

# Entrepreneur

## Will Decriminalization of Sex Work Become the Next Anti-Regulation Battle?

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When asked how the criminalization of sex work hurts sex workers, writer and dominatrix Mistress Matisse does not mince words.

"We all get arrested," she says. "The idea that being arrested is helpful to someone – really, that people have been able to pull that idea off – is a masterful bit of sort of double speak. Because, no, no one is helped by being arrested."

In August, Amnesty International voted that the best policy to protect sex workers is the full decriminalization of consensual sex work. While the recommendation was met with disapproval by many, including celebrities known for feminist activism such as Meryl Streep and Lena Dunham, it also served as a mainstream wake-up call about the dangers of the current legislation in the U.S.

"There is this big dragnet of laws that are seemingly intended to protect society or to protect even people engaged in the sex trade," says Katherine Koster, communications director for SWOP-USA, the Sex Worker Outreach Project. "But what ends up happening is that these laws are often used to criminalize people involved in the sex trade themselves."

The still-in-progress effort to legalize marijuana is grounded in similar beliefs. The argument, which has united libertarians and the left, is that purchasing marijuana should be a decision adults can freely make. The criminalization of this increasingly mainstream practice has been argued to drain police and government resources without results and disproportionately affect people of color. Right now, the use and sale of marijuana in the U.S. is still illegal under federal law, but can be made legal by individual states. Recreational pot is legal in four states – Colorado, Alaska, Washington and Oregon – and medicinal marijuana is legal in 20 others.

Current laws regarding sex work can be seen as the criminalization of an exchange between consenting adults. However, Nevada is currently the only state in the U.S. that allows for the legal exchange of sexual service, legalizing prostitution in regulated brothels (as opposed to decriminalization, as argued for by most sex work activists).

"Decriminalization simply means that, whatever reason I choose to have sex for -- even if it's for money -- it's not a crime," says Mistress Matisse. "It means that any act that would not be illegal if no money changed hands is not a crime just because money changes hands."

### The dangers of regulation

Advocates for decriminalization argue that current laws regarding sex work unnecessarily consume government and police resources. While not nearly as expensive as the so-called War on Drugs, when state governments strictly enforce the long and often confusing list of laws prohibiting a variety of types of sex work, the costs add up.

Programs such as the New York Police Department's "demand side" focus on clients instead of sex workers at first glance appear to spend taxpayer money to better help those in the sex trade, especially those trafficked against their will. In reality, individuals consensually or non-consensually engaged in sex work (or stereotyped as such) often face arrest and pretrial detention, to their detriment. Most sex work organizations, such as SWOP, argue that this money could be better spent on community-based organizations that support those who do want to avoid or exit sex work.

The vast majority of sex workers' organizations advocate for the decriminalization of prostitution and related practices. Sex workers indicate fear of arrest makes it more difficult to do things such as carry condoms, seek medical attention, report sexual assault or work together with other sex workers.

Many advocates of continued criminalization of sex work say that to decriminalize the practice would be to condone the trafficking of minors, violence and sexual abuse.

"I don't think that's a useful [or] well founded concern," says Jeffrey Miron, an economics professor at Harvard and senior fellow at libertarian think tank the Cato Institute. "Standard economic reasoning would suggest that, if it becomes legal then... most of the demand is going to be satisfied in an above-ground market that most people would prefer to access because it would be safer and have lower health risks."

Opponents argue that fighting for decriminalization is a privilege that ignores the experiences of those who enter the trade under dangerous circumstances or out of dire economic necessity. However, criminalizing this "survival sex work" has been found to hurt those who engage in it. A survey by the Sex Workers Project in New York City (an effort organized by the nonprofit Urban Justice Center) found that 30 percent of sex workers working outdoors reported being threatened with violence by the police. Additionally, current laws mean certain marginalized groups disproportionately face the risk of stop and frisk searches and arrests due to perceived "intent" to engage in sex work, as in the case of transgender activist Monica Jones.

Even if many of the most publicized voices for decriminalization are self-identified "empowered" sex workers instead of people engaging in survival work, this fact doesn't mean that criminalization benefits anyone.

"Would you help a domestic violence victim by arresting her? Would you help a rape victim by arresting her?" Mistress Matisse says, regarding the potential benefits of criminalization. "If you think someone is in trouble, then arresting them is not the responsible thing to do."

Decriminalization does not seek to paint sex work as a purely "empowering" profession, but instead ideally allow for greater intervention in cases involving coercion and abuse. It would not remove laws related to statutory rape or trafficking (which globally is more than four times more

likely to be related to forced labor than sex). Instead, it would offer an opportunity to make it possible for those engaged in consensual sex work to regulate the industry and provide themselves and those who want to exit with support, instead of a jail sentence or fine.

"Decriminalization doesn't decriminalize exploitation," says Koster. "It's not going to decriminalize trafficking. It's not going to decriminalize coercion or fraud."

### **The future**

Sex work -- especially as it applies to sex workers, as opposed to clients -- carries a stigma in a way that marijuana is escaping (49 percent of Americans have said they've tried marijuana, compared to an estimated 1 percent of women who have engaged in sex work).

While sex workers have been organizing for decriminalization since the 1970s, is there hope now for change in the U.S.?

"I certainly think there is some possibility of sex work being decriminalized [or] legalized. First, in contrast to drugs, there's no federal law criminalizing sex work," says Miron. "Second, there's already a small part of the U.S. that already has legalized prostitution... We have a lot of other countries that have varying degrees of decriminalization and legalization."

In America, most sex workers and organizations seem to see the decriminalization as in its "embryotic stages," to quote Mistress Matisse. However, indicators such as Amnesty International's suggestion and a growing online community of sex workers have helped spark a cautious optimism.

The two potential paths to legalization appear to be state governments striking laws from the books or state courts overturning laws that criminalize sex work. Scrubbing legislation would likely be a slow process, involving the gradual picking apart the aforementioned dragnet of laws. While marijuana is now normalized to a degree presidential candidates can admit to partaking themselves, stigma surrounding sex work means that it is widely associated with political scandals instead of high times in college. In the U.S. at least, most politicians just aren't ready to publicly engage with the politics of sex work.

The alternative is through the court system. If legislative decriminalization is analogous to legalizing marijuana, this is more closely comparable to the Supreme Court's decision to strike down bans on gay marriage, though on a state level.

In California, there is already a case in progress. In 2008, after a proposition to decriminalize prostitution in San Francisco failed, activist and sex worker Maxine Doogan began organizing plaintiffs to file a complaint that would become "Erotic Service Providers Legal, Education and Research Project (ESPLERP) vs. Gascón." The complaint, filed against San Francisco District Attorney George Gascón and other attorney generals in their official capacities, challenges the constitutionality of laws criminalizing prostitution as violations of the rights to sexual privacy, freedom of association and free speech, as well as the right to earn a living.

"The rights of adults to engage in consensual, private sexual activity (even for compensation) is a fundamental liberty interest," reads the complaint. "That right is one that is, objectively speaking, deeply rooted in this nation's history and tradition and one that is implicit in the concept of ordered liberty."

The case is currently in limbo, as Judge Jeffrey White canceled a hearing to dismiss the lawsuit scheduled for Aug. 7 and has not yet ruled on the motion. ESPLERP's lawyers say that it is unlikely the court will dismiss the suit in its entirety, and, if the judge does grant the defendants' motion to dismiss, the plaintiffs plan to appeal to the 9th Circuit Court of Appeals.

The U.S. may be years away from decriminalizing sex work, but it has the example of other countries to follow if it does begin to make progress. There has been no evidence that decriminalizing sex work in New South Wales, Australia or legalizing prostitution in New Zealand lead to an increase in sex trafficking. Since the legalization of sex work in New Zealand in 2003, the industry hasn't grown, but violence against sex workers has decreased and quality of life has increased.

In addition to Amnesty International, the United Nations, Human Rights Watch and the World Health Organization all support decriminalization.