



POSITIVE WOMEN'S NETWORK
USA

Positive Women's Network - USA
436 14th Street, Suite 500
Oakland, CA 94612
510.698.3811 **phone**
www.pwn-usa.org
@uspwn
www.facebook.com/pwnusa

Harm Reduction & Decriminalization of Sex Work and Drug Use Factsheet

Special Thanks to Monique Tula and Charles Hawthorne from the Harm Reduction Coalition and Cris Sardina from the Desiree Alliance for their input and expertise

What Is Harm Reduction?

Harm reduction refers to a set of human rights and public health-based practices and principles aimed at reducing negative outcomes associated with certain activities, some of which are criminalized—such as sex work¹ and injection drug use.

Sex work is an umbrella term which includes any type of labor where a sexual service is provided in return for a benefit. Thus, sex work can include prostitution (direct sexual services), as well as other activities like dancing, webcam work, making adult films, and phone sex². Sex work refers to a consensual transaction between adults and should not be mistaken for sex trafficking, which may involve violence, threats, deception, or other forms of coercion and exploitation³.

Harm reduction efforts prioritize the safety, rights and dignity of individuals engaging in the activity, rather than focusing on ending or preventing the activity. This approach respects people's autonomy to make their own choices, and literally focuses on reducing harm that can result from those choices. Thus, for activities that are criminalized, harm reduction practices may include reducing likelihood of contact with the criminal justice system and the harm that results from criminal justice system itself. This harm reduction philosophy is colloquially described as “meeting people where they are.”⁴

What Does Harm Reduction Look Like in Practice?

Harm reduction strategies can vary depending on the needs of the community being served. Here are some ways they are commonly put into practice:

1. **Education and Outreach:** Organizations may provide trainings and information to promote safety and to prevent criminalization; examples include instructions on safer injection practices⁵, bad date lists⁶, and know your rights guides for sex workers⁷.
2. **Syringe Exchanges:** Syringe access or syringe exchange programs (SAPs/SEPs) are community-based centers where people can obtain injection equipment, including syringes, and can also return used

¹ *The term sex work/er will be used throughout the factsheet to recognize that sex work is a form of labor, in place of other terms that, while commonly used (and sometimes preferred) may still be stigmatizing for some.

² “Learn About Sex Work.” Sex Workers Outreach Project-USA, <http://www.new.swopusa.org/learn-about-sex-work/>

³ “Sex Work and Sex Trafficking.” Sex Workers Outreach Project Behind Bars, 2015, <http://swopbehindbars.org/amnesty-international-policy-to-decriminalize-sex-work/the-difference-between-sex-work-and-sex-trafficking/>

⁴ “What is Harm Reduction?” North Carolina Harm Reduction Coalition, <http://www.nchrc.org/harm-reduction/what-is-harm-reduction/>

⁵ “Safer Injection Materials.” Harm Reduction Coalition, <http://harmreduction.org/issues/drugs-drug-users/drug-information/safer-injection-materials/>

⁶ “Bad Date List.” St. James Infirmary, https://stjamesinfirmary.org/wordpress/?page_id=3767

⁷ “Know Your Rights Manual for the Sex Worker Community: Criminal Law.” The National Lawyers Guild, S.F. Bay Area Chapter, June 2014, <https://www.nlg-npap.org/sites/default/files/docs/Sex%20Worker%20Know%20Your%20Rights%20Manual%20Criminal.pdf>

syringes for safe disposal. These programs may also provide linkages to additional healthcare and social services⁸.

3. **Supervised Consumption Services:** Supervised consumption sites (SCS) are legally-sanctioned locations⁹ where medical staff work onsite to ensure that people who use drugs have access to a safe and sterile place to use pre-obtained drugs. This usually includes access to sterile equipment and assistance in case of overdose or another medical event. There are currently no SCS operating in the U.S. due to ongoing concerns about interference from federal drug enforcement.
4. **Emergency Medical Response:** Harm reduction practices include providing intervention training for people in the community, so they can provide emergency first aid including administering overdose reversal medication (such as Naloxone or Buprenorphine)¹⁰.
5. **Health Services and Support:** Harm reduction strategies also include offering free or low-cost counseling, testing, and primary care health services¹¹ that are non-judgmental and accessible to the community. Some harm reduction organizations also use mobile units to provide services directly to individuals on the street¹².
6. **Decriminalization:** Decriminalization of sex work¹³ and decriminalizing the possession or use of drugs¹⁴ are also considered harm reduction policies because they aim to keep sex workers and people who use drugs safe by ensuring that they are not at risk for criminal prosecution based on the activities they engage in.

Decriminalization vs Legalization

These terms are often used together but they are not interchangeable, and their differences should be noted. Decriminalization and legalization produce different policy outcomes.

- *Decriminalization* means removing all criminal laws relating to a certain activity.
- *Legalization* means using criminal laws to control activities by determining the conditions under which they can happen legally¹⁵.

Why Decriminalize?

The criminalization of sex work and drug possession or use disproportionately impacts women¹⁶, people of color¹⁷, immigrants¹⁸, and LGBT¹⁹ individuals (particularly people of transgender experience²⁰). These are

⁸ "Syringe Services Programs." Centers for Disease Control & Prevention, 2018, <https://www.cdc.gov/hiv/risk/ssps.html>

⁹ "Supervised Injection Facilities." Drug Policy Alliance, <http://www.drugpolicy.org/issues/supervised-injection-facilities>

¹⁰ "Naloxone Training." Peer Based Harm Reduction WA, <http://harmreductionwa.org/naloxone/>

¹¹ "What We Do." St. James Infirmary, https://stjamesinfirmary.org/wordpress/?page_id=8

¹² "Using a Harm Reduction Approach and Mobile Outreach to Promote Health Among Those Engaged in Street-Based Sex Work and Drug Use." Health Outreach Partners, September 2015, <https://outreach-partners.org/2015/09/16/using-a-harm-reduction-approach-and-mobile-outreach-to-promote-health-among-those-engaged-in-street-based-sex-work-and-drug-use/>

¹³ "Sex Workers Without Borders." Harm Reduction Coalition, <http://harmreduction.org/connect-locally/north-carolina/sex-workers-without-borders/>

¹⁴ "It's Time for the U.S. to Decriminalize Drug Use and Possession." Drug Policy Alliance, July 2017, <http://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession>

¹⁵ "Prostitution Law Reform: Defining Terms." Sex Workers Education Network, Bay Area Sex Worker Advocacy Network, <http://www.bayswan.org/defining.html>

¹⁶ "The Gender Divide: Tracking Women's State Prison Growth." Prison Policy Initiative, January 2018, https://www.prisonpolicy.org/reports/women_overtime.html

¹⁷ "The Drug War, Mass Incarceration and Race." Drug Policy Alliance, January 2018, <http://www.drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish>



communities that are already over-policed and surveilled, heavily criminalized, and vulnerable to acquiring HIV²¹, which makes them targets of HIV criminalization laws as well.

Laws and policies that target communities disproportionately impacted by the HIV epidemic include:

- **Mandatory HIV Testing for Sex Workers**
 - 25 states require mandatory HIV testing for people arrested for sex work. The confidentiality of these results is not guaranteed, and many states impose harsher penalties for people arrested for sex work if they are living with HIV.
- **“Condoms as Evidence” Laws**
 - In some cities (most notably New York, Washington, DC, Los Angeles, and San Francisco²²) possession of multiple condoms has been used by police as evidence of sex work, thus placing people at risk for arrest just for carrying condoms²³. This discourages sex workers (as well as people often profiled as sex workers) from carrying condoms, which can place them at greater risk for sexually transmitted infections, HIV, and pregnancy.
- **Criminalizing Syringe Possession**
 - 32 states consider the possession of syringes to serve as evidence of illegal drug use, which discourages people from using and carrying sterile needles, including people of transgender experience who may need to inject hormones, steroids, or silicone²⁴. Twelve states currently criminalize sharing or selling syringes²⁵.
- **Travel Bans**
 - Though the U.S. government repealed the immigration ban on people living with HIV that was put in place in 1987, U.S. visa applications still require disclosure of an applicant’s history with sex work and drug use, which can bar entry into the country²⁶.

Consequences of Criminalization

¹⁸ “A Price Too High US Families Torn Apart by Deportations for Drug Offenses.” Human Rights Watch, June 2015, <https://www.hrw.org/report/2015/06/16/price-too-high/us-families-torn-apart-deportations-drug-offenses#f3d51c>. See section titled Immigrants and the “War on Drugs”

¹⁹ Hanssens, Catherine et al. “Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV.” May 2014, http://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf. See section titled Criminalization of Sex Work and Responses to Trafficking in Persons

²⁰ Fitzgerald, Erin et al. “Meaningful Work: Transgender Experiences in the Sex Trade.” December 2015, http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf

²¹ “Who Is at Risk for HIV?” HIV.gov, May 2017, <https://www.hiv.gov/hiv-basics/overview/about-hiv-and-aids/who-is-at-risk-for-hiv>

²² “Sex Workers at Risk Condoms as Evidence of Prostitution in Four US Cities.” Human Rights Watch, 2012, <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities>

²³ “The Intersection of Sex Work and HIV Criminalization: An Advocate’s Toolkit.” See section titled Penalty enhancements for sex workers living with HIV

²⁴ “The Intersection of Syringe Use and HIV Criminalization: An Advocate’s Toolkit.” Center for HIV Law & Policy and the National LGBTQ Task Force, 2017, http://www.thetaskforce.org/wp-content/uploads/2014/09/Syringe-Use-Toolkit-Final-R2_0.pdf. See section titled Criminalization of Paraphernalia and the Importance of Syringe Service Programs

²⁵ “The Intersection of Syringe Use and HIV Criminalization: An Advocate’s Toolkit.” See section titled HIV-Specific Laws that Criminalize Syringe Sharing

²⁶ General Classes of Aliens Ineligible to Receive Visas and Ineligible for Admission; Waivers of Inadmissibility.” U.S. Citizenship and Immigration Services, <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-2006.html>



- Criminal prosecution creates barriers to accessing healthcare²⁷ and public benefits²⁸. It can also limit the exercise of other legal rights and liberties, like voting.
- Fear of prosecution can make it dangerous for sex workers and people who use drugs to report violence and other crimes and to talk openly with healthcare providers.
- Past convictions can make accessing public benefits and jobs challenging or impossible.
- Laws like the Stop Enabling Sex Traffickers Act and the Fighting Online Sex Trafficking Act, which target platforms sex workers use to safely advertise services and screen their clients online²⁹, force sex workers to work “underground”. This means sex workers risk violence at the hand of clients³⁰ and often police³¹ as well as exploitation by pimps/traffickers³² while working on the streets. They may also be forced to work less or be unable to continue working at all, creating economic insecurity.
- Accidental overdose deaths are the leading cause of accidental death in the U.S. Many of these deaths are preventable if emergency medical assistance is requested. However, the fear of criminalization can discourage people from seeking help for an overdose (whether their own or one they are witnessing). Fear of police interactions is the most commonly cited reason people do not call 9-1-1 for medical help³³.

What Can Be Done?

At the Federal level:

1. **End the War on Drugs** and its discriminatory and draconian drug policies, which for nearly half a century, has led to continued mass incarceration of Black and Latinx communities in the U.S., who are overly policed and receive especially harsh sentences for drug-related charges. Any attempt to revive a federal crackdown on drug offenses, impede the shift toward harm reduction-grounded drug policy reform, or to reduce funding for solutions grounded in harm reduction approaches should be opposed.
2. **Repeal SESTA/FOSTA** and prevent other efforts to advance policies that harm sex workers. Though SESTA/FOSTA sought to curb sex trafficking by making website publishers liable for any content on their sites that could be considered facilitation of sex work, the broad language of the law has led websites, like Craigslist, to shut down their personal ad pages to avoid potential lawsuits. Losing websites that allowed sex workers to advertise services and screen clients safely has made them more vulnerable to violence and exploitation on the streets. Legislation like SESTA/FOSTA confuses sex work with sex trafficking which drives stigma against sex workers and threatens their lives and livelihoods.

²⁷ “Laws and Policies Affecting Sex Work.” Open Society Foundations, Sexual Health and Rights Project, 2012, <https://www.opensocietyfoundations.org/sites/default/files/sex-work-laws-policies-20120713.pdf>

²⁸ “The Human Toll of Criminalizing Drug Use in the United States.” Human Rights Watch, <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>. See section titled Exclusion from Public Benefits and Rights

²⁹ “Documenting Tech Actions.” Survivors Against SESTA, <https://survivorsagainstsesta.org/documentation/>

³⁰ “Why Do Sex Workers Need Online Spaces?” Survivors Against SESTA, March 2018, https://survivorsagainstsesta.files.wordpress.com/2018/03/onlinespaces_impact-003.pdf

³¹ “Revolving Door: An Analysis of Street-Based Prostitution in New York City.” Sex Worker’s Project, Urban Justice Center, 2003, <http://sexworkersproject.org/downloads/RevolvingDoorFS.html>

³² “SESTA=Death.” Coalition for Rights and Safety, <http://www.rightsandsafety.org/sesta/>

³³ “911 Good Samaritan Laws: Preventing Overdose Deaths, Saving Lives.” Drug Policy Alliance, 2016, http://www.drugpolicy.org/sites/default/files/DPA_Fact%20Sheet_911%20Good%20Samaritan%20Laws_%28Feb.%202016%29.pdf



At the State level:

1. **Repeal State HIV Criminalization Laws** that punish the alleged non-disclosure, exposure and transmission of HIV which perpetuate HIV-related stigma and impede the goals of public health of testing, treatment and prevention. States should align HIV-related policies with current scientific understanding of HIV transmission and eliminate laws that impose sentence enhancements for sex workers diagnosed with HIV or people who use drugs living with HIV.
2. **Adopt and Fund Harm Reduction Practices** like syringe access programs (SAPs). States should also repeal laws that cap the number of syringes that can be purchased or that criminalize syringe possession³⁴ and create supervised consumption services (SCS)³⁵.
3. **Adopt Good Samaritan Overdose Laws** that provide immunity from arrest, charge, or prosecution for certain drug offenses, when someone calls for medical assistance for an overdose they are experiencing or witnessing. Currently, 40 states and D.C. have adopted such laws³⁶.
4. **Decriminalize Sex Work and Related Offenses** to end the over policing and incarceration of people who do sex work, both of which increase vulnerability of sex workers to violence, abuse, and exploitation. States should pass legislation decriminalizing sex work³⁷. Other policies that target sex workers and impact their safety and agency such as allowing condom possession as evidence in criminal prosecutions should also be eliminated³⁸.

Where Can I Learn More?

- Desiree Alliance: national coalition of current and former sex workers
 - <http://desireealliance.org/>
- Drug Policy Alliance: advocacy network working to end drug war and criminalization of drug use/possession
 - <http://www.drugpolicy.org/>
- Harm Reduction Coalition: national capacity building organization that advocates for the rights of people who use drugs and communities disproportionately impacted by the war on drugs.
 - <http://harmreduction.org/about-us/>
- Sex Workers Outreach Project: national network dedicated to the fundamental human rights of people involved in the sex trade and their communities, focusing on ending violence and stigma through education and advocacy
 - <http://www.new.swopusa.org/>
- Survivors Against SESTA: sex worker led effort to elevate sex worker voices in the outcry against SESTA/FOSTA
 - <https://survivorsagainstsesta.org/>

³⁴ In 2017, Assembly Bill A6258 was introduced in New York. A6258 would decriminalize both sale and possession of hypodermic needles. This policy shift will promote public health and the safety of people who use drugs by allowing people to protect themselves from communicable diseases.

³⁵ In 2018, San Francisco committed to become the first city in the US to open safe injection sites

³⁶ Drug Overdose Immunity and Good Samaritan Laws." National Conference of State Legislators, June 2017, <http://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx>

³⁷ In 2017, a law that would remove criminal penalties for sex work, the Reducing Criminalization to Promote Public Safety and Health Amendment Act of 2017, was introduced in Washington, D.C.

³⁸ In 2014, California passed AB336, which requires a court to state explicitly that the presence of condoms is relevant to the individual case before prosecutors can use them as evidence of prostitution. The original bill would have banned the use of condoms entirely as evidence of prostitution, but it did not have enough votes to pass.



- Women with A Vision: social justice non-profit that addresses issues faced by women in the south including sex worker rights, drug policy reform, reproductive justice, and advocacy for women living with HIV.
 - <http://wwav-no.org>

###

Positive Women's Network - United States of America (PWN-USA) is a national membership body of women living with HIV working to prepare and involve all women living with HIV, in all our diversity, including gender identity and sexual expression, in all levels of policy and decision-making to improve the quality of women's lives. PWN-USA applies



a gender equity and human rights lens to the HIV epidemic to achieve federal policies grounded in the reality of women's lived experiences.

