

AMENDED IN ASSEMBLY SEPTEMBER 2, 2025

AMENDED IN SENATE MAY 1, 2025

SENATE BILL

No. 258

**Introduced by Senators Wahab, Rubio, and Cervantes
(Coauthors: Senators Ashby, Caballero, Cortese, Grayson, Hurtado,
McNerney, Richardson, and Weber Pierson)**

(Coauthors: Assembly Members Aguiar-Curry, Ahrens, Alanis, Boerner,
Pacheco, Petrie-Norris, Quirk-Silva, Michelle Rodriguez, ~~and
Blanea Rubio~~) *Blanca Rubio, and Stefani*)

February 3, 2025

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

LEGISLATIVE COUNSEL'S DIGEST

SB 258, as amended, 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:

5 (1) (A) If a person is *at the time* incapable, because of a mental
6 disorder or developmental or physical disability, of giving legal
7 consent, and this is known or reasonably should be known to the
8 person committing the act. *A person with a mental disorder or*
9 *developmental or physical disability shall not be presumed to be*
10 *unable to give legal consent to sexual intercourse due to that*
11 *disability.* Notwithstanding the existence of a conservatorship
12 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
13 1 (commencing with Section 5000) of Division 5 of the Welfare
14 and Institutions ~~Code~~), *Code*) or the absence of voluntary supports
15 as described in Division 11.5 (commencing with Section 21000)
16 of the Welfare and Institutions Code, except subdivisions (a) and
17 (b) of Section 21000, the prosecuting attorney shall prove, as an
18 element of the crime, that a mental disorder or developmental or
19 physical disability rendered the alleged victim incapable of giving
20 consent. *This paragraph does not preclude the prosecution of the*
21 *person committing the act under any other paragraph of this*
22 *subdivision or any other law.*

23 (B) *In determining whether the person is at the time incapable,*
24 *because of a mental disorder or developmental or physical*
25 *disability, of giving legal consent, both of the following shall be*
26 *considered, as applicable:*

27 (i) *Any mitigating measure in place, as defined in subdivision*
28 *(n) of Section 11065 of Title 2 of the California Code of*
29 *Regulations, as that regulation existed on January 1, 2025.*

30 (ii) *Any voluntary supports in place, as described in Division*
31 *11.5 (commencing with Section 21000) of the Welfare and*
32 *Institutions Code, except subdivisions (a) and (b) of Section 21000.*

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

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

1 (4) If a person is at the time unconscious of the nature of the
2 act, and this is known to the accused. As used in this paragraph,
3 “unconscious of the nature of the act” means incapable of resisting
4 because the victim meets any one of the following conditions:

5 (A) Was unconscious or asleep.

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

8 (C) Was not aware, knowing, perceiving, or cognizant of the
9 essential characteristics of the act due to the perpetrator’s fraud in
10 fact.

11 (D) Was not aware, knowing, perceiving, or cognizant of the
12 essential characteristics of the act due to the perpetrator’s fraudulent
13 representation that the sexual penetration served a professional
14 purpose when it served no professional purpose.

15 (5) If a person submits under the belief that the person
16 committing the act is someone known to the victim other than the
17 accused, and this belief is induced by artifice, pretense, or
18 concealment practiced by the accused, with intent to induce the
19 belief.

20 (6) If the act is accomplished against the victim’s will by
21 threatening to retaliate in the future against the victim or any other
22 person, and there is a reasonable possibility that the perpetrator
23 will execute the threat. As used in this paragraph, “threatening to
24 retaliate” means a threat to kidnap or falsely imprison, or to inflict
25 extreme pain, serious bodily injury, or death.

26 (7) If the act is accomplished against the victim’s will by
27 threatening to use the authority of a public official to incarcerate,
28 arrest, or deport the victim or another, and the victim has a
29 reasonable belief that the perpetrator is a public official. As used
30 in this paragraph, “public official” means a person employed by
31 a governmental agency who has the authority, as part of that
32 position, to incarcerate, arrest, or deport another. The perpetrator
33 does not actually have to be a public official.

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

35 (1) “Duress” means a direct or implied threat of force, violence,
36 danger, or retribution sufficient to coerce a reasonable person of
37 ordinary susceptibilities to perform an act which otherwise would
38 not have been performed, or acquiesce in an act to which one
39 otherwise would not have submitted. The total circumstances,
40 including the age of the victim, and the victim’s relationship to

1 the defendant, are factors to consider in appraising the existence
2 of duress.

3 (2) *“Incapable, because of a mental disorder or developmental
4 or physical disability, of giving legal consent” means that a person
5 is at the time of the intercourse either of the following:*

6 (A) *Unable to understand the nature of the act or transaction
7 involved due to a mental disorder or developmental or physical
8 disability.*

9 (B) *Unable to act freely and voluntarily due to a mental disorder
10 or developmental or physical disability.*

11 ~~(2)~~

12 (3) *“Menace” means any threat, declaration, or act that shows
13 an intention to inflict an injury upon another.*

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.