

UNLAWFUL SEX

MATERIALS

- 1) Enough lesson handouts for each student (at end of lesson and available in the PICC)
- 2) Copies of the “Proposed Unlawful Sex Law” handout on p. 10. (and available in the PICC)
- 3) Re-useable white board and markers if you want them (provided in the PICC).

TAKEAWAYS

- Students will be able to understand the unlawful sex laws and that sexual activity by youth under 18 might be a crime even though both parties consent.
- Students will be able to think about the pros and cons of unlawful sex laws and think practically about how they are enforced.

WELCOME

(Time Check: 2 minutes)

Tell the class: Your names, that you’re law students from Stanford Law School, and you’re there to teach a StreetLaw class.

- Remind the students about StreetLaw rules: don’t talk about the specifics of your case, respect your classmates and your teachers.
- Tell them that this week we are going to talk about unlawful sex.

INTRODUCTION TO UNLAWFUL SEX LAWS
(Time Check: 2 minutes)

We will be talking about unlawful sex laws: when the law says teenagers can and cannot have sex. After our first exercise, we are going to tell you what the law actually is in California. This might be embarrassing to hear and it is a hard lesson for us to teach sometimes, so it is important that we all work together and be mature about discussing this legal topic.

Please explain right from the start that the laws you will be discussing are only those that are related to consensual sex. There are lots of other laws that talk about situations where one person does not consent (say it's ok) to have sex. What we are talking about today are situations where both people involved want to have sex, but where at least one of them is a minor.

ALSO NOTE: THE USUAL RULE ABOUT USING HYPOTHETICALS RATHER THAN REFERRING TO PERSONAL EXPERIENCES IS PARTICULARLY IMPORTANT FOR THIS LESSON. Their classroom teachers are mandatory reportersⁱ (NB: we are not), which means they must report if a student is engaging in prohibited sexual activity in the following cases: where the minor is younger than 16 and the adult is 21 or older; where the minor is 13 or younger and the sexual partner is 14 or older. This is to protect students.ⁱⁱ

HOT OR COLD
(Time Check: 5 minutes)

Hot or Cold: have two teachers hold up signs—one that says “Hot” and one that says “Cold” (or otherwise designate two different points in the room as Hot and Cold.) Tell the students that you’re going to make a series of statements. If they agree with each statement, they should go to the “Hot” point. If they disagree, they should go stand by “Cold.” If they’re somewhere in the middle, they should show how they feel by where they stand between hot and cold.

NOTE: depending on class size, arrangement of classroom, etc., you may want to do thumbs up, down, or neutral.

After each statement, ask a few students why they feel the way they do.

- Statements:**
- (1) Teenagers should not be allowed to have sex.**
 - (2) It’s possible to have 100% safe sex.**
 - (3) People younger than me aren’t mature enough to have sex.**
 - (4) The government should not have the right to make laws about people’s sexual activity.**

**ACTIVITY 1: SENATE COMMITTEE DISCUSSION ON UNLAWFUL SEX
(Time Check: 25 minutes)**

Goal of the Activity: For the students to understand the laws governing consensual sex.

Materials Needed:

- Paper and pens or pencils
- “Proposed law” handouts

Exercise:

- Hand out copies of “Proposed Unlawful Sex Law” (Attached at the end of the lesson—print out copies of this page to bring with you and hand out) (NB: The following is true under current California law, but for the purpose of this exercise we are pretending that it is just a law the Senate is considering. Don’t tell your students that this is the real law until the end of the exercise):
 - California’s Proposed Unlawful Sex Law:
 - A youth under the age of 18 is guilty of unlawful sex if:
 - She or he has sexual intercourse with another youth under the age of 18.
 - It does not matter if both people want to have sex.
 - This crime is a misdemeanor, with a maximum punishment of one year in jail.ⁱⁱⁱ
 - 1. *Teaching Tip* – May want to write this on the board
- Break the students into groups:
 - (1) The State Senate Committee – those who decide the law.
 - The State Senate Committee is a group of elected officials. They meet to consider possible laws and make recommendations to the full Senate as to what the laws should be. At their meetings, they have people who are for and against the law come tell them what they think the law should be and why. This helps them learn more about the law so they can decide whether or not to vote for it.
 - Here is an example of someone who might be a member of this group: Maria Velazquez was elected by the people of San Mateo to represent their interests in the State Senate. She is 40 years old and has a 16 year old son and 15 year old daughter. Her number one concern is voting the way most of her constituents (the people in San Mateo) would want her to vote because she really wants to be re-elected in the upcoming elections and she knows people are keeping a close eye on her and what she votes for and against.
 - (2) Teens Helping Teens – this is a group that is in favor of this law. Here is an example of someone who might be a member of this group: Luther Thomas is a 17 year old male from East Palo Alto. He is a member of this group for two main reasons. First, a year ago he accidentally got his girlfriend, Tammy, pregnant. When her parents found out they were so furious that they kicked her out of the house and she had to go live with him. The problem was that his parents were not too happy with him either and so

they made Tammy pay rent. When Tammy couldn't find a job Luther had to drop out of school to get a job to pay her rent and to cover all of her medical expenses. Eventually, Tammy also dropped out of school to take care of herself and the baby. Even though Luther and Tammy are still together and happy (and Luther is now going back to school to get his GED), he realizes how much this has affected his life and how different his life would be if he hadn't been having sex.

- (3) Teens Who Want to Decide for Themselves – this is a group that is opposed to the proposed law. Here is an example of someone who might be a member of this group: Gerry is a 17 year old guy living in Redwood City. He feels he is pretty responsible and he gets good grades at school. He also has a girlfriend that he's been seeing for a while and who he has sex with. He and his girlfriend talked about the decision of whether or not to have sex and decided that as long as they used a condom to protect themselves, it would be okay. He doesn't see how it would be right for the state to take away his right to have consensual sex with his girlfriend. Plus, he's about to be 18 but his girlfriend is only 16 and he's really worried this law would make things even more complicated for them.
- Explain that the two groups will present their arguments to the Senate Committee, who will then decide whether or not to make the law. Tell the students that even if they don't personally agree with the position their group takes the purpose of this is convince the Senate Committee that they are right. In other words, the winning group is the group that convinces the Senate Committee to support their position. (If the groups are being a little resistant to this whole idea, playing up the “game” aspect of the activity often helps motivate them.)
- Teens Helping Teens and Teens Who Want to Decide for Themselves should come up with their arguments about why this is a good or a bad law.
- The State Senate Committee will talk about both sides of the argument. Have your group think about the following questions:
 - What problems are people trying to solve with this law?
 - AIDS/STDS^{iv}
 - Pressure from older teenagers to have sex
 - A lot of tax money goes to help young mothers^v
 - Teenage pregnancy
 - Why is teenage pregnancy a problem?
 - Teen moms often drop out of school^{vi}
 - Often fathers provide no support
 - It is expensive to have a child, so the mom may need to go on welfare^{vii}
 - Supporters of the law?
 - Parents: to protect their kids from having sex
 - Teens: to prevent pregnancy and so they can say no to sex
 - Religious leaders: to encourage people to wait until they're married to have sex
 - Teachers: to prevent students from dropping out of school
 - Who would be against the law?

- Teens: Youth should be able to think for themselves and make their own decisions
 - People over 18 who want to date someone under 18
- What rights might be affected by the law?
 - Right to privacy – right to be left alone
 - Freedom of expression – youth should be able to choose who they care about and how they show their feelings
- **Come back together as a group and run the hearing:**
 - Have one group present their arguments to the Senate Committee, then give the Senate Committee a few minutes to ask them questions.
 - Then have the other group present their arguments and let the Senate Committee ask them questions.
 - After hearing the arguments, have the Senate Committee talk it over, then make the decision about whether this should be the law – they should say what they thought were the best arguments on each side and why they reached the decision they did.

Discussion:

- Explain to the students that under current California law, what we've just been discussing (two people under 18 having sex) is actually illegal.
- **Define unlawful sex:** The statute defines unlawful sex as sex with a minor, no matter how old the other person is. Sex with a minor is always illegal. Sex includes:
 - Regular sexual intercourse
 - Any sort of penetration (with fingers or objects)
 - Oral sex
- **Defenses:** There generally are NOT excuses or defenses. BUT: If the two people are married to each other, it isn't unlawful sex; and in the case of an adult and a minor, the state may reduce the charges against the adult, dismiss the case, or allow an acquittal if it appears that the minor presented him or herself as eighteen years old or older, or if he or she was involved in activities that could allow the defendant to reasonably believe that he or she was of that age.^{viii} (For instance, if the underage individual was at a bar drinking or was taking a college course).
- Note that **CONSENT is NOT a defense.** It doesn't matter if both people wanted to or if their parents knew and said it was okay.
- **Punishments** (see more detail about this in the footnote^{ix})
 - Misdemeanor: Most cases. A maximum of 1 year in custody. **NOTE:** having unlawful sex *is a probation violation*.
 - Felony: If the difference in age is more than three years, it MAY be a felony, which means the person could be in jail for more than a year and might have to register as a sex offender.^x
 - Note: This is a good time to introduce the difference between a misdemeanor and a felony (goes to the seriousness of the crime and the length of the punishment).
- **Child Molestation:**

- A person can be guilty of child molestation if he/she commits “any lewd or lascivious act” that involves touching any part of the body of a child under age 14, with the intent of sexually arousing or gratifying either the perpetrator or the child.^{xi}
 - This is a felony! If the person committing this is 16 or older, it can count as a strike.
 - There are no defenses to child molestation.
- NOTE: There is another statute that criminalizes “annoying or molesting” any minor under age 18. If the act in question is motivated by “abnormal or unnatural sexual interest” in the minor then the act itself need not be lewd or obscene – just acts that would cause a normal person to be “unhesitatingly irritated.”^{xii}
- **How and when are these laws enforced?**
- It used to be that only boys could get in trouble for these laws. BUT now these laws are gender neutral, and both boys and girls can get in trouble for them. In fact, age difference is more significant to prosecution than gender difference.^{xiii}
- Ask the students – how do you think the police would find out?
 - There are lots of ways: ex-girlfriends or ex-boyfriends tell the police, parents or teachers find out by hearing kids talk about it, reading notes passed talking about sexual stuff, a girl gets pregnant, kids caught in the act, or kids may tell their PO what they are doing.
 - Remind students that it is NOT confidential if I talk to a probation officer or a police officer. If I am not sure if it’s confidential, I should ask before I say anything.
 - Remember: This can be a sobering lesson for some students, who didn’t know about these laws. Remind them that kids are rarely charged with this crime, but it can happen. ***I should be especially careful if I am on probation.*** As we discuss each week, knowing the law can help us understand the potential legal consequences of our actions.

ACTIVITY 2: UNLAWFUL SEX SCENARIOS
(Time Check: 12 minutes)

Goal of the Activity:

- To review what students have learned about unlawful sex.
- To apply their knowledge to specific examples.

Exercise:

- Tell the students that we are going to review what they have learned (and maybe learn some new things we didn't go over in detail) by working through the following scenarios.
- After you go through all of the scenarios, break the class into small groups (depending on how many teachers you have), and use the remaining time to give students a chance to ask you questions about the rules surrounding unlawful sex and the policy reasons behind such laws, and to share their own thoughts on the subject (but note that they should not be discussing their own situations at all). This can be a very difficult subject for students to talk about, so this part of the lesson is intended to be less formal and more of an open discussion format.

Questions:

Note to teachers: Names are used below for the purpose of the scenarios, but be sure to change the names you use in the classroom if you have students with these names.

Bobby, who is fifteen, tells his girlfriend Suzie, who is also 15, that even if she doesn't want to have sex, because it's illegal, she should still be willing to have oral sex, because you can't get in trouble for that. Suzie doesn't know whether he's right about the law. Is he? (No; oral sex counts as sex.)

Suzie's mom is having a talk with her, and is trying to explain to her some of the potential dangers of underage sex. What sort of things might Suzie's mom tell her? (the risk of getting pregnant, too young to take care of a child, the risk of contracting an STD, minors are not mature enough to have sex)

Brandon, who is sixteen, is in court being prosecuted for having unlawful sex with his girlfriend, Brenda, who is also sixteen. He tries to argue that he didn't do anything wrong, because Brenda wanted to have sex (she consented). Is that a valid defense? (No; consent is not a defense.)

If Brandon is found to have committed unlawful sex, will it be a misdemeanor or a felony? (A misdemeanor.)

Could Brandon be put in jail for this misdemeanor? (Yes, for up to one year.)

What if Brandon were nineteen and Brenda were fifteen – would Brandon then be charged with a misdemeanor or a felony? (This could be a felony, because Brandon is more than three years older than Brenda.)

Dylan and Andrea are both sixteen years old. They are kissing in Dylan's car, which is parked near a public park. A police officer approaches and taps on the window. Can any charges be brought against them? (No; it is legal for two 16-year-olds to kiss each other, as long as there is no sex, oral sex, or penetration.)

James and Cindy are both seventeen years old, and were recently married with their parents' blessing. Can they be charged with unlawful sex? (No; if a couple is married, it is not unlawful sex).

Child molestation

Kelly has been charged with child molestation, but is not at all concerned about this, because she believes that she can't be convicted of this crime because she is a woman and only twenty-five years old, so she doesn't think she fits the typical description of a child molester. You are her lawyer. What do you tell her? (Charges can be brought against anyone, no matter how old they are, if they touch someone under the age of 14 in a sexual way.)

If she is found guilty of child molestation, is this a misdemeanor or a felony? (A felony.)

Ian is a high school senior, seventeen years old, and his girlfriend Tori is a thirteen-year-old high school freshman. They have not had sex of any kind, but they have kissed. Is this legal? (No; touching anyone under the age of 14 in a sexual way or kissing constitutes child molestation.)

What defenses can Ian plead if he is prosecuted for this? (None; there are no defenses to child molestation.)

If Ian is found delinquent for child molestation, could he be required to register as a sex offender? (Yes.)

CONCLUSION **(Time Check: 2 minutes)**

Before closing, thank the students for being so mature and respectful in dealing with a very difficult topic.

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California's Proposed Unlawful Sex Law:

- A youth under the age of 18 is guilty of unlawful sex if:
 - She or he has sexual intercourse with another youth under the age of 18.
 - It does not matter if both people want to have sex.
 - This crime is a misdemeanor, with a maximum punishment of one year in jail.

StanfordStreetLaw

UNLAWFUL SEX

WHAT IS "UNLAWFUL SEX"?

- The law defines unlawful sex as: sex with a minor (someone 17 or younger), no matter how old the other person is.
 1. So if I have sex with a minor, it is illegal - even if I'm also a minor.
- Where is this in the law if I want to look it up?
 1. California Penal Code Section 261.5

WHAT COUNTS AS "SEX"?

- Sex includes:
 - o Sexual intercourse
 - o Any sort of penetration (with fingers or objects)
 - o Oral sex

ARE THERE ANY EXCUSES OR DEFENSES?

- Generally, there is only one: If the two people involved are married to each other.
- Very Important: Consent is NOT a defense.
 - o That means it doesn't matter if both people wanted to have sex, or even if their parents knew and said it was okay.

WHAT ARE THE CONSEQUENCES?

- "Unlawful sex" is a probation violation.
- Most cases are misdemeanors.
- Some cases are felonies.
 - o "Unlawful Sex" can be charged as a felony if the age difference between the two people is more than three years.
 - o A felony charge is more serious: it usually mean more time locked up, and it might mean the person has to register as a sex offender.

Footnotes and Additional Information

ⁱ http://family.findlaw.com/child-abuse/le2_c.html

Cal. Penal Code §11165.7

ⁱⁱ <http://www.cacsc.org/council/reportminors.html> (last reviewed Feb. 2008); Cal Penal Code §§, 11164 et seq.

ⁱⁱⁱ Cal. Penal Code § 261.5

^{iv} **Q:** How many people in the U.S. contract STDs per year.

A: The Centers for Disease Control estimate that 19 million new cases of Chlamydia, gonorrhea, and syphilis occur each year (these are the STDs that are required to be reported to the CDC and state health departments, along with Hepatitis A and B). STDs cost the US health care system \$17 billion each year. The CDC also estimates that approximately 50,000 individuals become infected with HIV each year. (sources: <http://www.cdc.gov/std/stats10/trends.htm>; <http://www.cdc.gov/nchstp/newsroom/HIVIncidencePressRelease.html>)

Q: How many cases of teen pregnancy are there per year?

A: According to the Guttmacher Institute, in 2006 a total of 750,000 women under 20 became pregnant, meaning that about 7% of women aged 15-19 became pregnant in 2006 alone. (source: <http://www.guttmacher.org/pubs/USTPtrends.pdf>). As for teen births, according to the National Center for Health Statistics and as reported by the CDC in April 2012, the birth rate for 15-19 year olds is at a historic low: 34.3 live births per 1,000 women in this age group. In 2010, 367,752 babies were born to women aged 15-19. (Source: <http://www.cdc.gov/nchs/data/databriefs/db89.htm>).

^v **Q:** How much does teen pregnancy cost in California?

A: According to research cited by the California Department of Education, the annual costs to taxpayers for births to teenage mothers in California was estimated at \$1.7 billion, and the “total net costs to society” were estimated at \$3.8 billion (updated in 2008). (Source: <http://www.cde.ca.gov/ls/cg/pp/teenpregnancy.asp>).

^{vi} **Q:** What percentage of teenage mothers complete high school?

A: The CDC reports that according to 2010 research only 50% of teenage mothers receive a high school diploma by age 22, compared with 90% of those who did not have a child during adolescence.

^{vii} **Q:** What percentage of young teen mothers end up on welfare?

A: Almost 80% of young teen mothers receive public assistance in the form of public housing, food stamps, etc. during the ten years after the birth of their first child. (source:<http://www.urban.org/publications/310796.html>).

^{viii} Cal. Penal Code § 11165.1 refers to Cal. Penal Code § 261.5 Unlawful sexual intercourse with person under 18. § 261.5(a) notes that unlawful sex is “with a person who is not the spouse of the perpetrator.” It is also a defense if the defendant had a “good faith belief that the other person was 18 years of age or older.” (source: CALJIC 10.67 (this refers to California Jury Instructions-Criminal and can be found on Westlaw)).

^{ix} **Q:** What is the applicable California statute?

A: California Penal Code § 261.5:

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to [subdivision \(h\) of Section 1170](#).

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to [subdivision \(h\) of Section 1170](#) for two, three, or four years.

(e)(1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

^x Cal Penal Code § 261.5

^{xi} People v. Nothnagel 9 Cal.Rptr. 519 (Dist. Ct. App. 1960); Cal Penal Code § 288(a):
“Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.”

^{xii} Cal. Penal Code § 647.6; People v. Lopez, 19 Cal. 4th 282 (1998); People v. Thompson (253 Cal.Rptr. 564 (App. 1998).

^{xiii} Prof. Weisberg.