

Assembly Bill No. 1035

Passed the Assembly September 5, 1995

Chief Clerk of the Assembly

Passed the Senate August 24, 1995

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1995, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

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, 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 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.

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

SECTION 1. (a) Like many other communities across this nation, communities in the State of California



are experiencing an increase in the street sales of marijuana, PCP, rock cocaine, and other controlled substances as defined in the Health and Safety Code.

(b) It is the intent of the Legislature to assist law enforcement personnel of this state in abating the sale of controlled substances. The Legislature finds and determines that the sale of controlled substances constitutes a continuing public nuisance which adversely affects the public health, safety, and welfare, fuels fear among the community, and is a factor which not only depreciates the value of property upon which the activity occurs, but also depreciates the value of adjacent and surrounding properties, and adversely affects a local community's image, business, development, and housing costs.

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

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

CHAPTER 9.5. LOITERING FOR DRUG ACTIVITIES

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

(a) "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.

(b) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and



entrances to buildings or dwellings and the grounds enclosing them.

11532. (a) It is unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to commit an offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400).

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

(1) Acts as a “look-out.”

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

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

(4) Uses signals or language indicative of summoning purchasers of illegal drugs.

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

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

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

(8) Has been convicted in any court within this state, within five years prior to the arrest under this chapter, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing



with Section 11350) or Chapter 6.5 (commencing with Section 11400), or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or of any other state.

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

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

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

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

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

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



SEC. 3. Section 4 of this act is enacted for the purpose of assisting local law enforcement in controlling prostitution-related activities and to minimize the adverse effect these activities have upon local communities.

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

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

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

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

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

(b) "Public place" means an area open to the public, or an alley, plaza, park, driveway, or parking lot, or an automobile, whether moving 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.

653.22. (a) It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under



circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

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

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

(2) 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.

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

(4) 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.

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

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

653.24. If any section, subdivision, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent



jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion of the chapter.

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

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

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

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



Approved _____, 1995

Governor

