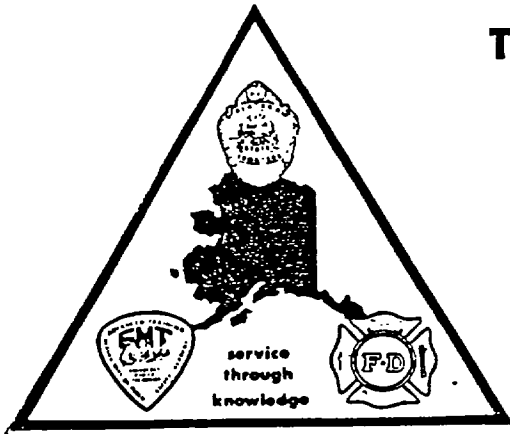


# DEPARTMENT OF PUBLIC SAFETY

## TRAINING ACADEMY

LEGAL BULLETIN NO. 70  
June 20, 1983



### LOITERING STATUTE

Reference: William KOLENDER  
v.  
Edward LAWSON

United State Supreme Court  
No. 81-1320  
May 2, 1983

#### FACTS:

California Penal Code 647(e) requires persons who loiter or wander on the streets to provide a "credible and reliable" identification and to account for their presence when requested by a police officer. LAWSON was detained or arrested on approximately fifteen occasions during a twenty-two month period. He was prosecuted only twice and convicted once; the second charge was dismissed. LAWSON brought a civil action seeking a declaratory judgment that Penal Code 647(e) is unconstitutional, a mandatory injunction seeking to restrain enforcement of the statute, and compensatory and punitive damages against the various officers who detained him. LAWSON won in the District Court except for the damage issue, which the court felt the officers acted in the "good-faith" belief that each detention was lawful. The Ninth Circuit Court of Appeals upheld the District Court but also ruled that LAWSON was entitled to a jury trial on the issue of damages against the officers. KOLENDER, Chief of the San Diego Police Department, appealed to the United States Supreme Court.

#### ISSUE:

Is the statute, as drafted, unconstitutionally vague on its face?

HELD: Yes.

#### REASONING:

1. The statute contains no standard for determining what a suspect has to do in order to satisfy the requirement to provide a "credible and reliable" identification.
2. The statute vests virtually complete discretion onto the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest.
3. An individual, whom police may think is suspicious but do not have probable cause to believe has committed a crime, is entitled to walk the

public streets "only at the whim of any police officer" who happens to stop that individual under this statute.

4. Although the initial detention is justified, the State fails to establish standards by which the officers may determine whether the suspect has complied with the subsequent identification requirement.

NOTES:

LAWSON is a black male with long hair who was in the habit of walking in predominately all-white, upper-middle-class residential areas in the early morning hours. Because he "looked out of place", the police would stop and talk to him. LAWSON would refuse to identify himself stating he had broken no laws. The police had no probable cause to arrest him for a crime and would instead rely on the "loitering" statute to make the arrest. There is nothing wrong with stopping someone and asking questions but the person stopped may or may not answer you. If you have a "Terry--Stop and Frisk" situation, you should be able to articulate your facts to the court. If you have no probable cause to arrest nor justification for a patdown, your communication skills become very important. Remember, you can ask for identification and for the person to give an account of himself---how you do this will have an effect on how the person responds.

Numerous state courts have declared statutes such as this unconstitutional under the vagueness doctrine.

This opinion seems to leave room for legislatures to devise constitutional "stop and identify" laws. However, they do not suggest what kind of identity papers a citizen might be required to carry. The only countries I am aware of that require identity papers at this time are the Communist-block countries. At least we, as Americans, still have the right to travel from state to state without regulated identity papers.