

ASSEMBLY BILL

No. 336

Introduced by Assembly Member Ammiano

February 13, 2013

An act to amend Section 647 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 336, as introduced, Ammiano. Crimes: prostitution: evidence.

Under existing law, a person is guilty of disorderly conduct, a misdemeanor, based on various acts, including when a person solicits or agrees to engage in or engages in any act of prostitution, as specified.

This bill would exclude the possession of one of more condoms as evidence of a violation of that provision.

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

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

- 1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:
3 647. Except as provided in subdivision (l), every person who
4 commits any of the following acts is guilty of disorderly conduct,
5 a misdemeanor:
6 (a) Who solicits anyone to engage in or who engages in lewd
7 or dissolute conduct in any public place or in any place open to
8 the public or exposed to public view.
9 (b) Who solicits or who agrees to engage in or who engages in
10 any act of prostitution. A person agrees to engage in an act of
11 prostitution when, with specific intent to so engage, he or she

1 manifests an acceptance of an offer or solicitation to so engage,
2 regardless of whether the offer or solicitation was made by a person
3 who also possessed the specific intent to engage in prostitution.
4 No agreement to engage in an act of prostitution shall constitute
5 a violation of this subdivision unless some act, in addition to the
6 agreement, is done within this state in furtherance of the
7 commission of an act of prostitution by the person agreeing to
8 engage in that act. *Possession of one or more condoms shall not*
9 *be used as evidence of a violation of this subdivision.* As used in
10 this subdivision, “prostitution” includes any lewd act between
11 persons for money or other consideration.

12 (c) Who accosts other persons in any public place or in any
13 place open to the public for the purpose of begging or soliciting
14 alms.

15 (d) Who loiters in or about any toilet open to the public for the
16 purpose of engaging in or soliciting any lewd or lascivious or any
17 unlawful act.

18 (e) Who lodges in any building, structure, vehicle, or place,
19 whether public or private, without the permission of the owner or
20 person entitled to the possession or in control of it.

21 (f) Who is found in any public place under the influence of
22 intoxicating liquor, any drug, controlled substance, toluene, or any
23 combination of any intoxicating liquor, drug, controlled substance,
24 or toluene, in a condition that he or she is unable to exercise care
25 for his or her own safety or the safety of others, or by reason of
26 his or her being under the influence of intoxicating liquor, any
27 drug, controlled substance, toluene, or any combination of any
28 intoxicating liquor, drug, or toluene, interferes with or obstructs
29 or prevents the free use of any street, sidewalk, or other public
30 way.

31 (g) When a person has violated subdivision (f), a peace officer,
32 if he or she is reasonably able to do so, shall place the person, or
33 cause him or her to be placed, in civil protective custody. The
34 person shall be taken to a facility, designated pursuant to Section
35 5170 of the Welfare and Institutions Code, for the 72-hour
36 treatment and evaluation of inebriates. A peace officer may place
37 a person in civil protective custody with that kind and degree of
38 force which would be lawful were he or she effecting an arrest for
39 a misdemeanor without a warrant. No person who has been placed
40 in civil protective custody shall thereafter be subject to any criminal

1 prosecution or juvenile court proceeding based on the facts giving
2 rise to this placement. This subdivision shall not apply to the
3 following persons:

4 (1) Any person who is under the influence of any drug, or under
5 the combined influence of intoxicating liquor and any drug.

6 (2) Any person who a peace officer has probable cause to believe
7 has committed any felony, or who has committed any misdemeanor
8 in addition to subdivision (f).

9 (3) Any person who a peace officer in good faith believes will
10 attempt escape or will be unreasonably difficult for medical
11 personnel to control.

12 (h) Who loiters, prowls, or wanders upon the private property
13 of another, at any time, without visible or lawful business with the
14 owner or occupant. As used in this subdivision, “loiter” means to
15 delay or linger without a lawful purpose for being on the property
16 and for the purpose of committing a crime as opportunity may be
17 discovered.

18 (i) Who, while loitering, prowling, or wandering upon the private
19 property of another, at any time, peeks in the door or window of
20 any inhabited building or structure, without visible or lawful
21 business with the owner or occupant.

22 (j) (1) Any person who looks through a hole or opening, into,
23 or otherwise views, by means of any instrumentality, including,
24 but not limited to, a periscope, telescope, binoculars, camera,
25 motion picture camera, camcorder, or mobile phone, the interior
26 of a bedroom, bathroom, changing room, fitting room, dressing
27 room, or tanning booth, or the interior of any other area in which
28 the occupant has a reasonable expectation of privacy, with the
29 intent to invade the privacy of a person or persons inside. This
30 subdivision shall not apply to those areas of a private business
31 used to count currency or other negotiable instruments.

32 (2) Any person who uses a concealed camcorder, motion picture
33 camera, or photographic camera of any type, to secretly videotape,
34 film, photograph, or record by electronic means, another,
35 identifiable person under or through the clothing being worn by
36 that other person, for the purpose of viewing the body of, or the
37 undergarments worn by, that other person, without the consent or
38 knowledge of that other person, with the intent to arouse, appeal
39 to, or gratify the lust, passions, or sexual desires of that person and

1 invade the privacy of that other person, under circumstances in
2 which the other person has a reasonable expectation of privacy.

3 (3) (A) Any person who uses a concealed camcorder, motion
4 picture camera, or photographic camera of any type, to secretly
5 videotape, film, photograph, or record by electronic means, another,
6 identifiable person who may be in a state of full or partial undress,
7 for the purpose of viewing the body of, or the undergarments worn
8 by, that other person, without the consent or knowledge of that
9 other person, in the interior of a bedroom, bathroom, changing
10 room, fitting room, dressing room, or tanning booth, or the interior
11 of any other area in which that other person has a reasonable
12 expectation of privacy, with the intent to invade the privacy of that
13 other person.

14 (B) Neither of the following is a defense to the crime specified
15 in this paragraph:

16 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
17 employer, employee, or business partner or associate of the victim,
18 or an agent of any of these.

19 (ii) The victim was not in a state of full or partial undress.

20 (k) (1) In any accusatory pleading charging a violation of
21 subdivision (b), if the defendant has been once previously convicted
22 of a violation of that subdivision, the previous conviction shall be
23 charged in the accusatory pleading. If the previous conviction is
24 found to be true by the jury, upon a jury trial, or by the court, upon
25 a court trial, or is admitted by the defendant, the defendant shall
26 be imprisoned in a county jail for a period of not less than 45 days
27 and shall not be eligible for release upon completion of sentence,
28 on probation, on parole, on work furlough or work release, or on
29 any other basis until he or she has served a period of not less than
30 45 days in a county jail. In all cases in which probation is granted,
31 the court shall require as a condition thereof that the person be
32 confined in a county jail for at least 45 days. In no event does the
33 court have the power to absolve a person who violates this
34 subdivision from the obligation of spending at least 45 days in
35 confinement in a county jail.

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37 (2) *In* any accusatory pleading charging a violation of
38 subdivision (b), if the defendant has been previously convicted
39 two or more times of a violation of that subdivision, each of these
40 previous convictions shall be charged in the accusatory pleading.

1 If two or more of these previous convictions are found to be true
2 by the jury, upon a jury trial, or by the court, upon a court trial, or
3 are admitted by the defendant, the defendant shall be imprisoned
4 in a county jail for a period of not less than 90 days and shall not
5 be eligible for release upon completion of sentence, on probation,
6 on parole, on work furlough or work release, or on any other basis
7 until he or she has served a period of not less than 90 days in a
8 county jail. In all cases in which probation is granted, the court
9 shall require as a condition thereof that the person be confined in
10 a county jail for at least 90 days. In no event does the court have
11 the power to absolve a person who violates this subdivision from
12 the obligation of spending at least 90 days in confinement in a
13 county jail.

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15 (3) *In* addition to any punishment prescribed by this section, a
16 court may suspend, for not more than 30 days, the privilege of the
17 person to operate a motor vehicle pursuant to Section 13201.5 of
18 the Vehicle Code for any violation of subdivision (b) that was
19 committed within 1,000 feet of a private residence and with the
20 use of a vehicle. In lieu of the suspension, the court may order a
21 person's privilege to operate a motor vehicle restricted, for not
22 more than six months, to necessary travel to and from the person's
23 place of employment or education. If driving a motor vehicle is
24 necessary to perform the duties of the person's employment, the
25 court may also allow the person to drive in that person's scope of
26 employment.

27 (l) (1) A second or subsequent violation of subdivision (j) is
28 punishable by imprisonment in a county jail not exceeding one
29 year, or by a fine not exceeding two thousand dollars (\$2,000), or
30 by both that fine and imprisonment.

31 (2) If the victim of a violation of subdivision (j) was a minor at
32 the time of the offense, the violation is punishable by imprisonment
33 in a county jail not exceeding one year, or by a fine not exceeding
34 two thousand dollars (\$2,000), or by both that fine and
35 imprisonment.