

SUMMARY OF SPOUSAL RAPE LAWS

State	Silent	Method for Abolishing Exemption			Marital Exemption for...
		Marital Exemption	Marriage Excluded as Defense	Separate Statute Developed	
ALABAMA		X ¹			1 st , 2 nd degree sodomy (§§ 13A-6-63, 13A-6-64); Sexual misconduct (§ 13A-6-65); 1 st degree sexual abuse (§ 13A-6-66)
ALASKA		X	X ²		<ul style="list-style-type: none"> • 1st or 2nd degree sexual assault where the offender engages in sexual penetration with another person the offender knows is mentally incapable and who is in the offender's care by authority of law or in a facility or program that is required by law to be licensed by the state. (§§ 11.41.410 & 11.41.420) • 2nd degree sexual assault where the offender engages in sexual penetration with a person the offender knows is mentally incapable, incapacitation, or unaware that a sexual act is being committed. (§ 11.41.420) • 3rd degree sexual assault (§ 11.41.425)
ARIZONA		X ³	X ⁴		Sexual abuse (§ 13-1404); Sexual conduct with a minor (§ 13-1405)
ARKANSAS		X			Sexual assault in the: <ul style="list-style-type: none"> • 1st and 3rd degrees (§§ 5-14-124, 5-14-126) • 2nd degree where an offender eighteen (18) years of age or older engages in sexual contact with another person who is less than fourteen (14) years of age, or an offender being a minor engages in sexual contact with another person who is less than fourteen (14) years of age (§ 5-14-125) • 4th degree where an offender twenty (20) years of age or older engages in sexual intercourse, deviate sexual activity, or sexual contact with another person who is less than sixteen (16) years of age, or where the offender is employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or a city or county jail (§5-14-127)

¹ Ala. Code 1975 § 13A-6-60 provides a marital exemption for all crimes involving “deviate sexual intercourse” and “sexual contact.”

² AS § 11.41.432 – It is no defense to prosecution under AS 11.41.410 or 11.41.420 except for those situations stated in the “Marital Exemption for...” column.

³ Ariz. Rev. Stat. § 13-1407(D). It is a defense to a prosecution pursuant to § 13-1404 or 13-1405 that the person was the spouse of the other person at the time of commission of the act.

⁴ Ariz. Rev. Stat. § 13-1407(D). It is not a defense to a prosecution pursuant to § 13-1406 that the defendant was the spouse of the victim at the time of commission of the act.

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CALIFORNIA		?	X	X	<p>§ 262. Rape of a spouse; elements; conditions of probation; fines, payments, or restitution (a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances: (1) 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. (2) 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. (3) 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 one of the following conditions: (A) Was unconscious or asleep. (B) Was not aware, knowing, perceiving, or cognizant that the act occurred. (C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact. (4) 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. (5) 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.</p>
COLORADO		X	X	X ⁵	Sexual assault where victim under 15, actor at least 4 years older (§ 18-3-402); Sexual assault where victim 15-17, actor at least 10 years older (§ 18-3-402); Sexual assault on a child (§ 18-3-405); Sexual assault on a child by one in a position of trust (§ 18-3-405.3)
CONNECTICUT		X	X	X ⁶	Marriage excluded as defense for: 1 st , 2 nd , 3 rd degree sexual assault; Aggravated 1 st degree sexual assault; Sexual assault in spousal or cohabitating relationship (separate statute developed); 3 rd degree sexual assault with a firearm (§ 53a-67) Affirmative defense to all other offenses that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship (§ 53a-67)
DELAWARE		X			4 th degree rape when the person is under 18 and the actor is at least 30 years old (§ 770)

⁵ C.R.S.A. § 18-3-409. Marital defense. Any marital relationship, whether established statutorily, putatively, or by common law, between an actor and a victim shall not be a defense to any offense under this part 4 unless such defense is specifically set forth in the applicable statutory section by having the elements of the offense specifically exclude a spouse.

⁶ Conn. Stat. Ann. § 53a-70(b). No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.

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D.C.		X	X	X ⁷	1 st degree child sexual abuse & misdemeanor sexual abuse of a child or minor either alone or in conjunction with charge of attempt to commit sexual offenses (§ 22-3011) 1 st , 2 nd degree sexual abuse of a ward; (§22-3017) 1 st , 2 nd degree sexual abuse of a patient or client (§22-3017)
FLORIDA	X				
GEORGIA	X				
HAWAII		X			Sexual assault in the 1 st and 3 rd degrees where there is sexual intercourse or contact between a person who is at least fourteen years old but less than sixteen years old and an actor not less than five years older than the minor (§§ 707-730 & 707-732)
IDAHO		X	X	X	§ 18-6107. Rape of spouse; § 18-61-01 No person shall be convicted of rape for any act or acts with that person's spouse, except where she resists but her resistance is overcome by force or violence, or where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.
ILLINOIS	X				
INDIANA	X				
IOWA		X	X		Marriage (and cohabitation) is excluded as defense to 3 rd degree sexual abuse where the act is done by force or against the will of the other person (§ 709.4); Marriage is a defense to all other acts of 3 rd degree sexual abuse (§ 709.4)
KANSAS		X			Sexual intercourse with a child who is under 14 years of age (§ 21-3502); Indecent and aggravated indecent liberties with a child involving any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both (§§ 21-3503 & 21-3504); Aggravated indecent liberties with a child involving sexual intercourse with a child who is 14 or more years of age but less than 16 years of age (§ 21-3504); Sodomy with a child who is 14 or more years of age but less than 16 years of age (§ 21-3505); Aggravated criminal sodomy with a child who is under 14 years of age (§21-3506); Sexual battery (§21-3517)
KENTUCKY		X			510.035 No offense committed if parties married to each other A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or mentally retarded.
LOUISIANA	X				

⁷ DC ST § 22-3019. No actor is immune from prosecution under any section of this subchapter because of marriage, domestic partnership, or cohabitation with the victim; provided, that marriage or the domestic partnership of the parties may be asserted as an affirmative defense in prosecution under this subchapter where it is expressly so provided.

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MAINE ⁸		X			<ul style="list-style-type: none"> • Gross sexual assault⁹ (§ 253); • Sexual abuse of minors¹⁰ (§ 254); • Unlawful sexual contact¹¹ (§ 255-A) where victim under 14, actor at least 3 years older; victim under 12, actor at least 3 years older; victim under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person; victim under 18 and student, actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student victim under 18 and student, actor at least 21 is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. • Visual sexual aggression against child (§ 256); • Sexual misconduct with a child under 14 years of age (§ 258) • Unlawful sexual touching where victim under 14, actor at least 5 years older; victim under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person; victim under 18 and student, actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student; victim under 18 and student, actor at least 21 is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled (§ 260)
MARYLAND		X	X	X ¹²	1 st or 2 nd degree rape, 3 rd or 4 th degree sexual abuse degree unless the parties were separated or force/threat of force was used (§ 3-318)
MASSACHUSETTS	X				

⁸ 17-A M.R.S.A. § 251 defines “spouse” as a person legally married to the actor, but does not include a legally married person living apart from the actor under a defacto separation.

⁹ Where victim has not attained either 12 or 14 years of age; where victim under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, actor has supervisory or disciplinary authority over the other person; where victim under 18 is a student, actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student; and where victim under 18 is a resident in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person.

¹⁰ Where victim 14-15, actor at least 5 years older; victim 16-17 and student, actor at least 21 is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled; or Victim 14-15, actor least 10 years older (§ 254).

¹¹ All crimes include situations with or without penetration. (§ 255-A).

¹² M.D. Code, Criminal Law, § 3-318(a) states that except as provided in subsections (b) and (c), a person may not be prosecuted for 1st or 2nd degree rape or 3rd or 4th degree sexual offense for a crime against a victim who was the person's legal spouse at the time of the alleged rape or sexual offense.

marriage is not a defense to rape in the first degree, rape in the second degree when accomplished through force, or sexual offense in the third degree when accomplished without consent and with a dangerous weapon, while inflicting serious physical injury on the victim or another, threatening with imminent death or serious physical injury or kidnapping, or when the crime is committed while aided and abetted by another.

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MICHIGAN		X	X	X	750.520l. Offenses involving spouses A person may be charged and convicted under sections 520b to 520g even though the victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16, mentally incapable, or mentally incapacitated.
MINNESOTA		X	X	X ¹³	<ul style="list-style-type: none"> • 1st or 2nd degree criminal sexual conduct where victim under 13, actor more than 36 months older; or victim 13-16, actor more than 48 months older and in position of authority (§§ 609.342, 609.343) • 3rd and 4th degree criminal sexual conduct where victim under 13, actor is no more than 36 months older; victim 13-16, actor more than 24 months older; actor knows or has reason to know victim is mentally impaired/incapacitated or physically helpless; victim 16-18, actor more than 48 months older and in position of authority; or actor provides or is agent of entity that provides special transportation service, victim used service, and penetration occurred during or immediately before/after actor transported victim (§§ 609.344, 609.345)
MISSISSIPPI		X	X	X ¹⁴	Sexual battery, sex between law-enforcement official and offender, and hazing unless engaged in forcible penetration without consent of victim (§ 97-3-99)
MISSOURI		X		X ¹⁵	Statutory rape in the first degree; second degree; statutory sodomy in the first degree; second degree; child molestation in the second degree; sexual misconduct in the first degree (§ 566.023)
MONTANA		X			Sexual intercourse without consent (§ 45-5-503) where victim is on probation or parole and offender is a probation or parole officer of a supervising authority; victim is patient in/resident of facility, is recipient of community-based services, or is receiving services from youth care facility and offender is employee, contractor, or volunteer of the facility or community-based service; where relationship is the basis for lack of consent (§ 45-5-501)
NEBRASKA		X			Sexual abuse of an inmate or parolee where offender is individual to whom Department of Correctional Services or the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities (§ 28-322)
NEVADA			X	X	200.373. Sexual assault of spouse by spouse It is no defense to a charge of sexual assault that the perpetrator was, at the time of the assault, married to the victim, if the assault was committed by force or by the threat of force.
NEW HAMPSHIRE			X	X	632-A:5 Spouse as Victim; Evidence of Husband and Wife. An actor commits a crime under this chapter even though the victim is the actor's legal spouse.

¹³ M.S.A. § 609.349. A person does not commit criminal sexual conduct under sections 609.342, clauses (a) and (b), 609.343, clauses (a) and (b), 609.344, clauses (a), (b), (d), (e), and (n), and 609.345, clauses (a), (b), (d), (e), and (n), if the actor and complainant were adults cohabiting in an ongoing voluntary sexual relationship at the time of the alleged offense, or if the complainant is the actor's legal spouse, unless the couple is living apart and one of them has filed for legal separation or dissolution of the marriage. Nothing in this section shall be construed to prohibit or restrain the prosecution for any other offense committed by one legal spouse against the other.

¹⁴ Miss. Code Ann. § 97-3-99. A person is not guilty of [sexual battery, sex between law-enforcement official and offender, or hazing] if the alleged victim is that person's legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

¹⁵ V.A.M.S. 566.023. It shall be an affirmative defense to prosecutions pursuant to sections 566.032, 566.034, 566.062, 566.064, 566.068, and 566.090 that the defendant was married to the victim at the time of the offense.

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NEW JERSEY			X		2C:14-5. Provisions generally applicable to Chapter 14 [Sexual Offenses] b. No actor shall be presumed to be incapable of committing a crime under this chapter because of age or impotency or marriage to the victim.
NEW MEXICO ¹⁶		X			4 th degree criminal sexual penetration (§ 30-9-11); 4 th degree criminal sexual contact of a minor where minor 13-18, actor at least 18 and at least 4 years older than minor is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer (§ 30-9-13)
NEW YORK		X			Any prosecution based solely on victim's incapacity to consent because he or she was under 17, mentally disabled, or a client/patient and actor is health care provider (§ 130.10)
NORTH CAROLINA			X	X	§ 14-27.8. No defense that victim is spouse of person committing act A person may be prosecuted under this Article whether or not the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense.
NORTH DAKOTA	X				
OHIO ¹⁷		X	X		Rape unless living separate and apart from each other or offender causes or offender causes son to submit by force or threat of force (§ 2907.02); Sexual battery (§ 2907.03); Unlawful sexual conduct with a minor where victim 13-16 (§ 2907.04); Gross sexual imposition (§ 2907.05); Sexual imposition (§2907.06)
OKLAHOMA		X	X		Rape unless force or violence is used or threatened (§ 1111)
OREGON	X				
PENNSYLVANIA		X			Statutory sexual assault (§ 3122.1)
RHODE ISLAND ¹⁸		X ¹⁹			1 st degree sexual assault where victim is mentally incapacitated/disabled, or physically helpless (§ 11-37-2)
SOUTH CAROLINA		X	X ²⁰	X ²¹	1 st or 2 nd degree criminal sexual conduct unless living apart; 3 rd degree criminal sexual conduct; criminal sexual conduct with a minor; assaults with intent to commit criminal sexual conduct (§ 16-3-658) ²²

¹⁶ N.M.S.A. 1978, § 30-9-10 defines "spouse" as a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.

¹⁷ R.C. § 2907.01 defines "spouse" as a person married to the offender, except that person shall not be considered the spouse: (1) when the parties have entered into a written separation agreement authorized by § 3103.06; (2) during the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation; or (3) in the case of an action for legal separation, after the effective date of the judgment for legal separation.

¹⁸ Gen. Laws 1956, § 11-37-1 defines "spouse" as a person married to the accused at the time of the alleged sexual assault, except that such persons shall not be considered the spouse if the couple are living apart and a decision for divorce has been granted, whether or not a final decree has been entered.

¹⁹ Gen. Laws 1956, 11-37-1 states that "spouse" means a "person married to the accused at the time of the alleged sexual assault, except that such persons shall not be considered the spouse if the couple are living apart and a decision for divorce has been granted, whether or not a final decree has been entered."

²⁰ Code 1976 § 16-3-615. Spousal sexual battery.

²¹ Code 1976 § 16-3-658. Criminal sexual conduct: where victim is spouse.

²² Note that under §§ 16-3-615 and 16-3-658, the conduct must be reported to appropriate law enforcement authorities within thirty days in order for that spouse to be prosecuted. Both statutes are not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

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SOUTH DAKOTA			X		§ 39-13-501. Definitions (8) "Victim" means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.
TENNESSEE	X				
TEXAS		X			Sexual assault where victim is child who consented or, where victim is adult, where the actor is an employee of a facility where the other person is a resident (§ 22.011); Indecency With a Child (§ 21.11); Improper Relationship Between Educator and Student (§ 21.12); Improper Sexual Activity With Person in Custody where actor is an employee of the Texas Department of Criminal Justice, the Texas Youth Commission, or a local juvenile probation department and victim is under the supervision, but not in custody of, the department, commission, or probation department (§ 39.04)
UTAH			X		§ 76-5-402. Rape (2) This section applies whether or not the actor is married to the victim.
VERMONT		X			Sexual assault where victim under 16 and act is consensual (§ 3252)
VIRGINIA			X		Rape (§ 18.2-61); Forcible sodomy (§ 18.2-67.1) Object sexual penetration; penalty (§ 18.2-67.2)
WASHINGTON		X			2 nd degree rape when victim is resident of facility for persons with mental disorder/ chemical dependency and perpetrator has supervisory authority over the victim (§ 9A.44.050); 3 rd degree rape (§9A.44.060); 1 st , 2 nd , 3 rd degree rape of a child (§§ 9A.44.073 - 9A.44.079); 1 st , 2 nd , 3 rd degree child molestation (§§ 9A.44.083 - 9A.44.089); 1 st , 2 nd degree sexual misconduct with a minor (§§9A.44.093, 9A.44.096); Indecent liberties (§9A.44.100)
WEST VIRGINIA ²³		X ²⁴			1 st degree sexual assault where victim under 12, offender over 14 (§ 61-8B-3); 3 rd degree sexual assault where victim under 16 and at least 4 years younger than offender, offender over 16 (§ 61-8B-5) 1 st , 2 nd , 3 rd sexual abuse (§§ 61-8B-7 – 61-8B-9)
WISCONSIN			X		940.225. Sexual assault (6) Marriage not a bar to prosecution. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.
WYOMING			X		§ 6-2-307. Evidence of marriage as defense (a) The fact that the actor and the victim are married to each other is not by itself a defense to a violation of W.S. 6-2-302(a)(i), (ii) or (iii) [1 st degree sexual assault] or 6-2-303(a)(i), (ii), (iii), (vi) or (vii) [2 nd degree sexual assault]

²³ W. Va. Code § 61-8B-1 defines "married" to include persons living together as husband and wife regardless of the legal status of their relationship.

²⁴ W. Va. Code § 61-8B-1 defines "sexual contact" as any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

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FEDERAL		X			Sexual abuse of a minor or ward (18 U.S.C.A. 2243)
UCMJ ²⁵		X			Aggravated sexual assault where victim is substantially incapacitated or substantially incapable of appraising the nature of, declining participation in, or communicating unwillingness to engage in the sexual act; Aggravated sexual assault of a child; Aggravated sexual abuse of a child; Abusive sexual contact with a child; Indecent liberty with a child Wrongful sexual contact; Indecent exposure; UNLESS accused's intent is to abuse, humiliate, or degrade any person.

²⁵ 10 U.S.C.A. § 920 Art. 120 defines marriage as a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.