

CONCURRENCE IN SENATE AMENDMENTS

AB 1927 (Boerner Horvath)

As Amended July 2, 2020

2/3 vote

SUMMARY:

Makes testimony that a victim or witness in a felony sexual assault prosecution was using or in possession of drugs or alcohol at the time of the sexual assault inadmissible in a separate prosecution of that victim or witness.

The Senate Amendments:

- 1) Specify that evidence that the testifying witness unlawfully possessed or used a controlled substance or alcohol is not excluded in the felony prosecution of a violation or attempted violation of specified sexual assault offenses.
- 2) Specify that evidence that a witness received use immunity for testimony related to possession of drugs or alcohol is not excluded in the felony prosecution of a violation or attempted violation of specified sexual assault offenses.

COMMENTS:**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:

None on file.

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

ASSEMBLY FLOOR: 77-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Kamlager, Quirk

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Jones

UPDATED:

VERSION: July 2, 2020

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