

## THE NEUROBIOLOGY OF DECISION MAKING IN HIGH-RISK YOUTH AND THE LAW OF CONSENT TO SEX

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*Under certain circumstances, the law treats juvenile consent the same as it treats adult decisions, even though a growing body of scientific research demonstrates that children make decisions using less developed cognitive processes. This Article highlights the gaps and deficiencies of legal treatment of juvenile decisions in the context of sex with an adult, as well as integrates new scientific information regarding the decision making of minors in risky situations. Part I examines recent pediatric brain imaging findings during a risky decision-making task. Specifically, a new study demonstrates that brain scan results differed between juveniles at high risk for potentially harmful or criminal conduct and healthy children. These differences within juvenile populations support the notion that particular biological and environmental traits in children may further distinguish juvenile decision making from adult decision making. Part II explores the potential impact of these novel neurobiological findings on the legal treatment of juvenile “consent” to sexual activity. A discussion and summary of the juvenile sex crime statutes of all fifty states demonstrates how the law attributes legal capacity and ability to make legally binding decisions to even very young teenagers. Part II also highlights where state civil and criminal law treat juvenile “consent” inconsistently. Criminal and civil laws’ treatment of juvenile capacity, in the context of sexual activity*

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with an adult, is not congruent with recent neurobiological discoveries regarding juvenile risk taking and decision making. Therefore, society should reconsider designations regarding legal capacity in light of novel neurobiological findings regarding decision making in juveniles.

**Keywords:** Neuroscience, consent, adolescence, statutory rape, decision making, sexual harassment

## I. LEGAL ASSUMPTIONS IN THE NEUROBIOLOGICAL UNDERPINNINGS OF YOUTH DECISION MAKING

Most people assume that children do not think or make decisions in the same way that adults do. Therefore, the law presumes that children under fourteen years old should not be held legally responsible for their conduct. The traditional “rule of sevens”<sup>1</sup> posits that a minor under age seven cannot give legal consent, be held liable for negligent conduct, or formulate the requisite mental state to engage in criminal conduct. From seven to fourteen, the law presumes that a minor lacks legal capacity. From fourteen to twenty-one (now eighteen), a rebuttable presumption declares that minors are competent to consent and responsible for criminal and negligent conduct.<sup>2</sup> Thus, in the context of a civil claim for damages and absent evidence to the contrary, this bright-line rule allows a trier of fact to presume that a child over fourteen consents to sexual contact.<sup>3</sup>

On the other hand, state civil law permits most minors of all ages to void their contracts during their minority.<sup>4</sup> State criminal laws prosecute adults and minors who engage in sexual activity with minors, even if those juveniles “consent.”<sup>5</sup> Quotations with adolescent “consent” indicate that even

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1. See generally MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 87–88 (2009) (discussing the infancy defense and capacity to commit a crime); WAYNE R. LAFAVE & AUSTIN W. SCOTT, HANDBOOK ON CRIMINAL LAW 351 (1972).

2. See *Doe v. Mama Taori's Premium Pizza*, No. M1998-00992-COA-R9-CV, 2001 WL 327906, at \*5 (Tenn. Ct. App. Apr. 5, 2001).

3. Another bright-line rule similar to the rule of sevens is the “mature minors” doctrine. The *Mama Taori's* court recognized that some mature minors may consent to conduct reserved for adults. *Id.* at \*5. See generally GARDNER, *supra* note 1, at 6 (discussing the “mature minor” and consent to medical treatment).

4. See Restatement (Second) of Contracts § 12(2)(a) (1981).

5. See the Appendix to this Article.

explicit verbal consent by a minor may not constitute legal consent and may equate more realistically with acquiescence.<sup>6</sup> To complicate matters, state civil law does not always track state criminal law in the treatment of juvenile legal capacity to “consent” or to be responsible for conduct. For example, in California, a minor’s “consent” is no defense for an adult accused of unlawful sex with a minor under California Penal Code § 261.5. That same “consent,” however, may serve as a complete defense to a civil law claim against the adult.<sup>7</sup>

Novel pediatric neuroimaging findings raise the question whether jurists might use these discoveries to improve legal treatment of juveniles and assess properly their capacity for legally binding decision making. Neurobiological studies suggest that assumptions concerning the distinction between adult and juvenile decision making are likely accurate. However, a substantial amount of heterogeneity among youth creates a complex picture of juvenile decision making. Scientists are just beginning to understand these cognitive processes. In particular, within the juvenile population, ten- to fourteen-year-old juveniles termed “high-risk” demonstrate different neurobiological processes during risky decision making than do “healthy” comparison youth. Empirical findings suggest that high-risk youth are less able to engage regulatory brain regions than healthy comparison children during risky decisions.

Before a discussion that delves into details, however, one must understand that this neurobiological, scientific inquiry is novel and the relevance of the data collected is limited by the studies themselves. One can hypothesize about the significance of the neurobiological data with respect to juvenile decision making concerning sexual solicitations. However, laboratory results presented here utilize the balloon analog risk task (BART)<sup>8</sup>

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6. See *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 59, 68 (1986) (determining respondent’s voluntary participation in the sexual activity in question irrelevant to an evaluation of the unwelcomeness of sexual conduct under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq.).

7. *People v. Tobias*, 21 P.3d 758, 761 (Cal. 2001); see also Jennifer Ann Drobac, *Wake Up and Smell the Starbucks Coffee: How Doe v. Starbucks Confirms the End of the “Age of Consent” in California and Perhaps Beyond*, 33 B.C. J.L. & SOC. JUST. 1 (2013).

8. C.W. Lejuez, Jennifer P. Read, Christopher W. Kahler, Jerry B. Richards, Susan E. Ramsey, Gregory L. Stuart, David R. Strong, & Richard A. Brown, *Evaluation of a Behavioral Measure of Risk Taking: The Balloon Analogue Risk Task (BART)*, 8 J. EXP. PSYCHOL. APPL. 75–84 (2002).

and cannot predict or provide causal explanations for what might happen outside of the lab, particularly with regard to sexual risk taking. This Article's purpose is to highlight the gaps and deficiencies of legal treatment of juvenile decisions in the context of sex with an adult, as well as integrate new scientific information regarding the decision making of minors in risky situations. The hope is that this pairing will indicate if the law is evolving in the right direction or if society needs to reconsider legal capacity until scientists and jurists can speak with more confidence about the neurobiological basis for decision making in juveniles and its similarity to that of adults.

### A. Decision-Making Studies in Juveniles

The neural basis for altered risky and non-risky decision making in per-adolescence has recently been investigated in a range of tasks and samples.<sup>9</sup> Decision making refers to the process of “forming preferences, selecting and executing actions, and evaluating outcomes.”<sup>10</sup> These studies have revealed developmental brain activation differences when compared to adults. Among typically developing adolescent participants, decision making has been characterized by heightened reward seeking rather than harm avoidance, relative to adults.<sup>11</sup> However, fewer than 15 percent of adolescents

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9. See, e.g., Dana G. Smith, Lin Xiao, & Antione Bechara, *Decision Making in Children and Adolescents: Impaired Iowa Gambling Task Performance in Early Adolescence*, 48 DEV. PSYCHOL. 1180–87 (2012); Amy L. Krain, Amanda M. Wilson, Robert Arbuckle, F. Xavier Castellanos, & Michael P. Milham, *Distinct Neural Mechanisms of Risk and Ambiguity: A Meta-Analysis of Decision-Making*, 32 NEUROIMAGE 477–84 (2006); Linda Van Leijenhorst, Bregtje Gunther Moor, Zdeňka A. Op De Macks, Serge A.R.B. Rombouts, P. Michiel Westenberg, & Eveline A. Crone, *Adolescent Risky Decision-Making: Neurocognitive Development of Reward and Control Regions*, NEUROIMAGE 345–55 (2010); Mujeeb U. Shad, Anup S. Bidesi, Li-Ann Chen, Binu P. Thomas, Monique Ernst, & Uma Rao, *Neurobiology of Decision-Making in Adolescents*, BEHAV. BRAIN RES. 67–76 (2011).

10. Monique Ernst & Martin P. Paulus, *Neurobiology of Decision Making: A Selective Review from a Neurocognitive and Clinical Perspective*, BIOL. PSYCHIATRY 597–604 (2005).

11. Jo Anne Grunbaum, Laura Kann, Steve Kinchen, James Ross, Joseph Hawkins, Richard Lowry, William A. Harris, Tim McManus, David Chyen, & Janet Collins, *Youth Risk Behavior Surveillance—United States, 2003 (Abridged)*, 74 J. SCH. HEALTH 307–24 (2004); James P. Byrnes, *The Development of Decision-Making*, 31 J. ADOLESCENT HEALTH 208–15 (2002); R. Andrew Chambers & Marc N. Potenza, *Neurodevelopment, Impulsivity, and Adolescent Gambling*, 19 J. GAMBLING STUD. 53–84 (2003); L.P. Spear, *The Adolescent Brain and Age-Related Behavioral Manifestations*, 24 NEUROSCI. BIOBEHAV. REV. 417–63 (2000).

in the general population would actually be considered at elevated risk for conduct such as unlawful or ill-advised sexual behavior, and little is known about decision-making strategies, or the underlying neurobiology, in these high-risk youth.

Collectively, studies suggest that the early choice phase of decision making is associated with greater striatal activation in adolescents than adults.<sup>12</sup> The brain's striatum helps to translate motivation and body movement and is central to perceiving reward. The striatum not only facilitates planning and motivation of movement, but it may also function in cognitive processes such as decision making and working memory, particularly as they relate to reward.<sup>13</sup> Rewarding outcomes have been associated with greater striatal activation in adolescents than adults.<sup>14</sup> Thus, the adolescent brain appears to be particularly primed to seek and appreciate stimuli that are rewarding to them.

Greater orbitofrontal cortex (OFC) and medial prefrontal cortex (mPFC) activation have also been reported across studies in adults compared to adolescents during decision making. These regions help regulate behavior, often by inhibiting impulses and utilizing higher-order, more rational decision-making strategies. The development of these regions likely underlies the improved maturity typically associated with adulthood. These studies suggest that adults are generally better able to recruit these regulatory regions during decision making than adolescents.

Few studies, however, have examined neural activation associated with decision making in highly impulsive youth, thought to be at elevated risk for potentially harmful or criminal conduct, including unlawful or ill-advised sex. To date, the neurobiology of youth at particularly elevated risk for becoming victims or perpetrators of sexual misconduct has not been studied in the context of decision making. To address this gap, one may assume that youth at risk for the development of drug and alcohol use disorders may approximate youth at high risk for sexual misconduct or sexual victimization, given their elevated rates of acquisition of sexually

12. Ernst & Paulus, *supra* note 10.

13. Raymundo Báez-Mendoza & Wolfram Schultz, *The Role of the Striatum in Social Behavior*, FRONTIERS NEUROSCI. 1–14 (Dec. 10, 2013), [http://www.frontiersin.org/decision\\_neuroscience/10.3389/fnins.2013.00233/abstract](http://www.frontiersin.org/decision_neuroscience/10.3389/fnins.2013.00233/abstract).

14. Leah H. Somerville, Rebecca M. Jones, & B.J. Casey, *A Time of Change: Behavioral and Neural Correlates of Adolescent Sensitivity to Appetitive and Aversive Environmental Cues*, 72 BRAIN & COGNITION 124–33 (2010).

transmitted diseases.<sup>15</sup> It is possible that youth who engage in unwise or unlawful sexual conduct later or simultaneously may turn to drugs and alcohol to cope with the repercussions of the sexual conduct. Alternatively, decision-making and impulse control deficits may predispose to both drug use and sexual risk taking. There is great need, however, for further empirical research to inform the analysis begun here.

### 1. Studies Involving High-Risk Youth

Briefly, several studies have examined the neurobiology of decision making in high-risk samples. In a small sample of eight- to thirteen-year-olds with attention-deficit/hyperactivity disorder (ADHD;  $n = 20$ ) who were offspring of adults with substance use disorders (SUDs; vs. no parental SUDs) had higher activation in insula/caudate/orbitofrontal cortex clusters during reward anticipation and decreased activation in the anterior insula and orbitofrontal cortex during receipt of reward outcome on an anticipation-conflict-reward paradigm.<sup>16</sup> Using a monetary incentive delay task, the European IMAGEN neuroimaging consortium demonstrated activation in striatal, prefrontal, insular, amygdalar, cerebellar, and thalamic regions in big versus small wins in a large sample ( $n = 324$ ) of fourteen-year-olds.<sup>17</sup> This activation was modestly predictive of early alcohol use, although personality factors were greater contributors. Finally, sixteen- to eighteen-year-old adolescent binge drinkers ( $n = 20$ ) were compared to nondrinking adolescents ( $n = 20$ ) on the Iowa Gambling Task.<sup>18</sup> Greater activation in the amygdala and insula were reported in the

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15. Nathaniel R. Riggs, Eleanor B. Tate, Ty A. Ridenour, Maureen D. Reynolds, Zu W. Zhai, Michael M. Vanyukov, & Ralph E. Tarter, *Longitudinal Associations from Neurobehavioral Disinhibition to Adolescent Risky Sexual Behavior in Boys: Direct and Mediated Effects Through Moderate Alcohol Consumption*, 53 J. ADOLESCENT HEALTH 465–70 (2013).

16. Iliyan Ivanov, Xun Liu, Suzanne Clerkin, Kurt Schulz, Karl Friston, Jeffrey H. Newcorn, & Jin Fan, *Effects of Motivation on Reward and Attentional Networks: An fMRI Study*, 2 BRAIN & BEHAV. 741–53 (2012).

17. Frauke Nees, Jelka Tzschoppe, Christopher J. Patrick, Sabine Vollstadt-Klein, Sabina Steiner, & Luise Poustka et al., *Determinants of Early Alcohol Use in Healthy Adolescents: The Differential Contribution of Neuroimaging and Psychological Factors*, 37 NEUROPSYCHOPHARMACOLOGY 986–95 (2012).

18. Lin Xiao, Antione Bechara, Qiyong Gong, Xiaoqi Huang, Xiangrui Li Gui Xue et al., *Abnormal Affective Decision Making Revealed in Adolescent Binge Drinkers Using a Functional Magnetic Resonance Imaging Study*, 27 PSYCHOL. ADDICTIVE BEHAV. 443–54 (2013). The Iowa Gambling Task is psychological test that simulates real life decision making.

high-risk group. These studies demonstrate that youth deemed high risk for SUD, either by early or problem use or by family history, have measurable activation abnormalities in cortical (orbitofrontal, insula), limbic, and striatal circuits, relative to youth deemed typically developing. However, they are limited by the fact that none recruit drug-/alcohol-naïve youth (given the impact of these substances on brain activation) who were also pre-adolescents. Arguably, individual adolescents/young adults who have not yet demonstrated problems with high-risk behaviors by this age (e.g., less than sixteen years of age) may not actually go onto develop them and may be high risk in name only. For the purposes of this paper, sexually naïve youth in this young age group warrant further study.

## 2. The BART in High-Risk Youth

A recent examination of the neural basis for choice and outcome<sup>19</sup> used a modified version of the balloon analog risk task (BART) in youth (ages ten to fourteen) selected for maximal drug abuse risk (high-risk) and typical low-risk (healthy) comparisons. Study parameters required high-risk participants to be biological offspring of men with past or present SUDs and to have an additional first- or second-degree family member with SUD history. In addition to the addiction family history requirement, each high-risk participant met criteria for behavioral disturbances consistent with addiction-risk models to indicate maximum risk for later addiction.<sup>20</sup> Specifically, children met Diagnostic and Statistical Manual of Mental Disorders IV Text Revision (DSM-IV-TR)<sup>21</sup> criteria for ADHD (any subtype) plus a disruptive behavior disorder defined as conduct disorder (CD), oppositional defiant disorder (ODD), or disruptive behavior disorder, not otherwise specified (DBD NOS). Healthy comparison participants had no current diagnosis or lifetime history of any DSM-IV-TR psychiatric disorder or SUDs and no first-degree relative with a history or current

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19. Leslie A. Hulvershorn et al., *Circuit-based disturbances in reward processing across pediatric disorders of impulse control*, Presentation at the Society of Biological Psychiatry 69th Annual Meeting (anticipated May 8–10, 2014) (unpublished manuscript on file with the author).

20. Ralph E. Tarter, Levent Kirisci, Ada Mezzich, Jack R. Cornelius, Kathleen Pajer, Michael Vanyukov et al., *Neurobehavioral Disinhibition in Childhood Predicts Early Age at Onset of Substance Use Disorder*, *AM. J. PSYCHIATRY* 1078–85 (2003).

21. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 4TH EDITION (2000).

diagnosis of an SUD. Attempts were made to recruit groups similarly on age, race, sex, IQ, pubertal development, and socioeconomic status.

Researchers have used the BART during functional magnetic resonance scanning in adult healthy and clinical participants,<sup>22</sup> as well as in a small sample of youth with and without traumatic brain injury.<sup>23</sup> Experimenters instructed participants to “inflate the balloon as much as you can without popping it” to earn money for each unpopped balloon. Thus, participants had to decide when to stop inflating, which provided a measure of how risk-tolerant they were. Researchers explained to participants that they (the participants) would receive the money, more for larger and less for smaller unpopped balloons, in the form of cash at the end of the scan.

This recent study used a variant of the BART<sup>24</sup> with parametric modulators pairing increasing risk of explosion with increasing wager amount in this study. It also used an additional modification that introduced jitter between decision and outcome stages of each trial. This change allowed for the distinction between decision making and feedback-related processing.<sup>25</sup> The investigators simplified this study’s BART task for use by children, by removing the wager amount presented at the onset of the trial (Figure 1). Twelve inflation responses were possible for each trial. Parametric increases in the probability of explosion occurred over successive responses, such that the probability of explosion was much higher in later responses.

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22. See, e.g., Hengyi Rao, Marc Korczykowski, John Pluta, Angela Hoang, & John A. Detre, *Neural Correlates of Voluntary and Involuntary Risk Taking in the Human Brain: An fMRI Study of the Balloon Analog Risk Task (BART)*, *NEUROIMAGE* 902–10 (2008); Tim Bogg, Rena Fukunaga, Peter R. Finn, & Joshua W. Brown, *Cognitive Control Links Alcohol Use, Trait Disinhibition, and Reduced Cognitive Capacity: Evidence for Medial Prefrontal Cortex Dysregulation During Reward-Seeking Behavior*, *DRUG & ALCOHOL DEPENDENCE* 112–18 (2012); Rena Fukunaga, Joshua W. Brown, & Tim Bogg, *Decision Making in the Balloon Analogue Risk Task (BART): Anterior Cingulate Cortex Signals Loss Aversion but Not the Infrequency of Risky Choices*, *12 COGNITIVE, AFFECTIVE, & BEHAV. NEUROSCI.* 479–90 (2012).

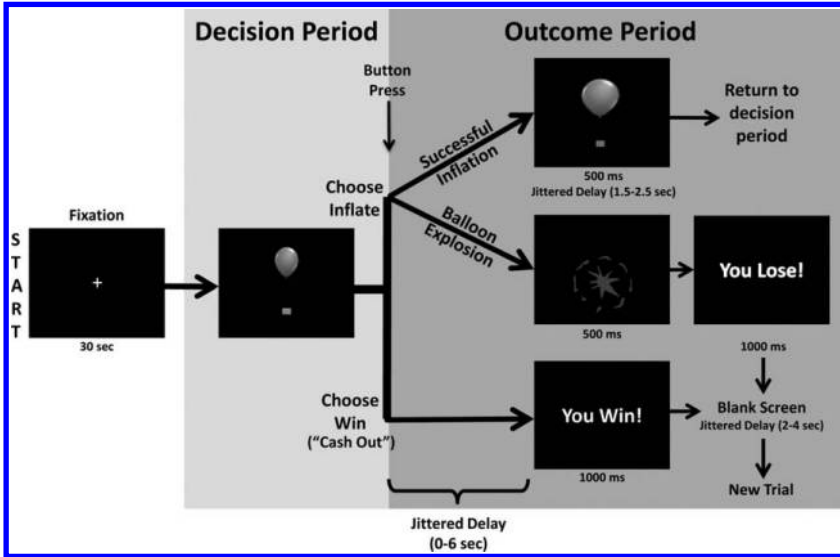
23. C.-Y. Peter Chiu, Sarah J. Tlustos, Nicolay Chertkoff Walz, Scott K. Holland, James C. Eliassen, Lori Bernard, & Shari L. Wade, *Neural Correlates of Risky Decision Making in Adolescents with and without Traumatic Brain Injury Using the Balloon Analog Risk Task*, *37 DEVELOPMENTAL NEUROPSYCHOL.* 176–83 (2012).

24. Fukunaga et al., *supra* note 22.

25. *Id.*



Figure 1. Experimental setup.



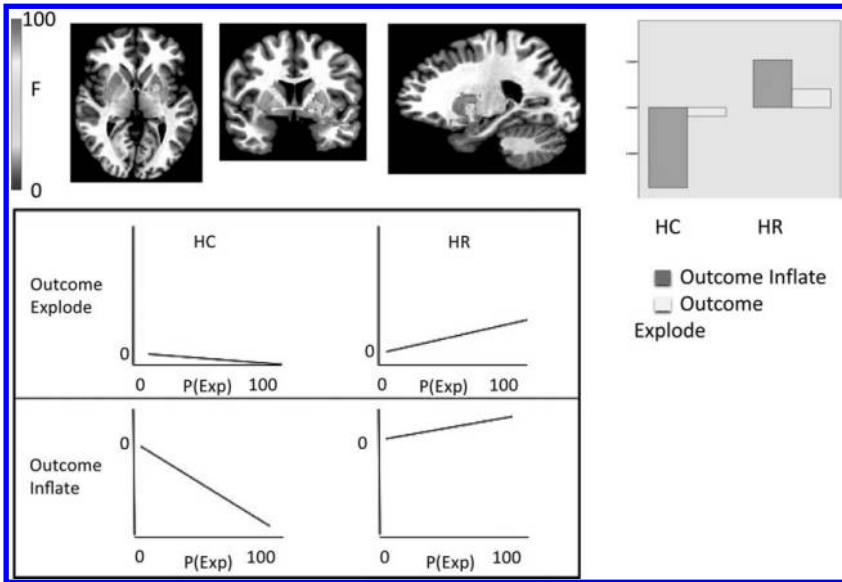
At the beginning of the task, a fixation cross in the center of the screen appeared for 30 seconds to determine baseline neural activation. At the start of each trial, a balloon and a green (i.e., go) decision cue were displayed on the screen (Figure 1).<sup>26</sup> Participants then had the option of inflating the balloon (Choose Inflate) or taking (i.e., “cashing out”) the accumulated wager (Choose Win) via button pressing. Their response was followed by a jittered delay (exponentially distributed over 0, 2, 4, or 6 seconds) during which no feedback occurred. This delay allowed for examination of the brain’s response during choice (Choose Inflate vs. Choose Win) and outcome (explosion vs. successful inflation).

After the delay, for the Choose Inflate conditions, the outcome appeared (exploding balloon for 500 ms, followed by “You Lose!” text for 1000 ms or successfully inflated balloon for 500 ms). If the balloon inflated, the decision cue turned red (i.e., stop) for 1.5 to 2.5 seconds (jittered), during which the program offered no response options.

For the Choose Win condition, “You Win!” displayed for 1000 ms. After a win or loss, the screen went blank for 2 to 4 seconds (jittered), and

26. A color version of Figure 1 is available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2379665](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2379665) at 9.

**Figure 2.** Group differences (healthy comparison vs. high-risk participants) on the parametric modulated comparison of the outcome contrast in a putamen/insula/inferior frontal gyrus (IFG) cluster. Bar graphs plot parameter estimates (y axis) from the cluster according to condition (Outcome Inflate vs. Outcome Explode) and group. Line graphs represent the relationship between probability of balloon explosion (x axis) vs. parameter estimates of the BOLD signal in the putamen/insula/IFG cluster (y axis).



then a new balloon appeared. Once the cue turned green, the next trial began. The cumulative earnings were displayed at the bottom of the screen for each trial.

## B. Results and Conclusions about Youth Decision Making

Results showed no group performance differences on task outcomes, except for reaction times for win outcomes,<sup>27</sup> where healthy comparison participants took more time to respond. However, the imaging results revealed a difference in brain activation between groups (Figure 2).<sup>28</sup> When

27. Hulvershorn et al., *supra* note 19.

28. A color version of Figure 2 is available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2379665](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2379665) at 10.

examining brain activation as the probability of risk (i.e., balloon explosion) increased, the investigators found a group difference in a large cluster spanning the left putamen, insula, and inferior frontal gyrus (Figure 2). These regions are involved with the ability to inhibit and regulate behavior, as well as monitor outcomes. In this cluster, as the probability of explosion increased, healthy comparison participants had increasing deactivations in response to inflations and a smaller-magnitude deactivation for explosions. Conversely, high-risk participants had increasing activations on inflations and smaller-magnitude activations on explosions.

In lay terms, as risk for a negative outcome (e.g., balloon explosion) increased, the brains of the healthy comparison group appeared sensitive to this risk during rewarding situations, whereas the brains of the high-risk group did not substantially change activation as risk increased. Thus, whether a reward is safe or risky, the brains of the high-risk group respond essentially the same. To extrapolate to situations pertaining to sexual misconduct, the brain of a vulnerable adolescent may not signal to them that even though a pleasurable (e.g., rewarding) situation is taking place, there is risk associated with it. For example, these results suggest that the brain is activating to the same degree whether these juveniles are engaged in a sexual relationship with a neighborhood peer or an adult they met online.

In sum, although the high-risk youth in this sample have not yet begun to display risky sexual behaviors outside of the lab at higher rates than the healthy comparison youth, this BART study revealed abnormal brain response during risk-taking scenarios in high-risk participants. These high-risk youth, given their genetic loading for addictive disorders and high levels of existing externalizing disorders, were already demonstrating decision-making strategies and the neural underpinnings that may lead to drug use or illegal or unwise sexual conduct as they age.

Thus, a failure to sufficiently deactivate brain regions necessary for anticipation of outcomes may impact all manner of adolescent choices, including sexual experimentation and abuse of drugs. Further, these data support the hypotheses that aberrant brain activation in regions relevant to risky decision making may drive real-world risky behavior. In other words, although adolescent brain function is clearly distinct from that of adults during risky decision making, a vulnerable subset of adolescents appear to have particularly pronounced neurobiological differences during decision making. These neurobiological differences may, in fact, drive the high-risk group's tendency to take risks.

## II. STATUTORY RAPE LAW<sup>29</sup>

Every state prohibits by statute some kind of “consensual” sexual activity between children and adults. They do so in a variety of different ways, however. A survey of these laws appears in the Summary of State Juvenile Sex Crime Statutes, the Appendix to this Article. Historically, statutory rape laws defined “the age of consent” as a girl’s age at which her consent to sexual intercourse earned legal significance and insulated the male participant from criminal prosecution. During the nineteenth century, states raised the age of consent from ten to as high as twenty-one.<sup>30</sup> Stereotypical notions concerning female moral purity and chastity surfaced in many of the judicial opinions. As late as 1994, only thirty-five states had gender-neutral laws protecting both male and female minors.<sup>31</sup>

Now, all fifty states ostensibly protect both sexes. Most states distinguish among sex crimes against children by the severity of the offense and the age of the child. States typically classify crimes against children under thirteen or fourteen years old as the most serious. Note that this demarcation roughly fits with the traditional “rule of sevens” that presumes children fourteen and younger do not have the legal capacity to provide legally relevant consent. A question arises whether this demarcation should remain a presumption or should become conclusive that those under fourteen do not possess what jurists would call legal capacity. The least serious sex crimes are nonforcible sex crimes involving older children. This demarcation arguably ignores novel neurobiological research conclusions that draw distinctions between the decision-making behaviors of adults and those of teenagers. An age difference of at least two to five years is an element of at least one sex crime statute in every state. These age differences indicate that jurists are accounting for power and maturity differences between the “consenting” parties to set deterring and punishing penalties.

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29. This discussion updates one by Professor Drobac from 2004. The laws have changed in numerous ways in the last ten years. For a comparison, see Jennifer Ann Drobac, *Sex and The Workplace: “Consenting” Adolescents and a Conflict of Laws*, 79 WASH. L. REV. 471, 484–86, 498–503, and App. A.

30. See Michelle Oberman, *Turning Girls into Women: Re-Evaluating Modern Statutory Rape Law*, 85 J. CRIM. L. & CRIMINOLOGY 15, 24–25 (1994).

31. Michael M. v. Sonoma County, 450 U.S. 464, 492 (1981) (Brennan, J., dissenting). Alabama, Arkansas, Delaware, Georgia, Idaho, Kentucky, Louisiana, Missouri, New Hampshire, Nevada, New Jersey, North Carolina, North Dakota, Pennsylvania, and Texas protected only female minors from predation by males. Oberman, *supra* note 28, at 32 n.88.

### A. The Age of Consent and Modern Sex Crimes

Because of the complexity of these laws, it is difficult to pinpoint one definitive age of consent. Some states set a baseline age of consent but then increase the age when a case involves special facts, such as an adult in a position of trust or authority, a relative, or a school employee. Teachers, coaches, band conductors and other school employees, guardians, babysitters, employers and shift supervisors, psychotherapists, and medical professionals are all examples of persons who wield authority over juveniles. For example, twenty-one states set the age of consent at thirteen, fourteen, or fifteen but increase it to sixteen or older under special circumstances.<sup>32</sup> Two states, Oregon and South Carolina, raise their ages from twelve and eleven, respectively, when special facts apply. As noted, all states enhance the crime or increase the age of consent from a baseline when there is an age difference of two or more years between the target and the perpetrator.

If one takes the highest age for consent in each state, as evidenced in the Summary of State Juvenile Sex Crime Statutes, then thirty-one states set the age of consent at eighteen, four at seventeen, and thirteen at sixteen. These laws demonstrate that twenty of the states set the age of consent at *below* the age of majority (eighteen), at which age most adult civil rights and privileges fully vest in the United States. Two states, New Mexico and Washington, set the age of consent *above* the age of majority (at nineteen and twenty-one, respectively) under certain circumstances. Only four states, 8 percent of the states, set the age of consent at the age of majority *absent* special circumstances.

### B. Public Policy, Juvenile Sex Crimes, and Neurobiological Decision Making

So what do these statutory rape laws have to do with neurobiological decision making and maturity? The recent United States Supreme Court

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32. See the Appendix (summarizing the laws for Alaska (13), Arkansas (14), Colorado (15), Connecticut (13), Illinois (13), Indiana (14), Iowa (14), Kentucky (14), Louisiana (15), Maine (14), Maryland (14), Michigan (13), Minnesota (13), New Hampshire (13), New Jersey (13), New Mexico (13), Ohio (13), Oklahoma (14), Tennessee (13), Virginia (13), and Wyoming (13)).

decisions in *Roper v. Simmons*,<sup>33</sup> *Graham v. Florida*,<sup>34</sup> and *Miller v. Alabama*<sup>35</sup> confirm that the law is changing slowly in response to new discoveries about adolescent development and decision-making capacity. An understanding of the public policy behind statutory rape laws enhances our understanding of the relevance of neurobiological data for youth outside of the serious criminal offender population.

### 1. Public Policy

Criminal law prevents harm to society, as well as to individuals within society. Another goal of the criminal justice system centers on punishment of the perpetrator who commits the act that society considers harmful or bad, the *actus reus*. Punishment serves several subsidiary aims: deterrence (both general and specific), rehabilitation, retribution, and incapacitation. With a strict liability offense such as statutory rape (or similar statutory sex crime), society demonstrates its concern not with the actor's guilty mind, or *mens rea*, but with the harm to our children.

What harm results from "consensual" youth-adult sexual contact? How is this illegal conduct between the juvenile and the adult so different from the same, legal behavior between consenting adults? The question, properly framed, analyzes not so much the sexual conduct itself but the quality of the consent. The physical acts between minors and adults may be the same as those between two adults.

What differs between juveniles and adults are the expectations, motivations, and experiential wisdom (or lack thereof) that produce the problematic "consent." Additionally, neuroscientific and psychosocial studies have demonstrated that youth make decisions differently than adults.<sup>36</sup> And, at

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33. *Roper*, 543 U.S. 551 (2005) (invalidating the death penalty for juvenile offenders under eighteen).

34. *Graham*, 560 U.S. 48 (2010) (finding that a life sentence without the possibility of parole for a juvenile nonhomicide offender violated the Eighth Amendment against cruel and unusual punishment).

35. *Miller*, 567 U.S.—, 132 S.Ct. 2455 (2012) (finding that a life sentence without the possibility of parole for criminal offender, who committed crimes as a minor, violated the Eighth Amendment against cruel and unusual punishment).

36. For a thorough, detailed, and updated discussion of the neurological and psychosocial development of teenagers and the relevance to consent, see JENNIFER ANN DROBAC, *WORLDLY BUT NOT YET WISE* (Univ. of Chi. Press, under contract); see also Jennifer Ann Drobac, *Consent, Teenagers, and (Un)Civil(ized) Consequences*, in *CHILDREN, SEX AND THE*

least in the lab, high-risk peri-adolescents also make decisions differently than their healthy comparison peers. Because youth neurobiological decision making, expectations, and motivations differ, the nature of the consent arguably differs. Thus, the consequences of the exact same sexual behaviors (that consenting adults engage in) may also differ for juveniles. Public policy serves to protect children who may suffer greater consequences as a result of possibly harmful sexual encounters. One may place the onus on adults to “Just say No.”

The notion that juvenile capacity, and therefore “consent,” differs qualitatively from adult consent engenders passionate debate.<sup>37</sup> Because society has historically deemed children incapable of giving informed consent, the law pertaining to children differs from that concerning adults in everything from contract formation to fundamental civil rights. Minors still cannot file lawsuits in their own names so adult guardians or administrators must act on their behalf.

If people accept that children cannot give informed consent because they lack capacity, the sexual taking of a child’s body constitutes a theft of the most intimate kind, a rape. This violation, or *actus reus*, justifies the punishment.<sup>38</sup> Society imposes more serious legal penalties when the adult

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LAW (Ellen Marrus & Sacha Coupet eds., forthcoming 2014); Jennifer Ann Drobac, *I Can't to I Kant: The Sexual Harassment of Working Adolescents, Competing Theories, and Ethical Dilemmas*, 70 ALB. L. REV. 675, 713–17 (2007); Jennifer Ann Drobac, “Developing Capacity”: Adolescent “Consent” at the Workplace, at Law, and in the Sciences of the Mind, 10 U.C. DAVIS J. JUVENILE L. & POL’Y I, 11–32 (2006).

37. Compare Gary B. Melton, *Toward “Personhood” for Adolescents’ Autonomy and Privacy as Values in Public Policy*, 38 AM. PSYCHOL. 99–102 (1983), with Elizabeth S. Scott et al., *Evaluating Adolescent Decisionmaking in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 224–31, 240 (1995).

38. See, e.g., *Virginia v. Black*, 538 U.S. 343 (2003). Justice Thomas stated:

For instance, there is no scienter requirement for statutory rape. See, e.g., Tenn. St. §39-13-506; Or. St. §163.365; Mo. St. §566.032; Ga. St. §16-6-3. That is, a person can be arrested, prosecuted, and convicted for having sex with a minor, without the government ever producing any evidence, let alone proving beyond a reasonable doubt, that a minor did not consent. In fact, “[f]or purposes of the child molesting statute . . . consent is irrelevant. The legislature has determined in such cases that children under the age of sixteen (16) cannot, as a matter of law, consent to have sexual acts performed upon them, or consent to engage in a sexual act with someone over the age of sixteen (16).” *Warrick v. State*, 538 N.E.2d 952, 954 (Ind. 1989) (citing Ind. Code 35-42-4-3). The legislature finds the behavior so reprehensible that the intent is satisfied by the mere act committed by a perpetrator.

*Id.* at 397 (Thomas, J., dissenting).

is much older than the child. It does not want to punish Romeo (or Juliet, who was thirteen during her love affair with Romeo), as it would Roman Polanski.<sup>39</sup> Roman Polanski was the famous forty-four-year-old movie director who pled guilty to the statutory rape of thirteen-year-old Samantha Gailey in 1977. As the child approaches the age of consent and maturity, however, society becomes less certain of the disability. One sees this uncertainty in the statutes that set lower ages of consent for sexual contact than for sexual penetration.

## 2. Recognizing High-Risk Juveniles, Not in the Lab but in the Courtroom

Scientists can recruit high-risk and healthy comparison participants for lab tests, but jurists do not have the luxury of such comparisons for youth in the courtroom. Take the teenager in *Doe v. Starbucks*, Kati Moore. She alleged that her twenty-four-year-old supervisor, Tim Horton, convinced her to have sex with him when she was a sixteen-year-old barista at Starbucks in 2005. Kati reported that Horton repeatedly asked her out and that she initially spurned his advances.<sup>40</sup> In pleadings, Kati claimed that while at work and in front of coworkers, Horton made “perhaps hundreds” of profane, sexually explicit remarks concerning his sexual interest in her.<sup>41</sup> Eventually, Kati acquiesced to Horton’s advances in the hopes that he would stop.<sup>42</sup> In November or December 2005, they allegedly engaged in sexual

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39. In *Romeo and Juliet*, Juliet was thirteen and sword-wielding Romeo was perhaps sixteen to nineteen years old, although William Shakespeare never specifies his exact age. WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act I, sc. 2 (specifying through Lady Capulet that “[Juliet] hath not seen the change of fourteen years”); see, e.g., Steve James, *Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and a Call for Reform*, 78 UMKC L. REV. 241 (2009–2010). For more information on Roman Polanski, see Luchina Fisher, *Roman Polanski: What did he do?* ABCNEWS, Sept. 30, 2009, <http://abcnews.go.com/Entertainment/roman-polanski/story?id=8705958>.

40. *Doe v. Starbucks, Inc.*, No. SACV 08-0582 AG (CWx), 2009 WL 5183773, at \*1, \*4 (C.D. Cal. Dec. 18, 2009) (granting in part and denying in part motions for summary judgment). This case was set to go to trial the week of June 15, 2010. However, according to the court clerk, the case settled. E-mail from Lisa Bredahl, Court Clerk to the Honorable Andrew J. Guilford, to author (Aug. 24, 2010) (on file with author).

41. *Id.* at \*2 (quoting Starbucks’s Objections to Plaintiff’s Evidence at 9:9–10:8, *Doe v. Starbucks, Inc.*, No. SACV 08-0582 AG (CWx), 2009 WL 5183773 (C.D. Cal. Dec. 18, 2009)).

42. *Starbucks*, 2009 WL 5183773, at \*1, \*4 (citing Doe Declaration ¶ 4, *Doe v. Starbucks, Inc.*, No. SACV 08-0582 AG (CWx), 2009 WL 5183773 (C.D. Cal. Dec. 18, 2009)).



activity.<sup>43</sup> Kati stated, “[Horton] demanded that I perform oral sex on him, which I did. I felt like I had to—that I had no choice. . . .” She explained, “I felt that, because he had given me marijuana and I had smoked it with him, I had to do what he said, because he was my Supervisor and I didn’t want to lose my job.”<sup>44</sup> Kati and Horton engaged in sexual activities regularly through June 2006.<sup>45</sup> In addition to “vaginal intercourse and oral copulation” at work and offsite, “[t]hey exchanged explicit sexual comments and text messages at work.”<sup>46</sup> Horton insisted that Kati not disclose their relationship to anyone.<sup>47</sup>

Ultimately, state authorities charged Horton with criminal unlawful sexual intercourse with a minor (Cal. Penal Code § 261.5) for his conduct with Kati, to which he pled guilty. In a 2009 civil action, Kati, by then an adult under the law and able to file in her own name, alleged sexual harassment and torts claims against Starbucks and Horton.<sup>48</sup> The civil court ruled that her “consent” to sex with Horton was relevant to her civil claims against Starbucks, even though it was no defense to the criminal sex charge against Horton.

Was Kati a high-risk teenager? Certainly, her behavior was high risk. According to the district court, Kati left her job in 2006 to enroll in a mental health treatment facility.<sup>49</sup> A news report clarified that Kati left Horton “when her mother called Integrity House, a home in Utah for troubled teens. Counselors from Integrity House ‘abducted’ Moore with her parents’ consent, shoving her into a car and driving her to their facility, where she lived for the next year.”<sup>50</sup> Such was Horton’s grip on Kati that her parents felt compelled to take such drastic measures to separate them.

Additional facts contribute to an understanding of Kati’s distress. After Kati agreed to appear on ABC’s 20/20 television news show, Federal Judge

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43. *Starbucks*, 2009 WL 5183773, at \*2.

44. *Id.* at \*3, \*4 (quoting Doe Declaration, *supra* note 40, ¶ 20).

45. *Starbucks*, 2009 WL 5183773, at \*5.

46. *Id.* (quoting Plaintiff’s Statement of Material Facts ¶¶ 20, 25, *Doe v. Starbucks, Inc.*, No. SACV 080582 AG (CWx), 2009 WL 5183773 (CD. Cal. Dec. 18, 2009)).

47. *Starbucks*, 2009 WL 5183773, at \*5.

48. *Id.*

49. *Id.* (citing Plaintiff’s Statement of Material Facts, *supra* note 45, ¶ 59).

50. Jon Cassidy, *Woman sues Starbucks over underage sex 2*, THE ORANGE COUNTY REGISTER, Jan. 25, 2010 (updated Jan. 26, 2010), <http://www.ocregister.com/articles/moore-230812-starbucks-records.html>.

Andrew J. Guilford released records of her prior sexual history. He acknowledged that while Kati had a right to privacy, Starbucks had a right to “defend themselves [*sic*] in the court of public opinion.” The *Orange County Register* recounted that when Kati was between fourteen and sixteen years old, she engaged in sexual activity with seven male partners. She did so with another five during the time she knew Horton. Kati responded, “They are trying to defend themselves by calling me a slut. . . .” The *Register* reported, “One of Starbucks’ arguments is that Moore has not sought criminal or civil action against any of the other men, all but one of whom were older than 18.”<sup>51</sup>

Where to start? How is it relevant that this young teen had sex with other men? Because she said “yes” to a dozen men, she must put out for the thirteenth at Starbucks? Federal Rule of Evidence 412 protects victims of sexual offenses (such as rape victims) from prejudicial introduction of their sexual histories. Did Rule 412 mean nothing for Kati? Apparently so in “the court of public opinion.” When courts fail to invoke Rule 412 (or similar state equivalents)<sup>52</sup> to protect the sexual history of minor victims, then any evaluation of a minor’s maturity and capacity could conceivably include a discussion of the minor’s sexual maturity and sexual history. This circumstance leaves minors vulnerable to the grossest procedural abuses that legislators intended Rule 412 (and state equivalents) to combat.<sup>53</sup>

So again, was Kati a high-risk juvenile? Society will never know for certain but common sense and hindsight indicate that she made repeated poor decisions. The decision to smoke marijuana with her supervisor, multiple sexual partners, and aggravating problems with her parents all demonstrate unwise and risky choices. Kati was fourteen when she began to free-fall, and several years later Judge Guilford ruled to release her sexual history to the court of public opinion. He later ruled that her “consent” might serve as a complete defense to her civil claims. Whether or not the judge actually believed Kati was a “slut,” California retains an unofficial promiscuity defense “in the [unofficial] court of public opinion.” Is the law

51. *Id.* (internal quotation marks omitted).

52. *See, e.g.*, Cal. Evid. Code §1106 (West 1995); Cal. Gov’t Code §11513 (West 1992).

53. *See, e.g.*, Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813, 849 (1991) (arguing that exposure of a woman’s sexual history will “lead not only to shame in the courtroom but acquiescence in the workplace”).

adequately serving our youth, particularly those at high risk for risky decision making? Arguably, Kati's case answers that question negatively.

### 3. Capacity and Neurobiological Decision Making

The Summary of State Juvenile Sex Crimes Statutes confirms that society expects even young teenagers to make wise choices about sexual activity. In Colorado, for example, the effective "age of consent" to sex with an adult is fourteen since, for the crime of "Sexual assault" (a class 4 felony), the partner must be four years older. Colorado's "Unlawful sexual contact" law applies for all minors, but it qualifies only as a class 1 misdemeanor. A misdemeanor hardly serves as a serious deterrent or retributive punishment. In North Carolina, the "Rape of a child" constitutes an offense only with a target under thirteen. Finally, even though the age of majority is eighteen in most states,<sup>54</sup> the "age of consent" absent special circumstances in only four states matches that age demarcation. Do these children really possess the legal capacity to make adult-like decisions? Many do not. And arguably, high-risk children really do not.

The neuroscientific findings suggest that some young teenagers may take greater, more imprudent risks than adults, if these children behave outside of a lab as they do in it. Moreover, the functioning of the brains of high-risk children predispose them to more precarious decisions than their healthy peers. Thus, the law of consent is arguably gambling with the well-being of young teenagers when it fails to protect them from their own perilous decisions or from savvy sexual predators. In reality, these juveniles may find their metaphorical balloons bursting in ways that they are not expecting and are not prepared to handle effectively. In the lab, youth lose at a balloon game and forfeit money. In real life, they engage in sexual activity and risk pregnancy, sexually transmitted infections, possible moral opprobrium, and more.

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54. Sandra Grauschopf, *Age of Majority by State—What is the Age of Majority in My State?*, ABOUT.COM., updated Sept. 21, 2012, <http://contests.about.com/od/sweepstakes101/a/agemajorystate.htm>. Variations occur in Alabama (19) Arkansas (18 or graduation from high school, whichever is later), Delaware (19), Mississippi (21), Nebraska (19), Nevada (18, or if still in high school at 18, 19 or graduation, whichever comes earlier), Ohio (18 or graduation from high school, whichever comes earlier), Tennessee (18 or graduation from high school, whichever is later), Utah (18 or graduation from high school, whichever is earlier), Wisconsin (18 or graduation from high school, whichever comes earlier).

By comparing recent neurobiological study results and the Summary of laws, readers may reach at least two conclusions. First, society needs more scientific analysis concerning the way teenagers make critical decisions, particularly about sexual activity. Scientists and jurists need to compare thoroughly this data with the data pertaining to adult decision making. Second, jurists need to reform the law of consent so that society stops conceiving of capacity as an “on/off” switch. Currently, the law expects that teenagers have full legal capacity and the ability to give legally binding consent, or that they do not. Scientific evidence suggests that adolescent development is much more varied and nuanced than an on/off model accurately portrays.

Ten years ago, Professor Drobac urged a reconceptualization of capacity.<sup>55</sup> Teenagers have some capacity. She found the term “diminished capacity”<sup>56</sup> to describe their abilities inappropriate because the word “diminished” suggests that full capacity should exist or may once have existed. Most teenagers suffer not from impairment but from immaturity—a blameless condition and a natural phase of growth. She proffered the term “developing capacity” because of a teenager’s transitional status from childhood to adulthood and his or her developing maturity.

What level of fault should jurists associate with developing capacity? What level of responsibility for unwise sexual exploration? “No fault” hardly seems fair since the teenager has some capacity. Logically, one could equate the quantum of fault with the level of maturing capacity. Thus, one

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55. Drobac, *Sex and the Workplace*, *supra* note 27, at 518–19.

56. Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 801, 829–34 (2003). In discussing adolescent criminal offenders, Professors Scott and Steinberg explained:

The differences that distinguish adolescents from adults are more subtle—mitigating, but not exculpatory. Most obviously, cognitive and psycho-social immaturity undermines youthful decisionmaking in ways that reduce culpability. Moreover, due to their immaturity, adolescents may be more vulnerable to coercive pressures than are adults. Finally, because their criminal acts are influenced by normal developmental processes, typical adolescent law breakers are different from fully responsible adults whose crimes are assumed to be the product of bad moral character. Thus, young offenders are less culpable than adults because of their diminished capacity; but they are also appropriately identified with actors who succumb to coercive pressures or who demonstrate that their criminal acts were out of character, and who are less culpable because their responses are those of ordinary persons.

Id. at 829–30.

sees how a comparative fault scheme would appear attractive to a court attempting to associate fault with capacity. Here, however, is the flaw in the logic.

Full legal capacity means just that—complete capacity. Not diminished capacity. Not developing capacity. Full legal capacity is an all-or-nothing proposition. There is no sliding scale for legal capacity.<sup>57</sup> Arguably, recent data suggest that peri-adolescents, particularly those deemed “high risk,” have not reached that adult legal threshold. Even in the criminal system, prosecutors try young adolescents in juvenile court as children or in adult court as adults.<sup>58</sup> Jurists do not try them in adult court as mature children. When one considers such a sliding scale seriously, one sees the fallacy of such an idea. How can society justify holding someone morally culpable and then fully legally responsible, when that person (child or teenager) is incapable of manifesting full, adult-like reasoning and decision-making abilities because of transitioning developmental maturity?

In *LK v. Reed*, a thirteen-year-old special education student, A.K., took the blame for her own injury, or at least a pro rata share of it. A.K., through her estate administrators, LK and LK, sued another student and the school board after A.K. allegedly agreed to engage in sex with an eighteen-year-old special education high school junior. The *LK* appellate court criticized the trial court, pointing out that the original holding “necessarily entitles any

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57. Professor Drobac has elsewhere advocated on behalf of *legal assent* for minors, voidable by a minor when the original decision was not in his or her best interests. Legal assent carries no presumptions regarding juvenile capacity. See DROBAC, *WORLDLY BUT NOT YET WISE*, *supra* note 34.

58. I [Jennifer] realize that this stance necessarily leaves intact an inconsistency between the criminal and civil systems. Because of the need to protect society from crimes committed by adolescents, I endorse Professors Elizabeth Scott and Laurence Steinberg’s proposal that the juvenile justice system recognize adolescent “diminished responsibility” due to diminished culpability. Elizabeth Cauffman et al., *Justice For Juveniles: New Perspectives on Adolescents’ Competence and Culpability*, 18 QUINNIPIAC L. REV. 403, 405 (1999); Scott & Steinberg, *supra* note 34, at 835–36. However, I reassert that adolescents—even adolescent criminal offenders—lack full adult legal capacity. Moreover, I do not suggest a “diminished culpability” or “diminished responsibility” parallel for the civil system because my focus is the protection of youth, and their developing capacity, from sexual exploitation by adults. I would still shield adolescents from legal responsibility for their immature choices because adult exploitation causes their injury. The need to protect society (and individual victims) from crimes committed by adolescents, however, justifies the different treatment in the criminal system of adolescent “developing capacity” and the different level of legal responsibility (and culpability) attributed to adolescent criminal offenders.

carneal knowledge victim to civil damages.” The *LK* appellate court warned, “Under the trial court’s holding, a girl could provoke a criminal prosecution against a sexual partner and recover damages from him, both as a result of her willful and voluntary actions in consenting to, or instigating, a sexual liaison.”<sup>59</sup>

This cautionary augury conjures the specter of the young seductress, luring men to their financial demise. Anticipating partners outside of the special education environment, the *LK* appellate court neglected to mention that any potential sexual partner of such a “Lolita”<sup>60</sup> remained free to reject her advances and spare himself criminal and potential civil liability. This notion of the child harlot, ready to entrap an unsuspecting adult partner, exemplifies the most dated, sexist notions of women (and girls) as avaricious temptresses.<sup>61</sup> The court’s reduction of the fault percentage to even 5 percent seems odd in the context of a thirteen-year-old special

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59. *LK*, 631 So. 2d 604, 605, 607 (La. Ct. App. 1994); see also *Orangeburg*, 518 S.E.2d at 261 (reasoning that “[t]o prohibit such evidence [of consent] would effectually allow a victim to come in and tell a one-sided version of events, without being subject to any real cross-examination or impeachment as to the damages actually suffered”).

60. Ironically, in the novel, Lolita was not the narrating protagonist but was the object of a pedophile’s desire. See generally VLADIMIR NABOKOV, *LOLITA* (Vintage Books 1989) (1955) (telling the story of a man sexually obsessed with his landlady’s twelve-year-old daughter).

61. See Marybeth Hamilton Arnold, “*The Life of a Citizen in the Hands of a Woman*”: *Sexual Assault in New York City, 1790–1820*, in *PASSION AND POWER: SEXUALITY IN HISTORY* 35, 40–45 (Kathy Peiss & Christina Simmons eds., 1989) (discussing sexual assault of women at the turn of the nineteenth century and highlighting the popular myth of sexually voracious working class women). Arnold noted the rape of a thirteen-year-old girl who was likened to a harlot. *Id.* at 42. Counsel for the defense argued:

[If] anything of an improper nature passed between them, I am inclined to believe that it has been with her consent. The passions may be as warm in a girl of her age as in one of more advanced years, and with very little enticement she may have consented to become his mistress. . . . [It] is said her youth renders it impossible she should have been a lewd girl. Who is acquainted with the dissolute morals of our city, and does not know that females are to be found living in a state of open prostitution at the early ages of 12 and 13 years?

*Id.* (citing Report of the Trial of Richard D. Croucher, on an Indictment for a Rape of Margaret Miller, on Tuesday, the 8th day of July, 1800, at 15, 18 (New York: 1800)); see also Estelle B. Freedman, “*Uncontrolled Desires*”: *The Response to the Sexual Psychopath, 1920–1960*, in *PASSION AND POWER*, *supra*, at 199, 212 (explaining that victims of sexual predators were described “as ‘seductive,’ ‘flirtatious,’ and sexually precocious”). *But see* Kathy Peiss, “*Charity Girls*” and *City Pleasures: Historical Notes on Working Class Sexuality, 1880–1920*, in *PASSION AND POWER*, *supra*, at 57, 64 (discussing “charity girls,” working women who traded sex for gifts and attention).

education student with an IQ of between 64 and 74.<sup>62</sup> *LK* gives new meaning to the recent study of high-risk youth discussed here.

Despite its ultimate determination, the *LK* appellate court explained other disturbing facts:

[A]t the time of these events A.K. was a 13-year-old girl with minimal intellectual and social skills. She was shy and obedient and had never had a boyfriend. She had a history of seizures for which she took daily medication. Her family was poor in financial assets but rich in religious beliefs. In the year preceding these events, A.K.'s father was involved in an accident which rendered him a paraplegic, and A.K.'s mother donated a kidney to A.K.'s younger sister, a surgery requiring extended visits to New Orleans. A.K.'s family stress coupled with her age, intellect, and social skills, render her consent, from a legal standpoint, almost meaningless. Accordingly, we assess A.K.'s fault at 5% and reduce the damages awarded to her by that percentage.<sup>63</sup>

In this passage, the court justified the limit on its award reduction with the family's circumstances, not with the victim's conduct. This alternate explanation suggests that the court was sympathetic to A.K.'s family stress and its admirable religious character. Neither factor justified a reduction in the comparative negligence multiplier. The real question was whether A.K. was negligent at all.

The "age of consent" ranges prominent on the Summary arguably highlight state attempts to account for what might someday be recognized as "developing capacity." One can see with two case examples, Kati's and A.K.'s, how awkward and inaccurate this system is to implement. Children who are disabled, or who are not as developmentally mature as peers in their chronological age group, or who would qualify as high-risk children in the recent study, are charged with a level of responsibility they may not have. National employers must cope with training supervisors and managers to deal with adolescent workers under inconsistent state laws. In the Seventh Circuit alone, the age of consent varies from Indiana (16) to Illinois (17) to Wisconsin (18). Other inconsistencies are equally glaring. For example, are children in Arizona (where the age of consent is 18) so much less mature and capable of consenting to sex than those in Iowa (where age

62. *LK*, 631 So. 2d at 605.

63. *Id.* at 608.

demarcations range from 12 to 18)? Other problems become apparent as one looks more carefully at the law.

### III. CIVIL AND CRIMINAL LAW INCONSISTENCIES IN THE TREATMENT OF JUVENILE CAPACITY AND CONSENT

The problems with state treatment of juvenile capacity and consent are much more complicated than a quick look at the Summary might indicate. For this reason, the left column of the Summary notes whether state civil law appears consistent with the juvenile sex crime laws. For example, the Summary reveals that in several states, including California, state civil law conflicts with state criminal law in the treatment of juvenile capacity and consent. Kati's case illustrated this conflict perfectly. Under California criminal law her "consent" was no defense to a criminal sexual offense charge. However, that same "consent" might have operated as a complete defense in her civil personal injury case for compensatory damages against Horton and Starbucks.<sup>64</sup> Even within a state, courts may not rule consistently regarding the treatment of juvenile capacity and consent. The Summary reveals that in at least thirteen states (California, Georgia, Illinois, Louisiana, Maryland, Mississippi, New Hampshire, New York, North Dakota, South Carolina, Tennessee, Virginia, and Wisconsin), civil law gives legal significance to the consent of a minor that criminal law treats as having no significance. Civil law acceptance of juvenile "consent" can work to bar the minor from the suit completely or, as in South Carolina, operate to limit damages.

The number of states that treat juvenile capacity and consent inconsistently increases by another eight (including Arkansas, Colorado, Florida, Kansas, Kentucky, Michigan, Minnesota, and Oklahoma) if one considers the arguably sexist treatment of sexually active boys.<sup>65</sup> In these states, courts

64. See the Appendix (California). In other articles, Professor Drobac has explored the conflict of laws in particular states. Drobac, *Wake Up and Smell the Starbucks Coffee*, *supra* note 7; Jennifer Ann Drobac, *A Bee Line in the Wrong Direction: Science, Teenagers, and the Sting to "The Age of Consent,"* 20 J.L. & POL'Y 63 (2011).

65. For a discussion of these paternity cases, see Ruth Jones, *Inequality From Gender-Neutral Laws: Why Must Male Victims of Statutory Rape Pay Child Support for Children Resulting From Their Victimization?* 36 GEORGIA L. REV. 411 (2002).



will treat a male child's "consent" to sex as legally significant when adjudicating the minor civilly liable for the financial support of a baby, conceived as a result of the illicit sex. For example, *State ex rel. Hermesmann v. Seyer* addressed how a twelve-year-old boy, Shane Seyer, engaged in sexual intercourse multiple times over several months with his sixteen-year-old babysitter, Colleen Hermesmann, in violation of state law. Rather than plead to a sex offense, Colleen pled guilty in juvenile court, as a minor, to a reduced charge of contributing to a child's misconduct. In a subsequent paternity and child support action, another court found Shane civilly liable for the support of the child, Melanie, conceived when Shane was thirteen. This court opined, "The issue of consent to sexual activity under the criminal statutes is irrelevant in a civil action to determine paternity and for support of a minor child born of such activity."<sup>66</sup>

If Shane did not have the capacity to consent to sex, why did the court hold him civilly liable for that conduct that resulted in the conception of a child? Only for the \$50 per month at it awarded in child support for Melanie? A similar question arises concerning whether Colleen had developed the requisite capacity to understand fully the implications of her conduct and to conform her behavior to state law. If she made risky choices because of her "developing capacity," does it really serve society or Shane (or Melanie) to prosecute Colleen? Is Colleen rehabilitated by the punishment, or does she simply "grow up" as she otherwise would have done? One wonders whether both of these minors might have been high-risk children. One might question whether they each failed to sufficiently deactivate those brain regions necessary for the anticipation of the logical outcomes of their behavior and choices.

## CONCLUSIONS

As the neurobiological and psychosocial studies contribute to our understanding of juvenile decision making and capacity, the law must adapt. The science of juvenile "developing capacity" should inform legal treatment of adolescent consent to sexual activity with an adult. Emerging functional neuroimaging research suggests that the brains of a subset of adolescents are less sensitive to processing risk during decision making than typically

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66. *State ex rel. Hermesmann v. Seyer*, 847 P.2d 1273, 1274 (1993).

developing peers. These high-risk youth are arguably more vulnerable to poor decision making in risky situations because of these neurobiological deficits. Even though the neuroscience is new and the research ongoing, jurists can begin to consider whether juvenile sex crime statutes adequately protect our precious children. At the very least, society needs to stop holding juvenile male victims of sex crimes civilly liable for support of children conceived. Washington State now protects young people up to twenty-one years old from the personnel in their schools who engage with them in sexual conduct. As other states experiment with different responses to the science and the injuries caused by unwise juvenile-adult sex, we jurists can consider creative, successful approaches. However, we adults have the capacity to begin now.

**APPENDIX. SUMMARY OF STATE JUVENILE SEX CRIME STATUTES.<sup>a</sup>**

State <sup>b</sup>	Code	Comment
<b>Alabama</b> 16 Consistent ?:  Gaither v. Meacham, 108 So. 2 (Ala. 1926); <b>but see</b> Benefield v. Bd. of Trs. of the Univ. of Ala., 214 F. Supp.2d 1212 (N.D. Ala. 2002) (crediting consent of a fifteen year old college student).	ALA. CODE § 13A-6-61 Rape, 1st degree	Gender neutral, but must be with member of opposite sex. Perpetrator (Perp): 16 or older; Target (Targ): under 12.
	ALA. CODE § 13A-6-62 Rape, 2nd degree	Gender neutral, but must be with member of opposite sex. Perp: 16 or older; Targ: 12–15 plus 2 yr. age diff.
	ALA. CODE § 13A-6-63 Sodomy, 1st degree	Gender neutral. Perp: 16 or older; Targ: under 12.
	ALA. CODE § 13A-6-64 Sodomy, 2nd degree	Gender neutral. Perp: 16 or older; Targ: 12–15.
	ALA. CODE § 13A-6-65 Sexual misconduct	Gender neutral, but must be with member of opposite sex. No age specified. (This is the statutory rape section.)
	ALA. CODE § 13A-6-67 Sexual abuse, 2nd degree	Male perp. only. Perp: 19 or older; Targ: 13–15.
<b>Alaska</b> 16/18 No inconsistency found.	ALASKA STAT. § 11.41.434 Sexual abuse of a minor, 1st degree	Gender neutral. Perp: 16 or older; Targ: under 13. Perp: 18 or older; Targ: under 18 plus parent or guardian. Perp: 18 older; Targ: under 16 plus perp. in position of authority.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	ALASKA STAT. § 11.41.436 Sexual abuse of a minor, 2nd degree	Gender neutral. Perp: 17 or older; Targ: 13–15 plus 4 yr. age diff. Perp: 16 or older; Targ: under 13. Perp: 18 or older; Targ: under 18 plus family relationship. Perp: 18 or older; Targ: under 16 plus perp. in position of authority. Perp: 18 or older; Targ: 16–17 plus 3 yr. age diff. and position of authority. Perp: under 16; Targ: under 13 plus 3 yr. age diff.
	ALASKA STAT. § 11.41.438 Sexual abuse of a minor, 3rd degree	Gender neutral. Perp: 17 or older; Targ: 13–15 plus 3 yr. age diff.
	ALASKA STAT. § 11.41.440 Sexual abuse of a minor, 4th degree	Gender neutral. Perp: under 16; Targ: under 13 plus 3 yr. age diff. Perp: 18 or older; Targ: 16–17 plus 3 yr. age diff. and perp. in position of authority.
	ALASKA STAT. § 11.41.455 Unlawful exploitation of a minor	Gender neutral. Targ: under 18.
<b>Arizona</b> 18 No inconsistency found.	ARIZ. REV. STAT. § 13-1404 Sexual abuse	Gender neutral. Targ: 15 or older without consent or under 15 if only female breast involved.
	ARIZ. REV. STAT. § 13-1405 Sexual conduct with a minor	Gender neutral. Targ: under 18.
	ARIZ. REV. STAT. § 13-1409 Unlawful sexual conduct	Gender neutral. Variations in level of punishment according to age of target. Targ: under 18.
<b>Arkansas</b> 15/18/21 Consistent ?: Hamm v. Office of Child Support Enforcement, 985 S.W.2d 742 (Ark. 1999) (father (13) found liable for support of child conceived despite	ARK. CODE ANN. § 5-14-103 Rape	Gender neutral. Targ: under 14 plus 3 yr. age diff. Targ: under 18 plus family relation plus 3 yr. age diff.
	ARK. CODE ANN. § 5-14-110 Sexual indecency with a child	Gender neutral. Perp: 18 or older; Targ: under 15 plus 3 yr. age diff.
	ARK. CODE ANN. § 5-14-124	Gender neutral. Targ: under 18 plus perp. is in position of authority and 3 yr. age diff.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
statutory rape by mother (15)).	Sexual assault, 1st degree	Targ: under 21 plus perp. is personnel at target's school.
	ARK. CODE ANN. § 5-14-125 Sexual assault, 2nd degree	Gender neutral. Perp: 18 or older; Targ: under 14. Targ: under 18 plus perp. in position of trust. Perp: under 18; Targ: under 12 plus 3 yr. age diff. Perp: under 18; Targ: 12-13 plus 4 yr. age diff. Targ: under 21 plus perp. is personnel at target's school.
	ARK. CODE ANN. § 5-14-126 Sexual assault in the 3rd degree	Gender neutral. Perp: under 18; Targ: under 14 plus 3 yr. age diff.
	ARK. CODE ANN. § 5-14-127 Sexual assault in the 4th degree	Gender neutral. Perp: 20 or older; Targ: under 16. (This is the statutory rape code.)
<b>California</b> 18 <b>Inconsistent:</b> People v. Tobias, 106 Cal. Rptr. 2d 80 (2001) and Co. of San Luis Obispo v. Nathaniel J., 57 Cal. Rptr. 2d 843 (Cal. Ct. App. 1996).	CAL. PENAL CODE § 261.5 Unlawful sexual intercourse with person under 18	Gender neutral. Variations in level of punishment according to age of target. Targ: under 18.
	CAL. PENAL CODE § 269 Aggravated sexual assault of a child	Gender neutral. Targ: under 14.
<b>Colorado</b> 15/18 Consistent ?: Bohrer v. DeHart, 943 P.2d 1220 (Colo. Ct. App. 1996); <b>but see</b> Schierenbeck v. Minor, 367 P.2d 333 (Colo. 1961) (finding father (16) may be liable for support of child conceived with mother (20)).	COLO. REV. STAT. § 18-3-402 Sexual assault	Gender neutral. Targ: under 15 plus 4 yr. age diff. Targ: 15-16 plus 10 yr. age diff.
	COLO. REV. STAT. § 18-3-404 Unlawful sexual contact	Gender neutral. Targ: under 18.
	COLO. REV. STAT. § 18-3-405 Sexual assault on a child	Gender neutral. Targ: under 15 plus 4 yr. age diff.
	COLO. REV. STAT. § 18-3-405.3 Sexual assault of a child by one in a position of trust	Gender neutral. Targ: under 18 plus perp. is in position of trust.

(continued)

State <sup>b</sup>	Code	Comment
<p><b>Connecticut</b> 16/18 Consistent: Silva v. Warecke, 2004 WL 1925882 (not reported).</p>	<p>CONN. GEN. STAT. § 53a-70 Sexual assault in the 1st degree</p>	<p>Gender neutral. Targ: under 13 plus 2 yr. age diff.</p>
	<p>CONN. GEN. STAT. § 53a-71 Sexual assault in the 2nd degree</p>	<p>Gender neutral. Targ: 13–15 plus 3 yr. age diff. Targ: under 18 plus perp. is target's guardian. Perp: 20 or older; Targ: under 18 plus perp. in position of authority.</p>
	<p>CONN. GEN. STAT. § 53a-73a Sexual assault in the 4th degree</p>	<p>Gender neutral. Targ: under 13 plus 2 yr. age diff. Targ: 13–14 plus 3 yr. age diff. Targ: under 18 plus perp. in position of authority or guardian.</p>
	<p>CONN. GEN. STAT. § 53a-90a Enticing a minor</p>	<p>Gender neutral. Targ: under 16.</p>
<p><b>Delaware</b> 16/18 Consistent: Bostic v. Smyrna Sch. Dist., 2003 WL 723262 (not reported).</p>	<p>DEL. CODE ANN. tit. 11, § 223 Gender/ Number</p>	<p>Masculine includes the feminine.</p>
	<p>DEL. CODE ANN. tit. 11, § 761(k) Definitions</p>	<p>Targ: under 16 plus more than 4 yr. age diff. Targ: under 12 cannot consent.</p>
	<p>DEL. CODE ANN. tit. 11, § 762(b) Gender</p>	<p>Masculine includes the feminine.</p>
	<p>DEL. CODE ANN. tit. 11, § 768 Unlawful sexual contact, 2nd degree</p>	<p>Gender neutral. Targ: under 18.</p>
	<p>DEL. CODE ANN. tit. 11, § 769 Unlawful sexual contact, 1st degree</p>	<p>Gender neutral. Targ: under 13.</p>
	<p>DEL. CODE ANN. tit. 11, § 770 Rape in the 4th degree</p>	<p>Gender neutral. Targ: under 16. Perp: 30 and over; Targ: under 18.</p>
	<p>DEL. CODE ANN. tit. 11, § 771 Rape in the 3rd degree</p>	<p>Gender neutral. Targ: under 16 plus 10 yr. age diff. or perp. causes physical injury or serious mental or emotional injury. Perp: 19 or older; Targ: under 14.</p>
<p><i>(continued)</i></p>		

State <sup>b</sup>	Code	Comment
	DEL. CODE ANN. tit. 11, § 772 Rape, 2nd degree	Gender neutral. Targ: under 16 plus perp. causes serious physical injury or uses deadly weapon or dangerous instrument. Perp: 18 or older; Targ: under 12
	DEL. CODE ANN. tit. 11, § 773 Rape, 1st degree	Gender neutral. Perp: 18 older; Targ: under 12.
<b>D.C.</b> 16/18/20 No inconsistency found.	D.C. CODE § 22-3001 Definitions	"“Child” means a person who has not yet attained the age of 16 years.” ““Minor” means a person who has not yet attained the age of 18 years.”
	D.C. CODE § 22-3008 1st degree child sexual abuse	Gender neutral. Targ: under 16 plus 4 yr. age diff.
	D.C. CODE § 22-3009 2nd degree child sexual abuse	Gender neutral. Targ: under 16 plus 4 yr. age diff.
	D.C. CODE § 22-3009.01 1st degree minor sexual abuse	Gender neutral. Perp: 18 or older; Targ: 16–17.
	D.C. CODE § 22-3009.02 2nd degree minor sexual abuse	Gender neutral. Perp: 18 or older; Targ: 16–17.
	D.C. CODE § 22-3009.03 1st degree sexual abuse of secondary student	Gender neutral. Targ: under 20 plus personnel in target’s school.
	D.C. CODE § 22-3009.04 2nd degree sexual abuse of secondary student	Gender neutral. Targ: under 20 plus personnel in target’s school.
	D.C. CODE § 22-3010 Enticing a child	Gender neutral. Targ: under 16 plus 4 yr. age diff.
	D.C. CODE § 22-3010.01 Misdemeanor sexual abuse of a minor or child	Gender neutral. Perp: 18 or older; Targ: under 18 plus 4 yr. age diff.
<b>Florida</b> 16/18 Consistent ?: Shaw v. Fletcher, 188 So. 135 (Fla. 1939);	FLA. STAT. § 794.011 Sexual battery	Gender neutral. Perp: 18 or older; Targ: under 12 plus injury to sexual organs. Targ: 12 or older without consent.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
<p><b>but see</b> Dep't of Revenue on Behalf of Bennett v. Miller, 688 So.2d 1024 (Fla. Dist. Ct. App. 1997) (finding father (15) liable for support of child conceived with mother (20)).</p>	<p>FLA. STAT. § 794.05 Unlawful sexual activity with certain minors</p>	<p>Gender neutral. Perp: 24 or older; Targ: 16 or 17.</p>
	<p>FLA. STAT. § 800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age</p>	<p>Gender neutral. Diff. punishment if perp. is over/under 18; Targ: under 12 or 12–15.</p>
<p><b>Georgia</b> 16 <b>Inconsistent:</b> McNamee v. A.J.W., 519 S.E.2d 298 (Ga. Ct. App. 1999); <b>but see</b> Gaines v. Wolcott, 167 S.E.2d 366 (Ga. Ct. App. 1969).</p>	<p>GA. CODE ANN. § 16-6-1 Rape</p>	<p>For “rape,” perpetrator is only male and target is only female. Targ: under 10.</p>
	<p>GA. CODE ANN. § 16-6-2 Sodomy</p>	<p>Gender neutral. Targ: under 10.</p>
	<p>GA. CODE ANN. § 16-6-3 Statutory rape</p>	<p>Gender neutral. Different punishment if perp. is under/over 21; Targ: under 16.</p>
	<p>GA. CODE ANN. § 16-6-4 Child molestation</p>	<p>Gender neutral. Targ: under 16.</p>
	<p>GA. CODE ANN. § 16-6-5 Enticing a child for indecent purposes</p>	<p>Gender neutral. Targ: under 16.</p>
	<p>GA. CODE ANN. § 16-6-22.1 Sexual battery</p>	<p>Gender neutral. Targ: under 16.</p>
<p><b>Hawaii</b> 14/16 No inconsistency found.</p>	<p>HAW. REV. STAT. § 707-730 Sexual assault, 1st degree</p>	<p>Gender neutral. Targ: under 14. Targ: 14–15 plus 5 yr. age diff.</p>
	<p>HAW. REV. STAT. § 707-732 Sexual assault, 3rd degree</p>	<p>Gender neutral. Targ: under 14. Targ: 14–15 plus 5 yr. age diff.</p>
	<p>HAW. REV. STAT. § 707-733.6 Continuous sexual assault of a minor</p>	<p>Gender neutral. Targ: under 14.</p>
<p><b>Idaho</b> 16/18 No inconsistency found.</p>	<p>IDAHO CODE ANN. § 18-1506 Sex abuse of child under age 16</p>	<p>Gender neutral. Perp: 18 or older; Targ: under 16.</p>
<p>(continued)</p>		

State <sup>b</sup>	Code	Comment
	IDAHO CODE ANN. § 18-1507 Sexual exploitation of a child	Gender neutral. Targ: under 18.
	IDAHO CODE ANN. § 18-1508 Lewd conduct with a minor	Gender neutral. Targ: under 16.
	IDAHO CODE ANN. § 18-1508a Sexual battery of a minor	Gender neutral. Targ: 16–17 plus 5 yr. age diff.
	IDAHO CODE ANN. § 18-6101 Rape	This code section specifies that “rape” can only be committed by a male and only a female may be a target. Perp: 18 or older; Targ: under 16. Targ: 16–17 plus 3 yr. age diff.
	IDAHO CODE ANN. § 18-6108 Male Rape	For “male rape,” perpetrator is only male and target is only female. Perp: 18 or older; Targ: under 16. Targ: 16–17 plus 3 yr. age diff.
<p><b>Illinois</b> 17/18 <b>Inconsistent:</b> Doe v. Oberweis Dairy 456 F.3d 704 (7th Cir. 2006) (finding that consent might limit damages).</p>	720 ILL. COMP. STAT. 5/11-1.20 Criminal sexual assault	Gender neutral. Targ: under 18 plus perp. is family member. Perp: 17 or older; Targ: 13–17 plus perp. in position of authority.
	720 ILL. COMP. STAT. 5/11-1.30 Aggravated criminal sexual assault	Gender neutral. Perp: under 17; Targ: under 9. Targ: 9–12 plus use of force or threat of force.
	720 ILL. COMP. STAT. 5/11-1.40 Predatory criminal sexual assault of a child	Gender neutral. Perp: 17 or older; Targ: under 13.
	720 ILL. COMP. STAT. 5/11-1.50 Sexual abuse	Gender neutral. Perp: under 17; Targ: 9–16. Targ: 13–16 plus less than 5 yr. age diff.
	720 ILL. COMP. STAT. 5/11-1.60 Aggravated criminal sexual abuse	Gender neutral. Targ: under 18 plus perp. is family member. Perp: 17 or older; Targ: under 13. Perp: 17 or older plus in position of authority, trust, etc.; Targ: 13–17. Perp: 17 or older plus used force or threat of force; Targ: 13–16. Perp: under 17; Targ: 13–16 plus 5 yr. age diff.; Targ: under 9. Perp: under 17 plus use of force or threat of use of force; Targ: 9–16.
<i>(continued)</i>		



State <sup>b</sup>	Code	Comment
	720 ILL. COMP. STAT. 5/11-6 Indecent solicitation of a child	Gender neutral. Perp: 17 or older; Targ: under 17.
<p><b>Indiana</b> 16/18 Unclear: Renguette v. Bd. of Trs. ex rel. Brownsburg Comty. Sch. Corp. 2007 WL 1536841 (not published) (leaving open the question of whether minor had capacity to consent to sex).</p>	IND. CODE § 35-42-4-1 Rape	Must be with "member of the opposite sex." No age specified.
	IND. CODE § 35-42-4-3 Child molesting	Gender neutral. Diff. punishment if perp. is under/over 21; Targ: under 14.
	IND. CODE § 35-42-4-5 Vicarious sexual gratification	Gender neutral. Perp: 18 or older; Targ: under 16.
	IND. CODE § 35-42-4-6 Child solicitation	Gender neutral. Perp: 18 or older; Targ: under 14. Perp: 21 or older; Targ: 14–15.
	IND. CODE § 35-42-4-7 Child seduction	Gender neutral. Perp: 18 or older; Targ: 16–17 plus 4 yr. age diff. and perp. in various positions of trust or authority.
	IND. CODE § 35-42-4-9 Sexual misconduct with a minor	Gender neutral. Perp: 18 or older; Targ: 14–15.
<p><b>Iowa</b> 14/16/18 Consistent: Reutkemeier v. Nolte, 161 N.W. 290 (Iowa 1917).</p>	IOWA CODE § 702.5 Definition of "Child"	Targ: under 14.
	IOWA CODE § 709.3 Sexual abuse, 2nd degree	Gender neutral. Targ: under 12.
	IOWA CODE § 709.4 Sexual abuse, 3rd degree	Gender neutral. Targ: 12–13. Targ: 14–15 plus family relationship, position of authority, or 4 yr. age diff.
	IOWA CODE § 709.8 Lascivious acts with a child	Gender neutral. Perp: 16 or older; Targ: under 14.
	IOWA CODE § 709.12 Indecent contact	Gender neutral. Perp: 18 or older or 16–17 plus 5 yr. age diff.; Targ: under 14.
	IOWA CODE § 709.14 Lascivious conduct with a minor	Gender neutral. Perp: over 18 plus in a position of authority; Targ: under 18.
<p><b>Kansas</b> 16 Consistent ?: Herman v. Turner, 232</p>	KAN. STAT. ANN. § 21-5503 Rape	Gender neutral. Targ: under 14.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
<p>P. 864 (Kan. 1925); <b>but see</b> State ex rel. Hermesmann v. Seyer, 847 P.2d 1273 (Kan. 1993) (finding father (13) liable for support of child conceived with mother (16)).</p>	KAN. STAT. ANN. § 21-5504 Criminal sodomy	Gender neutral. Targ: 14–15.
	KAN. STAT. ANN. § 21-5505 Sexual battery	Gender neutral. Targ: 16 or older without consent.
	KAN. STAT. ANN. § 21-5506 Indecent liberties with a child	Gender neutral. Targ: 14–15.
	KAN. STAT. ANN. § 21-5508 Indecent solicitation of a child	Gender neutral. Targ: 14–15.
	KAN. STAT. ANN. § 21-5510 Sexual exploitation of a child	Gender neutral. Targ: under 18.
	KAN. STAT. ANN. § 21-5512 Unlawful sexual relations	Gender neutral. Targ: 16 or older.
<p><b>Kentucky</b>            16/18            Consistent ?:            Monahan v. Clemons, 279 S.W. 974 (Ky. Ct. App. 1926); <b>but see</b> Commonwealth ex rel. Rush v. Hatfield 929 S.W.2d 200 (Ky. Ct. App. 1996) (finding father (15) ultimately liable for support of child conceived with mother (over 21)).</p>	KY. REV. STAT. ANN. § 446.020 Gender & number	Use of the masculine includes the feminine unless otherwise indicated.
	KY. REV. STAT. ANN. § 510 References and Annotations	Explanation of legislative age choices (ages 12, 14, & 16). Age of full consent: 16.
	KY. REV. STAT. ANN. § 510.020 Lack of consent	Gender neutral. Targ: incapable of consenting when under 16.
	KY. REV. STAT. ANN. § 510.040 Rape, 1st degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Targ: under 12.
	KY. REV. STAT. ANN. § 510.050 Rape, 2nd degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Perp: 18 or older; Targ: under 14.
	KY. REV. STAT. ANN. § 510.060 Rape, 3rd degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Perp: 21 or older; Targ: under 16. Perp: 21 or older; Targ: under 18 plus perp. in position of authority.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	KY. REV. STAT. ANN. § 510.070 Sodomy, 1st degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Targ: under 12.
	KY. REV. STAT. ANN. § 510.080 Sodomy, 2nd degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Perp: 18 or older; Targ: under 14.
	KY. REV. STAT. ANN. § 510.090 Sodomy, 3rd degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Perp: 21 or older; Targ: under 16. Perp: 21 or older; Targ: under 18 plus perp. in position of authority.
	KY. REV. STAT. ANN. § 510.110 Sexual abuse, 1st degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Targ: under 12. Perp: 21 or older; Targ: under 16. Perp: 18 or older; Targ: under 18 plus perp. in position of authority.
	KY. REV. STAT. ANN. § 510.120 Sexual abuse, 2nd degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Perp: 18–21; Targ: under 16.
	KY. REV. STAT. ANN. § 510.130 Sexual abuse, 3rd degree	Written in masculine, but gender neutral due to Ky. Rev. Stat. Ann. § 446.020. Perp: 18 or older; Targ: under 14.
<p><b>Louisiana</b> 17/18 <b>Inconsistent:</b> Landreneau v. Fruge, 676 So.2d 701 (La. Ct. App. 1996).</p>	LA. REV. STAT. ANN. § 14:43.1 Sexual battery	Gender neutral. Targ: under 15 plus 3 yr. age diff. Perp: 17 or older; Targ: under 13.
	LA. REV. STAT. ANN. § 14:43.2 Sexual battery, 2nd degree	Gender neutral. Perp: 17 or older; Targ: under 13.
	LA. REV. STAT. ANN. § 14:43.3 Oral sexual battery	Gender neutral. Targ: under 15 plus 3 yr. age diff.
	LA. REV. STAT. ANN. § 14:80 Felony carnal knowledge of a juvenile	Gender neutral. Perp: 17 or older; Targ: 13–16 plus 4 yr. age diff.
	LA. REV. STAT. ANN. § 14:80.1 Misdemeanor carnal knowledge of a juvenile	Gender neutral. Perp: 17 or older; Targ: 13–17 plus 3 yr. age diff.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	LA. REV. STAT. ANN. § 14:81 Indecent behavior with a juvenile	Gender neutral. Targ: under 17 plus 2 yr. age diff.
	LA. REV. STAT. ANN. § 14:81.2 Molestation of a juvenile	Gender neutral. Perp: over 17; Targ: under 17 plus 3 yr. age diff. plus perp. use of force, intimidation, or position of authority.
<p><b>Maine</b> 14/16/18 No inconsistency found.</p>	ME. REV. STAT. 17-A § 253 Gross sexual assault	Gender neutral. Targ: under 14. Targ: 18 plus perp. has supervisory or disciplinary control.
	ME. REV. STAT. 17-A § 254 Sexual abuse of minors	Gender neutral. Targ: 14–15 plus 5 yr. age diff. Perp: 21 or older; Targ: 16–17 plus perp. is school personnel in target’s school.
	ME. REV. STAT. 17-A § 255-A Unlawful sexual contact	Gender neutral. Targ: under 14 plus 3 yr. age diff. Targ: 14–15 plus 10 yr. age diff. Targ: under 18 plus perp. with certain familial relationship or is school personnel in target’s school.
	ME. REV. STAT. 17-A § 256 Visual sexual aggression against a child	Gender neutral. Perp: 18 or older; Targ: under 14.
	ME. REV. STAT. 17-A § 258 Sexual misconduct with a child	Gender neutral. Perp: 18 or older; Targ: under 14.
	ME. REV. STAT. 17-A § 259-A Solicitation of a child to commit a prohibited act	Gender neutral. Perp: 16 or older; Targ: under 14 plus 3 yr. age diff.
	ME. REV. STAT. 17-A § 260 Unlawful sexual touching	Gender neutral. Targ: under 14 plus 5 yr. age diff.; Targ: under 18 plus perp. is school personnel in target’s school or guardian.
<p><b>Maryland</b> 14/16 <b>Inconsistent:</b> Tate v. Bd. of Edu., 843 A.2d 890 (Md. Ct. Spec. App. 2004).</p>	MD. CODE ANN., CRIM. LAW § 3-303 Rape, 1st degree	Gender neutral, but must involve a vagina. Perp: 18 or older; Targ: under 13.
	MD. CODE ANN., CRIM. LAW § 3-304 Rape, 2nd degree	Gender neutral, but must involve a vagina. Targ: under 14 plus 4 yr. age diff.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	MD. CODE ANN., CRIM. LAW § 3-305 Sexual offense, 1st degree	Gender neutral. Perp: 18 or older; Targ: under 14.
	MD. CODE ANN., CRIM. LAW § 3-306 Sexual offense, 2nd degree	Gender neutral. Targ: under 14 plus 4 yr. age diff.
	MD. CODE ANN., CRIM. LAW § 3-307 Sexual offense, 3rd degree	Gender neutral. Targ: under 14 plus 4 yr. age diff. Perp: 21 or older; Targ: 14–15.
	MD. CODE ANN., CRIM. LAW § 3-308 Sexual offense, 4th degree	Gender neutral. Perp: 21 or older; Targ: 14–15 plus 4 yr. age diff. and perp. is school personnel in target's school.
	MD. CODE ANN., CRIM. LAW § 3-324 Sexual solicitation of minors	Gender neutral.
<p><b>Massachusetts</b> 16 Consistent: Glover v. Callahan, 12 N.E.2d 194 (Mass. 1937)</p>	MASS. GEN. LAWS ch. 265, § 22A Rape of a child	Gender neutral. Targ: under 16 plus force or threat used.
	MASS. GEN. LAWS ch. 265, § 23 Rape and Abuse of a child	Gender neutral. Targ: under 16.
	MASS. GEN. LAWS ch. 265, § 24B Assault of child; intent to rape	Gender neutral. Targ: under 16.
	MASS. GEN. LAWS ch. 272 § 4 Inducing persons under eighteen to have sexual intercourse	Gender neutral. Targ: under 18 but must be of "chaste life." [I do not consider this a protective statute since it leaves the target open to a trial regarding her sexual history.]
<p><b>Michigan</b> 16/18 Consistent ?: L.M.E. v. A.R.S., 680 N.W.2d 902 (Mich. Ct. App. 2004) (finding father (14) liable for support of child)</p>	MICH. COMP. LAWS § 750.520b Criminal Sexual Conduct, 1st degree	Gender neutral. Targ: under 13. Targ: 13–15 plus perp. in position of authority.
	MICH. COMP. LAWS § 750.520c Criminal Sexual Conduct, 2nd degree	Gender neutral. Targ: under 13. Targ: 13–15 plus perp. in position of authority.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
conceived with mother (a married adult)).	MICH. COMP. LAWS § 750.520d Criminal Sexual Conduct, 3rd degree	Gender neutral. Targ: 13–15. Targ: 16–17 plus perp. is school personnel in target's school.
	MICH. COMP. LAWS § 750.520e Criminal Sexual Conduct, 4th degree	Gender neutral. Targ: 13–15 plus 5 yr. age diff. Targ: 16–17 plus perp. is school personnel in target's school.
<b>Minnesota</b> 16/18 Consistent ?: Bjerke v. Johnson, 727 N.W.2d 183 (Minn. Ct. App. 2007); <i>but see</i> Jevning v. Cichos, 499 N.W.2d 515 (Minn. Ct. App. 1993) (finding father (15) liable for support of child conceived with mother (20)).	MINN. STAT. § 609.342 Criminal Sexual Conduct, 1st degree	Gender neutral. Targ: under 13 plus 36 mo. age diff. Targ: 13–15 plus 48 mo. age diff. plus perp. is in position of authority. Targ: under 16 plus perp. has “significant relationship” to target plus force or coercion used.
	MINN. STAT. § 609.343 Criminal Sexual Conduct, 2nd degree	Gender neutral. Targ: under 13 plus 36 mo. age diff. Targ: 13–15 plus 48 mo. age diff. plus perp. is in position of authority. Targ: under 16 plus perp. has “significant relationship” to target plus force or coercion used.
	MINN. STAT. § 609.344 Criminal Sexual Conduct, 3rd degree	Gender neutral. Targ: under 13 plus 36 mo. age diff. Targ: 13–15 plus 24 mo. age diff. Targ: 16–17 plus 48 mo. age diff. plus perp. is in position of authority. Targ: 16–17 plus significant relationship to perp.
	MINN. STAT. § 609.345 Criminal Sexual Conduct, 4th degree	Gender neutral. Targ: under 13 plus 36 mo. age diff. Targ: 13–15 plus 48 mo. age diff. or perp. is in position of authority. Targ: 16–17 plus 48 mo. age diff. plus perp. is in position of authority. Targ: 16–17 plus significant relationship to perp.
	MINN. STAT. § 609.3451 Criminal Sexual Conduct, 5th degree	Gender neutral. Targ: under 16.
	MINN. STAT. § 609.352 Solicitation of Children to Engage in Sexual Conduct	Gender neutral. Perp: 18 or older; Targ: under 16.

(continued)

State <sup>b</sup>	Code	Comment
<p><b>Mississippi</b> 14/16 <b>Inconsistent:</b> Miss. St. Fed. Colored Women's Club Housing v. L.R., 62 So.3d 351 (Miss. 2010).</p>	<p>MISS. CODE ANN. § 97-3-65 Statutory Rape</p>	<p>Gender neutral. Perp: 17 or older; Targ: 14–15 plus 36 mo. age diff. Targ: under 14 plus 24 mo. age diff.</p>
	<p>MISS. CODE ANN. § 97-3-95 Sexual Battery</p>	<p>Gender neutral. Perp: 17 or older; Targ: 14–15 plus 36 mo. age diff. Targ: under 14 plus 24 mo. age diff.</p>
<p><b>Missouri</b> 17 No inconsistency found.</p>	<p>MO. REV. STAT. § 566.032 Statutory Rape, 1st degree</p>	<p>Gender neutral. Targ: under 14.</p>
	<p>MO. REV. STAT. § 566.034 Statutory Rape, 2nd degree</p>	<p>Gender neutral. Perp: 21 or older; Targ: under 17.</p>
	<p>MO. REV. STAT. § 566.062 Statutory Sodomy, 1st degree</p>	<p>Gender neutral. Targ: under 14.</p>
	<p>MO. REV. STAT. § 566.064 Statutory Sodomy, 2nd degree</p>	<p>Gender neutral. Perp: 21 or older; Targ: under 17.</p>
	<p>MO. REV. STAT. § 566.067 Child molestation, 1st degree</p>	<p>Gender neutral. Targ: under 14.</p>
	<p>MO. REV. STAT. § 566.068 Child molestation, 2nd degree</p>	<p>Gender neutral. Targ: under 17.</p>
	<p>MO. REV. STAT. § 566.083 Sexual misconduct involving child</p>	<p>Gender neutral. Targ: under 15.</p>
	<p>MO. REV. STAT. § 566.151 Enticement of a child</p>	<p>Gender neutral. Perp: 21 or older; Targ: under 15.</p>
<p><b>Montana</b> 13/16 No inconsistency found.</p>	<p>MONT. CODE ANN. § 45-5-501 Definitions</p>	<p>Gender neutral. Targ: under 16.</p>
<p><i>(continued)</i></p>		

State <sup>b</sup>	Code	Comment
	MONT. CODE ANN. § 45-5-502 Sexual assault	Gender neutral. Targ: under 16 plus 3 yr. age diff.
	MONT. CODE ANN. § 45-5-503 Sexual intercourse without consent	Gender neutral. Perp: 18 or older; Targ: under 13. Targ: under 16 plus 4 yr. age diff.
<b>Nebraska</b> 16/17 Consistent: Bishop v. Liston, 199 N.W. 825 (Neb. 1924).	NEB. REV. STAT. § 28-319 Sexual assault, 1st degree	Gender neutral. Perp: 19 or older; Targ: 12–15.
	NEB. REV. STAT. § 28-319.01 Sexual assault of a child, 1st degree	Gender neutral. Perp: 19 or older; Targ: under 12. Perp: 25 or older; Targ: 12–15.
	NEB. REV. STAT. § 28-320 Sexual assault, 2nd or 3rd degree	Gender neutral. No age specified.
	NEB. REV. STAT. § 28-320.01 Sexual assault of a child, 2nd or 3rd degree	Gender neutral. Perp: 19 or older; Targ: 14 and under.
	NEB. REV. STAT. § 28-805 Debauching a minor	Gender neutral. Perp: 18 or older; Targ: under 17.
<b>Nevada</b> 16 No inconsistency found.	NEV. REV. STAT. 200.364 Definitions	Gender neutral. Perp: 18 or older; Targ: under 16.
	NEV. REV. STAT. 200.368 Statutory sexual seduction: Penalties	Gender neutral. Specifies age of perpetrator.
<b>New Hampshire</b> 16/18 <b>Inconsistent:</b> Kravitz v. Beech Hill Hosp., 808 A.2d 34 (N.H. 2002).	N.H. REV. STAT. ANN. § 632-A:2 Aggravated felonious sexual assault	Gender neutral. Targ: under 13. Targ: 13–15 plus perp. lives in same household or family relation. Targ: 13–17 plus perp. in position of authority.
	N.H. REV. STAT. ANN. § 632-A:3 Felonious sexual assault	Gender neutral. Targ: 13–15 plus 4 yr. age diff., penetration. Targ: under 13, contact only.
	N.H. REV. STAT. ANN. § 632-A:4 Sexual assault	Gender neutral. Targ: 13 and over. Targ: 13–15 plus 5 yr. age diff., contact only. Targ: 13–15 plus age diff. of 4 yrs. or less, penetration.

(continued)



State <sup>b</sup>	Code	Comment
<p><b>New Jersey</b> 16/18 No inconsistency found.</p>	<p>N.J. STAT. ANN. § 2C:14-1 Definitions</p>	<p>Gender neutral. No age specified.</p>
	<p>N.J. STAT. ANN. § 2C:14-2 Sexual assault</p>	<p>Gender neutral. Targ: under 13. Targ: 13–15 plus family relation or perp. in position of authority or 4 yr. age diff. Targ: 16–17 plus family relation or perp. in position of authority.</p>
	<p>N.J. STAT. ANN. § 2C:14-4 Lewdness (exposure)</p>	<p>Gender neutral. Targ: under 13 plus 4 yr. age diff.</p>
<p><b>New Mexico</b> 14/19 No inconsistency found.</p>	<p>N.M. STAT. ANN. § 30-9-11 Criminal sexual penetration</p>	<p>Gender neutral. Targ: under 13. Targ: 13–18 plus perp. in position of authority. Perp: 18 or older; Targ: 13–16 plus 4 yr. age diff. Targ: 13–18 plus perp. is school personnel in target’s school.</p>
	<p>N.M. STAT. ANN. § 30-9-12 Criminal sexual contact</p>	<p>Gender neutral. Targ: 18 and over plus no consent.</p>
	<p>N.M. STAT. ANN. § 30-9-13 Criminal sexual contact w/ a minor</p>	<p>Gender neutral. Targ: under 13. Targ: 13–18 plus perp. in position of authority.</p>
<p><b>New York</b> 17 <b>Inconsistent:</b> Barton v. Bee Line, 265 N.Y.S. 284 (1933).</p>	<p>N.Y. PENAL LAW § 130.05 Sexual offense: lack of consent</p>	<p>Gender neutral. Targ: under 17.</p>
	<p>N.Y. PENAL LAW § 130.25 Rape, 3rd degree</p>	<p>Gender neutral. Perp: 21 or older; Targ: under 17.</p>
	<p>N.Y. PENAL LAW § 130.30 Rape, 2nd degree</p>	<p>Gender neutral. Perp: 18 or older; Targ: under 15 and 4 yr. age diff.</p>
	<p>N.Y. PENAL LAW § 130.35 Rape, 1st degree</p>	<p>Gender neutral. Targ: under 11. Perp: 18 or older; Targ: under 13.</p>
	<p>N.Y. PENAL LAW § 130.40 Criminal sex act, 3rd degree</p>	<p>Gender neutral. Perp: 21 or older; Targ: under 17.</p>
	<p>N.Y. PENAL LAW § 130.45 Criminal sex act, 2nd degree</p>	<p>Gender neutral. Perp: 18 or older; Targ: under 15 plus 4 yr. age diff.</p>
	<p>N.Y. PENAL LAW § 130.50 Criminal sex act, 1st degree</p>	<p>Gender neutral. Targ: under 11. Perp: 18 or older; Targ: under 13.</p>
<p>(continued)</p>		

State <sup>b</sup>	Code	Comment
	N.Y. PENAL LAW § 130.55 Sexual abuse, 3rd degree	Gender neutral. Targ: under 14 plus 5 yr. age diff.
	N.Y. PENAL LAW § 130.60 Sexual abuse, 2nd degree	Gender neutral. Targ: under 14.
	N.Y. PENAL LAW § 130.65 Sexual abuse, 1st degree	Gender neutral. Targ: under 11.
	N.Y. PENAL LAW § 130.66 Aggravated sexual abuse, 3rd degree	Gender neutral. Targ: under 11.
	N.Y. PENAL LAW § 130.67 Aggravated sexual abuse, 2nd degree	Gender neutral. Targ: under 11.
	N.Y. PENAL LAW § 130.70 Aggravated sexual abuse, 1st degree	Gender neutral. Targ: under 11.
<b>North Carolina</b> 13/16 No inconsistency found.	N.C. GEN. STAT. § 14-27.2 Rape, 1st degree	Gender neutral. Perp: 12 or older; Targ: under 13 plus 4 yr. age diff.
	N.C. GEN. STAT. § 14-27.2A Rape of a child	Gender neutral. Perp: 18 or older; Targ: under 13.
	N.C. GEN. STAT. § 14-27.4 Sexual offense, 1st degree	Gender neutral. Perp: 12 or older; Targ: under 13 plus 4 yr. age diff.
	N.C. GEN. STAT. § 14-27.4A Sexual offense with a child	Gender neutral. Perp: 18 or older; Targ: under 13.
	N.C. GEN. STAT. § 14-27.7A Statutory rape or sexual offense	Gender neutral. Targ: 13–15 plus 6 yr. age diff.
<b>North Dakota</b> 18 <b>Inconsistent:</b> Braun v. Heidrich, 241 N.W. 599 (N.D. 1932).	N.D. CENT. CODE § 12.1-20-03 Gross sexual imposition	Gender neutral. Targ: under 15.
	N.D. CENT. CODE § 12.1-20-03.1 Continuous sexual abuse of child	Gender neutral. Targ: under 15.
	N.D. CENT. CODE § 12.1-20-05	Gender neutral. Perp: 18 or older; Targ: 15–17.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	Corruption or solicitation of minor	Perp: 18 or older; Targ: under 15. Perp: 22 or older; Targ: 15–17.
	N.D. CENT. CODE § 12.1-20-07 Sexual assault	Gender neutral. Perp: 18 or older; Targ: 15–17.
<p><b>Ohio</b> 16/18 No inconsistency found.</p>	OHIO REV. CODE ANN. § 2907.01 Definitions	“Minor” and “juvenile” are under 18.
	OHIO REV. CODE ANN. § 2907.03 Sexual battery	Gender neutral. Targ: under 18 plus perp. in position of authority, guardian, or other certain relationships.
	OHIO REV. CODE ANN. § 2907.04 Unlawful sexual conduct with a minor	Gender neutral. Perp: 18 or older; Targ: 13–15.
	OHIO REV. CODE ANN. § 2907.05 Gross sexual imposition	Gender neutral. Targ: under 13.
	OHIO REV. CODE ANN. § 2907.06 Sexual imposition	Gender neutral. Perp: 18 or older; Targ: 13–15 plus 4 yr. age diff.
<p><b>Oklahoma</b> 14/16 Consistent ?: Priboth v. Haveron, 139 P. 973 (Okla. 1914); <b>but see</b> In the Matter of the Paternity of K.B. v. Dep’t of Human Serv., ex rel. Baker, 104 P2d 1132 (Okla. Civ. App. 2004) (finding father (15) liable for support of child conceived with mother (19)).</p>	OKLA. STAT. tit. 21 § 888 Forcible Sodomy	Gender neutral. Perp: 19 or older; Targ: under 16.
	OKLA. STAT. tit. 21 § 1111 Definitions	Gender neutral rape. Targ: under 16. Targ: 16–19 plus perp. is school personnel in target’s school.
	OKLA. STAT. tit. 21 § 1114 Rape, 1st degree & 2nd degree	Gender neutral. Perp: 18 or older; Targ: under 14.
	OKLA. STAT. tit. 21 § 1123 Lewd or indecent propositions or acts to a child	Gender neutral. Targ: under 16.
<p><b>Oregon</b> 12/16/18 Consistent: Wilson v. Tobiasen 777 P.2d 1379 (Or. Ct. App. 1989); Hough v. Iderhoff, 139 P. 931 (Or. 1914).</p>	OR. REV. STAT. § 163.315 Incapacity to consent	Gender neutral. Targ: under 18.
	OR. REV. STAT. § 163.355 Rape, 3rd degree	Gender neutral. Targ: under 16.
	OR. REV. STAT. § 163.365 Rape, 2nd degree	Gender neutral. Targ: under 14.

(continued)

State <sup>b</sup>	Code	Comment
	OR. REV. STAT. § 163.375 Rape, 1st degree	Gender neutral. Targ: under 12. Targ: under 16 plus certain family relationships.
	OR. REV. STAT. § 163.385 Sodomy, 3rd degree	Gender neutral. Targ: under 16.
	OR. REV. STAT. § 163.395 Sodomy, 2nd degree	Gender neutral. Targ: under 14.
	OR. REV. STAT. § 163.405 Sodomy, 1st degree	Gender neutral. Targ: under 12. Targ: under 16 plus certain family relationships.
	OR. REV. STAT. § 163.408 Unlawful sex. Penetration, 2nd degree	Gender neutral. Targ: under 14.
	OR. REV. STAT. § 163.411 Unlawful sex. Penetration, 1st degree	Gender neutral. Targ: under 12.
	OR. REV. STAT. § 163.415 Sexual abuse, 3rd degree	Gender neutral. Targ: under 18.
	OR. REV. STAT. § 163.427 Sexual abuse, 1st degree	Gender neutral. Targ: under 14.
	OR. REV. STAT. § 163.435 Contributing to the sexual delinquency of a minor	"Opposite sex" requirement. Perp: 18 or older; Targ: under 18.
	OR. REV. STAT. § 163.445 Sexual misconduct	Gender neutral. Targ: under 18.
<b>Pennsylvania</b> 16/18 Consistent: C.C.H. v. Philadelphia Phillies, 940 A.2d 336 (Pa. 2008).	18 PA. CONS. STAT. § 3121 Rape of a child	Gender neutral. Targ: under 13.
	18 PA. CONS. STAT. § 3122.1 Statutory sexual assault	Gender neutral. Targ: under 16 plus 4 yr. age diff.
	18 PA. CONS. STAT. § 3123 Involuntary deviate sexual intercourse	Gender neutral. Targ: under 18.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	18 PA. CONS. STAT. § 3125 Aggravated indecent assault	Gender neutral. Targ: under 13. Targ: under 16 plus 4 yr. age diff.
	18 PA. CONS. STAT. § 3126 Indecent assault	Gender neutral. Targ: under 13. Targ: under 16 plus 4 yr. age diff.
<p><b>Rhode Island</b> 15/18 No inconsistency found.</p>	R.I. GEN. LAWS § 11-37-6 Sexual assault 3rd degree	Gender neutral. Targ: 14–15.
	R.I. GEN. LAWS § 11-37-8.1 Child molestation 1st degree	Gender neutral. Targ: under 15.
	R.I. GEN. LAWS § 11-37-8.3 Child molestation 2nd degree	Gender neutral. Targ: under 15.
	R.I. GEN. LAWS § 11-37-8.8 Indecent solicitation of a child	Gender neutral. Targ: under 18.
<p><b>South Carolina</b> 11/15/16 <b>Inconsistent</b> (damages): Roe by Doe v. Orangeburg County Sch. Dist., 518 S.E.2d 259 (S.C. 1999).</p>	S.C. CODE ANN. § 16-3-655 Criminal sexual conduct with minors	Gender neutral. Targ: under 11. Targ: 11–14. Targ: 14–15 plus perp. in position of familial, custodial or official authority.
<p><b>South Dakota</b> 16 Consistent: Huempfner v. Bailly, 156 N.W. 78 (S.D. 1916).</p>	S.D. CODIFIED LAWS § 22-22-1 Rape defined	Gender neutral. Targ: under 13. Targ: 13–15 plus 3 yr. age diff.
	S.D. CODIFIED LAWS § 22-22-7 Sexual contact with a child	Gender neutral. Perp: 16 or older; Targ: under 16.
	S.D. CODIFIED LAWS § 22-22-7.3 Sexual contact with a child misdemeanor	Gender neutral. Perp: 16 or under; Targ: under 16.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	S.D. CODIFIED LAWS § 22-24A-5 Solicitation of a minor	Gender neutral. Perp: 18 or older; Targ: under 16.
<p><b>Tennessee</b> 13/18 <b>Inconsistent:</b> Doe v. Mama Taori's Prem. Pizza, 2001 WL 327906 (not reported).</p>	TENN. CODE. ANN. § 39-13-504 Aggravated sexual battery	Gender neutral. Targ: under 13.
	TENN. CODE. ANN. § 39-13-506 Statutory rape	Gender neutral. Targ: age 13–17 plus 4 yr. age diff.
	TENN. CODE. ANN. § 39-13-522 Rape of a child	Gender neutral. Targ: 4–13.
	TENN. CODE. ANN. § 39-13-527 Authority figure, sexual battery	Gender neutral. Targ: age 13–17 plus perp. in supervisory or disciplinary position.
	TENN. CODE. ANN. § 39-13-531 Aggravated rape of a child	Gender Neutral. Targ: under 4.
<p><b>Texas</b> 17 Consistent: Altman v. Eckermann, 132 S.W. 523 (Tex. Civ. App. 1910); Robinson v. Moore 408 S.W.2d 582 (Tx. Civ. App. 1966).</p>	TEX. PENAL CODE ANN. § 21.01 Definitions	Gender neutral. No age.
	TEX. PENAL CODE ANN. § 21.11 Indecency with a child	Gender neutral. Targ: under 17 plus 4 yr. age diff.
	TEX. PENAL CODE ANN. § 22.011 Sexual assault	Gender neutral. Targ: under 17.
	TEX. PENAL CODE ANN. § 22.021 Aggravated sexual assault	Gender neutral. Targ: under 17.
<p><b>Utah</b> 14/16/18 Consistent: Elkington v. Foust, 618 P.2d 37 (Utah 1980).</p>	UTAH CODE ANN. § 76-5-401 Unlawful sex activity with a minor	Gender neutral. Targ: 14–15 plus 4 yr. age diff.
	UTAH CODE ANN. § 76-5-401.1 Sexual abuse of a minor	Gender neutral. Targ: 14–15 plus 7 yr. age diff.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	UTAH CODE ANN. § 76-5-401.2 Unlawful sexual conduct with a 16 or 17 old	Gender neutral. Targ: 16–17 plus 7 yr. age diff.
	UTAH CODE ANN. § 76-5-402 Rape	Gender neutral. No age specified.
	UTAH CODE ANN. § 76-5-402.1 Rape of a child	Gender neutral. Targ: under 14.
	UTAH CODE ANN. § 76-5-402.3 Object rape of a child	Gender neutral. Targ: under 14.
	UTAH CODE ANN. § 76-5-403 Forcible sodomy	Gender neutral. Targ: 14 and over.
	UTAH CODE ANN. § 76-5-403.1 Sodomy on a child	Gender neutral. Targ: under 14.
	UTAH CODE ANN. § 76-5-404 Forcible sexual abuse	Gender neutral. Targ: 14 and over.
	UTAH CODE ANN. § 76-5-404.1 Sexual abuse of a child, aggravated	Gender neutral. Targ: under 14.
	UTAH CODE ANN. § 76-5-406 Sexual offense without consent	Gender neutral. Targ: under 14. Targ: under 18 plus certain family relationships. Targ: 14–17 plus 3 yr. age diff.
<b>Vermont</b> 16/18 No inconsistency found.	VT. STAT. ANN. tit.13 § 3252 Sexual assault	Gender neutral. Targ: under 16. Targ: under 18 plus certain family relationships.
	VT. STAT. ANN. tit.13 § 3253 Aggravated sexual assault	Gender neutral. Perp: 18 and older; Targ: under 13.
	VT. STAT. ANN. tit. 13 § 3253a Aggravated sexual assault of a child	Gender neutral. Perp: 18 or older; Targ: under 16.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
	VT. STAT. ANN. tit. 13 § 3258 Sexual exploitation of a minor	Gender neutral. Perp: 18 or older; Targ: no age specified but 4 yr. age diff.
<b>Virginia</b> 13/15/18 <b>Inconsistent</b> (damages): Parsons v. Parker, 170 S.E. 1 (Va. 1933).	VA. CODE ANN. § 18.2-61 Rape	Gender neutral. Targ: under 13.
	VA. CODE ANN. § 18.2-63 Carnal knowledge of a child	Gender neutral. Targ: 13–14.
	VA. CODE ANN. § 18.2-67.1 Forcible sodomy	Gender neutral. Targ: under 13.
	VA. CODE ANN. § 18.2-67.2 Object sexual penetration	Gender neutral. Targ: under 13.
	VA. CODE ANN. § 18.2-67.3 Aggravated sexual battery	Gender neutral. Targ: under 13. Targ: 13–14 plus use of force or threat. Targ: 13–17 plus perp. in certain familial relationship.
	VA. CODE ANN. § 18.2-67.4:2 Sexual abuse of a child	Gender neutral. Targ: 13–14.
	VA. CODE ANN. § 18.2-370.1 Taking indecent liberties with a child	Gender neutral. Perp: 18 or older; Targ: under 18 plus perp. in supervisory position.
	VA. CODE ANN. § 18.2-371 Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant	Gender neutral. Perp: 18 or older; Targ: “child” 15 or older.
<b>Washington</b> 16/18/21 Consistent: Christensen v. Royal Sch. Dist., 124 P.3d 283 (Wash. 2005).	WASH. REV. CODE § 9A.44.073 Rape of a child, 1st degree	Gender neutral. Targ: under 12 plus 24 mo. age diff.
	WASH. REV. CODE § 9A.44.076 Rape of a child, 2nd degree	Gender neutral. Targ: age 12–13 plus 36 mo. age diff.
<i>(continued)</i>		



State <sup>b</sup>	Code	Comment
	WASH. REV. CODE § 9A.44.079 Rape of a child, 3rd degree	Gender neutral. Targ: age 14–15 plus 48 mo. age diff.
	WASH. REV. CODE § 9A.44.083 Child molestation, 1st degree	Gender neutral. Targ: under 12 plus 36 mo. age diff.
	WASH. REV. CODE § 9A.44.086 Child molestation, 2nd degree	Gender neutral. Targ: 12–13 plus 36 mo. age diff.
	WASH. REV. CODE § 9A.44.089 Child molestation, 3rd degree	Gender neutral. Targ: 14–15 plus 48 mo. age diff.
	WASH. REV. CODE § 9A.44.093 Sexual misconduct with a minor, 1st degree	Gender neutral. Targ: 16–17 plus 60 mo. age diff., perp. in significant relationship with target, and perp. in supervisory position over target. Targ: 16–21 plus perp. is school personnel in target’s school and 60 mo. age diff. Targ: 16 or older plus perp. is foster parent.
	WASH. REV. CODE § 9A.44.096 Sexual misconduct with a minor, 2nd degree	Gender neutral. Targ: 16–17. Targ: 16–21 plus perp. is school personnel in target’s school and 60 mo. age diff. Targ: 16 or older plus perp. is foster parent.
<p><b>West Virginia</b> 16 No inconsistency found.</p>	W. VA. CODE § 61-8B-2 Lack of consent	Gender neutral. Targ: under 16.
	W. VA. CODE § 61-8B-3 Sexual assault, 1st degree	Gender neutral. Perp: 14 or older; Targ: 11 and under.
	W. VA. CODE § 61-8B-5 Sexual assault, 3rd degree	Gender neutral. Perp: 16 or older; Targ: under 16 plus 4 yr. age diff.
	W. VA. CODE § 61-8B-7 Sexual abuse, 1st degree	Gender neutral. Perp: 14 or older; Targ: 11 and under.
	W. VA. CODE § 61-8B-9 Sexual abuse, 3rd degree	Gender neutral. Perp: 16 or older; Targ: under 16 plus 4 yr. age diff.
<i>(continued)</i>		

State <sup>b</sup>	Code	Comment
<b>Wisconsin</b> 18 <b>Inconsistent:</b> Michelle T. by Sumpter v. Crozier, 495 N.W.2d 327 (Wisc. 1993).	WIS. STAT. § 948.02 Sexual assault of a child	Gender neutral. Targ: under 13; Targ: under 16.
	WIS. STAT. § 948.05 Sexual exploitation of a child	Gender Neutral. Targ: under 18.
	WIS. STAT. § 948.09 Sexual intercourse with a child	Gender neutral. Targ: 16 and over.
<b>Wyoming</b> 13/16/18 No inconsistency found.	WYO. STAT. ANN. § 6-2-308 Criminality of conduct; Victim's age	Gender neutral. Targ: age varies with degree of crime.
	WYO. STAT. ANN. § 6-2-314 Sexual abuse of minor, 1st degree	Gender neutral. Perp: 16 or older; Targ: under 13. Perp: 18 or older; Targ: under 18 plus perp. in certain familial relationship. Perp: 18 or older; Targ: under 16 plus perp. in position of authority.
	WYO. STAT. ANN. § 6-2-315 Sexual abuse of minor, 2nd degree	Gender neutral. Perp: 17 or older; Targ: 13–15 plus 4 yr. age diff. Perp: 16 or older; Targ: under 13. Perp: 18 or older; Targ: under 18 plus perp. in certain familial relationship. Perp: 18 or older; Targ: under 16 plus perp. in position of authority.
	WYO. STAT. ANN. § 6-2-316 Sexual abuse of minor, 3rd degree	Gender neutral. Perp: 17 or older; Targ: under 13 plus 4 yr. age diff. Perp: 20 or older; Targ: 16–17 plus perp. in position of authority and 4 yr. age diff. Perp: under 16; Targ: under 13 plus 3 yr. age diff. Perp: 17 or older; Targ: under 17 plus 4 yr. age diff.
	WYO. STAT. ANN. § 6-2-317 Sexual abuse of minor, 4th degree	Gender neutral. Perp: under 16; Targ: under 13 plus 3 yr. age diff. Perp: 20 or older; Targ: 16–17 plus perp. in position of authority and 4 yr. age diff.
	Wyo. Stat. Ann. § 6-2-318 Soliciting to engage in illicit sexual relations	Gender neutral. Perp: 18 or older; Targ: under 14.

<sup>a</sup> I [Jennifer] thank Landon Scott for his excellent research and work on updating this table, originally created with the assistance of Sandie McCarthy Brown in 2004. Every effort was made to make this chart current to the date of press submission. Because of the difficulty in locating cases that indicate inconsistencies between state civil law and criminal statutory rape law, I offer the conflicts noted here as merely examples. I invite comments, updates, and corrections for this chart from all readers.

<sup>b</sup> The “State” column also includes some conclusions about ages of consent, criminal code consistency with civil law, and citations to authority for those associations.