



**BROOKLYN
DEFENDER
SERVICES**

MEMORANDUM OF SUPPORT

A9704A (Paulin)/S8107A (Hoylman) – Repeal of New York Penal Law 240.37

June 1, 2018

Brooklyn Defender Services (BDS) urges the Legislature to pass and the Governor to sign A9704A (Paulin)/S8107A (Hoylman) to repeal New York Penal Law Section 240.37—Loitering for the purpose of prostitution. This law is overtly discriminatory and unconstitutional. It encourages over-policing and the criminalization of women’s bodies while hindering their liberty to freely express themselves.

BDS provides multi-disciplinary and client-centered criminal defense, family defense, immigration and other civil legal services, social work support, and tools for self-advocacy to more than 30,000 indigent Brooklyn residents every year. Over the past 22 years we have represented close to half a million people in criminal matters in Kings County, New York. Since the inception of Human Trafficking Intervention Courts, BDS has developed a specialized model to best represent victims of human trafficking. BDS’s specialized trafficking team provides extensive wrap-around services that meet the needs of trafficking survivors in a comprehensive way.

THE PROBLEM

New York Penal Law Section 240.37, loitering for the purpose of prostitution, criminalizes mostly women, particularly cisgender and transgender women of color and women who have previously been arrested for alleged prostitution offenses. This law allows police to interpret innocuous and otherwise lawful behavior such as “repeatedly” waving at a person in a vehicle or talking to people in the streets as cause to arrest for loitering for the purpose of prostitution.¹ Police records show that police frequently consider wearing short dresses, skirts and high heels, the possession of condoms, being in an area known for prostitution, or having a prior arrest for a prostitution-related offense as sufficient “evidence” for a stop and/or arrest for prostitution.²

¹ <https://codes.findlaw.com/ny/penal-law/pen-sect-240-37.html>

² <https://www.politico.com/states/new-york/city-hall/story/2016/09/suit-challenges-nypd-enforcement-of-prostitution-loitering-statute-105990>

In addition to the vague statutory language, the NYPD Patrol Guide instructs officers that an arrestee’s “clothing” is “pertinent” to the probable cause inquiry.³ At the same time, the NYPD Patrol Guide does not provide any objective criteria regarding what types of attire may or may not have probative value for purposes of establishing probable cause.⁴ This essentially allows the bias of the police officer to turn a lawful manner of dress into an alleged criminal offense, with most of the harm of arrests and prosecutions suffered by already-marginalized New Yorkers. In one Supporting Deposition, the NYPD profiled a woman Brooklyn Defender Services represented for having “Tight pants showing curves of lower body.”⁵

Existing Data on the Impact of NYPL 240.37

Though the number of arrest for NYPL 240.37 has been steadily decreasing in New York State, there still exist disparities in who is impacted by the law. Data from the Division of Criminal Justice Services show that for 2017, 79% of the individuals arrested are women, 78% are Black and/or Latinx, and 76% fall in the age range of 16 to 39 years old. Due to the limited documentation of sexual or gender identity on police and court records, there is no exhaustive list of the impact of this law on transgender and gender non-conforming communities. However, according to a staff attorney from Sylvia Rivera Law Project, 80% of the transgender women of color he worked with experienced police harassment or an arrest based on unfounded suspicion of prostitution.⁶

Unnecessary Involvement with the Criminal Legal System

Under the existing law, people are profiled, stopped, arrested, prosecuted and sometimes burdened with permanent criminal records, all for the aforementioned specious criteria. This justice involvement can lead to the loss of- or barriers to obtaining- formal employment, housing, custody of one’s children, services, access to education. Convictions and even mere arrests can also result in severe immigration consequences, including deportation and the inability to adjust immigration status or become a citizen.

SOLUTION

The Legislature must pass and the Governor must sign A9704A/S8107A, which would repeal NYPL 240.37.

CONCLUSION

NYPL 240.37 contributes to a revolving door into the criminal legal system for marginalized people, increases the vulnerability to violence, exploitation and other forms of victimization and hinders access to crucial services. We urge the legislature to repeal NYPL 240.37 in order to stop this cycle of criminalization.

If you have any questions, please contact Saye Joseph, Policy Associate, at scjoseph@bds.org or 718-254-0700 ext.206.

³ https://www.americanbar.org/content/dam/aba/directories/pro_bono_clearinghouse/ejc_2014_182.authcheckdam.pdf

⁴ New York Police Department Patrol Guide 208-45

⁵ Ricardo Cortes, An Arresting Gaze: How One New York Law Turns Women into Suspects. <https://www.vanityfair.com/culture/2017/08/nypd-prostitution-law>

⁶ Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights. https://maketheroadny.org/wp-content/uploads/2018/02/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf