

jury gets in a rape case with respect to this issue of force because I think it's a very mixed message, and if I was on the jury, I would have a hard time under our existing law knowing exactly what I was required to find and not find, because it seems to send two different messages. Here's the model jury instruction in a case of rape. It is not required that when an attempt is made to sexually assault a victim that the victim need subject herself to threatened serious bodily harm by resisting to the utmost of the victim's physical ability so long as the victim has strength to do so; indicates that you don't have to fight back. A victim need not physically resist where it would be obviously useless, futile, or foolhardy to do so, and then it says it is only required that the victim make reasonable resistance in good faith under all the circumstances, and that the resistance be such as to make nonconsent and actual opposition genuine and real. It's part of the difficulty of trying to retain this element of physical resistance in our law that produces a model instruction so difficult to understand. I have to go to law school for three years and have this in front of me to make sense out of it. If I was sitting on a jury and I was a layperson and this was read to me by a judge, I would have a darn tough time knowing what to do and I think the element that makes it most difficult is the way in which the jury instruction seems to indicate that resistance someplace between foolhardiness and an expression of genuine nonconsent is required. That makes it problematical. It seems me that juries are entitled to better direction and the reason the jury instructions are written this confusing way is because we still linger with the obligation for the woman to somehow physically resist in addition to simply saying no and through the rest of her conduct making clear that she does not consent to the sexual advance. I think there's good reason to pass this amendment and, although I acknowledge the letter from the Criminal Defense Attorneys Association, when you hear the jury instructions that are given, it seems to me that we do have a problem at that point making clear to people what the real definition of rape is and, therefore, this change is necessary.

SPEAKER WITHEM: Thank you, Senator Landis. Senator Chambers, followed by Senator Hall.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I have stated earlier, even though I've given my personal views on this idea of a man taking a woman's body against her will, I still feel somewhat uncomfortable about what we have in front of