California May Outlaw Stealthing, the Removal of a Condom Without Consent

In a first, California lawmakers are poised to make it illegal to take off a condom without a partner's permission.

September 13, 2021 By Trent Straube

In California, it may soon be illegal to remove a condom during sex without the consent of one's partner, a practice known as "stealthing." On Tuesday, lawmakers sent Governor Gavin Newsom a bill amending the state's civil code to define acts of stealthing as sexual battery, reports The Associated Press, which adds that California will be the first state to do so.

"It's disgusting that there are online communities that defend and encourage stealthing and give advice on how to get away with removing the condom without the consent of their partner, but there is nothing in law that makes it clear that this is a crime," said Democratic Assemblywoman Cristina Garcia, who sponsored the bill, in a press release.

Garcia has been working on legislation regarding stealthing since 2017. She introduced the current iteration of the bill, AB 453, in February. It faced no opposition. The AP did not state whether the governor is expected to sign the bill.

Earlier versions of the legislation aimed to make stealthing a crime, as opposed to a civil charge, and sought to define stealthing as a form of rape, according to a 2017 Facebook video posted by Garcia. Those efforts failed. An analysis at the time concluded it was hard to prove whether an alleged perpetrator acted intentionally.

The new legislation doesn't affect the state's criminal code, but by clarifying the civil code's definition of sexual battery to include stealthing, the bill allows victims of the act to sue perpetrators for damages, including punitive ones, reports the AP.

The Erotic Service Providers Legal Educational Research Project supports the bill, according to the AP, because it would allow sex workers to sue clients who removed condoms without consent.

The introduction to AB 453 reads as follows, including the italicized and crossed-out text:

> Existing law provides that a person commits a sexual battery who, among other things, acts with the intent to cause a harmful or offensive contact, as defined, with an intimate part, as

> defined, of another that directly or indirectly results in a sexually offensive contact with that person. The law makes a person who commits a sexual battery pursuant to those provisions liable for damages and equitable relief.
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> This bill would additionally provide that a person commits a sexual battery who causes contact between a ~~penis,~~ sexual organ, from which a condom has been removed, and the intimate part of another who did not verbally consent to the condom being removed. The bill would also specify that a person commits a sexual battery who causes contact between an intimate part of the person and a sexual organ of another from which the person removed a condom without verbal consent.

When used properly, condoms can be an effective way to prevent HIV. As the POZ Basics on Safer Sex explains:

> Several studies have demonstrated that male condoms made of either latex or polyurethane are effective barriers against HIV. The theory behind using condoms is clear: They cover the penis and provide an effective barrier to exposure to secretions, such as semen and vaginal fluids, thereby blocking the sexual transmission of HIV.…
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> A number of epidemiological studies—studies conducted in real-life settings where one partner is living with HIV and the other partner is not—have demonstrated that consistent use of latex (or polyurethane) condoms provides a high degree of protection against HIV. The key to effective protection is consistent and correct use of condoms.
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> Incorrect use of condoms can increase the risk of slippage or breakage, which diminishes their ability to protect against the virus. Inconsistent use—for example, failure to use condoms with every act of vaginal or anal intercourse—can lead to HIV transmission.

For a collection of related articles in POZ, click the hashtag #Condoms. You'll find headlines such as "No, Using Condoms Doesn't Mean You're Smarter" and "For Anal Sex, Condoms With Lube Slip or Break Less Than 1% of the Time."

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