

September 9, 2024

Dear Chair Kettle and Members of the Seattle City Council
Public Safety Committee,



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We are writing today in strong opposition to CB 120836. Legal Voice fights for gender liberation across the Pacific Northwest using both litigation and legislative advocacy. We believe that all women and LGBTQ+ people should be able to live their lives with dignity, safety, and autonomy and we envision a world where we can all thrive in our communities, free from oppression and racism. We oppose CB 120836 because additional criminalization of already marginalized communities contributes to oppression and racism and does not address the root causes, which require systemic change.

The Seattle City Council is considering reimplementing an unpopular and ineffective ordinance overturned by the previous City Council in 2020 – the misdemeanor crime of prostitution loitering – and would authorize the City to establish “Stay Out of Area of Prostitution” (SOAP) zones and allow judges to prohibit people from entering the area, violation of which would be a gross misdemeanor.¹ CB 120836 would also create a new gross misdemeanor of “promoting loitering for the purpose of prostitution”.²

Legal Voice is concerned that CB 120836 will harm the communities it purports to protect: primarily victims of sex trafficking and sex workers. Central Staff acknowledged that they had “limited time to engage with the full body of research about prostitution loitering laws and SOAP orders.”³ The Seattle City Council in 2020 overturned the existing misdemeanor crime of prostitution loitering due to recommendations from the Seattle Reentry Workgroup, which highlighted that similar ordinances in other cities disproportionately negatively impacted cisgender and

¹ Seattle, Wash., Council Bill 120836 (2024) <https://seattle.legistar.com/View.ashx?M=F&ID=13209997&GUID=10D5FFA7-12C7-4E47-A812-D0ACEFBF852D>; see Memorandum from Seattle City Council Central Staff to the Public Safety Comm., 1 (Aug. 12, 2024), <https://seattle.legistar.com/View.ashx?M=F&ID=13227866&GUID=2A190346-DE2F-4B78-9C99-4513556C8A5E> [hereinafter Staff Memo].

² Staff Memo at 1.

³ Staff Memo, *supra* note 1 at 13.

transgender women of color, many of whom were simply “participating in legal, routine activities”.⁴

Research consistently shows that criminalization – regardless of whether it focuses solely on ending demand or on all people involved in sex work – makes it more difficult for sex workers who are victims of violent crime to report it to the police.⁵ Immigrant sex workers are even less likely to report abuses because of distrust of law enforcement and the additional risk of deportation.⁶ Transgender women are particularly targeted by law enforcement for simply walking down the street, usually under suspicion of engaging in prostitution, making them unlikely to seek help from law enforcement.⁷ Furthermore, transgender victims of police profiling often do not challenge charges, preferring to plead guilty in order to avoid detention centers which are notorious for being transphobic and traumatizing.⁸

Criminalization of sex work through laws like prostitution loitering also results in increased profiling and incarceration of transgender women, women of color, and immigrant sex workers. For example, all the transgender respondents to a survey of LGBTQ people in New York City reported being profiled by police as sex workers, stopped and searched, verbally and physically abused, and “arrested on account of possessing condoms” even though none of the respondents

⁴ *Seattle Reentry Workgroup Final Report*, Seattle Office of Civil Rights 1, 52 (Oct. 2018), <https://www.seattle.gov/documents/departments/civilrights/policy/reentry%20workgroup%20final%20report.pdf>. See also *Sex Work*, 23 Geo. J. Gender & L. 325, 355 (2022), <https://www.law.georgetown.edu/gender-journal/in-print/volume-xxiii-issue-2-annual-review-2022/sex-work/> (highlighting various studies showing disproportionate policing of cis and trans women of color by police officers).

⁵ *Sex Work* at 355; see also Michael Conant, *Federalism, The Mann Act, and the Imperative to Decriminalize Prostitution*, 5 CORNELL J. L. & PUB. POLY 99, 100 (1996); Minouche Kandel, *Whores in Court: Judicial Processing of Prostitutes in the Boston Municipal Court in 1990*, 4 YALE J.L. & FEMINISM 329, 333 (1992); Alliance for a Safe and Diverse DC, *Move Along: Policing Sex Work in Washington, D.C.* 39-42 (2008), <https://dctranscoalition.files.wordpress.com/2010/05/movealongreport.pdf> (citing a survey of street sex workers, among whom 90% had experienced violence and almost 50% had been treated badly when attempting to obtain help through reports to police, met instead with discrimination, dismissals, or requests for sex).

⁶ *Sex Work* at 355.

⁷ Alexandra Walker, Note, *Prostitution and the Transgender Community: How Overly Vague Laws, Selective Enforcement, and Cruel and Unusual Punishment Interplay*, 45 N. Ky. L. Rev. 193, 196-197 (2018).

⁸ *Id.* at 200.

were working as sex workers.⁹ Another study in Los Angeles found that Black and Asian women were excessively arrested for prostitution-related offenses, and the City Attorney brought charges for prostitution disproportionately against Black women.¹⁰ Immigrant sex workers also avoid police interactions due to fear of deportation, risk of detention, and other adverse immigration consequences in addition to the risks and threat of criminalization.¹¹ Increased criminalization leads to significant isolation for immigrant sex workers, separating them from community safety mechanisms that may otherwise have been available without the stigma and social exclusion of sex work criminalization.

Even when laws only criminalize the purchase of sex, studies show that any increased interaction with law enforcement for sex workers increases the likelihood of assault, harassment, and incarceration by clients, pimps, or law enforcement.¹² Increased risk of criminalization leads to clients pressuring sex workers to rush rate and service negotiations, forego health measures such as condoms, and move transactions to increasingly isolated spaces.¹³ Criminalization and stigmatization of sex work results in increased client violence to sex workers and adopting end-demand policies have not

⁹ Sarah Sakha et al., *Is Sex Work Decriminalization The Answer? What the Research Tells Us*, ACLU Research Brief 1, 12 (2020), <https://www.aclu.org/publications/sex-work-decriminalization-answer-what-research-tells-us> [hereinafter ACLU Research Brief].

¹⁰ *Id.*

¹¹ *Id.* at 13.

¹² See generally Lucy Platt et al., *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, 15 PLoS Med. (Dec. 2018), [10.1371/journal.pmed.1002680](https://doi.org/10.1371/journal.pmed.1002680) (finding that criminalization of sex work, including laws that target the sale and purchase of sex increased isolation for sex workers, exacerbated inequities and police harassment of transgender, migrant, and drug-using sex workers, and limited negotiation power with clients); Katherine H.A. Footer et al., *Police-Related Correlates of Client Perpetrated Violence Among Female Sex Workers in Baltimore City, Maryland*, Am. J. Pub. Health 109 (2019), <https://doi.org/10.2105/AJPH.2018.304809> (concluding that sex worker interactions with police led to more client-perpetrated violence); Alexandra Lutnick & Deborah Cohen, *Criminalization, legalization or decriminalization of sex work: what female sex workers say in San Francisco, USA*, 17(34) Repro. H. Matters 38 (2009), [https://doi.org/10.1016/S0968-8080\(09\)34469-9](https://doi.org/10.1016/S0968-8080(09)34469-9) (interviewing sex workers who voice their preference for a mix of legalization and decriminalization frameworks so they can feel confident in having legal rights and protections if they are victims of violence).

¹³ Anne E. Fehrenbacher et al., *Exposure to Police and Client Violence Among Incarcerated Female Sex Workers in Baltimore City, Maryland*, 110 Am. J. Pub. H. S152 (2020), <https://doi.org/10.2105/AJPH.2019.305451>.

resulted in statistically significant decreases in workplace violence against sex workers.¹⁴

While there are limited studies on the efficacy of “end demand” regulatory models,¹⁵ research show that the most effective methods for supporting sex workers to leave situations of violence and coercion comes from community, not law enforcement. A recent study of Canadian sex workers showed that under an “end demand” criminalization framework, sex workers who escaped situations of violence or confinement did so with the help of other sex workers, followed by friends and family.¹⁶ The majority of sex workers interviewed for the study reported experiencing police harassment and fearing calling 911 to report situations of violence due to past antagonistic interactions with law enforcement.¹⁷ Client fears of criminalization further created unsafe environments for sex workers as clients provide less personal and screening information.¹⁸

The Council’s proposed ordinance would increase criminalization of sex work in Seattle, harming victims of sex

¹⁴ ACLU Research Brief, *supra* note 9 at 5.

¹⁵ States and cities adopt a variety of legal approaches to sex work. These approaches are rooted in two opposing theories: (1) that sex work is violent and that sex workers are always victims and (2) that sex work is a matter of choice and is a form of labor. A third framework that recognizes all labor is exploitative while centering the agency of sex workers advocates for the full decriminalization of adult sex work as a harm reduction practice.

The most common legal regulatory approach to sex work in the United States is to criminalize the buying and selling of sex – known as the criminalization model. In recent years, several countries have adopted a model seeking to eradicate prostitution and sex trafficking by criminalizing solely the purchase of sex – known as the “end demand” or “Nordic model”. Finally, due to vocal advocacy from sex workers themselves, there are increasing calls for decriminalization of sex work altogether at the international level, including from Amnesty International and United Nations agencies. Under this model, sex workers can legally offer sexual services in exchange for money and buyers can legally seek out such services. However, pimping and sex trafficking remain illegal. New Zealand, Denmark, and Germany have adopted the decriminalization approach.

See generally Guidance doc. of the Working Group on discrimination against women and girls, *Eliminating discrimination against sex workers and securing their human rights*, Human Rights Council, ¶ 4, U.N. Doc. A/HRC/WG.11/39/1 (Dec. 2023), <https://documents.un.org/doc/undoc/gen/g23/241/61/pdf/g2324161.pdf>; Amnesty International, *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers.*” POL 30/4062/2016 (May 2016), <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>.

¹⁶ Anna-Louise Crago et al., *Sex Workers’ Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under and “End Demand” Criminalization Model: A Five City Study in Canada*, 10 Soc. Sci 13, 6 (Jan. 2021), <https://doi.org/10.3390/socsci10010013>.

¹⁷ ACLU Research Brief, *supra* note 9 at 4.

¹⁸ *Id.* at 8.

trafficking and sex workers and increasing the risk of discriminatory enforcement. Prostitution is already a crime; adding a new misdemeanor of prostitution loitering will sweep more people into negative law enforcement interactions and possible arrest. Prostitution loitering laws, like the one established by CB 120836, criminalize common behavior like approaching vehicles and engaging in conversation. Because prostitution loitering laws are vague and broad, they carry a significant risk of discriminatory enforcement, with police targeting people based on perceived gender identity, LGBTQ+ status, clothing, race, class, and age.¹⁹ While proposed Amendment B includes language indicating that diversion and referral are the *preferred* response to prostitution loitering for sellers of sex, the ordinance nevertheless creates a new crime for which sellers of sex could be arrested and charged.

The proposed ordinance's creation of SOAP zones is particularly concerning, for both increasing criminal penalties and for its draconian restraints on travel. A sex worker who is arrested for prostitution loitering would not only be criminalized for loitering but would also be subject to a geographic restraint that covers a major travel corridor containing businesses and social services. The ordinance has very limited exceptions that would allow a person to travel into a SOAP zone, with no exceptions for meeting basic needs, such as transferring between bus routes, going to work, shopping for necessities or food, going to one's home, or family care-taking responsibilities.²⁰ Violation of a SOAP order carries significant penalties: Under the ordinance, violation of a SOAP order would be a gross misdemeanor, which is more serious and merits higher fines and longer jail time than the underlying charge of prostitution loitering, which is only a misdemeanor.²¹

¹⁹ See generally Kate Mogulescu, *Your Cervix is Showing: Loitering for Prostitution Policing as Gendered Stop & Frisk*, 74 U. Miami L. Rev. Caveat 68 (2020) (describing discriminatory impact of New York's prostitution loitering law and superficial, stereotyping bases for police to stop individuals for supposed prostitution loitering); Karen Struening, *Walking While Wearing a Dress: Prostitution Loitering Ordinances and the Policing of Christopher Street*, 3 Stan. J. Crim. L. & Pol'y 16, 16–20 (2016) (discriminatory application of New York prostitution loitering law). See also Aimee Green, *Are Portland's prostitution 'hot spots' civil-rights gray zones?*, Oregon Live (April 29, 2009),

https://www.oregonlive.com/portland/2009/04/are_portlands_prostitution_hot.html.

²⁰ Alarmingly, Amendment B even takes away the possibility of someone traveling to receive medical or social services unless those services are specifically ordered by the court.

²¹ Seattle, Wash., Council Bill 120836, *supra* note 1 at 12–13; see also Seattle, Wash., Mun. Code § 12A.02.070.

We urge the Seattle City Council to consider the broad swath of research showing that increased criminalization succeeds only in further marginalizing vulnerable communities without addressing any of the root cause issues around crime and violence. States like California and New York have repealed their anti-prostitution loitering laws in recognition of the significant harm they caused to communities of color.²² Seattle should do no less.

Please reach out with any questions about this body of research or our stance at abhojani@legalvoice.org.

Sincerely,



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²² Anne Gray Fischer, *The Harm of Anti-Prostitution Loitering Laws*, Gender Policy Rep. (Oct. 5, 2022), <https://genderpolicyreport.umn.edu/the-harm-of-anti-prostitution-loitering-laws/>.