



Statutory Sexual Assault

A Technical Assistance Bulletin for Advocates

Statutory sexual assault raises many legal and ethical questions for sexual violence prevention educators. Often, teens involved in statutory sexual assault situations do not self-identify as victims or feel that their experiences constitute sexual violence. However, statutory sexual assault is a form of sexual violence, and it's illegal. Prevention educators often receive questions from program participants about the definitions of statutory sexual assault. Various scenarios and hypothetical situations are posed by teens who want to know if they, or someone they know, are involved in a statutory sexual assault situation under the law - and what will happen if someone finds out. This bulletin is intended to help answer some of the more common questions that arise regarding statutory sexual assault, and to support prevention educators in responding to teens with helpful information, resources and support.



Definitions of Statutory Sexual Assault and Rape

Statutory Sexual Assault

Under Pennsylvania law, the definition of statutory sexual assault is as follows (Pennsylvania Consolidated Statutes, Crimes and Offenses, Title 18, Chapter 31. Sexual Offenses, Subchapter B, Definition of Offenses, §3122.1):

Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant and the complainant and the person are not married to each other. Sexual intercourse can include vaginal, anal or oral intercourse.

Involuntary Deviate Sexual Intercourse

If the situation involves sexual contact other than vaginal intercourse - such as oral and anal intercourse or penetration of the genitals with a foreign object - it would also be considered involuntary deviate sexual intercourse (IDSI)(per § 3123). Oral, anal or object penetration of someone under the age of 16 constitutes IDSI if the perpetrator is four or more years older. Pursuant to the statute, consent is irrelevant if the victim is under 16 and the perpetrator is four or more years older, because the age of consent in Pennsylvania is 16 for these types of intercourse. If the victim is 16 or older or if the victim and perpetrator are both under 16, it only constitutes IDSI if the acts are committed one of the following ways:

- ◆ By forcible compulsion.
- ◆ By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
- ◆ Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- ◆ Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the

complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

- ♦ Who suffers from a mental disability, which renders the complainant incapable of consent.

Rape

Pennsylvania law defines rape as follows (Pennsylvania Consolidated Statutes, Crimes and Offenses, Title 18, Chapter 31. Sexual Offenses, Subchapter B, Definition of Offenses, § 3121):

- ▶ A person commits a felony of the first degree when he or she engages in sexual intercourse with a complainant by forcible compulsion or:
 - By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
 - Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
 - Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
 - Who suffers from a mental disability, which renders the complainant incapable of consent.
 - Who is less than 13 years of age.

In summary, in Pennsylvania law says statutory sexual assault occurs when:

- ▶ there is a victim less than 16 years of age*
- ▶ consent is not an issue due to the victim being under 16
- ▶ there is a perpetrator four or more years older
- ▶ the two parties are not married
- ▶ the two parties engage in vaginal, oral or anal intercourse

* If the victim is under 13, the crime is rape and if the victim is under 16 and the sexual activity involves oral or anal intercourse or penetration with an object, it is the crime of involuntary deviate sexual intercourse.

Real Life Scenarios

When working with the issue of statutory sexual assault, prevention educators and advocates must consider multiple legal definitions concerning consent, statutory sexual assault, rape, deviate sexual intercourse, privilege, and mandated reporting of child abuse while honoring their professional duties to the client and the ethics of self-determination, empowerment and confidentiality.

Below are several situations that may help clarify how these laws apply to real life. The assumption in each is that both parties were consenting. Nonconsensual sexual intercourse is rape no matter what the age. The age of consent in Pennsylvania is 16. Many statutory sexual assault cases involve victims who believe they have consented to sex with an older partner, even though they are unable to give consent by law due to their age.



What if one person is 16 and the other is 32 and they have vaginal intercourse?
This is not statutory sexual assault because the victim is not under 16.

What if one person is 14 and the other is 20 and they have vaginal intercourse?
This is statutory sexual assault because there is a victim under 16 and a perpetrator that is at least four years older.

What if one person is 14 and the other is 20 and they have oral intercourse?

This is statutory sexual assault because the PA Crimes Code definition of sexual intercourse includes vaginal, oral and anal intercourse. The charge would be statutory sexual assault as well as involuntary deviate sexual intercourse. The person under 14 cannot legally consent to IDSI.

What if one person is 12 and the other is 18 and they have vaginal intercourse?

This is rape because the victim is under 13.

What if one person is 11 and the other is 13 and they have vaginal intercourse?

This is rape because there is a victim under 13.

What if both parties are 14 and they have vaginal intercourse?

If both parties are the same age, there is no crime.

What if both parties are under 13 and they have vaginal intercourse?

Again, if both parties are the same age, there is no crime.

Statutory Sexual Assault no longer a Mandated Report

Act 179 made substantial changes to the Child Protective Services Law (CPSL) in Pennsylvania. Among the many changes was the removal of statutory sexual assault from the definition of sexual abuse and exploitation. The removal of statutory sexual assault from the CPSL was an attempt by some advocates to protect the confidentiality of teens in counseling, mental health, family planning and medical settings.

The thinking was that if teens knew they would be reported when coming forward, they might not seek the critical services they need. For example, they may not go to a family planning clinic or medical provider for pregnancy prevention or testing and treatment of sexually transmitted diseases or to a rape crisis center for counseling. Because statutory sexual assault is no longer included in CPSL, it is no longer a mandated report to ChildLine. If an advocate makes a report without the written consent of the client it would violate the client's confidentiality (42 P.A.S. 5945.1, section SA counselor privilege statute).

CPSL Definition of Sexual Abuse and Exploitation

Advocates must still make a report to ChildLine if they suspect sexual abuse is occurring, per the CPSL definition of sexual abuse and exploitation below.

- 1.) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct.
- 2.) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographic, videotaping, computer depicting and filming.
- 3.) Any of the following offenses committed against a child: rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, sexual abuse, or sexual exploitation.

For more information about mandated reporting obligations and the Child Protective Services Law, please contact PCAR's Legal Director (1-800-692-7445, ext. 114) or Technical Assistance Coordinator (1-800-692-7445, ext. 117).

How to Respond

Statutory sexual assault is a form of sexual violence which is often based on power disparities, manipulation, isolation and coercion. However, many teens involved in statutory sexual assault relationships may not consider themselves victims, and may not want a report to police to be made or their parents to find out. They may feel loved by the offender, and reject the idea that they are a victim of sexual assault or sexual violence. The offender may be the only person in their lives giving them attention and affection. One survivor

shared that it wasn't until she re-read the journal she had written while a teenager - and involved in a statutory sexual assault situation - that she realized how she had been manipulated, isolated and abused by an offender who was much older. She did not define her experience as sexual violence until more than 15 years later when she was in her mid-30s. At the time of the incident, she did not consider herself a victim and would have balked at anyone telling her she was.

Alternatively, some teens may feel that something is wrong in their relationships and might want to talk about it, but do not want a report to be made or for their parents to be involved. Other teens may want a report to be made and action taken. All scenarios and individuals are unique and therefore advocates must respond to the circumstances, the questions asked, and the needs and wishes of their teen participants, which is consistent with PCAR's mission to advocate for the rights and needs of all victims. This process must always be grounded by respect for the confidential duty that an advocate has to a client. Often, the rape crisis center and the prevention program is the only safe place for teens to talk openly and ask questions about what is going on in their lives and relationships. Advocates should consult with their supervisors, agency policies, legal requirements and attorneys when legal questions arise surrounding the issue of statutory sexual assault. PCAR is also available to provide technical assistance on this matter.

Prevention educators can have a tremendous impact on reducing statutory sexual assault even when a report is not possible, or when teens do not consider themselves to be victims. Below are some possible strategies to consider:

- ▶ Promote healthy relationships based on equality, respect, trust and open communication in prevention efforts.
- ▶ Develop bystander intervention programs for statutory sexual assault, equipping teens with skills to speak out about relationships based on age and power disparity.
- ▶ Develop public awareness campaigns on statutory sexual assault to reinforce classroom and community programming.
- ▶ Assist teens in developing critical questions and reasoning skills to help them reframe their relationships and analyze the power differentials, manipulation, isolation and coercion that may exist.
- ▶ Partner with community allies such as teachers, parents, mentors, after-school program staff, domestic violence advocates, child advocates, faith leaders, creative arts providers, family planning providers, and others to help reduce risks and expand teens' supportive networks and resources to prevent and address statutory sexual assault.
- ▶ Facilitate psycho-educational groups with teens, discussing statutory sexual assault and their relationships, connecting individuals' stories and reducing isolation they may be experiencing.
- ▶ Develop peer-to-peer education programs with teens so they can hear from each other about statutory sexual assault - its red flags, effects and alternatives.
- ▶ Travel to your target audience, ultimately building upon their strengths, bridging gaps in dissemination of information, and providing meaningful referrals to services and programs in the community.

Additional Resources

- ▶ A Demographic Portrait of Statutory rape, produced by Child TRENDS, www.childtrends.org
- ▶ I can't believe that's what my teen thinks! Guide for parents, produced by the Pennsylvania Coalition Against Rape
- ▶ Juvenile Law Center, www.jlc.org; 1-800-875-8887
- ▶ National Sexual Violence Resource Center, compiled list of resources on statutory sexual assault, <http://www.nsvrc.org/selectedresources/searchresults.aspx?TopicId=35;877.739.3895>
- ▶ Pennsylvania Coalition Against Rape, www.pcar.org; 800-692-7445, ext. 115

- ▶ Prevent Connect listserv, <http://www.preventconnect.org/display/displaySection.cfm?sectionID=240>
- ▶ Sexual Coercion and Exploitation of Minor Teens, curriculum for youth service providers, Virginia Department of Health, <http://www.menendingviolence.com>; <http://www.vahealth.org/civp/sexualviolence>; <http://www.vahealth.org/civp/sexualviolence/varapelaws/crossing.html>.
- ▶ Statutory Rape, fact sheet developed by the Maryland Coalition Against Sexual Assault, <http://www.mcasa.org/pdfs/Statutory%20Rape.pdf>
- ▶ Statutory Rape: Strategies for Empowering Middle School Students, a guide and curriculum for sexual assault programs and other organizations, produced by the Pennsylvania Coalition Against Rape
- ▶ Statutory Rape: What you should Know, brochure developed by the New York Coalition Against Sexual Assault, <http://www.nyscasa.org/resources/SR%20Brochure.pdf>
- ▶ Teen Sexual Assault and Abuse, fact sheet developed by the Wisconsin Coalition Against Sexual Assault, <http://www.wcasa.org/info/factsheets/teen.htm>
- ▶ Truth and Consequences: Statutory Rape, interactive curriculum for teens, produced by the Pennsylvania Coalition Against Rape
- ▶ Victim-Oriented Multidisciplinary Responses to Statutory Rape Training, developed by Office of Victims of Crime, <http://www.mincava.umn.edu/documents/victimo/victimo.html>

PCAR wishes to thank Christopher Mallios, Assistant District Attorney, Assistant Chief, Legislation Unit, at the Philadelphia District Attorney's Office, and Beth Lawson, Legal Resource Attorney, PA District Attorneys Institute, for providing consultation on this bulletin.

This bulletin should not be construed as legal advice.