

Evolution of Rape Law: A Study of Common Law and Michigan Statutory Elements

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Abstract

This paper examines how the legal definition of rape has shifted from its narrow origins in English common law to the broader, consent-focused framework used in Michigan today. Common law defined rape in limited terms that required force, physical resistance, and a female victim, and it included major shortcomings, such as marital exemption and the “utmost resistance” rule. Michigan’s modern criminal sexual conduct statutes take a more comprehensive approach by recognizing multiple forms of penetration and contact, removing gender restrictions, addressing incapacitation, and expanding protections for minors and victims in authority-based situations. The paper also explains Michigan’s rape shield law, which limits the use of a victim’s sexual history in court except in rare cases where excluding the evidence would violate a defendant’s constitutional rights. Overall, this paper compares common-law elements to Michigan’s statutory structure, discusses the social and legal developments that drove these changes, and identifies possible areas for continued reform as society and technology evolve. Rape has historically been one of the most serious crimes against people, but its legal definition has changed significantly over time. Early English common law treated rape in narrow and often restrictive terms that reflected the social norms of that time period in history. In today’s society, Michigan’s statutory framework for criminal sexual conduct reflects a modern understanding of sexual violence, consent, power dynamics, and victim protection. This paper analyzes the elements under historical common law, outlines the elements under Michigan’s current statutes, and examines how and why the law has evolved. Finally, it offers recommendations for future reform based upon emerging societal needs and challenges.

Common Law Elements of Rape

Under English common law, rape was defined as the unlawful carnal knowledge of a woman without her consent, accomplished by force or the threat of force (FindLaw, n.d.; LawShelf, n.d.). However, this definition shows a clear flaw within the law, because based upon the word structuring, this means that in no case or scenario a male may be the victim of rape. Hale (1736) and Blackstone (1769) both describe rape as “the carnal knowledge of a woman forcibly and against her will,” basically meaning that any amount of penile–vaginal penetration counted. Because of how the law was written, rape was completely gendered. The victim had to be a woman, the

offender had to be a man, and husbands couldn't legally be charged with raping their wives. This marital exemption is another clear flaw in common law because it prevented married women from accusing their husbands of rape if it happened.

Under common law, the burden of proving lack of consent was put almost entirely on the victim. Prosecutors often had to show that the victim "resisted to the utmost" (Blackstone, 1769), which is nearly impossible to prove in court. Force or threat of force was mandatory. Without force, the act was not considered rape under common law. Because of this, courts would assess the victim for signs of resistance, checking for bruises, torn clothing, scratches, defensive wounds, or any signs of an altercation. Without this type of "evidence," under common law, there would essentially be no case for the victim.

Lastly, common law treated minors differently but did not have the nuanced, tiered protections compared to what Michigan includes in its current statutes.

Elements of Rape Under Michigan Statutory Law

Michigan no longer uses the term "rape" in its legal code. Instead, the state classifies such offenses as criminal sexual conduct (CSC) in the first through fourth degrees, found in Michigan Compiled Laws, Act 328 of 1931, sections 750.520b–750.520e. This naturally raises the question of how Michigan defines and structures criminal sexual conduct within its modern statutory framework. Michigan's approach differs significantly from the narrow elements of rape under English common law.

Michigan recognizes both sexual penetration (vaginal, anal, or oral) and sexual contact (touching for sexual purposes) as criminal sexual conduct. This is a broader standard in comparison to common law. There is no gender restriction within Michigan's statute for CSC; victims may be of any gender, and marital status does not limit prosecution. Under Michigan's statutes, the consent-based framework is clearly defined and includes criminal acts involving force or coercion and incapacitation, as well as victims being unable to consent due to age, mental disabilities, or authority dynamics. The codes for these can be found within three different sections:

Force or Coercion:

- (Mich. Comp. Laws § 750.520b(1)(f), 1931) — for the “force or coercion” language in First Degree CSC,
- (Mich. Comp. Laws § 750.520d(1)(b), 1931) — for the “force or coercion is used to accomplish the sexual penetration” language in Third Degree CSC, and (Mich. Comp. Laws § 750.520e(1)(b), 1931) — for the “force or coercion is used to accomplish the sexual contact” language in Fourth Degree CSC.

Incapacitation:

- (Mich. Comp. Laws § 750.520b(1)(d), 1931) — victim is mentally incapable, mentally incapacitated, or physically helpless
- (Mich. Comp. Laws § 750.520e(1)(c), 1931) — actor knows victim is mentally incapable, mentally incapacitated, or physically helpless

In Michigan's statutes there is no requirement for victims to physically resist. Special protections exist for minors (under 13, or 13-16 with certain relationships). Lastly, offenders in positions of authority face enhanced penalties. Michigan's statutes reflect a comprehensive and victim centered approach much broader than common law. Compared to the very narrow, force-focused definition used under English common law, Michigan's modern statutes are much broader and substantially more realistic. Michigan removes all gender restrictions, gets rid of the marital exemption, expands what counts as penetration, and even recognizes sexual contact on its own as a criminal offense. The state also clearly defines what force, coercion, and incapacitation look like, which is something common law never did well. Overall, the shift from common law to Michigan's current approach shows how the law moved away from a property-based, resistance-focused view and toward a consent-centered model that actually protects victims and reflects what we know today about trauma and sexual violence.

Rape Shield Laws

Another significant difference between common law and Michigan's modernized approach to sexual assault is the adoption of rape shield laws. These laws place strict limits on what evidence can be presented about a victim's past sexual behaviors. Under English common law, a victim's sexual history was often used within courts to challenge her credibility, implying that women who were not virgins were less trustworthy or would be more likely to have given consent. This allowed defense attorneys to introduce highly

prejudicial and irrelevant information regarding the victim's past life, which often discouraged victims from reporting their assaults.

In contrast, Michigan adopted one of the strongest rape shield laws across the country, codified at MCL 750.520j. Under this statute, evidence of a victim's previous sexual conduct is generally considered inadmissible except in very narrow circumstances. These circumstances may include prior sexual activity with the defendant or when excluding the evidence would violate the defendant's constitutional rights under the Sixth Amendment, the right to present a complete defense. Michigan courts apply a balancing test to determine whether any exception applies, weighing the probative value of the evidence against the prejudicial effect. The purpose of rape shield laws is to protect the victims from character attacks and to prevent trials from shifting focus away from the defendant's actions. By restricting irrelevant and discriminatory evidence, these laws encourage reporting, reduce the possibility of retraumatization, and ensure that sexual assault trials center on the facts of the incident rather than the victim's personal life. This represents a significant departure from common law thinking, in which a victim's chastity was treated to be as relevant as her credibility.

Reasons for Legal Change

Looking between the two and comparing English common law to Michigan's current statutes in regard to CSC, we can see that there was need for legal change, but what brought about this change? Research has shown that victims, rather than fight back and resist, will freeze, which invalidates the utmost resistance requirement (Campbell, 2008). This was realized as we developed more understanding of trauma responses compared to what we believe should "logically" happen.

Gender equality developments also played a major role. Research and updated federal definitions show that rape can occur to *any* gender and within marriage, contradicting the gendered limitations of common law (U.S. Department of Justice, 2012). Common law also overlooked the power differences between offenders and victims. Many assaults occur where an offender holds a position of authority (teachers, caregivers, police officers, or others), which increases coercive power. Modern research helped expose the role of authority in sexual abuse (Finkelhor, 1984), leading Michigan to include authority-based coercion as part of CSC. Common law additionally failed to fully consider the impact of drugs, alcohol, or unconsciousness during sexual assault. Modern research shows that a large portion of sexual assaults occur when victims are incapacitated (Kilpatrick et al., 2007). Michigan now explicitly criminalizes sexual acts involving victims who cannot consent due to intoxication, drugs, sleep, or mental incapacity.

Lastly, widespread social and cultural shifts, including public awareness campaigns, advocacy groups, and movements such as #MeToo,

placed pressure on lawmakers to modernize outdated sexual assault laws and reflect contemporary understandings of victimization (Hindes & Fileborn, 2020).

Suggested Reforms for Michigan Law

As society changes, laws will continue to evolve. This raises questions regarding the appropriate limits of statutory reform. Modern society has increasingly become more reliant on digital services such as social media, Wi-Fi, and other online interactions. Michigan could adopt clearer guidelines on coercion over the internet, or “digital coercion.” These are crimes in which threats may be made regarding leaking private photos as well as coercing individuals into sending them. Regarding reporting procedures, many victims still wait to report due to fear or trauma. Michigan could improve by expanding anonymous reporting, increasing officer training on handling rape cases to help deal with trauma, and increasing access to sexual assault nurse examiners.

Michigan can also strengthen protections for military personnel and college students. Given the high sexual assault rates between these two groups, Michigan could expand jurisdictional cooperation and mandatory prevention programming. College women are at one of the highest risks when they are on campus compared to when they are out in public. By implementing the blue box emergency system on every campus, where all you need to do is press a button and security will walk you to where you need to go, we may lower the rate at which these attacks occur.

Conclusion

The evolution of rape law from English common law to Michigan’s modern CSC statutes shows how much society has changed its understanding of sexual violence. Common law created a narrow and outdated framework that focused heavily on force, physical resistance, and gendered assumptions in regard to both perpetrators and victims. Michigan’s statutes take a much broader and realistic approach by recognizing different forms of penetration, sexual contact, incapacitation, and power dynamics. These changes reflect our improved knowledge about trauma, consent, and how people react during an assault. While Michigan has made major progress in comparison to common law, there is still room for change in today’s evolving world, especially as technology and society advance. Updating digital coercion guidelines, strengthening reporting procedures, and improving protections for vulnerable groups would assist in making the law more effective. Overall, the shift from common law to Michigan’s CSC framework represents a needed move toward a system that better protects victims and responds to the realities of modern society.

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