

## INFORMATION SHEET

### COVID-19 AND PROSECUTORIAL POLICIES

The onset of the COVID-19 pandemic in early 2020 brought heightened attention to the double systemic harms of racism and COVID-19. This, combined with the continued organizing efforts of the sex worker rights movement for policy change in tandem with work developing and expanding mutual aid networks for life-saving support in the absence of government action, led several district attorneys to reevaluate their prosecution policies, and, in some instances, police departments to shift arrest practices.<sup>1</sup>

Prosecutor's offices, including in Brooklyn, New York;<sup>4</sup> Philadelphia, Pennsylvania;<sup>5</sup> Maricopa County, Arizona,<sup>6</sup> Baltimore, Maryland,<sup>7</sup> Multnomah County, Oregon;<sup>8</sup> Cook County, Illinois and King County, Washington,<sup>9</sup> stopped or reduced charging minor offenses and/or advocated for early release, in a context where some police departments also delayed arrests by issuing warrants or citations for a variety of offenses as a response to COVID-19. In Seattle, police had formally announced the ramping up of arrests of both sex workers and clients beginning in 2019.<sup>10</sup> In 2020, police reversed course, likely due to the pandemic, among a number of factors including public criticism of the arrests, a change in police department leadership, and staffing challenges.<sup>11</sup> Nonetheless, the enforcement of COVID-19 regulations also increased police surveillance, harassment and violence against sex workers, and reduced access to essential health services, with trans, undocumented and/or BIPOC sex workers particularly vulnerable to over-policing and punitive measures.<sup>12</sup>

**Transgender** (or "trans") is a term used to describe someone whose gender identity is different than the sex they were assigned at birth.<sup>2</sup>

**Cisgender** (or "cis") is a term used to describe someone who identifies with the sex they were assigned at birth.<sup>3</sup>

The pandemic has highlighted the harms of mass incarceration and the lack of sanitary and safe conditions in carceral facilities, prompting calls to state governors and other public officials to adopt decarceration measures to reduce prison and jail populations and mitigate the spread of COVID-19 among incarcerated individuals.<sup>13</sup> While policymakers largely failed to heed these calls to significantly reduce prison and jail populations, some individual jurisdictions took action to increase releases and reduce admissions.<sup>14</sup> The COVID-19 crisis also prompted the public health field to turn its attention to the harms of incarceration, resulting in the American Public Health Association adopting the policy statement "Advancing Public Health Interventions to Address the Harms of the Carceral System" in October 2021.<sup>15</sup> The statement acknowledges the chronic health harms of incarceration and recommends moving towards the abolition of carceral systems.<sup>16</sup>

In this context, these non-prosecution policies sought to lessen the burden of criminalization for so-called 'quality-of-life' or 'petty' offenses, which include offenses related to street-based sex work and low-level drug possession as well as associated 'disorder' offenses such as loitering, trespassing, or disorderly conduct. The criminalization of these activities has been criticized for widening the net of individuals who get caught in the criminal legal system and targeting poor or low-income individuals, often also BIPOC individuals, resulting in a system of policing and courts that is fundamentally tasked with the criminalization of poverty.<sup>17</sup>

In March 2020 Baltimore City's then-State's Attorney Marilyn Mosby announced the Covid Criminal Justice Policies, an approach to crime developed with public health authorities under which Baltimore City would stop prosecuting the crime of prostitution, among a slate of offenses including low-level drug and drug paraphernalia possession, minor traffic violations, and disorder-related offenses, in an effort to reduce admission to jails and prisons and curb the spread of COVID-19.<sup>18</sup> A year later, an evaluation conducted by Johns Hopkins University found that the policy resulted in a reduction of arrests without causing any increase in threats to public safety or public complaints,<sup>19</sup> and the State's Attorney's office announced the intention to adopt the policy permanently during Mosby's (now completed) term.<sup>20</sup> The pandemic offered a window to make this policy shift.

- <sup>1</sup> Bromfield, Nicole F., Meg Panichelli, and Moshoula Capous-Desyllas. 2021. "At the Intersection of COVID-19 and Sex Work in the United States: A Call for Social Work Action." *Feminist Inquiry in Social Work* 36, no. 2: 140-48. <https://doi.org/10.1177/0886109920985131>
- <sup>2</sup> For a more complete list of definitions, see Trans Student Educational Resources. n.d. "Definitions." Accessed Nov. 7, 2022. <https://transstudent.org/about/definitions/>
- <sup>3</sup> Trans Student Educational Resources. n.d. "Definitions."
- <sup>4</sup> Denney, Andrew, and Larry Celona. 2020. "Coronavirus in NY: Brooklyn DA to stop prosecuting 'low-level' offenses." *New York Post*, March 17, 2020. <https://nypost.com/2020/03/17/coronavirus-in-ny-brooklyn-da-to-stop-prosecuting-low-level-offenses/>
- <sup>5</sup> Melamed, Samantha, and Mike Newall. 2020. "With courts closed by pandemic, Philly police stop low-level arrests to manage jail crowding." *The Philadelphia Inquirer*, March 18, 2020. <https://www.inquirer.com/health/coronavirus/philadelphia-police-coronavirus-covid-pandemic-arrests-jail-overcrowding-larry-krasner-20200317.html>
- <sup>6</sup> Castle, Lauren. 2020. "Thousands of criminal charges delayed during the pandemic, Maricopa County data shows." *AZ Central*, April 28, 2020. <https://www.azcentral.com/story/news/local/phoenix/2020/04/28/maricopa-county-attorneys-office-allister-adel-thousands-criminal-charges-delayed-during-pandemic/3033305001/>
- <sup>7</sup> Office of the State's Attorney for Baltimore City. 2020. "State's Attorney Mosby Urges Governor to Take Action on Courts, Prisons and Jails." March 18, 2020. <https://web.archive.org/web/20220121035803/https://www.stattorney.org/media-center/press-releases/1997-state-s-attorney-mosby-urges-governor-to-take-action-on-courts-prisons-and-jails>; Battaglia, Juliana. 2021. "Baltimore will no longer prosecute drug possession, prostitution and other low-level offenses." *CNN*, March 27, 2021. <https://www.cnn.com/2021/03/27/us/baltimore-prosecute-prostitution-drug-possession/index.html>
- <sup>8</sup> Bernstein, Maxine. 2020. "Multnomah County's adult jail population has dropped about 30% due to fewer arrests, early releases." *Oregon Live*, April 14, 2020. <https://www.oregonlive.com/coronavirus/2020/04/multnomah-countys-adult-jail-population-has-dropped-about-30-percent-due-to-fewer-arrests-early-releases.html>
- <sup>9</sup> Vaughn, Joshua. 2021. "The Pandemic Prompted Marilyn Mosby to Stop Prosecuting Low-Level Crimes. Will Other D.A.s Follow?" *The Appeal*, April 12, 2021. <https://theappeal.org/the-pandemic-prompted-marilyn-mosby-to-stop-prosecuting-low-level-crimes-will-other-d-a-s-follow/>
- <sup>10</sup> Coalition for Rights & Safety for People in the Sex Trade, Chinatown/International District Coalition. 2021. "Solidarity with Massage Parlor Workers Means Ending Police Raids and Patrols in the CID: A Joint Statement + Call to Action from the Massage Parlor Outreach Project 女工互助小组 and CID Coalition." <http://rightsandsafety.org/solidarity-with-massage-parlor-workers-means-ending-police-raids-and-patrols-in-the-cid>
- <sup>11</sup> Kiefer, Paul. 2021. "Court Approves City Attorney's Motion to Clear Outstanding Prostitution Warrants." *Publicola*, September 16, 2021. <https://publicola.com/2021/09/16/court-approves-city-attorneys-motion-to-clear-outstanding-prostitution-warrants/>
- <sup>12</sup> Global Network of Sex Work Projects. 2021. "Policy Brief: COVID-19 and Sex Workers / Sex Worker-led Organisations." <http://nswp.org/resource/nswp-policy-briefs/policy-brief-covid-19-and-sex-workers-sex-worker-led-organisations>; Bromfield et al. 2021; Amnesty International. 2020. "Include Sex Workers in the COVID-19 Response." July 28, 2020. <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3027882020ENGLISH.pdf>; Speri, Alice. 2020. "NYPD's Aggressive Policing Risks Spreading the Coronavirus." *The Intercept*, April 3, 2020. <https://theintercept.com/2020/04/03/nypd-social-distancing-arrests-coronavirus/>
- <sup>13</sup> Partners in Health. 2021. "Why Decarceration Is Vital For Public Health Amid COVID-19." January 26, 2021. <https://www.pih.org/article/why-decarceration-vital-public-health-amid-covid-19>
- <sup>14</sup> Prison Policy Initiative. n.d. "The most significant criminal justice policy changes from the COVID-19 pandemic." Accessed November 7, 2022. <https://www.prisonpolicy.org/virus/virusresponse.html>
- <sup>15</sup> American Public Health Association. 2020. "Advancing Public Health Interventions to Address the Harms of the Carceral System." October 24, 2020. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/14/advancing-public-health-interventions-to-address-the-harms-of-the-carceral-system>
- <sup>16</sup> American Public Health Association. 2020.
- <sup>17</sup> Natapoff, Alexandra. 2018. *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal*. Basic Books.
- <sup>18</sup> Office of the State's Attorney for Baltimore City. 2020; Battaglia, Juliana. 2021.
- <sup>19</sup> Rouhani, Saba, Catherine Tomko, Noelle P. Weicker, and Susan G. Sherman. 2021. "Evaluation of Prosecutorial Policy Reforms Eliminating Criminal Penalties for Drug Possession and Sex Work in Baltimore, Maryland." <https://publichealth.jhu.edu/sites/default/files/2021-10/prosecutorial-policy-evaluation-report-20211019.pdf>
- <sup>20</sup> Office of the State's Attorney for Baltimore City. 2021. "State's Attorney, Mayor's Office, and Community Partners Announce Success of Covid Criminal Justice Policies." March 26, 2021. <https://www.stattorney.org/media-center/press-releases/2243-state-s-attorney-mayor-s-office-and-community-partners-announce-success-of-covid-criminal-justice-policies>