

Does the Age of Consent Need to be Raised?

While much ado is made regarding child brides around the world, and rightly so, little attention is given to the age at which youth in the United States are allowed to marry. Discussed in even more hushed voices is the age at which youth, particularly girls, are *legally* permitted to engage in sexual acts. Yet, it may shock many to know that American girls may engage in sexual acts at an age as young as twelve without legal consequence, depending on the age of her partner.

Looking back into history, the age of consent was often established based on physical maturity (e.g., when menstruation began) without any recognition that the cognitive and reasoning ability of young people have not yet been fully developed. In other words, girls who have achieved puberty are not equipped to make decisions about sexual encounters in the same manner as adults.

This flyer is intended to provide summary (limited) information about current law relative to the age of consent and to raise the question as to whether the law should be changed. It is intended to allow the conversation on the topic to begin.

Age of consent is age at which a female is legally capable of agreeing to sexual intercourse and below which age the male commits statutory rape if he has sexual intercourse with her.

Black's Law Dictionary

Federal Law

Under federal law, *sex with a minor* occurs when someone knowingly engages in a sexual act with a minor – or attempts to do so. A minor is defined as someone over the age of twelve but not yet age sixteen and is at least four years younger than the offender with whom sex is being engaged. [18 U.S.C. § 2243] The punishment shall be a fine or imprisonment for not more than 15 years, or both.

Colorado Law

Under Colorado law, *sexual assault on a child* occurs when a person subjects another person who is not his spouse, to any sexual contact when the child is less than fifteen years of

age and the offender is at least four years older than the victim. [C.R.S. § 18-3-405] This crime is a Class 4 felony unless additional threats or injuries occur, at which time it becomes a Class 3 felony. A Class 4 felony is punishable by a fine and imprisonment of two to six years. [C.R.S. § 18-1.3-401]

Montana Law

Sexual assault occurs in Montana if a person subjects another to any sexual contact without consent. If the victim is less than sixteen years old and the offender is three or more years older than the victim or if the offender inflicts bodily injury during the sexual assault, the punishment is four or more years in prison. However, a less

The Issue



Most commonly available reports indicate that the age of consent is 16 to 18 years old for most of the states in the USA. However, many of the states have exceptions based on the difference in age of the two people involved in the sexual act.

Many, if not most, of the state laws would allow someone as young as 12 years old to have sex with someone not more than 4 years older, without legal consequence. Hence, a 12 year old could agree to have sex with someone nearly 16, or a 15 year old with someone nearly 19, and it would be permissible under the law.

While some are concerned that changes in the law will result in a proliferation of teen “sex offenders”, one must ask whether a 12-15 year old is fully capable of making this type and level of decision.

than four year prison term may be imposed upon a good cause finding by the judge. Consent is ineffective if the victim is less than fourteen years old and the offender is three or more years older than the victim. [MCA § 45-5-502]

Potential Actions in Response to the Issue



Develop a short 30 second speech (a so-called *elevator speech*) on the issue where you can grab the attention of your audience.

Research current law (not relying on only this or other summaries) to have a full understanding of current crimes and punishments.

Research the issue of how this may impact various individuals or entities (minors, adults, society, law enforcement, etc.) so that you can dispel misunderstandings and myths.

Consider options to concerns that may exist. For example, instead of changing the age of consent law, should revisions to punishments be enacted?

Create allies regarding the issue and raise community awareness by discussing the matter with other women-oriented groups, school officials, community leaders, and other similar entities.

Develop a relationship with local media by sending out stories, talking to reporters, and keeping them notified of community discussions. One might also wish to provide newspaper opinion pieces or be a guest on radio programs to begin the community discussion.

Contact legislators to gauge interest in and to develop an awareness about the need for changes to state laws. Assist legislators by providing draft legislation.

A separate Montana law [MCA § 45-5-503] defines *Sexual intercourse without consent*. Similar punishment to that for sexual assault of imprisonment of four or more years applies when the victim is a less than sixteen years old and the offender is four or more years older than the victim, or if the offender inflicts bodily injury during the crime.

South Dakota Law

It is a crime in South Dakota for a person age sixteen or older to engage in sexual contact with another person, other than their spouse, if the person is under the age of sixteen. [SDCL § 22-22-7] The crime is a class 3 felony and punishable by a fine and up to 15 years in prison. However, if the victim is age thirteen or older and the offender is less than five years older than the victim, the crime is a Class 1 misdemeanor punishable by a fine or up to one year in county jail, or both.

Wyoming Law

W.S. §§ 6-2-314 through 6-2-317 define *sexual abuse of a minor* in the first, second, third, and fourth degrees.

- First degree involves an offender engaged in sexual intrusion age sixteen or older with a victim less than age thirteen. The penalty is imprisonment up to 50 years.
- Second degree involves a sexual intrusion offender age seventeen or older with a victim age thirteen through fifteen, and the victim four years younger than the offender. An alternative crime under this same statute would be an offender age sixteen or older with the victim less than age thirteen. The punishment is imprisonment up to twenty years.
- Third degree may involve different situations based on the

ages of the offender and the victim. The punishment is subject to imprisonment of not more than fifteen years.

- An offender age seventeen or older with a victim age thirteen through fifteen, and the victim is at least four years younger than the offender.
- The offender under age sixteen, with a victim less than thirteen years old, and the victim is at least three years younger than the offender.
- The offender is age seventeen or older and takes indecent liberties with a victim under the age of seventeen, and the victim is at least four years younger than the offender.
- Fourth degree involves an offender under age sixteen who engages in sexual contact with a victim who is under age thirteen, and the victim is at least three years younger than the offender. The punishment is at the discretion of the juvenile court.

Suggested Reading



Considerations on The Age of Consent to Sexual Activity by Jannit Rabinovitch (Canadian)
<http://03559de.netsolhost.com/Age%20of%20Consent.pdf>

The Teenage Brain: Under Construction, American College of Pediatricians, April, 2016
<https://www.acpeds.org/the-college-speaks/position-statements/parenting-issues/the-teenage-brain-under-construction>

What Should the Law Do about Teen Sex? Legal Affairs Magazine, Debate Club
http://www.legalaffairs.org/webexclusive/debateclub_statrape0305.msp