

Minors and Consensual Sexual Intercourse

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - January 2013

During the course of one's practice, it may become known that your minor patient, or a patient's child, has engaged in consensual sexual intercourse with another person – who may be another child or an adult. It is important under such circumstances for the practitioner to be knowledgeable about the laws dealing with this topic in order to determine whether the situation requires a report of child abuse to be made. Failure to report child abuse is a serious offense, with substantial consequences. On the other hand, making a report that is not required or authorized may constitute a breach of confidentiality.

As an example of how this issue can be tricky, some in California have been fooled or misled into thinking that because sexual intercourse between an adult (someone who is 18 years of age or older) and a child (a person under 18) is a crime, that it is therefore reportable as child abuse. It is not uncommon for police agencies to make this mistake. Unlawful sexual intercourse is a crime in California – it is commonly referred to as statutory rape. Unlawful sexual intercourse occurs when there is an act of sexual intercourse with a person who is not the spouse of the perpetrator, if the person is a minor. As many therapists and counselors know, not all crimes are reportable to the authorities. To the contrary, in most states the already committed crimes of the patient are generally confidential. There are exceptions. Child abuse, dependent adult abuse, and elder abuse are examples of crimes that must be reported in California.

Thus, the question that must be asked is whether the act involved constitutes reportable child abuse under the reporting law of the particular state – not merely whether the act constitutes a crime. In California, for example, consensual sexual intercourse between a twenty year old person and his 16 year old girlfriend is not reportable as child abuse, but it is a crime. If the adult is twenty one-years of age or older, and the minor is under sixteen years of age, it is both a crime and reportable as child abuse. What does the law provide in your state of practice? Are there any exceptions to reporting child abuse when there is sexual intercourse between a minor and an adult? The answer to these questions will help the therapist or counselor determine whether confidentiality prevails or a report is required – a critical determination.