
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 701 **Hearing Date:** June 28, 2016
Author: Cristina Garcia
Version: June 22, 2016
Urgency: No **Fiscal:** No
Consultant: AA

Subject: *Sex Crimes: Rape*

HISTORY

Source: Author

Prior Legislation: None

Support: California Young Democrats; Los Angeles County Professional Peace Officers Association

Opposition: American Civil Liberties Union

Assembly Floor Vote: Not Applicable

PURPOSE

The purpose of this bill is to enact a new code section stating that persons convicted of specified sexual assault crimes shall be considered guilty of rape.

Current law provides generally that sexual assault is a felony, as specified and described in several discrete sections of the Penal Code. (*See e.g.*, Penal Code §§ 261; 262; 286; 288a; 289 and other sections)

This bill would enact a new law, stating:

For purposes of this section, a person shall be considered guilty of rape if he or she is convicted under any the following sections:

- (a) Section 261.
- (b) Section 262.
- (c) Section 266c.
- (d) Section 286.
- (e) Section 288a.
- (f) Section 289.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

The recent case in Palo Alto involving a former Stanford swimmer who sexually assaulted an unconscious woman behind a dumpster has rightfully caused a national uproar. In this case, the perpetrator could not be charged with rape due to California's outdated definition of it. Under California law rape is defined as "an act of sexual intercourse" or penile penetration. Other types of sexual assault—including forcible acts of sexual penetration by a foreign object and sodomy—are defined and categorized as different crimes. Under this definition, since the perpetrator did not penetrate the victim with his penis, no "rape" occurred in the eyes of the law.

Under California law there is a bias against lesbian, gay, bisexual, transgender, and queer (LGBTQ) victims because of our narrow definition of rape. This is especially unjust given the staggering statistics which show that LGBTQ individuals are more likely to be victims of sexual violence than heterosexuals.

According to the Human Rights Campaign, 46 percent of bisexual women have been raped, compared to 17 percent of heterosexual women and 13 percent of lesbians and 40 percent of gay men and 47 percent of bisexual men have experienced sexual violence other than rape, compared to 21 percent of heterosexual men.

California's restrictive definition of rape means a man cannot be raped only sodomized and it means that despite being sexually penetrated with a foreign object, the victim in Palo Alto was not raped only sexually assaulted.

AB 701 modernizes the definition of rape to ensure the consequences for such acts are properly assigned to their perpetrator. When we fail to call rape "rape," we rob survivors and their families of the justice they deserve. Rape is rape—the law should reflect that.

2. Recent Gut and Amend

When this bill came over from the Assembly and until June 16th of this year, it pertained to the Gaming Policy Advisory Committee; the bill proposed to increase the membership of that committee from 10 to 12 members, and instead would have required the committee to be composed of 5 representatives of controlled gambling licensees, 5 members of the general public, and 2 representatives from the Department of Justice.

On June 16th this was amended to pertain to sexual assault, and On June 22nd it was amended again, into the version now before the Committee.

3. Background: California Sex Assault Crimes

California's sexual assault crimes are set forth in discrete sections that describe the specific nature of the sexual assault. For example, rape, defined as nonconsensual sexual intercourse (Penal Code § 261), nonconsensual sodomy (Penal Code § 286), nonconsensual oral copulation (Penal Code section 288a) and nonconsensual sexual penetration (Penal Code § 289) all set forth particular sex crimes based upon the nature of the felony conduct. Each of these crimes carries the same sentence triads and life sentences where aggravating circumstances are present. Over the last many years have been amended to reflect a broader, more comprehensive understanding of the fundamental nature of these sex crimes. While the specific conduct is proscribed in discrete sections of the law, those sections contain mirroring language.

Of these statutes, only nonconsensual sexual intercourse is expressly described as "rape." Sodomy is described as "sodomy." Oral copulation is described as "oral copulation." And, nonconsensual sexual penetration is described as "sexual penetration." These descriptions, however, do not limit the scope, application or sentences for these crimes. The law considers these crimes to be equally grave.

Sexual assault statutes have evolved significantly over the last several years. As explained in a training manual for sexual assault counselors prepared by the California Coalition Against Sexual Assault:

. . . In the past fifteen years, we've addressed a number of issues as they've emerged. Rape has been brought into the public policy arena, we've expanded our understanding of what sexual violence is (to include sexual harassment, for example), we've built multiple levels of prevention work, and continue to learn about the full range of ways sexual violence impacts the lives of survivors. We've learned that our solutions and remedies cannot be narrowly focused on one system or set of systems (e.g, criminal legal system, health care) but instead we should focus our solutions on every facet of our society - because, as sexual violence is a trauma that impacts the survivor's body, mind, and soul, so too are the remedies survivors seek. Our legal remedies continue to grow, but we must also grow other systems as well.

. . . Understanding the range of behaviors that make up the spectrum of sexual violence is important to help you see the depth and breadth of the problem of sexual violence; it is also important to help you understand the specific types of experiences the survivors whom you support have had. However, though the circumstances and details about each type of sexual violence may be distinct, it is critical to note that each type of victimization does not correspond to a specific impact or type of recovery for each victim. Though there are some generalities, the impact sexual violence has on its victims varies from victim to victim. The impact and consequences of the violence vary widely, but not necessarily in direct relationship to the form the violence has taken.¹

¹ <http://www.calcasa.org/wp-content/uploads/2010/12/CALCASA-2008-Support-for-Survivors-Mini-Book.pdf>

4. What This Bill Would Do

This bill would enact a new code section stating that for its purposes, a person shall be considered guilty of rape if he or she is convicted under any the following sections:

- (a) Section 261 (sexual intercourse);
- (b) Section 262 (spousal rape);
- (c) Section 266c (sexual acts by fraud, fear, etc.);
- (d) Section 286 (sodomy);
- (e) Section 288a (oral copulation); or
- (f) Section 289 (sexual penetration).

Members may wish to discuss how this bill, by apparently redefining the crime of “rape” to include more sex crimes than sexual intercourse, would impact the interpretation and application of the extensive case law on California’s sex crime statutes.

5. Suggested Amendments

Members may wish to consider amending this bill as follows, in an attempt to ensure that its provisions do not weaken or otherwise confuse existing law:

Strike current language and replace with the following:

Add section 263.1 to the Penal Code, to provide:

(a) The Legislature finds and declares that the following sexual assault crimes may be considered as rape for purposes relating to the support of survivors:

1. Section 261.
2. Section 262.
3. Section 266c.
4. Section 286.
5. Section 288a.
6. Section 289.

(b) This section is declarative of current law.

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