

How is Spousal Rape Treated?

State	Treated the same as rape of other victims	Time Limit for Reporting Incident	Must be Force/Threat of Force	Must be Divorce in Progress, Separate Living, or Court Order	Difference Applies to Cohabitors	Prosecution Limited to Certain Offenses. Cannot be charged with...	Punishment and Sentencing Disparity for States with Separate Marital Rape Statutes
ALABAMA						Sodomy, sexual abuse ¹	
ALASKA						3 rd degree sexual assault	
ARIZONA			✓				Class 6 felony: up to 3 years, eligible for Class 1 misdemeanor with mandatory counseling; 2 nd offense Class 2 felony (A.R.S. § 13-1406.01)
ARKANSAS						1 st , 3 rd , and 4 th degree sexual assault	
CALIFORNIA		1 year ²					If marital rape committed by force, still probation eligible
COLORADO	✓						
CONNECTICUT			✓		✓		Class B felony; same as non MR
DELAWARE						4 th degree rape ³	
D.C.	✓				✓		
FLORIDA	✓						
GEORGIA	✓						
HAWAII	✓						
IDAHO			✓				
ILLINOIS		30 days ⁴					
INDIANA	✓						

¹ *Alabama Code § 13A-6-60* states that “deviate sexual intercourse” and “sexual contact” occur “between persons not married to each other.”

² *California Penal Code § 262* states that rape must be reported within 1 year to medical personnel, a member of the clergy, an attorney, a shelter representative, a counselor, a judicial officer, a rape crisis agency, a prosecuting agency, a law enforcement officer, or a firefighter. If independent evidence corroborates the victim’s statements, the reporting requirement does not apply.

³ Section (a)(2) of 11 Del. C. § 770 states that intentionally engaging in “intercourse shall not be unlawful if the victim and person are married at the time of such intercourse” when the victim has not yet reached his or her 18th birthday and the actor is 30 years or older.

⁴ Section (c) of 720 ICLS 5/12-18 states that prosecution of a spouse for criminal sexual assault, aggravated sexual assault, criminal sexual abuse, and aggravated criminal sexual abuse are “barred unless the victim reported such offense to a law enforcement agency or the State’s Attorney’s officer within 30 days after the offense was committed, except when the court finds good cause for the delay.”

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IOWA					✓	1 st and 2 nd degrees of sexual abuse	Class C felony; 1 st degree is Class A; 2 nd degree is Class B
KANSAS						Sexual battery	
KENTUCKY	✓ ⁵						
LOUISIANA	✓			✓ ⁶		Simple rape, sexual battery	
MAINE	✓ ⁷						
MARYLAND			✓ ⁸	✓			
MASSACHUSETTS	✓						
MICHIGAN							
MINNESOTA				✓ ⁹			

⁵ While no mention of spousal rape is made in the actual rape statutes, K.R.S. 510.035 states that “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 16 years old or mentally retarded.”

⁶ LA. R.S. § 14: 43.1 states that for simple rape and sexual battery, a person is no longer considered a spouse when “a judgment of separation from bed and board has been rendered, or if the person and the offender are not legally separated but are living separate and apart and the offender knows that a temporary restraining order, preliminary or permanent injunction, or other order of decree has been issued prohibiting or restraining the offender from sexually or physically abusing, intimidating, threatening violence against, or in any way physically interfering with the person.”

⁷ 17-A M.R.S. § 255-A states that marriage is a defense to Unlawful Sexual Contact when “the other person, not the actor’s spouse, is in fact less than 14 years of age and the actor is at least 3 years older” whether or not the sexual contact includes penetration, and when the actor is in position of authority.

⁸ MD. C.L.C.A. § 3-319 states that the following applies only to rape in the 1st and 2nd degrees and sexual offense in the 3rd and 4th degrees. A spouse can only be prosecuted when “at the time of the alleged crime the person and the person’s legal spouse have lived apart, without cohabitation and without interruption under a written separation agreement executed by the person and the spouse; or for at least 3 months immediately before the alleged rape or sexual offense; or the person in committing the crime uses force and the act is without the consent of the spouse” or at the time of the alleged crime the person and the spouse live apart, without cohabitation and without interruption, under a decree of limited divorce.

⁹ Minn. Statute § 609.349 states that “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.”

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MISSISSIPPI			✓	✓ ¹⁰			
MISSOURI							
MONTANA	✓						
NEBRASKA	✓						
NEVADA			✓				
NEW HAMPSHIRE	✓						Equal punishment for marital and non-marital rape
NEW JERSEY	✓						
NEW MEXICO						Penetration when victim is 13-16 and actor is 18 and 4 years older	
NEW YORK	✓						
NORTH CAROLINA	✓						
NORTH DAKOTA	✓						
OHIO			✓	✓		Rape unless separated/sexual battery	
OKLAHOMA			✓ ¹¹				
OREGON	✓						
PENNSYLVANIA	✓						

¹⁰ *Miss. Code* § 9-3-99 states that a spouse is not guilty of sexual battery if the victim is a “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.”

¹¹ *Section B of 21 Okla. Statute 1111* states that “rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another.”

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RHODE ISLAND						1 st degree sexual assault when victim is mentally incapacitated, mentally disabled, or physically helpless	
SOUTH CAROLINA		30 days ¹²	✓			Criminal sexual conduct	Up to 10 years in prison; same level of aggravation for non-marital rape is punishable with up to 30 years in prison
SOUTH DAKOTA	✓						
TENNESSEE			✓ ¹³	✓			Spousal rape: Class C felony for weapon used or resulting injury; equal punishment with non-marital rape if spouses are living apart. Aggravated spousal rape: Class B Spousal Sexual Battery: Class D, unless spouses are living apart (Class E felony); Class B if aggravated; non-marital rape committed with weapon is Class A felony
TEXAS	✓						
UTAH	✓						
VERMONT	✓						
VIRGINIA			✓				Equal punishment of 5 years to life; however, for both marital rape and marital sexual assault, judge may suspend sentence upon completion of counseling or period of probation
WASHINGTON						3 rd degree rape, indecent liberties	

¹² S.C. Code § 16-3-615 states that spousal sexual battery must be reported to the “appropriate law enforcement authorities” within 30 days; spousal sexual battery is not applicable to a “purported marriage entered into by a male under the age of 16 or a female under the age of 14.”

¹³ Spousal rape requires force with a weapon or what is believed to be a weapon, results in serious bodily injury, or involves “spouses living apart and 1 of them has filed for separate maintenance of divorce.” Aggravated spousal rape requires “especially cruel, vile and inhumane” treatment, which either causes serious bodily injury or is committed with a weapon. Spousal sexual battery involves sexual contact coerced with a weapon, results in serious bodily injury, or involves “spouses living apart and 1 of them has filed for separate maintenance or divorce.”

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WEST VIRGINIA							
WISCONSIN	✓						
WYOMING							1 st degree sexual assault when victim is mentally ill, mentally deficient, developmentally disabled