

Jury Decision Making in 'Forced-to-Penetrate' Trials

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Policy Context

'Forced-to-penetrate' (FTP) cases involve a man being forced-to-penetrate, with his penis, and without his consent, a woman's vagina, anus, or mouth. A woman is the defendant in these cases. This project is the first to investigate how mock jurors make decisions in FTP cases in an England and Wales trial context and was delivered in partnership with Avon and Somerset Constabulary, the Crown Prosecution Service, and We Are Survivors. The highly-realistic mock trials involved a RASSO ticketed judge, experienced barristers, and professional actors.

Key Research Findings

The mock defendant was charged with one count of **causing a person to engage in sexual activity without consent** (Sexual Offences Act 2003, s.4). Across 12 separate mock jury panels; 5 returned a not guilty verdict (3 unanimous, 2 majority); 3 returned guilty verdicts (1 unanimous, 2 majority); and 4 were hung.

- **Mock jurors struggled to understand the issue of (male) consent.** They were often uncertain of when (if at all) the complainant lost capacity to consent following alcohol consumption.
- **Mock jurors compared the consequences of their decision-making for the complainant and defendant,** noting that the consequences of a conviction for the defendant outweighed those of an acquittal for the complainant.
- **Mock jurors debated how to ascertain whether the defendant had a reasonable belief in the complainant's consent,** often blaming the complainant for their actions before, during, and after the alleged offence.
- **Myths and stereotypes around sexual victimisation played a role in deliberations.** Mock jurors doubted the complainant's sexuality and questioned the likelihood of a false allegation.
- **Mock jurors frequently explored reversing the gender of the complainant and the defendant,** suggesting that whilst the issue of non-consent would be clearer, they did not feel that gender impacted their verdict.
- **Preliminary analysis showed that pre-trial juror attitudes had limited influence on juror decision-making.** Juror belief in FTP myths and sexist attitudes were not directly related with verdict decisions pre- or post-deliberation.
- **The route to verdict document was often used ineffectively.** Mock jurors struggled to understand legal terminology and did not proceed methodically through each question.
- **Mock jurors found the offence of 'causing a person to engage in sexual activity' difficult to understand.** They struggled to distinguish this from other sexual offences (e.g. rape) and highlighted a need for law reform.

Policy recommendations

- **The Route to Verdict document should be reviewed and revised to improve juror understanding of key legal terminology**, for example requirements that the defendant ‘intentionally caused’ penetration under the Sexual Offences Act 2003, s.4. Reform in this area should aim to reduce ambiguity without diluting legal terminology.
- **This research demonstrates that guilty verdicts are possible in FTP cases. Prosecutorial decision-making should therefore move away from assumptions that these cases are not viable** due to juror scepticism around male sexual victimisation and female perpetrators, or perceived evidential weaknesses.
- **Consideration should be given to reforming the law surrounding FTP cases, to better align with public understandings around the definition of rape and other types of sexual offending.** Findings from this study suggest that the current separation of offences can undermine conceptual clarity for jurors. Integrating FTP offences within the offence of rape or re-defining and more clearly aligning offences within the legal framework, may support a more accurate application of the law by jurors.
- **Any consideration of law reform in relation to FTP cases should take place within a holistic review of the Sexual Offences Act 2003**, with particular attention paid to the gendered terminology embedded within the legislation. The language used within the Sexual Offences Act continues to reflect assumptions that can obscure male victimisation and influence how offences are understood, prosecuted, and adjudicated. Policymakers should assess whether existing language adequately captures the realities of male sexual victimisation.
- **Targeted education is required to improve public understandings of male consent and male sexual victimisation.** Whilst our findings showed that jurors were less accepting of many of the prevalent myths that blame men for their victimisation in the abstract, persistent misconceptions, such as that an erection signifies consent, that a man’s physical stature means he cannot be sexually assaulted by a woman, or that men enjoy being forced into sex or will not be negatively affected by it, can distort how evidence is interpreted and witnesses are perceived.

Work with us

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Please contact them via the email addresses above if you would like to learn more about their research, invite them to speak at your event, or collaborate with them.