

REPEAL THE WALKING WHILE TRANS LAW

Background: Penal Law §240.37, Loitering for the Purpose of Prostitution

Under P.L. §240.37, individuals have been arrested for wearing “tight jeans and tight tank showing cleavage,” “tight pants showing curves of lower body,” or “tight fitting dress.” **This law allows police officers to arrest and detain women & gender non-conforming people at their discretion based on what they are wearing and their appearance.** This law targets women, particularly transgender Black and Latinx women, who gather in public in certain communities and subjects them to violence during arrest and processing. NYPD has been known to use this law to target women with no prior arrests and women who have been previously arrested for a prostitution-related offense. **This unjustly places a “scarlet letter” on women who have previously been arrested for prostitution and denies Black and Latinx women the autonomy to wear and gather in any space they choose.**

Data on Arrests for P.L. §240.37

- There has been a **120%** increase in arrests for loitering as of 2018
- In 2018, there were **152 arrests: 49% Black, 42% Hispanic, and 7% white.**
 - **80%** of people arrested were identified as female, though because of mis-gendering by the NYPD that number is likely higher.
- Last year, the Manhattan District Attorney, Cyrus Vance, chose not to prosecute loitering arrests, and as a result there are no arrests for P.L. §240.37 in Manhattan. This has not led to an uptick in other prostitution offenses.
 - **21%** of arrests are in the Bronx, **24%** in Kings County, **47%** in Queens, **4%** in Suffolk County, and the remaining **4%** is split between Oneida and Onondaga County.
- According to the Department of Correction “At a Glance Report,” there were **10 people incarcerated for loitering during the month of January 2019.**

Impact of Passing S2253 (Hoylman) /A654 (Paulin)

- S2553 / A654 is a very narrowly tailored bill that would **eliminate one way women are discriminatorily entangled in the criminal legal system.**
 - When repealed, police officers will **no longer be able to use a woman’s clothing as probable cause** to stop, search, and arrest her.
 - Repeal of 240.37 is important because **police often use the statute to harass and demean women and TGNC people** as well as coerce sexual favors from women in exchange for not being arrested, interactions that are not captured in arrest data.
- Already marginalized communities will no longer be arrested or given a criminal record for an **arbitrary and gendered penal law.**
 - This is **important for immigrant communities as any arrest can place a person in a database that is accessible to ICE.** When applying for asylum, legal permanent residency or any adjustment of status a person is required to report and explain all arrests, even when an arrest results in a dismissal.
- It will be one of many steps we take to **affirm transgender communities and protect the liberties of LGBTQ and TGNC people** to wear, walk, and gather in any public space they choose to.