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Dear Bill:

I have just received from Judge Otto Moore the latest draft of the proposed new Colorado Code of Crimes and Offenses, which his letter indicates is just about ready for submission to the legislature in a bill. From the proposed effective date of Sept. 1, 1971, it would seem that passage is contemplated this session.

Looking carefully through the draft, I am impressed by its significance for homosexual law reform. It would repeal Colorado's sodomy law and replace it with one on deviate sexual intercourse, punishing such behavior only under the same circumstances as normal heterosexual intercourse (i.e., force, imposition, minors). It would likewise repeal Colorado's solicitation law.

The only areas of the code which appear to continue any discrimination against homosexuals are 40-1-804, "Use of physical force in defense of a person", which justifies the use of force, even deadly force, if the actor believes the other person is about to commit deviate sexual intercourse as defined in 40-3-403 (1) (b), (c) and (d) and 40-3-404; and 40-7-301 (1)(d), which includes within the petty offense of public indecency (besides acts of sexual intercourse or deviate sexual intercourse) "a lewd fondling or caress of the body of another person of the same sex". Such fondling or caressing of the body of a person of the opposite sex is not included.

Whether any issue ought to be made of these, I don't know. What do you think? My initial reaction is to say nothing, because the provision on defensive use of force is already being called in question by the commentary (which notes that the crimes mentioned do not involve force, so why should force be justified in defense against them?). The other one seems such a petty matter as hardly being worth objecting to. Also, any issue made on these matters might call attention directly to the more important reforms of repeal of consensual sodomy and of homosexual solicitation. The latter may otherwise slip through almost unnoticed, because the commentary is virtually silent on them (it contains one sentence: "It is to be noted that voluntary participation in deviate sexual acts is not made a crime.").

Best regards,

Walter

Walter E. Barnett

cc: Arthur Warner