

PROPOSED CALIFORNIA PENAL CODE

To be introduced into the State Senate sometime during the week of
March 10, 1975/authorized by Senator Roberti (D/L.A.) ^{Req. #5151}
and Senator Grunsky (R/Watsonville)

DIVISION 9. SEX OFFENSES, AND OFFENSES

AGAINST THE FAMILY

CHAPTER 1. DEFINITIONS AND OTHER
GENERAL PROVISIONS

9001. The following definitions and provisions are
applicable to this division:

(a) "Sexual conduct" means vaginal intercourse,
anal intercourse, or contact between the mouth or tongue
and the penis, the scrotum, the anus, the vulva, (or the
clitoris.) Penetration, however slight, is sufficient to
complete vaginal or anal intercourse.

(b) "Presentation" means any motion picture, play,
musical production, revue, or similar activity.

(c) Whenever the definition of an offense excludes
conduct with a spouse, the exclusion shall not extend to
persons living apart pursuant to a judgment of nullity,
divorce, dissolution, or legal separation.

Chapter 2. Sexual Offenses

9301. (a) A person is guilty of sexual battery when he engages in sexual conduct with a person other than his spouse under either of the following circumstances:

(1) He compels the other person to submit to the sexual conduct by the use or threat of force.

(2) He knows that the other person is unable to consent or to refuse to consent to the sexual conduct due to his present physical or mental condition.

(b) Sexual battery is a felony of the second degree when the act is committed in concert with one or more other individuals, or when it is committed under circumstances which result in serious bodily injury to the victim. Otherwise, it is a felony of the third degree.

9302. (a) In any criminal prosecution for violation of Section 9301 or 9403, or for an attempt to commit any such crime, the jury shall not be instructed that it may be inferred that a female who has previously consented to sexual intercourse with persons other than the defendant would be therefore more likely to consent to sexual intercourse again; and a jury shall not be instructed that the prior sexual conduct in and of itself of the complaining witness may be considered in determining the credibility of the witness pursuant to Chapter 6 (commencing with Section 780) of Division 6 of the Evidence Code.

(b) The term "unchaste character" shall not be used by any court in any criminal case in which the defendant is charged with a violation of Section 9301 or 9403, or attempt to commit any crime defined in any such section, in any instruction to the jury.

9303. (a) A person is guilty of incest when he marries or engages in vaginal intercourse with a person whom he knows to be related to him as ancestor or descendant, as brother or sister of the whole or halfblood, or as uncle, aunt, nephew, or niece.

(b) Incest is a felony of the fifth degree.

9304. (a) A person is guilty of indecency with an animal when he engages in sexual intercourse or sexual conduct with an animal.

(b) Indecency with an animal is a misdemeanor of the second degree.

9305. (a) A person is guilty of indecent exposure when, for the purpose of arousing or gratifying the sexual desire of any person, that person exposes his private parts or engages in sexual conduct in any public place or in any place open to public view, and a reasonable person knowing the circumstances would likely be offended.

(b) This section shall not apply to a presentation in a place where persons less than 18 years old are excluded.

(c) Indecent exposure is a misdemeanor of the second degree.

9306. (a) A person is guilty of soliciting sexual conduct when he solicits another person to engage in sexual conduct under circumstances in which the person solicited is offended by the solicitation.

(b) The offense of solicitation shall be proved by the testimony of two witnesses or of one witness and corroborating circumstances.

(c) Solicitation of sexual conduct is a misdemeanor of the second degree.

Chapter 3. Sexual Offenses Involving Minors

9401. (a) A person is guilty of sexual abuse of a child when he does either of the following:

(1) He engages in sexual conduct, with a person who is less than 14 years old.

(2) With intent to arouse or gratify the sexual desire of any person, he touches the body, or touches the body through the clothing, of a ^{person} who is less than 14 years old.

(b) Sexual abuse of a child, as defined by paragraph (1) of subdivision (a), is a felony of the second degree when it is committed under circumstances which result in serious bodily injury to the child. Otherwise it is a felony of the third degree.

(c) Sexual abuse of a child, as defined by paragraph (2) of subdivision (a), is a felony of the third degree when it is committed under circumstances which result in serious bodily injury to the child. Otherwise it is a felony of the fifth degree.

9402. (a) A person is guilty of sexually annoying a minor when he interferes with or disturbs a minor with the intent of engaging in illicit sexual conduct.

(b) In a prosecution under this section, it is a defense that the defendant reasonably believed the person to be at least 18 years old.

(c) Sexually annoying a minor is a misdemeanor of the first degree.

9403. (a) A person is guilty of unlawful sexual conduct when he engages in sexual conduct with a person not his spouse who is a minor.

(b) In a prosecution under this section, it is a defense that the defendant reasonably believed the person to be at least 18 years old.

(c) Unlawful sexual conduct is a felony of the fifth degree when the defendant is more than three years older than the person. Otherwise, it is a misdemeanor of the first degree.

CHAPTER 4. PROSTITUTION

9601. (a) A person is guilty of prostitution when he does either of the following:

- (1) Engages or offers or agrees to engage in an act of sexual conduct with another person in return for a fee.
- (2) Pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual conduct.

(b) Prostitution is a misdemeanor of the second degree.

9602. (a) A person is guilty of exploiting prostitution when he does any of the following:

(1) Compels, persuades, or attempts to compel or persuade another person to become or remain a prostitute.

(2) Shares the proceeds of prostitution with a prostitute pursuant to their understanding that he is to share therein.

(3) Solicits another person to patronize a prostitute.

(4) Knowingly permits prostitution in any premises in his possession or under his control.

(b) Exploiting prostitution as defined in paragraphs (1), (2), and (3) of subdivision (a) is a felony of the fifth degree. Otherwise, it is a misdemeanor of the second degree.

(c) In a trial under paragraph (1) of subdivision (a) when the person upon or with whom the offense was committed is a minor, the defendant shall not be convicted upon the testimony of the minor unless the minor's testimony is corroborated by other evidence that tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

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March 21, 1975

Senator David Roberti
Hollywood, California

Re: Proposed amendments to S.B. 565

Dear Senator:

I enjoyed my conversation with you the other day concerning the proposed penal code revision. The meeting was called without much advance notice or time to prepare a proper document stating the proposed amendments. After having reflected on our conversation, discussed the matters with both co-chairman of the National Committee for Sexual Civil Liberties as well as other concerned persons, I am submitting a more refined draft of our proposed amendments.

With respect to Section 9306, soliciting sexual conduct, it is our position that this Section is overbroad in that it prohibits private solicitations, does not take into account the state of mind of the speaker, and imposes a possible jail sentence of up to 6 months. To correct these defects we propose the following amended language:

Section 9306 (a) A person is guilty of soliciting sexual conduct when, while in a public place, with the intent to offend another person or in reckless disregard of the fact that another person is offended by his behavior, he solicits another to engage in sexual conduct under circumstances in which the person solicited is offended.

(b) The offense of solicitation shall be proved by the testimony of two witnesses or of one witness and corroborating circumstances.

(c) Solicitation of sexual conduct is an infraction.

The language proposed above for amending Section 9306 is a fall back position because it is still our belief that a statute forbidding the request to commit a lawful act is unconstitutional in violation of the First Amendment.

With respect to Section 9305, indecent exposure, it is our position that this Section could be improved in two respects, 1) by taking into account the state of mind of the defendant, and 2) clearing up the ambiguous language in the last phrase. To correct these defects we propose the following amended language:

page 2 of
letter to
Senator Roberti

Section 9305 (a) A person is guilty of indecent exposure when, for the purpose of arousing or gratifying the sexual desire of any person, that person exposes his private parts or engages in sexual conduct in any public place or in any place exposed to public view, and he knows that he is likely to be observed by others who would be affronted or alarmed.

(b) This section shall not apply to a presentation in a place where persons less than 18 years old are excluded.

(c) Indecent exposure is a misdemeanor of the second degree.

With respect to Section 9403 you requested a proposed amendment to it. This is what we would suggest in view of the two main defects, 1) an unreasonably high age of 18 years old, and 2) penalties too severe for the nature of the crime:

Section 9403 (a) A person is guilty of unlawful sexual conduct when he engages in sexual conduct with a person not his spouse who is under 17 years of age and that person is at least 3 years younger than he.

(b) In a prosecution under this section, it is a defense that the defendant reasonably believed that the person to be at least 17 years old.

(c) Unlawful sexual conduct is a misdemeanor of the first degree.

Please let me know your position on these amendments at the earliest possible date. I also hope that you can arrange the meeting with Senator Alfred Song in the near future.

Very truly yours,

Thomas F. Coleman

TC:pad

cc: Prof. Walter Barnett
Dr. Arthur C. Warner