

**Introduced by Senator Evans**

**(Coauthors: Senators Block, Corbett, De León, DeSaulnier, Galgiani, Hancock, Jackson, Lara, Leno, Pavley, Steinberg, and Wolk)**

January 7, 2013

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An act to amend Section 261 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 59, as introduced, Evans. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual 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 individual submits under the belief that the individual committing the act is the victim's sexually intimate partner.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. 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 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 not the spouse of the perpetrator, under any of the  
 5 following circumstances:  
 6 (1) Where a person is incapable, because of a mental disorder  
 7 or developmental or physical disability, of giving legal consent,  
 8 and this is known or reasonably should be known to the person  
 9 committing the act. Notwithstanding the existence of a  
 10 conservatorship pursuant to the provisions of the  
 11 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
 12 5000) of Division 5 of the Welfare and Institutions Code), the  
 13 prosecuting attorney shall prove, as an element of the crime, that  
 14 a mental disorder or developmental or physical disability rendered  
 15 the alleged victim incapable of giving consent.  
 16 (2) Where it is accomplished against a person’s will by means  
 17 of force, violence, duress, menace, or fear of immediate and  
 18 unlawful bodily injury on the person or another.  
 19 (3) Where a person is prevented from resisting by any  
 20 intoxicating or anesthetic substance, or any controlled substance,  
 21 and this condition was known, or reasonably should have been  
 22 known by the accused.  
 23 (4) Where a person is at the time unconscious of the nature of  
 24 the act, and this is known to the accused. As used in this paragraph,  
 25 “unconscious of the nature of the act” means incapable of resisting  
 26 because the victim meets *any* one of the following conditions:  
 27 (A) Was unconscious or asleep.  
 28 (B) Was not aware, knowing, perceiving, or cognizant that the  
 29 act occurred.  
 30 (C) Was not aware, knowing, perceiving, or cognizant of the  
 31 essential characteristics of the act due to the perpetrator’s fraud in  
 32 fact.  
 33 (D) Was not aware, knowing, perceiving, or cognizant of the  
 34 essential characteristics of the act due to the perpetrator’s fraudulent

1 representation that the sexual penetration served a professional  
2 purpose when it served no professional purpose.

3 (5) Where a person submits under the belief that the person  
4 committing the act is the victim's ~~spouse~~ *sexually intimate partner*,  
5 and this belief is induced by any artifice, pretense, or concealment  
6 practiced by the accused, with intent to induce the belief.

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

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

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

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

32 SEC. 2. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 the only costs that may be incurred by a local agency or school  
35 district will be incurred because this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within  
39 the meaning of Section 6 of Article XIII B of the California  
40 Constitution.

1 SEC. 3. This act is an urgency statute necessary for the  
2 immediate preservation of the public peace, health, or safety within  
3 the meaning of Article IV of the Constitution and shall go into  
4 immediate effect. The facts constituting the necessity are:

5 In order to protect the public safety by minimizing the threat  
6 posed by sexual predators at the earliest possible time, it is  
7 necessary that this act take effect immediately.