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COMMENT

## Legal and Ethical Considerations in Research With Sexually Active Adolescents: The Requirement to Report Statutory Rape

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Encouraged by congressional action, state legislators in the mid-1990s began strengthening and enforcing statutory rape laws in an effort to lower teenage pregnancy rates and welfare costs. One approach has been to classify statutory rape as child abuse, making reporting mandatory for designated professionals. This requirement presents significant challenges to researchers who work with sexually active adolescents. Ethical, legal and scientific responsibilities are often in conflict, and few guidelines exist to assist the researcher. In this comment, we explore some of these conflicts and suggest strategies to prevent scientific misconduct and advance science.

### VARIATIONS IN STATUTORY RAPE STATUTES

All states have laws that prohibit sexual intercourse between adults and children younger than a certain age. Although these laws are often referred to as "statutory rape" laws, the term is rarely used in criminal statutes. The more commonly used terms are "rape," "sexual assault" and "unlawful sexual intercourse."<sup>1</sup> Here, we use "statutory rape" to describe an adult's engaging in sexual intercourse with a minor.

In the United States, each state has autonomy in enacting statutes pertaining to the health, safety and moral conduct of its citizens. Consequently, state laws pertaining to statutory rape vary considerably, and any attempt to compare them is an imprecise and challenging process.<sup>2</sup>

A comprehensive review of laws prohibiting sexual contact between adults and children found that sex crimes are generally defined by three elements: the nature of the act, the defendant's mental state (i.e., intent) and the age of the victim.<sup>3</sup> Although a few states have established separate offenses on the basis of the victim's gender—for example, rape for cases in which the victim is a girl and sodomy for cases in which the victim is a boy—most have created genderneutral offenses.

Sexual crimes against children typically are divided into categories on the basis of the victim's age; offenses committed against the youngest children generally are

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considered the most serious.<sup>4</sup> In 28 states, the most serious offense for sexual penetration applies when the child is younger than 13 or 14. In 13 states, the most serious offenses involve victims younger than 12 (in two of these, younger than 10). The remaining nine states apply the most serious penalties to cases involving older children, including one state that uses age 17 as the cutoff. Therefore, a person could be charged with first-degree rape for engaging in sexual intercourse with a 17-year-old in one state, while in another state, a person could be charged with first-degree rape for sexual intercourse only with a minor younger than 10.

Several states have established intermediate-level offenses for cases involving adolescents who are just above the age cutoff for the most serious contact offense to apply, and most states have a category of least-serious offenses that involves consensual sexual activity between an adult and an older adolescent. The age at which an adolescent can legally consent to sexual intercourse varies from state to state. In 1997, the age of consent in all but two states ranged from 16 to 18, and 16 was the most common. The other two states set the age of consent at 15 and 14.<sup>5</sup>

In addition, many states have considered the offender's age or the age difference between the offender and victim when creating laws pertaining to statutory rape. Approximately half of the states specify a minimum age that the offender must have attained for at least some of the offenses to apply. Others require a minimum age difference between the parties for some offenses but do not set a minimum age for the offender. Other states stipulate both a minimum age and a minimum age difference.<sup>6</sup>

Another element that states often weigh when determining penalties for statutory rape is the offender's relationship to the victim.<sup>7</sup> States frequently define sexual abuse committed by a family member or by someone in a position of authority over the victim as more serious than offenses committed by others. The use of force may also lead to a stiffer penalty. A few states still require a victim's sexual inexperience as an element of sexual offenses; however, this requirement is generally considered obsolete and has been abolished in most jurisdictions.

## **RATIONALES FOR PROSECUTING STATUTORY RAPE**

Statutory rape has long been considered a crime; prohibitions against sex with children date back to ancient Rome and early religious canons.<sup>8</sup> Historically, the reason most often provided to justify punishment for statutory rape is that children below a certain age are incapable of making significant decisions: They are unable to consent to sexual intercourse, and thus, they are vulnerable and deserve state protection. In cases involving older children, the courts claimed that it was the state's responsibility to protect young women because they were inherently weak or were emotionally and intellectually incapable of consenting to sexual intercourse, or because female chastity was necessary to maintain the moral character of a society.

More recently, the argument used to justify punishment for statutory rape has focused on the state's interest in preventing teenage pregnancy.<sup>9</sup> A variation of this argument emerged in the context of welfare reform when Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Federal lawmakers urged states to aggressively enforce statutory rape laws to reduce teenage pregnancy and thus reduce welfare costs. The lawmakers argued that unwed teenage mothers and

their children made up a significant portion of the welfare caseload and that a high percentage of them had become pregnant through a sexual relationship with an adult male.<sup>10</sup> Other recent motivations for prosecuting statutory rape are the desire to protect minors from predatory, exploitive sexual relationships, especially with older partners, and an interest in encouraging marriage or postponement of sexual intercourse.<sup>11</sup>

The federal welfare reform act is just one example of recent legislative actions taken to broaden the scope of statutory rape laws and increase enforcement. Twenty-one states either enacted or considered amendments to statutory rape laws in 1995 and 1996. These amendments included provisions to raise the age of minors subject to protection under the law; target offenders who are much older than minors; increase penalties, especially for cases resulting in pregnancy; and mandate reporting of statutory rape.<sup>12</sup>

## LEGAL REQUIREMENTS FOR REPORTING

State laws for reporting statutory rape tend to be even more complicated and confusing than sex crime laws. This is partially because reporting crimes against children is governed by state child abuse statutes, and it is often unclear whether these statutes encompass reporting of statutory rape.<sup>13</sup>

Both federal and state statutes define child abuse. The federal Child Abuse Prevention and Treatment Act provides minimum standards for the definition of child abuse or neglect that must be included in states' definition if states are to be eligible for federal grants available through this law. Under these standards, child abuse and neglect are defined as, at a minimum, "any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation or an act or failure to act which presents an imminent risk of serious harm."<sup>14</sup> All states define child abuse to include sexual abuse. However, there is much variation in how sexual abuse is described.

Child abuse reporting laws apply only to offenses over which child protection authorities have jurisdiction, and these are generally limited to cases where the offender is a family member or is in a custodial position.<sup>15</sup> Hence, every sex crime committed against a child is not necessarily an act that must be reported. In 1998, approximately half the states' definitions of child abuse either did not include statutory rape or applied only to cases involving a family member or guardian.<sup>16</sup> However, a more recent trend has been for states to redefine child abuse to include statutory rape, thereby making reporting of statutory rape mandatory for designated individuals.<sup>17</sup>

Whether researchers, who have an ethical obligation to maintain confidentiality, must report child abuse has been a subject of debate. All states have laws designating individuals, usually by professional group, who must report child maltreatment. None of these statutes specifically lists researchers, although some investigators must report because they belong to professions required to report. For example, researchers who are health professionals, teachers or other child care professionals are required to report child abuse. Furthermore, in 22 states, anyone who has reason to suspect child abuse is required to report.<sup>18</sup> Also, institutional review boards typically interpret state reporting laws as being applicable to researchers.<sup>19</sup> The Code of Federal Regulations does not provide specific guidance on this issue, but its tenor is one of deferral to state

legal and regulatory requirements.<sup>20</sup>

## ETHICAL AND SCIENTIFIC CONFLICTS

Where state law requires statutory rape to be reported, researchers working with sexually active adolescents confront ethical and scientific dilemmas. The ethical principles of respect for persons, beneficence and justice must be upheld, but these often conflict when teenagers are involved in sexual activity with someone who is older than they are. Scientific rigor can be difficult to achieve, yet it must be maintained if findings are to be useful. Thus, investigators are challenged to balance ethical and scientific principles while adhering to legal requirements in their state.

## RESPECT FOR PERSONS

The ethical principle of respect for persons requires the investigator to treat all individuals as autonomous agents capable of determining personal goals and making informed choices.<sup>21</sup> In respecting autonomy, researchers are compelled not to obstruct the actions or decisions of participants unless they believe that participants' actions may cause harm to themselves or others. Included within this concept is the requirement that researchers assess the study participants' capacity for self-determination. Children mature at different rates, and many adolescents may decide to become sexually active. A researcher is obligated to honor a teenager's decision if he or she believes that it represents an informed choice.

The principle of respect for persons also requires that researchers carefully consider their obligation to protect study participants from harm or exploitation.<sup>22</sup> This requirement is especially important when study participants are members of vulnerable groups. Although some teenagers may be able to make an informed choice concerning involvement in a sexual relationship, adolescents may also be vulnerable to sexual abuse and coercion. Protection of study participants may go beyond ensuring safety in the research process to include taking precautionary measures when participants report being in situations that are potentially dangerous or harmful.

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*Laws that require reporting of statutory rape can present formidable barriers that hinder research on sexually active youth....*

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A related issue is protection of privacy. Researchers are ethically obligated to protect study participants' privacy to the maximum degree possible.<sup>23</sup> Research should be designed to be as unintrusive as possible while still meeting scientific goals. Anonymity should be guaranteed; when it cannot be assured, efforts to protect confidentiality become critical.<sup>24</sup>

However, when state laws require that statutory rape be reported, investigators studying adolescents' sexual activity face a challenging situation, where the responsibility to report sexual misconduct may limit their efforts to protect

adolescents' privacy. Although researchers have an ethical obligation to obtain study participants' informed consent to release information to authorities, they may also have a legal obligation to report certain information even without informed consent. It is essential that researchers inform potential participants that confidentiality cannot be assured under these circumstances. Limitations to confidentiality must be explicitly noted in the consent form.<sup>25</sup>

Efforts to protect adolescents' privacy are further complicated by federal regulations governing research participation, which generally require that researchers working with children or adolescents obtain parental permission and the minor's assent.<sup>26</sup> The dual nature of this consent process is intended to acknowledge the emerging autonomy of youth while offering protection to those who have not reached their full intellectual and decision-making capacities. However, parental permission violates adolescents' right to privacy and, when the research concerns behaviors of which the parents may be unaware, may lead to family disruption or criminal prosecution.<sup>27</sup>

Where parental permission is "not reasonable," federal regulations permit waiver of this requirement, provided that an alternate mechanism for protecting participants is in place.<sup>28</sup> Circumstances considered potentially appropriate for such a waiver include child abuse, health issues for which adolescents may legally seek services without parental consent (such as family planning and treatment for sexually transmitted diseases) and research that involves minimal risk and in which the participants are "mature minors."<sup>29</sup> Studies that involve sexually active minors may thus qualify for such a waiver.

Waiving parental permission does not, however, exempt researchers from complying with state laws when these require reporting of statutory rape. Where this is a requirement, researchers working with sexually active teenagers are obligated to take extra measures to protect adolescents' privacy. To maximize confidentiality, researchers should carefully consider the subject matter of their research and the questions they will ask.

## **Beneficence**

The principle of beneficence centers on the responsibility to do good. Researchers are obligated to weigh the potential for individual and social benefit against the possibility of doing harm.<sup>30</sup> Involvement in a research study should not put adolescent participants in a situation for which they have not been prepared, nor should information gathered be used against them. This ethical principle can be challenging to uphold when state laws require reporting of statutory rape.

Reporting statutory rape that is revealed in the course of research has the potential to bring harm to study participants. While it is possible that reporting the case to authorities may help an adolescent escape from an abusive relationship, and thereby lessen mental health consequences, the experience of disclosure and the subsequent investigation could be very stressful and negative for the victim.<sup>31</sup> Other negative consequences that may occur are the breakup of a relationship between a teenager and someone she or he loves, the loss of economic support available through the relationship and the threat of physical abuse in retaliation for disclosure of the relationship. Additionally, because some cultures accept or encourage young women

to form relationships with older men, reporting may violate cultural norms and bring distress to a young woman, her partner and perhaps family members.<sup>32</sup>

The principle of beneficence encompasses the obligation to maximize possible benefits and minimize the potential for harm.<sup>33</sup> The potential for adolescents to benefit from involvement in research is strengthened if they can gain access to an intervention that was previously unavailable to them, if they are able to share the circumstances of their lives with an objective and nonjudgmental investigator or if they gain knowledge about themselves or their circumstances that might enhance their well-being.<sup>34</sup> An investigator who discovers statutory rape and reports it with the consent of the minor participant may be maximizing possible benefits by assisting her or him in escaping from an exploitive relationship. In a 1996 study, researchers found that adolescents, especially those who were younger, expected to be helped if they reported to an adult researcher that they were the victim of abuse.<sup>35</sup> This was true even though they had been assured during the informed consent process that the information they shared would be kept confidential.

## Justice

Justice concerns the fair distribution of the benefits and burdens of research and demands that individuals who are equal be treated equally when they participate in research. The principle of justice requires that populations, as well as individuals, have an equal opportunity to participate in and potentially gain from research.<sup>36</sup> Although the public has often viewed research as a potentially dangerous activity from which persons should be protected, there has been growing recognition that involvement in research can produce substantial benefits.<sup>37</sup> Women and racial and ethnic minority groups have made significant progress toward ensuring their representation in federally funded studies, but no similar efforts have been focused on ensuring that persons are not excluded on the basis of age. As a result, adolescents, as a group, have often been unable to reap the benefits of research. Unfortunately, lawmakers have made conducting research with adolescents increasingly difficult. Laws that require reporting of statutory rape can present formidable barriers that hinder research on sexually active youth, hence impeding efforts to promote their health and well-being.

The principle of justice also requires that the risks of research participation be equitably shared, and not imposed in a manner that affects some individuals or populations unfairly.<sup>38</sup> When state laws mandate reporting of statutory rape, research that involves sexually active minors may unfairly burden certain individuals or groups. Although well-intentioned, statutory rape laws establish rigid standards for sexual behavior, without consideration for individual circumstances, including cultural norms or a minor's decision-making capacity. The potential adverse consequences of reporting statutory rape include emotional trauma, legal problems and severe stigmatization of both the individuals involved and the group they represent.<sup>39</sup>

Racial and ethnic minority groups have long been concerned about the potential for research to harm them.<sup>40</sup> These communities may fear that research results will not be used to their benefit and will, in fact, stigmatize their members.<sup>41</sup> Mandatory reporting of statutory rape places investigators in the position of being at odds with certain populations and reinforces the lack of trust in research that is felt in many



communities.

## Scientific Concerns

Mandatory reporting of statutory rape may pose threats to scientific rigor. For example, notifying prospective participants of reporting obligations could discourage sexually active adolescents from volunteering for research studies. According to a 1995 survey, 39% of female and 45% of male 16-year-olds report that they have had sexual intercourse.<sup>42</sup> Thus, a significant portion of the teenage population may be wary of participating in research if they know that their relationship might be reported because they are younger than the age at which they can legally consent to sexual activity. If teenagers who were sexually involved declined to participate in studies, samples may not be representative, and valuable data may be missed.

Informing prospective participants of mandatory reporting requirements may jeopardize researchers' ability to earn adolescents' trust. Assuring confidentiality in research encourages subjects to be honest and open, thereby enhancing the credibility and validity of the findings.<sup>43</sup> This is especially critical in qualitative studies, where a trusting relationship is vital if a thorough and accurate understanding of the subject matter is to be achieved. Ultimately, informing participants of reporting requirements may promote the conundrum of participants' having to choose whether to reveal incriminating information, to not answer questions or to lie.<sup>44</sup>

One way researchers can avoid the legal requirement to report statutory rape is to mask research data. For example, researchers can collect anonymous data through encoded, random response options or random digit dialing. They can also transmit data out of the state or country, or have participants enter data into a computer to ensure anonymity.<sup>45</sup> These approaches have both scientific and ethical limitations, however. Masking data may be inconsistent with the study's research design. Furthermore, one can argue that it is unethical for a researcher who is in a position to be aware of potential abuse to choose to be blinded to this information.

## RECOMMENDATIONS

Researchers studying sexually active minors must balance complex legal, scientific and ethical standards. They may find it helpful to consider the following suggestions for ways to avoid misconduct while advancing both science and ethics.

- All investigators who work with adolescents should thoroughly understand laws concerning statutory rape and child abuse reporting in the state in which they are conducting their research, federal research regulations and the interaction between the two. It is important to distinguish legal requirements from possibly nonbinding interpretations of the law.
- When state laws require that investigators report statutory rape, this should be explicitly noted in the informed consent form. Participants must understand that confidentiality cannot be assured under these circumstances. Furthermore, the consent process should include opportunities for participants to discuss their questions and concerns with investigators to ensure that they thoroughly understand what the reporting requirement and their consent mean.<sup>46</sup>
- Researchers working with adolescents should consider developing safety protocols to

provide additional protections to adolescent participants. Protocols that have been developed for use in research involving battered women may offer useful guidelines.<sup>47</sup> For example, researchers should consider the risks to participants, their partners and family members from involvement in the study; the legal and ethical responsibilities of the principal investigator and members of the research team; and the procedure to follow when illegal sexual activity is suspected or reported. In addition, research team conferences may be useful in helping investigators to resolve or cope with the dilemmas and tension created when legal, ethical and scientific principles conflict.<sup>48</sup>

- Age-appropriate literature on domestic violence shelters or child protection agencies should be provided routinely to all participants.<sup>49</sup> By sharing information concerning relevant community services, investigators can maximize the benefits adolescents receive from participating in a study.
- Adolescent participants should be informed that they do not need to reveal the identity or age of their sexual partners. This can be explained at the same time that the requirements for reporting statutory rape are discussed. Explaining this permits adolescents to decide whether to disclose this information and demonstrates investigators' respect for their personal choices concerning sexual relationships. However, some laws may require that the case be reported even when the age or identity of the partner is not reported.
- Investigators should honor parents' roles in adolescents' lives and should carefully balance respect for the emerging autonomy of youth with the benefits of parental participation in the research.<sup>50</sup> Even when parental permission has been waived, researchers should make an effort to include parents by involving them in identifying adolescent health needs, reviewing research protocols and promoting community acceptance of the project. Involving parents may strengthen the research design, increase participation, add to the likelihood that findings will be accepted and expand support for adolescent health promotion activities.<sup>51</sup>
- Researchers should make an effort to ensure that communities benefit from and are not harmed by the research.<sup>52</sup> Racial and ethnic diversity within the sample will reduce the possibility that findings will stigmatize a particular group, and diversity within the research team may increase the likelihood both that minorities will participate and that the research will be conducted in a manner that respects minority populations.<sup>53</sup> Establishing a community advisory board to serve as a liaison between researchers and participants and as an advocate for participants can strengthen the process of informed consent.<sup>54</sup> Finally, linking health-promoting interventions to the research effort can assist communities in realizing benefits from their participation.<sup>55</sup>
- The impact of statutory rape reporting and prosecution on the well-being of adolescents and their families is an issue that needs further attention from researchers.<sup>56</sup> In addition, studies are needed to assess the implications of mandatory reporting on recruitment of research participants and on the truthfulness and openness of participants' responses.

## CONCLUSION

Investigators will be better prepared to manage the dilemmas concerning disclosure of sexual relationships involving minors if they are familiar with relevant laws and



regulations, ethical principles and scientific concerns. Research on teenage sexuality, which is of great importance, presents unique challenges. Through an analysis of the issues, investigators may find ways to successfully integrate ethical, legal and scientific responsibilities. If they do so, both science and ethics will be served.

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