



Oregon

Kate Brown, Governor

Mental Health Regulatory Agency

Board of Licensed Professional Counselors and Therapists

3218 Pringle Road SE, Ste. 120

Salem, OR 97302-6312

(503) 378-5499 • Fax (503) 470-6266

Oregon.gov/OBLPCT

Mandatory Reporting of Abuse Involving Sexual Contact between Consenting Adolescents Close in Age

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Licensed professional counselors and licensed marriage and family therapists have a mandatory obligation to report child abuse, under the statutory provisions in ORS 419B.005 through ORS 419B.055. Those provisions define “child” as an unmarried person under 18 years of age. Recently, the Oregon Department of Human Services (DHS) asked the Oregon Attorney General whether mandatory reporters are required to report every instance of sexual conduct involving consenting minors who are close in age. In response, the Attorney General issued an opinion (Opinion 8294), concluding that the qualified answer to that question is no.

Under Oregon law, minors under the age of 18 are legally unable to consent to sexual contact, and nonconsensual sexual contact constitutes a crime. However, where sexual contact is a crime only because a minor is too young to consent, ORS 163.345 provides a complete defense: sexual contact is not a crime if the participants are less than three years apart in age and the sexual contact would be consensual, but for the fact that the minor cannot legally consent under the law. In her opinion, the Attorney General determined that this defense – called the “age-gap defense” – reflects a legislative decision that not all sexual conduct involving adolescents is inherently harmful. Therefore, the legislature did not intend to require that all adolescent sex be reported as abuse, which Oregon law defines as conduct causing injury or other harm to a child.

In summary, the Attorney General concluded that mandatory reporters are not obligated to report every instance of sexual conduct involving a minor where the age-gap defense applies. Sexual contact between participants less than three years apart in age does not require reporting, if the lack of consent is due solely to the age of the minor and no other factors make the conduct a crime or otherwise qualify as “abuse” under ORS 419B.005. But that conclusion is qualified. Each instance of sexual conduct involving a minor must be considered, and if the conduct was likely harmful to the minor, it must be reported – whether or not the age-gap defense may apply.

The Attorney General’s opinion is binding on DHS. Nevertheless, because that opinion did not consider specific factual scenarios, licensees should proceed with caution in deciding to not report sexual contact between minors, and to err on the side of making a report to DHS or to a law enforcement agency. If one of the minors is under the age of 15 years old, there is a high likelihood of harm, and, under those circumstances, licensees are encouraged to report the sexual contact. In addition, licensees should be aware that some school districts and agencies may still require reporting close-in-age adolescent sexual contact as a matter of policy.