

fondling of breasts cannot put a person within the purview of this bill. You must read the entire bill. On page 3, as I mentioned, the crime consists in dealing with sexually explicit...let me find the exact language, sexually explicit conduct in line 24. What is sexually explicit conduct? You go farther up the page to line 6 and you see sexually explicit conduct. What is included in that conduct? Line 12 says, erotic fondling. What is erotic fondling? If you go to page 2, line 8, erotic fondling shall mean touching a persons clothed or unclothed genital or pubic area and breasts. If you touch, in this depiction, if a person is depicted touching another individual, if she is a female, her clothed breasts, that is erotic fondling. Erotic fondling is sexually explicit conduct under the terms of this bill and a person commits this crime, if you look in the bill at line 23, page 3, to provide one of these depictions to any person regardless of age. Thus, by the terms of the bill, if there was a picture of a male or, based on the way things happen these days, a female touching the breasts of another female, 17-years-old, 364 days, takes that picture and gives it to another student, that is a Class IV felony under the bill as it exists right now. It was a bad law when it was put on the books. It is still a bad law and it's easy to cloud the issue by saying you're talking about child molesters. Who is going to say that a bunch of boys in a locker room or a bunch of girls in a locker room or a bunch of girls and boys at a party passing these pictures around are child molesters? Is that what you mean when you use the term child molester? But each and every one of those examples I gave you comes under the purview of the explicit terms of this bill and it makes nobody any difference. It doesn't make enough difference to want to do anything about it. It's because legislation of this kind was contemplated by those who drafted the Constitution, that they put in a provision against cruel, unusual punishments because they said legislatures cannot be trusted to provide punishments without resorting to that which is unusual and cruel. Let the Legislature criminalize conduct as it chooses, but there must be a constitutional barrier erected to the types of punishments imposed. And there were people such as Patrick Henry even, who spoke against giving legislatures untrammelled power to inflict whatever punishment they chose. A judge in a U.S. Supreme Court case said that a legislature can make drinking liquor a crime, but it cannot take one glass of liquor, count the number of drops and make each drop in that glass an individual offense and by so doing, lock up a person up for an indefinite period of time. That is considered a cruel and unusual punishment even though you're not torturing the person, you're not talking about