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State Capitol
Madison, Wisconsin
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608-266-8570

David E. Clarenbach, State Representative

Chairperson:
Committee on Tax Exemptions
Member:
Committee on Administrative Rules
Committee on Energy
Committee on Judiciary

REP. CLARENBACH URGES SEXUAL PRIVACY BILL

MADISON - "The government has absolutely no business in what goes on in the bedrooms of the state," Rep. David Clarenbach (D-Madison) told the Assembly Criminal Justice and Public Safety Committee on August 9.

Clarenbach is sponsoring a sexual privacy bill, Assembly Bill 514 for consenting adults. Current Wisconsin law makes it illegal to have sex with anyone who is not his or her spouse, to have sex with anyone of the same sex, or for anyone to have oral or anal sex.

Clarenbach went on to tell the committee that his bill would protect married people, the unmarried and homosexuals. He called opponents of the bill "the Anita Bryants of the world."

A referendum on the bill was urged by Rev. Richard Pritchard of Madison, who led opponents of the bill.

"Even though the practice of intercourse between unmarried consenting adults in private is prevalent, I don't know whether this is something that we should say is legal," ... "It isn't enough to say that these are consenting adults," Pritchard said.

Clergy from all over the state testified in support of Clarenbach's bill, led by the Rev. Joyce Setzler of Prairie du Sac, saying, "Homosexuals are persons of worth."

(MORE)

Sexual Privacy Bill

Add on -1-

Members of the Criminal Justice and Public Safety Committee are Chair Edward McClain (D-Wausau); Dismas Becker (D-Milwaukee); James Rutkowski (D-Hales Corners); Michael Ferral (D-Milwaukee); Richard Flintrop (D-Oshkosh); Louise Tesmer (D-Milwaukee); David Travis (D-Madison); Mordecai Lee (D-Milwaukee); Tommy Thompson (R-Elroy); James Lewis (R-West Bend); Sheehan Donoghue (R-Merrill); John Merkt (R-Méquon); and David Prosser (R-Appleton). Barbara Lightner, organizing in favor of the bill urges that all gay people write committee members as well as their local legislative representatives in support of AB 514.

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AUGUST 2, 1979

I AM PLEASED TO BE HERE AS THE AUTHOR OF AB 514 - THE SEXUAL PRIVACY BILL - WHICH AMENDS THE LAWS ON CRIMES INVOLVING SEXUAL ACTIVITY BETWEEN CONSENTING ADULTS IN PRIVATE. THIS BILL BASICALLY INSERTS THE WORDS "IN PUBLIC" TO THE PROHIBITION OF CERTAIN SEX ACTS, SO THAT INSTEAD OF BEING ILLEGAL, THEY ARE ILLEGAL ONLY IF CONDUCTED "IN PUBLIC." SO THAT THERE IS NO CONFUSION, THIS BILL DOES NOT ALTER CURRENT LAWS ON SEXUAL ACTS CONDUCTED IN PUBLIC, ON PROSTITUTION OR SEX IN EXCHANGE FOR ANYTHING OF VALUE, ACTS COMMITTED WITH MINORS, OR NON-CONSENTUAL SEX ACTS OR SEXUAL ASSAULT.

THE CHANGE THAT THIS BILL PRESENTS IS ONE OF THE MOST BASIC PRINCIPLES OF OUR COUNTRY-- THE RIGHT OF PROTECTION AGAINST UNWARRANTED INTERFERENCE BY THE GOVERNMENT IN OUR PRIVATE LIVES. THE GOVERNMENT HAS ABSOLUTELY NO BUSINESS IN WHAT GOES ON IN THE BEDROOMS OF OUR STATE-- AND THUS, THIS SEXUAL PRIVACY PROTECTION.

Now, IT WOULD PROBABLY NOT BE ENOUGH ON PRINCIPLES ALONE, TO PROVIDE THESE PRIVACY PROTECTIONS BY LAW, IF THERE WAS NOT A VERY REAL NEED FOR THE THE CHANGE. BUT OUR LAWS PLACE INTO THE CRIMINAL CATEGORY ACTIVITY ENGAGED IN BY A MAJORITY OF SEXUALLY ACTIVE CITIZENS-- ^{under laws} ~~IT~~ EVEN GOES SO FAR AS TO COVER A MAN AND A WOMAN WHO ARE LEGALLY MARRIED ~~AND ITS VERY LIKELY THAT COMMITTEE MEMBERS VIOLATED THIS LAW JUST LAST NIGHT.~~ IT HAS BEEN SAID THAT 95% OF US VIOLATE OUR STATES SEXUAL CODES AND THE OTHER 5% HAVE NO IMAGINATION...MAYBE SO.

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p. 3

CONSENTING ADULTS ADD ON -1-

THE POINT IS THAT THESE SEX LAWS MAKE A MOCKERY OUT OF OUR LEGAL & LEGISLATIVE SYSTEM-- THEY ARE ARCHAIC AND OUTDATED AND NEED TO BE BROUGHT INTO LINE. TWENTY ~~THREE~~ ^{three} STATES HAVE MADE THIS CHANGE AND WISCONSIN SHOULD, TOO.

IT IS NOT AS THOUGH, EITHER, THAT THESE LAWS ARE NOT BEING ENFORCED. HERE'S AN ARTICLE ABOUT A CASE IN WAUWATOSA WHERE A POLICE OFFICER WAS SENT TO AN APARTMENT TO INVESTIGATE A POSSIBLE BREAKIN IN PROGRESS. THE MAN AND WOMAN WERE LEGALLY IN THE HOME AND WERE MAKINGGG LOVE...

AT LEAST 50 ARRESTS HAVE BEEN MADE IN WISCONSIN IN THE LAST 5 YEARS ALONE. THIS CAN DESTROY PEOPLES LIVES AND REPUTATIONS. IN ADDITION, CONSIDER THE PSYCHOLOGICAL AFFECTS ON THE GENERAL PUBLIC WHO KNOW THERE IS NOTHING WRONG OR UNNATURALL ABOUT AN ACT OF LOVE, BUT WHO ALSO KNOW THAT OUR STATE CALLS IT CRIMINAL.

IF THERE ARE THOSE WHO CONSIDER IT IMMORAL, THEN LET THAT BE A PRIVATE OR RELIGIOUS DECISSION. WE OUGHT NOT LEAVE THAT SORT OF REGULATION TO "BIG BROTHER GUV."

CONSENTING ADULTS ADD ON -2-

AS ALWAYS, IT IS THE POLITICS OF A HIGHLY CHARGED EMOTIONAL ISSUE LIKE THIS THAT CAUSES THE MOST DIFFICULTIES FOR US, POLITITIANS. WE HAVE TO BE SENSITIVE TO THE PUBLIC. THIS BILL PROVIDES SEXUAL PRIVACY PROTECTION FOR HOMOSEXUALS AS WELL AS HETROSEXUALS, MARRIED AND UNMARRIED PEOPLE ALIKE.

LAST SESSION'S BILL: AB323 WAS ENDORSED SPECIFICALLY BY HUNDREDS OF CLERGY STATEWIDE. THE LEAGUE OF WOMEN VOTERS ENDORSED IT ~~2 YEARS AGO~~. CONSENTING ADULTS LAWS HAVE THE SUPPORT OF THE AMERICAN BAR ASSOCIATION, THE AMERICAN MEDICAL ASSOCIATION, UNITED CHURCHES OF CHRIST, NATIONAL FEDERATION OF PRIESTS COUNCIL, AMERICAN PSYCHIATRIC ASSOCIATION AND AMERICAN PSYCHOLOGICAL ASSOCIATION --AMONG OTHERS.

PERHAPS MOST IMPORTANT TO US IS THT 2 YEARS AGO THE ASSEMBLY VOTED 55 - 44 TO ADVANCE AB 323 TO A 3RD READING-- A SIGNIFICANT ADVANCEMENT OF THE BILL. ^{ANTI POLITICALLY SPEAKING} I DON'T KNOW OF ONE OF THOSE MEMBERS WHO FELT POLITICALLY HURT BY THAT VOTE IN THEIR RE-ELECTION CAMPAIGNS WHICH PROVES TO ME THAT IT IS POLITICALLY SAFE TO SUPPORT THIS BILL.

TO SUMMARIZE, I HAVE FIVE REASONS FOR THIS CHANGE:

LASTLY, I FIND IT IRONIC, ON THIS SUBJECT OF "LOVE" TO FIND THOSE IN OPPOSITION OFTEN SO HATE FILLED. PERHAPS, WE WILL HEAR SOME OF THIS TODAY-- THE ANITIA BRYANTS OF THE WORLD WHO ~~WOULD HAVE US "KILL A FAG FOR CHRIST."~~ ~~I DOUBT HE WOULD HAVE WANTED IT THAT WAY.~~ EVERYBODY HAS A RIGHT TO LIVE, TO LIVE AND LET LIVE, LOVE AND LET LOVE. AND THAT'S WHAT THIS IS ALL ABOUT.

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f. AB 70

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LEGISLATIVE UPDATE

Earlier this year, the Wisconsin Assembly narrowly defeated Assembly Bill 235 which would have legalized all sexual acts between consenting adults by a vote of 50 to 49. It is possible that this same legislation in the form of Senate Bill 205 could once again come up for consideration this session if we can find the needed additional vote for passage. Despite rumblings from the "Moral Majority," the gay rights movement in Wisconsin is steadily gaining momentum and I am confident that we will see our laws changed soon.

Another bill I have authored, Assembly Bill 70, will be up for a vote when we return to session this fall. AB 70 prohibits discrimination in employment, housing, or public accommodations because of sexual preference and has been recommended for passage by the Committee on Health and Human Services.

Only two states, California and Pennsylvania, have successfully enacted such gay rights protections, and both by executive order. I hope to see our legislature become the first to prohibit discrimination against gay people, and also go on to become the 26th to lift its ban on homosexual activity.

Right now, letters and phone calls to the Legislative Hotline (266-9960) in support of AB 70, especially from Wisconsin residents whose permanent addresses are outside of Madison, would be helpful to our effort. If you would like further information about either initiative, please contact my office (266-8570).

--David Clarenbach
State Representative



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April 10, 1981

for Gay Madison:

Legislation is currently before the Assembly that would legalize sexual activity between consenting adults in private (including homosexual activity) and cohabitation. Right now, Wisconsin law only permits sex between husband and wife and only sexual intercourse. This bill, Assembly Bill 235, is similar to legislation introduced last session that passed the Senate, but narrowly failed in the Assembly.

This year, the bill has been introduced through the Assembly Committee on Criminal Justice and Public Safety "by request of" 44 individuals and groups around the state, including the League of Women Voters, 7 District Attorneys, and numerous protestant and Jewish clergy. After a public hearing, the Committee recommended by a bipartisan vote that AB 235 be passed by the Assembly as a whole. An identical bill, Senate Bill 205, has also been introduced by the Senate Human Services Committee.

Twenty-five other states including Iowa, Indiana, Illinois and North Dakota ^{have} ~~has~~ passed similar laws. Late in April, Wisconsin could become the 26th. Despite heavy lobbying by groups like the Moral Majority, I expect a close but favorable vote in the Assembly.

--David Clarenbach,
State Representative

David Clarenbach

ISSUES & COMMENT

THE CONSENTING ADULTS BILL

BILL HISTORY: Identical legislation has been introduced the past two successive sessions of the legislature, both by the Assembly Committee on Criminal Justice and Public Safety and the Senate Committee on Human Services (last session by the request of over 40 groups, members of the clergy and district attorneys). This bill has passed the Senate and failed passage in the Assembly by one vote. Both former Governor Dreyfus and Governor Earl have indicated support for this initiative.

SCOPE OF THIS LEGISLATION: Decriminalizes a limited number of private acts. The bill:

- 1) Repeals the cohabitation statute, Wis. Stats. 944.20(3), with respect to adults.
- 2) Adds the words "in public" to the fornication statute, Wis. Stats. 944.15.
- 3) Recreates the perversion statute as a sexual gratification statute, adding the words "in public" to Wis. Stats. 944.17(1)(a).
- 4) Repeals that part of the drivers licensing statute, Wis. Stats. 343.30(2)(d), making it no longer possible to deny a license due to conviction under 944.17.

WHAT THIS BILL DOES NOT DO: Doesn't decriminalize any sexual acts done for pay (prostitution). This bill doesn't repeal the adultery statute. The current laws on sexual assault continue to apply to all non-consenting sexual acts. All sexual acts between an adult and minor (not the person's spouse) remain criminal. Sexual activity with animals remains criminal.

NATIONAL SUPPORT FOR SEX LAW REFORM: Similar legislation has been enacted in 25 states, including Alaska, California, Illinois, Indiana, Iowa, Nebraska, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota and Vermont. Many other states have never had cohabitation statutes.

The model penal code of the American Bar Association contains no criminal sanctions for private sexual acts between consenting adults, and recommends their repeal where they do exist.

The AMERICAN BAR ASSOCIATION, the AMERICAN FEDERATION OF TEACHERS, the AMERICAN MEDICAL ASSOCIATION, the AMERICAN PSYCHIATRIC ASSOCIATION, and the NATIONAL ASSOCIATION OF SOCIAL WORKERS support the concept of decriminalization.

(MORE)

Many of the country's largest corporations, including AT&T, IBM, BANK OF AMERICA, PROCTER AND GAMBLE, McDONALD'S, HONEYWELL and CITICORP, have adopted written policies that guarantee employees the right to privacy in their sexual activity.

Three higher courts in the United States have found statutes prohibiting sexual behavior between consenting adults to be an unwarranted invasion of privacy under the U.S. Constitution -- in New Jersey, Pennsylvania and New York. The New York Supreme Court at Rochester ruled that "Personal sexual conduct is a fundamental right protected by the right of privacy because of the transcendental importance of sex to the human condition, the intimacy of conduct, and its relationship to a person's right to control his or her own body."

WISCONSIN AND THE LAW: A 1977 study of the cohabitation statute by University of Wisconsin Law Professor Martha Fineman shows that 73% of Wisconsin district attorneys concurred that "cohabitation is not a matter which can or should be addressed by criminal sanctions or the criminal justice system." Only 14.5% thought cohabitation should be addressed by the criminal justice system.

Yet, each year Wisconsin adults are prosecuted for cohabitating and for sexual acts performed in the privacy of their home. Last year, Clark Norton in an article entitled "Sex in America: an Outlaw's Guide" stated that Wisconsin has the national reputation as the "forerunner in the field of nabbing fornicators."

Some of the organizations that have endorsed the repeal of these archaic laws are the UNITED MINISTRY IN HIGHER EDUCATION, LEAGUE OF WOMEN VOTERS IN WISCONSIN, WISCONSIN WOMEN'S NETWORK, WISCONSIN COUNCIL ON HUMAN CONCERNS, WISCONSIN FEDERATION OF TEACHERS, WISCONSIN CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES - COUNCIL 24 and the MADISON POLICE DEPARTMENT.

Some statements of support for Wisconsin sex law reform--

LEAGUE OF WOMEN VOTERS: "The League of Women Voters of Wisconsin urges passage of this sex law reform legislation...The current statutes are enforced in an arbitrary and capricious manner...Agressive enforcement of this law as it applies to private acts of consenting adults implies the necessity for gestapo-like tactics and raises questions of whether or not privacy rights would be infringed by such enforcement."

RODNEY A ZEMKE, DISTRICT ATTORNEY OF EAU CLAIRE COUNTY AND PAST-PRESIDENT OF THE WISCONSIN DISTRICT ATTORNEY ASSOCIATION: "I heartily endorse your proposed changes regarding sexual activity between consenting adults."

BISHOP MARJORIE S. MATTHEWS, THE UNITED METHODIST CHURCH FOR THE WISCONSIN AREA: "I feel this is much needed and warranted legislation. I do support its enactment in the state of Wisconsin."

(MORE)

FORMER GOVERNOR LEE DREYFUS (IN AN INTERVIEW WITH THE CAPITAL TIMES): "I have seen a change in society's standards in my lifetime and the law ought to conform with societal standards. There's no sense in having a law that doesn't, and is therefore unenforceable. It's time for a realistic change."

REV. EUGENE LOCKE, BROOKFIELD UNITED PRESBYTERIAN CHURCH: "As a pastor, it is my conviction that private sexual behavior is a matter for adults and their religious counselors and their God and not a matter for legislation by the state."

REV. PAUL FLUCKE, PLYMOUTH UNITED CHURCH OF CHRIST, MILWAUKEE: "I support this legislation out of a concern, first, for morality; second, for law; and third for freedom."

CHIEF DAVID COUPER FOR THE MADISON POLICE DEPARTMENT: "Private sexual behavior is another area in which we do not really mean what we say...Most of us can conclude that the energies and resources of the police can be better used elsewhere."

DR. LAWRENCE A. SINCLAIR, CHAIRPERSON, DEPARTMENT OF RELIGION, CARROLL COLLEGE: "It is dangerous for any government body to legislate morality and infringe on the privacy rights of individuals, on the other hand, the suggested legislation strengthens the laws against prostitution and sexual abuse of minors."

Some of the editorial support for consenting adults legislation--

"Chance to slam the bedroom door...The Wisconsin Assembly has another chance to approve a bill that would remove criminal sanctions on private, noncommercial sexual acts between consenting adults. Representatives should grasp the opportunity."

--THE MILWAUKEE JOURNAL, April 5, 1981.

"Criminal definitions of sex...The state doesn't belong in anyone's bedroom. The Post-Crescent has said so editorially for a long time. It's past time for Wisconsin legislators to enact enforceable laws and discard the outmoded one that never should have passed anyway."

--THE APPLETON POST-CRESCENT, April 23, 1981.

"It's not state's job to regulate sexual morality...Twenty-five states have passed consenting adults laws and society has not come apart at the seams. Wisconsin should follow suit."

--WISCONSIN RAPIDS DAILY TRIBUNE, March 7, 1981.

"Deregulating Sex...It's still impossible to legislate moral consensus or to make official designation of right and wrong. Public laws fare better in less private areas."

--THE JANESVILLE GAZETTE, March 12, 1980

"Unnecessary nuisance...It is time our legislators stood up to these threats to our first amendment freedoms and revamped our sex laws."

--THE MILTON COURIER, May 14, 1981.

"Out of the bedrooms, snoopers...Why is it that the same people who want to get government off our backs are so reluctant to cast off one of the most intrusive state laws on the books?"

--THE CAPITAL TIMES, May 1, 1981.