



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

Wednesday, June 26, 2019
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL
2. APPROVAL OF AGENDA
3. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)

4. APPROVAL OF MINUTES
Regular Meeting of June 12, 2019

5. CHAIR'S REPORT

6. PRC OFFICER'S REPORT
Status of complaints, other items.

7. CHIEF OF POLICE'S REPORT
Crime, budget, staffing, training updates, other items.

8. SUBCOMMITTEE REPORTS (discussion & action)
Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:
 - a. Lexipol Policies Subcommittee - update from June 12 & June 18 meetings.
 - b. MOU Compendium Subcommittee
 - c. Standard of Proof Subcommittee

- d. Probation & Parole Questioning Subcommittee – update from June 10 & June 18 meetings; next meeting July 11 at 11:00 a.m.

9. OLD BUSINESS (discussion & action)

- a. Consider and approve Lexipol Policy #302, Handcuffing and Restraints, and communicate the PRC's recommendation on the use of spit hoods/spit masks to the City Council.

From: Lexipol Subcommittee

(See also materials on pp. 21 – 38 of June 12, 2019 packet, and materials distributed at June 12 meeting.)

- b. Lexipol Policies for review and approval.

From: Lexipol Subcommittee

Lexipol #	G.O.	Title
316	M-01	Missing Persons
321	P-26	Standards of Conduct
325	C-62	Subpoenas and Court Appearances
418	Council Res. 51,408-N.S.	Obtaining Air Support

(For all except Lexipol 316, see materials distributed with May 22, 2019 agenda.)

- c. Consider recommending to the City Council that it endorse Senate Bill 233, prohibiting the arrest of a person for certain sex crimes if that person is reporting sexual assault, human trafficking, or other violent crimes.

From: Commissioner Ramsey

- d. Report from Commissioner Mikiten on the Mental Health Commission meeting of May 23, 2019, and possible joint request to the City Council for increased funding for the mobile crisis unit or other mental health services.

- e. Consider establishing a subcommittee to review the BPD's Use of Force policy.

From: Commissioner Perezvelez

(See materials on pp. 61 - 99 of June 12, 2019 packet.)

- f. Lexipol Policies for review and approval (from March 13, 2019 PRC meeting.)

Lexipol #	G.O. (if any)	Title
605		Brady Material Disclosure
702		Vehicle Maintenance
705		Personal Protective Equipment
902		Prison Rape Elimination
1000		Recruitment and Selection

1004		Anti-Retaliation
1005		Reporting of Employee Convictions
1025		Nepotism and Conflicting Relationships

(See separate packet)

10. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

11. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

12. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.



Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

PRC REGULAR MEETING ATTACHMENTS

June 26, 2019

MINUTES

June 12, 2019 Regular Meeting Draft Minutes Page 7

AGENDA-RELATED

Item 8. –PRC Subcommittees List updated 6-17-19. Page 11

Item 9.a. – BPD Policy 302, received from Chief Greenwood 6-20-19, with comments. Page 13

Item 9.a. – BPD Policy 302, received from Chief Greenwood 6-20-19, without comments. Page 19

Item 9.b. – BPD Policy 316, Missing Persons. Page 25

Item 9.c. – Senate Bill No. 233, as amended June 17, 2019. Page 31

Item 9.c. – Comparison of current version to original bill. Page 35

Item 9.c. – Legislative analysis June 11, 2019. Page 37

Item 9.c. – 4-29-19 email: got Endorsement for SB233? And list of supporters. Page 47

Item 9.c. – Senator Wiener Introduces Legislation to Protect Sex Workers from Arrest when Reporting Violent Crimes. Page 49

Item 9.c. – Apr. 28, 2019 Article from The Daily Californian: Berkeley Police Department implements policy changes to protect sex workers. Page 51

Item 9.f. – Minutes from March 13, 2019 PRC meeting showing action on Lexipol policies. Page 53

COMMUNICATION(S)

6-14-19 Letter from the PRC Officer to the BPD Chief of Police: Commendations of BPD employees July 2018 to January 2019. Page 55



Police Review Commission (PRC)

DRAFT

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
*(draft)***

**Wednesday, June 12, 2019
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:20 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Gwen Allamby (Vice-Chair)
Commissioner Kitty Calavita
Commissioner LaMonte Earnest
Commissioner Sahana Matthews
Commissioner Elisa Mikiten
Commissioner Terry Roberts

Absent: Commissioner Ismail Ramsey

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Lt. Dave Lindenau, Sgt. Rashawn Cummings (entire meeting); Capt. Rico Rolleri, Sgt. Sam Speelman, Ofc. Chris Waite, Sgt. Jen Tate, Chuck Gunter, BPD Administrative and Fiscal Services Manager (part of meeting).

2. APPROVAL OF AGENDA

By consensus, the order of the agenda was revised as follows to consider, after Item #5: Item #s 9.b., 10.b., and 10.a.

3. PUBLIC COMMENT

There were 3 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of May 22, 2019

Moved/Second (Allamby/Mikiten) Motion Carried

Ayes: Allamby, Calavita, Earnest, Mikiten, Perezvelez, and Roberts.

Noes: None

Abstain: Matthews

Absent: Ramsey

5. CHAIR'S REPORT

None.

6. PRC OFFICER'S REPORT

(Heard following Item #12.)

-- Some complaint statistics for 2018 have been prepared and are in the agenda packet. Releasing those now, as the full Annual Report will not be issued for at least another month.

-- Staffing of PRC table at Juneteenth was worked out.

7. CHIEF OF POLICE'S REPORT

Epic Recruiting firm was on-site last week to do videos for recruitment.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

a. Lexipol Policies Subcommittee - update from June 12 meeting.

b. MOU Compendium Subcommittee

c. Standard of Proof Subcommittee

d. Probation & Parole Questioning Subcommittee – update from June 10 meeting.

(Comm. Matthews resigned from the Probation & Parole Questioning subcommittee. All other reports postponed to the next meeting.)

9. OLD BUSINESS (discussion & action)

a. Lexipol Policies for review and approval.

Lexipol #	G.O.	Title
316	M-01	Missing Persons
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325	C-62	Subpoenas and Court Appearances
418	Council Res. 51,408-N.S.	Obtaining Air Support

(Item postponed to the next meeting.)

- b. Review these Surveillance Use Policies from the Berkeley Police Department:
1300 -- Body Worn Cameras
1301 -- Automatic License Plate Readers
1302 -- GPS Trackers.
(Heard following Item #5.)
Presentation from the Chief; he and Deputy City Attorney Jensen answered questions. No action.

10. NEW BUSINESS (discussion & action)

- a. Use of spit hoods/spit masks by BPD and other law enforcement in Berkeley.
 - i.) Presentation by BPD and others.
(Heard following Item #9.b.)
Chief Greenwood and Ofc. Waite gave a presentation; they and other BPD staff answered questions.
 - ii.) Consider and approve Lexipol Policy #302, Handcuffing and Restraints, and communicate the PRC's recommendation on the use of spit hoods/spit masks to the City Council.
(Item postponed to the next meeting.)
- b. Presentation by BPD regarding its budget proposal for FYs 2020 and 2021.
(Heard following Item #9.b.)
Presentations given by the Chief and Mr. Gunter, followed by question and answer. No action.
- c. Report from Commissioner Mikiten on the Mental Health Commission meeting of May 23, 2019, and possible joint request to the City Council for increased funding for the mobile crisis unit or other mental health services.
(Item postponed to the next meeting.)
- d. Consider establishing a subcommittee to review the BPD's Use of Force policy.
(Item postponed to the next meeting.)

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

12. PUBLIC COMMENT

(Heard following Item #10.a.)

There were 2 speakers.

13. ADJOURNMENT

Motion to adjourn the meeting at 10:06 p.m.

Moved/Second (Calavita/Allamby) Motion Carried

Ayes: Allamby, Calavita, Earnest, Matthews, Mikiten, Perezvelez, and Roberts.

Noes: None

Abstain: None

Absent: Ramsey

**POLICE REVIEW COMMISSION
SUBCOMMITTEES LIST
Updated 6-17-19**

Subcommittee	Commissioners	Chair	BPD Reps / Others
Lexipol Policies Formed 5-23-18 Renewed 5-22-19	Perezvelez Ramsey Roberts	Perezvelez	Sgt. Samantha Speelman Capt. Rico Rolleri
MOU Compendium Formed 2-13-19	Allamby Mikiten Perezvelez	Perezvelez	
Standard of Proof Formed 4-10-19	Calavita Mikiten Ramsey		
Probation & Parole Questioning Formed 5-8-19	Allamby Calavita Roberts	Calavita	Lt. Daniel Montgomery

Comments indicate BPD changes made in response to Lexipol Subcommittee input, including its revisions proposed at its June 18, 2019 meeting. Other redlines show changes from Lexipol boilerplate.

Handcuffing and Restraints

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

302.2 POLICY

The Berkeley Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

302.3 USE OF RESTRAINTS

Only members who have successfully completed Berkeley Police Department approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- (a) The circumstances or crime leading to the arrest
- (b) The demeanor and behavior of the arrested person
- (c) The age and health of the person
- (d) Whether the person ~~may be~~ ~~is known to be~~ pregnant
- (e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes
- (f) Whether the person has any other apparent disability

302.4 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

302.5 ALTERNATIVE MEANS OF RESTRAINT

Alternative Means of Restraint include but are not limited to:

- (a) Handcuffing the person with their hands in front of their body
- (b) Handcuffing the person with multiple sets of linked handcuffs
- (c) Use of the entire WRAP system

- (d) Use of the WRAP's ankle strap
- (e) Use of plastic handcuffs "flex-cuffs"
- (f) An ambulance gurney with five point straps

302.6302.6 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and in no event shall these persons be restrained by the use of leg irons, waist chains or handcuffs behind the body.

Commented [SSM1]: Jun 2019 - Section changed back to Lexipol language from our prior H6 language - per the PRC 6/18/19

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, officers or others (Penal Code § 3407; Penal Code § 6030).

302.6302.7 RESTRAINT OF JUVENILES

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer or damage property.

302.7302.8 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

302.8302.9 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary ~~nylon or~~ plastic cuffs (aka "flex-cuffs"), may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is ~~discretionary and~~ not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, in order to avoid risk every person should be handcuffed. ~~regardless of the circumstances~~

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider using a ~~ternative means of restraint alternatives, such as using an additional set of handcuffs or multiple plastic~~

cuffs

If the person being handcuffed is on the ground or in a prone position, officers should, as soon as possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.

Commented [SSM2]: Sep 2018 - Added per PRC request from 9/17/18

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.9302.10 APPLICATION OF SPIT HOODS/MASKS/SOCKS

Spit hoods aka "spit masks" or "spit socks"/masks/socks are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others. As the Department recognizes that use of a spit hood may cause alarm and concern to onlookers, this policy provides clear and specific guidelines for their use, in service of the safety of all parties involved.

Commented [SSM3]: Jun 2019 - Changed back to 'hoods' per PRC 6/18/19 meeting

Commented [SSM4]: Jun 2019 - Chief's language

Spit hoods may be placed upon persons in custody when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods shall ensure that the spit hood is applied/fastened properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Commented [SSM5]: Jun 2019 - Shall per PRC 6/18/19 meeting

Spit hoods should not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the restrained person has a medical condition evident in the area around the mouth or nose, such as difficulty breathing or vomiting. In such cases, prompt medical care should be provided/obtained. If the person vomits while wearing a spit hood, the spit hood shall be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Commented [SSM6]: Jun 12 2019 Chief's changes

Commented [SSM7]: Jun 2019 - Per PRC

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

302.10302.11 APPLICATION OF THE WRAPLEG RESTRAINT DEVICES

The WRAP is a temporary restraining device comprised of a Velcro strapped leg panel, torso harness, ankle strap and backside handcuff carabiner. The device immobilizes the body into a straight-legged seated position. Used properly, it restricts a subject's ability to do harm to oneself or others. Officer safety is enhanced and the risk of injury to the subject is reduced.

Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Only restraint devices approved by the Department shall be used.

In determining whether to use the WRAP leg restraint, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).
- (d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP LEG RESTRAINTS

When applying the WRAP leg restraints the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the ankle WRAP strap device. In all cases, a supervisor shall be notified as soon as practicable after the application of the ankle strap device WRAP.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Restraint straps should be checked frequently for tightness, and adjusted as necessary until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while the WRAP ankle strap is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation. The person can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.
- (g) Once secured in a vehicle, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer

Commented [SSM8]: Per PRC 6/18/19

Commented [SSM9]: Per PRC 6/18/19

should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the person's combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is a part of the WRAP restraint system. The ankle strap may be used alone, without the rest of the WRAP system to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

302.14302.12 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

302.12302.13 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

~~(a) — The amount of time the suspect was restrained.~~

~~(b)(a)~~ How the suspect was transported and the position of the suspect.

~~(c)(b)~~ Observations of the suspect's behavior and any signs of physiological problems.

~~(d)(c)~~ Any known or suspected drug use or other medical problems.

Handcuffing and Restraints

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- (c) Use of the entire WRAP system

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- (d) Use of the WRAP's ankle strap
 - (e) Use of plastic handcuffs "flex-cuffs"
 - (f) An ambulance gurney with five point straps

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302.6302.7 RESTRAINT OF JUVENILES

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cuffs

If the person being handcuffed is on the ground or in a prone position, officers should, as soon as possible, place the person in an upright sitting position or on their side for respiratory recovery and to mitigate the potential for positional asphyxia.

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.9302.10 APPLICATION OF SPIT HOODS/MASKS/SOCKS

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Spit hoods may be placed upon persons in custody when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods ~~shall~~ ensure that the spit hood is ~~applied~~fastened properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods with other detainees.

Spit hoods should not be used in situations where ~~the restrained person is bleeding profusely from the area around the mouth or nose, or if~~ there are indications that the ~~restrained~~ person has a medical condition, evident in the area around the mouth or nose, such as difficulty breathing or vomiting. In such cases, prompt medical care should be ~~provided~~obtained. If the person vomits while wearing a spit hood, the spit hood ~~shall~~ be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood.

Those who have been placed in a spit hood should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods shall be discarded after each use.

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- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).
- (d) Whether conventional methods of restraint have failed.

302.11.1 GUIDELINES FOR USE OF THE WRAP LEG RESTRAINTS

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- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Restraint straps should be checked frequently for tightness, and adjusted as necessary until the WRAP is removed. The harness straps shall never be tightened to the point they interfere with the person's ability to breathe.
- (d) The restrained person should be continually monitored by an officer while the WRAP-ankle strap is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
- (e) The officer should look for signs of distress such as sudden quiet or inactivity, complaints of chest pain, change in facial color, complaint of extreme heat, vomiting and/or labored breathing, and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
- (f) Movement of the person can be accomplished in three ways, depending on the level of their cooperation. The person can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.
- (g) Once secured in a vehicle, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.
- (h) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer

should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.11.2 DEVICE REMOVAL

Based on the person's combativeness or level of aggression, officers should employ appropriate control techniques and tactics when removing the WRAP.

302.11.3 THE WRAP'S ANKLE STRAP

The ankle strap is a part of the WRAP restraint system. The ankle strap may be used alone, without the rest of the WRAP system to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Use of the ankle strap will follow the same guidelines listed above for the WRAP.

~~302.11~~302.12 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

~~302.12~~302.13 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

- ~~(a)~~—The amount of time the suspect was restrained.
- ~~(b)~~(a) How the suspect was transported and the position of the suspect.
- ~~(c)~~(b) Observations of the suspect's behavior and any signs of physiological problems.
- ~~(d)~~(c) Any known or suspected drug use or other medical problems.

Missing Persons

316.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

316.1.1 DEFINITIONS

At risk - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person is age 11 or younger.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

Missing person - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

Missing person networks - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), and the Missing and Unidentified Person System (MUPS).

316.2 POLICY

The Berkeley Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Berkeley Police Department gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

316.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Detective Bureau Lieutenant, or their designee, Investigation-supervisor should develop and make available ~~ensure the forms and~~ forms and ~~kits are developed and available~~ in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- Department report form for use in missing person cases

- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)
- Missing person school notification form
- Medical records release form ~~from the California Department of Justice~~
- California DOJ missing person forms as appropriate
- Biological sample collection kits

316.4 ACCEPTANCE OF REPORTS

Any member encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those members ~~who do not take such reports or~~ who are unable to render immediate assistance shall promptly dispatch or alert a member who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

316.5 INITIAL INVESTIGATION

* [Officers or other members conducting the initial investigation of a missing person shall ~~also~~ take the following investigative actions, as applicable:

- (a) Respond to a dispatched call for service as soon as practicable.
- (b) Interview the reporting party and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.
- (c) Notify a supervisor immediately if there is evidence that a missing person is either at risk or may qualify for a public alert, or both (see the Public Alerts Policy).
- (e)(d) Broadcast a "Be on the Look-Out" (BOLO) bulletin if the person is under 21 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 21 years of age or may be at risk (Penal Code § 14211).
- (d)(e) ~~Make Ensure that~~ entries ~~are made~~ into the appropriate missing person networks as follows:
 1. Immediately Within 2 hours of the initial report, when the missing person is under 21 years old or is considered at risk.
 2. In all other cases, as soon as practicable, but not later than fourtwo hours from the time of the officer's contact with the reporting party, the initial report.
- (e)(f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.
- (f)(g) Collect and/or review:
 1. A photograph and a fingerprint card of the missing person, if available.

1-2. Any documents that may assist in the investigation, such as court orders regarding custody.

2-3. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).

- (g) When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier.
- (h) Contact the appropriate agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.

316.6 REPORT PROCEDURES AND ROUTING

Employees should complete all missing person reports and forms promptly and submit them for supervisor approval. advise the appropriate supervisor as soon as a missing person report is ready for review.

316.6.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of the supervisor shall include, but are not limited to:

- (a) Reviewing and approving missing person reports upon receipt.
- ~~(b) The reports should be promptly sent to the Records Management.~~
- ~~(c)~~(b) Ensuring resources are deployed as appropriate.
- ~~(d)~~(c) Initiating a command post as needed.
- ~~(e)~~(d) Ensuring applicable notifications and public alerts ~~are made and documented.~~ (Nixle, AMBER, etc., see Public Alerts Policy).
- ~~(f)~~(e) Ensuring that records have been entered into the appropriate missing persons networks.
- ~~(g)~~(f) Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.

If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.

316.7 RECORDS MANAGEMENT RESPONSIBILITIES

The receiving member shall:

- (a) As soon as reasonable under the circumstances, notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's residence in cases where the missing person is a resident of another jurisdiction (Penal Code § 14211).
- (b) Notify and forward a copy of the report to the law enforcement agency in whose jurisdiction the missing person was last seen (Penal Code § 14211).

-
- (c) Notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's intended or possible destination, if known.
 - (e)(d) Forward a copy of the report to the Detective Bureau.
 - (d)(e) Coordinate with the NCIC Terminal Contractor for California to have the missing person record in the NCIC computer networks updated with additional information obtained from missing person investigations (42 USC § 5780).

316.8 FOLLOW UP TIMELINE

- (a) Adult Missing Person Cases: The initial assigned investigator handles the 24 hour and one week follow ups, then forwards the case to the Homicide Detail for follow up.
- (b) Juvenile Missing Person/Runaway Cases: The initial assigned investigator handles the 24 hour follow up, then forwards the case to the Youth Services Detail for follow up.

316.9 DETECTIVE FOLLOW UP

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

- (a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.
 1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).
 2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the juvenile's student file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.
- (b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.
- (c) Should consider contacting other agencies involved in the case to determine if any additional information is available.
- (d) Shall verify and update CLETS, NCIC and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (42 USC § 5780).
- (e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.
- (f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (42 USC § 5780).
- (g) Should make appropriate inquiry with the Coroner[Medical Examiner/JOP].

-
- (h) Should obtain and forward medical and dental records, photos, X-rays and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.
 - (i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (42 USC § 5780).
 - (j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (~~NamUs~~MUPS).
 - (k)** In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 586).

316.9316.10 WHEN A MISSING PERSON IS FOUND

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report, notify the relatives and/or reporting party, as appropriate, and other involved agencies and refer the case for additional investigation if warranted.

The ~~assigned investigator~~ ~~Public Safety Business Manager~~ shall ensure that, upon receipt of information that a missing person has been located, the following occurs (Penal Code § 14213):

- (a) ~~Notification is made to California DOJ~~ ~~The person's name is removed from MUPS.~~
- (b) The missing person's school is notified, if applicable.
- ~~(c) Entries are made in the applicable missing person networks.~~
- ~~(d) Immediately notify the Attorney General's Office.~~
- (e)(c)** Notification shall be made to any other law enforcement agency that took the initial report or participated in the investigation within 24 hours.

316.8.1 UNIDENTIFIED PERSONS

Department members investigating a case of an unidentified person who is deceased or a living person who cannot assist in identifying him/herself should:

- (a) Obtain a complete description of the person.
- (b) Enter the unidentified person's description into the NCIC Unidentified Person File.
- (c) Use available resources, such as those related to missing persons, to identify the person.

316.10316.11 CASE CLOSURE

The Detective Bureau ~~Lieutenant or his/her designee~~ ~~supervisor~~ may authorize the closure of a missing person case after considering the following:

- (a) Closure is appropriate when the missing person is confirmed returned or evidence has matched an unidentified person or body.

-
- (b) If the missing person is a resident of Berkeley or this department is the lead agency, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.
 - (c) If this department is not the lead agency, the case can be made inactive if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks as appropriate.
 - (d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

316.11316.12 TRAINING

Subject to available resources, the Personnel and Training Sergeant should ensure that members of this department whose duties include missing person investigations and reports receive regular training that includes:

- (a) The initial investigation:
 - 1. Assessments and interviews
 - 2. Use of current resources, such as Mobile Audio Video (MAV)
 - 3. Confirming missing status and custody status of minors
 - 4. Evaluating the need for a heightened response
 - 5. ~~Identifying the zone of safety based on chronological age and developmental stage~~
- (b) Briefing of department members at the scene.
- (c) Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).
- (d) Verifying the accuracy of all descriptive information.
- (e) Initiating a neighborhood investigation.
- (f) Investigating any relevant recent family dynamics.
- (g) Addressing conflicting information.
- (h) Key investigative and coordination steps.
- (i) Managing a missing person case.
- (j) Additional resources and specialized services.
- (k) Update procedures for case information and descriptions.
- (l) Preserving scenes.
- (m) Internet and technology issues (e.g., Internet use, cell phone use).
- (n) Media relations.

AMENDED IN ASSEMBLY JUNE 17, 2019

AMENDED IN SENATE APRIL 23, 2019

AMENDED IN SENATE APRIL 11, 2019

AMENDED IN SENATE MARCH 11, 2019

SENATE BILL,

No. 233

Introduced by Senator Wiener
(Principal coauthor: Assembly Member Quirk)
(Coauthors: Assembly Members Carrillo and Friedman, Friedman,
Kamlager-Dove, and Wicks)

February 7, 2019

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

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, 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 a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crime: 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 if the offense is related to prostitution;~~ *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;~~ *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.

Vote: $\frac{2}{3}$. 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 782.1 of the Evidence Code is repealed.
- 2 SEC. 2. Section 782.1 is added to the Evidence Code, to read:
- 3 782.1. The possession of a condom is not admissible as
- 4 evidence in the prosecution of a violation of *Section 372 of,*
- 5 *subdivision (a) or (b) of Section ~~647 of 647 of, or Section 653.22~~*
- 6 *of, the Penal Code Code, if the offense is related to ~~prostitution;~~*
- 7 *or Section ~~372 or 653.22 of the Penal Code,~~ prostitution.*
- 8 SEC. 3. Section 1162 of the Evidence Code is amended to read:
- 9 1162. Evidence that a victim of, or a witness to, ~~extortion as~~
- 10 ~~defined in Section 519 of the Penal Code, stalking as defined in~~

1 Section 646.9 of the Penal Code, or a violent felony as defined in
2 Section 667.5 of a serious felony as defined in subdivision (c) of
3 Section 1192.7 of, an assault in violation of subdivision (a) of
4 Section 245 of, domestic violence in violation of Section 273.5 of,
5 extortion in violation of Section 518 of, human trafficking in
6 violation of Section 236.1 of, sexual battery in violation of
7 subdivision (a) of Section 243.4 of, or stalking in violation of
8 Section 646.9 of, the Penal Code, has engaged in an act of
9 prostitution at or around the time ~~he or she was~~ they were the victim
10 of or witness to the crime is inadmissible in a separate prosecution
11 of that victim or witness to prove ~~his or her~~ criminal liability for
12 the act of prostitution.

13 ~~SEC. 3.~~

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

15 647.3. (a) A person who ~~is reporting a crime of sexual assault,~~
16 ~~human trafficking, stalking, robbery, assault, kidnapping, threats,~~
17 ~~blackmail, extortion, burglary, or another violent crime reports~~
18 *being a victim of, or a witness to, a serious felony as defined in*
19 *subdivision (c) of Section 1192.7, an assault in violation of*
20 *subdivision (a) of Section 245, domestic violence in violation of*
21 *Section 273.5, extortion in violation of Section 518, human*
22 *trafficking in violation of Section 236.1, sexual battery in violation*
23 *of subdivision (a) of Section 243.4, or stalking in violation of*
24 *Section 646.9 shall not be arrested for either any of the following:*
25 *following offenses if that offense is related to the crime that the*
26 *person is reporting or if the person was engaged in that offense*
27 *at or around the time that the person was the victim of or witness*
28 *to the crime they are reporting:*

29 (1) A misdemeanor violation of the California Uniform
30 Controlled Substances Act (Division 10 (commencing with Section
31 11000) of the Health and Safety Code).

32 (2) A violation of Section 372, subdivision (a) or (b) of Section
33 ~~647 647, or Section 653.22, if the offense is related to an act of~~
34 ~~prostitution, or of Section 372 or 653.22: prostitution.~~

35 (b) Possession of condoms in any amount shall not provide a
36 basis for probable cause for arrest for a violation of Section 372,
37 subdivision (a) or (b) of Section ~~647 647, or Section 653.22~~ if the

- 1 offense is related to an act of ~~prostitution, or of Section 372 or~~
- 2 ~~653.22, prostitution.~~

O

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.

~~SECTION 1.~~ 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:

(a) (1) A ~~person who is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crime shall not be arrested for a crime, including a~~ misdemeanor violation of the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety ~~Code) or a violation of subdivision (a) or (b) of Section 647 or of Section 372 or 653.22. 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, in and of itself, be not provide a basis for~~ probable cause for arrest for a ~~crime, including a~~ violation of *Section 372*, subdivision (a) or (b) of *Section 647* 647, or ~~of Section 372 or 653.22. Section 653.22 if the offense is related to an act of prostitution.~~*

Date of Hearing: June 11, 2019
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 233 (Wiener) – As Amended April 23, 2019

As Proposed to be Amended in Committee

SUMMARY: Makes condoms inadmissible as evidence in specified crimes relating to prostitution and prohibits the arrest of a person for misdemeanor drug possession or prostitution-related offenses when the person is reporting certain, more serious crimes. Specifically, this bill:

- 1) States that the possession of a condom is not admissible as evidence in the prosecution of a violation of specified offenses related to prostitution.
- 2) States that a person who reports being a victim of, or a witness to a serious felony, as specified, assault as specified, domestic violence, as specified, extortion, as specified, human trafficking, as specified, sexual battery, as specified, or stalking, as specified, shall not be arrested for the following offenses if they were engaged in such an offense at or around the time that they were a victim of, or witness to the crime they are reporting:
 - a) A misdemeanor controlled substances offense, as specified; or
 - b) A prostitution-related offense, as specified.
- 3) States that the possession of condoms in any amount shall not provide a basis for probable cause for arrest for a violation of specified offenses related to prostitution.
- 4) Prohibits the use of evidence that victims of, or witnesses to a serious felony, as specified, assault as specified, extortion, as specified, human trafficking, as specified, or stalking, as specified, were engaged in an act of prostitution at or around the time they were the witness or victim to the crime in a separate prosecution for the crime of prostitution.

EXISTING LAW:

- 1) Makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person. (Pen. Code 647 § (b)(1).)
- 2) Makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code § 647(b)(2).)
- 3) Makes it a misdemeanor for a person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any

- legal duty relating to the removal of a public nuisance. (Pen. Code § 372.)
- 4) Criminalizes the act of loitering in a public place with the intent to commit prostitution. (Pen. Code § 653.22.)
 - 5) Punishes loitering in a public place with the intent to commit prostitution as a misdemeanor. (Pen. Code § 653.26.)
 - 6) Mandates the following procedure prior to the introduction of possession of condoms as evidence that a crime was committed:
 - a) The prosecutor shall make a written motion to the court and to the defendant stating that the prosecution has an offer of proof of the relevancy of the possession by the defendant of one or more condoms;
 - b) The written motion shall be accompanied by an affidavit in which the offer of proof and shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing. After that determination, the affidavit shall be resealed by the court;
 - c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow questioning regarding the offer of proof made by the prosecution;
 - d) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the prosecutor regarding the possession of condoms is relevant and is not inadmissible, the court may make an order stating what evidence may be introduced by the prosecutor; and,
 - e) An affidavit resealed by the court shall remain sealed, unless the defendant raises an issue on appeal or collateral review relating to the offer of proof contained in the sealed document. If the defendant raises that issue on appeal, the court shall allow the Attorney General and appellate counsel for the defendant access to the sealed affidavit. If the issue is raised on collateral review, the court shall allow the district attorney and defendant's counsel access to the sealed affidavit and the use of the information contained in the affidavit shall be limited solely to the pending proceeding. (Evid. Code § 782.1.)
 - 7) Prohibits the admissibility of evidence that a victim of, or a witness to, extortion, stalking, or a violent felony, each as defined, has engaged in an act of prostitution at or around the time he or she was the victim of or witness to the crime in order to prove the victim's or witness's criminal liability in a separate prosecution for the act of prostitution. (Evid. Code, § 1162.)
 - 8) Defines a "serious felony" as murder or voluntary manslaughter, mayhem, rape, robbery, kidnapping, and approximately 40 other crimes, for which a person can be subjected to enhanced penalties under the Three Strikes Law. (Pen. Code, § 1192.7, subd. (c).)
 - 9) Makes it a "wobbler" offense (felony or misdemeanor) to assault another person with a deadly weapon, including a firearm, or by means of force likely to produce great bodily injury and punishes that conduct by two, three, or four years, in the state prison, or as a

misdemeanor. (Pen. Code § 245, subds. (a)(1), (2), and (4).)

- 10) Makes it a "wobbler" offense (felony or misdemeanor) to willfully inflict corporal injury resulting in a traumatic condition upon a spouse or former spouse, cohabitant or cohabitant, fiancée or someone with whom the offender has a dating relationship, or mother or father of the offender's child, and punishes that conduct in state prison for two, three, or four years, or as a misdemeanor. (Pen. Code § 273.5, subds. (a) and (b).)
- 11) Makes extortionate threats a felony and punishes that conduct by for two, three, or four years in the county jail. (Pen. Code, §§ 519 – 520.)
- 12) Makes it a felony to deprive or violate the personal liberty of another with the intent to obtain forced labor or services and punishes that conduct by imprisonment in the state prison for 5, 8, or 12 years. (Pen. Code, § 236.1, subd. (a).)
- 13) Makes it a felony to deprive or violate the personal liberty of another with the intent to commit the acts of pimping, pandering, or other sexual exploitation offenses, as specified, and punishes that conduct by imprisonment in the state prison for 8, 14, or 20 years. (Pen. Code, § 236.1, subd. (b).)
- 14) Makes it a felony to cause, induce, or persuade, or attempt to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, as specified, and punishes that conduct with 5, 8, or 12 years in state prison, or 15 years to life in state prison if the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1.)
- 15) Makes it a "wobbler" offense (felony or misdemeanor) to touch an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, and punishes that conduct by imprisonment in the state prison for two, three, or four years or as a misdemeanor. (Pen. Code § 243.4)
- 16) Makes it a "wobbler" offense (felony or misdemeanor) to willfully, maliciously, and repeatedly follow or willfully and maliciously harass another person and make a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, and punishes that conduct by imprisonment in the state prison or as a misdemeanor. (Pen. Code, § 646.9.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) Author's Statement: According to the author, "Sex workers are victims of violent crime at a disproportionately high rate. A 2014 study by the University of California, San Francisco and St. James Infirmary found that 60% of sex workers experience some form of violence while working. Specifically, 32% of sex workers reported a physical attack while engaging in sex work, and 29% reported being sexually assaulted while engaging in sex work. Unfortunately, this same report found that when a sex worker interacted with law

enforcement as the victim of a violent crime, 40% of their interactions were negative experiences. Moreover, condoms have historically been confiscated and used as a tool to incriminate sex workers for prostitution.

"It is critically important that sex workers feel safe reporting crimes and carrying condoms. If sex workers believe that reporting crimes and carrying condoms will get them arrested, they will do neither. The criminalization of prostitution results in sex workers largely not trusting law enforcement due to fear that they will be arrested or mistreated. This is particularly true for people of color, street-based sex workers, and transgender women who face the most harassment and arrests. Data from multiple countries link the criminalization of sex work with up to a five-fold increase in the risk of HIV or other sexually transmitted infections. Research is clear that sex workers must be able to carry condoms without fear that they will be confiscated or used to criminalize them to avoid exacerbating an already unsafe work environment or worsening our public health crisis.

"SB 233 simply prioritizes the health and safety of people engaged in sex work, including human trafficking victims, over their criminalization by prohibiting arrest for misdemeanor prostitution or drug offenses when this population comes forward as victims or witnesses of specified violent crimes. SB 233 also bars the use of condoms as evidence of sex work as a sensible, public health approach."

- 2) **Condoms as Evidence:** Generally, all relevant evidence is admissible in criminal proceedings unless it must be excluded under federal law (Proposition 8, approved by voters June 8, 1982, "Right to Truth-in-Evidence" provision) or the court may exclude the evidence if it will cause unnecessary delay, or create a danger of undue prejudice, confusion of the issues, or misleading the jury. (Cal Const., art. I, § 28(f)(2); Evid. Code, § 352.)

In 2012, Human Rights Watch (HRW) released a report titled "*Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities*" which reviewed research literature on sex workers in Los Angeles and San Francisco and conducted its own interviews with persons either in sex trades or in organizations that provide health and social services to that population. In addition to specific cases in which possession of condoms was used as evidence of prostitution, HRW found that the threats of harassment of sex workers about possessing condoms had resulted in a prevalent belief that one is risking arrest and prosecution as a prostitute by having any condoms in one's possession when approached by law enforcement. As a result, many sex workers stopped carrying any condoms or a sufficient number of condoms, thereby creating multiple opportunities for transmission of HIV to and from the sex worker.

In 2013, AB 336 (Ammiano), Chapter 403, Statutes of 2014, established a new evidentiary procedure for admitting condoms into evidence. According to the bill analysis on AB 336:

"This bill requires the prosecution to submit a sealed affidavit with an offer or proof stating the relevance of condom evidence the prosecutor intends to introduce at the trial of a prosecution charge. It is likely that a prosecutor would argue that the possession of condoms – especially more than one or two condoms for use with an intimate partner – shows that the person was planning to engage in commercial sex transactions.

“It would appear that the . . . concern about evidence of condom possession in a prostitution case might be that jurors might conclude that a person who carried numerous condoms was predisposed to engage in prostitution regardless of the particular facts of the alleged solicitation or act of prostitution, allowing conviction on assumptions about the defendant’s conduct on other occasions. The prosecution would likely counter that the defendant’s possession of numerous condoms at the time she or he is alleged to have solicited a person to engage in sexual conduct indicates that the interaction was for commercial purposes. That is, the condoms were essentially tools of the defendant’s trade.”

(Sen. Com. on Public Safety, Analysis of Assm. Bill No. 336 (2013-2014 Reg. Sess.) as amended May 29, 2014, pp. 5-6.) This bill would repeal the evidentiary procedure established by SB 336 and instead states that possession of a condom is not admissible as evidence of a violation of specified crimes related to prostitution.

Because this bill would exclude potentially relevant evidence which is not required to be excluded under Proposition 8’s Truth-in-Evidence provision, nor is it excludable under federal law, a two-thirds vote by both the Assembly and the Senate is required for it to pass.

- 3) **Encouraging the Reporting of Serious Crimes by Granting Immunity from Arrest:** Last year, AB 2243 (Friedman), Chapter 27, Statutes of 2018, prohibited the use of evidence that victims of, or witnesses to, certain violent crimes were engaged in an act of prostitution at or around the time they were the witness or victim to the crime. The goal of that bill was to remove the fear of prosecution for victims and witnesses of violent crime in order to encourage reporting those crimes. Prostitution is punishable as a misdemeanor offense in California and those engaged in acts of prostitution are often victims of, or witnesses to, more serious crimes that are subject to more serious punishment. Therefore, by providing an evidentiary protection to a vulnerable population in exchange for evidence and testimony about more serious, often violent crimes, the effect of AB 2243 is likely to be a safer community.

The rationale behind AB 2243 is applicable to this bill, and, in fact, this bill would expand the protections of AB 2243. This bill also goes several steps further and states that victims and witnesses are granted immunity from arrest for both prostitution and drug possession misdemeanors. This bill aims to remove the fear of arrest for simple drug use/possession and prostitution-related misdemeanors, meaning that victims and witnesses should be more likely to seek law enforcement’s help and offer assistance in the investigation and prosecution of more serious cases. One important difference between AB 2243 and this bill is that AB 2243 was an evidentiary rule that prohibited the introduction of certain evidence in court whereas this bill prohibits law enforcement from even making an arrest.

Last year, the San Francisco Police Department announced a policy similar to immunity from arrest portion of this bill, which precipitated AB 2243. (Blumberg, *San Francisco Takes a Stand to Protect Sex Workers who Come Forward About Abuse*, The Huffington Post, Jan. 12, 2018, available at: https://www.huffingtonpost.com/entry/san-francisco-sex-workers-policy_us_5a58fa29e4b03e4189655459 [as of March 12, 2018].) Its policy states in pertinent part that:

The District Attorney's Office will not prosecute persons for involvement in sex work or other forms of sex trade when they are victims or witnesses of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime. For purposes of this policy, persons will not be prosecuted for uncharged offenses including Penal code §§ 647(a), 647(b), 653.22, 372, and misdemeanor drug offenses, when reporting sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary or other violent crime.

Information gathered from a victim or witness of a violent crime who is engaged in sex work or other forms of sex trade including trafficked persons will not be used in any manner to investigate and prosecute that person, during the course of the investigation or in the future. So long as the person making the report does so truthfully, any statements they make shall not be used against them in the current investigation or in any future criminal action against them concerning this incident brought by this office for violation of Penal code §§ 647(a), 647(b), 653.22, 372.

One significant difference between the local policy in San Francisco and this bill is that the local policy appears to be explicitly directed towards the sex workers who are engaged in the act of selling services. This bill is broader in that it does not specify application to the sellers alone and includes the purchaser of services. Furthermore, this bill would add misdemeanor drug possession offenses to the types of crimes for which a person shall not be arrested if they are reporting the offenses enumerated in this bill.

- 4) **Argument in Support:** According to the *Ella Baker Center for Human Rights*: "The Ella Baker Center of Human Rights is writing in support of SB 233 (Wiener), a measure that will prohibit the arrest of persons in the sex trade who are reporting sexual assault, domestic violence and other violent crimes, or who are in possession of condoms. Based in Oakland, the Ella Baker Center for Human Rights works to advance racial and economic justice to ensure dignity and opportunity for low income people and people of color.

"Persons in the commercial sex trade through choice, circumstance or trafficking are subject to and witness extremely high rates of violence yet are often reluctant to report these crimes to law enforcement due to fear of arrest. SB 233 (Wiener) will create a pathway for persons in the sex trade to come forward and say "me too."

"SB 233 (Wiener) also furthers important public health goals by preventing the possession of condoms to be used as evidence in prostitution-related crimes. Condoms have historically been confiscated and used as a tool to incriminate sex workers. Preventing the use of condoms in criminal prosecutions of prostitution will support sex workers' ability to protect themselves, a practice that promotes better health for sex workers and their clients.

"The Ella Baker Center strongly believes that people who engage in sex work should not be unjustly criminalized, especially when they are taking steps to protect themselves and others by reporting violent crimes or carrying condoms. Prioritizing the health and safety of sex workers and trafficking survivors protects some of our most marginalized community members, including women of color and trans individuals who are disproportionately

criminalized for sex work.”

- 5) **Argument in Opposition:** According to the *California District Attorneys Association*: “SB 233 would legislatively prohibit condoms from being used as evidence of prostitution [PC §647(b)], lewd acts in public [P.C. §647(a)], loitering with the intent to commit prostitution [P.C. §653.22], and committing a public nuisance [P.C. §372], regardless of the circumstances of a particular case. Condoms would also be prohibited from being the basis for probable cause to arrest for the same offenses.

“Further, SB 233 would provide immunity from prosecution for misdemeanor drug crimes, prostitution, and committing a lewd act in a public place to any person who is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or other violent crime, regardless of whether or not there is corroboration of the reported crime.

“While we understand and appreciate the struggles of victims of human trafficking and sex workers, SB 233 is bad public policy and sets a bad precedent. There are already sufficient measures in place to protect these individuals, and this measure protects the buyers of sex trafficking as well as the workers.

“The determination of what is and what is not evidence in a criminal investigation and of what constitutes probable cause to arrest should not be legislated. Indeed, even with respect to the admissibility of evidence in a criminal case, the California Constitution provides that all evidence is admissible, except by a 2/3 vote of the legislature, demonstrating the preference for admissibility.

“Likewise, the determination of what constitutes probable cause to arrest is a matter for law enforcement and judicial interpretation and not for the legislature. For these reasons, we must respectfully oppose SB 233.”

6) **Prior Legislation:**

- a) AB 2243 (Friedman) Chapter 27, Statutes of 2018, prohibited the use of evidence that victims of, or witnesses to a violent felony as specified, extortion, or stalking, were engaged in an act of prostitution at or around the time they were the witness or victim to the crime.
- b) AB 336 (Anniano) Chapter 403, Statutes of 2014, established an evidentiary procedure for admitting condoms into evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

Erotic Service Providers Legal, Education, and Research Project (Co-Sponsor)
 Sex Workers Outreach Project, Sacramento (Co-Sponsor)
 St. James Infirmary (Co-Sponsor)
 AIDS Healthcare Foundation
 American Civil Liberties Union of California

APLA Health
 California Attorneys for Criminal Justice
 California Civil Liberties Advocacy
 California Latinas for Reproductive Justice
 California Nurse-Midwives Association
 California Women's Law Center
 Citizens for Choice
 City and County of San Francisco Department on the Status of Women
 City and County of San Francisco, Board of Supervisors
 City of West Hollywood
 Conference of California Bar Associations
 Desert AIDS Project
 Desiree Alliance
 Drug Policy Alliance
 Ella Baker Center for Human Rights
 Equality California
 Free Speech Coalition
 Gender Health Center
 Global Women's Strike
 Harvey Milk LGBTQ Democratic Club
 Human Impact Partners
 Human Rights Campaign
 If/When/How: Lawyering for Reproductive Justice
 Legal Services for Prisoners with Children
 Los Angeles County District Attorney's Office
 Los Angeles LGBT Center
 National Association of Social Workers, California Chapter
 National Center for Lesbian Rights
 Positive Women's Network-USA
 Public Health Justice Collective
 Religious Sisters of Charity
 San Francisco AIDS Foundation
 San Francisco District Attorney
 San Francisco District Attorney's Office
 San Francisco Police Department
 Santa Barbara Women's Political Committee
 Sex Workers Outreach Project-USA
 Sex Workers' Outreach Project - Los Angeles
 The Transgender Service Provider Network Los Angeles
 The Women's Foundation of California
 US PROStitutes Collective
 Women of Color in the Global Women's Strike
 Young Women's Freedom Center

10 Private Individuals

Oppose

California District Attorneys Association
California State Sheriffs' Association

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, April 29, 2019 5:10 PM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: Got Endorsement for SB233?
Attachments: List of Supports of SB233.docx

From: Maxine [mailto:mistressmax@mindspring.com]
Sent: Monday, April 29, 2019 5:06 PM
To: PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>
Subject: Got Endorsement for SB233?

Dear Berkeley Police Review Commission,
I saw the article supporting a policy that allows us sex workers to report crime. That's great. We are hoping you can add your name in support of SB233. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB233
Its sponsored by Assembly Member Quirk and San Francisco Senator Scott Wiener. <https://sd11.senate.ca.gov/news/20190211-senator-wiener-introduces-legislation-protect-sex-workers-arrest-when-reporting>

Here are the list of supporters so far. We hope you can write a letter to the sponsors and let them know of your support too.
Thanks so much and if you have any questions, please do call me or contact the sponsors' offices.
Maxine Doogan
Erotic Service Providers Legal, Education and Research Project
415-265-3302

Crime & Courts Sunday, April 28, 2019 Berkeley Police Department implements policy changes to protect sex workers

https://www.dailycal.org/2019/04/28/berkeley-police-department-implements-policy-changes-to-protect-sex-workers/?fbclid=IwAR29dSx10FnjUV9zjGiUkg-RiAgo8MLwLTTY1kxM-AA_AlhReY2MDqUFhEk

List of Supports of SB233

St. James Infirmary
US PROStitutes Collective
Erotic Service Providers Legal, Education, and Research Project
Sex Workers Outreach Project, Sacramento
ACLU of California
Alexandra Lutnick, PhD
Adult Performer Advocacy Committee
ALPA Health
Asian Pacific Legal Outreach
Board of Supervisors of the City and County of San Francisco
California Latinas for Reproductive Justice
California Nurse-Midwives Association
California Women's Law Center
City of Oakland
City of West Hollywood
Conference of California Bar Associations
Desert AIDS Alliance
Desiree Alliance
Ella Baker Center for Human Rights
Equality California
Gender Health Center
Human Impact Partners
Legal Services for Prisoners with Children
Los Angeles LGBT Center
National Center for Lesbian Rights
National Center for Transgender Equality
Positive Women's Network
Public Health Justice Collective
Religious Sisters of Charity
San Francisco Department on Status of Women
San Francisco District Attorney's Office
San Francisco Police Department
Santa Barbara Women's Political Committee
Sex Workers Outreach Project, Los Angeles
Sex Workers Outreach Project, USA
SF AIDS Foundation
The Adult Performer Advocacy Committee
The Harvey Milk LGBTQ Democratic Club
The Women's Foundation of California
Transgender Service Provider Network of Los Angeles
Young Women Freedom's Center
200+ Individuals

Senator Wiener Introduces Legislation to Protect Sex Workers from Arrest when Reporting Violent Crimes & to Prohibit Use of Condoms as Evidence of Sex Work

Senate Bill 233 prohibits the arrest of people involved in sex work when they come forward as a witness or victim of a specified violent and serious crime

February 11, 2019

San Francisco – Today, Senator Scott Wiener (D-San Francisco) announced legislation to protect sex workers from arrest when they report a serious and violent crime or come forward as a witness to a violent crime. These crimes include, for example, sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, and burglary. Separately, Senate Bill 233 ensures that the possession of condoms may not be used as probable cause to arrest someone for sex work. SB 233 prioritizes public safety by ensuring that witnesses and victims are able to report crimes without the fear of arrest and criminalization. By protecting workers who carry condoms, SB 233 improves public health outcomes encouraging safer sex practices and not discouraging sex workers from carrying condoms.

Individuals who engage in sex work experience violent crimes at a disproportionately high rate. A 2014 study by the University of California San Francisco and St. James Infirmary (a peer-based occupational health and safety clinic for sex workers of all genders) found that 60% of sex workers experience some form of violence while working. Specifically, 32% of sex workers reported a physical attack while engaging in sex work, and 29% reported being sexually assaulted while engaging in sex work. Meanwhile, the same report found that 40% of sex worker interactions with law enforcement, when the sex worker was a victim of a violent crime, were rated as negative experiences. SB 233 seeks to remedy this problem by preventing sex workers who report violent crimes from being treated as a criminal themselves. The more sex workers feel comfortable reporting violent crimes, the easier it will be for law enforcement to apprehend violent criminals and rescue victims of human trafficking.

"We're all worse off when crime victims do not feel safe coming forward, for fear of arrest," said Senator Wiener. "This legislation is about protecting victims and increasing public safety. Too many sex workers are victimized, and the last thing we need is for sex workers to be further victimized by being arrested when they report a crime. If sex workers risk arrest for reporting a crime, they simply won't come forward, and violent criminals will go free. We also need to make it easy and safe for sex workers to access condoms. Using condoms as evidence of sex work creates a huge incentive for sex workers not to carry or use them. Criminalizing possession of condoms undermines our efforts to reduce HIV prevention."

SB 233 prohibits law enforcement from relying on possession of condoms as probable cause that an individual is engaging in sex work. Treating condoms as evidence of sex work exacerbates an already unsafe work environment because it discourages sex workers from practicing safer sex. People engaged in sex work are already thirteen times more likely to contract HIV. Human Rights Watch reported that one woman in Los Angeles was so frightened to be caught with condoms by police that she had to use a plastic bag as a condom to try and protect herself against HIV and other sexually transmitted infections. It is in the interest of public health to support the use of condoms and not criminalize individuals who carry them. The San Francisco District Attorney's office has already adopted this practice and committed to not use condoms as evidence when prosecuting someone for sex work.

"Predators view sex workers as easy targets because the illegality of their work makes the police a natural threat; abusers know most sex workers will never go to the police, and they take advantage of that," said **Pike Long, MPH, Deputy Director of St. James Infirmary.**

We know that most people involved in sex work, including those who are experiencing exploitation, do not go to the police when they have been victimized," said **Dr. Alexandra Lutnick, Senior Research Scientist with Aviva Consulting.** "This legislation is the first step towards creating a social and political environment in California where people can seek help when they are victims of violence

While some police departments, such as the San Francisco Police Department, have already set guidelines to prohibit the arrest of sex workers who are coming forward as victims or witnesses of various crimes, it is important that California promote public safety and health by adopting this policy statewide. SB 233 will prioritize the safety of workers, communities, and public health, by ensuring victims and witnesses of sexual assault, human trafficking, stalking, kidnapping, assault, and other serious crimes feel safe reporting these crimes to authorities.

"US PROstitutes Collective welcomes California bill SB 233, Improving Sex Worker Health & Safety," said **Rachel West, Spokesperson for US PROstitutes Collective.** "Giving immunity from arrest to sex workers who report violence will help reduce attacks as women can come forward without fear that they will be prosecuted for prostitution offences. Violent men often target sex workers as they know they are less likely to be brought to justice. But the recent increase in police crackdowns in some areas of the San Francisco Bay Area is in direct contradiction with this Bill. These police operations must stop if safety is to be genuinely prioritized."

SB 233 is supported by St. James Infirmary, US Prostitutes Collective, Erotic Service Providers Legal, Education, and Research Project, and the Sex Worker Outreach Project. It is co-authored by Assemblymembers Bill Quirk (D-Hayward) and Laura Freidman (D-Glendale).

SB 233 was officially introduced on February 7 and will be set for a hearing in the coming months. Further amendments will be made to strengthen protections and clarify that the possession of condoms may not be used as evidence to prosecute someone for sex work. Full text of the legislation can be found [here](#).

###

Berkeley Police Department implements policy changes to protect sex workers

By Sasha Langholz | Staff

The Berkeley Police Review Commission, or PRC, recommended changes to a policy that was implemented by the Berkeley Police Department on April 5 and is designed to protect sex workers by allowing individuals to come forward to report violent crimes without fear of being prosecuted for prostitution or misdemeanor drug offenses.

Berkeley's implementation of this policy was inspired by San Francisco's "Prioritizing Safety for Sex Workers" policies, according to PRC Commissioner Ismail Ramsey. According to Ramsey, exploring a similar change in Berkeley made sense after observing the media attention received from the passing of the San Francisco legislation and the studies that detailed violent crimes against sex workers.

San Francisco was the first in the country to enact this type of policy, according to a January 2018 press release from the San Francisco Department on the Status of Women. According to Johanna Breyer, a co-founder and former executive director of St. James Infirmary, the policy was designed to mitigate the harm experienced by sex workers.

"Our hope for this policy is to reduce the harm experienced by sex workers, in particular, women of color and transgender women engaged in the sex trades," Breyer said in the San Francisco press release.

According to Ramsey, studies documenting violent crimes against sex workers aided in the commission's decision to implement changes. One study conducted by the Sex Worker Environmental Assessment Team, or SWEAT, was published by UCSF and St. James Infirmary and sampled more than 200 cisgender female sex workers from 2003 to 2007.

The SWEAT study found that 32 percent of those surveyed reported being physically attacked while doing sex work, 29 percent reported being sexual assaulted while doing sex work, and 76 percent reported a history of being arrested. In this study, of the 174 women who tried to report crimes to police, 37 percent rated their experience as "bad" or "very bad." Additionally, some reported being threatened with arrest if they did not have sex with the officers.

Of the 174 women who tried to report crimes, more than a third “reported verbal, emotional, physical, sexual abuse by law enforcement,” the study said. Ramsey said that after seeing the studies, it was clear there is a need for sex workers to feel safe.

After enactment of the San Francisco policy, the PRC assembled a Prioritizing Safety for Sex Workers Subcommittee that evaluated anecdotal evidence from women coming forward and collaborated with the Berkeley Commission on the Status of Women to formulate the changes. A member of the Berkeley Commission on the Status of Women joined the subcommittee to aid in the recommendations.

Ramsey emphasized that whether someone is voluntarily or involuntarily involved in the work, it should be done safely.

“We want to protect all people in our society from violence,” Ramsey said.

Contact Sasha Langholz at slangholz@dailycal.org and follow her on Twitter at @LangholzSasha.

10. NEW BUSINESS (discussion & action)

a. Lexipol Policies for review and approval.

Lexipol #	G.O. (if any)	Title
501	T-16	Motor Vehicle Collision Investigations
506	T-18	Disabled Vehicles
605		Brady Material Disclosure
702		Vehicle Maintenance
705		Personal Protective Equipment
902		Prison Rape Elimination
1000		Recruitment and Selection
1004		Anti-Retaliation
1005		Reporting of Employee Convictions
1012		Body Armor
1014	P-21	Commendations
1020	P-20	Outside Employment
1024		Police Aides
1025		Nepotism and Conflicting Relationships
1027		Temporary Modified-Duty Assignments
1033	P-17	Employee Absences (No change from G.O.)

Motion to refer Lexipol policy 605 to the Police Department and the City Attorney's Office to ask for information regarding why the word "should" in sections 605.3 paragraphs 2 and 3, and 605.4(c)1, appears instead of "shall."

Moved/Seconded (Roberts/Calavita)

Motion withdrawn

Motion to: approve Lexipol policies 501, 1012, 1014, 1020, 1024, 1027, 1033; send 506 back to the Subcommittee; and hold 605, 702, 705, 902, 1000, 1004, 1005, 1025 to take a closer look.

Moved/Seconded (Perezvelez/Allamby) Motion Carried

Ayes: Allamby, Calavita, Mikiten, Perezvelez, Ramsey, and Roberts.

Noes: None Abstain: Prichett Absent: Matthews, Yampolsky

b. Whether the "clear and convincing" standard is the appropriate standard to be used in PRC Boards of Inquiry.

Motion to direct the PRC Officer to ask be updated or advised by the City Manager's office as to whether or not they are in meet and confer with the BPA regarding the Commission's prior approval to change its own Regulations to use the "preponderance of the evidence" standard.

Moved/Seconded (Ramsey/Calavita) Motion Carried

Ayes: Allamby, Calavita, Mikiten, Perezvelez, Prichett, Ramsey, Roberts.



Police Review Commission (PRC)

June 14, 2019

Andrew Greenwood, Chief of Police
City of Berkeley
2100 Martin Luther King, Jr. Way
Berkeley, CA 94704

Re: Commendations of BPD employees July 2018 to January 2019

Dear Chief Greenwood:

Thank you for forwarding to the Police Review Commission the letters and emails of thanks and appreciation for exemplary work by members of your department from July 2018 through January 2019. The Commissioners considered these at their March 27, 2019 meeting.

The Commission voted to specially recognize all officers and employees of the BPD who are mentioned in this set of commendations, and listed on the attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine J. Lee".

Katherine J. Lee
PRC Officer

Attachment
cc: PRC Commissioners

PRC commendations of BPD employees, July 2018 -- January 2019

Title	Name	Badge	No. of times, if more than one
Ofc	Jason Baker	112	2
Det	Andres Bejarano	52	
PEO	Florence Blackmon	837	
Ofc	Corey Bold	68	
Sgt	Chris Bonaventure	S-10	
Ofc	Daniel Breaux	15	
Sgt	Jennifer Coats	S-6	
Ofc	Stephanie Cole	146	3
Ofc	Joel Del Rosario	99	
Lt	Michael Durbin	L-3	
Det	Donovan Edwards	135	
Ofc	Neil Egbert	103	2
Ofc	Earl Emelson	108	2
Sgt	Spencer Fomby	S-7	3
Ofc	Edward Galvan	78	
Ofc	Aaron Gasper	64	
Ofc	Zack Gordon	70	3
Sgt	Jesse Grant	S-27	
Ofc	Heather Haney	102	
Lt	Angela Hawk		
Ofc	Devon Hogan	84	
Ofc	Nicholas Hom	89	
Lt	Peter Hong	L-9	2
Ofc	Kevin Houston	513	
Ofc	Beau Hunt	133	
Ofc	Rush Jackson	37	3
PSD	Princess Jenkins	505	
Ofc	Jumaane Jones	160	
Sgt	Rosie Jung	S-33	
Det	Darren Kacalek	88	
Ofc	Kevin Kleppe	115	
Sgt	Frank Landrum	S-1	3
Sgt	Joseph LeDoux	S-30	
Sgt	Peter Lee	S-5	3
Det	Susan Lee	110	
Ofc	Victor Li	33	
Sgt	Craig Lindenau	S-22	
Ofc	Jonathan Loeliger	7	3
Ofc	Kyle Ludovico	26	
Ofc	Samantha Martinez	21	
Ofc	Victor Martinez	100	
Ofc	Alexander McDougall	77	
Sgt	Matthew McGee	S-8	2
PEO	Elisha McKeever	824	

Ofc	Greg	Michalczyk	9	
Ofc	Geoffrey	Mitchell	150	4
Ofc	Tyler	Moore	56	
Ofc	Daniel	Morales	47	
Ofc	Dustin	Morillas	36	2
Ofc	Semir	Muratovic	159	3
PSD	Erin	Netz	526	
Ofc	Nathan	Patrick		2
Ofc	Benjamin	Phelps	153	
Ofc	Marissa	Pickett	81	2
PEO	Christina	Pinkney	839	
PEO	Shaunette	Pinson	810	
Ofc	Garrett	Pock	123	
Ofc	Daniel	Quezada-Garcia	82	2
Ofc	Derek	Raday	5	
Sgt	Darrin	Rafferty	S-2	
Lt	Kevin	Reece	L-7	
Ofc	Steve	Rego	130	2
Ofc	Xiao	Ren	90	
Sgt	Robert	Rittenhouse	S-9	
Sgt	Veronica	Rodrigues	S-24	3
Ofc	Nicholas	Rosato	43	
PSD	Elizabeth	Rosenlicht	527	
Ofc	Eric	Ruff	45	
Sgt	Todd	Sabins	S-19	
Ofc	Scott	Salas	141	
Lt	Kevin	Schofield	L-11	
Ofc	Chris	Scott	23	
Ofc	Corey	Shedoudy	127	
Ofc	Jitendra	Singh	10	2
PEO	Shanee	Singleton	815	
PSD	Shannon	Smith	503	
Ofc	Brandon	Smith	3	3
Ofc	Josh	Smith	60	
Capt	Edward	Spiller	C-5	
Sgt	Christian	Stines		
Ofc	Sean	Tinney	63	3
PEO	Caleb	Trahan	825	
Ofc	Nicholas	Turney	18	
Ofc	Matthew	Valle	111	2
Ofc	Hernan	Villarroel	11	
Ofc	Chris	Waite	20	
Ofc	Shira	Warren	76	
Det	Kyle	White	50	
Ofc	Byron	White	17	
Sgt	Jennifer	Wilson	S-3	
Ofc	Ethell	Wilson	93	3
Sgt	Brian	Wilson	S-23	