

OFFICE OF THE CHIEF OF POLICE

NOTICE

1.8

June 24, 2020

TO: All Department Personnel

FROM: Chief of Police

SUBJECT: SENATE BILL 233, VICTIMS OF OR WITNESSES TO SERIOUS FELONIES SHALL NOT BE ARRESTED FOR CERTAIN MISDEMEANORS AND CONDOMS SHALL NOT BE USED AS PROBABLE CAUSE OR EVIDENCE OF A CRIME

BACKGROUND:

Recent changes in legislation recognized the nature of human trafficking and shifted the focus to the underlying issues involved in prostitution, taking into account that many individuals are forced into terrible circumstances. Expanding on this idea and pursuant to Senate Bill 233, officers shall not arrest a person for misdemeanor violations of the California Uniform Controlled Substances Act (CUCSA) of the California Health and Safety Code (H&S) § 11000 et. seq., or specific sex work penal code (PC) violations if that person is reporting they are a victim of, or a witness to, certain crimes enumerated below.

Additionally, the possession of condoms, in any amount, does not provide a basis for probable cause for arrest and may not be introduced as evidence in the prosecution of certain crimes.

I. Victims of or Witnesses to Certain Serious Felonies Have Immunity from Certain Misdemeanor Arrests

A. A Person CANNOT BE ARRESTED for Misdemeanor Violations of the Following:

- Drug crimes in violation of the CUCSA of H&S 11000 et. seq. - see Section III below;
- Nuisance violations related to an act of prostitution in violation of PC 372;
- Lewd or disorderly conduct related to an act of prostitution in violation of PC 647(a) and (b); and,
- Loitering to commit prostitution in violation of PC 653.22.

B. If that Person is Reporting They are a Victim of or Witness to the Below Crimes, that Occur at or About the Time of the Offense:

- A serious felony as defined in PC 1192.7(c) – see Section III below;
- An assault in violation of PC 245(a);
- Domestic Violence in violation of PC 273.5;
- Extortion in violation of PC 518;

- Human Trafficking in violation of PC 236.1;
- Sexual Battery in violation of PC 243.4(a); and,
- Stalking in violation of PC 646.9.

II. Lack of Evidentiary Value in the Possession of Condoms

Per PC 647.3(b) and Evidence Code 782.1, the possession of condoms, in any amount, shall not provide a basis for probable cause for arrest of, and is not admissible as evidence in the prosecution of any individual for violations related to an act of prostitution as contained in:

- PC 372 (nuisance);
- PC 647 (a) Lewd or Disorderly Conduct;
- PC 647 (b) Prostitution; and,
- PC 653.22 Loitering to Commit Prostitution.

III. Definitions

A. Serious felonies as defined by PC 1192.7(c) are:

- Murder or voluntary manslaughter;
- Mayhem;
- Rape;
- Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- Lewd or lascivious act on a child under 14 years of age;
- Any felony punishable by death or imprisonment in the state prison for life;
- Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
- Attempted murder;
- Assault with intent to commit rape or robbery;
- Assault with a deadly weapon or instrument on a peace officer;
- Assault by a life prisoner on a non-inmate;
- Assault with a deadly weapon by an inmate;
- Arson;
- Exploding a destructive device or any explosive with intent to injure;
- Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- Exploding a destructive device or any explosive with intent to murder;
- Any burglary of the first degree;
- Robbery or bank robbery;

- Kidnapping;
- Holding of a hostage by a person confined in a state prison;
- Attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- Any felony in which the defendant personally used a dangerous or deadly weapon;
- Selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;
- Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- Grand theft involving a firearm;
- Carjacking;
- Any felony offense, which would also constitute a felony violation of Section 186.22;
- Assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;
- Throwing acid or flammable substances, in violation of Section 244;
- Assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;
- Assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5;
- Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;
- Commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;
- Continuous sexual abuse of a child, in violation of Section 288.5;
- Shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034;
- Intimidation of victims or witnesses, in violation of Section 136.1;
- Criminal threats, in violation of Section 422;
- Any attempt to commit a crime listed in this subdivision other than an assault;
- Any violation of Section 12022.53 (use of a firearm in certain felonies);
- A violation of subdivision (b) or (c) of Section 11418 (use of weapons of mass destruction); and,
- Any conspiracy to commit an offense described in this subdivision.

B. Misdemeanor offenses listed in the CUCSA consist of:

- 11153 of the Health and Safety Code (H&S) – Misuse of Prescription Medicine;
- 11154(a) H&S – Prescribing a Controlled Substance Without Treatment;
- 11156 H&S – Prescribing Controlled Substances to an Addict;

- 11162.5 H&S – Counterfeit Prescription Blanks;
- 11173 H&S – Doctor Shopping & Prescription Fraud;
- 11350 H&S – Possession of a Controlled Substance;
- 11355 H&S – Substitution of an Imitation Controlled Substance;
- 11357 (a) H&S – Possession of Concentrated Cannabis;
- 11357.5 H&S – Sale of Synthetic Marijuana/Cannabis;
- 11358 H&S – Cultivating Marijuana;
- 11359 H&S – Possession of Marijuana (Intent to Sell);
- 11360 H&S – Selling Cannabis/Marijuana;
- 11363 H&S – Cultivating Peyote;
- 11364 H&S – Possession of Drug Paraphernalia;
- 11365 H&S – Being Present During Controlled Substance Use;
- 11366 H&S – Operating a Drug House;
- 11366.8 H&S – Concealing Drugs in a False Compartment;
- 11368 H&S – Altering or Forging a Prescription;
- 11370.9 H&S – Money Laundering;
- 11375 H&S – Possession of Benzodiazepine Drugs;
- 11375.5 H&S – Sale of Synthetic Stimulants;
- 11377 H&S – Possession of Methamphetamine; and,
- 11550 H&S – Under the Influence of Drugs.

If you have any questions regarding this Notice, please contact Detective Services Group, at (213) 486-7010.



MICHEL R. MOORE
Chief of Police

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