
Minor Girls' Abuse Prevention Act

Model Legislation & Policy Guide



*Advancing the Human Right to Life
in Culture, Law, and Policy*

INTRODUCTION

In a small Illinois town, a 13-year-old girl named Jessica, unbeknownst to her parents or to anyone else, walks out of school to meet with her 37-year-old teacher, Mr. Murphy. Mr. Murphy has convinced Jessica to visit the local family planning clinic, and Jessica complies. What is the reason for this trip to the clinic? The student and the teacher are involved in an illegal sexual relationship, and Mr. Murphy would like to secure contraceptives for Jessica. He no longer wants to be burdened with wearing a condom during sex with Jessica, so he has decided to pursue other means of birth control.

Mr. Murphy and Jessica walk into the federally funded family planning (and abortion) clinic. Jessica is noticeably nervous. Mr. Murphy assures her that everything will be alright and that no one will find out about their secret affair. When they arrive at the clinic, Mr. Murphy requests that Jessica be given a shot of Depo Provera, a very powerful and controversial contraceptive.¹

Jessica's information, including her age, is documented, but no questions are asked about the man who brought her to the clinic. Only when Jessica is taken into another room to have the drug administered does she let slip to a clinic staff member that the man who brought her in is her teacher, revealing the true nature of their relationship. The clinic staff member, though required by law to report this as statutory rape, assures Jessica that her secret is "safe" and that no one will find out.

While most people would find such a story deeply disturbing, it is all too common. In fact, the story outlined above is an adaptation of an event that was brought to light by Congressman Don Manzullo (R-IL) in the late 1990s.² More recently, Lila Rose, founder of the pro-life group Live Action, went undercover into Planned Parenthood clinics across the nation and recorded consistently similar results.³

Currently, all 50 states have laws requiring healthcare professionals and others to report the suspected sexual abuse of minors including statutory rape. The federal government also mandates that Title X healthcare facilities comply with state criminal reporting laws. However, there is substantial and developing evidence that many family planning and abortion clinics are not reporting all instances of suspected abuse and are, in some cases,

¹ See <http://www.plannedparenthood.org/birth-control-pregnancy/birth-control/the-shot.htm> (last visited August 28, 2017).

² See <http://www.hslsda.org/docs/hshb/10/hshb1004.asp> (last visited August 29, 2017).

³ For more information on Live Action and its investigations of abortion facilities, go to <http://liveaction.org>.

advising minors and their abusers on how to circumvent the law. As a result, sexual predators are free to continue to abuse their victims, scarring them for life.

Tragically, statutory rape is a major problem in the United States. The U.S. Department of Health and Human Services (HHS) estimates that half of all children born to minors are fathered by adult men.⁴ HHS has also found that 75 percent of girls under 14 years of age who have had sex report having a forced sexual experience.⁵ In a similar report by the Massachusetts Family Institute, nearly 55 percent of children born to girls in the state who are 15 years old or younger were fathered by adult men.⁶

In response, AUL has drafted the *Minor Girls' Abuse Prevention Act*. This innovative legislation has three major components designed to protect minors from abuse, neglect, and coercion:

- 1) Enhanced sexual abuse reporting requirements, mandating that all employees and volunteers (not just licensed healthcare professionals) at abortion or “reproductive health care” facilities report cases of suspected sexual abuse.
- 2) A requirement, in cases where an abortion is performed on a minor, that tissue samples be retained for use in potential investigation and prosecution.
- 3) A cause of action for civil damages and remedies in cases where abortion clinic employees or others aid, abet, or assist a minor in circumventing the parental involvement requirements (for abortion) of her home state.

For more information on AUL's *Minor Girls' Abuse Prevention Act*, or for drafting assistance, please contact AUL's Legislative Team at Legislation@aul.org.

⁴ Asaph Glosser, Karen Gardinier & Mike Fishman, *Statutory Rape: A Guide to State Laws and Reporting Requirements 1* (The Lewin Group ed., 2004).

⁵ *Id.* at 1.

⁶ Matthew Daniels & Dan Englund, *Statutory Rape: When Adults Prey Sexually Upon Children 7* (Massachusetts Family Institute ed., 1998).

MINOR GIRLS' ABUSE PREVENTION ACT

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

Section 1. Title.

This Act may be cited as the “[*Insert name of State*] Minor Girls’ Abuse Prevention Act.”

Section 2. Legislative Findings and Purposes.

- (a) The [*Legislature*] of the State of [*Insert name of State*] finds that:
- (1) Children are increasingly being preyed upon, victimized, and coerced into illegal sexual relationships by adults.
 - (2) [*Insert name of State*] law requires [*caretakers, healthcare facilities, healthcare providers, teachers, and other specified individuals*] to report suspected incidents of sexual crimes against children. [*Insert reference(s) to appropriate state statute(s)*].
 - (3) However, many of these suspected criminal acts go unreported, and perpetrators are not investigated or prosecuted.
 - (4) [*Insert name of State*] may better prevent future sexual crimes against children by investigating, prosecuting, incarcerating, and treating those who prey upon and victimize children.
 - (5) To prevent future and continuing sexual crimes against children, all suspected crimes of this nature must be reported to state investigators and agencies that are specifically trained and equipped to professionally, thoroughly, and compassionately investigate cases of suspected crimes against children, relieving mandatory reporters of any investigatory responsibility.
 - (6) The physical, emotional, developmental, and psychological impact of sexual crimes on child victims can be severe and long-lasting.

- (7) The societal costs of these crimes are also significant and affect the entire populace.
 - (8) The collection, maintenance, and preservation of evidence, including forensic tissue samples, furthers [*Insert name of State*]'s interest in protecting children from sexual crimes and provides the State with a necessary tool for successful investigations and prosecutions.
 - (9) Parents and guardians have both the right and responsibility to be involved in medical treatment decisions involving their children, and no one has the right to knowingly or willfully impede or circumvent this right.
 - (10) There are documented cases of individuals other than a parent or guardian aiding, abetting, and assisting minor girls to procure abortions without their parents' or guardians' knowledge, consent, or involvement. This includes transporting children across state lines to avoid [*Insert name of State*]'s parental [*involvement, consent, or notice*] requirements for abortion.
 - (11) Such actions violate both the sanctity of the familial relationship and [*Insert name of State*]'s parental [*involvement, consent, or notice*] law for abortion.
- (b) Based on the findings in subsection (a), the [*Legislature*]'s purposes in promulgating this Act are to further the important and compelling state interests of:
- (1) Protecting children from sexually predatory adults;
 - (2) Ensuring that adults who are involved in illegal sexual relationships or contact with children are reported, investigated, and, when warranted, prosecuted;
 - (3) Relieving medical professionals and other mandatory reporters of suspected sexual crimes against children from any responsibility to personally investigate an allegation or suspicion. Mandatory reporters must simply report allegations, suspicions, and pertinent facts. Trained law enforcement or social services personnel will then be responsible for any investigation and for the ultimate disposition of the allegations or cases;

- (4) Reducing the physical, emotional, developmental, and psychological impact of sexual crimes on child victims;
- (5) Reducing the societal and economic burdens on the populace that result from sexual crimes against children;
- (6) Providing law enforcement officials with the tools and evidence necessary to investigate and prosecute child predators; and
- (7) Protecting and respecting the right of parents and guardians to be involved in the medical decisions and treatment of their children and preventing anyone from knowingly or willfully subverting or circumventing these rights.

Section 3. Definitions.

As used in this Act only:

(a) **“Abortion”** means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) **“Abuse”** means [*Insert specific language from existing state statutes concerning the reporting of child abuse, child sexual abuse, or similar offenses*] or [*the involvement of a child in any sexual act with a parent, guardian, or another adult; any sexual activity involving a child under the age of twelve (12); the aiding or toleration of a parent, guardian, or caretaker of the child’s sexual involvement with any other adult; the child’s involvement in pornographic displays; or any other involvement of a child in sexual activity constituting a crime under the laws of this State*].

[Drafter’s Note: *Depending on the specific provisions and prohibitions of the state’s criminal/penal code or other statutes, a more definitive exclusion of sexual acts or conduct between two (consenting) children may be appropriate in light of recent federal court decisions. Please consult AUL for specific drafting assistance.*]

(c) **“Adult”** means one who has attained the age [*of eighteen (18) or the legal age of majority in this State*].

(d) **“Caretaker”** means any person legally obligated to provide or secure adequate care for the child, including a parent, guardian, tutor, legal custodian, foster home parent, or anyone else providing the child with a residence.

(e) **“Child”** or **“children”** means anyone under the age of [*eighteen (18) or, if appropriate, the state’s age of consent for sexual activity*].

(f) **“Mandatory reporter”** means any of the following individuals or entities performing their occupational duties:

[Insert specific categories and definitions of mandatory reporters from existing state statutes or administrative rules defining “mandatory reporters” for child abuse, child sexual abuse, or similar offenses].

[Add “reproductive healthcare facility” (as defined in (h) below) to the list of mandatory reports under state law.]

(g) **“Physician”** means a person licensed to practice medicine in the State of [*Insert name of State*]. This term includes medical doctors and doctors of osteopathy.

(h) **“Reproductive healthcare facility”** means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services.

(i) **“Sexual abuse”** means [*Insert specific language from existing state statutes concerning child sexual abuse or similar offenses*] or [*any sexual conduct, sexual contact, or sexual penetration as defined in [Insert appropriate reference(s) to state criminal/penal code provision(s) or other statutory provision(s)] and committed against a child by an adult or involving a child under the age of twelve (12)*].

Section 4. Mandatory Reporter Requirements.

A mandatory reporter must report [*in writing*] every instance of alleged or suspected abuse, sexual abuse, or sexual crimes against a child as defined by [*Insert appropriate reference(s) to state criminal/penal code or other statutory provision(s)*] [*and this Act*]. The mandatory reporter may not use his or her discretion in deciding what cases should or should not be reported to the appropriate law enforcement or state agencies.

Section 5. Mandatory Reporting Procedure.

If a mandatory reporter has cause to believe that a child has been abused, sexually abused, or has been the victim of a sexual crime as defined in [*Insert appropriate reference(s) to state criminal code or other statutory provision(s)*] [*and this Act*], the mandatory reporter shall make a [*written*] report no later than the forty-eighth (48th) hour after such abuse, sexual abuse, or crime has been brought to his or her attention or after he or she suspects such abuse, sexual abuse, or crime. A mandatory reporter may not delegate the responsibility to report such abuse, sexual abuse, or crime to any other person, but must personally make the report. The mandatory reporter must make a report to [*Insert name of designated local or state law enforcement agency and/or other state or local agency responsible for investigating suspected or alleged abuse or crimes against children*].

Section 6. Contents of the Report.

The person making the report must identify the name and address of the child, as well as the name and address of the person(s) who is responsible for the care or custody of the child. The person making the report must also file any pertinent information he or she may have relating to the alleged or suspected abuse, sexual abuse, or crime.

Section 7. Failure to Report.

Any mandatory reporter who has cause to believe that a child has been abused, sexually abused, or has been the victim of a crime as defined in [*Insert appropriate reference(s) to state criminal/penal code or other statutory provision(s)*] [*and this Act*] and does not report such abuse, sexual abuse, or crime as provided by this Act shall be subject to [*Insert reference(s) to appropriate civil remedy, fine, or other penalty*].

Section 8. Maintenance of Forensic Samples from Abortion Performed on a Child.

(a) Any physician who performs an abortion on a child who is less than [*fourteen (14)*] years of age at the time of the abortion procedure shall preserve, in accordance with rules and regulations adopted by the [*state Attorney General or other appropriate law enforcement agency charged with the collection and preservation of evidence*] pursuant to this Act, fetal tissue extracted during such abortion. The physician shall submit such tissue to the [*Insert name of proper state agency such as state Department of Public Safety, state Bureau of Investigation, or the state Crime Laboratory*].

(b) The [*state Attorney General or other appropriate law enforcement agency charged or familiar with the forensic collection and preservation of evidence*] shall adopt rules and regulations prescribing:

(1) The amount and type of fetal tissue to be preserved and submitted by a

physician pursuant to this Section;

- (2) Procedures for the proper preservation of such tissue for the purpose of DNA testing and examination;
- (3) Procedures for documenting the chain of custody of such tissue for use as evidence;
- (4) Procedures for proper disposal of fetal tissue preserved pursuant to this Section;
- (5) A uniform reporting form [*or instrument*] mandated to be utilized by physicians when submitting fetal tissue under this Section which shall include the name and address of the physician submitting the fetal tissue and the name and complete address of residence of the parent or legal guardian of the child upon whom the abortion was performed; and
- (6) Procedures for communication with law enforcement agencies regarding evidence and information obtained pursuant to this Section.

(c) **Penalties.** Failure of a physician to comply with any provision of this Section or any rule or regulation adopted thereunder:

- (1) Shall constitute unprofessional conduct for the purposes of [*Insert appropriate statutory reference(s)*]; and
- (2) Is a [*Insert appropriate criminal offense/penalty classification*] and a [*Insert appropriate higher offense/penalty classification*] upon a second or subsequent conviction.

Section 9. Prohibition on Intentionally Causing, Aiding, Abetting, or Assisting a Child to Obtain an Abortion Without Parental [*Involvement, Consent, or Notification*].

(a) No person shall intentionally cause, aid, abet, or assist a child to obtain an abortion without the [*consent or notification required by [insert reference(s) to state parental involvement for abortion statute(s)]*].

(b) **Penalties.** A person who violates subsection (a) of this Section shall be civilly liable to the child and to the person or persons required to [*give consent/receive notice under*

[insert reference(s) to state parental involvement for abortion statute(s)]. A court may award damages to the person or persons adversely affected by a violation of subsection (a) of this Section, including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorneys' fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sexual act with a child in violation of the provisions of *[Insert appropriate reference(s) to state criminal/penal code provision(s)]*, which results in the child's pregnancy, shall not be awarded damages under this Section.

(c) It shall not be a defense to a claim brought under this Section that the abortion was performed or induced pursuant to consent to or notice of the abortion given in a manner that was otherwise lawful in the state or place where the abortion was performed or induced.

(d) An unemancipated child does not have capacity to consent to any action in violation of this Section.

(e) A court of competent jurisdiction may enjoin conduct that would be in violation of this Section upon petition by the Attorney General, a prosecuting or *[district]* attorney, or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

(1) Is reasonably anticipated to occur in the future; or

(2) Has occurred in the past, whether with the same child or others, and that it is not unreasonable to expect that such conduct will be repeated.

Section 10. Right of Intervention.

The *[Legislature]*, by joint resolution, may appoint one or more of its members who sponsored or cosponsored this Act in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

Section 11. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 12. Effective Date.

This Act takes effect on [*Insert date*].

STATE OF THE STATES: WHERE ARE WE NOW?

Current State Laws:

All 50 states have statutory rape and other laws that make sexual contact with a minor a crime, though there is significant variation in the laws from state to state.⁷ The age of consent (for sexual intercourse) ranges from 16 to 18 years of age, with 32 states setting the age of consent at 16 years.⁸ In two-thirds of the states, statutory rape is a reportable offense regardless of the relationship between the victim and the rapist. In the remaining states, reporting of statutory rape is only mandated when the perpetrator is someone who is responsible for the care of the child.⁹

In terms of who must report suspected cases of sexual abuse and statutory rape, it is ordinarily anyone who encounters the victim in his or her professional capacity. These mandatory reporters often include teachers, legal professionals, and clergy and universally include certain healthcare providers.¹⁰ While some states allow these mandatory reporters to exercise discretion in the cases they report, a majority of states do not.¹¹

Case Study: Success in Texas

In 2001, then-Texas Governor Rick Perry signed into law a measure strengthening mandatory reporting laws for healthcare providers and employees of reproductive healthcare facilities (*i.e.*, abortion clinics). One of the main provisions of the law stripped much of the discretion that these individuals exercised over what cases of suspected sexual abuse they reported. Since that time, healthcare providers and employees at reproductive healthcare facilities have been required to report all cases of suspected sexual contact involving clients under 17 years of age unless the partner is less than three (3) years older

⁷ U.S. Dept. of Health and Human Services, 2003 Child Abuse and Neglect State Statutes Series Statutes at a Glance: Mandatory Reporters of Child Abuse and Neglect (U.S. Dept. of Health and Human Services 2003).

⁸ See Glosser et. al, *supra* note 4 at 6-7.

⁹ *Id.* at ES-2.

¹⁰ See U.S. Dept. HHS, *supra* note 16 at 1.

¹¹ See Glosser et. al, *supra* note 4 at 12-13.

(than the victim). Moreover, all sexual contact that involves a child under fourteen (14) years of age must be reported regardless of the age of the sexual partner.¹²

During the debate over this legislation, Planned Parenthood complained that this new law would result in a flood of frivolous claims of sexual assault and statutory rape. They contended that real cases would be lost in the shuffle of the bureaucracy, and children would suffer adverse consequences. More than a decade later, however, that has not proven to be the case.

In 2000, there were 6,925 confirmed allegations of sexual abuse of children in Texas.¹³ After the implementation of the new mandatory reporting requirements, confirmed allegations rose fairly steadily. By 2006, however, the number of confirmed allegations of sexual abuse of children had fallen back near 2000 levels (to 7,176).¹⁴ Clearly, strong reporting requirements protect children and lead to more sexual predators and child rapists being identified and prosecuted. Moreover, in the wake of recent scandals involving Planned Parenthood clinics across the nation, the need for stricter mandatory reporting laws and harsher penalties for violation of these laws is clear.

¹² Cynthia Daillard, *Statutory Rape Reporting and Family Planning Programs: Moving Beyond Conflict*, The Guttmacher Report on Public Policy, available at <http://www.guttmacher.org/pubs/tgr/07/2/gr070210.html> (last visited August 29, 2017).

¹³ Texas Dept. of Family and Protective Services, 2000 Data Book 54 (State of Texas 2000).

¹⁴ Texas Dept. of Family and Protective Services, 2006 Data Book 54 (State of Texas 2006).

For further information regarding this or other AUL policy guides, please contact:

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