

## SENATE JUDICIARY COMMITTEE

## MINUTES OF MEETING

MARCH 3, 1975

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT:            Senator Close  
                   Senator Wilson  
                   Senator Bryan  
                   Senator Sheerin  
                   Senator Dodge  
                   Senator Foote  
                   Senator Hilbrecht

## ABSENT:

SB 52    Makes changes in law relating to sexual crimes against persons.

Testimony was presented before the Committee by the following:

Florence McClure, Vice President, Community Action Against Rape -

Mrs. McClure discussed with the Committee a rape case in Las Vegas that had just returned a "not guilty" verdict. One important reason she attributed to the "not guilty" verdict was the cautionary statement in the judge's instructions to the jury which stated that "the charge of rape was one easily made but difficult to prove."

Additionally, Mrs. McClure stated that the reason for requesting lower penalties for the crime of rape was that many jurists are reluctant to sentence a defendant for such a long period of time especially since the average age of a rapist is 18 years old. She stated that the National Advisory Commission on Criminal Justice Standards and Goals recommends criminal penalties for rape "should be 2 to 10 years for the first offense and 3 to 25 years for subsequent offenses."

Tom Beatty, Assistant District Attorney, Clark County, representing the Nevada District Attorneys Association - He stated that the Association was very concerned about changing an area of the law that had been very well established by case law. It was their recommendation that SB 52 be either completely redone or eliminated.

In discussing the bill, Mr. Beatty made the following suggestions:

Strengthen sexual molestation reporting by adding a new section to NRS 200.501 which would be very similar to Section 27 of SB 52. Failure to report would be a misdemeanor.

Expand the reporting requirement under NRS 200.503 to include the nature and extent of the neglect of the child. Neglect is an element that also has to be reported.

Senate Judiciary Committee  
Minutes of Meeting  
March 3, 1975  
Page Two

SB 52 Render the following statutes sexually neutral by eliminating "male", "female" and so forth: NRS 200.363 (rape); NRS 200.365 (statutory rape); NRS 200.373 (rape of person by spouse), he also suggested amending this statute by allowing a conviction in the case where the parties are living separate and apart and one of them has filed for divorce.

Add new subsection 3 to NRS 200.363 (rape) to include in the definition of substantial bodily harm (which is further defined in NRS 193.015) "extreme and prolonged mental anguish or trauma."

In regard to NRS 201.180 (incest), NRS 201.190 (infamous crime against nature) NRS 201.230 (lewdness with a minor), and NRS 207.260 (annoyance or molestation of minor under 18) Mr. Beatty stated that these sections were already sexually neutral regardless of the terminology used. He felt that inasmuch as they all have recognized legal definitions it would be unwise to tamper with them.

On the question of the general penalty for forcible rape, it was the Association's recommendation that it carry a one-to-life sentence rather than the five-to-life. He concurred with Mrs. McClure that a conviction would more likely result if the penalty was lower. Mr. Beatty also stated that they would like to retain attempted rape which carries a one-to-twenty sentence, as it is a useful bargaining agent if the prosecutor feels he has a weak case or where the victim is unable to testify.

Concerning Judge Goldman's cautionary statement (a charge of rape is one easily made but difficult to prove) is really a question of policy. That is, is there a need for a cautionary statement? It was Mr. Beatty's experience that it is appropriate in some instances, such as those involving child victims, but for the most part it is unnecessary. The general rule in Nevada is that a judge, according to the constitution and backed up by statute, may instruct on law as it pertains to the case but cannot instruct on the facts of a case.

Mr. Beatty also discussed briefly with the Committee SB 222 (provides protection for rape victims in prosecution against rape offenders). on the question of admissibility as evidence, prior sexual conduct in regard to the general credibility of the victim.

He also discussed an upcoming bill dealing with exemption from jury duty. He stated that at the present time there are nearly 30 or more mandatory exemptions, which is contrary to the ABA and NAC standards that say there should be a very specifically delineated and limited number of exemptions.

Senate Judiciary Committee  
 Minutes of meeting  
 March 3, 1975  
 Page Three

SB 52 Patricia Lynch, Reno Attorney - Stated she has dealt with rape victims and has attended several rape workshops. She feels that the extension of the law to cover men is good, however, she would like to see the definition of rape set forth. She would also like to have other acts of sexual aggression covered under the law. Additionally, she would like to see the sections wherein the cost of the victim's examination is covered by the county or municipal government retained. In response to a question by Senator Sheerin, Ms. Lynch stated that although a convicted defendant should be required to cover examination costs, most do not have the resources necessary to do so.

Carol Gunlock - Stated that she was the victim of an attempted rape. She feels the definition of rape is adequate but that it should also include attempted rape. She also stated that the police need clearer guidelines with regard to questioning rape victims.

Judy Monkin, Administrative Coordinator for the Rape Crisis Center in Reno - Informed the Committee that in Washoe County there has not been one conviction in a rape case since June, 1974 out of approximately 45 complaints. She cited a rape case where the victim had wanted to prosecute but was turned down by the District Attorney's office because they felt there was not enough evidence to go on. She stated that 10 out of the 45 reported cases had this same result. In regard to Section 15, she stated that many women are not able to afford filing for divorce or separation and that the fact that they were living separate and apart from their spouse should be sufficient to bring a complaint of rape.

Jerri Caliber - Stated she was in favor of changing the name from rape to sexual battery for the following reasons:  
 1) rape is a sexist term in that a male cannot be raped; and  
 2) studies have found that rape is not a sexual crime but rather one of violence and should be classified as such, i.e. categorized as a type of battery. She felt this would make a difference psychologically for the victim and in the eyes of the jury.

There was no action taken at this time.

SB 214 Restricts conditions under which defendant may appeal from judgement in criminal action tried before justice of peace.

Tom Beatty, Assistant District Attorney, Clark County - He felt that the insertion of the waiver provision, where it goes directly into district court, might be appropriate.

Senate Judiciary Committee  
Minutes of Meeting  
March 3, 1975  
Page Four

SB 214 He stated that the lower courts are not courts of record and if you waive right to counsel or enter a plea of guilty, you have to go through all the requirements that you do for a court of record, but there is no record left to prove that that is what happened. Additionally, there is the difficult question as to how someone would move to set aside such a plea.

After brief discussion, Senator Bryan moved an "amend and do pass,"  
Seconded by Senator Wilson,  
Motion carried unanimously.

SB 216 Amends Las Vegas city charter to permit city attorney to engage in private practice of law until July 1, 1977.

In response to a question from Senator Bryan as to the present laws with regard to the deputy city attorney's private practice of law, Tom Beatty stated that in Clark County there is a local ordinance which prohibits it. There is a statute which will prohibit private practice as of July 1, 1975 and will apply to all District Attorneys in counties with a population of 100,000 or more.

After discussion, Senator Sheerin moved to amend the bill by amending the city charter to give them the authority to increase the city attorney's salary up to \$30,000.  
Seconded by Senator Hilbrecht,  
Motion carried unanimously.

SB 228 Enables city attorney to bring action against person engaged in deceptive trade practice.

Senator Wilson moved a "do pass,"  
Seconded by Senator Bryan,  
Motion carried unanimously.

SB 229 Provides for certain changes in provisions relating to juveniles and juvenile court judges.

The Committee reviewed the amendments suggested in the meeting of February 28, 1975.  
There was a brief discussion by the Committee members, however no action was taken at this time.


There being no further business, the meeting was adjourned.

Senate Judiciary Committee  
Minutes of Meeting  
March 3, 1975  
Page Five

Respectfully submitted,

  
Cheri Kinsley, Secretary

APPROVED:

  
Senator Ollson, Chairman