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DECRIMINALIZING SEX WORK



KEY PRINCIPLES AND POLICY RECOMMENDATIONS FOR PROSECUTORS

ABOUT FJP

Fair and Just Prosecution (FJP) brings together elected district attorneys* as part of a network of like-minded leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutive leaders to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility.

In furtherance of those efforts, FJP's "Issues at a Glance" briefs provide district attorneys with information and insights about a variety of critical and timely topics. These papers give an overview of the issue, key background information, ideas on where and how this issue arises, and specific recommendations to consider. They are intended to be succinct and to provide district attorneys with enough information to evaluate whether they want to pursue further action within their office.

For each topic, Fair and Just Prosecution has additional supporting materials, including model policies and guidelines, key academic papers, and other research. If your office wants to learn more about this topic, we encourage you to contact us.

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*The terms "district attorney," "DA," or "elected prosecutor" are used generally to refer to any chief local prosecutor, including State's Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.

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EXECUTIVE SUMMARY

While sex work has existed in one form or another for thousands of years, its criminalization has not always been as universal. Sex work is the exchange of sexual services for money or any other resource among consenting adults and is, importantly, distinct from sex trafficking which involves individuals who perform commercial sex acts by force, fraud, or coercion. Understanding this distinction between sex trafficking and consensual sex work is critical because limited criminal legal system resources continue to be ineffectively used against sex work writ large, which comes at great cost to the people involved in the sex trade and does little to alleviate the harms of sex trafficking.

Decriminalization of sex work is being increasingly recognized as a preferred approach — one that increases safety for sex workers and provides opportunities to exit the trade for those who wish to do so. As leaders in the criminal legal system, prosecutors play an essential role in advocating for decriminalization and rethinking how sex work is approached.

This issue brief examines what is known about the sex trade, discusses the possible paths forward, and lays out recommendations for prosecutors who are rethinking the criminal legal system's relationship to sex work.

Part I provides important background information related to the sex trade and criminal legal system. Section A examines what is known about the prevalence and demographics of sex work. While the illegal nature of the trade makes it difficult to quantify, research indicates that sex workers are predominantly young women and people of color who enter sex work for a variety of reasons, often influenced by choice, circumstance, and coercion. Despite their reasons for entering, many sex workers face physical and sexual violence in the trade that can be exacerbated by the criminalization and policing of sex work. Section B discusses the issues with criminalization, which contrary to its goals, does not appear to reduce the overall volume of sex work, help sex workers leave the trade, nor improve community safety. In fact, it may serve to drive the work further into the shadows, and, thus, increase the dangers faced by sex workers.

Part II discusses the potential paths forward for sex work and sex trafficking. Section A examines the evidence supporting different models of decriminalization. While the Nordic model of asymmetrical criminalization, which criminalizes buying but not selling sex, is intended to reduce demand and help sex workers, evidence suggests it may actually

increase stigma, violence, and trafficking. In contrast, full decriminalization, where both buying and selling sex are legal, is associated with improved safety, health outcomes, and reporting of crimes by sex workers. Section B addresses the critical question of decriminalization's impact on sex trafficking. While opponents argue it may increase trafficking, the research, at best, is inconclusive. Some studies suggest decriminalization does not increase, and may even decrease, sex trafficking by enabling legal, consensual sex work to meet demand that would otherwise be met by trafficking, reducing the vulnerability of sex workers that leads to violence and exploitation.

Part III proposes recommendations for prosecutors to support decriminalization and destigmatization of sex work, including:

A. Support full decriminalization efforts by advocating for the repeal of laws criminalizing consensual adult sex work and related activities, while ensuring laws against sex trafficking and exploitation remain in place.

B. Implement internal policies such as presumptively declining prosecution of adult sex work charges and refraining from using condoms or safe sex practices as evidence of a crime, while continuing to prosecute trafficking, exploitation of minors, and violence against sex workers.

C. Provide public health and social support for sex workers, regardless of their participation in the prosecution of a case, including connecting them to healthcare, social services, housing and employment opportunities; eliminating barriers to reporting violent crime; and supporting criminal record relief efforts, including expungement, record sealing, non-disclosure, and vacatur.

I. BACKGROUND

This Part provides background information on: (A) what we know about the U.S. sex trade, and (B) the consequences of criminalizing sex work.

A. What We Know About the Sex Trade

The prevalence of the U.S. sex trade is difficult to quantify in part because of the illegality of much of this work and the resulting aim of some participants to keep it hidden. For instance, due to a perceived stigma associated with sex work, some sex workers do not disclose their work to close family members or friends.² Despite this stigma and criminalization of many forms of sex work, it remains widespread and varied in scope. In fact, the sex trade is one of the largest trades in the world³ and includes street-based sex work, brothels, massage parlors, escort services, exotic dancing, and online sex work. Some people may engage in sex work on a temporary basis, while others engage in sex work longer-term.⁴ In addition to sex workers, other actors in the sex trade include clients and third-party facilitators such as security guards and other actors who help oversee and facilitate the sex trade.

The United States, unlike many other countries, has little nationwide data on the number of workers in the sex trade, let alone demographic statistics on such workers.⁵ Some researchers have, however, collected data on particular subsets of sex workers which provides some insight into their identities.⁶ These studies indicate that sex workers are usually people of color and identify as women, with the age of entry on average being around 19 years old.⁷

In addition to focused research such as these studies, arrest reports help illuminate the demographics of sex workers who have been arrested on charges related to their work. According to data from the Federal Bureau of Investigation (FBI), about 30,000 people a year are arrested for “prostitution and commercialized vice.”⁸ This national arrest data, as well as data from specific cities, indicates that people arrested for sex work typically identify as women and people of color, particularly for arrests of those under the age of 18.⁹

Individuals become sex workers for a variety of reasons: choice, circumstance, and coercion, with coercion aligning with trafficking under federal law.¹⁰ Though many individuals choose sex work, others are pushed into the trade for reasons related to structural and societal barriers that make other types of work seemingly unattainable. One study outlined several factors that pushed sex workers into street-based sex work:

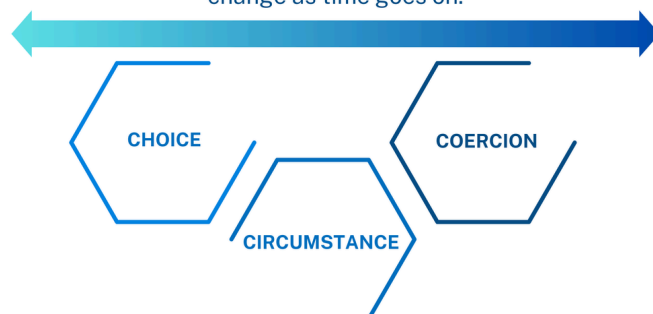
“economic need; homelessness; the encouragement of family members, friends, and acquaintances; a desire for social and emotional acceptance; as a natural continuation of work of other forms of commercial sex work, such as stripping and dancing; and to support substance use.”¹¹ For many of those interviewed for the study, a combination of factors contributed to their decision to become involved in the sex trade.¹² Even for those who initially chose the sex trade, these forces can sometimes lead sex workers to remain in the sex trade despite a desire to exit. For instance, some sex workers who entered the trade without a substance use disorder develop one, leading to a dependency on the sex trade to support their substance use.¹³

Many sex workers report a desire to leave the sex trade but indicate that emotional and physical harm, as well as other vulnerabilities, make such an exit challenging.¹⁴ For some, reasons related to physical health, mental health, substance use disorders, and an absence of other employment lead them to become financially dependent on the sex trade and, in turn, third-party facilitators.¹⁵ Many sex workers report that even when they had attempted to exit the trade, they were threatened, abused, and sometimes forced to return.¹⁶ On the other hand, some sex workers, especially those who are self-employed or not working in street-based sex work, are thought to be less vulnerable to these factors that lead to a dependency on the work.¹⁷

Whatever the reason for their entry into the sex trade, many sex workers, though not all, face violence as a result of their work. Specifically, they face both physical and sexual violence in the workplace in addition to being more likely to be murdered than people of similar demographics.¹⁸ This violence can come at the hands of clients, third-party facilitators, and law enforcement officers. For instance, research has found policing of sex work to be associated with substantially higher odds of any kind of violence, and physical or sexual violence from clients was higher among those who had been exposed to repressive police activity compared to those who had not.¹⁹

WHY PEOPLE JOIN THE SEX TRADE

Sex workers join the trade for a variety of reasons. Sex workers can slip in and out of each category; this is not a rigid decision but rather a spectrum of reasons that might change as time goes on.



B. Consequences of Criminalizing Sex Work

The United States has regulated some form of sex work since its founding, but in the twenty-first century, and especially since the COVID-19 pandemic,²⁰ both the United States sex trade and political interest in sex work reform has increased drastically.²¹ At the national level, Congress signed the controversial Stop Enabling Sex Traffickers Act (SESTA) and the Fight Online Sex Trafficking Act (FOSTA) in 2018, making it illegal for websites to allow information that could facilitate an individual engaging in sex work, including advertisements and peer-to-peer information sharing.²² Some elected officials have gone further, introducing bills to fully decriminalize sex work at the national²³ and state²⁴ levels. So far, none of these efforts have been successful in passing decriminalization legislation, though Maine enacted a law in June 2023 that partially decriminalizes sex work by making the sale of sex legal but the purchase of sex illegal.²⁵

The continued criminalization of sex work has been found to disproportionately impact LGBTQ individuals, sex workers of color, undocumented sex workers, and those who share several of these identities. Some studies find that LGBTQ, and especially trans,²⁶ individuals experience increased harm²⁷ from its criminalization, and trans individuals may have disproportionately higher levels of involvement in the sex trade compared to their share of the population.²⁸ LGBTQ individuals, broadly, face unique barriers to education, housing, and access to social services which might lead them to participate in the sex trade.²⁹ Trans youth, in particular, face additional challenges in the sex trade: they are less likely to live with family, more likely to report harassment and violence while in the sex trade, and more likely to be arrested for sex-work-related charges than young cis sex workers.³⁰

Sex workers of color, too, disproportionately experience the harms of the criminalization of sex work. Non-white sex workers are more likely to be involved in street-based work than indoor sex work, and law enforcement tend to enforce the former more often than the latter.³¹ Black women, in particular, are more likely to be arrested for their sex work than white women.³² Moreover, Black youth disproportionately engage in the sex trade,³³ and young sex workers of color report the highest rates of negative police experiences.³⁴ In addition, undocumented sex workers face risks of detention or deportation as a result of their illegal sex work.³⁵


While criminalized sex work disproportionately impacts marginalized communities, proponents argue that criminalization generates several positive outcomes: reduction of the overall size of the sex trade; incentivization for sex workers to choose another, less dangerous trade; and increased community safety. These contentions have not, however, played out.

First, criminalizing sex work does not reduce the volume of the sex trade. There is no research showing that the criminalization of sex work deters potential sellers or buyers of sex.³⁶ In fact, the sex trade has only increased in the twenty-first century despite the continued criminalization and enforcement of sex work prohibitions.³⁷ Moreover, evidence tends to show that criminalization actually compounds the dangers of sex work by pushing sex workers into more remote and dangerous working locations; disincentivizing sex workers from reporting abuse from clients, third-party facilitators, or law enforcement; and increasing the risk of contracting a sexually transmitted infection (STI).³⁸

Second, criminalization does not help sex workers by incentivizing them to choose another, less dangerous trade. Many sex workers report being coerced or forced into the trade, meaning that not all sex workers feel they had a true “choice” in picking their trade in the first place.³⁹ Criminalization does not address this dependence that many sex workers have on working in the industry. In fact, it worsens the problem by creating a revolving-door effect: sex work is criminalized, saddling sex workers with a criminal record and collateral consequences, making it more difficult for them to leave the industry because of a lack of employment opportunities and other barriers to reentry after contact with the criminal legal system, inducing them back to the sex trade to survive, and so on.⁴⁰

Lastly, criminalization does not make the community safer. To the contrary, communities with this policy may be less safe. When sex work is criminalized, sex workers fear reporting victimization or other crimes to law enforcement.⁴¹ Specifically, sex workers fear being blamed for the crime themselves, exposing themselves to law enforcement as someone who engages in an illegal trade, or becoming the victim of violence by the police.⁴² Studies looking at interactions with police across the country confirm these findings.⁴³ **Thus, if criminalization does not reduce the volume of the sex trade, does not help sex workers themselves, and does not make communities safer, adopting other policies, such as decriminalization, should be the obvious next step to promote public safety.**

“
If you stop pursuing the criminalization of prostitution, then I can come to you when I’m raped, then I can come to you when I’m robbed, then you can pursue violent crimes.”
- Anonymous Alaskan sex worker



II. DISCUSSION

This Part provides an evidence-based discussion of: (A) different models and arguments in support of decriminalization, as well as (B) decriminalization's effects on sex trafficking.

A. Decriminalization Is the Way Forward

There are two primary models for decriminalization: partial decriminalization, also known as the “Nordic model,” and full decriminalization. The former criminalizes the purchase of sex but not the sale of it and makes brothel ownership and “pimping” illegal.⁴⁴ In other words, clients can be arrested for sex work but sex workers cannot. Importantly, sex workers still work in a criminalized environment under this model. The latter model decriminalizes both the purchase and sale of sex.

One obvious benefit to either model of decriminalization is avoiding sex-worker involvement with the criminal legal system in the first place. Specifically, sex workers can avoid criminal records with sex-work-related charges which present collateral consequences such as restricted access to employment, housing, government benefits, and more.⁴⁵ Sex-work-related offenses can also be used to justify parental custody and re-arrest decisions by the police.⁴⁶ Some U.S. jurisdictions even require some people convicted of sex work to register as sex offenders which creates additional problems such as social isolation and harassment.⁴⁷ Under the Nordic model, though, sex workers are still impacted by policing and criminalization for other low-level charges, such as loitering, or they may be detained and have their name run for open warrants.

Thus, there is debate about which model is preferable to adopt. In theory, the Nordic model is meant to reduce the demand for sex work and, in turn, help sex workers who are harmed by the sex trade.⁴⁸ In reality, the evidence about the effectiveness of this model in reducing demand and increasing public safety is, at best, inconclusive. Some research indicates that the demand for sex work decreases in jurisdictions that adopt the model,⁴⁹ but other studies indicate that there is no change in demand.⁵⁰ Some research even suggests that sex trafficking,⁵¹ violence against sex workers,⁵² and stigma associated with the sex trade⁵³ increases under this model. **Partial decriminalization, while well-intentioned, appears merely to shift the blame of sex work from the workers to clients but does little to fix the underlying problems of criminalization related to unsafe working conditions, lack of access to social services, and general fear of law enforcement.**





The evidence for full decriminalization is more promising. In addition to the benefit of avoiding the criminal legal system altogether, full decriminalization is also safer for sex workers. Criminalized sex work contributes to violence by clients, third-party facilitators, and law enforcement, as well as unsafe working conditions. Violence by clients occurs because of a perceived lack of law enforcement protection, the nature of the intimate interaction, and an inability to properly screen clients or negotiate fees.⁵⁴ While decriminalization cannot guarantee that clients will never be violent, it does involve more regulation and scrutiny of the sex trade, allowing sex workers to better screen and handle clients, create more peer support from social networks, and establish more positive law enforcement relationships.⁵⁵ Additionally, full decriminalization has been found to decrease the demand for street-based sex work which is associated with more dangerous environments.⁵⁶ Decriminalization often also comes with the creation of occupational guidelines, ensuring safer working conditions for both sex workers and clients.⁵⁷

The community, too, is safer when sex work is fully decriminalized. Sex workers are unlikely to report crimes to the police while sex work remains criminalized, but decriminalization has been found to make sex workers feel more confident and safer to report crime because of the removal of the threat of arrest.⁵⁸ While some community members and officials argue that arrests are necessary to address local concerns about the visibility of sex work, evidence suggests that decriminalization can actually lead to better community outcomes. By way of example, after Rhode Island inadvertently decriminalized indoor sex work from 1980 to 2009, the state saw a 30 percent decrease in reported rapes due to sex being accessible and more affordable.⁵⁹ In other words, decriminalization can increase crime reporting and decrease sexual violence, making the community a safer place.

Full decriminalization also has positive health-related outcomes: lower rates of sexually transmitted infections, better mental health, and greater access to health care. Criminalization negatively impacts STI prevention, in part, because sex workers cannot properly screen clients nor negotiate terms such as condom use,⁶⁰ and places that decriminalize sex work repeatedly report better access to and greater use of condoms.⁶¹ From 2004 to 2009 — during the period where Rhode Island inadvertently decriminalized indoor sex work — the state saw a nearly 40 percent decline in female gonorrhea among both sex workers and the general public.⁶² Regarding HIV specifically, a meta-analysis of HIV research established that decriminalization could be the best policy to prevent the HIV epidemic, potentially resulting in the prevention of 33 to 46 percent of transmissions among female sex workers.⁶³ Criminalization also creates stigma, social exclusion, and lack of support for sex workers which can lead to poor mental health for those in the trade.⁶⁴

One study found that sex workers experience levels of post-traumatic stress disorder (PTSD) comparable to veterans seeking treatment.⁶⁵ Decriminalization would help lift this stigma and lack of support associated with the sex industry. Additionally, it would increase access to health services such as STI testing, emergency services, and general health care.⁶⁶

Partial vs Full Decriminalization

Partial Decriminalization	Full Decriminalization
 <p>Partial reduction in criminal justice involvement</p>	 <p>Complete avoidance of criminal legal system for sex workers</p>
 <p>Sex workers still impacted by policing for other low-level charges</p>	 <p>Improved safety and working conditions</p>
 <p>Potential increase in stigma and violence against sex workers</p>	 <p>Better community outcomes & positive health impacts (e.g., reduced sexual violence, lower STI rates)</p>
 <p>Continued fear of law enforcement and limited access to services</p>	 <p>Reduced stigma and restoration of dignity to sex workers</p>

Of course, one final benefit of full decriminalization is the inherent dignity it restores to sex workers. Contemporary human rights theories center the fundamental belief that all people are born free and deserve basic human dignity.⁶⁷ If decriminalized, sex work is more likely to align with choice rather than coercion. Sex workers choose their work for many reasons — better pay, autonomy, flexible schedules⁶⁸ — and decriminalization would forward the principle that sex workers are no different than laborers in any other industry, deserving of human rights and an equal status in society.

While balancing these rights with community concerns about the visibility and location of sex work is crucial, decriminalization can actually provide a framework for addressing these issues through regulation, rather than criminalization. This approach allows for the protection of both sex workers' rights and community interests, fostering a more inclusive and safe environment for all.

Looking at these benefits, many organizations support the decriminalization of sex work: Amnesty International,⁶⁹ Human Rights Watch,⁷⁰ UNAIDS,⁷¹ the International Commission of Jurists,⁷² Global Alliance Against Traffic in Women,⁷³ and more. Further, recent polling shows that the majority of Americans strongly or somewhat support decriminalizing sex work.⁷⁴



We believe criminalization of either side of the sex trade does not help protect sex workers but rather merely perpetuates the social stigma that treats sex work as an inherently harmful activity....

Cecilia Gentili

Founder of Transgender Equity Consulting and former sex worker



In fact, elected prosecutors across the country are beginning to implement decriminalization policies:

- ...➤ **Washtenaw County (MI) Prosecuting Attorney Eli Savit** no longer prosecutes consensual sex work and does not contest the expungement of prior charges.⁷⁵
- ...➤ **Brooklyn District Attorney Eric Gonzalez** refuses to prosecute sex-work-related charges and has urged the state legislature to expunge such charges en masse.⁷⁶
- ...➤ **Los Angeles District Attorney George Gascón** stopped prosecuting sex-work-related charges on his first day in office.⁷⁷
- ...➤ **Manhattan District Attorney Alvin Bragg**, like his predecessor Cy Vance Jr., refuses to bring misdemeanor charges for "prostitution"⁷⁸ and has called on the state legislature to pass legislation to protect sex workers who report crime to law enforcement.⁷⁹

“
New York is safer when survivors and witnesses feel comfortable reporting crimes. But individuals involved in the commercial sex trade often feel reluctant to report crimes, because they are afraid they will be prosecuted themselves for prostitution offenses. Silencing these individuals does not protect us, it only protects the perpetrators of the crimes these survivors and witnesses are too afraid to report.
”
– *Manhattan District Attorney Alvin Bragg*

These actions have not occurred without significant pushback in some jurisdictions. Often, this pushback manifests in the form of local community concerns. Community members, understandably, do not want the sex trade occurring where they live, work, or where their children go to school. This, in turn, leads local law enforcement, including some district attorneys, to feel constrained in their response and so they continue to enforce sex work arrest policies.

Criminalization, however, may paradoxically exacerbate the issue by pushing the industry further underground and reducing opportunities for regulation and harm reduction. District attorneys who have been successful in adopting new sex work policies often take mitigating actions to address these concerns.

First, they use their bully pulpit to educate the community, emphasizing that criminalization worsens the community's health and safety. Additionally, they adopt nuanced, evidence-based policies that account for these concerns, including provisions explicitly stating that their policy should not be construed to encourage sex work in residential areas. They also highlight that the resources previously used to prosecute sex work can now be funneled towards more effective prevention and prosecution of sexual violence and trafficking which pose a greater risk to public safety. **Overall, DAs looking to innovate in this space must be clear that their highest priority is community safety, and decriminalization is the best way to achieve that.**

B. Decriminalization's Effects on Sex Trafficking

The most difficult challenge to decriminalization is arguably the belief that it will somehow worsen sex trafficking, making it essential that policy makers effectively grapple with this issue. To begin, sex work must be distinguished from sex trafficking. The latter involves “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act” in which the “commercial sex act is *inducted by force, fraud, or coercion*, or in which the person induced to perform such an act *has not attained 18 years of age.*”⁸⁰ Sex work, on the other hand, involves the consensual trade of sex for something else of value, and decriminalizing it does not make sex trafficking any less of a crime. One difficulty in evaluating decriminalization's impact on sex trafficking is the conflation of these two forms of sexual acts or a too-rigid understanding of either. In reality, a person might voluntarily enter the sex trade but become a victim of sex trafficking through some later form of coercion. The best framework for thinking about sex work and trafficking, then, is on a spectrum of choice, circumstance, or coercion where some people might oscillate between categories. Thus, policies should be built around supporting choice and criminalizing coercion.

Critics of decriminalization primarily argue that this policy will increase sex trafficking because the market and demand for the sex trade will grow, but there is a lack of consensus on this point and real concern with how studies on this issue have been conducted. On the one hand, some research suggests that harsh regulation or criminalization of sex work in Norway and Sweden helped reduce, or prevent an anticipated increase in, sex trafficking.⁸¹ Sweden, though, passed their decriminalization law in 1999, but didn't criminalize trafficking until 2000, so the claims about reducing trafficking were only based on projections.

A different widely-cited study found that legalizing sex work is associated with an increase in trafficking, but the authors of that study publicly warned people not to use their research to oppose decriminalization efforts because they did not study nor compare the positive effects of decriminalization as well.⁸² Besides, anti-decriminalization research has been criticized on the whole for conflating human trafficking with sex trafficking.⁸³ In fact, one widely-cited study that allegedly found an increase in trafficking made this mistake, leading the authors to admit that they had no way of knowing if the increase in trafficking was related to sex trafficking at all.⁸⁴ Regardless, it is generally accepted that it is extremely difficult to accurately report the number of trafficking victims which impedes the production of reliable research on this topic. As such, policymakers should not reject a movement towards decriminalization based on this criticism alone.

Moreover, other data indicates that decriminalization does not increase sex trafficking⁸⁵ and might even decrease sex trafficking.⁸⁶ For example, in Germany, sex trafficking prosecutions dropped after they loosened their anti-sex-work laws.⁸⁷ While it is possible that this is a result of more lenient law enforcement actions against sex trafficking, that is unlikely given how seriously countries are trying to tackle all human trafficking. Rather, this drop suggests that there was no increase in trafficking. Moreover, theoretical models offer evidence that full decriminalization is the best policy to decrease trafficking because legal sex work fills in the demand for sex that sex trafficking would otherwise fill.⁸⁸ Additionally, full decriminalization can address the under-prosecution of trafficking by freeing up resources for law enforcement to investigate and focus on trafficking and exploitation directly.

Of course, nonconsensual involvement in the sex trade is real, but criminalization not only fails to rectify that problem, it has profoundly negative consequences for anyone consensually or nonconsensually involved in the sex trade, including serious public health fallout.

III. RECOMMENDATIONS

A prosecutor’s goal is to keep their community safe. The status quo of sex work criminalization does just the opposite. Prosecutors must use their power and discretion not only to mitigate the obvious harms caused by criminalization, but to educate the public, lawmakers, and advocates about the reality of this issue. The following recommendations offer a preliminary roadmap for doing just that.

The practical implementation of these policies works best with buy-in from other law enforcement agencies, so, where possible, elected prosecutors should communicate with local law enforcement either informally or through memoranda of understanding to come together on this issue. Each office has unique needs and community concerns and that local landscape will necessarily drive the contours of reform.

The following prosecutorial recommendations are rooted in a public health harm reduction approach in an effort to improve the safety and dignity of all people involved in the sex trade.

A. Support Decriminalization Efforts

1. Support efforts to fully decriminalize all consensual sex work for both buyers and sellers. Prosecutors should call on lawmakers to repeal laws that penalize sex work and related activities.⁸⁹ Importantly, prosecutors should not simply support partial decriminalization, but rather advocate for full decriminalization.

— “

Every day, sex workers across the country face violence, exploitation, and a lack of basic human rights—all exacerbated by the laws meant to 'protect' them. By adopting policies that focus on decriminalization, we can better protect vulnerable individuals, improve public health outcomes, and ensure that our limited law enforcement resources are directed toward addressing truly harmful crimes.

— ”

AMY FETTIG, CO-EXECUTIVE DIRECTOR OF FAIR AND JUST PROSECUTION

2. Advocate to repeal laws that enable profiling and harassment of sex workers and others perceived as sex workers. Prosecutors should identify opportunities to increase protections for and reduce criminalization of sex workers and others who are often targeted as sex workers. If legislative reform efforts are unsuccessful, use internal prosecutorial tools to protect sex workers. For example, Brooklyn District Attorney Eric Gonzalez stopped enforcing New York’s “walking while trans” ban — an anti-loitering law that law enforcement used for decades to stop and frisk people who they perceived to be sex workers, primarily trans people — and vacated all warrants and charges related to that statute.⁹⁰

3. Support efforts to repeal laws that prevent online screenings of clients. Federal legislation, namely SESTA/FOSTA, and similar state policies make it illegal for websites to post sex work advertisements, leading sex work to be more unsafe by removing a primary way for sex workers to screen clients and for law enforcement to identify and help sex trafficking victims.⁹¹ Prosecutors should support the reinstatement of online platforms, such as Backpage, because they help sex workers employ safety strategies and their elimination has not led to the reduction in sex trafficking that spurred this legislation in the first place.

B. Implement Internal Declination Policies

1. Presumptively decline to prosecute charges based solely on the consensual exchange of sex for something of value or the solicitation of such an exchange. Prosecutors should use their discretion to not prosecute sex-work-related charges but (as explained below) still continue to prosecute sex-work-adjacent crimes such as sex trafficking, violence, and offenses involving minors.⁹² Relatedly, prosecutors should not seek money or other assets from civil asset forfeiture that was taken as a result of a sex-work-related charge.

A. Do not arrest or charge sex workers. Prosecutors should request that local law enforcement agencies not arrest sex workers solely for their sex work nor excessively patrol areas with sex work activity. If sex workers are arrested, prosecutors should not charge them. Prosecutors should be wary to support sex work diversion programs (as opposed to decriminalization and deflection efforts that prevent criminal legal system involvement in the first place) that may be coercive and do not serve the best interests of sex workers, such as those that include stringent sobriety requirements.

B. Do not arrest or charge clients. Prosecutors should request that local law enforcement agencies not arrest individuals solely for purchasing sex.

If clients are arrested for such activity, prosecutors should not charge them. Importantly, clients should still be arrested and charged for any violent acts committed during the sexual exchange.

C. Do not arrest or charge minors. Minors cannot legally consent to sexual encounters and should not be charged with sex-work-related offenses, though charges should be brought against buyers or prospective buyers who knowingly purchase sex from a minor.

2. If prosecuting a sex-work related charge against an immigrant defendant, avoid charges that trigger collateral consequences for undocumented sex workers. Prosecutors should treat all criminal cases involving immigrant sex workers with sensitivity given the adverse immigration consequences, particularly deportation for undocumented sex workers.

3. If prosecuting any sex-work-related charge, do not admit into evidence the use of safety measures such as condoms or negotiating safer sex as evidence of a crime. Otherwise, sex workers are disincentivized from practicing safe sex which only worsens public health consequences of criminalizing sex work.⁹³

4. Do not prosecute misdemeanor or non-violent cases that are the result of a stop-and-frisk encounter where sex work was the probable cause. Such practices are inconsistent with the declination policy described above and would incentivize law enforcement officers to no longer pursue sex-work-related arrests.

5. Continue to strongly pursue and prosecute charges related to labor and sex trafficking, violence against sex workers, and offenses involving minors. Create a policy that clearly defines “force,” “fraud,” “coercion,” and other key terms to assist line prosecutors in determining whether a sex worker engaged in consensual sex work or is being trafficked. When possible, prosecutors should connect victims of these crimes to trauma-informed and non-discriminatory resources such as victim advocates or rape crisis centers.

6. Partner with, include, and elevate community-based organizations led by individuals with lived experience in the sex trade and compensate them for their time and expertise. Amplifying the voices of directly impacted individuals is critical across all of these recommendations, but it is particularly important when developing internal policies that affect sex workers. Prosecutors must work closely with these groups to ensure sex workers’ needs and challenges are properly addressed.

C. Advocate for Public Health and Social Supports

1. Support efforts to eliminate barriers for sex workers to report violent crime. Sex workers are reluctant to report crime because they fear being arrested for their own work, so providing protections makes the community safer by incentivizing sex workers to report crime in the first place. For example, Manhattan District Attorney Alvin Bragg called on the state legislature to provide immunity to sex workers who report being a victim or witness to a crime.⁹⁴

2. Work to remove law enforcement from entanglement in the sex industry. Prosecutors must work to fortify trust between those in the sex trade and law enforcement. They can do so by calling for the elimination of vice units which have a history of harassing and abusing sex workers, vigorously pursuing investigations of law enforcement officers accused of harassment or violence towards sex workers⁹⁵ and ensuring misconduct is independently and credibly investigated, and implementing other accountability mechanisms against law enforcement officers who commit violence against sex workers. They should also advocate for law enforcement policies that prohibit officers from having sexual contact with sex workers during an investigation.

3. Do not contest applications for criminal record expungement of sex-work-related charges and call on state legislatures to expunge such charges en masse. Relatedly, prosecutors should support criminal expungement for victims of sex trafficking who were convicted of charges as a result of being trafficked in addition to calling for the removal of such individuals from sex offender lists.



— “
Over and over again, America has attempted to criminalize activity that runs counter to purported social mores. These prohibitionist policies have inevitably made things worse.... Lamentably, America has repeated these mistakes through the criminalization of sex work.” —

WASHTENAW COUNTY (ANN ARBOR, MI) PROSECUTING ATTORNEY ELI SAVIT

4. Advocate for better access to healthcare services and refer sex workers to free or affordable clinics.

While prosecutors are ideal actors to reduce exposure to the criminal legal system for sex workers, individuals in the sex trade are less likely to trust those in law enforcement, including prosecutors, so it is best for prosecutors to work with, not supplant, organizations that provide much-needed services for sex workers. In particular, stigma, past trauma, fear of prosecution, and limited economic resources may make some sex workers reluctant to seek health care in traditional medical establishments. Sex workers need access to health services related to sexual wellness and reproductive care, though it is just as important to provide basic screening and health treatments. As such, prosecutors should support and direct sex workers to clinics that provide free or affordable care and have staff who are educated about the sex work industry.

5. Advocate for better access to affordable housing, social services, and employment opportunities for sex workers.

When possible, prosecutors should provide resources and connections to these services. Prosecutors should also ensure that these service providers and others, such as rape crisis centers and shelters, do not discriminate against sex workers.

“

To uphold justice and safety in our communities, prosecutors must continually work to modernize our engagement with sex workers. Criminalization creates a stigma against the worker, which creates a barrier to supportive services. The violence sex workers face is considerable, so we must avoid pushing this community into the shadows. Prosecutors must work to distinguish consensual adult sex work from sex trafficking and various forms of sexual abuse, while also dedicating their considerable resources to combating sexual violence in all its forms.

”

– Former Los Angeles County District Attorney George Gascón

CONCLUSION

Decriminalizing sex work serves the broader goal of decarceration and it is a more effective use of prosecutorial and law enforcement resources. It is a vital step toward shrinking the footprint of the criminal legal system and improving access to justice. It will also improve the health and wellbeing of sex workers and the community at large, as well as support a paradigm shift toward adopting a harm-reduction and public-health approach to issues typically handled by the criminal legal system.

Prosecutors play an essential role in implementing and carrying out these policies. As is, the status quo of criminalization disrupts and harms the lives of individuals merely for making a personal choice to sell sex. While trafficking — an issue of coercion — deserves swift criminal justice attention, consensual sex work — a matter of choice — does not.

ADDITIONAL RESOURCES

- American Civil Liberties Union (2020), [Is Sex Work Decriminalization The Answer?](#)
- Erin Fitzgerald, et al. (2015), [Meaningful Work: Transgender Experiences in the Sex Trade](#)
- Nina Luo (2020), [Decriminalizing Survival: Policy Platform And Polling On The Decriminalization Of Sex Work](#), Data for Progress
- Rachel Swaner, et al. (2016), [Youth Involvement in the Sex Trade: A National Study](#), Center for Justice Innovation
- Sex Workers & Allies Network and Yale Global Health Justice Partnership (2020), [Sex Work vs Trafficking: How They Are Different and Why It Matters](#)

APPENDIX

Model Sex Work Policy⁹⁶

Given the demonstrated public-safety and public-health benefits of decriminalizing sex work, this office will [presumptively]⁹⁷ decline to bring criminal charges that are based solely on the consensual exchange, between adults, of sex for money or other resources. This office, however, will continue to vigorously pursue criminal charges involving violence in the sex trade, trafficking, or the victimization of children.

Policy Directive

1. Consensual Sex Work and Solicitation: Absent extenuating circumstances warranting an exception (as discussed herein), this office will not file criminal charges based solely on:

- (a) the consensual exchange, between adults, of sex for (i) money or (ii) another thing of value, or
- (b) the solicitation of such an exchange.

For purposes of this Policy, an “adult” is someone 18 years of age or older. A “minor” is someone under the age of 18.

2. Violence and Sexual Assault: This office will continue to file — and to vigorously pursue — criminal charges in cases where violence or sexual assault arises out of a planned exchange of sex for money. By way of example, criminal charges are appropriate where the evidence indicates:

- (a) A buyer, or a prospective buyer, physically assaulted a sex worker;
- (b) A buyer, or a prospective buyer, sexually assaulted a sex worker;
- (c) A buyer refused to use a condom despite a sex worker’s expressed wishes;
- (d) A buyer engaged in a sexual act to which a sex worker did not consent; or
- (e) A buyer engaged in sexual activity with a sex worker, but refused to pay. In such a case, the evidence may indicate that consent for the sexual act was obtained via “coercion,” including the buyer’s “concealment” of the fact that the buyer had no intention to pay.

Note that in all of the foregoing examples, the sex worker is the victim of a crime. In such instances, pursuant to this Policy, charges should be filed only against the buyer/assailant — not against the sex worker who was the victim of physical or sexual assault.

This office will not prosecute the sex worker independent of the victim's willingness to participate in an investigation or prosecution and the threat of prosecution should not be used to incentivize or encourage cooperation.

3. Human Trafficking and Third-Party Involvement: This Policy does not prohibit or discourage the filing of charges related to human trafficking.⁹⁸ This office will continue to charge human traffickers — and those who knowingly seek to purchase sex from a trafficked person — wherever the evidence dictates. This Policy, however, prohibits prostitution and solicitation charges against individuals who were the victims of human trafficking, and who were forced to engage in sex work.

4. Purchase and Solicitation of Sex from Minors: This Policy does not prohibit or discourage the filing of charges against individuals who purchase sex, or seek to purchase sex, from minors. In such circumstances, however, charges related to the exchange of sex for money should be brought only against the buyer or the prospective buyer, not the minor.

5. Charges Should Be Supported by Evidence and in the Interests of Justice: Nothing in this Policy shall be interpreted to mandate or encourage the filing of charges that are not covered by this Policy. If the line prosecutor believes that filing charges other than those covered by this Policy are not supported by the evidence, or are not in the interest of justice, that prosecutor should not file those charges.

6. Criminal Record Relief: This office will not contest any application for expungement, record sealing, non-disclosure, or vacatur where the underlying charge arose solely from the consensual exchange of sex for something of value, or the solicitation of such an exchange.

7. No Substantive Rights Created: This Policy is an exercise of discretion by the prosecutor. Nothing in this Policy shall be interpreted to create substantive or enforceable rights.

8. Exceptions: Requests for deviations from this Policy shall be made in writing, and require supervisory approval. The rare and exceptional circumstances in which charges may be approved outside of the parameters of this Policy include situations in which charges would have a direct impact on preventing trafficking, or where necessary to protect the safety and health of a victim. A deviation from this Policy will be granted only in exceptional circumstances, and where public safety requires that deviation.

ENDNOTES

1. The terms “district attorney,” “DA,” or “elected prosecutor” are used generally to refer to any chief local prosecutor, including State’s Attorneys, Prosecuting Attorneys, and Attorneys General with local jurisdiction.
2. See, e.g., Chin, J., et al. (2019), *Illicit Massage Parlors in Los Angeles County and New York City, Stories from Women Workers*, at 19, http://johnchin.net/Article_Files/MP_Study_10.11.19_FINAL.pdf.
3. One study measured the value of the illicit sex economy in eight U.S. cities in 2007 and estimated that it ranged from \$39.9 million in one city to \$290 million in another. Dank, M., et al. (2014), *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, The Urban Institute, at 22, <https://www.urban.org/sites/default/files/publication/22376/413047-estimating-the-size-and-structure-of-the-underground-commercial-sex-economy-in-eight-major-us-cities.pdf>.
4. A study of a cohort of sex workers in London found that over a 15-year period, the majority of the cohort “were still in the industry and had sold sex for a mean of 13.6 years.” Ward, H. and Day, S. (2006) *What happens to women who sell sex? Report of a unique occupational cohort*, Sexually Transmitted Infections, at 413, https://www.researchgate.net/publication/6993004_What_happens_to_women_who_sell_sex_Report_of_a_unique_occupational_cohort.
5. The Joint United Nations Programme on HIV/AIDS (UNAIDS) which collects size estimates of the number of sex workers around the world reports no data for the United States. UNAIDS, *Key Population Atlas*, <https://kpatlas.unaids.org/dashboard>. A report from Fondation Scelles estimates there to be about 40 to 42 million sex workers worldwide with approximately 1 million living in the United States, but that report is not available online, though a map displaying the data does exist. Lubin, G. (2012), *There Are 42 Million Prostitutes In The World, And Here’s Where They Live*, Business Insider, <https://www.businessinsider.com/there-are-42-million-prostitutes-in-the-world-and-heres-where-they-live-2012-1?IR=T>.
6. Other studies have collected data on the demographics of third-party facilitators of sex work. See e.g., Dank, M., et al., *Estimating the Size and Structure*, *supra* note 3, at 132 (finding that approximately 66 percent of respondents were Black, 10 percent were Latino, and 8 percent were white and that about 85 percent of respondents were male).
7. One report looking at the demographics of a small sample of street-based sex workers in New York City found that approximately 70 percent of respondents were Latino or Black whereas only 17 percent were white; 93 percent were women with ten percent identifying as trans women; and the age varied from as young as 19 to as old as 53, though some respondents entered into the sex trade from as young as 13 to as old as 50. Thukral, J. and Ditmore, M. (2003), *Revolving Door, An Analysis of Street-Based Prostitution in New York City*, Urban Justice Center, at 29-30, <https://sexworkersproject.org/downloads/RevolvingDoor.pdf>. Additionally, in a survey of 40 Alaskan sex workers, about 98 percent were female, and the average age of entry into the sex trade was 19, though 26 percent reported entering before the age of 18. Burns, T. (2015), *People in Alaska’s Sex Trade: Their Lived Experiences And Policy Recommendations*, at 5, <http://www.sextraffickingalaska.com/pdfs/AKSWR.pdf>. The commonly-cited statistic, however, that the average age of entry into sex work is 13 has been debunked. Hall, C. (2014), *Is One of the Most-Cited Statistics About Sex Work Wrong?*, The Atlantic, <https://www.theatlantic.com/business/archive/2014/09/is-one-of-the-most-cited-statistics-about-sex-work-wrong/379662/>.
8. See, e.g., Federal Bureau of Investigation, *2017 Crime in the United States*, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-42>; Federal Bureau of Investigation, *2015 Crime in the United States*, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-43>.

9. For instance, according to 2017 FBI data, approximately 61 percent of those arrested were female, and according to 2015 data, about 55 percent of arrestees were white whereas about 40 percent were Black. See Federal Bureau of Investigation, *2017 Crime*, *supra* note 8; see also Federal Bureau of Investigation, *2015 Crime*, *supra* note 8. The racial disparity was even wider, however, for people arrested under the age of 18 – approximately 60 percent of whom were Black and only 37 percent of whom were white. *Id.* Similarly, a report looking at arrest records in New York City found that 98 percent of prostitution arrests were of females, and 91 percent of arrests were of people of color. Decriminalize Sex Work, *By the Numbers: New York's Treatment of Sex Workers and Trafficking Survivors*, at 37, https://decriminalizesex.work/wp-content/uploads/dsw_report_2022_REVISED-02032022b.pdf. Likely, the New York figure is more representative of sex worker demographics on the whole because the FBI arrest data does not distinguish between those arrested for actually participating in sex work (i.e. sex workers) and those arrested for promoting sex work (i.e. pimps). Federal Bureau of Investigation, *Offense Definitions*, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/offense-definitions>.
10. See e.g., Sex Workers & Allies Network and Yale Global Health Justice Partnership (2020), *Sex Work vs Trafficking: How They Are Different and Why It Matters*, https://law.yale.edu/sites/default/files/area/center/ghjp/documents/issue_brief_sex_work_vs_trafficking_v_2.pdf; Luo, N. (2020), *Decriminalizing Survival: Policy Platform and Polling on the Decriminalization of Sex Work*, Data for Progress, <https://www.filesforprogress.org/memos/decriminalizing-sex-work.pdf>.
11. Dank, M., et al., *Estimating the Size and Structure*, *supra* note 3, at 220.
12. *Id.*
13. Shively, M., et al. (2012), *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, Final Report*, National Institute of Justice, at 15, <https://www.ojp.gov/pdffiles1/nij/grants/238796.pdf>.
14. One study found that as many as 88 percent of sex workers in San Francisco wish to exit the sex trade. *Id.* at 14.
15. *Id.*
16. *Id.*
17. *Id.* at 10.
18. One systematic review found that globally, 45 to 75 percent of sex workers experienced workplace physical or sexual violence. Deering K., et al. (2014), *A Systematic Review of the Correlates of Violence Against Sex Workers*, *American Journal of Public Health*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987574/pdf/AJPH.2014.301909.pdf>. A different study conducted in California established that 32 percent of sex workers report experiencing physical violence and 29 percent report experiencing sexual violence while working. Senator Scott Weiner (2019), *SB 233 – Improving Sex Worker Health and Safety*, <https://www.sfaf.org/wp-content/uploads/downloads/SB-233-Fact-Sheet.pdf>. Another study following a cohort of Coloradoan sex workers estimated that women actively engaging in sex work were about 18 times more likely to be murdered than women of similar demographics. Potterat, J., et al. (2004), *Mortality in a Long-term Open Cohort of Prostitute Women*, *American Journal of Epidemiology*, <https://academic.oup.com/aje/article-abstract/159/8/778/91471>.
19. Platt, L., et al. (2018), *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, *PLOS Medicine*, <https://doi.org/10.1371/journal.pmed.1002680>.
20. Drolet, G. (2020), *The Year Sex Work Came Home*, *New York Times*, <https://www.nytimes.com/2020/04/10/style/camsoda-onlyfans-streaming-sex-coronavirus.html>.
21. This trend can be explained, at least partially, by the rise of Internet technology which led to the increased purchase of phone sex, Internet sex, escort services, and other services in the sex industry. See, e.g., Finley, S. (2023), *Sex Work*, *Georgetown Journal of Gender and the Law*, 24(2), 761-786, at 762, <https://www.law.georgetown.edu/gender-journal/in-print/volume-xxiv-issue-2-annual-review-2023/sex-work/>.
22. *Allow States and Victims to Fight Online Sex Trafficking Act of 2017*, Pub. L. No. 1115-164, 132 Stat. 1253 (codified as amended in scattered sections of 18 and 47 U.S.C.) (2018). This legislation has been criticized by sex-worker advocates because it makes screening clients more difficult, making their work riskier. See COYOTE RI (2018), *COYOTE Rhode Island: SESTA/FOSTA = Death*, *Uprise RI*, <https://upriseri.com/2018-07-28-coyote-ri/>.

23. Congresswoman Ayanna Pressley (2019), *Huffpost: Rep. Ayanna Pressley Calls to Decriminalize Sex Work in Criminal Justice Resolution*, <https://pressley.house.gov/2019/11/14/huffpost-rep-ayanna-pressley-calls-decriminalize-sex-work-criminal-justice/>.
24. ACLU, *Is Sex Work Decriminalization The Answer? What The Research Tells Us*, at 1, <https://www.aclu.org/report/sex-work-decriminalization-answer-what-research-tells-us>; see generally Finley, S. (2023), *Sex Work*, *supra* note 21 (summarizing efforts to decriminalize sex work).
25. Heal, A. (2023), *Maine becomes first state to decriminalize selling sex*, Washington Post, <https://www.washingtonpost.com/politics/2023/06/30/maine-sex-work-decriminalization/>. This bill has not been without criticism from reform advocates who argue that this will only further push sex work into a black market, exasperating the harms. Nolan Brown, E. (2024), *Maine's Bad Prostitution Law Could Be Coming Soon to Your State*, Reason, <https://reason.com/2024/01/03/maines-bad-prostitution-law-could-be-coming-soon-to-your-state/>.
26. For instance, trans sex workers in New York City more often have to use physical protection to defend themselves while working than cis sex workers. Dank, M., et al. (2015), *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex*, Urban Institute, <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>. Additionally, trans sex workers in Baltimore were found to be eight times more likely to have HIV than cis sex workers, likely because of restricted access to healthcare due to gender- and occupation-based stigma. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 12. Trans sex workers also report higher rates of substance use disorders and mental health issues. *Id.*
27. James, S., et al. (2016), *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, at 157, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.
28. Amnesty International (2016), *Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers*, <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>. A global study found that trans sex workers, in particular, have less economic opportunities and access to the labor market than cis sex workers, likely due to discrimination and lack of legal documentation regarding their gender. Poteat, T., et al. (2015), *HIV risk and preventive interventions in transgender women sex workers*, *The Lancet*, 385(9964), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60833-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60833-3/fulltext). Relatedly, trans sex workers more frequently report a necessity to enter the sex trade because of a lack of other means of income. Abel, G., Fitzgerald, L., and Brunton, C. (2007), *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee*, University of Otago, https://www.otago.ac.nz/_data/assets/pdf_file/0027/248760/pdf-811-kb-018607.pdf.
29. Amnesty International, *Amnesty International policy*, *supra* note 28.
30. Swaner, R., et al. (2016), *Youth Involvement in the Sex Trade: A National Study*, Center for Justice Innovation, at 85, <https://www.innovatingjustice.org/publications/youth-involvement-sex-trade-national-study>.
31. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 12.
32. *Id.*
33. Swaner, R., et al., *Youth Involvement in the Sex Trade*, *supra* note 30, at 40.
34. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 12.
35. *Id.* at 12-13.
36. Sex Workers & Allies Network and Yale Global Health Justice Partnership (2020), *The Harmful Consequences of Sex Work Criminalization on Health and Rights*, https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences_of_criminalization_v2.pdf.
37. Finley, S., *Sex Work*, *supra* note 21.
38. Sex Workers & Allies Network, *The Harmful Consequences*, *supra* note 36.
39. Shively, M. et al., *A National Overview*, *supra* note 13, at 13.
40. Krinsky, M., Hill, K., and Nidiry, R. (2022), *Working Toward a Fair and Just Reentry Process: The Role of Prosecutors*, American Bar Association, <https://fairandjustprosecution.org/wp-content/uploads/2022/07/Role-of-Prosecutors-Reentry-ABA-Article.pdf>.

41. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 7-8.
42. *Id.* at 7; see also Struyf, P. (2022), *To Report or Not to Report? A Systematic Review of Sex Workers' Willingness to Report Violence and Victimization to Police, Trauma, Violence, & Abuse*, <https://doi.org/10.1177/15248380221122819>.
43. As many as 78 percent of respondents in a study of Baltimore sex workers reported at least one abusive interaction with law enforcement. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 7. A different Department of Justice study confirmed that the Baltimore Police Department had forced sex workers into performing sexual acts in exchange for not arresting them. *Id.*
44. See e.g., *Decriminalize Sex Work, Equality Model or Nordic Model of Prostitution Explained*, <https://decriminalizesex.work/equality-model/>; see also FIRST (2010), *Swedish model a failure: Yet another law targeting street-based sex workers*, <http://www.bayswan.org/swed/Swedish-model-a-failure.pdf>.
45. See e.g., Forrest, C. (2016), *Collateral Consequences of a Criminal Conviction: Impact on Corrections and Reentry*, <https://www.ojp.gov/pdffiles1/nij/249734.pdf>.
46. Open Society Foundations (2015), *Ten Reasons to Decriminalize Sex Work*, <https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>.
47. *Id.*; Craun, S., and Bierie, D. (2014), *Are the Collateral Consequences of Being a Registered Sex Offender as Bad as We Think? A Methodological Research Note*, *Federal Probation*, 78(1), 28-31, https://www.uscourts.gov/sites/default/files/78_1_5_0.pdf.
48. *Decriminalize Sex Work, Equality Model*, *supra* note 44.
49. Fein, L. (2019), *Has the Nordic Model worked? What does the research say?*, *Nordic Model Now*, <https://nordicmodelnow.org/2019/12/22/has-the-nordic-model-worked-what-does-the-research-say/>.
50. United Kingdom Department of Justice (2019), *Assessment of Review of Operation of Article 64A of the Sexual Offences Order (Northern Ireland) 2008: Offense of Purchasing Sexual Services*, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/assessment-of-impact-criminalisation-of-purchasing-sexual-services.pdf>.
51. Global Network of Sex Work Projects (2018), *Policy Brief: The Impact of 'End Demand' Legislation on Women Sex Workers*, <https://www.nswp.org/resource/nswp-policy-briefs/policy-brief-the-impact-end-demand-legislation-women-sex-workers>.
52. Working Group (2004), *Purchasing Sexual Services in Sweden and the Netherlands*, https://www.nswp.org/sites/nswp.org/files/232216-purchasing_sexual_services_in_sweden_and_the_netherlands.pdf.
53. United Kingdom Department of Justice (2019), *Assessment of Review*, *supra* note 50.
54. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 5; Open Society Foundations, *Ten Reasons*, *supra* note 46, at 2-3.
55. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 6.
56. *Id.*
57. Open Society Foundations, *Ten Reasons*, *supra* note 46, at 6.
58. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 7-8.
59. Cunningham, S., and Shah, M. (2017), *Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health*, *Review of Economic Studies*, 85(3), <https://doi.org/10.1093/restud/rdx065>.
60. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 8.
61. Open Society Foundations, *Ten Reasons*, *supra* note 46, at 4.
62. Cunningham, S., and Shah, M., *Decriminalizing Indoor Prostitution*, *supra* note 59.
63. Shannon, K., et al. (2015), *Global Epidemiology of HIV among Female Sex Workers: Influence of Structural Determinants*, *The Lancet*, 385(9962), 55-71, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60931-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60931-4/fulltext).
64. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 9.
65. Park, J., et al. (2021), *Cumulative Violence and PTSD Symptom Severity Among Urban Street-Based Female Sex Workers*, *Journal of Interpersonal Violence*, 36(21-22), 10383-10404, <https://doi.org/10.1177/0886260519884694>.
66. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 10.
67. Open Society Foundations, *Ten Reasons*, *supra* note 46, at 2.
68. *Id.*

69. Amnesty International, *Amnesty International policy*, *supra* note 28.
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74. Luo, N., *Decriminalizing Survival*, *supra* note 10.
75. Washtenaw County Office of the Prosecuting Attorney (2021), *Policy Directive 2021-08: Policy Regarding Sex Work*, <https://www.washtenaw.org/3301/Sex-Work-Policy>.
76. The Brooklyn District Attorney's Office (2021), *Brooklyn District Attorney Eric Gonzalez Dismisses All Outstanding Prostitution-Related Warrants*, <http://www.brooklynda.org/2021/01/29/brooklyn-district-attorney-eric-gonzalez-dismisses-all-outstanding-prostitution-related-warrants/>.
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80. 22 U.S.C. § 7102(11), (12) (emphasis added).
81. Jakobsson, N., and Kotsadam, A. (2010), *The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation*, *European Journal of Law and Economics*, 35(458), at 15, https://www.researchgate.net/publication/46470484_The_Law_and_Economics_of_International_Sex_Slavery_Prostitution_Laws_and_Trafficking_for_Sexual_Exploitation.
82. Cho, S., Dreher, A., and Neumayer, E. (2013), *Does Legalized Prostitution Increase Human Trafficking?*, *World Development*, 41, 67-82, <https://www.sciencedirect.com/science/article/pii/S0305750X12001453?via%3Dihub>.
83. Human trafficking research itself has been criticized for being thinly sourced, not scrutinized enough, and exaggerated. Weitzer, R. (2014), *New Directions in Research on Human Trafficking*, *The ANNALS of the American Academy of Political and Social Science*, 653(1), 6-24, <https://journals.sagepub.com/doi/full/10.1177/0002716214521562>.
84. Cho, S., Dreher, A., and Neumayer, E., *Does Legalized Prostitution Increase Human Trafficking?*, *supra* note 82.
85. Réchard, D. (2005), *National Legislation on Prostitution and the Trafficking in Women and Children: Study*, Directorate-General, European Parliament, [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2005/360488/IPOL-JOIN_ET\(2005\)360488_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2005/360488/IPOL-JOIN_ET(2005)360488_EN.pdf).
86. Ham, J. (2011), *Moving Beyond 'Supply and Demand' Catchphrases: Assessing the uses and limitations of demand-based approaches in Anti-Trafficking*, Global Alliance Against Traffic in Women, <https://gaatw.org/resources/publications/913-moving-beyond-supply-and-demand-catchphrases-assessing-the-uses-and-limitations-of-demand-based-approaches-in-anti-trafficking>Decreased.
87. Unternehmerverband Erotik Gewerbe Deutschland (2012), *Prostitution: Bundeslagebild Rotlichtkriminalität*, https://cdn3.vox-cdn.com/uploads/chorus_asset/file/3973422/German_traff_STATS.0.pdf; see also Lopez, G. (2015), *The case for decriminalizing prostitution*, *Vox*, <https://www.vox.com/2015/8/18/9166669/why-legalize-prostitution>.

88. Lee, S., and Persson, P. (2021), *Human Trafficking and Regulating Prostitution*, IFN Working Paper No. 996, NYU Stern School of Business EC-12-07, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2057299.
89. These activities include loitering for the purposes of prostitution, prostitution, patronizing prostitution, carrying condoms, pandering, soliciting, permitting prostitution, promoting prostitution, brothel-keeping, and more.
90. The Brooklyn District Attorney's Office, *Brooklyn District Attorney Eric Gonzalez Dismisses*, *supra* note 76.
91. ACLU, *Is Sex Work Decriminalization The Answer?*, *supra* note 24, at 6.
92. See Appendix for an example of such a policy.
93. Burns, T., *People in Alaska's Sex Trade*, *supra* note 7.
94. Manhattan District Attorney's Office, *D.A. Bragg Urges Passage*, *supra* note 79.
95. Engelberg, S. (2021), *How NYPD's Vice Unit Got Prostitution Policing All Wrong*, Propublica, <https://www.propublica.org/article/how-nypds-vice-unit-got-prostitution-policing-all-wrong>; see also Trujillo, J. (2021), *To Decriminalize Sex Work, NYC Must First Defund NYPD's Vice Squad*, NYCLU, <https://www.nyclu.org/en/news/decriminalize-sex-work-nyc-must-first-defund-nypds-vice-squad>.
96. This model policy is based on the [sex work policy](#) adopted by the Washtenaw County (Ann Arbor, MI) Prosecuting Attorney's Office. We extend our gratitude to their office for their pioneering work in this area.
97. Note that an office will want to decide based on local laws and practices whether or not to include this bracketed option.
98. Human trafficking, according to federal law, involves "the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act" in which the "commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age." 22 U.S.C. § 7102(11), (12). We encourage offices, however, to include in their policy the definition of trafficking based on their jurisdiction's laws.



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