
**Criminal Justice & Corrections
Committee**

HB 1940

Brief Description: Prohibiting specified sex offenses against children.

Sponsors: Representatives Newhouse, Lovick, Carrell, Moeller, Campbell, Lantz, McMahan, Kirby and Edwards.

Brief Summary of Bill

- Creates two new crimes relating to sex offenses against victims aged 16 or 17: Rape of a child in the fourth degree and child molestation in the fourth degree.

Hearing Date: 2/25/03

Staff: Jim Morishima (786-7191).

Background:

I. Rape of a Child

Rape of a child (sometimes called statutory rape) occurs when a person has sexual intercourse with a child and the perpetrator is a certain number of years older than the victim. Lack of consent is not an element of rape of a child. It is not a defense to rape of a child that the defendant did not know the victim's age or believed the victim to be older. However, it is an affirmative defense, that a defendant must prove by a preponderance of the evidence, that the defendant reasonably believed the victim to be older because of declarations made by the victim.

- Rape of a child in the first degree occurs when the victim is under 12 years old and the perpetrator is at least two years older than the victim (and not married to the victim). Rape of a child in the first degree is a class A felony with a seriousness level of XII.
- Rape of a child in the second degree occurs when the victim is at least 12 years old, but less than 14 years old, and the perpetrator is at least three years older than the victim (and not married to the victim). Rape of a child in the second degree is a class A felony with a seriousness level of XI.
- Rape of a child in the third degree occurs when the victim is at least 14 years old, but

less than 16 years old, and the perpetrator is at least four years older than the victim (and not married to the victim). Rape of a child in the third degree is a class C felony with a seriousness level of VI.

Consensual sexual intercourse with a person 16 or 17 years old is not rape of a child. However, a person who: 1) is in a significant relationship with a 16 or 17 year old victim; 2) is at least five years older than the victim; and 3) uses a supervisory relationship within that relationship to have sexual intercourse with the victim, is guilty of sexual misconduct with a minor in the first degree. A school employee who has sexual intercourse with a student at the school who is at least 16 years old is also guilty of sexual misconduct with a minor in the first degree if the perpetrator is at least five years older than the victim and not married to the victim. Sexual misconduct with a minor in the first degree is a class C felony with a seriousness level of V.

II. Child Molestation

Child molestation is similar to rape of a child except it involves sexual contact instead of sexual intercourse. The crime occurs when a person has sexual contact (or knowingly causes another person under the age of 18 to have sexual contact) with a child and is a certain number of years older than the victim. Lack of consent is not an element of child molestation. It is not a defense to child molestation that the defendant did not know the victim's age or believed the victim to be older. However, it is an affirmative defense, that a defendant must prove by a preponderance of the evidence, that the defendant reasonably believed the victim to be older because of declarations made by the victim.

- Child molestation in the first degree occurs when the victim is less than 12 years old and the perpetrator is at least three years older than the victim (and not married to the victim). Child molestation in the first degree is a class A felony with a seriousness level of X.
- Child molestation in the second degree occurs when the victim is at least 12 years old, but younger than 14 years old, and the perpetrator is at least three years older than the victim (and not married to the victim). Child molestation in the second degree is a class B felony with a seriousness level of VII.
- Child molestation in the third degree occurs when the victim is at least 14 years old, but younger than 16 years old, and the perpetrator is at least four years older than the victim (and not married to the victim). Child molestation in the third degree is a class C felony with a seriousness level of V.

Consensual sexual contact with a person 16 or 17 years old is not rape of a child. However, a person who: 1) is in a significant relationship with a 16 or 17 year old victim; 2) is at least five years older than the victim; and 3) uses a supervisory relationship within that relationship to have sexual contact with the victim, is guilty of sexual misconduct with a minor in the second degree. A school employee who has sexual contact with a student at the school who is at least 16 years old is also guilty of sexual misconduct with a minor in the second degree if the perpetrator is at least five years older than the victim and not married to the victim. Sexual misconduct with a minor in the second degree is a gross misdemeanor.

Summary of Bill:

I. Rape of a Child

A person is guilty of rape of a child in the fourth degree if he or she has sexual intercourse with another who is 16 or 17 years old and is at least five years older than the victim (and not married to the victim). Rape of a child in the fourth degree is a gross misdemeanor.

II. Child Molestation

A person is guilty of child molestation in the fourth degree when the person has, or knowingly causes another person under the age of 18 to have, sexual contact with another who is 16 or 17 years old and is at least five years older than the victim (and not married to the victim). Child molestation in the fourth degree is a gross misdemeanor.

It is an affirmative defense to both rape of a child in the fourth degree and child molestation in the fourth degree, that the defendant must prove by a preponderance of the evidence, that the defendant did not know that the person was 16 or 17 years of age.

Appropriation: None.

Fiscal Note: Requested on February 19, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.