

RESOLUTION 03-10-04

DIGEST

Topless Sunbathing at State Beaches

Amends Penal Code sections 314 and 647, subdivision (a) to permit topless sunbathing at state beaches.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolution found.

Reasons:

This resolution amends Penal Code sections 314 and 647, subdivision (a) to permit topless sunbathing at state beaches. This resolution should be disapproved because the government has a substantial interest in regulating nudity on public beaches.

Penal Code section 314 provides that willful and lewd exposure of a person is a misdemeanor if the exposure is offensive to decency. Penal Code section 647, subdivision (a) provides that disorderly conduct, including engaging in lewd or dissolute conduct, is a misdemeanor.

The governmental interest in this regulation serves to discourage general disorderliness by providing an alternative basis for prosecution when a conviction for a more serious sexual crime is unlikely. The judicial system has managed to differentiate whether clothed suspects have or have not acted lewdly, thus preserving the right to freedom of expression and civil liberties without impacting the protections afforded by these statutes.

There appears to be no compelling reason to eviscerate these protections. Topless sunbathing for the purposes of political or social protest against gender discrimination or for scientific, literary or artistic purposes, would not constitute lewd conduct or indecent exposure under the above listed penal code sections but is protected speech under the First Amendment.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 314 and Penal Code section 647(a) to read as follows:

- 1 §314.
- 2 Every person who willfully and lewdly, either:
- 3 1. Exposes his person, or the private parts thereof, in any public place, or in any
- 4 place where there are present other persons to be offended or annoyed thereby; or,

5 2. Procures, counsels, or assists any person so to expose himself or take part in any
6 model artist exhibition, or to make any other exhibition of himself to public view, or the
7 view of any number of persons, such as is offensive to decency, or is adapted to excite to
8 vicious or lewd thoughts or acts, is guilty of a misdemeanor.

9 Every person who violates subdivision 1 of this section after having entered,
10 without consent, inhabited dwelling house, or trailer coach as defined in Section 635 of the
11 Vehicle Code, or the inhabited portion of any other building, is punishable by
12 imprisonment in the state prison, or in the county jail not exceeding one year.

13 Upon the second and each subsequent conviction under subdivision 1 of this
14 section, or upon a first conviction under subdivision 1 of this section after a previous
15 conviction under Section 288, every person so convicted is guilty of a felony, and is
16 punishable by imprisonment in state prison.

17 Notwithstanding the aforementioned language, it shall not be a violation of this
18 section for any person to expose any portion of their body above the waist at a state beach.

19

20 §647

21 Every person who commits any of the following acts is guilty of disorderly
22 conduct, a misdemeanor:

23 (a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct
24 in any public place or in any place open to the public or exposed to public view.

25 Notwithstanding the aforementioned language, it shall not be a violation of this section for
26 any person to expose any portion of their body above the waist at a state beach.

27 [Subdivisions (b) through (k) remain unchanged.]

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

PROPONENT: Ventura County Bar Association

STATEMENT OF REASONS

Existing Law: Makes it a criminal offense to sunbathe topless at state beaches.

This Resolution: Would make it legal to sunbath topless at state beaches.

The Problem: It is a criminal offense to sunbath topless at state beaches.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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