

“I DON’T REALLY SLEEP”¹: STREET-BASED SEX WORK, PUBLIC HOUSING RIGHTS, AND HARM REDUCTION

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¹ JUHU THUKRAL & MELISSA DITMORE, REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY, SEX WORKERS PROJECT 62 (2003), *available at* <http://sexworkersproject.org/downloads/RevolvingDoor.pdf>, *archived at* <http://permacc/DKL9-4538> (“Michelle said ‘I really don’t sleep’ because she has no place to go to sleep.”).

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“It’s killing me, the room, you know, the atmosphere I’m not used to, the whole situation. It makes a lot of issues with my use, you know, continuing on going, because of the depression, the endless sleepless nights, the slamming doors, the people who just”

—Dorothy, street-based sex worker discussing living in a shelter²

I. INTRODUCTION

When discussing the rights of sex workers in New York City, the resounding sentiment of lawmakers and community groups is “not in my neighborhood!” However, for street-based sex workers, a question proposed by advocates is: where are sex workers living in poverty supposed to find housing?² In scholarship about sex work within New York City, many authorities discuss decriminalization of prostitution, drug use among sex workers, and increased HIV rates. However, there is little discussion about sex workers and housing even though housing is essential for survival. This is especially true in a city where there is a 0.95% vacancy rate for public housing³ and the price of the average private studio apartment in Harlem exceeds \$1,500 dollars per month.⁴ While the number of homeless people in municipal shelters in New York City is at an all time high, more than 52,000 people,⁵ public housing authorities and

² *Id.* at 31 (“Dorothy elaborated on the conditions that create a difficult environment in which an individual can experience great stresses while trying to confront her own substance dependency, because drugs were pervasive in the shelter.”).

³ *About NYCHA Fact Sheet*, N.Y.C. HOUS. AUTH., <http://www.nyc.gov/html/nycha/html/about/factsheet.shtml> (last updated Apr. 1, 2014), *archived at* <http://permacc/CPG6-4L66>.

⁴ MANHATTAN MARKET RENTAL REPORT FEBRUARY 2015, MNS REAL IMPACT REAL ESTATE (Feb. 2015), *available at* http://www.mns.com/pdf/manhattan_market_report_feb_15.pdf, *archived at* <http://permacc/4DV8-G59P>. Harlem historically has been a source of affordable housing for Black communities, immigrants, and other marginalized communities. In recent years, Harlem has been experiencing a shift that has many concerned about gentrification of the area. For further discussion, *see* HARLEM HERITAGE TOURS, <http://www.harlemheritage.com/history-of-harlem/> (last visited Apr. 1, 2015), *archived at* <http://permacc/JH7Z-P8PJ>.

⁵ *Number of Homeless People in NYC Shelters Each Night*, COAL. FOR THE HOMELESS, <http://www.coalitionforthehomeless.org/pages/basic-facts-about-homelessness-new-york-city-data-and-charts> (last visited Mar. 24, 2015), *archived at* <http://permacc/7WP5-U92X>.

lawmakers currently enact strict regulations to push sex workers into overcrowded shelters, onto the streets, and further from safer housing environments.⁶

In New York City, sex work is the source of income or survival for an indeterminate number of individuals whose work is street-based or who work in indoor environments.⁷ Street-based sex work "means that the initial transaction occurs in a public place (sidewalk, park, truck stop). The sex act takes place in either a public or private setting (alley, car, park, hotel, etc.)."⁸ Although it is difficult to determine how many women, men, gender non-conforming, and trans* individuals are part of this population, the New York Police Department ("NYPD") makes around 2,700 arrests annually for "prostitution" and "loitering for purposes of prostitution" city-wide.⁹ A 2002 study of thirty street-based sex workers in New York City conducted by the Sex Workers Project revealed the issues that sex workers faced obtaining housing, elaborated on the experiences of those who perform street-based prostitution activities, and emphasized the impact of law enforcement approaches.¹⁰

The report concluded that twenty-six respondents out of the thirty surveyed street-based sex workers had unstable housing and that few had a place of their own.¹¹ Only four of the twenty-six respondents reported having stable housing.¹² Providers from New York non-profit agencies reported that there is a lack of housing options available for street-based sex workers and that there is no supportive housing outside of rehabilitation facilities or detoxification programs.¹³ Because public housing precludes people who have previous convictions or have performed criminalized sex acts

⁶ See THUKRAL & DITMORE, *supra* note 1, at 22-23 (describing the criminal sanctions and civil regulations targeted towards sex work).

⁷ *Id.* at 17. ("Researchers are often asked to estimate the number of sex workers in a given area. Due to the covert nature of commercial sex, it is difficult, perhaps impossible, to determine how many sex workers are currently working in New York City, and almost impossible to make a blanket statement as to their needs and working conditions. We remain skeptical of all statistics that claim to be representative or exhaustive, especially when such estimates may be influenced by political viewpoints.")

⁸ Ronald Weitzer, *New Directions in Research on Prostitution*, 43 n.1 CRIM., L., & SOC. CHANGE 211, 230 (2005) (defining "street prostitution" as compared to "indoor prostitution").

⁹ Jeff Storey, *Q&A: Kate Mogulescu*, N.Y. L.J. (July 26, 2013), <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202612471658> (accessed by Lexis Nexis) (on file with CUNY Law Review).

¹⁰ THUKRAL & DITMORE, *supra* note 1, at 5.

¹¹ *Id.* at 6.

¹² *Id.*

¹³ *Id.* at 65.

on the premises, sex workers utilize alternative living arrangements such as single-room occupancy hotels (“SROs”), hotels, shelters, or sharing a room with friends or associates in SROs and hotels.¹⁴ “Some paid to sleep in crack houses, some stayed with friends as much as they could, while a few said that they tried not to sleep because it was dangerous to sleep without a place to go.”¹⁵ In addition to a fear of violence during street-based sex work activities, sex workers feared “robbery, rape and other violence” within their housing conditions.¹⁶

Housing rights should be at the forefront of civil rights for sex workers, and city policies should reflect the trend of decriminalization of sex work in New York City.¹⁷ Having access to public housing allows sex workers to escape a deepening cycle of impoverishment. These policy changes should be supported by both sex work decriminalization advocates and advocates for the abolishment of sex trafficking. Removing “prostitution” conviction bans from public housing not only allows sex workers to have increased access to safe and affordable housing, but also allows people with prostitution convictions on their records to escape impoverishment. This often-stigmatized group of individuals are among those most in need of housing advocacy.

This article urges public housing authorities, shelter systems, and lawmakers to take an approach to sex work that mirrors the harm reduction approach of the hypodermic syringe (“needle exchange”) program implemented in New York City. Harm reduction can be achieved by compelling the New York City Housing Authority (“NYCHA”) to adopt less restrictive policies to housing sex workers in line with the trend of decriminalization adopted by the New York State courts. These less restrictive policies can include: (1) compelling the New York City District Attorneys and NYCHA not to evict tenants purely for being arrested for prostitution offenses and (2) removing the “sex or morals” bans from

¹⁴ *Id.* at 30.

¹⁵ *Id.*

¹⁶ THUKRAL & DITMORE, *supra* note 1, at 62.

¹⁷ See Andrew Keshner, *Special Parts Created to Aid Human Trafficking Victims*, N.Y.L.J., Sept. 26, 2013, <http://www.newyorklawjournal.com/id=1202620764959/Special-Parts-Created-to-Aid-Human-Trafficking-Victims?slreturn=20150301181904> (accessed by LexisNexis) (on file with CUNY Law Review) (explaining that the creation of “Human Trafficking Intervention Courts” (“HTIC”) in New York City is anticipated to reduce the criminal convictions for prostitution by identifying trafficking victims and referring them to programs such as drug treatment and job training, which may result in non-criminal dispositions or reduced or dismissed charges upon successful completion of such programs).

NYCHA applications and eviction process.¹⁸ For the greater cause of harm reduction to sex workers, in addition to policy changes, the city should create supportive shelter environments to cater to their needs and implement unsanctioned sex worker environments.¹⁹

This article explains the public health and safety concerns that sex workers face because they do not have access to safe and affordable public housing in New York City and how the lack of housing deepens the cycle of impoverishment that sex workers experience. Part II of this article discusses the dangers of street activity, risks to sex workers' health, consent and bargaining issues with street-based sex work, and how indoor sex work environments decrease this risk. Part III outlines public and private housing laws designed to exclude sex workers and "prostitution" offenses occurring on the premises and the extent to which sex work convictions affect eligibility and ejection from NYCHA. Part IV examines the sociological and long-term effects of housing laws on the lives of sex workers.

In Part V of this article, I describe three different public housing models developed by proponents for sex workers' rights in North America with an emphasis on an unsanctioned indoor sex work model utilized in Vancouver, British Columbia. This section will examine the risk reduction that results from indoor sex work and supportive housing environments. In Part VI, I draw a parallel between unsanctioned indoor sex work environments and needle exchange programs that operate on harm reduction and public health models. Finally, Part VII concludes by urging New York City housing authorities to adopt less restrictive public housing laws and create unsanctioned indoor sex environments, highlighting the changes that this would have for socioeconomic status of sex workers, public health, and safety for sex workers within New York City.

II. SEX WORKERS AND STREET ACTIVITY: PUBLIC HEALTH AND HARMS

A. *Background on Street-Based and Survival Sex Work*

The United Nations defines sex work as "the exchange of money or goods for sexual services, either regularly or occasionally, involving female, male, and transgender adults, young people and

¹⁸ See *infra* part III C.

¹⁹ See *infra* text accompanying footnotes 178-90.

children where the sex worker may or may not consciously define such activity as income generating.”²⁰ Although this definition may differ from New York laws regarding prostitution charges, it covers a broad range of activities and groups of people who may consider themselves sex workers.²¹ Street-based sex workers are the most vulnerable population involved in sex work because they experience excessive police contact as they are targeted by law enforcement and often find themselves in a cycle of arrests.²² Further, street-based sex workers are economically deprived, have limited job opportunities outside of sex work, and lack housing and supportive services to reduce the risk of homelessness.²³ Some street-based sex workers engage in “survival sex,” which involves trading sex to meet the basic needs for survival (such as food, shelter, or clothing).²⁴ Although these individuals are not forced or coerced to engage in sex work, they feel there is no other choice to obtain the necessities needed to survive.²⁵ Others engage in street-based sex work by choice to supplement income because they are unable to conform to working in a different field or can’t find a position in indoor sex work environments.²⁶

Indoor sex work was preferred among a study of New York City street-based sex workers: “17 respondents reported that they would prefer to work indoors entirely.”²⁷ Explanations for their continued outdoor work included the lack of any private space to receive clients, reluctance of indoor venues such as brothels or escort services to employ women with substance dependencies, difficulty in maintaining the fixed schedule of an indoor venue (particularly in the case of subjects with substance dependencies), and difficulty of meeting or making contact with clients without being present on

²⁰ UNAIDS INTER-AGENCY TASK TEAM ON GENDER AND HIV/AIDS, HIV/AIDS, GENDER AND SEX WORK, (2002), *available at* <http://www.unfpa.org/sites/default/files/pub-pdf/factsheets.pdf>, *archived at* <http://permacc/5THQ-S8NP>.

²¹ Michael W. Ross et al., *Occupational Health and Safety Among Commercial Sex Workers*, 38 SCAND. J. WORK AND ENVIRON. HEALTH 105, 105 (2012), *available at* http://www.sjweh.fi/show_abstract.php?abstract_id=3184, *archived at* <http://permacc/E6YX-KFGL> (explaining that “sex work” is a broad term that encompasses a “range of transactions”).

²² THUKRAL & DITMORE, *supra* note 1, at 10-11.

²³ *Id.*

²⁴ JAYNE BIGELSON ET AL., HOMELESSNESS, SURVIVAL SEX AND HUMAN TRAFFICKING: AS EXPERIENCED BY YOUTH OF COVENANT HOUSE NEW YORK, COVENANT HOUSE 1, 7 (May 2013), *available at* <http://center.serve.org/nche/downloads/cov-hs-trafficking.pdf>, *archved at* <http://permacc/ZLN7-BP52>.

²⁵ *Id.*

²⁶ THUKRAL & DITMORE, *supra* note 1, at 29-30, 55-56.

²⁷ *Id.* at 6.

the street.²⁸

In addition to this preference, sex workers stated that they would participate in indoor sex work by calling up regular clients, setting up appointments in hotels or clients' apartments to avoid street work or interactions with the police.²⁹ However, this technique was frustrated because many workers could not bring clients back to their housing or because sex workers did not have mobile phones.³⁰

Street-based sex workers face ramifications such as increased police harassment and criminal charges, risk of violence including harassment, battery, abuse, elevated risk of HIV and other Sexually Transmitted Infections ("STIs"), depression, substance abuse, and an increased risk of unconsented services,³¹ including rape.³² Many of these issues are a part of a deepening cycle of impoverishment and are exacerbated by the fact that many sex workers are significantly underhoused.³³ Sex workers with prior prostitution convictions do not qualify for affordable public housing due to a prior criminal record and cannot afford to get back on their feet due to expensive and unstable housing.³⁴ Reforms to public housing can alleviate a number of devastating and recurring issues experienced by sex-based workers by mitigating violence against sex workers, improving sex workers' physical and mental health, and preventing the risk of unconsented services.

B. Violence Against Sex Workers

Street-based sex workers are at a higher risk of victimization and violence due to their increased exposure during street activities.³⁵ Violence against sex workers may include assault, robbery,

²⁸ THUKRAL & DITMORE, *supra* note 1, at 8.

²⁹ *Id.*

³⁰ *Id.*

³¹ Unconsented or unwanted services means services not agreed to by the sex worker, which includes any forced sex acts. *See infra* Part II D.

³² Kari Lyderson, *Sex Workers and Civil Rights*, ALTERNET (July 18, 2003), <http://www.rapeis.org/activism/prostitution/sexworkerscivilrights.htm>, archived at <http://permacc/77DH-JETN>.

³³ Steven P. Kurtz et al., *Barriers to Health and Social Services for Street-Based Sex Workers*, 16 J. HEALTH CARE FOR THE POOR AND UNDERSERVED 345-46 (2005).

³⁴ *See infra* Part III A-C.

³⁵ *See generally* THUKRAL & DITMORE, *supra* note 1 (discussing the violence street-based sex workers suffer at the hands of customers and police); *see also* Michael L. Rekart, *Sex-Work Harm Reduction*, 366 THE LANCET 2063, 2124 (2005), available at <http://myweb.dal.ca/mgoodyea/Documents/Health%20and%20wellbeing/Sex%20work%20harm%20reduction%20Rekert%20Lancet%202005%20366%20p2123.pdf>, archived at <http://permacc/3QM3-XCR3>.

harassment, death, verbal assault, sexual abuse, gang rape, trauma, and confinement.³⁶ A New York study of street-based sex workers concluded that:

24 out of 30 respondents (80 percent) experienced either violence or threats in the course of their work. 18 out of 30 respondents (60 percent) had experiences with male clients who became violent or tried to force them to do things they did not want to do. These problems include rape, assault and robbery.³⁷

In comparison, indoor sex workers are at a much lower risk of violence:

A British study, for instance, of 115 prostitutes who worked on the streets and 125 who worked in saunas or as call girls found that the street prostitutes were more likely than the indoor workers to report that they had ever been robbed (37 vs. 10%), beaten (27 vs. 1%), slapped/punched/kicked (47 vs. 14%), raped (22 vs. 2%), threatened with a weapon (24 vs. 6%), or kidnapped (20 vs. 2%).³⁸

The differences in the rate of violence against street-based and indoor sex workers can be attributed to the fact that indoor workers can screen out customers, can perform sex acts indoors, and may see lower-risk regular clients.³⁹ Although the risk of these harms still exist in generally safer environments (e.g. indoor sex work or bringing a client back to an apartment), risks of violence are exacerbated by street-work activity because of the greater exposure to the police and the increased control the client has over the sex worker on the street.⁴⁰ When participating in street activity, sex acts occur in alleys, the home or car of the client, or in public areas like parks.⁴¹ In these scenarios (especially in industrial areas) sex workers may feel that they do not have any options for help when being attacked or raped.⁴² Sex workers experience high rates of violence in the course of their work, and both indoor and outdoor sex workers are exposed to risks of violence and crime at the hands of their clients.⁴³ Increased housing for sex workers affords sex

³⁶ Rekart, *supra* note 35.

³⁷ THUKRAL & DITMORE, *supra* note 1, at 8.

³⁸ Weitzer, *supra* note 8, at 216.

³⁹ *Id.* at 215-16.

⁴⁰ See THUKRAL & DITMORE, *supra* note 1, at 75 (“[P]rostitutes know from past experience, their own or from their friends, that police will say something [negative] to them, or threaten to arrest them, even though they’re the victim.”).

⁴¹ Weitzer, *supra* note 8, at 214 n.1.

⁴² See THUKRAL & DITMORE, *supra* note 1, at 75.

⁴³ See *id.* at 44-46 (describing the violence sex workers experience with some customers).

workers the opportunity to bring clients back to their homes. This would decrease their exposure to violence because it could allow sex workers to call for help or remove clients from their homes.

Bringing a client back to an apartment could be safer than the risk of violence a sex worker is exposed to on the streets because of the increased selection and control of clientele one has in their own apartment as opposed to in a car, in public, or in a client's apartment.⁴⁴ Bringing a client back to an apartment exposes a sex worker to less violence—like indoor sex work—because a home environment allows for the possibility of greater safety mechanisms, third-party controls, and narrowing or vetting of clientele.⁴⁵ However, bringing a client back to an apartment is different than indoor sex work in many aspects and is not completely without risk.⁴⁶ For example, violence, unconsented services, rape, and risks to a sex worker's health may still occur in one's apartment. However, a sex worker may have the ability to employ additional precautions to prevent these attacks that are unavailable on the streets.⁴⁷ Particularly, sex workers have greater power and control in their own apartment than the apartment of a client by having the ability to employ their own systems or safety mechanisms.⁴⁸

C. Health

"If he don't want to use a condom, we're in extreme danger. I want to try to use one [condom], but the violence might ensue."⁴⁹

⁴⁴ See, e.g., Andrea Krüsi et al., *Negotiating Safety and Sexual Risk Reduction with Clients in Unsanctioned Safe Indoor Sex Work Environments: A Qualitative Study*, 102 AM. J. PUB. HEALTH 1154, 1155 (2012) (explaining that these safety mechanisms have been implemented in a sex worker housing environment and the lessened risk of violence) ("Women's accounts indicated that both the structural-environmental and the informal safety mechanisms facilitated by the indoor sex work environment greatly increased women's control over negotiating risk in sex work transactions Women's narratives suggested that these models can promote increased control among sex workers over negotiating transactions with clients on their own terms, including types of services provided, amount charged, and overall health and safety. Many described how the control afforded by an enhanced sense of safety allowed them to refuse unwanted risky services that they would have to perform in other environments where support from staff, other sex workers, or police was not readily available when clients used violence to force unwanted services such as unprotected sexual intercourse.").

⁴⁵ *Id.*

⁴⁶ See Weitzer, *supra* note 8, at 216 (illustrating the risk of risk of violence against indoor sex workers); see also THUKRAL & DITMORE, *supra* note 1, at 44-46 (describing that one indoor sex worker was robbed by a customer).

⁴⁷ See Krüsi, *supra* note 44, at 1156.

⁴⁸ See *id.*

⁴⁹ Kate Shannon et al., *Social and Structural Violence and Power Relations in Mitigating HIV Risk of Drug-Using Women in Survival Sex Work*, 66 SOC. SCI. & MED. 911, 915-16 (2007) ("The everyday violence and ongoing fear of violence, feelings that abusive

It is hard to estimate the number of street-based sex workers infected with HIV/AIDS. Female sex workers risk HIV infection at a rate fourteen times higher than other female populations worldwide.⁵⁰ Of the population of sex workers worldwide, HIV rates were significantly lower among call girls and women working in legal brothels than among street workers.⁵¹ The highest rates of HIV are among street-based sex workers who use intravenous drugs.⁵²

Other issues regarding health and street-based sex work involve the availability and use of condoms. Sex workers expressed concern of police using condoms to arrest for prostitution and discussed apprehension of carrying around condoms while participating in street sex work activity.⁵³ Sex workers have also reported that police confiscated condoms when searching them.⁵⁴ Recently, the New York City police commissioner released a “no condoms as evidence” directive, which prevents New York police officers from confiscating condoms to be used for evidence under certain charges.⁵⁵ However, the directive still allows the use of condoms as evidence against those accused of “promoting prostitution and sex trafficking.”⁵⁶ This directive does not protect sex workers in all criminal charges, and many sex workers are still afraid of being arrested for carrying condoms.⁵⁷

When sex workers cannot freely carry condoms, it exposes them to increased risk of HIV and sexually transmitted infections (“STI”) and directly negates New York City public health program promotion of safe sex and free condom distribution.⁵⁸ UNAIDS specifically argues: “Confiscation of condoms is clearly counterproductive from a health perspective and disrespectful of the rights of sex workers to protect themselves from HIV.”⁵⁹ When street-

johns were frequently not criminalized, lack of protections offered by current policing, meant that women’s ability to insist on condom use was severely compromised.”).

⁵⁰ Roger Pebdoy, *Female Sex Workers have 14 Times the Risk of Having HIV as Other Women*, AIDSMAP (July 31, 2012), <http://www.aidsmap.com/Female-sex-workers-have-14-times-the-risk-of-having-HIV-as-other-women/page/2457223/>, archived at <http://permacc/BP6F-WVED>.

⁵¹ See Weitzer, *supra* note 8, at 217.

⁵² *Id.*

⁵³ See THUKRAL & DITMORE, *supra* note 1, at 36.

⁵⁴ *Id.* (“Candy reported that police officers tell her to ‘open her condoms and drop them into the sewer, all the time, ten times a month.’”).

⁵⁵ Wilson Dizard, *NYC to Stop Using Condoms as Evidence—in Some Cases*, ALJAZEERA AMERICA, (May 12, 2014, 6:20 PM), <http://america.aljazeera.com/articles/2014/5/12/sex-condoms-nyc.html>, archived at <http://permacc/ZQV2-NUM8>.

⁵⁶ *Id.*

⁵⁷ See *id.*

⁵⁸ See *id.*

⁵⁹ Freeman Klopott, *Prostitutes Push for N.Y. Law Banning Condoms as Evidence*,

based sex workers try to reduce visibility due to fear of arrest, sex workers reduce the amount of time negotiating with clients on consenting acts and condom use. This can cause sex workers to carry out sex acts that are at higher risk of HIV and STI infection.⁶⁰ Although New York City is changing the way condoms are used against sex workers in criminal charges, sex workers are still not completely free from arrest and able to use condoms in street activity as they may need to.⁶¹

D. *Unwanted Services, Consent, and Power*

*Well a good date is someone that you can get out of the car with after. We don't know how lucky we are. When they drive us back. You know and we take it for granted a little bit I think. It just seems that once you're taken away in a car, your power and control are gone.*⁶²

When street-based sex workers are trying to reduce visibility, they make quicker decisions to get into a client's car, which makes it more difficult to screen potentially violent clients and allots less time to negotiate what sex acts to which they consent.⁶³ Lack of power to control whom sex workers chose as clients and where sex acts take place can be the basis of risks for street-based workers' health and safety.⁶⁴ Power is reflected within the economics of sex work, where street-based workers have little power and less pay as opposed to indoor sex workers who demand higher pay, have their own premises for work, have a more robust ability to screen clients, and may work by referral.⁶⁵ Lack of a safe place to take clients is consistently described as the reason why sex workers face an increased risk of violence from their clients.⁶⁶

The manner in which they are policed and excluded from public and private housing, examined in the following section, illustrates the depth of sex workers' subjection to a deepening cycle of impoverishment.

BLOOMBERG BUSINESS, (Apr. 17, 2012, 2:20 PM), <http://www.bloomberg.com/news/articles/2012-04-17/prostitutes-push-for-new-york-law-banning-condoms-as-evidence>, archived at <http://permacc/R2J6-59JU>.

⁶⁰ Ross, *supra* note 21, at 3.

⁶¹ Dizard, *supra* note 55.

⁶² Shannon, *supra* note 49, at 916.

⁶³ Ross, *supra* note 21, at 3.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *supra* notes 35-39.

III. BANS FROM PUBLIC AND PRIVATE HOUSING

A. *Prostitution Related Offenses*

In New York State there are separate laws regarding prostitution in the criminal context versus prostitution in the sphere of housing. Importantly, prostitution related criminal offenses exclude sex workers from housing, when the same treatment does not apply to clients. Criminal charges related to prostitution include: prostitution,⁶⁷ patronizing a prostitute,⁶⁸ prostitution in a school zone,⁶⁹ promoting prostitution,⁷⁰ permitting prostitution,⁷¹ and loitering for the purpose of engaging in prostitution.⁷² In addition, under the New York Penal Law (“N.Y.P.L.”), accomplice liability, sex trafficking, and promoting sex with a minor carry charges up to a class E felony.⁷³

New York Penal Law section 230.00, which codifies the prostitution offense, is a class B misdemeanor and provides that “[a] person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”⁷⁴ Sexual conduct is defined in the statute and allows courts case-by-case discretion over what conduct conforms to the statute.⁷⁵ Permitting prostitution on one’s property (N.Y.P.L. § 230.40), a class B misdemeanor, is especially relevant in the housing context, providing: “a person is guilty of permitting prostitution when, having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use.”⁷⁶

In addition, one can be guilty of “promoting prostitution” under N.Y.P.L. § 230.15 if a person either knowingly “advances” or “profits” from prostitution.⁷⁷ One “advances prostitution” when:

[A]cting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists

⁶⁷ N.Y. PENAL LAW § 230.00 (McKinney 2014).

⁶⁸ *Id.* § 230.02.

⁶⁹ *Id.* § 230.03.

⁷⁰ *Id.* § 230.15.

⁷¹ *Id.* § 230.40.

⁷² N.Y. PENAL LAW § 240.37.

⁷³ *Id.* §§ 230.33-230.36.

⁷⁴ *Id.* § 230.00.

⁷⁵ THUKRAL & DITMORE, *supra* note 1, at 22.

⁷⁶ PENAL § 230.40.

⁷⁷ *Id.* § 230.15.

in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.⁷⁸

Further, one profits from prostitution when: "acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity."⁷⁹ Although this penal law may not impose criminal liability for sex workers themselves, it could create liability for roommates, boyfriends, or "pimps" if they help provide housing for a sex worker and acts of prostitution occur on those premises. This penal law shows the further policing of sex workers' acts that occur behind close doors.

B. Multiple Dwelling, Illegal Use, and Nuisances

New York Public Health Law and New York Real Property Law contain civil laws that exclude sex workers and "pimps" from both private and public housing but likewise do not affect clients.⁸⁰ New York Public Health Law § 2320 governs "houses of prostitution, equipment and nuisance" and provides: "Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, or prostitution is guilty of maintaining a nuisance."⁸¹ Houses of prostitution are defined as "[t]he building, erection, or place, or the ground itself, in or upon which any lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists."⁸² This action is subject to an injunction, abatement, or temporary restraining order.⁸³

Owners of private multiple-dwelling buildings and apartment units can terminate a tenancy or repossess a dwelling if the apartment or any portion of the building is being used for sex work activities. Multiple Dwelling Law § 352 provides,

[I]f a multiple dwelling, or any part thereof, shall be used as a house of prostitution or assignation with the permission of the

⁷⁸ *Id.* § 230.15, *explained in* Antonucci v. Town of Irondequoit, 438 N.Y.S.2d 417, 419 (4th Dep't 1981).

⁷⁹ *Id.*

⁸⁰ N.Y. PUB. HEALTH LAW §§ 2320-2334 (McKinney 2014); N.Y. REAL PROP. LAW § 231(3) (McKinney 2014).

⁸¹ PUB. HEALTH § 2320(1).

⁸² *Id.* § 2320(2).

⁸³ *Id.* § 2323.

lessee or his agent, the lease shall be terminable at the election of the lessor, and the owner shall be entitled to recover possession of said premises by summary proceedings.⁸⁴

This statute effects the availability of housing to sex workers because it creates liability for those who bring clients back to their houses or imposes liability for friends and partners who allows sex acts on the premises even if the sex worker is not a party to the lease.

New York Real Property Law § 231(3) renders a lease void if made with any person convicted two or more times in one year for prostitution related offenses that occur on the premises.⁸⁵ There are a number of issues sex workers face accessing or retaining housing as a result of this statute. First, sex workers may not be able to secure representation in order to combat these charges.⁸⁶ Should an arrest or conviction occur, the lessor has the right to enter the premises,⁸⁷ giving a sex worker little notice to find alternative housing and recourse to save her home. A judgment under this statute also prevents a sex worker's future access to public and private housing opportunities, even if the person is no longer a sex worker. Finally, the statute may discriminate against those who experience trafficking or are part of heavily policed communities.⁸⁸ These individuals are more likely to be arrested and prosecuted for prostitution-related offenses,⁸⁹ exposing them to increased risk of a void lease under this statute.

The law also allows rights and regulations for a landlord to

⁸⁴ N.Y. MULT. DWELL. LAW § 352 (McKinney 2014).

⁸⁵ REAL PROP. § 231.

⁸⁶ See generally Mark Levine & Jaron Benjamin, *Justice Denied: A Call for Action in Our City's Housing Courts*, GOTHAM GAZETTE (Jun. 10, 2014), <http://www.gotham-gazette.com/index.php/opinions/5094-justice-denied-call-action-housing-courts-attorney-levine-benjamin>, archived at <http://permacc/H7T7-PYM4> (explaining that low-income tenants generally appear unrepresented in higher rates in housing court since no current right to counsel exists) ("Fewer than 10 percent of tenants in housing court in the five boroughs have the benefit of legal counsel.").

⁸⁷ N.Y. REAL PROP. LAW § 231(3).

⁸⁸ See Donna M. Hughes, *Race and Prostitution in the United States I* (Dec. 2005) (unpublished report), available at http://webcache.googleusercontent.com/search?q=cache:4wAitfPLf9cJ:www.uri.edu/artsci/wms/hughes/race_prost.doc+&cd=1&hl=en&ct=clnk&gl=us, archived at <http://permacc/T99V-99ZS> ("U.S. Service providers that assist women and girls to escape prostitution in cities throughout the U.S. report that their client population has proportionately more racial minorities than their city's population."); see also *infra* notes 123-24 and accompanying text.

⁸⁹ See *id.* at 5-6 ("In 2001, Black and Hispanic women made up 85 percent of all women arrested in New York City. From 1995 to 2001, the percentage of Black, Hispanic and White women, aged 16 to 24, incarcerated for prostitution rose dramatically, particularly for Black and Hispanic women.").

repossess an apartment if it is "illegally used" pursuant to New York Real Property Actions and Proceedings Law (R.P.A.P.L.) §715.⁹⁰ Illegal use includes use as a "bawdy house" or for "purposes of prostitution."⁹¹ Not only do these laws have negative effects for sex workers seeking private housing, but also they impose statutory liability on landlords who fail to evict tenants who use the premises for prostitution related purposes.⁹² This can create difficulties for sex workers because of the increased scrutiny of sex workers' acts on the premises and the incentive for landlords to eject workers. The statute also allows a neighboring tenant to bring an eviction proceeding.⁹³ Additionally, two or more prostitution convictions of any occupant within a year in their apartment or their building shall be presumptive evidence of conduct constituting use of the subject premises for the purposes of prostitution.⁹⁴

Private housing laws also unnecessarily infringe on the rights of sex workers by allowing the District Attorney to evict a tenant for engaging in sex work. R.P.A.P.L. § 715(1) allows an owner, fellow tenant, or the District Attorney to serve a notice on the landlord requiring her to make an application for the removal of a tenant engaged in illegal activity.⁹⁵ This statute further states that if the landlord does not make an application for eviction within five days of receiving the notice or does not diligently "prosecute" the tenant, the person or agency giving notice to the landlord of the illegal activity:

may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to one theretofore brought by him and not prosecuted diligently and in good faith.⁹⁶

A 1997 case explains that the District Attorney has power to

⁹⁰ N.Y. REAL PROP. ACTS. LAW § 715 (McKinney 2014).

⁹¹ *Id.* § 711(5).

⁹² REAL PROP. § 231.

⁹³ REAL PROP. ACTS. § 715(1).

⁹⁴ *Id.* § 715(2).

⁹⁵ *Id.* § 715(1) ("An owner or tenant . . . of any premises . . . used or occupied . . . for purposes of prostitution . . . or any duly authorized enforcement agency of the state . . . under a duty to enforce the provisions of the penal law [etc.] . . . may serve personally upon the owner or landlord of the premises . . . a written notice requiring the owner or landlord to make an application for the removal of the person so using or occupying the same.").

⁹⁶ *Id.* The District Attorney typically initiates these suits by threatening the landlord with a counter claim for attorney fees if they refuse to file a suit against their tenant. See Gerald Lebovitz & Douglass J. Seidman, *Drug Holdover Proceedings: An Over-*

initiate suit or to require the landlord to initiate suit against a tenant engaged in illegal activity within a dwelling.⁹⁷ Under R.P.A.P.L. § 715(3), “the District Attorney retains the right to become an actual party, the petitioner, in a new and separate proceeding commenced by such office in the event that the original petitioner landlord fails to diligently prosecute this matter.”⁹⁸ However, while the District Attorney has the power to become a party to an eviction proceeding under R.P.A.P.L., her power is limited in that she does not have authority over settlement agreements or the authority to force a landlord to appeal a decision.

When the District Attorney has the power to compel or to initiate proceedings against tenants who may participate in sex work in private housing and rent-stabilized units, the State infringes on the rights of individuals, including sex workers, to engage in private conduct in their home and oversteps its role by acting as landlord. In these cases, the landlord is threatened by the State to evict a tenant when the landlord may want to continue the tenancy. This creates additional barriers for sex workers because they may not have the availability, means, or notice to secure representation to combat the charges.⁹⁹ This practice likely leads to increased rates of homelessness and poverty among sex workers.

Sex worker tenants may also be evicted based on the conduct in their home, even without evidence of arrest or conviction. A tenant can be evicted for a nuisance, even if the tenant did not violate a provision of lease, by engaging in objectionable conduct that threatens the life, health, or safety of the owner or other tenants.¹⁰⁰ Evictions based on objectionable conduct for non-rent regulated units give the “landlord the right to terminate the time fixed for occupancy under such agreement if he deem [sic] the tenant objectionable.”¹⁰¹ Rent regulated tenancies are also subject to termination on nuisance grounds:

[A] tenant can be evicted for: (1) committing or permitting a nuisance; or (2) is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or (3) the tenant engages in a persistent and continuing course of

view From “Knew,” To “Should Have Known,” To “Strict Liability,” 35 N.Y. REAL PROP. L.J. 16 (2007) (citing N.Y. REAL PROP. ACTS. § 715(4)).

⁹⁷ *Rochdale Village Inc. v. Harris*, 172 Misc.2d 758, 762 (Civ. Ct. Queens Cnty. 1997).

⁹⁸ *Id.*

⁹⁹ Levine & Benjamin, *supra* note 86.

¹⁰⁰ *See Domen Holding Co. v. Aranovich*, 802 N.E.2d 135, 140 (2003).

¹⁰¹ REAL PROP. ACTS § 711(1).

conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others.¹⁰²

Case law defines what type and pattern of behavior creates a nuisance or rises to the level of objectionable conduct.¹⁰³ Nuisance law can be detrimental for sex workers because it could allow the court discretion when determining whether conduct rises to the level of a nuisance. No previous case law exists on whether a sex worker bringing clients home constitutes nuisance because other methods are available for ejection. In the case of sex workers, having loud or frequent visitors at night may rise to the level of a nuisance that would permit a private landlord to institute eviction proceedings against a tenant.

Recently, other cities in the United States have adapted their current nuisance laws to explicitly target sex worker tenants. In late 2014, Oakland, California's City Council voted to "expand an existing law that allows the city to evict private property tenants who have become a 'nuisance' to their communities."¹⁰⁴ The City Council argued that it intended to cut rates of child trafficking despite the lack of evidence that the ban would have this impact.¹⁰⁵ The existing "nuisance eviction ordinance" adopted in 2004 was designed to evict tenants of commercial or residential private property who were "engaging" in violence and illegal drug activities.¹⁰⁶ The expansion "added a number of other 'nuisance activities' to the law—the most controversial being 'pimping, prostitution, pandering, and solicitation.'"¹⁰⁷ Critics of this law argue that:

[T]he law enables the City Attorney's Office to force sex workers out of their homes in a wide range of circumstances without giving them meaningful opportunities to contest the accusations. The law also empowers residents to make complaints about neighbors they believe are involved in sex work while incentivizing landlords to evict tenants they suspect may be prostitutes—or possibly avoid renting to them in the first place.¹⁰⁸

¹⁰² N.Y. UNCONSOL. § 2524.3(b) (McKinney 2014).

¹⁰³ *See, e.g.,* Berenger v. 261 West LLC, 93 A.D.3d 175, 182-83 (1st Dep't 2012) (describing the elements of "nuisance" and explaining that nuisance is characterized by a pattern of behavior).

¹⁰⁴ Sam Levin, *Oakland's Threat to Sex Workers*, E. BAY EXPRESS (Nov. 12, 2014), <http://www.eastbayexpress.com/oakland/oaklands-threat-to-sex-workers/Content?oid=4121332>, archived at <http://permacc/B76D-Q9Y6>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

These concerns mirror the concerns of sex work advocates in New York City and emphasize that these types of laws are being used to disproportionately evict low-income tenants.

Critics of the Oakland law expressed concern that, “[i]ts implementation would likely reflect existing law enforcement biases and profiling patterns—meaning that low-income tenants, transgender residents, and people of color would most likely be targeted.”¹⁰⁹ Much like the laws in New York City allowing the District Attorney to evict tenants in private residential properties, these laws increasingly infringe on the rights of sex workers and should be repealed.

C. Criminal Convictions, NYCHA, and the “Sex or Morals” Offense

1. Application

NYCHA has laws to exclude sex workers in both its application procedures and eviction proceedings. NYCHA provides public housing to more than 400,000 low and moderate income New Yorkers in 334 housing projects within the five boroughs of New York City.¹¹⁰ In addition to residents of public housing projects, NYCHA provides rental assistance in private homes to over 235,000 renters through the Section 8 Leased Housing Program.¹¹¹ Federal law governs the availability of housing to individuals with criminal records and gives local housing authorities discretion to create policies regarding the admission and termination of tenancies for people with criminal records or those who commit crimes on the premises.¹¹² NYCHA has authority for these policies in New York City and creates policies regarding termination, rules of tenancy, and admission pursuant to federal law.¹¹³

NYCHA considers the criminal history of every member of the household who is sixteen years or older when reviewing housing applications, and the information they review contains criminal activity from violations to convictions.¹¹⁴ Pursuant to federal law, NYCHA “has the discretion to deny housing to applicants who have

¹⁰⁹ *Id.*

¹¹⁰ N.Y.C. HOUS. AUTH., *supra* note 3.

¹¹¹ *Id.*

¹¹² PUBLIC HOUSING POLICIES AFFECTING INDIVIDUALS WITH CRIMINAL RECORDS, LEGAL ACTION CENTER 1 (Feb. 2001), *available at* http://lac.pmhclients.com/doc_library/lac/public-housing-policies/wv.pdf, *archived at* <http://permacc/H38L-XLQW>.

¹¹³ N.Y. PUB. HOUS. LAW § 400 (McKinney 2014).

¹¹⁴ *Applying for Public Housing General Questions*, N.Y.C. HOUS. AUTH., <http://www.nyc.gov/html/nycha/html/assistance/generalfaq.shtml> (last visited Apr. 1, 2015), *archived at* <http://permacc/GR2Z-9T2P>.

been convicted of any criminal offense, including a violation."¹¹⁵ NYCHA's review of an applicant's criminal history requires that people with convictions must at minimum complete their sentence, yet may still be ineligible for public housing, depending on the severity of the crime of conviction.

In general, class A, B, or C violent felonies or felonies involving drugs or alcohol mandate a six-year period of ineligibility. Class D or E offenses of the same caliber result in a five-year period of ineligibility. People convicted of class A drug or alcohol misdemeanors are ineligible for four or five years, whereas those with class B or unclassified drug or alcohol misdemeanors are ineligible for three to four years. Finally, a drug or alcohol violation or infraction triggers a two to three-year period of ineligibility.¹¹⁶

Therefore, NYCHA explicitly lays out periods of ineligibility for felonies of any caliber and has specific rules for misdemeanor drug and alcohol offenses. However, as stated above, NYCHA is afforded discretion when no bright-line rule for a certain criminal charge exists.¹¹⁷

In addition to imposing guidelines for housing eligibility, NYCHA also has discretion to waive ineligibility when it is "convinced that there is reasonable probability that the offender's future conduct would not be likely to affect adversely the health, safety or welfare of other tenants, and would not be likely to affect adversely the physical environment or the financial stability of an Authority project."¹¹⁸ If NYCHA believes the applicant does not pose any immediate danger to other tenants or to the Housing Authority project in general, NYCHA considers the following factors to mitigate or waive periods of ineligibility:

- (1) The seriousness of the applicant's offense;
- (2) the frequency of the offense;
- (3) when the offense occurred;
- (4) evidence about the conduct underlying the offense;
- (5) evidence about rehabilitation;
- and (6) evidence showing a willingness to participate in counseling or social service programs (and the availability of such programs).¹¹⁹

¹¹⁵ SETTING THE RECORD STRAIGHT: WHAT DEFENSE ATTORNEY NEED TO KNOW ABOUT THE CIVIL CONSEQUENCES OF CLIENT CRIMINAL RECORD, LEGAL ACTION CENTER 11 (2001), available at http://hirenetwork.org/sites/default/files/setting_the_record_straight.pdf, archived at <http://permacc/AM7G-VHR5>.

¹¹⁶ *Id.*

¹¹⁷ *See id.*

¹¹⁸ NYCHA TRESPASS POLICY FOR FELONY DRUG ARREST, N.Y.C. HOUS. AUTH., available at http://www.nyc.gov/html/nycha/downloads/pdf/trespass_policy.pdf (last visited Mar. 24, 2015), archived at <http://permacc/BCL4-WDN4>.

¹¹⁹ *Id.*

Therefore, a NYCHA applicant with a “prostitution” conviction on their record, or multiple convictions of any kind on their record, may become ineligible based on the above discretionary factors. However, such an applicant may be granted housing on the condition that they participate in social service or rehabilitation programs¹²⁰

These application policies are overall detrimental to sex workers who have prostitution or drug related convictions on their record. Federal law gives discretion to local housing authorities to exclude people with convictions, and local policies are overly restrictive and can be a roadblock to tenants who pose no threat to the safety and welfare of other tenants and public property.¹²¹ Federal law only requires barring lifetime registered sex offenders or those who have been convicted for the production of methamphetamine from public housing.¹²² NYCHA policies are over-inclusive with respect to federal policies because they can bar access to housing based on an arrest that never leads to a conviction.¹²³ However, barring applicants arrested for sex work offenses disparately impacts street-based sex workers and women and trans* women of color because they are selectively targeted and profiled

¹²⁰ *See id.*

¹²¹ *Advocacy Toolkit: Improving Housing Opportunities for Individuals With Conviction Records*, LEGAL ACTION CENTER, <http://www.lac.org/toolkits/housing/housing.htm> (last visited Mar. 24, 2015), *archived at* <http://permacc/43JU-VTVM>.

¹²² *Know Your Rights: Housing and Arrests or Criminal Convictions*, THE BRONX DEFENDERS (Oct. 2, 2010), <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/>, *archived at* <http://permacc/7A5F-Q9NF>.

¹²³ *See* LAW ENFORCEMENT VIOLENCE AGAINST WOMEN OF COLOR & TRANS PEOPLE OF COLOR: A CRITICAL INTERSECTION OF GENDER VIOLENCE & STATE VIOLENCE, INCITE! WOMEN OF COLOR AGAINST VIOLENCE, 26, *available at* http://www.incite-national.org/sites/default/files/incite_files/resource_docs/3696_toolkit-final.pdf (last accessed Apr. 26, 2015) (“Women of color, and particularly transgender women of color, are often perceived by police through racialized and gendered stereotypes framing us as highly sexualized and sexually available. Law enforcement officers’ internalization and perpetuation of these stereotypes, combined with the high degree of discretion afforded by vague “quality of life” regulations, results in police profiling women of color, and particularly transgender women of color, as sex workers, and selective targeting of women of color for harassment, detention, and arrest. For instance, trans women of color across the country report frequent arrests for “loitering with intent to solicit” while engaging in such lawful and routine activities as hailing a cab, walking their dog, going to get groceries or cigarettes, walking home from work, eating out, or talking to friends. Such disproportionate enforcement is compounded by law enforcement focus on street-based sex work, where a greater proportion of sex workers are women of color.”) (citing AMNESTY INTERNATIONAL, STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S., 13-18, 34 (Amnesty Internatioanl U.S.A. 2005); THE SAN FRANCISCO TASK FORCE ON PROSTITUTION, FINAL REPORT, (Mar. 1996), *available at* <http://www.bayswan.org/1TF.html>).

by police resulting higher rates of arrest (including false arrest).¹²⁴ Furthermore, NYCHA housing bans re-victimize sex workers who are exploited by boyfriends or pimps by barring these individuals from public housing based on forced sex work that resulted in arrest.¹²⁵ This policy also discriminates against those who have left sex work and seek other employment.

2. Eviction

NYCHA reserves the power to evict any person on the grounds of "Non-Desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in the Payment of Rent, Non-Verifiable Income, Assignment or Transfer of Possession, and Misrepresentation."¹²⁶ Under "non-desirability" and breach of rules and regulations, NYCHA can evict a tenant due to their conduct or that of a roommate, someone that claims to live at the address, or a frequent visitor.¹²⁷ This conduct includes activity that occurs in the subject apartment, on NYCHA premises, or near project grounds.¹²⁸

Conduct that constitutes "non-desirability" includes:

- (1) a danger to the health and safety of the tenant's neighbors;
- (2) "a sex or morals offense;" (3) a source of danger or a cause of damage to the employees, premises or property of the Authority; (4) "a source of danger to the peaceful occupation of other tenants;" or (5) a common law nuisance.¹²⁹

Sex work falls squarely within the designation of a "sex or morals"

¹²⁴ Suzannah Phillips et al., CUNY School of Law, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims* 43 *available at* <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf> (last accessed Apr. 26, 2015) ("In addition to the cruel, inhuman, and degrading treatment that trafficking victims suffer as a result of arrest, detention, and prosecution for crimes they were compelled to commit, survivors of trafficking experience long-term mental suffering and humiliation as a result of having a criminal record [A] criminal record hinders a trafficking victim's ability to rebuild their life by preventing them from obtaining stable employment and safe housing.").

¹²⁵ *Id.*

¹²⁶ NYCHA TERMINATION OF TENANCY PROCEDURES, COLUMBIA LAW (2008), *available at* <http://blogs.law.columbia.edu/4cs/files/2008/11/nycha-termination-of-tenancy-procedures1.pdf>, *archived at* <http://permacc/EC6X-GDTF>.

¹²⁷ HOW DO I KEEP MY NYCHA APARTMENT?, MFY LEGAL SERVICES (2005), *available at* http://www.mfy.org/wp-content/uploads/facts/NYCHA%20_HSG-1%20KeepApt.pdf, *archived at* <http://permacc/7N8K-ZGUK>.

¹²⁸ *Id.*

¹²⁹ KATE RUBIN, ET AL., THE CONSEQUENCES OF CRIMINAL CHARGES: A PEOPLE'S GUIDE, THE BRONX DEFENDERS & REENTRY.NET (2008), *available at* http://www.sikhcoalition.org/documents/pdf/criminal_charges.pdf, *archived at* <http://permacc/5GQN-UNZ3>.

offense and imposes liability on sex workers who engage in prostitution on or near NYCHA premises or allow others to engage in these acts regardless of whether they are on the lease. Therefore, sex workers and family members who reside with them may find themselves in a termination of a tenancy proceeding. Specifically, a whole family may find themselves in an ejection proceeding if someone visiting them is arrested for prostitution on the premises.¹³⁰ This “non-desirability” clause is overly inclusive and uses a discriminatory policy as a catch-all to exclude sex workers when they see fit. Federal laws give NYCHA discretion when evicting tenants.¹³¹ However, by including “sex or moral” offenses in termination proceedings, NYCHA has overstepped its discretion by allowing the policing of its own tenants on the private conduct that occurs within their homes.

Despite the rules regarding “sex or morals,” the rate of prostitution in NYCHA premises is quite low. When NYCHA residents were asked what crimes occurred in the development currently or in the last twelve months, forty-three out of 1,166 respondents (four percent) responded that prostitution occurred.¹³² By continuing the policy of evicting and barring sex workers, NYCHA continues discrimination without any benefit on its behalf. By forcing sex workers out of public housing to avoid sex work on the premises, it pushes sex workers into surrounding areas and into the open, making sex work within community surrounding NYCHA buildings more visible and dangerous.

3. Shelter Housing and SROs

Shelter housing is not a conducive environment for sex workers to live or participate in sex work activity. Shelter housing has fixed hours and presents a roadblock for sex workers who work the streets at night. This is detrimental to sex workers not only because it eliminates their ability to earn income, but also because sex workers cannot bring clients to the shelter housing, preventing them from finding stable housing to create a permanent residence.¹³³ Residents of shelter housing in New York City have further reported that they have been raped by security guards and

¹³⁰ *Id.*

¹³¹ *Id.*; 42 U.S.C. § 13661 (1999).

¹³² SAFETY AND SECURITY TAKE REPORT, N.Y.C. HOUS. AUTH. 26 (2011), available at <http://www.nyc.gov/html/nycha/downloads/pdf/safety-and-security-task-force-report.pdf>, archived at <http://permacc/699D-L4VY>.

¹³³ N.Y. MULT. DWELL. LAW §§ 12, 352 (McKinney’s 2015).

exposed to theft and substance abuse.¹³⁴

SRO accommodations do not offer a safe environment for sex workers. A study in Vancouver, British Columbia noted that co-ed SROs create additional difficulty for female sex workers.¹³⁵ Women reported that they experienced violence by male residents and discrimination by male staff due to their involvement with sex work.¹³⁶ These same issues were not experienced in women-only SROs, which created a support system for women in this housing environment.¹³⁷ By housing one or two occupants in single room, they usually do not offer a place for sex workers to bring back clients and lack private kitchens for sex workers to prepare meals. In addition to offering limited facilities, sex workers reported SROs as being undesirable and filled with drugs and other criminal activity.¹³⁸ Additionally, SROs are detrimental to sex workers recovering from or refraining from drug use. Sex workers reported being able to hear, see, and smell drug use and transactions in SROs.¹³⁹ This can exacerbate stress on sex workers struggling with substance dependency.¹⁴⁰

Inefficiencies of city agencies and housing discrimination are contributing factors for sex workers' inability to find and maintain affordable housing. A respondent from a study on street-based sex workers developed by the Urban Justice Center's Sex Worker Project discussed that she was getting "the runaround" from a city agency in her search for housing.¹⁴¹ "She was seeking housing assistance from a city agency that was providing her with other services, but the agency was not being effective, helpful, or active in assisting with the search for housing."¹⁴² Without access to technology, telephone, or helpful housing assistance services, many sex workers are left to fend for themselves in the housing market.

Transgender respondents noted housing discrimination as being an issue with finding stable housing.¹⁴³ "Jamie, who is trans-

¹³⁴ THUKRAL & DITMORE, *supra* note 1, at 36.

¹³⁵ WOMEN SEX WORKERS' STRUGGLE TO FIND SAFE, SECURE HOUSING IN VANCOUVER'S DOWNTOWN EASTSIDE, GENDER AND SEXUAL HEALTH INITIATIVE (2011), available at <http://gshi.cfenet.ubc.ca/sites/default/files/PLS%20RtP%202011%20Risky%20Housing.pdf>, archived at <http://permacc/WQD6-7USB>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ THUKRAL & DITMORE, *supra* note 1, at 31.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 62.

¹⁴² *Id.*

¹⁴³ See generally *Housing And Homelessness*, TRANSEQUALITY, <http://transequality.org/issues/housing-homelessness> (last visited Apr. 5, 2015), archived at <http://permacc/>

gender, said “[I would like to] get my own apartment. I’m tired of being discriminated against.”¹⁴⁴ Transgender respondents of the study further noted discrimination by city agencies, the police, and employers in addition to housing discrimination.¹⁴⁵ Discrimination is not specific to transgender sex workers as stigmatization is widespread against street-based sex workers.¹⁴⁶ Complaints among residents and community patrols have caused sex workers to go outside to low-income industrial areas where sex workers are exposed to increased risk of harm having little chance to escape violent clients who pressure them into unconsented or unprotected sex acts.¹⁴⁷

IV. EFFECTS OF BANS ON PUBLIC HOUSING

A. *Deepening Impoverishment, Inabilities to Leave Sex Work, and Drug Use*

Respondents of a study on street-based sex work noted that housing was essential for sex workers who wished to make enough money to leave sex work, be reunited with their families, or combat substance abuse issues.¹⁴⁸ Respondents of the study best articulated these issues:

Marlene is homeless and was interviewed just after being released from police custody. With no place to go, she returned to the area she knows best, a neighborhood known for drug and sexual commerce [T]he environment is not conducive to her transitioning out of substance dependence and street-based sex work, especially when she lacks any indoor place to which to retreat, even for sleep.¹⁴⁹

7PC5-378N (“One in five transgender people in the United States has been discriminated when seeking a home, and more than one in ten have been evicted from their homes, because of their gender identity.”).

¹⁴⁴ *Id.*

¹⁴⁵ THUKRAL & DITMORE, *supra* note 1, at 63 (“She also noted the specific discrimination that transgender women face by adding, ‘the courts and the police I don’t think we should be harassed because of who we are, regardless if they know what we are, I don’t think we should be discriminated against . . . because it happens anyway, you go to courthouse, you’ll still be discriminated against by the judge, by the DA, by the lawyers in [sic] society, you’re discriminated against.’”).

¹⁴⁶ Rekart, *supra* note 35, at 2124.

¹⁴⁷ Krüsi, *supra* note 44, at 1155.

¹⁴⁸ THUKRAL & DITMORE, *supra* note 1, at 9 (“Housing presents a specific difficulty for those who want to leave sex work. Homeless respondents and those with unstable or marginal housing, such as those living in SROs, described the difficulties of combating substance dependency when remaining amid people who also use drugs. Being offered drugs to share by neighbors presented nearly irresistible temptation, especially in a climate without peer support from non-drug users.”).

¹⁴⁹ THUKRAL & DITMORE, *supra* note 1, at 62.

Substance abuse is frequently associated with sex work as a means of self-medicating in order to cope with the stresses of the nature of the work.¹⁵⁰

Without safe and affordable housing, workers are unable to earn enough money to pay for private housing, and paying for short substandard accommodations like rooms or SROs are costly and impose a further financial burden.¹⁵¹ These same factors complicate family reunification:

Many prostitutes who are mothers and have lost or are in danger of losing custody of their children place a high priority on restoring ties with their children. Some want to re-gain custody once they are in a position to care for their children, but such family reunification is impossible without stable housing.¹⁵²

Without access to safe, affordable, and stable housing environments many sex workers are road blocked from keeping or reunifying with their children. It is of the utmost importance that this stigmatized group be provided with supportive housing, especially since access to safe and affordable housing keeps families together.

In addition, unstable housing situations make it difficult for sex workers to feed themselves, have good nutrition, maintain personal hygiene, or have a place to get enough sleep. This inability to maintain a safe and clean lifestyle impairs a sex worker's ability to leave sex work for work in the formal economy. Without a place for workers to sleep, eat, or bathe, many sex workers will not be hired into the workforce. Without housing, many sex workers do not have a telephone or fixed address, items necessary to those seeking employment.¹⁵³

B. *Mental Health, Self-Esteem, and Vulnerability*

Research on streetwalkers and call girls in California and legal brothel workers in Nevada found that 97% of the call girls reported an *increase* in self-esteem after they began working in prostitution, compared with 50% of the brothel workers but

¹⁵⁰ Amy M. Young et al., *Prostitution, Drug Use, and Coping with Psychological Distress*, 30 J. OF DRUG ISSUES 789, 790 (2000), available at <http://myweb.dal.ca/mgoodyea/Documents/Health%20and%20wellbeing/Prostitution,%20drug%20use,%20and%20coping%20Young%20J%20Drug%20Iss%202000%2030%284%29%20789-800.pdf>, archived at <http://permacc/T9LK-PT5D>.

¹⁵¹ THUKRAL & DITMORE, *supra* note 1, at 31.

¹⁵² *Id.* at 79.

¹⁵³ For example, a sex worker named John expressed concern that without housing, he had difficulty appearing "presentable." THUKRAL & DITMORE, *supra* note 1, at 62.

only 8% of the streetwalkers.¹⁵⁴

Mental health issues that street-based sex workers face include poor self-esteem, vulnerability to negative societal attitudes to sex work, depression, and post-traumatic stress disorder (“PTSD”):¹⁵⁵ as opposed to indoor sex workers who experienced higher levels of self-esteem than the street-based sex workers surveyed here.¹⁵⁶ A study conducted in Canada, Columbia, Germany, Mexico, South Africa, Thailand, Turkey, United States, and Zambia of street-based sex workers found that nearly seventy percent of women met the criteria for PTSD.¹⁵⁷ A second study conducted in Holland argued that the cause of the high rates of PTSD included high rates of “victimizing experiences,” homelessness, and substance abuse.¹⁵⁸ Research shows that street-based sex workers experience more stress and depression than brothel workers.¹⁵⁹ Although much of the research on sex worker psychological impact is done in other countries in conjunction with the United States, “[a] comparison of 176 streetwalkers who use crack cocaine and a matched sample of 130 crack cocaine using non-prostitutes, interviewed on the streets in Harlem, found that the street prostitutes were more likely to exhibit psychological disorders.”¹⁶⁰

V. HOUSING MODELS AND HARM REDUCTION

In addition to urging public and private housing law makers to adopt less restrictive policies to housing in line with the trend of

¹⁵⁴ Weitzer, *supra* note 8, at 218.

¹⁵⁵ See Ross, *supra* note 21, at 2 (“In a comment in *The Lancet*, Groneberg and colleagues (3) included the following occupational hazards that need to be taken into account in the lives of commercial sex workers: violence, harassment, infections, bladder problems, stress, depression, alcohol or drug addiction, latex allergy, and death.”); see also Rekart, *supra* note 35, at 2124.

¹⁵⁶ Weitzer, *supra* note 8, at 218.

¹⁵⁷ Ross, *supra* note 21, at 5 (“Mental health issues vary considerably among female sex workers. Farley et al. (7) found that PTSD among sex workers in South Africa, Thailand, Turkey, the US, and Zambia was present in two thirds of the sample, and did not differ by country. In an update five years later in nine countries (Canada, Colombia, Germany, Mexico, South Africa, Thailand, Turkey, the US, and Zambia), they found that close to 70% of the women met criteria for PTSD. While Farley et al concluded that prostitution is intrinsically traumatizing and the harm of prostitution is not culture-bound[.]”).

¹⁵⁸ *Id.*

¹⁵⁹ Priscilla Alexander, *Sex Work and Health: A Question of Safety in the Workplace*, 53 J. AM. MED. WOMEN ASS’N 77, 79 (1998).

¹⁶⁰ Weitzer, *supra* note 8, at 217-18 (citing Nabilla El Bassel et al., *Sex Trading and Psychological Distress Among Women Recruited from the Streets of Harlem*, 87 n.1 AM. J. PUB. HEALTH 66 (Jan. 1997), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.87.1.66>).

decriminalization adopted by the New York State courts,¹⁶¹ New York City must adopt a housing model that will help street-based sex workers escape the deepening cycle of impoverishment created by homelessness. In spite of the large population of homeless and shelter-housed individuals in New York City, sex workers are among the most stigmatized individuals and have few resources when faced with homelessness, drug dependency, or poverty. Below, I analyze three separate housing models discussed by sex worker advocates, which address the problem of sex worker homelessness.

A. *Transitional Shelters*

Advocates for sex workers' rights insist that it is necessary for New York City to create transitional shelter support systems for street-based sex workers similar to the domestic violence shelter model.¹⁶² This includes short- or long-term housing integrated with onsite support staff to assist with finding permanent housing solutions for workers. One advocate stated that:

[T]hese shelters offer women a safe and confidential place to go and get their lives together [T]o stop and figure out what's next for them . . . where services are more seamless. And the best thing is that [women who stay at shelters] are living with other women who are going through similar situations, and they can be a support network for each other.¹⁶³

A crucial element of this model is a 24-hour support staff system. The same advocate said that support staff:

provide counseling and advocacy, and referrals to take care of other needs, like maybe rehab or job training or with ACS, that a client has They could drive a client directly from finishing rehab to this special shelter, so there's no opportunity to get into trouble or distracted.¹⁶⁴

This model is especially essential for street-based sex workers who work outside, are homeless, or are marginally housed in the winter-time. This model could also be used for sex workers who were recently released from institutions or who were previously incarcerated.

Advocates for transitional shelters distinctly noted that transgender sex workers are in need of a shelter system that provides

¹⁶¹ See Keshner, *supra* note 17.

¹⁶² THUKRAL & DITMORE, *supra* note 1, at 80.

¹⁶³ *Id.* at 65.

¹⁶⁴ *Id.*

specific supportive services.¹⁶⁵ This model would include “dress for success” classes or mental health support such as therapy, caseworkers, and food programs.¹⁶⁶ This model would help alleviate hunger and domestic violence: two issues specifically stated to affect the transgender sex worker community.¹⁶⁷ An advocate noted that transgender sex workers, and transgender women in general, are not always eligible for domestic violence shelters and may have decreased access to shelter and services they may need.¹⁶⁸ This model would be a helpful adaptation of the current shelter system. However, it would create barriers for sex workers who wish to continue sex work by preventing them from bringing clients home.

B. *Housing First Model*

The “housing first” methodology provides a critical link between the emergency shelter/transitional housing systems and the community-based and governmental services and resources that are often fragmented, difficult to access or simply not available to homeless families trying to attain stability and independence in permanent housing.

The program methodology facilitates the move into permanent housing for homeless families and then engages the newly-housed family in a progressive set of individualized case management activities and interventions for a limited period of time, as they move toward improved social and economic well-being. The “housing first” methodology is premised on the belief that multi-problem and at risk families are often more responsive to interventions and support after they are in their own housing, rather than still living in housing programs that are temporary or transitional.¹⁶⁹

This model finds apartments for clients and rents them out as a Social Security benefits payee program. This program takes Social Security benefits on behalf of clients, pays rent, telephone, and other utilities, and then returns the remainder of the money to clients. Advocates noted that this model is not particularly conducive for clients with substance abuse issues because of the risk of

¹⁶⁵ *Id.* at 80-81.

¹⁶⁶ *Id.* at 66.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ THUKRAL & DITMORE, *supra* note 1, at 66; *Best Practices and Profiles Report on Beyond Shelter*, NAT'L ALLIANCE TO END HOMELESSNESS (Apr. 17, 2003), <http://www.endhomelessness.org/library/entry/beyond-shelter-los-angeles-ca>, archived at <http://permacc/565G-Q2NP>.

falling out of treatment because the recipients have control over the remainder of the money. For example:

The people [they] take are not housing ready. And the woman you're talking about on the streets is not housing ready according to all these other models, but this is a model, he has [a very successful] retention rate in two years [as compared to] other supportive housing providers that only serve housing ready people.¹⁷⁰

Although there is a risk of substance abuse among clients of this model, advocates noted that clients at risk of substance abuse do not spiral out of control to the point of homelessness. She noted, "The first step to recovery is getting somebody a house. Once you have a house, then you have like something to live for and like a reason to bring yourself together."¹⁷¹ Another advocate agreed, saying, "yeah, I mean, the more I do this work, the more I see that it's housing that's like the most fundamental thing for people."¹⁷² An issue of this program is that not all sex workers are eligible for Social Security and may work around a cash only environment.

In these situations, a housing program would not be able to make rental payments on the behalf of sex workers. An expert on advocacy for homeless sex workers agreed that "commitment to housing is important for street-based sex workers, whether it is a domestic violence shelter or 'housing first' program."¹⁷³ This model provides basic needs and housing for sex workers but fails to assist the needs of sex workers who may need other supportive services. Additionally, by not reforming the laws regarding private and public housing, sex workers, and eviction, many sex workers would be pushed out of the housing procured by the housing first model if arrested for prostitution.

C. *Unsanctioned Indoor Sex Work Environment*

In addition to traditional indoor sex work environments like massage parlors and brothels, a recent study in Canada reported that research calls for indoor sex work environments with "environmental-structural interventions." These "interventions" or "systems of support" create "enabling environments" to reduce violence and sexual risks associated with sex work contributed by "contextual factors, gendered power dynamics, and access to resources."¹⁷⁴ Fur-

¹⁷⁰ THUKRAL & DITMORE, *supra* note 1, at 66.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 67.

¹⁷⁴ Krüsi, *supra* note 44, at 1154.

ther, environmental-structural supports instituted in indoor sex work in countries such as Brazil and the Dominican Republic include “supportive management policies, security measures, and access to HIV and STI prevention resources strongly associated with increased control among female sex workers in negotiating sexual risk reduction, including condom use.”¹⁷⁵

Unfortunately, these “environmental-structural interventions” have been scarce among developed countries and formal implementations of these policies are road blocked by restrictive laws. However, in Canada, Parliament recently enacted a law that criminalized the purchase of sex work, those who “materially benefit from sexual services,”¹⁷⁶ the discussion of the sale of sex in certain areas, and those who “knowingly advertise an offer to provide sexual services for consideration.”¹⁷⁷ Much like the laws in the United States, these restrictive laws impede the ability of sex workers to engage in sex work without fear of arrest and conviction. Although “prostitution” or sex work is not completely decriminalized in Canada, “erotic massage parlors” or “licensed body rub parlors” act as indoor sex work environments throughout the country. In addition to these indoor sex work environments, activists call for unsanctioned indoor sex work environments where sex workers can live and work free from violence, arrest, and risk of harm.

In British Columbia, a new unsanctioned indoor sex work model has been utilized that focuses on “low-barrier, supportive housing programs for women.”¹⁷⁸ This indoor unsanctioned sex work model differs from a brothel or indoor sex work environment because operators do not profit from the sex work occurring on the premises. Further, this environment exists purely to support sex workers and to provide them a safe place to live, work, and receive supportive services. This unsanctioned sex work environment is neither legalized nor regulated by the Canadian government. The following study focuses on how these environments

¹⁷⁵ *Id.*

¹⁷⁶ Protection of Communities and Exploited Persons Act, S.C. 2014, c. C-36 (Can. 2014) (codified as amended at Criminal Code R.S.C 1985, c. C-46 § 286.2 (Can. 2014)), available at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6646338&File=33#3>, archived at <http://permacc/E6MX-8YS8>. (The amended Criminal Code Act added language that made obtaining sexual services for consideration an indictable offense and liable to imprisonment.)

¹⁷⁷ *Id.* (“Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 286.1(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.”).

¹⁷⁸ Krüsi, *supra* note 44, at 1155.

positively impact "safety and risk negotiation with clients during sex work transactions."¹⁷⁹

1. The Unsanctioned Safer Sex Work Housing Model¹⁸⁰

Despite a "prohibitive legal environment" for sex work in Canada, a recent innovative program has combined an indoor sex work environment with a supportive housing model in British Columbia to create the "Unsanctioned Safer Sex Work Housing Model."¹⁸¹ These housing programs "offer a minimal-barrier, high-tolerance environment and follow a women-centered empowerment and harm reduction/health promotion philosophy."¹⁸² Residents of this housing model "represent the most marginalized, chronically homeless women in the community who live with trauma and substance use issues and support themselves through sex work."¹⁸³ Simply put, this model is a supportive housing environment that also helps facilitate the female residents' involvement with sex work. Therefore, the building policies reflect "the needs of women who are working in the street-level sex trade" and allow women to bring sex work clients into their rooms.¹⁸⁴

Further, this model employs "environmental-structural policy supports" to help facilitate a safe environment for residents to provide sex work transactions.¹⁸⁵ These supports include: (1) building/management policies; (2) environmental cues/security measures; and (3) access to health, prevention, and harm reduction resources.¹⁸⁶

Building and management policies provide that the Unsanctioned Safer Sex Work Housing Model buildings consisted of only women (management, residents, and staff), had required guest hours where women could bring their clients, required clients to register at the front desk (sometimes requiring photo identification), and restricted guests to one at a time.¹⁸⁷ However, some women reported that these policies interfered with client's anonymity, as discussed in the "effects of study" below.

¹⁷⁹ *Id.*

¹⁸⁰ This model will be used extensively throughout the remainder of the article and referred to as "the model."

¹⁸¹ Krüsi, *supra* note 44, at 1155.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ Krüsi, *supra* note 44, at 1155.

Environmental cues and security measures consist of bad date reports to monitor client violence, camera surveillance systems in public areas, and residents' ability to call for help from the staff or the police in the case of a client altercation.¹⁸⁸ These bad date reports are distributed to other residents of the buildings and allow women to screen out potentially violent clients, even leading to the arrest of particular violent clients and offenders.¹⁸⁹

Lastly, access to health, prevention, and harm reduction resources include support by doctors and mental health practitioners (who often visit the buildings), access to condoms, syringes, and other harm reduction paraphernalia, and onsite staff who distribute medication (including methadone and antiretroviral therapy).¹⁹⁰

The author of the the "Unsanctioned Safer Sex Work Housing Model" study states:

We drew upon data from 39 in-depth qualitative interviews and 6 focus groups conducted with residents of the two housing programs from July 2009 to March 2010. All residents of the housing programs, who were willing to participate and met the minimum criterion of having engaged in sex work in the previous month, were interviewed.¹⁹¹

This study, examined below, illustrates the positive effects that a supportive sex work housing environments has on the health, safety, and socioeconomic status of sex workers.

2. Effects of Study

Generally, the study found that an unsanctioned indoor sex work environment decreased the rate of violence sex workers experience, increased control and negotiations of sex work transactions, and improved the health risks inherent in sex work.¹⁹² All respondents of the study reported that violence and rape were inherent in street-based sex work. All respondents additionally re-

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 1156.

¹⁹⁰ *Id.* at 1155.

¹⁹¹ *Id.*

¹⁹² *Id.* ("Women's accounts indicated that unsanctioned indoor sex work environments promoted increased control over negotiating sex work transactions, including the capacity to refuse unwanted services, negotiate condom use, and avoid violent perpetrators. Despite the lack of formal legal and policy support for indoor sex work venues in Canada, the environmental-structural supports afforded by these unsanctioned indoor sex work environments, including surveillance cameras and support from staff or police in removing violent clients, were linked to improved police relationships and facilitated the institution of informal peer-safety mechanisms.").

ported that safety and control over sexual risk reduction were prominent living and working under this model.

i. *Safety*

It's safer. I can just yell for help and you know, in the alley you can't really yell, you know? It's hard to run away, and . . . you don't know whether they're going to get violent or something. There's a lot more chance of that outside than at my place . . . It's happened before, and the staff have come and they've told him to leave or they even got the police to get him to leave. They do that right away. It took four cops to get this guy to leave. (Participant #30)¹⁹³

Safety in these supportive housing environments involved the implementation of "environmental-structural safety mechanisms," which included programs such as bad date reports, camera surveillance, and contact with staff and police.¹⁹⁴ Bad date reports compiled lists of violent clients and are made available to residents and staff and posted on the entrance of buildings.¹⁹⁵ Women of the study noted that this technique increased their sense of safety by allowing staff to recognize and report violent clients in their housing.¹⁹⁶

Issues with this model included concern that the lack of anonymity would be a barrier for clientele as opposed to the anonymous nature of street-based sex work.¹⁹⁷ However, sex workers felt that camera surveillance was an important feature of vetting and identifying violent clients. Only a minority of women reported that identification policies were a barrier to clients.¹⁹⁸

Relationships with the staff and police were integral to the sex workers' perception of safety. They reported that they could count on police for support to remove violent clients.¹⁹⁹ This aspect of the model cannot be found in other indoor sex work environments and is in direct opposition to police interactions discussed among street-based sex workers in New York City.²⁰⁰ A large proportion of study respondents noted that police welcomed their indoor conduct and showed concern for their safety. One woman noted, "Police just stop me and then sometimes they ask if I'm okay or if I've

¹⁹³ Krüsi, *supra* note 44, at 1156.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Krüsi, *supra* note 44, at 1156.

²⁰⁰ *Id.*

had dates with assholes or jerks lately. They used to hassle us a long time ago; it's changed." (Participant #26).²⁰¹ Formal and informal safety mechanisms allow for safer housing and work environments, which create spaces that allow women to look out for each other's safety.

ii. *Negotiation Risk Reduction in Sex Work Transactions*

One of the positive effects of this model is that sex workers have increased control of client transaction negotiations regarding types of services, amounts charged, as well as sexual health and condom use. This model grants sex workers agency not afforded in street-based sex work by allowing them to refuse services that are risky or unwanted. Women also reported that safety and support staff allowed them to feel more dignified and receive more respectful treatment from clients.²⁰² This empowerment experienced by participants was linked to increased prices of services and less risk of women being "slighted," or not paid for their work.²⁰³ Respondents noted that they could count on other the women in the housing program if a client did not pay.²⁰⁴ However, one issue of living in a support community of sex workers was that women would undercut fellow sex workers due to competition for dates within the small environment.²⁰⁵

In summary, this model represents the best housing environment for sex workers in New York City because it consists of unsanctioned and unregulated housing environments that combine the ability of sex workers to live, work, and receive supportive services all under one roof. This allows sex workers to significantly reduce the risk to their health and risk of violence, as well as eliminate unnecessary police actions, arrests, and criminal convictions. This environment could be made to accommodate sex workers with children by having on-site child care centers. Additionally, the affordable unsanctioned sex work-housing environment would assist sex workers in escaping poverty by working and paying to live in affordable housing, freeing funds to afford living expenses and build savings. Once sex workers are able to afford their own housing, they would ideally have access to public housing that no longer discriminates against their current involvement in sex work or pre-

²⁰¹ *Id.*

²⁰² *Id.* at 1157.

²⁰³ *Id.* at 1157.

²⁰⁴ *Id.* at 1157-58.

²⁰⁵ Krüsi, *supra* note 44, at 1158.

vious sex work convictions as discussed in this paper.²⁰⁶

VI. ADOPTING HARM REDUCTION MODELS TO SEX WORK IN NEW YORK CITY

Like prostitution, the use of intravenous controlled substances is illegal under New York law.²⁰⁷ However, approved not-for-profit organizations are given the authority to "obtain, possess, and furnish" hypodermic syringes and needles for drug-using patients for the purpose of preventing HIV and blood borne pathogens.²⁰⁸ New York law protects patients who possess hypodermic needles under the needle exchange program and decriminalizes possession of a residual amount of a controlled substance in the needles as part of the program as well.²⁰⁹

Using the Unsanctioned Safer Sex Work Housing Model, housing authorities and lawmakers should create similar harm reduction programs to combat violence and public health concerns without fear of facilitating conduct that it is not sanctioned under state law. New York City has successfully used the needle exchange policy as a basic, adaptive technique for harm reduction regulation of illegal activity. New York City should similarly adopt the unsanctioned indoor sex work model instead of banning sex workers from public housing entirely.

Needle exchange programs reduce public health concerns related to intravenous drug use by substantially decreasing HIV and Hepatitis transmission rates. However, syringe and needle exchanges were not always legal under state law.

In 1990, 54 percent of injection drug users in New York City were HIV positive. To combat the disease, state lawmakers legalized clean syringe exchange programs in 1992. By 2001, the HIV rate among IV drug users in the city had fallen to 15 percent.²¹⁰

Through these efforts, needle exchange programs became legalized despite the increased control and criminalization of the buying and selling of drugs like heroin and cocaine. Most importantly,

²⁰⁶ See *supra* Part III B-C.

²⁰⁷ N.Y. PENAL LAW § 220.00 et seq. (McKinney 2014).

²⁰⁸ N.Y. COMP. CODES R. & REGS. tit. 10, § 80.135 (2015).

²⁰⁹ Press Release, Office of the New York State Governor, Governor Paterson Signs Bills to Promote HIV Testing and Remove Barriers to Needle Exchange and Syringe Access (July 30, 2010), *available at* <http://readme.readmedia.com/Governor-Paterson-Signs-Bills-to-Promote-HIV-Testing-and-Remove-Barriers-to-Needle-Exchange-and-Syringe-Access/1658422>, *archived at* <http://permacc/F5WJ-BNMG>.

²¹⁰ Kenny Goldberg, *Syringe Exchange Widespread in New York City*, KBPS (July 9, 2009), <http://www.kpbs.org/news/2009/jul/09/syringe-exchange-widespread-new-york-city/>, *archived at* <http://permacc/N8A4-TZRU>.

these decreased HIV rates show that harm reductive services that support an “illegal activity” can have a substantial positive impact on the lives of those affected while decreasing risks to public health.

The unsanctioned indoor sex work environment model of British Columbia should be the next utilization of the needle exchange harm reduction technique because the public good of decreasing the risk of violence to sex workers, decreasing the risk of HIV transmission, and helping this vulnerable population to escape poverty outweighs the fear of allowing sex work activity in violation of state law. Just as independent and grassroots needle exchange forced lawmakers to pioneer harm reduction legislation relating to intravenous drug use, the implementation of an indoor sex work environment could push the trend of increased decriminalized of sex work in New York City while drastically reducing the devastations faced by sex workers, the risk of violence, and public health concerns.

VII. CONCLUSION

No matter the reason sex workers chose to engage in this work, whether it is survival sex work or to supplement low-wage income, many face issues finding and maintaining housing in New York City. These issues may be due to public housing laws, previous convictions, or housing conditions that prevent them from performing sex acts for money in or near their apartments, homes, shelters, or rooms.

Public housing authorities, shelter systems, and lawmakers must take an approach to sex work that mirrors the harm reduction approach of the hypodermic syringe and needle exchange program and follow the trend of increasing decriminalization of sex work in New York City. Harm reduction can be exemplified by compelling NYCHA to adopt less restrictive policies that do not discriminate against those with sex work convictions. These less restrictive policies include: (1) compelling the New York City District Attorneys and NYCHA to not evict tenants purely for being arrested for prostitution offenses and (2) removing the “sex or morals” bans from NYCHA applications and eviction process.

In addition to policy changes, the city should create supportive shelter environments that cater to sex workers’ needs and implement unsanctioned sex work environments for the greater cause of harm reduction to sex workers. By creating a model that mirrors the harm reduction approach exemplified by the needle

exchange programs and the implementation approach developed by the British Columbia unsanctioned indoor sex work environment model, sex workers will have a better chance to escape violence, mitigate HIV risk, and overcome the cycle of poverty.

