

ASSEMBLY BILL

No. 2223

Introduced by Assembly Member Buchanan

February 20, 2014

An act to amend Section 261 of the Penal Code, relating to sexual assault.

LEGISLATIVE COUNSEL'S DIGEST

AB 2223, as introduced, Buchanan. Sexual assault.

Existing law establishes various sexual assault offenses, including the offense of rape. Under existing law, rape is defined as an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, under certain circumstances, including where the act is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

This bill would make a technical, nonsubstantive change to the provisions establishing the offense of rape.

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 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 *who is* not the spouse of the perpetrator, under any
- 5 of the following circumstances:

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

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

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

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

(A) Was unconscious or asleep.

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

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

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

(5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to

1 retaliate” means a threat to kidnap or falsely imprison, or to inflict
2 extreme pain, serious bodily injury, or death.

3 (7) Where the act is accomplished against the victim’s will by
4 threatening to use the authority of a public official to incarcerate,
5 arrest, or deport the victim or another, and the victim has a
6 reasonable belief that the perpetrator is a public official. As used
7 in this paragraph, “public official” means a person employed by
8 a governmental agency who has the authority, as part of that
9 position, to incarcerate, arrest, or deport another. The perpetrator
10 does not actually have to be a public official.

11 (b) As used in this section, “duress” means a direct or implied
12 threat of force, violence, danger, or retribution sufficient to coerce
13 a reasonable person of ordinary susceptibilities to perform an act
14 which otherwise would not have been performed, or acquiesce in
15 an act to which one otherwise would not have submitted. The total
16 circumstances, including the age of the victim, and his or her
17 relationship to the defendant, are factors to consider in appraising
18 the existence of duress.

19 (c) As used in this section, “menace” means any threat,
20 declaration, or act which shows an intention to inflict an injury
21 upon another.