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Formal Reporting: The Barriers and Enablers of Legal Mobilisation

Teela Sanders , Harriet Smailes , Barbara G. Brents ,
Jane Scoular , and Gillian Abel 

Introduction

The global #MeToo digital campaign has brought significant attention to the criminal justice system's continued failures to deal with sexual harassment, rape, and sexual assault (Mendes et al., 2018). Many victims still do not report sexual violence to the police, rarely are perpetrators punished, and those who do report have negative interactions with the

T. Sanders (✉) · H. Smailes
University of Leicester, Leicester, UK
e-mail: teela.sanders@leicester.ac.uk

B. G. Brents
University of Nevada, Las Vegas, Nevada, USA

J. Scoular
Strathclyde Law School, University of Strathclyde, Glasgow, UK

G. Abel
University of Otago, Dunedin, New Zealand

system. Zvi (2022) conducted a perceptions-based study of 220 police officers in Israel (in the context of client criminalisation) and concluded that victim credibility in rape against sex workers was low, with higher rates of victim-blaming and a tendency to treat the consequences of rape as if they were less severe. It is in this context that—rather than being able to reach out for support or justice—sex workers are left to deal with their own experiences of crime, sexual violence, and other incidents that are harmful and often illegal. Stigma and exclusion have long silenced sex workers, and, in many places, their work itself is criminalised. As a result, they are even less likely to formally report sexual violence or other crimes compared to non-sex workers, a finding consistently supported by decades of research (Amnesty International, 2016; Kinnell, 2008; Krüsi et al., 2014; Penfold et al., 2004; Spencer et al., 2018). It is this problematic context that has led us to ask questions to find out more about the dynamics of sex workers' experiences.

Do different legal landscapes affect sex workers' interactions with criminal justice systems? We know that when aspects of their work are criminalised, they are less likely to use the criminal justice system to deal with violence. Are they likely to access the criminal justice system to manage other disputes such as non-payment or 'stealthings'? Are there differences in legal systems that may lead to different outcomes? This chapter examines the impact of different legal landscapes on sex workers' engagement with the criminal justice system.

Drawing on surveys and interviews (see Chapter 9 for a discussion of our methods), we explore the experiences shaped by legal frameworks, ranging from Aotearoa New Zealand's decriminalisation to complete criminalisation in the USA. We detail sex workers' experiences with the reporting, investigation, and prosecution of sexual offences and other forms of unwanted contact. The chapter investigates how confidence in the police varies among sex workers, both within and across these jurisdictions. We present the accounts and experiences of those who have and have not navigated the criminal justice system—outlining the reasons why the majority will not report, and, conversely, the experiences of the police and courts for those who did. Included are the reasons why many

sex workers choose to seek alternative, more informal routes to resolution. By contrasting Aotearoa New Zealand's decriminalised approach with the semi-legal structure in the UK, and the mixed legal environment in the USA, we explain how legislation influences sex workers' interactions with law enforcement. We use this novel lens to provide a comprehensive understanding of how legislation shapes interactions between sex workers and law enforcement.

What We Know About Sex Workers and the Criminal Justice System

We know that, even more so than non-sex workers, sex workers of any socio-demographic status would rarely consider seeking assistance from the police, or attempt to seek justice through the courts in dealing with any crime. In a systematic review of research, Struyf (2023) finds that sex workers do not report victimisation for four main reasons: (i) fear of being punished; (ii) fear of being mistreated; (iii) fear of exposure, and; (iv) fear that perpetrators will not be punished. Sex workers fear being re-traumatised and those who have had bad previous experience in non-sex-work cases also fear arrest or a criminal record. In the USA, in a collection of essays titled *We Too* (West & Horn, 2021), current and former sex workers point out that despite public concern about violence and exploitation in the sex industry, they are left out of these mainstream 'Me Too' debates. Instead, their experiences of harassment and violence are funnelled into the USA trafficking rescue industry (Weitzer, 2020). This highlights the policymakers' and the general population's perceptions of sex workers' experiences, which they view as an issue belonging to the criminalised debate, rather than a mainstream public rights debate. This separation could be seen as furthering the stigma attached to sex-working populations.

We also know that sexual violence victims are more willing to report any potential future crimes when they perceive adherence to elements of procedural justice (for instance, empathy with survivors) in their interactions with the criminal justice system (Lorenz & Jacobsen, 2021). The varying legal status of sex workers in different countries could, thus,

make a difference. Yet, we have little comparative data on how these experiences differ in different legal contexts. What we did know leading up to our project was that sex workers rarely engage with the police (Bowen et al., 2021) and that police attitudes can often be stereotypical, stigmatising, and problematic. Stardust and colleagues (2021) examined trust and experiences with police across Australia's diverse legal contexts and found that police consistently see sex workers as 'irresponsible citizens' and blamed them for their experiences of crime. The authors conclude that "... 'Whore stigma' is entrenched in the criminal legal system and requires a systemic response that necessitates but goes beyond the decriminalisation of sex work" (Stardust et al., 2021, p. 142).

Even for non-sex-working populations, we know little about how different legal contexts matter. Evidence so far indicates some strong similarities across many countries. In the UK, trust in the police is at an all-time low, and trust around safety for women is questionable, particularly for many women who are in marginalised groups and live in London (see Marquis & Langlois, 2023). A recent poll of all crime victims in England and Wales found that only 17% believed the criminal justice system was fair and 8% thought they would receive justice by reporting a crime (Victims' Commissioner UK, 2023). From this knowledge it is clear we need more nuanced ways of understanding sex workers' low (or, in the case of the USA, next-to-no) engagement with the criminal justice system.

Attitudes Towards the Criminal Justice System

Our survey assessed attitudes towards the criminal justice system by asking whether respondents agreed or disagreed with three key statements:

1. The police take rape against sex workers seriously.
2. I have confidence in getting justice if a case is taken to court.
3. Overall, I have confidence in the criminal justice system.

Table 6.1 reports across all sites for those who disclosed an incident and also shared their attitudes to the criminal justice system. The data is reported across four categories, which reflects the different legislative frameworks like so: Aotearoa New Zealand (ANZ); Nevada (NV) brothels; the rest of the USA (where sex work is criminalised); and the UK (including Northern Ireland data due to small numbers; see Chapter 9 for more detail). From this data, we can say the following:

- Participants in the USA (including those in criminalised and legalised brothel settings) had the poorest attitudes towards police, courts, and the criminal justice system generally.
- Participants in the ANZ decriminalised system were more likely to believe the police will take rape seriously.

Table 6.1 Respondent percentage of agreement with criminal justice system attitudinal statements

| | Percentage and number of respondents who have experienced incidents and who agree ('agree' or 'strongly agree') with attitudinal statements concerning the criminal justice system | | | | | | | | | |
|--|--|----|------------|---|-------|----|-------|----|-----------|----|
| | ANZ | | NV Brothel | | UK | | USA | | All Sites | |
| | % | n | % | n | % | n | % | n | % | n |
| The police take rape against sex workers seriously | 34.57 | 28 | 3.33 | 1 | 25.81 | 32 | 10.50 | 21 | 18.85 | 82 |
| I have confidence in getting justice if a case is taken to court | 17.28 | 14 | 4.17 | 1 | 17.86 | 20 | 6.99 | 13 | 11.91 | 48 |
| Overall, I have confidence in the criminal justice system | 12.05 | 10 | 0.00 | 0 | 13.27 | 15 | 6.32 | 12 | 9.00 | 37 |

- The UK participants generally had low opinions of the police, courts, and criminal justice system.

There was a notable difference in perceptions of police attitudes across the different legal contexts. Across all sites and among respondents who reported violence, only 19% of sex workers ($n = 82$) agreed that ‘The police take rape against sex workers seriously’. Across all sites, 66% of survey respondents who experienced violence/unwanted contact strongly disagreed that police take rape against sex workers seriously. In ANZ, 35% of sex workers agreed or strongly agreed that police take rape against sex workers seriously, compared to 11% in the USA criminalised market. In ANZ, 44% of sex workers strongly disagreed that the police take rape against sex workers seriously, compared to 78% USA who strongly disagreed. This suggests that even while numbers who are supportive of police attitudes are low in ANZ, the decriminalised setting may increase the number of sex workers who believe the police will support sex workers.

Within countries, there are some subtle differences. In the USA, 63% of sex workers in Nevada’s legal brothels strongly disagreed that the police take rape against sex workers seriously, compared to 79% of respondents working in illegal sex work elsewhere in the USA. ANZ had the greatest proportion of respondents who agreed that the police take rape against sex workers seriously (35%). By contrast, only 10% of all USA sex workers agreed. The ‘confidence in getting justice’ question responses were very low for the USA, with only 7% from illegal settings in the USA agreeing and 4% (one respondent) from the Nevada brothels. Irrespective of setting, sex workers in the USA were dubious of the court system assisting them when they were a victim of sexual violence or unwanted contact in their sex work. The lack of engagement with the criminal justice system in the USA can be explained by the intense criminalisation of sex work in the vast majority of states. Data from respondents from the semi-legal structure in England and Wales lay largely in between the USA and ANZ results: distrust was still significant, with 70% strongly disagreeing that they have confidence in the criminal justice system. When we compare these attitudes across jurisdictions, there is an indication that, in a decriminalised setting, there is more belief that the police

will take account of unwanted contact seriously. In those where the sex worker is heavily criminalised, there is little faith. The Nevada brothel workers, despite working in a regulated system, ultimately are situated in a culture of anti-sex work, in a country that generally criminalises the sex industry. Decriminalisation, therefore, does not eliminate distrust of the courts or law enforcement. Sex workers' lack of trust in seeking formal redress is most likely impacted by the general populations' perception towards sex workers and the dominant legal position in that context, alongside sex workers' perceptions of the criminal justice system in its response to sexual violence more broadly. In other words, these factors combined contribute to sex workers' understanding and perception of engaging with the police and going through criminal justice proceedings, which ultimately affects their intentions around legal mobilisation.

Who Reported to the Police?

From our comparative survey, we wanted to know, from those who had experienced forms of unwanted contact, how many respondents reported any incidents to the police. We asked respondents to tell us whether or not they had reported to the police the last incident that had happened to them (from a list of non-/underpayment; condom removal; physical assault; penetration; person not stopping when asked to; being threatened or harassed into having sex). Of the 425 participants who responded, only 35 reported any incident to the police. While the numbers are incredibly small, which means not much can be inferred, this was broken down by site as follows:

- Four from Aotearoa New Zealand (4% of ANZ respondents who experienced unwanted contact);
- 17 from the UK (13% of UK respondents who experienced unwanted contact); and
- 14 from the USA (USA criminalised market = 5.8%, 2 from the Nevada brothels = 6.45%).

Given the barriers that previous research has found that prevent access to criminal justice for sex workers (see ‘What We Know About Sex Workers and the Criminal Justice System’, above), it was no surprise that so few in our sample reported unwanted contact or sexual violence to law enforcement. However, there are differences between countries that are worth discussing. We think a likely explanation for the lowest reporting to police being from the decriminalised setting is because the sex workers use a wider range of other interventions—from their brothel manager, to reporting to (and getting support from) the New Zealand Collective of Prostitutes, and even Human Rights Tribunals where they can report breaches of contract by clients (see Wilkinson, 2023 and Chapter 2 of the current volume). Other legal mechanisms are explored in the ANZ system, below (see ‘Decriminalised Settings’ within this chapter). It also stands, as argued in Chapter 5, that despite a decriminalised setting where better relationships between marginalised groups and the police might be expected, behaviour does not always follow legal change/reform. To further understand the trends from the survey, then, the qualitative data (mainly from interviews but some from free-text responses in the survey) will now be discussed.

The sex-worker interviewee sample for this project is made up of 41 interviews across the sites as follows: England, Wales, Scotland, and Northern Ireland (UK) = 15; USA (both Nevada brothels and the criminalised setting) = 14; Aotearoa New Zealand (ANZ) = 11 (see Chapter 9 for a detailed account of the study design and socio-demographics of participants).

Among those interviewed in ANZ who had reported their assaults to the police, there is a common theme connecting the women in terms of their reasons for reporting. The main reason most of the workers reported their assaulters was so that the perpetrator could not go on to assault more sex workers. It is a commonly shared thought, and evident reality, that if he (because it is usually a ‘he’) would do this to one woman/sex worker, then he probably has done it before, and he will likely do it again. It is an important and also inspiring reason for reporting as it shows their sense of solidarity and desire to protect fellow workers from harm—for example:

I've considered what would happen if I took any of these many people to court, um, and I think for me the change was that with one of these ones I can't discuss, the event that occurred to me, occurred to someone else as well. And I saw that if I do not report what's happened to me as a sex worker from a customer and try and get justice, then it's going to keep happening to these other people. ... So that's what made me change, and press for justice, because I wanted to protect my peers. And I am glad that I did it. It's just, I just, it's why I have regrets about not reporting other things sooner, is because I know those people are probably still reoffending and causing more harm. (Talia, ANZ, brothel)

I feel a responsibility as a human to, if that were to ever happen to me again or if something, sexual violence were to happen to me again, to protect other people from having that happen to them. And part of it was why I went through with the court process as well, is that no-one really wants to go to court, for any reason, on either side, but sometimes it's like a personal obligation, yeah. (Jane, ANZ, brothel)

Reporting incidents to the police shows that some sex workers would want to engage in formal ways to seek justice and they knew the mechanisms to initiate this—however, they generally perceived that they could not trust the criminal justice system. In some cases, when sex workers chose to engage in the criminal justice system, they gained a better understanding of how the system worked and their understanding of formal law changed or broadened. Talia, for instance, demonstrated knowledge she had learned throughout the legal process:

... for someone back-handing you, you can get them convicted. For someone touching you after you told them, 'I don't want you to touch me anymore', that's also a crime. So yeah, I've learnt a lot about consent and, um, stuff I didn't know before doing all this justice experience. (Talia, ANZ, brothel)

We knew there would be few people in the survey who had experience in the criminal justice system because of low reporting rates and high attrition, yet we were still keen to capture sex workers' experiences of taking formal pathways to seek justice from those who did take this step of reporting. In the survey, we asked '*What happened after you*

Table 6.2 The number of participants by outcome after having reported to the police

| What happened after you reported to the police? | ANZ | UK | USA | Total number |
|--|-----|----|-----|--------------|
| There was nothing done about it | 1 | 10 | 10 | 21 |
| Police arrested or charged the person who did it | 2 | 4 | 2 | 8 |
| The person was convicted | 2 | 3 | 0 | 5 |
| I received compensation | 2 | 3 | 0 | 5 |
| Other | 1 | 4 | 2 | 7 |
| Total number | 8 | 24 | 14 | 46 |

reported to the police?'. Table 6.2 provides the responses (respondents could choose more than one answer). We note that there was only one person from Aotearoa New Zealand who replied that nothing was done after a report, whereas this was ten times higher with both the UK and USA respondents. As expected, convictions are low and compensation is even lower.¹

Experiences with Police

Criminalised Settings

We know that, in general, the rate of sex workers reporting to the police is extremely low. Sex workers' comments in interviews reflected what the survey data said: "I think I would have to think I was going to be dead within the next five minutes to dial 911. They're not going to help" (Bella, USA, independent).

Sex workers realised that they are certainly likely to be treated the same as non-sex workers in one sense, in not being believed, but in addition they felt that they face more discrimination from the police, because of their line of work. One survey respondent wrote:

¹ We want to flag that in the UK, conviction rates for violence against sex workers are higher than those for non-sex workers, according to case-file analysis by Lea et al. (2016).

There's no reason to trust the police; they don't do anything about sexual assault for non-sex workers and certainly not for sex workers. I don't need a target on my back. (Survey respondent, USA)

But, in addition, the fact that sex workers are criminalised can mean that they feel they risk being arrested themselves when they report crimes. The USA sex workers working in criminalised spaces were clear in their beliefs:

[Few sex workers would report because] they don't want to risk going to prison themselves (Nancy, USA, independent)

On a number of occasions, I've had law enforcement choose not to believe me, choose not to assist me, or choose that I'm actually the person they should pursue with charges. (Bella, USA, independent)

The police will never help a sex worker, only hurt her further. I will never, even if in serious trouble, reach out to my enemies who are ready to ticket me and stain my name and who do not care in the slightest. (Survey respondent, USA)

There may be instances, however, whereby reporting may feel more like a necessity or an expected course of action. Jessica recalled that because sex work is criminalised in the USA, sex workers do not usually report anything until they have to—for example, when they are in the emergency room or hospital:

Because it's not legalised, and we're doing it illegally, you don't have anybody to call, report. It's not even like they're going to care. Usually we don't report things, unless like ... I've had a friend that had been strangled, or things like that, then they reported it, because they've ended up in the hospital. Usually the only time a woman will report it, is if they end up in the hospital, and then they're getting questioned. Other than that, they're more likely not to. (Jessica, USA, various)

Dewey and St. Germain (2014), from a large three-year study of street-based sex workers in Denver Colorado, note that the reluctance from sex workers to report is because both sex work and drug use are criminalised, which determines the approach of police officers. In this jurisdiction, sex

workers perceived that the laws criminalised them and that, therefore, it could ultimately hurt them if they did report formally, which also affected their willingness of seeking redress formally. This means, then, that while sex workers' understanding of client-breach behaviours may actually be entirely aligned with a formal legal understanding, their experience of the law with regard to their sex work more generally presents as a significant barrier to reporting. Moreover, the barrier in reporting is not, in itself, that the state law criminalises sex work, but, rather, because of the police's interpretation and perception of these laws, which seems to support a stigmatised understanding of the nature of sex work, even beyond the scope of the law.

A trans woman in the USA who we interviewed suggested the innate level of assumptions around gender identity and sex work can lead police officers to make judgements and not see the crime that is being presented to them:

It's hard enough for a trans woman to get a police officer to take you seriously, because when I was raped the first time I wasn't doing anything, I wasn't even dressed provocatively, I was just raped, and the first [thing] the cop asked me was, was I soliciting. And I'm kind of like, 'What the fuck?!' ... Yeah. I discovered recently that it's not a question that they just ask any woman, it's a question that they tend to ask a lot of trans women, because automatically they think that because we're trans, we're sex workers or we're doing this for the kink. (Kassandra, USA, independent)

Kassandra told the story of the one time she did report a rape: "I wasn't expecting closure in that sense, if I had to be honest with you. But if I didn't report it, somebody else in the area would probably be hurt". Afterwards she was called to the police station and told to pick out her rapist from a line-up of all black men. None of them were the perpetrators, and because she did not select anyone, the only thing that was done was a temporary increase in the police presence in the area:

I'm not just picking out the random black guy because you think that all black guys look alike or whatever. I'm not doing that... And I haven't heard anything more about that investigation since. Again, I'm probably

just another one of the 98% statistics then of rape that are never resolved.
(Kassandra, USA, independent)

While this is a rare occasion of a sex worker reporting a rape in the USA context and appropriate initial investigations taking place, the dissatisfaction with the investigation is evident.

Semi-Criminalised Settings

In semi-criminalised settings, sex workers expressed similar reluctance to go to the police because of the fear of disbelief and belittlement. However, there were subtle differences in perception, resulting in a slightly higher proportion (13% of the sample) in the UK having engaged with the police. The two interviewees who had reported to the police had experienced very high levels of violence and the conditions in which they were attacked left them especially vulnerable: the women were alone when they were attacked and in a context where the perpetrator had complete control of the surroundings. These two cases were taken to court and convictions were secured.

Rather than a fear of arrest, sex workers in semi-criminalised settings that we interviewed reported a perception that police believed crime was an ‘occupational hazard’ in the sex industry. Two interviewees from England, for example, recounted police attitudes encountered when working in a street environment:

Every working girl I know never wanted to report it, never wanted to report it because they either get away with it or they’re not arrested anyway... In a way, we should get more support because there’s reasons why we do what we’re doing. No-one wakes up in the morning and says, ‘I’m going to be a prostitute’. We’ve all got a story, unfortunately; we’ve all got reasons why we do it, whether it be addiction or whatever. But yeah, it’s like they just see it, I feel anyway, that police just see it as an occupational hazard. (Anna, UK, street-based)
I’ve had it all over the years, ‘Well, you do that job’, and there’s the look. Yeah, there’s so much judgement. They need talking to, as well, because

there's so much judgement in their faces and it's like, 'Come on!'. (Emily, UK, various)

There was a recurrent theme that emerged in the UK context: sex workers experienced being treated less favourably than non-sex workers because they were selling sexual services:

The first thing the copper asked me were, 'Did they know you were a working girl?' What difference does that make? Why have you asked that? Whether they had known or not, what difference does that make? And they said, 'Oh, there's no reason why we've asked you'. Well, there clearly is because you wouldn't have asked! So, and that made me feel like, and this is the question you're coming out with, what girl is going to feel like they can go and report? They're not going to feel like they can report it. (Tess, UK, street-based)

This experience that Tess had with the police—suggesting that violence committed against sex workers could be contextualised, and was perhaps even permissible, because of their work—clearly demonstrates why many sex workers do not report. If there is even a perception that their case will follow a different trajectory compared to a non-sex-worker victim's case, the criminal justice process becomes, at best, a mystery, if not explicitly discriminatory.

There was little regard for treating non-payment as any kind of harm from police in the UK, and in fact, it was rare for sex workers across all jurisdictions to pursue a criminal-reporting route for this type of breach. Recounting interactions with a police officer regarding non-payment by a client, Anna explains this lack of understanding:

But again, I've had other incidents, like I said, where it's 'Occupational hazard', 'Are you sure this really happened? Did he just not pay you?', 'There's a difference between not being paid and being raped'... (Anna, UK, street-based)

For some sex workers, they had internalised police responses to these breaches and were of the same view—that it was a hazard of the work. For others, they perceived it as something more violating and their

responses reflected this. Halley, an independent sex worker in the UK, described an incident where the client had not paid and she had tried to tell people with no success. She clearly saw this as an act of violence:

One time on the job, I was outsmarted, yes. At the end, the client didn't pay me and he absconded with my money and I wasn't able to contact him. ... Would I consider that an act of violence? Yes, I would. ... I was trying to let the people know what was going on but nobody was hearing me or no-one was trying to speak up for me, or trying to accuse the person: 'Why would you do that?' (Halley, UK, independent)

We interviewed some street-based sex workers in the UK who had experience working in the only officially managed street area in Leeds, Yorkshire, which was open during 2014–2020.² Even while they felt safer in this managed zone (also a feeling reported by other sex workers outside of this study; see Brown & Sanders, 2017), they still felt police often did not take their claims seriously:

I used to get fined if I was out outside the times of the zone. But that's pointless because you just have to go out earlier the next day and do more jobs to pay the fine. And I told the police that, but they just laughed. There are two police who used to come around the area who harassed us worse than the punters. Then the men wouldn't come up to you if the police were hanging around, but it was safer on the whole. I don't know why they stopped it because it's worse now without the managed area. (Tess, UK, street-based)

Tess discussed not taking forward her (earlier mentioned) claim of sexual violence to the police as she was concerned that the accused could harass her online and cause reputational damage, which could devastate her income: "He could easily go online and say, 'this escort lies about rape'. And then I've got no clients if they do that. So I didn't end

² For more information about the first managed approach in the UK, see here: <https://democracy.leeds.gov.uk/documents/s208220/Managed%20Approach%20Independent%20Review%20Report%20Appendix%20080720.pdf> And here: <https://prostitutescollective.net/tag/leeds/>

up doing the statement” (Tess, UK, street-based). The lack of protection Tess felt a police report would afford her clearly informed her decision-making here.

As has been described in other literature (e.g. Minichiello & Scott, 2014), sex workers reported experiencing incidences of police performing additional, gendered discrimination. There were only six male or trans sex workers interviewed across the project/sites; this smaller group, who responded to the survey also, flagged some essential points around policing and male sex work:

I strongly feel that male escort/sex workers are taken less seriously and are given far fewer resources to deal than females. There are no men’s shelters for abuse victims in this country. There is a clear bias in how cases are taken, reported, and dealt with, which disproportionately affects men. (Survey respondent, UK)

Additional discrimination was felt by Queen whereby she felt additional vulnerability engaging with the police, being a sex-working mother.

I’m speaking from personal experience. You report a crime to the police, rightly. So, they’ll immediately contact Social Services because that’s a vulnerable child. Social Services go, ‘You’re doing what?’ and remove your child. So that is weaponised against us; you will have your children removed from you if you report a crime. Whereas the experience in New Zealand, because people in sex work are acceptable human beings, social workers don’t immediately go, ‘We’re going to remove your child because you’re bad’. They’ll go, ‘Oh okay, so you’re doing sex work, fine’... (Queen, UK, various)

For Queen, even without full criminalisation of sex work in the UK, there is still an experience felt by some that the legislation is perhaps still focused on ending prostitution, not protecting workers. In fact, Queen felt as though “The crime of being a whore is worse than crimes against whores” and that “That’s very much the feeling of if we report a

crime against us". This shows that legislation can have unintended consequences, which might affect sex workers' perception of the law and their trust in formal reporting mechanisms.

Understanding the specific vulnerabilities that may be experienced by sex workers is something that has been noted as being an important element of policing crimes against them (Brown et al., 2024). A recent review of UK specialist police sex worker liaison officers (SWLOs) found that a focus on vulnerabilities over enforcement, and using discretion with regard to whether individuals were considered as victims or offenders, was incredibly important and considered as best practice (Brown et al. 2024). These principles are particularly pertinent in semi- or fully criminalised jurisdictions, where the unknowns around whether sex workers will be afforded victim or offender status is noted as a significant barrier for them in reporting to the police. These uncertainties experienced by sex workers around the police's interpretation of the law contributed to their perceptions that formal reporting is not available for them or it is not in their interest. The unpredictability of laws being enforced, with regard to the feeling that they are responded to differently to those in the sex industry when reporting crimes, was often a well-understood context to which sex workers referred when making decisions around reporting.

Legal and Managed Settings

When asked about interactions with or attitudes about the police, Nevada brothel workers mostly felt that because they were working in licensed brothels and were, therefore, working legally, they would be treated well by the police, and many said that the police would be respectful:

... they [the police] seem to have respect when situations have happened. I haven't experienced a situation like that, to that level, where the police had to come and everything. Incidences of the alarms going off, being a legit situation, are pretty rare. I do feel like in Nevada, where it is legal in the brothels, that we are looked at in a better light. (Jessica, USA, various—experience working independently and in brothels)

In the brothels, because it is legal, so you can file a police report and not get arrested, it's still stigmatised and judged, so some people still might not feel comfortable. But I think it's easier, because you won't get arrested for being a sex worker. (Chrissie, USA, various—experience in brothels)

However, none of the sex workers from the legal brothels that we interviewed had ultimately reported anything to the police:

Everybody should be able to report it to the police if something violent happens to them, and find the perpetrator and all that. But I just know that I personally wouldn't, and that's a shame. And I'm sure most sex workers feel that same way. (Chrissie, USA, various—experience in brothels)

As discussed in Chapter 5, the impact of practical adjustments that could be made in decriminalised settings—for instance, having security in legal brothels—allowed for alternative routes for safety and justice, not involving the police. Security systems and safety processes in brothels (as has been testified for many decades; see Brents & Hausbeck, 2005) provide protection and a quick, direct form of intervention for the incidents that occur in the licensed brothels. Of course, some brothels are more supportive than others and can help sex workers in reporting incidents to the police, as well as implementing their own response measures. Importantly, this affords sex-worker victims with some additional choices, not available in other jurisdictions or work settings. For Chrissie, with experience of working independently and in brothels, her view was clear that “Let's say if I had actually be raped in the brothel, I would have gone to the police”. However, she followed to consider the same scenario in a different setting:

If I was working independently or illegally, and if something happened to me, I'm pretty sure I wouldn't go, I'm almost positive I wouldn't go to the police. I do know that, because I would be too afraid of getting arrested and judged and not believed. ... I just know that I personally wouldn't and that's a shame. (Chrissie, USA, various)

Decriminalised Settings

The attitude of the brothel workers in the Aotearoa New Zealand decriminalised setting was the reverse of that expressed above by the workers in the Nevada brothels. There was a stronger sense of justice and doing the ‘right thing’ in involving the police if harm was done, which was embedded in the workplace norms of the brothel—if not through members of staff, through other workers:

There was one other girl on shift, and then I just said—I can’t remember what I said, but I just said, like, ‘Something has happened. Like, something has happened’. And then she, um, she went up and she talked to him. And at that time, my head was sort of spinning. I couldn’t really think. ... I was like, ‘Should I call the police?’ and the other girl in the room, she was like, ‘Yeah, you should’, like, ‘You should definitely call the police’. But the way the receptionist was talking to me, it felt like I shouldn’t. She was like, ‘I don’t know. It’s, like, up to you’, and stuff, and in that situation, I couldn’t really think for myself. So, they had asked me, ‘What do you want?’ like, ‘What do you want done?’, and I just said, ‘I just want him to leave so I can think’. [Her partner came and] he was like, ‘We’re calling the police’. That’s when I realised we should call the police. ... I told the Chinese lady that ran the house and that I’d rung the police and the police might be coming here. She freaked the fuck out, told me she didn’t want the police to come and she left the building. So yeah, that caused a big fissure in our relationship and I no longer work from that house, because she didn’t want the police there. ... It was absolute bullshit, but it was a real sort of power trip. Like, ‘Oh, if you’re my friend, you don’t bring the police into my house. That’s disrespectful’, and I’m like, ‘No, it’s not. The police are here to help us’. (Talia, ANZ, brothel)

In a contrasting account, Jane recalled how brothel staff had been enabling in their response to her experience of a client breach:

I think our manager said, ‘Do you want me to call the police?’ Yeah, and I said ‘Yes’, and so she did it, yeah ... He did try to leave ... he wasn’t aggressive about it. Like, he did kind of try to step past, but, um, our

manager has a bit of air of respect about her; she calmly told him, ‘You have to stay here’. (Jane, ANZ, brothel)

The brothel workers in Aotearoa New Zealand appeared, then, to have a different attitude to more regularly reporting incidents to the police compared to Nevada brothel workers, despite sex work being licensed and legal in both contexts. We would suggest that the anti-sex-work narrative, and perhaps the context around the criminal justice system more broadly, in the USA negatively affects the belief that sex workers will be protected in the brothels in Nevada. Supporting this assertion, in a quote presented above in the USA (Nevada) context, Chrissie noted that she perceived that the police would treat sex workers respectfully, because “*it* is legal” (emphasis added), and not because she is legal or sex work is accepted.

While the survey reported some feelings of distrust in the police by Aotearoa New Zealand sex workers, they were among the most trustful from all three countries. The Aotearoa New Zealand sex workers we interviewed reported that they understand that the police can be on their side and that the laws to protect them will be implemented: for some, this was a process of gradual realisation; for others, it has always been their perception:

The whole time I have been having sex it has been legal to be a sex worker. So I’ve never understood that fear of going to the police. The whole time I have been employed as a sex worker the police have been there, in my mind’s eye, to help. ... Last year was the first time I ever took any assaults to court or anything. I never reported it or anything ever before. So, I’m proud of myself and glad that I do have something to say, you know, ‘Oh, it does work. You can get a conviction and get some justice’. (Talia, ANZ, brothel)

Talia went on to describe in detail the breach she reported to the police and the conviction that followed:

He knew what my rules were around the practice of safe sex, which includes using condoms and dental dams for oral sex on each other in penetrative, vaginal and oral sex. And he decided that he was going to

ignore my rules and he put his mouth on my vagina without a dental dam. So that's one I have taken to the police and he ended up pleading guilty to indecent assault. Yay. And he got sentenced to six months detention, which is amazing. (Talia, ANZ, brothel)

Talia went on to explain that, in her experience, the police in Aotearoa New Zealand were solely focused on the victimhood of the person and not any other potential misdemeanour that might surround the case:

I was talking with the detective, and he said, 'Well, we don't care about whether you're committing benefit fraud. We're not going to tell IRD [the benefit authorities]. We've got bigger fish to fry. We're not, we don't care about that stuff. We care about whether you're safe'. So, it really needs to be the thing drilled into all of this is that the police are there to keep us safe. (Talia, ANZ, brothel)

Aotearoa New Zealand's sex workers were able to refer to a section in the Prostitution Reform Act that provides special protections for sex workers and that indicates that, even if there is a contract for sexual services, a sex worker can stop contact at any point. This section of the law has proven among the most important for giving sex workers confidence that they can report crimes to the police. As a result, crimes such as removing a condom (stealth), non-payment, and any form of non-consent can be taken to the police. Details of the legislation are discussed further in Chapter 2.

All this being said, it is the case that sex workers recognised the need to be aware of rules of evidence:

I thought because there's a witness involved, we might be able to get justice here. And my thinking around it was 'I don't really care for my own justice, but I'd like to go through the process to see what happens and then set a precedent'. I wanted to set a precedent for the stealth incident, 'cause I went, 'Well this directly breaches the PRA, you know, Section 9, up to 1, 3 and 4'. You know, it's not okay. I screamed at him. The witness saw me screaming. That would make a really solid case. (Carrie, ANZ, independent)

In this way, Carrie demonstrates how being aware of the details of legislation not only helped her at the time of a breach, but gave her additional confidence to report what had happened. Even then, the actual reason for reporting, as is often the case, was not necessarily having laws in place, but the potential for using these laws to protect someone else in the community:

I'm proud of myself and glad that I do have something to say, you know: 'Oh, it does work. You can get a conviction and get some justice.' ... The event that occurred to me, occurred to someone else as well, and I saw that if I do not report what's happened to me as a sex worker from a customer and try and get justice, then it's going to keep happening to these other people... (Talia, ANZ, brothel)

Others expressed that, irrespective of the response from the police, there was a high emotional price to pay for reporting and going through the criminal justice system. Chanelle, for instance, described her reluctance:

I'm not sure if, for me personally, it would help just with my mental health and that sort of thing. If my client was to, like, you know, be prosecuted and to go into prison, that would probably be cool. I'd be like, 'Cool, they can't do that to other people'. They actually do deserve to be there, yes. But does that take away the flashbacks? Does that take away the fact that he did do that? (Chanelle, ANZ, various)

Yet despite the more pronounced understanding of rights and access to justice, this did not dilute the experiences of re-trauma in recounting horrific incidents. The re-victimisation of survivors by the criminal justice system in sexual violence cases has been documented, even from the point of view of police (see Spencer et al., 2024).

As considered earlier in this chapter, speaking out and reporting unwanted sexual contact was seen as protection for other sex workers, especially by Aotearoa New Zealand sex workers. They saw that the law was there to protect them and, as has been discussed, felt a personal obligation, both to prevent other sex workers from experiencing what they

had experienced and to feel that justice had been served. The perpetrator was positioned as responsible and had to answer for their actions. These sex workers felt a sense of pride in standing up to anyone who overstepped their boundaries:

It's not just that he disregarded my safety and my boundaries and the rules I set in that room. It's that he disregarded a legal regulation of the industry I work in. So, it would be the same if you didn't wear a hard hat at a construction site or shit like that. (Talia, ANZ, brothel)

I feel a responsibility as a human to, if that were to ever happen to me again or if something, sexual violence were to happen to me again, to protect other people from having that happen. (Jane, ANZ, brothel)

...because I feel really disgraced that he did what he did and the way it happened; it seemed like he'd done it before... I would feel even worse if I withdrew it and then heard something happened, you know. Not even with the same guy, just to hear something happened to another girl, say at work or something, I would just feel, you know, almost like everyone's got their voice, and then if I withdraw my voice, I could hurt another victim, you know. (Alice, ANZ, various)

Even though no sex workers in any of the jurisdictions had attempted to test whether non-payment could be prosecuted as rape, the context of decriminalisation, again, appeared to support resolution—or at least some form of it in Christine's (ANZ, various) case. Christine recounted a situation where she had been picked up by a client who she argued raped her because he dropped her back on the street without paying her and also, to her dismay, did not put the condom on. As she got out of the car, she “ripped the registration out of the window” and gave it to police officers who happened to be across the road. They intercepted his car on the motorway.

... and they arrested him there and then, but he was saying that he paid me the money and, and done the deed and dropped me off, and I said, ‘No, he didn't pay me the money’... There's a ripped condom packet too, but the condom's still in the packet, and I deliberately dropped it on the floor beside the front seat, and um on the side of the front seat' and they found that too. (Christine, ANZ, various)

The offender was charged and ultimately convicted of rape and sentenced to seven years' imprisonment.

Working in a decriminalised setting allowed for different perceptions of breaches that would otherwise be considered quite common among sex workers. Jane went on to recall that unwanted sexual contact is “not like someone left the heater on all day or, you know, that's not a workplace complaint. That's a human rights issue” (Jane, ANZ, brothel). Of course, those attitudes may still exist in formal and informal settings. Erihapeti (ANZ, independent) reported an assault to the police, and a family member subsequently asked her if that was not something she should expect in her job. She said “that was pretty... like, pulling the knife out on you... Whoa, how out of touch”. However, for the most part, the Aotearoa New Zealand sex workers *themselves* never saw any form of unwanted sexual contact as an occupational hazard.

Court Experiences: What Helps?

We were interested in sex workers' experiences after they reported a crime, and, in particular, what happened once they were involved in the criminal justice system. In the survey, we asked whether people agreed or not with the statement: ‘I have confidence in getting justice if a case is taken to court’. Across all sites, only 12% of respondents agreed with this statement (see Table 6.1). Respondents with the most confidence in court justice came from the UK (18% agreement), very closely followed by those from Aotearoa New Zealand (17% agreement). Overwhelmingly, survey respondents from the USA—both across legalised settings in Nevada brothels and criminalised states—showed the least confidence in attaining justice through the courts, with 4% and 7% agreement respectively. Again, this suggests that those in criminalised states, or even legalised and managed settings which are broadly surrounded by criminalisation (i.e. Nevada brothels), are most alienated from the criminal justice system and less likely to believe that it is there for them to obtain justice through the courts.

No study participants from the USA (whether survey respondent or interviewee) had court experience—a situation that can be explained

by virtue of the fact that, as mentioned earlier, sex work in most states is intensely criminalised.³ In the quasi-criminalised context of the UK, meanwhile, experiences were more varied. Below, we explore some of the participants' experiences in court.

Experiences in UK Courts

It is well known and well documented that, in the UK court context, victims of sexual violence and assault are often treated inadequately. Indeed, the response here on such issues has not kept up with policy, to the extent that Smith and Skinner (2012) suggest that there remain “fundamental inadequacies” in the UK courts. Our interviewees' experiences of the courtroom reflect some of these failings. Interviewees recounted stories of stigma and of being treated differently and unfairly because of the sex-work context in which they experience harms. Even though the UK had the most survey respondents who spoke more positively about getting justice through criminal proceedings, respondents also identified a number of problems that contributed to their negative experiences. Many of them reported problems regarding the healthcare system, connected to gathering forensic evidence for criminal justice investigations. When Emily was violently raped this was her experience in a hospital:

There was one occasion, I had to ask for a test, a swab test because I said the situation, and they were like, ‘Oh okay, right okay, I’ll go and speak to someone, get a doctor to come over’. And they had a look and that but they didn’t do any swabs. I went, ‘Are you not even going to do a test?’ They were like, ‘Yeah, but that’s the kind of job you do’, and I was like, ‘You fucking what?’ Oh, and I had to really keep it cool because I was ready to hit the roof. Yeah, I was fuming; I was like, ‘I want to speak to...’ And I made complaints and everything. But no-one should get treated like that; it’s disgusting. (Emily, UK, various)

³ Other than ten regions in the state of Nevada, the rest of the USA criminalises any sexual services, relationships or organising. See, for example, <https://decriminalizesex.work/advocacy/prostitution-laws-by-state/>

As Emily's experience demonstrates, police investigations can involve medical examinations; and Anna also felt as though healthcare staff were particularly insensitive to her needs after a male client had raped her just hours earlier:

... 'You want a male to go near me after I've just been... What? No mate! See you later'. I think they should make it that rape victims, that it's a female police surgeon because the last thing you want is a male going near you. And then... the officer was, 'Why are you being difficult? They've got other things to be doing; they don't have to be here'. Hang on a minute, 'I don't want to be here mate, I don't have to be here either, yeah? I'm a victim and you want a man to come near me after I've just gone through whatever I've gone through, it ain't gonna happen is it?' Like come on, let's be real, yeah? (Anna, UK, street-based)⁴

Although these experiences were not with police officers or criminal justice staff directly, they were barriers along the pathway of intervention and support—in these cases, the collation of forensic evidence—that should be afforded to all sexual violence victims/survivors.

Further along the criminal justice timeline, those who had gone through the UK court system explained how standing in the witness box was a brutal experience:

The trial was horrible because basically the [perpetrator's defence] made it sound like I wasn't raped, I just weren't paid, do you know what I mean? ... I know it's the [defence's] job but come on, man ... my injuries was horrific. I was raped anally and vaginally. I had stitches anally and so it was obvious that it was a violent rape. It was obvious. I spent three weeks in hospital, like I said. They don't keep you in hospital for nothing, do they? But they still put me in; they rung me through the mill. (Anna, UK, street-based)

⁴ Guidance provided to Sexual Assault Referral Centres in England and Wales does consider the need to be able to offer victim/survivors a choice of gender of the forensic examiner, where it is possible to do so (see National Service Specification for Sexual Assault Referral Centres, p. 33, <https://www.england.nhs.uk/wp-content/uploads/2018/04/PRN00577-national-service-specification-sexual-assault-referral-centres-updated.pdf>). However, this may not always be supported by the necessary staffing at the time of the examination.

This differs from the experiences of non-sex-working victim/survivors because of the defence being able to suggest it is part of the job (an ‘occupational hazard’) and perhaps the only issue is with regard to whether payment occurred or not—and not whether rape occurred or not. However, there were differences in experiences of participants that can be noted. When asked about the evidence-giving process, Tess was relatively positive:

I found it alright. I mean, the only thing when I was going on my interview, is my [support] worker is not allowed in the room with me when I’m getting my interviews to court. But I could have stopped it at any point and I could have gone out to him, so it were alright. (Tess, UK, street-based)

The English Collective of Prostitutes in the UK continually raises awareness of the problems with sex workers accessing justice in rape cases (Elks, 2019). In Anna’s case, her first trial resulted in a hung jury and her second trial resulted in the perpetrator getting a jail sentence. She recounts the prejudice and stigma against sex workers she felt from those members of the jury who did not believe her, even though the jury were shown evidence of visible signs of the injury she had sustained:

[During the first trial (hung jury)] there was no doubt that something happened because of my injuries. But I honestly believe it was people’s perception of working girls that made them say ‘Not guilty’... I’m looking at the jury and it’s like you can just see, just with body language and that, and I’m thinking, ‘You lot need your eyes opening because not everybody lives in that comfortable world’. (Anna, UK, street-based)

There were sex workers who reported on the aspects that made the process better for them, from kind and understanding officers to procedures that made the process easier, such as support workers and various identity protections. Participants described the impact of professionals supporting them through the court process:

...I went to court with [my support worker] and [the support worker] did half the work... (Tess, UK, street-based)

On that occasion, the head officer, she was brilliant. She went out of her way to get in court and I was never doubted whatsoever; she was behind me all the way. (Anna, UK, street-based)

There are, then, some 'take homes' here in terms of better practice, particularly around forensic investigations and where sex workers feel supported in the UK context. Ensuring that support workers, who have a clear focus on the sex worker as the complainant, are present is key, and a practitioner who is not connected to a state criminal justice agency appeared to make a significant difference to the experience.

Experiences in Aotearoa New Zealand Courts

In Aotearoa New Zealand, the interviewees revealed a legal system that protected the victim by mostly keeping their identity out of records and maintaining their anonymity during the trial. One respondent who worked in a brothel explained the different measures that were in place to facilitate her witness statement:

I could [testify] behind a screen, or actually because of Covid, I could have done it just remotely, as a video thing. I could have done it in a different room while being in the courthouse. There was all sorts of different things, um, sort of offered to me. (Talia, ANZ, brothel)

Since New Zealand Prostitutes Collective (NZPC, a sex-worker-led organisation in ANZ) have begun liaising with police, there is a mechanism that is increasingly being used when sex workers are reporting sexual harm crimes against clients. It protects the legal name of the sex worker up until trial. The sex worker still must provide their legal identity to the police; however, when charges are laid, this is redacted in the documents provided to the defence. They provide their legal details for the administration part of their statement, but when they write their statement, they identify themselves as their workname. This way the offender is still able to know who is accusing them of a crime (see Chapter 2).

Unfortunately, this does not apply to charges of harassment or harmful digital communication, as they do not meet the threshold. However, this is often when sex workers are feeling most fearful of their legal identity being known. Also, it runs into problems when charges are reduced. In a recent case relayed to us by NZPC colleagues, the sex worker withdrew her complaint altogether when her sexual harm complaint was reduced to a Section 9 (of the Prostitution Reform Act) charge and it no longer counted as a Category 3 charge, so her legal identity could no longer be redacted. However, if the offender pleads guilty, the sex worker's name is protected from them completely. This is where the legal provisions work effectively. For example, in 2022, there was a case of complaints of intimate visual recording of 14 sex workers (see Osborne, 2022), and, in the same year, a case of a customer receiving a six-month community sentence for not using a dental dam despite clear instructions from the worker. This was considered an indecent assault charge (see Galuszka, 2022). There are laws in Aotearoa New Zealand that enable the protection of the sex worker, which encourages engagement in the criminal justice system; but the nuances of how these laws are applied may create additional barriers for some, even within decriminalised settings.

Conclusion

This chapter has explored sex workers' perceptions and experiences with the criminal justice process across various legislative contexts. We documented accounts of workers who navigated formal reporting processes, highlighting diverse impacts and outcomes. The differences between decriminalised, semi-criminalised, and criminalised settings were considered and recognised as factors influencing sex workers' legal mobilisation. How individuals understand formal law reflects the legal context in which they work. Additionally, their understanding is shaped by how law enforcement and other actors in the criminal justice system interpret the law and perceive sex workers' legal and social standing.

Previous research shows that both sex workers and sexual violence survivors often have negative experiences with criminal justice proceedings, facing victim-blaming and re-traumatisation. When these two

identities overlap (i.e., a sex worker who is also a survivor of sexual violence), the likelihood of seeking formal redress is significantly lower. This chapter specifically explores how different legal contexts affect these perceptions and outcomes for sex workers.

Our survey found varying attitudes towards the criminal justice system and the belief that the police and courts would take their reports seriously. The greatest difference emerged when comparing decriminalised (ANZ) and criminalised (USA) settings. A relatively positive experience with formal law in decriminalised markets, compared to where they could be subject to prosecution in criminalised states, appears to reduce feelings of legal alienation. Their own prior experiences, as well as the experiences of their peers, with the criminal justice process also informed sex workers' perceptions and understanding of formal law and affected their willingness to seek justice formally.

When it came to actually engaging with criminal justice proceedings, only a minority of survey participants reported incidents to the police. Reporting was not more common in decriminalised settings, despite generally more positive attitudes towards these processes. Most of those who did report to the police did so to help protect others. Those who chose not to report cited reasons such as the fear of being criminalised themselves, particularly in the USA.

Additionally, the attitudes of criminal justice professionals and how they responded—often viewing violations against sex workers as merely occupational hazards—affected sex workers' experiences with formal reporting options. Positive experiences were more likely in legal contexts like Aotearoa New Zealand, where the Prostitution Reform Act specifically requires sex-work clients to wear condoms, supporting a more positive response from criminal justice professionals. Conversely, in criminalised contexts, the application of the law against sex workers or a misunderstanding of the law surrounding sex work led to poorer experiences for those who did come forward.

These contextual factors highlight the importance of considering how sex workers' understanding of formal law and their perceived possibilities for legal mobilisation are influenced by the perceptions and attitudes of other actors. These actors include other sex workers, brothel management, the police, various parties connected to the justice system (such as

healthcare providers, jury members, and case workers), as well as general society and representatives of social movements like #MeToo. While sex workers often expressed a willingness to report sexual violence, this rarely led to formal reporting, and seeking formal redress through the criminal justice system was even more uncommon.

Sex workers' willingness to report formally was primarily affected by the legislative context around sex work in their areas and their broader perceptions of the criminal justice process. Their legal mobilisation was also influenced by informal routes for resolution, which were more common in decriminalised settings. Therefore, for those involved in criminal justice processes to better engage with sex workers, they must understand and dismantle the barriers related to the criminalisation of sex workers.

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