



**The Teen
Sexual Assault Victim:
What Can An Advocate
or Lawyer Do?**

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Preparation of this of this material was supported by grant number 2004-WT-AX-K062, awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author and do not necessarily represent the views of the U.S. Department of Justice.

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**Minors Have Limited
Constitutional Rights**

- Background view: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body." (Schloendorff v. Soc'y of NY Hosp., 105 NE 92, 93 (NY 1914), overr'd on other grounds.)
- More recent years:
 - Due process rights apply to minors in certain juvenile proceedings (In Re Gault, 387 U.S. at 42, 49).
 - Free speech rights (Tinker v. Des Moines School District, 393 U.S. 503, 514 (1969)).
 - Right to privacy (Planned Parenthood v. Danforth, 428 U.S. 52, 74-75 (1976)).

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BACKGROUND: MINORS AND THE LAW

- Who is a Minor in Idaho?
- Anyone under age 18 *unless*:
 - Emancipated (no specific criteria)
 - Married
 - Age is not always determinative (at least for child support purposes)
 - For purposes of abortion, emancipated if married or in active military service

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What Does the Tension Re: Minors' Rights Mean for You in Your Work?

- Complex weave of laws and regulations; minors' rights not always predictable
- Competing interests involving the minor, the minor's parents/guardians, and the interests of the state (public policy interests).
- Compromised privacy rights
- Need for particular clarity re: who is the client / who is the decision maker

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TEENS and SEXUAL ASSAULT: Who Are the Victims?

- Between 44% and 61% of all rapes are committed against victims who are minors.
- Nearly 29% of all forcible rapes occurred when the victim was less than 11 years old. An additional 32% occurred when the V was between the ages of 11 and 17.
- Estimated 1.8 million 12-17 year olds are victims of rape or sexual assault (NIJ-funded National Survey of Adolescents)
- 2/3 to 3/4 of all adolescent sexual assaults are perpetrated by an acquaintance or relative of the adolescent. Sources: *J Adolescent Health*, 1995;17(6):372-375; Falgout JF, Domagalaki LR. *Epidemiology of Adolescent Sexual Assault. Obstetrics & Gynecology* 1994;84(5):867-871

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TEEN VICTIMS

- Teens ages 16 to 19 are 3.5 times more likely than the general population to be victims of rape, attempted, rape, or sexual assault.
- Women who reported they were raped before age 18 were twice as likely to report being raped as an adult. (Tjaden)
- Children and adolescents with disabilities are 1.5x to 2x higher than general pop to be Vs.
- Children and adolescents w/ milder cognitive disabilities are at highest risk. Sobsey D, Doe T. Patterns of sexual abuse and assault. *Sex Disabil.* 1991;9(3):243-260; Ticoll M, Panitch M. Opening the doors: addressing the sexual abuse of women with an intellectual disability. *Can Womens Stud.* 1993;13(4):84-87

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Some Barriers to Successful Prosecution

- Adolescent rape victims presenting to Emergency Medicine Departments = more likely than adult victims to have used alcohol or drugs.
- Adolescent female Vs more likely to delay seeking medical care after rape and sexual assault. (V or Perp used in approx. 40% cases).
- Adolescent victims less likely than adult women to press charges (when given a choice).
- Less likely (than adult V) to sustain serious physical injury. Adolescent rape less likely to involve use of weapons.

Source: Peiperl JF, Domagalski LR. Epidemiology of adolescent sexual assault. *Obstetrics & Gynecology* 1994;84(5):867-871; Heise LL. Reproductive Freedom and Violence Against Women: Where Are The Intersections? *J Law Med Ethics.* 1993;21(2): 206-216

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Impact of SA on Teen Victims

- Depression; Anxiety
- Social withdrawal
- Self-harm (cutting, suicide)
- Skipping school
- Binge drinking / escalated substance abuse
- Unhealthy weight control issues
- Increased sexually risky behaviors
- Compromised sense of right to bodily autonomy

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TIPS: SA Intake with Teen Victims

- Address up front who you represent; informed consent; Victim's privacy rights (and limitations); Confirm that the victim wants your services; Discuss how you will handle parents' request for information
- How does the teen want to communicate with you?
- Use teen's vocabulary
- Discuss status offenses; how minors often withhold information afraid of response
- Be specific - Ask concrete details (e.g., day, time, weather) and specific time markers (holidays, birthday, school events)
- Power of Peers: victims' friends are greatest asset (and maybe greatest liability)
- Teens and technology

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Teens, Consent and Privacy: Some Considerations

- Right to consent does not necessarily equal right to confidentiality
- Consent to medical care
- Consent to counseling
- Discuss at the outset who is the client and what information will and will not be disclosed (and to whom)
 - Parental access to victims' information
 - Mandatory reporting
 - Privileged communications

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Privacy and Mandatory Reporting

- Why do we have mandatory reporting laws?
- Who are the mandatory reporters in Idaho? 16-1605
- To whom must suspected abuse be reported and when?
- What must be reported?
 - What acts?
 - What information must be disclosed in the report?

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WHAT MUST BE REPORTED IN IDAHO?

- (a) Conduct or omission resulting in skin bruising, bleeding, . . . burns, fracture of any bone, subdural hematoma, soft tissue swelling, . . . and such condition is not justifiably explained, or where the history given concerning such condition . . . is at variance with the degree or type of such condition . . . , or the circumstances indicate that such condition . . . may not be the product of an accidental occurrence; or
- (b) Sexual conduct, including rape . . . , prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child."
- Failure to report is a misdemeanor.

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What to Do If You're A VSP Who Must Report?

- Victim Self-Reporting
 - Explain options / Discuss reasons V may want to self-report
 - Provide time to help promote / support self-report
 - Have relationships in place with agency receiving report to facilitate victim-centered services
 - Discuss with victim what information does / does not have to be disclosed
- VSP Reporting
 - Have a policy on point.
 - Does the specific provider report? The program director? Or a designee?
 - With whom can the provider consult? (Privileged consultation?)
- Abide by testimonial privileges
 - Attorney-client
 - Clergy-penitent

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VAWA and Victim Privacy

- Confidentiality is a grant condition for every state, tribe or territory receiving VAWA \$.
- Grantees are required to protect the confidentiality and privacy of those receiving services
- Grantees may not disclose *personally identifying information* or *individual information* or reveal individual client information unless:
 - (a) secure informed, written, reasonably time-limited consent *or*
 - (b) release is compelled by statute or court mandate.

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Personally Identifying Information Is:

- Information that is likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including:
 - First and last name; a home or other physical address; contact information (including a postal address, e-mail address, telephone or fax number); social security number, and
 - Any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of the above information, would serve to identify any individual
 - Must look at facts of each individual case.
- If information must be released provider shall:
 - Make reasonable attempts to notify victim
 - Take steps necessary to protect the privacy and safety of the persons affected by the release of information

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HIPAA, VOCA and FVPSA Require Confidentiality Too!

- A 'written, time-limited release' must be signed by the client or an appropriate representative (for example, a non-abusive parent can sign for a minor, or a non-abusive guardian can sign for a person with an adjudicated cognitive disability). The release must be limited in time as appropriate to meet the client's individual needs. The time limit must be as short as possible to meet the client's needs, and should be limited to a few hours or a few days as appropriate. . . . The release should be limited to the specific service provider or individual with whom the victim wants information to be shared. The release must also be limited in scope to the specific issues at hand.
- While reports of child abuse and emergency CPS calls may be made in compliance with state mandatory reporting laws, information that goes beyond the information statutorily required to be reported (such as lists of current or former clients or information about clients with open CPS cases) cannot be shared. FVPSA grantees may not provide information to CPS (beyond what is required by statute) without a written, time-limited release signed by the client in question. This should only be done in specific circumstances and at the behest of the client.
- A program cannot require a survivor to provide a release of information in order to receive services. Releases of information should be client-initiated to enhance services provided to the survivor and not simply to ease administration and case-management or for statewide data collection. Source: FVPSA Q&A

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TIPS ON PRIVACY ISSUES

- Address school gossip concerns
 - Anti-bullying laws, regulations or policies
 - Title IX
 - FERPA
- Schools' Online Reporting schemes (a word of caution)
- Send letter to record holders (VRLC has sample)
- Review V's and Offender's networking sites, etc.
- Initials instead of V's name
- Ask that court allow V to testify in chambers or have courtroom cleared
- Records reviewed in camera
- Seal the court record during and at close of case



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Teens and Medical Care

- Consent:
 - "A minor 14 or older who may have come into contact with any infectious, contagious, or communicable disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law, or regulation adopted pursuant to law, to be reported to the local health officer.
 - The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents or legal guardian shall not be liable for payment for any care rendered pursuant to this section." Idaho Code § 39-3801
- Confidentiality: Teen can get certain confidential health care from a Title X clinic
- EC is over the counter for 17 and older; under 17 need RX (hospitals in Idaho not required to dispense EC info)
- HIV testing in Idaho is confidential (not anonymous)

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Teens and Counseling

- Consent
- Capacity to contract
- Confidentiality rights (consider mandatory reporting obligations); VAWA; FVPSA, VOCA; HIPAA
- Use of written retainer re: privacy rights
- Privileged communications

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JANE

Jane is a high school freshman. Last month she told her parents that she and a friend were going out for ice cream and to the movies. Instead, they went to a party at the home of the student council president. Jane drank several beers; her classmate Tom (the Student Council president) filled up her glasses for her at the keg. Jane began to feel woozy and very dizzy. Tom reassured her "everything would be okay." Several hours later, Jane woke up in a guest bedroom at the house. She was naked and sore.

At school the following Monday, classmates taunted her about having had sex with "the whole student council." Jane finally told a teacher what had happened but nothing happened and the harassment continues - verbally, on Facebook, and at after-school events. Jane is afraid to tell her mother (or the police) about the assault. Her grades have plummeted and she is likely to fail several classes. Jane is about to quit school.

What can you do? What legal issues do you spot?

Education

- Often see slip in victim's grades, school attendance, activities, etc.
- Gossip can be vicious
- School response is often to offer to remove the victim'
- May sanction victim for actual or alleged conduct
- School administrators may be unaware of a victim's legal rights
- Procedures and processes re: school disciplinary hearings vary widely



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What Can You Do re: School?

- What Does the Victim Want?
 - Class or school change
 - Course Incomplete or Drop
 - Additional time for exams, projects, etc.
 - Independent study
 - Home school, tutors, etc.
 - Family relocation
 - Enhanced safety
 - Perp suspension, expulsion (class, school, extra-curricular)
- IDEA ("Emotional Disturbance")- IEP
- Section 504 – FAPE (OCR Complaint)
- Title IX – School must have SH policy, grievance procedure and designated recipient
- No Child Left Behind Act of 2001
 - May request transfer from unsafe school
- Student Handbook
- Safe Schools Act of 1994 – requires equal access to education
- State anti-discrimination laws



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Some Tips for School Advocacy

- Assess whether student eligible for services under IDEA or Section 504
 - Request copy of IEP if one in place
 - Determine whether to request if none exists
 - (If offender is on IEP consider whether to request Interim Alternative Education Setting – 45 day max)
- School may not suspend its own investigation pending outcome in criminal case (schools have been found to have violated Title IX when they suspended their investigation after a complaint was filed with the police or decided to wait until the end of a police investigation to conduct a school investigation).
- If defendant has right to counsel than victim must be afforded same right.
- Victim has right to know outcome of the hearing. Victim cannot be required to keep outcome confidential.
- If student is over 18 but parent's dependent, parent has right to student's otherwise private records under FERPA.

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Safety Planning With Teens

- Discuss offender M.O. (vulnerable, accessible and perceived to lack credibility; pre-meditated, use of alcohol or drugs, likelihood to reoffend)
- How to enlist peer support
- Options re: Safety and Protection orders
- Online privacy
 - Older teens share more personal info online than younger teens
 - Most teens with profiles believe motivated person will find them
 - Scope of information is far-reaching and enduring

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Minors and Employment

- Consider potential legal rights and/or remedies that are:
 - Age-specific (because victim is a minor)
 - SA specific
 - Crime victim-specific
 - Employer based (manual; union)
- Consider general workplace accommodations (leave, flex schedule, transfers, union advocacy, etc.)



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Minors, Non-citizens and Immigration Considerations

- T and U visa remedies extend to minors (as do asylum and refugee protections)
- Education-based visa considerations
- Legal presence in the U.S.
 - Student --- Parent -- Perpetrator
- May need help gathering documents



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Teens & Housing Considerations

- Enforceability of lease or other housing K if teen lives on own
- Runaway law
- Interference with Custodial Relations
- Housing transfers (public housing; dorms)
- Sheltering teen victim in DV shelter
- Group homes and other placement issues for dependent or delinquent victims

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Financial Considerations

- Crime Victim Compensation – Some considerations
 - Privacy / Parental consent
 - 72 hour reporting or documentation of good cause
 - Full cooperation with investigation and prosecution
 - Victim misconduct as cause or contributing factor = preclusion
 - Must file within 1 year
 - Payer of last resort
- Financial remedies via CPO
- If perp is minor, consider whether parents financially liable for any of the victims' expenses
- Statutes of limitation for tort cases may be extended based on age / discovery of harm
- School expenses, tuition refunds, etc.

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Advocating for Victims in a Criminal Case

- Crime victims' rights – Art I, sec. 22 and T. 19, ch. 53
 - Accrues to family member on behalf of child
 - Must affirmatively request in writing
- Rights (in adult and in juvenile -if would be felony- cases) include:
 - Treated fairly with dignity, respect and privacy
 - Notice of trial, appellate and parole proceedings
 - Information (if requested) re: def's sentence, incarceration or release
 - Opportunity to communicate with the prosecution; be advised of any proposed plea agreement before it's made
 - Refuse defense interview or contact - unless mandated by the court
 - Impact statement in PSI and read report before sentencing (confidential)
 - Notice of defendant's release
 - Speedy return of property
- Privacy enforcement!



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SELECT RESOURCES

- Victim Rights Law Center National Manual (Beyond the Criminal Justice System) at www.victimrights.org; Teen chapter forthcoming
- *AG Blumenthal Opinion Interpreting Mandated Reporter Statute, Sept. 30, 2002*
- Center for Adolescent Health & the Law (monograph; overview of national health care laws for minors) www.CAHL.org
- "Revealing Confidential Information to Parents of A Juvenile Client," Conn. Lawyer, October 2004 (p.8)
- Levesque, Roger J.R., "Dating Violence, Adolescents, and the Law" Virginia Journal of Social Policy and the Law, Winter 1997
- National Center for Youth Law; www.youthlaw.org and www.teenhealthrights.org
- NYCLU Reproductive Rights Project Memo, "Minors Who Can Give Informed Consent Have the Right to Consent to Confidential Sexual Offense Services," at <http://www.nyclu.org/finalrapeccisismemo.pdf>
- Care of the Adolescent Sexual Assault Victim, American Academy of Pediatrics, **Miriam Kaufman, MD, and the Committee on Adolescence**, *Pediatrics* 2006;122:462-470
- Informed Consent, Parental Permission, and Assent in Pediatric Practice, *PEDIATRICS* Vol. 95 No. 2, February 1995

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