



# Legal Aspects of Clinical Care: Minor's Rights to Consent in SC

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Stig T. Rasmussen

Operations & HR Manager

# Our Mission

Fact Forward's mission is to improve the health and economic well-being of individuals, communities, the state of South Carolina, and beyond by preventing teen pregnancy and advancing adolescent reproductive health.



# What We Do & Who We Work With

We train and educate people who work with adolescents so they can provide medically accurate information about healthy relationships and safer sex.

**Parents**



**Clinicians**



**Educators**



**Communities**



# OUR WORK

## FOCUS AREAS:

- Preventing the spread of STIs, which are on the rise among teens
- Preventing unplanned pregnancies in older teens, which accounted for 75% of teen births in 2016
- Partnering with healthcare providers to screen 100% of teens for pregnancy intention by asking whether they plan to have a baby in the next six months




# WHO WE REACH

- PARENTS
- SCHOOLS & COMMUNITIES
- MEDICAL COMMUNITIES
  - We inform these communities about appropriate reproductive health and age limits. It is key to have the medical community ready, willing, and able to serve teen populations.





A photograph of a group of young people sitting on a paved surface. In the upper left, a silver boombox is visible. To the right, a person's arm with a tattoo is seen. In the foreground, several pairs of sneakers are visible. A magazine with the word 'MOTO' is partially visible on the right. A large green rectangular overlay covers the center of the image, containing white text.

We don't just aim to lower rates of unintended pregnancies; our broader focus is on  
**IMPROVING REPRODUCTIVE  
HEALTH.**

# In this report, the American Academy of Pediatrics makes 11 recommendations for the medical community.



## TECHNICAL REPORT

### Contraception for Adolescents

Mary A. Ott, MD, MA, FAAP, Gilda S. Suraco, MD, MPH, FAAP,  
and COMMITTEE ON ADOLESCENCE

#### KEY WORDS

contraception, adolescent, birth control, intrauterine device, contraceptive implant, oral contraceptive pills, contraceptive injection

#### ABBREVIATIONS

AAP—American Academy of Pediatrics  
AST—antiestrogen therapy  
BMD—bone mineral density  
CDC—Centers for Disease Control and Prevention  
COC—combined oral contraceptive  
DMPA—depot medroxyprogesterone acetate  
EC—emergency contraception  
FDA—US Food and Drug Administration  
HIPAA—Health Insurance Portability and Accountability Act  
IUD—intrauterine device  
LARC—long-acting reversible contraception  
POP—progestin-only pill  
STI—sexually transmitted infection  
VTE—venous thromboembolism

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The guidance in this report does not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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## abstract

A working knowledge of contraception will assist the pediatrician in both sexual health promotion as well as treatment of common adolescent gynecologic problems. Best practices in adolescent anticipatory guidance and screening include a sexual health history, screening for pregnancy and sexually transmitted infections, counseling, and if indicated, providing access to contraceptives. Pediatricians' long-term relationships with adolescents and families allow them to help promote healthy sexual decision-making, including abstinence and contraceptive use. Additionally, medical indications for contraception, such as acne, dysmenorrhea, and heavy menstrual bleeding, are frequently uncovered during adolescent visits. This technical report provides an evidence base for the accompanying policy statement and addresses key aspects of adolescent contraceptive use, including the following: (1) sexual history taking, confidentiality, and counseling; (2) adolescent data on the use and side effects of newer contraceptive methods; (3) new data on older contraceptive methods; and (4) evidence supporting the use of contraceptives in adolescent patients with complex medical conditions. *Pediatrics* 2014;134:e1257–e1261

## INTRODUCTION

Pediatricians play a key role in adolescent sexual health and contraception. Sexual health is an important part of adolescent anticipatory guidance and screening, and pediatricians' long-term relationships with adolescents and families allow them to help promote healthy sexual decision making, including abstinence and contraceptive use. Additionally, medical indications for contraception, such as acne, dysmenorrhea, and heavy menstrual bleeding, are frequently uncovered during adolescent visits. A working knowledge of contraception will assist the pediatrician in both sexual health promotion as well as treatment of common adolescent gynecologic problems. This technical report provides the pediatrician with updated information on adolescent sexual behavior, guidance for counseling adolescents, and an update on available methods of contraception. It is a companion to the policy statement "Contraception for Adolescents."<sup>1</sup>

## ADOLESCENT SEXUAL BEHAVIOR AND USE OF CONTRACEPTION

Sexual intercourse is common among adolescents. In 2011, 47% of high school students reported ever having had sex, and 34% reported having had sex in the previous 3 months.<sup>2</sup> For the pediatrician, this means that approximately half of their adolescent patients have engaged in sex;



The Pill



**91% \*Effective**

External Condom



**82% \*Effective**

The Shot



**94% \*Effective**

Abstinence



**100% \*Effective**

Vaginal Ring



**91% \*Effective**

The Patch



**91% \*Effective**

I.U.D.



**92-99.8% \*Effective**

Implant



**99.5% \*Effective**

\*with perfect use



# Disclaimer



This presentation does not constitute specific legal advice, nor does it establish an attorney-client relationship. It merely is compiled to educate the reader on relevant provisions in the SC Code of Laws that are current as of June, 2020. This document is educational and intended to provide guidance to health care service providers about the scope of services they are legally allowed or prohibited to provide to minors, and a brief overview of other SC Code provisions to consider. Any specific legal questions about actual instances should be directed to your organization's attorney.



# **Reproductive Health Services and Teens: What Does South Carolina Law Say?**

# WHAT LAWS APPLY?



# WHICH LAWS APPLY?

South Carolina Code of Laws

Title 63 South Carolina Children's Code

Chapter 5 Legal Status of Children

Article 3 Legal Capacity of Minors

Chapter 7 Child Protection and Permanency

Article 3 Identification, Investigation, and Intervention

Title 16 Crimes and Offenses

Chapter 3 Offenses Against the Person

Article 7 Assault and Criminal Sexual Conduct



# A LOOK AT THE SC CODE

**SECTION 63-5-340.** Minor's consent to health services.

Any minor who has reached the age of **sixteen years** may **consent to any health services** from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary **unless such involves an operation** which shall be performed only if such is **essential to the health or life of such child** in the opinion of the performing physician and a consultant physician if one is available.





# A LOOK AT THE SC CODE

**SECTION 63-5-350.** Health services to minors without parental consent.



Health services of **any kind** may be rendered to minors of **any age** **without** the consent of a parent or legal guardian **when**, in the judgment of a person authorized by law to render a particular health service, such services are **deemed necessary** unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.



# MANDATORY REPORTING & THE CLOSE-IN-AGE EXCEPTION (AKA ROMEO AND JULIET LAW)

# MANDATORY REPORTING & THE CLOSE-IN-AGE EXCEPTION

(aka Romeo and Juliet Law)

SC Mandatory Reporter Law

South Carolina Code of Laws

Section 63-7-310. Persons required to  
report.

SC Close-in-age Exception

South Carolina Code of Laws

Section 16-3-655 (B)(2)





# MANDATORY REPORTING & THE CLOSE-IN-AGE EXCEPTION

(aka Romeo and Juliet Law)

## SC Mandatory Reporter Law

Section 63-7-310. Persons required to report



...must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

(A) **has received information in the person's professional capacity** which gives the person **reason to believe** that a **child's physical or mental health or welfare has been or may be adversely affected** by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, **the reporter must make a report to the appropriate law enforcement agency.**

[...]

(D) **Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.**

# MANDATORY REPORTING & THE CLOSE-IN-AGE EXCEPTION

(aka Romeo and Juliet Law)

SC Close-In-Age Exception (aka Romeo & Juliet  
Clause)

South Carolina Code of Laws  
Section 16-3-655 (B)(2)

- (2) the actor engages in sexual battery with a victim who is **at least fourteen years of age but who is less than sixteen years of age** and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. **However**, a person may not be convicted of a violation of the provisions of this item if he is **eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.**







# DISCUSSION SCENARIOS

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Q1. Samantha, a 16-year old, comes into your clinic. She wants a Nexplanon insertion. Can you provide this service without receiving parental consent? Would your answer change if she was 14?

Yes, you can provide services without parental consent. Samantha is a minor who has reached the age of 16 and can thus consent to ANY health services that do not require an operation, whether or not the provider deems this service as necessary. (63-5-340) If she was 14, you would be allowed to provide the insertion if you deem it necessary, such as if she told you she was sexually active. (63-5-350)

Q2. Later that week, Samantha's Mom calls your clinic wanting to know why her daughter came in for services. She says she is very concerned about her well-being and wants to do everything she can to support Samantha. Can you tell Mom why Samantha came in? Why or why not?

No. HIPAA forbids you from releasing this information. However, if Samantha is insured on her Mom's insurance plan, the insurer's Explanation of Benefits may reveal that information. Even though Mom may eventually discover why Samantha came to the clinic, you cannot reveal that information.

# DISCUSSION SCENARIOS



Q3. 6-months later, Samantha, aged 16, comes back to your clinic complaining about break-through bleeding caused by the Nexplanon device. Can you remove the device without receiving parental consent?

No, because Nexplanon removal requires an incision, it is considered a surgical procedure and requires parental consent for removal. This is a tricky question, because Nexplanon insertion DOES NOT require parental consent because that is considered an injection, not surgery. (63-5-340; 63-5-350)

Q4. Mom thinks Samantha is sexually active and brings her in to the clinic. Mom wants Samantha to get on birth control; Samantha does not want to go on birth control. Must you prescribe Samantha birth control?

No, you may not prescribe birth control over Samantha's objection despite her mother's request. This is the flip side of consent – the ability to refuse. However, if in your professional judgment there is a medical need “essential to the health or life of such child” you may prescribe it. (63-5-340; 63-5-350) Nothing in the question as written rises to this level, especially because if Samantha states that she does not want birth control, she is not likely to take it properly, etc.



# DISCUSSION SCENARIOS



Q5. Sarah is 15, and dating Adam, who is also 15. Sarah tells you this when she comes in for services requesting birth control. Can you provide Sarah birth control without parental consent? Are there any other considerations? Would your answer change if Sarah and Sam were both 13, and Sarah came in for the same services with the same request?

You do not need parental consent to prescribe birth control to a 15-year old (see answer to question 1). Because of the SC Romeo law, you do not need to report her sexual activity with a 15-year old (or her boyfriends with her!) as a mandatory reporter. (16-3-655 (B)(2)) In the second scenario, because they are both 13 and fall outside of the Romeo law, you would be required to report this as a mandatory reporter.

Q6 Sylvia is 13 and comes to your clinic alone and requests an intra-uterine device (IUD). Do you need parental consent to provide the insertion? What other factors must you consider?

No, you do not need parental consent. (63-5-350) However, you are required to report this as a mandatory reporter because 13 is below the age range cutoff for the Romeo law exclusion. (16-3-655 (B)(2))

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