



THE LAW & SEX WORK: FOUR LEGAL APPROACHES TO THE SEX SECTOR



SEX WORKERS & ALLIES NETWORK

YALE GLOBAL HEALTH JUSTICE PARTNERSHIP

There are four main approaches to sex work in national law, each with implications for the health and rights of people in the sex sector. While there is little empirical research in the U.S., evidence from the implementation of each of these frameworks globally can yield important insights for the U.S [1]. While buying and selling sex is in fact not limited by gender, some laws and most public understandings of sex work have “men” buying and “women” selling sex.

The legal frameworks addressing prostitution are often discussed in the context of anti-trafficking law. Trafficking is defined as the coerced movement into any labor sector (with distinct definitions for minors) and is not exclusively concerned with the sex sector.

CRIMINALIZATION

Criminalization **prohibits prostitution** (the selling and buying of sexual conduct) and certain related activities. It places criminal penalties on individuals who sell or buy sexual services. This is currently the model in Connecticut and all fifty states, with minor exceptions. Supporters of this model seek the public condemnation of the exchange of sex for money, often in the name of enforcing a specific morality and more recently with claims around protecting women.

IMPLICATIONS

- Consequences for people who sell sex include **fines, arrests, jail time, criminal records, and deportation**. Policing results in greater isolation and less negotiating power when working, reduced access to services, and increases in violence and exploitation by law enforcement, managers, and clients [2].
- Fearing arrest and retribution, sex workers may be reluctant to seek legal justice and report cases of trafficking and abuse, making it easier for trafficking to occur [2].
- Stigma and discrimination make it harder for sex workers to seek services from healthcare and other providers, access housing and employment, and gain community acceptance. All of these effects are compounded by racially and other discriminatory policing practices [3].

FULL DECRIMINALIZATION

Full decriminalization is the complete **removal of criminal penalties** related to the sex trade. It lifts penalties for both sex workers and buyers. Many sex worker rights groups, including the Sex Workers and Allies Network (SWAN) and the Global Justice Health Partnership (GHJP), favor this approach as expanding the individual and collective power of sex workers to work more safely, challenge injustice and seek fair remuneration for their labor. Trafficking, violence and victimization, intimate partner violence, and commercial sex acts involving minors all remain illegal under this model. Commercial and labor laws that promote rights also remain applicable.

IMPLICATIONS

- Without criminal penalties, sex workers are less subject to violence—whether from the state (e.g., law enforcement) or private actors (e.g., clients) [4].
- Sex workers have better access to services and economic opportunities, more control over their work, and greater ability to pursue legal remedies in the face of violence or other harms [4, 5].
- Decriminalization would help **protect communities disproportionately impacted by criminalization**, advancing LGBTQ+ rights, racial justice, gender equity, immigrant rights, public health, and labor rights [6].
- When the threat of arrest is lifted, both sex workers and buyers are more willing to report suspected trafficking to law enforcement [7]. Recent evidence from New Zealand suggests that their decriminalization law improved health outcomes for sex workers and did not lead to an increase in sex trafficking or to an increase in the number of minors involved in the sex trade [8].

PARTIAL DECRIMINALIZATION (A.K.A. "NORDIC MODEL", "END DEMAND")

This model **criminalizes buying sexual services** but not selling sexual services. In other words, clients and anyone who facilitates selling and buying sex are subject to criminal penalties, while persons selling sex technically are not. Supporters of the model seek to eradicate sex work and claim, based on their assumptions of the gender of sex work, that it would end men's demand for commercial sexual services from women. However, sex workers' rights advocates do not support this approach.

IMPLICATIONS

- Under this model, evidence indicates that sex workers continue to be arrested, albeit under different charges, as the activities essential to their work remain criminalized [6].
- This model polices buyers and focuses police action on the areas where sex workers conduct business. In countries following this model, sex workers are exposed to many of the same risks of violence, exploitation, and arrest as the criminalization model.
- Increased policing, even if targeted at buyers, means sex workers work in more isolated conditions, increasing their vulnerability and disrupting safety strategies [6].
- Studies suggest that this model does not reduce violence against sex workers [9]. In fact, it may be even worse than criminalization models, leaving sex workers with less choice over who they accept as clients and less negotiating power over condom use and location [3, 10].

LEGALIZATION OR REGULATION

Under legalization, city or state **government is the primary regulator** of the sex trade. The government sets specific conditions, such as licensing and registration requirements, under which the exchange of sexual services could take place. Sex work occurring outside of these conditions remains criminalized. Many sex worker advocates and allies, including SWAN and GHJP, do not support this approach. Historically, this model was favored by colonial militaries and some governments to create zones under their control and ostensibly to regulate sexual labor in the name of public health [11].

IMPLICATIONS

- Strict regulations dictating who can carry out sex work and what is considered "illegal" vs. "legal" sex work infringe on sex worker autonomy over decisions about their work [12].
- The structure gives undue power to managers, brothel owners, and third parties, constraining the strategies sex workers can use to stay safe [13].
- Sex workers who fall outside of the "legal" designations continue to be subjected to policing and criminalization. In particular, immigrants, refugees, LGBTQ people, and individuals engaged in survival sex work remain at risk of criminal penalties [12, 14].

1. The Lancet. (2014). HIV and Sex Workers, 385. <https://www.thelancet.com/series/HIV-and-sex-workers>
2. Reframe Health and Justice. Sex Work Is Work. <https://static1.squarespace.com/static/5b0e15eb8f5130668364019e/t/5b0f59982b6a28f41d1ffb68/1527732636055/RHJ+Sex+Work+101.pdf>.
3. Erin Albright & Kate D'Adamo, Decreasing Human Trafficking through Sex Work Decriminalization, AMA Journal of Ethics 19 (2017), <https://journalofethics.ama-assn.org/article/decreasing-human-trafficking-through-sex-work-decriminalization/2017-01>.
4. Lynzi Armstrong. (2017). From Law Enforcement to Protection? Interactions Between Sex Workers and Police in a Decriminalized Street-based Sex Industry. British Journal of Criminology 57(3): 570-588. <https://academic.oup.com/bjc/article/57/3/570/2623927>; Gillian M. Abel. (2014). A decade of decriminalization: Sex work 'down under' but not underground. Criminology and Criminal Justice. 14(5): 580-592. <https://journals.sagepub.com/doi/pdf/10.1177/1748895814523024>
5. Human Rights Watch, Why Sex Work Should Be Decriminalized: Questions and Answers. (2019), <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#>
6. Nina Luo, Decriminalizing Survival: Policy Platform and Polling on the Decriminalization, Data for Progress. <http://filesforprogress.org/memos/decriminalizing-sex-work.pdf>.
7. Dean Peters and Giles Griffin, Sex Work, Human Trafficking & The Harm of Conflating the Two. Asijiki. https://static1.squarespace.com/static/5b0e15eb8f5130668364019e/t/5b10476b0e2e72a2d378abe0/1527793515205/Sex-work-and-Human-trafficking_Asijiki-Fact-Sheet_Web.pdf.
8. Prostitution Law Review Committee, Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003 (2008). <http://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>.
9. Lucy Platt et al., Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies, PLOS Medicine (2018). https://www.nswp.org/sites/nswp.org/files/journal.pmed_1002680.pdf.
10. Hélène de Bail, Calogero Giametta & Noémie Rassouw. (2018). What Do Sex Workers Think About the French Prostitution Act? A Study on the Impact of the Law from 13 April 2016 Against the 'Prostitution System' in France. Médecins du Monde et al. <https://www.medecinsdumonde.org/en/actualites/publications/2018/04/12/study-impact-law-13-april-2016-against-prostitution-system-france>; Graham Ellison, Caoimhe Ní Dhónaill & Erin Early. (2019). A Review of the Criminalisation of Paying for Sexual Services in Northern Ireland. Queen's University Belfast & Department of Justice. <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/report-criminalisation-paying-for-sex.pdf>.
11. Levine, Philippa. (2003). Prostitution, race, and politics: Policing venereal disease in the British Empire. Psychology Press; Howell, Philip. (2000). Prostitution and racialised sexuality: the regulation of prostitution in Britain and the British Empire before the Contagious Diseases Acts. Environment and Planning D: Society and Space 18.3: 321-339; Tracol-Huynh, Isabelle. (2010). Between stigmatisation and regulation: prostitution in colonial Northern Vietnam. Culture, Health & Sexuality 12.S1: S73-S87.
12. Mariëlle Kloek & Minke Dijkstra. (2018). Sex Work, Stigma, and Violence in the Netherlands. SOAIDS Nederland. https://www.nswp.org/sites/nswp.org/files/sex_work_stigma_and_violence_in_the_netherlands_reportdigital.pdf.
13. Global Network of Sex Work Projects, Sex Work And The Law: Understanding Legal Frameworks and the Struggle for Sex Work Law Reforms. <https://www.nswp.org/sites/nswp.org/files/Sex%20Work%20%26%20The%20Law.pdf>.
14. Joyce Outshoorn. (2012). Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control. Sexuality Research & Social Policy, 9, 233-243. <https://www.nswp.org/sites/nswp.org/files/fulltext1%20%282%29.pdf>.