

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: October 17, 2016

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and
Neighborhoods Committee

FROM: Sharon M. Tso *Sharon M. Tso* Council File No: 15-0002-S197
Chief Legislative Analyst Assignment No: 16-07-0622

SUBJECT: Resolution (Martinez - Wesson) in support of AB 2888 (Low)

CLA RECOMMENDATION: Adopt Resolution (Martinez - Wesson) to include in the City's 2015 - 2016 State Legislative Program SUPPORT for AB 2888 (Low), which would prohibit probation being granted to a person convicted of certain felony sex offenses.

SUMMARY

On July 1, 2016, a Resolution (Martinez - Wesson) was introduced in support of AB 2888, which would prohibit granting probation to individuals convicted of certain sex crimes. The Resolution states that sexual assault continues to be a problem in the United States, with nearly 300,000 people victimized each year. The Resolution further states that women enrolled in college are three times more likely to be the victim of a sexual assault, and that the majority of sexual assaults on campus involve alcohol or other controlled substances. The Resolution states that under current law, an individual who sexually assaults an individual who is unconscious or intoxicated would not be required to serve time in prison or jail for their crimes, and instead could be sentenced to probation.

The Resolution states that recent events on college campuses have highlighted the need for state law to be updated to ensure that individuals who commit sexual assaults go to jail. The Resolution states that AB 2888 would amend state law to prohibit granting probation to individuals convicted of certain sexual assault felonies, including those perpetrated against unconscious or intoxicated victims. The Resolution, therefore, seeks an official position of the City of Los Angeles to support AB 2888.

BACKGROUND

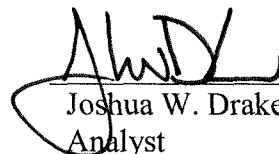
Under current law, the majority of felony sexual assault crimes fall into two sentencing categories: Presumptive Ineligibility of Probation (PIP) or Mandatory Denial of Probation (MDP). Under current law, if an individual is convicted of a PIP offense, the court may grant probation if it finds and notes on record an unusual circumstance, as listed in the state's Judicial Rules. Under current law, not all sexual assault crimes involving penetration would result in a denial of probation, and the denial of probation is tied to the use of force while committing a sexual assault crime. Under current law, an individual who sexually assaults an unconscious person may be granted probation, and serve little or no time in jail.

AB 2888 would amend current law to include sexual assault felonies perpetrated against intoxicated or unconscious victims in the MDP sentencing category. AB 2888 ensures that an individual who sexually assaults another person will serve time in jail for their crime, and not be

AB 2888 would amend current law to include sexual assault felonies perpetrated against intoxicated or unconscious victims in the MDP sentencing category. AB 2888 ensures that an individual who sexually assaults another person will serve time in jail for their crime, and not be sentenced to probation. This legislation was introduced in response to the public outrage that resulted from a decision by a Santa Clara County Judge to sentence an individual found guilty of sexually assaulting an intoxicated woman to six months in jail and probation, instead of the up to fourteen years that the convicted individual was eligible for. Supporters of this legislation argue that there is no difference between a sexual assault using physical force and a sexual assault against an unconscious or incapacitated person, and that this legislation is necessary to ensure that victims of sexual assault receive justice.

BILL STATUS

02/29/2016	Bill introduced in Assembly
03/28/2016	Referred to Assembly committee on Agriculture
05/05/2016	Read third time. Passed in Assembly and ordered to Senate
06/16/2016	Referred to the Senate Committee on Agriculture
06/20/2016	Withdrawn from Committee
06/20/2016	Re-referred to the Senate committee on Rules
06/21/2016	Re-referred to the Senate committee on Public Safety
08/01/2016	From committee: passed as amended and referred to the Senate committee on Appropriations
08/11/2016	From committee: do pass
08/16/2016	Read third time in Senate. Passed and ordered to the Assembly
08/16/2016	In Assembly. Concurrence in Senate Amendments pending
08/16/2016	Re-referred to the Assembly committee on Public Safety
08/23/2016	From Committee: Senate amendments be concurred in
09/07/2016	Enrolled and presented to the Governor
09/30/2016	Approved by Governor


Joshua W. Drake
Analyst

SMT:jwd

Attachments: Resolution (Martinez - Wesson)
AB 2888 (Low)

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, sexual assault continues to be a problem in the United States, with nearly 300,000 people victimized every year; and

WHEREAS, women enrolled in college are three times more likely to be a victim of sexual assault than women who are not in college; and

WHEREAS, a majority of sexual assaults on college campuses involve alcohol or other controlled substances, often with the victims being unconscious or intoxicated; and

WHEREAS, under current state law, the majority of felony sexual assault crimes fall into two sentencing categories: "Presumptive Ineligibility of Probation (PIP)," where a court may grant probation if it finds and notes an unusual circumstance, or "Mandatory Denial of Probation (MDP)," which does not allow for probation; and

WHEREAS, under current law, an individual who uses force during a sexual assault involving penetration would trigger a mandatory denial of probation, while an individual who does not use force, as in cases where the victim is incapacitated or unconscious would not; and


WHEREAS, recent events on college campuses have highlighted the need for state law to be updated to ensure that individuals who sexually assault an unconscious or intoxicated person are sentenced to jail, and not granted parole; and

WHEREAS, AB 2888 (Low) would amend state law to prohibit granting probation to individuals convicted of certain sexual assault felonies, including those perpetrated against an unconscious or intoxicated victim;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015 - 2016 State Legislative Program SUPPORT for AB 2888 (Low), which would prohibit probation being granted to a person convicted of certain felony sex offenses.

PRESENTED BY: 
NURY MARTINEZ
Councilmember, 6th District

SECONDED BY: 


jwd

JUL - 1 2016 ORIGINAL

CHAPTER _____

An act to amend Section 1203.065 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2888, Low. Sex crimes: mandatory prison sentence.

Existing law prohibits a court from granting probation or suspending the execution or imposition of a sentence if a person is convicted of violating specified provisions of law, including rape by force, pandering, aggravated sexual assault of a child, and others.

This bill would prohibit a court from granting probation or suspending the execution or imposition of a sentence if a person is convicted of rape, sodomy, penetration with a foreign object, or oral copulation if the victim was either unconscious or incapable of giving consent due to intoxication.

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

SECTION 1. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, a person who is convicted of violating paragraph (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266h, 266i, 266j, or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d), (f), or (i) of Section 286, paragraph (2) or (3) of subdivision (c), or subdivision (d), (f), or (i) of Section 288a, Section 288.7, subdivision (a), (d), or (e) of Section 289, or subdivision (b) of Section 311.4.

(b) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to a person who is convicted of violating paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, subdivision (g) of Section 289, or Section 220 for assault with intent to commit a specified sexual offense.

(2) If probation is granted, 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.