

SEX WORK VS TRAFFICKING: HOW THEY ARE DIFFERENT AND WHY IT MATTERS

Issue Brief



SEX WORKERS & ALLIES NETWORK

YALE GLOBAL HEALTH JUSTICE PARTNERSHIP

WHAT IS SEX WORK?

Sex work, broadly defined, is the exchange of sexual services for money or goods, including housing, food, drugs, or basic necessities [1]. It may involve working independently, with others, or for a third party. Individuals may engage in sex work regularly or sporadically. Sex workers include people of all genders, races, and ages. Some forms of sex work (the exchange of sexual conduct for money or goods) are prohibited by prostitution laws, while other kinds, such as stripping or erotic dancing, are regulated by laws such as zoning or alcohol laws, and are not criminal, per se [2].

Work in the sex sector/sex trades occurs in many different forms and settings, including street-based or web-based settings, escort services, and video camera work, among others. Of the forms of sex work covered by prostitution laws, street-based sex work tends to be the most precarious because it is the most public and visible and therefore the most subjected to harassment, policing, and criminalization [3].

This issue brief uses the term sex worker to describe a person whose labor or livelihood includes the selling or trading of sexual conduct for money or other goods of value. Using the term “sex work” reinforces the idea that sexual labor is work and supports the discussion of applying labor rights and concern for the conditions of work to sex work. However, while the term was adopted by persons within the sex trades as a self-designation, not everyone who participates in the sex trades identifies as a sex worker [4, 5].

WHAT IS TRAFFICKING?

Trafficking is defined in United States federal and state law, as well as international law [4], and refers to the intentional movement of someone through force, fraud, or coercion into any labor sector. Thus, the crime of “trafficking” can be experienced by sex workers, but not all people in the sex trade are trafficked. People can be trafficked into any kind of work: in the United States, more people are trafficked into agricultural and domestic labor than into the commercial sex sector [6].

The U.S. Trafficking Victims Protection Act of 2000 (TVPA) defines trafficking to include inducement of a commercial sex act by a minor, regardless of whether there is evidence of force, fraud, or coercion [7].

In the United States, while almost all prostitution is criminalized, not all prostitution or sex work falls under state or federal anti-trafficking laws. Under Connecticut General Statutes 53a-192a, trafficking in persons occurs when a “person compels or induces another person to engage in conduct involving sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from,” by means of force, fraud, or coercion [8]. All inducement of persons under 18 into sexual contact for a fee is trafficking. Some media and advocacy materials mistakenly use the terms trafficking, sex work, and prostitution interchangeably. This conflation is legally inaccurate and does not capture the realities of sex work.

1. “Sex Work is Work” Strategic Consulting | Reframe Health and Justice. Reframe. <https://www.reframehealthandjustice.com/>

2. Weitzer, R. (2014, May 1). Sex Work, Gender, and Criminal Justice. In *The Oxford Handbook of Gender, Sex, and Crime*. : Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199838707.013.0026>

3. Blankenship, K. M., & Koester, S. (2002). Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users. *The Journal of Law, Medicine & Ethics*, 30(4), 548-559. <https://doi.org/10.1111/j.1748-720x.2002.tb00425.x>

4. Global Health Justice Partnership of Yale Law School and School of Public Health (GHJP). (2018). *Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts*. https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf

5. In *Sex(Work) in the Classroom*, Kate D’Adamo notes that, “many who exchange sex... find the term [sex work] alienating. They may not see themselves as workers, engaging in an industry, or part of the continued history of “sex work” as an identity and part of a political movement, all of which is a valid personal stance.” Kate D’Adamo, *Sex (Work) in the Classroom: How Academia Can Support the Sex Workers’ Rights Movement*. 2017.

6. Human Trafficking and Sex Workers Rights. Freedom Network USA. Shenoy <https://freedomnetworkusa.org/resource/human-trafficking-and-sex-workers-rights/human-trafficking-and-sex-workers-rights/>

7. FACT SHEETS Asijiki Coalition from <https://asijiki.org.za/resources/fact-sheets/>

8. Connecticut General Statutes 53a-192a – Trafficking in persons: Class A Felony LawServer. (n.d.). from https://www.lawserver.com/law/state/connecticut/ct-laws/connecticut_statutes_53a-192a

WHEN NOT TO APPLY THE CRIMINAL LAW OF TRAFFICKING

APPLYING A MORE PRODUCTIVE ANALYSIS OF LABOR ACROSS THE SPECTRUM OF CHOICE, CIRCUMSTANCE, AND COERCION ACROSS LIVELIHOOD

People engage in sex work for many reasons that often fall along a spectrum of choice, circumstance, and coercion [9]. Poverty and precarious circumstances often constrain livelihood decisions across a wide range of labor sectors (agriculture, food production, and care work, to name a few). Thus, policy and programming concerned with workers facing constrained decisions should seek to improve the entry, conditions, and exit capacity of workers across all sectors, without exceptionalizing the sex sector. Moreover, most people in the sex trades do not enter the sex sector through acts that fit the statutory crimes of “force, fraud, or coercion” and are therefore not considered victims of trafficking under the federal or CT state definition [10].

Notably, reliance on the criminal law framework informing anti-trafficking interventions has not been shown to improve the socioeconomic security or overall stability and decision-making capacity of those in the sex sector [11, 12].

Research shows that coercive acts defining trafficking do not arise through the buying or selling of sexual services. Rather, trafficking (i.e., coercion and force that bring and keep people in forms of exploited labor) is enabled by the conditions and policies that contribute to workers being unable to assert their rights - such as criminalized and unsafe migration, inability to associate and organize, and lack of access to information about health and safety [12, 13].

Ironically, the criminalization of sex work is itself one of the factors that promotes impunity for harms to sex workers, as their stigmatized status leaves sex workers acutely more vulnerable to exploitation, violence, and trafficking [14].

ADDRESSING PROBLEMS IN SEX WORK OUTSIDE OF A TRAFFICKING FRAMEWORK

Work in the sex sector must be distinguished from trafficking as a matter of conformity with the law and as a matter of enabling sex workers’ health and rights. Sex worker advocates and allies aim to improve working conditions and reduce harms for those in the sex sector by: reducing stigma and risks of violence; increasing access to health services and housing; decriminalizing sex work and related offenses; and promoting harm reduction strategies. Rights are violated and health-promoting efforts are stymied when policing, punitive approaches, and/or anti-trafficking laws are inappropriately and indiscriminately applied to all people in the sex sector.

For instance, law enforcement raids have been shown to drive sex work further underground, while also proving unsuccessful in attempts to identify trafficked persons [12, 15]. Criminalization through prostitution law stymies the demonstrated capacity of sex workers to identify those in trafficking situations: when sex workers can access authorities without fear of arrest or retaliation, they are able to share information about potential trafficking situations and help connect people being exploited or trafficked to appropriate services [16, 17, 18].

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10. Sex Work, Trafficking: Understanding the Difference. (n.d.). Rewire.News. from <https://rewire.news/article/2008/05/06/sex-work-trafficking-understanding-difference/>
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12. Miller, A. M., & Zivkovic, T. (2017). Orwellian rights and the UN Trafficking Protocol. In *Routledge Handbook of Human Trafficking* (pp. 328-341). Routledge.
13. Kempadoo, K., Sanghera, J., & Pattanaik, B. (2015). Trafficking and prostitution reconsidered: New perspectives on migration, sex work, and human rights. Routledge
14. Albright, Erin, and D’Adamo, K. (2017). “Decreasing Human Trafficking through Sex Work Decriminalization.” *AMA Journal of Ethics* 19 (1): 122–26. <https://doi.org/10.1001/journalofethics.2017.19.1.sect2-1701>.
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CRIMINALIZATION OF SEX WORK IS A RISK FACTOR FOR VIOLENCE AND ENABLES TRAFFICKING

The criminalization of sex work disrupts sex workers' working environments, support networks, safety and risk reduction strategies, as well as their access to health services, employment opportunities outside of sex work, and the legal system. Policing and criminalization expose sex workers to an increased risk of violence from clients, law enforcement officers, and managers, and often make it more difficult to find protection under the law in cases of violence or needed medical, legal, or educational services [17].

DECRIMINALIZING SEX WORK

Full decriminalization refers to the removal of criminal penalties for those who sell sexual services, for those who purchase sexual services, and for those who work in supporting sex workers' labor. Trafficking, violence and victimization, intimate partner violence, and commercial sex acts involving minors all remain crimes under this model. **Without criminal penalties, sex workers have better access to health and legal services, more control over their work, and greater ability to seek protection or redress in the face of violence or other harms.** Evidence shows that decriminalization is part of an effective set of anti-sex trafficking interventions. When sex workers are not threatened with criminal charges, they are better able to identify and report cases of trafficking, violence, and abuse to authorities [18].

Decriminalizing sex work is the best solution to promote the health and human rights of sex workers. Other legal regulatory frameworks, like partial decriminalization or legalization, fall short and may even increase stigma and violence against sex workers:

- **Partial decriminalization**, also referred to as the Nordic, Equality, or End Demand model, criminalizes the buying but not the selling of sexual services. This approach increases the policing of buyers, which means sex workers are forced to work in more isolated conditions, increasing their vulnerability to violence and diminishing their negotiation powers with clients [19, 20].
- **Legalization**, or regulation, positions the government as the primary regulator of the sex trade, infringing on sex worker autonomy and agency over decisions about how and where they work, while giving disproportionate power to managers and third parties [21].

Full decriminalization of sex work is the only model that can help promote racial justice, LGBTQ+ justice, gender equity, immigrant rights, public health, and labor rights [19]. Full decriminalization of sex work is endorsed by many international health and human rights organizations as well as sex worker advocacy groups, including: the Sex Workers and Allies Network of New Haven (SWAN), the Yale Global Health Justice Partnership (GHJP), Amnesty International, the World Health Organization, UNAIDS, Human Rights Watch, The Global Alliance Against Traffic in Women, and several others.

For more information, see our fact sheet on [The Law and Sex Work: Four Legal Approaches to the Sex Sector](http://www.law.yale.edu/ghjp) available on the GHJP website (www.law.yale.edu/ghjp).

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