

AMENDED IN ASSEMBLY MAY 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 336

Introduced by Assembly Member Ammiano

February 13, 2013

An act to amend ~~Section~~ *Sections 647 and 653.22* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 336, as amended, 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. *Existing also law makes it unlawful for any person to loiter in any public place with the intent to commit prostitution and, in determining whether a person has violated this provision, permits consideration of circumstances including, but not limited to, that the person repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with, passersby, indicative of soliciting for prostitution.*

This bill would, *for purposes of both crimes*, exclude the possession of one or more condoms as evidence of a violation of that ~~provision~~ *crime*.

The California Constitution provides for the Right to Truth in Evidence that requires a $\frac{2}{3}$ vote of the Legislature to exclude any relevant evidence from any criminal proceeding, as specified.

Because this bill would exclude possession of one or more condoms as evidence of crimes, it requires a $\frac{2}{3}$ vote of the Legislature.

Vote: ~~majority~~^{2/3}. 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
12 manifests an acceptance of an offer or solicitation to so engage,
13 regardless of whether the offer or solicitation was made by a person
14 who also possessed the specific intent to engage in prostitution.
15 No agreement to engage in an act of prostitution shall constitute
16 a violation of this subdivision unless some act, in addition to the
17 agreement, is done within this state in furtherance of the
18 commission of an act of prostitution by the person agreeing to
19 engage in that act. Possession of one or more condoms shall not
20 be used as evidence of a violation of this subdivision. As used in
21 this subdivision, “prostitution” includes any lewd act between
22 persons for money or other consideration.

23 (c) Who accosts other persons in any public place or in any
24 place open to the public for the purpose of begging or soliciting
25 alms.

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

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

32 (f) Who is found in any public place under the influence of
33 intoxicating liquor, any drug, controlled substance, toluene, or any
34 combination of any intoxicating liquor, drug, controlled substance,
35 or toluene, in a condition that he or she is unable to exercise care

1 for his or her own safety or the safety of others, or by reason of
2 his or her being under the influence of intoxicating liquor, any
3 drug, controlled substance, toluene, or any combination of any
4 intoxicating liquor, drug, or toluene, interferes with or obstructs
5 or prevents the free use of any street, sidewalk, or other public
6 way.

7 (g) When a person has violated subdivision (f), a peace officer,
8 if he or she is reasonably able to do so, shall place the person, or
9 cause him or her to be placed, in civil protective custody. The
10 person shall be taken to a facility, designated pursuant to Section
11 5170 of the Welfare and Institutions Code, for the 72-hour
12 treatment and evaluation of inebriates. A peace officer may place
13 a person in civil protective custody with that kind and degree of
14 force which would be lawful were he or she effecting an arrest for
15 a misdemeanor without a warrant. No person who has been placed
16 in civil protective custody shall thereafter be subject to any criminal
17 prosecution or juvenile court proceeding based on the facts giving
18 rise to this placement. This subdivision shall not apply to the
19 following persons:

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

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

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

28 (h) Who loiters, prowls, or wanders upon the private property
29 of another, at any time, without visible or lawful business with the
30 owner or occupant. As used in this subdivision, "loiter" means to
31 delay or linger without a lawful purpose for being on the property
32 and for the purpose of committing a crime as opportunity may be
33 discovered.

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

38 (j) (1) Any person who looks through a hole or opening, into,
39 or otherwise views, by means of any instrumentality, including,
40 but not limited to, a periscope, telescope, binoculars, camera,

1 motion picture camera, camcorder, or mobile phone, the interior
2 of a bedroom, bathroom, changing room, fitting room, dressing
3 room, or tanning booth, or the interior of any other area in which
4 the occupant has a reasonable expectation of privacy, with the
5 intent to invade the privacy of a person or persons inside. This
6 subdivision shall not apply to those areas of a private business
7 used to count currency or other negotiable instruments.

8 (2) Any person who uses a concealed camcorder, motion picture
9 camera, or photographic camera of any type, to secretly videotape,
10 film, photograph, or record by electronic means, another,
11 identifiable person under or through the clothing being worn by
12 that other person, for the purpose of viewing the body of, or the
13 undergarments worn by, that other person, without the consent or
14 knowledge of that other person, with the intent to arouse, appeal
15 to, or gratify the lust, passions, or sexual desires of that person and
16 invade the privacy of that other person, under circumstances in
17 which the other person has a reasonable expectation of privacy.

18 (3) (A) Any person who uses a concealed camcorder, motion
19 picture camera, or photographic camera of any type, to secretly
20 videotape, film, photograph, or record by electronic means, another,
21 identifiable person who may be in a state of full or partial undress,
22 for the purpose of viewing the body of, or the undergarments worn
23 by, that other person, without the consent or knowledge of that
24 other person, in the interior of a bedroom, bathroom, changing
25 room, fitting room, dressing room, or tanning booth, or the interior
26 of any other area in which that other person has a reasonable
27 expectation of privacy, with the intent to invade the privacy of that
28 other person.

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

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

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

35 (k) (1) In any accusatory pleading charging a violation of
36 subdivision (b), if the defendant has been once previously convicted
37 of a violation of that subdivision, the previous conviction shall be
38 charged in the accusatory pleading. If the previous conviction is
39 found to be true by the jury, upon a jury trial, or by the court, upon
40 a court trial, or is admitted by the defendant, the defendant shall

1 be imprisoned in a county jail for a period of not less than 45 days
2 and shall not be eligible for release upon completion of sentence,
3 on probation, on parole, on work furlough or work release, or on
4 any other basis until he or she has served a period of not less than
5 45 days in a county jail. In all cases in which probation is granted,
6 the court shall require as a condition thereof that the person be
7 confined in a county jail for at least 45 days. In no event does the
8 court have the power to absolve a person who violates this
9 subdivision from the obligation of spending at least 45 days in
10 confinement in a county jail.

11 (2) In any accusatory pleading charging a violation of
12 subdivision (b), if the defendant has been previously convicted
13 two or more times of a violation of that subdivision, each of these
14 previous convictions shall be charged in the accusatory pleading.
15 If two or more of these previous convictions are found to be true
16 by the jury, upon a jury trial, or by the court, upon a court trial, or
17 are admitted by the defendant, the defendant shall be imprisoned
18 in a county jail for a period of not less than 90 days and shall not
19 be eligible for release upon completion of sentence, on probation,
20 on parole, on work furlough or work release, or on any other basis
21 until he or she has served a period of not less than 90 days in a
22 county jail. In all cases in which probation is granted, the court
23 shall require as a condition thereof that the person be confined in
24 a county jail for at least 90 days. In no event does the court have
25 the power to absolve a person who violates this subdivision from
26 the obligation of spending at least 90 days in confinement in a
27 county jail.

28 (3) In addition to any punishment prescribed by this section, a
29 court may suspend, for not more than 30 days, the privilege of the
30 person to operate a motor vehicle pursuant to Section 13201.5 of
31 the Vehicle Code for any violation of subdivision (b) that was
32 committed within 1,000 feet of a private residence and with the
33 use of a vehicle. In lieu of the suspension, the court may order a
34 person's privilege to operate a motor vehicle restricted, for not
35 more than six months, to necessary travel to and from the person's
36 place of employment or education. If driving a motor vehicle is
37 necessary to perform the duties of the person's employment, the
38 court may also allow the person to drive in that person's scope of
39 employment.

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

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

10 *SEC. 2. Section 653.22 of the Penal Code is amended to read:*

11 653.22. (a) It is unlawful for any person to loiter in any public
12 place with the intent to commit prostitution. This intent is
13 evidenced by acting in a manner and under circumstances ~~which~~
14 *that* openly demonstrate the purpose of inducing, enticing, or
15 soliciting prostitution, or procuring another to commit prostitution.

16 (b) Among the circumstances that may be considered in
17 determining whether a person loiters with the intent to commit
18 prostitution are that the person:

19 (1) Repeatedly beckons to, stops, engages in conversations with,
20 or attempts to stop or engage in conversations with passersby,
21 indicative of soliciting for prostitution.

22 (2) Repeatedly stops or attempts to stop motor vehicles by
23 hailing the drivers, waving arms, or making any other bodily
24 gestures, or engages or attempts to engage the drivers or passengers
25 of the motor vehicles in conversation, indicative of soliciting for
26 prostitution.

27 (3) Has been convicted of violating this section, subdivision (a)
28 or (b) of Section 647, or any other offense relating to or involving
29 prostitution, within five years of the arrest under this section.

30 (4) Circles an area in a motor vehicle and repeatedly beckons
31 to, contacts, or attempts to contact or stop pedestrians or other
32 motorists, indicative of soliciting for prostitution.

33 (5) Has engaged, within six months prior to the arrest under this
34 section, in any behavior described in this subdivision, with the
35 exception of paragraph (3), or in any other behavior indicative of
36 prostitution activity.

37 (c) The list of circumstances set forth in subdivision (b) is not
38 exclusive. The circumstances set forth in subdivision (b) should
39 be considered particularly salient if they occur in an area that is
40 known for prostitution activity. Any other relevant circumstances

1 may be considered in determining whether a person has the
2 requisite intent. Moreover, no one circumstance or combination
3 of circumstances is in itself determinative of intent. Intent must
4 be determined based on an evaluation of the particular
5 circumstances of each case.

6 *(d) Possession of one or more condoms shall not be used as*
7 *evidence of a violation of this section.*

O