



Defending Against the Charge of Statutory Rape

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Disclaimer

The content in this book is intended to be general legal information for unrepresented defendants. I do not know the specifics of your case, and this book is not legal advice based upon the particular details of your case. I do not automatically become your attorney just because you are reading this book. If you are already represented by an attorney, then you should listen to him or her. With that out of the way, happy reading!

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Question #1: How much trouble am I in?

As with many sex crime offenses, the greatest penalty of a conviction may not be not the actual potential jail time, but the social stigma it can cause. Imagine that a potential employer does a background check on you, and he or she learns that you were convicted for trying to sleep with a prostitute! So whether you actually have to serve jail time on it or not, your primary focus should be trying to avoid a conviction altogether.

Depending on the facts of the case, a conviction for this offense could result in jail, placement on the Sex Offense Registry (in some cases), a felony on your record, loss of your marriage, child visitation, employment, immigration status, loss of car or house (in some cases), and many more.

You are about to have to make a very difficult decision – do you have the heart for the battle to come? It will be very tempting to plead guilty rather than go to trial because it's cheaper, quicker, and easier ... but you will be wearing a scarlet letter forevermore.

Question #2: Do I have a good chance at trial?

I can only give general advice here without having read the specific facts in your case, but I can say this – as you read this guide, you will probably be surprised at how many things you would like to present at trial but cannot.

The **first** thing you need to understand about the offense of statutory rape is that a minor (under 18) cannot legally consent to have sex, so any evidence that you might like to show to suggest that the minor explicitly consented or implicitly consented by her actions (never said no, never said stop, actively participated, “wanted it”¹, etc.) is irrelevant, and therefore inadmissible.

Even if you had a text message from the minor saying “I want to have sex with you,” the

¹ Forgive me for handling this content indelicately, but unfortunately these are the facts that we have to deal with. You might as well get used to the unsettling feeling of discussing your private conduct under the bright lights and judgmental attitudes of the courtroom; it’s just the nature of sex crime cases.

jury would never hear it because she still cannot consent.

On a related note, the parents of a minor cannot “give consent” on her behalf. They may tell a person that it’s okay, but having them write a permission slip will not protect you from prosecution; the fact is that the act is illegal, and that isn’t waived by getting the parents’ permission.

The **second** thing you need to know about this offense: statutory rape is a “strict liability” crime, which means that your mental state does not matter. I know, it seems crazy, but you could not even present proof that the minor lied to you and that you relied on her false statement and acted upon an honest, reasonable, but mistaken belief that she was of legal age.

Perhaps you were planning to tell the jury that you demanded that the minor show you her driver’s license, and that she had a fake driver’s license showing that she was twenty-one. Now all that you’ve done is admit that you had suspicions about her age! So you see, it cannot help you, and but it can absolutely hurt you. Besides, it’s irrelevant and inadmissible.

If you look at the statute, you'll see that there is no mental requirement, such as "intentionally," "knowingly," "recklessly," or "negligently" – the prosecutor does not have to prove that you knew the minor's age because it's simply not part of the offense. (And on the flip side, you can't testify that you didn't know either.)

The **third** thing you need to understand about this offense is that statutory rape is completely different from forcible rape. For many years, I have griped to everyone who will listen that statutory rape should be re-named "Unlawful Sexual Intercourse with a Minor." Okay, that doesn't sound like something you would want to be charged with either, but the point is that people would understand that it's different from the "rape" that most people think of, which is accomplished by "force or coercion." Tenn. Code Ann. § 39-13-503.

Because the two offenses are different (Statutory rape being about sexual intercourse with a minor, and Rape being about sexual intercourse through force or coercion), the same act could actually qualify as both Statutory Rape and Rape at the same time if it might the elements of each offense.

Question #3: What facts can make the charge more serious?

Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when: the victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim. Statutory rape is a Class E felony. The range of punishment for a Class E felony is “not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand dollars (\$3,000).” Tenn. Code Ann. § 40-35-111.

Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less

than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim. Aggravated statutory rape is a Class D felony. The range of punishment for a Class D felony is not less than two (2) nor more than twelve (12) years.” In addition, the jury may assess a fine not to exceed five thousand dollars (\$5,000).” Tenn. Code Ann. § 40-35-111.

Keep in mind that each sexual act can count as a separate incident and support multiple convictions. State v. Hogg, -- S.W.3d --, 2014 Tenn. LEXIS 668 (Tenn. Sept. 25, 2014).

Question #4: Could this charge put me on the Sex Offender Registry?

Statutory rape will not normally place a criminal defendant onto the Sex Offender

Registry. However, there's a bit of a wrinkle here, because the statute states that the trial judge "may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender."

In general, the wording suggests that in case the prosecutor were to take the case too lightly (like that's ever happened), but yet the judge is offended and thinks that the defendant got 'too good of a deal,' the judge could consider the fact that if the original charge was the aggravated statutory rape or if the facts were especially heinous, the judge could consider the original allegations and disregard the agreed upon plea agreement between the prosecution and the defendant.

This is a new development and it's not entirely clear how this will play out; for example, will they person who is judicial diversion eligible be placed on the registry only until the successful completion of diversion, and then be removed afterward? Time will tell.

Question #5: Can I get a diversion on this offense?

If you've done some research online (perhaps on my website, which is located at MemphisDiversion.com), then you know that judicial diversion is a wonderful program that allows individuals with little to no criminal background to enter a guilty plea in a manner that avoids future jail time and the eventual expunction of the criminal charge upon the successful completion of a probationary period. Tenn. Code Ann. § 40-35-313.

After the criminal defendant enters a guilty plea, the sentence is suspended and the charge would show on a criminal background check as a pending offense (not a conviction). If the criminal defendant is successful, he or she has achieved the same result as winning at trial.

Statutory rape is eligible for diversion unless the defendant is accused of Statutory rape by an authority figure, as described in Tenn. Code Ann. § 39-13-532. (But see the previous question regarding for more information on this).

Question #6: What defenses are unavailable?

A criminal defendant seeking to raise a defense against the criminal charge of statutory rape cannot argue that because the minor actively participated in the act, she should be charged as an accomplice. Further, the defendant cannot argue that accomplice testimony is insufficient to sustain a conviction without additional corroboration, and that he or she cannot be convicted unless there are other witnesses or other evidence beyond the minor's testimony.

At one time, this argument was well-settled law in Tennessee, so you may find some cases on the Internet that suggest as much. However, Tennessee courts recently ruled that a victim of a statutory rape cannot be charged, and thus does not qualify as an accomplice. These courts also overruled all prior decisions requiring corroboration of the victim's testimony, so these prior cases are no longer "good law." *State v. Collier*, 411 S.W.3d 886, 899 (Tenn. 2013)

Question #7: What is the Rape Shield Law and how will it affect the case?

The Rape Shield law is a rule of evidence that determines the admissibility of the alleged victim's sexual behavior when a defendant is charged with certain sexual offenses. See Tennessee Rule of Evidence 412.

Generally speaking, reputation testimony, opinion testimony, and specific instances of a victim's sexual behavior are all 'shielded,' or inadmissible from court proceedings. This means that the jury will not be able to hear any of this information regarding the victim's sexual behavior. The rule makes a distinction between evidence of sexual activity between the alleged victim and the defendant and evidence of sexual activity between the alleged victim and other sexual partners.

Why does it exist? This rule was put into effect because some defendants might introduce this evidence in an attempt to shame the victim or make the victim's morality the central issue in the case. Additionally, the rule may make more victims hesitant to report sexual offenses for fear that their personal sex lives will become public. One can certainly understand that a rape victim who has had multiple sexual partners in his or her personal life should not fear that such information would be made public during the rape trial when it has nothing to do with whether or not a rape occurred.

Does it go too far? While this rule achieves positive social aims, some people feel that the rule goes too far when it denies the jury from being able to hear whether the victim has made false accusations in the past, as this might certainly be relevant in determining whether the alleged victim is making a false claim in the present case. Other people do not believe that the rule goes too far and believe that it should be even more expansive.

When does it apply? This rule applies not only to the actual trial, but also to the preliminary hearing, depositions, and other proceedings. This rule applies when a defendant is accused of certain sexual offenses, as listed below. In the few exceptions where evidence of the victim's sexual behavior is admissible, there are additional conditions that must be met. The defense attorney must comply with a pre-trial procedure if this testimony is to be admitted, wherein the court can determine whether the evidence will be used for a permissible purpose.

Tennessee Rule of Evidence 412: Sex Offense Cases; Relevance of Victim's Sexual Behavior.

“Notwithstanding any other provision of law, in a criminal trial, preliminary hearing, deposition, or other proceeding in which a person is accused of ... 39-13-506 [statutory rape] ..., or the attempt to commit any such offense, the following rules apply:

(a) Definition of sexual behavior. In this rule “sexual behavior” means sexual activity of the alleged victim other than the sexual act at issue in the case.

(b) Reputation or opinion. Reputation or opinion evidence of the sexual behavior of an alleged victim of such offense is inadmissible unless admitted in accordance with the procedures in subdivision (d) of this Rule and required by the Tennessee or United States Constitution.

(c) Specific instances of conduct. Evidence of specific instances of a victim’s sexual behavior is inadmissible unless admitted in accordance with the procedures in subdivision (d) of this rule, and the evidence is:

(1) Required by the Tennessee or United States Constitution, or

(2) Offered by the defendant on the issue of credibility of the victim, provided the prosecutor or victim has presented evidence as to the victim’s sexual behavior, and only to the extent needed to rebut the specific evidence presented by the prosecutor or victim, or

(3) If the sexual behavior was with the accused, on the issue of consent, or

(4) If the sexual behavior was with persons other than the accused,

(i) to rebut or explain scientific or medical evidence, or

(ii) to prove or explain the source of semen, injury, disease, or knowledge of sexual matters, or

(iii) to prove consent if the evidence is of a pattern of sexual behavior so distinctive and so closely resembling the accused's version of the alleged encounter with the victim that it tends to prove that the victim consented to the act charged or behaved in such a manner as to lead the defendant reasonably to believe that the victim consented."

Question #8: Could law enforcement seize my house or car over this?

Yes. If a criminal defendant was found to have used his or her house or any personal property in the commission of patronizing prostitution, the real or personal property is

subject to judicial forfeiture. The offense must be committed against a person under eighteen (18) years of age on or after July 1, 2006. Tenn. Code Ann. § 39-13-530.

Statutory Rape

Tenn. Code Ann. § 39-13-501(7):

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required.

Tenn. Code Ann. § 39-13-506

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

(d)

(1) Mitigated statutory rape is a Class E felony.

(2)

(A) Statutory rape is a Class E felony.

(B) In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2.

(3) Aggravated statutory rape is a Class D felony.

Notes

Booking and processing date: _____

Court date: _____

Court division: _____

Potential favorable witnesses: _____

Questions for the attorney: _____

Special Offer

If you found this consumer guide to be helpful and would like to read more, please contact me using the information below to request my book, 10 Mistakes that Can Sabotage Your Criminal Case.

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About the Author

J. Jeffrey Lee is one of only five Certified Criminal Trial Specialists in Memphis, Tennessee. He has been certified as a Criminal Trial Specialist by the Tennessee Commission on C.L.E. and Specialization and Certified as a Criminal Trial Specialist by the National Board of Trial Advocacy.

He has attended the Tennessee Criminal Defense College on numerous occasions, along with the renowned National Criminal Defense College in Macon, Georgia. He was recently inducted into The National Trial Lawyers Top 100 Trial Lawyers. He has also been selected as a 2015 Mid-South Rising Star by Super Lawyers. However, the distinction that gives J. Jeffrey Lee the greatest pleasure is the Client's Choice award from AVVO, and the "10 Best" Client Satisfaction Award from the American Institute of Criminal Law Attorneys, because that means that his clients are pleased with the representation he provides. He is a member of TACDL (Tennessee Association of Criminal Defense Lawyers) and NACDL (National Association of Criminal Defense Lawyers).

Mr. Lee began as an Assistant Public Defender in the 25th Judicial District of Tennessee (Lauderdale, Tipton, Fayette, Hardeman, and McNairy Counties). His responsibilities included representing the indigent accused in General Sessions Court, Circuit Court, and the Court of Criminal Appeals. He performed a variety of matters, including preliminary hearings, suppression hearings, jury and bench trials, appeals, revocation hearings, and post-conviction hearings.

After working as a public defender, he formed his own law practice and he has recently narrowed and focused his practice in the area of serious felonies and sex crimes in an effort to serve an underrepresented and marginalized group of defendants who desperately need a first-rate defense.

The Law Office of J. Jeffrey Lee primarily serves the greater Memphis area. If you or someone you love needs legal representation, please contact the author.

Testimonials

“Mr. Lee was an astounding criminal defense lawyer for my needs. He was professional, prompt, available, dependable, and reliable. He kept me informed and responsive throughout the court dates and situations. He was able to deliver better results than I imagined! Thank you for your dedicated service!”

— Mrs. M Y

“Very Good Person to be around and make you feel comfortable, very knowledgeable and professional. I would definitely use his services again if needed and would recommend him to future clients.”

— Kandice

“I actually got his contact information from a close friend of mine and he had suggested Jeff right off the bat. The first time talking to Jeff he knew exactly what needed to be done for this court date to go smoothly and well in my favor. His knowledge and calm collective way of handling my case was exactly what I was

looking for. Thanks again Jeff I really appreciate your help!”

— Kris

“This attorney provides services that are of a high caliber. He has handled two different cases for me over the past couple of years. He kept me informed of each step involved with this case. Additionally, he explained the worst case outcome and the best case outcome. Thanks to his tenacity, we came out with the best case outcome! I recommended him to several people during the course of my legal case.”

— Federal Crime Client

“Mr. Lee impressed me from the moment I retained him...actually before I gave him any payment at all!! He was accessible throughout my entire legal issue. He not only got my case dismissed, he helped me get my case expunged. I never even had the chance to be nervous that he would not show up on time. He always showed up early and was extremely prompt with all of my paperwork. I trust Mr. Lee and am very comfortable and confident to recommend him to anyone facing any type of

legal issue. I am also happy to say that I found a friend in Jeff and did not feel like just another client. :-)"

— Anonymous

"Jeff took good care of my case. Right from the onset he told me I could get a diversion, and that is what eventually happened. He took care of paperwork effectively, met me promptly at court appointments, and helped me out in court when the judge was pondering why a higher-level offence wasn't issued. He knows what he's doing, and if he didn't know something I would trust him to become knowledgeable in order to help a client."

— Aaron

"Mr. Lee helped me make the best of a very stressful situation. I was simultaneously facing college graduation and jail time (not that they are related.) I was on the fence between being on top of the world and losing it all. Mr. Lee pushed me back towards the former I would definitely hire him again!"

— Adam

Awards



CLIENT SATISFACTION AWARD

American Institute of
Criminal Law Attorneys™



Super Lawyers®



National Board of Legal Specialty Certification



Still have questions?

Please contact the author at:

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