

Fact Sheet
SB 838 (Beall)
Audrie's Law
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BACKGROUND

Senate Bill 838 is the direct result of the tragic death of Audrie Pott, a 15-year-old Saratoga High student who committed suicide after she was sexually assaulted while unconscious and photos of her were disseminated electronically. The perpetrators, according to news reports, were tried as juveniles and the allegations against them were sustained, and released after serving 30- to 45-day sentences. They are free to continue their lives, education, and careers in anonymity thanks to outdated laws after publically destroying a young women's life.

The incidents surrounding Audrie's death are not isolated but reflect a disturbing trend. Her case is eerily similar to the suicide of Rehtaeh Parsons, a 17-year-old student in Canada, who suffered nearly two years of bullying as photos of her sex assault were circulated by students, and the photographed rape of an unconscious 16-year-old girl by two high school football players in Steubenville, Ohio. It should be noted that the identities of the convicted football players, both 16, were released by the juvenile court.

The nature of the crimes against Audrie, coupled with the growing use of social media to bully victims, demands that our statutes and codes be amended to reflect the severity of these offenses in the 21st century to not only give justice but to act as a deterrent.

CURRENT LAW

Juvenile court proceedings are generally not open to the public. However, CA WIC Section 676, lists offenses that can cause the juvenile proceedings to be open to the public. These crimes include forced rape, sodomy and oral copulation. However, the list does not include sex offenses where the victim was in a defenseless state. The sexual assault was committed while Audrie was incapacitated, without force, thus preventing the court proceedings from being open to the public.

CA WIC Section 707(b) provides a list of offenses for which specified juvenile offenders may be prosecuted in adult court under certain circumstances. Similar to CA WIC Section 676, this section includes forced rape, sodomy and oral copulation, but does not include sex offenses where the victim was in a defenseless state. This loophole

in the law allowed the assailants to be prosecuted in juvenile court.

Existing law prohibits using an electronic communication device to repeatedly annoy or harass, or to use said device to threaten or direct obscene language at another person. Current law also prohibits sending, distributing, publishing, etc...obscene or harmful matter that depicts people under 18 years of age involved in sexual conduct. However, there is no statute currently prohibiting the use of electronic communication devices and social media to share, transmit, or otherwise make public photos and/or online messages of a sexual nature or depicting the intimate body parts of a minor who has been the victim of a sexual assault with the intent to embarrass, harass, or intimidate.

THIS BILL

SB 838 would amend three different code sections in California statute.

1. Amend CA WIC Section 676(a)(b):

- Add to the list of crimes a "defenseless victim clause" that would include people who are unable to resist due to being intoxicated, incapacitated or developmentally disabled. This would close the loophole created by "forced rape, sodomy and oral copulation".
- Add to the list all the crimes found in Penal Code Section 290(c).
- Add to the list any sexual offense where the offender uses social media to identify, intimidate, harass, humiliate, and/or bully the victim.

2. Amend CA WIC Section 707(b)

- Add to the list of crimes a "defenseless victim clause" that would include people who are unable to resist due to being intoxicated, incapacitated or developmentally disabled. This would close the loophole created by "forced rape, sodomy, lewd and lascivious acts and oral copulation".

- Add to the list any sexual offense where the offender uses social media to identify, intimidate, harass, humiliate, and/or bully the victim.

3. Create CA Penal Code Section 290.1

- Create a misdemeanor for “cyberbullying” when it involves the distribution of media of a sexual nature without consent and with the intent to intimidate, embarrass, or harass.
- Create a felony for “cyberbullying” when it involves the distribution of media that depicts a minor in a sexual nature without consent and with the intent to intimidate, embarrass, or harass.

STATUS/VOTES

SUPPORT

Santa Clara County District Attorney

OPPOSITION

FOR MORE INFORMATION

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