

# Improving Laws and Policies to Protect LGBT Sex Workers and Promote HIV Prevention and Care

Preliminary findings of a study by the O'Neill Institute for National and Global Health Law, Whitman-Walker Health, and HIPS

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## CONFLICT OF INTEREST DISCLOSURES

- Sean Bland

The O'Neill Institute for National and Global Health has received funding from Gilead Sciences for its Ryan White Policy Project and for a separate HIV Prevention Project. Sean Bland received an honorarium from Gilead Sciences for participating in a community advisory board in April 2017.

- Daniel Bruner

Whitman-Walker Health has received funding from Gilead Sciences for a Mobile Outreach Retention and Engagement project, focusing on patients who have fallen out of care or who encounter significant barriers to engagement in care. Gilead Sciences is also a sponsor of a National LGBT Cultural Competency Summit, organized by Whitman-Walker and the National LGBT Cancer Network.

- Scott Schoettes

None.

## OUTLINE OF PRESENTATION

### 1. Background

- Critiques of Criminalization of Consensual Sex Work
- Criminal Laws Applicable to Sex Work in Washington, DC
- Sex Work Advocacy and Decriminalization Bill in Washington, DC
- Research Project: Overview and Methodology

### 2. Preliminary Findings from Focus Groups

### 3. Preliminary Findings from Interviews

### 4. Preliminary Conclusions

## SECTION 1

# BACKGROUND

## SECTION 1: BACKGROUND

# Critiques of Criminalization of Consensual Sex Work

- Definition and types of sex work
- Current US legal landscape – criminalized in all states except certain counties in Nevada; some states criminalize, or prioritize enforcement, against customers or “Johns”; most states have sweeping third-party criminal laws and laws criminalizing sellers and buyers
- Critiques
  - Public health; discriminatory enforcement; wasteful resource allocation; and individual liberty (“victimless crime”) arguments
  - Amnesty International; other major human rights groups
- Counter-arguments
  - Primarily concerns about sex trafficking, abuse of minors, and inherently coercive nature of much sex work
- Alternative approaches to full criminalization (decriminalization of supply only; legalization with regulation; full decriminalization)

## SECTION 1: BACKGROUND

# Criminal Laws Applicable to Sex Work in DC

- DC Code, Title 22, Criminal Offenses and Penalties, Chapter 27. Prostitution; Pandering (DC Code §§ 22-2701 – 22-2731). Acts criminalized:
  - Prostitution (a sexual act or contact with another person – defined broadly – in return for giving or receiving anything of value)
  - Soliciting for prostitution
  - Arranging for prostitution, pandering and procuring
  - Operating or keeping a “house of prostitution” or a “disorderly or bawdy house”
  - A range of coercive, non-consensual activities and activities involving minors

## SECTION 1: BACKGROUND

# Sex Work Advocacy and Decriminalization Bill

- Sex Worker Advocates Coalition (SWAC)
  - Formed in October 2016 to promote the human rights, civil rights and liberties, health, safety, and well-being of sex workers in DC and advocate for legal and policy changes to challenge the criminalization of sex work
  - Membership: Around 20 organizations including HIPS and Whitman-Walker as well as advocates and activists in their individual capacity
- PROPOSED LEGISLATION: Reducing Criminalization to Promote Public Safety and Health Amendment Act of 2017
  - Introduced by Councilmember David Grosso in October 2017 and supported by SWAC
  - Removes all criminal penalties for engaging in sexual exchange
  - Repeals DC Code provisions for localities and most forms of sexual exchange, but does not affect the criminalized status of coercive practices, human trafficking, or the state of law regarding minors
  - Establishes a task force to monitor and evaluate the legislation's implementation

## SECTION 1: BACKGROUND

# Research Project: Overview

- Collaboration between the O'Neill Institute for National and Global Health Law, Whitman-Walker Health, and HIPS
- The purpose is to explore the impact of laws and policies on sex workers' access to clinical care and social services and recommend potential criminal law and policy reforms to better support sex workers in Washington, DC
- Currently preparing policy brief capturing findings from focus groups and interviews and making recommendations
- Funded by the Elton John AIDS Foundation



## SECTION 1: BACKGROUND

## Research Project: Methodology

- 3 focus groups – 2 hours each - held 9/11/17, 9/25/17, 12/19/17
  - 27 participants engaged in sex work in the past 2 years
  - Recruited by HIPS and Whitman-Walker Health
- 12 interviews – 1 to 1-1/2 hours each – conducted November 2017 – January 2018
  - 2 spokespeople for the Metropolitan Police Department (interviewed jointly)
  - Office of Police Complaints
  - DC Councilmember
  - DC Council staff person/community activist
  - Official with the DC Department of Health
  - 1 immigration attorney; 2 attorneys at a nonprofit that represents sex workers in criminal and other cases; ACLU attorney
  - Community transgender activist
  - 2 service providers and advocates for youth and victims of sex trafficking

## SECTION 2

# PRELIMINARY FINDINGS FROM FOCUS GROUPS

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Characteristics of Focus Group Participants

- Age, race/ethnicity, gender identity and sexual orientation
  - Ages 20-55
  - 67% transgender women or non-binary; 30% cisgender men; only 1 cisgender woman
  - All of the cisgender men identified as gay or bisexual; the transgender women identified a range of sexualities
  - Virtually all Black, Non-Latinx
- Income and housing
  - 37% homeless; 70% had unstable housing in the past 2 years
  - Income –  $\frac{3}{4}$  below the Federal Poverty Level (\$12,060 in 2017); 57% <\$6,000
- Frequency of sex work and percent of income
  - Percent of income derived from sex work: 52% all or most; 78% one-half or more
  - Frequency of sex work - 59% more than once a week; 11% about once a week; 30% less than once a week

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Characteristics of Focus Group Participants

- Health insurance, access to health care, self-reported health
  - Most with health insurance
  - Few reported unable to get needed health care
  - 74% reported their health as Good or better (Very Good, Excellent)
- HIV, PrEP engagement, STIs
  - Most had been tested for HIV within the past year
    - 59% living with HIV
    - All of the HIV-negative had heard of PrEP; most were not using it; 2 were non-adherent or used it only after an accident
  - Most had been tested for other STIs recently
    - 63% had been diagnosed with one or more STIs at some point
    - 67% had disclosed sex work to person(s) testing them for HIV or STIs

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

# Issues Addressed in Focus Groups

1. Health Priorities
  1. Social Determinants of Health
  1. Encounters with Police and the Legal System
  2. Opinions about Changing Sex Work Criminal Laws
  3. Demand for Action and Criticism of Research

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Health Priorities

- HIV and STDs
- Mental health
- Chronic health conditions, e.g. diabetes
- Transgender care and services
- Access to health care
  - Lack of insurance among non-DC residents
  - Difficult getting proper documentation to obtain insurance
  - Barriers accessing health care during period of incarceration, especially hormone therapy
- Physical safety

*“I still don’t have insurance and it’s been a hard thing too, being a Virginia resident trying to become a DC resident.”*

*“I can’t tell you how many times I’ve been in rooms and in different states with girls and had a gun pulled on me. So safety really ranks high for me. Very very high.”*

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Social Determinants of Health

- Housing was a top concern – lack of affordable housing
- For those who lacked housing or lived in shelters, HIV and other health issues were viewed as a secondary concern
- Participants stated that there was not enough housing advocacy and they thought that providing housing would lead to better adherence to medication and fewer interactions between sex workers and police

*“Speaking for me, when I am homeless the last thing on my mind is taking my HIV pills. The first thing on my mind is where I am going to lay my head. Then how long I can lay my head there. Can I leave my HIV pills there and not come back and they be gone?”*

*“I live in [a] shelter. So it is difficult to adhere to anything because you don’t know where you are going to be.”*

*“We need housing. Without housing, we cannot take our pills, we cannot make meetings, we cannot have stability.”*

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Social Determinants of Health

- Employment and job training
- Poverty
- Physical safety
  - Street-based sex workers interacting with clients and police
  - Experiences of violence from being homeless or living in shelter, including stemming from being LGBT

*“Without that sex work procedure, we don’t eat at night or we don’t sleep at night, or we cannot protect ourselves.”*



## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Encounters with Police

- Sex workers noted that a lot has improved in DC in terms of police interaction, especially compared to other jurisdictions, but also noted a need for more sensitivity training
- Lack of trust in the police
- Negatives experiences with police
  - Misgendering trans sex workers (“even if you have breast implants, even if you have a full surgery, they will still be like John.”)
  - Asking invasive questions (“so what you got down there”)
  - Demeaning sex workers (putting on gloves when handing back identification “like it was germs”)
  - Sexual harassment and harassment (“I got harassed by the police; he made me try to suck his dick for free or he was going to lock me up”)
  - Getting physical and sometimes violent
- Some sex workers said they did not interact at all with the police because they worked indoors, indicating differential vulnerability between street sex workers and others.

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Encounters with Police

- Sex workers spoke favorably of the Gay and Lesbian Liaison Unit (GLU) at the Metropolitan Police Department
  - A team of dedicated officers that focuses on the public safety needs of the gay, lesbian, bisexual, transgender and their allied communities
  - Also known called the LGBT Liaison Unit
- Those who knew about the LGBT Liaison Unit always wanted have them present when interacting with police

*“My only thing that I feel like should change when it comes to known prostitution areas is the officers that they assign to these areas should be more strict with who they allow to work these areas because not all of those officers have our best interest at heart.”*

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

## Encounters with the Legal System

- Negative impact of arrest
  - More stress
  - Loss of money
  - Lack of housing and employment opportunities
  - Other consequences
- Basis of arrest
  - Most indicated they were arrested for solicitation
  - Arrest for indecent exposure and sexual misconduct
  - Arrest for drug crimes
- Arrest as part of sting operations

*“Now they try to do a buy and bust... They try to get us on drugs too. Now it is their ambition to keep you off the streets for a while. With misdemeanors they know that you will get no papered, or a citation or you basically get released. They also know a lot of us are concurrent, we are self-mediating with different drugs.”*

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

# Opinions About Changing Sex Work Criminal Laws

- Unanimous support for reforming sex work laws in DC
- Supported decriminalization sex work
- Decriminalizing both the buying and selling of sex (“full decriminalization”) was viewed as better than decriminalizing just the selling of sex (“partial decriminalization”)
- Concerns about the spread of HIV and other STIs through sex work and about young people being coerced into the sex trade – a potential reason to a few in favor of partial decriminalization

*“I am going to say both. I don’t think the trick should be penalized for picking me up. Then I won’t make money because you’ve scared him from coming back out.”*

*“I agree that it should be decriminalized on both ends because it is a mutual agreement between two people.”*

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

# Opinions About Changing Sex Work Criminal Laws

- Strong preference for decriminalization approaches
- Some sex workers preferred legalization
- Discussion of sex workers being better off with various regulations, such as designated areas where sex work would be allowed, participants noted this could be complex
- Viewed making sex work a legal profession would also make it easier to report thefts or any other abuse

## SECTION 2: PRELIMINARY FINDINGS FROM FOCUS GROUPS

# Demand for Action and Criticism of Research

- Some sex workers felt that police would find other reasons to arrest them, even with changes to sex work laws
- Need for housing and other resources in addition to changing sex work laws
- Desire for reform to happen and programs to be implemented; dissatisfaction with research only

## SECTION 3

# PRELIMINARY FINDINGS FROM INTERVIEWS

## SECTION 3: PRELIMINARY FINDINGS FROM INTERVIEWS

# Health

- Health concerns range beyond HIV (STIs, mental health, lack of access to affirming trans care)
- Major social determinants of poor health/lack of health care access: lack of housing, employment



## SECTION 3: PRELIMINARY FINDINGS FROM INTERVIEWS

## Police Encounters

- Police encounters: very discretionary & officer-specific
- MPD generally does not prioritize arrests or stings; more reactive to neighborhood complaints and pressure from politicians; “move along” approach
- Despite training, definitely disparate treatment of Blacks and TG women
- Condoms no longer used as evidence and MPD policy prohibits confiscating them – but some police officers still do it and people are wary

### SECTION 3: PRELIMINARY FINDINGS FROM INTERVIEWS

## Criminal Justice System Issues

- Many arrests and citations for other offenses than solicitation or prostitution: drug possession, vagrancy, loitering, resisting police orders, trespassing, having a fake ID, jaywalking
- Diversion programs need reform – pre-sentencing still result in criminal records; pre-trial is better (although still an arrest record); support for pre-arrest division (e.g., LEAD)

## SECTION 3: PRELIMINARY FINDINGS FROM INTERVIEWS

## Consequences of Arrest/Conviction

- Difficulty with housing and employment
- Immigration
  - Many convictions can be a bar to immigration relief or at least make obtaining relief much more difficult.
  - Even arrest/conviction sealing/expungement doesn't solve the problem – decriminalization would reduce arrests/convictions that create the records that must be disclosed to immigration authorities
  - Trans people particularly adverse to detention/jail – often plead to avoid this in ways that negatively affect their immigration status
  - DC jails cooperate with ICE although MPD does not – so decriminalization would reduce likelihood of arrest/detention
  - Engaging in prostitution in the last 10 years is a bar to many types of relief – but waiver is often available – arrest and conviction make the issue much more difficult

## SECTION 3: PRELIMINARY FINDINGS FROM INTERVIEWS

# Protections from Violence/Abuse

- DC systems look good on paper but don't work well for sex workers who have been victimized
  - DC's systems depend on complaints by victims – should be more proactive
  - Stigma of sex work affects willingness to report and the weight the system gives to complaints by sex workers (and to sex workers as witnesses)
- Internet-based work safer than street work but legal crackdowns are forcing people back onto the streets

## SECTION 3: PRELIMINARY FINDINGS FROM INTERVIEWS

## Attitudes Toward Reform

- Most interviewees supported decriminalization (MPD more cautious but not enthusiastic about current criminal laws)
- Need for public education and other neighborhood approaches to nuisances associated with street-based sex work
- Advocates for sex trafficking victims and minors tend to be opposed to full decriminalization
  - Keep demand criminalized or otherwise stigmatized
  - Concerns about Internet-based sex work
  - Also concerns about repealing laws that criminalize pimping/procuring/pandering (in DC, “arranging for prostitution”) and keeping a brothel/house of prostitution
    - Anti-trafficking laws are hard to enforce/prove – anti-prostitution laws are a more effective tool to get at traffickers and to help victims
  - A moral dimension to their position
    - Sex work as inherently exploitative of women
    - Or: truly consensual sex work is a function of privilege and not representative of most people in sex work

## SECTION 4

# PRELIMINARY CONCLUSIONS

## SECTION 4: PRELIMINARY CONCLUSIONS

# SUMMARY

- Sex workers in DC support decriminalization of sex work as well as advocating for housing and other policy changes – viewed as the best way to promote health and safety
- Concerns about full decriminalization from advocates from sex trafficking victims
- Need for anti-stigma efforts and sensitivity training for law enforcement
- Unique considerations in DC due to its status as the federal capital

Questions?

THANK YOU!