




Exercising Discretion

A Handbook for Advocates and District Attorneys Navigating
the Possibilities and Impacts of Non-Prosecution Policies in
the Context of Sex Work Criminalization



Introductions

Mariah Grant (she/her) is a human rights researcher and advocate who focuses on migrant and sex worker rights, freedom of movement, and labor exploitation. She is currently a freelance consultant working on projects related to sex worker rights, human trafficking prevention, and service provision for survivors. She combines her many years of experience providing direct services to migrant and refugee children and families within the United States and Europe and researching and documenting human rights abuses throughout the Americas, the Middle East, and Asia-Pacific to push for long-term policy solutions at the local, state, national, and international levels.

Francesca Maviglia (she/her) is a public health professional with a focus on political and legal determinants on health, particularly as it pertains to harm reduction and sex workers' rights and health. She has been involved in research, advocacy, and project management for several projects related to the health and rights of sex workers; drug policy and harm reduction; and housing justice, as a Postgraduate Research Associate at the Yale School of Medicine and as a Fellow with the Global Health Justice Partnership. She is currently a research assistant on several harm reduction studies exploring harm reduction needs of people affected by changes in the drug supply.

Roadmap of Training

Agenda

1. How to Use the Handbook
2. Primer on Prosecutorial Discretion
3. Model Non-Prosecution Policy
4. Where are we today? Updates on DA Non-Prosecution Movement

Agreements

1. Sex work and other criminalized labor are legitimate forms of work
2. We strive for the full decriminalization of sex work as the baseline to protect the rights, labor, power, and health of sex workers

Context of the Handbook

Timeline

1. Started research in Fall 2021
2. Bulk of writing & editing in 2022
3. Published in March 2023

Political context

- COVID-19 pandemic
- Post George Floyd uprising

How to Use the DA Handbook

Section I: Action Sheet: Model Policy and Landscape Analysis

Advocates can use this section to identify relevant issues, and avenues for advocacy with their local DA office.

Section I:

- Presents the scope of charges that DAs should decline to prosecute under a Model Policy;
- Provides a series of Landscape Analysis Questions for advocates mapping their local context.

For further reading see [Pages 6-12 of the DA Handbook](#).

Section II: Policy Development and Communications

Advocates can use this section to identify relevant contextual dynamics for the development and communication of non-prosecution policies.

Section II:

- Explores the development of non-prosecution policies to date;
- Discusses choices made by DAs around policy communication and implementation, & their impact;
- Presents important principles for DA engagement with sex workers' rights advocates.

For further reading see [Pages 13-23 of the DA Handbook](#).

Section III: Key Elements of a Non-Prosecution Policy

Advocates can use this section for detailed recommendations for the scope of non-prosecution policies.

Section III:

- Presents the key features of a model non-prosecution policy in detail, including:
 - Declining prosecution for all offenses related to the selling and buying of sex;
 - Declining prosecution of 'quality-of-life' offenses;
 - Including action in the policy to support the dismissal of current and past charges and cases.
- Discusses variations in policy models and their possible shortcomings.

For further reading see [Pages 26-39 of the DA Handbook](#).

Section IV: Points of Influence in Policy Implementation

Advocates can use this section to identify other actors to target in advocacy, and their dynamics with DAs.

Section IV:

- Explores points of influence on non-prosecution policies;
- Presents how other actors in the criminal legal system can inhibit or support non-prosecution policies.

For further reading see [Pages 42-59 of the DA Handbook](#).

Section V: Primer on District Attorneys, Criminal Law, and Sex Work

Advocates can use this section to enhance their understanding of the role and powers of DAs, both generally and with regard to the criminalization of sex work.

Section V:

- Provides background information on the power and role of district attorneys;
- Discusses the ways that DAs can enhance or mitigate the harms of criminal law, particularly regarding sex workers' health and rights.

This section is intended to build foundational understanding of this area and should be the first section consulted for those new to engaging with DAs. It may also be used as a stand-alone resource to share for advocacy or education.

For further reading see [Pages 61-69 of the DA Handbook](#).

Infosheets

Summarize background conditions that have informed non-prosecution policy development.

Formatted as stand-alone documents, advocates may print or send these as part of advocacy or education efforts with DAs or other stakeholders.

Stand-alone PDFs are available alongside the handbook on [GHJP's website](#).

INFORMATION SHEET

GROWING MAINSTREAM RECOGNITION OF THE HARMS OF CRIMINAL LAW

Growing awareness of the harms of criminalizing sex work has developed with, and benefited from, a broader national conversation about policing, incarceration, and the criminal legal system as a whole, that was thrust into the mainstream by recent waves of struggle for racial justice and challenging anti-Blackness, and spurred in 2020 by the killings of George Floyd, Ahmaud Arbery, and Breonna Taylor by current or former police officers.¹

Criminal legal system is the phrase we use, rather than "criminal justice system," as an acknowledgement that the system does not deliver justice for many individuals and communities. The phrase, "criminal punishment system," is also used by advocates to highlight how it functions as an apparatus of racist violence, serving aims of surveillance, control, punishment, and retribution.²

This renewed understanding of the harms of policing and carceral systems on racialized and poor individuals is reflected in the policy statement "Addressing Law Enforcement Violence as a Public Health Issue" adopted in 2018 by the American Public Health Association (APHA), the largest professional association for public health in the U.S.³ The statement acknowledges that the system of law enforcement is one of the factors causing the disproportionate levels of physical and psychological violence targeted at marginalized communities, including Black people and other people of color, Indigenous people, immigrants, LGBTQ+ people, people with disabilities or mental illnesses, people engaging in criminalized activities such as sex work and drug use, and people suffering from poverty-related issues including homelessness. In 2021, over 250 researchers and scientists signed an open letter to President Joe Biden and Vice President Kamala Harris underscoring the "wealth of empirical data" on the harms of criminalizing sex work, and called for decriminalization, among other measures.⁴

Sex workers are differentially exposed to the harms of criminalization and violence based on the level of physical contact with both clients and police involved in the type(s) of sex work performed.⁵ For example, individuals who cam or are phone sex operators have less contact with clients and police than in-person and street-based sex workers. This also highlights the different level and kind of police interaction and surveillance dealt with by people in legalized sectors of the sex trades, although they still may face restrictions and censorship due to SESTA-FOSTA. Sex workers who exclusively produce and publish adult content online may work with agencies and platforms operating legally, and are not necessarily engaging in criminalized sectors of sex work. Moving between types of sex work as a risk management strategy is not possible for everyone, as seen when some in-person sex workers moved to online settings at the beginning of the pandemic, as sex workers and clients sought to avoid COVID-19 transmission. This harm reduction strategy is contingently accessible, based on access to technology, digital skills, differential opportunities for non-white sex workers in online spaces, restrictions due to SESTA-FOSTA,⁶ and limited payment options due in part to Mastercard's restrictions on processing payments for adult content.⁷ **Exposure to the harms of criminalization is also a function of stereotypes about sex work, which are often racialized and gendered in specific ways.**

Community guide

Provides a 6-page overview of the main takeaways of the DA Handbook, available online of the [SWP](#) and [GHJP](#) websites

The image shows the cover of a report titled 'Community Guide'. The cover features a stylized illustration of a red hand reaching out from the top left. The background is a light green grid pattern. The title 'Community Guide' is written in a bold, orange font. On the right side, there is a dark blue triangular shape containing white text. Below the title, the main title of the report is displayed in a black font. At the bottom, there is a short paragraph of text in a smaller font.

**Community
Guide**

The Global Health
Justice Partnership of
the Yale Law School and
Yale School of Public
Health

in cooperation with

The Sex Workers Project
of the Urban Justice
Center

Possibilities and Impacts of
Non-Prosecution Policies in the
Context of Sex Work Criminalization

This resource is a Community Guide to *Exercising Discretion: A Handbook for Advocates and District Attorneys Navigating the Possibilities and Impacts of Non-Prosecution Policies in the Context of Sex Work Criminalization*. The Community Guide provides an overview of the main takeaways of the Handbook.

Primer on Prosecutorial Discretion

What is a Prosecutor? What is a District Attorney?

Prosecutors:

- Attorneys working for the government responsible for starting legal procedures and securing a conviction against someone accused of a crime.

District Attorneys (DAs):

- Head prosecutor in a specific judicial district at the local level (county/parish/borough).

DAs lead a team of prosecutors, and can give direction to the prosecutors working under them informally or through a formal written policy, such as a non-prosecution policy.

For further reading see [Pages 61-63 of the DA Handbook.](#)

Many scholars consider prosecutors to be the most powerful officials in the criminal legal system, due to:

- Their central role within the criminal legal system.
- The broad power afforded to DAs.

What is Prosecutorial Discretion?

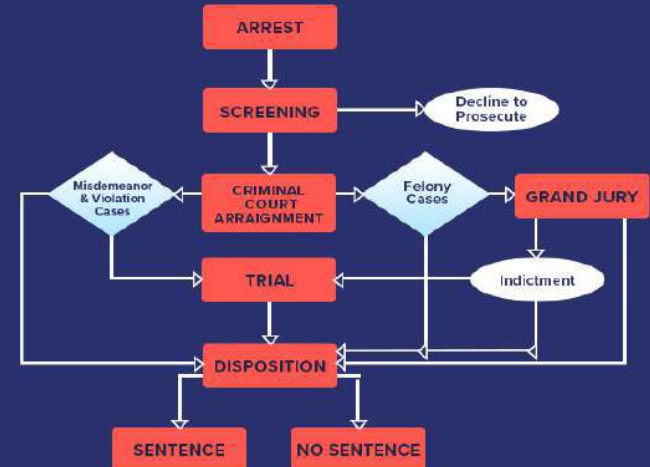
Prosecutorial discretion:

- the authority to make choices regarding what enforcement actions to take, both in charging individual cases and in setting policy for prosecutions within their jurisdiction.



Manhattan D.A.'s Criminal Justice Process

This diagram shows the flow of a typical case. The red rectangles indicate major court events, but there can be other court events in between.



For further reading see [Pages 61-66 of the DA Handbook](#).

Impacts of prosecutorial discretion

DA's prosecutorial discretion impacts the course of a case at various stages, including:

- Deciding whether to prosecute a case
 - When declining to prosecute, this may mean dismissal of charges or diversion
- Deciding what charges to bring forward
- Deciding whether to set bail
- Seeking a plea bargain
- Selecting evidence presented at trial
- Making sentencing recommendations

DAs can also set larger-scale prospective policies for the work of all the prosecutors in their office across the entire jurisdiction, and their decisions in individual cases, by setting priorities for certain charges or types of charges, leading to greater or lesser enforcement, in some cases with a view to supporting changes to the criminal legal system. DAs can announce that they will not prosecute certain conduct through non-prosecution policies.

For further reading see [Pages 67-68 of the DA Handbook](#).

Why does it matter for sex workers?

- DAs operate at the local government level (county/parish/borough) within states.
- Much of the law criminalizing sex work is based in municipal codes and state law.
- Each state has its own set of laws around sex work, and differences are also shaped by how DAs' jurisdiction interpret and apply that law.

A range of laws can be implicated in the criminalization of sex work:

- Infractions, which may include:
 - Traffic violations
- Misdemeanors, which may include:
 - Prostitution, Solicitation, Patronizing
 - Quality-of-Life Offenses
- Felonies, which may include:
 - Promotion, Facilitation
 - Trafficking

For further reading see [Pages 67-72 of the DA Handbook](#).

Non-prosecution vs. decriminalization

DA non-prosecution policies are a mitigation strategy that cannot undo all the harms of criminalization.

The **full decriminalization of sex work** is essential to:

- Protect rights, safety; and health;
- Reduce stigmatization;
- Ensure that sex workers receive fair compensation and have the ability to organize;
- Ensure that sex workers have access to a stable livelihood and social services responsive to their needs.

Full decriminalization includes the complete removal of criminal penalties related to the sex trade, including lifting penalties for sex workers, clients, and third parties, as well as for related activities.

For further reading see [Pages 28-29 and 73 of the DA Handbook](#).

Model Non-Prosecution Policy

Key Elements of a Non-Prosecution Policy

A non-prosecution policy is not sufficiently broad if it only includes charges related to selling sex

Decline Prosecution of All Offenses Related to the Selling and Buying of Sex, including 'Third Party' Charges

Decline Prosecution of 'Quality-of-Life' and Other Offenses that Engage Sex Workers

Include Action to Support the Dismissal of Current and Past Charges and Cases

Non-Prosecution of Clients

The scope of non-prosecution policies sometimes includes both selling and buying sexual services; other times maintains prosecution of clients.

End Demand-aligned policies are risky as a potential harm reductionist or incremental step, as they may become established and contribute to an ideology inconsistent with full decriminalization.

Non-Prosecution Policies Should Not Mimic 'End Demand' Model; policies that continue to prosecute clients, encourage police surveillance, reduce sex worker safety, facilitate the arrest of sex workers on other charges, enable the targeting of low-income and/or BIPOC men, and increase housing insecurity.

For further reading see [Pages 67-72 of the DA Handbook](#).

Case Studies

Washtenaw County

The non-prosecution policy includes both sex workers and clients.

The policy is explicitly grounded in “the demonstrated public-safety and public health benefits of decriminalizing sex work,” and research on public health outcomes.

The directive also points to general support for decriminalization across a number of organizations.

Seattle

Seattle has adopted a model of targeted prosecution against clients and (limited) non-prosecution of sex workers.

This occurs within a context of:

- widespread conflation of sex work and trafficking;
- anti-trafficking raids leading only to sex work-related (and no trafficking) charges;
- a large presence of end-demand-oriented anti-trafficking groups, funding, and campaigns.

These contextual factors opened the door to legislative criminalization efforts at the city and state level in 2024-2025.

For further reading see [Pages 29-31 of the DA Handbook](#).

Non-Prosecution of Third Parties

Non-prosecution policies vary in their treatment of third parties; that is, those who may be people sex workers work with or for, hire, or who provide a good or service directly related to a sex worker's labor. Third parties may serve as "personal assistants, drivers, security, web designers, agents, and worksite providers as well as owners, managers and receptionists of outcall agencies (e.g., escort agencies) or in-call establishments (e.g., brothels and massage businesses)." Third parties who are abusive and/or exploitative would continue to face prosecution just as clients who are violent would.

Non-prosecution policies should decline prosecution of 'third party' charges, which have been used to criminalize people providing support to sex workers to conduct their work safely, critically this includes other sex workers, as well as family members, friends, and those who live with or are supported by sex workers.

For further reading see [Pages 37-38 of the DA Handbook](#).

Case studies

Baltimore City

The former Baltimore City State's Attorney chose not to prosecute any of the crimes under Maryland's statute criminalizing activities related to sex work, which includes using or allowing use of a building or vehicle for selling and buying sex.

Washtenaw County

Washtenaw County's non-prosecution memo states: "The Prosecutor's Office will also continue to pursue charges against those colloquially known as "pimps," as well as any unlawful commercial sexual establishment (e.g., a brothel) and their operators."

For further reading see [Pages 37-38 of the DA Handbook](#).

Non-Prosecution of Quality-of-Life/Other Offenses

Non-prosecution policies vary in the extent to which they cover charges beyond selling and buying sex. Concretely, this impacts the extent to which non-prosecution policies engage different types of sex work, including sex work other than in-person full-service sex work.

Non-prosecution policies should decline prosecution of 'quality-of-life' and other offenses that sex workers may be charged with, including loitering, public camping, public urination, illegally congregating, and panhandling; and unlicensed massage, which is frequently used to target and arrest migrant Asian massage workers.

For further reading see [Pages 34-36 of the DA Handbook](#).

Case Studies

Baltimore City

Baltimore City's previous SA Mosby announced non-prosecution of sex work and other 'quality-of-life' offenses, including trespassing. The State's Attorney's Office had adopted the explicit frame that sex work is a 'quality-of-life' issue, rather than a public safety issue, and has been conscious of the overlap between prosecution of sex work-specific offenses and other 'quality-of-life' offenses. The new SA, Ivan Bates, ran on overturning Mosby's policy.

Manhattan

District Attorney Alvin Bragg instructed staff to no longer prosecute the crime of prostitution unless associated with a felony count, and that prosecuting the crime of patronizing would require supervisory approval.

The memo does not cover all legal provisions that sex workers could be criminalized under; for example, the memo does not directly address massage workers who may also provide sexual services to clients. Bragg does not appear to be prosecuting unlicensed massage but has not made an official announcement.

For further reading see [Pages 35-36 of the DA Handbook](#).

Dismissal of Past Charges and Cases

DAs may include specific action by DAs to drop current charges, to advocate to courts to support the dismissal of current and past charges and cases related to offenses under the non-prosecution policy, and to advocate to courts or legislatures for the expungement of related convictions.

Non-prosecution policies should seek to remove or mitigate the harms of past charges and convictions under the offenses included in their policy, by providing retroactive relief to those affected by past prosecutions.

For further reading see [Pages 39-41 of the DA Handbook](#).

Case studies

Brooklyn

In January and March 2021, Brooklyn DA Eric Gonzalez successfully submitted court motions to vacate 1,119 open bench warrants related to the crimes of prostitution and loitering for the purposes of prostitution, and to dismiss the underlying cases.

Seattle

Also in 2021, the Seattle Municipal Court approved a motion by then-City Attorney Pete Holmes to quash misdemeanor prostitution bench warrants, and to dismiss, vacate, or close cases against 34 people arrested for selling sex between 2001 and 2019 (when the non-prosecution policy began).

For further reading see [Pages 39-41 of the DA Handbook](#).

Where are we today? Updates on DA Non-Prosecution Movement

DA Non-Prosecution Policies: Handbook Case Studies

Policy at time of DA Handbook development:

Baltimore City: non-prosecution policy for selling, buying, and some third-party activities

Manhattan, New York: non-prosecution policy for selling, supervisory approval for buying

New Haven, Connecticut: no official non-prosecution policy but agreement from police chief to end sex work stings

Seattle, Washington: non-prosecution policy for selling but not buying

Washtenaw County, Michigan: non-prosecution for selling and buying but not third-party activities

Policy today:

Baltimore City: non-prosecution policy revoked by new SA Ivan Bates

Manhattan, New York: DA Bragg is still in office and maintains partial non-prosecution policy

New Haven, Connecticut: new SA John P. Doyle, Jr., no official non-prosecution policy

Seattle, Washington: non-prosecution policy revoked by new City Attorney Ann Davison, City Council passed Stay Out of Prostitution Area

Washtenaw County, Michigan: DA Savit is still in office and maintains non-prosecution policy

Updates from Other Jurisdictions

San Francisco, CA: DA Chesa Bodin implemented non-prosecution policy which was revoked by his predecessor and current DA Brooke Jenkins; DA Jenkins now focuses on prosecuting clients

Philadelphia, PA: DA Larry Krasner is still in office and continues a policy of non-prosecution for selling sex for individuals with fewer than two prior convictions; he was one of the first “progressive prosecutors” elected to a DA post

Brooklyn, NY: DA Eric Gonzalez is still in office and maintains non-prosecution policy for selling

Impacts of 2024 Election

Less of a focus on progressive DA
movement in national media

Progressive DA loss: Los Angeles, CA

Progressive DA win: Harris County, TX

Trump Administration targeting
progressive DAs and local government

DA Non-Prosecution Cohort

Thanks to funding from the [New Moon Network](#), in 2023 we ran a small cohort for sex worker rights advocates to spend several weeks receiving in-depth guidance on the use of the DA Handbook.



Goals of the Cohort:

1. Equip sex workers' rights advocates with tools to understand the landscape of prosecutorial policy and its implementation
2. Identify opportunities for advocacy for non-prosecution policies
3. Develop a strategy for engagement, using the material provided by the handbook

Questions and Answers

Discussion

What dynamics did you observe in your last local DA elections?

Have you been working with your local DA? If so, what has it been like?

Have changes in national politics affected your local landscape?

Thank you for attending!

We'd love to stay in touch!

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