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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF GILA

THE ESTATE OF BABY VILLEGAS, DECEASED, by and through MARIO VILLEGAS; MARIO VILLEGAS on his own behalf and on behalf of all survivors of BABY VILLEGAS, Deceased,

Plaintiffs,

v.

JACKRABBIT FAMILY MEDICINE, INC., an Arizona corporation, d/b/a CAMELBACK FAMILY PLANNING; GABRIELLE J. GOODRICK, M.D., a single woman; JOHN DOES I-X; JANE DOES I-X; ABC PARTNERSHIPS I-X; and XYZ CORPORATIONS I-X.

Defendants.

NO.: CV202200007

MARIO VILLEGAS REBUTTAL TO DEFENDANTS' POST-TRIAL BRIEF

(Assigned to the Hon. Bryan Chambers)

Introduction

This Court has already ruled that M.S.V.'s consent was invalid and that the abortion violated A.R.S. § 36-2153. Under the Act, valid consent is a condition precedent to a lawful abortion, and Defendants did not satisfy that condition precedent. Only two questions remained for trial: whether A.R.S. § 36-2153 (K)(2) bars Mario from bringing

this civil action, and the measure of his damages.

The parties presented two competing narratives. Mario's narrative describes a young woman, newly out of another relationship, working but without health insurance, who married a Marine veteran and firefighter nine years her senior, who offered stability, and meant it. Mario's three boys were a non-negotiable part of the bargain from the start; they moved into the family home before the wedding, with no objection from M.S.V., and she married Mario anyway. (Tr. Day 2, pp. 163–165; Tr. Day 1, p. 242.)

Money was tight from the start. Mario earned eleven dollars an hour at the fire station, pulled extra shifts and sometimes worked twenty-four hours straight to make ends meet. He added M.S.V. to his insurance, bought her a car on his own credit, helped her find several jobs, disciplined his sons when she told him they were disrespecting her, went with her to couples counseling, and finally went bankrupt trying to keep the household afloat by himself. (Tr. Day 2, pp. 164, 169–174.) The marriage was stressed by scarcity and step-children, and it failed, as marriages sometimes do.

Defendants' narrative blames the abortion violation on everyone but themselves, despite the Court's ruling. They claim Mario exercised "coercive control" over M.S.V. and lied to her, tricking her into having unprotected sex with him so he could get her pregnant. They claim his lie was a crime, and that his coercive control deprived M.S.V. of "self-efficacy", the ability to make her own reproductive choices. But Defendants did not prove Mario's lie, and have never explained how a wife so deprived of self-efficacy, could then make a fully autonomous decision to kill her baby, over Mario's objection.

M.S.V. never told this Court she was coercively controlled. Those words, and the framework behind them, come from Dr. Taylor, Defendants' expert, who never met or spoke with M.S.V. or Mario, and reviewed only the materials Defendants selected. (Tr. Day 2, pp. 33, 44.)

Defendants' narrative is unfair twice over. It is unfair to Mario, whom it brands a criminal abuser on evidence M.S.V herself disclaimed, and it is unfair to M.S.V., whose self-efficacy it erases. The same brief that calls her powerless, then recounts her making the most consequential decision of her marriage, abortion, instantly, irrevocably, and over her husband's voiced opposition.

I. The Evidence Refutes Defendants' Coercive-Control Theory.

A. This Is Defendants' Theory and Burden of Proof, Not M.S.V.'s.

The first part of A.R.S. § 36-2153(K)(2) allows a married father to sue an abortion provider for damages resulting from her violation of the Act. Mario seeks the benefit of this clause, and therefore, he bears the burden of proving his entitlement to it. It is undisputed, based on the stipulated facts in the JPTS, that Mario and M.S.V. were married, that the pregnancy resulted from their sexual intercourse, and that the abortion violated the Act. He has met this burden.

The second part of (K)(2) carves out an exception to a married father's right to sue, "unless the pregnancy resulted from" his criminal conduct. A married father can sue except where he committed some criminal act that resulted in the pregnancy. This exception benefits Defendants, who are pursuing it, and not Mario, who is not.

Defendants listed this theory as an affirmative defense in their Answer to Plaintiffs' 2nd Amended Complaint. No wonder the Court stated on the record at trial, "off the top of my head, my thought is [Defendants] have the burden and the standard is preponderance of the evidence." Tr. Day 2, p. 223:25 – 224:1.

Defendants' Post-Trial Brief cites two cases, *Aranda v. Cardenas*, 215 Ariz. 210 (App. 2007) and *Harvest v. Craig*, 195 Ariz. 521 (App. 1999), to support their theory that Mario has the burden to disprove their criminal conduct defense. *Aranda* states, "*when the statute is silent*" about which party bears a burden, the party seeking a statutory

benefit must show "*he comes within the ambit of the statute*." *Id.* ¶¶ 14–15 (quoting *Harvest* at ¶ 15). The plaintiff in *Aranda* brought a wrongful death claim but didn't prove he was the decedent's father, an essential element of the claim. Although *Aranda* held that paternity was the Plaintiff's burden to prove, it sent the case back to the trial court because there was enough evidence of paternity from other sources to raise a jury question. *Aranda* is distinguishable and inapposite because the wrongful death statute does not have a separate, express exception like the "criminal conduct" defense in the second part of (K)(2).

Harvest is more on point. It involved a malpractice claim against an emergency care facility and physician who wanted the benefit of the higher standard of proof required by A.R.S. § 32-1473. *Harvest* explained:

> "*However, where the statute grants a benefit but also contains an exception to the benefit,* ***and*** *the exception does not appear in the portion of the statute granting the benefit but appears in another clause of the statute, the party seeking the benefit of the exception has the burden of proving its entitlement thereto." Harvest*, 195 Ariz. at 523–24, ¶ 16 (citing A.M. Swarthout, Annotation, *Burden of Allegation and Proof in Civil Cases as Regards Exception in Statute*, 130 A.L.R. 440, 478–79 (1941)).

Harvest's controlling insight is partly about where the exception is found in the statute and how it is worded, and partly about certain other factors the Court considered ("fairness, convenience, and change in the status quo."). One of those other factors was who seeks the benefit of the defense. (K)(2)'s "criminal conduct" defense never benefits an aggrieved father; it is a disqualifier that, if established, defeats the father's claim — and the only party it ever helps is the abortion provider. Mario does not invoke it; he seeks to avoid it. Defendants invoke it to win. The benefit Mario seeks, by contrast, is the

right of action conferred by the first part of § 36-2153(K)(2), and he has satisfied his burden of establishing that right.

Defendants have treated this theory as an "affirmative defense" throughout the case, and it is more fair and convenient to put the burden on them because M.S.V. is aligned with them, has talked with them, and opposes Mario in every aspect of this case.

Harvest did not merely announce this rule in the abstract; it applied it against the medical-provider defendants. The court reversed summary judgment in their favor precisely because the defendants "failed to establish their entitlement to the statute's enhanced standard of proof." *Id.*, 195 Ariz. at 522, ¶ 1. The burden of invoking a statutory exception fell on the parties who sought to benefit from it — there, as here, the medical providers.

The (K)(2) "unless" clause is, in short, structurally identical to the statutory exceptions Arizona courts have always treated as affirmative defenses: a carve-out to be raised by the defendant, that operates only "if" a disqualifying condition is shown — and on which the defendant therefore bears the burden of proof.

Each subsection below discusses one alleged controlling tactic Mario used, what M.S.V. actually said about it, and then which narrative that evidence supports.

B. M.S.V. Testified That Mario Did Not Control Her Transportation.

On direct, M.S,V, said: "Q. Did the Plaintiff control your ability to travel or get transportation? A. No, I wouldn't say that." (Tr. Day 1, p. 177:12–14.) On cross, she agreed she had the Kia Soul to drive from the 2014 marriage until the 2017 bankruptcy (Tr. Day 1, pp. 225:11–226:2), and that she bought herself a smart car near the end of the marriage. (Tr. Day 1, p. 231:10–14.)

Mario added what M.S.V. omitted: when he occasionally took the Soul to save gas at the end of a pay period, the truck stayed home and she had access to it, without a single

argument about it. (Tr. Day 2, pp. 170–171.) The ordinary explanation for the one period without two cars is in the record: Mario bought the Soul for her on his own credit because she had none, and both vehicles went back to the creditors in the bankruptcy. (Tr. Day 2, pp. 171–172; Tr. Day 1, p. 232:15–17.) The bankruptcy caused the loss of vehicles, and it took Mario's vehicle too. This was a family struggling financially, not coercive control.

C. Mario Never Prevented M.S.V. From Working Or Took Her Money.

Under cross-examination, M.S.V. admitted that she held jobs at Fry's, Haven's Health, Circle K, and the Holiday Inn, the last of which she had forgotten until reminded; she never failed a job interview; she quit the Holiday Inn because it "didn't pay good" and quit Fry's because she did not like how the manager spoke to her. (Tr. Day 1, pp. 226, 238–241.) "Q. Did Mario take the money away from you that you earned? A. No." (Tr. Day 1, p. 227:2–4.) "Q. So the real problem was you didn't have a job, at least during those three years; right? A. Yes." (Tr. Day 1, p. 227:5–7.) "Q. Mario never prevented you from working; true? A. He never said that I [could not] work." (Tr. Day 1, p. 241:7–11.)

Mario's unrebutted testimony went further: he helped her get the Fry's job through his sister-in-law's mother, encouraged her to work, and encouraged her to attend school to become a dental assistant. (Tr. Day 2, pp. 169–170.)

M.S.V. said, "[H]e didn't tell me those were the rules or anything, that's just how it was" (Tr. Day 1, p. 174:13–15), and she understood the financial struggles were part of an ordinary marriage: "I just didn't have a job and he had the money and we were married, so I thought it was just kind of went hand-in-hand." (Tr. Day 1, p. 176:9–13.)

Dr. Taylor herself admitted that financial strain could account for any conflicts Mario and M.S.V. had (Tr. Day 2, p. 70.) There was no extra money to control, but a shortage, Mario shouldered the problem it alone, working every shift he could find while shielding his wife from worry. She testified she "never even really knew that we were

struggling financially." (Tr. Day 1, p. 244:7–9.) Defendants read that answer as secrecy. The simpler reading is a husband carrying the money load without burdening his wife, not coercive control of the money.

D. The Children Were Part Of The Deal And M.S.V. Was Not Isolated.

M.S.V.'s parents lived "within like a three minute walk down the street from our house," and she visited them; she had girls' nights out a couple of times a month; she went to the store alone; she never needed and never asked permission to leave the house. (Tr. Day 2, pp. 175–176.) Her cross-examination response is dispositive: "Q. And so he didn't stop you from going and seeing anybody you wanted to; right, you just didn't have someone to go see? A. He never stopped me, no." (Tr. Day 1, p. 241:21–24.) Her direct testimony had already supplied the ordinary explanation: "I just didn't have a lot of friends or anywhere to really be besides work, when I was working, so I was just always home." (Tr. Day 1, p. 177:20–22.)

Dr. Taylor described the "imposition" of unwanted caregiving as a coercive tactic, but the boys were a known, non-negotiable part of the marriage from the start. They moved into the home before the wedding; M.S.V. did not object; and she married Mario with the children already there. (Tr. Day 1, p. 242; Tr. Day 2, pp. 163–165.) By Mario's account, the friction did not arise until 2016, two years in, as the boys became teenagers. When M.S.V. told him they were disrespecting her, he sat them down and disciplined them. (Tr. Day 2, pp. 164–166.) A blended family under one roof is hard; the record shows a stepmother who struggled and a father who responded, not coercive control.

E. There Was No Surveillance Before the Abortion, And None by Mario.

M.S.V.'s direct testimony: "Q. Did the Plaintiff ever monitor or surveil you in any way? A. Not that I was aware of." (Tr. Day 1, p. 184:14–16.) On cross: "I have no evidence of him doing it. It was always someone else. It was always another name"; "I

don't know if it was him for sure"; and finally, "I don't think he surveilled me." (Tr. Day 1, pp. 232:22–233:5, 234:10.) The computer in question was hers, bought for her by Mario for her virtual-reality hobby. (Tr. Day 1, p. 233:17–25.)

M.S.V. agreed that no hacking or harassment of any kind occurred before the abortion. (Tr. Day 1, p. 234:16–22.) Any alleged surveillance during a bitter divorce does not prove coercive control during the marriage, pregnancy, or abortion.

F. M.S.V. Conceded She Was Free to Leave the Mesa Hotel.

On cross, M.S.V. conceded she does not know who arranged the meeting at the Mesa hotel. When asked whether it was possible that Phil arranged it, she answered, "Could be, possibly. I don't know." (Tr. Day 1, p. 236:22–24.) Her friend Cassie drove her there and was present; she and Mario walked out to Cassie's car to get her luggage; and then M.S.V. admitted: "Q. And it's also true that you could have got back in the car with Cassie and said, I want to go home? A. Yes, you're right. You're right, I forget about that." (Tr. Day 1, p. 237:4–25.)

Mario denied arranging anything. (Tr. Day 2, pp. 202–203.) The ordinary explanation is painful but human: a husband who learned his wife was meeting another man went to the hotel, and the two of them tried a reconciliation trip to a city she liked. The marriage was failing. That is sad, but not coercive control.

G. Dr. Taylor Assumed Facts the Court Must Find.

Mario's initial Closing Statement lists Dr. Taylor's core concessions: she offered no opinion that Mario lied, agreed her opinions are only as valid as the facts she relied on, and agreed her opinions would change if those facts proved false. (Closing § II.E.) Her cross-examination at trial added four points the Closing did not discuss. She agreed that M.S.V.'s "representation of the facts may not have been accurate; true? A. True." (Tr. Day 2, pp. 69–70.) She conceded the age gap she emphasized is a mere risk factor that,

standing alone, predicts nothing. (Tr. Day 2, pp. 64–65.) She conceded that financial stress is a possible innocent explanation for a husband's changed behavior, which is what this record shows. (Tr. Day 2, p. 70.) She also summarized her own method in one sentence: "My opinion is based on her [M.S.V.'s] testimony that he did lie." (Tr. Day 2, p. 92:2–3.) An opinion that assumes a contested fact cannot help the Court find it.

Defendants' coercive control theory does not survive their own proposed findings, which recite that M.S.V. decided on an abortion "the second" she saw the test, was "a hundred percent certain," never wavered, and prevailed over her husband whose "significant influence," in Defendants' words, "was unsuccessful." Mario's Closing makes the self-efficacy point (§ II.E) that Defendants' own proposed findings now concede. The most consequential decision of the marriage was made instantly and executed over Mario's opposition.

Control that loses the very contest that matters most is not control.

H. The Findings the Evidence Supports.

With the borrowed vocabulary stripped away, the trial proved Mario's narrative as described in the Introduction above. Every fact Defendants try to fit into their coercive-control template fits Mario's ordinary narrative better, which has one advantage the template lacks: it is consistent with M.S.V.'s own answers on direct and cross.

Mario does not ask the Court to find that M.S.V. testified dishonestly about her marriage; her concessions were candid, and her loneliness was real. He only asks the Court to find that the evidence does not prove there was coercive control.

II. With or Without Coercion, the Fertility Deception Defense Fails.

The claim that Mario lied to M.S.V. is not supported by the evidence, as argued in Mario's Closing Statement (§ II.D) ,and will not be repeated here. However, a few points from the trial record about this defense are new to this rebuttal.

First, when pressed to identify Mario's lie, M.S.V. only said, "just the fact that he told me that it was not a reversal," which she twice attributed to her own assumption: "I'm assuming." (Tr. Day 1, pp. 221:9–222:2.)

Second, the reversal procedure had a documented medical purpose, to correct epididymitis confirmed by Mario's treating physician. The only insurance-driven wording in the record was the VA's own referral language about wanting more children. (Tr. Day 2, pp. 180–182.) Defendants' theory requires a motive, and their own cross-examination dismantled the only one available: Mario admitted the VA paperwork overstated his desire for children, and testified he "really didn't want more kids." Also, Defendants proved that the 2017 bankruptcy shows he could not have afforded them, even if he had wanted more. (Tr. Day 2, pp. 213–215.) A lie needs a liar with a reason. Defendants proved neither.

Third, it is undisputed that unprotected intercourse occurred after the abortion, when M.S.V. knew Mario was fertile. (Tr. Day 1, p. 192:21–22; Tr. Day 2, p. 209:9–10.) The parties dispute the character of that encounter, but its occurrence refutes the claim that she would never have consented to unprotected sex if she had known he was fertile. Any argument that Mario coerced her into having sex, especially the second time in Scottsdale, ignores the evidence.

Deception about fertility is not deception about "the nature of the act." Defendants build their entire criminal-conduct theory on three cases, *State v. Schackart*, 190 Ariz. 238, 246 (1997), *State v. Van Adams*, 194 Ariz. 408 (1999), and *State v. Witwer*, 175 Ariz. 305, 307–08 (App. 1993). These cases stand for the valid general proposition that sexual assault "can be perpetrated by deception as well as by force." Defs.' Br. at 5. But none of these cases in any way supports the theory that deception **about fertility** is a criminal act under Arizona law. Mario's discussion in his Closing

Statement, Section II. B., starting on page 3, about the difference between fraud in the factum, which vitiates consent, and fraud in the inducement, which does not, is incorporated herein by reference.

Defendants cite no Arizona case holding that deception about fertility is deception about the "nature of the act". M.S.V. consented to sexual intercourse and engaged in sexual intercourse; any alleged misrepresentation about fertility would have concerned a collateral circumstance, not the nature of the act, and therefore, at best would be fraud in the inducement. *See People v. Babaali*, 171 Cal. App. 4th 982, 987–88 (2009); *Boro v. Superior Court*, 163 Cal. App. 3d 1224 (1985).

Defendants argue that *Witwer* supports the proposition that the "without consent" categories in A.R.S. § 13-1401(A)(7) are "illustrative" and "not exhaustive." Defs.' Br. at 5. This theory would mean that *Witwer* licenses judicial crime-making. Mario's discussion at Section II. C. of his Closing Statement dispels this misconception of Arizona law, a criminal code state. Only the Legislature can declare criminal conduct.

A jurisdiction-by-jurisdiction survey of the published law of every American jurisdiction — federal, all fifty states, the District of Columbia, and the territories — likewise located no reported appellate decision holding that fertility deception constitutes deception as to the nature of the act sufficient to render intercourse a sexual assault. Those survey results are submitted herewith as Exhibits 13 and 14. In candor to the Court, Exhibits 13 and 14 are the product of AI-assisted legal research using Lexis+; they have not been independently verified for completeness or accuracy; and they are offered solely for the Court's convenience, not as controlling authority.

Mario's point is straightforward. No published appellate decision in any American jurisdiction has held that fertility deception is deception as to the nature of the act — and Defendants have cited none. Defendants want this Court to be the first.

III. Damages: A Lifetime Without Mario's Child.

Mario's Closing Statement describes Mario's affirmative damages case: the two distinct injuries and the disclaimer of the first (§ III.C), the causal framework and why common-law informed-consent causation does not apply (§§ III.A–D), the live-birth probabilities from both experts (§ IV.A), and Mario's injuries and their corroboration (§ IV.B). None of that is repeated here.

IV. Conclusion

Defendants are liable for Mario's lifetime loss of his relationship with his unborn child. Mario renews his request for $1,250,000 in compensatory damages; $5,000 in statutory damages; and reasonable attorney's fees and costs.

June 5, 2026.

MARTINEAU LAW, PLLC

/s/ J. Stanley Martineau
J. Stanley Martineau
Attorney for Plaintiff

ORIGINAL of the foregoing e-filed today
with the Clerk of the Gila County Superior Court,

COPY delivered via TurboCourt and email this date to:

The Honorable Bryan B. Chambers

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/s/ J. Stanley Martineau

: Is it true that no published appellate decision in any American jurisdiction holds that fertility deception constitutes deception “as to the nature of the act" sufficient to qualify having sex between married partners as "sexual assault"?

AI Assistant

Under Arizona law, sexual assault is defined as intentionally or knowingly engaging in sexual intercourse or oral sexual contact with another person without their consent . A.R.S. § 13-1406. The statutory definition of "without consent" includes situations where the victim is "intentionally deceived as to the nature of the act" . State v. Johnson, 155 Ariz. 23 (1987), A.R.S. § 13-1401. However, the phrase "deception as to the nature of the act" has specific legal interpretations and limitations.

The Arizona statutes and case law provided do not directly address whether fertility deception—such as lying about the ability to conceive or use of contraception—constitutes deception "as to the nature of the act." The statutory language in (A.R.S. § 13-1401. 7)(c) focuses on deception that fundamentally alters the victim's understanding of the sexual act itself, such as being misled about the act's sexual nature or being deceived into believing the perpetrator is their spouse . State v. Johnson, 155 Ariz. 23 (1987), A.R.S. § 13-1401. This interpretation aligns with the broader legal principle that the deception must pertain to the essential character of the act, rather than collateral matters like fertility or contraception.

In State v. Johnson, 155 Ariz. 23 (1987). and , State v. Taylor, 135 Ariz. 262 (1982). the courts emphasized that the statutory definition of "without consent" includes specific forms of coercion, incapacity, or intentional deception about the act's nature or the identity of the perpetrator, but there is no indication that fertility deception has been recognized as meeting this standard . State v. Johnson, 155 Ariz. 23 (1987), State v. Taylor, 135 Ariz. 262 (1982). Furthermore, in , Duncan v. Scottsdale Med. Imaging, LTD., 205 Ariz. 306 (2003). the Arizona Supreme Court distinguished between situations where a person is fully aware of the nature of the act and those where they are misled about its character, suggesting that the deception must directly relate to the act itself to invalidate consent . Duncan v. Scottsdale Med. Imaging, LTD., 205 Ariz. 306 (2003).

Based on the provided materials, there is no indication that any published appellate decision in Arizona or elsewhere has held that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The statutory and case law focus on deception that fundamentally alters the victim's understanding of the sexual act itself, rather than ancillary matters like fertility.

Content supporting AI-generated response:

A.R.S. § 13-1406 | AZ - Arizona Annotated Revised Statutes | Codes | Arizona

State v. Johnson, 155 Ariz. 23 | AZ Supreme Court Published Cases from 1866 | Cases | Arizona | Sep 15, 1987

A.R.S. § 13-1401 | AZ - Arizona Annotated Revised Statutes | Codes | Arizona

State v. Taylor, 135 Ariz. 262 | AZ Court of Appeals Published Cases from 1965 | Cases | Arizona | Nov 19, 1982

Duncan v. Scottsdale Med. Imaging, LTD., 205 Ariz. 306 | AZ Supreme Court Published Cases from 1866 | Cases | Arizona | Jun 16, 2003

: Ask the same question in All Federal & Alabama & Alaska

AI Assistant

Based on the provided materials, there does not appear to be any published appellate decision in federal, Alabama, or Alaska jurisdictions that explicitly holds that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

The distinction between "fraud in the factum" (deception as to the nature of the act) and "fraud in the inducement" (deception as to collateral matters) is critical in determining whether consent is legally valid. Fraud in the factum negates consent because the victim is deceived about the fundamental nature of the act itself, whereas fraud in the inducement does not negate consent because the deception pertains to collateral matters . Notti v. Hoffman, 513 P.3d 245 (2022), United States v. Carr, 65 M.J. 39 (2007), United States v. Booker, 25 M.J. 114 (1987), United States v. Hughes, 48 M.J. 214 (1998).

1. **Federal Jurisdiction**: Under 10 USCS § 920. (Uniform Code of Military Justice), sexual assault includes acts where consent is obtained through impersonation or fraudulent representation that the act serves a professional purpose . 10 USCS § 920. However, this statute does not address fertility deception specifically, nor does it suggest that such deception would qualify as fraud in the factum.

2. **Alabama Jurisdiction**: Code of Ala. § 13A-6-65. criminalizes sexual misconduct where consent is obtained by fraud or artifice . Code of Ala. § 13A-6-65. However, this provision does not distinguish between fraud in the factum and fraud in the inducement, nor does it specifically address fertility deception. The statute's language suggests that it may encompass broader forms of deception, but no appellate decision explicitly applies this statute to fertility deception.

3. **Alaska Jurisdiction**: Alaska Stat. § 11.41.410. and Alaska Stat. § 11.41.420. define sexual assault and include provisions for acts committed by impersonation or when the victim is unaware of the act . Alaska Stat. § 11.41.410, Alaska Stat. § 11.41.420. However, these statutes do not address fertility deception, and the Alaska Supreme Court in Notti v. Hoffman, 513 P.3d 245 (2022). emphasized that fraud in the inducement, such as

misrepresentations about intentions or collateral matters, does not vitiate consent . Notti v. Hoffman, 513 P.3d 245 (2022). The court distinguished this from fraud in the factum, which involves deception about the nature of the act itself, such as impersonation or misrepresentation of the act as a medical procedure . Notti v. Hoffman, 513 P.3d 245 (2022), United States v. Carr, 65 M.J. 39 (2007), United States v. Booker, 25 M.J. 114 (1987).

In summary, while the legal framework distinguishes between actionable and non-actionable forms of deception, there is no published appellate decision in the referenced jurisdictions that categorizes fertility deception as fraud in the factum sufficient to render sexual intercourse between married partners as sexual assault. Fertility deception would likely be considered fraud in the inducement, which does not negate consent under the prevailing legal standards . Notti v. Hoffman, 513 P.3d 245 (2022), United States v. Carr, 65 M.J. 39 (2007), United States v. Booker, 25 M.J. 114 (1987), United States v. Hughes, 48 M.J. 214 (1998).

Content supporting AI-generated response:

Notti v. Hoffman, 513 P.3d 245 | AK Supreme Court Cases from 1959 | Cases | Alaska | Jul 15, 2022

United States v. Carr, 65 M.J. 39 | Court of Appeals for Armed Forces (CAAF) | Cases | U.S. Federal | May 9, 2007

United States v. Booker, 25 M.J. 114 | Court of Appeals for Armed Forces (CAAF) | Cases | U.S. Federal | Sep 28, 1987

United States v. Hughes, 48 M.J. 214 | Court of Appeals for Armed Forces (CAAF) | Cases | U.S. Federal | Jul 13, 1998

10 USCS § 920 | USCS - United States Code Service - Titles 1 through 54 | Codes | U.S. Federal

Code of Ala. § 13A-6-65 | AL - Code of Alabama | Codes | Alabama

Alaska Stat. § 11.41.410 | AK - Alaska Statutes | Codes | Alaska

Alaska Stat. § 11.41.420 | AK - Alaska Statutes | Codes | Alaska

: Ask the same question in Arkansas & California & Colorado

AI Assistant

In the jurisdictions of Arkansas, California, and Colorado, there does not appear to be any published appellate decision explicitly holding that fertility deception—such as misrepresenting one's fertility status—constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

California:

Under California law, the distinction between "fraud in the factum" and "fraud in the inducement" is critical in determining whether consent is vitiated. Fraud in the factum occurs when the victim consents to one act but the perpetrator performs a different act, thereby negating consent. Fraud in the inducement, on the other hand, involves misrepresentation to induce consent to the same act, which does not vitiate consent under California law . People v. Babaali, 171 Cal. App. 4th 982 (2009), People v. Robinson, 63 Cal. 4th 200 (2016), C.R.S. 18-3-402. For example, in , People v. Babaali, 171 Cal. App. 4th 982 (2009). the court emphasized that fraud in the inducement does not negate consent because the victim understands the nature of the act being performed, even if misled about collateral matters . People v. Babaali, 171 Cal. App. 4th 982 (2009). Similarly, in , Boro v. Superior Court, 163 Cal. App. 3d 1224 (1985). the court held that inducing consent to sexual intercourse through false pretenses (e.g., claiming it was a medical treatment) constituted fraud in the inducement, not fraud in the factum, and thus did not vitiate consent . People v. Robinson, 63 Cal. 4th 200 (2016), Boro v. Superior Court, 163 Cal. App. 3d 1224 (1985).

Fertility deception, such as misrepresenting sterility, would likely fall under fraud in the inducement because it pertains to a collateral matter (fertility status) rather than the nature of the act itself. In , Barbara A. v. John G., 145 Cal. App. 3d 369 (1983). the court allowed a claim for battery and deceit where a man falsely claimed to be sterile, but this case did not address whether such deception constituted sexual assault under criminal law . Barbara A. v. John G., 145 Cal. App. 3d 369 (1983). The focus was on civil liability rather than criminal culpability.

Colorado:

Colorado law defines sexual assault under , C.R.S. 18-3-402. which includes circumstances where the victim is incapable of appraising the nature of the act or submits erroneously under certain conditions, such as believing the actor to be their spouse . C.R.S. 18-3-402. However, there is no indication in the provided materials that fertility deception has been addressed as a basis for sexual assault in Colorado. The statutory language does not explicitly encompass misrepresentations about fertility as affecting the victim's ability to appraise the nature of the act . C.R.S. 18-3-402, C.R.S. 18-3-401.

Arkansas:

Arkansas law under A.C.A. § 5-14-103. criminalizes rape in cases involving forcible compulsion or where the victim is incapable of consent due to physical or mental incapacity . A.C.A. § 5-14-103. However, there is no indication in the provided materials that fertility deception has been addressed as a basis for criminal liability under Arkansas law. The statute does not explicitly address fraud or deception as to collateral matters like fertility.

Conclusion:

In all three jurisdictions, fertility deception would likely be classified as fraud in the inducement rather than fraud in the factum. Fraud in the inducement does not vitiate consent under the prevailing legal standards in California and is not explicitly addressed in the statutes or case law of Colorado or Arkansas. Therefore, there is no published appellate decision in these jurisdictions holding that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

Content supporting AI-generated response:

People v. Babaali, 171 Cal. App. 4th 982 | CA Courts of Appeal Cases from 1905 | Cases | California | Mar 3, 2009

People v. Robinson, 63 Cal. 4th 200 | CA Supreme Court Cases from 1850 | Cases | California | May 23, 2016

C.R.S. 18-3-402 | CO - Colorado Revised Statutes Annotated | Codes | Colorado

Boro v. Superior Court, 163 Cal. App. 3d 1224 | CA Courts of Appeal Cases from 1905 | Cases | California | Jan 25, 1985

Barbara A. v. John G., 145 Cal. App. 3d 369 | CA Courts of Appeal Cases from 1905 | Cases | California | Jul 26, 1983

C.R.S. 18-3-401 | CO - Colorado Revised Statutes Annotated | Codes | Colorado

A.C.A. § 5-14-103 | AR - Arkansas Code Annotated | Codes | Arkansas

: Ask the same question in Connecticut & Delaware & Dist. of Columbia

AI Assistant

In the jurisdictions of Connecticut, Delaware, and the District of Columbia, there do not appear to be any published appellate decisions directly addressing whether fertility deception, such as misrepresenting fertility status or the use of contraception, constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

1. **Connecticut**: Under Connecticut law, sexual assault in the fourth degree includes situations where sexual contact is accomplished by means of false representation that the contact is for a bona fide medical purpose by a health care professional . Conn. Gen. Stat. § 53a-73a.

However, this provision does not address fertility deception in the context of sexual intercourse between married partners. The case of State v. Gupta, 297 Conn. 211 (2010). involved false representations by a health care professional regarding medical purposes, but it did not extend to issues of fertility deception or marital relationships . State v. Gupta, 297 Conn. 211 (2010). Additionally, the statutory definitions of "sexual contact" and "sexual intercourse" in Connecticut do not explicitly include deception regarding fertility or contraception as a basis for sexual assault . Conn. Gen. Stat. § 53a-73a, Conn. Gen. Stat. § 53a-65.

2. **Delaware**: Delaware law defines "sexual intercourse" and "sexual penetration" broadly, including acts committed under the guise of providing professional treatment by health professionals . 11 Del. C. § 761. However, there is no indication in the statutes or case law that fertility deception within a marital relationship has been recognized as constituting sexual assault. The statutory language focuses on lack of consent due to coercion, incapacity, or professional deception, but does not address misrepresentation of fertility or contraception . 11 Del. C. § 761.

3. **District of Columbia**: In the District of Columbia, sexual abuse statutes focus on lack of consent due to incapacity, coercion, or fear, but do not explicitly address deception regarding fertility or contraception as a basis for sexual assault . D.C. Code § 22-3003, D.C. Code § 22-3006, D.C. Code § 22-3005, D.C. Code § 22-3001. The statutory framework does not appear to extend to fertility deception within marital relationships.

In summary, while these jurisdictions have provisions addressing sexual assault in various contexts, including professional deception and lack of consent, there is no published appellate decision or statutory provision that explicitly recognizes fertility deception as constituting deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The existing legal frameworks focus on other forms of deception or lack of consent, and fertility deception does not appear to fall within these recognized categories.

Content supporting AI-generated response:

Conn. Gen. Stat. § 53a-73a | CT - LexisNexis® Connecticut Annotated Statutes | Codes | Connecticut

State v. Gupta, 297 Conn. 211 | CT Supreme Court Cases from 1764 | Cases | Connecticut | Jun 29, 2010

Conn. Gen. Stat. § 53a-65 | CT - LexisNexis® Connecticut Annotated Statutes | Codes | Connecticut

11 Del. C. § 761 | DE - Delaware Code Annotated | Codes | Delaware

D.C. Code § 22-3003 | DC - District of Columbia Code Annotated | Codes | District of Columbia

D.C. Code § 22-3006 | DC - District of Columbia Code Annotated | Codes | District of Columbia

D.C. Code § 22-3005 | DC - District of Columbia Code Annotated | Codes | District of Columbia

D.C. Code § 22-3001 | DC - District of Columbia Code Annotated | Codes | District of Columbia

: Ask the same question in Florida & Georgia & Guam

AI Assistant

Based on the provided materials, there are no published appellate decisions in Florida, Georgia, or Guam that explicitly hold that fertility deception, such as misrepresenting fertility status or use of contraception, constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

In Florida, the statutory framework under Fla. Stat. § 794.011. defines "consent" as "intelligent, knowing, and voluntary consent" and explicitly excludes coerced submission or the failure to offer physical resistance as constituting consent . Fla. Stat. § 794.011. However, there is no indication in the materials that fertility deception has been addressed as a basis for sexual battery or assault. The case of State v. Rider, 449 So. 2d 903 (1984). clarifies that traditional notions of spousal consent do not extend to acts of violence or sexual battery, but it does not address deception regarding fertility or contraception as a factor in determining consent . State v. Rider, 449 So. 2d 903 (1984).

In Georgia, O.C.G.A. § 16-6-1. specifies that the fact that the victim is the spouse of the defendant is not a defense to a charge of rape, which is defined as carnal knowledge of a female forcibly and against her will or of a female under ten years of age . O.C.G.A. § 16-6-1. However, the statute does not address whether deception regarding fertility or contraception could constitute a lack of consent or qualify as deception "as to the nature of the act."

In Guam, the statutory provisions under 9 GCA Section 25.10. and 9 GCA Section 25.20. define sexual penetration and criminal sexual conduct but do not address fertility deception or misrepresentation of contraception as a factor in determining whether sexual conduct constitutes criminal sexual conduct . 9 GCA Section 25.10, 9 GCA Section 25.20.

Thus, while the statutes and case law in these jurisdictions address various aspects of consent and sexual offenses, there is no indication in the provided materials that fertility deception has been recognized as a basis for qualifying sexual intercourse as sexual assault or battery.

Content supporting AI-generated response:

Fla. Stat. § 794.011 | FL - LexisNexis® Florida Annotated Statutes | Codes | Florida

State v. Rider, 449 So. 2d 903 | FL Courts of Appeal Cases from 1957 | Cases | Florida | Apr 17, 1984

O.C.G.A. § 16-6-1 | GA - Official Code of Georgia Annotated | Codes | Georgia

Content outside your subscription:

9 GCA Section 25.10 | Codes | Non-jurisdictional

9 GCA Section 25.20 | Codes | Non-jurisdictional

: Ask the same question in Hawaii & Idaho & Illinois

AI Assistant

There are no published appellate decisions in Hawaii, Idaho, or Illinois explicitly holding that fertility deception (e.g., misrepresenting fertility status or use of contraception) constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault." However, relevant statutes and case law provide some context for understanding how deception might be treated in these jurisdictions.

Hawaii

Under Hawaii law, ** HRS § 702-235. specifies that consent does not constitute a defense if it is induced by force, duress, or deception . HRS § 702-235. However, there is no explicit statutory language or case law addressing whether fertility deception qualifies as deception "as to the nature of the act." Additionally, ** HRS § 707-730. defines sexual assault in the first degree, including circumstances where the victim is mentally incapacitated or physically helpless due to substances administered without consent, but it does not address deception regarding fertility or contraception . HRS § 707-730.

Idaho

In Idaho, ** Idaho Code § 18-6101. defines rape as involving penetration under specific circumstances, including when the victim submits under the belief that the person committing the act is their spouse, and the belief is induced by artifice, pretense, or concealment practiced by the accused with intent to induce such belief . Idaho Code § 18-6101. While this provision addresses deception regarding the identity of the perpetrator, it does not extend to deception about fertility or contraception. There is no case law explicitly addressing fertility deception as a basis for sexual assault or rape in Idaho.

Illinois

Illinois law, under ** 720 ILCS 5/11-1.20. , defines criminal sexual assault as involving sexual penetration where the victim is unable to give knowing consent or where force or threat of force is used . 720 ILCS 5/11-1.20. Additionally, Illinois courts have interpreted "knowing consent" in the context of sexual assault statutes, but there is no indication that fertility deception has been recognized as a form of deception "as to the nature of the act" sufficient to qualify as sexual assault. For example, in , People v. Brown, 2024 IL App (3d) 230675 (2024). the court focused on the statutory requirement of sexual penetration and the victim's ability to consent but did not address deception regarding fertility or contraception . People v. Brown, 2024 IL App (3d) 230675 (2024).

Conclusion

While statutes in Hawaii, Idaho, and Illinois address various forms of deception and lack of consent in the context of sexual offenses, there is no published appellate decision or statutory provision in these jurisdictions explicitly holding that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The statutory frameworks and case law in these states do not appear to extend to this specific issue at this time.

Content supporting AI-generated response:

HRS § 702-235 | HI - Hawaii Revised Statutes Annotated | Codes | Hawaii

HRS § 707-730 | HI - Hawaii Revised Statutes Annotated | Codes | Hawaii

Idaho Code § 18-6101 | ID - Idaho Code Annotated | Codes | Idaho

720 ILCS 5/11-1.20 | IL - Illinois Compiled Statutes Annotated | Codes | Illinois

People v. Brown, 2024 IL App (3d) 230675 | IL Court of Appeals Cases from 1877 | Cases | Illinois | Nov 21, 2024

: Ask the same question in Indiana & Iowa & Kansas

AI Assistant

In the jurisdictions of Indiana, Iowa, and Kansas, there are no published appellate decisions explicitly holding that fertility deception, such as misrepresenting fertility status or use of contraception, constitutes deception "as to the nature of the act" sufficient to qualify sexual

intercourse between married partners as "sexual assault." However, relevant statutes and case law provide some guidance on the broader principles of consent and deception in the context of sexual offenses.

1. **Indiana**:
   Under Indiana law, sexual assault or rape is defined in part by the lack of consent or the victim's unawareness of the act. Specifically, (Burns Ind. Code Ann. § 35-42-4-1. a)(2) criminalizes sexual intercourse when "the other person is unaware that the sexual intercourse or other sexual conduct is occurring" . Burns Ind. Code Ann. § 35-42-4-1. Additionally, sexual battery under (Burns Ind. Code Ann. § 35-42-4-8. a)(2) applies when a person touches another's genitals while the person is unaware of the touching . Burns Ind. Code Ann. § 35-42-4-8. However, these statutes do not explicitly address fertility deception or misrepresentation of contraception as a basis for vitiating consent. Indiana case law, such as , Filice v. State, 886 N.E.2d 24 (2008). emphasizes the importance of the victim's awareness of the act itself, rather than collateral matters like fertility status . Filice v. State, 886 N.E.2d 24 (2008).

2. **Iowa**:
   Iowa Code § 709.1. defines sexual abuse as a sex act performed "by force or against the will of the other," including when consent is procured through threats or when the victim is unconscious . Iowa Code § 709.1. In , State v. Bolsinger, 709 N.W.2d 560 (2006). the court distinguished between fraud in fact (which vitiates consent) and fraud in the inducement (which does not). Fraud in fact involves deception as to the nature of the act itself, whereas fraud in the inducement pertains to collateral matters, such as ulterior motives or purposes . State v. Bolsinger, 709 N.W.2d 560 (2006). The court in *Bolsinger* concluded that fraud related to collateral matters, such as the defendant's unexpressed purpose, does not vitiate consent. Fertility deception would likely fall under fraud in the inducement, as it pertains to collateral matters rather than the nature of the act itself.

3. **Kansas**:
   Kansas law under (K.S.A. § 21-5503. a)(4) criminalizes sexual intercourse when consent is obtained through a "knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure" . K.S.A. § 21-5503. This provision explicitly addresses deception regarding the necessity of the act but does not extend to fertility deception. The statute does not include language suggesting that misrepresentation of fertility status or contraception constitutes deception as to the nature of the act.

In summary, while these jurisdictions recognize that certain forms of deception can vitiate consent, the case law and statutes provided do not explicitly extend this principle to fertility deception within the context of sexual assault. Fertility deception would likely be classified as fraud in the inducement, which does not vitiate consent under the legal frameworks in Indiana, Iowa, and Kansas . Burns Ind. Code Ann. § 35-42-4-1, State v. Bolsinger, 709 N.W.2d 560 (2006), K.S.A. § 21-5503.

Content supporting AI-generated response:

Burns Ind. Code Ann. § 35-42-4-1 | IN - Burns Indiana Statutes Annotated | Codes | Indiana

Burns Ind. Code Ann. § 35-42-4-8 | IN - Burns Indiana Statutes Annotated | Codes | Indiana

Filice v. State, 886 N.E.2d 24 | IN Appeals Court Cases from 1891 | Cases | Indiana | May 7, 2008

Iowa Code § 709.1 | IA - LexisNexis® Iowa Annotated Statutes | Codes | Iowa

State v. Bolsinger, 709 N.W.2d 560 | IA Supreme Court Cases from 1839 | Cases | Iowa | Feb 10, 2006

K.S.A. § 21-5503 | KS - LexisNexis® Kansas Annotated Statutes | Codes | Kansas

: Ask the same question in Kentucky & Louisiana & Maine

AI Assistant

Based on the provided statutory provisions, there are no explicit appellate decisions or statutory provisions in Kentucky, Louisiana, or Maine that directly address whether fertility deception (such as misrepresenting fertility status or use of contraception) constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

1. **Kentucky**: Under Kentucky law, KRS § 510.020. establishes that lack of consent is an essential element of sexual offenses, and it defines circumstances under which a person is deemed incapable of consent, such as being underage, mentally incapacitated, or physically helpless . KRS § 510.020. However, there is no mention of fertility deception or misrepresentation of contraception as a basis for lack of consent or as constituting deception "as to the nature of the act." Additionally, KRS § 510.035. explicitly states that sexual acts between married persons do not constitute an offense under this chapter solely because one party is under sixteen years old or has an intellectual disability . KRS § 510.035. This provision does not address fertility deception.

2. **Louisiana**: Louisiana statutes, including La. R.S. § 14:41. (defining rape) and La. R.S. § 14:43. (third-degree rape), focus on the absence of lawful consent due to factors such as incapacity, force, or fraud. Fraud is addressed in (La. R.S. § 14:43. A)(3), which includes circumstances where the victim submits under the belief that the offender is someone else, intentionally induced by artifice or pretense . La. R.S. § 14:43. However, this provision does not extend to fertility deception or misrepresentation of contraception. Similarly, La. R.S. § 14:42.1. (second-degree rape) addresses lack of consent due to force, threats, or incapacity but does not include fertility deception as a qualifying factor . La. R.S. § 14:42.1.

3. **Maine**: Maine law under 17-A M.R.S. § 253. defines gross sexual assault and includes provisions addressing lack of consent due to compulsion, incapacity, or mental disability . 17-A M.R.S. § 253. However, there is no explicit mention of fertility deception or misrepresentation of contraception as constituting deception "as to the nature of the act." Notably, Maine has codified a statutory cause of action related to condom tampering or misrepresentation of intent to use a condom, which allows for recovery of damages in such cases . § 1.03. Plaintiff's Consent.. This statutory claim is distinct from criminal sexual assault and does not address fertility deception in the context of married partners.

In conclusion, while the statutes in these jurisdictions address various forms of lack of consent and fraud, none explicitly recognize fertility deception as constituting deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The Maine statutory cause of action related to condom tampering may provide a civil remedy in certain cases but does not equate to a criminal sexual assault provision . § 1.03. Plaintiff's Consent..

Content supporting AI-generated response:

KRS § 510.020 | KY - Michie's Kentucky Revised Statutes Annotated | Codes | Kentucky

KRS § 510.035 | KY - Michie's Kentucky Revised Statutes Annotated | Codes | Kentucky

La. R.S. § 14:41 | LA - LexisNexis® Louisiana Annotated Statutes | Codes | Louisiana

La. R.S. § 14:43 | LA - LexisNexis® Louisiana Annotated Statutes | Codes | Louisiana

La. R.S. § 14:42.1 | LA - LexisNexis® Louisiana Annotated Statutes | Codes | Louisiana

17-A M.R.S. § 253 | ME - Maine Revised Statutes Annotated by LexisNexis® | Codes | Maine

§ 1.03. Plaintiff's Consent. | Maine Tort Law | Treatises | Maine

: Ask the same question in Maryland & Massachusetts & Michigan

AI Assistant

In the jurisdictions of Maryland, Massachusetts, and Michigan, there is no explicit appellate decision or statutory provision that directly holds that fertility deception, such as misrepresenting fertility status or use of contraception, constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault." However, the following legal principles and cases provide relevant context:

1. **Maryland**:
   Maryland law defines "consent" as a clear and voluntary agreement to engage in sexual activity, and the lack of consent may be communicated through words or conduct . Md. Criminal Law Code Ann. § 3-301.1. However, there is no indication in Maryland statutes or case law that fertility deception qualifies as deception "as to the nature of the act" to constitute sexual assault. The statutory provisions governing sexual offenses, such as , Md. Criminal Law Code Ann. § 3-304. focus on lack of consent, force, or the victim's incapacity to consent, rather than deception regarding fertility or contraception . Md. Criminal Law Code Ann. § 3-304, Md. Criminal Law Code Ann. § 3-301.

2. **Massachusetts**:
   Massachusetts law similarly does not explicitly address fertility deception as a basis for sexual assault. The state's rape statute, , ALM GL ch. 265, § 22. requires proof that the sexual act was compelled by force or threat of bodily injury and against the victim's will . ALM GL ch. 265, § 22. Case law in Massachusetts emphasizes that the crime of rape does not require proof of the defendant's specific intent regarding the victim's lack of consent, but rather focuses on whether the act was nonconsensual in fact . Commonwealth v. Lopez, 433 Mass. 722 (2001). There is no precedent suggesting that misrepresentation about fertility or contraception constitutes deception "as to the nature of the act."

3. **Michigan**:
   Michigan law defines various circumstances under which sexual penetration or contact constitutes criminal sexual conduct, including situations involving force, coercion, or the victim's incapacity to consent (e.g.,) MCLS § 750.520b. . MCLS § 750.520b. However, Michigan courts have explicitly rejected the argument that misrepresentation regarding contraception constitutes a defense or mitigating factor in related contexts. For example, in , Beard v. Skipper, 182 Mich. App. 352 (1990). the court held that fraud or misrepresentation as to contraceptive protection does not provide a defense in paternity cases, emphasizing that such deception does not negate the consensual nature of the sexual act itself . Beard v. Skipper, 182 Mich. App. 352 (1990). This reasoning suggests that fertility deception would not qualify as deception "as to the nature of the act" sufficient to constitute sexual assault under Michigan law.

In summary, while these jurisdictions address issues of consent, force, and incapacity in their sexual assault statutes, none explicitly recognize fertility deception as a basis for qualifying consensual sexual intercourse as sexual assault. The focus remains on the voluntariness of consent and the presence of force or coercion, rather than on misrepresentations about fertility or contraception.

Content supporting AI-generated response:

Md. Criminal Law Code Ann. § 3-301.1 | MD - Annotated Code of Maryland | Codes | Maryland

Md. Criminal Law Code Ann. § 3-304 | MD - Annotated Code of Maryland | Codes | Maryland

Md. Criminal Law Code Ann. § 3-301 | MD - Annotated Code of Maryland | Codes | Maryland

ALM GL ch. 265, § 22 | MA - Annotated Laws of Massachusetts | Codes | Massachusetts

Commonwealth v. Lopez, 433 Mass. 722 | MA Supreme Judicial Court Cases from 1768 | Cases | Massachusetts | Apr 17, 2001

MCLS § 750.520b | MI - Michigan Compiled Laws Service | Codes | Michigan

Beard v. Skipper, 182 Mich. App. 352 | MI Court of Appeals Cases from 1965 | Cases | Michigan | Feb 20, 1990

: Ask the same question in Minnesota & Mississippi & Missouri

AI Assistant

In the jurisdictions of Minnesota, Mississippi, and Missouri, there are no explicit statutory provisions or published appellate decisions directly addressing whether fertility deception, such as misrepresenting fertility status or the use of contraception, constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

1. **Minnesota**:
   Minnesota statutes define various circumstances under which sexual penetration or contact may constitute criminal sexual conduct. For example, Minn. Stat. § 609.341. includes provisions addressing sexual penetration or contact obtained through deception or false representation, but these provisions are limited to specific contexts, such as impersonating a medical provider or psychotherapist and falsely claiming that the sexual act is for a bona fide medical or therapeutic purpose . Minn. Stat. § 609.341. However, there is no mention of fertility deception or misrepresentation of contraceptive use as a basis for criminal sexual conduct under Minnesota law.

2. **Mississippi**:
   Mississippi law, under , Miss. Code Ann. § 97-3-65. criminalizes sexual intercourse without consent, including cases where consent is obtained through the administration of substances that impair the victim's ability to resist . Miss. Code Ann. § 97-3-65. However, the statute does not address deception regarding fertility or contraception as a form of fraud that vitiates consent. Similarly, Miss. Code Ann. § 97-3-95. defines sexual battery but does not include provisions related to fertility deception or misrepresentation of contraceptive use . Miss. Code Ann. § 97-3-95.

3. **Missouri**:
   Missouri statutes, such as § 566.030 R.S.Mo.. and , § 566.031 R.S.Mo.. define rape in the first and second degrees, focusing on lack of consent, incapacity to consent, or forcible

compulsion . § 566.030 R.S.Mo., § 566.031 R.S.Mo.. While these statutes address situations involving incapacity or coercion, they do not explicitly include fertility deception or misrepresentation of contraceptive use as a basis for criminal liability.

In summary, while these jurisdictions recognize various forms of deception or coercion as invalidating consent in the context of sexual offenses, none of the statutes or appellate decisions reviewed explicitly address fertility deception or misrepresentation of contraceptive use as constituting deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The absence of such provisions suggests that this issue has not been explicitly codified or adjudicated in these states.

Content supporting AI-generated response:

Minn. Stat. § 609.341 | MN - LexisNexis® Minnesota Annotated Statutes | Codes | Minnesota

Miss. Code Ann. § 97-3-65 | MS - Mississippi Code of 1972 Annotated | Codes | Mississippi

Miss. Code Ann. § 97-3-95 | MS - Mississippi Code of 1972 Annotated | Codes | Mississippi

§ 566.030 R.S.Mo. | MO - LexisNexis® Missouri Annotated Statutes | Codes | Missouri

§ 566.031 R.S.Mo. | MO - LexisNexis® Missouri Annotated Statutes | Codes | Missouri

: Is it true that no published appellate decision in any American jurisdiction holds that fertility deception constitutes deception “as to the nature of the act" sufficient to qualify having sex between married partners as "sexual assault"?

AI Assistant

The assertion that no published appellate decision in any American jurisdiction holds that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault" appears to be consistent with the provided legal materials. However, the analysis must consider the statutory frameworks and case law in the jurisdictions of Montana, Nebraska, and Nevada.

1. **Montana**: Under Montana law, sexual intercourse without consent is defined as knowingly engaging in sexual intercourse with another person without their consent or when the person is incapable of consent . 45-5-503, MCA, 45-2-101, MCA. The statutes do not explicitly address fertility deception as a form of deception "as to the nature of the act." Furthermore, there is no indication in the provided materials that Montana courts have addressed fertility deception in this context.

2. **Nebraska**: Nebraska law defines "without consent" to include situations where consent is the result of the actor's deception as to the identity of the actor or the nature or purpose of the act . State v. McCurdy, 25 Neb. App. 486 (2018), R.R.S. Neb. § 28-318. In , State v. Anders, 311 Neb. 958 (2022). the Nebraska Supreme Court clarified that deception must involve either the identity of the actor or the nature and purpose of the act, and the consent given must result from such deception . State v. Anders, 311 Neb. 958 (2022). However, the case law does not suggest that fertility deception has been recognized as deception "as to the nature of the act." The focus in Nebraska has been on deception regarding the act's purpose or the actor's identity, not ancillary matters such as fertility.

3. **Nevada**: Nevada law defines sexual assault as subjecting another person to sexual penetration against their will or under conditions where the perpetrator knows or should know the victim is incapable of resisting or understanding the nature of the conduct . Nev. Rev. Stat. Ann. § 200.366, Nev. Rev. Stat. Ann. § 200.364. In , McNair v. State, 108 Nev. 53 (1992). the Nevada Supreme Court held that sexual penetration accomplished under a pretext, such as medical treatment, without the victim's foreknowledge or consent, constitutes sexual assault . McNair v. State, 108 Nev. 53 (1992). However, this case involved deception about the purpose of the act (medical treatment), not fertility deception. There is no indication in the materials that Nevada courts have addressed fertility deception as a basis for sexual assault.

In conclusion, while the statutes and case law in Montana, Nebraska, and Nevada address deception in the context of sexual assault, there is no evidence in the provided materials that fertility deception has been recognized as deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. This conclusion is based

on the absence of relevant case law or statutory interpretation addressing fertility deception in this context in the jurisdictions examined.

Content supporting AI-generated response:

45-5-503, MCA | MT - LexisNexis® Montana Code Annotated | Codes | Montana

45-2-101, MCA | MT - LexisNexis® Montana Code Annotated | Codes | Montana

State v. McCurdy, 25 Neb. App. 486 | NE Court of Appeals Cases from 1992 | Cases | Nebraska | Jan 30, 2018

R.R.S. Neb. § 28-318 | NE - Revised Statutes of Nebraska Annotated | Codes | Nebraska

State v. Anders, 311 Neb. 958 | NE Supreme Court Cases from 1871 | Cases | Nebraska | Jul 15, 2022

Nev. Rev. Stat. Ann. § 200.366 | NV - Nevada Revised Statutes Annotated | Codes | Nevada

Nev. Rev. Stat. Ann. § 200.364 | NV - Nevada Revised Statutes Annotated | Codes | Nevada

McNair v. State, 108 Nev. 53 | NV Supreme Court Cases, Combined | Cases | Nevada | Jan 24, 1992

: Ask the same question in New Hampshire & New Jersey & New Mexico

AI Assistant

Based on the provided materials, there is no published appellate decision in New Hampshire, New Jersey, or New Mexico that explicitly holds that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

1. **New Hampshire**: Under New Hampshire law, aggravated felonious sexual assault is defined in . RSA 632-A:2. The statute includes circumstances such as physical force, coercion, or the victim's incapacity to consent, but it does not explicitly address fertility deception as a form of deception "as to the nature of the act" . RSA 632-A:2. Additionally, the New Hampshire Supreme Court in State v. Ramos, 149 N.H. 272 (2003). emphasized that the focus in sexual assault cases is whether a reasonable person would understand that the victim does not consent, even in the absence of physical or verbal resistance . State v. Ramos, 149 N.H. 272

(2003). However, there is no indication that fertility deception has been addressed or recognized as meeting this standard.

2. **New Jersey**: In New Jersey, sexual assault is defined under . N.J. Stat. § 2C:14-2. The statute requires that sexual penetration occur without the victim's "affirmative and freely-given permission" or under specific coercive or incapacitating circumstances . N.J. Stat. § 2C:14-2. The New Jersey Supreme Court has clarified that "physical force" is not required beyond the act of penetration itself, and the absence of affirmative consent is sufficient to constitute sexual assault . State v. K.W., 483 N.J. Super. 58 (2025). However, there is no indication in the materials that fertility deception has been considered as a form of deception "as to the nature of the act" under this framework.

3. **New Mexico**: In New Mexico, criminal sexual penetration is defined under . N.M. Stat. Ann. § 30-9-11. The statute criminalizes sexual penetration under circumstances involving force, coercion, or incapacity, but it does not address deception "as to the nature of the act" or fertility deception specifically . N.M. Stat. Ann. § 30-9-11. Furthermore, the New Mexico Court of Appeals in Wallis v. Smith, 130 N.M. 214 (2001). expressed reluctance to impose legal duties in intimate interpersonal relationships, emphasizing that certain immoral acts, including those involving reproductive matters, may not rise to the level of torts or crimes . Wallis v. Smith, 130 N.M. 214 (2001). This suggests a judicial hesitance to expand the scope of sexual assault to include fertility deception.

In conclusion, while the statutes and case law in these jurisdictions address various forms of coercion, incapacity, and lack of consent, there is no published appellate decision explicitly recognizing fertility deception as deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault.

Content supporting AI-generated response:

RSA 632-A:2 | NH - LEXIS New Hampshire Revised Statutes Annotated | Codes | New Hampshire

State v. Ramos, 149 N.H. 272 | NH Supreme Court cases from 1816 | Cases | New Hampshire | Mar 17, 2003

N.J. Stat. § 2C:14-2 | NJ - LexisNexis® New Jersey Annotated Statutes | Codes | New Jersey

State v. K.W., 483 N.J. Super. 58 | NJ Superior Courts, Appellate Division | Cases | New Jersey | Dec 17, 2025

N.M. Stat. Ann. § 30-9-11 | NM - Michie's Annotated Statutes Of New Mexico | Codes | New Mexico

Wallis v. Smith, 130 N.M. 214 | NM Court of Appeals Cases from 1966 | Cases | New Mexico | Mar 1, 2001

: Ask the same question in New York & North Carolina & North Dakota

AI Assistant

Based on the provided materials, there is no published appellate decision in New York, North Carolina, or North Dakota that explicitly holds that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

1. **New York**: In , Alice D. v. William M., 113 Misc. 2d 940 (1982). the court addressed a claim of fraudulent misrepresentation regarding fertility but did not classify the act as sexual assault. The court focused on the elements of fraud, including material misrepresentation, reliance, and causation, and found that the defendant's false assertion about sterility constituted a material misrepresentation. However, the case was framed as a civil fraud claim rather than a criminal matter involving sexual assault . Alice D. v. William M., 113 Misc. 2d 940 (1982). Similarly, in , People v. Hough, 159 Misc. 2d 997 (1994). the court distinguished between seduction and fraud in the context of sexual consent but did not address fertility deception or classify it as deception "as to the nature of the act" sufficient to constitute sexual assault. The court emphasized that deceit alone does not replace statutory elements required for criminal charges such as rape or sexual misconduct . People v. Hough, 159 Misc. 2d 997 (1994).

2. **North Carolina**: N.C. Gen. Stat. § 14-27.33A. criminalizes certain sexual acts involving misrepresentation in the context of medical treatment or when the victim is incapacitated. However, the statute does not address fertility deception or classify it as deception "as to the nature of the act." The statute focuses on misrepresentations about the necessity or benefit of sexual contact for medical purposes, as well as situations involving incapacitation, rather than broader forms of deception . N.C. Gen. Stat. § 14-27.33A.

3. **North Dakota**: N.D. Cent. Code, § 12.1-20-03. outlines circumstances under which a sexual act may constitute an offense, including when the victim is unaware that a sexual act is being committed or when the victim's ability to appraise or control their conduct is impaired. However, the statute does not explicitly address fertility deception or classify it as deception "as to the nature of the act" sufficient to constitute sexual assault . N.D. Cent. Code, § 12.1-20-03.

In summary, while the provided materials discuss fraud and misrepresentation in various contexts, they do not establish that fertility deception qualifies as deception "as to the nature of the act" sufficient to classify sexual intercourse between married partners as sexual assault under the laws of New York, North Carolina, or North Dakota. The cases and statutes provided focus on other forms of deception or circumstances, such as incapacitation or misrepresentation in medical contexts, rather than fertility deception specifically.

Content supporting AI-generated response:

Alice D. v. William M., 113 Misc. 2d 940 | NY Lower Courts - Trial Orders | Cases | New York | Apr 27, 1982

People v. Hough, 159 Misc. 2d 997 | NY Lower Courts - Trial Orders | Cases | New York | Jan 13, 1994

N.C. Gen. Stat. § 14-27.33A | NC - General Statutes of North Carolina Annotated | Codes | North Carolina

N.D. Cent. Code, § 12.1-20-03 | ND - North Dakota Century Code | Codes | North Dakota

: Ask the same question in Northern Mariana Islands & Ohio & Oklahoma

AI Assistant

Based on the provided materials, there is no published appellate decision in the Northern Mariana Islands, Ohio, or Oklahoma that explicitly holds that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault."

1. **Northern Mariana Islands**: Under , 6 N. Mar. I. Code § 1301. sexual assault in the first degree includes engaging in sexual penetration with another person without their consent or when the offender knows the victim is unaware that a sexual act is being committed . 6 N. Mar. I. Code § 1301. However, the statute does not specifically address fertility deception or classify it as deception "as to the nature of the act." The statute focuses on lack of consent, mental incapacity, or unawareness of the act itself, rather than deception regarding ancillary matters such as fertility.

2. **Ohio**: ORC Ann. 2907.03. defines sexual battery, including situations where the offender knowingly coerces submission or where the victim is unaware that the act is being committed . ORC Ann. 2907.03. Additionally, ORC Ann. 2907.02. prohibits sexual conduct obtained through substantial impairment caused by deception . ORC Ann. 2907.02. However, there is no indication in the materials that fertility deception has been interpreted as deception "as to the nature of the act" under these statutes. The focus of these provisions is on coercion, incapacity, or unawareness of the act itself, rather than deception about fertility.

3. **Oklahoma**: Under , 44 Okl. St. § 920. sexual assault includes acts committed through fraudulent representation that the act serves a professional purpose or by inducing a belief through artifice or pretense that the offender is another person . 44 Okl. St. § 920. Similarly, 21 Okl. St. § 1111 criminalizes sexual intercourse obtained through artifice or pretense

inducing the belief that the offender is the victim's spouse . 21 Okl. St. § 1111. These provisions address specific forms of deception but do not extend to fertility deception. The statutes focus on misrepresentation of identity or professional purpose rather than deception about fertility.

In summary, while the statutes in these jurisdictions address various forms of deception in the context of sexual offenses, there is no indication from the provided materials that fertility deception has been recognized as sufficient to qualify sexual intercourse between married partners as "sexual assault" based on deception "as to the nature of the act." The statutory language and case law provided do not explicitly address this issue.

Content supporting AI-generated response:

6 N. Mar. I. Code § 1301 | Northern Mariana Islands Code | Codes | Northern Mariana Islands

ORC Ann. 2907.03 | OH - Page's Ohio Revised Code Annotated | Codes | Ohio

ORC Ann. 2907.02 | OH - Page's Ohio Revised Code Annotated | Codes | Ohio

44 Okl. St. § 920 | OK - Oklahoma Statutes Annotated by LexisNexis® | Codes | Oklahoma

21 Okl. St. § 1111 | OK - Oklahoma Statutes Annotated by LexisNexis® | Codes | Oklahoma

21 Okl. St. § 1111 | OK - Oklahoma Statutes Annotated by LexisNexis® | Codes | Oklahoma

: Ask the same question in Oregon & Pennsylvania & Puerto Rico

AI Assistant

Based on the provided materials, there is no explicit mention of a published appellate decision in Oregon, Pennsylvania, or Puerto Rico that directly addresses whether fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault." However, the relevant statutes and legal principles in these jurisdictions provide some guidance on how deception may be evaluated in the context of sexual offenses.

1. **Oregon**: Under , ORS § 163.305. the definition of "forcible compulsion" and related terms does not explicitly address fertility deception. However, (ORS § 163.325. 4) provides an affirmative defense in cases where the victim’s lack of consent is not based on incapacity due to age, allowing the defendant to prove a reasonable belief that the victim consented. While this statute does not directly address fertility deception, it suggests that the focus in Oregon

law is on the victim's capacity to consent and the defendant's knowledge of that capacity, rather than deception about collateral matters such as fertility . ORS § 163.305, ORS § 163.325.

2. **Pennsylvania**: Under , 18 Pa.C.S. § 311. consent is generally a defense to sexual offenses unless it is deemed "ineffective" due to factors such as force, duress, or deception. Specifically, subsection (c)(4) states that consent is ineffective if induced by "force, duress, or deception of a kind sought to be prevented by the law defining the offense" . 18 Pa.C.S. § 311. However, the statute does not elaborate on whether fertility deception would qualify as deception "as to the nature of the act." Additionally, 18 Pa.C.S. § 3121. outlines circumstances under which sexual intercourse constitutes rape, such as forcible compulsion or substantial impairment of the victim's ability to consent, but it does not explicitly address deception regarding fertility . 18 Pa.C.S. § 3121.

3. **Puerto Rico**: Under , 33 L.P.R.A. § 5191. sexual acts performed under certain circumstances, including force, intimidation, or when the victim's capacity to consent is impaired, are punishable as sexual offenses. Subsection (f) criminalizes acts where the victim submits under the belief that the defendant is someone known to them, induced by "artifice, pretense, or concealment." However, this provision appears to focus on deception regarding the identity of the perpetrator rather than collateral matters like fertility . 33 L.P.R.A. § 5191.

In summary, while the statutes in these jurisdictions recognize deception as a factor that can render consent ineffective, they do not explicitly address fertility deception as a form of deception "as to the nature of the act." The absence of specific appellate decisions or statutory language on this issue suggests that it remains an open question in these jurisdictions. Courts would likely need to evaluate whether fertility deception fundamentally alters the nature of the sexual act or falls within the scope of deception contemplated by the relevant statutes.

Content supporting AI-generated response:

ORS § 163.305 | OR - LexisNexis® Oregon Annotated Statutes | Codes | Oregon

ORS § 163.325 | OR - LexisNexis® Oregon Annotated Statutes | Codes | Oregon

18 Pa.C.S. § 311 | PA - Pennsylvania Statutes, Annotated by LexisNexis® | Codes | Pennsylvania

18 Pa.C.S. § 3121 | PA - Pennsylvania Statutes, Annotated by LexisNexis® | Codes | Pennsylvania

33 L.P.R.A. § 5191 | PR - Laws of Puerto Rico Annotated for Lexis | Codes | Puerto Rico

: Ask the same question in Rhode Island & South Carolina & South Dakota

AI Assistant

There is no published appellate decision in Rhode Island, South Carolina, or South Dakota that explicitly holds that fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault." The relevant statutes and case law in these jurisdictions do not address fertility deception as a basis for criminal liability under sexual assault laws.

1. **Rhode Island**: Under Rhode Island law, first-degree sexual assault requires sexual penetration under specific circumstances, such as the use of force, coercion, or when the victim is mentally incapacitated, physically helpless, or deceived through concealment or surprise . R.I. Gen. Laws § 11-37-2. However, there is no indication in the statutes or case law that fertility deception is recognized as a form of deception "as to the nature of the act" sufficient to constitute sexual assault. The statutory language focuses on the victim's incapacity, force, or coercion, rather than deception regarding fertility or reproductive intentions.

2. **South Carolina**: South Carolina's criminal sexual conduct statutes define "sexual battery" as acts involving penetration under specific circumstances, such as the use of aggravated force, coercion, or when the victim is mentally incapacitated or physically helpless . S.C. Code Ann. § 16-3-652, S.C. Code Ann. § 16-3-651. The statutes do not include deception, including fertility deception, as a basis for criminal sexual conduct. The statutory framework emphasizes physical or mental incapacity and the use of force or coercion, rather than fraud or deception.

3. **South Dakota**: South Dakota law defines rape as an act of sexual penetration under specific circumstances, including the use of force, coercion, or when the victim is incapable of giving consent due to physical or mental incapacity . S.D. Codified Laws § 22-22-1. In , State v. Klaudt, 2009 SD 71 (2009). the South Dakota Supreme Court explicitly noted that the state has not criminalized the use of deception or fraud to obtain consent to sexual penetration . State v. Klaudt, 2009 SD 71 (2009). This precedent confirms that deception, including fertility deception, does not fall within the statutory definition of rape or sexual assault in South Dakota.

In summary, none of the jurisdictions—Rhode Island, South Carolina, or South Dakota—explicitly recognize fertility deception as a form of deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault under their respective statutes or appellate decisions. The statutory frameworks and case law in these states focus on force, coercion, incapacity, or other specific circumstances, rather than deception regarding fertility or reproductive intentions.

Content supporting AI-generated response:

R.I. Gen. Laws § 11-37-2 | RI - General Laws of Rhode Island | Codes | Rhode Island

S.C. Code Ann. § 16-3-652 | SC - South Carolina Code of Laws Annotated by LexisNexis® | Codes | South Carolina

S.C. Code Ann. § 16-3-651 | SC - South Carolina Code of Laws Annotated by LexisNexis® | Codes | South Carolina

S.D. Codified Laws § 22-22-1 | SD - LexisNexis® South Dakota Codified Laws Annotated | Codes | South Dakota

State v. Klaudt, 2009 SD 71 | SD Supreme Court Cases from 1867 | Cases | South Dakota | Aug 5, 2009

: Ask the same question in Tennessee & Texas & Utah

AI Assistant

In addressing whether fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault," the following statutory and case law guidance is relevant for Tennessee, Texas, and Utah:

Tennessee

Tennessee law recognizes that consent is not effective if it is induced by deception. Specifically, (Tenn. Code Ann. § 39-13-503. a)(4) provides that rape includes sexual penetration accomplished by fraud . Tenn. Code Ann. § 39-13-503. Additionally, (Tenn. Code Ann. § 39-11-106. a)(9)(A) defines consent as ineffective when induced by deception . State v. Tizard, 897 S.W.2d 732 (1994). In , State v. Tizard, 897 S.W.2d 732 (1994). the court held that a physician who misrepresented his intent to perform a medical procedure for sexual gratification committed sexual battery by fraud. The court emphasized that fraud regarding the purpose of the act rendered the victim's consent invalid . State v. Tizard, 897 S.W.2d 732 (1994). However, there is no explicit statutory or appellate decision in Tennessee addressing fertility deception within the context of sexual intercourse between married partners as constituting sexual assault or rape.

Texas

Under (Tex. Penal Code § 22.011. b), sexual assault is without consent if the actor compels participation through deception, such as creating a false impression of law or fact that affects the victim's judgment . Tex. Penal Code § 22.011. Case law, such as Rushing v. State, 141 S.W.3d 739 (2004). and , Christensen v. State, 240 S.W.3d 25 (2007). further clarifies that deception includes creating or confirming a false impression likely to affect judgment, and the actor must

intend to deceive . Rushing v. State, 141 S.W.3d 739 (2004), Christensen v. State, 240 S.W.3d 25 (2007). However, there is no specific statutory provision or appellate decision in Texas explicitly addressing fertility deception as a form of deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault.

Utah

Utah Code Ann. § 76-5-406. outlines circumstances under which sexual activity is deemed nonconsensual, including when the actor uses deception as a health professional to induce participation under the guise of providing professional treatment . Utah Code Ann. § 76-5-406, State v. Mottaghian, 2022 UT App 8 (2022). In , State v. Mottaghian, 2022 UT App 8 (2022). the court upheld a finding of nonconsent where the defendant falsely represented himself as a health professional conducting medical research, which induced the victims to participate in sexual acts . State v. Mottaghian, 2022 UT App 8 (2022). However, Utah law does not explicitly address fertility deception in the context of sexual intercourse between married partners as constituting sexual assault. The statute and case law focus on broader contexts of deception but do not specifically extend to fertility deception within marriage.

Conclusion

While all three jurisdictions recognize that deception can invalidate consent in certain contexts, there is no explicit statutory or appellate authority in Tennessee, Texas, or Utah that directly addresses fertility deception as deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The existing legal framework in these states focuses on broader categories of fraud or deception, but none explicitly extend to the specific scenario of fertility deception within marriage.

Content supporting AI-generated response:

Tenn. Code Ann. § 39-13-503 | TN - Tennessee Code Annotated | Codes | Tennessee

Tenn. Code Ann. § 39-11-106 | TN - Tennessee Code Annotated | Codes | Tennessee

State v. Tizard, 897 S.W.2d 732 | TN Court of Criminal Appeals Cases from 1967 | Cases | Tennessee | Nov 10, 1994

Tex. Penal Code § 22.011 | TX - Texas Statutes & Codes Annotated by LexisNexis® | Codes | Texas

Rushing v. State, 141 S.W.3d 739 | TX Court of Appeals and Court of Civil Appeals Cases from 1892 | Cases | Texas | Jul 1, 2004

Christensen v. State, 240 S.W.3d 25 | TX Court of Appeals and Court of Civil Appeals Cases from 1892 | Cases | Texas | Jul 6, 2007

Utah Code Ann. § 76-5-406 | UT - Utah Code Annotated | Codes | Utah

State v. Mottaghian, 2022 UT App 8 | UT Court of Appeals Cases from 1987 | Cases | Utah | Jan 21, 2022

: Ask the same question in Vermont & Virgin Islands & Virginia

AI Assistant

In Vermont, the Virgin Islands, and Virginia, there is no explicit statutory provision or published appellate decision that directly addresses whether fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault." Below is a summary of the relevant statutes and case law in these jurisdictions:

Vermont

Under Vermont law, sexual assault is defined in . 13 V.S.A. § 3252. Consent is a key element, defined as an "affirmative, unambiguous, and voluntary agreement to engage in a sexual act" . 13 V.S.A. § 3251. Fraud is not explicitly mentioned as a factor that vitiates consent in the statute. However, in , State v. Doe, 2020 VT 78 (2020). the Vermont Supreme Court considered whether fraud (specifically, misrepresentation of HIV status) could undermine consent. The court noted that the statutory definition of consent includes the term "voluntary," which could imply protection against undesired sexual acts induced by fraud. However, the court also acknowledged that the legislature had not explicitly stated that fraud undermines consent, leaving the issue unresolved . State v. Doe, 2020 VT 78 (2020). There is no indication in Vermont law that fertility deception has been recognized as a basis for criminal liability under sexual assault statutes.

Virgin Islands

In the Virgin Islands, 14 V.I.C. § 1701. criminalizes rape, including when consent is vitiated by fraud. Specifically, (14 V.I.C. § 1701. a)(5) states that sexual penetration accomplished by fraud constitutes first-degree rape . 14 V.I.C. § 1701. However, in , Flores v. People of the Virgin Islands, 70 V.I. 958 (2019). the Virgin Islands Supreme Court addressed the issue of fraud in the context of rape. The court held that, absent a specific statutory provision, fraud in the inducement does not vitiate consent under the common law. The court emphasized that the Virgin Islands rape statute follows the common law, which historically required force for rape and did not criminalize fraud in the inducement . Flores v. People of the Virgin Islands, 70 V.I. 958 (2019). There is no indication that fertility deception has been recognized as a form of fraud sufficient to vitiate consent under Virgin Islands law.

Virginia

Virginia law defines rape under , Va. Code Ann. § 18.2-61. which includes sexual intercourse accomplished through force, threat, intimidation, or the use of the victim's mental incapacity or physical helplessness . Va. Code Ann. § 18.2-61. "Mental incapacity" is defined as a condition that prevents the victim from understanding the nature or consequences of the sexual act, and "physical helplessness" includes unconsciousness or an inability to communicate unwillingness . Va. Code Ann. § 18.2-67.10. There is no explicit mention of fraud or deception, including fertility deception, as a basis for criminal liability under the statute. Additionally, there is no published appellate decision in Virginia addressing fertility deception as a basis for sexual assault liability.

Conclusion

In all three jurisdictions, there is no explicit statutory or appellate authority recognizing fertility deception as a basis for criminal liability under sexual assault laws. While fraud is addressed in some contexts, such as in the Virgin Islands' statute, the case law suggests that fraud in the inducement, including fertility deception, is not generally recognized as sufficient to vitiate consent for purposes of sexual assault liability. The absence of explicit statutory language or case law on this issue leaves it unresolved in these jurisdictions.

Content supporting AI-generated response:

13 V.S.A. § 3252 | VT - Vermont Statutes Annotated | Codes | Vermont

13 V.S.A. § 3251 | VT - Vermont Statutes Annotated | Codes | Vermont

State v. Doe, 2020 VT 78 | VT Supreme Court Cases from 1826 | Cases | Vermont | Sep 18, 2020

14 V.I.C. § 1701 | VI - Virgin Islands Code Annotated | Codes | Virgin Islands

Flores v. People of the Virgin Islands, 70 V.I. 958 | VI Supreme Court Cases from 2007 | Cases | Virgin Islands | Mar 28, 2019

Va. Code Ann. § 18.2-61 | VA - Code of Virginia (Annotated) | Codes | Virginia

Va. Code Ann. § 18.2-67.10 | VA - Code of Virginia (Annotated) | Codes | Virginia

: Ask the same question in Washington & West Virginia & Wisconsin

AI Assistant

In addressing whether fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault," the statutes and case law in Washington, West Virginia, and Wisconsin provide relevant guidance. However, none of the provided materials explicitly address fertility deception in this context. Below is a summary of the relevant statutes and principles in each jurisdiction:

Washington

Under Washington law, sexual assault is addressed in statutes such as , Rev. Code Wash. (ARCW) § 9A.44.050. which defines rape in the second degree. This statute includes circumstances where the victim is incapable of consent due to physical helplessness or mental incapacity, or where consent is obtained through forcible compulsion or abuse of a supervisory position . Rev. Code Wash. (ARCW) § 9A.44.050. The definition of "consent" under (Rev. Code Wash. (ARCW) § 9A.44.010. 2) requires actual words or conduct indicating freely given agreement to sexual intercourse or contact . Rev. Code Wash. (ARCW) § 9A.44.010. However, the statutes do not explicitly address deception, including fertility deception, as a factor that would negate consent or qualify as "deception as to the nature of the act."

The case State v. Wellington, 34 Wn. App. 607 (1983). discusses deception in the context of theft but does not address sexual assault or the specific issue of fertility deception . State v. Wellington, 34 Wn. App. 607 (1983). Thus, there is no explicit statutory or case law guidance in Washington on whether fertility deception constitutes deception "as to the nature of the act" for sexual assault purposes.

West Virginia

West Virginia law defines sexual assault in W. Va. Code § 61-8B-3. and . W. Va. Code § 61-8B-4. These statutes focus on lack of consent due to forcible compulsion, physical helplessness, or the victim's age . W. Va. Code § 61-8B-3, W. Va. Code § 61-8B-4. The definitions of "mentally incapacitated" and "physically helpless" in W. Va. Code § 61-8B-1. emphasize the victim's inability to appraise or control their conduct or communicate unwillingness due to external factors, such as intoxication or unconsciousness . W. Va. Code § 61-8B-1. However, the statutes do not explicitly address deception, including fertility deception, as a basis for invalidating consent or constituting sexual assault.

Wisconsin

Wisconsin law under Wis. Stat. § 940.225 defines various degrees of sexual assault, including first-degree sexual assault, which involves sexual contact or intercourse without consent and under circumstances such as the use of force, threat, or causing great bodily harm . Wis. Stat. § 940.225, Wis. Stat. § 940.225. The statute also criminalizes sexual intercourse without consent in cases involving mental incapacity, physical helplessness, or intoxication to the extent that the victim cannot give consent, provided the defendant has actual knowledge of the victim's condition . Wis. Stat. § 940.225. However, the statute does not explicitly address deception, including fertility deception, as a factor that would negate consent or constitute sexual assault.

Conclusion

In all three jurisdictions—Washington, West Virginia, and Wisconsin—there is no explicit statutory or case law addressing whether fertility deception constitutes deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as sexual assault. The statutes primarily focus on lack of consent due to force, incapacity, or other external factors, and do not explicitly include deception as a basis for invalidating consent in the context of sexual assault.

Content supporting AI-generated response:

Rev. Code Wash. (ARCW) § 9A.44.050 | WA - Annotated Revised Code of Washington | Codes | Washington

Rev. Code Wash. (ARCW) § 9A.44.010 | WA - Annotated Revised Code of Washington | Codes | Washington

State v. Wellington, 34 Wn. App. 607 | WA Court of Appeals Cases from 1969 | Cases | Washington | May 9, 1983

W. Va. Code § 61-8B-3 | WV - West Virginia Code | Codes | West Virginia

W. Va. Code § 61-8B-4 | WV - West Virginia Code | Codes | West Virginia

W. Va. Code § 61-8B-1 | WV - West Virginia Code | Codes | West Virginia

Wis. Stat. § 940.225 | WI - LexisNexis® Wisconsin Annotated Statutes | Codes | Wisconsin

Wis. Stat. § 940.225 | WI - LexisNexis® Wisconsin Annotated Statutes | Codes | Wisconsin

: Ask the same question in Wyoming

AI Assistant

Wyoming law does not explicitly recognize fertility deception as a form of deception "as to the nature of the act" sufficient to qualify sexual intercourse between married partners as "sexual assault." However, the statutory framework and case law provide guidance on the circumstances under which sexual assault may be established, particularly in the context of consent and the nature of the act.

Under Wyoming law, sexual assault in the first degree occurs when an actor inflicts sexual intrusion on a victim under specific circumstances, including when the victim is incapable of appraising the nature of their conduct due to mental illness, mental deficiency, or developmental disability, and the actor knows or reasonably should know of this incapacity . Wyo. Stat. § 6-2-302, Tombroek v. State, 2009 WY 126 (2009). This provision, found in (Wyo. Stat. § 6-2-302. a)(iv), focuses on the victim's ability to understand their conduct rather than on deception by the actor regarding ancillary matters such as fertility . Wyo. Stat. § 6-2-302, Tombroek v. State, 2009 WY 126 (2009).

Additionally, (Wyo. Stat. § 6-2-303. a)(iv) addresses situations where the victim submits to sexual intrusion erroneously believing the actor to be their spouse, and the actor knows or reasonably should know of this mistaken belief. This provision highlights that deception as to identity, specifically the identity of the actor, may render the act non-consensual under the statute. However, it does not extend to other forms of deception, such as fertility misrepresentation . Wyo. Stat. § 6-2-303.

Case law in Wyoming, such as , Jackson v. State, 891 P.2d 70 (1995). emphasizes that second-degree sexual assault occurs under circumstances not constituting first-degree sexual assault and involves distinct elements, such as threats of retaliation or abuse of a position of authority . Jackson v. State, 891 P.2d 70 (1995). The statutory and case law framework does not suggest that fertility deception would meet the threshold for "deception as to the nature of the act" required to establish sexual assault.

Furthermore, (Wyo. Stat. § 6-2-307. a) explicitly states that marriage between the actor and the victim is not a defense to certain sexual assault charges, such as those involving physical force or incapacity to consent . Wyo. Stat. § 6-2-307. However, this provision does not address fertility deception or similar forms of misrepresentation within a marital context.

In conclusion, neither Wyoming statutes nor case law explicitly recognize fertility deception as sufficient to qualify sexual intercourse between married partners as sexual assault based on deception "as to the nature of the act." The statutory provisions and case law focus on issues of consent, incapacity, and identity rather than ancillary deceptions such as fertility misrepresentation.

Content supporting AI-generated response:

Wyo. Stat. § 6-2-302 | WY - Wyoming Statutes Annotated | Codes | Wyoming

Tombroek v. State, 2009 WY 126 | WY Supreme Court Cases from 1870 | Cases | Wyoming | Oct 16, 2009

Wyo. Stat. § 6-2-303 | WY - Wyoming Statutes Annotated | Codes | Wyoming

Jackson v. State, 891 P.2d 70 | WY Supreme Court Cases from 1870 | Cases | Wyoming | Mar 6, 1995

Wyo. Stat. § 6-2-307 | WY - Wyoming Statutes Annotated | Codes | Wyoming