

Improving Laws and Policies to Protect Sex Workers and Promote Health and Wellbeing

A REPORT ON CRIMINALIZATION OF SEX WORK
IN THE DISTRICT OF COLUMBIA



From the Whitman-Walker Institute, the O'Neill Institute for National and Global Health Law, and HIPS

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Executive Summary

The District of Columbia has made significant investments in reducing violence and improving community health. DC implemented violence interruption programs and accountability mechanisms, reformed policing and trained in cultural competency, and increased access to health insurance for vulnerable communities of immigrants and homeless people. Despite their continued prioritization, violence and infectious disease continue to be major public health challenges, especially for DC's Black and LGBTQ communities. There is considerable evidence from public health researchers that criminalization of sex work contributes to community violence, propagates crime, blocks access to public health resources, is an ineffective deterrent to participation in sex work, and is deeply harmful to sex workers.

Whitman-Walker Institute, the O'Neill Institute for National and Global Health Law, and HIPS collaborated on this research project and report to examine the impact of laws and policies on sex workers in DC and identify recommendations for lawmakers and law enforcement. Three focus groups with 27 sex workers and individual interviews with 13 DC institutional stakeholders were conducted in 2017. Focus group participants were almost all Black transgender women and gay or bisexual men. Community focus group participants and individual institutional stakeholder interviewees discussed the motivations and reasons people have for engaging in sex work (including limited options for housing and employment), priorities for addressing the health needs of and violence against sex workers, sex workers' experiences

with police and the criminal justice system, the consequences of arrest and incarceration in connection with sex work, and needed legal and policy reforms in DC.

This research found that

- Legal and policy reforms are needed to improve the health and wellbeing for sex workers.
- DC prostitution laws are not successful at stopping sex work because people rely on sex work for survival and for access to money, housing, and other necessities.
- Harassment, violence, and coercion by the police and others in the community against sex workers are facilitated – indeed, encouraged – because sex workers are criminalized.
- Sex work is different from trafficking, but criminalization of sex work allows exploiters to use the threat of arrest to control and traffic their victims.
- DC laws stigmatize sex workers, and stigma creates barriers to accessing HIV care and prevention, regular medical care, community programs, and other services. These barriers act to trap sex workers in cycles of poverty and homelessness.

The quotes below are illustrative of the data captured from community focus groups and institutional stakeholder interviews:

QUOTES FROM COMMUNITY FOCUS GROUPS:

“It’s survival to me. That’s what makes me want to do sex work because I don’t like asking people for money.”

“The impact of arrests is you lose everything.... Like but when I came home I lost everything—family, money, whatever clothes I had. I had to start all over.”

QUOTES FROM INSTITUTIONAL STAKEHOLDERS:

“You get caught in this cycle and it prevents you from being able to access health care. It prevents you from being able to access a job. And so, you are both stigmatized but you are also left in a position where you don’t have the tools to get yourself out”

– Nassim Moshiree, Policy Director, ACLU of DC

“It’s a real challenge, I think, for people in the sex trade to be able to report any instances of violence.”

– Yasmin Vafa, Executive Director, Rights4Girls

The findings point to four policy actions that can yield significant improvements in health and wellbeing:

1. Reform the criminal code of the District of Columbia to eliminate criminal consensual commercial sexual exchange between adults.
2. Increase access to affordable housing.
3. Expand resources for job training and employment programs.
4. Strengthen efforts to address discrimination against lesbian, gay, bisexual, transgender, and queer (LGBTQ) people.

Introduction

This report was prompted by a need to understand how Washington, DC's laws and policies governing prostitution and solicitation impact the health of marginalized communities.¹ This report is informed by the results of the community-based research conducted by the Alliance for a Safe and Diverse DC in 2008² and the DC Trans Coalition in 2015.³ The earlier work addressed the lack of research on the impact of policing and criminalization of sex work on sex workers and transgender women stereotyped as sex workers.⁴ These community-based research projects identified that the laws on prostitution in DC create barriers to HIV prevention and care for transgender women and gay and bisexual men, and contribute to violence and discrimination against sex workers and those stereotyped as sex workers.

This report places significant focus on the laws, policies, and practices in DC and is intended to inform policy makers. The research explores the mechanisms of criminal laws and police enforcement practices identified by earlier work. The DC Council and the Metropolitan Police Department (MPD) are identified as active policy makers, and our recommendations focus on policy changes in DC and within MPD that can improve the health and safety of sex workers. The report identifies how the government can actively promote better health outcomes, in particular through reducing violence and reducing HIV infection for Black transgender women and gay and bisexual men who engage in sex work.⁵

OVERLAPPING CRISES

The District of Columbia is home to vibrant lesbian, gay, bisexual, transgender, and queer (LGBTQ) and Black communities, containing disproportionate numbers of each due to the District's history and reputation as a haven of civil rights for marginalized people.⁶ Unfortunately, LGBTQ and Black communities in D.C. are experiencing twin crises of violence and HIV, and Black LGBTQ people are most impacted. Bias motivated crimes are on the rise in DC, and most of these crimes are targeted at LGBTQ and Black people (see table on this page).⁷ Young, Black gay and bisexual men accounted for 42% of new cases of HIV among young gay and bisexual men in the United States in 2018.⁸ A 2015 needs assessment conducted by the DC Trans Coalition sheds light on the impact of HIV and violence on the lives of transgender women in DC. Compared to 2.5% of the general population of DC residents, 20% of transgender respondents reported living with HIV, and 43% of transgender respondents who had engaged in sex work reported living with HIV.⁹ Rates of HIV acquisition are higher for transgender women who engage in sex work compared to those who do not. While nearly one third of transgender women in DC report having HIV, almost three quarters of transgender

Motivations and Numbers of Hate Crimes in Washington, DC in 2018

Sexual Orientation	61
Race	39
Ethnicity	36
Gender Identity	33
Religion	25

LEADING WITH RACE

Improving laws and policies for sex workers is a matter of racial justice. Nearly all of the sex workers who participated in this project identified as Black. Due to social and economic factors in addition to discrimination in the criminal justice system and other areas, Black people are vastly overrepresented in the sex work population and often face arrest and incarceration. While Black people account for 13% of the population in the United States, nearly 40% of adults and 60% of youth arrested for prostitution in 2015 were Black. Black women, especially Black transgender women, are more likely to engage in sex work and to be arrested and incarcerated for sex work-related offenses. In the United States, 28% of Black transgender people who responded to the 2015 U.S. Transgender Survey (USTS) participated in sex work in their lifetimes, compared to 20% of all transgender people in the USTS sample, and Black transgender women represented a disproportionately high percentage of those who participated in sex work. In comparison, 1% of cisgender women in the United States report engaging in sex work. In the District of Columbia, transgender people have even higher rates of sex work participation with greater racial disparities. Over one third of respondents to the 2015 DC Trans Needs Assessment reported engaging in sex work in the past, and transgender women and transgender people of color were more likely to have a history of sex work than other transgender people. Notably, over half of Black and Hispanic transgender people had a history of sex work, compared to 12% of White transgender people.

Policing and criminalization of sex work are ways in which Black people are subjected of racial profiling, police violence, and mass incarceration. Black transgender women are particularly vulnerable. It is critical that we address the root causes of vulnerability. To do so, we must listen to Black people and place the experiences and needs of Black transgender women at the center of conversations about legal and policy reforms for sex workers. This requires recognizing the importance of decriminalizing sex work as well as acknowledging that any interaction with police is not desirable for most sex workers who are Black given histories of mistreatment by law enforcement. Beyond criminal justice issues, access to housing, employment, education, and health care are also important to Black people and other people of color who engage in sex work. Policy action is needed to address various forms of structural racism and oppression that sex workers experience.

Sources:

- (1) Federal Bureau of Investigation, Arrests by Race and Ethnicity, CRIME IN THE UNITED STATES tbl. 43 (2015), <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-43>.
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- (3) Elijah A. Edelman *et al.*, Access Denied: Washington, DC Trans Needs Assessment Report, DC TRANS COAL. (Nov. 2015), <https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf>.
- (4) Prostitutes' Education Network, Prostitution in the United States - The Statistics (2007).

people with a history of sex work in DC report having HIV.¹⁰ Meanwhile, nationwide, only about 3% of transgender people at high risk for HIV infection are taking pre-exposure prophylaxis (PrEP), a pill that, when taken as prescribed, reduces transmission of HIV by more than 96%.¹¹

While data collection and reporting on transgender communities are incomplete, conservative calculations from 2015 estimate that the murder rate for transgender women is 4.3 times higher than the murder rate for women in the general population.¹² Recent research on the impact of structural interventions on public health indicates that decriminalization of sex work has the potential to reduce violence and significantly lower rates of HIV transmission.¹³

Gay and bisexual men and transgender people disproportionately engage in sex work due to employment discrimination.¹⁴ To get a measure of the extent of anti-trans bias in hiring, the DC Office of Human Rights conducted a resume study and found that, 48% of the time, DC employers prefer a less-qualified cisgender applicant over a more-qualified transgender applicant.¹⁵

This research finds that the violence and disease in DC's Black and LGBTQ communities are attributable to the vulnerability that arises from stigma and bias. A review of the literature finds that an international community of public health researchers and practitioners believe that efforts to combat violence and disease are more effective when they address the underlying structural forces that contribute to stigma and bias, forces which disproportionately affect people in marginalized communities.

Background

A SOURCE OF VULNERABILITY

The growing international consensus is that the criminalization of sex work erects barriers to health, limits access to legal systems, stigmatizes, and exacerbates racial disparities.

The United Nations' Human Rights Council¹⁶, Amnesty International¹⁷, the Global Alliance Against Trafficking in Women¹⁸, Freedom Network¹⁹, and Human Rights Watch²⁰ critique the criminalization of sex work from a human rights perspective. Sex workers are unable to access the protective features of legal systems because of their participation in criminalized work. A human rights analysis reveals that criminalization submits sex workers to a paradox by creating violent social conditions and cutting off access to resources to ameliorate that violence.²¹

The World Health Organization²², UNAIDS²³, the UN Special Rapporteur on the Right to Health²⁴ identify that the criminalization of sex work propagates stigmatizing messages about sex work. Stigmatization of sex work, LGBTQ people, and people living with HIV directly contribute to elevated rates of HIV transmission in priority populations.²⁵

The Black Lives Matter²⁶ movement, in addition to the international organizations listed above, critiques criminal laws around sex work as discriminatory against marginalized groups. Laws criminalizing sex work have resulted in the disproportionate incarceration of Black and Brown people, immigrants, and LGBTQ people.²⁷ Arrest, incarceration, and criminal records are

additional burdens for members of communities that already experience discrimination in employment, housing, education, and health care.

This research focuses on the experiences of community participants as sex workers, but their identities and relationships are multifaceted and complex. Sex workers are parents, children, spouses, renters, friends, and taxpayers. The human rights approach critiques criminalization of sex work as isolating sex workers by criminalizing the economic transactions that go along with it, including paying rent, a driver, a security guard, or a babysitter.²⁸ The human rights community and the public health literature recognize that an approach to reform that allows sex workers to organize and advocate collectively is more effective. Research on collectivists projects find that they are safer and healthier; reporting increased condom usage and reductions in client and third-party violence.²⁹

THEORIES OF CRIMINALIZATION

Sex work is criminalized under a theory that the criminal and social consequences of operating in the sex trades will prevent and deter people from engaging in sex work. Some policy makers justify these laws with moral or religious beliefs that condemn sex work as inherently immoral or the belief that sex work is so exploitative of women that no woman would freely choose to engage in it.³⁰ Other justifications are that sex work is associated with organized crime, gambling, and illicit drugs and is socially undesirable in its own right or because it “spreads” disease and crime.³¹ Some believe that sex work must be criminalized because law enforcement needs to arrest sex workers to stop

human trafficking, or that all sex work is coerced and therefore sex work is indistinguishable from sex trafficking.³²

CURRENT LEGAL LANDSCAPE

States and cities have the power to legislate around sex work. Sex work is criminalized throughout much of the United States. Aside from a few counties in Nevada, selling or buying sexual services in the United States is a criminal offense that results in fines and jail time. Other states laws adopt “prostitution” and “solicitation” prohibitions to limit exposure to negative externalities of sex work like public visibility of sex workers or their clients.³³

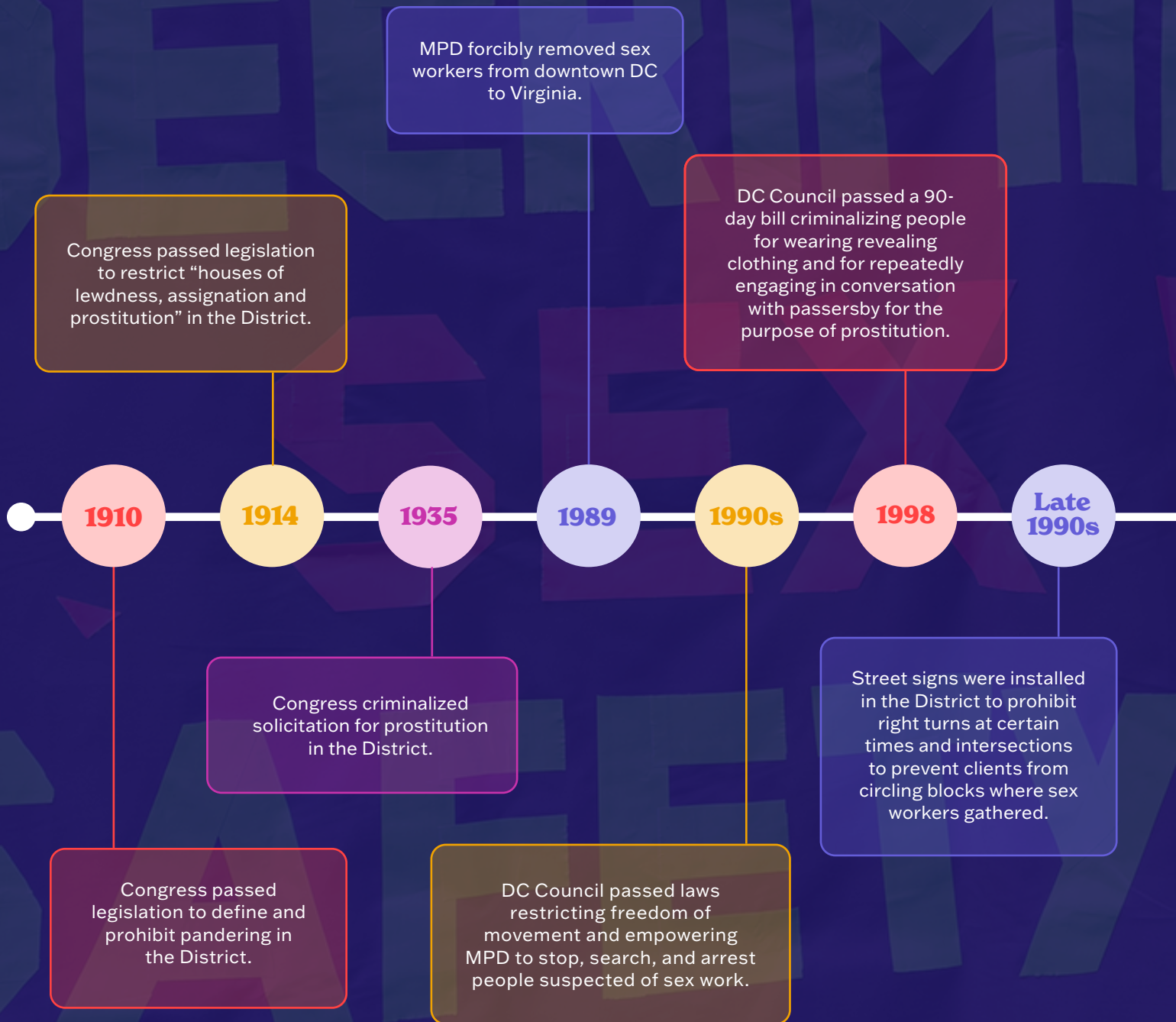
Local Laws and Advocacy Efforts

The District of Columbia currently criminalizes engaging in or soliciting prostitution. Washington, DC imposes penalties ranging from a maximum fine of \$500 and 1 to 90 days in jail for a first offense, to a fine of \$1,000 and 1 to 180 days of imprisonment for the third offense.³⁴ Acts and behaviors that are criminalized under the District’s prostitution laws are found in DC Code §§ 22-2701 – 22-273. Criminalized acts include the following:

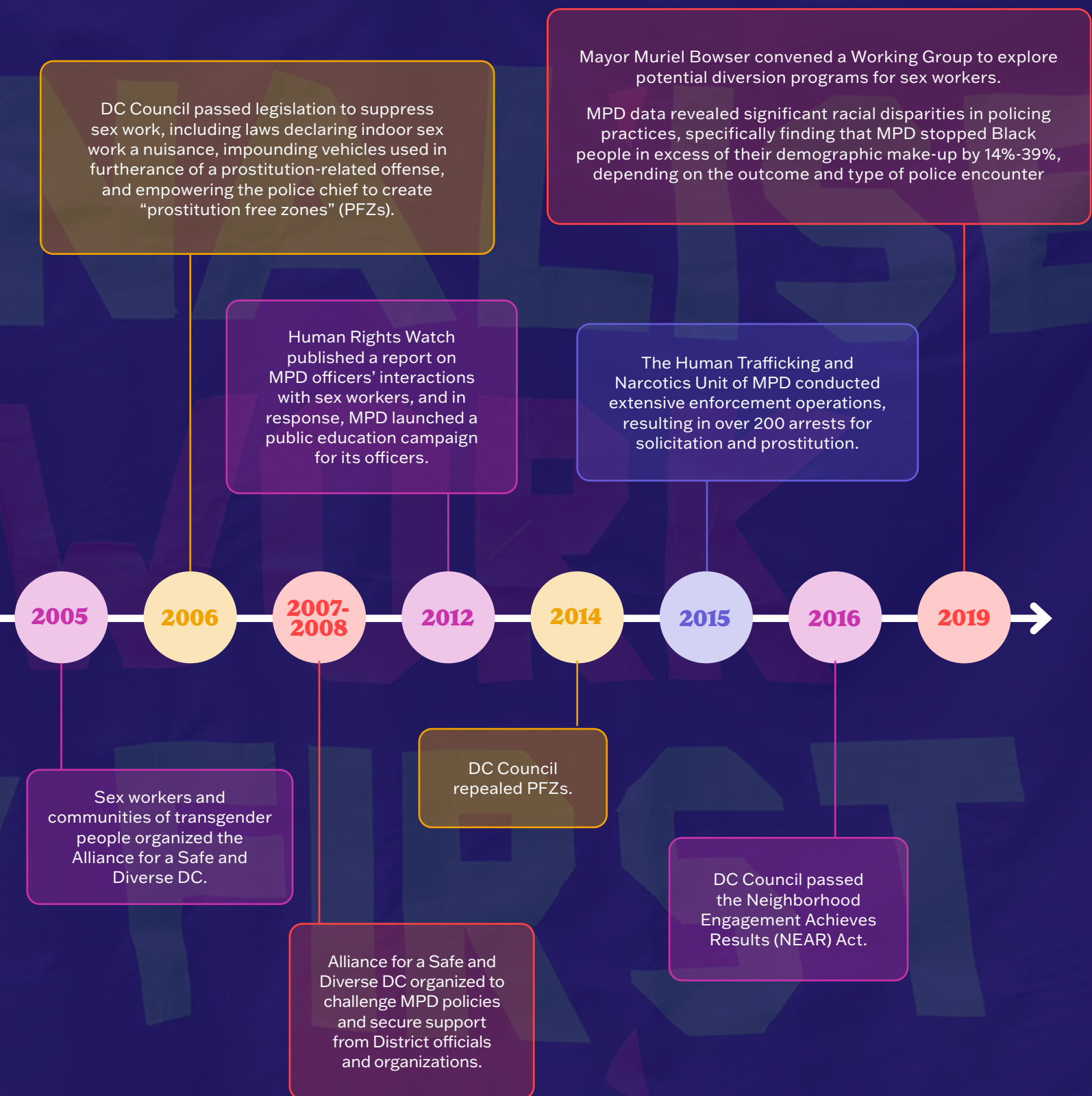
- Prostitution, defined as performing a sexual act or contact with another person in return for giving or receiving anything of value;
- Soliciting for prostitution;
- Arranging for prostitution, pandering, or procuring;
- Operating or keeping a “house of prostitution” or a “disorderly or bawdy house”; and
- Coercive, non-consensual activities and activities involving minors.

TIMELINE OF DC'S PROSTITUTION POLICIES

DC's prostitution laws and policies have changed throughout the years, often following cultural shifts and sustained advocacy.



Note: See Appendix A for a narrative of this historical timeline with greater details



Note: See Appendix A for a narrative of this historical timeline with greater details

Neither sexual activities involving coercion nor minors are the subject of this research.

Presently and in this report, MPD characterizes its enforcement tactics as consisting of two actions: responding to requests of neighborhood residents complaining about the presence of sex workers around the District³⁵ and sporadic sting operations targeting street and hotel-based sex workers. MPD sting operations have come under scrutiny. Investigative reports find that undercover operations fail to arrest traffickers and subject sex workers to sexual contact by officers, tactics which are unnecessary to meet the legal standard for arrest.³⁶ There have been reports of MPD officer misconduct and reports of harassment, extortion, and assault of sex workers by law enforcement officers in the District and surrounding jurisdictions.³⁷

Advocacy and education by the DecrimNow DC campaign built around the efforts to pass a decriminalization bill, the Reducing Criminalization to Promote Public Safety and Health Amendment Act of 2017 during the 22nd legislative session and the Community Safety and Health Amendment Act of 2019 during the 23rd legislative session. The 2019 bill would decriminalize consensual commercial sexual exchange involving adults, repeal portions of the criminal code criminalizing places of sex work, and heighten the standard for consent for cooperation between sex workers.³⁸ The advocacy around this effort resulted in a 14-hour Judiciary Committee hearing in October 2019. HIPS and Whitman-Walker are supporters of this campaign and testified in favor of the bill during a 2019 committee hearing.



Source: Screen Capture, *The Community Safety and Health Amendment Act of 2019: Hearing on Bill 23-0318*, Council of the District of Columbia (October 17, 2019) (Forefront from left: HIPS Staff members, T. Spellman, A. Bradley, J. Martinez, testify in support of the bill and billionaire S. Hunt testifies against the bill while council members and staff look on), http://dc.granicus.com/ViewPublisher.php?view_id=44.

Additional calls for reform came from the Black Lives Matter protests sparked by the death of George Floyd on May 25, 2020. Ongoing, nationwide protests against police violence reached a crescendo in the summer of 2020. In DC, protests called for decreasing the MPD budget, greater police accountability, and greater investments in community supports. In response to advocacy and activism in DC, the DC Council introduced the Comprehensive Policing and Justice Reform Amendment Act of 2020 on July 31, 2020.³⁹ The legislation is primarily a series of reforms to increase transparency and accountability around use of force by police. The bill would introduce reforms to MPD hiring and training practices, enhance access to the vote for people in prisons and jails, and repeal a DC law that criminalized an officer for neglecting to make an arrest when a crime is committed in their presence. It is unclear whether these reforms will pass the Council or how much or how quickly these reforms would affect MPD practices and the material conditions of DC's sex worker and transgender communities. While Chief of Police Peter Newsham has characterized the MPD as being engaged in reform for the past two decades,⁴⁰ there appears to be resistance to the new reforms from within the MPD. For example, on August 10, 2020, the DC police union, which represents the approximately 3,600 MPD officers, filed a lawsuit seeking to block the release of body-camera footage.⁴¹

Federal Laws

The federal government's powers are restricted by constitutional limits. The federal government has passed laws targeting criminal enterprises that cross state lines under the power of the

Commerce Clause.⁴² Recent federal laws include the Trafficking Victims Protection Act of 2000, which provides additional tools for investigating and prosecuting human traffickers,⁴³ and the Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act (FOSTA-SESTA), which allows website owners to be held liable for transactional sex facilitated on their websites.⁴⁴ Even before FOSTA-SESTA was enacted, the federal government took numerous actions to shut down websites used by sex workers, including MyRedbook.com in 2014, **Rentboy.com** in 2015, and **Backpage.com** in 2018. Fear of increased liability from FOSTA-SESTA and federal enforcement caused Craigslist, Google, and others to remove portions of their sites most often used by sex workers.⁴⁵ FOSTA-SESTA is criticized for making sex work less safe by curtailing the ability to negotiate and screen clients beforehand.⁴⁶

At the time of publication of this report, Congress is considering another bill aimed at regulating content on the internet, the Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2020 (EARN IT).⁴⁷ Like FOSTA-SESTA, EARN IT proposes to expand criminal and civil liabilities for internet services based on user-generated content.⁴⁸ The bill has received criticism from supporters of internet freedom for enlisting private companies to proactively search and censor their content, which restricts speech without recourse or appeal.⁴⁹ The EARN IT Act, if passed, is likely to make it more difficult to sex workers to operate in online spaces, exacerbating many of the harms of FOSTA-SESTA (see Text Box).

FOSTA-SESTA HARMS SEX WORKERS

The Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA), known together as FOSTA-SESTA, became federal law on April 11, 2018. While FOSTA-SESTA ostensibly focuses on curbing sex trafficking on online platforms, there is little evidence that the law has actually reduced sex trafficking, even as it has vastly expanded liability for all online platforms, including those that host content related to consensual sex work. Not only does FOSTA-SESTA allow law enforcement to pursue civil penalties against online platforms for “knowingly assisting, facilitating, or supporting sex trafficking,” but it also penalizes online platforms that “promote or facilitate prostitution.” As a result of this overbroad and unclearly written language, online platforms that host advertisements for sex workers, such as CityVibe, shut down, and websites such as Google and Craigslist eliminated large portions of their platforms that they feared could be in violation of the new law. In consequence, sex workers who used those platforms have been negatively impacted.

A major effect of FOSTA-SESTA is its elimination of a safety mechanism that sex workers greatly relied on, namely their ability to review and screen clients before in-person meetings. Research indicates that online platforms that allow sex workers to advertise, vet, and choose clients create safer work environments. Some online platforms even provided the opportunity for sex workers to screen clients for safety via peer references or “bad-date lists,” but these lists were mostly deleted because they could expose online platforms to civil liability under FOSTA-SESTA. With at least parts of online platforms shuttering due to FOSTA-SESTA, sex workers have been forced to find clients on the street, where they have fewer advance safety precautions in place and are more susceptible to violence. A study from Call Off Your Old Tired Ethics (COYOTE) found that following the passage of FOSTA-SESTA, sex workers reported a 28% drop in screening clients and reported taking more risks to access clients.

Additionally, FOSTA-SESTA has jeopardized the livelihood and financial security of sex workers. Online platforms offered a sense of stability and predictability in terms of financial income, but after FOSTA-SESTA was passed, respondents in one study of sex workers noted that their main source of income had now become more unstable. Some respondents in that study stated that they are now “always barely scraping by” or are now “...homeless and can’t pay the bills.”

Lastly, the implementation of FOSTA-SESTA has had a significant impact on the mental health and wellbeing of sex workers, mainly because of the law’s disruption of the online community and ability to connect with others. Online platforms are spaces to share resources and build community, but the new law has prevented sex workers from accessing these spaces and has contributed to increased fear and anxiety among sex workers.

Sources:

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- (2) Aja Romano, *A new law intended to curb sex trafficking threatens the future of the internet as we know it*, VOX (July 2, 2018, 1:08 pm EDT), <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>.
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- (5) COYOTE-RI Impact Survey Results 2018, SWOP-SEATTLE 1, 17, <http://www.swop-seattle.org/wp-content/uploads/2018/11/COYOTE-Survey-Results-2018.pdf> (last visited Oct. 15, 2020).
- (6) D Blunt & A Wolf, *Erased: The impact of FOSTA-SESTA and the removal of Backpage on sex-workers*, 14 ANTI-TRAFFICKING REVIEW 117, 118-19 (2020), <https://doi.org/10.14197/atr.201220148>.

Research on Protecting Sex Workers and Promoting Health and Wellbeing

RESEARCH METHODS

In December 2016, the O'Neill Institute, Whitman-Walker, and HIPS received a grant from the Elton John AIDS Foundation for this research project. The research project consisted of three focus groups with a total of 27 individuals, at least 18 years old, who had engaged in commercial sex work (exchanged sex for money or some other type of compensation) within the past two years, and individual interviews with 13 institutional stakeholders – DC police officials, other DC public officials, lawyers who represent sex workers in criminal proceedings, immigration attorneys, social service providers, and community activists who work with sex workers and sex trafficking victims. All research forms and protocols were approved by Georgetown University's Institutional Review Board (IRB), and all individuals involved in the facilitation of focus groups, interviews of institutional stakeholders, or review or analysis of data completed Georgetown University's human subjects research training.

Focus Groups with Community Participants

Two focus groups of individuals who disclosed that they had engaged in commercial sex work within the past two years were held at HIPS offices in Northeast DC on September 11 and September 25, 2017. Focus group participants were recruited by HIPS by word of mouth and venue-based recruitment at HIPS and Whitman-Walker's health centers. A third focus group was held at Whitman-Walker's health

center in Northwest DC on December 19, 2017; participants in that group were recruited by Whitman-Walker. A total of 27 individuals participated in the focus groups. Participants received lunch and each participant received \$50 in the form of a gift card at the end of the focus group. Individuals could participate in only one focus group. All three groups were facilitated by a Whitman-Walker researcher trained in qualitative research methodologies, with the assistance of staff from HIPS and the O'Neill Institute, following the written IRB-approved focus group protocol.

Prior to the commencement of each focus group, participants received written and oral explanations of the study and of their rights, and each participant signed a consent form. Each participant then met separately, in a private setting, with a researcher, who asked IRB-approved survey questions to the participant and recorded the participant's answers on a standardized form. The survey included questions about demographic characteristics, experience with sex work, history of arrest and incarceration, HIV and sexually transmitted infections (STIs), and access to health care. Appendix A contains a table of community focus group participant responses to survey questions. Participants' names were not recorded on the surveys, and during the focus groups, participants were advised to avoid referring to other participants, or others engaged in sex work, by name. Focus group discussions were taped, and the recordings were transcribed. The transcriptions were reviewed and the very few references to an individual participant's name were redacted. Formal focus group sessions lasted between one and one-half hours and two and a quarter hours.

Individual Interviews with Institutional Stakeholders

Institutional stakeholders were recruited jointly by Whitman-Walker, O'Neill Institute, and HIPS staff, with the aim of ensuring perspectives from across DC government, human services, and legal and public health officials. Individuals who agreed to interviews included; two officials of the DC Metropolitan Police Department (interviewed jointly at their request); officials of the DC Department of Health and the DC Office of Police Complaints; an elected Member of the Council of the District of Columbia and a member of his staff; an immigration attorney at Whitman-Walker and two attorneys at a nonprofit that represents sex workers in criminal and other cases; an attorney with the ACLU-DC; a community transgender activist; and two service providers and advocates for youth and victims of sex trafficking. Appendix B lists all interviewees. Interviews were conducted in person and lasted approximately one to one and one-half hours. Interviews were taped, and the recordings were transcribed. Institutional stakeholder affiliations are listed for context only and their comments do not necessarily represent the beliefs or policy positions of the entities listed. While some of the institutional stakeholders have changed roles, they are identified in this report by their role at the time the research was conducted.

Results from Community Focus Groups

The focus groups with members of the sex worker community consisted of a discussion of the following topic areas: (1) motivations and reasons for engaging in sex work, (2) experiences of engaging in sex work, (3) experiences with police and the criminal justice system, (4)

consequences of arrest and incarceration, and (5) views on reforming sex work criminal laws.

The following section discusses the major focus group findings in each of these topic areas.

Results from the focus group participant survey are included to provide a more comprehensive portrait of the topic areas and to supplement the focus group findings.

Participants ranged in age from 20 to 55 years old, with a majority in their 20s and 30s. All but one of the participants identified as Black. Two-thirds of participants were transgender women who identified as a range of sexual orientations, and 30% identified were cisgender men, all of whom identified as gay or bisexual. One participant was a bisexual, cisgender woman.

MOTIVATIONS AND REASONS FOR ENGAGING IN SEX WORK

Community participants noted various reasons for engaging in sex work. The most commonly reported reason for engaging in sex work was the motivation to earn a livelihood. All but one participant mentioned the need for money. A majority of participants (60%) reported that substance use was tied to their motivation for engaging in sex work. Specifically, sex work was a way to earn money to buy drugs. Many participants discussed their struggles with substance use and addiction, suggesting that these sex workers could benefit from behavioral health services. Substance use may also be a way of coping with stress and discrimination, including in the context of sex work. One participant said, ***"I may have been at this time active in my drug addiction. Due to housing, due to stigma, due to all this, I'm doing the only thing I know how to cope with."***

SUMMARY OF FOCUS GROUP RESULTS

As the District considers efforts to improve the health and wellbeing of sex workers, it is important to heed the voices experiences and recommendations of sex workers. The following themes emerged from focus groups with community participants who engaged in sex work in the District:

- 1. Motivations and reasons for engaging in sex work:** Community participants stated that they engaged in sex work to make a living, earn money to buy drugs (noting struggles with substance use and addiction and a need for behavioral health services), and access to housing and food. Participants, especially those who identified as transgender, faced significant socioeconomic challenges. While participants had many barriers to housing and employment, they emphasized their own agency in sex work and viewed sex work as survival.
- 2. Experiences of engaging in sex work:** Community participants noted their desire to protect their overall health and wellbeing while engaging in sex work. While participants recognized that sex work places them at risk for contracting HIV and STIs, participants encountered barriers to effective HIV prevention. Participants living with HIV reported health and mental health challenges, including stress due to their HIV status and problems with storing and taking HIV medications. Transgender participants discussed their needs for accessing gender-affirming health care without stigma and discrimination. The majority of participants reported experiencing physical or sexual abuse from sex work clients.
- 3. Encounters with police and the criminal justice system:** An overwhelming number of community participants had negative encounters with police in DC. Officers were reported to have often mistreated, profiled, and harassed transgender sex workers and physically and sexually abused sex workers either during arrests or actual client interactions with officers. Because of mistreatment, sting operations, and officers' lack of cultural competency, participants had a strong mistrust of law enforcement. Participants noted that they were unwilling to call the police when they were victims of crimes because they feared arrest, worried about being harassed, or just did not think the police would do anything.
- 4. Consequences of arrest and incarceration:** Most community participants reported a history of incarceration. Arrests and criminal convictions have negatively impacted their lives. When arrested, community participants were often charged with prostitution or solicitation. Other common reasons for arrest while engaging in sex work included drug crimes, failure to obey an officer, and disorderly conduct. The reported negative effects of arrest and incarceration included reduced access to health care and medication while imprisoned, worse health and wellbeing, economic instability, housing insecurity, and lack of social support from family members and community networks.
- 5. Views on reforming sex work criminal laws:** There was a strong consensus that the current criminalization model regarding sex work was unacceptable. Full decriminalization was favored as an alternative to the current approach over the options of partial decriminalization and the legalization of sex work.

Access to housing (41%) and food (37%) were commonly cited by participants as reasons for engaging in sex work. Participants situated their reasons for engaging in sex work cited in a larger context where structural factors (such as socioeconomic status, housing, and employment) and survival needs play a significant role in their motivations.

Socioeconomic Status

Community participants faced significant socioeconomic challenges in their lives. Nearly three-fourths of our participants (74%) lived below the federal poverty level (\$12,060 annually in 2017), 70% reported unstable housing in the past 2 years, 59% had a high school diploma/General Educational Development or less, and 85% had a history of incarceration. Employment options outside of sex work were limited. In the past two years, the majority of participants (52%) earned all or most of their income from sex work, and 70% engaged in sex work at least once a week.

Housing and Employment

Barriers to housing and employment contributed most strongly to participants' low socioeconomic status. Participants often said their inability to obtain housing or a job resulted from anti-transgender discrimination. One participant elaborated on gay, bisexual, and transgender people not being afforded educational opportunities that would put them in a good position for housing and jobs:

“There are not a lot of [LGBT] people who are in a place to get an education to qualify for jobs like yours or yours. But it goes back to housing and not having food, and not having this and not having that because they are not afforded it.”

Participants repeatedly underscored that housing was a critical issue for sex workers. Securing housing was not only seen as a motivator for engaging in sex work, but as a key approach for better meeting the need of sex workers.

“Housing is very important. Once you got a house, then everything else will fall in place.”

“We need housing. Without housing, we cannot take our pills, we cannot make meetings, we cannot have stability. Without housing, everything is in an uproar.”

“It gets really emotional to talk about housing. Because it’s a constant struggle. Homelessness is a constant struggle because there is no curb to homelessness.... It’s a constant struggle. And it gets more and more emotional because you are worried about it. You’re worried about it.”

“I hope some change will come to get us housing, not so drastic. It all comes back to housing in the end. Some housing if you get lucky... I hope each individual gentleman and girl in here, if they don’t have housing have the opportunity to get it, keep it. Because you don’t know when you have the opportunity to get it back. But I hope you have the opportunity because it won’t stop until you have some housing.”

Sex Work as Survival

While participants struggled with poverty and having few options for work and housing, they repeatedly emphasized their own agency in sex work. None of the participants characterized themselves as victims of trafficking. Instead of

victimhood, participants repeatedly mentioned “survival” in connection with their sex work. Survival meant different things to different participants. For many participants, survival meant engaging in sex work to cover basic necessities and to avoid homelessness and encounters with the police.

“Of course, like I said a lot of times people just do that because their back is up against the wall. Somebody needs a quick dollar.”

“So this is survival and if I don’t do this then I’m going to be in the streets, where I gotta deal with the police. And I’m still dealing with everything as a whole.”

“Sex work to me has become a way of life. It was first out of necessity because I did it to help my family and then it became something that I got used to doing.”

At the same time, participants framed survival in a positive manner. They denoted a sense of power in their choice to engage in sex work. For those participants, sex work was empowering because they could take care of themselves and did not have to rely on others.

“Taking this word ‘sex work’ that ya’ll so badly beat up and turned it in to such a dirty thing, that its survival to us. Without that sex work procedure, we don’t eat at night or we don’t sleep at night, or we cannot protect ourselves.”

“I was very proud of, because I think that being a sex worker is very honorable because you’re giving up yourself and you’re getting money for it. You’re giving services. This isn’t violence, I’m working for

people, and I’m getting my money and providing a service. Survival. It’s an honorable job. It’s a survival, it’s for survival, I mean right.”

“It’s survival to me. That’s what makes me want to do sex work because I don’t like asking people for money.”

“Sex work to me is survival. I am doing it just to survive. It’s not like I am doing it just to be the hottest thing on the street. That’s what we do to eat. Appearance, transportation, everything that [is] anything that revolves around money. Even if we were to have help from our parents, it’s us being how we are. We would rather make it on our own.”

Some participants found sex work to be an easy and acceptable occupation. One sex worker stated that sex work was a skill that they picked up and honed. Sex work was also discussed as a lifestyle or way of life and viewed as a good option given their wants, aspirations, and circumstances. Still others found sex work to be difficult and changed their attitude over time as they became either used to sex work or tired of it.

“To me sex work is its own career, it is its own type of work, it is its own job.”

“Sex work to me is survival and it’s a skill, because to be honest I’m good at it. It went from me graduating, life hit me hard. As soon as I graduated it was like boom you’re grown, what you want to do. And I made the best of it coming from two years ago to where I’m at now. I can say that I picked on quick.”

“A lot of people like it for the lifestyle.... It’s a lifestyle you looking for the attention, you looking for the dollar, it has to be done in order to meet your everyday needs or your every month needs.”

“Sex work to me is a way of life, it’s survival, but I feel like it’s kind of overrated and sometimes it’s draining, it’s physically, mentally, and spiritually draining sometimes.”

There were participants who discussed stopping sex work, but how participants felt about stopping varied enormously. A few participants stated that they would stop engaging in sex work if they found a suitable alternative job or had housing. While discussing this topic, one participant responded, **“A job, a place to lay my head, a therapist that is just not going to sit there and write down what I’m saying but is actually want to get inside my brain and not judge me.”** A transgender participant said, **“A place, and my surgeries and I’ll be out.”** However, not all participants shared this view. For example, another transgender participant said, **“Nobody can really do anything to make me stop. Even if I do get a house, a car, and all that, I’m still going to do what I need to do to make that extra money.”**

EXPERIENCES OF ENGAGING IN SEX WORK

Prior research has indicated different experiences of stigma, violence, and criminalization between sex workers who meet their clients on the street and sex workers who meet their clients on the internet. In the past two years, 85% of focus group participants reported engaging in street-

based sex work, compared to 74% of participants who reported engaging in internet-based sex work. While most participants engaged in both street-based and internet-based sex work, 26% of participants only met clients on the street, and 15% only met their partners on the internet. Other places where participants reported meeting clients included brothels or massage parlors (11%), a bar (4%), and a bathhouse (4%). Regardless of where participants met their clients, participants commonly engaged in the transactional sex either at a hotel (64%) or a private home (52%). Participants also reported sex occurring in brothels, massage parlors or bathhouses as well as in a car or outside.

HIV and STIs

HIV and sexually transmitted infections (STIs) are major health concerns for many sex workers. Participants discussed their desire to protect their sexual health, recognizing that sex work places them at risk for contracting HIV and STIs. Some participants noted that gay and bisexual men and transgender women are heavily impacted by HIV and STIs generally, but they further discussed how sex work increased risk.

“HIV is a top priority. I’m negative but I guess it’s easier to say than do when you don’t have it because you tend to push it as a back burner.”

“When it comes to HIV even though I’m not positive, it ranks high for me too. I think coming into contact with people who are HIV positive and seeing the physical struggles that they go through and the mental struggles that they go through, to protect myself from that. It becomes very high ranking. I used to not really think about it, but now I do.”

“To me I would think that catching STDs is, STIs, would be most important to me. Because with sex work and without sex work, there is a lot of unprotected sex in the gay community. And that is probably the main thing on my mind after I finish having sex with somebody or even before I think about having sex. It is the main thing that I’m thinking about, is who doesn’t have it, if I’m going to catch it, if I’m not going to catch it.”

A number of participants noted the importance of getting tested for HIV and STIs and discussing their engagement in sex work with health care providers. All eight participants who reported not having HIV indicated that they had an HIV test in the past year, but participants faced barriers to effective HIV prevention. While these participants reported that they had heard of pre-exposure prophylaxis (PrEP), only two of the eight participants reported using PrEP. Among the two people who had used PrEP, one said she was non-adherent (*“I don’t really take it”*), and the other said she only used it after an accident, i.e. condom break. Another barrier to HIV prevention was that 30% of participants reported not disclosing to health care providers that they do sex work. One participant expressed a reluctance to disclose this information because of stigma and bias against sex work. Participants described the stigma of being a sex worker as one of multiple stigmas they experience, including the stigma of being gay, bisexual, or transgender, the stigma of being of person of color, the stigma of being homeless, the stigma of being in jail or prison, and the stigma of living with HIV, all of which can have a negative effect on taking care of their sexual health.

“I’m free when it comes to talking about my health care with my provider.... So I didn’t have any problem with talking to them about me being a sex worker. You know I am frequently asked can I be tested for STDs. So she asked if I am a sex worker, I said yes. I don’t feel like I should hide it. You are my medical provider. Number one with me.”

“It basically makes you feel reluctant to mention that you actually do sex work. You might want to say oh I do sex work, and they look at you kind of funny because of all the stigma and bias are related to sex work. Like they don’t want to help you or you’re too much of risk to help you and certain other things you have going on. Like, oh, you might not be a good fit because you are currently sex working and things of that nature.... You may not go. You may not mention that you do sex work.”

Difficulties in negotiating condom usage in the context of sex work was also discussed. Participants described that when clients offer more money to not use condoms, sex workers sometimes agree because they need the money to survive. One participant elaborated as follows: *“Everybody don’t have to know if I use condoms, or I don’t use condoms, I have to make that rent money because if somebody comes and says I have \$500 for your rent today and my rent is due, I’m behind. I trust you’re gonna remove that condom. We’re gonna make this work. I’m going to pray to the gods that I don’t catch nothing, but I need that five, ya know what I’m saying, because this is survival.”*

The majority of participants (70%) reported having an HIV diagnosis. For those participants, accessing HIV treatment and care was considered one of their top health priorities. Participants living with HIV said that HIV was stressful and affected their physical, mental, and social wellbeing. They emphasized the importance of accessing health care, making medical appointments, and adhering to HIV antiretroviral therapy. One participant worried about having a secure place to store HIV medication, noting that sex workers who are unstably housed would not be inclined to carry pills with them, but also do not want to leave pills in a location where they could be stolen. Another participant noted that an arrest related to sex work can also result in medication disruption because they did not receive the medication they needed and asked for in the DC jail.

“I think probably the most important health care would be most likely be like HIV health care and receiving AIDS care. Being able to have access to people so you can go and get them.”

“It’s the highest rank for me because it’s stressful. It’s just stressful. You can’t have a normal relationship, you have to be very healthful because your immune system is so affected by it. It is just a lot. That is the most stressful thing.”

“Make sure you take your meds everyday if you’re HIV positive, or um just get regular checks with your doctor because you never know. You could be walking around with an STI and you probably won’t know it.”

“Speaking for me, when I am homeless, the last thing on my mind is taking my HIV pills. The first thing on my mind is where I am going to lay my head. Then how long I can lay my head there. Can I leave my HIV pills there and not come back and they be gone.... And if you are not one pill [a] day like me, thank God. Then if you got seven packs of pills, you’re not going to carry them in your purse and they start jiggling.”

“Every time you go through DC Court jail system you already know what’s about to be there....You ask for some medicine, they don’t have no medicine.”

Occupational Violence

Participants talked about the dangers and risks they faced while engaging in sex work. The majority of participants (56%) reported experiencing physical or sexual abuse from clients in the past two years.

“A lot comes from sex work. You get beat up, you get robbed, you get cut.”

“I can’t tell you how many times I’ve been in rooms and in different states with girls and had a gun pulled on me.”

“Last year I was shot and I almost died. I was on [deleted] Avenue prostituting.”

The violence that participants experienced during sex work also stemmed from people who were not their clients. In addition to violence from police officers discussed in the next section, participants reported violence from other third parties. Violence from third parties

such as strangers in the area was an issue that rendered street-based sex workers particularly vulnerable.

“I was on [deleted] street and some boys came out on [deleted] street with paintball guns and they were shooting girls on the stroll.”

“That time when [someone] got hit by a car. You know when you’re coming from [deleted] Avenue and the lower ledge that everybody be at, and the lower fence that’s right there. Out of nowhere, we were just all standing there, and you hear her screaming. And all you see is her wig scrambling up from up under the car and she was limping, and some Mexican man tried to stab her or something.”

In part due to experiencing violence and other stressors in the context of sex work, participants emphasized that mental health was a priority. They discussed the need to address stigma and depression as well as alcohol and substance use.

“The main thing for me would be how to deal with stress. Stress can take a tear on your body: mentally, physically, emotionally. Especially your mental. So if you learn how to deal with stress, I think your life will be a lot better.”

“The mental health aspect is a big deal. Because you got to understand that we, or I, coming into this community open and honest, you have to deal with a lot of stigma coming from society and previous people I used to know. The acceptance piece and am I being accepted by that. I personally suffer

from depression, so that coupled with society’s stigmatism, and a lot of the unprotected sex, partner to partner, the non-trustworthiness. The mental health piece and holistic health piece is the most important part...I mean mental, spiritual, emotional, physical. All that coupled into one. We are, I am not new, but I am coming into a point of comfort. But that comes with mentally, spiritually, emotionally, just having a strong outer exterior to deal with what’s coming at me on a day-to-day basis”

“I don’t think, um, African Americans address mental health issues like they should. We’re so used to self-medicating, if it’s drinking, or drugging, or um substituting drinking with sex.”

ENCOUNTERS WITH POLICE AND THE CRIMINAL JUSTICE SYSTEM

Nearly all participants talked about negative interactions with police in DC. These negative interactions include harassment, abuse, and violence from Metropolitan Police Department (MPD) officers as well as from United States Park Police and Capitol Police. The following information focuses on the MPD.

Harassment

Transgender sex workers reported mistreatment associated with their gender identity. For example, police officers often mis-gendered transgender sex workers, asked invasive questions about their anatomy, and verbally harassed and demeaned them.

HEALTH NEEDS OF TRANSGENDER SEX WORKERS

Two-thirds of focus groups participants identified as transgender. Transgender sex workers ranked gender-affirming services as a top health issue. Participants reported that access to gender-affirming health care was important and generally available to them in DC, but that they face stigma and discrimination accessing care at health facilities and in jail and prison. They emphasized the importance of addressing the comprehensive needs of transgender sex workers, including hormone therapy and surgeries as well as mental health, assistance with name changes and insurance, and risk for breast cancer and other health problems. Participants indicated that health facilities like Whitman-Walker Health provide high-quality health care to transgender people and mentioned that transgender people in the DC Jail are able to receive hormone treatment and therapy and were housed consistent with their gender identity. However, they noted that in other jurisdictions it is common to be taken off hormones and other medications in jail or prison. Some participants told stories of being unable to get trans-competent care in DC and experiencing stigma and discrimination from providers at health facilities.

“Basically getting your bloodwork done to test your levels of estrogen in your blood, just checking your blood out, making sure your liver is not being overwhelmed by every medication.”

“As well as I think another thing as for transgender women, we suffer from and we get the same thing by us taking hormones we take. We have the risk of catching breast cancer and things like that, so I think that we need to be more allowing to speak of and help you with keeping up with whether or not you have things of that nature.”

“Because that’s a part of treatment, I have to go through mental health first before they approve me for all my surgeries. The letter is showing you want to be a woman, they can’t approve you for surgery, you got to go through mental health first.”

“I was told by them that they couldn’t take me. Because of me being transgender they didn’t have everything, and the capability to fit my needs.... That’s just the stigma of being transgender.”

“I can say is, why I love DC more is that they are more transgender friendly. We go to prison, we have the right to go with women now. We got to treatment, we have the right to go with women. Unless you take your wig off, but now DC is only where transgender can be in the prison with women without sex changes. DC is the only. Almost all transgenders move to D.C., they are almost the only ones that have free hormones right now.”

“On the stroll, they are so nasty. They call you boy, they call you [male name]. There used to be an officer that would snatch the girls’ wigs off, and he used to ride down the stroll and if a date would try to pull up to you, he would be like you know that’s a boy. His name is [male name].”

“Okay like me, some officers would try us because your ID says such and such, or your ID says F, they still try us, for real what is your real name. You don’t have the right to ask me my real name. That is my name. A lot of officers try in their mind they can’t take you anymore. So when I give them my ID, I say “here ya go”, and they say “so what you got down there?” And I say “what you mean what I got down there”, “you wanna see it?”. That’s harassment.”

“The way the computer systems are set up is that when you first get locked up, you get locked up under your boy name. They call you by that even if you have a whole name change, even if your ID says female, even if you have breast implants, even if you have a full surgery. They will still be like [male name].”

In addition, many transgender sex workers reported being subjected to profiling, i.e., police targeting them as suspected sex workers merely for being transgender and for being on the street at night rather than on the basis of any observed illegal activity. Participants recount that there is often the assumption based on appearance, being known to officers as a sex worker, or being in an area associated with sex work that individuals are sex workers, and this is particularly the case for transgender women of color.

“So it’s just not even being able to walk down, you’re talking about harassment you know. It’s automatically being seen as, you know as everyone said at the table, like we’re the problem.”

“He stopped her, and she got smart. She like why you stopped us. We are not prostituting. We are not doing anything.”

“I see the police, it was one day recently that they had the white trucks out and the police was like, me and another transgender were standing on [street name deleted]. Another car come zooming up really slowly, and it was the police in the car like five of them. So of course, I ran down the street because I remembered the white truck coming that day to lock the girls up, so I’m thinking five police in the car they are about to lock both us up.”

Still not all participants had negative interactions with police. One explanation for this is that some sex workers managed to avoid encounters with police as a result of luck and circumstances. One circumstance that made it more likely for sex workers to encounter police is working on the street.

“I’ve never had an encounter with the police. I didn’t say I was never going to. I have never had a police encounter.”

“I ain’t never had no problem with the police because I wasn’t outside. I never had no problem. It depends on where you’re doing that.”

“Working out of a hotel or your home also makes a difference. Where you do this, you have to be strategic.”

Violence and Abuse from Police

Fifteen percent of participants reported being the victim of physical or sexual abuse at the hands of the police in the past two years. One participant described the use of excessive force by an MPD officer. While this incident did not occur in the past two years, it is illustrative of the type of abuse to which sex workers continue to be subjected.

“I remember there was a policeman years ago that used to constantly harass the girls. Yes, Officer [name deleted], he wore the glasses. And I remember they shut [deleted] street down so we had to go elsewhere over.... I remember he had pulled over, slammed me on the hood of his trunk and took my wig off, took my – I had water balloons titties – took them out threw them on the ground, they splashed, took everything out of my purse. I watched my makeup slide off the hood of the car and break. My MAC compact broke up. And it just I felt just so, so bad. I remember crying and it was raining and I was standing there in the rain and everything.”

Fifteen percent of sex worker participants reported being the victim of physical or sexual abuse at the hands of the police in the past two years.

Participants recounted various instances of police sexual misconduct toward them or

other sex workers. In many instances, the victims of misconduct are transgender women of color, suggesting that some police officers may target this subgroup of sex workers who are particularly vulnerable. One transgender participant recalled being extorted into having sex with a police officer under the threat of prostitution charges.

*In many instances, the victims of misconduct are **transgender women of color**, suggesting that some police officers may target this subgroup of sex workers who are particularly vulnerable.*

“I got harassed by the police. He made me try to suck his dick for free or he was going to lock me up on [deleted] Avenue.”

Regardless of whether there was extortion or other forms of coercion, sexual encounters between police officers and sex workers are inappropriate, yet participants noted that they have clients who are police officers. Many participants viewed this as a double standard because sex workers are criminalized while police officers break the law and face no consequences.

“I dated a police officer because too, as a client.”

“I had one pull up on me in a squad car, and he was like let me take you out. I just never trusted him because I thought he was going to lock me up.”

“At the end of the day, police we date them too. Government officials, we date them too. People who make these laws aren’t even following the laws, so why should we?”

“I think that it’s a double standard because the girls are clearly saying that they date these governmental officials. It’s a double standard.”

Additionally, participants called out sting operations as another double standard. As a part of sting operations, police officers go undercover to arrest people involved in sex work. Undercover officers offer money for sex and sometimes push the boundary between their police work and criminal activity. One participant elaborated as follows:

“To me, that doesn’t make no sense. They are getting paid to get high, they are getting paid to have sex, they are getting paid to do all this stuff undercover.”

Several participants mentioned police officers having sex with them during sting operations. Questions about the fairness and legitimacy of sting operations suggests that this tactic undermines trust in police.

Lack of Trust in Law Enforcement

Community participants reported that they lacked trust in law enforcement. Notably, participants were unwilling to call the police when they were victims of crime because they feared arrest, worried about being harassed, or just did not think the police would do anything.

“I don’t like the police, so I don’t call them.”

“You can’t call police about stuff because they are going to work you at the end.”

“Sometimes things have happened to me, like this right here—my head was busted. Nothing was done

about it. It gets to the point that I don’t trust the police. It’s trauma.”

“Nothing ever happens. I feel like they’re treating us like a joke.”

One participant discussed feeling that the police do not care about sex workers. As a result, the participant said that they did not trust the police and did not want to call the police for help.

*Sex worker participants were unwilling to call the police when they were victims of crimes because **they feared arrest, worried about being harassed, or just did not think the police would do anything.***

“There’s no consequences been done for any type of harassment we go through. The shopping center, church, on the streets, there’s no type of consequences being done for any of it. It really is crazy and showing us that police don’t care. And that makes us not want to go to the police at all. And not want even call the police. And with that we take things into our own hands. What am I going to do if I feel like I can’t trust the police and I have to do what I have to.”

Several participants voiced concerns about how police misconduct is handled, which may further undermine trust. One participant mentioned that there was no police accountability for mis-gendering and discriminating against transgender sex workers, and another participant shared this sentiment by noting that a complaint against police officers was generally ineffective.

“When it comes to us calling and saying there was discriminating against us, calling us all some types of he’s and men, there’s nothing.”

“If there is a direct physical attack, but mentally, verbally they can say what they want for real, just like you can say what you want. I feel like there is no purpose in reporting that unless they put their hands on you.”

Need for Cultural Competency

Participants noted that a lot had improved in DC in terms of police interactions, especially compared to other jurisdictions, but participants also wanted police officers to have more sensitivity training. In discussing how DC has improved, participants elaborated as follows:

“I can say DC is getting better. They have gotten better. They are not as homophobic as times goes on. Acceptance, the more you grow up, the more is accepting. As a young kid at 22, you an asshole. At 30, you are a better person. So I think it all goes on the maturity level of the police officer too.”

“This city’s tolerance has changed. In one point of time, there was no tolerance for prostitution. You got beat up, you got harassed, you got thrown in the back of the cop car, driven around for hours, missing money. And now the tolerance has changed and with the laws and things and people like you and groups like yours that are fighting for our rights as sex workers. It’s getting better, but it’s not all the way better yet.”

A major improvement within MPD was the

creation of the Gay and Lesbian Liaison Unit (GLLU), also known as the LGBT Liaison Unit.

Participants spoke favorably of GLLU, which is a team of dedicated officers that focuses on the public safety needs of the gay, lesbian, bisexual, transgender and their allied communities. One participant discussed a positive experience with a member of GLLU:

“And I told her and she had a whole conversation with me. And she said when I write this report, I am going to write why you’re out here because they don’t understand that you are out here to survive. They don’t understand that you don’t have a place to live, they don’t understand it’s hard to find a place to work. So I really it was compassion and she gave me her business card and said if you ever need someone to talk to, if you ever need help with a resident, or anything like that, here’s my card I’ll help you if you really want to get out of this situation. I will say that sometimes it’s good that you have those type of officers that are around compared to the regular officers that come and pick you up.”

A few participants reported that they had never heard of GLLU. Others mentioned that police officers only call GLLU or inform them about GLLU when a case involves a potential hate crime.

“A lot of stuff I am learning now about the GLLU unit, I didn’t know that. If I would have known that, I would have told the police get out of my face. I want to see these people. But they didn’t tell me that.”

I am going to piggyback off what this gentleman was saying, that he wasn't informed that there was a GLLU unit, that there is the GLLU unit that is more sensitive to LGBT. And I definitely agree to what he saying.

And the basis of when they do address those particular situations is more on the basis of if it was a hate crime. That's more when the GLLU unit is called. If it's not and they don't feel as though it is a hate crime, then they really don't contact them."

Various participants noted a practice among some police officers of not contacting GLLU until officers have all the information from their investigation. In some instances when participants would make a request for GLLU, the request would be ignored, or officers would tell them that GLLU will slow the process down as a way of discouraging the request.

"I told them can I get GLLU. So the whole time they were talking to me for like a half-hour they were trying to get GLLU there but they couldn't get in contact with them. So they were trying to speed up the process and ignore my requests for GLLU."

"And so then I was like I want the GLLU unit. When you say the GLLU unit, the first thing they say is well if you get the GLLU unit or Blue [sic] unit, whatever it is, that it's going to slow you down the process of you getting out. They always throw that in your face because you asked for the gay and lesbian unit, they are basically like whatever we have written we are going to take our time to be sure we get it before we swap them over to their hands."

While participants preferred having no interaction with the police, those who knew about GLLU always wanted to have that unit present if they had to interact with the police. Participants thought that GLLU was the most appropriate unit to respond to issues related to sex work. Additionally, one participant recommended that MPD be stricter about who it allows work in areas with high activity of sex work because many officers have bias and discriminate against transgender sex workers.

"My only thing that I feel like should change when it comes to known prostitution areas is the officers that they assign to these areas should be more strict with who they allow to work those areas because not all of those officers have our best interest at heart. Not all those officers want to see us out there or want to see us the next day. Sometimes things have happened to me, like this right here, my head was busted. Nothing was done about it. It gets to the point that I don't trust the police. It's trauma. I feel like there should be more stipulations of what officers they allow, they assign to the known prostitution areas. When you have something happen to you and the officer don't want to touch you because you're transgender, I feel like that's the only thing that needs to be changed."

Despite some improvements and the impact of GLLU, participants said that there was a need for more sensitivity training within MPD. One participant noted that some police officers may not take the existing training that they receive seriously: **"Every government employee of**

the District of Columbia has taken sensitivity training. Part of, they have to. Anybody, don't matter what agency you work in. [For] police theirs is more extensive.... But some people just might not take it seriously because it doesn't deal with them." Other participants elaborated as follows:

"There should be some type of sensitivity training. I don't think a lot of cops have sensitivity training because I still see girls that are kind of hard, they still get harassed and still called sir and all of that."

"And a lot of these police don't have sensitivity training. I mean I am thankful for the whole GLLU unit, but I honestly believe that based on how society is changing as a whole, every member of the police department, everybody should have some form of sensitivity training."

CONSEQUENCES OF ARREST AND INCARCERATION

Community participants discussed the devastating impact of arrest and criminal conviction on their lives, driving them into deeper realms of poverty and vulnerability. Most participants (85%) reported a history of incarceration, i.e., they had spent time in jail or prison for any reason or any amount of time in their lifetimes. One participant explained, ***"I've been arrested a total of five times. I've been kind of fortunate. I've been a sex worker for a long time."*** Among participants with a history of incarceration, the majority had been incarcerated in the past two years. While a few participants reported spending no more than a night or two in jail, 41% of participants reported

spending a year or more in jail or prison during their longest period of incarceration.

Basis for Arrest

Sex workers are commonly charged with prostitution or solicitation when they are arrested. In DC, it is unlawful for any person to

In the past two years, nearly a quarter of participants reported that they had been arrested while engaging in sex work.

engage in prostitution or to solicit prostitution. In the past two years, nearly a quarter of participants reported that they had been arrested while engaging in sex work, and three of those six were arrested for prostitution. Other common reasons for arrest while engaging in sex work included drug crimes, failure to obey a police officer, and disorderly conduct.

Participants discussed that MPD officers regularly charge sex workers with drug-related offenses, suggesting that, even if sex work were no longer a crime, sex workers would still be vulnerable to police profiling and targeted for arrest. Whereas sex workers arrested for prostitution or solicitation are likely to have their case "no papered" (i.e., government declines to file charges despite the arrest) and to spend just a night in jail, this is less likely to occur for arrests for drug crimes, and charges for possession or distribution of a controlled substance can result in longer periods of imprisonment.

"Now they try to do a buy and bust. Prostitution charges aren't enough for them. They try to get us on drugs too. Now it is their ambition to keep you off the streets for a while. With

misdemeanors, they know that you will get no papered, or a citation, or you basically get released. They also know a lot of us are concurrent, we are self-medicating with different drugs. They are using us to buy and arrest us like we are big drug dealers. That's the new plot, that the new catch."

"I had a similar experience, that was possession to distribute a controlled substance. They had me charged with possession. No, they had me charged with distribution of a controlled substance."

Inside Jail and Prison

Participants who had been arrested recounted negative experiences in jail or prison.

Participants reported terrible conditions such as being placed in a freezing cell and being isolated.

"They put you in a freezing cell, and when you ask for a blanket, they tell you they don't have any. And then they isolate you, and they say it's for your safety. You're sitting on the cold bench, they don't care."

This experience is consistent with reports citing the DC Jail for inadequate standards related to environmental conditions, including room temperatures, sanitary conditions, pests, broken fixtures, and inadequate lighting.⁵⁰ Beyond physical conditions of confinement, participants also reported facing mistreatment from jail staff. A transgender participant explained that she was subjected to a humiliating strip search during the booking process and faced verbal harassment in jail.

"When I was there, the way that they stripped searched me was so

humiliating. They are saying, oh, does that wig come off? Do you have a tuck on? They just like stripped me down, and I felt so humiliated. And they were just kiki-ing back and worth [kiki means joking/chatting/gossiping]"

Barriers to Health Care

Various community participants discussed how arrest and confinement in jail or prison impeded their ability to access health care services. Participants particularly noted that they faced barriers to medication, suggesting that incarceration may lead to worse health outcomes.

"You ask for some medicine, they don't have no medicine. They sit you back there and don't check on you."

"And mental health you know, they didn't get my drugs. They didn't get that together right, so I ended up stop taking them in jail."

"For me when I went to prison, by me taking a lot on the streets, when you go to prison, they take you off a lot of the medicine that the doctor put you on."

Stress and Loss

The level of stress and strain that arrest and incarceration produce negatively impacts economic stability, health and wellbeing, and the potential for future opportunities. Participants emphasized the detrimental impact of being arrested for even a short period of time. They often discussed the impact of incarceration in terms of losing a lot and taking them backward in their lives. Some participants discussed returning to society after a period of incarceration and having to start over.

“When you get arrested, you do lose everything, you lose a lot. If you don’t lose everything, you lose most things. Police officers play a part in this. They are arresting you, they are taking from you. It can be something so simple like a sock. You lose a sock because they took it from you when they arrested you. That’s in general, when you get arrested, you take ten steps backward. When you get arrested, you’re not going forward. You go backwards when you get arrested.”

“The impact of arrests is you lose everything.... Like but when I came home I lost everything—family, money, whatever clothes I had. I had to start all over.”

Financial Costs

Participants reported facing financial consequences as a result of arrest and incarceration. An immediate consequence of arrest is losing out on the sex work job that they arranged or planned to arrange. One participant noted, **“They locked me up. I lost the job, [and] didn’t get out until 4 o’clock in the morning.”** Beyond that, participants discussed wide-ranging consequences for their earning ability because criminal conviction and incarceration have a lasting impact on employment prospects and income mobility. Participants relayed that upon release from jail, they often do not have jobs waiting for them. They described that finding a stable job outside of sex work is even more difficult with a criminal record.

“So, it was detrimental to me. It cost me quite a bit. It cost me my earning ability.”

“I just know coming to the point that I can reapply for a security license, with this frivolous ass felony, you have x-ed me out of making an amount or a particular amount that I am used to making.”

Financial consequences associated with navigating the criminal justice system were also discussed. A significant cost that was mentioned was money spent on attorney fees following an arrest related to sex work. One participant discussed court-related and other costs as follows:

“A lot times with myself or if I get arrested, you have to pay a lawyer. You have to prepare [for] being locked up. You got to pack your place up. There is a lot you got to do when you catch a charge whereas you do go backwards.”

Housing Consequences

Arrest and incarceration can also result in housing loss or insecurity. Participants reported significant barriers to stable housing after release from jail or prison. When applying for public or other housing opportunities, there may be criminal background checks. Some participants reported either being ineligible for or denied housing because of their conviction history as well as having limited housing options.

“From my experience, they gave me my voucher. I got my voucher in June. I didn’t know the impact now in Washington, DC of a criminal record because now they’re using the record, misdemeanors. They asked you when is the last time you’ve been arrested and violent charges the last seven years.... The impact of the arrest on filling out

for getting a simple apartment. My voucher is for ... the market value rent for my voucher is \$2,600. I can get somewhere real cute for \$2,600, and every year it goes up. Yeah, the reason I can't get where I want to get is because of my criminal record."

"Now it's harmful because I'm paying the piper cause I can't get where I want to get, and I'm moving somewhat drug neighborhoods. Where I live now is a quiet block. It's a quite block, but once I cross the street they pumping."

Sex worker participants reported significant barriers to stable housing after release from jail or prison.

Lack of Social Support

Given the multiple challenges faced by sex workers due to arrests and incarceration, it is not surprising that many sex workers rely to their families and networks for support. Some participants, however, noted that another consequence after they leave jail or prison is a lack of social support.

"The best thing that happened from being locked up was showing me who my family was—nobody. You feel what I saying. And someone said earlier, you're good with me when I'm good, but when I'm fucked up, you ain't really got nothing."

"Financially I didn't have nowhere to go. As far as my family, they weren't giving me any money or anything like that."

VIEWS ON REFORMING SEX WORK CRIMINAL LAWS

Participants unanimously supported reforming sex work criminal laws in DC. There was a consensus that the status quo of the current criminalization model was unacceptable. The criminalization model is common in the United States and involves penalizing the buying and selling of sex and all related economic activity, like driving for, leasing to, accompanying, or otherwise cooperating with sex workers. The harms to sex workers from policing and incarceration were a major reason that sex workers rejected this model. In addition to these harms, which have been discussed throughout this report, some participants mentioned that criminalization is ineffective at deterring participation in sex work. One participant noted, "**People are going to do whatever they want anyway.**" Another participant emphasized that criminalization was a waste of governmental resources.

"I feel like it is a waste of, not that I really care about, taxpayers' money, but I'm just trying to say it's a waste of the taxpayers' money for even criminalizing prostitution and locking people up and having to feed them, and pulling all of these officers in, all with something I want to do with my body."

Strong Support for Full Decriminalization

Discussion about alternatives to criminalization centered around the following legal models: Full Decriminalization, Partial Decriminalization, and Legalization. These models are summarized below. Participants reported a strong preference for full decriminalization over either partial decriminalization or legalization.

*Sex worker participants reported a strong preference for **full decriminalization of sex work.***

The primary reason that participants strongly supported full decriminalization was that this legal model recognized the agency of two adults to consent to commercial sex. Participants mentioned that neither sex workers nor their clients should be penalized. Furthermore, participants noted that it would be unfair to penalize clients but not the sex workers. Some participants also emphasized that full decriminalization removed barriers to earning a livelihood, whereas partial decriminalization was viewed as continuing barriers to making money for survival. In addition, one participant mentioned full decriminalization as a way to reduce police abuse and negate the need for undercover sting operations in which police officers push the boundary between their work and criminal activity.

“I am going to say both. I don’t think the trick should be penalized for picking me up. Then I won’t make money because you’ve scared him from coming back out.”

“I agree that it should be decriminalized on both ends because it is a mutual agreement between two people.”

“I think it’s supposed to be for both ways. If you’re doing it in a responsible way, then nobody [should be criminalized].”

“I don’t feel like police should have the right, and you see this is what used to really annoy me, if that what

gives them the right to be able to use drugs to be able to do everything and break the law, just to lock you up.... I think that it should be decriminalized.”

While full decriminalization was the first choice for the vast majority of participants, some participants discussed other considerations that are important to address. Important considerations include concerns about addressing the spread of HIV and other STIs in the context of sex work and concerns about protecting minors from the sex trade, and these considerations are relevant even if sex work is decriminalized. Moreover, participants discussed the fact that full decriminalization of sex work will not solve all the problems that sex workers face. Participants noted concerns that law enforcement will find other ways to arrest and incarcerate sex workers, such as through criminalization of drugs, loitering, and other behaviors.

“It could be impactful, but there are other elements. Just by decriminalizing sex work, there are other things that go along with the sex work. And we have to remember America is a criminalizing country. They’re not going to do anything but find another way to get us.”

“It is the same as decriminalizing it and legalizing it. It’s reducing the penalties, but then y’all gonna find something else to pinpoint on us like loitering and taxes and evading all the other stuff.”

Differences of Opinion About Legalization of Sex Work

It is noteworthy that a few participants spoke favorably about the benefits of the legalization model. A perceived benefit was the prospect of

having designated places where sex work would be permitted, which would mean sex workers do not have to engage in street-based sex work and could avoid associated harassment. One participant explained, *“I guess if it was legal you wouldn’t have to walk the streets because you would have a place to prostitute just like in Nevada they don’t hang on the streets. They have the Moonlight Bunny Ranch or the Cat Ranch or whatever. They have an actual location.”* Similarly, two participants elaborated on their desire to have legal protections for sex workers, including laws that set payment rates to prevent theft of services.

“I want a minimum and a maximum rate set. Minimum and maximum rate and for everyone to understand and abide by it.”

“I don’t have a problem with it being taxed, as long as it’s legalized and it’s protected. I want to be like a hairdresser. I mean like competition is what it is, but with it being legalized we can charge taxes. I can charge taxes for my work and a time limit. I will have protection for what I’m doing now. So, if you come in and you fuck me and you think you gonna walk without paying your bill, I can have your ass arrested for theft of services. These are the things I talk about need to be added in place when you decriminalize. We need protections as well.”

At the same time, other participants expressed significant reservations about the legalization model. In particular, they worried about the creation of a tiered system of legal and illegal sex work and had fears about discrimination against sex workers living with HIV.

“Just because sex work is legal doesn’t mean if you are HIV positive, you can do the sex work. If you are not registered, you have a stroll that is in back of the legal stroll that is illegal. So, you still have the same illegal sex work.”

“It does go that way, but if you are HIV positive, it goes on your card. You are not supposed to be dating on that site. You are not supposed to be dating on the strip at all. So, they have a front strip which is legal, and right behind the front strip is the illegal back strip. And that’s where we tend to find a lot of the girls going instead of the front strip.”

ALTERNATIVES TO THE CRIMINALIZATION MODEL FOR SEX WORK

Full Decriminalization is the decriminalization of consensual commercial sexual exchange. Advocates argue that full decriminalization reduces stigma by treating sex work as work, increases safety by allowing sex workers to legally organize to set standards and cooperate with third parties for safety and transportation, whereas advocates against full decriminalization believe that decriminalization will lead to the proliferation of sex work and sex trafficking. New Zealand has implemented full decriminalization since 2003. Since implementing these reforms, New Zealand sex workers have reported increasing the use of social services, increasing use of condoms, and increased reporting of violence to law enforcement.

Partial Decriminalization, known also as the Nordic Model or Prohibition Model, decriminalizes selling sex, but criminalizes buying sex and economic cooperation of landlords, drivers and others. Jurisdictions that have implemented partial decriminalization include Sweden, France, Canada, Norway, and Ireland. Partial decriminalization attempts to end or suppress demand for sex work. While advocates argue that it has a protective effect for sex workers, a growing body of evidence from researchers in partial decriminalization jurisdictions indicates that sex workers report increased stigmatization, decreased access to health and social services, and increased vulnerability to violence from clients.

Legalization describes government regulation of sex work. Nevada is an example of jurisdiction with a legalization regime. In Nevada, sex work is allowed only in licensed brothels, with registered sex workers who must receive periodic STI testing. While advocates for legalization believe that regulating commercial sex is necessary for public health and to protect vulnerable people from exploitation, legalization creates a tiered system of legal and illegal sex work and often continues to marginalize and criminalize most sex work, especially among sex work involving transgender women of color and people living with HIV.

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Results from Institutional Stakeholder Interviews

There was a substantial amount of agreement in the perceptions of the institutional stakeholders and the experiences recounted by the community participants.

MOTIVATIONS FOR INDIVIDUALS ENGAGING IN SEX WORK

Access to Housing

Institutional stakeholders repeatedly discussed that people engage in sex work to access housing. The most common example discussed was paying rent through sex work due to the rising housing costs in DC. Institutional stakeholders expressed an understanding that sex work means survival for many sex workers.

“These are the people that maybe have sex with the landlord once a month for a break on the rent or are trying to put some more food on their table in addition to a couple of full time jobs they already have. I mean, the cost of living is a serious question in the city.”

– David Grosso, At-Large Council Member, Council of the District of Columbia

“They’re not out there ... because they want to be out there, many of them. They are out there because they have to be out there. This is their way to have a roof over their head, to have food in their mouths, to find health care. It’s the only way.”

– Brett Parson, Former Manager of Special Liaison Branch, Metropolitan Police Department

Institutional stakeholders described that access to housing is a primary motivator for engaging in sex work and criminalization of sex work erects barriers to housing. Housing is a primary social determinant of health, and housing insecurity interferes with access to medical care by reducing ability to administer medications regularly and store medications safely.

“[H]omelessness caused my client to grow more ill and lose a dangerous amount of weight. He experienced wasting on the street and didn’t take his medication because it upset his stomach and he didn’t have regular access to a bathroom. Even when people have access to treatment, if they don’t have a safe place to store medication or don’t have access to bathrooms, that’s a significant barrier to health, and I’m sure a lot of people engaged in survival sex work face those same challenges.”

– Nassim Moshiree, Policy Director, ACLU of DC

Socioeconomic Factors

Institutional stakeholders believed that socioeconomic factors like poverty and education were factors in participating in sex work. In particular, stakeholders believed that failures of social programs influenced people to engage in sex work. Sex work allowed people to provide support for themselves that the District government did not provide.

“[T]his has been too much influenced by cultural factors that are... in effect, sort of criminalizing social class status. Because you

SUMMARY OF INSTITUTIONAL STAKEHOLDER RESULTS

The data portray that DC's prostitution laws create a landscape that pushes vulnerable people to the margins. The following emerged from the interviews with institutional stakeholders who served sex workers in the District:

- 1. Structural forces create instability:** Institutional stakeholders understood that participation in survival sex work is driven, in part, by the lack of available alternatives. They expressed that survival sex work arises at the intersection of human need and the anti-trans bias (transphobia) transgender women experience. Lack of access to employment and increasing cost of living in the District contribute to a lack of stable housing. Housing instability creates an ecosystem of insecurity in every area of life.
- 2. Uncertainty propagates fear:** Institutional stakeholders identified that, despite MPD's prioritization of crimes of violence and their commitment to culturally competent police services, there is a lack of confidence in law enforcement. DC's overlapping jurisdictions contribute to confusion about the legal rights of individuals who are subjected to stops by officers, uniformed and undercover. Stakeholders report that sex workers are less likely to engage in health care services due to distrust, frustrating preventive care and public health efforts. Stakeholders who provide victims services have developed tactics for engaging with MPD while preserving their client's safety.
- 3. Arrests erase progress:** Institutional stakeholders expressed, based on data on MPD practices, that arrests by the human trafficking unit were largely ineffectual at combating human trafficking. Stakeholders said that arrests are ineffective at ending sex work. Stakeholders found incarceration and arrest destabilize the lives of sex workers and disrupt progress toward education and economic achievements. Incarceration interrupts health care, including gender-affirming care and HIV prevention and treatment plans, harming physical and behavioral health.
- 4. Law creates vulnerability:** Stakeholders expressed that the law perpetuated stigma against sex workers and those profiled as sex workers. They also recounted that MPD officers have perpetrated acts of violence against sex workers, and that such practices contribute to a culture of impunity and violence toward sex workers. This contributes to illness and injury, fear and anxiety, and vulnerability to human trafficking.
- 5. Consensus on Reform:** No stakeholders supported DC's current laws criminalizing sex work. Stakeholders were all in favor of reducing criminal penalties for engaging in sex work. Stakeholders report that while vacatur statutes and diversion programs can be helpful for some, the program requirements and legal standards undermine the agency of sex workers. Most stakeholders support total decriminalization of sex work on the basis that it would increase trust in social services, increase safety, and increase engagement in health care.

are low income or have no income or the other rest of the system has failed you, such as the child welfare system – I used to work in child welfare – or the child protective system that failed you or the fact that your family upbringing was an unsafe one, that your educational system failed you, that all these other parts of our society and that your only choice is to do this activity is not – therefore then that gives – that should entitle you to an illegal status. That just seems – can I say ‘ass-backward’?”

– Michael Kharfen, Senior Deputy Director of HAHSTA, DC Dept. of Health

THE POLICE AND CRIMINAL JUSTICE SYSTEM

Institutional stakeholders identified law enforcement, i.e. the police, the courts, and prisons and jails, as a key mechanism of criminalization’s effect on the health and safety of sex workers. As discussed below, law enforcement treatment of sex workers is influenced by District laws, as well as the official MPD policy priorities and the individual discretion of police and prosecutors.

Training

Generally, institutional stakeholders both inside and outside the MPD believed that the MPD received more training for gender sensitivity than other police departments in the United States. Stakeholders said that police received training in LGBTQ cultural competency and were familiar with the Gay and Lesbian Liaison Unit and other specialized units of the MPD, like the human trafficking unit. No one was aware of racial bias trainings for MPD officers.

“[I]t was one of the original departments that started its own LGBT unit, and it still maintains it. And the, I think the hallmark of that program right now is that regular street officers, that are not, that have never been associated with LGBT issues, are now assigned there on rotating basis, so that they can get exposed to that.”

– Michael Tobin, Executive Director, DC Office of Police Complaints

“[T]he city and then the police department put out an entire internal and external policy on dealing with people regarding gender identity, gender expression, right? I mean, so again, I put us ahead of the game worldwide, much less nationwide. So we have that. Then we have our internal policies on dealing with transgender individuals”

– Brett Parson, Former Manager of Special Liaison Branch, Metropolitan Police Department

“[Y]ou can’t just leave it up to MPD to do the training for themselves, it’s all internal. You almost need to make sure that someone from outside comes in and does the training.”

– Stacie Reimer, Former Executive Director, Amara Legal

Priorities

Arrests resulting from prostitution-related crimes were not seen as a priority by police. Police stakeholders said that MPD prioritizes crimes related to human trafficking and over the past decade have been deprioritizing non-violent crimes. Enforcement of prostitution laws in the District is initiated primarily by neighborhood

complaints of nuisances related to the presence of sex work, e.g. used condoms on the street.

“[O]fficers over the last probably seven, eight, nine years have seen us kind of shift some of our resources to more violent crimes, and a de-emphasis on the larger prostitution operations that we used to do.”

- Brett Parson, Former Manager of Special Liaison Branch, Metropolitan Police Department

“Officers who are on beats that have a visible problem of commercial street sex work are obviously responding to complaints from the community and public safety issues and nuisance complaints. So they have to enforce those laws. But they also spend an awful lot of time responding to protecting those individuals who were engaging in those activities who become victims of crime. And so we find ourselves in kind of a balancing act of moving back and forth between, “you need to get off this corner, people are complaining” and “Oh my God, are you OK? What can I do to help you?”

- Brett Parson, Former Manager of Special Liaison Branch, Metropolitan Police Department

Discretion

Institutional stakeholders reported that enforcement of District prostitution laws was discretionary based on individual officer experience and training. Discretion in policing resulted in different attitudes toward police, depending on the experience and relationship with specific officers or police precincts. Discretion in law enforcement was seen as positive by police stakeholders. Others

cited differential enforcement and deviation from police department protocols and policies as a barrier to trust.

“[D]ifferent units, like I said, are doing different things.... I only work with police that I’m comfortable with and I know they push it. So, I call the ones that we work with, so it would be a different answer for me. It’s always going to be right, because I’m going to make sure it’s right and I already made that connection.”

- Tina Frundt, Founder, Courtney’s House

“There is also vast amount of judgment and discretion provided to police officers, which is necessary in our society. We can’t arrest our way out of any problem. Right?”

- Brett Parson, Former Manager of Special Liaison Branch, Metropolitan Police Department

“It’s because they’ve had direct experiences with police interactions over decades and decades that have taught them that they can’t trust the police. And this is true, I think in the sex work industry too. There’s just a long time in the eighties when the sex work industry was predominantly along 14th, Logan circle area and stuff. There were raids all the time that were very violent. They were patty wagons chasing people down. It was a very violent time, the whole city was violent. We haven’t healed from that time.”

- David Grosso, At-Large Council Member, Council of the District of Columbia

Accountability

Institutional stakeholders had different understandings of police accountability methods and different views on the efficacy of police accountability mechanisms. The Office of Police Complaints (OPC) described the District's efforts to improve police accountability. The OPC is administratively independent from the MPD and receives and assesses complaints against the MPD and submits its recommendations to the MPD. The MPD has discretion in responding to recommendations from the OPC. The OPC expressed that the office has made efforts to make submitting complaints accessible for community members by allowing complaints to be submitted by phone, email, fax, social media, in-person, or through internet forms. Complainants can submit information anonymously, but this was seen to limit the ability of the OPC to respond effectually.

“We’ve long had an Office of Police Complaints in the District, as an independent organization. But it was just recently – since 2017 – that all citizen complaints are falling under their jurisdiction for investigation. If there is a criminal allegation as part of a complaint, it will also be investigated by MPD. But if it’s allegations that an officer was harassing someone – they keep coming around or they’re misgendering them or things like that – OPC will handle it.”

– Kelly O’Meara, Executive Director, Strategic Change Division, Metropolitan Police Department

“Whenever anyone believes that they’ve been the victim of misconduct or whenever someone

believes they are a witness to police misconduct, they can file a complaint in the District and they can do it by one of many different ways. They can go to any District station, they can pick up the phone and call us or the police department. They can come to our office at 14th and I street, and they can Google it and when they Google “police complaints” or “police misconduct Washington DC” they’ll come up with the Office of Police Complaints, our website, and you can file a complaint right through our website in an online filing system. They can file a complaint through Facebook, through our Facebook page. They can notify us through Twitter. They can do it by fax. They can do it by email and if they’re not comfortable with any of those things, they can go to one of our 15 or 16 community partners throughout the District, and they can go to that community partner, community group, and start the complaint process with them.”

– Michael Tobin, Executive Director, DC Office of Police Complaints

Complaints

Other institutional stakeholders were unsure how to make a complaint of police misconduct. Most stakeholders were unsure of how police complaints were processed, and some expressed the belief that reports by sex workers and homeless residents are often not viewed as credible. Barriers to police accountability include the discretion MPD has in acting on recommendations from the OPC, public awareness of how to make complaints about police conduct, and how complaints are handled.

The OPC reported an increase in the number of complaints received by their office but were unable to ascribe the increase to a specific cause.

“[T]he consensus is nationally, [internationally] even, is that complaint-based systems, regardless of whether it’s police or health care or traffic conditions, they privilege certain people, and they privilege folks that already feel access and feel empowered to speak. And so, if you’re from a marginalized community, you’re not going to do that as much most likely. ... [I]t ought to be more about not waiting for those complaints to come in, but going out and auditing the agency, the body, the community, whatever it is, and investigating into their practices and actively recruiting people to find out what is going on.”

– Darby Hickey, Former Legislative Advisor, Council of the District of Columbia

“Is there a process? I believe there is. Is it an adequate and culturally sensitive process? No. Is it victim-blaming? Yes. Is it something that is encouraging and taking away the burden from the people reporting abuse? No.”

– Activist and educator

Overlapping Jurisdictions

The presence of multiple uniformed police forces in DC contribute to confusion for DC residents when interacting with the police. This confusion contributes to violence when civilians are unable to determine if an arresting officer has the authority to detain them or deport them, or if they are being subjected to police misconduct or

someone impersonating a police officer.

“[E]lements that lead to better public safety for all, and that includes ... differentiating between the police units, enforcement units, and immigration, customs enforcement for example, so people feel confident that when they... reach enforcement they won’t be detained themselves and subsequently deported.”

– Activist and educator

Negative Encounters with Police

Institutional stakeholders reported that criminalization of sex work had a largely negative impact on police encounters with sex workers. Stakeholders report that police officers have harassed and extorted sex workers, including coercing them to perform sex work under threat of arrest. Service providers interviewed report that there have been reductions in instances of police harassing community health workers conducting outreach to sex workers.

“We’ve also gotten several complaints either from our clients... that law enforcement officers are sexually assaulting people or sort of like trading, not arrest for sexual favors.”

– Yvette Butler, Former Director of Policy and Strategic Partnerships, Amara Legal

“[W]e used to get tons of reports for when I was at Different Avenues, and then when I was [out] real early talking with HIPS peer health workers [in] the HIPS van, and peer health workers at Different Avenues who were walking around on foot getting stopped by police and being messed with, you know, and being

told, “What are you doing?” and “Why are you here? Why are you talking to those people?”... “You can’t be out here. I might arrest you.” Right? I think that’s gotten a lot better”

– Darby Hickey, Former Legislative Advisor,
Council of the District of Columbia

Fighting Human Trafficking

Institutional stakeholders expressed that prostitution enforcement is an ineffective method of enforcing human trafficking laws because they fail to assist in apprehending high-level traffickers, due to fear of traffickers and lack of trust in law enforcement. Stakeholders expressed that police are not supposed to be targeting sex workers and their clients in human trafficking stings.

“[T]he Human Trafficking Unit, who is supposed to be viewing everybody and not charging anyone involved in prostitution – like, figuring it out and connecting those to services – isn’t doing the job that the unit is supposed to be doing.”

– Tina Frundt, Founder, Courtney’s House

“With the sting operations that I’ve seen they’re not really arresting the people that are the traffickers. If there’s a trafficker in the situation, he typically doesn’t get arrested just because he’s not there. He’s across the street or miles away. They’re arresting everyone and then they’re saying you need to testify against somebody in order to get your charges dropped. Of course, that’s a really dangerous thing to do and they don’t want to testify. So they’ll

just then move forward on these low level misdemeanor charges. There’s no effort to get the kind of the masterminds behind it.”

– Stacie Reimer, Former Executive Director,
Amara Legal

A few stakeholders were particularly concerned about the sexual exploitation of minors and children. They expressed that approaches to trafficking interventions and victims’ services that relied on arrest could be counterproductive, noting traffickers may use the threat of police involvement to coerce and control their victims.

“[I]n some cases, it can be paternalistic and unnecessary involving young people in the court system. That kind of reemphasizes the whole criminal/offender narrative, which we’re trying to move away from. That’s one of the things traffickers tell youth, “If you go forward and try to get help, they’re just going to treat you like a criminal.”

– Yasmin Vafa, Executive Director,
Rights4Girls

Particular harms to immigrants

Stakeholders report that a criminal record of prostitution-related offenses is particularly harmful for immigrants because federal immigration law creates bars for immigrants with criminal convictions for prostitution-related offenses. In an immigration court, participation in diversion programs, nolo contendere pleas, probation, and court-ordered rehabilitation programs are all considered convictions and potentially bar future immigration relief. Further, stakeholders expressed that expungement or sealing the criminal records of sex workers

and trafficking victims are ineffective in the immigration context because immigration authorities can access sealed and expunged criminal records, and immigration documents require disclosure of participation in sex work, whether legal or illegal, performed in the 10 years prior to the application for change in immigration status.

“[I]f people are afraid of law enforcement bringing charges against them because, well, and particularly for immigrants because it will affect their potential immigration status, they’re very reluctant to come forward and report trafficking situations. Oftentimes if their traffickers are afraid that they are going to report, a lot of traffickers threaten to contact either law enforcement or ICE to keep people in a trafficking situation as well, as kind of a power and control method. The threat of deportation is very common in trafficking, domestic violence, in situations like that.”

– Denise Hunter, Senior Staff Attorney,
Whitman-Walker Legal Services

Fear of Deportation and Other Adverse Immigration Outcomes

The impact of criminalization on immigrant sex workers is over their whole lives. Institutional stakeholders expressed that arrest, incarceration, and prosecution for immigrant sex workers implicates the risk of being deported and sent back to a dangerous situation in their country of origin. They elaborated that the fear of deportation creates a vulnerability that means immigrants are especially susceptible

to coercion, the negative health effects from underutilization of health care services, increased fear and anxiety when interacting with any government entity, and additional barriers in housing, education, and employment when compared to their non-immigrant counterparts.

“[F]or the most part there’s a reluctance among immigrants to – so, they’re kind of two-fold. One is that clients are reluctant if they are the victims of crime, for example, are reluctant to report. So, if they’re the subject of violence, are reluctant to report those crimes, so if, especially... if it occurred during the process of an encounter of exchanging sex for an exchange of goods. So, they are reluctant to come forward and report to law enforcement for the fear of being criminalized themselves for engaging in that practice. And then as a secondary, particularly with immigrants are in general very concerned about any cooperation with ICE, Immigration, Customs, and Enforcement, between law enforcement if they are – particularly if they’re undocumented, and even if they have a more temporary status that can put – any kind of arrest history can put someone who is not a US citizen in jeopardy.”

– Denise Hunter, Senior Staff Attorney,
Whitman-Walker Legal Services

Impact of Arrest and Incarceration

Institutional stakeholders generally expressed that the effects of arrest and incarceration were traumatizing to sex workers and people profiled as sex workers. The stakeholders

expressed that arrest, incarceration, and prosecution resulting in a criminal record has a negative impact on access to housing and employment, increasing vulnerability to violence and increasing barriers to transition into other employment. These barriers act to further entrench sex workers into cycles of poverty and underground economies.

Exclusion and Discrimination

Criminal records from repeated arrests due to sex work can exclude people from accessing public housing or housing assistance programs, and employment or employment programs. Institutional stakeholders articulate that employers discriminate based on criminal records and that spending time in legal proceedings or incarcerated is a barrier to employment.

“I think people are oftentimes engaging with law enforcement, developing a record and therefore experiencing farther difficulties in getting a job despite the fact that it’s really hard to get a job and be employed when you are transgender, when you’re transgender and black, when you’re transgender and undocumented. ... I do think that there needs to be a more critical understanding of the sociological elements that lead to ... vicious cycles of engagement with the sex industry, and that’s absent.”

– Activist and educator

Destabilizing Trauma

Incarceration resulting from arrest and prosecution interrupts the development of stability in employment that can lead to higher incomes. Incarceration and arrest are seen as traumatizing and harmful events that delay

needed medical care and interrupt pathways to independence. Incarceration and arrest are particularly traumatizing for young gay, bisexual, and transgender people.

“The offense of prostitution is a misdemeanor, but people often get charged multiple times which can lead to stacked charges and increased penalties, leading to lengthy periods of incarceration. Women are the fastest growing population in our prison system. A lot of people think of misdemeanor charges and arrests as slaps on the wrist, but they don’t realize that when someone gets arrested for prostitution and for other low-level offenses, they get caught in a cycle of criminalization that prevents them from accessing health care, employment, housing. Sex workers are stigmatized for engaging in sex work, but the system also leaves them without the tools to move beyond survival sex work. And the criminal justice costs go up as a result. This is money that could be redirected to actually improve the lives of those engaged in sex work.”

– Nassim Moshiree, Policy Director,
ACLU of DC

“It’s time and money plus stigma plus emotional distress plus a criminal record, and it may not even change behavior.”

– Stacie Reimer, Former Executive Director,
Amara Legal

Interruptions in Care

Institutional stakeholders also identified that incarceration interrupts medical care, a particular bad result for gender-affirming care. Stakeholders identified that criminalization negatively impacted health due to exposure to violence while incarcerated and disruptions in medical care from time spent incarcerated. Incarceration and arrest were major barriers to engagement and retention in medical and behavioral health care.

“[O]ne of the concerns is especially for trans-identified clients, they’re very afraid of law enforcement because they don’t want to be put in populations where, they don’t want to be put into detention facilities where they’re going to be put in based on their sex assigned at birth, which is a big problem which leads to further criminalization, people agreeing to plea bargains that they ordinarily wouldn’t because they’re in a detention circumstance where they feel unsafe. I’ve seen that a lot with my trans immigrant clients where I would never recommend them taking a plea bargain because it affects their immigration status, but they end up doing it out of fear for themselves and for their safety.”

– Denise Hunter, Senior Staff Attorney,
Whitman-Walker Legal Services

HEALTH

Institutional stakeholders revealed that criminalization of sex work negatively affected the health and wellbeing of sex workers and people profiled as sex workers through exposure to danger and violence, propagating stigmatizing

messages, and interrupting medical care, including gender-affirming care and HIV care and prevention.

Danger and Violence

The state imprimatur of criminality creates stigma and a culture of impunity and violence toward sex workers and people profiled as sex workers. Institutional stakeholders report that criminalization increases the danger that sex workers and the Black and Brown gay, bisexual, and transgender communities profiled as sex workers will face violence. They identify that sex workers experience violence from clients and from community members, including law enforcement.

“[S]o much of the violence that does happen... is precisely because sex work is illegal. That’s why it happens, because there is a perception, this goes back to the stigma and the criminalization, that, “Oh, they’re just whores. I can do whatever I want to them, and no one’s going to care.”

– Darby Hickey, Former Legislative
Advisor, Council of the District of Columbia

“And by the way they are not reporting it that it was a John. They’re not reporting that they were out there. “Hey officer, detective, I just want to be honest. I was out here last night and this guy came up for one of my services and then pulled the gun on me and took my cash.” What we get is she’s going to the hospital, the emergency room calls us because she’s clearly been the victim of an assault. We got there while I was walking home from work and some guys just

randomly walk, but then we pull footage of the video when she was out there for two hours walking in circles and so we put two and two together, but they aren't reporting to us in many, many instances the circumstances surrounding why they were victimized or what they were engaging in at the time because they're afraid that we're going to investigate them and that's a hard message to send to them, but it gets to the US attorney offices. So we catch the guy, you don't think of defense attorney is going to go after? So now do I sponsor her as a witness? Now we have moral turpitude issues, and they could go after her credibility. It's all part of that horrible thing that our society has created."

– Brett Parson, Former Manager of Special Liaison Branch, Metropolitan Police Department

Stigma

Criminalization is known to reduce the ability of sex workers to effectively report crimes of violence for fear of arrest by law enforcement. Stakeholders expressed that criminalization contributes to internalized and external feelings of stigma and perceptions that sex work is an inherently dangerous profession, causing people to blame sex workers for violence perpetrated against them.

"[I]t's a real challenge for people in the sex trade to be able to report any instances of violence. One of the things that I think just culturally we see is that people in prostitution and the sex trade are still largely seen as outside of the category of

those who experience violence. Some of the comments made in the context of the Me Too movement about how powerful men should have just solicited women in the sex trade instead of soliciting their employees at work are a good example of demonstrating how as a society, we still see people in the sex trade as outside of the realm of "everyone else" and as a category of people who we expect to be raped and harassed."

– Yasmin Vafa, Executive Director, Rights4Girls

Barriers to medical care

Criminalization of sex work limits access to health care for sex workers by creating an environment of stigma and fear. Institutional stakeholders perceived that fear of entering DC government buildings for fear of potential negative interactions with law enforcement reduced access to public services and benefits.

"One story that sticks out involved the person examining them putting on two sets of gloves. And just feeling like that was a judgment and not wanting to come back to even get the results of their tests."

– Yasmin Vafa, Executive Director, Rights4Girls

"I think that the current criminalization farther perpetrates stigmas that lead to people's self-worth and self-esteem to decrease. That leads to people's apprehension in reaching social workers and different health programs due to concerns around being demonized and subsequently put in contact

with enforcement bodies and personnel that will criminalize them for, in their attempts to monitor their health”

– Activist and educator

Gender-affirming care

Criminalization was generally seen to impede gender-affirming care for transgender sex workers. Institutional stakeholders expressed that transgender people can defer seeking services if they anticipate experiences of stigma. One stakeholder expressed that the policies at the DC Jail around access to gender-affirming care have improved due to the advocacy of LGBTQ and transgender-focused groups.

“They can be reluctant to access health services because of what they perceived their – the level of care that they will receive and not being in a very affirming, competent environment. So, they will defer, or they will utilize resources that are maybe limited in their capacity to provide those, or in some cases, as I’ve heard anecdotally, persons who aren’t really competent to provide those services. As I’ve heard in terms of anecdotes of person[s] going to others for hormone injections, for instance, that might not be done as – as informed as possible.”

– Michael Kharfen, Senior Deputy Director of HAHSTA, DC Dept. of Health

“You can get hormones. We got really good policies passed on that about a decade ago that D.C. Trans Coalition, Different Avenues, HIPS, GLAA, everybody involved.”

– Darby Hickey, Former Legislative Advisor, Council of the District of Columbia

HIV and STIs

Criminalization limits access to care, treatment, and prevention of HIV and other sexually transmitted infections (STIs). Institutional stakeholders report that criminalization makes sex workers less likely to disclose their sex work to their providers out of fear of stigma and discrimination, resulting in poorer preventive medical care. Stakeholders did not identify any barriers to accessing condoms for the prevention of HIV and other STIs.

“I think it’s hard to have a relationship with a primary care provider, which is what we all really should be doing this - doing preventative care - because if you’re afraid that if you tell your primary care provider, it’s just this constant fear that it’s going to get out, that you’re doing this and that it’s illegal.”

– David Grosso, At-Large Council Member, Council of the District of Columbia

“Something that is very important is to make public health particularly preventive health care accessible to our communities.”

– Activist and Educator

Condoms

MPD stakeholders and others with legal training communicated that carrying condoms is not sufficient cause for an arrest but can be used as evidence of sex work in court. The legal distinction between “cause for arrest” and “used as evidence” contributes to continued confusion and may act as a barrier to public health efforts to stop the spread of HIV and other STIs.

“[A] few years back I was involved in conversations with MPD around issues of condoms and possession of condoms and whether or not that can be considered ‘evidence of commercial sex work’ of which we argued as vigorously as possible to our colleagues in government that this is actually a public health intervention that we’re doing in that we’re providing those condoms. And then if you’re taking that and using that as evidence for law enforcement, that’s sort of counter-indicative of what our strategy is.”

– Michael Kharfen, Senior Deputy Director of HAHSTA, DC Dept. of Health

Public Health

Institutional stakeholders communicated the belief that under a criminalization regime, sex workers are treated as vectors of disease rather than people, and that effective public health efforts can engage sex workers as partners in prevention.

“Sex workers are part of the solution to maintain a safe environment. And the way to go about this should be about ensuring that there are public health concerns addressed, and the people are having access to ongoing and adequate testing, and that there are enough economic opportunities that are actually reaching those who need it the most. So, they can make the best, informed decisions about themselves, their health, their lives, and their families, and by extension, communities.”

– Activist and educator

Access to PrEP

Low rates of PrEP use among community participants indicate that sex workers find it difficult to effectively engage with available PrEP programs. Institutional stakeholders reported that same-day initiation programs for antiretroviral therapy and PrEP for the treatment and prevention of HIV are available to the uninsured, undocumented, and homeless populations through public programs. Access to insurance was not identified as a barrier in Washington, DC. Some stakeholders articulated that public and private programs lack resources for supportive services, like peer health workers, community support groups, and transportation assistance that help retain people in care.

“I think that’s universal, is a failure to understand how human rights and empowerment and fighting stigma of specific communities that are hit super-hard by bad health outcomes, particularly HIV and STDs, how critical those kinds of interventions are, and how there is not funding for them. There’s funding much more for the bio-medical approach which is fine. It’s important, and we need funding for that, for sure. But I remember we used to do like awesome like support group sessions, and, peer training, and peer advocacy, and peer education and, passing out condoms, but it was also about building networks.”

– Darby Hickey, Former Legislative Advisor, Council of the District of Columbia

ONLINE-BASED SEX WORK

District laws and federal laws work together to criminalize online sex work. Most institutional stakeholders indicated that online sex work is safer and more lucrative than street-based sex work. Online sex work allows for negotiation of terms of sexual exchange, location, duration, sexual acts, and price. Institutional stakeholders reported that FOSTA/SESTA has decreased the ability of sex workers to communicate with clients online, pushing them into street-based sex work. FOSTA/SESTA decreased income for sex workers because sex workers can make more from online sex work than street-based sex work. Street-based sex work was perceived to be more dangerous than online work because it increases exposure to violence and arrest.

“If it were to be shut down, I think it gives them less control their own business and less control over the ways that they can get clients. I think anytime you have less control over something that can be a safety issue.”

– Stacie Reimer, Former Executive Director, Amara Legal

POLICY AND LEGAL REFORM

Institutional stakeholders presented a variety of attitudes toward reforming criminal laws and policies around sex work. Stakeholders expressed views of policy reform around vacatur statutes, diversion programs, and reform of criminal laws. Generally, the institutional stakeholders' viewpoints on criminal law reform can be characterized as falling into two camps: those supportive of partial decriminalization and those supportive of full decriminalization.

Institutional stakeholders were careful that their policy proposals were effective for the most marginalized communities; to that effect, no one supported a legalization regime with government regulation of sex workers.

Vacatur Statutes

Stakeholders expressed that vacatur statutes were potentially useful for victims of trafficking. DC's vacatur statute permits victims of trafficking to vacate convictions for crimes committed while under duress and potentially to expunge the related offenses from their record.⁵¹ However, stakeholders understand that vacatur statutes have complex evidentiary and procedural barriers to expungement which make them difficult for many sex workers to access.

“People really love to categorize other people and there's a lot of compassion and concern for someone if they identify as a victim of trafficking versus if they identify as a sex worker, they don't really have any legal remedies to things like a criminal record that might have been wrongful. So, the vacatur statute is great and I'm really glad that we're probably going to have it, [but] there's a portion of the population that it's not going to help at all.”

– Stacie Reimer, Former Executive Director, Amara Legal

Vacatur statutes were understood to not be useful for immigrant sex workers, whose criminal records are accessible by the Department of Homeland Security. Institutional stakeholders expressed that expungement and vacating criminal records from prostitution and solicitation removed barriers to housing and employment and could be helpful for some people.

“[I]t helps you for everything, right? Getting a job, getting an apartment. That’s one of the barriers to even getting an apartment right now, if you have a record.”

– Tina Frundt, Founder, Courtney’s House

Diversion Programs

Institutional stakeholders expressed that diversion programs were a kind of recognition that imprisonment is not an appropriate reaction to consensual commercial sexual exchange. Diversion programs were understood to vary widely, but central features include community service, court appearances, and probationary periods with heightened consequences for re-arrest.

“We’re giving them all of these requirements that they may or may not be able to meet, especially if they continue in sex work. They don’t have a way to continue in sex work and have this diversion agreement in place because if they get arrested again then the whole thing falls apart. Then the third thing that I think is a real concern is that you’re connecting the receipt of services to being arrested.”

– Stacie Reimer, Former Executive Director, Amara Legal

Stakeholders understand that the effectiveness of diversion programs varies widely between programs. Some expressed that diversion programs should be voluntary and should not require an arrest or law enforcement involvement to participate.

“Some of the diversion programs... are surprisingly good and have good outcomes and are non- punitive in

their approach. But others kind of as you signaled, do more harm or do what we call net widening. They just basically pull more people into the system for a longer period of time, unnecessarily.”

– Yasmin Vafa, Executive Director, Rights4Girls

“It’s up to the District and we could do our own diversion program, but it’s really important that it not be a system in which you are penalized by being threatened with jail time if you don’t participate in the services or complete goals of the program. Any diversion program must involve voluntary participation or I think it doesn’t work.”

– Nassim Moshiree, Policy Director, ACLU of DC

Partial Decriminalization

Institutional stakeholders seeking partial decriminalization (decriminalization of the sale of sex, but maintaining criminalization of buyers) state that sex work is performed by marginalized communities and suggest that partially decriminalizing sex has a protective effect on marginalized communities. Stakeholders advocating for partial decriminalization articulate a belief that criminalizing buyers empowers sex workers to report abuse from buyers. These stakeholders are more likely to openly equate sex trafficking and sex work, believing that all sex work is the result of coercion. They also advocate for maintaining criminalization of third parties, claiming that third-party benefactors of sex workers are coercing sex workers through emotional and physical violence and manipulation.

“From our perspective, a lot of the dynamics in the sex trade mirror other forms of gender-based violence. It’s an industry that’s predicated on racial, gender, and income inequality that has a very problematic historical legacy rooted in colonization and slavery and is fueled predominately by white powerful men of means.”

– Yasmin Vafa, Executive Director,
Rights4Girls

There is a desire stated by proponents of partial decriminalization for regulation or monitoring of sex workers to ensure that minors and trafficked persons are not involved. Proponents of partial decriminalization express a view of sex work as socially undesirable and are concerned that full decriminalization sends a message of acceptability that will proliferate professional sex workers and the sex tourism industry. Additionally, these stakeholders expressed fears include fear of corporatization of sex work whereby managers control the services and prices that sex workers charge, fear that decriminalization leads to more human trafficking, and fear that legitimizing sex work removes the incentive of governments to provide social services.

“Full decriminalization, which includes decriminalizing acts of pimping, pandering, sex-buying and brothel keeping...proliferates the sex trade and makes it vulnerable to corporate interests and corporate influence.”

– Yasmin Vafa, Executive Director,
Rights4Girls

“[I]f this is an adult person who’s never bought a child and all they do is buy adults who don’t have a controller, I can’t really say nothing. But we need a way to monitor these things.”

– Tina Frundt, Founder, Courtney’s
House

Full Decriminalization

Full decriminalization was favored by other institutional stakeholders. A common reason for support of full decriminalization was the belief that laws criminalizing sex work have a discriminatory impact on Black communities. Proponents of full decriminalization state that current criminal laws are sources of violence for sex workers and communities of gay and bisexual men and transgender women profiled as sex workers.

“[L]et’s be nonjudgmental and accepting. ...[Y]ou know, criminalization hurts people. And I don’t know if this is more like, a Black community argument, but there’s too much. There are too many police and too much criminalization and too many people have records and this is a racist system”

– Darby Hickey, Former Legislative
Advisor, Council of the District of
Columbia

Stakeholders who advocate for full decriminalization believe that removing criminality will improve the ability of sex workers to operate safely through increased access to public services and the ability to work together without fear of arrest. Advocates for full decriminalization state that if sex work was

decriminalized, sex workers would be able to organize themselves and look out for each other. They argue that if sex work was not a crime, sex workers would be more likely to call the police in the event of violence.

“We strongly believe that if sex work were decriminalized, it would actually make it safer for sex workers to come forward and report incidents of trafficking or other serious crimes to police. Sex workers are on the front lines and often best positioned to identify that someone is being subject to abuse and not there of their own volition, and they could report this to police if they didn’t have to fear arrest.”

– Nassim Moshiree, Policy Director,
ACLU of DC

Diverse stakeholders commented on or participated in the conflation of sex trafficking with sex work. Stakeholders were more likely to conflate sex work and human trafficking if they believed that no person would voluntarily engage in sex work.

“Trafficking and sex work are often conflated, and everything gets wrapped up and labeled as trafficking. And so someone who is engaged in consensual sex work for any variety of reasons – because they simply want to, because they find it empowering, or because they need to pay rent – gets caught up in anti-trafficking efforts.”

– Nassim Moshiree, Policy Director,
ACLU of DC

Effects of Decriminalization

Stakeholders generally believed that decriminalization would make sex workers more likely to report incidences of violence to the police, would increase trust between sex workers and police, and would assist anti-trafficking efforts by allowing sex workers to safely identify when someone is being coerced. Stakeholders expressed the belief that decriminalization would increase access to the District’s supportive services and increase retention and engagement in health care.

“I hope that it would bring them more safety. I hope that they would be able to call the police when they had a problem and that they could actually get some help. I think it would reduce stigma.”

– Stacie Reimer, Former Executive
Director, Amara Legal

Comparing Perspectives

There was a substantial amount of agreement between community participants in the focus groups and the institutional stakeholders who participated in the interviews.

MOTIVATIONS OF SEX WORKERS

Both data sets captured that participation in sex work is primarily motivated by earning a livelihood and accessing housing and food. These motivations are understood to arise from socioeconomic circumstances, like poverty, which create situations of economic necessity where participation in sex work is a pathway to self-sufficiency and survival. Community participants and institutional stakeholders agreed that criminal

penalties were unsuccessful at stopping or deterring people from engaging in sex work.

SEX WORK VERSUS TRAFFICKING

All community participants and most institutional stakeholders distinguished between sex work and human trafficking. The gay and bisexual men and transgender women sex workers in focus groups remarked on their agency when participating in sex work. Most stakeholders agreed that enforcement of the District's prostitution and solicitation laws was ineffective in the fight against human trafficking, in particular the fight against the sexual exploitation of minors. The few stakeholders who believed that criminalizing sex work helped fight human trafficking were particularly concerned with the sexual exploitation of minors. When speaking about adults, these stakeholders expressed that the economic circumstances for sex workers were so intense as to be coercive, removing meaningful capacity for choice in those situations. Because homelessness and access to necessities of daily living like food and clothes are primary motivators for participation in sex work, increasing access to social programs may decrease the economic necessity for participation in sex work.

NEED FOR SOCIAL SERVICES

Community participants and institutional stakeholders noted that a lack of sufficient funding for social programs and widespread employment discrimination created the economic circumstances that disproportionately impact Black transgender women and gay and bisexual men. Both groups agreed that additional resources to provide housing support, employment programs, and medical and supportive services would improve

the health and wellbeing of sex workers. Notably, both groups agreed that access to insurance was not a major barrier to medical services in the District. This result indicates that District policies to improve health care access are successful at reaching the District's communities of sex workers.

LAWS CREATE BARRIERS

Both groups agreed that criminalization of sex work created barriers to housing, employment, and health. These barriers arise from legal mechanisms, such as policies that bar people with criminal records from housing assistance or federal grant programs, and through less direct psychosocial mechanisms like stigma, which contributes to the vulnerability of sex workers to violence and discrimination. The law created social stigma related to criminality that has normalized violence toward sex workers and those stereotyped as sex workers. The law was also seen to propagate stigmatizing messages that are internalized by sex workers. Internalized stigmas created a sense of anticipatory discrimination in sex workers, discouraging them from reporting crimes when they were victimized and discouraging them from communicating with their health care providers.

SUPPORT FOR LEGAL REFORMS

All community participants and institutional stakeholders believed that the current laws needed to be reformed. Most supported the decriminalization of consensual commercial sexual exchange, with some desiring additional requirements and conditions on employment, but stopping short of a governmental legalization regime. In particular, there was strong support for the full decriminalization

of sex work. Some supported the partial decriminalization of sex work, believing that criminalizing the buying of sex is needed to continue to give the law enforcement officers authority to investigate potential sexual exploitation and human trafficking.

CONCERNS ABOUT LEGALIZATION

Nearly all community participants and institutional stakeholders voiced concerns about creating a regulatory and legalization regime in the District. There was widespread agreement that legalization would result in continued marginalization of immigrants, people living with HIV, and transgender women of color. There was a sense that legalization resulted in the promulgation of commercialized and corporatized structures of sex work, an outcome which was not favored by community participants nor institutional stakeholders. All of the stakeholders and community participants sought to reduce sources of violence and coercion for sex workers, including potentially coercive and exploitative legal employment.

LIMITATIONS OF VACATUR AND DIVERSION

While not every institutional stakeholder and community participant discussed the subject of vacatur statutes and diversion programs, there was generally agreement that these interventions had limited applicability for most sex workers due to their complex procedural requirements and high evidentiary burdens. In particular, vacatur statutes and diversion programs were perceived as requiring people to stop engaging in sex work without establishing supports for housing and employment training

that would facilitate leaving the sex trade.

DISTRUST OF THE MPD

There was agreement between community participants and institutional stakeholders that current MPD practices and policies undermine trust and create barriers to community safety. Discrimination, harassment, and violence against sex workers by MPD officers were viewed as severely detrimental to building trust with law enforcement, in particular a barrier to fighting trafficking. Community participants felt that it is hypocritical of MPD officers who are clients of sex workers to enforce laws criminalizing sex work. MPD accountability processes, mediated by the OPC, were perceived to be an improvement over previous practices, but a lack of transparency around how complaints are handled contributed to feelings of mistrust. Notably, both MPD stakeholders and sex workers agreed that criminalization of sex work is barrier to MPD's handling of reports of violence against sex workers—both in reporting these crimes and prosecuting them.

CULTURAL COMPETENCY TRAINING

There was agreement between the community participants and institutional stakeholders that MPD officers should receive additional training on the LGBTQ community as well as on race and systemic racism. The Gay and Lesbian Liaison Unit (GLLU) was understood to be a leader in the nation in advancing cultural competency of law enforcement officers, but levels of cultural competency varied among MPD officers. Community participants expressed that they liked that all members of the GLLU have expertise in LGBTQ cultural competency, while

institutional stakeholders from the MPD implied that including non-specialized officers in the GLLU was a strength of the program.

Recommendations

Based on the research findings, we recommend the following to remove barriers to health and wellbeing for transgender women and sex workers in the District of Columbia.

REFORMS THAT WE RECOMMEND

We recommend that the DC Council:

1. Reform the criminal code of the District of Columbia to eliminate criminal penalties for consensual commercial sexual exchange between adults.

Criminalization causes arrest and incarceration, vulnerability to state and non-state sponsored violence, homelessness, lack of employment, and barriers to health care. Criminalization also contributes to stigma, discrimination, and early death for sex workers and those stereotyped as sex workers. Decriminalization of consensual commercial sexual exchange between adults removes a driver of racial inequalities in arrest and incarceration, is a cost-effective method of reducing crime and improving community health, and recognizes the inherent dignity of individuals to control their own body and the conditions of their existence.

2. Increase access to affordable housing.

Increased resources for supportive housing and prioritizing populations of transgender women of color would remove or alleviate barriers to accessing housing and address a primary motivation for participation in sex work.

3. Increase resources for job training and employment programs.

Increased resources focused on providing populations of greatest need, identified here as sex workers and transgender women of color, with skills-building programming, secondary education, apprenticeships, and employment readiness programs will ameliorate a gap in access to other employment for sex workers.

4. Increase efforts to address discrimination against LGBTQ people.

Our research identifies discrimination against transgender people as a primary driver of survival sex work. Additional resources to help fight discrimination in employment, education, and other areas will increase access to careers and gainful employment for LGBTQ people and help improve the health and wellbeing of people engaged in commercial sexual exchange.

REFORMS THAT WE DO NOT RECOMMEND

Partial Decriminalization of Sex Work

We do not recommend partial decriminalization or decriminalizing only selling sexual services and maintaining criminal penalties for buying sexual services and third-party participation. Our research indicates that partial decriminalization does not reduce experiences of violence for sex workers or allow them to access law enforcement. Partial decriminalization maintains existing stigma on sex workers by seeking to eradicate sex work, and consequently fails to address the identified harms of stigma on sex workers and those stereotyped as sex workers.

Legalization of Sex Work

We do not recommend legalization of sex work or the regulation of commercial sexual exchange, often through mandated licensing and screening and limitations on where and under what circumstances consensual commercial sexual exchange may be conducted. We do not recommend legalization because it fails to ameliorate the marginalization sex workers experience. In particular, transgender women of color and people living with HIV are likely to continue to be marginalized under legalization due to not being able to access legal venues for sex work.

Additional information on the emergent effects of decriminalization may support some governmental regulation of commercial sexual services, but these should be created in consultation and agreement with the District of Columbia's communities of sex workers. Voluntary, accessible, and culturally competent health care services are more effective than mandated screening requirements and compliant with international standards for realizing the human right to health.

Vacatur Statutes

We do not recommend vacatur statutes as a potential solution for the harms arising from criminalization of consensual commercial sexual exchange. Existing vacatur or sealing statutes allow for some people to expunge or seal their criminal records. However, these statutes have complex procedural requirements, high evidentiary standards, and limited applicability to many potential beneficiaries, in particular immigrant sex workers. Because of the high evidentiary standards, vacatur statutes are

most useful for extreme cases of human trafficking where traffickers clearly coerced their victims into committing criminal acts.

RESEARCH LIMITATIONS

Applicability

The application of this research is limited by the timing of our research, conducted during 2017, and our sampling and interview methods. This research is unable to speak to the effects of the reform efforts initiated in 2020, but does reflect the enforcement practices and policies of the MPD through 2020. While our description and explanation of the effects of criminalization on the health and wellbeing of sex workers may be generalizable within DC and to other jurisdictions, the results and recommendations of our report are limited in applicability to Washington, DC's local governance. Our legal analysis is limited to the local ordinances regarding solicitation, prostitution, and brothel-keeping.

Our research focuses on communities of Black sex workers, with a focus on Black transgender women as a group that experiences overlapping marginalization based on their intersecting identities. This focus is a strength of the research, as policies which address the most marginalized groups are likely to address conditions that create vulnerability for all groups.

It is reasonable to conclude that the sex worker's experiences with criminalization and enforcement in Washington, DC are generalizable to a wider population of sex workers in the United States. The present findings align with previous DC-based research in the Move Along Report⁵², the DC Trans Needs Assessment⁵³, and the research

conducted by the United Nations⁵⁴, Amnesty International⁵⁵, and Human Rights Watch⁵⁶ in other jurisdictions.

Our qualitative analysis engages with the harms from criminalization as understood by sex workers. Our report uses interviews by institutional stakeholders to highlight how criminalization produces the effects that sex workers experience. Research published in medical journals on health outcomes in other jurisdictions serves to provide additional evidence of the connection between the health outcomes and structural factors.⁵⁷

Our analysis regarding the impact of FOSTA-SESTA on the health and wellbeing of sex workers is likely generalizable, but additional research on the national impact is necessary to identify outcomes with epidemiological rigor.

Sampling

Nearly all focus group community participants were Black, and most were transgender women. We used convenience sampling to find participants. Transgender women of color report high levels of survey fatigue as a population. This feeling of being research specimens rather than research participants may suppress responses and decrease the pool of potential participants or cause non-random self-selection of survey naïve participants who may have different experiences with law enforcement. However, the characteristics of our sample contribute to the strengths of this research because they match the demographic breakdown of street-based sex workers who are disproportionately affected by the two epidemics of HIV and hate crimes in the District of Columbia.⁵⁸ Additional research

could expand the pool of potential participants to determine if our findings are anomalous. We did not recruit and sample Latinx sex workers in this research. The focus group participants were all English-speaking and none were recent immigrants, potentially limiting the application of our research to address the concerns of DC's communities of immigrants and English-language learners. Our interview data provide a number of ways in which the legal status of immigrant sex workers creates barriers to health and wellbeing; however, future research would benefit from collecting information on the lived experiences of immigrant and non-English speaking sex workers.

Future Research

This project is a cross-sectional sampling of current and former sex workers. A longitudinal study would be able to observe the potential consequences of legal changes to identify causal relationships with more accuracy. This research strengthens our understanding of the material processes of criminalization's effects. Additional research specific to Washington, DC would strengthen the theoretical bridge between law and its effects. For example, quantitative analysis of policing practices and policies, analysis of prosecutions, trials, and incarceration, and an analysis of medical and legal outcomes and effects on marginalized transgender communities.

Appendix A: Community Participant Survey Data

Participant Number	Health is	Frequency of sex work traded for	% of income from sex work	Prison or jail	Arrests for/ while sex work?	Abuse by clients/others?	Abuse by police?	Abuse reported to police?	HIV?	PrEP	STIs	Disclosure of sex work to testers?
1	Good	>1/wk	Most	Yes	No	Yes	Yes	No	+		Yes	Yes
2	Good	>1/wk	Most	Yes	No	Yes	Yes	No	+		Yes	Yes
3	Fair	>1/wk	Most	Yes	No	Yes	No	Yes	+		No	Yes
4	Good	>1/wk	Half or more	Yes	Yes	Yes	Yes	No	+		Yes	No
5	Excellent	1/wk	25-50%	Yes	Yes	Yes	No	Yes	+		No	No
6	Very Good	1/mo	<25%	Yes	Yes	Yes	No	No	+		Yes	Yes
7	Fair	1/mo	Most	Yes	Yes	Yes	No	Yes	+	Unaware	Yes	Yes
8	Good	1/wk	Most	Yes	No	No	No		+		Yes	No
9	Excellent	A few times	<25%	Yes	No	No		Yes	+		No	Yes
10	Good	1/wk	<25%	Yes	No	Yes	No	Yes	Negative	Aware but not using	Yes	Yes
11	Very Good	>1/wk	Most	Yes	No	No	No		Negative	Aware but not using	No	No
12	Fair	>1/wk	Most	Yes	No	Yes	No	Yes	+		No	Yes
13	Very Good	>1/wk	Half or more	No	No	No	No		Negative	Aware but not using	Yes	No
14	Excellent	>1/wk	Half or more	No	No	No	No		Negative	Aware, on it but not adherent	Yes	No
15	Excellent	>1/wk	Most	No	No	No	Yes	Yes	Negative	Aware, take it sporadically (for accidents)	No	Yes
16	Excellent	>1/wk	Most	Yes	No	No	No		Negative	Aware but not using	Yes	Yes
17	Very Good	>1/wk	Most	Yes	No	Yes	No	No	+		Yes	Yes
18	Good	A few times	<25%	Yes	No	No	No		Negative	Aware but not using	No	Yes
19	Excellent	A few times	Most	Yes	No	Yes	Yes	No	+		No	No
20	Fair	>1/wk	Most	Yes	No	Yes	No	Yes	+		Yes	No
21	Excellent	A few times	None	Yes	No	Yes	No	Yes	+		Yes	Yes
22	Fair	>1/wk	Most	Yes	No	Yes	Yes	No	Negative	Aware but not using	No	Yes
23	Good	1/mo	Half or more	No	No	Yes	No	No	+		Yes	Yes
24	Fair	>1/wk	Half or more	Yes	No	No	No		Negative	Aware but not using	Yes	No
25	Good	>1/wk	Half or more	Yes	Yes	Yes	Yes	No	+		No	Yes
26	Fair	<1/mo	Half or more	Yes	Yes	Yes	No	No	Negative	Aware but not using	Yes	Yes
27	Excellent	>1/wk	Most	Yes	Yes	Yes	Yes	Yes	Negative	Aware but not using	Yes	Yes

RELEVANT CHARACTERISTICS OF PARTICIPANTS WERE:

Age. Participants ranged from age 20 to age 55, with a majority in their 20s and 30s.

Race, ethnicity, sexual orientation and gender identity. Almost all participants identified as Black and almost none identified as Latinx. 67 percent identified as transgender women; 30% identified as cisgender men; two participants identified as non-binary; and one participant as a cisgender woman. All of the cisgender men identified as gay or bisexual; the transgender and non-binary individuals identified as a range of sexual orientations.

Income and housing. 37 percent of participants were homeless at the time of the survey; 70% had experienced unstable housing in the previous two years. 57 percent reported annual incomes of less than \$6,000 at the time of the survey; only 7% reported annual incomes of \$30,000 or more.

Amount of commercial sex work. 52 percent of participants reported that all or most of their income came from sex work, and another 26% reported that sex work accounted for one-half or more of their income. 15 percent reported that sex work accounted for less than one-quarter of their income. 59 percent engaged in sex work more than once a week; another 11% reported sex work about once a week; 30 % reported that they engaged in sex work less often.

Health insurance self-reported health; HIV status and use of PrEP; STI testing. Almost all of the participants reported that they had health insurance, mostly through Medicaid. Few reported that they had been unable to get health care they thought they needed; 74% rated their own health as “Good” or better. 59 percent had been diagnosed as HIV-positive. Most of the rest had tested HIV-negative within the past year. All of the HIV-negative individuals reported that they had heard about PrEP, but most of them had not used it. Two participants reported that they had PrEP prescriptions, but one said that they were not taking the drug and the other said they only used it after a sexual accident, such as a broken or slipped condom (which essentially means they were not adherent). Most participants said they had been tested for other STIs within the past year; 63% had been diagnosed with one or more STIs at some point in time. 67 percent of participants said that when last tested for HIV or other STIs, they had disclosed to the tester or doctor that they had engaged in sex work.

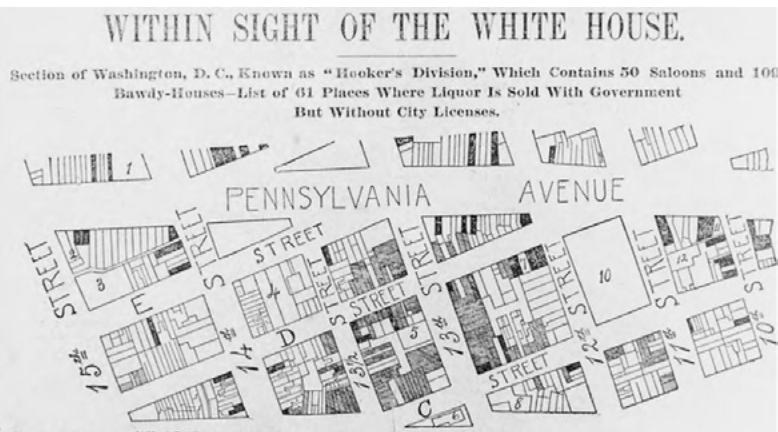
Participant Number	Age	GI	Sex at Birth	Sexuality	Partnered	Race	Latinx	Education	Living situation	Income	Health insurance	Problem getting health care?
1	30	TGF	M	Het	Fiance	B	No	High school/GED	Unstable, now homeless	<6,000	Y - public	No
2	30	M	M	Pan	Single, partner	B	No	Some college	Unstable, now homeless	<6,000	Y - public	No
3	50	TGF	M	Pan	Single	R	No	No high school	Unstable, now rent	6,000-12,000	Y - public	No
4	50	TGF	M	Bi	Seprated	B	No	Some college	Unstable, now homeless	6,000-12,000	Y - public	No
5	34	F	M	Het	Single, partner	B	No	College degree	Rent	30,000-60,000	Y - public	No
6	36	TGF	M	Bi	Single	B & Native American	Yes	High school/GED	Unstable, now live with others	30,000-60,000	Y - public	No
7	26	TGF	M	Homo	Single	B	No	High school/GED	Unstable, now rent	<6,000	Y - public	Yes
8	32	TGF	M	Homo	Single	B	No	High school/GED	Unstable, now homeless	<6,000	Y - public	Yes
9	55	TGF	M	Het	Single	B	No	No high school	Rent	<6,000	Y - public	No
10	34	M	M	Homo	Single	B	No	Associate college degree	Unstable, now homeless	<6,000	Y - public	No
11	23	F	M	Het	Single	B	No	Some college	Rent	12,000-18,000	No	Yes
12	23	TGF	M	Pan	Single	B	No	High school/GED	Unstable, now homeless	<6,000	Y - public	No
13	23	M	M	Homo	Single	B	No	Some college	Unstable, now live with others	12,000-18,000	Y - private	No
14	21	TGF	M	Het	Single	B	No	High school/GED	Unstable, now homeless	<6,000	Y - public	No
15	20	TGF	M	Het	Single, partner	B	No	Some college	Unstable, now homeless	<6,000	Y - public	Yes
16	24	M	M	Homo	Single	B	No	College degree	Unstable, now live with others	18,000-24,000	Y - private	No
17	28	TGF	M	Het	Single, partner	B	No	High school/GED	Unstable, now rent	<6,000	Y - public	No
18	37	M	M	Homo	Single	B	No	Some college	Rent	<6,000	Y - private	Yes
19	32	TGF	M	Het	Single, partner	Native American	No	High school/GED	Rent	18,000-24,000	Y - public	No
20	47	M	M	Homo	Single	B	No	No high school	Rent	6,000-12,000	Y - public	No
21	47	M	M	Bi	Single	B	No	College degree	Unstable, now live with others	18,000-24,000	Y - public	No
22	41	F	F	Bi	Single, partner	B	No	Some college	Unstable, now homeless	<6,000	Y - public	No
23	36	M	M	Ri	Single	R	No	High school/GED	Unstable, now transitional facility	<6,000	Y - public	No
24	27	NB	M	Homo	Single	B	No	High school/GED	Unstable, now homeless	<6,000	Y - public	No
25	50	TGF	M	Bi	Single	B	No	High school/GED	Rent	6,000-12,000	Y - public	No
26	48	NB	F	Bi	Single, partner	B	No	No high school	Rent	6,000-12,000	Y - public	No
27	29	TGF	M	Het	Single	B	No	High school/GED	Unstable, now rent	<6,000	Y - public	No

Appendix B: Institutional Stakeholder Interview Participants

NAME	TITLE/ORGANIZATION
Yvette Butler	Former Director of Policy and Strategic Partnerships, Amara Legal
Stacie Reimer	Former Executive Director, Amara Legal
Denise Hunter	Senior Staff Attorney, Whitman Walker Health
Yasmin Vafa	Executive Director, Rights4Girls
Brett Parson	Former Manager, Special Liaison Branch (oversees LGBTLU); Lieutenant, MPD
Kelly O'Meara	Executive Director, Strategic Change Division
Michael Kharfen	Senior Deputy Director of HIV/AIDS, Hepatitis, STD, and TB Administration (HAHSTA), DC Department of Health
David Grosso	Chairperson of the Committee on Education, At Large Councilmember, Council of the District of Columbia
Darby Hickey	Former Senior Legislative Advisor for CM Grosso
Nassim Moshiree	Policy Director, ACLU of DC
Tina Frundt	Founder of Courtney's House
Anonymous	Activist and educator
Michael Tobin	Office of Police Complaints, Executive Director

Appendix C: DC's History of Sex Work Policing

Historically, the policy approach to sex work has changed in response to community action and emerging public health evidence. For example, in the 1800s, due to the presence of standing armies and the rapid increase in District population during and after the Civil War, the number of sex workers increased rapidly.⁵⁹ At that time, authorities believed that sex workers helped contain disease and were a necessary outlet for excess male sexual energy. Consequently, sex work was confined to several red-light districts adjacent to centers of commerce and government.⁶⁰



When public opinion changed in the late 1800s and early 1900s, sex work was described as morally wrong and degrading to the cohesion of families.⁶¹ Early in the 20th century, Congress sought to abolish sex work and passed laws to “define and prohibit” “pandering...and provide for the punishment thereof” (1910) and to “enjoin and abate houses of lewdness, assignation and prostitution” (1914) in the District.^{62,63} In 1935, Congress criminalized solicitation for prostitution in District.⁶⁴

In 1989, counter to the policy of the MPD, District police removed sex workers from downtown

street corners and marched them toward the Virginia state line via the 14th Street Bridge.⁶⁵ During the 1990s, the “broken window” theory—which argues that policing low-level offenses can prevent more serious crimes, was popular,⁶⁶ and the DC Council passed a number of measures restricting freedom of movement and expanding the ability of police to stop, search, and arrest people suspected of sex work.



In 1998, the DC Council passed a 90-day city bill criminalizing people for wearing revealing clothing and for repeatedly engaging in conversation with passersby for the purpose of prostitution.⁶⁸ Street signs were erected in the late 1990s prohibiting right turns between 9pm and 5am at certain intersections in an effort to keep clients from circling blocks where sex workers gathered.⁶⁹

In response to these restrictions on their freedom of movement in DC and increasing violence, in 2005, sex workers and communities of transgender people organized the Alliance for a Safe and Diverse DC.⁷⁰ In 2006, the DC Council enacted omnibus crime legislation which, among other provisions, sought to suppress sex work in DC.⁷¹ The laws enacted include

provisions declaring indoor sex work a nuisance, impounding vehicles used in furtherance of a prostitution-related offense, and empowering the police chief to create “prostitution free zones” (PFZ). A PFZ could be declared over city blocks, and police could order anyone suspected of being a sex worker to “move along.” Due to concerns about constitutionality, prostitution free zones were repealed by the DC Council in 2014.⁷² Traffic restrictions, nuisance laws, and vehicle impounding are still in effect.

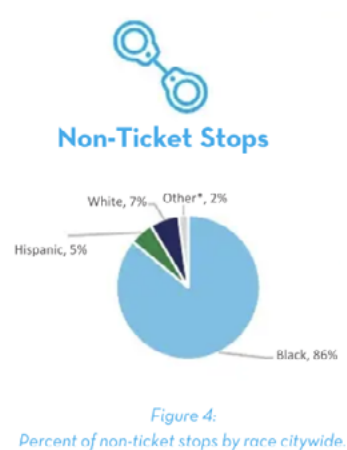
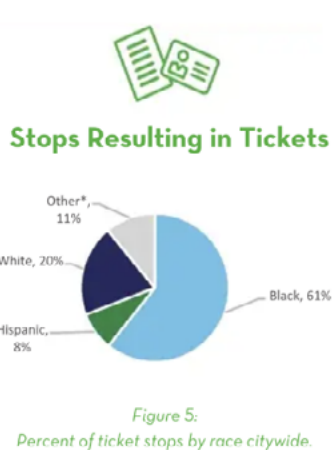
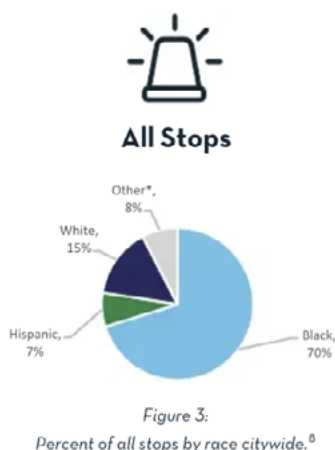
Organizing efforts and community-based research conducted by the Alliance for a Safe and Diverse DC in 2007 and 2008 were successful in challenging MPD policies and securing positive statements of support from city government employees, elected officials, and other LGBTQ and human rights organizations.⁷³

In July 2012, Human Rights Watch published a report on police, including MPD officers, using the presence of condoms as evidence of sex work.⁷⁴ The MPD responded with a public education campaign, publishing and distributing cards to officers and sex workers clarifying that carrying condoms is not an arrestable offense.⁷⁵ The MPD noted, however, that while condoms alone are not sufficient evidence of sex work, condoms may still be used as “supplementary

evidence in some cases and will continue to be collected at the scene.”⁷⁶ This distinction may continue to cause confusion and have negative effects on public health.

Throughout the summer of 2015, the Human Trafficking and Narcotics Units of MPD conducted prostitution enforcement operations.⁷⁷ These enforcement operations resulted in over 200 arrests for solicitation and prostitution.⁷⁸

In an effort to move away from “broken window policing,” in 2016, the DC Council passed the Neighborhood Engagement Achieves Results Act, or the NEAR Act.⁷⁹ The NEAR Act asserts a public health approach to crime, seeking to interrupt violence through investments in community resources and seeking to improve MPD relationships with surveys and data on policing. In 2019, a Working Group was convened by the Mayor to explore potential diversion programs for sex workers.⁸⁰ In 2019, after court-ordered compliance with the NEAR Act’s reporting requirements on all police stops, the data revealed significant racial disparities in policing practices.⁸¹ The data showed that MPD stopped Black people in excess of their demographic make-up by 14%-39%, depending on the outcome and type of police encounter.⁸²



Endnotes

- 1 Laws in the United States use the term “prostitution”, which has connotations of criminality and immorality. Many people who sell sexual services prefer the term “sex work” and find the term “prostitution” demeaning and stigmatizing, which contributes to their exclusion from health, legal, and social services. Throughout the report, we use the term “sex work” but we occasionally use the term “prostitution” when refer to DC law or other state or federal laws.
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