

TESTIMONY OF ALEXANDRIA RUDEN
ON BEHALF OF THE LEGAL AID SOCIETY OF CLEVELAND ON HOUSE BILL 121 HOUSE CRIMINAL
JUSTICE COMMITTEE

Chair LaRe, Vice Chair Swearington, Ranking Member Leland, and Committee Members:

My name is Alexandria Ruden. I am an attorney with the Legal Aid Society of Cleveland. I have been a practicing attorney focusing on domestic violence since 1979, when the Ohio Domestic Violence Act was enacted. I have represented thousands of survivors of domestic violence in divorce and protection order proceedings. I am a member of the Supreme Court's Advisory Committee on Domestic Violence and the Ohio Department of Public Safety's Family Violence Prevention Center Advisory Council. Additionally, I co-author *Ohio Domestic Violence Law* with Judge Sherrie Miday and retired Judge Ronald Adrine.

Witches were still being burned at the stake when Sir Matthew Hale came up with his legal theory that rape could not happen within a marriage. The 17th century English jurist declared it legally impossible because wedding vows implied a wife's ongoing consent to sex. Three and ½ centuries later, vestiges of this so-called marital rape exception still exist in some way in many states-remnants of the English common law that helped inform American tradition.

I support House Bill 121. While similar legislative attempts have failed to go anywhere, it is my hope that this is finally Ohio's time...time to stop distinguishing between spousal rape and rape...time to stop distinguishing between unmarried live-in partners and those who are married and time to stop distinguishing between those spouses who live together and those who are living separate and apart from each other. These distinctions date from the days when women were expected to obey their husbands and was based on the idea that men have a property right of sexual access to the bodies of their wives. These distinctions are particularly antiquated now

that many people live together without marrying. It is inherently unfair to allow marital status to be an escape hatch for accountability for rape.

There are two primary aspects to this bill: 1) elimination of the spousal exception for certain sex offenses and 2) permitting spousal testimony for certain sexual offenses. Both amendments are necessary. States like Ohio, which still allow the marital rape exemption to exist as viable law are accomplices to a crime which degrades women in the eyes of the law and society, helps perpetuate myths and generalizations as to the husband's dominance in the marriage and facilitates a cycle of violence and humiliation unheard of in any other context. The law can no longer remain neutral on this issue. It either protects victims of rape or it protects the rapist. If the law exempts husbands from rape charges, the implication is that it condones husbands raping their wives.

Until marital rape a legally punishable crime and abrogated from Ohio's statute, married women in Ohio will continue to be victimized without redress. Removal of the words "not the spouse of the offender" for the offenses of rape, sexual battery, unlawful sexual conduct with a minor gross sexual imposition, sexual imposition and importuning should be a simple fix.

Why should Ohio eliminate the marital rape exception? Rape turns on the issue of consent. Regardless of the relationship between the abuser and the victim, regardless of whether the spouses live together, rape occurs when one forces another to have sex. Studies show that the frequency of marital rape is statistically significant-between 10% and 15% of women have been raped by their husbands. Despite these numbers, husbands have historically not been prosecuted for marital rape. A primary motivation for urging complete abolishment of Ohio's marital rape exemptions is to give married women the right to prosecute their attackers in all

situations regardless of the marital relationship.

This amendment reflects the equality among both married and unmarried women which should be an issue of social, legislative and judicial attention. Changing the law is pivotal to deterrence because too few husbands recognize that marital rape is unacceptable and too many wives believe that they do not have a right to refuse their husband's sexual advances. If Ohio law is changed to reflect this abolishment of marital rape exceptions, it will reset the moral boundaries which will remind husbands that they can be prosecuted for raping their wives and that wives have the right to prosecute their husbands for rape.

Any artificial line in the sand which prevents a victim providing spousal testimony against her husband for sexual violence or adhering to outdated laws that do not permit a woman from prosecuting or testifying against one's husband because she is married to her rapist is not fair. It is time for spouses to be permitted to testify against the other spouse in a prosecution for certain sexual crimes, to wit: sexual battery, sexual conduct with a minor, gross sexual imposition, sexual imposition or importuning.

The argument against these outdated laws is self-evident. However, the reasons to maintain these exceptions are both antiquated and unfair: 1) that marital privacy is a constitutional right; 2) the inappropriateness of using the criminal law in disputes between spouses; (3) the difficulty of proving marital rape; (4) the possibility of malicious prosecution by the wife; (5) the possibility that the wife, having accused her husband of rape, will change her mind and reconcile with the husband; and (6) the existence of alternative remedies of family law. None of these justifications for the exemption are sufficient to justify the continued protection of the husband from brutality and abuse in a sexual assault on his wife.

Removal of the marital exceptions would be a symbolic endorsement of the integrity and self-determination of women. The rationale for HB 121 is simply that one's legal relationship to another human being should never give another permission to rape them. As people become more familiar with how sexual violence is perpetrated — normally *not* by a stranger in an alley with a knife — long-standing myths and biases will loosen their hold. More sexual violence survivors will feel empowered to recount violations to family members, friends, neighbors, co-workers and even law-enforcement officials. The possibility of justice offers compelling reason for survivors to tell their stories.

The enactment of HB 121 will tell rape and sexual assault victims that they matter and that they will always have an opportunity to seek justice in a court of law. The amendments to the these statute as well as permitting spousal testimony for certain sexual crimes will clearly demonstrate that Ohio is willing to believe survivors.