
THIRD READING

Bill No: SB 357
Author: Wiener (D), et al.
Amended: 4/5/21
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/13/21
AYES: Bradford, Kamlager, Skinner, Wiener
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

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

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

DIGEST: This bill repeals provisions of law related to loitering with intent to commit prostitution.

ANALYSIS:

Existing law:

- 1) 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).)

- 2) 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).)
- 3) 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).)
- 4) Makes it a misdemeanor to loiter in a public place with the intent to commit prostitution. (Pen. Code § 653.22 & 653.26.)
- 5) States that among the circumstances that may be considered in determining whether a person loiters with intent to commit prostitution are that the person:
 - a) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution;
 - b) 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;
 - c) Has been convicted of violating this section, or other offenses related or involving prostitution, within five years of the arrest under this section;
 - d) 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;
 - e) 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).)
- 6) 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).)
- 7) Contains the following definitions:
 - a) “Commit prostitution” means to engage in sexual conduct for money or other consideration, except as specified;

- b) “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.
- c) “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:

- 1) Repeals Penal Code Sections 653.20 and 653.22 related to loitering with the intent to commit prostitution and makes conforming changes.
- 2) 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.
- 3) 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.
- 4) Specifies that unless requested by the applicant, no hearing is necessary to grant or deny an application.
- 5) 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.
- 6) States that this bill’s provisions is not intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

- 7) 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

According to the author of 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 LGTBQ+, 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 difficult securing employment and safe housing due to having an arrest record relating to sex work.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, 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

SUPPORT: (Verified 5/20/21)

American Civil Liberties Union of California (co-source)
Asian Pacific Islander Legal Outreach (co-source)
Equality California (co-source)
Positive Women's Network (co-source)
St. James Infirmary (co-source)
SWOPLA (co-source)
Trans Latin@ Coalition (co-source)
Adult Industry Laborers and Artists Association
Anti-Defamation League
APLA Health
Bay Area Sex Worker Advocacy Network
Best Practices Policy Project
California Attorneys for Criminal Justice
California Public Defenders Association
California Women's Law Center
Californians for Safety and Justice
Californians United for a Responsible Budget
Center for LGBTQ Economic Advancement & Research
City of West Hollywood
Coalition to Abolish Slavery and Trafficking
Community Health Project Los Angeles
COYOTERI
DAP Health
Decriminalize Sex Work
Desert AIDS Project Health
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Rights
Equality California
Erotic Service Providers Legal, Education, and Research Project
Free Speech Coalition
Fresno Barrios Unidos
Green Party of California
Harm Reduction Coalition
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 County District Attorney's Office
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
Scientists for Sex Worker Rights
Sero Project
Sex Workers Outreach Project Behind Bars
Sex Workers Project of the Urban Justice Center
Sharmus Outlaw Advocacy and Rights Institute
Strippers United Inc.
Transgender, Gender-Variant & Intersex Justice Project
Transitions Clinic Network
U.C.S.F. Alliance Health Project
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: (Verified 5/20/21)

Los Angeles County Sheriff's Department

ARGUMENTS IN SUPPORT: According to St. James Infirmary, one of the co-sponsors of this 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.

ARGUMENTS IN OPPOSITION: According to the Los Angeles County Sheriff’s Department:

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.

Prepared by: Stella Choe / PUB. S. /
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