

**ASSEMBLY BILL**

**No. 1821**

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**Introduced by Assembly Member Maienschein**

February 8, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1821, 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 subject to 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 subject to 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 subject to 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.

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

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

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

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

8 (11) Sexual penetration, in violation of subdivision (b) of Section  
9 289, if the victim was “developmentally disabled,” as defined in  
10 subdivision (d) of Section 667.9, and that fact is alleged in the  
11 accusatory pleading and either admitted by the defendant in open  
12 court or found to be true by the trier of fact.

13 (12) Sodomy, in violation of subdivision (g) of Section 286, if  
14 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 (13) Oral copulation, in violation of subdivision (g) of Section  
19 288a, if the victim was “developmentally disabled,” as defined in  
20 subdivision (d) of Section 667.9, and that fact is alleged in the  
21 accusatory pleading and either admitted by the defendant in open  
22 court or found to be true by the trier of fact.

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

25 (1) The defendant has been previously convicted of an offense  
26 specified in subdivision (c), including an offense committed in  
27 another jurisdiction that includes all of the elements of an offense  
28 specified in subdivision (c).

29 (2) The defendant kidnapped the victim of the present offense  
30 and the movement of the victim substantially increased the risk of  
31 harm to the victim over and above that level of risk necessarily  
32 inherent in the underlying offense in subdivision (c).

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

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

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

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

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

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

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

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

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

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

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

27 (6) The defendant administered a controlled substance to the  
28 victim in the commission of the present offense in violation of  
29 Section 12022.75.

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

35 (f) If only the minimum number of circumstances specified in  
36 subdivision (d) or (e) that are required for the punishment provided  
37 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and  
38 proved, that circumstance or those circumstances shall be used as  
39 the basis for imposing the term provided in subdivision (a), (b),  
40 (j), (l), or (m) whichever is greater, rather than being used to impose

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

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

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

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

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

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

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

5 (l) Any person who is convicted of an offense specified in  
6 subdivision (n) under one or more of the circumstances specified  
7 in subdivision (d) or under two or more of the circumstances  
8 specified in subdivision (e), upon a victim who is a ~~minor~~ *minor*,  
9 14 years of age or ~~older~~ *older*, shall be punished by imprisonment  
10 in the state prison for life without the possibility of parole. If the  
11 person who was convicted was under 18 years of age at the time  
12 of the offense, he or she shall be punished by imprisonment in the  
13 state prison for 25 years to life.

14 (m) Any person who is convicted of an offense specified in  
15 subdivision (n) under one of the circumstances specified in  
16 subdivision (e) against a ~~minor~~ *minor*, 14 years of age or ~~older~~  
17 *older*, shall be punished by imprisonment in the state prison for  
18 25 years to life.

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

21 (1) Rape, in violation of paragraph (2) of subdivision (a) of  
22 Section 261.

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

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

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

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

31 (6) Oral copulation, in violation of paragraph (2) of subdivision  
32 (c) of Section 288a, or in violation of subdivision (d) of Section  
33 288a.

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

39 (8) *Sexual penetration, in violation of subdivision (b) of Section*  
40 *289, if the victim was “developmentally disabled,” as defined in*

1 *subdivision (d) of Section 667.9, and that fact is alleged in the*  
2 *accusatory pleading and either admitted by the defendant in open*  
3 *court or found to be true by the trier of fact.*

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

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

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

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

20 667.9. (a) Any person who commits one or more of the crimes  
21 specified in subdivision (c) against a person who is 65 years of  
22 age or older, or against a person who is blind, deaf,  
23 developmentally disabled, a paraplegic, or a quadriplegic, or  
24 against a person who is under the age of 14 years, and that  
25 disability or condition is known or reasonably should be known  
26 to the person committing the crime, shall receive a one-year  
27 enhancement for each violation.

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

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

33 (1) Mayhem, in violation of Section 203 or 205.

34 (2) Kidnapping, in violation of Section 207, 209, or 209.5.

35 (3) Robbery, in violation of Section 211.

36 (4) Carjacking, in violation of Section 215.

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

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

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

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

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

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

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

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

14 (1) Attributable to a mental or physical impairment or a  
15 combination of mental and physical impairments.

16 (2) Likely to continue indefinitely.

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

19 (A) Self-care.

20 (B) Receptive and expressive language.

21 (C) Learning.

22 (D) Mobility.

23 (E) Self-direction.

24 (F) Capacity for independent living.

25 (G) Economic self-sufficiency.

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

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