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John K. Van de Kamp
District Attorney of Los Angeles County
210 West Temple Street
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Dear Mr. Van de Kamp:

Because the impact of the California Supreme Court decision in Pryor v. Municipal Court (1979) 25 Cal.3d 238 is so startling and historic, we would like to share some materials which may assist you in determining how to deal with Penal Code §647(a) cases which come under your jurisdiction.

Enclosed you will find the following documents:

1. An analysis of Penal Code §647(a) based on the opinion of the California Supreme Court in the Pryor case;
2. The application of Burt Pines' office for modification of the Pryor decision, and our response;
3. The 1980 version of the CALJIC instruction on lewd conduct;
4. The Memorandum dated February 22, 1980 from Judge Gilbert to all judges and commissioners of the Los Angeles Municipal Court; and
5. A copy of the Supreme Court decision in In re Anders.

I would like especially to direct your attention to the third page of the Analysis of the P.C. §647(a), where, at the bottom of the page, the elements of the statute as interpreted in Pryor are set forth. Of course the most significant element is number 3: whether the actor knows or should know of the actual presence of someone who may be offended. This element was given constitutional importance because the Court stresses that the primary purpose of the statute is to protect innocent onlookers who might be offended and that there is little state interest if there is no one present who may be offended.

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This particular element can be broken down into several parts:

- a) There must be an onlooker;
- b) There must be evidence that that onlooker may be an offended person; and
- c) There must be evidence that the defendant knew or should have known of the onlooker's presence and that the onlooker was someone who may be offended.

Thus, the Court seems to have taken the statute out of the category of "victimless crime;" there must be present at least a potential victim in the reasonable opinion of the defendant.

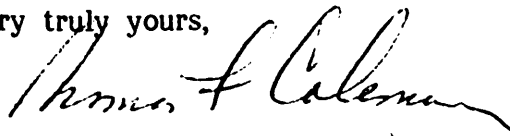
The Los Angeles City Attorney requested the Supreme Court to modify its opinion in Pryor to insert the word "likely" before the word "presence." The Petition for Modification was denied.

The CALJIC Committee, on October 5, 1979, in order to reach a publication deadline—even before the Pryor case was final—rather hastily drafted an instruction which included an element requiring that the actor "knows or should know that there is or will be present a person who may be offended by such conduct." After debate over the next few months, these matters were resolved with the deletion of the words "or will be" from the element requiring the presence of one who may be offended. Judge Gilbert, in his letter to all of the judges of the Los Angeles Municipal Court, agreed with this final version of the jury instructions.

In re Anders was rendered by the Supreme Court also in October of 1979, while the Petition for Modification of the City Attorney's office was pending. Anders reaffirms the elements stated in Pryor.

I enjoyed talking with you at the MECLA dinner and welcome the opportunity to provide you with this input. As you may know, the Pryor case was handled by me from its inception through the Supreme Court, and I take particular joy in following through so that the case receives a proper practical application. Again, thank you for allowing me to participate in this way. I am available at any time to discuss any of the matters regarding the Pryor decision.

Very truly yours,



Thomas F. Coleman

/mbo

Enclosures



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June 26, 1980

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Dear Mr. Coleman:

Pursuant to our conversation, please find enclosed a copy of an excerpt from the Legal Policies Manual of this office. The section involved is VI. B. 2. c. (4) relating to Penal Code Section 647(a) filing guidelines. Subparagraph (d) relates specifically to case disposition policies which we discussed.

I hope this information will suffice.

Very truly yours,

JOHN K. VAN DE KAMP
District Attorney

by


CURT LIVESAY
Chief Deputy District Attorney

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enclosure

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From Legal Policies Manual

Section VI.B.2.c.(4)

3) Driving under the influence of drugs, Vehicle Code Section 23105, also deserves special mention:

- a) Ordinarily, the accused should be required to plead guilty as charged.
- b) However, when there is evidence of combined use of alcohol and drugs, a plea may be taken to Vehicle Code Section 23102a.

4) Penal Code Section 647(a) filing guidelines:

(This policy has been prepared in light of the *Pryor* decision (*Pryor v. Municipal Court*, 25 Cal.3d 236). It is expected that further modifications will be made before September 1, 1980.)

a) A complaint alleging violation of Penal Code Section 647(a) will be filed in cases involving solicitation in a public place to engage in sexual conduct in a public place or a place open to the public or exposed to the public view and the suspect knows or should know that there is (or will be) present a person who may be offended by such conduct. (This represents the CALJIC majority view: See CALJIC 16.400 and Commentary: The language in the brackets represent a minority view which is still being litigated.)

b) A complaint alleging violation of Penal Code Section 647(a) will not be filed in cases involving solicitation in a public place to engage in sexual conduct in a private location.

c) A complaint alleging violation of Penal Code Section 647(a) will be filed in cases involving a touching with sexual connotation whether consensual or non-consensual in a public place or a place open to the public or exposed to public view and the suspect knows or should know that there is (or will be) present a person who may be offended by such conduct. (The language in the brackets reflects the CALJIC minority view still being litigated.)

d) A plea of guilty to Penal Code Section 415, where there has been a solicitation but no touching or a plea of guilty to Penal Code Section 242 where there has been a touching, shall be accepted as a disposition of a case where the complaint alleges a violation of Penal Code Section 647(a), except:

- (1) Where the accused has a prior conviction specified in Penal Code Section 290, or where the accused has had 647(a) charges reduced within three (3) years prior to the offense, a plea of guilty to Penal Code Section 415 or a plea of guilty to Penal Code Section 242 shall not be entertained. If the defense can demonstrate that the prior 647(a) or the case reduced from a 647(a) would not have been a valid 647(a) under the *Pryor* decision, then this prohibition shall not apply.

- (2) The touching must not be forcible.
- (3) The solicitation or touching must not be in the presence of children.

Observations on the Effect of the
Administration of a Single Dose of
Vitamin B₁₂ to Patients with
Pernicious Anemia

1. The purpose of this study was to determine the effect of a single dose of vitamin B₁₂ on the clinical course of pernicious anemia.

2. The study was conducted in a hospital setting over a period of 12 months. The patients were selected on the basis of their clinical and laboratory findings.

3. The results of the study are as follows:

4. The patients who received a single dose of vitamin B₁₂ showed a rapid improvement in their clinical symptoms, particularly in the area of neurologic and hematologic abnormalities.

5. The improvement was sustained over a period of 6 months, suggesting that a single dose of vitamin B₁₂ may be sufficient to initiate a long-term remission of the disease.

6. The study also demonstrated that the response to a single dose of vitamin B₁₂ was similar in both neurologic and hematologic manifestations.

7. The results of this study support the use of a single dose of vitamin B₁₂ as a means of initiating treatment in patients with pernicious anemia.

8. Further studies are needed to determine the long-term effects of a single dose of vitamin B₁₂ and to evaluate the role of other factors in the pathogenesis of the disease.

9. The authors are grateful to the following individuals for their assistance in the conduct of this study:

10. The authors also wish to thank the following individuals for their generous contributions to the study:

11. The authors are indebted to the following individuals for their helpful criticisms of the manuscript: