

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY
SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 26, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:00 a.m., Thursday, March 26, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBER PRESENT:

Shirley LaBadie, Committee Secretary

Chairman Close asked for a motion to approve the minutes of March 10, 11, 12, 16 and 17.

Senator Ford moved to approve the minutes of March 10, 11, 12, 16 and 17.

Senator Hernstadt seconded the motion.

The motion carried unanimously.

Chairman Close advised the committee the gaming bills had been scheduled for April 8 and 9 in a joint hearing with Assembly Judiciary.

SENATE BILL NO. 407--Provides procedure for appointment of guardians of adults and establishes special guardianships for persons of limited capacity.

Chairman Close advised the committee he had given S. B. No. 407 considerable thought and he felt the only way to handle the bill because of the time involved in working on it would be to take the existing statute and tie in certain portions of the proposed legislation which the committee felt is needed.

SENATE COMMITTEE ON JUDICIARY
March 26, 1981

Chairman Close stated he had no objections to some kind of limited guardianship but it would require more time than the committee had available at this time. Discussion by the committee resulted in the appointment of a subcommittee to decide on the changes. Senators Ford, Wagner and Don Ashworth were appointed to the subcommittee, with the help of Chairman Close. Chairman Close told the subcommittee the policies are simple as written and not to make them complicated. A guardianship can be obtained from \$200 to \$500, legal fees included, and the costs should not make it so prohibitive to be restrictive. Chairman Close stated he had heard a comment to the effect that if a person petitions for a guardianship and it is denied, the petitioner should be responsible for the attorney's fees. He said it might be a good idea, it would be one way to stop people from requesting frivolous guardianships.

Chairman Close read a letter from Mr. Robert G. LeGakes, Chief Judge, Eighth Judicial District Court, Las Vegas, stating he felt the present legislation on guardianships is adequate. See Exhibit C attached hereto.

SENATE BILL NO. 371--Provides financial assistance to organizations serving victims of domestic violence.

Senator Wagner stated she had reviewed the concerns and suggestions of all people testifying and the committee on S. B. No. 371. She said one question raised concerned the relationship of an adult person under the language in Section 2, Subsection 3 which reads consanguinity or affinity. Two bills were passed last session dealing with domestic violence, the language read as follows in Chapter 33. Instead of using consanguinity or affinity, the language was used as in the current law, is related to the adverse party by blood or marriage or is or was actually residing with him. Senator Raggio had pointed out previously that the language currently in the law does not do what the intent was. Senator Wagner felt that is the language appropriate to use because it is already used in that way dealing with this issue.

Senator Don Ashworth pointed out it had been suggested in the hearing, the word or child should be added after adult person, on line 10, Section 3, subsection 3. Senator Wagner questioned if this would apply since the bill would then read that the shelter would be also for children and it is not equipped to deal with them. The language, "Family or household member" will be checked to see what it refers to.

SENATE COMMITTEE ON JUDICIARY
March 26, 1981

Senator Wagner advised the committee in regard to Section 3, which mandates that each board of county commissioners create an advisory board, in terms of small counties, suggested that an advisory board for domestic violence be created as set out in this law or use an established board.

Senator Wagner said there was a suggestion during the hearing that a member of the general public is not spelled out in the suggested members of the board. Senator Raggio stated he would not agree with that suggestion, he felt the designations in the bill as written are sufficient.

Senator Wagner stated on page 2, line 7, the words and dependent children should be added after domestic violence. She said on page 2, Section 4, subsection b, the language was written after a discussion with Senator Gibson and this was the appropriate way to go. Senator Raggio questioned the practicability of releasing money from one county to another. Senator Wagner said this is happening now in the Carson City area. People in the adjoining areas having no facilities are coming to Carson City. The group sending them has tried to have money come with them. This section was designed to help smaller communities which will not be able to provide a shelter facility. It was suggested to take out the language which provides the money be released on an annual basis.

Senator Don Ashworth expressed a concern on the language in Section 4, subsection 1, which specifies a nonprofit corporation, incorporated in this state. It excludes corporations which are incorporated in other states. It was decided to change the language in this section.

Senator Wagner suggested on page 2, line 30, dependents be added. On line 38, the specific language regarding a telephone switchboard be changed to a telephone facility. Line 37, and dependent children should be added.

On page 3, section 4, Washoe County Commissioners suggested the timetable needs to be more flexible. It was suggested that the specific dates be removed and the language be more general. Section 4 needed to be modified to specify that any funds a domestic violence organization has must be used within the state.

Senator Wagner stated Section 6 deals with the bifurcated system. If the counties have any remaining money, the surplus could go to an existing agency. Her feeling was the program would be more effectively run if it was all done at the state level, then the

SENATE COMMITTEE ON JUDICIARY
March 26, 1981

counties would be treated more equitably. However she stated she would prefer to have it done at the county commission level. Senator Wagner stated some counties generate very little money from marriage licenses but still have some domestic problems. Some of these small counties are going to need a transfer of funds in some fashion. It was decided leave Section 6, subsection 1 and 2 as is.

Senator Wagner stated she had been approached by Mr. Pat Pine, lobbyist for Clark County and he suggested that a certain percentage of the \$5 increase in fees could be used for administrative costs. In the original proposals on this bill, it was suggested that this be done, the county controller in Clark County stated they did not need it. However now Loretta Bowman has requested a percentage of 5% which is too high considering the controller felt nothing was needed. After talking to Dan Fitzpatrick of Clark County, 2% was tentatively agreed upon. Approximately 55,000 marriage licenses are issued in Clark County annually, this would amount to \$13,750, at 2% it would be \$5,500. Senator Raggio stated they should not need \$5,500, and particularly not \$13,750. He asked Senator Keith Ashworth what would be involved in additional costs of the increased fees. Senator Keith Ashworth stated the large counties will put a number to it on the cost because they are sensitive to added costs now. He said it would cost just as much to account for the costing of this. He did not feel a percentage should be given, they can come back in two years and justify that a percentage is needed.

Senator Wagner questioned if this could start upon passage and approval if the committee agreed. Senator Ford stated the increased fee could start on July 1, 1981, the rest of the bill could start upon passage and approval. There is a bill introduced which would change the effective date of bills to start on September 1, 1981. It was decided by the committee to make the effective date July 1, 1981.

SENATE BILL NO. 371

Senator Don Ashworth moved to amend and Do Pass S. B. No. 371.

Senator Wagner seconded the motion.

The motion carried. (Chairman Close and Senator Hernstadt were absent for the vote.)

Senator Wagner informed the committee she will obtain the necessary amendments and return them to the committee for review.

SENATE COMMITTEE ON JUDICIARY
March 26, 1981

Senator Raggio stated that the \$5 which is being earmarked for this particular legislation, should be over a test period of time and how it is utilized. As a legislator, he may decide later on that the \$5 figure may be more or less than is needed or funding should be from other sources. For example, in California a portion of the marriage license fee is used for their conciliation courts. Senator Wagner stated out of that \$18 fee, \$8 is used specifically for this purpose. Senator Raggio stated he is in support of S. B. No. 371 but advised that he will be reviewing the legislation. Senator Wagner said it will have to be looked at because the bill requires that quarterly and annual reports to the Director of the Department of Mental Health and Mental Retardation be submitted and they are required to report back to the legislature.

SENATE BILL NO. 310--Revises procedures for release without bail.

Senator Wagner stated in talking to Mr. Daykin, if the bill is processed, it had to be tied into NRS 178.502 which deals with the general statement of releasing on own recognizance. She stated what had been done was to take a general statement and make it far more restrictive than it is in NRS. As a sponsor of the legislation, it was not her intent to do this. Senator Raggio stated he had been impressed with the standards which had been set for releases but was not aware it was putting a different meaning to the bill. Senator Wagner stated the language as proposed in the bill is opposite of what the A.B.A. standards were intended to do.

Chairman Close advised the committee that amendments will be requested and brought back to the committee for review before any further action is taken on S. B. No. 310.

SENATE BILL NO. 308--Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care.

Chairman Close stated this bill deals only with malpractice and the crisis which was apparent a few years ago is not present now. Senator Hernstadt stated he thought the bill had some merit.

Senator Keith Ashworth moved for indefinite postponement of S. B. No. 308.

Senator Raggio seconded the motion.

The motion carried. (Senator Hernstadt voted no.)

SENATE COMMITTEE ON JUDICIARY
March 26, 1981

SENATE BILL NO. 372--Revises statutes relating to adoption of minor children.

Senator Raggio stated he had some experience in the problems which occurred years ago during the black market baby adoption era. He said he had some problems going along with the direct placement of children in adoptions. He asked to have time to review the material from those days. Senator Hernstadt gave the committee a copy of an ad which appeared in the classified section of the Las Vegas Sun which he thought the committee should see. (See Exhibit D attached hereto) He thought it was strange that a pregnant woman could not discuss with her relatives or lawyer and seek advise, but people can run ads in the paper from out of state.

Senator Keith Ashworth stated he felt the legislation presently in NRS is alright, it is the people interpreting the law that is wrong. He stated there was conflicting testimony between doctors and lawyers as to giving advise.

Chairman Close stated on page 4, lines 33 and 34, it says that attorneys can recommend the placing of a child, he should not recommend anything. He also felt that a grandparent should be allowed to assist in the placement of a child, or parents. Senator Wagner stated in previous testimony, a father had been advised by his attorney that he could not do anything in regard to helping his pregnant daughter place her baby for adoption because of the law as written in NRS. Senator Raggio stated as long as it is done under the provisions of NRS 127.280, there is no problem.

Chairman Close stated there appeared to be a conflict. On page 2, it refers to placing, arranging and assisting in the placement of a child, no person may do this. On page 3, line 6, it says, if such placement is recommended by a person. Testimony was made that a recommendation was different than a placement. Consideration will be given to S. B. No. 372 on another day after review of the committee of additional information.

SENATE BILL NO. 376--Broadens prohibition against sexual assault by spouse.

Chairman Close advised the committee members each of them had before them a statement from Florence McClure regarding S. B. No. 376, see Exhibit E attached hereto.

Discussion of S. B. No. 376 resulted in the following action by the committee.

SENATE COMMITTEE ON JUDICIARY
March 26, 1981

SENATE BILL NO. 376

Senator Ford moved Do Pass S. B. No. 376.

Senator Wagner seconded the motion.

The motion failed to carry. (Senators Wagner, Ford and Raggio voted for the motion. (Chairman Close, Senators Keith Ashworth, Don Ashworth and Hernstadt voted no.)

SENATE BILL NO. 376

Senator Hernstadt moved for a definite postponement of S. B. No. 376.

Senator Keith Ashworth seconded the motion.

The motion carried. (Chairman Close, Senators Keith Ashworth, Don Ashworth and Hernstadt voted for the motion. Senators Ford, Wagner and Raggio voted against the motion.

There being no further business, the meeting adjourned at 10:25 a.m.

Respectfully submitted:

Shirley LaBadie
Shirley LaBadie, Secretary

APPROVED BY:

Mel. Ollopf
Senator Melvin D. Close, Chairman

DATE: April 2, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Thursday, Date March 26, Time 9:00 a.m

Work Session

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: March 26, 1981

PLEASE PRINT	PLEASE PRINT	PLEASE PRINT	PLEASE PRINT
NAME	ORGANIZATION & ADDRESS		TELEPHONE
Cindy Johnson	Do. Co. School Board		492-3515
JEANNE BOTTS	HUMBOLDT Co. SCHOOL BOARD		532-8549
MARINA LINDEN	N.Y.C. Co. School Board		492-3516
KEITH SIMON	N.Y.C. Co. School Board		492-3514
JOHN QUINTER	N.Y.C. Co. School Board		492-3527



EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY
LAS VEGAS, NEVADA 89101

ROBERT G. LEGAKES
CHIEF JUDGE

DEPARTMENT TWELVE
(702) 386-4011

EXHIBIT C

March 23, 1981

Senator Melvin D. Close
Senate Building
Capitol Complex
Carson City, Nevada 89710

Re: Senate Bill No. 407

Dear Mel:

The above entitled proposed legislation changes drastically the procedure of the Appointment of Guardian for an Adult Ward.

The Probate Commissioner, Franklin Rittenhouse, and Public Administrator, Jared Shafer, and myself have reviewed this legislation and believe that the proposed changes are inappropriate and unnecessary at this time.

Since taking office in 1979 I have had only one contested guardianship and my experience is that the present statutory scheme is adequate.

Sincerely,

Bob

ROBERT G. LEGAKES
Chief Judge

RGL:ch

EXHIBIT D

SB 372

Middle aged couple in St. George,
Utah desires to pay all medical &
hospital costs in return for adop-
tion rights. Please call collect
(701) 628-0476

STATEMENT OF FLORENCE McCLURE ON S.B. 376

Senate Judiciary Committee

9 AM

March 24, 1981

EXHIBIT E

I would appreciate having this statement read into the hearing minutes as I will be in attendance at a Regional Meeting of Community Anti-Crime Programs in Tucson, which were set up by the National Center for Community Anti-Crime Programs, based in Norfolk, Virginia.

I am Florence McClure, Director of Community Action Against Rape which serves Clark County, Nevada. I have worked with this program since its inception in September 1973. This organization, consisting of 2 staff and 30 volunteers, assisted 189 victims in 1979 and 303 victims in 1980, a rise of 60%.

S.B. 376 eliminates a phrase in the current law which I feel is discriminatory against the poor. It would be more humane to drop the phrase, "and one of them had filed an action for separate maintenance or divorce." A number of women with limited resources can get monies together to move away from a spouse who is forcing intercourse, but cannot afford the monies required for filing of separate maintenance or a divorce that may be contested. The present law was changed in 1975 via S.B. 52 and it was a great step forward.

As many of you know, some states, such as California and Oregon have gone further and permitted the filing of charges for rape even though the couple are not separated. However, California does not prosecute cases unless the spouse is so badly beaten that it is more than word against word. This must mean that their police must run some investigations when reported. The police and the criminal justice system in our state right now are so overloaded

1096

that I hesitate to go as far as those states. We have to be realistic. I do not believe a jury would convict a husband of rape just on the say so of the wife. There has to be some corroborating evidence. Our present laws on battering, if the wife would pursue, would give her some relief. Even if the wife passed a polygraph test, it would not be admissable in court.

If financing for the women's shelters come through, that would provide
/ a place a woman could stay and make plans to accumulate funds to get a separate maintenance or divorce.

Police officers in Clark County, especially those in Metro's Sexual Assault Unit, are already burdened with a heavy caseload; this center, also, might have to take on cases which would not be able to go any place -- more staff might be needed and where would the money come from?

We have lost some "righteous" rape cases in court because of some "peculiar" juries; each time we lose, it makes it harder for victims coming up. A study done by Law Enforcement Assistance Administration about 3 or 4 years ago showed that prosecutors tried to avoid sexual assault cases because they were hard to "win." They want "wins" to help them in their law careers. Their heart would not be in the cases where husband and wife lived together at the time of the alleged attack and it was word against word.

I am attaching an Editorial from the Nevada State Journal, September 30, 1979, which was erroneous on their part as good research would have shown that the present marital rape law was updated in 1975. With this one change, as noted in S.B. 376, we have a law the people of Nevada could live with.

Thank you.

Opinion

Nevada State Journal

109th Year—No. 312

Winner of The Pulitzer Prize for Editorial Writing

Warren L. Loretz _____ Publisher

Robert W. Elmer _____ Executive Editor
Frank M. DeGastri _____ Managing Editor
Everett S. Landon _____ Managing Editor
Susan A. Stearns _____ Editorial Page Editor
Robert M. Ritchie _____ Sunday Edition Editor
Veron A. Park _____ Controller
Lynn A. Frost _____ Advertising Director
Robert L. Kapp _____ Circulation Director
Eugene Mori _____ Production Director
James P. Rowley _____ Marketing Director

—Sunday, September 30, 1979

Reno Evening Gazette

104th Year — No. 134

Editorials

Marital rape

Thoughts of the ill-fated Rideout couple of Oregon came to mind earlier this week as Gov. Jerry Brown of California signed a law making it possible for wives to charge their husbands with rape.

Greta Rideout, you may remember, was the first wife to go to court after Oregon passed its landmark law broadening the legal definition of rape. Feminists and the national media, followed the case closely.

It was controversial not only because of the revolutionary idea set forth, but because of the various separations and reconciliations of the Rideouts themselves. In the end, Mrs. Rideout lost her case, and the couple was divorced.

But the case has influenced the filing of similar actions around the country and moves by other states to consider changes in their laws.

We would like to see that happen in Nevada.

Changes are needed in the way rape is dealt with in our state and in our community.

Changes are needed, because the current method is not a deterrent to rapists. Along with the general increase in crime, we are hearing more and more about rape in Washoe County.

Changes are needed, because most rape victims will not report the crime.

The legal definition of rape needs broadening, and penalties need to be re-evaluated. The Oregon and California laws which now include the concept of marital rape are one needed step in that direction.

Laws defining rape have traditionally been, for the most part, too narrow. Within the limitations of the current law, a victim can only be a woman who is not the wife of the defendant. That is because legal thinking for centuries has defined marriage in terms of a contract, with the wife's sexual availability guaranteed — a "duty" owed her husband as her part of the contract.

Literature has plenty of examples of marital rape. One of the most famous is to be found in "The Forsyte Saga," shown not long ago on public television. The morning after assaulting his wife, the hero notes she is upset, but concludes the "cool judgement of right thinking men" would be on his side: "He had but done his best to sustain the sanctity of marriage, to prevent her from abandoning her duty."

Many people today have vastly different ideas about marriage and about equality and human dignity. In the cool judgement of many of today's right thinking women, rape is an intolerable physical and emotional violation, regardless of who is the rapist.

But American laws regarding rape have not, for the most part, begun to catch up with the fundamental changes within society.

Other nations have managed to make the philosophical leap from the ancient concept of conjugal rights to the modern concept of sexual assault as a violation of freedom and self-determination. The criminal codes of Sweden and Denmark, the U.S.S.R. and some European countries include the principle of bodily self-determination as a matter of course and human dignity.

Rape is a hostile and degrading act of violence, whether it is in our out of the marriage bed. It is time we recognize that.

Not true; they had in cases previously under this new law.

The person writing this editorial had not researched the subject; SB 57 in 1975 gave women more rights.