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Analysis

Peer-on-Peer Child Sexual Abuse: A Proposed Updated Definition of ‘Peer’

This article continues our exploration of whether we can determine a principled approach to age-gap laws based on information about adolescent development.

By **Lori S. Kornblum, Daniel Pollack and Bruce Semon** | January 25, 2021



In a prior [article](#), we explored the differences between state laws punishing certain teens for engaging in sexual behavior and exempting other teens from punishment based on the closeness in age between the teens. These laws are called “age-gap laws.” To review, the laws vary widely in terms of what sexual behavior between peers is viewed as legal and what is not. In some states, peers will not be prosecuted

when the age difference between them is two years; in others, up to six years difference is acceptable. In some states, the age-gap laws are not effective until the teens are at least a threshold age, such as 15-years-old. In other states, the age-gap laws apply regardless of how young the youngest teen is.

This article continues our exploration of whether we can determine a principled approach to age-gap laws based on information about adolescent development. As we know, adolescence is a time when peer relationships change. More time and interaction is spent with contemporaries and less time is spent with adults. As noted above, we described in our recent article how states differ considerably regarding their legal definition of “peer” as it pertains to peer-on-peer child sexual abuse. In part, this research confirmed how contradictory are our views of child and teenage sexuality.

As a society, we have little control over what adolescents learn about sexuality in the age of Internet, cable television, and over-sharing of information. Our legal systems also have limited control over whether adolescents have sexual relations, possibly become parents, or contract a sexually transmitted disease. The question is, what should be the legal response to teenage sexuality? For example, is adolescent sexting just a typical form of flirtation or is it a sex crime? Do we accept adolescent sexual behavior as “normal”? Do we respond punitively? Do we examine adolescent relationships for coercion and control? Sexual abuse? Especially in the era of the #MeToo movement, and “yes means yes” rather than “no means no” for consent, these questions are at a social collision point.

At the same time of growing awareness of the need and power to recognize potential coercion and control, and even abuse, the media’s depiction of teenage sexual content as normal and acceptable has increased exponentially. For youth, these messages are confusing. At a time of tremendous adolescent and sexual identity development, they hear and see mixed messages all around them. They then may unknowingly engage in illegal sexual behaviors with someone they believe is a “peer” and believe that such

sexual behavior is presumed to be consensual and legal. They and their parents and guardians are shocked when they find out that this is not the case.

In addition, because the legal systems in different states define who is a “peer” differently, the legal response to adolescent sexual behavior differs markedly depending on where the adolescents live. These differences are compounded between states and between countries. The legal system encapsulates these differences in “age-gap laws.”

A More Principled Approach

Is the concept of a pure “age-gap” sufficiently principled to determine which teens get punished and which teens do not? As we know from common experience, age alone is not determinative. For example, the difference between a 30-year-old and a 24-year-old is six years, as is the difference between a 16-year-old and a 10-year-old. We can all see, without any particular expertise, that for developmentally typical people, the developmental differences between adults age 24 and 30 is not so great that we would question a sexual relationship between the two purely based on age (not based on other factors such as coercive control). However, the developmental differences between a 16-year-old and a 10-year-old would always be questionable. Most people would be horrified if the former were punishable, and the latter were not, purely based on age differences.

To develop a principled approach, we need to look at whether research informs us when the age gap between two developmentally typical adolescents narrows such that we are not concerned based on age alone that one of the teens is abusing or exercising coercive control over the other one. We deliberately are excluding from any discussion children, adolescents, and adults who have a significant developmental disability of any type because they are inherently more vulnerable to abuse. Age-gap laws do not presently account for these types of situations.

With these competing social trends in mind, we are looking at the issue of peer-on-peer sexual abuse to determine if we can define some principled way to create an analytical framework for determining when teenage peer-on-peer sexual behavior is coercive or abusive and when it is not. In other words, when do age-gap laws create an analytically justifiable distinction between peers and when do they not?

The evidence-based child development literature should drive the law rather than the other way around.

What does knowledge of child development tell us about whether there is a basis for who is a peer for purposes of sexual activity to which both peers agree, and we do not question that agreement based on age alone? Many teens engage in sexual activity, but when do age differences become problematic?

Adolescent Development During and After Puberty

During puberty sexual hormones increase dramatically. Puberty may start on average by age 11 to 12. The hormones stay at high levels, but the parts of the brain which control our impulses and behavior do not develop at the same rate. The hormones increase faster than an adolescent's ability to control their impulses. The ability to exercise executive function and cognitive control in the brain and respond rationally to hormonally driven impulses develops more slowly during the teen years. This is why the age of majority is 18. Chronological age does not inform us about when an adolescent is capable of controlling their impulses. As a noted author on child development [states](#), a child's age is "far too vague a guide to his or her maturation level." There is some difference in the rate of development between individual teens, but one cannot generalize to entire populations or genders based on age alone. (For more information about chronological age and maturity, see Melvin Lewis and Fred Volkmar, Yale Child Studies Center, *Clinical Aspects of Child and Adolescent Development*, 3rd Ed., Chapter 19).

While no specific studies support general age-gap legislation, a specific study on adolescent development relating to gender differences highlights that one cannot presume that boys and girls mature at different rates, justifying an assumption that a male who is two years older than a female is at the same level of development. Many people, looking at age-gap laws, assume that the older peer is a male and the younger is a female, based on stereotypes and assumptions that an older male teen is about the same level of maturity as a younger female within a certain age range. This assumption, like many stereotypes, turns out to be false. Investigators have tried to find differences in cognitive development between the genders during adolescence, but there are no real significant differences. (See N.L. Galambos, et al. (2009), Gender development in adolescence, In R. M. Lerner & L. Steinberg (Eds.), Handbook of adolescent psychology: Vol. 1: Individual bases of adolescent development (3rd ed., pp. 305-57)). We refer here to teen sexual behavior as occurring between males and females, because assumptions about those types of relationships underlie the age-gap laws. The age-gap laws are gender-neutral, however, applying equally to same-sex relationships, and the same analysis applies.

All of the research to date shows that children and adolescents develop their cognitive and executive abilities at different rates, and one cannot make generalizations about whether two teens who may be two or three years apart are at a similar enough level of development that neither one is exerting pressure on the other. The development of cognitive executive functions is very slow, and takes several years starting with the onset of puberty. No study suggests otherwise.

What does this information tell us about age-gap laws? The information from child development studies indicates that there is no evidentiary basis for age-gap laws at all, whether the laws exempt teens who are two years apart or six years apart. There is no evidence for the common belief and the laws in many states, that a four-year age

difference between two adolescents is clearly abusive and should be criminal, while a three-year age difference is not.

At most, the literature would support treating teens as peers and exempting them from legal sanction, if the teens had an age difference of less than a year. One can only say that if the teens are within a year of each other, the developmental trajectory for both can be assumed to be in the same range, assuming neither teen has cognitive or developmental impairments.

Conclusion

Our conclusion is that age-gap laws may have a social basis, but are not grounded in sound developmental psychology research. Admittedly, this conclusion goes against the grain of all of the recent changes in laws to decriminalize teenage sexual behavior within certain age ranges. We are not arguing that any or all teenage sexual behavior should be criminalized. Whether criminalization of sexual behavior serves social purposes or deters sexual behavior in adolescents are matters for different studies. Rather, we argue that states should revisit the entire issue of criminalization of teenage sexual behavior from the developmental perspective. Punishing some teens for being outside an age-gap, while protecting other teens within an age-gap does not make sense from an evidence-based perspective.

This conclusion is consistent with the observations of others that the age-gap laws were developed based on social assumptions about which teens should be punished and which teens should be exempted, without any reference to data. Consequently, this explains why the age-gap laws vary so widely from state to state.

As in other disciplines, evidenced-based practice in law means trying to apply valid research findings to legislative decision-making.

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