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SOME QUESTIONS ABOUT HOUSE BILL 160, PRINTER'S #171

I. Does this bill reduce from 16 to 13 the age at which children may legally be **seduced for homosexual sex**?

II. Does this bill **reduce** the number of first degree felony counts for **homosexual rape**?

III. Artists can produce quite accurate drawings of children engaged in prohibited sexual acts, and images of live poses can be scanned into computers and then graphically altered or faxed without ever using videotape. Would this bill change Pa. law to **legalize** sexually explicit depictions of children (**child pornography**) which are not photographs, films, or videotapes?

IV. In the 1980 case of Commonwealth v. Benadio, the state Supreme Court overturned Pa.'s anti-sodomy law (18 PS 3124).

A. In light of the AIDS epidemic, do you believe the Court's reasoning would be valid today?

B. Do you believe that a municipality's attempt to pass a gay rights ordinance could produce an **opportunity for the court to re-examine** the Bonadio decision, if the anti-sodomy law stays on the books?

C. Would an intact anti-sodomy law **overturn** municipal **gay rights ordinances** (In that these ordinances would seek to protect that which is a felony under state law.)?

D. **Would this bill remove the state's anti-sodomy law from the books?**

V. A. Does this bill **remove** the concept of "**Deviate sex**" from this part of the law?

B. Does this bill **remove** all references to **man and woman** or **husband and wife** from the definition of a spouse in this part of the law?

C. Does including the following paragraph,

"Anyone who, by virtue of living arrangement, acts in a position of authority....within the household.",

under the definition of "Family member" mean that for the purposes of this portion of this law, **homosexuals** living together would be defined as "**Family members**"?

VI. What is the effect **on children** of legalizing homosexuality?

ANSWERS

I. Yes, currently, under 3123 (5), homosexual sex is statutory rape under the age of 16. H.B. 160 would lower this age to 13 via 3121 (b) and 3109.

II. Yes, under current law, homosexual rape would incur two first degree felony counts, via 3121 (rape) & 3123 (Involuntary deviate sexual intercourse). H.B. 160 would reduce the severity of this crime to a one first degree felony count (3121) and one second degree felony count (3122).

III. The federal child prongraphy statute (Title 18 sec. 2251) uses the term "depiction" no less than 6 times in what is a very short section. In the recent case of Osborne v. Ohio 495 US ---, 109 L Ed 2d 98,110 S ct---, 1990, the Supreme Court of the United States went out of its way to say it found no constitutional problems with any state kiddie porn statutes, many more poorly written than the Commonwealth's. But H.B. 160 removes the broad and effective word, "depict(ing,s)" everywhere in 6312 and substitutes the much less inclusive "photograph(ing,s), videotaping(ing,s), or film(ing,s)".

(Earlier this year the feds broke up a ring which was faxing kiddie porn. Faxes and direct computer scans are depictions, but not photographs, videotapes, or films. If you were prosecuting this case under H.B. 160, how would you prove beyond a reasonable doubt that these faxes did not originate from direct computer scans?)

Accurate paintings or drawings, or sketches like those used by the media in trails where cameras are not permitted, are depictions but not photographs, videotapes, or films.

H.B. 160 is an amended version of last year's H.B. 2302. That bill proposed to exempt from our law child pornography which "is possessed, controlled brought or caused to be brought into this Commonwealth for a bona fide.... artistic... purpose" (6312[f]). Taken together, it would seem these bills are trying to legalize artistic productions like the Mapplethorpe exhibit, but featuring children instead of adults.

IV. First, it is worth noting that anti-sodomy laws like section 3124 are not used by police to invade private bedrooms. To the contrary, in each of the cases cited here, the perpetrators flouted the law with some public action. In Commonwealth v. Bonadio 490 Pa. 91, 415 A.ed 47,1980, two exotic dancers were caught performing sexual acts on customers in a nightclub. In Commonwealth v. Waters Pa. Super., 422 A.2d 598, 1980, an undercover policewoman was solicited for deviate sex, and in Bowers v. Hardwick, 106 S Ct 2841, 1986, the defendant apparently asked to be prosecuted in order to test the law, an offer which the prosecuting attorney tried to decline (A married couple tried to join Hardwick as defendants, saying they engaged in deviate sex and were afraid of prosecution. The Court told them they had no basis for their fear and denied them standing.).

Although 3124 was overturned by the 1980 Bonadio decision, since then two matters make it quite possible the state Supreme Court might reverse itself, given the opportunity to re-examine Bonadio. One is the AIDS epidemic, unknown in 1980. Anal sex is the major mechanism for spreading AIDS, and other sexually transmitted diseases put unmarried practitioners of anal or oral sex at great risk. Perhaps more significant is the 1986 case of Bowers, in which the Supreme Court of the United States upheld a Georgia anti-sodomy law, saying the states did have the power to pass such acts without infringing federal constitutional rights.

3124 has been overturned for criminal purposes, but a municipality's attempt to pass a gay rights ordinance would clear a path for a re-examination of that decision.

If the gay rights ordinance were to force an unwilling resident of the municipality to hire or rent to an avowed homosexual, for example, the resident could argue in court that the municipality was trying to protect an activity which is a felony under state law. Lower courts would of course dismiss under precedent, but as these would not be criminal proceedings, plaintiff could appeal all the way to the state Supreme Court.

And as stated above, if Bonadio were overturned, all municipal gay rights ordinances would fall beneath it. **THUS, FOR THE MILITANT HOMOSEXUALS, ABOLISHING 3124 MAY WELL BE THE MOST IMPORTANT FEATURE OF THIS BILL!**

V. A & B. Yes, all references to homosexuality as deviant sex, or any reference which would suggest that spouses are man and woman or husband and wife are stricken from H.B. 160, which must be very pleasing to the militant homosexual lobby.

C. At first glance it would seem both necessary and appropriate to include in the 3101 definition of "Family member" protection for children who are victimized by "Anyone who, by virtue of living arrangement...."(4). But notice that everywhere a crime refers to this definition of a "Family member", it also refers to "Position of Authority" (cf P2, ln 13,14,15; P9,ln 14,15,16; P9, ln 28) , and, in fact, the very words, "position of authority" are used within the definition itself. It would seem the only practical effect of putting this definition under "Family member" instead of "Position of Authority" is that homosexuals living together would thus be defined as family members.

VI. WHY MUST HOMOSEXUALITY STAY IN THE CLOSET?

Attached is a recent front page article from The Washington Post which shows how vulnerable adolescents are interpreting the growing acceptance of homosexuality as a green light to experiment with their sexual orientation. When one considers the potentially lethal physical consequences of homosexual sex, and the added potential for long-term emotional scars which such ill-considered liaisons can produce, it is apparent that for the sake of the children, homosexuality, by law, must stay in the closet!

