

Statutory Rape Reporting and Family Planning Programs: Moving Beyond Conflict

By Cynthia Dailard

Laws that make having sex with a minor under a given age a crime are on the books in every state, primarily to protect young females from sexual exploitation, especially by older men. In certain circumstances that vary widely across the states, family planning providers—who are obligated under the federal Title X program to provide confidential contraceptive services to teenagers on request—also may be obligated to report instances of such “statutory rape” to state authorities.

Since the late-1990s, some policymakers and others who argue that teenagers should be required by law to involve their parents in order to receive contraceptive care have attempted to capitalize on the issue of statutory rape enforcement to further their cause. These advocates have been trying to make the case that family planning providers are using confidentiality as a shield not just to deny parents important information about their children’s behavior but also to prevent state authorities from taking actions to protect young people’s welfare. Beyond vigorously enforcing existing statutory rape reporting requirements, they contend, these requirements should be broadened.

Family planning providers are concerned about this increasing politicization of the statutory rape issue. Pointing to an abundance of data as well as their clinical experience, they argue that a guarantee of confidentiality is critical to many teens’ willingness to seek medical care and that undermining it will only result in more teen pregnancies, sexually

transmitted infections (STIs) and other negative health outcomes. Moreover, wholesale reporting of large numbers of teens simply because they have had sex ultimately will prove counterproductive to the goal of punishing genuine cases of abuse and exploitation. Indeed, by virtue of their training and client contact, they say, family planning providers are already at the forefront of efforts to identify sexual abuse and victimization in teens and others. Requiring them to report cases of sexual activity among teenagers beyond those that they believe, in their professional judgment, are truly dangerous, coercive or exploitive will ultimately undermine societal efforts to protect young people from harm.

A Statutory Rape Primer

Understanding what constitutes statutory rape and who is mandated to report it requires familiarity with two discrete areas of law that vary considerably from state to state. This complexity can make navigating when and under what circumstances sexual activity among teens should be reported to state authorities difficult.

First, every state’s criminal code prohibits sexual activity with a minor below a certain age, based on the premise that the minor is legally incapable of consenting to sex. These crimes are commonly referred to as statutory rape. When it comes to penalties, however, these laws typically impose a range depending on the age of the “victim” and the age difference between the victim and “perpetrator.”

If this were not complicated enough, the obligation to report statutory rape is governed not by these criminal laws but by an entirely separate set of child welfare laws; these laws require certain individuals who tend to have frequent contact with children to report of known or suspected cases of child abuse to child welfare agencies or law enforcement. The definition of child abuse in all

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states includes sexual abuse; however, the definition of sexual abuse varies from state to state, and only about half of these state laws explicitly mention statutory rape. Health care professionals are typically included within the list of designated individuals who are required to report.

Gaining Traction?

Some conservative policymakers have seized upon the issue of statutory rape in order to vilify family planning providers and to undermine the very notion of confidential services. In 1998, Rep. Don Manzullo (R-IL) launched a self-described “legislative assault” on the federal Title X family planning program, citing the case of a Title X-funded clinic in his district that failed to inform the authorities or the parents of a 14-year-old girl when a 37-year-old teacher with whom she was having an affair brought her to the clinic for contraception. Few disagreed that this incident should have been reported, given the age disparity and the teacher’s position of authority over the student. However, Manzullo used this single extreme case to argue for an amendment to an annual funding bill that would have

vitiated Title X's guarantee of confidentiality by requiring clinics to notify parents in writing before providing a prescription contraceptive to a minor. Although the provision was defeated in Congress, compromise language was added to the funding bill simply reiterating that Title X providers must comply with state reporting requirements.

Recent activity in two states suggests that the campaign to use mandatory reporting requirements to restrict minors' access to confidential health care may be gaining a toehold. A 2003 opinion letter by the Kansas Attorney General interpreting the state's statutory rape reporting requirement says that abortion providers must report any minor under the age of 16 who seeks an abortion. According to the opinion letter, sex that is illegal under state law—namely, sex with someone

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under the age of 16—is inherently injurious and therefore must be reported to state authorities; pregnancy constitutes evidence that such an injury has occurred. The opinion acknowledged that “although this opinion is limited to the question posed [about abortion providers], the consequences of the conclusion reach further. Other situations that might trigger a mandated reporter's obligation, because sexual activity of a minor becomes known, include a teenage girl or boy who seeks medical attention for a sexually transmitted disease, a teenage girl who seeks medical attention for a pregnancy, or a teenage girl seek-

ing birth control who discloses she has already been sexually active.” The constitutionality of the opinion is currently being challenged in court by the Center for Reproductive Rights, on the grounds that it violates young women's right to privacy.

Similarly, since the late 1990s, a rider attached to an annual funding bill for the Texas Department of Health conditions state funding for family planning clinics and other grant recipients on a showing of good faith efforts to comply with the state's child abuse reporting law. Perhaps even more significant for family planning providers, however, was a 2001 change in Texas law that removed the discretion of health care professionals in deciding whether or not a patient is a victim of abuse. As a result, family planning providers must effectively now report all cases of sexual contact that involve clients younger than 17, unless the client's partner is less than three years older than the client. (To protect their funding, family planning providers must document in the client's medical record that they have asked about the partner's age.) They must also report all cases of sexual contact that involve clients younger than 14, regardless of the partner's age.

In addition to this state activity, there are signs that the federal government is beginning to shine a spotlight on this issue as well. In 2003, a cadre of staunch family planning opponents, including Reps. Chris Smith (R-NJ), Mark Souder (R-IN) and Dave Weldon (R-FL), requested that the Department of Health and Human Services (DHHS) investigate charges by Life Dynamics, Inc (LDI), a radical anti-choice group, that family planning providers are trying to circumvent state child abuse reporting requirements. Shortly thereafter, the DHHS Office of Inspector General announced that it will focus on the statutory requirement that Title X-

funded clinics comply with state laws on child abuse, child molestation, sexual abuse, rape and incest. Specifically, it will evaluate oversight of the reporting requirement by the Office of Population Affairs (which runs the Title X program), and “determine whether Title X grantees have operating procedures to ensure that their employees know when and how to report instances of suspected underage sexual abuse.” Additionally, DHHS has awarded a contract to a private consulting group to conduct a separate study to collect information about state statutory rape laws and analyze how DHHS programs and their grantees relate to these laws. The three programs being studied include Title X, Community Health Centers and child protective services. The study will explore a host of issues, including grantees' knowledge of state law, their protocols for addressing reporting, forms used for reporting, record keeping of reports, training of providers, referral networks, and how the issue of confidentiality is addressed. Finally, DHHS has established a statutory rape working group that meets monthly and involves high-level government officials.

Provider Concerns

The motivation for this recent federal activity and its policy implications are currently unclear. However, given the events in Kansas and Texas, family planning providers are understandably concerned about the potential impact on client confidentiality—and on the ability and willingness of teenagers to obtain the counseling and medical services they need. Although there is no research to date documenting the specific impact of statutory rape reporting on minors seeking reproductive health services, such information can be extrapolated from similar research involving teens and parents. Research from as far back as the late 1970s has found that many minors will not seek important fam-

ily planning and related preventive health care if they need to inform their parents. More recently, a study appearing in 1999 in the *Journal of the American Medical Association (JAMA)* found that a significant percentage of teenagers had decided not to seek health care that they thought they needed due to confidentiality concerns. With respect to reproductive health care specifically, a 2002 study also published in *JAMA*

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found that almost half of sexually active teens (47%) visiting a family planning clinic would stop using clinic services if their parents were notified that they were seeking birth control, and another 11% reported that they would delay testing or treatment for STIs, including HIV; virtually all (99%), however, reported that they would continue having sex.

Researchers, moreover, are attempting to quantify the public health and financial costs in Texas created by the 2001 reporting requirement and a 2003 parental consent requirement for family planning services. A study to be published next year in *The Archives of Pediatric and Adolescent Medicine* concludes that the loss of confidentiality in Texas will significantly increase pregnancies, births and abortions among Texas teens. The lead author of the study, Luisa Franzini of the University of Texas Health Science Center at Houston, adds that this would significantly increase annual

Medicaid costs in Texas as the result of unintended pregnancies among teens receiving publicly funded reproductive health services.

In addition to expressing concerns about patient confidentiality, experts contend that the effort to single out family planning providers is misplaced. According to Sue Hilton, executive director of Missouri Family Health Council, these providers have been at the forefront of the effort to identify abuse and sexual victimization in this country, among teens and others. “Family planning clinicians are trained to identify abuse and have appropriate reporting protocols in place.” She continues, “As professionals, we know how and when to work with law enforcement or social services in constructive ways to help young people. We also encourage teens to involve their parents in decisions about sexual activity and counsel them about how to avoid coercive sexual activity,” both of which are required under law of Title X-funded providers.

The Texas experience, moreover, suggests that calls for blanket reporting of all sexual activity among teens may be counterproductive. Peggy Romberg, CEO of the Women’s Health and Family Planning Association of Texas, notes that statutory rape reporting among family planning providers has gone up substantially because of changes to Texas law. As a result, law enforcement agencies have been inundated with reports, with most ending up in file drawers with no action taken. “Historically, we [family planning providers] have been the partners of law enforcement agencies in identifying and reporting actual sexual abuse of teens, including by inappropriate adult partners. When we filed a report, law enforcement agencies took it seriously. Now that we are no longer allowed to exercise our discretion, there is a lot more reporting

going on, but the police are ignoring most.” Romberg continues, “We used to be part of the solution [to the problem of teenage sexual victimization]. Now we are part of the problem.”

Toward an Enlightened Policy

Abigail English, director of the Center for Adolescent Health & the Law and the nation’s foremost authority on the impact of statutory rape laws on access to health care, agrees that increased statutory rape reporting “is a rather blunt tool for dealing with the very real problem of sexual victimization among teens.” She notes, however, that there is a way to better protect those who are being victimized while preserving teens’ access to confidential care. States, she suggests, could amend or interpret their child abuse reporting statutes to target specific behaviors that are truly exploitive or abusive. Alternatively, they could exempt from the mandatory reporting requirement providers of confidential health care or allow for health care provider discretion in determining whether abuse has occurred.

These options, she notes, would lessen the burden on law enforcement or child welfare agencies of unwarranted reports, enable health care providers to maintain the trust of their adolescent patients based on their ability to maintain confidential care and allow sexually active adolescents to seek health care without fear that doing so will automatically result in a report to child welfare or law enforcement authorities. “Ultimately,” English says, “these alternatives have a better chance of protecting adolescents than many of the existing approaches.” ☺

This article was supported in part by a grant from the Prospect Hill Foundation. The conclusions and opinions expressed in the article, however, are those of the author and The Alan Guttmacher Institute.