

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1524 (Lowenthal) – As Amended April 13, 2023

**SUBJECT:** Postsecondary education: on-campus access to drug testing devices

**SUMMARY:** Requires each community college district (CCD) and each campus of California State University (CSU) to provide date rape drug testing devices at no cost to their campus population at a location on campus. Requests the University of California (UC), independent institutions, and private postsecondary education institutions to provide date rape drug testing devices at no cost to their campus population at a location on campus. Specifically, **this bill:**

- 1) Requires each campus of the CSU and community colleges within a CCD to provide an adequate supply of drug testing devices, available, accessible, and free of cost to the campus population. The campus will offer drug testing devices at no less than one location on campus.
  - a) Clarifies when choosing the location of the supply of drug testing devices described in (1), the campus will consider the following factors:
    - i) Hours of operation, relative to hours that students are on campus;
    - ii) Proximity to high-traffic areas on campus;
    - iii) Accessibility to all students regardless of physical abilities; and,
    - iv) The privacy of students and whether accessing the drug testing devices would require interaction with campus staff or other students; and,
    - v) Safety.
  - b) Permits the location of the supply of drug testing devices to be located in student centers, libraries, wellness or health centers, pantries, and/or study rooms.
- 2) Requires the CSU and each CCD to display information regarding the location of the drug testing devices specified in (1) in all women's and men's restrooms on campus.
- 3) Request the University of California (UC), the independents of higher education, as defined, and the private postsecondary education institutions, as defined, to provide an adequate supply of drug testing devices at no less than one location on campus, free of cost to the campus population. Further, request the institutions to display information regarding the location of the drug testing devices in all women's and men's restrooms on campus.
- 4) Clarifies this measure does not prevent a campus from providing more than one location for a person to access the drug testing devices.
- 5) Defines for purposes of the measure a "drug testing device" as a device, including, but not limited to, a test strip, sticker, or straw, specifically designed to detect the presence of controlled substances.

- 6) Defines controlled substances to include, but not limited to:
  - a) Flunitazepam;
  - b) Gamma hydroxybutyric acid, which is also known by other names, including, but not limited to, GHB, gamma hydroxyl butyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, and sodium oxybutyrate; and,
  - c) Ketamine.

**EXISTING LAW:**

- 1) Establishes the CCC under the administration of the BOG of the CCC, as one of the segments of public postsecondary education in California. The CCC shall be comprised of community college districts (Education Code (EDC) Section 70900).
- 2) Establishes that CCC districts are under the control of a board of trustees, known as the governing board, who has the authority to establish, maintain, operate, and govern one or more community colleges, within its district as specified. Permits districts to establish policies for and the approval of courses of instruction and educational programs (EDC Section 70902).
- 3) Establishes the CSU system, comprised of 23 campuses, and bestows upon the CSU Trustees, through the BOT, the power, duties, and functions with respect to the management, administration, and control of the CSU system (Education Code (EDC) Sections 66606 and 89000 et. Seq.).
- 4) Establishes the UC as a public trust to be administered by the Regents and grants the Regents full powers of organization and governance subject only to legislative control as necessary to ensure the security of funds, compliance with terms of its endowments, and the statutory requirements around competitive bidding and contracts, sales of property, and the purchase of materials, goods, and services (Article IX, Section (9) (a) of the California Constitution).
- 5) Stipulates no provision of the Donahue Higher Education Act shall apply to the UC unless the UC Regents adopt the provision (EDC Section 67400).
- 6) Defines “public higher education” as each campus and branch of the CCC, the CSU, and the UC and defines the “independent institutions of higher education” as those nonpublic higher education institutions that grant undergraduate degrees and/or graduate degrees, are identified as a nonprofit corporation in California, and are accredited by an agency recognized by the United States Department of Education (EDC Section 66010 (a) and (b)).
- 7) Defines “private postsecondary education institutions” as a private entity with a physical presence in this state that offers postsecondary education to the public and charges tuition (EDC Section 94858).

**FISCAL EFFECT:** Unknown

**COMMENTS:** *Need for the measure.* As expressed by the author, “the underreported epidemic of drink spiking continues to plague California and the world. Unfortunately, drink spiking is often used to facilitate the commission of other crimes, such as sexual assault and rape. While

anyone can have their drink spiked, the targets of this act are all too often women. Although drink spiking can be perpetrated in almost any setting, a common location for this activity to take place is on college campuses, in settings such as parties and other events. AB 1524 is a commonsense measure to protect individuals from being unknowingly drugged by requiring Community Colleges and California State Universities and encouraging University of California campuses to offer students free drug testing devices, such as test strips, that can detect the presence of controlled substances to help prevent someone's drink from being drugged. These devices are simple preventative measures that can protect someone from being drugged and becoming the victim of another crime, such as sexual assault or rape."

*What are the drugs listed in the bill and what are they used for?* The United States Drug Enforcement Agency (DEA), describes the drugs as listed in AB 1524 (Lowenthal) as depressants and hallucinogens:

- *Flunitrazepam or Rohypnol*— is a benzodiazepine and belongs to a group of medicines called central nervous systems depressants. The drug has never been approved for medical use in the United States by the Food and Drug Administration (FDA); however, outside the United States, the drug is used to treat insomnia. This drug is often referred to as a "date rape drug." Rohypnol is misused to physically and psychologically incapacitate a person in order to prevent resistance to a sexual and/or physical assault.
- *Gamma hydroxybutyric acid, which is also known by other names, including, but not limited to, GHB, gamma hydroxyl butyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid, sodium oxybate, and sodium oxybutyrate (GHB)* – is a depressant that is approved for medical use by the FDA. GHB is authorized to be used to treat daytime sleepiness and muscle weakness associated with narcolepsy. GHB provides the user with a euphoric and calming effect and is often misused due to the side effects of increased libido, reduced cognitive thinking, and amnesia. GHB is used as a date rape drug as it takes effect within 15 to 30 minutes and makes the consumer highly suggestible to sexual activities and a person's memory of the events is often impaired or erased.
- *Ketamine* – is a hallucinogen and is approved as a short-acting anesthesia used on humans and animals and as a nasal spray to treat depression. Ketamine distorts the perception of the user and makes the user feel disconnected and not in control. Ketamine is used for sedation, immobility, and sometimes, as a pain reliever. According to the DEA, Ketamine has been used to sedate victims of sexual assault.

*Sexual assault on postsecondary education campuses.* In 2020, the Association of American Universities published the results of two surveys conducted in 2015, and 2019, which examined the prevalence of sexual assault and misconduct at colleges and universities throughout the United States. The surveys found the following:

- The rate of nonconsensual sexual contact by physical force or inability to consent for undergraduate women ranged from 14% to 32%;
- The rate of nonconsensual sexual contact by physical force or inability to consent increased by 3% from 2015 to 2019 for undergraduate women and 2.4 percentage points for undergraduate men.

- Among all students 41.8% reported experiencing at least one sexually harassing behavior since enrolling in college.
- 37.1% of students felt they were very or extremely knowledgeable about the definition of sexual assault and where to get help, but only 31.5% felt they knew how to report it.

Since 1990, due to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act, all colleges and universities who receive any federal funding must submit a report once a year disclosing information about certain crimes, including: the prevalence of stalking, intimidation, dating violence, domestic violence, sexual assault and hate crimes that occur on or around the campus. The data provided by these reports is available to the public disaggregated by campus on the U.S. Department of Education website under the Campus and Security database. In 2021, California had 659 institutions with a total of 1,024 campuses that provided crime data to the US Department of Education. In 2021 there were 445 rapes, 404 incidents of fondling, 22 statutory rapes, 352 incidents of domestic violence, 168 incidents of dating violence, and 408 incidents of stalking reported that occurred on or near California postsecondary education campuses. Committee staff notes the above figures are only reported incidents of sexual violence and sexual assault and do not account for any unreported cases which occur on college campuses throughout the state.

*Campus safety policies.* While the efficacies of President George H. W. Bush's domestic agenda on drug reduction, colloquially known as the "war on drugs" are up for debate, many of the policies enacted in the winter of 1989 remain in the law today. On December 12, 1989, then-President Bush signed into law the Drug-Free Schools and Communities Act of 1989. The law required universities and colleges that receive funding from the federal government to commit to maintaining a drug-and alcohol-free college environment for students and employees. Due to these provisions, many of the public and private institutions in the state of California have policies prohibiting the use of drugs on campus and limiting the use of alcohol on campus to specified events or circumstances. The 73 community college districts' governing boards have been delegated the authority to adopt policies regarding the use of drugs and alcohol on campus. The CSU has a systemwide policy prohibiting the use of drugs and limiting the use of alcohol, which includes definitions of when a student can be expelled for having drugs on campus, and the UC has a policy in compliance with federal law.

Despite having drug and alcohol policies to limit or prevent their use on campus, college campuses are still gateways to recreational alcohol use for many students. The 2021 National Survey on Drug Use and Health found that the percentage of binge drinkers was highest among young adults ages 18 to 25. Campus policies can only monitor student behavior while they are on campus or engaging in campus-sanctioned events. Off-campus parties are not subject to the control of campus policies; however, the behavior that transpires off-campus can negatively impact a student's educational journey.

In June 2022, the Biden Administration released new Title IX regulations, which expanded the jurisdiction of what is considered sex discrimination. Under the new regulations, a student who is harassed or assaulted off-campus can claim sex discrimination and receive assistance from the campus. Therefore, by providing date rape drug testing devices to protect students from being incapacitated when they engage in activities off-campus, AB 1524 (Lowenthal) aligns with the intentions of the Biden Administration with regard to the duty of colleges and universities to protect students by taking additional steps to prevent sexual assault from transpiring.

*Drug testing devices.* AB 1524 (Lowenthal) requires CCC and CSU campuses and requests the UC, independent and for-profit universities to provide drug-testing devices to students for the purpose of preventing sexual assault. The drug-testing devices cited in the measure are to detect the presence of the three most common date rape drugs. The Los Angeles Times published an article in August of 2022, on West Hollywood's efforts to reduce rapes by providing date-rape drug testing kits to venues that serve alcohol. The kits each contained a bottle of liquid that when dropped into a drink would turn blue or red if GHB or Ketamine were present. After examining multiple pharmaceutical sites and online shopping sites, Committee staff determined the most common testing kits only provide results for GHB and Ketamine, however, to test for Rohypnol would require an additional test. The testing kits were often either a card the size of business cards that had sections for a drop of a drink to be tested or were testing strips that would be dipped into a person's drink. In order to comply with AB 1524 (Lowenthal), colleges and universities might need to purchase multiple strips to comply with the testing requirements, as Committee staff could not find a single testing strip that would test for all three drugs as listed by the measure.

*Committee Comments.* AB 461 (Ramos, 2023) is currently in the Assembly Appropriations Committee and would require the community colleges and the CSU, and request the UC to provide fentanyl test strips through the campus health centers on campus. Through research for AB 1524 (Lowenthal), Committee Staff learned the majority of fentanyl test strips include the ability to test for GHB and Ketamine. *The author may wish to work with Assemblymember Ramos to combine efforts to ensure testing strips are available in the same location to remove confusion for students.*

*To honor students' lived experiences and to remove any unintended exclusion, the author may wish to expand the notification in campus restrooms to include all-gender restrooms on campus.*

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Faculty Association of California Community Colleges

### **Opposition**

None on file.

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