

SENATE THIRD READING
SB 258 (Wahab, et al.)
As Amended September 02, 2025
Majority vote

SUMMARY

Eliminates the spousal exception from the definition of rape based on the victim's inability to legally consent, as specified, because of a mental disorder or developmental or physical disability.

Major Provisions

- 1) States a person must be incapable of legal consent at the time of the sexual intercourse to constitute rape based on the victim's inability to consent.
- 2) Prohibits any person with a mental disorder or mental or physical disability be presumed unable to give legal consent to sexual intercourse due to that disability.
- 3) States 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 must be considered:
 - a) Any mitigating measures, as specified.
 - b) Voluntary supports in place, as defined.
- 4) States "incapable, because of a mental disorder or developmental or physical disability, of giving legal consent" means a person is, at the time of the intercourse, either unable to understand the nature of the act or transaction involved due to a mental disorder or developmental or physical disability or unable to act freely and voluntarily due to a mental disorder or developmental or physical disability.

COMMENTS

According to the Author

"Marriage should never be a shield for rape. Senate Bill (SB) 258 ends the unequal treatment of spousal rape in California by closing a legal loophole that allows the rape of a spouse who is unable to consent due to a disability. This outdated exception denies justice to disabled survivors of sexual assault, simply because they are married to the perpetrators. All survivors of sexual assault deserve equal access to protections and legal recourse.

"Spousal rape is already underreported, and even more so among people with disabilities, who face significantly higher risks of sexual violence—particularly those with intellectual disabilities, who are over seven times more likely to be assaulted than people without disabilities. Abolishing this two-tiered system of justice is long overdue. More than 40 states have already eliminated similar provisions, affirming that rape is rape, regardless of marital status. SB 258 is essential to correct this harmful and outdated exception, bringing California in line with nearly every other state."

Arguments in Support

According to the *Coalition of Gender Equality*: SB 258 is a follow-up bill to AB 1171 (Garcia) [Chapter 626, Statutes of 2021] which passed in 2021. AB 1171 repealed the spousal rape exception, but left one loophole that allows the spousal rape when the victim cannot consent due to a severe disability. This was not an omission that the author or sponsors wanted, but we ran out of time and committed that we would come back in order to remove that last exception. Former Assemblymember Garcia generally supports SB 258's goal of closing this loophole, as a continuation of her work on AB 1171.

SB 258 protects disabled individuals from being raped by their spouses when they cannot consent to sex due to the impact of a disability. Today, rape of a spouse who is too disabled to consent is not a crime in California. That same rape, if committed by a non-spouse, is a crime. SB 258 simply removes the discriminatory law that allows this rape of disabled married spouses. The bill is strongly supported by numerous disability rights and service organizations, most notably the ARC of California, United Cerebral Palsy, The Association of Regional Center Agencies which coordinate services for, and advocate on behalf of, over 450,000 Californians with intellectual and developmental disabilities. It also has the support of national and state women's rights organizations and numerous domestic violence service providers.

California is currently one of a tiny, shrinking handful of states that provide any form of spousal rape exception. These laws are an archaic holdover from 17th century common law that have no place in a modern penal code. In the last four years since the passage of AB 1171 more than 10 states have repealed their spousal rape exceptions. Now California stands nearly alone with this retrograde statute and is clearly an outlier. SB 258 is necessary to bring California law into alignment with that of other states.

The Public Defenders and their allies oppose the bill in a series of near-identical form letters. The Public Defenders have opposed virtually every effort to repeal California's spousal rape exception for the last 50 years. In 1993, for example, with reference to then-Assembly Member Hilda Solis's AB 187, they wrote that they opposed any effort to eliminate the spousal rape exception because "spousal rape should not be generalized in the same category as rape by a stranger, or date rape. These were outdated views in 1993, and are even more so now.

The opponents, including DRC, claim that SB 258 criminalizes all sex between disabled people. This is simply untrue. This bill respects the ability of all people, including disabled married people to have choice about their bodily autonomy -- to have sex when they choose and not have it thrust on them without their consent. Furthermore the bill provides appropriate protection for accused spouses by requiring that the accused spouse either knew or should have known that the victim was too disabled to consent.

Current law contains an ironclad presumption that a disabled spouse can never be too impaired by their disability to consent to sex. This is unconscionable. According to the opposition, It doesn't matter if the victim is paralyzed from a stroke. It doesn't matter if the victim is unable to understand their surroundings, move, or speak after being hit by a drunk driver. It doesn't matter if they have dementia and no longer recognize their spouse. It doesn't matter if they are unable to scream, fight back, or flee.

It also doesn't matter if the defendant knew for a fact that the victim was too disabled to consent but sexually violated them anyway. According to the opponents, if a victim was competent to get married on her wedding day, then the marriage is itself proof of ongoing ability to consent to sex,

regardless of how distant in time the marriage may have been, what has happened with her health since then, or what the specific facts and circumstances were at the time of the rape. Common sense alone tells you that is wrong. Current law discriminates on the basis of both marital status and disability. SB 258 will finally end that discrimination.

Arguments in Opposition

Arguments in Opposition no longer apply.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES**SENATE FLOOR: 37-0-3**

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Durazo, Hurtado, Reyes

ASM PUBLIC SAFETY: 9-0-0

YES: Schultz, Alanis, Mark González, Haney, Harabedian, Lackey, Nguyen, Ramos, Sharp-Collins

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache
ABS, ABST OR NV: Sanchez, Dixon, Ta, Tangipa

UPDATED

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