

Introduced by Senator KuehlFebruary 22, 2006

An act to amend Section 262 of the Penal Code, relating to spousal rape.

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as introduced, Kuehl. Spousal rape.

Existing law defines spousal rape as an act of sexual intercourse accomplished by means of force or violence, when the victim is at the time unconscious, or by threats of retaliation or use of public authority against the victim. Existing law provides, however, that no prosecution will be commenced under these provisions unless the violation was reported to other specified persons within one year of the violation, unless the allegation is corroborated by independent evidence, as specified.

This bill would remove provisions requiring that an allegation of spousal rape has been reported previously or be corroborated by independent evidence in order to be prosecuted.

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

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

- 1 SECTION 1. Section 262 of the Penal Code is amended to
- 2 read:
- 3 262. (a) Rape of a person who is the spouse of the
- 4 perpetrator is an act of sexual intercourse accomplished under
- 5 any of the following circumstances:

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

4 (2) Where a person is prevented from resisting by any
5 intoxicating or anesthetic substance, or any controlled substance,
6 and this condition was known, or reasonably should have been
7 known, by the accused.

8 (3) Where a person is at the time unconscious of the nature of
9 the act, and this is known to the accused. As used in this
10 paragraph, "unconscious of the nature of the act" means
11 incapable of resisting because the victim meets one of the
12 following conditions:

13 (A) Was unconscious or asleep.

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

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

19 (4) Where the act is accomplished against the victim's will by
20 threatening to retaliate in the future against the victim or any
21 other person, and there is a reasonable possibility that the
22 perpetrator will execute the threat. As used in this paragraph,
23 "threatening to retaliate" means a threat to kidnap or falsely
24 imprison, or to inflict extreme pain, serious bodily injury, or
25 death.

26 (5) Where the act is accomplished against the victim's will by
27 threatening to use the authority of a public official to incarcerate,
28 arrest, or deport the victim or another, and the victim has a
29 reasonable belief that the perpetrator is a public official. As used
30 in this paragraph, "public official" means a person employed by
31 a governmental agency who has the authority, as part of that
32 position, to incarcerate, arrest, or deport another. The perpetrator
33 does not actually have to be a public official.

34 (b) Section 800 shall apply to this section. ~~However, no~~
35 ~~prosecution shall be commenced under this section unless the~~
36 ~~violation was reported to medical personnel, a member of the~~
37 ~~clergy, an attorney, a shelter representative, a counselor, a~~
38 ~~judicial officer, a rape crisis agency, a prosecuting agency, a law~~
39 ~~enforcement officer, or a firefighter within one year after the date~~
40 ~~of the violation. This reporting requirement shall not apply if the~~

1 ~~victim's allegation of the offense is corroborated by independent~~
2 ~~evidence that would otherwise be admissible during trial.~~

3 (c) As used in this section, "duress" means a direct or implied
4 threat of force, violence, danger, or retribution sufficient to
5 coerce a reasonable person of ordinary susceptibilities to perform
6 an act which otherwise would not have been performed, or
7 acquiesce in an act to which one otherwise would not have
8 submitted. The total circumstances, including the age of the
9 victim, and his or her relationship to the defendant, are factors to
10 consider in apprising the existence of duress.

11 (d) As used in this section, "menace" means any threat,
12 declaration, or act that shows an intention to inflict an injury
13 upon another.

14 (e) If probation is granted upon conviction of a violation of
15 this section, the conditions of probation may include, in lieu of a
16 fine, one or both of the following requirements:

17 (1) That the defendant make payments to a battered women's
18 shelter, up to a maximum of one thousand dollars (\$1,000).

19 (2) That the defendant reimburse the victim for reasonable
20 costs of counseling and other reasonable expenses that the court
21 finds are the direct result of the defendant's offense.

22 For any order to pay a fine, make payments to a battered
23 women's shelter, or pay restitution as a condition of probation
24 under this subdivision, the court shall make a determination of
25 the defendant's ability to pay. In no event shall any order to make
26 payments to a battered women's shelter be made if it would
27 impair the ability of the defendant to pay direct restitution to the
28 victim or court-ordered child support. Where the injury to a
29 married person is caused in whole or in part by the criminal acts
30 of his or her spouse in violation of this section, the community
31 property may not be used to discharge the liability of the
32 offending spouse for restitution to the injured spouse, required by
33 Section 1203.04, as operative on or before August 2, 1995, or
34 Section 1202.4, or to a shelter for costs with regard to the injured
35 spouse and dependents, required by this section, until all separate
36 property of the offending spouse is exhausted.