



Health Outcomes Associated with Criminalization and Regulation of Sex Trade

Criminalization of Sex Work Globally

The criminalization of commercial sex trade and regulatory frameworks seeking to regulate it differ across the globe. These efforts fall into four models of criminalization and regulation.

Frameworks for Criminalization and Regulation of Sex Trade

- (1) Criminalize sex trade
- (2) Criminalize clients (also known as the Nordic or End Demand model).
- (3) Regulate sex trade
- (4) Decriminalize sex trade

Sex work can be defined as the consensual provision of sexual services for money or goods, and, in some instances, non-monetary items. For the purpose of this policy brief, we identify individuals engaged in the sex trade as “sex workers” even where individuals may not themselves identify as such. “Exchange sex,” which some refer to as “survival sex work,” occurs where sex is exchanged for food, shelter, drugs, or protection. We distinguish here the criminalization and regulation of sex trade from the criminalization of sex trafficking. It is important to distinguish *sex work* from *sex trafficking* because the legal frameworks and responses to address each often differ. Sex trafficking includes the recruiting, enticing, harboring, transporting, providing, obtaining, patronizing, or soliciting a person for a commercial sex act by force, fraud, or coercion, or when the person engaged in the sex act is under age 18. In contrast, sex work occurs on a voluntary and consensual basis. Additionally, we acknowledge that some forms of commercial sex trade and some sectors in which sex trafficking occurs are not necessarily criminalized (i.e., pornography, exotic dancing, massage, escorting) while they may be heavily regulated.

Purpose of Criminalization and Regulation

Laws criminalizing sex trade in the United States (US) rely on a public health rationale and frame the protection of public health as a legitimate state interest.^{1,2,3,4,5} Additionally, the protection of public morals is considered a valid exercise of police power vested in the state.⁶ Preventing the spread of disease(s), including sexually transmitted infections (STIs) and HIV, is a powerful lever for justifying the existence of such laws criminalizing and regulating sex trade.

This brief seeks to answer the question—what is the evidence that criminalization of sex work has positive effects on public health?

Criminalizing sex trade

A key rationale provided for the criminalization of sex work is that it creates various negative externalities and social ills and is morally reprehensible.⁷ The US government holds the position that “prostitution is inherently harmful and dehumanizing and fuels trafficking in persons.”⁸ Criminalization intends to raise the cost of

engaging in sex work and thus reduce participation in the sex trade. In contrast to the health claims made, there is scant evidence that criminalizing sex trade has any positive effects on public health and the health of sex workers. Rather, evidence from empirical studies demonstrate that the criminalization of sex work can lead to increased STI incidence, increased risks for HIV, STIs and condom-less sex, harmful relationships with law enforcement, and violence against sex workers.^{9,10,11,12,13,14,15,16,17,18} Pathways include pushing sex work into isolated and unsafe spaces and confiscation of condoms.¹⁹

Criminalizing clients

Criminalizing clients and third parties (such as managers, security personnel, receptionists), known as the 'Nordic,' End Demand, or neo-abolitionist model, is an approach first taken in Sweden and subsequently implemented in countries including Norway, Iceland, Canada, Northern Ireland, France, and the Republic of Ireland. During the last two decades, advocates and policymakers have increasingly argued for this approach based on their notion that prostitution is a form of male violence against women, that it is physically and psychologically damaging to sell sex, and that there are no women who sell sex voluntarily.²⁰

Proponents of the 'Nordic model' claim that it reduces demand for commercial sex and thereby decreases sex trafficking. However, minimal evidence supports that criminalization of clients reduces demand or trafficking. Rather, studies document that the neo-abolitionist approach shifts the type of client from less risky to more risky²¹, increases rape²², perpetuates or worsens unsafe working conditions seen under criminalization,^{23,24} and fosters a negative dynamic between law enforcement and sex workers.^{25,26,27} It has a detrimental effect on sex workers' health and overall living conditions^{28,29} and offers no solutions for addressing the structural inequities that sex workers face.^{30,31}

Licensing and regulating sex trade

While legal and regulated sex work varies considerably from country to country, Weitzer finds that legal, well-regulated prostitution can be superior to criminalization.³² Licensing and regulation of sex work is intended to reduce infectious disease by providing government certification of sex workers and health check-ups. This strategy has lowered incidence of rape and sexual abuse in the Netherlands by 30-40%.³³ Legalized brothels in Nevada report low levels of violence and STIs compared to illegal markets in other states due to worker safety regulations.^{34,35} However, regulation can bring about unintended consequences including the rise of civil and criminal penalties on sex workers for non-compliance. This is further worsened by disparities with policing and protection based on race/ethnicity, gender identity and immigration status.³⁶ It can also push sex workers underground who find the regulations too costly to comply with.³⁷

Decriminalizing sex trade

Decriminalization is based on the framework that sex work is service work and allows people in the sex trade to operate under the same legal and employment rights afforded other occupational groups.⁴⁰ Research evidence suggests that decriminalization of commercial sex trade may lead to better public health outcomes. Because purchasing sex services comes out of the shadow of criminal behavior, studies have demonstrated that STIs, rape and violence against women declined in jurisdictions that decriminalized sex work.²⁶ Violence by police drops³⁸. Because our existing system of criminalization results in disproportionate arrests for persons of color, decriminalization would begin to address problematic policing practices. The evidence for these positive effects is global.³⁹

Not only does decriminalization eliminate some key problems associated with criminalization, it has been shown to have positive effects. Studies in New Zealand, where decriminalization has been implemented, identified public health and health-related benefits resulting from decriminalization. This includes sex workers' easier access to justice when faced with violence and victimization and harmful policing practices.⁴⁰ Confident in their legal rights, sex workers expressed feeling safer in demanding respect and safer sex practices.⁴⁰

Future Directions in Public Health Research

Public policy addressing sex trade in the US is motivated by moral judgment rather than scientific evidence. In the US, there are few population-based studies on persons engaged in the sex trade.⁴¹ Because many forms of sex work are criminalized in the US and surveillance data with regard to sex work are not collected, domestic data on the role of sex work in relation to HIV prevention and treatment outcomes does not exist.⁴² Evidence documents disproportionality in the enforcement of sex trade-related criminalization laws among gender minorities, people who use drugs, and people of color, particularly Black women.^{43,44,45} Trends in policing demonstrate that communities of color are broadly targeted for criminalization, thus, criminalization of sex trade represents just one dimension of a larger problem.⁴⁶

Future research could address the following gaps in the literature:

- Intersectional analyses: centering the perspectives of diverse individuals in the sex trade, including racial/ethnic, sexual and gender minorities, male sex workers, migrants, and others vulnerable to multiple systems of oppression.
- Health outcomes resulting from increased vulnerability associated with arrests, incarceration and criminal justice involvement including problems related to housing and homelessness, education, loans and other forms of gainful employment.
- Challenges raised by the conflation of sex work with sex trafficking. Some argue decriminalization of sex trade may result in increased human trafficking.^{47,48} Others argue how decriminalization results in decreased human trafficking.^{49,50} This remains a largely empirical question.
- Identifying good and reliable data on sex trade and sex trafficking that is currently difficult to uncover given the clandestine nature of this market.
- Quantified cost savings related to reduced policing of sex work and reduced prosecution and confinement of sex workers as well as cost savings related to decreased incidence of STIs, HIV, and reduction of other health disparities.

While it remains uncertain whether decriminalization will be a politically viable option in the US,⁵¹ structural interventions that seek to establish and sustain partnerships between law enforcement and sex workers holds promise. Evidence suggests that stronger relationships between sex workers and law enforcement can help promote safety and health rather than harm.^{52,53} Relationships can focus on common goals: to target violence against sex workers and sex trafficking as true threats to public health and public safety. Furthermore, studies that document the implementation of structural interventions to increase protections for sex workers, such as CA Senate Bill 233 would be useful.⁵⁴ Finally, using stigma-reduction strategies and trauma-informed techniques, as well as, harm reduction to guide education, engagement, organization, and empowerment have been shown to increase safety behaviors, health protective behaviors and reduce HIV risks.^{17,53,55,56} Evidence-based interventions such as these merit further programmatic and funding support.

Conclusions

Existing evidence on differing frameworks for criminalizing and regulating sex trade demonstrate how laws and policies can facilitate better health outcomes for sex workers while improving public health. The public health justification for criminalization and regulation is not supported by the weight of scientific evidence. Structural innovations to shift law and policy around the criminalization and regulation of sex trade merit further study, especially exploration of alternatives to subjecting individuals to criminal punishment. While decriminalization itself may not inherently eliminate stigma, marginalization, violence and victimization of sex workers, evidence suggests that decriminalization as a key structural intervention has targeted advantages. By removing criminal liability from the picture, approaches that seek to integrate sex workers into society can advance both human rights and labor rights of communities made vulnerable by multiple systems

of oppression.⁵⁷ The state can serve to protect sex workers' legal rights and facilitate access to culturally appropriate health services and safer working conditions. Additionally, decriminalizing the sex trade does not equate to decriminalizing pimping and sex trafficking, which are illustrative of coercive actions exacted by third parties and are illegal across the globe. While the use of criminal laws is a powerful tool available to public health entities, generally, public health is better facilitated on the basis of consent rather than through the use of coercive threat.

Full references may be found [here](#)