

California -- Age of Consent

CALIFORNIA

PENAL CODE SECTION 261-269

261.5. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor.

For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(d) Any person over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(e) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the

following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

261.6. In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, "consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 288a, or 289.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

261.7. In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.

Updates 04-2001:

From District Attorney (http://www.stanislaus-da.org/statutory_rape.htm)

What is Statutory Rape?

Statutory Rape is unlawful sexual intercourse with someone under the age of 18.

What is Vertical Prosecution?

Vertical Prosecution means one prosecutor handling the case from issuance to final disposition. Studies show that when it comes to crimes of a personal and sexual nature one attorney handling all aspects of the case, from charging through sentencing, increases effectiveness in understanding the dynamics of each particular case and the needs of each victim.

Do WE PROSECUTE EVERY CASE?

No. We are evaluating each case independently to determine if criminal charges are appropriate.

WHY SO MUCH ATTENTION TO STATUTORY RAPE?

California has the highest teen birth rate in the U.S.

Every 8 minutes, a teenager in California has a baby.

3 of 4 births to High School girls are fathered by adults.

Men over 25 account for twice as many teen births as boys under 18 years old.

The Average Age difference between the teen victim and the adult defendant in cases filed by the District Attorney is 7years 9months.

Men over 20 are responsible for 5 times as many births among junior high school girls.

In California almost 70% of teen births are fathered by adult men.

On an average California day 76 teenage girls, 17 & younger, will give birth.

In Stanislaus County over 6% of teenage girls will give birth in any given year.

In 1993 1,572 births in California were to mothers 14 years or younger.

The rate of sexually transmitted disease among teenage girls is twice that of teenage boys.

This all translates into a tremendous drain in our welfare and medical resources statewide.

AFDC and Medi-Cal costs for 1 teen pregnancy, birth and 1st year support is \$10,000.

Total costs for teen births to those 17 and younger in 1993 for California were \$140 million.

WHAT CAN BE DONE?

Spread the word that all reports of statutory rape are being evaluated and in appropriate cases charges are being filed.

You can report any knowledge of Statutory Rape to local Law Enforcement or to the District Attorney's Statutory Rape Vertical Prosecution Unit.

The number of Teenage Pregnancies has declined every year in Stanislaus County since the Statutory Rape Vertical Prosecution unit was started. Since 1996, over Five Hundred and Thirty cases of Statutory Rape have been reported in Stanislaus County. Of the 530 plus cases, 95 defendants have been sentenced to County Jail or State Prison, 56 have completed the Stanislaus County Statutory Rape Diversion Program, and the remainder are awaiting processing or have been processed in an appropriate fashion. The average age difference between the victim and the defendant in cases reported in Stanislaus County is over 6 years. The largest age difference reported since 1996 was 31 years. The Statutory Rape Vertical Prosecution Unit of the Stanislaus County District Attorney's Office is an integral part of a concerted effort on the part of our citizens to reduce teen pregnancy.

In re T.A.J. (1998) 62 Cal.App.4th 1350 [73 Cal.Rptr.331]. Court of Appeal, First District, Division 2.
From: (http://www.courtinfo.ca.gov/programs/childrenandthecourts/case_law/delinque/delinquency-13.htm)

A juvenile court petition was filed alleging that a 16-year-old boy had sexual intercourse with a 14-year-old female. The petition alleged the child engaged in statutory and forcible rape. At the jurisdictional hearing the only issue was whether the sexual encounter was consensual. The juvenile court found that the act was consensual and that the statutory rape charge was true, but made no finding with regard to the forcible rape count. The child appealed, contending that Penal Code section 261.5 was unconstitutional, both facially and as applied to him. Specifically, he contended that the statute (1) violated his right to privacy under the California Constitution and (2) may not be constitutionally applied to him since he was a member of the class the statute was designed to protect. The Court of Appeal rejected both contentions. First, the court held that *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, did not confer upon children the right to engage in consensual sexual intercourse. "While we do not ignore

the reality that many California teenagers are sexually active, **that fact alone does not establish that minors have a right to privacy to engage in sexual intercourse.** We accept the premise that due to age and immaturity, minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences."

The court further found that the reasonable expectation of privacy that exists for a child deciding whether to have an abortion (*American Academy of Pediatrics v. Lungren*, supra, 16 Cal.4th at p.373), "cannot be imputed to their decision to engage in consensual sexual intercourse." On the child's second contention, the court noted that the legislative intent behind the statutory rape law was to make illegal sexual intercourse both between children and adults and between children. Although children cannot be prosecuted for felony statutory rape (unlawful intercourse between an adult and a child) because the child is the victim in such a crime, there is no parallel with regard to misdemeanor statutory rape, which by its terms involves sexual intercourse between two children.

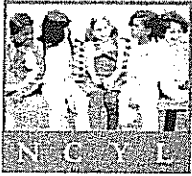
Santa Clara County Reporting Rules for STATUTORY RAPE
<http://www.cacsc.org/pdfs/reportminors.pdf>

07-2000 New Source: U.S. statutory rape laws is published on the Web by the National Clearinghouse on Child Abuse and Neglect Information. The booklet, which requires Adobe Acrobat to read, is located at:

<http://www.calib.com/nccanch/pubs/99statutes/35-SexualOffenses.PDF>

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When Consensual Sexual Intercourse is Deemed Child Abuse in California **

1. If a minor has consensual sexual intercourse with an older (or younger) partner, *must* mandated reporters make a child abuse report?

Age of Partner →	12	13	14	15	16	17	18	19	20	21	22
Age of Patient ↓											
11	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
12	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
13	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
14	Y	Y	N	N	N	N	N	N	N	Y	Y
15	Y	Y	N	N	N	N	N	N	N	Y	Y
16	Y	Y	N	N	N	N	N	N	N	N	N
17	Y	Y	N	N	N	N	N	N	N	N	N
18	Y	Y	N	N	N	N	N	N	N	N	N
19	Y	Y	N	N	N	N	N	N	N	N	N

Chart by David Knopf, LCSW, UCSF.

KEY: Y = Yes, report required based solely on age difference between partner and patient.
 N = No, report not required based solely on age. Reporter only must report if he or she has a reasonable suspicion of abuse, -- for example, that activity was not consensual.

2. Do I have a duty to try to ascertain the age of a minor's sexual partner for the purpose of child abuse reporting?

No statute or case obligates health care practitioners who are mandated reporters of abuse to ask their minor patients about the age of the minors' sexual partners for the purpose of reporting abuse. Rather case law states that providers should ask questions as in the ordinary course of providing care according to standards prevailing in the medical profession. Thus, a provider's professional judgment determines his practice. *People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 769 (3rd Dist. Ct. App. 1988).

3. My client claims the sexual activity was consensual. How do I know if it truly was consensual?

In determining whether an act truly was consensual or whether additional facts give rise to a suspicion of child abuse, treating professionals should "evaluate facts known to them in light of their training and experience to determine whether they have an objectively reasonable suspicion of child abuse." *People ex rel. Eicheberger v. Stockton Pregnancy Control Medical Clinic, Inc.*, 249 Cal. Rptr. 762, 769 (3rd Dist. Ct. App. 1988). If a reporter has a reasonable suspicion that sexual activity was coerced, the reporter must make a child abuse report, irrespective of claimed consent.