

# Sex Worker Criminalization in the United States

A landscape analysis of the criminalization health effects on the sex worker population in the United States.

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## Executive Summary

In the United States, sex workers are often neglected as communities of need. The current structure of criminalization of sex work has created an environment that perpetuates poor outcomes for those who exchange sex. Sex workers face a variety of health risks from discrimination in laws, law enforcement and healthcare access. Health stressors from fear of prosecution and financial hardship lead to chronic stress, increasing their chances for development of other chronic health conditions and mental health issues. While not all sex work looks the same, many of the same criminalization laws effect the social determinants of health on this community. Sex work is defined as the exchange of sex for money or goods, and can be seen through peep shows, strip clubs, brothels, escorting, telephone sex, online camming, pornography, professional domination, street work, and more. The differences in sex work may come with different legal and health harm risks. Often the sexual health outcomes some sex workers face, such as STIs and HIV transmission, are treated as a necessary factor to their occupation, rather than focusing on the various legal and social pressures that can increase these outcomes. HIV risk drivers in street-based sex workers environments are common where they might face substance use disorders, unprotected sex, and housing insecurity. Notably, many of these risk drivers are driven by criminalization, including police behaviors, that causes harassment and violence by not allowing sex workers to make choices that would be better for their safety and health.

The 2018 law known as FOSTA-SESTA, placed pressure on online platforms to censor their users, leading to the end of many websites that sex workers used for income, a resource to communicate among each other, and to screen potential clients for business. The passage of this law forced many sex workers to turn to street-based sex work without precautionary measures, leaving them more vulnerable to harmful circumstances with violent clients, and lack of agency with a variety of prophylaxis. Sex workers have reported loss of income, reduced harm reduction tools, lack of community space, difficulty accessing Pre and Post-Exposure Prophylaxis (PEP and PrEP), inaccessible financial technologies due to FOSTA-SESTA, and an increased fear of future financial barriers.

Criminalization of sex work does not occur in a vacuum, and its effects are amplified by co-occurring structural inequities in the communities in which sex workers live. Criminalization of sex work causes another layer of fear and anxiety for those who are also criminalized for their lack of housing, and those who use drugs. These communities overlap, and all the laws that surround them amplify their inability to choose to make decisions that would produce better health outcomes. The reversal of FOSTA-

SESTA has been seen as a necessary step in addressing the specific health inequities sex workers face. Due to the nature of criminalization of sex work in the United States, much of the needed data to show the harm laws such as FOSTA-SESTA cause, are not available. It is critical to support the movement of legislation, such as The Safe Sex Workers Study Act, that would study the health effects of such legislation on the sex worker community, to support repeal FOSTA-SESTA, and move away from criminalization that harms our populations.

## Sex Worker Health and Environment in the United States

### Overall health risks

Many of the risks sex workers face to their health and well-being can be traced to secondary factors rooted in their marginalization within the laws and social structures of the United States. While laws and discrimination, from law enforcement, healthcare, and other members of society, do not explicitly restrict sex workers from access to healthcare and other services that are beneficial to their overall health, they can be a deterrent for many.

- Decriminalize Sex Work has reported such laws as Loitering for the purpose of prostitution are found in many states, and allows for perceived intent to sell sex to stop and frisk sex workers, many trans-women and women of color.
- The Center for HIV Law and Policy shows that HIV criminalization laws, that seek to punish alleged exposure, non-disclosure, or transmission of HIV, can cause avoidance of STI screening and treatment due to fear of healthcare providers and prosecution.

While much of the data around sex workers' health has to do with their sexual health risk, some global research has shown increased maternal morbidity and mortality among sex workers who were forced by their pimp to work throughout their pregnancy (Willis et al.). This similar risk from being forced to work through pregnancy was seen to increase risk onto their children due to a lack of prenatal care that may result in HIV, congenital syphilis, and fetal alcohol syndrome (Willis et al.). The linkage to fetal alcohol syndrome is seen by substance use reported by many sex workers due to the nature of the job where safety and security is not ensured. Many of the stressors sex workers face are from financial hardship and fear of prosecution. When sex workers are trying to provide for themselves, and often their children, in a criminalized environment, this leads to high levels of stress that can increase the risk for anxiety, depression, and substance use disorder (Reed, Anna).

**Sex workers frequently have complex social needs and structural determinants such as insecure housing, unemployment, adverse childhood experiences, gender and racial inequality, poverty, sex work criminalization, and the settings of sex work, all of which can contribute to development of significant mental health issues that lower their quality of life and require care from a mental health professional (Johnson et al.).**

Young transgender women often choose sex work due to discrimination in the general workforce and for higher wages but have been seen to have high occupational injuries such as anxiety and depression, as well as various criminalization experiences (Fisher et al.). Unfortunately, mental healthcare is unattainable for many in the United States, with sex workers facing additional barriers to connect with many health services due to being unaware of available services, fear of legal

implications from being identified as a sex worker, and past experiences of judgment from healthcare professionals (Burnette et al.).

Previously sex workers have utilized online platforms to share resources, build community, but changes to laws in the United States that restrict resources for those in the sex trades, restricts these platforms, leading to further isolation (Torres-Berrio et al.). Currently it has been up to sex workers, the LGBTQ+ community, and even sites such as domestic violence shelters to support their own community through therapy, and other assistance.

### Sexual health risks

Sexual Health outcomes are related to access to preventative services, education, prophylaxis, and the ability to use harm reduction techniques. Poor sexual health outcomes are not inherent to sex work but are an effect of the criminalized and stigmatized environment surrounding sex work.

Not all sex work is the same and can take a multitude of forms such as online live camming, pornography, dancing, and street-based sex work. With the variety of sex work, sexual health risks are different for some, but most of the health risks discussed in this review are surrounding street-based sex work. While there is a large information-gap with overall health and sexual health risks sex workers have due to criminalization laws, we know that they are a group that is at higher risk of contracting HIV ("HIV Risk Among Persons...").

While sex workers of all identities, such as transgender women and men who have sex with men (MSM), experience sexual-based harms, much of the data available is primarily focused on cis-female sex workers. Importantly, violence among all women, in all its forms, has poor impacts on health and outcomes, and is seen by partners and enforcement of laws. **Within sex workers, LGBTQ+ female sex workers are more likely to engage in sex work, but also experience disproportionate structural vulnerabilities, such as housing insecurity and violence, leading to higher HIV risk outcomes than heterosexual female sex workers (Glick et al.).** Other vulnerabilities and HIV risk factors in sex work, are driven by criminalization such as police-perpetrated harassment and violence (Sternersen et al.), and the inability to access drug treatment, poverty, and discrimination (Goldenberg et al.).

HIV risk drivers in sex work are seen in high-risk behaviors such as unprotected vaginal sex, unprotected anal sex, and injection drug use. Drug use is versatile and has been seen to come as a coping mechanism for some sex workers to stay awake or continue to do the work. This causes a relationship where street-based sex work and drug use work may work in unison and begin a cycle of using drugs to be able to sell sex, and selling sex to provide for the substance use, which can result in choosing higher paying sexual activities such as unprotected sex (Cleland et al.). An often neglected fact is how housing insecurity is associated with sexual and physical victimization, substance use, worsened mental and physical health, HIV infection risk, and HIV outcomes (Pyra et al.).

Discrimination and stigma is also an important factor that leads to further poor social determinants of health for sex workers. Sex workers' overall structural vulnerability reflects their often-combined marginalization from their communities and results in added sexism, homophobia, racism, and more, that restrict their own agency and health outcomes (Brantley et al.).

As mentioned, many of these increased health risks are tied to street-based sex work, and is permeated by police harassment, harm from clients, inability to report crimes, and lack of agency on

harm reduction choices such as condom use or prescreening of clients. Many of these outlined risks above are consequences of sex workers being criminalized for their voluntary decision to choose this occupation.

**Analyses of the association of sex workers health and sex work laws has shown that the threat of police harassment and arrest of sex workers or clients, displaces sex workers into isolated spaces, disrupts support networks and services, and limits risk reduction opportunities, such as negotiation power around, performing different sexual acts, prophylaxis use and more (Platt et al.).**

Police presence around sex workers in criminalized spaces creates areas where there is a lack of agency for sex workers to make choices that would support their overall and sexual health and can lead to sex workers to avoid carrying condoms or feel that they do not have the time to negotiate condom use (Anderson et al.). These effects of policing also disproportionately affect transgender, migrant, and drug-using sex workers (Platt et al.).

## Sex Worker Criminalization & FOSTA-SESTA

### General Criminalization

Currently in the United States, prostitution, the act of exchanging sexual activity for money, is prohibited in almost all states. In Nevada, it is legal in specific counties, and to a limited extent in California and New Hampshire, where there are exceptions around the filming of pornography (“Criminal Prostitution Law”). At this moment, regulation around prostitution/selling of sex, is decided at the state level.

Recently in June 2023, Maine became the first state to decriminalize selling sex. This new law in Maine focuses on decriminalizing sex workers but still leaves the buying of sex illegal, harming potential income for sex workers. Hawaii recently differentiated buyers and sellers in law, although they both remain illegal (Heal, Alexandra). New York, Massachusetts, and Vermont have considered measures that would adopt either the “Nordic model” or full decriminalization (Heal, Alexandra).

When discussing the harms towards sex workers’ health, many street-based sex workers impacted by poor health decisions due to criminalization of sex work. Before 2018, many sex workers used Backpage, a classified website in which sex workers could find and screen clients, to provide safety for themselves, and avoid street-based work (Reed, Anna).

### FOSTA-SESTA

In April 2018, Backpage was shut-down by U.S. federal authorities and Public Law 115-164, better known as *FOSTA-SESTA*, became US law (Blunt et al.). The goal of this amendment to Section 230 of the Communications Decency Act, was to hold internet platforms accountable for the information shared by their users, but alternatively placed pressure for platforms to censor their users (Blunt et al.). The pressure has led to not only the end of websites like Backpage, but has provided a pathway for other websites and institutions to discriminate against Sex Workers.

For many sex -workers, the end of Backpage changed how they were able to create safer choices for their occupation. With the passage of *FOSTA-SESTA*, many sex workers were forced to return to street-based sex work to find clients, leaving them vulnerable to increased harm that can be avoided with

prescreening and other forms of sex work. Many sex workers felt that the law incorrectly associated the choice to voluntarily exchange sex with sex trafficking, and used sites that were helping to improve the conditions for sex workers as scapegoats for sex trafficking harbors (Blunt et al.).

**The effects of *FOSTA-SESTA* have been reported by sex workers as a loss of income, reduced harm reduction tools, lack of community space, and inaccessible financial technologies. A survey of sex workers was conducted, which included 98 responses online and 38 from in-person distribution to street-based sex workers, and showed that for most respondents, sex work was their main source of income, with half reporting sex work as their only income (Blunt et al.). After April 2018, three-quarters of respondents reported increased economic hardship, with a quarter reporting a loss of complete income.**

Online platforms before *FOSTA-SESTA*, allowed sex workers to utilize harm reduction in their occupation, by adopting digital security methods to stay safer, as sites existed to review clients, where they could flag for violence, non-payment, and connections to law enforcement (Blunt et al.). These “bad-date lists,” provided a safety net for sex workers, to avoid criminalization but also harmful clients, but alongside Backpage, websites like these, and sites like VerifyHim, were taken down with the passage of *FOSTA-SESTA*. These sites and other sites connected a community of sex workers together to provide the safety no one else was able to provide. Online spaces allowed shared resources, increased community discussion and resilience, and advertisement services for sex workers. By shutting down these sites, *FOSTA-SESTA* also removed perhaps the best support that sex workers had for protecting themselves and has potentially worsened mental health outcomes in these marginalized and criminalized communities (M Lucassen et al.).

**Sex workers have also reported a secondary effect of *FOSTA-SESTA* to be increased inaccessibility to financial technologies, causing further income hardship. The law allowed sites to push sex workers off platforms for vague violations, making them at risk for losing access to their money and their community. This created inequitable access to new technologies and resulted in a third of sex worker survey respondents to report being kicked off a payment processor (A Lake et al.).**

A major player in pushing for the passage of *FOSTA-SESTA* was Mastercard, and helped in defunding Backpage by denying credit card payments on the site, directly reducing income to many sex workers, and later restricting their autonomy in their occupation (Reed, Anna). Mastercard claims that these policies aim to reduce nonconsensual sexual content on all websites, when they ultimately threaten the safety and health of sex workers. The passage of *FOSTA-SESTA* started a chain reaction for other private entities to discriminate against sex workers, resulting in Onlyfans and Visa attempting to take steps to restrict sex workers. Onlyfans, a website used for all payment-based content, announced in August 2021, that it would ban all adult content due to pressure from its banking partners; although this was later retracted, this caused major anxiety among online-based sex workers, who relied on the income and security of the website (Reed, Anna). Visa, alongside Mastercard as the other largest banking institution in the United States, has made steps to restrict adult content by terminating its contract with Pornhub.

These pushes to limit banking and financial transactions for sex workers cause harm by limiting access to basic resources. Without a significant reforms sex workers will continue to be restricted online and be forced to work in street-based sex work, where measures for safety are constrained. There is increased risk for long-term health risks for sex workers when living in fear of losing their income from previously reliable companies such as Onlyfans, and compounded stressors due to daily fear from

criminalization and violence; sex workers high levels of stress can lead to serious health consequences.

Criminalization of sex work does not occur in a vacuum, and its effects are amplified by co-occurring structural inequities impacting the communities in which sex workers live. Criminalization of sex work causes another layer of fear and anxiety for those who are also criminalized for their lack of housing, and those who use drugs. These communities overlap, and all the laws that surround them amplify their inability to choose to make decisions that would produce better health outcomes.

## Next Steps

### Decriminalization

Decriminalization is the act of removing laws that criminalize behaviors such as sex work/prostitution, HIV status, and drug use. Criminalization of behaviors does not stop the behaviors and identities do not prevent the behavior but rather restrict those communities' ability to protect themselves from harmful situations. While there are currently no laws introduced federally to provide decriminalization of sex work in the United States, some states such as New York, have begun to provide discussions and introduce legislation. The Stop Violence in the Sex Trades Act has been introduced now for the third time in New York State, that would decriminalize sex work in the state, while upholding felony anti-trafficking statutes to hold people who seek to buy sex from minors accountable ("Decrim NY: Stop Violence in the Sex Trades Act"). This bill would also allow sex workers to apply for criminal record relief/expungement for crimes they were previously convicted of that would be repealed by the law.

Many countries have begun to implement levels of decriminalization, legalization, or regulation of sex work, such as Sweden, Norway, France, The Netherlands, and New Zealand. *The Center for Health and Gender Equity* has reported that full decriminalization of sex work is supported by the World Health Organization, UNAIDS, Human Rights Watch, and other organizations that focus on vulnerable populations and victims of human trafficking. A full decriminalization model, is a policy supported overwhelmingly by those in sex work, and could be the push to promote safety and cautionary measures, while allowing sex workers to protect themselves without fear of prosecution (Bobashev et al.).

### Reversal of FOSTA-SESTA

In March 2022, Senators Elizabeth Warren (D-MA) and Ron Wyden (D-OR), and Representatives Ro Khanna (D-CA-17) and Barbara Lee (D-CA-12), last reintroduced the Safe Sex Workers Study Act. This Act would direct the Department of Health and Human Services (HHS) and the Department of Justice to conduct the first federal study on the impact FOSTA-SESTA has had on sex workers ("Senator Warren...Introduce Safe Sex Workers Study Act"). This would be a landmark study that would work with the National Institutes of Health, Centers for Disease Control and Prevention, and the Substance Abuse and Mental Health Services Administration to report to Congress on FOSTA-SESTA's impact on human trafficking in the United States ("Senator Warren...Introduce Safe Sex Workers Study Act").

Notably, the bill was introduced after the Government Accountability Office found that FOSTA-SESTA had never been used by federal prosecutors to seek criminal restitution for victims of sex trafficking, and instead made websites legally liable for content that facilitates prostitution, making it more difficult to investigate and prosecute sex trafficking cases ("SEX TRAFFICKING Online Platforms and Federal Prosecutions"). The bill was drafted by sex workers, LGBTQ+ advocates, sex worker rights

organizations, HIV/AIDS advocacy groups, and organizations that support sex workers and sex trafficking victim (“SEX TRAFFICKING Online Platforms and Federal Prosecutions”). Due to the nature of criminalization of sex work in the United States, much of the needed data to show the harm laws such as FOSTA-SESTA cause, are not available. The Safe Sex Workers Study Act is a necessary first step in reducing the harm criminalization causes on sex works in the United States.

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