Trends in Teen Sex Are Changing, but Are Minnesota's Romeo and Juliet Laws?

Jana L. Kern
I. INTRODUCTION

Statutory rape laws are in place to protect minors from sexual abuse from either adults or peers. The intent of the legislature in enacting these laws is to protect minors from coercive and involuntary sexual activity. But many teenagers voluntarily engage

† J.D., William Mitchell College of Law, 2011. Ms. Kern is a litigator specializing in representation of medical facilities.


3. Id.
in sexual activity before the legal age of consent. States have reacted to this reality in a variety of ways, many by providing statutory exceptions to protect teens from criminal charges or sex offender registration.

Statutory rape is a tough issue for a legislator to address. There must be a balance between protecting young people and penalizing private adolescent behavior. Recognizing the different ways to approach the issue, including the different ways Minnesota addresses it, helps determine the best way to penalize statutory rape in Minnesota.

II. PURPOSE OF THE LAWS AND THE EXTENT OF PROTECTION

A basic definition of statutory rape is “the carnal knowledge of a person who is deemed underage as proscribed by statute and who is therefore presumed to be incapable of consenting to sexual activity.” Laws forbidding sex with minors and proposed changes to these laws may have more than one purpose. The more specific a policymaker can be in outlining the purpose of a law, the better. Understanding the purposes will further discussion and help pass laws that accurately address what activity Minnesota deems worthy of prosecution.

In an American Bar Association survey of twenty-one states that considered proposed legislation in recent years, state legislators cited several different motivations for reviewing their state’s statutory rape laws. Some of these motivations included:

- General intent to protect minors from sexual intercourse.
- Desire to protect minors below a certain age from predatory, exploitative sexual relationships.
- Prevention and/or reduction of the incidence of teen pregnancy.
- Reduction of the number of young mothers on welfare.
- Responsibility and accountability in sexuality and parenting.

4. Id. at 6.
6. DAVIS & TWOMBLY, supra note 1, at 5.
7. Id.
8. Id.
9. Id.
10. Id.
A question that legislators should ask themselves is whether criminal prosecution furthers the purpose of the law. A proposed change in law is better evaluated with clear purposes defined. Reviewing research, statistical information within the state, and other states’ laws, as well as holding legislative hearings with criminal justice professionals, will aid in the evaluation. This type of evaluation should help legislators determine whether any proposed change in the law will further the purposes.

III. AGE OF CONSENT

“All states have laws that prohibit sexual intercourse with persons under a certain age.” No person can agree to engage in sex until he or she reaches the legal “age of consent.” “A common misconception . . . is that there is a single age at which an individual can legally consent to sexual activity.” Only a small number of states have a single age of consent, ranging from sixteen to eighteen years old. For the other states, the age of consent depends on one or more of the following: age differences between partners, age of the victim, and age of the defendant.

Where an age differential is used, as it is in a number of states, the state code specifies age ranges outside of which parties cannot consent to sex. In some state codes, a “minimum age of the victim” sets a definitive age so that any person below it cannot

11. Id.
12. Id.
13. Id.
14. Id.
15. Id. at 2.
18. Id. In Kentucky, for example, a person is incapable of consent “when he or she is [l]ess than sixteen (16) years old.” Ky. REV. STAT. ANN. § 510.020, subdiv. (3)(a) (West, Westlaw through 2012 Reg. Legis. Sess. and 2012 1st Extraordinary Sess.).
20. Id. For example, in Mississippi statutory rape is committed when (1) any person seventeen years or older has sexual intercourse with a child who is at least fourteen but under sixteen years old and thirty-six or more months younger than the person or (2) a person of any age has sexual intercourse with a child who is under fourteen years old and is twenty-four or more months younger than the person. MISS. CODE ANN. § 97-3-65, subdiv. (1) (West, Westlaw through 2012 Legis. Sess.).
engage in sexual contact, without any consideration of the age of the other individual involved.\(^{21}\) Some states use a “minimum age of defendant,” where youth of a certain age and below cannot be prosecuted for having sex with a minor.\(^{22}\) Looking at these different elements, of which any combination might be used, is necessary to understand the law in a specific state.

A justification often offered for age-of-consent laws is to protect young people from sexual exploitation by adults.\(^{23}\) However, some studies have shown that “the majority of those prosecuted for age of consent violations are in their teens or early twenties.”\(^{24}\) In California, for example, fifty-eight percent of those prosecuted in 1999 were under the age of twenty.\(^{25}\)

In some cases two people who engage in consensual sexual activity and who are under the lawful age of consent will both face criminal prosecution.\(^{26}\) This fact is not surprising where more than seventy percent of the adult population believes that adolescents having sex is “always wrong.”\(^{27}\) Public opinion influences not only parents and authority figures but also the law and how it is

\(^{21}\) GLOSSER ET AL., \textit{supra} note 17, at ES-2. For example, in Missouri a person commits statutory rape in the first degree “if he has sexual intercourse with another person who is less than fourteen years old.” MO. ANN. STAT. § 566.032(1) (West, Westlaw through 2012 2d Reg. Legis. Sess.).

\(^{22}\) GLOSSER ET AL., \textit{supra} note 17, at ES-2. For example, in Missouri a person commits statutory rape in the second degree “if being twenty-one years of age or older, he has sexual intercourse with another person who is less than seventeen years of age.” § 566.034(1). In this case, a twenty-year-old can have sexual contact with a fifteen-year-old who is under the age of consent of seventeen, but a twenty-one-year-old cannot have sexual intercourse with a sixteen-year-old.


\(^{24}\) \textit{Id.} at 316 (citing Rigel Oliveri, Note, \textit{Statutory Rape Law and Enforcement in the Wake of Welfare Reform}, 52 STAN. L. REV. 463, 479 (2000)).

\(^{25}\) \textit{Id.} (citing Oliveri, \textit{supra} note 24).

\(^{26}\) \textit{Id.}

\(^{27}\) SMITH & KERCHER, \textit{supra} note 2, at 6 (citing CAROLYN E. COCCA, \textit{JAILBAIT: THE POLITICS OF STATUTORY RAPE LAWS IN THE UNITED STATES} 31–32 (2004)). This figure relates to the National Opinion Research Center and General Social Survey that has repeated a number of questions regarding attitudes toward sexual behavior. Participants were asked whether it is always wrong, almost always wrong, wrong only sometimes, or not wrong at all if a man and a woman have sexual relations before marriage and are in their early teens, say fourteen to sixteen years old. COCCA, \textit{supra}, at 30–31. The “always wrong” response has consistently received at least sixty-five to seventy percent of the responses over several years. \textit{Id.} at 31–32. “Not wrong at all” responses are usually around three to four percent. \textit{Id.} at 32.
executed.\textsuperscript{28} Still, despite public opinion and any state-mandated age of consent, teenagers today participate in autonomous acts of sexual experimentation. Approximately half of all seventeen-year-olds report that they have engaged in sexual intercourse.\textsuperscript{29} The disconnect between public opinion, the law, and the reality of teen sexuality leaves some teens in jeopardy of being charged with statutory rape and labeled sex offenders.

IV. TYPES OF PROTECTION FOR TEENS FROM STATUTORY RAPE LAWS

Because lawmakers are becoming increasingly aware of teen sexuality and the possible ramifications of being charged with a sex offense, several states have enacted statutes to protect certain sexual activity from prosecution. These states seem to “recognize that sex between two young people is in some way less punishable than sex between a young person and an adult.”\textsuperscript{30} The provisions may impose lighter penalties when both parties are close to or under the age of consent or may decriminalize the activity altogether.\textsuperscript{31}

In general, there are two main types of laws intended to protect young persons in close-in-age relationships from falling under the purview of statutory rape statutes: age-gap provisions and Romeo and Juliet clauses.\textsuperscript{32}

A. Age-Gap Provisions

Many states have age-gap provisions that legalize sexual relations among young people as long as they are within a certain

\begin{itemize}
\item \textsuperscript{28} Smith & Kercher, supra note 2, at 6.
\item \textsuperscript{30} Joanna S. Markman, Community Notification and the Perils of Mandatory Juvenile Sex Offender Registration: The Dangers Faced by Children and Their Families, 38 SETON HALL LEGIS. J. 261, 275 (2008) (citation omitted).
\item \textsuperscript{31} Id. Forty-five states and Washington, D.C. at least mitigate the punishment from a felony to misdemeanor based on the age gap between the two teens. Megan Myers, Technology and Teen Sex: The Need for Legislative Action in Response to “Sexting,” 46 TULSA L. REV. 191, 216 (2010). For example, sexual contact with a child under sixteen is a crime in South Dakota. S.D. CODIFIED LAWS § 22-22-7 (2012) (West, Westlaw through 2012 Legis. Sess.). However, if the actor is less than five years older than the victim and the victim is at least thirteen years old, then the actor is guilty of a misdemeanor rather than a felony. Id.
\item \textsuperscript{32} Smith & Kercher, supra note 2, at 11.
\end{itemize}
age range. If the minor is above a certain age, a crime is committed only if the defendant is a specified number of years older. As of 2012, thirty-one U.S. states have an age-gap provision. Depending on the state, the age gap may be from two to six years older than the minor, but most often it is three or four years.

In Colorado, for example, sexual assault is committed if, at the time of the act, the victim was less than fifteen years of age and the actor was at least four years older than the victim and was not the spouse, or if the victim is at least fifteen but less than seventeen years of age and the actor is at least ten years older than the victim and not the spouse. However, a violation of the former is a felony, whereas the latter is a misdemeanor subject to “extraordinary risk crime” sentencing.

The Model Penal Code’s (MPC) section on statutory rape, which uses an age-gap provision, has not been widely embraced by states. The MPC provides that sexual intercourse constitutes a felony of the third degree if one person is less than sixteen years old and the other is at least four years older. Because many

33. Id. at 10.
34. DAVIS & TWOMBLY, supra note 1, at 3.
35. SMITH & KERCHER, supra note 2, at 11.
36. DAVIS & TWOMBLY, supra note 1, at 7.
38. Id. § 18-3-402(1)(e).
39. Id. § 18-3-402(2)–(3).
40. SMITH & KERCHER, supra note 2, at 17.
41. Id.; see also MODEL PENAL CODE § 213.3. Section 213.3 of the MPC states: Corruption of Minors and Seduction.
(1) Offense Defined. A male who has sexual intercourse with a female not his wife, or any person who engages in deviate sexual intercourse or causes another to engage in deviate sexual intercourse, is guilty of an offense if:
(a) the other person is less than 16 years old and the actor is at least 4 years older than the other person; or
(b) the other person is less than 21 years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or
(c) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or
(d) the other person is a female who is induced to participate by a promise of marriage which the actor does not mean to perform.
(2) Grading. An offense under paragraph (a) of Subsection (1) is a felony of the third degree. Otherwise an offense under this section is a
teenagers’ close-in-age sexual activity violates statutory rape laws but poses little danger to the public to reoffend, many argue that adopting the MPC recommendation would save state resources.\(^{42}\) States’ adoption of the MPC could reduce arbitrary enforcement of statutory rape laws as well as reduce confusion among the public as far as what is and is not punishable.\(^{45}\)

B. Romeo and Juliet Clauses

Another type of protection for similar close-in-age relationships offered in many states is what is often referred to as “Romeo and Juliet Clauses.”\(^{44}\) Romeo and Juliet laws mitigate penalties or exculpate consensual sexual activity between teens when at least one is below the age of consent.\(^{45}\) A majority of states use some type of Romeo and Juliet exception to their statutory rape laws.

Romeo and Juliet clauses are often considered the same as age-gap provisions, and the terms are often used interchangeably.\(^{47}\) Still, some scholars believe there are slight differences.\(^{48}\) One aspect of these laws that makes them distinguishable is that any age-gap provision can be considered a Romeo and Juliet clause, whereas a Romeo and Juliet clause need not include an age-gap provision. For example, a state may not have a law decriminalizing sexual activity within a certain age span but instead may provide an affirmative defense or allow other mitigating factors to reduce punishment.

Texas, for example, has no age-gap provision that reduces the level of offense or decriminalizes certain close-in-age activity.\(^{49}\) The Texas code states that it is sexual assault to have sexual relations with a child, meaning a person younger than seventeen years of age.\(^{50}\) However, it is an affirmative defense to prosecution if (1) the

---

\(^{42}\) Smith & Kercher, supra note 2, at 17.

\(^{43}\) Id. at 13.

\(^{44}\) Id. at 11.

\(^{45}\) Myers, supra note 31, at 216 (citing Michael J. Higdon, Queer Teens and Legislative Bullies: The Cruel and Invidious Discrimination Behind Heterosexist Statutory Rape Laws, 42 U.C. Davis L. Rev. 195, 225–26 (2008)).

\(^{46}\) Id.

\(^{47}\) Smith & Kercher, supra note 2, at 11.

\(^{48}\) Id.

\(^{49}\) Id.

\(^{50}\) Tex. Penal Code Ann. § 22.011(a)(2), (c)(1) (West, Westlaw through
actor was not more than three years older than the victim at the
time of the offense, was not required to register for life as a sex
offender, and did not have a reportable conviction or adjudication
for a similar offense; (2) the victim was fourteen years of age or
older; and (3) neither the actor nor victim would commit bigamy
by marrying each other.51 So Texas’s Romeo and Juliet clause does
not provide positive law but rather gives the defendant an
affirmative defense to prosecution.52

A concern with Romeo and Juliet clauses is the amount of
judicial discretion in prosecution and sentencing.53 Because of the
large number of potential cases, many jurisdictions are thought to
“pick and choose” which cases to pursue.54 Some states experience
a gender bias in prosecution, especially where both minors are
under the age of consent.55 In these cases, it is more common for
only the male to be prosecuted, although both minors are
considered both victims and offenders.56

Critics have also cited disproportionate convictions of minority
teenage girls.57 The prosecution of men who have impregnated teenagers
also causes some men to refuse to pay child support, thereby
burdening the state.58 This not only happens when the defendant
is sent to prison but also when offenders are subject to sex offender
registration and have restrictions on employment and housing.59

C. Minority State Law

Many states that do not have an age-gap provision or Romeo
and Juliet clause that legalizes certain close-in-age sexual activity
still make those types of cases a lower level of crime.60 Still, it is a
criminal act.61 If this is the case, that state is not considered to have

51. § 22.011(e); SMITH & KERCHER, supra note 2, at 11.
52. SMITH & KERCHER, supra note 2, at 11.
53. Id.
54. Id.
55. Id. at 13.
56. Id.
57. Id. For example, thirty-two of the thirty-five people on the California
Alliance for Statutory Rape Enforcement’s most-wanted list in 2003 were men, and
all thirty-two of these men were either Hispanic or black. Sutherland, supra note
23, at 322–23.
58. SMITH & KERCHER, supra note 2, at 13.
59. Id.
60. Id. at 11.
61. Id.
an age-gap provision. Most states do attempt to protect close-in-age offenders, with or without a law intended to do so.

A small minority of states has no exception to statutory rape laws. Teens face severe adult penalties if convicted, including incarceration and registration as a sex offender. In Massachusetts, it is unlawful to have sexual intercourse with a child less than sixteen years of age. Still, recent studies show that over forty-six percent of Massachusetts teens are having sex.

While Romeo and Juliet statutes have been proposed in Massachusetts, they have failed for several reasons. The issue is difficult to address as a legislator, where there is discomfort with teen sex and a potential of looking soft on crime. District attorneys are another source of opposition. Currently the strict liability standard provides them with an easy burden of proof, and leaving the law untouched retains their discretion to decide when to prosecute.

In the absence of a law protecting young close-in-age sexual relationships, Massachusetts is not without criticism. Many argue that consensual teen sex is a private matter and that adult punitive sanctions could constitute a violation of the Eighth Amendment. Others argue that state resources are wasted in prosecuting young close-in-age violations and should instead be used in prosecuting violent offenders.

The argument that the Massachusetts statute discourages teen sex and pregnancy is countered by the fact that research does not

62. Id.
63. Id.
65. Id.
66. MASS. GEN. LAWS ANN. ch. 265, § 23 (West, Westlaw through ch. 3 of the 2013 1st Annual Sess.) (“Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age, shall be punished by imprisonment in the state prison for life or for any term of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.”).
67. Eden, supra note 64, at 9.
68. Id. at 10.
69. Id.
70. Id.
71. Id.
72. Id.
73. Id.
support this claim. Some even believe that teens are less likely to seek help from adults on the issue of teen sex, since current law requires mandated reporters to report consensual acts among peers. Discouraging minors from receiving medical and mental health care treatment is often cited as a drawback to legislation requiring mandatory reporting of statutory rape.

V. STATUTORY RAPE LAWS IN MINNESOTA

Minnesota has a multilevel statutory scheme with different penalties dependent on the sexual act and the age of the minor or defendant. Each degree covers a variety of behavior, with the most severe penalties for first-degree crimes and the least severe penalties for fourth-degree. In general, first- and third-degree crimes involve sexual penetration; second- and fourth-degree crimes involve sexual contact without penetration. Consent by the victim is not a defense.

A. Minnesota’s Age-Gap Provisions

In Minnesota, the criminal sexual conduct statutes provide age-gap provisions legalizing certain close-in-age sexual activity or lowering the degree of the felony. A person who engages in sexual penetration with a complainant who is under thirteen years of age and who is more than thirty-six months older than the complainant is guilty of criminal sexual conduct in the first degree. A person

---

74. Id.
75. Id.
76. Davis & Twombly, supra note 1, at 10.
78. Id. Fifth-degree criminal sexual conduct does not include any crimes related to statutory rape. See Minn. Stat. § 609.3451 (2012).
79. Diebel, supra note 77.
81. This section also applies to certain sexual contact with a person under thirteen years of age as defined in section 609.341, subdivision 11, paragraph (c): “The intentional touching of the complainant’s bare genitals or anal opening by the actor’s bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant’s bare genitals or anal opening of the actor’s or another’s bare genitals or anal opening with sexual or aggressive intent.” Id. § 609.341, subdiv. 11 (c).
82. Id. § 609.342, subdiv. 1 (a).
who engages in sexual contact with a complainant who is under thirteen years old and is more than thirty-six months older is guilty of second-degree criminal sexual conduct. 83

A person who engages in sexual penetration with a complainant under thirteen years old and is no more than thirty-six months older is guilty of third-degree criminal sexual conduct. 84

The same is true where the victim is at least thirteen but younger than sixteen years old and the actor is more than twenty-four months older. 85 But a person who engages in sexual contact with a complainant under thirteen years old and who is no more than thirty-six months older is guilty of fourth-degree criminal sexual conduct. 86 It is unclear from the criminal sexual conduct statutes whether this twelve-month discrepancy based on the type of sexual act is intentional or a potential oversight. All of these crimes are felonies. 87

B. Position of Authority and Significant Relationship Crimes

Minnesota has other provisions in place to protect young people from being exploited by others with influence over them. There are provisions that protect young people from being taken advantage of by those in a position of authority, 88 as well as those with a significant relationship 89 with the complainant.

83. Id. § 609.343, subdiv. 1(a).
84. Id. § 609.344, subdiv. 1(a).
85. Id. § 609.344, subdiv. 1(b). If the actor is no more than 120 months older than the complainant, then the reasonable belief that the complainant is sixteen years of age or older is an affirmative defense. Id. If the actor in such case is no more than forty-eight months but more than twenty-four months older, the actor may be sentenced to imprisonment for no more than five years. Id.
86. Id. § 609.345, subdiv. 1(a).
87. See id. §§ 609.342, subdiv. 2(a); 343, subdiv. 2(a); 344, subdiv. 2; 345, subdiv. 2.
88. Id. § 609.341, subdiv. 10.
89. Id. § 609.341, subdiv. 15.

"Position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Id.

"Significant relationship" means a situation in which the actor is:

1) the complainant’s parent, stepparent, or guardian;
2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first
1. Position of Authority

The statutes offering protection from those in a position of authority are aimed at protecting young people from being taken advantage of by someone in a parent, guardian, or any type of supervisory role, no matter how brief, at the time of the act. A person is guilty of criminal sexual conduct in the first degree when the complainant is at least thirteen but younger than sixteen if the actor is more than forty-eight months older and uses a position of authority over the complainant. A person is guilty of criminal sexual conduct in the third degree if the complainant is at least sixteen but younger than eighteen if the actor is more than forty-eight months older and uses a position of authority over the complainant. If a complainant is at least thirteen but younger than sixteen, the actor is guilty of fourth-degree criminal sexual conduct if the actor is more than forty-eight months older or in a position of authority.

2. Significant Relationship

The laws protecting young people from individuals with whom they have a significant relationship are targeted at family members or other people who stay in the same home. An actor with a significant relationship to the complainant is guilty of first-degree criminal sexual conduct if the victim is under sixteen years old at the time of penetration. The same is also true if, in addition, one of the following circumstances is present: force or coercion, cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant’s spouse.

Id. § 609.341, subdiv. 10.
91. Id. § 609.342, subdiv. 1(b). First-degree criminal sexual conduct applies to sexual penetration. Id. Second-degree criminal sexual conduct uses the same age-gap provision but applies to sexual contact. Id. § 609.343, subdiv. 1(b).
92. Id. § 609.344, subdiv. 1(c). Third-degree criminal sexual conduct applies to sexual penetration. Id. Fourth-degree criminal sexual conduct uses the same age-gap provision but applies to sexual contact. Id. § 609.345, subdiv. 1(c).
93. Id. § 609.345, subdiv. 1(b).
94. See id. § 609.341, subdiv. 15 (defining “significant relationship”).
95. Id. § 609.342, subdiv. 1(g). An actor is guilty of second-degree criminal sexual conduct when there is a significant relationship with the complainant and the complainant was under sixteen years of age at the time of the sexual contact. Id. § 609.343, subdiv. 1(g).
personal injury, or multiple occurrences over an extended period of time. Where the complainant is at least sixteen but younger than eighteen at the time of penetration and the actor has a significant relationship to the complainant, the actor is guilty of third-degree criminal sexual conduct. This is the same result when, in addition, force or coercion, personal injury, or multiple acts over time are present.

Because a stay of imposition or execution of the sentence is often in the best interest of the complainant and his or her family when the offender is in a special relationship with the complainant, the court has discretion to order these remedies in certain situations. Except where imprisonment is required, the court may stay the sentence if it finds that (1) it is in the best interest of the complainant or the family unit and (2) an assessment provides that the offender has been accepted by and can respond to a treatment program. However, this is only an option when no force or coercion, personal injury, or multiple acts over time exist.

If the court does stay imposition or execution of the sentence, the offender will be subject to certain conditions of probation. These include incarceration in a local jail or workhouse, as well as completion of a treatment program and an order for no unsupervised contact with the complainant until completion of treatment unless approved by the treatment program and the supervising correctional agent.

While Minnesota offers a stay for offenders with a special relationship with the complainant, a similar exception for close-in-age relationships is noticeably absent.

---

96. *Id.* § 609.342, subdiv. 1(h). First-degree criminal sexual conduct applies to sexual penetration. *Id.* Second-degree criminal sexual conduct has the same requirements but applies to sexual contact. *Id.* § 609.343, subdiv. 1(h).

97. *Id.* § 609.344, subdiv. 1(f). Third-degree criminal sexual conduct applies to sexual penetration. *Id.* Fourth-degree criminal sexual conduct uses the same age-gap provision but applies to sexual contact. *Id.* § 609.345, subdiv. 1(f).

98. *Id.* § 609.344, subdiv. 1(g). Third-degree criminal sexual conduct applies to sexual penetration. *Id.* Fourth-degree criminal sexual conduct uses the same requirements but applies to sexual contact. *Id.* § 609.345, subdiv. 1(g).

99. *Id.* §§ 609.342, subdiv. 3; 343, subdiv. 3; 344, subdiv. 3; 345, subdiv. 3.

100. *Id.* § 609.3455 (previously codified at MINN. STAT. § 609.109 (2004)).

101. *Id.* §§ 609.342, subdiv. 3; 343, subdiv. 3; 344, subdiv. 3; 345, subdiv. 3.

102. *Id.* §§ 609.342, subdiv. 3; 343, subdiv. 3; 344, subdiv. 3; 345, subdiv. 3; see *id.* § 609.3455.

103. *Id.* §§ 609.342, subdiv. 3; 343, subdiv. 3; 344, subdiv. 3; 345, subdiv. 3.

104. *Id.* §§ 609.342, subdiv. 3; 343, subdiv. 3; 344, subdiv. 3; 345, subdiv. 3.
VI. REGISTRATION REQUIREMENTS

Reviewing current laws and judicial practices within Minnesota helps legislators educate themselves about what outcomes will result from a criminal prosecution for statutory rape.\footnote{105} It may include conviction of a felony or misdemeanor, incarceration, probation, fines, sex offender therapy or other treatment, and registration as a sex offender.\footnote{106}

A person convicted or adjudicated delinquent of criminal sexual conduct in the first, second, third, or fourth degree must register under Minnesota’s predatory offender registration law.\footnote{107} A person must comply with registration requirements for a minimum of ten years from the time the person initially registered in connection with the offense or until the probation, supervised release, or conditional release period expires, whichever is later.\footnote{108}

The commissioner of public safety may add five years to an offender’s registration period if the person fails to register a change in primary address, fails to register with local law enforcement when the person has no primary address, fails to notify authorities of another change in registered information, or fails to return the verification form sent by the Bureau of Criminal Apprehension within ten days.\footnote{109} Additionally, a new ten-year registration period begins with any subsequent incarceration for a new offense or following a revocation of supervised release, conditional release, or probation.\footnote{110}

The court must order a predatory offender treatment assessment for any person convicted of a sex offense.\footnote{111} If the assessment provides that the offender is in need of and amenable to sex offender treatment, the court must require treatment unless the offender is sent to prison.\footnote{112} The court must also order anyone convicted or adjudicated delinquent of a sex offense to provide a biological sample for DNA analysis.\footnote{113}
None of the requirements above have an exception for close-in-age relationships.

VII. CONCLUSION

Reviewing the state’s statutory rape laws helps to understand what events and circumstances must be present in order for someone to be charged. This may aid policymakers in determining whether the consequences of conviction are proportionate to the criminal act itself or fit the purpose of the law.

Minnesota does legalize some close-in-age sexual activity. Still, some youths’ consensual activity will violate the law and subject them to possible serious consequences. As discussed earlier, sexual intercourse between an individual at least thirteen but younger than sixteen years old and another person who is more than twenty-four months older is the felony offense of criminal sexual conduct in the third degree. It is no secret that this law is broken by young people across the state and much of the activity will never be reported. Minnesotans want to protect teens from experiences of which they may be too immature to truly understand the depth of the consequences. Still, the young person who is charged with a felony is also often still a child.

Conviction potentially limits where the offender lives, works, and travels. State legislators must ask: against whom should criminal laws be used to protect minors from sexual intercourse, and whom does Minnesota want to penalize?

There are many ways Minnesota could enact legislation to provide more protection for consensual teen sexual activity. If Minnesota were to broaden its age-gap provisions, more young people would be protected. The state could make an exception where, if a complainant is at least thirteen and under sixteen and the actor is older by twenty-four to forty-eight months, then the crime is a misdemeanor rather than a felony. An exception to the mandatory predatory offender registration could apply to certain actors in an extended age span or where the victim is at a set minimum age or above. Or a type of stay in sentencing could be offered if agreed upon by the victim and family. This would still

114. Davis & Twombly, supra note 1, at 5.
115. § 609.344, subdiv. 1(b).
116. Eden, supra note 64.
117. Davis & Twombly, supra note 1, at 7.
subject the actor to the stigma of a criminal record with a sex crime but would likely better represent the consciousness of many Minnesotans, including our young people.

Important to remember is the fact that even if the state expands the age-gap provisions, it will not leave youth within the age span without protection. A person of any age will continue to be prosecuted for non-consensual acts with a minor or when they take advantage of their relationship or influence.