

STATEMENT BY:

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As a police officer, specializing in sexual assault cases, I have had the opportunity to work with various sections of Chapter 31, of the Crimes Codes of the Commonwealth of Pennsylvania. It is my professional opinion that this section of offenses has been in serious need of updating for a long time. I have reviewed House Bill 160 which covers the recodification of the Sex Offense Statues for Pennsylvania and recommend that the changes in this bill be adopted by the legislation.

With the recent Pa. Superior Court denouncing the decision in the Commonwealth vs Berkowitz case, the states sex offense laws have been seriously questioned by everyone who utilizes them. I am the arresting/prosecuting officer of Robert Berkowitz and I must admit that I do not feel comfortable enforcing laws that I no longer have faith in. These are the same laws that I, as a police officer, have taken an oath to uphold. As the statues presently read, they can be confusing and perplexing to those who need to work within the system. I have found this to be true among the law enforcement community.

The clarification of the statues as they read in House Bill 160, simplifies the enforcement of these statues. Since I have worked with victims of sex offenses, I have been exposed to the painful ordeals that they must endure from such a crime and that

they, the victims, feel re-victimized by the insensitivity of the same system that was set up to protect them. Investigation of a sex offense is not easy. The victims are usually emotionally traumatized and since most assault victims are acquainted in some manner with their assailants, the fluctuation between these emotions can be severely extreme. This makes it imperative that all criteria in such an investigation be met to the fullest and enforcement is done by the letter of the law. Having these statues clearly defined and without questions as to interpretation, makes enforcement more successful for police as well as prosecutors.

The statistics for sex offences are alarming. Rape is the most under reported violent crime in the United States. One out of every four women will be a victim of a sex offense in her life time and only one out of every ten offense will ever be reported to the authorities. Very few of the cases that are reported are ever prosecuted in a court of law.

I feel that the Commonwealth of Pennsylvania has a responsibility to society, the victims of such crimes, to its law enforcement personnel, and to the prosecutors of these offenses to clarify and simplify the statues of Chapter 31. Hopefully by doing so, more victims will come forward and file a formal complaint and victims will be treated with the same respect and dignity as victims of other violent crimes.

You will find attached to this statement my individual comments to each topic in House Bill 160 and again I urge that these amendments be adopted into the Crimes Code of Pennsylvania.

Sgt. Cindy Bogart
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Judiciary Committee Hearing
September 1, 1993

House Bill #160/ Recodification of Sex Offences

GENDER NEUTRAL:

I am in agreement with the proposed changes as they refer to gender in the Crimes Code re: to Chapter 31, Sex Offences. The term "Actor" is currently used else where in the Crimes Code and should be utilized anywhere "he" is presently used to refer to the perpetrator of an alleged crime under this section since victims do consist of both male and females.

DEFINITIONS:

The phrase "sexual act" being used to cover a wide range of sexual misconduct in this chapter simplifies all the previous terms and definitions that are currently in use. The criteria to meet the current statues is rigid and clarification for all persons involved is necessary for those who do not work within the Criminal Justice System (complaint, def., family, jury, ect.) since the present terminology can be confusing.

* Any clarification under this section will assist in law enforcements ability to make an arrest and subsequently prosecution of a case.

SEX OFFENCE CHARGES:

Re-classifications of C.C sections 3121/3122/3123/3126 to be "aggravated sexual assault". Changing these offences to 2 classifications of first or second degree felonies, again clarifies and eliminates the often "GREY" area what exists on the amount of force issue that is usually in question. The new crimes of indecent contact and sexual exploitation are clear and exact. I strongly feel that moving section 4302 (incest) to be included in Chapter 31 affords the victim additional benefits (rape shields) which in all likelihood, will provide for more victims coming forward and reporting the offences without the usual fear of social stigmatism attached.

RESISTANCE NOT REQUIRED: CC 3107

The clarification of the terms "resistance" and "consent" can not be stressed enough. As the arresting officer for Comm. vs Berkowitz case, the recent Superior Court decision overturning the conviction of a rape, pointing that to simply say "NO" was not enough. This is a travesty of justice to women and children every where. It has been my experience that when a victim says no, it is always backed by fear and confusion. Resistance is always a factor even if the resistance is as slight as attempting to push the perpetrator away. How much resistance one shows in the face of fear is simply not something that can be measured since all people react differently during a confrontation and any attempt to do so does injustice to the victim. This also may clarify the "Implied Consent" defense that frequently is brought into play during an Date Rape incident.

CHILD VICTIMS/WITNESSES:

I agree with the reversal of the considerations of incompetency to competency. Age should not be a barrier to a victim's competency to testify unless proven.

SPOUSAL SEXUAL ASSAULT:

A spouse who sexually victimizes his partner should be subject to the possibility of all charges under Chapter 31. No on should be afforded protection because of a marital contract.

ELIMINATION OF CERTAIN DEFENSES TO PROSECUTION: CC3102

I agree with the recommended provisions. Ignorance to a persons age should not be a defense. Responsibility should be on the actor for his behavior.

EXPERT WITNESS TESTIMONY:

It is most imperative that the emotional state of anyone who is a victim under the offences of Chapter 31, have their emotional state explained and understood by all parties involved. This education on the victims reaction to such a crime would clarify to a jury or any other persons present, as to the victims failing to make a prompt complaint. With the reluctance of victims to report their crimes, education should be the first weapon used to combat the stereotyping of the victim.

MANNER OF DRESS:

The manner of a victims dress should never be admissible or imply that it provoked an assault. This implies that individuals are unable to control their actions and are subject to the wills of there hormonal rages and have no intellectual control.

LIE DETECTOR TESTS:

Law enforcement officers or prosecutors should not require a victim of a sexual assault to submit to a lie detector test as a condition for proceeding or filing charges. It not only immediately implies that the victim is not telling the truth but it sets up the negative scenario of the former belief that no one gets raped unless the want to. If a victim feels she is not believed at the point of an initial investigation, a victim will drop all charges. I have found that a victim will not subject themselves to the emotional trauma of an investigation, including interviews, the collection of evidence (rape kit), medical treatments, embarrassment and finally testifying in a courtroom to file a false report. Filing a false report could also lead to charges on the victim.

STATUE OF LIMITATIONS:

Five year limit on the statue is consistent.