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**SB-258 Crimes: rape.** (2025-2026)

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**Senate Bill No. 258**

**CHAPTER 599**

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

[ Approved by Governor October 11, 2025. Filed with Secretary of State October 11, 2025. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 258, 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 Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 261 of the Penal Code is amended to read:

**261.** (a) Rape is an act of sexual intercourse accomplished under any of the following circumstances:

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

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

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

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

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

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

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

(A) Was unconscious or asleep.

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

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

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

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

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

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

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

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

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

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

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

(3) "Menace" means any threat, declaration, or act that shows an intention to inflict an injury upon another.

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