



TESTIMONY OF:

Jillian Modzeleski

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Women and Gender Equity

Hearing on Res 0923-2019 and Res 1444-2020

December 3, 2020

My name is Jillian Modzeleski and I am a Senior Trial Attorney in the Women’s Defense Practice at Brooklyn Defender Services. BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 clients in Brooklyn every year. I would like to thank the New York City Council Committee on Women and Gender Equity, and in particular Chair Helen Rosenthal, for the opportunity to testify today about Res 0923-2019 and Res 1444-2020 regarding loitering for the purposes of prostitution.

BDS’ Women’s Defense Practice provides trauma-responsive defense to cisgender and transgender women who are charged with crimes in Brooklyn. This specialized unit serves women who have a history of violence, exploitation and abuse that has directly or indirectly led to their involvement in the criminal legal system. We also practice in the Human Trafficking Intervention Court, where we represent sex workers and victims of trafficking who have come in contact with the criminal legal system.

Background

In 1976, New York State passed legislation to criminalize loitering for the purpose of prostitution. New York Penal Law Statute 240.37 is commonly referred to as the “walking while trans” ban or “stop-and-frisk for women” due to the biases in enforcement. This statute allows police to interpret innocuous, lawful behavior—including “repeatedly” waving at a person in a vehicle or “attempt[ing] to engage passers-by in conversation”—as cause to stop, frisk, and arrest people. Since its enactment, the statute has disproportionately been used to profile and arrest Black and Latinx transgender and cisgender women and LGBTQ people for simply existing.

NYPL 240.37 is used as a pretext to stop and frisk Black and Latinx women, simply for standing on the sidewalk, hailing a cab, or wearing tight or revealing clothing. I represented one woman whose criminal complaint included the accusation that “she was wearing tight pants that showed the curves of her lower body.” To make an arrest, the New York Police Department (NYPD) are not required to show that they heard any discussion about exchanging sex for money, nor is there a requirement that they witness any exchange of money. Officers can simply make an arrest based on observing benign behavior. In practice, we have seen clients arrested for wearing form fitting clothing, being in an area known to be frequented by sex workers, or standing in a group with other women.

This loitering law only serves to give law enforcement the discretion to profile, arrest, and charge those whom officers deem likely to commit prostitution in the future—or those whom they want to harass—with a lower standard of proof. Enforcement of the law, if not the law itself, is patently sexist and racist. In 2018 alone, 91% of those arrested were Black and/or Latinx and 80% were identified as female by the NYPD. All of the people I have represented in cases with loitering for the purposes of prostitution have identified as women and all have been Black, Asian or Latinx.

Resolutions 0923-2019

Brooklyn Defender Services supports Resolution 0923-2019 which calls on the New York State Legislature to pass and the Governor to sign A654 (Paulin) / S2253 (Hoylman), which would repeal New York Penal Law Section 240.37, loitering for the purpose of prostitution.

Repealing NYPL 240.37 is a racial justice issue and a gender justice issue – but it is also a New York City issue. In 2019, over 75 percent of arrests for loitering for the purpose of prostitution came from Queens and Brooklyn alone. The Council must pass this resolution and show Senate and Assembly leadership that the City is committed to ending this gender-based stop-and-frisk.

Resolution 1444-2020

BDS supports Resolution 1444-2020, 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 convictions for

Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively.

Current State law allows all Violations and Traffic Infractions to be sealed, except for Driving While Ability Impaired (VTL § 1192(1) and Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37). A criminal record imposes life-long, detrimental effects — limiting access to employment and educational opportunities, financial resources, and housing. A criminal record can also result in severe immigration consequences, including the threat of deportation and the inability to adjust immigration status or become a citizen. Passing a law to amend the sealing provision will allow people who have been criminalized under NYPL 240.37 to over the last 44 years to move forward without the burden of a violation.

Conclusion

Thank you for your time and consideration of my comments. If you have any questions, please feel free to contact Kathleen McKenna, Senior Policy Social Worker at 718-254-0700 ext. 210 or kmckenna@bds.org.



New York City Anti-Violence Project

116 Nassau Street, 3rd Floor
New York, New York 10038
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Good morning to Chair Rosenthal, Councilmember Rivera, and the entire Committee on Women and Gender Equity. My name is Audacia Ray, and I'm the Director of Community Organizing and Public Advocacy at the New York City Anti-Violence Project (AVP). I'm a queer woman, a survivor of violence, and a former sex worker; and as a cis white woman I aspire to be an ally to Black and brown trans women and femmes. I'm here to encourage the City Council to pass Resolutions 923 and 1444, which underscore the importance of the state passing S2553 / A654, a repeal of state criminal code 240.37, and to seal past convictions on this charge.

For forty years, the Anti-Violence Project has provided free legal and counseling services to LGBTQ and HIV-affected New Yorkers who have experienced sexual, hate, or intimate partner violence. We work to support individual survivors in moving toward healing while we also do organizing and policy work to shift the systemic injustices that lead to violence, including violence perpetrated by the state.

AVP supports the decriminalization of sex work and the many policy steps we need to take to get there. LGBTQ people trade sex due to unstable housing and employment situations that are largely created by discrimination and violence, and this disproportionately impacts Black and brown trans women and femmes. Violence is not just an interpersonal experience of harm - violence also includes poverty, policing, and other conditions created by the state.

In a 2018 AVP released a report entitled "[Individual Struggles, Widespread Injustice: Trans and Gender Non-Conforming Peoples' Experiences of Systemic Employment Discrimination in New York City](#)" - and we found that 22% of trans and gender non-conforming (TGNC) respondents are unemployed, which was 5x higher than the NYC unemployment rate at the time. Many TGNC people engage in sex work to survive. [A report](#) by the National Center for Transgender Equality and the Red Umbrella Project found that 40% of Black trans people self-report having engaged in the sex trades. An Urban Institute report found that LGBTQ youth in New York [trade sex at 7-8x the rate](#) of their cisgender, heterosexual peers.

Although arrests for criminal code 240.37 occur throughout New York State - the majority of these arrests happen in New York City. This misdemeanor charge has been on the books since the 1970s, and it is a law which enables discriminatory policing of Black and brown trans women, non-binary femmes, and cisgender women. Police profile, harass, stop, detain, and arrest people on this charge based on gendered assessments of clothing, body shape, body language, neighborhood, and gender presentation. Police profiling of Black and brown women and TGNC people is racist and gender-based violence and it contributes to the many ways that women and TGNC people continue to feel unsafe on our streets and in our communities.

The Manhattan, Brooklyn, and Queens District Attorneys have already stopped prosecuting these charges, and in Manhattan this has led to a decrease in arrests for the charge. These DA



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experiments have not increased trafficking or exploitation in the sex trades - instead, they are a step toward creating greater safety for women and TGNC people in our city. Throughout the city, District Attorneys and Police Precincts could and should make the choice, TODAY, to stop prosecuting and arresting on this charge. However, to ensure that 240.37 cannot be used to police trans women and femmes, Albany must pass this bill, and the support of the City Council is essential.

Starting with Fiscal Year 2020, the City Council began funding the early stages of work on a city resource center for people in the sex trades. AVP has received funds to do outreach to LGBTQ people in the sex trades as part of this initiative. One of the concerns we have been hearing from community members is fear of profiling, harassment, and arrest as the result of being targeted when visiting service providers involved in the resource center initiative. Repealing 240.37 is a step in the right direction, though more work needs to be done so that people in the sex trades feel safe accessing services and to ensure they will not be criminalized for doing so.

In AVP's work supporting survivors of violence, and particularly this year during the uprisings over the summer, we have heard from many LGBTQ people, especially TGNC people of color, who have experienced violence from police during protests as well as on the streets and subways. Repealing 240.37 is a step in the right direction - TGNC people must not be criminalized for their survival and must not be afraid of any one, especially police, as they move through their daily lives. We must curtail the power of the police to profile and harass marginalized communities, starting with defunding the Vice Squad.

Because 240.37 is a state level criminal code, but arrests are concentrated in New York City, there is a lot of finger pointing about whether it is the City or the State's responsibility to resolve and end this discriminatory policing practice. Today I want to encourage the Committee on Women and Gender Equity in particular and the New York City Council at large to not just pass these resolutions, but continue to look at the proactive ways New York City can lead on this issue, and make life safer for Black and brown TGNC people and women.

Audacia Ray
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Reports cited:

- Ray, Audacia, Lolan Sevilla, and Teal Inzunza. "Individual Struggles, Widespread Injustice: Trans and Gender Non-Conforming Peoples' Experiences of Systemic Employment Discrimination in New York City" New York City Anti-Violence Project: December 2018.

https://avp.org/wp-content/uploads/2018/12/AVP_EmploymentDiscrimination.pdf



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- Fitzgerald, Erin, Sarah Elspeth Patterson, Darby Hickey, Cherno Biko, and Harper Jean Tobin. “Meaningful Work: Transgender Experiences in the Sex Trade.” Best Practices Policy Project, Red Umbrella Project, and National Center for Transgender Equality: December 2015.
https://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf
- Dank, Meredith, et al. “Surviving the Streets of New York Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex.” Urban Institute and Streetwise and Safe: February 2015.
<https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>

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December 1, 2020

Dear Esteemed City Council members,

Thank you for taking the time to consider supporting the repeal of the discriminatory Loitering for the Purpose of Engaging in a Prostitution Offense law. I am writing to express my strong support for the repeal of PL 240.37 (SB2253/ AB654) – City Council Resolution 0923-2019 would show the state legislature how important this issue is to so many New Yorkers. I am also in strong support of Resolution 1444-2020 addressing sealing of such convictions so that people can move forward with their lives without the collateral consequences of this arrest.

As a longtime attorney and activist for sex workers and survivors of human trafficking in NYC, I can say with certainty that loitering laws are used to target and criminalize people of color, the LGBTQIA community (particularly transwomen), and those most vulnerable to exploitation. Between 2009-2019, according to Department of Justice Records, 88% percent of NYC arrests for PL 240.37 were of BIPOC individuals, and 80% women (though this number likely under-reports the proportion of women arrested due to gender misidentification by law enforcement). In 2018, there was a 120% increase in arrests for loitering in NYS. Forty-seven percent of these arrests took place in Queens. This data demonstrates that Loitering for the Purpose of Engaging in a Prostitution Offense is inconsistently implemented in New York City and state. When used, it is invoked in a discriminatory and harmful way.

Loitering laws have historically been utilized to police people of color and neighborhoods where “broken windows” policing and other problematic tactics are used in the name of public safety. It is critical to note that specific to Loitering for the Purpose of Prostitution laws, people (mostly women and transwomen) who are trafficked or exploited are more likely to be working in public places. The vast majority of people in the sex trade work indoors when able, particularly in the internet age. Sex work has also changed dramatically since COVID-19. Individuals are increasingly pivoting to online work, making those still working outside more likely to be experiencing exploitation. Street-based sex workers are subject to increased danger, visibility to law enforcement, and crime victimization. Victims of trafficking are often forced to work outdoors to meet quotas for their traffickers. Though this law nominally seeks to target people voluntarily engaging in prostitution, it is racially biased, and likely those arrested are in exploitative situations.

Further, people with PL 240.37 convictions on their record are marked for life – this is one of the only violations in the state that is never sealed; upon second conviction, it becomes a misdemeanor. Thus, Res. 1444-2020 is critical in acknowledging the immense harm that criminal records pose to people who are already marginalized when trying to gain employment, housing, immigration, and other critical rights.

I am thankful that the New York City Council recognizes the problematic nature of PL240.37 and is considering supporting its repeal. Please do not hesitate to contact me with further questions.

Best,



Melissa Sontag Broudo, JD, MPH [Brooklyn, NY]

Legal Director, Decriminalize Sex Work

December 1, 2020

Dear New York City Council,

It is far past time to repeal the #WalkingWhileTrans bill. Our transgender neighbors, especially women of color, face extreme and unacceptable levels of harassment and violence. 240.37 of the New York Penal Law encourages the police to target trans women, making the streets even more dangerous for them. Repealing this section is the first of many steps we must take towards achieving a city that is safe and welcoming for all of us. Please pass Resolution 0923-2019. Thank you.

Sincerely,
Dr. Marika Plater
461 Classon Avenue, #1
Brooklyn, NY 11238

**Testimony of Planned Parenthood of Greater New York Before the
New York City Council Committee on Women and Gender Equity on the Rights of Trans
and Gender Non-conforming New Yorkers and Reforms to the City’s Criminal Justice
System**

December 3rd, 2020

Good Morning. My name is Maryam Mohammed-Miller and I am the Government Relations Manager at Planned Parenthood of Greater New York (PPGNY). Thank you to the Committee Chair, Council Member Helen Rosenthal for holding this important hearing to explore how we can strengthen the rights of transgender and gender non-conforming (TGNC) individuals in New York City.

PPGNY has proudly provided the full range of sexual and reproductive health care services and quality education programs to all New Yorkers for over 100 years. Last year, our New York City health centers conducted over 104,000 patient visits, providing care regardless of patients’ immigration status, identity or ability to pay. Our education programs also engaged over 19,000 people—including 1,800 youth. Our Project Street Beat program, through their offices and mobile health center, conducted over 20,000 encounters throughout the city. In 2019, we enrolled over 6,300 people in health insurance programs. In response to the COVID-19 pandemic, we have continued to provide vital healthcare through in person visits and telehealth appointments, as well as educational programming. We transformed our care delivery model to ensure individuals could safely access our services while adhering to government guidelines to decrease the spread of the virus.

PPGNY firmly believes that the right to reproductive and sexual health care should be afforded to all New Yorkers. We proudly offer a wide-range of services to the LGBTQ, trans and gender-nonconforming (TGNC) community including gender affirming hormone therapy, STI testing and treatment, PrEP and PEP, HIV testing and counseling, and GYN exams. This year, we expanded our gender affirming hormone therapy to most of our health centers. Our services are culturally competent, inclusive, and provided to our patients regardless of their identity or economic status.

Despite the growing visibility and understanding of the TGNC community in New York City, there are still major disparities in transgender people's access to housing, employment, and health care.¹ Though there are numerous local laws to protect individuals from gender discrimination, including New York City's Human Rights laws, TGNC individuals still face high rates of discrimination. Housing insecurity disproportionately impacts TGNC individuals, and with compounded identities of race and economic status, securing quality and affordable housing is extremely difficult. They experience high rates of homelessness and when they enter the shelter system, they face deplorable conditions and violence. High rates of distress due to systematic harassment and discrimination has been shown to affect their physical and mental health. Additionally, TGNC individuals are often targeted by police harassment for simply existing.

PPGNY firmly supports Resolution 0923 sponsored by Council Member Carlina Rivera. The resolution calls on the New York State legislature to pass and the Governor to sign S.2253 (Hoylman)/A.654 (Paulin), a bill that would repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense.² In New York State, we must end the criminal profiling and harassment of individuals based on their clothing, appearance, and gender identity. This profiling disproportionately impacts women of color and trans and gender nonconforming individuals and leads to individuals being unnecessarily entered into the criminal justice system.

While the state has made much progress in safeguarding the rights of TGNC New Yorkers, as long as the statute exists in the state's law, the TGNC community will continue to face harassment and profiling. According to the Human Rights Campaign (HRC), in 2018 there was a 120% increase in arrests under this statute, with Black and Brown people being most impacted.³ Additionally, 60% of transgender New Yorkers reported experiencing police harassment, including sexual assault, which discouraged them from obtaining assistance from law enforcement.⁴ Giving law enforcement discretion to unfairly determine if an individual is engaging in sex work is harmful. The statute allows police to interpret actions like repeatedly waving at a person in a vehicle, wearing certain clothing, or talking to people in the streets as an attempt to loiter for the purpose of prostitution.⁵

For TGNC individuals who hold several marginalized identities, the impact of this statute is alarming. For those who have a complex immigration status, an arrest and conviction can lead to losing their immigration status and deportation.⁶ And while in detention facilities, TGNC immigrants face high rights of harassment and violence and are in facilities that do not meet their unique needs. Black transgender individuals, specifically Black trans women, are highly

¹ Sex-Segregated Facilities. (n.d.). Retrieved November 26, 2019, from http://tldef.org/work_show.php?id=6.

² NY State Assembly Bill A654. (2020, December 01). Retrieved December 02, 2020, from <https://www.nysenate.gov/legislation/bills/2019/a654>

³ Repeal the Walking While Trans Ban. (n.d.). Retrieved December 02, 2020, from <https://www.hrc.org/news/urge-the-new-york-state-assembly-to-repeal-the-walking-while-trans-ban-and>

⁴ Ibid.

⁵ Advocacy. (n.d.). Retrieved December 02, 2020, from <https://www.decrimny.org/advocacy>

⁶ Gullapalli, V. (2020, February 11). A Chance to Repeal a 'Walking While Trans' Ban. Retrieved December 02, 2020, from <https://maketheroadny.org/a-chance-to-repeal-a-walking-while-trans-ban/>

susceptible to police violence and experience higher rates of incarceration when compared to other racial groups.⁷ And while incarcerated, Black trans women experience higher rates of violence from other inmates and prison staff,⁸ substance use, contracting STIs like HIV, and other negative health outcomes.⁹

We urge the council to pass Resolution 0923 and support the call to push the state legislature to pass S.2253 (Hoylman)/A.654 (Paulin). It is a pivotal time in our history as the nation continues to reckon with the growing call for reforms to the criminal justice system that disproportionately impacts Black and Brown people. Now, more than ever, New York must stand up and protect TGNC New Yorkers from criminal profiling and unnecessary harassment. The legislation before us today is a step in the right direction. The well documented history of police violence experienced by TGNC New Yorkers continues to highlight the need to reform our criminal justice system. We can not sit idly by and wait for the next crisis to arise before we act. We thank the Council for introducing this important legislation and look forward to working with you to ensure a fairer and just city for all.

Thank you.

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Planned Parenthood of Greater New York (PPGNY) is a leading provider, educator, and advocate of sexual and reproductive health care in New York State. PPGNY offers a wide range of services across 65% of NYS - including gynecological care; birth control; cancer screenings; pregnancy testing; STI testing and treatment; HIV prevention, testing, and counseling; transgender hormone therapy; and vasectomy. PPGNY is also proud to provide abortion services to anyone who needs compassionate, non-judgmental care. PPGNY is a trusted source of medically-accurate, evidence-based information that allows people to make informed decisions about their health and future. As a voice for reproductive freedom, PPGNY supports legislation and policies that ensure all New Yorkers have access to the full range of reproductive health services and education.

⁷ Reisner, S., Bailey, Z., & Sevelius, J. (2014). Racial/ethnic disparities in history of incarceration, experiences of victimization, and associated health indicators among transgender women in the U.S. Retrieved December 02, 2020, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5441521/>

⁸ Advocacy. (n.d.). Retrieved December 02, 2020, from <https://www.decrimny.org/advocacy>

⁹ Reisner, S., Bailey, Z., & Sevelius, J. (2014). Racial/ethnic disparities in history of incarceration, experiences of victimization, and associated health indicators among transgender women in the U.S. Retrieved December 02, 2020, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5441521/>



December 3, 2020

The New York City Council
Committee Women & Gender Equity

Re: **Res. No. 923-2019** 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.

Dear Councilmembers,

Lambda Legal welcomes the opportunity to submit written testimony in support of Resolution 923-2019 sponsored by Councilmember Rivera 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 (P.L. § 240.37).

Lambda Legal, the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbian, gay, bisexual, transgender and queer/questioning (LGBTQ) people and everyone living with HIV, supports the repeal of P.L. § 240.37. This bill would remove an overbroad and vague law that with no legitimate purpose and which is used consistently, abusively to target marginalized women – specifically and disproportionately transgender women of color. Since its passage in 1976, critical concerns about P.L. § 240.37 have included persistent questions about its constitutionality and its potential for abuse.

S2253-A654 is tailored to eliminate this problematic law, which indeed has been used by police officers to stop, search, and arrest LGBTQ and gender nonconforming people based on their clothing or appearance. The law’s vagueness has led to arbitrary and discriminatory enforcement against women from marginalized groups. For example, the frequent profiling, arrest, and charging of transgender women under P.L. § 240.37 and similar laws has been termed “walking while trans.” And even when charges are ultimately dropped, the consequences of being arrested under P.L. § 240.37 are severe – including the threat of deportation for immigrants.

For these reasons, Lambda Legal supports Resolution 923-2019 and will continue to advocate for the repeal of P.L. § 240.37.

Sincerely,

Richard Saenz
Senior Attorney and Criminal Justice and Police Misconduct Strategist
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Hi, I live in District 7 and I wanted to voice my support for ending the Loitering for the Purpose of Prostitution law. It's outdated and ineffectual and harmful, and I don't like the effect it has on my neighborhood and community.

I am a historian, and I understand how women's dress has constantly been policed by society, and by the actual police. I recently wrote about the race riot of 1901 in the New York Journal of History, where a black woman was assumed to be a prostitute, and a man who stepped in to protect her was beaten by police, causing a days-long race riot and thousands in property damage. Giving police discretion to use how someone is dressed as a way to lead to their arrest is not only dangerous, it's ineffectual. This is New York! People dress all kinds of ways for all kinds of reasons, and policing that gets us nowhere, and invites escalation that places us all in danger and invites more violent encounters on display in the street.

I'm also a woman, and I don't appreciate what this law implies about women's bodies as being not ours to safely adorn however we decide. If the city gladly accepts the millions of dollars and thousands of jobs that fashion week and the garment industry bring to the city, and highlight our designers for the expression and art they color our lives with, surely we cannot be using fashion as a means of punitive control at the same time.

Now that we're in masks, I love walking through my neighborhood and recognizing people through the clothes they wear. Whether it's scrubs, a suit, a full fur coat, ballet practice clothes, or Santeria initiate clothes, in a time where my neighbors and I can't come close physically, we check in with one another through taking in each other's 'fits.

Please repeal the Loitering for the Purpose of Prostitution law. It's best for all of us and shows the best in all of us, and we need to be caring for each other now more than ever.

**The Bronx
Defenders**

**Redefining
public
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**New York City Council
Committee on Women and Gender Equity
Hearing on Loitering for the Purpose of Prostitution Offense (S2253-A654)
December 3, 2020**

**Written Testimony of The Bronx Defenders
By Whitney Braunstein, Equal Justice Works Fellow of LGBTQ Defense Project and
Immigration Practice**

My name is Whitney Braunstein and I am an Equal Justice Works fellow sponsored by Akin Gump Strauss Hauer & Feld LLP as part of The Bronx Defenders (“BxD”) Immigration Practice and LGBTQ Defense Project.¹ Thank you to Councilmember Rivera and the Women and Gender Equity Committee for the opportunity to present testimony on the immigration consequences of New York Penal Law § 240.37.

¹ The Bronx Defenders is a public defender non-profit that is transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

Our Immigration Practice pioneered the model of integrated criminal defense and immigration representation over fifteen years ago. BxD immigration attorneys work closely with clients and their advocates throughout the pendency of their cases in both criminal and family court to avoid or mitigate negative immigration consequences. Additionally, immigration attorneys represent clients in deportation proceedings in both detained and non-detained settings, provide affirmative immigration services, and pursue community-based systemic reform litigation and advocacy aimed at reforming federal immigration laws. Since November 2013, our immigration attorneys have also served as assigned counsel at the Varick Street Immigration Court under the New York Immigrant Family Unity Project (NYIFUP), the first-ever universal representation project in immigration court. For both detained and non-detained work we represent our clients in their hearings before the Executive Office for Immigration Review (EOIR) and appeals before the Board of Immigration Appeals (BIA).

I. Introduction

Trans women, and in particular trans women of color, are regularly criminalized for simply existing in a world that feels threatened by their presence. This criminalization leads to myriad consequences, from arrest, prosecution, and incarceration to enmeshed penalties stemming from criminal convictions, such as reduced access to employment opportunities, fewer housing options, and many others. One long-term, and often life-threatening, impact of criminalization is the threat of deportation and other immigration consequences for a conviction under Penal Law § 240.37 (hereinafter “§ 240.37”). Section 240.37 is a unsealable violation for Loitering for the Purposes of Prostitution, a charge which has historically been abused by law enforcement to target, profile, harass, and arrest transgender people. Because police officers routinely arrest transgender women for simply existing in public spaces, the charge is regularly referred to as “Walking While Trans.” As with many criminal convictions, a conviction under § 240.37 may trigger long-lasting and varied immigration consequences. These consequences include risk of deportation as well as ineligibility for certain immigration relief and benefits, or complications in accessing those forms of relief or benefits.

As public defenders, we see first-hand how the threat of deportation devastates the lives of non-citizen trans women of color. The LGBTQ Defense Project at BxD is a team of advocates who represent lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in legal matters. The majority of our clients are transgender and gender non-conforming (TGNC) people. Examples of our legal and social services include immigration defense, criminal defense, prisoners rights representation, family defense, and referrals to culturally competent services across the city. The creation of a specialized practice at a public defender office that supports LGBTQ people was driven by the disproportionate criminalization of LGBTQ people both nationally and locally in New York City.² “Walking While Trans” arrests are among the most common ways NYPD officers harass our trans women clients. Because the NYPD continues to profile trans women as sex workers, transgender and gender non-conforming people continue to be targeted for arrest, prosecution, and detention for simply existing in public. Section 240.37 must be repealed.

² Description of LGBTQ Defense Project on The Bronx Defenders’ website: <https://www.bronxdefenders.org/programs/lgbtq-defense-project/>.

II. Convictions under § 240.37 May Trigger Inadmissibility, Deportation, and Other Immigration Consequences

One of the many reasons law enforcement's use of § 240.37 to target the transgender community is extremely harmful is because a conviction for § 240.37, or "loitering for the purpose of prostitution," may be found to be a crime involving moral turpitude ("CIMT") for federal immigration purposes.³ A CIMT conviction may render someone inadmissible—precluding someone who is either attempting to enter the United States or has entered the United States without being inspected by a Customs and Border Patrol officer from gaining lawful immigration status—or deportable, putting them at risk of deportation.⁴

A conviction under § 240.37 may also present issues under a separate ground of inadmissibility regarding an individual who has engaged in prostitution under Immigration and Nationality Act ("INA") § 212 (a)(2)(D). This subsection does not require a conviction for an immigration finding that an individual has engaged in prostitution. Consequently, a conviction for loitering for the purpose of prostitution could be considered by an immigration judge to be a factor towards a finding that an individual has in fact engaged in prostitution, also putting an individual at risk of deportation due to the inability to obtain lawful immigration status. This means that even if someone has never been convicted of the crime of prostitution under P.L. § 230.00, their conviction for the violation of § 240.37 can be used as a factor in determining whether they have engaged in prostitution, making them inadmissible under this section of the INA.

In addition to rendering someone removable—without immigration relief available and at risk of deportation at any moment—a finding of inadmissibility may complicate or eliminate eligibility for a variety of forms of immigration relief or pathways to lawful immigration status. Among these forms of relief are some visas commonly accessed by trans people, such as the T visa for victims of trafficking or the U visa for victims of serious crimes. While, in some cases,

³ "The AAO finds that disorderly conduct, loitering for the purpose of engaging in prostitution, is an inherently base act and that the applicant's conviction is a conviction involving moral turpitude (CIMT)" (emphasis original). United States Citizenship and Immigration Service, Administrative Appeals Office. Denial of benefits under the LIFE Act, p. 5-6. May 9, 2011. https://www.uscis.gov/sites/default/files/err/L2%20-%20Legalization%20Application%20for%20Adjustment%20to%20Permanent%20Resident%20Status/Decisions_Issued_in_2011/May192011_01L2245.pdf.

⁴ Immigration and Nationality Act ("INA") § 212(a)(2)(A)(i)(I).

there may exist pathways to immigration status despite a conviction that would otherwise preclude them from eligibility, such relief is discretionary and depends on factors the trans community has been historically disenfranchised from accessing, such as steady employment and housing, strong family ties in the United States, and lack of or minimal criminal legal system contact.⁵ Consequently, trans immigrants are both more likely to be convicted under P.L. § 240.37 and face the resulting immigration consequences and less likely to be able to avoid immigration consequences than their cisgender counterparts.

Even for individuals who are not found removable and who already have lawful immigration status as permanent residents, a conviction under P.L. § 240.37 can present permanent consequences. An individual seeking to naturalize must demonstrate good moral character, to which inadmissibility due to prostitution is a bar.⁶ Consequently, even those who are able to avoid the most devastating immigration consequences to a conviction under this statute may be unable to become United States citizens.

III. Conclusion

Section 240.37's criminal consequences alone are staggering in the disparate harm they inflict on trans women of color for simply moving through the world as their authentic selves. The risk of deportation and ineligibility for immigration benefits magnify these harms for non-citizens, putting our non-citizen trans women of color clients in constant jeopardy of permanent exclusion. BxD appreciates the Committee's commitment to ensuring equal access to justice for trans immigrant New Yorkers and would be happy to assist the Committee's efforts to repeal "Walking While Trans."

⁵ Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

⁶ INA § 101(f).



Equality New York's Co-Chair Tanya Asapansa Walker
testifies on Res. 0923 & Res. 1444
in front of New York City Council, Committee on Women & Gender Equity

Thursday, December 3, 2020

Supporting Resolution 923 & 1444: Repeal of the Walking While Trans Bill

Good afternoon Chair Rosenthal and members of the Committee on Women & Gender Equity. My name is Tanya Asapansa Walker and I am both a Co-founder of the New York Transgender Advocacy Group and currently a Co-chair of Equality New York (EQNY), the largest state-wide advocacy organization working to advance equality and justice for LGBTQI New Yorkers.

Equality New York is an advocacy organization that unites and amplifies the social and political voices of the LGBTQI communities throughout New York State. We work to advance equality and justice for all LGBTQI New Yorkers and their families. EQNY uses an intersectional lens to ensure equitable outcomes for our community.

I would like to thank you for holding this important hearing and am here to let you know that we strongly support Res. 0923 (pertaining to repealing the walking while trans bill) & Res. 1444 (pertaining to sealing convictions for loitering for the purpose of engaging in prostitution).

In 2000, I received a phone call from my sister who lived in the Bronx at 2:30 in the morning. She stated she lost her keys and she needed the spare set I held for her at my house. I said okay give me an hour and I will be there. It was early in the morning so I decided to walk to the Third Avenue Bridge. After I arrived at the bridge and started walking on it, 3 police cars pulled over and shouted at me, and other Transgender women, "Don't move."

The Police requested to see our I.D. and began to write tickets after they checked us for warrants. I told them I had an emergency then the officer began writing a ticket to appear in court. I was detained for an hour and half all because I had a family emergency and am Transgender.

These resolutions will allow others to deal with family emergencies. For example, another innocent person will not have to worry about getting a ticket or being arrested, just for taking a spare set of keys to a sibling in desperate need. Being Transgender is not a crime. I ask that you validate that by passing resolution Res. 0923 & Res. 1444. The Transgender, Gender Non-Conforming, and Non-Binary community here in New York is counting on you.

To whom it may concern,

Please repeal this harmful law, it does so much harm to the trans community. Trans women of color are especially vulnerable and heavily targeted by the corrupt and violent NYPD and this law gives them license to do it. Not all trans women are sex workers but also sex work is not a bad thing and should be decriminalized. All laws like this do is make the world less safe for people who are already in danger, I really hope you feel ashamed for instituting it in the first place.

City Council Hearing on Reso 0923 and Intro 1314

3 de diciembre del 2020

Testimonio de Bianey Garcia

Buenos días a todos. Mi nombre es Bianey Garcia organizadora del comité de Trans Immigrant Project en la organización de Make the Road.

Estoy aquí para compartir mi testimonio de cómo una madrugada en el 2008 cuando yo tenía 18 años y era la segunda vez que me vestía de mujer y salía a divertirme con mi novio fui parada y requisada por oficiales encubiertos en la esquina de la 86 st y Roosevelt.

Eran pasadas las 4 de la mañana cuando mi pareja y yo caminábamos por Roosevelt ave. agarrados de la mano, cuando de pronto oficiales encubiertos se bajaron de una van y me empujaron frente a la pared, sin tener mi consentimiento los oficiales me quitaron mi bolso y tiraron el contenido al piso, Ellos encontraron condones y esa fue la evidencia para acusarme de sexo servicio. Aunque mi novio y yo tratamos de explicar que éramos pareja la policía no me creyó e intimidó a mi pareja con arrestarlo si no se iba de la escena.

Empecé mi transición a la edad de 17 años junto a otras 2 amigas trans también indocumentadas, ellas ya no están en este país, porque fueron perfiladas como trabajadoras sexuales y fueron arrestadas y después deportadas a su país de origen.

El querer expresar nuestro género o vestir sexy, es para los policías una forma de perfilarnos como sexo servidoras. Nueva York debe hacer más para proteger a las comunidades transgéneros, género no conforme y no binario.

Muchas tenemos miedo de salir a la tienda de la esquina, salir a cenar o caminar con nuestras parejas por el temor a la violencia policiaca y el perfilamiento. Conozco historias de mujeres trans que tienen que llevar con su certificado de matrimonio por miedo a ser perfiladas como trabajadoras sexuales y ser arrestadas.

Pido que se la ciudad de Nueva York pase la resolución 0923 para que se revoque el código penal 240.37, "ambular con el propósito de prostitución" porque la policía lo usa para justificar sus paradas y requisas ilegales contra las personas transgéneros, como yo. El problema con este código penal es que es demasiado amplio, y le da la libertad a los policías a detenernos en

cualquier momento sin reconocer el impacto migratorio que puede tener. Estos arrestos injustificados traen muchos problemas a mis hermanas trans al momento de querer arreglar sus estatus migratorio, o en muchas ocasiones terminan en las cárceles y también deportadas.

Por lo tanto yo demando que la ciudad de Nueva York se comprometa a presionar al estado para derogar el código penal 240.37. Esta es una problemática de stop and frisk contra nuestra identidad de género, y va en contra de los valores y el apoyo que la ciudad se ha comprometido a darle a la comunidad inmigrante.

Muchas gracias por su tiempo.

City Council Hearing on Reso 0923 and Intro 1314

3 de diciembre del 2020

Testimony by Bianey Garcia

Good morning to everyone. My name is Bianey Garcia, organizer of the Trans Immigrant Project committee in the Make the Road organization.

I am here to share my testimony of how one morning in 2008, while I was 18 years old, the second time that I dressed as a woman and decided to go out to have fun with my boyfriend I was stopped and frisked by undercover officers in the corner of 86 st and Roosevelt avenue.

It was past 4 in the morning when my partner and I were walking on Roosevelt Ave. We were holding hands, when all of a sudden undercover officers got off a van and pushed me in front of the wall, without my consent the officers took my bag and threw everything to the floor, they found condoms and that was enough evidence for them to accuse me of doing sex work. Although my boyfriend and I tried to explain that we were a couple, the police didn't believe me and intimidated my partner with arresting him if he didn't leave the scene.

I began my transition at the age of 17 with two other trans undocumented friends, they are no longer in this country, because they were profiled as sex workers and were arrested and then deported to their country of origin.

Wanting to express our gender or dress sexy, is enough for the police to profile ourselves as sex workers. New York must do more to protect transgender, gender non-conforming and non-binary communities.

Many of us are afraid to go to the corner store, go out to dinner or walk with our partners out in the public because of police misconduct and profiling. I know stories of trans women who have to carry their marriage certificate for fear of being profiled as sex workers and being arrested.

I demand that New York City passes resolution 0923 to the penal code 240.37, "loitering with the purpose of prostitution" because the police use it to justify their illegal stops and frisk practices (stop and frisk) against transgender people, like me. The problem with this penal code is that it is too broad, and gives the police the freedom to stop at any time without recognizing the immigration impact it can have on us. These unjustified arrests bring many problems to my trans sisters when they want to fix their immigration status, because they often end up in prisons and also deported.

Therefore, I demand that the city of New York commits itself to pressure the state to repeal the penal code 240.37. This is a problem of stop and frisk against our gender identity, and goes to the values and support that the city has committed to give to the immigrant community.

Thank you very much for your time.

City Council Hearing on Reso 0923

3 de diciembre del 2020

Testimony by Mateo Guerrero-Tabares

Good morning everyone, my name is Mateo Guerrero-Tabares and I'm the TGNCIQ Lead organizer at Make the Road New York. Today I'm testifying on the city's need pass reso 0923 and intro 1314 in order to protect Black and brown Trans, gender nonbinary and queer communities in NYC

Make the Road New York (MRNY) is a membership-based organization that builds the power of Latinx and working-class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. One of our committees is the Trans Immigrant Project (TriP), a community organizing project lead by and for transgender women of color in Jackson Heights Queens. During TriP meetings, members frequently discuss the violence and discrimination they face in the community, whether at the hands of strangers, employers, landlords, or police and the alternatives to address the issue by its root.

One form of violence that is consistently brought up during the meetings is that TGNCNB people are regularly targeted by the police, stopped and questioned without reason. **Section 240.37** of the New York Penal Law gives the police excessive discretion and emboldens biased policing against TGNC people. TriP members, particularly transgender immigrant women and women of color, like **Jennifer, Norma and Bianey** have shared stories about being arrested and profiled for merely standing outside, speaking to one another, walking with partners and other friends, or walking from the subway to their home. Often times, they are followed by police cars with flashing lanterns rushing them to open the door to their house to confirm that they were not in the area loitering with the intent of prostitution. This level of harassment comes with intimidation tactics, violence and gender based harassment from police officers.

Not only does this have an emotional, mental and economic impact in our TGNCNB communities but it also results in immigration consequences. For immigration purposes it doesn't matter if the person's records has been sealed, the person still has to answer the question whether or not they have been arrested in the past, and therefore forced to explain the arrest. The disclosure of the arrests is what leads to a potential obstacle in being able to adjust their immigration status, and this is indeed a threat to Transgender, and nonbinary immigrants who have come to the United States to find relief from the violence at home. The idea of New York being "sanctuary city" does not include Black and brown transgender immigrant women, and it is the duty of NYC to end the pipeline from criminalization into deportation.

To close, I want to summarize that Make the Road NY members are intimately familiar with the biased policing encouraged under Section 240.37. This law has devastating consequences for our community members who often face consequences not only by the criminal legal system, but by immigration enforcement as well. Therefore, we need the city council to commit to pressure the State to repeal PL 240.37 now, and end this racist and transphobic penal code that has been a part of NYS law books for over the past four decades.

City Council Hearing on Reso 0923
3 de diciembre del 2020

Testimonio de Jennifer Orellana

Mi nombre Jennifer Orellana Delgado, soy líder comunitaria y líder del proyecto trans inmigrante de Se Hace Camino Nueva York. Hoy estoy aquí para testificar sobre la importancia de pasar la resolución 0923 y la introducción 1314 debido a mis experiencias con la policía por ser una Mujer Trans Puertorriqueña de 48 años.

Por muchos más de 20 años me he dedicado al mundo del espectáculo y he trabajado en diversos clubes en Roosevelt ave, una avenida bastante conocida, ya que todos muchos de los clubes de nuestra comunidad LGBTQ están localizados en esta área.

El sábado 1.º de junio, durante la víspera de la parada gay de Queens me encontraba trabajando en el club Evolution ubicado en la 77st y Roosevelt ave Queens cuando terminando mi show aproximadamente a la 1:45 am salí del club con mi maleta en mano en dirección al Club Music Box ubicado en la 74st y Roosevelt ave cuando de pronto en la esquina de la 75 st y Roosevelt ave se detiene un vehículo y se baja un hombre del auto, quien me detiene y me pregunta “¿Qué haces aquí?” Yo, le contesté que iba en dirección al club de Music Box a trabajar, y el me contesta que él sabe lo que yo hago caminando en estas calles.

Él me dejó ir y me dijo que me fuera para el club, pero que si me volvía a ver caminando en la Roosevelt avenue me iba a arrestar. El policía me estaba acusando de buscar clientes, y de trabajar como sexo servidora solamente basado en mi identidad de género y la ropa que estaba utilizando. El policía se subió al carro, y me estuvieron siguiendo hasta que llegué al club.

Después de terminar mi show a las 4:00 a.m. salí a tomar un taxi cuando me percaté que el vehículo estaba estacionado en la esquina de la 74st probablemente esperando a que yo saliera del club Music Box, o quizás esperando para hostigar y arrestar a otras mujeres trans.

Hoy como mujer trans demando que nosotras debemos de tener el derecho de caminar libremente en las calles sin el hostigamiento de la policía, por eso demando que la ciudad de NY pase la resolución 0923 para presionar al estado a que se repele el código penal 240.37. También demando que pasen la introducción 1314 que evitaría la discriminación laboral contra muchas mis hermanas trans que han sido injustamente arrestadas bajo el código penal 240.37.

¡Es tiempo de eliminar la discriminación y hostigamiento solo por ser quienes somos, “porque nuestro existir es resistir!”

City Council Hearing on Reso 0923

December 3, 2020

Testimony by Jennifer Orellana

My name Jennifer Orellana Delgado, I am a community leader and leader of the trans immigrant project of Make the Road New York. I am here today to testify on the importance of passing reso 0923 and intro 1314 because of my experiences with the police as a 48 year old Puerto Rican Trans woman.

For more than 20 years, I have dedicated myself to the entertainment business, and have worked in various clubs on Roosevelt ave, a well-known avenue since there are many LGBTQ clubs located in this area.

On Saturday, June 1st, on the eve of the gay parade in Queens, I was working at Evolution club located at 77st and Roosevelt ave, and when finishing my show at approximately 1:45 am I left the club with my suitcase headed to another club, called Music Box located at 74st and Roosevelt ave. Suddenly at the corner of 75 st and Roosevelt ave a vehicle stops and a man gets out of the car, he stops me and asks me "What are you doing here?" I told him that I was going to Music Box club to work as a performer, and he answered that he knows what I do walking on these streets.

He let me go and told me to go to the club, but that if he sees me again walking on Roosevelt avenue he was going to arrest me. The officer was accusing me of looking for clients, and of working as a sex worker solely based on my gender identity and the clothes that I was wearing. The cop got into the car, and then they followed me until I got to the club.

After finishing my show at 4:00 am I went out to get a taxi when I realized that the vehicle was parked on the corner of 74st, probably waiting for me to get out of Music Box club, or perhaps waiting to harass and arrest other trans women.

Today as a trans woman I demand that we have the right to walk freely in the streets without the harassment of the police, I demand that the city of NY passes reso 0923 to pressure the state to repeal the penal code 240.37. Additionally, I demand that the city passes intro 1314 that would prevent labor discrimination against many of my trans sisters who have been arrested under penal code 240.37.

It is time to end discrimination and harassment just for being who we are, "because our existence is resistance!"

City Council Hearing on Reso 0923 and Intro 1314
3 de diciembre del 2020

Testimonio de Norma Ureiro

Buenas tardes y gracias por darme la oportunidad de levantar mi voz. Mi nombre es Norma Ureiro soy una mujer trans, y soy miembro y líder del proyecto Trans Inmigrante de Se Hace Camino NY de Queens.

Concejales, yo he sido parte de la lucha por los derechos de la comunidad transgénero y queer por muchos años, y todavía es increíble ver que en la ciudad de Nueva York se sigan arrestando a nuestras comunidades trans solamente por ser quienes somos

Demando que la ciudad de Nueva York pase la resolución 0923 para eliminar estatalmente el código penal 240.37, "ambular con el propósito de prostitución", ya la policía utiliza este código penal para discriminarnos, hostigarnos y criminalizarnos.

Yo recuerdo una noche cuando fui a un Dunkin Donuts en la Roosevelt como a las 11 de la noche. Solo me había sentado por 5 minutos, cuando la policía me comenzó a correr del espacio diciendo que estaba buscando clientes y ejerciendo el sexo servicio. Yo le dije a los policías que no, que solo me estaba tomando un café, pero a ellos no les importo, y me siguieron hostigando y amenazando con un arresto si no me iba. Esta no es una experiencia única o aislada, esta es la historia de muchas de nosotras.

Otra noche iba caminando con mi novio en la avenida Roosevelt, cuando unos policías nos pararon y nos acusaron de estar ejerciendo el sexo servicio. Los policías asumieron que él era un cliente, y que yo estaba trabajando. Mi novio y yo intentamos explicarles a ellos que somos pareja, que solo estábamos caminando en nuestro barrio y hasta les mostramos que él lleva mi nombre tatuado en su cuerpo, y yo tengo el nombre de él en mi espalda también, pero no les importo y de igual manera nos arrestaron a los dos.

Demando que se pase la resolución 0923, y también que pasen la introducción 1314 que evitaría la discriminación laboral contra muchos de nosotres que se nos ha arrestado bajo el código penal 240.37.

Demando que la ciudad de nueva York de un paso hacia el futuro y deje de criminalizarme a mí y a mis hermanas trans solo por existir en público.

City Council Hearing on Reso 0923 and Intro 1314
December 3, 2020

Testimony by Norma Ureiro

Good afternoon and thank you for giving me the opportunity to raise my voice. My name is Norma Ureiro, I am a trans woman, and I am a member and leader of the Trans Immigrant project of Make the Road in Queens.

Council members, I have been part of the fight for the rights of the transgender and queer community for many years, and it is still incredible to see that in New York City our trans communities continue to be arrested just for being who we are.

I demand that the city of New York passes resolution 0923 to repeal the state penal code 240.37, "loitering for the purposes of prostitution", because the police use this penal code to discriminate, harass and criminalize transgender women like myself.

I remember one night when I went to a Dunkin Donuts at Roosevelt avenue at around 11pm, I had sat down only for 5 minutes, when the police began to harass me and kick me out of the space saying that I was looking for clients and that I was doing sex work. I told the police officer that I wasn't, that I was just having a coffee, still they didn't care, and they kept harassing me and threatening to arrest me if I didn't leave. This is not a unique or isolated experience, this is the story of many of us.

Another night I was walking with my boyfriend on Roosevelt Avenue, when some police officers stopped us and accused us of engaging in sex work. The cops assumed that he was a client, and that I was working as a sex worker. My boyfriend and I tried to explain to the police that we are a couple, and we were just walking in our neighborhood, and we even showed them that he has my name tattooed on his body, and I have his name on my back too, but they don't care about and still proceeded to arrest both of us.

I demand that resolution 0923 be passed, and also that the city council also passes introduction 1314 that would prevent labor discrimination against many of us who have been arrested under penal code 240.37.

I demand that New York City steps into the future and stop criminalizing me and my trans sisters just for existing in public.



Princess Janae Place, Inc.

2526 Wallace Avenue Suite 201, Bronx, NY 10467 Phone: (718) 684-1688 | Fax: (718) 684-1691

Good Afternoon, Members of The Committee on Women & Gender Equity, Chairperson Helen Rosenthal, and Councilmember Rivera as well as all the members of The New York City Council & Public Advocate Jumaane Williams who have co-sponsored Resolution #923 - calling on the NYS 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. Also, the accompanying Resolution #1444 calling on the NYS Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow convictions for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively. We at Princess Janae Place support both Resolution 923 & Resolution 1444.

My name is Bryan John Ellicott, my pronouns are He/They. I am the Program Coordinator at Princess Janae Place Inc. located in The Bronx. The mission of Princess Janae Place is to help people of trans experience maximize their full potential as they transition from homelessness to independent living. Princess Janae Place fulfills our mission by offering a safe space for people of trans experience to connect with the community, access gender-affirming support, as well as engage in educational and recreational activities. Princess Janae Place serves as a critical referral source for our members to secure housing navigation, substance use and mental health resources, legal assistance, job training/placement, and healthcare.

In 2018, 126 people were arrested for engaging in prostitution according to the New York City Police Department, which was more than double the amount the year before which was 47 people. Many of these arrests were Black & Brown women many of those women of transgender experience. According to the New York State Division of Criminal Justice Services under this law in 2018 80% identified as women, of that 80% - 49% were Black & 42% Latina.

In many of those arrests, these people were targeted either for what they were wearing, what they were carrying (ie condoms and lube) and subsequently many of these people are in locations known to be areas where sex workers have for decades been known to find community and work together.

Here at Princess Janae Place every day we are assisting people in need of housing and other assistance and almost 65% of our current clients - both transwomen, transmen & non-binary have engaged in some sort of sex work in

their lifetime. Of that 65% - a little less than 50% of them have stated they have been convicted of a misdemeanor or felony. We have 12% of our clients currently on probation. This directly impacts our client's ability to retain employment & housing and often their citizenship status.

- No person should be targetted as being a sex worker based on what they are wearing, we have said many times that we need to stop the practice of basing so-called crimes on what a person is wearing, this kind of bias should have no place in the laws of New York State.
- No person should be targeted for the use of safe sex protections like condoms & lubricate, protecting yourself and those you engage in sex with should never be a crime. We should never be discouraging the use of safe sex practices & stop the addressing of the continued need for HIV prevention and reproductive health care.
- We need to allow sex workers to make safe sex choices without feeling they will be persecuted if found with “too many condoms” We need to stop the policing of sexuality & the ways people make money to survive especially during these trying times.
- We need to do more when it comes to protecting those who are carrying condoms, lubricate & syringes. Those items are not illegal and in no way should warrant a deeper such or harassment from the New York City Police Department.
- We need to actually Defund The Police specifically VICE, and give money back to communities and organizations that do the work and provide services to TGNCNB communities like Princess Janae Place. Princess Janae Place is in need of funding that can be taken away from the NYPD to continue the work we do for our community. We could do so much if we just had the support of the City Council & State Legislature.

These kinds of outdated laws are what can have a devastating impact on those affected by attacking their basic qualities of life including their jobs, housing & citizenship status. The right thing to do here is simply to repeal section 240.37 of the New York Penal Law, loitering for the purpose of engaging in a prostitution offense & seal the records of those who have been convicted of this while having the law apply retroactively. This is how we continue to make New York City & New York State a more equitable place for everyone.

Thank you so much for your time & work on these two resolutions today.

Repeal Res. 0923 and Res. 1444

Good afternoon,

I'm writing to submit a written testimony for the hearing on December 3rd at 10 am. I'm advocating for the repeal of Res. 0923 and Res. 1444.

With regards to Res. 0923, trans men and women deserve to be able to walk around anywhere without being harassed by individuals or stopped and arrested by police. No matter their gender, they have the right to live their lives without shame or being judged for the gender they identify as.

With regards to Res. 1444, people should be able to do whatever job they wish, including prostitution. Prostitution is the only industry with negative stigma and should be decriminalized.

Thank you,

Paul Wnuk