

Might decriminalizing sex work have unintended consequences on children?

Whatever one's opinion regarding legalizing prostitution might be, and however well-intentioned the two pieces of proposed legislation are, might they inadvertently force sex work further into the shadows and thereby expose children to exploitation?

Daniel Pollack, Helene M. Weiss and Amy Mathieu | January 4, 2022



Two different bills regarding decriminalizing aspects of sex work and sex workers are winding their way through the New York State Legislature:

the Stop the Violence in the Sex Trades Act, and the Sex Trade Survivors Justice and Equality Act. Sex work, i.e., prostitution, is the exchange of money or something else of value for sexual services. The exact New York state definition can be found in Article 230 of the Penal Law. In contrast, human trafficking can be defined as sex workers who are coerced or forced to engage in sex work.

The U.S. Supreme Court, in *Lawrence v. Texas*, 539 U.S. 558 (2003), held that consensual sexual conduct was part of the “personal and private life of the individual” and protected by the Constitution. Years later, in *Erotic Serv. Provider Legal Educ. & Research Project v. Gascon*, 880 F.3d 450, 454 (9th Cir. 2018), amended, 881 F.3d 792 (9th Cir. 2018), Judge Carlos Bea, one of the judges on the panel hearing the California case, is quoted as asking, “Why should it be illegal to sell something that it’s legal to give away?”

Whatever one’s opinion regarding legalizing prostitution might be, and however well-intentioned the two pieces of proposed legislation are, might they inadvertently force sex work further into the shadows and thereby expose children to exploitation?

The Data

According to the New York State Interagency Task Force on Human Trafficking 2019 Annual Report, between 2007 and 2019 there were 1,541 confirmed victims of human trafficking. Of those, 1,377 were female, 164 were male, 1,149 were 18 years or older, and 392 were younger than 18 years old. Regarding arrests for prostitution, according to data from the Federal Bureau of Investigation, in 2016, there were 627 arrests in New York state.

The Proposed Legislation

Although the two pieces of legislation address the same topic, the bills are markedly different. Both the Stop the Violence in Sex Trades Act and the Sex Trade Survivors Justice and Equality Act are currently in the New York Senate committee and have not yet reached the Senate floor.

Stop the Violence in Sex Trades Act (Senate Bill S6419). Julia Salazar introduced the bill, while Robert Jackson, Velmanette Montgomery, Zellnor Myrie, and Jessica Ramos co-sponsored it. This proposed legislation would repeal §230, the part of the Penal Code that makes prostitution illegal in New York. However, the bill does maintain criminal charges for prostitution within a school zone, patronizing a person for prostitution when the actor patronizes someone under the age of 18, and permitting prostitution on an actor's premises when it is committed in a school zone or against a minor.

The Stop the Violence in Sex Trades Act would also facilitate the elimination of prior criminal records for conduct that would have been an offense under Section 230 of the New York Penal Code but would no longer classify as an offense under the Stop the Violence in Sex Trades bill. This Act proposes to decriminalize prostitution for any consenting adult—the worker, the client, and the manager.

Sex Trade Survivors Justice and Equality Act (Senate Bill S6040). Liz Krueger introduced this legislation, while Neil Breslin and Diane Savino co-sponsored it. The Sex Trade Survivors Justice and Equality Act proposes decriminalization of prostitution for those engaging in sexual conduct with another person in return for a something of value, but does not de-criminalize the other offenses related to prostitution (e.g., paying

a fee to another person for engaging in sexual conduct or soliciting another person to engage in sexual conduct for a fee).

The proposed legislation also adds a fine for any violation of the still intact prostitution charges. The fine is based on the defendant's net taxable income and ranges from \$50 to \$1,000 for a first offense, and \$10,000 for a third offense. The bill proposes that these fines would be split between the victim exploitation fund and an interagency task force on human trafficking. Additionally, the bill provides that, for any person who has been convicted of a prostitution violation that has since been repealed by this act, the judge shall automatically vacate, dismiss, and expunge the prior conviction.

Additionally, the Sex Trade Survivors Justice and Equality Act aims to expand upon a statute passed by the New York Assembly in 2008—The Safe Harbor for Exploited Children Act (Safe Harbor Act). The Safe Harbor Act defines an exploited child as any person under the age of 18 who has been subject to sexual exploitation because he or she has been the victim of sex trafficking or has engaged in prostitution. This law provides that in any criminal proceeding against a minor for prostitution, that minor is presumed to be an exploited child and subject to supervision rather than delinquency. The Sex Trades Survivors Justice and Equality Act proposes to raise the age in the Safe Harbor Act to 24 rather than 18.

Inadvertent Effects on Children

When reflecting on the considerations for new laws relating to the legalization of sex work, consideration must be given to the collateral impacts such legislation would have on children. One of the most

concerning side effects of the legalization of prostitution is the potential for human trafficking crimes to become easier for perpetrators to commit against children.

In 2012, researchers for the London School of Economics and Political Science analyzed data from 116 countries to determine what effects legalized prostitution may have on the inflow of human trafficking. The results were clear. Countries with legalized prostitution are directly associated with higher human trafficking inflows than countries where prostitution is outlawed. Researchers further found that the scale effect of legalizing prostitution undoubtedly outweighed the substitution effect—in which legal sex workers are favored over illegal workers. On the whole, countries with legalized prostitution were found to report a greater incidence of human trafficking inflows.

Since the human trafficking “black market” is largely comprised of women and children forced, coerced, or manipulated into prostitution, these statistics obviously present a troubling reality for legislators in New York and other states who are seeking to do good, but may actually be creating a black hole of opportunity for nefarious criminals.

Indeed, models of decriminalization and legalization of prostitution see an obvious rise in the inflows of sex trafficking as the market fosters a demand for the sexual exploitation of children. Although decriminalization of prostitution is often justified by policymakers as a way to deter organized crime in the sex trafficking industry, empirical evidence suggests that legalization escalates the flow of children trafficked and imparts a legitimate cover for criminal syndicates, while simultaneously decreasing surveillance by law enforcement.

Marci Hamilton, founder and CEO of CHILD USA, an interdisciplinary think tank to prevent child abuse and neglect comments, “CHILD USA is deeply concerned that the decriminalization of sex work will create even more danger of sex abuse for adolescents and teens. As we know from recent sex trafficking schemes, traffickers traveled with female victims of abuse from ages thirteen to mid-twenties.” Hamilton continues: “Some of the girls looked older than their age, but others did not. No one questioned these traffickers regarding the presence of young girls, and victims have suffered. Decriminalization would add a layer of proof problems for prosecutors fighting child sex abuse. Consider a scenario where child sex traffickers could claim they thought the victims were all sex workers over 18. They could then claim they had no intent to sexually abuse a child and, therefore, avoid liability. The same scenario could occur with a single perpetrator as well: ‘She looks over eighteen, and I gave her money and gifts in exchange for sex.’ If sex for pay with an adult is decriminalized, child abusers who lure children with money and gifts, could raise issues that cast doubt on the accused’s intent to commit a crime against a child. Such prosecutions could be reduced to two facts: The survivor’s appearance and the payments, instead of validation for the child victim bravely coming forward.”

While the legislature is focused on passing laws, local district attorneys’ offices and police precincts must be prepared for the swift consequences of decisions being made in Albany. Indeed, no systemic progress can be made towards curing the issue of decriminalizing sex work without discussing the inextricably interwoven world of human trafficking and the unintended consequences this may have on our children.

Daniel Pollack, MSW, JD is a professor at Yeshiva University's School of Social Work in New York. Contact: dpollack@yu.edu. **Helene M. Weiss** is an associate at the Marsh Law Firm in New York, and special professor of law, Maurice A. Deane School of Law, Hofstra University. Contact: heleneweiss@marsh.law. **Amy Mathieu** is an associate at the Marsh Law Firm in Pennsylvania. Contact: amymathieu@marsh.law.