

Date of Hearing: August 20, 2025

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

SB 258 (Wahab) – As Amended May 1, 2025

Policy Committee: Public Safety

Vote: 9 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill eliminates, from the definition of the crime of rape, the exception for a person who has sexual intercourse with their spouse who is incapable of legally consenting because of a mental disorder or developmental or physical disability.

FISCAL EFFECT:

- 1) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate felony rape charges resulting from this bill. A defendant charged with a felony is entitled to a jury trial and, if the defendant is indigent, legal representation provided by the government. Actual court costs will depend on the number of violations, prosecutorial discretion, and the amount of court time needed to adjudicate each case. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations.
- 2) Costs (General Fund) to the California Department of Corrections and Rehabilitation (CDCR) to incarcerate people convicted of rape as a result of this bill. Actual incarceration costs will depend on the number of convictions, the length of each sentence, and each person's credit earning. Rape is punishable by a prison term of three, six, or eight years. The Legislative Analyst's Office estimates the average annual cost to incarcerate one person in state prison is \$133,000. The incidence of the conduct affected by this bill is unknown. Data from CDCR shows that in 2024, four people were admitted into prison with the primary offense of rape of a person incapable of giving legal consent due to a disability. If this bill results in the conviction of three additional people each year, each of whom must serve four years in prison, the resulting cost to CDCR would be approximately \$1.6 million annually ongoing by the fourth year of implementation.
- 3) Possible costs to the Department of State Hospitals (DSH) of an unknown but potentially significant amount due to the bill's expansion of criminal liability. DSH reports a person who is charged with rape under the circumstances affected by this bill and diagnosed with a serious mental disorder could be found incompetent to stand trial (IST) and referred to DSH for treatment. Any increase in referrals would increase costs to the General Fund for DSH. DSH states it cannot accurately estimate the number of referrals that may result from this bill but reports the annual General Fund cost per patient for IST treatment varies from about \$200,000 for DSH-funded diversion to about \$400,000 for inpatient hospital treatment. If

this bill passed, DSH plans to monitor its implementation and may request a budget augmentation at a later date.

COMMENTS:

- 1) **Background.** Historically, the California Penal Code contained separate sections criminalizing rape of a spouse and rape of any other person. In 2021, the Legislature enacted AB 1171 (Garcia), Chapter 626, Statutes of 2021, which eliminated the spousal rape statute and expanded the general definition of rape to include rape of a spouse in most circumstances. However, the law maintained a provision permitting sexual intercourse between spouses where one spouse is deemed incapable of giving legal consent because of a mental disorder, developmental disability, or physical disability. When AB 1171 was passed, disability rights advocates expressed the importance of continuing to amend this area of law. They stressed their desire to avoid undermining the already limited sexual rights of people with disabilities and criminalizing consensual sex among adults with disabilities.

The current rape statute makes it a crime for a person to have sex with someone who is incapable of giving legal consent because of a mental disorder or developmental or physical disability, unless the two people are married. In other words, it is a crime for a person to have sex with a second person who is deemed incapable provide legal consent due to their disability, unless the first person is married to the second person. Within a marriage, a person with a disability, including an intellectual or developmental disability (I/DD), is presumed to have the capacity to consent to sex because they had demonstrated the capacity required by law to enter into a marriage.

Other provisions in existing law criminalize rape involving force or duress, intoxication, or power imbalances between the parties, like an incarcerated person and a prison staff member. Those provisions are not affected by this bill.

- 2) **Capacity to Consent versus Legal Consent.** To determine whether a person consented to a sex act, courts must decide whether they (a) have the capacity to consent, and (b) provided legal consent to the act. Capacity to consent means, generally, a person has the mental capacity to understand the nature and consequences of their decision-making. California law contains multiple definitions of capacity that apply in various circumstances, but there is no definition of capacity to consent in the Penal Code. As noted above, a person with I/DD who is married is presumed to have the capacity to consent to sex with their spouse. For an unmarried person with I/DD, the courts use a legal standard established in 1897 to determine whether the person has the capacity to consent. Writing to oppose this bill unless it is amended, the Disability Rights Education and Defense Fund (DREDF) explains that courts using this standard:

readily find that people with even mild or moderate intellectual and developmental disabilities lack capacity to consent to sex...This body of case law raises serious concerns about the rights of people with intellectual and developmental disabilities to make intimate choices free of government interference.

Legal consent is defined in the Penal Code as “positive cooperation in an act or attitude pursuant to an exercise of free will.” To provide legal consent, the person “must act freely

and voluntarily and have knowledge of the nature of the act.” In other words, a person who has the capacity to consent may provide or withhold legal consent in a given situation.

- 3) **This Bill.** The practical implications of this bill are viewed very differently by its supporters and opponents. Supporters of this bill believe it closes the final loophole that permits spousal rape, continuing the work done by the Legislature in passing AB 1171. The California District Attorneys Association, writing in support, states:

SB 258 aligns California’s laws with modern understandings of consent and sexual violence, ensuring that individuals who commit rape are held accountable, regardless of whether the victim is their spouse. Removing this exemption is critical to providing survivors with equal access to justice and reinforcing that marriage is not a defense to sexual violence.

Opponents of the bill believe it eliminates a safe harbor that allows a person with I/DD to engage in consensual sex with their spouse without fear that their spouse will be prosecuted. Since there is no statutory definition of capacity for consent, opponents fear that eliminating the presumption of capacity within marriage means courts will use the outdated and discriminatory capacity standard referenced above to deem any person with I/DD incapable of rendering consent, regardless of their individual understanding and experience. Disability Rights California, writing in opposition to the bill, explains:

No [court] has found that a person with I/DD has capacity to consent or withhold consent to sexual activity, even if they have the ability to consent. The bill in its current form would define all sex with a person with I/DD as rape even within the confines of marriage. This bill does not fix the discriminatory issues of capacity, despite multiple organizations making suggestions and amendments over the months.

DREDF also points out that this bill implicates the state’s history of regulating:

the bodies and intimate choices of people with disabilities, particularly people with intellectual and developmental disabilities. California sought to regulate and prevent sex, marriage, and reproduction by disabled people, consistent with the eugenical mandate to prevent the “breeding” of biologically inferior persons.

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