



June 7, 2007

Age of Consent Muddles Law on Marriage vs. Rape

By Claire Bushey, WeNews correspondent

(WOMENSENEWS) – Ken Boulden, clerk of the peace for New Castle County in Delaware, is breathing a sigh of relief.

On May 23 Gov. Ruth Ann Minner signed a law that Boulden drafted to help protect minors in Delaware.

It requires anyone younger than 18 to petition Family Court for permission to marry. A judge will decide whether the marriage is in the minor's best interest.

Pregnancy – which until last month had been a reason to allow an underage marriage to proceed – will no longer exclude a couple from the state's restriction of marriage to those 18 or older.



Ken Boulden

Boulden estimates about 25 couples married each year in New Castle County under the former pregnancy exception. Presiding over such weddings put him in a bind because the pregnancy provision allowing the union was in direct conflict with the state's statutory rape law, which classified sex with anyone under 16 as a felony.

Sometimes Boulden says he would marry a couple in compliance with the marriage code only to call the police to arrest one of the newlyweds on statutory rape charges as they were leaving his office.

The statutory rape charges, he says, rarely stuck.

“Part of their successful defense was, ‘How can you condemn me for an act you're alleging was illegal when you hand me a document with the state seal and signature on it, sanctioning me to go forward and continue the same act?’ With that, it became obvious that the law was broke. It needed to be fixed.”

Conflicts Still on the Books

Four other states – Maryland, Florida, Oklahoma and Kentucky – still have conflicts between their laws on statutory rape and underage marriage in the case of pregnancy.

Maryland allows pregnant 16- and 17-year-olds to marry without parental consent. A pregnant 15-year-old can marry provided a parent agrees to it.

Judges in Florida, Oklahoma and Kentucky can grant or refuse a marriage license to a pregnant minor of any age, regardless of their parents' consent.

County clerks and family law attorneys in some of these states told Women's eNews that the legal contradiction was not an issue, either because it applied to too few marriages or because nothing had brought the conflict to legislators' attention.

"Sometimes legislative priorities are driven by circumstances," says Cindy Callahan, secretary of the Maryland State Bar Association's family and juvenile law section council. "In some ways it's not an issue because it hasn't been raised."

Conflicts between marriage and criminal codes can, however, embarrass a state when a case receives national media attention.

Georgia eliminated the pregnancy provision from its code in 2006 after 37-year-old Lisa Lynette Clark was charged with child molestation, statutory rape and enticing a minor days after marrying the 15-year-old who impregnated her.

Legal History

Rigel Oliveri, associate professor of law at the University of Missouri, says the history of statutory rape laws helps explain how these states have come to sanction and condemn the same act.

Oliveri, an expert on statutory rape laws, says the laws, which entered the U.S. legal system by way of English common law, were first intended to make men "take responsibility for a problem they created."

Today, she says, one of the legal rationales for statutory rape laws is to protect minors from predatory adults. But the laws' original intent of limiting out-of-wedlock births was complemented – rather than contradicted – by pregnancy exceptions that states placed on age restrictions on marriage.

Marriage is a permissible defense to statutory rape in all states and most legal cases. But it is not always successful, adding to the legal muddle over statutory rape and legal grounds for marrying a minor.

Last month Matthew Koso, 24, was released from a Nebraska prison after serving 15 months for statutory rape.

Koso began dating a 12-year-old when he was 20 and he impregnated her when she was 13. They then married in May 2005, shortly after her 14th birthday, by crossing into Kansas because the state, at the time, set no minimum age for marriage if the minor had parental permission. (That has since changed; Kansas instituted a minimum age of 15 a year later, in May 2006.)

But Nebraska's Attorney General Jon Bruning charged Koso with breaking the state's statutory rape laws and charged him with first-degree sexual assault in July 2005.

Critics attacked Bruning for prosecuting a man they said was shouldering responsibility for the child he fathered.

Boulden has heard similar arguments since he began pressing for change in Delaware. People told him to "leave well enough alone," that if "a gentleman wants to step up and take responsibility and form a family unit, who is government to get involved in that process?"

Question of Legal Consent

"That's a shallow argument because they're assuming the act that brought about that union was consensual, when under Delaware law, no matter what the circumstances, because she's a minor, she cannot legally give consent," Boulden said.

Boulden's campaign to change Delaware's marriage laws was galvanized by cases such as that of a 15-year-old girl who walked into his office and asked if she could "erase" her marriage.

Boulden had officiated at her wedding two months earlier when she was 14 and pregnant. The infant had died; now she wanted out of her marriage to a man almost 10 years her senior.

"I had to explain to her I couldn't," he said. "She was old enough to get a marriage license, but she was not old enough to go to Family Court on her own behalf and get a divorce."

In early 2006 Boulden sought the counsel of attorneys, Family Court judges, other clerks of the peace and clergy on the Wilmington-based Delaware Ecumenical Council. He worked on the bill's language for a year.

He knew the bill would go to the Legislature's Judiciary Committee because it involved Family Court, so he went to the state legislator who chaired that committee, Rep. Robert Valihura Jr., who introduced the bill in March.

Boulden says he hopes Delaware's new law will protect minors who are coerced by parents and partners into marriages that do no serve their best interests.

“When people come in here for a license, it’s usually a celebration,” he said. “But I cannot think of a single instance – not one – when one of these young girls came in with a smile on their face, happy to be in this office going through this process to get a license.”

Claire Bushey is a freelance journalist based in Chicago.

For more information:

Marriage laws by state, Legal Information Institute at Cornell Law School:

http://www.law.cornell.edu/topics/Table_Marriage.htm#k

“Sexual Relationships Between Adult Males and Young Teen Girls: Exploring the Legal and Social Responses,” by Sharon G. Elstein and Noy Davis – [Adobe PDF format]:

<http://www.abanet.org/child/statutory-rape.pdf>

“Senate Bans Out-of-State Travel for Teen Abortions”:

<http://www.womensenews.org/article.cfm/dyn/aid/2838/>

Copyright © 2007 Women’s eNews.