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UNFINISHED BUSINESS

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Bill No: SB 258  
Author: Wahab (D), Cervantes (D) and Rubio (D), et al.  
Amended: 9/2/25 in Assembly  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 6-0, 4/29/25  
AYES: Arreguín, Seyarto, Caballero, Gonzalez, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/23/25  
AYES: Caballero, Seyarto, Cabaldon, Grayson, Richardson, Wahab  
NO VOTE RECORDED: Dahle

SENATE FLOOR: 37-0, 6/2/25  
AYES: 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  
NO VOTE RECORDED: Durazo, Hurtado, Reyes

ASSEMBLY FLOOR: 59-0, 9/11/25 – Roll call vote not available

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**SUBJECT:** Crimes: rape

**SOURCE:** National Women’s Political Caucus of California

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**DIGEST:** This bill expands the circumstances under which sexual intercourse with a spouse is rape, to include where a spouse is incapable of giving “legal consent” due to a mental disorder or developmental or physical disability.

*Assembly Amendments* provide that:

- 1) A person with a mental disorder or development or physical disability shall not be presumed to be unable to give legal consent to sexual intercourse due to that disability.

- 2) States that notwithstanding the absence of voluntary supports, as defined, the prosecutor 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.
- 3) States that this provision does not preclude the prosecution of the person committing the act under any other law, including other circumstances where the act constitutes rape.
- 4) Provides that 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:
  - a) Any mitigating measure in place, as defined; and
  - b) Any voluntary supports in place, as described.

#### **ANALYSIS:**

##### Existing law:

- 1) Provides that the punishment for all forms of rape is imprisonment in the state prison for three, six or eight years. (Penal (Pen.) Code § 264.)
- 2) Defines rape as an act of sexual intercourse accomplished under any of the following circumstances:
  - a) If a person who is not the spouse of the person committing the act 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, the prosecuting attorney must prove, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent. This does not preclude the prosecution of a spouse under any other provision of this law or any other law;
  - b) Against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another;
  - c) When the victim is prevented from resisting by an intoxicating or anesthetic substance, controlled substance, and this condition was known, or should have been known, to the accused;

- d) Where the victim was not conscious of the nature of the act, as follows:
    - i) Was unconscious or asleep;
    - ii) Was not aware, knowing, perceiving, or cognizant that the act occurred;
    - iii) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact (the perpetrator tricked, lied to, or concealed information); or,
    - iv) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact (the perpetrator tricked, lied to, or concealed information);
  - e) Against the victim's will by threat of retaliation, as defined; or,
  - f) Against the victim's will by threat of authority, as defined. (Pen. Code § 262, subd. (a).)
- 3) Defines "duress" as "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." (Pen. Code § 262, subd. (b)(1).)
- 4) Defines "menace" as "any threat, declaration, or act that shows an intention to inflict an injury upon another." (Pen. Code § 262, subd. (b)(2).)
- 5) Provides that before probation may be granted for the crime of rape, the court must:
- a) Order a diagnostic study of the defendant, which can include being placed in a facility for up to 90 days;
  - b) Conduct a hearing at the time of sentencing to determine if the defendant would pose a threat to the victim; and,
  - c) Order a psychologist or psychiatrist appointed to include a consideration of the threat to the victim and the defendant's potential for positive response.

(Pen. Code, § 1203.067. subd. (a).

- 6) Provides that if probation is granted for rape, the defendant must complete a sex offender management program, which shall not be less than one year. (Pen. Code, § 1203.067. subd (b)(2).)
- 7) Provides sentences of 15-years-to-life, 25-years-to-life, or life without the possibility of parole for certain sex crimes if specified circumstances are found to be true. This is known as the One-Strike-Sex-Law. Includes within the qualifying offenses under the One-Strike Sex Law rape and spousal rape accomplished by force, duress, menace, or fear of immediate and unlawful bodily injury and rape and spousal rape accomplished by threat of retaliation. (Pen. Code, § 667.61.)
- 8) States a legislative intent that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses. (Pen. Code, § 1192.7, subd. (a)(1).)
- 9) Prohibits plea bargaining when an indictment or information charges any serious felony, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. (Pen. Code, § 1192.7, subd. (a)(2).)
- 10) Classifies rape as a serious felony, a strike. (Pen. Code, §§ 667 & 1192.7, subd. (c)(3).)
- 11) Requires a person convicted of rape to register as a sex offender. (Pen. Code § 290, subd. (c)(1).)
- 12) Requires a person required to register as a sex offender to be listed on the Megan’s law website, except as specified. (Pen. Code, § 290.46.)

This bill:

- 1) Expands the circumstances under which sexual intercourse with a spouse is rape, to include where a spouse is incapable of giving “legal consent” due to a mental disorder or developmental or physical disability.

- 2) Provides that a person with a mental disorder or development or physical disability shall not be presumed to be unable to give legal consent to sexual intercourse due to that disability.
- 3) States that notwithstanding the absence of voluntary supports, as defined, the prosecutor 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.
- 4) Provides that this provision does not preclude the prosecution of the person committing the act under any other law, including other circumstances where the act constitutes rape.
- 5) States that 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:
  - a) Any mitigating measure in place, as defined; and
  - b) Any voluntary supports in place, as described.

## Background

*Legislative History of Spousal Rape.* Before 1979, the law in California did not recognize that a wife could be raped by her husband. AB 546 (Mori) enacted a spousal rape law (former Pen. Code, § 262) and distinguished between marital and non-marital rape (Pen. Code, § 261). “Supporters of the 1979 bill spoke out against historical arguments like irrevocable consent, women as property, and violence in marriage. One line of argument, irrevocable consent, posited that “a woman does not give up her right to consent to sexual intercourse by virtue of marriage, and that the existing definition of rape treats married women in an unequal and unfair fashion.” (Ross, *Making Marital Rape Visible: A History of American Legal and Social Movements Criminalizing Rape in Marriage* (Dec. 2015) Digital Commons @ University of Nebraska – Lincoln; <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1085&context=history> diss at p. 136, citing Senate Committee on Judiciary summary of A.B. 546 at fn. 384 [as of April 18, 2025].) In the years that followed, the Legislature amended the spousal rape law (Pen. Code, § 262) several times. These amendments better defined spousal rape to correspond with and mostly mirror the language of Penal Code section 261 (non-spousal rape). (*Id.* at pp. 127-193.)

Though rape and spousal rape were set forth in separate statutes, the courts viewed them as one offense – rape. (See *People v. Hillard* (1989) 212 Cal.App.3d 780, 784 [“It is evident that the Legislature added . . . section 262 for the sole purpose of eliminating the marital exemption for forcible spousal rape, and not to define a new and separate offense, apart from rape by a stranger, of spousal rape.”].) The Legislature also found and declared “that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.” (Pen. Code, § 263.1.)

Nonetheless, balancing tensions between treating rape as rape irrespective of the marital status with the considerations presented by marital units, limited distinctions remained between the two statutes: probation eligibility and discretionary sex offender registration. California was one of 11 states that still retained some distinction between rape and spousal rape.

(<https://apnews.com/article/legislature-california-sexual-assault-962ff3592c5b86c35097de0e35d4c860> [as of April 18, 2025].)

Then, in 2021, the Legislature passed AB 1171 (C. Garcia, Chapter 626, Statutes of 2021), which repealed the stand-alone spousal rape statute (Pen. Code, § 262) and expanded the definition of rape (Pen. Code, § 261) to include the rape of a spouse in all but one circumstance. The expanded version of the rape statute maintained a limited exemption for the act of sexual intercourse with a spouse who is incapable of giving “legal consent” because of a mental disorder or developmental or physical disability. (Pen. Code, § 261, subd. (a)(1).)

This bill would eliminate that limited distinction.

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: Yes   Local: Yes

According to the Assembly Appropriations Committee:

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.

- 1) 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.
- 2) 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.

**SUPPORT:** (Verified 9/11/25)

National Women's Political Caucus of California (source)

Action Together Bay Area

Alameda County Families Advocating for the Seriously Mentally Ill

American Association of University Women - San Jose

American Association of University Women - California

Asian Americans for Community Involvement

Association of Regional Center Agencies

CA Legislative Women's Caucus

California Civil Liberties Advocacy

California Democratic Party

California District Attorneys Association  
 California National Organization for Women  
 California State Sheriffs' Association  
 Coalition for Gender Equity  
 County of Santa Clara  
 Dawn (Democratic Activists for Women Now)  
 Feminist Majority  
 Joyful Heart Foundation  
 Los Angeles County Democratic Party  
 National Clearinghouse on Marital and Date Rape  
 Ruby's Place  
 San Francisco Senior and Disability Action  
 Santa Barbara Women's Political Committee  
 Santa Clara County Democratic Party  
 Santa Clara County District Attorney's Office  
 Santa Clara; City of  
 Silicon Valley Democratic Club  
 Tahirih Justice Center  
 Voices of Women for Change  
 Weave  
 Women's Equal Justice  
 Women's March Action

**OPPOSITION:** (Verified 9/11/25)

Californians United for a Responsible Budget  
 Disability Rights California  
 Initiate Justice  
 Local 148 LA County Public Defenders Union  
 San Francisco Public Defender's Office  
 Universidad Popular  
 1 Individual

**ARGUMENTS IN SUPPORT:** According to the National Women's Political Caucus of California, the sponsor of this bill:

...Senate Bill (SB) 258 ... closes a loophole in the California Penal Code that permits the rape of a spouse who is unable to consent due to a mental disorder or disability.

Founded in 1973, NWPC CA is the state chapter of the oldest grassroots organization that recruits, trains, and supports pro-choice women candidates at all levels of public office. We also



advocate for policy initiatives that support our bottom line issues, especially reproductive freedom, and that we believe will promote equity in general, particularly for women. This bill supports our policy priorities.

Since the 1970s, 42 states have passed laws to remove spousal rape exceptions, but California has lagged behind. Assembly Bill 1171 (Chapter 626, Statutes of 2021) eliminated most differences between how spousal rape and non-spousal rape are treated in the Penal Code, but left a disparity when a person is unable to consent due to a disability.

An estimated 1 in 10 US women have experienced rape by a spouse. For disabled women, this number is likely higher, as people with disabilities are four times as likely to be sexually assaulted, according to the U.S. Bureau of Justice Statistics National Crime Victimization Survey.

SB 258 eliminates this distinction, clarifying that rape is rape, regardless of a victim's abilities and their relationship to the offender.

**ARGUMENTS IN OPPOSITION:** According to Disability Rights of California: While we share the goal of preventing sexual violence, especially against people with disabilities, this bill has serious unintended consequences for people with disabilities.

DRC believes this bill fails to truly respect and keep the intellectual and developmental disability (I/DD) community safe. SB 258 undermines the rights and dignity of people with I/DD by reinforcing outdated and discriminatory assumptions about their capacity to consent to sexual relationships. It removes an important legal protection and effectively creates a presumption that individuals with I/DD cannot consent regardless of the context.

Prepared by: Cheryl Anderson / PUB. S. /  
9/11/25 11:57:20

\*\*\*\* END \*\*\*\*