

116TH CONGRESS
2D SESSION

S. 3165

To direct the Secretary of Health and Human Services to conduct a study to assess the unintended impacts on the health and safety of people engaged in transactional sex, in connection with the enactment of the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (Public Law 115–164) and the loss of interactive computer services that host information related to sexual exchange, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 8, 2020

Ms. WARREN (for herself, Mr. WYDEN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “SESTA/FOSTA Ex-
3 amination of Secondary Effects for Sex Workers Study
4 Act” or the “SAFE SEX Workers Study Act”.

5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

7 (1) People who engage in consensual, trans-
8 actional sex utilize online platforms to protect their
9 health, safety, and independence. This use includes
10 building community connections, distribution of
11 harm reduction information and techniques, identi-
12 fication and screening of potential clients, and nego-
13 tiating the terms of consensual, transactional sex
14 services, including condom use and other harm re-
15 duction strategies.

16 (2) Widespread discrimination against popu-
17 lations, including LGBTQI+ individuals, particu-
18 larly transgender women of color, prevents many
19 from accessing formal employment resources and
20 educational opportunities.

21 (3) In the 2015 United States Transgender
22 Survey conducted by the National Center for
23 Transgender Equality, 19 percent of respondents re-
24 ported having exchanged sex for resources, such as
25 for money, food, or a place to sleep. Transgender
26 women of color, including Black (42 percent), Amer-

1 ican Indian (28 percent), multiracial (27 percent),
2 Latina (23 percent), and Asian (22 percent) re-
3 spondents were more likely to have participated in
4 sex work than the overall sample.

5 (4) In the 2015 United States Transgender
6 Survey, respondents who experienced homelessness
7 in the past year (17 percent) were more than three
8 times as likely to have participated in sex work dur-
9 ing that year compared to the overall sample.

10 (5) On a broader scale, internet platforms fos-
11 ter connections between people and play an integral
12 part in American society. Meaningful regulation of
13 internet platforms must take into account the role
14 they play in the health, safety, and privacy of all
15 people's lives.

16 (6) While policymakers, representatives of inter-
17 net platforms, and some advocates have discussed
18 ways to mitigate the use of internet platforms to de-
19 crease exploitation, people who consensually trade
20 sex are rarely involved in the drafting of legislation
21 or policies, or in assessing their impact, despite
22 being amongst the populations who are impacted by
23 legislation and policies related to the regulation of
24 these internet platforms.

1 (7) On February 27, 2018, the House of Rep-
2 resentatives passed the Allow States to Fight Online
3 Sex Trafficking Act, known as SESTA/FOSTA.
4 While SESTA/FOSTA holds websites liable for user-
5 generated content that facilitates sex trafficking, it
6 also impacts online platforms where users discuss
7 consensual sex work and related topics.

8 (8) Contemporaneously with the passage of
9 SESTA/FOSTA in the Senate on March 21, 2018,
10 websites preemptively shut down, some directly cit-
11 ing the law’s passage as the rationale for closure.

12 (9) One week before President Donald Trump
13 signed SESTA/FOSTA into law (Public Law 115–
14 164), the Department of Justice seized
15 Backpage.com and arrested Backpage employees,
16 citing promotion of prostitution and money laun-
17 dering charges, similar to the Department of Home-
18 land Security’s seizure of Rentboy.com only a few
19 years prior.

20 (10) While these websites and individual ac-
21 counts have been closing down, there has been no
22 national investigation rigorously examining the im-
23 pact of losing access to these platforms on the health
24 and safety of people in consensual, transactional sex
25 work. Regional and anecdotal information from

1 health and safety service providers and sex workers
2 has pointed to significant impacts on the health and
3 safety of people who engage in consensual, trans-
4 actional sex.

5 (11) Community organizations have reported
6 increased homelessness of sex workers, including of
7 sex workers who are caretakers for their families
8 and have lost the economic stability provided by ac-
9 cess to online platforms.

10 (12) Sex workers have reported a reduced abil-
11 ity to screen potential clients for safety, and nego-
12 tiate for boundaries such as condom use, resulting in
13 reports of physical and sexual violence.

14 (13) Many sex workers have turned to street-
15 based work, which has historically involved higher
16 rates of violence than other forms of transactional
17 sex. Street-based sex workers have frequently noted
18 practices which harm their health and safety, such
19 as the confiscation of condoms by police, or use of
20 condoms as evidence of arrest for prostitution.

21 (14) With this new level of precarity, isolation,
22 and vulnerability, there is substantial anecdotal evi-
23 dence that members of the sex work community are
24 more frequently being contacted by third parties
25 seeking to engage in management activities. This in-

1 includes both sex workers who had always worked
2 independently, as well as those who have previously
3 experienced violence and exploitation by a third
4 party.

5 (15) The United States Government has long
6 discussed the importance of assessing collateral con-
7 sequences when looking at other industries. A com-
8 prehensive study is essential to evaluate the impact
9 on the health and safety of those involved in consen-
10 sual, transactional sex, who are increasingly losing
11 access to digital platforms, which have been used for
12 harm reduction information and techniques, and to
13 screen clients. Informed government policies begin
14 with seeking out relevant information to better guide
15 our actions moving forward.

16 **SEC. 3. STUDY ON UNINTENDED IMPACTS ON HEALTH AND**
17 **SAFETY OF PEOPLE ENGAGED IN TRANS-**
18 **ACTIONAL SEX AS A RESULT OF THE LOSS OF**
19 **CERTAIN ONLINE RESOURCES.**

20 (a) STUDY.—The Secretary of Health and Human
21 Services (in this section referred to as the “Secretary”)
22 in consultation as appropriate with the Director of the
23 Centers for Disease Control and Prevention, the Director
24 of the National Institutes of Health, and the Assistant
25 Secretary for Mental Health and Substance Use shall

1 study the impacts on the health and safety of people en-
2 gaged in transactional sex resulting from the loss of access
3 to interactive computer services (as defined in section
4 230(f) of the Communications Act of 1934 (47 U.S.C.
5 230(f))) in connection with the closure of websites (includ-
6 ing Backpage.com) that host information related to sexual
7 exchange, on or after February 27, 2018, in anticipation
8 of, or in response to, the enactment of the Allow States
9 and Victims to Fight Online Sex Trafficking Act of 2017
10 (Public Law 115–164).

11 (b) INTERVIEWS AND SURVEYS.—The study under
12 subsection (a) shall include interviews with, and surveys
13 conducted by, nonprofit and community-based organiza-
14 tions that provide direct services to people engaged in
15 transactional sex.

16 (c) TOPICS.—The study under subsection (a) shall in-
17 clude assessment of the following impacts on people en-
18 gaged in transactional sex:

19 (1) Changes in access to technology-related
20 harm reduction services.

21 (2) Changes in ability to negotiate terms with
22 potential clients.

23 (3) Changes in experiences of violence from cli-
24 ents.

1 (4) Changes in interactions with law enforce-
2 ment officials, including changes in police surveil-
3 lance, stops, and arrests.

4 (5) Changes in contact from third parties.

5 (6) Changes in relationship to and reliance on
6 third parties.

7 (7) Changes in experiences of exploitation.

8 (8) Impacts on access to economic resources.

9 (9) Impacts on homelessness and housing sta-
10 bility.

11 (10) Impacts on mental health.

12 (11) Impacts on vulnerability to the trans-
13 mission of HIV and other sexually transmitted infec-
14 tions.

15 (12) Changes in participation in other
16 criminalized behavior.

17 (13) Disparities in these effects on key popu-
18 lations typically underserved by service providers,
19 specifically LGBTQI+ individuals, people living in
20 rural areas, racial and ethnic minorities, Tribal com-
21 munities, individuals experiencing exploitation and
22 trafficking, and undocumented and documented for-
23 eign nationals.

1 (14) Any other impacts on people engaged in
2 consensual, transactional sex, as determined appro-
3 priate by the Secretary for inclusion in the study.

4 (d) REPORT.—Not later than one year after the date
5 of enactment of this Act, the Secretary shall submit to
6 the Congress a report on the results of the study under
7 subsection (a) and make such report available to the pub-
8 lic.

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