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Noel Gallo  
City Council Member, District 5

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**DATE:** March 21, 2019  
**TO:** City Councilmembers and Members of the Rules and Legislation Committee  
**FROM:** Councilmember Noel Gallo, Council District 5  
**SUBJECT: Supporting Bill SB-233**

**RECOMMENDATION**

Councilmember Noel Gallo recommends that the City Council adopt:

**RESOLUTION SUPPORTING CALIFORNIA STATE SENATE BILL NO. 233, AUTHORED BY SENATOR SCOTT WIENER AND CO-AUTHORED BY ASSEMBLY MEMBERS BILL QUIRK AND LAURA FRIEDMAN, WHICH WOULD PROHIBIT THE ARREST OF SEX WORKERS WHEN THEY REPORT SEXUAL ASSAULT, HUMAN TRAFFICKING, STALKING, ROBBERY, ASSAULT, KIDNAPPING, THREATS, BLACKMAIL, EXTORTION, BURGLARY OR OTHER VIOLENT CRIMES AGAINST THEM**

**SUMMARY**

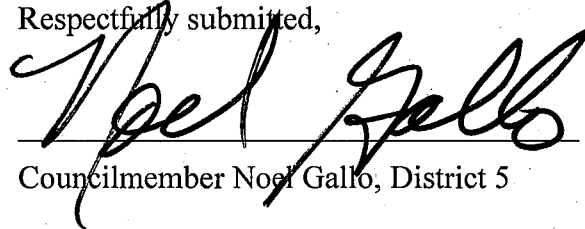
Councilmember Gallo strongly supports the State Bill-233 introduced by California State Senator Scott Wiener and co-authored by Assembly Members Bill Quirk and Laura Friedman, which would prohibit the arrest of persons for misdemeanor violations of the California Uniform Controlled Substances Act (CUCSA) or other crimes when they report crimes of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crimes to law enforcement agencies. The resolution "State Bill 233" fulfill the criteria and intent to support sex workers from being arrested when they report a violent crimes against them. SB 233 also provides that possession of condoms in any amount, in and of itself, is not probable cause to be arrested for a crime, including specified sex work crimes such as solicitation and prostitution, and public nuisance.

The Resolution in support of SB 233 would reinforce State Bill 233 and would send a clear message that The City of Oakland supports all workers and their rights to report any crime committed to them without being arrested.

Item: \_\_\_\_\_  
Rules and Legislation Committee  
October 14, 2014

For questions regarding this report, please contact Mayra Chavez, Office of Councilmember Noel Gallo at (510) 238-7051.

Respectfully submitted,



Councilmember Noel Gallo, District 5

Prepared by:  
Mayra Chavez, Office of  
Councilmember Noel Gallo, District 5

Attachments:  
A – Proposed Ordinance

Item: \_\_\_\_\_  
Rules and Legislation Committee  
October 14, 2014

AMENDED IN SENATE MARCH 11, 2019

SENATE BILL

No. 233

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**Introduced by Senator Wiener**

(Principal coauthor: Assembly Member Quirk)

(Coauthor: Assembly Member Friedman)

(Coauthors: Assembly Members Carrillo and Friedman)

February 7, 2019

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An act to *repeal and add Section 782.1 of the Evidence Code, and to add Section 647.3 to the Penal Code, relating to crime.*

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Wiener. Immunity from arrest.

Existing law criminalizes various aspects of sex work, including soliciting anyone to engage in, or engaging in, lewd or dissolute conduct in a public place, loitering in a public place with the intent to commit prostitution, or maintaining a public nuisance. Existing law, the California Uniform Controlled Substances Act (CUCSA), also criminalizes various offenses relating to the possession, transportation, and sale of specified controlled substances.

This bill would prohibit the arrest of a person for a misdemeanor violation of the CUCSA or ~~other~~ specified sex work crimes, if that person is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crime. The bill would also state that possession of condoms in any amount, ~~in and of itself, is not~~ *amount does not provide a basis for* probable cause for arrest for specified sex work crimes.

*Existing law specifies a procedure by which condoms may be introduced as evidence in a prosecution for various crimes, including soliciting or engaging in lewd or dissolute conduct in a public place,*

*soliciting or engaging in acts of prostitution, loitering in or about a toilet open to the public for the purpose of engaging in or soliciting a lewd, lascivious, or unlawful act, or loitering in a public place with the intent to commit prostitution.*

*This bill, instead, would prohibit the possession of a condom as evidence of a violation of soliciting or engaging in lewd or dissolute conduct in a public place, soliciting or engaging in acts of prostitution, loitering in a public place with the intent to commit prostitution, or for maintaining a public nuisance.*

*The California Constitution includes the Right to Truth-In-Evidence, which requires a  $\frac{2}{3}$  vote of the Legislature to pass a bill that would exclude any relevant evidence from any criminal proceeding, as specified.*

*Because this bill would exclude from a criminal action evidence about a person's liability for an act of prostitution that is otherwise admissible, it requires a  $\frac{2}{3}$  vote of the Legislature.*

Vote: ~~majority~~ $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 782.1 of the Evidence Code is repealed.~~
- 2     ~~782.1. In any prosecution under Sections 647 and 653.22 of~~
- 3     ~~the Penal Code, if the possession of one or more condoms is to be~~
- 4     ~~introduced as evidence in support of the commission of the crime,~~
- 5     ~~the following procedure shall be followed:~~
- 6     ~~(a) A written motion shall be made by the prosecutor to the~~
- 7     ~~court and to the defendant stating that the prosecution has an offer~~
- 8     ~~of proof of the relevancy of the possession by the defendant of one~~
- 9     ~~or more condoms.~~
- 10    ~~(b) The written motion shall be accompanied by an affidavit in~~
- 11    ~~which the offer of proof shall be stated. The affidavit shall be filed~~
- 12    ~~under seal and only unsealed by the court to determine if the offer~~
- 13    ~~of proof is sufficient to order a hearing pursuant to subdivision~~
- 14    ~~(c). After that determination, the affidavit shall be resealed by the~~
- 15    ~~court.~~
- 16    ~~(e) If the court finds that the offer of proof is sufficient, the court~~
- 17    ~~shall order a hearing out of the presence of the jury, if any, and at~~
- 18    ~~the hearing allow questioning regarding the offer of proof made~~
- 19    ~~by the prosecution.~~

1 ~~(d) At the conclusion of the hearing, if the court finds that~~  
 2 ~~evidence proposed to be offered by the prosecutor regarding the~~  
 3 ~~possession of condoms is relevant pursuant to Section 210, and is~~  
 4 ~~not inadmissible pursuant to Section 352, the court may make an~~  
 5 ~~order stating what evidence may be introduced by the prosecutor.~~  
 6 ~~The prosecutor may then offer evidence pursuant to the order of~~  
 7 ~~the court.~~

8 ~~(e) An affidavit resealed by the court pursuant to subdivision~~  
 9 ~~(b) shall remain sealed, unless the defendant raises an issue on~~  
 10 ~~appeal or collateral review relating to the offer of proof contained~~  
 11 ~~in the sealed document. If the defendant raises that issue on appeal,~~  
 12 ~~the court shall allow the Attorney General and appellate counsel~~  
 13 ~~for the defendant access to the sealed affidavit. If the issue is raised~~  
 14 ~~on collateral review, the court shall allow the district attorney and~~  
 15 ~~defendant's counsel access to the sealed affidavit. The use of the~~  
 16 ~~information contained in the affidavit shall be limited solely to the~~  
 17 ~~pending proceeding.~~

18 *SEC. 2. Section 782.1 is added to the Evidence Code, to read:*

19 *782.1. The possession of a condom is not admissible as*  
 20 *evidence of a violation of subdivision (a) or (b) of Section 647 of*  
 21 *the Penal Code or Section 372 or 653.22 of the Penal Code.*

22 **SECTION 1.**

23 *SEC. 3. Section 647.3 is added to the Penal Code, to read:*

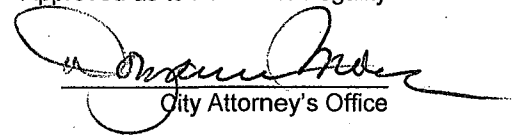
24 *647.3. (a) A person who is reporting a crime of sexual assault,*  
 25 *human trafficking, stalking, robbery, assault, kidnapping, threats,*  
 26 *blackmail, extortion, burglary, or another violent crime shall not*  
 27 *be arrested for a crime, including a either of the following:*

28 *(1) A misdemeanor violation of the California Uniform*  
 29 *Controlled Substances Act (Division 10 (commencing with Section*  
 30 *11000) of the Health and Safety Code) or a Code).*

31 *(2) A violation of subdivision (a) or (b) of Section 647 or of*  
 32 *Section 372 or 653.22.*

33 *(b) Possession of condoms in any amount shall not, in and of*  
 34 *itself, be not provide a basis for probable cause for arrest for a*  
 35 *crime, including a violation of subdivision (a) or (b) of Section*  
 36 *647 or of Section 372 or 653.22.*

2019 MAR 21 PM 3:10

  
City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER NOEL GALLO AND CITY ATTORNEY  
BARBARA J. PARKER

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**RESOLUTION SUPPORTING CALIFORNIA STATE SENATE BILL NUMBER 233, AUTHORED BY SENATOR SCOTT WIENER AND CO-AUTHORED BY ASSEMBLY MEMBERS BILL QUIRK AND LAURA FRIEDMAN, WHICH WOULD PROHIBIT THE ARREST OF SEX WORKERS WHEN THEY REPORT SEXUAL ASSAULT, HUMAN TRAFFICKING, STALKING, ROBBERY, ASSAULT, KIDNAPPING, THREATS, BLACKMAIL, EXTORTION, BURGLARY OR OTHER VIOLENT CRIMES AGAINST THEM**

**WHEREAS**, sex workers are highly vulnerable to violence and their safety became even more precarious in April 2018 when two federal bills, the Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), made it illegal to knowingly assist, facilitate, or support sex trafficking, which led to the closure of websites and online platforms that sex workers used to screen clients, share knowledge and report dangerous and violent behavior; and

**WHEREAS**, those most affected by violence are predominantly women, and women of color, transgender women, and poor women and immigrant women are even more disproportionately affected by this violence; and

**WHEREAS**, in California police can assert probable to arrest a person for solicitation, prostitution, public nuisance or other crimes solely on the basis of the number of condoms they possess; and

**WHEREAS**, sex workers have a well-founded fear of arrest or harassment by police officers and/or other government officials who are responsible for enforcing the law, which at times may include misconduct, retaliation for not granting sexual favors and abuse of power to coerce a sex worker to grant sexual favors, and this fear discourages them from reporting crimes; and

**WHEREAS**, California State Senator Scott Wiener introduced Senate Bill No. 233 (SB 233), co-authored by Assembly Members Bill Quirk and Laura Friedman, which would prohibit the arrest of persons for misdemeanor violations of the California Uniform Controlled Substances Act (CUCSA) or other crimes when they report crimes of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crimes to law enforcement agencies; and

**WHEREAS**, SB 233 also provides that possession of condoms in any amount, in and of itself, is not probable cause to be arrested for a crime, including specified sex work crimes such as solicitation and prostitution, and public nuisance; now, therefore, be it

**RESOLVED:** That the Oakland City Council gives its full endorsement of SB 233; and be it

**FURTHER RESOLVED:** That the Oakland City Council hereby directs the City Administrator [or Council President?] to send a copy of the Resolution to Senator Scott Wiener, Assembly Members Bill Quirk and Laura Friedman and Governor Newsom.

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IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California