

The Age of Sexual Consent

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In 1899 the age of sexual consent in some American jurisdictions was 9 years. It has ranged from 7 to 21 years and at present the range is from 11 to 18 years. The age selected seems to be an arbitrary matter, the product of legislative compromise. The age of sexual consent should not be so early that little protection is provided for a child. Conversely, it should not be so late that a man can be held for statutory rape when the "victim" is fully capable of informed consent and readily acquiesced to a proposal or even invited a sexual relationship.

In 1899, Denslow Lewis,¹ an advocate of sexual education for girls and young women, presented the reason for his stand in the closing remarks of a controversial paper. He stated, "The age of consent in certain states is 9 years; that means a child can be offered a box of candy, can be seduced, can become a mother, and the man goes free, because at 9 years the age of consent exists." Lewis added, "I have seen many pregnant young girls in the Cook County Hospital, Chicago, and in other institutions with which I am connected, and I have talked with them. Often I find that they permitted sexual intercourse without knowing what it was. Unquestionably children should be taught, not necessarily in a brutal way, regarding sexual intercourse and reproduction (W)hile their modesty may be shocked their virtue will be saved."¹

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The fact that the age of consent could be as young as 9 years caused us to ask several questions: (1) Is the age of consent generally 9 years or does it vary widely from one geographical area to another? (2) If the age varies from place to place, does it also vary in one place from time to time? (3) How is a particular age selected? (4) If the age is changed, why is it changed? (5) Is the age of consent consistent with the legal age for marriage? (6) Should the age of consent be a determinant of the age at which information about sex is imparted?

Because age of consent laws, like child custody laws, may have a definite relationship to psychiatric thinking and practice, it seems important to answer the questions that have been posed. After briefly defining our terms and providing a historical perspective, we will attempt to answer them.

Definition of Terms

The age of consent, as a legal term, may be defined as the age at which a minor is capable of giving informed con-

sent for sexual relations.² An adult male who has sexual relations with a female younger than the age of consent commits the crime of "statutory rape." Under the statutory rape laws, it does not matter if the female willingly participates in the sexual act or even invites it. The law assumes that she is too young to give her consent.³ This ruling is like the general contractual incapacity of minors which is based on the presumption that although there is consent, legal recognition should be withheld because of the inability of the minor to appreciate the consequences of the agreement.

Historical Background

Ancient Rome A history of rape, directly relevant to the age of consent and statutory rape in modern Western codes, begins with the class society of Ancient Rome, where both legal and private property were highly developed. For example, the Roman law of raptus, a violent form of theft, applied both to property and persons. If a woman was abducted violently and molested sexually, the crime was defined as theft because women were regarded as the possessions of propertied men.⁴

Anglo-Saxon With the evolution of feudalism, a change that occurred in the status of women was reflected in sex (e.g., rape) laws. Rape was explicitly defined as a crime against the person rather than against property. In addition to being defined as rape in the revised Medieval Canon Law, an assault had to involve abduction, coitus, violence, and lack of free consent on the part of the woman.⁴

The first known mention of statutory

rape came during the reign of Edward I and was referred to as the Statute of Westminster (1275). This statute made it a crime to "ravish," with or without consent, a girl younger than 12 years, the age at which she could legally consent to marriage. During the reign of Elizabeth I (in 1576), the age of consent was changed to 10 years.⁵

America Historically, the age of consent in the United States has varied widely from one geographical area to another, ranging from 7 in Delaware to 21 in Tennessee.^{2,5,6} At present the range for the age of consent, from 11 to 18 years, reflects major reforms implemented in the mid-seventies in many states (Table 1).

Not only have the laws governing sexual exploitation of children differed from one region to another, but they have also differed over time within a particular region. In Texas, for example, the age of consent has been 15 and 18 years and now is 17 years.⁷

It is difficult to know precisely why a particular year was selected as the age of consent, but the wide variation (from 7 to 21 years) suggests that different criteria were used or that the approach was arbitrary. An age at either extreme would seem inappropriate. It would generally be unlikely that a girl younger than 12 or 13 years would have the emotional or cognitive readiness or possess the intellectual knowledge required for informed consent. Conversely, it would generally be unlikely that a girl or young woman of 15 or 16 years or older would be incapable of informed consent. By eliminating the two extremes, it seems that the age of consent should

Table 1
Age of Sexual Consent (Female): Pre- and Postreform Comparison

| State | Prereform Age (Common Law)* | Postreform Age (Post 1974)† |
|----------------|--|--|
| | Type of Sexual Contact <i>not</i> Specified (Lower Age Limit) | Types of Sexual Contact Specified (Lower Age Limit) |
| Alabama | 12 | 12‡ |
| Alaska | 12‡ | 13‡ |
| Arizona | 18 | 15‡ |
| Arkansas | 16 | 14‡ |
| California | 18 | 14‡ |
| Colorado | 18 | 15‡ |
| Connecticut | 16 | 15‡ |
| Delaware | 7 | 16 |
| DC | 16 | 16 |
| Florida | 10 | 11‡ § |
| Georgia | 14 | 14 |
| Hawaii | 12‡ | 14 |
| Idaho | 18 | 18 |
| Illinois | 16 | 16‡ |
| Indiana | 12 | 12‡ |
| Iowa | 16‡ | 12‡ |
| Kansas | 18 | 16 |
| Kentucky | 12‡ | 12‡ |
| Louisiana | 12‡ | 12‡ |
| Maine | 14 | 14‡ |
| Maryland | 14 | 14‡ |
| Massachusetts | 16 | 16 |
| Michigan | 16 | 13‡ |
| Minnesota | 10‡ | 13‡ |
| Mississippi | 12‡ | 12‡ § |
| Missouri | 16‡ | 14‡ |
| Montana | 18 | 16 |
| Nebraska | 15§ | 16 |
| Nevada | 10‡ | 14‡ |
| New Hampshire | 16 | 13‡ |
| New Jersey | 12‡ | 13‡ |
| New Mexico | 10‡ | 13‡ |
| New York | 18 | 11‡ |
| North Carolina | 12‡ | 13‡ |
| North Dakota | 18 | 15 |
| Ohio | 16 | 12‡ |
| Oklahoma | 14‡ § | 14‡ § |
| Oregon | 16‡ | 12‡ |
| Pennsylvania | 16§ | 14‡ |
| Puerto Rico | 14 | 14 |
| Rhode Island | 16‡ | 13‡ |
| South Carolina | 14‡ § | 11‡ |
| South Dakota | 10 | 15 |
| Tennessee | 12§ | 12‡ |
| Texas | 15§ | 17 |
| Utah | 13‡ | 14 |
| Vermont | 16 | 16 |
| Virginia | 14§ | 13‡ |
| Washington | 10‡ | 11‡ |
| West Virginia | 16‡ § | 11‡ |
| Wisconsin | 12‡ | 12‡ |
| Wyoming | 18 | 12‡ |

* Adapted from reference 2.

† Adapted from reference 8.

‡ Higher age specified and/or lesser penalty administered in special circumstances, e.g., offender is parent, guardian, or person of authority; defendant's age falls into a specified range.

§ Previous chaste character of victim taken into consideration for any victim between lower and upper age limits.

probably be between 12 and 15 years. Moreover, revisions might be necessary periodically to keep the age consistent with prevailing social trends.

Practical, psychologic, and cultural considerations should be taken into account in selecting a particular year to mark the age of consent. If the estimate that nearly 50 percent of females under the age of 18 years have had (premarital) sexual intercourse and the suggestion that many of these acts are technically statutory rape are correct,² the age of consent needs to be lowered. But how much should it be lowered? Certainly, at least to an age when relatively few females are likely to have had sexual intercourse. If this criterion is used, what is meant by "relatively few"? Would it be less than 25 percent? Or perhaps less than 10 percent?

The acquisition of information about sex, including menstruation and contraception, should make it possible for a girl or young woman to respond somewhat knowledgeably to a sexual proposal. (Parenthetically, the younger the age of consent, the earlier is sexual information needed to avoid the danger of seduction—perhaps with a box of candy, as Lewis¹ suggested.)

It is much easier to assess when a girl or young woman is ready intellectually for informed consent than when she is ready emotionally. Still, this issue should and can be studied from a psychologic standpoint.

Statutory Rape

As defined earlier, an *adult* male who has sexual relations with a female younger than the age of consent com-

mits the crime of statutory rape. Some states, recognizing that juveniles pass through a stage of sexual curiosity and experimentation, have enacted laws that regard a sexual offense involving two adolescents or an adolescent and a child with less reprobation than an offense involving an adult. The common law of some states (e.g., Massachusetts) still holds that a male under 14 years is irrebuttably presumed to be incapable of engaging in sexual relations.² In several states the male must be at least two years older than his sexual partner before statutory rape can be charged. To charge statutory rape in Nebraska, the victim must be under 16 years and the offender over 19 years. Hence, if an 18-year-old male has sexual intercourse with a 10-year-old female,⁸ he cannot be charged with statutory rape. However, this same male could be tried as an adult for the charge of forcible rape of an adult female. In this instance it seems that both the age of consent and the age at which a male can be an offender have been set too late.

The Age of Consent and Other Statutes

There is no reason to assume that there should be parallelism between the age of consent and license to drive a motor vehicle, consume alcoholic beverages, or be drafted for military service. There is reason, however, to assume that there should be parallelism between the age of consent and the permission to marry (Table 2), to obtain contraceptives without parental consent, and/or the ability to participate in providing informed consent for medical or surgical

Table 2
Age of Sexual Consent: A Comparison with Other Age Limits on Social Activity

| State | Age of Sexual Consent* (Lower Age Limit) | Age of Marriageability† | | | |
|----------------|---|-------------------------|--------|--------------------------|--------|
| | | With Parental Consent | | Without Parental Consent | |
| | Postreform | Male | Female | Male | Female |
| Alabama | 12 | 17 | 14 | 21 | 18 |
| Alaska | 13 | 18 | 16 | 21 | 18 |
| Arizona | 15 | 18 | 16 | 21 | 18 |
| Arkansas | 14 | 18 | 16 | 21 | 18 |
| California | 14 | 18 | 16 | 21 | 18 |
| Colorado | 15 | 16 | 16 | 21 | 18 |
| Connecticut | 15 | 16 | 16 | 21 | 21 |
| Delaware | 16 | 18 | 16 | 19 | 19 |
| DC | 16 | 18 | 16 | 21 | 21 |
| Florida | 11 | 18 | 16 | 21 | 21 |
| Georgia | 14 | 18 | 16 | 19 | 19 |
| Hawaii | 14 | 18 | 16 | 20 | 20 |
| Idaho | 18 | 18 | 16 | 21 | 18 |
| Illinois | 16 | 18 | 16 | 21 | 18 |
| Indiana | 12 | 18 | 16 | 21 | 18 |
| Iowa | 12 | 18 | 16 | 21 | 18 |
| Kansas | 16 | 18 | 18 | 21 | 18 |
| Kentucky | 12 | 18 | 16 | 18 | 18 |
| Louisiana | 12 | 18 | 16 | 21 | 21 |
| Maine | 14 | 16 | 16 | 21 | 18 |
| Maryland | 14 | 18 | 16 | 21 | 18 |
| Massachusetts | 16 | 18 | 16 | 21 | 18 |
| Michigan | 13 | 18 | 16 | 18 | 18 |
| Minnesota | 13 | 18 | 16 | 21 | 18 |
| Mississippi | 12 | 17 | 15 | 21 | 21 |
| Missouri | 14 | 15 | 15 | 21 | 18 |
| Montana | 16 | 18 | 16 | 21 | 18 |
| Nebraska | 16 | 18 | 16 | 21 | 21 |
| Nevada | 14 | 18 | 16 | 21 | 18 |
| New Hampshire | 13 | 14 | 13 | 20 | 18 |
| New Jersey | 13 | 18 | 16 | 21 | 18 |
| New Mexico | 13 | 18 | 16 | 21 | 18 |
| New York | 11 | 16 | 14 | 21 | 18 |
| North Carolina | 13 | 16 | 16 | 18 | 18 |
| North Dakota | 15 | 18 | 15 | 21 | 18 |
| Ohio | 12 | 18 | 16 | 21 | 21 |
| Oklahoma | 14 | 18 | 15 | 21 | 18 |
| Oregon | 12 | 18 | 15 | 21 | 18 |
| Pennsylvania | 14 | 16 | 16 | 21 | 21 |
| Rhode Island | 13 | 18 | 16 | 21 | 21 |
| South Carolina | 11 | 16 | 14 | 18 | 18 |
| South Dakota | 15 | 18 | 16 | 21 | 21 |
| Tennessee | 12 | 16 | 16 | 21 | 21 |
| Texas | 17 | 16 | 14 | 19 | 18 |
| Utah | 14 | 16 | 14 | 21 | 18 |
| Vermont | 16 | 18 | 14 | 21 | 18 |
| Virginia | 13 | 18 | 16 | 21 | 21 |
| Washington | 11 | 17 | 17 | 21 | 18 |
| West Virginia | 11 | 18 | 16 | 21 | 21 |
| Wisconsin | 12 | 18 | 16 | 21 | 18 |
| Wyoming | 12 | 18 | 16 | 21 | 21 |

* Adapted from reference 8.

† Adapted from reference 3.

procedures. Based on a review of the literature, it is evident that no such parallelism exists.⁹⁻¹¹

Conclusions

The age selected for the age of consent should not be so young that little protection is provided for a child. Conversely, it should not be so late that a man can be held for statutory rape when the victim is fully capable of informed consent and readily acquiesced to a proposal or even invited a sexual relationship.

Although the exact age chosen for consent may have to be somewhat arbitrary, additional information gathered from psychologic and sociologic research on sexual behavior should help define the time when informed consent is not only possible intellectually but also when emotional and cognitive readiness have developed.

Sexual education should make it possible for children to cope knowledgeably with sexual advances when the threat of statutory rape proceedings no longer provides them with some protection.

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References

1. Lewis D: The gynecologic consideration of the sexual act. *J Am Med Assoc* 250:222-7, 1983
2. Mueller GOW: *Sexual Conduct and the Law*. New York, Oceana Publications, 1980
3. Dorman M: *Under 21: A Young People's Guide to Legal Rights*. New York, Delacorte Press, 1970
4. Schwendinger JR, Schwendinger H: *Rape and Inequality*. Beverly Hills, CA, Sage Publications, 1983
5. Prevost EG: Statutory rape: A growing liberalization. *South Carolina Law Rev* 18:254-66, 1966
6. Tonry RA: Statutory rape: A critique. *Louisiana Law Rev* 26:105-17, 1965
7. Search SS III, Patterson JR: *Vernon's Texas Codes Annotated: Penal, 2 Section 21.09*. St. Paul, MN, West Publishing Co., 1974
8. Flanagan TJ, McLeod M (eds): *Sourcebook of Criminal Justice Statistics (1982)*. New York, The Michael J. Hindelong Criminal Justice Research Center, 1983
9. Bush D: Fertility related state laws enacted in 1982. *Fam Plann Perspect* 13:111-6, 1983
10. Hoffman AD: A rational policy toward consent and confidentiality in adolescent health care. *J Adolesc Health Care* 5:79-86, 1984
11. Turetsky RA, Strasburger VC: Adolescent contraception. *Clin Pediatr (Phila)* 5:337-41, 1983