Policy Recommendations

Respecting and Advancing the Rights of People Involved in the DC Sex Trade

HIPS — Reducing harm in the nation's capital since 1993

Throughout the United States, with the exception of a few areas, the exchange of sex for anything of value between consenting adults is criminalized.[i] This brief non-exhaustive policy guide was created to shift laws and policies in the nation's capital in order to combat the harms exacerbated by criminalization.[ii]

Fully Decriminalize Sex Work

The full decriminalization of sex work helps to respect and advance the civil and human rights of folks involved in the sex trade. Criminalization exacerbates harms—leaving people vulnerable to violence and discrimination with limited recourse. Decriminalization is the removal of all criminal penalties associated with consensual sexual exchange.[iii] Not only does this mean the removal of the possibility of jail or prison time but also the removal of other punishments such as fines, probation, and non-custodial sentences. Unlike legalization, where sex work is made legal under a regulatory regime, which typically results in stringent work requirements and police enforcement, decriminalization seeks to eliminate the role of criminal law in constraining consensual adult sex.

People engaging in survival sex work will benefit the most from a decriminalization policy. Street-based sex workers are the most likely to be stopped, harassed, or arrested under current laws and policies. A legalization policy is limited because of potential compliance issues with government-imposed requirements. These requirements also operate under the assumption that sex workers do not apply harm reduction safety practices voluntarily. Decriminalizing sex work will help to better expand efforts to keep the public healthy and safe, making it a necessary policy move in the District of Columbia and elsewhere.

End Profiling and Improve Police Departmental Policies

Profiling is defined as discriminatory law enforcement practices that rely on stereotypical group characteristics to target people for suspicion of crime.[iv] Profiling can occur on the basis of several identity markers including race, gender identity, or sexual orientation. In the context of sex work, women of color, and more specifically Black cisgender and transgender women, are profiled as sex workers.[v] By doing so, law enforcement labels and criminalizes the expression and existence of people in our communities. To end profiling, police departments in DC must establish appropriate policies and procedures with the input of community organizations and individuals.

Additionally, police departments should establish policies that address police harassment and violence. For example, a majority of police departments in the United States do not have explicit departmental policies prohibiting sexual harassment and assault. As evidenced by the Daniel Holtzclaw case[vi] in Oklahoma City and the results of a study conducted in DC showing that 23% of Black trans* folks have been subjected to police physical or sexual violence,[vii] there is a great need for zero tolerance policies that will help to end extortive police practices.

Deprioritize Arrests for Solicitation and Other Related Offenses

Folks engaged in the sex trade are subjected to arrest for a variety of offenses. The most commonly known prostitution offense is solicitation, which both sex workers and clients can be arrested, charged, and convicted of. However, there are a myriad of offenses that can lead to arrest or citation, such as disorderly conduct and lewd, indecent, or obscene acts.

The fear of arrest limits the ability of sex workers to negotiate safer sex practices and may deter them from carrying sufficient safer sex supplies, thus exacerbating adverse health outcomes and violence. Not only are sex workers increasingly vulnerable to police harassment and violence but racial and sexual minorities are disproportionately impacted by criminalization. In the United States in 2014, approximately 52% of youth and 42% of adults arrested for prostitution offenses were Black[viii]—meanwhile the Black population in the United States is only approximately 13%.[ix] By deprioritizing arrests of sex workers and clients for consensual sexual exchange, DC can help to limit the harms produced by criminalization and allocate law enforcement resources elsewhere.

Expand Access to Record Sealing

Several states have passed vacatur statutes, providing post-conviction relief to victims of sex trafficking. Currently, the DC Council is reviewing the *Record Sealing for Victims of Sex Trafficking Amendment Act of 2015*,[x] which if passed, would permit sex trafficking survivors to apply for the sealing of arrest, charge, and conviction records for prostitution offenses. The sex trafficking survivor would need to establish that another person coerced them into the sex trade and the survivor did not commit a prostitution offense in connection with another DC or federal crime. Although the bill allows the court to grant the petition in the "interest of justice" even if the petitioner fails to establish the requirements, they are not guaranteed relief. The bill does not provide relief for people arrested for other crimes connected to their exploitation. It also does not provide relief for people who may not have been coerced by another individual into the sex trade yet face barriers to employment, housing, and social services due to having been arrested, charged, or convicted of a prostitution or prostitution-related offense. Additionally, sealing the record removes the file from the public record but it is still retained as a non-public file. Retaining a non-public file is insufficient in fully addressing the harm associated with having a criminal history, including police harassment.

Grant Immunity When Reporting Crime

Establishing a policy that explicitly grants immunity to sex workers reporting a crime committed against them or others can help to eliminate barriers to justice. The criminal label ascribed to sex workers can make them vulnerable to violence. By providing support and assistance regardless of their involvement in the sex trade, we send a message that violence against sex workers will not be tolerated.

Expand Access to Crime Victims Compensation Programs

Being a victim of violent crime can be a destabilizing experience emotionally, physically, and financially. The Crime Victims Compensation Program (CVCP) in DC covers crime-related out of pocket expenses. However, the eligibility requirements[xi] make it difficult to access such compensation for folks in the sex trade. In order to provide the support necessary to sex workers who are victims of crime, guidelines should be produced to clarify eligibility requirements in addition to trainings for law enforcement so that sex workers are not turned away when seeking redress. Additionally, the CVCP should be made available to victims of police violence and reporting to the Office of Police Complaints (OPC) should satisfy reporting requirements.

Fund Research, Community-Based Programs, and Advocacy

Appropriate funding should be allocated to organizations providing support to folks in the sex trade as well as funding research. Research is important so that we understand the needs of sex workers and can establish programs catered to those needs. By expanding funding streams, community organizations can provide paid opportunities for peer involvement in advocacy and outreach. Funding will also provide organizations with the capacity to train service providers and agencies on best practices.

Organizations in the U.S. are no longer required to take an anti-prostitution loyalty oath (APLO) in order to receive funding from the President's Emergency Plan for AIDS Relief (PEPFAR). However, work needs to be done to expand funding for advocacy efforts to create laws and policies that honor the health, safety, and human rights of folks in the sex trade—which includes the decriminalization of sex work.

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[i] In states throughout the country, minors can be arrested, charged, and convicted of prostitution. DC recently passed the *Sex Trafficking of Children Prevention Amendment Act of 2014*, providing minors with immunity for children (under age of 18) suspected of engaging in prostitution, http://lims.dccouncil.us/Download/31339/B20-0714-SignedAct.pdf.

[ii] As expressed throughout this document, these vulnerability are compounded by systemic oppression and criminalization.

[iii] The definitions of decriminalization are contested. Here, we take a more progressive stance on what decriminalization requires.

[iv] *See generally* ACLU, *Racial Profiling: Definition*, https://www.aclu.org/racial-profiling-definition.

[v] Darby Hickey, *Monica Jones and the Fight Against Racial and Gender Police Profiling in the U.S.*, Huffington Post (Mar. 12, 2014, 11:26AM), http://www.huffingtonpost.com/darby-hickey/monica-jones_b_4937899.html; *see generally*, Red Umbrella Project, *Criminal, Victim, or Worker? The Effects of New York's Human Trafficking Intervention Court on Adults Charged with Prostitution-Related Offenses*, http://redumbrellaproject.org/wp-content/uploads/2014/09/RedUP-NYHTIC-FINALweb.pdf.

[vi] Matt Ford, *A Guilty Verdict for Daniel Holtzclaw*, The Atlantic (Dec. 11, 2015), http://www.theatlantic.com/politics/archive/2015/12/daniel-holtzclaw-trial-guilty/420009/.

[vii] DC Trans Coalition, *Access Denied: Washington, DC Trans Needs Assessment Report* at 78, https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf.

[viii] FBI, *Uniform Crime Reports*, 2014 Crime in the U.S., Table 43, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43.

[ix] United States Census Bureau, *Quick Facts: United States 2014*, http://quickfacts.census.gov/qfd/states/00000.html.

[x] Council of the District of Columbia, *B21-0365 – Record Sealing for Victims of Sex Trafficking Amendment Act of 2015*, available at http://lims.dccouncil.us/Legislation/B21-0365?FromSearchResults=true.

[xi] District of Columbia Courts, *Crime Victims Compensation Program*, available at http://www.dccourts.gov/internet/public/crimevictimscomp.jsf.