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## A Snapshot of GKH:

- Established in 1977
- General practice law firm
- 17 Attorneys
- 21 Support staff
- Multiple office locations



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# Supporting Individuals with ID/A on Sexual Health, Personal Relationships, Informed Choices

Presented by:  
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# Griswold v. Connecticut (1965)

- Challenge to CT criminalization of birth control
- Supreme Court holds that the ban violates the right to marital privacy

# The Right to Privacy-the Right to Sexuality

- Where is sex and sexuality mentioned in the Constitution?

# The Right to Privacy-the Right to Sexuality

- Penumbra of rights arising out of the 9<sup>th</sup> Amendment to the Constitution
  - First Amendment protects free speech
  - Third Amendment prohibits the forced quartering of troops
  - Fourth Amendment provides freedom from search and seizure
  - Fifth Amendment provides freedom from self incrimination
  - Ninth Amendment provides for other rights not explicitly stated in the Constitution

# The Right to Privacy-the Right to Sexuality

- Roe v. Wade
- Lawrence v. Texas
  - Struck down a sodomy law in Texas
  - The Court held that intimate consensual sexual conduct was part of the liberty protected by the Constitution
  - “The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime.”



# Rape

**Offense defined.**--A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

(5) Who suffers from a mental disability which renders the complainant incapable of consent.

If there is no consent it is rape.

# Informed Consent

- Knowledge by the person
  - What is the activity and what are the consequences of the activity
- Intelligence of the person
  - Realizing benefits and risks
- Voluntariness
  - Free from coercion and force

# Question

- Jen is an individual with a developmental disability. She is unable to manage her financial affairs and there is a financial power of attorney appointed to her.
- Can Jen give informed consent to have sexual relations with her boyfriend Jack?

# Informed Consent

- Determined on a case by case basis
- What is the activity? A hug-holding hands-kissing-sex...
- Who is involved in the activity? Are the individuals similarly situated?
- Does the individual have the competency to give consent?

# Competency

- Who determines competency?
  - Clinical professional
  - A court of law
  - What about direct care support staff?

# Question

- Mary is an adult with down syndrome. One evening Mary's new boyfriend who lives in the same apartment complex comes over. Mary and her boyfriend retreat to her bedroom. The staff is unaware of whether Mary can reasonably consent to having sex. What should the staff member do?

# Act 70 of 2010

- Act 70 of 2010 requires an employee or administrator of a facility who has reasonable cause to suspect that a recipient is a victim of abuse, neglect, exploitation or abandonment to make an immediate report.

# Act 70 of 2010

- Abuse: The occurrence of one or more of the following acts: (1) the infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish; (2) the willful deprivation by a caregiver of goods or services which are necessary to maintain physical or mental health; (3) sexual harassment, rape or abuse.



# Act 70 of 2010

- Who is a mandated reporter? An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting

# When is Consent Not Required?

- Self stimulation
- Masturbation
- Viewing of pornography
- There may be restrictions as to the appropriateness of the action in the specific context-private vs. public.

# Question

- John is an individual with a developmental disability. John spends time in his room looking at pornographic materials. The staff members find John's use of pornography to be objectionable.
- What can staff do or say?

# Documentation

- Providers should document-
  - Conversations that they have with the individual when it comes to sex and consent
  - Sexual interactions that an individual has with others

