

INFORMATION SHEET

GROWING MAINSTREAM RECOGNITION OF THE HARMS OF CRIMINAL LAW

Growing awareness of the harms of criminalizing sex work has developed with, and benefited from, a broader national conversation about policing, incarceration, and the criminal legal system as a whole, that was thrust into the mainstream by recent waves of struggle for racial justice and challenging anti-Blackness, and spurred in 2020 by the killings of George Floyd, Ahmaud Arbery, and Breonna Taylor by current or former police officers.¹

Criminal legal system is the phrase we use, rather than “criminal justice system,” as an acknowledgement that the system does not deliver justice for many individuals and communities. The phrase “criminal punishment system” is also used by advocates to highlight how it functions as an apparatus of racist violence, serving aims of surveillance, control, punishment, and retribution.²

This renewed understanding of the harms of policing and carceral systems on racialized and poor individuals is reflected in the policy statement “Addressing Law Enforcement Violence as a Public Health Issue” adopted in 2018 by the American Public Health Association (APHA), the largest professional association for public health in the U.S.³ The statement acknowledges that the system of law enforcement is one of the factors causing the disproportionate levels of physical and psychological violence targeted at marginalized communities, including Black people and other people of color, Indigenous people, immigrants, LGBTQ+ people, people with disabilities or mental illnesses, people engaging in criminalized activities such as sex work and drug use, and people suffering from poverty-related issues including homelessness. In 2021, over 250 researchers and scientists signed an open letter to President Joe Biden and Vice President Kamala Harris underscoring the “wealth of empirical data” on the harms of criminalizing sex work, and called for decriminalization, among other measures.⁴

Sex workers are differentially exposed to the harms of criminalization and violence based on the level of physical contact with both clients and police involved in the type(s) of sex work performed:⁵ For example, individuals who cam or are phone sex operators have less contact with clients and police than in-person and street-based sex workers. This also highlights the different level and kind of police interaction and surveillance dealt with by people in legalized sectors of the sex trades, although they still may face restrictions and censorship due to SESTA-FOSTA. Sex workers who exclusively produce and publish adult content online may work with agencies and platforms operating legally, and are not necessarily engaging in criminalized sectors of sex work. Moving between types of sex work as a risk management strategy is not possible for everyone, as seen when some in-person sex workers moved to online settings at the beginning of the pandemic, as sex workers and clients sought to avoid COVID-19 transmission. This harm reduction strategy is contingently accessible, based on access to technology, digital skills, differential opportunities for non-white sex workers in online spaces, restrictions due to SESTA-FOSTA,⁶ and limited payment options due in part to Mastercard’s restrictions on processing payments for adult content.⁷ **Exposure to the harms of criminalization is also a function of stereotypes about sex work, which are often racialized and gendered in specific ways.**

- ¹ See “10 Years Since Trayvon: The story of the first decade of Black Lives Matter.” *New York Magazine*, January 31, 2022. <https://nymag.com/article/black-lives-matter-2022.html>; The African American Policy Forum. n.d. “#SAYHERNAME.” Accessed November 7, 2022. <https://www.aapf.org/sayhername>; Grullón Paz, Isabella, and Maggie Astor. 2020. “Black Trans Women Seek More Space in the Movement They Helped Start.” *New York Times*, June 28, 2020. <https://www.nytimes.com/2020/06/27/us/politics/black-trans-lives-matter.html>
- ² See Foran, Rachel, Mariame Kaba, & Katy Naples-Mitchell. 2021. “Abolitionist Principles for Prosecutor Organizing: Origins and Next Steps.” *Stanford Journal of Civil Rights & Civil Liberties* 16, no. 3: 496-536. <https://law.stanford.edu/publications/abolitionist-principles-for-prosecutor-organizing-origins-and-next-steps/>
- ³ American Public Health Association. 2018. “Addressing Law Enforcement Violence as a Public Health Issue.” November 13, 2018. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/29/law-enforcement-violence>
- ⁴ Brown, Elizabeth N. 2021. “Science-Based Policy Means Decriminalizing Sex Work, Say Hundreds of Researchers.” *Reason*, March 3, 2021. <https://reason.com/2021/03/03/science-based-policy-means-decriminalizing-sex-work-say-hundreds-of-researchers/>
- ⁵ Witt, Emme. 2020. “What Is the Whorearchy and Why It’s Wrong.” *An Injustice!*, November 18, 2020. <https://aninjusticemag.com/what-is-the-whorearchy-and-why-its-wrong-1efa654dcb22>
- ⁶ Nelson, Alex J., Yeon Jung Yu, and Bronwyn McBride. 2020. “Sex Work during the COVID-19 Pandemic.” *Society for the Anthropology of Work*, November 2, 2020. <https://saw.americananthro.org/pub/sex-work-during-the-covid-19-pandemic/release/1?readingCollection=85abf988>
- ⁷ Holston-Zannell, LaLa B. 2021. “How Mastercard’s New Policy Violates Sex Workers’ Rights.” *ACLU News & Commentary*, October 15, 2021. <https://www.aclu.org/news/lgbtq-rights/how-mastercards-new-policy-violates-sex-workers-rights>