



Senator Scott Wiener, 11th Senate District

SB 357 – Repeal Loitering for Intent to Engage in Sex Work

SUMMARY

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.

BACKGROUND/EXISTING LAW

Section 653.22 of California Penal Code makes it an offense to loiter in public places with the intent to commit a prostitution related offense. This section outlines non-exhaustive circumstances that law enforcement may use to determine if someone intends to engage in sex work, such as speaking with other pedestrians or being in an area where sex work has occurred before. This provision of law was enacted by AB 1035 (Katz, 1995), which sought to make it easier to arrest sex workers by allowing law enforcement to arrest someone before they solicit, accept, or engage in a sex act, regardless of whether that was even the intent of the persons being targeted. According to a statement that Assemblymember Katz provided the Assembly Public Safety committee for their bill analysis, this law was also needed because people engaging in sex work adversely affect “...our neighborhoods while hurting small businesses and decreasing property values.”

¹ See generally, Gaffney, Maggie, Simon Shered, Michelle Zhang, and Illhan Zhur. “Tracing Criminalization: Policing and Prosecution in LA, 2017-2019.” UCLA Law, 2019.

² *Id*

³ See www.census.gov/quickfacts/losangelesciticifornia

⁴ See generally, Gaffney, Maggie, Simon Shered, Michelle Zhang, and Illhan Zhur. “Tracing Criminalization: Policing and Prosecution in LA, 2017-2019.” UCLA Law, 2019.

⁵ This figure includes arrests for engaging in prostitution, soliciting prostitution, and loitering for prostitution among other sex crimes.

In reality, Penal Code 653.22 has created barriers to public safety for all communities by subjecting street-based sex workers and persons perceived to be sex workers to discrimination, harassment and arrest from law enforcement. Black women and members of the trans community face disproportionate enforcement of the loitering law.

In Los Angeles, **27.3%** of the sex work related arrests between 2017-2019 were for §653.22 charges¹. Among the § 653.22 charges, Black adults accounted for **56.1%**² of the charges despite only making up 8.9% of the city’s population.³ Moreover, women accounted for 67.1% of all §653.22 charges—and women might be underrepresented here given the data set possibly counts many trans women as males.⁴

In Pomona, Black youth (ages 11-24) account for only 6% of the population but experienced **75.5%** of all sex work related arrests⁵ between 2016 and mid-2020.⁶ Black women, in particular, were charged with sex work related crimes at a rate nearly **11 times** higher than their proportion to the overall population.⁷ Finally, the **second most common** charge for 18 to 24 year-olds, and **the third most common** charge for all ages, were §653.22 charges.⁸

In one study from Compton, CA, Black adults accounted for **72.3%** of those charged under §653.22 despite only comprising 30.9% of the population.⁹ Women and trans females comprised **100%** of these arrests.¹⁰

⁶ Haro, B. N. & Guzman, F., Jr. (2021). Pomona Police Department’s Crusade Against Youth and Women of Color. Pomona, California. Gente Organizada.

⁷ *Id*

⁸ *Id*

⁹ See Demeri J., Derek. “Policing of People in the Sex Trades in Compton: Analysis of Section 653.22 Clients.” Law Offices of Los Angeles County Public Defender, 2019.

¹⁰ *Id*

Furthermore, people within the LGBTQ+, Black, and Brown communities report high rates of police misconduct throughout the United States and are disproportionately affected by police violence. Transgender people who have done street-based sex work are more than twice as likely to report physical assaults by police officers and four times as likely to report sexual assault by police than trans individuals who have not traded sex. A Black person is 3.5 times more likely to be shot by police than a white person. These statistics are a reality that Transgender and Black and Brown people face, and leads to significant mistrust between these communities and the police.

PROBLEM

Due to the broad subjective nature of the language that criminalizes loitering for the intent to engage in sex work, its enactment has resulted in the disproportionate targeting of Black and Brown transgender women. 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. 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.

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.

SOLUTION

SB 357 will repeal provisions of the law that criminalize loitering for the intent to engage in sex work, and is a vital step that will prioritize the health and safety of Black, Brown, transgender and gender nonconforming individuals. This legislation will also enable persons who have been convicted of this offense to have their records sealed and orders resentencing, when applicable. SB 357 does not decriminalize engaging or soliciting sex work, but will decriminalize loitering with the alleged intent to engage in sex work given this offense largely contributes to the discriminatory treatment and harassment of Black and Brown, transgender and gender nonconforming people that are profiled by law enforcement as sex workers and stopped for simply existing.

SUPPORT

- Positive Women’s Network – USA (co-sponsor)
- St. James Infirmary (co-sponsor)
- SWOP LA (co-sponsor)
- Trans Latin@ Coalition (co-sponsor)
- Asian Pacific Islander Legal Outreach (co-sponsor)
- ACLU of California (co-sponsor)
- Equality California (co-sponsor)
- Adult Industry Laborers and Artists Association
- Anti-Defamation League
- APLA Health
- Bay Area Sex Worker Advocacy Network
- Best Practice Policy Project
- California Attorneys for Criminal Justice
- Californians for Safety and Justice
- California Public Defenders Association
- California United for a Responsible Budget (CURB)
- California Women’s Law Center
- Center for LGBTQ Economic Advancement & Research (CLEAR)
- City of West Hollywood
- Coalition to Abolish Slavery and Trafficking (CAST)
- Community Health Project Los Angeles
- COYOTE RI
- Decriminalize Sex Work
- DAP Health
- Dignity and Power Now
- Drug Policy Alliance
- Ella Baker Center for Human Rights
- Erotic Service Providers Legal, Education and Research (ESPLER) Project
- Free Speech Coalition
- Fresno Barrios Unidos
- Green Party of California
- If/When/How: Lawyering for Reproductive Justice
- Legal Aid at Work
- Legal Services for Prisoners with Children
- Los Angeles District Attorneys Office
- Los Angeles LGBT Center
- LYRIC Center for LGBTQ Youth
- MPact Global Action for Gay Men’s Health and Rights
- National Center for Lesbian Rights (NCLR)
- National Council for Jewish Women, Los Angeles
- National Harm Reduction Coalition

SUPPORT CONT.

- National Juvenile Justice Network
- Religious Coalition for Reproductive Choice of California
- San Francisco AIDS Foundation
- San Francisco District Attorneys Office
- Scientists for Sex Worker Rights
- Sex Workers Outreach Project Behind Bars
- Sex Workers Outreach Project of the Urban Justice Center
- Sharmus Outlaw Advocacy and Rights (SOAR) Institute
- Strippers United
- Transgender, Gendervariant, Intersex Justice (TGIJ) Project
- Transitions Clinic Network
- UCSF Alliance Health Project
- US PROSTitutes Collective
- United States People Living with HIV Caucus
- We the People – San Diego
- Women’s Foundation California
- Young Women’s Freedom Center

FOR MORE INFORMATION

Angela Hill, *Legislative Director*

Email: angela.hill@sen.ca.gov

Phone: (916) 651-4548