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# SESTA/FOSTA as de Facto Hate Policy: Combatting Carceral Investments and Uplifting Community-Based Solutions

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## Abstract

**Introduction** Sex workers overlap demographically with individuals who are pushed into informal economies due to their marginalized identities. Although policies increasing the criminalization of sex work are not regarded as hate politics, we argue that these policies are de facto hate policies against LGBTQ+ communities and other marginalized groups.

**Methods** We utilize a literature review of nine empirical studies (2018–2023) on the effects of SESTA/FOSTA, a sex worker hate policy, as well as 25 interviews from a 2022 community-based study on the effects of California Senate Bill 233 (SB233), which decriminalized condom possession.

**Results** SESTA/FOSTA harmed sex workers by reducing their income, restricting access to safety and screening resources, increasing the risk of exploitation and violence, and removing online spaces for community building and political organizing. Moreover, marginalized sex workers felt these effects most keenly. The SB233 interviews further revealed that condom possession was utilized as a means for law enforcement to harass trans women through pervasive harassment, deadnaming, and forcing sexual encounters with the threat of violence and jail time.

**Conclusions** SESTA/FOSTA reveals how policies increasing the criminalization of sex workers also hate policies against marginalized groups. However, policies reducing the criminalization of sex workers, such as SB233, may be ineffective without community involvement. For this reason, we recommend community-based policies like SB357, which repealed loitering with intent.

**Policy Implications** Hate politics increase carceral investments, leading to police harassment and surveillance of marginalized groups. We recommend community-led policy suggestions as an alternative.

**Keywords** Sex work · Criminalization · Community engagement · SESTA/FOSTA · Surveillance

## Introduction

In 2018, the U.S. Congress passed the Stop Enabling Sex Traffickers Act (SESTA) and the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA). This bill package amended Sect. 230—the safe harbor section—of the 1996 Communications Decency Act to make internet platforms liable at the state and civil levels for content posted by their users that promotes or facilitates prostitution or sex trafficking, conflating the two. Although ostensibly created to fight sex trafficking, SESTA/FOSTA intentionally conflated sex work<sup>1</sup> with sex trafficking because the anti-trafficking

<sup>1</sup> We define sex work as the exchange of money, goods, services or other survival needs for erotic labor, including but not limited to escorting, erotic dancing, professional domination and submission, erotic content creation, webcam modeling, phone sex operators, actors in adult films, “sugar” dating, and trading sex.

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organizations that advocated for it believed that no one can consent to sell sex (Chamberlain, 2019; Wiesner, 2020). This belief stems from whorephobia, defined as the fear and hate of sex workers (Fuentes, 2022)<sup>2</sup> As a result of this conflation, SESTA/FOSTA increased the criminalization of sex work in the United States by making both platforms and users more liable for promoting or facilitating prostitution.

By contrast, in 2020, California passed Senate Bill 233 (SB233), a harm reduction bill that aimed to improve the health and safety of people in the sex trade in two ways. First, it amended the state Evidence Code to make condoms inadmissible as evidence of prostitution-related crimes, and second, it offered immunity from arrest for sex workers and people possessing small amounts of illegal drugs when reporting certain violent crimes such as trafficking, robbery, and assault. Sex worker organizations supported this bill because it promised to reduce the number of sex workers arrested, charged, and convicted of prostitution-related crimes by decriminalizing condom possession.

The advocacy of DecrimSexWorkCA and Sex Workers Outreach Project Los Angeles (SWOPLA) resulted in the passage of SB357 in 2022 (SWOPLA, 2023). Also referred to as the Safer Streets for All Act, this bill repealed loitering with the intent to commit prostitution from California's criminal code. This repeal also functioned retroactively, as people who had previously been convicted on loitering charges became eligible for record-clearing. This was a landmark passage in California for several reasons. Loitering laws infamously target queer people of color (Fischer, 2022; Mogulescu, 2020). Black transgender women were especially vulnerable to the enforcement of loitering laws due to prevalent racism and sexism among police. Additionally, street-based sex workers were explicitly targeted by the language in the criminal code (ACLU, 2020). SB357 aims to ensure communities that have been historically targeted by police violence and surveillance have greater mobility and safety in their neighborhoods.

In this article, using the example of SESTA/FOSTA, we argue that policies increasing the criminalization of sex workers are de facto hate policies against LGBTQ+ communities and other marginalized groups. A hate policy is typically defined as a policy that is intended to inflict harm on a specific population. However, we argue that this definition can be extended to encompass policies that allegedly have a different purpose, but have disregarded previously known effects on a particular group or groups. This was the

case for SESTA/FOSTA because, even though lawmakers supported the bill package as a symbolic gesture of their opposition to sex trafficking, they were well aware of the negative second-order consequences this would have on sex workers, leading sex worker organizers to call SESTA/FOSTA a “war on whores.”

Furthermore, drawing on a community-based study about the impact of SB233 in 2022, we find that alternatives to sex worker hate policies are limited in their impact if they do not involve the community's voice. In the case of SB233, encouraging sex workers to cooperate with the police by reporting violent crimes may counterintuitively lead to increased criminalization of their communities (Wang, 2016). For example, predictive policing may draw heightened police surveillance of the areas where sex workers live and work, leading to increased police harassment (Stop LAPD Spying, 2015, August 19). Additionally, had organizers consulted with the wider sex work community before advocating for this policy, they may have discovered that this was unlikely to be effective because of widespread distrust of the police. For this reason, we recommend community-engaged policy suggestions such as SB357.

## Sex Work and Marginalized Groups

For reasons including flexible hours, and higher hourly pay, sex work can be an alternative employment for those barred from the formal economy. Marginalized people, such as those who are undocumented, previously charged with a felony, and/or use drugs are locked out of the formal economy because of lack of documentation, language barriers, and xenophobia, among other factors. Demographically, several studies point to the overlap between sex workers and other marginalized groups such as LGBTQ+ folks, undocumented immigrants, people of color, and people with disabilities. For the community research report *ERASED: The Impact of FOSTA-SESTA and the Removal of Backpage*, Danielle Blunt and Ariel Wolf (2020) conducted a total of 98 online surveys from sex workers. Of all respondents, 78% identified as LGBTQIA, and 60% reported facing obstacles accessing other forms of labor.

Transgender people, in particular, report encountering discriminatory experiences at work (Nadal et al., 2014). A study by the National Center for Transgender Equality and the National Gay and Lesbian Task Force (2009) of 6450 trans people across the U.S. and Puerto Rico found that the number of trans people who were unemployed was twice that of the national average. A total of 97% of all trans participants reported workplace harassment or mistreatment. Due to the precarity of trans people's treatment in the workplace, many trans people face job insecurity, live in poverty, and become unhoused (Nadal et al., 2014). Thus, discrimination in the formal labor sector pushes trans people into sex work.

<sup>2</sup> Whorephobia leads to hierarchies within sex work, known as the whorearchy, a phenomenon whereby sectoral differences, as well as intersecting forces including gender, class, race, citizenship, and language, impact sex workers' earning potential and access to safety and justice.

A report by the compounding oppressions of being trans, and a sex worker of color poses unique vulnerabilities. In a 2008–2009 survey of 6400 trans adults, 39.9% of respondents who reported participating in the sex trade were Black and/or multiracial, making this group the highest in sex trade participation; Hispanic or Latina/o respondents were a close second at 33.2% (Fitzgerald et al., 2015). Immigrant trans sex workers of color experience unique forms of policing and state violence due to additional barriers to attaining citizenship, language, education, and employment (Coupous-Desyllas & Loy, 2020). However, Nadal et al. (2014) report that trans women also have positive experiences with sex work, including gender euphoria.

Common reasons for doing sex work, according to Blunt and Wolf (2020), included mental illness, chronic illness, and disability, along with schedule constraints from single-parenthood or being a full-time student<sup>3</sup>. Lindsay Blewett et al. (2022) also center on disabilities as shaping entry into sex work in their introduction to the special issue on sex work and disability in *Disability Studies Quarterly*. This issue emphasizes that sex work is not only a means of survival for many at the margins of capitalist society but also a site of self-empowerment for disabled trans and gender-expansive sex workers. Blewett et al. (2022) stress the necessity of linking the struggle to decriminalize sex work and the movement for disability justice to combat the risk and stigma involved in accessing healthcare and medical support for sex workers. In this issue, sex workers with disabilities specifically highlighted chronic illness as a main motivation for entry into sex work. Additionally, Angela Jones' mixed-method study on the camming industry (2022b) and interview-based study on transmasculine and nonbinary escorts (2022a) find that sex work participation is based on ableist underpinnings of formal employment such as inaccessible long-hour shifts that provide little to no accommodations or flexibility for people with disabilities.

Barriers to formal workforces extend to undocumented workers and people of color. For example, although there is no evidence Black women are overrepresented in the sex trade, police surveil and arrest them far more frequently than other women (Gilbertson et al., 2019, August 7). Additionally, undocumented workers in the U.S. experience institutional barriers to health care and formal employment due to policies that criminalize immigration stemming from the Immigration Reform and Control Act of 1986. Workers' statuses are consistently weaponized to keep wages low and avoid formal complaints due to fear of deportation. Undocumented women in the U.S. experience greater difficulty finding employment that is adequately paid, so sex work as a

part of the informal economy becomes an accessible means to earn extra income (Grieb et al., 2019).

Given the overlap between these populations, we argue that policies increasing the criminalization of sex workers are de facto LGBTQ+ hate policies, in addition to hate policies targeting other marginalized groups. To demonstrate how sex work criminalization is a hate policy, and to determine alternative solutions, we asked the following research questions:

**RQ1:** What were the impacts of SESTA/FOSTA on sex workers?

**RQ2:** How did the passing of SB233 impact the criminalization of sex workers?

## Methods

To answer our first research question, we conducted a literature review of studies published between 2018 and 2023 assessing the impact of SESTA/FOSTA on sex workers. Author 2 conducted a Boolean keyword search for “SESTA OR FOSTA AND impact” on both Google Scholar and in the University of Southern California's online library catalog, limiting the results to those published from 2018 onward, the year SESTA/FOSTA went into effect. She read abstracts to identify relevant research and eliminated duplicate results. She stopped searching when there were no further relevant results on the search page. Since the shutdown of Backpage.com is falsely attributed to SESTA/FOSTA, we did not include articles that solely examined the impact of this closure (Albert et al., 2021). Similarly, because the de-platforming and shadowbanning<sup>4</sup> of sex workers on social media websites and applications predate SESTA/FOSTA and are “part of an increasing and overarching whorephobic online landscape,” we excluded articles that looked exclusively at these phenomena (Blunt & Wolf, 2020, p. 31). Finally, we excluded studies that considered only the potential or anticipated impacts of SESTA/FOSTA.

We initially identified 26 studies that examined the impact of SESTA/FOSTA on sex workers. Of these, we excluded 10 that collected no empirical data, four student dissertations and theses, and three news articles. Of the nine empirical studies analyzed, five are peer-reviewed journal articles, and four are reports published by sex workers and anti-trafficking organizations. Although the latter are not peer-reviewed, we included them because together they make a significant contribution to the existing empirical research on the impact of SESTA/FOSTA on sex workers and because they support the findings of the limited number of peer-reviewed studies.

<sup>3</sup> In addition to the reasons cited in *ERASED*, some prefer sex work to other form of labor because of its relatively high hourly rate.

<sup>4</sup> Shadowbanning refers to hiding a users' profile or content without informing them.

To address our second research question, we pulled from the results of a pilot study conducted in 2022 on the implications of SB233. Prior research has established Los Angeles as a hotbed for prostitution criminalization through research studying the impacts of an HIV felony solicitation law (with over 95% of the arrest incidents involving sex workers) (Hasenbush et al., 2015). For this reason, Los Angeles was chosen as a critical point to gather people's experiences in the sex trade post-SB 233. Over 3 years, beginning in 2019 and in compliance with the University of California Los Angeles' Institutional Review Board, the Hub for Health Intervention Policy and Practice, Sex Worker Outreach Project Los Angeles, and the East Los Angeles Women's Center implemented a qualitative study on the potential impacts of SB233.

This study asked how people engaged in sex work navigated health and safety in the context of experiencing criminalization, and how this may have changed with newly passed legislation. This study had three aims. The first was to gather qualitative evidence on the nature of sex workers' interactions with law enforcement. The second was to identify sex workers' beliefs, knowledge, and experiences of how condoms have been or could be used as evidence against them in the crime of "prostitution." Finally, we set out to explore sex workers' perceptions of how their condom possession and use impacted the criminalization they faced in the context of their work.

We held two community affairs board convenings in 2019 to get feedback on our survey questions from those with lived experience in the sex trade. Participants ( $n=100$ ) broke out into small groups to review measures from different sections of the survey with a research roundtable member in each group. We integrated this feedback into the final version of the survey. Inclusion criteria for the study asked that participants be 18 years old or older, have sex work experience in Los Angeles County, and have interacted with law enforcement while engaging in the sex trade. We conducted recruitment in English and Spanish, which resulted in 25 completed interviews with 25 participants from January to August 2022, 2 years after the passage of SB233. Of these participants, age ranged from 20–54 years with the average being 35 years of age. Eighteen of our participants identified as transgender women, nine reported having sex 100 times or more in the past 12 months, and all of the participants reported engaging in street-based sex work, amongst other forms of sex work such as stripping, cam modeling, and phone sex.

The involvement of participants entailed a one-time, semi-structured interview held over Zoom that lasted on average around one hour. Respondents provided consent orally and in writing before participating and selected a pseudonym of their choice to protect their anonymity. We compensated them with \$100 for participating. We asked

participants about their demographic characteristics, experiences in sex work, sexual risk behaviors, condom-carrying practices, substance use, mental health, experiences with violence and victimization, interactions with law enforcement, and familiarity with the recent passing of SB233.

The analysis entailed an iterative process between individual coding and a group thematic review. We began by pulling excerpts from the transcripts corresponding to the open-ended questions about the participant's beliefs and practices around condom-carrying practices, experiences with law enforcement, and knowledge around SB233. The members of the research team utilized in-vivo and process coding individually on Dedoose (a coding software) before returning to the larger group and comparing codes until we reached a consensus on the codes. We discussed the excerpts in person until we were able to create a visual codebook of larger categories utilizing Post-it notes to bypass technological barriers and assure coding reliability (Appendix). Subsets of the research team re-examined patterns among codes and demographic information of the participants (e.g., race and gender identity). Codes that surfaced include the following: fear of profiling, cops lying, common condom-carrying practices, and harsher police practices for trans women. After identifying underlying patterns, the research team sought to discern any evidence contradicting these patterns to further define the codes. The team reassessed patterns to further refine categories and arrive at a final list of themes around who experienced the criminalization of condom carrying and how. Resulting themes from this coding process included strategies for mitigating the risk of criminalization of sex work, carrying condoms despite criminalization risk, forms of persistent harassment, coercion to demand sexual favors, and endangering trans women.

## Findings

In our literature review, we found that SESTA/FOSTA censored sex workers by restricting their access to online resources, which harmed their safety, income, access to the community, and health outcomes while increasing their risk of labor exploitation. Sex workers experience these negative consequences both in the United States and internationally. Furthermore, marginalized sex workers felt these effects most keenly. This shows that SESTA/FOSTA, like other policies increasing the criminalization of sex workers, is a hate policy against LGBTQ+ and other marginalized communities, in addition to a sex worker hate policy.

Similarly for SB233, we found that the potential benefits of this well-intentioned effort have not been able to reach the most marginalized sex workers, namely Black trans women who are engaged in street-based sex work. The interviews revealed the nuances around a participant's choice to carry

condoms. Notably, participants shared their fear of law enforcement as a primary driver of their decisions. This fear was justified by instances of misgendering, taunting, violent assault, and rape by law enforcement shared in the interviews. We argue that SB233, while well-intentioned, does not operate from a sex worker-informed perspective. It does not take into account sex workers' relationships with police and therefore limits the usefulness of the protections it claims to offer sex workers.

### SESTA/FOSTA's Impact on Sex Workers

As predicted by sex workers and advocates, the literature revealed that SESTA/FOSTA harmed sex workers in the United States and beyond by restricting access to online resources. This included workers' websites, free or low-cost advertising sites like Craigslist personals, and harm-reduction tools like screening databases and blacklists of dangerous clients. Sex workers also experienced a "chilling effect" on their free speech through online censorship (Blunt & Wolf, 2020, p. 33). Many companies changed the terms and conditions of their online services to avoid liability for sex trafficking because of SESTA/FOSTA. Skype and Tumblr, for example, banned nudity. Some social media sites like Facebook, Instagram, and Reddit cracked down on sexual content, and others like Twitter and Instagram continued to shut down sex worker accounts and hide sex work-related content. Additionally, sex workers lost access to dating sites like Tinder, Grindr, and Adam4Adam, even for personal use.

Loss of access to online advertising significantly impacted sex workers' income, which increased homelessness and insecure housing. SESTA/FOSTA also caused sex workers to have their bank accounts shut down and lose access to their payment processors. This too contributed to financial and housing insecurity. Furthermore, reduced spaces for online advertising forced many indoor workers onto the streets where working conditions are more dangerous (Blunt & Wolf, 2020; COYOTE RI, 2022; Eichart, 2020; Institute for Shelter Care, 2018; Jones, 2022a; Mia, 2020; Musto et al., 2021; Tichenor, 2020).

The loss of access to online harm reduction tools like databases for screening (or "vetting") clients and blacklists (or "bad date lists"), where workers could review clients, also decreased sex worker safety by increasing the risk of violence from both clients and police. In the wake of SESTA/FOSTA, numerous sex workers were raped, assaulted, murdered, or reported missing. According to Tichenor (2020), SESTA/FOSTA also led to "epistemic violence" against sex workers by silencing sex workers online (p. 105 quoting Chapman-Schmidt).

Due to increased income instability, sex workers became more vulnerable to labor exploitation. Workers experienced

increased contact with pimps and traffickers, and independent sex workers were more likely to move to managed workplaces like brothels, where working conditions are more exploitative. The latter was especially the case in countries where sex work is decriminalized like New Zealand, where brothels are legal. Moreover, knowing that sex workers were in dire financial straits, clients increasingly pressured workers to see them, pushed their boundaries, and demanded cheaper services, leading many workers to accept dangerous or unpleasant clients, offer services they were not comfortable with, and lower their rates (Blunt & Wolf, 2020; COYOTE RI, 2018; COYOTE RI, 2022; Eichart, 2020; Institute for Shelter Care, 2018; Musto et al., 2021).

SESTA/FOSTA also negatively impacted sex workers' health outcomes. For example, 26% of the chronically ill online respondents to Danielle Blunt and Ariel Wolf's (2020) community-based survey reported an intensification of their symptoms after the passage of SESTA/FOSTA, further contributing to income and housing insecurity. SESTA/FOSTA also posed significant challenges to sex workers' mental health. Workers reported a dramatic increase in fear and anxiety, sometimes leading to panic attacks and exacerbating existing conditions such as PTSD. Workers also experienced increased stress and levels of depression, including feelings of hopelessness, and some even committed suicide.

Finally, SESTA/FOSTA reduced sex workers' access to the community, leading to increased feelings of isolation and inhibiting harm reduction practices like sharing safety tips and providing references for clients. This, in turn, negatively affected sex worker organizing, but it also increased the visibility of and involvement in the sex worker rights movement and "galvanized online sex workers" (Blunt & Wolf, 2020, p. 27). Collectively, these impacts on sex workers' free speech, income, safety, labor exploitation, health, and community substantiate that SESTA/FOSTA, like other policies increasing the criminalization of sex workers, is a sex worker hate policy. The unanticipated increase in sex worker organizing following SESTA/FOSTA, however, has proven fertile ground for the development of community-based policy suggestions offering an alternative to criminalization such as SB357.

Although SESTA/FOSTA impacted many sex workers, including those in legal sectors, it harmed some more than others. Studies reported greater impacts on LGBTQ+ workers, workers of color, sex trafficking survivors, workers with a disability, migrant workers, and low-income workers. Negative outcomes were even worse for sex workers with multiple marginalized identities, such as Black, and LGBTQ+ sex workers or trans and nonbinary sex workers with disabilities.

Sex workers of color were more likely to experience negative consequences because of SESTA/FOSTA. According to COYOTE RI (2022), people of color were 40% more likely to experience unstable housing, and FOSTA hindered police

in investigating all of the crimes they reported. Of the four studies examining SESTA/FOSTA's greater impact on sex workers of color, two mentioned Black or African-American workers. Two mentioned Latinx sex workers, and one mentioned Indigenous sex workers (COYOTE RI, 2022, Jones, 2022a; Musto et al., 2021; Tichenor, 2020).

SESTA/FOSTA had an increased impact on LGBTQ+ sex workers, but harms were not evenly distributed across non-normative sexual and gender identity categories. For example, four studies mentioned SESTA/FOSTA's disproportionate impact on transgender, non-binary, and other gender-non-conforming sex workers, but only one of these mentioned LGBTQ+ sex workers as a whole (Eichert, 2020; Jones, 2022a; Musto et al., 2021; Tichenor, 2020). No studies specifically examined the impact of SESTA/FOSTA on lesbian sex workers, and the studies considering the impact of SESTA/FOSTA on male sex workers, many of whom are gay or bisexual, produced mixed results.

COYOTE RI (2022) found that male sex workers experienced less violence from clients or those posing as clients and less pressure to provide services they were uncomfortable with than other sex workers. They were also less likely to lower their rates or provide new services they were uncomfortable with, and none turned to street-based sex work after FOSTA. However, a male sex worker interviewed by Musto et al. (2021) claimed that changing guidelines of gay dating apps pushed male sex workers onto the streets. Furthermore, David Eichert (2020) found that, although FOSTA harmed male sex workers, causing them financial and psychological hardship, the continued operation of Rentman—a low-cost advertising site based in the Netherlands—as well as male sex workers' lesser reliance on “bad date lists” mitigated these negative impacts.

SESTA/FOSTA had adverse impacts on migrant sex workers, especially undocumented workers (COYOTE RI, 2022; Jones, 2022a; Musto et al., 2021; Tichenor, 2020). SESTA/FOSTA also disproportionately harmed sex workers with disabilities. Respondents to COYOTE RI's (2022) survey who reported having a disability experienced 14% more violence than all respondents, and were the most likely to both lower their rates and offer services they were not comfortable with than sex workers without a disability. They started working on the street nearly twice as often as other workers, and they had the highest rates of homelessness and insecure housing.

SESTA/FOSTA hurt low-income sex workers more than those in the middle class. Although these laws drastically increased the number of street-based sex workers, Blunt and Wolf's (2020) survey of street-based sex workers in Massachusetts found that these policies had little impact on the lives of those who were street-based workers before the law's passage. This group uses in-person harm reduction techniques and therefore relies less on online resources.

SESTA/FOSTA had a magnified impact on sex trafficking survivors, including people who experience force, fraud, and coercion within the sex industry and those who entered the industry as minors. COYOTE RI (2022) found that both of these groups “faced more violence, exploitative work conditions, and vulnerability due to FOSTA than the larger group of survey participants” (p. 16). They also had considerably worse “economic outcomes and recovery from homelessness” (Ibid).

Lastly, sex workers with multiple marginalized identities were harmed the most by SESTA/FOSTA. Angela Jones (2022a) found that transmasculine and non-binary sex workers with additional marginalized identities like sex workers of color and disabled sex workers suffered the greatest losses because of these laws, and Musto et al. (2021) found that transgender migrants and people of color experience the worst effects of SESTA/FOSTA. Together these studies demonstrate that SESTA/FOSTA and other policies increasing the criminalization of sex workers are de facto hate policies targeting the LGBTQ+ community, as well as people of color, migrants, people with disabilities, people on a low income, and sex trafficking survivors.

### SB233 as a Well-Intentioned Failure

Eighteen of our participants shared that they carried condoms on them when working in the sex trade despite the use of condoms as evidenced in previous arrests. Participants also carried condoms on them despite the awareness that condoms could be used against them, even though SB 233 was supposed to protect them from this. Therefore, while disagreement exists about the existing efficacy of protections against condom regulation, in practice, workers continue to carry the condoms they need. As the research team began asking participants about their awareness of enforcement around condom possession, we discovered a broad range of perceptions about how many condoms triggered their use as evidence of prostitution. Some claimed that there was a “three condom rule,” meaning that possessing more than three was cause for arrest. Meanwhile, others communicated that having any condoms on your person, or other items such as a purse or Pre-Exposure Prophylaxis (PrEP) could be used as evidence of prostitution. Sam, an Asian trans woman, shared, “The three-condom rule is really a thing. It's not written on paper, but it's a de facto rule that's really understood in the community.”

Many participants expressed uncertainty about the exact number of condoms that could trigger an arrest. This ambiguity weighed heavily on participants who identified as trans women. They understood that, while it was not illegal to have or carry condoms or lube if they carried these items, police would assume that they were engaging in sex work. Sasha, a Black trans woman, said, “That's paraphernalia.

That means I'm turning a trick. I'm out soliciting. When they see that, that means [I'm] soliciting." Cases where Black trans women were stopped even when they were not working make this salient. Pamela, a Black trans woman shared an experience where an officer accused her of solicitation:

They'll search you. If you have condoms on you, you're going to jail... You have to keep 'em in your purse. I told him, "Officer, I'm not working." "Well, if you've got condoms in your purse, you're going to fucking jail cause you're lying to me," he said.

The fear of criminalization was not successful in deterring workers from carrying condoms. Workers shared accounts of hiding condoms in their thigh-high boots, waist cinchers, undergarments, and wigs or asking clients to bring condoms. Some even carried an excess of condoms to give to others. Scout, a white nonbinary worker, shared the importance of prioritizing their health: "If it's going to be a scenario where if they don't have it on them, they're not going to have condoms accessible, then that's your health. Just carry that shit."

Two years after the passage of SB233, participants still maintained a belief in the three-condom rule despite police not being able to use condoms as evidence. This is further revealed through the interviews where workers shared that condoms were not necessary to warrant an arrest given the numerous counts of arrest regardless of condoms being found on their person, especially for Black trans women engaging in sex work.

Kandy, a Black trans woman, shared that a police officer who had been soliciting her as a client harassed her when he saw her out at a nightclub with her friends. Kandy was not engaging in sex work at the time or committing any other crime, but the officer continued to harass her. She said, "He did approach and charge me with resistin' arrest. I'm like, 'How am I resistin' arrest? What am I being arrested [for]—I'm confused.'" This was one of eight instances when participants shared the ways that law enforcement trailed them when they were not sex working.

While SB233 created more avenues for sex workers to practice safety measures, it did little to change the violent nature of their primary aggressors, law enforcement. Becky, a Black trans woman, shared an experience of being persecuted when she was not working:

Wearing pajamas. Getting stopped and searching my body, searching my—just harassment. No reason to search me at all. Then they sit there and ask me, like—or they ask me how many dates I've already gotten. They would ask me about the work. I wouldn't answer, and then they would get mad. Asked me about the other transgenders [sic] or other girls out here on the streets, like where are we working at now. There was one of 'em was an officer,

undercover officer —picked me up and I had sex with him. Otherwise, he would arrest me. Of course, all the girls have that interaction. I know, for me, they would tell me, "If you don't wanna go to jail tonight, you know what to do."

This harassment happened at the grocery store, on their way home from work, or even at strip clubs where they worked, furthering the distrust and distaste that participants shared towards the police.

One participant, Jasmine, an Indigenous trans woman, shared how the strip club she worked at was the target of a police raid. During this raid, police officers told the club manager that "a Black girl offered to have sex with an officer," alluding to Jasmine. Jasmine recounted:

The bartender was like, "Well, that's impossible because that girl is not a genetic girl. She didn't offer to give you any courtesy 'cause she doesn't have one to give to you. Anyway, go ahead and do what you're gonna do. I know what you're here for." [The police] were really shocked and confused that I was trans. They took me in a separate car from the other three girls that were working. They told me, "You're gonna give us [oral sex] or you're going to jail." I ended up going to jail.

Sex workers faced blatant and profuse sexual harassment and extortion. When asked in the interview about any positive experiences that they shared with police officers, they either laughed or shared another negative experience to emphasize that this was not possible due to pervasive transphobia and racism. Kennedy, a Black trans woman, told us about a time she was riding in the backseat of a police car after getting stopped for solicitation:

[The officer] told me to show them my breasts, and I told him to go to hell. He pulled over and gave me another ticket for disorderly conduct. After years of thinkin' about it, I said, "That was sexual harassment." As a matter of fact, everything he did was sexual harassment.

This extensive harassment of and violence against sex workers occurred at every point of interaction with police officers.

Heather, a Black trans woman, related the following:

[An officer] forced me to get in the car and took me to a secluded place that I didn't care to go to, took me out of my way, and made me perform oral sex on him, and he was disgusting.

Heather highlights the use of forced relocation as a form of harassment. Law enforcement officers often dropped participants off in unfamiliar areas away from the safety of their



coworkers, a potentially deadly offense. Several participants mentioned that certain street-based workers were only safe to work in particular areas and that trans women could be killed if they found themselves on certain gang-dominated streets. These attacks highlight the heinousness of police action when taking into account the blatant transphobia that law enforcement officers use against workers.

Additionally, police are common recurring perpetrators of rape for street-based sex workers. However, the police are also the primary reporting mechanism for these acts of violence. Therefore, workers do not feel safe reporting crimes committed against them to law enforcement, even if SB233 protects them in theory. SB233 failed its main objectives because it did not address workers' distrust of law enforcement. Our results suggest that SB233 failed, in part, because of a lack of community engagement that would have revealed these critical barriers to policy efficacy.

### Discussion: SB357 as a Community-Based Policy Suggestion

Anti-sex work policies knowingly and disproportionately harm marginalized groups, including the LGBTQ+ community, given the overlap between these populations. Therefore, policies criminalizing sex workers like SESTA/FOSTA can be considered hate politics, as the interests of sex workers and other marginalized groups often coincide. SESTA/FOSTA harms sex workers and their respective communities by limiting resources essential to sex worker safety and wellbeing. SESTA/FOSTA definitively shut down channels that allowed sex workers to screen clients, connect with the community, and generally work more safely. In the wake of SESTA/FOSTA, workers experienced reduced safety resources—such as websites used for screening—leading to greater labor exploitation, income reduction, and an increase in street-based work. SESTA/FOSTA also led to poorer health outcomes, affecting both mental and physical health. Moreover, SESTA/FOSTA particularly impacted workers with marginalized identities, including LGBTQ+ people, people of color, and people with disabilities. Sex workers with marginalized identities were the most likely to experience unstable housing. Because these effects were anticipated and disregarded, SESTA/FOSTA counts as a hate policy.

SB233, on the other hand, while intended to reduce criminalization, was not effective. Although not a sex worker hate policy, one of the reasons SB233 failed to fulfill its intent may have been because of insufficient community involvement. Since it was not community-based, SB233 was out of touch with sex workers' priorities and the difficulties with law enforcement they face on a day-to-day basis. SB233 intended to reduce criminalization by mandating protections and immunities that would help safeguard sex workers from

harassment and arrest. Theoretically, by making condoms inadmissible as evidence of prostitution and giving immunity when reporting violent crimes, sex workers should have felt safer and less targeted after the bill's passage.

While the aspect of SB233 concerning condom possession technically reduced criminalization, it did little to address harassment by police and law enforcement, who did not change their patterns of targeting sex workers after the bill's passage. In practice, harassment continued regardless of condom possession, particularly for marginalized workers. Many sex workers—80% of those interviewed—were unaware of SB233 protections. Furthermore, their experiences with law enforcement were so negative they stated that they would not feel comfortable reporting a violent crime regardless of SB233. Thus, while technically reducing criminalization, (1) most sex workers were not aware of the passage of SB233, and (2) SB233 did not address harassment and targeting by law enforcement. A law is only so good as its enforcement, and SB233 is an example of this. Had SB233 been more community-based, addressing mistreatment by police in addition to criminalization, it may have been more effective.

The other aspect of SB233, offering immunity to sex workers and people possessing small amounts of drugs when reporting certain violent crimes, does not reduce criminalization, and could even increase it. While seemingly positive, this part of SB233 could involve sex workers in data-driven policing, a way of policing that allows law enforcement to keep track of (1) where certain violent crimes are reported and (2) the proportion of sex workers and substance users in an area. Even though sex workers reporting violent crimes may receive immunity under SB233, this puts more data in the hands of the police. It enables law enforcement, who consistently harass, violate, and discriminate against sex workers, whether or not they are committing a crime, to track workers in different areas over time. Further, SB233 responds to violence with criminalization, funneling resources to the police and relying on the state to intervene in their mistreatment of sex workers.

Instead, we recommend greater community involvement of sex workers in policymaking. Policies driven by community involvement can help ensure that the well-being and interests of sex workers and other marginalized groups are accurately represented and reflected (Michels & De Graaf, 2010). Community-driven policy creation can also alleviate the challenges associated with fostering civil society actors' participation in local politics (Prins, 2005). One such sex work community-based policy is SB357, which retroactively repealed loitering with the intent to commit prostitution in California. Police disproportionately target trans women of color for loitering, and SB357 promises to curtail this targeting. Thus, sex worker-led policy efforts have also been protection efforts for marginalized groups.

Our review of SESTA/FOSTA demonstrates that it is both a sex worker hate policy and a hate policy against other marginalized groups, including the LGBTQ+ community. Our review of SB233 further shows how policy can be detrimental even when well-intended. A community-based policy that actively involves sex workers, like SB357, helps ensure that the interests of sex workers and other marginalized groups are addressed. Future research should examine the effects of SB357, specifically assessing if its passage reduced the number of prostitution-related arrests.

Sex worker organizers from Decrim SexWork CA and the Sex Worker Outreach Project Los Angeles have begun to mobilize letter-writing campaigns against emerging bills introduced to the California Assembly Public Safety Committee. In March 2024, three bipartisan bills were introduced to criminalize intent. One of these, SB 1219—introduced by Senator Kelly Seyarto (R-Murrietta)—aimed to reintroduce penalties for anyone loitering with intent to sell or purchase sex. Due to ongoing letter-writing efforts from multiple sex worker advocacy groups, SB129 was killed in committee (Riquelmy, 2024). As of April 2024, two bills remain before the California State Legislature. AB 2034, introduced by Assembly Member Freddy Rodriguez (D-Pomona), seeks to make loitering a misdemeanor. AB 2646, proposed by Assembly Member Tri Ta (R-Orange County), targets explicitly loitering within 1000 feet of a school, park, playground, amusement park, or state highway (Riquelmy, 2024).

There are, however, some methodological weaknesses in our study. First, we did not gather empirical evidence on the impact of SESTA/FOSTA ourselves but relied on research conducted by other scholars. Second, we only conducted interviews with 25 sex workers on the implications of SB233. Due to our limited sample size, our claims may not be generalizable to sex workers in California, or even Los Angeles, as a whole. For future studies on anti-sex work policies, we recommend triangulating qualitative with quantitative methods such as surveys and analysis of arrest data.

## Policy Implications

Our analysis has several implications for policies impacting sex workers and other marginalized communities. The current model of creating policies using opaque methods of legal expertise and jargon does little to increase public safety, health, or well-being. In the worst instances, policies are crafted to cause intentional harm. In other instances, policies inadequately account for the realities of marginalized communities and still manage to inflict harm. Thus, we urge policymakers to not only listen to but to actively seek consultations and partnerships with, those who have to live

with the consequences of these policies. Sex workers are experts in their own lived experiences.

For those willing to do the work required to build a safer world for sex workers, there has to be a concerted effort to understand what is happening on the ground. Policies must be informed by lived experiences. Income and housing insecurity, as well as deficits in healthcare, are among the primary concerns sex workers raise. The creation of a robust welfare system in the U.S. that addresses these concerns will ensure people have the necessary resources to not only survive but thrive.

The implementation of decriminalization, as with other legal solutions, must be conducted with sex worker input. Community input in this process will ensure that the process of removing financial, legal, and other barriers aligns with sex workers' lived experiences. Sex workers advocate for the complete decriminalization of sex work as a way to address structural inequalities without reinforcing known harms. Decriminalization is essential to reduce the impact of state violence on sex workers. It will help alleviate the stigma sex workers navigate, as well as surveillance and discrimination from state authorities. It would also allow workers to build stronger communities with one another, reducing mental health strains. Though SB357 repealed loitering with the intent to commit prostitution from California's criminal code, sex work itself is still considered illegal. Simply, by sex working, a person can be harassed, arrested, incarcerated, and/or deported. Only full decriminalization of sex work will reduce the violence sex workers and other marginalized people experience.

Still, decriminalization is not enough. As many of the interviews with sex workers indicated, the mere presence of police is a disrupting and brutalizing one. Not a single sex worker felt they could go to the police despite having immunity from arrest. While some may argue for the implementation of hate policies as a method to reduce the precarity marginalized people face, there is little evidence this will be the outcome (Spade, 2011). A consequence of this method would be exposing people to higher levels of police presence. Given that policies tend to reinforce structural inequalities such as racism, sexism, and whorephobia, hate crime policies end up marginalizing and incarcerating people more often than not (Spade, 2011).

The U.S.'s carceral legal system threatens the autonomy, safety, and well-being of all marginalized communities. Approaches to decriminalization that still uphold the police apparatus will inevitably fail to result in meaningful change. Providing groups who are the recipients of state violence with the resources previously funneled to carceral institutions can lead to a safer environment for all. An end to carceral punishment more broadly is necessary for the safety of sex workers, LGBTQ+, and other marginalized communities.

**Appendix. SB 233 study codebook visualization.**



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**Data availability** Available upon request.

**Code Availability** Available upon request.

## Declarations

**Conflict of Interest** The authors declare no competing interests.

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