

Sodomy and the winds of change

by Liane Wetterer

Although the winds of change have created some ripples, the ancient crime of sodomy remains on the books in Nebraska. Possibly not for long.

A "behind the scenes" move, soon to surface in the Legislature, could make Nebraska one of the first states in the country to revise its sodomy laws.

The proposed revision of the Nebraska Criminal Code, LB8, would replace chapter 28 of the 1943 Nebraska Revised Statutes. A hearing date before the Legislative Judiciary Committee has not been set, however.

The current law defines sodomy as "carnal copulation with a beast or in an opening of the body except sexual parts with another human being.."

Maximum sentence is 20 years imprisonment.

In the revised code, the entire section defining sodomy and its punishment have been omitted.

"Actually, we've just excluded the punishment for homosexual activities in private with consenting adults," according to Michael R. Johnson, a member of the staff who revised the code.

"We're simply bringing in the law up to what it always realistically was," Johnson said. "The police aren't running around breaking down bedroom doors."

Johnson said the proposed Nebraska code still includes punishment for "deviate sexual intercourse" by force, imposition, or with a person under 14 years old.

The Nebraska code, he added, is modeled mainly after the Model Penal Code, drafted by the American Law Institute, and Colorado's recently-revised criminal code.

According to the American Law the Institute, "The code does not attempt to use the power of the state to enforce purely moral or religious standards.

The existing law is substantially unenforceable, the institute said, tacitly encourages blackmail, may deter homosexuals from seeking psychiatric care and wastes police personnel and funds while more heinous crimes go unsolved.

Immediately after publication of the Model Penal Code, New York and Minnesota attempted to revoke their criminal sanctions against private, consenting adult homosexuality. In both cases, the proposals for revision were voted down by state legislatures.

A 1971 case study by Jon F. Simmons, a UNL law student, reported that 46 states still have laws against sodomy. Twenty-six of those (not including Nebraska) are patterned after the original English sodomy statute of 1533, defining it as "detestable and abominable vice of buggery, committed with either man or beast."

Anthropological studies reveal that just as some societies have strong taboos against homosexuality, other condone or even encourage it.

Among western civilizations, only the United States has prohibitions against private, consenting, adult homosexual acts.

Criminal law of many nations—including Italy, France, Sweden, Poland, Czechoslovakia and England—no longer punishes private homosexual relations between consenting adults.