



Assembly Bill (AB) 2888 (Low & Dodd)

Sexual Assault – Probation; Presumption of Ineligibility

Sponsors: Santa Clara County District Attorney, Jeff Rosen

SUMMARY

AB 2888 will close a loophole in current law that allows judges to impulsively sentence perpetrators of sexual assault to little or no jail time by adding certain types of sexual assault offenses to the existing list of offenses that have a mandatory denial of probation.

BACKGROUND

In March 2015, a Stanford University student was convicted on 3 felony counts of sexual assault of an intoxicated and unconscious woman. Despite the fact that the defendant was eligible for a sentence of up to 14 years in prison, the trial judge sentenced the defendant to 6 months in jail and 3 years' probation. The sentence has been justifiably criticized by many as shockingly lenient, given the horrific nature of the crime. However, while the judge's decision has been viewed as morally wrong and inappropriate, such a decision was within the judge's legal discretion, and therefore complied with the rules of court.

Each year, nearly 300,000 people are sexually assaulted in the United States. Unfortunately, many of these assaults involve individuals who are under the influence of alcohol or other substances. Women in college are 3 times more likely to be sexually assaulted than women not enrolled, and at least 50% of sexual assaults involve alcohol intoxication. Studies have shown more than 55% of those assaulted consumed alcohol at the time of the assault, and more than 75% of those perpetrating the assault also consumed alcohol.

PROBLEM

The majority of felony sexual assault crimes fall into two sentencing categories: "Presumptive Ineligibility of Probation" [PIP] or "Mandatory Denial of Probation" [MDP]. If a crime triggers a PIP situation, the court may grant probation if it finds and notes on the record an unusual circumstance, out of those listed under Judicial Rule 4.413.

However, not all forms of sexual assault involving penetration are included in the list of offenses that would trigger a mandatory denial of probation. Current law

clarifies that a defendant's use of force triggers a mandatory prison sentence. However, when a victim is unconscious or severely intoxicated, the victim is unable to resist, and the perpetrator does not have to use force. This distinction between assault accomplished through force or predatory behavior provides courts the discretion to sentence perpetrators of sexual assault against intoxicated and unconscious victims to probation, which may include little or no jail time.

Under this interpretation of the law, a perpetrator at a college party who chooses to forcibly rape a conscious victim will go to prison. However, a different perpetrator at the same party who chooses to watch and wait for a victim to pass out from intoxication before sexually assaulting her may get probation. Whether penetration is accomplished through physical aggression [force] or predatory behavior is a distinction without a difference. Both perpetrators seek prey that are vulnerable; disadvantaged by his/her capacity to resist. Both perpetrators represent a danger to the community. Additionally, the aftermath suffered by an unconscious victim or a victim incapable of giving consent due to intoxication is not ameliorated by the absence of memory. Indeed, the fear and terror that accompanies the absence of memory of a known sexual assault should not be viewed as less serious than the fear and terror that a victim experiences during a recalled forcible sexual assault.

PROPOSAL

AB 2888 would amend Penal Code § 1203.065 to include to the list of offenses that are ineligible for probation, all sexual assaults felonies perpetrated against intoxicated and unconscious victims.

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