

THE HARMFUL CONSEQUENCES OF SEX WORK CRIMINALIZATION ON HEALTH AND RIGHTS



SEX WORKERS & ALLIES NETWORK

YALE GLOBAL HEALTH JUSTICE PARTNERSHIP

THE SCOPE OF CRIMINALIZATION OF SEX WORK

- Legal regimes that **criminalize sex work prohibit the selling and buying of sexual services and certain related activities entirely**, and authorize policing, arrest, and conviction for these acts. This is currently the model in Connecticut (CT) and all fifty states, with minor exceptions.
- In Connecticut, there were an average of 302 arrests on prostitution charges per year between 2009 and 2018. Arrests were distributed in a strikingly uneven manner across jurisdictions in CT [1, 2]. The total number of arrests also varied year-to-year, with a decline in most but not all parts of the state in recent years. This ten-year pattern points to the erratic and arbitrary reality of prostitution law enforcement. Criminalization of sex work disproportionately affects women, trans and gender nonconforming people, people of color, and immigrant communities [3]. In CT for example, of the people arrested on prostitution charges between 2009 and 2018, 76% were identified as women and 24% as Black/African American, despite the fact that the former make up only 51% of the CT population and the latter only 11% [2, 4, 5].
- Many people in the sex sector are caught in cycles of surveillance and criminalization for lower-level “quality of life” offenses, including but not limited to prostitution offenses. Street-based sex workers, for instance, are often targeted for arrest under trespassing, loitering, and vagrancy laws. This revolving door of criminal legal system involvement has short- and long-term destabilizing and disempowering effects on sex workers and their communities [6, 7].
- The full decriminalization of sex work is a necessary step to counteract the harms of criminalization and promote the health, safety and rights of sex workers. Other legal regulatory frameworks, including partial decriminalization and legalization, fall short and may even increase stigma and violence against sex workers. For more information, see *The Law and Sex Work: Four Legal Approaches to the Sex Sector*, available at www.law.yale.edu/ghjp.

CONSEQUENCES OF CRIMINALIZATION FOR SEX WORKERS

INCREASED SOCIOECONOMIC HARDSHIP

- Arrest and conviction records make it harder for sex workers to find alternative employment if they desire, holding them in street economies and economic hardship, and exacerbating ongoing race and gender discrimination.
- Criminalization exacerbates the barriers to housing, public benefits, and other social supports especially needed by street-based sex workers [8].
- A peer-to-peer survey of a network of street-based sex workers in New Haven found that 83% of respondents had been previously incarcerated, and of those, almost half had been charged with a crime related to sex work, houselessness, or drug use. Almost a third of respondents reported having trouble finding work because of a criminal record, and the vast majority reported experiencing food and housing insecurity [9].

INCREASED VIOLENCE AND STIGMA

- There is no evidence that criminalizing sex work deters those who may sell or buy sex [10]. Instead, the evidence shows that criminalization, whether full or partial (the latter only targets buyers), makes sex work more dangerous; drives sex workers into more isolated locations; impedes the use of safety and harm reduction strategies; makes it more risky to report violence and abuse from clients, managers, and law enforcement; and increases risk of exposure to HIV and other sexually transmitted infections (STIs) [11, 12].
- Criminalization fuels the stigmatization of individuals as sex workers and as “criminally deviant” people which can impact their mental health, social bonds, and community integration [13].

INFRINGEMENT ON RIGHTS OF PEOPLE WHO SELL SEX

- Criminal records can leave sex workers unable to vote, serve on criminal juries, qualify for financial aid or college admission, hold public office, or get professional licenses in many states [14].
- Criminalization makes it difficult for sex workers to demand basic rights, including police protection, unionization for better working conditions, or opening bank accounts for their business [15].
- Organized stings, undercover officers, and so-called “prostitution diversion programs” (see more detail below) can infringe on individuals’ due process rights [7].

CONSEQUENCES FOR THEIR FAMILIES AND LOVED ONES

- Conviction and incarceration separate sex workers from their families and friends, disrupting social support systems and devastating communities [16]. The revolving door experiences of arrests, courts, and jails are harmful to the physical and mental health of both sex workers and their communities [17].
- The incarceration of sex workers disrupts their ability to fulfill parental and other familial duties and creates reunification challenges, making it more likely for their children to remain in foster care even after their release [18].
- Families and friends of sex workers may themselves face criminal penalties for “living off the proceeds” of sex work [19]. Those who receive financial support from a sex worker may experience financial hardship while that individual is arrested or incarcerated and unable to work.
- Families, friends, roommates, partners, and peers of sex workers can be prosecuted under overbroad anti-trafficking laws that allow their support to be interpreted as “pimping, pandering, or promoting” prostitution [20]. This overuse of prosecution disrupts social support systems and makes it harder for grassroots organizations to provide services.

CONSEQUENCES FOR THEIR COMMUNITIES

- Many jurisdictions nationwide, including some cities in CT, have established “diversion programs” that claim to deliver rehabilitative social services to ostensibly trafficked people or people who commit low-level offenses [21, 7]. In reality, these programs often enable the police and courts to act as gatekeepers to social services and consume valuable resources that could instead be invested directly in community-based, non-penal programs [22]. Moreover, these programs rarely address the needs expressed by participants, such as housing and other resources.
- Tens of thousands of individuals are arrested for prostitution nationally each year; cities spend an average of \$7.5 million each year enforcing prostitution laws, and some spend up to \$1 million on diversion programs alone [26].
- Law enforcement often relies on resource-intensive organized stings and undercover officers to arrest sex workers and clients. These methods do not address the conditions that push people onto the streets and often simply move unhoused people from neighborhood to neighborhood [17].

1. These charges are defined as the unlawful promotion of or participation in sexual activities for profit, including soliciting customers or transporting persons for prostitution purposes; owning, managing, or operating a dwelling or other establishment for the purpose of providing a place where prostitution is performed; or otherwise assisting or promoting prostitution.
2. Crime in Connecticut 2018: Annual Report of the Uniform Crime Reporting Program. (2019). State of Connecticut Department of Emergency Services and Public Protection Crime Analysis Unit. https://portal.ct.gov/-/media/DESPP/Division-of-Crimes-Analysis/2018_Crime_in_CT_Final.pdf?la=en
3. Luo, N. Decriminalizing Survival: Policy Platform and Polling on the Decriminalization of Sex Work. Data for Progress. <http://filesforprogress.org/memos/decriminalizing-sex-work.pdf>
4. U.S. Census Bureau (2018). Selected housing characteristics, 2018 American Community Survey 1-year estimates. Retrieved from <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/>.
5. U.S. Census Bureau QuickFacts: Connecticut. from <https://www.census.gov/quickfacts/fact/table/CT/SEX255218#SEX255218>
6. American Public Health Association. (2018). Addressing Law Enforcement Violence as a Public Health Issue. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/29/law-enforcement-violence>
7. Yale Global Health Justice Partnership and Sex Workers Project at the Urban Justice Center. (2018, September). Diversion from Justice: A Rights-Based Analysis of Local “Prostitution Diversion Programs” and their Impacts on People in the Sex Sector in the United States. Global Health Justice Partnership. https://law.yale.edu/sites/default/files/area/center/ghjp/documents/diversion_from_justice_pdp_report_ghjp_2018rev.pdf
8. Purtle, J., Gebrekristos, L. T., Keene, D., Schlesinger, P., Niccolai, L., & Blankenship, K. M. (2020). Quantifying the Restrictiveness of Local Housing Authority Policies Toward People With Criminal Justice Histories: United States, 2009–2018. *American Journal of Public Health*, 110(S1). doi: 10.2105/ajph.2019.305437
9. Global Health Justice Partnership report to be published June 2020.
10. Herrmann, F. (2018). Building a Fair and Just New York: Decriminalize Transactional Sex. *Hastings Race and Poverty Law Journal*, 15(1), 65. https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1011&context=hastings_race_poverty_law_journal.
11. The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence. Global Network of Sex Work Projects. https://www.nswp.org/sites/nswp.org/files/impact_of_criminalisation_pb_prf01.pdf.
12. Albright, E., & D’Adamo, K. (2017). Decreasing Human Trafficking through Sex Work Decriminalization. *AMA Journal of Ethics*, 19(1), 122–126. <https://doi.org/10.1001/journalofethics.2017.19.1.sect2-1701>.
13. Moore, K. E., Stuewig, J. B., & Tangney, J. P. (2016). The Effect of Stigma on Criminal Offenders’ Functioning: A Longitudinal Mediation Model. *Deviant Behavior*, 37(2), 196–218. <https://doi.org/10.1080/01639625.2014.1004035>
14. Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities. (2019). U.S. Commission on Civil Rights. https://www.cga.ct.gov/lab/tfs/20190827_Council%20on%20The%20Collateral%20Consequences%20Of%20A%20Criminal%20Record/Research%20Subcommittee%20Materials/06-13-19-Collateral-Consequences%20USCommissionHuman%20Rights%20-%20Findingsand%20Recommendations.pdf
15. Why Sex Work Should Be Decriminalized. (2019, August 7). Human Rights Watch. <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>
16. Collier, L. (2014). Incarceration Nation. *American Psychological Association*, 45(9). <https://www.apa.org/monitor/2014/10/incarceration>
17. Dank, M., Yahner, J., & Yu, L. (2017). Consequences of Policing Prostitution: An Analysis of Individuals Arrested and Prosecuted for Commercial Sex in New York City (p. 58). Urban Institute. https://www.urban.org/sites/default/files/publication/89451/legal_aid_final_0.pdf
18. Swavola, E., Riley, K., & Subramanian, R. (2016). Overlooked: Women and Jails in an Era of Reform (<https://www.vera.org/>). Vera Institute of Justice. <https://www.vera.org/publications/overlooked-women-and-jails-report>
19. Q&A: Policy to Protect the Human Rights of Sex Workers. (2016, May). Amnesty International. <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>
20. Reframe Health and Justice. (2019, January 16). The State Department Requests Input... sex workers respond. Medium. <https://medium.com/@reframehealthandjustice/the-state-department-requests-input-sex-workers-respond-395075d1ea02>
21. Global Health Justice Partnership. (2020, February). New Haven LEAD Watch Site. <https://leadwatchsite.wixsite.com/newhaven>
22. Hill, C. (2018). Selling Sex: The Costs of Criminalization. *Quinnipiac Health Law*, 21, 131.
23. Global Health Justice Partnership and the Sex Workers Project at the Urban Justice Center. Un-Meetable Promises.