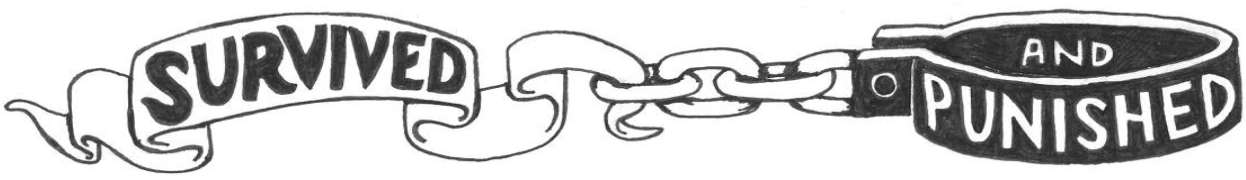
Preserving Punishment Power

A grassroots abolitionist assessment of New York reforms



NEW YORK

Contents:

This document represents our analysis of criminal punishment system reforms passed in New York in 2019. The public health crisis of COVID-19 that hit NYC in early 2020 has already had a deep impact on the carceral structures of the city and state. We, like other abolitionists, are working to understand exactly what the pandemic's immediate and long term effects are, and to continue our work under these new conditions.

We hope that this abolitionist assessment of these recent reforms can serve as a durable resource for organizers considering progressive-seeming but carceral state-expanding legislation and policies that come about in their locales, both during this pandemic and beyond. We know that criminal justice reformers and elected officials will use this moment to add new draconian powers into their arsenal, as we already see in Governor Cuomo's expansion of pretrial detention.

We refuse to submit to carceral expansion as inevitable. But our work will become harder, and to paraphrase Thenjiwe McHarris, much is "required of us in this moment." We hope to connect to abolitionists in other cities as we respond to the rapid threats and opportunities of these new—and very old—conditions.

Alongside our abolitionist movement family, during this global pandemic we promise to continue to: support our comrades behind the walls, demand everyone's immediate release, and fight for the abolition of gender violence, policing, prisons, surveillance, and deportations.

Over the past year, as abolitionist movements have grown both in size and in visibility, we've seen a wave of 'criminal justice reform' initiatives across the United States. Here in New York State and New York City, liberal politicians and non-profits have positioned themselves to be seen as leaders in this effort—passing new legislation, consolidating older reforms, and floating new proposals. They've expressed a desire for these reforms to be seen as models for local and state governments to follow throughout the country.

Survived & Punished NY has been actively critical of the reforms proposed and enacted here, and has participated in coalitions such as No New Jails and Decrim NY, which pursue a vision of abolition and liberation rather than reform. This document is a continuation of that work—both the critique and the construction of alternative paths. We offer it as an assessment of these reforms—which are the best that reformers have to offer in the face of growing calls for an end to carceral structures[1]—and as a model of how we, as abolitionists, can think through whether to support or oppose future reforms that liberals and progressives propose.

Some of these reforms will free some people. A few have the potential to free many people—a prospect that may or may not happen, depending on how they are actually put into practice. We will use whatever new tools they offer as we work to free all criminalized survivors, just as we use every available existing tool, however imperfect.

But the questions for us as abolitionists are: Do the structures created by reforms also work to keep other people in cages? Do they help or hinder continued efforts to free all incarcerated people and to prevent people from being locked up? Do they move us closer to freeing all of our caged friends, neighbors and family members, or do they instead bargain away some lives for others' freedom? At heart, that is what determines whether a reform—even one that will free some people—is one that we as S&P NY believe is consistent with our abolitionist politics and vision.

We've built on the work of other abolitionist organizers and strategists[2] to develop a set of clear, concrete questions to help us understand recent and ongoing reform efforts here in New York. We hope these questions will also be useful to abolitionists in other places as they make similar decisions about how to respond to proposed reforms.

1 Structures relating to all systems of confinement and/or control based upon a punishment mentality or practice. This can mean jails, prisons and detention centers directly, but also refers more broadly to the support systems for such methods of caging: surveillance, probation, fines and fees associated with the criminal legal system, the punitive manner in which other systems operate to mentally, emotionally, financially restrict and constrict people and whole communities.

2 In particular "Challenges and Pitfalls to Reform," a document compiled by Mariame Kaba which includes questions by Erica Meiners, Dean Spade, and Peter Gelderloos; the "Radical Policy Checklist" compiled by Movement 4 Black Lives Policy Table and Law for Black Lives; Mariame Kaba's "Police 'Reforms' You Should Always Oppose" (found at https://transformharm.org/police-reforms-you-should-always-oppose/); and "Abolitionist Principles and Organizing Strategies for Prosecutor Organizing", which Survived & Punished NY and other organizations put out in Fall 2019 (found at bit.ly/AbolitionistPrinciples).

We ask of each reform:

Does it (as a whole or in part) legitimize or expand the carceral system we're trying to dismantle?

Does it benefit parts of the Prison Industrial Complex, industries that profit from the PIC, or elected officials who sustain the PIC?

Do the effects it creates already exist in a way we have to organize against? Will we, or others, be organizing to undo its effects in five years?

Does it preserve existing power relations? Who makes the decisions about how it will be implemented and enforced?

Does it create a division between "deserving" and "undeserving" people? Does it leave out especially marginalized groups (people with criminal records, undocumented people, etc.)? Does it cherry-pick particular people or groups as token public faces?

Does it undermine efforts to organize and mobilize the most affected for ongoing struggle? Or does it help us build power?

If a proposed reform does these things, we know it does not lead towards freedom and is one we must oppose.

Sadly, that has been true of all the reforms we've seen in New York over the past year. The problems with each have been different, in ways that these questions have helped us understand, but none have been directed towards liberation. We see this as an important indication of the direction that 'reformers' are taking: using a rhetoric of "repair" to strengthen and legitimize the carceral state, to preserve the relations of power that it upholds and enacts, to insist on a separation of "deserving" and "underserving" that sacrifices the lives and freedom of countless people, and to undermine organizing towards collective power and liberation.

Trans-Specific Reforms at NY City & State levels that fail to free trans people or dismantle the PIC

In recent years, we have noticed an increase in "criminal justice reforms" in both the New York City Council and Albany terrains that purport to support trans & gender non-conforming people specifically. Because they are not examined for the ways they legitimize and expand the carceral system, they enjoy an almost unquestioned supportive consensus among mainstream and liberal LGBTQ advocacy groups. As PIC abolitionists, we are deeply concerned about this trend, and we insist that there is not universal support by queer and trans people for carceral solutions in our names. Indeed, we believe that the groups providing cover for an agenda set by prosecutors and politicians often do so based on financial interest. These reforms do not intend to free trans people who are currently incarcerated or to decriminalize "crimes" that disproportionately impact trans people, particularly Black, Indigenous, and immigrant trans communities.

Here, we focus on two of these reforms: one, Bill 1535,[3] which creates a new task force to supervise the conditions of trans people in NYC custody, was passed by the NYC Council in June 2019 within weeks of the death of Layleen Polanco Xtravaganza while she was in Rikers Island custody; the second, banning the "trans/gay panic" defense,[4] which aims to increase sentences for people charged in anti-trans hate crimes, had the overwhelming support of LGBT groups and was passed and signed by the Governor in 2019.

These reforms both legitimize and expand important parts of the carceral system.

The new task force presumes we can trust the Board of Corrections and other city actors to improve conditions for incarcerated trans people when decades of history and abolitionist trans-led organizing in NYC prove otherwise. The task force has only reporting powers, with no guarantee that the Department Of Corrections must comply or even that City Council will mobilize to enact their recommendations. It is common and undisputed knowledge that trans people, especially Black trans women and trans femmes of color, are disproportionately policed and face inordinate violence while incarcerated.[5] All this plan does is spend money to tell us what we already know.

The bill barring the "trans/gay panic" defense is expressly based on wanting longer/harsher sentences for those charged with hate crimes.[6] We do not believe that even the most heinous acts of interpersonal violence can be eliminated by caging their perpetrators.[7] The causes of homicidal

3 https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3923931&GUID=-94F7EE69-D9E4-45D2-8A98-A67C055EAE20&Options=&Search=

4 https://www.nysenate.gov/legislation/bills/2019/s6573

5 A few of the myriad reports documenting the details of this are https://srlp.org/files/warinhere.pdf (dealing with New York State prisons), https://www.scribd.com/document/334018552/We-Deserve-Better-Report (addressing policing in New Orleans), and https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf (a national survey describing policing and incarceration in Chapter 14).

6 https://www.cnn.com/2019/06/30/us/new-york-cuomo-gay-panic-trans/index.html; https://www.cbsnews.com/news/new-york-bans-gay-panic-defense-in-murder-cases/

7 For an early statement in opposition to hate crimes, see https://srlp.org/files/Broken%20Bones-1.pdf; see also Kay Whitlock and Michael Bronski, Considering Hate: Violence, Goodness, and Justice in American Culture and Politics (2015).

transmisogyny and anti-Blackness are not mitigated by the arrests of individuals, nor by locking people up. And, we know that as long as prosecuting offices continue to call for decades-long sentences, communities will be torn apart, perpetuating harm and reinforcing systems that remove trans people from society, employment, and housing.

These reforms benefit parts of the PIC, including industries that profit from the PIC and elected officials who sustain the PIC.

New York City councilmembers created a task force to make it look like they were responsive to the conditions that caused Layleen Polanco Xtravaganza's death,[8] but they were not actually responding in a meaningful way, and were instead just using a tired liberal move to appease LGBT NGOs by tapping into identity politics. While the impacts of incarceration on trans people are specific - jails and prisons inflict particular kinds of harm on us which others do not experience - many changes that would keep trans people safe are not unique. The pressing need for complete decriminalization of sex work, an end to solitary confinement, and genuine access to health care are all shared with other criminalized or incarcerated people. A task force restricted to "trans issues" does little by itself to bring about these changes, but it does allow politicians and others to pad their resumes while the system wastes our time producing knowledge we already know: the PIC kills and criminalizes trans people disproportionately. Jails, prisons, and detention centers cannot respond to gender, rather they reproduce the gender binary. The one trans-specific concrete need advocates cite - choice about which gender-segregated cage to be held in - is hugely important to many incarcerated trans folks, but is not a priority for others. As a policy goal, it also raises questions about gatekeeping ("eligibility") that are almost certain to leave large numbers of our siblings behind.

With the overturning of the "trans/gay panic" defense, prosecutors can use hate crime cases to build their careers and garner LGBT support by saying they are protecting vulnerable communities and dealing with "violent" criminals. Hate crime sentencing is career prosecutors' bread and butter. But, again, this does not do anything to make another act of hatred less likely and only further justifies the logic of the state's desire to punish and cage.

These reforms already result in things that we are organizing to undo.

The task force will distract community attention from the necessary systemic changes that would concretely help incarcerated trans folks, diverting energy onto cosmetic and potentially net-widening changes like "gender-responsive jails." A task force that legitimizes jailing feeds jail and prison expansion efforts that abolitionists are already fighting in NYC and beyond.

While eliminating the "trans/gay panic" defense gets rid of an explicitly bigoted legal tool, its main concrete effect will be to help lock up more of our neighbors, with longer sentences and less likelihood of timely parole. As abolitionists, we are committed to taking people out of the clutches of the prison system, not keeping them there longer. This reform goes directly against the work that we do to free all prisoners.

8 https://council.nyc.gov/press/2019/06/27/1768/

These reforms do nothing to shift power relations or change who makes decisions about implementation and enforcement of the policies they enact.

The task force is a creation of politicians and the Board of Corrections; it places grassroots movements and trans communities in an advisory role at best. And because it has only the power to report or suggest, the Board of Corrections retains its total power to shape the conditions in which trans people are caged. In effect, the creation of a task force allows the Board of Corrections to claim it is acting in partnership with trans communities, while we gain no substantive leverage to impose our demands as policies.

Similarly, the bill barring the "trans/gay panic" defense shores up prosecutors' power, leaving them with full discretion over what actions to label as "hate crimes" and who to target with the accompanying higher sentences.

These reforms are based on tokenization and leaving significant groups behind as "undeserving."

The task force tokenizes trans people. It uses us as window-dressing for a process that has no decision-making power. Tokenistic inclusion undermines our actual safety by doing nothing to build broad solidarity around the violences of the gendered carceral system. We recognize and acknowledge our siblings doing the incredibly difficult work of engaging with the DOC as members of the task force. We know it has been incredibly rare for trans people of color to engage directly around these tables. Nevertheless, we question whether this process can produce anything other than the state's logic.

A task force is likely to adopt a narrow definition of abuse or harm, which masks the widespread brutality fundamental to incarceration. At best, the task force may force the system to concede some ameliorated conditions, but it is based upon continued caging and doesn't have the power to say that prisons and jails shouldn't exist in the first place, or to demand freedom for all trans people. Because communities of abolitionist trans people leading mutual aid and participatory defense in our city gain no real decision-making power, we risk the possibility that the task force will endorse trans policies that throw some of our community members under the bus.

The "trans/gay panic" bill reinforces the idea that some people—generally Black and brown, poor and working class—are inherently "violent" and so deserve to be locked up. Like all "hate crimes" legislation, it provides punishment on behalf of "perfect victims"—white, well-off, cis-appearing, and "law-abiding"—at the expense of most trans people, who will not have access to this supposed benefit. And like all such laws, it ignores the most pervasive kinds of anti-trans hatred and bigotry, which express themselves through hiring policies, healthcare and education practices, and other institutional structures, to focus on increased punishment for exactly those already targeted by the police/court/prison system. While these systemic barriers are ubiquitous, we will not as a society address the root causes of interpersonal violence.

These reforms do not mobilize the most affected for ongoing struggle or build power in any way.

The task force will create a small, closed door group of people that will persuade other groups that they've "got it." Creating the fiction that the prison system is "responsive" to community needs is demobilizing and and actually undermines the critical consciousness abolitionists need to foster to dismantle the PIC. Directing community energy towards the task force also takes energy away from other organizing work, like participatory defense strategies that we know have made a crucial difference for trans people targeted for incarceration and built our abolitionist base.

Similarly, this approach to "trans/gay panic" defenses could increase mobilization in support of longer sentences and more incarceration, instead of AGAINST carceral solutions to harms done within our communities, neighborhoods, and city.

Mayor de Blasio and the New York City Council's NGO-supported Jail Construction Plan

New York City Mayor Bill de Blasio proposed, and the City Council voted to push forward, a land use proposal to build thousands of new cages for human beings across the city, in what would be four of the tallest skyscraper jails in the world if they are constructed. Supporters of the proposal claim this is "progressive" because spending $11 billion or more to build four new jails in Manhattan, Brooklyn, Queens, and the Bronx, along with 3-6 new jail wings of hospitals and 1-2 new womens' jails with included nurseries, is the only route they can envision to closing the infamous jail complex on Rikers Island -- allegedly by 2026, after their own time in office ends. Doubtless, Rikers is a racist and transphobic torture chamber that must be closed immediately and permanently. But building thousands of fresh cages -- planned as "multigenerational" according to the jails' own designers -- and hence entrenching incarceration into the New York City landscape for another century is not the way to do it, especially when there is no binding guarantee Rikers will close at all. Instead, the city should end pretrial detention and the policing that snatches community members up into the system in the first place, and invest resources into the real needs of our Black and Brown, poor and working class communities. A review of the city's jail expansion proposal against the guidelines of the Radical Policy Checklist quickly reveals that it fails on a host of critical issues. NYC does not need four new jails -- it needs no new jails!

New York City's plan to build new jails legitimizes and expands the carceral system.

There is no clearer example of the expansion of carceral systems than building new jails. The rhetoric of city officials and their allies has consistently exceptionalized the violence of the jails on Rikers, rather than locating it firmly within what is normal for the prison industrial complex, and hence legitimized the idea that constructing new facilities can be a solution -- which history has already proven it cannot be. Witness the conditions in the more modern jails located in residential NYC neighborhoods such as the Tombs, the Brooklyn Detention Center, the Metropolitan Detention Complex, and the new youth jail run by Horizons in the Bronx. Rikers itself was proposed and built as the most modern and "humane" jail complex of its own era. There is no reason to believe that building new jails will turn out differently this time. This includes "gender-responsive" jails built specifically for women and their children -- this is offensive, not progressive! Mothers and babies do not belong in cages. No one does.

Building new jails pours billions of dollars into industries that profit from the PIC and benefits elected officials who sustain the PIC.

Private developers such as the design firm Perkins Eastman stand to make huge profits from their participation in this land use and construction process. Large-donor funded nonprofits are spending thousands on lobbyists to promote jail expansion. The same alleged City Council "progressives" who increased the NYPD budget and headcount in 2015 now want to posture as if they have done something about mass incarceration by closing Rikers Island -- but their plan to do so is to literally cement a future of incarceration for NYC.

Abolitionists in New York City are already organizing to prevent jail-building.

A growing movement across NYC is organizing to prevent this jail expansion plan. If that organizing does not succeed and these new jails are constructed, we will without a doubt find ourselves back to raise an outcry about the appalling conditions in these new cages and the urgent need to close them, too. The historical cycle of new jails is clear: they are always built as "reforms", only to themselves need "reform". Let us break that cycle now, and create a true plan for our decarceration which does not involve further entrenching systems of incarceration.

This plan does nothing to shift power relations or change who makes decisions about implementation and enforcement of the policy.

Existing power dynamics remain intact. The land use process the city went through to approve jail expansion is completely anti-democratic. The same mayor's office and the Department of Correction would administer the new jails, same as the old ones. Again, there is no actual evidence to suggest that there will be any substantive change.

New York City has cherry picked particular people and groups as token public faces to legitimize the perpetuation of jailing.

Large nonprofits, led by Just Leadership USA, have been using the support of a few dozen formerly incarcerated people to claim that this plan has widespread community support which it in fact does not. And by endorsing the indefinite existence of jails which are explicitly designed to stand for decades beyond the term of every current elected official, it logically follows that the advocates of this plan claim, whether explicitly or implicitly, that some people deserve to be caged, just perhaps with a little more sunshine or a few more family visits.

The plan to build 4 new jails did not mobilize the most affected for ongoing struggle, but grassroots organizers have built extraordinary power in response to the plan.

This cynical plan actively disorganizes oppressed people by recruiting them to reinforce the carceral systems which did them harm. Aligning formerly incarcerated people with the city government does not build power, but only strengthens police, prisons, and the political establishment. The only community mobilization and power-building occurring in connection with this plan is happening in opposition to it; join that movement for No New Jails NYC!

A postscript: The 2020 revision of New York State's 2019 'bail reform' legislation, and the actions of the city and state governments during the COVID-19 pandemic highlight the dishonesty of the NGO and elected officials' rhetoric promoting the jail expansion. We were assured that Rikers would inevitably close, because the 2019 bail law would reduce the flow of people into its cages, leaving only enough to fill the new jails. Not only did the 2020 expansion of carceral control ensure that Rikers would remain full, Mayor De Blasio, Governor Cuomo, the City Council, the State Legislature, and NYC prosecutors have all refused to free more than a token handful of incarcerated people even as the coronavirus pandemic rushes through New York's jails and prisons. Their unanimity in refusing to let cells sit empty even when necessary to save lives and help stop the spread of a deadly disease demonstrates the depth of their commitment to keeping all the cages they build and fund full.

New York State Domestic Violence Survivors Justice Act

New York passed the Domestic Violence Survivors Justice Act (DVSJA) in 2019.[9] The intent of the law is to acknowledge the fact that many survivors of domestic violence are criminalized and incarcerated due to acts of survival and/or self-defense. As such, survivors may be eligible for more lenient sentencing than they were under prior law. The bill "codifies more meaningful sentence reductions for domestic abuse survivors in the criminal justice system" and is a key initiative in the Governor's 2019 Women's Justice Agenda."[10] The bill amended key provisions of New York Law—Penal Law § 60.12 (amended and effective 5.14.19) and CPL § 440.47 (new and effective 8.12.19) — to recognize that "The vast majority of incarcerated women have experienced physical or sexual violence in their lifetime, and too often these women wind up in prison in the first place because they're protecting themselves from an abuser."[11]

The DVSJA was passed after ten years of hard work by a broad coalition led by currently and formerly incarcerated survivors, whose leadership and expertise guided the campaign from the beginning through the law's enactment. The campaign included survivors on both sides of the walls, and individuals and organizations that supported its creation and passage.

The DVSJA is current and retroactive and provides for discretionary leniency in sentencing and resentencing. For both current sentencing and resentencing, there is a very strict three-part test: requiring (briefly) - 1) that at the time of the offense, the survivor was a victim of substantial abuse by a member of the same family or household, 2) the abuse was a significant contributing factor to the offense, and 3) considering all the circumstances, a traditional sentence would be unduly harsh. It allows some currently incarcerated survivors of domestic violence to apply for resentencing if they meet the same criteria, are currently detained in a DOCCS facility, have been sentenced to eight years or more, and were convicted of an "eligible offense".The same exclusions as to certain crimes apply to both.[12]

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9 Governor Andrew Cuomo signed the DVSJA into law on May 14, 2019. Office of Governor Andrew M. Cuomo, Key Component of the Governor's 2019 Women's Justice Agenda (2019). Available at https://www.governor.ny.gov/news/governor-cuomo-signs-domestic-violence-survivors-justice-act.

10 Id.

11 Id.

12 Under C.P.L. 440.47 (a)(McKinney 2019), "any person confined in an institution operated by the department of correction and community supervision serving a sentence with a minimum or determinate term of eight years or more…and eligible for an alternative sentence pursuant to section 60.12 of the penal law" can apply for resentencing under N.Y. Penal Law 60.12, which provides that a person is "eligible for an alternative sentence" if the court determines that:
(a) at the time of the instant offense, the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant as such term is defined in subdivision one of section 530.11 of the criminal procedure law, and
(b) such abuse was a significant contributing factor to the defendant's criminal behavior; and
(c) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, a sentence of imprisonment pursuant to (various felony sentencing provisions)…would be unduly harsh...
Under New York Law, (Soc. Serv. Law 459-a) a "Victim of domestic violence" includes any person who is the victim of violent or coercive acts (any act which would be a violation of the penal law) by a family or household member that have "resulted in actual physical or emotional injury or have created a substantial risk of physical harm to such person." This includes "persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship" to be "family or household members" for purposes of the foregoing provisions. N.Y. Crim. Proc.

The DVSJA has the potential to benefit some individuals by reducing the time they spend in prison, either as an alternative to incarceration, or a reduced sentence. The importance of this should not be minimized. But it also has severe limitations, including the strictness of the test, the steep burden of proof, and uncertainty as to future court interpretations of the standards. Equally as problematic, it contributes to narratives that legitimize the incarceration of survivors who don't meet a set of narrowly defined, and yet to be practically established, standards for relief under the new law. It is too soon to know how many people will actually benefit, and how much relief it will provide, notwithstanding its potential. Some of this will depend on the legal standards ultimately set for the requirements enumerated above, and the numbers of those who are permanently excluded. One of the harms that cannot be measured is the sense of false hope it created - this is violent and contributes to the trauma experienced by survivors before and during incarceration.

The DVSJA legitimizes the carceral system we're trying to dismantle, and in some instances may expand it.

Fortunately, the bill does not result in more money going to prisons or policing. In that limited sense, it doesn't expand the system.

Overall, however, the DVSJA legitimizes the criminal punishment system, in that it only provides a challenge to the criminalization of survival in limited individual circumstances. Even if someone currently being sentenced meets the DVSJA criteria, it still results *only* in a shorter sentence—or possibly, in rare instances, an "alternative to incarceration." For people who seek resentencing, it allows for the possibility of a shortened sentence (which may include carceral control through probation and/or other forms of surveillance). A re-sentencing could result in someone coming home immediately, or just serving less time. The law thus reaffirms that criminalization of survivors of domestic violence is appropriate—just for a shorter period of incarceration. It does not say that punishing survivors is illegitimate; it does not say that survival is an absolute defense to criminalization. While it attempts to recognize that caging survivors replicates the dynamics of the interpersonal abuse and violence they survived, for many this partial acknowledgement may not be made tangible, since the relief offered is only discretionary.

By sending the message that domestic violence as a cause of criminalized conduct justifies only *less* punishment—and not something else altogether, like providing resources, and emotional or psychological support—the DVSJA implicitly validates the criminal punishment system.

This reform benefits parts of the Prison Industrial Complex, including industries that profit from it, the court systems, prosecutors and elected officials who hold power in the PIC. In so doing, it preserves existing power relations.

The reform benefits judges, law enforcement, prosecutors and nonprofit service providers, through a further legitimization of their exclusive power and authority to determine both the existence of domestic violence, and whether or not it was substantial and contributed significantly to the offense

Law 530.11 (McKinney 2018). For this determination as to intimate relationship, the court can consider the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and its duration. Id.

resulting in conviction and incarceration. The court is the ultimate determinant of whether each of the three requirements of the law are present in any survivor's case.

Reduced sentencing and resentencing are completely discretionary and not mandatory, so this increases the power of judges tremendously. Initial applications for a hearing for resentencing can be denied. A decision to vacate an original sentence and impose a shorter one can be appealed by prosecutors, further expanding their power. As with any new law, there are "gray areas" and uncertainties. There will be questions about where the burden of proof will lie for the three part test -- substantial abuse, significant contributing factor, and unduly harsh sentence -- and whether the standards will be the same for sentencing and resentencing. The meaning of the requirement that "*at the time of the instant offense,* the defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse" -- has already been challenged by prosecutors in one instance.[13] This even though that language was not intended to mean that abuse was being inflicted in the exact moment of an act of self-defense, but to acknowledge that reactions to abuse are the product of long-standing trauma, not just what occurs in the moment. And, of course, District Attorneys can oppose the use of the new law for current sentencing, or for resentencing.

The DVSJA benefits law enforcement and traditional social service providers in the non-profit industrial complex because it requires at least two forms of proof corroborating the abuse, one of which must be a court record, pre-sentence report, social services record, hospital record, sworn statement from a witness to the domestic violence, law enforcement record, domestic incident report, or order of protection.[14] This will reinforce the authority of law enforcement, traditional service providers, and medical industry professionals as gatekeepers who are the only ones who can validate or invalidate claims of abuse. In addition, prisons and prosecutors control the flow of information that may well be essential to meeting the standards, particularly so for those seeking resentencing.

Politically, Governor Cuomo benefits tremendously. Signing the DVSJA helped him deflect the well-deserved criticism that he de-prioritizes survivors of domestic violence, and in fact repeatedly breaks his promises to give special consideration to the use of clemency (commutations) for incarcerated domestic violence survivors. As discussed in the next section, this is disingenuous and evasive.

The DVSJA will perpetuate exclusionary standards of who qualifies, and we will need to continue to organize to free all criminalized survivors. It divides people as those who are deserving of lesser sentences or resentencing, and those who are not.

The DVSJA has foreseeable political ramifications. It allows the state to deflect well-earned criticism that it doesn't care about survivors at all, particularly women survivors. Not only does it exclude many survivors, the relief is purely discretionary. A New York City Bar Association report

13 See: https://www.newyorker.com/news/dispatch/when-can-a-woman-who-kills-her-abuser-claim-self-defense In the prosecution's response to the D.V.S.J.A. submission, Krauss argued that whether Addimando had suffered abuse at Grover's hands was immaterial if the defense could not prove that she was being abused at the precise moment when she killed him. "This Court does not need to determine whether or not the defendant was the victim of domestic violence," Krauss wrote. The D.V.S.J.A. statute "is very clear, not close in time, not recent, but at the time of the offense." and https://www.poughkeepsiejournal.com/story/news/crime/2019/12/09/nicole-addimando-sentencing-scheduled-feb-11/2630127001/

14 https://legislation.nysenate.gov/pdf/bills/2019/A3974

issued on April 9, 2019[15] reinforced this, saying: "In no case would the bill permit the vacation of a judgment of conviction. It would merely afford a more nuanced available sentencing range, allowing the judge to fashion a punishment befitting the particular offender, taking into consideration the effect of the offender's own victimization in determining a just punishment, in those cases in which the offender is able to meet the strict three-part standard of eligibility."[16] Further, in addition to meeting the standards of the three-part test, the court must determine that there is no threat to public safety.[17]

The Bar Association report reflected further that "it is estimated that the DVSJA would affect a relatively small number of offenders . . . . Relief would not be available for convictions of murder in the first degree, aggravated murder, sex offenses or terrorism offenses. Inmates with prior adjudications as persistent felony offenders or second violent felony offenders would not be eligible to seek relief under the bill."[18] Early estimates of potential eligibility were very low: "...the total pool of incarcerated women and men eligible to apply for re-sentencing has been estimated at 360, and the annual number of women and men eligible to seek alternative sentencing has been estimated at 480."[19] It is promising and heartening to see that since the enactment, estimates of men and women potentially eligible for resentencing has dramatically increased, according to New York State Corrections. Clearly the intent of the law was meaningfuly shaped by a desire to not "open the floodgates" and provide broad relief for the many thousands of survivors of domestic violence incarcerated in New York. Finally, the DVSJA will be used to remove attention from the fact that during his entire tenure, Cuomo has commuted the sentence of only one criminalized survivor, despite promising to pay special attention to evaluating criminalized survivors' cases.[20] His track record on clemency is deplorable.

Do the effects it creates already exist in a way we have to organize against? Will we, or others be organizing to undo the effects in five years?

Over the next few years, we can anticipate that there will be some well-publicized high-profile wins for survivors under the DVSJA. For those who benefit, it will be life-changing and transformative for them and their families and loved ones. We hope that for current sentencing the law will be maximized to avoid any form of incarceration. But overall, the wins will likely be cases featuring "model victims," where the survivor is seen as not culpable (a standard that reflects racist, classist, anti-queer, anti-trans standards), where the abuse is seen as indisputably terrible (through court, law enforcement, and social service provider records), and where no one can argue the fact that abuse was a significant contributing factor to the offense. For resentencing, this will mean only cases where the court determines the person has a stellar disciplinary record in prison, their sentence was "unduly" harsh, and they pose no "threat to public safety."

But we must ask: How much is "substantial (enough)" abuse?[21] How much does the abuse have

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15 Available at https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-in-support-of-the-domestic-violence-survivors-justice-act

16 Id.

17 Id. (citations omitted)

18 Id. (citations omitted)

19 Id. (citations omitted)

20 https://www.thenation.com/article/archive/why-it-matters-that-an-imprisoned-domestic-violence-survivor-was-granted-clemency/

21 See, for example, the case of Taylor Partlow: https://buffalonews.com/2019/09/08/her-lawyer-called-her-epitome-of-a-domestic-violence-victim-but-shes-still-going-to-prison/

to contribute to the offense leading to incarceration for it to be “significant”? How harsh is “unduly” harsh? How will the “threat to public safety” be evaluated? In most instances, such an evaluation includes the use of biased risk assessments.

The very nature of the law is about identifying deserving victims among those criminalized for survival actions. The exclusions, and the evaluation of the disciplinary record, and risk evaluation (for resentencing) reinforce the idea that there are good and bad survivors. In doing so, it directly undercuts the demand that no one should be criminalized for survival because everyone deserves to live free of gender violence. In addition, even if the highest projected potential numbers for resentencing are realized, that still leaves thousands of survivors still incarcerated in New York State prisons.

Every incremental reform raises the question of whether or not it is better to reduce harm (in this case, result in less incarceration), for some than for no one. If the reform creates exclusionary and restrictive categories which close the door to relief, particularly for those more marginalized individuals, then yes, we will be organizing and advocating continuously to undo these effects. This law clearly creates such exclusions, permanently cutting off the possibility under this law for many. In this instance, the impact of both the law’s strict eligibility requirements and exclusions as written, and the development of standards for actual relief, will be felt by all criminalized survivors, and will necessitate further organizing to challenge and expand. The conversation about what is needed for justice for all criminalized survivors is not limited to the language of this new law, and instead includes the decriminalization of survival for all.

It constrains, rather than mobilizes, the power of the most affected to organize for ongoing struggle.

For those most directly impacted, survivors on both sides of the wall, the process of fighting for the DVSJA mobilized many towards an important legislative goal. However, because of the legalistic nature of the reform, it does not lend itself to future mobilization or collective action. Its passage serves as a “mission accomplished” moment. It provides an individualized “solution” to a systemic problem, which undermines the potential for collective action. Finally, it keeps power into the hands of traditionally empowered actors—prosecutors and judges—which does nothing to change power relations. In addition, to the extent that it will be looked upon as a model for the rest of the country, it may lead to laws in other states which are equally as, or more, restrictive. All eyes in the anti-domestic violence community will be on New York in this regard in the coming months and years.

New York State Bail Reform Package

On April 1, 2019, New York State passed a law that was supposed to change the landscape of pretrial incarceration in the state. Having taken effect in January 2020, the stated purpose of the 2019 legislative bail reform package was to eliminate money bail and traditional jailing for many people charged with, but not convicted of, a crime. As of April 2020, despite the fact that the bail reform was still in the process of being implemented, new bail legislation passed as part of a last minute, back-room deal to pass the FY2020–2021 budget.[22] The 2020 expansion of pre-trial caging represents the victory of law enforcement and certain politicians, with the help of fear-mongering local media outlets, who called for expanded pre-trial caging as soon as the reform began to be implemented.[23] The reform and expansion are described below.

Under the 2019 New York legislative bail reform package, we expected that fewer people would be sent to jail pretrial. However, even if the law had been implemented to its full extent, this bail reform was not genuinely transformative because it divided people into categories of deserving/not deserving, it allowed for growth in other forms of carceral control aside from traditional jailing, and ultimately, it did not challenge the premise of pretrial incarceration. As such, it is sad but not surprising that the 2019 reforms lasted less than four months, because in legitimizing the system they supposedly sought to displace, they set the stage for the later revisions.

Under the 2020 expansion, judges will have broader discretion to set bail on a whole new set of charges that weren't bail-eligible under the 2019 reform. In particular, judges can now set bail on people charged with a misdemeanor and re-arrested for a misdemeanor that involves "harm to . . . person or property", and they can set bail on people on parole or probation with prior felony convictions (no matter how long ago) who are newly arrested for most felony charges. The 2020 expansion also increases the range of non-monetary carceral conditions judges may impose, and it allows for the flourishing of profiteering via for-profit electronic monitoring.

This New York legislative bail reform package directly divides people as those who are deserving of pretrial freedom and those who are not.

Even without the 2020 expansion, the 2019 law does not actually eliminate money bail. For folks charged with more serious crimes, the amount of money they have access to will still determine whether they are free pretrial or locked in a cage. People accused of particular charges will not be eligible for automatic release; instead judges will have the option to set money bail or remand (pretrial incarceration; available only in the case of felonies). These charges include misdemeanor and felony sex offenses, misdemeanor and felony criminal contempt in domestic violence cases, violent felonies, and more.[24] Thus, New York's bail reform does not eliminate explicitly

22 The legislation included in the 2020 budget can be found here https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S07506&term=2019&Summary=Y&Floor%26nbspVotes=Y&Text=Y.

23 For examples of law enforcement and media backlash against the bail reform legislation, see https://www.nytimes.com/2019/12/31/nyregion/cash-bail-reform-new-york.html and https://nypost.com/2020/01/05/embracing-no-bail-law-is-cuomos-first-huge-political-mistake-as-gov/

24 For a full list of the charges carved out of NY's bail reform see page 2-4 of Bail Reform in New York: Legislative Provisions and Implications for New York City, found online at https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail_Reform_NY_full_0.pdf

wealth-based incarceration or pretrial detention.

We know that categories such as “violent” felonies are wildly over-inclusive, and violent acts do not justify overriding the presumption of innocence to cage someone, nor do they justify wealth-based detention as a practice. Because they are charged with something that sounds scary, the people accused of these crimes are politically easy for the state to keep in a cage—and exclude from reforms—because they are considered undeserving of freedom, simply by virtue of being charged.

With the 2020 expansion, the list of charges that lead to wealth-based pre-trial detention has expanded to include numerous property crimes, and the law explicitly provides for consideration of criminal history in making bail determinations, thereby compounding the harmful effects of criminalization by translating past criminalization into future heightened punishment.

Additionally, instead of dealing with root causes of serious harms such as sexual assault, domestic violence, gender violence, and other forms of violence (and now property crimes), this law offers only the same, one-size-fits-all, brutalizing tool we already know to be a failure: caging. Moreover, past experience shows that the charges exempted from the bail reform are the types of charges often used against criminalized survivors; as such, this law will exacerbate certain problems it purports to solve.

The New York 2019 legislative bail reform package expands pretrial carceral control and the surveillance system.

The 2019 legislative bail reform package expands the scope of the carceral state by introducing pretrial electronic monitoring as an “alternative” form of “custody” (i.e., incarceration) and expanding the use of non-monetary release conditions. Individuals who would have previously been released pretrial without any strings attached are now likely to have conditions of surveillance and supervision placed upon them because anyone accused of any crime, including those crimes that are no longer eligible for bail, will be eligible for non-monetary conditions of release (which may include mandatory check-ins with pretrial service agencies, travel restrictions, restrictions on who to associate or live with, and curfews). These conditions are subject to the discretion of punitive trial judges.

The stakes for compliance are high. Under the new law, people found “noncompliant” with any of their pretrial conditions are subject to being electronically shackled as a result. Moreover, experience shows that people subjected to pretrial release conditions can often end up re-incarcerated because of the state’s fervor to find people in technical violation of their conditions.[25]

In addition to expanding the system, this reform brings state supervision into people’s homes and communities, disrupting their lives and endangering not only people accused of a crime but their friends and loved ones. As a result, this reform will exacerbate the emerging crisis of “mass supervision”—a term that has been used to describe the expansion of probation and parole that happened alongside, and not instead of, the growth of incarceration.[26] As historical experience with

25 In April 2019, it was reported that the number of New Yorkers sent to NYC jails on technical parole violations continues to climb, even as the overall jail population decreases. Read more at: https://gothamist.com/news/more-and-more-people-winding-nyc-jails-technical-parole-violations

26 Read more about the expansion of “mass supervision” in this report on Correctional Control from the Prison

probation and parole shows, supervisory control and traditional caging can and do expand at the same time, mutually reinforcing one another rather than acting as substitutes. Rather than being an "alternative to incarceration," electronic shackling is better understood as just another form of incarceration that expands the capacity of the carceral system to surveil and control people in their homes.[27]

This reform thus widens the net of control of the carceral system in four ways:

1. Establishes a pretrial electronic monitoring system;
2. Permits judges to set non-monetary conditions even on those who otherwise would not be eligible for bail;
3. Creates an additional pathway to electronic monitoring and incarceration for failure to observe judge-made conditions;
4. Exposes family and loved ones to increased potential law enforcement contact because of expanded surveillance and monitoring.

The 2019 bail reform law legitimizes pretrial carceral control and surveillance.

The 2019 reform legislation leaves the bail system intact, further legitimating the use of pretrial detention and supervision through monetary and non-monetary forms. The premises of pretrial detention and wealth-based detention, through the use of money bail, are not actually removed, and are in fact defined, allowed, and mandated for a specific set of carved out charges.

The inherent fragility of any reform that leaves intact the basic premises of the PIC is illustrated by the fact that, despite no change in the composition of the legislature between the passage of the initial bail reform and its 2020 expansion, numerous legislators who had voted for the "reform" supported restoring cash bail for more charges. This type of unprincipled capitulation is the predictable result of reformist reforms that legitimize existing systems.

These reforms benefit parts of the PIC, including industries that profit from the PIC, elected officials who sustain the PIC, and nonprofits whose work depends on the PIC.

Nonprofits and governmental contracted agencies will receive funding from the state to provide electronic shackles and conduct pretrial supervision. As we have seen with establishment nonprofits that provide pretrial, diversion, "Alternative to Incarceration" (ATI), "Reentry," and other related services,[28] the organizations that benefit from these contracts will become even more powerful, status-quo-oriented obstacles to future decarceration.[29] Most troublingly, perhaps, the

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Policy Initiative, found online here: https://www.prisonpolicy.org/reports/correctionalcontrol2018.html

27 Read more about the dangers of electronic shackling and how it is just another form of incarceration from the Challenging E-Incarceration campaign and Media Justice, found online at: https://www.challengingecarceration.org/2017/06/18/why-electronic-monitoring/ and https://mediajustice.org/nomoreshackles-reports/

28 Such organizations include the Center for Community Alternatives (CCA), Center for Alternative Sentencing and Employment Services (CASES), various programs of the Fortune Society (e.g. DAMAS), and more.

29 These organizations regularly lobby for more state funding to expand "services" to "underserved populations," see, e.g. https://nyassembly.gov/write/upload/files/testimony/20150226_pubprot/20150226-PublicProtection-Solomon.pdf at 3. The "underserved population" in question is, of course, people arrested and facing jail time, and any expansion of post-arrest diversionary or ATI services has the effect of widening the carceral net by allowing the state to exercise carceral control over more people notwithstanding jail or prison space constraints. See generally https://www.

2020 expansion allows for-profit companies to provide electronic monitoring. As we've seen from the bail bond industry, companies that leech off the misery of the PIC for profits are both inherently evil and tremendous obstacles to shrinking the PIC.[30]

Governor Cuomo and Democratic legislators benefited by assuming the mantle of progressive criminal justice reformers via passage of the 2019 reform legislation (a reputation some have since distanced themselves from). After years of pressure from advocates and the general public, they needed to prove that they could take action on bail reform. The passage of the 2019 legislation secured their credentials and insulated them against calls for genuinely decarceral legislation. Those same government officials easily caved to expanded pretrial carceral control after fear-mongering media and lobbying pressure against bail reform.

The reputational benefits were not limited to politicians. While privately many organizations acknowledged the problems with the 2019 bail reform, publicly nearly all self-identified progressive non-profits celebrated the reform as a "historic" success. This heavily-marketed "win" has benefitted their reputation with the public and with their funders. So too has their flurry of ineffective opposition to the predictable 2020 pushback—which they had no contingency plans for, and were unable to mobilize their supposed legislative 'allies' to resist.

We, or others, will be organizing to undo this for years.

We will need to be organizing on two (or more) fronts to undo the ramifications of this legislation. One organizing front will be fighting to end money bail and pretrial detention for people accused of all crimes. Especially given carceral forces' victory in expanding pre-trial caging immediately after the 2019 reforms began taking effect, future work to curtail the PIC's pre-trial reach will be that much harder. Moreover, the passage of both the 2019 reform and the 2020 expansion make future wins harder. Because both laws reinforce reserving bail for a category of people the State labels (including through these laws) as "undeserving," these laws act as a major impediment to their future liberation. As Michelle Alexander powerfully articulated in a meditation on the disposability that results from being labeled criminal, "Once human beings are defined as the problem in the public consciousness, their elimination through deportation, incarceration or even genocide becomes nearly inevitable."[31]

The second front, directly caused by this legislation, will be fighting to undo pretrial supervision and surveillance. As we have seen with "mass supervision," which ballooned alongside mass incarceration, the conditions placed on individuals are indefensibly oppressive. They do not actually serve as an alternative to incarceration, but another form of incarceration and a further

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prisonpolicy.org/scans/phelps/mass_probation_and_inequality.pdf. In addition, when the legislature considers issues such as low-level drug offenses or the relationship between mental health and incarceration, these organizations do not argue for decriminalization or resources for communities but rather for diverting a higher percentage of people arrested for such into their programs run by these organizations. See generally https://nyassembly.gov/write/upload/files/testimony/20150226_pubprot/20150226-PublicProtection-Solomon.pdf. And, of course, if someone enrolled in such a program fails to complete it or comply with its terms—which includes extensive monitoring—the organization may obtain and execute a warrant and/or refer them back to the DA and criminal court for prosecution. See https://www.vera.org/downloads/Publications/pamphlets-about-the-community-service-sentencing-project-cssp/legacy_downloads/1587b.pdf at 8–9.

30 See, e.g., https://theappeal.org/bail-bond-industry-fights-back-against-reform-b4bacb510140/.

31 Read Michelle Alexander's NYT piece here: https://www.nytimes.com/2020/01/17/opinion/sunday/michelle-alexander-new-jim-crow.html

expansion of carceral control. They also directly drive incarceration because release conditions are intentionally set up to be easily violated, resulting in additional excuses to incarcerate, and by expanding surveillance and monitoring of communities. Moreover, the beginning of for-profit e-carceration only means the fight will be harder.

People across the country are already organizing against electronic monitoring and other forms of state supervision and this will be a necessary battle to take on in New York State as well.[32]

This legislation does not significantly shift power relations.

Before this law, the actors with the most power in the pretrial incarceration system were prosecutors (also known as district attorneys—DAs) and judges. That remains true, although because the charges now determine bail eligibility, some of the judges' power is shifted to the DAs—a change that does not result in any benefit to our communities. Now, DAs can simply charge people with more serious crimes to allow for setting money bail. Indeed, DAs are already being specifically trained on how to evade the new law's limitations on pretrial incarceration.[33] And even where DAs do not use this power, judges can craft non-monetary conditions or say that electronic monitoring is necessary to ensure appearance—all using the same racist, classist criteria currently used by the pretrial system.

Finally, because "re-arrest" is a trigger for bail eligibility under the 2020 expansion, one result of the expansion is that policing decisions can effectively determine whether someone is caged pre-trial.

This legislation does not mobilize the most affected for ongoing struggle.

Since the passage of the law in 2019, organizing around bail reform continued but it was confined within the limitations of the compromise legislation -- legislation that did not end money bail and actually expanded pretrial supervision and surveillance. The legislation itself, as well as the strategies followed by the well-funded non-profit groups (through their paid & unpaid advocates and organizers) that helped pass the legislation in the first place, have severely limited ongoing struggle to within the confines of the new law. This is how legitimation works: by limiting our imaginative possibilities to compromises that are incompatible with our broader vision for liberation, we narrow our possibilities for the future.

After this legislation was passed, the public messaging from legislators, media outlets, and non-profit advocates alike was that the passage of the legislation was an unqualified victory. In fact, Just Leadership USA, which received funding to start the #FreeNewYork campaign, shut down the campaign shortly after the legislation passed.[34] The Vera Institute of Justice published

32 You can learn more about the Challenging E-Carceration campaign here: https://mediajustice.org/challengingecarceration/

33 The New York Prosecutors Training Institute manual has sections on strategies such as, "How to jail someone for failure to comply with non-monetary conditions" and "How to avoid the 'clear and convincing' evidentiary standard for revoking someone's freedom." As these training materials—and years of court-watching experiences— show, evading laws meant to protect people accused of crime is an explicit strategy that DAs employ. This bail reform law provides more opportunities for employing that strategy.

34 https://jlusa.org/campaign/freenewyork/ Although the campaign ended immediately after the legislation passed, it was restarted by Just Leadership USA in January 2020 when fears were stoked about potential rollbacks.

celebratory messaging about the legislation, calling New York a "model for pretrial justice."[35] For organizations needing to appeal to funders, it was especially important to market this legislation passing as a victory.

With the growing fear around legislative expansion of pretrial carceral control, the conversation around the possibilities for bail reform were limited to what the 2019 legislation allowed for -- the ongoing struggle was capped to the limitations imposed by legislation that keeps both money bail and pretrial detention in place and opens opportunities for increased pretrial supervision and surveillance.[36] In fact, the predictable attacks on the legislation from DAs, police, elected officials, and their right-wing supporters have led to even more exaggerated claims from NGOs about the benefits of the 2019 reform. Even as the lawmakers waffled or outright changed sides, the NGOs doubled down on this already deeply compromised legislation as the horizon of possibility. In defending the New York bail reform package against attacks from law enforcement, Republicans, and even Democrats, advocates have embraced law enforcement's terms of debate by insisting that the bail reform is a "measured, common sense"[37] law because its benefits are tailored to "people charged with misdemeanors and non-violent felonies"[38] and because "[j]udges still have the authority in all cases to impose conditions like…electronic monitoring."[39] In this way, the harm caused by the law is compounded by the public discourse supporting the 2019 statute.

Not only did they refuse to entertain critical perspectives on the law as it was passed and doubled down in support of the law since it went into effect, they avoided even commenting on the ease with which DAs were, in practice, able to evade its supposed aims even in the few months that it was in effect. All organizing energy from established NGOs has been focused on preserving the limited and compromised legislation, inhibiting actual organizing to end pretrial detention in all its forms.

Finally, because this law divides people into groups of deserving and undeserving people, it has undermined the solidarity in organizing among people facing the pretrial punishment system in its new form. Effectively, the legislation and its NGO backers have deeply damaged both current and future efforts to even incrementally improve the pre-trial conditions of anyone who cops and DAs choose to charge in ways that fall within the law's carve-outs.

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35 https://www.vera.org/publications/new-york-new-york-2019-bail-reform-law-highlights

36 Mariame Kaba on twitter (@prisonculture) said it best: "New York's new bail reform law ACTUALLY doesn't go far enough. It doesn't end cash bail. Yet now so much organizer, advocate energy will be diverted to preserving a compromised compromise. I'm not impugning those organizers. I AM saying the game is bullshit." View the full tweet here: https://twitter.com/prisonculture/status/1219330150984310785

37 https://justicenotfear.org/#new-york-state

38 https://indefenseof.us/assets/images/Bail-Reform-Facts-2020.pdf

39 https://www.nytimes.com/2020/01/24/opinion/sunday/bail-reform-new-york.html

Human Trafficking Intervention Courts, Decrim NY's Proposed Legislation & "End Demand/Equality Model" Reforms

Below, we assess the impact and function of HTICs as an existing reform-based measure, as well as two divergent proposed legislative reforms that would impact the same people currently being affected by the HTICs: the Decrim NY package Senate Bill S6419 (Stop Violence in the Sex Trades Act) and the New Yorkers for the Equality Model's "Equality Model" (no bill number yet assigned). Because S6419 exists as an introduced bill, we spend considerably more time and space here teasing out the interplay between it and the existing structure of the HTICs. At the close of this section, we briefly assess the "Equality Model" coalition's approach and proposed legislative work.

In 2013, Jonathan Lippman, then New York State's Chief Judge (more recently known for his work as a major architect of NYC's jail-expansion plan), announced a plan to create "Human Trafficking Intervention Courts" (HTICs) run by the state. Despite their name, HTICs do not specifically address trafficking.[40] Instead, they consolidate all of what the state calls "prostitution-related" cases, in a single courtroom, before a single judge who supposedly has expertise in trafficking-related issues.

The HTIC is a "post-arraignment" intervention; that means people diverted to HTIC are still jailed and charged under existing laws targeting sex workers, after which their cases are adjourned to the HTIC.[41]

The theory underlying HTICs, reflected in the consolidation of various sex work-related cases in a single "trafficking" court, is that sex work is by definition trafficking (or proto-trafficking) and that sex workers need saving through "therapeutic interventions." Thus, case outcomes typically include mandated 'treatment' backed by the threat of incarceration for failure to participate to the court's satisfaction. As a result, for-profit and nonprofit service providers are prominent players in the HTIC process, obtain business from the HTIC, and are often present in court.

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40 Institutional and "legal" definitions of trafficking will often include people who would not otherwise characterize their own experiences as such. For our purposes, **labor trafficking**: is deliberate, and typically systematic, forced or coerced labor, debt bondange, wage theft, or outright wage denial, and in the case of those being trafficked for sexual labor, abuse, assault, and often rape. It's not work that someone elects to do. Most often you'll hear the terms "sex trafficking," or "human trafficking." It's important to acknowledge that survival and working identities are complicated. Working under capitalism is complicated. Sometimes survivors of labor trafficking might also identify as sex working or trading sex in ways that were necessary for them. Some sex workers have survived violence. Some survivors of trafficking will engage in sex work on their own terms before or after surviving trafficking conditions. The vast majority of sex workers are confronted by stigma and whorephobia; this plays out differently depending on lived experience and other systemic oppressions. Some folx also need to trade or engage in something community has termed **survival sex** to get by, for example securing housing or food, childcare or drugs, gift cards or presents in order to survive day-to-day. We need to be able to honor and speak to the experiences of folx in the trade/industry who are most impacted and affected by criminalization if we all want safer conditions of work and to effectively organize for the total decriminalization of survival.

41 There are many criteria (that differ by county) used to determine who is eligible for HTICs. For example, some HTICs require release at arraignment to participate. Others exclude people based on past criminal punishment system contact, which in essence allows the police to determine who is eligible through deciding who to arrest. This report does not address the (many) problematic issues with these criteria, and instead focuses on problems coming from the function, structural implications, and consequences of the HTICs themselves.

However, in addition to the problems with mandated treatment generally, HTICs are also problematic because HTIC-mandated interventions often go far beyond what anyone could call treatment. Instead, these interventions extend to paternalistic and often authoritarian control over private aspects of sex workers' lives, including prescribing who to associate with, where to live and with whom, and, of course, what to do for work.

The Human Trafficking Intervention Courts legitimize and expand a system we're trying to dismantle.

The beneficiaries of this current carceral intervention in the lives of folx in the sex trades are numerous - and none of them are sex workers:

- Mandated exit or victim service program coordinators and organizations benefit, which range from right wing Christian groups to (arguably) reasonable service providers (similar to what can be expected from "mental health court" experiences). These service providers maintain their funding and build their staff's careers upon victims/survivors and those simply caught up in the criminal legal system. For example, Polaris[42] relies directly on inflated arrest data from HTICs to seek funding, and Sanctuary for Families (funded by the DA's office) conducts bizarre outreach at the HTICs.
- The police (Special Taskforce and Vice units included) benefit very directly because HTICs depend on them to fill the docket, keeping their arrest numbers/quotas as high as their superiors want them, and encouraging continued arrests of sex workers.
- ICE directly benefits by preying on immigrant, migrant and undocumented people (mostly cis and trans women of color) who are in HTICs, sweeping them up indiscriminately, including those who went to court to identify their abusers or exploiters.
- The existence of HTICs, as a "reformed" court project, benefits and justifies organizations that see the courts as inherently positive institutions, rather than as part of the incarceration system. This encourages the fiction that if their integrity/sanctity were preserved (for example, in the view of the #ProtectOurCourts coalition organizations, by passing legislation to "shield courthouses from ICE" by stopping ICE arrests from happening inside courthouse walls[43]), all would be well.
- Assembly people and other elected officials use these courts to show that their neighborhoods are "cleaner," bolstering the morality narratives elected officials use while campaigning ("tough on crime" & "cleaning the streets"). Elected officials use the HTICs to call themselves progressive while simultaneously upholding a carceral ideology and practice.

Human Trafficking Intervention Courts bolster the PIC.

All of the above parties, and more, benefit from the existence of these types of courts. Human Trafficking Intervention Courts also benefit the Prison Industrial Complex, industries that profit from the PIC, and elected officials who sustain the PIC.

42 https://theappeal.org/a-national-campaign-to-crack-down-on-massage-businesses-may-harm-the-women-it-wants-to-help/

43 https://www.nydailynews.com/opinion/ny-oped-immigration-20190428-idos5htivvcp7mzd3nh5rlmuq4-story.html?fbclid=IwAR1tZgjd0DR9y9WeTTpXWX3Fl4pBPcOiG3VWvwu9v1OiNdlRxHOXsNlpGTE.

We are already organizing to undo HTICs and will need to continue to do so.

This is something that we, and others, will still be organizing to undo in five years if HTICs continue to exist. Survived & Punished NY and the Decrim NY coalition have been opposed to HTICs and their deep harms since our movements formed, and our co-strugglers have been documenting and fighting their harmful impact since the inception of HTICs in 2013.[44]

For example, Decrim NY has been working to pass a state-level reform bill that takes a different approach to mitigating the harm caused by criminal punishment laws that HTICs were supposed to address (although it would leave the HTIC structure intact). The *Stop Violence in the Sex Trades Act* (A.8230/S.6419) is a package bill meant to "decriminalize and decarcerate" the sex trades in New York. From Decrim NY:

> "The bill upholds laws concerning human trafficking, rape (including statutory rape), assault, battery, and sexual harassment. The bill amends statutes so that consenting adults who trade sex, collaborate with or support sex working peers, or patronize adult sex workers are not criminalized. It also amends the law so that people can trade sex in spaces where legal businesses are permitted, while upholding that maintaining an exploitative workplace where coercion and trafficking takes place is a felony."[45]

Although our analysis is in some respects necessarily speculative as the legislative package has yet to pass, the intent of the bill is clear in the language from the State Senate: "To repeal statutes that criminalize sex work between consenting adults, but keep laws relating to minors or trafficking, and to provide for criminal record relief for people convicted of crimes repealed under this bill."[46]

Specifically, under the current bill language, several provisions of N.Y. Penal Law related to sex work are repealed. These include § 230.00 ("Prostitution")[47] and § 240.37 ("Loitering for the purpose of engaging in a prostitution offense"[48] -- better and more accurately known as the "Walking While Trans Ban,"[49] based on how it is enforced). The current draft bill would also repeal § 230.20 ("Promoting prostitution in the fourth degree")[50] and § 230.25 ("Promoting prostitution in the third degree"),[51] with the goal of lessening the effect of criminalization on those who are working with others less experienced than themselves in the sex trade. Insofar as the bill wipes certain crimes from the books, it is an unadorned positive. But the positive effect of these straightforward repeals—to the extent they are passed into law, which is far from certain, especially regarding the repeal of § 230.20 and § 230.25—is tempered by exclusions and limitations discussed below.

Other amendments of note exist in "Part C" of S6419, which seeks to limit the current ways in

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44 "This report documents what happens inside the Brooklyn and Queens HTICs, based on court observations that were conducted by staff and members of the sex worker-led Red Umbrella Project (RedUP) from December 2013 until August 2014." https://www.nswp.org/resource/criminal-victim-or-worker-the-effects-new-yorks-human-trafficking-intervention-courts

45 https://www.decrimny.org/post/for-immediate-release-decrim-ny-legislators-intro-first-statewide-bill-to-decriminalize-sex-work

46 Full bill language here: https://www.nysenate.gov/legislation/bills/2019/s6419

47 https://codes.findlaw.com/ny/penal-law/pen-sect-230-00.html

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

49 https://queenseagle.com/all/trans-remembrance-day-state-senators-pledge-repeal-walking-while-trans-ban

50 https://newyork.public.law/laws/n.y._penal_law_section_230.20

51 https://www.nysenate.gov/legislation/laws/PEN/230.25

which sex workers are disqualified for housing, evicted, or face other sorts of legal housing discriminations. Under the current bill language, the bill tries to remedy the current housing disqualifications by saying that no adverse actions can be taken by landlords or those agencies dispensing housing aid just because a sex worker lives at the premises. It also attempts to create more protection for individuals who have "taken in" youth or fellow workers as housemates. However, as is relevant to both the "promoting prostitution" and "advancing prostition" proposed repeals, as well as to the partial protection against housing penalties, these proposed changes do little to change the existing definition of trafficking. Thus, even under this bill, law enforcement would retain the power and discretion to treat someone who "takes in" a youth or other fellow sex worker as a trafficker, at which point they would not only face criminal punishment but also housing and other collateral penalties.[52]

The fact that youth—especially queer youth, trans youth, and youth of color—at times rely on sex work to find or fund alternative housing in light of abusive family situations makes this a non-trivial exception. If a young person engages in sex work and later gets caught up in the court system, they will still, under this bill, be regarded as a trafficking victim regardless of circumstances and regardless of how they identify. If they live with peers or elder supporters, those people would likely be considered traffickers regardless of the nature of their relationship.[53] And a client would still be charged as a sex offender and subjected to draconian punishment such as the sex offense registry.[54]

Finally, the bill would allow for vacatur (under certain circumstances) of convictions for conduct that would no longer be criminalized under the new law.

To be clear, Decrim NY's bill would not disband the HTICs, and, as discussed in this section and below, the bill has its own important limitations and carve-outs. Indeed, the limitations and carve-outs are one reason why prosecutors and judges will still be able to use coercive tools like the HTICs. For example, the bill that the Decrim NY coalition is putting forward does not touch or impact penal codes related to youth (sometimes referred to as sexually exploited minors) or those codes that target people who purchase sex from minors.[55] Moreover, some people who support or

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52 We are concerned, in particular with the following subsections of Part C: §5, §6, and especially §10. These sections appear to preserve, for the new, more limited list of crimes, all of the guilt-by-association elements of the existing laws, specifically targeting landlords and home-owning/leaseholding family members and friends. This, in effect, maintains the existing barriers to sex workers getting stable housing, since the barrier is created by hypothetical/threatened prosecution more than an actual police and or DA practice of systematically targeting landlords,families, and housemates, and that threat is functionally unchanged.
Worse, §5 seems to allow vigilantes (legally empowered as neighbors or as state-recognized anti-'vice' NGOs) to directly threaten landlords and families for not evicting workers, without even having to get a DA to take their claims seriously (p10 ln47 to p11 ln16).
Further, §10, "evidence of the common fame and general reputation of the building,... the inmates or occupants thereof, or of those resorting thereto, shall be competent evidence to prove the existence of the public nuisance.... [and] prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees and all those… having any interest in any form in the property" (p13 ln10-21).In combination, these provisions add up to explicitly defining rumors (good-faith or bad-faith) of "trafficking" or coercion as legal grounds for vigilante groups to force landlords and families to evict people, with the DAs and cops as their enforcers. Needless to say, this amounts to decriminalization in name only.

53 For examples of this type of relationship being criminalized, see, e.g., Juno Mac and Molly Smith, Revolting Prostitutes: The Fight For Sex Workers' Rights (2018), pp. 75–85.

54 https://theappeal.org/sex-registries-as-modern-day-witch-pyres-why-criminal-justice-reform-advocates-need-to-address-the-aca3aaa47f03/

55 Because Decrim NY's bill is solely concerned with "consenting adults (discussing and enacting the) selling or purchasing sex" the bill in effect defaults to statutory rapes laws and penalties for any young person, associate, or

assist folks involved in the sex trades (especially youth) may still be deemed by law enforcement to be traffickers (or at least threatened with prosecution as such). We need a bolder decriminalization approach. And of course, leaving intact penal codes related to youth contributes to the policing and criminalization of youth themselves—even if they are ultimately not prosecuted or are diverted into services-oriented programs. Young people are still being caught up in the criminal legal system and shouldn't have to be arrested and in court to access services to address their needs.[56]

HTICs do not shift policy power relations, and even the Decrim NY bill leaves considerable power in the hands of cops and prosecutors.

In the HTIC structure, sex workers and their communities are not the ones addressing harm and exploitation that sex workers or survivors of human trafficking are facing. Instead, police, prosecutors, judges, and non-profits are. Police decide, through their decisions about who to arrest and what charges to list, who will be put into the system and directed towards HTICs (or away from them, based on number of arrests). DAs, by confirming those charges and through their actions in HTICs, decide whose HTIC diversions to block, and what mandated "interventions" to require. HTIC judges have the final say on who is given access to the HTIC system, and on the details of how it operates on a particular person. Finally, the NGOs who administer the "interventions" have the power to send someone back into the regular prosecution stream by declaring them "non-compliant" or simply scheduling their sessions in a way that makes it impossible for them to attend.

Further, as we know, it takes decades for police to stop arresting people for things that are no longer crimes.[57] We find it hard to imagine an HTIC judge dismissing a case just because the charge is no longer legal—they often see themselves as moral crusaders, and will mandate those arrested into patronizing and insidious exit programs regardless of the status of the arrest. Indeed, judges who support the HTICs specifically cite the capacity to force people into programs that can "save them" as their reason for doing so—a belief premised on the view that all sex workers are inherently victims.[58]

And even when the HTIC system is fully applied, it is hardly harmless. Arrest without conviction is still a huge problem, especially for immigrants and all people with dependents. Arrest alone makes a person deportable, puts someone on ICE's radar who previously was not, and can lead to loss of custody over children. Moreover, the time spent dealing with court and mandated "interventions"

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client of said young person. Essentially, the bill treats commerical sex as sex, and if it's involving someone under the age of consent for NY state (17 years old) it upholds Article 130 of NY Penal Law (laws and their punishments addressing rape and sexual violence). Article 130 does however include the allowance for marital exclusion (permits "consensual" sex with a minor under marriage) as well as mandate anyone convicted of a "sex-related" crime be registered as a "sex offender." We know all too well that sex workers themselves end up on such regestries, or are punished harshly in other ways, based upon where they were working, or who hires them, and for what work. See "A Jailbreak of the Imagination" by Mariame Kaba and Kelly Hayes, for Truthout, which discusses the case of Tiffany Rusher.

56 When youth are involved in or adjacent to the sex trades and are then picked up, arrested and diverted into Family Court, even when not charged with prostitution, we should be keeping closer watch on what youth are being charged with. According to Amnesty International, "In 2015, nearly 40% of adults arrested for prostitution were Black. This disparity is larger for minors, where approximately 60% of youth under the age of 18 arrested for prostitution were Black—despite being categorized as victims of sex trafficking under federal law."
https://www.amnestyusa.org/from-margin-to-center-sex-work-decriminalization-is-a-racial-justice-issue/

57 As we've seen with the decriminalization of possession of injection gear and needle exchange programs.

58 http://www.floridalawreview.com/wp-content/uploads/4-Gruber_Cohen_Mogulescu.pdf.

often disrupts child- and elder-care and ability to work to make ends meet.

Another set of proposed reforms are in practice likely to have the most practical effect when it comes to getting charges dismissed after arrest—for example the Decrim NY coalition's work to repeal the "Walking While Trans Ban," N.Y. P.L. § 240.37. Repealing this loitering ban is undoubtedly a positive. Its repeal is a notable harm reduction effort. It takes "off the books" a draconian carte blanche for police harassment—what had amounted to a targeted Stop & Frisk program for trans folks of color in particular. Such repeals are a necessary part of any decriminalization effort. And the repeal will have significant effects: Steering Committee members of Decrim NY have cited that the people most frequently harassed and arrested under this penal code are trans and cis women of color,[59] a claim backed up by extensive reporting.[60] Based on the violence inherent in the application of § 240.37, removing it would be a step toward legally taking back public spaces.

However, as we've seen with the removal of the "Condoms as Evidence" provision (part of the anti-loitering penal code prior to 2014), the NYPD can selectively maintain a practice even after it is formally eliminated. In the case of the "condoms as evidence" repeal, the NYPD has continued to rely on this especially regressive rule "in the cases of trafficking" (whose boundaries they determine) with impunity.[61] Thus, even here, there remains the possibility of a selective—and undoubtedly discriminatory—continuation of enforcement under different guises.

Both HTICs and the Decrim NY bill divide people into "deserving" or "undeserving" categories and leave out especially marginalized groups of people.

In various ways, and at times unintentionally, the reforms considered in this section either divide people into more or less deserving groups, or else are likely to benefit only those who are already less marginalized and targeted.

With respect to both HTICs and Decrim NY's legislation, there is a filtering effect—which in the case of the HTICs, is explicitly part of the structure of the system. The HTIC regime expressly allows prosecutors to decide which cases are diverted, and expressly allows prosecutors and judges to decide who is jailed during their case.[62] It allows a prosecutor to treat a sex worker who works with others for safety or to pool resources as either a trafficker (ineligible for diversion) or as a victim.[63] Prosecutors and judges decide who is a victim or perpetrator—and who is a flight risk or dangerous—drawing on the same class and racial stereotypes they bring to their work generally.[64] Moreover, Decrim NY's bill's youth exclusions limit the ability of some individuals to seek vacatur, and further put other people at risk (who may work or live in a group that includes some, say, 17-year-olds and some 18-year-olds)—especially given the discretion of law enforcement to treat certain members of peer groups as traffickers when one member of the group is a young

59 https://thinkprogress.org/sex-workers-rally-capitol-ask-new-york-lawmakers-to-pass-legislation-to-keep-them-safe-9e8213a484c7/

60 https://www.villagevoice.com/2016/11/22/the-nypd-arrests-women-for-who-they-are-and-where-they-go-now-theyre-fighting-back/

61 https://rewire.news/article/2014/05/13/nypd-finally-changes-condoms-evidence-policy-leaves-giant-loophole/

62 http://www.floridalawreview.com/wp-content/uploads/4-Gruber_Cohen_Mogulescu.pdf

63 Id. at 1348 (quoting a judge who supports the HTICs as saying, by way of justification for diverting some cases, "prostitution [i]s a product of power and control rather than autonomous choice").

64 Id. at 1358–59 (describing evolving justifications for keeping someone incarcerated during HTIC case).

person.[65]

More broadly, the purported benefits of both HTIC and the Decrim NY legislation are also *practically* unavailable to (or unsafe for) many who are not expressly excluded. For example, the HTIC, by funneling people through the criminal punishment system, is particularly dangerous for immigrants. ICE has arrested defendants in trafficking court,[66] and even when not arrested, being forced into the HTIC system can put any immigrant in danger in various ways. Multiple parts of the criminal punishment system in New York collaborate with ICE, sometimes in defiance of state policy, to facilitate deportations after an immigrant is in contact with the criminal punishment system, whether their case is concluded or not.[67] And the mere fact of an arrest is routinely used by immigration judges to deny bond[68] to immigrants seeking release from immigration jails (not to mention that an arrest for "prostitution" can make an immigrant ineligible to re-enter the country in the future if they depart, even if they were never convicted).[69] Any intervention that requires criminal punishment system contact necessarily creates tremendous danger for some, on top of the baseline violence and coerciveness entailed by the system.

Finally, some people simply cannot avail themselves of the protections these systems purport to offer. Decrim NY's legislative package offers individual pursuit of vacatur as a response to past convictions, but getting convictions vacated is contingent upon time, money, access to legal resources, luck of the draw in judge, etc. Thus, admittedly by different means, HTICs and Decrim NY's legislation both divide people into deserving and undeserving categories—whether expressly or by implication.

HTICs in their own workings, actively prevent building people power.

The HTIC system is structured to divide sex workers, in ways that undermine efforts to organize and build collective power. By allowing workers' support for each other to be categorized as 'trafficking', the HTIC system directly criminalizes collective action and mutual aid. The ways in which it splits those facing charges into 'deserving' and 'undeserving' operates similarly - especially given the level of control police and prosecutors have over who is directed towards incarceration and who towards HTICs, which makes retaliation for organizing easy.

The situation is similar in the HTIC system's operation on the people diverted into it. People are diffused among different mandated "service providers" scattered across the city, often with minimal attention to where they actually live. This makes it harder for folks who work or live near each other, work in similar parts of the industry, or otherwise share working conditions to come together to identify and pursue their specific needs. The combination of mandated sessions and travel to and from them also drastically reduces the time workers have available for organizing, mutual support, and other forms of power-building. Court-mandated restrictions on where people can go and who they can associate with (and policing practices that amplify those restrictions, like arresting folks for being with others with past arrest records) also limit organizing, in addition to

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65 Juno Mac and Molly Smith, Revolting Prostitutes: The Fight For Sex Workers' Rights (2018), pp. 75–85.
66 https://www.nydailynews.com/new-york/ny-metro-ice-arrests-nyc-courthouses-20190125-story.html
67 https://documentedny.com/2019/01/26/documents-show-new-york-court-officers-alerted-ice-about-immigrants-in-court/; https://documentedny.com/2019/05/08/new-york-a-sanctuary-state-provides-criminal-justice-data-to-ice/.
68 Matter of Siniauskas, 27 I&N Dec. 207, 208–09 (BIA 2018) ("[I]t is proper for the Immigration Judge to consider . . . both arrests and convictions.").
69 See INA § 212(a)(2)(D).

disrupting community ties of all kinds, among workers, between neighbors, and within families.

Further, the HTICs and the "service providers'' with whom they contract, provide an extra-convenient feeding ground for the "Rescue Industry." The "Rescue Industry" consists of non-profits and lobbying groups who work to preserve and expand the criminalization of sex work, and use the HTICs as sites where they can easily gain access to workers under conditions where workers cannot easily refuse to deal with them. This is especially the case when judges and prosecutors demand and mandate counseling, exit programming or other similar obligatory obstacles to getting through the criminal legal system once "catching a case." The offered exit programming and mandated counseling is never peer-led and by virtue of it being mandatory is prescriptive and punitive. Both as a form of harassment and as a divide-and-rule tactic, this directly undermines efforts by sex workers to collectively assess and pursue their concrete needs, and to build power among and for themselves.

New Yorkers for the Equality Model's "Equality Model"

The latest effort to directly attack and undermine sex worker organizing builds on the HTIC system, and specifically counter-responds to the legislation that Decrim NY proposed. This new "reform" effort was launched by "anti-trafficking" non-profits and "rescue" groups in late 2019. This "partial crim"[70] effort comes from a long line of "End Demand" or Nordic Model inspired criminalizing initiatives: the so-called "Equality Model" also known as "No Buyer, No Pimp NY" is being organized by the coalition New Yorkers for the Equality Model.[71] This self-professed "survivor-led" group denounces any survivors not adopting their deeply carceral agenda. The coalition is comprised of pro-police and pro-incarceration organizations who are known to sex worker organizers and advocates as harassers.[72]

"The Equality Model" promotes criminalization, not equality.

The legislation will be introduced by Manhattan State Senator Liz Krueger and Brooklyn Assembly Member Tremaine Wright in the upcoming legislative session. While the bill language is not yet finalized, this is the partial-criminalization, public-facing language from the coalition working with senators and assembly members to draft it:

> "The Equality Model" is a five-pronged legal approach that holistically addresses prostitution. An Equality Model law in New York State will:
>
> - Repeal laws calling for the arrests and incarceration of people in prostitution (i.e. decriminalize people in prostitution).
> - Provide comprehensive trauma-informed social services (e.g., legal, social,

70 We use quotations around these words because while the adovcates say they're only cracking down on the clients of sex working people (they use the term "buyers"), we know that this in effect criminalizes sex workers as well, and prevents them from engaging in their work. We also must acknowledge the enforcement history of the NYPD. Even when laws/ordinances are removed from the books (such as possession of condoms as evidence of sex work) they continue to use them to justify harassment, extortion, and arrest - which harm their targets even if judges dismiss the formal charge.

71 https://queenseagle.com/all/opponents-sex-work-decriminalization-launch-2020-legislative-fight

72 https://twitter.com/RedCanarySong/status/1201999931935993864?s=20

clinical, medical, economic empowerment) to people in prostitution, including options should they wish to exit the sex trade.
- Reduce the demand for prostitution by penalizing sex buyers. This shrinks the sex trade and prevents more vulnerable people from being pulled into harm's way.
- Continue to criminalize pimps and traffickers, brothel owners and illicit massage parlor owners.
- Commit to an extensive community education campaign to raise awareness about the lifelong physical harm and psychological trauma people in prostitution experience at the hands of sex buyers. This increases social accountability for the discriminatory practice of sex buying and contributes to reducing demand for prostitution. It also promotes gender equality, strengthens empathy for survivors and increases cultural understanding of the devastating effects of the sex trade on the most vulnerable populations and our communities.

Full Decriminalization, on the other hand, seeks to decriminalize the entire sex trade. This includes prostitution, patronizing prostitution (sex buying), and promoting prostitution (pimping). With full decriminalization of the sex trade, there is no incentive for the state to fund specialized services to those in prostitution because it is now a job like any other."

This proposed legislative effort directly works to uphold existing carceral systems of entrapment and punishment. Points three and four of their outline are expressly about criminalizing and penalizing clients and patrons of sex workers, as well as brothel owners (the legal definition of which could be used to target sex workers) and massage parlor owners (who may also be undocumented), migrant sex working people (who already have to deal with the felony charges levied against performing unlicensed massage, or calling "body work" massage). Although lacking in specifics at this early stage, it is inevitable that any bill put forth under this rubric—because it explicitly relies on and reinforces criminalization—would bolster the PIC; increase the divide between "deserving" and "undeserving" people; reinforce the power of police, prosecutors and judges; and entrench laws that we will be working to undo down the road when their defects become widely recognized.

Even at the level of language we call into question this "reform." Throughout Krueger and Wright's platform statement they make reference to those "in prostitution," language that sex workers and advocates have repeatedly cited as creating a vision of workers as passive, helpless subjects being acted upon instead of having or deserving human agency. This dehumanizing, agency-denying language is exacerbated by the platform's emphasis on "lifelong physical harm and psychological trauma" they say sex working/trading people endure, as if to imply again a broken, helpless permanent victim status. Their rhetoric around pimping is tired and racist—calling upon old bigoted fears and anxieties steeped in white saviorism. We will long be working to undo the harm this legislation will cause should it pass, and no matter what, we will continue to struggle against the harm caused by the stereotyping and police violence promoted by the "Equality Model."


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AND
PUNISHED