Indiana's Rape Shield Law:
Its Attributes and Limitations

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I first became interested in the Rape Shield Law at a rape forum in the Student Center on April 21, 1981. Before that time, I did not know it existed. I was pleasantly surprised to discover Indiana had such a progressive piece of legislation. Finally, something was being done about the inherent sexism of the rape statutes and the crime itself.

I always thought that a person's sexual history was personal and had little relevance to being raped. I'm not saying that a victim's sexual history should never be used as evidence because I am aware of legitimate instances when it would be necessary for the defendant's case. However, even in these instances a great deal of discretion should be used.

As I researched the paper, I was enraged at some of the closed-minded, sexist attitudes of judges, jurors and the population as a whole. No wonder women were reluctant to report being raped. I would have serious doubts about justice being served through a system that operated under archaic ideas like, unchaste women lie, the victim is a woman so she lies. The rape shield statute is a positive step toward exposing and eliminating these prejudices.

The only problem I found with the statute was little or no public knowledge about it. Obviously, it would be even more effective if more people know of it. With this paper I hoped to broaden the public's knowledge of the rape shield law. Ask my family and friends, I've preached the merits of the statute since I started my paper!
I wish to express my gratitude to Dr. Jan Mickish and Dr. Warren Vanderhill for being my advisors for this paper. Also for their sympathy and understanding as I extended my deadlines. Special and heart felt thanks to Tami Wells for being able to decipher my writing and for editing and typing my Honors Thesis.
The fear of having one's past sexual history mad public and open to scrutiny by judges and juries kept many rape victims from reporting their assaults. In an attempt to combat this problem, rape shield statutes have been enacted by various state legislatures.\(^1\) Indiana's rape shield law\(^2\) is a progressive reform statute designed to spare a rape victim the embarrassment and humiliation of disclosing her past sexual history when she reports her rape. In order to appreciate the significance of the rape shield statute, it is important to understand the factors prompting the creation of this legislation, including the current legislation dealing with rape.

Contrary to some popular beliefs, rape is not a sex crime. It is a crime of violence\(^3\) with sex or the threat of sexual intercourse as the weapon. Rape, in Indiana, is generally defined as sexual intercourse with a member of the opposite sex by means of force or threat of force or when the victim is mentally incapable of giving consent or is unaware that intercourse is occurring.\(^4\) Indiana legislation, as with most state laws, does not apply to sexual intercourse between spouses.\(^5\)

In recent years, the media, legislature and the public have focused more attention on rape. The Federal Bureau of Investigation (FBI) reports that forcible rape occurs once every six minutes.\(^6\) The statistics show that one out of ten women will be raped or sexually assaulted at some point during her life.\(^7\) These figures do not express the entire scope of the crime, rape is one
of the most underreported crimes. Victimization surveys estimated that only one out of five rapes is ever reported to the police, while the FBI estimates that for each rape which comes to official attention, ten do not.8

The underreporting of rape is attributed to many factors. First of all, the rape victim may be afraid of reprisals from her assailant. Secondly, the victim may be willing to protect her assailant if he is someone previously known to her. Thirdly, she may not wish to suffer the scrutiny and speculation of her family, friends and co-workers. Finally, she has already been victimized by her assailant, she has no desire for further harassment and victimization from the police, medical personnel and the courts.9

Forcible rape has been recognized by law enforcement officers as one of the most underreported of all Index crimes, primarily because of the victims' fear of assailants and their embarrassment over the incidents. The FBI estimated that of all the reported offenses in the rape category during 1979, 76% were committed by force. Attempts or assaults to commit forcible rape comprised the remainder.10

According to the 1979 Uniform Crime Reports, there were an estimated 75,989 forcible rapes committed in the United States. Forcible rapes continued to comprise less than 1% of the Crime Index total and accounted for 6% of the volume of violent crimes. Geographically, the Northeastern States recorded 15% of the forcible rape volume; the North Central States, 23%; the Western States, 27%; and the Southern States, the region with the largest population, recorded 34% of the forcible rape volume.11
The number of forcible rapes in 1979 increased 13% over 1978 and 35% over 1975. During 1979, 39% of the forcible rapes occurred in cities with 250,000 or more inhabitants, where an 11% increase in volume was recorded. In suburban areas, forcible rape offenses rose 12% and rural areas registered a 4% increase over 1978. All regions indicated upsurges in the volume of forcible rape offenses with the largest increase in the North Central States with 16%; 14% in the Southern states; 12% in the Northeastern states; and 11% in the Western States.12

The statistics for Indiana are equally alarming. The Source Book of Criminal Justice Statistics, 1980 reported the offenses known to the police in cities with populations over 100,000 for crimes committed in 1978. Evansville had 44 forcible rapes reported; Fort Wayne reported 59; Gary reported 192; and Indianapolis had 341 forcible rapes reported.13

Considering the particular components of rape, it is not surprising that more women do not report the crime. She has been attacked, threatened, her privacy invaded, she's been forced to submit to or commit acts which are against her will and put in fear for her safety and possibly her very life or lives of her family. When she reported the crime her victimization began again. This time her victimization comes in the form of stereotypes. The rape victim is regarded as damaged goods and characterized as dispoiled or ravaged.14 She also has to deal with such archaic ideas as, "she was asking for it," "no female can ever be taken against her will," and "it doesn't matter since she wasn't a virgin."15 When the case gets to trial, testimony regarding the victim's previous personal behavior, specifically with respect to her sex-
ual behavior, was considered admissible evidence, while that of the defendant's sexual history was not. This effectively resulted in putting the victim on trial with respect to her conformance with conventional mores about acceptable female behavior. This was frequently highly effective in discrediting the testimony of the victim in the minds of jurors.¹⁶ Not only must she overcome the prejudices of those she turns to for help, but with the law's focus upon corroboration, consent and character, she was forced to offer to the judge and jury proof more stringent than "beyond a reasonable doubt," in effect, "beyond all doubt."¹⁷

During the trial, the defense attorney would try to persuade the jury that the victim had prior sexual relations with the defendant and others. One reason for disclosing such prior sexual history was to contradict or impeach the testimony of the rape victim. A second objective, was to take advantage of an archaic and indefensible evidentiary rule that existed in some states, the so-called "unchaste witness rule," which held that evidence of the witness' prior unchastity is relevant and admissible to diminish the witness' credibility. The third and most important objective related to consent.¹⁸ Evidence of prior sexual activity with the defendant and others has generally been regarded as admissible because it increases the likelihood that there was consent.¹⁹ Those victims that did invoke the legal process, payed the price in personal exposure and often found that their sacrifice had netted them absolutely nothing. The jury would acquit the man of rape but "convict the woman of loose behavior."²⁰

"Any victims, feeling that the attack was bad enough, did not wish to prolong the agony or to pursue reporting the crime and
prosecuting the offender because of harassment and humiliation they had traditionally experienced in their dealing with police, prosecuting personnel and the defense attorney in the court proceeding. Awareness of these problems and the subsequent ramifications motivated many women's organizations to concentrate their efforts on making legal agencies aware of the need for more sensitive dealings with the victim.

Obviously reforms were badly needed. In 1974, the American Civil Liberties Union (ACLU) Women's Rights Project drafted a proposal arguing that inquiry into prior sexual history chills a complainant's willingness to prosecute and results in unjust acquittals. The proposal begins with rules for determining the admissibility of evidence regarding prior sexual history.

It states that in rape trials where sexual intercourse between the prosecuting witness and defendant is admitted, the prior sexual history of the victim is otherwise excluded except when, such prior history lead the defendant to reasonably believe that consent was present at the time of the alleged rape, or such evidence would rebut evidence of the witness' chastity introduced by the prosecution. The prior sexual history of the prosecuting witness is admissible only to refute specific facts not general credibility of the prosecuting witness.

The final section of the proposal details the procedures for admitting evidence of the victim's prior sexual history. First, the defendant must submit an affidavit listing in relevant detail how the sexual history of the prosecuting witness is relevant to the issues in his case. Such evidence must be admissible under the above sections of this proposal. Secondly, if the court
determines that there is a reasonable probability that the evidence is relevant, then an in camera hearing will be held with all the involved parties and their counsel. Finally, during the in camera hearing the defendant shall present relevant evidence and arguments to the judge. The defense counsel is not required to disclose the actual evidence used to prove the theories, just an adequate representation of the facts they'll use.26

Since 1974, numerous states have adopted rape shield statutes.27 The remaining state legislatures, including the national one, have attempted passing or are in the process of passing similar legislation28 which will limit the defense's authority to introduce the victim's prior sexual behavior. In addition to the ACLU proposal, the model legislation for much of the revised and currently proposed rape shield laws has been the Michigan statute which went into affect in April 1975.29 Michigan's new law incorporates the crime of rape into the more general offense category of criminal sexual conduct.30 The statute drops the corroboration requirement and prohibits cross-examination of the victim's prior sexual history unless such questioning is absolutely relevant. It also is virtually nonexist in that a woman can be charged with raping a man by using a weapon to force him to perform sexual acts with her. The legislation includes homosexual rape and provides for legally separated husbands to be charged with raping their estranged wives.31 When Indiana's rape shield legislation was introduced in 1975, the Michigan statute had been used as the guidelines for its creation.32

On January 13, 1975, during the 99th Session of the General Assembly, Representative Dennis Avery, a Democrat from Evansville,
proposed a bill for an act to amend IC 1971, 35-1, by adding a new chapter concerning evidence in certain criminal cases. This bill concerned the admissibility of a rape victim's past sexual conduct. Before the bill was voted on, Representatives Hayes, Doyle, Fruechtenicht, Ducomb, Thomas, and Needing were added as co-authors. The bill was passed with 92 yeas and only Representative O'Nealy voting against the bill.33

The bill was sent to the Senate where it was sponsored by Senators Duvall and Louch. The bill was referred to the Judiciary Committee where it smoothly went through the three readings necessary for a vote. In the vote the bill was unanimously approved, 47 yeas and 0 nays. The President of the Senate signed the bill and sent it to the Governor.34

On April 11, 1975, Governor Otis Bowen signed the bill into law. The amendment became effective on October 1, 1977. In 1979, the statute was amended to include the past sexual conduct of a witness other than the accused as inadmissible evidence also.35

Indiana's statute36 excludes evidence which includes opinion, reputation and specific evidence of the victim's prior sexual conduct. No reference of this evidence can be made in the presence of the jury. Evidence may be admitted after the judge's determination that it is material to the issue at hand and it's inflammatory or prejudicial nature does not outweigh its probative value, concerning the witness' past sexual conduct with the defendant, or if it shows that the act upon which the prosecution was based was committed by someone else. If the defense wishes to have such evidence admitted, a written motion must be made at least ten (10) days prior to the trial and an in camera hearing
will be held. The same procedure is followed if new information is discovered within ten (10) days of the trial or during the actual trial.\textsuperscript{37}

The purpose of this statute is to eliminate the embarrassment suffered by victims of sexual assaults from cross-examination about their unrelated sexual histories prior to the rape. The statute hopes to protect the victim from "\ldots baseless, irrelevant and grotesque harassments,"\textsuperscript{38} and to encourage victims of sexual assaults to report the crime free of the fear of being harassed or humiliated when on the witness stand.\textsuperscript{39} By more crimes being reported, the state increases its number of prosecutions, while at the same time, deterring would be rapists because suspected rapists are not as frequently acquitted.\textsuperscript{40}

In addition to protecting the victim from undo harassment, the statute seeks to allow only evidence which is logically relevant and that its probative value is not outweighed by the evidence's inflammatory or prejudicial nature.\textsuperscript{41} Relevant evidence could be excluded if it presents a substantial likelihood that the jury's prejudice will be aroused or it would unduly confuse or mislead the jury.\textsuperscript{42} This is important because studies show that juries react extremely harshly to the complainant whenever she seems to have, in any way, brought the attack upon herself. They tend to import notions of unclean hands into the criminal prosecutions. Specifically, it punishes unchaste women by refusing to credit their accusations even when the cases are meritorious and there is no hint of neglecting or deserving conduct.\textsuperscript{43} While the law and the judge are interested only in the fact of whether or not consent was given at the time of intercourse, juries usually go beyond this
issue. They weigh the woman's conduct in this case and also closely and harshly scrutinizes the female complaintant. The jury is often lenient with the defendant whenever there is a suggestion of contributory behavior on the victim's part. Consequently, the jury usually acquitted the defendant when the judge in the same case would have convicted him. It is clearly in the state's interest to limit the unnecessary and prejudicial evidence given to the jury so they base their convictions or acquittals on the issue at hand and not the victim's character.

For these reasons, including preventing the further humiliation of the victim, the statute requires that such evidence must be presented by the defendant and/or the state in a pretrial motion including an affidavit stating the offer of proof and of its relevance to the issue at hand. If the judge finds that the offer of proof is sufficient, an in camera (out of the presence of the jury and the public) hearing will be held. During this time, the defendant or the state is allowed to question the victim or witness regarding the information he stated in his affidavit. At the conclusion of the hearing, if the court finds that the evidence proposed by the defendant or the state regarding the sexual conduct of the victim or witness is admissible, then the judge will make an order stating what evidence and the nature of questions regarding such evidence may be admitted in the court. The same procedure is followed when evidence is discovered during the course of the trial.

The in camera hearing allows for judicial discretion to determine the merits of each particular case, while following the procedural safeguards of the statute. The main purpose of this pri-
Private hearing is to protect the victim from embarrassment which might occur if her sexual history was disclosed and debated in public. Public humiliation of the victim in the pretrial hearing may serve the same purpose as humiliation at the trial. Quite possibly the evidence may be ruled inadmissible so the public will never know the victim's sexual history. On the other hand, if the evidence is ruled admissible then it will be presented at the public trial. The in camera hearing does not protect the rape victim from exposure of presumptively relevant proof, but it screens out and shields against the disclosure of facts that can only smear the victim and her reputation.

Indiana's rape shield statute is not designed to give an unfair advantage to the victim just to protect her from harassment. The statute gives the defendant the option to introduce evidence of his past sexual history with the victim or the witnesses or evidence which would show that someone other than the accused committed the act upon which the prosecution is founded, or to impeach the credibility of the witness or victim.

A past sexual relationship between the defendant and the victim is generally admitted as evidence because it has more probative value than evidence concerning a general lack of chastity or specific acts with other men. The defendant does not deny that sexual intercourse occurred, just that it did in fact occur with the victim's consent or his reasonable belief that she was consenting. A history of intimacies with the defendant would lend creditability to the claim of consent to yet another sexual encounter. It also is specific evidence pertaining to a defined time span instead of the victim's entire sexual history and gen-
eralizations and hearsay evidence about her supposed reputation.55

Another instance where the victim's sexual history is usually admissable is when the defendant is not conceding that he committed the act but some other person did with or without the victim's consent.56 Examples of this include: when the defendant presents an alibi defense, he could use prior sexual conduct to try to show that the victim was with someone else at the time of the alleged act. If the victim was pregnant, had contracted venereal disease, or had semen present in her vagina, the defendant could suggest that these indications of intercourse can be attributed to a liaison with someone else. Again, he needs to be able to identify the opportunities when the victim had intercourse with someone else. In these instances the defendant is trying to establish who may have had sexual relations with the victim, no if she has a good or bad character.57

The final section of the rape shield statute deals with the right of either the state or the defendant to impeach the credibility of the victim or witness. This is accomplished by showing that the witness had prior felony convictions.58

Many professionals are confident about the statute's effectiveness.59 In their estimations, the statute is fulfilling its purpose. It's protecting the rape victims from harassment and victims are more willing to report their assaults and continue with the court procedures.60 Of course, the statute is not without its opponents.61 For example, the statute has been criticized not for being too restrictive, but for not including other ways for admission of evidence. The statute makes no provisions for: introduction of victim's sexual activity tending to show motives
for a particular charge; admission of evidence showing habitual sexual conduct with strangers, or of indiscriminate sexual relations with third parties unless such instances tend to prove that the accused did not commit the offense. Finally, there is nothing in the statute to exclude evidence of the past sexual history between the defendant and the victim when it is obvious that there was no consent in that particular instance.62

The statute is also criticized for infringing the defendant's constitutional rights. The constitutional arguments against a limitation of the scope of evidence at the trial concerns the Sixth Amendment rights of the defendant. The Sixth Amendment essentially guarantees the right to cross-examination through the right of all criminal defendants to confront their accusers. Arguably, this fundamental right is restricted because the defendant can not introduce whatever evidence of the victim's past sexual history he desires.63

However, there is no constitutional guarantee to irrelevant information. Since the legislature declared certain types of evidence as irrelevant, the defendant does not have a constitutional argument to have it admitted. Even when some evidence is considered relevant, it can be inadmissible because its probative value is outweighed by its inflammatory or prejudicial nature.64

Several cases have raised these arguments and tested the constitutionality of Indiana's rape shield law. The defendant in Roberts v. State65 claimed that the state statute unconstitutionally discriminated by sex, violated his right to confront witnesses and represented an improper interference of the legis-
lature into the judicial process. The Indiana Supreme Court rejected all of these arguments. The statutes constitutionality was again upheld by the court in *Lagenour v. State*. In *Lagenour*, the defendant, who was accused of kidnapping and assault and battery with intent to gratify sexual desires, sought to introduce evidence of past sexual history of the prosecuting witness and of two other witnesses who had testified that the defendant had, on unrelated occasions, assaulted them sexually. The trial court refused to admit the evidence. The Supreme Court of Indiana held that the statute did not apply to all of the proposed lines of questioning, but that the trial court's exercise of its discretionary power to exclude evidence did not violate the defendant's rights of due process and confrontation. The court also found that there were no indications that the judge's application of the statute foreclosed the defense counsel from any line of questioning which would have otherwise been admissible as evidence. The court did find, however, that the "rape shield statute does not apply to victims of separate crimes nor to the victim of a kidnapping." The General Assembly acted promptly to remove one of these limitations. It amended the rape shield law so that it now restricts the admission of past sexual history evidence not only from the victim of the sexual assault, but also for any witness other than the accused.

The defendant in *Finney v. State*, convicted of rape, raised numerous constitutional objections to the rape shield law; among these were claims of violating his right to confront witnesses and to equal protection of the laws. The Court of Appeals rejected the confrontation clause argument on the authority of
Lagenour and Roberts; although the right to confrontation would have been abridged if the trial court had barred the defense from presenting all impeachment evidence concerning the victim in the rape trial. With respect to the second contention, the court found that rape defendants are not a suspect classification and that the state need therefore prove only that the statute has a rational basis for the classification which discriminated against them. The legislature's finding that the statute was needed to encourage rape victims to report the crimes and protect them from embarrassment provided such a basis. The Finney decision has been cited as the rationale in upholding the constitutionality of rape shield statutes in other cases.

By enacting the rape shield law, the Indiana legislature is attempting to level the imbalance between the victim and defendant in rape trials. The use of prior sexual history evidence has deterred victims from reporting the crime, forced them to drop out of the criminal process and has led juries to acquit defendants on issues not directly related to their guilt. The statute provides the guidelines for evidence admissibility while allowing for judicial discretion. This combination, insures the constitutionality of the statute. The future continued success of the statute depends on public awareness of its existence and its judicious use by trial judges.
APPENDIX
35-1-32.5-1. INADMISSIBLE EVIDENCE, PAST SEXUAL ACTIVITY.
   --In a prosecution for a sex crime as defined in IC 35-42-4
   (35-42-4-1--35-42-4-4), evidence of the victim's past sexual
   conduct, evidence of the past sexual conduct of a witness other
   than the accused, opinion evidence of the victim's past sexual
   conduct, opinion evidence of the past sexual conduct of a wit­
   ness other than the accused, reputation evidence of the victim's
   past sexual conduct, and reputation evidence of the past sexual
   conduct of a witness other than the accused may not be admitted,
   nor may reference be made to this evidence in the presence of the
   jury, except as provided in this chapter. (IC 35-1-32.5-1, as
   1979, P.L. 289, sec. 1.)

35-1-32.5-2. EXCEPTIONS TO INADMISSIBILITY. --The following
   evidence proscribed in section 1 (35-1-32.5-1) of this chapter
   may be introduced if the judge finds, under the procedure pro­
   vided in section 3 (35-1-32.5-3) of this chapter, that it is
   material to a fact at issue in the case and that its inflamma­
   tory or prejudicial nature does not outweigh its probative value:
   (a) Evidence of the victim's or a witness's past sexual
       conduct with the defendant; or
   (b) Evidence which in a specific instance of sexual activ­
       ity shows that some person other than the defendant committed
       the act upon which the prosecution is founded. (IC 35-1-32.5-2,
       as added by Acts 1975, P.L. 322, sec. 1; 1979, P.L. 289, sec. 2.)

35-1-32.5-3. PROCEDURE FOR ADMITTING EVIDENCE--Discovery
   of new information. --If the defendant or the state proposes
   to offer evidence described in section 2 (35-1-32.5-2) of this
   chapter, the following procedure must be followed:
   (a) The defendant or the state shall file a written motion
       not less than ten (10) days before trial stating that is has an
       offer of proof concerning such evidence and its relevancy to the
       case;
   (b) The written motion shall be accompanied by an affidavit
       in which the offer of proof is stated; and
   (c) If the court finds that the offer of proof is sufficient,
       the court shall order a hearing out of the presence of the jury
       and at such hearing allow the questioning of the victim or witness
       regarding the offer of proof made by the defendant or the state.
       At the conclusion of the hearing, if the court finds that
       evidence proposed to be offered by the defendant or the state
       regarding the sexual conduct of the victim or witness is admis­
       sible under section 2 (35-1-32.5-2) of this chapter, the court
       shall make an order stating what evidence may be introduced by the
       defendant or the state and the nature of the questions to be per­
       mitted. The defendant or the state may then offer evidence under
       the order of the court.
If new information is discovered within ten (10) days before trial or during the course of the trial that may make evidence described in section 2 (35-1-32.5-2) of this chapter admissible, the judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this chapter. (IC 35-1-32.5-3, as added by Acts 1975, P.L. 322, sec. 1; 1979, P.L. 289, sec. 3.)

35-1-32.5-4. RIGHT TO IMPEACH CREDIBILITY. --This chapter (35-1-32.5-1–35-1-32.5-4) does not limit the right of either the state or the accused to impeach credibility by showing of prior felony convictions. (IC 35-1-32.5-4, as added by Acts 1975, P.L. 322, sec. 1, p. 1768.)
35-42-4-1. RAPE. —(a) A person who knowingly or intentionally has sexual intercourse with a member of the opposite sex when:

(1) The other person is compelled by force or imminent threat of force;
(2) The other person is unaware that the sexual intercourse is occurring;

or

(3) The other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given; commits rape, a class B felony. However, the offense is a class A felony if it is committed by using or threatening the use of deadly force, or while armed with a deadly weapon.

(b) This section does not apply to sexual intercourse between spouses, unless a petition for dissolution of the marriage is pending and the spouses are living apart. (IC 35-42-4-1, as added by Acts 1976, P.L. 1948, sec. 2, p. 718; 1977, P.L. 340, sec. 36, p. 1533.)
The following interview took place with State Representative Dennis Avery, a Democrat from Evansville, at the House Chambers in Indianapolis, Indiana, on November 17, 1981. Representative Avery proposed a bill to add a chapter concerning evidence in certain criminal cases. This bill deals with the procedures for admitting a rape victim's past sexual history as evidence in the rape trial. This bill is commonly referred to as Indiana's Rape Shield Law.

Q: What were the motivating factors when you proposed the statute?
A: During the campaign my wife and I watched a television movie, "A Case of Rape" with Elizabeth Montgomery, and I was shocked at the treatment the victim received from the police and during the trial. It was like she was the one being tried. She was looking for justice yet she became the target of harsh treatment, vulgar innuendoes and public humiliation and ridicule. I realize that lots of things are exaggerated on television to make a point, but I figured there had to be some truth to it.

I called different friends of mine who were in positions to know the facts about the treatment of rape victims and asked how realistic the movie was. Unfortunately, they all said that the movie was a pretty good description of the typical rape trial. I was outraged. It was so unfair, a woman is victimized by her assailant and again when she turns to the courts for help.

Q: What did you do then?
A: Shortly after that the public television station in Evansville invited all of the candidates to a rape forum. During the forum, I said that I was opposed to a woman's sexual history being admitted as evidence because in very few instances did it have any relevance to the case at hand. At this time, the public was becoming more aware of rape and all of the horrors associated with it. Apparently many of my constituents were also enraged by the treatment of rape victims once they reached the courts. I decided that this was an issue I could rectify if I were elected.

Q: How did you proceed after the election?
A: First we celebrated. Seriously, I really wanted to do something about the problem, but as a realtor, I didn't have a legal background and I didn't know how to proceed. I wanted something that would be practical and effective, and that would survive the scrutiny of the courts.

I called various friends and I explained the components that I wanted the bill to have and we started doing research. Portions of the Michigan sexual assault statute proved to be exactly what I was looking for and I used these as my guidelines.

Q: Did you have much opposition to the proposed legislation?
A: Surprisingly not. Of course, a few things were changed in committee--like, some of my wording. The changes weren't major and they were easily inserted. I think that the timing was important also. As people became more aware of the problems dealing with rape, they wanted some type of legislative reform.
Consequently, I had a lot of support for this bill. Women in Politics helped lobby for the bill in the Senate. The National Organization of Women, the Indiana Women's Political Caucus and the Prosecuting Attorneys Association were also very supportive, just to name a few.

Q: What were your feelings when the bill passed?
A: I was very excited. This was my first major piece of legislation since coming to the house. It passed through both committees with very little difficulties and then was virtually unanimously approved by members of both houses. I was elated when the governor signed the bill into law.

Q: Were you aware that the constitutionality of the bill was tested?
A: Yes, I was. Each time a rape case was appealed with the shield law listed as an infringement of the accused's rights, I held my breath. I like to think that the law is effectively protecting the rape victims and witnesses from disclosing their past sexual history. Maybe this protection also encourages women to report the crime and press charges, too. After public awareness and support, judicial scrutiny and approval are crucial for the continued life of the law. The only doubts I ever had with this law were if the wording was correct so as not to infringe others' rights and thus be considered unconstitutional. Thankfully, the law hasn't been held unconstitutional in current cases, and I hope this record continues.

Q: Earlier you mentioned witnesses, what were the contributing factors in amending the bill to include witnesses?
A: I was really proud of that bill because I thought it was working effectively. Well, it was to a point. Two of my constituents were raped at the same time and their cases were tried separately. The attorney didn't bring up the victim's past history, but since each woman was a witness to the other's rape, he attacked her credibility as a witness through her past sexual history.

I was furious. Protecting witnesses from unnecessary prying of their sexual history is equally as important as protecting the victim. If you thought that by coming forward as a witness, your past was going to be put under a microscope, you'd probably be very hesitant about doing so. When the house resumed I proposed the amendment so the original bill would include witnesses as well. It was passed with no snags, and that's how the bill stands today.
This interview took place March 11, 1982, at a rape awareness program during Lutheran Church Women's meeting at Resurrection Lutheran Church in Gary, Indiana. Glenda Morley is actively involved in Calumet Women United Against Rape. She conducts rape awareness and prevention programs and self defense workshops all over Lake County.

Q: What is the purpose of Calumet Women United Against Rape?
A: C.W.U.A.R. is a non-profit voluntary association organized to provide necessary and supportive assistance to rape victims and victims of sexual attacks, and to provide the community with information concerning rape. The C.W.U.A.R. advocates are trained volunteers who give their time to help women and their families through a difficult period of their lives. The organization also seeks to increase the reporting of rape incidents, along with eventual prosecution and conviction of guilty persons.

Q: What type of services does C.W.U.A.R. perform?
A: Besides the awareness programs and self defense classes, we offer confidential counseling and support when the rape victim needs someone to talk to. We're also a sympathetic friend for the rape victim at the police station, hospital, and in court. We give the victim information about police reporting, investigative procedures and legal information for victims interested in prosecuting.

Q: You're aware then, of Indiana's Rape Shield Law?
A: Yes, we are. Many of our pamphlets have a summarized version of the Shield Law on them. They say Indiana's Rape Shield Law, signed in 1975, prohibits the admission of information about the past sexual conduct of the victim with anyone other than the alleged rapist. The advocates also mention the rape shield law during rape awareness and prevention programs and workshops. When a rape victim contacts us, we explain the statute in detail in hopes that it will help convince her to prosecute.

Q: Do you feel that the statute is effective?
A: Yes, to some extent. It helps many victims decide to prosecute, because they don't have to worry about their sexual history being brought up. But there are ways for the defense attorneys to get around the law, so I think it should be stricter. There should also be more victim protection laws and stricter sentences for rapists in order for more women to prosecute. Maybe the stricter laws will deter some people from raping in the first place.

Q: Do you think women in Lake County know about the statute?
A: No. According to many of the victims, C.W.U.A.R. does most of the explaining about the rape shield law. Most of the time the victim doesn't hear it from the police until she talks to a detective. Rarely are the women we talk to informed about the statute from the police officers or the hospital personnel. I guess there needs to be more people, besides C.W.U.A.R. providing rape awareness programs.

I talked with some of the volunteers at the Coalition Against
Their goals are much the same as C.W.U.A.R., but they really don't deal with the prosecuting aspect concerning rape victims. Their major functions are to provide immediate assistance for the rape victim, educate the community about rape by dispelling the myths associated with it, and refer the victims to other agencies who can be of further assistance to them. The victims are told of the rape shield law through the police and the prosecutor's office.

This interview took place May 7, 1982, at a public rape forum at the First United Methodist Church in Merrillville, Indiana, and May 11, 1982, at Judy Petro's office in the Government Complex at Crown Point, Indiana. Ms. Petro is an officer with the Lake County Sheriff's Department and a member of the Rape Investigation Squad.

Q: What is the Rape Investigation Squad?
A: The squad was formed as a special unit to deal with rape and other sex crimes in Lake County. This way rape victims receive sympathetic, yet professional assistance from the police. The officers have been trained in sex crimes investigation and psychological crisis intervention techniques. The unit has established liaison with other components in the system such as the hospitals and women's groups, mental health associations, etc., so we're able to refer them to places where they can receive the aid needed at the time. We also work closely with the prosecutor's office so we know the kind of information needed for a strong case, so we have increased the probability of more effective prosecution.

Q: Are you familiar with Indiana's Rape Shield Law?
A: Yes, I am. We have periodic in service seminars where new techniques, procedures and equipment are discussed, as well as problems which arise in investigations and personal appearances.

Q: What are you feelings about the shield law?
A: It's been a long time in coming but I think it's a definite step forward in the treatment of rape victims. After reporting the rape and the woman has calmed down, we explain the statute. If she decides to go on with prosecution, she knows there's something to protect her from an invasion of her privacy. You'd be surprised at the majority of women that have never heard of the statute. They're really relieved to know that their entire sexual history won't be drug out for public inspection. We also remind them again when a suspect is in custody and there's a greater possibility of going to trial.

Q: Do you think the statute is effective?
A: I think the shield law is effective in that it helps victims decide to prosecute since they are protected from needless inquiries into their past sexual conduct. The only drawback is, not enough people know about the statute. It takes a great deal of explaining for some women to convince them that they are protected from the horrors associated with going through with the trial. Before the statute and special rape units, several women told me the actual rape was horrible, but it didn't compare to being raped again by the disbelieving and accusing police and
courts system that thought that "good girls" couldn't be raped but if you were, you probably asked for it and enjoyed the rape anyway.

This interview occurred November 18, 1981, in the law office of Erma Nave. Ms. Nave is the Deputy District Attorney in Delaware County that handles prosecution of the rape cases.

Q: What were your first reactions to Indiana's Rape Shield Statute?
A: At first I was skeptical. I had questions about what the legislation covered. Other than that I was glad, Indiana was revising its entire criminal code around that time and the changes were definitely needed.

Q: Have you initial doubts been alleviated?
A: Yes. After being used for a couple of years, the guidelines are clearer about what is considered relevant to the defendant and what is merely prejudicial to the victim. Some sexual history can be admitted if the judge decides it's relevant in the in camera hearings. This is important because it gives the defendant the opportunity to present evidence which might benefit his position while at the same time protecting the victim from public disclosure of her sexual history. Judicial discretion and the in camera hearing protects both the defendants rights and the victim's in addition to insuring that the law remains constitutional.

Q: How does the rape shield statute work in Delaware County?
A: It's basically efficient. Before the trial I file a motion in limine which precludes the defense attorney from examining the victim concerning her prior sexual conduct. This puts the defense attorney on notice and if there's some evidence which might be pertinent, he can file a motion accompanied by an offer of proof and let the judge determine its relevance.

Q: Do you think the statute is serving its intended purpose?
A: Yes. We're at a point where people consider the sexual history of the rape victim. Once they have come forward and have been assured of the Rape Shield Law and its protection, they're willing to go through with the prosecution. It has the effect of removing the reluctance to continue with the proceedings. The only problem here is informing rape victims, and the public as well, about the existence of the statute. Often the police officers don't know or aren't comfortable telling rape victims about it. Once this hurdle has been overcome, the rape shield law can be used to its full potential.
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FACTS: Appellant Roberts was convicted of four counts at the conclusion of a jury trial in Marion Criminal Court on January 13, 1977: first degree murder, two counts of kidnapping, and rape. He was sentenced to life imprisonment for the murder and kidnapping counts, and to 21 years imprisonment for the rape. The crime in question occurred at about 4:00 a.m. on November 14, 1974, when a young woman, driving home with her infant son was accosted by a gunman at an Indianapolis intersection. The man entered the car and drove away with the woman, eventually raping her twice and leaving her locked in the trunk. Several miles before the woman was left locked in the abandoned car, her child had been left abandoned to die outside in the subfreezing cold.

QUESTION: Whether or not the rape shield statute unconstitutionally discriminates between the sexes, violates the Sixth Amendment of the United States Constitution by restricting a defendant's cross-examination, and is an unconstitutional intrusion of the legislature into the judiciary.

HOLDING: No.

RATIONALE: Pivarnik, J.—Nothing probative of either the prosecutrix's credibility or the appellant's guilt or innocence in this case is excluded by the court in sustaining the motion in limine relative to this evidence. Appellant was not prevented from proper cross-examination and presentation of evidence relating to the prosecutrix's relationship with the deceased child in question. The contested statute is no more an unconstitutional discrimination between the sexes than are our rape statutes generally. Neither is it an unwarranted intrusion of the legislature into the judiciary, but it is rather a rational attempt by our legislature to protect a prosecutrix from the sort of baseless, irrelevant, and grotesque harassments as the appellant wished to perform here.

Affirmed. All Justices concur.
FACTS: On April 26, 1976, the prosecuting witness, a 16 year old girl, accompanied two male friends to the Colonial Bar in French Lick, Indiana, she remained in the car. The two friends met appellant and conversed with him. One friend told the other to go check on the girl, but the latter was inebriated so the appellant volunteered. He told the prosecuting witness that he was going to pick up Timmy, the drunk friend. However, he drove instead to a small country lane where he removed his pants and the girl's lower garments despite her resistance. When another car pulled into the lane, they both replaced their clothing and appellant returned to the parking lot. Appellant brought Timmy to the car where they found prosecuting witness sitting in the car crying. Other acquaintances from the bar gathered and someone called the French Lick police. The appellant was apparently arrested there, although the record is unclear on this point. At the trial two young women testified that appellant had also made sexual assaults upon them. Appellant was charged with crimes arising from the two others' testimony but both prosecutions were dismissed by the prosecutor. Appellant was convicted of the offenses of assault and battery with intent to gratify sexual desires.

QUESTION: Whether or not the rape shield law unconstitutionally violates the guarantee of the Sixth Amendment for the cross-examination of the prosecuting witness.

HOLDING: No.

RATIONALE: The primary issue before us is whether the total limitation prevented appellant from conducting a full and effective cross-examination of the three women in violation of the constitution. Appellant has relied upon the general contention throughout that the limitation deprived him of "reasonable latitude in effectively cross-examining the witness... in eliciting facts concerning their prior sexual conduct for the purposes of revealing their reputations for veracity, possible biases, prejudices or ulterior motives." There is no suggestion made of the existence of any line of questioning related to any of the witnesses which could have been followed in the absence of the limitation, we require the showing of an actual impingement upon cross-examination. Affirmed. DeBruler, J., Gruan, C.J., and Hunter, Prentice and Pivarnik, J.J., concur.
FACTS: The rape victim testified that on September 17, 1974, she was hitchhiking on U.S. Highway 6 and she accepted a ride from the defendant. He was supposed to take her home at the Liberty Farms Trailer Park. Instead, Finney turned off U.S. 6 and drove around for almost an hour until he parked his Volkswagen near an abandoned building. While holding a knife to the victim's throat, he grabbed her breast but when she began to scream at him to leave her alone, he put the knife under his leg and said he would take her home. However, he drove her to a cornfield and told her if she tried to escape, he would hurt her. He ordered the victim to undress and get in the back seat where he raped her at knifepoint. Then, the defendant drove her home where they scuffled in her attempt to snatch his keys. As a result, the victim received minor scratches. She enlisted the aid of neighbors to call the police. Later that evening, the victim went to Porter Memorial Hospital for a medical examination. Finney was convicted in Superior Court Porter County, Bruce W. Douglas, Judge, of rape. Defendant appealed.

QUESTION: Whether or not the rape shield statutes violates the 6th and the 14th constitutional amendments.

HOLDING: No.

RATIONALE: A) The Indiana Supreme Court recently ruled that the Indiana Rape Shield statute does not violate a defendant's Sixth Amendment right to confront a witness since there is not a total denial of access to cross examination. The defendant was not precluded from impeaching the witness on other grounds such as prior convictions of enumerated felonies, bias, prejudice, or reputation for truthfulness or veracity.

B) Since rape defendants are not a suspect classification, the equal protection clause of the 14th amendment requires only that there be a rational and reasonable basis for the classification and that it bear a fair relationship to the purpose of the statute. In earlier decisions, the court has held that the rape shield statute was a rational attempt by the Legislature to protect the rape victim from harassment that might arise if her prior sex life was disclosed in court. Another closely related justification for rape shield laws is that they will aid in crime prevention because victims, knowing that the statute protects them from the embarrassment of introduction of evidence of previous sexual activity, will be encouraged to report rape offenses.

ENDNOTES


3 Criminal Justice Department Rape Forum, Ball State University Student Center, Muncie, Indiana, April 21, 1981.

4 Ibid.


7 Burns. op. cit., sec. 35-42-4-1.

8 See Appendix, p. iii.


11 Ibid.

12 Ibid.


14 Berger. op. cit., p. 23.


The legal difference between intercourse and rape is consent. It is the prosecutions responsibility to prove that the victim did not consent.

Herman, "What's Wrong with the Reform Laws?", *Victimology*, vol. 2, no. 1, Spring 1977, p. 10.


The ramifications of these problems are that many rapists will not be apprehended, much less convicted if the crime is not reported.


Herman. *op. cit.*, p. 10.

Ibid., p. 12.

Ibid.


See Endnote #1.


Forcible Rape. *op. cit.*, p. 82.

Ibid., p. 82, Michigan Common Laws Annotated, sec. 750:520.

Interview with State Representative Dennis Avery, November 17, 1981. See Appendix, p. iv-v.


Ibid.

See Appendix, p. i-ii.

*Burns. op. cit.*, Indiana Code Annotated sec. 35-1-32.5-1--35-1-32.5-4.

*North Eastern Reporter 2d*. (St. Paul: West), vol. 373, 373 N.E. 2d 1107.

40 Interview with Dennis Avery. See Appendix, p. iv-v.

41 See Appendix, p. i-ii.

42 *Forcible Rape.* *op. cit.*, p. 23.


44 Brownmiller. *op. cit.*, p. 419.

45 *Forcible Rape.* *op. cit.*, p. 23.


47 Burns. *op. cit.*, sec. 35-1-32.5-3.

48 Ibid.

49 Ibid.

50 *Forcible Rape.* *op. cit.*, p. 27.


52 Burns. *op. cit.*, sec. 35-1-32.5-3.

53 Ibid., sec. 35-1-32.5-4.


56 Burns. *op. cit.*, sec. 35-1-32.5-3.

57 *Forcible Rape.* *op. cit.*, p. 25.

58 Burns. *op. cit.*, sec. 35-1-32.5-4.

59 See Appendix, p. iv-viii.

60 See Appendix, p. vii-viii.


62 Ibid.

63 *Forcible Rape.* *op. cit.*, p. 25.

64 Ibid., p. 26.
65 North Eastern Reporter 2d. op. cit., vol. 373, 373 N.E. 2d 1103.

66 See Appendix, p. ix.


68 See Appendix, p. x.

69 North Eastern Reporter 2d. op. cit., vol. 376, 376 N.E. 2d 475.

70 Indiana Law Review op. cit., p. 208.


72 See Appendix, p. xi.

73 Ibid.

74 Indiana Law Review op. cit., p. 29.

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Criminal Justice Department Rape Forum, Ball State University Student Center, Muncie, Indiana, April 21, 1981.


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Mave, Erma. A personal interview on November 18, 1981.
North Eastern Reporter. (St. Paul: West), vols. 373, 376, 385.

Petro, Judy. A personal interview on May 7 and May 11, 1982.

