



Expat Counsel

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CRIMINAL LAW IN THAILAND Part LXVII: Sex crimes — underage sex

Sometimes sex may be consensual, but the consent doesn't count. How does this happen? If the person with whom the defendant has had sex is considered too young to consent.

In Thailand this age is 15. If your sex partner is under 15, you're guilty of violating Section 277 of the Criminal Code of Thailand, and this applies to practically any sex act. It is also applicable regardless of whether your partner is of the same sex.

The punishment for this is a fine and imprisonment from four to 20 years.

There's another side to this. What if you don't know your partner is under 15? Section 277 is not a strict liability offence. This is different from the laws of other countries, as discussed below.

Section 59, paragraph one of the code provides that criminal liability arises only when the person the crime is committed intentionally. In the context of underage sex, this means that to commit the crime

you would have to know your partner was under 15. As mentioned last week, the fact that you are not aware of Section 277 doesn't mean you can't be prosecuted; the law presumes you know all its restrictions.

What Section 59 means is that if you don't know the specific fact that your partner is under 15, you can't be prosecuted. But here's the catch. Anybody and everybody prosecuted under Section 277 is bound to claim he didn't know his partner was under 15.

So how does this get resolved?

The judge decides.

If the judge looks at your partner and declares that no one could mistake your partner for being over 15, you're in trouble, even if you truly did believe that she was 15.

There are a couple of other issues we should mention. If your partner has not yet turned 13 years of age, the penalty is:

- Imprisonment of seven to 20 years and

- a fine of 14,000 to 40,000 baht; or,
- Imprisonment for life.

It is up to the judge to decide which penalty to impose.

There are saving provisions from underage sex if you, the offender, are 18 years old or younger.

For example, paragraph five of Section 277 provides that if your partner is over 13, you may be able to apply to a court for permission to marry, and if you do, you would escape penalty.

You may have heard of Johnny Paycheck, the US country and western singer. His big hit was *Take This Job and Shove It*. Several years back, after a concert in Mississippi, Johnny met a young lady. She told him she was 18 and a student at the University of Mississippi.

She lied.

She was 13, and Johnny did a year in jail. That's why we always think of Johnny when we discuss this crime.

In the US, underage sex, or statutory rape, is a strict liability crime, so it didn't matter that Johnny was totally fooled by his partner's statement — he was still criminally liable.

In Thailand, of course, he could always argue that he truly thought his partner was 15 or older. If the judge believes this, the accused is off the hook. If not, it's back in the dock.

Don't get caught in the web Johnny did. More about this next week. ■

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