

Veto No. 1984-4

HB 1137

October 5, 1984

To the Honorable, The House of Representatives
of the Commonwealth of Pennsylvania:

I have before me House Bill 1137, Printer's No.3653, which creates a new first degree felony of "Spousal Sexual Assault." In effect, this bill would, for the first time, enable married persons in Pennsylvania to prosecute their spouses for rape or involuntary deviate sexual intercourse. It would make a fundamental change with regard to certain longstanding principles in our criminal law.

Spouses now have the ability to prosecute for assault and physical abuse, and spouses who live in separate residences, or in the same residence under a separation agreement or court order, can already initiate criminal charges for the offenses of rape and involuntary deviate sexual intercourse.

I am concerned that with this bill we would be entering the privacy of the home and the sanctity of an ongoing marriage to allow spousal prosecutions for sexual conduct. I certainly believe that forced sexual intercourse is a heinous deed, regardless of the personal relationship between the perpetrator and the victim. Nevertheless, my study of this bill, including the legislative floor debates concerning it, leads me to believe that in a case involving an ongoing marital relationship, certain evidentiary considerations are necessary to deter frivolous and capricious use of such a law.

I was particularly impressed by the statements of legislators of both parties and both sexes who, based on their law enforcement and legal experience, felt this kind of bill would indeed lead to frivolous and capricious charges, particularly at a time when a marriage was dissolving. Even proponents of the bill have acknowledged that the evil they seek to mitigate is physical abuse and not the act of sexual penetration by a cohabiting spouse.

Senator Snyder, chairman of the committee which heard testimony and reported the bill, offered two amendments which addressed this concern: One would require a spouse claiming rape to promptly report it, so that a threatened charge of rape could not be leveled maliciously years later to gain leverage at the time of a divorce. The other would require some corroborating evidence of physical abuse, providing a reasonable evidentiary safeguard against frivolous charges while addressing the real evil of spousal violence.

Nine states have laws permitting spousal rape prosecutions, most of them quite recent. Nine other states adopted laws permitting such prosecutions in limited situations, some of them extending the traditional marital exemption for rape to unmarried cohabitators in other situations. At least two states with such laws impose prompt reporting requirements.

The problems of rape and of domestic violence are serious ones that deserve our attention. This Administration has provided over \$17 million for rape crisis programs and domestic violence centers, \$4.5 million in the current year alone.

An appropriate amount of care and caution must be applied, however, before we subject persons to a new criminal charge of the most serious degree. As one respected House member, a former prosecutor and a woman, said: "The criminal courts are notoriously unsuccessful in dealing with domestic abuse. They are going to be even less successful in dealing with allegations of sexual abuse where there is not physical abuse." To invite misuse of rape charges, or to divert the time and resources of police and prosecutors with questionable charges of rape, is to demean the seriousness of violent rape and to devalue the anguish suffered by real victims of rape.

I propose that, if Pennsylvania is to adopt a spousal rape bill, we do so with the type of safeguards reflected in Senator Snyder's amendments or that we defer action on such a bill until we can more thoroughly obtain and assess information from the states that have pioneered this concept.

I am therefore returning this bill at this time without my signature.

DICK THORNBURGH