

SENATE THIRD READING
SB 357 (Wiener)
As Amended September 1, 2021
Majority vote

SUMMARY

Decriminalizes the act of loitering with the intent to commit prostitution.

Major Provisions

- 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 to recall, dismissal, and sealing, as applicable.
- 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.

COMMENTS

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 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."

Arguments 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 [Section] 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.

"By repealing [Section] 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."

Arguments 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Possible cost pressures (Trial Court Trust Fund) in the upper hundreds of thousands of dollars to low millions of dollars annually to the trial courts in increased workload, given this bill requires courts to adjudicate motions to recall and dismiss convictions for loitering with intent to commit prostitution. Costs would eventually decline and will be ultimately eliminated as convictions for past violations of Penal Code Section 653.22 are dismissed and sealed. Although this bill states a hearing is not necessary, record retrieval and court action still create workload pressures on court staff. The estimated cost of one hour of court time is approximately \$1,000. It unknown how many petitions may be filed, however, there are likely tens of thousands of convictions for violations of Penal Code Section 653.22. If 1,000 petitions for relief are filed and this bill increases court workload by even one hour, costs to the courts will be \$1 million.
- 2) Cost savings (General Fund and local funds), possibly in the low millions of dollars, to counties in reduced incarceration costs since this bill eliminates a common misdemeanor for which people are often sentenced to jail. The average annual cost per inmate per year for a county jail commitment is approximately \$30,000 (or approximately \$82 per day). If this bill results in 1,000 fewer people held in county jail for a period of 30 days, the cost savings will be \$2.5 million annually.

VOTES

SENATE FLOOR: 29-9-2

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Hertzberg, Umberg

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Lee, Quirk, Santiago, Wicks

NO: Lackey, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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