



666 Broadway, 7th Floor  
New York, New York 10012  
212-614-6464  
ccrjustice.org

June 12, 2019

Senate Majority Leader Andrea Stewart-Cousins  
188 State Street Room 907, Legislative Office Building  
Albany, NY 12247  
[scousins@nysenate.gov](mailto:scousins@nysenate.gov)

Speaker of the Assembly Carl Heastie  
Legislative Office Building, Room 932  
Albany, NY 12248  
[Speaker@nyassembly.gov](mailto:Speaker@nyassembly.gov)

**Re: Urgent Request to Repeal the “Walking While Trans” Ban (S02253/A00654) and Support the Expansion of Criminal Record Relief for Survivors of Trafficking (S4981a/A6983a)**

Dear Senate Majority Leader Andrea Stewart-Cousins and Speaker of the Assembly Carl Heastie,

We, the undersigned, are civil rights organizations that advocate for racial justice, gender justice, immigrant justice, and LGBTQ+ rights. In our capacity as civil rights leaders, we write today to urge you to pass two bills—**S02253/A00654** and **S4981a/A6983a**—before the close of New York State’s legislative session.

**First**, we are deeply concerned that New York State continues to enforce NYS Penal Law § 240.37, an archaic anti-loitering law that has led law enforcement to engage in widespread profiling and harassment of the transgender and gender non-conforming (TGNC) community across the State. The statute, commonly known as the “walking while trans” ban, permits police to arrest people based on the vague and non-evidence based assumption that they are occupying public space with the purpose of engaging in sex work.

Police reports cite “wearing a skirt,” “waving at a car,” and “standing somewhere other than a bus stop or taxi stand” as reasons to arrest people.<sup>1</sup> According to the Division of Criminal Justice Services (DCJS), there was a 120% increase in these arrests in 2018. Of the 152 arrests made in 2018, 49% were Black, 42% were Hispanic, and the remaining 7% were white; 80% of people identified as female, though because of mis-gendering by the NYPD of trans women, this figure is likely higher. Because of the “walking while trans” ban, countless members of the TGNC community have been arrested while heading to the grocery store or bus stop, congregating with friends, or simply trying to live their lives.<sup>2</sup>

While the New York Police Department recently changed their patrol guide as part of a settlement from a Legal Aid lawsuit,<sup>3</sup> it is in no way an adequate response to the violence TGNC people face as a result of NYS Penal Law § 240.37. Patrol guides do not allow officers to assault TGNC people, yet they still do. Patrol guides do not allow officers to misgender TGNC people, yet they still do. Patrol guides do not allow officers to coerce sexual favors from TGNC people in exchange for not arresting them, yet they still do. As long as the law remains on the books, TGNC people and women of color remain at high risk of profiling, harassment, and sexual violence.

---

<sup>1</sup> See Melissa Gira Grant, *The NYPD Arrests 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/>; Ricardo Cortes, *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>2</sup> See, e.g. 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>; AFRICAN AMERICAN POLICY FORUM & CENTER FOR INTERSECTIONALITY AND SOCIAL POLICY STUDIES, SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 24-25 (2015), available at <https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF+SMN+Brief+Full+singles-min.pdf>; Emma Whitford, *When Walking While Trans is a Crime*, THE CUT (Jan. 2018), <https://www.thecut.com/2018/01/when-walking-while-trans-is-a-crime.html>; CATHERINE HANSENS, ET AL., A ROADMAP FOR CHANGE: FEDERAL POLICY RECOMMENDATIONS FOR ADDRESSING THE CRIMINALIZATION OF LGBT PEOPLE AND PEOPLE LIVING WITH HIV 5 (2014), available at <https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap+for+change+full+report.pdf>; CENTER FOR CONSTITUTIONAL RIGHTS, STOP AND FRISK: THE HUMAN IMPACT 11-13 (2012), available at <https://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf>; MAKE THE ROAD NEW YORK, TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS (2012), available at [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).

<sup>3</sup> See Emma Whitford, *NYPD amends patrol guide to curb 'walking while trans' arrests*, QUEENS DAILY EAGLE (June 6, 2019), <https://queenseagle.com/all/loitering-law-transwomen-nypd-amended-profiling>.

Compounding the problem of discriminatory and arbitrary arrests, TGNC people frequently experience physical, sexual, and verbal abuse at the hands of law enforcement.<sup>4</sup> Sixty-one percent of transgender New Yorkers recently surveyed had previously been subject to police misconduct, including incidences of sexual assault, while a similar number reported that past experiences of police harassment had discouraged them from seeking the assistance of law enforcement altogether.<sup>5</sup>

On the eve of the 50th Anniversary of the Stonewall Rebellion, it is unconscionable that New York State’s Democratically-controlled legislature would continue to sanction the unconstitutional, state-sponsored harassment of TGNC people simply for “walking while trans.” The criminalization and profiling of transgender and gender non-conforming individuals is indisputably a civil rights issue, made all the more egregious by the persistent discrimination, homelessness, poverty, and violence that transgender New Yorkers continue to face.<sup>6</sup> Therefore, we urgently call for the passage of **S02253/A00654**, a bill which repeals NYS Penal Law § 240.37 and dramatically curtails the state-sanctioned harassment and criminalization of the transgender community.

**Second**, we call upon the New York State Legislature to pass **S4981a/A6983a**, a bill that allows survivors of human trafficking to vacate their records for crimes their traffickers forced them to commit. By making criminal records eligible for vacatur in additional circumstances, the bill allows trafficking survivors to overcome previously insurmountable barriers to securing stable housing, employment, and social services access so they can move on with their lives.

The vacatur relief afforded by **S4981a/A6983a** is especially critical for New York’s immigrant communities. as many immigrants in trafficking situations—whether trafficked into the sex trades, domestic work, agriculture, and construction—have criminal charges as a result of their exploitation. These criminal charges prevent immigrant survivors of trafficking from applying for citizenship, adjusting their immigration status, and qualifying for a VAWA Self Petition or Battered Spouse Waiver when otherwise eligible—in turn, making them vulnerable to deportation

---

<sup>4</sup> See NATIONAL CENTER FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY: NEW YORK STATE REPORT 2 (2015), available at <https://bit.ly/2wDD8gF> [hereinafter “NYS TRANS SURVEY”]; EMILY WATERS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED INTIMATE PARTNER VIOLENCE IN 2016: A REPORT FROM THE NATIONAL COALITION OF ANTIVIOLENCE PROGRAMS (2017), available at <http://avp.org/wp-content/uploads/2017/11/NCAVP-IPV-Report-2016.pdf>; JAIME M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 158-162 (2011), available at [https://www.transequality.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](https://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf).

<sup>5</sup> NYS TRANS SURVEY.

<sup>6</sup> See generally NYS TRANS SURVEY (reporting high rates of discrimination and homelessness).

every day. By expanding the scope of vacatur relief available under New York State Law, **S4981a/A6983a** paves the way for immigrant survivors of trafficking to live free from persecution and fear.

In the Trump era, where LGBTQ+ and immigrant communities are under attack from all sides, and the federal government can no longer be relied upon to enforce equal rights, it is imperative that the New York State Legislature be a strong ally. Therefore, decisive action on **S02253/A00654** and **S04981a/A06983a** is required this Legislative Session in order to supply a critical remedy to transgender, gender non-conforming, and immigrant communities facing criminalization, marginalization, and deportation in New York State. We urge you to pass this legislation without delay.

Sincerely,

The Center for Constitutional Rights

National Women's Law Center

American Civil Liberties Union of New York (NYCLU)

NAACP Legal Defense and Education Fund

The National Center for Lesbian Rights

Transgender Legal Defense and Education Fund

Transgender Law Center

National LGBTQ Task Force Action Fund

Color of Change

LatinoJustice PRLDEF

BYP100 Action Fund

Lambda Legal

GLBTQ Legal Advocates & Defenders

Gay Men's Health Crisis

Girls for Gender Equity

Stonewall Democrats

Lambda Independent Democrats of Brooklyn

National Trans Bar Association

The Lesbian, Gay, Bisexual & Transgender Community Center

The LGBT Bar Association of New York (LeGaL)

National Center for Transgender Equality

Reframe Health and Justice

The Center for HIV Law and Policy

National Lawyers Guild - Queer Caucus

National Lawyers Guild - NYC Chapter

Adalah Justice Project

National Black Justice Coalition

Progressive Doctors

Sexual and Reproductive Health (SRH) Section, American Public Health Association

St. James Infirmary

National Gay and Lesbian Task Force (NYC Office)

Highlander Center

Black and Pink

Cornell Gender Justice Clinic

Public Health Justice Collective