
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 357 (Wiener) - Crimes: loitering for the purpose of engaging in a prostitution offense

Version: April 5, 2021

Urgency: No

Hearing Date: May 3, 2021

Policy Vote: PUB. S. 4 - 1

Mandate: No

Consultant: Shaun Naidu

Bill Summary: SB 357 would repeal the crime of loitering with intent to commit prostitution and would allow a person to petition the court to recall and dismiss the sentence if the person is currently serving a sentence for that offense or to seal the conviction for a prior conviction, as specified.

Fiscal Impact: Unknown, potentially-significant workload cost pressures to the courts to decide and process petitions for relief under this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

Background: It is unlawful, for any person age 18 or older, to loiter in a public place with the intent to commit prostitution. Existing law specifies that this intent is evidenced by acting in a manner and under circumstances that openly demonstrate the purpose of inducing, enticing, or soliciting prostitution or procuring another to commit prostitution. Moreover, existing law provides a non-exhaustive list of circumstances that may be considered in determining if a person is loitering with the intent to commit prostitution. Specifically, when a person does any of the following: (i) repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution; (ii) repeatedly stops or attempts to stop 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; (iii) has been convicted of this crime, prostitution, or any other offense relating to or involving prostitution, within five years of the arrest of this crime; (iv) circles an area in a vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution; (v) has engaged, within six months prior to the arrest for this crime, in specified behavior or in any other behavior indicative of prostitution activity.

Loitering in a public place with the intent to commit prostitution is a misdemeanor that is punishable by incarceration in the county jail for up to six months, a base fine of up to \$1,000, or both the incarceration and fine.

Proposed Law: This bill would:

- Repeal the provisions of law that make it unlawful to loiter in a public place with the intent to commit prostitution.
- Allow a person who is currently serving a sentence for a conviction of the repealed section to petition the court for a recall or dismissal of sentence.
- Require the court, upon receiving a petition, to presume the petitioner satisfies the criteria for recall and dismissal of sentence unless the opposing party proves by clear and convincing evidence that the petitioner does not satisfy the criteria. It would require the court to grant the petition and dismiss the sentence as legally invalid if the petitioner satisfies the criteria.
- Allow 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.
- Require the court to presume the petitioner satisfies the criteria unless the opposing party proves by clear and convincing evidence that the petitioner does not satisfy the criteria. It would require the court to seal the conviction as legally invalid if the petitioner satisfies the criteria.
- Specify that a hearing is not necessary to grant or deny an application unless it is requested by the applicant.
- Require the Judicial Council to promulgate and make available all necessary forms to enable the filing of the petitions and applications authorized by SB 357.

Related Legislation: SB 233 (Wiener, Ch. 141, Stats. 2019), among other things, prohibited the arrest of a person for a misdemeanor violation of the California Uniform Controlled Substances Act or specified sex work crimes if that person is reporting that they are a victim of, or a witness to, specified crimes.

SB 1322 (Mitchell, Ch. 654, Stats. 2016), among other things, decriminalized prostitution for individuals under age 18.

Staff Comments: It is unknown how many individuals are currently serving a sentence for loitering with the intent to commit prostitution or who have a prior conviction of this crime. According to the analysis of this bill by the Senate Committee on Public Safety, in a one-week period in 2019, one branch of the Los Angeles County Public Defender's office, reported a total of 48 cases for this offense. Extrapolating from this data, it appears that the number of convictions for loitering with the intent to commit prostitution easily could be somewhere in the thousands. If the courts receives 100 petitions for relief under this bill, and it takes the court, on average, 30 minutes to process and decide each petition, the workload cost pressures of this measure to the courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would create pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

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