

SOAR INSTITUTE

Dear House Judiciary Committee,

Thank you for considering this critical issue today. I am writing to express my strong support of House Bill 6049, which establishes criteria for the criminal offense of custodial sexual assault by a peace officer. As a longtime attorney and advocate for sex workers and survivors of trafficking, I have repeatedly seen vulnerable people be sexually abused at the hands of law enforcement without repercussions or redress.

This issue is certainly one that causes shock and discomfort when discussed – most people cannot believe police are permitted to do this. The reality is that they should not, but that they do, on quite a regular basis. Sex workers and those profiled as sex workers – especially transgender women of color – are subject to routine sexual assault by police offering “deals” (if you do this, I will not arrest you now). This is not consent – in fact, it is the very definition of coercion. Other states, including Nevada and Pennsylvania, are currently considering similar laws to punish custodial sexual assault.

[[<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6667/Text>;
<https://legiscan.com/PA/text/HB1807/id/2052878>].

The federal government just introduced the “Closing the law enforcement consent loophole” bill, in the George Floyd Justice in Policing Act 2021, which, in relevant part:

- (1) makes it a criminal offense for any person acting under color of law of the State or unit of local government to engage in a sexual act with an individual, including an individual who is under arrest, in detention, or otherwise in the actual custody of any law enforcement officer; and
- (2) prohibits a person charged with an offense described in paragraph (1) from asserting the consent of the other individual as a defense.

[https://judiciary.house.gov/uploadedfiles/jip_bass_version_xml.pdf?utm_campaign=5874-519].

To say there is a power imbalance between law enforcement and those in their custody would be a severe understatement - people who are in custody have no agency, have fear about what is to come, and are at the complete and total mercy of those who have taken them into custody. There cannot possibly be a consensual sexual encounter between someone in custody and the person in charge of their freedom. When you think of who may be in custody, there is a disproportionate chance that person will be part of a marginalized or more vulnerable group [people of color, specifically Black and Brown people, are significantly more likely to be arrested]. When it comes to sex work, Black and Brown women, especially transgender women, are the most likely to be arrested - and also the most vulnerable to exploitation, abuse, and stigma. These factors are easily exploited by law enforcement.

The ACLU provides a great national overview in their article “There’s no Such Thing as Consensual Sex When a Person is in Police Custody” [<https://www.aclu.org/blog/criminal-law-reform/reforming-police/theres-no-such-thing-consensual-sex-when-person-police>].

Thank you again for your time and consideration on this matter.

Regards,



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