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Emma Bruder ✍ Mar 16 4 min read

Partial Decriminalization of Prostitution: Sex Workers Still Aren't Workers

In April 2021, the Manhattan District Attorney's Office, then led by Cyrus Vance, announced that the Office would stop prosecuting prostitution.[1] Shortly after taking office last month, his replacement, District Attorney Alvin Bragg, issued a memo detailing the many crimes his office will also decline to prosecute, including prostitution.[2] However, selling or buying sex is still a Class B Misdemeanor in the state of New York,[3] and it is also illegal almost everywhere else in the world.[4] The philosophy behind the criminalization of sex work reflects a pervasive stigma and strong moral rejection of sex-for-pay.[5] Contrastingly, the progressive movement of decriminalization is fueled by an ambition to empower sex workers as workers, increase their safety, and reduce the stigma on sex work.[6]

Governor Kathy Hochul of New York publicly announced that she is considering proposals to legalize sex work within the state, and set her intention to address the issue in this current legislative session.[7] One bill that is currently in the legislature and has gained significant support would still allow police to charge clients of sex workers- criminalizing the buying, but not selling, of sex.[8] This bill proposes a "Nordic model," also referred to as the "partial decriminalization response model," which was first introduced in Sweden and embraced by other European countries, including France and Norway.[9] The Nordic model is based upon the notion that sex workers are "inherently victims of male exploitation and need to be protected and supported rather than prosecuted." [10] To politicians, this model is appealing because it seems to be a compromise that placates the opponents of this controversial topic.[11]

However, despite the model's well-meaning intention, albeit troublingly paternalistic, research has shown that partial decriminalization has many tangible consequences for sex workers. Partial criminalization still burdens their ability to "find safe places for work, unionize, work together and support and protect one another, advocate for their rights, or even open a bank account for their business. Any criminalization of prostitution stigmatizes and marginalizes sex workers and leaves them vulnerable to violence and abuse by police as their work and their clients are stigmatized." [12] Moreover, ACLU published a brief that includes numerous findings demonstrating the *increased* risks associated with this model, including that it results in: increased harassment and abusive behaviors by clients; increased fear and stigma reported by sex workers; no significant decrease in workplace violence against sex workers or trafficking; [13] reduced HIV/STI prevention and screening; [14] and increased risks of police violence. This last factor is particularly significant because of historical discrimination and mistrust by the police. [15] Considering the risk of being arrested when sex work is criminalized, sex workers

report crimes to the police at low rates.[16] Importantly, the criminalization of sex work impacts workers' mental and physical health, resulting from the general stigma, feelings of lack of safety, and discriminatory reduced access to needed healthcare services.[17] These prohibitive laws and regulations result in "lower and less stable income for sex workers, and potentially, an inability to support themselves and their dependents... For many, sex work is not merely a source of income, it is the source of their survival." [18] Unsurprisingly, those who are most at risk for the consequences of criminalization are already the most socially marginalized, including LGBTQ people, people of color, and immigrants. It was found that police have targeted predominantly Black and Latino areas, making over three times as many arrests of alleged sex buyers there than in whiter neighborhoods, despite comparable complaints about prostitution and arrests of alleged sex workers in each.[19] Quantifiable evidence aside, as Human Rights Watch writes, "[c]riminalizing adult, voluntary, and consensual sex – including the commercial exchange of sexual services – is incompatible with the human right to personal autonomy and privacy. In short – a government should not be telling consenting adults who they can have sexual relations with and on what terms." [20]

The partial decriminalization model forces sex workers towards an illegal, underground market where they are even more vulnerable to exploitation.[21] This setting causes client interactions to be rushed and more dangerous, so clients are more likely to commit acts of harassment or abuse against the sex workers.[22] The evidence shows that full decriminalization of prostitution would result in improved conditions for sex workers, particularly those who are most marginalized, and would help reduce the nation's crises of police violence and mass incarceration.[23] Consensual sex work, including prostitution, should be entirely legalized, police contact with sex workers should be limited, perpetrators of violence against sex workers should be held accountable, and sex workers should have full access to health and supportive services.[24]

[1] Rachel Treisman, *A 'Relic' and 'Burden': Manhattan District Attorney To Stop Prosecution Prostitution*, NPR (Apr. 21, 2021, 4:40 P.M.), <https://www.npr.org/2021/04/21/989588072/a-relic-and-burden-manhattan-district-attorney-to-stop-prosecuting-prostitution>.

[2] Sonia Moghe, *Manhattan district attorney announces he won't prosecute certain crimes*, CNN (Jan. 6, 2022, 3:55 A.M.), <https://www.cnn.com/2022/01/06/us/alvin-bragg-manhattan-district-attorney-crimes-prosecution/index.html>.

[3] New York Consolidated Laws, PEN § 230.00 Prostitution.

[4] Ine Vanwesenbeeck, *Sex Work Criminalization is Barking Up the Wrong Tree*, 46(6) Arch Sex. Behav. 1631-1640 (Jun 5, 2017).

[5] *Id.*

[6] *Id.*

[7] Ashley Hupfl, *Lawmakers and advocates debate how to legalize sex work in New York*, WAMC Northeast Public Radio (Oct. 25, 2021, 12:15 P.M.), <https://www.wamc.org/news/2021-10-25/lawmakers-and-advocates-debate-how-to-legalize-sex-work-in-new-york>.

[8] Sex Trade Survivors Justice and Equality Act; 6040—A (N.Y.S. 2021),

<https://legislation.nysenate.gov/pdf/bills/2021/S6040A>.

[9] Human Rights Watch, *Why Sex Work Should Be Decriminalized, Questions and Answers* (Aug. 7, 2019, 3:31 A.M.), <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#>; Marco Poggio, *Competing Bills Seek to Decriminalize Sex Work In NY* (Nov. 14, 2021, 8:02 P.M.), <https://www.law360.com/articles/1431732/competing-bills-seek-to-decriminalize-sex-work-in-ny>.

[10] Susan Nembhard, et al., *Partial Decriminalization of Sex Work Could Cause More Harm Than Good*, Urban Institute (Apr. 15, 2021), <https://www.urban.org/urban-wire/partial-decriminalization-sex-work-could-cause-more-harm-good>.

[11] *Id.*

[12] Human Rights Watch, *supra* note 9.

[13] American Civil Liberties Union, *ACLU Research Brief: Why Decriminalize Sex Work?* <https://www.aclu.org/report/sex-work-decriminalization-answer-what-research-tells-us> (last visited Feb. 9, 2022).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Joshua Kaplan & Joaquin Sapien, *NYPD Cops Cash In on Sex Trade Arrests With Little Evidence, While Black and Brown New Yorkers Pay the Price*, ProPublica (Dec. 7, 2020, 5 A.M.), <https://www.propublica.org/article/nypd-cops-cash-in-on-sex-trade-arrests-with-little-evidence-while-black-and-brown-new-yorkers-pay-the-price>.

[20] Human Rights Watch, *supra* note 9.

[21] American Civil Liberties Union, *supra* note 13.

[22] *Id.*

[23] *Id.*

[24] *Id.*