

## A Credibility Gap in Cases of Rape with Professor Deborah Tuerkheimer

**The credibility gap in the context of rape.** According to Prof. Deborah Tuerkheimer, the credibility gap results in objectively credible rape victim reports being discounted or disbelieved as a result of a bias stemming from combination of law and cultural effects.

- **Example: The case of Abbey Honold.** Prof. Tuerkheimer discusses the details of Abby Honold's violent rape by an acquaintance while attending college in Minnesota. The rape was reported immediately, and physical injuries were present. Law enforcement was skeptical of her account and no charges were initially filed. Only after other victims reported rapes by the same person, the suspect was charged and plead guilty.
- For more about the case, see "[The Campus Rapist Hiding in Plain Sight](#)," by Barbara Bradley Hagerty (The Atlantic, July 15, 2019).

### The Burden of Proof in Rape Cases

- For civil lawsuits – [preponderance of evidence](#)
- For arrest – [probable cause](#)
- For criminal conviction – [beyond a reasonable doubt](#).

### Historical requirements related to sexual assault in the United States.

- Corroboration requirement - accuser's word not enough for a case to reach a jury
  - See [Davis v. State, 48 S.E. 180, 181-182 \(Ga. 1904\)](#)
- Prompt Outcry Rule - victim had to make accusation fairly quickly to have case considered
  - Model Penal Code § 213.6 at 151 (American Law Institute, Proposed Official Draft 1962)
- Cautionary Instruction to Juries – explicit instructions to juries warning that they use special suspicion evaluating the testimony of a rape complainant
  - See [People v. Rincon-Pineda, 538 P.2d 247, 252 \(Cal. 1975\)](#).
- While these rules are no longer in the black letter of the law, the [Model Penal Code of 1962](#) was influenced by these rules and informal requirements still remain.

### Laws around Intoxicated Victims

- Intoxication often used as a way to place fault on the victim
- Distinction between Voluntary and Involuntary Intoxication

- Laws can vary based on level of intoxication
  - Ex. [State v. Finley, No. A13083 \(Minn. Ct. App. April 28, 2014\)](#) A woman went to a wedding, voluntarily consumed alcohol, and was sexually assaulted. Her voluntary intoxication barred her from getting justice.

Marital Rape Exception - laws against rape did not apply to marriages; now abolished in all states, yet traces still remain

Title VII sexual harassment cases in workplace - legally sanctioned focus on how the victim's attire.

### Resistance Requirements

- The case of Cassandra Weeks: [State v. Powell, 438 So.2d 1306, 1307, 1308 \(La. Ct. App. 1983\)](#)
  - Victim slapped and shown a gun
  - Conviction was overturned since the victim did not resist enough
- Verbal resistance requirements (in place in about ½ of all states)
  - Victim has to manifest unwillingness
  - Doing nothing is equated with consent
  - Ex: [PEN § 130.05](#): "Lack of consent results from...Where the offense charged is rape in the third degree as defined in [subdivision three of section 130.25](#) , or criminal sexual act in the third degree as defined in [subdivision three of section 130.40](#) , in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances."
  - Some states have laws describing the opposite: affirmative consent
    - For more, [Deborah Tuerkheimer, "Affirmative Consent," Ohio State Journal of Criminal Law 13, no. 2 \(2016\): 448](#)
- For more on resistance requirements, see [Brown v. State, 106 N.W. 536, 536–38 \(Wis. 1906\)](#).