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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2243                      **Hearing Date:** May 15, 2018  
**Author:** Friedman  
**Version:** May 7, 2018  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Evidence: Admissibility*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 694 (Bloom) Chapter 126, Stats. 2013  
Proposition 35, November 6, 2012

**Support:** American Civil Liberties Union of California; Asian Pacific Islander Legal Outreach; California Adolescent Health Collaborative; City and County of San Francisco; District Attorney of San Francisco; Equality California; Junior Leagues of California State Public Affairs Committee; Maitri; Not for Sale; Public Health Justice Collective; St. James Infirmary; Katy Tang, San Francisco Board of Supervisors;

**Opposition:** None known

**Assembly Floor Vote:** 67 - 0

## PURPOSE

***The purpose of this bill is to prohibit 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.***

*Existing law* 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).)

*Existing law* 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).)

*Existing law* criminalizes the act of loitering in a public place with the intent to commit prostitution. (Pen. Code § 653.22.)

*Existing law* punishes loitering in a public place with the intent to commit prostitution as a misdemeanor. (Pen. Code § 653.26.)

*Existing law* provides that all relevant evidence is admissible in a criminal case, with defined, limited exceptions. (Cal. Const., Art. I, § 28, subd. (d); Evid. Code § 210.)

*Existing law* allows a judge to exclude relevant evidence if it will cause necessary delay, or create a danger of undue prejudice, confusion of the issues, or misleading the jury. (Evid. Code § 352.)

*Existing law* mandates a strict and confidential procedure prior to the introduction of evidence of past sexual conduct of victim of a sexual assault. (Evid. Code § 702.)

*Existing law* mandates a strict and confidential procedure prior to the introduction of possession of condoms as evidence that a crime was committed. (Evid. Code § 782.1.)

*Existing law* limits the introduction of evidence of acts that show a defendant's propensity to commit crime in a criminal case. (Evid. Code § 1103.)

*Existing law* allows the admission of a person's own statement against them in any proceeding to which they are a party. (Evid. Code § 1220.)

*This bill* provides that evidence that victim of or a witness to extortion, stalking or a violent felony has engaged in an act of prostitution at or around the time he or she was a victim of or a witness to the crime is inadmissible to prove the victim or witness's criminal liability of the act of prostitution in a separate prosecution of that victim or witness.

## COMMENTS

### 1. Need for This Bill

According to the author:

Sex workers often feel unsafe reporting violence to police officers, or coming forward as witness to a violent crime because they fear they will be prosecuted for engaging in prostitution. In a study conducted by the University of California, San Francisco & St. James Infirmary, over 60% of sex workers face some form of assault while engaged in sex work—32% reported a physical assault, while 29% reported a sexual assault.

California has always encouraged every victim or witness to come forward to report a crime as a means of promoting the public safety of the State. Currently, many prosecutors provide immunity to sex workers who act as cooperating witnesses and do not prosecute them for prostitution. This bill would simply codify this common practice. In doing so, we are providing one of the most vulnerable populations in California with a pathway to bring claims, without fear of prosecution, when they are the victims or witnesses of a violent crime.

AB 2243 would provide protections for sex workers who want to come forward to report a crime of violence perpetrated against them during an act of prostitution, or want to testify as a witness to such a crime. Specifically, AB 2243 bars evidence of criminal liability for prostitution if the sex worker engaged in the act is a victim or witness to a violent felony.

## 2. Prohibits Use of Evidence That a Victim is a Sex Worker

This bill would provide that evidence that a victim or a witness to extortion, stalking or a violent felony is engaged in an act of prostitution at or around the time he or she was a victim or witness to the crime is inadmissible to prove the victim or witness's criminal liability for the act of prostitution in a separate prosecution of that victim or witness. This bill intends to alleviate the fear of prosecution that may dissuade people engaged in acts of prostitution from reporting a violent crime. Prostitution is punishable only as a misdemeanor offense in California, and those engaged in acts of prostitution are often victims of, or witnesses to, more serious crime that is subject to more serious punishment.

Some jurisdictions have already adopted the policy in this bill. For example, the San Francisco District Attorney's Office announced a policy similar to this bill. (Blumberg, *San Francisco Takes a Stand to Protect Sex Workers who Come Forward About Abuse*, The Huffington Post, Jan. 12, 2018 < [https://www.huffingtonpost.com/entry/san-francisco-sex-workers-policy\\_us\\_5a58fa29e4b03c4189655459](https://www.huffingtonpost.com/entry/san-francisco-sex-workers-policy_us_5a58fa29e4b03c4189655459)> [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 may be construed to include the purchaser of services.

### 3. Argument in Support

According to Asian Pacific Islander Legal Outreach:

Sex workers are subjected to extreme levels of abuse. In one study in San Francisco, over 60% of sex worker endured assault while engaged in sex work – 32% reported a physical assault and 29% reported a sexual assault. California has always encouraged every victim or witness to come forward to report a crime as a means of promoting public safety. The California Victim Compensation Program permits prostitutes who are assaulted while working to access victim compensation funds. The Sex Work and Trafficking Policy Impact Committee of the San Francisco Mayor’s Task Force on Anti-Human Trafficking worked with the San Francisco Police Department and District Attorney’s Office to create “Prioritizing Safety for Sex Worker” policies in San Francisco, which prohibit the arrest or prosecution of a sex worker for prostitution related offenses or minor drug crimes when the report being the victim or witness of a violent crime. Every survivor of violence, regardless of their employment or lifestyle, should be able to seek justice so they can build a life free from violence.

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