

Approved: April 25, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 9:00 a.m. on April 4, 1996 in Room 514-S of the Capitol.

All members were present except:

Representative Mary Compton - Excused
Representative Greta Goodwin - Excused
Representative David Haley - Excused
Representative Doug Mays - Excused
Representative Gary Merritt - Excused
Representative Ed Pugh - Excused
Representative Vince Snowbarger - Excused

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

Others attending:

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

Chairman O'Neal explained that this bill was sent back to committee because some members of the House believed that it needed more work and that amending the death penalty into the bill had also presented a problem. He suggested that the committee further amend the rape provision, leave in the "Garner/Grant" amendment and take out the death penalty amendment.

The Chairman provided the committee with language that would help clarify. (Attachment 1) He explained that this suggested language would still include "a person in the position of authority" but it was in the context of the offender making a "misrepresentation" that the intercourse was a medically, therapeutically or legally necessary procedure within the scope of his authority. This was an attempt to get away from concerns of the employer/employee relationships gone sour. He stated that he wasn't insisting on the suggested language and encouraged the committee to make suggestions.

Chairman O'Neal explained that one needs to look at the criminal intent:

1. There must be a knowing misrepresentation. In cases such as the employer/employee or teacher/student there is no fraud or deception.
2. The "act" is a procedure, as the term is defined.
- 3 Needs to be an element of authority.

Representative Nichols stated "that since the person who was most concerned about the bill was not here, he was asked to negotiate on his behalf." He commented that Representative Pugh had been doing some research on the subject and his concern was with the wording of "legally and scope of authority". Representative Pugh had suggested to Representative Nichols the following wording "...medically or therapeutically necessary procedure."

The Chairman stated that if the majority of the committee felt that this was where the line was to be drawn then it would be that way. His concern was that it did not address situations where the law enforcement officer suggests that a strip search or intercourse was a necessary procedure.

Representative Grant commented that the language that had been provided addressed the concerns that were proposed to the committee and House last week. She stated that it was highly unfair that members of the committee who are most concerned about the bill were not attending the meeting and they have not provided the committee with examples of why this language was a problem.

Representative Nichols suggested that having the language divided into sub sections would be a good compromise because the language in the second sub section, which there is concern about, could easily be stricken from the bill on the floor, or the courts could deal with that sub section separately.

Representative Nichols made a motion to have the language divided and be placed in separate sections. Representative Yoh seconded the motion.

The motion to add the following language under sub section 3 "Sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 9:00 a.m. on April 4, 1996.

intercourse was a medically or therapeutically necessary procedure”, carried.

The motion to add the following language under sub section 4 “Sexual intercourse with a victim when the victim’s consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offenders authority” , carried.

Representative Miller made a motion to strike the language dealing with the death penalty. Representative Garner seconded the motion. The motion carried.

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

The committee meeting adjourned at 10:00 a.m.

4/4

Sexual intercourse with a victim
when the victim's consent was
obtained through a knowing
misrepresentation made by the
offender that the sexual
intercourse was a medically,
therapeutically or legally
necessary procedure within the
scope of the offender's authority.