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UNFINISHED BUSINESS

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Bill No: SB 357  
Author: Wiener (D), et al.  
Amended: 9/1/21  
Vote: 21

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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

SENATE FLOOR: 29-9, 6/1/21  
AYES: 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  
NOES: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh,  
Wilk  
NO VOTE RECORDED: Hertzberg, Umberg

ASSEMBLY FLOOR: 41-26, 9/10/21  
(ROLL CALL NOT AVAILABLE)

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**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  
SWOP LA  
Trans Latin@ Coalition

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

*Assembly Amendments:*

- 1) Clarify that a person who is currently serving a sentence crime that is repealed by this bill is entitled to have their conviction sealed.
- 2) Add double-jointing language from AB 1337 (Lee) to avoid chaptering out issues.

**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:

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 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.

**SUPPORT:** (Verified 9/8/21)

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)

SWOP LA (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  
COYOTE RI  
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  
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  
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  
Oasis Legal Services  
Reframe Health and Justice

Religious Coalition for Reproductive Choice California  
San Francisco District Attorney's Office  
San Francisco Sex Positive Democratic Club  
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 9/8/21)

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. /  
9/10/21 17:45:57

\*\*\*\* **END** \*\*\*\*