background; they can't ask her whether or not she uses a diaphragm. They can't ask her whether or not she's involved in birth control; whether or not she's had sexual--how many times she's been married, what her customs are and what her preferences are to sex; all of these types of questions that have no relevancy to the situation before the Court; whether or not in fact a rape

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occurred. The history of it is that there was case law that kind of left this with some ambiguity and we wanted to bring this to a head. I think it's a very fine piece of legislation. It's been worked on with the Committee on Judiciary with many of the women's groups in the State, with the Office of the State's Attorney, although he had some-- and I should point out the Chief State's Attorney had some problems with the Amendment, House Amendment A that we've already adopted because of the fact that the woman might be called on to testify on two occasions. I think it's a fine piece of legislation and it's been thoroughly worked out and I'd ask if there is no objection, that it be placed on Consent.

THE CHAIR:

Thank you Senator Owens. Before we do that does anyone have any further remarks on this Bill? Am I opposed to moving this matter to the Consent Calendar? Hearing none, so moved.

THE CLERK:

Calendar 522, File 536, Substitute for House Bill 5127,  
AN ACT CONCERNING DEFINITE SENTENCES, with a Favorable Report

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and I wanted to read something into the record that I forgot to do so I would move that it be taken off the Consent Calendar so I could do that if I may.

THE CHAIR:

Senator Owens, are you referring to Calendar <sup>521</sup>522, the HB5056 matter we just passed?

SENATOR OWENS:

Yes Mr. President.

THE CLERK:

You want to remove this from the Consent Calendar--

SENATOR OWENS:

If I may. And comment on the Bill very briefly. I have an additional comment that I wanted to make.

THE CHAIR:

And you wish to Roll Call this after?

SENATOR OWENS:

No. I'd put it back on the Consent Calendar.

THE CHAIR:

Proceed.

SENATOR OWENS:

The Amendment that we were talking about was to really--

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that was the House Amendment--was designed to insure treatment parallel to motions to suppress evidence and it was intended to insure respect for the constitutional right of the accused under the Fifth Amendment. It is not intended, however, to prevent the use of the record of the hearing on admissibility for impeachment purposes under the appropriate circumstances. I wanted to read that into the record with respect to the Bill.

THE CHAIR:

Thank you Senator Owens. Just to clarify in my mind, if you would please, you are now referring to Calendar 521.

SENATOR OWENS:

521 correct.

THE CHAIR:

Substitute House Bill 5056. Is that clear to all the members of our chamber?

SENATOR OWENS:

That's correct Mr. President.

THE CHAIR:

Thank you. Do you wish this to the Consent Calendar again?

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SENATOR OWENS:

If you would please. Thank you.

THE CHAIR:

Motion has been made to move Calendar 521, House Bill  
5056 to the Consent Calendar. Anyone opposed to that? So  
ordered.

THE CLERK:

Moving along, Calendar 523, File 538, Substitute for  
House Bill 5131, AN ACT CONCERNING OFFERS OF JUDGMENT IN  
CIVIL ACTIONS, with a Favorable Report of the Committee on  
Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

I move acceptance of the Joint Committee's Favorable  
Report and passage of this Bill.

THE CHAIR:

Will you remark, Senator?

SENATOR OWENS:

Yes Mr. President. The Bill would change from unlimited  
to one of a number of offers of judgment which a plaintiff  
could make in a suit and when the plaintiff is to receive

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established. A fine for infraction must not exceed \$90.00. This would set the minimum fine of \$25.00 while retaining the \$90.00 maximum for any violation of the statutes deemed to be an infraction. Fines for parking tag violations could be less than \$25.00. I'd ask if there is no objection that this Bill be placed on the Consent Calendar.

THE CHAIR:

Anyone opposed to moving this item to the Consent Calendar? Hearing none, so ordered.

THE CLERK:

Moving to page 15, Calendar 536, File 552, 745, Substitute for House Bill 5906, AN ACT CONCERNING IDENTIFICATION OF CERTAIN JUVENILES, as amended by House Amendment Schedule A, with a Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Owens.

SENATOR OWENS:

I move adoption of the--I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

THE CHAIR:

Will you remark, Senator?

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SENATOR OWENS:

Yes Mr. President. I move the adoption of House Amendment A.

THE CHAIR:

Will you remark Senator?

SENATOR OWENS:

House Amendment A added the requirements concerning fingerprints. I move its adoption.

THE CHAIR:

All in favor of House Amendment, Schedule A, signify by saying aye. Opposed? House Amendment, Schedule A is adopted. Will you remark Senator?

SENATOR OWENS:

On the Bill itself, existing law requires that a person 16 years of age and over arrested for certain crimes submit to the taking of their fingerprints and physical description. This would require that 14 or 15 year olds arrested and charged with the violation of any felony submit to the taking of his or her photograph and physical description and would specify that persons 16 or older arrested for a felony under the penal code submit to the taking of a photograph. I'd ask if there is no objection that it be placed on Consent.

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ATTY. WASHINGTON: (continued)

case really is not the important thing. Whether it's a murder case -- they speak about murderers walking out free. Now, we don't have that many in the State. We have enough of them, yes. But we have a good many more criminal cases and those people are entitled to the same treatment as any other defendant is entitled to.

Certainly, anybody in a drunken driving case, the voir diring of a jury is extremely important, especially if in that drunken driving case his livelihood may depend and he may not be able to operate a vehicle. I'm not talking about the new law with first offenders, but I'm talking about the way it was and the way it would be to someone perhaps who's charged with a second offense. These things are essential.

Now, what we're concerned about is a fair and impartial jury. And if you try cases, that's what you try to get. Certainly, you want a jury that you hope will favor your client. But that's the essential thing in being an advocate. And certainly, don't take that away and don't emasculate the trial bar. That I say as far as the voir dire is concerned.

The other one -- bill I would like to speak on is House Bill 5056, An Act Concerning the Admissibility of Evidence of Prior Sexual Conduct. Now that has to do with what we usually commonly called rape. Well, I say to you, ladies and gentlemen, if a woman is a decent woman and a respectable person, she has nothing to fear on the cross-examination by counsel for a defendant. But if you have ever -- any of you who are members of the Bar or have ever sat in a Courtroom, and have tried to defend someone who's been charged with sexual assault one or two or the crime of rape, and the complaining witness is one with a very questionable background, especially where there is no weapon -- no evidence of a weaper having been used, no knife, no gun, no evidence of brutal force, it's just a question of a word of a woman who may be of excellent background and, as I say, she has nothing to fear or one who may be of questionable background and then it's the word of that person against the defendant, a man who may be well respected or whoever he might be. And certainly I think you should have a right to go into the background of the complaining witness to determine what sort of a person that complaining witness is. And I say prior sexual conduct is certainly relevant, when you have a charge like that against a defendant who has to come in

ATTY. WASHTON: (continued)

there and defend himself against the word of one person against his own word. Now, if a man is guilty, that'll come out one way or another. But certainly, what the person is like, what the person has done previous to the complaint is certainly essential and I would ask that that evidence be admissible, that when there is evidence of prior sexual conduct on the part of the complaining witness, that the lawyer should be permitted to go into that if he wants to properly defend a client. Now, that's in a criminal case. And I think it's a very essential thing for the attorney and the client.

SENATOR OWENS: Mr. Washton, in a situation where -- particularly where there has been no contact between the individuals before in a rape case, what relevance is it whether the woman had sex ten times, has never had sex or what type of device she uses and this type of thing? I really don't see -- I don't see why that becomes relevant in the cross-examination. Are you saying that people who have had sexual activity, whether it's with their husband or with a friend are more base than those who have not? I just wonder what's the rationale for this kind of --

ATTY. WASHTON: I say we know today that our mores are such and our social customs are such that the fact that a woman perhaps has had some sexual contact or something like that prior to that depends a lot on the background of the woman, too. But you take a good many of these cases where if somebody perhaps picks up somebody in the bar or you pick up a hitchhiker, not that necessarily means that a bad thing or not, but nevertheless, if there are things in the background which would lend or tend to discredit that person and cast some doubt upon her veracity -- now, I'm not talking about the case where there's evidence of, say, a knife, or a weapon used or brutal force. But I'm talking where there's no such evidence at all. It's simply word against word, where there may be a question of consent. I say it's a very difficult thing. When a man comes in and says, "Sure I had that woman, but we never argued about it. If anything happened when we got through, she wanted more money than I was willing to pay and so she cries rape." Now, I've defended a great many rape cases, ladies and gentlemen, over a period of 48 years to a jury and somehow you try to go into that. And it's a very essential thing in the case and I can tell you this. While I've defended many of them, most of them were determined finally by plea negotiation and

ATTY. WASHTON: (continued)

so forth. But a good many of them were tried. And I would say in my period of time, I've perhaps tried twelve to fifteen rape cases right through to a jury and I got a defendant's verdict in every single one. And in every one of them, somehow I managed to go into something about the prior history of the woman. And I know -- I later found out that that had a decided effect upon how the jury reacted.

SENATOR OWENS: Assuming a situation where the defendant didn't know anything about the background of the woman when the rape is perpetrated, even in that situation you're saying that, you know, what she did and what her relationship with becomes relevant to the case? Even if it was years before, whether she had an affair, whether she was -- you know, where do you draw the line then, Mr. Washton?

ATTY. WASHTON: I would say it's got to be within a reasonable period of time. I'd say if a woman has had an affair five or ten years before, that certainly is not relevant. It's not even material. It's remote. But where there's some sort of a history or a background.

SENATOR OWENS: A history of what, Mr. Washton?

ATTY. WASHTON: Of sexual activity with various persons or at various places within a reasonable period of time, a limitation perhaps might be put on it, but certainly, there's a big difference between a woman perhaps that has never had any contact with a man, a woman who has had very little contact with a man who's reputation is above reproach, even though she may have had an affair or two. But certainly in many cases where you have people picked up in a bars or become very close and they go to an apartment and so on and so forth, I simply say that you should have a right at least to go into the background.

SENATOR OWENS: Yes, Representative Berman. I'm sure that you're in accord with this, but go ahead. (LAUGHTER)

REP. BERMAN: First of all, I'd like to thank you, Mr. Washton, for your -- Washington, is it? Washton -- for your testimony because I think some of the things that you have said give greater support for a need of this legislation. (APPLAUSE)

ATTY. WASHTON: Why is it that you feel that somebody who has a history of sexual activity is not entitled to the same basic rights

REP. BERMAN: (continued)

of protection that someone who has not?

ATTY. WASHTON: Well, you know, in a way it's a loaded question.

SENATOR OWENS: Would you speak up a little louder, we're having trouble getting you sometimes here.

ATTY. WASHTON: In a way it's a loaded question. I can only get back to what I said at the very beginning. A decent woman has nothing to fear.

REP. BERMAN: What is a decent woman?

ATTY. WASHTON: A decent woman is one, very frankly, that is not one who's promiscuous, who is not one who perhaps frequents a lot of bars, who is not a pick-up. That's about what I would characterize.

REP. BERMAN: And what is a decent man?

ATTY. WASHTON: That's very difficult to answer. (LAUGHTER)  
A decent man is not a man who would rape a woman.

REP. BERMAN: I agree. I absolutely do agree. Mr. Washton --

ATTY. WASHTON: It doesn't mean that he wouldn't try to have something to do with a woman, but it doesn't mean that he would rape a woman. A decent man knows enough when someone says no, he takes it as a no.

REP. BERMAN: But a woman who says yes is not a decent woman.

ATTY. WASHTON: It all depends. It depends on many factors.

REP. BERMAN: Mr. Washton, you said that you have used this kind of evidence over a period of 40 years to obtain convictions because it was indeed prejudicial.

ATTY. WASHTON: I never have changed convictions.

REP. BERMAN: Or to prevent -- I'm sorry. To obtain acquittals for your defendants because, indeed, this type of evidence which basically is irrelevant --

ATTY. WASHTON: Why is it irrelevant?

REP. BERMAN: Because it has nothing to do -- if it has nothing

REP. BERMAN: (continued)  
to do with the individual case, then it should be irrelevant.

ATTY. WASHTON: Don't you think it would bear on the question of consent?

REP. BERMAN: No, I do not.

ATTY. WASHTON: I disagree with you.

REP. BERMAN: I think perhaps credibility bears on the question of consent.

ATTY. WASHTON: Then it should come in. If it doesn't come in on consent, then let it come in on credibility.

REP. BERMAN: Do you understand how traumatic it is for the victim of a rape to come in to Court and have her entire past delved into and become a public factor?

ATTY. WASHTON: A decent woman has nothing to fear.

REP. BERMAN: I again object to your characterization of a decent woman.

ATTY. WASHTON: Perhaps I'll say it --

REP. BERMAN: I think perhaps you are referring to a rather Victorian definition of what a decent woman is.

ATTY. WASHTON: I would say a promiscuous woman may have something to fear. Now, you define that or separate it as you will.

REP. BERMAN: What is the difference between a promiscuous woman and a promiscuous man?

ATTY. WASHTON: I think men are perhaps a little more select sometimes.

SENATOR OWENS: Select?

ATTY. WASHTON: Select. A promiscuous woman is a promiscuous woman.

REP. BERMAN: But a man is selective?

ATTY. WASHTON: Sometimes.

REP. BERMAN: I see. Thank you very much.

SENATOR OWENS: Are there any other questions? Yes, Michael Rybak.

REP. RYBAK: Is it Washton or Washington?

ATTY. WASHTON: Washton.

REP. RYBAK: I was <sup>HB 5037</sup> Mr. Washton, your comments on the voir dire. As someone who has practiced 48 years in Connecticut, certainly your experience -- apart from <sup>the</sup> I think represent the true trial attorney's view, I think <sup>questions</sup> you actually represent the true defendant's attorney's view trying to get the most for your client for dealing with an adversarial relationship and you're his protector in that relationship. Why do you feel so strongly about the voir dire? There's something there, isn't there? What is it that causes you to support it, even though the other States don't agree with it?

ATTY. WASHTON: Because I don't think the average person in a box tells the truth. You get him on the voir dire through your questioning, it leads to another question, it leads to another, you pretty well can determine whether that juror is telling the truth or whether the juror is simply not -- isn't quite frank because it's a very difficult thing with twelve panel people seated in that box to really get truthful and honest answers on them. I've been through it. I've seen it. <sup>House Bill 5036</sup> Now, you take a Federal Court. Have you ever tried anything in a Federal Court? You have to give your questions to the Judge ahead of time and, sure, he'll ask the question, but on the other hand, too, you have damned little to say about the type of jury you get. Sometimes you're lucky and some-time's you're not with the jury that you get.

Now, I don't think that's due process. I don't care if they have it in Federal Courts. I don't care if they have it in the other States. I think a defendant, especially in a criminal case under due process should have that whole voir dire. Now, the Judge who's sitting there -- he can control it. I've spoken to Judges about this. And they simply tell me the Judge can control that.

REP. RYBAK: Do you feel as strongly about civil cases?

MS. STEEVES: (continued)

would certainly be a big improvement. We also paid the Court in Hartford a substantial sum of money. I don't know exactly where all of that goes. I think probably to sustain the Court, but it does seem to me that if all the small towns of which Joan Kemler spoke have its own Probate Court, certainly will fill the bill of meeting such requirements.

At any rate, I think it's high time something was done. I hope my children won't have to go through for me what I had to go through at the times that I was going to Court. Thank you.

SENATOR OWENS: Thank you, Ms. Steeves. Susan Omilian, to be followed by Ruth Howell.

SUSAN OMILIAN: My name is Susan Omilian. I'm staff attorney for the Connecticut Women's Educational Legal Fund which is known as CWEALF. CWEALF is a public interest law firm specializing in sex discrimination cases.

I'm here to testify today regarding House Bill 5056, the act on the admissibility of evidence of the victim's prior sexual conduct. I believe this law is essential in order for the State of Connecticut to declare clearly that sexual assault is a violent crime and its victim should not be put on trial if they report and prosecute a charge of sexual assault.

Connecticut began the process of stating such a policy in 1975 when it revised its rape statute to reflect the violent nature of the crime of sexual assault. This public policy was continued in 1981 when Connecticut again changed the law to allow prosecution of spouses for sexual assault. Today, before this committee, we have another proposed law which will further establish this policy in Connecticut. It will declare as a matter of statutory law that as a general rule, the evidence of a victim's prior sexual conduct is not relevant or admissible in a trial of a sexual assault case.

Connecticut needs this evidence law not only to foster consistency in the introduction of such evidence in criminal trials, but also to let sexual assault victims know their personal lives will not be used against them indiscriminately

MS. OMILIAN: (continued)

to obscure the violent nature of the crime of sexual assault in the eyes of the jury.

Since other people today have and will testify about the need for this law in Connecticut, I will not take my time doing so. However, I'd like to say two things about this law to the committee. First of all, I commend you for raising this bill and for having a public hearing. It demonstrates that you recognize the importance of this type of law which, as of 1979, has been passed by 41 other States. These laws, known as rape shield laws, have as their purpose to protect victims of harrassment and humiliation. They prohibit introduction at trial of irrelevant and evidence prejudicial regarding a victim's prior sexual conduct. The laws also attempt to counter a once prevalent societal myth that an unchaste victim, one who has previously consented to sexual acts with one person, is more likely to consent to sexual activity with the person now accused of criminal sexual conduct.

Secondly, I'd like to recommend to this committee amendments to the present bill to enhance the clarity of the bill and to adequately accomplish the purposes I've mentioned above. All the amendments I present to you are outlined and explained in a more detailed fact sheet that I believe each member of the committee has received prior to this hearing. I also attach a copy to my official remarks here.

To outline the amendments briefly, they are: number one, to include in this law a definition of sexual conduct so that sexual conduct is more than just prior sexual intercourse. It can also be prior sexual contact, use of contraceptives, pregnancy and any related medical treatment, living arrangements and lifestyle. I believe that a sexual assault victim would suffer harrassment, humiliation and have less incentive to report and prosecute a case if they knew that any of this kind of evidence was admissible at trial.

Secondly, to add to Line 18 and 19 of the proposed bill that the type of evidence excludable not only is in prosecutions of sexual assault cases, but also in crimes involving risk of injury to minors or attempted risk injury to minor child, that's Section 53-21 of the criminal code in Connecticut. Many cases of child sexual assault are prosecuted under this

MS. OMILIAN: (continue)

section rather than the sexual assault section and the same evidentiary rule should apply.

Number three, to add to Line 20 that evidence to be excluded includes specific instances of conduct and opinion evidence and reputation evidence. Presently, Connecticut law permits evidence to be presented at trial in all three forms. Surely, it is humiliating not only for a victim to have to testify about her past sexual life, but also to hear other witnesses give testimony about their opinion of her sexual life or her reputation in the community as regarding that sexual life.

Number four is to delete language of Line 22 which states constitutionally required to be admitted. This language creates an exception to the general rule posed in this bill. That general rule is that evidence of a victim's prior sexual conduct is not admissible at trial because it is irrelevant. The proposed bill already has three exceptions which narrowly define when evidence of prior sexual conduct may be deemed relevant to the trial -- at the trial by the Judge. When evidence is relevant under one of these specific exceptions, it is, in fact, constitutionally required to be admitted because it is relevant. For Courts across the country have ruled in upholding rape shield statutes as constitutional, that a defendant does have a 6th Amendment right to ask questions to confront and cross-examine witnesses with relevant questions, but not with irrelevant questions. However, as a Michigan Court found in upholding the State's rape shield law, there is no fundamental constitutional right to ask a question of a witness that is irrelevant.

The proposed Connecticut bill adds a fourth exception to allow evidence that is constitutionally required to be admitted. This language is vague, it's overly broad, it's unclear as to its intent. With such an exception, the law would be open to interpretation by any and all and certainly would not help a victim who was unfamiliar with the law when and how her personal sexual conduct could be used against her. If the victim wasn't sure, she would not be so sure about going forward with prosecution.

Finally, additions to the hearing provision in the bill should be added to more adequately protect the victim's privacy. This is most essential when the victim's prior sexual conduct is found not admissible following the hearing. Then, if the hearing had been held in-camera, and the record

MS. OMILIAN: (continued)  
of the hearing sealed in the event of an appeal or other post-trial proceeding, the victim would not have to fear the testimony, ruled inadmissible at trial, was nonetheless actually open for public consideration.  
In closing, I would stat that these amendments to House Bill 5056 are endorsed by not only CWEALF, but also by ConnSACS, Connecticut Sexual Assault Crisis Services, the Connecticut International Women's Decade Committee and ConnVO, Connecticut Victim Organization, as well as other groups who might testify here today.

SENATOR OWENS: Any questions? Thank you. Ruth Howell, to be followed by Pat Weal. Good afternoon.

RUTH HOWELL: Pardon me?

SENATOR OWENS: Good afternoon.

MS. HOWELL: Good afternoon, Members of the committee. My name is Ruth Howell. I'm the counseling coordinator of the Hartford YWCA Sexual Assault Crisis Service. I'm here today as a representative of the Connecticut Sexual Assault Crisis Services, Inc., a coalition of nine Connecticut sexual assault services located in Ansonia, Danbury, Hartford, Middletown, Milford, New London, Stamford, Waterbury and Willimantic. I've come here to testify in support of the intent of House Bill 5056 as delineated in the statement of purpose and I would strongly urge this committee to consider the amendment proposed by Attorney Susan Omilian of the Connecticut Women's Educational and Legal Fund.

From our extenitive work with victims of sexual assault, we are aware that an overwhelming number of sexual assault victims are reluctant to report the crime to the police because they fear that they will be subjected to public humiliation as the details of their private lives are examined in Court. While Judges have been know to rule such testimony inadmissible, they are not bound by statute to do so. At present, there is no clear policy stating what information is admissible and what is not. The victim cannot be sure which pieces of her personal life will be scrutinized by the Court and possibly used against her. Without this guarantee of privacy, the victim is often unwilling to risk a Court trial. This fear encourages victims to withhold the very cooperation the police and

MS. HOWELL: (continued)

Court so urgently require to successfully prosecute rape cases.

The national statistics of reporting of sexual assault reflect the rape victim's reluctance to prosecute. FBI figures show that one in ten cases of sexual assault is ever reported to the police. Of those sexual assault cases that are reported, only half result in an arrest, only 30% of the reported cases lead to prosecution and less than 15% of reported cases result in a conviction. Sexual assault has one of the lowest arrest rates of all violent crimes and also one of the lowest rates of conviction of all major crimes.

At the Hartford YWCA Sexual Assault Crisis Service, more than half of the men and women we counsel choose not to report their rapes to the police. Over the past two years, I have seen only four of our 425 cases come to trial. Other sexual assault services across the State report equally horrifying figures. While the number of sexual assaults that are reported to the Hartford Sexual Assault Crisis Service has risen 67% since 1980, the Hartford police report that rape is decreasing. Clearly, rape victims are not reporting. A major reason for this, victims have stated, is the fear of what they may be forced to undergo in the Courts. Details of past abortions, past marital status, use of contraceptives, children born out of wedlock, past living arrangements or sexual preference may be raised to discredit their character. In fact, the defendant in the sexual assault case often enjoys greater protection than does the victim and it is he, not she, who is on trial. If the defendant chooses not to testify, his history of sexual assault is inadmissible because it is felt to be unfairly prejudicial. The victim's sexual history, however, is considered admissible, even though it clearly prejudices the case in favor of the defendant, as the studies of American juries show. If the defendant's history is inadmissible, so must be the victim's. We cannot apply one rule of law to men and another to women.

And, more important, it is our belief that if a woman has consented to have sexual relations with one man or a hundred men, this has no legal bearing on whether or not she has said yes to the defendant. A woman has the right to say no and under the law, the only relevant evidence should be that which directly bears on whether or not she has consented in

MS. HOWELL: (continued)  
the pending case. No discussion of prejudicial past sexual behavior should be allowed in the courtroom.

The practice of allowing the past sexual conduct of a victim to be introduced as evidence is a violation of the victim's right to justice. Rape, in itself, is a life-threatening and traumatic experience. In addition to this, the victim must have the strength to face the possible humiliation and violation of her right to privacy in Court. Again I stress it is because of this many women refuse to press charges.

If we wish to encourage rape victims to utilize the criminal justice system, the admissibility of testimony concerning the victim's past sexual conduct must have clear limitations. We at the Connecticut Sexual Assault Crisis Services, Inc., and the Hartford YWCA Sexual Assault Crisis Service fully support the intent of House Bill 5056, but encourage the members of this committee to amend the bill as proposed by Attorney Susan Omilian. Please remove the barriers that make it impossible for so many men and women to prosecute their rapists. Thank you for your attention.

SENATOR OWENS: Any questions? Thank you, Ms. Howell. Pat Weal, to be followed by William Fenniman,

PAT WEAL: Hello. It's nice to see those of you who have been willing to stay and listen to those of us who have been willing to stay and speak. Thank you very much. My name is Patricia Weal. And I'm here today to speak on two bills, No. 5056 regarding the admissibility of evidence of prior sexual conduct in sexual assault trials, and No. 5038, which allows victims to learn the offender's identity in juvenile and youthful offender cases.

I strongly support the intent of both these bills being discussed today.

House Bill 5038 provides that victims of crimes committed by juveniles be informed of the offender's identity when it is their intent to institute a civil suit for their losses. This is a common sense change which reflects current statutory definitions of juvenile liability. However, I am --

SENATOR OWENS: Excuse me, Pat. Doesn't the Court have the power to do that now?

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MS. WEAL: (continued)  
want to sue civilly. So I support this bill, but only without the deletion.

SENATOR OWENS: Would you send me a note on that, too, please?

MS. WEAL: Certainly.

SENATOR OWENS: I'd appreciate it.

REP. A. PARKER: May I comment on that?

SENATOR OWENS: Sure.

REP. A. PARKER: I agree with you, Pat. Last year, in having the file open, we omitted something. This year by taking the other route, it gives us something to do next year to correct the bill again.

MS. WEAL: Maybe we could do it all in one year this time.

SENATOR OWENS: No, I'd just like to have it for my file so that when we're drafting this --

MS. WEAL: Yeah, I will write it up for you. I'd be happy to do that.

House Bill 5056 raises a number of crucial issues for this committee's consideration. I strongly support the committee's intent to limit the admissibility of the victim's sexual history in sexual assault cases. It is clear that in a crime defined by the use of force and the threat of physical injury where these elements must be proved to obtain a conviction, that it is the behavior of the offender when committing the crime and not the behavior of the victim prior to the crime which is at issue. The sexual history of a sexual assault victim is no more relevant to proof of the crime than the philanthropic habits of a robbery victim are to proof of a robbery.

However, in Connecticut Courts today victims are confronted with the old historical legal attitudes that (a) a woman -- women are inherently untrustworthy and will lie. That is, they will falsely accuse rapists, especially sexually active women. (b) Women who consent to relations with one or more persons are likely consented relations with the offender, i.e., loose women will have sex with anyone. And (c) women

MS. WEAL: (continued)

ask for and provoke rape by their sexual behavior. Those are historical legal attitudes that we feel are incorrect and need to be addressed and are being addressed in this law.

There has been a need to clarify and limit the types of past sexual history evidence admissible for two reasons. Number one, it's irrelevant and, number two, it's essential that victims of sexual assault have their rights to personal privacy clearly stated if we expect them to come forward and report and prosecute these crimes. It is for both of these reasons that we support the amendments recommended by ConnSACS and other concerned groups.

It is well known that sexual assault is one of the most severely under-reported crimes of violence, although the FBI classifies it as second only to homicide in severity. It is also well known that rapists are serious recidivists, repeating their crime again and again, many times at increasing levels of violence.

I would like to quote to you from Dr. Nicholas Gross who works with rapists. It is a common misconception that the rapist is not a serious recidivist. For every reported sexual assault, as many as nine such offenses go unreported and, therefore, the offender has nine chances out of ten of not even being identified as having committed an assault, simply because his crime is not reported. Counselors in rape crisis centers confirm that many women do not report sexual assaults because they are intimidated by the possibility that their personal sexual histories will be used against them in Court.

Connecticut has a serious problem of sexual assault. It is the second fastest growing major crime in the State with an increase of 112% between 1970 and 1979 and an additional 17% in 1980. The State clearly has an interest in providing a climate where victims of sexual assault will not be afraid to report the crime and assist in its prosecution. It is obvious that any statute such as that outlined in Raised Committee Bill 5056, must be very clear regarding the types of private conduct protected, the crimes to which it applies and the types of evidence excluded. The victim must feel assured that any evidence which is determined to be irrelevant by the Courts will not be held up by the press and public to damage her reputation. This can only be done by holding any hearing on these issues in-camera.

MS. WEAL: (continued)

Jeanne Marsh of the University of Chicago, in conjunction with Nathan Kaplan and other members of the Institute for Social Research at the University of Michigan recently completed a research study on the effects of law reform in the prevention and treatment of rape. The study was designed to examine the impact of legal reforms in Michigan, addressing the problem of sexual assault and included analysis of crime statistics and interviews with 170 criminal justice personnel, including police, prosecutors, defense attorneys and Judges and rape crisis staff. I would like to quote from this study. "Perhaps the most important innovation of this law was the prohibition on the use of evidence related to the victim's sexual history. The introduction of such evidence is considered a principle factor inhibiting the willingness of victims to report and prosecute their assailants." Their research found that "after the law reformed, there is a significant increase in convictions as charged and a significant reduction in convictions for lesser offenses." It tests the validity of the evidence provided by the time period analysis respondent to ask to comment, "50% on sexual history evidence as responsible for this change." Also, "our respondent's overwhelmingly agree by 82% that due primarily to the prohibitions on sexual history evidence, the victim's experience with criminal justice processing is less traumatic than it was prior to the law reform."

"To summarize briefly, arrest and convictions for criminal sexual conduct in the first degree have increased substantially as a function of the reform law. Secondly, the law reduced the discretion exercised by members of the criminal justice system, eliminating many opportunities for subjective decision-making, especially prone to bias in sexual assault cases. The comprehensive degree structure and clarity of the language, particularly regarding sexual history evidence contributed most to this reduction of personal discretion which respondents thought was especially important for Judges." Victims of sexual assault in Connecticut deserve the same clarity of language, so they know where they stand. Connecticut's policy must be clear. We highly recommend these amendments.

SENATOR OWENS: Thank you, Pat. Any questions? William Fenniman.

WILLIAM FENNIMAN: Ladies and gentlemen of the committee. I'm speaking in favor of Bill 5040 and

MR. OLDS: (continued)

and yet in the analysis last year by the Office of Fiscal Analysis, which was presented to you, Senator Owens, their estimate was close I believe to six million. And that called for only six or seven additional justices and I understand that Judge Sponzo today was calling for 15 new judges. So there's some discrepancy in the way that the figures are being estimated.

On one other point, I would like to say I agree with Judge Sponzo, who was the first speaker today, when he said that the court facilities here in Hartford at G814 are, to use his language, disgraceful. I agree with him. They're absolutely disgraceful, and it's a shameful situation for the state and for the City of Hartford. I would hope that if you can do anything, that that situation ought to be alleviated, and with that I'll thank you.

SEN. OWENS: Thank you. Any questions? We'll go to the second page of the sign-up -- from the public sector -- and we'll start with Virginia Knight. Anthony Marino. I'm sorry. I didn't know you were still here, Miss Knight. Thank you.

VIRGINIA KNIGHT: Thank you. Again I am Miss Knight.

SEN. OWENS: Followed by Mr. Mariro and Sebastian Mariro -- Marino.

MISS KNIGHT: I'm Miss Knight and I've been a counselor with the Bridgeport YWCA Rape Crises Service for the past year and a-half. Now during that time I found that if 30% of the women who are brave enough to report to us their rape situation are brave enough again to go to the police, we consider ourselves very lucky.

Now I have two small cases to report. One is a case of a 16-year-old girl who was raped, and she was terror stricken about going to the police, because of her parents and boyfriend. So we tried to persuade her to go to the police, she wouldn't go to the police, so on and so forth. But four months later, she was raped again by the same man who was out on the street. This time she went to the police and the court date is

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MISS KNIGHT: (continued)

pending, but by the same token, this girl's life has been broken apart. She's under counseling, so on and so forth. That's one case.

The other case is a 31-year-old woman who had chosen to become a single parent and live her life that way. She was raped -- went out with a co-worker, who raped her, and because of her position at work and her child, she was afraid to report this also because she was not in a supervisory position. So she was forced to lose her job -- or give up her job, I should say.

Now there are two cases of women whose lives have been broken apart, whereas the rapists are out there still ready to ply their violent trade. That's all I have to say. And if this continues -- if Amendment 5056, or rather Bill 5056 and especially Amendments 4 and 5 are not passed, then we're going to be finding the same things happening, 60% of the rapists are still going to be out on the street.

SEN. OWENS: Thank you very much.

MISS KNIGHT: You're welcome.

SEN. OWENS: Mr. Marino, Anthony S., Anthony P., and Sebastian A. Let's take Anthony S. Well, fine. Nice to hear from one of you anyway.

ANTHONY P. MARINO: Senator Owens, Representative Tulisano, Members of the Judiciary Committee, we're here to speak in favor of Senate Bill 21, as Judge Sponzo originally remarked today --

SEN. OWENS: May I have your address, please?

MR. MARINO: Yes, Middletown. 72 Asher Drive, Middletown, Connecticut. As Judge Sponzo indicated in his remarks earlier, it was hoped that -- we hoped that Senate Bill 21 would cover all of the courts in the state. I believe as it is presently written it is effecting only District 14, geographical area 14. To that end, Representative Gionfriddo today filed a statement with the Committee, which I believe you have, which suggests

MR. LANGENBACH: (continued)

As I say, cases come up immediately and they are looking for work. Thank you.

SEN. OWENS: Thank you Mr. Langenbach. Edith Daley to be followed by Robert Butler. Gilbert Salk to be followed by Rena Brignole.

GILBERT SALK: Thank you. I am Gilbert Salk, Coordinator of the Statewide Victim Witness Project. I would like to speak in regards to two bills that are before you today. And I will be brief on both of these since they have already been well covered by other people. First, 5056 having to do with past sexual history. I really can't exceed the testimony of Mr. Washton who made it as clear as possible why there is need for a bill like that. I think he also underscored the absolute need for the amendments that have been suggested to you on document that was passed out to you. The need for an in-camera hearing. The need to severely limit circumstances under which extraneous prejudicial and flammatory material can be brought before a jury. I think it deserves the utmost consideration.

The other bill that I would like to discuss is 5038. This has to do with access to juvenile and youthful offender records by victims. I think that the intent of this is very supportable. It -- obviously, if the victim wishes to file suit against an offender for damages, they should be able to do that. Under current statute it is impossible for the victim to find out who the offender is which makes it very difficult to file suit. However, in the wording of the bill, some key material is deleted from the existing statute. That material is the clause which allows a victim to find out the disposition of the case without finding out the identity of the offender. In many cases that involve juveniles, there is no wish on the part of the victim to learn the identity, but they do want to know what happened in the case. The purpose that is intended by 5038 can be accomplished easily by including both sections and putting an except clause in which will allow both things to stand together. There is no need to accomplish the purposes of 5038 by deleting the sections that are underlined in what I passed out to you. Yes.

ARLENE VIOLANTE: Here.

SEN. OWENS: Okay.

MS. VIOLANTE: I will make it very brief. I want to get home too. I am Arlene Violante Executive Director of Women's Crisis Service in Norwalk, Connecticut. I am here first as a representative of Connecticut Task Force on Abuse in Women of which I am a member. I am going to address House Bill 50-56. It is our position that all violence against women is wrong and should be punished under the law. Further we feel that it is our mandate to protect a victim and assist her in systems such as medical, police and court. Therefore, we feel to bring forth past sexual behavior of victim is a gross violation of her rights. It is truly, in the puritan sense, blaming the victim.

Underlying all of this for me is that I sense an ambivalence on the part of some law makers when it comes to taking a strong stand against violence towards women. The subtle message is often that a woman who gets raped or beaten is somehow bad or asking for it or somehow they have caused their own victimization. The results is that our laws reflects such attitudes and therefore a section of our population is unfairly dealt with in our courts. It is my hope that we will -- you will give careful consideration to the issues I and my colleagues have raised. Thank you.

SEN. OWENS: Thank you for your comments, Arlene. Thank you for waiting so long. Richard Goodman. Mr. and Mrs. Dalon Gilbert. Clarence Cook. E. Clayton Gengras, Jr. Mary Guiney. Anne Streeter left a note here with a written communication to the committee -- a written statement.

REP. TULISANO: Mayor Goodman who has been mentioned is also in favor of (inaudible).

SEN. OWENS: I do have a communication from Anne Streeter.  
R. L. Hass.

REP. TULISANO: Is your product on the market in Connecticut along with the others or is it a new thing --

MR. HASS: We started test marketing it in November and now we have gone national. Connecticut as well as other states.

REP. TULISANO: I see. Although these other things are on the market, yours is not.

MR. HASS: We have restricted our sales to police use only until November.

REP. TULISANO: In terms of -- without divulging any trade secrets -- its chemical make-up. Is it substantially different from the others?

MR. HASS: No. We think it is a little cleaner. They all contain about 1% of tear gas. Suspended in an aerosol.

SEN. OWENS: Thank you. Any questions? Thank you for your illustration. Alderwoman Patricia Dillon of New Haven. Is she still here?

PATRICIA DILLON: I am in my second term on the New Haven's Board of Alderman, but I am also a member of the Governor's Victim Witness Task Force which prepared a series of bills for your consideration over the past two years. I am especially excited to be able to testify on Bill 5056 concerning the admissibility of prior sexual conduct, partly because I am in my seventh month pregnancy and because with one notable exception in the Christian tradition, pregnancy is usually considered final evidence of prior sexual activity, which makes me especially aware of my vulnerability should I be raped.

I had actually intended to recommend a series of amendments to this bill. I think it is an important necessary step for consideration of reconciling the laws of evidence in Connecticut with our 1975 actions which theoretically recognized rape as an assault. However, since then I have listened to the testimony provided by Miss Omilian and support fully her recommendations, especially in the area of removing

MS. DILLON: (continued)

the clause constitutionally of -- I believe it is -- in line 20 which I think is vague enough to undermine what the propoerted intent of the bill. In my own experience as a service provided to victims of violence, and also as a local elected official which also makes you a social worker in many respects, I have seen many, many cases of women who were victimized who, for one reason or another were unable to go through a court procedure because the specifics of their cases meant that the trauma of the actual proceedings would be dangerous to their health. I am speaking specifically to situations where women were raped by their ex-husbands, when their husbands were theoretically exercising their visiting privileges with their children and on the advice of counsel and process through the court appeared that it would be not -- cost effective in terms of the victims emotional stability to have to go through yet another court proceeding, given that she had previously consented to sexual relations when she was married to the individual.

Some of the cases that I have seen where women were preceived to have forfeited the right to protection under the law from sexual assault were young women who were living together with their boyfriends without benefit of legal marriage. They weren't necessarily -- they were not women who had been raped by the individuals they were living with, but because they were living with someone without being married, it was considered evidence of some sort of sexual misbehavior. College students, I believe, are the most vulnerable in this area, as everyone agrees the testimony from our friend fron New London indicated a decent man is a man who does not rape women, a decent woman is a woman who doesn't go into a bar, which makes college students, especially, vulnerable.

One example which is a little -- well he was from New London -- one example which is especially interesting to me is a woman who was a rape victim who later became pregnant and not as a result of this of the attach however, and -- right, yes, she was a rape victim. It took a year and one-half for the case to get through the court. She became pregnant and decided that although she was not

MS. DILLON: (continued)

married to the individual, that she would carry the pregnancy to term. But her pregnancy out of wedlock was held against her in the courtroom proceedings and the case was thrown out. She was seven months pregnant at the time that she was asked to testify. Whether or not she was married to the father of the child. For that reason, and there are many others, equally horrible to potential victims. Although as I have stated that I strongly support the concept of this bill, there are a number of clauses in here which anyone who went to law school could destroy any poor victim and this is one of the reasons for the shocking statistics in Connecticut of -- first of all, lack of reporting, lack of getting to trial and also in something which we have not discussed, a judiciary which very often hands out incredibly permissive sentences once a conviction does come about.

I am tired of watching our legal system put victims on trial and appreciate your consideration at this late hour and hope that you will strongly consider all the amendments which have been recommended by my fellow testifiers today. Thank you very much.

SEN. OWENS: Good luck on the baby, too.

MS. DILLON: Thank you.

SEN. OWENS: That completes, I believe, all of the people who were signed up for the public sector -- I am sorry.

REP. TULISANO: No. We will go back. I am just finishing this public and we will go back and -- Lieutenant come on up.

LT. WILLIAM KIRKBY: An alleged friend signed me up. Good evening. My name is, for the record, Lieutenant William Kirkby. I represent the Division of State Police, the Department of Public Safety and I am here to speak on Proposed Bill 19, an Act Regulating the Purchase, Sale and Use of Tear Gas Weapons. The State Police at this time takes no position regarding the total proposal. We do want to discuss the physical

LT. KIRKBY: (continued)

impact it it is proposed on our organization. We feel that this bill if passed as written, would impact on the Division of State Police in the following areas: We would be required to design an application form and supply these forms to the issuing authority. These are the issuing authorities are all the towns within the state of Connecticut. We would be required to maintain a record of all applications and I would assume that by maintaining a record we would also be required to access that record. There is also an appeal process at the end of the bill in which any person denied a permit may appeal to the Board of Firearms Permit Examiners, our personnel sit on the Board that would certainly increase their work loads.

All of the foregoing represent a further strain on State Police resources. To accomplish what the bill requires of us, it would be necessary certainly to increase the staff. At present the bill only provides that a fee of \$10 go to the issuing authority which in most instances would be the local police departments. It would certainly -- would go to the State Police Departments and the State Police towns. We suggest that if a fee of \$20 be instituted, \$10 directed to the issuing authority and \$10 directed to the Division of State Police -- excuse me --

REP. TULISANO: The stuff only costs \$5.95.

LT. KIRKBY: Well, you have to have clerks to maintain the records as to --

SEN. OWENS: Bill, thank you very much. It is good to see you again. My apologies for keeping you waiting so long. Try someone else on the sign up. Next time. Flora Parisky.

FLORA PARISKY: Yes. I am here on both the bills. We should be. No. I am Flora Parisky a member and past chair of the State of Connecticut's Permanent Commission on the Status of Women. I am here today to testify in regards to Raised Committee Bills 5056 and 5051. First 5056. Since 1975 Connecticut has made significant progress in the revision of its sexual assault statutes. The PCSW

MS. PARISKY: (continued)

has worked step by step since its inception and over the seven years since this reform was begun and I would add closely and cooperatively with members of this committee, both past and present, to achieve these improvements in the protection of Connecticut women against these crimes. In terms of their violence, which are classified by the FBI second only to murder. Raised Committee Bill 5056 addresses the lingering deficiency in the statutes by providing an evidence statute which reflects our state's definition of sexual assault as a crime of violence and would prevent the use of a victim's personal sex life to be used against them to obscure the violent nature of the crime in the eyes of the jury.

The PCSW believes an evidence statute is an important and necessary step since at present, in spite of the progress we have made, only an estimated 10% of these crimes are reported. Without the reporting, the rapists are not brought to justice. Studies show that currently rapists have raped from 5 to 14 times before they are caught with an increasing level of violence each time. The reluctance of victims to report the crime, of course, feeds into this pattern that delays the hauling of the violent acts. As of 1979, Connecticut was one of only 9 states that had not passed statutes to limit the admissibility of evidence of a victims' prior sexual conduct. I would add that we also support the amendments that were presented in more detail today by previous speakers both the attorneys and non-attorneys on the commission concur with the suggested amendments and we would appreciate their inclusion in this important step forward.

In addition, I did want to speak on 5051 which extends the statute of limitations for product liability claims. We are concerned about the lingering effects of DES cases and we would want people to be protected, both men and women, as was pointed out today, from the effects of that medication. And, thank you very much for --

SEN. OWENS: Thank you very much. James O'Connor please.



Yefox

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NATIONAL ORGANIZATION FOR WOMEN  
203-668-5574  
CONNECTICUT N.O.W.

February 22, 1982

Rep R. Tulisano )  
Sr. H. Owens ) Co-Chairpersons  
JUDICIARY COMMITTEE  
State Capitol

Gentlemen:

HB 5056 AAC ADMISSIBILITY OF EVIDENCE  
OF PRIOR SEXUAL CONDUCT

We are pleased that the Judiciary Committee has raised a Rape Shield bill for consideration during the present session. However, we have to ask for amendments to the language of the present bill which we do not support in its present form. The amendments we are requesting are set forth in detail on page two of the attached Fact Sheet. These amendments have been thoroughly researched by lawyers, and others representing a coalition of Ct. Women's groups. The National Organization For Women wishes to point out that a Rape Shield bill has been introduced into the Connecticut Legislature seven times in seven years. Forty-one states have passed statutes which limit the admissibility of evidence of the victim's prior sexual conduct in prosecution of sexual assault cases. We feel it is time that Connecticut enacted a law that truly protects the victim from character assassination in the courts, thus encouraging more women to report the violent crime of rape, and enabling the police to prosecute rapists.

Thank you for your consideration of this important legislation. Please make this letter part of the public record.

Very truly Yours,

  
Pauline D. Harnden  
Legislative Liaison

FULL EQUALITY FOR WOMEN

irrelevant and prejudicial evidence at trial. They also attempt to counter once prevalent societal myth that an "unchaste" woman (one who has previously consented to sexual intercourse with one person) is more likely to have consented to sexual activity with the accused.

To adequately accomplish this purpose, we recommend the following amendments to HB 5056:

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- 1) (NEW) FOR THE PURPOSES OF THIS SECTION, "SEXUAL CONDUCT" MEANS ANY ACTUAL OR REPUTED CONDUCT OR BEHAVIOR RELATING TO SEXUAL ACTIVITIES OF THE VICTIM, INCLUDING BUT NOT LIMITED TO PRIOR EXPERIENCE OF SEXUAL INTERCOURSE OR SEXUAL CONTACT, USE OF CONTRACEPTIVES, PREGNANCY AND ANY RELATED MEDICAL TREATMENT, LIVING ARRANGEMENTS AND LIFESTYLE.

It is important that the statute clearly define "sexual conduct" evidence if it is to reflect a clear policy on what can be considered relevant evidence.

A victim of sexual assault may be fearful of reporting or prosecuting the crime not only because her prior experiences of sexual intercourse or sexual contact might be admissible evidence in court but also because she may be questioned on her prior use of contraceptives or previous pregnancies.

- 2) Line 18, 19 after "In any prosecution for sexual assault under sections 53a-70 to 53a-73" add: AND RISK OF INJURY TO A MINOR CHILD UNDER SECTION 53-21.

In Connecticut, sexual assault and attempted sexual assault is prosecuted under Sections 53a-70 to 53a-73a. However, many cases involving child sexual assault victims are prosecuted under Section 53-21 which governs risk of injury to a minor or attempted risk of injury to a minor.

- 3) Line 20, after "no evidence of" add: SPECIFIC INSTANCES OF SEXUAL CONDUCT, OPINION OR REPUTATION OF

In Connecticut, evidence at trial can be admitted in three ways: specific instances of conduct, opinion or reputation. The statute should specifically exclude evidence of past sexual conduct in all three categories.

- 4) Line 22 Delete: [(1) constitutionally required to be admitted, or]

The general rule of this proposed statute is that evidence of a victim's prior sexual conduct is not admissible at trial because it is irrelevant except in three narrowly drawn circumstances. [See Sections (a)(2)(A); (a)(2)(B); and (a)(3)] However, the proposal also adds a third exception that the prior sexual conduct, which is "constitutionally required," be admitted. This provision creates an exception to the general rule that is vague, overly broad and unclear as to its intent.

There are certainly constitutional issues to be considered in enacting rape shield laws. The accused has a constitutional right to confront and cross examine witnesses under 6th Amendment guarantees. However, courts across the country have upheld rape shield laws as constitutionally valid stating that the accused constitutional right does not extend to asking victim/witnesses irrelevant questions.

Connecticut can enact a law that is constitutionally valid by clearly defining what is a relevant question to be asked of a victim regarding her prior sexual conduct. Moreover, Connecticut can give sexual assault victims reason to report and prosecute the crime if the law clearly tells them when and how their past sexual life will be admitted at trial.

Neither of these purposes are accomplished by creating general exceptions in the law which are open to interpretation by any and all.

- 5) Line 34, after "The court may, after" add: HOLDING AN IN CAMERA HEARING  
Line 38, add: THE IN-CAMERA HEARING SHALL BE RECORDED AND IF THE COURT FINDS ANY OF THE EVIDENCE OFFERED TO BE ADMISSIBLE UNDER THIS SECTION, IT SHALL MAKE WRITTEN ORDER SETTING FORTH THE REASONS FOR ITS RULING AND LIMITING THE FORM OF THE EVIDENCE AND THE PURPOSE FOR WHICH IT MAY BE INTRODUCED. OBJECTIONS TO ANY DECISION OF THE COURT UNDER THIS SECTION MAY BE MADE BY EITHER THE PROSECUTION OR THE DEFENDANT IN THE MANNER PROVIDED BY LAW. THE RECORD OF THE IN-CAMERA HEARING SHALL BE SEALED FOR DELIVERY TO THE PARTIES AND TO THE APPELLATE COURT IN THE EVENT OF AN APPEAL OR OTHER POST-TRIAL PROCEEDINGS.

This new provision would insure that any hearing on the admissibility of a victim's prior sexual history preserve the victim's privacy, particularly if after the hearing, the evidence is found to be inadmissible at trial.

PREPARED BY--CONN SACS (Connecticut Sexual Assault Crisis Services)  
in cooperation with:  
Connecticut Women's Educational and Legal Fund (CWELEF)  
CONN VO (Connecticut Victim Organizations)  
Connecticut International Women's Decade Committee

FACT SHEET  
ON HB 5056  
ADMISSIBILITY OF EVIDENCE  
OF PRIOR SEXUAL CONDUCT

THE FACTS

- \*Studies have found that the primary reaction of victims is fear for their lives. Sexual assault is a violent, life-threatening attack, motivated by hostility, control and dominance.
- \*Only 10% of all sexual assaults are reported, and of those only 2% result in conviction.
- \*Rapists cause rape. To see a woman's behavior or appearance as the cause of sexual assault is to confuse sex with rape.
- \*Statistics show rapists usually have raped approximately five times for each time they are caught and they are on an ascending scale of violence with each assault.
- \*In the order of violent crimes, the FBI places rape second only to murder.
- \*In America, a woman is raped every 23 minutes.

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NEED FOR STATE POLICY

Sexual assault is a crime of violence. The Connecticut legislature recognized this fact in 1975 by revising the rape statutes to reflect the violent nature of the crime of sexual assault. Today, in Connecticut, sexual assault is defined in terms of the use of force and threat of physical injury.

However, an evidence statute has never been enacted in Connecticut to reflect this new definition of sexual assault. Under present state law, evidence about the victim's sexuality is still admissible at the judge's discretion as relevant in proving a crime of violence. This has resulted in an inconsistent and unclear policy in this state for the treatment of sexual assault cases. On one hand, sexual assault victims are told rape is a crime of violence; on the other hand, they are told that their personal sex lives may be used against them in court to obscure the violent nature of the crime of sexual assault in the eyes of the jury.

What this does is uphold the myth of the "good" and the "bad" woman. If a defense attorney can show that a victim is not "sexually pure" it is implied that she is therefore "bad" and deserving of rape. No wonder women refuse to come forward and run the risk of being labeled a "bad" woman.

In a state:

- \*where reported sexual assaults have increased 112% between 1970-79 and an additional 17% over that in 1980;
- \*where rape crisis centers indicate that at least ten times as many rapes occur as are reported to authorities;
- \*where many victims do not report because they fear their personal sexual behavior will be used against them;
- \*where many women drop prosecutions for the same reason;

Connecticut cannot afford to continue any longer without a clear statement that in a crime defined in terms of force, where it is the responsibility of the state to prove that force in order to convict, a victim's personal sexual conduct is not relevant.

It is essential that victims be assured that this kind of irrelevant evidence will not be used to "put them on trial" if they are expected to report and prosecute these crimes.

Further, it is essential that victims report and prosecute if these violent (and predominantly repeat) offenders are to be removed from the streets.

NEEDED AMENDMENTS

Legislation to limit the admissibility of a victim's prior sexual conduct in sexual assault cases has been introduced in the Connecticut legislature every year for the past seven years. The legislature's inaction on these proposals has given a clear message to judges, juries and the citizens of Connecticut that this protection for sexual assault victims is considered unimportant.

As of 1979, forty-one states have passed statutes which limit the admissibility of evidence of the victim's prior sexual conduct in prosecution of sexual assault cases. These provisions are known as rape shield statutes because their purpose is to protect victims from harassment and humiliation by prohibiting introduction of

Jud: 2/22  
2:30 P.M.

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 5  
1120-1392

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JUDICIARY

1372  
March 24, 1982

MR. BEALS: (continued)

aware of that appointment. Tom turned out to be a pretty good guy in spite of the fact that the Bar Association didn't think he was going to be so good when they rated him, if I remember correctly.

I think with some safeguards that you're attempting to put into this, under the merit rating system, it should work, and I'd like to ask you to consider to do it on the merit rating, along with the system. Let's not be naive. We know there's going to be some political appointments in here. This is par for the course, but if it can be done intelligently and effectively with the safeguards I'm all for it.

Number 308, driving while intoxicated. I have absolutely no sympathy with people who drive when they're intoxicated. I've seen too much of this. My boys happen to be in business, and in many instances they're required to go out in the evening on service calls, which take them as far as Bridgeport, New Haven, North Haven, you name it. The number of drunken drivers on the road is deplorable, and as much as the state cops attempt to pick them up, they obviously escape, and I think that if they're eventually picked up, there is no excuse for these people

(Gap between belts)

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Criminal possession of a firearm, 351. There's no excuse for it in the first place. Anybody that gets tagged with a firearm when they're in criminal act should be hammered real hard. As hard as the law will allow, as far as I'm concerned. I guess I'm an old Yankee, and I can't help but believe that this is still a pretty good country, and there are things that are right, and there are things that are wrong.

I think that the one that you reported out I guess today, 5056, is up for -- that's previous sexual knowledge. I think that has no place. I realize that some of the people attempt from time to time bring this out to show a background and so forth. If you can't face the act in fact, for where it was at, then forget it, you know.

Good time credit, 5559, I think that the credit should begin from the time the guy served until he gets out, basically