



DEPARTMENT NOTICE

23-185

Published: 12/06/23

Expires: 12/06/26

Guidelines Concerning Drug-Related Loitering Offense

(Update to DB 18-240)

The purpose of this notice is to provide members with guidance concerning enforcement of Health and Safety Code section 11532, “Loitering for Drug Activities.”

Background

Illegal open-air drug dealing and use, and associated criminal activity, significantly impacts this City and Department resources. To supplement numerous other statutes, H&S Code section 11532 provides members with an additional criminal statute that may be used to combat blatant and pervasive open-air drug dealing and use.

Health and Safety Code section 11532

This section states, in part: *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).*

H&S Chapters 6 and 6.5 include offenses involving controlled substances starting with 11350 H&S through 11401 H&S.

“Loitering” means to delay or linger without a lawful purpose for being on the property and for purpose of committing a crime as opportunity may be discovered.

“Public place” means any area open to the public or exposed to public view. This includes not only public places like streets, sidewalks, parks, vehicles (whether moving or not), etc., but also private property that is open to the general public, such as malls, restaurants, parking lots, and doorways and entrances to buildings or dwellings and the grounds enclosing them.

Proving the Intent to Commit a Drug Offense

An essential element of the drug loitering law is the intent to commit a drug offense. To prove a specific intent, the officer needs to look at surrounding circumstances or what the suspect was doing to manifest the intent.

The legislature has enumerated a set of ten (10) circumstances – listed below – that may be considered in determining whether a suspect has the requisite intent to commit a drug offense. These circumstances, and the examples provided, are non-exclusive – there may be other relevant circumstances that demonstrate whether a suspect has the requisite intent.

There is no requirement that officers observe a certain number of circumstances, or any combination of circumstances. Intent must be determined based on an evaluation of the particular

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circumstances of each case. Additionally, recorded observations (e.g., BWC, filmed spotting operations, use of surveillance cameras, CAD entries, FI cards) can provide valuable evidence to help support an officer's opinion that a suspect was loitering with the intent to commit a drug crime.

1. **Act as a "look-out."** The incident report should specify exactly what the suspect was doing. For example, did they have contact with a seller? Were they present when a drug sale took place? How many times did they look up and down the street? Did they whistle or warn a seller in some other way that the police were around?

2. **Transfer small objects or packages for currency in a furtive fashion.** In an incident report, officers should describe the transfer of any small objects to the best of their ability. Furtive gestures refer to movements of a suspect that reasonably appear to have been made in an attempt to hide or conceal contraband. For example, was the object held in a clenched fist? Close to the body? Did the seller take it from a concealed location?

3. **Tries to conceal themselves or any object that reasonably could be involved in an unlawful drug-related activity.** For example, did the suspect run and hide when a police car approached? Did they appear to hide something in a bag? Under a car? By giving it to another person?

4. **Use signals or language indicative of summoning purchasers of illegal drugs.** Officers may rely upon their background, training, and experience to articulate what certain language means in the context of street narcotics sales. For example, when a buyer asks for a "twenty" that probably does not mean they're asking for a twenty-dollar bill, or when a buyer asks for "fenty" or "fetty" they are likely referring to fentanyl. This applies to signals as well. Officers must use their specialized expertise to identify signals and then indicate in the report what signals were observed and what those signals mean.

5. **Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passerby, whether on foot or in a motor vehicle, indicative of summoning purchasers of illegal drugs.** When officers observe this type of activity, they should consider whether the suspect could be doing this for some other purpose. For example, could the suspect be panhandling? Trying to sell something other than illegal drugs? Usually, other circumstances will be present to show that this activity was for the purpose of engaging in drug activity.

6. **Repeatedly passes to or receives from passerby, whether on foot or in a motor vehicle, money, or small objects.** In an incident report, officers should describe the small objects to the best of their ability. Most times, it is difficult to see the object, but officers can usually determine that it is small and consistent with narcotics sales activity based upon their background, training, and experience. Officers should also include a description of any persons or vehicles with whom the suspect has transactions.

7. **Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia.** "Narcotic or drug paraphernalia" means any device, contrivance, instrument, or

apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming any controlled substance. 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. Officers should document the evidence and set of circumstances observed that indicates the person is under the influence of a controlled substance or in possession of narcotic or drug paraphernalia.

8. 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 or receive information from other law enforcement sources and should include the case number in the incident report.

9. Is subject to any order prohibiting their presence in a high crime area. Officers must verify that the order is active and include a case number in the incident report.

10. Has engaged, within the last six months, in any behavior described above, with the exception of paragraph (8), or in any other behavior indicative of illegal drug-related activity. This circumstance is designed to address those situations where officers have seen the suspect loitering for drug activities or engaged in drug activities on a previous occasion. For example, officers may have arrested the suspect, filled out a FI, or documented the incident in some other way. Officers should include documentation of the prior contact in the incident report.

The 10 circumstances should be considered particularly important if they occur in an area that is known for unlawful drug sales and use or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Therefore, officers should always document their knowledge of the area or location (e.g., street conditions, calls for service, experience in the area).

Proving Loitering

To be able to articulate that the suspect is loitering, officers need to have a period of observation. That is, 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 the suspect, consistent with drug activity. If the suspect is not a known narcotics offender, officers should aim to have longer observation periods and more observed actions than if a suspect is known to be a drug user or dealer. For example, in one case, a court found sufficient evidence of loitering where the suspect was observed for less than a minute in a high narcotics trafficking area, the suspect had a prior 11532 conviction, the suspect had been previously warned about loitering, and on this occasion suspect was with a known narcotics violator that was waiving down motorists.

Documentation

Officers need to be as thorough and detailed as possible when documenting their observations. Officers are not required to specify the particular drug offense that the suspect intends to commit, but are required to specify the conduct by the suspect that reflects an intent to commit a drug offense. In a drug loitering case, officers are documenting activity that may appear innocent to

those without training and experience in narcotics sales and use. For this reason, officers should document in the incident report as much detail as possible that supports the officers' conclusions that the suspect had the intent to commit a drug offense.

Citations

A violation of H&S Code section 11532 is a misdemeanor. Members are reminded to review DGO 5.06 concerning citation release and custodial arrests procedures for misdemeanor offenses.

William Scott

WILLIAM SCOTT
Chief of Police

Per DN 23-152 all sworn and non-sworn members shall electronically acknowledge this Department document in PowerDMS within (30) thirty calendar days of issuance. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be sent to sfpd.writtendirectives@sfgov.org, who will provide additional information.