



Expat Counsel

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CRIMINAL LAW IN THAILAND

Part LXI: Sex crimes — prostitutes and their customers

Last time we discussed the legal side of prostitution from the perspective of the sex worker. If the solicitation of the customer is done in public, particularly where it is annoying to other people, or at places known to the public as prostitution establishments, this is where Thai law will punish the sex worker.

Would a private residence, such as the home of a customer, be considered a "prostitution establishment" if it is used by a customer to buy sex? This is possible in theory but unlikely in practice. We questioned officials about this and were told that arrests for prostitution practically never happen in places like the customer's house or hotel room.

What about in a private house with, for example, three bedrooms and someone regularly selling sex out of each? This would be considered a prostitution establishment and the persons selling sex out of these rooms could be punished accordingly.

But even when it is a crime for the sex worker, the punishment is not harsh.

Let's look at a couple of examples. Let us say that Ms X is a prostitute. She receives referrals by word of mouth and gets calls at home from customers and meets them at their homes or hotel rooms. Under Thai law, there has been no crime committed under Section 5 of the Prevention and Suppression of Prostitution Act BE 2539 because

she is not selling sex "in an open and shameless manner or causing nuisance to the public". As we mentioned last week, Section 6 the Act punishes prostitutes for soliciting in public or hanging around "prostitution establishments", which would include brothels and bars where there are available bar girls. As discussed above, in practice, a customer's hotel room or home would not be considered a "prostitution establishment".

The act may punish a sex worker in one more situation. Where the sex worker or another person solicits customers by printed matter or otherwise the punishment under Section 7 of the act is a fine and/or imprisonment of up to two years.

Let's see how Section 7 would work in terms of our example, above. Business has not been good for Ms X lately. She decides to change her business model. Instead of passively waiting for calls, she contacts the classified editor of the local newspaper.

She places an advertisement making it clear that she is selling sex with a description of the services she offers.

Both Ms X and the publisher of the newspaper would be guilty of violations of Section 7.

Wait a minute, you say. Every newspaper in Thailand has ads like that. So why are they allowed to run?

Take a look at the ads, though. They operate in a grey area. They don't openly say that sex is for sale. Instead they offer massages, escort services or dating. It is very difficult to police every little ad, and as a practical matter, this kind of thing just goes on. Also, this is a situation where press freedoms intersect with the criminal law. In societies where there are rudimentary individual freedoms, freedom of speech — even commercial speech — gets some leeway.

Let's turn now to the customer. First, as with the prostitute, the provisions of Section

5 of the act apply to the customer. So, if the prostitute is soliciting in a public place and is picked up, the customer is exposed criminally to the same penalty — a fine not exceeding 1,000 baht.

If the customer is arrested for "mingling" in a "prostitution establishment" as discussed above, there is a potential of a fine of 1,000 baht and/or imprisonment of up to a month.

Next time, we'll discuss how the customer can really get into hot water — with underage sex workers. ■

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