Why Decriminalization is Consistent with Public Health Goals

Canadian Alliance for
Sex Work Law Reform

Sex Workers, Organizations and Individuals Advocating for Sex Workers' Rights and Community Well-Being

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Evidence shows that the criminalization of sex work and the accompanying lack of respect for sex workers' human rights forces sex workers to work in circumstances that diminish their control over their working conditions and leaves them without the protective benefit of labour or health standards. Conversely, the decriminalization of sex work has been associated with better and improved health.

In New Zealand, after the government decriminalized prostitution in 2003, sex workers exercised greater power to demand safer sex. For example, some brothel- and street-based sex workers who had previously not carried condoms or lubrication for fear of it being used as evidence for a conviction felt safe being in possession of these items. Evidence from New Zealand and the Australian state of New South Wales indicates that decriminalization of sex work also empowers sex workers, giving them more control over their work environment and conditions. It also increases their access to HIV and sexual health services and is associated with very high condom use rates and very low STI prevalence. Moreover, in decriminalized contexts, the sex industry can be subject to the same general laws regarding workplace health and safety and anti-discrimination protections as other industries. As borne out by the evidence, reforming prostitution laws in a way that respects, protects and fulfills sex workers' human rights is critical to advancing public health objectives and a necessary prerequisite for improving prevailing conditions so that sex workers can work free from violence and other health and safety risks.

The public health consequences of criminalization include:

Displacement to isolated spaces: The criminal law prohibiting communicating in public spaces for the purposes of sex work often pushes the most marginalized sex workers to secluded areas (e.g., dark alleys and industrial settings) to avoid police detection, where they have little protection or ability to screen clients. Displacement is directly linked to increased risk of physical violence, sexual assault and HIV risks, including reduced ability to insist on condom use by clients.

Limited ability to screen clients: The prohibition on communication in public for the purpose of sex work puts pressure on workers to hastily conclude a transaction for fear of police intervention and leaves them with inadequate time to screen a potential client and negotiate the terms of a transaction, including condom use.

Limited ability to control condom use: Sex workers — particularly those working on the street — have reported having their condoms confiscated by police, who may use those condoms as evidence of criminal activity. Police condom confiscation can also make venue managers reluctant to provide condoms. Heavy policing of the current laws, and violence committed against sex workers, have forced many to hide or carry less condoms for fear of violence and arrest. Court-ordered sanctions, police displacement, lack of access to safer indoor spaces, and elevated violence also directly impact sex workers' ability to negotiate condom use with clients.

Displacement from health and social services: Court- or police- imposed "red zone" orders either on arrest or as a condition of sex workers' probation prohibit them from certain neighbourhoods, particularly urban areas where sex workers may live and work and many crucial health and social services (e.g., food banks, emergency shelters, drop-ins, methadone clinics, health clinics and needle and syringe programs) exist. Because contravening a red zone order means its recipient risks re-arrest, sex workers may be forced to choose between relinquishing their housing and access to health and social services or risking incarceration for breaching the conditions of the red zone order, both of which have negative repercussions for sex workers' health.

Restrictions on working from safer indoor work spaces: A prohibition against bawdy-houses penalizes sex workers who work from their own home and precludes the establishment of secure facilities where sex workers can bring their clients. Indoor "in-call" venues with increased safety protections (e.g., managers/security, client sign-in) and ability to work together promote sex workers' ability to control transactions, including avoiding violence, refusing unwanted clients or risky services and insisting on condom use. Moreover, eviction (or the constant threat of it) leads to sex workers' precarious and unstable housing, which renders them more vulnerable to abuse, violence and disruptions in medical treatment. The threat of prosecution also deters those working in bawdy-houses from making large quantities of condoms, other safer sex materials or violence prevention resources available, for fear of tipping off police about what they do.

Restrictions on working with other sex workers or with third parties: The prohibition on living on the avails of prostitution makes it a criminal offence for sex workers to work together. This provision forces sex workers to work in isolation, alienates sex workers from their networks of support, and prevents them from taking measures to ensure their safety (which, in turn, facilitates the practice of safer sex), such as hiring security personnel or drivers.

Aggressive policing: Under the current criminal laws, policing is both directly (e.g., violence and intimidation) and indirectly (e.g., displacement to more spaces) linked to increased risk of physical violence and sexual assault of sex workers and reduced ability to negotiate condom use. Arrest and intimidation by police can cause fear and mistrust, and make sex workers less likely to report violence to authorities.

Physical and sexual violence: The current criminal laws remove most protections for sex workers against violence. Those working on the street or in hidden indoor spaces are often forced to rush negotiations and have limited time to screen clients due to fear of arrest. Police intimidation and displacement and lack of access to safer indoor work spaces are directly linked to increased risk of violence against sex workers. In turn, violence perpetrated by police and others is also significantly associated with higher rates of STIs, including HIV, among sex workers.

Hampered access to health care: Criminal laws concerning sex work hinder sex workers' access to essential health services and create barriers to HIV and STI testing, sexual health education, and appropriate treatment, care and support. Sex workers fear that disclosing their occupation to health and social service workers could trigger a report to the police or to child protection authorities. Stigma (fear of disclosing sex work status), social isolation and displacement, and language barriers are the strongest barriers to accessing health care for sex workers. These barriers have a particularly serious effect on sex workers who struggle with intersecting forms of disadvantage, are likely to have the greatest need for services, and already face barriers to accessing them.

Increased stigma and discrimination: Criminal laws against sex work reinforce and exacerbate stigma and discrimination against sex workers, which leads to their marginalization and social exclusion. The marginalization of sex workers has profoundly negative effects on their physical and mental health and can fuel stress, anxiety, depression, fear and isolation. As well, it subjects sex workers to increased risks of violence and present barriers to social supports and health care.

Incarceration: Criminal laws that lead to the incarceration of sex workers can lead to disruptions in treatment. Incarcerated sex workers are also put at risk of contracting HIV and other blood-borne infections due to elevated rates of such infections in prisons, and inadequate access to harm reduction materials such as condoms and sterile injection equipment.