

NY - Penal Code

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Byrne ponders partial veto of sexual consent age bill

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Gov. Brendan T. Byrne is considering a partial veto of legislation to maintain New Jersey's age of sexual consent at 16.

Byrne has not changed his support of the effort to keep the consent age itself at 16. But he is considering his legal staff's objections that some parts of the legislation are too drastic.

The governor's press aide, Joseph Santangelo, insisted yesterday that Byrne has not made up his mind about the partial veto.

Under the new state criminal code that is to take effect in September, the age of sexual consent would be lowered to 13 unless the 16-year-old

consent bill is signed into law.

THE PROBLEM with the bill to keep the age of consent at 16, Santangelo said, is that it provides criminal penalties for things like "heavy petting" and kissing used in attempted seduction.

The consent-at-16 bill was rushed through both houses of the Legislature after a wave of public protest.

Critics of the penal code charged that, in effect, the code was asserting that 13-year-olds had the right to have sex. Defenders argued that the code merely attempted to keep 14- and 15-year-olds from being subjected to the criminal process.

The defenders wanted to create a four-year age gap provision that would make it a crime for anyone over 16 to have sexual relations with

someone four years younger.

But the bill that was rushed through the Legislature in advance of the primary election last month left a loop hole which removed criminal penalties for sexual activities between teen-agers under 16.

In hearings before the bill was passed, law enforcement officials testified that although complaints about consensual sex among early teens have been investigated, prosecutions are rare.

The new code

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New Jersey has adopted a model penal code, after a painful, 13-month period of adjustment to its tolerance of contemporary sexual mores.

The bitter debate over whether the age of sexual consent should be 13 or 16 — also whether sex between consenting homosexuals should be illegal still — obscured several praiseworthy and far more important reforms. The code attacks the problem of disparity in criminal penalties by creating four degrees of crime, each category with a built-in range of sentencing, and assigning each offense to one of them. It also modernizes the law, for example making polluting with hazardous or toxic wastes a serious crime, and codifying credit card fraud.

NY - PENAL CODE

Perhaps the most important reform authorizes judges to include restitution to crime victims in sentencing, but what intrigues us is that the new law empowers prosecutors to appeal — limited only by double-jeopardy considerations — and that includes appeals of sentences that are manifestly too lenient.

We believe that such a provision recognizes the public interest in sentencing, and as such, it lends further weight against the most recent interpretation of the Constitution that judges can close criminal trials simply on their own discretion. The public has an interest in the administration of what is, after all, its laws.