
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: SB 1219 **Hearing Date:** April 2, 2024
Author: Seyarto
Version: February 15, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: prostitution*

HISTORY

Source: San Diego District Attorney's Office

Prior Legislation: SB 357 (Wiener), Ch. 86, Stats. 2022
SB 1322 (Mitchell), Ch. 654, Stats. 2016

Support: Arcadia Police Officers' Association; Bridge Network; Burbank Police Officers' Association; California Baptist for Biblical Values; California Coalition of School Safety Professionals; California District Attorneys Assoc.; California Narcotic Officers' Association; California Reserve Peace Officers Association; City of Stanton; Claremont Police Officers Association; Concerned Women for America; Corona Police Officers Association; Culver City Police Officers' Association; Deputy Sheriffs' Association of Monterey County; Exodus Cry; Fullerton Police Officers' Association; Hear She! Hear She!; Journey Out; Lighthouse Baptist Church; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; National Center on Sexual Exploitation; Newport Beach Police Association; Novato Police Officers Association; Our Duty; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; PORAC; Positive Change Consultants; Riverside County Sheriff's Office; Riverside Police Officers Association; Riverside Sheriffs' Association; San Bernardino County Sheriff's Dept.; Santa Ana Police Officers Association; Upland Police Officers Association

Opposition: Access Reproductive Justice; ACLU California Action; Any Positive Change INC.; APLA Health; California Attorneys for Criminal Justice; California Public Defenders Assoc.; Californians for Safety and Justice; Californians United for A Responsible Budget; Call Off Your Old Tired Ethics (coyote Ri); Center on Reproductive Rights and Justice At Berkeley Law; Community Health Project LA; Courage California; Decriminalize Sex Work; El/la Para Translatinas; Ella Baker Center for Human Rights; Equality California; Erotic Service Providers Legal, Education, and Research Project; Initiate Justice; Initiate Justice Action; Legal Services for Prisoners with Children; Los Angeles LGBT Center; National Center for Lesbian Rights; National Harm Reduction Coalition; Oasis Legal Services; Sacramento LGBT Community Center; San Francisco Public Defender; Smart Justice California; Soar Institute; The Sidewalk Project; Uncommon Law; Woodhull Freedom Foundation; Young Women's Freedom Center

PURPOSE

The purpose of this bill is to: 1) re-enact the crime of loitering in a public place to commit prostitution; 2) create a new misdemeanor to operate a motor vehicle in any public place and repeatedly beckon to, contact, or attempt to contact or stop pedestrians or other motorists, or impede traffic, with the intent to solicit prostitution; and 3) authorize a court to suspend the driving privileges for a person convicted of the new misdemeanor for impeding traffic with the intent to solicit prostitution or a conviction where the factual circumstances show a person impeded traffic in a manner indicative of soliciting for prostitution.

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law, until January 1, 2023, made it a misdemeanor to loiter in a public place with the intent to commit prostitution. (Former Pen. Code § 653.22 & 653.26.)

Existing law, until January 1, 2023, stated that among the circumstances that may be considered in determining whether a person loiters with intent to commit prostitution are that the person:

- Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution;
- 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;
- Has been convicted of violating this section, or other offenses related or involving prostitution, within five years of the arrest under this section;
- 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;
- 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.

(Former Pen. Code, § 653.22, subd. (b).)

Existing law, until January 1, 2023, stated 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. (Former Pen. Code, § 653.22, subd. (c).)

Existing law, until January 1, 2023, contained the following definitions:

- “Commit prostitution” means to engage in sexual conduct for money or other consideration, except as specified;
- “Public place” means an area open to the public, or an alley, plaza, park, driveway, or parking lot, or an automobile, whether move 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.
- “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.

(Former Pen. Code, § 653.20.)

This bill reenacts the crime of loitering in a public place with the intent to commit prostitution.

This bill makes it a misdemeanor disorderly conduct for an individual who operates a motor vehicle in any public place and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, or impedes traffic, with the intent to solicit prostitution.

This bill repeals provisions of law that authorizes a person who had a prior conviction for loitering with intent to solicit prostitution to dismiss their conviction.

Existing law, until January 1, 2020, repealed the court’s authority to suspend or restrict driving privileges for engaging in an act of prostitution or prostitution-related offense within 1000-feet of a private residence and with the use of a vehicle.

This bill authorizes a court to suspend, for not more than 30 days, the privilege of a person to operate a motor vehicle upon a first conviction of the new disorderly conduct offense created by this bill, or a conviction where the factual circumstances show a person had circled an area in a motor vehicle and repeatedly beckoned to, contacted, or attempted to contact or stop pedestrians or other motorists, or impedes traffic, indicative of soliciting for prostitution.

This bill specifies that for a second conviction based on the above-described provisions, the vehicle used in the commission of the offense shall be impounded for 30 days; on a third or subsequent conviction, the vehicle used in the commission of the offense shall be impounded for 30 days and the person shall be fined \$1,000.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Human trafficking is modern-day slavery. Black and Brown women are disproportionately at higher risk for human trafficking, and recently, there has been an explosion of underage prostitution amongst the same groups. Not only has research from the U.S. State Department revealed that prostitution creates a safe haven for criminals, more studies are finding that legalized prostitution does not lead to better safeguards but often worsens protections for victims and survivors. SB-1219 will make the acts of impeding traffic and loitering in a public place with the intent to direct or solicit prostitution forms of disorderly conduct; offering a narrowed tool to assist in the war on human trafficking.

2. Recent Repeal of Loitering with Intent to Commit Prostitution

In 2022, the Legislature passed and the Governor signed SB 357 (Wiener) which repealed the crime of loitering in a public place with the intent to commit prostitution. The crime of loitering with the intent to commit prostitution was enacted in 1995 by AB 1035 (Katz). At the time, soliciting or agreeing to engage in prostitution was already a crime, however according to the Senate Committee's analysis of the bill, the author and proponents of the bill expressed that the bill was needed because existing laws were ineffective at resulting in arrests of persons who were believed to be sex workers and the presence of such individuals add to crime and blight of their neighborhoods. According to the author's statement provided in the analysis for AB 1035:

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 cites 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 by providing broad discretion on what circumstances may satisfy the intent to commit prostitution which may lead to subjective and arbitrary arrests. (*Id.* at pp. i-j.)

As stated by the author of SB 357 which repealed the crime of loitering with intent to commit prostitution, “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. (Sen. Comm. on Public Safety, Analysis of Sen. Bill No. 357 (2021-22 Reg. Sess.) as amended Apr. 5, 2021, p. 4.)

The committee’s analysis of the bill also pointed to a study showing the disparate arrest rates on Black women:

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.*)

(*Id.* at p. 5, citing 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).)

Opponents of SB 357 argued that repealing the crime would make it more difficult to crack down on human trafficking operations. Since the passage of the law, various police chiefs, mayors and district attorneys have criticized the law and advocated for its repeal. (See <https://abc7news.com/ca-loitering-law-sex-trafficking-sb-357-workers/12910562/> [as of Mar. 14, 2024].)

3. Existing Laws to Criminalizing Prostitution and Human Trafficking

As noted above, SB 357 repealed the crime of loitering with the intent to commit prostitution. It did not repeal the crime of solicitation for prostitution or engaging in prostitution. (Pen. Code, § 647, sub. (b).) Under existing law, both a sex worker and a person who wants to buy such services may be criminally liable. Supervising, recruiting, or collecting the part of proceeds earned from an act of prostitution committed by another person also remains a crime. (Pen. Code, § 653.23.) Pimping and pandering (Pen. Code, §§ 266h and 255i), selling of a prostitute (Pen. Code, § 266f), procurement of a minor for prostitution (Pen. Code, § 266), and abduction of a minor for prostitution (Pen. Code, § 267) all remain crimes.

Additionally, human trafficking remains a crime with increased penalties for commercial sexual exploitation. (Pen. Code, § 236.1.) Existing law also provides that it is the duty of law enforcement agencies to use due diligence to identify victims of human trafficking (Pen. Code, § 236.2) and authorizes the forfeiture of money and property used for facilitating human trafficking (Pen. Code, § 236.7).

Existing law also recognizes that a minor who is commercially exploited for sex cannot be held criminally liable for prostitution. Instead, law enforcement who encounter minors involved in commercial sex acts are required to report the situation to county social services as abuse or neglect and authorizes the minor to be taken into temporary custody to protect the minor's health or safety. (Pen. Code, § 647, sub. (b)(5), enacted by SB 1322 (Mitchell), ch. 654, stats. 2016.) Thus, under existing law, even though it is not a crime for a minor to engage in solicitation, officers who believe a minor is a victim of human trafficking may still take action to help.

4. Sex Work is not Synonymous with Sex Trafficking

While sex work can involve coercion or force on one end of the spectrum, on the other end is choice and circumstances that may lead a person to get involved in sex work. Studies indicate that criminalization of sex work does not result in more protection for victims; on the contrary, it has shown to result in increased victimization and erosion of trust with law enforcement and health providers.

According to a recent United Nations report:

In jurisdictions which criminalise sex workers, violations of their rights are numerous, and range from arbitrary arrests (for simply standing on the street or for having condoms), lack of respect for the rights of defence, police abuses (extortion of money or sexual services, discrimination and degrading treatment), failure to protect sex workers from violence by private individuals and lack of access to adequate health-care. Even in the jurisdictions where sex work itself is not criminalised, many related activities are, and this significantly harms sex workers. For example, criminalisation of third party activities may lead to criminalisation of not only managers, organisers and facilitators, but also of the children and partners of sex workers (under 'living from the avails of prostitution' provisions, for example). Further, women who work together can be criminalised for pimping, even where there is no element of exploitation among women who work together. Also, sex workers can be penalised under criminalisation of soliciting and advertising of prostitution.

In addition, sex workers – particularly those working outdoors – may be indirectly criminalised through the criminalisation of behaviours and activities adopted by marginalized and disadvantaged communities (of which sex workers are often part), such as the criminalisation of drug use and possession, the criminalisation of certain sexual orientations or gender identities, as well as homelessness. Sex workers may be charged with offenses such as loitering, vagrancy, impeding the flow of traffic, congregating for the purposes of prostitution, public indecency, or disorderly behaviour, all of which have implications for the enjoyment of their human rights, including the right to private life. By giving police powers to directly or indirectly target sex workers, criminalisation models facilitate systemic violence and undermine the sex workers' health and safety. As stressed by sex workers at the consultations held, criminalisation of sex work furthers violence and fosters stigma, increases risk of HIV and other sexually transmitted infections (STIs) and impedes access to justice, thus undermining sex workers' human rights.

(Mandate of the Working Group on discrimination against women and girls: Eliminating discrimination against sex workers and securing their human rights, United Nations Human Rights Special Procedures (Oct. 2023) (Fn. omitted).)

This bill re-enacts the crime of loitering with the intent to commit prostitution. The circumstances or behaviors that may be used to prove such intent include beckoning to, stopping, or attempting to engage in conversations with passersby; attempting to hail drivers, waving arms or making other bodily gestures; having been convicted of loitering with intent to commit prostitution or solicitation for prostitution in the past 5 years; or engaging, within the past 6 months, in any of the above-described behavior. Additionally, being in an area that is known for prostitution activity is to be considered particularly salient.

This bill also reenacts similar specified circumstances that may be considered when determining whether a person has violated the offense of supervising a person in the commission of prostitution and creates a new misdemeanor offense under the crime of disorderly conduct for an individual who operates a motor vehicle in any public place and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, or impedes traffic, with the intent to solicit prostitution.

This bill also authorizes a court to suspend the driving privileges, and in specified instances impound the vehicle, of a person based on a conviction of the new misdemeanor disorderly conduct offense created by this bill, or a conviction where the factual circumstances show a person had circled an area in a motor vehicle and repeatedly beckoned to, contacted, or attempted to contact or stop pedestrians or other motorists, or impedes traffic, indicative of soliciting for prostitution.

5. Argument in Support

According to the Riverside Sheriffs' Association:

Human trafficking is a \$150 billion global industry and the fastest growing criminal enterprise in the world. California has the highest number of human trafficking incidents reported by the National Human Trafficking Hotline. Point Loma Nazarene University and the University of San Diego released a joint study that estimates more than 3,500 victims are trafficked each year in San Diego County, earning their traffickers an estimated \$810 million. The study also found that 16 years was the average age of adolescents entering into a life of prostitution. In addition, each of the high schools studied had evidence of recruitment on their campuses and 90 percent of those high schools had documented cases of human trafficking.

From these numbers, we know that our youth are being exploited and even more are at risk of exploitation. We know from our cases that our child victims are often so entwined with their trafficker that they can't see the abuse. Traffickers exploit the emotional vulnerability of children, especially those that are runaways, foster youth and those that have been previously abused. The trafficker convinces the victim that they are a family and will always be together. Vulnerable children crave this sense of belonging and will stay loyal to their trafficker even after acts of violence and exploitation.

Current law prevents from initiating investigations based on these provisions. Several news outlets have shared accounts of concerned community members seeing brazen acts of pimping on public streets and even near school grounds. Those profiting from human trafficking are even more emboldened, recruiting more victims and tightening their control over them.

Because our officers routinely encounter victims and traffickers, they are well-situated to identify, intervene, and offer resources to victims to better prevent further exploitation in the future. Additionally, by having the court routinely consider a post-conviction protective order, it will allow the victim to continue to heal from the horrific abuse that accompanies trafficking, free from the undue influence and manipulation of the trafficker. Requiring the prosecutor to address the protective order with the court will ensure a full airing of the issues in each matter, further protecting the victims.

6. Argument in Opposition

According to National Harm Reduction Coalition:

Evidence shows that Penal Code section 653.22 was not being used in an effective way to help survivors of human trafficking before it was repealed. Data from the San Diego Police Department, for example, shows that Penal Code section 653.22 was not being used to address human trafficking as it was barely using the law at all. In 2021, the San Diego Police Department only arrested a total of 8 people for violating Penal Code section 653.22, while between 2019-2021, they arrested a total of 24 people for violating that law. Oakland Police Department's police stop data for 2022 gave little indication that stops for section 653.22 resulted in support for trafficking survivors given the vast majority of stops led to arrests.

Instead, Penal Code section 653.22 harmed survivors of trafficking by criminalizing them and making them more vulnerable to the long-term negative effects of arrest and incarceration, including barriers to seeking employment, housing, or immigration relief. Trafficking survivors are better able to receive support and escape abusive and harmful situations if they are not arrested along the way. Indeed, the federal Bureau of Justice Assistance, which funds anti-trafficking task forces, prohibits use of their funds for arresting purchasers of commercial sex in most cases or arresting sex workers as a means of identifying victims of trafficking. SB 1219 would permit arrest of both sex workers and purchasers as a means of "helping" human trafficking survivors, but in reality the bill would only add to their suffering and build a wall between them and law enforcement.

Penal Code section 653.22 particularly harmed Black and Brown women and members of the transgender community. The broad, subjective nature of section 653.22 created opportunities for law enforcement to engage in discriminatory policing and rely on bias rather than evidence to criminalize otherwise legal activities like walking, dressing or standing in public. For instance, Black adults accounted for 56.1% of the section 653.22 charges in Los Angeles between 2017-2019, despite only making up 8.9% of the city's population. Additionally, nearly one in three "loitering with intent" charges in Los Angeles County were rejected

due to lack of sufficient evidence. In Compton, Black cis and trans women accounted for 72% of those charged with loitering with intent despite only being 30.9% of the population. The legal bullying of cis and trans women of color by police results in distrust and an unwillingness to call on police to protect them and others from violence or other forms of victimization.

. . . .

There are effective, non-criminal ways to identify and assist survivors that do not carry the long-term negative effects of criminalization. Law enforcement does not need to arrest someone to implement such approaches and we can offer help and services to survivors without arresting them.

-- END --