

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmembers Susan Wengraf and Laurie Capitelli

Subject: Support for Senate Bill SB59 (Evans) and Assembly Bill AB65 (Achadjian) to

Amend the California Penal Code to Expand the Definition of Rape

RECOMMENDATION

Adopt a Resolution supporting Senate Bill SB 59 and Assembly Bill AB 65 which would amend Penal Code Section 261 (a) (5) to expand the definition of rape to include a sexually intimate partner. If adopted, send copies of the signed resolutions to Senator Loni Hancock, President ProTem Senator Darrell Steinberg, Assemblymember Nancy Skinner and to the Senate and Assembly Committees on Public Safety.

BACKGROUND

SB 59 and AB 65 have been introduced to address an outdated rape statute. The current rape statute language contains arcane and confusing language which upholds the rights of a married victim but not the rights of others. Due to this outdated language, the 2nd District Court of Appeals recently overturned a rape conviction due to the fact that the victim was not married. Because the current law was unclear, the conviction was overturned on a technicality.

SB 59 and AB 65 both intend to close this loophole in state law and expand the definition of rape by amending Penal Code 261 (a) (5). SB 59 specifically substitutes the word "spouse" for "sexually intimate partner". AB 65 expands the definition of rape to include cases where there is impersonation of a boyfriend or girlfriend. The proposed changes would make the law equitable and close the loophole.

Support of these bills is consistent with the City of Berkeley's commitment to ensuring justice for all.

FINANCIAL IMPLICATIONS

No General Funds impact

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

Attachments:

- 1. Resolution
- 2. Senate Bill SB-59
- 3. Assembly Bill AB-65

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF SENATE BILL 59 AND ASSEMBLY BILL 65 TO AMEND THE CALIFORNIA PENAL CODE TO EXPAND THE DEFINITION OF RAPE

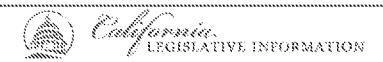
WHEREAS, SB 59 and AB 65 were introduced to amend Penal Code Section 261(a)(5) to expand the definition of rape in response to outdated and confusing language in the current rape statute; and

WHEREAS, the arcane language in the statute has resulted in overturned convictions for rape, based on a technicality; and

WHEREAS, the current rape statute upholds the rights of a married victim, but not the rights of others; and

WHEREAS, expanding the definition of rape ensures equality and justice for all.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby supports SB 59 and AB 65 to amend the California Penal Code section 261(a)(5) to expand the definition of rape.



98-99 Crimes: 1202-2014)

CALIFORNIA LEGISLATURE --- 2019-2014 REGULAR SESSION

SENATE BILL No. 59

Introduced by Senator Evans (Coauthor(s): Senator Block, Corbett, De León, DeSaulnier, Galgiani, Hancock, Jackson, Lara, Leno, Pavley, Steinberg, Wolk)

January 07, 2013

An act to amend Section 261 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 59, as introduced, Evans. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would instead provide that this type of rape occurs where the individual submits under the belief that the individual committing the act is the victim's sexually intimate partner.

By expanding the definition 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

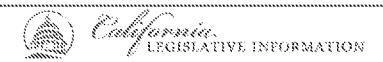
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

261. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

- (1) Where a person is 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. 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), 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.
- (2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodity injury on the person or another.
- (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known or reasonably should have been known by the accused.
- (4) Where 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.
- (8) 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) Where a person submits under the belief that the person committing the act is the victim's-excess sexually intimate partner, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief
- (6) Where the act is accomplished against the victim's will by threatening to retailate 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) Where 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) As used in this section, "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 his or her relationship to the defendant, are factors to consider in appraising the existence of duress.
- (c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.
- **SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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 XIIIB of the California Constitution.
- **SEC. 3.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public safety by minimizing the threat posed by sexual predators at the earliest possible time, it is necessary that this act take effect immediately.



A8-65 Crimes: rape. (2013-2014)

AMENDED IN ASSEMBLY JANUARY 30, 2013

CALIFORNIA LEGISLATURE--- 2013-2014 REGULAR SESSION

ASSEMBLY BILL No. 65

Introduced by Assembly Member Achadjian, Lowenthal
(Principal Coauthor(s): Assembly Member Bradford, Comez, Mitchell, Williams)
(Principal Coauthor(s): Senator Hill)

(Coauthor(s): Assembly Nember Alejo, Ammiano, Atkins, Bigelow, Blumenfield, Buchanan, Jan Calderon, Chávez, Conway, Oshle, Dickinson, Donnelly, Frazier, Garcia, Gatto, Gordon, Gorell, Grove, Hagman, Nail, Narkey, Jones, Levine, Logue, Maienschein, Mansoor, Melendez, Morrell, Nazarian, Nestande, Olsen, Patterson, Perea, John A. Péraz, Quirk-Silva, Rendon, Skinner, Stone, Ting, Wagner, Waldron, Weiter, Wilk)

(Coauthor(s): Senator Anderson, Berryhill, Slock, Cannella, Emmerson, Fuller, Gaines, Huff,
Jackson, Knight, Lieu, Rubio, Walters, Wyland)

January 07, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 65, as amended, Achadjian. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would additionally provide that this type of rape occurs where the person submits under the belief that the person committing the act is the victim's domestic partner, cohabitant, seekey flance, flance, or someone with whom the victim has a dating relationship.

By expanding the definition 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 with a person not the spouse of the perpetrator, under any of the following circumstances:
- (1) Where a person is 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. 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), 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.
- (2) Where 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) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.
- (4) Where 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) Where a person submits under the belief that the person committing the act is the victim's spouse, domestic partner, cohabitant, flancé, flancée, or someone with whom the victim has a dating relationship, as defined in subdivision (f) of Section 243, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.
- (6) Where the act is accomplished against the victim's will by threatening to retailate 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) Where 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) As used in this section, "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 his or her relationship to the defendant, are factors to consider in appraising the existence of duress.
- (c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.
- **SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIIIS 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 XIIIB of the California Constitution.