

**Introduced by Senators Wahab and Rubio  
(Coauthors: Senators Ashby, Caballero, and Cortese)**

February 3, 2025

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An act to amend Section 261 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 258, as introduced, Wahab. Crimes: rape.

Existing law defines rape as an act of sexual intercourse accomplished under certain circumstances, including with a person not the spouse of the perpetrator where the person is incapable of giving legal consent because of a mental disorder or developmental or physical disability.

This bill would remove the spousal exception from this definition of rape.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 261 of the Penal Code is amended to
- 2 read:
- 3 261. (a) Rape is an act of sexual intercourse accomplished
- 4 under any of the following circumstances:

1     ~~(1) If a person who is not the spouse of the person committing~~  
2 ~~the act is incapable, because of a mental disorder or developmental~~  
3 ~~or physical disability, of giving legal consent, and this is known~~  
4 ~~or reasonably should be known to the person committing the act.~~  
5 ~~Notwithstanding the existence of a conservatorship pursuant to~~  
6 ~~the provisions of the Lanterman-Petris-Short Act (Part 1~~  
7 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~  
8 ~~Institutions Code), the prosecuting attorney shall prove, as an~~  
9 ~~element of the crime, that a mental disorder or developmental or~~  
10 ~~physical disability rendered the alleged victim incapable of giving~~  
11 ~~consent. This paragraph does not preclude the prosecution of a~~  
12 ~~spouse committing the act from being prosecuted under any other~~  
13 ~~paragraph of this subdivision or any other law.~~

14     (2) If it is accomplished against a person's will by means of  
15 force, violence, duress, menace, or fear of immediate and unlawful  
16 bodily injury on the person or another.

17     (3) If a person is prevented from resisting by an intoxicating or  
18 anesthetic substance, or a controlled substance, and this condition  
19 was known, or reasonably should have been known by the accused.

20     (4) If a person is at the time unconscious of the nature of the  
21 act, and this is known to the accused. As used in this paragraph,  
22 "unconscious of the nature of the act" means incapable of resisting  
23 because the victim meets any one of the following conditions:

24         (A) Was unconscious or asleep.

25         (B) Was not aware, knowing, perceiving, or cognizant that the  
26 act occurred.

27         (C) Was not aware, knowing, perceiving, or cognizant of the  
28 essential characteristics of the act due to the perpetrator's fraud in  
29 fact.

30         (D) Was not aware, knowing, perceiving, or cognizant of the  
31 essential characteristics of the act due to the perpetrator's fraudulent  
32 representation that the sexual penetration served a professional  
33 purpose when it served no professional purpose.

34     (5) If a person submits under the belief that the person  
35 committing the act is someone known to the victim other than the  
36 accused, and this belief is induced by artifice, pretense, or  
37 concealment practiced by the accused, with intent to induce the  
38 belief.

39     (6) If the act is accomplished against the victim's will by  
40 threatening to retaliate in the future against the victim or any other

1 person, and there is a reasonable possibility that the perpetrator  
2 will execute the threat. As used in this paragraph, “threatening to  
3 retaliate” means a threat to kidnap or falsely imprison, or to inflict  
4 extreme pain, serious bodily injury, or death.

5 (7) If the act is accomplished against the victim’s will by  
6 threatening to use the authority of a public official to incarcerate,  
7 arrest, or deport the victim or another, and the victim has a  
8 reasonable belief that the perpetrator is a public official. As used  
9 in this paragraph, “public official” means a person employed by  
10 a governmental agency who has the authority, as part of that  
11 position, to incarcerate, arrest, or deport another. The perpetrator  
12 does not actually have to be a public official.

13 (b) For purposes of this section, the following definitions apply:

14 (1) “Duress” means a direct or implied threat of force, violence,  
15 danger, or retribution sufficient to coerce a reasonable person of  
16 ordinary susceptibilities to perform an act which otherwise would  
17 not have been performed, or acquiesce in an act to which one  
18 otherwise would not have submitted. The total circumstances,  
19 including the age of the victim, and the victim’s relationship to  
20 the defendant, are factors to consider in appraising the existence  
21 of duress.

22 (2) “Menace” means any threat, declaration, or act that shows  
23 an intention to inflict an injury upon another.

24 SEC. 2. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.