

ASSEMBLY BILL

No. 962

Introduced by Assembly Member Maienschein

(Coauthors: Assembly Members Baker, Chávez, Frazier, Beth Gaines, Gallagher, Gonzalez, Grove, Jones, Mathis, Mayes, Patterson, and Waldron)

(Coauthors: Senators Anderson, Bates, Beall, Cannella, Galgiani, Huff, Nielsen, and Vidak)

February 26, 2015

An act to amend Sections 667.61 and 667.9 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 962, as introduced, Maienschein. Sex offenses: disabled victims.

(1) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, makes a defendant punishable by imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law also makes a defendant punishable by imprisonment in the state prison for 15 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other

things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house of the Legislature.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, if the victim is developmentally disabled, as defined. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(2) Existing law makes a defendant punishable by imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if certain circumstances were present, including, among other things, in the commission of that offense any person kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, if the victim is developmentally disabled, as defined. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(3) Existing law requires that a person who commits certain enumerated crimes, including rape, sodomy, oral copulation, and sexual penetration, against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under 14 years of age, receive a one-year sentence enhancement and requires that any person having a prior conviction for any of the enumerated offenses receive a 2-year sentence enhancement.

This bill would add to the enumerated list of crimes rape, sodomy, oral copulation, and sexual penetration, perpetrated against a person

who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(4) 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 667.61 of the Penal Code is amended to
2 read:

3 667.61. (a) Except as provided in subdivision (j), (l), or (m),
4 any person who is convicted of an offense specified in subdivision
5 (c) under one or more of the circumstances specified in subdivision
6 (d) or under two or more of the circumstances specified in
7 subdivision (e) shall be punished by imprisonment in the state
8 prison for 25 years to life.

9 (b) Except as provided in subdivision (a), (j), (l), or (m), any
10 person who is convicted of an offense specified in subdivision (c)
11 under one of the circumstances specified in subdivision (e) shall
12 be punished by imprisonment in the state prison for 15 years to
13 life.

14 (c) This section shall apply to any of the following offenses:

15 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)
16 of Section 261.

17 (2) Spousal rape, in violation of paragraph (1) or (4) of
18 subdivision (a) of Section 262.

19 (3) Rape, spousal rape, or sexual penetration, in concert, in
20 violation of Section 264.1.

21 (4) Lewd or lascivious act, in violation of subdivision (b) of
22 Section 288.

23 (5) Sexual penetration, in violation of subdivision (a) of Section
24 289.

25 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
26 (c), or subdivision (d), of Section 286.

1 (7) Oral copulation, in violation of paragraph (2) or (3) of
2 subdivision (c), or subdivision (d), of Section 288a.

3 (8) Lewd or lascivious act, in violation of subdivision (a) of
4 Section 288.

5 (9) Continuous sexual abuse of a ~~child~~, *child* in violation of
6 Section 288.5.

7 (10) *Rape in violation of paragraph (1) of subdivision (a) of*
8 *Section 261, if the victim was “developmentally disabled,” as*
9 *defined in subdivision (d) of Section 667.9, and that fact is alleged*
10 *in the accusatory pleading and either admitted by the defendant*
11 *in open court or found to be true by the trier of fact.*

12 (11) *Sexual penetration, in violation of subdivision (b) of Section*
13 *289, if the victim was “developmentally disabled,” as defined in*
14 *subdivision (d) of Section 667.9, and that fact is alleged in the*
15 *accusatory pleading and either admitted by the defendant in open*
16 *court or found to be true by the trier of fact.*

17 (12) *Sodomy, in violation of subdivision (g) of Section 286, if*
18 *the victim was “developmentally disabled,” as defined in*
19 *subdivision (d) of Section 667.9, and that fact is alleged in the*
20 *accusatory pleading and either admitted by the defendant in open*
21 *court or found to be true by the trier of fact.*

22 (13) *Oral copulation, in violation of subdivision (g) of Section*
23 *288a, if the victim was “developmentally disabled,” as defined in*
24 *subdivision (d) of Section 667.9, and that fact is alleged in the*
25 *accusatory pleading and either admitted by the defendant in open*
26 *court or found to be true by the trier of fact.*

27 (d) The following circumstances shall apply to the offenses
28 specified in subdivision (c):

29 (1) The defendant has been previously convicted of an offense
30 specified in subdivision (c), including an offense committed in
31 another jurisdiction that includes all of the elements of an offense
32 specified in subdivision (c).

33 (2) The defendant kidnapped the victim of the present offense
34 and the movement of the victim substantially increased the risk of
35 harm to the victim over and above that level of risk necessarily
36 inherent in the underlying offense in subdivision (c).

37 (3) The defendant inflicted aggravated mayhem or torture on
38 the victim or another person in the commission of the present
39 offense in violation of Section 205 or 206.

1 (4) The defendant committed the present offense during the
2 commission of a burglary of the first degree, as defined in
3 subdivision (a) of Section 460, with intent to commit an offense
4 specified in subdivision (c).

5 (5) The defendant committed the present offense in violation
6 of Section 264.1, subdivision (d) of Section 286, or subdivision
7 (d) of Section 288a, and, in the commission of that offense, any
8 person committed any act described in paragraph (2), (3), or (4)
9 of this subdivision.

10 (6) The defendant personally inflicted great bodily injury on
11 the victim or another person in the commission of the present
12 offense in violation of Section 12022.53, 12022.7, or 12022.8.

13 (7) The defendant personally inflicted bodily harm on the victim
14 who was under 14 years of age.

15 (e) The following circumstances shall apply to the offenses
16 specified in subdivision (c):

17 (1) Except as provided in paragraph (2) of subdivision (d), the
18 defendant kidnapped the victim of the present offense in violation
19 of Section 207, 209, or 209.5.

20 (2) Except as provided in paragraph (4) of subdivision (d), the
21 defendant committed the present offense during the commission
22 of a burglary in violation of Section 459.

23 (3) The defendant personally used a dangerous or deadly weapon
24 or a firearm in the commission of the present offense in violation
25 of Section 12022, 12022.3, 12022.5, or 12022.53.

26 (4) The defendant has been convicted in the present case or
27 cases of committing an offense specified in subdivision (c) against
28 more than one victim.

29 (5) The defendant engaged in the tying or binding of the victim
30 or another person in the commission of the present offense.

31 (6) The defendant administered a controlled substance to the
32 victim in the commission of the present offense in violation of
33 Section 12022.75.

34 (7) The defendant committed the present offense in violation
35 of Section 264.1, subdivision (d) of Section 286, or subdivision
36 (d) of Section 288a, and, in the commission of that offense, any
37 person committed any act described in paragraph (1), (2), (3), (5),
38 or (6) of this subdivision or paragraph (6) of subdivision (d).

39 (f) If only the minimum number of circumstances specified in
40 subdivision (d) or (e) that are required for the punishment provided

1 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
2 proved, that circumstance or those circumstances shall be used as
3 the basis for imposing the term provided in subdivision (a), (b),
4 (j), (l), or (m) whichever is greater, rather than being used to impose
5 the punishment authorized under any other provision of law, unless
6 another provision of law provides for a greater penalty or the
7 punishment under another provision of law can be imposed in
8 addition to the punishment provided by this section. However, if
9 any additional circumstance or circumstances specified in
10 subdivision (d) or (e) have been pled and proved, the minimum
11 number of circumstances shall be used as the basis for imposing
12 the term provided in subdivision (a), (j), or (l) and any other
13 additional circumstance or circumstances shall be used to impose
14 any punishment or enhancement authorized under any other
15 provision of law.

16 (g) Notwithstanding Section 1385 or any other provision of law,
17 the court shall not strike any allegation, admission, or finding of
18 any of the circumstances specified in subdivision (d) or (e) for any
19 person who is subject to punishment under this section.

20 (h) Notwithstanding any other provision of law, probation shall
21 not be granted to, nor shall the execution or imposition of sentence
22 be suspended for, any person who is subject to punishment under
23 this section.

24 (i) For any offense specified in paragraphs (1) to (7), inclusive,
25 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
26 subdivision (n), the court shall impose a consecutive sentence for
27 each offense that results in a conviction under this section if the
28 crimes involve separate victims or involve the same victim on
29 separate occasions, as defined in subdivision (d) of Section 667.6.

30 (j) (1) Any person who is convicted of an offense specified in
31 subdivision (c), with the exception of a violation of subdivision
32 (a) of Section 288, upon a victim who is a child under 14 years of
33 age under one or more of the circumstances specified in subdivision
34 (d) or under two or more of the circumstances specified in
35 subdivision (e), shall be punished by imprisonment in the state
36 prison for life without the possibility of parole. Where the person
37 was under 18 years of age at the time of the offense, the person
38 shall be punished by imprisonment in the state prison for 25 years
39 to life.

1 (2) Any person who is convicted of an offense specified in
2 subdivision (c) under one of the circumstances specified in
3 subdivision (e), upon a victim who is a child under 14 years of
4 age, shall be punished by imprisonment in the state prison for 25
5 years to life.

6 (k) As used in this section, “bodily harm” means any substantial
7 physical injury resulting from the use of force that is more than
8 the force necessary to commit an offense specified in subdivision
9 (c).

10 (l) Any person who is convicted of an offense specified in
11 subdivision (n) under one or more of the circumstances specified
12 in subdivision (d) or under two or more of the circumstances
13 specified in subdivision (e), upon a victim who is a minor 14 years
14 of age or older shall be punished by imprisonment in the state
15 prison for life without the possibility of parole. If the person who
16 was convicted was under 18 years of age at the time of the offense,
17 he or she shall be punished by imprisonment in the state prison
18 for 25 years to life.

19 (m) Any person who is convicted of an offense specified in
20 subdivision (n) under one of the circumstances specified in
21 subdivision (e) against a minor 14 years of age or older shall be
22 punished by imprisonment in the state prison for 25 years to life.

23 (n) Subdivisions (l) and (m) shall apply to any of the following
24 offenses:

25 (1) Rape, in violation of paragraph (2) of subdivision (a) of
26 Section 261.

27 (2) Spousal rape, in violation of paragraph (1) of subdivision
28 (a) of Section 262.

29 (3) Rape, spousal rape, or sexual penetration, in concert, in
30 violation of Section 264.1.

31 (4) Sexual penetration, in violation of paragraph (1) of
32 subdivision (a) of Section 289.

33 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
34 Section 286, or in violation of subdivision (d) of Section 286.

35 (6) Oral copulation, in violation of paragraph (2) of subdivision
36 (c) of Section 288a, or in violation of subdivision (d) of Section
37 288a.

38 (7) *Rape in violation of paragraph (1) of subdivision (a) of*
39 *Section 261, if the victim was “developmentally disabled,” as*
40 *defined in subdivision (d) of Section 667.9, and that fact is alleged*

1 *in the accusatory pleading and either admitted by the defendant*
 2 *in open court or found to be true by the trier of fact.*

3 (8) *Sexual penetration, in violation of subdivision (b) of Section*
 4 *289, if the victim was “developmentally disabled,” as defined in*
 5 *subdivision (d) of Section 667.9, and that fact is alleged in the*
 6 *accusatory pleading and either admitted by the defendant in open*
 7 *court or found to be true by the trier of fact.*

8 (9) *Sodomy, in violation of subdivision (g) of Section 286, if the*
 9 *victim was “developmentally disabled,” as defined in subdivision*
 10 *(d) of Section 667.9, and that fact is alleged in the accusatory*
 11 *pleading and either admitted by the defendant in open court or*
 12 *found to be true by the trier of fact.*

13 (10) *Oral copulation, in violation of subdivision (g) of Section*
 14 *288a, if the victim was “developmentally disabled,” as defined in*
 15 *subdivision (d) of Section 667.9, and that fact is alleged in the*
 16 *accusatory pleading and either admitted by the defendant in open*
 17 *court or found to be true by the trier of fact.*

18 (o) The penalties provided in this section shall apply only if the
 19 existence of any circumstance specified in subdivision (d) or (e)
 20 is alleged in the accusatory pleading pursuant to this section, and
 21 is either admitted by the defendant in open court or found to be
 22 true by the trier of fact.

23 SEC. 2. Section 667.9 of the Penal Code is amended to read:

24 667.9. (a) Any person who commits one or more of the crimes
 25 specified in subdivision (c) against a person who is 65 years of
 26 age or older, or against a person who is blind, deaf,
 27 developmentally disabled, a paraplegic, or a quadriplegic, or
 28 against a person who is under the age of 14 years, and that
 29 disability or condition is known or reasonably should be known
 30 to the person committing the crime, shall receive a one-year
 31 enhancement for each violation.

32 (b) Any person who commits a violation of subdivision (a) and
 33 who has a prior conviction for any of the offenses specified in
 34 subdivision (c), shall receive a two-year enhancement for each
 35 violation in addition to the sentence provided under Section 667.

36 (c) Subdivisions (a) and (b) apply to the following crimes:

- 37 (1) Mayhem, in violation of Section 203 or 205.
- 38 (2) Kidnapping, in violation of Section 207, 209, or 209.5.
- 39 (3) Robbery, in violation of Section 211.
- 40 (4) Carjacking, in violation of Section 215.

1 (5) Rape, in violation of paragraph~~(2)~~ (1), (2), or (6) of
2 subdivision (a) of Section 261.

3 (6) Spousal rape, in violation of paragraph (1) or (4) of
4 subdivision (a) of Section 262.

5 (7) Rape, spousal rape, or sexual penetration in concert, in
6 violation of Section 264.1.

7 (8) Sodomy, in violation of paragraph (2) or (3) of subdivision
8 (c), or subdivision~~(d)~~; (d) or (g), of Section 286.

9 (9) Oral copulation, in violation of paragraph (2) or (3) of
10 subdivision (c), or subdivision~~(d)~~; (d) or (g), of Section 288a.

11 (10) Sexual penetration, in violation of subdivision (a) or (b)
12 of Section 289.

13 (11) Burglary of the first degree, as defined in Section 460, in
14 violation of Section 459.

15 (d) As used in this section, “developmentally disabled” means
16 a severe, chronic disability of a person, which is all of the
17 following:

18 (1) Attributable to a mental or physical impairment or a
19 combination of mental and physical impairments.

20 (2) Likely to continue indefinitely.

21 (3) Results in substantial functional limitation in three or more
22 of the following areas of life activity:

23 (A) Self-care.

24 (B) Receptive and expressive language.

25 (C) Learning.

26 (D) Mobility.

27 (E) Self-direction.

28 (F) Capacity for independent living.

29 (G) Economic self-sufficiency.

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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