MINUTES

ASSEMBLY JUDICIARY COMMITTEE
April 18, 1977
7:00 a.m.

Members Present: Chairman Barengo
Vice Chairman Hayes
Mr. Price
Mr. Coulter
Mrs. Wagner
Mr. Sena
Mr. Ross
Mr. Polish
Mr. Mr. Banner

Chairman Barengo brought this meeting to order at 7:00 a.m.

Assembly Bill 621:

Mr. Davie Frank, Judicial Planning Unit, having been sworn in testified in support of this bill, stating that it is a housekeepping measure of sorts. All this does is change the qualifications for District Court judge and Supreme Court justice by barring anyone who has been removed from judicial office by either the Legislature or the Commission on Judicial Discipline from again serving. There followed some discussion.

Assembly Bill 646:

David Hagen, Esq., representing the State Bar of Nevada, having been sworn in testified in support of this bill. However, he stated that they do wish to make an amendment to provide for the addition of one District Court judge in the Second Judicial District Court. That amendment would be on line 1, page 2, changing the number from 7 to 8 District Court judges. He explained the reasoning to the committee with statistics as to the increase in caseload in Washoe County. In addition, Mr. Hagen did comment that Mr. Russ Mc Donald has indicated to him that there is space in Washoe County for the addition of one department in the District Court.

Mr. Tom Moore, representing the District Attorney and the County Commissioners of Clark County, having been sworn in, testified in support of this bill on behalf of the District Attorney's Office of Clark County. However, the County Commissioners find it somewhat difficult to support this bill because of the fiscal impact. Attached hereto and marked as Exhibit "A" is a copy of the Staff Report of said fiscal impact. The committee had several questions as to the accuracy of this report.

Assembly Bill 647:

Assemblyman Nick Horn, testified in support of this bill, having been sworn in stating that there is a companion bill on the Senate side, i.e., SB 412. He stated that it was his understanding that some amendments have been adopted on that side and, if at all possible, he requested that this bill be set aside until this companion bill comes across to see if that meets with this committee's approval. If it does not, then, perhaps, the committee can examine this bill at that time.

Assembly Bill 649:

Assemblyman Nick Horn, testified in support of this bill, as its sponsor, first explaining the genesis of this bill. He stated that after lengthy discussions

with Bart Jacka of Metro Police he found that the main purpose behind this bill was to provide a third alternative for the judges. A third option to a sentence would be one of working off a fine.

Assembly Bill 659:

William Raymond, Deputy Attorney General, assigned to the State Highway Department, having been sworn in, testified against this bill, in particular, sections 3, 4 and 5 of this bill. He explained to the committee that sections 3 and 4 create a new procedure whereby if there is a survey and there is an entry on the property prior to the condemnation, the property owner can require the Agency who is so surveying to go to Court, to put down a deposit which is subject to the property owner going to Court and prove that use of his property had been damaged extremely. They have checked this out with the federal people and they state that they will not participate in any deposit, or any judgment which is so entered or in any legal fees. In addition, section 5 purports to amend the rebuttable presumptions that ordinances contemplate and this is in conflict with our present authority over a Highway Board pursuant to NRS 408.980. It is also in conflict with 37.100 which is the provision for the Order for Entry before occupancy.

Mr. Russ Mc Donald of Washoe County, having been sworn in, testified on this bill in opposition to it on behalf of Washoe County Commissioners and he concurred with the comments made by William Raymond. He further added that there are probably some instances where Chapter 37 could be improved, but, not in the way that this bill proposes to do so.

Senate Bill 385:

Dave Frank, Judicial Planning Board, having been sworn in, testified on this bill stating that this bill is an exact copy of AB 540, consideration of which was deferred pending receipt of this bill from the Senate. This bill implements the commission on Judicial Discipline. He detailed the contents of this bill for the committee.

Senate Bill 454:

Ace Martelle, Deputy Administrator of Nevada State Welfare, and Mr. Dale Landon, Chief, Chief of the Child Support Program, and Mr. Robert Ulrich of the Attorney General's office, testified in support of this bill. Attached hereto and marked as an Exhibit "B" is the basis for their comments, as stated by Dale Landon, on this bill. They elaborated some of these comments at great length for the committee. There was considerable discussion and much questioning from the committee.

Senate Bill 224:

Charles Thompson, of Las Vegas, Nevada, having been sworn in, testified in support of this bill. He stated that this is primarily a housekeeping bill to clarify a procedure that has been somewhat endowed over the years. Historically, in Nevada, personal property in the hands of third persons, when it was sought to be executed upon, was acquired through the Sheriff through a Notice procedure that was done on the back of a Writ of Execution. The Legislature in 1973 revamped the attachment statutes clarifying what the correct procedure should have been and is today with regard to attachments. This is that the only way you can acquire property in the hands of a third person is through the use of a Writ of Garnishment. It is the proper way to use the Writ of Garnishment.

Senate Bill 248:

Charles Thompson, of Las Vegas, Nevada, having previously been sworn, testified on this bill stating that Sen. Raggio was going to be here to support this bill. This is sought in order to clarify the procedure for change of judge in certain cases where the procedure today is probably a little confusing and certainly, abused. He stated that we have a statute that probably does not provide for a preemptory change of judge. Mr. Thompson suggested that they'd like a procedure set forth so that it cannot be used as a delaying tactic, which this does, and a reasonable fee to be applied to the district judges travel fund if they are going to use a pre-emptory challenge. This also clarifies the procedure for affidavits of actual bias and prejudice; allows a judge to file a response thereto and to request a hearing or to voluntarily disqualify himself. He stated that he thought this was passed without opposition, in the Senate.

Assembly Bill 643:

Assemblyman Dale Goodman, District #26, having been sworn in, testified in support of this bill. A copy of his statement is attached hereto and entered as Exhibit "C".

Judge Howard Babcock, Chief Judge of Clark County Eighth Judicial District Court, having been sworn in, testified against this bill. He stated that, as the Chairman so indicated, these records are already available to any interested citizen or the media. He said that this type of record would not be a fair assessment by law,because before a Judge imposes a sentence be it by a conviction of jury or upon a plea of guilty, the Department of Parole and Probation must submit to that judge a very detailed pre-sentence report. In the eyes of the Court, these people are the professionals. In the majority of cases, the recommendations of the Department are generally followed by the Court. This adds nothing to what is already available, except that it adds an additional chore to the administrator or clerk of the courts.

Assembly Bill 646:

Judge Howard Babcock, Judge Charles Thompson and Mr. Wayne Blalock of Clark County then testified on this bill, all having previously been sworn. Judge Babcock stated that the judges of Clark County are not truly the advocates for the Judiciary in asking for the enlargement of the bench in Clark County, rather, he believes they are the advocates for the citizens of Clark County. Judge Babcock made reference to the Staff Report earlier given to the committee (Exhibit "D") stating that that presentation is not credible. In addition, he stated that if there is no enlargement of the Judiciary in Clark County that it will be to the year of 1985 before they will have another Judge by the creation of an office. The need is now in their civil department and not in their criminal division. At this point, Mr. Wayne Blacklock, Court Administrator, distributed a statement regarding Clark County Caseload Status Report for 1976 which he elaborated on for the committee. There was lengthy discussion and questioning following this testimony.

Senate Bill 23:

Senator Sheerin, having been sworn in, testified on this bill as its sponsor, explaining that this is a piece of legislation that will allow children between the ages of 14 and 18 to execute a Will. They will do so only if a parent or other guardian is present with them and further that it will have to have the

busing of the District Court at the same time in order to make sure that the Will is as it should be. This legislation, while there are alot of children between the ages of 14 and 18, will have to have a very limited use. The main reason for the bill is in an estate tax planning situation. There was some questioning from the committee upon completion of Senator Sheerin's testimony. Assemblyman Ross noted that perhaps that age should be changed from 14 to 16.

Senate Bill 152:

Senator Gary Sheerin, testified on this bill, stating that this bill actually comes out of the Attorney General's Office, and they just ask the Judiciary Committee to introduce it.

Mr. Steve Boland, of the Attorney General's office, then made a brief comment about this bill stating that it is meant to insure all of the administrative agencies do have subpoena power. Chairman Barengo then asked Mr. Boland to return to this committee a listing of those agencies who have the power now and a listing of the new ones who are seeking this power.

Assembly Bill 647:

Mrs. Florence Mc Clure, having been sworn in, Director of Community Action Against Rape, testified in support of this bill. A copy of her testimony is attached hereto and marked as Exhibit "E". Chairman Barengo appointed a sub-committee of Mrs. Hayes, Mr. Sena and Mr. Ross to work with the SEnate Judiciary sub-committee on this bill and the senate bill, S.B. 412.

COMMITTEE ACTION:

Assembly Bill 646, Mr. Polish moved for a DO PASS AS AMENDED, the amendment being for an additional judge for Washoe County and two additional judges for Clark County, Mrs. Wagner seconded the motion. Mrs. Hayes abstained from voting and Mr. Ross abstained from voting. The motion carried.

Assembly Bill 643, Mr. Sena moved for an INDEFINITE POSTPONEMENT, Mrs. Hayes seconded the motion. Mr. Coulter voted "no". The motion carried.

Assembly Bill 649, Mr. Ross moved for an INDEFINITE POSTPONEMENT, Mr. Sena seconded the motion. Mrs. Wagner abstained from voting. The motion carried.

Assembly Bill 659, Mr. Ross moved for an INDEFINITE POSTPONEMENT, Mr. Polish seconded the motion. The motion carried unanimously.

Senate Bill 224, Mrs. Hayes moved for a DO PASS, Mr. Sena seconded the motion. The motion carried unanimously.

Senate Bill 385, Mr. Sena moved for a DO PASS AS AMENDED, the amendment being on line 16 of said bill for $40.00 for each meeting, Mr. Polish seconded the motion. Mrs. Hayes abstained from voting. The motion carried.

Senate Bill 454, Mr. Polish moved for a DO PASS AS AMENDED, the amendment being to delete section 13, Mr. Sena seconded the motion. The motion carried.

Assembly Bill 529, Mrs. Wagner moved for a DO PASS, Mr. Sena seconded the motion. The motion carried unanimously.

Assembly Bill 531, Mr. Ross moved for an INDEFINITE POSTPONEMENT, Mrs. Wagner seconded the motion. The motion carried unanimously.

Assembly Bill 530, Mrs. Wagner moved for a DO PASS, Mr. Sena seconded the motion. The motion carried unanimously.

There being no further business to discuss, this meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce, Secretary

April 13, 1977

STAFF REPORT

SUBJECT: Fiscal Impact of A.B. 646

The fiscal impact of three more district court judges has been estimated at $2,373,457. This estimate has been arrived at as follows:

PERSONNEL

District Court

Personnel	$158,300
3 Bailiffs 3 Law Clerks 3 Legal Secretaries 1 Administrative Assistant	
Supplies	6,000
Services	450,000
Capital Equipment	15,000
Subtotal	$629,300

District Attorney

Personnel	$603,000
29 positions	
Supplies	10,000
Services (including witness fees and one additional grand jury)	200,000
Capital Equipment	26,000
Subtotal	$839,000

County Clerk

Personnel	$ 36,068
2 District Court Clerk I 1 District Court Clerk II	
Supplies	660
Services	480
Capital Equipment	4,200
Subtotal	$ 41,408

1746

EXHIBIT A

PERSONNEL (continued)

L.V.M.P.D. Court Services	
Personnel	$ 43,405
3 Convictions Officers II	
Supplies	200
Capital Equipment	350
Subtotal	$ 43,955
Public Defender	
Personnel	$265,000
13 positions	
Supplies	2,655
Services	12,000
Capital Equipment	12,000
Subtotal	$291,655
Justice Court	
Personnel	$100,000
6 positions	
Supplies	2,000
Services	65,000
Capital Equipment	10,000
Subtotal	$177,000

SPACE ACQUISITION

District Court	
Three courtrooms and office space (13,300 sq. ft. @ 60¢/ft) x 12	$ 95,760
Justice Court	
700 sq. ft. @ (60¢/sq. ft.)12	5,040
District Attorney	
3,000 sq. ft. @ (60¢/sq. ft.)12	21,600

SPACE ACQUISITION (continued)

Public Defender	
1,500 sq. ft. @ (60¢/sq. ft.)12	$ 10,800
Subtotal	$133,200
INDIRECT CHARGES	
11.2 percent of operating budgets (.112 x $1,936,955)	$216,939
GRAND TOTAL	$2,372,457

SUMMARY EXPLANATION OF S.B. 454

P.L. 93-647, as amended, requires states to undertake to establish paternity and enforce child support in ADC cases and, when requested, in non-ADC cases. Failure to conform results in loss of federal ADC matching funds. The purpose of S.B. 454 is to conform to this federal mandate and to provide the legal tools necessary to efficiently cause dependent children to be maintained insofar as possible from the resources of their responsible parents. S.B. 454 is thus intended to provide cost-beneficial reductions in welfare rolls by causing parents to meet their primary obligation to support their dependent children.

The provisions of S.B. 454, summarized below, are not provided for in Nevada law:

Sections 2 through 9. Provide definitions.

Sec. 10. (1). Required by 42 U.S.C. 602(a)(26), 45 C.F.R. 232.11. Provides that receipt of ADC assigns by operation of law existing and future support rights up to amount of ADC received. Eliminates current cumbersome administrative procedure.

(2) Provides administrator with power of attorney to endorse and negotiate child support checks. Reduces loss of collections by eliminating the need to forward or return checks for payee endorsement or correction.

(3) Required by 42 U.S.C. 656(a), 45 C.F.R. 302.32. Provides that assigned support rights are a support debt owing the state to amount of ADC paid.

(4) Required by 42 U.S.C. 656(a), 45 C.F.R. 302.53. Provides for determining amount of support debt from H.E.W. approved formula in absence of court order.

EXHIBIT 13 1749

Sec. 11. Provides that payment of ADC makes the state a creditor of the responsible parent. Welfare Division is also subrogated to the support rights of the child.

Sec. 12. Required by 42 U.S.C. 654(6), 45 C.F.R. 302.33. Provides that the Welfare Division is responsible for enforcing support obligations owed a dependent child.

Sec. 13. Provides for return by Welfare Division of any improperly received funds.

Sec. 14. Required by 42 U.S.C. 654(5), 45 C.F.R. 302.32. Provides for routing support payments through the Welfare Division for distribution to parties entitled thereto.

Sec. 15. Provides that any unidentifiable monies collected will be deposited by the Welfare Division in the State General Fund.

Sec. 16. Required by 42 U.S.C. 657, 45 C.F.R. 302.51. Provides for distribution in conformity with federal law of all monies received.

Sec. 17. Required by 42 U.S.C. 654(1) & (7), 45 C.F.R. 302.10 & .34. Provides duties of prosecuting attorneys for consistent statewide operation of support enforcement program.

Sec. 18. Required by 42 U.S.C. 654, 45 C.F.R. 302.35 and 303.3. Provides for a central state child support enforcement organizational unit and parent locate function.

Sec. 19. Provides for removal of uncollectible support debts from accounting records.

Sec. 20. Adapted from Calif. Welf. & Institutions Code §11353 and R.C. Wash. 74.20.260. Provides for prompt reporting by responsible (legitimate or judicially determined) parent of his financial ability to support his dependent child(ren).

Sec. 21. Declaration of legislative purpose that children be promptly maintained insofar as possible from the resources of responsible parents.

Secs. 22 through 33 and 35. Billdrafter's technical amendments.

Sec. 34. Required by 42 U.S.C. 1302, 45 C.F.R. 232.10 & .12. Provides that applicant or recipient must cooperate with child support enforcement requirements as a condition of ADC eligibility.

Secs. 36 through 39. Adapted from Calif. Civ. Code §4701. Provides for court-ordered wage assignments.

Sec. 40. Repeals obsolete ADC recoupment statutes superseded by S.B. 454 provisions.

DALE GOODMAN
ASSEMBLYMAN
RENO-WASHOE COUNTY
DISTRICT NO. 26

2357 YORI AVE.
RENO, NEVADA 89502

COMMITTEES
VICE CHAIRMAN
LABOR AND MANAGEMENT
MEMBER
EDUCATION
ELECTIONS

Nevada Legislature

FIFTY-NINTH SESSION

April 17, 1977

FOR YOUR INFORMATION CONCERNING AB 643

A major complaint of the public concerning the fight against crime is that many judges are overly lenient in their treatment of hardened criminals.

Convicted criminals are often given small prison terms or fines, and sentences are often reduced or suspended altogether by judges who are unwilling to impose the full sentence allowed by law.

The suggested Judicial Sentencing Disclosure Act is designed to help counter this trend towards excessive leniency by requiring a complete public record of a judge's sentencing history, which would be available for inspection by the media and the general public at all times during normal working hours.

The record would include the identity of every convicted criminal, all criminal charges of which the defendant was convicted, and all sentences handed down by judges in such cases.

1752

EXHIBIT C

CLARK COUNTY CASELOAD STATUS REPORT FOR 1976

The Eighth Judicial District Court had, during 1976, a per judge caseload that is 40% higher than the national average. Total case filings during 1976 were 21,797 - the highest ever. The national average of cases filed per judge is between 1,000 - 1,200 cases. Filings for Clark County during 1976 were 1,981 cases for each of the eleven judges.

Criminal cases filed for 1976 were 3,255 or 814 for each of the four criminal departments. This is near the national average of criminal cases filed. The most seriousproblem facing the criminal courts is the delay in case processing. A sample survey of delay in case processing between filing in justice court and disposition in district court indicated the magnitude of the problem. Only 9% of the cases were concluded within 90 days. National standards and goals recommend that all criminal cases must be processed within 120 days. Clark County processed only 18% of its criminal cases in 120 days. It took one year to process 57% of the cases. Thirteen per cent of the cases took over two years to process.

Pre-sentence investigation reports (PSI's) ordered by the District Court indicate the number of defendants found guilty. (No historical data is available on the number of cases concluded.) During 1976, 1,148 PSI's were ordered, a 100% increase over 1974 when 573 PSI's were ordered, and a 35% increase over 1975. Preliminary data indicates that a record number of PSI's are being ordered during the first two months of 1977.

Although more cases are being disposed of, the courts are unable to keep up with the caseload. Criminal case filings during the past five months show that more cases were filed than disposed.

Judgements entered in civil cases reflect the increased productivity of the court in civil case processing. During 1976 there were 13,808 judgements entered, a 19.5% increase over 1974. More cases are going to trial by jury with a 55% increase during 1976 over 1974.

Each civil department had an average of 2,648 cases filed during 1976. This is 1,250 cases above the national average of 1,300 - 1,500 civil cases filed . Case processing delay is a serious problem in the civil courts. Jury trial dates, in most courts, are being set 8-14 months in the future (depending on the department). Non-jury cases are being set 6-10 months in the future.

Delay in civil cases is based upon the time lapse between the date a case is ready for trial and the date the court can set for trial. In most instances 30-90 days should be allowed. In Clark County the time averages 10-12 months.

To bring the Eighth Judicial District Court in line with national averages and recommended standards 7 more judges would be required. Washoe County has 7 judges with 9,893 total filings, for a per judge average of 1,413, compared with Clark County's 1,981 filings. To match Washoe County in cases filed per judge would require 15 judges in Clark County. Washoe County has a population ratio of 22,134 people per judge, while Clark County has 34,000 people per judge (based on 1975 projected population figures). California Superior Courts had a per judge case filing of 1,196. To match the California average would require 18 judges.

If the courts of Clark County are to provide the service required by the people, additional judges must be allocated.

EXHIBIT D

ASSEMBLY JUDICIARY HEARING ON AB 647 - April 18, 1977

I am Mrs. Florence McClure, Director of Community Action Against Rape, serving the Metro Area of Clark County. The primary goal has always been to help the victims of sexual assault crimes with counseling and helping them to make adjustments. However, until the laws are changed to be more just the victim is still going into that courtroom with the deck stacked against her and the defendant has his full rights under the Constitution.

This Committee made it possible at the 1975 Legislature for the victim to have many more rights and help than she had had before. At that time most of the laws in this area were over 100 years old -- this was true of most of the states -- in '75 only Michigan and Florida had redefined the crime; while we were in session that year, New Mexico changed its laws, followed by Colorado, Ohio, Wisconsin, Kentucky, Nebraska and so forth -- now we have 22 states that have redefined the crime as one of violence, and many more are ready to do so.

I am strongly in favor of retaining all Constitutional rights guaranteed to a defendant but we want rights for victims of crimes of violence -- violating a person's self is a most horrendous act and payment should be exacted for commission. AB 647 I believe will make some inroads on the present injustice. There are a number of changes needed also, such as special training of police officers and hospital personnel; The State of California recently passed a bill, SB 575, that insures such is available in their cities and counties. We will work toward accomplishment of this at the local level and if not forthcoming, then we will be back at the '79 session.

1754

EXHIBIT E

A true definition of rape is:

> An act of violence - in which force is used or implied - committed by one person against another without that person's consent, violating that person's self, including the right of sexual privacy.

Myths are hard to kill -- it takes a lot of re-education and even then some do not want to part with them; this is one of the main reasons that prosecutors have trouble with juries -- they bring myths with them in the courtroom even though they are cautioned again and again to stick to the facts and points of law are brought out during the course of the trial. Some of you are lawyers and you know there is such a thing as a "bad" jury. I have seen or heard of two recently in sexual assault cases; after the defendant was acquitted in the last one, the defense attorney said, "When he commits the next one, perhaps you will get a good jury!"

The film industry, both television and movie, as well as a number of print media, have not protrayed rape properly and thereby perpetuate myths. For instance, the myth that rape involves almost exclusively young, attractive, fasion-conscious women -- the truth is that all women are vulnerable to attack, regardless of age, physical appearance, marital status, etc. Counselors with our organization have worked with victims from the age of 4 to 72. The film industry is not about to portray the rape of a 4-year-old girl or a 72-year-old arthritic woman. Over 50% of the rapes during the past 4 years in our area happened in the victim's home -- some offenders started out as burglars but found a woman alone and committed rape also.

The Miami Beach Police Department, also located in a resort area, have stated that since the redefinition of the crime went into effect in October 1974, they have apprehended more and convicted more offenders.

Susan Brownmiller in her best-selling book, AGAINST OUR WILL: MEN, WOMEN AND RAPE, states:

> "Like assault, rape is an act of physical damage to another person, and like robbery it is also an act of acquiring property: the intent is to "have" the female body in the acquisitory meaning of the term. A woman is perceived by the rapist both as hated person and desired property. Hostility against her and possession of her may be simultaneous motivations, and the hatred for her is expressed in the same act that is the attempt to "take" her against her will. In one violent crime, rape is an act against person and property."

When I started working with the Center when it was set up in the fall of '73, I knew I would have trouble looking a victim in the eye while urging her to prosecute. I could not tell her the law is just and she would be treated properly. However, I could say that we would be working with legislators to make the law more just and also remind them that rape has the highest recidivism of any crime and this individual would go on to do it again and again. Rape has the highest recidivist rate with 77%; 70% for robberies, 69% for aggravated assault, 66% for burglaries, 64% for larcenies and auto thefts have 51%. These figures are from Ray Cromley's syndicated column in the Review-Journal for September 22, 1976; he also stated that we should view these with a ray of hope as it appears they are being committed by just a handful of our citizenry. He has a point -- recently a 17-year-old Western High football star was arrested for numerous rapes and certified up to stand trial as an adult. I

know that our counselors worked with 3 of his victims -- he did great bodily harm to them by strangling and beating on their heads. Two days after one of his crimes I saw the victim with flecks of blood in the whites of her eye -- he had also stolen her purse, money and car keys. A locksmith I know made keys for her car so we could move it to her new location -- she is the only one who had seen his face and could identify him -- the criminalistic experts got his fingerprints at the other crime scenes; this woman has a fourteen-month-old baby and was entering her apartment at the time the assailant attacked and threw her into her apartment. This is a crime of violence -- the offender had a scholarship to the University of Nebraska waiting for him at graduation. THIS IS A CRIME OF VIOLENCE.

Metro shows a decrease in the crime for 1976 but this is only a decrease in reporting. North Las Vegas shows an increase -- they had 26 in 1975 and 46 in 1976. Henderson said they had 5 rapes but I know of 5 girls being counseled there by a school counselor who did not report it to authorities. It was this counselor's request for help that brought about a special conference on rape, child molestation and incest -- it was a credit course for nurses, counselors, teachers, law enforcement, etc. The university was very pleased with the turnout -- we had over 200 enrolled, plus our counselors.

The principal speakers for this Conference were Dr. Ann Burgess, Chairman of the National Advisory Committee on Rape Prevention and Control, who is also Professor of Nursing at Boston College and set up a counseling service for rape victims in that city; she is also the author of RAPE: VICTIMS OF CRISIS. The other speaker was Dr. Nick Groth, who is now Chief Psychologist at Whiting Forensic Mental Insti-

tute in Connecticut; prior to that employment he worked with over 600 rapists in Massachusetts. Dr. Groth said that rape is committed because of the desire for power over another human being or in anger and only a small amount committed for the sex act itself. Recently a woman in Las Vegas said in the newspaper that she was for legalized brothels as she felt it would cut down on child molestation. This is another myth that percists -- Dr. Groth said that children would have to work in the brothels to cut down child molestation -- also, prostitution does not reduce the crime of rape -- power and anger are the causes of rape, not sex.

Det. Karen Good of Metro Police told me she had 8 adult male rapes in 1976, the first time such a large figure has appeared; the 8 males were raped by other males -- 4 cases of one against one and the other 4 were gang rapes, 2 or more men against one. Of 115 female victims, 81 rape victims were also victims of infamous crime against nature; 31 were attempted rapes and 3 were fellatio only. The formula for rapes, based on the best research data, is that you will have 100 per 100,000 population -- right now the FBI gives us a population base of about 392,000 -- so we should have had 392 for the 3 major police entities (Henderson, Metro and No. Las Vegas) but we did not -- another factor -- we had 9,968,000 tourists visit the Las Vegas area last year, according to the Convention Authority -- the FBI does not count them as factors -- about 35% of the defendants on trial for sexual assault are from out of state. We are seeing only a tip of the iceberg. No doubt a large group of non-reporters of the crime are tourists -- they do not want to spoil the rest of their vacation at the hospital, police department, etc. They are leaving soon and

plan to forget it. We are still #3 in the nation for rape, even though we may feel the computation by FBI is in error -- when the fact that Las Vegas is #1 in Burglary and #3 in forcible rape is page 1 in newspapers around the country, it might as well be so as far as the readers are concerned! There is the fallacy of the printed word -- if it is printed, it has to be right.

ANALYSIS OF AB 647: I am very pleased with the bill and it will go a long way in helping law enforcement, prosecutors and the victims. On April 5 I appeared before the Senate Judiciary on SB 412, as did Asst. D. A. Tom Beatty.

In June of 1976, the Council of State Governments made certain recommendations in changes in sexual assault laws in the states. The one big difference between that recommendation and this bill is the absence of the provision for "sexual contact" in ours. Of the 22 states that redefined the crime, 11 also included the sexual contact, and of that 11, 2 had qualifications -- one state required that the woman be "unclothed" and the other required corroboration only on this phase of the crime. "Sexual contact" had been included in 1975 in SB 52 and it appears to have scared a number of people; one gentleman told me he was afraid a woman might charge the man even though he was just being playful and pinched her buttocks. I don't think anyone has the right to pinch anyone. Further, a woman could be charged if she committed the same act -- this is non-sexist.

I called Det. Karen Good the first part of this month and asked if she had cases that would fall in this category -- that of "sexual contact" and she indicated that about 10 would -- right now they are being charged with "open and gross lewdness." The states that

do have this section are: Alaska, Colorado, Connecticut, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, Ohio and Wisconsin.

At this time and because of the short period of time left in this session, I would not push for its inclusion. However, we will attempt to keep track of cases that would fall under such a section to determine if we should return in the future and ask that it be incorporated into the law.

The next reference I have is to Line 46 on Page 7 and goes through Line 4 on Page 9 -- this all pertains to initial medical treatment for a victim at the hospital, when she has signed the police officer's complaint. A couple of months ago I discovered that the police entities in the Metro were handling the costs quite differently. Det. Bobby Hartman, Chief of Detectives in North Las Vegas, said he knew of the 1975 legislation and when So. Nevada Memorial Hospital sent him a bill for payment relative to a rape victim, he sent it back with appropriate remarks. Captain Goff of the Henderson Police Department said his police department had been paying the bills. Det. Karen Good said she found out last September that Metro was paying so she went to the County Controller and spoke to him about the discrepancy, and the county began paying.

In the 1975 Legislature we had AB 664 and SB 222, both of which passed with provisions for the initial medical care of a victim. A statute was written up under "health" section and one under "criminal." I feel that if we do not direct the county to pay for this initial care of the victim, it will not be done as attempts to get them to enact the provisions of AB 664, by passing an ordnance, providing

for counseling of victim or spouse up to $1,000 was never enacted. Just a handful of victims each year would have actually come under this need. I prefer the statute that came out, stating that "the victim would not be charged directly or indirectly" for the initial treatment. I would like the phrases, "if the county has an ordinance providing for the payment of such costs," deleted. The words "may" changed to "shall" or "will".

Reference is made to Line 29 on Page 8, Section 23: as I stated above, the county never adopted an ordinance when AB 664 was passed in the '75 Legislative Session. Only a few cases would develop that needed such treatment; however, we felt we had one that would apply and I even contacted Assemblyman Nash Sena, the introducer of AB 664 and asked him to talk to County Commissioner Robert Broadbent about its implementation; a number of women in our community approached Commissioner Thalia Dondero and asked her to implement -- it was never done. I cannot see local government taking action -- we have to rely on the state in this type of case. They may feel that many will jump in to take advantage of such a law, but I personally cannot see that happening -- at the most perhaps 4 or 5 cases a year and usually by those who cannot afford the cost. The City Commission is very much attuned to the problems of victims, as indicated by their giving our crisis center office space in the Naval Reserve Building as soon as renovated at the cost of $1 per year on a lease. The interests of the County Commission seem to be in a different direction at this time -- I am sure that a number of you, even though you are from the northern or other parts of the state are aware of problems existing in Clark County; if things were different, perhaps they would look more at victim assistance. We need your help!

Sexual Assault

The Council of State Governments

1977 SUGGESTED STATE LEGISLATION

Volume XXXVI

Sexual Assault Act

Recent state actions indicate a trend toward modification of current rape statutes. Several jurisdictions have enacted laws which protect the rape victim from disclosure in court of irrelevant evidence describing previous sexual conduct. These laws are designed, in large part, to encourage the rape victim to prosecute the rapist. Other States have modified rape statutes to establish different degrees of the offense as well as to make changes which recognize that rape or sexual assault may be committed by females as well as males. Many of these statutes contain penalties for certain types of sexual contact even if actual rape was not involved.

This draft act was prepared by the Council of State Governments and contains the provisions described above. It is based upon an act introduced in Congress, and recently enacted Kentucky and Wisconsin statutes.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the [State] Sexual Assault Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to the provisions of this act.

(2) "Actor" means the person accused of conduct prohibited by this act.

(3) "Intimate parts" means the genital, groin, inner thigh, buttock, anus, or breast of a human being.

(4) "Mentally defective" means an individual suffering from a mental disease or deficiency which renders the individual temporarily or permanently incapable of appraising the nature of his conduct.

(5) "Mentally incapacitated" means an individual temporarily incapable of appraising or controlling his conduct by reason of the influence of a narcotic, anesthetic, or other substance, administered without the individual's consent.

(6) "Physically helpless" means an individual physically unable to communicate unwillingness to an act because of the individual's being asleep, unconscious, or for other reasons.

(7) "Personal injury" means bodily injury, mental anguish, chronic pain, pregnancy, disease, and loss or impairment of a sexual or reproductive organ.

(8) "Sexual contact" means the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the victim's or actor's intimate parts, if that touching can be

reasonably construed as being for the purpose of sexual arousal or gratification.

(9) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a human's body or of any other object into the genital or anal openings of another human's body.

(10) "Consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual contact or sexual penetration. A person under [15] years of age is incapable of consent as a matter of law. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:

(i) A person who is [15] to [17] years of age.

(ii) A person suffering from a mental illness or defect which impairs his capacity to appraise his conduct.

(iii) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(11) "Force or coercion" includes:

(i) The application of physical force or physical violence.

(ii) The threat of physical force or physical violence, when the victim believes that the actor has the present ability to execute this threat.

(iii) The medical treatment or examination of the victim in a manner or for purposes which are recognized by the medical profession as unethical.

(iv) The use of concealment or surprise to overcome the victim.

Section 3. [*Sexual Assault.*]

(a) Whoever does any one of the following shall be guilty of first degree sexual assault and shall be fined not more than [$15,000], or imprisoned for not more than [15] years, or both:

(1) Has sexual contact or sexual penetration with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(2) Has sexual contact or sexual penetration with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(3) Is aided or abetted by one or more other persons and has sexual contact or sexual penetration with another person with consent of that person by use or threat of use of force or violence.

(4) Has sexual contact or sexual penetration with a person [12] years of age or younger.

(b) Whoever does any one of the following shall be guilty of second degree sexual assault and shall be fined not more than [$10,000], or imprisoned for not more than [10] years, or both:

(1) Has sexual contact or sexual penetration with another person

without consent of that person by use or threat of use of force or violence.

(2) Has sexual contact or sexual penetration with another person without consent of that person and causes injury, illness, disease, or loss or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(3) Has sexual contact or sexual penetration with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising his conduct, and the defendant knows of that condition.

(4) Has sexual contact or sexual penetration with a person who the defendant knows is unconscious.

(5) Has sexual contact or sexual penetration with a person who is over the age of [12] years and under the age of [18] years without consent of that person.

(c) Whoever has sexual penetration with a person without consent of that person shall be guilty of third degree sexual assault and shall be fined not more than [$5,000], or imprisoned for not more than [five] years, or both.

(d) Whoever has sexual contact with a person without consent of that person shall be guilty of fourth degree sexual assault and shall be fined not more than [$500], or imprisoned for not more than [one] year, or both.

(e) No person may be prosecuted under this section if the complainant is his or her legal spouse, unless the parties are living apart and one of them has filed for an annulment, legal separation, or divorce.

Section 4. [*Admissibility of Evidence.*]

(a) In any prosecution for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of these sections, reputation evidence and evidence of specific instances of the complaining witness' prior sexual conduct or habits is not admissible by the defendant.

(b) Notwithstanding the prohibition contained in subsection (a), evidence of the complaining witness' prior sexual conduct or habits with the defendant or evidence directly pertaining to the act on which the prosecution is based may be admitted at the trial if the relevancy of such evidence is determined in the following manner:

(1) A written motion shall be filed by the defendant with the court no later than [two] days prior to the day of the trial, or at a later time as the court may for good cause permit, stating that the defendant has an offer of relevant evidence of prior sexual conduct or habits of the complaining witness.

(2) A hearing on the motion shall be held in the judge's chambers. If, following the hearing, the court determines that the offered proof is relevant and that it is material to a fact in issue, and that its probative value outweighs its inflammatory or prejudicial nature, the court shall admit the offered proof, in whole or in part, in accordance with the

applicable rules of evidence.

Section 5. [*Severability.*] [Insert severability clause.]

Section 6. [*Repeal.*] [Insert repealer clause.]

Section 7. [*Effective date.*] [Insert effective date.]

4/18/77

GUEST LIST

	NAME (Please print)	REPRESENTING	WISH TO SPEAK Yes	No
621	DAVID FRANK	JUDICIAL PLANNING UNIT	✓	
	DAVID W. HAGEN	STATE BAR OF NEV		
	Ace MarTelle	H. Resources	✓	
	~~DALE LANDON~~	~~STATE NEVADA~~	✓	
	R.H. Ulrich	Atty. Gen	✓	
	Tom Moore	Clark Co	✓	
659	Wm Raymond	Hwy Dept	✓	
659	Russell McDonald	Washoe County	✓	
652	Verlyn L Fletcher	Dept of Motor Vehicles		✓
	JOHN CIARDELLA	DEPT of MOTOR Vehicles		
AB 659	Steven Stucker	CITY OF NORTH LAS VEGAS	✓	
	Nick Horn	Assembly Dist 15	✓	
	Florence McClure	Rape Crisis Center Las Vegas	✓	