

Age of consent

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The **age of consent** is the age at which a person is considered to be legally competent to consent to sexual acts, and is thus the minimum age of a person with whom another person is legally permitted to engage in sexual activity. The distinguishing aspect of the age of consent laws is that the person below the minimum age is regarded as the victim, and their sex partner as the offender.

The term *age of consent* rarely appears in legal statutes.^[1] Generally, a law will instead establish the age below which it is illegal to engage in sexual activity with that person. It has sometimes been used with other meanings, such as the age at which a person becomes competent to consent to marriage,^[2] but the meaning given above is the one now generally understood. It should not be confused with the age of majority, age of criminal responsibility, the voting age, the drinking age, the driving age, etc.

Age of consent laws vary widely from jurisdiction to jurisdiction,^[1] though most jurisdictions set the age of consent in the range 14 to 18. The laws may also vary by the type of sexual act, the gender of the participants, or other restrictions such as abuse of a position of trust; some jurisdictions may also make allowances for minors engaged in sexual acts with each other, rather than a single age. Charges resulting from a breach of these laws may range from a misdemeanor such as *corruption of a minor*, to what is popularly called *statutory rape* (which is considered equivalent to rape, both in severity and sentencing).

There are many "grey areas" in this area of law, some regarding unspecific and untried legislation, others brought about by debates regarding changing societal attitudes, and others due to conflicts between federal and state laws. These factors all make age of consent an often confusing subject, and a topic of highly charged debates.^[1]

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History and social attitudes

Traditional attitudes

In traditional societies, the age of consent for a sexual union was a matter for the family to decide, or a tribal custom. In most cases, this coincided with signs of puberty, menstruation for a woman and pubic hair for a man.^[3] The ancient Greek poet Hesiod in *Works and Days* (c. 700 BC) suggests that a man should marry around the age of thirty, and that he should take a wife who is five years past puberty.

Reliable data for ages at marriage is scarce. In England, for example, the only reliable data in the early modern period comes from property records made after death. Not only were the records relatively rare, but not all bothered to record the participants' ages, and it seems that the more complete the records are, the more likely they are to reveal young marriages. Modern historians have sometimes shown reluctance to accept evidence of young ages of marriage, dismissing it as a 'misreading' by a later copier of the records.^[3]

In the 12th century, Gratian, the influential founder of canon law in medieval Europe, accepted age of puberty for marriage to be around 12 (girls) and around 14 (boys) but acknowledged consent to be meaningful if the children were older than 7.^[4] There were authorities that said that consent could take place earlier. Marriage would then be valid as long as neither of the two parties annulled the marital agreement before reaching puberty, or if they had already consummated the marriage. Judges sometimes honored marriages based on mutual consent at ages younger than 7: in contrast to established canon, there are recorded marriages of 2 and 3 year olds.^[3]

The first *recorded* age-of-consent law dates from 1275 in England; as part of its provisions on rape, the Statute of Westminster 1275 made it a misdemeanor to "ravish" a "maiden within age," whether with or without her consent. The phrase "within age" was later interpreted by jurist Sir Edward Coke as meaning the age of marriage, which at the time was 12 years of age.^[5]

The American colonies followed the English tradition, and the law was more of a guide. For example, Mary Hathaway (Virginia, 1689) was only 9 when she was married to William Williams. Sir Edward Coke (England, 17th century) "made it clear that the marriage of girls under 12 was normal, and the age at which a girl who was a wife was eligible for a dower from her husband's estate was 9 even though her husband be only four years old."^[3]

In the 16th century, a small number of Italian and German states set the minimum age for sexual intercourse for girls, setting it at 12 years. Towards the end of the 18th century, other European countries also began to enact similar laws. The first French Constitution of 1791 established the minimum age at 11 years. Portugal, Spain, Denmark and the Swiss cantons initially set the minimum age at 10–12 years.^[6]

Age of consent laws were, historically, difficult to follow and enforce: legal norms based on *age* were not, in general, common until the 19th century, because clear proof of exact age and precise date of birth were often unavailable.^[6]

In Christian societies, sex outside marriage was forbidden. Older children were often punished themselves for being complicit in sexual interaction with an adult. Until the late 18th century, there was little understanding of childhood as a concept, and children were seen as "little adults". Indeed, prior to the 12th century, there was virtually no notion of childhood at all. Christianity also deemed that children were born into the original sin, and, as such, were perceived as inherently immoral.^[7] Children had very few rights and were considered the chattel of the father.^[7] From the late 18th century, and especially in the 19th century, attitudes started to change. By the mid-19th century there was increased concern over child sexual abuse.^[7]

Reforms in the 19th and 20th century

A general shift in social and legal attitudes toward issues of sex occurred during the modern era. Attitudes on the appropriate age of permission for females to engage in sexual activity drifted toward adulthood. While ages from 10 to 13 were typically regarded as acceptable ages for sexual consent in Western countries during the mid-19th century,^[1] by the end of the 19th century changing attitudes towards sexuality and childhood resulted in the raising of the age of consent.^[5]

The English common law had traditionally set the age of consent within the range of 10 to 12, but in 1875 the age was raised to 13. Early feminists of the Social Purity movement, such as Josephine Butler and others, instrumental in securing the repeal of the Contagious Diseases Acts, began to turn towards the problem of child prostitution by the end of the 1870s. Sensational media revelations about the scourge of child prostitution in London in the 1880s then caused outrage among the respectable middle-classes, leading to pressure for the age of consent to be raised again.

The investigative journalist William Thomas Stead of the *Pall Mall Gazette* was pivotal in exposing the problem of child prostitution in the London underworld through a publicity stunt. In 1885 he "purchased" one victim, Eliza Armstrong, the 13-year-old daughter of a chimney sweep, for five pounds and took her to a brothel where she was drugged. He then published a series of four exposés entitled *The Maiden Tribute of Modern Babylon*, which shocked its readers with tales of child prostitution and the abduction, procurement, and sale of young English virgins to Continental "pleasure palaces". The "Maiden Tribute" was an instant sensation with the reading public, and Victorian society was thrown into an uproar about prostitution. Fearing riots on a national scale, the Home Secretary, Sir William Harcourt, pleaded in vain with Stead to cease publication of the articles. A wide variety of reform

groups held protest meetings and marched together to Hyde Park demanding that the age of consent be raised. The government was forced to propose the Criminal Law Amendment Act 1885, which raised the age of consent to 16 and clamped down on prostitution.^[8]

In the United States, as late as the 1880s most States set the minimum age at 10–12, (in Delaware it was 7 in 1895).^[9] Inspired by the "Maiden Tribute" articles, female reformers in the US initiated their own campaign^[10] which petitioned legislators to raise the legal minimum age to at least 16, with the ultimate goal to raise the age to 18. The campaign was successful, with almost all states raising the minimum age to 16–18 years by 1920.^{[5][11]}

In France, Portugal, Denmark and the Swiss cantons and other countries, the minimum age was raised to between 13 and 16 years in the following decades.^[5] Though the original arguments for raising the age of consent were based on morality, since then the *raison d'être* of the laws has changed to child welfare and a so-called right to childhood or innocence.^[12]

In France, under the Napoleonic Code the age of consent was set in 1832 at 11,^[13] and was raised to 13 in 1863.^[14] It was increased to 15 in 1945.^[15]

In Spain, it was set in 1822 at "puberty age", and changed to 12 in 1870,^[16] which was kept until 1999, when it became 13;^{[17][18]} and in 2015 it was raised to 16.^{[19][20][21]}

21st century and present day situation

In the 21st century, concerns about child sex tourism and commercial sexual exploitation of children gained international prominence, and have resulted in legislative changes in several jurisdictions, as well as in the adoption of several international instruments.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 25 October 2007), and the European Union's *Directive 2011/92/EU of the European Parliament and of the Council* of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography^[22] were adopted.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography came into force in 2002.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which came into force in 2003, prohibits commercial sexual exploitation of children.^[23]

The Council of Europe Convention on Action against Trafficking in Human Beings (which came into



Several articles written by investigative journalist William Thomas Stead in the late 19th century on the issue of child prostitution in London led to public outrage and ultimately to the raising of the age of consent to 16.

force in 2008) also deals with commercial sexual exploitation of children.

Several Western countries have raised their ages of consent recently. These include Canada (in 2008 - from 14 to 16); and in Europe, Iceland (in 2007 - from 14 to 15), Lithuania (in 2010 - from 14 to 16), Croatia (in 2013 - from 14 to 15), and Spain (in 2015 - from 13 to 16).

The International Criminal Court Statute does not provide a specific age of consent in its rape/sexual violence statute, but makes reference to sexual acts committed against persons "*incapable of giving genuine consent*"; and the explicative footnote states, "It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or *age-related incapacity*." (see note 51)^[24]

Law

Sexual relations with a person under the age of consent is a crime in most countries. Jurisdictions use a variety of terms for the offense, including *child sexual abuse*, *statutory rape*, *illegal carnal knowledge*, *corruption of a minor*,^[1] besides others.

The enforcement practices of age-of-consent laws vary depending on the social sensibilities of the particular culture (see above). Often, enforcement is not exercised to the letter of the law, with legal action being taken only when a sufficiently socially-unacceptable age gap exists between the two individuals, or if the perpetrator is in a position of power over the minor (e.g., a teacher, minister, or doctor). The sex of each participant can also influence perceptions of an individual's guilt and therefore enforcement.^[1]

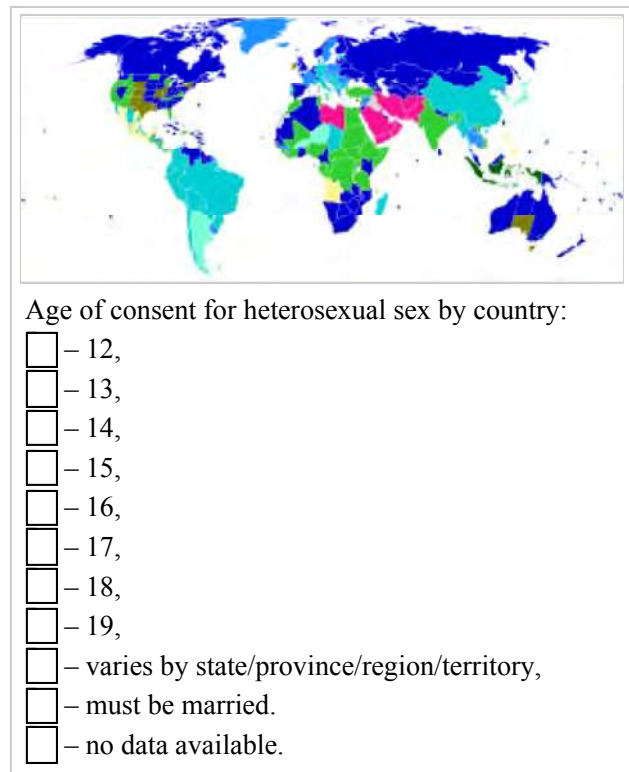
Age

The threshold age for engaging in sexual activity varies between jurisdictions (see below). Most jurisdictions have set a fixed age of consent.^[25] However, some jurisdictions permit sex with a person after their puberty, such as Yemen, but only in marriage. Ages can also vary based on the type of calendar used, such as the Lunar calendar,^[26] how birth dates in leap years are handled, or even the method by which birth date is calculated.^[27]

Defenses and exceptions

The age of consent is a legal barrier to the minor's ability to consent and therefore obtaining consent is not in general a defense to having sexual relations with a person under the prescribed age, for example:

Reasonable belief that the victim is over the age of consent



In some jurisdictions it is a defense if the accused can show that he or she reasonably believed the victim was over the age of consent. However, where such a defense is provided, it normally applies only when the victim is close to the age of consent or the accused can show due diligence in determining the age of the victim (e.g. an underage person who used a fake identification document claiming to be of legal age).^[28]

Marriage

In most jurisdictions, age of consent laws do not apply if the parties are legally married to each other.

Close-in-age exemptions

Some jurisdictions have laws explicitly allowing sexual acts with minors under the age of consent if their partner is close in age to them. For instance, in Canada, the age of consent is 16, but there are two close-in-age exemptions: sex with minors aged 14–15 is permitted if the partner is less than five years older, and sex with minors aged 12–13 is permitted if the partner is less than two years older.^[29] Other countries state that the sexual conduct with the minor is not to be punished if the partners are of a similar age and development: for instance, the age of consent in Finland is 16, but the law states that the act will not be punished if "there is no great difference in the ages or the mental and physical maturity of the persons involved".^[30] Another approach takes the form of a stipulation that sexual intercourse between a minor and an adult is legal under the condition that the latter does not exceed a certain age. For example, the age of consent in the US state of Delaware is 18, but it is allowed for teenagers aged 16 and 17 to engage in sexual intercourse as long as the older partner is younger than 30.^[31] In Slovenia, the age of consent is 15, but the law requires that there be "a marked discrepancy between the maturity of the perpetrator and that of the victim".^[32]

Homosexual and heterosexual age discrepancies

Some jurisdictions, such as the Bahamas, Bermuda, Cayman Islands, Chile, Paraguay and Vanuatu have a higher age of consent for same-sex sexual activity. In both the United Kingdom and Western Australia, for example, the age of consent was originally 21 for same-sex sexual activity between males (with no laws regarding lesbian sexual activities), while it was 16 for heterosexual sexual activity; this is no longer the case.^[33] However, such discrepancies are increasingly being challenged. In Canada, the age of consent for anal sex is officially higher at 18 years, compared with 16 years for vaginal and oral sex.^{[34][35]} In the five Canadian provinces of British Columbia, Nova Scotia, Alberta, Ontario and Quebec, this discrepancy has been declared unconstitutional by courts.^{[36][37][38]}

Gender-age differentials

In some jurisdictions (such as Indonesia^[39]), there are different ages of consent for heterosexual sexual activity that are based on the gender of each person. In countries where there are gender-age differentials, the age of consent may be higher for girls—for example in Papua New Guinea, where the age of consent for heterosexual sex is 16 for girls and 14 for boys,^[40] or they may be higher for males, such as in Indonesia, where males must be 19 years old and females must be 16 years old.^[39] There are also numerous jurisdictions—such as Kuwait^[41] and the Palestinian Territories^[42]—in which marriage laws govern the gender-age differential. In these jurisdictions, it is illegal to have sexual intercourse outside of marriage so the *de facto* age of consent is the marriageable age. In Kuwait, this means that boys must be at least 17 and girls at least 15 years old.

Position of authority/trust

In most jurisdictions where the age of consent is below 18 (such as England and Wales^[43]), in cases where a person aged 18 or older is in a position of trust over a person under 18 the age of

consent usually rises to 18, or higher. Examples of such positions of trust include relationships between teachers and students. For example, in England and Wales the age of consent is 16, but if the person is a student of the older person it becomes 18.

Circumstances of the relationship

In several jurisdictions, it is illegal to engage in sexual activity with a person under a certain age under certain circumstances regarding the relationship in question, such as if it involves taking advantage of or corrupting the morals of the young person. For example, while the age of consent is 14 in Germany and 16 in Canada, it is illegal in both countries to engage in sexual activity with a person under 18 if the activity exploits the younger person. Another example is in Mexico, where there is a crime called "estupro" defined as sexual activity with a person over the age of consent but under a certain age limit (generally 18) in which consent of the younger person was obtained through seduction and/or deceit. In Pennsylvania, the age of consent is officially 16 but if the older partner is 18 or older, he/she may still be prosecuted for corruption of minors if he/she corrupts or tends to corrupt the morals of the younger person.

Extraterritoriality

Some countries have age of consent laws which apply not only to acts committed within the country, but also to those committed by its citizens or inhabitants while they are on foreign soil.^[1] For example, a federal United States law bans sexual activity by its citizens with foreigners or with U.S. citizens from another state, if the partner is under 18 and the activity is illegal under the federal, state or local law. This applies in cases where any of the partners travels into or out of the United States, or from one state into another, for the purpose of an illegal sexual encounter.^{[44][45]}

Other issues

Gender of participants

There is debate as to whether the gender of those involved should lead to different treatment of the sexual encounter, in law or in practice. Traditionally, age of consent laws regarding vaginal intercourse were often meant to protect the chastity of unmarried girls.^[6] Many feminists and social campaigners in the 1970s have objected to the social importance of virginity, and have also attempted to change the stereotypes of female passivity and male aggression; demanding that the law protect children from exploitation regardless of their gender, rather than dealing with concerns of chastity. This has led to gender-neutral laws in many jurisdictions.^[6] On the other hand, there is an opposing view which argues that the act of vaginal intercourse is an "unequal act" for males and females, due to issues such as pregnancy, increased risk of STDs,^[46] and risk of physical injury if the girl is too young and not physically ready. In the US, in *Michael M. v. Superior Ct.* 450 U.S. 464 (1981) it was ruled that the double standard of offering more legal protection to girls is valid because "the Equal Protection Clause does not mean that the physiological differences between men and women must be disregarded".^[47]

Traditionally, many age of consent laws dealt primarily with men engaging in sexual acts with underage girls and boys (the latter acts often falling under sodomy and buggery laws). This means that in some legal systems, women having sexual contact with underage youth were rarely acknowledged. For example, until 2000, in the UK, before the Sexual Offences (Amendment) Act 2000, there was no

statutory age of consent for lesbian sex.^[48] In New Zealand, before 2005, there were no age of consent laws dealing with women having sex with underage boys.^[49] Situations like these have been attributed to societal views on traditional gender roles, and to constructs of male sexuality and female sexuality; according to E Martellozzo, "[V]iewing females as perpetrators of sexual abuse goes against every stereotype that society has of women: women as mothers and caregivers and not as people who abuse and harm".^[50] Alissa Nutting argues that women are not acknowledged as perpetrators of sex crimes because society does not accept that women have an autonomous sexuality of their own.^[51]

Marriage and the age of consent

The age at which a person can be legally married can differ from the age of consent. In jurisdictions where the marriageable age is lower than the age of consent, those laws usually override the age of consent laws in the case of a married couple where one or both partners are below the age of consent. Some jurisdictions prohibit all sex outside of marriage irrespective of age, as in the case of Yemen.

Prostitution

In many countries, there are specific laws dealing with child prostitution.

Pornography and 'jailbait' images

In some countries, states, or other jurisdictions, the age of consent may be lower than the age at which a person can appear in pornographic images and films. In many jurisdictions, the minimum age for participation and even viewing such material is 18. As such, in some jurisdictions, films and images showing individuals under the age of 18, but above the age of consent, that meet the legal definition of child pornography are prohibited despite the fact that the sexual acts depicted are legal to engage in otherwise under that jurisdiction's age of consent laws. In those cases, it is only the filming of the sex act that is the crime as the act itself would not be considered a sex crime. For example, in the United States under federal law it is a crime to film minors below 18 in sexual acts, even in states where the age of consent is below 18.^[45] In those states, charges such as child pornography can be used to prosecute someone having sex with a minor, who could not be otherwise be prosecuted for statutory rape, provided they filmed or photographed the act.^[52]

Jailbait images can be differentiated from child pornography, as they do not feature minors before the onset of puberty, nor do they contain nudity.^{[53][54]} The images are, however, usually sexualized,^[53] often featuring tween or young teen girls in bikinis, skirts,^[55] underwear or lingerie.^[56] Whether or not these images are legal is debated. When questioned regarding their legality legal analyst Jeffrey Toobin stated he thought it was not illegal, though legal expert Sunny Hostin was more skeptical, describing jailbait images as "borderline" child pornography which may be illegal.^{[57][58]}

Health

The human immune system continues to develop after puberty.^[59] The age of exposure has an influence upon if the immune system can fend off infections in general, and this is also true in the case of some sexually transmitted diseases. For example, a risk factor for HPV strains causing genital warts is sexual debut at a young age;^[60] if this extends to the cancer causing strains, then sexual debut at a young age would potentially also increase risk of persistence of HPV infections that cause the very HPV induced cancers that are being diagnosed in spiking numbers of relatively young people.^[60]

Initiatives to change the age of consent

Age-of-consent reform refers to the efforts of some individuals or groups, for different reasons, to alter or abolish age-of-consent laws. These efforts advocate five main positions:

- Introductions of close-in-age exceptions.
- A change in the way that age-of-consent laws are examined in court.
- Either increases in the ages of consent or more severe penalties or both.
- Either decreases in the ages of consent or less severe penalties or both.
- Abolition of the age-of-consent laws either permanently or as a temporary, practical expedient.

By country or region

Specific jurisdictions' laws relating to age of consent can be found, organized by region, on the following pages:

- Ages of consent in Africa
- Ages of consent in Asia
- Ages of consent in Europe
- Ages of consent in North America
 - Ages of consent in the United States
- Ages of consent in Oceania
- Ages of consent in South America

See also

- Age of majority
- Adult film industry regulations
- Age of Consent Act, 1891 (British India)
- Age disparity in sexual relationships
- Age of accountability
- Age of consent reform (UK)
- Age of reason (canon law)
- Child sexual abuse
- Comprehensive sex education
- Convention on the Rights of the Child
- Emancipation of minors

- Fitness to plead, *law of England and Wales*
- French petition against age of consent laws
- Legal age
- Mature minor doctrine
- Minors and abortion
- Sexual Morality and the Law
- Sex-positive movement
- Sodomy law
- *The Maiden Tribute of Modern Babylon*
- Youth
- Youth suffrage
- Youth rights
- Age of candidacy

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Further reading

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- Waites, Matthew (2005). *The Age of Consent: Young People, Sexuality and Citizenship*, (New York [United States] and Houndmills, Basingstoke [United Kingdom]: Palgrave Macmillan) ISBN 1-4039-2173-3
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External links

- Legislation of Interpol member states on sexual offenses against children (<http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/Default.asp>) (Some information may be out of date)
- Links to the relevant state laws for all 50 States and Washington DC (<https://web.archive.org/web/20100831060017/http://moraloutrage.net/state-laws/>)
- Avert.org list (<http://www.avert.org/age-of-consent.htm>)

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