

ASSEMBLY BILL

No. 1501

Introduced by Assembly Member Negrete McLeod

February 23, 2001

An act to amend Sections 667.61 and 12022.75 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1501, as introduced, Negrete McLeod. Sex offenses: controlled substances.

Existing law provides that any person convicted of a felony violation of any of several specified sex offenses under one of several specified circumstances, shall be punished by imprisonment in the state prison for life with the possibility of parole after not less than 15 years.

This bill would recast those provisions for the sex offenses of sodomy and oral copulation, as specified. This bill would also make one of the specified circumstances invoking the enhancement for specified sex offenses, the circumstance where the defendant administered a controlled substance to the victim without the victim's knowledge or against the victim's will, as specified. Existing law provides that any person who, for the purpose of committing a felony, administers certain controlled substances by specified means, against the victim's will, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which the person has been convicted, be punished by an additional term of 3 years.

This bill would provide, in addition, that any person who, for the purpose of committing a felony involving sexual conduct, administers certain controlled substances by specified means, without the victim's knowledge, shall, in addition and consecutive to the penalty provided

for the felony or attempted felony of which the person has been convicted, be punished by an additional term of three years.

By imposing additional duties on local prosecuting agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.61 of the Penal Code is amended to
2 read:

3 667.61. (a) A person who is convicted of an offense specified
4 in subdivision (c) under one or more of the circumstances specified
5 in subdivision (d) or under two or more of the circumstances
6 specified in subdivision (e) shall be punished by imprisonment in
7 the state prison for life and shall not be eligible for release on
8 parole for 25 years except as provided in subdivision (j).

9 (b) Except as provided in subdivision (a), a person who is
10 convicted of an offense specified in subdivision (c) under one of
11 the circumstances specified in subdivision (e) shall be punished by
12 imprisonment in the state prison for life and shall not be eligible
13 for release on parole for 15 years except as provided in subdivision
14 (j).

15 (c) This section shall apply to any of the following offenses:

16 (1) A violation of paragraph (2) of subdivision (a) of Section
17 261.

18 (2) A violation of paragraph (1) of subdivision (a) of Section
19 262.

20 (3) A violation of Section 264.1.

21 (4) A violation of subdivision (b) of Section 288.

22 (5) A violation of subdivision (a) of Section 289.

23 (6) Sodomy or oral copulation in violation of subdivisions (c),
24 (d), or (i) of Section 286 or 288a by force, violence, duress,
25 menace, or fear of immediate and unlawful bodily injury on the



1 victim or another person, *or where the victim is prevented from*
2 *resisting by any intoxicating, anesthetic, or controlled substance.*

3 (7) *Oral copulation in violation of subdivisions (c), (d), or (i)*
4 *of Section 288a, by force, violence, duress, menace, or fear of*
5 *immediate and unlawful bodily injury on the victim or another*
6 *person or where the victim is prevented from resisting by any*
7 *intoxicating, anesthetic, or controlled substance.*

8 (8) A violation of subdivision (a) of Section 288, unless the
9 defendant qualifies for probation under subdivision (c) of Section
10 1203.066.

11 (d) The following circumstances shall apply to the offenses
12 specified in subdivision (c):

13 (1) The defendant has been previously convicted of an offense
14 specified in subdivision (c), including an offense committed in
15 another jurisdiction that includes all of the elements of an offense
16 specified in subdivision (c).

17 (2) The defendant kidnapped the victim of the present offense
18 and the movement of the victim substantially increased the risk of
19 harm to the victim over and above that level of risk necessarily
20 inherent in the underlying offense in subdivision (c).

21 (3) The defendant inflicted aggravated mayhem or torture on
22 the victim or another person in the commission of the present
23 offense in violation of Section 205 or 206.

24 (4) The defendant committed the present offense during the
25 commission of a burglary, as defined in subdivision (a) of Section
26 460, with intent to commit an offense specified in subdivision (c).

27 (e) The following circumstances shall apply to the offenses
28 specified in subdivision (c):

29 (1) Except as provided in paragraph (2) of subdivision (d), the
30 defendant kidnapped the victim of the present offense in violation
31 of Section 207, 209, or 209.5.

32 (2) Except as provided in paragraph (4) of subdivision (d), the
33 defendant committed the present offense during the commission
34 of a burglary, as defined in subdivision (a) of Section 460, or
35 during the commission of a burglary of a building, including any
36 commercial establishment, which was then closed to the public, in
37 violation of Section 459.

38 (3) The defendant personally inflicted great bodily injury on
39 the victim or another person in the commission of the present
40 offense in violation of Section 12022.53, 12022.7, or 12022.8.



1 (4) The defendant personally used a dangerous or deadly
2 weapon or firearm in the commission of the present offense in
3 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

4 (5) The defendant has been convicted in the present case or
5 cases of committing an offense specified in subdivision (c) against
6 more than one victim.

7 (6) The defendant engaged in the tying or binding of the victim
8 or another person in the commission of the present offense.

9 (7) The defendant administered a controlled substance to the
10 victim by force, violence, or fear in the commission of the present
11 offense *as provided in violation subdivision (a) of Section*
12 *12022.75.*

13 (8) *The defendant administered a controlled substance to the*
14 *victim without the victim's knowledge or against the victim's will,*
15 *as provided in subdivision (b) of Section 12022.75.*

16 (f) If only the minimum number of circumstances specified in
17 subdivision (d) or (e) which are required for the punishment
18 provided in subdivision (a) or (b) to apply have been pled and
19 proved, that circumstance or those circumstances shall be used as
20 the basis for imposing the term provided in subdivision (a) or (b)
21 rather than being used to impose the punishment authorized under
22 any other law, unless another law provides for a greater penalty.
23 However, if any additional circumstance or circumstances
24 specified in subdivision (d) or (e) have been pled and proved, the
25 minimum number of circumstances shall be used as the basis for
26 imposing the term provided in subdivision (a), and any other
27 additional circumstance or circumstances shall be used to impose
28 any punishment or enhancement authorized under any other law.
29 Notwithstanding any other law, the court shall not strike any of the
30 circumstances specified in subdivision (d) or (e).

31 (g) The term specified in subdivision (a) or (b) shall be imposed
32 on the defendant once for any offense or offenses committed
33 against a single victim during a single occasion. If there are
34 multiple victims during a single occasion, the term specified in
35 subdivision (a) or (b) shall be imposed on the defendant once for
36 each separate victim. Terms for other offenses committed during
37 a single occasion shall be imposed as authorized under any other
38 law, including Section 667.6, if applicable.

39 (h) Probation shall not be granted to, nor shall the execution or
40 imposition of sentence be suspended for, any person who is subject



1 to punishment under this section for any offense specified in
2 paragraphs (1) to (6), inclusive, of subdivision (c).

3 (i) For the penalties provided in this section to apply, the
4 existence of any fact required under subdivision (d) or (e) shall be
5 alleged in the accusatory pleading and either admitted by the
6 defendant in open court or found to be true by the trier of fact.

7 (j) Article 2.5 (commencing with Section 2930) of Chapter 7
8 of Title 1 of Part 3 shall apply to reduce the minimum term of 25
9 years in the state prison imposed pursuant to subdivision (a) or 15
10 years in the state prison imposed pursuant to subdivision (b).
11 However, in no case shall the minimum term of 25 or 15 years be
12 reduced by more than 15 percent for credits granted pursuant to
13 Section 2933, 4019, or any other law providing for conduct credit
14 reduction. In no case shall any person who is punished under this
15 section be released on parole prior to serving at least 85 percent of
16 the minimum term of 25 or 15 years in the state prison.

17 SEC. 2. Section 12022.75 of the Penal Code is amended to
18 read:

19 12022.75. (a) Any person who, for the purpose of
20 committing a felony, administers by injection, inhalation,
21 ingestion, or any other means, any controlled substance listed in
22 Section 11054, 11055, 11056, 11057, or 11058 of the Health and
23 Safety Code, against the victim's will by means of force, violence,
24 or fear of immediate and unlawful bodily injury to the victim or
25 another person, shall, in addition and consecutive to the penalty
26 provided for the felony or attempted felony of which he or she has
27 been convicted, be punished by an additional term of three years.

28 (b) *Any person who, for the purpose of committing a felony*
29 *involving sexual conduct, administers by injection, inhalation,*
30 *ingestion, or any other means, any controlled substance listed in*
31 *Section 11054, 11055, 11056, 11057, or 11058 of the Health and*
32 *Safety Code, against the victim's will by means of force, violence,*
33 *or fear of immediate and unlawful bodily injury to the victim or*
34 *another person, shall, in addition and consecutive to the penalty*
35 *provided for the felony or attempted felony of which he or she has*
36 *been convicted, be punished by an additional term of three years.*
37 *As used in this subdivision, "without the victim's knowledge"*
38 *means that the victim is unaware that the substance being*
39 *administered to him or her may alter his or her judgment or impair*



1 *his or her ability to decline participation, or communicate*
2 *unwillingness to participate, in sexual conduct.*

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

