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Risk of Criminalization Among Sex Workers Carrying Condoms

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RESEARCH THAT MATTERS

RISK OF CRIMINALIZATION AMONG SEX WORKERS CARRYING CONDOMS

MAY 2023

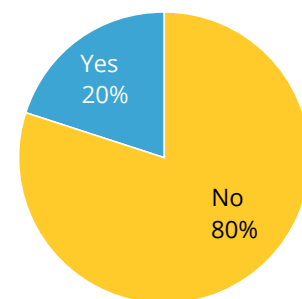
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EXECUTIVE SUMMARY

People who engage in sex work (PESW) are particularly vulnerable to criminalization even when seeking to report experiencing victimization. The health and safety of those engaged in sex work is further jeopardized as condoms have been historically used as evidence of sex work. California Senate Bill (SB) 233, taking effect on January 1, 2020, was meant to ensure that condoms cannot be used as probable cause for arrest nor used as evidence to prosecute a person for sex work. Nearly two years after its passage, we conducted interviews with twenty-five diverse individuals with experience engaging in sex work in Los Angeles County, a known locus for enforcement of a prior HIV felony solicitation. We sought to explore respondents' interactions with law enforcement, their knowledge, beliefs, and experiences with the use of condoms as evidence of sex work, and their beliefs about criminalization risk and how that might impact condom possession and condom use in the context of their work. Through a group thematic review and individual coding (or categorizing) process, we identified the below key findings:

- Respondents shared their perceptions about the risks of criminalization related to condoms in several ways. Some had detailed knowledge about rules and policies related to condom carrying and others had a general awareness of the possible risk of carrying condoms.
- Respondents discussed that the information they received about criminalization regarding condom possession came primarily from other PESW.
- Respondents discussed approaches to mitigating risk of police surveillance by either not carrying condoms at all and/or managing condom carrying through concealing techniques.
- Some respondents who carried condoms, whether they tried to conceal them or not, discussed reasons for doing so, including resisting police control and reducing risk to protect their health, the health of their clients, and/or the health of their community and colleagues in sex work.
- Generally, most respondents (80%) had not heard of any new law that restricted the use of condoms as evidence (SB 233). Further, reflecting the lack of awareness of the new law, condom-carrying behaviors seemed relatively unchanged.
- Notably, most respondents carried condoms regardless of the risk of criminalization.

Awareness of SB233 among sex workers in Los Angeles



Findings point to future opportunities to support the resilience demonstrated by PESW themselves, including their determination to carry condoms and protect their health and the health of others. While evaluating the implementation and adherence to SB233 among law enforcement remains critical post-passage of SB 233, aligning future implementation efforts with advocacy efforts led by PESW might yield greater impact—as respondents largely reported receiving information from other members of their community, including other PESW.

INTRODUCTION

People who engage in sex work (PESW)¹ experience high rates of violence and victimization while working.^{2,3} Sex work is the consensual⁴ provision of sexual services for money or goods, including nonmonetary items.⁵ Prior research documents experiences of physical attack, sexual assault, and negative interactions with law enforcement, including violence perpetrated by law enforcement officers.^{6,7} PESW are particularly vulnerable to criminalization for sex work even when seeking to report experiencing victimization.^{8,9} The health and safety of PESW is further jeopardized as condoms have been historically used as evidence of sex work, including in the context of reporting crime and victimization.^{10,11} California Senate Bill (SB) 233 authored by Senator Scott Wiener was passed into law in 2019, taking effect on January 1, 2020.¹² SB 233 ensures that condom possession, or possession of any prophylactics, cannot be used as probable cause to arrest nor used as evidence to prosecute a person for a sex work-related crime. It also provides PESW, who are victims or witnesses, the ability to report a serious and violent felony and receive limited immunity from prosecution of misdemeanor sex work-related crimes or minor drug possession at or around the time of the alleged felony crime.

¹ While it is best to use the language that individuals use to describe themselves and their work (i.e., hooker, stripper, sex worker, prostitute, hoe), we did not gather this information for our study. For this reason, we refrain from referring to our respondents as “sex workers.” Thus we have elected to use a term that broadly includes those engaged in sex work: people who engage in sex work (PESW).

² Deering KN, Amin A, Shoveller J, Nesbitt A, Garcia-Moreno C, Duff P, Argento E, Shannon K. A systematic review of the correlates of violence against sex workers. *Am J Public Health*. 2014 May;104(5):e42-54. doi: 10.2105/AJPH.2014.301909. Epub 2014 Mar 13. PMID: 24625169; PMCID: PMC3987574.

³ Katherine H.A. Footer et al. “Police-Related Correlates of Client-Perpetrated Violence Among Female Sex Workers in Baltimore City, Maryland”, *American Journal of Public Health* 109, no. 2 (February 1, 2019): pp. 289-295.

⁴ We acknowledge that consent is a spectrum that ranges for individuals and is impacted by various factors including race, age, ability, and most notably, economic status. We did not ask our respondents if the instances in which they discussed their sex work were entirely consensual.

⁵ Baldwin, SB, Edwards, G, Fuentes, K, Leibowitz, A, Miyashita Ochoa, A, Seegmiller, W, and Shah, M. Health Outcomes Associated with Criminalization and Regulation of Sex Trade. California HIV/AIDS Policy Research Centers (March 2021). Available at: <http://www.chprc.org/publications>.

⁶ Sherman SG, Footer K, Illangasekare S, Clark E, Pearson E, Decker MR. “What makes you think you have special privileges because you are a police officer?” A qualitative exploration of police’s role in the risk environment of female sex workers. *AIDS Care*. 2015;27(4):473-80. doi: 10.1080/09540121.2014.970504. Epub 2014 Oct 31. PMID: 25360822; PMCID: PMC4312509.

⁷ Goldenberg, S.M., Duff, P. & Krusi, A. Work environments and HIV prevention: a qualitative review and meta-synthesis of sex worker narratives. *BMC Public Health* 15, 1241 (2015). <https://doi.org/10.1186/s12889-015-2491-x>

⁸ Decker, M. R., Crago, A. L., Chu, S. K., Sherman, S. G., Seshu, M. S., Buthelezi, K., ... & Beyrer, C. (2015). Human rights violations against sex workers: burden and effect on HIV. *The Lancet*, 385(9963), 186-199.

⁹ Struyf P. To Report or Not to Report? A Systematic Review of Sex Workers’ Willingness to Report Violence and Victimization to Police. *Trauma Violence Abuse*. 2022 Sep 26:15248380221122819. doi: 10.1177/15248380221122819. Epub ahead of print. PMID: 36154751.

¹⁰ McLemore, Megan., & Human Rights Watch (Organization). (2012). *Sex workers at risk : condoms as evidence of prostitution in four US cities*. Human Rights Watch.

¹¹ Wurth, M. H., Schleifer, R., McLemore, M., Todrys, K. W., & Amon, J. J. (2013). Condoms as evidence of prostitution in the United States and the criminalization of sex work. *Journal of the International AIDS Society*, 16(1), 18626. <https://doi.org/10.7448/IAS.16.1.18626>

¹² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB233

Prior research established that over 95% of HIV criminalization cases in California resulted from the enforcement of a law that criminalized people living with HIV who engaged in or were suspected of engaging in sex work.¹³ These data specifically identified Los Angeles County as the locus for enforcement of the HIV felony solicitation law in place at the time (California Penal Code §647f, repealed January 1, 2018), with over half of the incidents occurring within the County. Because this prior research relied on existing criminal offender records data, it did not allow for an assessment of the ways PESW navigate health and safety in the context of threats to criminalization. This project was designed to address the need for more research from the perspectives of those engaged in sex work and in the context of the newly passed legislation.

Beginning in 2019, in collaboration with community-based organizations East Los Angeles Women's Center and Sex Worker Outreach Project Los Angeles, the research team implemented a qualitative study to understand the potential effects of SB 233. We aimed to document and understand interactions PESW have with law enforcement and how those experiences may have impacted decisions to possess and use condoms in the context of sex work in Los Angeles County. Through collaborating with those who engage in, or have a recent history of engaging in, sex work, this study sought to 1) explore the nature of respondents' interactions with law enforcement, 2) explore respondents' knowledge, beliefs, and experiences of how condoms may be/have been used as evidence in the crime of "prostitution,"¹⁴ and 3) identify how the criminalization of sex work as perceived by respondents may impact condom possession and condom use in the context of their work.

PROJECT APPROACH

Interviews were collected from February 2021 through August 2022. All procedures were conducted in compliance with the institutional review board of UCLA. For this study, respondents were asked to participate in an interview if they were a) 18 years old or older, b) had sex work experience in Los Angeles County, and c) had prior interactions with law enforcement while working. Outreach and recruitment efforts included developing recruitment materials in English and Spanish grounded in a sex-positive point of view, distributing palm cards to twelve organizational partners serving PESW across Los Angeles County, presenting information about the study at community meetings, tabling during community events (e.g., health fairs), and distributing materials at community health and social services organization sites.

All respondents provided oral consent documented in writing by research staff prior to participating in the study. The study included participation in a one-time semi-structured anonymous interview over Zoom, an online meeting platform. In total, thirty-nine individuals (n=39) were screened for interviews, thirty-three (n=33) were deemed eligible to participate, and twenty-five individuals (n=25) successfully completed an interview. Respondents were identified by a unique identification number and were requested to use a pseudonym of their choice. After collecting demographic data, we asked respondents about their experiences in sex work, interactions with law enforcement, sexual risk behaviors, condom-carrying practices, substance use, and experiences with violence and victimization.

¹³ Amira Hasenbush, Ayako Miyashita, & Bianca D.M. Wilson, The Williams Inst. Univ. of Cal. L.A. Sch. Of Law, HIV Criminalization in California: Penal Implications for People Living with HIV/AIDs (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalization-California-Updated-June-2016.pdf>

¹⁴ The research collective underscores the importance of language and has chosen to avoid using "prostitution" throughout the brief. This is due to the stigmatized nature of the term.

On average, interviews lasted approximately one hour. Respondents received \$100 for participating in the study.

Our analytic approach involved an iterative process between group thematic review and individual coding (or categorizing) procedures. We started by excerpting all text in response to the open-ended interview questions relevant to the current policy brief. For the current brief, the team specifically examined the text in response to questions about whether interviewees had heard of any rules or policies regarding the legality of carrying condoms in the context of sex work and their own practices of carrying condoms within the context of those beliefs. As a team, we reviewed the excerpted text and discussed overarching categories of responses which led to a consensus on a set of major themes. Then, a subset of team members re-analyzed the interview excerpts with a codebook based on the themes identified by the team. The coders examined patterns among codes and between codes and characteristics of the respondents (e.g., gender identity). Finally, for each claim about patterns in the data, we sought to identify any evidence that contradicted these patterns, resulting in clarifications (e.g., editing claims about “most” to “a few” people experiencing an issue), or removal of a theme from the final list of findings. Here, we present the resulting themes from this process as they relate to the research questions of this sub-study study focused on condom carrying.

Table 1. Study sample demographics

OVERALL (N=25)	
Age	
Minimum-maximum	20-54 years
Mean	35 years
%	
Race	
White or European	12
Black or African American	42
Latino/a/e or Hispanic	13
Asian or Asian American	8
American Indian	4
Biracial/ Multiracial	21
Sexual Orientation	
Straight or heterosexual	48
Gay or lesbian	16
Bisexual	16
Queer	8
Something else	12
Gender Identity	
*Transgender	18
Cisgender female	3
Cisgender male	4

OVERALL (N=25)	
%	
Gender Expression (n=24)	
Very feminine	50
Mostly feminine	21
Somewhat feminine	4
Equally feminine and masculine	12
Somewhat masculine	5
Mostly masculine	4
Very masculine	4

*Respondents were categorized as transgender if their self-reported assigned sex at birth was different than their gender identity. Of the 18 transgender respondents, 12 identified as women or were assigned male at birth and identified as transgender.

FINDINGS

PERCEPTIONS OF CONDOM-CARRYING RISK

We asked respondents whether they were aware of any rules or practices related to carrying condoms while engaging in sex work. The majority were aware of some type of rule or expectation; less were knowledgeable about an actual policing policy or practice related to condom possession. Below we describe three ways respondents discussed their perceptions about the risks to criminalization related to condoms—detailed knowledge about rules and policies related to condom carrying, general awareness of the possible risk of carrying condoms, and sources of information about criminalization as it relates to condom possession.

Knowledge

A few respondents spoke about a specific number of condoms that could trigger the use of condoms as evidence of sex work. This included individuals that believed that a single condom was enough to draw suspicion from law enforcement. There were a range of perceptions about a “certain” or specific amount of condoms as being part of a policing rule or practice. Tray’s description demonstrates such knowledge.

I’ve heard if you’re in an area that’s known for its sex work or anything like that, if you’re caught with a certain amount of condoms or an amount that’s over—I don’t know the facts. Supposedly, you’re not supposed to have over a certain amount of condoms in your possession or in your car.

Tray, 37, cisgender man, Black/African American, informal sex work through word of mouth

Unlike Tray, Carla and several others reported having specific knowledge regarding one commonly understood policing practice.

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.

Carla, 26, transgender woman, Asian/Asian American, sex work advertised online

Using terms analogous to the criminalization of substance use, Sasha explained,

Yeah. That’s paraphernalia. You get arrested for that...that means I’m turning a trick. I’m out soliciting. When they see that, that means you’re soliciting.

Sasha, 40, transgender woman, Black/African American, street-based sex work

Awareness

A handful of respondents demonstrated awareness that condom possession posed a risk of criminalization, even though they had no specific knowledge about any policing policy or practice regarding condom possession, nor had condoms been used as evidence against them personally. When asked about their knowledge, Jason responded,

Honestly, no, but I always have had—in my mind, I always felt like if the police is gonna stop me out on the street and they see that I have lube and condoms on me, instantly they know what I'm doing. It's like a given, you know, what you're out here doin' because why would you be—not sayin' that it's against the law for somebody to walk around with condoms and lube on them. That's not in the law, that's not against no law, but I've never actually—I've never experienced that, nor have anybody that I know of, that I can think of, ever said anything to me as far as them being stopped and the police finding lube or condoms on them and just assume that they are out doin' sex work. I never had nobody say that to me, and I've never experienced it. Now, I thought that back in the day when I would think to myself and say, if they pull you over and stop you, they gonna think—they gonna know exactly what you're doin'.

Jason, 54, cisgender man, Black/African American, sex work advertised online

Referencing prior experiences with law enforcement, Brian demonstrated awareness of how condoms in addition to other items could be used as evidence, including lubrication (“lube”) and pre-exposure prophylaxis (“PrEP”).

When I bring my condoms with me, I just take a handful of condoms and put 'em in my bag. That's how they feel that I'm doing prostitution. Then also, I have lube in there. I have PrEP, my PrEP medication, in there. Yeah, that's what they feel that I'm, conducting prostitution... They say, “Oh, what are you doing with all this?” then I said, “Oh, this for my own personal business.” Then they said, “Oh, well, it's our business now.” Then they tried to get more information out of me. I said, “No, it's just for my own personal business. Why is it your business?” Then that's when they say, “You're doing prostitution, aren't you?”

Brian, 26, cisgender man, Asian/Asian American and Latino/Hispanic, sex work advertised online

Similarly, while Passion has never been told by law enforcement that PESW are not supposed to carry condoms nor received any such messaging from others, she deduced that condoms would raise suspicion in the context of criminalization.

... I always carry numerous condoms and lube with me. I think when you have so many condoms in your purse, or lubrication, that's the first thing that comes to their mind.

Passion, 51, transgender woman, Black/African American, street-based sex work

The qualitative responses on the topic of rules about carrying condoms reflect the responses to the close-ended questions as well. Generally, most respondents had not heard of any new law that restricted the use of condoms as evidence (SB 233). Further, reflecting the lack of awareness of the new law, condom-carrying behaviors seem relatively unchanged during the two time points we asked about. Notably, most carried condoms regardless of the risk of criminalization.

Table 2. Awareness and condom use in study sample

OVERALL (N=25)	
	%
Were aware of recent changes to California law regarding condoms used as evidence of prostitution	
Yes	20
No	80
In the past year, did you carry condoms with you while working in the sex work (n=24)	
Yes	79
No	17
Refused to answer	4
Before the past year, did you carry condoms with you while working in the sex work (n=24)	
Yes	83
No	12
Not Sure	4

SOURCES OF INFORMATION

Of respondents that were aware of a rule about condom carrying and policing of sex work, the most common source of information was members of their community, including other PESW.

One of them told me like, "Don't carry more than three condoms. Because if cops will show you, I know you experienced that back home. If they see you having a lot of condoms there, they're gonna use that against you."

Carla, 26, transgender woman, Asian/Asian American, sex work advertised online

Sensation, another respondent, shared a similar sentiment when asked if she had heard about any rules or practices regarding condoms and policing.

I did from other girls who would say, "You can't have a certain amount of condoms or they're gonna automatically think you're a prostitute, and you're going to jail."

Sensation, 38, transgender woman, American Indian, street-based sex work

STRATEGIES FOR MITIGATING RISK OF CRIMINALIZATION OF SEX WORK

Among those that perceived some degree of criminalization risk to carrying condoms, there was a range of responses to this awareness. Respondents discussed approaches to mitigating the risk of police surveillance by either not carrying condoms at all and/or managing condom carrying through concealing techniques. Also, some who carried condoms, whether they tried to conceal them or not, discussed reasons for doing so. These reasons included resisting police control generally and specifically in the context of reducing risk to their own and professional community's health.

Working Without Condoms

A couple of respondents indicated that they avoided carrying condoms due to their concerns about police interactions. When asked whether she knew of any rules regarding carrying condoms, one respondent, Trixie, talked about the way that awareness of these policies, and the ways law enforcement may respond, impacted her behavior and practice.

Condoms and rules and practicings that I know of? The only thing I know of, basically, is a lot of them, they catch you with them in your possession, or on you, they assume you're automatically doing something. [Interviewer asks: Right. Do you currently carry condoms with you...?] Not at all, no.

Trixie, 35, transgender woman, Black and Puerto Rican, sex work advertised online

As the quote indicates, multiple sources of pressure sometimes affected whether or not people engaged in carrying condoms, including fears about what police would do. One respondent, Alex (20-year-old transgender Latino man who advertised sex work online) noted that they did not carry condoms because they feared police interactions, but also his clients preferred not to use them. In all, very few respondents avoided carrying condoms as a result of their awareness of informal policing practices or previous negative police interactions.

Carrying But Concealing

Most respondents who perceived the risk of criminalization through police interactions or arrest as a function of carrying condoms nonetheless carried them. Some respondents emphasized a need to carry with caution.

I put 'em in my bra or in my undergarments, or if I have on a waist cincher, I'll keep 'em in there, or if I have on boots or thigh-highs, I'll keep 'em down there, things like that.

Patty, 40, transgender intersex woman, Black/African American and Latina/Hispanic, street-based sex work

This quote demonstrates how PESW identified creative ways to conceal the condoms they carried, including hiding them in wigs, altering bags and purses to create secret compartments, and asking clients to bring their own condoms.

Carrying Openly

Several respondents who were aware of the risk of police interactions related to condoms nonetheless discussed carrying condoms without any concealment practices. For example, when asked about whether they carried condoms, two respondents indicated they did so often:

Like American Express, don't leave home without it.

Patty, 40, transgender intersex woman, Black/African American and Latina/Hispanic, street-based sex work

I carry a box of 'em.

Sky, 37, cisgender woman, Black/African American, sex work advertised online

Carrying Condoms Despite Criminalization Risk

As seen above, many respondents carried condoms either concealed or openly. They talked about doing this regardless of their awareness of carceral consequences or negative interactions with the police. When discussing this choice, several cited reasons related to protecting their health, the health of their clients, and/or the health of their community and colleagues in sex work.

I mean it depends on the type of sex work they're doing and where they're working from... Because 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.

Lilith, 35, non-binary, White/European American, fetish work

The act of resistance to carry condoms was discussed by several respondents in the context of knowing condoms might be used in an arrest (whether or not the policing practice was still legally permissible under SB 233). As Table 3 shows, when we asked each participant whether condoms had been considered as evidence in a previous arrest, about half indicated that had happened to them.

Table 3. Criminalization risk from carrying condoms and other items

	OVERALL (N=25)
	%
When police arrested you, did they consider things in your possession such as condoms as "evidence of prostitution"	
Yes, condoms	24
Yes, condoms and other items	12
Yes, condoms and sex toys	12
Yes, condoms, sex toys, and other items	12
Yes, other items	4
No	44

Note: In the survey questionnaire, respondents were given a multiple-choice option where they could choose all responses that applied. The estimates reflect all of the respondents' selections to the question as each could select multiple responses. Other items include money, makeup, perfume, breast pads, lube, and PrEP.

IMPLICATIONS

In this study, we sought to understand knowledge, awareness, and experiences with the use of condoms as criminalized evidence of sex work. This research was intentionally situated at the onset of the implementation of SB 233, a relatively new law designed to decriminalize condom carrying and disassociate the practice from legal actions taken against sex work. Our queries revealed how the overall criminalization of sex work and the role of condoms in criminalization affect respondents' condom-carrying practices. Some knew of a practice or policy on how condoms are used as evidence of sex work. Even when respondents did not claim any specific knowledge, many were aware of or suspected that there would be risks to carrying condoms on their person. Respondents indicated that they learned about the practice of law enforcement targeting them for carrying condoms through various sources, including respondents' own experiences interacting with law enforcement and from community members of peers engaged in sex work. Respondents discussed approaches to mitigating risk to police surveillance by either not carrying condoms at all and/or managing condom carrying through concealing techniques. For respondents that elected to carry condoms despite the risk of criminalization, reasons included generally resisting police control and resisting police control as a means of valuing their own health. One of the striking indications of this study is that most respondents indicated awareness of being targeted by law enforcement if they carried condoms at a time when condoms could no longer be used as evidence of sex work. This highlights a need for interventions to raise awareness of the legal rights of PESW, but also focus on evaluating the implementation and adherence to SB233 among the police. There remains an opportunity to align future implementation efforts with advocacy efforts led by PESW given that much of the knowledge and awareness that respondents reported came from other members of their community, including other PESW.

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