



October 28, 2020

Hon. Carl E. Heastie
Speaker, NYS Assembly

Hon. Andrea Stewart-Cousins
NYS Senate Leader

Hon. Andrew M. Cuomo
NY State Governor

Hon. Tish James
NY State Attorney General

Dear Speaker Heastie, Leader Stewart-Cousins, Governor Cuomo, and AG James,

Enclosed please find a Resolution approved by Downtown Independent Democrats General Membership on October 28, 2020:

- **Repeal the "Walking While Trans" ban**

The "Walking While Trans" ban is an excuse for the NYPD to disproportionately harass Black, Latinx, transgender women in New York City. Officially New York Penal Law § 240.37, "Loitering for the purpose of engaging in a prostitution offense", the NYPD uses the "Walking While Trans" ban to target our trans neighbors, friends, and families of color in New York City.

DID insists that the State legislature repeal this cruel and unusual policy. We ask State legislative leadership to promptly bring Assembly Bill 654 (Paulin and 65 other Assembly co-sponsors) and Senate Bill 2253 (Hoylman and 35 other Senate co-sponsors) to a floor vote, and finish this job.

Sincerely,

Richard Corman
President, Downtown Independent Democrats

Enclosure

cc: Hon. Bill de Blasio, Mayor of New York City
Hon. Corey Johnson, Speaker, NYC Council
Cy Vance, Manhattan District Attorney
Dermot F. Shea, NYC Police Commissioner
Hon. Margaret Chin, NYC Council Member
Hon. Carlina Rivera, NYC Council Member
Hon. Chuck Schumer, U.S. Senator
Hon. Kirsten Gillibrand, U.S. Senator
Hon. Carolyn Maloney, U.S. Representative
Hon. Jerrold L. Nadler, U.S. Representative

Hon. Nydia Velázquez, U.S. Representative
Hon. Brad Hoylman, NY State Senator
Hon. Brian Kavanagh, NY State Senator
Hon. Harvey Epstein, NY State Senator
Hon. Deborah J. Glick, NY State Assembly Member
Hon. Yuh-Line Niou, NY State Assembly Member
Hon. Scott M. Stringer, NYC Comptroller
Hon. Jumaane Williams, NYC Public Advocate
Hon. Gale Brewer, Manhattan Borough President



Resolution to Repeal the "Walking While Trans" Ban

Whereas:

1. New York State's "Walking While Trans" ban is an anachronous law which disproportionately impacts marginalized populations;
 - a. The New York State legislature enacted the Walking While Trans ban, formally the Loitering for the Purpose of Prostitution law, in 1976.¹ This law was written so that police could harass people for prostitution, and criminalizes basic life activities such as remaining or wandering around in a public place, and engaging passers-by in conversation.² NYPD uses this law to explicitly harass trans people, for example, waiting at a bus stop, at a crosswalk for a taxi or a friend, or walking to the store just because of their gender identity. NYPD officers are on the record for explicitly looking for trans women ("women with Adam's apples") to harass and arrest under this loitering law.³
 - b. "The percentage of New Yorkers charged with prostitution who are trans is impossible to know for sure. Attorneys with the Legal Aid Society say the NYPD often misgenders their trans clients, listing them as men."⁴
 - c. Leading New York organizations and politicians support repealing this law -- including the New York City Bar,⁵ the Human Rights Campaign,⁶ Governor

¹ PEN § 240.37 Loitering for the purpose of engaging in a prostitution offense, New York Consolidated Laws, Penal Law, retrieved October 25, 2020,

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

² A Guide to the 'Walking While Trans' Ban, The Cut, July 22, 2020,

<https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>

³ Nix the 'walking while trans' law, New York Daily News, July 29, 2020,

<https://www.nydailynews.com/opinion/ny-oped-nix-the-walking-while-trans-law-20200729-hampm3yvarfjd-egsgj5xzijzae-story.html>

⁴ A Guide to the 'Walking While Trans' Ban, The Cut, July 22, 2020,

<https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>

⁵ Committee Report: Repeal the "Walking While Trans" Ban, New York City Bar, February 3, 2020,

<https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>

⁶ Urge the New York State Assembly to Repeal the Walking While Trans Ban and Hold Police Accountable, Human Rights Campaign, June 9, 2020,

<https://www.hrc.org/news/urge-the-new-york-state-assembly-to-repeal-the-walking-while-trans-ban-and>



Cuomo,⁷ a majority of NY Senate Democrats,⁸ and the Brooklyn District Attorney⁹ -- yet the New York State legislative leadership has chosen to not bring it to a floor vote.

- d. The "Walking While Trans" ban is broadly written, and is used by NYPD to clear the streets of people they deem inappropriate. In reference to the West Village, Legal Aid's Kate Mogulescu said in 2016, "This kind of policing is very much tied into the gentrification and sort of economic shift in certain areas. The call for a kind of 'cleanup' of the streets that accompanies that — this is not the only law that's used to do that, but it's a pretty striking example. And because the law allows for such abuse — it's part of the law itself — there's no check on that. So it becomes a very useful tool for getting people off the street. And we have to think about who those people are."¹⁰
2. Discrimination against trans people disproportionately affects Black and non-Black people of color;
 - a. NYPD overwhelmingly targets trans women of color under this law, yielding intersectional disparate impact. In 2018, NYPD arrested 152 people using the law: 80 percent were women, 49 percent were Black, and 42 percent were Latinx (i.e., 91 percent were Black or Latinx). According to the Red Umbrella Project, in one Brooklyn court in 2013 and 2014, 94 percent of the defendants charged were Black;¹¹
 - b. 2020 is the deadliest year for trans women of color since records began.¹² For years, trans activists have fought to repeal this law. Recently frontline Black trans activists have gained momentum and support in New York State in their fight to

⁷ Cuomo, Andrew (@NYGovCuomo), June 28, 2020. Tweet.

<https://twitter.com/NYGovCuomo/status/1277278313808084994>

⁸ The Walking While Trans Ban Is 'Stop and Frisk 2.0', The Nation, February 19, 2020,

<https://www.thenation.com/article/activism/walking-while-trans-repeal/>

⁹ Brooklyn DA, others urge Albany to repeal loitering law and enable record-clearing for trafficking victims before end of session, Brooklyn Eagle, June 19, 2019,

<https://brooklyneagle.com/articles/2019/06/19/brooklyn-da-others-urge-albany-to-repeal-loitering-law-and-enable-record-clearing-for-trafficking-victims-before-end-of-session/>

¹⁰ The NYPD Arrests Women For Who They Are And Where They Go - Now They Are Fighting Back, The Village Voice, November 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/>

¹¹ A Guide to the 'Walking While Trans' Ban, The Cut, July 22, 2020,

<https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>

¹² More than 30 transgender people have been killed in 2020, making this already the deadliest year since records began, Insider, October 6, 2020,

<https://www.insider.com/30-transgender-people-have-been-killed-in-2020-highest-record-2020-10>



repeal, but legislative leadership is sitting on the repeal bills even with a majority of State legislative support.¹³

3. Police use of the "Walking While Trans" policy is discriminatory;
 - a. Even the NYPD recognizes the negative impact of this law: in 2018, the NYPD told officers to reduce arbitrary apprehensions, after loitering for prostitution arrests increased 120 percent in one year.¹⁴
 - b. The law requires no basis in reality, merely the subjective determination of a patrolling officer. The Village Voice documented this as, "From 2012 through 2015, nearly 1,300 individuals were arrested in New York City and charged with loitering for the purposes of prostitution. The vast majority are women. Such arrests are not the result of stings, in which undercover officers attempt to solicit sex for money. Neither are they the result of investigations that produce evidence — emails, text messages, online ads — that the women had intended to sell sex. With a loitering arrest, a woman's crime need only exist in the arresting officer's head... 'There is no other law that I can think of that gives the police that much power and discretion,' [Legal Aid's] Mogulescu said. "What you see is simply identity-based policing."¹⁵
 - c. "According to the Civilian Complaint Review Board, between 2010 and 2015, 856 complaints filed by LGBTQ New Yorkers included allegations that officers used slurs including "faggot," "queer," "homo," and "tranny." The NYPD revised its patrol guide in 2012 to explicitly prohibit disrespectful remarks about gender expression — but a November 2017 report by the Department of Investigation found that between 2012 and 2016, officers at just six of the city's 77 precincts received the mandatory training."¹⁶
 - d. More than 60% of transgender New Yorkers report recent police harrassment and misconduct -- including allegations of sexual assault by police -- stemming from enforcement of this law. This reduces transgender peoples' willingness to

¹³ Repeal the #WalkingWhileTrans ban (@RepealWWT), July 22, 2020. Tweet.

<https://twitter.com/RepealWWT/status/1285924589013479424>

¹⁴ A Guide to the 'Walking While Trans' Ban, The Cut, July 22, 2020,

<https://www.thecut.com/2020/07/walking-while-trans-law-in-new-york-explained.html>

¹⁵ The NYPD Arrests Women For Who They Are And Where They Go - Now They Are Fighting Back, The Village Voice, November 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/>

¹⁶ When Walking While Trans Is A Crime, The Cut, January 31, 2018

<https://www.thecut.com/2018/01/when-walking-while-trans-is-a-crime.html>



work with NYPD.¹⁷

- e. “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[1] and transgender, and immigrant women.”¹⁸

Therefore be it resolved that Downtown Independent Democrats supports:

1. Repealing New York State's "Walking While Trans" Ban.
 - a. We endorse Assembly Bill 654 (Paulin) and Senate Bill 2253 (Hoylman) to repeal this ban.^{19,20}
2. Comprehensive reporting on the discriminatory impact of NYPD policies.
 - a. Including a centralized data base for crimes against transgender and LGPQIA+.²¹
3. Holding individual officers accountable for harassment against trans people.
 - a. Require and enforce mandatory anti-racist training, anti-bias LGBTQIA+, feminist training.

¹⁷ Urge the New York State Assembly to Repeal the Walking While Trans Ban and Hold Police Accountable, HRC, June 9, 2020,

<https://www.hrc.org/news/urge-the-new-york-state-assembly-to-repeal-the-walking-while-trans-ban-and>

¹⁸ New York City Bar Committee Report, “Walking While Trans” Ban, February 3, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>

¹⁹ Assembly Bill A654, Repeals section 240.37 of the penal law, relating to loitering for the purpose of engaging in a prostitution offense; repealer, NY State Senate, January 9, 2019,

<https://www.nysenate.gov/legislation/bills/2019/s2253>

²⁰ Senate Bill S2253, Repeals section 240.37 of the penal law, relating to loitering for the purpose of engaging in a prostitution offense; repealer, January 23, 2019,

<https://www.nysenate.gov/legislation/bills/2019/s2253>

²¹ Violence Against Transgender People Is on the Rise, Advocates Say, The New York Times, November 9th, 2017, <https://www.nytimes.com/2017/11/09/us/transgender-women-killed.html>