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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).)

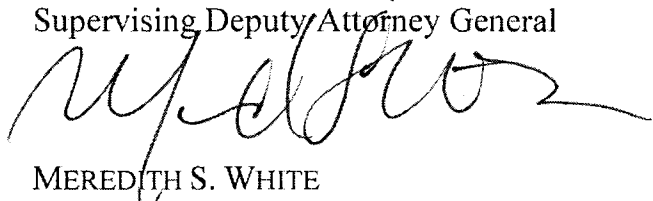
CONCLUSION

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
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GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General



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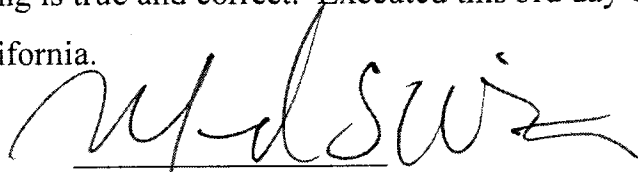
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**DECLARATION OF MEREDITH WHITE IN SUPPORT OF
RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

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', with a stylized flourish at the end.

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
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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

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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

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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

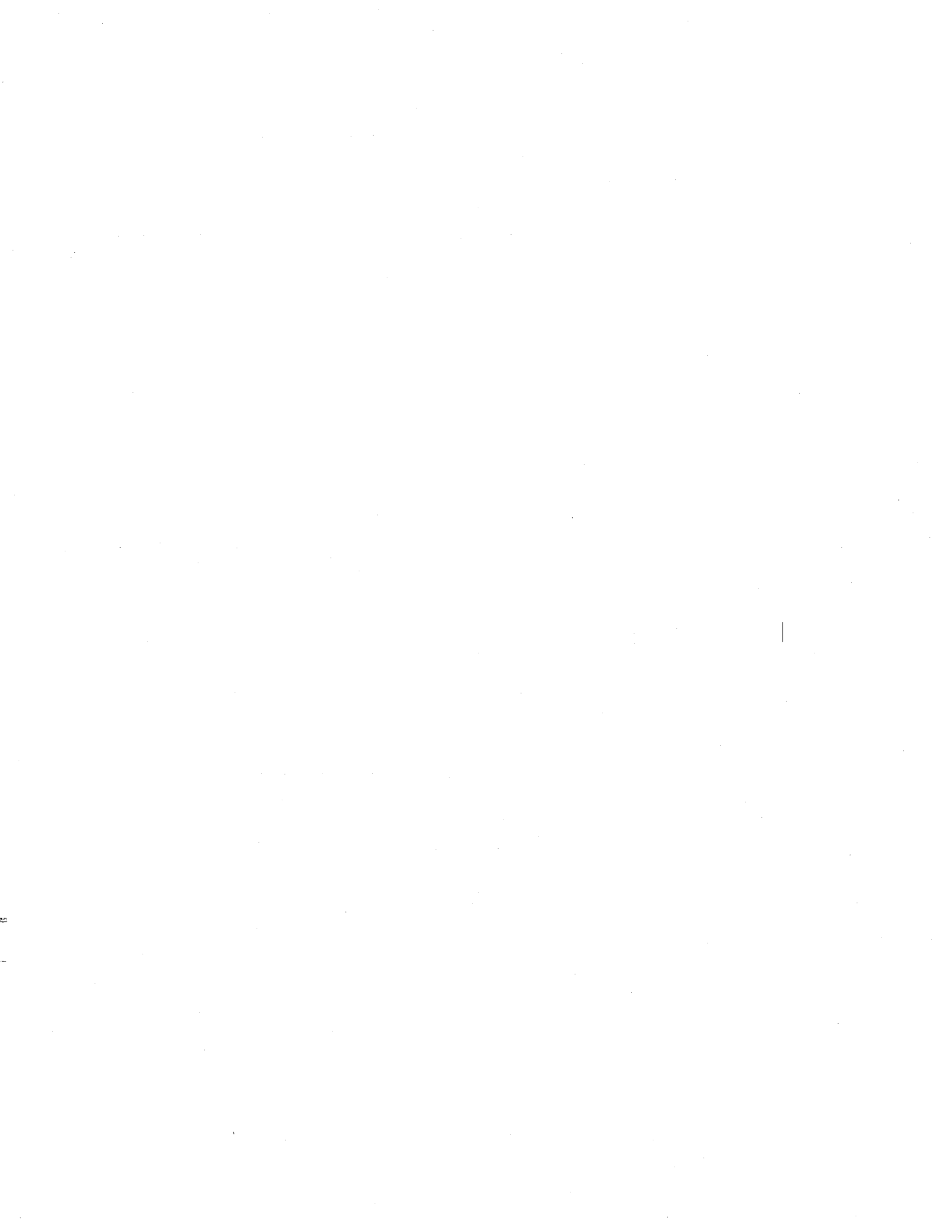


EXHIBIT C

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:

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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

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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)