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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 <u>Commonwealth v. Benadio</u>, 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 <u>Bonadio</u> 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 <u>lower</u> 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 pronography 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 kiddle 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 photogaphs, 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 y. 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 <u>Bonadio</u> decision, since then two matters make it quite possible the state Supreme Court might reverse itself, given the opportunity to re-examine <u>Bonadio</u>. 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 <u>Bowers</u>, 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.

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 <u>Bonadio</u> 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!

ore 'leens ' Their Sexual Orientation

GAYS, From Al

disapproved. girls in school hallways. In a few support of gay rights. Occasionally, girls could be seen kissing other led to tensions when other students creasing openness about the cases, boys went to proms with oth-And sometimes seen kissing other the in-

prompted prs, parents and others who work closely with teenagers in the Washagers and dozens of school counsel ucation classes and at home have ment and lessons learned in sex edicity about the gay rights moveigton area, many people said pubin interviews with about 50 teen young people to empahomosexuals and bisex-

"Everyone is bisexual, if you ask me," said Karen Taggart, 18, who is erant toward homosexual peers. among students. However, they do agree that students are more tolarea said they have seen a trend loward bisexuality or homosexuality Carol Dopp, a sexuality education

consultant for private schools throughout the Washington area, said she had not seen a trend among students saying that they are bisectual, but she said more students are talking about the issue of sexual consultant

the are somewhere on the line. sergrosexual and just

to love whonever you

τήπ Thomas Jefferson. "Most peo-

graduated

are talking about it. That wasn't so be dinner conversation. People who never mentioned the word before sexuality, it makes it easier for it to With media attention to homoambiguity

of teens questioning whether they with ternagers say. Mental health are heterosexual, people who work

nas been an increase in the number oung people is increasing, there

that the number of grose to love."

Although there is

8 homosexual

indication

issues agree that teens proclaiming their bisexuality or homosexuality does appear to be increasing, mainarea psychologists, school counsel-ors and people who work with gay

explore their feelings and share them with their families. counselors held a system-wide meeting about it last spring. Offition particularly of school officials in Fairfax County, where guidance counselors held a system-wide cials urged counselors not to make ly among middle-class students. The issue has come to the attento encourage teens

school counselors in the "At our prom, for the first time we had two guys dancing together on the dance floor, and kids didn't say too much," said Jim McClure, director of guidance at T.C. Williams High School in Alexandria.

Craig Lancto, who teaches English at T.C. Williams, said that two

me about that is nobody seemed to raise an eyebrow. sexual. "One said it very matter-of-fact," Lancto said. "What surprised girls in his class said they were be Some parents of teenagers who

they have few reservations about their children's sexuality. name used, said he didn't really have said that they are homosexual or bisexual said in interviews that have a reaction when his son One father, who did not want his

the family he was gay. "I've always been the type of person who said, "You do your thing; I'll do my thing;" said the man, who is 53. talking about it.

boo, and as a result more people are nomosexuality now is less of a taand transvestite youths, said that homosexual, bisexual, transsexual services agency that works with (SMYAL), a local nonprofit youth-

cided to organize a discussion Washington area schools has prompted a backlash among some heterosexual students. When some night school and began going to night school because of harassment. The debate over gay rights in

have had an impact on teenagers. the movie "Basic Instinct," which featured a bisexual character, may

very well received. He was very open about it. It was common in Montgomery County. times who indicated he was gay," said William Elhott, resource coun-selor at Gaithersburg High School knowledge in the building." "There was one student in recent

the right to change their minds. something they want, and later it may not be," she said. "They have the right to change their minds." homosexuality and then their minds. "Some feel teenagers may experiment change this is

Chris Erd, director of training and education for the Sexual Minor-Youth Assistance League

people to come out at earlier ages. We are having more 14- and 15-year-olds than we have had in the That "might be allowing young

her," Shirley Kato said. "She's quite also said she is understanding. Shirley Kato, Lesley's mother, don't know why I should judge

then who had that proclivity might not have tried it. I think they feel things like homosexuality. A person agers "are trying things we wouldn't have tried 30 years ago, Shirley Kato said she thinks teen-

treer now to experiment and freer to make up their minds." She said she expects that some

gay, said that being homosexual may be fashionable for some people. from Prince William County who is sex with another man. but in many places it still has not Jim Henderson, a 17-year-old

"People need to know gay teen-agers go through such hell," said Henderson, who dropped out of dropped 3no

old enough to handle her own afdoes not think the publicity is creating gay teenagers. Rather, teens who are already gay feel more compast," Erd said. But she said she

orescent posters advertising the meetings were forn down.
"The posters heightened a lot of the tension in school," said Wayne

on sexuality, others protested. Flu

his homosexuality at a Fairfux

steward, 18, who publicly declared

The number of gay men and les-bians in the United States has been fortable declaring their sexual ori-

cent, and most comprehensive, survey of sexualty in America, published earlier this year by the Batpercent of men in their twenties and thirties said they had ever had ters in Seattle, found that only 2.3 percent of men in their twenties telle Human Affairs Research Cenuality among teens. The most reare no firm figures about homosexa matter of controversy, and there School Board meeting and gradu-ated from Jefferson this year. There was a battle over the post-ers. We stuck them up, and they ripped them down."

heterosexual. recent Jefferson graduate who One student said she felt har-

our school is pro-gay. A lot of pen-ple aren't, said Zora Costich, 18, a

"Everyone thinks the majority of

thing. I just wish they wouldn't push it on everybody else." assed by other students pushing gay rights. "People come up to you and say, 'You need to be more open. Don't knock it until you try it,' " people who declare themselves bi-Being bisexual seems to said the girl, who just graduated and did not want her name used. Henderson said he knows a few ₹

sexual just for a few weeks.

Then they say, 'Now I'm not gay
or bisexual.' It's mainly because they want to be politically currect," he said. "A lot just want the attention. When it gets to sexual relait gets to sexual rela-

misconduct or ... experimentation wind up thinking they must be it is too early for most teenagers to really know if they are homosexual,

into that trend, "said Elspeth Leech,
16, who will be a junior at Falls
Church High School. She is hetero-

even for some who are not.

"You say you're 'bi' so that you fit

claim they are gay or bisexual come cool for some students to pro-

Caught up in a movement of activism and in some cases rebellion, some teenagers also say it has be-

in Northern Virginia.

5. Federici, who works with schools

did this," said psychologist Ronald

mosexual or bisexual because 'I

bisexual or heterosexual

"Some kids involved in sexual

cence is a time of sexual experi-

mentation of various kinds and that professionals point out that adoles-

When teenagers announce they are gay but are not sure they mean it, it alarms some professionals who

being just no

ual, it's to protect themselves from being just no she added. "It's

For people who are heterosex-

he impression that they are ing they are bisexual protects them who are actually homosexual, saytended to be otherwise. For people sexual and said she has never pre-

harassment and gives

increasing number of calls from school counselors in Fairfax.

They are saying, 'What are we going to do with all these kids pro-claiming they are bisexual or homosexual when we know they are not?" Federici said. "A lot of kids are coming forward saying they are

gay or bisexual."
Federici said that although many of the teenagers may indeed be homosexual or bisexual, other adplescents may be going through a age of "sexual identity confusion," .nd made more unsure by what they see in the media. "Everything is front page, gay and homosexual.

Kids are jumping on it," he said. He said that during the last year. his caseload of teenagers "in sexual identity crisis" has doubled. "They are saying, 'I don't know what I am, so I will be gay,' "Federici said, adding that most of the teens who come to him because they are sex-ually confused "tend to even out and get back" to heterosexuality as they mature.

Doug Holmes, director of student services in Fairfax County schools. said that the school system recently introduced the concept of homosexuality in sex education classes and that more students have begun asking questions.

A normal part of adolescent growth includes a period of confu-sion about sexual identity, Holmes ork with teens. Federici said he has gotten an said, but he too said some teenag-

ers may be going through a form of rebellion as well. "You have a form of behavior here that is certainly an area in which a student can express rebel-

tion. 'Instead of growing my hair long. I'm going to say I'm gay,'

Ana Guedes, 13, who goes to Pyle Intermediate School in Bethesda, said she and her friends, who are heterosexual, sometimes joke about bisexuality. "A lot of my friends are like, "Bisexuality rules," she said.

rules," she said.
"A lot of my friends have inside jokes," she said. "They pretend to be bisexual. One of my friends will look at a girl and start winking.... The guys are pretty disgusted."

A 15-year-old sophomore at Bethesda-Chevy Chase High School said some girls hold hands or kiss in

said some girls hold hands or kiss in the halls at school just to see what reaction they can provoke from boys. "Like if you're talking to a guy, you might be like, 'Yeah, I'm bi.' Just to see what they say," said the teenager, whose parents did not want her name used

Although there are no local statistics on the phenomenon, some