



Decriminalize Sex Work ♡

By the Numbers:

New York's Treatment of Sex
Workers and Trafficking Survivors

ABOUT DECRIMINALIZE SEX WORK

Decriminalize Sex Work (DSW) is a national organization pursuing a state-by-state strategy to end the prohibition of consensual adult prostitution in the United States. DSW works with local organizations, advocates, and lobbyists to build community support and convince legislators to stop prostitution-related arrests. Evidence shows that decriminalizing sex work will help end human trafficking, improve public health, and promote community safety.

DSW operates collaboratively to fight human trafficking and promote the health and safety of communities across the nation. DSW intends to supplement — not supplant — the good work that so many organizations have been doing for years to decriminalize sex work in the United States.

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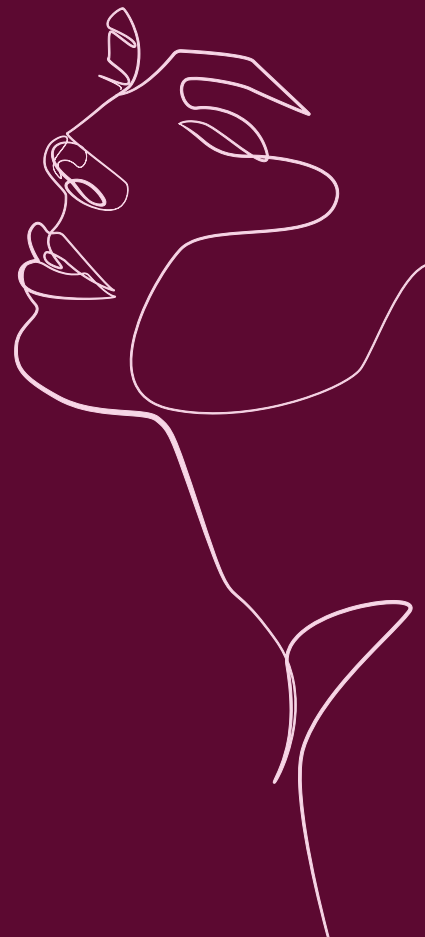
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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

In the last 20 years, New York State has taken a leadership role in developing policy responses to combatting human trafficking and addressing sex work. New York was the first state in the U.S. to provide criminal record relief to survivors of trafficking, the first to develop diversion courts for trafficked arrestees, and in the Spring of 2021, the Manhattan District Attorney became one of the first in the country to enact a non-prosecution policy for prostitution and unlicensed massage. But these progressive developments are built on a legacy of racially-biased policing and the criminalization of poverty, and are thus not enough to rectify historic and systemic damage. Progressive legislation rarely, if ever, impacts all communities equally. The conflation between human trafficking and commercial sex has resulted in policies that aim to put an end to commercial sex using criminal penalties. This approach only threatens the health and safety of sex workers and survivors alike, and the consequences fall disproportionately on low-income communities, LBGTQIA individuals, and people of color.

After introducing and contextualizing this analysis, the report reviews existing statutes governing prostitution and human trafficking and discusses how these laws interact with policing, prosecutorial discretion, and Human Trafficking Intervention Courts (HTICs). New York did not criminalize prostitution until 1969 and did not pass a state-level trafficking law until 2007. The conflation of trafficking and commercial sex in law and policy has harmed outcomes for both trafficking survivors and adult consensual sex workers. Survivors of human trafficking are frequently arrested and prosecuted for crimes they were forced to commit as a result of their exploitation, and sex workers rarely have access to protection from violence and important social services. Sex trafficking responses are prioritized over labor trafficking, despite the fact that 80% of trafficking cases worldwide are in labor sectors outside of commercial sex.

The authors also examine relevant legislation recently passed and bills currently in the legislature. In 2021, exciting advances were made to protect the health, safety, and human rights of sex workers and survivors. The Loitering for the Purpose of Engaging in Prostitution statute (NY Penal Law §240.37) was repealed in February because its vague wording allowed law enforcement the discretion to disproportionately target, harass, and arrest transwomen of color and members of other marginalized communities for decades. In November, a coalition of service providers and anti-trafficking advocates known as the New York Anti-Trafficking Network (NYATN) succeeded in improving trafficking survivors' access to criminal record relief by allowing the vacatur of convictions for non-prostitution crimes in addition to the existing option for prostitution convictions. After years of hard work, the coalition won support for the bill from prosecutors and legislators around the state after many brave survivors spoke up about their experiences, leading to the bill's passage.

Several bills impacting New York's prostitution and trafficking laws are currently pending in the legislature. S2233A/A255A, similar to bills recently passed in other states, provides immunity from prosecution for prostitution to witnesses or victims who report violent crime to law enforcement or seek medical help. Immunity laws protect the safety of sex workers and trafficking victims by allowing victims or witnesses to seek help without fear of arrest. There are also two active bills that would repeal parts of New York's prostitution law. The first (S3075/A849) would decriminalize commercial sex completely while maintaining criminal penalties for trafficking, coercion, sexual abuse, abuse of minors, and rape. The second (S6040/A7069) proposes a "Nordic Model" of sex work regulation in New York State, decriminalizing the sale but not the purchase of commercial sex. The former would greatly increase the health and safety of sex workers and decrease risk of exploitation, as shown in other parts of the world where sex work is fully decriminalized. The Nordic Model, on the other hand, is based on the misguided belief that the same health and safety benefits associated with full decriminalization are realized when the purchase of sex remains illegal, despite studies conducted in countries that currently operate under this model proving otherwise.

After providing a legislative overview, the report summarizes the history of sex work and trafficking policy in New York State, as well as its intersection with national laws and cultural trends. This account highlights a shifting, but ever-present narrative that conflates sex work and human trafficking. In recent decades, policy reform has often been grounded in the belief that sex work

is inherently exploitative; workers are victims while clients and third parties are abusers. Not only does this narrative ignore the underlying structural components that might compel someone to voluntarily participate in sex work, but the hypocrisy of the binary is also revealed when sex workers and trafficking survivors alike continue to face arrest and entanglement in the criminal legal system. Despite the HTIC's purported purpose to identify and divert victims from traditional punishment, arrestees are still faced with court visits and criminal records regardless of their exploitation.

The report looks at the legacy of this hypocrisy and discriminatory policing, from the passage of the Mann Act in 1910 to the contemporary debate over immigrant massage parlor workers in Queens, who are routinely harassed and arrested by NYPD's notoriously abusive Vice division. There have been encouraging developments in recent years: New York City courts have dismissed hundreds of prostitution and loitering warrants; Manhattan will no longer prosecute prostitution or unlicensed massage and is instead offering resource referrals devoid of any criminal justice system contingencies; transgender women of color will no longer be profiled and arrested as sex workers under the state's loitering ordinance; and, vacatur eligibility has finally been expanded to include all survivors of human trafficking and all crimes committed as a result of exploitation.

But the failure to recognize or distinguish the contextual factors that can lead to prostitution, including economic and social vulnerability, combined with widespread stigmatization and abuse of sex workers, has created a deep and historic distrust between those who trade sex for money and law enforcement. And policies that maintain penalties for those who purchase sex, as well as third parties who might work alongside sex workers do not make sex work safer, healthier, or more transparent. In fact, the UN Women Organization stated that this policy approach "leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights" and that failing to distinguish between survivors and sex workers infringes on the health and safety of both groups and may inhibit the ability to prosecute trafficking.

Even if more recently implemented policies aim to protect sex workers, survivors, and communities, in reality, New York still largely criminalizes the sale of sex. After contextualizing current policy responses, the authors examine arrest and conviction data for prostitution and trafficking-related crimes in New York State, provided by the New York State Division of Criminal Justice Services. The data reveals that arrest rates for prostitution and related crimes are indeed declining. But arrests may also be shifting, criminalizing the same individuals for unlicensed massage rather than prostitution or loitering pursuant to NY ED Law Section 6512, Unlicensed Practice of a Profession. As exhibited by the data compiled in this report, only in recent years have the number of arrests for purchasing or aiding prostitution come close to arrests for solicitation offenses. In early 2017, the NYPD pledged to arrest fewer people on prostitution charges and loitering for the purpose of engaging in a prostitution offense charges, and while arrests for these charges dropped, massage parlor raids simultaneously spiked. Between 2012-2016, Unauthorized Practice of a Profession arrests rose from 31 to 631. The majority of the arrestees under this statute are immigrant women from China and Korea; arrests of Asian individuals charged with unlicensed massage and prostitution increased by 2700% in those same years. 91% of the 2016 cases were against non-citizens. Service providers also report that arrestees that previously faced repeated prostitution charges are now being brought in for more serious crimes like larceny and assault.

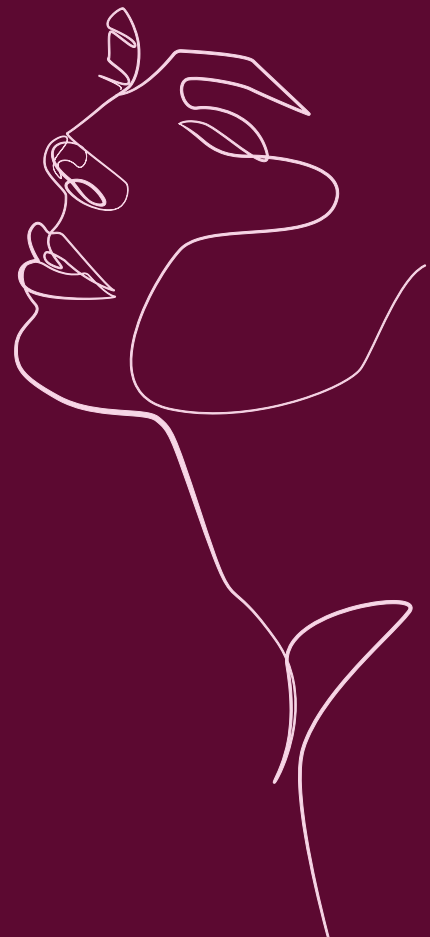
Even if arrest and conviction rates are truly going down, racial bias is as strong as ever. 98% and 97% of New York City arrests in 2019 for prostitution and loitering for the purpose of engaging in prostitution respectively were of female-identified individuals, and 91% and 93% were people of color. Over the last ten years, 90% of arrests for patronizing a prostitute in the 3rd degree were Black, Indigenous, and people of color (BIPOC) despite the fact that national studies report between 80-85% of sex buyers are white men. Convictions showed similar bias.

Conversations with advocates and service providers provide context for this data and the impact of policies based on their experiences working with sex workers and trafficking survivors within the criminal legal system. Throughout the data collection and interview process, it became clear that the law enforcement bodies and court systems in different counties and jurisdictions interpret sex work and anti-trafficking statutes inconsistently. Interviewees were frustrated by the failure of the

HTIC system to adequately serve defendants, the continued profiling and criminalization of their clients in spite of policy changes, the conflation between sex work and trafficking, and varied responses and levels of understanding from different law enforcement agencies around the state.

In the final two sections, the authors make policy recommendations to improve the health, safety, and human rights of sex workers and survivors in New York State. Chief among these is the decriminalization of adult, consensual sex work, the immediate disbandment of NYPD's vice squad, and the dedication of state funds, previously used to arrest and incarcerate consensual adult sex workers, to provide stigma-free social services and resources for those engaged in sex work.

INTRODUCTION



I. INTRODUCTION

New York State is often seen as a leader in regard to sex work advocacy and advancing the rights of survivors of human trafficking. While this reputation is not unwarranted, the impact of state and local policies on sex workers and survivors is much more complex and inconsistent. Despite the state's progressive reputation (particularly in New York City) and the explicit promises of several county District Attorneys to stop prosecuting prostitution cases, reform programs and policies have repeatedly failed to identify and address the needs of impacted populations. Underlying this failure is the perpetual conflation of sex work and human trafficking by policy-makers and the media; often violent over-policing of low-income, largely Black Indigenous People of Color (BIPOC) communities under the guise of anti-prostitution efforts; and a legacy of retributive, carceral policy approaches. New York State has failed to address the public health and safety concerns of human trafficking and the criminalization of consensual sex work because it has failed to implement research-supported and resource-based harm reduction strategies.

New York State did not pass criminal laws specifically targeting human trafficking and trafficking for the purpose of commercial sex until 2007.¹ Prior to the creation of these state laws, trafficking for commercial sex was typically prosecuted under promoting prostitution, sexual assault, and domestic violence state statutes, or federally under the 2000 Trafficking Victims Protection Act (TVPA). Despite successful legislative efforts over the past decade and a half to delineate between prostitution and trafficking in New York State criminal law, policymakers and the public alike continue to conflate consensual adult sex work with human trafficking.

New York has historically been a trailblazer in its approach to human trafficking. In 2010, New York became the first state in the country to allow vacatur of trafficking survivors' prostitution and prostitution-related convictions that occurred as a result of their exploitation. While this landmark measure became an example around the country, advocates and service providers recognized that the law did not go far enough and immediately began

organizing to expand vacatur. Survivors of trafficking are forced to commit many crimes as a result of exploitation and the original criminal relief bill left many vulnerable to criminalization. In a long-fought and hard-won battle, the START (Survivors of Trafficking Attaining Relief Together) Coalition, a coalition made up of advocates and service providers from the New York Anti-Trafficking network finally succeeded in passing the START Act in the spring of 2021. The bill (A459/S674), sponsored by Senator Jessica Ramos and Representative Richard Gottfried, expands vacatur for survivors to include all convictions that arose as a result of human trafficking and was signed into law by Governor Kathy Hochul on November 16, 2021.

In 2013, New York's Unified Court System was the first in the nation to implement Human Trafficking Intervention Courts (HTICs), instituted to combat the criminalization and victimization of trafficking survivors and to address their particular needs. These measures were crucial in recognizing the struggle of human trafficking survivors roped into the criminal justice system as a result of their exploitation, but the HTICs and the legacy of vacatur in New York have severe limitations in terms of their capacity to meaningfully protect survivors of trafficking and address public health concerns.

In terms of policing prostitution, NYPD's Vice Enforcement Division has a documented history of racial profiling, sexual misconduct, and false arrests in its enforcement of prostitution and related offenses.² New York recently repealed Penal Law § 240.37 "loitering for the purpose of engaging in a prostitution offense" after increasing public pressure due to law enforcement's use of the statute to profile, harass, and arrest women of color, especially transgender women, since the law's 1976 passage. § 240.37 so disproportionately affected these communities that it was colloquially referred to as the "Walking While Trans Ban." An arrest required almost no evidence other than an officer's perception of an individual as "looking like a prostitute" while occupying public space.³ Advocates' and impacted community members' long-fought battle to stop this blatant profiling and harassment

¹ "New York State Anti-Trafficking Law" (New York Anti-Trafficking Network, December 12, 2007), <https://sexworkersproject.org/downloads/20071212-NYATNNYSTraffickingLawFS.pdf>.

² Joshua Kaplan, and Joaquin Sapien. "NYPD Cops Cash In on Sex Trade Arrests With Little Evidence, While Black and Brown New Yorkers Pay the Price." ProPublica. December 7, 2020. <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>.

³ "Legislative Memo: Loitering Repeal." New York Civil Liberties Union, July 8, 2019. <https://www.nyclu.org/en/legislation/legislative-memo-loitering-repeal>.

was finally won on February 2, 2021,⁴ when New York joined a growing movement to repeal prostitution loitering laws across the country.⁵

As for legislation and policy around adult consensual sex work, there have been some recent state and local reform efforts. In June 2019, Assemblymember Richard Gottfried and Senator Julia Salazar introduced a bill in the state legislature to totally decriminalize sex work, but it failed to gain any serious traction.⁶ In the summer of 2020, New York City budgeted over \$4.1 million dollars to “support people involved in the sex trade”. While this was a critical step in the right direction, many organizations who received funding are explicitly anti-sex work, conflating sex work with human trafficking and confusing support for sex workers’ rights with the movement to abolish the sex trade entirely in the name of anti-trafficking, regardless of the wishes of sex workers.⁷

Arrest and conviction data provided by the New York State Division of Criminal Justice Services (DCJS) reveal a statewide moderate (though uneven) decline in arrests for certain prostitution charges in the last ten years, likely due in part to changing approaches to the prosecution of prostitution crimes in many counties. However, those and other policy changes leave ample room for the continued profiling, harassment, and criminalization of sex workers, clients, third parties, and survivors. Impacted communities will only see the effects of reform with the expansion of holistic and harm-reduction policies, which will also benefit overall public health and safety.

This report identifies arrest and conviction trends for prostitution and human trafficking offenses statewide using data provided by the New York State Division of Criminal Justice Services (DCJS) in order to determine

the efficacy of current policies and to consider the social costs and benefits of policing prostitution. Prostitution-related charges currently enacted and recently repealed are examined, paying special attention to the race, gender, and county of arrest, as well as any correlated substitution charges.⁸ What follows is a qualitative analysis of existing laws and policies using interviews conducted with prosecutors, public defenders, and service providers experienced in working with sex workers and trafficking survivors in the criminal justice system. Finally, the authors discuss the implications of the quantitative and qualitative data for current and future policies, identify needed additional research, and recommend steps forward in policy efforts.



4 “Governor Cuomo Signs Legislation Repealing the ‘Walking While Trans’ Ban.” New York State Government, February 2, 2021. Office of Governor Andrew M. Cuomo. <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-repealing-walking-while-trans-ban>.

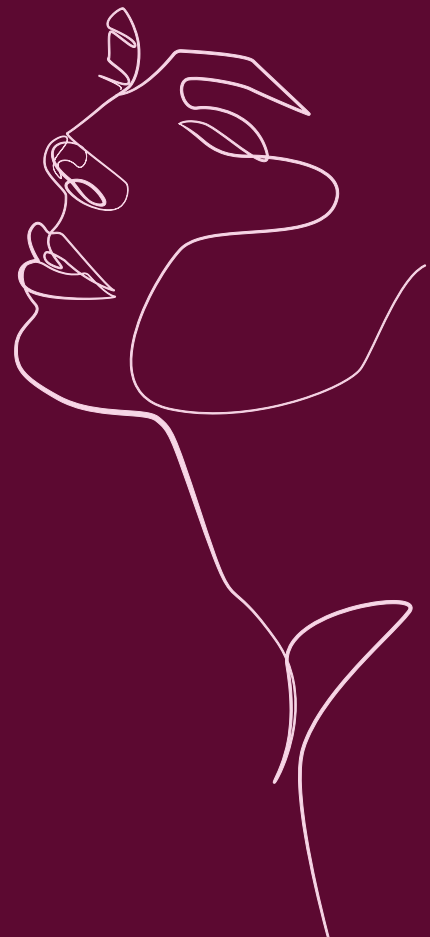
5 Seattle, Washington repealed its loitering ordinance in 2020, and, as of the writing of this report, California’s legislature is poised to pass a prostitution loitering repeal bill. See, Seattle, Wash. C.B. 119807 (2020), <http://seattle.legistar.com/LegislationDetail.aspx?ID=4569520&GUID=A9C88B38-B61C-4954-8CF7-40EF4D881294>; S.B. 357, 2021-2022 Leg., Reg. Sess. (Cal. 2021), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20210220SB357.

6 Erik Ortiz, “New York State Lawmakers Introduce Bill to Decriminalize Sex Work,” NBC News, June 10, 2019, <https://www.nbcnews.com/news/us-news/new-york-state-lawmakers-introduce-bill-decriminalize-sex-work-n1015891>.

7 Zijia Song, “NYC Budgets Over \$4.1 Million to Support Sex Workers, But What Does ‘Support’ Mean?,” Bedford + Bowery, February 16, 2021, <https://bedfordandbowery.com/2020/07/nyc-budgets-over-4-1-million-to-support-sex-workers-but-what-does-support-mean/>.

8 By substitution charges, the authors refer to decreases in certain offenses that are substituted for another. For example, in 2016 there was a noticeable drop in state-wide arrests for loitering for the purpose of engaging in prostitution and a noticeable spike in arrests for unauthorized practice of a profession. Though there is no way to determine what explains that spike, much of the increase took place in Queens County, which is known for its massage parlors and high numbers of arrests of immigrant women who work there. Jackson Heights in particular has a storied history of targeting transgender women of color for loitering for the purpose of engaging in prostitution. To this end, we might assume that as law enforcement faced pressure to decrease loitering arrests, they turned instead to arresting people for unlicensed massage; Abello, Oscar Perry. “Do Cities Have Room for Sex Workers to Ply Their Trade ...” Next City, August 6, 2020. <https://nextcity.org/daily/entry/do-cities-have-room-for-sex-workers-to-ply-their-trade>.

EXISTING LAW



II. EXISTING LAW

Most of the criminal laws related to sex work are located in New York Penal Law §§ 230.00 - 40, which is the prostitution section of the state penal law. Other laws revolving around sex work and trafficking, or implicating either of those things, are in different parts of New York’s statutory scheme - trafficking is in a different part of the criminal code and vacatur is in the civil procedure laws, for example.

Prosecutors have a great deal of discretion in choosing what charges to pursue against criminal defendants, and along with the letter of the law, decisions are made on surrounding circumstances and case facts. Two similar cases involving commercial sex may end up being brought under different charges and end with different outcomes in part due to subjective judgments around culpability, trafficking status, and the assumed “threat” that an individual represents to public safety.⁹ While prosecutorial discretion plays some role in all criminal cases, there is increased subjectivity in cases involving sex work due to the common conflation between trafficking, underage prostitution (which is technically trafficking regardless of the fact that the age of consent in New York is 17), and adult, consensual prostitution¹⁰ as well as widespread fear of traffickers going unprosecuted.¹¹ In reality, trafficking laws are often used against trafficking survivors coerced into participating in the trafficking scheme and adult consensual sex workers who operate in groups for safety.¹²

CLASSIFICATION	INCARCERATION DURATION		FINES
	NON-VIOLENT	VIOLENT	
Class B Misdemeanor	Min: No Jail Max: 90 Days	N/A	Up to \$500
Class A Misdemeanor	Min: No Jail Max: 1 Year	N/A	Up to \$1,000
Class E Felony	No Jail Max: 1 1/3 to 4 Years	Min: 1 1/2 Years Max: 4 Years	Up to \$5,000
Class D Felony	No Jail Max: 2 1/3 to 7 Years	Min: 2 Years Max: 7 Years	Up to \$5,000
Class C Felony	No Jail Max: 5 to 15 Years	Min: 3 1/2 Years Max: 15 Years	Up to \$5,000
Class B Felony	Min: 1 to 3 Years Max: 8 1/3 to 25 Years	Min: 5 Years Max: 25 Years	Up to \$5,000

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Table 1. Prostitution offenses in New York State are punished with financial penalties and/or incarceration, as listed in the table to the left. There are additional financial repercussions that may be incurred including mandatory surcharges (\$300); additional surcharges (\$170); monthly parole or probation costs (\$30 per month); and/or a victim restitution fee (up to \$15,000).¹⁴

9 Nicola Wake and Alan Reed. “Defining the Line Between Victim and Offender: Trafficked Victims and Prosecutorial Discretion: R v O; R v N [2019] EWCA Crim 752.” The Journal of Criminal Law 83, no. 5 (2019): 410–15. <https://doi.org/10.1177/0022018319878524>.

10 “Sex Work Is Not Trafficking” (Global Network of Sex Work Projects, December 16, 2011), https://www.nswp.org/sites/nswp.org/files/SW%20is%20Not%20Trafficking_Summary.pdf.

11 Amy Ferrell, Monica J DeLateur, Colleen Owens, and Stephanie Fahy. “The Prosecution of State-Level Human Trafficking Cases in the United States.” Anti-Trafficking Review, no. 6 (2016). <https://doi.org/10.14197/atr.20121664>.

12 Sex Work Is Not Trafficking, 4.

13 “Prostitution Offenses.” Nassau County Traffic Lawyer. The Law Offices of Michael H. Ricca P.C., 2019. <https://nassaucountytrafficlawyer.com/prostitution-offenses/#:~:text=NYS%20Penal%20Law%20230.40%3A%20Permitting,B%20Misdemeanor%20in%20New%20York>.

14 Id.

PROSTITUTION AND PATRONIZING A PERSON FOR PROSTITUTION

Prostitution is currently a Class B misdemeanor. In 2015, § 230.01 was added to the penal code, allowing an affirmative defense for prosecutions under several prostitution statutes if the defendant's participation in the offense was a result of having been a victim of compelling prostitution or trafficking.¹⁵

Patronizing a person for prostitution can range from a Class A misdemeanor to a Class E felony depending on the circumstances. The vast majority of arrests and convictions are for patronizing in the third degree, a class A misdemeanor. The severity of the charge increases based on the age of the defendant and the seller, as minors cannot consent to commercial sex.¹⁶

Prostitution in a school zone is a class A misdemeanor. The statute, which was enacted to enhance penalties for prostitution when committed near schools, was added to the Penal Law in 2011 in response to the publication of a New York Times article¹⁷ documenting the prevalence of prostitution outside an elementary school in the Bronx.¹⁸ Despite the outrage that inspired the legislation, there have been virtually no arrests for prostitution in a school zone since the statute went into effect.

PROMOTING, COMPELLING, AND PERMITTING PROSTITUTION

As with patronizing a person for prostitution, **promoting prostitution** charges vary depending on circumstance, ranging from a class A misdemeanor to a class B felony. The law defines promotion as either “advancing prostitution”¹⁹ or “profiting from prostitution”.²⁰ These categorizations are broad, classified more specifically based on the circumstances in which they occur, ranging from distributing obscene material in a public place to coercing another person to engage in prostitution. **Compelling prostitution** is a class B felony and occurs when an adult uses force or intimidation to coerce a minor to engage in prostitution.²¹ A person is guilty of **permitting prostitution**, a class B misdemeanor, when a place they own or control, such as a home or vehicle, allows prostitution to occur in that place without making an effort to stop it.

TRAFFICKING, SEX, AND LABOR

A person is guilty of **sex trafficking** (a class B felony) when they intentionally advance or profit from prostitution by any number of enumerated forms of coercion, such as lying to their victim, intentionally impairing them with drugs, withholding their passport, requiring prostitution to repay a debt, or threatening the victim with physical violence, property damage, testimony against them, revealing a secret, etc. **Sex trafficking of a minor** is also a class B felony and occurs when an adult “intentionally advances or profits from prostitution” of a minor.

Labor trafficking, a class D felony, occurs when someone “compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person” using many of the same coercive tactics as listed in the sex trafficking statute.

¹⁵ “In any prosecution under section 230.00, section 230.03, section 230.19, 230.20, subdivision 2 of section 230.25, subdivision 2 of section 230.30, section 230.34-a or subdivision two of section 240.37 of this part, it is an affirmative defense that the defendant's participation in the offense was a result of having been a victim of compelling prostitution under section 230.33, a victim of sex trafficking under section 230.34 of this article, a victim of sex trafficking of a child under section 230.34-a of this article or a victim of trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).”(Added L.2015, c. 368, § 9, eff. Jan. 19, 2016. Amended L.2018, c. 189, § 2, eff. Nov. 13, 2018.)

¹⁶ Having commercial sex with a defendant younger than fourteen is not automatically classified as trafficking of a minor. Trafficking of a minor was not added to the New York Penal Code until 2018.

¹⁷ Yarden Schwartz, “A Bronx Elementary School, Surrounded by Prostitutes,” The New York Times, January 2, 2011, <https://www.nytimes.com/2011/01/03/nyregion/03bronx.html?smid=url-share>.

¹⁸ NYPL §230.03 (2011), <https://www.nysenate.gov/legislation/laws/PEN/230.03> in relevant part: “The New York Times published a shocking article on January 2, 2011, entitled ‘A Bronx Elementary School, surrounded by Prostitutes (Yarden Schwartz).’ Ms. Schwartz, in her expose, reported in great detail how students who attend the West Farms Elementary School located in the Bronx, NY, are subjected to this illicit sexual activity...The activity is so brazen that according to the article, ‘The prostitutes also have sex inside a tent on top of a boulder directly below the school’s playground. Students from pre-kindergartners to fifth graders can see mattresses, cushions, and sheets strewn about the rock. Custodians often have to sweep condoms and hypodermic needles from the school grounds before students arrive in the morning.’ We must do more to protect our children and to ensure that they are not subjected to crimes of this nature. They should be safe at all times, but especially when they are going to and from school. Likewise, local enforcement, from the police to the district attorney, must be given the appropriate tools to fight these crimes.”

¹⁹ “A person ‘advances prostitution’ when, acting other than as a person in prostitution or as a patron thereof, he or she 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 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.” (L.1965, c. 1030. Amended L.2015, c. 368, § 19, eff. Jan. 19, 2016.)

²⁰ “A person ‘profits from prostitution’ when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.” (L.1965, c. 1030. Amended L.2015, c. 368, § 19, eff. Jan. 19, 2016.)

²¹ Note the similarities between promoting/compelling prostitution and sex trafficking.

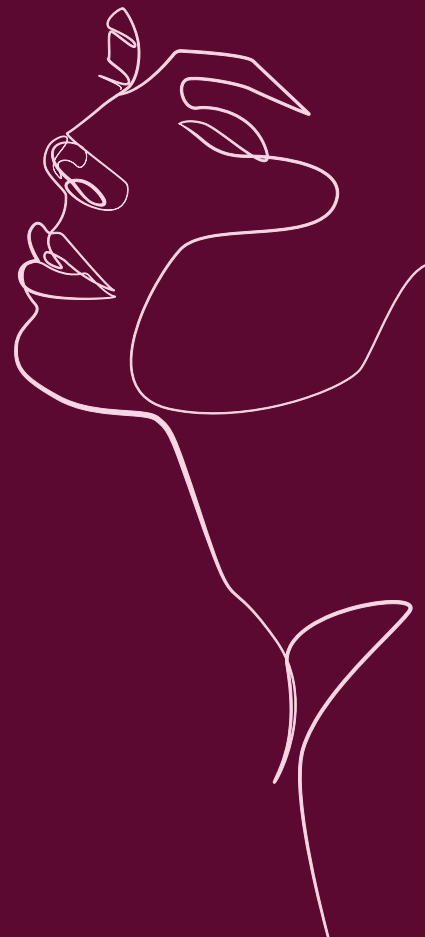
UNAUTHORIZED PRACTICE OF A PROFESSION

New York Education Law § 6512, a class E felony, prohibits someone who is unlicensed from holding themselves out as a professional in a field that requires licensure. It also applies to anyone aiding and abetting such practice. While § 6512 has very little to do with sex work prosecution on its surface, it has long been used to arrest massage parlor workers in New York, particularly in Queens County. Queens has a high population of East Asian immigrants who rely on massage work for income, often drawn in by their networks and limited opportunities to find alternative employment.²²



²² Emma Whitford and Melissa Gira Grant, “After Deadly Vice Sting, Advocates Say End to Prostitution Arrests Is Long Overdue,” The Appeal, November 30, 2017, <https://theappeal.org/after-deadly-massage-parlor-raid-advocates-say-end-to-prostitution-arrests-is-long-overdue-e61f4aae1bca/>.

PROPOSED LEGISLATION



III. PROPOSED LEGISLATION

S6419/A8230, 2019-2020 / S3075/A849, 2021-2022 SPONSORED BY SENATOR JESSICA SALAZAR AND ASSEMBLYMEMBER RICHARD GOTTFRIED

Status: referred to codes in Assembly and Senate in January 2021; died in committee. On June 10th, 2019, Assemblymember Richard Gottfried and Senator Julia Salazar introduced a bill that would decriminalize prostitution in New York State, amend provisions related to criminalizing certain offenses, and vacate past convictions.²³

In the bill’s written justification, lawmakers criticized New York’s prostitution laws for criminalizing “adults who consent to sell or buy sex, as well as those who help and depend on them, not to mention the numerous prohibitions and punishments for prostitution in a wide variety of laws.” The bill’s authors question the efficacy of addressing sex work as a criminal justice concern, as it is a means of survival for many individuals, particularly for marginalized communities such as LGBTQ individuals.

S6419/A8230 would not make any changes to the “criminal and civil legal provisions under which individuals who engage in trafficking, coercion, sexual abuse, abuse of minors, or rape may be prosecuted.” By allowing sex workers to more easily report crimes committed against them, the law helps protect against these crimes. When policy differentiates between consensual adult sex work and coerced exploitation, sex workers have an increased ability to report abuse, rape, theft, and other crimes perpetrated against them that today go ignored and are exacerbated by law enforcement activity.

The bill would also allow individuals who had been convicted of the repealed offenses to vacate those judgments, providing critical access to housing, health, and economic resources which many have been barred from because of their criminal records. Record relief allows individuals struggling to survive at the margins of society to start fresh and transition into other forms of employment if they choose.

The bill’s authors write that “criminalizing sex work between consenting adults does not end the demand for sex work, and it certainly does not improve the lives of people who participate in the sex trades by choice, circumstance, or coercion, or people who are profiled as sex workers. Instead of treating all people in the sex trades as criminals, victims, or both, it is time to create a more nuanced legal approach to the sex trades.” This nuanced, holistic approach is indicative of a major shift in the way that many New York lawmakers think about sex work, reflective of a greater national trend.²⁴ Unfortunately, S6419/A8230 died in committee, and the bill reintroduced in 2021 suffered the same fate.



²³ S6419/A8230, 2019-2020 Leg. Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s6419> and S3075/A849, 2021-2022 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/S3075>.

²⁴ Jesse McKinley, “Bills to Decriminalize Prostitution Are Introduced. Is New York Ready?,” The New York Times (The New York Times, June 11, 2019), <https://www.nytimes.com/2019/06/11/nyregion/prostitution-legal-ny.html>.

S2233A/A255A, 2021-2022

SPONSORED BY SENATOR JULIA SALAZAR

(REFERRED TO SENATE CODES COMMITTEE AS OF JANUARY 2021, ADVANCED TO THE THIRD READING IN THE ASSEMBLY AS OF MARCH 2021)

S2233A/A255A provides immunity from prosecution for “individuals engaged in prostitution who are victims of or witnesses to a crime and who report such crime or assist in the investigation or prosecution.”²⁵ It was introduced, per the bill’s authors, “to encourage sex workers who are crime victims and witnesses to seek help without fear of being prosecuted for prostitution.” Immunity provisions are critical to the safety and health of sex workers, as criminalization often deters those involved in prostitution from reporting abuse or crimes committed against them, allowing criminals and law enforcement entities who target sex workers for violent acts to operate with impunity.²⁶ Some serial killers have reported selecting sex workers as their victims because of their marginalized status and the reluctance of police to investigate crimes committed against them.²⁷

Fear of criminalization is also used as a tool by traffickers to deter their victims from seeking help. Many survivors of trafficking are threatened by their exploiters, who tell them that they will be prosecuted if they report the crimes committed against them, which unfortunately is often the case. Many trafficking survivors are criminalized as a result of their exploitation.²⁸ An immunity option would allow a more nuanced understanding of sex work and trafficking, contribute to destigmatization, help to combat human trafficking, and allow survivors of exploitation to access justice without fear of potential consequences.

S6040/A7069, 2021-2022

SPONSORED BY SENATOR LIZ KRUEGER

(INTRODUCED TO THE SENATE ON MARCH 31, 2021)

In January 2021, New York State Senator Liz Krueger (D-Manhattan) announced her intention to introduce a partial criminalization bill in the New York Legislature. The Sex Trade Survivors Justice & Equality Act reframes partial decriminalization, also known as “End Demand”, “Entrapment” or the “Nordic Model,” as the “Equality Model” under the well-intentioned but misguided idea that decriminalizing the sale but not the purchase of sex will temper demand, create equal access to resources between sex workers and their clients, and ultimately end the sex trade. As reported by the New York Post following its announcement, the bill is intended to keep sex workers safe from the harms of criminalization, “while still holding pimps and buyers accountable.”²⁹ The belief is that the same health and safety benefits associated with full decriminalization will be realized, without the paranoia that through decriminalization, sex work will increase.

However, evidence from countries in which the “End Demand” Model has been implemented shows no improvement in the health or safety of sex workers. Instead, this approach promotes an anti-sex work agenda, conflating sex work with trafficking. In the words of Manhattan DA candidate Eliza Orlins, “the Nordic model is a prohibitionist model in which—even if the act of prostitution itself is not illegal for the sex worker—all activities which are essential to sex workers’ safety and survival, including advertising, or renting spaces, or communicating with other sex workers, or buying sex are illegal. [The Nordic Model] continues to push the industry underground where clients, fearing arrest, refuse safety screens, or it forces sex workers to meet at clients’ homes rather than in places that the sex workers themselves designate. This results in sex workers having less control over their working conditions and puts them in danger. One of the objectives of this Nordic prohibitionist model is to

25 S2233A/A255A, 2020-2021 Leg. Sess. (N.Y. 2021), <https://www.nysenate.gov/legislation/bills/2021/s2233>.

26 “The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence” (Global Network of Sex Work Projects, December 5, 2017), https://www.nswp.org/sites/nswp.org/files/impact_of_criminalisation_pb_prf01.pdf, 4-5.

27 Jooyoung Lee, and Sasha Reid. “Serial Killers & Their Easy Prey.” *Contexts* 17, no. 2 (June 7, 2018): 46-51. <https://doi.org/10.1177/1536504218776961>.

28 Dank et al., 2017, 12.

29 Gabrielle Fonrouge, “New Bill Would Decriminalize, Support Sex Workers in New York,” *The New York Post*, January 25, 2021, <https://nypost.com/2021/01/25/new-bill-would-decriminalize-sex-work-in-new-york/>.

make the sex industry so dangerous and so violent that it ends.”³⁰

Indeed, a study reviewing three years of End Demand policies in Northern Ireland found that the policy increased rates of violence against sex workers at the hands of clients resulted in higher rates of anti-social and nuisance behavior, and stigmatization. Additionally, the policy had no impact on supply or demand for sex work.³¹ In Sweden, where the policy has been in effect since 1999, the model often results in “evictions, deportations, child custody loss, police tracking or raids, and outing to one’s immediate environment [that] hinder sex workers from seeking help from the police.”³²

End Demand policies are built on the pretense that sex work is inherently exploitative, as a form of gender violence that workers are unable to consent to. This presumption removes individual agency and is sexist, ignoring the reality that many sex workers are male, transgender, non-conforming, or nonbinary.³³ Though the bill seeks to help vulnerable individuals, it is unlikely that it would have a positive impact on sex workers or trafficking survivors.

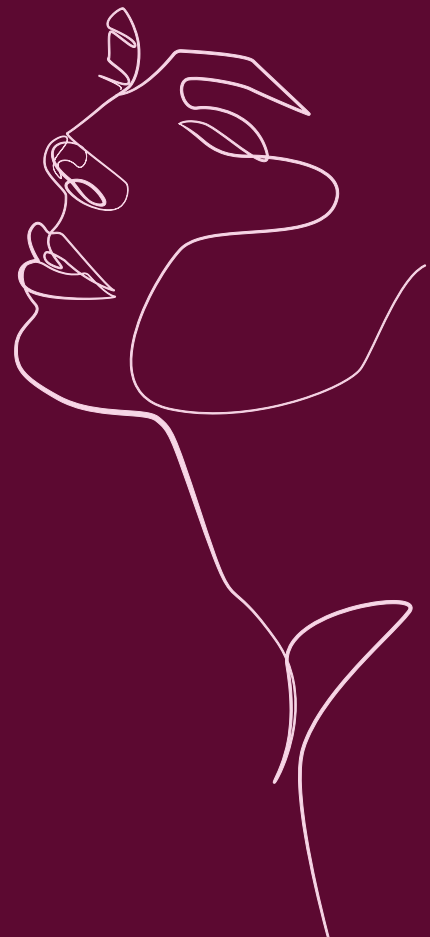
30 Michael Ellsberg, “Manhattan DA Candidate Eliza Orlins Has a Plan to Make New York City Safer for Sex Workers,” Daily Beast, January 27, 2021, <https://www.thedailybeast.com/manhattan-da-candidate-eliza-orlins-has-a-plan-to-make-new-york-city-safer-for-sex-workers>.

31 Assessment of Review of Operation of Article 64A of the Sexual Offences Order (Northern Ireland) 2008: Offence of Purchasing Sexual Services,” Northern Ireland Department of Justice, September 17, 2019, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/assessment-of-impact-criminalisation-of-purchasing-sexual-services.pdf>

32 Boglárka Fedorkó, Jay Levy, and Niina Vuolajärvi, “Twenty Years of Failing Sex Workers” (International Committee on the Rights of Sex Workers in Europe, September 30, 2019), https://www.nswp.org/sites/nswp.org/files/20_years_of_failing_sex_workers.pdf, 24.

33 Marc Horne, “Sex Work Ban to Protect Women Ignores Us, Say Male Prostitutes,” The Times, March 16, 2021, <https://www.thetimes.co.uk/article/sex-work-ban-to-protect-women-ignores-us-say-male-prostitutes-vgm5gvt0l>.

HISTORY



IV. HISTORY

Though the law has long been used to regulate sex work across the country, the act of prostitution was not criminalized in New York State until 1969.³⁴ Prostitution occurred commonly before the late 20th century but was curtailed to certain areas in different cities, or indirectly criminalized through lewdness, morality, and loitering laws.

Data from the 19th century suggests that between 5-10% of women in New York City were engaged in prostitution, one of the most flexible and highest paying work options available to women during that time. Sex work was restricted to certain “red light” districts within urban areas, within which it was largely unregulated. As is still true today, street-based workers, many in poorer areas populated by immigrant communities and neighborhoods of color, were the most likely to be harassed and criminalized. Brothels in these neighborhoods could be subject to increased raids and law enforcement harassment.³⁵

By the early 20th century, moralistic fervor had taken over the country. Harm reduction³⁶ and medical responses to sex work were usurped by prohibitionist sentiments which abolished red-light districts and pushed sex work into more illicit, underground channels. Pandering and living off earnings of sex work became crimes in many states for the first time.³⁷

The 1910 passage of the Mann Act reflected the same vague and moralistic sentiments. Colloquially known as the “white slave traffic act,” the law prohibited the transport of any woman or girl across state lines for prostitution, debauchery, or any other “immoral purpose”. It was intended to combat forced prostitution, but was born in the midst of a moral panic over alleged immigrant-run prostitution rings across the country.³⁸ Congress appointed a commission in 1907 to investigate the “problem” of immigration and prostitution. It was alleged that immigrant women were brought to America for sexual slavery while immigrant men lured American girls into prostitution (or “white slavery”).³⁹ The Mann Act was also used to target interracial couples who traveled across state lines together, including Jack Johnson, heavyweight boxing champion, who traveled to Chicago with his white girlfriend in 1913.⁴⁰

Not unlike policies that persist today, the Mann Act cloaked discrimination against interracial couples and immigrants in a more acceptable sentiment: fighting human trafficking. It was upheld by the Supreme Court in multiple instances, never repealed but amended multiple times to reflect a more explicitly anti-trafficking intention.⁴¹

In political discourse, the criminalization of sex work has strategically been tied to public health on both sides of the argument, used to bolster morality arguments, as well as harm-reduction and destigmatization efforts. The Chamberlain-Kahn Act, another anti-prostitution bill, was passed in 1918. Also known as the American Plan, the bill implemented a public health program with the stated goal of combating the spread of sexually transmitted infections among soldiers in the United States during World War I. Under the Chamberlain-Kahn Act, the government had the power to quarantine any woman suspected of having a venereal disease. A medical examination was required, and if it revealed a sexually transmitted infection, this constituted proof of prostitution. A disproportionate number of those arrested were working-class women and women of color who were viewed as a threat to soldiers’ moral hygiene.”⁴²

34 Frankie Herrmann, “Building a Fair and Just New York: Decriminalize Transactional Sex,” *Hastings Race and Poverty Law Journal* 15, no. 1 (January 1, 2018): pp. 65-129, https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1011&context=hastings_race_poverty_law_journal, 71.

35 *Ibid.*, 72-74.

36 Harm reduction is a strategy of addressing social dynamics that was originally developed in response to laws regulating drug use. It has since been applied to other policies, programs, and practices in order to minimize negative health, social and legal impacts; KM Leslie, “Harm Reduction: An Approach to Reducing Risky Health Behaviours in Adolescents,” *Pediatrics & Child Health* 13, no. 1 (January 1, 2008): pp. 53-56, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2528824/pdf/pch13053.pdf>.

37 Nicole Bingham, “Nevada Sex Trade: A Gamble for the Workers,” *Yale Journal of Law and Feminism* 10, no. 1 (1998): pp. 69-99, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1137&context=yjlf>.

38 Eric Weiner, “The Long, Colorful History of the Mann Act,” NPR (NPR, March 11, 2008), <https://www.npr.org/templates/story/story.php?storyId=88104308>.

39 “Mann Act,” Legal Information Institute (Cornell Law School, July 2020), https://www.law.cornell.edu/wex/mann_act.

40 Weiner, 2008.

41 Legal Information Institute, 2020.

42 Kim Kelly, “A Forgotten War on Women,” review of *The Trials of Nina McCall: Sex, Surveillance, and the Decades-Long Government Plan to Imprison “Promiscuous” Women*, by Scott W. Stern, *New Republic*, May 22, 2018, <https://newrepublic.com/article/148493/forgotten-war-women>.

Transgender and cisgender women were arrested and given invasive exams on the basis of poverty, racial profiling, rumors of prostitution, their dress being perceived as “morally questionable,” or simply walking alone in the wrong place at the wrong time. The results of these exams were used as “evidence” to convict women of prostitution and send them away for “rehabilitation.” The Chamberlain-Kahn Act continued to be enforced through the 1970s and was used to close areas across the country where prostitution had previously been permitted.⁴³ During World War II, the May Act took these efforts a step further, making it a federal offense to solicit sex near a military base, and leading to the long-term imprisonment, or “quarantine” of thousands of sex workers, poor women, women of color, or anyone who appeared too “forward.”⁴⁴

HUMAN TRAFFICKING LAW

Trafficking was not a criminal offense in New York State until 2007, seven years after the Trafficking Victims Protection Act (TVPA) became the first comprehensive federal law to address trafficking in persons.⁴⁵ Prior to 2007, acts that would now be considered sex trafficking at the state level, such as using force, intimidation, fraud, coercion or violence to advance or compel prostitution, or any type of prostitution involving a minor, were prosecuted as promoting prostitution, compelling prostitution, patronizing a minor for prostitution, and/or sexual assault and domestic violence. Many cases showing clear signs of trafficking, involving multiple victims or foreign nationals were prosecuted at the federal level.

Advocate and Human Rights Attorney [and founder of the Sex Workers’ Project] Juhu Thukral recalls that in the early 2000s there was a significant degree of infighting between different jurisdictions over how to classify these cases and who should handle them. Advocates and defense attorneys, according to Thukral, actually preferred a model of prosecution where federal agencies dominated trafficking. The federal prosecutors tended to have higher standards of evidence and more perspective in terms of how to classify these cases, leading to less conflation, and fewer prosecutions in general. But trafficking prosecutions also existed at the state level. When cases involved fewer defendants and perpetrators, and only US nationals, often New York State would invoke domestic violence or promoting prostitution charges.

This created tension, not only between prosecutorial jurisdictions but also among advocates. Many argued that immigrant victims received “better treatment” than citizen victims, as federal agencies had more experience and resources at their disposal and trafficking was easier to detect and prove when it involved foreigners. Survivors of human trafficking had more rights than survivors of domestic violence or those involved in promoting prostitution cases, who were often prosecuted under prostitution charges, despite the presence of coercion.

A lack of standardized policy and a degree of territoriality from state prosecutors emerged and contributed to a legislative push for anti-trafficking policy at the state level. “This is when the rhetoric conflating sex trafficking and prostitution really spirals, around 2003 or 2004,” says Thukral. There were two coalitions advocating for an anti-trafficking policy. In the first, advocates for sex workers and survivors opposed creating a state-level trafficking classification unless legislation was accompanied by resources. They were wary of conflation, sex workers being hit with heavier charges, and the potential performative nature of the bill.

In the latter, legislators and anti-trafficking advocates wanted to increase penalties for clients of sex workers and pursue a more punitive approach to policing prostitution under an anti-trafficking model. This coalition framed any kind of sex work, consensual or not, as inherently exploitative and believed that prostitution cases and trafficking for the purpose of commercial sex cases should be handled similarly, at the state level. Thukral notes that in part, the legislation was motivated by the state’s desire to have more control over their cases and receive funding for this control. In the end, anti-prostitution advocates succeeded in increasing penalties for buyers in conjunction with anti-trafficking legislation.

43 Helen Bouzon, Jessica Jennings, and Charles Chamberlain, “Storyville District - Stop 7 of 10 on the Tour The Birthplace of Jazz: A Walking Tour Through New Orleans’s Musical Past,” New Orleans Historical (University of New Orleans and Tulane University, 2021), <https://neworleanshistorical.org/items/show/1307>.

44 Cari Romm, “During World War II, Sex Was a National-Security Threat,” The Atlantic (The Atlantic , October 8, 2015), <https://www.theatlantic.com/health/archive/2015/10/during-world-war-ii-sexually-active-women-were-a-national-security-threat/409555/>.

45 22 USC § 7102

When the trafficking laws in New York passed in 2007, the handling of cases shifted. Trafficking prosecutions involving foreign nationals were still sometimes directed to the FBI, particularly when ICE was involved. But the state now had the tools to invoke comprehensive anti-trafficking programming. This could have been a positive step, but with trafficking only so recently defined on a municipal level, law enforcement had little guidance on how to clearly distinguish it from prostitution, other than on a subjective, case-by-case basis. New policies around policing and prosecution were being developed, not only in the wake of a newly invigorated focus on human trafficking but also as partial criminalization rhetoric was growing in prominence in the late 2000s.

One of the central tenants of the partial criminalization model, or as Thukral calls it “arrest first model”, is that it views all buyers of sex as exploitative, and all those who sell sex as victims. Antithetically, in order to “rescue” these victims, New York still puts them in handcuffs and often charges them with prostitution. Between 2009-2013, the state arrested an average of 2,400 individuals for prostitution each year, of which only around 867 would result in convictions. 78% of these arrests took place in New York City counties and nearly 90% of prostitution arrests during this time were of people of color.⁴⁶

Given the context of the racialized policing of sex work,⁴⁷ the criminalization inherent in many diversion programs,⁴⁸ and the reality of prosecutorial discretion in the United States criminal legal system,⁴⁹ the implementation of trafficking and prostitution laws created problematic dynamics. Immigrant Defense Project attorney Genia Blaser observed that, historically, “[New York City] investigated trafficking by arresting people on the street for crimes related to sex work.” That process caused individuals to go through a system in which they were handcuffed, fingerprinted, and criminalized, regardless of whether they participated in the sex trade as a result of choice, circumstance, or coercion.⁵⁰

The failure to recognize or distinguish the contextual factors that can lead to prostitution, including economic and social vulnerability, combined with widespread stigmatization and abuse of sex workers, has created a deep and historic distrust between those who trade sex for money and law enforcement.⁵¹ In particular, the NYPD Vice Squad has long been a strong presence in New York City policing. With the emergence of the Human Trafficking Taskforce and other anti-trafficking programs, the significance of programming increased. The unit’s historic reputation, as abusive and discriminatory, was legitimized as it aligned itself with anti-trafficking “rescue rhetoric,” though the abuse continued.⁵²

The authors confronted this dynamic throughout their interviews. Prosecutors, defense attorneys, and service providers contend with previous classifications of “criminal” and “victim” which had been the status quo for decades. The advent of local human trafficking laws, as well as the conflation between criminalization and rescue rhetoric within sex work prosecutions, introduces complications and skepticism, particularly when enforcement is carried out by small and diverse municipal organizations without state-wide guidelines for how to dispense these cases.⁵³ Advocates and service providers, even when they had the contextual background to understand the nuances between sex work and trafficking, were frustrated by law enforcement and prosecutorial resistance.

As a result, responses to trafficking and consensual adult sex work in New York are increasingly coded based on the identities

46 DCJS, 2019

47 “From Margin to Center: Sex Work Decriminalization Is a Racial Justice Issue.” Amnesty USA, December 12, 2016. Amnesty International. <https://www.amnestyusa.org/from-margin-to-center-sex-work-decriminalization-is-a-racial-justice-issue/>.

48 Becca Kendis, “Human Trafficking and Prostitution Courts: Problem Solving or Problematic?,” Case Western Reserve Law Review 69, no. 3 (2019): pp. 805-841, <https://scholarlycommons.law.case.edu/caselrev/vol69/iss3/10>.

49 “Defining the Line Between Victim and Offender: Trafficked Victims and Prosecutorial Discretion: R v O; R v N [2019] EWCA Crim 752.” The Journal of Criminal Law 83, no. 5 (2019): 410-15. <https://doi.org/10.1177/0022018319878524>.

50 Emma Whitford, “NYPD Urges Immigrant Sex Trafficking Victims To Anonymously Report Abuse,” Gothamist (Gothamist, February 2, 2017), <https://gothamist.com/news/nypd-urges-immigrant-sex-trafficking-victims-to-anonymously-report-abuse>.

51 Amy Farrell, Jack McDevitt, and Stephanie Fahy, “Understanding and Improving Law Enforcement Responses to Human Trafficking: Final Report” (Northeastern University, December 2008), <https://www.ojp.gov/pdffiles1/nij/grants/222752.pdf>.

52 Caroline Lewis, “Lawmakers Say NYPD Vice Squad Is A ‘Hotbed Of Corruption’ And Sexual Abuse,” Gothamist (Gothamist, April 19, 2019), <https://gothamist.com/news/lawmakers-say-nypd-vice-squad-is-a-hotbed-of-corruption-and-sexual-abuse>.

53 Id.

of the involved parties. Women of color, Transgender, Non-conforming (TGNC), and LGBTQ individuals, are more likely to be prosecuted as criminals, whereas white women in the sex trade are more likely to be flagged as victims coerced into selling sex. Immigrants might be more likely to be identified as survivors of trafficking, but they may still have immigration consequences if they commit crimes as a result of exploitation.⁵⁴ These dynamics create an enforcement gap based on false assumptions. LGBTQ youth, migrants, and trans women of color are some of the most vulnerable populations to trafficking and have also historically been targeted by and distrustful of law enforcement.⁵⁵

In the early 21st century, a coalition of survivors, service providers, and legal advocates successfully campaigned for legislators to take action in combating the criminalization of survivors. New York passed a bill providing post-conviction vacatur for survivors of sex trafficking, the first of its kind in the nation.⁵⁶ The 2010 vacatur bill amended New York State Criminal Procedure Law section 440.10, allowing individuals who had been trafficked to expunge prostitution-related criminal convictions from their records, provided they could prove that the crime was committed as a result of their trafficking.

Though a critical step in the right direction, advocates and legal experts agree that the law did not go far enough in protecting trafficking survivors with criminal records: Non-prostitution-related convictions were ineligible for vacatur even if an individual was forced to commit a crime as a result of their exploitation, and the standard of evidence for trafficking was often difficult to meet.⁵⁷ As a result, New York expanded its vacatur law in 2021, allowing New York State courts to vacate a range of criminal convictions stemming from a person's experience as a victim of sex trafficking or labor trafficking.

HUMAN TRAFFICKING INTERVENTION COURTS (HTICS)

Riding the tide of anti-trafficking legislation, and recognizing the need for a concentrated effort to enforce recent vacatur and TVPA policies, the New York State Unified Court System announced their new Human Trafficking Intervention Initiative on September 25, 2013. The initiative is a partnership between law enforcement, service providers, and advocates, focused on individuals charged with prostitution-related offenses in an effort to “identify and assist sex trafficking victims, opening the door for thousands across the state to escape a life of abuse and torture.”⁵⁸

The HTIC system developed gradually. Initially, prostitution diversion programs were completely localized within boroughs. The Center for Court Innovation (CCI) developed a community policing model and partnered with the Manhattan DA to establish the Midtown Community Court in Manhattan. Queens county worked with Girls Educational and Mentoring Services (GEMS) to develop their own diversion program.⁵⁹ Other counties followed suit.

Eventually, twelve separate courts emerged, all part of the NYS Unified Court System, the nation's first statewide system of dedicated courts designed to intervene in the lives of trafficking survivors. These twelve courts were meant to cover the entire state, though as advocates later reported, it is up to municipal level authorities whether cases of trafficking are actually directed to diversion programs. The HTIC system formalized the process. The Legal Aid Society's Exploitation Intervention Project partnered with the courts to provide borough-specific representation for New York City courts in 2011.⁶⁰ According to Thukral, who was Founder and Director of the Sex Workers Project at the Urban Justice Center at the time, coordination between the courts increased the quality of representation for survivors. However, Thukral warned, the entire system is still

54 “Global Human Trafficking,” Global Human Trafficking (blog) (Ohio State University , March 6, 2018), <https://u.osu.edu/osuhtblog/2018/03/06/the-enforcement-gap-and-the-new-york-city-police-departments-treatment-of-lgbt-human-trafficking-survivors/>.

55 Farrell et al., 2008.

56 Edna Ishayik, “Law Helps Those Who Escape Sex Trafficking Erase Their Criminal Record,” The New York Times, March 23, 2015, <https://www.nytimes.com/2015/03/24/nyregion/law-helps-those-who-escape-sex-trafficking-shed-its-stigma-too.html>.

57 Whitney Drasin, “New York’s Law Allowing Trafficked Persons to Bring Motions to Vacate Prostitution Convictions: Bridging the Gap or Just Covering It Up?,” *Touro Law Review* 28, no. 2 (July 2012): pp. 489-518; Alyssa M Barnard, “The Second Chance They Deserve: Vacating Convictions of Sex Trafficking Victims,” *Columbia Law Review* 114, no. 6 (October 2014): pp. 1463-1501.

58 Center for Court Innovation, 2016.

59 Mary Emily O’Hara, “Not Everyone Is Happy with the NY Courts Treating Sex Workers as Trafficking Victims,” VICE (Vice News, October 1, 2014), <https://www.vice.com/en/article/7xjj59/not-everyone-is-happy-with-the-ny-courts-treating-sex-workers-as-trafficking-victims>.

60 “Exploitation Intervention Project,” The Legal Aid Society, 2021, <https://legalaidnyc.org/programs-projects-units/exploitation-intervention-project/>.

built on arrest first principles, and funding was, and is, distributed based on how individual courts adhere to these principles. While both trafficking and sex work advocates agree that HTIC's are a vast improvement over traditional criminalization, the courts are founded on the false premise of conflation. In the announcement of the opening, Chief Judge Jonathan Lippman stated, "We now recognize that the vast majority of individuals charged with prostitution offenses are commercially exploited or at risk of exploitation. By offering vital services instead of punishment to these defendants, the Human Trafficking Intervention Initiative will act to transform and save lives - and in turn, enable law enforcement to identify, investigate and punish the traffickers."⁶¹

Trauma-informed services may be beneficial to trafficking survivors and some members of the sex working community. Still, courts operate on the assumption that all women involved in sex work are victims and still continue to criminalize them. Advocates have long argued that HTIC programs put communities at risk by enforcing anti-prostitution, carceral feminist policies,⁶² forcing survivors and sex workers into stigmatizing, inadequate, and de-personalized programs to "[save] them from sex work". The programs are also sexist. While sex workers are more likely to identify as women, people of all genders participate in sex work and experience trafficking.⁶³ Though the rhetoric used shifted away from prostitution and towards human trafficking, individuals processed by the courts remained largely the same.

In 2014, The Red Umbrella Project published an evaluation of New York HTICs, revealing extreme racial profiling in Brooklyn and Queens courts. 69% of defendants facing prostitution charges in Brooklyn were Black, and in Queens, 58% percent were East Asian. Arrests re-victimized individuals whom the courts were meant to be "saving," drawing them into a system with an inadequate understanding of their circumstances.⁶⁴ Red Umbrella Organizer Jenna Torres spoke to the NYC Council in 2015, describing how HTIC programming forced her to quit going to college in order to attend mandatory sessions and care for her children. Ultimately, "successfully completing" the program made her more likely to return to sex work without skills to get a better-paying job.⁶⁵ Womankind, a non-profit service provider, ended up leaving the Queens county HTIC program, citing it was easier to build community trust outside of the courts.

While the courts solve certain problems, such as providing an alternative to prison, generally leaving individuals without a lasting criminal record, and recognizing the reality of trafficking and exploitation, they are also problematic. Critics note that despite certain success stories, these programs have a tendency to "encourage special interest control of criminal courts, foster undesirable police and judicial practices, and fail to meaningfully address societal problems," specifically the criminalization of prostitution.⁶⁶ In an interview with the New York Times, trafficking survivor Melanie Thompson put it this way: "the court is great for keeping you out of prison. But it still doesn't take into account all the precursors, those factors that led you to prostitution in the first place."⁶⁷

In interviews with legal advocates and service providers, we talked about the benefits, costs, and implications of HTICs, coming to the conclusion that separate human trafficking courts are not bad; in fact they can be helpful for people who are experiencing exploitation. But they are not necessarily good.

61 "NY Courts," NY Courts, September 25, 2013, http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/PR13_11.pdf.

62 Carceral Feminism describes an approach to women's rights and gender equity that sees increased policing, prosecution, and imprisonment as the primary solution to violence against women. This stance does not acknowledge that police are often purveyors of violence and that prisons are always sites of violence. It also ignores the way that race, socio-economics status, immigration, gender, and sexual identity play into the protection that the state provides; "Carceral Feminism," Transform Harm (Open Society Foundation, 2020), <https://transformharm.org/carceral-feminism/#:~:text=Victoria%20Law,are%20always%20sites%20of%20violence>.

63 Melissa Gira Grant. "Human Trafficking Courts Are Not a Criminal Justice 'Innovation.'" The New Republic, January 7, 2020. <https://newrepublic.com/article/156135/human-trafficking-courts-not-criminal-justice-innovation>.

64 Audacia Ray and Emma Caterine, "Criminal, Victim or Worker? The Effects of New York's Human Trafficking Intervention Courts on Adults Charged with Prostitution-Related Offenses" (Red Umbrella Project, 2014), <https://www.nswp.org/resource/criminal-victim-or-worker-the-effects-new-yorks-human-trafficking-intervention-courts>.

65 Michelle Chen, "Why Do Sex-Work Diversion Programs Fail?," The Nation, September 25, 2015, <https://www.thenation.com/article/archive/why-do-sex-work-diversion-programs-fail/>.

66 Kendis, 2019.

67 Christina Goldbaum, "Charged With Prostitution, She Went to a Special Court. Did It Help?," The New York Times, January 6, 2020, <https://www.nytimes.com/2020/01/06/nyregion/ny-prostitution-courts.html>.

POLICY SHIFT TO “TARGETING DEMAND”

Following the legal codification of trafficking, District Attorneys across the state expressed a desire to shift the way sex work is prosecuted to focus increasingly on buyers and third parties rather than sex workers themselves. In a 2012 case involving a father and son convicted of sex trafficking, Manhattan DA Cyrus Vance Jr. said he would not press charges against their victims. Though not prosecuting trafficking survivors might seem intuitive, in reality, this was the beginning of a nominal effort to shift away from the prosecution of sex workers.⁶⁸ In 2021, the change became even more explicit when the Manhattan DA’s Office announced it would no longer even issue ACD’s for prostitution or unlicensed massage arrests.⁶⁹ Months before, Brooklyn and Queens county vacated hundreds of open bench warrants for prostitution, loitering, and other prostitution-related charges.⁷⁰

While acknowledging the limited agency of some individuals working in commercial sex was a critical step, there are several problems with this policy approach. First, though the law distinguishes between trafficking and prostitution, the discretion of individual actors within the legal system has resulted in the continued criminalization of survivors and sex workers alike and failed to provide anything close to adequate services for those who wish to find work outside of commercial sex.⁷¹

Framing buyers as inherently exploitative actors encourages conflation. In 2013, the UN Women Organization stated that this policy approach “leads to inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights” and that failing to distinguish between survivors and sex workers infringes on the health and safety of both groups and may inhibit the ability to prosecute trafficking.⁷²

Evidence shows that focusing on clients of sex workers and third parties neither improves public safety and the safety of sex workers, nor does it help to combat trafficking. Decriminalizing the sale of sex but maintaining penalties for purchasing, often called the “arrest first model,” “Swedish Model,” the “Nordic Model,” “End Demand Model,” “partial criminalization,” or the “Entrapment Model,” has been adopted by many countries around the world. In Northern Ireland, a report by the Department of Justice revealed that three years after the implementation of End Demand, sex workers reported higher levels of anxiety and unease as well as increased stigmatization, and have been subjected to heightened rates of anti-social and nuisance behavior.⁷³ A 2004 report by the Norwegian government assessed the situation in Sweden and found that “more abuse takes place ... as the women cannot afford to say ‘no’ to the clients they have their doubts about.”⁷⁴ Sex workers were evicted and discriminated against by their landlords in Norway. Violence at the hands of police and clients increased as they could no longer as easily negotiate safe sex practices or access health care services.⁷⁵ Increased police surveillance and harassment were largely to blame as sex workers were seen as the leads in cases against clients.⁷⁶

Even if End Demand policies effectively protect sex workers, survivors, and communities, in reality, New York still largely criminalizes the sale of sex. As exhibited by the data in the following sections, only in recent years have arrests for purchasing or aiding prostitution come close to arrests for solicitation offenses. In 2019, 49.6% of prostitution and trafficking-related

68 Russ Buettner, “Prosecutors Focus on Pimps and Clients, Instead of Prostitutes,” *The New York Times*, May 2, 2012, <https://www.nytimes.com/2012/05/03/nyregion/manhattan-prosecutors-focus-on-pimps-instead-of-prostitutes.html>.

69 Jonah Bromwich, “Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift,” *The New York Times*, April 21, 2021, <https://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecuting-prostitution.html>.

70 “Brooklyn DA,” Brooklyn DA, January 29, 2021, <http://www.brooklynnda.org/2021/01/29/brooklyn-district-attorney-eric-gonzalez-dismisses-all-outstanding-prostitution-related-warrants/>.

71 Kendis, 2019.

72 Zoe Bulls and Victoria Watson, “Three Ways the Nordic Model Falls Short,” *Ms. Blog (Ms. Magazine)*, December 17, 2018, <https://web.archive.org/web/20181217192936/http://msmagazine.com/blog/2018/12/17/three-ways-nordic-model-falls-short/>.

73 “Assessment of Review of Operation of Article 64A of the Sexual Offences Order (Northern Ireland) 2008: Offence of Purchasing Sexual Services,” Northern Ireland Department of Justice, September 17, 2019, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/assessment-of-impact-criminalisation-of-purchasing-sexual-services.pdf>.

74 “Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences,” Norwegian Ministry of Justice and the Police, 2004, https://www.nswp.org/sites/nswp.org/files/232216-purchasing_sexual_services_in_sweden_and_the_netherlands.pdf; Jay Levy, *Criminalising the Purchase of Sex: Lessons from Sweden* (New York: Routledge, Taylor & Francis Group, 2015), 121.

75 Alek Nielson, “Nordic Model: The Ongoing Criminalization of Sex Workers in Northern Europe,” *Medium (Internet Archive)*, December 29, 2018, <https://web.archive.org/web/20190713153945/https://medium.com/@aleknielsen/nordic-model-the-ongoing-criminalization-of-sex-workers-in-northern-europe-c1df02ba94ae>.

76 Lucy Platt et al., “Associations between Sex Work Laws and Sex Workers’ Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies,” *PLoS Medicine* 15, no. 12 (December 11, 2018), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002680>.

arrests in New York were for prostitution (PL 230.00) and loitering for the purpose of engaging in prostitution (PL 240.37). 37% of arrests were of clients patronizing individuals for prostitution, 9.7% were for promoting or permitting prostitution, and 3% were for trafficking.

This is an improvement from earlier in the decade when PL 230.00 accounted for close to 70% of prostitution and trafficking-related arrests, but current criminalization rates are ill-matched with policy objectives. As is illustrated in Figure 13, though conviction rates for sex workers and clients have been declining, the proportion of individuals arrested for selling sex who are convicted outweighs the convictions of buyers. Those arrested for selling sex were convicted between 10-46% of the time, while conviction rates for buyers hovered around 5% or 6% in most years. If convicted of prostitution (a class B misdemeanor) the likelihood of serving prison time is on average 44.6%, a rate that has declined only marginally throughout the decade, despite the rise of HTICs. Conversely, the incarceration rate of those convicted of purchasing sex in the 3rd degree is on average 17%. When controlling for outlying years, such as 2012 and 2013, this average falls closer to 10%.

New York judges and prosecutors continue to fail to listen to impacted communities and instead struggle to define crimes resulting from commercial sex. In recent years, legislation has focused on increasing penalties for purchasing sex or aiding prostitution. Under previous laws, traffickers or “pimps” as they are sometimes known (conflating those who exploit individuals for commercial sex with third parties who are sometimes hired by sex workers for safety) typically faced up to 15 years in prison for “promoting prostitution with an adult”. The 2010 sex trafficking charge carries a maximum sentence of 25 years. Also under the 2010 law, customers who pay adult prostitutes for sex face up to one year in jail, an increase from 90 days.⁷⁷

Despite the good intentions of lawmakers, trafficking laws often foster the increased criminalization of consensual sex work and fail to provide meaningful help to trafficked individuals. Because of the lack of nuance in the laws and lack of understanding by police and prosecutors, laws that purport to combat trafficking continue to create hostile situations for consensual sex workers and trafficked individuals.

INDIRECT TARGETING OF SEX WORKERS

In addition to the repercussions associated with the entrapment model of policing sex work, the shift towards focusing on clients was not entirely accurate. Service providers reported that sex workers were still being arrested, just on different charges. In early 2017, NYPD pledged to arrest fewer people on prostitution and loitering for the purpose of prostitution charges. Kate Mogulescu, who was Legal Aid Society’s Exploitation Intervention Unit’s (EIP) director at the time, confirmed that arrest rates had indeed dropped. But massage parlor raids simultaneously spiked. Between 2012-2016, Unauthorized Practice of Profession arrests rose from 31 to 631.⁷⁸ The majority of the arrestees under this statute are immigrant women from China and Korea. According to Mogulescu, 91 percent of the 2016 cases were against non-citizens.⁷⁹ Additionally, the total number of Asian arrestees charged with both unlicensed massage and prostitution increased from 12 to 336 between 2012 and 2016, a 2700% increase.⁸⁰

In November 2017, massage parlor raids came under increased scrutiny after Yang Song, a 38-year-old woman from China who worked in one of the parlors, died after jumping out of a window to flee police during a vice sting. Song had previously been arrested on prostitution charges. Raids are incredibly traumatizing events, but to make matters worse, Song was sexually assaulted while in custody the first time. She bravely reported the assault and as a result was subjected to intense and increased police harassment.⁸¹ Officers pressured Song to become an informant and “report on other masseuses”. They told her that

⁷⁷ Buettner, 2012.

⁷⁸ Our own data contradicts slightly, noting 24 and 627 arrests in Queens respectively, but the general trend holds true.

⁷⁹ Emma Whitford, “NYPD Urges Immigrant Sex Trafficking Victims To Anonymously Report Abuse,” Gothamist, February 2, 2017, <https://gothamist.com/news/nypd-urges-immigrant-sex-trafficking-victims-to-anonymously-report-abuse>.

⁸⁰ Meredith Dank, Jennifer Yahner, and Lilly Yu, “Consequences of Policing Prostitution: An Analysis of Individuals Arrested and Prosecuted for Commercial Sex in New York City” (Urban Institute, April 2017), <https://www.urban.org/sites/default/files/publication/89451/consequences-of-policing-prostitution.pdf>.

⁸¹ Melissa Gira Grant and Emma Whitford, “Family, Former Attorney of Queens Woman Who Fell to Her Death in Vice Sting Say She Was Sexually Assaulted, Pressured to Become an Informant,” The Appeal, December 15, 2017, <https://theappeal.org/family-former-attorney-of-queens-woman-who-fell-to-her-death-in-vice-sting-say-she-was-sexually-d67461a12f1/>.

they would pay her but she needed to sign a contract. Song resisted and she never received any follow-up regarding the officer who assaulted her. There is speculation that Song jumped because she feared deportation if she was caught.⁸²

FULL DECRIMINALIZATION

A bill to fully decriminalize sex work was first introduced in the New York State Legislature in 2019 by Senator Julia Salazar and Assemblymember Richard Gottfried. The bill reflected growing national sentiment in support of decriminalization. In 2019, the City Council of the District of Columbia introduced a similar bill backed by LGBTQ Advocates. The New York Coalition was made up of public defenders, service providers for immigrant workers, LGB and TGNC community members, public health professionals, human rights advocates, and impacted individuals. The bill decriminalized the sale and purchase of sex, as well as promoting prostitution but maintained criminal penalties for trafficking, coercion, and sexual abuse of minors.⁸³ Criticism from prosecutors objected to the fact that the proposed bill redefines trafficking in a way that makes it more difficult to prosecute.

Full decriminalization of sex work has been shown to reduce the spread of STIs and violence against women where and when it has been implemented. Rhode Island inadvertently decriminalized indoor prostitution in 1980 in an attempt to make laws governing sex work more specific. The loophole was noticed by lawmakers in 2003 and prevented conviction until 2009 when indoor sex work was re-criminalized. A study published by the National Bureau of Economic Research found that during the six-year window of decriminalization, the number of reported rapes decreased by 31 percent, and the statewide incidence of gonorrhea diminished by 39 percent.⁸⁴

New Zealand passed the Prostitution Reform Act (PRA) in 2003, fully decriminalizing sex work for New Zealand nationals. According to a study conducted by the Global Alliance Against Traffic in Women (GAATW), there was no evidence of human trafficking among populations where sex work had been decriminalized between 2003 and 2018.⁸⁵ As previously noted, focusing on clients has not yielded the same benefits in New York State or other countries where End Demand policies have been implemented, nor have they had any impact on the demand for commercial sex.⁸⁶ Lawmakers and community members are realizing this. A 2019 National Poll shows the majority of registered voters support decriminalizing sex work.⁸⁷

Though New York's decriminalization bill has not been passed, it was reintroduced in the 2021 session. Senator Liz Krueger also introduced the Sex Trade Survivors Justice & Equality Act on March 31, 2021, which would follow an End Demand Model to decriminalize the sale, but not the purchase of sexual services. Neither bill has gotten much traction.⁸⁸

82 Whitford and Grant, 2017.

83 S.B. 6419, 2019-2020 Leg. Sess., Reg. Sess. (Ny. 20019), <https://www.nysenate.gov/legislation/bills/2019/s6419>

84 Scott Cunningham and Manisha Shah, "Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health," *The Review of Economic Studies* 85, no. 3 (December 20, 2017): pp. 1683-1715, <https://doi.org/10.3386/w20281>.

85 Thomas Manch, "No Trafficking in NZ sex industry but migrant abuse is widespread, report finds," *Stuff*, April 17, 2018, <https://www.stuff.co.nz/national/crime/103129627/no-trafficking-in-nz-sex-industry-but-migrant-abuse-is-widespread-report-finds>.

86 An analysis of 173,460 ads shows little effect on the supply of or demand for sex work in Northern Ireland between 2015 and 2018, the first 3 years that end demand policies were implemented there; "Assessment of Review of Operation of Article 64A of the Sexual Offences Order (Northern Ireland) 2008: Offence of Purchasing Sexual Services," Northern Ireland Department of Justice, September 17, 2019, <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/assessment-of-impact-criminalisation-of-purchasing-sexual-services.pdf>.

87 Nina Luo, "Decriminalizing Survival: Policy Platform and Polling on the Decriminalization of Sex Work" (Data for Progress, January 30, 2020), <https://www.filesforprogress.org/memos/decriminalizing-sex-work.pdf>.

88 Kayla Kibbe, "Why Not All Sex Workers Are in Favor of New York's New 'Decriminalization' Bill," *InsideHook*, January 25, 2021, https://www.insidehook.com/daily_brief/news-opinion/new-york-sex-work-decriminalization.

REPEAL OF LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION OFFENSE AND CLEARING CONVICTIONS

In a historic moment, the New York State Legislature repealed PL 240.37, loitering for the purpose of engaging in a prostitution offense, on February 2, 2021. The bill was signed into law later that day by Governor Andrew Cuomo.⁸⁹ Lawmakers cited the arbitrary and discriminatory enforcement of PL 240.37, which allowed law enforcement to target women from marginalized groups that are at high risk for sex trafficking and other exploitation and abuse. The harassment, discrimination, and violence that the law allowed was deemed “a danger to the public health and safety.”⁹⁰

Loitering for the purpose of engaging in a prostitution offense was enacted in 1976 along with several other anti-loitering statutes at a time when street crime was rampant. The explicit intention of the bill was to “curtail the proliferation of prostitution” and other “maladies” in New York. Following the original passage of the statute, there were repeated concerns about the law’s constitutionality and potential for abuse - particularly towards women.⁹¹

Over the next four decades, in addition to persistent concerns over bias and abuse in enforcement, the context of the law and the extent of its premises changed to make section 240.37 completely irrelevant and unnecessary. The law’s vagueness encouraged arbitrary and discriminatory arrests which targeted marginalized women in the commercial sex industry, a group at high risk for trafficking and exploitation. Eighty-five percent of the individuals arrested under Section 240.37 between 2012-2015 were Black or Latinx. In particular, transgender and cisgender women of color have often been unlawfully targeted by officers under this statute during “sweeps” or “operations” where officers arrest large numbers of women in a given area at the same time.

In a class action lawsuit brought by The Legal Aid Society challenging this statute, five of the eight named plaintiffs are transgender women of color arrested during four separate sweeps in neighborhoods where transwomen gather and socialize as a community to avoid violence, hostility, and discrimination. These women were arrested simply for standing outside, speaking to one another, or walking from a subway or grocery store back to their homes. Some trans women had been expressly warned by law enforcement that “girls like them” would be arrested if they were seen outside after midnight. One officer, when asked how he was trained to identify prostitutes, testified that he was trained to look for women with Adam’s apples, big hands, and big feet. Section 240.37 is rarely if ever, enforced against individuals loitering for the purpose of purchasing sex. Instead, the same individuals were repeatedly profiled and arrested, based exclusively on their identity.⁹²

The justification for the repeal asserts that “section 240.37 represents a vestige of an approach that has been universally disavowed. Arrests under the law foster distrust of law enforcement, which hurts victims of trafficking and impedes broader efforts to investigate and punish more serious criminal activity. Exposure to repeated arrests, and resulting criminal records, make it difficult for women to leave the commercial sex industry and seek assistance when victimized.”⁹³ For this precise reason, New York County, under the leadership of Human Trafficking Response Unit Chief Carolina Holderness, responded to call from advocates and stopped prosecuting loitering in 2017. Still, arrests in the county persisted.⁹⁴

As a result of the repeal, The Queens District Attorney, Melinda Katz, requested the dismissal of hundreds of cases against people who were charged with prostitution, loitering for the purpose of engaging in prostitution, and similar offenses. “Instead of prosecuting these defendants, we need to provide a helping hand by connecting them with meaningful services, support

89 Jimmy Vielkind, “New York Repeal of Anti-Prostitution Loitering Statute Is Approved,” The Wall Street Journal, February 2, 2021, <https://www.wsj.com/articles/new-york-repeal-of-anti-prostitution-loitering-statute-passed-by-lawmakers-11612303523>.

90 Rpld §240.37 2021-2022.

91 Kelly, 2018.

92 “Report in Support of Repealing the ‘Walking While Trans’ Ban,” New York City Bar (Association of the Bar of the City of New York, February 1, 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>.

93 S.B. 1351 2021-2022 Leg. Sess., Reg. Sess. (2021), <https://www.nysenate.gov/legislation/bills/2021/S1351>.

94 DCJS, 2020.

options, and the necessary tools that will assist them to safely exit the sex trade if that is what they choose to do,” Katz stated.⁹⁵

Though the dismissal of loitering charges was mandated by law, Katz went further by including prostitution charges. Her actions echoed those of Brooklyn District Attorney Eric Gonzalez who announced at the end of January that his office would vacate more than 1,000 bench warrants related to prostitution and loitering. The office formally announced that moving forward they would decline to prosecute both offenses. “The current way of handling sex workers is dangerous. It drives them underground, it doesn’t keep us safe, and it’s not really getting to the issue of trafficking,” Gonzalez said in a statement.⁹⁶ Action by these two boroughs on the issue was critical as in 2019, Queens and Kings counties alone accounted for 80% of loitering arrests statewide. Ninety-three percent of those arrested in these two counties were BIPOC and 98% were women.⁹⁷

In April 2021, the Manhattan District Attorney’s Office again took the lead on change by announcing it would no longer prosecute prostitution or unlicensed massage point-blank. Assistant District Attorney Carolina Holderness explained that previously, Manhattan filtered these cases through AP8 (HTICs) and issued an Adjournment in Contemplation of Dismissal rather than charging either offense. If defendants were not rearrested within six months, charges would be dropped. Still, arrests were traumatic and burdensome, and because cases were not sealed, they still had immigration consequences. Particularly in the case of unlicensed massage, many of those arrested in stings are immigrant women who suffer greatly as a result.

In response to a query about the future of AP8 in Manhattan, Abigail Swenstein of the Exploitation Intervention Project responded with less certainty. “It is not clear how the DA’s new policy will impact policing and in turn, AP8,” says Swenstein. Previously, AP8 took cases based on the charge, and prostitution made up the bulk of these since its inception. “Ostensibly, if the police make no prostitution-related arrests, then AP8 would only hear vacatur motions.” The concern from advocates though is that law enforcement is still able to stop someone if they have “reasonable suspicion” that they are engaging in sex work. From that stop, police may engage in a search or conversation leading to probable cause for arrest. “DANY has not said that they would not prosecute those cases,” says Swenstein. She hopes that these cases will not be prosecuted, and if they are they will be heard in the HTICs. Additionally, if sex workers or trafficking survivors are arrested for any offenses while selling sex, she hopes these will also become AP8 cases. “Only time will tell how people are policed and what DANY does with that.”

In other counties, sex workers still face arrest. The recent shifts in policy are important to limit contact with the criminal justice system and remove bench warrants which “have powerful negative consequences for the individual, and [] undermine public safety. Because someone with an open warrant is subject to arrest at any time, those engaged in the selling of sex are more likely to be driven underground and be less likely to report abuse or other crimes, which makes both them and others less safe.”⁹⁸

What follows is an examination of what arrests and convictions look like across New York State and the potential costs and benefits of the policies that drive these outcomes.

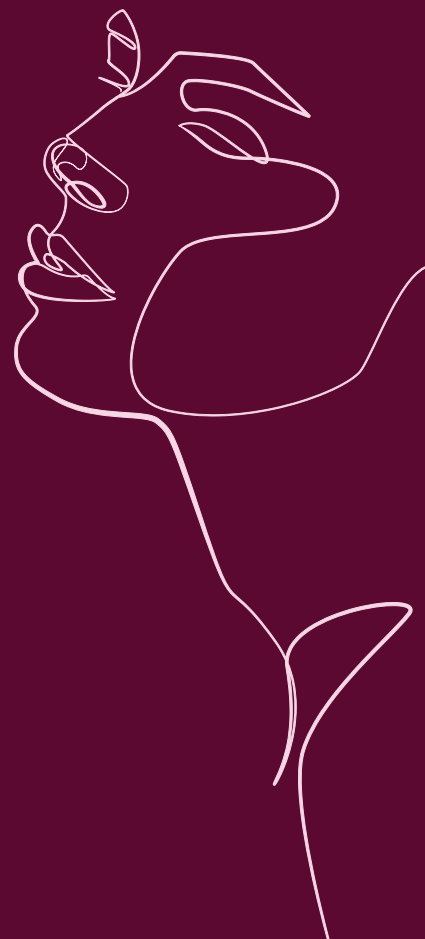
95 Karen Matthews, “Queens DA Moves to Drop 700 Sex Work-Related Prosecutions,” The San Diego Union Tribune, March 16, 2021, <https://www.sandiegouniontribune.com/news/nation-world/story/2021-03-16/queens-da-moves-to-drop-700-sex-work-related-prosecutions>.

96 Otilia Steadman, “More Than 1,000 Open Prostitution Cases In Brooklyn Are Going To Be Wiped From The Files,” BuzzFeed News (BuzzFeed News, January 29, 2021), <https://www.buzzfeednews.com/article/otillisteadman/prostitution-loitering-cases-brooklyn>.

97 DCJS, 2020.

98 “Brooklyn District Attorney Eric Gonzalez Dismisses All Outstanding Prostitution-Related Warrants.” Brooklyn DA, January 29, 2021. The District Attorney of Kings County. <http://www.brooklynda.org/2021/01/29/brooklyn-district-attorney-eric-gonzalez-dismisses-all-outstanding-prostitution-related-warrants/>.

METHODS



V. METHODS

QUANTITATIVE

This report was written for Decriminalize Sex Work's National Arrest Data Project in an effort to consolidate and analyze state-level policies regarding the criminalization of sex work. The analysis combines quantitative and interview-based methods to assess how sex workers and trafficking survivors are prosecuted and treated by local and state-level laws and policies. We hope the findings will contribute to the optimization of community health, safety, and human rights by illuminating which laws and policies are the most successful in upholding these goals.

The New York Chapter of the Project began with a data request from the New York State Division of Criminal Justice Services. The data was organized by race, gender, and county of arrest and conviction each year. Though we obtained both arrest and conviction data for 2009-2019, there is, unfortunately, no reliable way to correlate particular cases between years. DCJS was careful to note that the functioning of the criminal legal system is such that, while some cases are processed relatively quickly, many others linger while defendants are out on bail or waiting in jail for trial.

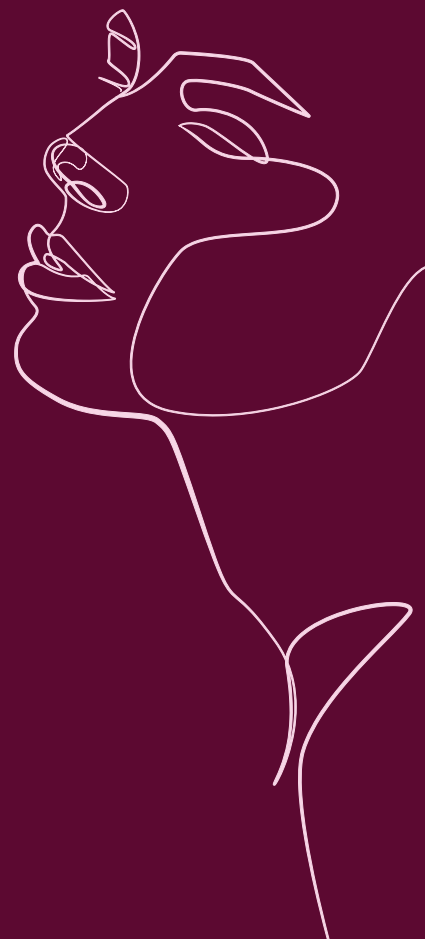
Because of this reality, we will treat arrest and conviction data as two distinct sets, only comparing the two for the benefit of what year over year trends can tell us. Most of our analysis looks at state-wide numbers. Still, we do take time to examine county-specific arrest and conviction rates to assess the many differences in the county and jurisdictional prosecution.

QUALITATIVE

We interviewed law enforcement agents and public defenders, looking to (where possible) actors involved in the Human Trafficking Intervention Courts utilized in many cities across the state. Specifically, we interviewed two public defense attorneys (one representing clients in the Bronx, the other in Brooklyn) who work at the Legal Aid Society's Exploitation Intervention Project (EIP) and the director of EIP. We also spoke to Carolina Holderness, the Human Trafficking Response Unit Chief at the Manhattan District Attorney's office.

Additionally, interviews were conducted with advocates from the Human Trafficking Courts in Buffalo, New York, including the HTIC Coordinator, Alicia Tabliago, as well as Ahlea Howard, the Human Trafficking Services Program Coordinator at the International Institute of Buffalo, and Marissa MacTurk, a Senior Case Manager in Survivor Support Services there.

DATA



VI. DATA

ARRESTS

In 2009 there were 4,869 prostitution-related arrests in New York State. Labor trafficking (PL 135.35) arrests are also included in Table 2 for comparison. The number of prostitution-related arrests does not include any arrests for compelling prostitution (PL 230.33) due to the fact that compelling prostitution involves force, fraud, and coercion of an individual under the age of 18 into sex work, which holds critical similarities to trafficking, though this statute is not always appropriately applied. We also omit arrests for unauthorized practice of a profession from this data (ED 654). There has been a history, particularly in Queens County, of law enforcement arresting massage parlor workers for working without a license as an alternative to prostitution; however, there is no way to determine just how many of ED 654 arrests are a result of sex work. Thus, we will analyze these numbers separately.

The numbers of prostitution-related arrests were climbing in 2009 and peaked two years later in 2011 at 5,164, after which the number of arrests declined steadily and consistently through 2019, which saw the lowest number of prostitution-related arrests yet at 1,482.

Top Arrest Charge	Arrest Year										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
PL 135.35 LABOR TRAFFICKING	1	0	0	1	0	1	2	0	0	0	0
PL 230.00 PROSTITUTION	2,255	2,386	2,633	2,394	2,474	2,270	1,901	1,493	1,022	861	706
PL 230.03 PATRONIZE PROSTITUTE-4TH-PROSTITUTION IN SCHOOL ZONE	0	0	0	1	1	1	0	2	7	6	11
PL 230.04 PATRONIZE A PROSTITUTE-3RD	1,248	1,295	1,475	1,503	1,524	957	983	1,073	1,250	1,085	560
PL 230.05 PATRONIZE PROSTITUTE-2ND	3	2	1	2	4	0	0	0	2	0	0
PL 230.06 PATRONIZE PROSTITUTE-1ST	1	0	3	0	0	0	0	0	2	0	0
PL 230.08 PATRONIZING PERSON FOR PROSTITUTION- SCHOOL ZONE	0	0	0	0	0	0	0	0	1	0	0
PL 230.11 AGG PATRONIZING A MINOR FOR PROSTITUTION-3RD	0	0	0	0	0	0	0	0	0	1	0
PL 230.19 PROMOTING PROSTITUTION SCHOOL ZONE	0	0	0	0	0	0	0	0	1	2	0
PL 230.20 PROMOTING PROSTITUTION-4TH	228	166	156	132	101	92	146	108	91	81	68
PL 230.25 PROMOTING PROSTITUTION-3RD	143	134	115	104	78	63	81	66	81	92	67
PL 230.30 PROMOTING PROSTITUTION-2ND	24	12	10	9	13	17	18	14	22	9	6
PL 230.32 PROMOTING PROSTITUTION-1ST	0	0	1	0	0	0	0	1	8	2	0
PL 230.33 COMPELLING PROSTITUTION	3	2	1	0	2	2	3	5	3	3	0
PL 230.34 SEX TRAFFICKING	7	11	41	36	32	36	25	34	42	79	41
PL 230.34-A CHILD SEX TRAFFICKING	0	0	0	0	0	0	0	0	0	0	7
PL 230.40 PERMITTING PROSTITUTION	20	23	17	13	37	17	12	10	13	4	8
PL 240.37 LOITERING FOR PROSTITUTION	947	931	753	478	401	276	231		69	152	54
ED 6512 UNAUTH PRACTICE OF PROFESSION	238	281	332	195	320	471	660	854	412	240	199

Table 2. Arrests for Prostitution and Trafficking-related Crimes in New York State 2009-2019.

In order to get a better sense of who is being criminalized and under what circumstances, we divided arrest numbers into six categories. The first category examines arrests for the solicitation of sexual services, including PL § 230.00 (prostitution) and PL § 240.37 (loitering for the purposes of prostitution). The second category includes all charges for the purchase of sexual services, i.e., patronizing a person for prostitution in the 1st-4th degree, as well as aggravated patronizing and patronizing in a school zone (PL §§ 230.03,.04,.05,.06, and .08). Third, we compile arrests for promotion of sex work (both advertent and inadvertent) including promoting prostitution in all degrees (PL §§ 230.19,.20.25,.30,.32) and permitting prostitution (PL § 230.40). Fourth, we looked at offenses that involve forced sex work, codified legally as “sex trafficking” (PL § 230.34), including charges for compelling prostitution (PL § 230.33). We separated all arrests related to commercial sex involving a minor, including “child sex trafficking” (PL § 230.34-A) and aggravated patronizing of a minor for prostitution (PL § 230.11). Lastly, we look at numbers for the Unauthorized Practice of a Profession, a charge that is commonly used to arrest massage workers of foreign descent, particularly Asian immigrants, in certain areas of the state. The results of these categorizations are in Figure 1 below.

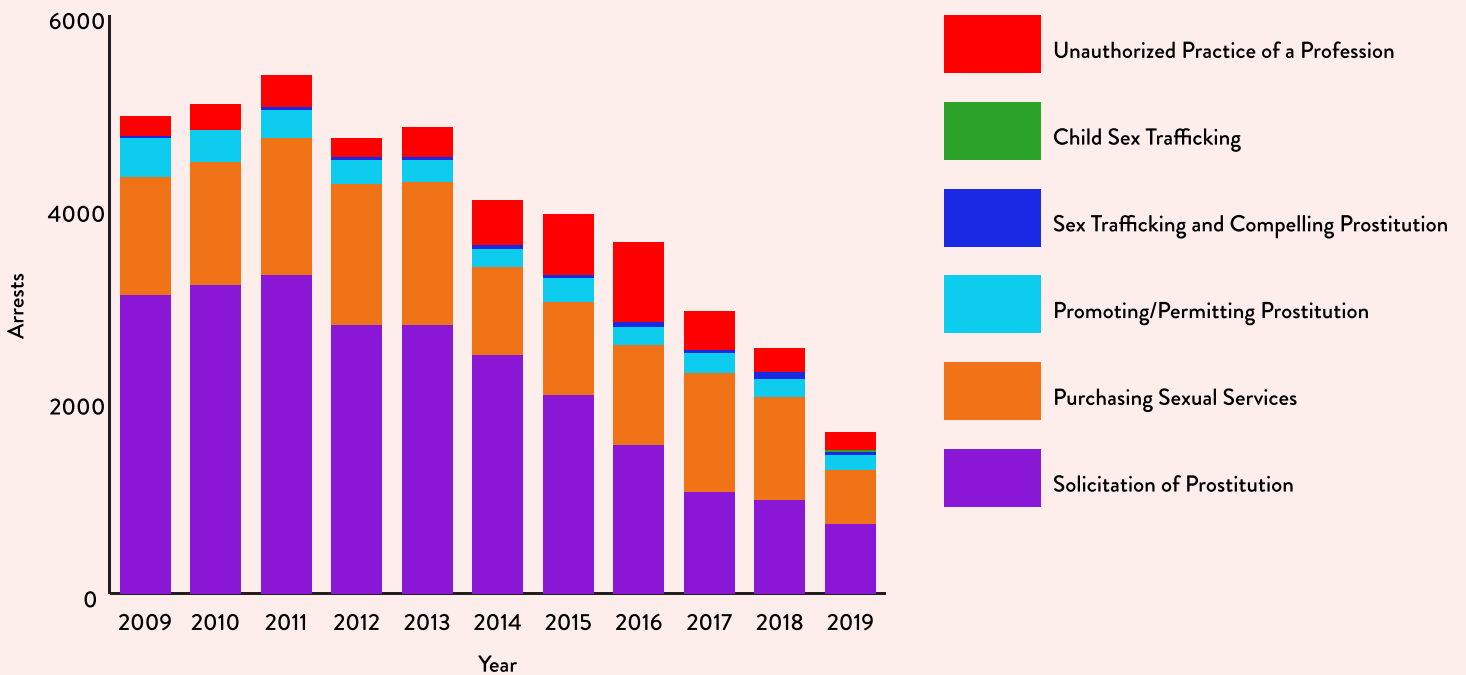


Figure 1 Prostitution and Sex Trafficking-related arrests in New York State; 2009-2019.

Here we see the overall number of arrests for prostitution-related charges declining fairly consistently since 2011. The graph shows a marked downward trend in arrests for solicitation of sexual services. There is a less pronounced but noticeable decline in arrests for purchasing sexual services and promoting/permitting prostitution arrests.

For other charges, the trends are less certain. Arrests for trafficking involving minors are almost nonexistent in the period examined. There were no arrests until 2019, when nine were made on child sex trafficking charges (230.34-A). Sex trafficking and compelling prostitution arrests remain relatively consistent and reflect interesting trends. The same year that prostitution charges reach their peak, sex trafficking arrests saw a surge from 11 the previous year to 41. From 2011 onward, arrest levels remain relatively consistent, hovering in the mid-thirties on average. The only other outlier was 2018 when there were 72 trafficking arrests in the state. This is likely due to a disproportionate number of arrests in Kings and New York Counties that year after a large-scale trafficking operation was uncovered.⁹⁹

Compelling prostitution arrests showed no significant trends, with an average of 2.4 arrests per year between 2009 and 2019.

⁹⁹ BIPOC is a common acronym referring to Black, Indigenous, and People of Color, in order to recognize the specific discrimination and challenges that these groups face; Sandra E Garcia, “Where Did BIPOC Come From?,” The New York Times, June 17, 2020, <https://www.nytimes.com/article/what-is-bipoc.html>.

Arrests for Unauthorized Practice of a Profession did not show a clear trend. However, there is an uptick in these arrests between 2014-2017, the same years that New York’s unified court system was shifting more and more towards using HTIC’s for prosecuting prostitution charges. In peak years, 2015 and 2016, 66% and 73% of these arrests respectively were in Queens County alone. From 2009-2019 arrests for ED 6512 are overwhelmingly of women classified as “other” racially, according to DCJS classifications (not White, Black, or Hispanic). For 2015 and 2016 in particular, 95% and 97% of overall arrests are of individuals in the “other” racial category, and 96% were identified as female both years. According to a 2017 report released by the Urban Institute, arrests of Asian-identified people in New York City charged with both unlicensed massage and prostitution increased by 2,700 percent between 2012 and 2016.

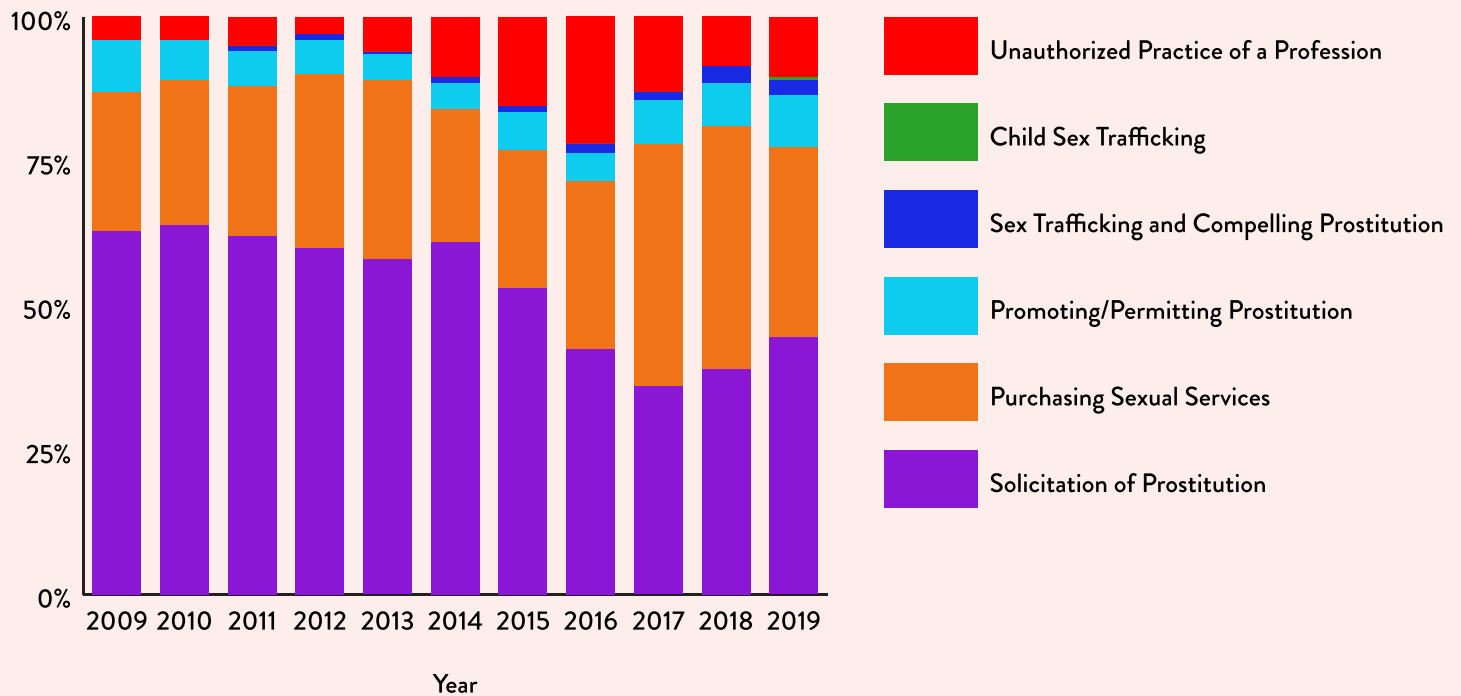


Figure 2 New York State Arrests by category and percentage, 2009-2019.

In Figure 2, we look at the percentage of each category of arrests out of the total number of arrests made. Through 2015, solicitation arrests are a clear majority. In 2017 and 2018, arrests for solicitation were outnumbered by arrests for purchasing sexual services, the percentage of which has been increasing since 2015, as have arrests for promoting/permitting prostitution. We also see an increase in the percentage of trafficking arrests. The increase in these percentages is primarily a function of declining solicitation arrests but is still important to note.

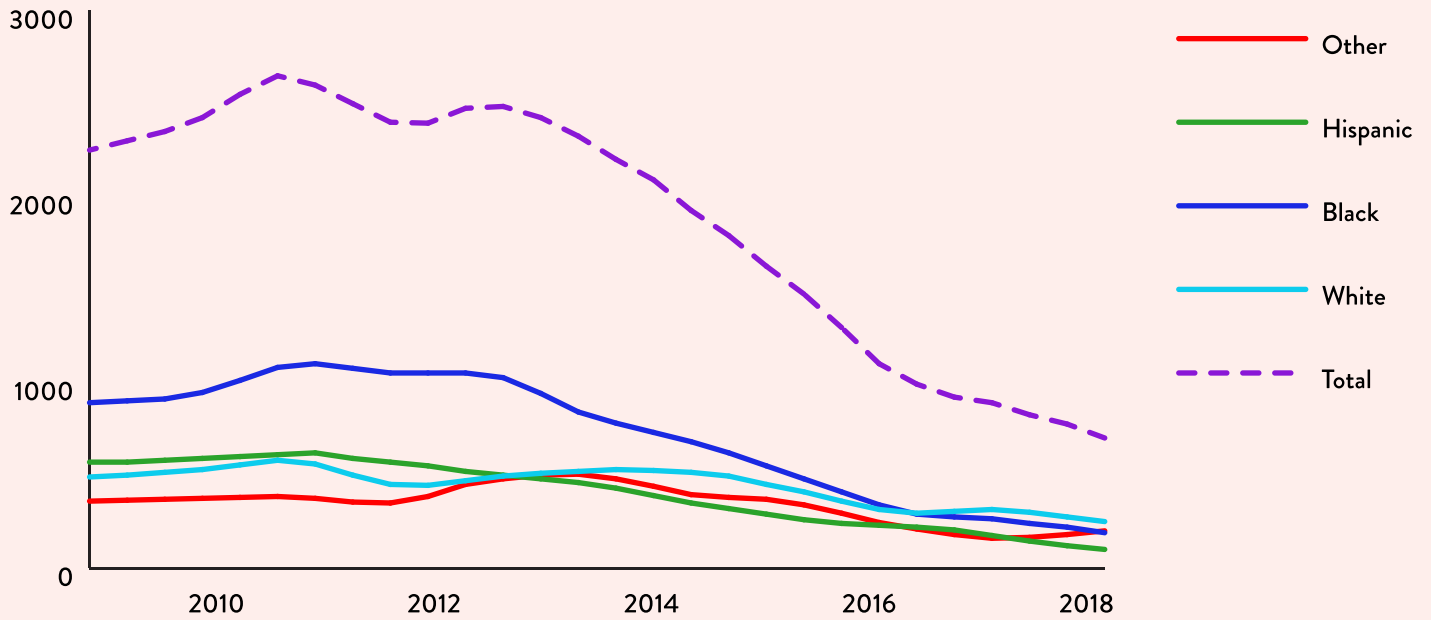


Figure 3 Prostitution arrests in New York State by Race, 2009-2019.

Another critical component of our research is to look at the racial demographics of those arrested. It is clear that overwhelmingly, arrestees for prostitution charges in New York State have been Black. This is particularly true in New York City.

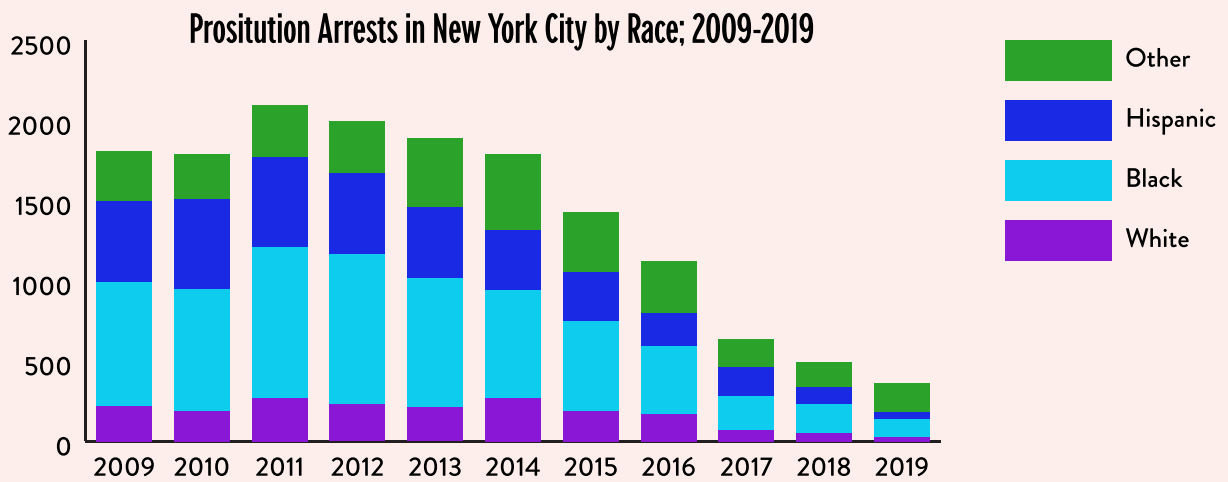


Figure 4 As evidenced by this graph, though prostitution arrests in New York City have declined, severe racial bias persists. 88% of arrests for 230.00 in 2018 were identified as female.

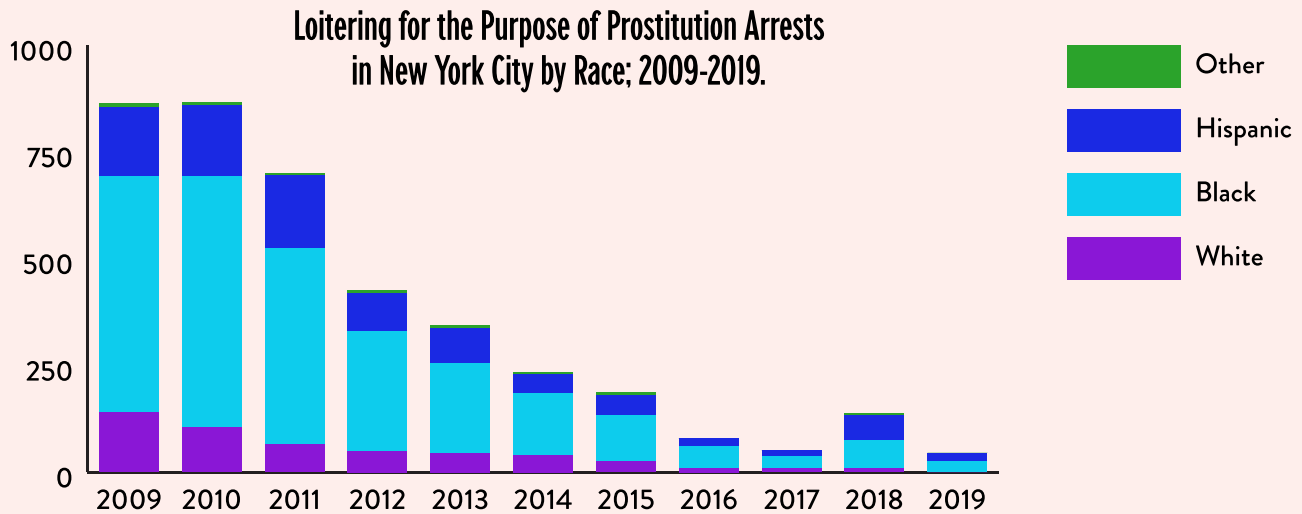


Figure 5 Because of the low standard of evidence required for arrest, PL 240.37 arrests demonstrate extreme racial and geographic bias in arrests. Not only is loitering for the purpose of engaging in a prostitution offense used to overwhelmingly target women of color, but 100% of 2019 NYC arrests for PL 240.37 took place in Kings and Queens counties.

98% and 97% of New York City arrests in 2019 for prostitution and loitering for the purpose of engaging in prostitution respectively were of female-identified individuals. Similarly, 91% and 93% were people of color. The gender bias in these arrests is likely higher than we know as transgender women are often stereotyped as sex workers, targeted, harassed, and arrested by law enforcement, and then misgendered in reporting. **Critically, of all of these arrests, there were only 3 convictions for prostitution and 2 convictions for loitering in New York City in 2019.**

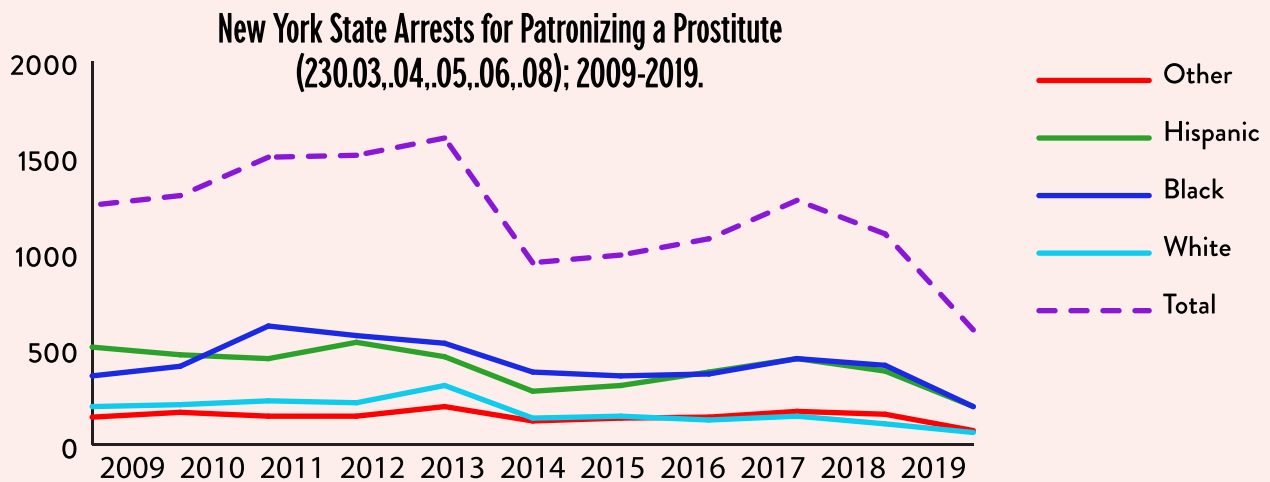


Figure 6 The graph above is the sum total annual arrests for Patronizing a Prostitute in the 1st, 2nd, 3rd, and 4th degree (PL 230.03-.06) as well as patronizing a person for prostitution in a school zone (PL 230.08). The arrest counts are divided by race in order to examine how solicitation arrests diverge from arrests for purchasing sexual services. Figure 6 demonstrates a similar racial bias in arrests for sex purchasers as exists in arrests for prostitution, even though research continually finds that the majority of people who purchase sex in the United States are white men.

Arrests for Patronizing a Person for Prostitution in the 3rd degree (PL 230.04) in NYC, 2009-2019

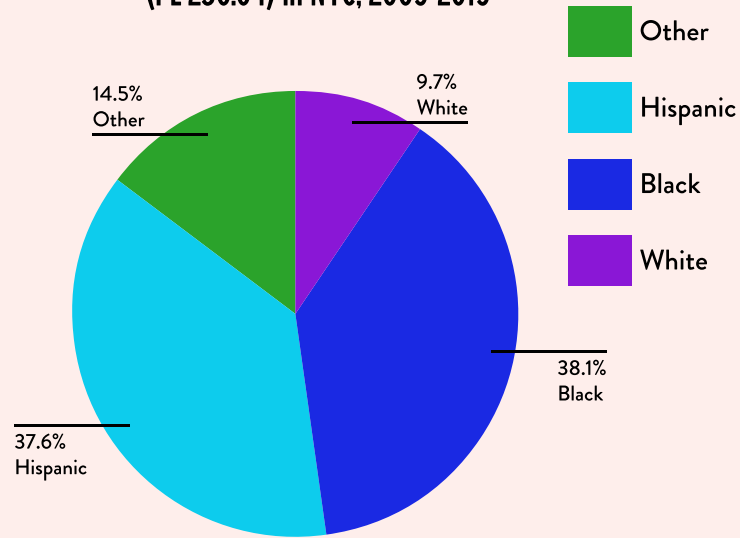


Figure 7 In the last ten years, 90% of arrests for Patronizing a Prostitute in the 3rd degree (PL 230.04) were BIPOC despite that fact that national studies report between 80-85% of sex buyers are white men.

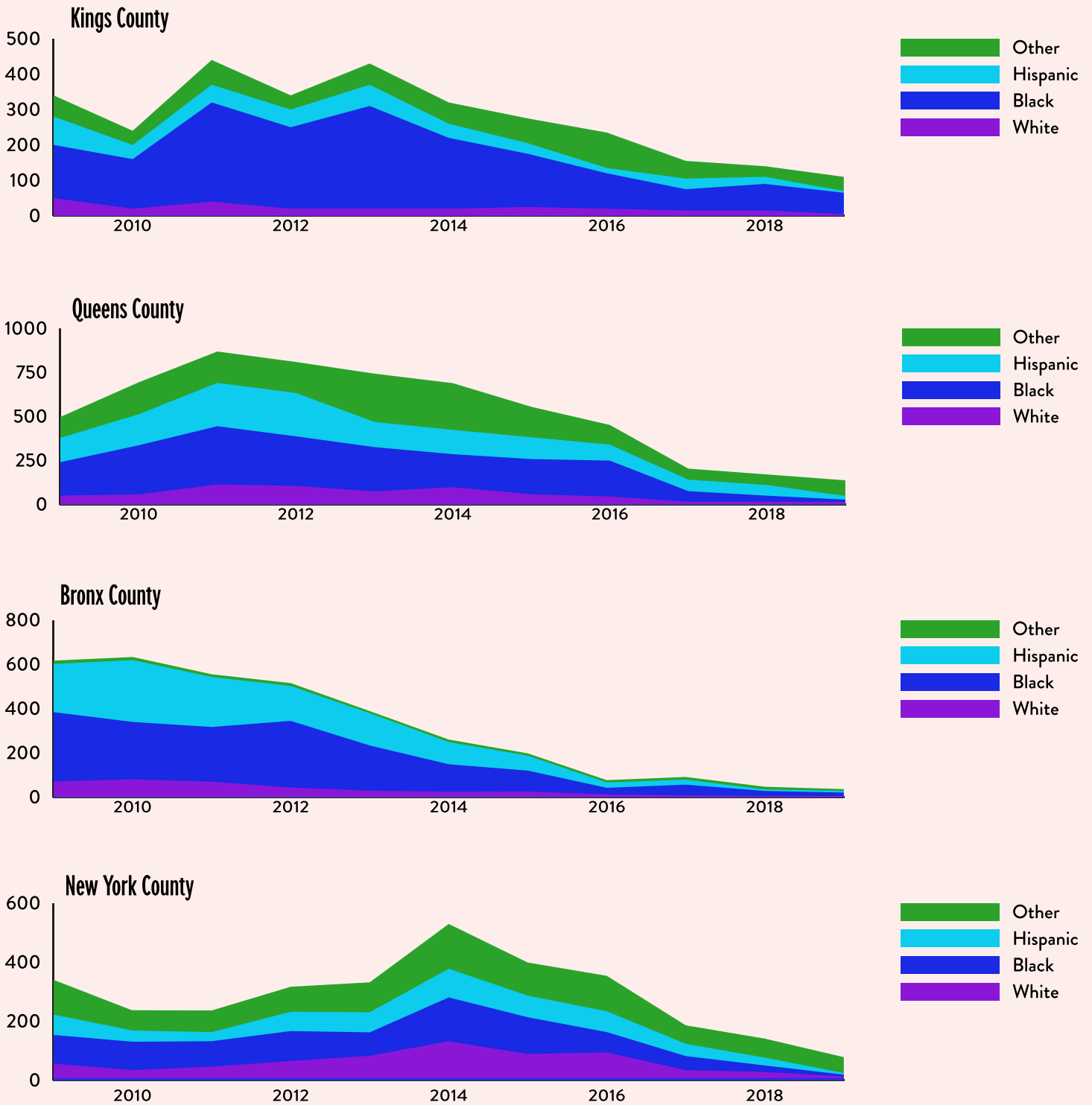


Figure 8.1-4 Arrests for Prostitution (PL 230.00) by Race and County in New York City; 2009-2019 (Richmond Omitted).

Of New York State's 19.4 million residents, 8.9 million call New York City home. New York City sees a high proportion of arrests related to sex work relative to the rest of the state. In 2019, 362 of the 706 state-wide prostitution arrests took place in New York City. Just two of three of those counties, Kings, Queens, and New York, make up 44% of state-wide arrests for prostitution. The same three counties resulted in only 4% of the statewide prostitution convictions in 2019, exhibiting the baselessness of many of these arrests.

As seen in Figures 8.1-.4, although prostitution charges are declining, at least since 2014, in New York City Counties, there is still a stark racial bias in those who are arrested on this charge. In 2019, 72% of all prostitution arrests in New York County were classified as ‘other’, meaning, Non-white, Non-Black, and Non-Hispanic. Queens arrests are known to target transgender Latinx and Asian immigrants while Kings County disproportionately arrests Black women for prostitution. In the Bronx, 93% of prostitution arrests were of Black and Hispanic individuals. Arrests in the Bronx declined earlier than in most counties.

When looking at the declining arrest rates in each county, it is critical to note that sex workers, and the social and legal forces that criminalize them, are not disappearing. The same social, economic and political forces that led to changes in policing can also obscure the status quo. For example, neighborhood and demographic changes can shift demand so that sex workers are forced out of certain areas, following gentrification trends. Some of the decline in arrests are real; District Attorneys are increasingly choosing to not prosecute prostitution charges, prosecuting individuals for other crimes, turning to HTIC’s or other interventions, or even dismissing charges. But this is not the whole story.

Prostitution Arrests in Bronx v. New York Counties

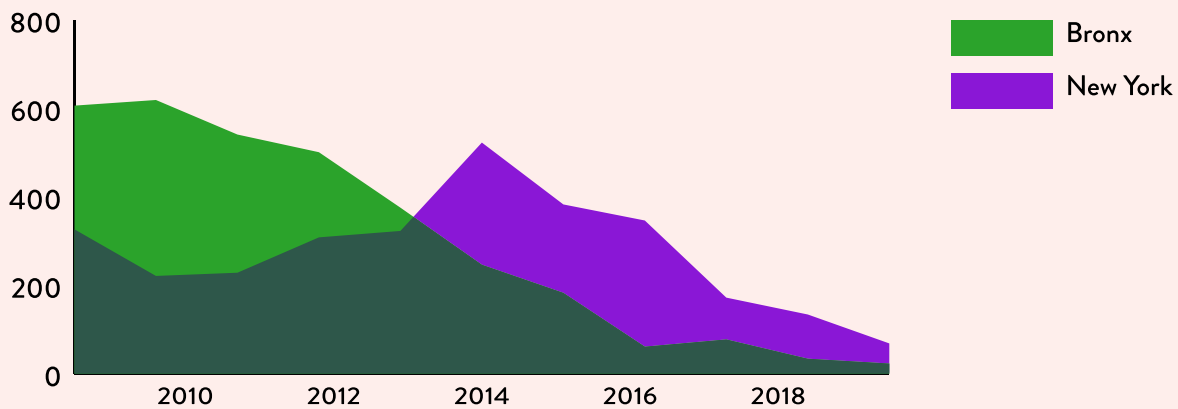


Figure 9 Shifting Prostitution arrests between the Bronx and New York Counties; 2010-2014.

Though it is not possible to prove that the spike in arrests from 2012-2014 in New York County was a direct result of sex work being pushed south from the Bronx, we know that a combination of changing neighborhood composition and industry shifts made it increasingly difficult for sex workers to earn a living in the Bronx around 2010. We also know that it is not uncommon for crimes to be forced out of certain neighborhoods and into others as a result of gentrification, development, or other economic and social shifts.

Nassau, Suffolk and Queens

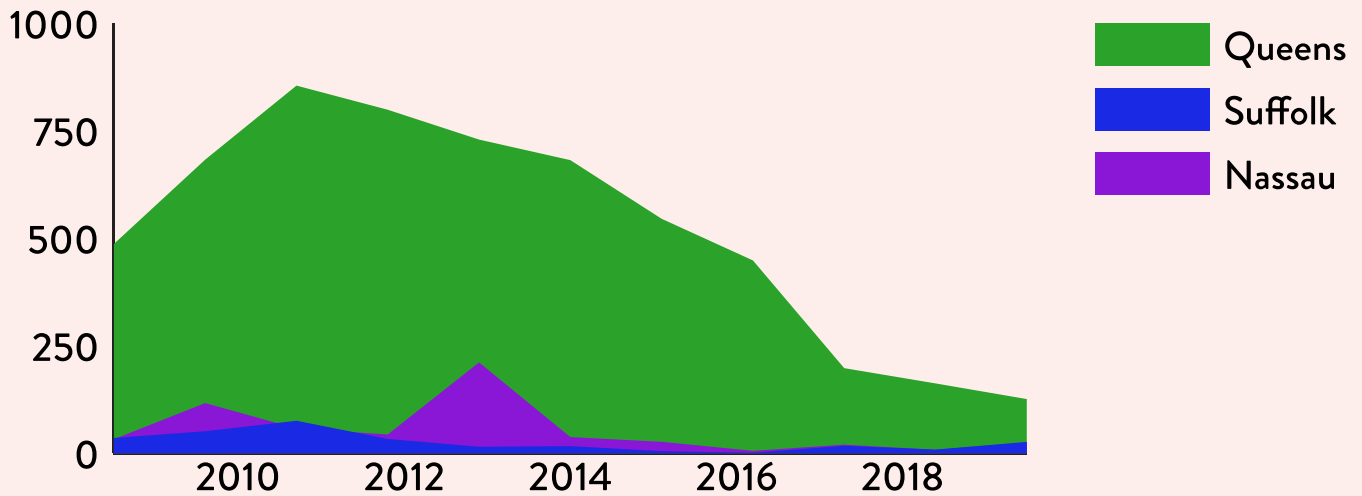


Figure 10 Shifting Prostitution arrests Between Queens and Suffolk and Nassau Counties; 2010-2014.

Massive stings in Queens County by NYPD Vice officers, as well as real estate development in certain parts of the borough, resulted in a similar shifting dynamic between Long Island City, greater Queens, and certain counties on Long Island. This dynamic will be further explored in the discussion section of the paper.

CONVICTIONS

For the purposes of this study, the authors have largely separated analyses of arrests and convictions. Because we are not privy to case-by-case information, and arrests are not necessarily dispensed or sentenced within the same calendar year, it is difficult to cross-compare. Thus, other than using arrest versus conviction average trends, we keep the two separate and ascertain what we can from each.

As detailed in Table 3 below, there were 165 convictions for prostitution-related crimes, as defined in the previous section, in 2019. Convictions plummeted to only 7% of what they had been in 2009, down from 2,076. The largest drop in convictions took place between 2013 and 2014 when solicitation-related crimes (prostitution and loitering for the purpose of engaging in prostitution) dropped by more than 40%. In 2009, 88% of convictions were for solicitation-related crimes. In 2019, these same two charges make up 46% percent of convictions, which will likely decline further due to the repeal of loitering for the purpose of engaging in prostitution (PL 240.37) in 2021.

Top Arrest Charge	Sentence Type	Disposition Year										
		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
PL 135.35 LABOR TRAFFICKING	Total Convictions	0	0	0	0	1	0	0	1	2	1	0
	Prison	0	0	0	0	0	0	0	1	1	1	0
	Jail	0	0	0	0	0	0	0	0	0	0	0
	Probation	0	0	0	0	0	0	0	0	1	0	0
PL 230.00 PROSTITUTION	Total Convictions	1,027	991	905	786	628	410	272	216	132	111	69
	Jail	478	436	408	323	289	190	119	67	47	35	24
	Time Served	191	172	147	165	154	100	73	84	37	25	13
	Jail + Probation	4	3	2	1	1	0	0	0	0	0	0
	Probation	21	17	16	15	11	11	12	18	5	15	10
	Fine	29	24	20	14	14	14	15	20	16	15	11
	Cond Discharge	304	337	311	266	159	93	53	25	26	20	10
	Other/Unknown	0	2	1	2	0	2	0	2	1	1	1
PL 230.03 PATRONIZE PROSTITUTE-4TH-PROSTITN IN SCHOOL ZONE	Total Convictions	2	2	1	1	1	0	1	0	0	0	0
	Jail	0	0	0	1	0	0	0	0	0	0	0
	Time Served	1	0	1	0	0	0	0	0	0	0	0
	Fine	0	1	0	0	0	0	1	0	0	0	0
	Cond Discharge	1	1	0	0	1	0	0	0	0	0	0
PL 230.04 PATRONIZE A PROSTITUTE-3RD	Total Convictions	97	71	89	84	91	82	63	52	62	43	20
	Jail	16	9	27	24	13	9	5	9	11	4	2
	Time Served	24	19	23	32	29	19	12	8	18	5	5
	Jail + Probation	1	0	1	1	0	0	1	0	0	0	0
	Probation	3	0	1	1	5	2	1	0	0	0	1
	Fine	22	14	13	9	9	31	22	18	17	20	6
	Cond Discharge	31	29	24	17	35	21	21	15	14	14	6
	Other/Unknown	0	0	0	0	0	0	1	2	2	0	0
PL 230.05 PATRONIZE PROSTITUTE-2ND	Total Convictions	0	0	0	0	0	0	0	1	0	0	2
	Prison	0	0	0	0	0	0	0	1	0	0	1
	Jail + Probation	0	0	0	0	0	0	0	0	0	0	1
PL 230.06 PATRONIZE PROSTITUTE-1ST	Total Convictions	0	0	0	0	0	0	0	0	0	1	0
	Prison	0	0	0	0	0	0	0	0	0	1	0
PL 230.20 PROMOTING PROSTITUTION-4TH	Total Convictions	109	94	93	62	52	63	34	39	49	33	26
	Jail	30	32	25	12	13	14	10	6	10	8	10
	Time Served	22	12	10	10	10	9	5	1	6	2	0
	Jail + Probation	0	0	0	2	3	1	2	1	0	1	0
	Probation	10	7	4	4	1	8	5	6	6	4	0
	Fine	15	8	10	5	11	8	4	5	4	1	1
	Cond Discharge	31	35	44	29	14	22	8	20	23	17	15
	Other/Unknown	1	0	0	0	0	1	0	0	0	0	0
PL 230.25 PROMOTING PROSTITUTION-3RD	Total Convictions	34	29	26	23	41	31	11	29	24	16	21
	Prison	5	7	3	6	15	10	4	16	11	10	12
	Jail	8	10	10	6	8	7	0	4	4	2	1
	Time Served	2	1	1	0	1	1	1	1	0	0	1
	Jail + Probation	1	1	2	2	3	3	4	2	2	2	2
	Probation	9	6	7	3	8	7	1	5	7	2	3
	Fine	1	0	0	1	0	0	0	1	0	0	0
	Cond Discharge	8	4	3	5	6	3	1	0	0	0	2
PL 230.30 PROMOTING PROSTITUTION-2ND	Total Convictions	7	6	8	5	10	8	11	10	10	10	11
	Prison	4	6	5	5	8	6	10	8	7	7	10
	Jail	2	0	0	0	0	0	1	0	1	1	0
	Time Served	0	0	2	0	1	0	0	1	0	0	0
	Jail + Probation	1	0	1	0	0	1	0	1	1	1	1
	Probation	0	0	0	0	0	1	0	0	1	1	0
	Cond Discharge	0	0	0	0	1	0	0	0	0	0	0
PL 230.32 PROMOTING PROSTITUTION-1ST	Total Convictions	0	0	0	0	0	0	0	0	0	4	1
	Prison	0	0	0	0	0	0	0	0	0	4	1

PL 230.33 COMPELLING PROSTITUTION	Total Convictions	0	0	0	0	0	0	0	1	0	0	1
	Prison	0	0	0	0	0	0	0	1	0	0	1
PL 230.34 SEX TRAFFICKING	Total Convictions	0	1	11	11	9	12	9	20	17	14	24
	Prison	0	1	11	11	9	8	9	20	16	13	24
	Jail	0	0	0	0	0	0	0	0	1	0	0
	Probation	0	0	0	0	0	4	0	0	0	0	0
	Cond Discharge	0	0	0	0	0	0	0	0	0	1	0
PL 230.40 PERMITTING PROSTITUTION	Total Convictions	4	6	2	2	1	3	2	14	7	8	7
	Time Served	1	0	0	0	0	1	2	2	0	0	1
	Probation	1	0	0	0	1	0	0	0	0	1	0
	Fine	1	2	1	0	0	0	0	0	1	2	1
	Cond Discharge	1	4	1	2	0	2	0	12	6	5	5
PL 240.37 LOITERING FOR PROSTITUTION	Total Convictions	796	647	501	499	374	182	140	69	21	20	7
	Jail	335	255	162	133	103	48	39	11	5	3	2
	Time Served	147	120	114	86	52	30	30	11	4	6	1
	Probation	2	4	1	1	0	1	0	1	0	0	0
	Fine	7	9	7	17	15	8	16	18	1	5	0
	Cond Discharge	304	258	217	262	200	95	52	27	11	6	4
	Other/Unknown	1	1	0	0	4	0	3	1	0	0	0
ED 6512 UNAUTH PRACTICE OF PROFESSION	Total Convictions	25	16	10	14	7	16	12	11	11	11	10
	Prison	0	1	0	0	0	1	0	0	1	0	0
	Jail	3	0	0	2	0	1	0	2	0	0	0
	Time Served	1	0	2	1	0	0	0	1	0	0	0
	Jail + Probation	1	0	0	2	1	1	0	0	4	0	0
	Probation	4	7	2	0	4	3	7	6	2	8	2
	Fine	6	2	1	2	1	6	1	0	1	1	1
	Cond Discharge	10	6	5	7	1	4	4	2	3	2	7

Table 3. Convictions for prostitution and trafficking-related crimes in New York State 2009-2019.

To get a better sense of who is being criminalized, and under what circumstances, we divided convictions into crime category groups and graphed numbers by total convictions each year and the percent of total convictions. As with the previous section, there are six groups: the **solicitation of sexual services**, including PL § 230.00 (prostitution) and PL § 240.37 (loitering for the purposes of prostitution); charges for the **purchase of sexual services**, including patronizing a person for prostitution in the 1st-4th degree, as well as aggravated patronizing and patronizing in a school zone (PL §§ 230.03,.04,.05,.06, and .08); convictions on the **promotion of sex work** (both advertent and inadvertent) including promoting prostitution in all degrees (PL §§ 230.19,.20.25,.30,.32) and permitting prostitution (PL § 230.40); offenses that involve **forced sex work**, codified legally as “sex trafficking” (PL § 230.34), including charges for compelling prostitution (PL § 230.33); convictions related to commercial sex involving a minor, including “**child sex trafficking**” (PL § 230.34-A) and aggravated patronizing of a minor for prostitution (PL § 230.11); finally, convictions for the unauthorized practice of a profession, a charge that is commonly used to arrest massage workers of foreign descent, particularly Asian immigrants, in certain areas of the state.

Prostitution and Sex Trafficking related convictions in New York State; 2009-2019.

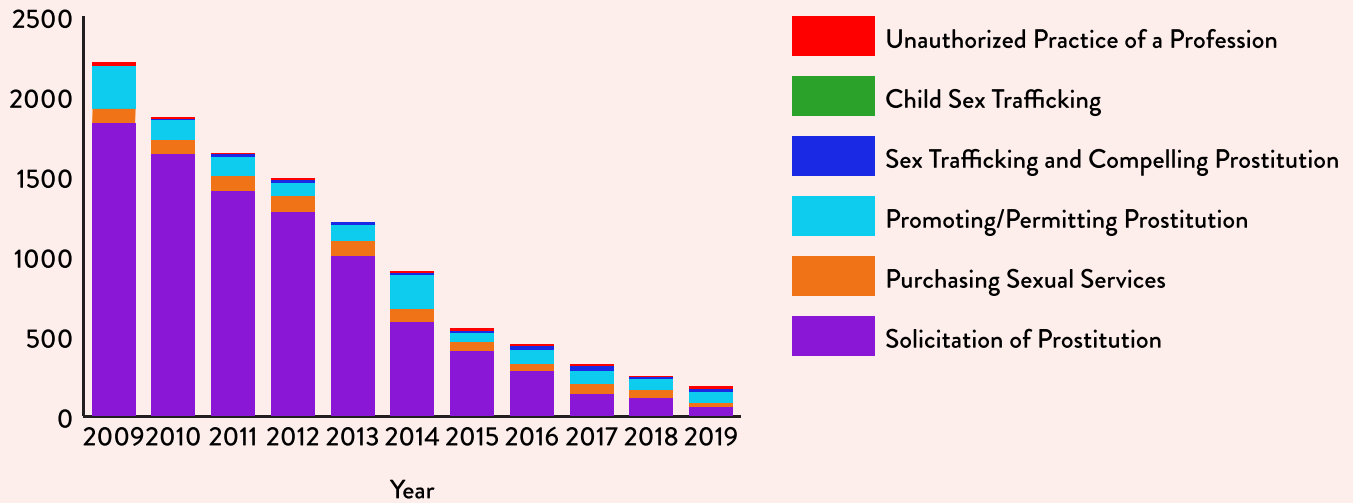


Figure 11 Overall convictions for prostitution-related crimes have generally declined over the last ten years. Notably, while solicitation offenses outnumber those for purchasing sexual services in both arrests and convictions, this disparity is relatively more severe in the case of convictions, as we will explore further. Notably, there were no convictions for trafficking involving minors between 2009-2019. Arrests for unauthorized practices of a profession were also unlikely to result in a conviction.

New York State Convictions by category and percentage; 2009-2019.

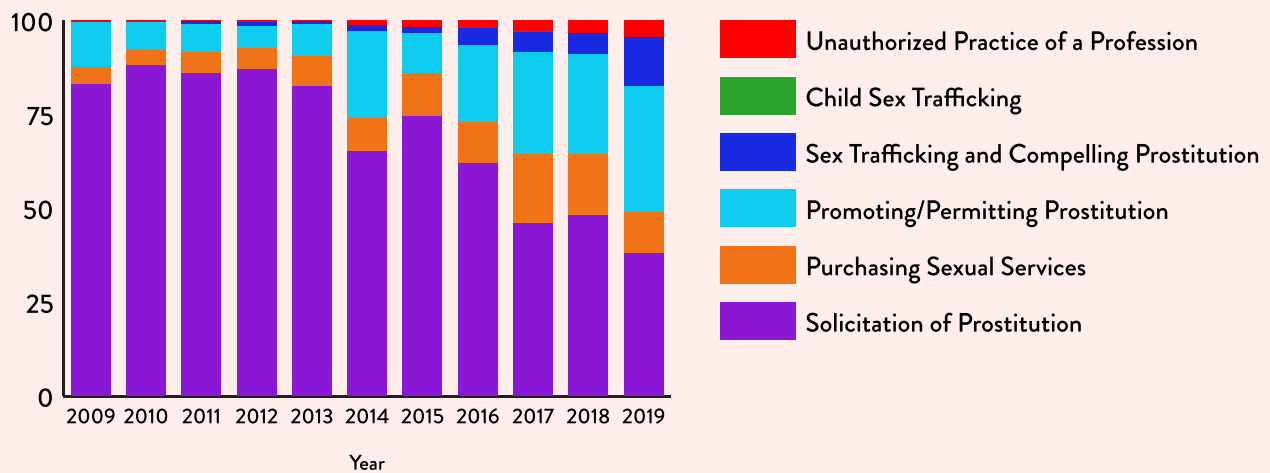


Figure 12 As with arrests, the proportion of convictions for solicitation-related charges has significantly decreased in recent years. The trend begins in earnest in 2016 when promoting/ permitting and purchasing prostitution charges begin making up a greater percentage of prostitution-related convictions. Interestingly, the number of trafficking and compelling prostitution convictions also increase, though not consistently, this same year. It requires further research to determine whether shifting the onus of criminalization onto clients and third parties encourages the pursuit of trafficking cases.

There has been a marked policy shift in the last five years away from prosecuting the sale of sexual services, reflected by arrest and conviction rates. With the decline in arrests and convictions for prostitution-related crimes, as well as increasing support for the End Demand model of criminalization, it is critical to examine how a shift in policy is directly impacting the lived experience of those impacted by these laws.

Next, we look at the conviction and incarceration rates of those arrested for prostitution (PL 230.00) versus patronizing a person for prostitution in the 3rd degree, by far the most common offense for sex buyers. The results are illustrated in Figure 13 below.

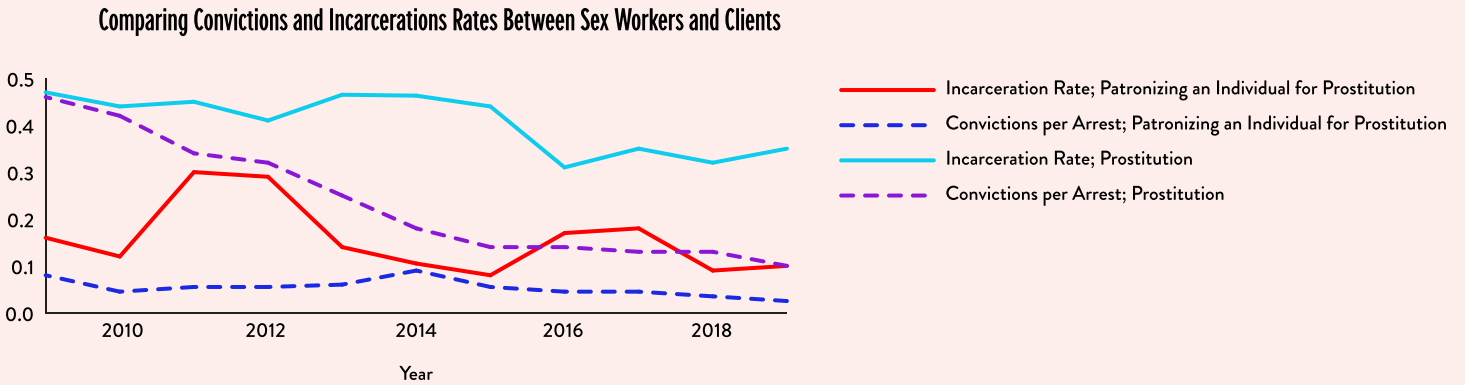


Figure 13 As previously shown, both arrests and convictions for prostitution and patronizing a person for prostitution have declined in the last ten years in New York State. Of those arrested, the percent of individuals convicted for each crime has also been declining, as shown by the orange and blue dotted lines above. The conviction rates of those arrested for selling sex still far outweigh convictions for buyers. Those arrested for selling sex were convicted between 10- 46% of the time, while conviction rates for buyers hovered around 5% or 6% in most years.

If convicted of prostitution (a class B misdemeanor), the likelihood of serving prison time is on average 44.6%, a rate that has declined only marginally throughout the decade, despite the rise of HTICs. This is illustrated by the solid orange line in the graph above. Conversely, the incarceration rate of those convicted of purchasing sex in the 3rd degree is on average 17%. When controlling for outlying years, such as 2012 and 2013, this average falls closer to 10%.

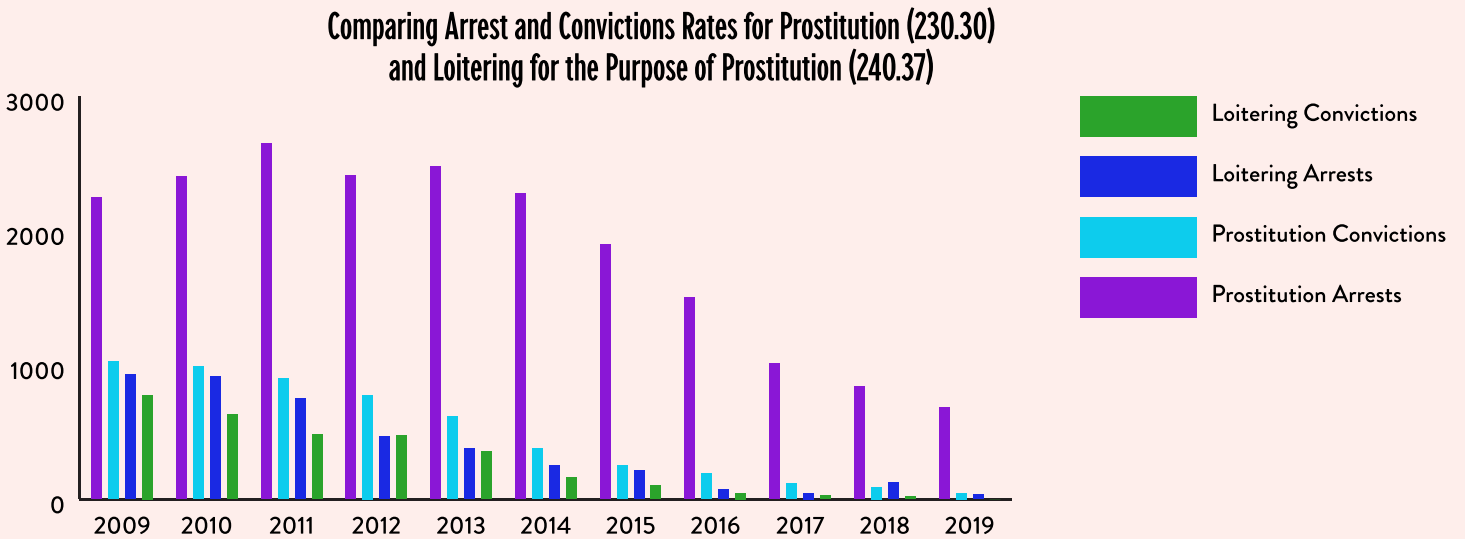


Figure 14 This graph demonstrates the number of individuals arrested and convicted for prostitution (PL 230.00) and loitering for the purpose of engaging in prostitution (PL 240.37). Interestingly loitering has an abnormally high arrest to conviction ratio as compared to other prostitution-related charges. The explanation for this may be that the vague nature of PL 240.37 lends itself to arbitrary and discriminatory policing with a low standard of evidence for a conviction. As a result, New York repealed loitering for the purpose of engaging in prostitution in February 2021.

Loitering for the purpose of engaging in prostitution arrests in New York City (2019)

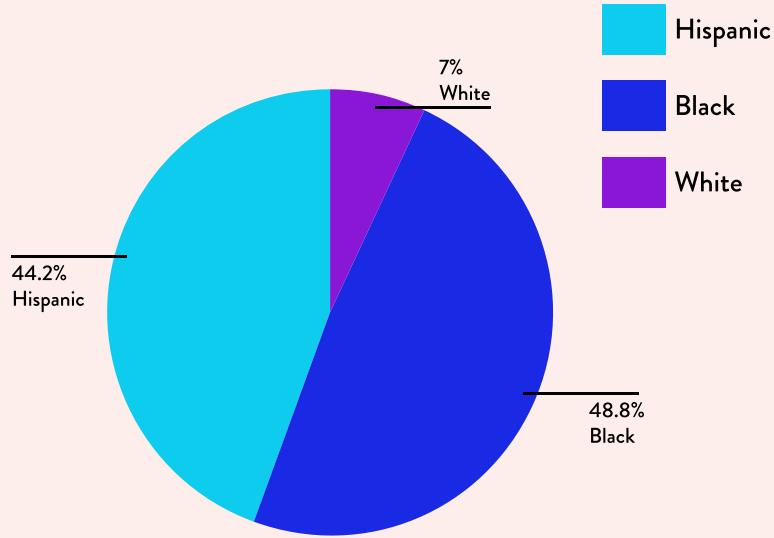
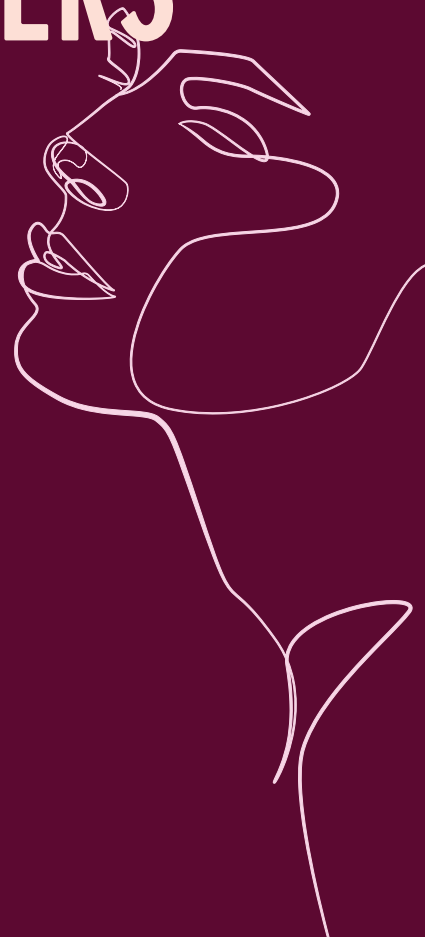


Figure 15 Recognizing that PL 240.37 was used to routinely harass and arrest women of color, particularly transgender women, only Kings and Queens county were still using the statue to arrest individuals for loitering in 2019. These two counties alone made up 80% of state-wide 240.37 arrests that year. 98% of arrests were of women.

DISCUSSION: PERSPECTIVES FROM SERVICE PROVIDERS



VII. DISCUSSION: PERSPECTIVES FROM SERVICE PROVIDERS

The criminalization of sex work and trafficking functions very differently in different areas of New York State. The varying interpretations of the laws and use of discretion by law enforcement bodies and court systems between counties and smaller jurisdictions was notable and ever-present throughout the interview and data collection process.

RYAN WALL

Staff Attorney at The Legal Aid Society's Exploitation Intervention Project (Kings County)

Ryan Wall (she/her), staff attorney at the Legal Aid Society's Exploitation Intervention Project, spoke about her experiences defending both survivors of trafficking and those who work in the sex trade by choice. Wall is a public defender first and foremost, as are her colleagues at the Exploitation Intervention Project (EIP), which was established in 2011.

Wall recalls that after New York's vacatur statute (New York Civil Procedure Law § 440.10) passed into law in 2010, the momentum behind trafficking intervention surged in New York State. But this was a national movement too, Wall is careful to point out. The Trafficking Victims Protection Act was passed in 2000, followed by the creation of AP8, the human trafficking specific courts in New York City. "That was seven years ago," said Wall, who was frustrated by the outcome. While bringing attention to human trafficking was necessary, she disagrees with the punitive nature of the intervention and its conflation of trafficking and prostitution. At the time of AP8's establishment, her day was controlled by the HTIC calendar. Women and girls cycled in and out of different diversion courts (and still do), still caught up in the same system. The problem, Wall states, is that the DA never meant for HTIC or AP8 programs to be harm-reduction oriented. From the beginning, "they were explicit that the intention of these programs, from their end, is to hook in low-level offenders to catch bigger fish."

"So what is the AP8 even for then?" Wall asks rhetorically. "Just more prosecution and criminalization."

In 2017, policy shifts and public pressure resulted in massive decreases in prostitution arrests. District attorneys and police forces said they would focus more on purchasers than sellers of sex and DCJS data supports the actualization of this sentiment. Between 2016 and 2017, prostitution arrests declined by more than a third, while those for patronizing increased by 25% state-wide.

It might be tempting to believe that shifting the focus from sellers to purchasers of sex has brought about a change in the way that law enforcement thinks about sex work. Wall says that despite a steady decline in prostitution arrests in the last ten years, the same chunk of the population is still getting arrested - but now, instead of being arrested under prostitution laws, they are faced with charges for more serious crimes with higher penalties, like larceny and human trafficking.

Despite law enforcement efforts to curtail trafficking and limit the purchase of sex, people who are financially and socially vulnerable are still resorting to informal employment sectors to make money. They are still struggling, and sex workers and survivors of trafficking alike are still facing prosecution.

In countries like Sweden, Northern Ireland, and Finland, that have formally decriminalized the sale of sex but still arrest people for purchasing services, sex workers still report violence, harassment, and abuse by law enforcement and clients. If sex workers wish to continue working, they are still deterred from reporting crime despite the fact that they will not face criminal consequences for selling sex.¹⁰⁰

100 Graham Ellison, Caoimhe Ni Dhonaill, and Erin Early, "Assessment of Impact Criminalisation of Purchasing Sexual Services" (Northern Ireland Department of Justice, September 18, 2018), <https://www.justice-ni.gov.uk/news/report-published-impact-sex-purchase-offence>.

Wall says the problems with New York's approach to sex work and trafficking stem from a combination of increasingly punitive laws for purchasers and the stigmatization and continued criminalization of sellers. The need for employment in the sex trades has not diminished, but sex workers and clients face increasingly stringent criminal legal penalties, creating the perfect storm for risky behavior and violence. Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), the Senate and House bills enacted by the Trump administration in 2018, cracked down on online sex work advertisements and removed many of the mechanisms sex workers used to keep themselves safe on the job. As the online forums sex workers use to share information and screen clients disappear, the stress of COVID-19 and the lack of relief available to many marginalized communities creates a pressure cooker that increases incidents of violent crime. Sex workers and other vulnerable communities are forced to act out of a place of fear and self-protection. The week we spoke, Wall had been assigned to three different cases in which sex workers held their clients hostage, either because they had not been paid or for other reasons.

Alongside sex workers, trafficking survivors have seen little benefit from New York's approach to prostitution diversion. Wall sees trafficking survivors in the criminal legal system arrested for their victimization every day. Worse yet, when public defenders point out the high rates of criminalization among survivors, they are often met with silence from the District Attorney's office. If a defendant is convicted of a prostitution-related crime and can show they participated in the crime as a result of trafficking, their convictions can be vacated, but only if they are aware of the vacatur option and have access to the resources necessary to go through the tedious and often retraumatizing vacatur process. Defendants arrested for prostitution also have trafficking available as an affirmative defense to those charges. However, most trafficking-related criminal cases are incredibly complex and nuanced. The DA's office can sit on these cases for years before deciding how to settle them. Looking at the mitigating facts of any particular prostitution/prostitution-related case can be extremely complicated, especially as the Domestic Violence Survivors Justice Act (DVSJA) has been called into question in recent years. In the midst of this neglect and inaction regarding trafficking cases, survivors are still caught in the criminal legal system and suffering its debilitating effects. "I often find myself calling the District Attorney himself saying, 'We're still here,'" says Wall, "because otherwise they just try to ignore it."

Ultimately, these cases usually get referred to the mental health diversion courts. Wall has conflicted feelings about this: while her clients in those cases will face less punitive measures when the charges are fabricated and ludicrous, it would better serve the person charged to just take the case to trial and have charges dismissed. On top of that, the mental health diversion court is especially slow-moving because of the sheer volume of cases that get directed there, entangling arrestees in the courts for much longer than necessary.

The authors were continually reminded of the impact that the COVID-19 pandemic had on these processes. Since the spring of 2020, the District Attorney has responded to calls to stop low-level arrests by utilizing pre-arraignment diversion. There is no way to know how this policy will hold up once processes normalize. Currently, prostitution tickets and other low-level crimes are stacking up. It is often difficult to contact individuals who frequently experience homelessness due to a myriad of contextual vulnerabilities.

AISHA LEWIS-MCCOY

Exploitation Intervention Project Attorney at Legal Aid Society (Bronx County)

Aisha Lewis-McCoy has been at the Legal Aid Society for thirteen years. Like Wall, she has been an EIP attorney since the Project's inception and is intimately familiar with the criminalization of survivors of sex trafficking, the bias in enforcement of sex work laws, and the frustration in trying to vacate the convictions of victims.

Lewis-McCoy comes from an immigration law background and is deeply familiar with the intersection of criminal and immigration law. Her experience in the Bronx is similar to Wall's, reflecting the same patterns the authors saw throughout these interviews. Law enforcement's varied practices and attitudes, prosecutorial discretion, and the attitudes and beliefs of "intervention" programs (if programs are available at all) all shape the disparate ways that sex workers and trafficking survivors are treated by the criminal legal system in different parts of the state.

Patterns in the Bronx reflect those seen in Kings County in that the decline in sex work arrests there is not exactly reflective of policy changes, but rather greater social and economic dynamics. Lewis-McCoy notes that Hunts Point, one of the most concentrated areas for prostitution arrests in the county, was changing rapidly during the first decade of the 21st century. Hunts Points had previously been a mixed industrial area with a high incidence of sex work but became increasingly residentialized due to shifting industry and housing development.¹⁰¹

Spurring this shift was the development of high-speed railroad and elevated subway lines. Combined with the expansion of universities in the area, and the resurgence of real estate development in the second decade of the 21st century, single-family homes and luxury apartment buildings arose in the northern half of the neighborhood.¹⁰² As a result, demand for commercial sex declined.

Hunts Point was not the only area subject to real estate speculation as the economy recovered from the 2008 housing crisis. Newly developed areas in the Bronx saw increased vigilance of both NYPD and university police forces around 2010. After an initial round of sex work sweeps, Lewis-McCoy said that law enforcement relied heavily on harassment rather than arrests, particularly of transgender women of color. As illustrated in Figure 9, arrests declined in the county as sex workers were forced south into New York County, where sex work reform had not fully taken hold and arrests spiked. In a recent ProPublica article detailing abuse practices of NYPD Vice officers in policing sex crimes, retired captain Paul Lichtbraun, who had overseen Manhattan and Bronx vice operations until 2017, said his unit tried to focus on buyers but when it received complaints about prostitution inside high-end Manhattan hotels, they'd only arrest sex workers.¹⁰³ Not until years later, when Human Trafficking Intervention Courts had become widespread and "reform" rhetoric embraced more holistically did arrests in New York decline overall.

In the Bronx itself, Lewis-McCoy explains, sex workers were and still are being criminalized, now under trespass, public lewdness, larceny, and assault statutes. As in Kings County, many of these cases are the result of individuals trying to protect themselves in a criminalized industry. If sex workers find themselves with a violent client and try to defend themselves, or a client is withholding payment and they try to procure it, the workers themselves may end up getting charged with assault or a felony robbery conviction. Similarly, trafficking victims who have escaped might try to reclaim their possessions from their traffickers and end up facing burglary and trespassing charges.

A vast majority of cases that Lewis-McCoy takes are felony charges for people who received prostitution convictions in the

101 "Hunts Point/Longwood Neighborhood Profile." Furman Center for Real Estate and Urban Policy. NYU, 2021. <https://furmancenter.org/neighborhoods/view/hunts-point-longwood>.

102 Kevin Walsh. "5 Places to Find the Outdoors in the Bronx." Forgotten New York, September 17, 2018. <https://forgotten-ny.com/2009/03/hunts-point-bronx/>.

103 Joshua Kaplan and Joaquin Sapien, "NYPD Cops Cash In on Sex Trade Arrests With Little Evidence, While Black and Brown New Yorkers Pay the Price," ProPublica, December 7, 2020, <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>.

last decade. Most cases brought in with a history of sex work, regardless of the current charge, are funneled into EIP because of the kind of neglect and confusion at the hands of the prosecution that Wall explained.

As shown by Figure 10, Queens is not exempt from these dynamics. Indeed, the intensely punitive and corrupt history of the Queens vice squad in investigating prostitution coupled with intense real estate speculation in western sections of the borough around 2010, may help explain an increase in prostitution arrests in Suffolk and Nassau counties in the following few years, as police harassment caused workers to move elsewhere. Around that time, the Legal Aid Society sought to file a class action lawsuit on behalf of all prostitution defendants due to the intense harassment and abuse defendants faced at the hands of vice officers.

Lewis-McCoy's conclusions are similar to Wall's in that, compared to the manner in which sex workers had been prosecuted, prosecutorial policy and intervention programs are certainly an improvement. But declining arrest and sentencing rates for prostitution-specific charges do not spell out a solution to the endemic profiling and violence sex workers are subject to. Many may just be displaced or arrested for more serious crimes.

LEIGH LATIMER

Director of the Exploitation Intervention Project at Legal Aid Society (City-wide)

In 2013, Leigh Latimer was a founding member of the Legal Aid Society's Exploitation Intervention Project (EIP). As Supervising Attorney of EIP, Latimer represents clients charged with prostitution-related offenses in criminal court and advocates for trafficking victims in a variety of settings. She also supervises other members of the project which includes four attorneys, a social worker, and a paralegal/case handler. Latimer has been a public defender at Legal Aid since 1987. In 2004, she was assigned to work in the Queens County Treatment Courts as Legal Aid's representative, where she represented clients whose cases would be dismissed if they completed drug treatment.

The authors interviewed Latimer in order to get a better sense of the prosecution landscape leading up to the implementation of human trafficking prosecutions in New York. Latimer notes that since 2007 there have been a lot of changes, not only in trafficking laws but also in how these cases are handled.

Promoting prostitution was the most common charge for what would now be considered trafficking, passed in 1965 and in effect from 1967. "Of course, there are a lot of layers to that charge," says Latimer, referring to the degree to which it is charged. In the third degree, promoting prostitution involves managing, supervising, controlling, or owning a commercial sex enterprise involving two or more people or, advancing or profiting from prostitution of a person less than nineteen-years-old. Promoting prostitution in the second degree is defined as involving "force or intimidation" to compel one to commit prostitution or advancing/profitting from prostitution of a person less than eighteen years old. Promoting prostitution in the first degree involves a child under the age of thirteen or a defendant over the age of 21 and a victim less than 15 years old. Prosecutorial discretion determines which degree is pursued. "You have to remember, at this point if you were 15 or 16 you were still prosecuted as an adult," Latimer points out. Importantly though, promoting prostitution, no matter the degree is considered a non-violent offense-- as human trafficking was considered until recently.

When asked about traffickers facing rape charges, or federal prosecution, Latimer said it wasn't common, but it certainly happened. In any prosecution, she said, prosecutors generally brought multiple charges. She had a few section 440 clients who were prosecuted and convicted of trafficking and statutory rape after having had admitted to having sex with minors. People often don't realize that not knowing the age of the defendant does not qualify as a defense.

Latimer disagrees that the origin of human trafficking prosecution feeds into the conflation between sex work and trafficking. "Personally, I think the conflation is more about people's attitudes towards prostitution, that it is inherently harmful." As a

founding member of EIP, Leigh and her fellow public defenders have pushed for the Human Trafficking Intervention Court diversion model to be applied to other charges. Ultimately it's up to the prosecutors though- "they have the power to say yes, we will agree to drop this case or a better disposition. The only power we have is advocacy, and that's not really power at all." The disposition depends on the risks that the district attorney is willing to take. Defenders can, and do, advocate to direct clients who identify as being trafficked but have charges that are not prostitution-related through mental health or drug courts to obtain better dispositions, as Wall had mentioned. There isn't technically a limit on how many times folks can go through the Human Trafficking Courts, but that does not mean there aren't consequences for recidivism, with high compliance requirements, particularly in Brooklyn where re-arrest of people with prostitution convictions is more common.

Latimer has noticed prostitution arrests happening in all boroughs, but she was not surprised to hear that prostitution arrests still outnumber patronizing arrests, or that those arrested for prostitution are more likely to be convicted and serve prison time. Most likely, the reason for this is, as Wall had also said, that there isn't the same blanket policing of clients as there is of sex workers. For most individuals charged with patronizing a prostitute, it's their first arrest, or at least their first arrest for that charge. "For my prostitution clients, well, it's their fourth or fifth arrest on that charge alone oftentimes. They get swept up because of their history."

AHLEA HOWARD

Human Trafficking Services Program Coordinator at the International Institute of Buffalo;

MARISSA MACTURK

Senior Case Manager in Survivor Support Services at the International Institute of Buffalo

Separate from the monolith of the New York Police Department and network of prosecutorial offices within New York City, the rest of the state is subject to a wide range of policies regarding the policing and prosecution of sex work. In order to explore the nuances of these policies, and how they disparately impact sex workers, clients and third parties, and trafficking survivors, the authors interviewed Ahlea Howard and Melissa MacTurk of the International Institute of Buffalo (IIB), service providers who work at Buffalo's Human Trafficking Intervention Courts to support individuals referred there.

The interview explored the way that sex work cases are handled in Erie County. The International Institute of Human Trafficking Services Program is the service provider arm that collaborates with the Human Trafficking Courts of Buffalo, providing an alternative court for individuals arrested on prostitution charges in the Erie County area. Howard is the coordinator of the service program while MacTurk is a case manager, working directly with defendants to connect them with social services and providing mitigating information to their attorneys and the judge overseeing the case.

The Buffalo HTIC program is well-respected in the area. Amy Martoche, the court's sole judge, is familiar with the reality that many of the individuals cycling through her court have unmet needs that traditional criminal legal structures punish them for.¹⁰⁴ Along with the Court Coordinator, and former advocate, Alicia Tabilago, they work hard to identify cases where trauma is involved, coordinating with the Erie County DA, and outside agencies including the International Institute of Buffalo.

But Howard and MacTurk are quick to point out the limitations of their program. As recipients of federal funding, they are unable to take certain positions, such as supporting the full decriminalization of sex work which might allow more effective harm-reduction strategies. Howard notes that technically, any surrounding county without HTIC's should send prostitution cases to them, but many do not, making it difficult to reach many law enforcement and prosecuting agencies to educate them on harm-reduction, trauma, and vulnerability.

The International Institute has a myriad of programs that are used to address diversion cases. Within the trafficking program,

104 Michael Canfield. "Human Trafficking 'a Significant Issue in Western New York?'" Buffalo Business First, July 10, 2017. <https://www.bizjournals.com/buffalo/news/2017/07/10/human-trafficking-a-significant-issue-in-western.html>.

there are case managers specifically focused on the needs of youth, foreign-born individuals, housing, opioid treatment (a significant problem in Erie County), and mental health needs. Because of the efficacy of the service provision, they said their program has expanded in recent years. Not only does IIB provide services to survivors and sex workers, but they also work with law enforcement and hospitals to educate system actors on the need for a harm-reduction approach within the system.

As in the city, MacTurk confirmed that in most cases she sees, clients are being brought in on criminal possession, trespass, assault, petty larceny, and possibly prostitution. She reports seeing the same faces again and again in the system. Some individuals are able to complete the program, find work outside of the industry and move on. However, many others, especially those facing particularly precarious economic conditions, drug dependence, or other circumstantial vulnerabilities, struggle to meet the stringent requirements of the program which often do not meet their needs. Unlike other courts, Buffalo does not put a cap on the number of times defendants can cycle through the HTICs. Instead, they focus on getting people to show up by providing services that fit into their lives. Buffalo HTIC Coordinator Alicia Tabliago works for New York State, bridging the gap between the defense attorneys, prosecution, and service providers.

Erie County is also unique in that the assistant district attorney that is working the human trafficking court changes every 2 months. Every district attorney gets trafficking sensitivity training and the same bureau chief is looking at sentencing, charges, and previous arrests and deciding how to proceed. Still, there are always cases that they miss, and many people sit in prison for a long time before their cases are identified by the HTIC.

One of the most significant challenges, Howard notes, is that Erie County has 24 plus non-college law enforcement jurisdictions in smaller towns and villages, and they all handle sex work policing differently. Most decide cases at the local level, meaning that even within Erie County sentencing is irregular. MacTurk went on, “Erie County has some good law enforcement officers, or as good as they can be,” who understand trauma and are willing to figuratively “meet folks where they are.” It’s difficult though when law enforcement still arrest sixteen-year-olds as prostitutes time and time again. MacTurk flagged Lancaster, NY as a particularly difficult jurisdiction in terms of harassment, abuse, and conflation of trafficking and sex work. She says that nearly 90% of her current clients struggle with substance use.

Prostitution convictions are declining in Erie County, and have been consistently since 2011. Still, up until 2017, many convictions resulted in jail time. Though Howard and MacTurk reported a slow decline in prostitution arrests, data from the DCJS between 2009-2019 has shown reductions to be inconsistent, probably due in some part to the lack of uniformity in policing.

CAROLINA HOLDERNESS **Human Trafficking Response Unit Chief at the District Attorney of New York’s** **(DANY) Office**

In 2017 Carolina Holderness became Chief of the Human Trafficking Response Unit at the Manhattan District Attorney’s Office, where she had served as an Assistant District Attorney since 2007. Almost immediately, Holderness invited representatives from LGBTQ rights organizations across the city to come and speak with her regarding policy changes they wished to see. The meeting ultimately resulted in Manhattan’s historic decision to decline to prosecute all loitering for the purpose of engaging in a prostitution offense (PL 240.37) charges in New York County outright in November 2017. Convictions for PL 240.37 dropped to zero that same year.¹⁰⁵

Holderness recalled that the conversations weren’t always easy. Community members were reluctant to trust a prosecutor. But Cecilia Gentili, a cornerstone international figure in the LGB/TGN CNB and immigrant rights communities, spoke up.

105 DCJS, 2019.

Gentili is the founder of Transgender Equity Consulting, Director of Policy at Gay Men’s Health Crisis Center (GMHC), and is intimately familiar with the public health and safety concerns related to institutional discrimination. At the time, Manhattan offered individuals charged with prostitution and unauthorized practice of a profession an Adjournment in Contemplation of Dismissal (ACD) provided the individual completed counseling sessions through the Human Trafficking Intervention Court. Under the terms of an ACD, the case is automatically dismissed after six months if an individual is not rearrested.

“It was appalling the way that people were experiencing policing [for loitering],” Holderness said. She credits Gentili completely for the policy change. This moment was small but revolutionary; someone with real power asked the question, and the community was prepared and trusting enough to respond.

Throughout the authors’ interview with Holderness, she emphasized this commitment to keeping people safe from violence above all else and creating an open dialogue between impacted communities and policymakers. She has tried to make good on that commitment within the bounds of her position. Holderness spoke with the authors in the week following the DA’s historic announcement that the office would no longer prosecute prostitution or unlicensed massage in New York County, primarily as a result of the collaboration between Holderness and Abigail Swenstein of the Legal Aid Society.¹⁰⁶

In his policy announcement, DA Vance stated, “over the last decade we’ve learned from those with lived experience, and from our own experience on the ground: criminally prosecuting prostitution does not make us safer, and too often, achieves the opposite result by further marginalizing vulnerable New Yorkers. For years, rather than seeking criminal convictions, my Office has reformed its practice to offer services to individuals arrested for prostitution. Now, we will decline to prosecute these arrests outright, providing services and support solely on a voluntary basis. By vacating warrants, dismissing cases, and erasing convictions for these charges, we are completing a paradigm shift in our approach. These cases – many dating back to the 1970s and 1980s – are both a relic of a different New York and a very real burden for the person who carries the conviction or bench warrant.”¹⁰⁷ The office will still be providing services to individuals on a voluntary basis, rather than as a result of criminal contact.¹⁰⁸

Manhattan is thus far the only borough to pursue this level of reform. In January and March of 2021, both the Queens and Brooklyn District Attorneys announced that they would be dismissing hundreds of open warrants for loitering and prostitution and expunging past convictions.¹⁰⁹ However, expungement does not seal an individual’s records and can still have immigration and employment consequences. Rather than declining to prosecute prostitution charges outright, Brooklyn DA Eric Gonzalez pledged to offer defendants service referrals and then dismiss their cases.¹¹⁰ Queens DA Melinda Katz made no mention of declining to prosecute prostitution going forward and neither office mentioned changing their county-wide policy regarding massage without a license.¹¹¹

“This is why I became a prosecutor,” Holderness says. “What are the small steps we can take to keep people safe from violence?” In the sex industry, she has identified immunity, vacatur, and declining to prosecute loitering or prostitution charges.¹¹² Holderness is particularly passionate about disrupting systems of gender-based violence, the lens through which she approaches both prosecution and policy initiatives, including this most recent change.

106 “D.A. Vance Ends Prosecution of Prostitution and Unlicensed Massage, A First in New York State.” Manhattan DA, April 21, 2021. District Attorney of New York County. <https://www.manhattanda.org/d-a-vance-ends-prosecution-of-prostitution-and-unlicensed-massage/>.

107 Id.

108 Bromwich, 2021.

109 “Queens DA Melinda Katz Asks Court to Dismiss Hundreds of Cases Against People Charged with Loitering for the Purpose of Prostitution.” Queens District Attorney, March 16, 2021. District Attorney Queens County. <https://queensda.org/queens-da-melinda-katz-asks-court-to-dismiss-hundreds-of-cases-against-people-charged-with-loitering-for-the-purpose-of-prostitution-and-related-charges/>; “Brooklyn District Attorney Eric Gonzalez Dismisses All Outstanding Prostitution-Related Warrants Dating Back to 1970s.” Brooklyn District Attorney, March 24, 2021. District Attorney Kings County. <http://brooklynda.org/2021/03/24/brooklyn-district-attorney-eric-gonzalez-dismisses-all-outstanding-prostitution-related-warrants-dating-back-to-1970s/>.

110 Id.

111 Id.

112 The expansion of vacatur for trafficking survivors was passed in the 2021 legislative session. Immunity from prosecution for witnesses or victims of violent crimes has not yet been made law.

Manhattan is in many ways a trailblazer. They were the first office to use eavesdropping warrants for trafficking cases,¹¹³ advocated for the repeal of the loitering law when many other DA's stood by silently, and are currently fighting for the passage of immunity for sex workers who are witness to or victims of crime. Holderness also emphasizes clarity and fact-based analysis regarding prosecution policy. She spoke about the inconsistencies of arresting someone to “rescue them” and then treating that supposed victim as a criminal. Vast numbers of trafficking arrests reported across the country are cases of consensual, adult prostitution, publicized in a way that inflates the “success” of anti-trafficking operations. Holderness shared that New York faced criticism for low numbers of trafficking prosecutions even though this is a sign of effective prevention. Holderness does what she can to combat these misconceptions. “Even when I’m picking a jury,” she said, “I start with having to combat everyone’s misconceptions about trafficking.” Instead, Holderness tries to educate people on what these cases look like and the vulnerability that stigma and misinformation create among these communities.

This is why, even though New York County has declined to prosecute more and more of those arrested for prostitution and unlicensed massage throughout the last decade, Holderness believes that formalizing policy is essential. The public deserves to have an understanding of what’s happening in the criminal courts. The new policy also dismisses thousands of warrants dating back decades, significantly impacting people’s lives. Still, “the messaging had a lot more of an impact than I thought it would because this is such an incremental shift” in terms of what the actual policy is, says Holderness. She does not expect a dramatic change, but the public’s reaction shows that the announcement is meaningful to people’s lived experiences. Hopefully, it will have a destigmatizing impact that goes beyond the criminal legal system.

In January of 2021, ProPublica released an article detailing how the NYPD Vice squad routinely targets Black and Brown New Yorkers in certain areas, using entrapment schemes to charge them with patronizing a person for prostitution.¹¹⁴ Holderness immediately checked to confirm that none of this activity was occurring in Manhattan. In her tenure as an Assistant District Attorney, the Office has not changed its policy regarding patronizing. Those arrested on a first offense are offered a plea to a violation, disorderly conduct, and must pay a fine, and often have to complete a health class or community service.

Holderness reports that Human Trafficking Team detectives and the Human Trafficking Response Unit investigators, who are trained specifically in investigating trafficking, are some of the more thoughtful and dedicated detectives she has ever worked with. Her unit does not address patronizing charges unless they involve an individual under 18 because, under New York State law, procuring sex for yourself never qualifies as trafficking, only third-party involvement. Unlike federal prosecutors, who can charge violent clients with trafficking, this is not an option at the state level.

In its recent policy announcement, DANY included that it would no longer prosecute arrests for unlicensed massage, mainly because of the nature of the arrests and who ends up getting targeted by these laws. Often, vice conducts an undercover sting, visiting massage parlors in disguise and asking for a sex act at the end of an appointment. If an individual agrees, they are arrested for prostitution, but if they said no, the officer can still charge them with unlicensed massage. This has significant consequences for immigrant women, the population most often targeted. Between 2015-2019, 93.3% of Unlicensed practice of a profession (ED 6512) arrests were of Asian-identified individuals.¹¹⁵ Even with an ACD that results in dismissal, these arrests are not sealed and can endanger an individual’s immigration status.

The authors were curious about the future of New York County’s Human Trafficking Courts (HTIC)s. Previously cases processed in HTICs were based on the charge rather than contextual signs of trafficking. Prostitution, unlicensed massage,

113 This is slightly controversial action because of the intrusion on an individual’s privacy (see *Berger v. State of New York*, 388 U.S. 41 (1967)). Wiretapping and eavesdropping warrants have been commonly used to prosecute prostitution cases involving massage parlors on questionable grounds. In conjunction with the 2019 case where Robert Kraft patronized a sex worker at a Palm Beach County massage parlor, video surveillance by law enforcement in massage parlors across Martin County were thrown out because of the unnecessarily intrusive nature of the monitoring (see Elizabeth Nolan Brown, “Massage Parlor Surveillance Videos Can’t Be Used in Court, Says Florida Judge,” Reason Magazine (Reason Foundation, May 3, 2019), <https://reason.com/2019/05/03/massage-parlor-surveillance-videos-cant-be-used-in-court-says-florida-judge-reason-roundup/>).

114 Kaplan and Sapien, 2020.

115 ED 6512 includes all types of work, not just massage, and it is difficult to determine what percentage of those arrests were for unlicensed massage. For this reason, it’s possible that the racial bias in arrests of Asian identified individuals was even higher.

and promoting prostitution made up the vast majority of the caseload. Individuals who experienced trafficking but were charged with robbery, assault, or other non-prostitution-related offenses that their trafficker compelled them to commit were often ineligible for diversion. Charge-based referrals help streamline the HTIC system by clarifying who qualified for AP8 services and who did not. This structure also provides some destigmatization around sex work within the court system. Still, Holderness acknowledges that the services pose a real burden to some processed through HTICs, while others who could benefit never receive referrals.

Without prostitution or unlicensed massage cases to process, Holderness hopes the courts will move more in the direction of offering services to people with other misdemeanor charges and focusing on voluntary referrals. “If we know someone is being trafficked, they should not be prosecuted,” says Holderness. Charging someone in a criminal court only increases their risk of trafficking by compromising access to resources, particularly if they have a history.¹¹⁶

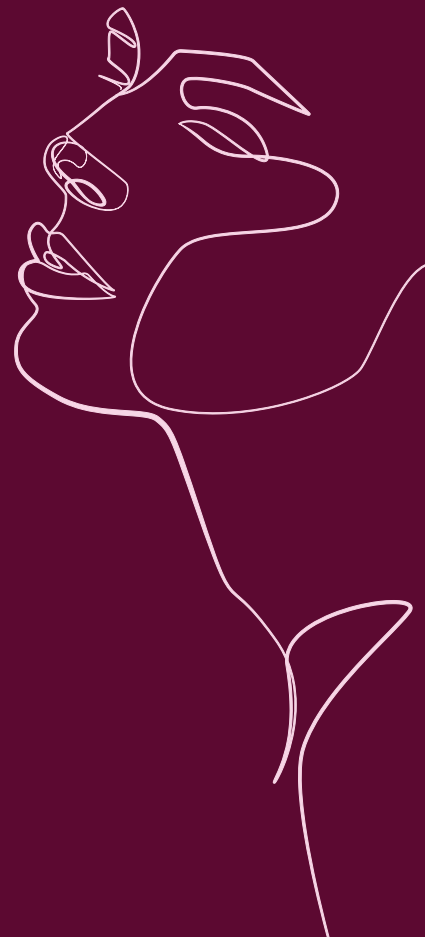
There has been no systematic review process of HTICs to track what happens to clients there, a source of criticism in determining whether courts live up to what they promise. Much of this criticism is focused on the juxtaposition of rooting services within the criminal legal system itself.¹¹⁷ The District Attorney’s Office has no direct contact with defendants, but Holderness works closely with the Legal Aid Society’s Exploitation Intervention Project (EIP) attorneys. The service networks in the Manhattan courts are respected. Individuals can show up and request help without having formal charges, and they often do, knowing they won’t be arrested for disclosure.

This type of collaboration is primarily made possible by Holderness and her colleagues’ willingness to listen and look at the evidence, as they have in these most recent dismissals. Holderness respects and appreciates her colleagues at EIP and Legal Aid and their ability to work outside of the traditional adversarial criminal legal system to address human trafficking. Though they see the system through different lenses, Holderness and her colleagues have found a way to make this system work, to some degree, for the better, and are pushing hard for policies that reflect that interest. She is excited about the prospects of pre-trial diversion if the courts can begin to play a role in getting services for individuals who are at risk before they get arrested or charged with a crime.

116 Dank et al., 2017; See also, “Un-Meetable Promises: Rhetoric and Reality in New York City’s Human Trafficking Intervention Courts” (Urban Justice Center, September 2018), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf.

117 Goldbaum, 2020; Yale Law School, 2020.

POLICY RECOMMENDATIONS

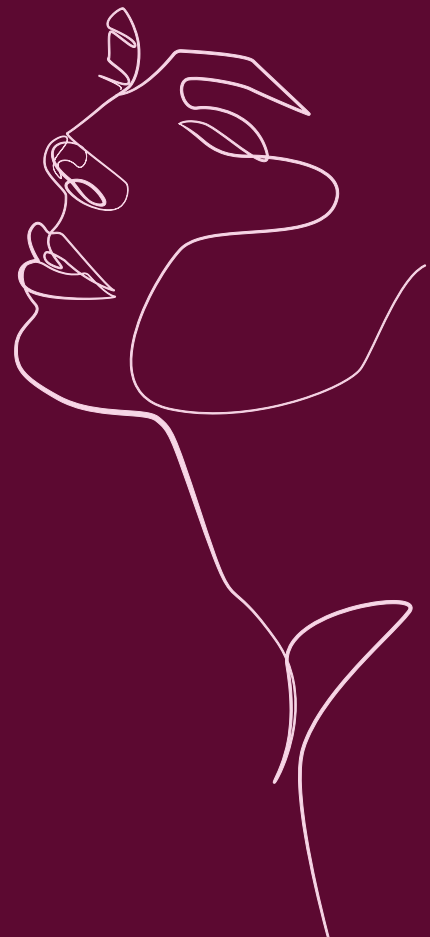


IX. POLICY RECOMMENDATIONS

In order to address the health and safety concerns related to the criminalization of sex work, protect survivors and sex workers, and create effective, community-based solutions, we have formulated policy recommendations for New York State moving forward:

1. Develop a study commission, made up of equal parts impacted community members, service providers, public health experts, and law enforcement, to study the impact of current policies and make further recommendations;
2. Disband the NYPD Vice Squad in order to halt the widespread violence, abuse, and racism the division has been guilty of over the past several decades;
3. Conduct mandated and standardized training for law enforcement in each jurisdiction on the critical differences between sex work and trafficking, as developed by the aforementioned study commission;
4. Provide Immunity from arrest or conviction for witnesses or victims of crimes who are engaged in sex work, promoting, allowing, or permitting prostitution, or patronizing a prostitute, at the time of the crime in order to secure access to justice and legal recourse for sex workers who have crimes committed against them (See S223A/A355A, 2021-2022);
5. Fully decriminalize consensual adult sex work, in order to reduce rates of STI transmission, sexual assaults, and increase law enforcement's ability to detect and address trafficking (See S3075/A849, 2021-2022; and,
6. Devote state funds, previously used to arrest and incarcerate consensual adult sex workers, to provide stigma-free social services and resources for those engaged in sex work.

CONCLUSIONS



VIII. CONCLUSIONS

In March of 2021, New York City Mayor Bill de Blasio announced that, as part of the NYC Police Reform and Reinvention Collaborative Draft Plan responding to Executive Order No. 203 to reform and reinvent the NYPD, New York City would “develop new policies and approaches to combatting sex trafficking which focus on the traffickers and do not entangle victims or those selling sex in the criminal justice system.”¹¹⁸

The impetus to reform the policing of sex work is mounting. Across the country, district attorneys are announcing that they will no longer prosecute prostitution charges. But advocates tend to be skeptical of this momentum towards reform. Policy shifts like this are seen in a similar light as Senator Liz Krueger’s proposed partial decriminalization bill. As Juhu Thukral puts it, these “shifts” ultimately become “history repeating itself over and over again, with the same players in power and the same getting arrested”.

In his official statement, the Mayor said the NYPD is already working on eliminating prostitution arrests, following the announcements by the Brooklyn and Queens District Attorneys that they would be dismissing warrants for hundreds of prostitution and loitering charges.¹¹⁹ Only a month later, Manhattan notified the public that the borough would no longer prosecute prostitution and unlicensed massage. DANY has declined to prosecute prostitution cases since 2017 but required those who were charged to complete five counseling sessions before dismissing charges. Abigail Swenstein, staff attorney with the Legal Aid Society’s Exploitation Intervention Project, said the announcement is encouraging, and will “ideally have reverberations outside of New York City, outside of New York County.”¹²⁰ Later, in an email to the authors, Swenstein expressed ambivalence about whether the policy would actually end the prosecution of prostitution or just change what sex workers and survivors were arrested for. Only time will tell, she said.

118 “NYC Police Reform and Reinvention Collaborative Draft Plan: Part 2” (City of New York, March 5, 2021), <https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf> at pg. 11.

119 Aaron Katersky, “New York City Moves to Dismiss Hundreds of Prostitution Cases, Decriminalize Sex Work,” ABC News (ABC News Network, March 16, 2021), <https://abcnews.go.com/US/york-city-moves-dismiss-hundreds-prostitution-cases-decriminalize/story?id=76494315>; Steadman, 2021.

120 Mirela Iverac, “On Verge Of Retirement, Manhattan DA To Stop Prosecuting Prostitution,” Gothamist (Gothamist, April 22, 2021), <https://gothamist.com/news/verge-retirement-manhattan-da-will-stop-prosecuting-prostitution>.

As part of the Mayor’s plan, the city will create a task force to review current law enforcement policies in regard to the investigation of human trafficking and the health and safety needs of sex workers. They will also draft a legislative framework to end penalties for sex work that will advocate for state-wide reform.¹²¹ The initiative is part of the NYC Police Reform and Reinvention Collaborative (NYCPRRC) Draft Plan that focuses on the “Decriminalization of Poverty”. Critically, though New York’s plan mentions the vast racial disparity in arrests for patronizing a prostitute in 2019, the document does not attempt to differentiate between the clients of consensual adult sex workers and traffickers, or other criminals who abuse vulnerable communities.¹²²

While policy shifts towards limiting arrests for sex work-related crimes are a crucial first step, it is clear that continued conflation between trafficking and sex work and the inconsistency in enforcement among small jurisdictions will require widespread and comprehensive legislative change to impact outcomes. While many of the steps being taken by individual district attorneys and those included in the NYCPRRC Plan react to community-based requests, the City Council Committee on Public Safety, charged with overseeing the Draft Plan, reported a worrying lack of rigor in the published plan, including “the small scope of the City’s engagement process and lack of information about research methodology”. According to sources we spoke to from New York HTICs, there has been no comprehensive review of AP8, nor are there plans to conduct one.

The Reform and Reinvention Collaborative formulated this policy after hosting “over 85 meetings—public listening sessions, town halls, and roundtable discussions—with a range of groups and organizations.” Of these meetings, five were held with “impacted communities,” but the oversight committee notes that the report fails to include any detail on how the City defined an “impacted community,” who participated, or how the City solicited those participants. Eleven of the meetings were held exclusively with the NYPD.¹²³ This begs us to question whether or not the

121 Ariama C Long, “No More Arrests for Sex Workers in New York, De Blasio Says,” AmNY, March 16, 2021, <https://www.amny.com/news/no-more-arrests-for-sex-workers-in-new-york-de-blasio-says/>.

122 NYC Police Reform and Reinvention Collaborative Draft Plan: Part 2, 2021, at pg. 11.

123 “NYC Police Reform and Reinvention Collaborative Draft Plan” (City of New York, March 5, 2021), <https://www1.nyc.gov/assets/home/downloads/pdf/reports/2021/Final-Policing-Report.pdf> at pg. 45.

conclusions will have the necessary impact on affected populations.

Thukral believes there are a lot of prosecutors who want to do the right thing by survivors of trafficking and sex workers. In the system as it currently operates, however, most will continue to embrace the 'Nordic Model' because they don't stop to think about the impact. If both the client and sex worker are there, police will arrest them both, forgetting that even if people don't end up getting prosecuted, any contact with the system is harmful. Prosecutors need to justify their role in the system, and the way they know how to do that is by making law enforcement the first line of defense.

Studies of arrests continually show that they have a criminogenic impact throughout the life course of an individual, by increasing antisocial behaviors. According to a 2019 article by Seth J. Prins, arrests are an even greater predictor of further criminal justice system involvement than convictions because they are "a more visceral experience."¹²⁴ This analysis has shown that though New York has significantly reduced the number of arrests and convictions for prostitution and related offenses, these policies are implemented relatively arbitrarily across the state with uncertain outcomes for those they impact, some of the state's most marginalized communities. Even efforts to stop arresting sex workers altogether and focus on clients, fail to appreciate the lived experiences of sex workers and survivors. What became clear from this study was the dearth of social, economic, and political power accessible to individuals targeted by prostitution laws.

Changes in prosecution will not negate this reality, making defense attorneys and advocates wary of their outcomes. Their clients may no longer face criminal charges for prostitution, but arrests, previous convictions, and identity-based discrimination will continue to contribute to the "pressure cooker" Ryan Wall alluded to. Sustainable, holistic, and realistic policy solutions have yet to be implemented.

124 Seth J. Prins, "Criminogenic or Criminalized? Testing an Assumption for Expanding Criminogenic Risk Assessment.," *Law and Human Behavior* 43, no. 5 (October 2019): pp. 477-490, <https://doi.org/10.1037/lhb0000347>, at pg. 484.

Decriminalize Sex Work ♡