Van H. Wanggaard

Wisconsin State Senator

TESTIMONY ON ASSEMBLY BILL 414

Thank committee members, for this hearing on Assembly Bill 414. This is a bi-partisan bill that would create the "Romeo and Juliet" exception, reducing the severity of penalties for consensual sexual activity between 15-18 year old teenagers.

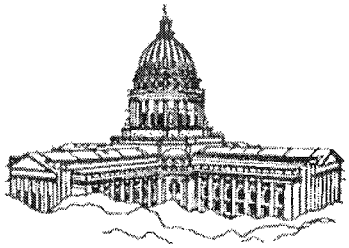
Wisconsin law does not distinguish between willing sexual contact between close-in-age teenagers and predatory behavior by adults against children. Too often, young people engage in sexual activity without thinking about the potential long–term consequences. Beyond the biological risks, they also face lifetime sex offender designation, felony convictions and long-term incarceration. They will carry that label and stigma that comes with it throughout their lives like a scarlet letter, negatively impacting future opportunities for employment, education, and housing. While these consequences can be appropriate in some circumstances, between two willing participants it usually is not.

With this bill Wisconsin will join the over 30 other states that have decided to treat sexually active teens differently than adults having sex with child victims. It is important to note we are not changing the age of consent with this legislation. Even with this bill, non-violent, willing, and for lack of a better work "consensual," sexual activity between 15-18 and 16-19 year old teenagers continues to be a criminal offense. Under the bill, this type of activity would be a misdemeanor instead of a felony. If force or other coercion is used, a felony charge is still an option. The judge in these cases will also still have the ability to decide if registering as a sex offender is necessary in the interest of public protection. Just as importantly, however, the judge will have the ability to determine that registering as a sex offender is not necessary under the circumstances.

Again, thank you for hearing this important bill.

Serving Racine and Kenosha Counties - Senate District 21

State Capitol, P.O. Box 7882, Madison, WI 53707-7882 • (608) 266-1832 • Toll-free (866) 615-7510
Sen.Wanggaard@legis.wi.gov • SenatorWanggaard.com



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Testimony of State Senator Lena C. Taylor
Senate Committee on Judiciary and Public Safety
January 11, 2018

Good afternoon. I want to thank my fellow committee members for the opportunity to submit written testimony regarding Assembly Bill 414.

This bill is an important step toward reforming our criminal justice system and making sure that youth who are engaging in consensual sexual activities are not punished for life. The mark of any conviction, let alone a felony, is a burden that one carries with them forever. Depending on your state of residence, everything from constitutional rights, such as voting or carrying firearms, can be lost. In addition, it can mean being passed over for housing and employment, regardless of whether the individual is at risk of re-offending or is qualified for a job or rental/mortgage application. Most stigmatizing is the assignment to be recorded on the sex offender registry. While the merits and intent of the registry is understood, I think most would argue that it was not intended to capture individuals as defined in the legislation before the committee.

We can all agree that non-consensual sexual activities, such as unwanted touching, groping, or rape, should not be tolerated and requires action from the criminal justice system regardless of a person's age. This bill leaves the current law punishments and consequences in place.

Most of us would acknowledge that we need to change how we approach corrections, whether considering the human toll or fiscal costs. Far too often, our approach has been to lock individuals up and throw away the key. As of August 25, 2017, the Department of Corrections held over 23,000 adults in its facilities. According to the Milwaukee Journal Sentinel, Wisconsin's prison population is on track to hit record highs by 2019. The consequences of mass incarceration are considerable. Families are separated. Wages and household incomes are lost. Taxpayers are stuck with the bill. Wisconsin now spends more on incarceration than it does for our landmark University of Wisconsin System. Between 2017 and 2019, taxpayers will spend over $1.1 billion annually for the Department of Corrections. These outcomes are not the ones we need nor are they the outcomes we can afford.

With this bill, we can better address the needs of youth who engage in consensual sexual activities, while providing a fairer and more efficient criminal justice system. I respectfully ask the Chairman and Committee Members to support AB 414. Thank you for your time.

Senator Lena C. Taylor
4th Senate District

Wisconsin State Public Defender

17 S. Fairchild St. - 5th Floor
PO Box 7923 Madison, WI 53707-7923
Office Number: 608-266-0087 / Fax Number: 608-267-0584
www.wispd.org

Protecting Justice for all Since 1977

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State Public Defender

Senate Committee on Judiciary & Public Safety
Thursday, January 11, 2018
Assembly Bill 414

Good morning Chairman and members,

Thank you for having this hearing on Assembly Bill (AB) 414, which makes changes to the criminal penalties for underage sexual activity. The State Public Defender (SPD) would like to thank Senator Wanggaard and Representative Kleefisch for authoring and introducing the bill.

AB 414 recognizes that there are different severity levels in criminal acts. Under current statutes, people who have not attained the age of consent are charged and convicted as felons. For example, two high school students who engage in consensual sexual activity may both be charged as felons because statutorily they are not allowed to give consent in the first place.

Once charged and convicted as felons, the future for these young people is tremendously impacted and limited. It will be difficult to complete their high school education, let alone continue on to postsecondary education. As a result of both the felony record as well as the lack of a degree, their future employability and earning potential are affected. They will no longer have the option to join the military or even to possess a firearm to go hunting.

It is important to note what AB 414 does not do. It does not lower the age of consent. By creating a specific age exception for underage sexual activity, it does not remove criminal penalties entirely, but provides for a misdemeanor instead of a felony charge. It does not create an exception in all cases - violent sexual assault by one person against a person of any age remains a felony.

AB 414 provides an alternative to more appropriately treat underage sexual contact as a criminal act, but as a misdemeanor rather than a felony. It continues to protect public safety without foreclosing the future of the youth with the ongoing consequences of permanent felony records.

Thank you for the committee's consideration of Assembly Bill 414.

Senate Committee on Judiciary and Public Safety
January 11, 2018

Mary Prosser[1]
Clinical Professor

Ben Kempinen[2]
Clinical Professor

University of Wisconsin Law School

STATEMENT OF INTEREST

Thank for you allowing us to share our perspectives on 2017 Assembly Bill 414. A little over three months ago we had the privilege of appearing before the State Assembly Committee on Criminal Justice and Public Safety about a very different version of this bill. At that time it appeared Wisconsin was poised to join the majority of states that do not allow children engaged in consensual sexual activity to be treated as felons subject to lifetime registration as sex offenders.

Since that time, the bill was amended. Although the issue giving rise to this legislation remains the same the proposed response is dramatically different. The changes were neither minor nor cosmetic. Instead, the bill before you today sends a clear message that sexually active children in Wisconsin may be viewed and treated as felons and be subject to lifetime registration as sex offenders. Because of the impact of the policies choices involved on our children, our families, our communities, and the taxpayers of Wisconsin we believe there is value in putting this proposal in context by outlining current law, how it has been applied, how the initial version

[1] Mary Prosser has taught criminal law courses at the University of Wisconsin Law School since 2003. She also supervises students in a year-long prison-based clinical program at the Remington Center.

[2] Ben Kempinen has taught at the University of Wisconsin Law School since 1976, specializing in the criminal law area. Since 1990 he has directed the Law School's Prosecution Project in which students serve as externs in Wisconsin district attorney offices.

of this bill would have changed existing law, and the likely impact of enacting the version before you today.

First, allow us to share a bit about ourselves. We have both spent our professional careers focused on issues of criminal justice and public safety. Through our work at the University of Wisconsin Law School's Remington Center we have had the opportunity to work with and learn from system shareholders, including legislators, prosecutors, police, victims, convicted offenders, and correctional authorities. These interactions have provided us with experience-based insights on a range of criminal justice issues we hope to share to promote sound cost-effective public safety policies. We are guided by the Law School's long history of contributions to the Wisconsin criminal justice system, including the creation of the original Wisconsin criminal code in the 1950s, the revision of our criminal procedure code in 1969 and of the homicide laws in the 1980s, application of chapter 227 rule-making to the corrections system in the 1980s, and revisions to the supreme court rules for attorney discipline in the past decade, to name a few.

The Problem

Wisconsin law now allows children who engage in consensual[3] sexual activity to be treated as felons subject to lifetime registration as sex offenders.[4] Current law does not distinguish the parties – both are potential felons if underaged. There is no evidence this was intended when our current array of sexual assault laws was enacted.[5]

---

[3] By law, persons less than 18 years old cannot give consent to engage in sexual intercourse and persons less than 16 years old cannot engage in any form of sexual conduct. In describing the situations to which 2017 Assembly Bill 414 would apply the writers are referring to consent in fact.

[4] Wis. Stat. §948.02(2); 301.45(5) (b) 1m.

[5] *See* Appendix A.

It is our experience that most prosecutors do not charge these cases at all. A minority of prosecutors do file criminal charges, often selecting misdemeanor level offenses.[6] Others charge at the felony level, charging either third-degree sexual assault in violation of Wis. Stat. § 940.225(3), a Class G felony, or second degree sexual assault of a child in violation of Wis. Stat. §948.02(2), a Class C felony. When felonies are charged the children involved face serious immediate and future consequences including mandatory registration as sex offenders.

What has resulted is extraordinary disparities in the treatment of largely identical cases, with most resulting in no formal consequences at all while others result in a felony conviction with life-changing consequences.

What legal principle distinguishes how these cases are treated? None. Rather, the disparities simply reflect the personal idiosyncrasies of which of the approximately four hundred individual prosecutors in Wisconsin happens to review the case. We emphasize that we do not suggest improprieties in how prosecutors exercise their power. Those few who charge in the harshest manner correctly defend their actions by pointing to you, the legislature, the body who created the laws which allows this level of disparity.[7] You, by your actions, control what behaviors are unlawful, what sanctions may be imposed on violators, and whether more than one crime may be charged for a single episode of conduct. When, as here, policy is not clearly articulated, the same behaviors are prohibited by multiple provisions with widely varying penalties, and prosecutors with widely varying personal values are imbued with substantial discretion, this type of disparity

[6] Examples of possible charges include fourth-degree sexual assault in violation of Wis. Stat. § 940.225(3m) or exposing genitals to a child in violation of Wis. Stat. § 948.10, the former being a Class A misdemeanor and the latter either a misdemeanor or Class I felony.

[7] *See* Appendix A.

is inevitable. And, respect for the law is diminished when its application depends on fortuitous circumstances rather than thoughtful, transparent, and rationale policy choices.

These concerns are neither abstract nor hypothetical. Statistics indicate that 42% of Wisconsin high school students admit to having engaged in sexual intercourse.[8] The Wisconsin Blue Book indicates there were more than 400,000 children enrolled in public and private high schools in 2015. This suggests that current law, and the proposal before you, invites state prosecutors to treat more than 170,000 of our children as felons. Passage would communicate to our police, prosecutors, and courts, that you approve of continuing felony treatment of our children, and the extraordinary disparity existing law has spawned over the past two decades.

We question whether the two certain consequences of this bill – felony treatment of children and disparate treatment of similar cases – reflect the best choice for Wisconsin.

Like any community, our most important resource is our children. They are the heart of our families and the future of our communities. How we treat them will profoundly affect our future and define us as a community. Children are different than adults. A growing body of evidence on adolescent brain development tells us that the teen years are a time of extraordinary vulnerabilities and opportunities. While this can include a willingness to engage in high risk behaviors without appreciation of immediate or long-term consequences, it is also a time where positive opportunities can help young people mature, better regulate their emotions, and develop long-term goals, values, and priorities that can guide them through adulthood. There is no evidence that the non-aggravated sexual behavior of teenagers is a predictor of future sexual dangerousness.

---

[8] This information is derived from a joint report of the Wisconsin Departments of Health Services and Public Instruction released in October of 2012. *https://www.dhs.wisconsin.gov/publications/p4/p45706.pdf*

The Effect of Pre-amended 2017 AB 414

The initial version of 2017 Assembly Bill 414 would have prohibited prosecution of non-aggravated sexual conduct as a Class C felony where one of the teenagers is not more than 18 years old and the other is at least 15 years old. It did so by carving out a misdemeanor option for this class of cases if a prosecutor believes some criminal charge is appropriate.[9] The wide range of felony options for aggravated cases would remain unchanged[10] as would the discretion to charge nothing, reflecting the most common current practice of our state prosecutors.

We have studied this issue for nearly a decade. We are confident, based on our research and experience, that the original bill would not compromise our ability to protect our children or hold violent offenders accountable. We have also reached out to several state prosecutors with decades of experience with all varieties of sensitive crimes. Not one disagreed with our views. Nor is the approach reflected in the original version of this bill is unique or uncommon. More than thirty-five states have enacted provisions to treat sexual active children in non-aggravated cases differently.

Registration and Eligibility for Sexual Predator Treatment

As you all surely know, conviction of many sex-related offenses carries not only direct consequences but long-term registration requirements as a sex offender. Today a teenager convicted of second degree sexual assault of a child in violation of Wis. Stat. § 948.02(2) is subject to lifetime registration as a sex offender[11] and is eligible for commitment as a sexual

[9] There is reason to believe this potential disparity was not intended by the legislature when our current statutory scheme for sexual assault was enacted. *See* Appendix A.

[10] *See* Appendix B.

[11] Wis. Stat. § 301.45(b), which defines what "sex offenses" require mandatory registration

predator under chapter 980.[12] This practice would continue under the bill before you today. In contrast, under the initial version, a child convicted of underaged sexual activity would not be subject to mandatory registration. The bill would have included judicial authority to require registration if the trial court believed it necessary for public protection.[13]

Both versions of the bill would allow children whose cases fit the new crime definition under Wis. Stat. § 948.093 but who were convicted of felonies to request removal from the registry.[14]

Conclusion

Wisconsin should be proud that we have been in the forefront of legislative reform in the area of sexual assault, crimes against children, and victim's rights. However, experience teaches that even the most carefully crafted laws can create ambiguities and unintended consequences. We believe that treating sexually active teenagers as felons with lifetime consequences, even if only in a small fraction of cases, is one such unintended consequence, one with lifetime consequences to the parties involved with no corresponding public safety benefits. There is reason to believe that this was never intended by the legislature twenty years ago and that the impetus to enact 2017 Assembly Bill 414 was to correct this. However, the amendments approved without public hearings or explanation constitute nothing short of a dramatic reversal of policy which would continue the potential for harsh treatment of our children and wide disparities in the way these cases are resolved.

You have the opportunity to consider the issues involve and determine what approach you believe best serves the interests of our children and our communities. We understand and respect

[12]Wis. Stat. § 980.01(4m) and (6) defining "serious child sex offender" and "sexually violent offense."(b),

[13] Wis. Stat. §973.048.

[14] *See* Wis. Stat. 301.45(1m)-(e).

your authority to make these important and difficult policy choices. Our hope is that our experience, perspectives, and the information we share will be of value as you consider the proposal before you.

Dated this 11th day of January, 2018

Respectfully submitted,

Mary Prosser
Clinical Professor

Ben Kempinen
Clinical Professor

University of Wisconsin Law School
975 Bascom
Madison WI 53706

The views expressed are those of the persons whose names appear in this statement and not those of the University of Wisconsin Law School or the University of Wisconsin.

APPENDIX A

Milwaukee Journal-Sentinel
April 24, 1997

Law comes down on father-to-be

Man, 18, whose girlfriend, 15, is pregnant is labeled sex offender, faces prison

BY JEFF COLE
of the Journal Sentinel staff

Port Washington — When high school senior Kevin Gillson found out his 15-year-old girlfriend was pregnant, those who know him say, he tried to do what he thought was right.

He asked his girlfriend to marry him. He dropped out of school to get a job with benefits to support his new family, saying, "This baby is not going on welfare."

Now, Gillson, 18, faces up to 40 years in prison and is branded a sexual offender. So neighbors can be notified, he must register as a sexual offender with his local police department, just as some of the state's worst sexual deviants must do.

Gillson will be sentenced June 24 in Ozaukee County Circuit Court in a conviction that one juror said left her "physically sick" when she learned the full details of the case.

District Attorney Sandy Williams refused to discuss the case or her reasons for prosecuting Gillson as a sexual offender.

Those who know the teenag-

Please see TEEN *page 11*

From page 1

ers describe this as two misbegotten teenagers in love.

Gillson, they say, is a caring but immature young man who, when he learned his girlfriend was pregnant, tried to make things right.

"It appears that some people think that black is black and white is white," said Pastor George Jorenby of St. Peter's United Church of Christ in Saukville, the Gillson family's church.

"There are gray areas in life, if not in the legal system. I would hope this would have been handled a different way. Kevin should not be looking at 40 years in prison for what he did."

Juror Mary A. Hoile wrote to Ozaukee County Circuit Judge Tom R. Wolfgram after she learned details not presented.

"I don't understand why the district attorney went after this kid," Hoile wrote to Wolfgram in asking him to be lenient in sentencing Gillson.

Gillson's journey into the legal system began in September 1996 when his girlfriend of four months learned she was pregnant.

According to testimony, the girl began feeling ill in September. Gillson insisted that she see a doctor. When she did, she was found to be pregnant.

Gillson apparently then decided that he had to "do the right thing," his father said.

"He told me the day they went to the doctor that she was pregnant," Joe Gillson said. "Kevin said he was going to marry her."

After telling his father, Gillson and the girl drove to Grafton to tell her mother.

When Gillson pulled up in front of the apartment where the girl and her mother lived, the transmission on his 1991 Ford Probe died.

After telling the mother, Gillson got on the phone to call his mother to ask that someone come and get him. As he was talking on the phone, the girl and her mother got into a physical fight, Sue Gillson said.

"Kevin said to me: 'Mom, what do I do? I can't stop them from fighting,'" Sue Gillson said. "I told him to call the police. Kevin was worried about the girl and her pregnancy."

When the officers arrived at the apartment to break up the fight, Gillson told them what prompted the altercation.

Grafton police turned the case over to the Ozaukee County Department of Social Services, which handles matters involving juveniles.

After an investigation by case worker Cathy Bonvicini determined that the pair had sex at Gillson's Port Washington home more than three times, the matter was turned over to Port Washington police.

Port Washington police Youth Officer Margaret Bannon was called into the investigation.

"Once we are called in, we have very little leeway in what we can do," Port Washington Police Chief Edward Rudolph said. "Under the law, we are required to report this to the district attorney's office."

DA Increased the Charge

Port Washington police recommended a Class C felony charge of second-degree sexual assault, punishable by up to 10 years in prison.

District Attorney Williams increased the charge to a Class B felony of sexual assault of a child more than three times. Class B felonies carry maximum penalties of up to 40 years under Wisconsin law.

Because the girl was only 15, Wisconsin law says she cannot give what is known as "informed consent" to enter into a sexual relationship. Any sexual contact with the girl is assumed to be non-consensual.

In the meantime, Gillson and the girl had met with Jorenby, the pastor, to begin marriage counseling.

The Gillson family is active in the church, Jorenby said, "although I have not seen Kevin on Sundays as much as I would like because he has been working," Jorenby said.

Jorenby stressed that he was very unhappy with what Gillson and the girl had done. But, he said, he was impressed that the couple were trying to take responsibility.

He said both seemed sincere in their desire to get married. He also said he had started to tell the couple about how difficult life could be for a couple made up of a 15-year-old girl and an 18-year-old man.

"I thought the girl was actually the more mature of the two," Jorenby said. "While they were sitting there talking to me, I would have thought the girl was the older of the two.

"I was only able to have one session with them, unfortunately."

Kevin Gillson had dropped out of Port Washington High School as soon as he found out his girlfriend was pregnant.

He found a full-time job working at Standard Machine Co. in Saukville, Joe Gillson said. He now works at a different job, with his father.

"Kevin got the job so he could get the health benefits for the baby," Sue Gillson said. "He said: 'Mom, this baby is not going on welfare.'"

In the meantime, the girl's mother had dropped her objection to the couple getting married.

According to an affidavit, the mother wanted her daughter and Gillson to get married. She also asked Wolfgram to lift the order barring Gillson and the girl from meeting.

Wolfgram rejected the request.

So, on April 17, Gillson went to trial. The entire trial took five hours and 32 minutes from the time the case was called until the jury returned a guilty verdict.

Only three people testified: Bannon, the police officer; Gillson; and the girl. According to juror Hoile's letter to the judge, the couple never denied what they had done. She said the case was presented in such a way that the only verdict could be reached was guilty.

"It seemed cut and dried," Hoile wrote. "We had no choice but to find him guilty, even though I found it very hard to come back into that courtroom with a guilty verdict."

Hoile said it upset her that Gillson is facing a harsh sentence.

According to state law, Wolfgram has wide latitude in how he can sentence Gillson. The young man could get anything from probation and no prison time to the 40-year sentence.

But no matter what happens, Gillson has been branded as a sex offender.

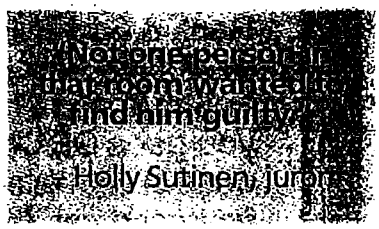
"You know, the only thing that hasn't let me down in all this is God," Sue Gillson said. "I feel there is no God in the system. I just don't trust the system anymore."

Milwaukee Journal-Sentinel
April 25, 1997

Jurors troubled by their verdict in teen sex case

Several felt they had no choice but to brand young man a sex offender

BY JEFF COLE
of the Journal Sentinel staff



One juror cried, and she and another vowed to never again serve on a jury after reaching a verdict convicting a teenager as a sexual offender.

Fallout from the case Thursday prompted a state lawmaker to call for a special state task force to review state laws on sexual assaults. Another lawmaker questioned how Ozaukee County District Attorney Sandy Williams could "in good conscience" file charges at all.

Kevin Gillson, 19, of Port Washington, now faces up to 40 years in prison and being required to register as a sex offender after being convicted of having sex with his then 15-year-old girlfriend. Gillson was 18 when he had sex with the girl, who is now 16.

Williams again refused Thursday to comment on the specifics of the case or explain the charges.

"In every case, we try to resolve it in a way that is fair to everyone," Williams said. "We tried to resolve this case in the same way and it didn't work."

Jurors reached for comment Thursday still were reeling from the verdict, reached a week ago in Ozaukee County Circuit Court.

"In the jury room, we were all trying to find a way not to find him guilty," said Holly Sutinen, of Saukville. "I was in tears in the jury box.

"We sat back there for an hour (in the jury room) trying to find a way not to find him guilty. Not one person in that room wanted to find him guilty."

But Sutinen and several other jurors said that the way the law was presented to them, they felt they had no choice but to find Gillson guilty of sexual assault of a child more than three times.

Sutinen said her experience has soured her on the idea of ever serving on a jury again.

Gillson is scheduled to be sentenced June 24.

Whatever sentence Ozaukee County Circuit Judge Tom R. Wolfgram imposes — from probation to prison time — Gillson is now required by state law to register with his local police de-

Please see **JURORS** *page 15*

Jurors/Several troubled by case

From page 1

partment as a convicted sex offender.

He also has to provide a DNA sample to the State Crime Laboratory.

In addition, he is barred from being a supervisor or coach for youth activities.

Gillson was charged after he told authorities in September what he had done.

The matter began when Gillson and his girlfriend went to tell the girl's mother she was pregnant. The girl and the mother got into a fight when the mother heard the news.

Gillson called Grafton police to break up the fight. That began the investigative process that landed him in an Ozaukee County courtroom April 17.

"This was just two high school kids doing what high school kids do," said a 30-year-old juror who asked that her name not be published. "We were back in that jury room looking for a loophole so we wouldn't have to convict him.

"This kid was no more stupid than anyone else. He tried to do the right thing. He didn't run away, like he could have."

The juror said the experience of sitting on Gillson's jury made her wary of ever being on a jury again. She said she didn't like what she had seen of the system in her one contact with it.

Juror Joseph E. Sommers of Mequon said that what Gillson and the girl did was not all that unusual.

"It was very difficult to find him guilty, but the law stipulated that we had to," Sommers said. "I guess the only thing I can do now is write a letter to the judge, asking for leniency."

Several of the jurors interviewed questioned why Williams chose to charge Gillson at all.

So did state Rep. Rebecca Young (D-Madison), an expert on the state's sexual assault law.

She said she had warned legislators when new sexual predator laws were passed that things like the Gillson case were going to happen. Young also called for overhauling the laws.

"Most every sensible person in this state would say this boy was not a criminal," Young said. "How could the district attorney in good conscience charge this boy?"

Williams has said that a Wisconsin Bar Association canon of ethics prevents her from commenting on the case.

However, Marquette Law School Dean Howard Eisenberg said that's not the case.

"I know of no canon of ethics that bars a district attorney from talking about a case, especially a case in which a verdict has been reached," Eisenberg said.

Both Eisenberg and University of Wisconsin-Madison Law School Prof. Ben Kempinen said Williams had the option not to charge Gillson at all.

Kempinen said he did feel some sympathy for Williams. He said it is often hard for district attorneys to decide when to charge and when not to charge.

He said there are no places a district attorney can turn for guidance in those situations.

However, Kempinen also questioned whether convicting Gillson of a crime is going to stop other teenagers from having sex.

"I don't have a great deal of faith in the criminal justice system to work where the family, church and society have failed," Kempinen said.

Eisenberg said he believed that the authors of the state's sexual predator laws did not have two teenagers in mind when they were crafted. He also questioned what purpose was served in charging and convicting Gillson.

To that end, state Sen. Alberta Darling (R-River Hills) sent a letter to Gov. Tommy Thompson's office calling for a special task force to review the state's sexual assault laws in light of Gillson's conviction.

A spokesman for Thompson's office said Thursday that Darling's letter was received and that Thompson's staff planned to meet with her.

Case may show flaw in sex offender laws

Darling says statutes need to be clarified to account for intent and motivation

BY JEFF COLE
of the Journal Sentinel staff

The conviction of Kevin Gillson as a sexual offender has exposed a flaw in the state's sexual assault laws that needs to be corrected, said state Sen. Alberta Darling, one of the authors of the sexual predator law.

Gillson was convicted April 17 of sexual assault of a child more than three times. He could receive up to 40 years in prison when sentenced and will have to register with his local police department as a sexual offender.

Gillson's crime was getting his 15-year-old girlfriend pregnant and then telling police about what he had done.

All of the sex between Gillson and the girl was consensual, according to sworn testimony in Gillson's trial. However, under Wisconsin law, the girl was legally too young to give her consent.

Labeling what was at worst a careless, immature teenager as a sex offender was not what the Legislature had in mind when it made a series of changes to Wisconsin's sexual assault laws, Darling said.

Written as a means of protecting citizens from the likes of notorious sex offenders, the law did not intend to brand for life the likes of Gillson, Darling and other legal experts said.

"The current law is such a broad brush stroke," said Darling (R-River Hills). "There should be something in the law that looks at intent and motivation. The registry laws are just too broad."

She said her office has been collecting information on how some judges in Wisconsin are allowing rapists and pedophiles to escape the law's provisions.

"We have to do a lot of clarifying in this law," Darling said. "I hope we can get something introduced next fall."

The sexual predator law was crafted in 1994 by Darling and then-state Rep. Lolita Schneiders (R-Menomonee Falls). The law was written because of the 1992 release from prison of Fond du Lac native Gerald Turner.

In 1973, Turner raped and murdered 9-year-old Lisa Ann French of Fond du Lac.

Sentenced to 38 years and six months in prison, Turner was released in 1992 on parole, although he showed no remorse and had refused treatment while in prison.

The law allows state prison officials to determine that someone convicted of a sex crime can be held indefinitely in prison.

Also, it requires that anyone convicted of a sex crime undergo evaluation and possibly treatment for deviant sexual behavior.

Last year, a provision known as the the Sex Offender Registration and Community Notification Act was passed.

That provision requires anyone convicted of a sex crime to register with their local police and provide a DNA sample to the state crime lab.

Also, it gives police the right to tell people in the community that a convicted sex offender has moved there.

Milwaukee Journal-Sentinel
April 28, 1997

Teen sex case cries out for judicial mercy

"If the law supposes that," said Mr. Bumble ... "the law is a ass — a idiot."

— "Oliver Twist"

State law says whoever has sexual contact with a child not yet 16 commits a felony and, if the contact happened three times or more, the felony is worse — that is, Class B, punishable by up to 40 years in prison.

But suppose the boy and girl in question are a madly-in-love Romeo and Juliet. The law makes no distinction. In its eyes, a kid in love is the same as a dirty old man. Romeo would be headed for the slammer — the prospect facing 18-year-old Kevin Gillson of Port Washington, who sought to marry his 15-year-old sweetheart after getting her pregnant.

Then the authorities butted in. A misguided prosecutor charged Gillson to the max. And a jury, feeling it had no choice, convicted reluctantly. What's more, barring some extraordinary intercession, Gillson will evermore be branded a sexual pervert — barred from holding certain jobs and required to register with the authorities where he lives.

That his conviction is a miscarriage of justice is obvious, but nobody has quite figured out how to wrest the controls of this train from District Attorney Sandy Williams. Yes, Gillson should have refrained from sex. But he by no means deserves the fate that has befallen him.

What's more, Gillson tried to do the right thing — getting a job so his baby wouldn't go on welfare, and seeking to marry the mother. And he's been open with the authorities. Had he been more secretive, he might not be in so much trouble. The authorities used his own words to convict him.

This case highlights a flaw in the state law dealing with sexual assault of a child. The statute rightly assumes that consent shouldn't matter for children under a certain age because they simply are not mature enough to give it.

But the law fails to take into account this type of case, where the two people engaging in sex are of similar age. So long as a minor is involved, the other party can face a charge of sexual assault.

Compounding this flaw are sexual predator and notification laws that turn out to apply not only to the real rapists whom the Legislature had in mind, but to the likes of Gillson.

Obviously, Madison lawmakers must clean up this legal swamp so that it won't snare other teenagers in love. Meanwhile, Gillson merits mercy at his sentencing on June 24.

Milwaukee Journal-Sentinel
April 30, 1997

DAs vary greatly on underage sex cases

Port youth fared worse than 5 other older teens

By Jeff Cole
of the Journal Sentinel staff

Kevin Gillson, the Port Washington High School senior convicted of having sex with his 15-year-old girlfriend, didn't fare nearly as well as five other older teens who faced District Attorney Sandy Williams.

Court records in Ozaukee County show that five teens, in one case a female, faced the DA for having sex with 15-year-olds.

In all five cases, Williams and the defense attorneys were able to work out plea bargains in which the defendants either pleaded guilty to a lesser charge or had the charges dropped after completing counseling and paying fines.

"I don't know why this case

Please see **SEX** *page 7*

Sex/Prosecution varies by case

From page 1

is being treated differently from the others," Gillson's defense attorney, R. Douglas Stansbury, said Tuesday.

His client faces a June 24 sentencing that could bring up to 40 years in prison. Regardless of the prison term, Gillson will have to register himself as a sex offender with local police anywhere he lives.

Williams was in court Tuesday and could not be reached for comment, a secretary in her office said.

Statewide, district attorneys differ widely over whether to prosecute teenagers who have reached adult status for having sex with youths 15 or younger.

Statistics compiled by the state Office of Justice Assistance found 599 such convictions in the state in 1996. Some counties prosecuted and convicted dozens of such cases in 1996, while others had none.

"It may seem cold and insensitive, but if people are unhappy with the law, they should take their gripes up with the Legislature," said Eau Claire County District Attorney Raymond L. Pelrine, who secured 50 such convictions in 1996. "These are often the toughest cases for my office to handle."

But in Dane County, District Attorney William Foust said prosecutors need to exercise discretion.

"If there was no indication of any abuse, we typically do not charge the crime," Foust said.

His rule of thumb says if there is less than three years age difference between the partners, and no coercion is involved, no charge is filed and the parties are placed in counseling.

Dane County, the state's second largest county, had 17 prosecutions in 1996. Milwaukee County had 108.

Women Also Prosecuted

And it's not just irresponsible young men being brought to trial.

In Shawano County, District Attorney Gary Bruno recently prosecuted an 18-year-old woman who was pregnant by her 15-year-old boyfriend.

Bruno said the woman actually spent time in the Shawano County jail for having sex with a minor.

"I prosecuted her because she violated the law," Bruno said. "When people do that here, they get charged."

The sex between the woman and boy was consensual, but that isn't the point, Bruno said.

The Legislature has decided that 15-year-olds cannot give their consent to have sex, Bruno said. Therefore, the law assumes that any sexual contact with a 15-year-old is crime, no matter what the circumstances.

If the people in Wisconsin have a problem with that, they should petition their legislators to change the law, Bruno and several other district attorneys said.

"We are required to follow the law," Calumet County District Attorney Kenneth R. Kratz said. "It is kind of disturbing to see people question a prosecutor's decision. The Legislature makes the policy, not us."

State Sen. Alberta Darling (R-River Hills) has petitioned Gov. Tommy Thompson to commission a task force to rewrite the state's sexual assault laws in light of the Gillson case. Darling's office said Tuesday that the governor's office hadn't made a decision on her petition.

The 1996 statistics compiled by the state Office of Justice Assistance found 599 convictions of 17-year-olds and 18-year-olds for having sex with people between age 12 and 16. Those 599 cases did not involve allegations of force or coercion.

In 1995, the last year for which statistics were available, there were 180 births to girls younger than 15 and 2,531 births to girls age 15 to 17, according to the state Center for Health Statistics.

Darling said the Gillson case exposed a flaw in state sexual assault laws. She said tough new laws that imposed harsher penalties on the state's worst sexual offenders were never intended for teenagers engaging in consensual sex.

In the Port Washington case, those involved say, the teens planned to get married. Gillson quit high school to take a job with benefits for his family, and the two began marriage counseling at his church.

Many district attorneys said they deal with such incidents on a case-by-case basis.

Outagamie County District Attorney Vincent Biskupic said his office tries to assess the maturity level of the minor in the case.

"We don't have a set policy," Biskupic said. "We look at such factors as age difference, input from the parents, whether there is any of police record, factors such as that."

Judgment calls are never easy, Marathon County District Attorney Jill Falstad said.

"These cases are always very easy to prove," Falstad said. "Usually, the couple admits they were doing it."

The sad thing, Falstad said, is that her office often finds out about sexual contact with a minor when one of the parties is treated for a sexually transmitted disease.

In cases where there is consensual sex between two teenagers, prosecutors in Marathon County do not seek felony charges, Falstad said. Usually, the charge will be a misdemeanor in which the record is expunged after both parties have had counseling, she said.

"This is just a very difficult area of the law," Falstad said.

Media flock to cover Port teen's story

By Jeff Cole
of the Journal Sentinel staff

Kevin Gillson and his family have received about 50 calls from newspapers, television stations, talk shows and producers wanting to tell the story of the Port Washington youth who faces up to 40 years in prison for having sex with his girlfriend.

"We have gotten calls from everyone from '60 Minutes' to 'Geraldo' and 'Montel Williams,'" defense attorney R. Douglas Stansbury said Tuesday. "Right now, we are just taking requests for interviews. We have not made any decisions."

Gillson, 19, was convicted April 19 of of sexual assault of a minor — his then 15-year-old girlfriend.

Joe and Sue Gillson, Kevin's parents, have vowed to do anything they can to clear their son. They have said they will sell family heirlooms to pay the legal fees to appeal Kevin's case.

After stories appeared on the front page of the Journal Sentinel, the story was carried by the Associated Press news wire across the country.

It was featured on talk radio shows in Milwaukee and on WHAD, the statewide National Public Radio station.

It has run in newspapers and on radio and television stations from Seattle to Philadelphia.

Stansbury said he did an interview Tuesday with a reporter from ABC's "World News Tonight." He said he was told it would air today or Thursday.

"I will provide sound bites and some interviews right now, but that's all," Stansbury said. "The Gillsons right now are not talking to anyone."

APPENDIX B

October 2017

SEXUAL ASSAULT AND CHILDREN: CHARGING OPTIONS UNDER WISCONSIN STATUTES[1]

Note: The following chart describes the charging options for common situations involving sexual activity with children assuming the enactment of the proposed "Romeo and Juliet" misdemeanor exception for non-aggravated cases involving sexually active children. The exception would apply when (1) the ages of the parties fit the statutory definitions (2) the activity is consensual and (3) there is no threat or use of force or violence. We considered and rejected making consent and the absence of force or violence elements and thought a chart demonstrating options for these cases was a better way of explaining when we envision the misdemeanor would apply and that more serious options remain for aggravated cases. The cases which the proposed exception would apply are listed in bold.

TYPE OF CONTACT	VICTIM UNDER 18	VICTIM UNDER 16	VICTIM UNDER 12
SEXUAL INTERCOURSE (consensual/no F/V)	§948.09 (M-A)	§948.02(2) (F-C) (if victim less than 15); **§948.093 (M-A) (victim 15 and actor less than 19)**	§948.02(1)(b), (e) (F-B)
SEXUAL CONTACT (consensual/no F/V)	---	§948.02(2) (F-C) (if victim less than 15); **§948.093 (M-A) (victim 15)**	§948.02(1)(e) (F-B)
SEXUAL INTERCOURSE FORCE/VIOLENCE	§940.225(2)(a) (F-C)	§948.02(1)(c) (F-B)	§948.02(1)(b) (F-B)
SEXUAL CONTACT FORCE/VIOLENCE	§940.225(2)(a) (F-C)	§948.02(1)(d) (F-B) (actor 18 or older); §948.02(2) (F-C) (actor 19 or older)	§948.02(1)(e) (F-B); §948.02(2) (F-C) (no age restrictions); §940.225(2)(a) (F-C)
SEXUAL INTERCOURSE NO FACTUAL CONSENT	§940.225(3) (F-G)	§940.225(3) (F-G); §948.02(2) (F-C) (actor 19 or older)	§940.225(3) (F-G); §948.02(1)(b) (F-B); §948.02(2) (F-C) (no age restrictions)

[1] This chart incorporates proposed changes reflected in 2017 Assembly Bill 414.