

## USLegal Guide to Statutory Rape



### INTRODUCTION

The criminal offense of statutory rape is committed when a person sexually penetrates a person who, under the law, is incapable of consenting to sex. Minors and physically and mentally incapacitated persons are deemed incapable of consenting to sex under rape statutes in all states. These persons are considered deserving of special protection because they are especially vulnerable due to their youth or condition.

Most legislatures include statutory rape provisions in statutes that punish a number of different types of sexual assault. Statutory rape is different from other types of rape in that force and lack of consent are not necessary for conviction. A defendant may be convicted of statutory rape even if the complainant explicitly

consented to the sexual contact and no force was used by the actor. By contrast, other rape generally occurs when a person overcomes another person by force and without the person's consent.

Statutory rape also falls under other offenses, such as criminal sexual contact, sexual assault, and aggravated sexual assault.

### AGE OF VICTIM

Some states adhere to a strict liability, single age of consent age limit for statutory rape. Such laws define the age below which an individual is legally incapable of consenting to sexual activity; assuming that all activities with individuals below this age are coercive, even if both parties believe their participation is voluntary or consensual. In most states, the legal nature of sexual intercourse is determined by age differentials between the child and defendant, the minimum age of the child, and/or the minimum age of the defendant.

All states have an "age of consent," or an age at which a person can legally consent to sexual activity and can then no longer be a victim of statutory rape. The age ranges between 16 and 18 among the states. In states that do not have a single age of consent, statutes specify the age below which an individual cannot legally engage in sexual intercourse regardless of the age of the defendant. The minimum age requirements in these states range from 10 to 16 years of age. The legality of sexual intercourse with an individual who is above the minimum age requirement and below the age of consent is dependent on the difference in ages between the two parties and/or the age of the defendant.

Some states also have laws that take into consideration the "age difference" between both people involved. In many states, the more years there are between the adult and the minor, the more serious the offense. Under current laws, depending upon the state, the age differential may be set at

from 2 to 6 years older than the minor. Most often, however, it is set at 3 or 4 years. All states have laws with special consideration and age restrictions where a relationship involves a person of authority over a minor; this includes but is not limited to, teachers, coaches, assistant coaches, or tutors.

#### **REPORTING REQUIREMENTS**

Each state's reporting requirements identify certain individuals who are required to notify the authorities of suspected abuse. Although it varies by state, mandated reporters are typically individuals who encounter children through their professional capacity. Common professions include: physical and mental health providers, teachers, child care workers, legal professionals (e.g., judges, magistrates, attorneys, law enforcement officers), clergy members, and employees of state agencies that deal with children and families. In some states, a child who is pregnant or infected with a sexually transmitted disease is sufficient to cause

reasonable suspicion of abuse, thereby necessitating a report. Mandated reporters in the majority of states may notify the state or county agency (or its designee) responsible for social or human services, children and families, or child protection. In roughly two-thirds of states, mandated reporters have the option of notifying law enforcement agencies or prosecutors' offices instead of the child protection agency.

#### **ENFORCING THE LAW**

Statutory rape may be a charge made in connection with another prosecution, such as a pornography charge or investigation into abuse of an employment or official position. Headlines are appearing more frequently in the newspapers when a teacher is engaging in sexual conduct with student. In some cases, the minor presses charges in retaliation when the relationship does not go as they hoped or the adult tries to end it. It is also not uncommon for charges to be pressed by the parents of the minor when they find out about the relationship, both to

penalize the adult sexual partner and to protect their child from further contact.

States have two primary objectives when responding to allegations of child abuse: (1) ensuring the health, safety, and well-being of the child in question, taking the necessary steps to prevent further harm and (2) conducting an investigation to determine if the reported abuse constitutes a criminal act and, when appropriate, prosecuting offenders. Generally, law enforcement is responsible for conducting investigations into criminal acts, whereas child protective services and human services agencies are primarily concerned with the well-being of the victim. The U.S Attorney General is responsible for ensuring that the Department of Justice's Violence Against Women initiative addresses the issue of statutory rape, particularly the commission of statutory rape by predatory older men committing repeat offenses

A statutory rape conviction as an adult can mean jail or prison time, and the requirement that they register as sex offenders for the rest of their lives.

<http://aspe.hhs.gov/hsp/08/SR/StateLaws/summary.shtml>

<http://www.ojp.usdoj.gov/ovc/publications/information/statutoryrape/handbook/statrape.pdf>

Many statutes authorize imposing fines up to a certain amount. In addition, California recently adopted a provision that allows the award of civil penalties in statutory rape cases. The possible amount depends upon the age differential between the offender and the minor; the range is from \$2,000 (age gap of 2 years) to \$25,000 (minor under 16 and offender over 21).

<http://www.ncjrs.gov/pdffiles1/ojdp/208803.pdf>

[http://www.law.cornell.edu/uscode/html/uscode42/usc\\_sec\\_42\\_00014016----000-.html](http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00014016----000-.html)

[http://www.ndaa.org/pdf/ncpca\\_statute\\_limitations\\_certain\\_sex\\_offenses.pdf](http://www.ndaa.org/pdf/ncpca_statute_limitations_certain_sex_offenses.pdf)

#### **STATUTE OF LIMITATIONS**

It is often the case with statutory rape cases that memories fade, evidence gets destroyed, and thus defendants may lose the tools to support their case. Therefore, many states impose a statute of limitations for prosecution in order to ensure that the lawsuits are based on a credible testimony and evidence and to ensure the integrity of the justice system.

#### **RESOURCES**