

ASSEMBLY BILL

No. 765

Introduced by Assembly Member Achadjian

February 17, 2011

An act to amend Sections 243 and 261 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 765, as introduced, Achadjian. Crimes: domestic battery and rape.

Existing law defines battery as any willful and unlawful use of force or violence upon the person of another. Existing law provides that when battery is committed against a spouse, a person with whom the defendant is cohabitating, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail for a period of not more than one year, or both that fine and imprisonment.

This bill would provide that a battery committed by the defendant against a person described above, after having entered, without consent, an inhabited dwelling house, or trailer coach, as defined, or the inhabited portion of any other building, is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding one year, or prison for 16 months, or 2 or 3 years, or both that fine and imprisonment.

By increasing the penalty for a crime, this bill would impose a state-mandated local program.

Existing law provides various circumstances that constitute rape including an act of sexual intercourse accomplished with a person who

is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim’s spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would instead provide that this type of rape occurs where the person submits under the belief that the person committing the act is someone other than the perpetrator, as provided.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 243 of the Penal Code is amended to
2 read:

3 243. (a) A battery is punishable by a fine not exceeding two
4 thousand dollars (\$2,000), or by imprisonment in a county jail not
5 exceeding six months, or by both that fine and imprisonment.

6 (b) When a battery is committed against the person of a peace
7 officer, custodial officer, firefighter, emergency medical technician,
8 lifeguard, process server, traffic officer, code enforcement officer,
9 or animal control officer engaged in the performance of his or her
10 duties, whether on or off duty, including when the peace officer
11 is in a police uniform and is concurrently performing the duties
12 required of him or her as a peace officer while also employed in
13 a private capacity as a part-time or casual private security guard
14 or patrolman, or a nonsworn employee of a probation department
15 engaged in the performance of his or her duties, whether on or off
16 duty, or a physician or nurse engaged in rendering emergency
17 medical care outside a hospital, clinic, or other health care facility,
18 and the person committing the offense knows or reasonably should
19 know that the victim is a peace officer, custodial officer, firefighter,
20 emergency medical technician, lifeguard, process server, traffic
21 officer, code enforcement officer, or animal control officer engaged

1 in the performance of his or her duties, nonsworn employee of a
2 probation department, or a physician or nurse engaged in rendering
3 emergency medical care, the battery is punishable by a fine not
4 exceeding two thousand dollars (\$2,000), or by imprisonment in
5 a county jail not exceeding one year, or by both that fine and
6 imprisonment.

7 (c) (1) When a battery is committed against a custodial officer,
8 firefighter, emergency medical technician, lifeguard, process server,
9 traffic officer, or animal control officer engaged in the performance
10 of his or her duties, whether on or off duty, or a nonsworn
11 employee of a probation department engaged in the performance
12 of his or her duties, whether on or off duty, or a physician or nurse
13 engaged in rendering emergency medical care outside a hospital,
14 clinic, or other health care facility, and the person committing the
15 offense knows or reasonably should know that the victim is a
16 nonsworn employee of a probation department, custodial officer,
17 firefighter, emergency medical technician, lifeguard, process server,
18 traffic officer, or animal control officer engaged in the performance
19 of his or her duties, or a physician or nurse engaged in rendering
20 emergency medical care, and an injury is inflicted on that victim,
21 the battery is punishable by a fine of not more than two thousand
22 dollars (\$2,000), by imprisonment in a county jail not exceeding
23 one year, or by both that fine and imprisonment, or by
24 imprisonment in the state prison for 16 months, or two or three
25 years.

26 (2) When the battery specified in paragraph (1) is committed
27 against a peace officer engaged in the performance of his or her
28 duties, whether on or off duty, including when the peace officer
29 is in a police uniform and is concurrently performing the duties
30 required of him or her as a peace officer while also employed in
31 a private capacity as a part-time or casual private security guard
32 or patrolman and the person committing the offense knows or
33 reasonably should know that the victim is a peace officer engaged
34 in the performance of his or her duties, the battery is punishable
35 by a fine of not more than ten thousand dollars (\$10,000), or by
36 imprisonment in a county jail not exceeding one year or in the
37 state prison for 16 months, or two or three years, or by both that
38 fine and imprisonment.

39 (d) When a battery is committed against any person and serious
40 bodily injury is inflicted on the person, the battery is punishable

1 by imprisonment in a county jail not exceeding one year or
2 imprisonment in the state prison for two, three, or four years.

3 (e) (1) When a battery is committed against a spouse, a person
4 with whom the defendant is cohabiting, a person who is the parent
5 of the defendant's child, former spouse, fiancé, or fiancée, or a
6 person with whom the defendant currently has, or has previously
7 had, a dating or engagement relationship, the battery is punishable
8 by a fine not exceeding two thousand dollars (\$2,000), or by
9 imprisonment in a county jail for a period of not more than one
10 year, or by both that fine and imprisonment. *Every person who*
11 *violates this subdivision after having entered, without consent, an*
12 *inhabited dwelling house, or trailer coach as defined in Section*
13 *635 of the Vehicle Code, or the inhabited portion of any other*
14 *building, is punishable by a fine not exceeding two thousand*
15 *dollars (\$2,000) or by imprisonment in a county jail not exceeding*
16 *one year, or in the state prison for 16 months, or two or three*
17 *years, or by both that fine and imprisonment. If probation is*
18 *granted, or the execution or imposition of the sentence is*
19 *suspended, it shall be a condition thereof that the defendant*
20 *participate in, for no less than one year, and successfully complete,*
21 *a batterer's treatment program, as defined in Section 1203.097, or*
22 *if none is available, another appropriate counseling program*
23 *designated by the court. However, this provision shall not be*
24 *construed as requiring a city, a county, or a city and county to*
25 *provide a new program or higher level of service as contemplated*
26 *by Section 6 of Article XIII B of the California Constitution.*

27 (2) Upon conviction of a violation of this subdivision, if
28 probation is granted, the conditions of probation may include, in
29 lieu of a fine, one or both of the following requirements:

30 (A) That the defendant make payments to a battered women's
31 shelter, up to a maximum of five thousand dollars (\$5,000).

32 (B) That the defendant reimburse the victim for reasonable costs
33 of counseling and other reasonable expenses that the court finds
34 are the direct result of the defendant's offense.

35 For any order to pay a fine, make payments to a battered
36 women's shelter, or pay restitution as a condition of probation
37 under this subdivision, the court shall make a determination of the
38 defendant's ability to pay. In no event shall any order to make
39 payments to a battered women's shelter be made if it would impair
40 the ability of the defendant to pay direct restitution to the victim

1 or court-ordered child support. Where the injury to a married person
2 is caused in whole or in part by the criminal acts of his or her
3 spouse in violation of this section, the community property may
4 not be used to discharge the liability of the offending spouse for
5 restitution to the injured spouse, required by Section 1203.04, as
6 operative on or before August 2, 1995, or Section 1202.4, or to a
7 shelter for costs with regard to the injured spouse and dependents,
8 required by this section, until all separate property of the offending
9 spouse is exhausted.

10 (3) Upon conviction of a violation of this subdivision, if
11 probation is granted or the execution or imposition of the sentence
12 is suspended and the person has been previously convicted of a
13 violation of this subdivision and sentenced under paragraph (1),
14 the person shall be imprisoned for not less than 48 hours in addition
15 to the conditions in paragraph (1). However, the court, upon a
16 showing of good cause, may elect not to impose the mandatory
17 minimum imprisonment as required by this subdivision and may,
18 under these circumstances, grant probation or order the suspension
19 of the execution or imposition of the sentence.

20 (4) The Legislature finds and declares that these specified crimes
21 merit special consideration when imposing a sentence so as to
22 display society's condemnation for these crimes of violence upon
23 victims with whom a close relationship has been formed.

24 (f) As used in this section:

25 (1) "Peace officer" means any person defined in Chapter 4.5
26 (commencing with Section 830) of Title 3 of Part 2.

27 (2) "Emergency medical technician" means a person who is
28 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses
29 a valid certificate or license in accordance with the standards of
30 Division 2.5 (commencing with Section 1797) of the Health and
31 Safety Code.

32 (3) "Nurse" means a person who meets the standards of Division
33 2.5 (commencing with Section 1797) of the Health and Safety
34 Code.

35 (4) "Serious bodily injury" means a serious impairment of
36 physical condition, including, but not limited to, the following:
37 loss of consciousness; concussion; bone fracture; protracted loss
38 or impairment of function of any bodily member or organ; a wound
39 requiring extensive suturing; and serious disfigurement.

1 (5) “Injury” means any physical injury which requires
2 professional medical treatment.

3 (6) “Custodial officer” means any person who has the
4 responsibilities and duties described in Section 831 and who is
5 employed by a law enforcement agency of any city or county or
6 who performs those duties as a volunteer.

7 (7) “Lifeguard” means a person defined in paragraph (5) of
8 subdivision ~~(e)~~ (d) of Section 241.

9 (8) “Traffic officer” means any person employed by a city,
10 county, or city and county to monitor and enforce state laws and
11 local ordinances relating to parking and the operation of vehicles.

12 (9) “Animal control officer” means any person employed by a
13 city, county, or city and county for purposes of enforcing animal
14 control laws or regulations.

15 (10) “Dating relationship” means frequent, intimate associations
16 primarily characterized by the expectation of affectional or sexual
17 involvement independent of financial considerations.

18 (11) (A) “Code enforcement officer” means any person who
19 is not described in Chapter 4.5 (commencing with Section 830) of
20 Title 3 of Part 2 and who is employed by any governmental
21 subdivision, public or quasi-public corporation, public agency,
22 public service corporation, any town, city, county, or municipal
23 corporation, whether incorporated or chartered, who has
24 enforcement authority for health, safety, and welfare requirements,
25 and whose duties include enforcement of any statute, rules,
26 regulations, or standards, and who is authorized to issue citations,
27 or file formal complaints.

28 (B) “Code enforcement officer” also includes any person who
29 is employed by the Department of Housing and Community
30 Development who has enforcement authority for health, safety,
31 and welfare requirements pursuant to the Employee Housing Act
32 (Part 1 (commencing with Section 17000) of Division 13 of the
33 Health and Safety Code); the State Housing Law (Part 1.5
34 (commencing with Section 17910) of Division 13 of the Health
35 and Safety Code); the Mobilehomes-Manufactured Housing Act
36 (Part 2 (commencing with Section 18000) of Division 13 of the
37 Health and Safety Code); the Mobilehome Parks Act (Part 2.1
38 (commencing with Section 18200) of Division 13 of the Health
39 and Safety Code); and the Special Occupancy Parks Act (Part 2.3

1 (commencing with Section 18860) of Division 13 of the Health
2 and Safety Code).

3 (g) It is the intent of the Legislature by amendments to this
4 section at the 1981–82 and 1983–84 Regular Sessions to abrogate
5 the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and
6 *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior
7 judicial interpretations of this section as they relate to criminal
8 sanctions for battery on peace officers who are employed, on a
9 part-time or casual basis, while wearing a police uniform as private
10 security guards or patrolmen and to allow the exercise of peace
11 officer powers concurrently with that employment.

12 SEC. 2. Section 261 of the Penal Code is amended to read:

13 261. (a) Rape is an act of sexual intercourse accomplished
14 with a person not the spouse of the perpetrator, under any of the
15 following circumstances:

16 (1) Where a person is incapable, because of a mental disorder
17 or developmental or physical disability, of giving legal consent,
18 and this is known or reasonably should be known to the person
19 committing the act. Notwithstanding the existence of a
20 conservatorship pursuant to the provisions of the
21 Lanterman-Petris-Short Act (Part 1 (commencing with Section
22 5000) of Division 5 of the Welfare and Institutions Code), the
23 prosecuting attorney shall prove, as an element of the crime, that
24 a mental disorder or developmental or physical disability rendered
25 the alleged victim incapable of giving consent.

26 (2) Where it is accomplished against a person’s will by means
27 of force, violence, duress, menace, or fear of immediate and
28 unlawful bodily injury on the person or another.

29 (3) Where a person is prevented from resisting by any
30 intoxicating or anesthetic substance, or any controlled substance,
31 and this condition was known, or reasonably should have been
32 known by the accused.

33 (4) Where a person is at the time unconscious of the nature of
34 the act, and this is known to the accused. As used in this paragraph,
35 “unconscious of the nature of the act” means incapable of resisting
36 because the victim meets one of the following conditions:

37 (A) Was unconscious or asleep.

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

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

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

8 (5) Where a person submits under the belief that the person
9 committing the act is ~~the victim's spouse~~ *someone other than the*
10 *perpetrator*, and this belief is induced by any artifice, pretense, or
11 concealment practiced by the accused, with intent to induce the
12 belief.

13 (6) Where the act is accomplished against the victim's will by
14 threatening to retaliate in the future against the victim or any other
15 person, and there is a reasonable possibility that the perpetrator
16 will execute the threat. As used in this paragraph, "threatening to
17 retaliate" means a threat to kidnap or falsely imprison, or to inflict
18 extreme pain, serious bodily injury, or death.

19 (7) Where the act is accomplished against the victim's will by
20 threatening to use the authority of a public official to incarcerate,
21 arrest, or deport the victim or another, and the victim has a
22 reasonable belief that the perpetrator is a public official. As used
23 in this paragraph, "public official" means a person employed by
24 a governmental agency who has the authority, as part of that
25 position, to incarcerate, arrest, or deport another. The perpetrator
26 does not actually have to be a public official.

27 (b) As used in this section, "duress" means a direct or implied
28 threat of force, violence, danger, or retribution sufficient to coerce
29 a reasonable person of ordinary susceptibilities to perform an act
30 which otherwise would not have been performed, or acquiesce in
31 an act to which one otherwise would not have submitted. The total
32 circumstances, including the age of the victim, and his or her
33 relationship to the defendant, are factors to consider in appraising
34 the existence of duress.

35 (c) As used in this section, "menace" means any threat,
36 declaration, or act which shows an intention to inflict an injury
37 upon another.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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