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## **Guidelines Concerning Narcotics-Related Loitering Offenses** (Re-issue DB 06-039)

The purpose of this bulletin is to provide guidelines for the arrest of individuals under California Health and Safety Code (hereinafter, "H&S") Section 11532(a) – concerning loitering activity that suggests an intent to engage in drug-related crimes.

### RELEVANT STATUTES AND DEFINITIONS:

- H&S Section 11532(a) states that "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)). Violation (per H&S 11536) is a misdemeanor.
- The legislative intent is to prohibit loitering for the purpose of buying, selling or using drugs.
- Per H&S Section 11530(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."
- Per H&S Section 11530(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."

### POLICY AND PROCEDURE REGARDING THE DETENTION AND/OR ARREST OF PERSONS FOR VIOLATION OF H&S SECTION 11532(a):

- Policy:
  1. Excluding the existence of another criminal charge, members shall "admonish," not "book," a first-time offender for violation of H&S Section 11532(a).

Members should book, not cite, a Section 11532(a) violator who was previously admonished regarding the 11532(a) offense. The booking card should include the number "7" in the appropriate space to indicate "continuing offense."

- Procedure:
  1. Members detaining/arresting an individual(s) for violation of Section 11532(a) should search CDW to determine if the individual was previously admonished regarding an 11532(a) HS offense and locate the case number of the prior admonishment.

2. If the individual has a previous admonishment, they should be booked for the offense. If not, they shall be admonished.
3. Regardless of admonishment or booking, members detaining/arresting individuals for violation of 11532(a) shall prepare a detailed SFPD Incident Report on the matter that includes the date and case number of the prior admonishment and title the report Controlled Substance Violation, Loitering for (16645).

References to CDW should be CDW/ILEADS. This will include the Airport reporting writing and records system.

Further, members should consider including the following information in the report:

- Detailed and relevant facts (circumstances and conditions) supporting the elements of the 11532(a) crime.
- The member's training and experience in identifying suspected drug-related activity.
- The member's understanding of the arrest location as being one where the incidence of drug sales and/or possession is high.
- Specifying the relevant H&S Code section that the suspect intended to violate. (Example: If the member believes the suspect was loitering with intent to sell a controlled substance, a violation of H&S Section 11532, that fact should be included in the report's narrative section.)
- Description of other individuals and/or vehicles involved in the violation.
- Documented statements from the arrestee/detainee and other witnesses/arrestees/detainees.

#### FINAL CONSIDERATIONS:

- Members should familiarize themselves with the full text of H&S Code Sections 11530 – 11538 before taking any law enforcement action concerning the issue of loitering for drug activities. In particular, members should review Section 11532(b), which gives direction regarding circumstances that may be considered in determining whether a person has the requisite intent to engage in drug-related activity.

  
WILLIAM SCOTT  
Chief of Police

*Per DB 17-080 sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.*