

Virginia State Crime Commission

Indecent Liberties

2006

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During the 2006 Session of the Virginia General Assembly, Delegate Vivian Watts introduced House Bill 585, which would delete the statutory offense of indecent liberties by a custodian or guardian from the Virginia Code, and incorporate that crime into the more general indecent liberties statute. To effectuate this, the bill would add several types of criminal conduct to the indecent liberties statute. The bill would also increase the penalty for certain offenses within that statute. The House Courts of Justice Committee referred this issue to the Commission for study.

To comply with the study request, Commission staff reviewed the legislative history of the indecent liberties statute, and the more recent indecent liberties by a custodian or guardian statute. The genesis of the indecent liberties statute was in 1958, when three criminal statutes were enacted that criminalized indecent exposure, propositioning, or sexually touching a juvenile, under the age of 14, by an adult 21 years of age or older. The age limitation for adults was lowered to 18 years in all three statutes in 1973. These three statutes were combined into one statute in 1975, when Virginia recodified its criminal code and adopted Title 18.2. Over the years, additional changes have been made to the statute: penalties have been increased; second or subsequent offenses receive heightened penalties, the offense of sexually touching a minor was removed entirely from the statute (and was added to the aggravated sexual battery statute), and the age of the victim was raised to under the age of 15.

In 1982, a new statute was created to handle situations where a sexual solicitation was made to a juvenile, older than 14, by a person who was a custodian or guardian. The penalty for this offense was lower than for the general indecent liberties statute, but it could be applied even when the inappropriate solicitation was made to a 17 year old. One of the key elements of this statute was that the inappropriate words or actions were being made by an authority figure, which is what distinguishes this statute from indecent liberties. Over time, this statute has also been amended, but it has always maintained the element of being applicable only when custodians or guardians of the victim are involved.

After deliberation, the Commission decided that the two statutes should be maintained as separate and distinct. Improvements could be made to the indecent liberties statute, but it should not be combined with the indecent liberties by a custodian or guardian statute. The latter statute should not be eliminated, but should be kept as a distinct statute in the Code of Virginia.