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 DATA FOR PROGRESS

DECRIMINALIZING SURVIVAL:

POLICY PLATFORM AND POLLING ON
THE DECRIMINALIZATION OF SEX WORK

Communities
need more

not more
policing.



Nina Luo, Data for Progress, *Fellow*

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ABOUT THE AUTHOR

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COVER PHOTO BY COREY TORPIE

EXECUTIVE SUMMARY

For the first time in presidential primary history, 2020 candidates have competed for a progressive position on the sex trade. Several candidates have indicated their “openness to the decriminalization of sex work”¹ while other candidates have expressed stances they describe as decriminalization but range in policy from Prohibition-style criminalization to regulated legalization. A recent resolution introduced by Congresswoman Ayanna Pressley calls for decriminalization.² Legislators, supported by community groups, have also introduced decriminalization bills in New York and D.C, and sex workers are mobilizing to do the same in cities and states across the country. There is growing consensus amongst civil rights, LGBTQ+ justice, labor, immigrant justice, and women’s groups that the decriminalization of sex work best protects people in the sex trades. A recent national poll by Data for Progress found an outright majority of all voters support decriminalizing sex work. Additionally, two-thirds of voters age 18-44 support decriminalization.

Here, we briefly contextualize the issue, discuss how decriminalizing sex work is a part of effective anti-trafficking policy, and present a local and state-based platform for decriminalization. Decriminalization includes amending penal codes and divesting from the criminal legal system (both police and prosecutors). Decriminalization is the first step toward expanding labor protections and funding services that address the needs of people in the sex trades. We hope this platform can guide progressive organizations working to promote racial, gender, and economic justice.

WHAT IS THE SEX TRADE?

People engage in the sex trades (also referred to as sex work, commercial/transactional sex, or prostitution) when they exchange sexual services for money, housing, food, drugs, healthcare, or any other resource. Sex work can be legal or criminalized, short-term or long-term, serve as primary or supplemental income, and be conducted independently or with other people. Like with other forms of labor, people trade sex for reasons that exist on a spectrum of choice, circumstance, and coercion.³ Most sex workers trade sex out of circumstance to meet economic needs such as healthcare, housing or childcare. They may experience explicit discrimination in the formal economy because of disability, gender identity or immigration status and rely on sex work to meet basic needs. They may find parts of the sex industry to have low barriers of entry, allowing them to immediately access income for a short period of time in the industry before exiting. They may find that the freelance or independent nature of the work allows them more time flexibility to caretake families or pursue other interests.

CHOICE

Doing sex work free of economic or other pressures

CIRCUMSTANCE

Doing sex work for economic survival or safety (shelter, healthcare bills, disability, childcare, etc.)

COERCION

Forced into sex trades through violence, fraud, or threats



COMMUNITY STORY

Tamika Spellman

I've done sex work for more than 35 years. I started when I was 15 because I had a child and I needed to pay for all kinds of expenses to take care of my child - diapers, clothes, transportation, toys, doctors' appointments. Both the child's mother and I were sex workers and sometimes I would watch the child while she was doing sex work.

I moved to DC and joined the military when I was 20. I continued to do sex work on the side. I was violently sexually assaulted while doing sex work and when I went to my supervisors in the military for help, they were more interested in whether other members of the military were gay than helping me recover. This was before 'Don't Ask, Don't Tell.' I was then discharged.

After I left, I started my gender transition, which sex work paid for. During my transition, I was working at McDonald's, where I experienced a lot of anti-trans discrimination. They let me work, but I never got any of the certifications I asked for that would help me get a raise. I trained up other people who were less qualified than I was and who then got promoted while I stayed in the same role. People always say sex work is exploitative, but how do you think I feel about McDonald's using me all those years, not allowing me to move up? I felt used.

I've lived in many places - Buffalo, Atlanta, Birmingham, Oklahoma City, Detroit, Indianapolis - and in all those places I've been able to get on my feet within 90 days. DC is the one place where I've been homeless for years. Many of the shelters and transitional housing require abstinence and confiscate even your marijuana or clean syringes from syringe exchanges. And no matter where you are, police are all the same. I have been raped by police officers in every city except for Indianapolis. It's not consent for me to have to give you a sexual favor so that I don't go to jail. Even the officers who don't engage in this are complicit; they see what's happening and keep their mouths shut. I'm terrified of the police wherever I go. Even now, I try to make myself as small as possible so they don't bother me.

There were times I tried to stop doing sex work and tried to just work a straight job, but bills would start piling up again. I remember how good unionized protected jobs and wages were once. Those just don't exist anymore. This is only the second time in my life where I've been paid enough at a job where I don't need to also do sex work to survive. From 1988 to now, that's more than 30 years apart between times when I've had a living wage job in my life.

Tamika Spellman is now the Advocacy Director at HIPS, working to end the violent policing and criminalization of trans people, people who use drugs, and sex workers in D.C.

WHAT IS U.S. GOVERNMENT POLICY ON THE SEX TRADE NOW?

In the United States, a mix of city, county, state and federal-level laws and policing and prosecution practices fully criminalize sex work, except in certain counties in Nevada where prostitution is allowed within regulated brothels. Penal codes criminalize the sale, purchase and facilitation of sexual exchange. Charges can include “patronizing prostitution,” “soliciting,” “promoting prostitution,” “pandering,” “brothel-keeping,” “loitering for the purposes of prostitution,” “permitting prostitution,” and more.

Charge	Who or What is Criminalized
Prostitution	Sale of sex
Patronizing prostitution	Purchase of sex
Brothel-keeping	Renting spaces to or living with people in the sex trades
Promoting or permitting prostitution	Providing services to sex workers, living or associating with sex workers
Pandering, loitering for the purposes of prostitution	Advertising, occupying public space
Soliciting	Offering to buy or sell sex

As a result, anyone who lives with, works with, or provides services to sex workers (including drivers, landlords, friends, roommates, children, partners, and other sex workers) is vulnerable to criminalization.

Some examples of criminalization strategies are below:

STINGS, RAIDS, AND BUSTS

Police, sometimes in dedicated vice units, spend weeks, sometimes years, posing as clients and setting up undercover operations. In stings, undercover officers approach people in public or online spaces and solicit them for sex to build a case for arrest. Law enforcement officers also engage in abusive and coercive conduct, including forcing sex workers to expose themselves, verbally harassing and misgendering them, grabbing their breasts and buttocks, engaging them in sex acts before arresting them, and contacting them following their arrest.^{4,5,6} In other instances, officers coerce sexual favors from sex workers in exchange for not arresting them⁷—behavior that constitutes sexual assault. In some states, it’s even legal for police officers to have sex with people in custody if they claim the person “consented.”⁸

Sex workers are often undocumented, women of color and/or young LGBTQ+ people who have little to no access to the justice system. Their additional “criminality” as a result of engaging in sex work entirely discredits them as “victims” when they report rape or violence to police. Take, for example, Song Yang, an Asian migrant massage parlor worker who was raped and stalked by an undercover officer for months.⁹ After she tried to report the assault to the same police precinct, police raided her massage parlor, and she fell to her death. This practice of discrediting allegations by sex workers is codified by courts: in many states, a rape victim with a prostitution conviction can have that admitted as evidence against them in trial, because having engaged in sex work makes a person a less credible rape survivor.¹⁰

In many cases, vice units and raids have been falsely branded as “anti-trafficking” operations, when their real focus is on policing sex work in all its forms. In February, Patriots owner Robert Kraft was arrested in a high-profile sting at a Florida massage parlor widely described as a human trafficking investigation. Police spent six months surveilling, filming the inside of, and paying for sex acts at the massage parlors before acting. A week after the initial media announcement, law enforcement conceded there was no evidence of human trafficking.¹¹ The migrant women “rescued” were arrested by law enforcement and now face felony and misdemeanor charges, hundreds of thousands of dollars in fines, and possible deportation.¹² Similarly, DC’s police unit calls itself the “Human Trafficking Unit” but only 2% of its arrests in 2016 were for trafficking; the other 98% of arrests targeted sex work in the absence of evidence of force, fraud or coercion.¹³

COERCIVE DIVERSION PROGRAMS

While often touted as alternatives to prosecution, most diversion programs involve state coercion and are still a form of criminalization. New York’s Human Trafficking Intervention Courts (“HTICs”) is one example. In the HTIC process, people experience arrest, jail, arraignment, vulnerability to ICE,¹⁴ and then several months to years of court appointments and mandatory counseling sessions.¹⁵ Only if they successfully complete the process do they receive an Adjournment in Contemplation of Dismissal (“ACD”), which usually mandates an additional six months they must have no contact with law enforcement or the justice system before their charge is dismissed. If they miss a court date, as Black trans sex worker Layleen Polanco Xtravaganza did, they may face jail time. Layleen was confined to Rikers Island on \$500 bail for missing HTIC appointments in her prostitution case. At Rikers, Layleen died in solitary confinement.¹⁶

Seattle’s Law Enforcement Assisted Diversion (“LEAD”) program, first introduced in 2011 and now copied by many other cities, has been celebrated as a “pre-arrest” diversion program. However, police actually still make arrests as part of LEAD and still send arrest records to prosecutor offices. Though the presumption is that as long as the individual complies with the intake process or diversion program they will not be charged, prosecutors *maintain discretion over whether to file charges*.¹⁷ Moreover, LEAD expands police discretionary power. Rather than making arrests only upon “probable cause” for a specific crime, police are encouraged to make a “social contact” referral when an officer encounters someone they “know is engaged in...prostitution.” Finally, LEAD carves out a significant portion of people ineligible for the program.

DISCRIMINATORY PROFILING AND POLICING

Criminalizing sex work is stop-and-frisk policing for women and trans and gender non-conforming (TGNC) communities. Many states have some form of a “loitering for the purposes of prostitution” statute that allows police to profile, harass and arrest women of color, especially trans women of color, for existing in public spaces even when they’re not engaging in sex work.¹⁸ These loitering charges ask police to profile people as sex workers, and police cite things such as “wearing a skirt” and “standing somewhere other than a bus stop or taxi stand” as justification for arrest.¹⁹ Like all broad laws that encourage profiling and stop-and-frisk policing, stops initially made on the pretext of one charge often result in other charges such as drug possession or trespass. Criminal records from these charges prevent people from accessing housing and employment and further entrap people in cycles of poverty and isolation.

COMMUNITY STORY

Bianey Garcia

I was born in Mexico but came to the US as a teenager to avoid persecution for being LGBTQ. At the time, I still identified as a gay person. I was working in a restaurant and sometimes sleeping on the streets, sometimes sleeping at my friend's. I met a man who let me move in with him so I'd no longer be homeless. After a few months, he told me that he needed me to sell sex and give him the money. He knew I didn't have family here and he threatened to report me to the police or immigration authorities because he knew I didn't have papers. After he beat me one night, I decided to start secretly saving money from my dates so I could escape.

After I left him, I worked as a busboy. I met some members of the trans community who helped me transition on hormones. After transitioning, the restaurant where I was working fired me. I looked for another job three months straight, going door to door every day with my resume and cover letter, but couldn't get a job, so I started doing sex work again, this time independently instead of being trafficked.

I've been arrested four times for prostitution. Only once was I actually doing sex work, the other three arrests were just profiling because I'm a trans woman. One time, I was walking and holding hands with my boyfriend and the police arrested me. Another time, my friends and I were waiting for some of our other friends outside a bar and two police officers jumped out of a van, pushed our faces against the wall, and searched our purses. They found condoms, which was apparently enough for them to charge us with loitering for the purposes of prostitution.

It's ridiculous that people have to carry their marriage certificate with them to prove that the person walking next to them is not a client. It's ridiculous that trans women can't occupy public space without getting arrested and sent to jail.

Bianey Garcia is now the TGNCIQ Justice Organizer at Make the Road, organizing and advocating for resources, rights, and support for trans communities in New York.

WHY SHOULD WE DECRIMINALIZE SEX WORK?

Decriminalization of sex work best promotes the rights and safety of people in the sex trades. It reduces state-based violence, removes people from cycles of arrest, incarceration, criminal records, and/or deportation that prevent them from accessing healthcare and building economic stability, allows people in the sex trades to seek legal remedies for violence and exploitation, and encourages sex workers to negotiate and organize for safety and better working conditions. Decriminalization is a policy endorsed and supported by international human rights organizations such as Amnesty International, World Health Organization, UNAIDS, Human Rights Watch, Freedom Network USA and the Global Alliance Against Traffic in Women. In the US, it has also been embraced by a growing number of feminist, LGBTQ+, and other civil rights groups.

In particular, decriminalization promotes racial justice, LGBTQ+ justice, gender equity, immigrant rights, public health, and labor rights.

DECRIMINALIZATION ADVANCES RACIAL JUSTICE

The criminalization of sex work disproportionately and often deliberately targets Black, Latinx, Native American, immigrant communities and other communities of color. First, communities of color are disproportionately impoverished due to long histories of state violence, family separation, redlining, labor exclusion, community divestment and environmental destruction. For example, in the 1950s, the government carried out a program to eliminate reservations and forcibly relocate Native Americans to poor urban areas, where families were separated and people often became homeless.²⁰ By the 1970s, a third of Native American children were being placed in foster care, mostly outside of their communities.²¹ Today, 28% of Native American women live in poverty, compared to 12% of white women.²² People experiencing poverty and excluded from formal economies often rely on informal economies such as the sex trades to survive.

Second, communities of color are disproportionately criminalized and policed. These are only a few of the many statistics that describe this fact: Black youth make up 62% of minors arrested for prostitution-related offenses in the US even though they only make up 13% of the population.²³ Black and Latinx individuals accounted for 91% of arrests for “loitering for the purposes of prostitution” in New York in 2018, while Asian immigrant women made up the majority of sex work-related massage parlor arrests.²⁴ Black women are arrested for prostitution at a rate 14 times their percentage in the population in California.²⁵

Sex work is only one “crime” in an entire category of quality-of-life “crimes” (including marijuana possession, pandering, unlicensed street vending, graffiti, etc.) that use “broken-windows” policing to put communities of color that may be homeless, using drugs or otherwise seen as “undesirable” in jail.²⁶ Criminalization is inextricably connected to gentrification. Former New York City Mayor Rudy Giuliani’s 90s campaign against the sex industry in areas (such as Times Square) he deemed ripe for business development is only one example.²⁷ So often, operations to “clean the streets” of drugs and sex work are only the first step in a coordinated campaign to make low-income minority neighborhoods amenable to real estate developers.

Any response to sex work that uses increased policing is a deep failure to understand the racialized harms of policing itself.

DECRIMINALIZATION ADVANCES LGBTQ+ JUSTICE

Young homeless people often trade sex for shelter.²⁸ Young LGBTQ+ people, due to a combination of parental rejection, foster care discrimination and abuse, and lack of acceptance in their communities, make up 40% of homeless youth even though they are only ~7% of the youth population.²⁹ As a result, LGBTQ+ youth are disproportionately engaged in the sex industry. For example, one study found that LGBTQ+ youth in New York City, were seven to eight times more likely to trade sex than their cisgender, heterosexual peers.³⁰

As adults, trans and gender-nonconforming (TGNC) communities continue to rely on sex work for survival because of school, employment and housing discrimination.³¹ Trans communities describe being called “vile” or “disgusting,” getting fired for their gender expression, and being asked to show up to work in clothes that don’t match their gender expression.³² The 2015 U.S. Transgender Survey found that trans people who had lost a job due to anti-trans discrimination were 3x more likely to engage in sex work.³³ The same survey found that 40% of Black trans people self-report having engaged in the sex trades. Rampant discrimination against LGBTQ+ communities is pervasive even in locales with legal protections, and until that discrimination is eradicated, criminalizing sex work is criminalizing what is for many, their best or only option for survival.

DECRIMINALIZATION SUPPORTS GENDER EQUITY

Laws targeting sex work have sexist, racist, and classist origins. Until the Progressive Era at the turn of the 20th century, “prostitution” laws did not exist. As working class women gained degrees of economic independence through wage labor, they posed a threat to the dominant culture of chastity. Middle class white women became concerned with policing other women’s sexuality, campaigning for laws against prostitution and defining any type of promiscuity as prostitution.³⁴ As Ann Lucas writes, “Not only did [sex workers] violate norms governing sexual behavior and personal morality, but they also challenged existing familial and economic norms by threatening men’s dominance in the market and the home.”³⁵

Anti-prostitution laws also specifically target Black and Native American women, who have historically been stereotyped as “jezebels” and “squaws”—promiscuous women who are available for any and all sexual relations—to justify sexual violence, especially in the context of slavery and colonization.^{36,37} Perceived promiscuity, codified as ‘prostitution,’ encourages the criminalization of all Black and Native American women.

Today, the existence of anti-prostitution laws carry out the same purpose, relegating certain types of women to an underclass undeserving of concern. This can be legislatively formalized, such as in New York³⁸ and Ohio,³⁹ where a prior prostitution conviction can exempt a victim from rape shield protections or be admitted as evidence against the victim. But just as meaningfully, it is cultural. On top of the previously mentioned police sexual violence against women & LGBTQ+ communities, criminalization entrenches a deep stigma that promotes a public culture of violence against people in the sex trades. From the 1980s to 2010, LAPD described the serial murders of a dozen women as “no human involved” because the victims were Black sex workers.⁴⁰ From the 1980s to 2002, Robert Pickton killed more than 60 women, many of them sex workers and/or Indigenous.⁴¹ Law enforcement did not take the murders seriously, part of a larger problem of ignoring violence against Native American women, and an investigation later called their inaction “blatant failures.”⁴² In New Jersey in 2016, Khalil Wheeler-Weaver “targeted Black women who turned to sex work” for rape and murder, thinking that “no one would notice if they disappeared.”⁴³ One woman called the police while being attacked, but police were more interested in figuring out if she was a sex worker than coming to her aid.⁴⁴ In 2018, a Border Patrol agent targeted at least four sex workers for murder, saying he wanted to “eradicate all prostitutes.”⁴⁵ Even the media is complicit in attributing guilt to victims: in covering this set of murders by the Border Patrol agent, the Associated Press changed headlines from referring to the victims as women to referring to the victims as “prostitutes.”⁴⁶ People in the sex trades keep each other safe via whisper networks and blacklists, because there is (rightfully) no expectation the justice system or the public will keep them safe from gender-based violence.

DECRIMINALIZATION PROTECTS IMMIGRANT RIGHTS

The first restrictive federal immigration law in the nation's history, the Page Act of 1875, prohibited the immigration of Chinese women on the basis that all Chinese women might promote "prostitution" or other "immoral" activities.⁴⁷ The anti-Asian xenophobia of The Page Act is replicated in today's anti-trafficking war on Asian migrant women working in massage parlors where sex work may also take place. A new national campaign by Polaris, an organization which works with DHS's Immigration and Customs Enforcement (ICE),^{48,49} seeks to raid and close massage parlors, where owners and workers are primarily Asian immigrant women, irrespective of whether trafficking is actually happening in a specific parlor.⁵⁰

Because prostitution-related charges are considered to be "crimes involving moral turpitude,"⁵¹ even an arrest without a formal charge or conviction can trigger immigration consequences for non-citizens, including deporting them or disqualifying them from citizenship or visas reserved for trafficking survivors or survivors of violence. Any non-citizen who has engaged in sex work within the last 10 years is also inadmissible to the United States.⁵² This war on sex work is a war that claims to help immigrants and migrants while only exposing them to police violence and family separation. Police, exploiters and abusive clients often threaten undocumented people in the sex trades with reporting them to immigration authorities. The criminalization of sex work works with the criminalization of immigration to entrench violence and coercion in undocumented peoples' lives.

DECRIMINALIZATION PROMOTES PUBLIC HEALTH

The criminalization of sex work interferes with efforts to prevent and treat HIV/AIDS and other health conditions in several ways. A Human Rights Watch report found because prosecutors use condoms as evidence in prostitution cases and police often harass and arrest people for carrying condoms, people in the sex trades are afraid of carrying condoms and health outreach workers are unable to distribute condoms freely.⁵³ Sex workers are also less able to negotiate condom usage or other safer sex practices with clients under criminalization because they must prioritize their immediate safety from arrest over possible infections.^{54,55} A Lancet study found that the decriminalization of sex work could avert 33-46% of new HIV/AIDS infections in the next decade.⁵⁶ Criminalization also disrupts general healthcare access for people in the sex trades. Because of stigma and fears of "discrimination, lower quality of service, and legal consequences" many sex workers do not disclose that they are trading sex.⁵⁷ Even adjusting other factors out, the pure isolation of hiding involvement in sex work from friends, family and community is independently associated with additional barriers to healthcare access.⁵⁸ Disclosure can be critical to addressing and preventing violence and exploitation. A systematic review of 33 countries by the London School of Hygiene & Tropical Medicine found that sex workers are 3x more likely to experience sexual and physical violence in countries with criminalization policies (including the Nordic Model)⁵⁹ as compared to decriminalization approaches.⁶⁰

Decriminalization is also critical to addressing the overdose crisis. Some studies indicate the rate of sex trade participation is as high as 56% for women who inject opioids.⁶¹ Research has shown that the criminalization of sex work and law enforcement violence disrupt medication assisted treatment programs and outcomes for such communities.⁶²

DECRIMINALIZATION PROTECTS LABOR RIGHTS

People in the sex trades cannot organize legal unions as long as sex work remains criminalized. Informal labor organizing already happens every day, when sex workers rent spaces together, provide references for each other and maintain blacklists, talk to each other about areas being policed, share information about harm reduction, make and drive each other to appointments, and call to check on each other. Since sex workers have little access to the justice system, community networks are their best defense against violence. However, this kind of informal organizing is criminalized under "promoting prostitution" and "brothel-keeping" laws, which can be felony charges, that criminalize any situation where more than one sex worker is involved, even if there is no force, fraud or coercion present.

COMMUNITY STORY

Mystique Fatale

I was born in Haiti. When I was 17, my family found out that I was sexually active and that I was bisexual, so they exiled me to the USA. When I arrived, I only had a visitor visa, not a work visa, so I couldn't work a straight job. For a couple years I struggled with homelessness, moving around from city to city and doing sex work to support myself. Even if I could sleep in a shelter, I still had to make money to eat. Sex work is one of the only things you can do when you have a major economic insecurity in your life like homelessness. You don't need a car. You don't need a visa.

After the earthquake in Haiti, my grandmother and my little sister and my little brother came to live with me. I was supporting all of them on sex work.

I'm schizophrenic and I get manic sometimes so it's really hard to hold down a 9-to-5 job. On the bad days I just can't work. After giving birth, I had bad postpartum depression and went to get mental health services. They reported me to child protective services and told them I was doing sex work to support myself and my baby. Child protective services showed up at my door with two police officers. I was in shock. I'm an undocumented woman, I'm Black, I'm a sex worker, and I need to take care of my newborn daughter. I was terrified.

It was my first lesson in not trusting the system because they're not here to help you. They said if I don't find a therapist they'd take my daughter away. So I paid for state mandated therapy out of my own pocket, from money I made doing sex work, and the therapist's main focus was on me leaving sex work.

One time in Las Vegas police did a sting on a date I was supposed to take, but my friend happened to take it instead. After that I got really scared and tried to stop doing sex work. But I put in 10 job applications a day for months, and no one wanted to hire me.

I do have an arrest record from shoplifting food and hygiene products from when I was young and homeless. That arrest record means I won't be able to get papers. I can't access housing, food stamps, or healthcare without documentation. I've worked in San Antonio, Georgia, Pennsylvania, Las Vegas, Miami, Los Angeles, Chicago, everywhere. The only reason my daughter and I aren't homeless is because of sex work.

COMMUNITY STORY

Victoria Walker

I was born and raised in Providence, Rhode Island. I was a foster kid. I left my foster home after experiencing sexual abuse as a child and feeling like no one cared about me. When my birth mother found out I was living on my own at the age of 16, she called child services on my adoptive mother. My adoptive mother lost her subsidy check for me as a result and she unenrolled me in school. I was out on my own and needed money to survive. I started stripping and doing sex work.

I met this man who would solicit clients for me. It was a complicated relationship. He would protect me from violent clients but he also abused me. After I left him, I continued to do sex work independently. When indoor sex work was decriminalized in Rhode Island, I felt safer because I could have clients come to my place. When Backpage was still up, it was a really different environment. I was able to screen clients. We had group texts of sex workers and we'd warn each other about police or bad dates. We'd send each other addresses and license plate numbers as we were leaving for dates and check in on each other and follow up. We kept each other safe.

After all these sites shut down, it got a lot harder to work and reach other people in the community. If sex work were decriminalized and these sites went back up, the sex worker community could find each other again and feel safe by having each others' backs.

I've been arrested three times for sex work, twice in New York, and once in Massachusetts. On the stroll in New York, firemen would come and hose all of us down in the freezing cold. In Connecticut, police would come and try to coerce sexual favors out of us, "blow us or we're going to lock you up." I had kids, and I had to make it back to them. If I got sent to jail, who would take care of my kids? So we had no choice but to do what they said.

The only reason I wasn't homeless after youth is because of sex work. I saw things in shelters as a kid that made me never want to go back or let my kids see the same things. That's why I did sex work.

I tried to stop sex work for a year, but I didn't get the help I needed. I went to social services and they were more worried about tracking down my kids' abusive father, which I didn't even want, than helping me. I wanted to get schooling and my GED, but they sent me to work at Dunkin' Donuts, which didn't pay enough for me to make rent and feed my kids.

I didn't have many options, but I want my kids to feel like they can achieve whatever they want.

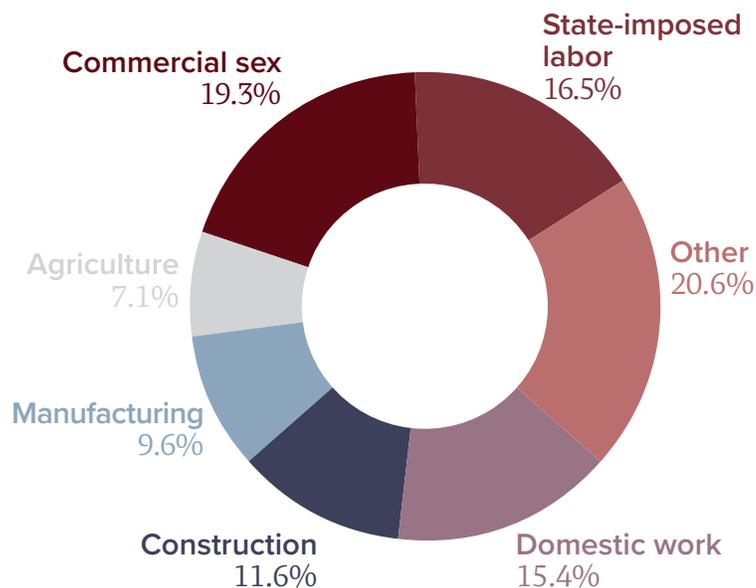
WHAT ABOUT TRAFFICKING?

Trafficking, as defined by the United Nations Commission on Human Rights, is the “recruitment, transfer, harboring or receipt of persons, by improper means” (such as threat, use of force, coercion, abduction, fraud) for “forced labor and/or sexual exploitation.”⁶³ While trafficking exists in every industry and the majority of trafficking victims are not in the sex industry, trafficking is often conflated with sex work. A 2017 report by the International Labor Organization estimates that on any given day in 2016, about 25 million people worldwide were being trafficked.⁶⁴ Of these 25 million, 64 percent (16 million people) are labor trafficking victims, working

most commonly in domestic work, construction, manufacturing, and agriculture. Another 17 percent (4.1 million people) are victims of state-imposed forced labor, which includes forced labor exacted by military or paramilitary institutions and forced labor in prisons, detention centers and labor camps. The final 19 percent (4.8 million people) are victims of forced sexual exploitation, including 3.8 million adults experiencing coercion in the sex industry and 1 million minors in the sex industry. Traffickers use a variety of tactics to exploit people, but more than half of all people trafficked into private sectors are affected by debt bondage.

Human trafficking is a serious, urgent, and multi-faceted problem that requires an informed, comprehensive and rights-based response. However, most participants in the sex trades are not victims of trafficking as the term is defined, so the concepts should not be conflated.

TRAFFICKING BY SECTOR



Source: 2017 report by the International Labor Organization



HOW IS DECRIMINALIZATION A PART OF EFFECTIVE ANTI-TRAFFICKING POLICY?

It is critical to understand some historical underpinnings of the modern-day anti-trafficking movement. In 1910, Congress passed The Mann Act, or The White Slave Traffic Act, which makes it a felony to transport women across state lines for “immoral purposes.” One of the first people criminalized under it was Black boxer Jack Johnson, who received felony trafficking charges for traveling with his white girlfriend.⁶⁵ Fears of human trafficking were rooted in panic about interracial relationships⁶⁶ and an influx of immigrants, especially Jewish communities.⁶⁷ The author of the bill, James Mann, said that “the white-slave traffic...is much more horrible than any black-slave traffic ever was in the history of the world.”⁶⁸ It is ironic that the first drivers of the anti-trafficking movement believed chattel slavery to be less harmful by comparison. It is doubly ironic that many modern-day organizations and individuals that seek to end the sex industry under the guises of “anti-trafficking” call themselves abolitionists while promoting criminalization and incarceration, when in reality, the American prison industrial complex is the direct descendant of chattel slavery. Notably, the 13th Amendment to the US Constitution abolishes slavery except “as a punishment for a crime.”

The complex anti-Black, anti-Semitic, and xenophobic history of the anti-trafficking movement tells us we should not value anti-trafficking work that re-entrenches racist and xenophobic systems of policing, incarceration, and deportation. That moral panic has given us bizarre and illogical anti-trafficking laws such as those in Alaska, where it is possible to receive felony charges for trafficking yourself.⁶⁹ Another example, SESTA-FOSTA, pushed people from online-based work into street-based work, exposed people to increased police violence and exploitation, and took away many sex workers’ income, destabilizing their economic and housing security.^{70,71,72,73,74} It is also apparently standard anti-trafficking practice to have sex with trafficking victims and then arrest them. For example, two Department of Homeland Security officers recently admitted to repeatedly engaging in sex acts with trafficking victims as a part of a two-year trafficking investigation known as “Operation Asian Touch” in Lake Havasu, Arizona.⁷⁵ Lake Havasu Police Chief said it is DHS policy “that investigators are allowed to participate in sex acts while working undercover.”⁷⁶ Misguided anti-trafficking efforts that promote abusive systems of power and fail to understand why people trade sex in the first place not only harm sex workers, but also trafficking victims.⁷⁷ Instead, we should focus on ending violence and exploitation in the sex trades through human rights, including labor rights, and resources.

As a first step, decriminalizing sex work reduces cycles of police violence, arrest, incarceration and deportation and allows people to report violence and exploitation when they experience it without fear of arrest or incarceration. Policing and criminalization of the industry, including of clients and workplaces, is associated

with 3x more violence against people in the sex trades.⁷⁸ Police harassment and arrest not only displace sex workers into isolated work locations, disrupt their peer support networks, discourage condom carrying and reduce their negotiation opportunities, they also increase stigma against and dehumanization of sex workers, normalizing violence. Second, without decriminalizing sex work, communities cannot organize for labor rights including safer working conditions, shorter working hours, higher pay, and freedom from harassment, transphobia and racism in the workplace.⁷⁹ Such labor rights reduce the likelihood of exploitation. Third, criminalization enables trafficking. A criminalized, underground sex industry also creates the conditions by which third-party exploiters can thrive: fear of arrest on the part of both sex workers and clients creates a market where people cannot work and vet each other independently.⁸⁰ Finally, the stigma of sex work and having an arrest record⁸¹ also make it nearly impossible for people to exit the sex trade if they want to.

All too often we draw a false dichotomy between “sex worker” versus “survivor” — in reality, people who are already in the sex trades are the ones most vulnerable to trafficking in the sex trades. It is the same group of people. Sex workers are the first line of defense against trafficking and should be partners and experts in preventing exploitation.⁸² Beyond decriminalization, we must address root causes of exploitation by reducing the vulnerabilities of people already in the sex trades. We must invest in LGBTQ+ affirming shelters for youths and affordable housing for all, support unionization and collective bargaining efforts, mandate a living wage, pass universal healthcare, decriminalize borders, increase disability benefits, and build real economic, social, and legal services for all people in the sex trades.^{83,84} The fewer viable economic choices people have, the more likely they are to be exploited in their attempt to survive.⁸⁵

WHAT ARE SOME OTHER LEGAL MODELS AND HOW HAVE THEY WORKED?

Broadly, legal and policy models for the sex trades can be broken into four categories: decriminalization, legalization, Nordic Model/Equality Model, and criminalization. They are summarized below.

	Decriminalization	Legalization	Nordic Model/Equality Model/End Demand/Prohibition	Criminalization
Description	<p>Removal of criminal penalties for sex work, including penalties for selling sex, buying sex, and living with, working with, and associating with sex workers</p> <p>Does not remove criminal penalties for rape, abuse, kidnapping, trafficking, etc.</p>	<p>Strict regulation of what is considered “illegal” vs. “legal” sex work, often includes licensing and registration requirements</p>	<p>Seeks to end the sex industry by ending demand for it</p> <p>Removes criminal penalty for “prostitution” but maintains or increases criminal penalties for buying sex, advertising for clients, and living with, working with, and associating with sex workers, including for sex workers themselves</p>	<p>Criminal penalties for all activities associated with sex trade</p>
Who is criminalized?	<p>No one, unless a person engages in violence or exploitation</p>	<p>Immigrants/ migrants, street-based workers, and HIV/AIDS-affected people, who are disproportionately Black, POC and/or trans</p>	<p>Everyone, including sex workers themselves</p>	<p>Everyone, including sex workers themselves</p>
Examples	<p>New Zealand, two territories in Australia (New South Wales and Northern Territory)</p>	<p>Germany, Netherlands, certain counties in Nevada (US)</p>	<p>Sweden, France, Ireland, Canada, Norway</p>	<p>United States, China</p>

In recent years, a union of some second-wave feminist organizations,⁸⁶ evangelical groups, and anti-trans groups⁸⁷ have banded together to advocate for an End Demand/Nordic Model, which has garnered significant enough criticism that they are now rebranding it as “The Equality Model.” This model seeks to end the sex industry by ending demand for it.⁸⁸ There is nothing “equal” nor “decriminalizing” about this model. Where the model has been implemented, sex workers continue to be arrested, albeit under different charges. The model is essentially Prohibition, where the act of prostitution itself may not be illegal, but all activities essential to sex work — including advertising outdoors or online for clients, renting a space for sex work, communicating with other sex workers, buying sex — are illegal. This Prohibition keeps the industry underground, where clients, fearing arrest, refuse safety screens,^{89,90} or force sex workers to meet at clients’ homes rather than in places sex workers designate, resulting in sex workers having less control over their working conditions.⁹¹

Indeed, an objective of The Nordic Model/Prohibition is to make the sex industry so dangerous and violent that it ends. Commenting on Sweden’s model, the head of Sweden’s anti-trafficking unit said: “I think of course the law has negative consequences for women in prostitution but that’s also some of the effect that we want to achieve with the law.”⁹² Commenting on the policies in Norway, an expert adviser to the Ministry of Justice and Public Security said: “It comes back to the question of ‘is it a problem that people in prostitution are in trouble.’ No one has said at a political level that we want prostitutes to have a good time while we also try to stamp out prostitution.”⁹³ From 2007-2014, Norway’s “Operation Homeless” systematically evicted more than 400 sex workers, primarily migrant women, from their homes.^{94,95} Since the introduction of the model in France, 78% of people in the sex trades report reduced income, 63% report worse living conditions, 42% report increased workplace violence, and 38% report increased difficulty negotiating condom usage with clients.⁹⁶ A report by Norway’s government found “the threshold for reporting a violent customer to the police also seems to be higher after the [End Demand] law. People are...afraid that such actions will come back to [haunt] them at later stages.”⁹⁷ In Sweden, 42% of sex workers who reported a crime to the police said they would not do so again due to treatment by police. Ireland’s Prohibition, implemented in 2017, has faced international criticism after publications reported on two migrant sex workers getting jailed for 9 months under the policy. One of them was pregnant.⁹⁸ A recent study finds the vast majority of people convicted under new brothel-keeping laws in Ireland are actually sex workers and primarily young migrant women.^{99,100} As the Global Alliance Against Traffic in Women writes, such models fail to reduce trafficking in the sex industry, ignore trafficking in other sectors, and “rely on ideology” more than evidence.¹⁰¹

By contrast, since New Zealand’s passage of decriminalization, the government has found no increase in the size of the industry.¹⁰² In a nationwide study, 90 percent of people trading sex reported decriminalization gave them employment, legal, and health rights, while 64 percent found it easier to refuse clients.¹⁰³ Since Australia’s New South Wales decriminalization, the government has “no evidence of recent trafficking of female sex workers... in marked contrast to the 1990s” when sex work was criminalized.¹⁰⁴

DECRIMINALIZATION IS DECARCERATION.

Decriminalization is the removal of criminal penalties and criminal legal system involvement, especially law enforcement contact, from sex work. We present below a platform for decriminalizing sex work and initial steps toward meeting the basic needs of people in the sex trades without relying on the criminal legal system. However, it is critical for organizations working on this issue to understand that people in the sex trades are a criminalized population, and laws used to police criminalized bodies are often arbitrary. Therefore, this platform is not conclusive: advocacy efforts around decriminalization must listen to and collaborate with people who trade sex to understand the particular nuances of criminalization of that area. Only then can policies best promote the rights and well-being of all people in the sex trades.

STATE, COUNTY AND CITY-LEVEL LEGISLATIVE REFORM:

- ▶ Repeal existing statutes that penalize sex trade between consenting adults, including statutes that penalize loitering for the purposes of prostitution, prostitution, patronizing prostitution, pandering, soliciting, permitting prostitution, promoting prostitution (where it does not involve force, fraud or coercion), brothel-keeping and more
- ▶ Maintain trafficking statutes (statutes that penalize the facilitation of sex trade with force, fraud, coercion, violence, intimidation, labor exploitation, etc.)
- ▶ Create vacatur and expungement systems that allow people with prostitution-related criminal charges to receive criminal record relief, including removal from sex offender registries when their charges are related to sex trade between consenting adults and/or they were a minor at the time they were charged
- ▶ Prohibit employment discrimination based on criminal records and amend labor protections to include people in the sex trades
- ▶ As necessary, introduce provisions that allow trafficking survivors the opportunity to apply for criminal record relief for charges they received (not just prostitution-related) as a result of being trafficked

POLICE ACCOUNTABILITY

- ▶ Defund and dismantle vice policing units and other units focused on the sex trades
- ▶ Move investigations of law enforcement for patterns of sexual violence, extortion and harassment of people in the sex trades to independent departments such as the State Attorney General's office or a Department of Investigation and make public the results of investigation along with action steps for accountability, including the removal of officers involved in misconduct

PROSECUTOR PRACTICES AND POLICIES

- ▶ Decline to prosecute any prostitution-related charge against minors
- ▶ Decline to prosecute any prostitution-related charge against adults that does not involve violence, coercion, exploitation, or minors
- ▶ Decline to prosecute misdemeanor and non-violent cases that result from stop-and-frisks when prostitution is the probable cause
- ▶ Return money from civil asset forfeiture taken from anyone with prostitution-related offenses to individuals when possible, and to sex worker-led organizations when not possible

HOUSING, SERVICES & LABOR PROTECTIONS

- ▶ Fund shelters that specifically house and affirm LGBTQ youth experiencing homelessness and make major investments in expanding affordable and supportive housing to end homelessness such as the Homes Guarantee
- ▶ Fund services for people in the sex trades where
 - ▶ Services are non-coercive and not tied to the criminal legal system
 - ▶ Services are non-stigmatizing
 - ▶ Access is not dependent on exiting
 - ▶ Services meet real needs (especially low-barrier housing, immigration and legal support, health and harm reduction services)
- ▶ Fund program under city or state-level Departments of Labor or Commissions on Human Rights that solicit and investigate tips on labor exploitation in the sex industry
- ▶ Fund public education campaigns that destigmatize people in the sex trades

DECRIMINALIZATION does not call for arrest-based diversion programs or courts, increased investment in “community-based policing” of sex work, rescue raids, or increases in prosecutor budgets, discretionary power, or staff size.

DECRIMINALIZATION does not call for repealing one prostitution-related statute while maintaining or building a complex web of laws that criminalizes sex workers, their clients, and anyone who lives with or works with sex workers.

DECRIMINALIZATION does not call for creating a legal system of sex work that is so restrictive that it excludes and still criminalizes the vast majority of participants.

THERE IS GROWING CONSENSUS FOR DECRIMINALIZATION: TWO NATIONAL POLLS

Decriminalization has the support of the majority of voters. In a recent survey,¹⁰⁵ Data for Progress and YouGov Blue surveyed several policy questions including decriminalization of sex work and the defunding of vice policing against sex workers. The survey sampled about 1,000 US voters and was fielded in late November, 2019.

One item asked voters if they would support decriminalizing sex work. Specifically, the survey asked voters,

Would you [support or oppose] decriminalizing sex work as New Zealand did in 2003? This would remove criminal penalties for adults to sell and pay for consensual sex while also maintaining laws that criminalize violence.

<1> Strongly support

<2> Somewhat support

<3> Somewhat oppose

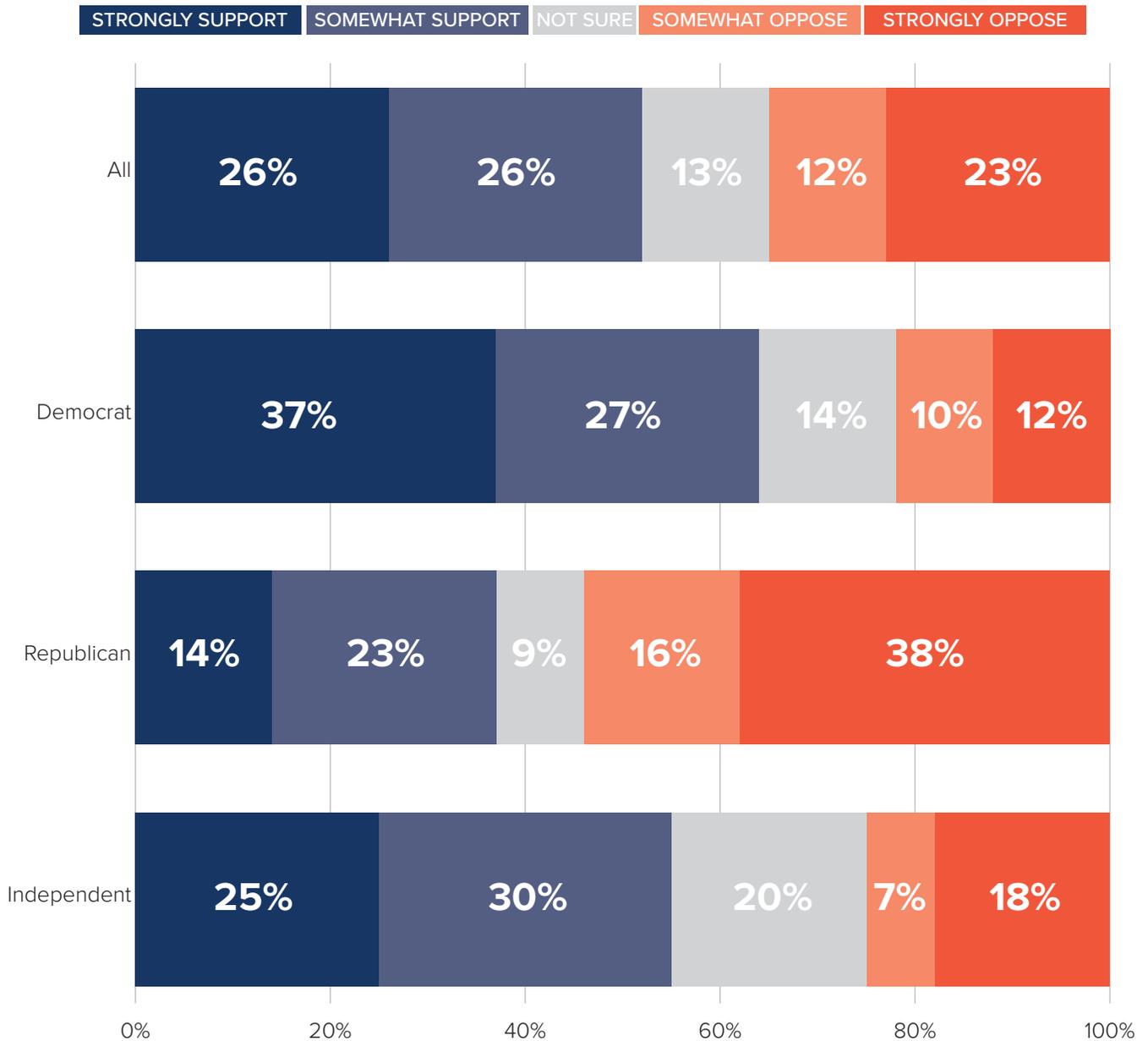
<4> Strongly oppose

<5> Not sure

Voters randomly saw the item asking either if they would “support or oppose” decriminalization or if they would “oppose or support” decriminalization, with the response options rotating appropriately to match the question text.

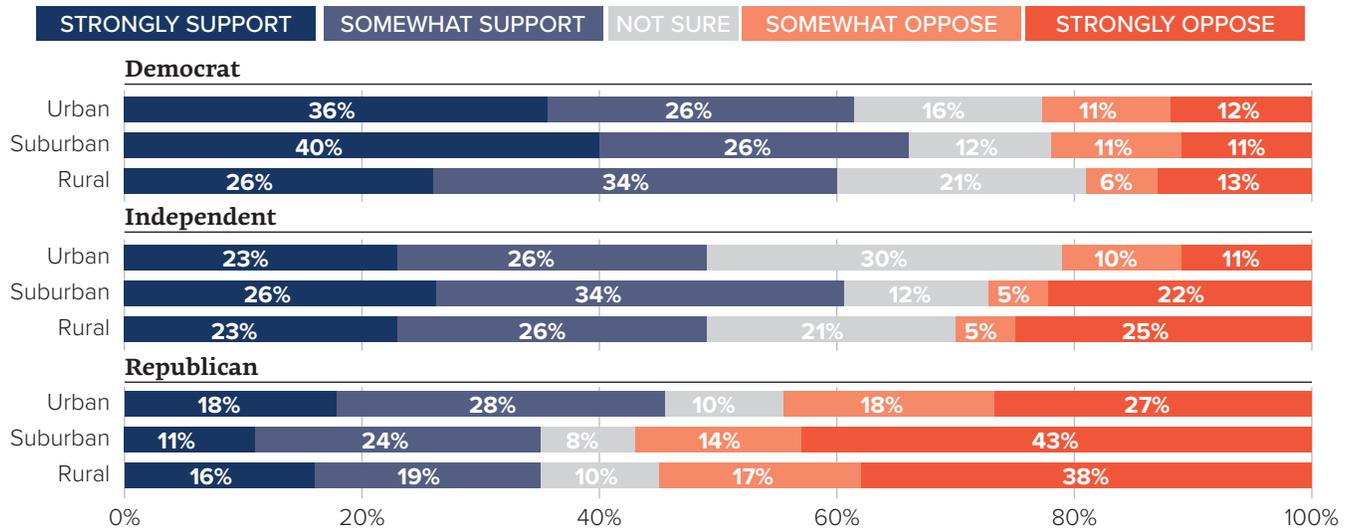
Fully 52 percent of voters somewhat or strongly support decriminalizing sex work, with 36 percent of voters somewhat or strongly opposing decriminalizing sex work. 64 percent of Democrats, 55 percent of Independents, and 37 percent of Republicans support decriminalization. In other words, net support for decriminalizing sex work is clearly positive at +16, including +44 percent among Democrats and +30 percent among Independents.

SUPPORT FOR DECRIMINALIZING SEX WORK



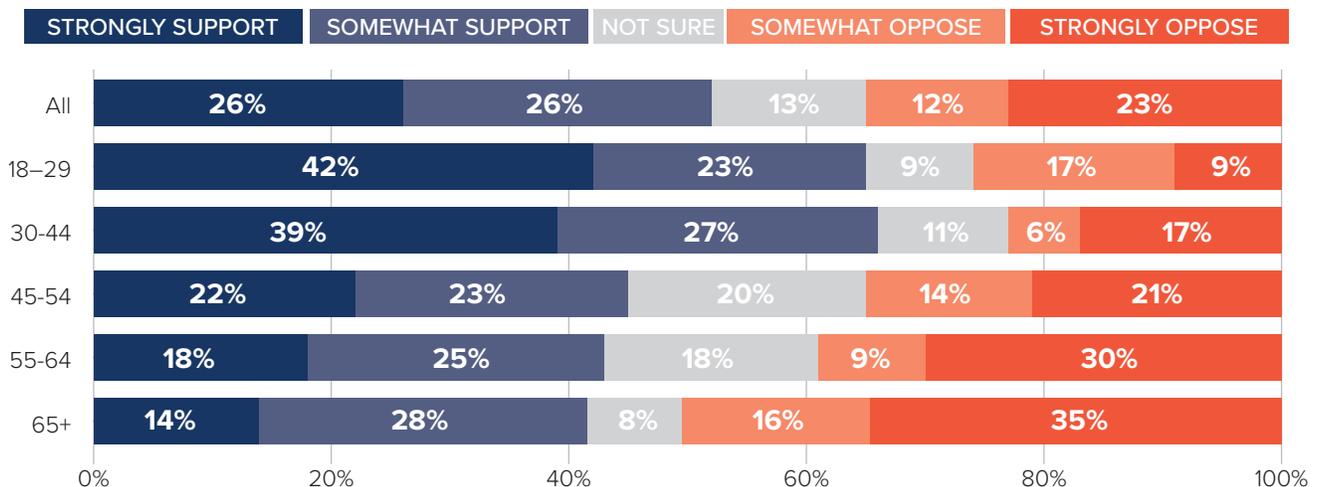
Even controlling for the effects of party identification, support for decriminalizing sex work is not an urban-area phenomenon. Indeed, suburban Independents are the most strongly supportive among Independents, as are suburban-area Democrats. While the urban/suburban/rural divide is not substantively significant when controlling for differences attributable to party identification, they show that a broad geographic coalition supports decriminalizing sex work.

SUPPORT FOR DECRIMINALIZING SEX WORK by party identification and urban/suburban/rural status



An age breakdown shows strong support amongst young people. Two-thirds of voters between the ages of 18 and 44, across all political IDs, support decriminalizing sex work. Voters aged 45-54 and 55-64 still support decriminalizing sex work (with +11 percent net support and +4 percent net support, respectively) while 42 percent of voters above the age of 65 are supportive. Age may be an even stronger predictor of support for decriminalizing sex work than political party.

SUPPORT FOR DECRIMINALIZING SEX WORK by age group



Later in the survey, voters were asked about ending vice policing. The item included a short description of vice policing to help voters understand the subject at hand. Specifically, the survey asked,

Vice policing units often enforce laws against consensual sex work. One strategy they use is undercover stings and raids, in which plainclothes officers pose as potential customers, solicit sex workers and then arrest them. Do you [support or oppose] defunding vice policing dedicated to criminalizing sex work?

<1> Strongly support

<2> Somewhat support

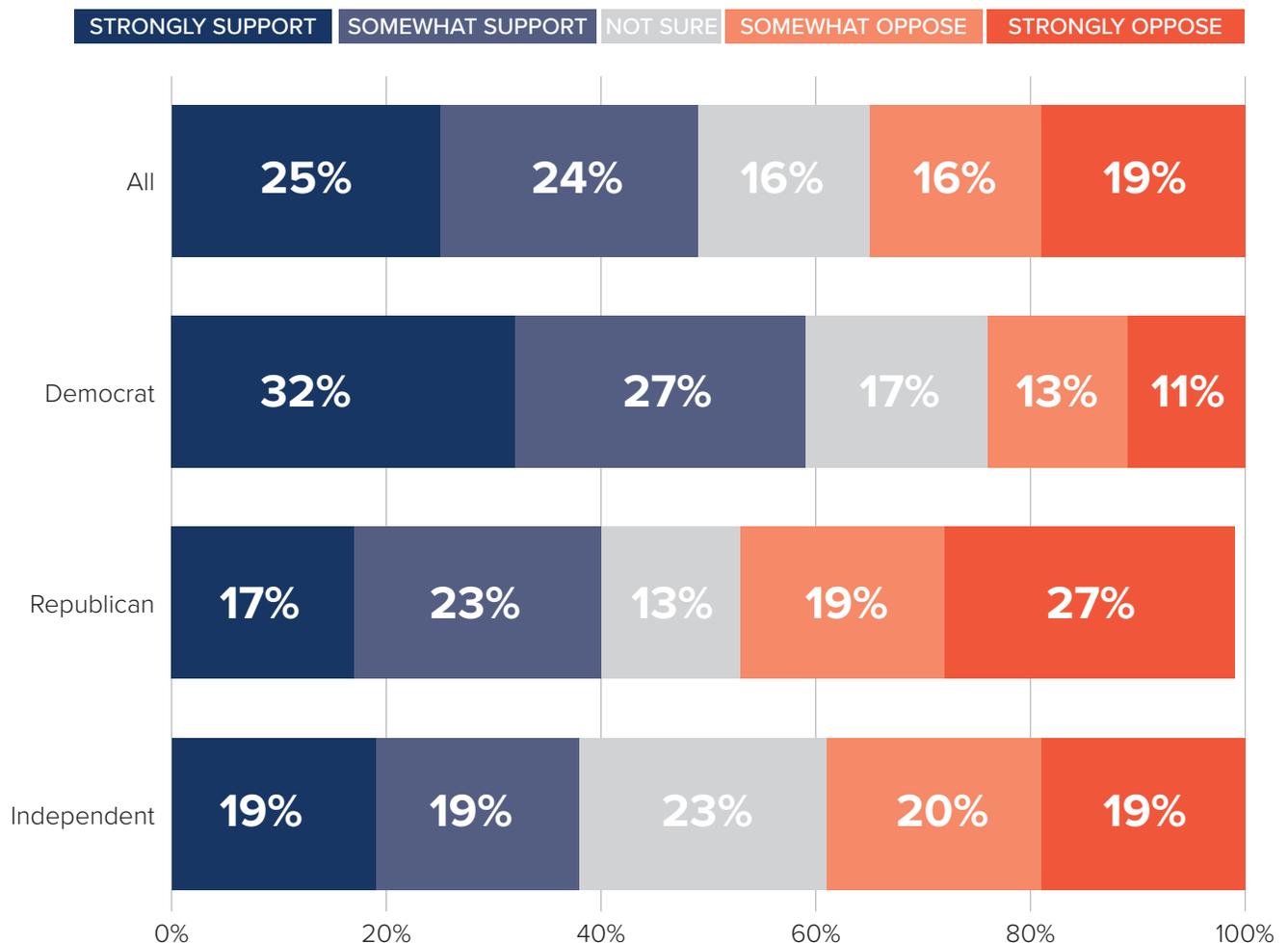
<3> Somewhat oppose

<4> Strongly oppose

<5> Not sure

Overall, support for this policy was statistically the same as support for decriminalization. About 49 percent of voters support ending vice policing of sex work, compared to 35 percent who oppose it. This +14 net support for ending vice policing is statistically indistinguishable from the net +16 percent who support decriminalizing sex work.

SUPPORT FOR ENDING VICE POLICING OF SEX WORK

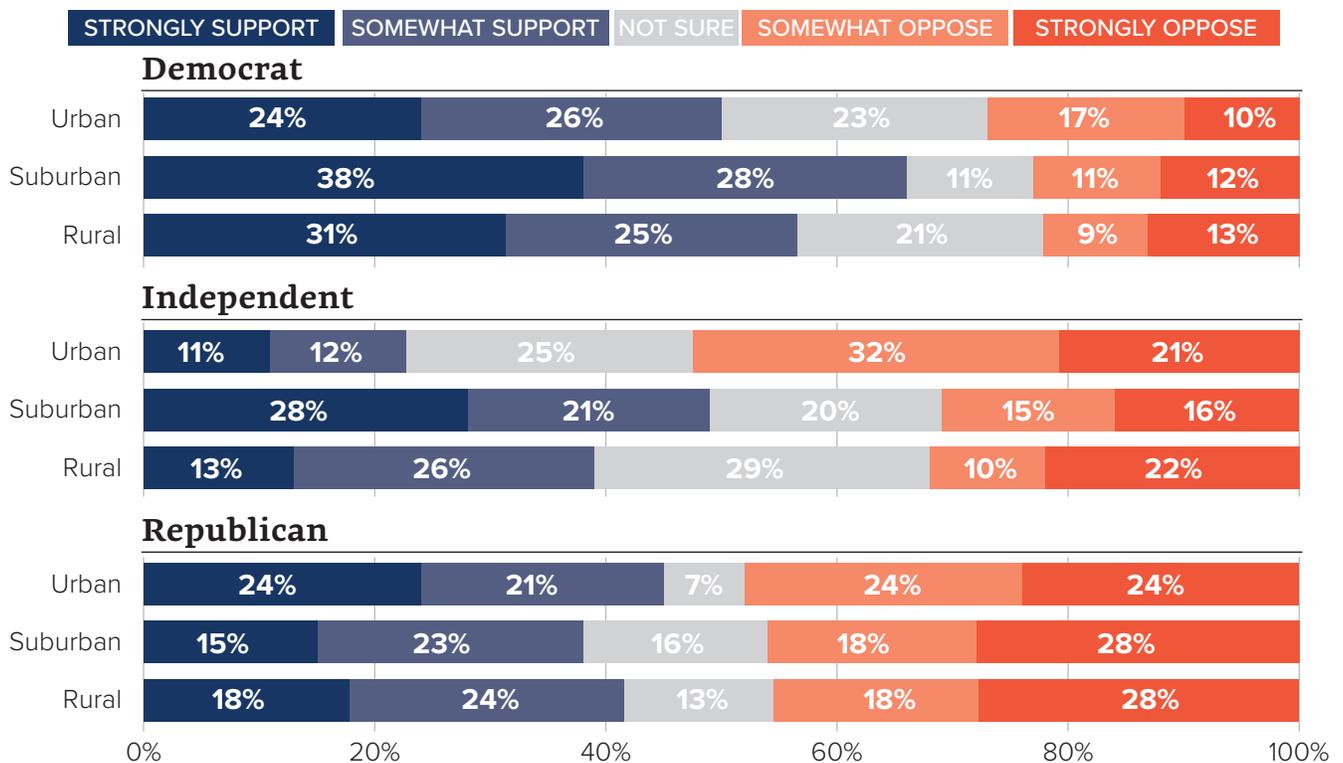


Republicans were nearly as supportive of ending vice policing as were Independents. While 59 percent of Democrats support defunding vice policing, about 38 percent of Independents supported the policy along with 40 percent of Republicans. Overall, Independents are roughly split, with 38 percent supporting and 39 percent opposing defunding vice policing. Republicans are split with a narrow lean against defunding vice policing, with 40 percent supporting defunding and 46 opposing defunding.

Among Democrats and Independents, suburban voters are clearly supportive of defunding vice policing. Fully 66 percent of suburban-area Democrats and 49 percent of suburban-area Independents support defunding vice raids. Controlling for party identification in this way, we see that both urban-area and rural-area Republicans are more supportive of ending vice raids than are urban-area and rural-area Independents.

SUPPORT FOR ENDING VICE POLICING OF SEX WORK

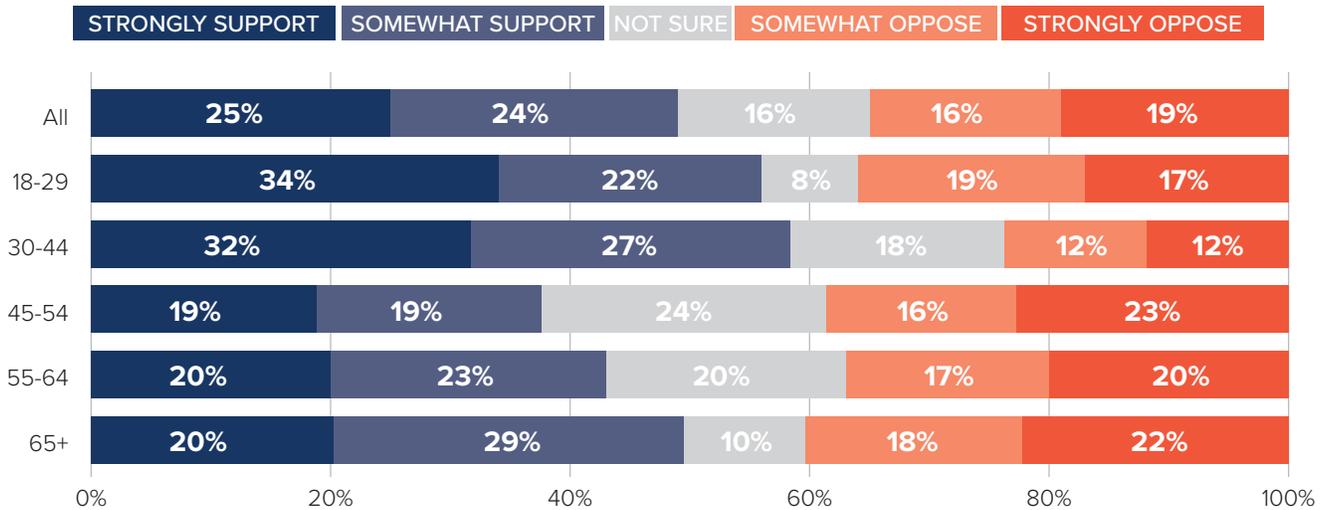
by party identification and urban/suburban/rural status



An age breakdown shows strong support amongst young people for defunding vice policing. Nearly 60 percent of voters between the ages of 18 and 44, across all political IDs, are supportive.

SUPPORT FOR ENDING VICE POLICING OF SEX WORK

by age group



An outright majority of voters, including clear majorities of Democrats and Independents, support decriminalization of sex work. A similar coalition supports defunding punitive vice raids against sex workers. Voters across the partisan and geographic spectrum support decriminalization at higher levels than some might expect. The polling demonstrates that decriminalizing and decarcerating sex work is not a third rail issue, but rather a policy that many voters already support.

In the last two years, grassroots coalitions led by people in the sex trades have worked with legislators to introduce bills to decriminalize sex work. The DECRIMNOW campaign in DC, which began organizing in October of 2016,¹⁰⁶ introduced the first bill in the nation to decriminalize sex work in October 2017.¹⁰⁷ A hearing about the bill in October of 2019 garnered 14 hours of testimony from nearly 200 witnesses.¹⁰⁸ Following the DECRIMNOW campaign, the Decrim NY campaign began organizing in the summer of 2018, launched in the spring of 2019,¹⁰⁹ and introduced a bill to decriminalize sex work in New York State in June 2019.¹¹⁰ Both campaigns have garnered significant press via protests, canvasses, and lobby days. Efforts to decriminalize sex work are also underway in California, Oregon, Illinois, Vermont, Connecticut, Colorado and other states.

CONCLUSION & ACKNOWLEDGEMENTS

Sex work is an issue of controversy because it forces us to reckon with the realities of economic, racial, and gender injustice. People trade sex for many reasons, but most often to meet basic needs, and until this economy affords everyone a home, a living wage job, healthcare, and education, many people will continue to trade sex for survival. Amidst renewed interest in this issue, we ask the public to remember that criminalization has never effectively ended either the sex industry or any violence and exploitation within it. Decriminalizing sex work is only the first step toward rights and safety for all people in the sex trades, but it is also the only legal model that immediately reduces the harms of policing, incarceration, deportation, and criminal records in the lives of sex workers and trafficking survivors. We call on organizations and individuals to urgently support this policy.

Our deepest gratitude to Chinyere Ezie, Kate D'Adamo, Tamika Spellman, Harper Jean Tobin, Anna Dardick, Gabriel Arkles, Abby Swenstein, Je'Kendria Trahan, Tyrone Hanley, Mateo de la Torre, Saye Joseph, John Ray, and Sean McElwee for their help on this report. And to the many generations of people in the sex trades who have fought for the liberation of all people from criminalization for survival.

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