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# California State Assembly

## PUBLIC SAFETY



**REGINALD BYRON JONES-SAWYER SR.**  
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### AGENDA

Thursday, May 27, 2021  
Upon Adjournment of Session -- State Capitol, Room 4202

### RE-REFERRED TO COMMITTEE PER A.R. 72

1. AB 1171 Cristina Garcia Rape of a spouse.

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### COVID FOOTER

**SUBJECT:**

We encourage the public to provide written testimony before the hearing by visiting the committee website at <https://apsf.assembly.ca.gov/>. Please note that any written testimony submitted to the committee is considered public comment and may be read into the record or reprinted.

Due to ongoing COVID-19 safety considerations, including guidance on physical distancing, seating for this hearing will be very limited for press and for the public. All are encouraged to watch the hearing from its live stream on the Assembly's website at <https://www.assembly.ca.gov/todaysevents>.

The Capitol will be open for attendance of this hearing, but the public is strongly encouraged to participate via the web portal or phone. Any member of the public attending a hearing in the Capitol will need to wear a mask at all times while in the building. We encourage the public to monitor the committee's website for updates.

Date of Hearing: May 27, 2021  
Counsel: Cheryl Anderson & Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1171 (C. Garcia) – As Amended May 27, 2021

RE-REFERRED TO COMMITTEE PER A.R. 77.2

**SUMMARY:** Repeals the existing stand-alone provision of law relating to spousal rape and expands the definition of rape to include the rape of a spouse, thereby making a state prison sentence mandatory in most circumstances, and requiring the convicted spouse to register as a sex offender. Specifically, **this bill**:

- 1) Repeals the provisions relating to spousal rape.
- 2) Expands the circumstances under which sexual intercourse with a spouse is rape, to include:
  - a) Where a spouse is incapable of giving legal consent due to a mental disorder or developmental or physical disability;
  - b) Where a spouse submits under false pretenses (one spouse gains consent by pretending to be someone known to the victim other than their spouse); or,
  - c) Where the accused spouse fraudulently represented that the sexual penetration served a professional purpose.
- 3) Prohibits probation and requires a mandatory state prison sentence for rape of a spouse accomplished under the following circumstances:
  - a) Against the spouse's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the spouse or another;
  - b) When a spouse is prevented from resisting by an intoxicating, anesthetic, or controlled substance, and this condition was known, or should have been known, to the accused spouse;
  - c) Where the spouse was unconscious of the nature of the act; and,
  - d) Against the spouse's will by threat of retaliation, as defined.
- 4) Eliminates, except in unusual circumstances, the court's discretion to grant probation and requires a mandatory state prison sentence where spousal rape is accomplished against the spouse's will by threat of authority, as defined.
- 5) Requires a person convicted of rape of their spouse to register as a sex offender.

- 6) Requires a person convicted of rape of their spouse, to be listed on the Megan's Law website, except as specified.
- 7) Makes a number of technical and conforming changes.

**EXISTING LAW:**

- 1) Provides that the punishment for all forms of rape, including spousal rape, is imprisonment in the state prison for three, six or eight years. (Pen. Code § 264.)
- 2) Defines rape of a spouse as the act of sexual intercourse with a spouse accomplished under any of the following circumstances:
  - a) Against a the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another;
  - b) 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;
  - c) Where the victim was unconscious 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; or,
    - 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);
  - d) Against the victim's will by threat of retaliation, as defined; or,
  - e) Against the victim's will by threat of authority, as defined. (Pen. Code § 262, subd. (a).)
- 3) Provides that in addition to the acts that would constitute rape if committed against a spouse, an act of sexual intercourse with a non-spouse accomplished under any of the following circumstances is also rape:
  - a) Where the victim is incapable of giving legal consent due to a mental disorder or developmental or physical disability;
  - b) By false pretenses (where the perpetrator gains consent by pretending to be someone known to the victim other than the perpetrator); or,
  - c) Where the victim is unconscious of the nature of the act because the perpetrator fraudulently represented that the sexual penetration served a professional purpose. (Pen. Code, § 261, subd. (a).)

- 4) Prohibits the court from granting probation for rape and spousal rape if the perpetrator personally used a firearm during the commission of the crime, or personally inflicted great bodily injury. (Pen. Code, §§ 1203.06, subd. (a)(1)(F) & 1203.075, subd. (a)(6).)
- 5) Prohibits the court from granting probation for rape committed under the following circumstances:
  - a) Against a person's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another;
  - b) When a person 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;
  - c) Where the person was unconscious of the nature of the act; or,
  - d) Against the victim's will by threat of retaliation, as defined. (Pen. Code, § 1203.065, subd. (a).)
- 6) Allows the court in unusual circumstances to grant probation for rape committed against the victim's will by threat of authority. (Pen. Code § 1203.065, subd. (b)(1).)
- 7) Provides that before probation may be granted for the crime of rape or spousal 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).)
- 8) Provides that if probation is granted for rape or spousal 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).)
- 9) Provides that if probation is granted upon a conviction of spousal rape, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:
  - a) That the defendant make payments to a domestic violence shelter, up to a maximum of one thousand dollars (\$1,000); and/or,
  - b) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense. (Pen. Code § 262, subd. (d).)

- 10) States that for any order to pay a fine, make payments to a domestic violence shelter, or pay restitution as a condition of probation the court shall determine the defendant's ability to pay. Payments to a domestic violence shelter shall not be ordered if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Community property may not be used to discharge the liability of the offending spouse until all separate property of the offending spouse is exhausted. (Pen. Code § 262, subd. (d).)
- 11) 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.)
- 12) States 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).)
- 13) 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).)
- 14) Classifies rape as a serious felony, strike. (Pen. Code, §§ 667 & 1192.7, subd. (c)(3).)
- 15) Requires a person convicted of rape to register as a sex offender; but requires a person convicted of spousal rape to register as a sex offender only if they commit the offense by use of force or violence and served a state prison sentence. (Pen. Code § 290, subd. (c)(1).)
- 16) 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.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Rape is universally acknowledged as a crime of violence that is both physically and psychologically harmful to the victim. Here in California, rapists who are convicted under spousal rape law may face less severe sentencing. Which is why AB 1171 is so important. It should not matter if a rapist is married to the victim, rape is rape, regardless of marital status.

"When spousal rape is not treated as seriously as other forms of rape, it invalidates the victims' traumatic experiences and continues to promote rape culture. Moreover, a rapist should not be shielded from punishment simply because the rapist is married to the victim."

**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 (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=historydiss> at p. 136, citing Senate Committee on Judiciary summary of A.B. 546 at fn. 384 [as of May 26, 2021].) In the years that followed, the Legislature has amended the spousal rape law (Pen. Code, § 262) several times. These amendments have 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 are set forth in separate statutes, the court has 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 has 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 have remained between the two statutes: probation eligibility and discretionary sex offender registration. California is one of 11 states that still retains some distinction between rape and spousal rape. (<https://apnews.com/article/legislature-california-sexual-assault-962ff3592c5b86c35097de0e35d4c860> [as of May 19, 2021].) This bill seeks to eliminate those distinctions.

- 2) **Decreasing the Court’s Discretion to Grant Probation in Spousal Cases and Making State Prison Mandatory in Some Circumstances:** Under current law, spousal rape and rape are punishable by imprisonment in the state prison for three, six, or eight years (Pen. Code, § 264). In both circumstances, probation is prohibited if the perpetrator uses a firearm in the commission of the offense or inflicts great bodily injury upon the victim. (Pen. Code, §§ 1203.06, subd. (a)(1)(F) & 1203.075, subd. (a)(6).)

In other specified rape cases, the trial court may not grant probation; a state prison sentence is mandatory. This includes: where the act is accomplished by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury of another person; where the victim is prevented from resisting by any intoxicating or controlled substance; where the victim is unconscious of the nature of the act; or where there is threat of retaliation. (Pen. Code, §§ 1203.065, subd. (a), 261, subd. (a)(2), (3), (4), & (6).) If the rape is accomplished by threat of authority, the court may only grant probation in unusual circumstances where the interests of justice would best be served. (Pen. Code, §§ 1203.065, subd. (b) & 261, subd. (a)(7).) The court may grant probation in cases where rape is committed by false pretenses

or where the victim is incapable of giving legal consent due a mental disorder or a developmental or physical disability.

In contrast, besides cases involving use of a firearm or infliction of great bodily injury, under current law, the court has discretion to grant probation in spousal rape cases in appropriate circumstances. This discretion is not without limits. In order to do so, the court must order a diagnostic study of the defendant which can include up to 90 days in a facility. (See Pen. Code, §§ 1203.067. subd. (a)(1) & 1203.03.) The court must also order a psychologist or psychiatrist to evaluate the defendant to determine their potential for positive response and their threat to the victim. (Pen. Code, § 1203.067. subd. (a)(3).) At the time of sentencing, the court must conduct a hearing to determine if probation would pose a threat to the victim. (Pen. Code, § 1203.067. subd. (a)(2).) If probation is granted, the defendant must complete a sex offender management program, which shall not be less than one year. (Pen. Code, § 1203.067. subd. (b).)

This bill would severely limit the court's discretion to grant probation in spousal rape cases, making state prison mandatory in most circumstances. Requiring mandatory state prison sentences for cases of spousal rape raises the question of whether there could be no conceivable set of facts and circumstances where judicial discretion in these spousal cases would be appropriate. In Virginia, for example, the law permits, under certain circumstances which includes "consideration of the views of the complaining witness," a counseling or therapy program to replace punishment. However, "the court [must] find[] such action will promote maintenance of the family unit and be in the best interest of the complaining witness." (VA Code, § 18.2.61(C).)

Should the bill be amended to make rape of a spouse presumptively ineligible for probation unless the victim-spouse consents? By allowing probation only in cases in which the victim requests it, this empowers the victim to decide whether it is in their interest, or in the interest of their child or children, to have the perpetrator-spouse go to prison or be granted probation, which can include a period of incarceration in the county jail. Victims are not homogenous and there are many reasons why a victim-spouse may not want her or his abuser go to prison, such as financial reasons or because of a parent-child relationship. "Most families experience financial losses as a result of parental incarceration and the loss is greatest for those families who try to maintain the convicted individual as a family member."

(<https://aspe.hhs.gov/basic-report/prisoners-and-families-parenting-issues-during-incarceration#Financial> [as of May 18, 2021].) This bill would allow no flexibility for maintenance of the family unit and consideration of the complaining spouse's views on probation versus incarceration. Arguably, disregarding the wishes of the victim-spouse is patronizing and may result in further collateral harm.

- 3) **Requiring Mandatory Sex Offender Registration in all Spousal Rape Cases:** California has required sex offender registration since 1947. The purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. (*Wright vs. Superior Court* (1997) 15 Cal.4th521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws*, 38 McGeorge L. Rev. 276, 278.)

All forms of non-spousal rape are subject to mandatory sex offender registration (Pen. Code, § 290, subd.(c)). Under current law, a person convicted of spousal rape is subject to mandatory sex offender registration if the offense is committed by means of force or violence and the person is sentenced to state prison (Pen. Code, § 290, subd.(c)). The court may also impose sex offender registration in any case of spousal rape where the court finds “the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.” (Pen. Code, § 290.006.)

By repealing the spousal rape statute and including it in the non-spousal rape statute, this bill would require mandatory sex offender registration in all instances of spousal rape. The period of registration could be from 20 years to life depending on the circumstances. (Pen. Code, § 290.) Further, a person required to register as a sex offender for spousal rape could also be included on the Megan’s law website. (Pen. Code, § 290.46, subs. (c)(1) & (d)(1)(A).)

One of the unintended consequences of mandatory registration in cases of spousal rape is punishing the children whose parent is a registered sex offender. “Registration laws can have a severe impact on the families of registrants. [footnote omitted]” (<https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us#> at p. 58 [as of May 18, 2021].)

Offender registration laws can have especially harmful impacts on the children of registrants. A 2009 study found that 75 percent of the children of registrants had lost friendships as a result of a parent’s status as a registered sex offender. Additionally, 59 percent reported that other children at school treated them differently when it was discovered that they had a parent on the registry...Children of registrants reportedly experience adverse consequences including stigmatization, violence, harassment, and differential treatment by teachers and classmates. In one instance, a teenage girl in Texas shot herself to death after her father’s photo appeared on the state Internet registry, embarrassing her at school.

(*Id.* at pp. 61-62.)

Even when there are no children in the family, a victim-spouse may not want the perpetrator spouse to have to register as a sex offender because of financial consequences. It can be hard to find or maintain a job as a registered sex offender. Many states, including California, have law prohibiting registered sex offenders from certain types of employment. Being on the sex offender registry in California takes almost all licensing opportunities away. California licenses over 200 occupations and professions. A licensing agency may deny a license if it determines that the registrant committed an act “substantially related” to the duties of that occupation or profession. (Bus. & Prof. Code, § 480, subd. (a)(1)(A).) In addition, registrants are specifically prohibited from many occupations and professions.<sup>1</sup>

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<sup>1</sup> Some examples include: dentist (Bus. & Prof. Code, § 1687); dental hygienist (Bus. & Prof. Code, § 1958.1); emergency medical technician/paramedic (22 CCR § 100174); insurance broker and bail agent (10 CCR § 2183.1 & 2183.2); medical doctor (Bus. & Prof. Code, § 2232); optometrist (Bus. & Prof. Code, § 3046); nurse (Bus. & Prof. Code, § 2760.1, subd. (i)).



- 4) **Expanding the Definition of Spousal Rape:** Unlike the rape statute, the spousal rape statute does not include the following circumstances: where the victim is incapable of giving legal consent due to a mental disorder or physical disability; by false pretenses (the perpetrator gains consent by pretending to be someone known to the victim other than the accused); or by fraudulent representation that it served a professional purpose. This bill would classify the aforementioned circumstances as rape when occurring between spouses.

Rape by false pretenses seems inapplicable to spouses. Presumably, the victim and offender would know each other. Similarly, although in theory rape by fraudulent representation of a professional purpose between spouses seems plausible, it too is largely inapplicable.

However, expanding rape to circumstances where a spouse is incapable of giving legal consent due to a mental disorder or physical disability could have unintended consequences. Some people might become disabled during their marriage due to age, disease, or accident. For example, one spouse might develop Parkinson's Disease, Alzheimer's Disease, or another form of dementia. In such cases, it might not be easy for one spouse to determine if the other is freely consenting to sexual intercourse.

Under these circumstances, the laws may not even be understood by the people they seek to protect. Arguably, education is a better and more effective means to protect disabled individuals from sexual abuse. Knowledge of the law combined with education would help to ensure that disabled individuals are able to exercise their rights and ensure that those rights are not infringed upon. (See Linder, Ann, *Capacity to Consent to Sexual Activity Among Those with Developmental Disabilities* (2018) Stanford Intellectual and Developmental Disabilities Law and Policy Project, Stanford Law School; <https://law.stanford.edu/wp-content/uploads/2018/11/Ann-Linder-Capacity-to-Consent-to-Sexual-Activity-Among-those-with-Developmental-Disabilities.pdf> [as of May 18, 2021].)

- 5) **State Prison Terms Imposed for Spousal Rape under Current Law:** According to the author's office, this bill is needed so that a person who rapes their spouse is not "shielded from punishment." The maximum exposure for rape and spousal rape are the same: 3, 6 or 8 years in state prison. (Pen. Code, § 264.) While spousal rape cases are eligible for probation, the courts do exercise their discretion to sentence perpetrators to state prison. According to information provided to this Committee by the California Department of Corrections and Rehabilitation, as of April 30, 2021, there were 157 counts of conviction being served in state prison for spousal rape (66 as the principal or longest term being served and 91 as a subordinate or lesser term). This data reflects the court's authority under current law to impose a state prison sentence for spousal rape where appropriate.

Rather than "shield a defendant" from punishment where the spouse is the victim, this bill ties the court's hands in most situations to do anything other than impose a state prison sentence irrespective of the facts and circumstances of any individual case or input of the victim spouse.

- 6) **Argument in Support:** According to the *Los Angeles County District Attorney's Office*, "California is one of eleven states that distinguishes 'spousal rape' from 'rape.' Nonconsensual sex is rape. Rape is universally acknowledged as a crime of violence that is both physically and psychologically harmful to the victim.

“A sex offender who rapes his spouse faces a less severe punishment than an offender who rapes a non-spouse cohabitant, ex-girlfriend, acquaintance, or stranger. The origin for this disparate treatment is rooted in an antiquated view the marital relationship is an automatic mitigating factor when a husband rapes his spouse.

“When California originally enacted our spousal rape statute (PC §262) it provided for a shorter incarceration period than California’s rape statute (PC §261). Over the years the period of incarceration between PC §261 and PC §262 have become equalized. However, unlike PC §261, PC §262 remains a probation eligible offense and does not require mandatory sex offender registration.

“This distinction no longer makes sense from either a legal or public policy perspective. The consequences for rape victims and spousal rape victims are the same according to the scientific research. When marital rape is not treated as seriously as other forms of rape, it invalidates the victims’ traumatic experiences and continues to promote rape culture.

“AB 1171 also corrects a loophole in existing law. Unlike California’s rape statute, our spousal rape statute does not include language to address circumstances where the sexual assault occurs when a “victim is incapable of giving legal consent due to a mental disorder or developmental or physical disability.” (See §261(a)(1).) This is very concerning considering that a spouse may suffer an accident or other tragedy and become incapable of giving legal consent due to a mental disorder or developmental or physical disability after marriage. In such circumstances, existing law prevents the filing of a PC§ 261 rape charge because the victim is “the spouse of the perpetrator” and the People would be precluded from filing a PC§ 262 spousal rape charge because the other elements of the offense are not met.”

- 7) **Argument in Opposition:** According to the *California Public Defenders Association*, “Although CPDA understands the desire to recognize the trauma of spousal rape, AB 1171 is bad public policy because it takes discretion away from judges and it imposes a one size fits all sentence on individuals in the criminal justice system. There are many reasons that judges are best situated to evaluate each case on its merits. Moreover, taking away discretion from judges may have the unintended consequence of disincentivizing the reporting of spousal rape by the victims who do not wish to punish their spouse or their children by sending their spouse to prison and branding their spouse with the stigma of sex offender registration.

“By taking away judicial discretion in sentencing, AB 1171 will force courts to sentence the spouse to state prison even when the victim has explicitly stated that they do not want prison because of the economic hardship it will impose on the victim and the children or when sentencing the spouse to prison will make the family homeless or when the victim only sought to get help for the spouse. These are all circumstances in which the judge has discretion under existing law to evaluate in sentencing the spouse to prison or granting probation.

“Even more draconian, AB 1171 will require mandatory sex offender registration for spousal rape. Among the many repercussions, requiring mandatory sex offender registration may preclude the individual from having future contact with either their children with the victim spouse or their children from a different union....

“Generally, California’s sex offender registration requirements make sense only when applied to those who, based on prior sexually motivated criminal conduct, are reasonably believed to pose a risk of committing other sexually motivated crimes in the future. The list of crimes for which registration is required is already extensive, encompassing nearly every conceivable sexually motivated crime. In addition, under existing law, *judges already have the authority to order sex offender registration of any defendant who has been convicted of any crime believed to be driven by sexual compulsion or motivated by a desire for sexual gratification*, even if the crime is not among those listed in Penal Code section 290.

“For California’s sex offender registration laws to bear any rational relationship to any legitimate government interest, other than punishment, they must apply only to those convicted of a sex offense who are believed to pose a danger of reoffending with another sex offense. The purpose of sex offender registration is in no way served by requiring sex offender registration for individuals who pose no risk of reoffense, and their mandatory inclusion in California’s already bloated-beyond-belief sex offender registry actually impacts public safety in a negative way – diverting scarce law enforcement resources to individuals who pose little or no risk of sexually reoffending....

“Eliminating spousal rape will criminalize the sex lives of mentally, developmentally or physically disabled spouses since rape under Penal Code section 261(a)(1) is defined as having sex with someone who legally is incapable of consenting. Some people with such disabilities live with and are married to other disabled people but others are married to non-disabled spouses. Additionally, some people might become disabled due to age, disease or accident. Does it make sense to criminalize their consensual sex with their partners?

“Already there is a tension in California law between the desire to protect the disabled and respecting their rights to control their own sex lives. California courts have held that the developmentally disabled or delayed individual ‘must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.’ (*People v. Thompson*, 142 Cal.App.4<sup>th</sup> 142.) The *Thompson* court found that a woman who lived in a group home and worked in a sheltered workshop, read at the level of a 7 or 8 year old, understood what sex was but did not understand the disease potential could not consent to sex even though she had given legal consent in other matters on various forms.”

8) **Related Legislation:** SB 530 (Cortese), is substantially similar to this bill; SB 530 would expand the non-spousal rape provisions to include the rape of a spouse and repeal the spousal rape provisions. SB 530 was not heard in the Senate Committee on Public Safety at the request of the author.

9) **Prior Legislation:**

a) SB 459 (Galgiani) Chapter 646, Statutes of 2019, made the five-year enhancement for the infliction of great bodily injury (GBI) in the commission of specified sex offenses applicable to the crime of spousal rape where the victim was prevented from resisting by the use of any intoxicating or anesthetic substance or a controlled substance.

b) AB 2888 (Low), Chapter 863, Statutes of 2016, prohibited probation for certain rape offenses.

- c) AB 701 (C. Garcia), Chapter 848, Statutes of 2016, provides all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.
- d) AB 2599 (Gipson), of the 2015-2016 Legislative Session, would have provided that rape is accomplished where the person was incapable of giving consent because of intoxication or where the person is incapable of giving consent because the victim was unconscious of the nature of the act. AB 2599 was not heard in this committee.
- e) SB 1402 (Kuehl), Chapter 45, Statutes of 2006, deleted the requirement that spousal rape only be prosecuted where the victim reported the attack to a specified person within one year of the offense or where the offense is corroborated by independent evidence that would otherwise be admissible at trial.
- f) SB 208 (Solis), Chapter 177, Statutes of 1995, amended existing law regarding what shall constitute spousal rape, to include a situation where the accused knows or reasonably should have known that the victim is unable to resist because they are under the influence of an intoxicating or anesthetic substance, or a controlled substance.
- g) SB 187 (Solis), Chapter 595, Statutes of 1993, amended the definition of spousal rape in order to more closely track the definition of rape, with specified exceptions.

## REGISTERED SUPPORT / OPPOSITION:

### Support

California Coalition Against Sexual Assault (CALCASA)  
 California Commission on the Status of Women and Girls  
 California National Organization for Women  
 Democratic Activist for Women Now (DAWN)  
 Enough is Enough Voter Project  
 Feminist Majority Foundation  
 Los Angeles County District Attorney's Office  
 National Organization for Women  
 Office of Lieutenant Governor Eleni Kounalakis  
 Prosecutors Alliance of California  
 San Francisco District Attorney's Office  
 Santa Clara County Democratic Party  
 Santa Clara County District Attorney's Office  
 Santa Clara County Supervisor Susan Ellenberg, District 4  
 Silicon Valley Democratic Club  
 South Bay Labor Council  
 Women's March San Jose

1 private individual

**Opposition**

California Attorneys for Criminal Justice  
California Public Defenders Association

**Analysis Prepared by:** Cheryl Anderson / PUB. S. / (916) 319-3744, Sandy Uribe / PUB. S. / (916) 319-3744