

# Commentary: Consensual Adolescent Sexual Activity With Adult Partners—Conflict Between Confidentiality and Physician Reporting Requirements Under Child Abuse Laws

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Over the past several decades, sexual activity between unmarried adolescents and adult partners has received increased public scrutiny, especially as it relates to teenage pregnancy.<sup>1</sup> Although the total adolescent birth rate has declined over the past decade, the birth rate for teenagers younger than 15 years has remained stable.<sup>2</sup> Adult fathers are responsible for one quarter of births to adolescents <15 years of age, and they typically are nearly 9 years older than the mothers.<sup>3</sup>

Because this sexual behavior is associated with an increase in teenage pregnancy, with all of its associated social consequences, public policy has dictated better enforcement of laws that prohibit such activity. This is one reason for the revision and increased enforcement of many state statutory rape laws that criminalize certain sexual activity between adolescents and adult partners. Individuals, however, generally do not have a legal duty to report a crime. Thus, physician reporting of such sexual behavior under these criminal statutory rape laws is premised on ethical and other considerations.

Physicians encountering teenagers involved in sexual relationships with adults may, however, be mandated to report such activity because of reporting requirements of child protection laws (ie, abuse and neglect), if the sexual activity is construed as abuse or neglect. A physician who becomes aware of sexual activity between an adolescent and an adult partner must then decide between confidentiality and disclosure. Physicians may be ethically troubled about maintaining confidentiality when parents are unaware of such activity, particularly if reporting to child protection agencies is also needed. Conversely, confidentiality between adolescents and their physicians is essential for their continued participation in medical care.<sup>4,5</sup> In fact, physicians who specialize in treating adolescents

prefer to maintain confidentiality about most consensual sexual situations between adolescents and adult partners, except for those relationships with a large age difference between the sexual partners.<sup>6</sup> This issue is also confounded by the civil liability and criminal penalties that can be incurred by physicians for failing to report behavior proscribed by child protection laws.

We analyzed the child protection laws in all 50 states and the District of Columbia as they relate to the potential mandatory reporting of “consensual” sexual activity between an unmarried adolescent and an adult partner (who lives in a different home and who has no custodial control over the adolescent; Fig 1). This analysis was based on the hypothesis that child protection laws may consider such sexual activity to be “sexual abuse.” Readers of this commentary should be aware that: most child protection laws as they relate to sexual abuse apply to “children” <18 years of age; these laws consider adult “perpetrators” as persons 18 years of age or older; the type of sexual activity that is defined as “sexual abuse” varies from state to state; and the laws are frequently silent on the issue of consensualness. This commentary focuses only on the issue of mandatory reporting and does not address discretionary reporting when the physician chooses to report because of the belief that the relationship is harmful to the adolescent. Because some of these laws are ambiguous and subject to differing interpretations, this commentary should not be relied on as a source of legal advice in any particular jurisdiction.

## LAWS WHERE MANDATORY REPORTING MAY EXIST

In 18 states (35%), the laws can be interpreted as requiring reporting of this “consensual” sexual activity. Some laws specifically include sexual activity between an adolescent and an adult in its definition of “sexual abuse.” In other states, the laws include language that such activity is reportable if a parent “*allowed . . . or permitted the activity to be committed*” (guardians, custodians, and adult caretakers are delegated the same responsibilities as parents). This phrase implies that reporting is predicated on parental knowledge of the behavior. An example of this category is the following state law that requires mandatory reporting of:

“abuse which includes *sexual abuse, as defined in*

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This commentary is based, in part, on research presented at the 40th Annual Meeting of the American College of Legal Medicine; March 30, 2000; San Diego, CA.

Received for publication May 8, 2000; accepted Sep 14, 2000.

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is apparent that there is significant ambiguity in these laws as they relate to sexual activity between adolescents and adult partners. The physician needs to balance the need for confidentiality and the protection of the adolescent patient against the potential for liability for not reporting. We recommend several general guidelines in the revisions of these laws:

1. the threshold for triggering mandatory reporting should be the physician's determination that psychological harm or the threat of such harm is incurred by the adolescent; or the physician determines that the age or degree of immaturity renders the adolescent incapable of understanding the nature or consequences of the sexual contact;
2. "sexual abuse" should be specifically defined in the law;
3. for laws that include activity, such as touching or kissing, in the definition of "sexual abuse," physician reporting should be discretionary if the activity involves older adolescents (17 years of age and older);
4. immunity from civil liability should exist for the physician for "breaching confidentiality";
5. when an older adolescent (17 years of age and older) is involved, reporting should be mandatory only if the other partner is a *custodial* adult.

Clarifications such as these will assist physicians who treat adolescent patients in understanding their obligations, if any, under these laws. Until this occurs, physicians who treat adolescent patients should familiarize themselves with the child protection laws in their jurisdiction, as they relate to adolescent–adult sexual behavior.

This commentary was peer-reviewed. *Pediatrics* 2001;107(2). URL: <http://www.pediatrics.org/cgi/content/full/107/2/e16>; *sexual activity, adults, adolescents, consensual sexual situations, physician reporting*.

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