

Senate Bill No. 233

CHAPTER 141

An act to amend Section 1162 of, and to repeal and add Section 782.1 of, the Evidence Code, and to add Section 647.3 to the Penal Code, relating to crime.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 233, Wiener. Immunity from arrest.

Existing law criminalizes various aspects of sex work, including soliciting anyone to engage in, or engaging in, lewd or dissolute conduct in a public place, loitering in a public place with the intent to commit prostitution, or maintaining a public nuisance. Existing law, the California Uniform Controlled Substances Act (CUCSA), also criminalizes various offenses relating to the possession, transportation, and sale of specified controlled substances.

This bill would prohibit the arrest of a person for a misdemeanor violation of the CUCSA or specified sex work crimes, if that person is reporting that they are a victim of, or a witness to, specified crimes. The bill would also state that possession of condoms in any amount does not provide a basis for probable cause for arrest for specified sex work crimes.

Existing law specifies a procedure by which condoms may be introduced as evidence in a prosecution for various crimes, including soliciting or engaging in lewd or dissolute conduct in a public place, soliciting or engaging in acts of prostitution, loitering in or about a toilet open to the public for the purpose of engaging in or soliciting a lewd, lascivious, or unlawful act, or loitering in a public place with the intent to commit prostitution.

This bill, instead, would prohibit introducing the possession of a condom as evidence in the prosecution of a violation of soliciting or engaging in lewd or dissolute conduct in a public place, soliciting or engaging in acts of prostitution, loitering in a public place with the intent to commit prostitution, or for maintaining a public nuisance, if the offense is related to an act of prostitution.

This bill would make other conforming changes.

The California Constitution includes the Right to Truth-In-Evidence, which requires a $\frac{2}{3}$ vote of the Legislature to pass a bill that would exclude any relevant evidence from any criminal proceeding, as specified.

Because this bill would exclude from a criminal action evidence about a person's liability for an act of prostitution that is otherwise admissible, it requires a $\frac{2}{3}$ vote of the Legislature.

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

SECTION 1. Section 782.1 of the Evidence Code is repealed.

SEC. 2. Section 782.1 is added to the Evidence Code, to read:

782.1. The possession of a condom is not admissible as evidence in the prosecution of a violation of Section 372 of, subdivision (a) or (b) of Section 647 of, or Section 653.22 of, the Penal Code, if the offense is related to prostitution.

SEC. 3. Section 1162 of the Evidence Code is amended to read:

1162. Evidence that a victim of, or a witness to, a serious felony as defined in subdivision (c) of Section 1192.7 of, an assault in violation of subdivision (a) of Section 245 of, domestic violence in violation of Section 273.5 of, extortion in violation of Section 518 of, human trafficking in violation of Section 236.1 of, sexual battery in violation of subdivision (a) of Section 243.4 of, or stalking in violation of Section 646.9 of, the Penal Code, has engaged in an act of prostitution at or around the time they were the victim of or witness to the crime is inadmissible in a separate prosecution of that victim or witness to prove criminal liability for the act of prostitution.

SEC. 4. Section 647.3 is added to the Penal Code, to read:

647.3. (a) A person who reports being a victim of, or a witness to, a serious felony as defined in subdivision (c) of Section 1192.7, an assault in violation of subdivision (a) of Section 245, domestic violence in violation of Section 273.5, extortion in violation of Section 518, human trafficking in violation of Section 236.1, sexual battery in violation of subdivision (a) of Section 243.4, or stalking in violation of Section 646.9 shall not be arrested for any of the following offenses if that offense is related to the crime that the person is reporting or if the person was engaged in that offense at or around the time that the person was the victim of or witness to the crime they are reporting:

(1) A misdemeanor violation of the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).

(2) A violation of Section 372, subdivision (a) or (b) of Section 647, or Section 653.22, if the offense is related to an act of prostitution.

(b) Possession of condoms in any amount shall not provide a basis for probable cause for arrest for a violation of Section 372, subdivision (a) or (b) of Section 647, or Section 653.22 if the offense is related to an act of prostitution.