



**NEW YORK  
CITY BAR**

**REPORT ON LEGISLATION BY THE  
LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER RIGHTS COMMITTEE,  
CIVIL RIGHTS COMMITTEE, CRIMINAL JUSTICE OPERATIONS COMMITTEE,  
IMMIGRATION AND NATIONALITY LAW COMMITTEE,  
AND SEX AND LAW COMMITTEE**

**A.3355  
S.1351**

**M. of A. Paulin  
Sen. Hoylman**

AN ACT to repeal section 240.37 of the penal law, relating to loitering for the purpose of engaging in a prostitution offense; and to amend the penal law, the criminal procedure law, the social services law and the administrative code of the city of New York, in relation to making technical corrections relating thereto.

**THIS BILL IS APPROVED**

This report is respectfully submitted by the New York City Bar Association’s (the “City Bar”) Lesbian, Gay, Bisexual, Transgender and Queer Rights Committee, Civil Rights Committee, Criminal Justice Operations Committee, Immigration and Nationality Law Committee, and Sex and Law Committee. The City Bar is an organization of over 24,000 lawyers and judges dedicated to improving the administration of justice. The City Bar submits this report in support of the proposed repeal of New York Penal Law § 240.37 to eliminate a criminal statute that has a vast disparate impact on lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people and other vulnerable minorities.

**I. SUMMARY**

A broad coalition of organizations supports the repeal of New York’s loitering for the purposes of engaging in prostitution law. The repeal of New York Penal Law § 240.37 (“§ 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<sup>1</sup> and transgender, and immigrant women. This report explores a detailed basis for why § 240.37 should be repealed, touching upon the areas of discriminatory enforcement, immigration and deportation, public health, and constitutional defects in the law.

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

## **II. BACKGROUND**

Enacted in 1976, § 240.37, Loitering for the Purpose of Engaging in a Prostitution Offense, faced opposition from its inception.<sup>2</sup> And over the four decades of its existence, it has been enforced disproportionately against vulnerable and marginalized populations. Enforcement has targeted women—and, in particular, women of color and transgender women who are in the sex trades or profiled as such.

The text of the statute forbids a person to remain or wander in a public place—including any street, sidewalk, park, or motor vehicle—while conducting acts such as repeatedly beckoning or stopping cars or passers-by or attempting to engage passers-by in conversation, for the purpose of engaging in acts covered under Article 230.00 (Prostitution).<sup>3</sup> There are increased penalties if one has a previous conviction for prostitution, patronizing a person for prostitution, or loitering for the purposes of prostitution.

Under § 240.37, a woman can be improperly arrested and detained simply because a law enforcement officer views her clothing or appearance as indicative of a purpose to engage in prostitution.<sup>4</sup> Similarly, a woman’s mere appearance in a “prostitution prone” location and proximity to cars or having a conversation can be the basis of a facially sufficient complaint.<sup>5</sup>

In September 2016, the Legal Aid Society and Cleary Gottlieb, its pro bono partner, filed a lawsuit in federal court challenging the constitutionality of § 240.37 and its discriminatory enforcement by the New York City Police Department (“NYPD”). The court allowed the claims of transgender women to proceed,<sup>6</sup> but the case settled,<sup>7</sup> so the constitutional questions around enforcement remain unresolved.

A broad range of civil and human rights organizations have endorsed the effort to overturn § 240.37 through the courts<sup>8</sup> or related mechanisms, including Decrim NY, a coalition of over 40 organizations<sup>9</sup> that supports the repeal of § 240.37.<sup>10</sup> Furthermore, the City Bar has historically supported a critical reevaluation of laws criminalizing prostitution in the interests of promoting public health and human rights, including support for the prohibition of the introduction of condoms as evidence of prostitution-related offenses in criminal proceedings<sup>11</sup> and laws vacating criminal convictions for survivors of sex trafficking-related activities.<sup>12</sup>

## **III. DISCRIMINATORY ENFORCEMENT OF THE LAW**

### **a. History of New York Penal Law § 240.37**

The legislature enacted § 240.37 to target individuals “aggressively engaging in promoting, patronizing or soliciting for the purposes of prostitution”<sup>13</sup> in Times Square and Midtown West and East.<sup>14</sup> Lawmakers specifically intended to address the concerns of “unwilling victims” of solicitation and business owners in those neighborhoods who had complained that “in recent years the incidence of such conduct in public places has increased significantly.”<sup>15</sup> The law was part of a larger plan to curb sex work using other legal mechanisms, including zoning regulations aimed at massage parlors and “commercial sex establishments.”<sup>16</sup> It was enacted just before the Democratic National Convention began in New York City in July 1976.<sup>17</sup>

Defending a woman who was arrested the day after the law went into effect, the Legal Aid Society successfully argued that the statute was vague, overbroad, and inhibited free speech, only

to have the Court of Appeals ultimately uphold the constitutionality of the law.<sup>18</sup> In 1977, police made 9,565 prostitution loitering arrests.<sup>19</sup> In the intervening decades, the “extensive redevelopment of Times Square, the movement of sex work to indoor [and internet] venues, and the policing efforts of the Giuliani administration eventually led to a decline in the public visibility of prostitution.”<sup>20</sup> However, the law has remained on the books, and its continued enforcement disproportionately impacts vulnerable populations.

## **b. LGBTQ People**

The relationship between the LGBTQ community and the NYPD has been complicated and, as described more fully below, LGBTQ people are disproportionately impacted by enforcement of § 240.37. Indeed, as one legal scholar has noted, section 240.37 “was redeployed in the 1990s to target ... LGBTQ[] youth of color and to discourage their presence in the gentrifying West Village.”<sup>21</sup> Over several years, members of the LGBTQ community have reported multiple instances of profiling, intimidation, humiliation, harassment, and even verbal and sexual abuse by police.<sup>22</sup> And a 2017 report by the New York City Department of Investigation (“DOI”) found that not all NYPD officers have received adequate training on NYPD’s LGBTQ policies.<sup>23</sup> DOI also found persistent flaws in its ability to track LGBTQ-related complaints that allege police misconduct.<sup>24</sup> Both failures have significantly contributed to the NYPD’s inability to recognize and remedy these deficiencies.

## **c. Women of Color**

As detailed below, arrestees for prostitution-related offenses are overwhelmingly women of color. Arrest rates spike even higher for transgender women. While there are instances where women have prevailed over unwarranted and unlawful arrests for under § 240.37,<sup>25</sup> their experiences underscore a larger, systematic problem.

### *i. Transgender Women of Color*

Transgender women of color are disproportionately likely to be profiled, arrested, re-arrested, and prosecuted under § 240.37.<sup>26</sup>

The statute provides no guidance on what constitutes acceptable clothing, which has contributed to overbroad enforcement of § 240.37 against transgender women of color who congregate on the street, run errands, or simply leave their homes.<sup>27</sup> Section 240.37 has a long history of being enforced specifically against transgender people.<sup>28</sup> Enforcement of this law and other disparate policing of LGBTQ people continue to this day,<sup>29</sup> despite recent reforms.<sup>30</sup> Transgender New Yorkers continue to report being profiled for enforcement of prostitution-related laws because the police are more likely to mistakenly believe transgender people are sex workers.<sup>31</sup>

Complaints against the NYPD for profiling and anti-LGBTQ bias remain a serious issue.<sup>32</sup> Transgender and gender non-conforming New Yorkers have reported high levels of mistreatment and harassment by the police, with 61% experiencing some form of misconduct.<sup>33</sup> Incidents included verbal harassment, being repeatedly referred to as the wrong gender, physical assault, or sexually assault, including officers forcing them to engage in sexual activity to avoid arrest.<sup>34</sup> And because of this history of mistreatment, many transgender and gender non-conforming people do not trust the police and do not report criminal activity.<sup>35</sup>

**ii. Cisgender Women of Color**

Cisgender women of color are also disproportionately impacted by § 240.37. Enforcement efforts seem to be focused on select areas of New York City that are home to communities of color, frequently labeled as “prostitution prone” neighborhoods.<sup>36</sup> This label creates a positive feedback loop for the increased criminalization of cis women of color in these areas, as the identification as “prostitution prone” leads to increased policing and arrests that then seems to validate the designation. The result of this kind of targeted enforcement is that 85% of the women arrested under § 240.37 were Black or Latinx,<sup>37</sup> a figure which is disproportionate to their representation in the population.<sup>38</sup>

Section 240.37 provides no guidance explaining what classifies as actions done for the purpose of selling sex. As such, the evaluation of a possible bad act relies on the discretion of individual police officers with only the aid of a pre-printed form to describe why a person is being arrested. This form varies between precincts, but common categories of justification include: being in an area for a certain amount of time and talking to people; wearing “provocative or revealing” clothing; gesturing to those passing by; having been previously arrested under the statute; and being around people who have previously been arrested under the statute.<sup>39</sup>

Variations in the forms used for § 240.37 enforcement and the lack of clear guidance have led to the criminalization of women of color for simply going about their lives in these neighborhoods. Women of color have been subject to arrest for standing on the street with a group of friends or calling out to passing-by neighbors in their own communities. Women have been arrested under § 240.37 for wearing jeans and a tank top, or a dress with the bra strap showing, or a hoodie with tight pants.<sup>40</sup> And they have been subject to profiling and arrest for speaking to, or being friends with, people who have previously been targeted and impacted by the statute. Women who fall victim to these arbitrary standards are at an increased risk of being re-arrested for doing nothing besides continuing to live in their neighborhoods.<sup>41</sup> Notably, none of the individual actions described on the forms used for § 240.37 enforcement describe *per se* criminal conduct, nor has enforcement been confined to such conduct.

**d. LGBTQ Runaway and Homeless Youth**

Section 240.37 enforcement disproportionately impacts LGBTQ young people, who are vastly overrepresented among the populations of runaway and homeless youth (“RHY”), both in New York City and across the state. LGBTQ youth who are driven from their homes because of difficult or abusive relationships caused or exacerbated by their LGBTQ status are often forced to participate in street economies, including survival sex.

Nationally, LGB youth make up approximately 3.5-8% of the general population, but 29% of the population of RHY.<sup>42</sup> Transgender youth, meanwhile, are an estimated 0.3% of the general population and 4% of the homeless population.<sup>43</sup> In New York City, the number of homeless LGBTQ youth may be even higher.<sup>44</sup> Among them, people of color are further overrepresented.<sup>45</sup> LGBTQ youth are more likely to have been rejected by their families and so are less able to rely on familial support.<sup>46</sup> Consequently, they are more frequently forced to fend for themselves in finding shelter, food, clothing, and hygiene items.<sup>47</sup> They are thus more likely to be forced into underground economies. Stated succinctly by organizations that serve queer youth, “[t]he

cumulative oppression of homelessness coupled with an LGBTQ identity places homeless LGBTQ youth in a precarious state of existence.”<sup>48</sup>

Because of the intersection of their identities, queer RHY, particularly RHY of color and those who are transgender and gender non-conforming (“TGNC”), are at vastly increased risk of being stopped by police and arrested.<sup>49</sup> At the same time, they are also more likely to be the victims of crimes.<sup>50</sup> Numbers vary, but experts estimate that somewhere between 2,250 and 4,000 youths under age 21 are engaged in the sex trade in New York City, with homelessness as “one of the most common drivers of youth engagement in survival sex.”<sup>51</sup> LGB RHY are seven times more likely than their heterosexual peers to trade sex for a place to spend the night, and transgender youth are eight times more likely to have done so.<sup>52</sup> As many as nine in ten LGBTQ RHY were homeless when they begin trading sex for money and shelter.<sup>53</sup> Many of them prefer this to risking the abuse and violence that are commonplace against them in shelters and in foster care.<sup>54</sup> These youth are already highly incentivized by the law,<sup>55</sup> and even forced by customers and by circumstance, not to use condoms.<sup>56</sup>

In a survey of LGBTQ RHY engaged in sex work, over two thirds of participants reported being stopped and frisked, and almost a fifth reported daily or weekly encounters with police.<sup>57</sup> Over 70 percent reported having been arrested, while “only” 9 percent said they had been charged with prostitution-related crimes.<sup>58</sup> LGBTQ youth generally are more likely to be charged with sex offenses that authorities overlook among other young people.<sup>59</sup> Juvenile and criminal records become a major barrier to employment, and alongside racism, homophobia, and transphobia, they help prevent LGBTQ RHY from obtaining traditional employment, thereby pushing them deeper into survival sex as their sole means of support.<sup>60</sup>

Section 240.37 is a significant factor in encounters between queer youth and the criminal justice system. The NYPD has responded to public pressure to police the Christopher Street pier, a common gathering place for LGBTQ RHY, by arresting them for low-level crimes that include loitering.<sup>61</sup> Notably, “[w]hile prostitution loitering accounts for a small portion of the arrests made in the Village... most individuals arrested on prostitution-related charges are LGBTQ young people and adults.”<sup>62</sup>

Negative stereotypes that are often at the root of problems faced by LGBTQ RHY persist in the enforcement of § 240.37. This is because “[t]he enforcement of prostitution loitering ordinances requires police to distinguish between prostitutes and individuals who are just out to have a good time. When police officers make this distinction they often draw on emotionally-charged stereotypes that link race, youth, gender expression and sexual orientation with crime.”<sup>63</sup>

For LGBTQ RHY, New York is plainly a very tough place to live. Section 240.37 contributes to the problems of stereotyping and profiling experienced by these youth by providing too little guidance and too much discretion in enforcement which, in turn, leads to unwarranted arrests. At the same time, it further stigmatizes (and saddles with criminal convictions) youth whose sexual orientation, gender identity and/or gender expression have forced them into a life on the street and survival sex to obtain food and shelter. It is thus a scourge to all LGBTQ youth, regardless of their actual involvement in sex work.

#### e. Immigrant Women

Section 240.37 enforcement also has a disproportionate impact on immigrant women, and, as discussed more fully below, leaves them vulnerable to potentially grave immigration consequences as a result.<sup>64</sup> This is because, as previously discussed, § 240.37 provides little to no guidance—and confers broad discretion—in enforcement, and inevitably encourages police profiling based on perceived ethnicity, national origin, and immigration status by permitting arrests of individuals who, according to police, “look like prostitutes.”<sup>65</sup>

### IV. IMMIGRATION CONSEQUENCES

The enforcement of § 240.37 has disproportionate and dire consequences for all immigrants, particularly trans immigrants. Section 212 of the Immigration and Nationality Act (“INA”) bars individuals from adjusting status to become a permanent resident or obtaining visas if they have been convicted of multiple crimes, engaged in prostitution, or engaged in a crime involving moral turpitude (“CIMT”).<sup>66</sup> Additionally, INA § 237 establishes that CIMT are grounds for deportability. A large part of the trans community that has been subject to enforcement of § 240.37 are immigrants escaping horrendous conditions in their countries of origin.<sup>67</sup> Humanitarian forms of immigration relief such as asylum, U Visas for victims of crime, T Visas for victims of trafficking, and *pro se* petitions made pursuant to the Violence Against Women Act (“VAWA”), 8 U.S.C. § 1154, by survivors of domestic violence can be complicated or made unavailable to undocumented trans immigrants because of arrests for prostitution charges. While Loitering for the Purposes of Prostitution has not typically been used as a CIMT, it remains a real risk for those charged with it as it has been found to be a CIMT in the past.<sup>68</sup> This magnifies the problems faced by trans immigrants because they lose any means of obtaining legal status, employment authorization, or the social security numbers needed to access most public and health benefits, and thus the ability to eventually leave underground economies.

Convictions under § 240.37 place immigrants at immense risk of deportation should they ever get detained by Immigration and Customs Enforcement (“ICE”). People are at risk even though the NYPD and New York City’s district attorneys’ offices generally do not report custody of immigrants with criminal convictions under § 240.37 to ICE officials.<sup>69</sup> Just by being arrested, undocumented immigrants are at increased risk of ICE enforcement. As soon as an individual is fingerprinted upon arrest, they are put into the FBI database. ICE then knows that they have been arrested, what they have been arrested for, and will target them for enforcement if they are otherwise deportable (e.g., undocumented) or wait until they are convicted if it makes them removable. Notably, this is true even if the criminal case is dismissed, reduced, or the person is regarded as a youthful offender. Regardless of the outcome of the criminal case, the 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.

Law enforcement officials in the rest of New York State may report these immigrants to ICE directly and hold them until they are transferred into immigration detention. Although there are defenses available in removal proceedings such as withholding of removal and the convention against torture, these forms of immigration relief do not lead to a permanent status and are not guaranteed, and transgender immigrants often face an immense risk of assault, torture, or death in

their countries of origin. The underlying systemic and institutional prejudices of immigration law, combined with the disparate enforcement of § 240.37 against vulnerable populations including transgender immigrants, mean that an arrest can have immediate life-and-death consequences.<sup>70</sup>

Transgender immigrants face unique challenges within New York City. Undocumented immigrants already have immense challenges, such as not being able to find work because they are not authorized to obtain legal employment. Thus, many immigrants resort to underground economy jobs, or unauthorized employment with employers. This leaves them uniquely vulnerable to exploitation through labor abuses such as wage theft, discrimination, and unsafe working conditions.<sup>71</sup> Transgender immigrants face the additional burden of gender identity-based employment discrimination, especially in unauthorized employment positions.<sup>72</sup> An additional hurdle for many transgender immigrants is the cost of their transition and access to healthcare. The need for money not only to survive, but also to finance their transition, drives many transgender immigrants toward engaging in survival sex.

#### **a. Consequences on Humanitarian Forms of Immigration Relief**

Applications for U Visas, T Visas, and VAWA self-petitions are subject to INA § 212(a) restrictions and applicants must apply for waivers of inadmissibility if they trigger its applicable provisions.<sup>73</sup> The applications for these forms of relief explicitly ask if the applicant has been arrested, charged, or convicted of a criminal offense.<sup>74</sup> Additionally, some of these applications ask if the applicant has engaged in prostitution.<sup>75</sup> Thus, it is mostly unavoidable for applicants to seek these forms of immigration relief without disclosing arrests or convictions under § 240.37. Unfortunately, waivers of inadmissibility are not guaranteed, and are determined by the individual immigration officer reviewing the application, which makes the process inherently subjective. Considering the high degree of risk created as a result of a denial, which places the applicant into removal proceedings, and the potential life-and-death consequences of being deported for trans people, trans immigrants may deem it safer to avoid applying for immigration relief.

Asylum is another form of relief that is available to transgender immigrants. Given the pervasive persecution of transgender people worldwide, many transgender immigrants qualify for asylum as a persecuted particular social group within their country of origin. However, asylum has a one-year filing deadline for applications, absent changed or extraordinary circumstances. Transgender immigrants often have been present in the United States for years or decades before they seek asylum or find themselves in removal proceedings; this may make them ineligible for asylum. Without access to counsel, many transgender immigrants are unaware that they are eligible to apply based on their gender identity.<sup>76</sup> Although asylum has no statutory bar for engaging in sex work or for prior prostitution-related criminal convictions, the individual asylum officer or immigration judge may deny an application for asylum based on criminal convictions as a matter of discretion. Thus, convictions under § 240.37 or for other prostitution offenses may hinder otherwise successful applications for asylum.

#### **b. Consequences on Immigration Relief and Deportability Grounds**

Immigrants who have obtained immigration relief, have an avenue to permanent status, or who already have permanent resident status are not safe from the repercussions of an arrest under § 240.37. Applications for adjustment of status and naturalization are also subject to certain criminal bars, as well as wide discretion and good moral character requirements.<sup>77</sup> Moreover, the

moral turpitude provisions of the INA make inadmissible and deportable any noncitizen who has multiple convictions for a CIMT.<sup>78</sup> This can bar trans people who have an avenue to a green card from adjusting status and place trans people who have legal status at risk for deportation, because as described above, due to inevitable stereotyping and profiling in § 240.37 enforcement, many trans women are repeatedly targeted for arrests under the statute.<sup>79</sup>

Prostitution has long been held to be a CIMT.<sup>80</sup> In the immigration context, courts have held that the label of CIMT “encompasses crimes that ‘are base, vile, or depraved—if they offend society’s most fundamental values, or shock society’s conscience.’”<sup>81</sup> While immigration advocates argue that § 240.37 is not a CIMT, because it does not require proof of any overt act of prostitution, the case law around CIMTs is long, complicated, and overbroad. Moreover, other crimes of intent have been considered to be CIMTs.<sup>82</sup> A single conviction of a CIMT can make an individual inadmissible, *i.e.*, bar them from adjusting status, and also make them mandatorily detained if they are apprehended by ICE, unless the offense carries a potential sentence of a year or less, and the “sentence imposed” was less than six months.<sup>83</sup> Section 240.37 is a misdemeanor with a jail time of less than one year.<sup>84</sup> Thus, a sole conviction of § 240.37 could bar a trans immigrant from getting a green card and achieving stability in their immigration status, if they are sentenced to six months or more.<sup>85</sup> Furthermore, while a single conviction for a CIMT with a jail time of less than one year does not make an individual deportable, two convictions would trigger the deportability ground of the INA.<sup>86</sup>

Whether an individual’s § 240.37 loitering conviction triggers the “prostitution” inadmissibility bar or if such conviction is considered a negative discretionary factor has not been definitively resolved at the federal court level, but these determinations are discretionary and federal courts are precluded from reviewing such decisions by the Board of Immigration Appeals.<sup>87</sup>

Moreover, engaging in a pattern and practice of prostitution is a ground of inadmissibility, *i.e.*, a bar to adjust status.<sup>88</sup> Section 240.37 incorporates § 230.00 of the penal law to define the act of prostitution, which means that an arrest or conviction under 240.37 may be used as evidence to trigger the prostitution inadmissibility ground and no conviction is required for a such a finding.<sup>89</sup>

Because of the lack of guidance in the statute coupled with broad law enforcement discretion, it is not uncommon for trans women who are *not* engaged in sex work to be targeted and arrested multiple times under § 240.37, and, as explained above, convictions could trigger the CIMT deportability grounds under INA § 237(a) and the CIMT or prostitution inadmissibility grounds under INA § 245.<sup>90</sup> Oftentimes, trans women charged under § 240.37 will plead guilty in order to avoid being sent to Riker’s Island and housed with men, where they face a significant threat of sexual assault, harassment, and abuse by both fellow inmates and guards.<sup>91</sup> The pressure to plead guilty to avoid jail time in such a situation is high even when the person was arrested for conduct that was not unlawful. Additionally, given the murky and complicated case law regarding CIMT, defense attorneys often may not give comprehensive legal advice regarding the immigration consequences of a conviction under § 240.37.

### **c. Consequences of Being Placed in Immigration Proceedings**

Immigration proceedings are considered a civil proceeding, and while immigrants have a statutory right to an attorney, the government has no responsibility to provide one to the indigent;



as a result, many people facing deportation appear pro se. Trans immigrants in removal proceedings may not sufficiently understand the proceedings and the immigration remedies available to them. Additionally, there is often a language barrier that prevents equal access to justice in removal proceedings. Thus, trans immigrants may be issued an order of removal without ever being able to seek legal counsel due to their indigent status. The consequences of this are dire, particularly to those who come from countries of origin that engage in persecution of LGBTQ people and who may face physical injury, imprisonment, torture, or certain death should they be deported.

Trans immigrants also face the prospect of being placed in detention while they are waiting for their immigration cases to be heard before a judge. ICE operates only one detention facility in the country where transgender immigrants are held in accordance with ICE’s internal guidelines regarding placement and care of transgender detainees.<sup>92</sup> However, transgender immigrants are held throughout the country in facilities that lack appropriate standards or training, including county jails. The transgender-specific facility is the Cibola County Detention Center in New Mexico, operated by CoreCivic, a for-profit prison company with a history of allegations of abusing detainees.<sup>93</sup> The Cibola detention facility is located over 500 miles from the nearest immigration court in Denver, Colorado, and detainees must appear by teleconference at their hearings. The remote nature of the Cibola detention facility isolates detainees from friends and family and makes accessing effective legal counsel extremely difficult.

The conditions within ICE detention facilities are horrendous, particularly for LGBTQ detainees. A recent analysis of government data by the Center for American Progress revealed that “LGBT detainees are 97 times more likely to be sexually assaulted than other detainees.”<sup>94</sup> ICE has systematically ignored its internal guidance and continues to place transgender immigrants in detention with men or in solitary confinement rather than permitting supervised release.<sup>95</sup> Criminal arrests and convictions, such as those under § 240.37, are factors ICE considers when deciding whether to hold immigrants in detention rather than place them in supervised release, and that immigration judges consider at bond hearings. A conviction for CIMT could lead to mandatory detention upon arrest by ICE and ineligibility for a bond hearing. Sometimes such detention, particularly for transgender immigrants, means placement in solitary confinement: isolation for 23 hours a day with little to no sunlight. The United Nations’ Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment considers many forms of solitary confinement, including prolonged solitary confinement, to be a form of torture.<sup>96</sup> Medical experts have also found that extended solitary confinement is equivalent to torture.<sup>97</sup> Given the immediate reality of being held in solitary confinement for months or even years, transgender immigrants may opt to waive their right to an immigration hearing so that they can escape the torture of solitary confinement or the near certainty of sexual assault in men’s detention facilities.

## **V. PUBLIC SAFETY CONSEQUENCES**

### **a. Section 240.37 Enforcement Practices Disproportionately Target and Impact Marginalized Communities**

Members of the LGBTQ community have reported verbal abuse, intimidation, humiliation, harassment, sexual assault, and profiling by members of the NYPD enforcing § 240.37.<sup>98</sup> As noted above, arrestees for prostitution-related offenses are overwhelmingly women of color,<sup>99</sup> and transgender women—more often than their cisgender counterparts—are profiled for prostitution-

related offenses.<sup>100</sup> The NYPD also reportedly profiles based on arrest history, so one arrest for loitering for the purpose of engaging in a prostitution offense can lead to more.<sup>101</sup> In 2008, two transgender women of color successfully challenged being arrested in New York City for loitering for the purposes of prostitution, which helped spur revisions to the NYPD's Patrol Guide.<sup>102</sup>

In June 2012, the NYPD announced new guidelines for police treatment of transgender and gender non-conforming people.<sup>103</sup> However, a 2017 report by the Office of the Inspector General for the NYPD found "clear gaps in NYPD's implementation of and training on the revisions as well as inadequacies in how the Department tracks LGBTQ-related complaints alleging police misconduct."<sup>104</sup>

**b. Health Consequences: People Fear Carrying Condoms Because They Can Be Used to Prosecute Them**

Section 240.37 also has negative public health consequences that go beyond harming marginalized communities or furthering the distrust between the police and communities that are in more frequent contact with law enforcement. The enforcement of § 240.37 also discourages the use and prevalence of condoms, which are vital to prevent the spread of HIV and other sexually transmitted infections. According to Human Rights Watch, "[t]he expansive grounds for suspicion under New York's loitering for the purposes of prostitution statute permit police to stop and search individuals for a wide variety of reasons and it is during these searches that condoms may be discovered and seized."<sup>105</sup> The report further states that "many people, particularly members of the transgender community . . . were stopped and searched for condoms while walking home from school, going to the grocery store, and waiting for the bus."<sup>106</sup> Notably, police officers have used the fact that a person possesses condoms as evidence that the person is guilty of loitering for the purposes of prostitution.<sup>107</sup>

The use of condoms as evidence in § 240.37 enforcement discourages condom use because people may be afraid that if they carry condoms they will be arrested and found guilty for 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 seroconversion. Transgender women, LGBTQ youth, and women of color are all at higher risk of contracting HIV. According to the Centers for Disease Control and Prevention (CDC), 43% of people diagnosed with HIV are African-American, although African-Americans only constitute 13% of the U.S. population.<sup>108</sup> Further, young people between the ages of 13 and 24 make up 21% of all new HIV diagnoses, with most of those diagnoses resulting from male-to-male contact.<sup>109</sup> The CDC also estimates that 14% of transgender women are living with HIV, including 44% of black transgender women.<sup>110</sup>

Encouraging New Yorkers to use condoms to lower the rate of seroconversion has been a cornerstone of public health policy for decades. The New York City Health Department ("DOHMH") actively encourages condom usage by distributing free condoms at thousands of sites in New York City, including "bars, clubs, restaurants, nail salons, barber shops, as well as hospitals, clinics and community based organizations."<sup>111</sup> In 2015, New York City gave out over 37.2 million male condoms and 1.2 million female condoms in an effort to combat the spread of HIV.<sup>112</sup> But widespread fear of being arrested under § 240.37 undermines these public health efforts by actively discouraging people from carrying condoms.<sup>113</sup>

**c. Human Trafficking: Section 240.37 Does Not Reduce Trafficking, But Rather Harms People Who Are Trafficked**

Arrests under § 240.37 do not benefit survivors of human sex trafficking. S.M., a former client of the New York City Bar Association’s Immigrant Women & Children’s Project, illustrates this.<sup>114</sup> S.M. was an immigrant who was coerced to engage in sex work over a period of several years, during which time her trafficker physically and psychologically brutalized her. With no family or other support, she was only able to escape her trafficker when he fled the United States due to warrants issued for his arrest. By that time, however, S.M. had been arrested eleven times for prostitution and related offenses and had been convicted on eight charges of prostitution or loitering. Hoping the police would help her, S.M. would not attempt to run away when they conducted raids of the areas in which she worked, but she was never identified or treated as a victim of sex trafficking, which is quite common.<sup>115</sup> Once she was safe, she was interested in applying for a job as a security guard but was concerned that she would be ineligible for employment due to her arrest history. While S.M.’s convictions may now be vacated under N.Y. Criminal Procedure Law § 440.10(1)(i)—allowing for the vacatur of convictions for prostitution (N.Y. Pen. Law § 230.00) and loitering for the purpose of engaging in a prostitution offense (N.Y. Pen. Law § 240.37) where the defendant committed the offending acts because they were a victim of sex trafficking or trafficking in persons—having to secure the services of a lawyer and file motions to vacate those convictions is burdensome and, in the meantime, the convictions hamper her ability to obtain gainful employment.<sup>116</sup>

Furthermore, undocumented women are disproportionately forced into sex trafficking.<sup>117</sup> “Traffickers may deprive victims of their passports or identification documents or threaten victims with arrest or deportation if the victims do not continue to labor for the traffickers” including in street locations visible to police.<sup>118</sup> This exposes women who are being forced into sexual slavery to police targeting and arrest instead of providing them with medical, counseling, housing, and other assistance.

**d. Collateral Consequences of § 240.37 Convictions**

Section 240.37 has been utilized at the discretion of law enforcement to profile, harass, and criminalize women of color, especially trans women of color, creating not only a pipeline to unjust incarceration, but also potential immigration hurdles, barriers to seeking employment and housing, and child welfare consequences.<sup>119</sup> Importantly, this is one of only two violations in the entire New York Penal Code that is not eligible for sealing.<sup>120</sup> 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. This is why the passage of the proposed repeal is so crucial—because those burdened with such charges seek to seal convictions and violations of § 240.37.

**VI. CONSTITUTIONAL CONCERNS**

**a. Section 240.37 Violates the First Amendment**

Section 240.37 violates the First Amendment in that it is overbroad and criminalizes constitutionally protected conduct. A Nevada court struck down a similar ordinance for criminalizing constitutionally protected conduct such as attempting to engage passersby in conversation.<sup>121</sup> While the Nevada ordinance lacked the specific intent provision contained in

§ 240.37, the way § 240.37 is enforced demonstrates that the law is overbroad as applied. The New York Court of Appeals’ 1978 opinion rejecting a First Amendment challenge rested on the notion that conduct for the purpose of prostitution is not a constitutionally protected form of speech.<sup>122</sup> That opinion is outdated and does not take into account how the statute is enforced. As the Second Circuit notes, “As with facial vagueness challenges, we must consider not only conduct clearly prohibited by the regulation but also conduct that arguably falls within its ambiguous sweep. The purpose of an overbreadth challenge is to prevent the chilling of constitutionally protected conduct, as prudent citizens will avoid behavior that may fall within the scope of a prohibition, even if they are not entirely sure whether it does.” *Farrell v. Burke*, 449 F.3d 470, 499 (2d Cir. 2006). As detailed above, women report being targeted by the police based on their attire, geographical location, or arrest history, to the point that they are afraid to leave their houses. The statute is having a clear chilling effect on lawful conduct, and this must be remedied through repeal.

## VII. CONCLUSION

For the above reasons, we urge the state legislature to support the repeal of § 240.37.

Lesbian, Gay, Bisexual, Transgender and Queer Rights Committee  
Danielle King and Geoffrey L. Wertime, Co-Chairs

Immigration and Nationality Law Committee  
Danny Alicea, Chair

Civil Rights Committee  
Zoey Chenitz and Kevin Jason, Co-Chairs

Criminal Justice Operations Committee  
Tess M. Cohen, Chair

Sex and Law Committee  
Farah Diaz-Tello and Olympias Iliana Konidaris, Co-Chairs

Reissued February 2021\*

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\* This report was first issued in February 2020 during the terms of the following committee chairs: Noah E. Lewis, Geoffrey L. Wertime, Co-Chairs (Lesbian, Gay, Bisexual, Transgender and Queer Rights Committee); Victoria Neilson, Chair (Immigration and Nationality Law Committee); Zoey Chenitz, Chair (Civil Rights Committee); Sarah Berger, Chair (Criminal Justice Operations Committee); Mirah Curzer, Melissa Lee, Co-Chairs (Sex and Law Committee).

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<sup>1</sup> “Cisgender” is defined as: “of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth.” *Cisgender*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cisgender> (all undated websites in this report were last visited January 30, 2020).

<sup>2</sup> “Opponents in the Legislature, as well as the New York Civil Liberties Union, the women’s lobby, the New York County Lawyers Association and the Legal Aid Society, termed the bill ‘overly broad and vague’ and therefore a threat to civil liberties.” Ronald Smothers, *Prostitution Loitering Bill Passes Albany Legislature*, N.Y. TIMES, June 11, 1976, <https://www.nytimes.com/1976/06/11/archives/prostitution-loitering-bill-passes-albany-legislature.html>.

<sup>3</sup> “Public place” is defined to include “any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.” N.Y. Penal Law § 240.37(1).

<sup>4</sup> “The Legal Aid Society has represented women assumed to be loitering for prostitution because they were wearing a “short dress,” “a skirt and high heels,” “tight black pants,” or “a black dress.” An outfit considered appropriate elsewhere becomes the basis for an arrest when worn by a woman of color on Pennsylvania Avenue in Brooklyn or Jerome Avenue in the Bronx.” Press Release, 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 (Sept. 30, 2016), <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> [hereinafter *D.H.* press release].

<sup>5</sup> See *People v. Byrd*, 149 Misc. 2d 350, 353 (N.Y. Crim. Ct. 1991) (referring to “an area known to be a prostitution-prone location” (citation omitted)); see also Melissa Gira Grant, *Interactive Map: See Where the NYPD Arrests Women Who Are Black, Latina, Trans, and/or Wearing Jeans*, VILLAGE VOICE (Nov. 22, 2016), <https://www.villagevoice.com/2016/11/22/interactive-map-see-where-the-nypd-arrests-women-who-are-black-latina-trans-andor-wearing-jeans>.

<sup>6</sup> *D.H. v. City of New York.*, 309 F.Supp.3d 52 (2018).

<sup>7</sup> *D.H. v. City of New York*, No. 16-cv-07698-PKC-KNF (Apr. 11, 2019) (stipulation and order of dismissal with prejudice).

<sup>8</sup> Press Release, 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 (Sept. 30, 2016), <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> (containing statements of support by, inter alia, Communities United for Police Reform, Human Rights Watch, New York Civil Liberties Union, Sanctuary for Families, STEPS to End Family Violence, and Youth Represent).

<sup>9</sup> Decrim NY, Join the Coalition, <https://www.decrimny.org/coalition-members> (including organizations such as Brooklyn Defenders Services, Callen-Lorde, Center for Constitutional Rights, Center for HIV Law and Policy, GMHC, Housing Works, Lambda Legal, The LGBT Center, Make the Road New York, Neighborhood Defender Service, New York City Anti-Violence Project, New York Immigration Coalition, Sex Workers Project at the Urban Justice Center, and Sylvia Rivera Law Project).

<sup>10</sup> Decrim NY, New York State Bills for the 2019-2020 Legislative Session, <https://www.decrimny.org/advocacy>.

<sup>11</sup> NEW YORK CITY BAR ASSOCIATION, REPORT ON LEGISLATION BY THE COMMITTEE ON AIDS, A.2736/S.1379 (2013), <https://www2.nycbar.org/pdf/report/uploads/20072412-LettercondemningCondomsasEvidenceofProstitution.pdf>.

<sup>12</sup> NEW YORK CITY BAR ASSOCIATION, REPORT BY THE CRIMINAL COURTS COMMITTEE AND THE SEX AND LAW COMMITTEE, RECOMMENDATIONS TO ENHANCE CRIMINAL PROCEDURE LAW § 440.10(1)(I), REGARDING THE VACATUR OF PROSTITUTION AND TRAFFICKING-RELATED CONVICTIONS FOR VICTIMS OF SEX TRAFFICKING (2013), [https://www2.nycbar.org/pdf/report/uploads/4\\_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf](https://www2.nycbar.org/pdf/report/uploads/4_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf).

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<sup>13</sup> L.1976, c. 344, § 1.

<sup>14</sup> Karen Struening, *Walking While Wearing a Dress: Prostitution Loitering Ordinances and the Policing of Christopher Street*, 3 STAN. J. CRIM. L. & POL'Y 16, 16 (2016).

<sup>15</sup> L.1976, c. 344, § 1.

<sup>16</sup> CLAIRE H. COONEY & JANET QUINT, N.Y. WOMEN IN CRIM. JUSTICE, PROSTITUTION IN NEW YORK CITY: ANSWERS TO SOME QUESTIONS 34 (1977), <https://www.ncjrs.gov/pdffiles1/Digitization/49950NCJRS.pdf>.

<sup>17</sup> Tom Goldstein, *New York Appeals Court Upholds Law to Reduce Street Prostitution*, N.Y. TIMES, June 16, 1978, <https://www.nytimes.com/1978/06/16/archives/new-york-appeals-court-upholds-law-to-reduce-street-prostitution.html>.

<sup>18</sup> *People v. Smith*, 378 N.E.2d 1032 (N.Y. 1978).

<sup>19</sup> Goldstein, *supra* note 17 at A19.

<sup>20</sup> Struening, *supra* note 14, at 16.

<sup>21</sup> Struening, *supra* note 14, at 16-17.

<sup>22</sup> CHRISTY MALLORY ET AL., WILLIAMS INST., DISCRIMINATION AND HARASSMENT BY LAW ENFORCEMENT OFFICERS IN THE LGBT COMMUNITY (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>; *see also* NYC CIVILIAN COMPLAINT REVIEW BOARD, PRIDE, PREJUDICE AND POLICING: AN EVALUATION OF LGBTQ-RELATED COMPLAINTS FROM JANUARY 2010 THROUGH DECEMBER 2015 (2016), <http://www.nyc.gov/html/ccrb/downloads/pdf/LGBTQ-Report.pdf>; *see e.g.*, *Breslauer v. City of New York*, 1:12-cv-00558-DLC (S.D.N.Y. filed Mar. 2, 2012) (describing a transgender woman who was repeatedly harassed by officers and handcuffed to a fence with her arm above her head for 28 hours instead of being placed in a female or male holding pen); *see also* CTR. CON. RIGHTS, STOP AND FRISK: THE HUMAN IMPACT 11-12 (2012), <https://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf>. According to an Urban Institute and Streetwise and Safe study of 300 LGBTQ youth residing in New York City who are or who have been engaged in survival sex, 70% had been arrested at least once. *See* MEREDITH DANK ET AL., URBAN INSTITUTE, LOCKED IN: INTERACTIONS WITH THE CRIMINAL JUSTICE AND CHILD WELFARE SYSTEMS FOR LGBTQ YOUTH, YMSM, YWSW WHO ENGAGE IN SURVIVAL SEX 33 (2015), [https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-yws-who-engage-survival-sex/view/full\\_report](https://www.urban.org/research/publication/locked-interactions-criminal-justice-and-child-welfare-systems-lgbtq-youth-ymsm-and-yws-who-engage-survival-sex/view/full_report) [hereinafter "LOCKED IN"].

<sup>23</sup> *DOI Investigation Finds Gaps in NYPD's Implementation of 2012 Patrol Guide Revisions for LGBTQ and TGNC People*, NYC 14 (Nov. 21, 2017), [https://www1.nyc.gov/assets/doi/press-releases/2017/nov/31\\_LGBTQ\\_ReportRelease\\_112117.pdf](https://www1.nyc.gov/assets/doi/press-releases/2017/nov/31_LGBTQ_ReportRelease_112117.pdf).

<sup>24</sup> *Id.* at 2 ("NYPD does not currently track all LGBTQ-related complaints alleging bias by police officers.... This means that the NYPD's Internal Affairs Bureau ("IAB") is not properly classifying and tracking all complaints from the LGBTQ community. As a result, NYPD is limited in its ability to detect violations of the Patrol Guide changes, perform internal assessments regarding the possible existence of biased policing issues affecting the LGBTQ community, and implement new training to reduce instances of discrimination. Notably, NYPD has not substantiated any allegations of profiling since this category was created in 2014.").

<sup>25</sup> For example, two transgender women of color successfully challenged their arrests for loitering for the purposes of prostitution in New York City in *Lamot v. City of New York*, No. 1:08-cv-05300-DLC (S.D.N.Y. Nov. 16, 2009) (stipulation and order of settlement and dismissal) and *Combs v. City of New York*, No. 1:11-cv-03831-AJN (Feb. 17, 2012) (stipulation of settlement and order of dismissal).

<sup>26</sup> *See* JOEY L. MOGUL ET AL., QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 61 (2011); *see also* Human Rights Campaign and Trans People of Color Coal., *Addressing Anti-Transgender Violence: Exploring Realities, Challenges and Solutions for Policymakers and Community Advocates*, HUMAN RIGHTS CAMPAIGN 28 (2015), <https://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf>; *see also, e.g.*, AMNESTY INT'L *Stonewalled: Police Abuse and Misconduct against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 128 (Sept. 21, 2005), <https://www.amnesty.org/en/documents/AMR51/122/2005/en/> [hereinafter *Stonewalled*].

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<sup>27</sup> See Ginia Bellafante, *Poor, Transgender and Dressed for Arrest*, N.Y. TIMES (Sept. 30, 2016), <https://www.nytimes.com/2016/10/02/nyregion/poor-transgender-and-dressed-for-arrest.html>; *supra* note 25 and accompanying text (describing successful legal challenges by transgender women).

<sup>28</sup> See DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* 49-69 (2011); ERIC A. STANLEY & NAT SMITH, *CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX* (2011); Andrea Ritchie, *Unfinished Business: Community Safety Act Needed to End Discriminatory Policing of LGBT New Yorkers*, GAY CITY NEWS (Oct. 22, 2012), <https://www.gaycitynews.nyc/stories/2012/22/w3832-unfinished-business-community-safety-act-needed-to-end-discriminatory-policing-of-lgbt-new-yorkers-2012-10-22.html>; Duncan Osborne, *Queer Youth of Color Complain of West Village Stop and Frisk*, GAY CITY NEWS (May 23, 2012), <http://gaycitynews.com/queer-youth-of-color-complain-of-west-village-stop-and-frisk>; *Stonewalled*, *supra* note 26, at 23; Mogul et al., *supra* note 26, at 45-68.

<sup>29</sup> See Alex Roberts, *49 Years After Stonewall, Transgender Women Still Face Harassment by Police*, MEDIUM (Jun. 28, 2019), <https://medium.com/transequitynow/49-years-after-stonewall-transgender-women-still-face-harassment-by-police-c5e743e19ef4>; Zach Stafford, *NYPD Sued After Arresting Trans Woman with Pink Handcuffs*, ADVOCATE (Jan. 22, 2019), <https://www.advocate.com/transgender/2019/1/22/nypd-sued-after-arresting-trans-woman-pink-handcuffs>; Joe Neel, *Poll: Majority of LGBTQ Americans Report Harassment, Violence Based on Identity*, NPR (Nov. 21, 2017), <https://www.npr.org/2017/11/21/565327959/poll-majority-of-lgbtq-americans-report-harassment-violence-based-on-identity>.

<sup>30</sup> The NYPD is not permitted to rely on sexual orientation, gender expression or gender identity in its policing activities. See *DOI Investigation Finds Gaps in NYPD's Implementation of 2012 Patrol Guide Revisions for LGBTQ and TGNC People*, NYC (Nov. 21, 2017), [http://www1.nyc.gov/assets/doi/press-releases/2017/nov/31\\_LGBTQ\\_ReportRelease\\_112117.pdf](http://www1.nyc.gov/assets/doi/press-releases/2017/nov/31_LGBTQ_ReportRelease_112117.pdf) (with accompanying report, Mark G. Peters, Commissioner, and Philip K. Eure, Inspector General for the NYPD, *Review of NYPD's Implementation of Patrol Guide Procedures Concerning Transgender and Gender Nonconforming People*) [hereinafter *Inspector Gen. Report*]. See also Paul Schindler, *NYPD Announces New Policies on Interactions with Trans New Yorkers*, GAY CITY NEWS (July 12, 2012), <http://gaycitynews.com/nypd-announces-new-policies-on-interactions-with-trans-new-yorkers>.

<sup>31</sup> *Inspector Gen. Report*, *supra* note 30, at 4.

<sup>32</sup> See *Inspector Gen. Report*, *supra* note 30, at 4.

<sup>33</sup> New York State Report, *2015 U.S. Transgender Survey*, NAT'L CTR. TRANS EQUALITY (2017), <http://www.transequity.org/sites/default/files/USTS%20NY%20State%20Report%20%281017%29.pdf>.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> JAIME M. GRANT ET AL., *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY*, NAT'L CTR. TRANS EQUALITY 162 (2012), [https://transequity.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](https://transequity.org/sites/default/files/docs/resources/NTDS_Report.pdf) (“Police harassment and assault had an apparent deterrent effect on respondents’ willingness to seek out help from law enforcement; 46% of the sample reported that they were uncomfortable seeking help from police while only 35% reported that they were comfortable doing so.”).

<sup>36</sup> See *supra* note 5 and accompanying text.

<sup>37</sup> *D.H. v. City of New York*, No. 16-cv-07698-PKC-KNF, ¶91 n.16 (S.D.N.Y., filed Sep. 30, 2016) (citing N.Y. State Div. of Criminal Justice Servs., *New York City Arrests by Precinct for Loitering for Prostitution: PL § 240.37 (2012-2015)* (unpublished spreadsheet)).

<sup>38</sup> ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* 150 (2017).

<sup>39</sup> See Ricardo Cortés, *An Arresting Gaze: How One New York Law Turns Women into Suspects*, VANITY FAIR (Aug. 3, 2017), <https://www.vanityfair.com/culture/2017/08/nypd-prostitution-laws>.

<sup>40</sup> See *id.*

<sup>41</sup> See Emma Whitford, *When Walking While Trans Is a Crime*, CUT (Jan. 31, 2018), <https://www.thecut.com/2018/01/when-walking-while-trans-is-a-crime.html>; Melissa Gira Grant, *The NYPD Arrests*,



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*Women for Who They Are and Where They Go—Now They’re Fighting Back*, VILLAGE VOICE (Nov. 22, 2016), <https://www.villagevoice.com/2016/11/22/the-nypd-arrests-women-for-who-they-are-and-where-they-go-now-theyre-fighting-back>.

<sup>42</sup> S.K. Choi et al., *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness*, WILLIAMS INST. 9-10 (June 2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>.

<sup>43</sup> *Id.* at 10. Another study found that LGBT RHY were 120% more likely to be homeless than their straight, cisgender peers. Chapin Hall, *Missed Opportunities: Youth Homelessness in America*, VOICES OF YOUTH COUNT 13 (2017), [http://voicesofyouthcount.org/wp-content/uploads/2017/11/ChapinHall\\_VoYC\\_NationalReport\\_Final.pdf](http://voicesofyouthcount.org/wp-content/uploads/2017/11/ChapinHall_VoYC_NationalReport_Final.pdf).

<sup>44</sup> See N.Y.C. Commission on Lesbian, Gay, Bisexual, Transgender and Questioning Runaway and Homeless Youth, *All Our Children: Strategies to Prevent Homelessness, Strengthen Services and Build Support for LGBTQ Youth*, NYC 21 (June 2010), [http://www.nyc.gov/html/om/pdf/2010/pr267\\_10\\_report.pdf](http://www.nyc.gov/html/om/pdf/2010/pr267_10_report.pdf) [hereinafter “*All Our Children*”] (“Findings for the percentage of the City’s homeless youth population who identify as LGBTQ range from 13 percent to 36 percent or more.”); see also N.Y.C. Cent. Innovation through Data Intelligence, *New York City Youth Count Report 2017*, NYC 13 (2017), [http://www1.nyc.gov/assets/cidi/downloads/pdfs/youth\\_count\\_report\\_2017\\_final.pdf](http://www1.nyc.gov/assets/cidi/downloads/pdfs/youth_count_report_2017_final.pdf); Nikita Stewart, *Homeless Young People of New York, Overlooked and Underserved*, N.Y. TIMES (Feb. 5, 2016), <http://www.nytimes.com/2016/02/06/nyregion/young-and-homeless-in-new-york-overlooked-and-underserved.html>. Nationally, the vast majority of homeless LGBT youth (78.2% of LGB youth and 84.5% of transgender youth) became homeless after they were kicked out of, or ran away from, home because of their sexual orientation or gender identity or expression. See Choi et al., *supra* note 42, at 12, figure 12.

<sup>45</sup> Choi et al., *supra* note 42, at 3.

<sup>46</sup> See *LGBTQ Youth National Policy Statement*, NAT. ALLIANCE END HOMELESSNESS (Sept. 7, 2012), <https://endhomelessness.org/resource/lgbtq-youth-national-policy-statement>; Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346, 350 (2009).

<sup>47</sup> Andrew Cray et al., *Seeking Shelter: The Experiences and Unmet Needs of LGBT Homeless Youth*, CTR. AMERICAN PROGRESS 15 (2013), <https://www.americanprogress.org/issues/lgbt/reports/2013/09/26/75746/seeking-shelter-the-experiences-and-unmet-needs-of-lgbt-homeless-youth> (“Survival for homeless youth means more than just a place to sleep at night. Youth need access to food, hygiene items, clothing, and economic security to get off the streets or out of shelters. Among the general population of homeless youth, these needs are often met by turning to friends and relatives for assistance with basic necessities. . . . But for LGBT homeless youth, who are less likely to have access to familial support, this kind of care may not be available, and they are much more likely to be self-reliant for meeting their needs.”) (citation omitted). See also Hall, *supra* note 43, at 11-12 (examining paths to survival sex).

<sup>48</sup> N.Y.C. Ass’n of Homeless and Street-Involved Youth Orgs., *State of the City’s Homeless Youth Report 2011*, COAL. HOMELESS YOUTH 57-58 (2012), <http://www.nychy.org/publications-info> (free registration required).

<sup>49</sup> See *All Our Children*, *supra* note 44, at 43.

<sup>50</sup> Cray et al., *supra* note 47, at 14-16; Meredith Dank, Lilly Yu, and Jennifer Yahner, *Access to Safety: Health Outcomes, Substance Use and Abuse, and Service Provision for LGBQ Youth, YMSM, and YWSW Who Engage in Survival Sex*, URBAN INST. 6 (Feb. 2016), [https://www.urban.org/research/publication/access-safety-health-outcomes-substance-use-and-abuse-and-service-provision-lgbtq-youth-ymsm-and-ywsw-who-engage-survival-sex/view/full\\_report](https://www.urban.org/research/publication/access-safety-health-outcomes-substance-use-and-abuse-and-service-provision-lgbtq-youth-ymsm-and-ywsw-who-engage-survival-sex/view/full_report) [hereinafter “*Access to Safety*”].

<sup>51</sup> See Meredith Dank et al., *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex*, URBAN INST. 5 (Feb. 2015), [https://www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ywsw-engaged-survival-sex/view/full\\_report](https://www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ywsw-engaged-survival-sex/view/full_report) [hereinafter “*Surviving the Streets*”].

<sup>52</sup> *Id.* at 5-6.

<sup>53</sup> *Id.* at 6.



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<sup>54</sup> *Id.*

<sup>55</sup> See Wilson Dizard, *NYC to Stop Using Condoms as Evidence – in Some Cases*, ALJAZEERA AMERICA (May 12, 2014), <http://america.aljazeera.com/articles/2014/5/12/sex-condoms-nyc.html>.

<sup>56</sup> See *Access to Safety*, *supra* note 50, at 6, 11-14.

<sup>57</sup> See LOCKED IN, *supra* note 22, at 1, 89. Queer youth were a popular target of stop-and-frisk policing. See Duncan Osborne, *Queer Youth of Color Complain of West Village Stop and Frisk*, GAY CITY NEWS (May 23, 2012), <http://gaycitynews.nyc/queer-youth-of-color-complain-of-west-village-stop-and-frisk>.

<sup>58</sup> *Surviving the Streets*, *supra* note 51, at 32.

<sup>59</sup> KATAYOON MAJD ET AL., EQUITY PROJECT, *HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS* 62-63 (2009), [http://www.equityproject.org/wp-content/uploads/2014/08/hidden\\_injustice.pdf](http://www.equityproject.org/wp-content/uploads/2014/08/hidden_injustice.pdf).

<sup>60</sup> Cray et al., *supra* note 47, at 15.

<sup>61</sup> Struening, *supra* note 14, at 45-46.

<sup>62</sup> *Id.* at 46.

<sup>63</sup> *Id.* at 27-28.

<sup>64</sup> MEREDITH DANK ET AL., URBAN INST., *CONSEQUENCES OF POLICING PROSTITUTION: AN ANALYSIS OF INDIVIDUALS ARRESTED AND PROSECUTED FOR COMMERCIAL SEX IN NEW YORK CITY* 8, 19, 30 (Apr. 2017), [https://www.urban.org/sites/default/files/publication/89451/legal\\_aid\\_final\\_0.pdf](https://www.urban.org/sites/default/files/publication/89451/legal_aid_final_0.pdf) [hereinafter “CONSEQUENCES”].

<sup>65</sup> See Pooja R. Dadhania, *Deporting Undesirable Women*, 9 UC IRVINE L. REV. 53, 94 (2018).

<sup>66</sup> 8 U.S.C. § 1182; INA § 212(a)(2).

<sup>67</sup> J. JEANTY AND H.J. TOBIN, NAT’L CTR. TRANS EQUALITY, *OUR MOMENT FOR REFORM: IMMIGRATION AND TRANSGENDER PEOPLE* 6 (2013), [http://www.transequality.org/sites/default/files/docs/resources/OurMoment\\_CIR\\_en.pdf](http://www.transequality.org/sites/default/files/docs/resources/OurMoment_CIR_en.pdf) (“Many transgender immigrants came to the US to escape severe and often life-threatening persecution because of who they are.”).

<sup>68</sup> (IDENTIFYING INFORMATION REDACTED BY AGENCY) APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the [INA], 8 U.S.C. § 1182(h) and Section 212(i) of the [INA], 2011 WL 10989685, at \*4 (“Accordingly, the AAO finds that the acts proscribed under N.Y. Penal Law §§ 230.00, 240.37, and 230.20 which are done specifically for prostitution, are morally turpitudinous. Thus, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude”); see also (IDENTIFYING INFORMATION REDACTED BY AGENCY) APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) on Behalf of Self-represented, 2009 WL 2749044 (May 6, 2009) (finding 240.37 is not a CIMT).

<sup>69</sup> 2017 N.Y.C. Local Law No. 228, N.Y.C Admin. Code § 10-178.

<sup>70</sup> MAKE THE ROAD N.Y., *TRANSGRESSIVE POLICING POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS* 12 (2012), [https://maketheroadny.org/pix\\_reports/MRNY\\_Transgressive\\_Policing\\_Full\\_Report\\_10.23.12B.pdf](https://maketheroadny.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf) (“As part of the wide latitude given to officers in enforcing quality-of-life violations, transgender women in particular are often stopped and arrested under the pretext of enforcement of anti-prostitution laws. The term ‘walking while trans’ has become a common descriptor for this phenomenon of arbitrary stops, purportedly on suspicion of prostitution, which are frequently accompanied by physical, sexual and verbal harassment. This profiling of transgender individuals frequently takes place in the form of a charge of ‘loitering with intent to solicit,’ a vague offense that allows broad officer discretion.”). See also Mogul et al., *supra* note 26, at 61.

<sup>71</sup> “The dual challenges faced by undocumented transgender immigrants and their families can make it incredibly difficult to find and maintain work to support themselves, and often face discrimination and abuse on the job. Without legal status, undocumented transgender people are unauthorized to work legally in the United States. Consequently, when they manage to find subsistence work, they are often exploited by their employers and have few avenues for recourse.” Jeanty and Tobin, *supra* note 67, at 7.

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<sup>72</sup> *Id.*

<sup>73</sup> INA § 212(a)(2)(A).

<sup>74</sup> USCIS Form I-918 Petition for U Nonimmigrant Status; USCIS Form I-914 Petition for T Nonimmigrant Status; USCIS Form I-485 Application to Register Permanent Residence or Adjust Status.

<sup>75</sup> USCIS Form I-918; USCIS Form I-914; USCIS Form I-485.

<sup>76</sup> See Luis Medina, *Immigrating While Trans: The Disproportionate Impact of the Prostitution Ground of Inadmissibility and Other Provisions of the Immigration and Nationality Act on Transgender Women*, 19 THE SCHOLAR: ST. MARY'S L. REV. ON RACE & SOC. JUST. 253 (2017).

<sup>77</sup> INA §§ 212(a), 245, and 316.

<sup>78</sup> INA § 237(a)(2)(A)(i). Individuals with a CIMT conviction within five years of admission or 10 years after the granting of legal permanent resident status are considered deportable. Additionally, multiple convictions of a CIMT create grounds for deportability.

<sup>79</sup> See MAKE THE ROAD N.Y., *supra* note 70, at 15.

<sup>80</sup> See *Rohit v. Holder*, 670 F.3d 1085, 1089 (9th Cir. 2012). In upholding a determination of CIMT, the Ninth Circuit found that solicitation of prostitution constituted a CIMT, stating that, “[t]he Board [of Immigration Appeals] has, in precedential decisions, identified certain crimes that involve moral turpitude that are quite similar to solicitation of prostitution, including ‘any act of prostitution, assignation, or any other lewd or indecent act,’; renting a room with the knowledge that it will be used for ‘lewdness, assignation or prostitution.’; and ‘keeping a house of ill-fame resorted to for the purposes of prostitution and lewdness.’” *Id.* (citing P., 3 I. & N. Dec. 20 (Bd. Immigration Appeals 1947)) (citations omitted).

<sup>81</sup> *Id.* at 1089 (citing *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1074 (9th Cir. 2007) (en banc) (Reinhardt, J., concurring, majority opinion), *overruled on other grounds by United States v. Aguila-Montes de Oca*, 655 F.3d 915 (9th Cir. 2011) (en banc)). “[I]n general, such offenses are those that are intrinsically wrong (*malum in se*) or require evil intent.” *Mendoza v. Holder*, 623 F.3d 1299, 1302 (9th Cir. 2010) (citing *Uppal v. Holder*, 605 F.3d 712, 716 n. 2 (9th Cir. 2010)).

<sup>82</sup> See *Miranda-Romero v. Lynch*, 797 F.3d 524, 526 (8th Cir. 2015) (finding that forgery is CIMT because of intent to commit fraud on another).

<sup>83</sup> 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

<sup>84</sup> NY PENAL LAW § 240.37.

<sup>85</sup> See INA § 237(a)(2)(A)(i).

<sup>86</sup> See INA § 212(a).

<sup>87</sup> *Id.* at 526 (citing *Sanchez-Velasco v. Holder*, 593 F.3d 733, 735 (8th Cir. 2010)). See also 8 U.S.C. § 1252(a)(2).

<sup>88</sup> INA 212(a)(2)(D).

<sup>89</sup> NY PENAL LAW § 240.37(2) (“for the purpose of prostitution as that term is defined in article two hundred thirty of this part.”); see also NY PENAL LAW § 230.00 (“A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”).

<sup>90</sup> The report by Make the Road repeatedly characterized the NYPD as engaging in targeted harassment against transgender people. “Many transgender interviewees reported being profiled as sex workers when they were conducting routine daily tasks in the neighborhood. They commonly reported stops that seem to be without basis but in which the police officers involved later justified the stop by charging the person with prostitution-related offenses because condoms were found in their possession. These arrests were frequently accompanied by verbal and physical abuse.” MAKE THE ROAD N.Y., *supra* note 70, at 4.

<sup>91</sup> Testimony of Robin Richardson, Esq., Equal Justice Works Fellow, Sex Workers Project, Urban Justice Center before the New York City Council Committee on Civil Rights in favor of Int. 0318-2014, Dec. 3, 2014, at 1-2, <http://sexworkersproject.org/downloads/2014/20141203-testimony-robin-richardson-fair-chance.pdf> (stating there is a “culture of plea agreements” that forces many to plead guilty even when they are not guilty); SANDY JAMES ET AL.,

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NAT'L CTR. TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (2017), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (“Respondents who were held in jail, prison, or juvenile detention in the past year faced high rates of physical and sexual assault by facility staff and other inmates. In the past year, nearly one-quarter (23%) were physically assaulted by staff or other inmates, and one in five (20%) were sexually assaulted. Respondents were over five times more likely to be sexually assaulted by facility staff than the U.S. population in jails and prisons, and over nine times more likely to be sexually assaulted by other inmates.”).

<sup>92</sup> See Memorandum from Thomas Homan re: *Further Guidance Regarding the Care of Transgender Detainees* (June 19, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/TransgenderCareMemorandum.pdf>.

<sup>93</sup> See Sandra E. Garcia, *Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse*, N.Y. TIMES, Nov. 27, 2018, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html>.

<sup>94</sup> Sharita Guttenberg, *ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, CTR. AM. PROGRESS (May 30, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse>.

<sup>95</sup> *Id.*

<sup>96</sup> See Juan E. Méndez (Special Rapporteur), *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 77, U.N. Doc. A/66/268 (Aug. 5, 2011), <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>97</sup> See *A Death Before Dying: Solitary Confinement on Death Row 5*, ACLU (July 2013), [https://www.aclu.org/sites/default/files/field\\_document/deathbeforedying-report.pdf](https://www.aclu.org/sites/default/files/field_document/deathbeforedying-report.pdf) (citing Hernán Reyes, *The Worst Scars Are In the Mind: Psychological Torture*, 89 Int. Rev. Red Cross 591 (2007), and Metin Basoglu et al., *Torture vs. Other Cruel, Inhuman and Degrading Treatment: Is the Distinction Real or Apparent?*, 64 Archives Gen. Psychiatry 277 (2007)).

<sup>98</sup> See generally *Consequences*, *supra* note 64; MAKE THE ROAD N.Y., *supra* note 70.

<sup>99</sup> See Audacia Ray and Emma Catherine, Red Umbrella Project, *Criminal, Victim, or Worker? The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses*, GLOB. NETWORK SEX WORK PROJECTS 15 (October 2014), <https://www.nswp.org/sites/nswp.org/files/RedUP-NYHTIC-FINALweb.pdf>; *Consequences*, *supra* note 64, at 6-7.

<sup>100</sup> See MAKE THE ROAD N.Y., *supra* note 70.

<sup>101</sup> See Juhu Thukral and Melissa Ditmore, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, URBAN J. CTR. 41 (2003), <https://swp.urbanjustice.org/sites/default/files/RevolvingDoor.pdf>; *Consequences*, *supra* note 64, at 30; Ray and Catherine, *supra* note 99, at 41.

<sup>102</sup> See *supra* note 25 and accompanying text. See also *Inspector Gen. Report*, *supra* note 30, at 2 n. 4.

<sup>103</sup> *Inspector Gen. Report*, *supra* note 30, at 1.

<sup>104</sup> *Id.* at 5.

<sup>105</sup> *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities*, HUMAN RIGHTS WATCH 17 (July 2012), [https://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf).

<sup>106</sup> *Id.* at 2. Following issuance of the report, the NYPD limited its practice of looking at condoms as evidence of prostitution in 2014. See Marc Santora, *New York Police to Limit Seizing of Condoms in Prostitution Cases*, N.Y. TIMES (May 12, 2014), <https://www.nytimes.com/2014/05/13/nyregion/new-york-police-to-limit-seizing-of-condoms-in-prostitution-cases.html>.

<sup>107</sup> See Report on A.2736/S.1379, which would prohibit police and prosecutors from introducing condoms as evidence of prostitution-related offenses in criminal proceedings, *Report on Legislation by the Committee on AIDS*, NYC BAR 2 (April 2013), <https://www2.nycbar.org/pdf/report/uploads/20072412-LettercondemningCondomsasEvidenceofProstitution.pdf> (noting that “police officers routinely confiscate and enter

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condoms as evidence in prostitution-related cases, and prosecutors routinely cite seized condoms as evidence of a prostitution-related offense in criminal court complaints.”).

<sup>108</sup> *HIV and African Americans*, CDC (Feb. 2019), <https://www.cdc.gov/hiv/group/raciaethnic/africanamericans/index.html>.

<sup>109</sup> *HIV and Youth*, CDC (Sept. 2019), <https://www.cdc.gov/hiv/group/age/youth/index.html>.

<sup>110</sup> *HIV Among Transgender People*, CDC (Sept. 2018), <https://www.cdc.gov/hiv/group/gender/transgender/index.html>.

<sup>111</sup> *NYC Condoms*, DOHMH, <https://www1.nyc.gov/site/doh/health/health-topics/condom.page>.

<sup>112</sup> *Id.*

<sup>113</sup> *See e.g.*, New York City Gay and Lesbian Anti-Violence Project, *supra* note 32, at 2 (“transgender women, who are frequently profiled as sex workers by police regardless of whether or not they are actually engaged in sex work, are especially fearful that any condoms in their possession will be used as evidence that they are engaging in prostitution-related offenses”).

<sup>114</sup> NEW YORK CITY BAR ASSOCIATION, *Memorandum in Support*, *supra* note 12, at 3.

<sup>115</sup> Survivors of sex trafficking are often arrested and convicted of prostitution-related offenses—without the police or courts recognizing their need for help. *See, e.g.*, KICKING DOWN THE DOOR: THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS, <http://www.urbanjustice.org/ujc/publications/sex.html> (interviewing sex trafficking victims and finding that trafficked women reported being repeatedly arrested, in some cases up to ten times, in police raids on brothels and other sex work venues, convicted of prostitution, and even sentenced to jail, without ever being identified as trafficked persons).

<sup>116</sup> Notably, those who must resort to sex work for economic reasons and are convicted of loitering for the purposes of prostitution have no such recourse available.

<sup>117</sup> *See* CONSEQUENCES, *supra* note 64, at 19.

<sup>118</sup> *See Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, ACLU, <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states> (last visited Feb. 1, 2020).

<sup>119</sup> *See* TS Candii and Carlina Rivera, *Nix the ‘walking while trans’ law*, DAILY NEWS, July 29, 2020, <https://www.nydailynews.com/opinion/ny-oped-nix-the-walking-while-trans-law-20200729-hampm3yvarfjdegsgj5xzijzae-story.html> (“A conviction under this law makes an individual ineligible for public housing for at least four years after they complete their sentence. Arrests or convictions could lead to deportation for Green Card holders or undocumented residents. For parents, an arrest or conviction could result in their children being removed and placed in foster care.”).

<sup>120</sup> *See* Criminal Procedure Law § 160.55.

<sup>121</sup> *Silvar v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 289, 298 (2006).

<sup>122</sup> *People v. Smith*, 378 N.E.2d at 1038.