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**M E M O R A N D U M**

February 21, 2018

**TO:** Interested Persons  
**FROM:** Juliann Jenson, Research Analyst, 303-866-3264  
**SUBJECT:** State Laws Addressing Age of Sexual Consent

**Summary**

This memorandum provides an overview of state laws that address age of consent for sexual activity. More specifically, it provides information about the age of sexual consent in Colorado and other states, including exemptions that allow a person below the age of consent to have lawful sex with an older person. The memorandum further outlines the sexual abuse charges that are used to prosecute age of consent and sexual assault-related crimes within Colorado.

**Overview**

Age of sexual consent is most commonly defined as the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity. The primary purpose of setting an age of consent in law is to protect an underage person from sexual advances by or activity with an older person. In most age of consent cases, the person below the minimum age is regarded as the victim and the older person is regarded as the offender or perpetrator, unless both are underage.

**Statutory references.** Most states, including Colorado, do not specifically define the term “age of consent” in statute. Instead, a law will generally establish the age below which it is illegal to engage in sexual activity with a person. The age of consent is therefore determined by what is not considered a criminal act.

**Age of sexual consent.** The age of sexual consent varies by state, but it usually ranges from 16 to 18 years of age, with the most common age being 16. Violations are open to prosecution under statutory rape or other related sexual assault laws. Statutory rape is generally defined as sexual contact with an individual who is below the legal age of consent and usually refers to adults engaging in sexual activity with minors.

**Close-in-age exemptions.** Close-in-age exemptions allow people below the age of consent to lawfully have sex with older partners provided those partners fall within a certain age range and are not in a position of trust or authority. For example, many states allow a 14- or 15-year old to consent to sexual activity as long as his or her partner is less than five years older.

**Marriage exemptions.** Every state regulates marriage, and one of the requirements for obtaining a marriage license is to be at least a certain age. Most states require parties to be 18 years old to marry. However, parental consent or judicial approval may allow for parties under the age of 18 to do so. Because of this, most statutory rape laws create exceptions for minors engaged in a sexual relationship with their lawful spouse.

A state-by-state listing of age of consent and close-in-age exemptions can be found here: <https://www.ageofconsent.net/states>

## **Colorado Law**

Colorado law does not define age of sexual consent in statute; instead, the law is written to make a determination of whether individuals, based on age, have the legal capacity to consent to sexual activity. The age of consent is then determined by what is excluded from the Colorado criminal code. Colorado also provides exemptions for specified age differences between partners and for marriage.

**Age of sexual consent.** The Colorado age of sexual consent is 17 years old. Colorado law does not criminalize consensual sex when both parties are 17 years old or older.

**Close-in-age exemption.** Colorado law allows for 15- and 16-year olds to lawfully engage in sexual behavior with partners who are less than ten years older, and minors younger than 15 to engage in sexual acts with those less than four years older.<sup>1</sup>

**Marriage exemption.** Colorado law includes a spousal exemption from statutory rape or sexual assault charges if the involved parties are married.<sup>2</sup> Although the legal age at which a person may marry is 18, parties aged 16 and 17 are allowed to wed with parental consent or judicial approval.<sup>3</sup>

**Penalties for violating age of consent.** Table 1 depicts examples of the more common statutory sexual abuse charges that may apply if a person violates the age of sexual consent in Colorado. The severity of the charge depends upon the specifics of the act and ages of both partners. The offenses primarily involve sexual activity between adults and minors and are considered crimes regardless of consent by the minor. Additionally, a nonconsensual sexual act is a crime under Colorado law regardless of the age of the actors.

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<sup>1</sup>Section 18-3-402, C.R.S.

<sup>2</sup>Section 18-3-402, C.R.S.

<sup>3</sup>Sections 14-2-106 and 14-2-108, C.R.S.

**Table 1**  
**Age of Consent-Related Penalties**

<b>Criminal Charge</b>	<b>Statutory Citation</b>	<b>Severity</b>	<b>Description</b>
Sexual Assault – 4-year close-in-age exemption	Section 18-3-402 (1) (d), C.R.S.	Class 4 felony	Individual who is at least 4 years older has sex with a minor who is under 15 years old.
Sexual Assault – 10-year close-in-age exemption	Section 18-3-402 (1) (e), C.R.S.	Class 1 misdemeanor	<b>Individual who is at least 10 years older has sex with a minor between the ages of 15 and 17.</b>
Sexual Assault on a Child – Position of Trust	Section 18-3-405.3, C.R.S.	Class 3 felony; Class 4 felony	Individual in a position of trust has sex with a minor who is 14 years or younger (Class 3) or between the ages of 15 and 17 (Class 4).
Enticement of a Child	Section 18-3-305, C.R.S.	Class 4 felony	Individual invites or persuades a minor under the age of 15 to enter a place with the intent to commit sexual assault or unlawful sexual contact upon the minor.
Internet Luring of a Child	Section 18-3-306, C.R.S.	Class 5 felony	Following circumstances must occur: knowingly communicating over the internet; knows or believes the victim to be under 15; describes sexual conduct; invites or persuades the minor to meet; and, is more than four years older than the minor.

Source: Legislative Council Staff.