
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1371 **Hearing Date:** June 13, 2023
Author: Low
Version: April 20, 2023
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Unlawful sexual intercourse with a minor*

HISTORY

Source: Author

Prior Legislation: Not Applicable

Support: California District Attorneys Association; Crime Victims Alliance; Crime Victims United of California; Peace Officers Research Association of California (PORAC)

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to prohibit a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

Existing law specifies that "unlawful sexual intercourse" is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age. (Penal Code § 261.5 (a).) Punishes unlawful sexual intercourse as follows:

- a) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor. (Penal Code § 261.5 (b).)
- b) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment for 16 months, two, or three years in the county jail for a violation of the felony provision. (Penal Code, § 261.5(c).)
- c) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by

imprisonment in county jail for two, three, or four years. (Penal Code, § 261.5(d).)

Existing law defines “probation” as “the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.” (Penal Code § 1203 (a).)

Existing law defines “conditional sentence” as “the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer.” (Penal Code § 1203 (a).)

Existing law sets the period of probation for a misdemeanor to no longer than one year, unless the offense includes specific probation lengths within its provisions. (Penal Code § 1203a.)

Existing law sets the period of probation for a felony to no longer than two years, except as specified (Penal Code § 1203.1 (a) & (l).)

Existing law authorizes the court to impose and require any or all reasonable conditions of probation as it may determine are fitting and proper so that justice may be done, that amends may be done to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer. (Penal Code § 1203.1 (j).)

Existing law authorizes the court to revoke, modify, or terminate its order of probation. (Penal Code §§ 1203.2 & 1203.3.)

This bill prohibits a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

COMMENTS

1. Need for This Bill

According to the author:

Victims' rights are critical to make sure our criminal justice system remains fair and balanced. It's inexcusable for rape cases in our state to be mishandled. AB 1371 is going to ensure victims are protected and rape cases are prosecuted correctly. If someone is found guilty of statutory rape, the defendant should never be able to fulfill community service in a place where minors are present.

2. Probation Supervision

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be “formal” or “informal.” “Formal” probation is under the direction and supervision of a probation officer. Under “informal” probation, a defendant is not supervised by a probation officer but instead reports to the court. Probation supervision is intended to facilitate rehabilitation and ensure defendant accountability. The court has broad discretion to impose conditions that foster the defendant’s rehabilitation and protect the public

safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at p. 1121.)

This bill would prohibit a person who is 21 years of age or older, and who is convicted of statutory rape with a minor under 16 years of age, from completing community service imposed as a condition of probation at a school or location where children congregate.

It is well-settled that a probationer, like a parolee, retains basic constitutional protection against arbitrary and oppressive official action. (See *In re Taylor* (2015) 60 Cal.4th 1019, 1038; *People v. Reyes* (1998) 19 Cal.4th 743, 753-754; *People v. Woods* (1999) 21 Cal.4th 668, 691.) However, courts have observed that “probation is a privilege and not a right, and that adult probationers, in preference to incarceration, validly may consent to limitations upon their constitutional rights—as, for example, when they agree to warrantless search conditions.” (*People v. Olguin* (2008) 45 Cal.4th 375, 384 [citation omitted]; *People v. Bravo* (1987) 43 Cal.3d 600, 609.) Reasonable probation conditions may infringe upon constitutional rights, provided the conditions are narrowly tailored to achieve legitimate purposes, such as fostering the probationer's rehabilitation or protecting the public. (*Olguin*, at p. 384.)

Freedom of association, for example, is a constitutional right. (*People v. Gonsalves* (2021) 66 Cal.App.5th 1, 6-7.) Because this bill would prohibit an individual from completing community service at a school or place where children congregate, it arguably may infringe on this right. That being said, this bill would prohibit only one subset of statutory rape offenders from performing community service at a school or where children congregate – those 21 years of age or older who were convicted on the basis of having engaged in sexual intercourse with a minor under 16 years of age. This bill would not encompass statutory rape cases where the age difference is much narrower and the perpetrator themselves could be a minor. Arguably, it is intended to balance fostering an individual’s rehabilitation through community service while protecting children.

3. Argument in Support

Crime Victim Alliance supports this bill stating:

We believe this is common sense legislation that will ensure that as sex offenders who have assaulted minors and are placed on probation, are not able to complete their community service hours at a school or a location where children congregate.

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