

**Introduced by Senator Cortese**

February 17, 2021

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

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as introduced, Cortese. Sexual assault.

Existing law establishes various sexual assault offenses, including the offense of rape. Under existing law, rape is defined as an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, under certain circumstances, including where the act 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.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 261 of the Penal Code is amended to  
2 read:  
3 261. (a) Rape is an act of sexual intercourse accomplished  
4 with a person *who is* not the spouse of the perpetrator, under any  
5 of the following circumstances:  
6 (1) ~~Where a person~~ *If a victim* is incapable, because of a mental  
7 disorder or developmental or physical disability, of giving legal  
8 consent, and this is known or reasonably should be known to the

1 person committing the act. Notwithstanding the existence of a  
2 conservatorship pursuant to the provisions of the  
3 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
4 5000) of Division 5 of the Welfare and Institutions Code), the  
5 prosecuting attorney shall prove, as an element of the crime, that  
6 a mental disorder or developmental or physical disability rendered  
7 the alleged victim incapable of giving consent.

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

11 (3) Where a person is prevented from resisting by any  
12 intoxicating or anesthetic substance, or any controlled substance,  
13 and this condition was known, or reasonably should have been  
14 known by the accused.

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

19 (A) Was unconscious or asleep.

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

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

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

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

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

1 (7) Where the act is accomplished against the victim’s will by  
2 threatening to use the authority of a public official to incarcerate,  
3 arrest, or deport the victim or another, and the victim has a  
4 reasonable belief that the perpetrator is a public official. As used  
5 in this paragraph, “public official” means a person employed by  
6 a governmental agency who has the authority, as part of that  
7 position, to incarcerate, arrest, or deport another. The perpetrator  
8 does not actually have to be a public official.

9 (b) As used in this section, “duress” means a direct or implied  
10 threat of force, violence, danger, or retribution sufficient to coerce  
11 a reasonable person of ordinary susceptibilities to perform an act  
12 ~~which~~ *that* otherwise would not have been performed, or acquiesce  
13 in an act to which one otherwise would not have submitted. The  
14 total circumstances, including the age of the victim, and his or her  
15 relationship to the defendant, are factors to consider in appraising  
16 the existence of duress.

17 (c) As used in this section, “menace” means any threat,  
18 declaration, or act which shows an intention to inflict an injury  
19 upon another.