

Date of Hearing: July 13, 2021
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 357 (Wiener) – As Amended April 5, 2021

SUMMARY: Decriminalizes the act of loitering with the intent to commit prostitution. Specifically, **this bill:**

- 1) Repeals provisions of law that make it a crime to loiter with intent to commit prostitution and attendant provisions that provide definitions and circumstances constituting evidence of intent to commit prostitution.
- 2) Provides that a person who is currently serving a sentence for loitering with intent to commit prostitution may petition the court for a recall or dismissal of sentence.
- 3) Provides that person who has completed their sentence for a conviction of loitering with intent to commit prostitution may file an application with the court to have the conviction dismissed and sealed.
- 4) Requires the court, upon receiving a petition to recall, dismiss, or seal a sentence or conviction for loitering with intent to commit prostitution, to presume the petitioner satisfies the criteria for recall, dismissal, or sealing.
- 5) Requires the court to grant the appropriate remedy, unless the party opposing the petition or application proves by clear and convincing evidence that the petitioner is not entitled to relief.
- 6) Specifies that unless requested by the applicant, no hearing is necessary to grant or deny an application to dismiss and seal a conviction for loitering with the intent to commit prostitution.
- 7) Specifies 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.
- 8) Specifies that these provisions are not intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.
- 9) Requires the Judicial Council to promulgate and make available all necessary forms to enable the filing of the petitions and applications.
- 10) Makes conforming changes.

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 and 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 are 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) Defines the following terms:
 - 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 moving 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.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author’s Statement:** According to the author, “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 difficult 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) Chapter 981, Statutes of 1995. At the time, soliciting or agreeing to engage in prostitution was already a crime. According to the Senate Committee’s analysis of AB 1035, the author and proponents of the bill expressed that the bill was needed because existing laws were ineffective at producing arrests of persons who were believed to be sex workers, and the presence of such individuals added to crime and blight to 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 cited 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. The bill provided broad discretion on what circumstances could satisfy the intent to commit prostitution, potentially leading to subjective and arbitrary arrests. (*Id.* at pp. i-j.)

This bill would repeal 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.”

- 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 would repeal existing provisions of law related to loitering with the intent to commit prostitution. It also makes conforming changes to Penal Code sections that reference the offense of loitering with intent to commit prostitution. This bill would 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 seeks to repeal that offense and provides post-conviction relief for anyone who was previously convicted of a violation of the repealed statute. Specifically, people who are currently serving a sentence for loitering with intent to commit prostitution will be able to petition to have their sentence recalled and/or dismissed, as appropriate. People who have completed their sentence will also be able to apply for dismissal of the conviction and sealing. This 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.

Based on the current version of the bill, it appears that people who have completed a sentence for loitering with intent to commit prostitution will be entitled to recall and dismissal of the sentence, but not seal their record. By contrast, people who have completed their sentence will be entitled to have their record sealed. It may be worth considering an amendment to address the disparity in the availability of sealing as a remedy for people who have completed their sentence vs. people who have had their sentence recalled and dismissed.

- 5) **Argument in Support:** According to the bill's co-sponsor, *ACLU California Action*: "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 Penal Code § 653.22 charges in Los Angeles between 2017-2019,¹ despite only making up 8.9% of the city's population.² Moreover, women accounted for 67.1% of all §653.22 charges, a figure that is likely an underrepresentation given that the data set may count many trans women as males.³

"By repealing § 653.22, this measure eliminates a law that allows police to rely on bias rather than evidence to criminalize otherwise legal activities like walking, dressing or standing in public, and results in the harassment of LGTBQ+, Black, and Brown communities for simply looking like a "sex worker" in the subjective opinion of a police officer. Arresting sex workers or persons perceived to be sex workers increases safety risks for persons trading sex. When sex workers are under constant threat of arrest for loitering, they are more vulnerable

to exploitation and violence, and face greater barriers to accessing safe housing and legal employment.

“California must stop criminalizing people based on their gender or the color of their skin. We all deserve to exist in public peacefully without fear of arrest based on discriminatory stereotypes.”

- 6) **Argument in Opposition:** According to the *Peace Officer’s Research Association of California*: “Current law prohibits soliciting or engaging in an act of prostitution. It also prohibits loitering in a public place with the intent to commit prostitution, or directing, supervising, recruiting, or aiding a person who is loitering with the intent to commit prostitution. This bill would repeal the above provisions related to loitering with the intent to commit prostitution.

“Everyday more people fall victim to human trafficking. This bill would further hinder law enforcement efforts to not only identify and prosecute those who commit crimes related to prostitution and human trafficking, but also hinder the ability of identifying those being victimized.”

7) **Prior Legislation:**

- a) SB 233 (Wiener) Chapter 141, Statutes of 2019, made condoms inadmissible as evidence in specified crimes relating to prostitution and prohibited the arrest of a person for misdemeanor drug possession or prostitution-related offenses when the person is reporting certain, more serious crimes
- b) AB 2243 (Friedman) Chapter 27, Statutes of 2018, prohibited the use of evidence that victims of, or witnesses to a violent felony as specified, extortion, or stalking, were engaged in an act of prostitution at or around the time they were the witness or victim to the crime.
- c) AB 336 (Ammiano) Chapter 403, Statutes of 2014, established an evidentiary procedure for admitting condoms into evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (Co-Sponsor)
Equality California (Co-Sponsor)
Adult Industry Laborers and Artists Association
Anti-defamation League
Apla Health
Asian Pacific Islander Legal Outreach
Bayswan (bay Area Sex Worker Advocacy Network)
Best Practices Policy Project
California Attorneys for Criminal Justice
California Latinas for Reproductive Justice

California Public Defenders Association
California Public Defenders Association (CPDA)
California United for A Responsible Budget (CURB)
California Women's Law Center
Californians for Safety and Justice
Californians United for A Responsible Budget
Call Off Your Old Tired Ethics (coyote Ri)
Center for Lgbtq Economic Advancement & Research (CLEAR)
City of West Hollywood
Coalition on Homelessness, San Francisco
Coalition to Abolish Slavery & Trafficking (CAST)
Coalition to Abolish Slavery and Trafficking
Decriminalize Sex Work
Desert Aids Project
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Rights
Erotic Service Providers Legal, Education, and Research Project
Fem Dems of Sacramento
Free Speech Coalition
Fresno Barrios Unidos
Green Party of California
Harm Reduction Coalition
If/when/how: Lawyering for Reproductive Justice
Initiate Justice
Justice At Last
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
Mpact Global Action for Gay Men's Health and Human Rights
National Center for Lesbian Rights
National Council of Jewish Women Los Angeles
Oasis Legal Services
Positive Women's Network - USA
Prosecutors Alliance California
Reframe Health and Justice
Religious Coalition for Reproductive Choice California
San Francisco District Attorney's Office
San Francisco Public Defender
San Francisco Sex-positive Democratic Club
Santa Barbara Women's Political Committee
Scientists for Sex Worker Rights
Sero Project
Sex Worker's Outreach Project Los Angeles
Sex Workers Outreach Project Behind Bars
Sex Worker's Out Reach Project Los Angeles

St. James Infirmary
Strippers United INC
The Sex Workers Project of The Urban Justice Center
The Sharmus Outlaw Advocacy and Rights (SOAR) Institute
Transgender, Gendervariant, Intersex Justice Project
Transitions Clinic Network
Translatin@ Coalition
U.s. People Living With Hiv Caucus
Ucsf Alliance Health Project
US Prostitutes Collective
We the People - San Diego
Women's Foundation California
Young Women's Freedom Center

1 private individual

Oppose

Beacon4victims
California Family Council
Capitol Resource Institute
Los Angeles County Sheriff's Department
Magdalene Hope INC.
National Center on Sexual Exploitation (NCOSE)
Peace Officers Research Association of California (PORAC)
Restoration Ranch Women's Shelter
Stepping Into His Image

10 private individuals

Analysis Prepared by: Matthew Fleming / PUB. S. / (916) 319-3744