Issues in Statutory Rape Law Enforcement: The Views of District Attorneys in Kansas

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Context: *The 1996 federal welfare reform law calls for the reduction of adolescent pregnancy rates through aggressive enforcement of statutory rape laws at the local and state level. Yet there are few quantitative data on district attorneys' attitudes toward enforcement and related issues.*

Methods: *Anonymous surveys were mailed to all 105 Kansas district attorneys in 1997; 92 surveys were returned. In-depth telephone interviews were conducted with seven of the attorneys.*

Results: *Most of the respondents (74%) favored aggressive enforcement, but just 37% believed the public would support aggressive enforcement. Only 24% believed enforcement would reduce adolescent pregnancy. Fifty-seven percent supported the current legal age of consent in Kansas (16 years). Fifty-three percent thought the law should not specify age differences between the partners. Most (77%) believed the law should protect sexually active minors, and that paternity acknowledgments should be admissible evidence in prosecutions (78%). Only 17% believed that enforcement would discourage adolescents from seeking health care.*

Conclusions: *The potential impact of statutory rape prosecution on reproductive and psychological health should be considered in each case. Educating law enforcement officials about adolescent health care issues and encouraging them to consult with professionals in health and psychological fields may help to minimize the potentially negative effects of enforcement on adolescents' reproductive health.* Family Planning Perspectives, 1998, 30(4):177–181

Statutory rape is a criminal offense generally defined as intercourse with a juvenile younger than the legally specified age of consent. When a person has sex with someone who is younger than the age of consent, legally valid consent cannot be obtained, and that person has committed rape. In the United States, individual state legislatures usually determine the age of consent. As reported by one study in 1997, the age of consent in 28 states was 16 years; in most of the remaining states it was 17 or 18 years, although in one state it was 15 years, and in another, 14 years.[1]

State laws also specify whether an age difference between sex partners is necessary for statutory rape to have occurred. When the age difference is about 2–4 years, prosecution may be unlikely, either because of prosecutorial discretion or because the case does not meet the legal standard of statutory rape. Larger age differences are a target of special concern for both the criminal justice system and the reproductive health community, however. One in five mothers aged 15–17 has a partner who is six or more years older, according to one study on the age of U.S. fathers; this age difference indicates "very different levels of life experience and power, and brings into question issues of pressure and abuse."[2]

Age differences are thought by some to play an important role in teenage pregnancy. The U.S. Congress made the prevention of teenage pregnancies a major objective of the 1996 federal welfare reform law,[3] which recommends that "the states and local jurisdictions should aggressively enforce statutory rape laws" as one way to achieve this end.[4] As a result, states are reconsidering both the content of their statutory rape laws and such laws' enforcement.[5]

Whether the public or the legal community supports this policy is unclear, however. Nor is there consensus on what would be the likely impact of enforcement. The views of legal experts range from the risks of selective enforcement and racial discrimination to the benefits of protecting girls from "depression, disease and pregnancy."[6]

Can aggressive enforcement of statutory rape laws reduce adolescent pregnancy rates? While federal welfare reform policy argues that it can,[7] many recent studies and commentaries[8] either suggest that it cannot or show no consensus on this topic.[9] Some incremental reductions may result from enforcement, but incarcerating men may not substantially lower pregnancy rates. Moreover, enforcing such laws without considering the needs of women, children and fathers may inadvertently damage those whom the law is meant to protect. For example, an 18-year-old male, branded a sex offender after impregnating his 15-year-old girlfriend, may suffer employment discrimination as a result of his criminal status, thereby lowering the financial support available to the child.

Some researchers have argued that targeting "older, predatory males" with statutory rape laws is unlikely to address more than a small share of the adolescent birth rate.[10] Older males, when defined as at least five years older than 15–17-year-old mothers, are responsible for only 21% of births to unmarried women younger than 18.[11] However, because many states specify an age difference of less than five years in defining statutory rape,[12] the proportion of teenage pregnancies resulting from relationships legally classifiable as statutory rape may in fact be greater.

Given the key role of district attorneys in determining which cases to prosecute, their opinions on statutory rape enforcement are an important part of the debate. We report the results of a 1997 opinion survey of Kansas district attorneys on statutory rape laws and on issues pertinent to their enforcement.

Background

Kansas has an adolescent pregnancy problem similar to that of other states, as well as interventions to reduce teenage pregnancy. In 1995, there were 52 births per 1,000 women aged 15–19, compared with 57 per 1,000 nationally.[13] In 1996, there were 4,772 births to women aged 10–19 in Kansas, 75% of which were out-of-wedlock births.[14]

Current teenage pregnancy interventions in Kansas include such services as Title X clinics, teenage pregnancy reduction programs similar to one modelled in South Carolina and teenage pregnancy case management with the objective of promoting health and preventing second teenage pregnancies. In addition, a number of Kansas communities conduct peer

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education programs on pregnancy prevention, using trained peer educators in schools and other public settings.

There are 105 counties in Kansas, most of which elect county attorneys. In the five most densely populated counties, however, the legislature has created a district attorney system.[15] In each of these five urban jurisdictions, the judicial district contains only a single county; hence the district attorney's jurisdiction is also limited to a single county. While there are some differences between the county and district attorneys,[16] for our purposes these differences are minimal, and we refer to both as district attorneys.

Kansas courts have long recognized that decisions about whether to file charges, to engage in plea bargaining or to reduce or dismiss charges are at the discretion of the prosecutor.[17] Other than a few extraordinary exceptions, such as grand jury indictment or legislative restrictions on plea bargaining, the Kansas prosecutor retains unfettered discretion over criminal cases within the county, and thus strongly influences law enforcement priorities. While the title and powers of the district attorney may vary from state to state, the authority granted Kansas district attorneys is typical.[18]

Methods

We constructed a 14-item survey instrument using questions about statutory rape suggested by previous studies, public health professionals and attorneys working in public health, child support and criminal justice. We also circulated drafts of this questionnaire to public health and legal professionals for their comments.

The survey contained questions on the respondents' attitudes toward statutory rape law and its enforcement, as well as the sex and age of the respondents. A Likert scale was used to measure the respondents' agreement with attitudinal statements on statutory rape. Respondents were also asked what the age of consent should be,* and what age difference, if any, should exist between victim and offender.† So that a wider range of information could be obtained, the questionnaire solicited comments in addition to structured responses.

The questionnaire was mailed in May 1997 to all Kansas district attorneys. A preaddressed, stamped return envelope was also enclosed. A cover letter from the executive director of the Kansas District and County Attorneys Association stated that the information was needed for policy and research purposes, and defined statutory rape in Kansas as felony-level sexual intercourse with a child under the age of 16 who was not the spouse of the perpetrator.[19‡]

To improve the response rate, we remailed the same questionnaire to all of the district attorneys one month later. This mailing included a new cover letter written by an assistant attorney general from the Kansas Office of the Attorney General. The letter stated that the survey was anonymous, and requested a response if the first questionnaire had not been answered. Of the 105 district attorneys surveyed, 88% returned questionnaires. The respondents represented areas throughout Kansas, and were predominantly male (81%). Most were younger than 45 (67%). About 1% of the respondents declined to answer the items on sex and age.

The frequency, range and means of district attorneys' attitudes were analyzed using EpiInfo. Because we censused the attorneys—rather than sampling them—confidence intervals were not used. In addition to the survey findings, we also report in this article some of the comments made on returned surveys by a minority of the respondents.

To add further detail, we also conducted qualitative interviews by telephone with seven of the district attorneys. These attorneys were asked to articulate their rationale for statutory rape law enforcement, to characterize their definition of aggressive enforcement and current practices, and to share their perceptions about the consequences of enforcement.

Results

Attitudes Toward Enforcement

Table 1 shows that while 74% of the attorneys either strongly agreed or agreed that statutory rape laws should be aggressively enforced, only 24% responded in this way to the statement that aggressive enforcement of statutory rape laws will reduce teenage pregnancy rates.

None of the district attorneys whom we interviewed suggested that aggressive enforcement would reduce adolescent pregnancy rates. Instead, they focused on the immediate issue of protecting young women from exploitative relationships. All of the interviewees said that they considered statutory rape to be a serious crime, that they had a duty to protect children from harm and that it was a priority to prosecute statutory rape over lesser crimes such as disorderly conduct. The law was seen as necessary to "protect [juveniles] from making choices they are not mature enough to make." The laws should be enforced—"otherwise, you should just strike them off the books." Nevertheless, the decision to prosecute "depends on circumstances."

Consequences of Enforcement

A minority of attorneys anticipated negative unintended effects from enforcement. Seventeen percent agreed or strongly agreed that enforcement will discourage teenagers from obtaining reproductive health care, for fear sexual partners will be prosecuted.

Thirteen percent anticipated that enforcement would decrease the emotional and financial support that young mothers receive from their partners. However, one respondent commented that it is "tough to decrease the nonexistent," indicating a perception that support in these instances is uncommon, regardless of enforcement practices. When asked whether enforcement is likely to increase the establishment of paternity and child support, the district attorneys' responses centered on neutral (33%).

The district attorneys we interviewed mentioned as negative consequences of aggressive enforcement the possibility of breaking up a caring relationship or making felons of 18-year-old males in similar-age relationships. They said they hoped to avoid these outcomes through use of prosecutorial discretion. None mentioned as a potential consequence the possibility that aggressive enforcement would deter teenagers from seeking reproductive health care.

Most of the survey respondents (78%) rejected exempting acknowledgments of paternity from use as evidence in statutory rape prosecutions. Most also agreed or strongly agreed (75%) that law enforcement officials need education and training on the problem of statutory rape. Opinions were split on whether civil penalty actions could be a useful part of statutory rape prevention and control, with 38% agreeing or strongly agreeing, versus 35% disagreeing or strongly disagreeing. A majority of the attorneys (54%) rejected granting health care workers an exemption from child abuse reporting when reporting would interfere with the provision of health services.

*The question wording was as follows: "The age of consent for sexual intercourse should be: A.) 14; B.) 15; C.)16; D.) 17; E.)18; F.) other (please fill in)."

†The question wording was as follows: "Statutory rape laws should specify that the offender be: A.) At least two years older than the victim; B.) At least three years older than the victim; C.) At least four years older than the victim; D.) At least five years older than the victim; E.) At least ___ years older than the victim (please fill in); F.) Age of offender should not be specified in statutory rape law."

‡Technically, Kansas law labels sexual intercourse with a partner aged 14–15 as "aggravated indecent liberties with a child"—not rape. Because both this crime and cases in which the victim is younger than 14 are felonies, however, the difference between them is minimal, both for our purposes and for those of welfare reform and child protection policies.

In the interviews, none of the attorneys indicated that statutory rape enforcement would aid in establishing paternity or in gaining financial support for children. Rather, they stressed their need for evidence of sexual intercourse (including acknowledgment of paternity) as one of the criteria necessary to prosecute a case.

Anticipating Public Opinion

The attorneys' attitudes toward whether the public supports aggressive enforcement varied. Thirty-six percent were neutral, 37% agreed or strongly agreed that the public supported enforcement and 26% disagreed or strongly disagreed that enforcement was the public's preference. Public support was seen as conditional: It could be obtained, some respondents wrote, "with proper education [for the public]"; "if [the] public perceives uniform and neutral enforcement"; and "only when others' children are involved." One respondent specified that the public would support prosecution in a case involving an adult offender and a child victim, but not one in which the offender was 17 years old and the victim 15.

Among the interviewees, there was general agreement that the public would be less likely to support enforcement if the individuals had a caring relationship or if the partners were within 3–5 years of one another in age. One district attorney believed her community would be supportive of aggressive enforcement because of strong feelings about "protecting our children." However, she also believed that the public needed to set guidelines on such enforcement through legislative action.

Two of the attorneys we interviewed mentioned a Wisconsin case in which a prosecutor had been subjected to public criticism for prosecuting the 18-year-old boyfriend of a 15-year-old girl, in what was apparently a supportive relationship. This was viewed as a cautionary tale, exposing the limits of public support for prosecution.

Table 1. Percentage distributions and means of district attorneys' opinions on statutory rape enforcement and related issues, Kansas, 1997 (N=92)

Topic	% strongly agree	% agree	% neutral	% disagree	% strongly disagree	Total	Mean*
Statutory rape laws should be aggressively enforced.†	31.9	41.8	20.9	4.4	1.1	100.0	2.0
Aggressive enforcement of statutory rape laws will reduce teen pregnancy.	9.8	14.1	34.8	29.3	12.0	100.0	3.2
Aggressive enforcement of statutory rape laws will discourage teenagers from obtaining reproductive health care for fear of sexual partners being prosecuted.	3.3	14.1	39.1	38.0	5.4	100.0	3.3
Aggressive enforcement of statutory rape laws will decrease the emotional and financial support young mothers receive from their male partners.†	1.1	12.1	38.5	41.8	6.6	100.0	3.4
Aggressive enforcement of statutory rape laws will increase the ability to establish and enforce paternity and gain financial support for the children.	9.8	26.1	32.6	27.2	4.3	100.0	2.9
Admissions of paternity should be exempted from use as evidence in statutory rape prosecutions.	3.3	6.5	12.0	45.7	32.6	100.0	3.9
Law enforcement officials need education and training on the problem of statutory rape.	29.3	45.7	19.6	5.4	0.0	100.0	2.0
Independent of criminal law or paternity/child support law, a civil penalty action could be useful as part of statutory rape prevention and control.	6.5	31.5	27.2	25.0	9.8	100.0	3.0
Health care workers should be exempt from child abuse reporting requirements when reporting would interfere with provision of health services.	5.4	22.8	17.4	33.7	20.7	100.0	3.4
The public will support aggressive statutory rape law enforcement.†	11.0	26.4	36.3	25.3	1.1	100.0	2.7
Statutory rape laws should specify that a sexually active minor does not merit the protection of statutory rape laws.†	5.5	4.4	13.2	41.8	35.2	100.0	3.9

*Values assigned to responses were: strongly agree=1, agree=2, neutral=3, disagree=4, strongly disagree=5. †Based on 91 responses.

Victim's Age and Sexual Experience

More than half of the attorneys (57%, not shown) supported the current age of consent in Kansas (16); 19% supported an age of consent of 18. Several respondents went beyond objective age standards in their comments. One suggested that the determination of statutory rape be made according to the "maturity of the individual." Another stated, "It's person-specific." A third respondent recommended graduated penalties "determined by ages, with mitigation when the victim is sexually active." Most of the district attorneys (77%) firmly rejected the view that a minor who is already sexually active does not merit the protection of statutory rape laws, however.

In the interviews, the attorneys expressed deference to the legislature's role in determining the age of consent. One interviewee stated, "To protect young children—whether 15, 16, or 12 [years old]—the legislature [has] determined [that] they were not mature enough to make decisions regarding sexual relationships." Two attorneys noted that the law was an educational tool, giving guidance to males and females about age boundaries, and providing incentives—particularly to males—to modify their behavior and avoid sexual relationships with underage women.

The surveyed attorneys were about evenly split on whether statutory rape laws should specify an age difference between offender and victim, with 53% opposed to this idea (not shown). One suggested, "Leave it to the discretion of the prosecutor." Another noted: "I don't believe age differences should be a factor in prosecution; however, they are extremely important at the penalty stage...." The

remaining 47% specified age differences ranging from two years to five years. Two of the attorneys who held this opinion suggested that the law should specify a misdemeanor offense if the age difference was less than 2–3 years.

According to the attorneys we interviewed, age differences between the partners are a major consideration in deciding whether to prosecute. In general, the attorneys said they were less likely to prosecute in cases where the partners were close in age and the young woman was close to age 16. Indeed, when the age difference was less than three years, prosecution was the exception. The district attorneys said they were also less likely to prosecute when the partners had a long-standing, caring relationship or when the parents approved of the relationship. They also noted that less egregious cases were sometimes diverted out of the criminal justice system and into the civil law system for dealing with children in need of protection.

Age differences mattered much less if the victim was mentally disabled, or if there was evidence that the relationship had been forced, according to the interviewed attorneys. In addition, the attorneys said they were more likely to prosecute when there was a larger age difference between partners—such as when a 19–20-year-old associates with a 13–15-year-old, or if they judged the younger partner to be lacking in emotional maturity. Prosecution was also more likely in the absence of a prior romantic relationship between the partners (when a juvenile had been approached on the same day for sexual intercourse only, for example).

While technically, "consent" is not an issue for underage juveniles, as a practical matter the attorneys said they also took this issue into consideration. For example, three of the attorneys noted behavior that might be considered legal among adults, such as furnishing a woman with alcohol before "consent" is obtained, may be seen as exploitative enough to justify a statutory rape charge when a juvenile is involved.

Policies Related to Enforcement

All of the attorneys whom we interviewed said that when they had good evidence, they prosecuted statutory rape as aggressively as they could. Such evidence included having credible witnesses; proof of a sexual relationship, such as the older partner's admission of the relationship, pregnancy and blood tests establishing paternity, or a paternity acknowlegment; and evidence of harm, defined as social and psychological damage, including strained parent-child relationships. Sexually transmitted diseases (STDs) were mentioned by four attorneys, two of whom also cited pregnancy.

Lack of attorneys, personnel or funds were not noted as significant barriers to enforcement by the district attorneys we interviewed. One obstacle to enforcement that they did mention was a couple's right under Kansas law to claim the existence of a common-law marriage between them as a defense to a statutory rape charge. Nevertheless, the attorneys pointed out, the legal concept of marriage can also work in the prosecution's favor, as when an older male partner is already married to another woman, or an older male partner admits that he had not been married to the juvenile involved.

Discussion

The finding that Kansas district attorneys do not believe that aggressive enforcement of statutory rape laws will reduce adolescent pregnancy rates is consistent with results from earlier qualitative studies,[20] including a recent American Bar Association (ABA) study[21] that was based on qualitative interviews with prosecutors from 48 of the largest U.S. cities. In comparison, our study was weighted toward less populated and often rural counties. Both studies, however, show agreement on several key findings.

In keeping with the first recommendation of the ABA study (and welfare reform), three-fourths of the attorneys we surveyed agreed that law enforcement officials need training on the problem of statutory rape. In addition, both our study and the ABA study found the following: that the prosecutors do not see pregnancy reduction as the objective of enforcement, but instead view pregnancy (if present) as physical evidence of the crime and as a factor in deciding whether to prosecute; that the prosecutors believe public support for prosecution is lacking; and that they believe case-by-case discretion is advisable.

Despite their skepticism about the potential impact of enforcement on teenage pregnancy rates, most of the attorneys we surveyed nevertheless believed that the laws should be enforced. Belief in protecting children from a variety of harms and deference to legislative policy on the age of consent seemed to underlie these attitudes.

While statutory rape laws were originally intended to protect the chastity of young women,[22] Kansas district attorneys reject limiting protection only to young women who had not had intercourse prior to the incident in question. This position fits squarely with both the renewed interest in protecting the state from financial claims and the objective of protecting juveniles, their parents and their potential offspring from the harms associated with early childbearing. Since reducing pregnancies, STDs and psychological harm are important objectives,[23] discouraging sexual relationships between adults and juveniles and promoting abstinence should not exclude those juveniles who were already sexually active. Nor are these outcomes any less harmful for those adolescents who have already had a child—particularly given these adolescents' added responsibilities of childrearing.[24]

The majority of these Kansas attorneys support the current age of consent of 16 years. Leaving the age of consent below age 18 decreases the negative consequences of inappropriately criminalizing males and disrupting relationships that have the potential to develop into normal families. However, the Congressional intent of using statutory rape laws to reduce adolescent pregnancy rates will be much less sweeping if 16–17-year-old women are excluded, as these are high-risk years for adolescent pregnancies.[25] Other approaches will be needed if Congress's goal of reducing adolescent pregnancy rates is to be achieved.

Nearly half of the Kansas attorneys surveyed believe that statutory rape laws should specify an age differential between the partners. They also report that the magnitude of the age difference is a major factor in the decision to prosecute: They tend not to prosecute cases in which the partners are close in age. The attorneys believe in slightly narrower age differences (2–4 years) than do members of the public and policymakers, as noted elsewhere (three years or more).[26] Thus, although the district attorneys support aggressive enforcement of statutory rape laws, their interpretation of appropriate enforcement policy is by definition less aggressive than the limits of Kansas criminal law.

About one-third of the attorneys believe that the public would support aggressive enforcement of statutory rape laws. If aggressive enforcement means prosecuting every time juveniles younger than 16 have sexual intercourse, the district attorneys' impression of public support may be correct. However, more research is needed to determine how the public defines aggressive enforcement and to what extent it will support such a policy.

Because district attorneys have discretion to consider the policy implications of prosecution decisions, their views on how these policies are affected by their actions are important. The majority of Kansas district attorneys perceive no negative impact resulting from aggressive statutory rape en-

forcement on other state policies, such as controlling STDs. The attorneys' lack of expressed concern about these issues probably indicates their focus on their immediate mandate of prosecuting crime, rather than on the reproductive health of adolescents, a subject they are less familiar with.

Acknowledgment of paternity and child support enforcement are probably topics about which the attorneys are better informed, however. This suggests that they may have weighed the facts and rated the objective of prosecuting statutory rape cases as the priority. Most likely this attitude is due to the perception that the individuals prosecuted for statutory rape will not provide much child support anyway.

Despite the threat to paternity declarations posed by federal welfare reform's stance on statutory rape enforcement, other federal laws promote the establishment of paternity.[27] Acknowledging paternity is an act of responsibility that helps ensure a child's access to health insurance, family medical history and other legal benefits. In addition, it may increase the probability that the child will have a relationship with his or her father. The decision to use such a document in criminal proceedings should be duly deliberated by all of the stakeholders, including child support officials and children's advocates.

In addition to the potentially negative effect on establishing paternity, there may be other unintended consequences of enforcement, such as the pejorative treatment of rape victims during prosecution, the abrogation of victims' medical privacy and the prosecution of the older partner by parents or government welfare agencies against the victim's wishes. Adults infected with STDs may fear prosecution and omit their young partners from contact tracing, leaving these partners without early treatment. A male victim of statutory rape may be required to pay child support if the offending adult female becomes pregnant.[28] However unlikely some of these outcomes may be, policymakers must contend with these possibilities. For them to do so, ongoing research must be conducted to keep up with the potential impact of new government policies such as welfare reform.

Our study has several limitations. Because only one state was included in the survey and the laws on statutory rape vary from state to state, it could be difficult to generalize our findings to all states. For example, the belief in aggressively enforcing statutory rape laws might be higher in a state where 14 is the age of consent than in one where it is 18. Thus, a national survey may yield more representative results.

Our survey made no distinction between the size of each attorney's district; thus an influential district attorney representing a large urban area would have the same survey impact as his counterpart from the least populated county. However, had the survey included more detailed demographic questions about the attorneys' districts, the longer questionnaire might have yielded a lower response rate. In addition, since more detailed information would have made individual attorneys identifiable, they might have answered less candidly if we had included such questions. Even with the promise of confidentiality and anonymity, answers and comments may have been tempered by discretion.

Finally, while we deemed the risk of duplicate responses from the second anonymous survey mailing to be minimal, we could not completely discount this possibility.

Conclusion

Statutory rape laws affirm that society feels some responsibility to minimize the sexualization of adolescent females. These laws offer some hope of making their coming-of-age safer. At the same time, it seems reasonable to believe, as some of the prosecutors did, that enforcement should occur on a case-by-case basis. While individual instances of prosecution will not change the underlying culture much, it may be possible to achieve incremental decreases in pregnancy rates in areas where enforcement efforts are strong, well-publicized and maintained over long periods of time. In this regard, prosecution of drunk driving and domestic abuse—efforts that have challenged deeply ingrained behaviors and social attitudes—may be instructive.

Nevertheless, as long as many pregnancies are the result of similar age relationships, enforcement of statutory rape laws must be seen as ancillary to the effort to decrease adolescent pregnancy rates. While enforcement may form part of the strategy, we must also focus on achieving a better balance with objectives that may sometimes compete with enforcement: maintaining adolescents' access to health services and ensuring support and paternity determinations for their children.

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