

Statutory Sexual Assault

WHAT ADVOCATES NEED TO KNOW

Statutory sexual assault raises many legal and ethical questions for sexual assault advocates. Often, young people 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. Sexual assault advocates often receive questions from program participants about the definitions of statutory sexual assault. Various scenarios and hypothetical situations are posed by youth 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 technical assistance bulletin is intended to help answer some of the more common questions that arise regarding statutory sexual assault, and to support sexual assault advocates in responding with helpful information, resources and support. Statutory definitions are provided at the end of this bulletin for your reference.

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

- There is a victim 13-15 years of age
- There is an offender four or more years older than the victim
- The two parties are not married
- The two parties engage in vaginal, oral or anal intercourse

STATUTORY SEXUAL ASSAULT IS A MANDATED REPORT

Several amendments in 2014 made substantial changes to the Child Protective Services Law (CPSL) in Pennsylvania. Among the many changes was the addition of statutory sexual assault to the definition of sexual abuse and exploitation. If a young person discloses statutory sexual assault a sexual assault advocate must make a report to ChildLine, 1-800-932-0313.

REAL LIFE SCENARIOS

When working with the issue of statutory sexual assault, sexual assault 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



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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 an offender 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.

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 13 and they have vaginal intercourse?

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

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 young people 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.

Alternatively, some youth 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. This is why informed consent is critical at the onset of counseling, so that youth can make informed decisions and aren't blindsided when a report must be made by an advocate.

Other young people 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 clients. 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 sexual assault advocate are the only safe place for young people to talk openly and ask questions about what is going on in their lives and relationships.



CRIMES CODE DEFINITIONS

Statutory Sexual Assault

(18 Pa. Cons. Stat. § 3122.1 (2016))

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

(18 Pa. Cons. Stat. § 3123 (2016))

PA Statutes defines deviate sexual intercourse as sexual conduct other than vaginal intercourse – such as oral and anal intercourse or penetration of the genitals with a foreign object.

A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- (4) 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;
- (5) who suffers from a mental disability, which renders the complainant incapable of consent; or
- (6) (Deleted by amendment).
- (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

Involuntary Deviate Sexual Intercourse with a child

(18 Pa. Cons. Stat. § 3123 (2016))

A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

Rape (18 Pa. Cons. Stat. § 3121 (2016))

A person commits a felony of the first degree when he or she engages in sexual intercourse with a complainant:

- (1) By forcible compulsion.
- (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
- (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- (4) 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.
- (5) Who suffers from a mental disability, which renders the complainant incapable of consent.
- (6) (Deleted by amendment).

Rape of a Child (18 Pa. Cons. Stat. § 3121 (2016))

A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

CHILD PROTECTIVE SERVICES LAW DEFINITIONS

Sexual Abuse and Exploitation

(23 Pa. Cons. Stat. § 6303 (2016))

Advocates must make a report to ChildLine if they suspect any of the following:

- (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, which includes, but is not limited to, the following:

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- (i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.
 - (ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.
 - (iii) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.
 - (iv) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.
- (2) Any of the following offenses committed against a child:
- (i) Rape as defined in 18 Pa. Cons. Stat. § 3121
 - (ii) Statutory sexual assault as defined in 18 Pa. Cons. Stat. § 3122.1
 - (iii) Involuntary deviate sexual intercourse as defined in 18 Pa. Cons. Stat. § 3123
 - (iv) Sexual assault as defined in 18 Pa. Cons. Stat. § 3124.1
 - (v) Institutional sexual assault as defined in 18 Pa. Cons. Stat. § 3124.2
 - (vi) Aggravated indecent assault as defined in 18 Pa. Cons. Stat. § 3125
 - (vii) Indecent assault as defined in 18 Pa. Cons. Stat. § 3126
 - (viii) Indecent exposure as defined in 18 Pa. Cons. Stat. § 3127
 - (ix) Incest as defined in 18 Pa. Cons. Stat. § 4302
 - (x) Prostitution as defined in 18 Pa. Cons. Stat. § 5902
 - (xi) Sexual abuse as defined in 18 Pa. Cons. Stat. § 6312
 - (xii) Unlawful contact with a minor as defined in 18 Pa. Cons. Stat. § 6318
 - (xiii) Sexual exploitation as defined in 18 Pa. Cons. Stat. § 6320

AUTHOR

PCAR wishes to thank Christopher Mallios, JD and Beth Lawson for consultation on this original bulletin.

RESOURCES

Age of Consent Infographic
http://www.pcar.org/sites/default/files/pages-pdf/age_of_consent_infographic.pdf

REFERENCES

Child Protective Services Law, 23 Pa. Cons. Stat. §§ 6301-6386 (2016). Retrieved from <http://www.legis.state.pa.us/CFDOCS/LEGIS/LI/consCheck.cfm?txtType=HTM&ttl=23&div=00.&chpt=063.&C-FID=227448616&CFTOKEN=85797905>

Crimes Code, 18 Pa. Cons. Stat. §§ 3101, 3121-3123 (2016). Retrieved from <http://www.legis.state.pa.us/WU01/LI/LI/CT/htm/18/18.htm>

This bulletin should not be construed as legal advice.



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