

Covid-19 and the Commercialized Body:

Why the Pandemic Should Motivate A Rethinking of Sex Work Laws

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Abstract

The impact of Covid-19 has amplified inequalities faced by sex workers in the United States, a country that both exploits and then legislates against these people. The unique characteristics of the current global health pandemic have intersected to create a truly dangerous time for the those who rely on sex work as a primary source of income both legally and economically, and it puts them at a significant health risk.

This research affects decision making by state and local policymakers as it outlines the ways that the pandemic has made clear existing inequalities that disadvantage those in the sex trade. This paper goes on to outline policies that could be implemented to create a safer and more equitable environment for that aforementioned group with suggestions that could reduce high rates of incarceration, improve health, and help lift those in the sex trade out of the harsh financial conditions that often trap them in hazardous situations.

Framework

Excluding a few counties in Nevada, sex work is illegal in the United States. Opponents of any level of decriminalization defend this approach, citing fear of normalizing the sex trade or trafficking, and a need to uphold a moral code. However, what this has done is not eradicate prostitution, but rather force it underground and into unregulated territories where violence, inadequate healthcare, and lack of control over income is more common.¹ This is happening at an even more intense level for those in the trade who are non-binary or transgender, low income, minority, disabled, or at the intersection of these identities. The current system in the United States treats its sex workers inequitably, in a cycle of both exploiting and legislating against those involved in the trade. Sex workers are more likely be members of at least one of those previously mentioned historically disadvantaged groups, and hardships that arise from the

¹ Freeman, Joelle. "Legalization of Sex Work in the United States: An HIV Reduction Strategy." *THE GEORGETOWN JOURNAL OF LEGAL ETHICS*, vol. 32, p. 17.

overlapping of discriminated against identities and sex work are amplified during a global crisis. The unique characteristics of the current Covid-19 pandemic have intersected to create a truly dangerous time legally, economically, and on a health level for those who rely on sex work as a primary source of income. This amplification of danger should be a call to action to revise the current system for sex workers and in order to work towards a truly equitable society, we must advocate for the most marginalized, objectified and commodified members of our society.

Theoretical Perspectives

This paper does not intend to impose a moral judgement over those who have involvement in the sex trade. Rather, it seeks to situate suggestions for addressing the heightened disparities faced by sex workers during the Covid-19 pandemic in the overlap of three presented feminist theoretical standpoints.²

The first of which, based in radical feminism, argues that the ability to commodify the body of one gender to the benefit and convenience of another signifies wider violation,³ and even when sex work presents itself as a choice, there are too many external forces present for it to truly be voluntary.⁴ A secondary feminist view on sex work advocates for its complete acceptance, arguing that this allows for a reversal of power dynamics, therefore giving sex workers the ability to establish agency and benefit from a society that regularly sexualizes women regardless, even liberating themselves from the domestic sphere.⁵ The third viewpoint, which is critical of the other two, is outlined in Laurie Shrage's 1997 piece 'Should All Feminists Oppose Prostitution?' She suggests that legislating the relationship between the buyer and sex worker is perhaps not the best approach, as consensual sexual activity between two adults does not need to be monitored.⁶

While these viewpoints all differ in their opinions on whether sex work is empowering or oppressive, they all agree that the inequalities that plague this type of work in the United States have made the acquisition of equal rights for sex workers challenging. The law is structured in a way that perpetuates the notion that these victims are criminals. The coronavirus has created a layering of disadvantages, as these sex workers are not only affected by patriarchal influences, social discrimination, economic instability, physical violence from buyers, and the

² See Figure 1.

³ Jensen, Robert, and Rebecca Whisnant. *The End Of Patriarchy*. 1st ed., Spinifex Press, 2017, p. 97.

⁴ Barry, Kathleen. *The Prostitution Of Sexuality*. New York University Press, 1996.

⁵ "Forty Years In The Hustle: A Q&A With Margo St. James". Bitch Media, <https://www.bitchmedia.org/article/forty-years-in-the-hustle-sex-work-margo-st-james-interview-activism-coyote>.

⁶ Shrage, Laurie. "Should Feminists Oppose Prostitution." *Ethics*, vol. 99, no. 2, 1989, pp. 347–361.

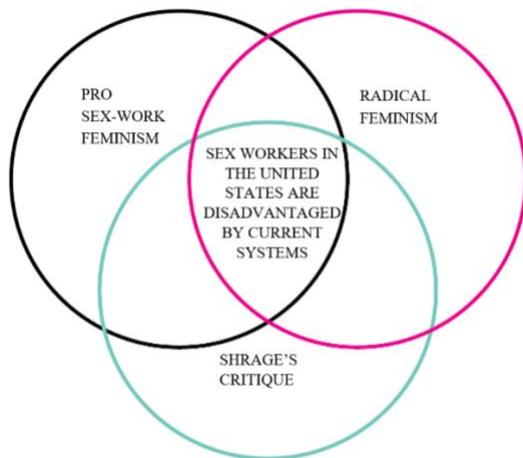


Figure 1: Overlap of Feminist Sex Work Theories

commodification of their own bodies, but also the current amplification of these, and other, disadvantaging factors due to the pandemic.

That being said these inequalities will not cease to exist as the spreading of Covid-19 slows and eventually fades from media and memory. Unless current policies change to be more conscious of sex workers unique needs, these disparities will persist, and conditions will likely worsen as a result of the long-term detrimental effects of Covid-19.

Factors that make sex workers prone to Covid-19

The conditions of sex work made those involved more susceptible to contraction of Covid-19 early on, even prior to the implementation of CDC guidelines and social distancing measures. For example, buyer – worker arrangements are often made at conferences, as these events draw in clients away from their families and typical social settings, and who often have the type of career that provides excess income to spend on sex.⁷ Conferences were, however, responsible for many of the initial Covid-19 outbreaks, and March and April of 2020 saw many conferences, conventions, and global meetings cancelled rapidly for the remainder of the year.⁸ Early outbreaks that were not attributed to conferences radiated mostly from transit hubs such as airports and naval ports, due to the consistent high traffic of global travelers. That high traffic is also what made these hubs other common locations for sex workers to operate out of, also putting those in the sex trade at a high initial risk for contraction.⁹ Although the United States, for the most part¹⁰, punishes sex workers and buyers equally, sex workers are far more likely to be incarcerated.¹¹ Jails and prisons are high-risk areas for infection, as the conditions make social distancing impossible and proper health and healthcare difficult.¹² 70% of sex-work connected arrests are given to female sex workers and madams, compared to 20% of male sex workers and

⁷ Steadman, Otillia. "The Coronavirus: Sex Workers Say Their Jobs Have Gotten Harder And Riskier Because Of COVID-19". *Buzzfeednews.Com*, 2020, <https://www.buzzfeednews.com/article/otillisteadman/coronavirus-sex-workers>.

⁸ Ravelo, Jenny, and Sara Jerving. "COVID-19 — A Timeline Of The Coronavirus Outbreak". *Devex*, 2020, <https://www.devex.com/news/covid-19-a-timeline-of-the-coronavirus-outbreak-96396>.

⁹ Senapati, Ashis. "COVID-19: Sex Workers Face Tough Time In Odisha's Port Town Paradip". *Downtoearth.Org.In*, 2020, <https://www.downtoearth.org.in/news/health/covid-19-sex-workers-face-tough-time-in-odisha-s-port-town-paradip-69697>.

¹⁰ See figure 2

¹¹ Tso, Tiffany Diane. "Here's How You Can Help Sex Workers During The COVID-19 Outbreak". *Rewire.News*, 2020, <https://rewire.news/article/2020/03/26/heres-how-you-can-help-sex-workers-during-the-covid-19-outbreak/>.

¹² "Criminal Justice Responses To The Coronavirus Pandemic". *Prisonpolicy.Org*, 2020, <https://www.prisonpolicy.org/virus/virusresponse.html>. Accessed 29 Apr 2020.

pimps and 10% ‘Johns’ or male buyers.¹³ Additionally, a 2003 report found that police officers often would operate under quid pro quo harassment, asking for sexual favors in exchange for not making an arrest, and 77% of respondents of that survey noted that they had been falsely arrested in the past. However, “[L]aw enforcement are the biggest ones that buy,” one former pimp reported in a 2019 survey. “The same people locking me up are the ones breaking the law.”¹⁴

The most obvious factor leading to sex workers’ risk of contracting the virus is the intimate physical contact that the sex work trade fundamentally requires. As of April 2020, Planned Parenthood had stated that

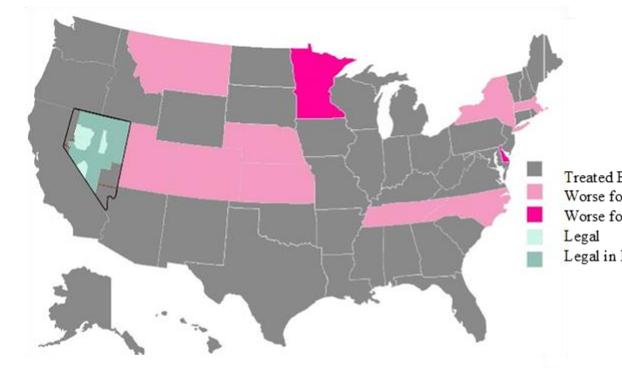


Figure 2: Map of Legality of Sex Work in the United States
Data Source: US Federal and State Prostitution Laws

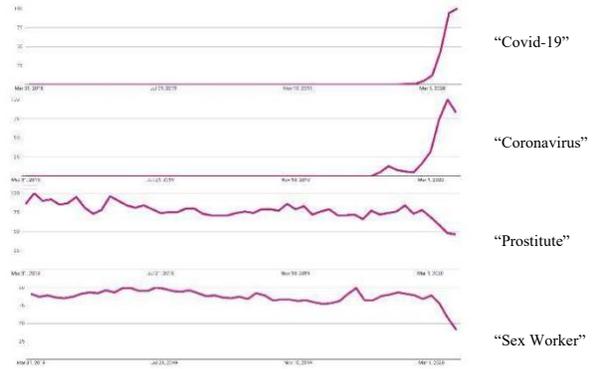


Figure 3: Google search trends for mid-March 2019 to mid-March 2020
Data source: Google Trends

there is no evidence that Covid-19 can be spread sexually through semen or vaginal fluids. However, being within six feet of someone who has contracted the virus can easily cause transmission, and it is believed that unprotected anal sex may also spread Covid-19.¹⁵

At the same time these factors were exposing sex workers to possible contractions of the virus, they concurrently led to a significant decline in clients who feared contracting it as well, and as a result, income for sex workers also fell. Google trends for the search terms ‘sex worker’ and ‘prostitute’ indicate a steep decline starting in early 2020, coinciding with the Covid-19 outbreak.¹⁶

Factors that make guidelines difficult to adhere to

The ability to follow the CDC guidelines is a privilege available to those who can afford to self-isolate and stock up on resources. However, 45% of sex workers are homeless, which

¹³ "Prostitution In The United States". *Hg.Org*, <https://www.hg.org/contactus.asp>.

¹⁴ DePaull, Grace. "Prioritizing The Health Of ALL Workers". *Sites.Psu.Edu*, 2019, <https://sites.psu.edu/globalhealthissues/2019/04/08/prioritizing-the-health-of-all-workers/>.

¹⁵ "COVID-19 And Your Sexual Health". *Plannedparenthood.Org*, 2020, <https://www.plannedparenthood.org/learn/health-and-wellness/covid-19-new-coronavirus/covid-19-and-your-sexual-health>.

¹⁶ See figure 3

renders 'stay at home' orders inapplicable. An additional percentage of workers also live in group home settings, a side effect of pimp and madam culture.¹⁷

While some sex workers have made the decision to work from home, only those with the ability to afford some level of residential independence can do so. This, however, runs the risk of a less safe working environment and can lead to a higher risk of violence from the buyers. Sex workers at legal brothels in Nevada have stated that they feel safer working there.¹⁸ Furthermore, legal brothels offer security guards and panic buttons, and illegal brothels at least offer solidarity and additional eyes looking out for violence or buyers unwilling to pay.¹⁹

Sex workers are already at an economic disadvantage, often being coerced and controlled by unregulated pimps and madams who can demand a large percentage of the earnings, and as a result they face financial instability with no benefits or steady guaranteed income. Many of those living in the United States at the time of the Covid-19 pandemic are relying on savings to help alleviate the burden and possible loss of salary, however for someone who works informally, this is a far less likely option.

Health care access can be hindered by the biases and stigmas surrounding sex work. As a result, many workers may not feel comfortable disclosing their line of work and related illegal activities when they do seek out medical care. This can result in leaving out vital information and consequently receiving inadequate or inaccurate care. However, when sex workers do choose to disclose their occupation they can be met with judgement, degrading comments and actions, or may be administered health care by professionals that do not have experience treating sex workers.²⁰ If these workers approach healthcare expecting a negative experience, they may be more likely to postpone, or even forgo, future treatment. In the time of Covid-19, this could mean waiting until symptoms become incredibly severe, or even deadly to discover a possible contraction of the virus.

The United States has already witnessed the impact that a health crisis can have on sex workers, as HIV had, and continues to have, a devastating impact on those in the sex trade. Female sex workers are 13 times more likely to have HIV, but this does not necessarily correlate directly to commercialized sex. Instead, these statistics emphasize the lack of essential regulations around the trade. Sex workers have reported not carrying condoms or avoiding medical treatment for fear of discovery of their work and arrest.²¹ Research comparing European countries that have legalized sex work against those who have not found that the former had

¹⁷ "Housing, Homelessness, And Sexual Violence Statistics". *Nsvrc.Org*, https://www.nsvrc.org/sites/default/files/NSAC11_Handouts/NSAC11_Handout_With_Statistics.pdf.

¹⁸ "Nevada's Legal Brothels Make Workers Feel Safer - *Nytimes.Com*". *Nytimes.Com*, 2020, <https://www.nytimes.com/roomfordebate/2012/04/19/is-legalized-prostitution-safer/nevadas-legal-brothels-make-workers-feel-safer>.

¹⁹ Schrage, Allison. "The US Crackdown On Sex Work Won't Help Women—It Will Hurt The Most Vulnerable". *Quartz*, 2020, <https://qz.com/1310338/the-us-sex-worker-crackdown-hurts-the-most-vulnerable-women/>.

²⁰ Rekart, Michael L. "Caring For Sex Workers". *Bmj.Com*, 2015, https://www.bmj.com/bmj/section-pdf/902641?path=/bmj/351/8020/Clinical_Review.full.pdf.

²¹ ("Sex Workers, HIV and AIDS." *Avert*, 20 July 2015, <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/sex-workers>.)

significantly lower HIV prevalence among sex workers.²² This study serves as a precedent for decriminalizing sex work in the United States, prompted by the current pandemic, as it is crucial for sex workers to feel comfortable accessing medical care without concern of arrest.

Long Term Effects

68% of outdoor sex workers²³ were found to have met the criteria for post-traumatic stress disorder, according to a 1998 study.²⁴ Sellers in the trade are constantly bombarded with the threat of violence from buyers, and pimps who use coercion and physical violence to keep prostitutes from leaving. These experiences led one team, after reviewing research from nine countries, to describe the trade as “multi traumatic.”²⁵ This, together with the anxiety caused by the Covid-19 pandemic and lack of access to affordable and proper mental health, puts these workers at an extreme disadvantage and at high risk for longer term mental health effects. A 2015 paper found evidence from cross sectional surveys showing that sex workers were prone to a variety of mental health disorders, including depression, suicidal tendencies, and the aforementioned PTSD.²⁶

A New York study found that 46% of sex workers who were based ‘inside’²⁷ were forced by a client to perform an act they did not want to engage in, and over 80% of ‘outdoor’ sex workers had experienced violence of some kind.²⁸ In more dire conditions, such as the one caused by the pandemic, clients are harder to come by. As a result, those involved in sex work may feel more pressure to submit to these, already prepositioned, unwanted acts in order to make a living.

Race, Class, and Gender Implications

²² Reeves, Aaron, et al. “National Sex Work Policy and HIV Prevalence among Sex Workers: An Ecological Regression Analysis of 27 European Countries.” *The Lancet HIV*, vol. 4, no. 3, Elsevier, Mar. 2017, pp. e134–40. www.thelancet.com, doi:[10.1016/S2352-3018\(16\)30217-X](https://doi.org/10.1016/S2352-3018(16)30217-X).

²³ Outdoor sex work here is characterized by buyers approaching workers in public, or vice versa. Outdoor is often the caricature seen when sex work is portrayed in film, illustrated by the image of provocatively dressed women standing on street corners.

²⁴ Farley, Melissa, and Howard Barkan. "Prostitution, Violence, And Post-Traumatic Stress Disorder". *Women & Health*, vol 27, no. 3, 1998, pp. 37-49.

²⁵ Farley, Melissa et al. "Prostitution And Trafficking In Nine Countries". *Taylor & Francis*, 2008, https://www.tandfonline.com/doi/abs/10.1300/J189v02n03_03.

²⁶ Rekart, Michael L. "Caring For Sex Workers". *Bmj.Com*, 2015, https://www.bmj.com/bmj/section-pdf/902641?path=/bmj/351/8020/Clinical_Review.full.pdf.

²⁷ Here, Indoor sex work is often classified as taking place in both legal and illegal brothels, through escorting that leads to sex, soliciting through websites, or through exotic dancing or performances in gentleman’s clubs which sometimes evolves into to sex work. (Dr. Powell, Anastasia, and Vicky Dr. Nagy. "The Harm Of Indoor Prostitution For Women: A Research Review". School Of Social Sciences - La Trobe University, 2012.)

²⁸ "Decriminalization Of Prostitution: The Evidence". *Prostitutescollective.Net*, 2016, <http://prostitutescollective.net/wp-content/uploads/2017/01/Online-Symposium-Report.pdf>.

The stigmas surrounding sex work cannot be discussed without addressing the race, class, and gender implications that correlate with the trade. Following the initial outbreak in Wuhan, Chinese sex workers worldwide were the victims of racism and as a result, saw severe declines in business early on, as a New York Post article from early February outlined.²⁹

Sex workers in the United States are more likely to be a racial minority. A 2014 survey of sex workers found that 33% identified as Black, 17% as white, 11% as Latinx, and 8% as multiracial.³⁰ More than three-quarters (78%) were cis-gender females, 3% were male, and 19% transgender females.³¹

Covid-19 has had a heightened effect upon sex workers who are also members of the trans community. The 2015 US Transgender Survey revealed that 12% of all respondents had participated in sex work for income. However, that number was much higher for racial minorities, at 23% for American Indian and Alaska Native respondents, 21% for Black respondents, and 13% for Latinx. The number was just marginally below average for Asian and Native Hawaiian/ Pacific Islander respondents at 10%. Across the board, those numbers rose when respondents were asked if they had exchanged sex at some point for income, food, shelter or other goods or services at 31% (AI/AN) 27% (B) 20% (L) 17% (A/NH/PI), compared to the 19% overall average.³²

Transgender Americans are twice as likely to be unemployed, a quarter experienced housing discrimination, and 20% have reported being denied care.³³ Each of these factors can greatly exacerbate the effect that Covid-19 has on this intersection of transgender sex workers.

Sex Work as Essential Work

As a response to the Covid-19 pandemic the Department of Homeland Security issued a series of guidelines to be used when determining what businesses should be considered essential, ranging from supermarkets to health clinics to transportation and more. The list also included “businesses that provide necessities to shelters and economically disadvantaged people.” However, there has yet to be clarity on exactly what metrics should be used to determine who is considered to be an essential worker, and the decision of what constitutes an essential versus non-essential business during the Covid-19 pandemic has been placed in the hands of local

²⁹ Steinbuch, Yaron. "Chinese Sex Workers Hiding Their Nationality Amid Coronavirus Fears". Nypost.Com, 2020, <https://nypost.com/2020/02/06/chinese-sex-workers-hiding-their-nationality-amid-coronavirus-fears/>.

³⁰ Not all respondents reported race in the survey, as a result percentages do not add up to 100

³¹ "Estimating The Size And Structure Of The Underground Commercial Sex Economy In Eight Major US Cities". *Urban Institute*, 2014, https://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view/full_report.

³² "USTS Reports". *2015 U.S. Trans Survey*, 2015, <http://www.ustranssurvey.org/reports>.

³³ Baume, Matt. "Sex Workers Speak Out About Coronavirus". *Them.*, 2020, <https://www.them.us/story/sex-workers-speak-out-about-coronavirus>.

government. As a result of the ambiguity and lack of strict enforcement, employers and businesses have been taking advantage and determining their own guidelines.³⁴

In light of this, how would sex workers be treated differently if their work was considered essential work? There are a series of factors that apply to sex workers that fit the description of other ‘essential workers,’ as they are unable to conduct business in isolation- rather the work requires in-person interaction. However, unlike ‘essential workers,’ sex workers are not eligible for the Paycheck Protection Program, as it does not provide funds for those who have been involved in illegal activities.³⁵ Senate Democrats have proposed a ‘Heroes Fund’ that would allow \$25,000 (or an equivalent of an additional \$13 an hour) for ‘front line’ workers. While there remains to be clarification around who exactly that refers to, there is reference to “health care workers, first responders, law enforcement, grocery clerks, delivery workers, and many others” as well as Title 5 employees and federal personnel system employees. The common thread throughout these being public facing employees who are unable to complete their work from home.³⁶ While this loose guideline would apply to sex workers, who can only continue their work outside of isolation, the illegality of sex work does not allow them to benefit from these funds.

Risk of Automation

Covid-19 has exposed how many jobs are at risk of being automated, as the pandemic has sped up the rate in which those positions are being, or considered being, replaced.³⁷ Just over a year before the Covid-19 outbreak, the first robot brothel opened in Barcelona.³⁸ While that, theoretically, may seem like a move towards reducing the demand for sex work (and as a byproduct, reducing immediate violence to sex workers) the concept completely objectifies the female body. It also allows for a more nuanced and hidden version of patriarchal visions of feminine sexuality, one completely removed from the whole being. Sex robots also remove the need of buyers to establish boundaries, ask for consent, and refrain from violence. Sex workers fear that this may influence male buyers to begin to consider these actions as the new normal

³⁴ Mosendz, Polly, and Anders Melin. "Bosses Stretch The Definition Of Who Is ‘Essential’ — And Workers Take The Risk". *Bloomberg.Com*, 2020, <https://www.bloomberg.com/news/features/2020-04-09/are-you-an-essential-worker-in-the-pandemic-that-depends>.

³⁵ "Paycheck Protection Program Borrower Application Form". *Sba.Gov*, 2020, <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.

³⁶ "Senate Democrats Unveil COVID-19‘Heroes Fund’ Proposal To Provide \$25,000 Pay Increase To Essential Workers On Frontline Of Nation’s Pandemic Response". *Democrats.Senate.Gov*, 2020, <https://www.democrats.senate.gov/newsroom/press-releases/senate-democrats-unveil-covid-19heroes-fund-proposal-to-provide-25000-pay-increase-to-essential-workers-on-frontline-of-nations-pandemic-response>.

³⁷ Rose, Sarah. "Jobs Lost To COVID-19 Were Already At Risk Due To Automation". *Gpbnews.Org*, 2020, <https://www.gpbnews.org/post/gsu-jobs-lost-covid-19-were-already-risk-due-automation>.

³⁸ Lockett, Jon. "World’s First Brothel Staffed Entirely By Robot Sex Workers Now Looking For Investors To Go Global". *The Sun*, 2020, <https://www.thesun.co.uk/news/4131258/worlds-first-brothel-staffed-entirely-by-robot-sex-workers-now-looking-for-investors-to-go-global/>.

when buying sex, putting real women in the sex trade at risk.³⁹ Additionally, it threatens the economic possibilities of sex workers, as they do not receive funds from this new technology. It is possible that these robot brothels could render sex work obsolete, however without proper support in place for those who would be taking the resulting economic hit, it could be devastating for those who rely on sex work for their primary source of income.

How Sex Workers Have Attempted to Cope

Because sex work is illegal in the United States, sex workers did not receive relief funds as part of the 2020 stimulus package. As a result, many smaller funds have popped up, relying on donations. In comparison to the initial \$1,200 stimulus check some American's received, these smaller funds typically offer \$50-200.⁴⁰ Because there is a lack of adequate economic relief, many of these workers have sought out at least one of two options; move their work online or continue to see clients despite the risks.

For those who conduct sex work virtually, this adaptation has manifested through pornography, 'camming' or virtual sex over skype or other video communication interfaces. While this may relieve a percentage of the financial burden, sex workers have noted that this market is oversaturated already with those who are not full-time sex workers.⁴¹

A recent study of online profiles of male sex workers analyzed responses to the Covid-19 pandemic and found that the majority of these persons (85.8%) were employing some form of risk reduction strategies, including a switch to exclusively virtual services, disclosing the frequency and result of Covid-19 testing, and screening in person clients for symptoms.⁴²

For those who have chosen to continue seeing customers, they face an immense health risk. One New York sex worker revealed that while she is still seeing clients as a way of supporting herself and her daughter, she has employed a series of tactics to stay safe. Despite the compounding factors working against them, sex workers are doing what they can to support themselves. Tactics of safety range from showering before and after sessions, not allowing kissing, and checking clients for fevers and other symptoms. However, as a result of these measures they are charging less to compensate for the changes in experience for the buyers.⁴³

³⁹ Lockett, Jon. "World's First Brothel Staffed Entirely By Robot Sex Workers Now Looking For Investors To Go Global". *The Sun*, 2020, <https://www.thesun.co.uk/news/4131258/worlds-first-brothel-staffed-entirely-by-robot-sex-workers-now-looking-for-investors-to-go-global/>.

⁴⁰ "Sex Worker ER Grant Fund". *Bay Area Workers Support*, 2020, <https://bayareaworkerssupport.org/grants>.

⁴¹ Palmer, Ewan. "Sex Workers Say The Online Market Is Saturated With Performers And Fans Are Canceling Subscriptions During Coronavirus Pandemic". *Newsweek*, 2020, <https://www.newsweek.com/coronavirus-sex-workers-cam-girls-online-1498024>.

⁴² Callander, Denton, et al. "Investigating the Effects of COVID-19 on Global Male Sex Work Populations: A Longitudinal Study of Digital Data." *Sexually Transmitted Infections*, BMJ Publishing Group Ltd, June 2020. [sti.bmj.com](https://doi.org/10.1136/sextrans-2020-054550), doi:[10.1136/sextrans-2020-054550](https://doi.org/10.1136/sextrans-2020-054550).

⁴³ Dellatto, Melissa, and Reuven Fenton. "Sex Workers Reveal Their Struggle To Survive The Coronavirus". *New York Post*, 2020, <https://nypost.com/2020/04/02/sex-workers-reveal-their-struggle-to-survive-the-coronavirus/>.

Shortly after Nevada announced they would be closing all non-essential businesses; legal brothels were added to that list. As a response, brothel keepers have publicly outlined the measures they are taking to prepare to resume business. One madam has requested enough Covid-19 tests to preform weekly exams of all sex workers to be conducted alongside their regular STI testing, as well as implementing mandatory wearing of masks for everyone on the premises.⁴⁴

Case Study

Germany serves as an interesting case study for the rethinking of commercialized sex laws in light of the pandemic. While Germany passed the Act Regulating the Legal Situation of Prostitutes, recognizing sex work as a legal profession in 2002, prostitution was banned for six months in 2020 due to the Covid-19 pandemic. During the ban, it seemed as though “the clock [had] been turned back on what many see as the progress made for workers in the industry,” an article by The Guardian reported.⁴⁵ Many sex workers, some left with no other source of income, still conducted services secretly and illegally. But, due to the loss of legal protection, they faced violence, lack of proper payment, and threats of being reported to the police. Sex workers protested in Cologne, Berlin, and Hamburg, demanding for the ban on sex work to be lifted, and brothel owners and managers collaborated with sex workers to create a hygiene plan to avoid the spread of Covid-19 during the pandemic.⁴⁶ This case serves as an example of how banned prostitution amplified by the additional stressors of the Covid-19 pandemic was comparably worse for those involved in a usually legal sex trade.

Suggested Policy Recommendations

While these policy recommendations are a response to the problems that have been highlighted during the Covid-19 pandemic, they are not limited to the time when this virus is at the forefront of our minds. These recommendations advocate for equity for sex workers beyond the scope of this pandemic, with the awareness that they may also prevent another exacerbation of existing inequity during the next crisis of comparable scale.

Although the current legal system is arranged to, theoretically, punish the sex worker and buyer equally, we have observed that the workers are at a significant disadvantage. By moving the United States legal policies regarding sex work towards decriminalization, pressure can be alleviated from the already vulnerable people who make up the industry. Fines, prison time, and

⁴⁴ "Nevada Brothel Owner Talks About Reopening, Testing After Getting Clearance". *KTNV*, 2020, <https://www.ktnv.com/news/coronavirus/nevada-brothel-owner-talks-about-reopening-testing-after-getting-clearance>

⁴⁵ "Germany's Sex Workers Demand Easing of Covid-19 Restrictions." *The Guardian*, 6 Aug. 2020, <http://www.theguardian.com/world/2020/aug/06/germany-sex-workers-demand-easing-of-covid-19-restrictions>.

⁴⁶ "Germany Bans Prostitution During Pandemic. Sex Workers Say That Creates New Dangers." *NPR.Org*, <https://www.npr.org/2020/08/26/905392256/germany-bans-prostitution-during-pandemic-sex-workers-say-that-creates-new-dange>.

even felony charges are never easily manageable, but having to cope with those burdens during a pandemic causes an incredible financial and mental strain. By decriminalizing sex work, there can be a heightened comfortability for those who do need to seek out medical or legal assistance, as they do not have to factor in a fear of arrest or punishment. Decriminalization also allows for the work to be better regulated, as we have seen in Nevada where regular STI testing and condom use are mandatory.⁴⁷

Additionally, decriminalization can serve as a catalyst for a larger societal movement towards a more accepting view of the people who are, or have been, involved in the sex trade. Should this be implemented, the criminal records of sex workers should be expunged, allowing them a more equitable opportunity to enter different professions, obtain housing, or receive benefits that are currently less available to people with records. To some scholars, the decriminalization of sex work in New Zealand proved to be even more successful than the Nordic Model in Sweden. Their Prostitution Law Review Committee found that sex workers felt more comfortable coming forward to police, and noted improved working conditions, access to health care, and access to justice.⁴⁸

In addition to this, legal immunity for undocumented and visa-holding sex workers requires serious consideration. Often these women take part in sex work as a last resort, and their fear of deportation greatly influences their decision of whether to seek out aid. By providing this immunity when obtaining medical and legal assistance, migrant sex workers can feel free to seek out as needed, rather than possibly postponing treatment until the severity of their situation escalates.

As of early May 2020, over 9,400 cases of Covid-19 had been reported from within United States correctional facilities. Those who are currently incarcerated fear contracting the virus, and rightfully so. They are living in close quarters, often without access to spaces for isolation or the best healthcare. In 2017, the FBI reported roughly 30,000 arrests for ‘prostitution and commercialized vice’⁴⁹ and a percentage of those arrested currently sit in correctional facilities.⁵⁰ If there has even been a time to free incarcerated sex workers, the pandemic should serve as a catalyst to do so. However, it is important that these women are not just released from prison and forgotten about. Proper support and resources should be provided upon release to allow sex workers to stay safe, healthy, and able to reenter the work force eventually in whatever way they see fit. These resources can present themselves as job training, health care, temporary transitional housing, and connection to a sex workers rights advocate. Care should be taken to help avoid what is known as the ‘revolving door,’ a cycle of incarceration where recently

⁴⁷ Kelley, David. "Condoms Required In Legal Nevada Brothels". *UPI*, 1988, <https://www.upi.com/Archives/1988/01/21/Condoms-required-in-legal-Nevada-brothels/3349569739600/>.

⁴⁸ Marshall, Rachel. "Sex Workers and Human Rights: A Critical Analysis of Laws regarding Sex Work." *William & Mary Journal of Women and the Law*, vol. 23, no. 1, Fall 2016, p. 47-74. HeinOnline.

⁴⁹ "Crime In The United States". *FBI : UCR*, 2017, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-42>.

⁵⁰ It appears that the number of sex work arrests that lead to jail time has not been released since the late 1980s, in a study that suggested the number hovers around 11%. ("The Highest Paying Customers: America's Cities And The Costs Of Prostitution Control". Vol 38, no. 4, 1987, p. 784.) Today that would be equivalent to roughly 3,300 workers being incarcerated per year. Today, prostitution is categorized under ‘public offenses’, for which 77,000 people were jailed in 2016 according to Federal Bureau of Investigation.

released sex workers are immediately recruited by pimps and involuntarily reenter the trade, and then the prison system again.⁵¹

The Trump administration's policies regarding reproductive work have led to the Covid-19 pandemic having more severe effects on women, particularly sex workers. One of Trump's first policies endorsed once in office, the Global Gag Rule, was a direct way of restricting women's access to sexual and reproductive healthcare. The policy has made it harder for disadvantaged women to receive that care, as it places family planning services in a difficult position of receiving federal funding or providing abortion related services.⁵² This has played off of the pro-life fear of individual dollars to be used towards services that differ morally from their own stance. However, what the administration has failed to make clear to pro-choice movements is how abortion related services have already been prevented from receiving federal funding since 1976 by the Hyde amendment. This doubling down by means of the Global Gag Rule is not preventing federally funded abortions, because those were not happening anyways, what is accomplished instead is further defunding of women's health clinics that provide other services.

For sex workers without healthcare plans, this means that the providers that they may have relied on prior to the virus for general wellness and sexual health are under a greater strain and have less resources available should they have decided to forgo that federal funding. The administration has deliberately stopped funding from being available to the nation's most vulnerable, which can be perceived as pushing a patriarchal agenda into the White House. In August of 2019, Planned Parenthood left the federal government's Title X program as a response to Trump's new rule.⁵³ An estimated 1.6 million women and girls rely on family planning services provided by Planned Parenthood, and without federal funding the organization relies on donations, financial reserves, or start charging co-pays should they wish to remain open.⁵⁴ For sex workers without health care coverage, this may render health care unaffordable. This is especially true during the Covid-19 pandemic when the need for tolerant, comfortable, and affordable healthcare is more important than ever and sex workers may be attempting to avoid larger hospitals for routine sexual wellness checks due to fear of contracting the virus. Repealing the Global Gag Rule should be a priority, as it would allow for more women's health clinic's access to funding, allowing them to remain open and able to serve more people during this challenging time.

All major hospitals and health care providers should train professionals, at least in part, to respond to the specific needs of sex workers. There should be a general understanding that many of these workers have been assaulted, coerced, drugged, or faced other forms of violence and violation. They should not fear judgment when receiving treatment, but rather expect to receive comprehensive and empathetic care. While sex workers are receiving treatment, they should similarly be assessed as possible victims of human trafficking, abuse by procurers and buyers, sexual trauma, drug addiction, and other circumstances that are unfortunately more common

⁵¹ "Revolving Door". *Sexworkersproject.Org*, 2003, <https://sexworkersproject.org/downloads/RevolvingDoor.pdf>.

⁵² Workers Speak Out About Coronavirus". *Them.*, 2020, <https://www.them.us/story/sex-workers-speak-out-about-coronavirus>.

⁵³ The previous rule, instated in 2000, required providers to refer patients to abortion services if they asked.

⁵⁴ "Trump Just Won A Battle With Planned Parenthood. Thousands Of Women Will Pay.". *The Washington Post*, 2019, https://www.washingtonpost.com/opinions/trump-just-won-a-battle-with-planned-parenthood-thousands-of-women-will-pay/2019/08/24/8dbcff94-c516-11e9-b5e4-54aa56d5b7ce_story.html.

among sex workers.⁵⁵ The public health community is not united on the best approach to prostitution and commercialized sex, but those who advocate for decriminalization or the Nordic model have noted that this system provides benefits to sex workers and allow physicians a greater opportunity to assist patients they believe have been trafficked, while avoiding the perception that the government endorses sex work⁵⁶

In 2018, Trump signed two bills into law. The first of which, FOSTA, is the Fight Online Sex Trafficking Act and the second, SESTA, or the Stop Enabling Sex Trafficking Act. While both are veiled under the image that they are positive movements for victims of sex trafficking, there has yet to be an indication that they have had any beneficial impact. (Markowicz, Karol. “Congress’ Awful Anti-Sex-Trafficking Law Has Only Put Sex Workers in Danger and Wasted Taxpayer Money.” *Business Insider*, <https://www.businessinsider.com/fosta-sesta-anti-sex-trafficking-law-has-been-failure-opinion-2019-7>.) However, what these laws have done is greatly hurt those who are trying to conduct sex work independently. As a result of these laws, Craigslist took down their ‘personals’ section, forcing women to conduct their work more secretly, and thus more dangerously. However, in the time of the coronavirus, this means finding clients is nearly impossible. Maxine Doogan, president of the Erotic Service Providers Legal Education and Research Project, stated that “With FOSTA-SESTA, so many people lost their housing within a month, A lot of people lost their housing pretty immediately, they lost their business, their ability to feed themselves. We’re going to see that with this quarantine, no doubt.”⁵⁷ A repeal or reworking of the bills to better understand the unique needs of safe, regulated sex work is necessary and urgent. They have exacerbated the effects of the pandemic for sex workers and as a result have made the conditions more devastating. Bills that better address the unique needs of safe, regulated sex work is essential at this moment.

Sex workers should also be considered eligible to receive government financial support, including the stimulus checks offered as a response to the pandemic. This eligibility should extend to the small business relief through the CARES Act or Economic Injury Disaster Loan Emergency Advance, as those loans are intended for small businesses “including sole proprietorships, independent contractors and self-employed persons,” which barring illegality, would apply to sex workers.⁵⁸

When sex workers fill out applications for funding, they fear the repercussions that may arise should their involvement in the sex trade be discovered. This makes empathic ways of verifying their employment difficult, even more so when compounded with the informality of the trade. The Bay Area Workers Support (BAWS) has outlined three ways in which they are verifying sex workers that are seeking financial support from their Covid-19 relief funding:

- a. Linking to current work website or ad (with contact info listed)
- b. Link to professional social media (with contact info listed)

⁵⁵ Deering, Kathleen N et al. “A systematic review of the correlates of violence against sex workers.” *American journal of public health* vol. 104,5 (2014): e42-54. doi:10.2105/AJPH.2014.301909

⁵⁶ Rothman, Emily F. “Should US Physicians Support the Decriminalization of Commercial Sex?” *AMA Journal of Ethics*, vol. 19, no. 1, American Medical Association, Jan. 2017, pp. 110–21. journalofethics.ama-assn.org, doi:10.1001/journalofethics.2017.19.1.sect1-1701.

⁵⁷ Baume, Matt. “Sex Workers Speak Out About Coronavirus”. *Them.*, 2020, <https://www.them.us/story/sex-workers-speak-out-about-coronavirus>.

⁵⁸ “Economic Injury Disaster Loan Emergency Advance”. *Small Business Association*, 2020, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>.

c. Reference from another current verified sex worker ⁵⁹

These options could be adapted to verifying sex work at a federal level, however a third party which functions primarily as a sex worker rights advocacy group should be contracted to conduct the verifications, so that workers can be given additional security and apply without fear of repercussions.

Hotels and dormitories have been left empty as a result of the pandemic, and communities have attempted to persuade cities to use the vacancies to help house homeless populations, as a way of curbing their vulnerability to the spread of the Covid-19 pandemic. It is vital that sex workers also be considered eligible for these accommodations when arranging placements, as these individual units of housing are not only useful in addressing the virus but also in addressing the risk of sexual assault that sex workers may face in other forms of sheltering. ⁶⁰

Conclusion

As a result of the devastating effects the Covid-19 pandemic has had on the economy, those put in positions of power when it comes to employment and living arrangements have the ability to exert that power as they want to. Sex workers exchange⁶¹ sex for compensation of all forms, and Melissa Farley noted that the sex is not always exchanged for money but can also be exchanged for “something of value,” and specifically cited career advancement.⁶² When persons are left most vulnerable during a crisis, the ability to exploit that vulnerability is heightened. A BuzzFeed article went viral in April of 2020, outlining various cases of landlords propositioning their tenants in exchange for rent, highlighting a form of sexual harassment that seeks to commercialize the body of someone in a truly difficult position as a result of the pandemic. The same article featured a quote by the executive director of the Hawaii State Commission on the Status of Women, Khara Jabola-Carolus, stating that they had “received more cases at our office in the last two days than [they] have in the last two years.” ⁶³

Prostitution is the manifestation of both gender and power dynamics. Sex workers are often our most discriminated against populations, occupying the complex intersection of gender, class, and racial groups that have long been treated as inferior. Deep-rooted inequalities faced by sex workers have intensified during this ongoing global health pandemic, and it is now more clear than ever that collective empathy and societal restructuring are crucial in correcting the long history of compounding disadvantages faced by sex workers in the United States.

⁵⁹ "Sex Worker ER Grant Fund". *Bay Area Workers Support*, 2020, <https://bayareaworkerssupport.org/grants>.

⁶⁰ "No Safe Place: Sexual Assault In The Lives Of Homeless Women". *Vawnet.Org*, 2006, https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SAHomelessness.pdf.

⁶¹ Exchange as a term is used loosely here, as for many workers it can more accurately be described as ‘tolerating’ at best.

⁶² Farley, Melissa (2018) "#MeToo Must Include Prostitution," *Dignity: A Journal on Sexual Exploitation and Violence*: Vol. 3: Iss. 1, Article 9.

⁶³ Jamieson, Amber. "Landlords Said To Be Sexually Harassing Tenants Unable To Pay Rent". *Buzzfeednews.Com*, 2020, <https://www.buzzfeednews.com/article/amberjamieson/landlords-sexual-harassment-coronavirus>.

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