

HB 606  
Conf. Committee

report to House Bill 584. Those in favor vote Aye. Those opposed vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 56, the Nays are none, none voting Present. The Senate does adopt the first Conference Committee report on House Bill 584 and the bill having received the affirmative votes of three-fifths of the members elected is effective immediately upon its becoming a law. House Bill 606, Senator Netsch. Senator Netsch is recognized on a motion concerning the first Conference Committee report on House Bill 606. Senator Netsch.

SENATOR NETSCH:

Thank you, Mr. President. The Conference Committee report addresses itself to several of the concerns that were raised during the Floor debate and specifically in the memorandum that Senator Bloom had circulated. For one thing, it corrected a gap that had come about because of...some language we had earlier included in the bill as a result of compromises made during the committee procedures and it deals with the age problem. It corrected it...as set forth in a fact sheet which I have now circulated to everyone, and I think if you scoot through that, we had one area where we had no crime covered and that is now in the...Class A Misdemeanor Section, that is fully covered. It also restructured the mistake in age defense which we had put in the bill initially as a result of the Illinois State Bar Association request, and it now provides simply that it shall be a defense to any offense under Sections 1213 through 1216 which are the basic sections that the accused reasonably believed the person to be sixteen years of age or over and that pretty much addressed that particular concern. It made absolutely clear, and I think this was a very good change, that the bill will apply only to offenses created after the effective date of the Act, so that we have no problem about having to elect whether you're to be

sentenced under the new Act or the old Act which was one of the concerns that they raised. It is effective only with respect to offenses created after the effective date of the Act, and that eliminates a lot of problems; and probably the most important thing of all is that the Act itself will not become effective until July 1, 1984. Now that does two things; one, it gives everyone an opportunity to look at the provision again very carefully, first of all because any major change in the law, and it is a major change in the law, should be available to the prosecutors, the defense attorneys, the public defenders and others before it becomes effective so that they have a chance to become familiar with it; secondly, it does make it possible, and...I think Senator Sangmeister may address himself in more detail to this, for a number of people to look at it again and make sure that it does exactly what all we want it to do. I think the basic structure of the Act was described the last time we looked at it. It is, as I indicated then, a major piece of legislation which addresses the very real concern that the law in its...hodgepodge form as it was currently written was simply not reaching all of the sex offenses which ought to be reached. This does it by two basic crimes, criminal sexual assault and criminal sexual abuse, and each one has a set of aggravating circumstances. The crimes are clearly defined in the Act. It does provide a continuum, a spectrum of offenses that we believe will provide coherence for the first time in our sex offense crimes. I would add, because I think this is also very important, that the bill as it came over from the House, I think clearly did need a great deal of work. With the full cooperation of Senator Sangmeister as chairman of the Judiciary Committee, and the minority spokesman, Senator Bloom, we had, I think it was about nine hours of subcommittee hearings and intensive participation, not only by the members of the subcommittee but also on the part of several

members of the Illinois State Bar Association; particularly, Mr. Davison, who started out, I think, being officially opposed and has ended up supporting the bill. I think all of that input has helped enormously to clear up ambiguities and to make a...a much stronger piece of legislation out of what came to us from the House. We believe it is in very, very good form; if it is not, if there is any problem that anyone has or second thought, subsequently, we will have a full year for all of those to come to attention, and a full year for any changes to be made and, of course, we have Senator Rock's full cooperation in making any such changes if they should be needed. We are not aware of them at the moment but it will give us that time to observe it. I will be happy to answer questions. I would solicit your support.

PRESIDING OFFICER: (SENATOR BRUCE)

Is there discussion? Senator Sangmeister.

SENATOR SANGMEISTER:

Thank you, Mr. President and members of the Senate. We didn't have too much chance to discuss this bill the last time because we all agreed we were going to put it into a Conference Committee which has been done, and the latest problems that developed at that time have been cleaned up on this bill. What you're voting on today, of course, is...is without question the major criminal law change of...of this Session. Senator Netsch has indicated to you we have taken eight separate...different sex offenses and classified them into four, really two different categories each with aggravating circumstances. My own personal opinion is, I think this will work. As she indicated, when it came over from the House it...without being derogatory of the House's work on this bill, there was an awful lot that had to be done, we put more time on this bill than anything else we did in the criminal law Session this year. I think it is in as good shape as we can expect at this time. When we discussed

this bill the last time, I was still concerned that there were cracks that we may fall into or land mines laying around; and in order to...alleviate that, our original plan was that we would take this Conference Committee report and let it sit until this fall which would give us all this summer to work on it. In fact, to be very honest about it, I made a commitment to Senator Bloom that that's exactly what we were going to do and I have gone back on that commitment. I might say that there's a good reason...one good...there's never a good reason for going back on a commitment; however, holding it now until this fall would have only held it for that period of time which would have given us maybe another...another four or five months. By putting an effective date in this bill of...July 1st, 1984, we will have an entire year within which to further look at this, and what I intend on doing is sending the final copy of this bill to every state's attorney in the State of Illinois and every chief circuit judge and have them review it and they will have to look at it now without being able to say, well, they may or may not adopt this, and then we will have a year within which to get all that information back; and I can assure you that either this fall or next spring, if there are any problems with the bill why, obviously, they are going to be corrected far before this bill becomes effective. Maybe that's a little different way than originally treating a piece of legislation, but I think that it's fair, and to Senator Bloom, my personal apologies for going back on my word.

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Senator Marovitz.

SENATOR MAROVITZ:

Thank you. Senator, I just want to clarify an area of the bill that...make sure that in its Conference Committee form is the same way that it left regarding the marital rape

section. We have tightened up the marital rape provisions so that there would be an action for marital rape only under certain very restricted conditions, and perhaps you, with the report in front of you, could enumerate those very limited and restrictive conditions under which marital rape actions would be allowed.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Netsch.

SENATOR NETSCH:

Thank...thank you, that is correct, Senator Marovitz. If you will look...if you have still the copy of the bill on page 6 of the enrolled bill, the...it now provides in Section 1218, Subsection C, "No person may be charged by his or her spouse under Sections 1215 and 1216 of this code," that is a flat prohibition. That is a reference to the so-called fondling and touching section. So there is no spousal action permitted under those sections at all. It goes on to say, "No person may be charged by his or her spouse under Sections 1213 and 1214 of this code, unless when the act was committed," and then it lists five restricted circumstances: petition for dissolution of marriage; the parties were living in separate residences; the accused displayed, threatened to use or used a dangerous weapon; the accused caused great bodily harm to the victim; there had been a pattern of intentional violence perpetrated by the accused which had caused bodily harm to the victim. Those are the only five circumstances that...that will permit a prosecution for marital rape.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Marovitz.

SENATOR MAROVITZ:

Well, just...I think that's about as tight as we could have gotten those provisions of marital rape, and I...I think that the chairman of the committee and the spokesman of the

committee and the sponsor of the bill and all those groups including the State's Attorney from Cook County deserve a tremendous amount of credit for the time, cooperation and conciliation they spent on this bill. This is probably the toughest subject that has come before this Body in the criminal law area since I've been here, and to come to an agreement on this bill took hours and hours of work and compromise and conciliation. Perhaps everybody hasn't got what they wanted, but I think this is a very fine work product; and certainly by next July, 1984, we will know of any improprieties that are in the bill and we'll be able to correct them, and I would solicit an Aye vote.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Philip.

SENATOR PHILIP:

Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR BRUCE)

Indicates she will yield. Senator Philip.

SENATOR PHILIP:

In a hypothetical question, just say, hypothetically, a man is in a very heated divorce and the woman decides to charge you with rape. She filed the complaint. You're sitting there and the lawyer comes to you and says,...we're going to make a deal for you, we'll drop the rape charge but you'll give us the house, the T.V., the summer home, the stock, you tell me exactly what happens under this...this bill.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Netsch.

SENATOR NETSCH:

If...if I heard your hypothetical correctly, Senator Philip, it is not possible for any person to charge another with a crime directly. That has to go, obviously, any complaint has to go to the prosecuting officer, to the state's

attorney and the state's attorney has got to be satisfied that all of the conditions of the Statute as it is written, which are quite restrictive, exist and that it is a...an appropriate one for prosecution; and that, obviously, is not an easy burden given the restrictions here. I might say that of the...I believe it is twenty-seven states...am I right...that have no bar to spousal rape at the current time, that there have been, I think, in the last fifteen years only about sixty prosecutions that have every been brought, many...some of which have resulted in a conviction, and some of which were terminated. It is not going to be a major...it is not a major part of this bill, as a matter of fact, Senator Philip. It is not excluded, but it is not the main thrust of the bill, and there are not going to be many prosecutions.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Philip.

SENATOR PHILIP:

Well, I'm not certainly an expert on divorce, I've had a few in my short checkered career; and I'm going to tell you one thing, if this doesn't leave a man at a disadvantage, I don't know what does. Now, you've got everything you've worked for all your life and you may not be wrong, she may be wrong, you know, and she files the complaint on rape, they got you. And you're going to have to give in and give her everything you've worked for your whole entire life. Now you know that happens. That goes on in courts all the time with lawyers. They're always ready to make a deal and...and I'll tell you one thing, any man that votes for this ought...ought to take a second think and look. This is a very dangerous thing. It'll have a terrible affect on those divorce proceedings.

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, Mr. President and Ladies and Gentlemen of the Senate, would the sponsor yield?

PRESIDING OFFICER: (SENATOR BRUCE)

Indicates she will yield. Senator...Senator Geo-Karis.

SENATOR GEO-KARIS:

As you know, we had an understanding with Senator...Sangmeister, who was the chairman of the Judiciary II, and Senator Bloom, the minority spokesman, and myself, that this bill would be held in a Conference Committee Report until the fall so we can make some more improvements. Now, I believe you mentioned earlier that...now I think the...the picture has changed from what Senator Sangmeister has said. Now, do you have a commitment from the President of the Senate that if we have amendments, more amendments to come in with to this bill in the fall season or up to the time that you have the date effective of July 1, 1984, is that correct? Do you have a commitment from the President of the Senate, and I believe he's in his seat or was, that he will permit us to bring in any amendments even though we might be in a budget Session?...permit us to bring these amendments and offer them on the bill, because I'll tell you...give me your answer first, then I'll speak.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Netsch.

SENATOR NETSCH:

Yes, the answer is, I have such a commitment, and I would also like to say so that there's no misunderstanding about this, Senator Geo-Karis, while I understand the discussion that Senators Bloom and Sangmeister had, I was not a party to it. I am the sponsor of the bill and it was always my intention that we would address those particular concerns and have a Conference Committee reported on now; but in any event, if in this period either between now and the fall or now and



next spring there are any problems that are brought to light, and I don't think that is very likely given the several hundreds of hours that have been spent in pouring over this bill, we have Senator Rock's commitment that we will be given the opportunity to address them.

PRESIDING OFFICER: (SENATOR BRUCE)

Senator Geo-Karis.

SENATOR GEO-KARIS:

Mr. President and Ladies and Gentlemen of the Senate, there's no doubt there's been a lot of good work done with this bill. I'm not going to oppose it, but I do want to bring up something. I have a copy of a letter here today that was mailed June 29th from the Illinois State's Attorneys' Association...concurring with us that they would deem it best, for example, to defer consideration of the bill until the fall of '83, to allow adequate time to fully explore its ramifications. However, I'm not going to insist on that. I'm going to vote for the bill today based on the representations made my Senator Netsch that we will be able to bring in amendments. One of the things that I have constantly opposed is a minimizing of the crime of rape. Rape is a horrible crime. A traumatic crime. A crime of great force and violence. There's no such thing as a little rape. It's like pregnancies, I've said before, there's no such thing as a little pregnancy; and somehow we're going to have to find an amendment, and I'll be glad to do it if...I have the time, which we will have with the waiting period, to put a section in there to define rape the way it should be in the criminal Statute. The women's movement should be commended for the last five years, because through them they have magnified the very horror of that horrible crime of rape, and I...I...I really commend them for it. People know what you mean now when you say rape. They don't always know what you mean when you say criminal sexual conduct...criminal sexual assault,

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'cause I've tried it on some of my constituents and they thought what's that, but when I said rape they knew immediately. So, based on the promise of the sponsor and the President, who has been sitting in his seat agreeing as I saw him, I will support this bill at this time, and also based on the fact that my state's attorney is going to make some suggestions for amendments, based on the fact that the state's attorney of Rock Island County, who was here the other day and I gave him copies of the bill and everything that went with it, is also going to be letting me know just what changes should be made 'cause he's had ten years experience trying these cases. I've had experience trying these cases and, therefore, I will support the bill and I urge everyone else to support it so that we can get it on the books since it's not going to be effective 'til July 1, 1984 and since we can make amendments until then.

END OF REEL

REEL #4

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I urge support for the first Conference Committee report on House Bill 606, and I wish to publicly thank Senator Sangmeister and apologize to Senator Bloom. The suggestion that the effective date be delayed was mine, and let me give you the reason because it's just exactly as Senator Geokaris pointed out. I will cause once the...the bill is enrolled and engrossed, I'm going to send one to every one of the hundred and two state's attorneys and point out the fact that the effective date is next July, and encourage each and

every one of those elected officials and the bar associations to report back to us by October when we come back here. So, that if, in fact, there is something that someone is concerned about, we can and will address it. To hold it on the Calendar simply did not carry with it, I suggest, that sense of urgency that will be created now. I think the bill is...is worth a try and I urge an Aye vote, and I will make sure that all concerned are properly notified and that we can have their proper response so that we make sure that this most progressive Statute is given its just due.

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Senator Bloom.

SENATOR BLOOM:

Well, I guess you can gather from what transpired, I...I think it's unfortunate no one can argue...no one can argue with the goals of this bill, and I think many of the prior speakers know that and we have spent a lot of time on it. I think you can gather from the tenor of the remarks that unfortunately politics has entered into this somewhat, and it's really unfortunate, 'cause I don't think anyone in...I take that back...I think most of us in this Chamber have not read this bill and our constituents haven't read this bill, they don't know what's in the bill. The people expect us to do what's right and to analyze and to exercise our judgment on their behalf. There are major changes. Today, one of the staffers pointed out the way the word coercion could be read; that arguably, under this kind of language coercion could include sexual harassment and in certain circumstances could be turned into Class X. Those kinds of bombs are there. I'm concerned...I'm concerned that we may pass another machine gun bill but the die is cast. It's unfortunate, as I said, that politics has entered into this, because what were doing today will probably be to pass a bill that's almost right, if one accepts the arguments of the proponents. And I don't

think we do ourselves any well or any good as an institution. I've talked with my prosecutor and told him what was done. I accept the apology but, unfortunately, I don't think that we're going to do ourselves any good by doing this; and most of all, I don't think we're helping the class of people that we're trying to help, because as I said at the beginning of my remarks, no one can argue with the goal of this bill and that's why all of us...all of us spent so much time. I'm not going to vote against this bill because that can be interpreted by certain people who are zealous in their beliefs as somehow being against them, but I'm going to vote Present; and those of you who are concerned...who are concerned that we may be confronted with a machine gun bill, as happened the last Session, I would suggest that the wisest course at this stage would be to vote Present. Thank you, very much.

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Senator D'Arco.

SENATOR D'ARCO:

Mr. President, I rise in support of the bill. It should be known by the Body that because of the delayed effective date, nobody would be tried under this bill until after July 1, 1984. So, anybody who is accused of a crime from this time...to July 1 will be tried under the old law which is very good, because if there are problems with this bill we can correct them in a year. Senator Philip brought up an interesting point. He said a...a wife could use this as an...negotiating tool in a divorce proceeding. In other words, he's saying she could tell her husband, I will drop the indictment against you for rape if you give me more marital property than is presently being offered in this deal. That's possible. I'm not saying that's not possible, because that is possible, but if you look at the other side of the issue, what happens if a husband does, in fact, rape his wife? What recourse does the wife have under the present

law? She has none, because under the present law it's prohibited. So, we have to weigh these situations and do what we think is right, and we've got a year to think about it. So, I rise in support of this bill.

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Senator Collins.

SENATOR COLLINS:

Yes, thank you, Mr. President and members of the Body. I did not intend to rise, Senator Netsch, on this bill, but do I think, for the record, that I...I should. It is an issue that spousal rape especially is an issue that I introduced in this Body about five years ago, and I have continued to introduce that bill and it, in fact, passed this Chamber and was stalled in the House. I think the most significant point about this bill no matter what other problems we may have with it is that the intent is clear, and it does have some safeguards to avoid many of the...the problems that have been raised and there is time left to work out those other problems; but I think if we put this bill into law, then those who are really serious about the fact of trying to get some convictions for the hideous crimes of rape will then seriously begin to work on trying to get an effective law before this bill become into effect. This is the only way that I think we can get that sincere effort and, therefore, I will move to concur.

PRESIDING OFFICER: (SENATOR BRUCE)

Further discussion? Further discussion? Senator Netsch to close.

SENATOR NETSCH:

Thank you. Just one response to Senator Geo-Karis' point, it is true that Mr. Petka has written a letter on his own behalf, he is a state's attorney; but I would also remind you that Mr. Dozier, who is a state's attorney of McLean County and the president-elect of the State's Attorneys'

Association, has written a letter supporting House Bill 606. I had distributed that to you earlier. I think that is very indicative and the State's Attorneys' Association has not taken a position in opposition to this bill. It rejected motions to do so on two occasions. Just briefly in closing, we have talked about this before, it is a major piece of legislation, it is an important piece of legislation. It is in many respects a very tough bill. It closes a number of gaps in the spectrum of sex offenses, but it also is a modern one. It recognizes that there....rape is not just simply one act by a husband against a wife against her will which is the old-fashioned definition. It recognizes that there is a large spectrum of sex offenses which have not been effectively covered in the past and which should be effectively covered. This bill will do it. I urge your Aye vote.

PRESIDING OFFICER: (SENATOR BRUCE)

Question is, shall the Senate adopt the first Conference Committee report on House Bill 606. Those in favor vote Aye. Those opposed vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 50, the Nays are 1, 8 voting Present. The Senate does adopt the first Conference Committee Report to House Bill 606, and the bill having received the required constitutional majority is declared passed. Senator Rock, for what purpose do you arise?

SENATOR ROCK:

Thank you, Mr. President. Ladies and Gentlemen of the Senate, it appears it will be a long, long evening. The appropriations people, I'm told, are still meeting. There is...there are a number of pieces of paper that have to flow between the Houses. I am going to suggest that we take a Recess and afford the members an opportunity to grab a bite to eat. I would move that we stand in Recess for one hour.

PRESIDING OFFICER: (SENATOR BRUCE)