

RESOLUTION 06-06-2017 (APPROVED AS AMENDED)

DIGEST

Criminal Law: Repeal Bathhouse Ban

Amends Penal Code section 11225 to repeal the public nuisance ban on bathhouses.

RESOLUTIONS COMMITTEE ANALYSIS

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 11225 to repeal the public nuisance ban on bathhouses. This was a law based on homophobia, as shown by the fact that it did not include massage parlors; it is obsolete because most such bath houses no longer exist. Prosecutors believe that this is a statute that is seldom or never used.

The statute's focus on bathhouses was tailored to a particular health issue. Penal Code section 11225 was amended to add what is now subdivision (c) in 1988, in order to bolster efforts by public health departments in San Francisco, Los Angeles, and San Diego to address a public health emergency centered on bathhouses that served as venues for unprotected sex for populations at high risk for contracting HIV. Prior to the amendment, for example, San Francisco's Department of Public Health attempted to shut down bathhouses where the unwitting transmission of the HIV virus had been confirmed, but lost a motion for a preliminary injunction brought by one of the proprietors, resulting in a remedy requiring on-site observers and removal of the doors from formerly private rooms. (See generally, *Agnost v. Owen* (filed Oct. 10, 1984) San Francisco Superior Court Case No. 830-321.)

Most of the bathhouses subject to this law have been closed for many years, and there is no longer be a need for a specific provision declaring bathhouses, in particular, to be public nuisances.

The Resolutions Committee initially recommended disapproval of this resolution. The full Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 11225, to read as follows:

- 1 § 11225
- 2 (a) (1) Every building or place used for the purpose of illegal gambling as defined by
- 3 state law or local ordinance, lewdness, assignation, or prostitution, and every building or place in
- 4 or upon which acts of illegal gambling as defined by state law or local ordinance, lewdness,
- 5 assignation, or prostitution, are held or occur, is a nuisance which shall be enjoined, abated, and
- 6 prevented, and for which damages may be recovered, whether it is a public or private nuisance.

7 (2) Nothing in this subdivision shall be construed to apply the definition of a nuisance to
8 a private residence where illegal gambling is conducted on an intermittent basis and without the
9 purpose of producing profit for the owner or occupier of the premises.

10 (b) (1) Notwithstanding any other law, every building or place used for the purpose of
11 human trafficking, and every building or place in or upon which acts of human trafficking are
12 held or occur, is a nuisance which shall be enjoined, abated, and prevented, and for which
13 damages may be recovered, whether it is a public or private nuisance.

14 (2) For purposes of this subdivision, human trafficking is defined in Section 236.1.

15 ~~(e)(1) Every building or place used as a bathhouse which as a primary activity encourages~~
16 ~~or permits conduct that according to the guidelines of the federal Centers for Disease Control can~~
17 ~~transmit AIDS, including, but not limited to, anal intercourse, oral copulation, or vaginal~~
18 ~~intercourse, is a nuisance which shall be enjoined, abated, and prevented, and for which damages~~
19 ~~may be recovered, whether it is a public or private nuisance.~~

20 ~~(2) For purposes of this subdivision, a "bathhouse" is to be defined as a business which,~~
21 ~~as its primary purpose, provides facilities for a spa, whirlpool, communal bath, sauna, steam~~
22 ~~bath, mineral bath, mud bath, or facilities for swimming.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The ban on bathhouses was passed in the early 1980's as a reaction to AIDS. The reference to bathhouses makes no sense. If our government regards as a nuisance places that encourage or permit conduct that spreads AIDS, as a primary activity, it should apply the same standard to everywhere and not have a special rule for bathhouses. Bathhouses should not be subject to special scrutiny regarding whether they encourage or allow such behavior as a primary activity. Furthermore, singling out bathhouses is discriminatory against gays because other places that permit or encourage such conduct as a primary activity but mainly involve heterosexual sex, such as massage parlors, are not included.

The Solution: This resolution removes the element of "bathhouse" in the ban on buildings and places that encourage or permit a primary activity of conduct that can spread AIDS. The result is the same standard applied to all places that permit or encourage conduct that can spread AIDS.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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