

Is Sex Work Decriminalization The Answer?

What The Research Tells Us

Introduction

For more than 40 years, the ACLU has advocated for the decriminalization of sex work.¹ While sex workers themselves have long spoken out about the harms of criminalization, efforts to decriminalize sex work have only recently expanded, becoming of interest to both national and state officials. In November 2019, Massachusetts Rep. Ayanna Pressley introduced a resolution into the U.S. Congress to decriminalize sex work between consenting adults.² Several states have proposed similar legislation, including New York, Maine, Massachusetts, Washington, D.C., and Vermont. As of publication of this Brief (October, 2020), the buying and selling of sexual acts remains illegal and penalized in all states across the United States besides Nevada, where prostitution is legal only in a regulated, “licensed house of prostitution.”³ However, between 1980-2009, indoor prostitution was technically legal in Rhode Island due to an gap in the law outlawing the buying and selling of sex outdoors that was later amended.⁴

At the federal level, recent legislation — driven in part by the inaccurate conflation of human trafficking with consensual sex work — has focused on limiting access

to certain online avenues for buying and selling sex-related activity. Specifically, in 2018, the Stop Enabling Sex Traffickers Act (SESTA) and the Fight Online Sex Trafficking Act (FOSTA), collectively referred to as “SESTA/FOSTA,” were signed into law with bipartisan support.⁵ These laws ostensibly intended to curb human trafficking by making websites liable for postings that appear to advertise sex trafficking or even consensual prostitution, subjecting websites hosting sex-related illegal activity to harsher punishments than websites hosting content related to other forms of illegal activity. These laws appear to have resulted in a drastic reduction in access to online venues. For example, Backpage, a website long known to advertise sex work, was shut down following the passage of these laws.⁶ This restriction of access to online platforms led to an outcry from many sex workers and advocacy groups, arguing that eliminating online screening mechanisms for clients leads to more dangerous working conditions for many sex workers.⁷ In response to these concerns, the SAFE SEX Workers Study Act was introduced in the Senate in 2019 and, as of the publishing of this Brief, is still in committee. The bill requests research into the health and safety impacts of SESTA/FOSTA.⁸

While consensual buying and selling of sexual activity remains very much illegal almost everywhere in the United States,⁹ the tide is beginning to turn in some other places around the globe. New Zealand decriminalized both the selling and buying of sexual activity in 2003, while several other countries decriminalized the sale of sex but left the purchase a criminal offense (often referred to as the “end-demand” or “Nordic model” approach).¹⁰ In the international sphere, there have been increasing calls for decriminalization. For example, following examination into the human rights of sex workers in four countries, Amnesty International called for all countries to fully decriminalize sex work (i.e., decriminalize the sale and the purchase of sex).¹¹

In the current context of COVID-19, the physical and economic vulnerability of sex workers is becoming more apparent, with growing attention in both policy and the media, due to lack of access to support in pandemic responses.¹² As such, in May 2020, Human Rights Watch recommended jurisdictions that currently criminalize sex work take steps toward decriminalization, reiterating their earlier stated support for decriminalization.¹³

As international calls for decriminalization increase and efforts for U.S. legislative reform at the local, state, and federal level grow, examining the potential impacts of these proposed policies is critical; this Research Brief reviews existing empirical research on the impacts of decriminalization – and conversely criminalization – of adult, consensual prostitution and related charges to inform recommendations for policy and practice. As such, this Brief provides an assessment of the growing evidence base on the potential benefits and harms of the decriminalization of consensual sex work.¹⁴

Methodology

This Brief identifies empirical research specifically relevant to the question of impacts of decriminalization¹⁵ or legalization¹⁶ of consensual sex work among adults.¹⁷ Sources were identified through iterative searches of peer reviewed and legal articles, government reports, and NGO (non-governmental organization) publications. Specific criteria for inclusion were:

Empirical research — either quantitative, qualitative, or mixed-methods, including both original studies and systematic reviews and meta-analyses;

Available in the English language;

Addressed potential consequences/benefits of decriminalization, criminalization, and/or legalization of sex work; and

Specifically pertained to sex work that is criminalized for adults in the U.S. (i.e. the buying and selling of sexual acts).

Research on both domestic (U.S.) and international contexts was permitted, and specific efforts were made to include research conducted by and with former/current sex workers and sex work organizing groups. The empirical literature specifically

examining impacts of decriminalization of sex work comes from research more in international than domestic (U.S.-based) settings. While it is important to note this gap or limitation in our research, this disparity exists at least in part because this type of research or analysis can only occur in places with decriminalization or legalization policies, which the U.S. does not have, with very few exceptions. However, U.S. research on the impacts of criminalization can provide crucial information on potential impacts of decriminalization, and thus are included in this review.

The literature reviewed focused on empirical research that: 1) assessed laws or policies implemented; 2) provided data on how decriminalization would/could affect sex workers; and/or 3) offered empirical evidence on how criminalization has affected/affects sex workers. Studies ranged from statistical models, evaluation of the impact of policies and laws, and descriptive studies of sex workers' experiences.

A total of 83 sources met our criteria for inclusion and were reviewed for this Brief, comprising 25 empirical qualitative studies, 25 quantitative studies, 27 mixed methods studies, and six systematic review/meta analyses. Fifty-seven sources were journal articles, 18 were NGO reports, seven were government reports, and one was a law review article. These sources included 54 articles that looked at international contexts and 29 that looked at domestic (U.S.) contexts (see Table 1).

TABLE 1

Overall Breakdown of Sources Included In Review (N=83)

Location of Study¹⁸

Outside U.S. (53): Argentina (1) Australia (1) Canada (12) China (2) European Union (1) Fiji (1) Kenya (2) India (1) Ireland (1) Netherlands (3) Norway (4) New Zealand (2) Northern Ireland (1) Papua New Guinea (1) Senegal (1) South Korea (2) South Africa (2) Spain (1) Swaziland (1) Sweden (6) Uganda (2) U.K. (2) Zimbabwe (2)

U.S.-Based (29): National (5) California (6) Illinois (1) Maryland (8) Massachusetts (1) Nevada (1) New York (6) North Carolina (1) Texas (1) Rhode Island (1)

Reference Type

Journal article (57) NGO report (18) Government report (7) Law review (1)

Methodology of Studies

Qualitative (25) Quantitative (25) Mixed methods (27) Systematic review/Meta-analysis (6)

Our initial review of the extant literature indicated five key areas of inquiry, which then guided our full review and analysis of the research. As such, this Brief draws upon the existing empirical research to answer these five key questions:

- 1. When you decriminalize sex work, how does it impact safety?**
- 2. When you decriminalize sex work, how does it impact health?**
- 3. When you decriminalize sex work, how does it impact financial stability?**
- 4. Which populations are most impacted by the criminalization of sex work?**
- 5. What is the relationship between sex work decriminalization and efforts to combat human trafficking?**

A note about language: Whenever possible, we use the language preferred by sex worker advocacy communities – for example “sex work” instead of “prostitution” in this Research Brief. However, at times it was necessary to use the specific legal terminology or particular language used in a research study.

Findings

Q1. When you decriminalize sex work, how does it impact safety?

This section presents a summary of evidence on the impacts of decriminalization on safety and violence. The research overwhelmingly suggests that **criminalization of sex work, including criminalization of buying, but not of selling, sex known as the “end-demand” or “Nordic” model, increases the risk of violence and threatens the safety of sex workers.** Specifically, the findings discuss violence by clients, violence by police, and sex workers’ inclination to report violent crime to authorities.

Violence By Clients

In criminalized contexts, sex workers face violence from clients, related both to the context of the interactions and the actual and perceived lack of police protection.¹⁹ For example, 22 percent of the 250 female²⁰ sex workers surveyed in Baltimore, Maryland reported physical or sexual violence by a client in the past three months. Research suggests a strong association between rushing negotiation and experiences with client-perpetrated violence; when sex work is illegal workers may not be able to as effectively screen clients or negotiate fees or activities. The lack of time or conditions to agree upon a fee in advance can increase the risk of disagreement and violent or aggressive escalation by the client during or after the fact. For example, findings from three studies in Vancouver, Canada indicate that rushing client negotiations, often due to police presence, resulted in increased client violence to female workers.²¹ Sex workers interviewed in a small South African study indicated that the criminalization and stigmatization of sex work exacerbated their experiences of sexual violence.²²

An assessment of the impact of legislation that changed sex work from being legal for both buyer and seller to criminalizing the buyer, i.e., an end-demand model, in Northern Ireland concluded that there was little overall impact on supply or demand, but that online solicitation increased, whereas street-based solicitation decreased.²³ Similarly, evaluations of Sweden’s end-demand model found a decrease in street-based sex workers, although they could not identify whether indoor or online solicitation changed one way or the other.²⁴ A systematic review of 28 studies from multiple countries found that sex workers in outdoor environments experienced higher levels of violence than those working in indoor environments.²⁵ Thus, given the greater safety risk for sex workers soliciting on the street as opposed to online or indoors,²⁶ these findings could be seen as a positive impact of end-demand laws. However, application to a U.S. context would be inappropriate given that an end-demand model in the U.S would be a loosening of restrictions on sellers with no change in restrictions on buyers, not a tightening of restrictions on buyers, who are already criminalized in almost all U.S. contexts. Furthermore, the Northern Ireland study also documented an increase in harassment and abusive behaviors by clients after buyers were criminalized, resulting in an increase of fear and stigma reported by sex workers, and sex workers expressed that the end-demand law was negatively impacting them more than it was the clients.²⁷

Research in Canada and Norway shows that shifts away from criminalizing sex workers and toward

Even when clients are the stated target of police, sex workers remain at a heightened risk of violence.

targeting buyers or clients still harm the safety of sex workers and their ability to negotiate their working conditions. Even when clients are the stated target of police, sex workers remain at a heightened risk of violence.²⁸ Two Canadian studies showed that moving police practices to an end-demand model yielded no statistically significant decrease in workplace violence against sex workers.²⁹

Research suggests that decriminalizing or legalizing sex work for both the buyer and seller may better help to protect sex workers from client violence. After the Netherlands legalized prostitution through specific regulations and only in specifically designated public areas known as “tippelzones,” they saw a 30 to 40 percent decrease in sex crimes citywide, and research indicated a long-term decrease in sexual abuse and crimes involving drugs if licensing was introduced from the start in the tippelzone.³⁰

Limited research on loosening restrictions surrounding sex-related work in the U.S. suggests that sex workers may be safer under less restrictions. For instance, during the period of inadvertent decriminalization of “indoor prostitution” in Rhode Island from 1980 through 2009, there was a 30 percent decrease in reported rape offenses against sex workers post-decriminalization.³¹ Several studies of conditions under legalized sex work, including legalized brothels in Nevada, indicate that legalization entails higher regulation and scrutiny, resulting in a decreased risk of violence due to greater oversight, regulated negotiation systems, greater peer support from social networks, and more positive relations with law enforcement.³²

Risk of violence by clients also appears to vary based upon the venue used for advertising services and connecting with clients, particularly online versus street-based venues. Research from the U.K. noted that internet-based solicitation may increase online harassment, threats, and even non/under-payment, as well as non-consensual and potentially harmful breaches of data privacy.³³ Nonetheless, levels of violent crime (physical or sexual assault) are shown to be substantially lower with online versus street-based sex work.³⁴ A U.S. study found that the ability to find and screen clients online via the Erotic

Services section (ERS) of Craigslist was associated with lower rates of female homicide, and attributed to more efficient transactions and greater screening of clients.³⁵ Yet, not long after that study was conducted, U.S. federal legislation known as SESTA/FOSTA (Stop Enabling Sex Traffickers Act/Fight Online Sex Trafficking Act)³⁶ made websites liable for posting of even consensual buying or selling of sex, resulting in the shutdown of online outlets, such as Craigslist ERS and Backpage, another commonly used site by online-based sex workers.³⁷ Critiques of the aforementioned Craigslist ERS study³⁸ (and the study authors themselves) have rightly noted some limitations of the research, particularly with regard to its applicability to potential impacts of SESTA/FOSTA, including not being able to measure homicides of sex workers specifically and occurring in a different time and context. However, since the passage of these laws, additional research has identified negative consequences on sex workers’ safety, including having to take on riskier clients, receiving physical and/or verbal threats or being physically exploited, and being forced to screen clients less, both because they lacked a dependable screening mechanism and because they were more desperate for clients.³⁹ For example, 60 percent of the 262 sex workers surveyed in a U.S. study reported having to take on riskier clients since SESTA/FOSTA restricted their online platforms.⁴⁰ In another study, a third of the 90 online-based sex workers (33.8%) recently surveyed reported an increase in violence from clients since the shut down of Backpage and passage of SESTA/FOSTA.⁴¹

Violence By Police

Research shows that **in heavily policed, criminalized contexts, including end-demand models, sex workers are often physically or sexually coerced by police through threat of detention, violence (including rape), or extortion.**⁴² There is evidence not only of regular police contact, but also the extent to which those interactions may be abusive, violent, and lead to imprisonments. Findings from a U.S. survey of online-based and street-based sex workers indicated police violence was a real threat; when asked about their experiences doing sex work, one respondent

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Blunt & Wolfe, 2020

declared, “All of my worst experiences happened because of the police.”⁴³ Survey results from 250 sex workers who participated in the Sex Workers and Police Promoting Health in Risky Environments (SAPPHIRE) study in Baltimore, Maryland reveal that 78 percent had experienced at least one abusive encounter with the police.⁴⁴ In fact, an investigation led by the U.S. Department of Justice concluded that officers in the Baltimore Police Department forced sex workers to perform sexual acts to avoid arrest.⁴⁵

Most of the 30 street-based sex workers interviewed in one New York City study reported having daily contact with the police; the vast majority were negative contacts leading to citations, arrest, and/or violence, however a minority of sex workers did report some positive interactions, particularly in regard to domestic violence issues.⁴⁶ One in 10 sex workers in the SAPPHIRE study also reported daily interactions with the police, ranging from stops and arrests to verbal abuse and assault.⁴⁷ Given the regularity of police interactions, sex workers face not only the threat, but also the reality, of incarceration. For example, a recent study examining the impact of police and client violence on sex workers in Baltimore, Maryland found that 70 percent of sex workers in the sample had been incarcerated, with an average of 15 instances of imprisonment within their lives.⁴⁸

Unsurprisingly, arrests, which themselves can involve extreme violence and lead to the violence of imprisonment, decreased significantly after sex work was decriminalized in New Zealand and Rhode Island (U.S.).⁴⁹ After passing SB 825 in Texas, which defined separate legal codes for buyers and sex workers, the disproportionate criminalization of sex workers shifted to criminalizing clients (akin to end-demand models). Arrest rates of sex workers (and therefore risk of violence associated with arrests) decreased, while arrest rates of buyers increased.⁵⁰

Even in partially and fully decriminalized contexts such as Canada and New Zealand, respectively, abuse of police power can and has occurred, albeit on a lesser scale.⁵¹ Although legalization – the scenario which removes criminal penalties for some sex work, provided the participants comply with relevant regulations – may help to reduce violence from clients (as discussed previously in the context of brothels in Nevada (U.S.) and tripplezones in The Netherlands), it may also maintain a level of police surveillance and contact with negative consequences to sex workers. For example, in Senegal, research concluded that government-mandated and legally enforced registration of sex workers increases their interaction with the authorities and puts them at risk of police violence.⁵²

Inclination To Report Violent Crime

Due to historical discrimination by and mistrust of the police and the risk of being arrested when sex work is criminalized, **sex workers report crimes to the police at low rates.**⁵³ In a study of sex workers in Sacramento Valley, California (U.S.), most sex workers indicated that they did not report violence to the police because of fear that law enforcement would blame the sex workers themselves,⁵⁴ a fear that sex workers surveyed in Chicago⁵⁵ and New York City⁵⁶ also predominantly reported. Furthermore, in a Baltimore study, police officers themselves expressed the view that violence was an inevitable consequence of sex work and not worth addressing in a serious manner, and thus they did not treat sex workers’ victimization as legitimate.⁵⁷

In a Canadian study, many Vancouver sex workers who had experienced workplace violence felt unable to access community health or social services due to the criminality of their profession, and the study found an association between a lack of access to those services and the declining to report violence to authorities.⁵⁸ Similarly, only a third of sex workers surveyed in Northern Ireland indicated that they would report a crime to police.⁵⁹

Some existing research suggests that **decriminalization and legalization may remove the threat of arrest, making sex workers feel more confident and safer reporting violent crime** to the police, including violence that occurs in the course of payment or service negotiations.⁶⁰ The research in New Zealand shows that largely due to the removal of the threat of detention as a consequence of decriminalization, the relationship between law enforcement authorities and sex workers improved, making workers feel safer and more inclined to contact the police to report violence and allowing police to focus on violence prevention over arrests.⁶¹

Q2. When you decriminalize sex work, how does it impact health?

This section presents a summary of the evidence on the impacts of decriminalization on health. The empirical research points to a **negative relationship between criminalization of sex work and physical and mental health**, and finds that **decriminalization, combined with more targeted interventions, can lead to greater access to health care and improved health**.

HIV/STI Prevention and Transmission

Research on criminalized and partially-criminalized contexts, including the criminalization of buyers solely (i.e. end-demand models), demonstrates that criminalization can negatively impact HIV/STI prevention and increase risk of transmission by **limiting sex workers' screening and negotiation abilities**, such as for condom use.⁶² Criminalization

and resulting restrictions, such as limiting access to online forums, may shift workers to less safe or less public areas or increase the risk of the client insisting on less public areas and/or engaging in unprotected sex.⁶³ Being displaced to less public areas has been found to lead to higher rates of unprotected intercourse, which in turn can lead to higher rates of STI and HIV transmission.⁶⁴

Research indicates that certain police practices related to enforcement of sex work criminalization may put sex workers (and their clients) at greater health risk.⁶⁵ Surveys of more than 1,000 sex workers in India demonstrated that negative police contact was associated with decreased condom use.⁶⁶ Interviews with sex workers in Sacramento Valley, California (U.S.) revealed that the threat and incidence of detention increased if sex workers had condoms in their possession, taken as intent to engage in/evidence of engaging in prostitution.⁶⁷ A study on sex workers in China concurred with these results, concluding that prior instances of incarceration resulted in sex workers engaging in riskier sexual behaviors (e.g. condomless sex) to accumulate income lost and avoid leaving evidence that could result in potential future sanctions.⁶⁸ Some sex workers in a New York City study reported that police confiscated or destroyed their condoms, even outside the context of arrests.⁶⁹ A number of these workers stated they carry fewer condoms due to their fear of arrest, but several indicated that this did not deter them from their commitment to practicing safer sex.⁷⁰

In terms of the potential impact of loosening or removing sex work prohibitions, research indicates that impacts on HIV/STI-related physical health vary between different models of decriminalization/legalization. Based on a systemic review of 87 studies from several continents, researchers developed an HIV transmission model and concluded that decriminalizing sex work could have the greatest impact on curbing the HIV epidemic. Specifically through decreases in sexual violence, police harassment, and unsafe work environments, the **study concluded that decriminalization could result in the prevention of over one-third**

(33–46%) of projected HIV transmissions among female sex workers between 2014-2024.⁷¹

Sex workers in Northern Ireland reported an increase in requests for unsafe sex practices following a change from legalized prostitution to an end-demand model that criminalized buyers.⁷² Even in legalized contexts, impacts of regulations can vary. For example, forced licensing of brothel systems is associated with reduced access to HIV-related peer education and support/health services for sex workers if they are not licensed, based on a study with 605 brothel-based workers in Australia.⁷³ However, that same study also found that there are higher occupational health and safety standards, with free condoms available, when brothels are licensed. Similarly, two other studies indicate that when brothels implement specific measures related to HIV/STI prevention, not surprisingly there is a positive impact on STIs. Research on mandatory STI testing for legalized brothels in Nevada⁷⁴ and mandatory registration of sex workers with health centers in Senegal⁷⁵ found these measures appeared to have a positive impact on sex workers' health, in terms of preventing and treating STIs. However, researchers also found negative outcomes of the mandatory registration in Senegal, such as greater engagement in riskier sex acts, less social support, and increased levels of violence from clients and police, leading to overall lower well-being.⁷⁶

Another study noted that following a period of decriminalization in Rhode Island, incidences of gonorrhea decreased by over 40 percent, particularly among female sex workers.⁷⁷ One study in South Korea reported a decrease in STI prevalence rates, although no change in condom use, among female sex workers after sex work was heavily regulated (basically amounting to partial criminalization) through the country's national Prohibition of Sex Trafficking Act, which relegated prostitution only to specific "prostitution blocks."⁷⁸ However, the same study concluded the act had a negative impact on working conditions and other health variables, such as smoking.

Mental/Psychological Health

The research literature regarding the potential impacts of decriminalization or criminalization on mental health is rather sparse. However, the limited research does point to some negative consequences of criminalization on the emotional and mental health of sex workers.⁷⁹ These include **general stigma and social exclusion, lack of support, and feelings of lack of agency or safety**,⁸⁰ all of which may lead to poorer mental health. One survey of street-based sex workers in Baltimore, Maryland found that the violence sex workers experienced resulted in PTSD levels that are consistent with those of treatment-seeking veterans.⁸¹ An additional study's findings describe the ways sex workers are treated as a "human rights violation."⁸² Not only do sex workers experience abuse and exploitation by their clients and law enforcement (as previously discussed), but criminalization of sex work may allow health care providers to justify discrimination and refuse to provide psychological care to members of the community who are among the most vulnerable.

Furthermore, regulating sex work – even without criminal penalties – can have negative consequences on sex workers' well-being. Findings from a study in

Decriminalization could result in the prevention of over one-third (33–46%) of projected HIV transmissions among female sex workers between 2014–2024.

Shannon et al., 2015

Senegal, the only African country to have legalized sex work, indicate that mandating registration and health screenings of sex workers may lead to lower emotional well-being and satisfaction generally among sex workers, in part due to stigma associated with registering as a sex worker.⁸³

Access to Health Care

International research suggests that **criminalization, including criminalization of the buyer only, reduces access to needed health services, as a result of stigma and discrimination**, and reduces the ability to access valuable peer education about HIV/STI prevention and condom distribution, thereby increasing sexual health risks.⁸⁴ Consequently, research shows a positive relationship between decriminalization or legalization and greater access to health services, such as STI testing, screenings, emergency services, and affordable health care, resulting in increased rates of health care utilization by sex workers.⁸⁵ However, barriers may still exist, even in decriminalized or legalized contexts. Sex workers in Canada were more likely to suffer from unmet health needs, as compared to those in similar demographic groups.⁸⁶ For example, when mandatory HIV/STI testing is required under legalization, it may actually hinder access to care, as a systematic review of over 800 studies indicated that forced HIV testing can lead to greater stigma, discrimination, and even lower inclination to seek out help/services.⁸⁷ Even under legalization, the Senegal study noted that barriers to registration at health centers exist, and the most isolated sex workers may not be able to access health services.

In addition to HIV/STI testing and other physical health services, studies of sex workers in Senegal⁸⁸ and in Sacramento County, California (U.S.)⁸⁹ indicate a need for improved access to psychological services for sex workers. Further research is needed on whether decriminalization can expand access to health care, particularly beyond HIV/STI testing and treatment, including reproductive health care and counseling/mental health resources.

Q3. When you decriminalize sex work, how does it impact financial stability?

This section presents a summary of evidence on the impacts of decriminalization on the financial stability of sex workers. The research points to a **negative relationship between criminalization of sex work and financial security**, and suggests **decriminalization can lead to more stable and higher income** if and when sex work is seen under the law as a means of legitimate employment.

Source of Income and Economic Benefits

The research suggests that **prohibitive laws and regulations on the purchase/sale of sex lead to lower and less stable income for sex workers**, and thus a higher financial burden and potentially the **inability to support themselves and their dependents**.⁹⁰

For many, sex work is not merely a source of income, it is the source of their survival.⁹¹ Thus, those most punished by criminalization are those who are already pushed toward the margins of society, those with the least resources, and those most vulnerable to abuse. As sex workers so often rely on prostitution for their livelihood, in end-demand or fully criminalized contexts, criminalization has a disproportionately negative impact on the economic stability of the sex workers over their clients, who most likely are more financially stable and thus less vulnerable to cycles of incarceration and poverty.⁹² Risk of arrest, detention, and police and client violence are amplified for sex workers living in poverty, who may be more likely to work on the streets as opposed to online,⁹³ and thus financial stability would not only increase their income, but their freedom and safety as well.

With fewer opportunities for client screening, whether due to criminalization of the acts themselves or to criminalization leading to laws that push sex workers off online screening platforms (e.g. SESTA/FOSTA legislation), sex workers often have less bargaining power. Many may leave the indoor sex work market, pursue riskier environments, and even

risk unprotected sex for higher but less stable pay and less safe working conditions, particularly if and when they rely on sex work as their main source of income.⁹⁴ For example, according to one participant in the survey conducted by the sex worker and advocates collective Hacking/Hustling, “My income decreased by 58 percent in the year following FOSTA/SESTA. I used to make enough to be comfortable; now I’m always barely scraping by.”⁹⁵

In cases of end-demand decriminalization where buyers are criminalized even if sellers are not, sex workers are less able to be selective about rates and clients than they would be in fully decriminalized markets. Furthermore, when online venues are limited due to criminalization (e.g. through SESTA/FOSTA) or enforcement ramps up, it may result in fewer clients seeking consensual, paid sex out of fear of penalization. This may have the effect of leaving sex workers feeling obligated to offer discounted rates in order to maintain an income, having less bargaining power, in addition to having to settle for less safe clients, according to reports by sex workers in U.S. studies.⁹⁶

Substituting criminal penalties with government regulations appears to have limited impact. One Netherlands study found that heavy regulation, through licensing that sets caps on the number of workers who can work in a tippelzone, may mean loss of a source of livelihood for some and force others into the illegal sector.⁹⁷ Full decriminalization might allow

all sex workers access to more stable, legal income, and autonomy.⁹⁸

Q4. Which populations are most impacted by the criminalization of sex work?

Research indicates that specific populations of sex workers are most at risk for the harmful impacts of criminalization. These tend to be communities that are already the most marginalized in our society, including LGBTQ people, people of color, and immigrants, particularly undocumented immigrants, and those living at the intersections of these identifies. Based on the empirical research reviewed for this Brief, these specific populations are disproportionately harmed when sex work is criminalized:⁹⁹

- LGBTQ people, particularly transgender women
- People of color
- Immigrants

LGBTQ People

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people make up a large portion of sex workers. This subset of workers face disparate impacts in criminalized settings. In the U.S., **transgender people, particularly transgender women of color, are disproportionately harmed by the criminalization of sex work.**

Involvement in sex work. One systematic review of data from six countries found restricted economic opportunities and lower access to the formal labor market for transgender sex workers due to stigma, discrimination, and lack of legal documentation with their gender.¹⁰⁰ In another study of sex workers in New Zealand, transgender respondents reported difficulty finding other sources of employment due to discrimination based on their gender identity, and reported sex work as one of the few options for a

Full decriminalization might allow all sex workers access to more stable, legal income and autonomy.

livelihood, and often their primary if not sole source of income.¹⁰¹

In studies in New York City¹⁰² and Chicago¹⁰³ of youth and young adults who engaged in survival sex – prostitution as a means of obtaining food, shelter, or money to survive – many LGBTQ youth, particularly transgender youth, reported resorting to survival sex after being kicked out of their homes for their sexual orientation or gender identity and/or leaving other unsafe environments.

Safety. Research suggests that non-heterosexual orientation is independently, positively associated with rushing negotiations with clients among female sex workers in Vancouver, Canada.¹⁰⁴ Transgender sex workers also have to use means of physical protection for self-defense at higher rates than cisgender sex workers, according to a New York City study.¹⁰⁵

Health. Transgender women sex workers often face extra barriers in accessing healthcare, particularly gender-related, due to discrimination and stigma based both on their gender and occupation.¹⁰⁶ They often face extra barriers specifically in terms of HIV testing and may be less inclined to access testing due to discrimination, stigma, and prior negative experiences.¹⁰⁷ One study of sex workers in Baltimore, Maryland found that transgender women in the study were eight times more likely to have HIV than cisgender women in the study.¹⁰⁸ **The criminalization of sex work, coupled with stigmatization and discrimination based on sexual orientation and gender identity, make LGBTQ sex workers even more likely to face detention and unequal access to healthcare.** These experiences are further amplified among LGBTQ sex workers of color.¹⁰⁹ Regarding mental health disparities, research indicates higher rates of depression, mental health issues, and substance abuse among transgender sex workers.¹¹⁰

Police Interactions. Research suggests that LGBTQ people, particularly transgender women, are profiled by police for engaging in prostitution even when they are not.¹¹¹ In the largest U.S. survey of transgender people, approximately three in 10 Black transgender

women and multiracial transgender women reported that a police officer had assumed they were sex workers.¹¹² Furthermore, all the transgender respondents of one survey of 305 LGBTQ people in the Jackson Heights neighborhood of New York City reported being profiled as sex workers, stopped and searched, often verbally or physically abused, and even arrested on account of possessing condoms as evidence of prostitution, though none were working as sex workers at the time.¹¹³

Sex Workers of Color

In the U.S., people of color are disproportionately represented among police arrests, profiling, and incarceration,¹¹⁴ and offenses related to sex work are no exception. One study based on Los Angeles Police Department and city attorney data found that Black and Asian individuals were disproportionately arrested for prostitution-related offenses, and Black people made up the majority of charges for assisting sex workers in prostitution.¹¹⁵ A study using data from three cities in North Carolina showed that law enforcement tend to police street-based sex work – more predominantly involving non-white sex workers – more vigilantly than indoor sex work.¹¹⁶ According to the same study, Black females were arrested at higher rates for prostitution-related offenses than white females. And in a study of New York City youth and young adults engaging in survival sex, **multiracial, Latinx, and Black young adults reported the highest experiences of trouble with police and their clients.**¹¹⁷

Immigrant Sex Workers

A body of research demonstrates that criminalization of sex work disproportionately negatively impacts immigrant sex workers. According to one study, immigrant sex workers under Canada's end-demand law are more vulnerable to police harassment than non-immigrant sex workers, and are less likely to report violence to authorities when they are victimized due to already being criminalized, and mistrust of police.¹¹⁸ A review of research from the 1990s concluded that the illegality of sex work puts immigrant workers at particular risk of harm.¹¹⁹ As

Limited existing research indicates that sex workers with disabilities may be particularly negatively impacted by criminalization.

previously discussed, criminalization may negatively affect the mental health of sex workers, leading to stigma and social exclusion, which are often heightened among immigrant sex workers.¹²⁰

Full criminalization and end-demand decriminalization expose undocumented immigrant sex workers to heightened scrutiny and risk of detention and/or deportation.¹²¹

Immigrant sex workers are often most vulnerable to displacement when clients are criminalized.¹²² Under the Netherlands' end-demand model, working permits are required for non-EU citizens, and in the U.K. and the Netherlands, licensed brothels cannot hire undocumented workers per city laws. Excluded from this legal labor market, undocumented immigrants are often forced to work in illegal and unprotected sectors in the Netherlands, where they may face abuse.¹²³ In Northern Ireland, although sex workers overall were unlikely to say they would report being a victim of crime to authorities, migrant sex workers were even less likely to do so.¹²⁴ However, respondents in one study of 545 transgender and cisgender female sex workers in Canada (recent immigrants, longer-term immigrants, and Canadian-born) indicated that indoor formal establishments may provide immigrant sex workers with some critical safety mechanisms. The study also found that duration of residency in the country, English proficiency, and existing social networks were

correlated with sex workers' decision-making authority.

Overall, sex workers from these and other marginalized populations, such as those with drug/substance use issues,¹²⁵ those who were formerly incarcerated,¹²⁶ and those living in poverty,¹²⁷ experience higher levels of violence and are more likely to work in the unregulated street-based market, which in turn makes them even more vulnerable to violence than if they were to work indoors. They are also less likely to report their victimization to the authorities or seek out support due to existing levels of stigmatization and criminalization.¹²⁸ In addition, limited existing research indicates that sex workers with disabilities may be particularly negatively impacted by criminalization and related measures, such as laws like SETSA/FOSTA that limit access to online platforms.¹²⁹

Q5. What is the relationship between sex work decriminalization and efforts to combat human trafficking?

Sex Work Decriminalization Laws' Impact On Human Trafficking

There is a **lack of consensus** in the literature about the relationship between legalization or decriminalization of sex work and human trafficking, although it is important to note that laws against human trafficking still apply under sex work decriminalization or legalization. Research in Norway and Sweden links harsher legislation that regulates and/or criminalizes sex work with reducing trafficking.¹³⁰ Yet, on the contrary, both Swedish government data and a study based on statistical modeling suggest that the end-demand model of decriminalization results in a decrease in trafficking rates.¹³¹ Furthermore, research in the EU more broadly suggests that decriminalization does not necessarily increase trafficking.¹³² In addition, according to a government study of Northern Ireland's implementation of the end-demand model, there is

no clear or conclusive evidence on the impact of the legislation on trafficking levels one way or the other. Specifically, in the years following implementation of this end-demand law, there were no additional prosecutions related to trafficking.¹³³

The Dutch model — or legalized prostitution only within the bounds of certain areas — appears ineffective against curbing trafficking per research referenced previously. This model may force voluntary sex workers underground to an illegal, unregulated market, where they lose agency and their vulnerability to exploitation is increased.¹³⁴ One key study suggests that legalizing sex work (specifically, prostitution) is associated with increased trafficking rates; however, the authors of this study caution against using these findings to oppose decriminalization or legalization given their model does not account for other potential positive impacts, such as improved worker safety.¹³⁵ Furthermore, the study authors note the possibility of an eventual substitution effect: Once consensual prostitution is legal, we might see a shift in demand from trafficked persons to legal sex workers.

Claims linking trafficking and forms of sex work decriminalization have also been questioned as researchers have noted limitations to any such research, such as the lack of a consistent definition of prostitution, lack of a distinction between legal sex work and trafficking, and lack of accurate, comprehensive, and up-to-date data, particularly on trafficking victims.¹³⁶ Furthermore, the European Parliament notes several confounding variables that could account for any correlation between criminalization and trafficking, such as differing levels of economic and social welfare, unemployment rates, and gender inequality between the host and destination countries.¹³⁷

Anti-trafficking Efforts' Impacts On Sex Workers

Often, anti-trafficking legislation, such that as in the U.S., South Korea, China, Norway, and Argentina, does not distinguish between trafficking and consensual adult sexual activity in exchange for money,¹³⁸ and some research points to adverse

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Blunt & Wolfe, 2020

consequences of anti-trafficking laws on voluntary adult sex workers. Research in South Korea suggests that the Prohibition of Sex Trafficking Act led to a decrease in STI prevalence rates among sex workers, though it also had negative consequences on the safety of the sex workers.¹³⁹ Additionally, governments and organizations often precondition funding or aid on pledging against prostitution — not distinguishing it from trafficking — which propagates stigma and reduces the effectiveness of HIV prevention programs.¹⁴⁰

In the U.S. context, studies of the role and regulation of online platforms provide evidence of potential unintended harms of efforts limiting online solicitation to prevent trafficking. A study of data from 185 U.S. cities found that the use of the Erotic Services section (ERS) of Craigslist correlated to lower rates of female homicides, attributed to more efficient transactions and higher screening. Limiting access to these online forums displaces workers to less safe or less public areas, increasing the risk of violence, reducing negotiating power, and increasing clients' insistence on unprotected sex.¹⁴¹ For example, in one survey of 262 sex workers that examined the short-term impacts of SESTA/FOSTA, sex workers reported having to place themselves into risky situations with clients to make ends meet, enduring physical and/or verbal threats, risking physical exploitation, and bypassing client screenings.¹⁴² In a more recent survey of 98 online-based and

street-based sex workers, 99 percent of sex workers reported that SESTA/FOSTA did not make them feel safer, and in fact, many expressed direct negative impacts of the law, including: loss of income leading some to homelessness and poverty, decreased access to screening tools and community support, and displacement from online to street-based solicitation.¹⁴³

Conclusions

The empirical evidence across a variety of criminalized, partially criminalized, decriminalized, and legalized settings examined in this Brief demonstrate increased harms to adult sex workers as a result of enforcing prohibitions or regulations on consensual sex work. Furthermore, the preponderance of the evidence indicates that **full decriminalization would result in improved conditions for those who engage in sex work, particularly those most marginalized, and would help to reduce the crisis of police violence and mass incarceration in the U.S.**¹⁴⁴

Summary of findings and implications

In sum, **the research points to negative impacts of criminalization on the physical safety, health, and financial well-being of sex workers**, with repercussions for clients seeking consensual sex between adults. These findings are only amplified when specifically examining the impact of the criminalization of sex work on marginalized communities, including LGBTQ people, people of color, and immigrants. People without adequate financial resources, such as those living in poverty, are also more harmed by the criminalization of sex work.

Overall, the evidence suggests that going from less to more prohibitive laws on adult consensual sex work is damaging to sex workers and appears to have little impact on curbing trafficking or other crimes. Conversely, as laws move down the continuum from

more to less prohibitive or restrictive on consensual sex work, workers experience less harm, and there is no strong evidence to indicate negative impacts on crime, health, or safety.

The existing body of research indicates that full decriminalization of adult consensual sex work best supports the safety, health, and financial well-being of sex workers and can help curb the overuse of the prison and jail systems that disproportionately punish sex workers from the most marginalized populations, such as transgender women of color. The empirical evidence reviewed indicates that while “partial” decriminalization, such as the end-demand approach or Nordic model, may provide some improvement to certain aspects of sex workers’ experiences, in comparison to full criminalization, the continued criminalization of buyers under these policies puts sex workers at risk – both in terms of safety and financial security – and exacerbates the problem of mass incarceration in the U.S.

As laws move down the continuum from more to less prohibitive or restrictive on consensual sex work, workers experience less harm, and there is no strong evidence to indicate negative impacts on crime, health, or safety.

Although more research is needed on the potential impacts of legalization versus decriminalization, it appears that legalization may perpetuate disparities existing under criminalization for those already most marginalized, such as LGBTQ people, people of color, immigrants, and those in poverty. Through regulatory policies, such as zoning and licensing, legalization might restrict market access and keep some populations of sex workers from benefiting, and instead push them further into the margins. Furthermore, the enforcement of regulations provide reasons for continued surveillance and disparate sanctions on LGBTQ people, people of color, immigrants, and those living in poverty. However, it is worth noting that none of the legalization policies studied appear to have been grounded in equity, i.e. with a focus on repairing the harms caused by prior criminalization and ensuring those most impacted by criminalization are provided access to and reap the benefits of the legalized market.

Based on the limited available empirical research, the impact of decriminalization of sex work on trafficking rates is somewhat unclear. However, there is a growing body of evidence that certain legal actions designed to reduce trafficking, such as SETSTA/FOSTA laws, have unintended negative impacts on sex workers. Furthermore, although outside the scope of this review, there is little evidence that criminal anti-trafficking laws are effective in combating trafficking itself.¹⁴⁵

Overall gaps and limitations in the research literature

This Brief provides a robust overview of the key findings in the extant literature regarding the impact of various levels of criminalization and decriminalization of sex work. Nevertheless, this Brief is not an exhaustive accounting of every possibly related study, nor was it designed to be. For example, in a few instances, the systematic reviews of empirical literature were sufficient and we relied on those instead of reviewing each relevant study (although we only cite the specific sources we

accessed and reviewed). Furthermore, despite our best efforts to obtain and review all relevant empirical evidence using multiple methods, it is likely that there is some relevant research that we were not able to identify or access. For example, we were limited to studies available in English, and those published by the time we conducted our review.

It is important to note that there were some gaps in the literature findings. There is a large body of research that points out the disproportionately adverse effects of criminalization and policing of sex work on LGBTQ sex workers, particularly transgender women of color. However, there is a notable lack of empirical evidence around the specific impacts of decriminalization, in particular, on these communities, as by and large, studies of the effects of decriminalization policies have not disaggregated findings for specific populations. Furthermore, much of the information on experiences of U.S. sex workers and police contact comes from urban areas, such as Baltimore and New York City. More data is warranted on the policing of sex work in other types of locales, such as rural areas. There is also an overall lack of empirical data — both in terms of the impact of decriminalization and of criminalization — on Indigenous sex workers (particularly in the U.S.)¹⁴⁶ and sex workers with disabilities.¹⁴⁷

Many legal reforms related to sex work are relatively new, and thus there is a need to continue research to examine the effectiveness of specific reforms in the long term, after decriminalizing or legalizing sex work. In addition, currently, the majority of research, particularly around the potential impacts of decriminalization or legalization, is specific to contexts outside the U.S. While this is to be expected given these policies have yet to be widely, if at all, implemented in the U.S., there is still a need for more widespread research within the U.S. Nonetheless, the limited research from the U.S. largely corroborates research from international contexts, and international research offers important insights into what decriminalization could look like in the U.S. Much of the limited U.S. data currently available are specific to a select few states within the country. Furthermore, despite a lack of legislative

decriminalization in the U.S., there are a growing array of practices designed to reduce criminalization that are occurring in pockets across the country, and thus are ripe for study. For example, prosecutors declining to prosecute prostitution charges¹⁴⁸ and changes in policing practices.¹⁴⁹

Some research on the shorter-term impacts of the 2018 SESTA/FOSTA law has been conducted, predominantly by sex worker advocacy groups,¹⁵⁰ but there remains a need for further research on the longer-term impacts. Given the overrepresentation of white sex workers in the online-based venues, it is not surprising that for the most part, the limited research that has been conducted on the impact of SESTA/FOSTA has involved samples of predominantly, though not exclusively, white female sex workers.¹⁵¹ Thus, future research is also needed to better understand and document the impact of SESTA/FOSTA on sex workers of color, male sex workers, and nonbinary sex workers. The SAFE SEX Workers Study Act, which was introduced by lawmakers in 2019, requests research into the health and safety impacts of the bill on sex workers.¹⁵² If passed, that bill could help support and broaden the research efforts pioneered by sex worker led-advocacy organizations, such as COYOTE-RI and Hacking/Hustling,¹⁵³ and provide critical information on the effects, both intended and unintended, of these types of policies.

Although we identified and discussed some research indicating potential economic benefits of decriminalization for sex workers themselves, there was a relative dearth of research on the broader economic impacts of decriminalization and how decriminalization affects the market or economic stability of communities, which could be useful in informing policy recommendations. In addition, research on how the criminalization and decriminalization of sex work interact with other structural systems, such as housing, health care, and immigration, is needed for policymakers to inform appropriate interventions and policy implementations, alongside legal reform.¹⁵⁴

Despite the need for continued study, the existing research on how criminalization efforts impact sex workers in the U.S., paired with the data indicating overall positive impacts of decriminalization in other countries, clearly indicate the value of full decriminalization of sex work in the U.S.

Recommendations

The ACLU's commitment to sex work decriminalization is rooted not only in empirical evidence but also in our mission and commitment to advocating for equal civil liberties and rights for all people. Advocating for sex work decriminalization means advocating for personal autonomy, LGBTQ+ and women's rights, decarceration, immigrants' rights, racial justice, and equal access to the right to life and security. To that end, the ACLU recommends the following:

Decriminalize all consensual sex work, including prostitution, among adults. Fully decriminalize by eliminating all criminal penalties for sellers and buyers. Also remove all criminal penalties for youth who participate in sex work, but not for adults who exploit youth. Decriminalization should include a retroactive component, permitting expungement of criminal records.

Eliminate unwanted police presence within the sex work community. Limiting police presence will curb police contact, reducing the likelihood of police violence toward sex workers. Meaningful accountability measures and transparency with the public regarding reports of police misconduct must also be put in place to deter police violence and exploitation toward sex workers. Government

Fully decriminalize by eliminating all criminal penalties for sellers *and* buyers.

bodies should also consider contracting with qualified, sex-worker-led, community-based organizations to train police forces around sensitivity and appropriate use of power, so that when they do engage with the community, sex workers are not targeted based on their identities.

Support sex workers and listen to the recommendations of community organizers who lead sex work decriminalization groups and grassroots organizations. Follow the lead of those most impacted and support their efforts for strategic decriminalization campaigns that lead to full decriminalization. Furthermore, consider ways to address the specific harms that have resulted from criminalization, as identified by sex worker communities themselves. In addition to advocating for more just laws, these efforts can decrease the stigma associated with sex work, and support vocational autonomy, so that just like workers in any other field, sex workers can choose sex work as a life-long career or can enter and exit the industry as they see fit.

Decline to prosecute charges related to consensual sex work. When district attorneys and other prosecutors decline to prosecute the buying and selling of sex, they can minimize the financial, physical, and health risks sex workers are exposed to on a daily basis due to their occupation. Particularly in jurisdictions where sex work is still legally criminalized, declining to prosecute prostitution is one way to work toward decriminalizing sex work, although it does not fully encompass all the ways in which sex workers and clients are harmed in the criminal justice context. Prosecutors should decline cases related to patronizing prostitution, brothel-keeping, promoting or permitting prostitution, pandering or loitering for the purpose of prostitution, and soliciting.

Remove barriers to reporting violent crime. Legislatures should pass laws prohibiting arresting someone for a minor crime, such as prostitution or

drug possession, when reporting a violent crime, such as assault or rape.

Reduce police funding and invest in resources that support the community. Invest in policies that support the safety, health, and economic stability of communities and individuals disproportionately impacted by the criminalization of sex work, specifically Black, Indigenous, and People of Color (BIPOC), immigrant, and LGBTQ+ workers. These policies and resources should reflect the input of sex workers themselves and be driven by their needs and recommendations. By reallocating financial resources, staff working with the sex work community can receive training to combat biases, and center rights-based approaches, trauma-informed care, and equitable treatment, regardless of work history, sexual orientation, gender identity, nationality, immigration status, disability, or race.

Remove adverse immigration consequences, including deportation, for immigrants participating in sex work. It is critical that immigrants — documented or undocumented — are not penalized for engaging in sex work, under any legal regime.

End mandatory or coercive HIV/STI testing requirements as a part of sentencing or diversion for sex work offenses and remove criminal penalties for all people living with HIV. Several states in the U.S. have laws that specifically increase penalties for HIV-positive persons convicted of prostitution or solicitation offenses.¹⁵⁵ Laws targeting those living with HIV, in turn, disproportionately impact sex workers of color, LGBTQ+ sex workers, and immigrant sex workers. Several states also criminalize HIV non-disclosure, but these laws do little to differentiate between reasons for non-disclosure.¹⁵⁶ These law only further stigmatize sex workers and all those living with HIV, often resulting in discrimination from healthcare providers and improper care and treatment.

Make certain that sex workers, like all survivors of violence, have access to nonjudgmental healthcare, including mental health care and supportive services.

Ensure consequences and accountability for those who physically and sexually abuse sex workers, including police, and ensure support for sex workers who survive abuse.

Hold perpetrators of violence against sex workers, including police officers, accountable for their harm. Make certain that sex workers, like all survivors of violence, have access to nonjudgmental healthcare, including mental health care and supportive services.

Remove barriers to HIV prevention and other health care.

Although full decriminalization would be much more effective in preventing HIV transmission, in the interim a more modest step legislatures should take is passing laws barring the use of condom possession as evidence of a crime. Resources should be allocated to ensure sex workers have free access to quality, consensual, respectful healthcare services not linked to the criminal legal system, including mental healthcare, testing and treatment for illness and injury, reproductive healthcare, and PrEP (HIV prophylaxis).

Prohibit community and service providers from refusing to serve sex workers. Service workers, including healthcare providers, must not discriminate against sex workers due to their source of livelihood, or for any other reason, including gender identity.

Eliminate barriers to accessing safe, affordable housing, public benefits, and employment opportunities, including restrictions based on past criminal records and other discriminatory policies and practices, such as those excluding transgender people. When current and former sex workers are denied such access, they may face little choice but to resort to options that put their health and safety at greater risk.

Repeal laws and policies that prevent online screenings of clients. Specifically, repeal SESTA/FOSTA and related laws or policies. These inadvertently remove a critical safety mechanism to reduce engagement with risky clients and potential exploitation. Repealing these laws and policies will also remove a barrier that currently prevents victims of trafficking from being identified and recovered via these online platforms.

Prioritize and value research led and conducted by current and former sex workers.

Ensure research is accountable to the communities most impacted. Specifically prioritize and value research led and conducted by current and former sex workers,¹⁵⁷ especially transgender sex workers and sex workers of color. Encourage authentic collaborations between researchers and sex workers and their advocates,¹⁵⁸ led by the needs and concerns of sex workers themselves. Ensure ethical practices that neither exploit nor further stigmatize sex workers in the course of the research.¹⁵⁹ Fund grassroots and advocacy organizations to conduct, advise, and participate in research. Make research usable and accessible not only to academics and government policymakers, but to advocates, community members, and organizers.

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sex work on both people with disabilities and Indigenous people, as well as other marginalized populations.

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