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HOUSE JOINT RESOLUTION NO. 80

Offered January 19, 1996

Establishing a joint subcommittee to study the criminal law relative to the capacity of mentally impaired persons to consent to sexual activity.

Patrons—McDonnell and Croshaw

Referred to Committee on Rules

WHEREAS, generally, there are three elements in establishing competency to provide legal consent: (i) knowledge of the important aspects of a decision and its risks and benefits, (ii) intelligence, reason or understanding showing comprehension in a manner consistent with the person's values or beliefs, and (iii) voluntariness of the decision; and

WHEREAS, determining the capacity of an individual to make a decision regarding consent to sexual activity has developed largely through judicial determinations in criminal prosecutions for sexual assault upon persons allegedly incapable of consenting due to mental impairment; and

WHEREAS, the courts have applied various standards ranging from requiring only an understanding of the nature of sexual conduct to requiring, in addition, an understanding of the possible consequences of sexual activity, making prosecutions for sexual abuse of these particular victims difficult to sustain; and

WHEREAS, the lack of a clear standard brings into question whether persons who are mentally impaired receive any protection from sexual abuse under the criminal law; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study whether there are appropriate protections within the criminal law for mentally impaired persons with regard to their capacity to consent to sexual activity. The joint subcommittee shall be comprised of five members to be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House, and two members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The direct costs of this study shall not exceed \$ 3,000.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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