

# How crime-based legal regimes shape sexual harm: Sex work, consent and vulnerability

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**Crime-based and carceral legal regimes shape sexual harm by structuring how consent is negotiated, enforced and recognized. Using a social harm framework, this study examines sex work not as an exceptional case but as a critical site for analysing how crime-based governance operates through the interaction of sex work law and sexual violence law to structure vulnerability and access to justice. Drawing on survey data from 483 sex workers and former sex workers and 41 interviews across four legal regimes—criminalization (United States), partial criminalization (Great Britain), legalization (Nevada) and decriminalization (Aotearoa New Zealand)—we analyse negotiations of conditional and dynamic consent. We show that criminalized and partially criminalized regimes do not merely fail to prevent harm; they actively produce it by restricting communication, collective safety and legal redress. Common violations, particularly stealthing and non-payment, are widespread yet routinely misrecognized as legally actionable harm. Decriminalization improves risk management, recognition and access to redress but does not eliminate harm due to enduring limits of crime-based sexual violence law. These findings show how carceral governance narrows legally recognizable harm and shifts responsibility for safety onto individuals.**

**Keywords:** social harm, crime-based governance, sex work law, sexual violence law, consent, conditional consent, dynamic consent, stealthing, non-payment, criminalization, decriminalization, harm reduction, access to justice

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## Introduction

Despite legal reforms, sexual violence law continues to struggle to prevent sexual harm for most people. Reporting rates remain low; prosecution rates are even lower. Legal responses continue to prioritize punishment after the fact, filtering harm through evidentiary standards and sexual norms shaped by racialized, gendered and sexual inequalities that determine whose injuries count and whose are dismissed (Frohmann 1991; Campbell *et al.* 2001; Patterson *et al.* 2009; Walklate *et al.* 2018; Spohn 2020; Lorenz and Jacobsen 2021). In doing so, crime-based laws produce sexual harm by shaping whether consent can be clearly negotiated and enforced.

These limits affect all survivors, but they are most visible where sexual encounters are already legally and socially contested. Sex work has become a central focus of policy debates about sexual violence and vulnerability, particularly as anti-sex trafficking responses expand criminal penalties. Yet law routinely struggles to determine who counts as a victim and who counts as a criminal, even when unwanted sexual contact is clear.

This study uses sex work not as an exceptional case, but as a critical site for examining how crime-based legal approaches produce sexual harm. Using a social harm framework, and drawing on survey data identifying the most common consent violations and interview data examining how sex workers enforce boundaries and seek redress, we compare four legal contexts for sex work law—criminalization (United States), partial criminalization (Great Britain: England, Scotland and Wales), legalization (Nevada, USA) and decriminalization (Aotearoa New Zealand). We show that crime-based law does not simply fail to prevent harm; it actively structures the conditions under which consent can be negotiated, enforced, or recognized.

Using a social harm framework, we examine how law produces sexual vulnerability, rather than merely responding to it. Social harm scholarship shifts attention away from individual wrongdoing and towards the ways states define, recognize and regulate injury through legal categories (Tombs and Hillyard 2008; Pemberton 2016; Pemberton *et al.* 2017; Canning and Tombs 2021; Pemberton *et al.* 2021; Dertadian and Askew 2024). We apply this framework to show how crime-based regimes redistribute risk by constraining consent negotiations, limiting access to protection and excluding common violations such as non-payment and stealthing from meaningful legal redress. Rather than treating sex work as exceptional, the analysis uses it as a site for examining how criminal law structures sexual harm more broadly.

### Crime-based sexual violence law and the limits of consent

By crime-based approaches, we refer to carceral legal frameworks that govern social problems primarily through criminal law and criminal justice institutions rather than labour, civil, or occupational regulation, encompassing diverse rules that vary across jurisdictions. Two intersecting legal regimes shape sex work: laws that regulate or criminalize sex work itself, and criminal laws addressing sexual violence. In this study, we apply the concept of crime-based approaches most directly to sex work law (governing sex work, purchasing sex and its infrastructure), and secondarily to criminal legal responses to sexual violence.

Applied to sexual violence, crime-based approaches define harm through the lens of prosecutable criminal acts. Feminist scholars have shown that anti-violence reforms, including anti-rape and anti-sex trafficking initiatives, mark a broader carceral turn in feminist politics (Bernstein 2012; Terwiel 2020). In this model, protection is pursued through policing, prosecution and incarceration rather than through social, economic, or institutional supports, producing hierarchies of deserving victims and legitimate targets of control (Wacquant 2009; Kim 2018). As a result, sexual violence is addressed primarily through

punishment after the fact, privileging violations that yield recognizable legal evidence such as physical force, injury, or incapacitation. In doing so, crime-based systems implicitly shift responsibility for anticipating and managing sexual risk onto individuals, requiring survivors to avoid harm and conform to credibility standards for violations to be recognized. While sexual violence statutes and case law vary across the United States, Great Britain and New Zealand, criminal legal systems in each rely on evidentiary thresholds and credibility assessments that produce similar patterns of exclusion and attrition (Estrich 1987; Frohmann 1991; Campbell *et al.* 2001; Patterson *et al.* 2009; Walklate *et al.* 2018; Spohn 2020; Lorenz and Jacobsen 2021).

From a social harm perspective, low reporting, charging and conviction rates are systemic consequences of these evidence and credibility filters. In the United States, fewer than one-third of sexual assault victims report to the police (RAINN 2024). In England and Wales, just 2.6% of recorded rapes resulted in a charge in 2023-24 (Flatley 2024; Rape Crisis England & Wales 2024). In Aotearoa New Zealand, most sexual assaults go unreported, and conviction rates remain low, even when cases proceed (Strang 2020; Radio New Zealand 2021). These outcomes reflect how crime-based legal frameworks organize recognition of harm rather than the prevalence or severity of sexual violence itself.

Criminal legal systems also rely on racialized scripts of sexual violence that fail to label harms outside conventional heterosexual or economic contexts. Those perceived as sexually ‘out of place’—including sex workers, LGBTQ people and racialized women—face higher credibility thresholds and greater risk of dismissal (Estrich 1987; Frohmann 1991; Spohn and Holleran 2001; Kutateladze *et al.* 2014; Ritchie 2017; Spohn 2020). These scripts shape not only legal outcomes but survivors’ expectations about whether the law will respond, undermining their likelihood of reporting (Ahrens 2006; Patterson *et al.* 2009; Peleg-Koriat and Klar-Chalamish 2022), and potentially their ability to enforce consent on their own terms.

Consent sits at the centre of this process. For sex workers and non sex workers alike, consent is neither binary nor static; it is often conditional, tied to agreed-upon terms such as condom use, specific sexual acts, STI testing, or economic exchanges, and dynamic, subject to change during an encounter (Popova 2019). A recent scoping review shows that stealthing is widespread, affecting between 7.9% and 43.0% of women and 5.0%–19.0% of men who have sex with men, yet legal recognition remains uneven across jurisdictions (Davis *et al.* 2024). Although many jurisdictions formally recognize conditional and withdrawable consent, crime-based frameworks privilege visible force over communicative violations, leaving harms involving contested communication or adjacent consent less likely to be recognized as legally actionable (Ferzan 2016; Alencar 2021; Jordan and Sommers 2024).

Recent legal developments illustrate this uneven recognition. Parts of Australia since 2021 have reformed consent law to criminalize stealthing. Courts in England, Wales and Aotearoa New Zealand have also begun to treat non-consensual condom removal (stealthing) as a sexual offense, though these cases are recent and inconsistently applied (Assange UKSC 22, Supreme Court of the United Kingdom 2012; R v Campos NZDC 7422 2021, 2021). In the United States, recognition varies by state.

### **Crime-based sex work law and harm production**

Crime-based approaches to sex work law include full criminalization (as in most of the United States) and partial criminalization (as in Great Britain,<sup>1</sup> where selling sex is legal but brothel-keeping, public solicitation and third-party involvement are criminalized).

<sup>1</sup> As of late 2025, the Scottish legislature was debating criminalizing the purchase of sex, but at the time of our interviews sex work laws in all three countries were fundamentally the same along these dimensions.

Crime-based sex work laws further intensify the risk produced by crime-based sexual violence law. In these contexts, harm is not incidental to regulation but a foreseeable outcome of policy choices that prioritize criminal control over labour rights, occupational safety and access to justice. Like non-sex workers, many sex workers avoid reporting harassment or violence due to fear of mistreatment, stigma, exposure, or the belief that perpetrators will not be punished. Where sex work is governed through criminal law, reporting carries additional risks, as sex workers themselves may face arrest, police mistreatment, loss of income, or further criminalization (Amnesty International 2016; Spencer *et al.* 2018; Bowen *et al.* 2021; Stardust *et al.* 2021; Struyf 2023). As a result, sexual violence law may be formally available to sex workers while remaining practically unusable.

In criminalized settings, sexual harm against sex workers is frequently reframed as sex trafficking or exploitation, and consent is typically presumed absent for those classified as victims, while sex workers who fall outside trafficking categories are treated as offenders (Musto 2016; Hamid 2023; Hodgins *et al.* 2023). Cast as protective, carceral anti-trafficking interventions expand criminalization by increasing penalties against third parties (such as security, drivers or managers) and clients, intensifying surveillance, raids and removal, or 'rescues', which leave sex workers less safe and more legally vulnerable (Lerum and Brents 2016; Tripp 2019; Blunt and Wolf 2020; Jones 2022). Policies that criminalize clients target demand, but still maintain criminal oversight of sex work, compress negotiation, displace work into less visible settings, and intensify reliance on informal or hurried consent practices (Krüsi *et al.* 2014; 2016; Kingston and Thomas 2019; McDermid *et al.* 2022; Armstrong *et al.* 2025). In Sweden and similar regimes, immigration enforcement and policing practices often pose greater risks to sex workers than clients themselves, particularly for migrants, despite formal protections for sellers (Vuolajärvi 2019; Vuolajarvi 2023).

Crime-based sex work laws also structure harm by shaping the conditions under which consent can be negotiated and enforced. Restrictions on advertising, communication, collective work and third-party involvement limit sex workers' ability to set boundaries in advance, rely on shared safety strategies, or secure backup when violations occur (Platt *et al.* 2018). These constraints operate unevenly across work settings, including street-based work, independent indoor work in private homes or hotels, and third-party managed workplaces or brothels, but consistently shift responsibility for safety onto individuals. While sex workers develop informal workarounds to mitigate these risks, such strategies remain less protective than formal legal or workplace support and reinforce structural marginalization.

Legal protections are generally stronger in decriminalized settings, where sex work is removed from criminal law and regulated through general labour, health, or planning frameworks, and in legalized settings, where sex work is permitted but confined to licensed venues and subject to specific regulatory controls. Research shows decriminalization reduces harm by removing criminal penalties, enabling collective work, improving access to legal protection and relations with police (Abel *et al.* 2007; Abel 2014; 2019; Armstrong 2017; 2021; 2024; Vanwesenbeeck 2017; Maciotti *et al.* 2023; Armstrong *et al.* 2025). In Nevada's legalized brothel system there is a greater perception of safety (Brents and Hausbeck 2005; Blithe *et al.* 2019).

However, protections for conditional or dynamic consent remain uneven, as some common violations, such as non-consensual condom removal, are frequently regulated through health or workplace codes rather than recognized within sexual assault law, with limited and uneven exceptions discussed below. Non-payment remains even more unevenly addressed. While courts in some jurisdictions, such as Australia, have begun to grapple with fraudulent non-payment, there remains no clear legislative consensus on whether it constitutes sexual assault (Stardust *et al.* 2021: 152).

## Method

This study draws on data from a cross-national study conducted between 2022 and 2023 in four legal environments: Nevada (USA), where brothel-based sex work is legal in rural jurisdictions only; the rest of the United States, where all sex work is criminalized; Great Britain (England, Scotland and Wales), where sex work operates under partial criminalization; and Aotearoa New Zealand, where sex work is decriminalized (Sanders *et al.* 2025). The full study protocol is published elsewhere (Scoular *et al.* 2023). This analysis focuses on survey and interview data from sex workers to examine how legal contexts shape negotiations of conditional and dynamic consent.

The study used a participatory, trauma-informed design consistent with best research practice with marginalized communities (Deering *et al.* 2014; Connelly and Sanders 2020). Sex worker peer researchers and NGO advisors contributed to study design, recruitment, data collection and interpretation. All participating institutions approved the study protocol.

Participants were recruited through social media, sex work platforms, peer organizations and word of mouth. Eligibility required participants to be over 18 and to have sold or exchanged sex in one of the study countries. Recruitment prioritized individuals who had experienced unwanted contact; the sample is therefore not statistically representative. Participants worked across street-based, independent indoor (self-managed) and brothel-based (third-party managed) settings.

The survey included 483 sex workers and former sex workers across the four legal contexts and captured experiences of unwanted sexual contact, consent violations, boundary negotiation, reporting practices and interactions with legal and support institutions. We also conducted 41 semi-structured interviews exploring consent negotiations, boundary enforcement and responses to violations across legal and work environments. Interviews were recorded, transcribed, anonymized and coded using a deductive framework derived from the research questions.

### How law structures conditions for negotiating consent

Our research found that legal frameworks structure how sex workers negotiate consent during interactions with clients. Sex workers typically negotiate terms before sexual encounters begin, including acceptable services, costs, locations, duration and safety practices like condom use. These pre-arranged terms function as conditional consent, establishing boundaries intended to be explicit and non-negotiable once set.

Where sex work takes place—whether street-based, independent (where workers arrange clients themselves), or brothel-based (third-party managed locations)—shapes the practical conditions under which consent is negotiated, including time to communicate, access to backup and exposure to police scrutiny. Sex work laws legally produce these work environments, determining whether consent can be negotiated in advance, backed by workplace rules or legal protection, or managed face-to-face without backup. As a result, law plays a central role in structuring sex workers' vulnerability to consent violations and harm. As Halley explained, reflecting a point made by sex workers across jurisdictions, the ability to refuse services depends on having space, time and safety to do so:

If it's something I don't want to do, I politely tell them and if they refuse, I might just have to pick up my things and leave. (Halley, GB, independent)<sup>2</sup>

<sup>2</sup> For all individuals interviewed, names are pseudonyms. The acronyms GB (Great Britain), ANZ (Aotearoa New Zealand) and USA (United States) indicate the country where participants primarily worked. We also report how participants self-described their primary work arrangement: as independent, self-managed escorts; as working in third parties managed places (such as brothels); or across various or multiple sectors.

While most clients respect boundaries set by sex workers, broader social, cultural and economic factors shape sexual relations, and some clients occasionally try and push boundaries (Krüsi *et al.* 2016; Benoit *et al.* 2018; Armstrong 2019). To counter this, sex workers must establish clear expectations and have strategies for enforcing them. While individual negotiation skills are important, the legal environment fundamentally structures their ability to uphold and defend boundaries. How sex workers can use legal protections to supplement workplace policies, or must navigate consent through informal norms, shared advice, or learned experience directly impacts their ability to uphold and defend their boundaries.

### Negotiating terms before the encounter

Whether consent can be negotiated in advance or only face-to-face depends on how law regulates communication and place. In decriminalized and partially criminalized settings such as New Zealand and Great Britain, sex workers can advertise online and clearly specify services, helping manage clients' expectations and reduce misunderstandings up front. Clients often spend a great deal of time researching workers in advance and the online environment enables this (Sanders *et al.* 2020). For example, Sophia, an independent British worker, describes how her AdlWork (an online advertising web site) profile allows her to specify services upfront:

On my AdlWork profile, there should be no questions for them to ask... 'In a 30-minute booking this is what's included', 'In an hour or more booking this is what's included' and 'In an overnight this is what's included.' (Sophia, GB, independent)

Similarly, Emily explains how explicit online advertising eliminates uncertainty:

I just tell them straight up. Usually, it has it on my advert, if I've got an advert up, it will tell them what I do, don't do, things I might try. And then I'll have the set list of prices as well, so then there's none of that awkwardness. (Emily, GB, various)

In addition to advertising, sex workers in decriminalized and partially criminalized settings also use text-based communication to further negotiate the terms of the contract before meeting a client, reinforcing boundaries and expectations. This pattern is reflected across our interview data. Interview participants in Great Britain described how text-based communication enables boundary setting prior to meeting clients.

A lot of the information is on my online profile, and then there's obviously a little bit of about what they would like to be involved in the session and whether that's something that I want to do ... It's usually text based before meeting, either email or messages on the site or WhatsApp ... It's much easier for me to do things by text. (Paul, GB, independent)

As Abuya explains, the ability to communicate freely with clients allows sex workers to set conditions of consent and reject clients whose requests do not align with their boundaries.

My profile is very detailed, if they call me and ask me things that I don't do, I just hang up. (Abuya, GB, independent)

In contrast, in the United States, where sex work is illegal outside of Nevada's rural legal brothels, online advertising is heavily restricted by laws criminalizing soliciting and platforms that knowingly advertise sexual services. This makes it difficult, if not impossible, for sex workers to specify services, prices, or boundaries in advertisements. Doing so could be seen as evidence of illegal prostitution. As a result, many sex workers

in the United States are forced to negotiate boundaries in person, under riskier circumstances.

Since it's not legal to sell sex, I don't allow any discussion of what I will or won't do, but I don't allow clients to do just whatever they want. (Survey respondent, USA)  
I don't like to list my services. It's incriminating. (Survey respondent, USA)

Cody said that she tried to imply services on her website without being too explicit, but ultimately, she had to rely on face-to-face negotiations:

I'd really wait until we're face to face to negotiate specific boundaries. (Cody, USA, independent)

For street-based workers in both Great Britain and United States, the criminalization of public space directly limits the possibility of conditional consent by compressing negotiation into hurried, surveilled encounters. Extended conversations about boundaries or payment can attract police attention, making it difficult to establish clear terms for conditional consent or ensure agreement on services and payment securely before an encounter begins. These differences in timing, setting and security are not simply matters of personal preference, venue or work style; they reflect how crime-based legal frameworks redistribute risk onto sex workers by limiting when, where, and how consent can be clearly negotiated, increasing exposure to boundary violations.

### **Negotiating consent during services**

In addition to conditional consent, sex workers, like non-sex workers, also practice dynamic consent, adjusting the terms of consent during the service. These adjustments often respond not always to preferred boundaries, but to external pressures, such as economic need, safety concerns, or job security. Whether dynamic consent can be exercised in practice depends on factors structured by sex work law, including the work setting, access to backup, exit options and if there are enforceable workplace rules. Across all jurisdictions, sex workers described navigating financial vulnerability, client relationships and safety when enforcing boundaries in real time (Sanders 2004; Blackstone *et al.* 2009; Krüsi *et al.* 2012; Sanders *et al.* 2025). In criminalized and some partially criminalized settings sex workers manage these negotiations alone, making them more vulnerable to coercion, exploitation and harm. These decisions unfold within legal and power structures that the criminal justice system rarely recognizes or recognizes in ways that recreate stereotypes and credibility biases.

For example, Linda (GB) described how her friend sometimes tolerated consent violations due to financial pressures and health concerns related to substance use. Paul, a trans-male sex worker (GB, independent), explained that the precarity of his work shaped his decision-making, as losing a regular client could have long-term economic consequences:

... someone who just didn't put [the condom] on ... I didn't want to disrupt the relationship because regular clients are like gold. (Paul, GB, independent)

The physical size or demeanour of clients also plays a role in enforcement. Sophia, a GB worker, noted that the ability to refuse clients' demands was sometimes impossible due to physical intimidation:

If I've got a man saying, 'No, I'm not wearing it' and he's massive, I'm just going to do it because there's nothing I can do. (Sophia, GB, independent)

Workplace conditions, shaped by sex work law and access to legal workplaces, further shaped consent practices, particularly for sex workers with fewer economic options. Chrissie (US, various) reflecting on her work in a legal brothel observed that financial instability forced some workers in other venues to compromise boundaries out of necessity, rather than choice.

I have seen a lot of girls where they're afraid to be direct because they don't want to lose out on the money. And now at the same time I understand. I feel like I'm pretty privileged. I'm able to have firm and clear boundaries, whereas if you're working on the street or really barely scraping by, your boundaries might be more fluid. Not because you want them to be, but because they have to be. (Chrissie, US, various)

Where legal or workplace safeguards are absent or weak, sex workers face greater exposure to economic and sexual harm.

### **Learning consent practices through peer networks**

In addition to tools like advertising, sex workers also learn negotiation and consent practices through peer networks and advice from other sex workers. Many of the sex workers we interviewed emphasized that their ability to set boundaries and negotiate consent was shaped by these peer connections. However, the legal environment directly impacts their ability to engage with others in the industry, influencing whether they can share strategies, access support, or are left to navigate consent alone. When laws restrict communication or shared workspaces between sex workers, they do not just criminalize interactions, they actively undermine workers' ability to develop skills for enforcing consent, increasing vulnerability to harm (Atchison *et al.* 2015).

In Great Britain and the United States (excluding Nevada's legal brothels), legal restrictions limit sex workers' ability to work collectively. Although selling sex is legal in Great Britain, laws against brothel-keeping and third-party involvement limit shared indoor workspaces, shaping how consent is negotiated and enforced. But sex workers in Great Britain, as noted above, are still able to advertise and communicate online and through sex worker-run platforms such as Ugly Mugs, allowing them to share advice and learn from each other. Such communication is far more challenging in the United States. Laws criminalizing solicitation are further compounded by FOSTA/SESTA, a US law passed in 2018 intending to combat sex trafficking by making online platforms liable for promoting and facilitating sex trafficking. It also created a new federal crime promotion or facilitation of prostitution. The law in practice has resulted in platforms restricting most all online communication around sex work, making even basic interactions between sex workers legally risky or outright criminalized. In criminalized settings, the lack of formal and informal support leaves many sex workers relying solely on personal experience to learn how to assert boundaries and mitigate risk.

Many US independent workers said that they had no communication with other sex workers and learned on the job through 'trial and error'. Nancy (USA) described initially believing she had to comply with client demands before learning to assert themselves:

In my early years I was unable to tell somebody that certain things weren't okay, I wasn't able to voice myself. But in later years I basically verbally tell people upfront, 'X, Y and Z is okay, this is not'. (Nancy, USA, independent)

Cody, who worked independently for five or six years before connecting with the sex worker community, described the impact of finding peer support:

Many of the women ... taught me about more formal types of screening and that there were blacklists you can join. That was astounding to me. I had no idea. (Cody, USA, independent)

Abigail echoed her reliance on experience. She also highlighted how legal and workplace constraints intersect with cultural norms about gender shape the ways women learn, or fail to learn, how to assert themselves in sexual encounters.

I think you learn through experience how to gauge clients in the bar, and how they're going to interact once you get them behind closed doors, and I hadn't really learned that yet. Even just as women in general, I don't think we really—I don't know how to finish that sentence ... And we've been taught since childhood that we need to be the responsible ones and things are our fault. (Abigail, USA, Nevada legal brothel)

In contrast, sex workers in Great Britain, where selling sexual services is legal under certain conditions, can form support groups to communicate openly, even if they cannot work collectively. Queen, a Great Britain worker, explained:

Like at the start, when I first did the job, I did stuff that was gross and it was only being around other women [that helped me understand I could set boundaries]... That's why we need to be able to communicate with each other. (Queen, GB, various)

In Great Britain, peer-based safety systems such as local and national Ugly Mugs schemes provide an additional mechanism for sharing information about dangerous clients and consent violations. While these schemes can improve short-term safety and information sharing, they operate outside formal legal protection and depend on voluntary participation, reflecting the limited institutional support available under partial criminalization. These peer-based strategies in criminalized and partially criminalized settings function as harm mitigation under constraint, rather than as substitutes for legal or workplace protection.

In decriminalized New Zealand, by contrast, peer networks operate alongside legal protections, enabling sex workers to share best practices without fear of legal repercussions. Under Aotearoa New Zealand law, up to four individuals can operate together as a small, owner-operated brothel (SOOB) without any additional licensing, provided everyone manages their own earnings. This arrangement enables independent sex workers to work from their own home or rented premises creating opportunities to learn from each other.

In addition, the NZPC (Aotearoa New Zealand Sex Workers Collective) plays a crucial role in formalizing peer support. Founded in 1987 and run by sex workers, the NZPC publishes *Stepping Forward*, a guide for new workers on managing clients, assessing risk and navigating sex work. It also provides support with housing, employment transitions, and legal claims against employers or clients, and assists survivors of sexual assault in navigating social services, police, courts and the Disputes Tribunal (Healy *et al.* 2010; Radačić 2017). Funded through government healthcare grants and independent revenue, the NZPC illustrates how decriminalization enables peer support to function as an integrated part of legal and social protection rather than a compensatory workaround.

## **Workspaces, workplace rules and institutionalizing consent**

Working collectively, as permitted by sex work laws, institutionalizes consent practices by providing a more supportive environment and reduces exposure to violence (Pyett and Warr 1997; 1999; Brents and Hausbeck 2005; Perkins and Lovejoy 2007; Sanders and Campbell 2007; Krüsi *et al.* 2012; Goldenberg *et al.* 2015). In legal brothel settings, such as those in rural Nevada and New Zealand, workplace policies further support consent by providing a formal structure that sex workers can use to set and maintain boundaries, backed by management if conflicts arise.

The information from our managers was so helpful that we all learned ways, and even off the other girls, sharing our techniques and stuff to manage that better. (Jane, ANZ, brothel)

When I got here, being brand new, my madam walked me through the entire process from when a client walks into the bar, to when you negotiate, to when you go back to the bedroom, to when you walk them back out. Everything was discussed and trained. And then the madam will set you up with a big sister, which is a more experienced working lady, and then she'll shadow you for your first two weeks or so to even come into negotiation with you to show you how the seasoned girls do it. (Abigail, USA, Nevada legal brothel)

In contrast, US sex workers outside brothels face the challenge of enforcing boundaries on their own. For example, Chrissie, a US worker, described the added difficulty of reporting or seeking backup in a criminalized setting:

There was really nowhere to report... You're breaking the law with what you're doing. You're not going to want to go to the law for help. (Chrissie, USA, various)

Workers in legal brothels and decriminalized settings can draw on both legal protections and workplace culture to reinforce their power in negotiations, using the possibility of reporting, sanctions, or even legal consequences to deter boundary violations, even when formal enforcement is never pursued. Across street-based, independent indoor and brothel settings, legal frameworks shape where consent can be negotiated, how much time is available and what enforcement mechanisms exist. By contrast, sex workers in criminalized environments must rely primarily on personal negotiation skills and informal peer support, increasing their vulnerability to consent violations. These contrasts show that legal frameworks shape not only where sex work occurs, but whether consent negotiations are supported by collective norms and institutional backing or left to individuals to manage alone, an arrangement that systematically increases vulnerability to harm.

## **How the law misses common consent violations**

Sex work law not only structures sex workers' ability to negotiate consent but also determines whether they have any recourse to the legal system when those boundaries are violated. Many of the most common violations sex workers experience are not legally recognized or are treated inconsistently, reflecting how legal definitions of consent intersect with the criminalization and regulation of sex work. These legal conditions create systematic barriers to justice, reinforcing social harm by limiting sex workers' ability to report, seek redress, or prevent future violations.

Combined with crime-based sexual violence laws, sex work criminalization further organizes sexual harm through an implicit hierarchy of seriousness, prioritizing violations involving physical force, injury, or incapacitation. The violations sex workers most com-

monly experience, such as stealthing and non-payment, are either not defined as crimes or relegated to the margins of legal recognition.

As noted above, while most clients respect the boundaries of consent set by sex workers, breaches do occur. Survey respondents reported violations including engaging in acts (1) explicitly prohibited prior to the booking; (2) not formally discussed prior to services; or (3) not seeking consent during services. Of those respondents who reported a violation in the last 12 months, incidents included a person not stopping when having been asked or told (49%, 222 out of 483 who responded to that question) which could have also included unwanted penetration by a finger or object (70%, 231 of 331) and/or a penis (54%, 241 of 449), threatened or harassed into sex (33%, 152 of 458), or physically assaulted them (32%, 144 of 451). Some of these reports combine multiple violations, but a minority of respondents ranging between 10% and 25% described these incidents as occurring more than once in the last twelve months. The sections that follow trace how different forms of consent violation, ranging from physical assault to stealthing and non-payment, are positioned differently within this legal hierarchy, with significant consequences for sex workers' access to recognition and redress.

### **Physical assault and the hierarchy of violence**

Even when violations meet the legal criteria for sexual assault under criminal law, such as physical injury or incapacitation, many sex workers do not report these incidents, especially in criminalized contexts. Hospitals or healthcare providers file reports when sex workers seek medical care. In decriminalized settings, participants in this study were more likely to describe instances of police action, whereas participants in criminalized contexts overwhelmingly described inaction or dismissal. Cody (USA, independent) described an incident where she was drugged, and gang raped when she first started working as an independent escort. She never reported this because, as she said,

It was definitely one of those messy situations where I would never have been considered the perfect victim in order to pursue any legal recourse. (Cody, USA, independent)

Others echoed how law enforcement made the situation worse.

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)

Research finds that police can also perpetrate physical and sexual assault ([Williamson et al. 2007](#); [Simić and Rhodes 2009](#); [Shannon and Csete 2010](#); [Deering et al. 2014](#)). As Cody went on to say,

I've experienced state violence from police who sexually assaulted me and then took my money...I have friends who have had experiences with law enforcement that were even worse than that and I'm like, oh wow I got off easy which is despicable but that is where we're at. (Cody, USA, independent)

While sex workers in partially criminalized settings sometimes reported successful interactions with law enforcement, these cases were rare and often depended on extreme levels

of violence. One worker from England described a brutal attack in which her stalker left her for dead in a parking lot. Even in such extreme circumstances, her first trial resulted in a hung jury, and it was only after a second trial that the perpetrator received two life sentences.

These accounts demonstrate that criminalized and partially criminalized legal frameworks not only fail to protect sex workers but actively create conditions where reporting is seen as more dangerous than silence.

### **Stealthing and conditional consent**

Stealthing, the non-consensual removal of a condom during sex, is a common violation for sex workers. While some jurisdictions have begun classifying stealthing as sexual assault, in most criminalized and partially criminalized settings, sex workers have little recourse when it happens to them.

Across all sites, 43% (196 of 451) of survey respondents who experienced an incident indicated clients removed condoms at least once in the past year. Sex workers view stealthing as a serious violation because it not only exposes them to STIs, threatening both their health and ability to work safely, but also directly breaches the boundaries they establish with clients.

In criminalized contexts, where sex work itself is illegal or heavily policed, criminal sexual assault law is rarely perceived as usable, even when consent has clearly been violated. Cody (USA, independent), for example, said of a stealthing incident,

I tried to report it to the police, and they laughed at me and said, 'What did you expect?' From that point on, I chose not to pursue any sort of institutional assistance. (Cody, USA, independent)

Even in partially criminalized jurisdictions where stealthing is increasingly a criminal offense, enforcement is rare and sex workers cannot rely on the legal system for protection consistently and so must rely on their own skills.

There's nothing you can do. I've had it where the client's tried and gone in without the condom, and I've said, 'Put this on.' [They say, ] 'Oh no, just leave that.' And I'm like, 'No, you need to put it on or I'll leave.' And they've already paid you, so they don't want you to leave because they know they're not getting their money back. So that's all you can do, really. (Sophia, GB, independent)

Paul, who previously described tolerating a regular client's refusal to wear a condom to avoid losing his business, later reflected on how he ultimately considered the experience to be sexual violence. Yet, he also recognized that reporting it was not an option.

I already have come to terms with the fact that if any sexual violence does happen, I'm not going to be going to the police over it, because I just know that it's not going to work out in my favour. They're going to dredge up as much stuff as they can, and I just don't want to have that stress and hassle. So, if something does happen, I'm just going to have to get over it. (Paul, GB, independent)

Paul's experience underscores how legal inaction and systemic neglect create conditions where sex workers must tolerate violations rather than seek justice. In criminalized and partially criminalized settings, the combined impact of sex work and sexual assault laws

forces sex workers into situations where they must choose between financial security and bodily autonomy, with no meaningful recourse.

In the decriminalized and legalized settings we examined, stealthing is most often addressed through sex work health and safety regulations or workplace enforcement mechanisms rather than as a consent violation in sexual assault law. In Aotearoa New Zealand, where sex work is decriminalized, Section 9 of the Prostitution Reform Act mandates condom use. Breaches are typically enforced through criminal courts as regulatory offences carrying a financial penalty with legal responsibility attached to both the sex worker and the client (Prostitution Reform Act 2003; Abel 2014). As a result, reporting remains uneven. Some sex workers described hesitating to report stealthing because police involvement still felt risky, including concerns that they themselves might be scrutinized for non-compliance.

In Nevada's legal brothels, state health codes similarly mandate condom use, but responsibility for enforcement rests with brothel management. No brothel workers in our survey reported stealthing occurring within brothels (see also Brents *et al.* 2009), suggesting that institutionalized workplace enforcement can prevent some violations, even if not part of sexual assault law.

While health and workplace regulations remain the most common way of addressing stealthing in decriminalized settings, criminal sexual assault law has begun to recognize conditional consent violations in some cases. In Aotearoa New Zealand the landmark case, *R v Campos* ([2021] NZDC 7422) established that a sex worker's consent was conditional on condom use, resulting in a criminal conviction and reinforcing the legal recognition of conditional consent. As one participant explained:

I was working and they decided to take the condom off, even though I'd previously let them know that's not something I was interested in. Yeah, and so went to court for all of that and he's now a convicted rapist. (Jane, ANZ, brothel)

Talia, another New Zealand worker, described how she pursued charges after a client ignored her rules and violated her consent:

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, um, he ended up pleading guilty to indecent assault. (Talia, ANZ, brothel)

### **Non-payment as sexual and economic harm**

It is not just stealthing that sex workers experience as a serious violation; non-payment is also a significant harm that is rarely recognized under sexual assault law and inconsistently addressed through general criminal fraud or theft statutes. In our survey, 47% (224 out of 470) of individuals surveyed felt that non-payment should be considered rape or sexual assault. Around one-third (153 out of 479) categorized it as fraud, theft, or breach of contract.

Survey responses underscore the frequency of non-payment as a violation: 75.6% of sex workers (365 out of 483) who reported experiencing an incident identified payment problems as a serious harm. Despite this prevalence, non-payment remains largely unrecognized in most legal systems. Many described the experience as more than a financial loss, instead framing it as a direct violation of their boundaries—one that undermines their ability to define and enforce consent in their work.

Cody, an independent US worker, reflects on how non-payment, like stealthing, constitutes a violation of conditional consent but remains legally unrecognized:

I definitely have experienced things that fit under a penal or criminal statute. I've experienced types of harm that don't really fit into any category. But among those things definitely is sexual violence. The most direct definition is a physical violation of my sexual boundaries. But, also, I see stealthing on here and then the denial of your conditional consent, which is payment, I've experienced that as well. (Cody, USA, independent)

The absence of enforcement reinforces power imbalances, leaving sex workers vulnerable to economic exploitation, which many explicitly frame as a form 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. (Halley, GB, independent)

Harrison, also working independently in England, described how a client's refusal to pay crossed into sexual violence:

So that was violence, the only one. I was like, 'No, you don't short-change me; I will say that I was raped'. Well, actually, that was actually sexual violence, at that moment. (Harrison, GB, independent)

In decriminalized contexts, such as Aotearoa New Zealand, non-payment may be addressed through general criminal law mechanisms, and sex workers sometimes receive police support in recovering unpaid wages. Hunu, a street-based worker in New Zealand, shared how she involved law enforcement to recover unpaid wages:

I did call the police on him, and I got them to come up actually to the ATM and I was like, 'No, motherfucker, you get my money out'... (Hunu, ANZ, street-based)

She added that the officers were validating and supportive of her experience, with one officer even telling the client, 'No, dude, like you can't expect her to fucking make you come and then not like pay her. What the hell? And then give her some more money. What the fuck?'

Hunu added:

She was like, 'Why don't you give her tip while you're at it?' You know? I was like, 'Fucking hell. Wow, you're awesome. I've never met anyone like you'. (Hunu, ANZ, street-based)

Christine, another New Zealand worker, was able to use evidence collection to successfully secure a conviction—an outcome unimaginable in criminalized settings. With this evidence and witness statements, the client was convicted and sentenced to seven years in prison.

By contrast, in criminalized or partially criminalized contexts, sex workers often avoid reporting non-payment to the police, fearing dismissal or further victimization. Many worry that their experiences will be framed as occupational hazards—violations that are expected and unworthy of legal action. In these environments, sex workers are effectively excluded from both sexual assault law and any economic remedy through criminal theft and fraud laws. From a social harm perspective, this exclusion shifts the costs of sexual and economic exploitation onto individuals, normalizing non-payment as an occupational risk rather than recognizing it as a legally produced harm.

## Conclusions

This study shows that crime-based carceral legal approaches do not merely fail to protect sex workers from sexual harm; they actively produce the conditions under which harm occurs and goes unaddressed. In short, crime-based approaches create the very violence they seek to prevent. Across criminalized, partially criminalized, legalized, and decriminalized contexts, sex work law shapes whether sex workers can negotiate consent in advance, rely on collective or workplace support, invoke the law during negotiations, or seek redress without risking punishment. Governing sex work through criminal law redistributes risk onto individuals by narrowing what counts as legally recognizable injury and limiting access to protection in everyday sexual and economic interactions.

Consent is central to this process. Our findings show that consent is not only an interpersonal practice but a legally produced capacity. Conditional and dynamic consent—agreements contingent on condom use, specific acts, payment, or the ability to withdraw—are routine features of sex work. Yet crime-based legal frameworks routinely fail to recognize these forms of consent when sex is exchanged for money. Stealthing and non-payment are among the most commonly reported harms in our data, but they remain systematically misrecognized because sex work law renders them ambiguous, non-criminal, or illegible as harm. As a result, sex workers are often forced to manage violations through silence, accommodation or informal strategies rather than enforceable legal remedies.

Comparative analysis shows that legal context matters. In fully criminalized settings, sex workers face the greatest constraints on communication, advance negotiation and reporting, alongside heightened surveillance and isolation. Partially criminalized systems permit some boundary-setting but continue to restrict collective work and third-party support, leaving criminal legal remedies largely unusable in practice. Legalized regimes, such as Nevada's legal brothel system, provide greater institutional support for consent through workplace rules, but enforcement remains contingent on management discretion rather than legal right, particularly where sex work outside licensed venues remains criminalized.

Decriminalization, as in Aotearoa New Zealand, provides the strongest support for consent by removing criminal penalties, enabling collective work and allowing sex workers to pursue redress without fear of prosecution. At the same time, ongoing stigma and uneven enforcement mean that decriminalization reduces harm without eliminating it entirely, a pattern consistent with broader research on sexual violence beyond sex work.

These findings have direct implications for policy debates on sex trafficking and violence prevention. Crime-based approaches often presume that sex workers lack the capacity to negotiate consent or protect themselves, justifying interventions based on rescue, surveillance and arrest. Our evidence challenges this assumption. Across legal contexts, sex workers actively negotiate boundaries, assess risk and develop strategies to prevent harm. What varies is not sex workers' agency, but whether the law enables or undermines it. Criminalizing clients and third parties restricts communication, collective safety and access to legal protection, disabling the very practices that reduce vulnerability.

Recent scholarship on sexual violence calls for alternatives to punitive, carceral systems, emphasizing harm prevention, survivor support and structural change over criminalization. Often framed within transformative and restorative approaches to justice, this work argues that reducing harm requires changing the legal and institutional conditions that produce vulnerability rather than relying on punishment after the fact. Our findings extend this literature by showing that such approaches cannot succeed where sex work remains governed through crime-based frameworks. Applied to sex work policy, these perspectives underscore how criminalization undermines the very conditions—negotiation, safety and

access to redress—that sexual violence reforms seek to strengthen (Kim 2018; Gruber 2020; Terwiel 2020).

From a social harm perspective, the central question is not whether sex work is morally acceptable, but whether legal frameworks reduce or reproduce harm. This study shows that crime-based approaches increase sexual and economic vulnerability by shifting risk onto sex workers and narrowing which injuries the law is willing to recognize. Laws that rely on punishment to protect selected groups make it harder for most individuals to negotiate consent, enforce boundaries and seek redress on their own terms. By contrast, legal frameworks that support negotiation, collective safety and access to justice offer a more effective route to reducing sexual harm, regardless of one's normative position on sex work.

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