

# **UCLA**

## **UCLA Women's Law Journal**

### **Title**

Trends in Marital Rape Laws: Progress or Facade

### **Permalink**

<https://escholarship.org/uc/item/57c0v04c>

### **Journal**

UCLA Women's Law Journal, 2(0)

### **Author**

Bernstein, Lisa

### **Publication Date**

1992

### **DOI**

10.5070/L321017567

### **Copyright Information**

Copyright 1992 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

## TRENDS IN MARITAL RAPE LAWS: PROGRESS OR FACADE?

Lisa Bernstein\*

In the past few decades, a majority of states have eliminated the marital rape exemption, the archaic law which permits men to rape their wives with legal impunity. During the 1991 legislative session, four additional states joined this majority by enacting laws which make spousal rape a crime.<sup>1</sup> Many jurisdictions have abolished this exemption completely, finally giving women raped by their husbands the same legal recourse as other rape victims. A number of states, however, have simply replaced the marital rape exemption with laws that are equally restrictive.

The penalty for spousal rape frequently is much less severe than the penalty for other types of rape. In Arizona, for instance, stranger rape carries a maximum penalty of imprisonment for seven years;<sup>2</sup> individuals convicted of spousal rape, on the other hand, receive a maximum penalty of only one and one half years imprisonment.<sup>3</sup> Furthermore, a trial judge has discretion to reduce a spousal rape sentence to the level of a misdemeanor with a defendant's participation in mandatory counseling.<sup>4</sup> The maximum prison sentence for a misdemeanor conviction is a mere six months.<sup>5</sup>

In Virginia, rape is punishable by confinement in a state correctional facility for a term of no less than five years.<sup>6</sup> Yet, for spousal

---

\* J.D. candidate, UCLA School of Law, 1994; B.A., UCLA, 1991.

1. Helaine Olen, *Most States Now Ban Marital Rape*, L.A. TIMES, Oct. 22, 1991, at A7.

2. ARIZ. REV. STAT. ANN. § 13-1406 (1991) (criminalizing sexual assault and setting felony classification of crime); ARIZ. REV. STAT. ANN. § 13-701 (1991) (determining length of imprisonment for felony classifications).

3. ARIZ. REV. STAT. ANN. § 13-1406.01 (1991); ARIZ. REV. STAT. ANN. § 13-701 (1991).

4. ARIZ. REV. STAT. ANN. § 13-1406.01 (1991).

5. ARIZ. REV. STAT. ANN. § 13-707 (1991).

6. VA. CODE ANN. § 18.2-61 (Michie 1991).

rape, the judge has discretion to suspend the defendant's sentence upon completion of counseling or therapy.<sup>7</sup> These minimal penalties not only trivialize a serious crime, but also fail to deter potential rapists.

Other states render marital rape prosecution virtually impossible by narrowly defining the crime. For instance, to be charged with spousal rape in Tennessee, the defendant must be armed with a weapon, cause the victim serious bodily injury, or be living apart from the victim pending a legal separation or divorce.<sup>8</sup> Such restrictions are not uncommon. The marital rape laws in Texas, Oklahoma, South Carolina, North Carolina, and Virginia all require that the woman be living apart from her husband or have a legal separation pending at the time of the rape.<sup>9</sup> In addition to this requirement, some of these states will only prosecute for spousal rape if the perpetrator uses or threatens to use force, or if the victim sustains serious bodily injury.<sup>10</sup> These extremely restrictive statutes deny marital rape victims effective legal redress.

Finally, some states impose strict statutes of limitations for spousal rape. In California, while a victim of stranger rape has three years to report the crime,<sup>11</sup> a victim of spousal rape in this state has only ninety days to report the incident.<sup>12</sup> In South Carolina, a woman must report spousal rape within thirty days of the occurrence;<sup>13</sup> in Virginia, she has a mere ten days.<sup>14</sup> These time restrictions present a barrier to women grappling with the often difficult decision to press charges against their own spouses.

While the abolition of marital rape law exemptions represents enormous progress for women, this area of the law is still extremely troublesome. In many jurisdictions, the current spousal rape laws are so restrictive that women raped by their husbands still have little or no legal recourse. Without more legal reform, many women today still are not protected against *all* rapists.

---

7. *Id.*

8. TENN. CODE ANN. § 39-13-507 (1991 & Supp. 1992).

9. TEX. PENAL CODE ANN. § 22011 (West 1991 & Supp. 1992); OKLA. STAT. TIT. 21, § 1111 (1990 & Supp. 1992); N.C. GEN. STAT. § 14-27.8 (1991); S.C. CODE ANN. § 16-3-658 (Law. Co-op. 1991); VA. CODE ANN. § 18.2-61 (Michie 1991).

10. *See, e.g.*, OKLA. STAT. TIT. 21, § 1111 (1990 & Supp. 1992); S.C. CODE ANN. § 16-3-658 (Law. Co-op. 1991).

11. CAL. PENAL CODE § 801 (West 1991).

12. CAL. PENAL CODE § 262 (West 1991).

13. S.C. CODE ANN. § 16-3-658 (Law. Co-op. 1991).

14. VA. CODE ANN. §§ 18.2-61, -67.2:1 (Michie 1991).