
Sex Work & Human Trafficking: Understanding the distinction




Melissa Broudo, JD, MPH
*Co-Founder of the SOAR Institute
and Legal Director of
Decriminalize Sex Work*





Bio/background

- Longtime advocate/activist for sex workers & survivors of human trafficking ; began sex work advocacy while undergraduate at Brown in late 1990s, led me to get law degree & MPH
 - Fundamental values are human rights, harm reduction, bodily autonomy & de-carceration/decriminalization
 - Direct representation of sex workers & survivors for 9 years at NYC's Sex Workers Project – helped create vacatur practice area for survivors of human trafficking
 - Last 5 years have been dedicated to policy & advocacy work throughout northeast
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Sex Work: Definitions

- **Sex work** is an umbrella term used to describe all erotic labor, many forms of which are legal in the U.S., such as dancing, porn, internet-based cam modeling, and fetish/BDSM. Sex work is usually regulated by state-level statutes, though there are federal laws in place regulating migration and sex work and solicitation near military bases, among other things.
- **Prostitution** is a form of sex work and is illegal in every state with the exception of certain small rural counties in Nevada.
 - Prostitution is defined by criminal statute in each state, but generally means the exchange of sexual conduct in exchange for a fee; RI criminal law defines it as “a person engag[ing], or agree[ing], or offer[ing] to engage in sexual conduct with another person in return for a fee.” (RI General Laws § 11-34.1-2)
- **Sex work is a broad, diverse industry encompassing all genders, ethnic backgrounds, and lived experiences. There is no unified or universal experience in the sex industry.**



Human trafficking is abuse and control over another person to exploit their labor. People are trafficked into a wide array of work, including prostitution, restaurant work, agricultural labor, domestic labor, etc.

Types and Prevalence of Human Trafficking Globally, 2017



Human Trafficking: definitions

- The 2017 International Labor Organization’s Annual Report found that 64% of Human Trafficking cases are non-sexual forced labor, 19% are cases of forced sexual exploitation and 17% involve state imposed forced labor.
- The US is no exception to this trend. The United States accounts for 5% of global human trafficking cases overall and 4% of forced sexual exploitation cases. Still, the US routinely focuses an inordinate amount of resources on combatting trafficking for the purposes of commercial sex.
- In the 2021 TIP report, advocate recommended that the United States increase the investigation and prosecution of labor trafficking cases, and increase access to protections for labor trafficking victims.





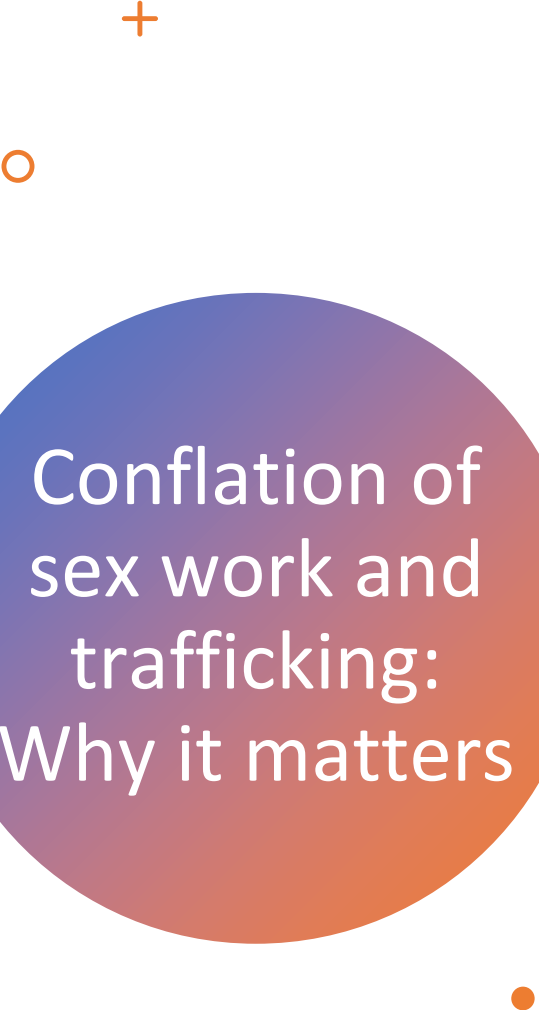
Human Trafficking: definitions

- *The Trafficking Victims Protection Act* (TVPA, first codified 2000 and re-authorized every three years) defines human trafficking as:
 - **Sex trafficking**, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
 - **Labor trafficking** as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. (22 U.S.C. § 7102(9)).
- Most states have their own human trafficking definitions codified. RI defines human trafficking as knowingly recruit[ing], transport[ing], transfer[ing], harbor[ing], receiv[ing], provid[ing], obtain[ing], isolat[ing], maintain[ing], or entic[ing] an individual in furtherance of:
 - Forced labor in violation of § 11-67.1-4; or
 - Sexual servitude in violation of § 11-67.1-5.
- While the majority of trafficking cases are in non-sexual labor sectors, trafficking in commercial sex does create unique challenges.
- In the context of prostitution, Human Trafficking often resembles (and is) intimate partner violence – the trafficker forges an intimate relationship with the victim in order to maintain emotional/physical control. Human Trafficking in commercial sex is also much more prominent in migrants experiencing human trafficking. 74% of cases of forced labor in which the victim is living outside of their home country involve sexual exploitation. (ILO, 2017)






Identifying Human Trafficking

- So how do we know if someone meets the legal definition of human trafficking (as opposed to having a bad work experience)?
 - Maintaining dominance and control over someone:
 - Physical violence or restraint
 - Emotional abuse and manipulation including, but not limited to: threats against them and their family members
 - Maintaining one's critical personal/legal documents, including passports etc.
 - Utilizing criminal and immigration law against someone leaving (if you go to the police, they will arrest and deport you)
 - Or if the person was a minor ["inducement" into prostitution is a relatively low standard]
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Conflation of sex work and trafficking: Why it matters

- Some anti-trafficking advocates disagree as to whether sex work is inherently exploitative. The result is that human trafficking and consensual, adult sex work are conflated in legislation and policy responses. Conflation has harmful effects on the rights of sex workers and survivors of human trafficking.
 - Sex workers' rights/decriminalization advocates believe there is a spectrum of experience in the industry and we have to meet people where they are at [harm reduction].
 - Prohibitionist or "end demand" advocates believe that all sexual labor is inherently exploitative and thus nobody could ever freely engage in it.
 - There are larger conversations around coercion of capitalism, patriarchy, misogyny, transphobia, homophobia that are more philosophical/unanswerable [ie all work under capitalism is coercive].
 - This conversation tends to be heavily gendered ["no woman would choose to do this"; women as victims, clients as predators] that betrays the diversity of the sex industry and is reductive.



Conflation of
sex work and
trafficking:
bad policy



- When human trafficking and consensual, adult sex work are conflated in legislation, policy responses, and popular rhetoric, three things happen:
 - Trafficking detection focuses on prosecuting individuals engaged in commercial sex rather than supporting survivors of exploitation, wasting valuable law enforcement resources;
 - Survivors of trafficking and sex workers alike find themselves embroiled in the criminal justice system, a process that further marginalizes them, creates barriers to resources, and erodes trust between criminalized communities and law enforcement;
 - Prevention and diversion programs struggle to meet the diverse needs of these two very different populations, failing both; &
 - Bad policies such as FOSTA/SESTA are implemented, driving all sex work underground and making exploitation harder to detect.

We must change our response to human trafficking and sex work to promote safety, health, and human rights.

