

A VISION FOR BLACK LIVES

POLICY DEMANDS FOR BLACK POWER, FREEDOM, & JUSTICE

END THE WAR ON DRUGS

POLICY BRIEF 09 of 13



POLICY PLATFORM 1 OF 6

M4BL

THE MOVEMENT
FOR BLACK LIVES

END THE WAR ON DRUGS SUMMARY



ACTION: RETROACTIVE DECRIMINALIZATION, IMMEDIATE RELEASE, AND RECORD EXPUNGEMENT FOR ALL DRUG RELATED OFFENSES AND PROSTITUTION, REPARATIONS FOR THE DEVASTATING IMPACTS OF THE “WAR ON DRUGS” AND THE CRIMINALIZATION OF PROSTITUTION, AND REINVESTMENT IN COMMUNITY-BASED TRANSFORMATIVE APPROACHES TO HARM, HEALTH SERVICES, HOUSING, JOB PROGRAMS, AND OTHER PROGRAMS BASED ON THE NEEDS IDENTIFIED BY INDIVIDUALS AND COMMUNITIES IMPACTED BY THE SEX AND DRUG TRADES

THE ISSUE:

The “War on Drugs” has been a primary driver of mass criminalization, incarceration, and law enforcement violence targeting Black people over the past five decades, devastating families, communities, and generations. Prostitution enforcement has consistently served as a mechanism for profiling, pathologization, targeting, physical and sexual violence, criminalization, and structural exclusion for Black women, trans, and gender nonconforming people, and regulation of sexual and reproductive autonomy. Both the drug war and prostitution enforcement divert millions of dollars away from meeting the needs of people with substance dependence and people in the drug and sex trades, including non-coercive, accessible, and evidence-based treatment, housing, health care, education, and living wage employment.

THE DEMAND:

Immediately and retroactively decriminalize drug and prostitution-related offenses and invest savings into programs and services identified by people in the drug and sex trades, and implement a full and comprehensive reparations package for people, families, and communities harmed by the drug war and criminalization of prostitution.

KEY FEDERAL LEGISLATION:

- ❖ **The MORE Act**, which would federally decriminalize marijuana and provide for expungement and investment in communities affected by the “War on Drugs.”
- ❖ **The People’s Justice Guarantee**, which would decriminalize drugs and prostitution-related offenses and invest in affected communities.
- ❖ The **SAFE SEX Workers Study Act**, which would mandate a study of the impact of legislation restricting use of online platforms on the health and safety of people in the sex trades.



WHAT IS THE PROBLEM ?


Throughout U.S. history, drug and prostitution-related laws have consistently been used to criminalize Black people and communities. Criminalization of marijuana and cocaine was achieved through the deployment of racist tropes depicting drug-crazed, sexually predatory, and superhumanly violent Black people, in spite of the fact that both drugs were widely used at the time by white people.

Black women, trans, and gender nonconforming people have systematically been framed as sexually promiscuous, deviant, and available to justify the structural sexual violence that fueled the slave trade. After the formal end of slavery, Black women were disproportionately profiled, targeted, and often brutally arrested for prostitution-related offenses and returned to domestic servitude through convict leasing in an attempt to regain control over their reproductive and sexual autonomy.

Statements by U.S. government officials confirm that the “War on Drugs” declared in the 1970s was a cover for targeting Black communities in the midst of increased resistance to police profiling, harassment, and violence, and the growing power of Black liberation and anti-war movements. At the same time, criminalization of poverty and Black motherhood, as well as drastic cuts to social service programs, were achieved based on gendered anti-Black criminalizing narratives of “welfare queens” and “crack hos,” while prostitution enforcement intensified in the context of aggressive “urban renewal,” “broken windows” policing, and gentrification efforts.

Against this backdrop, drug and prostitution law enforcement often operate in tandem - enforced by the same vice units, using many of the same tactics, against the same people, deploying similar criminalizing narratives, imposing punishment instead of support. This is true in spite of the fact that not all people who use drugs trade sex, and not all people who trade sex use drugs.

Separately and together, drug and prostitution enforcement have driven systemic and widespread racial profiling, discriminatory enforcement, physical and sexual violence, extortion and abuse, gross sentencing disparities, and mass criminalization, incarceration, institutionalization, civil commitment, detention, deportation, and exclusion of Black people over the past 50 years. The drug war and enforcement of poverty and “public order” offenses such as prostitution have played a central role in making Black women the fastest growing prison and jail populations over this time frame, and in driving family separation through the criminal punishment and child welfare systems. Drug and prostitution laws have also consistently been used to exclude and deny Black people access to housing, employment, education, family, social services and benefits, immigration status, and community, while simultaneously failing to address the needs of people struggling with substance use or dependence and economic survival.



THE RAVAGES OF THE DRUG WAR

Millions of people have been profiled, harassed, violated and abused, arrested, incarcerated in jails, prisons, on probation or parole, or detained, deported, civilly committed, or placed in child welfare proceedings based on drug use, possession, and sales. The vast majority of cases involve small quantities of drugs for personal use or low-level drug sales. According to the Drug Policy Alliance, in 2012,

Black people made up 38.8% of people incarcerated in federal prisons for drug offenses (99.5% related to selling and distribution). As of 2011, **Black youth were 44% more likely** to be arrested for drug offenses than white youth, despite reporting equal rates of drug use. In 2014, Black people were over 3 times more likely to be arrested for selling and distributing drugs, despite growing evidence that white people sell drugs at a slightly higher rate.

Black LGBTQ people are also at higher risk of being ensnared in the drug war due to higher levels of poverty, higher rates of drug use stemming from family and community rejection, structural exclusion, denial of necessary health care, and disproportionately high rates of police contact. One study found that nearly 40% of -LGB+ people used criminalized

substances in the past, compared to 17% of the public. Nearly **30% of transgender and gender nonconforming** respondents to the 2015 U.S. Transgender Survey also report past use of criminalized substances.

Structural exclusion from formal economies drives many Black queer, trans and gender nonconforming people into criminalized economies. Twenty-eight percent (28%) of Black respondents to the 2015 U.S. Trans Survey participated in the underground economy for income at some point in their lives, including in sex work, drug sales, and other currently criminalized work, compared to 20% of all respondents. Fourteen percent (14%) had done so in the last year, compared to 9% of all respondents.



Michael Ibido



Additionally, barriers to health care for disabled, queer, and transgender people can lead to increased self-medication, which can be charged and prosecuted as a drug-related offense. For example, a quarter of respondents to the 2015 U.S. Transgender Survey reported being denied coverage for transition-related hormone replacement therapy (HRT), and 33% of respondents reported avoiding healthcare services that they needed due to fear of being discriminated against by providers. When prescription HRT is out of reach, some transgender people turn to non-prescribed “street” hormones, which can lead to criminalization for possession of “drug” paraphernalia or unauthorized use of prescription medication.

Beyond incarceration, the drug war has subjected millions of people to mandatory and non-consensual drug testing, treatment, and incarceration or involuntary commitment in medical or other treatment facilities, including mandated treatment based on “junk science.” Additionally, drug treatment centers are sites of emotional, economic, physical, sexual, and other forms of violence and abuse. Conversely, countless people have been denied evidence-based medical care, including medication based support for withdrawal. Use — or even suspicion of use — places Black pregnant people and parents at risk of losing child custody and parental rights, regardless of whether there is any danger or harm to their fetuses or families.

The “***War on Drugs***” has also contributed to creating dangerous conditions for people who use drugs, including violence in illicit drug markets, increased overdose risk, vulnerability to sexual, physical, and other forms of violence at the hands of law enforcement officers, and denial of necessary medical treatment to people in custody, resulting in death or severe pain and suffering.

As marijuana is increasingly being decriminalized across the country, Black people with drug-related criminal convictions are being excluded from legal markets, while they continue to suffer the devastating harms and collateral consequences resulting from prior convictions, including years spent incarcerated or under criminal punishment system control for actions that are now legal.

CRIMINALIZATION IN THE SEX TRADES

Since its inception at the turn of the 20th century, vice policing has involved profiling and targeting Black, Native, and Asian women, who are framed as inherently promiscuous and sexually available and deviant under different logics serving anti-Black racism, colonialism, and imperialism. Prostitution laws have consistently been used to surveil, police, and criminalize Black communities, homes, and businesses. They have particularly facilitated police and community violence - including sexual violence - against Black women, trans, gender nonconforming and disabled people. Criminalization of prostitution originated and continues to be used as a basis for exclusion and deportation from the U.S.



Black women, girls, trans, and gender nonconforming people continue to make up a disproportionate number of people targeted by enforcement of prostitution-related offenses:

- ❖ **Black youth make up 62% of minors arrested** for prostitution-related offenses in the U.S.
- ❖ Black and Latinx people made up **91% of arrests** for “loitering for the purposes of prostitution” in New York in 2018.
- ❖ Black women are arrested for prostitution at rates **14 times greater** than their representation in the population in California.

Criminalization of the sex trade particularly impacts working class, low- and no-income Black people, and members of Black communities structurally excluded from formal economies, including Black migrants and disabled, queer, and trans people. The vast majority of people who trade sex do so in order to meet basic needs for housing, food, education, medical care, childcare, and elder care.

For instance, a quarter of **Black disabled people** live below the poverty line, and are often structurally excluded from formal employment. As a result, they may participate in the sex trade because it offers flexibility and accommodations jobs in formal economies do not. It can also substitute or supplement for inadequate or denied disability benefits, and to cover exorbitant medical costs.

More than one in five (21%) Black respondents to the 2015 U.S. Trans Survey participated in sex work for income, compared to 12% of all respondents. Transgender women represent more than one-half (60%) of Black respondents who have traded sex for money in their lifetimes. Non-binary people assigned female at birth (AFAB) (18%) and transgender men (16%) also account for a significant proportion of Black queer people who trade sex to survive. More than a quarter (27%) of respondents traded sex for money, food, a place to sleep, or other goods or services.

Trans people who had lost a job due to anti-trans discrimination were 3 times more likely to engage in sex work. Of those who interacted with the police while doing or thought to be doing sex work, 90% of Black trans respondents reported some form of police harassment abuse, or mistreatment including being verbally harassed, physically attacked, or sexually assaulted by police.

Instead of meeting the basic needs that drive people into the sex trades, criminalization of prostitution-related offenses drives people in the sex trades further into poverty, closing off access to housing, employment, health care, reproductive rights, family, and community. Vice and drug law enforcement cost the U.S. billions of dollars each year that could be used to meet the needs of targeted communities— for medical care, including voluntary, quality, low-threshold and harm reduction-based drug treatment, mental health treatment, and parental and family support, for housing, living wage employment, and basic necessities.

Over half of voters in the U.S. support decriminalizing sex work.





THE DEMAND

- ❖ Full decriminalization of drug and prostitution-related offenses, including an end to arrest, detention or conviction, and to mandated social services or medical treatment. Decriminalization must be retroactive so that people currently serving time in jails and prisons can be released immediately, and must include provisions to automatically expunge criminal records and remove barriers to access to housing, employment, licensing, benefits, health care, family, and community, and sex offender registration requirements where applicable.
- ❖ Repeal bars to entry into the U.S. and removal based on drug use or convictions and involvement in the sex trades.
- ❖ Full and comprehensive reparations to all people who have been adversely impacted by the drug war and enforcement of prostitution laws — for police harassment and violence; for time spent in jails or prisons; for denial of housing, education, and employment; for extortion of sex or money in exchange for leniency; for loss of parental rights and separation of children from parents in foster care and adoption; for detention, deportation, and exclusion from the U.S.
- ❖ Create mechanisms for people criminalized by the “War on Drugs” to be able to participate in legal drug markets where decriminalization has already taken place.
- ❖ Investment of savings from decriminalization to meet the needs identified by all people impacted by the drug and sex trades themselves, regardless of whether they have experienced specific harms, including affordable, accessible, and high quality housing; living wage employment; comprehensive, accessible, and universal, non-judgmental, and harm reduction-based health services; and voluntary, evidence-based, safe, and affirming support and treatment relating to substance use and dependence, without mandating or coercing participation in services.

- ❖ Expanded 911 Good Samaritan laws to offer immunity from prosecution for people who call emergency services, including in the event of an overdose.
- ❖ Expansion of community-based naloxone access and distribution.
- ❖ Expansion of Opioid Agonist Treatment (OAT).
- ❖ Authorized supervised consumption sites (SCS) on the state and local level.

HOW DOES THIS SOLUTION ADDRESS THE SPECIFIC NEEDS OF SOME OF THE MOST MARGINALIZED BLACK PEOPLE?

- ❖ Drug and prostitution law enforcement practices disproportionately impact low- and no-income, disabled, LGBTQ+, and migrant Black people and communities.
- ❖ Drug law enforcement drives criminalization of pregnant and parenting Black people, family separation, and denial of reproductive and sexual autonomy.
- ❖ Once saddled with a drug or prostitution conviction, individuals are denied access to public housing, education, and employment, often driving them further into criminalized economies.
- ❖ Trans and cisgender Black women, gender nonconforming and queer people are disproportionately profiled and affected by criminalization of prostitution-related offenses.
- ❖ Black migrants are disproportionately affected by the federal bar on entry of individuals who have engaged in prostitution, regardless of whether they have been arrested or convicted.



FEDERAL ACTION:

- ❖ Pass legislation at the federal level decriminalizing offenses relating to drug possession and sale.
- ❖ Pass the **MORE Act**, which would federally decriminalize marijuana and provide for expungement and investment in communities affected by the “War on Drugs.”
- ❖ Pass legislation consistent with the **People’s Justice Guarantee**, which would **decriminalize drug offenses** and invest in community needs.
- ❖ Repeal portions of the **Immigration Reform and Control Act (IRCA)** deeming drug offenses “aggravated felonies” warranting exclusion and deportation.
- ❖ Repeal the **Mann Act**.
- ❖ Repeal **FOSTA/SESTA**. Pass the **SAFE SEX Workers Study Act**, which would mandate a study of the legislation’s impact on the health and safety of people in the sex trades.
- ❖ Eliminate the ban on entry and immigration into the U.S. for individuals who have engaged in prostitution and remove prostitution-related charges as a crime of moral turpitude for immigration proceedings.
- ❖ Repeal the so-called “anti-prostitution pledge,” which denies international HIV/AIDS and anti-trafficking funds to groups that support sex workers.
- ❖ Repeal regulations and end programs that permit and incentivize asset seizure and forfeiture by federal, state and local law enforcement agencies.
- ❖ Develop a comprehensive reparations package for people adversely impacted by criminalization of the drug and sex trades, including ensuring access to opportunities in legal drug markets, restoration of value of assets seized through asset forfeiture. Implement vacatur and expungement systems that afford post-conviction relief to people with criminal convictions and removal from sex offender registries where applicable.



STATE ACTION

- ❖ Pass legislation decriminalizing offenses relating to drug possession and sale.
- ❖ Pass legislation decriminalizing all prostitution-related offenses.
- ❖ Eliminate coercive and mandated drug treatment and expand availability of accessible, affirming, non-judgmental, voluntary, low-threshold, harm reduction and evidence-based treatment and support for substance use and dependence, including for women, pregnant and parenting people, disabled, LGBTQ and gender nonconforming people, English language learners, and migrants. Ensure that services are uncoupled from law enforcement, are non-stigmatizing, do not mandate exit from the sex trades or abstinence from drug and alcohol use, and are focused on client needs.
- ❖ Repeal regulations and end programs that permit and incentivize asset seizure and forfeiture by law enforcement agencies.
- ❖ Develop a comprehensive reparations package for people adversely impacted by criminalization of the drug and sex trades, including ensuring access to opportunities in legal drug markets, restoration of value of assets seized through asset forfeiture. Implement vacatur and expungement systems that afford post-conviction relief to people with criminal convictions and removal from sex offender registries where applicable.
- ❖ Prohibit discrimination based on prior convictions of drug- or prostitution-related offenses.





LOCAL ACTION

- ❖ Pass local ordinances decriminalizing drug- and prostitution-related offenses.
- ❖ Enact and enforce policies barring arrest or prosecution for drug- and prostitution- related offenses.
- ❖ Cease civil enforcement of prostitution-related nuisance actions.
- ❖ Eliminate coercive and mandated drug treatment, and expand availability of accessible, affirming, non-judgmental, voluntary, low-threshold, harm reduction- and evidence- based treatment and support for substance use and dependence, including for pregnant and parenting people, disabled, LGBTQ and gender nonconforming people, English language learners, and migrants.
- ❖ Defund and dismantle vice units.
- ❖ Repeal regulations and end programs that permit and incentivize asset seizure and forfeiture by law enforcement agencies.
- ❖ Deprioritize enforcement efforts targeting third-party internet advertising platforms and instead facilitate partnerships with these operators as resources to connect with populations who may not feel comfortable seeking out law enforcement to report victimization.
- ❖ Reallocate funds expended on vice operations to provide for needs of people in the sex and drug trades, including accessible, affordable, high quality housing, living wage employment, universal child care, and comprehensive, universal, free, accessible, affirming, non-judgmental, voluntary, low-threshold, harm reduction- and evidence- based treatment and support for substance use and dependence, including for pregnant and parenting people, disabled, LGBTQ and gender nonconforming people, English language learners, and migrants. Ensure that services are uncoupled from law enforcement, are non-stigmatizing, do not mandate exit from the sex trades or abstinence from drug & alcohol use, and are focused on client needs.

MODEL LEGISLATION

- ❖ *Drug Decriminalization in Portugal: A Health Centered Approach*
- ❖ *New Zealand Prostitution Reform Act of 2003*
- ❖ *Stop Violence in the Sex Trade Act (NY)*
- ❖ *Community Safety and Health Amendment Act of 2019 (District of Columbia)*

RESOURCES

- ❖ **10 Reasons to Decriminalize Sex Work**, Open Society Foundations
- ❖ **14 Years After Decriminalizing All Drugs, Here's What Portugal Looks Like**
- ❖ **Approaches to Decriminalizing Drug Use and Possession**
- ❖ **Decriminalizing Survival**: Policy Platform and Polling on the Decriminalization of Sex Work
- ❖ Drug Policy Alliance, **Criminal Justice Reform in the Fentanyl Era: One Step Forward, Two Steps Back**
- ❖ Drug Policy Alliance, **Rethinking the Drug Dealer**
- ❖ **For Disabled Sex Workers, Congress' Anti-Trafficking Legislation Is Life Threatening**
- ❖ From the War on Poverty to the War on Crime: **The Making of Mass Incarceration in America**
- ❖ **How the War on Sex Work Crushes Underprivileged Women**
- ❖ Invisible No More: **Police Violence Against Black Women and Women of Color**
- ❖ **Majority of Surveyed US Voters Support Sex Work Decrim**
- ❖ National Black Women's Justice Institute, **Expanding Our Frame, Deepening Our Demands for Safety and Healing for Black Survivors of Sexual Violence**
- ❖ **New Study Shows That Shows Portugal's Decriminalization of All Drugs Resulted in Reductions in Drug Use, Prison Overcrowding and Drug Related Deaths**
- ❖ **The Impact of the Trump Administration's Federal Criminal Justice** Initiatives on LGBTQ People & Communities and Opportunities for Local Resistance
- ❖ **2015 U.S. Trans Survey: Report on the Experiences of Black Respondents**

ORGANIZATIONS CURRENTLY WORKING ON POLICY

BLACK AND PINK

BYP100

DECRIM NOW

DECRIM NY

**DRUG POLICY
ALLIANCE**

DESIREE ALLIANCE

**EQUITY AND
TRANSFORMATION
(EAT)**

**HARM REDUCTION
COALITION**

**HELPING INDIVIDUAL
PROSTITUTES
SURVIVE (H.I.P.S)**

ORGANIZATIONS CURRENTLY WORKING ON POLICY

**INTERRUPTING
CRIMINALIZATION**

**MOVEMENT FOR
FAMILY POWER**

MIJENTE

**NATIONAL
ADVOCATES FOR
PREGNANT WOMEN**

**NATIONAL LGBT/HIV
CRIMINAL JUSTICE
WORKING GROUP**

**REFRAME HEALTH
AND JUSTICE**

**TRANSGENDER LAW
CENTER**

**RED CANARY SONG,
NYC**

**SOLUTIONS NOT
PUNISHMENT
COALITION
(SNaPCo)**

AUTHORS & CONTRIBUTORS

- ❖ *Andrea J. Ritchie, Interrupting Criminalization*
- ❖ *DeAngelo Bester, Workers Center for Racial Justice*
- ❖ *Kassandra Frederique, Drug Policy Alliance*
- ❖ *Kate D'Adamo, REFRAME for Health and Justice*
- ❖ *Marbre Stahly-Butts, Center for Popular Democracy*
- ❖ *Saye Joseph, BYP100*
- ❖ *Sheila Vakharia, Drug Policy Alliance*
- ❖ *Dionna King, Drug Policy Alliance*
- ❖ *Toni-Michelle Williams, Solutions Not Punishment Coalition (SNaPCo)*
- ❖ *Woods Ervin, Interrupting Criminalization*



JUSTICE!

A VISION FOR BLACK LIVES

POLICY DEMANDS FOR BLACK POWER, FREEDOM, & JUSTICE



M4BL.ORG

M4BL

THE MOVEMENT
FOR BLACK LIVES