# Questionnaire on criminalization and prosecution of rape

## Til spørsmål 1

Translation of relevant provisions from the Penal Code: <https://app.uio.no/ub/ujur/oversatte-lover/data/lov-19810522-025-eng.pdf>

**Section 291.*Sexual assault***

A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who

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| --- | --- |
| a) | obtains sexual activity through violence or threatening conduct, |
| b) | engages in sexual activity with a person who is unconscious or for other reasons incapable of resisting the act, or |
| c) | through violence or threatening conduct makes a person engage in sexual activity with another person, or perform acts corresponding to sexual activity on himself/herself |

**Section 292.*Minimum penalty for sexual assault involving intercourse, etc.***

The penalty shall be imprisonment for a term of between three and 15 years if the sexual assault as specified in section 291 included:

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| a) | insertion of the penis into the vagina or anus, |
| b) | insertion of the penis into the aggrieved person's mouth, |
| c) | insertion of an object into the vagina or anus, or |
| d) | if the offender brought about a state as specified in section 291 b) in order to obtain sexual activity |

**Section 293.*Aggravated sexual assault***

Aggravated sexual assault is punishable by imprisonment for a term not exceeding 21 years. The same applies if the offender has previously been convicted of acts specified in sections 291, 294 or 299.

In determining whether the sexual assault is aggravated, particular weight shall be given to whether

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| --- | --- |
| a) | it was committed by multiple persons acting together, |
| b) | it was committed in a particularly painful or offensive manner, or |
| c) | the aggrieved person died or suffered considerable harm to body or health as a result of the act. A sexually transmitted disease is always considered considerable harm to body or health pursuant to this section |

**Section 294.*Grossly negligent sexual assault***

Grossly negligent sexual assault is punishable by imprisonment for a term not exceeding six years. If circumstances as specified in section 293 exist, the penalty shall be imprisonment for a term not exceeding 10 years

**Section 295.*Abuse of unequal power relationship, etc.***

A penalty of imprisonment for a term not exceeding six years shall be applied to any person who obtains sexual activity for himself/herself or another person, or makes a person perform acts corresponding to sexual activity on himself/herself by

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| a) | abusing a position, dependent relationship or relationship of trust, or |
| b) | exploiting a person's mental illness or mental disability provided the conduct does not fall within the scope of section 291, or |
| c) | exploiting a person under 18 years of age in a particularly vulnerable life situation. |

The same penalty shall be applied to any person who through circumstances specified in the first paragraph, a) to c) makes two or more persons engage in sexual activity with each other.

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**Section 296.*Sexual activity with inmates, etc. of an institution***

A penalty of imprisonment for a term not exceeding six years shall be applied to any person who

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| a) | engages in sexual activity with a person who is an inmate of or has been placed in an establishment or institution under the control of the correctional services or the police or in an institution under the control of the child welfare service, and who in that establishment or institution is subject to that person's authority or supervision, |
| b) | makes a person or persons with whom he/she has a relationship as specified in a) perform acts corresponding to sexual activity on themselves or engage in sexual activity with each other, or |
| c) | obtains for another person sexual activity with a person with whom he/she has a relationship as specified in a |

**Section 299.*Sexual assault on a child under 14 years of age***

A penalty of imprisonment for a term not exceeding 10 years shall be applied to any person who

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| --- | --- |
| a) | engages in sexual activity with a child under 14 years of age, |
| b) | makes a child under 14 years of age perform acts corresponding to sexual activity on himself/herself, or |
| c) | performs an aggravated sexual act with a child under 14 years of age |

**Section 300.*Minimum penalty for sexual assault involving intercourse on a child under 14 years of age***

The penalty is imprisonment for a term of between three and 15 years if the sexual assault as specified in section 299 involved:

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| --- | --- |
| a) | insertion of the penis into the vagina or anus, |
| b) | insertion of the penis into the aggrieved person's mouth, |
| c) | insertion of objects into the vagina or anus, or |
| d) | insertion of the penis into and between the labia majora and labia minora |

**Section 301.*Aggravated sexual assault on a child under 14 years of age***

Aggravated sexual assault on a child under 14 years of age is punishable by imprisonment for a term not exceeding 21 years. The same applies if the offender has previously been convicted of acts specified in sections 291, 294 or 299.

In determining whether the sexual assault is aggravated, particular weight shall be given to

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| a) | whether it was committed by multiple persons acting together, |
| b) | whether it was committed in a particularly painful or offensive manner, |
| c) | the age of the aggrieved person at the time of the act, |
| d) | whether repeated abuse occurred, or |
| e) | whether the aggrieved person died or suffered considerable harm to body or health as a result of the act. A sexually transmitted disease is always considered considerable harm to body or health pursuant to this section |

**Section 302.*Sexual activity with a child between 14 and 16 years of age***

Any person who engages in sexual activity with a child between 14 and 16 years of age shall be subject to imprisonment for a term not exceeding six years, unless the conduct also falls within the scope of other provisions. The same penalty shall be applied to any person who makes a child between 14 and 16 years of age perform acts corresponding to sexual activity on himself/herself

**Section 303.*Aggravated sexual activity, etc. with a child between 14 and 16 years of age***

Aggravated violation of section 302 is punishable by imprisonment for a term not exceeding 15 years. The same applies if the offender has previously been convicted of acts specified in sections 291, 299 or 302.

In determining whether a violation of section 302 is aggravated, particular weight shall be given to whether

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| a) | the act was committed by multiple persons acting together, |
| b) | the act was committed in a particularly painful or offensive manner, or |
| c) | the aggrieved person died or suffered considerable harm to body or health as a result of the act. A sexually transmitted disease is always considered considerable harm to body or health pursuant to this section |

## Til spørsmål 2

1. NO
2. YES
3. NO
4. NO
5. YES, the general provision on rape (or “sexual assault” which is the term used in the Norwegian Penal Code) applies when the offender uses violence or threatening conduct or engages in sexual activity with a person who is unconscious or for other reasons incapable of resisting the act. Obtaining sexual activity by abusing a dependent relationship, a relationship of trust orcertain types of unequal power relationships is also punishable.
6. NO
7. YES, it covers vaginal, anal and oral penetration as well as other sexual activities
8. NO
9. YES
10. YES
11. NO

## Til spørsmål 3

There are no such provisions in Norwegian law.

## Til spørsmål 4

16 years

## Til spørsmål 5

According to the Penal Code section 308, the penalty pursuant to the provisions on sexual assault on a child under 14 years of age or sexual activities with children between 14 and 16 years of age may be waived or set below the minimum penalty if the persons involved are approximately equal in age and development.

## Til spørsmål 6

The offender shall be subject to imprisonment. The duration depends on the circumstances.

* Sexual assaults as described in the Penal Code Section 291 is punishable by imprisonment for a term not exceeding 10 years. If the sexual assault involve vaginal, anal and oral penetration or insertion of an object into the vagina or anus, the penalty shall be imprisonment for at term between 3 and 15 years. Aggravated sexual assault is punishable by imprisonment for at term not exceeding 21 years.
* Obtaining sexual activity by abusing a dependent relationship, a relationship of trust or certain types of unequal power relationships is punishable by imprisonment for at term not exceeding 6 years.
* Engaging in sexual activity with a child under 14 years of age is punishable by imprisonment for at term not exceeding 10 years. If the activity involve vaginal, anal and oral penetration or insertion of an object into the vagina or anus, the penalty shall be imprisonment for at term between 3 and 15 years. Aggravated sexual assault on a child under 14 years of age is punishable by imprisonment for at term not exceeding 21 years.
* Engaging in sexual activity with a child between 14 and 16 years of age is punishable by punishable by imprisonment for at term not exceeding 6 years. If the violation is aggravated, the offender shall be subject to imprisonment for at term not exceeding 15 years.

A sentence of imprisonment may be imposed in combination with a fine or restraining orders as described in the Penal Code Section 32, cf. the Penal Code Section 32. If a sentence of imprisonment is deemed insufficient to protect the life, health or freedom of other persons, preventive detention in an institution under the correctional services may on certain conditions be imposed, cf. the Penal Code Section 40.

## Til spørsmål 7

NA

## Til spørsmål 8

1. YES
2. YES
3. NO

## Til spørsmål 9

YES, the Penal Code Section 78 contain a general provision on mitigating circumstances. According to this provision mitigating circumstances to be given particular considerations are that

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| --- | --- |
| a) | there exists a situation or condition as specified in section 80 b), c), d), e), i) or j), [includes among others situation where the offender is sentenced for attempt or has only participated to a minor degree] |
| b) | the offender has prevented, reversed or limited the harm or loss of welfare caused by the offence, or sought to do so, |
| c) | the offence was to a significant degree occasioned by the circumstances of the aggrieved party, |
| d) | the offender had, at the time of the act, reduced capacity to realistically assess his or her relationship to the outside world due to mental illness, mental disability, impairment of consciousness not caused by self-induced intoxication, or a state of severe mental agitation, |
| e) | the offence was committed a long time ago, or the proceedings have taken longer than is reasonable based on the nature of the offence, through no fault of the offender, |
| f) | the offender has made an unreserved confession, or contributed significantly to solving other offences, |
| g) | the offender himself/herself has been severely affected by the offence, or the criminal sanction will impose a heavy burden due to advanced age, illness or other circumstances, |
| h) | the prospects for rehabilitation are good, |
| i) | the offender was under 18 years of age at the time of the act |

## Til spørsmål 10

YES, if both the aggrieved person and the person charged consent, the prosecuting authority may decide that the case shall be remitted to the National Mediation Service for mediation if it is suitable for this purpose, cf. the Criminal Procedure Act section 71 a.

## Til spørmål 11

According to the Criminal Procedure Act section 69 a prosecution may be waived even though guilt is deemed to be proved if such special circumstances exist that the prosecution authority on an overall evaluation finds that there are weighty reasons for not prosecuting the act.

1. NO
2. YES, if the case is remitted to the National Mediation Service and the victim and the offender reach an agreement

## Til spørsmål 12

YES

## Til spørsmål 13

NA

## Til spørsmål 14 og 15

NO, an unreserved confession is however a mitigating circumstance, cf. the Penal Code section 78 (f).

## Til spørsmål 16

According to the Penal Code section 87 the limitation period for criminal liability is 10 years when the maximum statutory penalty prescribed is imprisonment for a term not exceeding 10 years, 15 years when the maximum statutory penalty prescribed is imprisonment for a term not exceeding 15 years and 25 years when the maximum statutory penalty prescribed is imprisonment for a term not exceeding 21 years.

## Til spørsmål 17

For violations of section 299 regarding sexual assault on a child under 14 yaers of age and 302 regarding sexual activity with a child between 14 and 16 years of age, the limitation period shall be calculated from the day the aggrieved party reaches 18 years of age.

## Til spørsmål 18

NO

## Til spørsmål 19 og 20

NA

## Til spørsmål 21

YES

## Til spørsmål 22

NO

## Til spørsmål 23

YES

## Til spørsmål 24-26

NA