

RESOLUTION 07-05-2016 (As Amended)

DIGEST

Statutory Rape: Ages of Individuals

Amends Penal Code section 261.5 to provide that only sexual intercourse between a minor and another person, not the minor's spouse, where the difference in age between the minor and other person is greater than two years shall be considered statutory rape.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 261.5 to read as follows:

§261.5

- 1 (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished ~~with a~~
2 ~~person who is not the spouse of the perpetrator, if the person is a minor~~ between a minor and
3 another person, where the other person is not the minor's spouse, and the difference in age
4 between the minor and other person is greater than two years. For the purposes of this section, a
5 "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years
6 of age.
- 7 (b) Any person who engages in an act of unlawful sexual intercourse with a minor who is
8 ~~not more than three years older or three years younger than the perpetrator, more than two years~~
9 ~~older or more than two years younger than that person is guilty of a misdemeanor.~~
- 10 (c) Any person who engages in an act of unlawful sexual intercourse with a minor who is
11 more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony,
12 and shall be punished by imprisonment in a county jail not exceeding one year, or by
13 imprisonment pursuant to subdivision (h) of Section 1170.
- 14 (d) Any person 21 years of age or older who engages in an act of unlawful sexual
15 intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a
16 felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by
17 imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.
- 18 (e) (1) Notwithstanding any other provision of this section, an adult who engages in an
19 act of sexual intercourse with a minor in violation of this section may be liable for civil penalties
20 in the following amounts:
- 21 ~~(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than~~
22 ~~two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars~~
23 ~~(\$2,000).~~
- 24 ~~(B)~~ An adult who engages in an act of unlawful sexual intercourse with a minor at least
25 two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars
26 (\$5000).
- 27 ~~(C)~~ (B) An adult who engages in an act of unlawful sexual intercourse with a minor at
28 least three years younger than the adult is liable for a civil penalty not to exceed ten thousand
29 dollars (\$10,000).
- 30 ~~(D)~~ (C) An adult over the age of 21 years who engages in an act of unlawful sexual
31 intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-
32 five thousand dollars (\$25,000).

33 (2) The district attorney may bring actions to recover civil penalties pursuant to this
34 subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing
35 the action shall be deposited with the treasurer of the county in which the judgment was entered,
36 and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is
37 hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention
38 Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by
39 the Legislature.

40 (3) In addition to any punishment imposed under this section, the judge may assess a fine
41 not to exceed seventy dollars (\$70) against any person who violates this section with the
42 proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however,
43 take into consideration the defendant's ability to pay, and no defendant shall be denied probation
44 because of his or her inability to pay the fine permitted under this subdivision.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: California's statutory rape laws are overinclusive. If two minors within the same age range and life experiences engage in consensual sexual intercourse, they are both guilty of statutory rape. An 18-year-old with a 16-year old or 17-year old, or a 19-year-old with a 17-year-old, is guilty of a misdemeanor. Although their choices are bad, they do not deserve to be subject to arrest, prosecution, and incarceration. It also contributes to the backlog in our criminal justice system.

The Solution: This resolution removes from the scope of statutory rape laws two individuals engaged in sexual intercourse if they are within two years of each other.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. Amendments taken on the Conference floor at least partially addressed the Resolutions Committee concerns. The full Conference approved the resolution as amended.