
SELLING SEX: THE COSTS OF CRIMINALIZATION

Candace N. Hill

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I. Introduction

Georgina Spelvin, originally Shelley Bob Graham, is no stranger to the business of selling sex.¹ As a young adult in the 1950s, Spelvin was paid to dance in the chorus of Dallas State Fair Musicals, the Latin Quarter supper club, and finally in the chorus of the Broadway musical *Pajama Game*.² Spelvin's greatest work came in the early 1970s, during the height of the pornographic film industry in the United States, as the character of Miss Jones in Gerard Domiano's adult film, *The Devil in Miss Jones*.³ The film went on to become one of the most widely known and celebrated films in the history of pornographic cinema.⁴ Although it was also Spelvin's most well-known foray into the industry, it was not her only experience with sex work.⁵

Spelvin contributed the story of her first, and only, expedition into the world of prostitution to an anthology of stories about the lives of various sex workers released in 2009.⁶ In her contribution, Spelvin discusses her own financial issues as well as her inability to find work in the more "legitimate" field of pornographic film after the success of *The Devil in Miss Jones* because she was considered too old for that profession.⁷ Spelvin's description of her experience with prostitution was somewhat uneventful. She had another woman with experience in the industry book her appointments.⁸ She was considered something of a "Boutique item" as a result of her former work in the porn industry, was able to make a little money towards her rent, and the "Johns"⁹ that she encountered were not unpleasant towards her.¹⁰ Nonetheless, Spelvin determined after one day that prostitution was not for her.¹¹ She did, however, make clear that she "hold[s] the firm belief that prostitution

¹ *Bio*, GEORGINA SPELVIN STAR OF THE DEVIL IN MISS JONES, <http://georgiespelvin.com/page10/page10.html> (last visited Feb. 25, 2018).

² *Id.*

³ *Id.*

⁴ *See id.*

⁵ DAVID HENRY STERRY ET AL., HOS, HOOKERS, CALL GIRLS AND RENT BOYS: PROFESSIONAL WRITING ON LIFE, LOVE, MONEY AND SEX 38 (David Henry Sterry & R.J. Martin, Jr. eds., Soft Skull Press 2009).

⁶ *Id.* at 41-43.

⁷ *Id.* at 41.

⁸ *Id.* at 42.

⁹ *Id.* at 42-43. "Johns" refers to the men who procure, or purchase, services from prostitutes. *Id.*

¹⁰ *Id.* at 43.

¹¹ *Id.*

should not only be legal, but deserves some respect for its ineradicable place in society. The ‘working girl’ who makes a proper business of her business is as deserving of success as an entrepreneur.”¹²

Georgina Spelvin’s experience with prostitution is not universal. Many women who have engaged in prostitution have had different experiences and, as a result, feel differently about legalization and decriminalization efforts. Still, Spelvin’s instinct that legalization or decriminalization would be beneficial to women engaged in this work has substantial support within the industry. For example, organizations like the Sex Worker’s Outreach Project have shown support for the legalization of prostitution.¹³

Discussions of prostitution in the United States have often been hindered by strict adherence to a singular narrative. Prostitution is linked heavily with moral depravity, drug use, disease, human trafficking, and the exploitation and abuse of women.¹⁴ Women who engage in prostitution are often deemed victims of violence and coercion.¹⁵ This narrative, which is complicated by the nation’s almost universal insistence on prosecuting the women engaged in prostitution,¹⁶ ignores the fact that prostitutes in the United States are often willing participants in the work that they do.¹⁷ While many women who engage in prostitution are indeed victims of male violence,¹⁸ characterizing all women as victims is overly inclusive and ignores diverse points of view amongst the women themselves.

The victimization narrative also ignores how criminalization contributes to the harms that are often associated with prostitution. Nina Hartley, a well-known porn star and sex worker’s rights activist, insists

¹² *Id.*

¹³ Andrew Breiner, *These 3 Graphs Could Change Your Mind About Legalizing Sex Work*, THINKPROGRESS (July 31, 2015, 6:01 PM), <https://thinkprogress.org/these-3-graphs-could-change-your-mind-about-legalizing-sex-work-346ea00c8037#.ieg1vdr1c>; see also Liva Gershon, *What Sex Workers Want*, BOSTON MAGAZINE (Nov. 24, 2015, 2:52 PM), www.bostonmagazine.com/news/blog/2015/11/24/sex-workers/.

¹⁴ See Naima Karp, *Exposing the Top 11 Stereotypes of Sex Workers*, PUCKER MOB, <https://web.archive.org/web/20160617224855/www.puckermob.com/lifestyle/exposing-the-top-12-stereotypes-about-sex-workers> (last visited Feb. 25, 2018).

¹⁵ *Id.*

¹⁶ *US Federal and State Prostitution Laws and Related Punishments*, PROCON.ORG (July 14, 2016, 9:44 PM), <https://prostitution.procon.org/view.resource.php?resourceID=000119>.

¹⁷ STERRY ET AL., *supra* note 5 at 41-42.

¹⁸ See Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27(3) WOMEN AND HEALTH 37, 40-41 (1998), <http://www.prostitutionresearch.com/Farley%26Barkan%201998.pdf>.

that “the negative effects of sex work come from society’s judgments and prejudices.”¹⁹ It is not difficult to see how criminalization²⁰ contributes to those judgments and prejudices.²¹

Whatever the reason a particular woman chooses to engage in prostitution in the United States, that choice is accompanied by a range of issues specific to the industry. Stigmatization, as well as the lack of access to health care and the criminal justice system, makes women engaged in prostitution particularly susceptible to untreated drug issues, mental health disorders, and other health issues, including physical and mental abuse. This note will discuss how these issues are affecting women engaged in prostitution and explain how criminalization is a contributing factor in perpetuating these problems. This note will further explain how current models of legalization and decriminalization have both succeeded and failed to address these issues. This note will conclude with an alternative to the current models for prostitution laws, as well as an explanation for how that alternative would benefit the health care needs of women engaged in prostitution. The conclusion will also offer a suggestion for how to fund health related services for women who are engaged in prostitution in a way that makes better use of tax payer funds.

The discussions in this note will be limited to a particular subset of individuals who are engaged in prostitution. Specifically, this note will focus on the health issues of women who are consensual participants in prostitution. While the importance of, and need for, meaningful discussion of human trafficking in the United States is undeniable, the particular issues associated with trafficked women are beyond the scope of this note. Additionally, while a certain percentage of prostitutes in the United States are men,²² they too are beyond the scope of this note.

Any meaningful conversation about the legalization of prostitution in the United States requires an acknowledgment that prostitution has not always been considered a criminal offense in the United States.²³ In

¹⁹ STERRY ET AL., *supra* note 5, at 221-222.

²⁰ Criminalization refers to the act of making something illegal, turning something into criminal conduct, or a person into a criminal. *Criminalize*, MERIAM-WEBSTER (11th ed. 2003).

²¹ TREENA ORCHARD, TIANIAN ZHENG & SUSAN DEWEY, *SEX WORKERS AND CRIMINALIZATION IN NORTH AMERICA AND CHINA ETHICAL AND LEGAL ISSUES IN EXCLUSIONARY REGIMES* 3 (Springer International Publishing 2016).

²² *Prostitution in the United States-The Statistics*, PROSTITUTION EDUCATION NETWORK, <http://www.bayswan.org/stats.html> (last visited Feb. 25, 2018).

²³ Melissa Gira Grant, *When Prostitution Wasn't a Crime: The Fascinating History of Sex*

fact, anti-prostitution laws are relatively new developments, first appearing in the 20th century.²⁴ Part II of this note will provide a short history of prostitution and prostitution laws, allowing for a more informed understanding of the historical, social, and political policies and justifications behind the current system.

Part III will discuss specific health issues that disproportionately impact women who are engaged in prostitution in the United States. The link between criminalization and both physical and mental abuse will be discussed, as well as how the stress of stigmatization has contributed to the link between drug abuse and poor mental health with prostitution. Most importantly, the impact criminalization has on the ability of women who engage in prostitution to both seek healthcare and gain access to the criminal justice system will be demonstrated and explained.

Part IV will discuss the financial costs of criminalizing prostitution. A lone study conducted in the 1980s remains the only large scale exploration of the costs of prostitution in the United States.²⁵ The results of that study indicated that the monetary costs of criminalization to taxpayers were staggering.²⁶ Smaller scale studies in various places across the United States indicate that monetary costs on taxpayers have not improved since the 1980s. This section will also provide some discussion on the non-monetary costs to the general public of criminalization of prostitution.

Part V will focus on current models of prostitution legalization and decriminalization from around the world. The Swedish model, currently the most celebrated model²⁷ for prostitution laws in the world, because of its focus on protecting women while still condemning the purchase of a prostitute's services,²⁸ will be discussed in depth to reveal where the model has both succeeded and failed to address the needs of women who engage in prostitution. The current model being utilized in Nevada will also be discussed, along with several other well-known models from

Work in America, ALTERNET (Feb. 18, 2013, 9:43 AM), <http://www.alternet.org/news-amp-politics/when-prostitution-wasnt-crime-fascinating-history-sex-work-america>.

²⁴ *Id.*

²⁵ See Julie Pearl, *The Highest Paying Customers: America's Cities and the Costs of Prostitution Control*, 38 HASTINGS L. J. 769 (1986).

²⁶ *Id.* at 769.

²⁷ Michelle Goldberg, *Swedish Prostitution Law is Spreading Worldwide – Here's How to Improve It*, THE GUARDIAN (Aug. 8, 2014), <https://www.theguardian.com/commentisfree/2014/aug/08/criminalise-buying-not-selling-sex>.

²⁸ *Id.*

around the world. Part V will also discuss diversionary programs,²⁹ which have become popular for handling drug offenses in the United States, and how these programs have been applied to prostitution offenses.

Part VI will discuss the differing viewpoints about legalization, the identity of the prostitute, and the competing suggestions for shaping prostitution laws and regulations in the future. Finally, Part VII will include suggestions for state, federal, or municipal legislation moving forward.

II. *History of Prostitution in the United States*

A. *Prostitution in Early America*

In 1721, there were fewer than 700 free men living in what would later become the state of Louisiana.³⁰ In an effort to prevent these men from engaging in relationships with the Native American women in the area, the French government sent eighty women by ship to the colony in the hopes that these women would marry the male colonists.³¹ These women were chosen from prisons across France, most of them having served time for the offense of prostitution.³² When these women arrived in the colony, most began to take up prostitution again, finding that it paid more than being married to one of the men that inhabited the colony.³³ These men would have to wait for different women to arrive if they wanted wives.³⁴

This was largely the story of prostitution in the early days of the colonies and then the United States. Women arrived from all over the world to work in American brothels and streets, selling sex to the overabundance of men who occupied the land at that time.³⁵ California, especially during the gold rush, was filled with women working in parlors,

²⁹ See *Pretrial Diversion Programs in Connecticut*, OFFICE OF GOVERNMENTAL ACCOUNTABILITY (Jan. 25, 2007, 9:43 PM), <http://www.ct.gov/ova/cwp/view.asp?a=2661&q=321094> (providing an overview of what kinds of diversion programs are offered in one state, who those programs are for, and what they consist of).

³⁰ Grant, *supra* note 23.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

dives, and gambling houses.³⁶ In 1933, one journalist, Herbert Asbury, stated that “[i]t has been said that by the end of 1852, there was no country in the world that was not represented in San Francisco by at least one prostitute.”³⁷

The largest red light district in the United States appeared in New Orleans in 1897.³⁸ The red light districts, which centralized the sale of prostitution into a single area of the city, allowed the working women to develop more formal governance structures.³⁹ Consisting mainly of brothels, the red light districts provided women with safer working environments.⁴⁰ They also provided a range of employment opportunities for non-prostitutes in maintenance and as performers.⁴¹

Particularly striking about this time period was the lack of regulation surrounding prostitution. Women in many cases were able to run their own businesses with little intervention from the legal system.⁴² This freedom, however, was not to remain a permanent part of the story of prostitution in the United States.

B. Early Efforts to Punish Women Engaged in Prostitution

Prior to criminalization, there were some efforts on behalf of law enforcement and government officials to both control and punish women who were engaged in prostitution. Even though their particular way of earning money was legal, these women were still viewed as social outcasts.⁴³ These women were viewed as immoral because they had sex outside of marriage, they were economically independent, and they lived without the control of men.⁴⁴ This made them targets for police harassment.⁴⁵

Many of these women were charged with crimes that, while not

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

technically punishing the act of selling sex, were designed to punish certain behaviors that were associated with the act of selling sex.⁴⁶ For example, many cities and states adopted vagrancy laws that punished people for being in public at restricted hours of the night.⁴⁷ Most charges made against these women were intended to keep them off the streets and out of the public eye rather than to actually keep them from engaging in prostitution. Notably, because prostitution was legal, these women were more likely to challenge their charges and were more successful at securing their own release from prison.⁴⁸

C. Criminalization

The 20th century saw a rise in efforts to end prostitution nationwide. Social reformers took up the cause of reframing prostitution as a “social disease” in and of itself.⁴⁹ New policies were adopted that sought to obstruct and end the red light districts.⁵⁰ These laws targeted brothels by making owners criminally liable for prostitution on their property.⁵¹ By 1916, at least forty-seven cities had closed their red light districts.⁵² The start of the First World War brought new laws targeting prostitution near military bases.⁵³ These laws, a direct response to the growing public view of prostitution as inherently dirty, proposed to protect military men from sexually transmitted infections.⁵⁴

Much of the push for eliminating prostitution in the United States came from early women’s rights activists who viewed prostitution as degrading and harmful for women.⁵⁵ Notably, some of the strongest opposition to criminalization efforts came from the prostitutes themselves.⁵⁶ In a group letter sent to the New York Evening Journal, Washington D.C.-area prostitutes wrote:

Knowing that public opinion is against us, and that the passing of

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ *Id.*

the Kenyon 'red Light' Bill is certain, we, the inmates of the underworld, want to know how the public expects to provide for us in the future? We don't want 'homes.' All we ask is that positions be provided for us. The majority will accept them. We must live somehow. We are human."⁵⁷

It is clear that these women could see problems with the public's call for the end of their trade. Without other options, how would these women provide for themselves?

Anti-prostitution legislation passed,⁵⁸ but it did not succeed in ending prostitution. Instead, it created a more dangerous work environment and additional health hazards for women engaged in prostitution.⁵⁹

III. *Health Implications of Criminalization*

Prostitution has always been a dangerous profession for women.⁶⁰ Unfortunately, it seems as if the hazards of being a sex worker have increased overtime, despite increasing social awareness and lessened stigma.⁶¹ Women who engage in prostitution suffer from a range of issues, from physical and mental abuse by clients, to issues with access, and willingness to access, health care.⁶² These issues are aggravated as a result of criminalization.⁶³

A. *Violence*

One of the issues impacting the health of women engaged in prostitution is violence. One study that included questionnaires and interviews with women who engaged in prostitution in San Francisco revealed that 82% of women who responded had been physically assaulted.⁶⁴ Of those women, 55% reported that they had been assaulted by customers⁶⁵ and 8% reported that their attacks resulted in serious

⁵⁷ *Id.*; see generally William Leavitt Stoddard, *Red Lights of Washington D.C.*, PEARSON'S MAGAZINE, Feb. 1914, 233, at 234.

⁵⁸ Grant, *supra* note 23.

⁵⁹ See Manpreet Abrol, *The Criminalization of Prostitution: Putting Women's Lives at Risk*, 3 THE J. OF HIST. STUD. 1, 1 (2014), <http://jps.library.utoronto.ca/index.php/prandium/article/viewFile/21843/17744>.

⁶⁰ *Id.*

⁶¹ *Id.* at 3, 6-7, 9.

⁶² *Id.* at 9.

⁶³ *Id.*

⁶⁴ Farley, *supra* note 18, at 40.

⁶⁵ *Id.* at 40-41.

physical injury, such as knife and gunshot wounds.⁶⁶

Equally terrifying is the prevalence of sexual assault amongst these women, with 68% reporting having been raped since entering into prostitution.⁶⁷ Among those women, many reported having been raped more than five times.⁶⁸ Many women reported incidents where customers recorded their interactions without permission.⁶⁹

Homicide rates among women who engage in prostitution tend to be higher than among women not engaged in prostitution. One study conducted in Colorado Springs, Colorado showed that between 1967 and 1999 the mortality rate of homicide for women who engaged in prostitution was 229 out of every 100,000 active prostitutes.⁷⁰ This rate was 17.7% higher than the standardized mortality rate for non-prostituting women.⁷¹

There are indications that decriminalization or legalization of prostitution could have positive effects on these numbers. Women who are engaged in prostitution in a system that criminalizes their actions are less likely to seek the assistance of police when they are assaulted or victimized.⁷² Their status as prostitutes exposes them to the possibility of prosecution if they draw attention to their work. It is unlikely that women will risk being arrested to make a complaint to the police.⁷³ Criminalization also means that these women are limited to unsafe working conditions. Without legal status, these women are not able to conduct their business in a way that would prevent abuse.

B. Drug Abuse

Prostitution is often associated with drug use – many stereotypes suggest that women who engage in prostitution do so to fund their drug habits.⁷⁴ In reality, the link between prostitution and drug use is much

⁶⁶ *Id.* at 41.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ John J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 AM. J. OF EPIDEMIOLOGY 778, 778 (Apr. 15, 2004), <http://aje.oxfordjournals.org/content/159/8/778.full>; see Abrol, *supra* note 59, at 2 (discussing the mortality rate among prostitutes in Canada).

⁷¹ Potterat, *supra* note 70.

⁷² Valeriya Metla, *Prostitution: Should it be Legalized or Criminalized?*, LAW STREET (Feb. 25, 2015), <http://lawstreetmedia.com/issues/law-and-politics/prostitution-legalized-criminalized/>.

⁷³ *Id.*

⁷⁴ Stefania Morozini, *The Real Link Between Drug Use and Sex Work*, TALKING DRUGS

more complex.⁷⁵ One study conducted in Portland, Oregon showed that while many prostitutes were addicted to drugs prior to their first experience with prostitution, it was equally likely that a woman would become addicted to drugs as a consequence of her work as a prostitute.⁷⁶ A separate study conducted in Connecticut demonstrated that many prostitutes⁷⁷ begin using drugs to escape from the difficulties of the industry, such as abuse from clients.⁷⁸ Criminal laws against prostitution contribute to this by making it more difficult for prostitutes to seek assistance when there is abuse and by perpetuating negative stereotypes about prostitutes by criminalizing their conduct.

C. Psychological Health

Opponents of prostitution legalization often focus on the psychological state of women who are engaged in prostitution. One study found that 88% of 315 prostitutes surveyed in Canada, Colombia, and Mexico in 2003, described verbal assaults being prevalent throughout the trade.⁷⁹ The frequency of rape and other abuses causes many prostitutes to suffer from posttraumatic stress disorder (PTSD).⁸⁰ One study found a PTSD prevalence rate of 68% among prostitutes from nine countries.⁸¹ A separate study conducted in 2008 found that 52.9% of the 278 street-based Miami prostitutes who were examined had symptoms of moderate to severe depression.⁸²

Other psychological problems that have been found amongst women who engage in prostitution are sexual dysfunction and disassociation.⁸³ Some women have lost the ability to view their chosen sexual

(Dec. 3, 2011), <http://www.talkingdrugs.org/drug-use-and-sex-work-what-is-the-real-link-between-them>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ The survey in question was careful to highlight that drug use as escapism is not unique to prostitutes. Morozini, *supra* note 74. There are women and men in all careers who rely on drugs as a coping mechanism. *Id.* The correlation between prostitution and drug addiction is not causal. *Id.*

⁷⁸ *Id.*

⁷⁹ Melissa Farley, "Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized, 10 VIOLENCE AGAINST WOMEN 1087, 1104 (2004).

⁸⁰ *Id.*

⁸¹ *Id.* at 1105.

⁸² Hilary L. Surratt et al., *The Connections of Mental Health Problems, Violent Life Experiences, and the Social Milieu of the "Stroll" with the HIV Risk Behaviors of Female Street Workers*, 17 J. OF PSYCHOL. AND HUM. SEXUALITY 23, 23-4 (2008).

⁸³ Farley, *supra* note 79, at 1105.

partners separately from the “johns” that they have worked for, leading to an inability to experience normal human relationships.⁸⁴ Other women reported feeling disconnected from their own bodies, and being unable to view themselves as more than a product.⁸⁵

Other studies examining the mental health of sex workers found that there is little to no difference between the psychological condition of prostitutes and non-prostituting women. One study was conducted using surveys of prostitutes and non-prostituting women in New Zealand.⁸⁶ Both sets of women were asked to reflect on their experiences with their work.⁸⁷ The study found no statistical difference between levels of relationship satisfaction expressed by the women in both groups.⁸⁸ The study also found no statistical difference between the self-esteem reported by prostituting and non-prostituting women.⁸⁹ Overall, the study concluded that women who engage in prostitution are not guaranteed to have mental health outcomes substantially different from women who engage in other trades.⁹⁰

A separate study conducted in the early 2000s sought to analyze the level of emotional exhaustion faced by active prostitutes.⁹¹ This study surveyed women engaged in prostitution as well as women engaged in high stress healthcare professions, such as nursing.⁹² The study indicated that the level of emotional exhaustion suffered by prostitutes did not differ significantly from that experienced by women in the healthcare professions.⁹³

While it is possible that there is a connection between prostitution and poor mental health, that is not itself a reason for criminalizing prostitution. There is the possibility that many women have mental health issues prior to the decision to engage in prostitution, which is a problem entirely separate from the issue of prostitution itself.⁹⁴ Also, if women

⁸⁴ *Id.*

⁸⁵ *Id.* at 1106.

⁸⁶ Sarah E. Romans et al., *The mental and physical health of female sex workers: A comparative study*, 35 AUSTRALIAN AND N.Z. J. OF PSYCHIATRY 75 (2001).

⁸⁷ *Id.*

⁸⁸ *Id.* at 77.

⁸⁹ *Id.* at 78.

⁹⁰ *Id.* at 79-80.

⁹¹ Ine Vanwesenbeeck, *Burnout Among Female Indoor Sex Workers*, 34 ARCHIVES OF SEXUAL BEHAVIOR 627 (2006).

⁹² *Id.*

⁹³ *Id.* at 633.

⁹⁴ If there are women who are entering prostitution as a result of the barriers that mental

who develop mental health issues after engaging in prostitution do so because of the prevalence of abuse within the trade, that is a valid reason for legalizing or decriminalizing the profession so that these women will have recourse when abuses occur or will be able to conduct their business in a way that makes abuse less common.

IV. *Financial and Other Implications of Criminalization*

While the main issue with the criminalization of prostitution is its impact on women actually engaged in prostitution, criminalization also carries consequences for the general public. In 2006, there were an estimated 79,700 individuals in the United States arrested on charges of prostitution.⁹⁵ That number has decreased slightly each year since 2016, with an estimated 56,600 arrests made for prostitution in 2012.⁹⁶ These numbers have financial consequences for tax payers whose money is used to fund the monitoring, arrest, and prosecution of individuals who are engaged in prostitution.⁹⁷

There have been few studies conducted on the financial costs of prostitution criminalization in the United States. One study conducted in 1985 included a “detailed cost analyses for sixteen of the nation’s largest cities.”⁹⁸ The study concluded that those sixteen cities spent an average of \$7.5 million enforcing prostitution laws.⁹⁹ This was more than half of what the cities spent on either education or public healthcare.¹⁰⁰ One of the cities, Dallas, Texas, spent over \$10 million on prostitution control that year.¹⁰¹

While large scale studies on the financial cost of anti-prostitution laws are scarce, there are some reports for individual jurisdictions. In 2011, Texas spent roughly \$8 million on enforcing the state’s strict anti-prostitution laws.¹⁰² Harris County, in Texas, spent \$2.3 million alone

health problems create in seeking employment, there is an issue of access to mental health care and resources that would allow these women to have other options beyond prostitution.

⁹⁵ *Estimated arrests of all persons in the United States*, EASY ACCESS TO FBI ARREST STATISTICS: 1994-2012, https://www.ojdp.gov/ojstatbb/ezaucr/asp/ucr_display.asp (last visited Feb. 25, 2018).

⁹⁶ *Id.*

⁹⁷ Pearl, *supra* note 25, at 769.

⁹⁸ *Id.* at 772.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 769.

¹⁰² Mark Lisher, *Strict Texas Prostitution Laws Cost Taxpayers \$8 Million a Year*, TX. WATCHDOG (Jan. 28, 2011), <http://www.texaswatchdog.org/2011/01/strict-texas-prostitution->

on housing, care, and food for individuals arrested for prostitution per year.¹⁰³ The costs amounted to slightly less than \$50 per person held on prostitution charges.¹⁰⁴

Financial costs are not the only losses suffered by taxpayers as a result of the criminalization of prostitution. Enforcement of anti-prostitution laws requires the efforts of law enforcement. If police officers are preoccupied investigating and arresting individuals for prostitution, there is less time reserved for the investigation of violent crimes. In 1985, prostitution arrests cost taxpayers “300 hours daily, or 2,170 hours weekly, of precious police man-hours.”¹⁰⁵ Of a reported 15,000 violent crimes in that year, only 2,665 resulted in arrests.¹⁰⁶ In comparison, there were 7280 prostitution arrests made in that year.¹⁰⁷

V. *Existing Models*

Legalization and decriminalization efforts have been made in other countries, as well as in individual jurisdictions within the United States. Some of these efforts have been, in some ways, successful at protecting and empowering the women engaged in prostitution. Some efforts have created new risks for these women, as well as patronized them. The successes and failures of existing programs can, and should, be analyzed for the purpose of developing new policies that would reflect the needs of the women that they impact in addition to the needs of the general public.

A. *Models for Legalized Prostitution*

1. *The Swedish Model*

In 1999, Sweden overhauled its existing prostitution laws with the passing of the Sex Purchase Law.¹⁰⁸ At the time, this law was revolutionary in that it decriminalized prostitution.¹⁰⁹ Women who engage in prostitution in Sweden are now offered a range of services, such as drug

laws-cost-taxpayers-8-million-a/1296228148.column.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Pearl, *supra* note 25, at 769.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Kelsey Fleharty, *Targeting the Tricks of the Trade: A Comparative Analysis of Prostitution Laws in Sweden and the United States*, 15 OR. REV. INT’L L. 443, 445 (2013).

¹⁰⁹ Goldberg, *supra* note 27.

treatment and career planning.¹¹⁰ However, Sweden's Sex Purchase Law is not without some element of criminalization. Men who purchase sex can be held criminally liable if they are caught doing so.¹¹¹

The rationale behind Sweden's prostitution model is simple. The Sex Purchase Law is premised on the notion "that a legalized sex trade is fundamentally irreconcilable with gender equality and that legalization leads to undesirable consequences."¹¹² The law relies on the theory that prostitutes are "victims of male violence" and that the belief that these women can engage in prostitution willingly is based on an illusion of autonomy.¹¹³ The Swedish government determined that, if prostitutes are to be viewed as the victims of sexual violence, it is inconsistent with that narrative to continue prosecuting them.¹¹⁴

What the Swedish Sex Purchase Law does is remove the fear of prosecution from the prostitute's daily life, but it does not go far enough to optimize conditions for these women. Many women who are engaged in prostitution in Sweden argue that Sweden's new laws have only succeeded in pushing prostitution further underground.¹¹⁵ Men who purchase sex, because of fear of arrest and prosecution, now insist that these encounters happen in more secluded areas where violence is more likely to occur.¹¹⁶ Prostitutes in Sweden also reported a change in their client base.¹¹⁷ The ideal clients, well-off family men, were less likely to seek out prostitutes, increasing the risk that any particular client the prostitute had would be more aggressive.¹¹⁸

Another argument against the Swedish model for prostitution legislation is that it severely restricts the autonomy of those women that engage in prostitution willingly. Supporters of the Swedish model argue that "[p]rostitutes are not independent actors but rather victims of a society that forces women to submit their bodies to male domination under the pretense of basic economic theory."¹¹⁹ While it cannot be denied that

¹¹⁰ Fleharty, *supra* note 108, at 447.

¹¹¹ *Id.* at 446.

¹¹² *Id.* at 447.

¹¹³ *Id.* at 448.

¹¹⁴ *Id.* at 447.

¹¹⁵ *Id.* at 451; *see also* Breiner, *supra* note 13.

¹¹⁶ Fleharty, *supra* note 108, at 451.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 453.

there are many prostitutes who are victims of male coercion and domination, the fact that there are prostitutes willing to stand in opposition to this characterization of prostitution demonstrates that not all prostitutes fall within this narrative of victimization.¹²⁰

Pye Jacobson, a Swedish sex worker, has argued that “[t]here are a lot of occupations that we take because we need to survive” but that does not make prostitutes victims.¹²¹ Jacobson argues that in many ways the Swedish legislation has worked to hurt prostitutes.¹²² Not only has the legislation resulted in more dangerous working conditions overall, it has also led to an increase in stigmatization.¹²³ Jacobson says that “you are a victim until you say that this is not a problem for me, and if you insist on working, and insist on continuing doing this, then you are ‘bad’ and will be punished.”¹²⁴ Jacobson indicates that the stereotypes placed on prostitutes and their clients have had a negative impact on those individuals’ mental health.¹²⁵ She states that “[t]he more stereotyped that you are, the more dehumanized that you are.”¹²⁶

While supporters of the Swedish model of prostitution legislation have ignored the concerns of prostitutes while arguing in support of that legislation, it is arguable that ignoring the concerns of the Swedish Sex Purchase Law’s target population is a form of victimization in itself. Legislatures should take into consideration the concerns of the population that they seek to regulate, because that population has a deeper understanding of the issues involved. To seek to protect women who are engaged in prostitution while ignoring the voices and the concerns of women that you seek to protect, appears misguided and patronizing as well as inconsistent with Sweden’s stated goal of gender equality.¹²⁷

2. Nevada’s Brothel System

Nevada provides a model for prostitution legalization and regulation.¹²⁸ Brothels are only permitted in counties with a population of less

¹²⁰ *Id.* at 452-3.

¹²¹ ALIYA, *Sweden: “We Want to Save You. And if You Don’t Appreciate It, We Will Punish You!”*, SEX WORKERS’ RIGHTS ADVOC. NETWORK (June 22, 2009), <http://swannet.org/node/1512>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Fleharty, *supra* note 108, at 447.

¹²⁸ Nev. Rev. Stat. Ann. § 201.354.

than 400,000 people.¹²⁹ The women who are employed as prostitutes must be twenty-one years old in most counties, and eighteen in a minority of counties.¹³⁰ In 2015, there were around 500 prostitutes working in thirty brothels across Nevada.¹³¹

A recent study of these brothels indicated favorable results for the women who lived and worked in them. Among the surveyed workers, 84% felt that their jobs were safe.¹³² They also indicated that they were “free to come and go, and [were] bound only by their contract.”¹³³ These workers indicated that the reason they felt safe working in these brothels is that “the police, employers and co-workers were there to protect them.”¹³⁴ This study also revealed no evidence of trafficking in Nevada’s legal brothels.¹³⁵

There is a lot that Nevada’s model for prostitution legislation does right. Women in these brothels are afforded a level of safety and security that other women engaged in prostitution are not. With that said, Nevada’s system is not without its flaws. Because prostitution is limited only to areas with fewer than 400,000 people, the opportunity for women who wish to enter into legal sex work to find employment in a brothel is limited. Women who are not able to enter into work in one of these legal brothels often resort to street-prostitution, which is not legal in Nevada.¹³⁶ This involves all of the typical risks associated with prostitution, including the risk of prosecution. Nevada has made street-prostitution a misdemeanor criminal offense, thereby separating prostitutes into two categories: (1) those that are legally employed as sex workers and (2) those that are criminals.¹³⁷

¹²⁹ Vivian Giang, *Everything You Ever Wanted To Know About Prostitution in Nevada*, BUS. INSIDER (Dec. 14, 2011, 4:30 PM), <http://www.businessinsider.com/prostitution-legal-nevada-prostitutes-brothels-sex-2011-12?op=1/#x-workers-are-considered-independent-contractors-and-dont-receive-unemployment-retirement-or-health-care-benefits-11>.

¹³⁰ *Id.*

¹³¹ Metla, *supra* note 72.

¹³² Barbara G. Brents, *Nevada’s Legal Brothels Make Workers Feel Safer*, THE NEW YORK TIMES (Jan. 23, 2014), <http://www.nytimes.com/roomfordebate/2012/04/19/is-legalized-prostitution-safer/nevadas-legal-brothels-make-workers-feel-safer>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Giang, *supra* note 129.

¹³⁷ *Id.*

3. *The Dutch Model*

The Dutch Model for prostitution legislation is one of legalization with government regulation. Brothels were banned in the Netherlands in 1911.¹³⁸ In order to end abuses in the sex work industry, in 2011, “the Netherlands decided to change the law to reflect everyday reality.”¹³⁹ The Netherlands now issues licenses to control brothels that force business owners to ensure health and safety conditions for prostitutes.¹⁴⁰ Prostitution is considered a legitimate occupation and prostitutes are entitled to the same rights and obligations as workers in other professions.¹⁴¹ Prostitutes in these brothels must be over the age of consent and do the work voluntarily.¹⁴² The Dutch legislation allows the government to “exercise more control over the sex industry and counter abuses.”¹⁴³ There are between 3,500 and 4,000 prostitutes employed in 600-700 clubs and private brothels across the Netherlands.¹⁴⁴

Prostitutes also have the option to work for escort agencies or as self-employed workers from home.¹⁴⁵ Self-employed prostitutes must be registered and the Netherlands intends to subject all forms of commercial sex work to licensing in the future.¹⁴⁶ The Netherlands also wants to make the act of soliciting illegal prostitution an offense.¹⁴⁷ Street prostitution is allowed in ten Dutch cities, where an estimated 320 prostitutes work daily.¹⁴⁸

Prostitutes in the Netherlands receive many benefits from this system. Because prostitution is considered a legitimate trade, prostitutes are able to form their own unions.¹⁴⁹ Local authorities are able to establish

¹³⁸ *FAQ-Prostitution in the Netherlands*, RNW MEDIA, <https://www.rnw.org/archive/faq-prostitution-netherlands> (last visited Feb. 25, 2018) [hereinafter FAQ].

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ FAQ, *supra* note 138.

¹⁴⁹ *Id.*

by-laws governing safety, hygiene, and working conditions in brothels.¹⁵⁰ Brothels can also be prevented from forcing prostitutes to consume alcohol or engage in unsafe sex. Brothels can also be compelled to allow health services or interest groups unrestricted access to their premises.¹⁵¹ Pamphlets are distributed to brothel owners, as well as to prostitutes, to make them aware of the social and health services that are available to them.¹⁵² One of the greatest benefits provided by the Dutch prostitution laws is the ability to rely on law enforcement to ensure safety.¹⁵³

The Dutch model of legislation has resulted in some concerns about human trafficking and underage prostitution.¹⁵⁴ To combat this issue, the Netherlands has taken several steps to ensure that the women engaged in prostitution do so consensually and legally.¹⁵⁵ While police are generally not allowed to keep a registry of prostitutes, they are allowed to keep a temporary registry for the purpose of tracking and investigating the possibility of trafficking.¹⁵⁶ A special phone line has been established so that members of the public can anonymously report suspicious activity.¹⁵⁷ Prostitutes and clients are more likely to report suspicious activity or abuse because they are not at risk of prosecution. Brothel owners found to have employed either a minor or any person who is under coercion are subject to the loss of their license and the closing of their business.¹⁵⁸ These measures are taken to help ensure the safety of the profession, as well as to make it easier for law enforcement to track and to investigate incidents of abuse and trafficking.

4. *The New Zealand Model*

New Zealand passed The Prostitution Reform Act in 2003 to replace laws that criminalized prostitution.¹⁵⁹ The purpose of the act in-

¹⁵⁰ *Id.*; see Abrol, *supra* note 59, at 4.

¹⁵¹ FAQ, *supra* note 138.

¹⁵² *Id.*

¹⁵³ *See id.*

¹⁵⁴ *See id.*

¹⁵⁵ *See id.*

¹⁵⁶ FAQ, *supra* note 138.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ The Prostitution Reform Act (Act No. 28/2003) (N.Z.), <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>.

cluded a framework for (1) safeguarding the human rights of sex workers, (2) promoting the welfare and the occupational health and safety of sex workers, (3) ensuring public health, (4) prohibiting the use of persons under eighteen years of age in prostitution, and (5) implementing related reforms.¹⁶⁰ New Zealand brothels require licenses and permits.¹⁶¹ They are also subject to health inspections.¹⁶² Police are utilized to ensure the safety of workers and managers.¹⁶³

The Prostitution Reform Act (PRA) resulted in the formation of the Prostitution Law Review Committee (PLRC).¹⁶⁴ This committee includes current and former government officials, members from various non-governmental organizations, and representatives from the sex worker community.¹⁶⁵ The function of this committee is to “review and critique the impact of the laws in place, and if need be, make recommendations to institute new laws and legislations which better the lives of sex workers in New Zealand.”¹⁶⁶ New Zealand has taken the approach of including the voices of prostitutes in the process of designing legislation intended to regulate and protect them.¹⁶⁷

The benefits of New Zealand’s system are major. Prostitutes can choose their own working conditions, including where they work, who they work with, and who their clients are.¹⁶⁸ Forcing prostitutes to have sex with a client, even after that client has paid, is a violation of the PRA.¹⁶⁹ Prostitutes have complete control over who they accept as clients and when they accept them.¹⁷⁰ Prostitutes are required to take steps to ensure safe sex, such as the use of condoms.¹⁷¹ Prostitutes also have access to Work and Income New Zealand, which provides financial assistance and employment services if they wish to leave the sex work industry.¹⁷² The New Zealand government is not allowed to deny them

¹⁶⁰ *Id.* at § 3.

¹⁶¹ Abrol, *supra* note 59, at 5.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 6

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See The Prostitution Reform Act (Act No. 28/2003) (N.Z.).

¹⁶⁹ *Id.* at § 17.

¹⁷⁰ See *id.* at § 16-17.

¹⁷¹ *Id.* at § 9.

¹⁷² *Id.*; see also *Work and Income*, MINISTRY OF SOCIAL DEVELOPMENT, <https://www.workandincome.govt.nz/> (last visited Feb. 25, 2018)

access to assistance because they quit their jobs or insist that they continue working as a sex worker.¹⁷³

In 2008, the PLRC conducted a report on the impact that the PRA has had on the lives of prostitutes in New Zealand.¹⁷⁴ That report concluded that “[o]n the whole, the PRA has been effective in achieving its purpose and . . . the vast majority of people involved in the sex industry are better off under the PRA than they were previously.”¹⁷⁵ The report did indicate that improvements in some areas still needed to be made and that “many sex workers were still vulnerable to exploitative employment conditions.”¹⁷⁶ The PLRC stated that “an assessment of the PRA’s impact should be undertaken at a later date to evaluate whether the [PRA] is achieving its purpose, if any unintended consequences have arisen, and if the PRA needs amendment.”¹⁷⁷ The PLRC indicated that the impact of the PRA would become clearer by 2018.¹⁷⁸

B. Other Ways of Handling Prostitution

Several American jurisdictions have begun to adopt a different way of addressing the issue of prostitution criminalization. These jurisdictions have passed legislation adopting diversionary programs for certain non-violent offenders. While this does not legalize prostitution, it provides a way for women arrested for prostitution to avoid prosecution and, in many cases, jail time. Although these programs are designed to offer help to vulnerable populations and decrease the jail population, they are not always effective at addressing the overall needs of the people.

1. Seattle’s LEAD Program

In 2011, Seattle established a pilot program known as Law Enforcement Assisted Diversion (LEAD).¹⁷⁹ This program opened a new

¹⁷³ The Prostitution Reform Act (Act No. 28/2003), § 18 (N.Z.).

¹⁷⁴ *Prostitution Law Reform in New Zealand*, NEW ZEALAND PARLIAMENT (July 10, 2012), <https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Seattle LEAD’s on Law Enforcement Diversion*, COPS (Apr. 2013), https://cops.usdoj.gov/html/dispatch/04-2013/seattle_leads.asp.

avenue for police officers to handle low level drug and prostitution offenses. After a police officer makes an arrest, he has the opportunity to divert the individual to a community-based treatment program or to other support services rather than having that person jailed and prosecuted.¹⁸⁰ The officers have standards that they must follow in determining who to divert, but also are given substantial discretion.¹⁸¹ Those who enroll in LEAD¹⁸² are assigned a caseworker who helps them develop an individualized service plan.¹⁸³ This can mean anything from finding mental health treatment and drug counseling to finding suitable housing and job training.¹⁸⁴ If the individual completes the LEAD program, their charge is thrown out and they no longer face potential prosecution as a result of that charge.¹⁸⁵

A 2016 evaluation of LEAD indicated favorable results. People in LEAD were 60% less likely than the people in the control group to be rearrested within the first six months of the evaluation, and 58% less likely over the course of the entire evaluation period.¹⁸⁶ Unfortunately, the evaluation does not provide the recidivism rates for individual crimes. There is no way of knowing how many of those evaluated were originally arrested on prostitution charges.

The LEAD program is a success in that it makes social and health services available to women who are engaged in prostitution. Unfortunately, because those services are being offered only to individuals hand-picked by officers, and only as a method for avoiding jail time, this program does not go far enough in its goals of lowering recidivism and the jail population, and of assisting vulnerable populations. Many women who desire to engage in these programs will inevitably be shut out by officer discretion, while women who have no interest in leaving the sex work industry will be forced into these programs in order to avoid being prosecuted.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* The LEAD program is marketed as voluntary. *Id.* Those selected for the program are given the choice between participation and jail time. *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *LEAD Evaluation, LEAD LAW ENFORCEMENT ASSISTED DIVERSION* (Nov. 2016), <http://leadkingcounty.org/lead-evaluation/>.

2. *Texas' STAR Program*

Success Through Addiction Recovery (STAR) is a program established in 2003 in Texas to divert low level drug offenders and prostitutes out of the criminal justice system.¹⁸⁷ Similar to LEAD, STAR provides individualized supervision.¹⁸⁸ Individuals are referred to as clients and receive access to rehabilitative treatment facilities, social services, health care providers, and other programs.¹⁸⁹ The program focuses primarily on eliminating drug addiction, and for prostitutes to be able to take advantage of the program they must be a first offender with a documented history of drug or drug and alcohol dependency.¹⁹⁰ Prostitutes without drug addictions are excluded, as the program seems to be targeted primarily at drug addiction issues and offenses. Between 2003 and 2011 only a small number of women arrested for prostitution have qualified for the program, meaning that most arrested prostitutes faced criminal prosecution and jail sentences.¹⁹¹

3. *Baltimore City's SPD Program*

Baltimore's Specialized Prostitution Diversion (SPD) program was launched in 2009.¹⁹² Between the date that the program started and March 2011, the program accommodated 278 individuals.¹⁹³ The program was developed in response to public recognition that the revolving door of incarceration was not a solution to the issue of prostitution.¹⁹⁴ The program offers women who are arrested for prostitution, and who are not on probation or parole, the opportunity to participate in an individualized program run by social workers that are hired by the Office of

¹⁸⁷ See Lisher, *supra* note 102.

¹⁸⁸ *Overview*, HARRIS COUNTY DISTRICT COURTS, <https://www.justex.net/courts/drug/adult/ProgramOverview.aspx> (last visited Feb. 25, 2018).

¹⁸⁹ *Id.*

¹⁹⁰ *Eligibility*, HARRIS COUNTY DISTRICT COURTS, <https://www.justex.net/courts/drug/adult/Eligibility.aspx> (last visited Feb. 25, 2018).

¹⁹¹ Lisher, *supra* note 102.

¹⁹² *Abell Grant Enables SAO to Double Capacity of Prostitution Diversion Program*, OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY (Oct. 27, 2011), <https://www.stattorney.org/central/189-102711-abel-grant-enables-sao-to-double-capacity-of-prostitution-diversion-program.html> [hereinafter Abell].

¹⁹³ *Id.*

¹⁹⁴ Corey S. Shdaimah & Shelly A. Wiechelt, *Converging on Empathy: Perspectives on Baltimore City's Specialized Prostitution Diversion Program*, 22 WOMEN AND CRIM. JUST. 156, 157 (April 2012).

the State's Attorney for Baltimore City.¹⁹⁵ Women that successfully complete the program have their charges dropped.¹⁹⁶

A study conducted on SPD revealed that the program is viewed favorably amongst women who have used it.¹⁹⁷ These women indicated that they saw SPD as something separate from the traditional criminal justice system, and that the program was "a sign of greater empathy and understanding of what drives women to engage in prostitution."¹⁹⁸ These women also seemed to embrace SPD as a way of obtaining services that they were otherwise cut off from.¹⁹⁹

While the program has the support of the women who have used it, there are still issues that must be addressed. Between August 2009 and March 2011, there were 545 women who were identified as being eligible for SPD.²⁰⁰ Only half of these women were admitted to the program as a result of budget issues.²⁰¹ This means that women who may have been interested in the program and the services that it offers were cut off as a result of funding. It has also been indicated that only 75% of participants successfully completed the program.²⁰² This lends evidence to the concern that some participants may not have an interest in leaving prostitution, or in taking advantage of the services provided through the program, and only enter the program because it is the only way to avoid jail time once arrested.²⁰³

VI. Discussion

The issue of prostitution has created a rift amongst feminist academics. While nearly all feminists have come to believe that the act of selling sex should never be criminalized and that the use of coercion or force to bring women into prostitution should always be criminalized, they differ as to how to characterize prostitution generally and whether or not it should be legalized entirely or only decriminalized.²⁰⁴ One

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 159.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Abell, *supra* note 192.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Shdaimah et al., *supra* note 194, at 163.

²⁰⁴ Barbara Havelkova, *Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes*, 18 CARDOZO J.L. GENDER 55, 63 (2011). Systems that legalize prostitution impose no

group of feminists “conceptualizes prostitution as sex work and speaks about sex workers, clients, and procurers.”²⁰⁵ Sex worker proponents argue that “the inherent problem is not the nature of sex work but rather with the conditions that such work exists in today. It is the laws criminalizing sex workers and repressing their migration that need changing, not prostitution itself.”²⁰⁶ The other group sees prostitution as “sexual domination and the essence of women’s oppression.”²⁰⁷

Some sex workers have pushed back against the narrative of objectification that is advanced by opponents of prostitution.²⁰⁸ Kitty Winter,²⁰⁹ founding member of a newly re-established sex workers rights group in Boston, has stated that sex work is “not just having stuff being done to you,” but that it is “doing stuff” as well.²¹⁰ Winter, also a graduate student, emphasizes that she “could live without doing sex work, but it just makes [her] life easier.”²¹¹ She states that “people need a way to support themselves.”²¹² Winter does not paint prostitution as being the perfect choice for everyone, or even an easy choice, but acknowledges that it is a choice that women often make in order to provide for themselves and their families.²¹³ Winter argues that her organization wants “to be able to do [their] jobs safely and not be hunted down by the police, and not have stigma for [themselves] and for [their] clients too.”²¹⁴

Regardless of the stance that one takes with respect to what the inherent nature of prostitution is, legislation targeting the issue of prostitution should be concerned primarily with enhancing and optimizing the health of women who are engaged in it, ensuring that women have the

legal sanctions on the buying or selling of sex as long as those transactions fit within certain parameters. For example, the systems in place in New Zealand and Nevada are legalization models. Decriminalization, on the other hand, does not allow or regulate the selling of sex, but makes it low priority for law enforcement. One example is the Swedish model, which does not allow women to be prosecuted for the selling of sex, but instead actively sanctions men who are found purchasing or soliciting sex for money.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 64.

²⁰⁷ *Id.* at 63.

²⁰⁸ See Livia Gershon, *What Sex Workers Want*, BOSTON MAGAZINE (Nov. 24, 2015), <https://www.bostonmagazine.com/news/blog/2015/11/24/sex-workers/>.

²⁰⁹ *Id.* Winter is considered a “high class” prostitute, as she does mostly escort work and “sugaring,” which is when typically younger women establish sexual relationships with mostly older men and receive some compensation in return.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

ability to make decisions for themselves about whether to engage in sex work, and optimizing the use of funds for the benefit of taxpayers. A system must be established that serves these purposes, and that also better serves the financial needs of the general public. A system of criminalization serves only to create further harms for women who are engaged in prostitution and is not cost effective for the taxpayers that fund such a system.

VII. Conclusion

The existing models for prostitution legislation provide an opportunity for legislatures to pick and choose between what does and does not work for the women engaged in prostitution. While Sweden has made great strides in decriminalizing the sale of sex, criminalizing the purchase of sex has increased risks for prostitutes in that country. Nevada's partial legalization works for many women that are able to access jobs in the brothels, but the limited number of positions means that many women have no opportunity to work in those brothels. Overall, the model of full legalization and strict regulation used by New Zealand and the Netherlands are most likely to benefit women that are engaged in prostitution, as well as to further the needs of society.

Legislatures should consider legalizing prostitution and setting in place regulations that will ensure that brothel owners provide necessary health care for women who work in those establishments. Access to health care for women who decide to work independently should also be ensured. All sex workers should have access to social programs that are available to workers in other professions. This system will also ensure that women who experience abuse will be able to seek the assistance of law enforcement. Moreover, the ability to rely on law enforcement will discourage violence against women who are engaged in sex work. Hotlines can be established to encourage others to report abuse without the fear of prosecution.

Additionally, diversionary programs can still be established to enable women who wish to leave sex work to do so. These programs should make addiction and mental health treatment available, as well as offer access to job training and recruitment programs. These programs should not be mandatory as a way to avoid jail time or other sanctions, but as a way for individuals who have had few options to gain access to new options. This would help to lower the number of women who are engaged in the unlicensed selling of sex and make it easier to target the

most vulnerable populations, such as drug addicted women and women who have been victims of trafficking or coercion. The enormous financial costs of criminalization can be diverted to fund such programs, which is far more cost effective for the public than the revolving door of incarceration that currently traps many prostitutes.

Prostitution criminalization enhances the risks faced by women who engage in prostitution. These women suffer increased physical and psychological harms, as well as the danger of arrest and prosecution. Furthermore, criminalization creates massive costs to the public in both taxes and law enforcement resources. Legalization can decrease the risks faced by prostitutes, as well as result in a reallocation of resources to drug treatment programs, mental health programs, job training and recruitment programs, and programs aimed at combating violent crime.