


 Expat Counsel

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CRIMINAL LAW IN THAILAND

Part LX: Sex crimes — the prostitute

Thailand is known as a tolerant society in which the traditional Asian family structure seems to coexist with a sex industry that is widespread. The legal system of a country, however, often reflects the existence of mores that are not expressed on the street corner. What, then, do the laws on the books in Thailand say about sex crimes? This will be the subject of our column in the next few weeks, and may surprise you.

We'll start with prostitution, because that's what everybody has asked us about.

Prostitution may be illegal in Thailand for the prostitute, the client and the pimp. But the penalties and acts punished are what tell more of the story.

The law that defines prostitution is the Prevention and Suppression of Prostitution Act, BE 2539 (1996).

It defines the sex act punishable as anything done to satisfy the carnal desires of others for money or similar benefits. This would include acts between two people of the same or opposite sex. It would include oral and anal sex and masturbation. It is still considered sex if it is done standing up or in a short-stay hotel room. The definition is, in short, a broad one and does not lend itself to exceptions on technicalities.

Now let's look at the parties involved. We'll start with Section Five of the Act, which applies only to prostitutes themselves. It says that anybody who solicits sex — in a street, public place or any other place in an open and shameless manner or causes nuisance to the public — is subject to a fine not exceeding 1,000 baht.

Every word in this definition from Section Five is important to understanding what's punishable in Thailand in connection with prostitution. The operative concept is the idea of soliciting in an "open or shameless manner" or in a way that "causes nuisance". What is meant here is so general as to defy exact legal analysis but is understandable in the cultural context mentioned above. What is meant is when one plies the sex trade in a way that is annoying or threatening to the rest of society, it may be punishable. We will discuss this at length later. At this point, you should notice something else: There is no jail term attached to the crime described in Section Five and the fine is relatively low.

Section Six of the act provides that anyone who is present in a "prostitution establishment" for the purpose of prostitution shall be liable to imprisonment of up to a month and/or a fine not exceeding 1,000 baht. "Prostitution establishment" includes any place established for prostitution or in which prostitution is allowed or used for soliciting or procuring another for prostitution. Thus it could be a club, a restaurant where people pick up prostitutes and/or where sex is sold for money.

What about a members' only club or a private home used to sell sex? Would they be considered "prostitution establishments"? Some academics believe they would, but there is little legal precedent on this issue, in part because it's difficult to make arrests in such places.

Section Six of the Act also provides that if the prostitute is forced in any way, either by threats, intimidation or otherwise, there is no criminal liability for the prostitute. For example, if a woman is locked in a room and forced to work as a prostitute for food and shelter or to repay back debts, or if she is beaten to make her do so, she is not liable to penalties either under Section Five or Six of the Act.

We'll discuss owners and operators of prostitution establishments later. You'll see that the penalties are much higher for these individuals than they are for the prostitutes.

More about prostitution next time. ■

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