

REPEAL THE “WALKING WHILE TRANS” BAN

Enact A.3355 (AM Paulin) / S.1351 (Sen. Hoylman)

#WalkingWhileTrans

The City Bar joins the broad coalition of organizations in supporting the repeal of New York’s loitering for the purposes of engaging in prostitution law (Penal Law § 240.37). Under the law, a person can be improperly arrested and detained simply because a law enforcement officer views their clothing or appearance as indicative of a purpose to engage in prostitution. Penal Law § 240.37 has faced opposition from its inception in 1976 and over the preceding four decades, the statute has been enforced disproportionately against vulnerable and marginalized populations.

The City Bar supports A.3355/S.1351 for the following reasons:

- **Enforcement practices disproportionately target and impact marginalized communities** - in particular LGBTQ people (including runaway and homeless youth), women of color and immigrants - creating not only a pipeline to unjust incarceration, but also potential immigration hurdles, barriers to seeking employment and housing, and child welfare consequences. Transgender New Yorkers are particularly vulnerable because the police are more likely to mistakenly believe transgender people are sex workers. Section 240.37 is one of only two violations in the entire Penal Code that is not eligible for sealing. As a result, thousands of New Yorkers are burdened with these criminal charges on their records, often for innocuous behavior while existing in public spaces.
- **Immigrants face dire consequences if charged.** Regardless of the outcome of the criminal case, an arrest starts a chain of events that can include ICE enforcement, ICE detention, the prospect of losing at a bond hearing because of the arrest, open case, or conviction for a prostitution offense, and being placed into removal proceedings where much of the relief available is discretionary and a prostitution-related arrest or conviction may be looked at harshly.
- **The law is vague and police enforcement lacks clear guidance.** There is no guidance explaining what classifies as actions done for the purpose of selling sex, or what constitutes acceptable clothing. None of the individual actions described on the forms used for enforcement describe *per se* criminal conduct, nor has enforcement been confined to such conduct. In addition, Penal Law § 240.37 violates the First Amendment in that it is overbroad and criminalizes constitutionally protected conduct.
- People fear carrying condoms because they can be used to prosecute them since possessing condoms can be used as evidence that a person is guilty of loitering for the purposes of prostitution. This presents a **serious public health problem** because the marginalized communities disproportionately subject to arrest under § 240.37 are the same communities at high risk of HIV seroconversion.

Repealing New York Penal Law § 240.37 will advance a more equitable New York by reducing the incidence of unwarranted police action against marginalized communities, in particular, women of color, both cisgender and transgender, and immigrants.