

KAMALA D. HARRIS  
Attorney General of California  
GERALD A. ENGLER  
Chief Assistant Attorney General  
JULIE L. GARLAND  
Senior Assistant Attorney General  
STEVE OETTING  
Supervising Deputy Attorney General  
MEREDITH S. WHITE  
Deputy Attorney General  
State Bar No. 255840  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 738-9069  
Fax: (619) 645-2044  
Email: Meredith.White@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*

SUPREME COURT  
**FILED**

AUG - 5 2016

Frank A. McGuire Clerk

Deputy

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

Plaintiff and Respondent,

v.

**BILLY CHARLES WHITE,**

Defendant and Appellant.

Case No. S228049

Fourth Appellate  
District, Division One,  
Case No. D060969

San Diego County  
Superior Court, Case  
No. SCD228290

**RESPONDENT'S REQUEST FOR JUDICIAL NOTICE AND  
DECLARATION OF MEREDITH WHITE IN SUPPORT THEREOF**

Respondent respectfully moves this court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rule 8.252, to take judicial notice of materials relating to various amendments to Penal Code sections 261 and 288a. The specific materials are detailed in the attached declaration. They include one former senate bill and eight legislative

committee reports. Versions of legislative bills and legislative committee reports and analyses are materials of which this court may take judicial notice. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7; see also *Martin v. Szeto* (2004) 32 Cal.4th 445, 450.) It should be noted that these materials do not represent complete legislative histories for each amendment. Instead, in the interest of brevity, respondent has selected the relevant portions and included only those portions in this motion.

These materials are relevant to this case because they are proper extrinsic aids which demonstrate the Legislature's intent to make similar changes to Penal Code sections 261 and 288a. (Cal. Rules of Court, rule 8.252, subd. (a)(2)(A).) Neither the trial court nor the Court of Appeal took judicial notice of these materials. (See Cal. Rules of Court, rule 8.252, subd. (a)(2)(B).) These materials consist of "[o]fficial acts of the legislative, executive, and judicial departments of" the State of California. (Evid. Code, § 452, subds. (c); Cal. Rules of Court, rule 8.252, subd. (a)(2)(C).) Finally, the materials do not relate to proceedings occurring after the order or judgment that is the subject of this appeal. (Cal. Rules of Court, rule 8.252, subd. (a)(2)(D).)

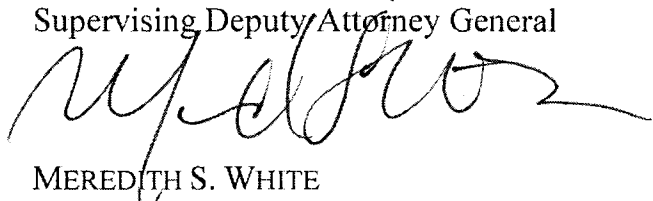
**CONCLUSION**

For the reasons stated above, respondent respectfully requests that this court take judicial notice of the attached documents.

Dated: August 4, 2016

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
GERALD A. ENGLER  
Chief Assistant Attorney General  
JULIE L. GARLAND  
Senior Assistant Attorney General  
STEVE OETTING  
Supervising Deputy Attorney General



MEREDITH S. WHITE  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent*

MSW:ccc  
SD2015802578  
81419215.doc

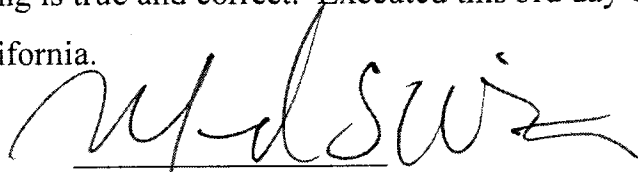


**DECLARATION OF MEREDITH WHITE IN SUPPORT OF  
RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

I, Meredith White, declare as follows:

1. I am a deputy attorney general for the State of California and the primary attorney responsible for this case.
2. The attached materials include the following items:
  - a. Senate Bill No. 759 (1967 Reg. Sess.) § 1
  - b. Assembly Committee on Criminal Justice, Analysis of Senate Bill 877 (1977 Reg. Sess.) as amended June 21, 1977
  - c. Assembly Committee on Criminal Justice, Bill Analysis of Senate Bill 1930 (1979-1980 Reg. Sess.), as amended April 16, 1980
  - d. Senate Committee on the Judiciary, Report on Assembly Bill 2721 (1981-1982 Reg. Sess.) as amended April 15, 1982
  - e. Senate Committee on the Judiciary, Report on Assembly Bill 3485 (1985-1986 Reg. Sess.) as amended June 30, 1986
  - f. Senate Committee on the Judiciary, Report on Assembly Bill 85x (1993-1994 Reg. Sess.) as amended May 12, 1994
  - g. Senate Rules Committee, Office of Senate Floor Analysis, Unfinished Business-Sen. Bill 1421 (2001-2002 Reg. Sess.) as amended July 1, 2002
  - h. Senate Rules Committee, Unfinished Business-Senate Bill 59 (2013-2014 Reg. Session) as amended July 3, 2013
  - i. Assembly Floor Analysis of Assembly Bill 65 (2013-2014 Reg. Sess.) as amended June 25, 2013
3. I am informed and believe that the attached documents are true and correct copies retrieved from our office library, which compiles the legislative history for statutory amendments and additions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of August, at San Diego, California.

A handwritten signature in black ink, appearing to read 'M. S. White', written in a cursive style.

MEREDITH S. WHITE  
Declarant

**EXHIBIT A**





AMENDED IN ASSEMBLY AUGUST 3, 1967

AMENDED IN ASSEMBLY JULY 20, 1967

AMENDED IN SENATE MAY 17, 1967

SENATE BILL

No. 759

---

---

Introduced by Senator Danielson

March 30, 1967

---

---

REFERRED TO COMMITTEE ON JUDICIARY

---

---

*An act to add Sections 264.1, 286.1, and 288b to the Penal Code, relating to forcible sex offenses.*

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 264.1 is added to the Penal Code, to  
2 read:

3 264.1. The provisions of Section 264 notwithstanding, in  
4 any case in which defendant, voluntarily acting in concert  
5 with another person, by force or violence and against the will  
6 of the victim, committed the rape, either personally or by  
7 aiding and abetting such other person, such fact shall be  
8 charged in the indictment or information and if found to be  
9 true by the jury, upon a jury trial, or if found to be true by  
10 the court, upon a court trial, or if admitted by the defendant,  
11 defendant shall suffer confinement in the state prison from 15  
12 five years to life.

13 SEC. 2. Section 286.1 is added to the Penal Code, to read:

14 286.1. The provisions of Section 286 notwithstanding, in  
15 any case in which defendant, voluntarily acting in concert with

LEGISLATIVE COUNSEL'S DIGEST

SB 759, as amended, Danielson (Jud.). Forcible sex offenses.

Adds Secs. 264.1, 286.1, and 288b, Pen.C.

Provides for a penalty of imprisonment in state prison from 15 5 years to life for convicted defendant who, voluntarily and in concert with another person, by force or violence and against the will of the victim, either personally or by aiding and abetting such other person, committed rape, by force or violence and against the will of the victim committed sodomy upon a human being, or by force or violence and against the will of the victim participated in an act of oral copulation.

Vote—Majority; Appropriation—No; State Expense—No.

1 another person, by force or violence and against the will of the  
2 victim committed sodomy upon a human being, either per-  
3 sonally or by aiding and abetting such other person, such fact  
4 shall be charged in the indictment or information and if found  
5 to be true by the jury, upon a jury trial, or if found to be  
6 true by the court, upon a court trial, or if admitted by the  
7 defendant, defendant shall suffer confinement in the state  
8 prison from ~~4~~ five years to life.

9 SEC. 3. Section 288b is added to the Penal Code, to read:  
10 288b. The provisions of Section 288a notwithstanding, in  
11 any case in which defendant, voluntarily acting in concert  
12 with another person, by force or violence and against the will  
13 of the victim participated in an act of oral copulation, either  
14 personally or by aiding and abetting such other person, such  
15 fact shall be charged in the indictment or information and if  
16 found to be true by the jury, upon a jury trial, or if found to  
17 be true by the court, upon a court trial, or if admitted by the  
18 defendant, defendant shall suffer confinement in the state  
19 prison from ~~4~~ five years to life.

**EXHIBIT B**



**ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE**

**Kenneth Maddy, Chairman**

State Capitol - Room 2188  
445-3268

BILL ANALYSIS

Staff Member	<u>MSU</u>
Ways & Means	<u>NO</u>
Rev. & Tax.	<u>YES</u>

HEARING DATE: August 1, 1977

BILL: S.B. 877 (As Amended June 21, 1977)

AUTHOR: HOLDEN

SUBJECT: ASSAULT

BACKGROUND:

Under the law prior to 1976, all acts of sodomy and oral copulation, whether done with or without the consent of the parties were felonious. In 1975, the Legislature passed A.B. 489 (Brown) which revised the criminal law on sexual conduct. This bill provided that only certain types of oral copulation and sodomy are proscribed; consensual acts with persons under age; acts through force, violence, duress, menace, or threat of great bodily harm; and acts committed by county jail or state prison inmates. All other sexual acts among consenting adults would not be punished criminally.

BILL DESCRIPTION:

Under current law, acts of oral copulation and sodomy are felonious if one participant is a minor, if it is accomplished through force or violence or threats, or if it is committed by county jail or state prison inmates.

Senate Bill 877 would add acts committed when the victim is at the time unconscious of the nature of the act and this is known to the person committing the act. The crime would be a wobbler punishable either in the county jail for one year or in the state prison for 16 months, 2 or 3 years.

COMMENTS:

1. This new crime would be covered by Section 290 of the Penal Code requiring sexual registration of the person convicted of such a crime. Should the requirement to register as a sex offender be expanded? What is the utility of the sexual registration statute, and in particular, what is to be gained by adding the persons convicted under this bill?

--MORE--

2. Do the acts covered by this bill really occur? If so, they would be covered under current law as misdemeanor batteries.
3. This bill is partially based upon the rape statute which covers acts of sexual intercourse imposed upon an unconscious woman. The rape laws are archaic covering such acts as "sex with a lunatic" and "sex with a woman tricked into believing she is married to the accused." Should the Legislature be building on the rape law structure? Should the whole "sex crime" law be revised?
4. This bill would cover acts committed when the "victim" is unconscious of the nature of the acts, even if the victim may have consented had he or she been conscious.

SOURCE: L.A. County District Attorney

SUPPORT: California District Attorneys' Association  
California Peace Officers' Association

OPPOSITION: Unknown

SENATE COMMITTEE ON JUDICIARY

1977-78 REGULAR SESSION

SB 877 (Holden)  
As introduced  
Penal Code

S  
B  
8  
7  
7

SEXUAL ASSAULT

HISTORY

Source: Los Angeles District Attorney

Prior Legislation: None

Support: California District Attorneys Association,  
California Peace Officers Association

Opposition: No Known

PURPOSE

Existing law provides that sodomy and oral copulation are crimes with specified penalties, when committed under certain circumstances.

This bill would add the circumstance of the victim being at the time unconscious of the nature of the act and this fact is known to the person committing the act. The penalty would be an alternative felony/misdemeanor.

The purpose of this bill is to correct a legislative oversight.

COMMENT

1. The proponents state that existing sections of the Penal Code relating to sexual assault contain the language proposed by this bill.

The addition of this language to Secs. 286 and 288(a) of the Penal Code would conform these sections with specified circumstances used in other sexual assault provisions of the Code.

(More)

SB 877 (Holden)  
Page two

S  
B

DIGEST

8  
7  
7

See Purpose section of analysis.

\*\*\*\*\*



PLEASE RETURN AS SOON AS POSSIBLE TO:

ASSEMBLYMAN KENNETH MADDY, CHAIRMAN  
CRIMINAL JUSTICE COMMITTEE  
STATE CAPITOL - ROOM 2188

JUN 30 1977

SEN. NATE HOLDEN  
SACRAMENTO

BILL ANALYSIS -- WORK SHEET

RE: BILL NO. S.B. 877

AUTHOR: Holden

1. Origin of the bill:

- (a) What is the source of the bill? (What person, organization or governmental entity, if any, requested introduction?)

Los Angeles District Attorney

- (b) Has a similar bill been before either this session or a previous session of the Legislature? If so, please identify the session, bill number and disposition of the bill.

No.

- (c) Has there been an interim committee report on the bill? If so, please identify the report.

No.

- (d) Give name or names of any group, organization or governmental agency who has contacted you either in support of or opposition to the bill:

Support - Rodney J. Blonien, Executive Director, California Peace Officers' Association, 1107 Ninth Street, Suite 800, Sacramento, California 95814, 446-7847; Charles Oates, Legislative Advocate, California Organization of Police and Sheriffs, 921 - 11th Street, Sacramento, CA 441-3336 (See Back)

2. Problem or deficiency in the present law which the bill seeks to remedy:

Inability to prosecute sodomy or oral copulation cases when the victim is unconscious of the nature of the act. Conforms law to rape law.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

We have cases from Los Angeles that were dismissed because of the above deficiency.

4. Hearing:

- (a) Approximate amount of time necessary for hearing:

20 minutes

- (b) Preference for date of hearing:

- (c) Names of witnesses to testify at hearing:

Doug McKee, District Attorneys Office

Support -

Los Angeles County District Attorney

California District Attorneys Association

Department of Finance



# CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

555 CAPITOL MALL, SUITE 1545, SACRAMENTO, CALIFORNIA 95814 Area Code (916) 443-2017

## OFFICERS

President  
DUNCAN M. JAMES  
District Attorney  
Mendocino County

First Vice-President  
EDWIN L. MILLER, JR.  
District Attorney  
San Diego County

Second Vice-President  
D. LOWELL JENSEN  
District Attorney  
Alameda County

Secretary-Treasurer  
JOHN VAN DE KAMP  
District Attorney  
Los Angeles County

Sergeant-at-Arms  
AL LEDDY  
District Attorney  
Kern County

## BOARD OF DIRECTORS

NEIL G. ANDERSON  
Deputy District Attorney  
Sacramento County

LAWRENCE G. ANTOLINI  
Deputy District Attorney  
Sonoma County

AL BENDER  
Deputy District Attorney  
Santa Clara County

JOHN BUFFINGTON  
District Attorney  
Humboldt County

MIKE CAPIZZI  
Assistant District Attorney  
Orange County

CHRISTOPHER COTTLE  
District Attorney  
Santa Cruz County

CHARLES PATRICK  
Deputy District Attorney  
San Diego County

HARRY SONDEHEIM  
Deputy District Attorney  
Los Angeles County

DONALD STAHL  
District Attorney  
Stanislaus County

STANLEY TROM  
District Attorney  
Ventura County

EXECUTIVE DIRECTOR  
GEORGE NICHOLSON

LEGAL AFFAIRS DIRECTOR  
THOMAS W. CONDIT

July 27, 1977

*Crim. Just.*

The Honorable Kenneth L. Maddy  
Member of the Assembly  
California Legislature  
State Capitol, Room 2188  
Sacramento, CA 95814

Dear Assemblyman Maddy:

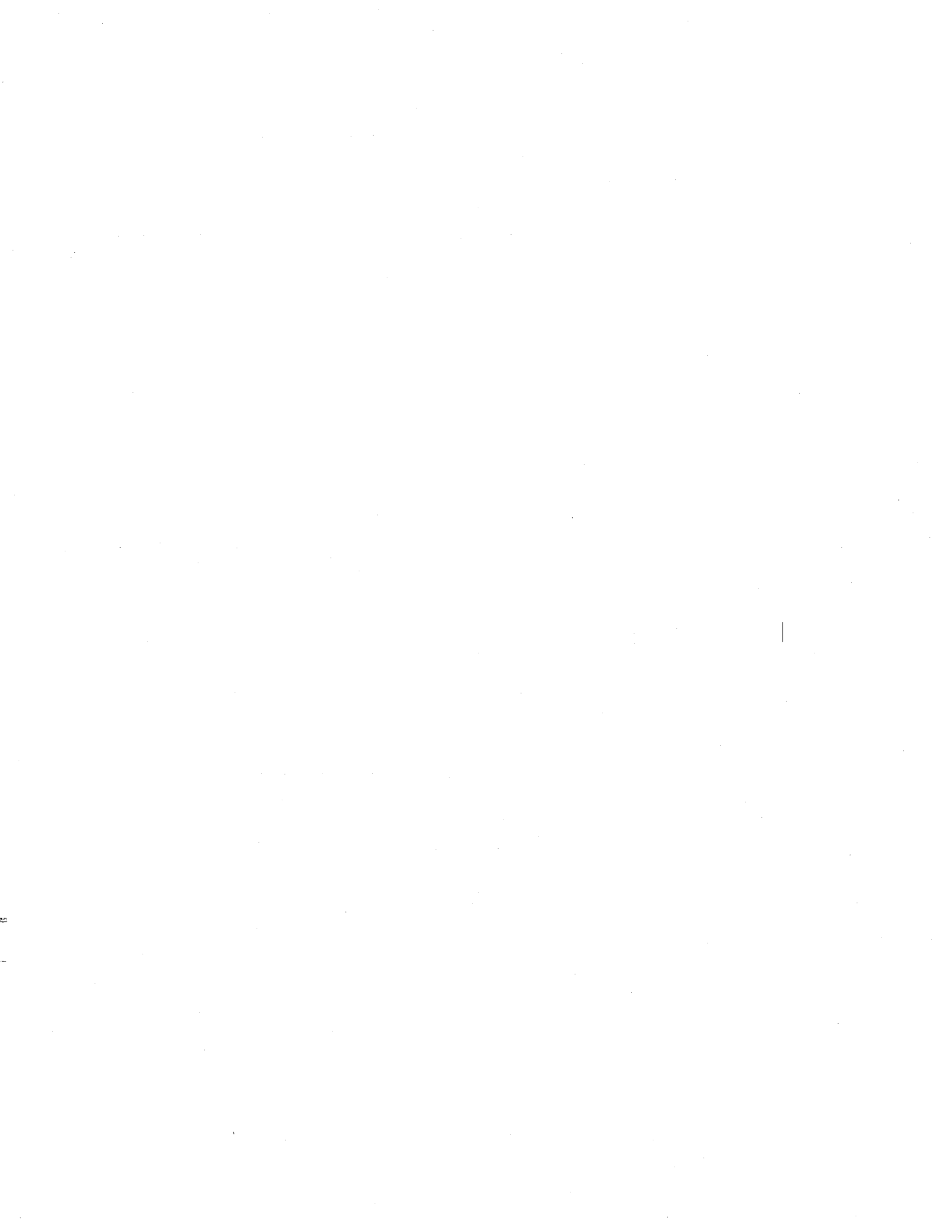
The California District Attorneys Association has read and considered Senate Bill 877, and we support the bill in principle.

This measure will bring the law of sodomy and oral copulation into conformity with the law of rape with regard to sexual abuse of an unconscious victim.

Respectfully yours,

*T.W. Condit*  
T. W. CONDIT  
Legal Affairs Director

TWC:mkp



**EXHIBIT C**



ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE  
BILL McVITTIE, Chairman

State Capitol - Room 3151  
445-3268

BILL ANALYSIS

Staff Member	<u>MSU</u>
Ways & Means	<u>YES</u>
Rev. & Tax	<u>NO</u>
Urgency	<u>NO</u>

BILL: Senate Bill 1930 (as amended 4/16/80)

AUTHOR: Watson

Hearing Date: June 27, 1980  
June 9, 1980

SUBJECT: Sexual Assaults: Threats to Harm Others

BILL DESCRIPTION:

Under current law, rape, oral copulation, and sodomy are punishable when the victim is prevented from resisting or compelled to participate because of threats of harm to the person.

AB 1930 would provide that the crimes are committed if the threats are to harm persons other than the victim.

Under current law, the threats required under the rape statute are of "great and immediate bodily harm accompanied by apparent power of execution."

SB 1930 would provide the same standard for oral copulation and sodomy.

COMMENTS:

1. The purpose of the bill is to insure that a person may be punished for these sexual assaults if the perpetrator threatens to harm someone other than the victim. For example, a "rapist" may threaten to kill the victim's child if she did not submit. Under the current statutory definition, this would not constitute rape. According to the proponents, these cases do arise and the charges have been dismissed because of the current statutory definition.
2. The statute covering "object rape" (P.C. Section 289) also contains similar language and should be amended the same as the sections covered by this bill.
3. This provision is also contained in AB 2899 (Levine) which is pending before the Senate Judiciary Committee.
4. SENATE VOTES:      Judiciary: 8 Ayes    0 Noes  
                         Floor:      36 Ayes    0 Noes

SOURCE: Los Angeles County Legislative Coalititon

SUPPORT: Los Angeles County District Attorney; Women in Politics  
County of Los Angeles

OPPOSITION: Unknown

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE  
BILL McVITTIE, Chairman

State Capitol - Room 3151  
445-3268

BILL ANALYSIS

Staff Member	<u>MSU</u>
Ways & Means	<u>YES</u>
Rev. & Tax	<u>NO</u>
Urgency	<u>NO</u>

BILL: Senate Bill 1930 (as amended 4/16/80)

AUTHOR: Watson

Hearing Date: June 2, 1980

SUBJECT: Sexual Assaults: Threats to Harm Others

BILL DESCRIPTION:

Under current law, rape, oral copulation, and sodomy are punishable when the victim is prevented from resisting or compelled to participate because of threats of harm to the person.

AB 1930 would provide that the crimes are committed if the threats are to harm persons other than the victim.

Under current law, the threats required under the rape statute are of "great and immediate bodily harm accompanied by apparent power of execution."

SB 1930 would provide the same standard for oral copulation and sodomy.

COMMENTS:

1. The purpose of the bill is to insure that a person may be punished for these sexual assaults if the perpetrator threatens to harm someone other than the victim. For example, a "rapist" may threaten to kill the victim's child if she did not submit. Under the current statutory definition, this would not constitute rape. According to the proponents, these cases do arise and the charges have been dismissed because of the current statutory definition.
2. The statute covering "object rape" (P.C. Section 289) also contains similar language and should be amended the same as the sections covered by this bill.
3. This provision is also contained in AB 2899 (Levine) which is pending before the Senate Judiciary Committee.
4. SENATE VOTES:      Judiciary: 8 Ayes    0 Noes  
                         Floor:        36 Ayes    0 Noes

SOURCE: Los Angeles County Legislative Coalititon

SUPPORT: Los Angeles County District Attorney; Women in Politics

OPPOSITION: Unknown



ASSEMBLY THIRD READING

SB 1930 ( Watson ) As Amended: August 26, 1980

SENATE VOTE: 36-0

ASSEMBLY ACTIONS:

COMMITTEE CRIM. J. VOTE 7-0 COMMITTEE W. & M. VOTE 19-0

Ayes: Ayes:

Nays: Nays:

DIGEST

This bill expands the definitions of the crimes of forcible sodomy, oral copulation, and object rape (i.e., adds the provisions relative to the act being accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury to another person, rather than just the victim). The bill also increases the prison sentence for persons convicted of object rape from three, four, or five years to three, six, or eight years, to conform to the punishments for the crimes of sodomy and oral copulation.

FISCAL EFFECT

To the extent that persons are convicted of object rape, sodomy, or oral copulation and sentenced to state prison, the bill could result in undetermined General Fund costs to the Department of Corrections.

The bill could also result in undetermined local mandated costs to enforce the crimes specified in the bill. The bill contains a crimes and infractions disclaimer.

## ASSEMBLY THIRD READING

SB 1930 ( Watson ) As Amended: June 17, 1980- SENATE VOTE: 36-0

## ASSEMBLY ACTIONS:

COMMITTEE CRIM. J. VOTE 7-0 COMMITTEE W. & M. VOTE 19-0

Ayes:

Ayes:

Nays:

Nays:

DIGEST

Existing law provides that "rape" is an act of sexual intercourse when (1) a person resists but the person's resistance is overcome by force or violence or (2) a person is prevented from resisting by threats of great and immediate bodily harm, accompanied by the apparent power to execute the threat.

This bill expands the definition of rape to include the circumstance in which the perpetrator prevents a victim's resistance with threats to another person. The bill also makes changes in the definitions of the crimes of sodomy and oral copulation to make them conform to the circumstances that define rape.

FISCAL EFFECT

To the extent that persons are convicted of rape, sodomy, or oral copulation and sentenced to state prison, the bill could result in undetermined General Fund costs to the Department of Corrections.

The bill could also result in undetermined local mandated costs to enforce the crimes specified in the bill. The bill contains a crimes and infractions disclaimer.

**EXHIBIT D**



SENATE COMMITTEE ON JUDICIARY

1981-82 Regular Session

AB 2721 (McCarthy)  
As amended April 15  
Penal Code  
GWW

A  
B  
2  
7  
2  
1

SEX OFFENSES

HISTORY

Source: Author; Women Lawyers of Sacramento; Yolo  
County Sexual Assault Center

Prior Legislation: None

Support: Attorney General; California District  
Attorneys Association; District Attorney's  
Offices of Alameda and Los Angeles;  
California Sexual Assault Investigators;  
California State Coalition of Rape Crisis  
Centers; The National Organization for  
Women; The Sex Crime Unit of the San  
Francisco District Attorney's Office

Opposition: No known

Assembly floor vote: Ayes 67 - Noes 0.

KEY ISSUES

SHOULD THE TOUCHING OF AN INTIMATE PART, AS DEFINED,  
OF A PERSON AGAINST HIS OR HER WILL WHEN THAT PERSON  
IS UNLAWFULLY RESTRAINED BE DEEMED AN ACT OF SEXUAL  
BATTERY, PUNISHABLE AS EITHER A FELONY OR MISDEMEANOR?

SHOULD A JURY INSTRUCTION ON CONSENT, AS SPECIFIED, BE  
REQUIRED IN ALL RAPE, ORAL COPULATION, SODOMY AND  
FOREIGN OBJECT RAPE PROSECUTIONS IN WHICH CONSENT IS  
AT ISSUE?

(More)

SHOULD THE OFFENSE OF ORAL COPULATION AND SODOMY BE  
DEFINED TO INCLUDE OTHER FORMS OF BEHAVIOR, AS  
SPECIFIED?

PURPOSE

Existing law defines and proscribes several sex offenses including rape, oral copulation, sodomy, and foreign object rape.

This bill would:

1. make punishable as an offense of sexual battery for a person to touch an intimate part (sexual organ, anus, groin, buttocks or female breasts) of another against that person's will when that person was unlawfully restrained for the purpose of sexual arousal, gratification or abuse.
2. set out a definition of consent that must be given as a jury instruction when the issue of consent was at issue in specified sex offense cases.
3. include oral contact with the anus in the definition for oral copulation.
4. amend the definition of foreign object rape to include penetration by any part of the body except a sexual organ, and provide that foreign object rape in concert with another would be punishable by 5, 7, or 9 years state imprisonment.

The purpose of this bill is to make punishable as unlawful sexual conduct certain sexually abusive behavior which currently does not fall within the scope of an existing sex offense.

(More)

COMMENT

1. Required consent instruction

This provision is the most contested part of the bill.

The bill would require in prosecutions for rape, sodomy, oral copulation, or foreign object rape, when consent was at issue, that the jury be instructed in the following manner:

"Consent" means positive cooperation in an act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the true nature of the act or transaction involved.

The instruction is borrowed in part from the present CALJIC instruction on "Consent."

Proponents assert that this instruction is necessary to counter a CALJIC instruction often given in sex offense cases in which consent is raised as an issue. That instruction, CALJIC 10.23, generally states that it is a defense to the charge that the defendant entertained a reasonable and good faith belief that the accuser voluntarily consented to engage in the sexual conduct. The instruction further provides that if from all the evidence a juror has a reasonable doubt whether the defendant reasonably and in good faith believed that the accuser voluntarily consented to engage in sexual conduct, the juror must give the defendant the benefit of the doubt and issue an acquittal.

(More)

Both the prosecution and the defense bar have expressed strong concern over this provision. The California District Attorneys Association believes that it is unwise to codify an instruction into law and to require that it be given in every case. They prefer the flexibility under the current procedures.

The defense bar voices the same concern and additionally contends that the bill would require the instruction in inappropriate cases to a defendant's detriment, such as in cases where the accuser was mentally diminished but was not a moron or legally incapable of giving consent. The defense bar also contends that the uncertainty of whether the test is an objective or subjective one could result in confusion.

2. Sexual battery

This bill would establish a new offense of sexual battery, which would consist of the touching of an intimate part of another person while that person was unlawfully restrained, which was against the will of the person and for the purpose of sexual arousal, gratification, or abuse. The offense could be committed even though the surrounding circumstances clearly negated an intent to commit a completed act of forcible rape, sodomy, or oral copulation.

According to the proponents, this offense is necessary to cover of sexually abusive conduct which is physically traumatic and psychologically terrifying, but which can only now be currently prosecuted as misdemeanor assaults and batteries.

(More)



(a) Definition of intimate part

2  
7  
2  
1

This bill would define intimate part as the "sexual organ, anus, groin, or buttocks of any person and the breasts of a female." The definition would not include the breasts of a male.

(b) "Unlawfully restrained"

The bill does not provide a definition for "unlawfully restrained." Conceivably, the person could be falsely imprisoned by means of a physical barrier, physical restraints or by violence, menace or fraud.

IF THE DEFENDANT PLACED HIS HAND ON THE VICTIM'S ARM, WOULD THAT BE UNLAWFUL RESTRAINT? SHOULD NOT THIS PHRASE BE CLARIFIED?

(c) Punishment

The offense would be punishable either as a misdemeanor or a felony by either imprisonment in the county jail for up to one year or in the state prison for 2, 3, or 4 years.

(d) Comparison with rape

This bill would provide that the offense of sexual battery would not be included in the crime of rape. However, although the crime of rape could be committed without also committing a sexual battery, there may be some cases in which sexual battery would be a lesser included offense in a prosecution for rape.

(More)

A  
B  
2  
7  
2  
1

(e) Possible overlap with attempted rape

Factual situations giving rise to a charge of attempted rape could in some cases also be prosecuted as a sexual battery. For example, where the defendant had restrained the victim and stripped her clothes off, and was equally naked and groping the victim's sexual organ when he was stopped and arrested, it would seem he could be charged with either attempted rape or sexual battery. Attempted rape is punishable by 18 months, 3, or 4 years in the state prison.

SHOULD NOT THE OFFENSES BE MORE CLEARLY SEPARATED?

3. Foreign object rape

(a) Expanded coverage

This bill would expand the definition of foreign object rape to include any part of the body except a sexual organ. The added language was designed to cover situations where the entire fist or fingers were inserted.

(b) Offense in concert with another

This bill would provide that the offense of foreign object rape when committed in concert with another would be punishable by 5, 7, or 9 years in a state prison. The provision follows the existing penalty for rape in concert.

(More)

(c) No probation

Both of the added offenses would be punishable by a mandatory term in prison.

IS MANDATORY IMPRISONMENT WARRANTED?

4. Oral copulation

This bill would expand the definition of oral copulation to include oral contact with the anus of another person. Forcible oral copulation is punishable by mandatory confinement.

\*\*\*\*\*



**EXHIBIT E**



SENATE COMMITTEE ON JUDICIARY  
Bill Lockyer, Chairman  
1985-86 Regular Session

AB 3485 (Wright)  
AS amended June 30  
Penal Code  
PAW

A  
B  
3  
4  
8  
5

SEX OFFENSES

HISTORY

Source: Office of Criminal Justice Planning

Prior Legislation: None

Support: Attorney General; Lieutenant Governor,  
Leo McCarthy; California  
Victim-Witness Coordinating Council

Opposition: ACLU

Assembly Floor Vote: Ayes 67 - Noes 0

KEY ISSUES

SHOULD RAPE OF A PERSON WHO IS MENTALLY DISEASED  
BE REDEFINED TO CONFORM TO THE DEFINITION OF OTHER  
SEXUAL ASSAULTS?

SHOULD THE OFFENSE OF INDUCING A PERSON TO CONSENT  
TO A SEXUAL ACT BY FRAUD INCLUDE PENETRATION BY A  
FOREIGN OBJECT?

SHOULD THE OFFENSES OF, AND PUNISHMENTS FOR,  
SODOMY, ORAL COPULATION AND PENETRATION BY A  
FOREIGN OBJECT BE EXPANDED TO CONFORM WITH THE  
DEFINITION OF, AND PUNISHMENT FOR, RAPE?

(More)

SHOULD RAPE BY FOREIGN OBJECT BE CONSIDERED A  
SERIOUS CRIME FOR PURPOSES OF ENHANCEMENT  
PENALTIES?

SHOULD THE LIFE IMPRISONMENT FOR HABITUAL  
OFFENDERS PROVISION BE EXTENDED INDEFINITELY?

#### PURPOSE

Existing law defines and provides punishment for rape, inducing the commission of a sexual act through false representation creating fear, sodomy, oral copulation, penetration by a foreign object, and lewd and lascivious acts with a child under the age of 14. It requires persons convicted of certain lewd crimes to register with local law enforcement agencies. Further, existing law provides for enhancements for persons convicted of specified sex offenses who had prior convictions for sex offenses.

This bill would conform the criteria used to determine the commission of each of the four major sex offenses: rape, sodomy, oral copulation, and foreign object rape; thus, the elements of these crimes relating to force, consent, and violence would be consistent. It would also make conforming changes to the enhancement and plea bargaining provisions.

The purpose of this section is to "reduce the potential for dismissal of cases containing circumstances inadvertently omitted from the definition of the specific crime."

(More)



COMMENT

1. Overview of proposed changes

a) Rape

Under existing law, two of the circumstances of rape exist when the victim is incapable of giving legal consent because of mental disease, defect or disorder and when the act is accomplished by means of force or fear of immediate bodily injury.

This bill would restate the disabilities as "mental disorder" or "developmental or physical disability" and include an act accomplished by violence. This change would conform the circumstances of rape to reflect the existing law for foreign object rape.

b) Consent by fraud

Under present law, inducing a person to consent to an act of sexual intercourse, oral copulation, or sodomy by false or fraudulent representations is a felony.

This bill would add the element of false or fraudulent representation to the crime of penetration of the genital or anal openings by a foreign object.

(More)

c) Sodomy, oral copulation, penetration by a foreign object

Under current law:

- an act of sodomy or oral copulation committed when the victim is unconscious of the nature of the act, and this is known to the perpetrator, is punishable as a misdemeanor/felony (wobbler) with a maximum of three years in the state prison;
- it is not prohibited to commit an act of sodomy, oral copulation, or penetration by a foreign object where the victim is prevented from resisting by an intoxicating or controlled substance administered by the accused;
- it is not prohibited to commit an act of sodomy, oral copulation, or penetration by a foreign object where the victim submits under the belief that the perpetrator is the victim's spouse and the perpetrator has induced this belief;
- it is not prohibited to commit an act of sodomy, oral copulation, or penetration by a foreign object by threatening to use the authority of a public official and the victim reasonably believes that the perpetrator is a public official.

This bill would:

- raise the penalty for sodomy or oral copulation committed against a person

(More)

who is unconscious of the nature of the act to three, six, or eight years in the state prison. This provision and penalty would also be added to the offense of penetration by a foreign object;

-- make the following acts punishable by three, six, or eight years in the state prison:

a) sodomy, oral copulation, or penetration by a foreign object where the victim was prevented from resisting by an intoxicating or controlled substance, administered by the accused;

b) sodomy, oral copulation, or penetration by a foreign object where the victim submits under the belief that the perpetrator was his or her spouse;

c) sodomy, oral copulation, or penetration by a foreign object accomplished by threatening to use the authority of a public official.

d) Penetration by a foreign object, additional changes

This bill would make the following changes to the offense of penetration by a foreign object:

-- expand the offense to include an act accomplished against the victim's will by a threat to retaliate in the future;

(More)

- modify the definition of "mentally incapable victim" to include a mental disorder or developmental or physical disability;
- require the prosecution to prove that a mental disorder or disability rendered the victim incapable of giving consent;
- make a violation of this provision a "wobbler" when the victim is under the age of 18;
- make a violation of this provision a felony punishable by a maximum of three years when the perpetrator is over the age of 21 and the victim is under the age of 16;
- make a violation of this provision a felony punishable by three, six, or eight years when the victim is under 14 years of age and is more than 10 years younger than the perpetrator.

2. Mental and physical disabilities

Existing law relating to sodomy and oral copulation characterize victims unable to give consent as those who are "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."

This bill would conform the language in all of the sex offense sections. The Office of

⋮  
(More)

Criminal Justice Planning, the sponsor of this bill, notes that this definition was sought last year, but that legislation reflecting the language, SB 889 (Seymour), was chaptered out by subsequent legislation.

3. Rape by violence, duress, or menace

Presently, sodomy, oral copulation, child molest and penetration by a foreign object include acts accomplished by the use of violence, duress, or menace, as well as force or fear of immediate and unlawful bodily injury on the person or on another person. Only these latter two elements (force or fear of injury) are prohibited acts in the rape provisions.

This bill would conform rape to these other offenses to the extent that it would include acts accomplished by the use of violence. The amended version of the bill deletes the elements of duress or menace. No explanation for this amendment, or for its inconsistency to other provisions, was provided by the author or the sponsor.

FOR THE SAKE OF CONSISTENCY IN THE SEX OFFENSE STATUTES, SHOULD NOT THE TERMS, "DURESS" AND "MENACE" BE INCLUDED IN THE RAPE PROVISIONS?

4. Rape with a foreign object by force

The sponsor suggests that existing law regarding the use of force when committing a sexual offense is insufficient to cover a number of situations, and cites as authority the 1985 Court of Appeals case, People v.

(More)

Kusumoto, 169 Cal.App.3d 487. In this case, the court found that the defendant's act of putting his fingers in the victim's vagina while the victim was asleep was not prohibited by law.

The court examined legislative intent in this case, and held that although in the provisions relating to rape, the Legislature had provided that a rape is committed where the defendant engages in sexual intercourse with the victim who "is at the time unconscious of the nature of the act, and this is known to the accused", there was no similar provision in the rape-by-object section. In addition, sodomy and oral copulation may be "by means of force" or where the victim is incapable of giving consent. The court could only conclude that the Legislature intentionally omitted this provision from the rape-by-object section. Thus, although there was no consent given by the victim in this case, the court held that there was not the requisite force to find the defendant guilty of foreign object rape.

This bill would conform all of the sexual offense statutes, and would include the provision that the victim was at the time unconscious of the nature of the act and this was known to the person committing the act.

5. Sexual assaults against unconscious victims

This bill would raise the penalty for the commission of an act of sodomy and oral copulation when the victim was unconscious of the nature of the act from a "wobbler" to a felony punishable by three, six, or eight

(More)

years. The bill would also mandate this punishment for penetration by a foreign object. These penalties would be consistent with the penalties for rape when the victim is unconscious of the nature of the act.

Under existing law, and this bill, an additional element of the offense would be that the perpetrator knew that the victim was unconscious of the nature of the act. This offense is commonly alleged in situations where the victim was asleep, in a coma, etc.

6. Additional new crimes

In addition to the new offenses cited in Comment 1, this bill would make sodomy, oral copulation, or penetration by a foreign object criminal offenses when: the victim was prevented from resisting due to intoxication by alcohol or controlled substance which was provided by the accused; the victim believed that the perpetrator was a spouse; there was the threat to use the authority of a public official; penetration by a foreign object was accomplished by a threat to retaliate in the future.

All of these offenses would be consistent with prohibited acts under the existing rape provisions, and would be punishable by three, six, or eight years in state prison.

The bill would also conform the punishment for acts of penetration by a foreign object to that imposed for sodomy and oral copulation in instances where the victim was under the age of 18 (wobbler), where the victim was under 16.

⋮  
(More)

and the defendant was over 21 (felony with 16 months, two years, and three year in the state prison), and when the victim was under the age of 14 and ten years younger than the defendant (felony with three, six, and eight years in state prison).

7. Enhancements

Under existing law, enhancements of prison terms for new offenses because of prior prison terms are imposed in cases of violent felonies, with violent felonies defined as murder or voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation by force, lewd acts on a child under the age of 14, a felony punishable by death or imprisonment, and other felonies which result in great bodily injury. The enhancement equals three years for each prior, separate prison term.

This bill would include rape by a foreign object which was accomplished by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person in the enhancement section.

8. Life imprisonment for habitual offenders -- sunset repealed

Under existing law, Penal Code Section 667.7, any person convicted of a felony in which great bodily injury was inflicted, has served two or more prior separate prison terms, as defined, for any of the serious felonies is a habitual offender and shall be punished by

(More)



imprisonment in the state prison for life. However, no prior prison term can be used for this determination which was served prior to a period of ten years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. This statute is scheduled to be repealed on January 1, 1987, unless a later enacted statute deletes or extends the date.

This bill would delete the sunset provision; thus it would extend the effective date of this section indefinitely.

9. Opponent's arguments

The ACLU opposes this bill because it would create several new crimes, add foreign object rape to the serious felony enhancement section, and increase penalties for specified sexual offenses. The ACLU consistently opposes increased sentences, not only because it feels that existing penalties are extremely harsh, but also because other California jails are overcrowded.

10. Similar legislation

AB 3566 (Connelly), which was heard in this committee last week and passed out by a vote of 9 to 0, would amend Penal Section 667.5 to provide that sentence enhancement provisions would apply if a new offense was committed while the defendant was temporarily removed from prison, transferred to a community facility, or on furlough.

(More)

Although there is no conflict with this bill,  
there may be some chaptering problems if the  
bills are not double-joined or conformed  
before they are sent to the Governor.

\*\*\*\*\*

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

AB 3485

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Office of Criminal Justice Planning - Terri Delgadillo  
324-9132

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

SUPPORT: Dept. of Justice  
Calif. Victim and Witness Coordinating Council  
The Hon. Leo McCarthy, Lt. Governor

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

Not Known

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

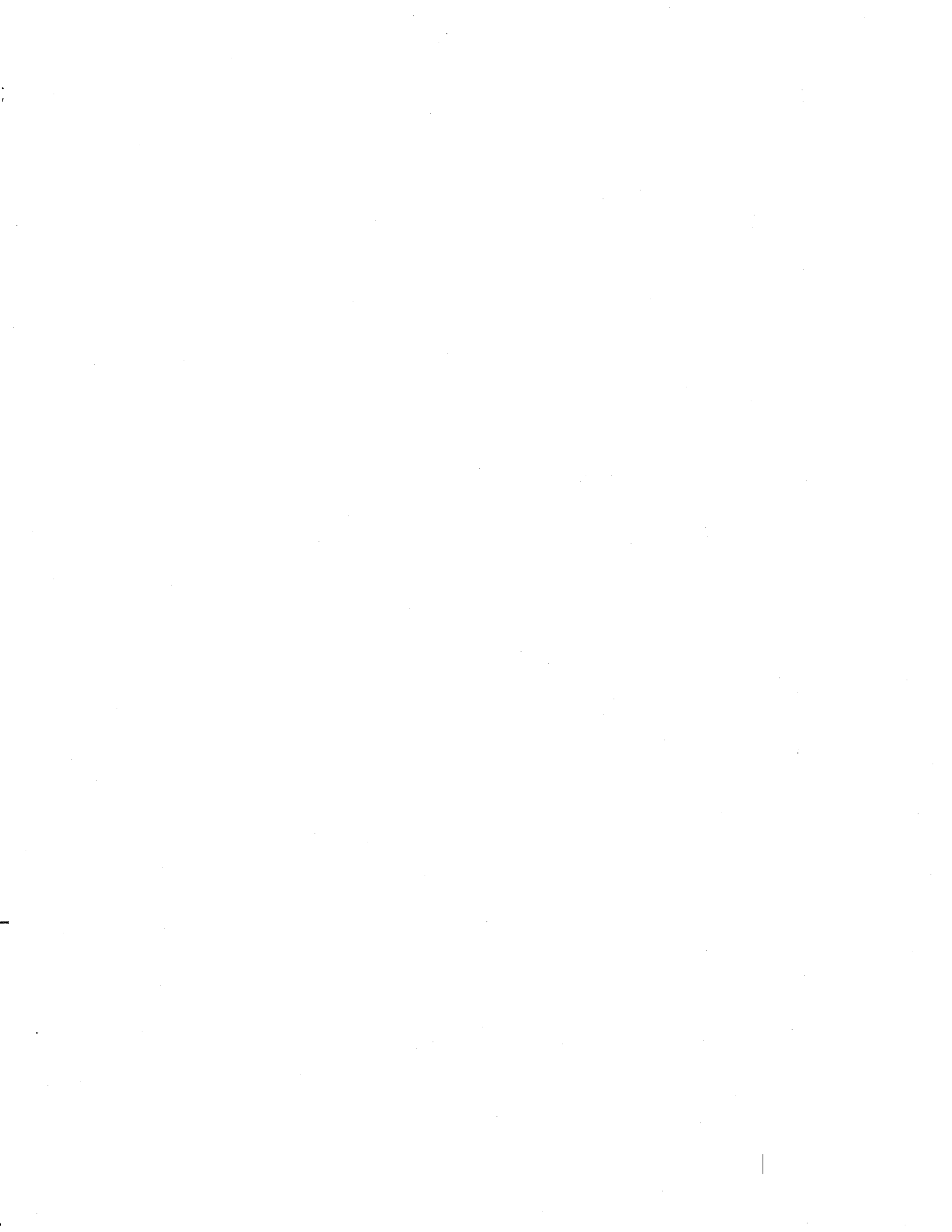
This bill would seek to amend existing law making the circumstantial criteria consistent in determining the commission of each of the four major sex offenses: rape, sodomy, oral copulation, and forced object rape

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2187 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.



**EXHIBIT F**



SENATE COMMITTEE ON JUDICIARY  
David Roberti, Chairman  
1993-94 Regular Session

A  
B  
8  
5  
X

AB 85X (Martinez)  
As amended May 12, 1994  
Hearing date: August 9, 1994  
Penal Code  
MLK/jms

CRIMES: RAPE DEFINITION

HISTORY

Source: An individual attorney

Prior Legislation: None

Support: California Peace Officers' Association; California NOW;  
National Action Against Rape; California District  
Attorneys Association;

Opposition: California Attorneys for Criminal Justice

Assembly Floor vote: Ayes 75 - Noes 0

KEY ISSUE

SHOULD THE DEFINITIONS OF RAPE, SODOMY, ORAL COPULATION AND PENETRATION BY A FOREIGN OBJECT BE CHANGED FROM REQUIRING THE DEFENDANT TO ADMINISTER OR BE AWARE THAT THE VICTIM HAS BEEN ADMINISTERED AN INTOXICATING SUBSTANCE TO INCLUDE WHEN THE ACT IS COMMITTED ON A VICTIM WHOM THE ACCUSED KNEW OR SHOULD HAVE KNOWN WAS PREVENTED FROM RESISTING BY ANY INTOXICATING OR ANESTHETIC SUBSTANCE OR ANY CONTROLLED SUBSTANCE?

PURPOSE

Under existing law the definitions for rape, sodomy, oral copulation, and penetration by foreign object, contain the common element that the act include, among other condition or

(More)

circumstances where a victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused.

This bill would delete the requirement that the substance be administered by or with the privity of the accused and instead make it a crime if the accused knew or should have known the victim was prevented from resisting by any intoxicating or anesthetic substance or any controlled substance.

The purpose of this bill is to delete the requirement in rape, sodomy, oral copulation and penetration by a foreign object that if the victim can not resist due to an intoxicating, anesthetic or controlled substance that the substance was administered by or with the privity of the accused and instead require that the accused knew or should have known the victim could not resist due to one of these substances.

#### COMMENT

1. This bill.

Under existing law the definitions of rape, sodomy, oral copulation and penetration by foreign object include as part of the definition, the circumstances where a victim is prevented from resisting by an intoxicating or anesthetic substance "ministered by or with privity of the accused." This bill would delete "administered by or with the privity of the accused" and amends these sections to read "and this condition was known, or reasonably should have been known by the accused."

The author asserts that whether or not the perpetrator administered the alcohol or drugs or was involved in some way with the victim becoming intoxicated should have no bearing on the fact that the victim is prevented from resisting.

2. Case law.

In People v. Mack, (1992) 11 Cal.App. 4th 1466, 1481, court ruled that:

"The qualifying term "administered by or with the privity of the accused" requires only that the defendant has instigated the victim's ingestion of the resistance-suppressing substance. The qualifying term simply excludes criminal liability for situations where a person engages in a sexual act with a partner who has reached a resistance-suppressed state (that is short of

(More)



insensateness) through no encouragement by the defendant. It is clear the Legislature did not intend criminal liability in such a case, because otherwise, the statute would proscribe intercourse whenever resistance is prevented by some intoxicating, anesthetic, or controlled substance (which would be the result if the qualified phrase "administered by" were not part of the statute)."

3. Examples of need for the bill.

The author has included the following examples of when this bill will improve on existing law:

a) Non-Consensual Group-Rape.

According to an example in background materials from the author, if a young college woman goes to Fraternity A on a weekend night and gets falling down drunk, then goes to Fraternity B and collapses on a bed in a semi-conscious heap, should the young men at Fraternity B be permitted to subject her to non-consensual gang sex, simply because they played no part in getting her drunk.

b) California Example.

Jim Fahey, an attorney whose practice consists solely of writing appeals for indigent convicted felons, believes this bill is needed because of a long outdated notion that if a woman voluntarily becomes intoxicated, she is to blame for whatever happens to her. He believes this is an anachronistic notion. He offers the following example in support of this bill from a case he handled in 1988:

A 17 year female made the mistake of going into a private residence with a 25 year old man, referred to as "X", and two of his friends, to whom reference will be "D-1" and "D-2". D-1 and D-2 offered the young woman an assortment of hard drinks, which she unwisely consumed. Before long, the young woman got sick to the stomach, after which she went upstairs to lay down. D-1, D-2 and X then came upstairs and performed a variety of sex acts on the young woman, who was semi-conscious at the time. The young woman in no way consented to these acts, nor did she want them to happen, nor had she said anything which indicated a desire to engage in any sort of sex (much less this type of humiliating three-on-one sex). The young woman was too drunk to offer any physical resistance, however, and so the men did not have to use physical force to get what they wanted.

(More)

The next day, the young woman and her mother reported the attack to the prosecutor's office. It was clear to the prosecutor that the young woman was not making up the story, so he brought the three men to trial. Because the men had not used physical force, however, the prosecutor was unable to charge them with forcible rape. (Penal Code Section 261(a)(2).) Likewise, because the young woman had not been wholly unconscious at the time of the acts, the prosecutor was unable to charge the men with rape against an unconscious person. (Penal Code Section 261(a)(4).) The prosecutor therefore charged the men with rape by intoxicant (Penal Code Section 261(a)(3)), since the young woman had been drunk to the point she could not resist. The prosecutor also charged the men with unlawful intercourse with a female under 18 (Penal Code Section 261.5), a far less serious offense which is commonly referred to as "statutory rape."

Separate trials followed. Mr. Fahey believes D-1 and D-2 were convicted on both charges. At X's trial, however, the defense attorney wisely cross-examined the young woman on the subject of who had given her the liquor. It soon became clear there was no evidence that X had played any role in getting the young woman drunk. The defense attorney was thus able to argue, that because the intoxicating substance had not been "administered by or with the privity of" X, X could not be convicted of violating Penal Code Section 261(a)(3). The jury found X guilty of statutory rape but not guilty of rape by intoxicant. Several weeks later, the judge sentenced X to two years in prison -- an uncommonly harsh sentence for a violation of Penal Code Section 261.5, but a far less severe sentence than the one X would have faced had he been convicted on the rape charge. An unsuccessful appeal followed.

c) Five Men Took Advantage of Drunken Woman.

The author asserts that this bill will ensure charges may be filed when it is impossible to prove the victim is unconscious to discourage repeats of this New York case.

On April 15, 1994, the Los Angeles Times wrote:

"There are men in this world who would enjoy having sex with a drunken woman passed out at their feet like some sodden rag doll, and at least five of them were acquaintances and even friends of Krista Absalon. The incident took place in New York.

"It had been a lousy week and Absalon meant a binge to be a wonder drug for her troubles. Her boss had not given her the raise she wanted. Worse yet, she and her ex were arguing again about custody rights to

(More)

their two little ones. The hospital lab technician began the evening with an empty stomach and then went on to fill it with beers and a double shot of rum and a whiskey sour. After hours, the manager allowed her free belts of alcoholic concoctions known as Kamikazes and Alabama Slammers."

"It was Pistolesi, a friend, who later found Absalon reeling in and out of consciousness in the ladies room with her jeans around her ankles. She kissed him, she recalls. He helped her to one of the bar's padded booths, where he and the others then took turns with her as they snacked on beer and sandwiches." Cases were plea bargained for \$750 fines. No jail. No probation.

"For quite some time, Krista Absalon was herself in the dark. Two of the men had given her a ride home. She recalls feeling wet and sore, but attributed that to her menstrual cycle. She said she had no hint of what had gone on until 13 days later. A friend had heard talk. The men were boasting."

When she asked Pistolesi what happened, he answered her "If you can't remember, then nothing happened." A friend who is a state trooper had heard the stories too, and he urged her to file a complaint.

An investigation ensued. The Los Angeles Times reported:

"all five of us went to the back and proceeded to remove Krista's clothes. I decided to have intercourse with her and I went first. I only had intercourse with her for about 1 1/2 minutes...I decided not to continue. After I was done, Mike Curcio was next...He was followed by Greg Streeter, and then both Mario and Dave Cummings took turns. ...When we were done, we all helped dress her. She was awake now and she had regained consciousness several times while we were having intercourse with her. We all went back to the bar and finished our beer and sandwiches."

Alice Vachss, a former New York City prosecutor and author of a recent book about sex crimes reportedly told the Los Angeles Times that "Rape isn't like robbery; rapists somehow get protected by our prejudices, with the idea being that the victim deserved it. In this case, Krista was drunk. So she wasn't a nice enough victim."

(More)

4. CACJ opposition.

The California Attorney's for Criminal Justice oppose removing the scienter requirement that the defendant either administered the controlled substance to the person or knew such substances were administered.

They assert that even though someone may know or should have known of the person's condition does not mean that they know the other person is unable to resist.

\*\*\*\*\*

Martinez

SENATE JUDICIARY COMMIT.  
BACKGROUND INFORMATION

- 6

445-5957

AB 85X

Please complete this form and return it to the Senate Judiciary Committee, Room 2032, as soon as possible. Your bill cannot be heard until this form is returned. PLEASE CALL AS SOON AS POSSIBLE TO SET YOUR BILL.

1. Who on your staff is responsible for this measure?

Mary Castellanos, 445-7852

2. Which agency, organization or individual requested the introduction of this bill?

Name: an individual attorney suggested the idea.

Contact Person:

Phone number:

3. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support?

See attached

4. Which agencies, organizations or individuals have expressed opposition?

See attached

5. If a similar bill has been introduced in a previous session, what was the number and year of its introduction?

unknown

6. What problem or deficiency under current law does the bill seek to remedy? The definitions of rape, sodomy, oral copulation, and penetration by foreign object in existing law, each include as a part of the definition, the circumstance where a victim is prevented from resisting by an intoxicating or anesthetic substance →

7. Are you planning any amendments to be offered before the Committee hearing?

no.

If you have any further background information or material relating to this measure (letters of support or opposition, reports, opinions, citations, etc.) please attach copies or state where such information is available.

Your cooperation is appreciated.

administered by or with the privity of the accused." This bill, as amended would delete "administered by or with the privity of the accused" and amend it to "this to" and this condition was known, or reasonably should have been known by the accused, ~~whether~~ whether or not the perpetrator administered the alcohol or drugs or was involved in some way with the victim becoming intoxicated, should have no bearing on the fact that the victim is prevented from resisting.

# California Attorneys for Criminal Justice

# CACJ

Assembly Member Diane Martinez  
State Capitol - Room 5119  
Sacramento, CA 95814

June 23, 1994

Re: ABX 85

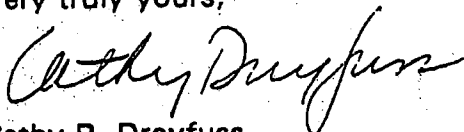
Dear Assembly Member Martinez:

CACJ regrets to inform you of our opposition to ABX 85, relating to rape:

CACJ is opposed to deleting the scienter requirement that the defendant either administered the controlled substance to the victim or knew that such substances were administered. This bill could result in rape conviction against innocent persons who believed the other party was consenting. Even though someone may know or should have known of the person's condition does not mean they can know the other person is unable to resist.

If you or your staff wish to discuss this further, please contact me at my office.

Very truly yours,



Cathy R. Dreyfuss  
Legislative Advocate

cc: Members and consultants,  
Senate Judiciary Committee

## EXECUTIVE DIRECTOR

Mary Broderick

## PRESIDENT

James S. Thomson  
660 "J" Street, Suite 280  
Sacramento, CA 95814-2482  
(916) 443-5004

## PRESIDENT-ELECT

Anne L. Fragasso, San Diego

## VICE PRESIDENT

Cristina C. Arguedas, Emeryville

## SECRETARY

Jerry J. Kenkel, Chico

## TREASURER

Marcia A. Morrissey, Los Angeles

## BOARD OF GOVERNORS

Michael L. Adelson, Los Angeles  
Jorge A. Alvarado, Oxnard  
Carleen R. Arledge, San Jose  
Richard P. Berman, Fresno  
Clyde M. Blackmon, Sacramento  
Martha J. Carlton, Modesto  
Steve Cochran, Los Angeles  
John Cutsirillo, San Diego  
Jack M. Earley, Irvine  
Paul Fromson, Merced  
Rex Gay, Susanville  
Mary J. Greenwood, San Jose  
Milton C. Grimes, Santa Ana Heights  
Elizabeth Grossman, Berkeley  
James R. Homola, Fresno  
Richard A. Huttnn, Glendale  
Rowan K. Klein, Santa Monica  
Madelynn Koppie, Santa Monica  
Ellen Kretzberg, Santa Clara  
Georgia McElroy, Stockton  
Richard H. Millard, Los Angeles  
Patience Milrod, Fresno  
Jon C. Minsloff, Santa Cruz  
Gregory C. Paraskou, San Jose  
John T. Phillipsborn, San Francisco  
Vicki I. Podbersky, Santa Monica  
Randy Sur Pollock, San Francisco  
Donald Ré, Los Angeles  
Dennis P. Riordan, San Francisco  
Thomas L. Roehr, Sacramento  
Richard Santwier, Pasadena  
Phillip A. Schnaverson, Hayward  
John M. Sink, Santa Barbara  
David Y. Stanley, San Francisco  
Jeffrey R. Stein, San Luis Obispo  
Allan H. Stokke, Santa Ana  
Spencer W. Strelitz, Oakland  
Scott A. Sugarman, San Francisco  
Kay L. Sunday, San Diego  
Cynthia A. Thomas, Sacramento  
Trina L. Thompson, Oakland  
Charles Windon, III, Los Angeles  
Christopher H. Wing, Sacramento  
Michael F. Yamamoto, Los Angeles  
John Yzurdiaga, Los Angeles

## PAST PRESIDENTS

Ephraim Margolin, San Francisco, 1974  
Paul J. Fitzgerald, Beverly Hills, 1975  
George W. Porter, Ontario, 1976  
Louis S. Katz, San Francisco, 1977  
Barry Tarlow, Los Angeles, 1978  
Charles R. Garry (deceased), 1979  
Charles M. Sevilla, San Diego, 1980  
Dennis Roberts, Oakland, 1981  
John J. Cleary, San Diego, 1982  
Gerald F. Uelmen, Santa Clara, 1983  
Michael G. Millman, San Francisco, 1984  
Robert Berke, Santa Monica, 1985  
Alex Landon, San Diego, 1986  
Richard G. Hirsch, Santa Monica, 1987  
Thomas J. Nolan, Palo Alto, 1988  
Leslie H. Abramson, Los Angeles, 1989  
Elizabeth Semel, San Diego, 1990  
Michael Rothschild, Sacramento, 1991  
Phillip H. Pennypacker, San Jose, 1992  
James Larson, San Francisco, 1993

## LEGISLATIVE ADVOCATE

Melissa K. Nappan  
660 "J" Street, Suite 200  
Sacramento, CA 95814  
(916) 448-8868

10551 Jefferson Boulevard  
Culver City, CA 90232  
Phone: (310) 204-0502  
Fax: (310) 204-2438

DANIEL E. LUNGREN  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



1515 K STREET, SUITE 511  
P.O. Box 944255  
SACRAMENTO, CA 94244-2550  
(916) 445-9555

FACSIMILE: (916) 322-2630  
(916) 324-5477

August 5, 1994

The Honorable Diane Martinez  
California State Assembly  
State Capitol, Room 5119  
Sacramento, CA 95814

RE: ABX 85 -- As Amended May 12, 1994

Dear Assembly Member Martinez:

The Attorney General's Office is pleased to support your measure, ABX 85.

If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

DANIEL E. LUNGREN  
Attorney General

JACK R. STEVENS  
Assistant Attorney General  
for Legislative Affairs

cc: Senate Committee On Judiciary  
Mr. Patrick Shannon, Governor's Office  
Ms. Maryanne Gilliard, OCJP

1878-0061





California NOW, Inc.

California National Organization for Women

926 J Street, Suite 523, Sacramento, CA 95814 (916) 442-3414

August 4, 1994

The Honorable David Roberti, Chair  
Senate Judiciary Committee  
205 Capitol Building  
Sacramento, CA 95814

RE: AB 85X (Martinez) - SUPPORT

Dear Senator Roberti and Committee Members:

The California National Organization for Women supports AB 85X (Martinez). AB 85X deletes from the definition of rape the requirement that certain substances must be "administered by or with the privity of the accused".

California NOW supports this measure because the issue of who gives alcohol or drugs to the rape victim is irrelevant. When a person is prevented from resisting an act of sexual intercourse because of being under the influence of an intoxicating or anesthetic substance, there is no consent, regardless of how and by whom it was administered.

AB 85X is needed because it would close the current loophole that allows a person to be sexually assaulted but not technically raped if she/he voluntarily becomes intoxicated.

We urge your "aye" vote for AB 85X (Martinez).

Sincerely,

Roberta White Battle  
Legislative Advocate

cc: Members, Senate Judiciary Committee

"Never Another Season of Silence" - Susan B. Anthony

# 4

CGIIT 03-

RCV, BX: XEPX, T9JEGPPTM, 7021 : 8-9-94 : 8:35AM :

1878-0062



*Support*  
**Government Relations Oversight Committee**

1455 Response Road, Suite 190, Sacramento, CA 95815  
Telephone Number: (916) 923-1825 Fax: (916) 263-6090



*Jun 22 1994*  
California Police Chiefs' Association

Government Relations Manager, John Lovell  
Telephone Number: (916) 447-3820 Fax (916) 447-3817

June 20, 1994

The Honorable Diane Martinez  
Member, California State Assembly  
State Capitol, Room 5119  
Sacramento, CA 95814

Dear Assembly Member Martinez:

Your bill, ABX 85, was reviewed by the Law and Legislative Committee of the California Peace Officers' Association. The position of the committee reflects the position of the California Peace Officers' Association and the California Police Chiefs' Association.

The committee has taken a position of approve in principle on this legislation.

If you have any questions or if I can be of assistance to you on this issue, please contact me at (916) 447-3820.

Very Truly Yours,

John Lovell  
Government Relations Manager

JL/sac



**NAAAR**  
National Action Against Rape

*Rec'd Staff*

May 6, 1994

The Honorable Diane Martinez  
California Assembly  
State Capitol  
Sacramento, CA 95814

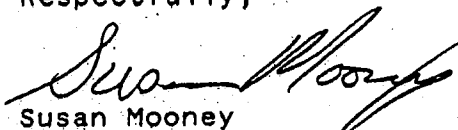
Dear Assemblymember Martinez;

National Action Against Rape is writing to express our support of ABX1 85. We believe that ABX1 85 will more clearly acknowledge the responsibility of perpetrators when sexual assault victims are prevented from resisting by any intoxicating or anesthetic substance. Language such as that contained in ABX1 85 will give a fuller, more accurate meaning to what consent means.

As a grassroots advocacy group, National Action Against Rape supports efforts such as those contained in ABX1 85 to have the law more realistically reflect how rape occurs, particularly in circumstances where the victim is acquainted with the perpetrator.

Thank you for your work on this important piece of legislation.

Respectfully,



Susan Mooney  
Member, Board of Directors

926 J Street, Suite 911 Sacramento, CA 95814 (916) 447-8817



# CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

1414 K STREET, SUITE 300 • SACRAMENTO, CALIFORNIA 95814 • (916) 443-2017

## OFFICERS

**President**  
EDWARD HUNT  
Fresno County

**First Vice-President**  
BARRY LABARBERA  
San Luis Obispo County

**Second Vice-President**  
JAMES P. FOX  
San Mateo County

**Secretary-Treasurer**  
MICHAEL R. CAPIZZI  
Orange County

**Sergeant-at-Arms**  
GEORGE KENNEDY  
Santa Clara County

**Past President**  
GARY T. YANCEY  
Contra Costa County

## BOARD OF DIRECTORS

JOHN PAUL BERNARDI  
Los Angeles County

LOUIS BOYLE  
San Diego County

MICHAEL D. BRADBURY  
Ventura County

ARTHUR DANNER III  
Santa Cruz County

CANDACE J. HEISLER  
San Francisco City & County

DALE KITCHING  
Sacramento County

TERRY LEE  
Santa Clara County

SUSAN MASSINI  
Mendocino County

PAUL RICHARDSON  
Placer County

RANDALL K. TAGAMI  
Riverside County

**EXECUTIVE DIRECTOR**  
GREGORY D. TOTTEN

May 4, 1994

The Honorable Diane Martinez  
Member, California Assembly  
State Capitol, Room 5119  
Sacramento, CA 95814

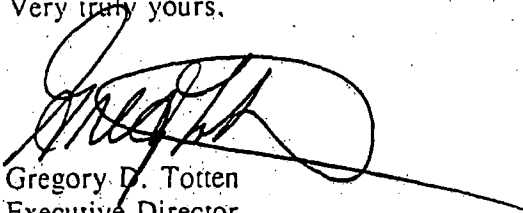
MAY 10 1994

RE: ABX 85

Dear Ms. Martinez:

The California District Attorneys Association is pleased to offer its support of your measure ABX 85 as introduced on February 24, 1994.

Very truly yours,

  
Gregory D. Totten  
Executive Director

GDT/ar

cc: The Honorable John Vasconcellos, Chair Assembly Committee on  
Ways & Means

Jeff Long, Assembly Committee on Ways & Means

COLUMN ONE

# Outrage May Revive Rape Case

■ Five men took advantage of a drunken woman who thought they were her friends. The district attorney agreed to misdemeanor pleas and fines of \$750.

By BARRY BEARAK  
TIMES STAFF WRITER

GOVERNEUR, N.Y.—There are men in this world who would enjoy having sex with a drunken woman passed out at their feet like some sodden rag doll, and at least five of them were acquaintances—and even friends—of Krista Absalon.

They all had been carousing that Friday night at the Casablanca, a popular hangout in this isolated town near the Canadian border. Partying often went on past the bar's closing time, with the doors locked and the liquor free.

It had been a lousy week, and Absalon meant a binge to be a wonder drug for her troubles. Her boss had not given her the raise she wanted. Worse yet, she and her ex were arguing again about custody rights to their two little ones.

The hospital lab technician began the evening with an empty stomach and then went on to fill it with beers and a double shot of rum and a whiskey sour. After hours, the amiable, young manager—Mario Pistoletti—allowed her free belts of alcoholic concoctions known as Kamikazes and Alabama Slammers.

It was Pistoletti, a friend, who later found Absalon reeling in and out of consciousness in the ladies room, with her jeans around her ankles. She kissed him, he recalls. He helped her to one of the bar's padded booths, where he and the others then took turns with her as they snacked on beer and sandwiches.

Nearly three years have since passed, but the attack on an incapacitated woman has kept this town at the center of a moral cyclone, not so much for the crime—awful as it was—but for the punishment, which last June was plea-bargained against the victim's wishes to a misdemeanor and \$750 fines. "That's it!" Absalon cried out in court. "Are you serious? Oh, my God."

In Gouverneur, there was little matching outcry; prevailing attitudes are like a wagging finger that suggests a woman who drinks too much forfeits the right to say no. But the case has carried across the Adirondacks and come to represent nationally so much of what goes awry in acquaintance-rape cases, a preoccupation with judging the victim's conduct instead of the perpetrator's.

"Rape isn't like robbery; rapists somehow get protected by our prejudices, with the idea being that the victim deserved it," said Alice Vachas, a former New York City prosecutor and author of a recent book about sex crimes. "In this case, Krista was drunk. So she wasn't a nice enough victim."

Absalon has been lenacious, however. Now 26, she has vented

Please see RAPE, A18

Continued from A1  
her anger and pain everywhere she could make appearances, writing-phonings. And today, a judge in Canton, N.Y., will hear some very unusual arguments in a very unusual motion by the state attorney general. He has asked that the misdemeanor pleas be thrown out and that the original charges of felony rape be reinstated.

There may yet be a trial in which a jury hears the evidence against the five men Krista Absalon once thought of as friends. "All I've ever wanted was my fair day in court," she said last week. "Regular, everyday people—a jury—ought to hear what these men did to me."

About 4,300 people live in Gouverneur, and most jobs are in the surrounding dairy farms and the mine and the talc mines. The town has been best-known as the birthplace of Edward G. Noble, the inventor of Lifesavers. A car-sized replica of "the candy with a hole" welcomes the traffic into downtown.

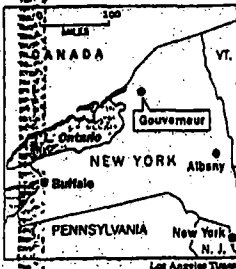
While Gouverneur may be an oasis amid expanses of white pine and hemlock, there are not many night spots except for the restaurants and bars owned by the Pistoletti family. The Casablanca sold good steaks and home-made pasta. Its bar was long and serpentine and the crowd was friendly.

Krista Absalon's assailants are not known locally as the "Casablancas 5." But if there is a common rumormongered compassion in town, it is neither for the victim nor the "5" but the genial Italian immigrant who owns the bar, Tony Pistoletti. The case has cost his establishment its liquor license.

Gouverneur's mayor, Donna Scobazzava, is typical of most when she said, "Everyone knows everyone else here, and there are some sympathies on both sides. But everyone feels for Mario Pistoletti's folks [Tony]. He's worked so many years in the restaurant trade and now he has been made to suffer."

The elder Pistoletti assesses the crime in terms of lost business and echoing general sentiments, indeed presents himself as a pitiable figure. "I was home sleeping and I'm the only one been hurt by all this," he said. "To this day, I wouldn't know how [the assault] started or how it ended."

For quite some time, Krista Absalon was herself in the dark. Two of the men had given her a ride



home that morning. She recalls feeling wet and sore, but attributed that to her menstrual cycle. She said she had no hint of what had gone on until 13 days later. A friend had heard talk. The men were boasting.

To make sense of it, Absalon rummaged through her memory for a hunch of that night was only a deep pool of emptiness. "I thought it was impossible, no way, these guys were my friends," she said. "I knew them from school and from the Casablanca on Friday nights. The idea of it made me an emotional wreck."

So she phoned the one she felt closest to, Mario Pistoletti. "What the hell went on?" she asked him. "People are saying all sorts of rotten things."

He answered her sternly, she recalled. "Listen Krista," he said. "If you can't remember, then nothing happened."

Krista Absalon... ever articulate. She is not an assertive woman—she was not inclined to report anything, but a friend—a state trooper—had heard the stories, too. He urged her to file a complaint at the state trooper barracks.

Investigators first questioned bartender Greg Streeter, now 29. He confirmed that an attack had occurred, though he initially denied taking part in it himself. "I thought the girl was passed out," he said.

His statement was crucial. It allowed police to squeeze confessions from three of the other four. One was Mark Hartle, now 27. He also comes from one of Gouverneur's leading families, working in his dad's construction business. His statement largely coincides with those of the others. It reads:

"At about 2:30 a.m., Mario Pistoletti was told by someone that there was a woman passed out in the girls' bathroom. Mario went in and brought her out and helped her to a booth where she layed down. At the bar at the time was myself, Mario, Greg Streeter, Mike Curcio and David Cummings. Everybody

else had left the bar and gone home.

"All five of us went to the back and proceeded to remove Krista's clothes. I decided to have intercourse with her and I went first. I only had intercourse with her for about 1 1/2 minutes. . . I decided not to continue. After I was done, Mike Curcio was next. . . He was followed by Greg Streeter, and then both Mario and David Cummings took turns. . .

"When we were done, we all helped dress her. She was awake now and she had regained consciousness several times while we were having intercourse with her. We all went back to the bar and finished our beer and sandwiches. . .

"I want to add a few things. . . We would stay a few seconds when somebody was [assaulting] her and then go into the bar to drink some more. I also remember that Greg asked for a beer while he had [assaulting] Krista. I think Mario is the one that carried the beer back to him. . .

"I am glad that I am finally able to talk about this as I have felt very guilty about doing this to Krista. I would not want anybody to do this to my sister."

It would be months before the police made arrests. All the while, Absalon ached with self-loathing. "I was a nut case, a psycho, running scared, dealing with all kinds of emotions. I blamed myself for a long time. I still blame myself. It was stupid being in that bar and getting that drunk."

She missed a lot of work. She drank heavily. "I had so many questions. Who did what and why? I felt betrayed in such a strange way. I would sit in the corner of the bedroom and cry all the time. My kids would ask what's wrong, and I'd say that somebody hurt me, and they'd tell me to hurt them back."

The crime had been reported in the local newspapers without using Absalon's name, but many people certainly knew that she was the victim. She could sense the staring and hear the whispers. "Krista jokes" were circulating.

One whisper was that the Pistoletti wanted to buy her silence. In an effort to verify that, investigators arranged for Absalon to phone Mario as they recorded the call. He denied the offer, but their taped exchange reveals two friends struggling over one's bad faith.

Krista: Why did you guys do that?  
Mario: Why do we all do it? I don't know, I'm sorry.  
Krista: You're sorry?  
Mario: I should have used my, even, oh, I don't know. . . I don't know what you can say anymore. Seems like every time I turn around, I open my mouth, somebody be sticking their foot in my

Krista: Why?  
Mario: Nobody to drink with.

By the time rape charges were filed—five months after the assault—Absalon had sought help at a rape treatment center 25 miles away in Canton, the county seat and a college town. Counselors there were used to rapes where people blamed the victim.

"This case was too painful for some people to believe," said Jennifer Baird, who runs the center. "The Pistoletti are a nice family. That goes against the stereotype."

Absalon herself was born in Gouverneur to working-class parents. Her mother and two sisters have stood by her from the start. "Women are still suppressed here," said one sister, Clover Forsythe.

"In the North Country, we're just starting to realize there's such a thing as sexual harassment."

Over the months, Absalon began to feel better about herself. She liked the word the counselors used, empowerment. She picked a lawyer from the phone book and filed a

civil suit against the five men and Tony Pistoletti for \$4 million.

Empowering as that may have felt, there was an unwanted repercussion. The Watertown Daily Times, so scrupulous about not publishing the name of a rape victim, went ahead and identified her as the plaintiff in the lawsuit. Gone forever was even the pretense of a victim's anonymity.

"I went out to get annihilated, and I drank and I took some pills and I would've succeeded in killing myself if I hadn't vomited it up," she said.

A year after the arrests, Absalon was so frustrated with the justice system that her mind seemed to be on fire. She had no idea of what was happening. Dist. Atty. Richard Manning did not answer her calls. He had never spoken with her.

Elected in 1991, Manning had problems of his own. His assistant who handled sex crime cases had recently quit, complaining he had slandered her. A former secretary had sued him for sexual harassment, claiming he engaged in "outbursts of obscenity" and favored profanity in describing women.

Absalon did not get word of what was going on until last May. Newspapers reported that a plea was in the works, reducing the charges to misdemeanor sexual misconduct. That crime—defined similarly to rape as "sexual intercourse with a female without her consent"—was punishable by no more than a year in jail.

Entering such a plea would require some doing. Legally, Manning could not bargain a Class B violent felony down to a Class A misdemeanor. He would have to drop the first charge and file the misdemeanor charge with a village or town judge.

In rural New York, town judges

are elected to handle minor violations. They commonly have no background in the law. In this instance, the case was scheduled for June 5 before Town Judge Wallace Sibley, a fertilizer salesman.

With that date set, something of a gasp rippled across the county. Women's groups in Canton were outraged. The idea of it—a misdemeanor. There was talk the "5" might get off with only a few months behind bars or even probation.

On the Saturday morning of the trial, 100 protesters—mostly out-of-towners—lined the sidewalks outside the Gouverneur fire station, which sits beneath the town court. Children held signs marked in crayon: Don't Hurt Girls.

Judge Sibley was ushered into the building with a police escort. Two of the defendants took seats right in front of the Absalon family. "You get the hell out from in front of us," shouted Krista's mother.

←  
5/24/97  
C. D. D.  
X

cerely, Krista Absalon.

Most everyone considered the sentences—fines of \$750 for each of the five and \$90 more in court costs—to be startling in one way or another, including Judge Sibley. His caseload usually dealt with barroom scraps and speeding tickets. He had never meted out this big a penalty, he announced gravely.

Someone among the spectators answered that by shouting, "That's it! No jail! No probation!" Even prosecutor Manning took exception. "I feel that there should have at least been a maximum fine (\$1,000) and at least a year of conditional discharge, if not probation," he told the court.

Manning himself could sense the heat. He would soon be under attack and he chose to face his critics with bluster. A plea-bargain was struck because "there was no corpus delicti, no proof that a crime had been committed," he explained. He called reporters "pandering, pustulant press idiots" and claimed that Absalon's lawsuit proved "she has dollar signs in her eyes."

Ten days later, the prosecutor oddly apologized for his outbursts, if not his entire handling of the case. He offered regrets "to the victim of this heinous crime" for any misconstrued statements about her "harrowing ordeal." He said he should have demanded that the "6" get a year in jail.

This solace was late. The sentencing had been a new low point for Absalon. Her mood was desperate. "A lot of people were sending flowers to my house," she recalled. "It was like someone had died and, when I thought about it, I said, yesh, a part of me has died. And the price on it was \$750."

The Absalons were unwilling to let things settle over the slow drift of time. They had support in this from a vanguard in Canton. Angry calls were made to the right people around the state. A month later, Gov. Mario M. Cuomo asked for a review of the case from a special investigations commission.

At the time, there were some charges of back room deals, but that has not been proved. Dick Sterling, news editor of the weekly Gouverneur Tribune-Press and himself a town judge, believes the plea was just a matter of too many people taking the assault of a woman too lightly.

"[Judge] Sibley was duped by the big shot attorneys for the defendants and Mr. Manning," Sterling said. "They presented everything to him beforehand, and I think Sibley honestly felt he was giving out a stiff sentence."

The gross mismatch of crime and punishment inevitably brought national exposure. Last summer, the NBC news magazine "Now" did a segment. The defendants have otherwise been publicly silent, but

the TV crew was able to convince one, Michael Curcio, to appear on camera.

He proved an impenitent spokesman. "The truth is it was a gang bang," Curcio said. "Gang bangs have been going on since the turn of the century."

In Gouverneur, this TV program finally flushed out some additional sympathy for Absalon. By then, however, most people also wanted the case simply to be over. It was time for the town to go back to being the birthplace of Lifesavers.

That desire has been thwarted by the state's intervention; Cuomo's commission recommended that a special prosecutor be appointed. Atty. Gen. G. Oliver Koppell was named and he made this assessment: The town judge had no jurisdiction and the guilty pleas can be legally rescinded.

In place of those pleas, the state will today ask to reinstate the first-degree rape charges. The crime carries prison terms of up to 25 years. Prosecutors believe the defendants' confessions are sufficient evidence.

Defense lawyers, for their part, intend to argue that all this violates their clients' right not to be tried twice for the same crime—or double jeopardy. They say Cuomo and Koppell are posturing for votes.

"It's political grandstanding and they haven't a chance in hell to pull it off," said lawyer Gary Miles, who represents Hardie. "Even if a district attorney screwed up, you can't just walk into court later and say that justice hasn't been done. It violates every concept of due process."

There are several possible outcomes, and some of them leave Krista Absalon very apprehensive. The guilty pleas could be thrown out without any new charges ever being sustained. There is that gambit.

In any event, she is bracing herself for her own day on the witness stand, either in a criminal case or the civil suit. "They're going to put me through a long, dirty hell," she said. "I'm no nun and I've never lived like one."

There are plenty of people in Gouverneur ready to throw mud her way. Tim Markwick, the bass player in a rock band, said he has already taken one attorney on a tour of the bars that have banned Absalon for misbehavior. "I've seen her passed out so many times, you wouldn't believe it," he said.

Carlton Yedinsk, bartender at the Fore by Four, is a spout for stories about how liquor turns Absalon into a vamp. "I've seen her in action, and it's quite an act to see," he said. "With a little to drink, she gets pretty free with herself."

He is yet another here who sees what took place in the Casablanca through the peculiar refraction that focuses blame on the victim. "No one will tell you that what happened to her was right, but c'mon, a girl that drunk, what did she expect?"

The judge warned against further disruptions. He expected order. If the victim wanted, she could present an "Impact statement" before sentencing. Absalon had written one but was too upset to read it. Her sister Clover took over.

"I feel as if I have fought a losing battle for the last 19 months of my life. First, I had to deal with the fact that I was raped by five men—or should I say five animals—that I thought were my friends. Then came the media that slandered me with my name, my family, and then to top it off, I was raped again by the law system."

"How come justice can't be served? What in God's name did I do wrong? They raped me when I could not consent. I was passed out and they raped me. They are pigs."

They will walk free to do that again.

"Ask them if they have had to go to a counselor every week for the last 19 months. Ask them if they have a hard time getting out of bed to go to their jobs. Ask them if they have to explain to their 4- and 5-year-old children why their mother is crying for no apparent reason."

"I guess this statement is my last shot of hope, my last cry for the justice system that everyone is supposed to live by to finally do what is right and discipline these so-called men with something besides a slap on their hands. Sin-



Associated Press

Dist. Atty. Richard Manning agreed to misdemeanor plea bargains in the case of five men who had been accused of first-degree rape.



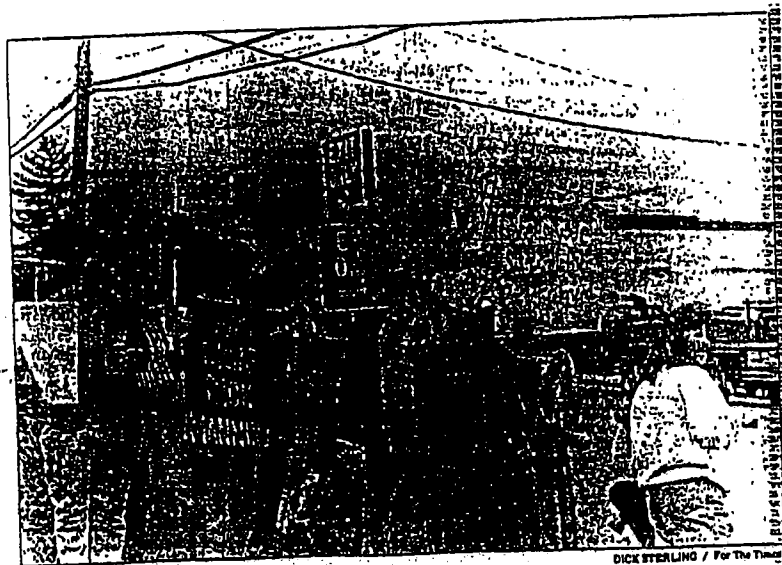
Associated Press

Krista Absalon hopes rape charges against five men are reinstated.



Associated Press

Defendants Mark Hartle, Mario Pistoletti and David Cummings after they plea-bargained rape charges down to misdemeanors.



DICK STERLING / For The Times

Protesters outside court as five accused of rape are sentenced to \$750 fines for sexual misdemeanors.





**EXHIBIT G**



BILL ANALYSIS

2002

```

-----
|SENATE RULES COMMITTEE | SB 1421 |
|Office of Senate Floor Analyses | |
|1020 N Street, Suite 524 | |
| (916) 445-6614 Fax: (916) | |
| 1327-4478 | |
|-----|

```

## UNFINISHED BUSINESS

Bill No: SB 1421  
 Author: Romero (D), et al  
 Amended: 7/1/02  
 Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 4/16/02  
 AYES: McPherson, Margett, Polanco, Sher, Vasconcellos

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 36-0, 5/16/02  
 AYES: Ackerman, Alarcon, Alpert, Battin, Bowen, Brulte, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Haynes, Jehannessen, Johnson, Karmette, Knight, Kuehl, Machado, Margett, McClintock, McPherson, Monteith, Morrow, O'Connell, Oller, Ortiz, Peace, Perata, Polanco, Pochigian, Romero, Scott, Sher, Soto, Speier, Torlakson, Vasconcellos

ASSEMBLY FLOOR : 72-0, 8/8/02 - See last page for vote

SUBJECT : Sex crimes: fraudulent representation

SOURCE : California Chapter of the Organization for Women

DIGEST : This bill (1) amends specified sex offenses to include circumstances where the victim is deemed to be unconscious of the nature of the offensive act because the victim is "not aware, knowing, perceiving, or cognizant of

CONTINUED

SB 1421

## PageB

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," and (2) expands sexual battery to include this same circumstance of fraudulent representation.

Assembly Amendments made a technical change in the definition of "victim".

ANALYSIS : Under current law, every person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act, is an alternate misdemeanor/felony, as specified. As used in this section, "fear" means the fear of physical injury or death to the person or to any relative of the person or member of the person's family.

Sexual Battery

Under current law, any person who touches an intimate part of another person against the will of the person touched and under specified circumstances for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery, as specified.

This bill includes the following within the sexual battery statute:

Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at

the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery.

A violation of this subdivision would be a wobbler, punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding \$2,000; or by

SB 1421

PageC

imprisonment in the state prison for two, three, or four years, and by a fine not exceeding \$10,000.

Rape

Under current law, rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of specified circumstances, including the following:

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 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.

This bill adds the following circumstances to this provision:

(Where the person 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.

Unlawful Sodomy

Under current law, sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person under any of specified circumstances, including the following:

Where the victim is at the time unconscious of the nature of the act and this is known to the person committing the act; "unconscious of the nature of the act" means incapable of resisting because the victim

SB 1421

PageD

meets one of the following conditions:

- 1. Was unconscious or asleep.
- 2. Was not aware, knowing, perceiving, or cognizant that the act occurred.
- 3. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

This bill adds the following condition to the definition of "unconscious of the nature of the act":

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.

Unlawful Oral Copulation

Under current law, oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person under any of specified circumstances, including the following:

Where the victim is at the time unconscious of the nature of the act and this is known to the person committing the act; "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

- (1) Was unconscious or asleep.
- (2) Was not aware, knowing, perceiving, or cognizant that the act occurred.
- (3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

This bill adds the following condition to the definition of "unconscious of the nature of the act":

SB 1421

PageE

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

Forcible Sexual Penetration

Under current law, an act of sexual penetration accomplished against the victim's will is unlawful under any of specified circumstances, including the following:

Where the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed; "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

- (1) Was unconscious or asleep.
- (2) Was not aware, knowing, perceiving, or cognizant that the act occurred.
- (3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

This bill adds the following condition to the definition of "unconscious of the nature of the act":

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.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

SUPPORT : (Verified 8/8/02)

California Chapter of the Organization for Women (source)  
Campaign for California Families  
Office of the Attorney General

SB 1421

PageF

California State Sheriffs' Association  
Crime Victims United of California  
American Association of University Women - California  
California District Attorneys' Association

ARGUMENTS IN SUPPORT : According to the author's office:

Current law does not allow the victim of a fraudulent physical examination performed for sexual gratification or sexual abuse to prosecute for rape because the victim is unable to prove it is fraud in fact, it was done with the consent of the patient, regardless of whether it was given unconscious of the real purpose. It was merely fraud in the inducement.

Last year a case was presented before the Court of Appeals in Southern California where an X-ray

technician was accused of digitally penetrating the genitals of two women and fondling the breast of one of them for the sole purpose of sexual gratification. The court found that the technician could not be convicted under Penal Code 289 (rape) because his actions did not fall within the statutory language. Because the women were aware of what the technician was doing and allowed him to do so. Thus, they "gave their consent." Now it does not fall within the statutory language of statutory rape either, because the women are over the age of 18 years.

ASSEMBLY FLOOR :

AYES: Aarstad, Aroner, Ashburn, Bates, Bogh, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Chu, Cogdill, Cohn, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Hertzberg, Horton, Jackson, Keesley, Kehoe, Koretz, La Suer, Leach, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Mountjoy, Nakano, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Rod Pacheco, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Simitian, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wyland, Zettel, Wesson

SB 1421

PageG

RJG:cm 8/9/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**EXHIBIT H**





**SENATE RULES COMMITTEE**

SB 59

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 651-1520 Fax: (916) 327-4478

---

UNFINISHED BUSINESS

---

Bill No: SB 59  
Author: Evans (D), et al.  
Amended: 7/3/13  
Vote: 27 - Urgency

---

SENATE PUBLIC SAFETY COMMITTEE: 6-0, 2/26/13  
AYES: Hancock, Anderson, Block, Knight, Liu, Steinberg  
NO VOTE RECORDED: De León

SENATE APPROPRIATIONS COMMITTEE: 7-0, 4/08/13  
AYES: De León, Walters, Gaines, Hill, Lara, Padilla, Steinberg

SENATE FLOOR: 38-0, 4/22/13  
AYES: Anderson, Beall, Berryhill, Block, Calderon, Cannella, Corbett, Correa,  
De León, DeSaulnier, Emmerson, Evans, Fuller, Gaines, Galgiani, Hancock,  
Hernandez, Hill, Hueso, Huff, Jackson, Knight, Lara, Leno, Lieu, Liu,  
Monning, Nielsen, Padilla, Pavley, Price, Roth, Steinberg, Walters, Wolk,  
Wright, Wyland, Yee  
NO VOTE RECORDED: Vacancy, Vacancy

ASSEMBLY FLOOR: 78-0, 8/22/13 (Consent) - See last page for vote

---

SUBJECT: Crimes: sex crimes

SOURCE: Author

---

DIGEST: This bill expands the definition of oral copulation and sexual penetration sex crimes committed by fraud or impersonation to include the occurrence where an individual submits under the belief that a person committing the act is someone known to the victim other than the accused, and this belief is

CONTINUED

induced by artifice, pretense, or concealment by the perpetrator, with the intent to induce the victim's belief.

Assembly Amendments limit this bill to oral copulation and sexual penetration, as it pertains to sex crimes by removing "victim's spouse" from current statute and replacing it with "someone known to the victim other than the accused," leaving rape and sodomy to AB 65 (Achadjian). The authors introduced similar bills and this amendment divides the subject matter.

### ANALYSIS:

Existing law:

1. Provides that any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.
2. Provides that any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

This bill expands the definition of oral copulation and sexual penetration sex crimes committed by fraud or impersonation to include the occurrence where an individual submits under the belief that a person committing the act is someone known to the victim other than the accused, and this belief is induced by artifice, pretense, or concealment by the perpetrator, with the intent to induce the victim's belief.

### Background

This bill was prompted by the well-publicized reversal of the rape conviction of Julio Morales. (*People v. Morales* (2013) 212 Cal.App.4<sup>th</sup> 583.) Morales was charged with and convicted of rape of an unconscious person. The prosecution's theory of the case was that Morales had intercourse with the victim while she was asleep. (The victim is called "Jane Doe" in the opinion.) The 2<sup>nd</sup> District Court of

CONTINUED

Appeal reversed Morales' conviction because the jury could have convicted him on the invalid theory that he had induced the victim to believe that he was her boyfriend.

The appellate court found that there was ample evidence to convict Morales of rape under the prosecution's theory that Morales had intercourse with the victim while she was asleep. The court ordered that Morales be retried on this basis. The jury instructions allowed the jury to convict Morales of rape on the invalid basis that Morales was able to engage in intercourse with the victim because he induced her to believe that he was her boyfriend. The invalid theory arose because Morales claimed that the victim was awake when they began having intercourse and that she likely believed he was her boyfriend. The prosecutor then argued to the jurors that even if they believed Morales, he was still guilty of rape by fraud. However, under existing California law, it is not rape for a person to induce a woman to have sexual intercourse with him by posing as her boyfriend. Under such circumstances, the perpetrator is guilty of rape only where he induces or leads the victim to believe that he is her spouse. (*People v. Morales, supra*, 212 Cal.App.4<sup>th</sup> 583, 586-587, 589-597.)

#### Prior Legislation

AB 765 (Achadjian, 2011) would have expanded the definition of "rape by fraud" to include submission of the victim to sexual intercourse under the belief that the perpetrator was a cohabitant. AB 765 was held in the Senate Public Safety Committee.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Potential minor near-term increase in state incarceration costs, likely less than \$25,000 (General Fund) annually, for increased state prison commitments to the extent expanding the definition of specified crimes results in additional felony convictions. Out-year costs could potentially be greater due to the cumulative cost effect of overlapping base sentence terms, parole, and/or sentence enhancements applicable to the specified crimes.
- Potential future cost pressure of \$60,000 (General Fund) per prison commitment per year to the extent the long-term impact of pending legislation considered in aggregate affects the state prison population to a degree that

CONTINUED

undermines the state's ability to reduce or sustain prison overcrowding below the federal court-imposed population limit.

- Likely minor impact to state trial court workload incurred by the Judicial Branch to the extent the provisions of this bill result in additional felony court filings and related court time.
- Minor, absorbable workload impact to the DOJ associated with increased sex offender registration.
- Minor non-reimbursable local law enforcement costs, offset to a degree by minor fine revenue.

**SUPPORT:** (Verified 8/22/13)

Attorney General Kamala Harris  
AFSCME  
California Coalition Against Sexual Assault  
California District Attorney's Office  
California Legislative Women's Caucus  
California Partnership to End Violence  
California Police Chiefs Association  
California State Sheriffs' Association  
California Women Lawyers  
Chief Probation Officers of California  
City Council and Commission on the Status of Women of the City of Glendale  
City of Berkeley  
City of West Hollywood  
Crime Victims United of California  
Humboldt County District Attorney  
Junior Leagues of California  
Marin County District Attorney  
Napa County District Attorney  
Napa Emergency Women's Services  
National Association of Social Workers  
Peace Officers Research Association of California  
Peace Over Violence  
Planned Parenthood  
San Bernardino County Sheriff  
Sonoma County Commission on the Status of Women

CONTINUED

**ARGUMENTS IN SUPPORT:** According to the author, this bill, “updates the arcane language contained in various sections of the California Penal Codes by substituting and defining the new term of ‘someone known to the victim other than the accused’ in place of the term ‘spouse.’ Doing so would expand the definition to include single individuals, domestic partners and individuals currently excluded by the narrow use of the term ‘spouse.’ This bill creates equity within the law.”

**ASSEMBLY FLOOR:** 78-0, 08/22/13

AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Bigelow, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Conway, Cooley, Dahle, Daly, Dickinson, Donnelly, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Hall, Harkey, Roger Hernández, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Maienschein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Wagner, Waldron, Weber, Wieckowski, Wilk, Williams, Yamada, John A. Pérez

NO VOTE RECORDED: Vacancy, Vacancy

JG:nl 8/23/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*



**EXHIBIT I**





CONCURRENCE IN SENATE AMENDMENTS

AB 65 (Achadjian and Lowenthal)

As Amended June 25, 2013

2/3 vote. Urgency

ASSEMBLY: 76-0 (April 18, 2013) SENATE: 38-0 (August 15, 2013)

---

Original Committee Reference: PUB. S.

SUMMARY: Provides that rape or sodomy, occurs where the victim submits to the sexual act under the belief that the perpetrator is someone known to the victim other than the accused, and not just the spouse of the victim.

The Senate amendments:

- 1) Clarify that the defendant must be impersonating someone known to the victim.
- 2) Make technical, non-substantive changes.
- 3) Delete the provisions pertaining to oral copulation and sexual penetration.

EXISTING LAW:

- 1) Provides that rape by fraud is committed when a person submits to sexual intercourse under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.
- 2) Provides that a person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

AS PASSED BY THE ASSEMBLY, this bill provided that rape, or felonious oral copulation, sodomy, or sexual penetration, occurs where the victim submits to the sexual act under the belief that the perpetrator is someone other than the accused, and not just the spouse of the victim. Specifically, this bill:

- 1) Expanded the crime of rape to include the situation where the perpetrator fraudulently induces the victim to believe that he or she is another person.
- 2) Expanded the crime of sodomy to include the situation where the perpetrator fraudulently induces the victim to believe that he or she was another person.
- 3) Expanded the crime of oral copulation to include the situation where the perpetrator fraudulently induces the victim to believe that he or she was another person.

- 4) Expanded the crime of sexual penetration by a foreign object to include the situation where the perpetrator fraudulently induces the victim to believe that he or she was another person.
- 5) Contained an urgency clause.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Potential minor near-term increase in state incarceration costs, likely less than \$25,000 (General Fund) annually, for increased state prison commitments to the extent expanding the definition of specified crimes results in additional felony convictions. Out-year costs could potentially be greater due to the cumulative cost effect of overlapping base sentence terms, parole, and/or sentence enhancements applicable to the specified crimes.
- 2) Potential future cost pressure of \$60,000 (General Fund) per prison commitment per year to the extent the long-term impact of pending legislation considered in aggregate affects the state prison population to a degree that undermines the state's ability to reduce or sustain prison overcrowding below the federal court-imposed population limit.
- 3) Likely minor impact to state trial court workload incurred by the Judicial Branch to the extent the provisions of this bill result in additional felony court filings and related court time.
- 4) Minor, absorbable workload impact to the Department of Justice associated with increased sex offender registration.
- 5) Minor non-reimbursable local law enforcement costs, offset to a degree by minor fine revenue.

COMMENTS: According to the author, "Assembly Bill 65 would protect all victims of rape by making it clear that a perpetrator who impersonates anyone other than the accused is guilty of felony rape. This will close an archaic loophole in current law that says a person is committing felony rape only if they are impersonating a victim's spouse. This updated language will better reflect the modern society we live in and protect all forms of relationship that exist, rather than prescribing each classification of relationship, with the possibility of overlooking one. This definition will give the district attorneys the tools they need to prosecute against all cases of rape."

Please see the policy committee analysis for a full discussion of this bill.

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

**DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE**

Case Name: **People v. Billy Charles White** Case No.: **S228049**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. The Office of the Attorney General's eService address is [AGSD.DAService@doj.ca.gov](mailto:AGSD.DAService@doj.ca.gov).

On **August 4, 2016**, I served the attached: **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Raymond M. DiGuiseppe  
Attorney at Law  
P.O. Box 10790  
Southport, NC 28461

Honorable Frank A. Brown, Judge  
c/o Michael M. Roddy  
Court Executive Officer  
San Diego County Superior Court  
220 West Broadway  
San Diego, CA 92101-3409

Kevin J. Lane/Court Administrator  
Fourth Appellate District, Division One  
750 B Street, Suite 300  
San Diego, CA 92101

and, furthermore I declare, in compliance with California Rules of Court, rules 2.251(i)(1)(A)-(D) and 8.71(f)(1)(A)-(D), I electronically served a copy of the above document on **August 4, 2016**, by 5:00 p.m., on the close of business day to the following.

[eservice-criminal@adi-sandiego.com](mailto:eservice-criminal@adi-sandiego.com)  
Appellate Defenders, Inc.'s

[da.appellate@sdca.org](mailto:da.appellate@sdca.org)  
San Diego District Attorney's Office

[diguisepe228457@gmail.com](mailto:diguisepe228457@gmail.com)  
Raymond M. DiGuiseppe  
Attorney for Appellant Billy Charles White

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **August 4, 2016**, at San Diego, California.

**C. Estrada**  
Declarant



Signature

