
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 453 (Cristina Garcia) - Sexual battery: nonconsensual condom removal

Version: May 28, 2021

Urgency: No

Hearing Date: June 21, 2021

Policy Vote: JUD. 11 - 0

Mandate: No

Consultant: Shaun Naidu

Bill Summary: AB 453 would expand the civil cause of action of sexual battery to include sexual contact, as specified, following the removal of a condom without verbal consent.

Fiscal Impact: Unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

Background: Existing law provides a civil cause of action against sexual battery if a person does any of the following: (i) acts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results; (ii) acts with the intent to cause a harmful or offensive contact with another by use of their intimate part, and a sexually offensive contact with that person directly or indirectly results; or (iii) acts to cause imminent apprehension of the conduct described above, and a sexually offensive contact with that person directly or indirectly results. A person who commits sexual battery upon another is civilly liable to the other person for damages, including, but not limited to, general damages, special damages, and punitive damages. The court also may award equitable relief as it deems proper.

Proposed Law: This bill would expand civil sexual battery to include both of the following conduct:

- Causing contact between a sexual organ, from which a condom has been removed, and the intimate part of another who did not verbally consent to the condom being removed.
- Causing contact between an intimate part of the person and a sexual organ of another from which the person removed a condom without verbal consent.

Related Legislation: AB 1033 (C. Garcia, 2017-2018 Reg. Sess.) would have made it a crime for a person, without consent of the other person, to remove or tamper with a condom when there was an agreement that a condom would be used, or to knowingly make a misrepresentation to the other person that a form of contraception other than a

condom is being used, during sexual intercourse. AB 1033 was held on the Suspense File of this Committee.

AB 1997 (C. Garcia, 2017-2018 Reg. Sess.) would have established, in prosecutions under specified sex offenses in which consent is at issue, that if a person freely agrees to have sexual intercourse or sexual contact with another person on the condition that a sexually protective device, as defined, is used and that other person intentionally removes or damages the sexually protective device without permission before or during sexual intercourse or sexual contact, there has been no valid consent. AB 1997 was never heard in the Assembly Committee on Public Safety.

Staff Comments: The fiscal impact of AB 453 to the courts will depend on many unknown factors, including the numbers of violations alleged to have occurred, if parties settle the matter before the filing of an action, and the factors unique to each case. While it is not known how many actions for alleged violations ultimately would be filed, it generally costs about \$8,032 (in FY 2020-2021) to operate a courtroom for one eight-hour day. Consequently, if alleged violations of AB 453 lead to the filing of cases that, combined, take 50 or more hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would create pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

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