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Shining Another Light on Spousal Rape Exemptions: Spousal Sexual Violence Laws in the #MeToo Era

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This Note builds on the growing scholarly discourse involving the #MeToo movement and places an importance on discussing the issue of spousal rape in the #MeToo era. It fills a crucial gap in legal scholarship by articulating how sexual violence during marriage persists despite greater attention to sexual violence in the public discourse. There may be a blind spot in the popular discourse surrounding the #MeToo movement. This Note argues that the current conversation around sexual violence in the workplace fails to address the importance of fixing sexual violence in other areas (such as the home). The Centers for Disease Control and Prevention (CDC) reports that 18.3% of women experience some type of sexual violence in their intimate relationships. A majority of states essentially permit these forms of intimate partner violence within state statutes. In response, this Note provides a robust empirical analysis of states’ handling of spousal sexual violence. This Note exposes how loopholes in the law remain and how the #MeToo movement can influence the abolishment of these loopholes.

This Note proceeds in four parts. Part I covers the history of the spousal rape privilege and explains both the historical and modern justifications for spousal sexual violence. Part II explores previous feminist movements’ impact on the eradication of sexual violence. Next, Part III presents the current spousal exemptions in state statutes. Additionally, Part III tracks any #MeToo era repeals of spousal sexual violence statutes. Finally, Part IV recommends eliminating spousal exemptions to provide a legal remedy for spouses who seek one. Part IV also acknowledges that noncarceral approaches are necessary.

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INTRODUCTION

The public exposures of Harvey Weinstein, Bill Cosby, R. Kelly, Donald Trump, and so many others place newfound importance on combating sexual violence. Many credit the #MeToo movement for the public awareness of these issues. The #MeToo movement builds on a program founded by activist Tarana

2. A majority of adults now believe society is not sensitive enough about sexual harassment, whereas twenty years ago a majority of adults believed that society was too sensitive about sexual harassment. Moreover, women are now twenty percent more likely to sue if they believe they experienced sexual harassment. Lydia Saad, Concerns About Sexual Harassment Higher than in 1998, GALLUP (Nov. 3, 2017), https://news.gallup.com/poll/221216/concerns-sexual-harassment-higher-1998.aspx?g_source=Politics&g_medium=lead&g_campaign=tiles [https://perma.cc/6URX-ZE6F].

3. Nora Stewart, The Light We Shine into the Grey: A Restorative #MeToo Solution and an Acknowledgement of Those #MeToo Leaves in the Dark, 87 FORDHAM L. REV. 1693, 1694–95 (2019) (“#MeToo has changed the rules surrounding women’s public discourse. As distinct from historical feminist movements, it has rapidly become a way to expose women’s realities beyond the confines of the previously acceptable.”); Sophie Gilbert, The Movement of #MeToo, ATLANTIC (Oct. 16, 2017),
Burke “to bring resources, support, and pathways to healing where none existed before.” According to Burke, the goal of the #MeToo movement is to “galvanize[e] a broad base of survivors, and work[] to disrupt the systems that allow sexual violence to proliferate in our world.”

By fall 2017, #MeToo had become a nationwide phenomenon. Responding to allegations against Harvey Weinstein, actress Alyssa Milano tweeted “[i]f you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.” The tweet achieved Milano’s stated goal: to show the public how prevalent sexual violence is. Within twenty-four hours, there were almost half a million tweets and twelve million Facebook posts and reactions to #MeToo. Within forty-five days,
#MeToo spanned eighty-five countries with eighty-five million Facebook posts.\(^{11}\)
Within the first year, nineteen million people had tweeted “#MeToo.”\(^{12}\)

This new wave of activism placed sexual violence in the public consciousness.
So far, the movement has sparked a conversation around sexual violence in various sectors including entertainment,\(^{13}\) academia,\(^{14}\) politics,\(^{15}\) the judiciary,\(^{16}\) the

\(^{11}\) Sayej, supra note 9.


sciences,\textsuperscript{17} sports,\textsuperscript{18} the military,\textsuperscript{19} and religion.\textsuperscript{20} Additionally, the virality of #MeToo targeted not only sexual violence but also other pressing concerns like complicity, celebrity culture, pay disparity, power structures, and whisper networks.\textsuperscript{21}

Yet with all of this progress, the public conversation continues to neglect particular subsets of women.\textsuperscript{22} #MeToo in the popular discourse may not be focusing enough on some of the most vulnerable to sexual violence: spouses.\textsuperscript{23}

\begin{footnotesize}
\begin{enumerate}
\item See, e.g., Antonieta Rico, \textit{Why Military Women Are Missing from the #MeToo Moment}, TIME (Dec. 12, 2017, 11:27 AM), https://time.com/5068570/military-women-sexual-assault/ [https://perma.cc/UHC5-B9JT] (“It is time for military commanders to face the #MeToo reckoning and be held accountable for the entrenched culture of sexual harassment and assault they have tolerated, and at times, participated in.”).
\item While not a focus of this Note, one of the largest subsets of women that the popular #MeToo movement neglects are minorities. Out of 1,848 articles that the New York Times posted in the first year and a half of #MeToo, only 2.11% addressed survivors who are a racial minority. Within the two percent of articles published, a large portion of them dealt with minority discomfort and feelings of remarginalization in a movement created to care for Black and Brown girls. Meaghan McBride, #MeToo Means Whore?: Shining a Light on the Darkness: A Rhetorical Analysis of Inclusivity and Exclusivity Within the #MeToo Movement 83–84 (May 19, 2019) (B.A. honors thesis, Dickinson College) (on file with Dickinson Scholar); see also P.R. Lockhart, \textit{Women of Color in Low-Wage Jobs Are Being Overlooked in the #MeToo Moment}, VOX (Dec. 19, 2017, 4:10 PM), https://www.vox.com/identities/2017/12/19/16620918/sexual-harassment-low-wages-minority-women [https://perma.cc/K7UQ-4ZTE] (“[T]his reckoning has not emboldened victims of harassment to report their experiences equally. The individualized coverage of these cases ignores countless people, many of whom are women of color who . . . work in low-wage jobs where the power imbalance is even less conducive to reporting sexual harassment. And even when the struggles of marginalized communities are reported, their stories are less likely to keep our attention.”).
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Because Milano’s #MeToo tweet responded to the conversation around the Harvey Weinstein scandal, the public conversation linked the #MeToo movement to sexual violence in more public-facing arenas such as the workplace. The link between sexual violence and only public-facing arenas is damaging, however, as sexual violence has a much broader reach. Many of the studies on record related to the prevalence of sexual violence were conducted decades ago. However, a recent Centers for Disease Control and Prevention (CDC) study paints a troublesome picture of the lives of those who are in intimate relationships.

Twenty-two years after the supposed repeal of the spousal rape privilege, the CDC reported that sexual violence in intimate relationships happened to around 18.3% of women. The National Institute of Justice found that there were an estimated 322,230 intimate partner rapes committed in one year alone. The preceding numbers roughly amount to over seven million women that have experienced intimate partner rape in their lifetime.

This blind spot in the public understanding of intimate partner violence has a much broader reach. Many of the studies on record related to the prevalence of sexual violence were conducted decades ago. However, a recent Centers for Disease Control and Prevention (CDC) study paints a troublesome picture of the lives of those who are in intimate relationships.


25. See NAT’L CTR. FOR INJURY PREVENTION & CONTROL, supra note 1.

26. Id. at 8 (including “rape, being made to penetrate someone else, sexual coercion, and/or unwanted sexual contact”).

27. NAT’L INST. OF JUST., supra note 24, at 25.

28. Id. at 26. Historical justifications for spousal rape were written in the context of heterosexual relationships with abuse happening to the women in those relationships. This Note frames these issues within that context. However, sexual assault can happen in any relationship, to anyone, no matter how they identify. The CDC reported that 8.2% of men experience some type of sexual violence in their intimate relationships. NAT’L CTR. FOR INJURY PREVENTION & CONTROL, supra note 1, at 9. Additionally, 43.8% of lesbians, 61.1% of bisexual women, 26.0% of gay men, and 37.3% of bisexual men have experienced some form of intimate partner violence. See NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION 2 (2013).
#MeToo discourse is harmful: the failure of the public conversation to more critically engage with how sexual violence affects married women undermines women’s movements to combat rapes and sexual assaults. Therefore, the current conversation around sexual violence must place sufficient importance on closing spousal exemptions.29

The continuance of sexual violence toward married women is due to views embedded in our societal fabric.30 The system supports a power asymmetry between husband and wife that manifests in both legal and social subordination. The focus of this Note is the continued existence of spousal exemptions that enables forms of sexual violence. Historical views of the woman’s place in marriage justified spousal rape privileges.31 These justifications seeped into U.S. common law32 and eventually were codified in state laws.33 By 1993, some states had eradicated spousal rape laws.34 Other state legislatures, instead of repealing the exemptions outright, created loopholes that essentially allow husbands to continue the abuse and exploitation of their wives.35 To this day, thirty-eight states have some form of spousal exemption contained in their rape and sexual assault statues.36

By exploring the state statutes with spousal rape exemptions, this Note exposes how loopholes remain. This Note advances in four parts. Part I chronicles the history of the spousal rape privilege. It highlights the subordination that women have endured and the justifications behind allowing spousal sexual violence.37 Part II examines feminist movements that focused on sexual violence and their role in influencing the progression of equality under sexual violence laws.38 Next, Part III
explores spousal exemptions in the #MeToo era. It reviews existing spousal sexual violence statutes and answers whether the public conversation around sexual violence has had any influence on repealing or upholding spousal exemptions. Last, Part IV proposes eliminating spousal exemptions and acknowledges the issues faced with doing so.

I. THE SPOUSAL RAPE EXEMPTION

Marital rape has long been inscribed in history tracing back to the days of William Blackstone and Sir Matthew Hale. Part I addresses these historical roots and their implications. Section IA traces the historical origins of spousal exemptions. Next, Section IB explains the historical justifications used to support early legal theories. Last, Section IC describes the modern justifications used today to uphold the allowance of spousal sexual assault.

A. Historical Origins

A woman’s place in marriage has “been prescribed by culture and by law.” Contrary to modern companionate marriage, in early English common law, the relationship between husband and wife was akin to an economic contract. The marital contract held great deference to husbands, going as far as to “suspend” the rights of the wife. Any benefit to the marital contract, therefore, was “not for marriage as an entity but for the husband as the marital rights bearer.” Scholars trace this notion to English jurist William Blackstone who stated,

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore . . . under the protection and influence of her husband . . . ; and her condition during her marriage is called her coverture.

40. See infra notes 316–336.
41. See infra notes 42–68 and accompanying text.
44. See Ryan, supra note 43, at 953 (“Subsuming her person meant legally appropriating her will, sexually and otherwise, as the legal presumption of coercion reveals.”); BLACKSTONE, supra note 43, at 430. However, Blackstone theoretically believed that “women and men approached marriage as theoretical equals to a civil contract.” Norma Basch, Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America, 5 FEMINIST STUD. 346, 350 (1979).
45. Ryan, supra note 43, at 946.
46. BLACKSTONE, supra note 43, at 430.
Legal scholars also trace the origins of the spousal rape exemption to English barrister Sir Matthew Hale’s theory of implied or irrevocable consent. Hale exclaimed that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.” Thus, the marital contract forced each participant to adhere to a “hierarchy of rights and duties” where “declining matrimonial intimacy and companionship, is per se a breach of duty, tending to subvert the true ends of marriage.” Taken together, these writings influenced the historical justifications for the spousal rape privilege: implied or irrevocable consent, property, and unity of the family. These legal assertions were rarely questioned throughout the nineteenth century. These notions and the theory that a husband is unable to rape his wife were first adopted at common law in the United States in Commonwealth v. Fogerty.

B. Historical Justifications

There are three historical justifications for the allowance of spousal rape. The first is implied or irrevocable consent. Implicit in the marital contract, the wife gives herself to her husband and, upon giving herself to him, assumes the marital obligation of sex. This implicit consent is present at all times during the marital relationship and is irrevocable unless the contract is null.


49. Ryan, supra note 43, at 946; see also Hasday, supra note 29, at 1400 (“Hale presented a couple’s mutual decision to marry as grounds for subjecting wives and husbands to very different obligations and rights. . . . [W]here this agreement gave the husband a right of sexual access to his wife, it bestowed an obligation on the wife to submit.”).

50. Hasday, supra note 29, at 1396 (“[O]ne of the most striking aspects of the nineteenth-century ‘debate’ over marital rape is how little debate there actually was in terms of direct exchange between the exemption’s legal champions and its critics.”); see also Parker v. Territory, 59 P. 9, 9–10 (Okla. 1899) (“It is intended that the indictment should contain the averment that the prosecutrix was not the wife of the accused.”); State v. Williams, 23 P. 335, 336 (Mont. 1890); People v. Estrada, 53 Cal. 600, 600 (1879) (“It is not necessary to allege that the person who is alleged to have been assaulted was not the wife of the defendant.”).

51. Commonwealth v. Fogerty, 74 Mass. (8 Gray) 489, 491 (1857) (“Of course, it would always be competent for a party indicted to show, in defence of a charge of rape alleged to be actually committed by himself, that the woman on whom it was charged to have been committed was his wife.”).

52. One of the core components of #MeToo is the antithesis of this notion. See Kennedy & Hausner, supra note 29, at 59.


Additionally, cultural ideas of the wife’s role support the theory of implied consent.\(^\text{55}\) Blackstone wrote about the influence of the social aspect of these roles—roles “founded in nature.”\(^\text{56}\) Throughout history, men “have been presumed and encouraged to be the aggressors” while women are painted as “passive receivers of such advances.”\(^\text{57}\) Presumed passivity in marriage becomes forced acquiescence to unwanted sexual encounters and also creates difficulties for studies measuring the issue of spousal sexual violence.\(^\text{58}\) These difficulties are present because women are socialized to believe that sexual consent is implicit in marriage and therefore do not acknowledge that consent issues fall within a gray area.\(^\text{59}\) Despite these difficulties, studies still find that many people in intimate relationships encounter forced acquiescence to sex.\(^\text{60}\) Thirty-four percent of women state that some of these instances of sexual violence occur as a result of feeling compelled by their marital duty to have sex with their partners even though they were unwilling.\(^\text{61}\) Some women even report that they resort to sexual acquiescence to avoid physical harm.\(^\text{62}\)

The second justification for spousal rape is the theory that a woman was her father’s and then her husband’s property right.\(^\text{63}\) In the past, rape was a property crime; therefore, it was impossible for husbands to defile their own belongings.\(^\text{64}\)
Similar to the property theory, the third justification for spousal rape is unity of the family. Blackstone described the family unit as one where the wife suspends her “legal existence,” viewing the familial legal identity as one with the male at the helm. Under this theory, spousal rape could not exist because a man could not possibly rape himself. Even though rape laws were “designed to regulate competing male interests in controlling sexual access to females,” the influences behind this theory affected not only spousal rape but also subordination in the legal system.

The practice of coverture emerged through a pushback to a “more modern, companionate ideal” of marriage. This suspension included the wife’s inability to (1) retain “any earnings they received,” (2) “sue [] or be sued,” and (3) make contracts and wills. Scholars argue that coverture was not “fully realized” in American legal circles. Nevertheless, while some in the American legal field found the practice of coverture flawed, judges adopted the practice into U.S. common law. Coverture no longer exists, but its effects linger throughout our legal and cultural spheres. Even though not directly relating to rape in the plain text, the practice of coverture directly relates to spousal rape as it grants “the husband authority over the wife’s person economically and physically.”

While present in the early application of spousal exemptions, by the twentieth century, these historical justifications were no longer adhered to. Courts within the United States found the unity of the person and irrevocable consent to be antiquated notions. For example, in Trammel v. United States, the Supreme Court disavowed the unity theory in stating,

66. See id.
68. Lyon, supra note 55, at 282.
69. See infra notes 70–78.
70. Basch, supra note 44, at 351.
71. Baxter, supra note 42, at 18.
72. Id.
73. Basch, supra note 44, at 347.
74. Id.
76. See Basch, supra note 44, at 352.
77. Zaher, supra note 75 (“But the social and legal consequences of the doctrine of coverture were pervasive and have carried over into the present.”); Basch, supra note 44, at 346 (noting the “patriarchal construct underpinned all of Anglo-American domestic relations law, and [it] continued to exist long after the enactment of the married women’s property acts of the mid-nineteenth century”).
79. See Waggoner, supra note 67, at 554.
80. See Jackson, supra note 53, at 188–89.
Nowhere...in any modern society—is a woman regarded as chattel or demeaned by denial of a separate legal identity and the dignity associated with recognition as a whole human being. Chip by chip, over the years those archaic notions have been cast aside.81

Social expectations of the role of marriage shifted as “companionate marriage” began to create a “cultural expectation of equality in marriage.”82

C. Modern Justifications

As historical justifications for spousal exemptions gave way to more progressive thinking, the practices that ultimately resulted in women’s subordination persisted. Scholars like Lalenya Siegel note that this is due to “patriarchal notions about women in marriage.”83 Similarly, scholars such as Linda Jackson and Jill Hasday offer four compelling theories to explain the continued prevalence of marital rape: (1) marital privacy, (2) marital reconciliation, (3) evidentiary issues, and (4) the belief that stranger rape is more severe.84

Proponents of the first theory, marital privacy, believe that the couple should solve marital disputes within the home.85 Directly influenced by coverture rationales, this belief also stems from the importance placed on the home and private relations in U.S. common law.86 The drafters of the Model Penal Code supported this theory, stating that the allowance of spousal rape was due to an “unwanted [sic] intrusion of the penal law into the life of the family.”87 Common law defines “the home as the institution, the sanctity of which ought not to be disturbed by the state.”88 The home is often referred to as the man’s “castle” where he is “free from arbitrary intrusion by government or others.”89

Like supporters of the marital privacy theory, proponents of the second theory, marital reconciliation, believe that the couple should be free from legal interference. If the victim reports her husband and legal institutions interfere, then marital reconciliation is much more difficult.90 But, as scholars have noted, both the marital privacy and reconciliation theories “protect the middle and upper classes from public scrutiny and shame.”91 This, in effect, places the right to privacy above

82. Ryan, supra note 43, at 953.
83. Siegel, supra note 47, at 358.
85. Jackson, supra note 53, at 190.
87. Lyon, supra note 55, at 282 (quoting MODEL PENAL CODE & COMMENTARIES § 213.1(1) cmt. 8(c) (AM. L. INST. 1980)).
88. Young, supra note 86, at 142.
90. See Jackson, supra note 53, at 190.
91. See Harless, supra note 34, at 314.
the right to safety. Alternatively, feminist scholars note that there are situations where the right to privacy and safety are the same. The home can be a “site of refuge” for those who “face discrimination and oppression outside the home.”

The third theory, regarding evidentiary concerns, is the “most common basis” supporting the continuance of spousal exemptions. Hale influences this theory. In his writings, he stated that rape “is an accusation easily to be made and hard to be proved.” Proponents believe that spousal rape cases are difficult to prove because it would be difficult to figure out which acts were and were not consensual due to the nature of the marital relationship. Further, this theory portrays the women as vindictive, having “something to gain, either in divorce, custody, or finance.”

The fourth theory states spousal rape is less harmful than stranger rape. On the contrary, society’s insistence that spousal exemptions remain in state statutes harms married women in multiple ways. The laws reinforce the notion that women are their husbands’ property. The laws “depriv[e] women of control over their reproductive capacity.” Additionally, spousal exemptions inhibit women’s

92. See Hasday, supra note 29, at 1491; McClain, supra note 89, at 210–11 (“Women's formal constitutional rights to privacy against the state mean little, the argument goes, if what women really need is protection by the state against men in private.”).
93. McClain, supra note 89, at 212.
95. HALE, supra note 48, at 634. #MeToo’s critics have similar misgivings about the movement and argue that it has gone too far. Some state that the movement’s inability to explain the nuances between rape, sexual harassment, and uncomfortable situations does a disservice and aids in these types of justifications. See Daphne Merkin, Opinion, Publicly, We Say #MeToo. Privately, We Hate Misgivings, N.Y. TIMES (Jan. 5, 2018), https://www.nytimes.com/2018/01/05/opinion/golden-globes-metoo.html [https://perma.cc/9ZVC-RPJ3] (“These are scary times, for women as well as men. There is an inquisitorial whiff in the air, and my particular fear is that in true American fashion, all subtlety and reflection is being lost.”).
96. See Siegel, supra note 47, at 360. Nevertheless, this has not stopped legislatures from enacting laws criminalizing stranger rape. One must make an illogical inference to only codify these justifications at the expense of spouses. LeGrand, supra note 31, at 926 (“If a woman suffers no less pain, humiliation, or fear from forcible sexual penetration by her husband than by a relative, a boyfriend, or a stranger, the difference is not great enough to warrant the total insulation of the former but not the latter from legal sanction.”).
97. Klarfeld, supra note 34, at 1836.
98. Keith Burgess-Jackson, Il’ihe Rape, 12 PUB. AFFS. Q. 1, 6 (1998) (explaining proponents state “though the wife may suffer indignity and shock as a result of [her husband’s] action her suffering is incomparably less than that of the victim of the typical rape”).
100. Hasday, supra note 29, at 1493. Though less of a concern when contraception and abortion are an “alternate means of limiting fertility.” Id. Nevertheless, states that continue to permit spousal rape have some of the most restrictive abortion access in the country. See Jessica Glenza, Ohio Bill Orders Doctors to ‘Reimplant Ectopic Pregnancy’ or Face ‘Abortion Murder’ Charges, GUARDIAN (Nov. 29, 2019, 3:54 AM), https://www.theguardian.com/us-news/2019/nov/29/ohio-extreme-abortion-bill-reimplant-ectopic-pregnancy [https://perma.cc/L6MP-7Q6V].
autonomy over their bodies and their expression of their sexual identities. Moreover, women who experience spousal rape can develop post-traumatic stress disorder and experience severe physical issues. Furthermore, spousal rape “is more susceptible to repeated occurrences” because of the nature of the offender and victim’s relationship.

Even though the historical justifications are no longer cited, as evidenced above, the modern justifications are just as unfounded. With varying success, women’s movements have pushed back on both sets of theories throughout the nation’s history. These movements, explained in Part II, did progress statutes in the spousal rape space, but it may not have been enough to fully repeal spousal exemptions.

II. FEMINIST MOVEMENTS TARGETING SPOUSAL RAPE, THEIR EFFORTS, AND THEIR SUCCESSES

As Part I illustrated, spousal rape has been present and legitimized throughout American history. However, during the time of Blackstone and Hale, the period of coverture, and while experiencing coverture’s effects, women consistently fought for bodily autonomy and equality. Part II analyzes this dynamic. Section II.A recounts women’s movements in the nineteenth century and explains the movements’ fight to eliminate rape in the women’s communities and to repeal the practice of coverture. Section II.B describes women’s movements in the twentieth century. It follows activists’ and scholars’ work to push rape into the public consciousness and the difficulty that these groups faced when dealing with spousal rape. Last, Section II.C explains the results from the previously mentioned activism and loopholes created under the guise of legal reform.

A. Nineteenth Century Feminist Movements

Serious movements to combat rape began in the nineteenth century with activists concerned about the brutality inflicted against enslaved Black women. During enslavement and Reconstruction, white men were able to rape Black women...
without penalty. Rape was punishable by law, but because the law considered Black women to be chattel, they legally could not be victims. Consider Celia, a slave girl who killed the man who purchased and then continuously raped her. Due to her legal status as chattel, she could not claim self-defense. Thus, she was not covered by the defense statute, which stated that women could defend themselves from “every person who shall take any woman, unlawfully, against her will, with intent to compel her by force, menace or duress . . . to be defiled.” Infuriated by these constant sexual assaults, Black activists tried to place rape in the public conversation. These women focused on the lack of accountability society afforded white men for raping Black women. Activists set their sights on criminalizing “the licentious man” and received a victory when seduction by an acquaintance became criminalized.

Around the same time, women criticized certain aspects of a woman’s place in the home. They declared that coverture laws were a serious issue plaguing the nation and stated that coverture was essentially a woman’s civil death. They further criticized violence in the home, such as the practice of administering “chastisement.” Suffragists argued that aspects of the government were male dominated—even juries—and were to blame for rampant sexual assault. They believed that if women had certain rights of citizenship, they could infiltrate power structures and “undermine rape by influencing the law.” Spousal rape became a specific issue of concern. For example, in 1871, a suffragist questioned what “makes obligatory the rendering of marital rights and compulsory maternity.”

The culmination of these movements placed sexual violence in the public domain. Throughout the nineteenth century, women’s rights movements continued to fight for the elimination of coverture laws and “contested a husband’s right to

108. See King, supra note 107, at 173.
109. Id. at 179.
110. Id.
111. Id. (quoting MO. REV. STAT. § 47.029 (1845)).
113. Id. at 76–77.
115. See Hasday, supra note 29, at 1413.
116. See id. at 1413 n.132; Zaher, supra note 75.
118. Freedman, supra note 106, at 54.
119. See id. at 54.
determine the terms of marital intercourse vociferously and profoundly.”

Activists were able to claim victory when states began to pass the Married Women’s Property Act, essentially abolishing coverture. However, as time passed, women at the forefront of the suffragist movement did not believe it was politically expedient to continue addressing spousal rape.

**B. Twentieth Century Feminist Movements**

It was not until the 1970s when feminist activists such as Laura X began targeting rape laws that male-dominated legal institutions began to make a more meaningful legal change. These activists had various goals. They wanted to “improv[e] the legal response to rape, provid[e] services for rape victims, and reform[] states’ rape laws” for all forms of rape. In response “to growing public concern about increases in reports of rape,” activists placed increased importance on tackling the nation’s rape crisis. To effectively effect reform, these women tried to “broaden the crime of rape.” To do so, some feminist activists found unlikely allies and worked with “conservative law-and-order groups.” Other feminist activists worked in tandem with the battered women’s movement. This group framed rape as a “means of male control over women and the product of a patriarchal society.” This framing challenged the traditional importance placed on the sanctity of the home and pushed rape into the public domain. Within this framing, the elimination of spousal rape became one of the principal issues of the feminist campaign.

Laura X was one of the driving forces behind the efforts to repeal the spousal rape privilege. She led the National Clearinghouse on Marital and Date Rape, which claims to have “transform[ed] the attitudes” in the United States through a “20-year

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121. See Hasday, supra note 29, at 1413–14.
122. See Klarfeld, supra note 34, at 1826.
123. Freedman, supra note 106, at 63–71; see Hasday, supra note 29, at 1482 (“As the feminist movement increasingly turned its attention to suffrage in the early twentieth century and then lost much of its organizational spark after suffrage was won, debate over marital rape dwindled.”).
126. Spohn, supra note 124, at 120–21.
127. McMahon-Howard et al., supra note 125, at 507.
128. Id.
129. See Schelongo, supra note 55, at 95–96.
130. Abrams, supra note 31, at 753; see Spohn, supra note 124, at 121 (noting that, with this framing in mind, activists lobbied legislatures to change “the definition of rape and the evidentiary rules applied in rape cases [as a means of . . . symboliz[ing] a rejection of this patriarchal view and . . . embody[ing] in law the notion that rape is a crime of violence”).
131. See Abrams, supra note 31, at 753.
campaign[] to change customs, policies, behaviors, and laws.”133 In this role, X also worked as a consultant for state campaigns to eliminate the spousal rape exemption.134

Additionally, feminist scholars highlighted the role of male domination in the private sphere and the connection with spousal rape.135 The scholars displayed how an insistence on privacy made “violence against women legally and politically invisible.”136 In the 1980s, Finkelhor and Yllo published License to Rape, which studied marital rape, its effects, and the husband’s motives for committing sexual violence.137 Diana Russell further deepened academic understanding of spousal rape when she published a comprehensive study of women who have experienced it in Rape in Marriage.138

C. Legislative and Judicial Repeal

The elimination of spousal exemptions occurred through legislative and judicial repeal.139 The first state to legislatively change its spousal rape laws was Nebraska in 1976,140 followed by Oregon in 1977.141 The following year, Oregon charged John Rideout with spousal rape, the first husband so charged in the United States.142 Greta Rideout stated that John had told her she should “do what [he] want[s]” since she was “[his] wife.”143 When she refused, he began to physically and sexually abuse her.144 Even though John Rideout was ultimately acquitted, the Rideout case “brought the issues of marital rape to the forefront of the nation’s awareness.”145 In 1979, in Massachusetts, James Chretien became the first man

137. FINKELHOR & YLLO, supra note 120.
138. RUSSELL, supra note 24.
139. Siegel, supra note 47, at 352.
140. Id. at 364.
141. Id.
143. Id.
144. Id.
convicted of spousal rape for threatening to kill his wife if she did not have sex with him.\textsuperscript{146}  

In 1984, New York judicially repealed a spousal rape exemption in \textit{People v. Liberta}.\textsuperscript{147} \textit{Liberta} involved an abusive husband who, because of domestic violence, received a court order to stay away from his wife.\textsuperscript{148} The couple did not adhere to the order.\textsuperscript{149} While meeting at a motel, Mario Liberta attacked his wife and forced her to engage in sexual acts.\textsuperscript{150} He also forced her to make their son watch as Mario profusely violated her.\textsuperscript{151} After charges of rape and sodomy in the first degree, Mario moved to waive them under the New York spousal exemption.\textsuperscript{152} The Court of Appeals of New York ruled that there was no rational basis to distinguish rapes based on the parties’ marital status and declared the statute unconstitutional.\textsuperscript{153} The \textit{Liberta} court also disavowed the marital privacy justification, stating that privacy does not reach violent acts.\textsuperscript{154}  

By 1993, every state had amended its spousal rape laws (either judicially or legislatively), with North Carolina as the last.\textsuperscript{155} After North Carolina’s repeal, Laura X asserted that the pursuit against spousal rape “chang[ed] by leaps and bounds.”\textsuperscript{156} Nevertheless, the repeal in many states was a façade: the new laws still subjected women to the legal possibility of spousal sexual violence but without explicit language doing so.\textsuperscript{157} States prevented rape reform bills from fully repealing the spousal rape privileges.\textsuperscript{158} Legislatures resisted their elimination and the legislative compromise resulted in laws containing various loopholes.\textsuperscript{159}  

Instead of repealing spousal exemptions outright through the legislative compromises, states created categories of loopholes including (1) punishing spousal rape separately,\textsuperscript{160} (2) barring marriage as a defense only to rape in the first

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{146} Commonwealth v. Chretien, 417 N.E.2d 1203, 1205 (Mass. 1981).
\item \textsuperscript{147} See Waggoner, supra note 67, at 557–58.
\item \textsuperscript{148} People v. Liberta, 474 N.E.2d 567, 569–70 (N.Y. 1984).
\item \textsuperscript{149} Id. at 569.
\item \textsuperscript{150} Id.
\item \textsuperscript{151} Id.
\item \textsuperscript{152} Id. at 570. (“[D]ue to the ‘not married’ language in the definitions of ‘female’ and ‘deviate sexual intercourse,’ there is a ‘marital exemption’ for both forcible rape and forcible sodomy.”).
\item \textsuperscript{153} Id. at 573.
\item \textsuperscript{154} Id. at 574 (“While protecting marital privacy and encouraging reconciliation are legitimate State interests, there is no rational relation between allowing a husband to forcibly rape his wife and these interests.”).
\item \textsuperscript{155} McMahon-Howard et al., supra note 125, at 507.
\item \textsuperscript{157} See infra notes 158–163 and accompanying text.
\item \textsuperscript{158} McMahon-Howard et al., supra note 125, at 507; see also Spohn, supra note 124, at 122.
\item \textsuperscript{159} See Judith A. Lincoln, Note, Abolishing the Marital Rape Exemption: The First Step in Protecting Married Women from Spousal Rape, 35 WAYNE L. REV. 1219, 1233 (1989).
\item \textsuperscript{160} Brown, supra note 54, at 665.
\end{enumerate}
\end{footnotesize}
degree, \(^{161}\) (3) permitting a marriage defense in cases of statutory rape, \(^{162}\) or (4) limiting the exemption. \(^{163}\) Despite the various movements explained in Part II, married women were not liberated from sexual violence. \(^{164}\) This is perhaps because rape reform had diminished focus on “‘nonparadigmatic’ victims.” \(^{165}\)

Lawmakers have continued to repeal portions of their states’ spousal exemptions without full repeal. \(^{166}\) For example, in 1986, the Virginia legislature passed a partial repeal of spousal exemptions. \(^{167}\) Then, in 2002, the legislature removed the force and non-cohabitating exemptions from its rape statute. \(^{168}\) In 2005, the legislature removed the separate spousal section from the rape, sodomy, and object sexual penetration statutes and incorporated the majority of the statute to prohibit and punish spousal rape. \(^{169}\) Yet, throughout these rounds of repeal, state statutes still separated spousal sexual violence from stranger sexual violence by permitting a lesser penalty or other variation. \(^{170}\)

Even though progress has been made, due to the loopholes and failed repeal efforts, married women are still at a disadvantage in their access to justice. Because of the historical backdrop and the justifications explained in Part I, spousal rape laws were difficult to fully repeal. However, with problematic consent issues at the forefront in the age of #MeToo, are legislatures and judicial benches making another change?

III. THE CURRENT STATE OF SPOUSAL SEXUAL VIOLENCE LAWS

As demonstrated in Part II, state statutes were not uniform in how they addressed spousal rape. Differing laws among states still exist today. Part III engages in a robust empirical study of current state laws pertaining to spousal sexual violence. It finds that full repeal remains an “elusive goal” and that married women

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161. Id. at 669.
162. Id.
163. Id. at 670.
164. See Hasday, infra note 29, at 1482 (“[T]he legal status of marital rape was again subject to significant attack . . . . Here too, however, the resulting reform has been partial and uneven.”).
166. See infra Appendix.
168. 2002 Va. Acts 810 (removing “however, no person shall be found guilty under this subsection unless, at the time of the alleged offense, (i) the spouses were living separate and apart, or (ii) the defendant caused bodily injury to the spouse by the use of force or violence”).
169. 2005 Va. Acts 631 (removing “if any person has sexual intercourse with his or her spouse and such act is accomplished against the spouse’s will by force, threat or intimidation of or against the spouse or another, he or she shall be guilty of rape” and revising “who is not his or her spouse” to “whether or not his or her spouse” or similar language from each statute).
are still fighting for “the right to control of their own bodies.” The following sections track spousal rape laws in the #MeToo era. Section III.A examines the loopholes that permit spousal sexual violence and displays how each adheres to the modern justifications outlined in Section I.C. Section III.B explores whether lawmakers have repealed any loopholes since the emergence of the #MeToo movement and if the movement has had any influence in new legislation.

A. States That Permit Spousal Sexual Violence

Various states refuse to move past eighteenth-century notions of marriage and instead uphold certain loopholes. For example, in West Virginia, “sexual contact” is “any intentional touching . . . of the breasts, buttocks, anus or any part of the sex organs of another person . . . where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.” Because of this existing spousal exemption, a person can commit any of the state’s sexual abuse statutes’ offenses against their spouse and not be liable for a criminal offense. West Virginia’s sexual abuse statutes include sexual contact without consent “and the lack of consent results from forcible compulsion” or sexual contact with someone who is mentally impaired. In other states, spousal sexual violence is protected by a myriad of loopholes. That is, some states essentially permit spousal sexual violence in certain circumstances including (1) allowing sexual activity when the perpetrator is in a supervisory position, (2) creating exceptions to otherwise statutory rape, or (3) finding consent where the spouse is mentally or physically impaired during sexual contact and therefore unable to consent. Other states treat spousal sexual violence differently. Some states charge spousal

172. For a fifty-state survey of spousal sexual violence laws, see infra Appendix.
175. Id.
176. Id. §§ 61-8B-7 to -8.
178. See infra Section III.A.1.
179. Sexual assault by compulsion fits within the impairment category but is a lesser offense. Found in statutes like Hawaii’s state code, a spouse may commit “sexual assault in the fourth-degree” by compulsion. HAW. REV. STAT. § 707-733 (2021). Compulsion is the “absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.” Id. § 707-700.
sexual violence under separate statutes and as a lesser crime\textsuperscript{180} while other states bar a spousal defense.\textsuperscript{181}

1. Statutory Rape

Some states permit sexual acts with minors as long as the perpetrator is their spouse.\textsuperscript{182} For example, in West Virginia, spousal sexual abuse is permitted against those twelve years old and younger if the perpetrator is fourteen years old or older.\textsuperscript{183} These statutes are ambiguous about whether they apply only to consensual acts within a marriage or any sexual act within a marriage that includes a minor. Yet, accounting for the role that power plays in consent, are sexual acts between a minor and adult ever consensual?

2. Physical or Mental Impairment

In 2018, Michael S. Jones visited his wife while she lay in the hospital incapacitated.\textsuperscript{184} As she was unable to consent, Jones decided at various moments that he could touch his wife’s genitals.\textsuperscript{185} Nurses reported these instances which resulted in Jones charged with first-degree sexual abuse against his wife.\textsuperscript{186} A similar charge to that above is not possible in Idaho,\textsuperscript{187} Iowa,\textsuperscript{188} Kentucky,\textsuperscript{189} Michigan,\textsuperscript{190} Rhode Island,\textsuperscript{191} or Wyoming\textsuperscript{192} if the spouse is disabled due to mental conditions.

\textsuperscript{180} See CAL. PENAL CODE §§ 261–262 (West 2021).

\textsuperscript{181} Few states fall under this category. Some of these states also still create loopholes within specific statutes. See D.C. CODE § 22-3019 (2021); GA. CODE ANN. §§ 16-6-1 to -2 (2020); N.H. REV. STAT. ANN. § 632-A:5 (2021); N.C. GEN. STAT. § 14-27.34 (2021).

\textsuperscript{182} See ARIZ. REV. STAT. ANN. § 13-1407 (2021); ARK. CODE ANN. §§ 5-14-124 to -127 (2021); COLO. REV. STAT. §§ 18-3-402, -405.5 (2020); DEL. CODE ANN. tit. 11, § 770 (2021); HAW. REV. STAT. §§ 707-731 to -733 (2021); IOWA CODE § 709.4 (2020); KAN. STAT. ANN. §§ 21-5504 to -5505 (2021); LA. STAT. ANN. § 14:43.3 (2020); ME. STAT. tit. 17-A, §§ 253, 255-A, 260 (2021); MD. CODE ANN., CRIM. LAW § 3-318 (West 2021); 18 PA. CONS. STAT. § 3125 (2021); S.D. CODIFIED LAWS §§ 22-22-7, -7.4 (2021); W. VA. CODE §§ 61-8B-1, -7 (2021).

\textsuperscript{183} W. VA. CODE §§ 61-8B-1, -7 (2021).


\textsuperscript{185} Id.

\textsuperscript{186} Id.

\textsuperscript{187} IDAHO CODE §§ 18-6101, -6107 (2021).

\textsuperscript{188} IOWA CODE § 709.4 (2020).

\textsuperscript{189} KY. REV. STAT. ANN. § 510.035 (West 2021).

\textsuperscript{190} MICH. COMP. LAWS § 750.520a (2021).

\textsuperscript{191} R.I. GEN. LAWS §§ 11-37-1 to -2 (2020).

\textsuperscript{192} WYO. STAT. ANN. § 6-2-307 (2020).
or in Connecticut,\textsuperscript{193} Maryland,\textsuperscript{194} Mississippi,\textsuperscript{195} Ohio,\textsuperscript{196} Oklahoma,\textsuperscript{197} or West Virginia\textsuperscript{198} if the spouse is impaired.

\textit{a. Disability}

A person can subject their spouse with a disability that limits their ability to consent to sexual violence without legal consequences.\textsuperscript{199} These, and the other loopholes mentioned in this Section, are not cases of poor drafting but purposeful targeting of spousal relationships. The same rules do not apply to single women.\textsuperscript{200} For example, consider Amanda, who lives with a “borderline IQ.”\textsuperscript{201} A borderline IQ qualifies under the Iowa sexual abuse statute as a mental defect.\textsuperscript{202} During a visit from Carl Skaggs, Amanda’s former caseworker’s husband, Skaggs “inserted his penis into” Amanda while she lay next to him.\textsuperscript{203} A doctor asked Amanda if she had told Skaggs “no,” which Amanda did not, thus presenting complicated consent issues.\textsuperscript{204} The court found that due to Amanda’s “limited intellectual abilities,” she was unable to consent to the encounter.\textsuperscript{205} Under Iowa law, the court could not have contemplated the consent issues if Amanda and Skaggs were married. Under these statutes, married women are not allowed to explain whether they told their rapist “yes” or “no.”\textsuperscript{206} They are not even able to explain whether they had the ability to say no. When involving spouses who are cohabitating, the statute assumes implicit consent.\textsuperscript{207}

\textit{b. Impairment}

Various states effectively allow spousal sexual violence when one spouse is under some type of mental or physical impairment.\textsuperscript{208} Ohio’s rape statute allows for

\begin{footnotesize}
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\item \textsuperscript{193} CONN. GEN. STAT. §§ 53a-67, -70b (2021).
\item \textsuperscript{194} MD. CODE ANN., CRIM. LAW §§ 3-304, -307, -318 (West 2021).
\item \textsuperscript{195} MISS. CODE ANN. §§ 97-3-95, -99 (West 2021).
\item \textsuperscript{196} OHIO REV. CODE ANN. § 2907.02 (West 2021).
\item \textsuperscript{197} OKLA. STAT. ANN. tit. 21, § 1111 (2021).
\item \textsuperscript{198} W. VA. CODE §§ 61-8B-1, -8 (2021).
\item \textsuperscript{200} See State v. Skaggs, No. 00-1904, 2002 WL 31015241 (Iowa Ct. App. Sept. 11, 2002).
\item \textsuperscript{201} Id. at *1.
\item \textsuperscript{202} Id.
\item \textsuperscript{203} Id.
\item \textsuperscript{204} Id.
\item \textsuperscript{205} Id.
\item \textsuperscript{206} See IOWA CODE § 709.4 (2020).
\item \textsuperscript{207} See id.
\item \textsuperscript{208} See IDAHO CODE § 18-6101 (2021); OHIO REV. CODE ANN. § 2907.02 (West 2021); MICH. COMP. LAWS § 750.520’ (2021); MISS. CODE ANN. § 97-3-95 (West 2021); OKLA. STAT. ANN. tit. 21, § 1111 (West 2021).
\end{itemize}
\end{footnotesize}
an egregious spousal exemption to remain. 209 Under the Ohio statute, rape of a married and cohabitating spouse is only considered criminal if compelled by force or the threat of force. 210 Ohio’s law, therefore, would permit spousal rape if the victim is drugged—even by the offending spouse—or in another state of impairment caused by a mental or physical condition. 211 Lawmakers have attempted to remove this loophole; however, each bill has faced opposition. 212

Ohio courts have not had to rule on appeal regarding this statute, but they frequently address the issue regarding single women. 213 In these cases, the court presents their conscious awareness of the spousal exemption and distinguishes whether the victim was single or married to their perpetrator. 214 For example, during a night out, E.C. drank “too much,” so her friends called an Uber. 215 E.C. woke up “bent over her bed” as her Uber driver “anally penetrat[ed] her.” 216 The defendant claimed that E.C. asked him to come into her house, and he believed the invitation implied consent. 217 The court was not convinced and explained that E.C. could not give consent because of her substantial impairment. 218 In four different parts of the opinion, the court mentioned that the parties were not married, which would have changed its analysis. 219 Similarly, in Ohio v. Allen, the court explained that one of the pertinent facts to be proven during trial was that the appellant and victim were not

209. OHIO REV. CODE ANN. § 2907.02 (West 2021).
210. A court in Ohio challenged the defense of spousal rape when force is used, but the state has not applied similar reasoning to other loopholes. State v. Rittenhour, 678 N.E.2d 293, 295 (Ohio Ct. App. 1996) (“[A] marriage license would give a spouse free rein to assault and sexually abuse their mate to any degree without fear of prosecution because of some impenetrable shield of marital sexual privacy. Meanwhile, the victim spouse would be stripped of his or her right to personal safety and bodily integrity.”).
211. OHIO REV. CODE ANN. § 2907.02 (West 2021).
215. Id.
216. Id.
217. Id. at *1, *6.
218. Id. at *3–4.
219. Id. at *2–4, *8.
married.\textsuperscript{220} Both cases implied that the marital status of the parties may have caused a different result.

3. Different Treatment

Reporting barriers are also present within state statutes. South Carolina places a strict statute of limitations on prosecuting sexual violence between spouses: an abused spouse must report a case within thirty days of the incident.\textsuperscript{221} After thirty days, the spouse's access to justice is null. Spousal rape is also punished to a lesser extent than the rape of the unmarried. For example, courts in Virginia can place any person who is convicted of sexual assault against their spouse and is a first-time offender on a conditional probation.\textsuperscript{222} The spouse must then attend a specified number of court-appointed therapy meetings.\textsuperscript{223} The complaining spouse and the Commonwealth must consent to the conditional probation.\textsuperscript{224} Once the spouse completes the court-appointed therapy, the court may dismiss the charges if it finds dismissal “will promote maintenance of the family.”\textsuperscript{225}

The spousal exemptions that remain in state statutes reinforce both the modern and historical justifications for spousal exemptions. The existence of statutes that permit sexual violence through supervisory privilege, age, and impairment supports the theory that states still adhere to implied and irrevocable consent. For example, Virginia’s lesser punishments for spousal rape support an insistence on marital reconciliation.\textsuperscript{226} Similarly, statutes that require a certain type of force to constitute sexual violence support the notion that spousal rape cases are difficult to prove. Moreover, a narrow statute of limitations relates to the theory that women are vindictive actors, only reporting when it is beneficial. These theories are also present in current repeal efforts, with various members of the Kansas Legislature citing them in their opposition.\textsuperscript{227}

\textsuperscript{220} State v. Allen, No. OT-18-001, 2018 WL 4524000, at *1 (Ohio Ct. App. Sept. 21, 2018) (finding perpetrator and victim drank together, then the perpetrator “digitally penetrated” her, taped it, and released the video on social media).
\textsuperscript{221} S.C. CODE ANN. §§ 16-3-615, -658 (2021).
\textsuperscript{222} VA. CODE ANN. § 18.2-61 (2021); see also id. § 19.2-218.1.
\textsuperscript{223} Id. § 19.2-218.1.
\textsuperscript{225} VA. CODE ANN. § 19.2-218.1 (2021). The only case to reach the Virginia appellate court regarding court-appointed therapy for spousal rape is Wilson v. Commonwealth. In Wilson, the defendant's wife refused to have sex with him. He "stuck his finger in her anus," and threatened to kill her. He then forced her to perform oral sex. Ultimately, the court did not give its required consent to therapy and Wilson did not receive the lesser penalty. Brief for the Commonwealth at 3–4, Wilson, 711 S.E.2d 251 (No. 0728-10-1).
\textsuperscript{226} VA. CODE ANN. § 18.2-61 (2021); see also id. § 19.2-218.1.
\textsuperscript{227} See infra notes 274–276.
B. Repeal in the Wake of Increased Awareness About Sexual Violence

While some states are reluctant to repeal spousal exemptions, there is evidence that public opinion is impacting legislation. The states mentioned below have devoted attention to remedying their legislatures’ failed attempts to repeal spousal exemptions from the 1980s and 1990s. Section III.B chronicles the repeal of spousal exemptions in Alabama, Alaska, Connecticut, Minnesota, and New Hampshire and the attempted repeals in Idaho, Kansas, Maryland, Michigan, and Ohio. Section III.B also presents the #MeToo movement’s influence on the previously mentioned state attempts to repeal spousal exemptions.

1. Enacted Legislation

In Alabama, before 2019, if the perpetrator and victim were married, the perpetrator could not violate the state’s sexual contact and deviate sexual intercourse statutes by assaulting their spouse. During the 2019 legislative cycle, sponsors State Representative Christopher England and State Senator Vivian Figures successfully proposed legislation to remove the “not married to each other” language from the Alabama statutes. The removal of the spousal exemption clause now allows for the conviction of spouses for sexual misconduct, sexual abuse in the first degree, and sexual abuse in the second degree. The Alabama Coalition Against Rape was highly influential in helping the spousal exemption’s repeal.

Similarly, Justin Schneider’s case highlighted Alaska’s sexual assault crises. Schneider grabbed a woman, strangled her, and then masturbated on her...
unconscious body.\footnote{Baird, supra note 232.} He did not serve any jail time because his actions did not fit within Alaska’s definition of sexual assault.\footnote{Id.} The Schneider case influenced Alaskan lawmakers to overhaul the state’s sexual violence statutes,\footnote{See Brooks, Alaska Governor Vows to Fix ‘Loophole’ in Sex Crime Laws, supra note 232; Brooks, To Fight Crime, Democratic Lawmakers Seek to Close Loopholes in State Law, supra note 232.} resulting in a repeal of the state’s spousal rape defense.\footnote{ALASKA STAT. § 11.41.432 (2020).} Two signature bills attempted to repeal the previous statute, the first being Alaska House Bill 33.\footnote{H.R. 33, 31st Leg., 1st Sess. (Alaska 2019).} Sponsored by State Representative Matt Claman, the bill removed a defense that allowed “a perpetrator of sexual assault to use marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is mentally incapable, incapacitated, or unaware that the sexual act is being committed.”\footnote{Press Release, Matt Claman, Rep., Alaska State Legislature, House Bill 33 Sponsor Statement (2019) [http://web.archive.org/web/20201024030239/http://www.akleg.gov/basis/get_documents.asp?session=31&docid=34933].} However, the standalone Alaska House Bill 33 did not pass; its proposal left the committee dissatisfied with the House’s comprehensive crime bill, Alaska House Bill 49.

Initially, under Alaska House Bill 49 (touted to improve Alaska’s laws and make the state’s communities safer), the spousal rape exemption would remain.\footnote{An Act Relating to Criminal Law and Procedure; Relating to Controlled Substances; Relating to Probation; Relating to Sentencing; Relating to Reports of Involuntary Commitment; Amending Rule 6, Alaska Rules of Criminal Procedure; and Providing for an Effective Date, H.R. 49, 31st Leg., 1st Sess. (Alaska 2019) (as amended on Feb. 20, 2019).} However, after the introduction of Alaska House Bill 33, amendments to Alaska House Bill 49 were introduced to address spousal assault in several ways: (1) adding the spousal defense to sexual assault in the fourth degree;\footnote{An Act Relating to Criminal Law and Procedure; Establishing the Crime of Possession of Motor Vehicle Theft Tools; Relating to Electronic Monitoring; Relating to Controlled Substances; Relating to Probation; Relating to Sentencing; Relating to Registration of Sex Offenders; Relating to Operating under the Influence; Relating to Refusal to Submit to a Chemical Test’ Relating to the Duties of the Commissioner of Corrections; Relating to the Alaska Criminal Justice Commission; Relating to the Duties of the Attorney General and the Department of Law; Relating to Testing of Sexual Assault Examination Kits; Relating to Public Disclosure of Information Relating to Certain Minors; Amending Rule 6(B)(6), Alaska Rules of Criminal Procedure; and Providing For an Effective Date, H.R. 49, 31st Leg., 1st Sess. (Alaska 2019) (as amended on Apr. 30, 2019).} (2) repealing portions
of the spousal defense, allowing its use for perpetrators in a supervisory role and sexual assault in the fourth degree; and (3) repealing the spousal defense.

After the various amendments stated above, the house voted down the spousal exemption repeal before sending the bill to the state senate. State Representative Sara Rasmussen condemned the House for voting the repeal amendment down stating, “[O]ur state consistently ranks among the highest sexual abuse rates nationally, and many of those cases are domestic violence cases between spouses. I am at a loss as to why some members of the Majority continue to downplay this issue and skirt the need to solve this problem.”

Representative Rasmussen also told a familiar story during a press conference after the house voted the amendment down. In the story Representative Rasmussen recounted, an Alaskan woman’s husband sexually assaulted her after her medication left her unconscious. Due to the spousal defense, the husband was not charged. Once the bill reached the state senate, senators supported the complete repeal of the spousal defense

241. An Act Relating to Criminal Law and Procedure; Eliminating Marriage as a Defense to Certain Crimes of Sexual Assault; Establishing the Crime of Possession of Motor Vehicle Theft Tools; Relating to Electronic Monitoring; Relating to Controlled Substances; Relating to Probation and Parole; Relating to Sentencing; Amending the Definitions of ‘Most Serious Felony,’ ‘Sex Offense,’ and ‘Sex Offender’; Relating to Registration of Sex Offenders; Relating to Operating under the Influence; Relating to Refusal to Submit to a Chemical Test; Relating to the Duties of the Commissioner of Corrections; Relating to Testing of Sexual Assault Examination Kits; Relating to Reports of Involuntary Commitment; Amending Rules 6(R)(6) and 38.2, Alaska Rules of Criminal Procedure; and Providing for an Effective Date, H.R. 49, 31st Leg., 1st Sess. (Alaska 2019) (as amended on May 7, 2019).

242. An Act Relating to Criminal Law and Procedure; Relating to Pretrial Services; Establishing the Crime of Possession of Motor Vehicle Theft Tools; Relating to Electronic Monitoring; Relating to Controlled Substances; Relating to Probation and Parole; Relating to Sentencing; Amending the Definitions of ‘Most Serious Felony,’ ‘Sex Offense,’ and ‘Sex Offender’; Relating to Registration of Sex Offenders; Relating to Operating under the Influence; Relating to Refusal to Submit to a Chemical Test; Relating to the Duties of the Commissioner of Corrections; Relating to Testing of Sexual Assault Examination Kits; Relating to Reports of Involuntary Commitment; Amending Rules 6(R)(6) and 38.2, Alaska Rules of Criminal Procedure; and Providing for an Effective Date, H.R. 49, 31st Leg., 1st Sess. (Alaska 2019) (as amended on May 8, 2019).


244. Id.


246. Id.

247. Id.
amendment,\textsuperscript{248} and after a special session, the Governor signed Alaska House Bill 49 into law.\textsuperscript{249}

Likewise, Connecticut partially repealed the state’s spousal exemptions in 2019. Before the limited repeal, any rape statute that contained the words “sexual intercourse” or “sexual contact” contained a spousal exemption.\textsuperscript{250} Additionally, the spousal rape statute required physical force or force through the use of a “dangerous instrument.”\textsuperscript{251} Connecticut House Bill 7396 removed the spousal exemption from the statute’s definitions and repealed the specific spousal rape statute.\textsuperscript{252} However, a spousal exemption remains. The state continues to allow marriage as an affirmative defense to portions of the rape statute.\textsuperscript{253} Further, the exemptions that remain cover all cohabitating relationships, not only couples who are legally married.\textsuperscript{254}

Before Minnesota repealed its voluntary relationship defense, one could legally sexually assault one’s spouse so long as the spouse was mentally or physically incapacitated.\textsuperscript{255} Jenny Teeson, who herself is a survivor of spousal rape, spearheaded the movement to repeal Minnesota’s archaic law.\textsuperscript{256} In Teeson’s case, her husband recorded their consensual intimate moments as well as his abuse.\textsuperscript{257} The videos included a recording where he “forcibly penetrat[ed] her with an


\textsuperscript{249} Press Release, Office of Governor Mike Dunleavy, Governor Dunleavy Signs Crime-Fighting Legislation into Law (July 8, 2019), https://gov.alaska.gov/newsroom/2019/07/08/governor-dunleavy-signs-crime-fighting-legislation-into-law/ [https://perma.cc/8PXD-EZDA] (“Repeals marriage as a defense to sexual assault except in cases where there is consent and the conduct is illegal due to the nature of the relationship but-for the marriage (probation officer/probationer, peace officer/person in custody, DJJ officer/person 18 or 19 an [sic] under the jurisdiction of the Division of Juvenile Justice.”).

\textsuperscript{250} \textsc{Conn. Gen. Stat.} § 53a-65 (2018) (defining “sexual intercourse” as “vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex, and its meaning is limited to persons not married to each other” and “sexual contact” as “any contact with the intimate parts of a person not married to the actor”).

\textsuperscript{251} Id. § 53a-70b (“No spouse or cohabitor shall compel the other spouse or cohabitor to engage in sexual intercourse by the use of force against such other spouse or cohabitor, or by the threat of the use of force against such other spouse or cohabitor which reasonably causes such other spouse or cohabitor to fear physical injury.”).


\textsuperscript{253} \textsc{Conn. Gen. Stat.} § 53a-67 (2021).

\textsuperscript{254} Id.

\textsuperscript{255} \textsc{Minn. Stat.} § 609.349 (2021).


\textsuperscript{257} Bierschbach, supra note 256.
object” as she lay unconscious next to their four-year-old son. Teeson believes her husband drugged her to commit the violation and soon after reported her husband’s abuse. Then, she found out that the actions that her husband took were not technically sexual assault within the statutory definition under Minnesota law. After Teeson became aware of Minnesota’s spousal defense, she spoke with the Minnesota Legislature. Minnesota lawmakers were unaware of the exemption and passed a unanimous bill repealing the exemption shortly after Teeson brought it to their attention.

In 2020, the New Hampshire legislature repealed most of the state’s spousal exemptions through New Hampshire House Bill 705. Previously, the state’s statute contained loopholes regarding sexual assault against spouses with disabilities that made them “incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct.” Additionally, New Hampshire House Bill 705 removed exemptions regarding spousal sexual violence against minors.

2. Proposed Legislation

Currently, under Idaho law, there are six spousal exemptions in the state’s spousal rape statute. In 2021, Idaho State Senator Wintrow introduced Idaho Senate Bill 1089 which fully repeals the Idaho statute permitting spousal exemptions. The bill unanimously passed the Idaho state senate and has crossed over to the house to be read in that chamber.

Additionally, Kansas sexual battery law contains “who is not the spouse” language, exempting spouses from the definition of a victim of sexual battery. In an effort to repeal the current statute, State Representative Brett Parker introduced Kansas House Bill 2079 after “hearing concerns from a representative of the

259.  Id.
260.  Id.
261.  See id.
262.  Id.
263.  Id.
264.  Id.
Metropolitan Organization to Counter Sexual Assault. No one directly opposed the bill, but state representatives voiced several concerns that mirror the justifications discussed in Part I. State Representative Emil Berquist voiced concern about “a spouse who regretted experimentation with ‘abnormal and abhorrent’ sexual acts” who might then accuse their spouse of rape. State Representative Kellie Warren worried about prosecuting spouses who were “in the mood for sex while the partner wasn’t on the same page.” Additionally, State Representative Mark Samsel wondered if spouses would use this statute as a way to punish the other in a future unrelated marital controversy. There was no documented opposition to the bill, but it did not move forward during the 2019 legislative term because it was “deemed not important enough.” In 2020, lawmakers again tried to bring this issue to the forefront. Representative Fred Patton proposed a bill similar to Kansas House Bill 2079, Kansas House Bill 2467, which does not have any documented opposition. Kansas House Bill 2467 did not advance from the Kansas Senate Judiciary Committee.

In 2019, the Maryland House of Delegates proposed to eliminate the spousal defense for sexual offenses. The bill did not leave the Maryland House Judiciary Committee. This, in part, was due to the opposition wondering whether “‘smacking the other’s behind’ during an argument” would be considered sexual assault. Another lawmaker asked, “If your religion believes if you’re married, two are as one


275. Id. Berquist’s commentary is an example of evidentiary issues.

276. Id. Warren’s commentary is an example of implicit consent.

277. Id. Samsel’s commentary is an example of evidentiary issues.


body . . . [.] Can you get a religious exemption? In 2020, Maryland lawmakers again proposed a bill, Maryland House Bill 590, to eliminate the state’s spousal defense. Advocates explained the need for the bill, citing a familiar circumstance where a husband repeatedly raped his wife while she was unconscious. However, lawmakers had misgivings. Opposition came from State Senator Robert Cassilly, who questioned the necessity of repealing the spousal exemption given the availability of other legal protections for spouses, stating, “If you don’t want to be touched, put him out of the house with a protective order.” In 2021, lawmakers have continued to evaluate legislation to repeal the state’s spousal exemptions.

Lawmakers in Michigan proposed a change to their spousal rape statutes in late 2019. Currently, a spouse is not liable for spousal sexual violence “solely because” their spouse is “mentally incapable, or mentally incapacitated” during sexual acts. The law then permits spouses to sexually abuse their partners while they are unable to consent. Michigan House Bill 4942 proposes to eliminate the mental incapacitation loophole.

The inspiration for the repeal began when a constituent messaged State Representative Pohutsky about the loophole on Twitter. A survivor of intimate partner rape herself, State Representative Pohutsky was very troubled when learning that Michigan law allowed for this type of abuse. She plans to eliminate the mentally incapable language at a later date.
because she believes that the statutory definition of mentally “incapable” and implications of a repeal are less clear.\textsuperscript{293} State Representative Pohutsky has found bipartisan support and believes that this repeal is a crucial step forward toward justice for survivors of sexual assault.\textsuperscript{294} The Michigan Legislature has not moved forward with the bill.\textsuperscript{295}

Similarly, Ohio lawmakers again tried to repeal the state’s spousal rape loophole.\textsuperscript{296} Ohio’s governor and the current and former attorneys general pushed for an elimination of the statute of limitations in the state’s rape statutes.\textsuperscript{297} Lawmakers attached a spousal rape repeal to the legislation.\textsuperscript{298} The Ohio Prosecuting Attorneys Association, a previously influential opponent to the repeal, even stated that repeal was feasible.\textsuperscript{299} However, the bills did not advance through the Ohio Senate Judiciary Committee or the Ohio House Criminal Justice Committee.\textsuperscript{300}

3. Related Legislation

There are other contentious legislative issues involving spousal rape that are not captured in rape statutes. Arizona State Senator Eddie Farnsworth has fought to allow a spousal rape exemption to a bill that would “terminate the parental rights” of rapists.\textsuperscript{301} In 2020, he stated, “I don’t think someone who’s been married, and has children, should be able to cry rape.”\textsuperscript{302} He has held this view for a while. In

\begin{footnotesize}
\bibitem{293}

\bibitem{294}
\textit{Id.}

\bibitem{295}

\bibitem{296}

\bibitem{297}
\textit{Id.}

\bibitem{298}

\bibitem{299}
Smyth & Karnowski, supra note 282.

\bibitem{300}

\bibitem{301}

\bibitem{302}
\textit{Id.}
\end{footnotesize}
2005, he told the executive director of the Arizona Sexual Assault Network that “[s]ome would argue there are conjugal rights that exist within a marriage.”

A similar bill was before the North Dakota legislature. State Representative Kim Koppelman proposed an amendment to the bill which would prevent the nonrapist spouse from terminating the other’s parental rights. Echoing the marital privacy justification, State Representative Koppelman stated, “[C]ourts should not disrupt the family where two people for whatever reason have decided to remain married.” After an outcry, the legislature removed the amendment from the bill.

C. Influences to Repeal

Most lawmakers who have proposed legislative efforts to repeal spousal exemptions did not explicitly cite #MeToo as their reason for doing so. It appears that decision has to do with the #MeToo movement’s association with workplace harassment and not spousal sexual violence. But, when explaining why they favored a repeal of spousal exemptions, the lawmakers seemed influenced by an awareness of sexual violence in their states. This awareness is most likely visible due to the #MeToo movement’s impact.

For example, in Michigan, State Representative Laurie Pohutsky stated that “[t]here’s been this effort over the last couple of years to really start addressing the issue of sexual assault and rape.” Similarly, in Ohio, State Senator Nickie Antonio said, “We believe that now, more than ever, the public is on the side of removing the artificial line in the sand that prevents a survivor from coming forward.” These statements suggest that the #MeToo movement and its broader implications of placing sexual violence at the forefront of our public discourse may be making an effect.

Advocates, on the other hand, have cited the #MeToo movement as a way for people to understand the need for repeal. In Maryland, the legal director at the Women’s Law Center of Maryland, Laure Ruth, stated that the movement “has

303. Id.
306. Id.
308. Tankersley, supra note 293.
309. Hancock, supra note 296. Although, a different state representative stated a few months earlier that “the #MeToo movement has more of a chilling effect.” Mattie Quinn, Marital Rape Isn’t Necessarily a Crime in 12 States, Governing (Apr. 10, 2019), https://www.governing.com/topics/public-justice-safety/gov-marital-rape-states-ohio-minnesota.html [https://perma.cc/29V6-EZZL].
helped educate people about what is and isn’t acceptable in terms of sexual interactions.”310 In Kansas, the program director at the YWCA Center for Safety and Empowerment, Michelle McCormick, has stated that the country has “come to grips . . . with how much trauma and abuse occurs due to the lack of understanding or misguided beliefs about consent.”311 Thus, the comments from both lawmakers and advocates indicate that awareness of these issues can influence a repeal of spousal exemptions and protect spouses against the current state-sanctioned abuse.

Awareness regarding spousal rape has proven to work.312 Once Minnesota lawmakers became aware of the state’s voluntary relationship exemption, there was a unanimous repeal.313 However, awareness is not enough. Arguably, the #MeToo movement has hit workplaces the hardest, and yet studies have shown that there have not been many tangible differences put in place at these institutions.314 Many of the men shamed out of lucrative positions are coming back into the public eye.315 Furthermore, within the first year of #MeToo, federal and state legislatures only passed twenty-three more bills targeting sexual assault than they did the previous year.316 Therefore, awareness of the issue is only the first step in what needs to be a multipronged solution.

310. Jeff Barnes, Maryland Lawmakers Look to Repeal State’s ‘Archaic’ Sex Laws, AP (Jan. 23, 2020), https://apnews.com/93e855ac3d1eeb904a1020a7c7795ee [https://perma.cc/3G3M-73JM] (stating that “[p]eople know what consent is now, or should know what consent is now”).
312. See Zraick, supra note 258.
313. Id.
314. The study found that thirty-one percent of respondents believed that nothing has changed in their workplace. Men seem to think that the slight changes made to mostly sexual harassment policies have helped more than women do, with forty-nine percent of men saying that “men support women more because of increased awareness” while fifty-three percent of women say that they do not feel more respected. HAVE HER BACK, THE #METOO EFFECT: DO WOMEN AND MEN THINK GENDER EQUITY IS ADVANCING IN THEIR WORKPLACE? (2019), https://haveherback.com/static/downloads/Have-Her-Back-Consulting_MeToo-Survey.pdf [https://perma.cc/JLC3-4MFG]; Mary Beth Ferrante, Two Years After #MeToo Started, Report Finds Companies Are Not Taking Enough Action, FORBES (Nov. 13, 2019, 2:00 PM), https://www.forbes.com/sites/marybethferrante/2019/11/13/two-years-after-metoo-started-report-finds-companies-are-not-taking-enough-action/#7c228275981 [https://perma.cc/MDJH-VNPL]. Another survey found that many companies have yet to institute policies surrounding sexual harassment. And those that do are often “ineffective, and even archaic.” Olivia Balsamo, The #MeToo Movement Is Changing the Corporate World: Survey, YAHOO! FIN. (Nov. 21, 2019), https://finance.yahoo.com/news/the-me-too-movement-is-changing-the-corporate-world-says-sap-exec-222632466.html [https://perma.cc/FYH4-S2H3].
316. Cara Kelly & Aaron Hegarty, #MeToo Was a Culture Shock. But Changing Laws Will Take More than a Year, USA TODAY (Oct. 5, 2018, 12:28 PM), https://www.usatoday.com/story/news/investigations/2018/10/04/metoo-metoo-sexual-assault-survivors-rights-bill/1074976002/ [https://perma.cc/9G2B-372A] (examining the bills passed within a year from Alyssa Milano’s tweet and finding that between both the Federal Legislature and state legislatures, 261 laws were passed addressing sexual violence while in the year before, the federal legislature and state legislatures only passed 238 laws; Congress did not pass any laws related to workplace sexual harassment, a cornerstone of the recent #MeToo movement).
IV. Eliminating the Allowance of Spousal Sexual Violence

As Christina Kennedy and Deena Hausner explain in *My Husband Rapes #MeToo*, lawmakers should design laws “to offer the highest level of support and protections to all survivors of sexual violence.”317 It is time that lawmakers fully repeal the various legislative exemptions stated in Part III. As the country elects more women to federal and state legislatures and as our social consciousness about consent and sexual violence grows, I am hopeful that a full repeal is within reach.318

Repeal of spousal exemptions gives victims a remedy for the abuse that they suffer if they desire to pursue a legal solution. For example, after repeal in Minnesota, the Minnesota Sentencing Guidelines Commission concluded that repeal would result in an additional seven convictions annually.319 Spouses will not receive a legal remedy, however, if legislatures continue to carve out loopholes under the guise of repeal.320 These carve-outs are evident in Part II and, as shown in Part III, continue to this day. These small carve-outs hinder advancement toward full repeal. Studies show that “an increase in the number of prior, weaker changes to a state’s marital rape law significantly decreases a state’s likelihood of completely eliminating the spousal exemption . . . by about 60 percent.”321

While repeal provides a legal remedy, a full repeal will not be enough to eradicate spousal sexual violence. After repeal, if the statutes are unenforced, then the lack of intervention essentially creates an extralegal spousal privilege. However, enforcement mechanisms as they currently stand present serious issues and need reform to create more meaningful change.322 The effects of the previous

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317. Kennedy & Hausner, *supra* note 29, at 59 (“The continued disparity in the treatment of marital rape has important symbolic value, for it indicates that the law continues to view rape by an intimate partner as less serious and less of a crime than stranger rape.”).

318. Studies have shown that the “percent of legislators who are women . . . are not significant predictors” in the elimination of spousal rape laws. But, that is since men far outweighed the number of women, not that women are not “more committed than male legislators to advancing women’s interests.” McMahon-Howard et al., *supra* note 125, at 518.

319. The bill’s sponsor stated, “That is seven people who are not getting the justice they are due because of this law.” Tim Walker, *House OKs Bill to Eliminate ‘Marital Exception’ in Sexual Misconduct Cases, MINN. LEGISLATURE: MINN HOUSE REPRESENTATIVES* (Feb. 21, 2019, 5:20 PM), https://www.house.leg.state.mn.us/SessionDaily/Story/13642 [https://perma.cc/74UA-WN8S].

320. While it is abhorrent that spousal sexual violence against the disabled is permitted, a full repeal of statutes dealing with mental incapacity could have serious implications. Currently, spouses who may not be able to consent and do not want to consent do not have a path to justice. However, a full repeal could hurt spouses who may not be deemed able to consent and want to. See Sofia Barrett-Ibarria, *People with Down Syndrome Need Healthy Sex Lives, Too, VICE* (Jan. 12, 2018, 2:51 PM), https://www.vice.com/en_us/article/ne49mk/sex-dating-and-down-syndrome [https://perma.cc/M55B-4ME9]. Thus, when legislatures are faced with repeal of these disability spousal exemptions, they must be cognizant of the difficult circumstances surrounding consent. See Tankersley, *supra* note 293 (explaining that the Michigan legislature is grappling with these issues).

321. McMahon-Howard et al., *supra* note 125, at 520.

322. Awareness, repeal, and reform must be performed simultaneously for effective elimination of spousal rape. See Warfield, *supra* note 39 (“I just don’t think that you can policy your way, or legislate your way, into teaching somebody to treat another person as a human being.”); Spohn, *supra* note 124, at 129.
rape-reform movement are instructive on the shortcomings of relying on legislation only. Studies on the impact of the previous reform bills found little change regarding reporting.323 Survivors of sexual violence do not report because the consequences “outweigh the benefits.”324 After reporting their abuse to authorities, survivors fear social stigma, retaliation, and traumatic recounting.325 If more survivors reported their abuse, there may be a large decrease in the amount of violence that they receive. A study found that women who contacted police or applied for protective orders after their first rape were less likely to experience intimate partner rape again.326

Sexual violence between intimate partners exacerbates reporting issues.327 In intimate partner relationships, seventy-seven percent of completed and attempted rapes and seventy-five percent of sexual assaults go unreported, compared to fifty-four percent of completed rapes, forty-four percent of attempted rapes, and thirty-four percent of sexual assaults by strangers.328 Survivors may also feel that reporting is a waste of time due to the limited number of rapes that are penalized. According to the Rape, Abuse & Incest National Network (RAINN), those who commit crimes of sexual violence are far less likely to be incarcerated than those who commit any other crime.329 RAINN reports that out of every 1,000 sexual assaults, only 5 cases will lead to a felony conviction, only 46 reports will lead to arrest, and only 230 assaults will be reported to police.330

These issues stem from the various mechanisms that fail survivors. Dispatchers do not receive substantial training and downgrade rape when coding crimes.331 The police have a history of not helping survivors effectively.332

323. Spohn, supra note 124, at 129 ("One study showed that the reforms had no impact in five of six major urban jurisdictions studied."). There was a slight increase in the number of arrests and convictions. Morgan Namian, Hypermasculine Police and Vulnerable Victims: The Detrimental Impact of Police Ideologies on the Rape Reporting Process, 40 WOMEN'S RTS. L. REP. 80, 84 (2018).
324. Namian, supra note 323, at 82.
325. Jackson, supra note 53, at 193; see Namian, supra note 323, at 82; McBride, supra note 22, at 37.
326. The study found that if women contacted police, they were fifty-nine percent less likely to be raped again, and if they applied for a protective order, they were seventy percent less likely to be raped again. Lauren R. Taylor & Nicole Gaskin-Laniyan, Sexual Assault in Abusive Relationships, 256 NAT'L INST. JUST. J. 12, 13 (2007).
330. Id.
332. Namian, supra note 323, at 84 ("[P]olice officers play a crucial gatekeeping role in determining whether victims will have access to justice . . . ."). The Baltimore Police Department offers an illuminating example of how police treat survivors of sexual violence. In a 2016 report, the Department of Justice (DOJ) found that the Baltimore Police Department humiliated those who
Additionally, some prosecutors actively work against those who report, and the judiciary does not have the best record when it comes to upholding the rule of law against offenders. Moreover, societal attitudes toward sex in marriage influence juries to be skeptical of those who bring their cases to trial.

As many feminist activists and scholars note, however, there is a danger in relying on the criminal justice system to eliminate sexual violence. This reluctance is rooted in the reality that the criminal justice system focuses “nearly exclusively on punishing criminals and virtually ignores forgiveness, victim healing, elimination of socio-economic predicates of crime, and victim social services.” Therefore, repeal and reform must be done for those who wish to pursue a legal remedy, but community, noncarceral approaches must also be pursued to eradicate spousal sexual violence.

CONCLUSION

The #MeToo movement has been transformational. Topics thought to be offensive are now within our national conversation; however, this conversation must help spouses. As this Note demonstrates, spousal exemptions still exist in the

reported and did not adequately investigate survivor’s claims. Some officers went as far as siding with the perpetrators, including questioning a survivor, “Why are you messing that guy’s life up?” The report also states that instead of taking sex workers seriously, the officers forced them to perform sexual acts to avoid arrest. These issues are not exclusive to Baltimore, as the DOJ has found similar actions taken in New Orleans and Missoula. Sheryl Gay Stolberg & Jess Bidgood, Some Women Won’t ‘Ever Again’ Report a Rape in Baltimore, N.Y. TIMES (Aug. 11, 2016), https://www.nytimes.com/2016/08/12/us/baltimore-police-sexual-assault-gender-bias.html [https://perma.cc/7UA9-SKMP]; Chemaly, supra note 331.

333. The Baltimore study found email exchanges between a prosecutor and police officer referring to a survivor as a “conniving little whore.” Stolberg & Bidgood, supra note 332.

334. After drugging, raping, and videotaping his wife, David Wise was sentenced to house arrest. Here, Judge Eisgruber instructed the survivor to “forgive” Wise. Goodwin, supra note 47, at 328; see also Brandon Stahl, Jennifer Bjorhus & MaryJo Webster, Rapists Who Know Their Victims Often Receive Lighter Sentences in Minnesota’s Courts, STAR TRIB. (Dec. 6, 2018), http://www.startribune.com/in-minnesota-convicted-for-rape-free-from-prison-time-denied-justice-part-seven/501636921/ [https://perma.cc/MBP8-8WFC] (finding thirty-two percent of acquaintance rape cases received reduced sentences where only sixteen percent of stranger rape cases received reduced sentences).

335. Since 2013, only nineteen men in Iowa have been charged with spousal rape and only one went to trial. In one example, the jury found that the husband was not guilty on all six counts, even though the wife testified that he “came up behind her and wrapped his arms around her, pinning her hands to her side so she couldn’t move. He walked her to the bed they once shared and pushed her, face down, onto it” and then “forced himself inside her.” Kathy A. Bolten, An Iowa Woman Said Her Husband Repeatedly Raped Her. Almost No One Believed Her. She’s Not Alone., DES MOINES REG. (Jan. 30, 2019, 10:34 AM), https://www.desmoinesregister.com/story/news/investigations/2019/01/24/domestic-violence-iowa-courts-me-too-spousal-sexual-abuse-marital-rape-sex-intimate-partner-assault/2524826002/ [https://perma.cc/RA43-YG5R].

336. Alta Viscomi, System Accountability and Sexual Assault: The Past and Future of the Criminal Justice System, 22 RICH. PUB. INT. L. REV. 173, 188 (2019) (“As symbolically powerful as new legal language was, many critical feminist scholars believe that these legal and legislative victories came at a high cost.”).

337. Gruber, supra note 165, at 615.
United States. To combat this, state legislatures must repeal the current loopholes, societal beliefs about marriage and consent must change, and those tasked with enforcing the laws must be sympathetic to survivors’ needs. And if those changes are not implemented, those who are married may continue to tweet “#MeToo.”

In the Appendix, table 1 provides the current state statutes regarding spousal sexual violence. The table is separated by the categories explained in Part III. For example, the information under “Supervisory Role” may define what roles perpetrators may have where spousal sexual contact is allowed. Additionally, the table provides the year of the most recent reform of the state’s spousal sexual violence laws. For example, as of 2019, Alabama’s rape statutes no longer contain a spousal exemption.
### Table 1: Spousal Sexual Violence Laws in 2021

*Note: In Progress labeled as “IP.”

<table>
<thead>
<tr>
<th>Recent reform</th>
<th>Supervisory role</th>
<th>Impairment</th>
<th>Statutory rape</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td></td>
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<tr>
<td>2019</td>
<td>Defense if the offender is employed in a state correctional facility, or a peace officer and engages in sexual penetration with a person with reckless disregard to whether or not the victim is in the control of the offender.</td>
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<tr>
<td>2019</td>
<td>Defense that the victim was the legal spouse of the defendant unless the victim consented to the intercourse.</td>
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338. ALASKA STAT. § 11.41.425(a) (2020); see also id. § 11.41.432(d).
339. Id. § 11.41.445(a).
### Recent Reform

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>Different Spousal Statute</th>
<th>Impairment</th>
<th>Supervisory Role</th>
<th>Statutory Rape</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>2005</td>
<td>Defense to a prosecution of sexual abuse and sexual conduct with a minor that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution of sexual assault that the defendant was the spouse of the victim at the time of commission of the act.</td>
<td>—</td>
<td>Unlawful sexual conduct statute does not apply to &quot;[a]n officer who is married to or who is in a romantic or sexual relationship with the person at the time of arrest or investigation.&quot;</td>
<td>Defense to committing sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age when that minor is the spouse of the other person at the time of commission of the act.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Recent reform</td>
<td>Different spousal statute</td>
<td>Impairment</td>
<td>Supervisory role</td>
<td>Statutory rape</td>
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</table>
|          |               |                          |            | "[S]exual assault in the first degree if . . . [t]he person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is . . . [e]mployed with the Division of Correction, the Division of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility . . . and the actor is supervising the minor while the minor is on probation or parole or for any other court-ordered reason." | "[S]exual assault in the second degree if the person . . . [e]ngages in sexual contact with another person who is . . . less than fourteen (14) years of age; and [a] [t]he actor's spouse."

Statutory rape "Sexual assault in the first degree if . . . [i]f sexual assault in the second degree if the person . . . [e]ngages in sexual intercourse or deviate sexual activity with a person who is not the actor's spouse and the victim is . . . [a] student enrolled in the public or private school employing the actor; and [i]s in a position of trust or authority over the victim and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity."
<table>
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<tr>
<th>Recent reform</th>
<th>Different spousal statute</th>
<th>Impairment</th>
<th>Supervisory role</th>
<th>Statutory rape</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>Prohibits rape of a spouse under a number of circumstances including by force, intoxication, unconsciousness, and by threat.</td>
<td>—</td>
<td>—</td>
<td><em>Unlawful sexual intercourse is ... accomplished with a person who is not the spouse of the perpetrator, if the person is a minor.</em></td>
</tr>
<tr>
<td>Colorado</td>
<td><em>Any marital relationship, whether established statutorily, putatively, or by common law, between an actor and a victim shall not be a defense to any offense . . . unless such defense is specifically set forth in the applicable statutory section.</em></td>
<td>—</td>
<td>—</td>
<td><em>Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if . . . the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or . . . the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim.</em></td>
</tr>
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</table>
SPOUSAL RAPE EXEMPTIONS

<table>
<thead>
<tr>
<th>State</th>
<th>Recent Reform</th>
<th>Different Spousal Statute</th>
<th>Impairment</th>
<th>Supervisory Role</th>
<th>Statutory Rape</th>
</tr>
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| Connecticut | 2019          | —                         | "In any prosecution for an offense . . . based on the victim's being mentally incapacitated, physically helpless or impaired because of mental disability or disease, it shall be an affirmative defense that the actor, at the time such actor engaged in the conduct constituting the offense, did not know of the condition of the victim . . . and it shall be an affirmative defense that the defendant and the alleged victim were . . . living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship."
<p>|            |               |                           |            |                  | &quot;[Affirmative defense that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship]&quot; for aggravated sexual assault of a minor when the &quot;victim of such offense is under thirteen years of age, and (1) such person kidnapped or illegally restrained the victim, (2) such person stalked the victim, (3) such person used violence to commit such offense against the victim, (4) such person caused serious physical injury to or disfigurement of the victim, (5) there was more than one victim of such offense under thirteen years of age, (6) such person was not known to the victim, or (7) such person has previously been convicted of a violent sexual assault.&quot; |</p>
<table>
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<tr>
<th></th>
<th>Recent reform</th>
<th>Different spousal statute</th>
<th>Impairment</th>
<th>Supervisory role</th>
<th>Statutory rape</th>
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</thead>
<tbody>
<tr>
<td>Delaware</td>
<td>—</td>
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<td>—</td>
<td>&quot;[R]ape in the fourth degree when the person . . . [i]ntentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim’s eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse.&quot;</td>
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<td>Florida</td>
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</table>
### SPOUSAL RAPE EXEMPTIONS

<table>
<thead>
<tr>
<th>Statutory rape</th>
<th>Supervisory role</th>
<th>Impeachment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory rape when he or she engages in sexual intercourse with any person under 16 years of age and not his or her spouse.</td>
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<td></td>
</tr>
</tbody>
</table>

**Recent reform**

Georgia:

**Statutory rape**

> The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

**Impeachment**

Georgia:

> The improper sexual contact statute by an employee or agent does not apply to married individuals.

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356. GA. CODE ANN. § 16-6-1(a) (2020) (improper sexual contact).
357. Id. § 16-6-5.1(e)(1).
358. Id. § 16-6-3(a) (emphasis added) (statutory rape).
<table>
<thead>
<tr>
<th>State</th>
<th>Recent Reform</th>
<th>Statutory Rape</th>
<th>Impairment</th>
<th>Supervisory Role</th>
<th>Different Spousal Assault</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawaii</td>
<td>2016</td>
<td>&quot;[S]exual assault in the fourth degree if . . . [t]he person knowingly subjects another person, not married to the actor, to sexual contact by compulsion or causes another person, not married to the actor, to have sexual contact with the actor by compulsion.&quot;&lt;sup&gt;330&lt;/sup&gt;</td>
<td>&quot;[S]exual assault in the second degree if [t]he person knowingly subjects to sexual penetration a minor who is at least sixteen years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; provided that: [t]he person is not less than five years older than the minor; and [t]he person is not legally married to the minor.&quot;&lt;sup&gt;330&lt;/sup&gt;</td>
<td>&quot;[S]exual assault in the first if . . . [t]he person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that: [t]he person is not less than five years older than the minor; and [t]he person is not legally married to the minor.&quot;&lt;sup&gt;330&lt;/sup&gt;</td>
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<tr>
<th>State</th>
<th>Recent Reform</th>
<th>Different Spousal Statute</th>
<th>Impairment</th>
<th>Supervisory Role</th>
<th>Statutory Rape</th>
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<tbody>
<tr>
<td>Idaho</td>
<td>IP*</td>
<td>&quot;No person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances cited in&quot; certain subsections of the Idaho Code.</td>
<td>&quot;No person shall be convicted of rape for any act or acts with that person's spouse,&quot;</td>
<td>—</td>
<td>&quot;No person shall be convicted of rape for any act or acts with that person's spouse,&quot;</td>
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<td>Illinois</td>
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364. Id. (emphasis added).
365. Id. § 18-6101(3) (rape).
366. Id. § 18-6107 (emphasis added).
367. Id. § 18-6101(1).
| Indiana | — | — | — | — | — |
| Iowa | — | "[S]exual abuse in the third degree when the person performs a sex act . . . and the act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabitating with the person." | "[S]exual abuse in the third degree when the person performs a sex act . . . between persons who are not at the time cohabitating as husband and wife . . . if the other person is in a position of authority over the other person and uses that authority to coerce the other person to submit. | "[S]exual abuse in the third degree when the person performs a sex act . . . between persons who are not at the time cohabitating as husband and wife . . . if the other person is twelve or thirteen years of age." | — |

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<th>Supervisory role</th>
<th>Statutory rape</th>
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</table>
| Kansas | IP*           | "Sexual battery is the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another." | — | "Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if . . . [t]he offender is an employee or volunteer of the department of corrections, . . . a parole officer, . . . a law enforcement officer, an employee of a jail, . . . juvenile detention facility or sanctions house, . . . the Kansas department for aging and disability services or the Kansas department for children and families, . . . a worker, volunteer or other person in a position of authority in a family foster home licensed by the department of health and environment, . . . a teacher, or other person in a position of authority."
<p>|       |               |                           |            |                 | Marriage is a defense to sexual intercourse with a child who is younger than fourteen.&quot; |</p>
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<tr>
<th>Recent reform</th>
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<th>Statutory rape</th>
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<tr>
<td>Kentucky</td>
<td>&quot;A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person’s age solely because the other person is less than sixteen . . . years old or an individual with an intellectual disability.&quot;</td>
<td>See &quot;Different Spousal Statute.&quot;</td>
<td>—</td>
<td>See &quot;Different Spousal Statute.&quot;</td>
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See the table for further details.
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<tr>
<td>Louisiana</td>
<td>2015</td>
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<td>—</td>
<td>&quot;Oral sexual battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when . . . [t]he victim, who is not the spouse of the offender, is under the age of fifteen years and is at least three years younger than the offender.&quot;</td>
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(SPOUSAL RAPE EXEMPTIONS)
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<tr>
<td>Maine</td>
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<td>&quot;[G]ross sexual assault if that person engages in a sexual act with another person and ... if the other person, not the actor’s spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person ... or if a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student.&quot; [381]</td>
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<tr>
<td>Statutory rape</td>
<td>Supervisory role</td>
<td>Impairment</td>
<td>Different spousal statute</td>
<td>Recent reform</td>
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<tr>
<td>A person may not be prosecuted for a sexual act with another if the victim is fourteen and the person performing the sexual act is at least four years older than the victim if the victim is the person’s legal spouse at the time of the offense.</td>
<td>A person in a position of authority may not engage in sexual contact with a minor who, at the time of the offense, was a student enrolled at a school where the person in a position of authority was employed unless the victim is the person’s legal spouse at the time of the offense.</td>
<td>A person may not be prosecuted for engaging in sexual contact with another if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual if the victim is the person’s legal spouse at the time of the offense.</td>
<td>A person may not be prosecuted under certain statutes for a crime against a victim who was the person’s legal spouse at the time of the alleged rape or sexual offense unless they are living apart or force was used.</td>
<td>Maryland</td>
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</table>

382. MD. CODE ANN., CRIM. LAW § 3-318(a)–(b) (West 2021) (emphasis added) (rape and sexual offense spousal defense).
383. *Id.* § 3-307(a)(2) (sexual offense third-degree); *id.* § 3-318(a).
384. *Id.* § 3-308(c)(1) (sexual offense fourth-degree); *id.* § 3-318(a).
385. *Id.* §§ 3-307(a)(3), 3-318(a).
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<tr>
<td>Michigan</td>
<td>IP*</td>
<td>&quot;A person may be charged and convicted . . . even though the victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16, mentally incapable, or mentally incapacitated.&quot;386</td>
<td>See &quot;Different Spousal Statute.&quot;387</td>
<td>&quot;Criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and . . . [t]hat other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies: [i] the actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of that public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.&quot;388</td>
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<tr>
<td>State</td>
<td>Recent reform</td>
<td>Different spousal statute</td>
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<tr>
<td>Minnesota</td>
<td>2019</td>
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<td>Criminal sexual conduct if &quot;the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and . . . the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense.&quot;</td>
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</table>

### Notes
- **Statutory rape**—Supervisory role focuses on a supervisory relationship where the complainant sought or received religious or spiritual aid in private, with added emphasis on the period of time spent in these meetings. The criminal sexual conduct includes scenarios where the defendant is not married to the complainant and the sexual contact occurred during the course of meetings for religious or spiritual advice.
- **Recent reform**—Indicates the year of legislative changes affecting the spousal rape exemption.
- **Different spousal statute**—Nullifies traditional spousal immunity in cases where an ongoing relationship exists for religious or spiritual assistance.

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**SPOUSAL RAPE EXEMPTIONS**
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<thead>
<tr>
<th>Statutory Rape</th>
<th>Supervisory Role</th>
<th>Impairment</th>
<th>Recent Reform</th>
<th>Different Spousal Statute</th>
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</thead>
<tbody>
<tr>
<td><em>A person is guilty of statutory rape if</em></td>
<td><em>A person is guilty of sexual penetration with a child</em></td>
<td><em>A person is guilty of sexual penetration with a mentally defective, mentally incapacitated or physically helpless person.</em></td>
<td><em>A person is guilty of sexual penetration if the person is in a position of trust or authority over the victim.</em></td>
<td><em>A person is not guilty of any offense under sexual battery statutes if the alleged victim is that person’s legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual penetration if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.</em></td>
</tr>
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</table>

392. *Id.* § 97-3-95(1)(b) (“sexual battery” defined).
393. *Id.* § 97-3-95(2).
394. *Id.* § 97-3-95(1)(c)–(d).
<table>
<thead>
<tr>
<th>Missouri</th>
<th>2014</th>
<th>&quot;It shall be an affirmative defense to [certain] prosecutions [see &quot;Statutory Rape&quot;] . . . that the defendant was married to the victim at the time of the offense.&quot;</th>
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| "A person commits the offense of statutory rape in the first degree if he or she has sexual intercourse with another person who is less than fourteen years of age." "A person commits the offense of statutory rape in the second degree if being twenty-one years of age or older, he or she has sexual intercourse with another person who is less than seventeen years of age." "A person commits the offense of child molestation in the fourth degree if, being more than four years older than a child who is less than seventeen years of age, subjects the child to sexual contact."
A victim is incapable of consent because the victim is, except for in marriage, "incarcerated in a . . . correctional, detention, or treatment facility or is on probation, conditional release, or parole and the perpetrator is an employee . . . or volunteer of the supervising authority . . . [is] receiving services from a youth care facility . . . and the perpetrator . . . [is] providing treatment to the victim; and is an employee . . . or volunteer of the youth care facility; [is] admitted to a mental health facility, . . . a community-based facility or a residential facility . . . and the perpetrator . . . is providing treatment to the victim; and is an employee, . . . or volunteer of a facility . . . ; [is] a program participant . . . in a private alternative adolescent residential or outdoor program, . . . and the perpetrator is a person associated with the program; . . . is a client receiving psychotherapy services and the perpetrator . . . is providing or purporting to provide psychotherapy services . . . ; [is] a student of an elementary, middle, junior high, or high school, whether public or nonpublic, and the perpetrator is not a student of an elementary, middle, junior high, or high school and is an employee, contractor, or volunteer of any school who has ever had instructional, supervisory, disciplinary, or other authority over the student in a school setting."
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<td>Nebraska</td>
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<td>Sexual abuse of an inmate or parolee deals with individuals employed by &quot;the</td>
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<td>Department of Correctional Services or by the Division of Parole Supervision,...</td>
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<td>and any individual, other than an inmate's spouse, to whom the department has</td>
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<td>authorized or delegated control over an inmate or an inmate's activities, an</td>
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<td>individual employed by a city or county correctional or jail facility, including</td>
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<td>any individual working in central administration of the city or county correction</td>
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<td>or jail facility, any individual working under contract with the city or county</td>
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<td>correctional or jail facility, any individual, other than an inmate's spouse, to</td>
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<td>whom the city or county correctional or jail facility has authorized or delegated</td>
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<td>control over an inmate or an inmate's activities.&quot;</td>
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It is no defense to a charge of sexual assault that the perpetrator was married to the victim at the time of the assault, if the assault was committed by force or the threat of force.

A person is guilty of statutory rape when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

404. N.J. STAT. ANN. § 2C:14-5(b) (West 2021) (emphasis added) (provisions generally applicable to chapter 14).
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<tr>
<td>New Mexico</td>
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<td>&quot;Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration . . . perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or perpetrated on a child thirteen to eighteen years of age when the perpetrator . . . is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer.&quot;</td>
<td>See &quot;Supervisory Role.&quot;</td>
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<tr>
<td>State</td>
<td>Year</td>
<td>Different spousal statute</td>
<td>Impairment</td>
<td>Supervisory role</td>
<td>Statutory rape</td>
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<td>New York</td>
<td>2010</td>
<td>&quot;In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, a client or patient and the actor is a health care provider, detained or otherwise in custody of law enforcement...or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee, it shall be a defense that the defendant was married to the victim...&quot;</td>
<td>—</td>
<td>&quot;A person is deemed incapable of consent when he or she is...committed to the care and custody of a local correctional facility,... and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility.&quot;</td>
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<tr>
<td>Supervisory role</td>
<td>Statutory rape</td>
<td>Healthcare provider</td>
<td>Nonviolent victim</td>
<td>Impairment</td>
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| Ohio          | IP*                       | "No person shall engage in sexual conduct with another, not the spouse of the offender, when . . . [t]he offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution."
|               |                           | "No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when . . . the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception . . . [or if] the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age." |
|               |                           | "No person shall engage in sexual conduct with another, not the spouse of the offender, when . . . [t]he victim] is in custody of law or a patient in a hospital . . . and the offender has supervisory or disciplinary authority over the other person[] . . . [the perpetrator is a person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution; . . . the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person]; [t]he offender . . . is a mental health professional, the other person is a mental health client or |
|               |                           | "No person shall engage in sexual conduct with another, not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when . . . [t]he other person is less than thirteen years of age, whether or not the offender knows the age of the other person." |

*IP* = Ohio R.C. CODE ANN. § 2907.02(A)(5)(A)(1)(B) (emphasis added) (sexual imposition)
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<tr>
<td>Ohio</td>
<td>IP*</td>
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<td><em>No person shall engage in sexual conduct with another, not the spouse of the offender, when...</em> The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.<strong>415</strong></td>
<td>Patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes; [the other person is confined in a detention facility, and the offender is an employee of that detention facility;] [the other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric; or] [the other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.]<strong>416</strong></td>
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| Oklahoma      | —                         | Rape is an act of sexual intercourse accomplished with a person "who is not the spouse of the perpetrator . . . " force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.  

|               |                           | Rape is an act of sexual intercourse accomplished with a person "who is not the spouse of the perpetrator . . . " where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim . . . where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system . . . or the perpetrator of the crime is a person responsible for the child's health, safety or welfare.  

418. Id. § 1111(A)(4)–(5) (emphasis added). |
|               |                           | Rape is an act of sexual intercourse accomplished with a person "who is not the spouse of the perpetrator . . . " where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim . . . where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system . . . or the perpetrator of the crime is a person responsible for the child's health, safety or welfare.  

419. Id. § 1111(A)(7)–(8), (10) (emphasis added). |
|               |                           | Rape is an act of sexual intercourse accomplished with a person "who is not the spouse of the perpetrator . . . " where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim . . . where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system . . . or the perpetrator of the crime is a person responsible for the child's health, safety or welfare.  

420. Id. § 1111(A)(1). |
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<tr>
<td>Oregon</td>
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<td>—</td>
<td>&quot;A person commits the crime of sexual misconduct if the person engages in sexual intercourse or oral or anal sexual intercourse with an unmarried person under 18 years of age.&quot;</td>
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<td>Pennsylvania</td>
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<td>&quot;[A] person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if... the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.&quot;</td>
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<tr>
<th>State</th>
<th>Recent reform</th>
<th>Different spousal statute</th>
<th>Impairment</th>
<th>Supervisory role</th>
<th>Statutory rape</th>
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<tbody>
<tr>
<td>Rhode Island</td>
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<td>&quot;[F]irst degree sexual assault if he or she engages in sexual penetration with another person, and if . . . [t]he accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.&quot;</td>
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2021

### SPOUSAL RAPE EXEMPTIONS

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<tr>
<th>State</th>
<th>Recent Reform</th>
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<tr>
<td>South Carolina</td>
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<td>&quot;A person cannot be guilty of criminal sexual conduct . . . if the victim is the legal spouse unless the couple is living apart and the offending spouse’s conduct constitutes criminal sexual conduct in the first degree or second degree . . . The offending spouse’s conduct must be reported to appropriate law enforcement authorities within thirty days in order for a person to be prosecuted for these offenses.&quot;</td>
<td>&quot;Criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if [the] . . . actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.&quot;</td>
<td>&quot;Criminal sexual conduct with a minor in the first degree if . . . the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.&quot;</td>
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</table>

425. Id. § 16-3-654(1)(b) (criminal sexual conduct in the first degree).
426. Id. § 16-3-655(B)(2) (criminal sexual conduct with a minor).
427. Id. § 16-3-655(A).
428. Id. § 16-3-655(B)(1).

Recent reform — South Carolina
<table>
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<tr>
<th>Statutory rape</th>
<th>Supervisory role</th>
<th>Impairment</th>
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<tbody>
<tr>
<td>Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than their spouse, if the sexual contact is committed by the person in an act of penetration with a person who is not their spouse and who is a patient who is emotionally dependent on the psychotherapist at the time that the act of sexual penetration is committed, commits a Class 4 felony.</td>
<td>Any person who is not the patient’s spouse who, although capable of consenting, has no capacity to consent, is guilty of a Class 3 felony.</td>
<td>Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than their spouse, if the sexual contact is committed by the person in an act of penetration with a person who is not their spouse and who is a patient who is emotionally dependent on the psychotherapist at the time that the act of sexual penetration is committed, commits a Class 4 felony.</td>
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</table>

430. Id. § 22-22-7 (emphasis added) (sexual contact with a child under sixteen).
431. Id. § 22-22-7.4 (emphasis added) (sexual contact without consent with person capable of consenting).
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<td>Tennessee</td>
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<td>Texas</td>
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<td>*An employee of a public or private primary or secondary school commits an offense if the employee . . . engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works.*402 *It is an affirmative defense to prosecution under this section that . . . the actor was the spouse of the enrolled person at the time of the offense.*403</td>
<td>Affirmative defense if the person &quot;causes the penetration of the anus or sexual organ of a child by any means; causes the penetration of the mouth of a child by the sexual organ of the actor; causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or causes the mouth of a child to contact the anus or sexual organ of another person, including the actor&quot; if the actor was the spouse of the child at the time of the offense.434</td>
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Statutory rape—

"No person shall engage in a sexual act with a person who is under the age of 16, except when the persons are married to each other and the sexual act is consensual."

435. UTAH CODE ANN. § 76-5-402(1)–(2) (West 2021) (emphasis added) (rape).

436. VT. STAT. ANN. tit. 13, § 3252(c)(1) (West 2021) (emphasis added) (sexual assault).
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<td>Virginia</td>
<td>2005</td>
<td>&quot;In any case deemed appropriate by the court, all or part of any sentence imposed for a violation . . . against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, . . . if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.&quot;</td>
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<td>Washington</td>
<td>2013</td>
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<td>Rape in the second-degree when the person engages in sexual intercourse with another person and &quot;the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who: [h]as supervisory authority over the victim; or [w]as providing transportation, within the course of his or her employment, to the victim; . . . the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination . . . ; [t]he victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator . . . has supervisory authority over the victim; . . . [t]he victim is a frail elder or vulnerable adult . . . who: [the perpetrator] has a significant relationship with the victim.**</td>
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<td>West Virginia</td>
<td>Sexual contact is &quot;any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, when the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.&quot; [439]</td>
<td>Sexual abuse &quot;when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated [440] or subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or [s]uch person subjects another person to sexual contact who is physically helpless.&quot; [441]</td>
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<td>&quot;[s]exual abuse in the third-degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.&quot; [442]</td>
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<td>Wisconsin</td>
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<td>&quot;A defendant shall not be presumed to be incapable of violating [the sexual assault section] because of marriage to the complainant.&quot;</td>
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<td>Wyoming</td>
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<td>&quot;The fact that the actor and the victim are married to each other is not by itself a defense to certain violations except what is stated in the following cells.&quot;</td>
<td>&quot;The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.&quot;</td>
<td>&quot;Being eighteen (18) years of age or older, the actor engages in sexual contact with a victim who is less than sixteen (16) years of age and the actor occupies a position of authority in relation to the victim.&quot;</td>
<td>&quot;Being seventeen (17) years of age or older, the actor inflicts sexual intrusion on a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor.&quot;</td>
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</table>

445. Id. § 6-2-302(a)(iv) (sexual assault in the first degree).
446. Id. § 6-2-315(a)(iv) (sexual abuse of a minor in the second degree).
447. Id. § 6-2-315(a).