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Is Brown Bill Necessary?

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SACRAMENTO—The California Legislature could approve revisions in the State Criminal Code which would accomplish the major purpose of the Brown Bill, whether or not the Brown Bill is repealed by popular vote in 1976.

That massive irony has become a possibility because Division 9 of the proposed Criminal Code revisions, governing "Sex Offenses," contains no punishment whatever for sexual activities between consenting adults in private.

Thus, even if the general public were to pass the anticipated Brown Bill referendum, there would be no laws against such sexual activity for the authorities to enforce—assuming, of course, that the Criminal Code revisions are approved.

However, some provisions in the "Sex Offenses" section of the proposed revisions, governing indecent exposure, loitering and soliciting, could still give lawmen an opportunity for harassment—especially of homosexuals. And another section affecting sexual conduct between minors could conceivably make felons out of millions of California adolescents.

The proposed revisions, contained in Senate Bill 565, passed the Senate Judiciary Committee on June 3 by a 7-0 vote. The bill was introduced by Sens. David Roberti (D-Hollywood) and Donald Grunsky (R-Watsonville) on March 10 and has been amended twice.

The Criminal Code revision has been in progress for 11 years. Last year, Grunsky proposed a measure which would have decriminalized oral copulation and sodomy between consenting adults of the opposite sex. But it was drowned in a flood of opposition testimony and was not introduced this time around.

A full Senate vote on the Roberti-Grunsky Bill was expected in mid-June. The bill is to be heard in the California Assembly by the Criminal Justice Committee, of which Allen Sieroty (D-Beverly Hills) is chairman. Further amendments are anticipated.

A number of the proposed revisions in the "Sex Offenses" category have been praised by civil libertarians, women's groups and others—especially those involving rape, which would presumably make it harder for defense lawyers to impugn the moral character of victims.

The Roberti-Grunsky revisions would also eliminate vague language. "Sexual conduct," for example, is specifically defined as "vaginal intercourse, anal intercourse, or contact between the mouth or tongue and the penis, the scrotum, the anus or the vulva." And penetration, "however slight," is deemed "sufficient to complete vaginal or anal intercourse."

The revisions would also eliminate some laws, most notably "lewd conduct," which many defense attorneys consider to be vague in language, permitting their unequal enforcement against homosexuals and others.

Even so, members of the legal defense community are sharply suspicious of a few provisions in the Roberti-Grunsky Bill. They say such provisions could continue to encourage police harassment and selective justice.

Their objections are neatly summarized in an analysis written by Los Angeles attorney Thomas F. Coleman, publisher of the Sexual Law Reporter, and Prof. Walter E. Barnett, co-chairman of the National Committee for Sexual Civil Liberties.

Coleman is urging NewsWest readers to convey the same objections to their representatives.

One of the sections which Coleman and Barnett dislike is 9305, "indecent exposure," which would make it a misdemeanor to expose one's "private parts" in public "for the purpose of arousing or gratifying the sexual desire of any person" or to engage in sexual conduct "under circumstances in which other persons are likely to be offended."

The purpose of the section is to protect unwilling observers from viewing sexual activity or "erotic nudity," Coleman and Barnett concede. "But the wording is too broad.

"Thus, any [genital] exposure in the backseat of a car parked at night on a lonely road or in a bedroom with the blinds drawn would be criminal, even though the only people likely to see it would be peeping-toms or the police."

The Coleman-Barnett analysis urges that the section be revised accordingly, so that the offender "should reasonably know that he is likely to be observed by others who would be offended." That would rule out a vice cop as sole complaining witness in a prosecution, Coleman told NewsWest.

Loitering Section Opposed

Coleman and Barnett are also urging that Section 9306, "loitering," be eliminated altogether. Under that section, a person would commit a misdemeanor "when he remains in or about any public toilet for the purpose of engaging in or soliciting any sexual conduct."

According to the Coleman-Barnett analysis, Section 9306 would serve "merely as a device for police harassment of suspicious-looking persons" and would be enforced "almost exclusively against homosexuals."

Coleman and Barnett also recommend the outright elimination of Section 9307 of the Roberti-Grunsky Bill, "soliciting sexual conduct," arguing that it would criminalize "mere speech alone" and would likewise be used primarily against gays.

Paradox on Solicitation

One peculiar effect of the solicitation section, the analysis continues, would be to make it almost impossible for an adult to seek consent for acts which would no longer be illegal.

"If sexual conduct in private between consenting adults is no longer to be a crime," wrote Coleman and Barnett, "people surely must be allowed to *seek* consent. But how can anyone get consent without first asking?

The analysis also claims that "private citizens are not sufficiently outraged by these solicitations to serve as complaining witnesses for the prosecution." Thus, "almost all solicitation arrests involve plainclothes policemen as complaining witnesses."

The other section to which the Coleman-Barnett analysis objects is 9403, which states:

"A person is guilty of unlawful sexual conduct when he engages in such conduct with a person not his spouse who is a minor." Presumably, it would apply to sexual conduct involving teenagers between the ages of 14 and 17. Sexual acts involving minors under 14 are covered in another section, and a person of 18 is considered an adult.

While it is clear that Section 9403 is designed to discourage adults from having sex with minors, it would also make it a felony for teenagers to have sex among themselves, the analysis contends, adding:

"It is ridiculous to brand sex *between* teenagers as a crime at all, and utter nonsense to brand it as a *felony*."

Coleman and Barnett recommend that the provision be changed so that it would not be criminal for persons up to three years apart in age to have sex among themselves.

On that point, the Brown Bill is comparatively "lenient," Coleman pointed out. Under the Brown Bill, sexual activity involving persons up to 10 years apart in age—when one of the partners is a minor—becomes a misdemeanor, not a felony. Brown Bill opponents argue that the 10-year differential is too generous. They say it will "encourage" young homosexual teachers to seduce their teenaged students.

Age of Consent

Coleman also objects to 18 as the adult "age of consent," as both the Brown Bill and the proposed Criminal Code revisions have provided. In most states where consenting sex legislation has been passed, the age of consent is 16. In Hawaii, it is 14.

Coleman said it is unlikely that the age of consent in California can be changed.

Moreover, the Roberti-Grunsky proposals would still require prosecutors to produce "corroborating evidence" in cases involving persons 14 years of age or older if both parties consented to have sex. In such cases, the testimony of the consenting minor can't convict his partner, no matter how old the partner was.

"What we need to do right now," urged Coleman, "is to get a lot of mail to the legislators on the really bad provisions of the Roberti-Grunsky Bill." Coleman recommended that letters be sent especially to Roberti and to Assemblyman Sieroty. According to Coleman, Sieroty would be willing to support amendments to the bill.