

## ***Sex Work is an LGBTQ Issue***

Sex workers have been a long standing, and often erased, part of the LGBTQ community. In this moment of reformation, it is important to look at sex work and its place within the LGBTQ community and its defense and validation in social justice spaces. This paper seeks to break down some of the ways in which sex worker rights is an integral part of the fight for LGBTQ liberation.

### ***Criminalization and Stigma of Sex Work impedes economic survival and access to resources***

Multiple studies have shown that the LGBTQ community is disproportionately impacted by issues of poverty and lack of access to formal employment. The trans community is disproportionately impacted by poverty, and are twice as likely to be unemployed compared to cisgender individuals.<sup>i</sup> For homeless and housing unstable youth, the disparities are just as pronounced, with some cities reporting that 40-50% of homeless young people reporting to be LGBTQ-identified.<sup>ii</sup> Exacerbating this disparity is the discrimination in traditional employment and social services due to LGBTQ status. One survey found that for homeless shelters, only 30% were open to housing transgender women<sup>iii</sup>, while structural barriers such as identification documents with different names and gender markers can make access to benefits and services that much more difficult.

*For many in the LGBTQ community, sex work means survival.*

The collateral consequences of a prostitution arrest can also make access to resources and economic stability further challenging. A prostitution conviction can mean disqualification from public housing,<sup>iv</sup> deportation or the inability to adjust one's green card status, violating a code of conduct to lead to expulsion from higher education, denial of student financial aid,<sup>v</sup> civil consequences such as eviction or removal of children from the home, among many other possible collateral consequences.

### ***Criminalizing Sex Work Promotes policing and incarceration of LGBTQ individuals<sup>vi</sup>***

Prostitution, as well as all the mechanisms around that act, is fully criminalized in every state<sup>vii</sup>. As LGBTQ communities experience disproportionately higher levels of policing, prostitution laws are often a significant part of that over policing and incarceration. For youth, LGB young women are twice as likely and LGB young men are ten times as likely to be incarcerated in juvenile detention for prostitution charges compared to their peers.<sup>viii</sup>

Particularly harmful have been laws against loitering for the purposes of prostitution. Evidence can include what a person is wearing, behaviors such as waving at cars, being in an area that law enforcement considers "known" for prostitution, or even having been arrested before. Loitering for the purposes of prostitution has colloquially come to be known as "walking while trans," because of the frequency with which trans women are subjected to their policing. During his time at the Sylvia Rivera Law Project, Dean Spade reported that 80 percent of the trans women of color he worked with "had experienced police harassment or false arrest based on unfounded suspicion of prostitution."<sup>ix</sup> This practice was corroborated by the research of Amnesty International in 2005 and again by Human Rights Watch in 2012.<sup>x, xi</sup>

### ***Proxy Laws destroy peer support, harm reduction and community essential to LGBTQ survival***

Criminalization of the sex trade also goes beyond sex worker through proxy laws such as soliciting, pandering, or promoting, which do not require violence or force. This also criminalizes everyone around a sex worker, including their peers, family, and community support. For queer communities and

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especially queer youth, peer support and harm reduction techniques such as information about potential clients become a misdemeanor or, in cases of youth, a felony. Pandering for the purposes of prostitution can criminalize information sharing about how to find clients between peers in similarly precarious life situations. Support networks are put in jeopardy when they are criminalized through proxy laws. Removing these support systems do not disincentivize someone from engaging in sex work, an assumption which misunderstands the very reasons why people trade sex, but instead forces many to simply trade sex under worse and more dangerous circumstances.

### ***Decriminalization of sex work is essential to addressing the spread of HIV and promotion of health***

The overlap between LGBTQ individuals and sex workers as communities affected by HIV transmission, and the decriminalization of sex work is an essential element to the fight against HIV transmission. One study put the impact of decriminalization of the sex trade at reducing HIV transmission 33 – 46% across the globe within the next decade.<sup>xii</sup> Sexual violence, exacerbated by criminalization, poses a significant risk to the health and safety of those trading sex.

One policing practice which impedes the ability to includes the use of condoms as evidence, a practice which has been documented across the globe. This practice includes confiscating or destroying condoms and the mere possession of condoms being enough to warrant arrest and conviction. This policing practices lead to fear of carrying condoms, regardless of whether a person will be engaging in sex work, or any sexual contact, that day. In a New York City-based study on the issue, 75% of transgender women said they had not carried condoms for fear of arrest.<sup>xiii</sup>

For the issue of HIV criminalization, sex workers have also been disproportionately impacted by the implementation of these laws, many of which include mandatory felony upgrades for those who are arrested for prostitution-related crimes while HIV positive.

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<sup>i</sup> National Center for Transgender Equality (2011) “Injustice at Every Turn.”

<sup>ii</sup> Williams Institute, (2012) “LGBT Homeless Youth Survey.”

<sup>iii</sup> Center for American Progress (2016) “Discrimination Against Transgender Women Seeking Access to Homeless Shelters.”

<sup>iv</sup> Curtis, et al., (2013) “Alcohol, Drug and Criminal History Restrictions to Public Housing.”

<sup>v</sup> <https://theswainlawoffice.com/happens-get-convicted-financial-aid/>

<sup>vi</sup> Prostitution and loitering laws are one part of the larger fight against quality of life policing which targets and profiles people of color and other marginalized communities.

<sup>vii</sup> In Nevada, prostitution is legal within a highly-regulated brothel system, which is only allowed to operate in specific locations. Working independently or outside of this system remains criminalized and as of this drafting, Nevada had the highest arrests for prostitution per capita in the country, at a rate of almost 10:1 to the second and third highest states.

<sup>viii</sup> Addressing the Invisibility of LGB & GNC Youths in the Juvenile Justice System, 2010

<sup>ix</sup> Make the Road, 2012, “Transgressive Policing,” 13.

<sup>x</sup> Amnesty International, USA (2005) “Stonewalled: Police Abuse And Misconduct against Lesbian, Gay, Bisexual, and Transgender People in the U.S.”

<sup>xi</sup> Human Rights Watch (2012) “Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities.”

<sup>xii</sup> Dr. Kate Shannon, “HIV prevention, criminalization, and sex work: Where are we at?” CATIE : Prevention in Focus, Fall 2016, <http://www.catie.ca/en/pif/fall-2016/hiv-prevention-criminalisation-and-sex-work-where-are-we>.

<sup>xiii</sup> PROS Network, (2012) “Public Health Crisis: The Impact of Using condoms as Evidence of Prostitution in New York City.”