

RESOLUTION 16-05-2017

DIGEST

Criminal Law: Eliminate References to Gender

Amends Penal Code sections 266, 315 and 11160, and deletes section 1108, to remove sexist, gender-biased, discriminatory, and outdated language.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code sections 266, 315 and 11160, and deletes section 1108, to remove sexist, gender-biased, discriminatory, and outdated language. This resolution should be approved in principle because society now recognizes a broad range of sexual crimes against persons of all genders and gender identities, and all sexual orientations.

Many of California's Penal Code sections were written at a time when women were presumed to be the only victims of sexual crimes. Since then, society has not only recognized that any person can be the target of improper sexual aggression, but also that sex can be used as a commodity. This resolution seeks to update the language of some of these statutes to reflect this new awareness.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 266, 315, and 11160 and repeal section 1108 to read as follows:

- 1 § 266
- 2 Every person who inveigles or entices any ~~unmarried female~~ minor, ~~of previous chaste~~
- 3 ~~character, under the age of 18 years~~, into any house of ill fame, or of assignation, or elsewhere,
- 4 for the purpose of ~~prostitution~~ commercial sexual exploitation, ~~or to have illicit carnal connection~~
- 5 ~~with any man~~; and every person who aids or assists in such inveiglement or enticement; and
- 6 every person who, by any false pretenses, false representation, or other fraudulent means,
- 7 procures any ~~female~~ person to have illicit carnal connection with ~~any man~~ another person, is
- 8 punishable by imprisonment in the state prison, or by imprisonment in a county jail not
- 9 exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both such
- 10 fine and imprisonment.
- 11
- 12 § 315
- 13 Every person who keeps a house of ill-fame in this state, resorted to for the purposes of
- 14 prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor; and
- 15 in all prosecutions for keeping or resorting to such a house common repute may be received as

16 competent evidence of the character of the house, the purpose for which it is kept or used, and
17 the character of the persons ~~women~~ inhabiting or resorting to it.

18
19 ~~§ 1108~~

20 ~~Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting~~
21 ~~therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste~~
22 ~~character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting~~
23 ~~therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom~~
24 ~~the offense was committed, unless she is corroborated by other evidence.~~

25
26 § 11160

27 (a) Any health practitioner employed in a health facility, clinic, physician's office, local
28 or state public health department, or a clinic or other type of facility operated by a local or state
29 public health department who, in his or her professional capacity or within the scope of his or her
30 employment, provides medical services for a physical condition to a patient whom he or she
31 knows or reasonably suspects is a person described as follows, shall immediately make a report
32 in accordance with subdivision (b):

33 (1) Any person suffering from any wound or other physical injury inflicted by his or her
34 own act or inflicted by another where the injury is by means of a firearm.

35 (2) Any person suffering from any wound or other physical injury inflicted upon the
36 person where the injury is the result of assaultive or abusive conduct.

37 (b) Any health practitioner employed in a health facility, clinic, physician's office, local
38 or state public health department, or a clinic or other type of facility operated by a local or state
39 public health department shall make a report regarding persons described in subdivision (a) to a
40 local law enforcement agency as follows:

41 (1) A report by telephone shall be made immediately or as soon as practically possible.

42 (2) A written report shall be prepared on the standard form developed in compliance with
43 paragraph (4) of this subdivision, and Section 11160.2, and adopted by the Office of Emergency
44 Services, or on a form developed and adopted by another state agency that otherwise fulfills the
45 requirements of the standard form. The completed form shall be sent to a local law enforcement
46 agency within two working days of receiving the information regarding the person.

47 (3) A local law enforcement agency shall be notified and a written report shall be
48 prepared and sent pursuant to paragraphs (1) and (2) even if the person who suffered the wound,
49 other injury, or assaultive or abusive conduct has expired, regardless of whether or not the
50 wound, other injury, or assaultive or abusive conduct was a factor contributing to the death, and
51 even if the evidence of the conduct of the perpetrator of the wound, other injury, or assaultive or
52 abusive conduct was discovered during an autopsy.

53 (4) The report shall include, but shall not be limited to, the following:

54 (A) The name of the injured person, if known.

55 (B) The injured person's whereabouts.

56 (C) The character and extent of the person's injuries.

57 (D) The identity of any person the injured person alleges inflicted the wound, other
58 injury, or assaultive or abusive conduct upon the injured person.

59 (c) For the purposes of this section, "injury" shall not include any psychological or
60 physical condition brought about solely through the voluntary administration of a narcotic or
61 restricted dangerous drug.

62 (d) For the purposes of this section, “assaultive or abusive conduct” shall include any of
63 the following offenses:

64 (1) Murder, in violation of Section 187.

65 (2) Manslaughter, in violation of Section 192 or 192.5.

66 (3) Mayhem, in violation of Section 203.

67 (4) Aggravated mayhem, in violation of Section 205.

68 (5) Torture, in violation of Section 206.

69 (6) Assault with intent to commit mayhem, rape, sodomy, or oral copulation, in violation
70 of Section 220.

71 (7) Administering controlled substances or anesthetic to aid in commission of a felony, in
72 violation of Section 222.

73 (8) Battery, in violation of Section 242.

74 (9) Sexual battery, in violation of Section 243.4.

75 (10) Incest, in violation of Section 285.

76 (11) Throwing any vitriol, corrosive acid, or caustic chemical with intent to injure or
77 disfigure, in violation of Section 244.

78 (12) Assault with a stun gun or taser, in violation of Section 244.5.

79 (13) Assault with a deadly weapon, firearm, assault weapon, or machinegun, or by means
80 likely to produce great bodily injury, in violation of Section 245.

81 (14) Rape, in violation of Section 261.

82 (15) Spousal rape, in violation of Section 262.

83 (16) Procuring any female person to have sex with another man, in violation of Section
84 266, 266a, 266b, or 266c.

85 (17) Child abuse or endangerment, in violation of Section 273a or 273d.

86 (18) Abuse of spouse or cohabitant, in violation of Section 273.5.

87 (19) Sodomy, in violation of Section 286.

88 (20) Lewd and lascivious acts with a child, in violation of Section 288.

89 (21) Oral copulation, in violation of Section 288a.

90 (22) Sexual penetration, in violation of Section 289.

91 (23) Elder abuse, in violation of Section 368.

92 (24) An attempt to commit any crime specified in paragraphs (1) to (23), inclusive.

93 (e) When two or more persons who are required to report are present and jointly have
94 knowledge of a known or suspected instance of violence that is required to be reported pursuant
95 to this section, and when there is an agreement among these persons to report as a team, the team
96 may select by mutual agreement a member of the team to make a report by telephone and a
97 single written report, as required by subdivision (b). The written report shall be signed by the
98 selected member of the reporting team. Any member who has knowledge that the member
99 designated to report has failed to do so shall thereafter make the report.

100 (f) The reporting duties under this section are individual, except as provided in
101 subdivision (e).

102 (g) No supervisor or administrator shall impede or inhibit the reporting duties required
103 under this section and no person making a report pursuant to this section shall be subject to any
104 sanction for making the report. However, internal procedures to facilitate reporting and apprise
105 supervisors and administrators of reports may be established, except that these procedures shall
106 not be inconsistent with this article. The internal procedures shall not require any employee
107 required to make a report under this article to disclose his or her identity to the employer.

108 (h) For the purposes of this section, it is the Legislature's intent to avoid duplication of
109 information.

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

PROPONENT: Queen's Bench Bar Association

STATEMENT OF REASONS

The Problem: The Penal Code includes language that is sexist, gender biased, discriminatory and outdated. The Code needs to be updated to reflect modern norms and to remove sexist, biased, and discriminatory language.

The Solution: This resolution would solve the problem by removing references to female or male where the code is intended to apply to those of any sex equally and to remove outdated language that is inapplicable to today's world.

Section 1108 exhibits so many flaws that it cannot be cured with amendment but should be repealed in full. First, section 1108 purports to address "a trial for procuring or attempting to procure an abortion, or aiding or assisting therein." As written, this section assumes that it is a crime to procure or attempt to procure an abortion. This is in conflict with the right to a legal abortion pursuant to the Reproductive Privacy Act. Second, section 1108 describes "an unmarried female of previous chaste character, under the age of eighteen years." This is clearly an antiquated reference that is no longer applicable to present day. Finally, this section prohibits the conviction of a perpetrator for kidnapping a child for the purposes of commercial sexual exploitation upon the testimony of the child "unless she is corroborated by other evidence." This clearly does not serve any legitimate, non-discriminatory purpose and may interfere with prosecution of kidnappers and rapists.

Please note that this resolution and QB-01-2017 propose complementary amendments to Penal Code sections 266 and 315. The amendments proposed in this resolution and in QB-01-2017 are intended to work together to eliminate use of outdated and discriminatory language.

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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