

ENFORCEMENT OF SECTION 647(a) OF
THE CALIFORNIA PENAL CODE BY
THE LOS ANGELES POLICE DEPARTMENT

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REPORT AND INVESTIGATION OF
ENFORCEMENT OF SECTION 647(a) OF THE CALIFORNIA PENAL CODE
BY THE LOS ANGELES POLICE DEPARTMENT

This report contends that Section 647(a) of the California Penal Code is discriminatorily, invidiously, and arbitrarily enforced, and purposefully so, by the Los Angeles Police Department against homosexuals (hereafter referred to as gay persons) individually and against homosexuals as a class of persons (hereafter referred to as the gay community). This manner of enforcement allows for the worst kind of police malpractice, including falsification of arrest reports, harassment, and usurpation of the legislative and judicial functions of legal interpretation. It further establishes the machinery for cruel and unusual treatment of gay persons in the State of California.

Our methods were simple. We went through all misdemeanor complaint records in the office of the Clerk of the Los Angeles Municipal Court, Central Division. Records are kept for all complaints filed arising out of arrests in several divisions of the Los Angeles Police Department (including: Central, Rampart, Newton, Hollywood, 77th, Northeast, Southwest, Hollenbeck, Wilshire). We selected only those cases in which a complaint was filed for an alleged violation of 647(a). We then read every arrest report (made out by each arresting officer) for the months of June, July, August, and September, 1972, collecting data from the reports and categorizing them as follows:

1. Name of arrestee -- date of arrest
2. Place of arrest
 - (a) bar
 - (b) restroom

- 1) in a bar
 - 2) in a public park
 - 3) in a department store
 - 4) in a movie theatre
 - 5) elsewhere
 - (c) on the street
 - 1) in or near a park
 - 2) near a bar
 - 3) in a car
 - 4) elsewhere
 - (d) movie theatre
 - (e) elsewhere
3. Arresting officer
 - (a) name
 - (b) division
 - (c) frequency and similarity of arrest records
 4. Nature of offense
 - (a) solicitation
 - (b) engaging in "lewd conduct"
 - (c) lewd conduct in concert with prostitution
 - (d) heterosexual type
 - (e) auto-erotic type
 - (f) homosexual type
 5. Gender of offender
 6. Complaining witness
 - (a) citizen
 - (b) uniformed officer
 - (c) plain clothes vice officer
 7. Disposition of case
 - (a) type of plea
 - (b) dismissals
 - (c) plea bargain
 - (d) sentence imposed
 - (e) conditions of probation imposed

Particular cases of interest or points underscoring the theory of discriminatory enforcement will be noted as the data are broken down.

The total number of complaints filed for alleged violations of 647(a) for the 4-month study period was 781 or approximately 200 per month. Of these, 663 (approximately 85%) were reviewed. The remaining 15% were unavailable from the Clerk's office either because some cases are still pending and the complaints were with the trial court, or for some other reason were in transition.

A FEW BRIEF INTRODUCTORY NOTES:

1. There was no identifiable racial pattern in terms of officer versus defendant, although Blacks and Chicanos were in greater proportion than their average number in the population. This was apparently because most of the vice arrests occurred in older downtown areas (Main Street, Pershing Square, or McArthur Park) frequented mainly by these 2 groups.

2. Conversation with Officer Spayth, Public Relations of the L.A.P.D. by Tom Coleman on 12-11-72. Officer Spayth indicated that each police division utilizes its own vice detail, although major policy decisions (shall prostitutes alone or shall prostitutes and their customers be arrested; the number of women versus men operating on the vice detail and how they are used) are made exclusively by Chief Davis. Current policy is to arrest only the prostitute and not the customer as is evidenced by the lack of any female officers working vice detail in any area outside of advertising vice or pornography. In certain situations however, involving public sexual conduct, customers have been arrested. There is also an administrative vice

unit which has authority to patrol any part of the city of Los Angeles. The average length of duty on vice detail is 18 months, handling such diverse areas as gambling, A.B.C. violations, prostitution, lewd conduct, or "homosexuality." ("Homosexuality" was Officer Spayth's words, not ours. Homosexuality, per se, is nowhere made a crime in the California penal codes or Los Angeles municipal codes. It should be noted that there are types of homosexual conduct which are not illegal.) The amount of time spent on each area depends on current policy, for example, gambling may be handled during the daylight hours, while the "fruit details" generally operate at night (again, "fruit details" are Officer Spayth's words, not ours).

3. In a conversation with Tom Coleman on 12-11-72 Officers Healy of Rampart Division, Rimbald of Hollywood, and Madris of Central each indicated that no women are employed in their vice details.

4. In view of the fact that the Chief of Police is responsible for the major policy decisions of the vice squads, it should be briefly reflected here that on Nov. 22, 1971, in a letter to Councilman Arthur Snyder, Chief Davis referred to homosexuals as "lepers" (see letter attached); on June 28, 1970 he equated homosexuality with criminality; while in an interview with stations KPPC (radio) and KNBC (tv) the Chief called homosexuality a "spreading disease" (references attached).

5. There is considerable evidence of the L.A.P.D.'s preoccupation with homosexuality both as a crime and as the locus of a moral issue. In statewide hearings recently held on adoption of a revised penal code, the L.A.P.D. took a position on only one issue, homosexual conduct! Commander Devin's comments before

the Joint Legislative Committee for Revision of the Penal Code are attached hereto.

PLACE OF ARREST: (see data on "place of arrest")

As noted previously, the major focal points of arrests for 647(a) encompassed the older downtown L.A. areas (Main St., Pershing Square, and McArthur Park), with pockets of arrests occurring in Hollywood, the Silverlake-Echo Park areas, Arroyo Seco and Lincoln Parks in the northeast area, truck stops near 14th and Long Beach Blvd., South Park on 51st and Towne Sts., and at Hollenbeck Park in East L.A.

Of major interest was the apparently arbitrary and sporadic "heat" generated in a particular location at a given time. For example, in two 3-day periods in September (5, 6, and 7th; 18, 19, 20th) over 2 dozen lewd conduct arrests occurred at the Greyhound Bus Station restroom in Hollywood, most by the same vice officers, Slack and Morrett. Only 2 other arrests occurred there during the rest of that month. In June, 33 arrests occurred in the McArthur Park restrooms, all by officers Tanner and Cleary of Rampart Vice, while August showed only 7 arrests in that park (Officer Tanner had mononucleosis in August. Unless one assumes that the largest figures are representative of the actual numbers of violations occurring at any given time, it becomes difficult to avoid the conclusion that the arresting officers are acting in an arbitrary manner with a greater interest in the numbers arrested than in the legitimacy of the arrest.

As the data above indicate, the great majority of arrests occurred in public restrooms, almost 38 percent. Next greatest were the street arrests followed closely by those occurring in movie theatres.

Both the restroom and movie house arrest reports were conspicuous by their internal similarities. The "john" arrest reports would generally read as follows:

"Officers went to such and such a location because of numerous complaints of homosexual activity in the vicinity." (Note: not one arrest report of the 663 read which involved a public restroom has the name or indicated the presence of a complaining witness.)

"Upon entering the restroom the officer noted so many stalls and urinals.

"Defendant either sat on a commode or stood by the urinal masturbating his exposed, erect penis in plain view of any person who might enter the restroom."

Officer Gil of the Rampart Division had 5 differing arrest reports in July where the alleged offense occurred in a restroom, occurring on different days, all reading identically, except for a few words changed around. Several arrest reports of violations occurring in McArthur Park and Pershing Square had Xeroxed copies of the layout of the washroom facility attached to them with only the position of the defendant changed.

The movie theatre arrests inevitably were males "masturbating their exposed, erect penises" while watching a movie. The officers (mainly officers Barrera, Plouffe, and Paniccia of the Central Division) either "took positions at the rear of the theatre, or in the balcony," where "my attention was drawn to movement occurring in such and such a row." (One enlightened officer with "20-20 hearing" claimed he happened upon the defendant by hearing a zipper being pulled down.)

The street arrests were both numerous and varied, although these too contained a perceptible leitmotif,

always the defendant spoke first:

Deft.: "Hi, how are you?"

Offcr.: "Pretty lonely."

Deft.: "What are you looking for?"

Offcr.: "Just walking around."

Deft.: "I could make life more pleasant
for you."

Offcr.: "What would you like to do?"

Deft.: "I could take care of you. I do
___ __ __. Would you like to ___ __ __
___ __ ___?"

The end of the conversation usually depended upon the arresting officer's state of mind. Generally Officer Paniccia's arrest reports indicated the defendant wanted to "fuck him" while Officer Barrera's reports usually indicated that the defendant asked the officer to be the active partner in anal intercourse.

Occasionally, the arrests classified as "street" in nature involved overt sexual conduct and those followed the pattern thusly:

"The officers approached the vehicle after seeing the head of one defendant disappear from view. Upon reaching the vehicle the officer observed deft. #1 attempting to conceal his exposed erect penis by zipping his pants, while deft. #2 was raising his head while attempting to wipe what appeared to be a creamy substance from his lips." (Note: all this occurred normally in a 20 second span of time.)

None of this is to say that all of the street arrests or reports were identical. Some were quite unique and enlightening. In one case involving an alleged female prostitute and her pickup, the police followed them from the point of contact in a car to a small bar-cafe in Central Los Angeles. Upon entering the back room, they

observed the couple engaging in sexual intercourse. Although charged with a 647(a) misdemeanor, the "trick" obtained a disposition of 415, disturbing the peace with 6 months probation and no conditions. Were that couple both males, a 286 felony sodomy charge would inhere, with a likely psychiatric evaluation and possible placement in a state prison or mental institution.

Also notable in the street arrests was the concentration on male defendants dressed in female attire, "drag queens." One officer, Sprankle, of the Wilshire Division had a habit of following the cars in which alleged "drags" would hitchhike rides into Hollywood, and his arrest reports read much like those of the "disappearing head" variety. Drag queens are particularly subject to harassment and their attempts to avoid prosecution are often to no avail. One technique employed by many drag queens and prostitutes, noted in at least 5 different reports, involved asking the arresting police officer if he was a policeman. The reply was always "no." The arrestee would then declare, "Prove it then by showing me your cock." Sometimes the officer would arrest the defendant merely for this statement. Since it is legally questionable whether a mere statement of this nature is sufficient to constitute a violation of 647(a) these arrests were sometimes dismissed at the arraignment. However, it should be remembered that the arrest record will follow the defendant around for the rest of his life.

Other street arrests occurred in public parks (not in the restrooms); these always involved solicitation of a vice officer save one instance in Lafayette Park, where 2 young gay males were arrested for "kissing and holding hands" which "disgusted" women and children nearby. This certainly demonstrates how vague "lewd conduct" is and how police discretion can be abused in interpreting this statute.

The truck stop arrests were only included in the data breakdown to indicate the lengths to which the vice squads often go in order to fulfill their legal obligations. It may be argued that sexual conduct is indefensible when occurring in a restroom, movie theatre, or on a street in potential plain view of the public. But the truck stops are self contained areas and semi-isolated locales, where no one other than those aware of the nature of the area venture. It is to say the least, hardly a place frequented by women and children.

The bar arrests, subject of the instant "Black Pipe" case, were intriguing in their diversity. We read of only 50 such arrests over the 4 month study-period (exclusive of the 21 occurring at the Black Pipe Bar). If there was a single unifying pattern to those "busts," it was that 90 PERCENT OCCURRED IN GAY BARS, often in widely divergent areas of the city. In no instance were the arresting officers in uniform.

In a series of nude dancing arrests in June, 1972 the defendants were charged with both 647(a) and 311.2 despite the fact that cases such as In Re Giannini (1968) 69C2d563, 567 have stated that it was not the intent of the legislature to include nude dancing in the parview of 647(a). This again demonstrates the vagueness of 647(a) and how police discretion can be abused. Incidentally, Judge George Trammell III accompanied vice officers on many of the nude bar "raids," and in fact was the judge sitting at one of those cases (defendant was acquitted).

Generally, the bar confrontations occurred over long periods of time, with lengthy conversations between officers and arrestees. In one case, 2 men were

arrested for kissing in a bar, which, according to the arresting officers, caused one patron to walk out in disgust. (These were the same officers, Tanner and Cleary, who had also arrested the 2 young men in Lafayette Park for kissing. The bar incidentally, was a gay bar.) In no case were a man and a woman ever arrested for kissing. This again demonstrates how vague 647(a) is and how police discretion can be abused.

Of the non-gay bar arrests (the few that there were), one involved a heterosexual male who inexplicably rushed the dance floor and kissed the gyrating buttocks of a female dancer. He was arrested for 647(a) but ultimately received a 415 disposition. Another involved 2 intoxicated women who fondled the "privates" of a male patron (the patron was not the complaining witness). One of these cases was dismissed, while the other woman received a 647(f) (drunk) disposition. The last "straight" arrest was that of a bottomless dancer who placed her index finger in her vaginal cavity while dancing. She was found guilty of disturbing the peace with no conditions of probation.

One gay nude dancer was arrested on a 647(a) charge because, the complaint alleged, he had an erect penis while performing. He was found not guilty at a court trial.

SOLICITATION ARRESTS: (see data on solicitation arrests)

We codified the nature of the offense since 647(a) really contains 2 distinct possible types of offenses: solicitation or engaging in lewd conduct. Since there is no place on either the arrest report or the complaint in which it is evident whether the defendant is being charged with solicitation or actually engaging

in lewd conduct it was necessary to read every police report in detail to collect this data. We were also careful to read those reports very carefully since solicitation is a form of speech and subject not only to preferred First Amendment protections but also subject to broad interpretation. Hence, we shall discuss the violations that occurred and the patterns that emerged.

It is seen from the data that of the total 663 arrest reports reviewed, 166 or about 1/4 involved solicitation. Of these only 6 involved females -- all prostitutes. None involved a private citizen complaint, or conversely, all were the result of police decoy techniques. In general, the solicitation arrests followed the pattern described previously in the dialogue between officer and defendant.

The few variations that occurred were the result of protracted conversations; one case, in fact, involved a vice officer making contact with an arrestee at a bus stop, later going to a bar (where the arrestee indicated for the officer to meet him), and once in the bar having a few drinks before the officer identified himself and formally charged the man with lewd conduct. Another involved an A.B.C. officer, Investigator Davis, purchasing a drink for the defendant and carrying on a 10 to 15 minute conversation before the arrest.

An interesting aspect of the solicitation arrests was the officer's interpretation of the "offer" made by the defendant. It is general policy for the arresting officer to explain in "legalese" what the defendant means when street language is used. On three different occasions, Officers Plouffe and Paniccia from Central and Officer Sprankle from Wilshire vice, interpreted an offer of "Do you want to have sex?" as homosexual street talk for "anal intercourse." It should be noted that in order for a solicitation to be a violation of 647(a) it must be a solicitation to commit a lewd act.

There are forms of homosexual conduct in private which are not violations of the penal law. It therefore becomes important for the officer to determine exactly what form of sexual conduct the defendant wishes to engage in. Any solicitation to commit a sex act is not necessarily a violation of 647(a). This again demonstrates how much discretion the police have in enforcing this statute and just how that discretion can be abused.

It should also be noted that since the L.A.P.D. has a policy of only using male officers for the "sex detail" it is impossible for a heterosexual male to be arrested for solicitation of a vice officer. Because of this policy of only using male decoys, the police have effectively created an exception to the solicitation portion of 647(a). It should be emphasized that 647(a) prohibits all solicitation for lewd conduct, both heterosexual and homosexual. The police department purposefully avoids enforcing the solicitation portion against heterosexual males.

In doing our research we had to filter out the 314.1, "indecent exposure" cases from the 647(a)s and made some interesting findings. In all of the 314.1s not involving nude dancing, there was a private citizen complaint that prompted police action. As noted prior, not a single citizen ever complained of being "victimized" by a homosexual solicitation.¹ Thus, citizens will respond when their sensibilities are outraged or their morality offended by public displays. (See Note 1, below)

¹ It is helpful to distinguish between police and citizen complaints. In a police initiated complaint the standard language is "Investigation due to many citizen complaints," but the arresting officer is really the complainant. A citizen complaint, alternatively, is where there is a private (non-officer) witness whose name appears on the face of the police report or complaint and who testifies to what he or she has observed. Usually the citizen will sign the complaint or report, stating that he or she is the complainant.

ENGAGING IN LEWD CONDUCT: (see data on "engaging")

Engaging in lewd conduct was far and away the most charged offense, comprising over 75% of the 647(a) arrests. As with solicitations, the pattern of arrest reports for engaging was very similar to that discussed above for restroom violations. We have already mentioned the several aberrations observed in the arrest reports involving variant types of behavior such as kissing, alleged oral copulation, and fondling. However, it should be noted that by far the largest number of arrests for this activity concerned auto-erotic behavior: masturbation, self-fondling, or suggestive bodily movements. Often, the only other males present were the arresting officers. Although again, the GREAT MAJORITY OF ARRESTEES WERE HOMOSEXUALS², there were isolated incidents of apparently heterosexual lewd conduct. These generally involved "tricks" of streetwalking prostitutes, one heterosexual couple who were seen engaging in oral copulation on a balcony, one couple engaged in public fondling, and several males urinating in public.

On an overall basis, of the 663 reports studied, ONLY 17 ARRESTS INVOLVED UNQUESTIONABLY HETEROSEXUAL CONDUCT, only 2.5 percent. It should be noted that according to even the most generous figures offered by scientists and researchers our population has a make-up of only 4 to 8 percent homosexuals, with over 90 percent heterosexual. It is therefore stunning to find that of those arrested for 647(a) only 2.5 percent were engaged in heterosexual conduct. It leads to the conclusion that the police do not actively seek out heterosexual offenses but only arrest the most obvious violations, that they fail to consider many public displays of heterosexual affection

² It may be argued that those arrested in restrooms are not necessarily homosexual. However, Tom Coleman, co-author of this report, while interviewing 647(a) arrestees in custody at Division 81, asserts that the overwhelming majority of them arrested in restrooms acknowledged

(kissing, embracing, dancing, fondling, petting) "lewd" and hence do not arrest the couple, but that they actively seek out occurrences of homosexual behavior (including kissing, embracing, and dancing).

COMPLAINING WITNESS: (see data on complaining witness)

We have dealt previously with the fact of the dearth of private citizen complaints. As the data above indicate, only 20 of the 663 arrests were effectuated by persons other than plain clothes vice officers.

2 of the 5 citizen complaints involved a security officer at Bullocks downtown. On one occasion he observed a lone male in the store's restroom engaging in lewd conduct. On the other occasion the arrest pertained to indecency (holding his exposed penis) on the main floor of the store. The other 3 citizen complaints involved heterosexuals (the couple orally copulating on the balcony and a man waving his penis around in a liquor store).

Of the 15 uniformed-officer arrests, all but 2 occurred on Main Street, either in a movie theatre or a gay bar; the remaining 2 were arrested by Hollywood patrolmen who allegedly witnessed a lewd conduct violation occurring in an automobile.

Finally, in analyzing the "decoy" arrests (those propagated by a plainclothes officer), it should be reasserted that inevitably the arrest report shows the arresting officer as the passive party -- he supposedly never initiates a conversation or makes a furtive gesture indicating his willingness to partake in illicit activities. There are a few points that can be noted in response to this, besides the obvious one of the officer's constant non-involvement:

1. When asked if he is a police officer, the reply is always "no." Does one lie suggest any others?

2. In movie theatres, the officer actively seeks out males who may be engaging in lewd conduct, usually from the balcony or projection booth overlooking the main floor.

3. Barry Copilow, co-author of this study has spent the past 12 months as the legal services director of the Gay Community Services Center, and claims that approximately 8 out of every 10 persons who came in for legal assistance on a 647(a) charge stated that the police officer, and not the defendant initiated the conversation. None, however, ever claimed that an officer actually engaged in any lewd conduct.

GENDER OF OFFENDERS: (see data on "gender")

Of the total 663 arrest reports reviewed, only 17 defendants were female. However, the presence of these women among those arrested is easily explainable: 12 were actually prostitutes; 1 was a masseuse who began masturbating the naked officer; 1 was a nude dancer who went too far with her dance; 2 were rather drunk and fondled a customer in a bar (who was not the complaining witness).

This, of course, suggests that 647(a) is selectively enforced against males (homosexual) and some females (mostly prostitutes).

DISPOSITION OF CASES:

Although dispositions of cases may not in a strict sense be considered pertinent to this study, we are compelled by obvious double standard dispositions to include a discussion of them herein.

The data show that the vast majority of cases are disposed of through the use of the 602-L (trespassing) statute which allows imposition of a 2-year probationary period. Most homosexual offenders receive a 602-L disposition with 2 years summary probation and some severe conditions of probation. However, only 3 of the heterosexual cases merited a 602-L plea bargain. All other "straight" offenders received 415s (with 1 year probation or less and no conditions of probation), 647b (for prostitutes: note: the trick of a prostitute will not receive a 647b but will get a 415 or an outright dismissal), 647(f), or dismissals. This is freely admitted by David Ogden, City Attorney at Division 81, who claims that the double standard is a product of increased pressure from judges and attorneys who can "empathize" with the occasional aberrant behavior of "normal" defendants, but feel constrained by their own lack of understanding, police pressure, and internal revulsion to give the more severe 602-L to a homosexual.

In no instance did a heterosexual have to plea "straight up" to a 647(a). However, 67 homosexual defendants were convicted of 647(a). Those defendants must register as sex offenders (under 290 of the Penal Code) for the remainder of their lives.

It would normally seem rational that the severity of the offensive conduct would directly affect the disposition of the case. A solicitation violation is hardly a shock to the public conscience, whereas actually engaging in lewd conduct in public might bring a more severe reprimand. This is never the case! In fact while many homosexual solicitors are given jail time, 602-L dispositions, 2 years summary probation, and severe conditions of probation, the most blatant heterosexual violations

of the statute (sexual intercourse in a cafe-bar, kissing a dancer's buttocks, and orally copulating in an automobile), the ultimate disposition was a 415 or an outright dismissal.

A few other notes:

1. Indecent exposure violators and customers of prostitutes generally receive 415s with 1 yr. probation or less, and no conditions of probation.

2. The homosexual offender is always asked if he works in a security related job or teaches. If the answer is yes, his employer is notified.

3. In the one 647A (child molestation) case studied, a 415 was the result (this was heterosexual conduct).

4. In nearly 2 identical cases involving prostitution -- the customer of a female (heterosexual lewd conduct) received a 415 and 1 year's probation, while the customer of a gay hustler received a 415 and 2 years' probation.

5. Gay people often receive conditions of probation prohibiting them from going into public parks or from congregating with other known homosexuals. Never has a "straight" 647(a) offender been told not to congregate with known heterosexuals.

Homosexuals are subject to constant probation violation proceedings since they rarely have any place to go but with their own kind, and after a time get to be known by the foot patrol or vice officers in certain areas. It becomes very much like a stigma that recreates a status crime every time one steps out onto the street.

These obvious inequities at the judicial level lend credence to homosexual complaints that they are the victims of standards that all too often allow for discrimination at every level of law enforcement.

STATISTICAL BREAKDOWN

Information: June July August September Total

Place of Arrest:

<u>Parks (not in "john")</u>	4	14	7	7	32
<u>Bars</u>	25	10	9*	6	50
<u>Streets</u>	53	34	48	61	196
<u>Movies</u>	25	40	29	40	134
<u>Restrooms</u>	69	54	56	71	250
<u>Truck Stop</u>	-0-	2	4	5	11

(* not including the "Blackpipe 21" cases)

Type of Offense:

<u>Solicitation (Homosexual)</u>	52	33	34	47	166
<u>Engaging (Homosexual)</u>	122	126	115	140	503
<u>Heterosexual type</u>	4	2	6	5	17

Note: A few complaints involves both soliciting & engaging.

Gender of Offender:

<u>Male</u>	163	155	143	185	646
<u>Female</u>	4	3	6	4	17

Complaining Witness:

<u>Citizen</u>	2	3	-0-	-0-	5
<u>Uniformed Officer</u>	2	5	5	3	15
<u>Plain Clothes officer</u>	163	150	144	185	642

Disposition:

<u>Not guilty</u>	4	1	-0-	1	6
<u>Dismissed</u>	12	7	1	10	30
<u>Guilty: 602-L</u>	108	111	112	143	474
<u>415</u>	10	7	10	8	35
<u>647(a)</u>	22	17	13	15	67
<u>647(b)</u>	5	4	7	1	17
<u>647(f)</u>	2	0	1	3	6