Twitter Thread by Eli Savit



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Today, I’m announcing the Washtenaw Prosecutor’s Office will no longer prosecute consensual sex work. We'll focus on trafficking, sexual assault, victimization of kids. Our policy will facilitate prosecution of such crimes.

Please read our full policy: https://t.co/lbl5xKfRIR /1

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POLICY DIRECTIVE 2021-08: POLICY REGARDING SEX WORK

I. Introduction and Background

Sex work is frequently called "the world's oldest profession."[1] Yet with the exception of several counties in Nevada, sex work is generally criminalized in the United States.[2] America's prohibitionist stance on sex work is increasingly out of step with international norms. Consensual sex work is legal—at least in some form—in nearly 100 countries across the globe.[3] It is permitted (with or without limits) in Canada, Mexico, New Zealand, Israel, Japan, the United Kingdom, and most European countries.[4] And Amnesty International,[5] Human Rights Watch,[6] and the American Civil Liberties Union[7] have all called for the decriminalization of sex work.

The Washtenaw County Prosecutor's Office is well aware that sex work carries an increased risk for violence, human trafficking, and coercion. Data and experience, however, have shown that criminalizing sex work does little to alleviate those harms. Indeed (as outlined in further detail below) the criminalization of sex work actually *increases* the risk of sex work-adjacent harm. Accordingly, the Washtenaw County Prosecutor's Office will henceforth decline to bring charges related to consensual sex work *per se*. The Prosecutor's Office, however, will continue to charge sex work-adjacent crime—including human trafficking, violence, and offenses involving children—that directly harm County residents.

In announcing this Policy, several points bear emphasis.

First, the criminalization of sex work in the United States is in tension with constitutionally protected liberties.[8] Adults in the United States generally have the right to

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[1] *See, e.g.*, Jesse McKinley, *Could Prostitution Be Next to Be Decriminalized?*, The New York Times (May 31, 2019).
[2] *See id*.
[3] World Population Review, *Countries Where Prostitution Is Legal 2020, available at* https://worldpopulationreview.com/country-rankings/countries-where-prostitution-is-legal.
[4] *Id*.
[5] *Amnesty International Policy on State Obligations to Respect, Protect, and Fulfil the Human Rights of Sex Workers* (May 26, 2016), *available at* https://www.amnestyusa.org/reports/amnesty-international-policy-on-state-obligations-to-respect-protect-and-fufil-the-human-rights-of-sex-workers/
[6] Human Rights Watch, *Why Sex Work Should Be Decriminalized, Questions and Answers* (Aug. 7, 2019), *available at* https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized.
[7] American Civil Liberties Union, *Sex Work is Real Work, and it's Time to Treat it That Way* (June 10, 2020), *available at* https://www.aclu.org/news/lgbt-rights/sex-work-is-real-work-and-its-time-to-treat-it-that-way/.
[8] This Policy is an exercise of discretion by the Washtenaw County Prosecuting Attorney, and does not purport to argue that that laws criminalizing sex work violate the United States Constitution. The purpose of this discussion is only to note the tension between the criminalization of sex work and fundamental constitutional values.

At the outset, I want to make this clear. Declining to prosecute sex work DOES NOT mean we won't vigorously pursue—& prosecute—human trafficking, pimping, those who engage in sexual/physical assault against sex workers, or those who try to purchase sex from minors.

We will. /2

II. Policy Directive

1. Consensual Sex Work and Solicitation: The Washtenaw County Prosecutor's Office will not file criminal charges based *solely* on:

(a) the consensual exchange, between adults, of sex for (i) money or (ii) another thing of
(b) the solicitation of such an exchange.

For purposes of this Policy, an "adult" is someone 18 years of age or older. A "minor" is someone under the age of 18.

2. Violence and Sexual Assault: The Washtenaw County Prosecutor's Office will continue to file—and to vigorously pursue—criminal charges in cases where violence or sexual assault arises out of a planned exchange of sex for money.

By way of example, criminal charges are appropriate where the evidence indicates:

(a) A buyer, or a prospective buyer, physically assaulted a sex worker;
(b) A buyer, or a prospective buyer, sexually assaulted a sex worker;
(c) A buyer refused to use a condom despite a sex worker's expressed wishes;
(d) A buyer engaged in a sexual act to which a sex worker did not consent; or
(e) A buyer engaged in sexual activity with a sex worker, but refused to pay. In such a case, the sex worker's consent to engage in sexual activity was given contingent on the buyer's promise to pay. The evidence may therefore indicate that consent for the sexual act was obtained via "coercion," including the buyer's "concealment" of the fact that the buyer had no intention to pay.[32]

Note that in all of the foregoing examples, *the sex worker is the victim of a crime*. In such instances, pursuant to this Policy, charges should be filed only against the buyer/assailant not against the sex worker who was the victim of physical or sexual assault.

3. Human Trafficking: This Policy does not prohibit or discourage the filing of charges related to human trafficking. The Prosecutor's Office will continue to charge human traffickers—and those who knowingly seek to purchase sex with a trafficked person wherever the evidence dictates. The Prosecutor's Office will also continue to pursue charges against those colloquially known as "pimps."[33] This Policy, however, prohibits prostitution and solicitation charges against individuals who were the *victims* of human trafficking, and who were forced to engage in sex work.

4. Purchase and Solicitation of Sex From Minors: This Policy does not prohibit or discourage the filing of charges against individuals who purchase sex, or seek to purchase sex, from minors. In such circumstances, however, charges related to the exchange of sex for money should be brought only against the buyer or the prospective buyer, not the minor.

Indeed, a key reason for today's policy directive is that the criminalization of sex work *increases* violence & sexual assault—and makes it less likely to be reported.

If you fear that you'd face prosecution if you report an assault to police, you're less likely to do so. /3

Second, research demonstrates that the criminalization of sex work "enhances sex workers' vulnerabilities to violence and exploitation."[14] Because sex work "is regarded as criminal activity . . . sex workers are easy targets for abuse and exploitation."[15] Criminalization forces sex workers to operate in "isolated conditions and locations," thereby increasing their "physical vulnerability."[16] And because sex workers can be criminally charged for engaging in sex work, they are "less likely to report instances of violence or exploitation."[17] The criminalization of sex work, in short, creates a "climate of impunity," in which people feel free "to abuse sex workers' rights."[18]

We're making this policy very public because I want sex workers to know: Please. Report violence. Report sexual assault. Report human trafficking.

We will go after those who engage in those activities. We won't prosecute you. /4

But there are other reasons for today's policy directive. First, as a fundamental matter, I do not believe it is appropriate for people to be prosecuted because of what they do with their own bodies.

At bottom, that's what the criminalization of sex work does. /5

> *First,* the criminalization of sex work in the United States is in tension with constitutionally protected liberties.[8] Adults in the United States generally have the right to "engage in . . . private conduct in the exercise of their liberty." "[A]bsent injury to a person or abuse of an institution," the Supreme Court has emphasized, the right to engage in consensual private conduct "should counsel against attempts by the State . . . to set . . . boundaries" pertaining to a sexual relationship.[10] Laws banning consensual sex between adults thus generally violate the United States Constitution.[11] It is only when sex is exchanged for money that such activity may be banned.
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> But even once money enters the equation, sex is not consistently criminalized. Pornography, for example, is generally legal in the United States. Sex can thus be exchanged for money so long as a camera or a video camera is recording the act. But as soon as the camera is removed or turned off, the consensual exchange of sex for money may be punished.[12]
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> The criminalization of sex work, in short, is in serious tension with established norms related to bodily autonomy and personal liberty. That factor, standing alone, "counsel[s] against" prosecution.[13]

Second, as noted, the criminalization of sex work—as with other prohibitionist policies—increases violence & coercion.

We see this repeatedly (as with drugs & alcohol). Criminalization creates black markets. Black markets encourage violence. Violence leads to victims. Enough. /6

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In this regard, the criminalization of sex work reflects the effects observed from other prohibitionist policies. Time and again, the United States has attempted to criminalize activity that runs counter to purported social mores. From 1920-1933, the federal government criminalized the production and sale of alcoholic beverages. And for decades, the United States has been engaged in the so-called "War on Drugs," which imposes severe criminal penalties on personal drug use and possession.

These policies, however, failed to have their desired effects. Prohibitionist policies did not prevent Americans from consuming drugs and alcohol. And the data demonstrates that prohibition significantly *increased* the violence associated with the drug and alcohol trade. "[P]rohibitions create black markets, and in black markets participants use violence to resolve commercial disputes."[19] As a result, researchers have concluded that "drug and alcohol prohibition have substantially raised the homicide rate in the United States over much of the past 100 years."[20]

The same is true with sex work. Criminalizing sex work forces participants to operate in a black market. That, in turn, leads participants to resort to "violence to resolve commercial disputes."[21] And the victims of such violence are typically sex workers themselves.

Third, we're protecting public health. When sex workers fear prosecution, they lack leverage to insist on condoms. That's why a series of papers in one of the world's leading medical journals concluded that decriminalization is *the* single best thing to do to stop HIV spread. /7

Third, and relatedly, the criminalization of sex work threatens public health. Because sex work is illegal, sex workers have "little control over their working conditions," including their ability to "enforce condom use with clients."[22] Indeed, physical and sexual abuse perpetuated by clients often "occurs during condom negotiation."[23]

The criminalization of sex work thus prevents sex workers from insisting on condom use. The results are predictable. Unprotected sex work facilitates the spread of HIV and other sexually transmitted infections. For that reason, a series of research papers published in *The Lancet*—the world's leading independent general medical journal[24]—concluded that decriminalization of sex work would have "*the* greatest effect," worldwide, on reducing new HIV infections in the next decade.[25]

Fourth: we need to look at equities. The people charged with prostitution in America are predominantly Black. Transgender people are also particularly likely to be arrested and charged—even if they're not actually engaged in sex work. That's

unacceptable. /8

Fourth, like many crimes, the criminalization of sex work disproportionately affects minority populations. According to Amnesty International, nearly 40 percent of adults and 60 percent of youth arrested for prostitution in the United States are Black.[26] Transgender women "are also especially likely to be arrested on sex work charges, even if they're not doing sex work."[27] Declining to charge consensual sex work is thus consistent with the Washtenaw County Prosecutor's Office's mission to ensure that justice is dispensed evenhandedly, irrespective of sex, race, gender, sexual orientation, gender identity, religion, national origin, or immigration status.

Finally: without stigmatizing the choice to engage in sex work, the truth is that many people would prefer to leave the industry, and to do something else.

Criminalization gives sex workers a criminal record, which can make it difficult to find non-sex work employment. /9

Fifth, and finally, criminalizing sex work can have the perverse effect of forcing people to *remain* in the sex work industry. The Washtenaw County Prosecutor's Office is well-aware that choice to engage in sex work is sometimes made out of desperation. [28] Some people who engage in sex work would prefer to do so for only a limited time. But criminalization—and the cascading employment-related consequences of a criminal record—can trap people in the sex work industry. That is because "[b]eing convicted of sex work-related offenses . . . gives sex workers a criminal record, which can make it hard to find . . . non-sex work employment."[29]

Perversely, then, laws which seek to *discourage* people from sex work often end up *trapping* them in sex work.

To paraphrase words most famously associated with the late Justice Ginsburg, these "paternalistic" laws place sex workers "not on a pedestal, but in a cage." /10

At the end of the day, laws which seek to avoid exposing people to the trauma, stigma, and violence associated with sex work may be well intentioned. When those laws carry criminal consequences, however, they can have the effect of *increasing* stigma, and foreclosing other employment options for sex workers. In that respect, criminalization of sex work is reminiscent of long-discarded "paternalistic" laws which sought to shield female workers from purportedly harmful consequences associated with a chosen profession—but, "in practical effect," placed them "not on a pedestal, but in a cage."[30]

The truth of the matter is, criminalization of sex work has not discouraged people from engaging in it. It's called "the world's oldest profession" for a reason.

And sex work is legal, to some extent, in around 100 countries across the globe. /11

Sex work is frequently called "the world's oldest profession."[1] Yet with the exception of several counties in Nevada, sex work is generally criminalized in the United States.[2] America's prohibitionist stance on sex work is increasingly out of step with international norms. Consensual sex work is legal—at least in some form—in nearly 100 countries across the globe.[3] It is permitted (with or without limits) in Canada, Mexico, New Zealand, Israel, Japan, the United Kingdom, and most European countries.[4] And Amnesty International,[5] Human Rights Watch,[6] and the American Civil Liberties Union[7] have all called for the decriminalization of sex work.

It's past time to stop criminalizing the choices people make with their bodies—and time to start focusing on public health, public safety, and fighting the scourge of trafficking and child exploitation.

That's what we're doing today. /12

As always, we didn't create this policy on our own. I'm grateful for the many subject-matter experts & community members who provided guidance and counsel on this policy.

We're building a safer, healthier, and more equitable Washtenaw, together. /fin

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