

## A provisional framework for analyzing laws and policies that affect sex workers†

***Overarching comments to consider in relation to all frameworks:***

- What is the overall intent behind the law as well as the substance of the law (in contrast to actual enforcement of law)?
- How does HIV or fear of HIV impact these different legal frameworks and the implementation and/or enforcement of the law?
- Frameworks penalizing sex work are not discrete and intersect in many ways. It is necessary to look at the interplay between formal criminal law and administrative/ entertainment law, particularly the impact of local and municipal regulations. Local accountability and local participation of people in sex work is critical

Legal Frameworks	Definition	Examples	Questions	Notes/comments
<p><b>Prohibition/partial prohibition</b> (often associated with the ‘abolitionist’ position)</p>	<p>Criminalization of the purchase and/or sale of sexual services and or associated activities.</p> <p>Most common contemporary legislative response to prostitution</p> <p>Often targets more public and visible forms of sex work (e.g. street-based sex work, brothels) and is often selectively enforced.</p>	<p>- The “Swedish model”: partial prohibition model implemented in 1998, which criminalizes purchasing but not selling of sexual services.**</p> <p>- Canadian law does not prohibit the act of prostitution, but criminalizes all activities and behavior related to prostitution (i.e. it is illegal to “live on the avails” of prostitution).</p> <p>- In NY State, prostitution is considered a Class B Misdemeanor. Article 230 (NYSCL) states that a person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Promoting prostitution and patronizing a prostitute are also criminalized under NY State Law. These offenses are classified as misdemeanors or felonies, depending on various criteria (i.e. age of person engaging or offering to engage in sex for fee; other criminal actions associated etc.)</p>	<p>*what specific act(s) are addressed by the law (sex for money, the offer/agreement of sex for money, moving publicly to offer sex for money, facilitating sex for money, coercing sex for money, etc.)</p> <p>*which persons engaged in those acts are addressed in the law (person offering sex, person offering fee for sex [also, is gender of buyer or seller specified?], other persons connected to those acts, e.g. running premises, relation to earnings etc.)</p> <p>*what do police need for evidence of a crime? How do they obtain such evidence?</p> <p>*who can be charged with “living off the earnings” of prostitution?</p>	<p>- It is important to understand that structures of “partial prohibition” in practice still result in sex work being fully penalized but under variable formal systems.</p> <p>- Criminal prostitution law overlaps with other types of law (i.e. anti- nuisance law) to further criminalize sex work</p>

<p><b>De-criminalization/ partial decriminalization</b></p>	<p>Refers to the removal of criminal penalties applying to (adult) sex work.</p> <p>De-criminalization may be partial wherein some forms of sexual services are decriminalized (i.e. escort, home, or brothel based work) and other remain criminalized.</p> <p>Under de-criminalization, regulation of sexual services then often moves to the local or municipal level, frequently through a nexus of non-prostitution specific law and codes such as liquor licensing, hygiene, public nuisance, labor law, entertainment venues, taxation, etc. as well as prostitution specific law and policies.</p>	<p>The Netherlands, New Zealand, parts of Australia, and Germany all utilize a decriminalization model.</p> <p>In the Netherlands, the objective is a rules-based control of prostitution. Prostitution is a legal activity in sex clubs, behind “display windows”, in hotels, in bars, as escort services, and on the streets. Regulation of prostitution is considered a municipal affair.</p> <p>**Some anti-prostitution advocates refer to the Swedish model as a “de-criminalization model”, but in the context of this chart’s understanding of de-criminalization, this label does not fit.</p>	<p>*does decriminalization adequately address the question of protection for under-aged, non-resident, or trafficked sex workers? (e.g. in the Netherlands, non EU nationals cannot by law practice sex work)</p> <p>*what are the implications of decriminalization structures implementing criminal provisions against forced prostitution and trafficking, but neglecting to institute a formal recognition of voluntary adult sex work as a legitimate form of labor?</p>	<p>- Many argue that decriminalization reduces covert sex work and increases sex workers’ ability to seek redress for labor and/or rights violations, but need to pay attention to the <i>local context</i> and <i>specific ways</i> in which sex work regulation occurs under decrim regimes.</p> <p>- As in the Netherlands, decriminalization allows for variation according to local laws, politics, etc. In some cases, decriminalization may or may not fit with the creation of an occupational category, and it may or may not intersect with other structures that govern work environment/ health benefits, or enforce other legal rights of sex workers, e.g. rights of contract, safety etc).</p>
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<p><b>Legalization, including state regulation</b></p>	<p>Government control and oversight of the sex sector where specific acts are legal under certain specified conditions.</p> <p>State institutes varied measures of control to regulate the sale and purchase of sexual services and the practices of individual workers (primarily health/STI status), premises, or brothel owners.</p> <p>Often includes state revenue interest in the sex sector</p>	<p>State regulation and licensing are common methods of legalization. Regulation implies strict surveillance and oversight over prostitution within limited circumstances (i.e. control over number and type of establishments, control over individual workers through mandatory monthly STI/other screenings, licensing or registration of individual workers and/or worksites with a state authority). May also include government enforcement of workplace conditions and adherence to public health guidelines.</p> <p>Senegal: In an effort to stem the spread of STIs, the state legalized prostitution in 1969 and requires all sex workers to register with the government (women must be over 21). All registered sex workers are required to receive monthly check-ups at specialized health centers where they can also receive condoms, STI education, contraception, and prescriptions for medication. If sex workers do not comply with these requirements, their registration cards may be revoked.</p>	<p>*who/what actor determines the circumstances under which a person can sell or buy sex? [government prohibits, government licenses, person engaged determines....]</p> <p>*important to consider the ways in which regulation of the workplace impedes workers' rights (i.e. in whose interest is the law claiming to act? What evidence supports or contradicts this claim? Are the people most affected key decision-makers in the legal regime?)</p> <p>*what about the welfare of individuals who don't/ can't participate in the licensing/registration regime, particularly street-based, non-nationals, or under-age workers?</p>	<p>- Other types of regulation often co-exist with the regulation of prostitution (i.e. building codes, liquor licenses, massage laws, taxation systems, public nuisance) which function as another site of state intervention into the lives of people who buy or sell sex, since many women move between work in "entertainment" and sex establishments. These different types of regulatory regimes often complicate the legal and financial status of persons in sex work, and complicate efforts to reduce the impact of the law (in most cases, not enough just to decriminalize prostitution).</p> <p>- Some countries debate the involvement of government in specific approval (or disapproval) of the sale of sex</p>
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<p><b>Non-prosecution/ suspension of arrests</b> (sometimes called pragmatic or selective enforcement)</p>	<p>Refers to a policy decision, not enshrined in law, functioning as guidance to not arrest or prosecute under prostitution law or other policies, absent evidence of other crimes or violence (i.e. under-age prostitution, forced prostitution).</p>	<p>In Thailand, prostitution is criminalized but the government simultaneously enacts strict health codes for brothels and sex workers.</p> <p>The implementation of the Thai government-sponsored 100% condom program exemplifies a pragmatic approach to enforcement. The program requires that condoms be used in all brothel-based sex acts and includes monthly screening and management of STIs among female sex workers, a media campaign directed at male clients, and free access to condoms in sex establishments. Sex establishment owners not in compliance are subject to sanctions, while the law against prostitution remains in place.</p>	<p>*how strong are the structures that oversee the implementation of this policy? To whom are they accountable?</p> <p>*how do governments benefit (i.e. financially) from this type of selective enforcement of prostitution law?</p>	<p>- Local discretion may be variable, thus requiring effective oversight to ensure police accountability</p>
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