



TRAINING BULLETIN

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DRUG LOITERING

The dealing of drugs on some streets in Los Angeles, or “street dealing,” has placed a great burden on limited police resources, particularly the specialized units assigned to work this type of criminal activity. Health and Safety Code (HSC) Section 11532 prohibits drug loitering. This state law provides officers an additional tool which can be used by Department specialized units, as well as other areas of law enforcement, to combat blatant and pervasive street dealing.

General loitering laws have been around for a long time. Most of these laws prohibit loitering, which was usually defined as hanging around or wandering from place to place. In 1970 and 1980, the courts began to strike down these laws because they were vague. That is, a person of ordinary intelligence did not know what was illegal under the law, and also because the laws gave too much discretion to the police.

The legal challenge to HSC Section 11532 as being unconstitutionally vague was settled in *People v. Ellison* (1998). Health and Safety Code Section 11532 meets all constitutional requirements and provides both adequate notice of the proscribed conduct and sufficient enforcement guidelines. Furthermore, HSC Section 11532 neither criminalizes constitutionally protected conduct nor empowers the police to determine what types of behavior constitute a crime.

Current loitering laws prohibit loitering, but also require a certain mental state, which is typically the intent to commit a crime, must be present for a person to be in violation of the law. Health and Safety Code Section 11532(a) provides that:

It is illegal to loiter in a public place with the intent to commit a drug offense specified in Chapter 6 and Chapter 6.5 of the Health and Safety Code. This includes Health and Safety Code Sections 11350 and 11401.

Loitering is defined as: delaying, lingering, or “hanging around” for the purpose of committing a crime, whenever the opportunity presents itself.

Public place is defined as: any area open to the public or exposed to public view. This includes not only public places like streets, sidewalks, parks, etc., but also private property that is exposed to public view, such as malls, parking lots, front lawns, and balconies.

IDENTIFYING THE INTENT TO COMMIT A DRUG OFFENSE

An essential element of the drug loitering law is the intent to commit a drug offense. Proving that a suspect has the intention of committing this type of crime is the most challenging part of the law. How does an officer show what a person's state of mind is? To do so, the officer needs to look at surrounding circumstances, in other words, what was the suspect physically doing to manifest the intent to commit a crime.

To help officers form the opinion that the suspect is loitering with the required intent, the legislature has laid out 10 circumstances in HSC Section 11532(b) that officers can consider. These circumstances are non-exclusive. If there are some other circumstances that are not listed, but officers feel are relevant, then they may consider those circumstances as well.

The following 10 circumstances would indicate that the suspect is loitering for the purpose of committing a drug offense:

1. **Acting as a "look-out."** The narrative of the report should specify exactly what the suspect was doing. Did he or she have contact with the seller? Was he or she present when a drug sale took place? How many times did he or she look up and down the street? Did he or she whistle or warn the seller in some other way that the police were around?
2. **Transferring small objects or packages for currency in a furtive fashion.** In the report, officers should describe the small objects to the best of their ability. The officers may have seen small bags containing a green, grassy like substance. What was furtive about the exchange if anything? Was the object held in a clenched fist? Close to the body? Did the seller take it from a concealed location such as his or her shoe or mouth?
3. **Attempting to conceal self or any object that reasonably could be involved in an unlawful drug-related activity.** Did the suspect run and hide when a police car approached? Did he or she appear to be hiding something behind a bush? In a box? Under a car?
4. **Using signals or language indicative of summoning purchasers of illegal drugs.** Officers need to have experience in working street sales of narcotics or some specialized training to know that when a buyer asks for a "twenty" that he or she is not asking for a twenty-dollar bill, or when a buyer asks for "black," he or she is referring to tar heroin. This applies to signals as well. For instance, someone who is making smoking gestures in the street is not offering to sell cigarettes. Officers must use their specialized expertise to indicate in the report what signals were observed and what those signals meant.

5. **Repeatedly beckoning to, stopping, attempting to stop, or engaging in conversations with motorists or pedestrians indicative of summoning purchasers of illegal drugs.** In other words, activity which is consistent with summoning buyers of illegal drugs. When officers observe this type of activity, they should consider whether the suspect could be doing this for some other purpose. Could the suspect be panhandling? Passing out literature? Trying to sell something other than illegal drugs? Usually, other circumstances will be present to show that this talking, trying to stop people, etc., was for the purpose of engaging in drug activity.
6. **Repeatedly passing or receiving money or small objects from motorists or pedestrians.** Describe the objects to best of your ability. Most times, it is difficult to see the object, but officers can usually determine that it is small. Officers should also include a description of any persons with whom the suspect has transactions and the license plate and description of any vehicles involved.
7. **The suspect is under the influence of a controlled substance or possesses drug paraphernalia.** This is self-explanatory. Officers will see this circumstance most often with a buyer, who is either looking to buy narcotics, or has just purchased and used a controlled substance.
8. **The suspect has been convicted within the last five years of any offense involving the use, possession, or sale of a controlled substance.** Officers must have personal knowledge of this conviction. When officers rely on this as one of the circumstances that led to their belief that the suspect was involved in drug loitering, they should include a case number and charge in the arrest report.
9. **The suspect is under a court order prohibiting him or her from being present in a high drug activity area.** Again, the officer must have knowledge of this court order and include a case number in the report. A request for a probation condition ordering the suspect to stay at least 100 yards from the location of suspect's arrest should be included in each arrest report narrative.
10. **The suspect has engaged in any behavior described above or any other drug-related activity in the past six months.** This circumstance is designed to address those situations where officers have seen the suspect loitering on a previous occasion. Officers may have arrested the suspect or simply filled out a Field Interview Report (FI Card), Form 15.43.00. If officers have documentation from the previous contact, they should include a copy of it with their report.

Health and Safety Code Section 11532(b) lists the above 10 circumstances specifically; however, this does not mean that officers can not include in their reports other circumstances they deem relevant. For example, officers observe a known gang member loitering on a street corner. The suspect is repeatedly approaching cars and exchanging small items for currency. The officers know the suspect, and know that the suspect belongs to the gang which "claims" that street corner. The officers also know that the suspect's gang is actively involved in illegal drug dealing, particularly on that street corner. In this situation, the officers should consider the suspect's gang membership as a factor in forming their opinions that the suspect is engaging in drug loitering, and include this in their report.

To be able to articulate that the suspect is "hanging around" (i.e., loitering) officers need to have a period of observation. City Attorney guidelines specify that officers must observe the suspect for some period of time. There is no minimum time period specified; however, it must be long enough to observe repeated actions (by each suspect) consistent with drug activity.

Also, City Attorney filing guidelines do not specify that officers observe a certain number of circumstances, or any combination of circumstances. However, officers must see repetitive activity which leads them to form the opinion that the suspect has the intent to commit a drug offense.

Note: Due to the risks associated with accidental or dangerous contamination and the threat of potential fentanyl exposure, officers shall not conduct field testing or screening on items suspected of being controlled substances, including cannabis as delineated in current Department policies and procedures.

CONCLUSION

In summary, officers need to be as complete and detailed as possible when documenting their observations. In a drug loitering case, officers are documenting activity which could be interpreted as being innocent, while articulating through expertise why it is not. For this reason, the more detailed the arrest report, the better the chance of proving to a jury that the suspect had the intent to commit a drug offense.

In a loitering case, the elements of the crime are contained in the details of what the officers observe. Remember, many of these cases will go to warrant. Therefore, if the case goes to trial several months or even years later, officers will not have any physical evidence to substantiate their observations. In all cases, it is important that officers accurately document their observations. However, in drug loitering cases it is paramount.

In addition, drug loitering arrests should be handled, but not limited to, personnel with extensive narcotics experience as well as trained personnel from Area Narcotic Enforcement Details, Gang and Narcotics Division, and Drug Recognition Experts.

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**This Bulletin cancels and supersedes Volume XXVIII, Issue 8, Drug Loitering,
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Field Training Services Unit
Police Training and Education

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Attachment: Suspected Fentanyl Handling Protocol

LOS ANGELES POLICE DEPARTMENT

Suspected Fentanyl Handling Protocol

Fentanyl and its analogues can present a significant hazard to Department personnel, particularly if inhaled. Personnel are most susceptible to inhalation when the drug particles are airborne. This is most likely to occur during the opening of containers or packages containing a fentanyl-based product, manipulating a fentanyl-based substance, or brushing/dusting fentanyl-based powders off clothing, gloves, or other surfaces. Due to this inhalation hazard, the NARK II screening tests on all suspected controlled substances has been discontinued. Officers encountering suspected fentanyl, or its analogues, shall adhere to the following guidelines:

- If the material is sealed or contained, officers shall follow existing protocols for booking evidence into Property Division without performing the preliminary NARK II testing.
 - Officers shall don the recommended personal protective equipment as follows:
 - Nitrile or latex gloves
 - Dusk mask: (N95 rated or above)
 - Eye protection
 - When possible, wear long sleeves
 - Avoid actions that may cause the material to become airborne. Officers shall not open a sealed container suspected to be fentanyl.
 - Describe the substance on the Property or Combined Evidence Report. Collect and package without agitating the substance or producing airborne particles. Write the words "Suspected Fentanyl" on the outside of the sealed plastic bag, and on the Analyzed Evidence envelope.
 - Determine the gross weight of the sample (including packaging) and include the information on the Property Report, Form 10.01.00 or Combined Evidence Report, Form 5.02.00.
 - Once the materials are collected and packaged, they should be secured in the trunk or rear cargo area of the officer's vehicle prior to transportation.
 - After the evidence has been booked, contact Forensic Sciences Division as soon as possible and request laboratory analysis.
 - Following completion of the evidence booking process, officers should wash hands with soap and copious amounts of water only. Alcohol-based wipes or hand sanitizers shall not be used.
- If any of the following occur, the involved personnel shall contact the Department Operations Center, at (213) 484-6700, and notify both the Gang and Narcotics Division Clandestine Lab Squad as well as the Hazardous Materials Unit for guidance:
 - If the material has breached its container and needs to be collected for evidence, the involved officers shall immediately exit and secure the location.

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- If the scene involves large quantities of suspected fentanyl (e.g., distribution/storage facility, pill milling operation, clandestine lab, gross contamination, spill, or release) or an overdose resulting in a death.

Note: If a Department employee or any other person believes they have been contaminated, officers shall monitor the exposed individual(s) for signs/symptoms of opioid intoxication and request a rescue ambulance or ensure other appropriate medical treatment is immediately provided. If a Department employee is trained, equipped, and authorized to administer Naloxone or NARCAN, it can be administered (if needed).

- Contaminated employees should not enter non-contaminated vehicles.
- If a Department vehicle is believed to be contaminated with fentanyl or one of its analogues, officers shall immediately remove the vehicle from service.
- If officers encounter suspected fentanyl combined with a threat, or other terrorism nexus.

Involved officers shall immediately notify a Department supervisor of any adverse incident involving fentanyl or its analogues (spilled material, contamination, inadvertent inhalation, or other means of accidental absorption, etc.).