

Submission to the  
UN Special Rapporteur on  
Violence against Women,  
Its Causes and Consequences  
on  
U.S. Sub-National Governments

December 2020

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**This report covers select U.S. states, the District of Columbia  
(Washington, D.C.), Guam, and Puerto Rico.**

This submission is made in response to the call for submissions to inform the Special Rapporteur's thematic report to be presented to the UN Human Rights Council in June 2021 to address States' responsibility to criminalize and prosecute rape as a grave and systematic human rights violation and a manifestation of gender-based violence against women, in line with international human rights standards.

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The Special Rapporteur's questionnaire posted in the call for submissions is copied below.

**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.
2. Based on the wording of those provisions, is the provided definition of rape:
  - a. Gender specific, covering women only YES/NO
  - b. Gender neutral, covering all persons YES/NO
  - c. Based on the lack of consent of victim YES/ NO
  - d. Based on the use of force or threat YES/ NO
  - e. Some combination of the above. YES / NO
  - f. Does it cover only vaginal rape? YES /NO
  - g. Does it cover all forms of penetration? YES/NO. If yes, please specify.
  - h. Is marital rape in this provision explicitly included? YES / NO
  - i. Is the law silent on marital rape? YES/NO
  - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO
  - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO
3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.
4. What is the legal age for sexual consent?
5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.
6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

**Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
  - a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
  - b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO
  - c. Is rape by spouse or intimate partner an aggravating circumstance?
9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?
  - a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
  - a. if the perpetrator marries the victim of rape? YES/NO
  - b. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? YES/NO

**Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO
13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO
14. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women? YES/NO
15. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES/NO
16. Please provide information on the statute of limitations for prosecuting rape.
17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO
18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.
19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

**War and/or conflict**

21. Is rape criminalized as a war crime or crime against humanity? YES/NO
22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

**Data**

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

**Other**

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

# CALIFORNIA

Nicole Yu

## Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.
  - a. According to the California penal code, Title 9, Section 261 defines rape as<sup>1</sup>:
    - i. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:
      1. (1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.
      2. (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
      3. (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.
      4. (4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

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<sup>1</sup> "Code Section Group." California Legislative Information. Accessed October 24, 2020. [http://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN).

- a. (A) Was unconscious or asleep.
  - b. (B) Was not aware, knowing, perceiving, or cognizant that the act occurred.
  - c. (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
  - d. (D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
5. (5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.
  6. (6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
  7. (7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.
    - a. (b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the



victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

- b. (c) As used in this section, “menace” means any threat, declaration, or act which shows an intention to inflict an injury upon another.
- b. In continuation, the California penal code describes unlawful sexual intercourse in Section 261.5 as<sup>2</sup>:
    - i. (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.
2. Based on the wording of those provisions, is the provided definition of rape:
- a. Gender specific, covering women only YES/NO
    - i. No, the definition of rape in the California penal code is not gender specific, covering women only<sup>3</sup>.
  - b. Gender neutral, covering all persons YES/NO
    - i. Yes, the definition of rape in the California penal code is gender neutral. They use the words “person”, “victim”, “perpetrator”, “minor”, “public official”, and “adult”. Under this penal code, a “minor” is someone who is under the age of 18 and an “adult” is someone who is at least 18 years old. The word “public official” refers to anyone who is employed by a governmental agency “who has the authority, as part of that position, to incarcerate, arrest, or deport another”, but they do not have to actually be a public official<sup>4</sup>.
  - c. Based on the lack of consent of victim YES/ NO
    - i. Yes.
  - d. Based on the use of force or threat YES/ NO
    - i. Yes.
  - e. Some combination of the above. YES / NO

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<sup>2</sup> California Legislative Information.

<sup>3</sup> California Legislative Information.

<sup>4</sup> California Legislative Information.

- i. Yes. Section 261, subsections 1, 2, 4, 6, and 7 explicitly mention lack of consent of the victim and/or the use of force or threat regarding rape<sup>5</sup>.
- f. Does it cover only vaginal rape? YES /NO
  - i. The California penal code is heavy on its usage of the phrase “sexual intercourse” which generally only constitutes vaginal rape. However, Section 263.1 says all forms of nonconsensual sexual assault can be considered rape<sup>6</sup>.
- g. Does it cover all forms of penetration? YES/NO. If yes, please specify.
  - i. Yes it covers all forms of penetration. In Section 263, it states, “Any sexual penetration, however slight, is sufficient to complete the crime” and in Section 263.1, it states, “The Legislature finds and declares that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.”<sup>7</sup> The penal code also states that, “The essential determination of whether an offender is guilty of rape lies in the outrage to the victim’s person and the feelings of the victim of the rape.”<sup>8</sup>
- h. Is marital rape in this provision explicitly included? YES / NO
  - i. Yes, Section 262 explicitly describes marital rape.
    - 1. “Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances...” which is followed by 5 subsections describing what constitutes as marital rape<sup>9</sup>.
- i. Is the law silent on marital rape? YES/NO
  - i. No, the law is not silent on marital rape.
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO
  - i. Marital rape is included in the California penal code.
- k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO
  - i. Marital rape is considered a crime<sup>10</sup>.

<sup>5</sup> California Legislative Information.

<sup>6</sup> California Legislative Information.

<sup>7</sup> California Legislative Information.

<sup>8</sup> “Sex Crimes: Definitions and Penalties California.” RAINN. Accessed October 24, 2020.

<https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=3& ga=2.208254934.595123917.1603568689-1534299706.1603568689>.

<sup>9</sup> California Legislative Information.

<sup>10</sup> California Legislative Information.

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.
4. What is the legal age for sexual consent?
  - a. The legal age for consent is 18 years of age according to Section 261.5<sup>11</sup>.
5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.
  - a. There are no provisions that differentiate for sexual activity between peers.
6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
  - a. Criminal sanctions for rape in California depend on certain factors like age of the victim and nature of the crime. The overall criminal sanction for rape is punishable by imprisonment for 3, 6, or 8 years.
  - b. If the victim is a minor and the rape was by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person<sup>12</sup>:
    - i. The perpetrator is subject to imprisonment for 9, 11, or 13 years if the victim is under 14 years old (Section 264).
    - ii. The perpetrator is subject to imprisonment for 7, 9, or 11 years if the victim is older than 14 years old (Section 264).
  - c. “Where the offender voluntarily acts in concert with another person, by force of violence and against the will of the victim, either personally or by aiding and abetting the other person”<sup>13</sup>:
    - i. If the victim is not a minor, the offender is subject to imprisonment for 5, 7, or 9 years.

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<sup>11</sup> “Consent Laws California.” RAINN. Accessed October 24, 2020. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=9&\\_ga=2.33191034.595123917.1603568689-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=9&_ga=2.33191034.595123917.1603568689-1534299706.1603568689).

<sup>12</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=3&\\_ga=2.208254934.595123917.1603568689-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=3&_ga=2.208254934.595123917.1603568689-1534299706.1603568689).

<sup>13</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=3&\\_ga=2.208254934.595123917.1603568689-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=3&_ga=2.208254934.595123917.1603568689-1534299706.1603568689).

- ii. If the victim is under 14 years old, the offender is subject to imprisonment for 10, 12, or 14 years.
  - iii. If the victim is a minor who is older than 14 years, the offender is subject to imprisonment for 7, 9, or 11 years.
- d. “Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.” (Section 261.5)<sup>14</sup>
- e. “Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.” (Section 261.5)<sup>15</sup>
- f. “The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for five, seven, or nine years.” (Section 264.1)<sup>16</sup>
  - i. “If the victim of an offense described in subdivision (a) is a child who is under 14 years of age, the defendant shall be punished by imprisonment in the state prison for 10, 12, or 14 years.”<sup>17</sup>
  - ii. “If the victim of an offense described in subdivision (a) is a minor who is 14 years of age or older, the defendant shall be punished by imprisonment in the state prison for 7, 9, or 11 years.”<sup>18</sup>

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<sup>14</sup> California Legislative Information.

<sup>15</sup> California Legislative Information.

<sup>16</sup> California Legislative Information.

<sup>17</sup> California Legislative Information.

<sup>18</sup> California Legislative Information.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?
- a. Refer to the section on the Federal Government.

### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
- a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
    - i. The law does not include rape by more than one perpetrator.
  - b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO
    - i. The law describes an imbalance of power between an alleged perpetrator and victim, such as if the alleged perpetrator is a public official<sup>19</sup>.
    - ii. In section 269, the law states<sup>20</sup>:
      1. Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child:
        - a. (1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.
        - b. (2) Rape or sexual penetration, in concert, in violation of Section 264.1.
        - c. (3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.
        - d. (4) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 287 or former Section 288a.
        - e. (5) Sexual penetration, in violation of subdivision (a) of Section 289.

<sup>19</sup> California Legislative Information.

<sup>20</sup> California Legislative Information.

- f. (b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.
  - g. (c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.
- c. Is rape by spouse or intimate partner an aggravating circumstance?
- i. No, rape by spouse or intimate partner is not an aggravating circumstance.
9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.
- a. No it does not foresee mitigating circumstances for the purposes of punishment<sup>21</sup>.
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response?  
YES/NO If so, at what stage and what are the consequences?
- a. No, reconciliation is not allowed as part of a legal response<sup>22</sup>.
  - b. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?
    - i. No, reconciliation is not permitted in practice<sup>23</sup>.
11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? YES/NO If yes, please specify.
- a. If the perpetrator marries the victim of rape? YES/NO
    - i. No<sup>24</sup>.
  - b. If the perpetrator loses his “socially dangerous” character or reconciles with the victim?  
YES/NO
    - i. No<sup>25</sup>.

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<sup>21</sup> California Legislative Information.

<sup>22</sup> California Legislative Information.

<sup>23</sup> California Legislative Information.

<sup>24</sup> California Legislative Information.

<sup>25</sup> California Legislative Information.

## **Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO

- a. “Reports must be made to any police department or sheriff’s department (not including a school district police or security department), or the county probation department (if designated by the county to receive mandated reports), or the county welfare department.”<sup>26</sup>

13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

- a. “Reports must be made to any police department or sheriff’s department (not including a school district police or security department), or the county probation department (if designated by the county to receive mandated reports), or the county welfare department.”<sup>27</sup>

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?

YES/NO

- a. No, plea bargains or “friendly settlements” of a case aren’t allowed in cases of rape of women<sup>28</sup>.

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?

YES/NO

- a. No, plea bargains or “friendly settlements” of a case aren’t allowed in cases of rape of children<sup>29</sup>.

16. Please provide information on the statute of limitations for prosecuting rape.

- a. Prosecution of rape: “Prosecution for a felony offense, described in paragraph (1), (2), (3), (4), (6) or (7) of subdivision (a) of Section 261 may be commenced at any time, for crimes that were committed on or after January 1, 2017, and for crimes for which the

<sup>26</sup> RAINN. [https://apps.rainn.org/policy/policy-state-laws.cfm?state=California&group=4&\\_ga=2.210253205.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-state-laws.cfm?state=California&group=4&_ga=2.210253205.1254158914.1604605628-1534299706.1603568689)

<sup>27</sup> RAINN. [https://apps.rainn.org/policy/policy-state-laws.cfm?state=California&group=4&\\_ga=2.210253205.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-state-laws.cfm?state=California&group=4&_ga=2.210253205.1254158914.1604605628-1534299706.1603568689)

<sup>28</sup> California Legislative Information.

<sup>29</sup> California Legislative Information.

statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017; or

- i. Prosecution of crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect prior to January 1, 2015, has not run as of January 1, 2015, and are alleged to have been committed when the victim was under 18 years of age, may be commenced any time prior to the victim's 40th birthday; or
  - ii. Prosecution must bring a case against the perpetrator within 6 years after commission of the offense.”<sup>30</sup>
- b. Prosecution of unlawful sexual intercourse with a minor: “This crime is a misdemeanor if victim is not more than three years older or three years younger than offender; misdemeanor or felony if victim is more than three years younger than offender and punishable by imprisonment in a county jail not exceeding 1 year, or by imprisonment in the state prison for up to 3 years; misdemeanor or felony if offender is at least 21 and victim is under 16 and punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for 2, 3, or 4 years.
- i. Prosecution for an offense punishable by imprisonment in the state prison or pursuant to subdivision (h) of § 1170 [describing trial court’s options for sentencing up to 3 years] shall be commenced within three years after commission of the offense.”<sup>31</sup>
- c. Prosecution of spousal rape:
- i. “Prosecution for a felony offense described in paragraph (1), (2), (3), (4), or (5) of subdivision (a) of Section 262 may be commenced at any time, for crimes that were committed on or after January 1, 2017, and for crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017; or
    1. Prosecution must bring a case against the perpetrator within 6 years after commission of the offense.”<sup>32</sup>

<sup>30</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)

<sup>31</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)

<sup>32</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)



17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO
- a. For aggravated sexual assault of a child: “Prosecution may be commenced at any time.”<sup>33</sup>
  - b. For incest: “Prosecution must bring a case against the perpetrator within 3 years after commission of the offense.”<sup>34</sup>
  - c. For continuous sexual abuse of a child: “Prosecution for a felony offense described in Section 288.5 may be commenced at any time, for crimes that were committed on or after January 1, 2017, and for crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017;
    - i. Prosecution for crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect prior to January 1, 2015, has not run as of January 1, 2015, and is alleged to have been committed when the victim was under 18 years of age, may be commenced any time prior to the victim's 40th birthday.”<sup>35</sup>
  - d. For sexual acts with a child 10 or younger: “Prosecution for an offense punishable by death or by imprisonment in the state prison for life may be prosecuted at any time.”<sup>36</sup>
18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.
- a. The law does not explicitly state that mandatory requirements for proof of rape.
19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO
- a. The law does not explicitly state any rape shield provisions.

<sup>33</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)

<sup>34</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)

<sup>35</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)

<sup>36</sup> RAINN. [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&\\_ga=2.36518304.1254158914.1604605628-1534299706.1603568689](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=California&group=7&_ga=2.36518304.1254158914.1604605628-1534299706.1603568689)

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

- a. The law does not explicitly state any criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings.

### **War and/or conflict**

21. Is rape criminalized as a war crime or crime against humanity? YES/NO

- a. Not applicable.

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

- a. Not applicable.

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

- a. Not applicable.

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

- a. Not applicable.

### **Data**

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

- a.

<b>Year</b>	<b>Reported</b>
2019	14,799 <sup>37</sup> (based on forcible rape)
2018	15,500 <sup>38</sup>
2017	14,724

<sup>37</sup> "U.S. Forcible Rape Cases by State," October 1, 2020, <https://www.statista.com/statistics/232524/forcible-rape-cases-in-the-us-by-state/>.

<sup>38</sup> "Crime Statistics in California 2018," Law Offices of Graham D. Donath, APC, December 20, 2019, <https://www.gddl.com/2019/12/16/crime-statistics-california/>.

2016	10,149
2015	8,331

**Other**

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

# DISTRICT OF COLUMBIA

Jasmine Mortazavi

## Official Code on Sexual Abuse § 22–3001

### Definition and scope of criminal law provisions:

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

The District of Columbia does not explicitly state rape as the official provision surrounding serious sexual violence. Instead, the District of Columbia uses the terms “Sexual Act” and “Sexual Contact” under a greater provision of Sexual Abuse, in various degrees of severity in a court of law.<sup>39</sup>

A Sexual Act under the DC Code of Law is defined as:

- Penetration, however slight of the anus, vulva, of another by a penis<sup>40</sup>.
- Any form of contact between a penis and mouth, mouth and vulva, or anus and mouth.<sup>41</sup>
- Penetration, however slight, of the anus or vulva by a hand, finger, or any object, with a specific intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of another person.<sup>42</sup>

Sexual Contact under the DC Code of Law is defined as:

- Any form of touching (either clothed or unclothed), of the genitalia, anus, groin, breast, buttocks or inner thigh, either under, through, or over clothing, with an intent to abuse, harass, humiliate, degrade, arouse, or gratify the sexual desire of another person.<sup>43</sup>

There are various degrees of sexual abuse, in which an actor or actors conduct(s) a sexual act against another person without their consent, or through force, fear, or coercion. Based on the degree and severity of the sexual act and the impact on the victim (i.e. bodily harm, fear for death, or serious

<sup>39</sup> Code of District of Columbia, Chapter 30. Sexual Abuse, Subchapter I. General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>40</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>41</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>42</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>43</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

threatening of the victim's life during the sexual abuse), the degrees and punishments will range. These degrees range from first degree sexual abuse which is punishable for any amount of years up to a life sentence in prison, to fourth degree sexual abuse which is punishable for no more than 5 years of imprisonment. Second degree sexual abuse is punishable for no more than 20 years imprisonment, and third degree sexual abuse is punishable for no more than 10 years imprisonment. Sexual abuse against minors (victims under the age of 18), are processed and tried under a different set of conditions and provisions.<sup>44</sup>

2. Based on the wording of those provisions, is the provided definition of rape:
  1. Gender-specific, covering women only **NO**
  2. Gender-neutral, covering all persons **YES**
  3. Based on the lack of consent of victim **YES**
  4. Based on the use of force or threat **YES**
  5. Some combination of the above. **YES**
  6. Does it cover only vaginal rape? **NO**
  7. Does it cover all forms of penetration? **YES**. If yes, please specify.
    - i. See response to question 1.
  8. Is marital rape in this provision explicitly included? **YES**
  9. Is the law silent on marital rape? **NO**
  10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**
  11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **NO**
3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it. **NO**
4. What is the legal age for sexual consent? **16 years of age**<sup>45</sup>
5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them. **NO, but “significant relationships” are mentioned (which include familial, guardian, and imbalanced power relationships), but there is no explicit mention of “peers”.**
6. Provide information on criminal sanctions prescribed and length/duration of such criminal

<sup>44</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>45</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

sanctions for criminalized forms of rape.

First degree sexual abuse is the most serious form of sexual abuse that one can be punished for. If found guilty of first degree sexual abuse, a person can be imprisoned for any term up to a life sentence, and fined no more than \$250,000.<sup>46</sup> First degree sexual abuse consists of any of the following:

- The use of force,
- Threatening or causing the victim to fear for their life, their physical safety (i.e. threatening bodily harm), or kidnapping,
- Through rendering the victim unconscious,
- After administering the victim (through force or threat of force), or without the knowledge of the victim, a drug, intoxicant, or other similar substance that causes impairment and takes away control from the other person.<sup>47</sup>

Second degree sexual abuse in the DC Code of Law is similar to first degree, however, it also includes that the actor or abuser is aware that the victim is incapable of providing consent or incapable of communicating an unwillingness to engage in a sexual act<sup>48</sup>. Second degree sexual abuse does not include the actor rendering the victim unconscious, or drugging or intoxicating the victim. Second degree sexual abuse is punishable by up to 20 years, and the fine cannot exceed \$200,000.<sup>49</sup>

Third degree sexual abuse in the DC Code of Law is defined as identical to first degree sexual abuse, however, it is punishable by no more than 10 years, and the fine cannot exceed \$100,000.<sup>50</sup>

Fourth degree sexual abuse in the DC Code of Law is defined identically to second degree sexual abuse, however, it is punishable by no more than 5 years, and the fine cannot exceed \$50,000.<sup>51</sup>

7. What does the legislation in your country provide in terms of reparation to the victim of rape

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<sup>46</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>47</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>48</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>49</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>50</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>51</sup>

and/or sexual violence after conviction of the perpetrator?

There is no exact DC code or legislation providing detail into reparations for the victim after sexual abuse has occurred and the actor has been convicted in a court of law.

### **Aggravating and Mitigating Circumstances:**

8. Does the law foresee aggravating circumstances when sentencing rape cases? **YES** If so, what are they?

Aggravating circumstances include:

- If the victim was under the age of 12,
- If the victim was under the age of 18 and they had a significant relationship to the actor,
- If the victim sustained bodily injury,
- If there was one or more accomplice partaking in the crime,
- If the actor has been convicted of sexual abuse on 2 or more offenses in the United States,
- If the defendant was armed, or had readily available, a firearm, pistol, or other deadly or dangerous weapon.<sup>52</sup>

1. Is rape by more than one perpetrator an aggravating circumstance? **YES**
  2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES**
  3. Is rape by spouse or intimate partner an aggravating circumstance? **NO, unless the victim was under the age of 18 years old.**<sup>53</sup>
9. Does the law foresee mitigating circumstances for the purposes of punishment? **NO**
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **NO** If so, at what stage and what are the consequences?
1. Regardless of the law, is reconciliation permitted in practice? **NO** and what is the practice in this regard? There is no mention of reconciliation being permitted or practiced between a perpetrator and a victim in the DC Code of Law.
11. Is there any provision in the criminal code that allows for the non-prosecution of the

<sup>52</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>53</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

perpetrator? **NO**

1. if the perpetrator marries the victim of rape? **NO**
2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim?  
**NO**

**Prosecution:**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? **NO**
13. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES**
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **NO**
15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **NO.** <sup>54</sup>
16. Please provide information on the statute of limitations for prosecuting rape.

Previously, there was a Statute of Limitations in D.C. for sexual abuse that provided victims with 15 years to prosecute sexual abuse, however, under D.C. Act 22-593 of 2018, there is now no statute of limitations required for victims of sexual abuse to prosecute their abusers.<sup>55</sup>

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **YES**, see above.
18. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? **NO**
19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? **YES**<sup>56</sup>
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **NO**

**War and/or conflict:**

21. Is rape criminalized as a war crime or crime against humanity? **YES**
22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **NO**

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<sup>54</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>

<sup>55</sup> Chaikin & Shermin. *DC Signs Sexual Abuse Amendment Act, Expands Statute of Limitations*, January 28, 2019,  
<https://www.chaikinandsherman.com/2019/01/dc-lawmakers-sign-sexual-abuse-amendment-act-to/>

<sup>56</sup> Code of District of Columbia, General Provisions: § 22–3001  
<https://code.dccouncil.us/dc/council/code/titles/22/chapters/30/>



23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **NO**
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **NO**

**Data:**

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

The table below displays the number of reported sexual assault cases between 2014 and 2017 in D.C. Data from 2017-2020 was not available on the D.C. Policy Center website.<sup>57</sup>

Year	Number of Reported Sexual Assault Cases in the District of Columbia
2014	317
2015	331
2016	347
2017	290

Unable to find data on sexual assaults that have been prosecuted and sanctioned in D.C.

**Other:**

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

n/a

<sup>57</sup> Arslan, Shirin. "Sexual Assaults in D.C.: What the data can and (can't) tell us", *D.C. Policy Center*, January 31, 2018. <https://www.dcpolicycenter.org/publications/sexual-assaults-d-c-data-can-cant-tell-us/>

# GEORGIA

Sydney Volpe

1. *Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.*

In the state of Georgia, a person commits the offense of rape when he has carnal knowledge of:

- (1) A female forcibly and against her will; or
- (2) A female who is less than ten years of age.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.<sup>58</sup>

In instances of sexual offense involving two men or two women that may otherwise be considered rape are charged as aggravated sodomy or sexual battery.

2. *Based on the wording of those provisions, is the provided definition of rape<sup>59</sup>:*
  1. YES. Gender specific, covering women only.
  2. YES. Not gender neutral, or covering all persons.
  3. YES. Not based on the lack of consent of the victim.
  4. YES. Based on the use of force or threat.
  5. YES. Some combination of the above.
  6. YES. Covers only vaginal rape.
  7. NO. Does not cover all forms of penetration.
  8. YES. Marital rape is explicitly included.
  9. NO. The law is not silent on marital rape.
  10. YES. Marital rape is covered in the general provisions or by legal precedent.
  11. NO. Marital rape is not excluded in the provisions, or not considered as a crime.
  
3. *Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?*

<sup>58</sup> "Statutes: Georgia." *WomensLaw.org*, 30 Oct. 2020, [www.womenslaw.org/laws/ga/statutes/all](http://www.womenslaw.org/laws/ga/statutes/all).

<sup>59</sup> "Georgia Rape and Statutory Rape Laws." *Findlaw*, 20 Mar. 2018, [statelaws.findlaw.com/georgia-law/georgia-rape-and-statutory-rape-laws.html](http://statelaws.findlaw.com/georgia-law/georgia-rape-and-statutory-rape-laws.html).

No, there are no provisions specifically excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship.

4. *What is the legal age for sexual consent?*

The legal age of consent in Georgia is 16 years old<sup>60</sup>.

5. *Are there provisions that differentiate for sexual activity between peers? If so, please provide them.*

No, there are no provisions that differentiate for sexual activity between peers.

6. *Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.*

A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. The offender must also be listed as a sex offender for life<sup>61</sup>.

7. *What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?*

Through the Victim Services Division of the Criminal Justice Coordinating Council in Georgia, victims are able to apply for compensation when they have been raped. The Crime Victims Restitution Act of 2005 states that offenders are required to pay the restitution amount deemed appropriate during their sentencing<sup>62</sup>. These financial benefits can be for expenses such as medical bills, counseling, or loss of wages.<sup>63</sup> Additionally, the Georgia Crime Victims Emergency Fund will completely cover the expenses of the victim's medical examination.<sup>64</sup>

### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

As rape is an offense punishable by death in the state of Georgia, the law foresees several aggravating circumstances when sentencing<sup>65</sup>:

<sup>60</sup> "Statutes: Georgia." *WomensLaw.org*, 30 Oct. 2020, [www.womenslaw.org/laws/ga/statutes/all](http://www.womenslaw.org/laws/ga/statutes/all).

<sup>61</sup> "Georgia Rape Shield Law." *Golookup*, [golookup.com/georgia-rape-shield-laws](http://golookup.com/georgia-rape-shield-laws).

<sup>62</sup> "Restitution." *State Board of Pardons and Paroles*, [pap.georgia.gov/restitution](http://pap.georgia.gov/restitution).

<sup>63</sup> "Victims Compensation." *Criminal Justice Coordinating Council*, [cjcc.georgia.gov/victims-compensation](http://cjcc.georgia.gov/victims-compensation).

<sup>64</sup> "Statutes: Georgia." *WomensLaw.org*, 30 Oct. 2020, [www.womenslaw.org/laws/ga/statutes/all](http://www.womenslaw.org/laws/ga/statutes/all).

<sup>65</sup> "Georgia Code Title 17. Criminal Procedure § 17-10-30." *Findlaw*, [codes.findlaw.com/ga/title-17-criminal-procedure/ga-code-sect-17-10-30.html](http://codes.findlaw.com/ga/title-17-criminal-procedure/ga-code-sect-17-10-30.html).

- The rape was committed by a person with a prior record of conviction for a capital felony;
  - was committed while the offender was engaged in the commission of another capital felony or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary in any degree or arson in the first degree;
  - was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim;
  - was committed by a person previously convicted of rape, aggravated sodomy, aggravated child molestation, or aggravated sexual battery
1. Is rape by more than one perpetrator an aggravating circumstance? NO
  2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) NO
  3. Is rape by spouse or intimate partner an aggravating circumstance? NO
9. Does the law foresee mitigating circumstances for the purposes of punishment? NO
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

Though reconciliation between the victim and the perpetrator is not explicitly addressed in Georgia law, the Georgia State Board of Pardons and Paroles offers victim services that include Victim Offender Dialogue (VOD)<sup>66</sup>. This program allows victims to meet one-on-one with their offenders to get answers to their questions and seek closure.

1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?
11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? NO
1. if the perpetrator marries the victim of rape? NO
  2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO

## Prosecution

12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES
13. Is rape reported to the police prosecuted ex parte (private prosecution)? NO
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES

<sup>66</sup> “Victim Offender Dialogue.” *State Board of Pardons and Paroles*, [pap.georgia.gov/georgia-office-victim-services/victim-offender-dialogue](http://pap.georgia.gov/georgia-office-victim-services/victim-offender-dialogue).

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES  
 16. Please provide information on the statute of limitations for prosecuting rape.

The statute of limitations for prosecuting rape in Georgia is 15 years from the commission of the crime<sup>67</sup>. However, in cases involving a minor the statute of limitations does not start to run until the victim is 16 years of age or until they report the crime, whichever comes first. If the victim is 65 years or older, the statute of limitations does not start until the offense is reported or found by the state. There is also an exception when DNA is used to definitely identify the perpetrator, where the offender can be prosecuted at any time.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES  
 18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? NO<sup>68</sup>  
 19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES<sup>69</sup>  
 20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? NO

### **War and/or conflict**

21. *Is rape criminalized as a war crime or crime against humanity?*

YES. Rape is a crime against humanity in the United States and therefore the state of Georgia<sup>70</sup>.

22. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts?*

No, there is not statute of limitations for prosecuting rape in the context of war or conflict.

23. *Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?*

No, there are no explicit provision excluding statutes of limitation for rape committed during war and armed conflict in the state of Georgia.

24. *Has the Rome Statute of the International Criminal Court (ICC) been ratified?*

<sup>67</sup> “Statute of Limitations Georgia Criminal.” *Conscienti & Ledbetter, LLC*, 21 Feb. 2020, [cl-firm.com/statute-of-limitations-georgia-criminal/](http://cl-firm.com/statute-of-limitations-georgia-criminal/).

<sup>68</sup> <https://www.raperesponse.com/get-help/about-sexual-assault/>

<sup>69</sup> “Georgia’s Rape Shield Law.” *Georgia Criminal Lawyer*, [www.georgiacriminallawyer.com/georgia-s-rape-shield-law](http://www.georgiacriminallawyer.com/georgia-s-rape-shield-law).

<sup>70</sup> July 13, 2016 | Kerry K. Paterson | International. “When Rape Became a War Crime (Hint: It’s Not When You Think).” *Women’s Media Center*, 13 July 2016, [www.womensmediacenter.com/women-under-siege/](http://www.womensmediacenter.com/women-under-siege/).

No, the Rome Statute of the International Criminal Court (ICC) has not been ratified in the United States or the state of Georgia.<sup>71</sup>

### Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

The following data is provided by the FBI Uniform Crime Report.<sup>72</sup>

Year	Reported
2017	2,684
2018	2,651
2019	2,922

<sup>71</sup> "Signatories of the Rome Statute." *International Criminal Court*, [internationalcriminalcourtnashie.weebly.com/signatories-of-the-rome-statute.html](http://internationalcriminalcourtnashie.weebly.com/signatories-of-the-rome-statute.html).

<sup>72</sup> "Crime in the U.S." *FBI*, FBI, 15 July 2010, [ucr.fbi.gov/crime-in-the-u.s/](http://ucr.fbi.gov/crime-in-the-u.s/).

# GUAM

Monica Canepa

## Questionnaire on criminalization and prosecution of rape

### Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

GCA CRIMES AND CORRECTIONS CH. 25 SEXUAL OFFENSE

CHAPTER 25 SEXUAL OFFENSES

§ 25.10 Definitions.

§ 25.15 First Degree Criminal Sexual Conduct.

§ 25.20 Second Degree Criminal Sexual Conduct.

§ 25.25 Third Degree Criminal Sexual Conduct.

§ 25.30 Fourth Degree Criminal Sexual Conduct.

§ 25.35 Assault with Intent to Commit Criminal Sexual Conduct.

§ 25.40 Victim's Testimony Need Not be Corroborated.

§ 25.45 Resistance Not Required.

§ 25.10. Definitions.

(a) As used in this Chapter:

(1) Actor means a person accused of criminal sexual conduct;

(2) Force or Coercion includes but is not limited to any of the following circumstances:

(i) when the actor overcomes the victim through the actual application of physical force or physical violence;

(ii) when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;

(iii) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat. As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping or extortion;

(iv) when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable; or

(v) when the actor, through concealment or by the element of surprise, is able to overcome the victim.

(3) Intimate Parts includes the primary genital area, groin, inner thigh, buttock or breast of a human being;

(4) Mentally Defective means that a person suffers from a mental disease or defect which renders that person temporary or permanently incapable of appraising the nature of his or her conduct;

(5) Mentally Incapacitated means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent;

(6) Physically Helpless means that a person is unconscious, asleep or for any other reason is physically unable to communicate unwillingness to an act;

(7) Personal Injury means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease or loss or impairment of a sexual or reproductive organ;

(8) Sexual Contact includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification;

(9) Sexual Penetration means sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required; and

(10) Victim means the person alleging to have been subjected to criminal sexual conduct.

(b) Whenever in this Chapter the criminality of conduct depends on a child's being below the age of fourteen (14), it is no defense that the defendant reasonably believed the child to be fourteen (14) or older. Whenever in this Chapter the criminality of conduct depends on a child's being below a specified age older than fourteen (14), it is an affirmative defense that the defendant reasonably



believed the child to be of that age or above. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.

NOTE: Mostly, this section refers to persons who are between the ages of fourteen and either sixteen or eighteen, since the age of majority on Guam is eighteen years for most purposes and sixteen for others.

**§ 25.15. First Degree Criminal Sexual Conduct.**

(a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists:

- (1) the victim is under fourteen (14) years of age;
- (2) the victim is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;
- (3) sexual penetration occurs under circumstances involving the commission of any other felony;
- (4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:
  - (i) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (ii) the actor uses force or coercion to accomplish the sexual penetration.
- (5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
- (6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and
- (7) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under §25.15 (a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole. Any person convicted of criminal sexual conduct in the first degree shall not be eligible for work release or educational programs outside the confines of prison nor shall the provisions under §80.31 apply. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79. Subsection (b) amended by P.L. 19-6:6. Subsection (b) repealed and reenacted by P.L. 23-114:1.

**§ 25.20. Second Degree Criminal Sexual Conduct.**

(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

- (1) that other person is under fourteen (14) years of age;
- (2) that other person is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit;
- (3) sexual contact occurs under circumstances involving the commission of any other felony;
- (4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:
  - (i) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
  - (ii) the actor uses force or coercion to accomplish the sexual contact.
- (5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;
- (6) the actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact; and
- (7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless. (b) Criminal sexual conduct in the second degree is a felony in the first degree but a person convicted of criminal sexual conduct in the second degree who receives a sentence of imprisonment shall not be eligible for work release or educational programs outside the confines of prison. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79. Subsection (b) amended by P.L. 19-6:7.

#### § 25.25. Third Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

- (1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;
- (2) force or coercion is used to accomplish the sexual penetration; and
- (3) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Criminal sexual conduct in the third degree is a felony of the second degree. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.

§ 25.30 Fourth Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if either of the following circumstances exists:

- (1) force or coercion is used to accomplish the sexual contact;
- (2) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Criminal sexual conduct in the fourth degree is a felony of the third degree, except for first time offenders it is a misdemeanor. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79; subsection (b) is amended by P.L. 20-209:1. § 25.35. Assault with Intent to Commit Criminal Sexual Conduct. Assault with intent to commit criminal sexual conduct involving penetration is a felony in a third degree. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.

§ 25.40. **Victim's Testimony Need Not be Corroborated.**

The testimony of a victim need not be corroborated in prosecutions under §§ 25.15 through 25.35. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.

§ 25.45. **Resistance Not Required.**

A victim need not resist the actor for a proper prosecution under §§ 25.15 through 25.35. SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.”<sup>73</sup>

2. Based on the wording of those provisions, is the provided definition of rape:
  1. Gender specific, covering women only YES/NO
    1. No
  2. Gender neutral, covering all persons YES/NO
    2. Yes
3. Based on the lack of consent of victim YES/ NO
  3. No
4. Based on the use of force or threat YES/ NO
  4. Yes

<sup>73</sup> “Chapter 25 Sexual Offenses.” *The Judiciary of Guam*, 2020, [www.guamcourts.org/sor/Title/Title\\_9\\_Chap\\_25.pdf](http://www.guamcourts.org/sor/Title/Title_9_Chap_25.pdf).

5. Some combination of the above. YES / NO

5. No

6. Does it cover only vaginal rape? YES /NO

6. No

7. Does it cover all forms of penetration? YES/NO. If yes, please specify.

7. Yes, "(9) Sexual Penetration means sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required; "

8. Is marital rape in this provision explicitly included? YES / NO

8. No

9. Is the law silent on marital rape? YES/NO

9. Yes

10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO

10. No

11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO

11. No

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

3. No

4. What is the legal age for sexual consent?

4. The age of consent is 16<sup>74</sup>.

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

No, but there were efforts to achieve this<sup>75</sup>.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

First degree criminal sexual conduct results in a minimum sentence of 15 years, and it is a first degree felony. Those charged with first degree criminal sexual conduct also are ineligible for work or education-related releases or programming outside the prison. Second degree criminal sexual conduct results in a 5 year minimum and a 20 year maximum sentence, with the same restrictions on work and education: however, second degree criminal sexual conduct, unlike first and third, is non-penetrative, so this may not be relevant). Third degree criminal sexual conduct results in a 3 year minimum and a 10 year maximum sentence.<sup>76</sup>

“A subsequent conviction for first degree sexual conduct is punishable by a minimum of 25 years imprisonment and a maximum of life imprisonment without the possibility of parole.<sup>77</sup>”

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

The Guam Victim Assistance Grant Program provides reparations to victims after conviction of the perpetrator.<sup>78</sup>

### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

<sup>74</sup> “Romeo & Juliet Exception to the Statutory Rape Law.” *Office of the Attorney General of Guam*, 6 Feb. 2013, [www.guamag.org/press%20releases/2013/Statutory%20Rape%20Romeo%20&%20Juliet%20Exception%20Response%20WEB.pdf](http://www.guamag.org/press%20releases/2013/Statutory%20Rape%20Romeo%20&%20Juliet%20Exception%20Response%20WEB.pdf).

<sup>75</sup> “Romeo & Juliet Exception to the Statutory Rape Law.”

<sup>76</sup> “Chapter 25 Sexual Offenses.”

<sup>77</sup> “Sex Crimes: Definitions and Penalties Guam.” *RAINN*, Rape, Abuse and Incest National Network, Mar. 2020, [apps.rainn.org/policy/policy-crime-definitions.cfm?state=Guam&group=3](http://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Guam&group=3).

<sup>78</sup> “VOCA Grant Funding.” *Office of the Attorney General of Guam*, 2019, [www.guamag.org/ag\\_voca.html](http://www.guamag.org/ag_voca.html).

8. Age is an aggravating factor, both with victims being under the age of 14 and under the age of 16. Familial relationships, being armed with a weapon, physical and mental helplessness are also aggravating circumstances. Positions of authority in general and doctor-patient relationships are aggravating circumstances. Force and coercion are aggravating circumstances.<sup>79</sup>

1. Is rape by more than one perpetrator an aggravating circumstance? YES/NO

1. Yes

2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO

2. Yes

3. Is rape by spouse or intimate partner an aggravating circumstance?

3. No

9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

9. No

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

10. No

1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

1. No.

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

1. if the perpetrator marries the victim of rape? YES/NO

1. no

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<sup>79</sup> "Chapter 25 Sexual Offenses."

2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim?  
YES/NO

2. no

12. **Prosecution** Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO

12. Yes

13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

13. No

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?  
YES/NO

14. Yes<sup>80</sup>

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?  
YES/NO

15. Yes<sup>81</sup>

16. Please provide information on the statute of limitations for prosecuting rape.

16. For first and second degree criminal sexual conduct there is no statute of limitations, for third and fourth the statute of limitations is 3 years. <sup>82</sup>

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO

17. Yes<sup>83</sup>

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<sup>80</sup>Weiss, Jasmine Stole. “Plea Deal Offered to Jefta Moses, Man Accused of Sexually Assaulting 2 Women.” *The Asheville Citizen Times*, Pacific Daily News, 6 June 2019, [www.citizen-times.com/story/news/local/2019/06/05/plea-offered-jefta-moses-rape-guam-sexual-assault/1349591001/](http://www.citizen-times.com/story/news/local/2019/06/05/plea-offered-jefta-moses-rape-guam-sexual-assault/1349591001/).

<sup>81</sup>Delgado, Nick. “Rape Defendant Could Take Plea Deal.” *The Guam Daily Post*, 1 July 2020, [www.postguam.com/news/local/rape-defendant-could-take-plea-deal/article\\_52c57714-ba8d-11ea-ab6a-b30683cce664.html](http://www.postguam.com/news/local/rape-defendant-could-take-plea-deal/article_52c57714-ba8d-11ea-ab6a-b30683cce664.html).

<sup>82</sup> “Criminal Statutes of Limitations Guam.” *RAINN*, Rape, Abuse and Incest National Network, Mar. 2020, [apps.rainn.org/policy/policy-crime-definitions.cfm?state=Guam&group=7](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Guam&group=7).

<sup>83</sup> “Criminal Statutes of Limitations Guam.”

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.

18. No

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO

19. Yes

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

20. No

21. **War and/or conflict** Is rape criminalized as a war crime or crime against humanity? YES/NO

21. No

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

22. No

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

23. No

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

24. No

25. **Data** Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.



## TRENDS: CRIMES REPORTED TO POLICE

Offense Classification	2015	2016	2017	2018
Homicide	8	3	4	4
Rape	160	104	32	61
Robbery	124	79	104	99
Aggravated Assault	400	156	229	401
Burglary	1211	1612	1689	1502
Larceny-theft	2251	1866	1638	2273
Motor Vehicle Theft	222	256	320	354
Arson	12	7	9	17
Part I Offenses Total	4388	4083	4025	4711
Part II Offenses Total	5063	5874	5593	3479
<b>Crimes Volume Total</b>	<b>9451</b>	<b>9957</b>	<b>9618</b>	<b>9422</b>

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26. **Other** Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

According to a 2017 article, “many of the groups said rape or sexual assault is still considered a taboo topic for many in the community, adding that families do not talk about it because of guilt, shame and fear of embarrassment for the family.”<sup>85</sup>

<sup>84</sup> Aguon, Mindy. “GPD: Drop in Crime Volume, Increase in Violent Crime.” *The Guam Daily Post*, 23 Sept. 2019, [www.postguam.com/news/local/gpd-drop-in-crime-volume-increase-in-violent-crime/article\\_00bdb07c-c7a8-11e9-8696-ebf2243ba0c4.html](http://www.postguam.com/news/local/gpd-drop-in-crime-volume-increase-in-violent-crime/article_00bdb07c-c7a8-11e9-8696-ebf2243ba0c4.html).

<sup>85</sup> Eugenio, Haidee V. “Spotlight on Guam's High Volume of Sexual Assaults.” *Pacific Daily News*, 24 Jan. 2017, [www.guampdn.com/story/news/2017/01/24/spotlight-guams-high-volume-sexual-assaults/96980440/](http://www.guampdn.com/story/news/2017/01/24/spotlight-guams-high-volume-sexual-assaults/96980440/).

# ILLINOIS

Blair Abington

## Definition and scope of criminal law provisions

1. *Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.*

In Illinois, a person commits criminal sexual assault if that person commits an act of sexual penetration and uses force or threat of force, knows that the victim is unable to understand the nature of the act or is unable to give knowing consent, is a family member of the victim, and the victim is under 18 years of age, or, is 17 years of age or over and holds a position of trust, authority, or supervision, and the victim is at least 13 years of age but under 18 years of age.<sup>86</sup>

2. Based on the wording of those provisions, is the provided definition of rape:
  - a. No. Not gender-specific, covering only women.<sup>87</sup>
  - b. Yes. Gender-neutral, covering all persons.<sup>88</sup>
  - c. Yes, based on the lack of consent of the victim.<sup>89</sup>
  - d. Yes, based on the use of force or threat.<sup>90</sup>
  - e. Yes, some combination of the above.<sup>91</sup>
  - f. No, does not only cover vaginal rape.<sup>92</sup>
  - g. Yes, covers all forms of penetration. In Illinois, sexual penetration means any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of

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<sup>86</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.20  
<<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?docname=072000050hart.+11&actid=1876&chapterid=53&seqstart=1430000&seqend=20800000>>

<sup>87</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.20

<sup>88</sup> Ibid

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Ibid

<sup>92</sup> Ibid

the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.<sup>93</sup>

- h. No, marital rape in this provision is not explicitly included.<sup>94</sup>
- i. Yes, the criminal offense codes are silent on marital rape.<sup>95</sup>
- j. Yes, marital rape is covered by legal precedent. In 1992, the marital exemption to rape and other sexual crimes was eliminated.<sup>96</sup>
- k. No, marital rape is considered a crime.<sup>97</sup>

3. *Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.*

No, there are no provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship or had a sexual relationship.<sup>98</sup>

4. *What is the legal age for sexual consent?*

The age of consent in Illinois is 17.<sup>99</sup>

5. *Are there provisions that differentiate for sexual activity between peers? If so, please provide them.*

Illinois has enacted a limited Romeo and Juliet exemption for criminal sexual abuse. If a person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age, but under 17 years of age and the person is less than 5 years older than the victim, the crime could be deemed as a misdemeanor instead of a felony.<sup>100</sup>

<sup>93</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-0.1  
<<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?docname=072000050hart.+11&actid=1876&chapterid=53&seqstart=1430000&seqend=20800000>>

<sup>94</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.20

<sup>95</sup> Ibid

<sup>96</sup> Marital Rape in Illinois. (2015, August 11). Retrieved November 01, 2020, from <https://www. DUI-criminal-lawyers.com/dsmlaw-blog/marital-rape-in-illinois>

<sup>97</sup> Nathan, Geoffrey. "Illinois Sex Crime Laws & Charges + Statute of Limitations: Federal Charges.com," October 16, 2018. <https://www.federalcharges.com/illinois-sex-crime-laws-charges/>.

<sup>98</sup> Marital Rape in Illinois. (2015, August 11). Retrieved November 01, 2020, from <https://www. DUI-criminal-lawyers.com/dsmlaw-blog/marital-rape-in-illinois>

<sup>99</sup> "Illinois Age of Consent Laws 2020." Illinois Age of Consent & Statutory Rape Laws. Accessed November 2, 2020. <https://www.ageofconsent.net/states/illinois>.

<sup>100</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.50  
<<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?docname=072000050hart.+11&actid=1876&chapterid=53&seqstart=1430000&seqend=20800000>>

6. *Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.*

Criminal sexual assault is a Class 1 felony. If a defendant has previously been convicted of criminal sexual assault or the offense of exploitation of a child, or is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2), which discusses use of force or threat of force and a knowledge that the victim is unable to understand the nature of the act or is unable to give knowing consent, or has been convicted in Illinois or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault or to the offense of exploitation of a child, commit a Class X felony.<sup>101</sup>

7. *What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?*

Sexual assault victims may apply for Crime Victim Compensation Funds (CVC) if they notify law enforcement, obtain an order of protection, or undergo sexual assault evidence collection exam within 7 days.<sup>102</sup>

#### **Aggravating and mitigating circumstances**

8. *Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?*

Illinois law foresees aggravating circumstances when sentencing sexual assault cases. Aggravating circumstances include: the person displays, threatens to use, or uses a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon; the person causes bodily harm to the victim; the person acts in a manner that threatens or endangers the life of the victim or any other person; the person commits the criminal sexual assault during the course of committing or attempting to commit any other felony; the victim is 60 years of age or older; the victim is a person with a physical disability; the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purpose; the person is armed with a firearm; the person

<sup>101</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.20

<sup>102</sup> Kirkner, Anne, and Jaclyn Houston-Kolnik. *Financial Assistance for Illinois Victims: Crime Victim Compensation Fund*, June 24, 2019, 1–13. <[http://www.icjia.state.il.us/assets/articles/VictimCompensation\\_Illinois.pdf](http://www.icjia.state.il.us/assets/articles/VictimCompensation_Illinois.pdf)>

discharges a firearm during the commission of the offense, and that discharge proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.<sup>103</sup>

a. *Is rape by more than one perpetrator an aggravating circumstance? YES/NO*

No, rape by more than one perpetrator is not an aggravating circumstance.<sup>104</sup>

b. *Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO*

Yes, rape of a vulnerable individual is an aggravating circumstance.<sup>105</sup>

c. *Is rape by spouse or intimate partner an aggravating circumstance?*

No, rape by a spouse or intimate partner is not an aggravating circumstance.<sup>106</sup>

9. *Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.*

No, does not specify mitigating circumstances.<sup>107</sup>

10. *Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?*

Illinois has been implementing more restorative justice practices in their criminal justice system, including Victim-Offender Mediation (VOM), which allows reconciliation between the victim and perpetrator, there is no specification if this is allowed as part of the legal process. There is no specific stage that VOM should take place, it should be tackled by a case by case basis. One consequence is no positive outcome is guaranteed, and that is more likely to happen when one party is not open to changing their mindset.<sup>108</sup>

a. *Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?*

There are Victim-Offender Mediation programs in Illinois, but not specificity as whether it is permitted in practice.<sup>109</sup>

<sup>103</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.30

<<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?docname=072000050hart.+11&actid=1876&chapterid=53&seqstart=1430000&seqend=20800000>>

<sup>104</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.30

<sup>105</sup> Ibid

<sup>106</sup> Ibid

<sup>107</sup> Ibid

<sup>108</sup> Midura, Janna M. "Human Rights." Illinois State Bar Association, 2019.

<https://www.isba.org/sections/humanrights/newsletter/2019/12/restorativejusticeanoverview>.

<sup>109</sup> Umbreit, Mark S., and Jean Greenwood. *Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice through Dialogue*. St. Paul, MN: U.S. Dept. of Justice, Office of Justice Programs, Office for Victims of Crime, 2000.  
<[https://www.ncjrs.gov/ovc\\_archives/reports/96517-gdlines\\_victims-sens/ncj176346.pdf](https://www.ncjrs.gov/ovc_archives/reports/96517-gdlines_victims-sens/ncj176346.pdf)>

11. *Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?*

*YES/NO If yes, please specify.*

No, there are no provisions that allow for the non-prosecution of a perpetrator.<sup>110</sup>

a. *If the perpetrator marries the victim of rape? YES/NO*

No, spouses may testify against each other in Illinois.<sup>111</sup>

b. *If the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO*

No, a victim still has a right for prosecution against their perpetrator.<sup>112</sup>

### **Prosecution**

12. *Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO*

Yes, sexual assault is prosecuted by the state.<sup>113</sup>

13. *Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO*

No, sexual assault reported to the police is not prosecuted by a private attorney.<sup>114</sup>

14. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?*

*YES/NO*

Yes, plea bargains allowed in cases of rape against women.<sup>115</sup>

15. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?*

*YES/NO*

Yes, plea bargains are allowed in cases of rape against children.<sup>116</sup>

16. *Please provide information on the statute of limitations for prosecuting rape.*

As of January 1st 2020, Illinois became the eight state to completely remove the statute of limitations for prosecuting sex crimes.<sup>117</sup>

17. *Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO*

<sup>110</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-1.20

<<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?docname=072000050hart.+11&actid=1876&chapterid=53&seqstart=1430000&seqend=20800000>>

<sup>111</sup> 725 Illinois Compiled Statutes (ILCS) 5/115-16 <<https://ilga.gov/legislation/ilcs/documents/072500050K115-16.htm>>

<sup>112</sup> 725 Illinois Compiled Statutes (ILCS) 120/ <<https://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1970&ChapterID=54>>

<sup>113</sup> “Considerations for Victims in Prosecuting Rape.” Accessed November 3, 2020. <https://www.hg.org/legal-articles/considerations-for-victims-in-prosecuting-rape-31035>.

<sup>114</sup> Ibid

<sup>115</sup> 725 Illinois Compiled Statutes (ILCS) 120/4.5

<<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1970&ChapterID=54>>

<sup>116</sup> Ibid

<sup>117</sup> Spinelli, Courtney. “Illinois Removes Statute of Limitations for Sex Crimes.” <https://www.kwqc.com>, July 29, 2019. <https://www.kwqc.com/content/news/Illinois-lifts-statutes-of-limitations-for-sex-crimes-513365041.html>.

Yes, a child can report rape as an adult because Illinois has no statute of limitations.<sup>118</sup>

18. *Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.*

No, evidence of emission of semen is not required to prove sexual penetration.<sup>119</sup>

19. *Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO*

Yes, Illinois has a rape shield provision that prevents discussing evidence concerning the past sexual conduct of the alleged victim or corroborating witness.<sup>120</sup>

20. *Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.*

Yes, Illinois does have a number of comprehensive legal services for victims of crime that include legal advocacy, civil legal services, and victim rights enforcement. Legal advocacy includes providing the victim with information on their rights and the court system, having an advocate accompany the victim through the different stages of the legal process, and having an advocate assist in obtaining an order of protection, applying for victim compensation, and in drafting victim impact statements.<sup>121</sup>

### **War and/or Conflict**

21. *Is rape criminalized as a war crime or crime against humanity? YES/NO*

The Military Acts Commission of 2006 (MCA), which amended the War Crimes Act, specifically defined actions that would be considered breaches of the Geneva Conventions and labeled as war crimes, rape and sexual assault or abuse were specifically listed under the MCA.<sup>122</sup>

22. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO*

There is no statute of limitations for prosecuting war crimes.<sup>123</sup>

<sup>118</sup> Ibid

<sup>119</sup> 720 Illinois Compiled Statutes (ILCS) 5/11-0.1

<<https://www.ilga.gov/legislation/ilcs/ilcs4.asp?docname=072000050hart.+11&actid=1876&chapterid=53&seqstart=1430000&seqend=20800000>>

<sup>120</sup> 725 Illinois Compiled Statutes (ILCS) 5/115-7

<<https://ilga.gov/legislation/ilcs/fulltext.asp?DocName=072500050K115-7#:~:text=In%20prosecutions%20for%20predatory%20criminal,commission%20of%20the%20offense%20involves>>

<sup>121</sup> Vasquez, Amanda L. "Comprehensive Legal Services for Victims of Crime." ICJIA Research Hub. Department of Justice, December 13, 2017. <https://icjia.illinois.gov/researchhub/articles/comprehensive-legal-services-for-victims-of-crime>.

<sup>122</sup> Elsea, Jennifer K. "Subject-Matter Jurisdiction." In *The Military Commissions Act of 2006 Analysis of Procedural Rules and Comparison with Previous DoD Rules and the Uniform Code of Military Justice*. Washington, DC: Congressional Research Service, Library of Congress, 2006. <<https://fas.org/sgp/crs/natsec/RL33688.pdf>>

<sup>123</sup> McHenry, Teresa, and Christina Giffin. "Guide to Human Rights Statutes." U.S. Department of Justice Criminal Division Human Rights and Special Prosecutions Section, October 2017. <https://www.justice.gov/criminal-hrsp/file/1002896/download>.

23. *Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO*

No, there is no specific provision excluding statutes of limitations for rape committed during war.<sup>124</sup>

24. *Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO*

No, the Rome Statute of the International Criminal Court (ICC) has not been ratified in Illinois or the United States.<sup>125</sup>

### Data

25. *Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.*

The following data is provided by Illinois crime rate.<sup>126</sup>

Year	Reported
2015	3,602
2016	3,635
2017	5,424
2018	6,106
2019	6,078

### Other

26. *Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.*

<sup>124</sup> Ibid

<sup>125</sup> "Q&A: The International Criminal Court and the United States." Human Rights Watch, October 28, 2020. <https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-united-states>.

<sup>126</sup> "Illinois Crime Rates 1960 - 2019." Illinois: Illinois, n.d. <<http://www.disastercenter.com/crime/ilcrime.htm>>



# MARYLAND

Demi Tate

1. **Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

**Rape in the first degree-** Vaginal intercourse, or a sexual act, with another by force or threat of force, without the consent of the other,<sup>127</sup> and defendant:

- Employs/displays a dangerous weapon, or a physical object the victim reasonably believes is a dangerous weapon;
- Inflicts serious physical injury on the victim or another in the course of committing the crime;
- Threatens or places the victim in fear that the victim, or a 3rd person known to the victim, imminently will be subject to death, suffocation, etc.;
- Commits the crime while aided and abetted by another; or
- Commits the crime in connection with a burglary in the 1st, 2nd, or 3rd degree.

**Rape in the second degree-** vaginal intercourse or a sexual act with another:

- By force or the threat of force, without the consent of the other;
- If the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, etc.;
- or
- If the victim is under the age of 14 years, and the defendant is at least 4 years older than the victim.<sup>127</sup>

<sup>127</sup> RAINN. (2020, March). Sex Crimes: Definitions and Penalties Maryland. Retrieved from [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Maryland&group=3&\\_ga=2.229552668.1878228489.1604535532-2089922420.1604535532](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Maryland&group=3&_ga=2.229552668.1878228489.1604535532-2089922420.1604535532)

**2. Based on the wording of those provisions, is the provided definition of rape:**

**Gender-specific, covering women only NO**

- 
- a. Gender-neutral, covering all persons YES**
  - b. Based on the lack of consent of the victim YES**
  - c. Based on the use of force or threat YES**
  - d. Some combination of the above. YES**
  - e. Does it cover only vaginal rape? NO**
  - f. Does it cover all forms of penetration? YES**
- 

Means any of the following acts, regardless of whether semen is emitted: (1) anilingus; (2) cunnilingus; (3) fellatio; (4) anal intercourse, including penetration, however slight, of the anus; or (5) an act in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus, and that can be reasonably construed to be for sexual arousal/gratification, or for abuse of either party.

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- g. Is marital rape in this provision explicitly included? NO**
  - h. Is the law silent on marital rape? YES**
  - i. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? NO**
  - j. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? NO<sup>128</sup>**
- 

**3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.**

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- There is no provision excluding criminalization of the perpetrator if the parties live together. This would become a separate filing of domestic violence.
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<sup>128</sup> RAINN. (2020, March). Sex Crimes: Definitions and Penalties Maryland. Retrieved from [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Maryland&group=3&\\_ga=2.229552668.1878228489.1604535532-2089922420.1604535532](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Maryland&group=3&_ga=2.229552668.1878228489.1604535532-2089922420.1604535532)

**4. What is the legal age for sexual consent? 16<sup>129</sup>**

**5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

Sexual Offense in the Fourth Degree- Engaging in sexual contact without the other's consent

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- Engaging in a sexual act or vaginal sex with a 14 or 15-year-old when the defendant is at least 4 years older
  - Engaging in a sexual act, sexual contact, or vaginal sex with a child under 18 who at the time of the sexual activity was a student enrolled in a school where the person was in a position of authority (i.e. a principal, coach, teacher, or counselor who's at least 21 years old, employed by the school, and was in a supervisory position over the student)
- 

**6. Provide information on criminal sanctions prescribed and the length/duration of such criminal sanctions for criminalized forms of rape.**

Rape in the First Degree- Typically, imprisonment not exceeding life. If the victim is under 16 and is also kidnapped, the defendant is subject to imprisonment not exceeding life without the possibility of parole. If the defendant is 18 years or older, the defendant is subject to

Rape in the Second Degree- If the defendant is 18 years of age or older and the victim is under the age of 13 years, defendant is subject to imprisonment for not less than 15 years and not exceeding life.

A court may not suspend any part of the mandatory minimum of 15 years.

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Defendant is not eligible for parole during the mandatory minimum sentence.<sup>130</sup>

**7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

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<sup>129</sup> Age of Consent. (n.d.). Retrieved November 05, 2020, from <https://www.peoples-law.org/age-consent>

<sup>130</sup> RAINN. (2020, March). Sex Crimes: Definitions and Penalties Maryland. Retrieved from [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Maryland&group=3&\\_ga=2.229552668.1878228489.1604535532-2089922420.1604535532](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=Maryland&group=3&_ga=2.229552668.1878228489.1604535532-2089922420.1604535532)

- The State of Maryland offers the Sexual Assault Reimbursement Unit. This unit was created to reimburse victims for physical examinations, collection of evidence, and emergency treatment of individuals for injuries resulting from rape or sexual assault. <sup>131</sup>

**8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

- **Is rape by more than one perpetrator an aggravating circumstance? NO**
- **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES**
- **Is rape by spouse or intimate partner an aggravating circumstance? NO**

**9. Does the law foresee mitigating circumstances for the purposes of punishment? NO**

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?**

Maryland does not present any opportunities for reconciliation between victim and perpetrator under rape cases.

- Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard? NO**

**11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? NO**

- if the perpetrator marries the victim of rape? NO**
- if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO**

## **Prosecution**

<sup>131</sup> Sexual Assault Reimbursement Unit. (n.d.). Retrieved November 05, 2020, from <http://goccp.maryland.gov/victims/saru/>

**12. Is rape reported to the police prosecuted ex officio (public prosecution)? NO**

**13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**

**14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?**

**YES<sup>132</sup>**

**15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?**

**YES<sup>133</sup>**

**16. Please provide information on the statute of limitations for prosecuting rape.**

**For rape in the first and second degrees, there is no time limit.**

**17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? NO**

**18. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? NO<sup>134</sup>**

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES<sup>135</sup>**

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES**

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<sup>132</sup> Maryland Sex Crimes - Rape Accusations: The Law Offices of Thomas Maronick Jr. LLC. (2019, October 22). Retrieved November 05, 2020, from <https://www.maronicklaw.com/blog/2018/03/maryland-sex-crimes-rape-accusations/>

<sup>133</sup> Aines, D. (2018, May 22). Plea in sexual abuse case results in 10-year sentence for Hagerstown man. Retrieved November 5, 2020, from [https://www.heraldmillmedia.com/news/local/plea-in-sexual-abuse-case-results-in-10-year-sentence-for-hagerstown-man/article\\_17c3f852-5e1e-11e8-a40b-1faec77c6bd5.html](https://www.heraldmillmedia.com/news/local/plea-in-sexual-abuse-case-results-in-10-year-sentence-for-hagerstown-man/article_17c3f852-5e1e-11e8-a40b-1faec77c6bd5.html)

<sup>134</sup> Grinberg, E. (2017, April 18). Maryland rape survivors no longer need to prove they fought back. Retrieved November 5, 2020, from <https://www.cnn.com/2017/04/18/us/maryland-rape-law-updated-sb-217/index.html>

<sup>135</sup> § 3-319. Rape and sexual offense--Admissibility of evidence. (n.d.). Retrieved November 05, 2020, from <https://govt.westlaw.com/mdc/Document/N66C244609CDB11DB9BCF9DAC28345A2A?viewType=FullText>

The Sexual Assault Reimbursement Unit

“The Sexual Assault Reimbursement Unit aims to prevent individuals and their families from re-victimization by easing the reimbursement process associated with medical-forensic claims processing”

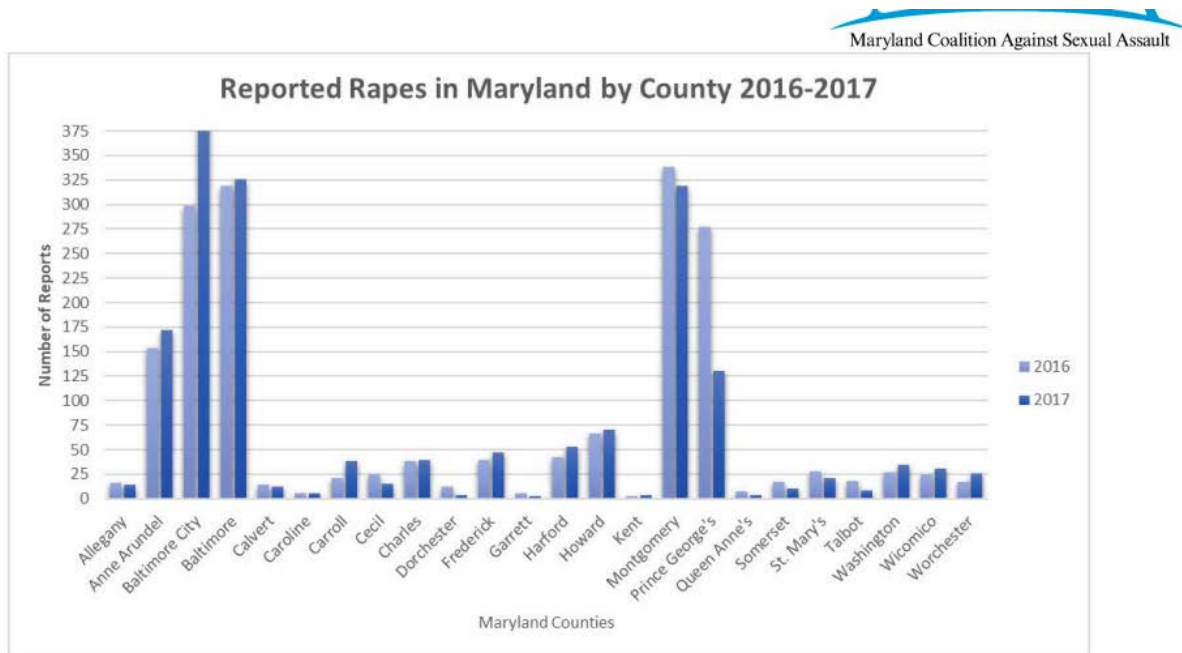
**War and Conflict**

**21. Is rape criminalized as a war crime or crime against humanity? YES**

**22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? NO**

**23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? NO**

**24. Has the Rome**



**Statute of the International Criminal Court (ICC) been ratified? NO**

**25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

Please view the graph above.<sup>136</sup>

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<sup>136</sup> G. (2020). Violent Crime & Property Crime by County: 1975 to Present. Retrieved November 5, 2020, from <https://opendata.maryland.gov/Public-Safety/Violent-Crime-Property-Crime-by-County-1975-to-Pre/jwfa-fdxs>

# MASSACHUSETTS

Abigail Tata

- 1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

Part IV Title I Chapter 265 Section 22:

“Section 22: Rape, generally; weapons; punishment; eligibility for furlough, education, training or employment programs

“(a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty-six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred and sixty-six or section ten of chapter two hundred and sixty-nine shall be punished by imprisonment in the state prison for life or for any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served



otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

(b) Whoever has sexual intercourse or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term or years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine-gun or assault weapon, shall be punished by imprisonment in the state prison for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).<sup>137</sup>

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<sup>137</sup> “Section 22.” *General Law - Part IV, Title I, Chapter 265, Section 22*, [malegislature.gov/laws/generallaws/partiv/titlei/chapter265/section22](http://malegislature.gov/laws/generallaws/partiv/titlei/chapter265/section22).

2. **Based on the wording of those provisions, is the provided definition of rape:**
- a. **Gender specific, covering women only:** NO
  - b. **Gender neutral, covering all persons :** YES
  - c. **Based on the lack of consent of victim:** YES
  - d. **Based on the use of force or threat :** YES
  - e. **Some combination of the above:** YES
  - f. **Does it cover only vaginal rape? :** NO
  - g. **Does it cover all forms of penetration? :** YES. when they state “unnatural” they imply other forms of penetration
  - h. **Is marital rape in this provision explicitly included? :** NO. they address rape by using the broad term “person”
  - i. **Is the law silent on marital rape? :** YES
  - j. **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? :** NO
  - k. **Is marital rape excluded in the provisions, or is marital rape not considered as a crime? :** NO. Marital rape is not stated in the section. Instead, the broader term “person” was put in place to factor in any type of rape. Using the term strips down any title and focuses on the crime.

3. **Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?** NO<sup>138</sup>
4. **What is the legal age for sexual consent?** 16 years old<sup>139</sup>
5. **Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

They state the legal aged peers as “ person” and state sexual activity into sexual intercourse or unnatural sexual intercourse in general applying to everyone. In terms of sexual intercourse or unnatural sexual intercourse with a child under 16:

Section 22A. Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16 and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for life or for any term of years. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

6. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

First time rape offenders face up to twenty years in prison, along with the penalties associated with all sex crimes, including registering as a sex offender. If weapons are used in the offense one will be sentenced to a mandatory minimum of 10 years in prison. A second conviction of rape can be a life sentence.<sup>140</sup>

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<sup>138</sup> “Section 22.” *General Law - Part IV, Title I, Chapter 265, Section 22*, [malegislature.gov/laws/generallaws/partiv/titlei/chapter265/section22](http://malegislature.gov/laws/generallaws/partiv/titlei/chapter265/section22).

<sup>139</sup> “Massachusetts Law about Sex.” *Mass.gov*, [www.mass.gov/info-details/massachusetts-law-about-sex](http://www.mass.gov/info-details/massachusetts-law-about-sex).

<sup>140</sup> A.C. Boston, Massachusetts. “Rape.” *Boston Criminal Lawyer Stephen Neyman*, [www.neymanlaw.com/rape.html](http://www.neymanlaw.com/rape.html).

7. **What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

Financial compensation from the Victim Compensation and Assistance Division is obtainable to victims of crime, which includes sexual assault. Post sexual assault care is provided to victims for free, which is required by the violence against woman act.<sup>141</sup>

**Aggravating and mitigating circumstances**

8. **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

- a. **Is rape by more than one perpetrator an aggravating circumstance?** YES “the rape is committed by a joint enterprise”<sup>142</sup>
- b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES
- c. Is rape by spouse or intimate partner an aggravating circumstance? NO. not specified in state laws

9. **Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO**

**If yes, please specify.** no information given

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response?

YES/NO If so, at what stage and what are the consequences?

<sup>141</sup> “Section X: Victim Compensation.” *Mass.gov*, [www.mass.gov/info-details/section-x-victim-compensation](http://www.mass.gov/info-details/section-x-victim-compensation).

<sup>142</sup> A.C. Boston, Massachusetts. “Aggravated Rape.” *Boston Criminal Defense Lawyer Stephen Neyman*, [www.neymanlaw.com/aggravated-rape.html](http://www.neymanlaw.com/aggravated-rape.html).

- a. Regardless of the law, is reconciliation permitted in practice? NO and what is the practice in this regard? The practice done by the court to suggest reconciliation.<sup>143</sup>

**11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? YES/NO If yes, please specify.**

- a. **if the perpetrator marries the victim of rape?** NO<sup>144</sup>
- b. **if the perpetrator loses his “socially dangerous” character or reconciles with the victim?** NO.

#### **Prosecution**

**12. Is rape reported to the police prosecuted ex officio (public prosecution)?** YES<sup>145</sup>

**13. Is rape reported to the police prosecuted ex parte (private prosecution)?** NO<sup>146</sup>

**14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?:**  
NO

**15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?:**  
NO

**16. Please provide information on the statute of limitations for prosecuting rape.**

“The statute of limitations is 15 years for rape, rape of a child under age 16, rape of a child, assault with the intent to commit rape, and assault of a child under age 16 with

<sup>143</sup> McGovern, Lisa S, and Kim Aliprantis. “The Massachusetts District Attorneys Association.” 1997.

<sup>144</sup> “Boston Spousal Rape Lawyer.” *Keegan Law*, 1 July 2015, [www.criminaldefenselawyerbostonma.com/criminal-defense/sex-crimes/rape/spousal-rape/](http://www.criminaldefenselawyerbostonma.com/criminal-defense/sex-crimes/rape/spousal-rape/).

<sup>145</sup> “Section 97B.” *General Law - Part I, Title VII, Chapter 41, Section 97B*, [malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section97b](http://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter41/Section97b).

<sup>146</sup> Section 97B. *General Law - Part I, Title VII, Chapter 41, Section 97B*,

intent to commit rape. In cases where the victim was under age 16, the statute of limitations will not begin to run until the victim reaches age 16 or the violation is reported to a law enforcement agency, whichever occurs earlier.”<sup>147</sup>

**17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?**

YES, If the child is under 16, the statutes of limitations will not begin to run until the child turns 16, or the violation is reported to law enforcement.<sup>148</sup>

**18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?**

NO. In Massachusetts, the 3 conditions needed to uphold a rape conviction is that any object must penetrate an orifice, the offender uses force or threat towards victim and the intercourse is not consensual by the victim.<sup>149</sup>

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES, Massachusetts has a law prohibiting defendants from exposing the victims past sexual history as part of their defense. This is called the Rape Shield Law<sup>150</sup>**

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? NO.**

**War and/or conflict**

<sup>147</sup> Jason K. Matthews, Legislative Fellow. *STATUTES OF LIMITATIONS FOR SEXUAL ASSAULT CRIMES IN NEW ENGLAND, NEW YORK, AND NEW JERSEY*, [www.cga.ct.gov/2002/rpt/2002-R-0258.htm](http://www.cga.ct.gov/2002/rpt/2002-R-0258.htm).

<sup>148</sup> Jason K. Matthews, Legislative Fellow. *STATUTES OF LIMITATIONS FOR SEXUAL ASSAULT CRIMES IN NEW ENGLAND, NEW YORK, AND NEW JERSEY*, [www.cga.ct.gov/2002/rpt/2002-R-0258.htm](http://www.cga.ct.gov/2002/rpt/2002-R-0258.htm).

<sup>149</sup> A.C. Boston, Massachusetts. “Rape.” *Boston Criminal Lawyer Stephen Neyman*, [www.neymanlaw.com/rape.html](http://www.neymanlaw.com/rape.html).

<sup>150</sup> Ashwani. “Massachusetts Rape Shield Laws.” *Massachusetts OUI Lawyer*, [www.delsignoredefense.com/rape-shield-laws.html](http://www.delsignoredefense.com/rape-shield-laws.html).

21. **Is rape criminalized as a war crime or crime against humanity? YES**
22. **Is there a statute of limitations for prosecuting rape in war or in conflict contexts? NO**
23. **Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? NO<sup>151</sup>**
24. **Has the Rome Statute of the International Criminal Court (ICC) been ratified? Not applicable.**
25. **Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years. <sup>152</sup>**

<b>2016</b>	1592
<b>2017</b>	2199
<b>2018</b>	2410

#### **Other**

26. **Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**

<sup>151</sup> "Section 22." *General Law - Part IV, Title I, Chapter 265, Section 22*, [malegislature.gov/laws/generallaws/partiv/titlei/chapter265/section22](http://malegislature.gov/laws/generallaws/partiv/titlei/chapter265/section22).

<sup>152</sup> Seitz, Jacob. "FBI Review Details 10 Percent Rise in Rape Reports in Massachusetts." *The Berkeley Beacon*, 31 Oct. 2019, [berkeleybeacon.com/fbi-review-details-10-percent-rise-in-rape-reports-in-massachusetts/](http://berkeleybeacon.com/fbi-review-details-10-percent-rise-in-rape-reports-in-massachusetts/).

# NEW YORK STATE

Olivia Ford

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.
  - a. According to the New York State Senate, the relevant articles of Criminal Code for New York state are the Penal law Article 130 through 130.96, it reads:
    - i. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim. Lack of consent results from forcible compulsion, incapacity to consent, when the offense charged is sexual abuse or forcible touching and the victim does not expressly or impliedly accept the actor's conduct, or in the case of rape or criminal sexual act in the third degree at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.<sup>153</sup>
    - ii. A person is guilty of rape in the third degree when he or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old, they are 21 years old or older and engages in sexual intercourse with a person less than 17 years old, they engage in sexual intercourse with another person without the victim's consent where the lack of consent is reasoned by some other factor other than incapacity to consent. **Rape in the third degree is a class E felony.** A person is guilty of rape in the second degree they are 18 years or older and engages in sexual intercourse with someone less than 15 years old. If they engage in sexual intercourse with another person who is incapable of consent by reason of being mentally incapacitated. The article also states that if the defendant was less than four years older than the victim at the time of the act it shall be an affirmative

<sup>153</sup> <https://www.nysenate.gov/legislation/laws/PEN/130.05>



defense. **Rape in the second degree is a class D felony.** A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person by forcible compulsion, who is incapable of consent by reason of being physically helpless, who is less than eleven years old, or who is less than 13 years old and the actor is eighteen years old or more. **Rape in the first degree is a class B felony.** <sup>154</sup>

- iii. A person is guilty of criminal sexual act in the third degree when they engage in oral or anal sexual conduct with a person who is incapable of consent by some reason other than being less than seventeen years old. If they are 21 years old or more and engage in oral and sexual conduct with a person under the age of 17. If they engage in oral or anal sexual conduct with a person with their consent.

**Criminal sexual act in the third degree is a class E felony.** A person is guilty of criminal sexual act in the second degree when they are over 18 and engage in oral or anal sexual conduct with a person less than 15 years old. They engage in oral and anal sexual conduct with a person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. The article also states that if the defendant was less than four years older than the victim at the time of the act it shall be an affirmative defense. **Criminal sexual act in the second degree is a class D felony.** A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person by forcible compulsion, who is incapable of consent by reason of being physically helpless, who is less than eleven years old, or who is less than 13 years old and the actor is eighteen years old or more. **Criminal sexual act in the first degree is a class B felony.** <sup>155</sup>

- iv. A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose forcibly touches the intimate parts of another person for the purpose of degrading or for the purpose of gratifying the actor's sexual desire. Or if they subject another person to sexual contact for the purpose of gratifying the actor's sexual desire and with intent to degrade the other person while on a bus, train, or subway car operated by any transit agency authorized by New York state or any of its political subdivisions. For the purposes of this

<sup>154</sup> <https://www.nysenate.gov/legislation/laws/PEN/130.30>

<sup>155</sup> <https://www.nysenate.gov/legislation/laws/PEN/130.45>

section, forcible touching includes squeezing, grabbing or pinching. **Forcible touching is a class A misdemeanor.**<sup>156</sup>

- v. A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent. **Sexual abuse in the third degree is a class B misdemeanor.** A person is guilty of sexual abuse in the second degree when the victim is incapable of consent by being less than seventeen years old or is less than 14 years old. **Sexual abuse in the second degree is a class A misdemeanor.** A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact forcible compulsion, who is incapable of consent by reason of being physically helpless, who is less than eleven years old, or who is less than 13 years old and the actor is 21 years old or more. **Sexual abuse in the first degree is a class D felony.**<sup>157</sup>
- vi. A person is guilty of aggravated sexual abuse in the fourth degree when they insert a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old or the victim is incapable of consent by reason of some factor other than being less than seventeen years old. **Aggravated sexual abuse in the fourth degree is a class E felony.** A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person by forcible compulsion, if the other person is incapable of consent by reason of being physically helpless, if their under the age of 11, or if they are incapable of consent by reason of being mentally disabled or mentally incapacitated. **Aggravated sexual abuse in the third degree is a class D felony.** A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by forcible compulsion, incapable of consent by reason of being physically helpless, or if the other person is under 11. **Aggravated sexual abuse in the second degree is a class C felony.** Aggravated assault in the first degree is the same as the second but instead of a

<sup>156</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>157</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

finger the act involves a foreign object. **Aggravated sexual abuse in the first degree is a class B felony.**<sup>158</sup>

2. Based on the wording of those provisions, is the provided definition of rape:

- a. Gender specific, covering women only **NO**
- b. Gender neutral, covering all persons **YES**
- c. Based on the lack of consent of victim **YES**
- d. Based on the use of force or threat **YES**
  - i. Some combination of the above. **YES**
- e. Does it cover only vaginal rape? **NO**
- f. Does it cover all forms of penetration? **YES**:
  - i. **Sexual intercourse** has its ordinary meaning and occurs upon any penetration, however slight.<sup>159</sup>
  - ii. **Oral sexual conduct** means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.<sup>160</sup>
  - iii. **Anal sexual conduct** means conduct between persons consisting of contact between the penis and anus.<sup>161</sup>
  - iv. **Sexual contact** means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.<sup>162</sup>
  - v. **Aggravated sexual abuse** is when an actor inserts a finger or foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to another person<sup>163</sup>
- g. Is marital rape in this provision explicitly included? **YES**

<sup>158</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>159</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>160</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>161</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>162</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>163</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

- i. Married means the existence of the relationship between the actor and the victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article against the victim<sup>164</sup>
  - h. Is the law silent on marital rape? **NO**
  - i. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? **NO**
3. The legal age for sexual consent is seventeen years old.<sup>165</sup>
4. Are there provisions that differentiate for sexual activity between peers? **YES**
- a. **Rape in the third degree:** being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old<sup>166</sup>
  - b. **Rape in the second degree:** being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old<sup>167</sup>
  - c. It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.<sup>168</sup>
5. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
- a. **Class A Misdemeanors** include Forcible touching and Sexual abuse in the second degree. A court may sentence an individual to a maximum of one year in jail or three years' probation and a fine of up to \$1,000.<sup>169</sup>
  - b. **Class B Misdemeanors** include Rape in the first degree, Aggravated sexual abuse in the first degree, Criminal sexual act in the first degree, and Sexual abuse in the third degree. Maximum penalties of up to three months imprisonment or one year probation. In addition, a fine of up to five hundred dollars.<sup>170</sup>

<sup>164</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>165</sup> 130.05 <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>166</sup> 130.25 <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>167</sup> 130.30 <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>168</sup> 130.30 <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>

<sup>169</sup> <https://omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm#:~:text=Upon%20conviction%20of%20a%20Class,the%20crime%20may%20be%20imposed.>

<sup>170</sup> <https://omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm#:~:text=Upon%20conviction%20of%20a%20Class,the%20crime%20may%20be%20imposed.>

- c. **Felony** penalties can vary from a term of probation to life imprisonment. In addition, the Penal Law authorizes the imposition of a fine not exceeding the higher of \$5,000.<sup>171</sup>
- i. Aggravated sexual abuse in the second degree is a **Class C felony**.
  - ii. **Class D Felonies** include Rape in the second degree, Criminal sexual act in the second degree, Aggravated sexual abuse in the third degree, and Sexual abuse in the first degree.
  - iii. **Class E Felonies** include Rape in the third degree, Criminal sexual act in the third degree, and Aggravated sexual abuse in the fourth degree.
6. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?
- a. When the court directs that the defendant be imprisoned until the fine, restitution or reparation be satisfied, it must specify a maximum period of imprisonment subject to the following limits: (a) Where the fine, restitution or reparation is imposed for a felony, the period may not exceed one year; (b) Where the fine, restitution or reparation is imposed for a misdemeanor, the period may not exceed one-third of the maximum authorized term of imprisonment<sup>172</sup>

### Aggravating and mitigating circumstances

7. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
- a. A person is guilty of **aggravated sexual abuse** in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person.<sup>173</sup>
  - b. Is rape by more than one perpetrator an aggravating circumstance? **NO**
  - c. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? **YES**

<sup>171</sup><https://omh.ny.gov/omhweb/forensic/manual/html/chapter1.htm#:~:text=Upon%20conviction%20of%20a%20Class,the%20crime%20may%20be%20imposed.>

<sup>172</sup> 420.10 <https://www.nysenate.gov/legislation/laws/CPL>

<sup>173</sup> 130.65a-130.70 <https://www.nysenate.gov/legislation/laws/PEN/P3TH>

- i. **Aggravated sexual abuse** in the first degree when they insert a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person if the other person is incapable of consent by reason of being physically helpless or when the other person is less than eleven years old.<sup>174</sup>
  - d. Is rape by spouse or intimate partner an aggravating circumstance? **No**
- 8. Does the law foresee mitigating circumstances for the purposes of punishment? **YES**
  - a. The court may impose a sentence other than a determinate sentence of imprisonment if it finds that the alternate sentence is consistent with public safety and does not deprecate the seriousness of the crime and that there are **mitigating circumstances** that bear directly upon the manner in which the crime was committed.<sup>175</sup>
- 9. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **NO**
  - a. Regardless of the law, is reconciliation permitted in practice? **NO**
- 10. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **NO**
  - a. if the perpetrator marries the victim of rape? **NO**
  - b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **NO**

### Prosecution

- 11. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES AND NO**
- 12. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES AND NO**
  - a. Every court case within this state shall be public, and every citizen may freely attend the same, except that in all proceedings and trials in cases for **rape, assault with intent to commit rape, criminal sexual act**, the court may, in its discretion, exclude therefrom all persons who are not directly interested therein, excepting jurors, witnesses, and officers of the court.<sup>176</sup>
- 13. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES and NO**

<sup>174</sup> <https://www.nysenate.gov/legislation/laws/PEN/P3TH>

<sup>175</sup> 70.02 <https://www.nysenate.gov/legislation/laws/PEN>

<sup>176</sup> JUD art 2 sec 4 <https://www.nysenate.gov/legislation/laws/CONSOLIDATED>

- a. A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class C or D felony, may not be accepted on condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class B felony defined in article two hundred twenty of the penal law.<sup>177</sup>

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **YES and NO**

- a. A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class C or D felony, may not be accepted on condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class B felony defined in article two hundred twenty of the penal law.<sup>178</sup>

15. Please provide information on the statute of limitations for prosecuting rape.

- a. **Class A misdemeanors:** A criminal action against the perpetrator of this crime must commence within two years after commission of the offense.<sup>179</sup>
- b. **Class E felony:** A criminal action against the perpetrator of this crime must commence within ten years after commission of the offense [for offenses committed after September 18, 2019, otherwise 5 years].<sup>180</sup>
- c. **Class D felony:** If victim is incapable of consent by reason of being mentally disabled or mentally incapacitated, then criminal action against the perpetrator of this crime must commence within twenty years after commission of the offense or within ten years from when the offense is first reported to law enforcement, whichever occurs earlier; or A criminal action against the perpetrator of this crime must commence within five years after commission of the offense [for offenses committed before September 18, 2019].<sup>181</sup>
- d. **Class B felony:** There is no limit.

<sup>177</sup> CPL 220.30 <https://www.nysenate.gov/legislation/laws/CONSOLIDATED>

<sup>178</sup> CPL 220.30 <https://www.nysenate.gov/legislation/laws/CONSOLIDATED>

<sup>179</sup> [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)

<sup>180</sup> [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)

<sup>181</sup> [https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)

- e. **Class B misdemeanor:** A criminal action against the perpetrator of this crime must commence within two years after commission of the offense.<sup>182</sup>
- f. **Class C felony:** A criminal action against the perpetrator of this crime must commence within five years after commission of the offense.<sup>183</sup>

16. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **YES**

- a. **Class A and B misdemeanors** permit a victim that was under 18 at the time of commission of the offense, the period of limitations does not begin to run until victim has reached the age of 23 or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier.<sup>184</sup>
- b. **Class C, D, and E felonies** permit a victim that was under 18 at the time of commission of the offense, the period of limitations does not begin to run until victim has reached the age of 23 or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier [for offenses committed after September 18, 2019, otherwise the time tolls until age 18].<sup>185</sup>

17. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? **NO**

18. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? **YES**

- a. Evidence of a victim's sexual conduct shall not be admissible in a prosecution for an offense or an attempt to commit an offense defined in article one hundred thirty or in section 230.34 of the penal law unless the evidence: proves specific instances of the victim's prior sexual conduct with the accused; proves that the victim has been convicted of an offense under section 230.00 of the penal law within three years prior to the sex offense which is the subject of the prosecution; rebuts evidence introduced by the people of the victim's failure to engage in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact during a given period of time; rebuts evidence

<sup>182</sup>[https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)

<sup>183</sup>[https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)

<sup>184</sup>[https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)

<sup>185</sup>[https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&\\_ga=2.111751940.1899305224.1604539974-1887176585.1604539974](https://apps.rainn.org/policy/policy-crime-definitions.cfm?state=New%20York&group=7&_ga=2.111751940.1899305224.1604539974-1887176585.1604539974)



introduced by the people which proves that the accused is the cause of pregnancy or disease of the victim, or the source of semen found in the victim; or is determined by the court to be relevant and admissible in the interests of justice.<sup>186</sup>

19. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **NO**

#### **War and/or conflict**

20. Is rape criminalized as a war crime or crime against humanity? **NO**
21. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **NO**
22. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **NO**
23. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **NO**

#### **Data**

24. The number of cases of rape that were reported, prosecuted and sanctioned, from 2013 to 2018, according to the FBI's database is 6,575 rapes in New York State.<sup>187</sup>

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<sup>186</sup> CPL 60.42 <https://www.nysenate.gov/legislation/laws/CONSOLIDATED>

<sup>187</sup> <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/rape>

# NORTH CAROLINA

Madelynn Bovasso

1. **Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

**First Degree Forcible Rape** - Engaging in vaginal intercourse with another person by force and against the will of the other person, and:

- Uses, threatens to use or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
- Inflicts serious personal injury upon the victim or another person; or
- Commits the offense aided and abetted by one or more other persons.

Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child.

**Second Degree Forcible Rape** - Engaging in vaginal intercourse with another person:

- By force and against the will of the other person; or
- Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child.<sup>188</sup>

2. **Based on the wording of those provisions, is the provided definition of rape:**
  1. **Gender specific, covering women only YES**
  2. **Gender neutral, covering all persons NO**
  3. **Based on the lack of consent of victim YES**
  4. **Based on the use of force or threat YES**
  5. **Some combination of the above. YES**
  6. **Does it cover only vaginal rape? YES**
  7. **Does it cover all forms of penetration? NO. If yes, please specify.**
    - i. However, later noted, anal penetration can fall under this jurisdiction though not explicitly stated.

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<sup>188</sup>Consent Laws North Carolina - RAINN. (n.d.). Retrieved November 3, 2020, from <https://apps.rainn.org/policy/policy-crime-definitions-export.cfm?state=North%20Carolina&group=9>

- 8. Is marital rape in this provision explicitly included? NO**
- 9. Is the law silent on marital rape? NO**
- i. In 1993, the state of North Carolina changed its provisions to include marital rape. Anyone accused of marital rape would be treated the same as a stranger.<sup>189</sup>
- 10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES**
- 11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? NO**

- 3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.**

There are no provisions excluding the criminalization of the perpetrator if they and the victim live together. If the two parties live together it becomes a domestic violence case on top of a sexual violence case.

- 4. What is the legal age for sexual consent?**

In the state of North Carolina, a child under the age of 12 is incapable of consent.

- 5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

- A person is guilty of a Class B1 felony if the defendant engages in vaginal intercourse with another person who is **15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.**

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- Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse with another person **who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person.**<sup>190</sup>

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- 6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

In the state of North Carolina criminal sanctions on rape are as follows:

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<sup>189</sup>Rebojo, V. (2019, August 13). Marital Rape in North Carolina. Retrieved November 03, 2020, from <https://www.charlesullman.com/nc-family-law-resources/resources-for-domestic-violence/marital-rape>

<sup>190</sup> Ibid.

**First Degree Forcible Rape:** The length of the sentence in North Carolina is based on prior criminal history. The penalty for this crime ranges from 144 months to life without parole.

**Second Degree Forcible Rape:** The length of the sentence in North Carolina is based on prior criminal history. The penalty for this crime ranges from 44 months to 182 months.

**Statutory Rape of a Child by an Adult:** The length of the sentence in North Carolina is based on prior criminal history. The penalty for this crime ranges from 300 months to life without parole; provided, however, that in no case shall the person receive an active punishment of less than 300 months. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life.

**First Degree Statutory Rape:** The length of the sentence in North Carolina is based on prior criminal history. The penalty for this crime ranges from 144 months to life without parole. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life.

**Statutory Rape of a Person who is 15 Years of Age or Younger:** The length of the sentence in North Carolina is based on prior criminal history. The penalty for the Class B1 felony version of this crime ranges from 144 months to life without parole; the penalty for the Class C felony version of this crime is 44 to 182 months in prison.

**7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

In the state of North Carolina Victims Compensation Services reimburses citizens who suffer medical expenses and loss of wages as a result of being an innocent victim of a crime committed in North Carolina. This applies to victims of rape, assault, child sexual abuse, domestic violence and drunk driving.<sup>191</sup>

A maximum of \$30,000 USD may be paid for an award for medical expenses related to treatment of injuries as a result of a crime. The state of North Carolina is the payer of last resort for these financial losses.

**8. Aggravating and mitigating circumstances**

**Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

- 1. Is rape by more than one perpetrator an aggravating circumstance? NO**
- 2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES**

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<sup>191</sup>NC Department of Public Safety. (n.d.). Retrieved November 03, 2020, from <https://www.ncdps.gov/DPS-Services/Victim-Services/Crime-Victim-Compensation>

- 3. Is rape by spouse or intimate partner an aggravating circumstance? NO**
- 9. Does the law foresee mitigating circumstances for the purposes of punishment? NO**
- 10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? NO If so, at what stage and what are the consequences?**
- There are no legally indicated opportunities for reconciliation in North Carolina.
- 1. Regardless of the law, is reconciliation permitted in practice? NO and what is the practice in this regard?**
- 11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? NO If yes, please specify.**
- 1. if the perpetrator marries the victim of rape? NO**
  - 2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? NO**
- 12. Is rape reported to the police prosecuted ex officio (public prosecution)? NO**
- 13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES**
- 14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? NO**
- 15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? NO**
- 16. Please provide information on the statute of limitations for prosecuting rape.**

Since all cases of rape in North Carolina are categorized as felonies, there are no statute of limitations for this crime. Hence, felonies in the state possess no statute of limitations.

17. **Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES**
18. **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? NO If yes, please specify.**

It is not necessary upon the trial of any indictment for an offense where the sex act alleged is vaginal intercourse or anal intercourse to prove the actual emission of semen in order to constitute the offense; but the offense shall be completed upon proof of penetration only. Penetration, however slight, is vaginal intercourse or anal intercourse.<sup>192</sup>

19. **Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES<sup>193</sup>**
20. **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? NO. If yes, please specify.**
21. **Is rape criminalized as a war crime or crime against humanity? YES, this falls under federal law in the United States.**
22. **Is there a statute of limitations for prosecuting rape in war or in conflict contexts? NO**
23. **Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? NO**
24. **Has the Rome Statute of the International Criminal Court (ICC) been ratified?**
- NO, they (the United States) originally signed and then withdrew their signature.
25. **Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

<sup>192</sup> N.C. Gen. Stat. Ann. § 14-27.21; *see also id.* § 14-27.20 (definitions); *id.* § 14-27.36 (evidence required); *id.* § 15A-1340.17 (punishment).

<sup>193</sup> *State v. Banks*, 295 N.C. 399 (1978),

	Reported
2019	3247
2018	2336

Information on whether the cases ended in prosecution or sanctions were unclear when researched.<sup>194</sup>

26. **Other** Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

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<sup>194</sup>NC Reports. (n.d.). Retrieved November 03, 2020, from <http://crimereporting.ncsbi.gov/Reports.aspx>

# PENNSYLVANIA

Tanishka Talagadadeevi

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.
  - 1.1. Definitions provided by provisions in Section 3121 Chapter 31-
    - 1.1.1. “Rape- A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:
      - 1.1.1.1. By forcible compulsion.
      - 1.1.1.2. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
      - 1.1.1.3. Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
      - 1.1.1.4. Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
      - 1.1.1.5. Who suffers from a mental disability which renders the complainant incapable of consent.<sup>195</sup>”
    - 1.1.2. “Rape of a child- A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.<sup>196</sup>”
    - 1.1.3. “Rape of a child with serious bodily injury- A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.<sup>197</sup>”

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<sup>195</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.



2. Based on the wording of those provisions, is the provided definition of rape:
  - 2.1. Gender specific, covering women only **YES/NO**
    - 2.1.1. No, the definition of rape as provided by the legal code of Pennsylvania is not gender specific. According to Pennsylvania legal code, rape is defined by “a person commits a felony of the first degree when the person engages in sexual intercourse with a complainant.<sup>198</sup>”
  - 2.2. Gender neutral, covering all persons **YES/NO**
    - 2.2.1. Though the definition of rape in Pennsylvania does not explicitly state that all gender identities are protected by the law, its ambiguity towards gender (see 2.1.1) insinuates that this definition applies to all cases which meet the criteria. The PA legal code on rape is gender neutral.
  - 2.3. Based on the lack of consent of victim **YES/ NO**
    - 2.3.1. The Pennsylvania law is, again, ambiguous in its definition. The definition of rape provides five conditions of rape.<sup>199</sup> The definition explicitly mentions the consent in section 3121. If an individual engages in intercourse with another individual “who suffers from a mental disability which renders the complainant incapable of consent<sup>200</sup>,” this act is categorized as rape.
  - 2.4. Based on the use of force or threat **YES/ NO**
    - 2.4.1. Yes, Pennsylvania’s definition of rape states that sexual intercourse using “forcible compulsion” or “threat of forcible compulsion” is categorized as rape.
  - 2.5. Some combination of the above. **YES / NO**
    - 2.5.1. In addition to the scenarios expressed in 2.3 and 2.4, Pennsylvania law also includes provisions regarding incapacitation due to “drugs, intoxicants, or other means for preventing resistance<sup>201</sup>.” If an individual utilizes means of preventing resistance through the administering of intoxicants during sexual intercourse, it is categorized as rape. If an individual is unconscious during intercourse, it is also categorized as rape.
  - 2.6. Does it cover only vaginal rape? **YES /NO**
    - 2.6.1. The definition of rape provided by the state of Pennsylvania does not exclusively cover vaginal rape. Sexual intercourse, as defined by Section 3101

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<sup>198</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

of Title 18, “includes intercourse per os or per anus, with some penetration however slight<sup>202</sup>.”

- 2.7. Does it cover all forms of penetration? **YES/NO**. If yes, please specify.
- 2.7.1. The Pennsylvania law specifically mentions vaginal penetration and anal penetration in its definition of rape through its inclusion of the term “sexual intercourse.” This is further clarified in Section 3101 of Title 18, which defines sexual intercourse (see 2.6.1).
- 2.8. Is marital rape in this provision explicitly included? **YES / NO**
- 2.8.1. Marital rape is not explicitly included in this provision. In 1995, Pennsylvania repealed a law that declared spousal rape as a separate and lesser offense than non-spousal rape<sup>203</sup>.
- 2.9. Is the law silent on marital rape? **YES/NO**
- 2.9.1. Though the law does not explicitly prohibit marital rape, this ambiguity is intentional. The definition of rape applies to all relationships. Therefore, if a person engages in unwanted/non-consensual intercourse with any person, including a spouse, they will be tried for rape in the first degree<sup>204</sup>.
- 2.10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES/NO**
- 2.10.1. Yes, marital rape is covered by Chapter 31 of Title 18. Although marital rape is not explicitly mentioned, any violation of the provisions listed in section 3121 will be prosecuted to the fullest extent of the law.
- 2.11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **YES /NO**
- 2.11.1. If the provisions described in section 3121 (see 2.3-2.5) are violated by an individual, that individual will be prosecuted. The state of Pennsylvania no longer provides exceptions to rape charges on the basis of marriage. To put it bluntly, rape is rape in PA regardless of the relationship between the victim and perpetrator.
3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

<sup>202</sup>Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>203</sup> National Center for Victims of Crime. *Spousal Rape Laws: 20 Years Later*. PDF file. 2004  
[http://www.ncdsv.org/images/NCVC\\_SpousalRapeLaws20YearsLater\\_2004.pdf](http://www.ncdsv.org/images/NCVC_SpousalRapeLaws20YearsLater_2004.pdf)

<sup>204</sup> Ibid.

- 3.1. No, a perpetrator will not be excluded from criminalization if the victim and perpetrator have a sexual relationship (see 2.11.1).
4. What is the legal age for sexual consent?
  - 4.1. The legal age for sexual consent in the state of Pennsylvania is 16 years<sup>205</sup>. However, no individual under the age of 13 can provide consent to sexual activity of any kind<sup>206</sup>.
5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.
  - 5.1. Although the legal age of consent is 16 years of age in Pennsylvania, there are provisions that differentiate for sexual activity between peers. Section 3122.1 of Title 18 of Chapter 31 of the PA law differentiates between first and second degree statutory sexual assault on the basis of age. The law prohibits intercourse with an unmarried complainant who is between four and eight years younger than the offender; this constitutes statutory sexual assault in the second degree. Statutory sexual assault in the first degree occurs when the complainant is 11 years or older than a complainant under the age of 16<sup>207</sup>.
6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
  - 6.1. In addition to the punishment for rape, an individual can also receive an additional sentence of ten years maximum and “an additional amount not to exceed \$100,000.”<sup>208</sup>
  - 6.2. As per subsection (e) of section 3121 of Title 18, in the case of a rape of a child the offender will receive a sentence that does not exceed 40 years<sup>209</sup>. If a child is raped and sustains serious bodily harm, the offender can “be sentenced up to a maximum term of life imprisonment.”<sup>210</sup>
7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?
  - 7.1. The state of Pennsylvania runs a Victims Compensation Assistance Program. This program aims to help victims of crimes through financial assistance. Assistance may

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<sup>205</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>206</sup> Pennsylvania Coalition Against Rape. *Age of Consent in Pennsylvania. 2018.*  
[https://www.socialwork.pitt.edu/sites/default/files/two\\_handouts\\_10\\_23\\_19.pdf](https://www.socialwork.pitt.edu/sites/default/files/two_handouts_10_23_19.pdf)

<sup>207</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>208</sup> Ibid.

<sup>209</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>210</sup> Ibid.

cover medical expenses, counseling, funeral costs, relocation, etc.<sup>211</sup>. Through the American legal system, a victim can file a civil lawsuit against the perpetrator in order to receive monetary justice.

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
  - 8.1. Is rape by more than one perpetrator an aggravating circumstance? **YES/NO**
    - 8.1.1. Pennsylvania law does not currently identify multiple perpetrators as an aggravating offense. There is no current law in place that addresses circumstances involving multiple perpetrators or “gang rape.”
  - 8.2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES/NO**
    - 8.2.1. Age Difference- Yes, Pennsylvania law addresses the imbalance of power between alleged perpetrator and victims through its provisions regarding the age difference between the perpetrator and victim (See section 5.1).
    - 8.2.2. Schools- Subsection (a.2) of Section 3124.2 of Title 18 of Chapter 31 of Pennsylvania law states that “a person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.”<sup>212</sup>
    - 8.2.3. Supervisory Relationships- Section 3124.2 of Title 18 of Chapter 31 of PA law addresses relationships between a supervisor and supervisee. This includes relationships between inmates and criminal justice practitioners, parole officer and offender, and patient and medical professional.<sup>213</sup>
  - 8.3. Is rape by spouse or intimate partner an aggravating circumstance?
    - 8.3.1. No, Pennsylvania law does not identify rape by a partner as an aggravating circumstance. The PA law does not provide separate provisions for marital rape.
9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES/NO** If yes, please specify.

<sup>211</sup> Pennsylvania Commission on Crime and Delinquency. *Victims Compensation Assistance Program*. [https://www.pccd.pa.gov/Victim-Services/Pages/Victims-Compensation-Assistance-Program-\(VCAP\).aspx](https://www.pccd.pa.gov/Victim-Services/Pages/Victims-Compensation-Assistance-Program-(VCAP).aspx).

<sup>212</sup>Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>213</sup> Ibid.

- 9.1. The law provides the defendant the opportunity to present evidence which may permit their sentence to be mitigated. The defendant “must present compelling circumstances” to seek mitigation.<sup>214</sup> Mitigating circumstances can include substance use by the defendant, lack of a criminal record, remorse, or troubled personal history. These conditions are not specific to rape cases; the opportunity to seek mitigation may not be granted, particularly in violent crimes such as rape. The law is vague in its description of mitigating circumstances in rape cases.
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?
- 10.1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?
11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? YES/NO If yes, please specify.
- 11.1. If the perpetrator marries the victim of rape? YES/NO
- 11.1.1. No, the criminal code of Pennsylvania does not allow for the non-prosecution of a perpetrator if the perpetrator marries the victim. The rape of a spouse is still rape nonetheless in Pennsylvania (see 2.11).
- 11.2. If the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO
- 11.2.1. No, Pennsylvania law does not permit the non-prosecution of a perpetrator if they lose their “socially dangerous” character or reconcile with the victim.
12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO
- 12.1. Yes, rape cases reported to the police are prosecuted ex officio. The perpetrator will be charged for their crimes and can potentially receive a life sentence, as per subsection (b) of section 3121 of Title 18 of Chapter 31 of the Pennsylvania law. (see 6.1 and 6.2).<sup>215</sup>
13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO
- 13.1. Victims have the right to pursue a civil lawsuit against the perpetrator. Civil lawsuits permit the victim to seek monetary compensation (see 7.1).
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO[1]

<sup>214</sup> Law Offices of Lloyd Long. *What Mitigating Factors Reduce Jail Sentences in Pennsylvania?*. September 20, 2018. <https://www.philadelphiacriminallawyers.com/blog/which-mitigating-factors-can-reduce-criminal-sentences-pennsylvania/>

<sup>215</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

- 14.1. The state of Pennsylvania does not prohibit the defendant from entering a plea bargain in the case of a rape of a woman. There is no law or provision that prohibits plea bargaining in cases of rape of women. (See 15.1).
15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?  
YES/NO
- 15.1. Yes, plea bargains are permitted in cases of rape of children. In 2017, Jermie Wolfe of Luzerne County, PA was arrested for raping an 8 year old girl.<sup>216</sup> The victim reported the incident in 2017, seven years after the first rape. Wolfe pleaded guilty to corruption of a minor and a misdemeanor count of indecent assault with forcible compulsion. In exchange, the prosecution dropped some of the charges against him, which included forcible rape. Wolfe is one of many who have received lenience in exchange for a plea.
16. Please provide information on the statute of limitations for prosecuting rape.
- 16.1. In 2019, Governor Tom Wolf of Pennsylvania signed House Bill 962 into law. HB962, sponsored by Representative Mark Rozzi, extends the criminal statute of limitations for victims to 12 years after the time of the offense.<sup>217</sup>
- 16.1.1. Individuals between the ages of 18 and 24 “at the time the cause of action occurs,” the individual will have until the age of 30 to “commence an action for damages.”<sup>218</sup>
17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO
- 17.1. Yes, if an individual was under 18 at the time of their abuse then the individual will have 32 years after turning 18 to “commence action for damages regardless of whether the individual files a criminal complaint regarding the sexual abuse.”<sup>219</sup>
18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.
- 18.1. No, the state of Pennsylvania does not have requirements for proof of rape. There is no current provision that requires witnesses in order for a case of rape to proceed.

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<sup>216</sup> James Halpin. *Plymouth Man Pleads Guilty to Molesting Girl*, 8. Wilkes-Barre Citizens’ Voice. April 17, 2020. [https://www.citizensvoice.com/plymouth-man-pleads-guilty-to-molesting-girl-8/article\\_fe4fe003-775b-5c2d-8dc9-6786d0d219f8.html](https://www.citizensvoice.com/plymouth-man-pleads-guilty-to-molesting-girl-8/article_fe4fe003-775b-5c2d-8dc9-6786d0d219f8.html)

<sup>217</sup> Pennsylvania House Democratic Caucus. *Governor Wolf Signs Three Bills to Protect Victims of Childhood Sexual Abuse*. November 26, 2019. <https://www.pahouse.com/Rozzi/News/?id=111608>.

<sup>218</sup> House Bill 962 (2019).

<sup>219</sup> Ibid.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO
- 19.1. Yes, Section 3102 of Title 18 of Chapter 31 of Pennsylvania law states includes a "Rape Shield Law."<sup>220</sup> This provision states that "an alleged victim's past sexual conduct, past sexual victimization, allegations of past sexual victimization, opinion evidence of the alleged victim's past sexual conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions of any offense listed in subsection (c) except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence."<sup>221</sup>
- 19.2. However, under subsection (b) of section 3104 of Title 18 of Chapter 31, the defense does have the power to raise a victim's past if the defense's written motion and offer of proof is accepted by the court<sup>222</sup>.
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.
- 20.1. Yes, section 1304 of 1998 Act 111 of Pennsylvania addresses revictimization relief.
- 20.1.1. According to section 1304a, "a victim of a personal injury crime may bring a civil action against an offender in any court of competent jurisdiction to obtain injunctive and other appropriate relief, including reasonable attorney fees and other costs associated with the litigation, for conduct which perpetuates the continuing effect of the crime on the victim."<sup>223</sup>
- 20.1.2. Section 1304b permits redress on behalf of the victim. "The district attorney of the county in which a personal injury crime took place or the Attorney General, after consulting with the district attorney, may institute a civil action against an offender for injunctive or other appropriate relief for conduct which perpetuates the continuing effect of the crime on the victim."<sup>224</sup>

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<sup>220</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.  
<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>221</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.  
<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>222</sup> Ibid.

<sup>223</sup> The Official Website for the Pennsylvania General Assembly. *1998 Act 111*.  
<https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1998&sessInd=0&smthLwInd=0&act=111&chpt=13&sctn=4&subsctn=0>

<sup>224</sup> Ibid.

- 20.1.3. Section 1304c addresses injunctive relief. If a victim successfully shows cause for the issuance of injunctive relief, “a court may issue special, preliminary, permanent or any other injunctive relief as may be appropriate.”<sup>225</sup>
21. Is rape criminalized as a war crime or crime against humanity? YES/NO
- 21.1. The state of Pennsylvania has not specifically identified rape as a crime against humanity, although Title 18 of Chapter 31 states that rape is the worst offense one can commit, second only to murder.<sup>226</sup>
22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
- 22.1.1. Pennsylvania’s provisions do not mention the prosecution of rape in war or conflict contexts. See sections 16, 17, and 18 for more details regarding the statute of limitations in PA.
23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
- 23.1.1. See section 22.1.1 for more details.
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO
- 24.1. The United States withdrew its signature from the Rome Statute of the ICC in 2002. Representative Ilhan Omar of Minnesota sponsors House Resolution 855, which recommends that the United States ratify the Rome Statute of the ICC<sup>227</sup>. Consequently, this question is not applicable to the state of Pennsylvania.
25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.
- 25.1. Reported rape cases by the state of PA in the past five years, as reported by the Uniform Crime Report.<sup>228</sup>
- 25.1.1. In 2015, 3764 rapes were reported in PA.
- 25.1.2. In 2016, 4084 rapes were reported in PA.
- 25.1.3. In 2017, 3862 rapes were reported in PA.
- 25.1.4. In 2018, 4186 rapes were reported in PA.
- 25.1.5. In 2019, 4351 rapes were reported in PA.

<sup>225</sup> Ibid.

<sup>226</sup> Chapter 31. - Title 18 - CRIMES AND OFFENSES.

<https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/18/00.031..HTM>.

<sup>227</sup> House Resolution 855 (2020).

<sup>228</sup> Pennsylvania Office of Attorney General. *Open Data URC- Crimes Overview*.  
<https://www.attorneygeneral.gov/open-data-urc-crimes-overview/>



- 25.2. There is not currently public data that states how many cases of rape were prosecution and sanctioned in the past two to five years. [2]
26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.
- 26.1. The state of Pennsylvania does not currently have an available database which publicly documents the number of prosecuted rape cases in the state.
- 26.2. Pennsylvania law fails to acknowledge aggravating circumstances in cases of rape, such as multiple perpetrators.
27. Recommendations-
- 27.1. Pennsylvania currently permits plea bargains for sex offenders, including those who have committed rape against a child. The state of Pennsylvania should not provide admitted child rapists with the opportunity to reduce their sentence, given the heinous nature of the crime.
- 27.2. The Pennsylvania law does not clearly address cases where a woman rapes an individual. The law must be more specific in cases such as these.

# PUERTO RICO

Destane Cherry

## Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

### **Definition and Penalties associated with sex crimes in the US territory of Puerto Rico**<sup>229</sup>

- **Sexual Assault**

- (1) It is defined as any degree of sexual intercourse that involves penetration under certain circumstances shall receive a second-degree felony<sup>230</sup>:
  - (a) The victim is not yet 16
  - (b) The victim is unable to understand the act due to illness or a mental disability.
  - (c) There was physical force, an act of violence, or intimidation that coerced the victim.
  - (d) Consent was not given due to narcotics or other stimulants that rendered victim unaware.
- (2) Sexual assault is a crime when it involves affecting the mental scope of a victim and causes bodily harm.
- (3) Any aspect of penetration, regardless of how small of an effect the penetration may have had on the body, goes into consideration. Ejaculation is not necessary.
- (4) Punishment of second degree is to follow. In the territory of Puerto Rico this includes imprisonment of 15 years fixed, with sentencing between 1 day and 25 years.
  - (a) If a minor has committed such an act, the sentence punishment is third degree. This involves 3 years fixed and between 1 day and 18 years.
- (5) Upon a prison sentence, the courts shall also acquire a \$300 fine for each felony.

- **Lewd acts**

- (1) It is defined as a sexual act that occurs against a minor from an older party. The following circumstances shall incur third degree<sup>231</sup>:
  - (a) Victim is not yet 16 years of age.
  - (b) Victim is compelled through forms of physical force, violence, threats, or narcotics.
  - (c) Victim under mental instability was unable to understand act.

<sup>229</sup> <https://apps.rainn.org/policy/policy-crime-definitions-export.cfm?state=Puerto%20Rico&group=3>

<sup>230</sup> 33 L.P.R.A. §§ 4770-4771; see also id. §§ 4694-4695 (penalties).

<sup>231</sup> 33 L.P.R.A. § 4772; see also id. §§ 4694-4695 (penalties).

(d) When kinship is involved, and the trust of the minor has been compromised.

- (2) Sentencing involves third degree which involves a term of 3 to 8 years.  
 (3) The court shall acquire a fine of \$300 for each felony

• **Conjugal sexual assault**

(1) It is defined as a sexual act that occurs between a spouse or person in a committed relationship where it is non-consensual, regardless of sex, sexual orientation, immigration, or gender identity. Whereas the following circumstances shall occur:

(a) Victim or person was compelled into sexual act through force, violence, or intimidation.

(b) If the methods of narcotics or depressants were used rendering the knowledge of victim or person or their ability to resist.

(c) Person or victim is abused psychologically or physically.

(2) Penalty for such a crime shall be a sentence of second degree<sup>232</sup>. There may also be an impose sentence of restitution.

(3) Fixed term of 8 to 15 years. \$300 fine may be collected by the courts for each felony.

2. Based on the wording of those provisions, is the provided definition of rape:

- a. Gender specific, covering women only **YES/NO**
- b. Gender neutral, covering all persons **YES/NO**
- c. Based on the lack of consent of victim **YES/ NO**
- d. Based on the use of force or threat **YES/ NO**
- e. Some combination of the above. **YES / NO**
- f. Does it cover only vaginal rape? **YES /NO**
- g. Does it cover all forms of penetration? **YES/NO**. If yes, please specify.
  - Penetrations covered other than vaginal include anal, oral-genital, digital, or instrumental.
  - Digital penetration refers to the use of one's fingers to sexually penetrate the vaginal or anal area of a person.
- h. Is marital rape in this provision explicitly included? **YES / NO**
- i. Is the law silent on marital rape? **YES/NO**
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES/NO**
- k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **YES /NO**

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No, there are no exclusions. This is all defined under conjugal sexual assault.

<sup>232</sup> 8 L.P.R.A. § 635; see also id. §§ 4694-4695 (penalties).

4. What is the legal age for sexual consent?

The legal age for sexual consent in the US territory of Puerto Rico is sixteen<sup>233</sup>.

Puerto Rico does not have definite definition for consent. When any person performs a sexual act or an act of penetration, regardless of the type, under certain circumstances they are going against having permission and are committing a felony.<sup>234</sup>

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

No.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Criminal sanction for sexual assault, rape, or sex crimes in Puerto Rico incur a felony sentence of second and third degree that depends on certain circumstances, which can include age. Second degree incurs a length of 15 years or a duration between 1 day and 25 years. When a minor is involved, they can be tried as an adult where their sentence can be a length of 3 years and a duration between 1 day and 18 years. A third-degree sanction

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Legislation in terms of reparations to victims of sexual assault have a department that focuses on providing compensation and resources. This department is called the office of crime victim and witness services and compensation where victims can receive financial assistant for treatments and the impact the effects can have<sup>235</sup>.

### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

If the victim or person has been compelled to the act using abuse, physical or psychological violence to participate with third parties. There is also a aggravating circumstance when the victim is under age, when the victim knows their attacker or perpetrator, and when they are involved romantically or relationship wise.

- a. Is rape by more than one perpetrator an aggravating circumstance? **YES/NO**
- b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES/NO**

<sup>233</sup> The Age of Consent in United States is **16 years old**. The age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity. United States has two territories that have their own local age of consent laws. (<https://www.ageofconsent.net/world/united-states>)

<sup>234</sup> <https://apps.rainn.org/policy/policy-crime-definitions-export.cfm?state=puerto%20rico&group=9>

<sup>235</sup> The office can offer compensation to pay for the medical forensic examination (up to a max of \$700).

- c. Is rape by spouse or intimate partner an aggravating circumstance? **YES/NO**
9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES/NO** If yes, please specify.
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **YES/NO** If so, at what stage and what are the consequences?
- a. Regardless of the law, is reconciliation permitted in practice? **YES/NO** and what is the practice in this regard?
11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **YES/NO** If yes, please specify.
- a. if the perpetrator marries the victim of rape? **YES/NO**
- b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES/NO**

### **Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES/NO**
13. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES/NO**
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES/NO**
15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **YES/NO**
16. Please provide information on the statute of limitations for prosecuting rape.  
The prosecution for sexual assault<sup>236</sup> must commence within 20 years of the offence that occurred. If the victim is not yet 18, then the statute of limitations does not begin until the victim reaches this age; this follows for lewd acts as well.
17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **YES/NO**  
Explained under the statute of limitations.
18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? **YES/NO** If yes, please specify.

<sup>236</sup> Puerto Rico Penal Code 2012 - Articles 87 and 89 (33 L.P.R.A. § 5132 and § 5134).

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? **YES/NO**

In the prosecution of rape or attempted assault, evidence from the victims sexual past or history which regarding their credibility or establishing consent, shall be admissible. It is deemed admissible unless there are special circumstances in which it is evidence enough with relevancy. If the defendant seeks to under special circumstances use evidence of the victim's sexual conduct or history, shall follow the following procedures<sup>237</sup>:

- (a) Before the court and prosecuting attorney, the defendant must file a written motion that is sworn by H/She specifying the evidence is offering relevancy in attacking the credibility of the victim and their consent.
- (b) If evidence shall be determined as sufficient then a judge will order a hearing in chambers out of presence of jury.
- (c) The court at the end finds what is brought forth to be relevant, then the evidence may be offered by the defendant.

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **YES/NO**. If yes, please specify.

### War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity? **YES/NO**

Criminalized as a crime against humanity.

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **YES/NO**

23. Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **YES/NO**

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **YES/NO**<sup>238</sup>

### Data

25. Please provide data on the number of cases of rape that were reported, prosecuted, and sanctioned, for the past two to five years.

2016	2017
168	209

\*Data collected prior to 2017 was lost due to hurricane maria and many went unreported<sup>239</sup>. Data for the last three years has not been forthcoming.

<sup>237</sup> P.R. LAWS ANN. tit. 32, Ap. IV Rule 21 (2008). Evidence of sexual conduct or history of the victim. <https://ndaa.org/wp-content/uploads/NCPCA-Rape-Shield-2011.pdf>

<sup>238</sup> 123 countries are States Parties to the Rome Statute of the International Criminal Court. [https://asp.icc-cpi.int/en\\_menus/asp/states](https://asp.icc-cpi.int/en_menus/asp/states)

<sup>239</sup> Sexual violence and intimate partner violence rise during the end of natural disasters. There are high levels of stress, scarcity of resources, and a tear in socialization. Puerto Rico has the highest rates of violence against women in the world. <https://periodismoinvestigativo.com/2018/05/official-reports-of-violence-against-women-in-puerto-rico-unreliable-after-hurricane-maria/>

**Other**

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

N/A

# SOUTH CAROLINA

Taylor W. Weeks

## Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.
  - 1.1 Definitions of Criminal Sexual Conduct in the First Degree under S.C. Code Ann. § 16-3-652 (Note. The State of South Carolina's legal definition of rape only applies to one party who is not of age)<sup>240</sup>
    - 1.1.1 A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:
      - 1.1.1.1 The actor uses aggravated force to accomplish sexual battery
      - 1.1.1.2 The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.
      - 1.1.1.3 The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance
    - 1.1.2 Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court
  - 1.2 Criminal Sexual Conduct in the Second Degree under S.C. Code Ann. § 16-3-653<sup>241</sup>
    - 1.2.1 A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery

<sup>240</sup> Title 16-Crimes and Offenses

<https://www.scstatehouse.gov/code/t16c003.php>

<sup>241</sup> Ibid



- of the
- 1.2.2 Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court
- 1.3 Criminal Sexual Conduct in the Third Degree under S.C. Code Ann. § 16-3-654<sup>242</sup>
- following
- 1.3.1 A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the circumstances are proven:
- 1.3.1.1 The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances
- 1.3.1.2 The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery
- 1.3.2 Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court
2. Based on the wording of those provisions, is the provided definition of rape<sup>243</sup>:
- 2.1 Gender specific, covering women only **YES/NO**
- 2.1.1 Refer to S.C. Code Ann. § 16-3-651
- 2.2 Gender neutral, covering all persons **YES/NO**
- 2.2.1 Refer to S.C. Code Ann. § 16-3-651
- 2.3 Based on the lack of consent of victim **YES/ NO**
- 2.3.1 Refer to S.C. Code Ann. § 16-3-600
- 2.4 Based on the use of force or threat **YES/ NO**
- 2.4.1 Refer to S.C. Code Ann. § 16-3-651
- 2.5 Some combination of the above. **YES / NO**

<sup>242</sup> Title 16-Crimes and Offenses

<https://www.scstatehouse.gov/code/t16c003.php>

<sup>243</sup> Ibid

2.6 Does it cover only vaginal rape? YES /**NO**

2.6.1 Refer to S.C. Code Ann. § 16-3-651

2.7 Does it cover all forms of penetration? **YES**/NO. If yes, please specify.

2.7.1 According to S.C. Code Ann. § 16-3-651 Sexual Battery is defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes<sup>244</sup>

2.8 Is marital rape in this provision explicitly included? **YES** / NO

2.8.1 Refer to S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658

2.9 Is the law silent on marital rape? YES/**NO**

2.9.1 Refer to S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658

2.10 Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**/NO

2.10.1 Refer to S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658

2.11 Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /**NO**

2.11.1 Refer to S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?

3.1 Being in a sexual relationship and or living together does not exclude any statutes regarding Criminal Sexual Conduct under South Carolina law

3.1.1 The only limitations to criminalization regarding sexual relationships is that of legal spouses under S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658. This however is only in degree of prosecution and still constitutes criminal behavior as of S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658<sup>245</sup>

4. What is the legal age for sexual consent?

<sup>244</sup> Title 16-Crimes and Offenses

<https://www.scstatehouse.gov/code/t16c003.php>

<sup>245</sup> Ibid

- 4.1 The legal age of consent in the state of South Carolina is 16 years of age, yet one is still  
a minor until they reach the age of 18 according to S.C. Code Ann. § 16-3-655
5. Are there provisions that differentiate for sexual activity between peers?
- 5.1 Under S.C. Code Ann. § 16-3-655 criminal sexual conduct prosecutions refer to age as  
the basis for the degree of punishment. Sexual Battery with a child under the age  
of 11 falls under the first degree and is a class A felony. If the minor is age 14 or less,  
but older than 11, then it is categorized as Sexual Battery in the second degree.<sup>246</sup>
6. Provide information on criminal sanctions prescribed and length/duration of such criminal  
sanctions for criminalized forms of rape<sup>247</sup>
- 6.1 Those found guilty of statutory rape in the first degree must be imprisoned for a  
mandatory minimum of twenty-five years, no part of which may be suspended nor  
probation granted, or must be imprisoned for life under S.C. Code Ann. § 16-3-655
- 6.2 Those found guilty of statutory rape in the second degree must be imprisoned for not  
more than twenty years at the discretion of the court under S.C. Code Ann. § 16-  
3-655
- 6.3 Those found guilty of statutory rape in the third degree must be fined in the discretion  
of the court or imprisoned not more than fifteen years, or both
7. What does the legislation in your State provide in terms of reparation to the victim of rape  
and/or sexual violence after conviction of the perpetrator?
- 7.1 The South Carolina Department of Aging in accordance with the Sexual Assault  
Protocol (SAP)/Child Abuse Protocol (CAP) Program provides both financial and  
medical assistance to those affected by sexual assault and other crimes.<sup>248</sup>

### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases?
- 8.1 When sentencing for rape cases aggravating circumstances are used in criminal  
sexual conduct in both the first and second degree. These include aggravated  
coercion and aggravated force, as defined in S.C. Code Ann. § 16-3-651
- 8.2 Is rape by more than one perpetrator an aggravating circumstance?  
**YES/NO**

<sup>246</sup> Title 16-Crimes and Offenses  
<https://www.scstatehouse.gov/code/t16c003.php>

<sup>247</sup> Ibid

<sup>248</sup> South Carolina Department of Aging  
<https://aging.sc.gov/>

8.2.1 Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES/NO**

8.3 Is rape by spouse or intimate partner an aggravating circumstance?

8.3.1 Under S.C. Code Ann. § 16-3-658 and aggravating circumstance is needed in order for a spouse to be a victim of rape (in the first and second degree) unless the legally married couple does not live together. If the couple is not married, then charges can be carried to the first, second, or third degree.<sup>249</sup>

9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES/NO**

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **YES/NO**

10.1 Regardless of the law, is reconciliation permitted in practice? **YES/NO**

11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? **YES/NO**

11.1 If the perpetrator marries the victim of rape? **YES/NO**

11.1.1 Even if married, criminal sexual conduct can still be prosecuted, but such activity must be reported within 30 days of the incident if the offence only falls within the third degree as specified by S.C. Code Ann. § 16-3-615 and S.C. Code Ann. § 16-3-658

11.2 If the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES/NO**

### **Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES/NO**

12.1 Rape is publically prosecuted in the State of South Carolina, reference S.C. Code Ann. § 16-3-655

13. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES/NO**

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES/NO**

<sup>249</sup> Title 16-Crimes and Offenses  
<https://www.scstatehouse.gov/code/t16c003.php>

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?  
**YES/NO**

15.1 Reference S.C. Code Ann. § 16-3-655 and S.C. Code Ann. § 14-3-330<sup>250</sup>

16. Please provide information on the statute of limitations for prosecuting rape

16.1 According to S.C. Code Ann. § 16-3-652 there is no limitation for prosecution of criminal sexual conduct. However, sexual violence must be reported in spousal sexual violence, unless they meet the standards of second or first degree criminal sexual conduct as described in S.C. Code Ann. § 16-3-658<sup>251</sup>

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **YES/NO**

17.1 While there is not statute of limitation on all sexual crimes in the state of South Carolina, damage compensation for minors can only be obtained within 6 years after becoming 21 years of age or 3 years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, or whichever occurs later , in accordance with S.C. Code Ann. § 15-3-555<sup>252</sup>

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? **YES/NO**

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? **YES/NO**

19.1 Under S.C. Code Ann. § 16-3-730 it is unlawful to expose the names and history of sexual assault victims

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **YES/NO**

20.1 Under S.C. Code Ann. § 16-3-730 a victim of rape is allowed to stay anonymous during court hearing, protecting their identity and from emotional harm

### **War and/or conflict**

21. Is rape criminalized as a war crime or crime against humanity? **YES/NO**

<sup>250</sup> Title 14-Courts

<https://www.scstatehouse.gov/code/t14c003.php>

<sup>251</sup> Title 16-Crimes and Offenses

<https://www.scstatehouse.gov/code/t16c003.php>

<sup>252</sup> Title 15-Civil Remedies and Procedures

<https://www.scstatehouse.gov/code/t15c003.php>

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO
- 24.1 The United States, including the State of South Carolina, has not joined the ICC<sup>253</sup>

### Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years

Table 1: Rate of Sexual Battery

Year	2014	2015	2016	2017	2018
Total Number of SD	2,237	2,500	2,572	2,622	2,634
Rate of SB	4.6	5.1	5.2	5.2	5.2

*Note.* The data in the table above shows the rate of sexual battery per 10,000 inhabitants in the state of South Carolina. Data comes from the 2018 SC.gov crime statistics for South Carolina.<sup>254</sup>

- 25.1 Unfortunately the data for cases prosecuted and or sanctioned are unavailable, due to all data regarding such incidents only being obtained through police reports from South Carolina Incident Based Reporting System and State Law Enforcement Divisions<sup>255</sup>

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above

- 26.1 Due to the way crime data is obtained in the State of South Carolina and the United States at large, must federal data regarding criminal activity such as rape and sexual assault is heavily reliant on localities. In the case of rape, the ability to get people to come forward with the crime is also a strong barrier to gaining adequate data on the subject.

<sup>253</sup> <https://www.icc-cpi.int/Publications/Joining-Rome-Statute-Matters.pdf>

<sup>254</sup> <https://www.sled.sc.gov/forms/statistics/2018%20Crime%20in%20South%20Carolina.pdf>

<sup>255</sup> Ibid

# VIRGINIA

Taylor Daniels

## Definition and Scope of Criminal Law Provisions

Rape is a serious felony offense under the regulations of Virginia Law 18.2 - 61. One could be punished at the maximum penalty in which you are convicted to life imprisonment with only having a minimum penalty of five years in prison.<sup>1</sup> The definition of ‘Adult Rap’ is defined as having sexual intercourse with another; against their will, by force, threat, or intimidation. It can be proven by the victim’s testimony, their physical evidence of injury, defense wounds, sometimes witness accounts, forensic evidence, computer or digital communication, circumstantial evidence, and or any other way that it is admissible in court. In order to have proven force sufficient to support any rape conviction, force must be used on the victim to overcome the victim’s will. While there also must be evidence of some array and or show of force in a form sufficient to have overcome resistance. Spoken in the statute; a threat means that the expression has the intent to do bodily harm. Which means the accused must have to put the victim in fear of bodily harm by exercising domination and control of her mind and overbear her wellbeing. In Virginia it is broken down within two statutes;

- In Virginia, rape can be proven through the use of the victim’s mental incapacity or physical helplessness
- Rape is automatic which it is with a child under the age 13 or 14<sup>2</sup>
- *Virginia Rape Law : 18.2 -61 - (A) If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person*

<sup>1</sup> Alexandria, C., & Written by an award-winning criminal defense lawyer specializing in felony and misdemeanor criminal charges in Northern Virginia state and Federal courts. (2019, March 03). Virginia Rape Laws and Defenses Explained by Criminal Defense Lawyer. Retrieved November 08, 2020, from <https://medvinlaw.com/virginia-rape-laws-and-defenses-explained-by-criminal-defense-lawyer/>

<sup>2</sup> Virginia Department of Health. (n.d.). Retrieved November 08, 2020, from <https://www.vdh.virginia.gov/statutory-rape-prevention/virginia-law/>

*and such act is accomplished (i) against the complaining witness’s will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness mental incapacity or physical helplessness; (iii) with a child under age 13 as the victim, he or she shall be guilty of rape. (B) A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility*

*for life or for any term not less than five years; and in addition: 1. For a violation of clause (iii) of subsection (A) where the offender is more an three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection (A) of 18.2-47 or 18.2-89, 18.2-90, or 18.2-91 or (iii) 18.2 - 51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or 2. For a violation of clause (iii) of subsection (A) where it is alleged in the indictment that the offender was 8 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement of life. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection (A) where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to the revocation by the court. There shall be a rebuttable presumptions that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness. (C) Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgement of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final dispositions of the case and proceed as otherwise provided. If such counseling is completed as prescribed under 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness. (Alexander. C. )*

- Yes, the provisions are gender specific while covering women only.



- Yes, the provisions are gender neutral while covering all persons.
- Yes, the provisions are based on the lack of consent of the victim at hand. ○ Yes, the provisions are based on the use of force or threat towards the victims. ○ Yes, the provisions cover the combinations above.
- Yes, the provisions cover only vaginal rape.
- Yes, the provisions cover all forms of penetration; penetration is an essential element of rape crimes, while proof of penetration is sufficient. The presence of sperm in vagina alone is sufficient to support any findings that penetration had occurred. (Alexander, C.)
- No, marital rape is not stated in the provisions explicitly.
- Yes, in the provisions the law is silent on marital rape. <sup>3</sup>At one point in time in Virginia, a person could not be found guilty of raping a spouse, unless they were living separate and apart or defendant caused bodily injury to the spouse by the use of force or violence. In Virginia this is referred to as the “Marital Rape Exemption”.
- Yes, marital rape is covered in the general provisions and or by legal precedent even if it is not explicitly included.
- No, marital rape is excluded in the provisions and yes it is now considered a crime in Virginia.

<sup>3</sup> Thematic report on rape as a grave and systematic human rights violation and a form of gender-based violence against women. (n.d.). Retrieved November 09, 2020, from <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRVAVW.aspx>

While there aren't any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship, have a sexual relationship, and or had a sexual relationship. The age at which a person in Virginia can legally consent to sexual intercourse is 18; however, take into consideration that it is not unusual for teenagers to engage in consensual sexual intercourse with one another. While there are provisions that differentiate for sexual activity between peers in which states such as Virginia have criminalized sexual contact or intercourse under certain ages as “statutory rape”; in which statutory rape applies even if the victim agrees to the sexual activity.<sup>4</sup> Under these laws, the victim is presumed to lack the capacity to consent because of their age.

### **Aggravating and Mitigating Circumstances**

- <sup>5</sup> While there are a variety of penalties for rape, taking into consideration the factors that may aggravate the case. While the maximum penalty for a rape conviction in Virginia is a life sentence in addition to actual sentence to serve while the judge may impose a suspended sentence of no less than 40 years in prison.
  - Yes, rape by more than one perpetrator is an aggravating circumstance. ○ Yes, rape of

a particularly vulnerable individual and or the imbalance of power between alleged perpetrator and victims an aggravating circumstance.

- Yes, rape by spouse or intimate partner an aggravating circumstance.
- No, the law does not foresee mitigating circumstances for the purpose of punishment. ● No, there is not reconciliation between the victim and the perpetrator allowed as part of a legal response.
- No, there is not any provisions in the Criminal Code that allows for the non-prosecution of perpetrator
  - No, if the perpetrator marries the victim of rape
  - No, if the perpetrator loses his “socially dangerous” character or reconciles with the victim.

### **Prosecution**

<sup>4</sup> Kornblum, D. (2020, September 16). In Peer-on-peer Child Sexual Abuse, States Differ on Who's a Peer. Retrieved November 09, 2020, from <https://jjie.org/2020/08/13/in-peer-on-peer-child-sexual-abuse-states-differ-on-whos-a-peer/>

<sup>5</sup> Virginia Rape Lawyer: Sex Crimes: Sexual Assault & Battery. (2016, May 02). Retrieved November 09, 2020, from <https://virginialawfirm.net/virginia-rape-lawyer.html>

- No, rape is not reported to the police prosecuted ex officio (public prosecution) ● Yes, rape is reported to the police prosecuted ex parte (private prosecution) ● No, there aren't any plea bargain or “friendly settlement” of a case allowed against rape of women.
- No, there aren't any plea bargain or “friendly settlement” of a case allowed in cases of rape of children.
- Virginia has established time limits that are placed for how soon after an arrest a prosecutor must file formal criminal charges. Virginia does not have a statute of limitations for most felonies, including rape, aggravated assault and battery, murder, burglary, kidnapping, manslaughter, and robbery.
- No, there are no provisions allowing children who were victims as a child to report after reaching adulthood.
- Yes, there are mandatory requirements for proof of rape in Virginia such as proof of force and sperm.
- No, there aren't any rape shield provisions aimed at preventing judges and defense lawyers from exposing a women's sexual history during trial.
- No, there aren't any procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings.

### **War and / or Conflict**

- Yes, in Virginia rape is criminalized as a war crime or crime against humanity. ● No, there is not a statute of limitation for prosecuting rape in war or in conflict contexts. ● No, there is not an explicit provisions excluding statutes of limitations for rape committed during war and armed conflict.
- No, the United States refuses to join the ICC because it lacks prudent safeguards against political manipulation, possesses sweeping authority without accountability to the U.N.

### **Data**

Within the #MeToo Era, many survivors of sexual assault felt more empowered to come forward with their stories.<sup>6</sup> In 2018, less than 20% of all rape cases in the commonwealth were cleared by arrest according to analysis of Virginia State Police Data.

- The Virginia State Police Compile Date of Sex Offenses other than rapes. In 2018, there were
  - 2,831 cases of “forcible fondling”; 21% offenses were cleared by arrest
  - 531 cases of “sexual assault with an object”; 25% of them were cleared
  - 623 cases of “forcible sodomy”; 28% of them were cleared
  - 130 cases of statutory rape; 39% of them were cleared
- Overall, 5,994 sex-related offenses were reported to police in Virginia last year and out of that 1,309 cases (22%) were cleared by arrest.

### **Other**

*Virginia Law 18.2-90 -- Entering Dwelling House, etc., with Intent to commit murder, RAPE, robbery or arson; penalty -- If any person in the nighttime enters without breaking or in the daytime breaks and enters or enters and conceals himself in a dwelling house or an adjoining, occupied or in the nighttime enters without breaking or at any time breaks and enters or enters and conceals himself in any building permanently affixed to realty, or any ship, vessel, or river craft or any railroad car, or any automobile, truck or trailer, if such automobile, truck or trailer is used as a dwelling or place of human habitation, which intent to commit murder, rape, robbery, or arson in violation of 18.2-77, 18.2-79 or 18.2-80, he shall be deemed guilty of statutory burglary, which offense shall be a Class 3 Felony. However, if such a person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 Felony. (Alexander, C. )*

<sup>6</sup>December 9, 2., Ancheta, D., Ugino, O., Eason, H., Press, A., & Newsroom, N. (2019, December 10). Rape cases in Virginia often go unsolved. Retrieved November 09, 2020, from <https://www.nbc12.com/2019/12/10/rape-cases-virginia-often-go-unsolved/>

# WASHINGTON STATE

Melody Mansourkia

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

**According to Washington State Legislature, Section 9A.44.040 RCW, the term Rape, in the first degree is defined as the following:**

- (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:
  - (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
  - (b) Kidnaps the victim; or
  - (c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
  - (d) Feloniously enters into the building or vehicle where the victim is situated.
- (2) Rape in the first degree is a class A felony.

**Continuation of Question 1. Rape in the Second Degree,<sup>256</sup> Section 9A.44.050**

- (1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:
  - (a) By forcible compulsion;
  - (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
  - (c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:
    - (i) Has supervisory authority over the victim; or
    - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

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<sup>256</sup> RCW 9A.44.040: *Rape in the First Degree.*, [app.leg.wa.gov/RCW/default.aspx?cite=9A.44.040](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.44.040). RCW 9A.44.050: *Rape in the Second Degree.*, [app.leg.wa.gov/RCW/default.aspx?cite=9A.44.050](http://app.leg.wa.gov/RCW/default.aspx?cite=9A.44.050).

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2) Rape in the second degree is a class A felony.

### **Continuation of Question 1. Rape in the Third Degree**

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

(a) Where the victim did not consent as defined in \*RCW [9A.44.010](#)(7), to sexual intercourse with the perpetrator; or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony.

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## **2. Based on the wording of those provisions, is the provided definition of rape:**

2a. Gender Specific, Covering Women Only (**NO**)

2b. Gender neutral, covering all persons (**YES**)

2c. Based on the lack of consent of victim (**YES**)

2d. Based on the use of force or threat (**YES**)

2e. Some combination of the above (**YES**)

2f. Does it cover only vaginal rape? (**NO**)

2g. Does it cover all forms of penetration? (**YES**), the statute defines “sexual intercourse” (described as anal, oral, or vaginal by a penis, tongue, finger or inanimate object).

2h. Is marital rape in this provision explicitly included? (**NO**)

2i. Is the law silent on marital rape? (**YES**)

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<sup>257</sup>RCW 9A.44.060: *Rape in the Third Degree.*, app.leg.wa.gov/RCW/default.aspx?cite=9A.44.060.

2j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **(NO)**

2k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **(YES)**<sup>258</sup>

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it. **(NO)**

4. **What is the legal age for sexual consent?** Sections of [Chapter 9A.44 RCW](#) describe when a person having sex or sexual contact can be prosecuted based on the ages of the people involved. Age is just one of many factors involved in consent.

Washington State will not prosecute you based on age if you have sex with:

- Someone **16 and over** ([Chapter 9A.44 RCW](#)).
- Someone **14-15** if you are less than 4 years older ([RCW 9A.44.79](#)).
- Someone **12-13** if you are less than 3 years older ([RCW 9A.44.76](#))
- Someone **under 12** if you are less than 2 years older ([RCW 9A.44.073](#))

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them. **(NO)**

6. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

The penalties include for Rape in the First and Second Degree to be a Class A Felony, which is deemed punishable up to life in prison and or a \$50,000 fine. Rape, in the Third Degree would be categorized as a Class C Felony, which is then punishable by up to 5 years in prison and or a \$10,000 fine.<sup>259</sup>

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<sup>258</sup> “Washington Rape and Sexual Assault Laws.” *Findlaw*, 23 Dec. 2019, [statelaws.findlaw.com/washington-law/washington-rape-and-sexual-assault-laws.html](http://statelaws.findlaw.com/washington-law/washington-rape-and-sexual-assault-laws.html). *State Laws Related to Family Planning and Sexual Health*, [www.doh.wa.gov/YouandYourFamily/SexualandReproductiveHealth/StateLaws](http://www.doh.wa.gov/YouandYourFamily/SexualandReproductiveHealth/StateLaws).

<sup>259</sup> “Washington Rape and Sexual Assault Laws.” *Findlaw*, 23 Dec. 2019, [statelaws.findlaw.com/washington-law/washington-rape-and-sexual-assault-laws.html](http://statelaws.findlaw.com/washington-law/washington-rape-and-sexual-assault-laws.html).

- 7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?** Currently, there is no legislation that specifically pertains to just rape victims and conviction of their perpetrator(s).
- 8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they? (NO),** it is not specified anywhere in the state laws.
- 8a.** Is rape by more than one perpetrator an aggravating circumstance? **(NO), it is not specified in anywhere in the state laws.**
- 8b.** Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **(YES)**
- 8c.** Is rape by spouse or intimate partner an aggravating circumstance? **(NO)**
- 9.** Does the law foresee mitigating circumstances for the purposes of punishment? **(NO)**
- 10.** Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **(NO)**
- 10a.** Regardless of the law, is reconciliation permitted in practice? **(NO)**
- 11.** Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **YES,** Washington law, currently states that Rape shall not be prosecuted.<sup>260</sup>
- 11a.** if the perpetrator marries the victim of rape? **(NO)**
- 11b.** if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **(NO)**
- 12.** Is rape reported to the police prosecuted ex officio (public prosecution)? **(YES)**
- 13.** Is rape reported to the police prosecuted ex parte (private prosecution)? **(YES)**
- 14.** Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **(NO)**
- 15.** Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **(NO)**
- 16.** Please provide information on the statute of limitations for prosecuting rape. vii)  
Rape in the first degree (RCW [9A.44.040](#)) if the victim is under the age of sixteen;  
(viii) Rape in the second degree (RCW [9A.44.050](#)) if the victim is under the age of sixteen;<sup>261</sup>
- 17.** Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **(NO)**<sup>262</sup>

<sup>260</sup> RCW 9.94A.411(2) discourages the use of diversion in prosecutions for rape, child molestation, and incest. Although not absolutely prohibiting diversion in these cases, the Legislature has indicated that pre-filing counseling is not a substitute for criminal prosecution. <https://www.courts.wa.gov/content/manuals/domViol/chapter7.pdf>

<sup>261</sup> *Seattle Legislature and Statutes*, [app.leg.wa.gov/rcw/default.aspx?cite=9A.04.080](http://app.leg.wa.gov/rcw/default.aspx?cite=9A.04.080).

<sup>262</sup> *Seattle Legislature and Statutes*, [app.leg.wa.gov/rcw/default.aspx?cite=9A.04.080](http://app.leg.wa.gov/rcw/default.aspx?cite=9A.04.080).

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? **(NO)**<sup>263</sup>
19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? **(YES)**

Washington's rape shield law (RCW 9A.44.020) permits a defendant to present evidence of the victim's past sexual behavior only "on the issue of consent to the offense" and only in two situations: (1) "when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense." 35 (2) With respect to charges of rape, attempted rape or assault with the intent to commit rape, the rape shield law provides: ...evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards ... is admissible on the issue of consent only pursuant to the following procedure: (a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim. (b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.<sup>264</sup>

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? **(NO)**
21. Is rape criminalized as a war crime or crime against humanity? **(NO)**
22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **(NO)**
23. Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? **(NO)**
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **(NO)**
25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

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<sup>263</sup> "Getting Medical Care After a Sexual Assault." *Getting Medical Care After a Sexual Assault - Police*, [www.seattle.gov/police/need-help/sexual-assault/getting-medical-care](http://www.seattle.gov/police/need-help/sexual-assault/getting-medical-care).

<sup>264</sup> *Chapter 3 Defenses to Sexual Offenses*, [www.courts.wa.gov/content/manuals/SexualOffense/chapter3.pdf](http://www.courts.wa.gov/content/manuals/SexualOffense/chapter3.pdf).



# ALASKA

Victoria Archampong

**The state has criminal provisions for sexual offenses in varying degrees. The criminal law provision for sexual assault in the first degree is as follows:**

Title 11. Criminal Law

Chapter 41. Offenses Against the Person

Article 4. Sexual Offenses.

AS 11.41.410. Sexual assault in the first degree.

(a) An offender commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state; or

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

**Based on the wording of those provisions, is the provided definition of rape:**

Gender-specific, covering women only: **NO**

Gender-neutral, covering all persons: **YES**

Based on the lack of consent of the victim: **YES**

Based on the use of force or threat: **YES**

Some combination of the above: **YES**

Does it cover only vaginal rape? **NO**

Does it cover all forms of penetration? **YES**

- The law refers only to 'sexual penetration' which covers all forms of penetration

Is marital rape in this provision explicitly included? **NO**

Is the law silent on marital rape? **YES**

Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**

Is marital rape excluded in the provisions, or is marital rape not considered a crime?

- A spousal relationship cannot be used as a defense for sexual assault according to AS 11.41.432. of Alaska criminal law.

- o “in a prosecution under AS 11.41.410 — 11.41.427, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.”

**Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?**

No, there not any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together, are in a sexual relationship/have a sexual relationship/had a sexual relationship.

**What is the legal age for sexual consent?**

The age of consent in Alaska is determined by legislation pertaining to the sexual abuse of a minor. According to these laws [AS § 11.41.434.], the legal age of consent in Alaska is 16 years old.

**Are there provisions that differentiate for sexual activity between peers?**

Provisions pertaining to sexual activity between minors is constituted under laws pertaining to the sexual abuse of minors:

AS 11.41.434. Sexual abuse of a minor in the first degree.

- (a) An offender commits the crime of sexual abuse of a minor in the first degree if
  - (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;
  - (2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or
  - (3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and
    - (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim;
    - or
    - (B) the offender occupies a position of authority in relation to the victim.
- (b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

AS 11.41.436. Sexual abuse of a minor in the second degree.

- (a) An offender commits the crime of sexual abuse of a minor in the second degree if,
  - (1) being 17 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least four years younger than the offender to engage in sexual penetration with another person;

**Provide information on criminal sanctions prescribed and the length/duration of such criminal sanctions for criminalized forms of rape.**

Sexual assault in the first degree is categorized as an undisclosed felony according to Alaska criminal law and is penalized as follows:

AS 12.55.125 Sentences of imprisonment for felonies

- (i) A defendant convicted of
  - (1) sexual assault in the first degree, sexual abuse of a minor in the first degree, unlawful exploitation of a minor under AS 11.41.455(c)(2), or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term

within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

- (i) less than 13 years of age, 25 to 35 years;
- (ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

**What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after the conviction of the perpetrator?**

Alaska state law does not consider reparations to victims of sexual violence after conviction of the perpetrator.

**Aggravating and mitigating circumstances**

Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

Is rape by more than one perpetrator an aggravating circumstance? **NO**

Is the rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) **YES**

- Health care workers can face charges for sexual assault in the first degree for sexual penetration without the victim's consent during professional treatment
- Any person over the age of 18 years old can face charges for sexual abuse of a minor in the first degree for the sexual penetration of a minor under the age of 16 whom they hold a position of authority over

Is rape by a spouse or intimate partner an aggravating circumstance? **NO**

Does the law foresee mitigating circumstances for the purposes of punishment? **YES/NO**

Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences?

Regardless of the law, is reconciliation permitted in practice? **YES/NO** and what is the practice in this regard?

- Reconciliation is not permitted in practice.

Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator?

**YES/NO** If yes, please specify.

If the perpetrator marries the victim of rape? **NO**

If the perpetrator loses his "socially dangerous" character or reconciles with the victim? **NO**

**Prosecution**

Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**

Is rape reported to the police prosecuted ex parte (private prosecution)? **NO**

Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES**

Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **YES**

Please provide information on the statute of limitations for prosecuting rape.

AS 12.10.010. General time limitations.

(a) **Prosecution for the following offenses may be commenced at any time:**

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering the prosecution of murder;

(3) **felony sexual abuse of a minor;**

(4) **sexual assault that is an unclassified, class A, or class B felony or a violation** of AS 11.41.425(a)(2) — (4);

(5) a violation of AS 11.41.425, 11.41.427, 11.41.450 — 11.41.458, AS 11.66.110 — 11.66.130, or former AS 11.41.430, when committed against a person who, at the time of the offense, was under 18 years of age;

(6) kidnapping;

(7) **distribution of child pornography** in violation of AS 11.61.125;

(8) **sex trafficking** in violation of AS 11.66.110 — 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) **human trafficking** in violation of AS 11.41.360 or 11.41.365.

Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? **YES**

Are there mandatory requirements for proof of rape, such medical evidence or the need for witnesses? **NO**

Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO

Are there procedural criminal law provisions aimed to avoid re-victimization during the prosecution and court hearings? **NO**

### **War and/or conflict**

Is rape criminalized as a war crime or a crime against humanity? **YES**

Is there a statute of limitations for prosecuting rape in war or in conflict contexts? **NO**

Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

Has the Rome Statute of the International Criminal Court (ICC) been ratified? **NO**

### **Data**

Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

#### **Felony Level Sex Offences**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Total Number of Incidents*</b>	1352	1542	1475	1762	1574
<b>Number of Victims Reported</b>	648	1181	1498	1850	1645

<b>Number of Suspects Reported</b>	691	1007	1455	1789	1641
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\*Not a sum of victims reported and suspects reported