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Isabella case puts attention on 'gross indecency' law

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A mentally handicapped man's legal ability to consent to sexual relations is at the root of a criminal charge being challenged in Isabella County Circuit Court.

Terry Lint, 55, is accused of sexually assaulting a 30-year-old developmentally disabled man with an IQ of 70, functioning with skills comparable to a 12- to 14-year-old, according to court records.

Lint is charged with fourth-degree criminal sexual conduct – a two-year misdemeanor that involves force or coercion or a suspect in a position of authority over the victim.

But he's also charged with gross indecency between males, a five-year felony rooted in 19th century British law that requires no victim and erases the issue of consent as a defense.

Under the gross indecency statute – of which there is a similar law pertaining to males and females – a prosecutor must prove only that the sexual act occurred.

In a written opinion, Isabella Trial Judge William R. Rush admitted the gross indecency law is vague, but ruled that Lint could stand trial under the statute.

"The court readily agrees that the legal definition of gross indecency is all over the board," Rush wrote. "The court finds the defendant knew or should have known that the conduct he engaged in with a mentally challenged male who is essentially a child was wrong and would be a crime."

Now attorney Joe Barberi is attempting to convince Chief Judge Paul Chamberlain to reverse Rush's decision and have all charges dropped against his client because prosecutors have failed to show a crime was committed.

Barberi, according to court records, contends "police and prosecutors are using their discretion to unconstitutionally criminalize sexual behavior they find offensive."

The state Supreme Court ruled in 1994 that the gross indecency charge could only be used in limited circumstances, one of those involving a sex act with children.

One attorney involved in that challenge, Rudy Serra of Detroit, questioned the use of the law in the Isabella case.

"I have a problem with a case in which the state tells someone with an IQ of 70 what they can and cannot do sexually," said Serra, who is human rights commissioner for the city of Detroit and also serves on the board of the Triangle Foundation, a gay advocacy group.

While declining to discuss the details of a pending case, Isabella County Prosecutor Larry Burdick disagreed.

"We believe the facts of the case support the charges (of gross indecency)," Burdick said.

Barberi said in court records that his client's contact with the alleged victim was consensual, but Burdick said the alleged victim disputes that.

And prosecutors have recently filed requests with the court to present two previous convictions on Lint's record which they say show a pattern of selecting "individuals who are incapable of fending off (his) advances due to age or limited mental capabilities," according to court documents.

Serra and Nora Baladerian, a certified sex therapist, however, said they have problems with the presumption that because someone has a low IQ, that means they cannot consent to sex.

And while prosecutors must prove the sexual contact in Lint's case was accomplished without consent to convict on the fourth degree CSC charge, they don't have to prove the act was forced with the felony gross indecency.

Critics of the gross indecency statute argue not only that it's vague, but that it is selectively applied to cases that are more appropriately covered under more modern CSC laws.

Baladerian, president of the American Association for Single People, expressed shock at the case.

"His IQ is 70?" she asked. "One more point and he'd be considered normal."

Experts say Michigan is the only state with the gross indecency law still on the books; it is also among 20 states with sodomy laws that apply to both sexes.

Enacted in 1952, the gross indecency statutes contain verbatim the language of the same 19th century British law used to prosecute author Oscar Wilde just before the turn of the century, Serra said.

In 1975, Michigan joined many other states that enacted new, more comprehensive and specific criminal sexual conduct codes.

"This was done with the idea that the gross indecency and sodomy statutes would be repealed," Serra said.

But they weren't.

One of the problems with the gross indecency statute was it never specifically said what constituted "gross indecency," Serra said.

For a time, it was loosely defined by what was termed "community standards."

Then in 1994, the state Supreme Court ruled that the community standard method was too vague and, hence, unconstitutional.

"The court ruled that gross indecency could not apply except in cases of payment for sex, forced sex, public sex, or sex with children," Serra said.

The court also hinted that the state's legislature should take a look at whether the law was even necessary anymore given the current criminal sexual conduct code.

But the legislature hasn't, and several representatives and senators have said they have no intention of ever raising the issue.

That attitude is not uncommon. Other states have had their laws struck down by the courts, but the legislatures in some states have often been deadlocked on the issue of repealing these laws.

In addition to being an attorney, Serra has also worked with the developmentally disabled, having been a supervisor in some foster care homes.

Part of the problem, as he sees it, is society's inability to recognize the developmentally disabled as sexual beings.

Baladerian agrees.

"They're not even supposed to be sexual. It's a prejudicial thing," she said. "Sex education for the developmentally disabled is basically AIDS, sterilization, and just don't do it."

"These are adults and they do have rights and they can behave appropriately," Serra said. "Our society does have a mindset about developmentally disabled people. And that mind set is they can't have sex because they'll reproduce.

"But they can be sexually appropriate and they can be provided with birth control and they can be instructed on where the activity is appropriate," Serra said.

But Burdick said the case is not simply about someone else deciding consent for the complainant.

According to the police report, the complainant was "very nervous and at one point almost began to cry" while describing what happened to police.

The complaint came to police is a less than direct manner. One support coordinator from state mental health services told a protective services employee who then told police.

Another case pending in Isabella courts provides another example of the use of gross indecency prosecution.

In that case, a 27-year-old man is accused to getting two boys drunk – a 12- and 11-year-old – and having them perform a solo sex act.

He faces three charges: contributing to the delinquency of a minor by enticing them to perform indecent sexual acts, and furnishing alcohol to a minor – both misdemeanors – and with gross indecency between males, a felony.

Burdick agreed with the notion there might be a hole in the state's laws for incidents involving children but in which there was no contact.

"I think there is a real problem with the CSC statutes where there was not any contact," Burdick said.