

AMENDED IN SENATE JULY 5, 1995  
AMENDED IN ASSEMBLY APRIL 6, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1035**

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**Introduced by Assembly Member Katz**  
**(Coauthor: Assembly Member Willard Murray)**  
(Coauthors: Senators O’Connell and Watson)

February 23, 1995

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An act to add Chapter 9.5 (commencing with Section 11530) to Division 10 of the Health and Safety Code, and to add Chapter 2.5 (commencing with Section 653.20) to Title 15 of Part 2 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL’S DIGEST

AB 1035, as amended, Katz. Loitering: drug activities: prostitution.

Existing law prohibits loitering under specified circumstances, including loitering upon the private property of another without visible or lawful business with the owner or occupant thereof, or loitering in or about any public toilet for the purpose of engaging in or soliciting a lewd, lascivious, or unlawful act.

This bill would make it a misdemeanor to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to ~~engage in drug-related activity~~ *commit a specified offense relating to controlled substances*, or with the intent to commit prostitution. This bill would

impose a state-mandated local program by creating new crimes.

This bill would state that these provisions shall not prevent a local governing body from adopting and enforcing consistent laws, and, where local laws duplicate or supplement these provisions, the provisions shall be construed as providing alternative remedies and not to preempt the field.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Chapter 9.5 (commencing with Section~~  
2 ~~11530) is added to Division 10 of the Health and Safety~~  
3 ~~Code, to read:~~

4  
5 ~~CHAPTER 9.5. LOITERING FOR DRUG ACTIVITIES~~

6  
7 ~~11530.~~

8 *SECTION 1.* (a) Like many other communities  
9 across this nation, communities in the State of California  
10 are experiencing an increase in the street sales of  
11 marijuana, PCP, rock cocaine, and other controlled  
12 substances as defined in ~~this code~~ *the Health and Safety*  
13 *Code.*

14 (b) It is the intent of the Legislature to assist law  
15 enforcement personnel of this state in abating the sale of  
16 controlled substances. The Legislature finds and  
17 determines that the sale of controlled substances  
18 constitutes a continuing public nuisance which adversely  
19 affects the public health, safety, and welfare, fuels fear  
20 among the community, and is a factor which not only  
21 depreciates the value of property upon which the activity



1 occurs, but also depreciates the value of adjacent and  
2 surrounding properties, and adversely affects a local  
3 community's image, business, development, and housing  
4 costs.

5 (c) It is the intent of the Legislature to assist law  
6 enforcement to minimize the impact which drug sales  
7 have on the quality of life, overall sense of feeling of safety  
8 and security of its citizens, and economic stability because  
9 the sale of controlled substances breeds criminal and  
10 gang-related activities and breeds community  
11 discontent.

12 ~~11532.~~

13 *SEC. 2. Chapter 9.5 (commencing with Section*  
14 *11530) is added to Division 10 of the Health and Safety*  
15 *Code, to read:*

16

17 *CHAPTER 9.5. LOITERING FOR DRUG ACTIVITIES*

18

19 *11530.* As used in this subdivision, the following terms  
20 have the following meanings:

21 (a) "Loiter" means to delay or linger without a lawful  
22 purpose for being on the property and for the purpose of  
23 committing a crime as opportunity may be discovered.

24 (b) "Public place" means an area open to the public or  
25 exposed to public view and includes streets, sidewalks,  
26 bridges, alleys, plazas, parks, driveways, parking lots,  
27 automobiles, whether moving or not, and buildings open  
28 to the general public, including those which serve food or  
29 drink, or provide entertainment, and the doorways and  
30 entrances to buildings or dwellings and the grounds  
31 enclosing them.

32 ~~11534.~~

33 *11532.* (a) It is unlawful for any person to loiter in any  
34 public place in a manner and under circumstances  
35 manifesting the purpose and with the intent to ~~engage in~~  
36 ~~drug-related activity contrary to~~ *commit an offense*  
37 *specified in* Chapter 6 (commencing with Section 11350)  
38 and Chapter 6.5 (commencing with Section 11400).



1 (b) Among circumstances that may be considered in  
2 determining whether a person has the requisite intent to  
3 engage in drug-related activity are that the person:

4 ~~(1) Behaves in a manner that raises a reasonable~~  
5 ~~suspicion that he or she is about to engage in or is then~~  
6 ~~engaged in an unlawful drug-related activity, including,~~  
7 ~~but not limited to, acting as a “look-out.”~~

8 ~~(1) Acts as a “look-out.”~~

9 (2) Transfers small objects or packages for currency in  
10 a furtive fashion.

11 ~~(3) Takes flight upon the appearance of a peace~~  
12 ~~officer.~~

13 ~~(4)~~

14 (3) Tries to conceal himself or herself or any object  
15 that reasonably could be involved in an unlawful  
16 drug-related activity.

17 ~~(5)~~

18 (4) Uses signals or language ~~consistent with~~ *indicative*  
19 *of* summoning purchasers of illegal drugs.

20 ~~(6)~~

21 (5) Repeatedly beckons to, stops, attempts to stop, or  
22 engages in conversations with passersby, whether on foot  
23 or in a motor vehicle, *indicative of summoning*  
24 *purchasers of illegal drugs.*

25 ~~(7)~~

26 (6) Repeatedly passes to or receives from passersby,  
27 whether on foot or in a motor vehicle, money or small  
28 objects.

29 ~~(8) Approaches or is in any vehicle registered to a~~  
30 ~~person who has been convicted in any court within this~~  
31 ~~state within the previous five years of any violation~~  
32 ~~involving the use, possession, or sale of any of the~~  
33 ~~substances referred to in Chapter 6 (commencing with~~  
34 ~~Section 11350) or Chapter 6.5 (commencing with Section~~  
35 ~~11400), or who has been convicted of any violation of~~  
36 ~~those provisions or substantially similar laws of any~~  
37 ~~political subdivision of this state or of any other state, or~~  
38 ~~who has an outstanding warrant for a crime involving~~  
39 ~~drug-related activity.~~



1 ~~(9) Displays physical characteristics of drug~~  
2 ~~intoxication or usage~~

3 (7) *Is under the influence of a controlled substance or*  
4 *possesses narcotic or drug paraphernalia. For the*  
5 *purposes of this paragraph, “narcotic or drug*  
6 *paraphernalia” means any device, contrivance,*  
7 *instrument, or apparatus designed or marketed for the*  
8 *use of smoking, injecting, ingesting, or consuming*  
9 *marijuana, hashish, PCP, or any controlled substance,*  
10 *including, but not limited to, roach clips, cigarette papers,*  
11 *and rollers designed or marketed for use in smoking a*  
12 *controlled substance.*

13 ~~(10) Is physically identified by a peace officer as a~~  
14 ~~member of a gang or association that has, as one of its~~  
15 ~~purposes, illegal drug activity.~~

16 ~~(11)~~

17 (8) *Has been convicted in any court within this state,*  
18 *within five years prior to the arrest under this chapter, of*  
19 *any violation involving the use, possession, or sale of any*  
20 *of the substances referred to in Chapter 6 (commencing*  
21 *with Section 11350) or Chapter 6.5 (commencing with*  
22 *Section 11400), or has been convicted of any violation of*  
23 *those provisions or substantially similar laws of any*  
24 *political subdivision of this state or of any other state.*

25 ~~(12) Is in an area that is known for unlawful drug use~~  
26 ~~and trafficking.~~

27 ~~(13) Is on or in premises that have been reported to~~  
28 ~~law enforcement as a place suspected of unlawful drug~~  
29 ~~activity.~~

30 ~~(14)~~

31 (9) *Is currently subject to any order prohibiting his or*  
32 *her presence in any high drug activity geographic area.*

33 ~~(15)~~

34 (10) *Has engaged, within six months prior to the date*  
35 *of arrest under this section, in any behavior described in*  
36 *this subdivision, with the exception of paragraph ~~(11)~~ (8),*  
37 *or in any other behavior indicative of illegal drug-related*  
38 *activity.*

39 (c) *The list of circumstances set forth in subdivision*  
40 (b) *is not exclusive. The circumstances set forth in*



1 *subdivision (b) should be considered particularly salient*  
 2 *if they occur in an area that is known for unlawful drug*  
 3 *use and trafficking, or if they occur on or in premises that*  
 4 *have been reported to law enforcement as a place*  
 5 *suspected of unlawful drug activity.* Any other relevant  
 6 circumstances may be considered in determining  
 7 whether a person has the requisite intent. Moreover, no  
 8 one circumstance or combination of circumstances is in  
 9 itself determinative of intent. Intent must be determined  
 10 based on an evaluation of the particular circumstances of  
 11 each case.

12 ~~11536.~~

13 *11534.* If any section, subdivision, sentence, clause,  
 14 phrase, or portion of this chapter is for any reason held  
 15 invalid or unconstitutional by any court of competent  
 16 jurisdiction, that portion shall be deemed a separate,  
 17 distinct, and independent provision, and that holding  
 18 shall not affect the validity of the remaining portion  
 19 thereof.

20 ~~11538.~~

21 *11536.* A violation of any provision of this chapter is a  
 22 misdemeanor.

23 ~~11540.~~

24 *11538.* Nothing in this chapter shall prevent a local  
 25 governing body from adopting and enforcing laws  
 26 consistent with this chapter. Where local laws duplicate  
 27 or supplement this chapter, this chapter shall be  
 28 construed as providing alternative remedies and not to  
 29 preempt the field.

30 ~~SEC. 2. Chapter 2.5 (commencing with Section~~  
 31 ~~653.20) is added to Title 15 of Part 2 of the Penal Code, to~~  
 32 ~~read:~~

33  
 34 ~~CHAPTER 2.5. LOITERING FOR THE PURPOSE OF~~  
 35 ~~ENGAGING IN A PROSTITUTION OFFENSE~~

36  
 37 ~~653.20. (a) This chapter~~

38 *SEC. 3. Section 4 of this act* is enacted for the purpose  
 39 of assisting local law enforcement in controlling  
 40 prostitution-related activities and to minimize the



1 adverse effect these activities have upon local  
2 communities.

3 (b) The Legislature finds and determines that  
4 loitering for the purposes of engaging in a prostitution  
5 offense constitutes a public nuisance which, if left  
6 unabated, adversely affects a community's image, public  
7 safety, and residential and business development, and  
8 tends to encourage further criminal activity.  
9 Furthermore, prostitution-related activities consume an  
10 inordinate amount of limited law enforcement resources.

11 ~~653.22.~~

12 *SEC. 4. Chapter 2.5 (commencing with Section*  
13 *653.20) is added to Title 15 of Part 2 of the Penal Code, to*  
14 *read:*

15

16 *CHAPTER 2.5. LOITERING FOR THE PURPOSE OF ENGAGING*  
17 *IN A PROSTITUTION OFFENSE*

18

19 653.20. For purposes of this chapter, the following  
20 definitions apply:

21 (a) "Commit prostitution" means to engage in sexual  
22 conduct for money or other consideration, but does not  
23 include sexual conduct engaged in as a part of any stage  
24 performance, play, or other entertainment open to the  
25 public.

26 (b) "Public place" means an area open to the public,  
27 or an alley, plaza, park, driveway, or parking lot, or an  
28 automobile, whether moving or not, or a building open to  
29 the general public, including one which serves food or  
30 drink, or provides entertainment, or the doorways and  
31 entrances to a building or dwelling, or the grounds  
32 enclosing a building or dwelling.

33 (c) "Loiter" means to delay or linger without a lawful  
34 purpose for being on the property and for the purpose of  
35 committing a crime as opportunity may be discovered.

36 ~~653.24.~~

37 653.22. (a) It is unlawful for any person to loiter in,  
38 ~~on, or near~~ any public place with the intent to commit  
39 prostitution. This intent is evidenced by acting in a  
40 manner and under circumstances which openly



1 demonstrate the purpose of inducing, enticing, or  
2 soliciting prostitution, or procuring another to commit  
3 prostitution.

4 (b) Among the circumstances that may be considered  
5 in determining whether a person loiters with the intent  
6 to commit prostitution are that the person:

7 (1) Repeatedly beckons to, stops, engages in  
8 conversations with, or attempts to stop or engage in  
9 conversations with passersby, *indicative of soliciting for*  
10 *prostitution*.

11 (2) Repeatedly stops or attempts to stop motor  
12 vehicles by hailing the drivers, waving arms, or making  
13 any other bodily gestures, or engages or attempts to  
14 engage the drivers or passengers of the motor vehicles in  
15 conversation, *indicative of soliciting for prostitution*.

16 (3) Has been convicted of violating this section,  
17 subdivision (a) or (b) of Section 647, or any other offense  
18 relating to or involving prostitution, within five years of  
19 the arrest under this section.

20 (4) Circles an area in a motor vehicle and repeatedly  
21 beckons to, contacts, or attempts to contact or stop  
22 pedestrians or other motorists, *indicative of soliciting for*  
23 *prostitution*.

24 ~~(5) Loiters in an area that is known for prostitution~~  
25 ~~activity.~~

26 ~~(6)~~

27 (5) Has engaged, within six months prior to the arrest  
28 under this section, in any behavior described in this  
29 subdivision, with the exception of paragraph (3), or in  
30 any other behavior indicative of prostitution activity.

31 (c) The list of circumstances set forth in subdivision  
32 (b) is not exclusive. *The circumstances set forth in*  
33 *subdivision (b) should be considered particularly salient*  
34 *if they occur in an area that is known for prostitution*  
35 *activity*. Any other relevant circumstances may be  
36 considered in determining whether a person has the  
37 requisite intent. Moreover, no one circumstance or  
38 combination of circumstances is in itself determinative of  
39 intent. Intent must be determined based on an evaluation  
40 of the particular circumstances of each case.



1 ~~653.26.~~

2 653.24. If any section, subdivision, sentence, clause,  
3 phrase, or portion of this chapter is for any reason held  
4 invalid or unconstitutional by any court of competent  
5 jurisdiction, that portion shall be deemed a separate,  
6 distinct, and independent provision, and that holding  
7 shall not affect the validity of the remaining portion of the  
8 chapter.

9 ~~653.28.~~

10 653.26. A violation of any provision of this chapter is  
11 a misdemeanor.

12 ~~653.30.~~

13 653.28. Nothing in this chapter or Chapter 2  
14 (commencing with Section 639) shall prevent a local  
15 governing body from adopting and enforcing laws  
16 consistent with these chapters relating to prostitution or  
17 prostitution-related activity. Where local laws duplicate  
18 or supplement this chapter or Chapter 2 (commencing  
19 with Section 639), these chapters shall be construed as  
20 providing alternative remedies and not to preempt the  
21 field.

22 ~~SEC. 3.~~

23 SEC. 5. No reimbursement is required by this act  
24 pursuant to Section 6 of Article XIII B of the California  
25 Constitution because the only costs that may be incurred  
26 by a local agency or school district will be incurred  
27 because this act creates a new crime or infraction,  
28 eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section  
30 17556 of the Government Code, or changes the definition  
31 of a crime within the meaning of Section 6 of Article  
32 XIII B of the California Constitution.

33 Notwithstanding Section 17580 of the Government  
34 Code, unless otherwise specified, the provisions of this act  
35 shall become operative on the same date that the act  
36 takes effect pursuant to the California Constitution.

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