

MINUTES

ASSEMBLY JUDICIARY COMMITTEE
April 29, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Coulter
Assemblyman Banner
Assemblyman Polish
Assemblyman Price
Assemblyman Ross
Assemblyman Sena
Assemblyman Wagner

The meeting was called to order at 8:10 a.m. by Chairman Barengo. The witnesses wishing to testify were sworn in as they testified.

SB 412: Assistant District Attorney of Clark County, Tom Beatty, was first to address this bill stating that he felt that whether or not section 17, subsection 3, should be include in the bill was a matter of legislative policy, but he pointed out that there are many in public prosecution who feel that a prohibition against homosexual conduct is necessary because they feel to raise the prohibition would raise the inference that that type of behavior was condoned.

He stated that there were still points which they felt should be looked into in regard to the bill and they are: 1. The bill would reduce penalties in some areas which cover assault on a child by an adult, 2. Virginia has passed laws upholding its sodomy statutes as being constitutional, and the Supreme Court ruled that a state may prohibit this action among adults, 3. The Senate side had basically left the infamous crimes section the same as previous law.

In answer to a question from Mr. Coulter, Mr. Beatty stated that there have been no cases tried recently in Clark County on this basis.

In answer to a question from Mrs. Wagner, Mr. Beatty stated that whether or not section 17, subsection 3, was discriminatory toward homosexuals, was, again, a policy decision for the legislature. Mrs. Wagner again asked him to express his own personal opinion, inasmuch as he was instrumental in adding the amendment and he declined to express his opinion.

Mrs. Wagner stated that she had didcussed this subject with members of the Washoe Sheriff's Department and they had stated that they do not enforce these types of laws in general. Mr. Beatty stated that they are hard to prosecute because of the proof factor. He also pointed out in response to a question from Mr. Coulter that if you did not outlaw that type of behavior then it was supposed that that behavior was proper conduct. And, he stated, for that reason, many prosecutors believe it should be retained. He also said he did not feel they would object to a gross misdemeanor, depending on the gravity of the act.

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Mr. Ross asked Mr. Beatty if the section he was concerned about, relative to reduction of penalty, was page 2, section 4. He stated that that was the questionable portion. Mr. Ross suggested that there be an amendment to provide for extra penalty in the case of an adult, over 21, assaulting a child, under the age of 14 (age currently in the law). Mr. Beatty agreed with the suggestion and stated that that would be more in keeping with current law.

Chairman Barengo asked Mr. Beatty if he felt an Interim Study on codification of the penalties in the NRS would be a worthwhile undertaking and Mr. Beatty stated that he felt it would be very worthwhile and he would speak to Senator Gibson about the need for the study.

Mr. Florence McClure was the next person to testify on SB 412. She presented a letter to the committee stating her position on the bill in its amended form and their fears of delaying the bill because of the amendments. She pointed out to the committee that she feared a fight over the amendment which had been discussed previously would, in effect, kill the bill because of the lateness of the session. Her letter is attached as Exhibit A.

Mr. Ross asked Mrs. McClure if she felt that section 17, subsection 3 should stipulate "consenting" adults. Mrs. McClure said she felt it should and that when they are consenting, there is no victim. Mr. Price asked if she felt that Nevada should pass a law similar to that just passed in California which would prevent the use of the names of the victims of these crimes from being publicized. She stated that she would, indeed, like to see this provision added to the law because they often find these people being threatened by the family or friends of the person who was accused of the rape.

Chairman Barengo handed out to the committee a letter on this bill which is attached and marked Exhibit B.

SB 44: Chairman Barengo introduced to the committee a letter from Tom Beatty which stated that he was opposed to the bill due to the reduction of penalty possibility. It is attached and marked Exhibit C.

SB 273: Mr. Fred Gale, Chief Deputy Coroner for Carson City County stated that it is their practice to sign only completed death certificates and he thought the bill was good as it was originally drafted.

Mr. Price asked Mr. Gale what happens when a body is found and they are unable to identify it right away. Mr. Gale stated that when this happens an affidavit is filled out with the known information and then when all the details are gathered the death certificate itself is filled in.

SB 74: Mr. Daykin, LCB, came in to tell the committee why this bill was included under chapter 100 of the NRS, which is the

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section which deals with general debtor and creditor relationships rather than in the section which deals only with banks because they are not the only institutions which accept deposits.

SB 431: Secretary of State Swackhammer stated that he felt this bill would cause his office only a minimal amount of additional work. And, that his office had not had any complaints registered with them concerning the engineering profession. A brief discussion followed as to why only this profession was singled out and Mr. Swackhammer stated he did not know why.

SB 514: Mr. Fran Breen stated that they had no problem with this bill except that in section five they would suggest that the new language which had been put in by the LCB be eliminated because the language in the law as it has been, was developed with and approved by IRS and he was not sure that the revised language would be acceptable to them. He stated that they would like to see the language stay as it had been.

He stated they had no objections to the balance of the bill.

SB 412 (Cont'd.): Mr. Larry Hicks, District Attorney for Washoe County and President of the Nevada State District Attorneys Association commented on the bill. He stated that he felt rape should be termed rape and not sexual assault because of the relaxing influence he felt the new term would indicate on rap sheets, etc.

He stated he felt that it would only change the name, not the number of rapes which happen nor would it help in prosecution of those cases. He stated that there is currently a rape crisis center in Reno and they have been working together very successfully in the past few years. He stated that the current law is a strong one and has been upheld by the Supreme court and he stated that he felt the change was only cosmetic.

Mr. Hicks stated he agreed with Mr. Beatty regarding the necessity of strengthening of the penalty for assault by an adult on a child under 14.

In answer to a question from Mr. Coulter, Mr. Hicks stated that he cannot remember a case, relative to section 17, subsection 3, prosecuted in Washoe county. Mr. Coulter then asked if he felt there should be a felony punishments for these types of acts. Mr. Hicks stated that they have never had a case like that brought before them and he felt the police had better things to do with their time and, from his personal point of view, he did not believe the law was necessary. Mr. Coulter asked him if he knew how the other DA's around the state felt about this and Mr. Hicks stated that he felt that would be their opinion also.

Mrs. McClure stated that she wished to point out that in 1975, only two states had redefined their rape laws (Michigan and Florida) and now there are 22 states which have redefined the law similar to what is done in SB 412 and she felt this number would increase substantially before next session.

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Mr. Barton Jacka, as a representative of law enforcement, stated he felt the law should remain, as is, in regard to homosexuals because he felt, otherwise, Nevada would end up with the same problems in regard to this area as are being felt in California in other states where that type of conduct has been liberalized.

In answer to a question from Mrs. Wagner, Mr. Jacka stated that he felt that the reason for the dramatic increase in homosexual activity in some of the California area was directly related to the liberalization of the California laws. He stated that he felt it was, perhaps, discriminatory toward the homosexuals; however, he felt the whole society had to be thought of.

In answer to a question from Mr. Coulter, Mr. Jacka stated that he felt we should not succumb to the influences of California necessarily and he did not feel that the sentences which could be set should be reduced farther for this conduct.

Mr. Ross asked if he also felt that the penalty for sexual assault on a child by an adult should be a greater penalty and Mr. Jacka stated that he absolutely felt it should. Mr. Ross also asked Mr. Jacka how he felt regarding the parole provisions in this regard. Mr. Jacka stated that he had not had a chance to review that particular portion of the bill and therefore did not wish to comment on that specifically. He also stated that from a personal viewpoint he agreed with most of Mr. Hicks' comments regarding the bill.

SB 152: Deputy Attorney General Brolin was brought in to address the committee regarding the letter resulting from his testimony on April 18. The letter may be referenced in the minutes of April 28 as Exhibit B (w/attachments). He stated that those agencies which are being added are similar in function to those that have the subpoena power now and this would be used in conjunction with their investigatory powers.

Chairman Barengo pointed out to Mr. Brolin that it was the feeling of the committee that had they had the bill earlier in the session they would have amended the bill to include only the sections dealing with the uniform procedures portion and that they wished to deal with new agency powers on a case by case basis.

Mrs. Wagner said that she felt it was important to pass through the uniform procedures sections and felt that the new agencies should be eliminated from the bill if possible.

Mr. Brolin stated that he too felt the uniform procedures portion was the most important though he did not feel the subpoena powers asked for would endanger anyone and would be a good idea.

SB 510: Washoe County District Attorney Larry Hicks and Barton Jacka, Las Vegas Metro Police, testified jointly on this bill stating that the bill was requested by the Las Vegas Metro Police Department because of a problem they have run into in Clark County.

They stated that this bill is aimed at the panderer or "pimp" who physically abuses the prostitutes in order to keep them in the business of prostitution. Bart Jacka stated that it is difficult to prove, as the law stands now, that a prostitute is kept in the profession against her will because the pimp can state that she was working in prostitution before he was associated with her.

Mr. Price asked if this could have been taken care of in AB 451, and Mr. Hicks stated that he did not believe so because that bill only dealt with the language of the law, and did not lend itself to specific infractions, as such.

Mr. Hicks stated that the District Attorneys Association is in support of the bill.

Mr. Sena asked Mr. Hicks or Mr. Jacka to comment on page 2, line 9 regarding aiding or assisting. Mr. Hicks said that this was pointed at the problem of transporting the prostitutes due to the fact the pimp usually hires someone else to do the driving from place to place and therefore cannot be convicted of taking part in the supplying of the prostitutes. Mr. Jacka stated that that, indeed, was the problem for the lack of convictions in Clark County.

In answer to a question from Mr. Price, Mr. Jacka stated that he felt the present laws were strict enough except for the fact that they were having difficulty getting convictions because of some of the weaknesses and he felt this would help to eliminate that problem for them and get more convictions.

COMMITTEE ACTION:

SB 514: Mr. Ross stated that he felt the language in section five should be restored to its original structure. Mr. Ross moved for a Do Pass as Amended. Mr. Coulter seconded the motion and it carried.

SB 510: Mr. Ross stated that this bill should be amended to make it consistent with AB 451 when it is passed by the Assembly. Mr. Ross moved for a Do Pass as Amended. Mr. Sena seconded the motion and it carried.

SB 116: Mr. Polish moved for a Do Pass. Mrs. Wagner seconded the motion and it carried.

SB 431: Chairman Barengo stated that the amendment to this bill on line 28 of page two, to include "engineered and engineering" would be discussed and worked out with Russ McDonald. Mr. Polish moved for a Do Pass as Amended. Mr. Sena seconded the motion and it carried.

SB 74: Mr. Ross moved for a Do Pass. Mrs. Hayes seconded the motion and it carried.

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SB 187: Various amendments were discussed on this bill and Mr. Banner stated that he would clarify the amendments. Mrs. Hayes moved for a Do Pass as Amended. Mr. Sena seconded the motion and it carried with Mrs. Wagner voting no and Mr. Ross and Chairman Barengo stated that, due to a conflict, they abstained.

SB 189: Mr. Banner moved for an Indefinite Postponement. Mr. Polish seconded the motion and it carried with Mr. Coulter, Mrs. Wagner and Mrs. Hayes voting no.

SB 273: Mrs. Wagner moved for a Do Pass. Mrs. Hayes seconded the motion and it carried.

AB 491: Mr. Ross was to see that amendments to this bill were drafted. Chairman Barengo moved for a Do Pass as Amended. Mr. Ross seconded the motion and it carried.

SB 234: Mr. Ross moved for an Indefinite Postponement. Mrs. Wagner seconded the motion and it carried.

SB 183: Mr. Ross moved for a Do Pass. Mr. Sena seconded the motion and it carried.

SB 151: Chairman Barengo said that he felt this had been previously passed from committee but, for the record, asked for a confirmation vote. Chairman Barengo moved for a Do Pass. Mr. Ross seconded the motion and it carried.

SB 412: Discussion on this bill followed with no conclusions drawn and the committee will discuss this at a later meeting.

There being no further business, the meeting was adjourned at 11:00 a.m. for session.

Respectfully submitted,

Linda Chandler

Linda Chandler, Secretary

Copy for Comm.

EXHIBIT A

COMMUNITY ACTION AGAINST RAPE



~~TEXAS CENTER NEW YORK LAS VEGAS NEVADA 89101~~

2432 Natalie, Las Vegas, Nevada 89121

April 23, 1977

Assemblyman Robert Barengo
Chairman, Assembly Judiciary Committee
Legislative Building
400 South Carson Street
Carson City, Nevada 89710

Dear Chairman Barengo:

Re: SB 412, First Reprint

I received the above-referenced bill Friday afternoon in the mail; I had tried to get a copy of the draft before I left Reno for home on Tuesday, April 19, but was told it was against regulations. Senators Close and Bryan gave me the substance of the changes; I had heard Assistant District Attorney Tom Beatty speak of amendments he wanted a week and a half before.

We are pleased with the bill as we feel it will enhance the victim's position. The day after I returned from Carson City, I had two rape victims to work with, one raped during a breakin of her home last Tuesday night and the other raped during the early morning hours when she was at her place of work (two men, one acting as a lookout) and on Thursday I had a 26-year-old girl who was raped at Red Rock State Park at 9 in the morning. Therefore, I look at legislation strictly on how I feel it will help a victim -- of course, I wish to insure that the Constitutional rights of defendants are not abridged. On Monday afternoon I am taking a young woman for a polygraph test at the North Las Vegas Police Department; some might say that her having to take a test in order to get action is not right, but if that is the only way we can do it, I will go along. I feel that the U. S. Supreme Court will eventually address itself to this issue.

The amendments made do protect victims. I am very pleased with the changes in Section 22 (Page 8, Lines 36 thru 44) as it will insure that a victim, though poor, will get proper treatment for injuries committed during the commission of the crime.

1882

Chairman Robert Barengo
Assembly Judiciary Committee

April 23, 1977
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I realize that California has passed a "sex between consenting adults" law -- The Lt. Governor voted "yes" to break the tie. However, I would hate to see this bill run into trouble and not pass because of the amendments put in to keep its prohibition. If the Committee feels strongly about this feature, perhaps it could be drafted and sent through on its own merits.

I attended the League of Women Voters' State Convention yesterday and many of the women spoke to me about the bill being passed in the senate unanimously. It is not a League issue, except that part that deals with discrimination between sexes, but they have followed the bill and are looking forward to its passage.

I have a luncheon speaking engagement with the Clark County Attorney's Wives on Tuesday and a meeting of nearly 30 women on Wednesday who are arranging for a halfway house, a shelter for battered wives, women who are victims of assaults (including rape victims), etc. There are many groups of people who are looking forward to passage of this law. Please do not disappoint us. It is about the end of the session and on the whole, this is an excellent bill. I would say that with its passage, the State of Nevada would have one of the best set of laws relative to sexual assault in the country. The Barristers Club of San Francisco is just now finishing a redefinition of the crime, such as SB 412, and is looking for an introducer.

Sincerely,



Florence McClure, Director
(Mrs. James E.)

FMc

cc: Assembly Judiciary Committee Members
James Banner, Steven Coulter, Karen Hayes,
John Polish, Robert Price, Ian Ross, Nash Sena,
Sue Wagner

EXHIBIT B

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William E. Andrews
5301 Canyon Drive
Reno, Nv. 89509
April 26, 1977

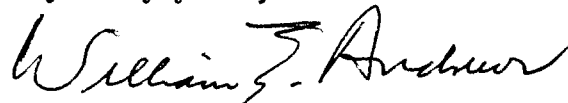
Assemblyman Robert R. Barengo
Chairman, Assembly Judiciary Committee
Legislative Building, State of Nevada
401 So. Carson Street
Carson City, Nv. 89710

Dear Assemblyman Barengo:

Enclosed is a copy of an editorial from the Nevada State Journal of April 26th. I definitely agree with the thoughts expressed and wish to support A.B. 647, (the same as S.B. 412) in its original form and without added amendments.

Thank you.

Very truly yours,



William E. Andrews

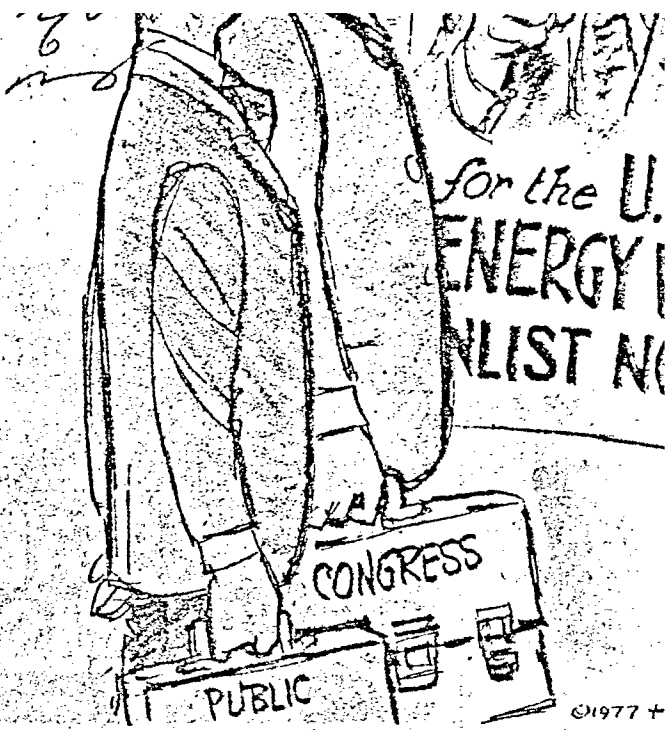
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Considering the extent of alcoholism in Nevada, \$350,000 is not an exorbitant sum. Nevada is number two in the nation in per capita consumption of alcohol and it is number one in the nation in per capita revenue generated by alcohol. At the same time, it is number 46 in expenditures per dollar of liquor revenue for alcoholism program expenditures. It also ranks number 46 in federal funds received to treat alcoholism and number 48 in total revenue spent on alcoholism programs.

One of the most urgent rehabilitative needs in Clark and Washoe counties is for detoxification facilities. Nevada's reputation as a 24-hour town and as a gaming center can result in a disproportionate number of alcoholics coming to this state.

If publicly intoxicated, they can be taken into civil protective custody and released. And although in Reno the Alcoholics Rehabilitation Association, Inc. can offer limited care, it does not have the facilities for long term treatment nor does it have sufficient capacity to handle the enormous demand.

Approval of AB 334 would be a responsible act in a state which draws so large a percentage of its income from alcohol and which, it might be expected, can have unusual problems resulting from alcohol abuse.



Sex and the Law

Legislation benefitting women has not been a primary accomplishment of the 1977 Legislature. But the Legislature has gone a long way toward removing obviously discriminatory laws and phrasing from the books.

AB 451 is an omnibus bill which removes distinctions based on sex from various state laws. It is the result of several interim studies of Nevada law. And although it makes no drastic changes in the law, it has clarified certain laws and, particularly, succeeded in destroying certain sexual stereotypes which were reflected in Nevada law.

For example, it provides that custody of a child in a divorce will not automatically go to the mother. And it also makes prostitution laws apply to males as well as females.

And the Assembly Judiciary Committee is now considering a bill, SB 412, which redefines rape and makes rape laws applicable to both men and women. The bill is, in part, designed to change public perception of what constitutes a sexual crime. It substitutes the concept "sexual assault" for the present legal concept, "rape." It might seem a fine distinction but reflects current thinking that sexual assaults are crimes of violence, not of sex, and that perception of such crimes as sexual in nature can distort the manner in which the victim is seen in society and can also subject the victim to unfair treatment in court.

An additional section of this law would repeal a statute which makes sexual acts other than intercourse between two persons illegal. This section, however, was amended by the Senate to apply only to acts committed by men and women. Homosexual conduct would still be forbidden.

The Assembly committee should drop this amendment and repeal the entire statute (NRS 201.190). Laws forbidding sexual practices between consenting adults, whether they are of the same or opposite sex, are unenforced and for all practical purposes, unenforceable. Retaining such laws, the breaking of which is commonly recognized, not only by society, but by law enforcement officials, can only be converted into weapons of oppression and discrimination by the unscrupulous.

William F. Buckley Jr.

National Debate

Washington Star

I wrote in this space last week that the discovery by the Carter administration of a secret memorandum of a conversation between President Nixon and Premier Chou En-lai in 1972 revealed that Nixon promised in his second term to "normalize" relations with China and that this meant abandoning Taiwan. My commentary was based on a front-page story in the New York Times.

Henry Kissinger has advised me that the story is substantially misleading and my comments therefore unjust.

The crux of the question is: What does "normalize" mean? The Carter administration, and indeed most commentators, appear to agree that it means the severance of United States diplomatic and military relations with Taiwan. Were this to happen, the mainland Chinese would be free to mount a military campaign against Taiwan to force unification.

Another view of "normalization" — and this was the view, Kissinger insists, of the Nixon administration — accepts the withdrawal of diplomatic recognition of Taiwan but only if mainland China pledges to limit itself to peaceful means of attempting reunification. "We never once went beyond the language of the Shanghai Communique," he advised me. The memorandum concerning Nixon's initiatives during the second term meant merely that not until 1973 would it be possible to move toward normalization.

Now here is the relevant language from the Shanghai Communique. That document was in

Copy to Comm



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KELLY W. ISOM
ADMINISTRATIVE OFFICER

April 20, 1977

The Honorable Robert Barengo
Chairman, Assembly Judiciary Committee
Nevada Legislature
Carson City, Nevada

Re: Senate Bill 44

Dear Bob:

The enclosed news clipping show that we are presently getting maximum sentences for robberies, with and without weapons.

The penned in comment shows the difference under SB 44.

Sincerely,

Thomas D. Beatty
Thomas D. Beatty
Assistant District Attorney

TDB/ch
Enclosure

cc: Karen Hayes

Las Vegas sentenced 15 years

A Las Vegas man was sentenced to 15 years in prison Friday for his part in the stick-up of a convenience market.

District Judge Michael Wendell handed down the maximum sentence to Lee Velarde, 31, of 325 N. Decatur who pleaded guilty.

According to the court record, Velarde and a companion beat up the clerk at the store at the corner of Decatur and Washington about 4:30 a.m. Jan. 20, 1976.

Then they robbed him and fled, according to the record.

The judge meted out the maximum prison sentence.

LAS VEGAS REVIEW-JOURNAL
ED., p. 27, 16 APRIL 1977

← MAXIMUM POSSIBLE PUNISHMENT UNDER SB 44 WOULD BE 10 YEARS



Man given 24-year sentence for robbery

A North Las Vegas man was sentenced to 24 years in prison Friday for armed robbery.

District Judge Michael Wendell handed down the sentence to Sam Culverson, 24, of 1120 Bluff, who was convicted last month.

A co-defendant, Gregory Lewis, had already been sentenced to 16 years in prison.

According to testimony, Culverson and Lewis broke into the home of Delores Riddley Aug. 7. They robbed both her and a man named Robert Hammond.

The shotgun wielding robbers then fled.

Lewis testified he and Culverson had been sold bad drugs by their victims and that they simply wanted a refund when they went to the house.

Culverson, who had a felony conviction on his record at the time, did not testify. If he had, prosecuting attorneys could have asked him about it during cross-examination.

Lewis had no felony conviction when he testified.

LAS VEGAS REVIEW-JOURNAL
ED., p. 13, 16 APRIL 1977

↓ MAXIMUM POSSIBLE PUNISHMENT UNDER SB 44 WOULD BE 15 YEARS

