

Amending North Carolina's Laws Regulating Public Sexual Activity

Why Change Is Necessary

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Why is it necessary to change North Carolina's laws regarding sexual activity by consenting adults?

In June of 2003 the United States Supreme Court ruled in *Lawrence v. Texas* that states cannot not make it a crime for consenting adults to engage in oral or anal sex. North Carolina has a law, dating back to the pre-colonial days of King Henry VIII of England, which purports to do just that. The law makes it a crime to for adults to have oral or anal sex with one another, even in the privacy of their own homes. Although enforced almost exclusively against prostitutes and gay men, the law theoretically covers all non-married individuals, regardless of sexual orientation.

After the *Lawrence* case many scholars felt that the "Crime Against Nature" Law was unconstitutional. Some law enforcement agencies and prosecutors, however, continue to try and enforce the law. In almost all cases, the charge is not actually engaging in sex, but merely talking about having sex ("soliciting a crime against nature"). Law enforcement authorities contend that the law is still enforceable if the person discussing the sex act does not affirmatively state he or she wishes to go to a private place.

I don't think people should be having or soliciting sex acts in public places. What is wrong with enforcing the law in those circumstances?

The Crime Against Nature Law was not intended to merely regulate public sexual activity. It contains no provisions at all relating to what constitutes a public or private place. The law was designed to criminalize all oral or anal sex acts, even among consenting adults in private. Without clear guidance from the legislature, it is doubtful that law enforcement agencies can constitutionally determine what constitutes public or private acts on a case-by-case basis.

In addition, the Crime Against Nature law does not cover masturbation or vaginal intercourse. Therefore, state law, even in public places, does not prohibit these sex acts in non-commercial settings. This presents three problems: a) A law that discriminates between certain kinds of sex acts will probably be declared unconstitutional by the United States Supreme Court, b) there is currently no effective statewide enforcement system to regulate public masturbation or vaginal sex, and c) if the courts find that the current law is unconstitutionally vague or discriminatory there may be no state law effectively regulating many forms of public sexual activity at all.

Most citizens support laws that regulate or prohibit public sexual activity, but such laws must be clear (non vague) and non discriminatory to survive constitutional challenge in the Courts.

Don't laws against prostitution cover this subject?

No. North Carolina's current prostitution law specifically applies only to vaginal intercourse. The law can be amended to include the sex acts now covered by the Crime Against Nature statute (oral and anal sex). Even so, a specific separate law regulating public sexual activity may be necessary as the prostitution statute only speaks to commercialize sexual encounters.

What about the indecent exposure law?

The current indecent exposure law only applies to individuals who willfully expose their private parts to members of the opposite gender in public places. It does not cover same gender exposure, even if the person is engaged in provocative and explicit sexual behavior. Since it is not uncommon for persons of the same gender to legitimately expose themselves in places such as restrooms, locker rooms and public showers, mere same-gender exposure alone cannot be criminalized. It is possible, however, to amend the law to cover explicit, suggestive or provocative conduct even in same gender situations. This may be necessary to protect young people and others from inappropriate sexual solicitation.

How can this situation be remedied?

The legislature can replace the current, probably unconstitutional, Crime Against Nature law with statutes that specifically a) amend the prostitution laws to cover sex acts other than vaginal intercourse, b) prohibit public displays of provocative, suggestive, or explicit conduct in public, regardless of gender, and c) prohibit all explicit sex acts in public settings and venues. These changes would ensure that the state has solid, comprehensive and constitutional laws designed to protect children and others from inappropriate or unwanted public sexual activity.

So, advocates of changing the laws are also in favor of protecting children, families and others from inappropriate public sexual activity?

Absolutely. The majority of citizens, regardless of gender or sexual orientation, favor such laws. To ensure their effectiveness, however, it is important that the laws not discriminate against identifiable classes of individuals and that they cover all forms of sexual activity. Amending the state's laws regarding public sexual activity will ensure that the laws are applied fairly, are not held unconstitutional by the courts, and fully protect citizens in ways that current statutes fail to do.

Questions or comments?

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