
YOU AND THE LAW

In statutory rape who is victimized?

By Arnold Zenker
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He's been the family's pride and joy, your Joey has. Ever since he was born 17 years ago. That's why it seems so incredible to see him charged with a felony, facing life imprisonment if he is convicted.

You don't quite understand how it happened. What is it your Joey has done that is so terrible? Having a sexual relationship with a young girl who attends the same high school? That kind of thing goes on all the time nowadays.

Sure, you know the girl is only 15, and sure you've heard of the term "statutory rape," but that wasn't meant to apply in a case like this . . . was it?

Legally, there is no doubt that it does. As you probably know, most states have legislated that females under a certain age, usually 16, are deemed incapable of consenting to the sexual act. Any male who engages in intercourse with such a girl is guilty of rape, even though she was willing and no force was used or needed.

It may surprise you to learn that it also makes no difference if the girl looked 22, swore that she was, and even presented phony identification as proof. Underage is underage, say the courts, and the male can't justify his unlawful act by claiming it was all a big mistake. Similarly, the girl's reputation for chastity prior to the incident is not normally a factor to be considered.

In many states, a sexually-experienced girl is as off-limits as a full fledged innocent. And to carry that curious logic even a step closer to absurdity, it's still rape even if the "victim" was married at the time or had been married in the past.

Statutory rape laws, which date back hundreds of years, are firmly rooted in the double standard of Puritan mores. Men were considered aggressively sexual beasts who had to be deterred from despoiling the virtue of defenseless young women.

Viewed in that context, the laws made sense, and still do under certain circumstances. Even today, few would be willing to defend the right of a middle-aged lecher to take advantage of a naive female adolescent.

But have changed social conditions made revision of the laws a necessity? Many believe the answer is yes.

Some suggested changes: A lowering of the age of consent to 14 in recognition of the greater sophistication of this generation's young females. A provision whereby the girl's overall sexual experience becomes a factor in considering whether a crime has really been committed. And the establishment of some minimum span between the ages of the female and the male so that the 17-year-old Joey's won't have their lives ruined for doing what, sex surveys say, comes naturally to most teen-agers.

It's a controversial area and only a courageous legislature is capable of dealing with the needed reforms.

(The Sunday Globe will, from time to time, print the column "You and the Law" in an effort to make readers more aware of the laws that affect their lives. Arnold Zenker is a local attorney and TV personality.)