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**Assembly  
California Legislature**



**ASSEMBLY COMMITTEE ON  
PUBLIC SAFETY**  
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ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

**CHIEF COUNSEL**  
GREGORY PAGAN

**COUNSEL**  
DAVID BILLINGSLEY  
GABRIEL CASWELL  
STELLA Y. CHOE  
SANDY URIBE

**AGENDA**

9:00 a.m. – August 23, 2016  
State Capitol Building 126

RE-REFERRED TO COMMITTEE PURSUANT TO  
ASSEMBLY RULE 77.2

<u>Item</u>	<u>Bill No. &amp; Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 450 (McCarty)	Mr. Billingsley	Firearms: concealed carry license.
2.	AB 701 (C. Garcia)	Mr. Caswell	Sex crimes: rape.
3.	AB 2888 (Low)	Mr. Caswell	Sex crimes: mandatory prison sentence.
4.	SB 614 (Hertzberg)	Ms. Uribe	Criminal procedure: legal assistance: ability to pay.

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CONCURRENCE IN SENATE AMENDMENTS  
AB 450 (McCarty)  
As Amended August 2, 2016  
Majority vote

ASSEMBLY: (April 30, 2015) SENATE: 23-16 (August 17, 2016)

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(vote not relevant)

COMMITTEE VOTE: RECOMMENDATION: Concur-in

Original Committee Reference: **PUB. S.**

**SUMMARY:** Requires the licensing authority for any city or county issuing concealed firearm licenses to charge an applicant a fee sufficient to cover the reasonable costs of processing, issuing enforcement of the license, eliminates the existing \$100 limit to process a new concealed carry license.

**The Senate amendments** delete the Assembly version of this bill and instead require the sheriff, chief, or other head of a municipal police department issuing concealed firearm licenses to charge an applicant a fee sufficient to cover the reasonable costs of issuing and enforcement of the license.

**EXISTING LAW:**

- 1) Specifies that each applicant for a new license to carry a concealed firearm or for the renewal of a license to carry a concealed firearm shall pay at the time of filing the application a fee determined by the Department of Justice (DOJ).
- 2) States that the fee shall not exceed the application processing costs of the DOJ for the direct costs of furnishing the report, as specified.
- 3) Provides that after DOJ establishes fees sufficient to reimburse DOJ for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the DOJ's budget.
- 4) Allows the licensing authority for concealed firearms of any city, city and county, or county to charge an additional fee in an amount equal to the actual costs for processing the application for a new license, including any required notices, excluding fingerprint and training costs, but in no case to exceed \$100.
- 5) Specifies that the first 20% of this additional local fee may be collected upon filing of the initial application. The balance of the fee shall be collected only upon issuance of the license.
- 6) Allows the licensing authority to charge an additional fee, not to exceed \$25, for processing the application for a license renewal, and shall transmit an additional fee, if any, to the city, city and county, or county treasury.

- 7) States that the local fees may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.
- 8) Requires the licensing authority to transmit the fee to the city, city and county, or county treasury.
- 9) Specifies that if psychological testing on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist used by the licensing authority for the psychological testing of its own employees. The applicant may be charged for the actual cost of the testing in an amount not to exceed \$150.
- 10) States that no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant, or requires them to obtain liability insurance, may be imposed by any licensing authority as a condition of the application for a license, except as authorized.
- 11) States that when a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county, or head of a municipal police department, may issue a license to carry a concealed firearm to that person upon proof of all of the following:
  - a) The applicant is of good moral character;
  - b) Good cause exists for issuance of the license;
  - c) The applicant is a resident of the county or a city within the county, or the applicant's principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business; and.
  - d) The applicant has completed a specified course of firearm training.
- 12) Allows the sheriff, in counties with population of less than 200,000 persons, as specified, to issue a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.
- 13) Specifies that the sheriff of the county can enter into an agreement with the chief or other head of a municipal police department of a city to process all applications for licenses, renewals of licenses, or amendments to licenses, as specified, in lieu of the sheriff.

**AS PASSED BY THE ASSEMBLY**, this bill specified that moneys appropriated from the Greenhouse Gas Reduction Fund (GGRF) may be used for implementation of the Property Assessed Clean Energy (PACE) Reserve Program.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:** According to the Author, "AB 450 is a common sense measure to ensure that local police and sheriff departments have the resources to properly review applications for CCW permits. Unfortunately, the current fee structure is rigid, leaving a strain on some local budgets. This bill gives local governments flexibility by removing the current structure and

requiring the fees charged for CCW permit applications cover the full costs of issuing and enforcing the permits."

**Analysis Prepared by:** David Billingsley / PUB. S. / (916) 319-3744

FN:

CONCURRENCE IN SENATE AMENDMENTS  
AB 701 (Cristina Garcia and Eggman)  
As Amended August 2, 2016  
Majority vote

ASSEMBLY: (May 07, 2015) SENATE: 37-0 (August 11, 2016)

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(vote not relevant)

COMMITTEE VOTE: RECOMMENDATION: Concur-in

Original Committee Reference: **G.O.**

**SUMMARY:** Provides that the Legislature finds and declares that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.

**The Senate amendments** delete the Assembly version of this bill and instead:

- 1) Provide that the Legislature finds and declares that all forms of nonconsensual sexual assault may be considered rape for purposes of the gravity of the offense and the support of survivors.
- 2) Specify that the findings and the declarations contained in this bill are declarative of existing law.

**EXISTING LAW:**

- 1) Provides generally that "sexual assault" is a category of felonies, as specified and described in several discrete sections of the Penal Code. These sections distinctly define separate crimes depending on the circumstances of the prohibited sexual acts, based on the proscribed conduct. The following offenses are included under the category of "sexual assault" felonies:
  - a) Rape;
  - b) Spousal rape;
  - c) Unlawful sexual intercourse, sexual penetration, oral copulation, or sodomy where consent is procured by false of fraud with intent to induce fear;
  - d) Sodomy;
  - e) Forced oral copulation; and
  - f) Sexual penetration.
- 2) Penalizes rape, spousal rape, sodomy, forced oral copulation, or sexual penetration with the same felony punishment as distinctly defined "sexual assault" crimes.

**AS PASSED BY THE ASSEMBLY**, this bill made modifications to an existing provision of the Gambling Control Act (Act) pertaining to the Gaming Policy Advisory Committee (GPAC).

**FISCAL EFFECT:** None. This bill has been keyed non-fiscal by the Legislative Counsel.

**COMMENTS:** According to the author, "Under California law rape is defined as 'an act of sexual intercourse' or penile penetration. Other types of sexual assault—including forcible acts of sexual penetration by a foreign object and sodomy—are defined and categorized as different crimes. Under this definition, since the perpetrator did not penetrate the victim with his penis, no 'rape' occurred in the eyes of the law.

"Under California law there is a bias against lesbian, gay, bisexual, transgender, and queer (LGBTQ) victims because of our narrow definition of rape. This is especially unjust given the staggering statistics which show that LGBTQ individuals are more likely to be victims of sexual violence than heterosexuals.

"According to the Human Rights Campaign, 46 percent of bisexual women have been raped, compared to 17 percent of heterosexual women and 13 percent of lesbians and 40 percent of gay men and 47 percent of bisexual men have experienced sexual violence other than rape, compared to 21 percent of heterosexual men.

"California's restrictive definition of rape means a man cannot be raped only sodomized and it means that despite being sexually penetrated with a foreign object, the victim in Palo Alto was not raped only sexually assaulted.

"AB 701 modernizes the definition of rape to ensure the consequences for such acts are properly assigned to their perpetrator. When we fail to call rape 'rape,' we rob survivors and their families of the justice they deserve. Rape is rape—the law should reflect that."

**Analysis Prepared by:** Gabriel Caswell / PUB. S. / (916) 319-3744 FN:

## CONCURRENCE IN SENATE AMENDMENTS

AB 2888 (Low and Dodd)

As Amended August 2, 2016

Majority vote

ASSEMBLY: (May 05, 2016) SENATE: 34-0 (August 16, 2016)

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(vote note relevant)

COMMITTEE VOTE: RECOMMENDATION: Concur-in

Original Committee Reference: **AGRI.****SUMMARY:** Prohibits judges from granting probation when one of the following felony offenses is committed:

- 1) Rape, sodomy, forced oral copulation, or sexual penetration by a foreign object when the perpetrator uses an intoxicating or anesthetic substance.
- 2) Rape, sodomy, or forced oral copulation when the victim is unconscious.
- 3) Sexual penetration by a foreign object when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused.

**The Senate amendments** delete the Assembly version of this bill, and instead provide that the following additional crimes would be ineligible for probation:

- 1) Forcible sexual intercourse where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused;
- 2) Forcible sexual intercourse where the victim is at the time unconscious of the nature of the act, and this is known to the accused;
- 3) Sodomy where the victim is at the time unconscious of the nature of the act and this is known to the person committing the act;
- 4) Sodomy where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused;
- 5) Oral copulation where the victim is at the time unconscious of the nature of the act and this is known to the person committing the act;
- 6) Oral copulation where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should

have been known by the accused;

- 7) Foreign object sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused;
- 8) Foreign object sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused.

#### EXISTING LAW:

- 1) Provides that probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating the following crimes:
  - a) Forcible sexual intercourse;
  - b) In concert sexual assault;
  - c) Pimping and pandering;
  - d) Procuring or obtaining a minor under the age of 16 for lewd and lascivious act;
  - e) Aggravated sexual assault of a child under 14;
  - f) Forcible or in concert sodomy;
  - g) Forcible or in concert oral copulation;
  - h) Sexual intercourse or sodomy of a child 10 or younger;
  - i) Forcible foreign object sexual penetration; or
  - j) Making child pornography.
- 2) Provides that “(e)xcept in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of” the following crimes:
  - a) Rape by threat of use of public official authority;
  - b) Sodomy by threat of use of public official authority;
  - c) Oral copulation by threat of use of public official authority; subdivision Foreign object sexual penetration by threat of use of public official authority; or Assault with intent to commit a specified sexual offender.

- 3) Provides that when probation is granted under specified circumstances, "the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition."

**AS PASSED BY THE ASSEMBLY**, this bill made permissive the requirement that:

- 1) The California Department of Food and Agriculture (CDFA) expend up to \$100,000 in any fiscal year for exhibits at a state-supported fair that shows the process of production and use of agricultural products in the state; and
- 2) CDFA arrange for a conference of fair judges to help CDFA make regulations for the judging of exhibits.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- 1) *State prisons:* Potentially significant ongoing increase in state incarceration costs (General Fund) for new commitments to state prison that otherwise may have been granted probation or suspension of imposition of a felony sentence. CDCR data indicates nearly 100 new commitments to state prison in 2015 under the specified provisions of this measure. However, the number of individuals granted probation in lieu of a prison sentence for these offenses that may be impacted by this bill is unknown. For context, for every five percent increase in annual commitments to state prison under the specified provisions of law, annual state incarceration costs would increase by \$145,000 in the first year, cumulatively increasing for overlapping sentences.
- 2) *State parole:* Potential increase in future parole supervision costs for persons released from state prison for a rape conviction pursuant to PC § 261(a)(3) or PC § 261(a)(4). All categories of rape under existing law are considered "serious felonies" pursuant to PC § 1192.7(c), and therefore, subject to parole supervision upon release from state prison.
- 3) *County supervision:* Unquantifiable net local agency supervision costs (Local Funds) consisting of potential cost savings for persons released onto state parole for rape convictions in lieu of probation, offset by increased costs for postrelease community supervision (PRCS) for persons that otherwise would have been granted probation.

**COMMENTS:** According to the author, "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.

"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."

**Analysis Prepared by:** Gabriel Caswell / PUB. S. / (916) 319-3744

FN:

SENATE THIRD READING  
 SB 614 (Hertzberg)  
 As Amended August 18, 2016  
 Majority vote

**RE-REFERRED TO COMMITTEE PER ASSEMBLY RULE 77.2.**

SENATE VOTE: 40-0

Committee	Votes	Ayes	Noes
<b>Health</b>	18-0	Bonta, Maienschein, Bonilla, Burke, Chávez, Chiu, Gomez, Gonzalez, Roger Hernández, Lackey, Nazarian, Patterson, Rodriguez, Santiago, Steinorth, Thurmond, Waldron, Wood	
<b>Appropriations</b>	12-0	Gomez, Bloom, Bonta, Calderon, Nazarian, Eggman, Eduardo Garcia, Holden, Quirk, Rendon, Weber, Wood	

**SUMMARY:** Applies the presumption of inability to pay attorney fees when a defendant is sentenced to state prison to those defendants sentenced to one year or more in county jail. Specifically this bill: establishes a presumption that a person sentenced to more than 364 days in county jail does not have a reasonably discernable future financial ability to reimburse the costs of his or her legal representation.

**EXISTING LAW:**

- 1) Entitles an indigent defendant the right to appointed counsel at public expense when charged with a felony or misdemeanor.
- 2) Permits the court to require the defendant to file a financial statement or provide other financial information under penalty of perjury in order to assist the court in determining if the defendant is able to hire an attorney.
- 3) States that in any case in which the superior court assigns an attorney to represent the defendant in a criminal proceeding or a minor in a delinquency proceeding, the assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, as specified.
- 4) States that every defendant who is represented by appointed counsel shall be assessed a registration fee not to exceed \$50, unless he or she is financially unable to pay the fee. The registration fee shall be credited toward any future attorney fees that the defendant may be

charged.

- 5) Requires the court, "prior to the furnishing of counsel," to notify the defendant that he or she may be ordered to pay attorney fees.
- 6) Allows the court, upon the conclusion of the criminal proceedings, to make a determination of the defendant's present ability to pay all or a portion of the costs of legal representation by appointed counsel.
- 7) Defines "ability to pay" as "the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her."
- 8) States that ability to pay includes, but is not limited to all of the following:
  - a) The defendant's present financial position;
  - b) The defendant's reasonably discernable future financial position in the next six months;
  - c) The likelihood that the defendant shall be able to obtain employment within a six-month period; and,
  - d) Any other factor or factors which may bear on the defendant's financial capability to reimburse the county for the costs of legal representation.
- 9) Establishes a presumption that a defendant sentenced to state prison does not have a reasonably discernable financial ability to reimburse defense costs.
- 10) Permits the court to order a minor's parent or guardian to reimburse the county for all or part of the services of appointed counsel, if the parent or guardian has the ability to pay.

**FISCAL EFFECT:** Unknown.

**COMMENTS:** According to the author, "SB 614 protects families from unintended burdens, providing that defendants who have been sentenced to a year or more in county jail for realignment-eligible offenses are presumed unable to pay fees for court-ordered defense, as is current law regarding persons sentenced to state prison."

**Analysis Prepared by:** Sandy Uribe / PUB. S. / (916) 319-3744

FN: