
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 357 **Hearing Date:** April 13, 2021
Author: Wiener
Version: April 5, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: loitering for the purpose of engaging in a prostitution offense*

HISTORY

Source: American Civil Liberties Union of California
Asian Pacific Islander Legal Outreach
Equality California
Positive Women's Network
St. James Infirmary
SWOPLA
Trans Latin@ Coalition

Prior Legislation: SB 233 (Wiener), Ch. 141, Stats. 2019
AB 2243 (Freidman), Ch. 27, Stats. 2018
SB 322 (Mitchell), Ch. 654, Stats. 2016
AB 336 (Ammiano), Ch. 403, Stats. 2014

Support: Adult Industry Laborers and Artists Association; Anti-Defamation League; APLA Health; Bay Area Sex Worker Advocacy Network; Best Practices Policy Alliance; California Attorneys for Criminal Justice; California Women's law Center; Californians for Safety and Justice; Californians United for a Responsible Budget (CURB); Center for LGBTQ Economic Advancement & Research; Center for LGBTQ Economic Advancement & Research; City of West Hollywood; Coalition to Abolish Slavery and Trafficking; Community Health Project Los Angeles; COYOTE RI; DAP Health; Decriminalize Sex Work; Desert AIDS Project Health; Drug Policy Alliance; Ella Baker Center for Human Rights; Erotic Service Providers Legal, Education, and Research Project; Fresno Barrios Unidos; Green Party of California; If/When/How: Lawyering for Reproductive Justice; Initiate Justice; Legal Aid at Work; Legal Services for Prisoners with Children; Los Angeles Community Health Project; Los Angeles LGBT Center; LYRIC Center for LGBTQ Youth; MPact Global Action for Gay Men's Health and Human Rights; National Center for Lesbian Rights; National Council of Jewish Women Los Angeles; National Harm Reduction Coalition; National Juvenile Justice network; Religious Coalition for Reproductive Choice California; San Francisco District Attorney's Office; Sex Workers Project of the Urban Justice Center; Scientist for Sex Workers Rights; Sex Workers Outreach Project; Sharmus Outlaw Advocacy and Rights (SOAR) Institute; Strippers United Inc.; Transgender, Gender-Variant & Intersex Justice Project; Transitions Clinic Network; U.S. People Living with HIV Caucus; U.S. Prostitutes Collective; We

the People – San Diego; Women’s Foundation California; Young Women’s Freedom Center

Opposition: Los Angeles County Sheriff’s Department

PURPOSE

The purpose of this bill is to repeal provisions of law related to loitering with intent to commit prostitution.

Existing law makes it a misdemeanor to solicit anyone to engage in or engage in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view. (Pen. Code, § 647, subd. (a).)

Existing law makes it a misdemeanor to solicit, agree to engage in, or engage in any act of prostitution with the intent to receive compensation, money, or anything of value from another person. (Pen. Code, § 647, subd. (b)(1).)

Existing law makes it a misdemeanor to solicit, agree to engage in, or engage in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. (Pen. Code § 647, subd. (b)(2).)

Existing law makes it a misdemeanor to loiter in a public place with the intent to commit prostitution. (Pen. Code § 653.22 & 653.26.)

Existing law states that among the circumstances that may be considered in determining whether a person loiters with intent to commit prostitution are that the person:

- Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution;
- Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution;
- Has been convicted of violating this section, or other offenses related or involving prostitution, within five years of the arrest under this section;
- Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution;
- Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision or any other behavior indicative of prostitution activity.

(Pen. Code, § 653.22, subd. (b).)

Existing law states that the circumstances set forth above is not exclusive. These circumstances should be considered particularly salient if they occur in an area that is known for prostitution activity. (Pen. Code, § 653.22, subd. (c).

Existing law contains the following definitions:

- “Commit prostitution” means to engage in sexual conduct for money or other consideration, except as specified;
- “Public place” means an area open to the public, or an alley, plaza, park, driveway, or parking lot, or an automobile, whether movie or not, or a building open to the general public, including one which serves food or drink, or provides entertainment, or the doorways and entrances to a building or dwelling, or the grounds enclosing a building or dwelling.
- “Loiter” means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(Pen. Code, § 653.20.)

This bill repeals Penal Code sections 653.20 and 653.22 related to loitering with the intent to commit prostitution and makes conforming changes.

This bill authorizes a person currently serving a sentence for a conviction of the repealed section to petition the trial court for a recall or dismissal of sentence. Upon receiving a petition, the court shall presume the petitioner satisfies the criteria for recall and dismissal of sentence unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria, the court shall grant the petition and dismiss the sentence as legally invalid.

This bill authorizes a person who has completed their sentence for a conviction of the repealed section to file an application before the trial court to have their conviction dismissed and sealed because the prior conviction is legally invalid. The court shall presume the petitioner satisfies the criteria unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria, the court shall seal the conviction as legally invalid.

This bill specifies that unless requested by the applicant, no hearing is necessary to grant or deny an application.

This bill provides that if the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

This bill states that this bill’s provisions is not intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

This bill requires the Judicial Council to promulgate and make available all necessary forms to enable the filing of the petitions and applications authorized by the provisions in this bill.

COMMENTS

1. Need for This Bill

Senate Bill 357 repeals provisions of the law that criminalize loitering for the intent to engage in sex work. This misdemeanor crime has failed to protect public safety, in addition to contributing to the discrimination on the basis of gender, race, class and perceived sex worker status – in particular, targeting Black women and members of the transgender community. This bill does not decriminalize soliciting or engaging in sex work. SB 357 simply eliminates an anti-loitering offense that results in the legal harassment of LGBTQ+, Black, and Brown communities for simply existing and looking like a “sex worker” to law enforcement. Due to the broad subjective nature of the language that criminalizes loitering for the intent to engage in sex work, this offense permits law enforcement to stop and arrest people for discriminatory reasons, such as wearing revealing clothing while walking in an area where sex work has occurred before. The creation and enactment of this offense began to cause more harm than help, because of the power it gave law enforcement to profile, target, harass, and criminalize without accountability, and the consequences of criminalization on the livelihood and safety of specifically targeted communities. Furthermore, anyone that is arrested and cited for this offense may have difficulty securing employment and safe housing due to having an arrest record relating to sex work.

2. Legislative History of Penal Code Section 653.22

The crime of loitering with the intent to commit prostitution was enacted in 1995 by AB 1035 (Katz). At the time, soliciting or agreeing to engage in prostitution was already a crime, however according to the Senate Committee’s analysis of the bill, the author and proponents of the bill expressed that the bill was needed because existing laws were ineffective at resulting in arrests of persons who were believed to be sex workers and the presence of such individuals add to crime and blight of their neighborhoods. According to the author’s statement provided in the analysis:

Prostitutes and drug dealers blatantly work on the streets in defiance of law enforcement. Prostitution and drug dealing adversely affect the safety, welfare, and health of our neighborhoods while hurting small businesses and decreasing property values. While it is usually quite obvious that prostitutes and drug dealers are conducting business, existing law has been ineffective in securing their arrest.

In order to be arrested, prostitutes must either solicit, accept, or engage in a sexual act for money. Drug dealers must be caught exchanging controlled substances for money. These criminals have become skilled in their operations -- they are familiar with undercover officers and know exactly what they can and cannot say to avoid arrest. They blatantly work the streets in defiance of law enforcement -- and add to the rampant crime and blight in some of our neighborhoods.

(Sen. Comm. on Crim. Procedure, Analysis of Assem. Bill No. 1035 (1995-1996 Reg. Sess.) as amended Apr. 6, 1995, p. d.)

The committee analysis cites concerns by opponents of the bill that enacting the proposed crime of loitering with the intent to commit prostitution may allow police officers to make arrests with substantially less than probable cause that a crime has been or will be committed by providing broad discretion on what circumstances may satisfy the intent to commit prostitution which may lead to subjective and arbitrary arrests. (*Id.* at pp. i-j.)

This bill repeals existing provisions of law related to loitering with the intent to commit prostitution. According to the author, the “creation and enactment of this offense began to cause more harm than help, because of the power it gave law enforcement to profile, target, harass, and criminalize without accountability.” (See note 1 above.)

3. Policing of Sex Workers

A study conducted in 2019 through the Los Angeles County Public Defender’s office compiled data from all of the charges of violations of Penal Code section 653.22 reported from the Compton Branch of the Public Defender’s office. During a one-week period of time, a total of 48 cases were reported. (Demeri, *Policing of People in the Sex Trades in Compton: Analysis of Section 653.22 Clients*, Law Offices of the Los Angeles County Public Defender (2019).)

The study found that the majority of arrests were made up of young Black women. 42.6 percent of arrests were for people aged 21-24 with the next highest rate being 23.4 percent for people aged 18-20. (*Id.* at p. 2.) As for race, 72.3 percent were Black with the next highest rate being 17 percent for Hispanic. (*Id.* at p. 4.)

The study shows that probable cause was most commonly established by the arrestee’s presence in an area known for sex work, their clothing, and motioning in a flirtatious manner to vehicles. (*Id.* at p. 14.) Other stated reasons for establishing probable cause for the arrest include possession of a cellphone, possession of cash, reacting to presence of police, giving conflicting information about activities, among many other stated reasons. (*Ibid.*)

The study also discussed why criminalization of sex work contributes to societal harms:

Evidence has shown that laws criminalizing sex work only contribute to human trafficking and violence, not stopping it. A recent study found that sex workers are three times more likely to experience violence when the sex trades are criminalized. Another study found that the erotic service’s section of Craigslist reduced the national homicide rate of women by 17%. Criminalization creates significant barrier to exiting the sex trade, makes sex workers more reliant on exploitive third-parties, and justifies irrational societal hatred towards sex workers. In several instances, serial killers have cited sex workers lack of societal protection as reason to prey on their vulnerable status. Ultimately, the best way to combat human trafficking is not through increasing criminalization, but increasing social welfare nets, addressing issues of poverty, and reforming immigration.

Decriminalization also maximizes public health outcomes. In a ground breaking report, the Lancet discovered that decriminalizing sex work would reduce the spread of HIV by 33% to 46% over a decade. When Rhode Island temporarily decriminalized indoor sex work, there was a sharp reduction in incidents of rape and gonorrhea.

(*Id.* at p. 19, citations omitted.)

This bill repeals existing provisions of law related to loitering with the intent to commit prostitution. This bill does not repeal or change other laws related to prostitution such as engaging in or soliciting sex work.

4. Post-Conviction Relief

Under existing law, loitering with the intent to commit prostitution is punishable as a misdemeanor. This bill repeals these existing provisions and provides post-conviction relief for anyone who was previously convicted of a violation of the repealed statute. Specifically, this bill authorizes a person who is currently serving a sentence or who has completed a sentence based on a conviction for loitering with the intent to commit prostitution to file a petition or application with the trial court that entered the conviction to have their sentence dismissed. The provisions would require the prior conviction to be sealed. The bill states that a person who files such a petition or application shall be presumed to satisfy the criteria for having their conviction dismissed unless it is shown by clear and convincing evidence that the person does not satisfy the criteria.

5. Argument in Support

According to St. James Infirmary, one of the co-sponsors of the bill:

The broad subjective nature of the anti-loitering law has created opportunities for law enforcement to engage in discriminatory policing that targets Black and Brown women and members of the transgender community. For instance, Black adults accounted for 56.1% of the § 653.22 charges in Los Angeles between 2017-2019, despite only making up 8.9% of the city's population.

By repealing Section 653.22, SB 357 eliminates a law that allows police to rely on bias rather than evidence to criminalize otherwise legal activities like dressing a certain way, walking or standing in public, and results in the harassment of TLGBQ+, Black, and Brown communities for simply looking like a "sex worker" to law enforcement. Arresting sex workers or persons perceived to be sex workers causes many safety risks for many people already at greater risk to their safety. Sex workers are already more vulnerable to exploitation and violence, and have barriers to accessing safe housing and legal employment. Arrests only further exacerbate these problems.

6. Argument in Opposition

The Los Angeles County Sheriff's Department writes in opposition:

The underlying root of 653.22 P.C. is to target sex buyers who seek to exploit. It is common for sex buyers to drive around high prostitution areas, which include business and residential locations and make contact with multiple prostitutes with no other lawful reason to be in the area. Current law allows law enforcement to help control street prostitution to a certain extent. This section is also often used to keep prostitutes from hanging around public places, business, and residential

communities, which can breed crime and drug use. While the intent of this legislation is to protect the prosecution of a vulnerable community, the unintended consequences will be to benefit the sex buyers as well.

A repeal of this law will take a major tool away from law enforcement, especially patrol operations. Prostitution operations require the use of extensive undercover operations and there are limited amounts of personnel and funding to do this type of work. Penal Code section 653.22 allows our patrol functions to enforce this section, and there are of course way more patrol officers than there are undercover officers available for extensive operations.

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