Caught Between Teens and the Law: Family Planning Programs And Statutory Rape Reporting

By Patricia Donovan

Studies showing that at least half of babies born to mothers who are minors are fathered by adult men, and that the sexual partners of those women are often men 3–6 years older, prompted some policymakers in recent years to conclude that vigorous prosecution of statutory rape could significantly reduce high rates of adolescent pregnancy and childbearing and lower welfare costs as well. Enthusiasm for this strategy has already begun to wane, however, in the face of evidence that it is not feasible for states to prosecute enough men to have an appreciable effect on teen pregnancy rates and birthrates.

But now, some conservative legislators have seized on enforcement of statutory rape—sexual intercourse in which one partner is deemed by law to be too young to consent—for another purpose. Announcing "a two-tiered legislative assault on…Title X," Rep. Don Manzullo (R-IL) has introduced legislation to require Title X–funded clinics to comply with state laws that mandate reporting of child abuse, including statutory rape, and also to notify parents in writing before providing a prescription contraceptive to a minor. A second Manzullo bill contains only the reporting provision.

Manzullo says his "battle to bring sanity and parental responsibility" to the Title X program began with the failure of a Title X–funded clinic in his district to inform the authorities, as state law requires, or the parents of a 14-year-old girl when a 37-year-old teacher with whom the minor was having an affair brought her to the clinic for contraception. In Manzullo's view, "clinic workers must get more vigilant in protecting our children and reporting instances of statutory rape."

Few would disagree that minors, especially very young teenagers, who are in sexual relationships with much older adult men are vulnerable to abuse and exploitation. Nor are many likely to disagree that the teacher in the Illinois case should have been reported, given the age difference between the partners and the fact that he was in a position of authority over the student.

However, statutory rape laws in many states cover cases that are far less clear-cut than the Illinois situation, and health care providers, social workers, guidance counselors, juvenile justice advocates and other professionals who work with young people have serious concerns about the consequences of mandatory reporting of these relationships. In particular, they fear that the breach of confidentiality inherent in mandatory reporting will discourage young women from seeking needed health care and deprive them of crucial sources of support.

What State Laws Say

Statutory rape and reporting laws are complex and vary enormously from state to state. Every state has set an age (generally 16, 17 or 18) below which a minor may not legally consent to sexual intercourse, and most have established different degrees of criminal behavior based on the age of the "victim" and the age difference between the victim and the "perpetrator."

Still, there is a very broad range in what the states consider criminal activity. Under Kentucky law, for example, it is a first degree felony to have intercourse with a minor under age 12, a second degree offense if the minor is under 14 and the partner is 18 or older and a third degree felony if the minor is under 16 and the partner is at least 21. In California, on the other hand, sexual intercourse between two individuals who are not married is a crime if one is under 18, albeit a somewhat more serious offense if one partner is under 16 and the other over 21.

State *reporting* laws tend to be even more complicated, and adolescent service providers are often confused as to whether and under what circumstances statutory rape is a reportable offense. That is at least partly because statutory rape laws themselves do not have a reporting component. Instead, the obligation to report is governed by state child abuse statutes.

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Every state requires cases of child abuse or neglect to be reported to either a child welfare agency or the police, and has designated certain individuals who have frequent contact with children—health care workers, school authorities and social workers, for example—to be mandatory reporters of known or suspected cases of abuse or neglect. In about half the states, the law appears to define child abuse to include at least some cases of statutory rape; in the remaining states, the definition of child abuse either

does not encompass statutory rape or applies only to cases involving a family member or guardian.

Troubling Questions

Mandatory reporting of statutory rape raises a number of troubling questions: What is the purpose of mandatory reporting, and is the agency receiving the statutory rape reports equipped to handle them? Does a provider have an ethical obligation to inform its teenage clients in advance that certain information, if revealed, must be reported to authorities? If a provider does not inform minors in advance of its obligation to report, does it violate minors' expectation of confidentiality? Conversely, if the provider *does* inform minors of the potential consequences of revealing certain information, will young women refuse to discuss important health issues or other concerns?

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According to Howard Davidson, director of the American Bar Association's (ABA) Center on Children and the Law, mandatory reporting was initially adopted by most states as a way to identify cases of child abuse or neglect by a parent or caretaker within the home. Furthermore, he says, while mandatory reporting can be triggered by other circumstances, the child welfare agency that receives these reports was established to protect children solely from *intrafamilial* abuse and neglect. Consequently, Davidson points out, the agency generally has no system for responding to reports of statutory rape perpetrated by nonfamily members.

"Many well-intentioned people from a variety of arenas…have a warm, fuzzy notion that the agency on the end of the phone will do something good for the young person [whom the reporter] wants to protect," observes Abigail English of the National Center for Youth Law. "They have no concept of what the process entails."

That process, she and other legal experts say, varies from state to state and even from county to county, reflecting the broad discretion prosecutors have in deciding how to handle reports of statutory rape. Often, a statutory rape report is simply placed in a file without any action taken; in other cases, the prosecutor may conduct a preliminary investigation, contacting the minor's parents and her sexual partner in the process, but take no further action; and in some instances, the man will be charged with a crime.

Meanwhile, "the victim may go through hell when a case is reported," contends Michelle Oberman, a law professor at DePaul University who has studied the implications of enforcing statutory rape laws. "Her confidentiality is breached, and the most private aspects of her life become public record. And for what end? Are we really going to lock up all these men? She is victimized all over again."

Lack of action largely reflects the fact that child welfare agencies are overloaded and have to prioritize the cases they pursue, according to legal experts. Children, especially those who are very young and have been physically abused, are at the top of the list. Adolescents are a much lower priority, unless they are victims of intrafamilial sexual abuse.

"Mandatory reporting of child and youth maltreatment…involves significant government intrusions into the lives of families," notes the ABA's Davidson. "There is a significant risk that simply requiring professionals to report [statutory rape] to authorities, without proper training and necessary infrastructure, could do more harm than good," he warns, such as "deterring young people from getting medical care, and making it more difficult to identify fathers and collect child support payments."

These are major concerns of adolescent service providers. Reproductive health care providers, for example, fear that pregnant and sexually active teenagers will not seek prenatal care, contraceptive services or STD screening, and that they will be unwilling to discuss personal problems if they think the provider will report their partner to authorities.

These concerns are by no means limited to family planning providers, however. Last fall in Massachusetts, the Alliance for Young Families, a consortium of social workers, child care agencies, health care providers and other professionals who work with pregnant and parenting teens, protested the practice by local welfare offices of recording information on the circumstances of the teen's pregnancy, including the age of her partner, on a "Minor Teen Parent Rape Form" when a minor applied for public assistance.

The Alliance warned that while "on the surface, enforcement of our state's statutory rape law seems good for the protection of adolescents, a closer examination of the implications reveals a multitude of unintended, negative consequences that could have disastrous effects on young families." It cited reports of

teen mothers opting not to seek state services to which they were entitled for fear the welfare agency would take their child away. The young women were also reported to be afraid that their partner would be sent to jail, and some feared possible domestic violence if they cooperated with authorities. "This fear," the Alliance pointed out, "pushes teens underground, away from their support services at a time when they may need them the most."

Mandatory reporting also poses another dilemma for service providers: Should they avoid asking questions that might trigger the reporting requirement, in order to protect minors' confidentiality, even if the answers to those questions may be crucial to providing high quality services, or should they ask the questions and make a report if required, even if in doing so they jeopardize their future relationship with young people?

Many providers feel they have an ethical responsibility to forewarn teenage clients that if they divulge the age of their sexual partner, the provider may have to report the man to the authorities. But, in warning a minor, experts say, the provider may deprive a young woman of a safe environment in which to discuss problems and concerns. Ultimately, concludes the ABA's Davidson, this may be a disservice to minors. "If you take actions that encourage a person not to talk, there is a strong risk they may not talk about more serious crimes as well."

How to Proceed?

Despite concerns about mandatory reporting of statutory rape, Title X staff, like all health care providers, are obligated to comply with state reporting laws. Manzullo's proposals would not affect this obligation. Indeed, by singling out Title X clinics, Manzullo appears to be primarily interested in undermining the ability of these clinics to provide confidential services to teenagers rather than in protecting adolescents from abuse.

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The ABA is currently examining how communities across the country have responded to calls for more vigorous enforcement of statutory rape in an effort to identify "best practices." It expects to publish its findings later this year, and Davidson suggests that lawmakers wait for that report before taking action that could have a harmful impact on teenagers and their families.

In view of the potentially adverse consequences associated with mandatory reporting, and the fact that this is not an issue that should be focused exclusively on one type of health care provider, Davidson's advice seems well taken. The question remains whether it will be heeded by politicians with a different agenda who appear determined to impose a simplistic solution on a very complex problem.