

RAYMOND A. WARREN

Attorney At Law

Former Judge of the Superior Court

309 East Morehead Street, Suite 150
Post Office Box 36071
Charlotte, North Carolina 28236
Ray@RayWarrenLaw.com
Tel: 704-714-4344
Fax: 866-779-3014

November 12, 2003

The Honorable James B. Black
Democratic Speaker of the House
2304 Legislative Building
Raleigh, North Carolina 27601

The Honorable Richard T. Morgan
Republican Speaker of the House
301 Legislative Office Building
Raleigh, North Carolina 27601

The Honorable Marc Basnight
President Pro Tempore of the Senate
2007 Legislative Building
Raleigh, North Carolina 27601

Gentlemen,

The purpose of this letter is to urgently request action by our General Assembly to address the uncertain status of our criminal law in light of the United States Supreme Court's decision in Lawrence v. Texas.

As you are no doubt aware, the Supreme Court struck down enforcement of a Texas statute very similar to North Carolina's "Crime Against Nature" law (N.C.G.S. 14-177). Many observers felt that the decision had clearly invalidated the North Carolina law. Some prosecutors and law enforcement officials, however, have taken the position that the law can be enforced in some situations. The trial courts in the various counties have rendered inconsistent decisions on that point.

My own view, which many legal scholars share, is that the current law cannot be constitutionally enforced. At the very least, the state is and defendants are facing perhaps years of litigation over the issue. This is a wasteful use of scarce resources and emotionally scarring of defendants who are likely to eventually be exonerated by the United States Supreme Court. Inconsistent decisions in the interim will also lead to inconsistent enforcement.

I believe defense attorneys, civil rights advocates, prosecutors, judges and law enforcement agencies are united in the desire for clear and undoubtedly constitutional

statutes to deal with the problem of public or commercial exhibitions of sexuality. I am quite sure that members of our state judiciary do not wish to wade through the murky waters of constitutional law to discern if a sixteenth century statute, adopted for one purpose (to ban certain forms of sexuality activity -- even in private) can be adapted without legislative changes for a different purpose (to regulate the public exhibition of sexuality).

All of the litigation, conflict and angst about the meaning of *Lawrence v. Texas* can easily be avoided by prompt legislative action to redefine North Carolina's laws governing public sexuality within clear constitutional parameters.

I have taken the liberty of drafting changes to three North Carolina statutes:

- 1) The prostitution statute,
- 2) The indecent exposure statute and
- 3) The Crime Against Nature law itself.

The proposed changes are attached. I suspect that legislators and/or the legislative staff may wish to revise, amend or change the proposals, but I hope they will serve as a starting point for discussion.

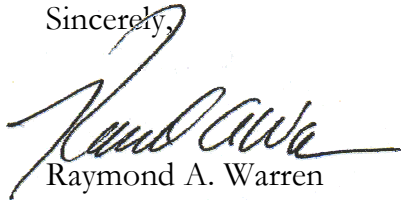
If adopted, these changes would address the desire of law enforcement for a constitutional vehicle for regulating public sexual activity. Because the revised laws would be gender and sexual orientation neutral, they would probably not be subject to constitutional attack on the basis of *Lawrence v. Texas*, *Romer v. Evans* or similar Supreme Court cases dealing with the right to privacy or equal protection under the laws.

As the legislature will be returning for special sessions involving at least two issues in the next month, it is my hope that you will find a way to enact this necessary legislation during one of those occasions. I realize that it is rare indeed to enact a change in the criminal law during a special session, but it is also rare for a statute that has been in effect for over three centuries to suddenly be called into question by our nation's highest Court. This extraordinary situation merits a prompt response.

In the past century North Carolina developed a reputation for positive and pro-active responses to the mandates of the Federal Courts. Other states chose massive resistance or other negative courses of action. Whether or not one agrees with the reasoning of *Lawrence v. Texas* it is now the law of the land. It behooves us as a progressive twenty first century state, competing in a world market for human capital and talent, to respond in a positive manner. Amending our laws promptly can address the state's legitimate concern about public sexual activity while avoiding unnecessary costly, divisive, and ultimately futile court battles.

Thank you for your consideration of this matter. If I can be of any further assistance in moving this matter forward, please let me know. I will be more than willing to work with your staff, the legislative staff and representatives of law enforcement agencies or prosecutorial authorities to reach a consensus to which most of our legislators can subscribe.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray A. Warren". The signature is fluid and cursive, with a large initial "R" and "W".

Raymond A. Warren

Attorney at law

Former judge of the Superior Court

Member of the North Carolina House of Representatives, 1985-1988