

Teen Center

Teen Dating Violence Technical Assistance Center



Issue Brief

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Balancing Obligations: Serving Teen Victims and Mandated Reporting of Statutory Rape

Statutory rape, generally defined as “sexual contact with a minor,” is a unique body of law wherein the crime is based solely on the age of the participants and not the nature of the sexual act itself. These statutory provisions serve as protective measures to ensure that minors do not fall prey to coercive older partners. However, in the context of teen dating violence, statutory rape laws present several challenges for not only the teen victim, but for service providers who may be bound by ethical and legal duties to report crimes against minors. These mandated reporting requirements can create a barrier to seeking help if a teen victim is afraid that, due to statutory rape laws and mandated reporting, her¹ abuser will be arrested and charged with a crime.

Many teens are aware of mandated reporting laws and their knowledge of these laws affects their decision whether or not to disclose dating violence to adult providers. Studies show that confidentiality is the most important factor in whether or not a teen victim seeks services.² If fear of mandated reporting causes a teen who is experiencing dating violence to choose not to disclose the abuse, she may not receive vital services. It may also increase her feelings of isolation and hopelessness.

Providers who work with teens experiencing dating violence must be aware of these obstacles and consider possible solutions because it is a scenario they will likely face at some time in their practice. Recent studies suggest that half of teens between the ages of 15 and 17 experiencing dating

violence have an abusive partner who is over the age of 18.³ By taking a few practical steps, service providers can ensure their teen clients’ trust and protect their confidentiality. In order to preserve confidentiality while fulfilling their legal duties, service providers must educate themselves on their jurisdiction’s statutory rape laws, as well as mandated reporting requirements.

Statutory Rape Laws

Statutory rape laws make any sexual contact with a person under the age of consent a criminal offense. Note that most states do not use the term “statutory rape.” Rather these offenses are categorized as unlawful sexual intercourse⁴, statutory sexual seduction⁵, importuning⁶, or sexual intercourse without consent⁷. State laws vary on the age of consent, as well as the degree of the criminal act. Historically, statutory rape laws reflected contemporary social norms, such as maintaining chastity and protecting minors from the imbalance of power that exists in sexual relationships between adults and minors. In addition to those goals, presently, some states, like California, use statutory rape laws as a means to deter teenage pregnancies, and indirectly, dating violence. A significant number of teenage pregnancies are fathered by men more than four years older than the mother.⁸ Studies have shown that pregnancy significantly increases the risk of intimate partner violence.⁹

The crime of statutory rape can be triggered in a variety of ways: single age of consent, minimum age for victims, age differential, and minimum age of defendant. Most states

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utilize more than one of these categories in their statute. Twelve states specifically delineate an age under which no individual can consent to sexual activity under any circumstances.¹⁰ For example, California employs a single age of consent of 18; thus it is illegal for anyone to have sex with a person under 18, regardless of the age of defendant.¹¹ Most states employ an age differential rule where a minimum age difference, ranging from four to ten years, must be present for the statutory rape statute to be triggered. The District of Columbia employs an age of consent of 16 combined with an age differential requirement of 4 years. There, it is statutory rape for a 19 year old to engage in consensual sex with a 15 year old, but not for a 17 year old to engage in consensual sex with a 15 year old.¹²

In the states that have a minimum victim age, certain sexual acts with individuals under the age of consent but above the minimum age constitute statutory rape, depending upon the age difference or the age of the defendant. For example, New Jersey imposes a minimum victim age requirement of 13. Although the age of consent is 16, in New Jersey certain sexual acts with minors who are at least 13 years old are not criminalized, as long as their partner is not more than four years older.¹³

Although statutory rape statutes are usually written and applied in gender-neutral fashion, there are some gender-specific patterns that service providers should be aware of. Younger male victims are more likely to be abused by a female than a male and the age differential tends to be larger than with teen female victims and their adult male abusers. Among perpetrators of statutory rape against male victims, 70% were over 21, compared with 45% of perpetrators of statutory rape against female victims.¹⁴

Mandated Reporting of Statutory Rape

Certain service providers are required by state law to report acts of child abuse. Mandated reporting laws vary from state to state, but generally include teachers, mental health counselors, clergy, healthcare providers, and legal professionals. Reporting requirements raise unique concerns for service providers who work with teens experiencing dating violence, particularly around the issue of confidentiality.

Many state laws explicitly state that the child abuse reporting requirements not only include sexually based offenses with minors but also statutory rape. Under some reporting statutes, statutory rape is not considered child abuse, unless it is part of intrafamilial sexual abuse. In others, the language is left vague and could be interpreted to require reporting of statutory rape. These inconsistencies can lead to confusion for service providers as to when and under what circumstances reporting statutory rape is mandatory, permissible or barred by their own confidentiality policies. Regardless of the mandated reporting requirements, service providers are often left with the dilemma of how to effectively work with teens experiencing dating violence while maintaining their state-mandated reporting obligations.

Obstacles for Providers

Confidentiality. When teens experiencing dating violence seek assistance and information from service providers, they, like adults, do so with the assumption that the information they share will remain confidential. Even without the added challenge of mandated reporting, it is difficult for teens to reach out to adults for help. Only 33% of teens experiencing dating violence ever report their abuse to anyone, and of those, 86% reported they would



only tell a friend.¹⁵ Teens have difficulty reaching out for help for a variety of reasons, such as fear of retaliation or future abuse, concerns about parental involvement, or fear of being “outed” as gay, lesbian, or transsexual.

Maintaining confidentiality is vital to gaining the trust of teens experiencing dating violence. Mandatory reporting requirements that encompass statutory rape may deter teens who are experiencing dating violence from seeking or continuing legal representation, advocacy services, and physical and mental health care. Particularly worrisome is that fear of unwanted disclosure of their personal information may discourage young women from seeking prenatal, reproductive and sexual health care.

Emotional Impact on Client. It is often the case that teens experiencing dating violence, like many adults, want the violence, not the relationship, to end. The victim may not want the abuser punished for the statutory rape (or any other abuse), particularly if she sees the sexual relationship as consensual and not part of the abuse. In this scenario, the client may view reporting the statutory rape as a violation of her trust and come to view the service provider as an adversary rather than an ally. Most sexually active teens believe they are old enough to consent to the sexual act and do not think that a statutory rape charge is appropriate. Even if the client wants to end the relationship, she may not want to pursue a statutory rape prosecution. If the report leads to an arrest and prosecution, she may fear more violence and retaliation by her abuser. For immigrant teens, the fear of deportation of their abuser (or even themselves and/or family) may create another obstacle to seeking

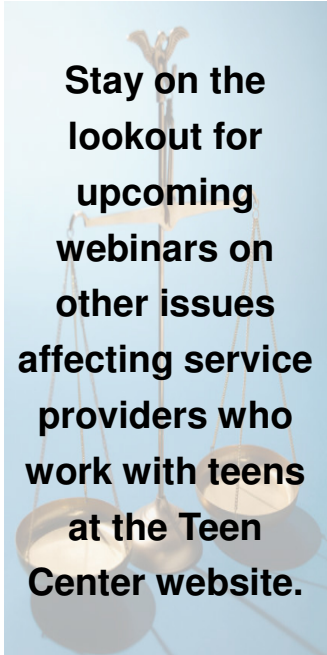
assistance for their abuse. For gay and lesbian teens, a statutory rape prosecution may put their sexual orientation out in the open before they are ready, which could cause further emotional trauma.

Ethical Obligations. Service providers who are also mandated reporters must be more nuanced in their intake and interviewing of teen clients. In order to build trust with a teen client, service providers must maintain confidentiality and preserve the integrity of the relationship. However, providers must also fulfill their role as mandated reporters and serve the governmental goals of safety and protection. These two obligations are often in conflict and can create tension within a provider’s practice, which may lead to reluctance to work with teens or to ask questions regarding sexual health and behavior or the identity of a teen’s partner.

Overcoming Obstacles

Striking a balance between the interests of teens experiencing dating violence and the goals of statutory rape laws is challenging but certainly not impossible. There are a variety of ways to overcome these obstacles.

- ✓ Communicate often and openly. When working with teen victims, immediately communicate your mandated reporting obligations before engaging in an intake and assessment. Communicating these requirements up front builds trust and allows the teen to decide which and how much information to share. If parental involvement becomes necessary or is requested, recognize that the teen’s parents may have different goals for the outcome than your client. If the situation permits it, set up a time to meet with the teen either alone or, preferably, with an advocate. Creating a safe place for the teen client is vital to a full assessment and successful provision of services.



Stay on the lookout for upcoming webinars on other issues affecting service providers who work with teens at the Teen Center website.

“Fear of disclosure may discourage young women from seeking prenatal, reproductive, and sexual health care.”

- ✓ Meet your teen client where she is. Many teens experiencing dating violence by an adult partner do not view the sexual relationship as part of the abuse. Further, a teen victim may not be ready to end the relationship. Listen to your clients. Use your relationship with your client and the clients' own experiences to educate them on the dynamics of dating violence with the goal of empowering them to end the abusive relationship. Acknowledging the adolescent development process may make it easier to understand and empathize with teens experiencing dating violence.
- ✓ Know your reporting requirements. If your state's statutes are vague, discuss ways to address your limitations with your agency's attorney. If your organization does not have an attorney, you can call the state agency that handles child abuse reporting to determine the parameters of the statute. Work with your organization to create an organizational policy on reporting cases of statutory rape and teen dating violence. Work with your colleagues to develop forms and procedures that address the needs of clients and mandated reporting requirements without compromising your professional duties or your client's confidentiality.
- ✓ Collaborate with other service providers. A teen who seeks help for dating violence usually works with several service providers. Develop a plan of action for dealing with teen victims, including but not limited to, developing a resource guide, creating age-appropriate educational and outreach materials, and sharing information (after receiving a client's confidentiality waiver).
- ✓ Educate yourself. Adolescent years are filled with physical, mental, and emotional changes. Adolescents are no longer children and are not yet adults. Educate yourself on how teens communicate and think. Although each teen is unique, the underlying causes of frustration, communication, and decision-making derive from the physiological and emotional development of adolescence.
- ✓ Prevention education is key. Educating the public about statutory rape laws and teen dating violence can help prevent certain acts of abuse. Utilize the resources that your state has created, such as posters geared to adults and teens that address statutory rape laws. Create new educational materials and distribute them widely to service providers and the general public.

- ✓ Educate non-traditional agencies. Reach out to other organizations that serve teens and places where teen go for help and educate these groups on teen dating violence and statutory rape. With more knowledgeable service providers, teen victims have more opportunities to seek help and guidance and more likely to leave an abusive relationship.

Notes

¹ We refer to victims as "she" and abusers as "he" because that is the reality of most reported cases of relationship violence. However, boys and men can be victims, and girls and women can be abusers; and domestic violence occurs in same-sex relationships at the same rate as in heterosexual relationships. The above information applies equally in those cases.

² Division of Adolescent Medicine. *What We Know About Teen-Friendliness*. 2006. Children's Hospital Los Angeles.

³ Bureau of Justice Statistics. *Intimate Partner Violence in the United States*, ONLINE. 2007. U.S. Department of Justice. Available: <http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm#content> [Dec. 2007].

⁴ Cal. Penal Code § 261.5 (West 1999).

⁵ Nev. Rev. Stat. 200.364 (1995), Nev. Rev. Stat. 300.368 (2001).

⁶ Ohio Rev. Code Ann. §2907.02 (West 1996).

⁷ Mont. Code Ann. §45-5-503 (2007).

⁸ Donovan, P. "Can statutory rape laws be effective in preventing adolescent pregnancy?" *Family Planning Perspectives* 29.1(1997): 30-34, 40.

⁹ Over 70% of pregnant teens are abused by their boyfriends. See The Children's Program. "Fact Sheet: Children and Domestic Violence."

¹⁰ These states are California, Delaware, Massachusetts, New Hampshire, Georgia, Illinois, Kansas, Kentucky, Nevada, New York, Wisconsin, and Vermont.

¹¹ Glosser, A., Gardiner, K., Fishman, M. *Statutory Rape: A Guide to State Law and Reporting Requirements*. ONLINE. 2004: 26. Dept. of Health and Human Serv. Available: http://www.lewin.com/Lewin_Publications/Human_Services/StateLawsReport.htm [December 2004].

¹² Id. at 35.

¹³ Id. at 81.

¹⁴ Troup-Leasure, K. & Synder, H. *Statutory Rape Known to Law Enforcement*. ONLINE. 2005. Office of Juvenile Justice and Delinquency Prevention. Available: <http://www.ncjrs.gov/pdffiles1/ojjdp/208803.pdf> [August 2005].

¹⁵ Liz Claiborne. "Teen Relationship Abuse Survey." 2005 Love Is Not Abuse. 14 July 2008 <<http://www.loveisnotabuse.com/pdf/Liz%20Claiborne%20Relationship%20Abuse%20Hotsheet.pdf>>.

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