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**The Council of the City of New York**

Committee Report of the Human Services Division

Jeffrey Baker*, Legislative Director*

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**Committee on Women and Gender Equity**

Hon. Helen K. Rosenthal, *Chair*

December 10, 2020

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| **Res. No. 923** | By Council Members Rivera, Cumbo, Torres, Dromm, Chin, Ayala, Rosenthal, Van Bramer, Constantinides, Kallos, Richards, Menchaca, Adams, Gibson, Lander, Reynoso, Levin, Barron, Moya, Cornegy, Louis, Grodenchik, Powers, Cohen, Levine, Ampry-Samuel, Koslowitz, Rose, Brannan and Public Advocate Williams |
| **Title:** | Resolution calling on the New York State Legislature to pass, and the Governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense |

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| **Proposed Res. No. 1444-A** | By Council Member Rivera, Rosenthal, Kallos and Gibson |
| **Title:** | Resolution calling on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively |

1. **Introduction**

On December 10, 2020, the Committee on Women and Gender Equity, chaired by Council Member Helen K. Rosenthal, will hold a vote on Resolution No. 923, which calls on the New York State Legislature to pass, and the Governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense, and Proposed Resolution No. 1444-A, which calls on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively. This legislation was originally heard at a hearing of this Committee on December 3, 2020, at which the Committee received testimony from local legal service providers, activists, advocacy groups, and experts in the fields of gender, gender equality and gender-based violence, as well as other interested stakeholders.

1. **Background**

*Section 240.37 of the Penal Law*

In New York state (“State”), Section 240.37 of the New York Penal Law[[1]](#footnote-1) is an anti-loitering statute, which advocates have come to colloquially refer to as the “walking while trans” ban.”[[2]](#footnote-2) Since 1976, New York Penal Law Section 240.37 has criminalized loitering in a public place by anyone the police determine is present for the purpose of prostitution.[[3]](#footnote-3) The law has faced opposition since its inception[[4]](#footnote-4) and, in recent years, advocates have called for the law to be repealed on the ground that it not only targets sex workers, but that the statute allows officers to arbitrarily arrest and detain New Yorkers for “simply walking around or standing on the street.”[[5]](#footnote-5) These advocates argue that the statute is outdated, leads to harassment, and criminalizes consenting adults who trade sex, collaborate with or support sex working peers, or patronize adult sex workers.[[6]](#footnote-6) According to one article, the law currently enables officers to decide “that a woman’s skirt is too short, or that she’s been lingering too long on one street corner, and to apprehend her based on suspicion that she’s ‘loitering for the purpose of prostitution;’” or in other words, the law can lead to harassment.[[7]](#footnote-7)

Additionally, the law is colloquially referred to as the “walking while trans” ban because, as advocates stress, transgender women, and particularly transgender women of color, are disproportionately targeted by the law.[[8]](#footnote-8) In 2018, there was a 120 percent increase in arrests for loitering,[[9]](#footnote-9) with 47 percent of all arrests pursuant to Section 240.37 across the State happening in Queens,[[10]](#footnote-10) and even as arrests for other prostitution-related charges declined in the same year.[[11]](#footnote-11) According to the State Division of Criminal Justice Services, in 2018, 91 percent of people arrested under the statute were Black and Latinx people and 80 percent identified as women.[[12]](#footnote-12) Data suggests this is an ongoing trend. In 2012 and 2015, five precincts in New York City, and all five “neighborhoods where the majority of residents are people of color,”[[13]](#footnote-13) accounted for nearly 70 percent of all citywide arrests pursuant to Section 240.37.[[14]](#footnote-14)

*S2253-A654 and Addressing ‘Walking While Trans’*

Assembly Bill 654 and Senate Bill 2253, sponsored by Assembly Member Amy Paulin and State Senator Brad Hoylman, would repeal section 240.37 of the Penal Law.[[15]](#footnote-15) Advocates argue the statue’s repeal would send a message that New York “values civil rights and dignity for those policed for being in the commercial sex industry and for those profiled as engaging in commercial sex.”[[16]](#footnote-16)

1. **Conclusion**

At today’s hearing, the Committee on Women and Gender Equity will consider Resolution No. 923 and Proposed Resolution No. 1444-A.

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Res. No. 923

Resolution calling on the New York State Legislature to pass, and the Governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense.

By Council Members Rivera, Cumbo, Torres, Dromm, Chin, Ayala, Rosenthal, Van Bramer, Constantinides, Kallos, Richards, Menchaca, Adams, Gibson, Lander, Reynoso, Levin, Barron, Moya, Cornegy, Louis, Grodenchik, Powers, Cohen, Levine, Ampry-Samuel, Koslowitz, Rose, Brannan and The Public Advocate (Mr. Williams)

                     Whereas, One-hundred and twenty-six people were arrested in 2018 in New York City for violating Penal Law 240.37, loitering for the purposes of engaging in prostitution, according to information provided by the New York Police Department; and

Whereas, Such arrests more than doubled from the previous year, in which only 47 people were arrested for this offense; and

                     Whereas, According to the Legal Aid Society of New York, Arrests under this law have disproportionately targeted black and Latina women;

                     Whereas, Police records have demonstrated that law enforcement officers use the manner of a person’s dress as an indicator of whether they are engaging in prostitution; and

Whereas, Criminalizing the way women act and dress should have no place in state law; and

Whereas, Police records have also demonstrated that possession of contraception is used as an indicator of whether a person is engaging in prostitution; and

                     Whereas, According to the Human Rights Watch, using condoms as an indicator of being engaged in prostitution poses a significant threat to public health by discouraging the use of tools that address HIV prevention and sexual reproductive health; and

Whereas, The law fails to effectively identify those who are engaged in the sex trade, and instead relies on stereotypes and archaic views of sexuality; and

                     Whereas, Involvement in the criminal justice system can have devastating effects, including loss of employment and deportation; and

                     Whereas, Under section 212 of the Immigration and Nationality Act, a person is ineligible for documented status if they have engaged in prostitution within ten years of the date of application; and

                     Whereas, Immigration and Customs Enforcement (ICE) has patrolled human trafficking intervention courts, with the goal of deporting individuals charged with prostitution offenses; and

                     Whereas, S2243/A-654, sponsored by Senator Hoylman and Assembly Member Paulin, would repeal Penal Law 240.37 ; now, therefore be it

                     Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the governor to sign, S2253-A654, which would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense.

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| Proposed Res. No. 1444-A    Resolution calling on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively.    By Council Members Rivera, Rosenthal, Kallos and Gibson    Whereas, Penal Law section 240.37, Loitering for the Purpose of Engaging in a Prostitution Offense, penalizes merely appearing to be engaged in such an offense, an inherently problematic and vague standard that invites discriminatory enforcement; and  Whereas, In fact, the enforcement of this law disproportionately targets Black and Latina women and transgender women of color; and                       Whereas, Eighty percent of people who were arrested under the law in 2018 were women, and of that, forty-nine percent were Black and forty-two percent were Latina, according to the New York State Division of Criminal Justice Services; and                       Whereas, In 2013 and 2014, the nonprofit organization Red Umbrella Project found that in a Brooklyn court, over ninety percent of defendants charged under the law were Black; and                       Whereas, Section 240.37 remains in the Penal Law even as Governor Cuomo has publicly supported  repealing this statute; and                       Whereas, The collateral consequences stemming from an arrest, violation or conviction for criminal offenses are severe; and                       Whereas, People who are arrested or convicted for Loitering for the Purposes of Engaging in Prostitution can lose their employment and housing; and                       Whereas, Undocumented individuals who are arrested  or convicted for Loitering for the Purposes of Engaging in Prostitution can be subject to deportation as immigration law disqualifies individuals from adjusting their immigration status if they have been arrested or convicted on a prostitution offense; and                       Whereas, These collateral consequences overwhelmingly burdens Black and Latina women and transgender women of color as they are disproportionately subjected to enforcement of this problematic statute; and  Whereas, Under Criminal Procedure Law section 160.55, New Yorkers are prohibited from sealing their violations for Loitering for the Purpose of Engaging in a Prostitution Offense; and  Whereas, This is one of only two violations in New York State law that can never seal under the statute; and  Whereas, This prohibition only exacerbates the burdens a violation for Loitering for the Purposes of Engaging in a Prostitution Offense carries; and  Whereas, To reduce some of the needless burdens imposed on New Yorkers with Penal Law 240.37 Offense violations, the New York State Legislature should amend Criminal Procedure Law 160.55 to permit New Yorkers to seal their violations for this offense; and, now therefore, be it                       Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, a bill to amend the Criminal Procedure Law  to allow violations for Loitering for the Purpose of Engaging in a Prostitution Offense to be sealed and have the law apply retroactively.  KMD  LS15942  9/25/2020    CGR  12/7/2020 |

1. N.Y. Penal Law § 240.37 (“Loitering for the purpose of engaging in a prostitution”) [↑](#footnote-ref-1)
2. *See* Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, The Cut (Jul. 22, 2020), *available at* https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html. [↑](#footnote-ref-2)
3. N.Y. Penal Law § 240.37; New York Civil Liberties Union staff, *Legislative Memo: Loitering Repeal* (last visited Nov. 27, 2020), *available at* https://www.nyclu.org/en/legislation/legislative-memo-loitering-repeal. [↑](#footnote-ref-3)
4. Ronald Smothers, *Prostitution Loitering Bill Passes Albany Legislature* (Jun. 11, 1976), *available at* https://www.nytimes.com/1976/06/11/archives/prostitution-loitering-bill-passes-albany-legislature; New York City Bar Association Committees on LGBTQ Rights, Civil Rights, Criminal Justice Operations, Immigration & Nationality Law and Sex & Law, *Repeal the “Walking While Tran”s Ban* (Feb. 3, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban. [↑](#footnote-ref-4)
5. Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, The Cut (Jul. 22, 2020), *available at* https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html; Decrim NYC, *Advocacy* (last visited Nov. 27, 2020), *available at* https://www.decrimny.org/advocacy. [↑](#footnote-ref-5)
6. New York City Bar Association Committees on LGBTQ Rights, Civil Rights, Criminal Justice Operations, Immigration & Nationality Law and Sex & Law, *Repeal the “Walking While Tran”s Ban* (Feb. 3, 2020), available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban; Decrim NYC, *Advocacy* (last visited Nov. 27, 2020), *available at* https://www.decrimny.org/advocacy; *See* Rciardo Cortez, *Arresting Gaze: How One New York Law Turns Women into Suspects* (Aug. 3, 2017), *available at* https://www.vanityfair.com/culture/2017/08/nypd-prostitution-laws. [↑](#footnote-ref-6)
7. Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, The Cut (Jul. 22, 2020), *available at* https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html; *See* Vaidya Gullapalli, *A Chance to Repeal a “Walking While Trans” Ban* (Feb 05, 2020), *available at* https://theappeal.org/a-chance-to-repeal-a-walking-while-trans-ban/. [↑](#footnote-ref-7)
8. Amanda Arnold, *A Guide to the ‘Walking While Trans’ Ban*, The Cut (Jul. 22, 2020), *available at* https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html; *See* New York City Bar Association Committees on LGBTQ Rights, Civil Rights, Criminal Justice Operations, Immigration & Nationality Law and Sex & Law, *Repeal the “Walking While Tran”s Ban* (Feb. 3, 2020*), available at* https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban; Joey L. Mogul, et al; Queer (In)Justice: The Criminalization of LGBT People in the United States, 1, 61 (2011); Human Rights Campaign and Trans People of Color Coalition, *Addressing Anti-Transgender*

   *Violence: Exploring Realities, Challenges and Solutions for Policymakers and Community Advocates*, HUMAN

   RIGHTS CAMPAIGN 28 (2015), *available at* https://www.hrc.org/resources/addressing-anti-transgender-violence-exploring-realities-challenges-and-sol; *See also, e.g.*, Amnesty International, *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the U.S.*, 1, 128 (Sep. 21, 2005), *available at* https://www.amnesty.org/en/documents/AMR51/122/2005/en/; See also Cara Kelly, *Two Black transgender women were killed last week, thousands showed up to protest* (Jun. 15, 2020), *available at* https://www.usatoday.com/story/news/nation/2020/06/15/deaths-black-trans-women-riah-milton-dominique-fells-spur-protests/3191769001/ (discussing more recent advocacy around the issue). [↑](#footnote-ref-8)
9. Emma Whitford, *Surge in Prostitution Related Loitering Charges Affects Undocumented Immigrants* (Dec. 19, 2018), *available at* https://documentedny.com/2018/12/19/surge-in-loitering-charges-may-affect-undocumented-immigrants/. [↑](#footnote-ref-9)
10. Jason Cohen, *Advocates and elected officials speak about repealing Walking While Trans* (Jul. 11, 2020), *available at* https://www.bxtimes.com/advocates-and-electeds-speak-about-repealing-walking-while-trans/. [↑](#footnote-ref-10)
11. *See, e.g*., Emma Whitford, *One Year on From Yang Song’s Death, Asian Sex Worker Advocates Call for Reduced Policing* (Nov. 26, 2018), *available at* https://documentedny.com/2018/11/26/one-year-on-from-yang-songs-death-asian-sex-worker-advocates-call-for-reduced-policing/. [↑](#footnote-ref-11)
12. Jason Cohen, *Advocates and elected officials speak about repealing Walking While Trans* (Jul. 11, 2020), *available at* https://www.bxtimes.com/advocates-and-electeds-speak-about-repealing-walking-while-trans/. [↑](#footnote-ref-12)
13. These precincts were in Bushwick, Brooklyn; Belmont/Fordham Heights, Bronx; East New York, Brooklyn; Hunts Point, Bronx and Brownsville, Brooklyn. *See* The Legal Aid Society of New York City and Cleary Gottlieb Steen & Hamilton LLP, *The Legal Aid Society and Cleary Gottlieb Challenge the Constitutionality of New York’s Loitering for Prostitution Law: Demand an End to NYPD’s Arbitrary and Discriminatory Enforcement of the Law Against Women of Color* (Sep. 30, 2016), a*vailable at* https://orgs.law.columbia.edu/qtpoc/sites/default/files/content/LAS-Cleary-Gottlieb-Challenge-the-Constitutionality-of-New-Yorks-Loitering-for-Prostitution-Law-Press-Release-9.30.16.pdf. [↑](#footnote-ref-13)
14. The Legal Aid Society of New York City and Cleary Gottlieb Steen & Hamilton LLP, *The Legal Aid Society and Cleary Gottlieb Challenge the Constitutionality of New York’s Loitering for Prostitution Law: Demand an End to NYPD’s Arbitrary and Discriminatory Enforcement of the Law Against Women of Color* (Sep. 30, 2016), a*vailable at* https://orgs.law.columbia.edu/qtpoc/sites/default/files/content/LAS-Cleary-Gottlieb-Challenge-the-Constitutionality-of-New-Yorks-Loitering-for-Prostitution-Law-Press-Release-9.30.16.pdf. [↑](#footnote-ref-14)
15. Senate Bill S2253, *available at* https://www.nysenate.gov/legislation/bills/2019/s2253; Assembly Bill A654, *available at* https://www.nysenate.gov/legislation/bills/2019/a654. [↑](#footnote-ref-15)
16. Decrim NYC, *Advocacy* (last visited Nov. 27, 2020), *available at* https://www.decrimny.org/advocacy. [↑](#footnote-ref-16)