



ACLU of New York

Legislative Affairs
One Whitehall Street
New York, NY 10004
212-607-3300
www.nyclu.org

2021 – 2022 Legislative Memorandum

Subject: Immunity from Prosecution for Prostitution Offenses for Sex Workers, Survivors, & Witnesses Who Report Crimes
A.255-A (Gottfried) / S.2233-A (Sepúlveda)

Position: SUPPORT

When sex workers and survivors of trafficking experience or witness violence, the threat of arrest and prosecution can make people fearful of reporting to police. It can also be a deterrent to seeking medical treatment, due to fear of healthcare providers reporting to law enforcement. This not only perpetuates disparate treatment and access within the criminal legal system, it is also poor public health policy.

To reduce this inequity, the NYCLU urges the legislature to pass A.255-A / S.2233-A, which would prohibit law enforcement from charging victims and witnesses with prostitution offenses or with sharing living quarters with sex workers when victims and witnesses report crimes or assist in investigations.¹

Violence is a reality and threat for sex workers. The fact that even consensual sex work operates in the shadows due to criminalization and stigmatization only perpetuates this violence. Moreover, SESTA/FOSTA, federal legislation signed into law in 2018, has deprived sex workers of tools they have relied upon to screen clients and reduce harm.² This exacerbates violence, as many sex workers – and even the Department of Justice – predicted.³ As a result, this legislation is more critical now than ever.

¹ Penal Law § 230.00 criminalizes the sale of sex. Penal Law § 230. criminalizes the sale of sex in a school zone, which encompasses large portions of several counties in the state. Penal Law § 230.40, permitting prostitution, is a B misdemeanor that criminalizes sharing a dwelling or car with anyone engaged in sex work. It is used to criminalize roommates.

² Siouxsie Q, Anti-Sex Trafficking Advocates Say New Law Cripples Efforts to Save Victims, Rolling Stone (May 25, 2018), <https://www.rollingstone.com/culture/culture-features/anti-sex-trafficking-advocates-say-new-law-cripples-efforts-to-save-victims-629081/>.

³ Mike Masnick, DOJ Tells Congress SESTA/FOSTA Will Make it MORE DIFFICULT to Catch Traffickers; House Votes For It Anyway, TechDirt (Feb. 27, 2018), <https://www.techdirt.com/articles/20180227/15314039324/doj-tells-congress-sesta-fosta-will-make-it-more-difficult-to-catch-traffickers-house-votes-it-anyway.shtml>.

Further, in the last few years there have been numerous instances of police violence against sex workers and survivors of trafficking. In 2019, former NYPD Vice Detective Ludwig Paz, along with seven other officers, organized an exploitative prostitution ring.⁴ In 2017, NYPD Vice Officer Michael Golden was caught extorting sex from noncitizen sex workers while he was on duty, and then arresting them on prostitution charges.⁵ The same year, Yang Song, an Asian masseuse and sex worker, was allegedly sexually assaulted at gunpoint by a Vice officer and ultimately jumped to her death.⁶

These are not isolated incidents, and sex workers have long complained about illegal misconduct by officers, but they have been afraid to report to law enforcement or even medical providers due to fear of retribution. While this bill is not a magic bullet or panacea, it would clearly reduce threats of retribution via criminalization from reporting such abuses.

Importantly, this bill would not only provide invaluable protections for people who engage in sex work consensually – it would also allow survivors of trafficking to report crimes against them. Unfortunately, trafficking survivors are commonly arrested and charged with prostitution related offenses, even though their acts were coerced. This session, the legislature passed the START Act,⁷ which enables trafficking survivors to clear convictions for crimes they were compelled to commit. However, survivors cannot attain this relief until after they have served their sentences. This measure would prevent some survivors from entering the penal system for coerced offenses when they are merely reporting violence that they have experienced or witnessed.

Arrests, prosecutions, and convictions for prostitution and knowingly sharing a dwelling with sex workers can have dire lifelong consequences for employment, housing, education, and attaining childcare. Each of these offenses are considered “crimes involving moral turpitude,” which carry dire immigration consequences.

This common-sense bill will give real relief to survivors of violence, provide a safe path for reporting offenses and abuses, and yield positive public health outcomes. The NYCLU urges New York to follow the leads of Alaska and California, and pass this bill expeditiously.

⁴ James Barron, *Ex-Detective Admits Running Brothel in Worst N.Y.P.D. Scandal in Years*, New York Times (May 22, 2019), <https://www.nytimes.com/2019/05/22/nyregion/nypd-detective-brothel.html>

⁵ Matt Tracy, *N.Y.P.D. Resist Calls for Vice Squad Probe*, Gay City News (April 19, 2019), <https://www.gaycitynews.com/nypd-resists-calls-for-vice-squad-probe>

⁶ Melissa Gira Grant and Emma Whitford, Family, Former Attorneys of Queens Woman Who Fell to Her Death in Vice Sting Say She Was Sexually Assaulted, Pressured to Become an Informant, *The Appeal* (Dec. 15, 2015), <https://theappeal.org/family-former-attorney-of-queens-woman-who-fell-to-her-death-in-vice-sting-say-she-was-sexually-d67461a12f1>

⁷ S674/S459 (Ramos/Gottfried)