

Loitering for the Purposes of Prostitution New York State

In New York State, 240.37 is the charge of loitering for the purposes of prostitution, a law which criminalizes constitutionally protected behavior and is often used to target:

- **women of color,**
- **transgender women, and**
- **individuals who have been previously arrested for these crimes.**

The statute allows police to interpret behaviors such as repeatedly attempting to stop a vehicle or repeatedly waving to a vehicle, or attempting to talk to other individuals on the street, as having a purpose of engaging in prostitution.¹ This means it is the bias of the arresting officer which turns legal behavior illegal, and turns citizens into criminals.

We know from police records that evidence used to indicate to an arresting officer that someone is about to engage in prostitution includes their manner of dress, being in an area of the city known for prostitution, the possession of condoms, or that they have been arrested before under this charge. This crime is a violation for those arrested who have no previous arrests, and becomes a B-level misdemeanor after the first arrest. This is often part of the cycle of involvement in the criminal justice system which contributes to poverty and instability.

Harms Created by Loitering Statutes

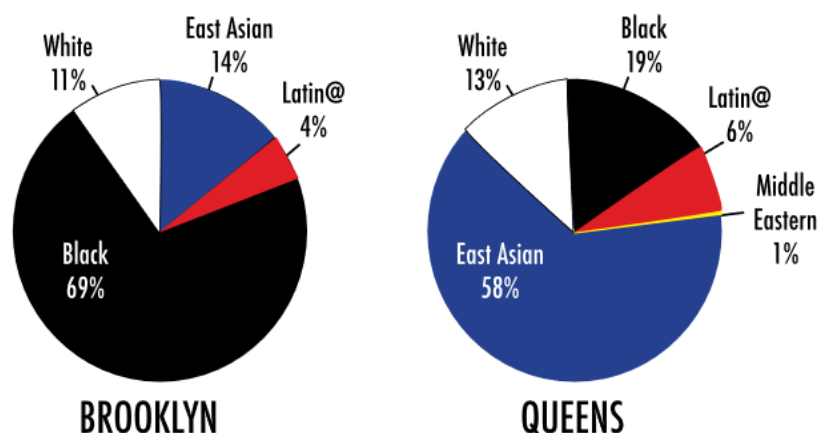
The impact of policing and criminalization for these communities leads to dire effects. The impact of policing for prostitution laws has long been shown to increase vulnerability to violence, exploitation and other forms of victimization. Policing areas known for sex work forces people into more isolated locations. This isolation means breaking down communities who can offer safety and harm reduction, no longer being able to connect with outreach workers who can offer resources and forcing people into locations more conducive to violence and victimization.

Involvement in the criminal justice for a prostitution-related crime can also lead to the loss of formal employment, housing, custody, services, access to schooling, stigma and discrimination – all of which only further undermine someone’s ability to access formal employment and stable circumstances. This is also compounded by the associated fines, penalties, and court costs – which now become another debt to pay off with the same survival techniques that got you arrested in the first place. Prostitution statutes such as 240.37 actively bar people who are trading sex from leaving sex work.

• **240.37 Targets Women of Color**

Overwhelmingly, 240.37 targets communities, and specifically women, of color. The study “*Criminal, Victim or Worker?*” from the Red Umbrella Project looked at the Human Trafficking Intervention Courts in Brooklyn and Queens, the system through which those arrested for prostitution charges are processed, and found that the courts are disproportionately seeing women of color come through on prostitution-related charges, including loitering.

- **People of color accounted for 89% of defendants in Brooklyn and 87% of defendants in Queens.**



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- **240.37 Targets Trans Women**

The specific focus on transgender women, and the impact of these laws, has long been documented in New York City, and across the country. While a staff attorney at the Sylvia Rivera Law Project, Dean Spade reported that 80% percent of transgender women of color he worked with had experienced police harassment or false arrest based on suspicion of prostitution.² This frequent experience has been termed “walking while trans,” to note the overwhelming profiling, arrest and charging for simply engaging in behaviors that would go unnoticed, save for gender identity.³ Said one transgender woman who had previously been arrested in Queens, “Being transgender is hard enough,” she says. “It is very hard getting arrested for nothing... I am afraid to walk outside, because they will think I am a prostitute and arrest me.”⁴

- **240.37 Targets Those Previously Arrested Under the Statute**

The police also use a previous arrest for the crime of loitering to profile someone’s intent to engage in prostitution is – contributing to the revolving door of involvement in the criminal justice system. As noted by the Human Rights Watch Study, *Sex Workers at Risk*,

According to the New York Police Department Patrol Guide, police officers are permitted to include the suspect’s location, conversations, clothing, conduct, associates, and status as a “known prostitute” in order to establish that someone is loitering for the purpose of engaging in prostitution... Such laws enable arbitrary and preemptive arrests on the basis of profile or status, rather than criminal conduct.”⁵

For too many, this profiling for a low-level crime is not simply a misdemeanor to be ignored, but quickly turns into a life sentence of involvement in the criminal justice system.

Resources

● **Make the Road, *Transgressive Policing (2012)***

Available at: http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf

● **Red Umbrella Project, *Criminal, Victim or Worker? (2014)***

Available at: <http://www.nswp.org/sites/nswp.org/files/RedUP-NYHTIC-FINALweb.pdf>

● **Sex Workers Project & PROS Network, *Public Health Crisis (2012)***

Available at: <http://sexworkersproject.org/publications/reports/public-health-crisis/>

● **Human Rights Watch, *Sex Workers at Risk (2012)***

Available at: <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities>

● **Amnesty International, *Policy on State Obligations to Respect, Protect & Fulfil the Human Rights of Sex Workers (2016)***

Available at: <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

● **Alliance for a Safe & Diverse DC, *Move Along: Policing Sex Work in Washington, DC (2008)***

Available at: <https://dctranscoalition.files.wordpress.com/2010/05/movealongreport.pdf>

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

2 Transgressive Policing, Make the Road, 2012

3 Sex Workers at Risk, Human Rights Watch, 2012

4 Gogolak, “Profiled by the NYPD, Transgender People in New York Fear Carrying Condoms.” Village Voice News.

5 Sex Workers at Risk, Human Rights Watch, 2012