

Assembly Bill No. 336

CHAPTER 403

An act to add Section 782.1 to the Evidence Code, relating to crimes.

[Approved by Governor September 18, 2014. Filed with
Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 336, Ammiano. Crimes: prostitution: evidence.

Existing law requires that in any of specified circumstances, including, but not limited to, rape, unlawful sexual intercourse, or sodomy, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness, specified procedures be followed. Existing law includes, among those procedures, a requirement that a written motion be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness. Existing law requires the written motion to be accompanied by an affidavit, filed and sealed, in which the offer of proof is stated. Existing law requires if the court finds that the offer of proof is sufficient, the court to order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant. Existing law permits at the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant and is not found inadmissible, the court to make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. Existing law states that the defendant may then offer that specified evidence pursuant to the order of the court.

This bill would require that in any prosecution for committing an act of disorderly conduct or for loitering in any public place with the intent to commit prostitution, if the possession of one or more condoms is to be introduced as evidence in support of the commission of the crime, specified procedures be followed that are similar to existing law, except that the written motion would be made by the prosecutor 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. The bill would permit, 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 to make an order stating what evidence may be introduced by the prosecutor. The bill would

then permit the prosecutor to offer that specified evidence pursuant to the order of the court.

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

SECTION 1. Section 782.1 is added to the Evidence Code, to read:

782.1. In any prosecution under Sections 647 and 653.22 of the Penal Code, if the possession of one or more condoms is to be introduced as evidence in support of the commission of the crime, the following procedure shall be followed:

(a) A written motion shall be made by the prosecutor 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 shall be stated. The affidavit shall be filed under seal and only unsealed by the court to determine if the offer of proof is sufficient to order a hearing pursuant to subdivision (c). 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 pursuant to Section 210, and is not inadmissible pursuant to Section 352, the court may make an order stating what evidence may be introduced by the prosecutor. The prosecutor may then offer evidence pursuant to the order of the court.

(e) An affidavit resealed by the court pursuant to subdivision (b) 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. The use of the information contained in the affidavit shall be limited solely to the pending proceeding.