

SEX AND THE STATE: A CRITICAL EVALUATION OF  
ALTERNATIVES TO SEX WORK CRIMINALIZATION IN  
OREGON, WASHINGTON, AND CALIFORNIA

by

HEATHER BARCLAY

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Approved: Alison Gash, Associate Professor of Political Science  
Primary Thesis Advisor

This paper will evaluate the merits and consequences of policy decriminalizing versus policy legalizing sex work in the existing policy landscapes of the western coastal US states: Oregon, Washington, and California. This analysis will inform those interested in creating resources for and protecting sex workers, a group of people who are disproportionately Black, Indigenous, People of Color, Queer, Transgender, and disabled. The illegality of sex work restricts the rights of a disproportionately marginalized group of people and endangers them in their interactions with law enforcement and the legal system broadly. For example, the illegality of their work deters sex workers from reporting sexual assault and other forms of harm to law enforcement because even in the best-case scenario doing so forces them to risk charges and arrest. Understanding the current policy environments of these states is critical in this evaluation as it establishes the current circumstances of sex workers within these environments. A clear, factual perception of the harm and endangerment sex workers can and do experience through their work because of its illegality is essential, as it provides a baseline to use in comparison to the potential benefits of either decriminalization or legalization. Instead of providing a singular, concrete policy option by arguing for one solution over another, this paper will compare the options and their most likely outcomes and impacts. Ultimately, these comparisons will serve to establish the conditions under which non-criminalization approaches to sex work are most successful at preventing the further marginalization of sex workers.

### **Author's Note and Acknowledgments**

I do not currently nor have I previously identified as a sex worker which greatly diminishes my authority on the subject of sex workers' rights. The intention of this thesis is to inform and discover what policies and conditions would create better outcomes for sex workers in US west coast states than the status quo of criminalization, but any and all policy action on the subject *must* take into account the perspectives, critiques, and lived experiences of sex workers.

Only sex workers have the experiential knowledge necessary to inform policy on the subject, making their involvement in sex work policy change *crucial*. Policy action is vital for the protection and support of sex workers. I owe much of the knowledge contained in this thesis and most of my personal knowledge on the subject to the sex workers I have had the privilege of knowing, working with, and learning from.

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## Chapter One

### Introduction, Methodology, and Literature Review

#### *Introduction*

Sex workers are inherently marginalized. The stigmatization and criminalization surrounding sex work expose sex workers to myriad forms of harm and violence. Existing as a sex worker in the context of criminalization is risky. Cops, pimps, and clients alike commit heinous offenses against sex workers and many are able to exploit criminality to perpetrate further harm against sex workers. Simply being arrested for prostitution can have substantial long-term implications for the employment, housing, and other basic needs of sex workers. The personal narratives of three sex workers identified as Willia, Chelsea, and Lisa will elaborate on the lived experiences of West Coast sex workers in the 21st Century.

Willia is a sex worker in Sacramento, California who has faced substantial harassment from police officers and has been deprived access to resources on account of her profession and the associated arrests. As of November 2018, Willia has been arrested for prostitution a total of five times. In various encounters with law enforcement, Willia has been harassed for what she wears, threatened, and forcibly searched. She notes that, despite her experiences as a survivor of sexual violence and exploitation, the police have only ever treated her as a criminal because she happens to be a sex worker. Willia's identity as a Black Woman has likely also contributed to the notable harassment by law enforcement that she has faced. Ultimately, the criminalization of prostitution in California is predominantly responsible for Willia's harassment as it justifies the behavior of arresting officers. In an interview, Willia remarked that, rather than sympathy, all she

needs is help. The criminalization of sex work also serves to deprive sex workers like Willia of many meaningful resources as well as access to other forms of aid and support.

Chelsea began working as a full-service sex worker when she was an 18-year-old college freshman at Reed College in Portland, Oregon. Her experience with sex work has been substantially distinct from Willia's. Chelsea is white and started engaging in sex work because her interest was piqued by an in-class debate on the subject. Chelsea has for the most part experienced the world of sex work and the world generally through a relatively privileged lens. As of 2016, out of hundreds of clients, Chelsea reports, only two have made her feel "dirty". Despite wishing to not play into the narrative of the "white happy hooker", Chelsea has been able to obtain empowerment, improved self-esteem, and financial independence as a sex worker. Chelsea's experience does not come across as uncommon. The advent of the internet has certainly allowed for added protections for sex workers through the increased capacity to screen clientele. As will be revealed throughout this thesis, there are substantial differences between the experiences of sex workers that often hinge on sources of privilege. Chelsea's case presents a genuinely privileged experience as a sex worker, but she remains vulnerable to arrest and other harm. Her story serves to consider an alternative negative implication of sex work criminalization. The criminalization of sex work diminishes opportunities for sex worker empowerment which is especially meaningful when considering that sex workers disproportionately belong to marginalized communities.

Finally, Lisa is a disabled sex worker in Washington State with a perspective that relates to both Willia and Chelsea. Lisa first engaged in sex work out of necessity which is far from uncommon. For Lisa, the path to sex work is very much linked to their disability, which is also the case for many disabled sex workers, a theme that will be explored later in this thesis. When

she could no longer feasibly handle working two part-time jobs while fighting to maintain her health, she decided to try engaging in sex work. As was the case for Chelsea, Lisa experienced a noticeable improvement in her self-esteem which was in part influenced by her newfound financial independence. Being able to provide for herself has been meaningful for Lisa, but sex work has not been exclusively positive. On the subject, Lisa stated, “Due to the criminalization and stigma attached to sex work, I constantly worry about avoiding the police.” The fear and hypervigilance Lisa experiences are not unique, many sex workers live in a consistent state of fear as a direct result of the criminalization of their work.

For the purposes of this paper, it is also critical to understand that sex work exists on a spectrum with stripping, pornographic film acting, full-service sex work, and many other jobs or professions all having their own position on the range. Within the context of this paper, references to “sex work” or “sex workers” typically refer to full-service sex work or workers. Full-service sex work refers to in-person, physical interactions between a sex worker and a client in which they engage in consensual sexual intercourse typically for a set fee charged by the sex worker. The terms “escort”, “prostitute”, “callgirl”, and “streetwalker” are all examples of language describing full-service sex workers.

Two other critical definitions are those of “legalization” and “decriminalization”. Ultimately, this thesis will evaluate the capacities of four non-criminalizing approaches to sex work policy to protect sex workers and prevent their further marginalization, but only two of these approaches will be considered in complete detail. The four approaches are legalization, decriminalization, partial decriminalization, and a hybrid model. Decriminalization is a policy approach in which sex work, or the relevant policy issue, is not criminalized nor is it regulated. Within the context of codified or de jure policy, this simply means all sex work crimes are no



longer classified or treated as crimes if they are not taken off the books entirely. For de facto policies and practices, decriminalizing sex work means sex workers are no longer charged, arrested, or convicted for their work. Thus, partial decriminalization refers to ceasing to treat an element or party involved in sex work as criminal instead of sex work as a whole. Legalization is typically decriminalization with regulation. For sex work, legalization can look like no longer criminalizing sex work exclusively for sex workers who register with a government agency, sex work practiced within a specific registered venue, et cetera. Finally, the hybrid model melds these larger two approaches. An example is making the registration model, described in relation to legalization, voluntary instead of mandatory and not criminalizing unregistered sex workers. As is detailed throughout the following pages, decriminalization and legalization are two distinct policy approaches to the issue of sex work with their own distinct sets of merits and consequences.

### *Methodology—*

#### *Analysis of the Current Policy of West Coast States*

In order to analyze the merits and consequences of policy decriminalizing versus legalizing sex work in the existing policy landscapes of western coastal US states, I will initially utilize Oregon, Washington, and California State Laws in order to establish the current legal status of sex work in these states. This information will serve to demonstrate the existing legal baseline before considering the impacts of these laws and the conditions they create or perpetuate. Furthermore, this will provide a clear and concise definition of sex work. This information will be compiled through the review of state codes, or compilations of laws and

statutes, namely the Oregon Revised Statutes, the Revised Code of Washington, and the California Penal Code. Electronic copies of these documents will be searched using the keywords “sex work”, “prostitution”, and “soliciting” to garner a clear understanding of the nature of these laws in the varying legal landscapes of these three states.

The in-depth review of the crimes and punishments associated with sex work in the three US West Coast States will serve as a baseline for understanding the legal environments which sex workers must navigate in these states. In order to establish a more well-rounded perception of the current conditions sex workers face, de facto legal system practices pertaining to sex work will be established through analysis of FBI crime data and other sources. These sources, compiled through my own research and research conducted with a research librarian's assistance, will vary drastically. Several primary sources will be considered; these sources will be predominantly recent and relevant newspaper articles covering interviews with sex workers and those who provide resources to sex workers within the United States, specifically within the three states included in the scope of this thesis. Beyond these interview-based sources, other sources will include research papers that utilize surveys of sex workers and in-depth analyses of the experiences of sex workers in the US. I will also be considering arrest rates within Oregon, Washington, and California in order to include a set of quantitative data within the analysis of the de facto status quo. Additionally, I will be considering an assortment of studies that examine the impacts of race, gender, sexuality, and ability on outcomes for sex workers in interactions with law enforcement and the legal system more broadly.

The final element of analyzing the status quo is demonstrating the inherent risks of criminalization and the negative impacts suffered by sex workers and others. An in-depth portrayal of the experiences of sex workers through a non-policy lens is a necessary component

of justifying the departure from the status quo. This aspect will include consideration of the demographics of sex workers in the US broadly and within the specified regional scope to the extent said data exist. These data will initiate the consideration of the prevalence of marginalization and intersecting marginalized identities amongst sex workers. This in turn will further serve to demonstrate the role of identity in lived experiences and outcomes for sex workers. Thus, this section will consider the widely experienced harm perpetrated against sex workers by myriad groups, the impact of intersecting marginalized identities, and how these data demonstrate the disproportionate harm suffered by marginalized groups due to criminalization.

#### *Evaluation of Legalization & Decriminalization Policies*

Analysis of the above sources will establish a robust understanding of the status quo laws, treatments, and experiences of sex workers in Oregon, Washington, and California. The remainder of the research will focus on the topics of legalization and decriminalization. After building a strong baseline of the current circumstances for sex workers, I will outline and describe legalization and decriminalization, and their similarities and differences from a general perspective to ensure there is clarity in the definition to promote consistency throughout the paper.

The remaining research pertains exclusively to sex work legalization and decriminalization. In order to accurately consider the potential outcomes of either of these policy options, I will evaluate and analyze the research of the outcomes experienced in US states and cities that have enacted these policies and include international examples as well. Legalization and decriminalization of sex work is not common practice in US states, cities, or municipalities.

Thus, an accurate analysis of likely outcomes must include international examples. In order to ensure a degree of accuracy in this predictive modeling, the included international examples will be from the nations or cities with the initial laws most similar to the current legal landscapes for sex work in Oregon, Washington, and California. Furthermore, to the end of analyzing international policies, information on cultural perceptions and stigmas surrounding sex work in the evaluated nations will be used to contextualize the outcomes further.

### *Analysis of the Implications of Criminalization Policy*

Before diving into a comprehensive comparison between decriminalization and legalization, I will analyze the alternative of criminalization beyond the consideration of existing policies. This element will allow for examination of what has historically and what is currently driving the criminalization of sex work. Criminalization policy advocacy pieces will be considered in order to ascertain the predicted benefits of criminalization. The ultimate goal of this section will be to explore the counterfactual's benefits and consequences in order to appropriately compare criminalization to alternative approaches. As much of the empirical research demonstrates the harm, not the merits of criminalization, this segment will rely on both advocacy pieces as well as existing research into the evolution of sex work criminalization broadly.

### *Comparative Analysis of Policy Approaches*

The final stage involves an in-depth comparative analysis of these two approaches' demonstrated outcomes and likely impacts. This comparison will predominantly be between

decriminalization and legalization, but hybrid and partial decriminalization models will also be included in the comparisons. The concluding portion of the paper will not advocate for a specific alternative to the criminalization of sex work, instead, it will evaluate the benefits and consequences of each. While there will be a direct comparison between legalization and decriminalization, these comparisons will not be assigned differing, specific values or weights of significance allowing the paper to conclude with more to consider instead of presenting a concrete solution to the issues perpetuated by the illegality of sex work. The above research will culminate in the establishment of which subgroups of sex workers are supported by the various policy actions. Ultimately, this paper will establish the conditions under which sex work policy change is successful at protecting sex workers from further degrees of marginalization.

### *Literature Review*

There are myriad versions and degrees of decriminalization and legalization policies relating to sex work. For example, when interviewing sex worker and activist Lala Zannell, Emerson Sykes describes a policy approach in which the selling of sex is decriminalized while the consumption or purchasing of sex work remains criminalized. Susan Nembhard details the risks of such partial decriminalization of sex work including the increased likelihood of sex workers experiencing increased levels of aggression and violence. By placing the risk of prosecution solely on the consumer, clients have been shown to engage in less discussion regarding boundaries and consent. This is a driving factor of the observed continuation and in some cases increases of violence toward sex workers. Additionally, Nembhard demonstrates the criminalization of sex work to any degree makes sex workers vulnerable to police violence whether or not their role has been decriminalized. In consideration of partial versus complete

decriminalization models, this paper will determine if any subgroup of sex workers is better off with partial decriminalization as well as whether or not there are policy conditions that limit the harm Nembhard et al. associate with partial decriminalization.

The Nordic Model has become the moniker for this specific approach to partial decriminalization as it was popularized and first implemented by the Nordic countries: Sweden, Norway, and Iceland. However, it has since been adopted by other nations including Canada and Ireland. Sykes' interview provides insight into the necessity for complete decriminalization in order to capture the positive health and safety outcomes of decriminalization policy. A comprehensive understanding of decriminalization requires the review of the complete spectrum of decriminalization including the consideration of the merits and consequences of the Nordic Model.

Beyond the approach of partial decriminalization or legalization, there is also research and existing advocacy for a hybrid approach. Alexandra Lutnick and Deborah Cohan's research published in 2009 demonstrates immense support for the hybrid legalization-decriminalization policy from sex workers in San Francisco, California. While hybrid models are not the priority models under consideration in this paper, they still provide insight into the various strengths and weaknesses of legalization and decriminalization, and thus, hybrid models will still be considered in terms of their likely impacts and the necessary conditions for their success.

Ronald Weitzer's research elaborates on the ways in which both de facto and de jure criminalization policies evolved in the context of sex work policy over the past few decades. Sex work is inaccurately conflated with human trafficking, and Weitzer demonstrates that the perpetuation of this notion has driven further stigmatization of the practice of sex work.

Weitzer's work presents an idea Zannell expands upon when they describe the negative impacts

criminalizing sex work has on human trafficking victims. Analyzing policy approaches seeking to reduce the occurrence of human trafficking is not within the scope of this paper; however, the cultural association between human trafficking and sex work associates the two in terms of the policy as well. Weitzer details the role of concern and fear relating to human trafficking in establishing sex work criminalization de facto policies; this paper will consider only to a small degree the capacity of decriminalizing or legalizing sex work to reduce the occurrences of human trafficking and survival sex as one of the potential merits of such policies. This outcome would be more notably the result of diminishing the stigma around sex work as opposed to de jure policies of decriminalization or legalization.

The vast majority of sources that have been considered thus far advocate for or recognize the benefits of ending the criminalization of sex work. Through various forms of analysis, most researchers and authors advocate specifically for legalization or decriminalization separately which allows for a more direct comparison of the likely outcomes, benefits, and consequences of either policy in a broad sense. Because of the socio-political nature of the debate, many articles, whether academic or news, read as policy advocacy pieces for one option or the other. For example, Sykes' interview presents a robust argument in favor of a policy model that entirely decriminalizes sex work whereas Miron and Partin explore concrete policy actions for de jure legalization policies in the United States. Other articles do evaluate both or several policy options pertaining to sex work typically through a specific lens. An example of this is Laura Lemoon's piece which explores interactions between policy, sex work, and disability. Other articles explore outcomes along the lines of race, sexuality, gender, and other demographics. It is documented throughout each piece in some context or another that sex workers who are members of a marginalized community or multiple, intersecting marginalized communities

experience worse outcomes in interactions with clients, law enforcement, the legal system, or all three.

Ultimately, the amplifying impacts of racism, sexism, transphobia, homophobia, ableism, and classism on negative outcomes for sex workers do not appear to be up for debate in the existing literature. Experts and advocates have widely accepted that sex workers who hold additional marginalized identities experience greater levels of violence and more harassment by law enforcement. However, the degree to which demographics influence outcomes is disputed as are the ways in which decriminalization, legalization, and other policy alternatives to criminalization interact with or disrupt the disproportionate harm that burdens sex workers with intersecting marginalized identities. This paper aims to provide additional clarity on how the various policy approaches impact several marginalized demographics of sex workers. Authors Lutnick and Cohan imply that the reason for the lack of a more concrete understanding of these interactions stems predominantly from two issues. First, the generally limited nature of the current body of literature on the subject. While this trend is shifting, research into policy methods of protecting sex workers, especially those who experience disproportionate harm due to their identity, is uncommon. However, this is due in great part to the second issue, which is the lack of existing policies, procedures, or practices either *de jure* or *de facto* which decriminalize or legalize sex work within the US. Ultimately, quantifiable data is a complicated approach to this consideration as it is difficult to establish appropriate measurable variables to describe the benefits and consequences of such policies, especially given the rarity of formal policy on the subject.

An approach to quantitative data in this context is tracking the demographics of sex workers in survey responses, as Lutnick and Cohan have done, and ultimately quantifying the



results of these surveys. This approach effectively helps describe the status quo experience of sex workers and the de facto practices they frequently interact with. Ultimately, this approach is restricted by both of the above issues resulting in the vast majority of research predominantly relying on qualitative data much of which is in the format of interviews or survey responses that reflect the lived experiences of sex workers. This is the evidence that drives the majority of the pieces that are more rooted in advocacy rather than academic inquiry or research. This approach is utilized by authors Sykes, Nembhard, and many more researchers and writers. According to Sykes' interview with Zannell as well as other sources, the consideration of these policies and establishing what approaches are worth pursuing must be determined through conversations led by sex workers discussing their own lived experiences. For this reason, many of the qualifications and measurements utilized in terms of analyzing changes between the status quo and predicted outcomes for sex workers under potential policies will be based on circumstances as described by current and former sex workers.

Overall, there does exist a debate between the benefits of decriminalization versus legalization in addition to ongoing debates about the merits of status quo criminalization. This debate is contained in both academic literature and news reporting on current events. My interaction with the debate will not be to advocate for or attempt to determine a specific policy approach that can best protect and benefit sex workers. Instead, I will consider the existing research on demographics, outcomes in the rare circumstances of reversing the criminalization of sex work, and the lived experiences of sex workers under myriad policy conditions. The ultimate aim of this evaluation is to determine the conditions under which reversing sex work criminalization is successful and how various policies interact with marginalized groups of sex workers.

## Chapter Two

### The Existing Policy Landscapes: de facto and de jure approaches to sex work in Oregon, Washington, and California

#### *Oregon Law — Codified policies pertaining to sex work*

Oregon’s bills and laws are compiled in the Oregon Revised Statutes (ORS). The most recent edition of the ORS, the 2021 edition, was published in early 2022 and is a complete compilation of Oregon law, with the exceptions of bills approved during the 2021 second special session and the 2022 regular session. A review of the “2022 Update to 2021 Oregon Revised Statutes”, specifically, the updates regarding Volume 4 of the ORS, made available by the Oregon State Legislature demonstrates that there have been no changes made to criminal policy pertaining to prostitution since the publication of ORS 2021. Thus, the considered laws pertaining to prostitution are accurate. The criminal laws regarding prostitution all come from ORS Volume 04, Criminal Procedure, Crimes, Title Number 16, Crimes and Punishments, Chapter 167, Offenses Against General Welfare and Animals. The four most relevant laws (contained within Appendix I) address prostitution, commercial sexual solicitation, promoting prostitution, and compelling prostitution.

These four policies concern all crimes relating to prostitution incorporated in Oregon law at the time of writing. Per these laws, crimes relating to prostitution are classified as either Class A misdemeanors, Class C felonies, or Class B felonies. The sentences for these classifications vary significantly. In Oregon, “Class A misdemeanors are punishable by up to 364 days in jail, a fine of up to \$6,250, or both.” Thus, prostitution itself and solicitation will not be punished by a

year or more in jail or prison, but sentencing may include both incarceration and a fine. Class C felonies are punishable by a fine of up to \$125,000, up to five years in prison, or both, whereas Class B felonies have a maximum sentencing of 10 years in prison, a fine of up to \$250,000, or both. These sentencing parameters demonstrate that the Oregon legislature considers crimes relating to pimping, brothel management, etc. more severe offenses to general welfare than the prostitution of self or solicitation of prostitution.

### *Oregon Law — De facto current realities*

Despite efforts to decriminalize sex work in Oregon, the public and law enforcement sentiments have not shifted enough to result in a de facto practice of decriminalization. Individuals continue to be arrested and prosecuted for prostitution and related offenses, including soliciting commercial sex. In addition, the public perception of several Oregon cities as hubs for human trafficking likely contributes to these arrest rates and the continued stigmatization of sex work in Oregon. Many larger busts occur due to sting operations often conducted by various human trafficking task forces. The conflation of sex work and human trafficking has repercussions that ultimately harm both sex workers and victims of human trafficking.

Nationwide data on prostitution arrest rates determined that in 2016 there were 284 arrests for prostitution in Oregon. While this source does not provide data on prosecution and conviction rates, it can be assumed that those numbers are notably less than the arrest rates due to the “turn them loose” approach many police departments practice within the US. The Federal Bureau of Investigation’s (FBI) Crime Data Explorer provided further information on arrest rates for the crimes of prostitution and purchasing prostitution. At the time of writing, the most recent

year for which data is available is 2021 when there were 133 individuals arrested for prostitution and 114 arrests for the crime of purchasing prostitution in Oregon. The majority, just under 57%, of those arrested for prostitution were listed as male by law enforcement while 98% of those arrested for purchasing prostitution were male.

According to the Crime Data Explorer, between 2006 and 2021 there were 1,777 arrests for prostitution in Oregon which were reported to the National Incident-Based Reporting System (NIBRS). However, prior to 2015, the largest percentage of the population within the jurisdictions of the law enforcement agencies that were reporting to NIBRS at any point in the range was 40%. Between 2014 and 2015, the percentage of the population covered by reporting agencies increased from 40% to 85%, and the reported number of arrests for prostitution in Oregon increased from 72 in 2014 to 222 in 2015. Before 2017, there was no report made by Oregon law enforcement to NIBRS of any arrests for purchasing prostitution. From 2017-2021, reporting agencies averaged just over 68 arrests annually for purchasing prostitution. Of the 293 arrest reports for this time period which recorded the gender of the arrested individual, over 98% were male. Whereas for the 850 reported arrests for prostitution which recorded gender for the same time period 54% were female.

The federally collected data does not specify which municipalities or law enforcement units make the individual arrests, but evidence suggests a non-insignificant amount of these arrests are made by human trafficking units and taskforces. According to Karina Brown, an investigative reporter with the Willamette Week, 85% of arrests made by the Portland Police Department's Human Trafficking Unit result in solicitation charges. This percentile includes the sting operations conducted by the unit which means a substantial amount of the resources meant to be directed to addressing human trafficking in Oregon's largest city are being utilized to arrest

individuals for the misdemeanor of solicitation of prostitution. In an interview with Dave Miller of OPB, Brown notes the role of human trafficking stings in perpetuating the negative and fearful relationship between sex workers and law enforcement.

Examples of such stings in recent years include a Benton County Sheriff's Office operation which netted arrests of eight men for solicitation in Corvallis in December of 2021, the arrest of 7 men by Washington County Sheriff's Office "human trafficking sting" in December 2022 all of whom were charged with solicitation, and the arrests of at least 3 in a raid conducted by the Grants Pass Police Department in October of 2021. While the evidence suggests most sting operations and raids relating to prostitution predominantly lead to arrests and charges filed for the solicitation of prostitution, the data provided by the NIBRS demonstrates that individuals are still arrested and charged for the crime of prostitution at a higher frequency. This evidence suggests that, more often than not, individual arrests target sex workers instead of their clientele in the state of Oregon although they have been arrested at similar rates in recent years.

#### *Washington Law — Codified policies pertaining to sex work*

Washington state's active, permanent laws are compiled in the Revised Code of Washington (RCW). The RCW is updated twice annually first following the legislative session and once more in November or December under the condition that ballot initiatives that add, amend, or repeal statutes pass in the Washington general election. The most recent update was made on June 29, 2022. Statutes that criminalize prostitution and related offenses are included in Title 9A of the RCW: the Washington Criminal Code; more specifically, they are contained within various sections of Chapter 9A.88 RCW: Indecent Exposure—Prostitution. The language

of the most relevant statutes (contained in Appendix II) defines and addresses the crimes of prostitution, promoting prostitution (in the first and second degree), promoting travel for prostitution, permitting prostitution, and patronizing a prostitute.

As is the case with prostitution and prostitution-related offenses in Oregon, all of these Washington crimes are classified as misdemeanors, Class B felonies, or Class C felonies. As the section title suggests, RCW 9A. 20.021 “Maximum sentences for crimes committed July 1, 1984, and after” provides the current guidelines for the maximum sentences by crime classification. The maximum sentence for misdemeanors is 90 days in county jail and/or a fine of up to \$1000. Class C and Class B felonies carry the same maximum prison sentences as they do in Oregon with caps at five and ten years, respectively. Class C felonies also carry a maximum fine of \$10,000, and for Class B felonies, there is a maximum fine of \$20,000. Of the six statutes criminalizing prostitution and prostitution-related offenses, half of them are classified as misdemeanors: prostitution, patronizing a prostitute (also known as solicitation), and permitting prostitution. As is the case in Oregon, promoting prostitution carries a heavier sentence than prostitution itself. In Washington, however, it is separated into two distinct degrees.

Washington is also distinct from Oregon in its inclusion of criminalization of promoting travel for prostitution. As detailed in the included notes associated with this statute, criminalizing this offense was intended to restrict sex tourism and “other commercial sexual services”. These notes additionally conflate prostitution and human trafficking. While the fines and sentences for similar crimes in Washington may be lessened to a degree compared to Oregon, it is evident that the codified law continues to criminalize prostitution and related offenses. Furthermore, the dates of amendment for these statutes demonstrate that the policies are in alignment with the intentions of the contemporary legislators. Each of these statutes has been amended during the 21st

Century, and most, five out of six, of them have been amended since 2010. The continued amending and maintenance of these policies to an extent imply that it is currently not the intention of legislators to consider decriminalizing or legalizing sex work or prostitution-related offenses.

### *Washington Law — De facto current realities*

Washington law enforcement continues to operate under de facto criminalization. Unlike the de facto criminalization seen in Oregon, the most recent Washington arrests for prostitution and related offenses skew toward arresting those who solicit prostitution. In fact, for the most recent year for which data is available, 2021, the number of individuals arrested for purchasing prostitution is 50% greater than the number of individuals arrested for prostitution. In 2021, there were a total of 322 arrests for the crimes of prostitution, purchasing prostitution, and assisting/promoting prostitution. The 2021 annual report *Crime in Washington* notes that there were 138 arrests for purchasing prostitution, 93 arrests for assisting/promoting prostitution, and 91 arrests for prostitution. Ultimately, this demonstrates that de facto decriminalization has not taken root in Washington State.

The arrest statistics from the years prior to 2021, however, resemble the trends in Oregon as they skew toward more arrests for prostitution over soliciting prostitution. For the five years prior to 2021, 2016-2020, there was a total of 2,036 arrests for prostitution according to NIBRS data. For these years, the data provided to NIBRS came from law enforcement agencies with jurisdictions that covered an average of 92% of the population of Washington. Over the same period and same coverage, there were only 530 reported arrests for purchasing prostitution in

Washington. With the exception of 2006 and 2016, every year for which any Washington State law enforcement agency reported prostitution arrests the majority of those arrested on charges of prostitution were documented as female. In 2006, there was only one prostitution arrest reported to NIBRS, and the arrested individual was identified as male in the report. Whereas in 2016, there were 388 reports of male individuals being arrested for prostitution and 278 reported arrests of female individuals based on NIBRS data that came from precincts covering a total of 92% of Washington's population. The gender-based data relating to charges of solicitation is perhaps unsurprising. Between 2012 and 2021, agencies covering approximately 74% of the population reported 2 arrests of individuals with gender labeled "unknown", 41 arrests of female individuals, and 788 arrests of male individuals for solicitation. These data established by the NIBRS demonstrate that Washington State continues to arrest individuals for prostitution and related offenses; however, these arrests disproportionately target sex workers over their clients.

The annual report *Crime in Washington* provides additional statistics relating to arrests and conviction rates of prostitution and soliciting prostitution. In 2021, an estimated 48.8% of prostitution-related offenses were cleared by the courts. Unfortunately, the source does not specify the conviction rates for each of the three categories of Washington prostitution offenses – prostitution, purchasing prostitution, and assisting/promoting prostitution. While a clearance rate of nearly half may seem substantial, there are several offenses that the report demonstrates have similar or higher rates of offense clearance. Of the 33 crimes against persons, property, and society classified as "Group 'A' Crimes", there are seven offenses with strictly higher rates of clearance or lower rates of conviction. These seven crimes are manslaughter (50.0%), simple assault (49.2%), kidnapping (54.0%), violation of no contact/protection order (54.5%), stolen property offenses (61.9%), drug/narcotic violation (58.3%), and drug equipment violation



(77.4%). Furthermore, there are two offenses with clearance rates within two percentage points of prostitution offenses, weapons law violations (48.1%) and murder (47.4%). Finally, the rate of clearing charges for all listed group “A” crimes against society, a classification to which prostitution offenses belong, averages 56.2%.

These various statistics on arrest and conviction rates for prostitution and purchasing prostitution in Washington demonstrate that the state broadly continues to prosecute people for these crimes. While the lack of population coverage provided by the collected NIBRS data does limit the clarity of concrete annual arrest rates, the data from the most recent years does not suggest a significant decline in arrests for prostitution-related charges. There is evidence of a relatively steady decline in arrests for prostitution specifically. Due to the COVID-19 pandemic, it is highly plausible that arrest statistic rates were inaccurately deflated compared to their pre-pandemic statistics which would likely influence the statistics of 2020 and 2021 arrest numbers for Washington as well as Oregon, California, and the US broadly. However, it is less likely that the rates of 2021 would be more deflated than those of 2020, so the decline in arrests for prostitution between these two years, going from 194 arrests in 2020 to 91 in 2021, does signal a shift in the de facto practices of law enforcement in recent years.

The possible shift in de facto law enforcement approaches is further supported by the steady increase in reported levels of arrests for solicitation or purchasing prostitution. The first year for which a Washington State law enforcement agency reported any arrests for purchasing prostitution to the NIBRS was 2013 when agencies reported 19 arrests. Since then there have been steady rates of increase with the exceptions of declines in 2015, 2018, and 2020. Despite those declines, however, the reported number of arrests increased significantly from 19 arrests in 2013, with a 75% population coverage rate, to 138 arrests in 2021, with a 99% population

coverage rate. The peak for reported arrests for purchasing prostitution was the reported 194 arrests in 2019 prior to the pandemic. These data regarding the arrests for all prostitution-related offenses suggest a shift from prioritizing the arrest of sex workers to the arrests of their customers. It is worth noting that of all years with reported arrests for both providing and purchasing prostitution, with the exception of 2021, there are substantially higher arrest rates for prostitution.

The noted decline in arrests for purchasing prostitution in 2018 is unlikely to be the result of changing attitudes of the public or changing practices by law enforcement. When compared to 2016, the 2018 arrest rate actually demonstrates a non-insignificant increase in arrests on this charge, but the 2017 arrest rate saw an astronomical increase. The drastic increase in 2017 was the result of an extensive, week-long sting conducted by Bellevue and the King's County Sheriff's Office that resulted in 110 arrests. The NIBRS data lists 116 as the total number of arrests for that charge in 2017.

Regardless of whether or not Washington State law enforcement agencies have shifted their priorities in terms of prostitution-related offenses over the past few years, it is evident that the de facto reality in Washington is one of criminalization of sex work and solicitation. While arrest patterns have begun to shift since Washington agencies began reporting to the NIBRS, the most recent years' data imply a slight decline in arrests for prostitution alongside a steady rise in arrests for solicitation. Ultimately, the continuation of de facto criminalization in Washington is more likely to remain relatively stable or continue on the trajectory of recent years than to shift to practices of decriminalization without policy intervention quickly.

*California Law — Codified policies pertaining to sex work*

California codified law is significantly more vast than those of Oregon and Washington. The California Penal Code, abbreviated as PEN, contains 28 sections that mention or address prostitution to some degree. In comparison, ORS has approximately 15 chapters containing the term “prostitution”. All laws criminalizing prostitution in California can be found within PEN Part 1: Of Crimes and Punishments in various titles and chapters. The most relevant statutes (contained within Appendix III) consider prostitution, solicitation, pandering, et cetera. As is the case in both Oregon and Washington, offenses related to pimping and procurement of sex workers carry heftier classifications than offenses of prostitution and solicitation themselves. California law takes a different approach to the display of their sentencing guidelines than Washington and Oregon do, at least in the case of prostitution-related statutes. Many of these statutes include both the classification of the crime and the appropriate sentences to be imposed upon those convicted of the relevant offense. Thus, there is more variability in the sentencing for California prostitution-related crimes, specifically for offenses classified as felonies. The various included subsections of Section 266 relate to prostitution, but these offenses also relate to human trafficking or abduction to differing degrees hence their inclusion in Chapter 1.

The first element of subsection 266e is more or less standard solicitation, but the subsection also considers holding individuals against their will for “immoral purposes” such as prostitution. This offense has a maximum prison sentence of three years. Per section 672 of PEN Part 1, Title 16, the maximum fine for a felony sentence in California is \$10,000. Thus, the maximum sentence for a violation of subsection 266e would be incarceration in prison for no more than three years and/or a fine of up to \$10,000. Unlike those of subsection 266e, the offenses criminalized by subsections 266h and 266i are explicitly named as pimping and pandering,

respectively. Both pimping and pandering carry maximum sentences of six years imprisonment and/or a fine of \$10,000.

The remaining included crimes are categorized as misdemeanors. Of these offenses, the crime described in Section 318 is unique in containing provisions for maximum sentencing for offenders. Individuals convicted of bringing another into a house of prostitution, brothel, etc. will not be sentenced to more than six months of incarceration and/or a fine of \$500. Whereas, for the remaining misdemeanors, including prostitution and solicitation, there is a consistent maximum punishment of six months in county jail and/or a fine of no more than \$1000 as established by section 19 of the PEN Preliminary Provisions. Perhaps the most distinct of these offenses is that of Section 309 which would criminalize a parent or guardian who participates in prostitution with any regularity within the home where their child or ward resides.

The final relevant California prostitution law has undergone recent changes which took effect on January 1, 2023. The current language of the law (Appendix IV) decriminalizes a single crime relating to prostitution. The 2022 Senate Bill 357 made a handful of amendments to PEN, but most notably the bill repealed section 653.22 which specifically criminalized loitering for the purposes of prostitution. The removal of that element of the section ultimately ends arrests and convictions for loitering for the purposes of committing or soliciting prostitution in California. Despite this change, California still very much criminalizes prostitution and related offenses through a variety of measures including what remains of Section 653.

*California Law — De facto current realities*

California is unique from Oregon and Washington in terms of de facto practices pertaining to sex work. This distinction is predominately due to the policy shift which took effect on July 1, 2022. As described above, California law enforcement will no longer arrest individuals for loitering for prostitution. This is a notable step toward both codified and de facto decriminalization policy, but, as stated by California Governor Gavin Newsom, “To be clear, this bill does not legalize prostitution.” In fact, California’s de facto practices demonstrate just how far the state is from the possibility of decriminalization or legalization.

This bill will serve to equalize outcomes to some extent between outdoor and indoor sex workers as outdoor sex workers, occasionally referred to as “streetwalkers” or “street-based sex workers”, have historically been and continue to be more vulnerable to arrest and violence. Unfortunately, arrest and conviction data for California for the most part is not compiled beyond local municipal courts or law enforcement agencies. Thus, up-to-date data, which may demonstrate trends following the enactment of this policy, is unavailable. Additionally, California only began contributing to NIBRS data in 2021 further limiting the available arrest information for the state.

There were only 359 arrests for prostitution and no arrests for purchasing prostitution in California reported to the NIBRS in 2021. These numbers are remarkably low but do not accurately display the state of de facto criminalization of the state. For 2021, only 15 Californian law enforcement agencies reported to NIBRS which covered an estimated 7% of the population causing this ultimately deficient reported arrest rate. Due to the lack of reporting, the NIBRS cannot provide adequate insight into Californian arrest statistics. Fortunately, other sources have successfully acquired arrest rates up to 2016. It is perhaps unsurprising that from the standpoint

of raw numbers California had the most arrests of any US state for prostitution and commercialized vice in 2016 with a total of 7,601. Prostitution and commercialized vice include the crimes of prostitution and promoting/assisting prostitution, but these data do not include arrests made for purchasing prostitution.

As the most populous US state, California's ranking for having the highest number of arrests for prostitution in 2016 seems statistically probable. When controlling for population, however, California still ranks fourth nationally for the most arrests. In 2016, California had approximately 1.97 prostitution and commercialized vice arrests per 10,000 people. California was only outranked by Tennessee (2.25 per 10,000), Wyoming (3.10 per 10,000), and Nevada (10.83 per 10,000). In comparison, Oregon and Washington fall cleanly outside of the top ten. California arrest rates seem to have remained relatively stable between 2001 and 2010 only falling from 12,032 in 2001 to 11,334 in 2010, but rates of arrest for prostitution and commercialized vice seem to have declined consistently between 2010 and 2016. There were 9,153 arrests made in 2014 statewide followed by 8,099 in 2015 and 7,601 in 2016.

These declines are likely in alignment with shifts in public attitudes regarding sex work and law enforcement priorities; however, it is unclear if arrests for purchasing prostitution have similarly declined in recent years or increased in a similar manner to Washington's arrest rates. A 2022 Los Angeles Times article notes that there were more than 4,000 arrests specifically for prostitution in California in 2020. The reporter notes that the number of arrests made for prostitution "declined by 45% since 2015 as attitudes about prostitution have changed." Despite the noted public attitude shift, it is evident that prostitution is still criminalized in the de facto Californian law enforcement practices. It is possible, if not probable, that the number of arrests made for prostitution will continue to decline. This probability is made all the more likely by the

enactment of California Senate Bill 357. Furthermore, it is likely that the passage of various bills in 2016 and 2019 that barred arresting minors for prostitution and prevent arresting sex workers who are reporting some crimes, as either a victim or a witness, have assisted the dramatic decline in arrest rates. Due to the limited data, it is difficult to ascertain whether arrests for all prostitution-related arrests are experiencing similar declines or if the state is shifting to essentially a de facto Nordic model meaning the criminalization would fall predominantly upon those purchasing sex work.

While concrete and recent arrest rates for prostitution and purchasing prostitution are not easily acquired, evidence of the continuation of de facto criminalization can be supplemented through state news reports. Another relatively recent Los Angeles Times story details an immense, statewide operation that resulted in nearly 500 arrests. In February 2022, the LA County Sheriff shared with an LA Times reporter that 34 individuals were arrested for suspected exploitation or trafficking, and 201 individuals were arrested for attempting to purchase prostitution. According to the reporter, “[Sheriff Villanueva] did not account for the remaining arrests.” There were likely another 250 or more arrests resulting from the human trafficking operation. This operation demonstrates the inaccurate conflation of human trafficking and sex work or prostitution that was noted in the analysis of Oregon de facto practices.

Conviction records tend to be even more difficult to come by compared to arrest statistics which makes it difficult to discern how aggressively prostitution and related offenses are being prosecuted in California. While statewide data is unavailable, it is estimated that at least 90% of arrests for solicitation in Los Angeles County do result in a conviction. It is not clear whether individuals facing prostitution charges are convicted at a similarly high rate. It is, however, evident that, despite the notable policy shifts and changes in public opinion of sex work,

individuals are still regularly arrested and convicted for prostitution and solicitation in California. Arrests for prostitution have been in steady decline since 2010, but ultimately de facto criminalization of prostitution and related offenses continues.

### *Conclusions on Existing Policy Landscapes*

Oregon, Washington, and California all maintain both codified and de facto policies and practices criminalizing prostitution, solicitation, and other related offenses. There is variance between these states in terms of punitive measures. While all of the states classify prostitution itself as a misdemeanor, Washington's maximum sentence for the offense is 90 days whereas California's is six months and Oregon's is 364 days. Oregon also carries the harshest maximum fine for prostitution and solicitation at \$6,250 which is notably larger than the \$1000 cap set by both Washington and California. In terms of codified law, California is the only of the West Coast states to take steps towards any form of decriminalization which was done in 2022 through Senate Bill 357. While this step will likely lead to some improved outcomes for outdoor sex workers, a particularly vulnerable class, the state is still far from legislation furthering decriminalization. All three states have seen declines in the arrest rates for prostitution in recent years although there is a trend of increasing arrest rates for solicitation and related offenses other than prostitution. While all three states show signs of changing attitudes toward sex work, they all continue to legally and in active practice criminalize sex work.



## Chapter Three

### The Lived Experience of Sex Workers

#### *The Consequences of Criminalization and Stigmatization—Harm stemming from elements beyond the field of explicit policy*

Sex workers experience harm on a myriad of axes under the conditions of criminalized prostitution. This violence and harm most often stem from criminalization and stigmatization two circumstances that are typically intertwined as they effectively fuel one another. The most common direct sources of violence against sex workers are law enforcement officers and clients. The Human Rights Watch has established that “in criminalized environments, police officers harass sex workers, extort bribes, and physically and verbally abuse sex workers, or even rape or coerce sex from them.” The organization reached this conclusion by examining conditions in several nations that criminalize sex work, including the US. Clients of sex workers, or “Johns”, and other civilian attackers contribute to violence against sex workers in the forms of assault, rape, murder, and more.

In addition to direct violence against sex workers, police officers contribute to further harm through the enforcement of the law. The criminalization of sex work prevents sex workers from comfortably or willingly reporting violent crimes they have experienced or witnessed. The illegality of prostitution is common knowledge to most, especially those engaging with the industry, so the knowledge that sex workers have a limited capacity to report violence against them consequently leaves sex workers particularly vulnerable. Thus, beyond the direct violence committed against sex workers by individual officers, the inability to confide or report crimes to

law enforcement agencies results in failure to prevent or address the violence experienced by sex workers. Being a sex worker is an identity that results in crime victims being categorized as “high-risk” victims. The label of high- versus low-risk victim reflects on the lifestyle of victimized individuals, and full-service sex workers of all forms are classified as high-risk, meaning the conditions of their life and work leave them vulnerable to violence and victimization.

The stigma attached to sex work reduces access to resources as victims of violence or harm. Many resources may only become available through the avenue of reporting the violence which is an additional barrier. Stigma heavily impacts the lives of sex workers on many levels. Sex workers often do not publicly or even privately identify themselves to others as sex workers whether for fear of violence, social alienation, or a multitude of other outcomes. Ultimately, organization among sex workers becomes a challenge due to an inability to identify and network among themselves. The Human Rights Watch finds that criminalization and stigmatization contribute to difficulty in organizing for labor rights or sex worker rights broadly. This issue should be of great concern because as demonstrated above sex workers are exposed to disproportionately high degrees of violence and harm on the job. Yet, they are restricted in their capacity to unionize or organize in any form to prevent the endless labor rights violations they encounter.

Challenges to organizing among sex workers contribute to more than difficulties in collaborating as activists to protect their rights broadly. Small-scale collaboration is heavily limited as well. Efforts to organize locally to protect one another from harm are often also thwarted. While collaboration is a critical element of protecting one another, sex workers are still exposed to risk in reporting crimes, even as witnesses, and creating a network increases visibility

and thus the risks of stigma and arrest. Because of criminalization and stigma, there are limited resources available to sex workers. Many that exist and are accessible are created by current or former sex workers or organizations with the primary goal of directly supporting sex workers. An example of a successful approach is a New York City-based organization that compiles a comprehensive list of violent, aggressive, or problematic johns that they work to make widely accessible. While this example demonstrates that there are successful, collaborative endeavors to protect and support sex workers, the status quo of criminalization and stigmatization prevents efforts such as this from being as successful and prevalent as they have the potential to be.

Another substantial form of harm is the negative individual and public health outcomes that criminalization, the legal system broadly, and stigma perpetuate. Public health outcomes describe a variety of issues including STI transmission rates, mortality rates, general physical health, mental health, and many more. A concerning contributing factor to negative public health outcomes in relation to sex work is the use of unused condoms as evidence in prostitution cases. The 2012 report *Criminalizing Condoms* found that “52 percent of [US] sex workers said there had been times when they opted not to carry condoms because they were afraid it would mean problems with the police.” The damaging legal possibilities deter the possession of condoms among sex workers increasing the likelihood of STI transmission and pregnancy among sex workers and their clientele. While California ended this practice via Senate Bill 233 in 2019, Oregon, Washington, and US federal law have not eliminated it.

Furthermore, police have been known to confiscate condoms from sex workers, a practice that has been directly linked to an increased risk of HIV and STI transmission. In fact, the 2021 *Oregon Human Rights Commission Report on the State of Sex Workers Rights* notes that the “Risk of HIV/STI transmission is two-to-four times greater among sex workers who experience

arrest; have sex with police officers to avoid arrest; have condoms, needles or syringes confiscated by the police; or have been subject to police raids.” This statement demonstrates an instance of law enforcement actively contributing to increased public health risks and concerns. Outdoor sex workers are typically the most vulnerable to harm and interactions with law enforcement meaning the deterrence to possessing condoms is likely strongest for them. Conditions broadly are worse for outdoor and street-based sex workers, but their income is often lower as well. While the criminalization of sex work prevents the vast majority of sex workers from receiving benefits and insurance from their job as sex workers, street-based sex workers are without insurance benefits, have a reduced income, and are disproportionately harassed by law enforcement. All of these factors may contribute to an increased risk of contracting an STI or pregnancy as well as limited access to healthcare, which endangers sex workers and negatively impacts public health outcomes.

#### *Demographics — Race, Sexuality, Gender, and Disability statistics overview*

Statistics regarding the identities of sex workers are difficult to come by, and many reported statistics are entirely based on arrest records and rates. Generally, research agrees that sex workers disproportionately belong to communities marginalized on the basis of race, ethnicity, citizenship status, gender, sexuality, and disability. The reliance on arrest statistics by many researchers has the capacity to inflate the numbers due to the disproportionately high arrest rates experienced by marginalized communities. Statistics are also limited in their geographic coverage or diversity. There are few studies that explicitly explore the demographics of sex workers within specific states. Of the states within the specific geographic scope of this paper, California has the most available demographic data which is most often based on arrest statistics, individual counties, or small sample sizes.

One such California report on HIV and sex work compares the arrest rates to the population rates of various racial and gender identities. The report finds that, between 2005 and 2013, 37% of California prostitution arrests were of Black women a group that only accounts for 3% of the state's total population for that same period. It is unlikely racial and gender bias in policing could account for the entirety of the difference between the two percentages. This statistic is corroborated by the demographics reported by Alexandra Lutnick and Deborah Cohan on the 40 San Francisco sex workers they interviewed, 18 of whom were Black. While this statistic does come from a notably small sample size, it still demonstrates that sex workers are disproportionately Black women in San Francisco and California broadly.

Oregon and Washington do not have comparable studies on the demographics of sex workers nor do their major cities. The data compiled within these states on similar matters refers to the demographics of the "sex industry" which for the purposes of the research is not limited to adult, consensual sex work and instead includes statistics pertaining to human trafficking and minors involved in the industry. Due to the limitations of the available data, further statistics will be from research conducted throughout the US as a whole instead of within these states. It is of note that as of 2020 Oregon and Washington continue to have higher populations of white citizens than California and the US as a whole with 74.8% and 66.6% of their populations identifying as white alone, respectively. California is significantly below the national average of 61.6% with only 41.2% of its population identifying as white alone. Thus, understanding California's disproportionately high percentage of women of color involved in sex work is best explicitly understood through the lens of its population demographics as was done above. It can be assumed for the exploration of Oregon and Washington that the percentages of sex workers who are People of Color are smaller than the national average because the states have smaller

non-white populations; however, it is likely that the national data is a relatively accurate estimate for the percentage of People of Color involved in sex work when controlling for the percentage of the state population that does not identify as white.

*Demographics — Demonstration sex workers disproportionately belong to marginalized groups*

The National Transgender Discrimination Survey (NTDS) was conducted in 2008 and 2009 and surveyed over 6,000 Transgender and Gender Non-Conforming individuals in the United States. Among the topics included in the survey, there were questions relating to their identities and lived experiences including racial and ethnic identities, participation in sex work, education levels, and interactions with police and the legal system broadly. A report produced by members of the Red Umbrella Project relied on the survey data to establish the correlations between various identities and experiences and participation in sex work. The researchers found that, among Transgender and Gender Non-Conforming individuals, People of Color were almost four times as likely to engage in sex work with approximately 24.4% of Trans People of Color reporting engagement in sex work. Participation is higher than the average participation rate of People of Color among individuals who identify as only Black or only Hispanic/Latine who reported participation rates of 44.1% and 33.2%, respectively. While this report relies entirely on self-reported data from Trans-identified individuals, it demonstrates that, even within already marginalized communities, People of Color and Black People especially are more likely to engage in sex work in comparison to their white peers.

The report also explores the impact of gender on participation in sex work. The authors find that of the four distinct gender/sex identities included in the data, Transgender Women were the most likely to participate in sex work. In fact, at a participation rate of 14.9%, Transgender Women were more than twice as likely to engage in sex work than any other identity, with

Transgender Men reporting the second-highest participation rate of 7.4%. The final two specified gender identities, Gender Non-Conforming/crossdresser assigned male at birth and those assigned female at birth, had participation rates of 6.8% and 6.5%, respectively. Thus for all identities distinguished in the report, those assigned male at birth have higher participation rates than those assigned female at birth. Unfortunately, the absence of data on cisgender individuals prevents establishing conclusively whether or not Transgender and Gender Non-Conforming identified persons participate in sex work at a higher rate. However, the report does demonstrate that non-cisgender individuals experience higher rates of houselessness and financial instability often as a direct result of bias or family disownment which would likely cause higher participation rates in sex work.

Another marginalized group that is disproportionately represented in the sex work industry is the disabled community; however, unlike other explored identities, there are existing sources that investigate and establish causes of this overrepresentation. The Sex Workers Outreach Program, for example, considers these interactions in an article entitled *On Getting into Sex Work Because of a Disability*. The most notable cause outlined by the author is reliance on social security and other disability benefits which have strict income caps contributing to a disproportionate number of Disabled People participating in the sex work industry and other underground economies. Because disability benefits almost always fail to fully financially support disabled individuals, there is amplified pressure to find employment and work that provides non-taxed and unreported income for the sake of their financial stability.

The inability to engage in legal or regulated fields of employment for any reason influences other marginalized groups to be overrepresented among sex workers as well. Namely, undocumented immigrants may rely on employment with under-the-table payments, such as sex

work, due to exclusion from legal labor markets. The factor of deterrents and consequences to entering the aboveground labor market explains why low-income and Disabled People who depend on benefits and undocumented immigrants are disproportionately represented in the sex work industry. However, beyond providing this explanation, this component contributes to added nuance in considering both the legalization and decriminalization of sex work. Ultimately, sex workers disproportionately belong to marginalized communities compared to non-sex workers in the US. While some identities have direct policies or contributing factors which drive their overrepresentation, other marginalized identities are simply disproportionately correlated with participation in sex work without clear contributing factors beyond their varying identities.

*Intersectionality of Identities — How intersecting, marginalized identities influence outcomes*

The previous section demonstrates that sex workers disproportionately belong to marginalized communities and that individuals with multiple or several intersecting, marginalized communities are at the highest rates of likelihood to engage in sex work. Beyond demographics, identity does significantly impact the outcomes of sex workers compared to non-sex workers as well as in comparison to other sex workers. It is evident that holding marginalized identities in any capacity increases the likelihood of an individual experiencing a multitude of negative outcomes within and beyond the system. An example of this is the fact that, in 2015, 17 of the 41 murder victims who were reported as being sex workers in the US were Black; furthermore, 12 of the 41 were Transgender women. While most marginalized identities are disproportionately represented in the sex trade, it is unlikely that they are disproportionately represented to the extent necessary for these statistics to be proportional.

The authors of the report explored above, *Meaningful Work: Transgender Experiences in the Sex Trade*, find that racial and gender identities correlate to a broad range of outcomes for



sex workers including education, treatment during incarceration, housing security, and others. Sex workers were significantly less likely to receive any higher education degree, and they were notably more likely to have their highest level of received education be some college, high school only, and no high school. With the exception of statistics for receiving some college, these disparities become more distinct for sex workers who are also People of Color. It is worth noting that all participants did not identify as cisgender, so extrapolating to the broader sex work community is not a feasible possibility for the data. While the comparisons between cisgender and Transgender or Gender Non-Conforming folks cannot be meaningfully established through the report, it is likely that among cisgender sex workers, there are similar race-based disparities in education. Furthermore, it is important to clarify that the data does not have the capacity to establish causality meaning it is not evident if lower education levels cause individuals to become sex workers or vice versa, identity and conditions are simply correlated.

As was explored earlier in this chapter, sex workers as a class experience systemic harm. The following paragraphs explore the impact of intersecting identities on outcomes with the inclusion of experience as a sex worker considered as one such identity. The survey data explored in the report *Meaningful Work* demonstrates 43.4% of Transgender sex workers who are People of Color report receiving household incomes under \$10,000 whereas only 16.3% of white, non-sex worker respondents report income levels this low. While being a sex worker and being a Person of Color are both identities that are linked to receiving lower incomes, the intersection of these identities amplifies these effects as this data demonstrates.

The final component of the report that will be explored provides information and statistics on the truly distressing regularity of mistreatment during incarceration for sex workers. Multiple forms of abuse and mistreatment were 3-5 times as likely to victimize sex workers compared to

their non-sex worker peers. One such statistic is the rate of sexual assault perpetrated by other inmates which was reported at a rate of 5% for non-sex worker respondents but increases to a staggering 28.8% for incarcerated sex workers. Ultimately, with the one exception of harassment by guards or staff, Transgender sex workers were at least twice as likely to experience all of the classified forms of abuse (harassment, physical assault, and sexual assault perpetrated by fellow inmates and by staff) compared to their non-sex worker fellow inmates. These harrowing statistics demonstrate that holding intersecting marginalized identities including identifying as a sex worker correlates to increased levels of vulnerability and violence due to the myriad of oppressions impacting these individuals.

## Chapter Four

### Evaluation of Significant Policy Approaches

#### *Sex Work Legalization*

Unlike decriminalization, the legalization of sex work has a consistent case study in the US in the state of Nevada. According to the Sex Work Law Map created by the Global Network of Sex Work Projects (NSWP), beyond Nevada, there are 17 countries or territories that have legalized sex work: three Australian territories or regions, four South American countries, three Caribbean islands or nations, five European nations, Turkey, and Taiwan. There are also a handful of nations and regions where sex work is legalized but organizing or purchasing is illegal according to NSWP data. Legalization is arguably the biggest departure from the status quo of criminalization among the options because legalization is essentially decriminalization plus government regulation of the decriminalized industry. Despite this, sociologist Ronald Weitzer, who has published extensive research on the interactions between sex work and the law, finds that citizens are more likely to support legalization than decriminalization because of the government involvement in the industry. Furthermore, Weitzer finds that polling data suggests between 25-50% of Americans support the legalization of sex work.

Regardless of potential widespread support for the legalization of sex work in the US, Nevada remains the only US state to have legalized the industry. Broadly the state's policy approach is relatively dissimilar to other legalization strategies seen globally. Nevada's legalization model does not operate in the manner popular perception leads many Americans to believe. Whether or not to legalize is a decision made at the county level which can only be

made in counties with populations under 400,000. Within the counties that vote to legalize the industry, all legal sex work must take place in brothels. Lutnick and Cohan note that due to the multitude of legally imposed regulations the sex workers in Nevada brothels “have restricted mobility and stipulated working conditions.” Examples of regulations commonly seen in Nevada and other legalization models include mandated STD testing, registering as sex workers or brothel workers with the police or a government agency, and inspections of businesses associated with sex work.

The purpose of these regulations is to ensure that public health and safety are monitored and protected throughout the process of decriminalization and thereafter. There has been some success on this axis for legalization models. Research suggests lower levels of STD transmission, more immediate treatment of STDs —specifically HIV— and increased public security. In investigating the potential for legalizing sex work through a global lens, Hassan Joulaei et al. find “Supporters of this approach claim that the legalization of prostitution makes it easier to identify violence, threats, and abuse of involved people compared to the conditions in which they tend to work secretly and contrary to community culture.” This claim suggests a benefit that cannot be fully achieved via sole decriminalization; the regulation of sex work and collection of sex workers’ personal information may increase the capacity of law enforcement to connect with victims and witnesses to crimes.

Joulaei et al. are quick to point out that some of these benefits are limited by either too little or too much regulation. For example, they note that regular STD tests are only mandated for sex workers, not their clients. Thus, there is limited protection for sex workers from acquiring STDs from individual customers. While the regular testing of sex workers allows for better maintenance of public health and leads to lower levels of transmission, the lack of testing of

clients prevents the protection of sex workers as individuals. Furthermore, according to Joulaei et al., another substantial drawback of legalization is the increased chances of alienation of sex workers from their friends or family who learn of their participation in sex work due to the registration requirement. Neither legalization nor decriminalization has demonstrated a strong capacity to influence social norms, so it is possible that learning of one's involvement in the industry made possible via legalization could lead to rejection by family or possibly employers and landlords.

Despite these more problematic components, there are sex workers who advocate for legalization specifically. Among the sex workers interviewed by Lutnick and Cohan, two of them voiced explicit support for a legalization model citing the possibility of legalization encouraging more scrutinous screening processes and resources as well as access to mental and physical healthcare services and police protection. Furthermore, the authors mention their interest in ensuring their rights as citizens broadly but specifically the ability to organize and unionize to protect their labor rights which cannot be accomplished in any form under a criminalizing model.

While criminalization absolutely prevents labor organizing and ensuring the worker's rights of sex workers, legalizing sex work has been known to result in excessive regulation beyond what other businesses and industries experience according to Lutnick and Cohan. An interesting resolution to this potential issue is having the regulations and inspections be operated through non-police government entities. The authors found that roughly one-third of interviewees felt it would be appropriate for the industry to be regulated by the San Francisco Health Department. Theoretically, this would prevent the over-policing of government mandates pertaining to the sex work industry. Furthermore, the involvement of the health department

would likely result in the centering of harm reduction practices and public health in the regulation resulting in better outcomes on these axes.

Harm reduction was a top priority for the Netherlands' legalization approach according to author Jess Gibly. Unfortunately, it is not clear how successful their model has been overall. Gibly reports that prior to legalization in 2000 estimates suggested there were at least 8000 sex workers operating in Amsterdam, and as of 2012, only 1500 sex workers are registered in the city suggesting many continue to operate illegally instead of through the regulatory means. These sex workers who choose to operate unlicensed or unregulated, depending on the state or nation, are essentially continuing to face the same outcomes they would under criminalization. While sex workers continue to face possible arrests, cannot rely on the police as a resource, and may be deprived of other resources due to their lack of licensing under legalization models, there are also notable benefits, such as improved public health outcomes.

The legalization of sex work in Nevada and internationally has yet to be implemented in a standard model, making results and reported outcomes inconsistent. Overall, however, legalization has had positive impacts, such as reduced crime rates and improved public health outcomes in these contexts. While at its core legalization is not dissimilar to decriminalization, the inclusion of regulatory measures has nuanced impacts on the lives of sex workers and on communities broadly. Much of the advocacy opposing both legalization and decriminalization is rooted in whorephobia or bias against sex workers, but empirical research does demonstrate several drawbacks to the possibility of legalization. There are far more instances of legalization internationally than there are of decriminalization which does allow for a more solid understanding of the realities the policy choice can produce. Ultimately, when compared to

criminalization, legalization allows for greater access to resources for sex workers, the creation of sex worker labor unions, and improvements to health and safety conditions.

### *Sex Work Decriminalization*

There is only one recent instance of complete decriminalization of sex work in the United States. For 29 years, the state of Rhode Island unintentionally decriminalized the offense of prostitution specifically. While amending statutes pertaining to prostitution the legislature entirely removed the portion criminalizing sex work, so while outdoor solicitation remained a crime, a significant portion of sex-work-related offenses were decriminalized. The bill making these amendments passed unanimously, but the implications were not notably addressed by any branch of the Rhode Island government again until 2003 when the state's Supreme Court determined that sex work was, in fact, not a crime. In 2009, the statute was amended and sex work was re-criminalized. However, prior to re-criminalization, an economy of indoor sex work grew immensely in the state providing a unique opportunity for the consideration of the implications of decriminalizing sex work within the US cultural and legal contexts. Economists/researchers Scott Cunningham and Manisha Shah found sizable declines in reported rape cases and gonorrhea rates linked to the booming sex industry. Ultimately, the researchers are able to successfully demonstrate that the decriminalization of sex work had sizable positive implications in Rhode Island.

With the sole exception of Rhode Island, the opportunities to investigate the impact of decriminalization are all international. As with legalization, there are myriad approaches to decriminalization. In terms of complete decriminalization, there are only four nations or

territories that have adopted the approach: Northern Territory, Australia, New South Wales, Australia, Niue, and New Zealand. New Zealand was the first of the four to decriminalize sex work, and its model boasts some substantial benefits. The approach includes some of the promising elements of legalization in terms of registration. However, New Zealand does not *require* sex workers to register as such. Instead, sex workers can individually select whether they would like to register, pay taxes, and receive social security for their income. Brothels and other places hosting sex work are instead required to register to allow the state to monitor, and when necessary discipline, the businesses not the workers. A method that aims to protect the labor rights of sex workers. The process of decriminalization likely encourages, but does not ensure, a decline in the stigma surrounding sex work; however, without the eradication of stigma, there will likely continue to be sex workers who do not wish to explicitly declare their job because of concerns of possible social consequences or their safety.

Perhaps the most well-known model of decriminalization is partial decriminalization as popularized by “the Nordic Model”. The Nordic Model which originated in Sweden in 1999 decriminalizes the selling of sexual services, but it continues to criminalize the purchasing of such services and the organization of sex work. Many in the global community applauded this approach which would theoretically prompt a decline in the demand for sex work and increases protections for sex workers. Unfortunately, the policy has not had a purely positive effect. Any model of decriminalization that does not include the decriminalization of purchasing sex work has the capacity to perpetuate harm and violence toward sex workers. With the full weight of potential legal consequences on the demand end of the market, sex workers have to work significantly harder as a result of their clients' anxieties. These anxieties also contribute to further harm to sex workers.



There are myriad factors that explain why the Nordic Model has led to increased levels of violence against sex workers in some settings. One such factor is that the burden of consequences landing upon clients results in a consistent desire for maintaining anonymity among customers. This incentivization of anonymity reduces the capacity of sex workers to screen their clients compared to full decriminalization. A client's primary focus is typically avoiding detection by police, so many want to meet sex workers in isolated locations which is a far more dangerous scenario for a sex worker. Furthermore, customers also rush conversations or negotiations on price, boundaries, and consent to further protect themselves from police detection. All of these factors result in sex workers being as or more vulnerable to being harmed by their clients than both criminalization and full decriminalization.

The Nordic Model is also often called the "End Demand" Model because it continues to target and criminalize the demand or consumer side of the market while theoretically providing support and resources to the supply side. The transference of law enforcement objectives from primarily arresting or targeting sex workers to primarily arresting Johns does successfully reduce the demand for sex work which is a priority of the policy, but this shift ultimately backfires against sex workers who become more restricted in terms of who they see. Heightening the criminality of the demand end does not reduce the supply. Thus, sex workers end up ignoring their own prior boundaries, decreasing their prices, and taking greater risks for the sake of remaining a competitive supplier and meeting their financial needs following the decline of income availability. Finally, research demonstrates that the partial decriminalization model directly contributes to increased rates of violence against sex workers. Thus, in order to ensure the goals of the decriminalization policy come to fruition, policymakers must promote full

decriminalization as partial decriminalization does not successfully alleviate the harm experienced by sex workers.

New Zealand's decriminalization took place in 2003, and the last 20 years have displayed promising achievements for the model. The New Zealand Prostitutes Collective (NZPC), a sex-worker-led organization that provides resources for and advocates for the rights of sex workers, played a critical role in the decriminalization of sex work in the country and has successfully implemented a handful of initiatives in cooperation with the New Zealand government, government agencies, health organizations, and law enforcement. Researcher Gillian Abel and Sex Worker Rights Advocate Catherine Healy report positive changes in relationships between sex workers and law enforcement that has allowed sex workers to more comfortably report sexual assault. NZPC has also created and distributed important educational materials and has ensured these resources are accessible to people entering the sex work industry. Abel and Healy repeatedly report these initiatives could not have occurred in any context other than decriminalization. Ultimately, decriminalization in New Zealand has allowed for the creation and distribution of new resources and demonstrated improved health and safety outcomes for sex workers.

Complete decriminalization offers a multitude of benefits that are not achieved through the partial models. Research that was done in San Francisco by Lutnick and Cohan provides insight into the opinions of sex workers on the topic of decriminalization within the geographic scope of this thesis. The benefits described by the sex workers who explicitly mentioned decriminalization in their interviews include increased access to police protection, improved opportunities for negotiation with clients, improved future opportunities and vertical mobility, access to resources, and the ability to advocate for and ensure their labor rights. As has been

discussed, a variety of laws prevent sex workers from organizing under the model of criminalization whether to advocate for their rights as workers or simply to avoid being isolated and vulnerable. The benefits of organizing are insurmountable regardless of the objective, but it is not a safe or legal possibility for most sex workers.

While even under the current status of criminalization of sex work, solicitation, and other related crimes there are organizations and services designed to provide resources for sex workers, many, if not most, of these groups are not operated by current sex workers because their involvement is a risk for both parties. Decriminalization would allow sex workers to become the face of sex worker rights advocacy without endangering themselves. Decriminalization, and generally departures from criminalization, are necessary for sex workers to become the primary voice for sex workers' rights and needs. While a reduction in the stigmatization of sex work and sex workers will also play a critical role in this, criminalization is the most severe barrier against this possibility. As with any identity, sex workers are the most equipped to speak to their challenges, barriers, and needs, so those speaking on their behalf have the capacity to do significant harm to the sex worker community.

There are a multitude of benefits that apply to most non-criminalizing approaches to sex work including decriminalization. For example, a 49-year-old San Franciscan sex worker noted that decriminalization would ensure the stability of her exit plan in an interview with Lutnick and Cohan. Ultimately, the possibility of arrest, conviction, and incarceration for sex work means that one's plan to eventually enter a career beyond sex work could quickly become infeasible due to the impact these instances have on employability. While this benefit could be achieved to a degree under legalization, legalization approaches that require sex workers to register could also contribute to extensive barriers to entering other fields. Other benefits, however, are solely

achievable via decriminalization. In referencing her brief employment in Nevada, another interviewee stated, “The amount of controls and the lack of freedom was horrendous. You know, I don't want someone else telling me how to work.... I think decriminalization gives us the most freedom.” Unlike legalization, decriminalization offers freedom from both potential arrest or incarceration and industry-imposed regulations on sex workers as individuals.

### *Similarities and Differences*

There are many similarities between decriminalization and legalization of sex work in terms of their goals and outcomes especially compared to criminalization, but they are also notably distinct in the operating practices of each policy. Decriminalization, specifically full decriminalization, requires the nullification of laws criminalizing the selling, purchasing, and organizing of sex work. As established above, decriminalization allows sex workers to more comfortably report violence or crimes against themselves or others, to begin organizing to protect their rights as workers, and to become the representatives of their own issues.

Legalization also typically creates these conditions.

More or less, legalization is decriminalization plus government regulation of sex workers and the industry. Relatively common examples of these regulations include requiring sex workers to be licensed or registered with law enforcement or another government agency and mandating regular STD testing for sex workers. Empirical evidence has not yet demonstrated which model has a more positive impact on public health and the welfare of sex workers concretely. This is due to several factors, but a notable component is the fact that sex work policy continues to be a relatively neglected research field. Furthermore, there is immense variability in the models. Arguably, there is more variance within the individual categories of legalization and decriminalization than there is a difference between their averages. Despite the

relative limitation of available research, there does seem to be a consensus among researchers that sex workers are more in favor of decriminalization. This is most likely due to the lack of regulations and requirements that would be imposed upon them and their work conditions under legalization models. Alison Bass, the author of *Getting Screwed: Sex Workers and the Law*, repeatedly refers to legalization models as seen in Nevada and Germany as “paternalistic” and “corporate.” Lutnick and Cohan note that many of the women they interviewed were adamantly opposed to government regulation of the industry while others supported mandating testing. Research shows, however, that there have been unintended consequences for public health caused by such regulation. In citing another researcher, Bass notes that common knowledge of mandatory testing leads to clients believing sex workers are “disease free” potentially increasing the likelihood of them bribing sex workers to not use condoms for the duration of their interaction. Thus, improved access to STD screening and other healthcare is likely a better avenue than mandating testing for the protection of public health and for the promotion of safer sex in sex work venues.

While it seems sex workers favor sex work decriminalization over legalization, the American public has the opposite preference according to Ronald Weitzer. Weitzer suggests that government involvement implies greater efforts to ensure public safety once sex work is no longer criminalized. Furthermore, research and advocacy pieces suggest that legalization provides more support for sex workers compared to partial decriminalization models specifically which have been associated with increased levels of violence against sex workers. Additionally, these consequences tend to harm outdoor sex workers more compared to their indoor-operating counterparts. Outdoor operating sex workers are especially at risk under any form of criminalization as they are far more visible and thus vulnerable.

While the research restricts conclusions of the best approach for supporting sex workers and public health and safety, complete decriminalization seems to have the most distinct outcomes from criminalization whereas the partial continued criminalization and regulatory elements of partial decriminalization and legalization models, respectively, seem to maintain many of the outcomes of criminalization. In the case of partial decriminalization, this is due to the continued criminalization of the demand side of the market or other aspects of sex work as exemplified by the Nordic Model. Of the three alternatives, partial decriminalization, full decriminalization, and legalization, partial decriminalization is the only method explicitly associated with increased rates of violence against sex workers as noted above.

Some benefits which are unique to legalization include the compilation of a sex worker registry allowing police or law enforcement to more easily connect with potential victims or witnesses to crimes as Joulaei et al. point out. It is also possible that such lists could allow law enforcement to alert sex workers to violent offenders and individuals targeting sex workers. Despite this potential, legalization is limited by how willing sex workers are to register or get licensed instead of continuing to operate underground and illegally as Gibly points out citing the case in the Netherlands. Ultimately, New Zealand's approach to decriminalization might have equal success to legalization as they allow the choice of whether sex workers would like to register and pay taxes while requiring the licensing of establishments. Bass notes some would consider the model legalization despite it being broadly cited as decriminalization. Although, of the models explored in this paper, it is arguably the most hybrid model of legalization and decriminalization, and thus the success of New Zealand's model speaks to the benefits of both approaches. Ultimately, both models have unique elements, limitations, and benefits for sex workers and the public broadly.

## Chapter Five

### Findings, Implications, and Conclusions

#### *Findings and Implications*

The above evaluation of the merits and consequences of policies reversing the criminalization of sex work has established that these various policies have broad implications and differ in their impacts upon marginalized communities. Table 1 presents the findings of this thesis in terms of how specific groups are impacted by the sex work policy approaches of partial decriminalization, complete decriminalization, legalization, and hybrid models. This analysis is operating within the context of the existing policy landscapes of the relatively progressive states of Oregon, Washington, and California.

Table 1: Who Experiences Improved Conditions as a Result of Changes in Sex Work Criminalization

Model	Sex Workers Broadly	BIPOC Sex Workers	Disabled Sex Workers	LGBTQIA2S+ Sex Workers	Undocumented Sex Workers
Partial Decriminalization					
Complete Decriminalization	X	X	X	X	X
Legalization	X			X	
Hybrid	X	X		X	

X - Signifies the relevant group experiences improved conditions on average under given model

As was established by several researchers, authors, and sex workers partial decriminalization has significant potential to cause equal or additional harm in comparison to the status quo of criminalization. Ultimately, it is highly unlikely that any of the marginalized subgroups of sex workers would experience improved conditions following such a policy shift. In fact, it is most probable that these marginalized demographics would experience a disproportionately high amount of negative outcomes associated with the Nordic Model. Complete decriminalization, alternatively, is most likely to provide improved outcomes for all groups. While legalization has the capacity to positively impact sex workers broadly and should have minimal negative implications for LGBTQIA2S+ sex workers as well, the commonality of independent sex worker registration under such models makes disabled, undocumented, and BIPOC sex workers more vulnerable. These requirements mean that unregistered sex work remains criminalized meaning disabled sex workers, undocumented sex workers, and other sex workers who have incentives to remain unregistered are still vulnerable to the various negative impacts of criminalization.

The results of the hybrid model's impact on vulnerable groups is very similar to that of legalization with the exception of BIPOC sex workers. While legalization often calls for more interactions between sex workers and law enforcement, the legal system, or government agencies, interactions in which BIPOC sex workers are disproportionately likely to experience harm, the hybrid model of decriminalization and legalization is likely to dilute these interactions to the extent that BIPOC sex workers are better off on average. However, the hybrid model is incredibly variable, so it is difficult to fully establish its implications. Thus, disabled and undocumented sex workers who experience additional risks in a model requiring any form of registration are more likely to remain vulnerable.



As established repeatedly in the above chapters, sex workers are disproportionately disabled due to increased incentives to participate in underground, illicit economies Disabled People experience. Table 2 evaluates the capacity of each of the four models to protect disabled sex workers from further marginalization under various policy landscapes.

Table 2: Preventing Twice Marginalization of Disabled Sex Workers: How do welfare policies interact with non-criminalization models of sex work policy to protect disabled sex workers?

Conditions	Partial Decriminalization	Complete Decriminalization	Legalization	Hybrid
Status Quo		X		
• Universal Healthcare		X		X
• Adequate Disability Benefits		X	X	X

X- Signifies the policy interactions successfully prevent the twice marginalization of disabled sex workers

+ - Signifies an addition to the current policy landscape

As demonstrated in Table 1, disabled sex workers do experience improved conditions under the complete decriminalization model. In the case of this specific model, disabled sex workers are not required to register in any form making it possible for them to continue to receive their benefits regardless of their labor as a sex worker. To an extent, universal healthcare serves to counteract the potential loss of portions of disability benefits for disabled sex workers likely to result from registration. Because registration requirements are less likely under hybrid models, coupled with the addition of universal healthcare disabled sex workers are likely better off on average under such models. Finally, the incorporation of adequate disability benefits for

all Disabled People diminishes the incentives for Disabled People to become sex workers which widely reduces the marginalization of disabled sex workers and Disabled People broadly.

The final table evaluates policy conditions that prevent the twice marginalization of sex workers broadly across the four considered models of a non-criminalized approach to sex work policy.

Table 3: Preventing Twice Marginalization of Sex Workers

Conditions	Partial Decriminalization	Complete Decriminalization	Legalization	Hybrid
Status Quo		X		
• Universal Healthcare		X		X
• Robust Welfare Policies		X	X	X
• Protections from Law Enforcement (and ICE)	X	X	X	X

X- Signifies the policy interactions successfully prevent the twice marginalization of disabled sex workers

+ - Signifies an addition to the current policy landscape

Table 3 considers whether or not sex workers are better off and less marginalized at the intersections of four policy landscapes with the four policy approaches to sex work evaluated in this thesis. As is demonstrated by Tables 1 and 2, complete decriminalization serves to effectively deflect the potential twice marginalization of sex workers broadly which is not diminished through the addition of various policies. The inclusion of universal healthcare allows for the hybrid model to become more successful in this policy goal by reducing the burden upon

low-income and disabled sex workers; however, in order for legalization to be successful, a complete, robust welfare social safety net is necessary because of the disproportionate risks to all sex workers when they are required to register. The addition of welfare to the policy landscape serves to counteract the increased vulnerability to social stratification and houselessness that registration requirements produce. Sex workers who lose their housing or access to other resources upon registering as sex workers have access to alternative sources of support in this landscape. Finally, robust protections for sex workers from law enforcement and Immigration and Customs Enforcement (ICE) is the only landscape in which partial decriminalization more effectively prevents twice marginalization in comparison to criminalization models. While there is certainly continued vulnerability to experiencing harm from clients, it is not likely to occur at a strictly higher rate than in criminalization policies, and this landscape allows for all sex workers to safely report harm or violence they experience or witness.

### *Conclusions and Proposals for Further Research*

In Oregon, Washington, and California sex work is criminalized in both de facto and de jure policies and practices. While arrest rates have been slowly declining in all of the West Coast US states, criminalization remains the status quo. While Oregon has the harshest punishments for prostitution offenses, California has the highest arrest rates even with controlling for the state population. Research conducted locally, regionally, nationally, and internationally demonstrates that sex workers experience significant levels of violence and harassment by police, clients, and others which is heavily amplified by the illegal status of their profession. Furthermore, sex workers are disproportionately People of Color, members of the LGBTQIA2S+ community, low-income individuals, Disabled People, and undocumented immigrants meaning these negative

impacts fall predominantly upon individuals who are marginalized beyond their identity as sex workers. Legalization and decriminalization are two approaches states and nations have taken to address the consequences criminalization inflicts upon sex workers and society broadly.

Decriminalization eliminates all laws pertaining to the selling and purchasing of sex work except in partial decriminalization models that continue to criminalize the purchasing of sex work in an attempt to end demand. Full decriminalization supplies myriad benefits to sex workers and public health broadly. Sex workers become able to use the police as a resource to address the violence they often face and experience and gain access to a multitude of other resources as well. Unfortunately, partial decriminalization does not have the same effects, and often times sex workers experience additional violence and risk due to the pressure illegality places on their clientele. Legalization boasts many of the same benefits as decriminalization, but it is notably distinct in its inclusion of government regulation and oversight of the industry and often individual sex workers. Legalization's benefits are to a degree limited likely due to mistrust in the government and law enforcement stemming from prior models of criminalization. Research suggests sex workers are not always or even mostly comfortable with registering as sex workers through government channels, and doing so may open them up to new forms of harm or rejection. Both approaches have significant potential limitations via the partial decriminalization approach and regulatory requirements for decriminalization and legalization, respectively; however, both approaches are capable of addressing the violence and harassment faced by sex workers, improving the health outcomes of the public, and preventing the disproportionate harm and incarceration of marginalized groups that are a direct result of criminalization.

The research limitations pertaining to this subject have been noted several times throughout. Criminalization also heavily contributes to this. Because sex workers can not be

publicly identified as such for fear of stigma, violence, or incarceration, it is challenging to conduct research or interviews with sex workers and to establish accurate estimates pertaining to the number of sex workers and their demographics. Interpretations of arrest and conviction rates are often used to supplement the lacking data; however, states do not consistently report or compile arrest data, and state collection of conviction data is notably more rare. While ideally, further research would be able to run difference-in-difference studies on nations, states, or territories before and after the implementation of legalization and decriminalization, data from the before is greatly restricted by criminalization. Ultimately, the best method of comparison is to investigate the rates of violence against sex workers and relevant public health and safety data in nations enacting the policies. Additionally, it is critical to conduct interviews and surveys of sex workers who work in the relevant region and have ideally worked in the profession before and after the policy shift. This would allow for a comprehensive understanding of the impacts of the policies on the people they are meant to support and protect. While researchers wait for more policy changes to produce case studies, further useful research would be on-the-ground anonymous surveying of sex workers to establish their population sizes and the issues they continue to face under criminalization.

The various models of decriminalization and legalization have distinct implications for further marginalized demographics of sex workers. The presence of multiple intersecting marginalized identities leaves these groups especially vulnerable to the harms caused by criminalization which are not inherently resolved through all of the models. Additionally, the incorporation of other policies whether welfare policies or guaranteed protections from law enforcement allow for each of these models to more successfully limit the twice marginalization of sex workers. Ultimately, legalization and decriminalization both have the capacity to promote

significantly better conditions for sex workers than the status quo of criminalization which is globally practiced. These approaches also address issues of oppression, mass incarceration, and harm reduction making them potentially invaluable in the US context. Understanding these policies will require that they be enacted which does require somewhat of a leap of faith on the part of policymakers, particularly in choosing between the predominant two non-criminalization approaches to sex work. Both models face unique merits and consequences, but for the most part, they produce outcomes superior to criminalization for sex workers and community members as well. Further research into the field is a critical next step in influencing and informing policymakers and the public on the forms of harm the criminalization of sex work perpetuates.

## Appendix

### Appendix I

#### ORS

##### 167.007 Prostitution.

(1) A person commits the crime of prostitution if the person engages in, or offers or agrees to engage in, sexual conduct or sexual contact in return for a fee.

(2) Prostitution is a Class A misdemeanor.

(3) It is an affirmative defense to prosecution under this section that the defendant, at the time of the alleged offense, was a victim of the crime of trafficking in persons as described in ORS 163.266 (1)(b) or (c). [1971 c.743 §250; 1973 c.52 §1; 1973 c.699 §6; 2011 c.151 §1; 2017 c.246 §1]

##### 167.008 Commercial sexual solicitation.

(1) A person commits the crime of commercial sexual solicitation if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

(2) Commercial sexual solicitation is a Class A misdemeanor. [2011 c.151 §3; 2013 c.720 §2; 2015 c.98 §1]

##### 167.012 Promoting prostitution.

(1) A person commits the crime of promoting prostitution if, with intent to promote prostitution, the person knowingly:

(a) Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise;

(b) Induces or causes a person to engage in prostitution or to remain in a place of prostitution;

(c) Receives or agrees to receive money, goods, property, services or something else of value, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money, goods, property, services or something else of value is derived from a prostitution activity; or

(d) Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.

(2) Promoting prostitution is a Class C felony. [1971 c.743 §251; 2016 c.10 §1]

##### 167.017 Compelling prostitution.

(1) A person commits the crime of compelling prostitution if the person knowingly:

(a) Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;

(b) Induces or causes a person under 18 years of age to engage in prostitution;

(c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or

(d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

(2) Compelling prostitution is a Class B felony.

(3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to prove that the defendant knew the other person was under 18 years of age and it is no defense that the defendant did not know the person's age or that the defendant reasonably believed the person to be older than 18 years of age. [1971 c.743 §252; 2011 c.334 §1; 2013 c.271 §1]

## **Appendix II**

RCW

RCW 9A.88.030 Prostitution.

(Effective until January 1, 2024.)

(1) A person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in chapter 9A.44 RCW.

(3) Prostitution is a misdemeanor.

[ 1988 c 145 § 16; 1979 ex.s. c 244 § 15; 1975 1st ex.s. c 260 § 9A.88.030.]

(Effective January 1, 2024.)

(1) A person age eighteen or older is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) For purposes of this section, "sexual conduct" means "sexual intercourse" or "sexual contact," both as defined in chapter 9A.44 RCW.

(3) Prostitution is a misdemeanor.

[ 2020 c 331 § 4; 1988 c 145 § 16; 1979 ex.s. c 244 § 15; 1975 1st ex.s. c 260 § 9A.88.030.]

RCW 9A.88.070 Promoting prostitution in the first degree.

(1) A person is guilty of promoting prostitution in the first degree if he or she knowingly advances prostitution:

(a) By compelling a person by threat or force to engage in prostitution or profits from prostitution which results from such threat or force; or



(b) By compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution or profits from prostitution that results from such compulsion.

(2) Promoting prostitution in the first degree is a class B felony.

[ 2012 c 141 § 1; 2007 c 368 § 13; 1975 1st ex.s. c 260 § 9A.88.070.]

RCW 9A.88.080 Promoting prostitution in the second degree.

(1) A person is guilty of promoting prostitution in the second degree if he or she knowingly:

(a) Profits from prostitution; or

(b) Advances prostitution.

(2) Promoting prostitution in the second degree is a class C felony.

[ 2011 c 336 § 413; 1975 1st ex.s. c 260 § 9A.88.080.]

RCW 9A.88.085 Promoting travel for prostitution.

(1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be patronizing a prostitute or promoting prostitution, if occurring in the state.

(2) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021.

(3) Promoting travel for prostitution is a class C felony.

[ 2006 c 250 § 2.]

NOTES:

Finding—2006 c 250: "The legislature finds that the sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, including activities relating to prostitution, pornography, sex tourism, and other commercial sexual services. Prostitution and related activities contribute to the trafficking in persons, as does sex tourism. Therefore, discouraging sex tourism is key to reducing the demand for sex trafficking.

While prostitution is illegal in developing nations that are the primary destination of sex tourism, sex tourism is a major component of the local economy. The laws target female workers rather than the male customers, and economic opportunities for females are limited. Developed nations create the demand for sex tourism, yet often fail to criminalize the practice, or the existing laws fail to specifically target the sellers of travel who organize, facilitate, and promote sex tourism." [ 2006 c 250 § 1.]

RCW 9A.88.090 Permitting prostitution.

(1) A person is guilty of permitting prostitution if, having possession or control of premises which he or she knows are being used for prostitution purposes, he or she fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor.

[ 2011 c 336 § 414; 1975 1st ex.s. c 260 § 9A.88.090.]

RCW 9A.88.110 Patronizing a prostitute.

(1) A person is guilty of patronizing a prostitute if:

(a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or

(b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or

(c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

(2) The crime of patronizing a prostitute may be committed in more than one location. The crime is deemed to have been committed in any location in which the defendant commits any act under subsection (1)(a), (b), or (c) of this section that constitutes part of the crime. A person who sends a communication to patronize a prostitute is considered to have committed the crime both at the place from which the contact was made pursuant to subsection (1)(a), (b), or (c) of this section and where the communication is received, provided that this section must be construed to prohibit anyone from being prosecuted twice for substantially the same crime.

(3) For purposes of this section, "sexual conduct" has the meaning given in RCW 9A.88.030.

(4) Patronizing a prostitute is a misdemeanor.

[ 2017 c 232 § 1; 1988 c 146 § 4.]

### **Appendix III**

PEN

TITLE 9. OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS 261-368.7

CHAPTER 1. Rape, Abduction, Carnal Abuse of Children, and Seduction [261 - 269] ( Chapter 1 enacted 1872. )

266e.

Every person who purchases, or pays any money or other valuable thing for, any person for the purpose of prostitution as defined in subdivision (b) of Section 647, or for the purpose of placing such person, for immoral purposes, in any house or place against his or her will, is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(Amended by Stats. 2011, Ch. 15, Sec. 304.5. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

266h.

(a) Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years.

266i.

(a) Except as provided in subdivision (b), any person who does any of the following is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years:

(1) Procures another person for the purpose of prostitution.

(2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute.

(3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.

(4) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.

(5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.

(6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

CHAPTER 7. Of Crimes Against Religion and Conscience, and Other Offenses Against Good Morals [302 - 310.5] ( Chapter 7 enacted 1872. )

309.

Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein; or any parent or guardian of any such minor, who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house, or room, shall be guilty of a misdemeanor.

(Added by Code Amendments 1880, Ch. 58.)

CHAPTER 8. Indecent Exposure, Obscene Exhibitions, and Bawdy and Other Disorderly Houses [314 - 318.6] ( Heading of Chapter 8 amended by Stats. 1961, Ch. 2147. )

315.

Every person who keeps a house of ill-fame in this state, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor; and in all prosecutions for keeping or resorting to such a house common repute may be received as competent evidence of the character of the house, the purpose for which it is kept or used, and the character of the women inhabiting or resorting to it.

(Amended by Stats. 1905, Ch. 507.)

316.

Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

(Amended by Stats. 1989, Ch. 1360, Sec. 108.)

318.

Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of illegal gambling or prostitution, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars (\$500), or be punished by both that fine and imprisonment.

(Amended by Stats. 1991, Ch. 684, Sec. 2.)

TITLE 15. MISCELLANEOUS CRIMES [626 - 653.75] ( Title 15 enacted 1872. )

CHAPTER 2. Of Other and Miscellaneous Offenses [639 - 653.2] ( Chapter 2 enacted 1872. )

647

Except as provided in paragraph (5) of subdivision (b) and subdivision (k), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) An individual who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) (1) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(2) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual

manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(3) An individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.

#### **Appendix IV**

PEN

CHAPTER 2.5. Loitering for the Purpose of Engaging in a Prostitution Offense [653.23 - 653.29] ( Chapter 2.5 added by Stats. 1995, Ch. 981, Sec. 4. )

653.23.

(a) It is unlawful for a person to do either of the following:

(1) Direct, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of Section 647.

(2) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647.

(b) Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266h or 266i or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i or any other offense.

(Amended by Stats. 2022, Ch. 86, Sec. 5. (SB 357) Effective January 1, 2023.)

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