

## **Rape**

You are in serious jeopardy if you are watching this. You have been accused of, arrested for, or implicated in rape.<sup>1</sup> If you are under arrest for or have been charged with rape, the penalties can escalate to decades imprisonment.

The Innocence Legal Team has long experience in dealing with, and winning, just such cases. Our team of attorneys, experts, paralegals and investigators understand that the key to prevailing is to understand and present evidence of an accuser's motivation to falsify such a report.

Other lawyers may claim to specialize in sex crimes, but the Innocence Legal Team is the only California law firm which handles sex cases exclusively. A lawyer may claim to be sex crime "specialist," but also may claim to specialize in everything from drunk driving to petty theft.

### **Rape: The Criminal Allegation That Is Easy to Claim and Increasingly Difficult for The Defendant To Disprove**

For decades, the crime of rape has been known as the easiest criminal allegation to make by the alleged victim and the hardest to mount a defense against. In the 1960's, the victims of this brutal crime were able to take advantage of significant changes in the law that made it easier to obtain convictions and justice. Unfortunately, these changes also made it easier for those who were falsely accused of rape to be convicted as well. Adding to the defendant's difficulties is the controversial "Rape Trauma Syndrome," an irresponsible psychological theory that has been rejected by mental health professionals but is still being used by prosecutors as so-called evidence in cases alleging the crime of rape.

### **Laws Making It Easier to Obtain Convictions**

The Courts have long known that rape is an easy allegation to make but one that is hard to disprove. In fact, the biggest threat of being falsely accused of a crime was that of being accused of rape (until "child molestation" became a significant national issue that flooded the legal system with cases.) The Courts perceived the potential threat of false allegations of rape and fashioned Jury Instructions to inform members of the jury that such allegations were easy to make by the complainant but difficult for the defendant to disprove. Today, this jury instruction is no longer allowed to be given as a result of changes in the law, changes that also mandate giving a very different set of instructions.

### **Jury Instructions**

The judge now informs the jury that

- 1) an allegation of rape does not require any evidence of corroboration;
- 2) there is no requirement for medical evidence;
- 3) there is no requirement for DNA evidence; and

---

<sup>1</sup> Possible charges can include 261 Rape, 261.5 Statutory Rape, 262 Spousal Rape, 264.1 Gang Rape, 289 Rape by a Foreign Object, 289 Rape by Threats, 289 Rape by Fraud, 289 Rape of unconscious or Intoxicated victim.

4) there is no requirement for a second witness.

In short, there is no requirement for obtaining a conviction other than the bare allegation made by a complainant. Even the manner in which the jury is selected is tainted with this attitude that evidence does not matter. Prosecutors can demand that during the selection process, each prospective juror must agree that he/she would not require corroboration of a crime. If the juror disagrees with this demand, he/she can be excused.

### **Rape Shield Laws**

Consensual sex is still legal. Being able to prove consent, however, has become more difficult for the defendant. For example, if a man meets a woman at a bar and has sex with her that night and later she claims that she was raped, the man used to be able to introduce evidence to help establish a pattern of consensual sexual behavior on the woman's part. That might be the testimony by witnesses that the woman routinely comes to the bar every night, engages a man's

companionship, and then goes home and has sexual relations. Such evidence is highly relevant to show the sex on the night in question was consensual. This type of evidence is no longer admissible.

Victims' rights advocates were rightly concerned with legal strategies that put the victim's personal life on trial. Unfortunately, highly relevant evidence that can protect an innocent defendant is no longer allowed because politics has obscured justice and powerful lobbies have helped to pass what is now called "Rape Shield Laws." Under the Rape Shield Laws, a defendant in today's courtroom is forbidden to introduce the prior sexual conduct of the complainant on the issue of consent. (Like the example above) And yet, no one has ever successfully shown that the evidence of prior sexual conduct is not relevant in determining consent. While the Rape Shield Laws were intended to encourage more women to come forward and testify, it simply has made it easier to falsely accuse and convict an innocent individual.

In 1998 the California legislature passed Evidence Code § 1108 that further crippled a defendant's ability to remain innocent in the eyes of the jury until proven guilty. The new code section allows the prosecution to introduce allegations made by other women allegedly assaulted on previous occasions by the defendant to prove that a rape occurred in the currently charged offense.

However, no corroborative evidence is required to introduce these alleged crimes. There does not have to be a conviction. Nor does there have to exist a criminal charge or even a prior police report. The uncorroborated word of a single individual is sufficient.

In a backlash meant to protect victims of rape, the legislature is creating new victims by keeping out the sexual history of the complainant on the issue of consent, and allowing into evidence the sexual history of the defendant. This is sheer politics and not based upon any rational grounds of relevancy or fair play.

Such legislation is systematically making it easier to obtain convictions, and while those guilty of rape should be convicted, those who are falsely accused must be given back the right to defend themselves adequately in a court of law.

### **Date Rape**

Cases involving “date rape” often result from a combination of “buyer’s remorse” and opinions of family and friends that the accused “used” or took advantage of the accuser.