

ASSEMBLY THIRD READING
AB 1927 (Boerner Horvath)
As Amended March 2, 2020
2/3 vote

SUMMARY:

Makes testimony provided by a victim or witness in a felony prosecution for specified sex offenses, that at or around the time of the sex offense the victim or witness unlawfully possessed or used a controlled substance or alcohol, inadmissible in a separate prosecution of that victim or witness to prove illegal possession or use of that controlled substance or alcohol.

Major Provisions

COMMENTS:

The Need for This Bill: The California Coalition Against Sexual Assault (CALCASA) publishes an annual report entitled the "Cost and Consequences of Sexual Assault in California." (CALCASA, Feb. 2018, available at: https://www.calcasa.org/wp-content/uploads/2018/02/CALCASA_CCofSV_FINALSpreads_2018.pdf, [as of Mar. 2, 2020].) That report purports to track the instances of self-reported sexual assaults against the number of sexual assaults that are reported to law enforcement. (*Id.*) One of the conclusions drawn from the report is that discrepancy in the number of self-reported sexual assaults versus the number of reports to law enforcement "highlight the extensive underreporting of sexual violence in California crime reports." (*Id.* at 12.) CALCASA has submitted a letter in support of this bill.

Various reports indicate that sexual assault is particularly prevalent on college and university campuses. In 2014, President Obama issued a memorandum directing the Office of the Vice President and the White House Council on Women and Girls to lead an interagency effort to address campus rape and sexual assault. (White House Press Release, Jan. 22, 2014, *Memorandum -- Establishing a White House Task Force to Protect Students from Sexual Assault*, available at: <https://obamawhitehouse.archives.gov/the-press-office/2014/01/22/memorandum-establishing-white-house-task-force-protect-students-sexual-a> [as of Feb. 26, 2020].) The White House Task Force to Protect Students from Sexual Assault ("White House Task Force") was then established.

The White House Task Force released its first report in 2014, finding that sexual assault on campus is "chronically underreported" and that only 2% of sexual assault survivors who were incapacitated from drugs or alcohol at the time of the assault report the incident to law enforcement. (*Not Alone: The First Report of the White House Task Force*, Apr. 2014, at page 7, available at: <https://www.justice.gov/archives/ovw/page/file/905942/download>, [as of Mar. 2, 2020].) The reporting rate for forcible rape was slightly higher, but still quite low, at 13%. (*Ibid.*) The fact that a victim may have used or possessed alcohol or drugs at or around the time of the sexual assault may be a reason why many witnesses are unwilling to come forward with allegations and evidence about a sexual offense. As part of its report, the White House Task Force created a checklist for Campus Sexual Misconduct Policies which included an amnesty policy for drug and alcohol use in specific situations. (*Checklist for Campus Sexual Misconduct Policies*, White House Task Force, Apr. 2014, at page 5, available at: <https://www.justice.gov/archives/ovw/page/file/910271/download>, [as of Mar. 2, 2020].) The

University of California has implemented such an amnesty policy. (University of California Policy on Sexual Violence and Sexual Harassment, Jul. 2019, at page 9, available at: <https://policy.ucop.edu/doc/4000385/SVSH>, [as of Mar. 2, 2020].) Under that policy, the University of California will not ordinarily discipline Complainants or witnesses for student conduct policy violations such as underage drinking or drug use, if it occurred around the time of alleged sexual misconduct. (*Ibid.*)

Under the provisions of this bill, a similar amnesty-like policy would be adopted at a statewide level. Specifically, any victim or witness to a felony-level sexual assault would be allowed to testify in regards to that assault without fear that their statements could be used in a separate prosecution for drug or alcohol use or possession. This statutory grant of immunity as to any statements about drug or alcohol use or possession at or around the time of the felony-level sexual assault may encourage victims and witnesses to be more honest and forthcoming in cases that involve serious allegations of sex crimes. In recent years, the Legislature has adopted similar policies – AB 2243 (Friedman) Chapter 27, Statutes of 2018 and SB 233 (Wiener), Chapter 141, Statutes of 2019 – that prohibit the use of testimony and evidence of low-level controlled substance and prostitution offenses when the person has shared that testimony or evidence in order to prosecute a more serious violation of law.

According to the Author:

According to the author, "A report by the White House Task Force to Protect Students from Sexual Assault confirm that liability for illegal consumption of alcohol and drugs can keep victims from reporting sexual assault. Higher education institutions nationwide, including the University of California system, utilize amnesty clauses to encourage college students to report sexual misconduct. These amnesty clauses provide limited immunity to individuals coming forward with a complaint. California should expand this concept to apply to all victims of sexual assault. Every victim deserves to come forward without fear of being found liable for minor violations of underage drinking or drug use. Providing victims with amnesty will help law enforcement prosecute perpetrators of sexual assault and increase overall public safety. AB 1927 will ensure that sexual assault survivors receive the justice they deserve."

Arguments in Support:

According to the bill's sponsor, *The San Diego District Attorney*: "AB 1927 seeks to address the current underreporting of what's nationally known as the "silent epidemic." AB 1927 will provide victims and witnesses with use immunity in sexual assault cases where their testimony about their illicit drug use or underage drinking at the time of the crime exposes them to criminal liability. AB 1927 creates an "amnesty clause" by adding 1324.2 to the Penal Code. This addition will provide that the testimonial evidence given by a victim or witness of a sexual assault who possessed or used a controlled substance or alcohol at the time of the crime would be inadmissible in a separate prosecution of that victim or witness to prove criminal liability for the unlawful possession or use of a controlled substance.

"Numerous reports, including the 2014 White House Task Force to Protect Students from Sexual Assault and the American Association of State Colleges and Universities, confirm that an amnesty clause can encourage sexual assault reporting within the campus community. The University of California system implemented a sexual assault 'amnesty' policy last year. However, sexual assaults happen everywhere. According to the Federal Bureau of Investigation's 2018 Uniform Crime Report there were more than 15,000 reported sexual assaults in California. These crimes affect children, men and women. This bill will remedy the underreporting of sexual

assault cases by creating a statutory vehicle by which California's criminal justice system can provide survivors and witnesses of sexual assault relief from potential criminal liability from self-incriminating testimony about their minor drug and alcohol-related offenses as it relates to the sexual assault case. This bill limits liability for drug-related or alcohol crimes only in the limited circumstance where the victim or witness testified in a sexual assault prosecution, and that the required testimony was incriminating. It does not prohibit the accused from introducing evidence that the accuser was under the influence. The only goal of this bill is to make the criminal justice system more supportive of sexual assault survivors who may have criminal liability for the use of drugs or alcohol at the time of their victimization."

Arguments in Opposition:

According to the American Civil Liberties Union of California: "There is no need for this change in the law. Prosecutors already have discretion as to whether or not to file charges regarding a victim's or witness's use or possession of drugs or alcohol. If a prosecutor is concerned that a witness will not testify out of fear of prosecution, the prosecutor can exercise discretion and promise not to prosecute. Moreover, under Penal Code Section 1324 (for felonies) and Section 1324.1 (for misdemeanors), prosecutors can provide statutory immunity.

"AB 1927 also fails to provide that the fact that a witness has been granted this immunity would be admissible, as are other grants of immunity under existing law. In addition, the prosecution could use the grant of immunity to suggest that a witness's testimony must be truthful, because the testimony regarding alcohol or drug use cannot be used against them.

"Where prosecutors need to grant immunity against prosecution on drug and alcohol charges to victims and witnesses in sexual assault cases, they can do so. There is no need for a new statute to grant this immunity in every case."

FISCAL COMMENTS:

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES:**ASM PUBLIC SAFETY: 5-0-3**

YES: Jones-Sawyer, Bauer-Kahan, Diep, Gabriel, Santiago

ABS, ABST OR NV: Lackey, Kamlager, Wicks

UPDATED:

VERSION: March 2, 2020

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