



## UNLAWFUL SEXUAL INTERCOURSE "STATUTORY RAPE"

### **What is unlawful sexual intercourse?**

Under California law, it is illegal to have sexual intercourse with anyone under the age of eighteen (a "**minor**"). Unlawful sexual intercourse is also known as "Statutory Rape." There are two situations in which unlawful sexual intercourse can occur:

1. an adult can be guilty of unlawful sexual intercourse if he or she has sex with a minor.
2. a minor can be guilty of unlawful sexual intercourse if he or she has sex with another minor.

The only situation in which it is legal for minors to have sex is if the minor is legally married and has sex with his or her spouse.

### **What are the penalties for unlawful sexual intercourse?**

- If a person is no more than three years older than the minor with whom they have sex, that person is guilty of a misdemeanor and can be imprisoned in the county jail for up to one year or fined up to \$1,000.00.
- If a person is more than three years older than the minor with whom they have sex, that person is guilty of a misdemeanor or a felony. If convicted of a felony, that person can be imprisoned in state prison for up to four years.

### **What if I willingly had sex?**

The person you had sex with can be prosecuted under the unlawful sexual intercourse law even if you wanted to have sex with him/her. If you did not want to have sex with that person, s/he can be prosecuted under the unlawful sexual intercourse law, child abuse laws, or the sexual assault and rape laws, depending on the situation.

### **Can a person be charged with this crime if they had sex with a minor of the same gender?**

No. Only people who engage in heterosexual intercourse (vaginal penetration) can be prosecuted for unlawful sexual intercourse. However, there are other laws that make it illegal to have same-sex relations with a minor.

### **How would anyone know that I had sex?**

The easiest way for the police or the District Attorney's office to find out that you had sex is if you have a baby. The DA's office might discover that you have a baby if you apply for welfare or for child support; additionally, personnel at the hospital where you give birth sometimes call the DA. Keep in mind, however, that you do not have to have a baby for the District Attorney to be alerted that someone is having unlawful sexual intercourse. Sometimes, parents call the police and report that their child (a minor) is having sex with an adult. Additionally, anyone, including you, can tell the police or the DA that you have had sex. Under certain circumstances, there are people who, because of their jobs, are required to report that you've had sex (see below). The District Attorney decides which cases to investigate, and then which cases to prosecute.

## **What?!?!?! A minor can be convicted of having sex with another minor?**

The actual law does allow for such convictions, but the cases tend to show that these are not prosecuted very often, unless there is evidence that the sexual act was not consensual.

## **If I tell someone that I've had sex, will they report it?**

*Anyone* other than someone with whom you have a "confidential relationship" can report to the police that you are a minor who has had sex. You have a confidential relationship with your attorney, your social worker, your counselor, and your doctor. Keep in mind that in some situations, *even people with whom you have a confidential relationship are also mandated reporters\** and are required by law to report an act of unlawful sexual intercourse **under certain circumstances**. Mandated reporters **must** give information about unlawful sexual intercourse to a child protective agency in four situations:

1. The sexual activity was involuntary.
2. The mandated reporter thinks that one partner exploited the other partner, even if you are married to the partner.
3. The sexual activity involved incest.
4. You had voluntary sex, depending on your age and the age of your partner. The *voluntary sexual situations* that must be reported include:

**If you are under 14**, partner is any age

**If you are 14 or 15**, partner is younger than 14, or partner is older than 21

**If you are 16 or 17**, partner is younger than 14

**If you are any age**, partner is any age, and you are engaging in sodomy, oral copulation, or anal or genital penetration with a foreign object.

Mandated reporters include most public school employees, social workers, health practitioners (including doctors), child care workers, child protective agency workers, child visitation monitors, police officers, fire fighters, animal control officers, and humane society officers. Attorneys and people working with attorneys are *not* mandated reporters.

## **What if I don't want the person I had sex with to be prosecuted?**

You don't decide whether the person you had sex with will be prosecuted under the unlawful sexual intercourse laws. Once someone has reported to the police, the police investigate and then give that information to the District Attorney's office. The DA's office decides whether or not to prosecute the person with whom you had sex. If they prosecute, the case is like all other criminal cases: the county and the person you had sex with are the parties and you are only a witness. The police and the DA's office will ask you for information and you must cooperate, but they do not have to check with you before making decisions about the case.

## **Is there any defense to this crime?**

Yes. A person charged with unlawful sexual intercourse can assert the defense that he or she mistakenly believed that he or she was having sex with someone aged eighteen or older. The person being prosecuted must show that their belief was honest and reasonable and usually this is hard to prove. This defense rarely succeeds.

**\*DISCLAIMER:** This fact sheet is intended to provide information to minors. It is **not** intended to be a guide for mandated reporters. This fact sheet is not intended to be and should not be considered legal advice. Mandated reporters who want more information should refer to "Child Abuse: Reporting Guidelines for Sexual Activity between and with Minors," distributed by the Santa Clara County Child Abuse Council and seek advice from their agency's attorneys.

*Fact Sheets for Teen Parents can be found on-line at: <http://www.teenparents.org>*