



**TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS IN SUPPORT OF H
1800 AND S 992, AN ACT TO STOP PROFILING TRANSGENDER PEOPLE AND
LOW-INCOME WOMEN**

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GLBTQ Legal Advocates & Defenders (GLAD) strongly supports H 1800 and S 992. These identical bills: (1) repeal the “common night walkers” and “common street walkers” statute, M.G.L. c. 272, § 53(a); and (2) create immunity from prostitution charges for reporting a crime in good faith. The “common night walkers” and “common street walkers” statute has been used disproportionately to profile and arrest low-income women and transgender women of color, including some who are engaged in consensual sex work as well as individuals who are stopped, searched, and arrested while simply walking the street and doing nothing illegal. The repeal of Chapter 272, § 53(a) is a vital first step to ending the harms that result from the criminalization of the consensual exchange of sex for money, including violence, increased HIV transmission and other health risks, and barriers to housing and employment. These bills will also enhance safety by creating the conditions for people who engage in sex work to report crimes, against them or others, without fear of prosecution.

While GLAD **supports the full decriminalization of consensual sex work** as reflected in H 1867, An Act to promote the health and safety of people in the sex trade (to be heard by this Committee on a later date), the passage of H 1800 / S 992 is a critical step towards protecting

vulnerable populations who are already subjected to profound stigma, discrimination, and marginalization in our society. In addition, **GLAD opposes any legislation that seeks to end the consensual sex trade, incentivizes the policing of the sex trade, or that undermines the basic dignity of people engaged in consensual commercial sexual exchange.**

I. GLAD’S POSITION ON THE DECRIMINALIZATION OF CONSENSUAL SEX WORK.

As an organization advocating for the wellbeing, agency, and autonomy of LGBTQ people, GLAD supports #DecrimMA and joins the call for full decriminalization of consensual sex work. LGBTQ people face disproportionate harassment from police, and violence and mistreatment when incarcerated. The criminalization of consensual sex work can lead to increased police interaction whether an individual is engaged in sex work or simply perceived to be. Transphobia and homophobia still lead to family rejection, homelessness, and poverty for too many LGBTQ people, and criminalizing what can be a critical survival option for some only compounds those harms. Criminalization forces many to work in hidden or remote places where they are more vulnerable to violence. It also impedes sex workers’ ability to negotiate condom use and safer sex practices, to seek help when they are targets of violence or harassment or to set boundaries for their autonomy, health, and protection. Research also shows that criminalizing consensual sex work subverts efforts to protect individuals from trafficking, exploitation, and abuse by making it dangerous for victims to speak out. Decriminalizing consensual sex work is the safer, healthier, and more humane path for Massachusetts.

II. LAWS THAT CRIMINALIZE SEX WORK, INCLUDING M.G.L. c. 272, § 53(a), INFLECT PROFOUND HARM THAT DISPROPORTIONATELY IMPACTS LGBTQ PEOPLE (ESPECIALLY TRANSGENDER WOMEN), PEOPLE OF COLOR, AND IMMIGRANTS.

Human Rights Watch¹, Amnesty International², and the World Health Organization³, have all called on countries to remove criminal penalties for the sex trade. A cursory glance at the research literature explains why these and other organizations have concluded that sex workers are at high risk of human rights abuses.

A. The Groups Disproportionately Harmed by Criminalization.

An ACLU Research Brief, *Is Sex Work Decriminalization the Answer?*, has surveyed the research literature and concluded that the “communities that are already the most marginalized in our society, including LGBTQ people, people of color and immigrants, and those living at the intersections of these identities” are the most at risk for the harmful impacts of criminalization.⁴ Law enforcement police street-based sex work, which disproportionately includes more non-white sex workers, more vigilantly than indoor sex work.⁵ According to Amnesty International, nearly 40% of adults and 60 percent of youth arrested for prostitution in the United States in 2015 were Black, even though Black Americans make up only 12 percent of the population.⁶ Research also demonstrates that the criminalization of sex work “disproportionately negatively impacts immigrant sex workers ... [who] are more vulnerable to police harassment than non-

¹ Human Rights Watch, “Why Sex Work Should Be Decriminalized” (2019). Available at, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#>

² Amnesty International, “Q&A: Policy to Protect the Human Rights of Sex Workers” (2016). Available at, <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>

³ World Health Organization, “Sex workers.” Available at, <https://www.who.int/teams/global-hiv-hepatitis-and-stis-programmes/populations/sex-workers>

⁴ ACLU, “Is Sex Work Decriminalization The Answer? What The Research Tells Us,” (2020), at 11. Available at, https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief_new.pdf

⁵ ACLU, at 12; see also Shana Judge & Mariah Wood, *Panel Paper: Racial Disparities in the Enforcement of Prostitution Laws*, Ass’n for Public Policy Analysis and Mgmt (2014).

⁶ Anna North, “The movement to decriminalize sex work, explained,” (2019), at 6. Available at, <https://www.vox.com/2019/8/2/20692327/sex-work-decriminalization-prostitution-new-york-dc>

immigrant sex workers and are less likely to report violence to authorities” due to fears of the police.⁷

LGBTQ people make up a significant portion of sex workers.⁸ Studies in New York and Chicago reported high rates of LGBTQ youth, particularly transgender youth, being kicked out of their homes due to their sexual orientation or gender identity, or leaving other unsafe environments, and engaging in survival sex.⁹ Transgender people, particularly transgender women of color, face restricted employment and economic opportunities, lack of housing, increased barriers to health care coverage, especially for gender transition, and lack of adequate documentation of their gender.¹⁰ The United States Centers for Disease Control and Prevention has noted that “transgender persons may turn to exchange sex because of discrimination and lack of economic opportunities.”¹¹ Further, LGBTQ people, particularly transgender women, are “profiled by the police for engaging in prostitution even when they are not.”¹² A 2015 U.S. Transgender Survey found that approximately three in ten Black transgender women and multiracial transgender women reported that a police officer had assumed they were sex workers.¹³ Similarly, in Los Angeles, 60 percent of transgender Latinas surveyed reported being

⁷ ACLU, at 12.

⁸ *Id.* at 11.

⁹ ACLU, at 12; *see also* Meredith Dank et al., Urban Institute “Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex” (2015). Available at, <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>; *see also* Jazeera Iman et al., Chicago: Young Women’s Empowerment Project, “Girls Do What They Have to Do to Survive: Illuminating Methods Used by Girls in the Sex Trade and Street Economy to Fight Back and Heal” (2009). Available at, <https://ywepchicago.files.wordpress.com/2011/06/girls-do-what-they-have-to-do-to-survive-a-study-of-resilience-and-resistance.pdf>

¹⁰ ACLU, at 11.

¹¹ CDC, “HIV Risk Among Persons Who Exchange Sex for Money or Nonmonetary Items” (2019). Available at, <https://www.cdc.gov/hiv/group/sexworkers.html>

¹² ACLU, at 12.

¹³ Sandy E. James et al., National Center for Transgender Equality, “The Report of the U.S. Transgender Survey” (2016). Available at, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

stopped by the police while merely walking to the grocery store or bus.¹⁴ The repeal of the “common night walkers” and “common street walkers” statute will go a long way to stopping these abusive practices in Massachusetts.

B. Decriminalization Will Reduce Pervasive Violence Inflicted on Sex Workers.

The criminalization of consensual sex work subjects sex workers to alarming rates of physical and sexual violence by clients, police, exploitative “pimps” and others.¹⁵ Research demonstrates that more than 80% of sex works are subjected to violence.¹⁶ Perpetrators recognize that it is often difficult, if not impossible, for sex workers to report violence and so believe they can inflict violence with impunity. One study found that violence against sex workers is often not even registered as an offense by the police.¹⁷ Criminalization forces sex workers to move their work to remote, isolated areas that are more dangerous settings in order to avoid arrest.¹⁸ Criminalization also puts sex workers at risk of police violence. As one advocacy group observed, “[p]eople often report being asked for sex by a police officer or to perform sexual favors as a way to avoid being charged with prostitution.”¹⁹ Decriminalization ameliorates these conditions. In New Zealand, for example, 61.9% of sex workers reported that they were more able to refuse a client since decriminalization in that country.²⁰

¹⁴ Tasha Hill, American Bar Association “The Impact of Incarceration and Policing in Our Community,” (2019). Available at, https://www.americanbar.org/groups/diversity/sexual_orientation/publications/equalizer/2019-july/impact-of-incarceration-and-policing-in-our-community/

¹⁵ Kate Shannon & Joanne Csete, *Violence, condom negotiation, and HIV/STI risk among sex workers*, 304 J. Am. Med. Ass’n 573 (2010).

¹⁶ Sex Worker Advocates Coalition. Available at, <https://www.hips.org/sex-worker-advocates-coalition-swac.html>; see also Juhu Thukral & Melissa Ditmore, Sex Workers Project at the Urban Justice Center, “Revolving Door: An Analysis of Street-Based Prostitution in New York City” (2003), at 46.

¹⁷ Thukral & Ditmore, at 36.

¹⁸ Shannon & Csete (2010), at 573.

¹⁹ Sex Worker Advocates Coalition. Available at, <https://www.hips.org/sex-worker-advocates-coalition-swac.html>

²⁰ *Id.*

C. Decriminalization Will Promote Public Health and Reduce Disease Transmission.

The CDC has concluded that the risk of HIV and other sexually transmitted diseases is high among persons who exchange sex for money or non-monetary items.²¹ The criminalization of sex work undermines public health efforts to decrease transmission of HIV and other sexually transmitted infections. Isolation, fear of arrest and prosecution, and violence hinder access to health care.²² Conversely, “[a]ddressing sexual exchange as a public health matter improves connection to services, increases the ability to negotiate safer sex practices, and reduces the transmission of infectious diseases.”²³ In 2003 after New Zealand decriminalized sex work, sex workers reported that they were more likely to have been to a doctor, disclosed to a doctor they were a sex worker, and used a government guide on health and safety practices in the sex trade.²⁴

D. Decriminalization Will Promote Employment and Economic Stability.

The ACLU Report notes that sex work is a means of survival for many people who are “already pushed to the margins of society, those with the least resources, and those most vulnerable to abuse.”²⁵ The Report concludes that there is a “negative relationship between criminalization of sex work and financial security” and proposes that “decriminalization can lead to more stable and higher income if sex work is seen as a means of legitimate employment.”²⁶

²¹ CDC, “HIV Risk Among Persons Who Exchange Sex for Money or Nonmonetary Items” (2019). Available at, <https://www.cdc.gov/hiv/group/sexworkers.html>

²² Lisa Lazarus et al., *Occupational Stigma as a Primary Barrier to Health Care for Street-Based Sex Workers in Canada*, 14 Culture, Health & Sexuality 139 (2012).

²³ Sex Worker Advocates Coalition, at Removing Criminal Penalties Will Help Improve Public Health and Safety, citing Lucy Platt et al., *Associations between sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and qualitative studies*, 15 PLOS Med. (2018); Shannon K. et al., *Global epidemiology of HIV among female sex workers: influence of structural determinants*, 385 The Lancet 55-71 (2015); World Health Organization, “Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations” (2016), at 86.

²⁴ Gillian Abel, *Sex Workers’ Utilisation of Health Services in a Decriminalized Environment*, 127 N.Z. Med. J. (2014). Available at, <https://pubmed.ncbi.nlm.nih.gov/24670587/>

²⁵ ACLU, at 10.

²⁶ *Id.*

Further, being convicted of a sex work-related offense gives a sex worker a criminal record and creates daunting obstacles to those seeking housing or employment outside the sex trade. The criminalization of sex work undermines economic security and therefore freedom of choice for those in the sex trade.

E. Criminalization Impedes Efforts to Stop Sex Trafficking.

As Amnesty International notes, decriminalization does not mean the cessation of anti-trafficking efforts.²⁷ Most sex workers are not coerced or subjected to trafficking. Sex workers, however, “are in the best position to identify who is being coerced or trafficked and removing criminal penalties allows them to be full partners without fear of arrest.”²⁸

In sum, laws criminalizing the consensual exchange of sex inflict profound harm on sex workers and our society. The repeal of these laws is long overdue. GLAD urges this Committee to favorably report out H 1800 and S 992 as important steps toward that goal.

²⁷ Amnesty International, “Q&A: Policy to Protect the Human Rights of Sex Workers” (2016). Available at, <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>

²⁸ Sex Worker Advocates Coalition, at Criminalization of Sex Work is Ineffective and Harmful, citing MPD Chief Peter Newsham, 2012 City Council hearing on Prostitution Free Zones.