

2C:33-2.1

LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 2C:33-2.1 (Loitering—disorderly persons)

LAWS OF: 1991 CHAPTER: 383

Bill No: S851

Sponsor(s): Rice

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks

Date of Passage: Assembly: June 27, 1991 Re-enacted 9-26-91

Senate: May 9, 1991 Re-enacted 12-9-91

Date of Approval: January 16, 1992

Following statements are attached if available:

Sponsor statement: Yes Also attached statement to floor amendment

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/dgw

§1  
C.2C:33-2.1  
§2  
Note

P.L.1991, CHAPTER 383, *approved January 16, 1992*  
1990 Senate No. 851 (*Third Reprint*)

*AN ACT* concerning loitering as a disorderly persons offense and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. <sup>1</sup>[a. A person commits a disorderly persons offense if he wanders, remains, or prowls in a public place, at a time or in a manner not usual for lawful activity under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

"Public place" means any place to which the public has access, including but not limited to, a public street, road, thoroughfare, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure, or area.

b. Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting him to explain his presence and conduct.

c. No person shall be convicted of an offense under this act if the law enforcement officer did not comply with the procedure set forth in subsection b. of this section or if it appears at trial that the explanation given by the person reasonably would have dispelled the alarm or immediate concern.

d. No person shall be convicted of an offense under this act if the person's actions are lawful and in furtherance of exercising the right to peaceably assemble or petition for a redress of grievances.]

<sup>2</sup>[a. As used in this section:

(1) "Public place" means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted March 4, 1991.

<sup>2</sup> Assembly AJL committee amendments adopted June 20, 1991.

<sup>3</sup> Senate amendments adopted in accordance with Governor's recommendations September 26, 1991.

shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

(2) "Loiter" means to wander, remain or prowl in a public place, at a time and in a manner not usual for lawful activity under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.

(3) "Known illegal drug user, possessor or seller of controlled dangerous substances" is a person who, within one year previous to the date of violation of this section, has, within the knowledge of the arresting officer, been convicted of illegal manufacturing, using, possessing, selling, purchasing or delivering any controlled dangerous substance or controlled substance analog.

b. A person commits a disorderly persons offense if he loiters in a public place in a manner and under circumstances manifesting the purpose of using, distributing or dispensing a controlled dangerous substance or controlled substance analog.

c. The requisite purpose is presumed if the person is a known illegal user, possessor or seller of a controlled dangerous substance, or controlled substance analog, or the person is at a location frequented by persons who illegally use, possess, or sell a controlled dangerous substance, or controlled substance analog, and either:

(1) The person repeatedly beckons to, stops, attempts to stop or engage in conversation with passers-by, whether such passers-by are on foot or in a motor vehicle, for the purpose of inducing, enticing, soliciting or procuring another to illegally possess, transfer or buy any controlled dangerous substance or analog; or

(2) The person repeatedly passes to or receives from passers-by, whether such passers-by are on foot or in a motor vehicle, money, objects or written material for the purpose of inducing, enticing, soliciting or procuring another to illegally possess, transfer or buy any controlled dangerous substance or analog.<sup>1]</sup>

a. As used in this section:

"Public place" means any place to which the public has access, including but not limited to a public street, road, thoroughfare, sidewalk, bridge, alley, plaza, park, recreation or shopping area, public transportation facility, vehicle used for public transportation, parking lot, public library or any other public building, structure or area.

b. A person, whether on foot or in a motor vehicle, commits a disorderly persons offense if <sup>3(1)</sup> he wanders, remains or prowls in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog <sup>3,3</sup> and <sup>3(2)</sup> engages in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog.

c. Conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog includes, but is not limited to, conduct such as the following:

(1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;

(2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place;

(3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.<sup>2</sup>

<sup>3</sup>d. The element of the offense described in paragraph (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in paragraph (2) of subsection b. of this section.<sup>3</sup>

2. This act shall take effect on the 60th day after enactment.

#### CRIMINAL JUSTICE

Creates the offense of loitering for the purpose of illegally using, possessing or selling controlled dangerous substances.

SENATE, No. 851

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator RICE

1 AN ACT concerning loitering as a disorderly persons offense and  
2 supplementing Title 2C of the New Jersey Statutes.

3

4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. a. A person commits a disorderly persons offense if he  
7 wanders, remains, or prowls in a public place, at a time or in a  
8 manner not usual for lawful activity under circumstances that  
9 warrant a justifiable and reasonable alarm or immediate concern  
10 for the safety of persons or property in the vicinity.

11 "Public place" means any place to which the public has access,  
12 including but not limited to, a public street, road, thoroughfare,  
13 recreation or shopping area, public transportation facility,  
14 vehicle used for public transportation, parking lot, public library  
15 or any other public building, structure, or area.

16 b. Among the circumstances which may be considered in  
17 determining whether such alarm or immediate concern is  
18 warranted is the fact that the person takes flight upon  
19 appearance of a law enforcement officer or manifestly endeavors  
20 to conceal himself or any object. Unless flight by the person or  
21 other circumstances makes it impracticable, a law enforcement  
22 officer shall, prior to any arrest for an offense under this section,  
23 afford the person an opportunity to dispel any alarm or  
24 immediate concern which would otherwise be warranted by  
25 requesting him to explain his presence and conduct.

26 c. No person shall be convicted of an offense under this act if  
27 the law enforcement officer did not comply with the procedure  
28 set forth in subsection b. of this section or if it appears at trial  
29 that the explanation given by the person reasonably would have  
30 dispelled the alarm or immediate concern.

31 d. No person shall be convicted of an offense under this act if  
32 the person's actions are lawful and in furtherance of exercising  
33 the right to peaceably assemble or petition for a redress of  
34 grievances.

35 2. This act shall take effect on the 60th day after enactment.

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STATEMENT

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40 This bill creates the disorderly persons offense of loitering.

41 Disorderly persons offenses are punishable by a fine not to exceed

1 \$1,000, a term of imprisonment not to exceed six months, or both.

2 A person is guilty of loitering if he wanders, remains or prowls  
3 in a public place at a time or in a manner not usual for lawful  
4 activity under circumstances that warrant alarm or concern for  
5 the safety of persons or property in the vicinity.

6 This bill attempts to set forth law enforcement guidelines to  
7 prevent its being applied in a discriminatory manner. The officer  
8 must give a person an opportunity to explain his presence and  
9 conduct. Failure to do so when possible will result in no  
10 conviction. Specific exemption is made for persons who are  
11 peaceably assembling.

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14 CRIMINAL JUSTICE

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16 Creates the disorderly persons offense of loitering.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

**SENATE, No. 851**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 20, 1991

The Assembly Judiciary, Law and Public Safety Committee reports without recommendation and with committee amendments Senate Bill No. 851 [1R].

Presently, Title 2C, New Jersey's Code of Criminal Justice, does not proscribe loitering. New Jersey pre-code criminal law did include specific prohibitions on vagrancy and loitering. The report of the Criminal Law Revision Commission on which Title 2C was based did contain a provision outlawing loitering but that provision was removed prior to the code's enactment.

Prior to committee amendments, the bill established loitering for the purpose of using, distributing or dispensing a controlled dangerous substance as a disorderly persons offense. The bill provided that "loiter" means to wander, remain or prowl in a public place at a time or in a manner not usual for lawful activity under circumstances that warrant alarm or immediate concern for the safety of persons or property in the vicinity.

The requisite purpose was presumed if the person is a known illegal user, possessor or seller of a controlled dangerous substance or the person is at a location frequented by persons who illegally use, possess, or sell controlled dangerous substances and either:

(1) The person repeatedly beckons to, stops, attempts to stop or engage in conversation with passers-by, whether such passers-by are on foot or in a motor vehicle, for the purpose of inducing, enticing, soliciting or procuring another to illegally possess, transfer or buy any controlled dangerous substance or analog; or

(2) The person repeatedly passes to or receives from passers-by, money, objects or written material for the purpose of inducing, enticing, soliciting or procuring another to illegally possess, transfer or buy any controlled dangerous substance.

The committee amended the bill to create the disorderly persons offense of wandering, remaining or prowling in a public place with the purpose of unlawfully obtaining or distributing a controlled dangerous substance or controlled substance analog and engaging in conduct that, under the circumstances, manifests a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog. Disorderly persons offenses are punishable by a fine not to exceed \$1,000, a term of imprisonment not to exceed six months or both.

The amendments include the following as conduct that may, where warranted under the circumstances, be deemed adequate to manifest a purpose to obtain or distribute a controlled dangerous substance or controlled substance analog:

(1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;

(2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place; or

(3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 851

STATE OF NEW JERSEY

DATED: FEBRUARY 25, 1991

The Senate Judiciary Committee reports favorably Senate Bill No. 851.

Presently, Title 2C, New Jersey's Code of Criminal Justice, does not proscribe loitering. New Jersey pre-code criminal law did include specific prohibitions on vagrancy and loitering. The report of the Criminal Law Revision Commission on which Title 2C was based did contain a provision outlawing loitering but that provision was removed prior to the code's enactment.

The bill would establish loitering as a disorderly persons offense. Disorderly persons offenses are punishable by a fine not to exceed \$1,000, a term of imprisonment not to exceed six months or both.

The bill provides that a person would be guilty of loitering if the person wanders, remains or prowls in a public place at a time or in a manner not usual for lawful activity under circumstances that warrant alarm or concern for the safety or persons or property in the vicinity.

Under the bill, that a person fled at the appearance of a police officer or tried to hide himself or an object is a circumstance which can be considered as warranting alarm.

The bill also provides that a person could not be arrested unless the police officer affords the person an opportunity to dispel any alarm or concern which the conduct might have caused by explaining his presence and conduct.

The bill contains a specific exemption for persons who peacefully assemble to redress grievances.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by review which has been performed.

## STATEMENT TO SENATE FLOOR AMENDMENT

### STATEMENT

As originally drafted, S-851 provides that a person would be guilty of a disorderly persons offense if the person wanders, remains or prowls in a public place at a time or in a manner not usual for lawful activity under circumstances that warrant alarm or concern for the safety of persons or property in the vicinity. These amendments would limit the scope of S-851 so that a person would only be guilty of an offense if the person loiters in a public place in a manner and under circumstances manifesting the purpose of using, distributing or dispensing a controlled dangerous substance.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

September 23, 1991

SENATE BILL NO. 851 (SECOND REPRINT)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 851 (Second Reprint) with my objections for reconsideration.

In too many neighborhoods in New Jersey, drug dealers and drug buyers have transformed street corners into open-air drug markets. Meanwhile, residents and legitimate merchants see their neighborhoods filled with the decay and violence that inevitably accompany the drug trade.

The possession and distribution of illegal drugs are serious crimes that carry severe penalties. Convictions for these crimes ordinarily require that the police find illegal drugs on the person of the suspect or within his immediate control. But drug dealers have become more and more skilled at minimizing their actual possession of the drugs while continuing to conduct their illegal business. While neighborhood residents and merchants have complained and sought more police intervention to stop the drug-related activity, in many cases the police have been unable to respond effectively because they lack the necessary legal tools.

This bill seeks to give the police the legal authority they need to address this problem by creating a new criminal offense, loitering with the purpose to buy or sell illegal drugs.

I strongly support the need for this bill, but I believe that it should be amended to provide clear guidance to ensure that the law is fairly enforced against only the drug dealers and buyers to whom it is directed.

The bill states that a person commits an offense if the person (1) loiters with the purpose of obtaining or distributing illegal drugs; and (2) engages in conduct that manifests a purpose to obtain or distribute illegal drugs. So there are two basic elements to the offense.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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The bill explains that conduct that, where warranted under the circumstances, may be deemed sufficient to satisfy the second element includes, but is not limited to, conduct such as:

- (1) Repeatedly beckoning to or stopping pedestrians or motorists in a public place;
- (2) Repeatedly passing objects to or receiving objects from pedestrians or motorists in a public place; and
- (3) Repeatedly circling in a public place in a motor vehicle and on one or more occasions passing any object to or receiving any object from a person in a public place.

In crafting the bill in this way, the Legislature was clearly aware of the constitutional concerns which courts have identified in reviewing the broader loitering statutes and ordinances enacted in the past in New Jersey and elsewhere. The bill addresses those concerns by requiring proof of both elements: first, loitering with the purpose to buy or sell illegal drugs; and, second, engaging in conduct that manifests a purpose to buy or sell illegal drugs.

The intent of the bill is that these two elements are distinct and that proof of the second element is not alone sufficient to establish the first element. This is an important feature of the bill because it draws the appropriate line between constitutionally protected conduct on the one hand and drug-related activity on the other. Because this is such an important feature of the bill, it should be stated as clearly as possible in the bill itself.

Therefore, I herewith return Senate Bill No. 851 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 44:</u>	After "if" insert "(1)"
<u>Page 2, Section 1, Line 47:</u>	After "analog" insert ";"
<u>Page 2, Section 1, Line 47:</u>	After "and" insert "(2)"

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

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Page 3, Section 1, Line 12:

At end of line, insert new subsection as follows: "d. The element of the offense described in clause (1) of subsection b. of this section may not be established solely by proof that the actor engaged in the conduct that is used to satisfy the element described in clause (2) of subsection b. of this section."

Respectfully,

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ Andrew Weber

Counsel to the Governor