

Approved: May 23, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 10:30 a.m. on March 26, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Bob Miller - Excused
Representative Doug Spangler - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

SB 609 - expanding the definition of rape to include when the offender is in a position of authority over the victim

Chairman O'Neal stated that the language the Senate sent over was rather restrictive and that he had been working on language that would make the bill more workable. The argument on the House floor was that the language that was presented is too broad. He provided the committee with suggested language. (Attachment 1)

Representative Pugh was concerned about what fact situations, other than medical, that would be addressed by the "professional authority" language. Chairman O'Neal replied psychologist, church chaplains or marriage counselors, for example, one may question why victims would consent to sex, but they have put their complete faith in someone they believe is a professional.

Representative Pugh asked what other situations this law would affect and are women really crazy enough to believe that if an attorney suggested that intercourse would help their case that they would have intercourse with the attorney. He believed that the victims were "mindless" and that most people have common sense. Very few people, by virtue of their profession, have any authority to engage in a sexual relationship.

Representative Ott explained that many people, depending on how they are raised and circumstances at the time, do things they would not ordinarily do because of the person in authority. They look up to them to help, this doesn't mean that they are "mindless" but it does make them a victim.

Representative Grant stated that an example of a victim, who was not "mindless", would be a seventeen year old who has a sex education class and the teacher informs them that they have to have intercourse in order to pass the class. This example would be rape.

Chairman O'Neal explained that the concept of rape by deception is that the victim's consent has been obtained under false circumstances. There will always be someone who will prey on the person who is vulnerable and that offender should be targeted.

Representative Pugh felt that this language would encompass huge areas of human relationships, such as doctors and patients falling in love and not working out.

Representative Snowbarger made a motion to adopt the proposed language and strike the work "professional". Representative Grant seconded the motion.

Representative Merritt made a substitute motion to change the work "professional" to "occupational". Representative Snowbarger commented that the reason he proposed striking "professional" was because there was not a good definition of its meaning and felt that the same toward "occupational". The motion received no second.

Representative Nichols made a substitute motion to add the following language in sub section 3: When the victim is incapable of giving consent because of: (a) a knowing misrepresentation made by the offender that the sexual intercourse was a medically, therapeutically or legally necessary procedure. Representative Merritt seconded the motion. The Chairman was concerned with the word "incapable" because of the definition in sub section (c) means mental capacity wasn't there.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S Statehouse, at 10:30 a.m. on March 26, 1996.

With permission of the second, Representative Nichols restated his motion: "Consensual sexual intercourse when the victims consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically, therapeutically or legally necessary procedure. The motion carried.

Representative Merritt commented that there was too much concern for the ignorant and there should be concern for innocent. Chairman O'Neal asked if anyone was innocent who "knowingly misrepresents" that the sexual intercourse is legally authorized. Representative Merritt replied that this was a finding of fact. Chairman O'Neal explained that the prosecution of rape is a finding of fact as to whether the necessary elements of the crime were present.

Representative Pugh stated that it becomes ludicrous when a teacher or lawyer states that they have the legal right to have sex.

Representative Ott commented that she was extremely concerned that some members of the committee were not listening to the victim. Rape comes from power play. Women, by large, respect authority. If a woman is in the position of seeing a psychologist, it doesn't mean she is "mindless" and can't make a decision. She resented the suggestion that women are incapable and stupid because they respect authority and end up getting raped.

Jill Wolters, Revisor of Statutes, explained some technical amendments that need to be made: page 2, line 18 should read "rape is a severity level I", on page 4 the grid should read "Severity" not "Security", on page 9 the boarder boxes are no longer needed. Representative Mays made a motion to amend in the technical changes. Representative Adkins seconded the motion. The motion carried.

Representative Snowbarger made a motion to add "or within the scope of the offenders apparent authority". Representative Grant seconded the motion. The motion carried.

Representative Adkins made a motion to strike on page 2, lines 19 & 20 the language regarding severity level of rape. Representative Grant seconded the motion. The motion carried.

Representative Mays made a motion to add in the provisions of **HB 2992** - enhancement of death penalty and strike the current language dealing with murder by prisoners receiving the death penalty. Representative Nichols seconded the motion. The motion carried.

Representative Grant made a motion to report **SB 609** favorably for passage as amended. Representative Yoh seconded the motion. The motion carried.

Representative Adkins made a motion to approve the committee minutes of February 16, 23, 26 & March 4. Representative Ruff seconded the motion. The motion carried.

The committee meeting adjourned at 11:00 a.m.

Sexual intercourse with a victim where the
victim's consent was obtained through a
knowing misrepresentation by the offender
that the sexual intercourse was a ^{medically} necessary procedure
or, ^{an} otherwise ^{legally} authorized act within the scope
of the offender's apparent authority.
professional

strike language in lines 19-20, pg. 2
re: severity level 4