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**SPECIAL REPORT**

## Can Statutory Rape Laws Be Effective in Preventing Adolescent Pregnancy?

By Patricia Donovan

Recent studies indicate that at least half of all babies born to minor women are fathered by adult men.<sup>1</sup> In addition, there is a widespread perception that these young mothers account for the large increase in welfare caseloads over the last 25 years. As a result, a growing number of policymakers are embracing the notion that adolescent pregnancy rates can be lowered and welfare costs reduced if states more rigorously enforce statutory rape laws prohibiting sexual intercourse between adults and minors.

In the last year, several states have taken steps to punish men who violate these laws. Meanwhile, the new federal welfare law urges that "states and local jurisdictions...aggressively enforce statutory rape laws" and requires state welfare plans to outline an education and training program for law enforcement officials, counselors and educators that focuses on "the problem of statutory rape." It also directs the attorney general to implement a program to study the connection between statutory rape and adolescent pregnancy, with particular attention to "predatory older men."<sup>2</sup>

Concerns about statutory rape are particularly acute in regard to the youngest adolescents. Although relatively small proportions of 13-14-year-olds have had intercourse,\* those who become sexually active at an early age are especially likely to have experienced coercive sex: Seventy-four percent of women who had intercourse before age 14 and 60% of those who had sex before age 15 report having had a forced sexual experience.<sup>3</sup> As policymakers and the public have become increasingly aware that the sexual partners of minor adolescent women are often not adolescents themselves but men 3-6 years older,<sup>4</sup> concern has grown that protective measures, in the form of increasing enforcement of statutory rape laws, are necessary to guard these young women from abuse and exploitation.

The new focus on statutory rape laws, which have been on the books in every state for decades but have been largely ignored, has prompted public debate over the effectiveness of this approach as a potential remedy for the ongoing problem of adolescent pregnancy and childbearing. Advocates of tougher enforcement assert that

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adult men who "prey" on minor women will avoid these involvements if they believe that prosecution and severe punishment will follow violation of the law. The result, these advocates predict, will be fewer adolescent pregnancies and births, and, therefore, lower state and federal expenditures for welfare and health care benefits.

Most experts, however, do not believe that greater enforcement of statutory rape laws can significantly reduce adolescent pregnancy and birth rates. As DePaul University associate law professor Michelle Oberman observes, statutory rape laws are probably necessary because "minor girls are...uniquely vulnerable to coercion and exploitation in their sexual decisionmaking."<sup>5</sup> At the same time, she notes, "drawing a connection between enforcing these laws and lowering adolescent pregnancy rates flies in the face of everything we know about why girls get pregnant and why they choose to continue their pregnancies. The problem is much more complicated than simply older men preying on younger women."<sup>6</sup> As Oberman and others observe, adolescent childbearing is the result of an intricate web of factors, including limited opportunity, entrenched poverty, low self-esteem and many other issues that statutory rape laws do not address.

Interviews conducted with law enforcement officials, reproductive health care providers, women's rights activists and policy analysts in the summer and fall of 1996 found advocates of tougher enforcement of statutory rape laws suggesting that such an approach is a worthwhile strategy to consider, even if it turns out to have little or no effect on adolescent pregnancy and birth rates. Others warned that a concerted effort to prosecute statutory rape cases could in fact have an adverse impact. Many providers, for example, cautioned that such efforts could discourage some teenagers from obtaining reproductive health care, for fear that disclosing information about their partners could lead to a statutory rape charge and the man's incarceration. Moreover, statutory rape prosecutions could jeopardize the support that young mothers receive from their partners, and could make it less likely that these men would develop relationships with their children.

## BACKGROUND

Statutory rape laws are based on the premise that until a person reaches a certain age, that individual is legally incapable of consenting to sexual intercourse. Statutory rape was codified into English law more than 700 years ago, when it became illegal "to ravish," with or without her consent, a "maiden" under the age of 12. In 1576, the age of consent was lowered to 10.<sup>7</sup>

Statutory rape laws became part of the American legal system through English common law. As in England, early lawmakers in this country adopted 10 as the age of consent. However, during the 19th century, states gradually raised the age of consent, in some cases to 21.<sup>8</sup> Today, the age of consent ranges from 14 to 18 years of age; in more than half of the states, the age of consent is 16 (see Table 1).

**Table 1. Age of consent and statutory provisions prohibiting sexual relationships between minors and adults, as of June 1996, by state**

State	Age	Provisions*
Ala.	16	Capital offense for male $\geq 16$ to have intercourse with female $< 12$ ; lesser offense if victim is aged 12-15 and actor is $\geq 16$ and two years older than victim.

Alaska	18	First-degree sexual abuse of a minor if victim is <13 and actor is >=16; second degree if victim is aged 13-15 and actor is >=16 and at least three years older than victim.
Ariz.	18	Felony to knowingly engage in sexual conduct with a minor <15; lesser felony if minor is >=15.
Ark.	18	Rape if actor has intercourse or engages in deviate sexual activity with victim <14. First-degree carnal knowledge if actor <18 engages in sexual activity with victim <14; third degree if actor is >=20 and victim is <16.
Calif.	18	Illegal to have intercourse with minor (not a spouse) <18. If actor is not more than three years older than victim, charge is a misdemeanor; harshest penalty for actor >21 when victim is <16.
Colo.	18	Second-degree sexual assault if victim is <15 and actor is at least four years older; third degree if perpetrator is >=18 and victim is <18.
Conn.	16	First-degree sexual assault if actor has intercourse with victim <13 and actor is more than two years older than victim; second degree if victim is aged 13-15 and actor is more than two years older than victim.
Del.	16	Second-degree unlawful sexual contact if victim is <16. First-degree unlawful intercourse if victim <16 suffers serious physical injury or actor used deadly weapon; second degree if intercourse causes physical injury; third degree if intercourse occurs.
D.C.	16	First-degree child sexual abuse if actor engages in sexual act with victim <16 who is at least four years younger than actor; second degree if actor has sexual contact with such victim.
Fla.	18	Capital felony if actor >=18 commits sexual battery or causes injury while attempting to commit sexual battery against person <12; life felony if actor is <18; first-degree sexual battery if victim is aged 12-17. Third-degree child abuse if person >=21 impregnates a child <16. Unlawful sexual activity if person >=24 has intercourse with victim aged 16-17.
Ga.	16 †	Statutory rape to have intercourse with someone <16. Misdemeanor if victim is aged 14-15 and actor ¾ three years older.
Hawaii	14	First-degree sexual assault if actor knowingly has sex with victim <14; third degree if sexual contact is with victim <14.
Idaho	18	Rape is intercourse with victim <18.
Ill.	18	Predatory criminal sexual assault if actor >=17 has intercourse with victim <13. Aggravated criminal sexual assault if actor is <17 and victim is <9 or aged 9-12 and actor uses force. Aggravated criminal sexual abuse is sexual conduct with victim aged 13-16 and actor at least five years older. Criminal sexual abuse if actor is <17 and victim is aged 9-16.
Ind.	16	Child molestation if actor has intercourse or engages in deviate sexual conduct with child <14.
Iowa	16	Second-degree sexual abuse if victim is <12; third degree if victim is aged 12-13 or 14-15 and actor >=five years older.
Kans.	16	Rape is intercourse with person <14.
Ky.	16	First-degree sexual abuse if actor has sexual contact with victim <12; second degree if victim is <14.
La.	17	Aggravated rape if actor has intercourse with victim <12. Carnal knowledge of juvenile if actor >17 has intercourse with consent of victim aged 12-16 and is more than two years older.
Maine	16	Gross sexual assault if actor engages in sexual act with victim <14. Sexual abuse of minor if victim is aged 14-15 and actor is >=19 and five years older than victim.
Md.	16	Second-degree sexual offense if actor engages in sexual act with victim ¾14 and actor is at least four years older; third degree if actor is >=21 and victim is aged 14-15; fourth degree if actor is four or more years older than minor aged 14-15.
Mass.	16	Unlawful sexual intercourse if victim is <16.

Mich.	16	First-degree criminal sexual conduct to have intercourse with victim <13; third degree if victim is <16.
Minn.	16	First-degree criminal sexual conduct to have intercourse with victim <13 if actor is more than 36 months older; third degree if victim is aged 13-15 and actor is more than 24 months older.
Miss.	18	Illegal for actor >=18 to have carnal knowledge of child <14; possible sentence includes death or life imprisonment (lesser sentence for actors aged 13-17). Carnal knowledge of unmarried person aged 14-17 of previously chaste character is illegal if actor is older than victim.
Mo.	17	First-degree statutory rape if actor has intercourse with person <14; second degree if actor is >=21 and victim is <17.
Mont.	16	Sexual assault if victim is <16 and actor is three or more years older.
Nebr.	16	First-degree sexual assault if actor >=19 has intercourse with person <16. Sexual assault of child if actor >=19 engages in sexual contact with victim $\frac{3}{4}$ 14.
Nev.	16	Statutory sexual seduction if actor >=18 has intercourse with person <16; felony if actor >21.
N.H.	16	Aggravated felonious assault if actor has intercourse with victim <13. Felonious assault if actor has sexual contact with victim <13 or intercourse with victim aged 13-15.
N.J.	16	First-degree sexual assault if actor has intercourse with victim <13; second degree if sexual contact with victim <13 and actor is four or more years older or intercourse with victim aged 13-15 and actor is four or more years older.
N.M.	17	First-degree criminal sexual penetration to have intercourse with child <13; third-degree criminal sexual contact if child is <13 or aged 13-16 and actor inflicts injury or uses a deadly weapon.
N.Y.	17	First-degree felony to have intercourse with person <11; second degree if actor is >=18 and victim is <14; third degree if actor is >=21 and victim is <17.
N.C.	16	First-degree rape if actor at least aged 12 and four years older than victim has intercourse with child <13.
N.Dak.	18	Gross sexual imposition if actor engages in sexual act with person <15; misdemeanor if adult engages in sexual act with person aged 15-17.
Ohio	18	First-degree rape if actor engages in sexual conduct with person <13. Corruption of a minor if actor is >=18 and victim is aged 13-15; if actor is less than four years older than victim, the crime is reduced from a felony to a misdemeanor.
Okla.	18	First-degree rape if actor >18 has intercourse with victim <14; second degree if actor (no age stipulated) has intercourse with victim <16.
Ore.	18	First-degree rape if actor has intercourse with victim <12; second degree if victim is <14; third degree if victim is <16.
Penn.	16	Rape if victim is <13. Statutory sexual assault if victim is <16 and actor is at least four years older than victim.
R.I.	16	Third-degree sexual assault if actor >=19 has intercourse with person aged 15. First-degree child molestation sexual assault if actor has intercourse with victim $\frac{3}{4}$ 14; second degree if sexual contact occurs with person 14.
S.C.	15	First-degree criminal sexual conduct if victim is <11; second degree if victim is aged 11-14.
S.Dak.	16	Rape if victim is <10, or aged 10-15 and perpetrator is at least three years older than victim. Felony for person >=16 to knowingly engage in sexual contact with person <16; if actor is less than three years older than the victim, the crime is reduced to a misdemeanor.
Tenn.	18	Rape of child if victim is <13. Statutory rape if victim is aged 13-17 and actor is at least four years older than victim.
		Aggravated sexual assault if actor has intercourse with victim <14.

Tex.	17	Sexual assault if actor intentionally or knowingly penetrates victim <17.
Utah	17	Rape if victim is <14, or if victim is aged 14-16 and actor is more than three years older and "coerces victim to submit."
Vt.	16	Aggravated sexual assault if actor >=18 engages in sexual act with victim <10. Sexual assault if actor engages in sexual act with a person <16.
Va.	16	Rape is intercourse with child <13. Felony to have carnal knowledge of child aged 13-15, but if victim consents and is less than three years younger than the minor who is accused, then crime is a misdemeanor.
Wash.	16	First-degree rape if victim is <12 and defendant is at least 24 months older than victim; second degree if victim is aged 12-13 and defendant is at least 36 months older; third degree if victim is aged 14-15 and defendant is at least 48 months older.
W.Va.	16	First-degree sexual assault if actor >=14 engages in sexual "intrusion" with victim $\frac{3}{4}$ 11; third degree if victim is <16 and actor is at least four years older.
Wis.	18	First-degree sexual assault if actor engages in sexual contact or intercourse with person <13; second degree if victim is <16.
Wyo.	16	Second-degree sexual assault if victim is <12 and actor is at least four years older; third degree if victim is <16 and actor is at least four years older.
*Does not include statutory provisions that relate to cases of incest, or those in which the perpetrator is in a position of authority over the victim or lives in the same household as the victim. †The age of consent in Georgia was 14 in June 1996; it was raised to 16 in October 1996.		

Table 1 also shows that while all states prohibit sexual activity between adults and minors in at least some circumstances, the laws vary enormously from state to state. Most statutes do not refer specifically to statutory rape; instead, they use designations such as sexual abuse, sexual assault, unlawful sexual conduct or carnal knowledge to identify prohibited activity. Most states have classifications and degrees of criminal behavior based on the age of the victim and the age difference between the victim and the "perpetrator."

Until recently, statutory rape laws applied exclusively to females, reflecting the long-held view that only girls and young women were so vulnerable as to warrant special protection. Today, however, most laws are gender neutral. Statutory rape laws were originally intended to protect the chastity of young women, and even today, many states allow defendants to argue that a minor who is already sexually experienced does not merit the protection of statutory rape laws. A few states also permit a defendant to claim that he or she mistakenly believed that the minor was older than was actually the case.<sup>9</sup>

Statutory rape law is an area in which "the law on the books...differs markedly from the law in action."<sup>10</sup> For example, data from the period 1975-1978 (gathered for a case argued before the Supreme Court) indicate that, on average, only 413 men were arrested annually for statutory rape in California, even though 50,000 pregnancies occurred among underage women in 1976 alone.<sup>11</sup>

A major reason for the dearth of cases is that statutory rape is difficult to prosecute. The young women involved are often unreliable, hostile witnesses who change or deny their story on the witness stand. "They don't want to go into court and talk about sex," observes Kathleen Sylvester, vice president of the Progressive Policy Institute,<sup>12</sup> which is cosponsoring with the American Bar Association a major study of states'

enforcement of statutory rape laws.

## A NEW APPROACH

California has begun a concerted effort to use its statutory rape laws as a means of reducing pregnancies and births among minors. The attempt was prompted by recent research indicating that two-thirds of babies born to school-aged mothers in the state were fathered by adult men, who, on average, were more than four years older than their adolescent partners.<sup>13</sup>

"One of the most disturbing things about [the] exploding [rate of] teen pregnancy is that so many of the fathers are...men, 26 and 28 years old, having sex with 14-year-old girls," declared California Gov. Pete Wilson. "We've got to enforce statutory rape laws."<sup>14</sup>

In fall 1995, Governor Wilson announced a plan allocating \$2.4 million of the state's adolescent pregnancy prevention funds to support prosecution of statutory rape cases. The plan, known as the Statutory Rape Vertical Prosecution Program, provides funding to hire additional personnel to work exclusively on statutory rape cases and allows the same prosecutor and investigator to remain on a case from beginning to end. According to Governor Wilson, vertical prosecution leads to higher conviction rates by fostering cooperation from victims and witnesses (who get to know the prosecutors) and permitting close communication between attorneys and law enforcement officials.<sup>15</sup> The Governor predicted that "the increased ability to more aggressively prosecute statutory rape offenders will send a loud message that there will be serious consequences for adult men who impregnate minors, thereby creating a significant deterrent effect."<sup>16</sup>

Initially, the 16 California counties with the highest rates of adolescent pregnancy involving adult men each received \$150,000 to hire new staff. Early in 1996, however, the governor proposed a \$6 million expansion of the initiative—bringing the total allocated to \$8.4 million—to fund the state's remaining counties.<sup>17</sup>

In addition to increased criminal prosecution, statutory rape offenders in California also face civil penalties under legislation enacted in September 1996. The "Teenage Pregnancy Prevention Act of 1995" provides for liabilities ranging from \$2,000-\$25,000, depending on the difference in the partners' ages. The statute claims that "illicit sexual activity between adult males and teenage...girls" has resulted in the state having the country's highest adolescent pregnancy and birth rates and spending billions of dollars annually to provide welfare and health care benefits to families headed by adolescents.<sup>18</sup>

Several other states have also moved to identify and punish "male predators," the term often used by politicians and the media to describe adult men who have sex with minors. Delaware, for example, enacted the "Sexual Predator Act of 1996," which doubles the penalty for adults convicted of having sex with adolescents who are 10 or more years younger than themselves and increases the sentence for adults who have intercourse with minors younger than 14. "We will be investigating and prosecuting these abuse cases to the fullest extent possible," declared Gov. Thomas Carper.<sup>19</sup>

Delaware has also begun stationing state police in high schools to identify students who



have become involved with adult men. "If we are committed to ensuring that our welfare reform and teen pregnancy prevention efforts are successful, we must recognize that older men frequently prey on young, vulnerable girls," the governor said. "Those officers have strong ties to the students and to the community, making them valuable allies in the effort to identify and investigate cases where girls are being victimized by adult men."<sup>20</sup>

Meanwhile, Georgia raised its age of consent from 14 to 16 and increased to 10 years the minimum prison sentence for men aged 21 and older convicted of statutory rape. Florida voted in 1996 to make impregnation of a minor younger than age 16 by a male aged 21 or older a reportable form of child abuse. It also toughened its statutory rape law to prohibit sexual intercourse between a person aged 24 or older and a minor aged 16 or 17. (The law formerly stated that it was illegal for anyone to have sex with a person "of previous chaste character" younger than 18.)

"The specific problem we are trying to attack is older men preying on younger girls," explained State Senator Locke Burt, a cosponsor of the measure.<sup>21</sup> Legislators in other states, including Pennsylvania and Texas, are also considering options for discouraging sexual activity between adolescent women and adult men.

## THE DETERRENT EFFECT

Some advocates of more diligent enforcement of statutory rape laws believe that incarceration of men who are convicted of the crime will by itself have an impact on teenage pregnancy and birth rates. "We hope to remove from the streets many of these men, a number of whom are multiple offenders," says Michael Carrington, deputy director of California's Office of Criminal Justice Planning, which administers the vertical prosecution program. "To the degree that they are out of the picture, the potential for adolescent pregnancy will be reduced."<sup>22</sup>

A more common view is that adult men will be deterred from getting involved with minor women in the first place if a state makes clear its intention to vigorously prosecute statutory rape and follows through on that threat with some highly publicized cases. "When we prosecute a few of these guys, we think it'll make a lot of guys think twice," predicts Jim Hollman, deputy district attorney in California's Tulare County.<sup>23</sup>

Garrett Randall, deputy district attorney in San Diego County, who has prosecuted more than two dozen cases and has won 19 convictions as of January 1, 1997, says that it is already happening in his area. "The idea that sex with young females is against the law and the law is being enforced is spreading here," he reports.<sup>24</sup> (Currently, Randall's office is prosecuting only cases in which a pregnancy has occurred and the man is at least six years older than the underage woman.)

The enforcement strategy is only likely to act as a deterrent, however, if the men it targets—and their young partners—know that these relationships are illegal. Indeed, law enforcement officials and health care providers have different perceptions of the public's knowledge of the issue. "Predators know they are not supposed to have sex with someone who is underage," asserts Rick Trunfio, an assistant district attorney in Syracuse, New York.<sup>25</sup>

"The perpetrators know," agrees Carrington of California's Office of Criminal Justice Planning. "They may not know all the legal definitions and precise sentences for different age ranges, but they know they have been able to get away with a crime."<sup>26</sup>

In contrast, reproductive health care providers say that clients and their partners often know little or nothing about statutory rape. "Very few know the rules," reports Margie Fites Siegle, executive director of the Los Angeles Regional Family Planning Council.<sup>27</sup> According to Sylvia Ivy, executive director of The Help Everyone (THE) Clinic in Los Angeles, "Patients don't use terms like statutory rape, or even rape, to describe sexual relationships that to others might sound like rape."<sup>28</sup>

## **MAKING MATTERS WORSE?**

Law enforcement officials appear to see no harm in implementing a strategy whose effectiveness is unknown. According to San Diego prosecutor Randall, lack of evidence that enforcing statutory rape laws will lower adolescent pregnancy rates is "not a good reason not to try it."<sup>29</sup>

In contrast, many reproductive health care providers believe there are good reasons not to pursue this strategy. Such an approach could exacerbate more problems than it would solve; providers are especially worried that publicity about statutory rape prosecutions will discourage pregnant and sexually active adolescents from seeking medical care for fear of having to reveal the identity and age of their partners. "I'm concerned that we'll have a situation in which women will not be comfortable disclosing information to their health care provider," says Siegle.<sup>30</sup>

Providers point out that a young woman might be unlikely to jeopardize a relationship with a man whom she loves or from whom she receives support. Furthermore, they note, an adolescent might fear physical abuse in retribution for reporting a man to authorities. Teenagers are likely "to shut down" in such situations, says Amy Coen, executive director of the Planned Parenthood Association of the Chicago Area. "They won't seek help or, if they do, they won't tell the truth." In either case, Coen adds, "you cut off an avenue of [emotional] support."<sup>31</sup>

Providers also point out that in some cultures it is accepted, even encouraged, for young girls to have relationships with much older men. Indeed, a family may promise their young daughter to a much older man, in part because he will help support the entire family. These cultural practices are "not going to change by throwing people in jail,"<sup>32</sup> observes Catherine Wiley, family planning director of the John Wesley Community Health Institute, a large community-based health center in Los Angeles. California officials acknowledge that cultural sensitivities are an issue in some circumstances, but say that taxpayers should not have to pay for these practices in the form of welfare and health benefits for adolescent mothers and their children fathered by adult men.

No state currently requires reproductive health care providers to gather and report information on the identity and age of their adolescent clients' sexual partners (unless they have reason to suspect a young woman has been abused). Providers say they do not routinely collect such information. "Trust is an important part of our relationship with patients," notes Ivy of THE Clinic. "If adolescents are communicating honestly with us about a partner and it turns out that he is an adult, a requirement to report the



relationship as statutory rape would place clinics in a very awkward position; we would be used by law enforcement officials for goals they've determined to be in the public's interest, but which may not be in the patient's best interest. We want to be law-abiding, but we don't want to turn ourselves into an arm of the law."<sup>33</sup>

Peggy Romberg, executive director of the Texas Family Planning Association, shares Ivy's concerns: "Mandatory reporting would place family planning providers in a terrible bind. We don't want the reputation that we're not a safe haven for counseling and services." On the other hand, she adds, clinics cannot afford to have employees arrested for failure to report suspected cases of statutory rape.<sup>34</sup>

Such concerns are reflected in the Florida legislature's decision to exempt certain providers from a reporting requirement in the state's recently enacted law on child abuse. It requires that "known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older...[be reported] immediately to the appropriate county sheriff's office or other appropriate law enforcement agency." The requirements do not apply, though, to "health care professionals or other persons who provide medical or counseling services to pregnant children when such reporting would interfere with the provision of medical services."<sup>35</sup> One of the bill's sponsors acknowledges that at least some supporters did not want health care professionals "to turn into police officers."<sup>36</sup>

Sponsors of programs designed to encourage men's involvement with their partners and children are also concerned about the consequences of mandatory reporting. Having to identify program participants who are adult men known to be involved with underage mothers would hamper their ability to enlist men into their programs. "There is a lot of concern about being put in a situation of having to report dads or would-be dads with adolescent partners," reports Jane Boggess, chief of California's office of family planning.<sup>37</sup>

Advocates of more stringent enforcement of statutory rape laws have apparently ignored the philosophical conflict between these laws and existing statutes authorizing minors to consent to various types of reproductive health care, such as contraceptive services, screening and treatment for sexually transmitted diseases (STDs) and prenatal care. In Georgia, for example, where the legislature recently raised the age of consent for sexual intercourse to 16, state law authorizes minors to consent to STD testing and treatment, but some health officials have suggested that a statutory rape investigation be initiated whenever an underage female seeks STD services.

Such a policy, says state epidemiologist Kathleen Toomey, would "not only discourage kids from seeking care, undermining many of our prevention efforts, but it would deter providers from reporting cases, making it even harder for us to obtain reliable data on STDs."<sup>38</sup>

## **THE FATHER'S ROLE**

Supporters of tougher enforcement of statutory rape laws rarely acknowledge that such a policy may jeopardize relationships between adolescent mothers and their partners, and between these men and their children. These advocates frequently portray the men they seek to prosecute as irresponsible and predatory, interested in pursuing relationships with adolescents solely to engage in sex with minors. While this

may accurately describe some individuals, other adult men who father the children of adolescent women play an important role in the lives of their offspring. Professionals who work with pregnant and parenting adolescents report that young mothers often receive crucial support in the form of cash, baby products and household goods from their baby's father.

"Adult [men] impregnating teenage girls is a troublesome phenomenon that is...unacceptable,...but we have to be very careful here," warns Lois Salisbury, executive director of Children Now, an advocacy group in Oakland, California. "We're talking about someone who has a baby to raise, and she needs resources to help raise that baby and she needs a father to help raise that baby. I don't see where it's human logic or nature that would motivate her to send that father to jail."<sup>39</sup>

Coen, of Chicago Planned Parenthood, agrees. "Nobody is talking about the baby. If these young women are going to have these babies, I would like them to have some support in their lives."<sup>40</sup>

Andrew Doniger, director of the Monroe County Health Department in New York (which has put up more than 100 billboards warning men that it is a crime to have sex with women younger than 17), adds that "if we drive a wedge between the father and the mother, it could make things worse for the youngsters."<sup>41</sup>

In fact, the support of these adult men can be so important that welfare case workers in at least one California county have on several occasions recommended—and the courts have agreed—that an underage pregnant adolescent marry her adult partner (including a 13-year-old whose partner was 20). "We do this in those few cases in which it seems best for the girl and the child," explains Larry M. Leaman, director of the Orange County Social Services Agency. These are "cases where we have a man who is standing by the teenage mother, wanting to do the right thing, ready for a family, willing to support it and where the girl's parents, if they are around, also favor the marriage."<sup>42</sup> (The agency's willingness to recommend marriage is highly controversial, and Leaman has ordered a review of the agency's handling of these cases.<sup>43</sup>)

## **ARE RAPE LAWS THE ANSWER?**

The strict enforcement of statutory rape laws is the latest in a series of punitive measures that states have adopted recently in an attempt to force people to change their sexual and reproductive behavior. There has been considerable doubt as to whether other such proposals (e.g., the so-called family cap, which denies additional cash benefits to women who bear children while on welfare) will achieve their stated objectives—lower birthrates among women likely to require public assistance and reduced welfare caseloads and costs. Likewise, there is widespread skepticism as to whether the use of statutory rape laws will have a noticeable effect on adolescent pregnancy and birth rates or on the number of young women who have sexual relationships with adult men.

One has only to look at the statistics from California to understand these doubts. In the first 11 months of the state's vertical prosecution program, 617 statutory rape cases were filed statewide, of which 293 resulted in convictions.<sup>44</sup> (Others are still pending.) While these numbers will surely rise in the wake of the program's recent expansion, the program is almost certain to address only a tiny fraction of the potential cases. In 1993

alone, for example, it is estimated that more than 30,000 underage adolescents in the state gave birth to a baby fathered by an adult man.<sup>45</sup> Even Carrington of the Office of Criminal Justice Planning concedes that the impact of the vertical prosecution program will be "small, given the resources applied, compared with the gravity of the problem."<sup>46</sup>

Michael Males, a University of California researcher, documented the extent of adult male involvement in births among California adolescents. He and other observers believe that the current focus on statutory rape reflects the frustration of politicians searching for "a simple solution" to the continuing problem of adolescent pregnancy and childbearing, rather than concern for the well-being of young adolescents.<sup>47</sup>

"People are so eager to blame one cause so the situation can be fixed," comments Mary Margaret Wilson, who is with the New York Council on Adolescent Pregnancy. "I'm scared people are going to say, 'Aha! This is why there is adolescent pregnancy. If we just get teens to name the perpetrators and their ages, the problem will go away.' People don't want to look at bigger things like poverty and racism."<sup>48</sup>

Indeed, an overwhelming majority of young women who become pregnant and give birth are from poor or low-income families.<sup>49</sup> Most lack access to good schools, face poor prospects for finding jobs and have little chance of marriage. As a result, many see little reason to avoid pregnancy and to postpone childbearing.

Moreover, while public debate over the use of statutory rape laws to prevent adolescent pregnancies has been framed largely in terms of so-called predatory older men who seek out young girls, the data suggest that these relationships account for only a slight fraction of adolescent births. In California, for example, fewer than 3% of all teenage births are to women younger than 15 (median age for this group is approximately 14.5); of these, nearly two-thirds are fathered by men 19 or younger. Among adolescent mothers aged 15-17 whose partner is an adult male, the women's median age is 17.1, while that of their partner is 21.4.<sup>50</sup>

Additionally, providers say that it is not uncommon for adolescent women to pursue adult men. Adult men are more likely than adolescents to have a job, a car and money to spend. The accoutrements that adult men can provide "are an appealing beacon in the dark" for disadvantaged adolescents, observes Wilson.<sup>51</sup> That is not likely to change until young women have access to good schools and jobs and develop a sense that their lives can improve.

"I think politicians have it backwards," concludes Valerie Small Navarro, a lobbyist for the California Civil Liberties Union. "They think you can slap a criminal penalty on the problem and the problem will go away." To reduce adolescent pregnancies, Navarro contends, "they have to be willing to invest time and money in women, not incarcerate men."<sup>52</sup>

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\*Seven percent of adolescent females have had intercourse by age 13, 13% have done so by age 14 and 19% have had intercourse by age 15. (See: AGI tabulations of data from the 1988 National Survey of Family Growth and the Youth Risk Behavior Survey.)