

Reporting Consensual Sexual Activity With and Between Minors: The Confusion Unraveled

The Therapist

January/February 2007

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Time and time again, there seems to be much confusion with regard to whether an MFT must, or is even permitted to, report consensual sexual activity involving minors. The information below applies only to consensual sexual activity, not incest, date rape or any situation in which the minor did not fully consent to the sexual activity. Involuntary sexual activity involving minors, and incest involving a minor (even when voluntary), is always a mandatory report¹.

Below is a chart which identifies the various ages of children and consensual sexual activity at issue²:

"Child" refers to the person that the mandated child abuse reporter is involved with.	Definitions and Comments	Mandatory Report	Not Mandatory Report
A. Child younger than 14 years old			
1. Partner is younger than 14 years old and of similar chronological or maturational age. Sexual behavior, including sexual penetration, oral copulation and sodomy, is voluntary & consensual. There are no indications of intimidation, coercion, bribery or other indications of an exploitive relationship.	See, AB 1145 and <i>Planned Parenthood Affiliates of California v. John K. Van De Kamp</i> (1986) 181 Cal. App. 3d 245 (1986); See also, <i>In re Jerry M.</i> 59 Cal. App. 4th 289.		X
2. Partner is younger than 14 years old, but there is disparity in chronological or maturational age or indications of intimidation, coercion or bribery or other indications of an exploitive relationship.		X	
3. Sexual Intercourse with a partner 14 years old or older.		X	

4. Lewd & Lascivious acts committed by a partner 14 years of age or older.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or sexual desires of the perpetrator or the child". This behavior is generally of an exploitative nature; for instance, 'flashing' a minor-exposing one's genitals to a minor.	X	
5. Partner is spouse.			X
B. Child 14 or 15 years old			
1. Sexual Intercourse with a partner younger than 14.		X	
2. Sexual Intercourse with a partner older than 14 and less than 21 years of age & <u>there is no</u> indication of abuse or evidence of an exploitive relationship.			X
3. Sexual Intercourse or with a partner 21 years of age or older.		X	
4. Voluntary sodomy, oral copulation, or sexual penetration with a partner less than 21 years of age & <u>there is no</u> indication of abuse.	See, AB 1145 Sexual assault does not include voluntary conduct in violation of sodomy, oral copulation, or sexual penetration laws if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.		X

5. Lewd & Lascivious acts committed by a partner more than 10 years older than the child.	The perpetrator has the intent of "Arousing, appealing to or gratifying the lust, passions, or gratifying the lust, passions, or sexual desires of the perpetrator or the child". This behavior is generally of an exploitative nature; for instance, 'flashing' a minor-exposing one's genitals to a minor.	X	
6. Partner is spouse.			X
C. Child 16 or 17 years old			
1. Sexual Intercourse with a partner less than 14.		X	
2. Sexual Intercourse with a partner 14 years old or older & <u>there is no</u> indication of an exploitive or abusive relationship.			X
3. Sexual Intercourse with a partner 14 years old or older & <u>there is</u> evidence of an exploitive or abusive relationship.		X	
4. Voluntary sodomy, oral copulation, or sexual penetration with a partner and & <u>there is no</u> indication of abuse.	See, AB1145 Sexual assault does not include voluntary conduct in violation of sodomy, oral copulation, or sexual penetration laws if there are no indicators of abuse, unless the conduct is between a person 21 years of age or older and a minor who is under 16 years of age.		X
5. Partner is spouse.			X

D. Oral Copulation and Sodomy of Child

The Child Abuse and Neglect Reporting Act requires a mandated reporter to make a report whenever the mandated reporter, in their professional capacity has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law provides that “child abuse or neglect” for these purposes includes “sexual assault,” that includes, among other things, the crimes of sodomy, oral copulation, and sexual penetration.

With the passage of Assembly Bill 1145, which becomes effective January 1, 2021, the definition of “sexual assault” for these purposes (mandated reporting) does not include voluntary sodomy, oral copulation, or sexual penetration, if there are no indicators of abuse, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

This information is intended to provide guidelines for addressing difficult legal dilemmas. It is not intended to address every situation that could potentially arise, nor is it intended to be a substitute for independent legal advice or consultation. When using such information as a guide, be aware that laws, regulations and technical standards change over time, and thus one should verify and update any references or information contained herein.

¹ Family Code, §2200 and Cal. Penal Code §285

²This chart was adapted from the Child Abuse Council of Santa Clara County found at www.cacsc.org.