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WOMEN'S RIGHTS LAW REPORTER

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Summer 1980

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<p>ORDERING INFORMATION</p>	<p><i>Rape IV</i> is an extensive state-by-state analysis of the sex offense laws through 1979. <i>Rape IV</i> is the supplement to Bienen, <i>Rape III-National Developments in Rape Reform Legislation</i>, by 6 WOMEN'S RTS. L. REP. 170 (Summer 1980), an article which surveys the national trends in rape reform legislation since 1976. <i>Rape IV</i> is the update of an earlier Women's Rights Law Reporter article, Bienen, <i>Rape II</i>, 2 WOMEN'S RTS. L. REP. 90 (Spring/Summer 1977). Copies of <i>Rape IV</i> can be obtained for \$5.00 from the Women's Rights Law Reporter, 15 Washington St., Newark, N.J. 07102. (201) 648-5320. For orders of 100 or more, the per issue cost is \$4.00.</p>				
<p>AUTHOR INFORMATION</p>	<p>Leigh Bienen is Director of the Special Projects Section of the New Jersey Department of the Public Advocate. Research for this chart was partially supported by the New Jersey Law Enforcement and Planning Agency, Special Projects Grant No. A-C: 10-16-78 (July 1, 1978—October 11, 1979) and Grant No. A-C:10-18-79 (October 12, 1979—November 28, 1980). An earlier version of this chart appeared in H. FIELD & L. BIENEN, JURORS AND RAPE: A STUDY IN PSYCHOLOGY AND LAW (Lexington Books, D.C. Heath & Co.; Copyright 1980, D.C. Heath & Co.). The author would like to thank Commissioner Stanley C. Van Ness and the Department of the Public Advocate for their support. Special thanks are also extended to Camille Trotto, Alba Conte and the editors of the WOMEN'S RTS. L. REP.</p>				

ALABAMA ALA. CODE §§ 13A-6-60 to - 70 (Supp. 1978)

HISTORY

1852 force to overcome resistance necessary element of rape unless female under 10 or had been administered drugs or other substances which produced stupor, imbecility of mind or weakness of body to prevent effectual resistance, life penalty, death for rape of white woman by slave or free Negro, provision against person taking woman unlawfully and against will by menace, duress, or force and compelling her to marry him or another or be defiled; 1876 deleted latter provision, gave jury option to impose death or life upon conviction for rape, impersonation of husband and subsequent carnal knowledge punishable by hard labor for minimum 10 years, but corroboration required; 1897 changed penalty for rape, 10 years to death, proof of actual penetration sufficient to sustain rape indictment when act forcible and against consent; age of consent 14, added carnal knowledge of woman between 10 and 14, punishable by fine of \$5 to \$500 and/or 6 months; males presumed incapable under 16; 1907 ages to 12 and 14, raised minimum fine to \$50; 1923 penalty for carnal knowledge of female over 12 to 2 to 10 years, extended statutory age to 16; 1955 added child molestation and enticing child for immoral purposes; 1977, eff. 1979, repealed 1852 statute except for enticing child for immoral purposes

DERIVATION

PRESENT LAW

Model Penal Code type revision, most prior common law provisions retained

OFFENSES

rape (2 degrees)(includes statutory rape); sodomy(2degrees); sexual misconduct; sexual abuse(2 degrees)

REQUIREMENTS

rape - sexual intercourse, see §§ 13A-6-61(a)(1),(2),(3), -62(a)(1),(2); sodomy - deviate sexual intercourse, § 13A-6-63(a), -64(a); sexual misconduct - either sexual intercourse by male actor upon female victim with proof of non-consent by circumstances of fraud or artifice, § 13A-6-65(a)(1), sexual intercourse by female actor upon non-consenting male victim, § 13A-6-65(a)(2), or consensual deviate sexual intercourse other than sodomy, § 13A-6-65(a)(3); sexual abuse - sexual contact, § 13A-6-66(a), -67(a); lack of consent an element of every offense with exception of § 13A-6-65(a)(3)

STATUTORY STRUCTURE

PRINCIPALS

rape - male actor/female victim; all other offenses - sex-neutral

SPOUSES

express marital exception included in new statutory definitions of "female" as "not married to the actor," § 13A-6-60(4), and in definitions of prohibited acts of deviate sexual intercourse, § 13A-6-60(2), and sexual contact, § 13A-6-60(3); neither termination of marriage nor exception provided for; exception extends to all persons cohabiting regardless of legal relationship, § 13A-6-60(4)

STATUTORY AGE PROVISIONS

AGE OF CONSENT

16, § 13A-6-70; inability to consent depends on actor's and victim's specific ages; 2d degree rape - age disparity of participants, § 13A-6-62(a)(1); actor liable for consenting conduct if over 16 and victim under 16

OFFENSES

rape 1st degree - male over 16 with female under 12, § 13A-6-61(a)(3); rape 2d degree - male over 16 or older with female over 12 and under 16 if male 2 years older than female, § 13A-6-62(a)(1); sodomy 1st degree, sexual abuse 1st degree - person 16 or older with person less than 12, §§ 13A-6-63(a)(3), -66(a)(3); sodomy 2d degree - person over 16 with person over 12 and under 16, § 13A-6-64(a)(1); sexual abuse 2d degree - person over 19 with person over 12 and under 16, § 13A-6-67(a)(2)

EVIDENCE

no statutory provisions limiting admissibility; state common law: bars defendant's use of victim's specific sexual acts with third persons as proof of bad character for chastity, permits defense to introduce victim's general reputation for chastity on issue of probability of consent, does not require corroboration of victim's testimony

DEFENSES

honest mistake as to female's age or mental defect defense to 2d degree rape, § 13A-6-62(a)(3) and factor which can reduce 2d degree sodomy to sexual misconduct, § 13A-6-64(c)

EVIDENCE, DEFENSES AND CROSS REFERENCES

CROSS REFERENCES

incest - § 13A-13-3; consensual homosexual acts - prohibition retained, § 13A-6-65

PENALTIES

TERMS

rape 1st degree, sodomy 1st degree - class A felony, §§ 13A-6-61(b), -63(b); rape 2d degree, sodomy 2d degree, sexual abuse 1st degree - class C felony, §§ 13A-6-62(b), -64(b), -66(b); sexual abuse 2d degree, sexual misconduct - class A misdemeanor, §§ 13A-6-65(b), -67(b)

<p>PENALTIES</p>	<p>class A misdemeanor - up to 1 year and 1 day to 10 years, § 13A-5-6; class C felony - 1 year and 1 day to 10 years, § 13A-5-6; class A misdemeanor - up to 1 year § 13A-5-7</p> <p>finer - class A felony, up to \$20,000, § 13A-5-11(a); class C felony, up to \$5,000, § 13A-5-12(a); death penalty - mandatory in conviction on indictment which stated charge of rape and intentional killing of victim with aggravation, § 13A-5-31(a)(3)</p>
<p>ALASKA</p>	<p>ALASKA STAT. §§ 11.41.410 to .470 (1979)</p>
<p>DERIVATION</p>	<p>HISTORY</p> <p>1899 contained traditional statute prohibiting carnal knowledge of female forcibly against will and carnal abuse of female under 16; life punishment if victim was daughter, sister or under 12; for all other rape, 3 to 20 years; 1951, 1958 penalty structure amended; 1958 punished person over 19 who raped daughter, sister or female under 12 with term of years, offender under 19 who raped daughter, sister or female under 16 with 3 to 20 years, all other rape, 1 to 20 years; 1959 changed age of female from 12 to 16 for offenses involving offender over 16; 1974 made section sex-neutral, added specification for son and brother; 1976 added reform definition of acts constituting offense, retained prior distinctions based upon actor/victim relationship; 1980 defined the offense in terms of sex-neutral sexual assault</p> <p>PRESENT LAW</p> <p>sexual assault reform statute in general criminal code revision enacted 1978 (eff. Jan 1, 1980)</p>
<p>STATUTORY STRUCTURE</p>	<p>OFFENSES</p> <p>sexual assault (3 degrees), §§ 11.41.410, .420, .430; sexual abuse of minor, § 11.41.440</p> <p>REQUIREMENTS</p> <p>1st degree - sexual penetration without consent, § 11.41.410(a)(1); attempted sexual penetration without consent causing serious physical injury, § 11.41.410(a)(2); sexual penetration with criminality defined by age, § 11.41.410(3), relation, § 11.41.410(a)(B), or legal custody, § 11.41.410(a)(4)(A); 2d degree - coerces another person to engage in sexual contact by threat or physical injury to any person, § 11.41.420(a); 3d degree - sexual penetration where victim has mental defect, disorder, or incapacity, § 11.41.430(a); sexual abuse of minor - sexual penetration or sexual contact with offense defined by age, § 11.41.440(a)</p> <p>PRINCIPALS</p> <p>person/person; sex-neutral</p> <p>SPOUSES</p> <p>affirmative defense that victim was defendant's legal spouse; marriage not defined; defense unavailable if spouses living apart, or if defendant caused physical injury to victim, § 11.41.445(a)</p>
<p>STATUTORY AGE PROVISIONS</p>	<p>AGE OF CONSENT</p> <p>duct if 16 and victim under 16, § 11.41.440(a)(1), (2)</p> <p>OFFENSES</p> <p>sexual assault 1st degree - sexual penetration either by person over 16 with person under 13, § 11.41.410(a)(3), or by person over 18 with person under 18 either entrusted to an older person's care, or son or daughter of that person, § 11.41.410(a)(4)(A), (B); sexual abuse of minor - sexual penetration by person over 16 but over 13; sexual contact by person over 16 with person under 13, § 11.41.440(a)(1), (2)</p>
<p>EVIDENCE, DEFENSES AND CROSS REFERENCES</p>	<p>EVIDENCE</p> <p>limits admissibility of evidence concerning victim's prior sexual conduct; requires court order for admission, with application made out of jury's presence; provides for in camera hearing to determine relevance, with probative value weighed against potential for prejudice, confusion, and invasion of privacy; victim's sexual conduct more than one year prior to date of offense presumed inadmissible absent persuasive contrary showing, § 12.45.045(a), (b) (enacted 1975, amended 1978, effective Jan. 1, 1980, to be applicable to new offenses)</p> <p>DEFENSES</p> <p>marriage to victim affirmative defense unless spouses living apart or victim physically injured, § 11.41.445(a); defendant's reasonable mistaken belief affirmative defense to statutory age offenses unless victim under 13, § 11.41.445(b)</p> <p>CROSS REFERENCES</p> <p>incest - § 11.41.450; child pornography - § 11.41.445; homosexuality - consensual acts among adults decriminalized by repeal of prior law</p>

PENALTIES	<p>sexual assault 1st degree - class A felony, § 11.41.410(b); sexual assault 2d degree - class B felony, § 11.41.420(b); sexual assault 3d degree, sexual abuse of minor - class C felony, § 11.41.430(b), .440(b)</p> <p>class A felony - not more than 20 years, with presumptive terms of 6 years for 1st felony conviction, 10 years for 2d felony and 15 years for 3d felony, § 12.55.125(c); class B felony - not more than 10 years, with presumptive terms of 4 years for 2d felony and 6 years for 3d felony, § 12.55.125(d); class C felony - not more than 5 years, with presumptive terms of 2 years for 2d felony, 3 years for 3d felony, § 12.55.125(e)</p> <p><u>SPECIAL</u> presumptive terms subject to adjustment by factors in aggravation and mitigation, § 12.55.155(a)(1),(2)</p>
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ARIZONA ARIZ. REV. STAT. ANN. §§ 13-1401 to -1414 (1978 & Supp. 1979)

DERIVATION	<p><u>HISTORY</u> 1901 contained statute based on 1872 California Code defining rape where lunacy rendered victim incapable of consent or where resistance overcome or prevented, or where female unconscious or submitted under belief that perpetrator was her husband; female capable of consent at 17; penalty: minimum 5 years; 1913 increased statutory age of female to 18; punishment: life or minimum 5 years; 1962 divided offense into 1st and 2d degree; 2d degree rape was sexual intercourse with female under 18 under circumstances not amounting to 1st degree rape; 1978 present statute enacted when criminal code revision based on Model Penal Code enacted</p> <p><u>PRESENT LAW</u> sex-neutral sexual assault with some reform definitions; statutory rape includes sexual conduct with minor and molestation of child; no evidence statute; retains prior definitions except consent</p>
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STATUTORY STRUCTURE	<p><u>OFFENSES</u> sexual assault; sexual abuse; sexual conduct with a minor; molestation of a child</p> <p><u>REQUIREMENTS</u> sexual assault - sexual intercourse or oral sexual contact with person not his or her spouse without consent, § 13-1406(A); sexual abuse - sexual contact with a person not his or her spouse without consent, or with person under 15 not his or her spouse, § 13-1404(A); sexual conduct with a minor - sexual intercourse or oral sexual contact with person under 18 not his or her spouse, § 13-1405(A); molestation of a child - fondling, playing with, or touching private parts of child under 15 or causing child under 15 to fondle, touch, or play with his or her private parts, § 13-1410</p> <p><u>PRINCIPALS</u> person/person; sex-neutral</p> <p><u>SPOUSES</u> -1406; spouse is person who is legally married and cohabiting, § 13-1401(4)</p>
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STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> 18, but several offenses define conduct with person under 15 as criminal</p> <p><u>OFFENSES</u> (A); molestation of a child - fondling, touching, or playing with private parts of child under 15 or causing child to fondle, play with, or touch private parts of person, § 13-1410</p>
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EVIDENCE, DEFENSES AND CROSS REFERENCES	<p><u>EVIDENCE</u> no rape evidence reform statute; introduction of prior acts of unchastity on cross-examination denied</p> <p><u>DEFENSES</u> know and could not reasonably have known age of victim; act done in rendering emergency medical care, § 13-1407</p> <p><u>CROSS REFERENCES</u> incest, § 13-3608; sexual exploitation of children, §§ 13-3551 to -3555</p>
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<p>STATUTORY AGE PROVISIONS</p>	<p>11 for rape, § 41-1803(1)(c); for other offenses, age of victim and sometimes age of actor vary</p> <p><u>rape</u> - sexual intercourse or deviate sexual activity with person under 11, § 41-1803(1)(c); <u>1st degree carnal abuse</u> - person over 18 who engages in sexual intercourse or deviate sexual activity with person under 14, § 41-1804(1); <u>2d degree carnal abuse</u> - person who engages in sexual intercourse or deviate sexual activity with another person not his spouse who is incapable of consent, § 41-1805; <u>3d degree carnal abuse</u> - person over 20 who engages in sexual intercourse or deviate sexual activity with person under 16, § 41-1806(1); <u>sexual misconduct</u> - person who engages in sexual intercourse or deviate sexual activity with person under 16, § 41-1807(1); <u>1st degree sexual abuse</u> - person over 18 who engages in sexual contact with person under 14, § 41-1808(1)(c); <u>2d degree sexual abuse</u> - person over 18 who engages in sexual contact with person under 14, § 41-1809(1); "The definition of an offense excluding conduct with a spouse shall not be construed to preclude accomplice liability of a spouse", § 41-1802(1)</p>
<p>STATUTORY STRUCTURE</p>	<p>person/person; sex-neutral</p> <p>no specific spousal exception for rape, nor does commentary indicate whether statute assumes common law spousal exception applies; principal offense is same as former offense of rape; prior law had no explicit spousal exception for rape but was codification of the traditional offense defined as forcible carnal knowledge without consent; explicit spousal exception for carnal abuse 1st, 2d, and 3d degrees and for sexual misconduct "...with another person not his spouse...", §§ 41-1804 to -1807; explicit spousal exception for one category of sexual abuse 1st degree - sexual contact with person not his spouse who is under 14, § 41-1808(1)(c); explicit spousal exception for sexual abuse 2d degree "...with another person not his spouse who is incapable of consent...", § 41-1809(1); "The definition of an offense excluding conduct with a spouse shall not be construed to preclude accomplice liability of a spouse", § 41-1802(1)</p>
<p>DERIVATION</p>	<p>1823 defined rape as carnal knowledge forcibly and without consent; death penalty; 1838 detailed offenses of rape, sodomy, forcing to marry, and administering potions; for negroes or mulattos, death penalty for attempts upon white women; 1838 added offense of carnal knowledge of female child "under the age of puberty;" penalty 5-21 years; 1874 included proof of penetration requirement for rape and sodomy; 1894 specified age for carnal abuse as under 16; 1899 changed minimum penalty for carnal abuse to 1 year; 1947 noted definition of offense unchanged but penalty death or life imprisonment; 1967 changed force to forcible compulsion, added distinctions between 1st and 2d degree; 1975 followed New York Penal Code and Model Penal Code; 1977 rape evidence reform statute</p> <p>1975 revision sex-neutral; added new offenses; rape evidence reform statute; much prior law retained</p>
<p>OFFENSES</p>	<p>rape; carnal abuse (3 degrees); sexual misconduct; sexual abuse (2 degrees)</p>
<p>REQUIREMENTS</p>	<p>rape - sexual intercourse or deviate sexual activity by forcible compulsion or with person incapable of consent because physically helpless or under 11, § 41-1803(1)(a), (b), (c); <u>1st degree carnal abuse</u> - person over 18 who has sexual intercourse or deviate sexual activity with person under 14, § 41-1804(1); <u>2d degree carnal abuse</u> - sexual intercourse or deviate sexual activity with person incapable of consent because mentally defective or <u>mentally incapacitated</u>, § 41-1805(1); <u>3d degree carnal abuse</u> - person over 20 who engages in sexual intercourse or deviate sexual activity with person under 16, § 41-1806(1); <u>sexual misconduct</u> - sexual intercourse or deviate sexual activity with person under 16, § 41-1807(1); <u>1st degree sexual abuse</u> - sexual contact by forcible compulsion or with person incapable of consent because physically helpless or when person over 18 engages in sexual contact with person under 14, § 41-1808(1)(a), (b), (c); <u>2d degree sexual abuse</u> - sexual contact with person incapable of consent because mentally defective or mentally incapacitated, § 41-1809(1)</p>
<p>PRINCIPALS</p>	<p>person/person; sex-neutral</p>
<p>SPOUSES</p>	<p>no specific spousal exception for rape, nor does commentary indicate whether statute assumes common law spousal exception applies; principal offense is same as former offense of rape; prior law had no explicit spousal exception for rape but was codification of the traditional offense defined as forcible carnal knowledge without consent; explicit spousal exception for carnal abuse 1st, 2d, and 3d degrees and for sexual misconduct "...with another person not his spouse...", §§ 41-1804 to -1807; explicit spousal exception for one category of sexual abuse 1st degree - sexual contact with person not his spouse who is under 14, § 41-1808(1)(c); explicit spousal exception for sexual abuse 2d degree "...with another person not his spouse who is incapable of consent...", § 41-1809(1); "The definition of an offense excluding conduct with a spouse shall not be construed to preclude accomplice liability of a spouse", § 41-1802(1)</p>
<p>AGE OF CONSENT</p>	<p>11 for rape, § 41-1803(1)(c); for other offenses, age of victim and sometimes age of actor vary</p>
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ARKANSAS ARK. STAT. ANN. §§ 41-1801 to -1813 (Repl. 1977 & Supp. 1979)

TERMS

sexual assault - class 2 felony, § 13-1406(B); sexual abuse - class 5 felony, § 13-1404(B); sexual contact with minor - class 2 felony if minor over 15, § 13-1405(B); molestation of child - class 2 felony, no eligibility for suspended sentence, commutation of sentence, probation, parole or release until two-thirds of imposed sentence has been served, or minimum of 5 years, § 13-1410; lewd and lascivious acts - class 3 misdemeanor, § 13-1412

class 3 misdemeanor - 30 days, § 13-707

class 2 felony - 7 years; class 5 felony - 2 years; class 6 felony - one and a half years, § 13-701;

class 3 misdemeanor - 30 days, § 13-707

dangerous and repetitive offenders, § 13-604; diagnostic commitment, § 13-605; sentencing (aggravating and mitigating circumstances), § 13-702

PENALTIES

sexual assault - class 2 felony, § 13-1406(B); sexual abuse - class 5 felony, § 13-1404(B); sexual contact with minor - class 2 felony if minor over 15, § 13-1405(B); molestation of child - class 2 felony, no eligibility for suspended sentence, commutation of sentence, probation, parole or release until two-thirds of imposed sentence has been served, or minimum of 5 years, § 13-1410; lewd and lascivious acts - class 3 misdemeanor, § 13-1412

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HISTORY

1823 defined rape as carnal knowledge forcibly and without consent; death penalty; 1838 detailed offenses of rape, sodomy, forcing to marry, and administering potions; for negroes or mulattos, death penalty for attempts upon white women; 1838 added offense of carnal knowledge of female child "under the age of puberty;" penalty 5-21 years; 1874 included proof of penetration requirement for rape and sodomy; 1894 specified age for carnal abuse as under 16; 1899 changed minimum penalty for carnal abuse to 1 year; 1947 noted definition of offense unchanged but penalty death or life imprisonment; 1967 changed force to forcible compulsion, added distinctions between 1st and 2d degree; 1975 followed New York Penal Code and Model Penal Code; 1977 rape evidence reform statute

1975 revision sex-neutral; added new offenses; rape evidence reform statute; much prior law retained

PRESENT LAW

1975 revision sex-neutral; added new offenses; rape evidence reform statute; much prior law retained

OFFENSES

rape; carnal abuse (3 degrees); sexual misconduct; sexual abuse (2 degrees)

REQUIREMENTS

rape - sexual intercourse or deviate sexual activity by forcible compulsion or with person incapable of consent because physically helpless or under 11, § 41-1803(1)(a), (b), (c); 1st degree carnal abuse - person over 18 who has sexual intercourse or deviate sexual activity with person under 14, § 41-1804(1); 2d degree carnal abuse - sexual intercourse or deviate sexual activity with person incapable of consent because mentally defective or mentally incapacitated, § 41-1805(1); 3d degree carnal abuse - person over 20 who engages in sexual intercourse or deviate sexual activity with person under 16, § 41-1806(1); sexual misconduct - sexual intercourse or deviate sexual activity with person under 16, § 41-1807(1); 1st degree sexual abuse - sexual contact by forcible compulsion or with person incapable of consent because physically helpless or when person over 18 engages in sexual contact with person under 14, § 41-1808(1)(a), (b), (c); 2d degree sexual abuse - sexual contact with person incapable of consent because mentally defective or mentally incapacitated, § 41-1809(1)

PRINCIPALS

person/person; sex-neutral

SPOUSES

no specific spousal exception for rape, nor does commentary indicate whether statute assumes common law spousal exception applies; principal offense is same as former offense of rape; prior law had no explicit spousal exception for rape but was codification of the traditional offense defined as forcible carnal knowledge without consent; explicit spousal exception for carnal abuse 1st, 2d, and 3d degrees and for sexual misconduct "...with another person not his spouse...", §§ 41-1804 to -1807; explicit spousal exception for one category of sexual abuse 1st degree - sexual contact with person not his spouse who is under 14, § 41-1808(1)(c); explicit spousal exception for sexual abuse 2d degree "...with another person not his spouse who is incapable of consent...", § 41-1809(1); "The definition of an offense excluding conduct with a spouse shall not be construed to preclude accomplice liability of a spouse", § 41-1802(1)

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EVIDENCE

opinion evidence, reputation evidence, or evidence of specific instances of victim's prior sexual conduct with defendant or any other person not admissible by defendant, either on direct or cross-examination, to attack credibility of victim, to prove consent or any other defense, or for any other purpose, § 41-1810.1; upon written motion defendant may offer and court may admit evidence of victim's prior sexual conduct with defendant or any other person after finding of relevance and with written order as to evidence and nature of questions permitted; victim given opportunity to review order and both parties have right to interlocutory appeal on issue of admissibility, § 41-1810.2; reference to victim's prior sexual conduct by counsel or defendant prohibited in absence of order, § 41-1810.4

**EVIDENCE
DEFENSES
AND CROSS
REFERENCES**

DEFENSES

consent is defense to rape; no mistake as to age defense if criminality of conduct depends upon child being under 11; if conduct criminal if victim older than 11, mistake as to age affirmative defense; affirmative defense that actor reasonably believed victim was not incapable of consent by reason of being mentally defective or mentally incapacitated, § 41-1802(2), (3), (4)

CROSS REFERENCES

incest, § 41-2403; wife battering 1st, 2d, and 3d degree, §§ 41-1653 to -1655; aggravated assault on wife, § 41-1656; 1st, 2d, and 3d degree assault on wife, §§ 41-1657 to -1659; medical treatment for victims, § 41-1814; types of treatment available, § 41-1815; payment for treatment, § 41-1816; reimbursement of medical facilities for treatment of rape victims, § 41-1817

TERMS

rape - class A felony, § 41-1803(2); 1st degree carnal abuse - class C felony, § 41-1804(2); 2d degree carnal abuse, 1st degree sexual abuse - class D felonies, §§ 41-1805(2), -1808(2); 3d degree carnal abuse, 2d degree sexual abuse - class A misdemeanors, §§ 41-1806(2), -1809(2); sexual misconduct - class B misdemeanor, § 41-1807(2)

PENALTIES

class A felony - minimum 5 years, maximum 10 years or life; class C felony - minimum 2 years, maximum 10 years; class D felony - maximum 5 years; class A misdemeanor - maximum 1 year; class B misdemeanor - maximum 90 days, § 41-901

SPECIAL

habitual offenders, § 41-1001; fines, § 41-1101; no suspended sentence or probationary sentence if defendant pleads guilty to 1st degree rape, § 41-1201(1)

CALIFORNIA CAL. PENAL CODE §§ 261 - 266, 283 - 290 (West Supp. 1980)

HISTORY

1872 defined rape where (1) female incapable of consent because under 10 or incapable through lunacy (2) she resists but resistance overcome by force or violence (3) resistance prevented by threats of great and immediate bodily harm or by intoxicant (4) female unconscious or (5) female submits believing person is her husband; presumption of inability for males under 14; essential guilt is the outrage to the person and feelings of the female; any penetration sufficient; punishment minimum 5 years; 1889 changed age of female to 14; 1897 changed age of female to 16; 1901 added lewd acts with children under 14; 1913 changed age of female to 18, added new offenses, left definition of rape unchanged except for minor wording changes; 1923 increased punishment to maximum 50 years, except for statutory rape maximum penalty 1 year; 1952 changed penalties; 1967 added acting in concert by force or violence; 1970 redefined statutory rape as "unlawful sexual intercourse with female under 18" and moved offense to a separate section; series of reform statutes passed beginning 1974; penalty amended in 1976 to 3, 6, or 8 years for rape

DERIVATION

PRESENT LAW

rape, sex-neutral definition of rape offense unchanged, but new offenses incorporate several reform features including spousal rape; evidence statutes enacted 1974; new offenses added 1978 and 1979

OFFENSES

rape - unlawful sexual intercourse with female under 18, § 261.5; rape of spouse, § 262; lewd or lascivious acts upon body of child under 14, § 288; oral copulation, § 288a; penetration of genital or anal openings by foreign object, § 289

**STATUTORY
STRUCTURE**

REQUIREMENTS

rape - sexual intercourse under circumstances of incapacity to consent or when resistance overcome or prevented, § 261; unlawful sexual intercourse with female under 18 - sexual intercourse with female under 18, § 261.5; rape of a spouse - sexual intercourse by spouse when spouse's resistance overcome or prevented, § 262; lewd or lascivious acts upon body of child under 14 - lewd or lascivious acts with intent to arouse or gratify, or such acts by force, violence, duress, menace, or threat of great bodily harm and against will of victim, § 288; oral copulation - acts of oral copulation under circumstances defined by age of victim and offender, § 288a; penetration of genital or anal openings by foreign object - penetration by foreign object, substance, instrument, or device by force, violence, duress, menace, or threat of great bodily harm and against will of victim for purposes of sexual arousal, gratification, or abuse, § 289

<p>STATUTORY STRUCTURE</p>	<p>person/person; sex-neutral</p> <p>"Rape of a spouse: (a) Rape of a person who is the spouse of a perpetrator is an act of sexual intercourse accomplished under either of the following circumstances: (1) where a spouse resists, but the spouse's resistance is overcome by force or violence; (2) where the spouse is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution; (b)...there shall be no arrest or prosecution under this section unless the violation of this section is reported to a peace officer having the power to arrest for a violation of this section or to the district attorney of the county in which the violation occurred, within 30 days after the day of the violation," § 262; no spousal exclusion for other offenses</p>
<p>STATUTORY AGE PROVISIONS</p>	<p>18, § 261.5</p> <p>unlawful sexual intercourse with female under 18 - sexual intercourse with female under 18, § 261.5; lewd or lascivious acts with child under 14 - lewd acts upon body of child under 14 with requisite intent, § 285; oral copulation - acts of oral copulation with person under 18, or by person over 21 with person under 16, or acts of oral copulation with person under 14 and over 10 by force, § 288a</p>
<p>EVIDENCE AND CROSS REFERENCES</p>	<p>EVIDENCE</p> <p>prohibits introduction of evidence concerning sexual conduct of complaining witness to attack credibility; procedures specify offer of proof, hearing away from jury, and finding of relevance, CAL. EVID. CODE § 782 (West Cum. Supp. 1980); psychiatric examination as to credibility of rape victims or witnesses outlawed, Sexual Assault - Psychiatric Examination, L. 1980, ch.6, 1980 Cal. Legis. Serv. 57 (to be codified as CAL. PENAL CODE § 1112); instruction regarding likelihood of consent outlawed, CAL. PENAL CODE § 1127(d) (West Cum. Supp. 1980); term "unchaste character" not to be used in jury instructions, CAL. PENAL CODE § 1127(e) (West Cum. Supp. 1980)</p> <p>DEFENSES</p> <p>consent, except where explicitly precluded by statutory presumptions</p> <p>CROSS REFERENCES</p> <p>incest, § 285; seduction under promise of marriage, § 268; school employees, arrest for sex offense, notice to school authorities, § 291</p>
<p>PENALTIES</p>	<p>rape - 3, 6, or 8 years, § 264; rape of spouse - county jail for 1 year or state prison for 3, 6, or 8 years, § 264; unlawful sexual intercourse with female under 18 - imprisonment in county jail or state prison for 1 year, § 264; rape acting in concert - 5, 7, or 9 years, § 264.1; lewd or lascivious acts with child under 14 - 3, 5, or 7 years, § 288; oral copulation - 1, 3, 6, or 8 years; if acting in concert, 5, 7, or 9 years; if in prison, 1 year; if person unconscious, 1 year, § 288a</p> <p>SPECIAL</p> <p>acts of oral copulation while confined in state prison, § 288(a),(e); registration of sex offenders, duty to register, penalties for violation, § 290; mentally disordered sex offender defined, § 290(j)</p>
<p>COLORADO COLO. REV. STAT. §§ 18-3-401 to - 410 (Repl. 1978)</p>	
<p>DERIVATION</p>	<p>HISTORY</p> <p>1868 contained traditional statute defining rape as carnal knowledge of female forcibly and against will, male over 14 who had carnal knowledge of female under 10 with or without consent also guilty of rape, punished by 1 year to life; 1907 introduced explicit spousal exception, redefined crime in terms of degrees and circumstances indicating consent: 1st degree rape where female unmarried under 18 and male over 18, where female incapable of consent, resistance overcome by force, threats, intoxicant administered without consent by fraud or if female unconscious or does not understand act, or if female stupefied by chloroform or anesthetic; punishment 3 years to life; 2d degree where female prevented from resisting by intoxicant or narcotic given with consent, female over 18 submits believing actor is husband, where both male and female are under 18, no other circumstances of 1st degree rape; punishment 2 to 10 years in prison or juvenile institution; 3d degree where rape by female where male under 18 and female prostitute and male of good character prior to offense; accessories punished as principals; punishment fine of \$200 to \$1,000 or 1 to 5 years, or commitment to juvenile institution; 1908, minor technical amendments; 1971 enacted Model Penal Code definitions - statutory age 16 if victim voluntary social companion, penalty reduced, added new crimes of gross sexual imposition and deviate sexual imposition by force and imposition as misdemeanor of sexual assault, prompt complaint requirement for adults, separate offense of sexual assault upon child, special provision for actor who is parent or guardian; penalties 5 to 40 years for rape, if voluntary social companion fine or 1 to 10 years, 6 months to 2 years or fine for sexual assault; 1975 enacted rape reform legislation</p>

DERIVATION	<p><u>PRESENT LAW</u> sexual assault reform statute including rape evidence reform statute 1975; amended 1977 adding requirement that prohibited acts must be "knowingly" committed</p>
STATUTORY STRUCTURE	<p>sexual assault (3 degrees), §§ 18-3-402 to -404; sexual assault on child, § 18-3-405</p> <p><u>REQUIREMENTS</u> 1st degree - sexual penetration under circumstances of force or violence, threat of imminent harm or force, or threat to retaliate, § 18-3-402; 2d degree - sexual penetration or sexual intrusion against victim's will or when circumstances imply coercion (includes offenses defined by age, custody, and position of authority), § 18-3-403; 3d degree - sexual contact without consent or in circumstances evidencing non-consent, § 18-3-404; sexual assault on child - sexual contact regardless of consent with ages of actor and victim as elements, § 18-3-405</p> <p><u>PRINCIPALS</u> actor/victim; sex-neutral</p> <p><u>SPOUSES</u> express marital exception; applies to statutory, putative, or common law marriage, § 18-3-409(1); exception terminates if spouses live apart with intent to live apart, whether under decree of judicial separation, § 18-3-409(2); spouses also excluded under offense of assault on child, § 18-3-405(1)</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> none; inability to consent if 4-year age disparity between participants, §§ 18-3-403(1)(e), -405(1); actor liable at any age, statutory liability if victim under 15, §§ 18-3-403(1)(e), -405(1) or if custodial circumstances with victim under 18, §§ 18-3-403(1)(f), -404(1)(e)</p> <p><u>OFFENSES</u> sexual assault 2d degree - sexual penetration or intrusion with victim less than 15 by actor at least 4 years older than victim, or with victim less than 18 by actor who is victim's guardian or responsible for victim's supervision, § 18-3-403(1)(e), (f); sexual assault 3d degree - sexual contact with victim less than 18 by actor who is victim's guardian or responsible for victim's supervision, § 18-3-404(1)(e); sexual assault on child - sexual contact with victim less than 15 by actor at least 4 years older than victim, § 18-3-405(1)</p>
EVIDENCE, DEFENSES, AND CROSS REFERENCES	<p><u>EVIDENCE</u> as to victim's prior history, 1975 rape evidence reform statute presumes certain evidence about victim irrelevant, requires court order for admission, applies to evidence of prior or subsequent sexual conduct whether by specific instances, opinion, or reputation, except for prior or subsequent sexual conduct with defendant and for specific instances of sexual activity showing source of semen, pregnancy, disease, or that defendant did not commit acts charged, special procedure to rebut presumption requires pre-trial written motion and affidavit stating offer of proof of relevancy and materiality, provides for in camera hearing either before or during trial, only evidence relevant to material issue admitted, § 18-3-402; impeachment use not distinguished; no statutory requirement for corroboration but status of common law requirement under prior law uncertain; statutory prohibition of cautionary instruction in prosecution for sexual assault, § 18-3-408</p> <p><u>DEFENSES</u> defendant's reasonable mistaken belief about victim's age limited affirmative defense to statutory age offenses where victim at least 15, § 18-3-406; statute prohibits cautionary jury instructions casting doubt on victim's testimony in sexual assault prosecutions, § 18-3-408</p> <p><u>CROSS REFERENCES</u> incest, § 18-6-301; adult consensual homosexual acts decriminalized; medical exception, § 18-3-410</p>
PENALTIES	<p><u>TERMS</u> 1st degree sexual assault - class 3 felony or class 2 felony if aggravating factors of aiders and abettors, serious bodily injury to victim, or actor armed, § 18-3-402(2); 2d degree sexual assault - class 4 felony or class 3 felony if aggravating factors of force, intimidation, or threat, § 18-3-403(2); 3d degree - class 1 misdemeanor or class 4 felony if aggravating factors of force, intimidation, or threat, § 18-3-404(2); sexual assault on child - class 4 felony or class 3 felony if aggravating factors of force, intimidation, or threat, § 18-3-405(2)</p>

<p>PENALTIES</p>	<p>class 2 felony - minimum 10 years, maximum 50 years, § 18-1-105; class 3 felony - minimum 5 years, maximum 40 years, § 18-1-105; class 4 felony - minimum 1 day, maximum 10 years, § 18-1-105; class 1 misdemeanor - minimum 6 months, maximum 24 months, to be served in county jail, § 18-1-106</p> <p>finer, alternative sentence to class 4 felony and class 1 misdemeanor, §§ 18-1-105, -106</p> <p>SPECIAL</p>
<p>DERIVATION</p>	<p>CONNECTICUT CONN. GEN. STAT. ANN. §§ 53a-65 to - 73a (West Supp. 1979)</p> <p>HISTORY</p> <p>1786 rape punished by death providing complaint and prosecution "made forthwith;" 1824 punished rape by death and separately prohibited carnal knowledge and abuse of female under 10, life imprisonment or as court shall determine; 1833 changed penalty for rape from death to life, penalty for carnal knowledge and abuse of female under 10 was 7 to 10 years; 1874 combined rape section with mayhem and assault; 1887 rewrote, punished ravishing or carnal knowledge of female over 14 and carnal knowledge or carnal abuse of female under 14, punishment 3 years to life; 1902 changed statutory age to 16, reduced maximum penalty to 30 years, removed minimum penalty; 1918 placed rape with offenses against chastity without substantive change; 1930 imposed only fine for carnal abuse; 1949 penalty for statutory rape, fine of \$1,000 or maximum 30 years, female under 16 incapable of consent; 1969 repealed, introduced new chapter on sex offenses based on Model Penal Code and New York Code, added corroboration requirement, prompt complaint requirement, new affirmative defenses (including cohabitation); added rape 1st degree where by force or if female physically helpless or under 14, punishment minimum 20 years; 2d degree rape where female incapable of consent or when female under 16 and actor over 18, punishment maximum 10 years; 1st degree sexual contact where sexual contact by force, when victim physically helpless or when other person under 11, punishment maximum 10 years; 2d degree sexual contact where person under 16, punishment maximum 5 years; 1974 corroboration requirement repealed; 1975 rewrote entire chapter</p> <p>PRESENT LAW</p> <p>1975 sexual assault reform statute, amended 1976 to increase statutory prompt complaint requirement from 3 months to 1 year from date of offense, § 53a-69</p>
<p>STATUTORY STRUCTURE</p>	<p>OFFENSES</p> <p>sexual assault (4 degrees)</p> <p>REQUIREMENTS</p> <p>1st degree - compelled sexual intercourse by force or threat of force, § 53a-70; 2d degree - sexual intercourse where offense defined by victim's age, mental incapacity, physical helplessness, or actor's supervisory status, custodial role, or position of authority, § 53a-71; 3d degree - compelled sexual contact by force or threat of force, § 53a-72a; 4th degree - intentional sexual contact in circumstances of a 2d degree offense, sexual contact without consent, or sexual contact with animal or dead body, § 53a-73</p> <p>PRINCIPALS</p> <p>actor/victim; sex-neutral</p> <p>SPOUSES</p> <p>express marital exception included in definitions of sexual intercourse and sexual contact, § 53a-65(2); neither termination of marriage nor exception defined; separate provision makes consensual cohabitation affirmative defense to prosecution regardless of legal status of relationship, § 53a-67(b)</p> <p>AGE OF CONSENT</p> <p>none; inability to consent depends on specific age of victim; liability exists for acts with victim under 15, or if in custodial circumstances, with victim under 18</p> <p>OFFENSES</p> <p>2d degree - sexual intercourse with person under 15, § 53a-71(a)(1), or if actor is person's guardian or responsible for person's supervision, with person under 18, § 53a-71(a)(3); 4th degree - intentional sexual contact with same age provisions as 2d degree, § 53a-73a(a)(1)(A),(C)</p>
<p>EVIDENCE, DEFENSES, AND CROSS-REFERENCES</p>	<p>EVIDENCE</p> <p>whether shown by specific acts, reputation, or opinion; statutory requirement for corroboration repealed in 1974</p> <p>DEFENSES</p> <p>mistake - actor's lack of knowledge of victim's condition affirmative defense to charge based on victim's mental defect, mental incapacity, or physical helplessness, § 53a-67(a); cohabitation - living together by mutual consent at time</p>

<p>EVIDENCE DEFENSES AND CROSS-REFERENCES</p>	<p>of offense affirmative defense, § 53a-67(b); prompt complaint - statute requires victim's complaint be made within 1 year of date of offense, § 53a-69</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 53a-191; <u>victim compensation</u>, § 54-202</p>
<p>PENALTIES</p>	<p><u>TERMS</u></p> <p>1st degree - class B felony, § 53a-70(b); 2d degree - class C felony, § 53a-71(b); 3d degree - class D felony, § 53a-72a(b); 4th degree - class A misdemeanor, § 53a-73a(b)</p> <p>class B felony - up to 20 years, § 53a-35; class C felony - up to 10 years, § 53a-35; class D felony - up to 5 years, § 53a-35; class A misdemeanor - up to 1 year, § 53a-36</p> <p><u>SPECIAL FIREARM</u> - 1st or 3d degree sexual assault accompanied by use or threat to use firearm requires a one year custodial term, §§ 53a-70a(b), -72b(b)</p>
<p>DELAWARE DEL. CODE ANN. tit. 11 §§ 761 - 773 (1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u></p> <p>1719 rape by assault or by threats felony; 1829 death penalty for rape, 2 year penalty for assault with intent and carnal knowledge of female under 10; 1852 increased maximum term for carnal abuse to 10 years, emission not required; 1874 lowered child's age to 7 for carnal knowledge offense death penalty; 1915 permitted jury to recommend life term; 1949 made jury recommendation of mercy bar to death penalty; 1958 made jury recommendation of mercy bar to life term</p> <p><u>PRESENT LAW</u></p> <p>1973 Model Penal Code revision, no corroboration requirement, no male victims of rape; 1975 evidence provisions, added cunnilingus to definition of sexual intercourse; 1976 age of consent raised to 16</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u></p> <p>rape (2 degrees); sexual misconduct; sexual assault; sodomy (2 degrees)</p> <p><u>REQUIREMENTS</u></p> <p>1st degree rape - if serious physical, mental, or emotional injury to victim, or victim not defendant's voluntary social companion and had not previously permitted sexual contact, § 764; 2d degree rape - sexual intercourse without consent, § 763; sexual misconduct - sexual intercourse or deviate sexual intercourse when age restrictions apply, § 762; <u>sexual assault</u> - sexual contact when person knows contact is offensive or without consent, or when age restrictions apply, § 761; 1st degree sodomy - serious physical, mental, or emotional injury or victim under 16, § 766; 2d degree sodomy - deviate sexual intercourse without consent, § 765</p> <p><u>PRINCIPALS</u></p> <p>rape - male/female; sexual misconduct - male/female, person/person; others - person/person; sex-neutral</p> <p><u>SPOUSES</u></p> <p>no spousal exclusion for rape, exclusion for other offenses</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u></p> <p>16, § 767</p> <p><u>OFFENSES</u></p> <p>2d degree rape - sexual intercourse with female under 16, § 763; 2d degree sodomy - deviate sexual intercourse with victim under 16, § 766; <u>sexual assault</u> - sexual contact with consent when defendant knows victim under 16 and defendant 4 years older, § 761; <u>sexual misconduct</u> - sexual intercourse or deviate sexual intercourse with person under 16 when defendant 4 years older, § 762</p>
<p>EVIDENCE DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u></p> <p>statutory evidence provisions limit admissibility of evidence concerning specific instances of victim's prior sexual conduct on issue of consent; motion required to offer evidence; court order will issue, §§ 3508, 3509; general reputation for chastity admissible; no corroboration requirement</p> <p><u>DEFENSES</u></p> <p>consent for all offenses except sexual misconduct, § 767; defense to 1st degree rape that victim was voluntary social companion or had previously permitted sexual contact, § 764(2); mistake as to age where victim over 16, § 772(a)</p>

EVIDENCE AND CROSS-DEFENSES REFERENCES	<p><u>CROSS REFERENCES</u></p> <p><u>sexual exploitation of child</u>, § 1108; <u>Violent Crimes Compensation Board</u>, § 9001</p>
PENALTIES	<p><u>TERMS</u></p> <p>1st degree rape - class A felony, § 764; 2d degree rape - class B felony, § 763; 1st degree sodomy - class B felony, § 766; 2d degree sodomy - class C felony, § 765; sexual misconduct - class E felony, § 762; sexual assault - class A misdemeanor, § 761</p> <p>class A felony - maximum life; class B felony - 3 to 30 years; class C felony - 2 to 20 years; class E felony - 7 years; class A misdemeanor - possibility of 2 years or fine, § 4205</p> <p><u>SPECIAL</u></p> <p>habitual criminal, § 4214</p>
<h2>DISTRICT OF COLUMBIA D. C. CODE ANN. §§ 22-2801 (1973 & Supp. 1978)</h2>	
DERIVATION	<p><u>HISTORY</u></p> <p>1857 defined 3 categories of rape - rape of daughter or sister, "other" rape and rape of child under 12, and carnal knowledge of insane woman; 1894 outlawed rape without distinguishing victims, penalty 10 to 30 years, life for second offense, statutory age 16; 1901 carnal knowledge statute enacted, statutory age 16, 5 to 30 years, or death by hanging; 1920 5 year minimum eliminated; 1925 death penalty by electrocution, 30 year maximum remained if death penalty not imposed; 1970 death penalty removed, 30 year maximum term established</p> <p><u>PRESENT LAW</u></p> <p>1901 law with penalty amendments</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u></p> <p>rape; carnal knowledge and abuse of female under 16; sodomy</p> <p><u>REQUIREMENTS</u></p> <p>genital acts and anal penetration</p> <p><u>PRINCIPALS</u></p> <p>male/female</p> <p><u>SPOUSES</u></p> <p>common law spousal exception</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u></p> <p>16, § 2801</p> <p><u>OFFENSES</u></p> <p>carnal knowledge and abuse of female under 16, § 2801</p>
EVIDENCE AND CROSS-DEFENSES REFERENCES	<p><u>EVIDENCE</u></p> <p>sexual relations with 3d parties inadmissible to prove consent; cross-examination of 13 year old victim concerning prior sexual experience allowed, but 3d party testimony as to victim's reputation for chastity not allowed; corroboration not required for every element; corroboration required for sex offense involving children; but only to show absence of falsification</p> <p><u>DEFENSES</u></p> <p>consent, other common law defenses</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 22-1901; sodomy, § 22-3502; indecent acts, children, § 22-3501; assault with intent to rape, § 22-501; sexual psychopaths, § 22-3504</p>

<p>PENALTIES</p>	<p><u>TERMS</u> 203(b)</p> <p>rape - any term of years or life, § 22-2801; minimum 2 years for assault with intent to rape, § 24-203(b)</p> <p><u>SPECIAL</u> when armed, § 22-3201</p> <p>minimum term for 2d conviction for rape 7 years, § 24-203; added penalties for offenses committed</p>
<p>FLORIDA FLA. STAT. ANN. §§ 794.011 to .022 (West 1976 & Supp. 1980)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u></p> <p>prior to 1840, death penalty; 1868 ravishing and carnally knowing female over 10, death or life; 1892 carnal knowledge or abuse of female under 10; 1906 enacted statutory presumption that boy under 14 incapable; 1920 prohibited publication of name of victim; 1941 added carnal intercourse with chaste person under 18, intercourse with unmarried female idiot, maximum penalty 10 years; 1947 jury could recommend life or any term of years for rape; 1961 prohibited defense to statutory rape on basis of character if previous intercourse with defendant; 1971 rape capital felony, statutory rape and carnal intercourse with idiot 2d degree felonies</p> <p><u>PRESENT LAW</u></p> <p>1974 rape reform statute</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u></p> <p>sexual battery; statutory rape</p> <p><u>REQUIREMENTS</u></p> <p>rape - carnal intercourse with unmarried person under 18, § 794.05</p> <p><u>PRINCIPALS</u></p> <p>sexual battery - offender/victim, sex-neutral; statutory rape - male/female</p> <p><u>SPOUSES</u></p> <p>no spousal exception for sexual battery</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u></p> <p>18 for statutory rape, 11 for sexual battery, § 794.011(2)</p> <p><u>OFFENSES</u></p> <p>carnal intercourse with unmarried person of previous chaste character under 18, § 794.05; sexual battery or injury of sexual organ of person under 11, § 794.011(2); sexual battery upon person over 11 without consent, § 794.011(3), (4)</p>
<p>EVIDENCE, DEFENSES, AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u></p> <p>specific instances of prior consensual activity between victim and 3d parties not admissible unless consent at issue, then relevance to consent may be proved, § 794.022(2); no corroboration requirement, § 794.022(1); testimony of child under 11 may be videotaped, § 794.022(3)</p> <p><u>DEFENSES</u></p> <p>(1)(f); lack of chastity of female if consenting female over 12 and under 18, § 794.05(1)</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 826.04; mentally disordered sex offenders, L.1979, ch. 79-341; parole provisions, L.1978, ch. 78-630; child pornography, L.1978, ch. 78-326; child abuse, L.1979, ch. 79-203</p>
<p>PENALTIES</p>	<p><u>TERMS</u></p> <p>sexual battery - capital felony if offender over 18 and victim under 12, § 794.011(2); life felony if offender under 18 and victim under 12, § 794.011(2); circumstances of force, threat of force, helplessness, incapacity, or mental defect of victim, or actor in position of authority - 1st degree felony, § 794.011(4)a-f; if crime committed with force or violence not likely to cause serious personal injury - 2d degree felony, § 794.011(5); carnal intercourse with unmarried person under 18 - 2d degree felony, § 794.05</p> <p>capital felony - death or life with 25 years before parole, § 775.082(1); life felony - 30 years to life, § 775.082(3)(a); 1st degree felony - term of years not exceeding 30 years or life, § 775.082(3)(b); 2d degree felony - maximum of 15 years, § 775.082(3)(d)</p>

PENALTIES	<p>SPECIAL aggravated offense, § 775.087; restitution, § 775.089; habitual offenders, § 775.084; aggravating and mitigating circumstances for capital felonies, L.1979, ch. 79-353</p>
<p>GEORGIA GA. CODE ANN. §§ 26-2001 to -2020 (1978 & Supp. 1979)</p>	
DERIVATION	<p>HISTORY 1861 defined rape as carnal knowledge of woman by force or against will, separate penalty structure for offenses against slaves and free persons of color; 1882 age of consent 10; 1895 death penalty unless jury recommended mercy; 1918 added statutory rape as separate offense with statutory age of 14, corroboration requirement, marriage as defense; 1968 corroboration requirement for rape, spousal exclusion for statutory rape</p> <p>PRESENT LAW common law carnal knowledge statute; separate offenses of statutory rape and rape; no corroboration requirement for rape; rape evidence reform provision</p>
STATUTORY STRUCTURE	<p>OFFENSES rape; statutory rape</p> <p>REQUIREMENTS rape - carnal knowledge, force, any penetration, absence of consent, § 26-2001; <u>statutory rape</u> - sexual intercourse with female under 14, § 26-2018</p> <p>PRINCIPALS male/female</p> <p>SPOUSES common law spousal exception for rape; statutory spousal exclusion for statutory rape</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT 14, §§ 26-2018, -2019</p> <p>OFFENSES <u>lestation</u> - commission of immoral or indecent act to, in the presence of, or with child under 14, § 26-2019</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p>EVIDENCE past sexual behavior of complaining witness not admissible on direct or cross unless court finds such evidence directly involved participation of accused or evidence supports inference of reasonable belief in consent; court will issue order regarding manner of admissibility, § 38-202.1</p> <p>DEFENSES common law consent to rape</p> <p>CROSS REFERENCES child molestation, § 26-2019; masturbation for hire, § 26-2021; crime victim compensation, § 2-1413(a); sexual exploitation of children, pornography, § 26-9943a; seduction, § 26-2003; mandatory registration of sex offenders, § 24-2715; incest, § 26-2006; <u>sodomy</u>, aggravated sodomy, § 26-2002; <u>solicitation for sodomy</u>, § 26-2003</p>
PENALTIES	<p>TERMS 433 U.S. 584 (1977); statutory rape - 1 to 20 years, § 26-2001; death penalty vacated, <u>Coker v. Georgia</u>, 433 U.S. 584 (1977); statutory rape - 1 to 20 years, § 26-2018</p> <p>SPECIAL special examination before parole, § 77-539</p>

HAWAII HAWAII REV. STAT. §§ 707-730 to -742 (Repl. 1976 & Supp. 1979)

DERIVATION	<p>HISTORY</p> <p>1905 cited 1869 Code as source of rape statute punishing anyone who ravished or had carnal intercourse with female by force or against will with fine of not more than \$1,000, hard labor for life, or any term of years, penalty for carnal abuse of female under 10 death or life at discretion of court; 1925 increased age for carnal abuse to 12, added corroboration requirement, removed death penalty; 1935 added sexual intercourse with female under 16, penalty of 10 years; carnal abuse retained for females under 12; penalty death, life or term of years, corroboration required for rape, sodomy, and sexual intercourse with female under 16; 1955 retained principal offenses but removed death penalty, added provision forbidding parole for rape; 1973 adopted criminal code reform based on the Model Penal Code and New York Penal Code</p> <p>PRESENT LAW</p> <p>modified Model Penal Code rape statute; no prompt complaint requirement; rape gender-neutral; special provisions for mentally defective, mentally incapacitated, and physically helpless victims; 1975 limited evidence statute passed 1975, amended 1977</p>
STATUTORY STRUCTURE	<p>OFFENSES</p> <p>rape (three degrees); sodomy (three degrees); sexual abuse (two degrees)</p> <p>REQUIREMENTS</p> <p>1st degree rape - sexual intercourse by forcible compulsion when serious bodily injury inflicted, except if complaining witness voluntarily had sexual intercourse with defendant within previous 12 months, or with a person under 14 and serious injury inflicted, § 707-730; 2d degree rape - sexual intercourse by forcible compulsion or with person under 14, § 707-731; 3d degree rape - sexual intercourse with mentally defective, or physically incapacitated, or physically helpless female, § 707-732; 1st degree sexual abuse - forcible sexual contact or sexual contact with person under 14, § 707-736; 2d degree sexual abuse - sexual contact with mentally defective, mentally incapacitated, or physically helpless person, or when person 14 or 15 and actor 4 years older, § 707-737</p> <p>PRINCIPALS</p> <p>person/person; sex-neutral</p> <p>SPOUSES</p> <p>"married" means legally married, or living together as husband and wife regardless of legal status, but does not include spouses living apart under judicial decree, § 707-700(11); status of spousal exception unclear after 1979 amendment making rape sex-neutral; technically female as defined no longer victim of offense; spousal exception included in definition of sexual contact, § 707-700(9)</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT</p> <p>14, but statutory penalty of misdemeanor available for some circumstances involving 14 and 15 year olds</p> <p>OFFENSES</p> <p>1st degree rape - sexual intercourse with person under 14 if serious bodily injury occurs, § 707-730(1) b; 2d degree rape - sexual intercourse with person under 14, § 707-731(1)b; 1st degree sexual abuse - sexual contact with person under 14, § 707-736(1)b; 2d degree sexual abuse - sexual contact with person 14 or 15 and 4 years younger than actor, § 707-737(1)b</p>
EVIDENCE DEFENSES AND CROSS-REFERENCES	<p>EVIDENCE</p> <p>requires written motion, offer of proof, court hearing, and finding of relevance if sexual conduct of the complaining witness with 3d parties is offered to attack victim's credibility, § 707-742; no restrictions on admissibility of evidence regarding consent</p> <p>DEFENSES</p> <p>affirmative defense to 1st degree rape that person is "voluntary social companion who had within the previous 12 months permitted defendant sexual intercourse," § 707-730(1)(a); ignorance or mistake a defense, § 702-21; when complaining witness 14 or 15 and 4 years younger than actor, affirmative defense to 2d degree sexual abuse that complaining witness had engaged promiscuously in sexual relations with others, § 707-737(3); consent, general, § 702-233.</p> <p>CROSS REFERENCES</p> <p>promoting child abuse (child pornography), § 707-750</p>
PENALTIES	<p>TERMS</p> <p>sodomy - class B felonies, §§ 707-731(2), -734(2); 3d degree rape, 3d degree sodomy, 1st degree sexual abuse, incest - class C felonies, §§ 707-732(2), -735(2), -736(2), -741</p> <p>1st degree rape, 1st degree sodomy - class A felonies, §§ 707-730(2), -733(2); 2d degree rape, 2d degree sodomy, incest - class C felonies, §§ 707-732(2), -735(2), -736(2), -741</p>

<p>PENALTIES</p>	<p>class A felony - maximum 20 years; class B felony - maximum 10 years; class C felony - maximum 5 years; misdemeanor - maximum 1 year, § 706-663</p> <p>mandatory terms if firearm used, § 706-660.1; extended terms, §§ 706-661 to -664</p> <p><u>SPECIAL</u></p>
<p>IDAHO IDAHO CODE §§ 18-6101 to -6107 (Supp. 1980)</p>	
<p>DERIVATION</p>	<p>1874-75 contained carnal knowledge statute, statutory age of female 12, penalty 5 years to life; 1887 redefined as sexual intercourse with female under 10, where female incapable of consent through lunacy, where resistance prevented, where female unconscious, or where female believed male to be husband, no conviction of male under 14; 1897 returned to carnal knowledge formulation, statutory age 10, penalty death or life, added corroboration requirement; 1901 redefined as sexual intercourse with female under 18, returned to 1887 formulation of circumstances of non-consent, penalty 5 years to life, no statutory corroboration requirement; 1919 specified minimum 5 year term; 1948 reduced minimum term to 1 year, maximum to life; 1977 enacted rape evidence reform provisions, exception to spousal exclusion, and provision for restitution to victims</p> <p>since 1972, codification of traditional common law offense with rape evidence reform statute and limitation on spousal exception</p>
<p>STATUTORY STRUCTURE</p>	<p>defined by circumstances of victim's age, status, incapacity or inability to consent</p> <p><u>REQUIREMENTS</u></p> <p>rape - sexual intercourse, without consent, when resistance overcome or prevented, when victim unconscious, or when victim submits in belief person is husband, § 18-6101; any penetration sufficient, § 18-6103</p> <p><u>PRINCIPALS</u></p> <p>male/female; male under 14 presumed incapable, § 18-6102</p> <p><u>SPOUSES</u></p> <p>spousal exclusion, but exception terminates if spouses have initiated legal proceedings for divorce or separation or if spouses have been living apart for more than 180 days, § 18-6107</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u></p> <p>18, § 18-6101(1)</p> <p><u>OFFENSES</u></p> <p>rape - sexual intercourse where female under 18, § 18-6101(1) and actor over 14, § 18-6102</p>
<p>EVIDENCE, DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u></p> <p>victim's prior sexual conduct not admissible unless found relevant after hearing; court limits questioning and controls admission of evidence at trial, but prior felony convictions of witnesses always admissible to impeach credibility, § 18-6105; statutory corroboration requirement; special jury instructions required</p> <p><u>DEFENSES</u></p> <p>consent, unless law has stated victim incapable to consent</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 18-6602; crime against nature, § 18-6605; distribution of obscene materials to minors, § 18-1513</p>
<p>PENALTIES</p>	<p><u>TERMS</u></p> <p>rape - 1 year to life, at discretion of sentencing judge, § 18-6104</p> <p><u>SPECIAL</u></p> <p>court may order offender to provide restitution, § 18-6106; mandatory minimum term of 3 years if second offense or if offender used, threatened, or attempted to use deadly weapon, § 19-2520A</p>

ILLINOIS ILL. ANN. STAT. Ch. 38, §§ 11-1 to -5 (Smith-Hurd 1978 & Supp. 1980)

DERIVATION	<p><u>HISTORY</u> 1833 contained Elizabethan carnal knowledge statute, statutory age 10, penalty 1 year to life; 1887 male age raised from 14 to 16 and female age raised to 14; 1905 changed male age to 17, female age to 16, added language "not his wife," added proviso allowing marriage to victim before conviction to preclude conviction, rewrote language on force; 1955 reduced male age to 14; 1961 added "not his wife" to substantive offense and used terminology of sexual intercourse; 1967 raised minimum penalty to 4 years; rape evidence reform statute passed in 1978</p> <p><u>PRESENT LAW</u> traditional rape statute with some language changes enacted in 1961, amended penalty 1967, 1973 and 1978; statutory rape redefined as indecent liberties with child and contributing to delinquency of child in 1961; rape evidence reform statute</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> rape; deviate sexual assault; indecent liberties with child; contributing to delinquency of child</p> <p><u>REQUIREMENTS</u> rape - sexual intercourse by force and against will including (1) where female unconscious or (2) where female mentally deranged or deficient, § 11-1; deviate sexual assault - deviate sexual conduct under force or compulsion, § 11-3; indecent liberties with child - sexual intercourse or lewd touching when age restrictions apply, also child pornography, § 11-4; contributing to sexual delinquency of child - sexual intercourse, deviate sexual conduct, lewd fondling or touching, or any lewd act in presence of child when age restrictions apply, § 11-5</p> <p><u>PRINCIPALS</u> rape - male/female; all others - person/person; sex-neutral</p> <p><u>SPOUSES</u> common law spousal exception codified, § 11-1; no spousal exception for deviate sexual assault; marriage of child defense to indecent liberties with child, § 11-4(d)</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> none, but sexual acts, including intercourse with a child under 16, are criminal when person over 17</p> <p><u>OFFENSES</u> indecent liberties with child - actor over 17, victim under 16, § 11-4; contributing to sexual delinquency of child - person over 14, person under 18, § 11-5</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p><u>EVIDENCE</u> in prosecution for rape or deviate sexual assault, prior sexual activity or the reputation of the alleged victim inadmissible, except concerning past sexual conduct of alleged victim with defendant, but defendant must first offer in camera evidence to impeach witness denial, § 115-7; corroboration required unless testimony clear and convincing; prompt complaint is corroborative</p> <p><u>DEFENSES</u> consent - defense to rape and deviate sexual assault; marriage no bar to prosecution under §§ 11-4, -5, -6; reasonable mistake as to child's age defense to § 11-4; no reasonable mistake as to age defense to § 11-5; no liability for males under 14</p> <p><u>CROSS REFERENCES</u> aggravated incest, § 11-10; incest, § 11-11; indecent solicitation of a child, § 11-6; minimum requirements for hospitals providing emergency services, ch. 111 1/2, § 87-5; hospitals to furnish emergency services, ch. 111 1/2, § 87-2; reimbursement to rape victims for emergency services, ch. 111 1/2, § 87-6.3</p>
PENALTIES	<p><u>TERMS</u> rape, deviate sexual assault - class X felony, §§ 11-1(c), -3(b); indecent liberties with child - class I felony, § 11-4(e); contributing to sexual delinquency of child - class A misdemeanor, § 11-5(c)</p> <p>class X felony - minimum 6 years, maximum 30 years, § 1005-8-1(a)(3) (Supp. 1979); class I felony - minimum 4 years, maximum 15 years, § 1005-8-1(a)(4) (Supp. 1979); class A misdemeanor - less than 1 year, § 1005-8-3 (Supp. 1979)</p> <p><u>SPECIAL</u> probation, periodic imprisonment, or conditional discharge not allowed for conviction of rape, ch. 38, § 1005-5.3 (Supp. 1979); see also new procedures on sentencing, ch. 38, § 1005-4-1 (Supp. 1979); extended terms, ch. 38, § 1005-8-2 (Supp. 1979)</p>

INDIANA IND. CODE ANN. §§ 35-42-4-1 to - 3 (Burns Supp. 1979)

DERIVATION	<p>HISTORY 1824 included carnal knowledge statute, statutory age 12, minimum penalty 5 years, maximum 21 years, proof of penetration required; 1843, minimum term reduced to 2 years; 1881 raised minimum term to 5 years, added sexual intercourse with insane female; 1894 amended statutory age to 14, reduced minimum term to 1 year; 1908 added carnal knowledge of female under 16, added sexual intercourse with female inmates, life penalty for rape of female under 12; 1974 sections regarding female inmates and insane females deleted, suspended sentence forbidden if crime was forcible; 1975 rape evidence reform statute passed; new formulations of offenses 1977</p> <p>PRESENT LAW modifies traditional rape law; includes reformulation of statutory rape as child molesting and reformulation of sodomy as non-consensual criminal deviate conduct, including penetration with an object; rape evidence reform statute amended 1977</p>
STATUTORY STRUCTURE	<p>OFFENSES rape; criminal deviate conduct; child molesting</p> <p>REQUIREMENTS rape - sexual intercourse by force or imminent threat of force, when person unaware, so mentally disabled, or deficient that consent cannot be given; <u>criminal deviate conduct</u> - compelling to perform or submit to deviate sexual conduct, penetration of sex organ or anus by object or by any other means, by force, imminent threat of force or when other person unaware, so mentally disabled, or deficient that consent cannot be given; <u>child molesting</u> - sexual intercourse or deviate sexual conduct with child under 12 or between 12 and 16; if actor 16 or older, sexual contact with child under 12 or between 12 and 16</p> <p>PRINCIPALS person/person since 1977 but sexual intercourse still defined as any penetration of female sex organ by male sexual organ; principal can be female</p> <p>SPOUSES rape - spousal exclusion unless petition for dissolution of marriage pending, § 35-42-4-1(b); criminal deviate conduct - no spousal exclusion; child molesting - defense that child is or has been married, § 35-42-4-3(f)</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT 12 for sexual intercourse, deviate sexual conduct or fondling or touching; 16 for sexual intercourse, deviate sexual conduct or fondling or touching if actor is over 16</p> <p>OFFENSES <u>sexual intercourse or deviate sexual conduct with child under 12</u>, § 35-42-4-3(a); <u>fondling or touching, child under 12</u>, § 35-42-4-3(b); <u>sexual intercourse or deviate sexual conduct by person 16 or older with child between 12 and 16</u>, § 35-42-4-3(c); <u>fondling or touching, child between 12 and 16, actor 16 or older</u>, § 35-42-4-3(d)</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p>EVIDENCE 1975 evidence statute excludes evidence and reference to evidence of prior sexual conduct of victim or any witness, except accused; excludes opinion evidence and reputation evidence; special provisions for admitting evidence of conduct with defendant or evidence showing person other than defendant committed act; right to impeach complaining witness or defendant with prior felony convictions preserved; corroboration not required</p> <p>DEFENSES common law consent defense, statutory defense to child molesting that person reasonably believed child was 16 or older, § 35-42-4-3(e); statutory defense to child molesting that child is or has been married, § 35-42-4-3(f)</p> <p>CROSS REFERENCES <u>incest</u>, § 35-46-1-3; <u>criminal sexual deviancy</u>, § 35-11-3.1-1</p>
PENALTIES	<p>TERMS conduct - class B felony, class A felony if forcible or offender armed, § 35-42-4-1(b); criminal deviate intercourse or deviate sexual behavior with child under 12, class A felony if forcible or offender armed; sexual contact offense with child under 12 - class C felony, class A felony if forcible or offender armed; if child between 12 and 16 and actor 16 or older, class C or class D felony, class A or class B felony if forcible or offender armed, § 35-42-4-3(a)-(d)</p> <p>class A felony - fixed term 30 years, § 35-50-2-4; class B felony - fixed term 10 years, § 35-50-2-5; class C felony fixed term 5 years, § 35-5-2-6; class D felony - fixed term 2 years, or court may sentence for misdemeanor, § 35-5-2-7</p>

PENALTIES

SPECIAL if offender threatens use of deadly force, or if offender armed with deadly weapon, gradation of offense for every category of rape, criminal deviate conduct, and child molesting is raised, no bail pending appeal if class A felony, 1979 Ind. Acts, Pub. L. 292; habitual offenders, § 35-50-2-8; all terms may be increased or decreased by aggravating and mitigating circumstances, § 35-50-2-4; criteria for sentencing, § 35-50-1A-7

IOWA IOWA CODE ANN. §§ 709.1 to .10 (West Supp. 1979)

DERIVATION

HISTORY 1850 included carnal knowledge statute, statutory age of female 10, penalty life or any term of years, separate provision for carnal knowledge after administering substance which induces stupor; 1888 raised statutory age to 13 and re-wrote section concerning administering drug to proscribe carnal knowledge with an idiot; 1897 increased statutory age to 15; 1919 rewrote, but substantive offenses unchanged; 1923 if actor over 25, statutory age of female 17, otherwise statutory age 16, penalty unchanged; 1927 reworded statute, added minimum penalty 5 years; 1976 enacted modified Model Penal Code criminal code, incest redefined, statutory corroboration requirement and traditional sodomy statute repealed, statute retained basic classifications but defined new crimes and re-formulated offense; 1977 deleted provision for 4th degree sexual abuse; 1978 statutory age offense added

PRESENT sexual abuse within modified Model Penal Code; rape evidence reform statute and statutory prohibition against special jury instructions

OFFENSES

sexual abuse (three degrees); lascivious acts with child

REQUIREMENTS

when participant is child, § 709.1(3); 1st degree - sexual act by force, § 709.1(1), or when participant mentally defective, § 709.1(2), or of force creates substantial risk of death or serious injury, § 709.2; 2d degree - weapon displayed or used, threat present and force used, § 709.3(3); 3d degree - any sex act done by force, § 709.3(2), or aiders and abettors are mental defect, § 709.4(2), with child, § 709.4(3), with person 14 or 15, and actor related by blood or affinity to 4th degree, actor used position of authority to coerce, § 709.4(4), or actor 6 or more years older, § 709.4(5); lascivious acts with child - fondling or permitting child to fondle child's genitals, soliciting child to engage in sex act, or inflicting pain or permitting child to inflict pain for sexual gratification, § 709.8

PRINCIPALS

person/person; sex-neutral

SPOUSES

spousal exclusion only for 3d degree sexual abuse; "persons who are not at the time cohabiting as husband and wife," § 709.4; spousal exclusion for lascivious acts with child, "unless married to each other," § 709.8

STATUTORY AGE PROVISIONS

AGE OF CONSENT

14, § 702.5; several offenses specify ages for both participants, §§ 709.3(2), .4(5)

OFFENSES

2d degree sexual abuse - participant under 12, § 709.3(2); 3d degree sexual abuse - sex act, participant child, § 709.4(3), or when participant 14 or 15 and other participant is related or in position of authority, § 709.4(4), or 6 or more years older, § 707.4(5); lascivious acts with child - person over 18 with child, § 709.8

EVIDENCE

special procedures for admission of evidence of prosecuting witness' previous sexual conduct; in camera hearing, court to control admission of evidence, no evidence of conduct more than one year prior to crime except conduct with defendant; prior felony conviction excepted, § 813.2, Rule 20(5); evidence that victim consented to intercourse with one person irrelevant to issue of consent with another; corroboration not required, cautionary jury instruction prohibited, § 709.6; proof of resistance not required, § 709.5

EVIDENCE DEFENSES AND CROSS REFERENCES

DEFENSES

consent - sexual abuse defined in part as when "such act is done by force or against the will of the other. In any case where the consent or acquiescence of the other is procured by threats of violence toward any person, the act is done against the will of the other," § 709.1(1); ignorance or mistake, § 701.6

EVIDENCE DEFENSES AND CROSS-REFERENCES	<p><u>CROSS REFERENCES</u> incest, § 726.2; <u>pornographic sexual exploitation of children</u>, Senate file no. 2205, L.1978; <u>reasonable force</u>, § 704.1; <u>deadly force</u>, § 704.2</p>
PENALTIES	<p><u>TERMS</u> 1st degree sexual abuse - class A felony, § 709.2; 2d degree sexual abuse - class B felony, § 709.3; 3d degree sexual abuse - class C felony, § 709.4; lascivious acts with child - class D felony</p> <p>class A felony - life, no suspended or deferred sentence or reconsideration of sentence, no parole unless governor commutes to term of years, § 902.1; class B felony-maximum 25 years, § 902.9(1); class C felony - maximum 10 years, § 902.9(3); class D felony - maximum 5 years, § 902.9(4)</p> <p><u>SPECIAL</u> every 5 years record of person convicted of class A felony reviewed, § 902.2; special provisions for habitual offenders, § 902.9(2); minimum sentences for habitual offenders, § 902.8; minimum sentence if use of firearm, § 902.7; provision for reconsideration of sentence, § 902.4</p>
<h1>KANSAS KAN. STAT. ANN. §§ 21-3501 to - 3508 (1974 & Supp. 1975, 1978)</h1>	
DERIVATION	<p><u>HISTORY</u> 1855 defined rape as unlawful carnal knowledge of female under 12 or forcible ravishment of woman over 10, punishment hard labor for at least 5 years, carnal knowledge of woman after administering drugs also rape, negro or mulatto who raped or attempted to rape white woman punished by castration at own expense; 1862 changed statutory age to 10, maximum penalty 21 years; 1889 statutory age to 18; 1930 minimum penalty 5 years; 1963 penalty 6 months or \$1,000 fine if guardian raped ward; 1969 defined and codified all sex offenses, included spousal exception, defined statutory rape; 1978 increased to class B felony</p> <p><u>PRESENT LAW</u> no reform features; traditional definition of rape in terms of victim's resistance, consent; statutory rape called indecent liberties with child</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> rape; indecent liberties with child; indecent liberties with ward</p> <p><u>REQUIREMENTS</u> rape - sexual intercourse without consent when resistance overcome, § 21-3502(1)(a), when unconscious or powerless to resist, § 21-3502(1)(b), when incapable of consent due to mental deficiency or disease, § 21-3502(1)(c), or when resistance prevented by alcohol, narcotic, etc., § 21-3502(1)(d); <u>indecent liberties</u> - sexual intercourse, § 21-3503(1)(a), or any lewd fondling or touching of child or ward for sexual gratification, § 21-3503(1)(b)</p> <p><u>PRINCIPALS</u> rape and sexual intercourse, male/female; offenses involving children, sex-neutral</p> <p><u>SPOUSES</u> statutory spousal exception for all offenses, §§ 21-3502, -3503, -3505</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> 16, § 21-3503</p> <p><u>OFFENSES</u> <u>indecent liberties with child or ward</u> - sexual intercourse or fondling of child under 16, §§ 21-3503, -3504; <u>aggravated sodomy</u> - sodomy with child under 16, § 21-3506</p>
EVIDENCE DEFENSES AND CROSS-REFERENCES	<p><u>EVIDENCE</u> no rape evidence statute; corroboration not required</p> <p><u>DEFENSES</u> marriage, consent, absence of resistance, capacity to consent</p>

<p>EVIDENCE AND CROSS-REFERENCES</p>	<p>incest, §§ 21-3602, -3603; sexual exploitation of child (pornography), § 21-3516; <u>enticement</u>, § 21-3509; <u>civil remedies for sexual abuse among family members or persons who reside together</u>, ch. 92, L.1979</p>
<p>PENALTIES</p>	<p>rape - class B felony, § 21-3502; indecent liberties with ward - class B felony, § 21-3504; indecent liberties with child - class C felony, § 21-3503</p> <p>class B felony - 5 years to life, § 21-4501(b); class C felony - 1 to 20 years, § 21-4501(c)</p> <p>second offenders, § 21-4504; fines, § 21-4503</p> <p><u>SPECIAL</u></p>

KENTUCKY KY. REV. STAT. ANN. §§ 510.010 to .150 (Baldwin 1975 & Supp. 1979)

<p>DERIVATION</p>	<p><u>HISTORY</u> 1798 punished rape with 4 to 21 years; 1799 minimum penalty increased to 10 years, delineated offense as carnal knowledge, specified 10 as statutory age; 1802 specified penalty applicable to whites only, provided death penalty for slaves who raped white woman; 1813 death penalty for slaves who attempted rape of white woman, rape of infant under 12; 1852 rape defined as carnal knowledge of white woman against will, by force, or when insensible, penalty 10 to 20 years, separate offense prohibited carnal knowledge of white girl under 10, same penalty; 1860 prohibited carnal knowledge of idiot; 1866 equalized criminal penalties for whites and negroes, except for rape; 1873 punished rape of infant under 12 with death or life imprisonment, at discretion of jury, attempted rape of female under 12 punishable by 5 to 20 years, carnal knowledge by force or while woman insensible, 10 to 20 years or death, carnal knowledge of female under 12 or idiot, 10 to 20 years; 1906 changed statutory age to 16 in carnal knowledge statute; 1922 raised statutory age to 18, words "with consent," "or an idiot" removed, penalty structure based on age of female; female under 12, 20 to 50 years or death; female between 12 and 16, 5 to 20 years; female between 16 and 18, 2 to 10 years; age restrictions on male defined as juvenile offense or allowed for mitigation of penalty; 1944 changed penalty for rape of child under 12 to death, or life without parole, or life or 10 to 20 years; in 1974 revised criminal code enacted; 1976 enacted rape evidence reform statute</p> <p><u>PRESENT LAW</u> Model Penal Code formulation codifies traditional definition of rape, adds less serious, sex-neutral offenses; rape evidence reform statute</p>
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<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> rape (3 degrees); sodomy (4 degrees); sexual abuse (3 degrees); sexual misconduct</p> <p><u>REQUIREMENTS</u> 1st degree rape - sexual intercourse by forcible compulsion or when person incapable of consent because physically helpless or under 12, § 510.040; 2d degree rape - sexual intercourse when actor over 18 and other person under 14, § 510.050; 3d degree rape - sexual intercourse with person incapable of consent because mentally defective or mentally incapacitated, or actor over 21 and other person under 16, § 510.060; 1st, 2d, and 3d degree sodomy - deviate sexual intercourse under circumstances of 1st, 2d, and 3d degree rape, §§ 510.070, .080, .090; 4th degree sodomy - deviate sexual intercourse with another person of same sex, § 510.100; 1st degree sexual abuse - sexual contact under circumstances of 1st degree rape, § 510.110; 2d degree sexual abuse - sexual contact with person mentally defective or mentally incapacitated or person under 14, § 510.120; 3d degree sexual abuse - sexual contact without consent, § 510.130; <u>sexual misconduct</u> - sexual intercourse or deviate sexual intercourse without consent, § 510.140</p> <p><u>PRINCIPALS</u> person/person; sex-neutral</p> <p><u>SPOUSES</u> statutory spousal exception for rape and sodomy, § 510.010(1), (8); spouses living apart under decree of judicial separation not considered married, § 510.010(3)</p>
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<p>STATUTORY AGE PROVISIONS</p>	<p>16, § 510.020(3)(a); in addition, several offenses define criminal conduct in terms of age of one or both participants, §§ 510.050, .080</p> <p><u>1st degree rape</u> - sexual intercourse with person under 12, § 510.040(1)(b)(2); <u>2d degree rape</u> - sexual intercourse by person over 18 with person under 14, § 510.050(1); <u>3d degree rape</u> - sexual intercourse by person over 21 with person under 16, § 510.060; <u>1st degree sodomy</u> - deviate sexual intercourse with person under 12, § 510.070(1)(b)(2); <u>2d degree sodomy</u> - deviate sexual intercourse by person over 18 with person under 14, § 510.080(1); <u>3d degree sodomy</u> - deviate sexual intercourse by person over 21 with person under 16, § 510.090(1)(b); <u>1st degree sexual abuse</u> - sexual contact with person under 12, § 510.110(1)(b)(2); <u>2d degree sexual abuse</u> - sexual contact with person under 14, § 510.120(1)(b)</p>
<p>EVIDENCE AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u> excludes evidence of victim's prior sexual conduct or habits as reputation evidence or specific instances of prior conduct, except evidence of conduct with defendant or evidence pertaining to act on which prosecution is based, § 510.145; corroboration not required</p> <p><u>DEFENSES</u> consent, § 510.020(1); except to 4th degree sodomy, § 510.100(2); ignorance or mistake, if negates existence of culpable mental state, § 510.070; for all crimes based on incapacity to consent, including age, defendant may prove in exculpation that he did not know of facts or conditions responsible for such incapacity to consent, § 510.030; defense to 3d degree sexual abuse that person between 14 and 16 and actor less than 5 years older, § 510.130(1)(b)</p> <p><u>CROSS REFERENCES</u> incest, § 530.020; <u>sexual exploitation of minors</u> (pornography), § 531.300</p>
<p>PENALTIES</p>	<p><u>TERMS</u> 1st degree sodomy - class B felony, unless victim under 12 or receives serious physical injury, then class A felony, §§ 510.040(2), .070(2); rape, 2d degree sodomy - class C felony, §§ 510.050(2), .080(2); rape, 3d degree sodomy - class D felony, §§ 510.060(2), .090(2); 1st degree sexual abuse - class D felony, § 510.110(2); all other offenses misdemeanors</p> <p>class A felony - minimum 20 years, maximum life; class B felony - 10 to 20 years; class C felony - 5 to 10 years; class D felony - 1 to 5 years, § 532.060</p> <p><u>SPECIAL</u> persistent felony offender, § 532.080; special procedures where death penalty might be imposed, including detailed aggravating and mitigating terms, §§ 532.025, .030, .035; court may modify jury sentence within statutory limits, § 532.070</p>
<p>LOUISIANA LA. REV. STAT. ANN. §§ 14:41 to :43, :80 (West Supp. 1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u> 1833 unusual carnal knowledge statute defining rape as carnal knowledge under detailed circumstances of force, menace, or fraud, with factors subjective as to victim considered, age of consent 11; 1852 provided death penalty for rape without definition of acts or offense; 1915 age of consent 12; 1932 incorporated special provisions for carnal knowledge of insane or feeble-minded woman and prohibited sexual intercourse with female over 12 and under 18; 1943 reduced age of consent to 17, male must be over 17, prohibited mistake as to age defense, penalty 5 years for statutory rape, divided rape into simple rape and aggravated rape, death penalty for aggravated rape, spousal exclusion, statutory age of 12 for aggravated rape; 1951 simplified formulation of simple and aggravated rape; 1975 reformulated as heterosexual rape and homosexual rape; 1978 new statute replaced old formulation</p> <p><u>PRESENT LAW</u> prior offenses of rape, aggravated rape, new offenses</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> ledge of juvenile (2 categories) aggravated rape (3 categories); forcible rape; simple rape (3 categories); sexual battery; carnal knowledge of juvenile (2 categories)</p> <p><u>REQUIREMENTS</u> aggravated rape - anal or vaginal sexual intercourse without consent because (1) victim resists and resistance overcome, (2) victim prevented from resisting by acts or threats of great and immediate bodily harm, or (3) victim under 12, §14:42; <u>forcible rape</u> - anal or vaginal sexual intercourse, victim prevented from resisting by force or threat of violence, § 14:42.1, simple rape - anal or vaginal sexual intercourse without consent because (1) victim incapacitated by drug or abnormality, (2) victim</p>

<p>STATUTORY STRUCTURE</p>	<p>incapable of understanding the act, or (3) female induced to believe male her husband, § 14:43; <u>sexual battery- genital acts short of intercourse and oral genital acts under compulsion; carnal knowledge of a juvenile - sexual intercourse, anal or oral sexual intercourse, with consent, when age restrictions apply, § 14:80</u></p> <p><u>PRINCIPALS</u> rape - male/male or female, § 14.80; sexual battery - offender/person, § 14:43.1; carnal knowledge of juvenile - male/female, person/person, § 14:80</p> <p><u>SPOUSES</u> spousal exculsion for all categories of rape, § 14:41; for sexual battery, § 14:43.1; for carnal knowledge of juvenile, "female" is an unmarried female, § 14:80; person not considered spouse if judgment of separation from bed and board rendered, § 14:41</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> none; presumption of non-consent if victim under 12, § 14:42(3); person can consent to vaginal, anal, or oral sexual intercourse at 17, or between ages 12 and 17, if actor not two years older, § 14:80(1)</p> <p><u>OFFENSES</u> <u>anal or vaginal sexual intercourse with victim under 12, § 14:42; intercourse with female over 12 and under 17 by male over 17, with consent, when age difference of more than 2 years, § 14:80(1)</u></p>
<p>EVIDENCE DEFENSES AND CROSS REFERENCES</p>	<p><u>EVIDENCE</u> admissibility of evidence of victim's prior sexual conduct and reputation for chastity precluded in prosecutions for rape or carnal knowledge, except "incidents arising out of the victim's relationship with the accused," § 15:498</p> <p><u>DEFENSES</u> juvenile marriage of female, § 14:80; consent, to all categories of rape, but not to carnal knowledge of a</p> <p><u>CROSS REFERENCES</u> incest, § 14:78; indecent behavior with juveniles, § 14:81; pornography involving juveniles, § 14:81.1; prostitution, § 14:82; crime against nature, § 14:89; aggravated crime against nature, § 14:89.1</p>
<p>PENALTIES</p>	<p><u>TERMS</u> aggravated rape - life, § 14:42; forcible rape - 2 to 40 years, § 14:42.1; simple rape - maximum 25 years, § 14:43; sexual battery - maximum 10 years, § 14:43.1; carnal knowledge of juvenile - maximum 10 years, § 14:80</p> <p><u>SPECIAL</u> life imprisonment is at hard labor without benefit of parole, probation, or suspension of sentence, § 14:42; former mandatory death penalty declared unconstitutional, State v. Williams, 340 So. 2d 1382 (La. Sup. Ct. 1976); forcible rape term at hard labor and 2 year minimum without benefit of probation, parole, or suspension of sentence, § 14:42.1</p>

MAINE ME. REV. STAT. ANN. tit. 17-A, §§ 251 to 255 (Pamph. 1979)

<p>DERIVATION</p>	<p><u>HISTORY</u> 1822 defined rape as carnal knowledge of woman by force or against will, statutory age 10, penalty death; 1831 changed penalty to life; 1842 reworded to ravish and carnally know by force; 1857 added carnal knowledge and abuse of child under 10, abduction to compel marriage; 1884 changed penalty to any term of years; 1904 added carnal knowledge of unmarried female between 14 and 16 by male over 12 with penalty of fine or maximum 2 years; penalty for rape remained any term of years; 1916 put statutory rape in crimes against children, offense unchanged; 1930 compilation raised age of male to 18; 1976 Model Penal Code reform enacted, sex offenses based on prior law, proposed Massachusetts criminal code, and proposed federal criminal code</p> <p><u>PRESENT LAW</u> Model Penal Code rape statute; new offense of gross sexual misconduct based on proposed federal code and proposed Massachusetts criminal code; sexual abuse of minors essentially statutory rape broadened to include sexual acts other than intercourse; unlawful sexual contact new, based on proposed Massachusetts criminal code and proposed federal criminal code</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> rape; gross sexual misconduct (2 categories); sexual abuse of minors; unlawful sexual contact</p> <p><u>REQUIREMENTS</u> rape - sexual intercourse with person under 14, or when victim compelled to submit by force, threat of death, serious bodily injury, or kidnapping, § 252; gross sexual misconduct - sexual act by force, threat of death, serious bodily injury, or kidnapping; sexual intercourse or sexual act with person under 14 under circumstances in which non-consent is presumed, § 253; sexual abuse of minors - sexual intercourse and sexual acts with person between 14 and 16 and actor 5 years older, § 254; unlawful sexual contact - sexual contact, without acquiescence, when victim unconscious or incapable of resisting, has not consented, and under 14 and actor 3 years older, suffering from mental disease, and in official custody and actor has supervisory power, § 255</p>

<p>STATUTORY STRUCTURE</p>	<p>person/person, but definition of sexual intercourse is any penetration of female sex organ by male sex organ, so rape is male/female; all other crimes sex-neutral</p> <p>common law spousal exception assumed, see <u>Comment</u> (1975) to Chapter 11, Sex Offenses (Maine Criminal Code (Supp. 1979) at 99); "spouse means a person legally married to the actor, but does not include a legally married person living apart from the actor under a de facto separation," § 251(1)(A); affirmative defense that defendant and victim were living together as man and wife at time of crime, §§ 252(2), 253(4)</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> 18, § 53</p> <p>14 for most offenses; sexual abuse of minors includes persons under 16; no prosecution of person under 14</p> <p><u>OFFENSES</u> rape - sexual intercourse with person under 14, § 252(1)(A); gross sexual misconduct - sexual act when other person under 14, § 253(1)(B); sexual intercourse or sexual act by person over 19 with person over 14 and under 16, § 254(1); unlawful sexual contact - sexual contact when person under 14 and actor 3 years older, § 255(c)</p>
<p>EVIDENCE, DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u> no evidence statute; corroboration not required; no prompt complaint requirement</p> <p><u>DEFENSES</u> consent; Model Penal Code consent formulation not adopted; mistake as to age to sexual abuse of minors, § 254(2); ignorance and mistake, § 52</p> <p><u>CROSS REFERENCES</u> incest, § 556</p>
<p>PENALTIES</p>	<p><u>TERMS</u> rape - class A crime unless victim voluntary social companion who had allowed sexual contact, then class B crime, § 252(3); gross sexual misconduct - if forced sexual act or person under 14, class A crime unless victim voluntary social companion who had allowed sexual contact, then class B crime, § 253(4); if person incapable because of mental illness, defect, had been administered intoxicant, or custodial care, class B crime, § 253(2)(A,C,E); if person unconscious, physically incapable, or compelled by threat, class C crime, § 253(5); sexual abuse of minors - class D crime, § 254(3); unlawful sexual contact - if person under 14 and actor at least 3 years older, class C crime; all other forms class D crime, § 255(2)</p> <p>class A crime, definite term not to exceed 20 years; class B crime, definite term not to exceed 10 years; class C crime, definite term not to exceed 5 years; class D crime, definite term less than 1 year, § 1252</p> <p><u>SPECIAL</u> grade of crime increased if dangerous weapon used, § 1252(4); minimum custodial term if offense committed with firearm, § 1252(5); authorized fines, § 1301</p>
<p>MARYLAND MD. ANN. CODE art. 27, §§ 461 to 465 (Repl. 1976 & Supp. 1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u> 1809 penalized rape by death or 18 months to 21 years, proof of penetration required, carnal abuse same penalty, statutory age of female 10; 1914 statutory age 14, added provision regarding sexual intercourse with mentally incompetent woman or imbecile; 1916 enacted sodomy statute; 1924 added new misdemeanor of carnal knowledge of female between 14 and 16, prohibited prosecution of male under 18; 1951 added jury instruction stating if no death penalty, maximum 21 years; 1976 penalty statutes replaced by statute defining 2 degrees of rape and 4 degrees of sexual offenses, carnal knowledge of male under 14 by female over 18 repealed, sodomy and perverted practices not repealed, rape evidence reform statute passed; 1977 expanded evidence provisions, statutory rape of person under 14 downgraded to 2d degree</p> <p><u>PRESENT LAW</u> rape reform legislation including evidence statute; rape defined in traditional terms, specific circumstances of violence and force delineate degrees; reform definitions of sexual act and sexual contact; traditional crimes of statutory rape, sodomy</p>

	<p><u>OFFENSES</u></p> <p>rape (2 degrees); sexual offenses (4 degrees)</p> <p><u>REQUIREMENTS</u></p> <p>1st degree rape - vaginal intercourse by force or threat of force, without consent, and actor (1) used or displayed weapon (2) inflicted suffocation, strangulation, disfigurement, or serious physical injury upon victim or anyone else (3) threatened or placed victim in fear of imminent death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping or (4) aided and abetted, § 462(a); 2d degree rape - vaginal intercourse (1) by force or threat of force against will without consent (2) with person known by actor to be mentally defective, mentally incapacitated, or physically helpless (3) with person under 14 and actor at least 4 years older, § 463(a); 1st degree sexual offense - sexual act under circumstances defining 1st degree rape or by force or threat of force, § 464(a); 2d degree sexual offense - sexual act under circumstances defining 1st degree rape or by sexual offense - sexual contact by force and actor (1) used weapon or (2) inflicted suffocation, etc., § 464B(a); 4th degree sexual offense - (1) sexual contact without consent (2) sexual act with person 14 or 15, actor 4 years older or (3) vaginal intercourse with person 14 or 15, actor 4 years older, § 464C(a)</p> <p><u>PRINCIPALS</u></p> <p>rape - male/female; sexual offenses-person/persons; sex-neutral</p> <p><u>SPOUSES</u></p> <p>statutory spousal exception defense to all offenses for legal spouses unless living apart pursuant to decree of divorce, § 464D; special provisions requiring police to aid in cases of spousal assault and providing immunity from civil liability for police acting in good faith, § 11F</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u></p> <p>14, § 463(a)(3); actor must be 4 years older for statutory age offenses</p> <p><u>OFFENSES</u></p> <p>2d degree rape - vaginal intercourse with person under 14 when other person at least 4 years older, § 463(a)(3); 2d degree sexual offense - sexual act with person under 14 and other person four years older, § 464(a)(3); 3d degree sexual offense - sexual contact with person under 14 and other person 4 years older, § 464B(a)(3); 4th degree sexual offense - sexual act or vaginal intercourse with person 14 or 15 and other person 4 years older, § 464C(a)(2)</p>
<p>EVIDENCE DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u></p> <p>prohibits admission of reputation and opinion evidence concerning victim's chastity; specific incidents of prior conduct admitted if judge finds relevance and evidence goes to (1) conduct with defendant (2) source or origin of semen, pregnancy, disease, or trauma (3) support claims of ulterior motive or (4) impeachment when prosecutor puts victim's prior sexual conduct in issue; in camera hearing required, § 461A</p> <p><u>DEFENSES</u></p> <p>consent, for crimes involving persons over 14; spousal exception; defendant entitled to bill of particulars, § 461B</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 335; sodomy, § 553; unnatural or perverted sexual practices, § 554; cost of medical exam, L.1977, ch. 854; causing abuse to child under 18, § 35A; restitution, § 640</p>
<p>PENALTIES</p>	<p><u>TERMS</u></p> <p>1st degree rape - maximum life term, § 462(b); 2d degree rape - maximum 20 years, § 463(b); 1st degree sexual offense - maximum life, § 464(b); 2d degree sexual offense - maximum 20 years, § 464A(b); 3d degree sexual offense - maximum 10 years, § 464B(b); 4th degree sexual offense - maximum 1 year and/or \$1,000 fine, § 464C(b)</p> <p><u>SPECIAL</u></p> <p>sentence for 4th conviction of crimes of violence, including rape, 1st and 2d degree sexual offense, mandatory life term without possibility of parole; for 3d offense, mandatory minimum term of 25 years without parole or suspended sentence, § 643B</p>

MASSACHUSETTS · MASS. ANN. LAWS ch. 265, §§ 22 to 23 (Michie/Law. Co-op 1980)

<p>DERIVATION</p>	<p><u>HISTORY</u></p> <p>1649 defined rape as ravishment of maid or single woman above age of 10 by force or against will, punishable by death or other grievous punishment; 1672 added carnal copulation with child under 10, punishable by death; 1836 contained traditional carnal knowledge rape statute, including carnal knowledge and abuse of female under 10; 1861 penalty life or any term; 1886 increased statutory age to 13; 1890 added carnal knowledge of female in institution or sexual intercourse with female under 18; 1893 raised age of consent to 16 for rape; 1902 retained carnal knowledge statute, statutory age 16, penalty of life or any term of years; 1921 re-</p>
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DERIVATION	<p>defined law in two sections; 1955 distinguished between forceful rape of child and carnal abuse of child, statutory age 16 for both; 1956 offenders over 21 received mandatory minimum term of 5 years; 1966 punishment for 2d offense; 1973 reduced age of actor to 18 for 2d offender status; 1974 redefined all categories of rape in sex-neutral terms as forcible sexual intercourse or unnatural sexual intercourse; 1977 rape evidence reform statute enacted; 1979 amended section on carnal knowledge of mentally disabled persons</p> <p><u>PRESENT LAW</u> sex-neutral rape statute prohibits forcible sexual intercourse and unnatural sexual intercourse; 2 categories of sex-neutral rape of child, forcible, and non-forcible; rape evidence reform statute</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> rape; forcible rape of child; rape and abuse of child (statutory rape)</p> <p><u>REQUIREMENTS</u> rape - sexual intercourse or unnatural sexual intercourse by force or against will, ch. 265, § 22; rape of child - sexual intercourse or unnatural sexual intercourse with child under 16, by force, and against will, ch. 265, § 22A; rape and abuse of child - sexual intercourse or unnatural sexual intercourse or abuse of child under 16, ch. 265, § 24</p> <p><u>PRINCIPALS</u> person/person; sex-neutral</p> <p><u>SPOUSES</u> common law spousal exception; statutory spousal exception in rape and abuse of child, ch. 265, § 23</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> 16, ch. 265, § 23</p> <p><u>OFFENSES</u> statutory rape - sexual intercourse, unnatural sexual intercourse, and abuse of child under 16, ch. 265, § 23; forcible rape of child - sexual intercourse by force of child under 16, ch. 265, § 22A; inducing chaste person under 18 to have unlawful sexual intercourse, ch. 272 § 4</p>
EVIDENCE, DEFENSES, AND CROSS-REFERENCES	<p><u>EVIDENCE</u> reputation evidence and evidence of specific instances of victim's sexual conduct prohibited, except conduct with defendant or as alleged cause of physical feature, characteristics, or condition of victim, then hearing and written findings required, ch. 233, § 21B; exclusion of public from trial for sex offenses involving persons under 18, ch. 278, § 16A</p> <p><u>DEFENSES</u> common law consent to rape and forcible rape of child</p> <p><u>CROSS REFERENCES</u> incest, ch. 272, § 17; drugging persons for sexual intercourse, ch. 272, § 3; inducing person under 18 to have sexual intercourse, ch. 272, § 4; carnal knowledge of mentally disabled persons, ch. 272, § 5; preservation of evidence, ch. 41, § 97B; adultery, ch. 272, § 14; child pornography, ch. 272, §§ 29A to 31; venue may be changed for sex offenses, ch. 265, § 24A</p>
PENALTIES	<p><u>TERMS</u> all offenses - life or any term of years, ch. 265, §§ 22, 22A, 23</p> <p><u>SPECIAL</u> 5 year mandatory term with parole or probation if 2d offense, if actor over 18 and victim under 16, ch. 265, §§ 22A, 23; ch. 267, § 87; no suspended sentence if life term or death penalty, ch. 279, § 1A</p>
<p>MICHIGAN MICH. COMP. LAWS ANN. §§ 750.520a to l (Supp. 1980-81) (MICH. STAT. ANN. §§ 28.788 (1) to (12) (Callaghan Supp. 1980))</p>	
DERIVATION	<p><u>HISTORY</u> 1808 included carnal knowledge rape statute, renamed statutory rape carnal knowledge and abuse of female child under 11, penalty \$1,000 or hard labor for life; 1816 specified age of consent 14, age for statutory rape reduced to 10, penalty reduced for both rape and statutory rape to fine or maximum 15 years at hard labor; 1820 penalty changed to maximum fine \$300 or maximum 2 years; 1827 penalty increased to maximum \$1,000 or solitary confinement up to 20 years; 1830 specified 10 as age of consent, punishment changed to life or any term of years; 1897 age of consent raised to 16; 1913 added provision allowing for prosecution of man who marries woman he rapes and then deserts without good cause; 1913 limited prosecution for statutory rape to males over 14 who had sexual intercourse with females between 14 and 16, penalty maximum 5 years or 1 year, 1 year statute of limitations on prosecutions; 1913 added provision regarding female patients in mental institutions; 1915 authorized punishment for person who represented sexual intercourse part of treatment; 1929 prohibited rape of female under 18 by guardian or employer, penalty 10 years or \$1,000 fine; 1948 sex offender statute; 1952</p>

DERIVATION	<p>penalty for rape changed to indeterminate term with maximum of life; 1974 rape reform legislation, amending rape evidence reform statute and redefinition of offense</p> <p><u>PRESENT LAW</u></p> <p>one of earliest rape reform statutes, became model for legislation in other states</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u></p> <p>criminal sexual conduct (4 degrees)</p> <p><u>REQUIREMENTS</u></p> <p>1st degree - sexual penetration when 1) person under 13 2) person over 13 and under 16 and actor member of household, relative, or in position of authority 3) commission of felony 4) actor aided and has reason to know that victim mentally defective, mentally incapacitated, or physically helpless or actor uses force 5) actor armed or apparently armed 6) personal injury to victim and force 7) personal injury to victim and actor has reason to know that victim mentally defective, mentally incapacitated, or physically helpless, § 750.520b; 2d degree - sexual contact under circumstances of first degree, § 750.520c; 3d degree - sexual penetration when 1) person over 13 and under 16 2) force or coercion used 3) actor has reason to know victim mentally defective, mentally incapacitated, or physically helpless, § 750.520d; 4th degree - sexual contact when 1) force or coercion used or 2) actor has reason to know that victim mentally defective, mentally incapacitated, or physically helpless, § 750.520e</p> <p><u>PRINCIPALS</u></p> <p>person/person, actor/victim; sex-neutral</p> <p>statutory spousal exception excludes couples living apart where one has filed for separate maintenance</p> <p><u>SPOUSES</u></p> <p>or divorce, § 750.5201</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u></p> <p>none; several offenses defined by sexual penetration or sexual contact and age of victim</p> <p><u>OFFENSES</u></p> <p>and under 16 when actor member of household, relative, or in position of authority, § 750.520b(1), (2); 2d degree criminal sexual conduct - sexual contact with person under 13 or with person over 13 and under 16 when actor member of household, relative, or in position of authority, § 750.520c(1), (2)</p>
EVIDENCE DEFENSES AND CROSS REFERENCES	<p><u>EVIDENCE</u></p> <p>prohibits admission of specific instances, opinion evidence, and reputation evidence of victim's sexual conduct unless judge finds in camera that following evidence material: past sexual conduct with defendant or evidence of specific instances of sexual activity showing source or origin of semen, pregnancy, or disease, § 750.520j; corroboration not required, § 750.520h; resistance not required, § 750.520i</p> <p><u>DEFENSES</u></p> <p>statute drafted to limit application of common law consent defense, but absence of force or coercion element of offense; no statutory defenses and no specific statutory repeal of other common law defenses</p> <p><u>CROSS REFERENCES</u></p> <p>suppression of names of victim or actor upon request pending adjudication, § 750.520k; <u>child abusive commercial activity</u> (prostitution and assault with intent), § 750.520g</p>
PENALTIES	<p><u>TERMS</u></p> <p>1st degree - felony punishable by life or term of years, § 750.520b(2); 2d degree - felony punishable by maximum 15 years, § 750.520c(2); 3d degree - felony punishable by maximum 15 years, § 750.520d(2); 4th degree - misdemeanor punishable by maximum 2 years or \$500 fine, § 750.520e(2)</p> <p><u>SPECIAL</u></p> <p>mandatory minimum 5 years for second conviction for 1st, 2d, or 3d degree, § 750.520f</p>

MINNESOTA MINN. STAT. ANN. §§ 609.341 to .351 (West Supp. 1980)

DERIVATION	<p><u>HISTORY</u> 1851 punished rape and carnal knowledge of females over 10 with 10 to 30 years imprisonment, 1 year if victim common prostitute; 1866 required proof of penetration; 1891 rape redefined sexual intercourse without consent, including when female unable to consent through unsoundness of mind, when resistance overcome by fear of immediate and great bodily harm, when resistance prevented by narcotic, or when female unconscious, statutory age unchanged, term of punishment 5-35 years, penetration requirement changed to "any penetration, however slight"; 1894 statutory age increased to 14, maximum term reduced to 30 years, statutory rape divided into three categories: carnal knowledge of girls between 14 and 16 punishable with 1 to 7 years in state prison or 3 months to 1 year in county jail, carnal knowledge of girls between 10 and 14 punishable with 7 to 30 years in prison, and carnal knowledge of girl under 10 punishable by a life term; 1905 statutory age of consent decreased to 10; 1909 age limit for carnal knowledge of girls raised to 18, but no minimum sentence set for carnal knowledge of girls between 14 and 18; 1961 required pre-sentence examination of sex offenders (repealed 1979); 1963 proposed Model Penal Code rape statute not adopted, rape and carnal knowledge of children statutes renumbered and included in criminal code; 1967 rewrote section, defined rape and aggravated rape in traditional terms; 1973 deleted category of statutory rape of female over 16 and under 18; 1980 removed spousal exception for offenses involving adults</p> <p><u>PRESENT LAW</u> rape reform statute modeled on Michigan statute passed in 1974, eff. 1975; 1978 amended technical definition of legal separation; 1979 made minor technical changes</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> criminal sexual conduct (4 degrees); 1st and 3d degree sexual penetration; 2d and 4th degree sexual contact</p> <p><u>REQUIREMENTS</u> 1st degree - sexual penetration (1) complainant under 13 and actor more than 3 years older (2) complainant between 13 and 16 and actor more than 4 years older and in position of authority (3) complainant fears imminent great bodily harm (4) actor armed or apparently armed (5) actor causes personal injury and uses force or coercion (6) actor has reason to know complainant mentally defective, mentally incapacitated, or physically helpless or (7) actor aided and abetted and accomplice uses force or coercion or accomplice is armed or apparently armed, § 609.342; 2d degree - sexual contact under circumstances of 1st degree criminal sexual conduct, § 609.343; 3d degree - sexual penetration complainant under 13 and actor not more than 3 years older or complainant between 13 and 16 and actor more than 2 years older, § 609.344; 4th degree - sexual contact under circumstances of 3d degree criminal sexual conduct, § 609.345</p> <p><u>PRINCIPALS</u> actor/complainant; sex-neutral</p> <p><u>SPOUSES</u> spousal exception repealed where force is used, where there is fear of imminent bodily harm or where bodily harm is inflicted, Act of Apr. 11, 1980, ch. 544, § 2, 1980 Minn. Sess. Law Serv. 691 (West 1980)</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> 13 and under 16 and actor more than 4 years older, §§ 609.342, .343</p> <p><u>OFFENSES</u> 1st degree criminal sexual conduct - sexual penetration (1) complainant under 13 and actor more than 3 years older (2) complainant over 13 and under 16 and actor more than 4 years older or (3) actor in position of authority, § 609.342; 2d degree criminal sexual conduct - sexual contact under age and status restrictions of 1st degree offense, § 609.343; 3d degree criminal sexual conduct - sexual penetration (1) complainant under 13 and actor not more than 3 years older or (2) complainant over 13 and actor more than 2 years older, § 609.344; 4th degree criminal sexual conduct - sexual contact (1) complainant under 13 and actor not more than 3 years older or (2) complainant over 13 and actor more than 4 years older, § 609.345</p>
EVIDENCE AND CROSS-REFERENCES	<p><u>EVIDENCE</u> complainant's prior sexual conduct not admitted nor reference made to such conduct, except for evidence showing source of semen, pregnancy, etc., past conduct with defendant, evidence relevant to consent or fabrication, evidence offered to impeach; motion and offer of proof by defense; court issues order as to admissibility, § 609.347; corroboration and proof of resistance not required, § 609.347 (1), (2); Lord Hale's instruction prohibited, § 609.347(5)(c),(d); jury instructions as to probative value of previous sexual conduct prohibited, § 609.347(5)(a),(b)</p> <p><u>DEFENSES</u> consent unless section precludes it, §§ 609.341(4), .342(a),(b), .343(a),(b), .344(a),(b), .345(a);</p>

EVIDENCE AND CROSS-REFERENCES	<p>mistake as to age defense to 3d and 4th degree if complainant over 13 and under 16, §§ 609.344(b), .345(b); exclusion for acts done for bona fide medical purpose, § 609.348</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 609.365; position of authority defined, § 609.341(10); domestic abuse, § 518B.01; child pornography, § 617.246; cost of medical exam, § 609.35; program to aid victims of sexual attacks, § 241.5i; victim reparations act, definition of injury, § 299B.02; sexual abuse of minors, § 626.556; bail and release, spousal assault, § 629.72</p>
PENALTIES	<p><u>TERMS</u></p> <p>1st degree - maximum 20 years, § 609.342; 2d degree - maximum 15 years, § 609.343; 3d degree - maximum 10 years, § 609.344; 4th degree - maximum 5 years, § 609.345</p> <p><u>SPECIAL</u></p> <p>restrictions on parole eligibility and minimum term for second and subsequent offenders, § 609.346; statute requiring pre-sentence examination of sex offenders (former § 609.116) repealed 1979</p>

MISSISSIPPI MISS. CODE ANN. §§ 97-3-65, -67 to -71 (1972 & Supp. 1979)

DERIVATION	<p><u>HISTORY</u></p> <p>1816 provided mandatory death penalty for rape; 1924 contained same provision, punished slave who attempted rape of free white woman with death; 1839 prohibited carnal knowledge of female under 10 or forcibly ravishing any woman 10 or more, minimum penalty 10 years, carnal knowledge of female over 10 by administering substance producing stupor, punishable by maximum 5 years; 1857 death penalty for slave who raped or attempted carnal connection with white female under 14 with or without consent, punishment for rape changed to life, for administering drug, minimum 20 years; 1906 added where female under 10, not necessary to prove penetration of female's private parts when shown they have been lacerated or torn in attempt to have carnal knowledge; 1917 changed statutory age of female to 12; 1942 added new offense - carnal knowledge of unmarried female of previously chaste character younger than himself and between 12 and 18, punishment fixed by jury, burden on defendant to prove female not previously chaste, corroboration required by statute; 1974 minor changes in language; 1977 passed evidence statute, but corroboration requirement and chaste character provision remain in effect for statutory rape</p> <p><u>PRESENT LAW</u></p> <p>traditional formulation of rape and two statutory rape offenses - carnal knowledge of females under 12 and carnal knowledge of chaste females over 12 and under 18</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u></p> <p>three categories of rape - carnal knowledge of female under 12, carnal knowledge of female 12 or over against will, and carnal knowledge of chaste female over 12 and under 18</p> <p><u>REQUIREMENTS</u></p> <p>carnal knowledge of female under 12 - proof of penetration not required where shown private parts of female have been lacerated or torn in attempt to have carnal knowledge; carnal knowledge of female over 12 - forcible ravishment or carnal knowledge by administration of substance producing stupor, imbecility, or "weakness of body as to prevent effectual resistance," § 97-3-65; carnal knowledge of chaste female over 12 and under 18 - carnal knowledge of unmarried female of "chaste character" younger than himself, § 97-3-67</p> <p><u>PRINCIPALS</u></p> <p>person/female; principals male/female in definitions</p> <p><u>SPOUSES</u></p> <p>no statutory spousal exception, but "unlawful" carnal knowledge implies common law spousal exception; reference to unmarried females in chaste character provision not spousal exception</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u></p> <p>for "chaste" female 18, male older than female; rape carnal knowledge of female under 12; age of offender determines penalty imposed: if offender between 13 and 18, and female under 12, life or term of years; if offender 18 or over and female under 12, death or imprisonment for life</p> <p><u>OFFENSES</u></p> <p>rape - carnally and unlawfully knowing female under 12, § 97-3-65; rape - carnal knowledge of chaste female over 12 and under 18, § 97-3-67</p>

EVIDENCE

opinion evidence, reputation evidence, evidence of specific instances of complaining witness' sexual conduct not admissible by defendant to prove consent; exception for conduct with defendant, for cross-examination of prosecution witnesses, including complaining witness, for evidence as to cause of pregnancy, disease, or source of semen, and special general exception if court finds after hearing evidence relevant and admissible in interests of justice, § 97-3-70; evidence of sexual conduct may be introduced to attack credibility after finding of relevance, § 97-3-68; chaste character presumed; uncorroborated testimony of victim over 12 and under 18 insufficient, § 97-3-69

**EVIDENCE
DEFENSES
AND CROSS-
REFERENCES**

DEFENSES
under 18

consent, to rape and statutory rape; unchaste character of the "injured" female if female over 12 and

CROSS REFERENCES

incest, § 97-29-27; restitution to victims, § 99-37-1; touching, handling child for lustful purposes, § 97-5-23; seduction of female child under age 18, § 97-5-21; exploitation of children, (child pornography), § 97-5-31; unlawful to cohabit with feeble-minded, § 41-21-45; exclusion of public from courtroom, Miss. Const. art. 3 § 26; seduction of daughter, § 11-7-11

TERMS

rape of female under 12 by offender 18 or over, death; carnal knowledge of female under 12, death or life imprisonment, but actor over 18, discretionary term, § 97-3-65; rape of female over 12, life or term of imprisonment, § 97-3-65; carnal knowledge of chaste female over 12 and under 18, fine not exceeding \$500, imprisonment in county jail 6 months, or imprisonment up to 5 years, punishment fixed by jury, § 97-3-67

PENALTIES

SPECIAL

jury determines length and form of punishment, § 97-3-67; habitual criminals sentenced to life imprisonment, § 99-19-83; jury to determine punishment in capital cases in separate sentencing procedure, after consideration of aggravating and mitigating circumstances, § 99-19-101; examination by psychiatrist before person convicted of sex crime may be released on parole, § 47-7-3

MISSOURI MO. REV. STAT. §§ 566.010 to .120 (Supp. 1980)

HISTORY

1825 punished rape by castration cost to defendant or to state if defendant could not pay, carnal knowledge and abuse of female under 10 constituted rape; 1835 punished rape, either as unlawful carnal knowledge of female under 10 or forcibly ravishing female over 10 with minimum 5 years, also defined as carnal knowledge by administering drugs, castration penalty for rape or attempted rape by negro or mulatto; 1856 raised statutory age of female to 12; 1879 changed penalty to death or minimum 5 years for rape at discretion of jury; 1889 raised age of consent to 14; 1899 added statutory rape, carnal knowledge of female of previous chaste character between 14 and 18 punished by 2 years in prison, fine, or county jail term of minimum 1 month, maximum 6 months; 1919 raised age of consent to 15 and defined statutory rape as carnal knowledge of female over 15 and under 18, punishable by minimum 2 years, maximum 5 years; 1929 raised age of consent to 16, punishable by death or minimum 2 years; 1939 changed age of offender to 17, for rape by administering drugs, statutory age remained at 14; 1975 death penalty removed; 1977 death penalty law repealed and replaced eff. 1979

DERIVATION

PRESENT LAW

based on Model Penal Code and New York Penal Code, incorporates some reform features, retains much prior law, adds new crimes; rape evidence reform statute enacted 1977

OFFENSES

rape; sexual assault (2 degrees); sodomy; deviate sexual intercourse with person under 14, or 15 years old, § 566.040(1); sexual abuse (3 degrees)

**STATUTORY
STRUCTURE**

REQUIREMENTS

rape - sexual intercourse without consent by use of forcible compulsion, or when person under 14, § 566.030(1); 1st degree sexual assault - sexual intercourse with incapacitated person or with person 14 or 15 years old, § 566.040(1); 2d degree sexual assault - sexual intercourse by person 17 or over with person 16, § 566.050(1); sodomy - deviate sexual intercourse by forcible compulsion or with person 14, § 566.060(1); 1st degree deviate sexual assault - deviate sexual intercourse with incapacitated person or with person 14 or 15 years old, § 566.070(1); 2d degree deviate sexual assault - deviate sexual intercourse by person 17 or over with person 16, § 566.080(1); sexual misconduct - sexual intercourse with person under 17 with person 14 or 15, or deviate sexual intercourse with person under 17, or deviate sexual intercourse with person of same sex, § 566.090; 1st degree sexual abuse - sexual contact without consent by forcible compulsion, or with person under 12, § 566.100; 2d degree sexual abuse - sexual contact with incapacitated person or with person 12 or 13 years old, § 566.110; 3d degree sexual abuse - sexual contact without consent, § 566.120

<p>STATORY STRUCTURE</p>	<p>male/female for sexual intercourse; commentary states female can be guilty of rape and sex of victim immaterial</p> <p><u>SPOUSES</u> crimes defined in terms of sexual intercourse, deviate sexual intercourse, or sexual contact with another person to whom not married; "spouses living apart pursuant to a judgment of legal separation are not married to each other for the purposes of this chapter," § 566.010(2)</p>
<p>STATORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> none, but age of both victim and offender elements of several crimes</p> <p><u>OFFENSES</u> rape - sexual intercourse with person under 14, § 566.030(2); 1st degree sexual assault - sexual intercourse with person 14 or 15, § 566.040(1); 2d degree sexual assault - sexual intercourse with person 16, § 566.060(1); sodomy - deviate sexual intercourse with person under 14, § 566.060(2); 1st degree deviate sexual assault - deviate sexual intercourse with person 14 or 15, § 566.070(1); 2d degree deviate sexual assault - deviate sexual intercourse with person 16, § 566.080(1); sexual misconduct - sexual intercourse with person 14 or 15 by person under 17, or deviate sexual intercourse with person under 17, or deviate sexual intercourse with person of same sex, § 566.090; 1st degree sexual abuse - sexual contact with person under 12, § 566.100; 2d degree sexual abuse - sexual contact with person 12 or 13, § 566.110</p>
<p>EVIDENCE AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u> opinion evidence, reputation evidence, and specific instances of complaining witness' prior sexual conduct inadmissible; exceptions for prior sexual conduct of witness with defendant to prove consent, evidence showing alternative source of semen, pregnancy, or disease, evidence of immediate surrounding circumstances and evidence relating to previous chastity of complaining witness in cases where, by statute, previously chaste character required to be proved by prosecution; defendant makes offer of proof on record, followed by in camera hearing, where court states reasons on the record, § 491.015</p> <p><u>DEFENSES</u> consent as justifying physical injury, § 565.080; defendant reasonably believed victim not incapacitated and reasonably believed victim consented, § 566.020(1); reasonable mistake as to age if criminality of conduct depends on child being 14 or 15, no defense if criminality of conduct depends on child being under 14, § 566.020(2), (3)</p> <p><u>CROSS REFERENCES</u> incest, § 568.020; child pornography, § 568.060</p>
<p>PENALTIES</p>	<p><u>TERMS</u> rape, sodomy - class B felony unless serious physical injury inflicted or, for rape deadly weapon displayed in threatening manner, then class A felony, §§ 566.030, .060; 1st degree sexual assault, 1st degree deviate sexual assault - class C felony, unless actor inflicts serious physical injury or displays deadly weapon in threatening manner, then class B felony, §§ 566.040, .070; 2d degree sexual assault, 2d degree deviate sexual assault - class D felony unless actor inflicts serious physical injury or displays deadly weapon in threatening manner; then class C felony, §§ 566.050, .080; sexual misconduct - class A misdemeanor, § 566.090</p> <p>class A felony - minimum 10 years, maximum 30 years or life; class B felony - minimum 5 years, maximum 15 years; class C felony - maximum 7 years; class D felony - maximum 5 years; class A misdemeanor - maximum 1 year, § 558.011(1)</p> <p><u>SPECIAL</u> authorized dispositions, § 557.011; criminal sexual psychopaths, § 202.700; jury to determine penalty within range, unless defendant requests court to punish, § 557.036; persistent offenders, § 558.016; extended terms, § 557.021</p>

MONTANA MONT. REV. CODES ANN. §§ 45-5-501 to -606 (1979)

<p>DERIVATION</p>	<p><u>HISTORY</u> 1895 defined rape as sexual intercourse with female not wife of perpetrator if female under 16, female incapable of legal consent through lunacy, resistance of female overcome by violence, female prevented from resisting by threats of immediate and great bodily harm accompanied by apparent power of execution, female unconscious, female submits under belief that person is her husband and this belief induced by artifice, minimum penalty 5 years; 1895 contained seduction statute with chaste character provision; 1913 amendment changed statutory age of female to 18 and changed penalty to minimum 2 years, maximum 99 years; 1913 added lewd and lascivious acts with children; present law enacted 1973</p>
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DERIVATION	<p>PRESENT LAW Montana Criminal Code of 1973 redefined most crimes, added new general provisions incorporating some Model Penal Code reforms; new crime of sexual assault; present definition of sexual intercourse without consent comes from revision of 1973, includes rape evidence statute</p>
STATUTORY STRUCTURE	<p>OFFENSES sexual assault; sexual intercourse without consent; deviate sexual conduct</p> <p>REQUIREMENTS sexual assault - sexual contact without consent, § 45-5-502(1); sexual intercourse without consent, § 45-5-503(1); deviate sexual conduct - knowingly engaging in deviate sexual relations or causing another to engage in deviate sexual relations, § 45-5-505</p> <p>PRINCIPALS sex-neutral; person/person sexual intercourse is with person of opposite sex, § 45-5-503(1)</p> <p>SPOUSES sexual assault and sexual intercourse without consent exclude conduct with spouse, "A person who knowingly subjects another not his spouse. . ." § 45-5-502(1) and "A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse. . ." § 45-5-503(1); no spousal exclusion for deviate sexual conduct, "Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform," § 45-5-506(2)</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT 16, § 45-5-501(2)c; consent to sexual assault ineffective if victim is under 14 and offender more than 3 years older, § 45-5-502(5)</p> <p>OFFENSES sexual assault - sexual contact without consent if victim under 16 and offender 3 years older, § 45-5-502(3); sexual intercourse without consent - sexual intercourse without consent with person of opposite sex if victim under 16 and offender 3 years older, § 45-5-503(3)</p>
EVIDENCE, DEFENSES AND CROSS REFERENCES	<p>EVIDENCE evidence of sexual conduct of victim inadmissible under prosecution for sexual intercourse without consent except evidence of victim's past sexual conduct with offender, evidence of specific instances of victim's sexual activity to show origin of semen, pregnancy, or disease, § 45-5-503(5)</p> <p>DEFENSES mistake as to age - reasonable mistaken belief that victim over 16 defense, but "such belief shall not be deemed reasonable if the child is less than 14," § 45-5-506(1)</p> <p>CROSS REFERENCES incest, § 45-5-613; sexual abuse of children (child pornography), § 45-5-625; prostitution, § 45-5-601</p>
PENALTIES	<p>TERMS sexual assault - fine to \$500 or imprisonment in county jail maximum 6 months, if victim under 16 and offender 3 years older or if offender inflicts bodily injury upon anyone in course of committing sexual assault, imprisonment maximum 20 years, § 45-5-502(2); sexual intercourse without consent - state prison minimum 2 years, maximum 20 years or, if victim under 16 and offender 3 years older or if offender inflicts bodily injury upon anyone in course of committing sexual intercourse without consent, minimum 2 years, maximum 40 years, § 45-5-503(2); deviate sexual conduct - with consent, maximum 10 years, without consent, maximum 20 years, § 45-5-505(2), (3)</p> <p>SPECIAL exception to mandatory minimum sentences based on age of offender, mental capacity of offender, actions under duress, defendant an accomplice, or absence of serious bodily injury to victim, unless weapon used in commission of offense, § 46-18-222; additional sentence for offenses committed with dangerous weapon, § 46-18-221; sentences that may be imposed, § 46-18-201</p>

NEBRASKA NEB. REV. STAT. §§ 28-317 to - 323 (Supp. 1978 & 1979)

DERIVATION	<p>HISTORY 1866 defined rape as carnal knowledge of female forcibly and against will, carnal knowledge of female under 10 with or without her consent by male over 14, penalty 1 year to life; 1873 defined separately forcible rape upon daughter or sister, life penalty, carnal knowledge of other woman or female child forcibly, knowledge and abuse of child under 10 with consent by male over 17, penalty 3 to 20 years; 1873 included carnal knowledge of insane or feeble-minded woman, punishment 3 to 10 years; 1895 increased age of female to 18 and added chaste character provision for carnal knowledge of female between 15 and 18 with consent; 1975 redefined as sexual assault</p> <p>PRESENT LAW 1975 introduced 2 degrees sex-neutral sexual assault; sexual penetration and sexual contact follow expanded definitions in other reform statutes</p>
STATUTORY STRUCTURE	<p>OFFENSES sexual assault (3 degrees)</p> <p>REQUIREMENTS 1st degree - sexual penetration (1) when victim overcome by force, express or implied threat of force, coercion, or deception, (2) when actor knew or should have known victim mentally or physically incapable of resisting or appraising nature of conduct, or (3) when actor 19 years or older victim under 16, § 28-319(1); 2d degree - sexual contact when victim overcome by force, express or implied threat of force, coercion, or deception, or knew or should have known victim physically or mentally incapable of resisting or appraising the nature of conduct and actor caused serious personal injury, § 28-320(1),(2); 3d degree - same as 2d degree but no serious personal injury inflicted on victim, § 28-320(3)</p> <p>PRINCIPALS actor/victim; sex-neutral</p> <p>SPOUSES no reference to marriage or spouses</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT 16, if actor 19 or over</p> <p>OFFENSES 1st degree - sexual penetration when actor 19 or over and victim under 16, § 2B-319(1)c</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p>EVIDENCE upon motion by either party, court holds in camera hearing to determine relevance of either victim's or offender's past sexual conduct; judge determines which evidence of victim's or defendant's past sexual conduct shall be admitted; specific instances of prior sexual activity between victim and person other than defendant shall not be admitted unless consent by victim at issue, then only after showing of relevance, §§ 28-321 to -323</p> <p>DEFENSES consent</p> <p>CROSS REFERENCES incest, § 28-703</p>
PENALTIES	<p>TERMS 1st degree - class II felony, § 28-319(2); 2d degree - class III felony, § 28-320(2); 3d degree - class I misdemeanor, § 28-320(3)</p> <p>class II felony - 1 to 50 years; class III felony - maximum 20 years, fine \$25,000 or both, minimum 1 year; class I misdemeanor - maximum 1 year, fine \$2,000 or both, § 28-106(1)</p> <p>SPECIAL provisions governing sentencing, release, and confinement of mentally disordered sex offenders, § 29-2911; regarding sexual sociopath, § 29-2901; person found guilty of 1st degree sexual assault for second time shall be sentenced to minimum 25 years, not eligible for parole, § 28-319(3)</p>

NEVADA REV. STAT. §§ 200.364 to .375 (1977)

<p>DERIVATION</p>	<p><u>HISTORY</u></p> <p>1861 defined rape as carnal knowledge of female forcibly and against will, or carnal knowledge of female child under 12 with or without her consent by person over 14, punishment - 5 years to life; 1889 changed age of actor to 15 and age of victim to 14; 1912 placed rape with crimes against morality and decency and removed from crimes against person, added that if rape accompanied by act of extreme violence or if great bodily injury inflicted, minimum penalty 20 years, and jury affixes death penalty, added carnal knowledge of female under 16 with or without consent to rape offenses; 1919 changed age of female to 18; 1939 added spousal exception - unless husband accomplice or accessory to rape of wife by third person; 1963 added that if victim under 14 years, offender not be paroled unless psychiatrist certifies offender not menace to society; 1977 redefined as sexual assault</p> <p><u>PRESENT LAW</u></p> <p>rape reform statute redefining rape as sexual assault and statutory sexual seduction; provisions for care of victims more extensive than those of other states</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u></p> <p>sexual assault; statutory sexual seduction</p> <p><u>REQUIREMENTS</u></p> <p>sexual assault - sexual penetration against victim's will, or when victim mentally or physically incapable of resisting or understanding nature of perpetrator's conduct, § 200.366, <u>statutory sexual seduction</u> - ordinary sexual intercourse, intercourse, cunnilingus or fellatio by person over 18 with consenting person under 16, § 200.368</p> <p><u>PRINCIPALS</u></p> <p>perpetrator/victim; sex-neutral</p> <p>traditional spousal exclusion, except for couples living apart, deviate intercourse, or third parties</p> <p><u>SPOUSES</u></p> <p>involved, § 200.373</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u></p> <p>none; sexual assault defined in part by acts with victim under 14, § 200.366(2)(c), person over 18 with consenting person under 16 for statutory sexual seduction, § 200.364(3), if offender under 21, punishment for misdemeanor of statutory sexual seduction</p> <p><u>OFFENSES</u></p> <p>act of sexual intercourse, intercourse, cunnilingus, or fellatio by person over 18 with consenting person under 16, §§ 200.364(3), .368</p>
<p>EVIDENCE, DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u></p> <p>special offer of proof and hearing if evidence of prior sexual conduct of victim offered on issue of consent; specific instances of conduct of witness for attacking credibility may not be proved by extrinsic evidence, but may be inquired into on cross-examination, § 49.069; accused may not present evidence of previous sexual conduct to challenge victim's credibility unless prosecution or victim has testified concerning such conduct, then scope of cross-examination limited, § 50.095; reference to "unchaste character" prohibited in jury instruction, § 175.186; court moves to exclude victim's address and telephone number, § 48.071</p> <p><u>DEFENSES</u></p> <p>consent, absence of force to sexual assault, but not to statutory sexual seduction</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 201.180; crime against nature, § 201.190; lewdness with child under 14 years, § 201.230; crime victim compensation, (including reasonable attorney's fees), § 217.010; treatment for emotional trauma, § 217.310; <u>treatment of victim or spouse, certification, time limits, § 217.320; county to pay for emergency medical care, § 217.300</u></p>
<p>PENALTIES</p>	<p><u>TERMS</u></p> <p>sexual assault, if substantial bodily harm to victim results - life without possibility of parole or with possibility of parole after minimum 10 years served, § 200.366(2)(b); sexual assault, if no substantial bodily harm to victim results - life with possibility of parole after minimum 5 years served or by any definite term of 5 years or more, with eligibility for parole after 5 years served, § 200.366(2)(b); statutory sexual seduction - if offender over 21, 1 to 10 years and fine up to \$10,000; if offender under 21 for gross misdemeanor, § 200.368; lewdness with child under 14 - 1 to 10 years, § 201.230(1)</p>

PENALTIES

trier of fact determines whether substantial bodily harm has been inflicted on victim, and if so, sentence to be imposed, § 200.366(3); limitations on parole - no parole unless qualified psychiatrist certifies person not menace to health, safety, or morals of others, § 200.375; restrictions on parole and probation for person convicted of lewdness with child under 14, § 201.230(2); registration of sex offenders, § 207.151

NEW HAMPSHIRE N. H. REV. STAT. §§ 632-A: 1 to -A:8 (Supp. 1979)

DERIVATION

HISTORY
1791 contained traditional common law rape statute - if man ravishes or carnally knows a woman by committing carnal copulation, with force against will, or commits carnal knowledge and abuse of female under 10, he shall be guilty of rape, penalty death; 1843 punishment solitary confinement not exceeding 6 months or hard labor for life; 1859 changed penalty to 7 to 30 years; 1887 changed age of female to 13, penalty 30 year maximum, no minimum; 1897 changed age of female to 16; 1971, eff. 1973, completely rewrote definition following Model Penal Code; 1975 rewritten; 1979 amended

PRESENT LAW
incorporates several reform features; 3 categories of sex-neutral sexual assault; limited spousal exception; evidence statute

OFFENSES

aggravated felonious sexual assault; felonious sexual assault; sexual assault

REQUIREMENTS

aggravated felonious sexual assault - sexual penetration when actor overcomes victim through application of physical force, physical violence, or superior physical strength, when victim physically helpless, when victim submits through threat, when victim submits under circumstances of false imprisonment, kidnapping, or extortion, when actor has administered intoxicant, when actor engages in medical examination or treatment for purposes not medically recognized or acceptable, when actor through concealment or surprise causes sexual penetration, when victim between 13 and 16 and actor member of household, related by blood or affinity, or in position of authority, or when victim under 13, § 632-A:2; felonious sexual assault - sexual contact causing serious personal injury under circumstances of aggravated felonious sexual assault, § 632-A:3; sexual assault - sexual contact under circumstances of aggravated felonious sexual assault, § 632-A:4

PRINCIPALS

person/victim; sex-neutral

SPOUSES

statutory limitation upon traditional spousal exception - "Spousal exception to sexual assault offenses. A person does not commit a crime under this Chapter if the victim is his legal spouse, unless the spouses are living apart and one of them has filed for separate maintenance or divorce," § 632-A:5

STATUTORY AGE PROVISIONS

13 and 16, § 632-A:2

OFFENSES

aggravated felonious sexual assault - sexual penetration when victim under 13, § 632-A:2 XI, when victim between 13 and 16 and actor member of household, related by blood or affinity to victim, or in position of authority and actor uses this authority to coerce victim to submit, § 632-A:2 X; felonious sexual assault - sexual contact when actor causes serious personal injury to victim under 13, or when victim between 13 and 16 and actor member of household, § 632-A:3; sexual assault - sexual contact when victim under 13, when victim between 13 and 16 and actor member of household, § 632-A:4

EVIDENCE

prohibits admissibility of evidence of prior consensual activity between victim and person other than actor, § 632-A:6; testimony of victim under 16 heard in camera unless good cause shown by defendant; record not sealed and other testimony and evidence introduced shall be public, § 632-A:8; corroboration not required, § 632-A:6

DEFENSES

prompt complaint requirement (6 months), except where victim under 18, § 632-A:7

CROSS REFERENCES

felonious sexual assault, felonious sexual assault, and sexual assault; domestic violence, L.1979, ch.1738
incest, §§ 632-A:2 X, -A:3, -A:4; blood relationship to 13 to 16 year old victim element of aggravated

EVIDENCE, DEFENSES, AND CROSS-REFERENCES

<p>TERMS aggravated felonious sexual assault - class A felony, § 632-A:2; felonious sexual assault - class B felony, § 632-A:3; sexual assault - misdemeanor, § 632-A:4</p> <p>class A felony - maximum 15 years; class B felony - maximum 7 years; misdemeanor - maximum 1 year,</p> <p>§ 651:2-II</p> <p>SPECIAL mandatory sentence for felonious use of firearm, not to be concurrently served, not to be suspended, § 651:2-II-b; extended terms, § 651:6</p>	<p>PENALTIES</p>
<p>HISTORY 1796 common law rape statute rape or carnal knowledge of woman against will and carnal knowledge and abuse of female under 10, penalty 15 years; 1820 different penalty for slaves convicted of rape or other crimes; 1887 raised statutory age to 16, age of offender to over 16; 1905 lowered statutory age to 12, raised fine, increased penalty for rape to 30 years, created new offense - carnal knowledge of woman between 12 and 16 with consent, penalty fine \$2,000 or 15 years; 1910 changed terminology of carnal abuse to "with or without her consent", 1921 added prohibition on carnal knowledge of female inmates in homes or institutions for feeble-minded, penalty fine \$1,000 or 2 years; 1949 required pre-sentence examination of sex offenders and sentence to treatment facility for maximum term for offense after clinical finding of compulsive, repetitive criminal acts; 1951 minor technical changes, raised fine for statutory rape, reworded and renumbered provision dealing with females in institutions, no specific penalty set for offense involving institutionalized female; 1952 added provision for women under influence of drugs; 1976 enacted rape evidence statute; 1979 rape reform legislation effective</p> <p>PRESENT LAW rape reform statute defines rape and sodomy as sex-neutral aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, and lewdness; strong evidence statute; no spousal exception</p>	<p>DERIVATION</p>
<p>OFFENSES lewdness</p> <p>REQUIREMENTS aggravated sexual assault; sexual assault; aggravated criminal sexual contact; criminal sexual contact; aggravated sexual assault; sexual assault; aggravated sexual assault - sexual penetration when victim under 13, when victim between 13 and 16 and actor related to victim, in position of authority, or in position of parent, when sexual act committed during felony, when actor armed, when actor aided or abetted and actor uses force or coercion, when victim physically helpless, mentally defective, or mentally incapacitated, or when actor uses force or coercion and victim sustains severe personal injury, § 2C:14-2(a); sexual assault - sexual contact with victim under 13 when actor 4 years older, sexual penetration when actor uses force or coercion, but victim does not sustain severe personal injury, when victim physically helpless or mentally incapacitated, when actor in position of authority, when victim between 16 and 18 and actor member of household, when victim between 13 and 16 and actor 4 years older, § 2C:14-2(b); aggravated criminal sexual contact - sexual contact under circumstances defining aggravated sexual assault; <u>criminal sexual contact</u> - sexual contact under circumstances defining sexual assault, § 2C:14-3(b)</p> <p>PRINCIPALS actor/victim; sex-neutral</p> <p>SPOUSES common law spousal exception explicitly repealed; "No actor shall be presumed to be incapable of committing a crime under this chapter because of . . . marriage to the victim," § 2C:14-5(b)</p>	<p>STATUTORY STRUCTURE</p>
<p>AGE OF CONSENT years older, §§ 2C:14-2(c)(5), -3(a)</p> <p>OFFENSES aggravated sexual assault - sexual penetration when victim under 13, § 2C:14-2(a)(1), when victim is between 13 and 16 and either relationship of affinity or actor in position of authority or in position of parent, § 2C:14-2(a)(2); <u>sexual assault</u> - sexual contact with victim under 13 when actor 4 years older, § 2C:14-2(b), sexual penetration when victim between 16 and 18 and actor member of household with supervisory or disciplinary power, § 2C:14-2(c)(4), when victim between 13 and 16 and actor 4 years older, § 2C:14-2(c)(5); <u>aggravated criminal sexual conduct</u> - sexual contact when victim between 13 and 16 and relationship of affinity or actor in position of authority or in position of parent, § 2C:14-3(a); <u>criminal sexual contact</u> - sexual contact when victim between 16 and 18 and actor member of household with supervisory or disciplinary power, when victim between 13 and 16 and actor 4 years older, § 2C:14-3(b)</p>	<p>STATUTORY AGE PROVISIONS</p>

NEW JERSEY N. J. STAT. ANN. §§ 2C:14-1 to -8 (West Pamph. 1979)

EVIDENCE DEFENSES AND CROSS-REFERENCES	<p>limits admission of evidence of victim's previous sexual conduct or reference to such conduct before jury, except under court order after in camera hearing; presumption of irrelevancy for conduct more than 1 year before offense; evidence of previous sexual conduct not considered relevant unless material to negating element of force or coercion or to proving that source of semen, pregnancy, or disease is person other than defendant, § 2C:14-7</p> <p>consent, consent to bodily harm for all criminal offenses, § 2C:2-10; ignorance or mistake of law or fact, if reasonable, § 2C:2-4; all common law defenses preserved unless explicit legislative purpose to the contrary, § 2C:2-5</p> <p><u>COERCION FOR PURPOSES OF SEXUAL ASSAULT</u>, § 2C:13-5; <u>treatment of sex offenders</u>, § 2C:47-1</p>
PENALTIES	<p><u>TERMS</u> 14-2(b); aggravated criminal sexual contact - 3d degree offense, § 2C:14-3(a); criminal sexual contact - 4th degree offense, § 2C:14-3(b); lewdness - disorderly persons offense, § 2C:14-4</p> <p>1st degree offense - 10 to 20 years; 2d degree offense - 5 to 10 years; 3d degree offense - 3 to 5 years; 4th degree offense - maximum 18 months, § 2C:43-6(a); disorderly persons offense - maximum 6 months, § 2C:43-8</p> <p><u>SPECIAL</u> second or subsequent offense, fixed minimum term of at least 5 years; no parole; no suspended sentence, no non-custodial sentence, § 2C:14-6; new criteria for sentencing, § 2C:44-1; fines and restitutions, § 2C:43-3; extended terms, § 2C:43-7; first release of all offenders on parole, § 2C:43-9</p>

NEW MEXICO N. M. STAT. ANN. §§ 30-9-10 to - 17 (1978 & Supp. 1979)

DERIVATION	<p><u>HISTORY</u> 1865 included variant of Elizabethan rape statute, person who ravished or had carnal knowledge of female over 10 by force or against will guilty of rape, punishment maximum 30 years, minimum 5 years, provided woman not common prostitute, for rape of child under 10, life; same statute included in the 1882 compilation under category of "offenses against lives"; 1887 rewrote definition of offense and changed statutory age and penalties, rape defined as sexual intercourse with female under 14, or with female over 14 but incapable of consent because of imbecility, unsoundness of mind, whether temporary or permanent, or when resistance overcome or prevented by stupor or weakness produced by intoxicant or anesthetic administered by defendant or someone in privacy with defendant, penalty maximum 20 years, minimum 5 years; 1887 presumption of incapacity for males to statutory defense; 1907 added new offense - seduction of female student under 18 with consent, penalty - minimum 1 year, maximum 5 years; 1915 changed statutory age for rape to 16, proviso concerning prostitutes remained; 1923 changed penalty for rape to minimum 1 year, maximum 99 years; 1963 Model Penal Code revision, but definition of rape essentially retained, term wife excluded legally separated, included female over 18 in relationship of consensual cohabitation, rape when male caused female other than wife to engage in sexual intercourse without consent, when resistance overcome by force, when female incapable of consent, or when resistance prevented by narcotic, rape 2d degree felony punishable by minimum 10 years, maximum 50 years, plus fine, new offense of statutory rape - sexual intercourse with female under 16, statutory defense of reasonable mistake as to age, offense graded, age of offender under 21, 4th degree felony, minimum 1 year, maximum 5 years, if victim under 13, no mistake as to age defense, new offense sexual assault - indecent touching of person under 16 with defense of mistake as to age; 1975 revision entirely rewrote the law</p> <p><u>PRESENT LAW</u> rape reform statute defining criminal sexual penetration, criminal sexual contact, and criminal sexual contact of minor; strong evidence statute; corroboration requirement repealed</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> criminal sexual penetration (3 degrees); 4th degree criminal sexual contact; 3d and 4th degree criminal sexual contact of minor</p> <p><u>REQUIREMENTS</u> 1st degree criminal sexual penetration - criminal sexual penetration of child under 13, or by use of force or coercion which results in great bodily harm or great mental anguish to victim, § 30-9-11A; 2d degree criminal sexual penetration - criminal sexual penetration of child over 13 and under 16 when perpetrator in position of authority, by use of force or coercion resulting in personal injury to victim, by use of force or coercion when perpetrator is aided and abetted, during commission of any other felony, or when perpetrator is armed, § 30-9-11B; 3d degree criminal sexual penetration - criminal sexual penetration perpetrated through</p>

<p>STATUTORY AGE PROVISIONS</p>	<p>use of force or coercion, § 30-9-11C; 4th degree sexual contact - criminal sexual contact perpetrated by force or coercion resulting in personal injury to victim, by use of force or coercion when perpetrator aided or abetted, when perpetrator armed, § 30-9-12; 3d degree criminal sexual contact of minor - criminal sexual contact of minor perpetrated on child under 13, on child 13 to 18 when perpetrator in position of authority, and uses authority to coerce child to submit, § 30-9-13A; 4th degree criminal sexual contact of minor - all criminal sexual contact of child 13 to 18 perpetrated with force or coercion, § 30-9-13B</p> <p><u>PRINCIPALS</u> person/person; sex-neutral</p> <p><u>SPOUSES</u> spousal exception included in definition of criminal sexual penetration, "Criminal sexual penetration is the unlawful and intentional causing of a person, other than one's spouse, to engage in...", § 30-9-11; spousal exception included in definition of criminal sexual contact, "Criminal sexual contact is intentionally touching... someone other than one's spouse or intentionally causing another... and someone other than one's spouse..." § 30-9-12; spousal exception included in definition of criminal sexual contact of minor, "Criminal sexual contact of a minor is unlawfully and intentionally touching... a minor other than one's spouse or unlawfully and intentionally causing a minor other than one's spouse to touch...", § 30-9-13; spouse means legal husband or wife, unless couple living apart or either spouse has filed for separate maintenance or divorce, § 30-9-10E</p> <p><u>AGE OF CONSENT</u> none, but age of victim element of several offenses</p> <p><u>OFFENSES</u> 1st degree criminal sexual penetration - criminal sexual penetration perpetrated on child under 13, § 31-9-11A; 2d degree criminal sexual penetration - criminal sexual penetration perpetrated on child 13 to 16 when perpetrator in position of authority and uses authority to coerce child to submit, § 30-9-11B; criminal sexual contact - committed on or caused to be committed by person over 18, but no restriction on age of person committing offense, § 30-9-12; criminal sexual contact of minor in 3d degree - all criminal sexual contact of minor perpetrated on child under 13 or on child 13 to 18 years of age when perpetrator in position of authority and uses authority to coerce child to submit, § 30-9-13A</p>
<p>EVIDENCE DEFENSES AND CROSS- REFERENCES</p>	<p><u>EVIDENCE</u> evidence of the victim's past sexual conduct, opinion evidence, or evidence of reputation for past sexual conduct not admitted unless court finds it material and not prejudicial; defendant must file written motion prior to trial and court hears in camera; court issues written order stating what may be introduced by defendant and stating specific questions to be permitted, § 30-9-16; testimony of alleged victim under 16 may be videotaped, including cross-examination, and heard at trial in lieu of direct testimony of alleged victim, § 30-9-17; corroboration requirement repealed, § 30-9-15; resistance not required for proof of force or coercion, § 30-9-10A</p> <p><u>DEFENSES</u> of victim element of offense consent for criminal sexual contact, § 30-9-12; no mistake as to age defense for offenses where age of victim element of offense</p> <p><u>CROSS REFERENCES</u> incest, § 30-10-3; victim restitution, § 31-17-1</p>
<p>PENALTIES</p>	<p><u>TERMS</u> 1st degree criminal sexual penetration - 1st degree felony, § 30-9-11A; 2d degree criminal sexual penetration - 2d degree felony, § 30-9-11B; 3d degree criminal sexual penetration - 3d degree felony, § 30-9-11C; 4th degree criminal sexual contact - 4th degree felony, § 30-9-12A; criminal sexual contact - misdemeanor when perpetrated through use of force or coercion, § 30-9-12B; 3d degree criminal sexual contact of minor - 3d degree felony, § 30-9-13A; 4th degree criminal sexual contact of minor, § 30-9-13B</p> <p>1st degree felony - 18 years imprisonment, § 31-18-15A(1); 2d degree felony - 9 years imprisonment, § 31-18-15A(2); 3d degree felony - 3 years imprisonment, § 31-18-15A(3); 4th degree felony - 18 months imprisonment, § 31-18-15A(4)</p> <p><u>SPECIAL</u> aggravating and mitigating circumstances can be used by judge or jury to alter basic sentences, if reasons given on record, but use of firearm or prior felony convictions not aggravating circumstances, § 31-18-15.1; aggravating and mitigating circumstances, §§ 30-21A-5, -6; use of firearm for alteration of basic sentence, § 31-18-16; habitual offenders, alteration of basic sentence, § 31-18-17; all sentences include parole term to be served after completion of actual time of imprisonment, § 31-18-15C; fines may be imposed in addition to term of imprisonment, § 31-18-15D</p>

NEW YORK N. Y. PENAL LAW §§ 130.00-.35, .55-.65 (McKinney 1977 & Supp 1979)

HISTORY

1829 defined rape as carnally and unlawfully knowing female child under 10 or forcibly ravishing woman over 10, punishment minimum 10 years, carnal knowledge of woman over 10 without consent by administering liquid or other stupor - producing substance, punishable by maximum 5 years, compelling girl to marry, punishable by minimum 10 years; 1836 added taking away female under 14, punishment up to 3 years or 1 year; 1848 introduced seduction with chaste character provision, and statutory corroboration requirement, misdemeanor with maximum penalty 5 years or 1 year, indictment within two years of offense, and statutory corroboration barred prosecution, no prompt complaint requirement, marriage defense, chaste character provision or corroboration requirement applied to forcible rape or to carnal knowledge of female child under 10; all statutes repealed in 1886; 1909 redefined 1st degree rape as sexual intercourse with female not wife against will or without consent or where female does not resist through idiocy, where resistance overcome, where resistance prevented by fear or by stupor, when female unconscious or in custody of law or in lawful detention, all other sexual intercourse with female under 18, 2d degree rape, new statutory corroboration requirement applied to both forms of rape, corroboration requirement interpreted by case law to apply to every material fact essential to crime, subsequent interpretations turned requirement into strictest of states, penalty for 1st degree rape maximum 10 years; 1950 left substantive offense and corroboration requirement unchanged, 1st degree rape penalty maximum 20 years or indeterminate term with minimum 1 day, maximum life, 2d degree rape, amendment required offender be over 12, penalty maximum 10 years, new offense added misdemeanor later termed statutory rape, if circumstances were neither 1st degree rape nor 2d degree rape; 1965 completely redefined sex offenses following Model Penal Code

PRESENT LAW

Model Penal Code statute defines 3 degrees rape, sodomy, and sexual abuse; emphasis on victim's demonstration of resistance or incapacity to consent; rape evidence statute added 1975, modifications of corroboration requirement 1972 and 1974; amendments to spousal exception and to definition of force and resistance 1978

DERIVATION

OFFENSES

rape (3 degrees); sexual misconduct; sexual abuse (3 degrees)

REQUIREMENTS

1st degree rape - sexual intercourse by forcible compulsion, when female physically helpless, or with female under 11, § 130.35; 2d degree rape - sexual intercourse with female under 14, § 130.30; 3d degree rape - sexual intercourse with female incapable of consent by reason other than age, when male over 21 engages in sexual intercourse with female under 17, § 130.25; sexual misconduct - sexual intercourse with female without consent, deviate sexual intercourse with person without consent, or sexual conduct with animal or dead body, § 130.20; 1st degree sexual abuse - sexual contact by forcible compulsion, when person incapable of consent because physically helpless, or when person under 11, § 130.65; 2d degree sexual abuse - sexual contact with person incapable of consent for reasons other than being under 17, or when person under 14, § 130.60; 3d degree sexual abuse - sexual contact without consent

PRINCIPALS

male/female for rape; male perpetrator for sexual misconduct; sex-neutral for sexual abuse

SPOUSES

means a) the lack of an existing relationship of husband and wife between the female and the actor which is recognized by law or b) the existence of the relationship of husband and wife between the actor and the female which is recognized by law at the time the actor commits an offense proscribed by this article by means of forcible compulsion against the female, and the female and the actor are living apart at such time pursuant to a valid and effective (i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart, or (ii) decree or judgment of separation, or (iii) written agreement of separation subscribed by them and acknowledged in the form required to entitle a deed to be recorded which contains provisions specifically indicating that the actor may be guilty of the commission of a crime for engaging in conduct which constitutes an offense proscribed by this article against and without the consent of the female," § 130.00(4)

STATUTORY STRUCTURE

AGE OF CONSENT

17, § 130.05(3)a; statutory age offenses 11, 14, and 17; age differential between persons element of some offenses

OFFENSES

1st degree rape - sexual intercourse with female under 11, § 130.35(3); 2d degree rape - male over 18 engages in sexual intercourse with female under 14, § 130.30; 3d degree rape - male over 21 engages in sexual intercourse with female under 17, § 130.25; 1st degree sexual abuse - sexual contact with person under 11, § 130.65(3); 2d degree sexual abuse - sexual contact with person under 14, § 130.60(2); 3d degree sexual abuse - sexual contact without consent, § 130.55

STATUTORY AGE PROVISIONS

<p>EVIDENCE AND CROSS-REFERENCES</p>	<p>limited admissibility of evidence of victim's sexual conduct unless proves specific instances of conduct with accused, proves victim has been convicted as prostitute, rebuts evidence introduced by prosecution, proves accused source of semen, pregnancy, or disease, or determined relevant and admissible after hearing and offer of proof by accused, N.Y. CRIM. PROC. LAW § 60.42; limited corroboration requirement, § 130.16; limited resistance requirement, § 130.00(8)</p> <p>DEFENSES</p> <p>"Whether or not specifically stated, it is an element of every offense defined in this article, except the offense of consensual sodomy, that the sexual act was committed without consent of the victim," § 130.05; affirmative defense defendant did not know victim incapable of consent because mentally defective, mentally incapacitated, or physically helpless, § 130.10; 5 year age difference between actor and victim under 17 but over 14 affirmative defense to 3d degree sexual abuse, § 130.55</p> <p>CROSS REFERENCES</p> <p><u>incest</u>, § 255.25; <u>1st degree sodomy</u>, § 130.50; <u>2d degree sodomy</u>, § 130.45; <u>3d degree sodomy</u>, § 130.40; <u>consensual sodomy</u>; § 130.38</p>
<p>PENALTIES</p>	<p>TERMS</p> <p>1st degree rape - class B felony, § 130.35; aggravated sexual abuse - class B felony, § 130.70; 2d degree rape - class D felony, § 130.30; 1st degree sexual abuse - class D felony, § 130.65; 3d degree rape - class E felony, § 130.25; sexual misconduct - class A misdemeanor, § 130.20; 2d degree sexual abuse - class A misdemeanor, § 130.60; 3d degree sexual abuse - class B misdemeanor, § 130.55</p> <p>class B felony - maximum 25 years, § 70.00(2)(b); class D felony - maximum 7 years, § 70.00(2)(d); class E felony - maximum 4 years, § 130.20; class A, class B misdemeanors - maximum 1 year, § 55.05(2)</p> <p>SPECIAL</p> <p>class B violent felonies include 1st degree rape, 1st degree sodomy, § 70.02(1)a; sentence for 2d violent felony offender, § 70.04; sentence for 2d offender, § 70.06; sentence for persistent violent felony offender, § 70.08</p>
<p>NORTH CAROLINA N. C. GEN. STAT. §§ 14-27.1 to - .10 (Supp. 1979)</p>	
<p>DERIVATION</p>	<p>HISTORY</p> <p>1818 adopted Elizabethan rape statute; assault with intent to rape codified 1823; 1868-69 codified traditional offense - every person convicted of ravishing and carnally knowing female 10 or older by force and against will or of carnally knowing and abusing female under 10 suffered death; 1881 added carnal knowledge of married woman by fraud or by impersonating husband; 1917 amendment changed statutory age of female to 12, added new offense - obtaining carnal knowledge of virtuous girls between 12 and 14; case notes referred to 1895 law as source of statute with age limits of 10 to 14, defined offense as carnal knowledge of female child who never had sexual intercourse; 1923 age provisions amended to include females over 12 and under 16, but if offenders married, total bar to prosecution, if male under 18 misdemeanor; 1949 added if jury recommends punishment it shall be life imprisonment, not death; 1977 evidence statute passed, traditional definition of rape with penalty of death, and statutory rape offense defined as carnal knowledge of virtuous girls between 12 and 16; remained in effect until 1979</p> <p>PRESENT LAW</p> <p>legislation passed in 1979 incorporated some reform features, retained aspects of prior law, divided offenses into two degrees, changed some definitions, added new offenses, modified spousal exception</p>
<p>STATUTORY STRUCTURE</p>	<p>OFFENSES</p> <p>rape (2 degrees); sexual offense (2 degrees); intercourse and sexual offense with certain victims</p> <p>REQUIREMENTS</p> <p><u>1st degree rape</u> - vaginal intercourse with person by force and against will and where person employs or displays dangerous or deadly weapon or article believed to be dangerous or deadly weapon, when person inflicts serious personal injury upon victim or another person, when person aided or abetted by 1 or more persons, or when victim child under 12 and defendant 4 years older, § 14-27.2; <u>2d degree rape</u> - vaginal intercourse by force and against will, or when person mentally defective, mentally incapacitated, or physically helpless, and person knows or should know of same, § 14-27.3; <u>1st degree sexual offense</u> - sexual act under circumstances of 1st degree rape, § 14-27.4; <u>2d degree sexual offense</u> - sexual act under circumstances of 2d degree rape, § 14-27.5; <u>intercourse and sexual offense with certain victims</u> - vaginal intercourse or sexual act between minor victim and parent, person in position of parent, or person having custody of victim of any age, § 14-27.7</p> <p>PRINCIPALS</p> <p>male/female for rape; sex-neutral for sexual offense</p>

<p>STATUTORY STRUCTURE</p>	<p><u>SPOUSES</u> spousal exception excludes those living apart, "A person may not be prosecuted under this article if the victim is the person's legal spouse at the time of the commission of the alleged rape or sexual offense unless the parties are living apart pursuant to a written agreement or a judicial decree," § 14-27.8</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> 13, defendant 4 years older, §§ 14-27.2a(2), .4a(2)</p> <p><u>OFFENSES</u> § 14-27.2a(2); 1st degree sexual offense - vaginal intercourse with victim under 12, defendant at least 4 years older, § 14-27.4a(2)</p>
<p>EVIDENCE, DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u> "The sexual behavior of the complainant is irrelevant to any issue unless such behavior was 1) between the complainant and the defendant; or 2) is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant; or is evidence of a pattern of sexual behavior so distinctive and so closely resembling the defendant's version of the alleged encounter as to tend to prove that such complainant consented. . . or behaved in such manner as to lead the defendant reasonably to believe that the complainant consented, or 3) is evidence offered as the basis of a psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged. . . in camera hearing on the record which shall be closed," § 8-58.6; penetration required, emission not required, § 14-27.10</p> <p><u>DEFENSES</u> consent unless defendant in position of parent or has custodial authority over victim, § 14-27.7; presumption of incapacity due to age abolished, § 14-27.9</p> <p><u>CROSS REFERENCES</u> incest, § 14-178; crime against nature, § 14-177</p>
<p>PENALTIES</p>	<p><u>TERMS</u> sexual offense - life, § 14-27.4(b); 2d degree sexual offense - maximum of 40 years, § 14-27.3(b); 1st degree sexual offense - minimum 2 years, maximum 15 years, § 14-27.7</p> <p><u>SPECIAL</u> § 14-1.1 punishment for second or subsequent offenses, § 14-2.1; maximum punishment for felonies including fines,</p>
<p>NORTH DAKOTA N. D. CENT. CODE §§ 12.1-20-07 to - 15 (Repl. 1976 & Supp. 1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u> 1877 defined rape as sexual intercourse with female not wife of perpetrator where female under 16, incapable through lunacy of giving consent, where resistance overcome, where resistance prevented by threats of immediate and great bodily harm, where resistance prevented by intoxication, or where female submits under belief that the defendant husband, presumption of incapacity for males under 14, essential guilt consists of outrage to person and feeling of female, 1st degree rape where female under 10, incapable by lunacy, or where accomplished by force, punished by 10 years, 2d degree rape all other categories, punished by minimum 5 years, no conviction if female over 10 and male under 20, and jury satisfied that victim understood nature of act and consented; 1903 raised statutory age to 18; 1909 added intercourse with female dependent or ward, including female in penal institution, changed age of female to 16 for 1st degree rape and prohibited consent defense for female under 16 for 2d degree rape, penalties changed - 1st degree minimum 5 years, 2d degree minimum 5 years, maximum 15; 1915 graded offense by age of offender, 1st degree rape if offender over 24 and victim under 20, 2d degree if offender between 17 and 20 or if female under 18 and offender between 20 and 24, added 3d degree rape - person under 20, female under 18, punishment - reform school minimum 1 year, maximum 3 years; 1917 changed age of offender to under 17; 1953 added offense of indecent liberties with person under 18 and provision for psychiatric treatment for persons convicted of rape; 1973 rewrote and redefined</p> <p><u>PRESENT LAW</u> Model Penal Code type statute with evidence provisions</p>

<p>STATUTORY STRUCTURE</p>	<p>OFFENSES</p> <p>gross sexual imposition; sexual imposition; corruption or solicitation of minors; sexual assault</p> <p>REQUIREMENTS</p> <p>gross sexual imposition - sexual act when victim submitted by force or threat, when victim's power to appraise or control conduct impaired, when victim unaware, when victim under 15, or when victim mentally incapable of understanding conduct, or sexual contact when victim under 15 or submitted by force or threats, § 12.1-20-03; sexual imposition - sexual act or sexual contact when threat rendered person of reasonable firmness incapable of resisting, § 12.1-20-04; sexual assault - sexual contact offensive to victim when person suffers from mental disease or defect which renders him or her incapable of understanding, when person's control impaired by intoxicant or other means of preventing resistance, when person in official custody or detained in hospital, prison, or other institution and actor has supervisory or disciplinary power over him or her, when person minor and actor parent or guardian, when person minor and actor adult, § 12.1-21-07</p> <p>PRINCIPALS</p> <p>sex-neutral; person/person</p> <p>SPOUSES</p> <p>definition of acts excludes parties who are husband and wife, § 12.1-20-02(1); but excepts spouses living apart under decree of judicial separation, § 12.1-20-01(2)</p>
<p>STATUTORY AGE PROVISIONS</p>	<p>AGE OF CONSENT</p> <p>none, but age of victim 15 for several offenses; other offenses defined as acts between minors and adults, minors are persons under 18, § 14-10-01</p> <p>OFFENSES</p> <p>gross sexual imposition - sexual act or conduct if victim under 15, §§ 12.1-20-03(1)d,(2)a; corruption or solicitation of minors - sexual act by adult with minor over 15, or solicitation of person under 15 by adult to engage in sexual act or sexual contact, § 12.1-20-05; sexual assault - knowing sexual contact where victim minor over 15 and actor parent, guardian, or otherwise responsible for general supervision, or victim minor over 15 and actor adult, §§ 12.1-20-07(1)e,f</p>
<p>EVIDENCE AND CROSS-REFERENCES</p>	<p>EVIDENCE</p> <p>opinion evidence, reputation evidence, and evidence of specific instances of complaining witness' sexual conduct not admissible by defendant to prove consent to gross sexual imposition or sexual imposition; if prosecution offers such evidence, defendant may cross-examine witness and offer rebuttal evidence, § 12.1-20-14; procedures for offer of proof and in camera hearing if sexual conduct of complaining witness offered by defense to attack credibility, § 12.1-20-15</p> <p>DEFENSES</p> <p>mistake as to age defense allowed for offenses involving minors over 15, § 12.1-20-01(1); mistake of law, § 12.1-05-09; excuse (mistake of fact), § 12.1-05-08; prompt complaint requirement, § 12.1-20-01(3)</p> <p>CROSS REFERENCES</p> <p>incest, § 12.1-20-11; fornication, § 12.1-20-08; adultery, § 12.1-20-09; unlawful cohabitation, § 12.1-20-10; deviate sexual act, § 12.1-20-12</p>
<p>PENALTIES</p>	<p>TERMS</p> <p>gross sexual imposition - class A felony if actor inflicts serious bodily injury, if victim under 15, or if victim not voluntary social companion of actor and not previously permitted him sexual liberties, otherwise class B felony, § 12.1-20-03; sexual imposition - class C felony, § 12.1-20-04; corruption or solicitation of minors - class A misdemeanor, § 12.1-20-05; sexual assault - class A misdemeanor if person minor over 15 and actor parent, guardian, or otherwise responsible for supervision or person minor over 15 and actor adult, otherwise class B misdemeanor, § 12.1-20-07</p> <p>class A misdemeanor - maximum 1 year; class B misdemeanor - maximum 30 days, § 12.1-32-01</p> <p>class A felony - maximum 20 years; class B felony - maximum 10 years; class C felony - maximum 5 years; class A misdemeanor - maximum 1 year; class B misdemeanor - maximum 30 days, § 12.1-32-01</p> <p>SPECIAL</p> <p>dangerous special offenders, extended sentences, § 12.1-32-09; provision for restitution to victim condition of probation, § 12.1-32-07(e); mandatory parole component of sentencing, § 12.1-32-10; minimum prison terms for armed offenders, § 12.1-32-02.1; fines in addition to prison terms, § 12.1-32-01</p>

OHIO OHIO REV. CODE ANN. §§ 2907.01 to .12 (Page Repl. 1975 & Supp. 1979)

HISTORY

1808-9 passed carnal knowledge statute - death penalty for carnal knowledge of woman with force and without consent or child under 10 with or without consent; 1835 criminalized forcible carnal knowledge of daughter or sister, hard labor for life, retained other offenses, punishable by 3 to 20 years imprisonment, new provision for carnal knowledge of insane woman, misdemeanor, 3 to 10 year penalty; 1880 included provision male be over 17 for carnal knowledge of female under 10, rape of daughter, sister, or female under 12 punishable by life, other female 3 to 20 years; 1861 miscegenation statute; 1887 changed age of male to over 18 and age of female to 14; 1912 changed age of female to under 16 with consent, 1 to 20 years or 6 months in county jail, court authorized to hear testimony on aggravation and mitigation, forcible rape of daughter, sister or child under 12 punishable by life, other female 3 to 20 years; 1953 renumbered and reworded sections but left major categories unchanged; 1961 changed age of female to under 14 and added forcible rape of female under 14 by person over 18, minimum 5 years, maximum 20 years; 1974 rape reform legislation

DERIVATION

PRESENT LAW

one of earliest and most comprehensive reform statutes; several offenses included under title of sexual assault; forcible rape includes homosexual assaults; new offenses of sexual imposition and sexual battery; evidence statute; new categories based on age and status of victim and offender; all sex offenses, prostitution, and pornography included in revised chapter

OFFENSES

rape; sexual battery; corruption of minor; gross sexual imposition; sexual imposition; and felonious sexual penetration

REQUIREMENTS

rape - sexual conduct when offender compels person to submit by force or threat of force, when offender substantially impairs other person's judgment by administering drug or intoxicant surreptitiously or by force, threat of force or deception, other person under 13 whether offender knows age of person, § 2907.02A; sexual battery - sexual conduct when offender knowingly coerces person to submit by any means to prevent resistance by person of ordinary resolution; when offender knows person's ability to appraise or control conduct substantially impaired, when person submits because unaware act being committed, when person mistakenly identifies offender as spouse, offender person's natural or adoptive parent, stepparent, guardian, custodian, or person in loco parentis, when person in custody of law or patient in hospital or other institution, and offender has supervisory or disciplinary authority, § 2907.04A; gross sexual imposition - sexual contact under circumstances of rape, § 2907.05A; sexual imposition - sexual contact known to be offensive to other person, other person's ability to appraise conduct impaired, other person unaware, other person between 12 and 15 and offender over 18 and 4 years older, § 2907.06A; felonious sexual penetration - penetration with object under circumstances of rape, § 2907.12A

STATUTORY STRUCTURE

PRINCIPALS

sex-neutral; person/person

SPOUSES

definition of offense excepts spouse of offender, §§ 2907.02A, .03A, .04A, .05A, .06A, .12A; Spouse means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply: (1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the revised code; (2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or alimony; (3) In the case of an action for alimony, after the effective date of the judgment for alimony," § 2907.01(L)

AGE OF CONSENT

none, but several offenses depend on victim's age, 13 or 15; 4 years difference between offender over 18 and victim for corruption of minor and sexual imposition, § 2907.04A, .06A

OFFENSES

rape - sexual conduct when person under 13, whether offender knows age of person, § 2907.02A(3); corruption of minor - person over 18 engaging in sexual conduct with another, when offender knows person between 12 and 15 or offender reckless in that regard, § 2907.04A; gross sexual imposition - sexual contact when person under 13, whether offender knows age, § 2907.05A; sexual imposition - sexual contact when person between 12 and 15, whether offender knows age and offender over 18 and 4 years older, § 2907.06A(4); felonious sexual penetration - penetration with object when person under 13, whether offender knows age, § 2907.12A(3)

STATUTORY AGE PROVISIONS

<p>EVIDENCE, DEFENSES AND CROSS-REFERENCES</p>	<p>restrictions on evidence apply only to crimes of rape and gross sexual imposition; evidence of specific instances of victim's sexual activity, opinion evidence, and reputation evidence not admitted unless shows source of semen, pregnancy, or disease; or past sexual activity with offender, and only after finding of relevancy; same restriction on past sexual history of defendant; in camera hearing prior to trial, §§ 2907.02D-F, .5D-F; victim may be independently represented at admissibility hearings; court appoints counsel if victim indigent, §§ 2907.02F, .05F; corroboration requirement for sexual imposition, § 2907.06B; proof of physical resistance not required for rape, § 2907.02(C)</p> <p><u>DEFENSES</u> limited to corruption of minor, § 2907.04A</p> <p><u>CROSS REFERENCES</u> importuning, § 2907.07; voyeurism, § 2907.08; prostitution, § 2907.21; evidence in prostitution cases, § 2907.26; traditional incest statute repealed 1974, some categories of incest redefined as sexual battery, § 2907.03A(5); names suppressed pending disposition, § 2907.11; obscenity, § 2907.31; hospital emergency services, § 2907.29; cost of medical examination, § 2907.28</p>
<p>PENALTIES</p>	<p><u>TERMS</u> rape and felonious sexual penetration - 1st degree felonies if victim under 13 and offender purposely compels victim to submit by force or threat of force, then for life, §§ 2907.02B, .12B; sexual battery - 3d degree felony, § 2907.03B; corruption of minor - 3d degree felony, § 2907.04B; gross sexual imposition - 3d degree felony if victim under 13, otherwise 4th degree felony, § 2907.05B; sexual imposition - 3d degree misdemeanor, § 2907.06C</p> <p>1st degree felony - minimum term 4, 5, 6, or 7 years, maximum 25 years, § 2929.11B(1); 3d degree felony - minimum 1, 1 1/2, 2 or 3 years, maximum 10 years, § 2929.11B(2); 4th degree felony - minimum 6 months, 1 year, 18 months, or 2 years, maximum 5 years, § 2929.11B(4); misdemeanors - restitution, fine, or imprisonment up to 60 days, §§ 2929.21, .22</p> <p><u>SPECIAL</u> repeat offenders, § 2929.01; fines in addition to prison terms, § 2929.11C; circumstances to consider in sentencing, § 2929.12; person accused of rape, sexual battery, or corruption of minor must be examined for venereal disease, treatment condition of probation if accused found guilty, results of examination not admissible, § 2907.27; mentally deficient offenders, psychiatric examination, § 2947.24</p>
<p>OKLAHOMA OKLA. STAT. ANN. tit. 21, §§ 1111 - 1123 (West 1951 & Supp. 1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u> 1893 cited Law of 1890 as source of statute defining rape as act of sexual intercourse accomplished with female not wife of perpetrator where female under 14, where incapable through lunacy, where resistance overcome by force or violence, where resistance prevented by intoxicant, where female unconscious, or where she believes person husband; presumption of inability due to age, any penetration sufficient, rape of female under 10 or incapable of consent through lunacy, 1st degree rape, all other offenses 2d degree rape, 1st degree rape minimum 10 year sentence; 2d degree rape minimum 5 year sentence; 1895 amended definition of 1st degree rape to rape of female under 14; 1901 redefined rape as of female under 16, added new circumstance defining offense where female between 16 and 18 and of previous chaste character, added proviso allowing for rape conviction of husband of victim if husband accomplice; 1910 minor changes added "virtuous" to chaste character provision, added to presumption of inability defense based on age difference between offender and victim where acts consensual, no conviction for rape if female over 14 consents unless offender over 18, added that for 1st degree rape male be over 18 and female under 14, rape by force or threats added to definition of 1st degree rape, penalty for 1st degree death or minimum 15 years at direction of jury, penalty for 2d degree minimum 1 year maximum of 15; 1921 added presumption of inability "except with the consent of the female over 14"; 1965 penalty for 1st degree rape changed to minimum 5 years</p> <p><u>PRESENT LAW</u> traditional definition of rape based on 1910 formulation, essentially same as Law of 1890; chaste character provision remains; evidence statute passed 1975</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> rape (2 degrees)</p> <p><u>REQUIREMENTS</u> 1st degree - sexual intercourse by male over 18 when female under 14, incapable of consent through lunacy or unsoundness of mind, or when accomplished with female either by force overcoming resistance or by threats of immediate and great bodily harm accompanied by apparent power of execution, § 1114; 2d degree - sexual intercourse, female under 16 or female between</p>

<p>STATUTORY STRUCTURE</p>	<p>16 and 18 and of previous chaste and virtuous character, resistance prevented by intoxicant administered by accused, female unconscious, female submits under belief induced by accused that defendant her husband, §§ 1111; 1114</p> <p><u>PRINCIPALS</u> male/female</p> <p><u>SPOUSES</u> the wife of the perpetrator. . . [but] in all cases of collusion between the accused and the husband of the female, to accomplish such act both the husband and the accused shall be deemed guilty of rape," § 1111</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> 16, § 1111, but no conviction for sexual intercourse with female over 14 with her consent unless offender over 18, § 1112; presumption of inability for males under 14, § 1112</p> <p><u>OFFENSES</u> rape - female under 16; female between 16 and 18 and of previous chaste and virtuous character, § 1111</p>
<p>EVIDENCE DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u> prohibits admission by defendant of opinion evidence, reputation evidence, or evidence of specific instances of complaining witness' conduct to prove consent, but not applicable to evidence of complaining witness conduct with or in presence of defendant; defendant may cross-examine as to evidence offered by prosecutor and offer relevant evidence in rebuttal, tit.22, § 750; chaste character provision for statutory rape of female between 16 and 18, 1111</p> <p><u>DEFENSES</u> consent and absence of resistance defense to rape by definition of offense in terms of resistance; if offender under 18, defense to 1st degree rape, § 1114; presumption of inability due to age, § 1112</p> <p><u>CROSS REFERENCES</u> incest, § 885; crime against nature, § 886; Required examination of sex offenders, tit.63, § 1-524(b)</p>
<p>PENALTIES</p>	<p><u>TERMS</u> 1st degree - death or imprisonment, minimum 5 years, § 1115; 2d degree - minimum 1 year, maximum 15 years, § 1116</p> <p><u>SPECIAL</u> discretion to jury to fix penalty for 1st degree, § 1115</p>

OREGON OR. REV. STAT. §§ 163.305 to .475 (Repl. 1977)

<p>DERIVATION</p>	<p><u>HISTORY</u> 1854 defined rape as: carnally and unlawfully knowing female under 10 or forcibly ravishing female over 10, maximum penalty 20 years, minimum penalty 3 years, and if of a sister or daughter, life; 1864 person who carnally knew female under 14 or forcibly ravished woman over 14 guilty of rape, punishment unchanged, rape of sister or daughter in separate section - rape of sister of whole or half blood, or of wife's daughter punished by minimum 20 years or life, corroboration requirement for seduction; 1895 raised statutory age to 16; 1905 added fornication - carnal knowledge of female between 16 and 18 by male over 18, if not rape and person previously of good moral character, penalty of fine or 1 month in county jail, but if rape then minimum of 1 to 5 years in prison; 1940 included provisions for mentally ill and sexually dangerous offenders; 1957 left offenses unchanged but removed minimum 3 years from both categories of offenses; 1971 complete revision</p> <p><u>PRESENT LAW</u> traditional definition of rape, but defined in 3 degrees; rape of sister or daughter retained from prior law; sodomy and sexual abuse redefined; sexual contact introduced; 1971 revision adopted Model Penal Code offenses; rape evidence reform statute 1975; spousal exception removed 1977</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> rape (3 degrees); sexual abuse (2 degrees); sexual misconduct</p> <p><u>REQUIREMENTS</u> 1st degree rape - sexual intercourse by forcible compulsion, or when female under 12, or when female under 16 and male's sister, of whole or half blood, daughter or wife's daughter, § 163.375; 2d degree rape - sexual intercourse when female incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness; or female under 14, § 163.365;</p>

<p>STATUTORY STRUCTURE</p>	<p><u>3d degree rape</u> - sexual intercourse with female under 16, § 163.365; 1st degree sexual abuse - sexual contact when victim under 12, when victim subjected to forcible compulsion, § 163.425; <u>2d degree sexual abuse</u> - sexual contact when victim does not consent, or when victim incapable of consent, § 163.415; <u>sexual misconduct</u> - sexual intercourse or deviate sexual intercourse with unmarried person under 18, § 163.445</p> <p>PRINCIPALS sexual misconduct</p> <p>male/female, 1st degree rape; person/female, 2d and 3d degree rape; person/person, sexual abuse and</p> <p>SPOUSES tion</p> <p>omission of definition of female and statutory defense of consensual cohabitation removed spousal excep-</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u></p> <p>18, § 163.315, but see definition of rape</p> <p><u>OFFENSES</u></p> <p><u>3d degree rape</u> - a male commits rape in 3d degree if he has sexual intercourse with female under 16, § 163.355; <u>2d degree rape</u> - male who has sexual intercourse with female under 14, § 163.365; <u>1st degree rape</u> - person who has sexual intercourse with female under 12, § 163.375; <u>2d degree sexual abuse</u> - sexual contact when victim between 14 and 18 and defendant less than 4 years older, § 163.415; <u>1st degree sexual abuse</u> - sexual contact when victim under 12, § 163.425; <u>sexual misconduct</u> - sexual intercourse or deviate sexual intercourse with unmarried person under 18, § 163.445</p>
<p>EVIDENCE, DEFENSES AND CROSS-REFERENCES</p>	<p><u>EVIDENCE</u></p> <p>sexual character or sexual reputation evidence of complainant not admissible for any purpose, and evidence of previous sexual conduct presumed irrelevant; but presumption may be overcome, if defendant introduces evidence of complainant's previous sexual conduct, in camera hearing and finding of relevance required; evidence of previous sexual conduct may be relevant includes but not limited to evidence showing motive or bias of complainant or evidence to explain or rebut scientific or medical evidence; no restriction on impeachment by proof of prior conviction of crime, § 163.475</p> <p><u>DEFENSES</u></p> <p>mistake as to age defense to 1st and 2d degree rape, ignorance as to incapacity, § 163.325; incapacity due to immaturity, § 161.380, defendant's age if less than 3 years older than victim and victim solely unable to consent because of age, § 163.345</p> <p><u>CROSS REFERENCES</u></p> <p><u>incest</u>, § 163.525; <u>victim compensation</u>, § 147.005</p>
<p>PENALTIES</p>	<p><u>TERMS</u></p> <p><u>class C felony</u>, § 163.355; <u>1st degree sexual abuse</u> - class A felony, § 163.375; <u>2d degree rape</u> - class B felony, § 163.365; <u>3d degree rape</u> - sexual misconduct - class C misdemeanor, § 163.445</p> <p><u>class A felony</u> - maximum 20 years, § 161.605(1); <u>class B felony</u> - maximum 10 years, § 161.605(2); <u>class C felony</u> - maximum 5 years, § 161.605(3); <u>class A misdemeanor</u> - maximum 1 year, § 161.615(1); <u>class C misdemeanor</u> - maximum 30 days, § 161.615(3)</p> <p><u>SPECIAL</u></p> <p>ines for felonies, § 161.625; fines for misdemeanors, § 161.635; sentencing dangerous offenders, § 161.725; dangerous offender, § 161.735</p>
<p>PENNSYLVANIA PA. STAT. ANN. tit. 18, §§ 3101 - 3126 (Purdon 1973 & Supp. 1980-81)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u></p> <p>1682 contained statute prohibiting rape or ravishment, punishment 1 year, for 2d offense, mandatory life term and forfeiture of property to victim, her parents, or husband; 1700 changed penalty to public whipping or 1 to 7 years, property forfeiture depended on offender's marital status, and property went to state, for second offense, offender castrated and branded with R, for negroes death penalty if offense committed on white woman, penalty for attempted rape by negro castration; 1705 eliminated castration, white man life imprisonment, negro branded and deported for attempt; 1718 adopted Elizabethan codification; 1794 changed penalty for rape to minimum 10 years, maximum 21 years, life for second offense; 1829 reduced penalty to minimum 2 years, maximum 12 years; 1860 spelled out traditional definition, 14 for offenders and 10 for females, penalty fine to \$1,000 and imprisonment up to 15 years; 1887 set statutory age of victim and offender at 16, chaste character provisions introduced, consent defense, if proved, reduced crime to</p>

DERIVATION	<p>fornication, added for offense with female under 16; 1939 increased fine to \$7,000; Model Penal Code rape statute passed 1972, eff. 1973; 1976 major amendments</p> <p>statutory corroboration requirement repealed and replaced with rape evidence statute and other pro-victim amendments; amendments to mistake as to age provision and spousal provisions; prompt complaint requirement repealed; Lord Hale's cautionary instruction prohibited; new section said resistance not required</p>
STATUTORY STRUCTURE	<p>OFFENSES decent assault</p> <p>rape; statutory rape; involuntary deviate sexual intercourse; voluntary deviate sexual intercourse; in-</p> <p>REQUIREMENTS resistance by person of reasonable resolution, when person mentally deranged or deficient and incapable of consent, § 3121; statutory rape - sexual intercourse with person under 14 by person over 18, § 3122; involuntary deviate sexual intercourse - deviate sexual intercourse under circumstances of rape or with person under 16, § 3123; voluntary deviate sexual intercourse - all other deviate sexual intercourse, § 3124; indecent assault - sexual contact under circumstances of non-consent, § 3126</p> <p>PRINCIPALS sex-neutral; person/person</p> <p>SPOUSES statutory spousal exception, §§ 3121, 3122; definition deviate sexual intercourse excludes spouses, § 3101; spouse relationship extends to persons living as man and wife, but exclusion inoperative to spouses living in separate residences, or in same residence under terms of written separation agreement or court order; where definition of offense excludes conduct with spouse, conviction of spouse as accomplice not precluded, § 3103</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT 14, actor over 18</p> <p>OFFENSES sexual intercourse - deviate sexual intercourse with person under 16, § 3123</p> <p>statutory rape - sexual intercourse with person under 14 by person over 18, § 3122; involuntary deviate</p>
EVIDENCE DEFENSES AND CROSS REFERENCES	<p>EVIDENCE introduction of all forms of evidence of victim's past sexual conduct prohibited, except conduct with defendant; proceedings followed if evidence admitted - in camera hearing, findings on records, § 3104; Model Penal Code corroboration requirement repealed and Lord Hale's instruction outlawed, § 3106; statutory repeal of resistance requirement, § 3107</p> <p>DEFENSES consent defense to offenses, except statutory rape or involuntary deviate sexual intercourse; prompt complaint requirement repealed, § 3105; reasonable mistake as to age statutory defense if criminality does not depend on child under 14, § 3102</p> <p>CROSS REFERENCES incest, § 4302; felony/rape, § 6102</p>
PENALTIES	<p>TERMS intercourse - 1st degree felony, § 3123; voluntary deviate sexual intercourse - 2d degree misdemeanor, § 3124; indecent assault - 2d degree misdemeanor, § 3126</p> <p>1st degree felony - maximum 20 years, § 1103; 2d degree felony - maximum 10 years, § 1103; 2d degree misdemeanor - maximum 2 years, § 1104</p> <p>SPECIAL fines, §§ 1101, 1358; restitution, § 1106; standards for sentencing, § 1321; presumption of probation, § 1322; sentencing commission, § 1381</p>

PUERTO RICO P. R. LAWS ANN. tit. 33, §§ 4061 to 4067 (1969 & Supp. 1978)

<p>DERIVATION</p>	<p><u>HISTORY</u> 1909 punished rape with "reclusion temporal", 14 to 20 years with specified intermediate ranges, rape defined as lying with woman by force, if woman deprived of reason or unconscious, or if woman under 12, special offenses for slaves of victims; 1913 redefined rape as sexual intercourse with female not wife of perpetrator and under 14, or incapable of resisting, where resistance prevented, where woman unconscious, or where she thought man husband, penalty minimum 5 years; 1937 same definition but minimum penalty reduced 1 year, defendant over 14 unless ability proved, court sentence to life; 1974 rewrote but retained traditional definition, maximum penalty reduced from life to 20 years</p> <p><u>PRESENT LAW</u> traditional definition of rape; no evidence statute; not sex-neutral; statutory corroboration requirement retained but amended 1974</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> rape; lewd and indecent acts</p> <p><u>REQUIREMENTS</u> rape - carnal intercourse when female under 14, when female incapable of legal consent, when female compelled by irresistible physical force or threats of great and immediate harm, when female unaware, when female believes man husband, § 4061; lewd and indecent acts - indecent or lewd act with victim, when victim under 14, when victim compelled, when victim incapable of consent, § 4067</p> <p><u>PRINCIPALS</u> male/female for rape; person/victim for lewd and lascivious acts</p> <p><u>SPOUSES</u> explicit spousal exception for rape, § 4061</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> 14, §§ 4061, 4067; statutory age for seduction 18, § 4063</p> <p><u>OFFENSES</u> rape - carnal intercourse with female under 14 not his wife, § 4061; lewd and indecent acts - person who without intending to have sexual intercourse commits any indecent or lewd act with victim under 14, § 4067</p>
<p>EVIDENCE DEFENSES AND CROSS REFERENCES</p>	<p><u>EVIDENCE</u> corroboration required; resistance essential element of crime; acts and reputation of offended female before or after crime relevant to issue of consent and resistance; 1974 amendment to statutory corroboration requirement added - "In trials for rape or attempts to commit it the corroborating evidence shall only be necessary when from the evidence shall arise the existence previous to the time of the alleged committing of the offense, relations of a friendly, or loving or intimate or equal nature between the accused and the aggrieved woman," tit. 34, P.R. Crim P.R. 154</p> <p><u>DEFENSES</u> traditional common law defenses, including consent; absence of good moral character, seductions, § 4603</p> <p><u>CROSS REFERENCES</u> incest, § 4121; dangerous sex delinquents, § 3373</p>
<p>PENALTIES</p>	<p><u>TERMS</u> rape - 1 to 25 years, § 4061; rape where female compelled by use of irresistible force - 10 to 50 years, § 4061; lewd and indecent acts - 1 to 5 years, § 4067</p> <p><u>SPECIAL</u> compulsive criminals, § 3374; habitual criminals, 12 years to life, § 3375</p>

RHODE ISLAND R. I. GEN. LAWS §§ 11-37-1 to -14 (1970 & Supp. 1979)

DERIVATION	<p>HISTORY 1798 included rape but undefined death penalty; 1844 penalty life or minimum 10 years, bail allowed only by supreme court; 1938 created common law rape crime included in 1956 code, penalty life or minimum 10 years, penalty for carnal knowledge and abuse of girl under 16 maximum 15 years; 1975 evidence statute; 1979 rape reform legislation</p> <p>PRESENT LAW sexual assault 3 degrees, depending on force, incapacity of victim, age of victim, includes sexual penetration or sexual contact during medical treatment or examination; no corroboration requirement or resistance requirement</p>
STATUTORY STRUCTURE	<p>OFFENSES sexual assault (3 degrees)</p> <p>REQUIREMENTS <u>1st degree</u> - sexual penetration when victim under 13, when victim mentally incapacitated, mentally defective, or physically helpless, when actor uses force or coercion, when actor through concealment or surprise overcomes victim, when actor engages in medical treatment or examination of victim for purpose of sexual arousal, gratification, or stimulation, § 11-37-2; 2d degree - sexual contact under circumstances of 1st degree sexual assault except when actor overcomes victim by concealment or surprise, § 11-37-4; 3d degree - sexual penetration by person over 18 with person 13 to 16, § 11-37-6</p> <p>PRINCIPALS sex-neutral; actor/victim</p> <p>SPOUSES explicit spousal exception for 1st degree sexual assault, § 11-37-2; "Spouse - a person married to the actor 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," § 11-37-1</p>
STATUTORY AGE PROVISIONS	<p>AGE OF CONSENT 16, § 11-37-6</p> <p>OFFENSES <u>1st degree sexual assault</u> - sexual penetration when victim under 13, § 11-37-2(A); <u>2d degree sexual assault</u> - sexual contact when victim under 13, § 11-37-4(A); <u>3d degree sexual assault</u> - sexual penetration by person over 18 with person 13 to 16, § 11-37-6</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p>EVIDENCE to introduce evidence of victim's sexual activities with third parties, notice required and hearing outside presence of jurors and spectators; court rules on admissibility after in camera offer of proof and arguments, § 11-37-13; corroboration not required, § 11-37-11; proof of resistance not required, § 11-37-12</p> <p>DEFENSES no statutory definition of consent, status of common law definition of consent unclear</p> <p>CROSS REFERENCES <u>incest</u>, § 11-6-4; <u>restitution</u>, § 12-19-32; <u>Criminal Injuries Compensation Act</u>, § 12-25-1; <u>assault with intent to commit first degree sexual assault</u>, § 11-37-8</p>
PENALTIES	<p>TERMS 1st degree sexual assault - minimum 10 years, maximum life, § 11-37-3; 2d degree sexual assault - minimum 3 years, maximum 15 years, § 11-37-5; 3d degree sexual assault - maximum 5 years, § 11-37-7</p> <p>SPECIAL subsequent offenses - sentence for 2d or subsequent offense to be not less than twice minimum number of years for most recent offense, § 11-37-10</p>

SOUTH CAROLINA S. C. CODE §§ 16-3-651 to -659.1 (1977 & Supp. 1979)

DERIVATION	<p><u>HISTORY</u> 1712 enacted Elizabethan rape statute - person who carnally knows and abuses woman under 10 guilty of felony and suffer felony without benefit of clergy; 1869 whoever shall ravish woman where no consent, or consent after, guilty of rape punished by hard labor for life or minimum 10 years according to aggravation, unlawful carnal knowledge of woman under 10 rape and felony; 1882 cited 1879 law leaving definition unchanged but specified death by hanging as punishment for rape of woman or carnal knowledge of woman under 10; 1895 constitution, art. 3 § 33 prohibited marriage between whites and negroes, stated no unmarried woman under 14 could legally consent to sexual intercourse; 1896 substantive definition of offense unchanged but statutory age for carnal knowledge of woman increased to 14, added if child between 10 and 14 jury recommends mercy, maximum term 14 years; 1902 abducting and deflowering of woman under 16 without knowledge of father, penalty fine and maximum 5 years; 1909 provided testimony be taken in secret, misdemeanor to publish name of raped woman; 1921 new age provisions - carnal knowledge and abuse of woman under 16, but if child over 10, maximum penalty 14 years, if woman child between 14 and 16, maximum penalty 5 years, if defendant under 18, female over 14, previous unchastity of female may be defensively shown, maximum punishment 1 year or \$500 fine; 1922 rape punishment changed - death or maximum 40, minimum 5 years at judge's discretion if jury recommends mercy; 1942 designated offense involving defendant under 18 and female over 14; 1952 rewrote without changing substance; 1967 miscegenation provision declared invalid; 1974 removed death penalty; 1977 present statute enacted; 1978 added relative actor/victim ages to offense involving minor victims; 1979 minor technical amendment</p> <p style="text-align: center;"><u>PRESENT LAW</u> vision</p> <p style="text-align: center;">rape reform statute based upon Michigan; three degrees criminal sexual conduct; includes evidence pro-</p>
STATUTORY STRUCTURE	<p style="text-align: center;">criminal sexual conduct (3 degrees); criminal sexual conduct with minors</p> <p><u>REQUIREMENTS</u> 1st degree - sexual battery with aggravated force or during course of other enumerated felonies, § 16-3-652; 2d degree - sexual battery when actor uses aggravated coercion, § 16-3-653; 3d degree - sexual battery when actor uses force and coercion in absence of aggravating circumstances, or when actor knows or has reason to know victim mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion not used, § 16-3-654</p> <p style="text-align: center;"><u>PRINCIPALS</u> sex-neutral; actor/victim</p> <p style="text-align: center;"><u>SPOUSES</u> statutory spousal exception exempts couples living apart under court order if offense 1st or 2d degree</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> 2d degree offenses defined by victim's age and actor in position of authority, § 16-3-655</p> <p><u>OFFENSES</u> 1st degree <u>criminal sexual conduct</u> - sexual battery with victim under 11, actor at least three years older, § 16-3-655(1); 2d degree <u>criminal sexual conduct</u> - sexual battery with victim 11 to 14, actor at least 3 years older, § 16-3-655(2); 2d degree <u>criminal sexual conduct</u> - sexual battery with victim 14 to 16, actor in position of familial, custodial, or official authority to coerce victim to submit, § 16-3-655(3)</p>
EVIDENCE, DEFENSES, AND CROSS-REFERENCES	<p><u>EVIDENCE</u> specific instances, opinion, and reputation evidence of victim's sexual conduct not admitted, except conduct with defendant or conduct showing origin of semen, pregnancy, or disease admissible after written motion, offer of proof, and in camera hearing; specific proviso allows admission of specific instances of sexual activity which would constitute adultery for impeachment purposes, § 16-3-659.1; no corroboration requirement, § 16-3-657</p> <p><u>DEFENSES</u> aggravated coercion and aggravated force definitions preclude consent defense in 1st or 2d degree criminal sexual conduct; no presumption of male's inability due to age, § 16-3-659</p> <p><u>CROSS REFERENCES</u> incest, § 16-15-20; assaults with intent to commit criminal sexual assault, § 16-3-656; procedures for taking victims' depositions, § 16-3-660, -720; <u>unlawful to publish name of victim</u>, § 16-3-730; <u>buggery</u>, § 16-15-120</p>

<p>PENALTIES</p>	<p>1st degree - maximum 30 years, § 16-3-652(2); 2d degree - maximum 20 years, § 16-3-653(2); 3d degree - maximum 10 years, § 16-3-654(2)</p> <p>SPECIAL none</p>
<p>SOUTH DAKOTA S. D. COMP. LAWS ANN. §§ 22-22-1 to - 7.1 (Special Supp. 1978, Revised 1979, Interim Supp. 1980)</p>	
<p>DERIVATION</p>	<p>HISTORY 1893 defined rape as sexual intercourse with female not wife of perpetrator when female under 16, incapable of consent through lunacy, when resistance overcome or prevented by threats, intoxication, when female unconscious, or when female believed defendant her husband, essential guilt outrage to person and feelings of female; 1st degree rape, minimum 10 years when female under 10 or incapable of consent through lunacy or by force, all other 2d degree rape, minimum 5 years; 1907 raised age of female to 18; 1909 raised maximum 2d degree rape penalty to 20 years; 1972 reduced statutory age to 16</p> <p>PRESENT LAW rape reform statute; evidence statute; statute suppressing names of victim and defendant</p>
<p>STATUTORY STRUCTURE</p>	<p>OFFENSES rape (2 degrees); sexual contact with victim under 15</p> <p>REQUIREMENTS 1st degree rape - sexual penetration under circumstances of force or where victim incapable of consent because of mental or physical incapacity, or under influence of drugs, § 22-22-1; 2d degree rape - victim under 15, § 22-22-1; sexual contact with child under 15 - sexual contact with victim under 15, § 22-22-7</p> <p>PRINCIPALS sex-neutral; actor/person</p> <p>SPOUSES spousal exception removed 1975, reenacted 1977, § 22-22-7</p>
<p>STATUTORY AGE PROVISIONS</p>	<p>AGE OF CONSENT none; actor must be 15 or over to commit sexual contact offense</p> <p>OFFENSES rape - act of sexual penetration where victim under 15, § 22-22-1(4); sexual contact - knowing sexual contact where actor over 15 and victim under 15, § 22-22-7</p>
<p>EVIDENCE DEFENSES AND CROSS REFERENCES</p>	<p>EVIDENCE victim's prior sexual conduct inadmissible unless relevancy hearing held, § 23A-22-15; victim's testimony, § 23A-22-15.1</p> <p>DEFENSES capacity; absence of force, coercion, or threats</p> <p>CROSS REFERENCES incest, § 22-22-19; sexual exploitation of children, § 22-22-22; suppression of names and details in rape prosecution, § 23A-6-22; initial screening evaluation of offenders, § 22-22-5; restitution, § 23A-28-1; damages for seduction, § 21-4-6; prostitution, § 22-23-8</p>
<p>PENALTIES</p>	<p>TERMS 1st degree rape - class 2 felony, 2d degree rape - class 4 felony, § 22-22-1; sexual contact with victim under 15 - class 3 felony if actor 3 years older, otherwise, class 1 misdemeanor, § 22-22-7</p> <p>class 2 felony - 25 years prison, possible fine \$25,000, § 22-6-1(3); class 3 felony - 15 years prison, possible fine \$10,000, § 22-6-1(4); class 4 felony - 10 years prison, possible fine \$15,000, § 22-6-1(5); class 1 misdemeanor - 1 year jail, \$1,000, or both, § 22-6-2(1)</p> <p>SPECIAL habitual offenders, § 22-7-7; counseling as parole condition, § 22-22-5; rape designated crime of violence, § 22-1-2(8)</p>

TENNESSEE

TENN. CODE ANN. §§ 39-3701 to -3710 (Repl. 1975 & Supp. 1980)

DERIVATION	<p><u>HISTORY</u> carnal knowledge accomplished by commencement sexual connection, penalty minimum 10 maximum 20 years; 1858 punished rape by slave or free person of color upon free white female with death by hanging, element of force added to definition of rape, added provision concerning administration of substance to prevent resistance; 1871 added carnal knowledge of married woman by pretending to be husband; 1884 changed punishment for rape to death by hanging, but jury could commute punishment to minimum 10 years maximum life; 1932 death penalty by electrocution, age of female changed to 12 years; 1934 added provision prohibiting unlawful carnal knowledge of female over 12 and under 21, punishment minimum 3 years maximum 10 years, prior chastity evidence admissible by defense only if female over 14, but no conviction when female over 12 is bawd, lewd, or kept female; 1956 added statutory corroboration requirement to section prohibiting carnal knowledge of woman between 12 and 21; 1974 amended penalties for rape of girl under 12 to electrocution, rape of girl over 12 to minimum 10 years maximum life, statutory age of female reduced to 18; penalty minimum 1 year maximum 10 years; 1978 rape reform statute, four degrees criminal sexual conduct, repealed and replaced 1979</p> <p><u>PRESENT LAW</u> present law continues some features of 1978 law but also incorporates reform features</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> aggravated rape; aggravated sexual battery; rape; sexual battery</p> <p><u>REQUIREMENTS</u> aggravated rape - sexual penetration (1) under circumstances of force, if actor armed, if actor causes personal injury to victim, or if actor aided and abetted (2) victim mentally defective, mentally incapacitated, or physically helpless and personal injury to victim, or actor aided and abetted (3) victim under 13 or (4) victim between 13 and 16, and actor related or in position of authority, § 39-3703; aggravated sexual battery - sexual contact under 13 or circumstances of aggravated rape, § 39-3704; rape - sexual penetration by force, when victim mentally defective, mentally incapacitated, or physically helpless; by fraud, or when victim between 13 and 16, § 39-3705; sexual battery - sexual contact under circumstances of rape, § 39-3706</p> <p><u>PRINCIPALS</u> sex-neutral; actor/victim</p> <p><u>SPOUSES</u> no conviction for rape, sexual battery, assault with intent to commit rape, or sexual battery, § 39-3701 to -3710; if victim legal spouse, unless living apart and separate maintenance or divorce filed, § 39-3709</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> none; age of victim partially defines aggravated rape, § 39-3703(a)(4)</p> <p><u>OFFENSES</u> aggravated rape - unlawful sexual penetration when victim under 13, § 39-3703(a)(4); aggravated sexual battery - sexual contact in circumstances of aggravated rape, § 39-3704(a); rape - unlawful sexual penetration by force or coercion, or when victim incapacitated, or by fraud, § 39-3705(a); sexual battery - unlawful sexual contact under circumstances of rape, § 39-3706(a)</p>
EVIDENCE DEFENSES AND CROSS REFERENCES	<p><u>EVIDENCE</u> specific instances of prior consensual activity between victim and person other than offender not admitted unless consent at issue and relevance to consent established outside of presence of jury and spectators, § 40-2445</p> <p><u>DEFENSES</u> consent; traditional common law defenses to battery and rape presumably apply</p> <p><u>CROSS REFERENCES</u> crimes against nature, § 39-707, abduction of female from parents or guardian, § 39-3721; forcible marriage or abduction of female, § 39-3722</p>
PENALTIES	<p><u>TERMS</u> maximum 35 years, § 39-3704(b); rape - life or minimum 20 years, § 39-3703(b); aggravated sexual battery - minimum 5 years, maximum 5 years, § 39-3705(b); sexual battery - maximum 5 years, § 39-3706(b)</p> <p><u>SPECIAL</u> if victim becomes pregnant, contracts venereal disease or serious mental illness, punishment increased by 5 years, § 39-3708; special penalties for class X felonies, including aggravated rape and aggravated sexual battery, §§ 39-5401 to -5404</p>

TEXAS TEX. PENAL CODE ANN. tit. 5, §§ 21.01 to .13 (Vernon 1974 & Supp. 1980)

DERIVATION	<p><u>HISTORY</u> 1845 adopted English common law definition, sexual connection by force contrary to will of victim, death penalty; 1866 defined rape as carnal knowledge of woman without consent obtained by force, threats, or fraud, or carnal knowledge of female under 10 with or without consent and with or without force, threats, or fraud, presumption of inability for male under 14, punishment minimum 5 years, maximum 15 years; 1886 amended penalty section to death, life, or any term of years with minimum 5 years at discretion of jury, rape prosecution within 1 year; 1895 changed statutory age for female to 15; 1918 changed statutory age to 18 and added provision in consent cases that if female over 15, prior sexual conduct admissible; 1970 revision followed Model Penal Code; evidence statute enacted 1975</p> <p><u>PRESENT LAW</u> rape defined by circumstances which prevent or overcome resistance or where female submits because she erroneously believes male her husband</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> decency with child</p> <p><u>REQUIREMENTS</u> rape - sexual intercourse without female's consent, § 21.02; <u>aggravated rape</u> - rape when person causes serious bodily injury, attempts to cause death to victim or another in course of same criminal episode, or submission compelled by threat of death, serious bodily injury, or kidnapping, § 21.03; <u>sexual abuse</u> - deviate sexual intercourse, compelling person to engage in sexual intercourse, deviate sexual intercourse with third person, intercourse without consent, or where victim incapacitated, § 21.04; <u>aggravated sexual abuse</u> - sexual abuse or sexual abuse of child when actor causes serious bodily injury, attempts to cause death to victim or another in course of same criminal episode, or compels submission by threat of death, serious bodily injury, or kidnapping, § 21.05; rape of child - sexual intercourse with female under 17, § 21.09; sexual abuse of child - deviate sexual intercourse with child under 17, § 21.10; <u>indecenty with child</u> - sexual contact with child under 17 or exposure to child under 17 with specified intent, § 21.11</p> <p><u>PRINCIPALS</u> male/female; person/person</p> <p><u>SPOUSES</u> spousal exception extends to persons who cohabit, § 21.12</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> none, but some offenses defined by victim between 14 and 17</p> <p><u>OFFENSES</u> 09; sexual abuse of child - deviate sexual intercourse when female younger than 17 and actor more than 2 years older, § 21.03; <u>indecenty with child</u> - acts with child under 17, § 21.11</p>
EVIDENCE DEFENSES AND CROSS REFERENCES	<p><u>EVIDENCE</u> specific instances, opinion evidence, and reputation evidence of victim's sexual conduct admissible if material and not prejudicial; notice of inquiry, in camera hearing on record, court findings; record sealed for appeal; neither evidence of prior conviction for impeachment nor evidence of promiscuous sexual conduct of child 14 or older restricted, § 21.13; corroboration not required if victim informed any person of offense within 6 months</p> <p><u>DEFENSES</u> consent and absence of resistance; affirmative defense that female over 14 and had engaged promiscuously in sexual intercourse, §§ 21.09(b),(c), .10(b),(c)</p> <p><u>CROSS REFERENCES</u> <u>incest</u>, § 25.02; <u>homosexual conduct</u>, § 21.06; <u>child pornography</u>, 1.1979</p>
PENALTIES	<p><u>TERMS</u> rape - 2d degree felony, § 21.02; rape of child - 2d degree felony, § 21.09; sexual abuse - 2d degree felony, § 21.04; sexual abuse of child - 2d degree felony, § 21.10; indecenty with child - 3d degree felony, § 21.11</p> <p>aggravated rape - 1st degree felony, § 21.03; aggravated sexual abuse - 1st degree felony, § 21.05;</p>

PENALTIES	<p>1st degree felony - minimum 5 years, maximum life or 99 years, possible fine \$10,000, § 12.32; 2d degree felony - minimum 2 years, maximum 20 years, possible fine \$10,000, § 12.33; 3d degree felony - minimum 2 years, maximum 10 years, § 12.34</p> <p><u>SPECIAL</u></p> <p>punishment for repeat and habitual offenders, § 12.42</p>
<h1 style="text-align: center;">UTAH</h1> <h2 style="text-align: center;">UTAH CODE ANN. §§ 76-5-401 to -407 (Repl. 1978 & Supp. 1979)</h2>	
DERIVATION	<p><u>HISTORY</u></p> <p>1866 included offenses of carnal knowledge by force and against will, or of female under 10, penalty minimum 10 years, maximum life; 1876 redefined offense as sexual intercourse when female under 10, incapable of consent, when resistance overcome by force or violence, when resistance prevented, when female unconscious, or when female believed accused husband, male over 14, minimum penalty 5 years; 1888 age of consent raised to 13; 1898 added new offense of carnal knowledge of female between 13 and 18; 1953 penalty when female under 13 maximum 20 years to life, all other victims minimum 10 years; 1973 Model Penal Code revision of criminal code passed</p> <p><u>PRESENT LAW</u></p> <p>Model Penal Code type rape statute; 1979 sex-neutral, prompt complaint requirement repealed</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u></p> <p>rape; sodomy and forcible sodomy; forcible sexual abuse; aggravated sexual assault</p> <p><u>REQUIREMENTS</u></p> <p>rape - sexual intercourse with person not spouse without consent, § 76-5-402; sodomy - oral/anal, genital acts between persons without consent, § 76-5-403; forcible sexual abuse - touching of anus or genitals or taking indecent liberties with requisite intent and without consent, § 76-5-404; aggravated sexual assault - rape, forcible sodomy, attempted rape, or forcible sodomy when actor causes serious bodily injury, or compels submission by threat of kidnapping, death, or serious bodily injury upon anyone, § 76-5-405</p> <p><u>PRINCIPALS</u></p> <p>sex-neutral; person/person, actor/victim</p> <p><u>SPOUSES</u></p> <p>statutory spousal exception excludes those living apart pursuant to court order, § 76-5-407(1); spousal exception to rape, § 76-5-402; specific spousal exception to unlawful sexual intercourse, § 76-5-401</p> <p><u>AGE OF CONSENT</u></p> <p>for sexual acts, 14, § 76-5-406(7); for sexual intercourse, 16, § 76-5-401(1);</p> <p><u>OFFENSES</u></p> <p>sodomy, § 76-5-403</p>
STATUTORY PROVISIONS	<p><u>EVIDENCE</u></p> <p>statutory corroboration requirement only for testimony of accomplices, § 77-31-18</p> <p><u>DEFENSES</u></p> <p>consent, to rape, forcible sodomy, and forcible sexual abuse, but not to unlawful sexual intercourse or to sodomy; ignorance or mistake, § 76-2-304</p> <p><u>CROSS REFERENCES</u></p> <p>incest, § 76-7-102; court may exclude public during rape trial, § 78-7-4; mental examination of sex offenders, § 77-49-1</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p><u>TERMS</u></p> <p>rape - 2d degree felony unless victim under 14, then 1st degree felony, § 76-5-402(2); sodomy - class B misdemeanor; forcible sodomy - 2d degree felony unless victim under 14, then 1st degree felony, § 76-5-403(3); unlawful sexual intercourse - 3d degree felony unless actor less than 3 years older than victim, then class B misdemeanor, § 76-5-401(2); forcible sexual abuse - 3d degree felony, § 76-5-404(2); aggravated sexual assault - 1st degree felony, § 76-5-405(2)</p> <p>1st degree felony - minimum term 5 years, maximum life, § 76-3-203(1); 2d degree felony - minimum 1 year, maximum 15 years, § 76-3-203(2); 3d degree felony - maximum 5 years, § 76-3-203(3); class B misdemeanor, maximum 6 months, § 76-3-204(2)</p>
PENALTIES	

<p>PENALTIES</p>	<p>SPECIAL "recovered," § 77-49-7; victim restitution, § 76-3-201; fines for felonies and misdemeanors, § 76-3-301; special additional terms and mandatory minimum term for second offenses involving firearms, § 76-3-203; aggravating and mitigating circumstances in sentencing, § 77-35-12</p>
<p>VERMONT VT. STAT. ANN. tit. 13, §§ 3251 to 3255 (Supp. 1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u> 1779 punished with death forcible ravishing of woman or maid and carnal copulation against will, provided complaint made promptly and woman made outcry; 1797 added damsel, specified 11 as statutory age, penalty reduced to 10 years and \$1,000 fine, separate offense for carnal knowledge of female under 11 with or against will; 1824 added phrase "or either such punishments"; 1839 rewrote section, consolidated two offenses; 1849 increased penalty to 20 years, fine \$ 2,000, or both; phrasing changes 1862, 1880; 1886 new offense of carnal knowledge of female under 14 by male under 16 with consent, penalty both parties sent to reform school, if forcible offense, penalty for rape; 1898 changed statutory age of female to 16 for all offenses; 1918 offense retitled; 1947 changed designation of institution for juveniles; 1977 redefined offense</p> <p><u>PRESENT LAW</u> sexual assault and aggravated sexual assault; evidence statute and statutory definition of lack of consent</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> sexual assault; aggravated sexual assault</p> <p><u>REQUIREMENTS</u> sexual assault - sexual act without consent, by threat or coercion, by placing other person in fear that person will be harmed imminently, of if victim's ability to appraise or control conduct is impaired after administration of drug or intoxicant, or other person under 16; <u>aggravated sexual assault</u> - sexual assault resulting in serious bodily injury</p> <p><u>PRINCIPALS</u> sex-neutral; person/person</p> <p><u>SPOUSES</u> spousal exception in sexual assault definition, "A person who engages in a sexual act with another person, other than a spouse. . . [or] the other person is under the age of 16 and they are not married to each other," § 3252</p> <p><u>AGE OF CONSENT</u> 16, unless participants married, § 3252(3)</p> <p><u>OFFENSES</u> sexual assault - sexual act with person under 16, § 3252(3); <u>aggravated sexual assault</u> - sexual acts with person under 16 when serious bodily injury occurs, § 3253</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>EVIDENCE</u> excludes opinion and reputation evidence of complaining witness' sexual conduct; special corroboration not required; evidence of prior sexual conduct of complaining witness only admitted when relevant to credibility and material to fact at issue; court may admit past sexual conduct with defendant, evidence showing source of semen, pregnancy, or disease, evidence of specific instance of complaining witness' past false allegations of sexual assault; written notice of motion and in camera hearing; objections to admissibility stated on record, § 3255; proof of resistance not required, § 3254(1)</p> <p><u>DEFENSES</u> consent; marriage</p> <p><u>CROSS REFERENCES</u> <u>intermarriage, fornication by persons prohibited to marry, § 205</u></p>
<p>EVIDENCE, DEFENSES, REFERENCES AND CROSS REFERENCES</p>	<p><u>TERMS</u> sexual assault - maximum term 20 years, fine \$10,000, or both, § 3252; aggravated sexual assault - maximum term 25 years, fine \$15,000, or both, § 3253</p>
<p>PENALTIES</p>	

VIRGINIA VA. CODE §§ 18.2-61 to -68 (1975 & Supp. 1979)

HISTORY

1789 criminalized carnal knowledge and abuse of child under 10; 1792 defined rape as ravishment of woman, without consent, with force, even when she later consented, death penalty, castration of slave who attempted to ravish white woman, otherwise punishment 10 to 21 years; 1819 differentiated penalties by status of offender, slaves - for rape, death, for carnal knowledge of girl under 10, death or castration, for attempt to ravish, castration, free person - for rape, 10 to 21 years, carnal knowledge of girl under 10, 1 to 10 years, accessory, 10 to 21 years; 1823 specified death by hanging of slave, free negro, or mulatto who attempted to ravish white woman; 1825 added consent defense, specified death without benefit of clergy; 1849 punished attempts by free negro by fraud or force at jury discretion with death or 5 to 21 years, if white person had carnal knowledge of female over 12 against will or by force, 10 to 21 years; 1860 specified same penalty for carnal knowledge of female under 12; 1873 provided penalty of death or 10 to 20 years for person who had carnal knowledge of female over 12; 1887 prohibited carnal knowledge of female inmate of lunatic asylum, same penalty as rape of female over 12; 1898 increased statutory age to 14, added provision for "female who is an inmate of deaf, dumb, or blind institution"; 1919 increased statutory age to 16, added new category of carnal knowledge of female between 14 and 16 with consent, penalty 5 to 20 years, if carnal knowledge with consent of female between 12 and 16, subsequent marriage with parental consent may bar prosecution; 1930 added provision prohibiting carnal knowledge of feebleminded or epileptic persons, penalty death or 5 years to life, for female between 14 and 16, with consent, penalty 1 to 20 years, marriage bar to prosecution with restrictions; 1977 added section concerning carnal knowledge of confined or detained juveniles; 1978 added provision concerning order of proof when death of victim occurs in connection with rape

PRESENT LAW traditional rape statute with two formulations of statutory rape; special provisions for females in institutions or under custody of Board of Corrections

OFFENSES rape; carnal knowledge of female child between 13 and 15; carnal knowledge of female patients or pupils of certain institutions; carnal knowledge of certain minors

REQUIREMENTS rape - carnal knowledge of female over 13 against will, by force, carnal knowledge of female under 13, § 18.2-61; carnal knowledge of female between 13 and 15 - carnal knowledge, without force, with consent, § 18.2-63; carnal knowledge of female patients or pupils of certain institutions - carnal knowledge with patient or pupil at institution for mentally ill, retarded, or with knowledge that she is on furlough, § 18.2-64; carnal knowledge of certain minors - carnal knowledge of juveniles in custody of Board of Corrections, § 18.2-64.1

PRINCIPALS male/female, except for prohibition against intercourse with male minor, § 18.2-64.1

SPOUSES no explicit statutory repeal of common law spousal exception

AGE OF CONSENT

13; but carnal knowledge with females, including consenting females, between 13 and 15 forbidden

OFFENSES
§ 18.2-63

rape - carnal knowledge of female under 13, § 18.2-61; carnal knowledge of female between 13 and 15,

EVIDENCE

previous unchaste character may be shown on issue of consent by proof of general reputation; depositions of female witness may be taken by judge or authorized officer away from court and with public excluded, defense right to cross-examine, § 18.2-67; if female over 14 of bad moral repute and "lewd" and carnal knowledge with consent, defendant not convicted of rape but of fornication or contributing to delinquency of minor, § 18.2-65; corroboration required for seduction, § 18.2-69; death of victim, immaterial whether death occurred before or after rape, § 18.2-63.1

DEFENSES consent; no mistake as to age defense for offense involving females between 13 and 15, § 18.2-63; marriage, to carnal knowledge with consent, § 18.2-66

CROSS REFERENCES

adultery and fornication by persons forbidden to marry, incest, § 18.2-366; indecent liberties with children, § 18.2-370; sodomy, § 18.2-361; seduction, § 18.2-68

<p>PENALTIES</p>	<p><u>TERMS</u> rape - life or any term more than 5 years, § 18.2-61; carnal knowledge of female between 13 and 15 - class 4 felony, if accused minor and more than 3 years younger, class 6 felony, if female less than 3 years younger, fornication, § 18.2-64; carnal knowledge of certain minors - class 6 felony, unless minor less than 3 years younger, fornication, § 18.2-64.1; class 3 felony - 5 to 20 years, § 18.2-10(c); class 4 felony - 2 to 10 years, § 18.2-10(d); class 6 felony - 1 to 5 years, or 1 year and/or fine \$1,000 maximum, § 18.2-10(f); punishment for misdemeanors - maximum 1 year and/or \$1,000, § 18.2.11</p> <p><u>SPECIAL</u> age differential between accused and victim determines penalty for carnal knowledge of female between 13 and 15, § 18.2-63, and for carnal knowledge of certain minors, § 18.2.64.1</p>
<p>VIRGIN ISLANDS V. I. CODE ANN. tit. 14, §§ 1701-1706 (Supp. 1979)</p>	
<p>DERIVATION</p>	<p><u>HISTORY</u> 1921 defined rape as sexual intercourse with female other than wife, when female under 12, incapable of consent through lunacy, when resistance prevented, or when resistance overcome by force and violence, minimum penalty 5 years; 1941 rewrote section following N.Y. Penal Law, added requirements for statutory corroboration, proof of penetration beyond reasonable doubt, minimum penalty removed, male over 14, statutory age changed to present formulation; 1964 increased age of victim from 13 to 14 for 3d degree rape</p> <p><u>PRESENT LAW</u> codification of common law rape; three degrees, based on age of female, circumstances</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> rape (3 degrees)</p> <p><u>REQUIREMENTS</u> 1st degree - sexual intercourse when female incapable of consent through idiocy, imbecility, or any un-soundness of mind, when resistance forcibly overcome or prevented by fear of bodily harm or intoxicant, or when female unconscious of nature of act, § 1701; 2d degree - sexual intercourse with female under 14 under circumstances not 1st degree, § 1702; 3d degree - sexual intercourse with female between 14 and 16 under circumstances not 1st degree, § 1703</p> <p><u>PRINCIPALS</u> male/female</p> <p><u>SPOUSES</u> spousal exception included in definition of rape in all 3 degrees, §§ 1701, 1702, 1703</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> 16, § 1703</p> <p><u>OFFENSES</u> 2d degree - sexual intercourse with female under 14, under circumstances not 1st degree rape, § 1702; 3d degree - sexual intercourse with female between 14 and 16, under circumstances not 1st degree rape, § 1703</p>
<p>EVIDENCE, DEFENSES AND CROSS REFERENCES</p>	<p><u>EVIDENCE</u> corroboration required as to fact of intercourse and lack of consent; court instructs regarding complainant's bad reputation for chastity where consent at issue</p> <p><u>DEFENSES</u> consent, to offenses except statutory rape</p> <p><u>CROSS REFERENCES</u> incest - § 961; sodomy, § 2061; bestiality, § 2062</p>
<p>PENALTIES</p>	<p><u>TERMS</u> or maximum 1 year, § 1703</p> <p>1st degree - maximum 20 years, § 1701; 2d degree - maximum 5 years, § 1702; 3d degree - \$200 fine and/</p>

WASHINGTON WASH. REV. CODE §§ 9A.44.010-.090 (1979)

DERIVATION	<p><u>HISTORY</u> 1881 contained traditional Elizabethan rape statute, punished ravishing and carnal knowledge of female 12 or older by force or against will, carnal knowledge of female under 12, carnal knowledge by administering substance producing stupor, and carnal knowledge of idiot with up to life imprisonment; 1909 defined rape as act of intercourse with female over 10 not wife, when victim idiot, when resistance forcibly overcome, prevented by fear of bodily harm, or by stupor produced by intoxicant, or when female unconscious, punishment minimum 5 years, carnal knowledge of female under 18 not wife, punishment 5 years if child between 10 and 15, maximum 10 years if child between 15 and 18 and of previous chaste character; 1919 added same punishment for female who had intercourse with male under 18 not her husband, chaste character provision removed; 1943 increased penalty to life if victim under 10, maximum penalty 20 years if child between 10 and 15; 1973 made rape laws sex-neutral</p> <p><u>PRESENT LAW</u> 1975 repealed former law; replaced with 3 degrees of rape depending on amount of force and age relationship between victim and perpetrator, expanded defenses, restricted admissible evidence</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> rape (3 degrees); statutory rape (3 degrees)</p> <p><u>REQUIREMENTS</u> 1st degree rape - sexual intercourse by forcible compulsion, perpetrator or accessory, uses or threatens to use deadly weapon, kidnaps victim, inflicts serious physical injury, or feloniously enters victim's building or vehicle, § 9A.44.040; 2d degree - sexual intercourse by force or when victim incapable of consent, § 9A.44.050; 3d degree - sexual intercourse where lack of consent clearly expressed by victim's words or conduct or where perpetrator substantially threatens unlawful harm to victim's property rights, § 9A.44.060; 1st degree statutory rape - sexual intercourse with victim under 11 by person over 13, § 9A.44.070; 2d degree - sexual intercourse by person over 16 with person between 11 and 14, § 9A.44.080; 3d degree - sexual intercourse by person over 18 with person 14 and 16, § 9A.44.090</p> <p><u>PRINCIPALS</u> sex-neutral; person/person</p> <p><u>SPOUSES</u> spousal exception for all offenses</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> by age of victim none, but statutory rape determined by age of offender and victim; grading of offense determined in part by age of victim</p> <p><u>OFFENSES</u> 1st, 2d, and 3d degree statutory rape, §§ 9A.44.070-.090</p>
EVIDENCE DEFENSES AND CROSS-REFERENCES	<p><u>EVIDENCE</u> victim's past sexual behavior inadmissible on issue of credibility or to prove consent unless perpetrator and victim engaged in past sexual intercourse; if evidence of past behavior material to issue of consent, admissible on that issue only after written offer of proof, and hearing out of presence of jury, §§ 9A.44.020(2)-(4); corroboration not required, § 9A.44.020(1)</p> <p><u>DEFENSES</u> affirmative defense defendant reasonably believed victim not mentally incapacitated nor physically helpless, § 9A.44.030(1); no mistake as to age defense to statutory rape, unless defendant's mistake reasonably based on declaration as to age by alleged victim, § 9A.44.030(2)</p> <p><u>CROSS REFERENCES</u> incest, § 9A-64-020; domestic violence, L. 1979, ch. 105; aid to victims of sexual assault, L. 1979, ch. 219</p>
PENALTIES	<p><u>TERMS</u> not reduced by credits, § 9A.44.040(2); 2d degree rape - minimum 20 years, no deferral or suspended sentence, with minimum 3 years confinement (2); 1st degree statutory rape - minimum 20 years, no deferred or suspended sentence, § 9A.44.050(2); 3d degree rape - maximum 5 years, § 9A.44.060 10 years, § 9A.44.080(2); 3d degree statutory rape - maximum 5 years, § 9A.44.090(2)</p> <p><u>SPECIAL</u> sexual psychopaths, § 71.06.010; no parole for sexual psychopaths, § 9.95.115</p>

WEST VIRGINIA W. VA. CODE §§ 61-8B-1 to -13 (Repl. 1977 & Supp. 1979)

DERIVATION	<p>HISTORY</p> <p>1868 prohibited carnal knowledge of female over 12 against will or by force, or carnal knowledge of female under 12, minimum term 5 years; 1891 penalty changed to include possibility of death penalty, term 7 to 20 years; 1906 increased statutory age to 14, added that section should not apply to person under 14; 1943 added "not his wife" by male over 16 and carnal knowledge of female of previous chaste character under age of 16, penalty life or death at jury discretion, or 5 to 20 years, proviso excluded male under 16 who had carnal knowledge of female over 12 with consent, female over 16 who had carnal knowledge of male under 16 guilty of misdemeanor, penalty 2 to 6 months in jail; 1957 added provision regarding male over 16 who had carnal knowledge of female under 10, penalty death, life, or 5 to 20 years if with mercy; 1965 added restriction on parole; 1976 rape replaced by statutory formulation of several offenses and statutory defenses</p> <p>PRESENT LAW</p> <p>Model Penal Code formulation of sex-neutral assault and sexual misconduct with evidence statute; statutory spousal exception expands common law provision to include all persons living together; if victim a "voluntary social companion" offense cannot be 1st degree sexual assault</p>
STATUTORY STRUCTURE	<p style="text-align: center;">sexual assault (3 degrees); sexual abuse (3 degrees); sexual misconduct</p> <p>REQUIREMENTS</p> <p>1st degree sexual assault - (1) sexual intercourse by forcible compulsion if actor inflicts serious bodily injury, uses deadly weapon, or victim not voluntary social companion (2) sexual intercourse with person incapable of consent because physically helpless or (3) victim under 11, and actor more than 14, § 61-8B-3; 2d degree sexual assault - sexual intercourse or penetration with object by forcible compulsion, § 61-8B-4; 3d degree sexual assault - sexual intercourse with person incapable of consent because person mentally defective, mentally incapacitated, under 16 and 4 years younger than defendant, § 61-8B-5; 1st degree sexual abuse - sexual contact by forcible compulsion when person incapable of consent because physically helpless or when person under 11, § 61-8B-6; 2d degree sexual abuse - sexual contact when person mentally defective or incapacitated, § 61-8B-7; 3d degree sexual abuse - sexual contact when person incapable of consent because under 16, affirmative defense defendant under 16 or less than 4 years older than victim, § 61-8B-8; sexual misconduct - sexual intercourse without consent or when person deceived, § 61-8B-9</p> <p>PRINCIPALS</p> <p>sex-neutral; he/person "he" includes any human being, § 61-8B-1(10)</p> <p>SPOUSES</p> <p>spousal exception exempts persons living together "Marriage for the purposes of this article in addition to its legal meaning includes persons living together as man and wife regardless of the legal status of their relationship," § 61-8B-1(2)</p>
STATUTORY AGE PROVISIONS	<p style="text-align: center;">16, § 61-8B-2(c)(1)</p> <p>OFFENSES</p> <p>1st degree sexual assault - sexual intercourse by person over 14 with person incapable of consent because under 11, § 61-8B-3(a)(3); 3d degree sexual assault - sexual intercourse by person over 16 with another incapable of consent because under 16 and at least 4 years younger than defendant, § 61-8B-5(a)(2); 1st degree sexual abuse - sexual contact by person over 14 with another incapable of consent under 11, § 61-8B-6(a)(3); 3d degree sexual abuse - sexual contact when victim under 16, § 61-8B-8</p>
EVIDENCE, DEFENSES AND CROSS-REFERENCES	<p>EVIDENCE</p> <p>for any offense where incapacity to consent is based on age, specific instances, opinion evidence and reputation evidence of victim's sexual conduct totally excluded; in other prosecution, victim's prior sexual conduct with defendant admitted on issue of consent, but hearing away from jury required; prior sexual conduct with 3d person admitted to impeach credibility if prosecution introduces issue first, § 61-8B-12</p> <p>DEFENSES</p> <p>consent, § 61-8B-2(a); victim voluntary social companion of actor defense to 1st degree sexual assault, § 61-8B-3(a)(1)(iii); affirmative defense that actor not know of victim's incapacity to consent, including age offenses where victim between 11 and 16, § 61-8B-13; actor under 16 or less than 4 years older than victim defense to 3d degree sexual abuse, § 61-8B-8</p> <p>CROSS REFERENCES</p> <p>incest, § 61-8B-12; indecent exposure, § 61-8B-10; public indecency, § 61-8B-11; child pornography, § 61-8C-1</p>

PENALTIES	<p>1st degree sexual assault - 10 to 20 years and fine \$10,000, § 61-8B-3; 2d degree sexual assault - 5 to 10 years and fine \$10,000, § 61-8B-4; 3d degree sexual assault - 1 to 5 years and fine \$10,000, § 61-8B-5; 1st degree sexual abuse - 1 to 5 years and fine \$10,000, § 61-8B-6; 2d degree sexual abuse - maximum 12 months in county jail and fine \$500; 3d degree sexual abuse - maximum 90 days in county jail and fine \$1,500; sexual misconduct - maximum 12 months in county jail and fine \$500</p>
WISCONSIN	<p>WIS. STAT. ANN. §§ 940.225 (1)-.225 (5) (West 1958 & Supp. 1979-80)</p>
DERIVATION	<p><u>HISTORY</u> 1839 included carnal knowledge rape statute, penalty 10 to 30 years unless victim prostitute, then penalty 1 to 7 years, age for statutory rape 10, penalty life; 1898 age of consent raised to 14, term changed to 5 to 35 years; 1921 age of consent raised to 16, minimum penalty reduced to 1 year, distinction introduced between offenders over 18 and under 18 - for offenders over 18, maximum penalty 35 years, for offenders under 18, maximum penalty 10 years; 1925 prohibited public dissemination of names of victims; 1947 included communications by telephone and telegraph; 1951 required pre-sentence examination for sex offenders; 1955 new offense of sexual intercourse without consent added, including when female incapable of resistance, mentally ill or infirm, or deceived, but maximum penalty 30 years and common law definition of rape retained, maximum penalty 15 years, statutory rape rewritten as sexual intercourse with child, offenses defined were sexual intercourse with female under 18 (maximum penalty 5 years), if female under 16 and male over 18 (maximum penalty 15 years), or if female under 12 and male over 18 (maximum penalty 30 years); rape reform legislation passed in 1975, eff. 1976; technical amendments passed in 1977; 1979 amendment as to classification of offense</p> <p><u>PRESENT LAW</u> offense of rape replaced by 4 degrees of sex-neutral sexual assault; evidence statute and modification of spousal exception passed in 1975</p>
STATUTORY STRUCTURE	<p><u>OFFENSES</u> sexual assault (4 degrees)</p> <p><u>REQUIREMENTS</u> 1st degree - sexual contact or sexual intercourse without consent causing pregnancy or great bodily harm, by use or threat of dangerous weapon or article believed to be dangerous weapon, when person aided and abetted and used threat of force, or with person 12 or under; 2d degree - sexual contact or sexual intercourse without consent by use or threat of force or violence, causing injury, illness, disease, or loss or impairment of sexual or reproductive organ, or mental anguish, with person suffering from mental illness or deficiency, with unconscious person, or with person between 12 and 18 without consent; 3d degree - sexual intercourse without consent; 4th degree - sexual contact without consent</p> <p><u>PRINCIPALS</u> sex-neutral; person/person</p> <p><u>SPOUSES</u> statutory spousal exception, "No person may be prosecuted under this section if the complainant is his or her legal spouse, unless the parties are living apart and one of them has filed for an annulment, legal separation or divorce," § 940.225(6)(6)</p>
STATUTORY AGE PROVISIONS	<p><u>AGE OF CONSENT</u> 15, § 940.225(4); 15 to 17 rebuttable presumption that incapable of consent, § 940.225(4)(a)</p> <p><u>OFFENSES</u> 1st degree sexual assault - sexual contact or sexual intercourse with person under 12, § 940.225(1)(d); 2d degree sexual assault - sexual contact or sexual intercourse with person between 12 and 18 without consent, § 940.225(2)(e)</p>
EVIDENCE DEFENSES AND CROSS-REFERENCES	<p><u>EVIDENCE</u> "evidence of the complaining witness' prior sexual conduct or opinions of the witness' prior sexual conduct and reputation as to prior sexual conduct, shall not be admitted, nor shall any reference to such conduct be made in the presence of the jury except. . . past conduct with the defendant, evidence of specific instances of sexual conduct showing the source of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered, or evidence of prior untruthful allegations of sexual assault made by the complaining witness," § 972.11, judge excludes persons, except officers of court or members of witness' or defendant's family, from hearing in sex offenses, § 970.03(4)</p> <p><u>DEFENSES</u> consent, except that there is rebuttable presumption of non-consent if victim suffers from mental illness or defect, unconscious, or for any other reason unable to communicate unwillingness</p>

<p>EVIDENCE AND CROSS-REFERENCES</p>	<p><u>incest</u> - § 944.06 (amended 1977); <u>sentencing of sex offenders</u>, § 975.01; <u>sexual exploitation of children</u>, § 940.203; <u>enticing child for immoral purposes</u>, § 944.12</p>
<p>PENALTIES</p>	<p>1st degree - class B felony, § 940.225(1); 2nd degree - class C felony, § 940.225(2); 3rd degree - class D felony, § 940.225(3), 4th degree - class A misdemeanor, § 940.225(3M)</p> <p>class B felony - maximum 20 years, § 939.50(3)(b); class C felony - maximum 10 years and/or fine to \$10,000, § 939.50(3)(c); class D felony - maximum 5 years and/or fine to \$10,000, § 939.50(3)(d); class A misdemeanor - imprisonment not to exceed 9 months or fine to \$10,000, § 939.51(3)(a)</p> <p><u>SPECIAL</u> habitual criminals, § 939.62</p>

WYOMING WYO. STAT. §§ 6-4-301 to -314 (1977 & Supp. 1979)

<p>DERIVATION</p>	<p><u>HISTORY</u> 1876 included carnal knowledge rape statute, male over 14, if female under 10, irrespective of consent, penalty 1 year to life; 1887 age of female raised to 14; 1899 age of female raised to 18, reference to males deleted, term "unlawfully" added; 1910 defined rape as unlawful carnal knowledge of woman forcibly and against will, or of female under 18 with or without consent, retained life maximum penalty; 1965 rewrote 3 degrees of rape: 1st degree, forcible rape of adult woman or child, punishable by 1 year to life; 2d degree, carnal knowledge of female under 15 with consent, punishable by 1 to 50 years; 3d degree, carnal knowledge of female from 15 to 18 with consent, punishable by 30 days to 1 year; 1971 changed penalty for 3d degree to 1 year; 1977 rape reform legislation passed; 1978 reduced standard of prejudice necessary to exclude evidence</p> <p><u>PRESENT LAW</u> four degrees of sex-neutral sexual assault defined in terms of circumstances of offense and status of participants; no corroboration requirement; restriction on publication of names; state to pay costs of medical examination; rape evidence statute</p>
<p>STATUTORY STRUCTURE</p>	<p><u>OFFENSES</u> sexual assault (4 degrees)</p> <p><u>REQUIREMENTS</u> 1st degree - sexual penetration or sexual intrusion through actual application of force, by threat of death, injury, pain, or kidnapping, when victim physically helpless, or when victim mentally incapable, § 6-4-302; 2d degree - sexual penetration or sexual intrusion when victim threatened with retaliation against self or others, when resistance prevented, when substance administered impairing victim's control, when victim erroneously believes actor spouse, when victim under 12 and actor 4 years older, when actor in position of authority, or part of treatment or examination inconsistent with reasonable medical practice, or sexual contact when actor causes serious bodily injury under circumstances of 1st or 2d degree or when victim under 12, § 6-4-303; 3d degree - sexual contact under circumstances of 1st degree or 2d degree when circumstances 2d degree, § 6-4-304; 4th degree - sexual penetration or sexual intrusion on victim under 16 when actor 4 years older, § 6-4-305</p> <p><u>PRINCIPALS</u> sex-neutral; actor/victim</p> <p><u>SPOUSES</u> limitation on common law spousal exception, "A person does not violate any provision of this act if the actor and victim are legally married, unless a decree of judicial separation or restraining order has been granted," § 6-4-307</p>
<p>STATUTORY AGE PROVISIONS</p>	<p><u>AGE OF CONSENT</u> except 2d degree 12 for 2d and 3d degree and 16 for 4th degree; actor must be at least 4 years older for all offenses</p> <p><u>OFFENSES</u> sexual assault 2d degree - sexual penetration or sexual intrusion, victim under 12 and actor 4 years older, § 6-4-303a(v); sexual contact with person under 12 and actor causes serious bodily injury to victim, § 6-4-303c; 3d degree sexual assault when victim under 12 and actor 4 years older, § 6-4-304; 4th degree sexual assault - sexual penetration or sexual intrusion on victim under 16 when actor 4 years older, § 6-4-305</p>

<p>EVIDENCE DEFENSES AND CROSS REFERENCES</p>	<p>evidence statute mandates procedures for admission of evidence of prior sexual conduct of victim, reputation evidence or opinion evidence as to character of victim; written motion required 10 days prior to trial, offer of proof, in camera hearing, court orders what evidence permitted; all such motions privileged and not available to public; exception for prior sexual conduct with actor, § 6-4-312; former case law requiring corroboration for rape expressly repealed by statute, § 6-4-311</p> <p>DEFENSES consent or its absence not defined by statute; affirmative defense actor reasonably believed victim over 16; no defense actor reasonably believed victim over 12, § 6-4-308</p> <p>CROSS REFERENCES incest, § 6-5-102; medical procedures, § 6-4-309; names of alleged victim and actor not released prior to indictment, § 6-4-310; soliciting anyone under 16, § 14-3-104; "employer" and "teacher", sexual harassment, see § 6-4-301a(iv)</p>
<p>PENALTIES</p>	<p>TERMS 1st degree - 5 to 50 years; 2d degree - 1 to 20 years; 3d degree - 1 to 5 years; 4th degree - county jail term maximum 1 year, § 6-4-306a</p> <p>SPECIAL extended terms when 2 or more separate acts in 1st or 2d degree, or when previous conviction of crime containing same or similar elements, § 6-4-306b</p>

