Sexkopslagen in the States: An American Version of the Nordic Model to Address Sex Trafficking in the United States

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Sexköpslagen in the States: An American Version of the Nordic Model to Address Sex Trafficking in the United States

ABSTRACT

Prostitution, and the widely-encompassing commercial sex industry, has been a staple of all societies for centuries. Although the typical narrative regarding prostitution is one of moral abhorrence and criminalization, prostitution’s spotlight has been recast with the acknowledgment and advocacy against related conduct: sex trafficking. Traffickers earn about $150 million annually from trafficking operations, $99 million of which is accounted for by sex trafficking. Although the United States officially criminalized trafficking in 2000, those engaged in prostitution, whether voluntarily or via trafficking, continue to be criminalized and further victimized through legal schemes perpetuated by the federal and state governments. Various other countries—including the Netherlands and Sweden—operate very different legal systems, ranging from complete decriminalization to making only the purchase, not the sale, of sex illegal. Although every legal scheme champions different goals and values, protecting individual freedoms and targeting exploiters, no system perfectly, or even effectively, protects sex trafficking victims.

This Note proposes state-level legislative measures designed to promote victim identification and victim safety, as well as to decrease exploitation in the commercial sex industry. These policy proposals include sex purchase laws prohibiting the purchase of sex instead of the sale of sex, stricter penalties for pimps and sex buyers, increased funding for victims’ services and law enforcement education, and the criminalization of extraterritorial commercial sex with adults at the federal level.

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I. INTRODUCTION

Prostitution, facetiously named the “world’s oldest profession,” has a storied history in the United States.1 The most common image of prostitution in the United States is that of Julia Roberts as an escort shopping on Rodeo Drive amidst an adored love story involving her and one of her clients, or “johns.”2 Although television and film conveys a glamorized, Hollywood-manufactured image of prostitution, commercial sex has existed as a stigmatized area of social regulation.

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2. PRETTY WOMAN (Touchstone Pictures 1990).
since America’s founding, treated by society and the government as a grave ill eroding America’s conscience. However, in many other countries, the *Pretty Woman* story is told quite differently. The Dutch city of Amsterdam, for example, has the infamous “Red Light District,” where windows of women soliciting sexual services line the city’s famed canals, personifying the childhood image of a doll in a plastic-paned box. Somewhere between the American and Dutch formulations of the sex industry lies Sweden, the birthplace of the “Nordic Model,” which criminalizes the purchase, rather than the solicitation, of sex in order to decrease demand for commercial sex and to promote social norms against sex buying.

As the United States continues to combat sex trafficking, the conversation naturally shifts to prostitution due to the difficulty in identifying victims participating in prostitution-related activities. However, not all prostitution activity meets the federal definition of “sex trafficking,” highlighting how trafficking constitutes just one element of a multitude of complicated issues woven throughout the commercial sex industry. Feminists, sex workers, and human rights activists alike have increasingly promoted arguments in favor of decriminalizing prostitution and regulating the commercial sex industry to promote individuals’ ability to engage in sex work free of criminal charges and stigmatization.

Countries around the world have addressed prostitution and sex trafficking in various unique, innovative ways. The Netherlands pioneered the decriminalization of prostitution, making it a rich source of data covering an extended period of time. Additionally, Sweden was the first country to both develop and implement the innovative Nordic Model, an influential advancement in the discussion of prostitution and sex trafficking on the demand side of commercial sex transactions. Finally, the salience of the prostitution-legalization

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3. Thompson, *supra* note 1, at 218.
4. See *BROTTSBALKEN* [BRB] [PENAL CODE] 6:11 (Swed.).
discussion in the United States fosters a unique opportunity to propose viable, attainable solutions that could further the goals of deterring participation in the largely exploitative sex industry while simultaneously aiding efforts to combat sex trafficking.  

For the United States to address the criminal treatment of those engaged in prostitution, new state and federal legislation is necessary to deter involvement in the sex industry and facilitate law enforcement efforts to protect those vulnerable to sex trafficking. The criminal treatment of prostitution needs adjustment at the state and federal level to criminalize perpetrators rather than victims. Additionally, new legislation needs to elevate criminal punishments for those who facilitate commercial sex transactions in ways that do not currently amount to prosecutable conduct under US sex trafficking legislation, namely the Trafficking Victims Protection Act (TVPA).

This Note explores the history of and analyzes the legal structures addressing prostitution in the Netherlands, Sweden, and the United States for comparative purposes to serve as influences for more effective trafficking legislation and policy in the United States. Countries criminalize commercial sex acts differently, and those various systems serve as helpful guideposts, and cautions, for rehauling the US system.

The history of the development of laws regarding prostitution in the Netherlands, Sweden, and the United States helps explain the normative goals underlying various commercial sex systems. The effects of those national systems cover the gamut of behavior, including successes and failures at protecting those involved in the commercial sex industry, disincetivizing participation in prostitution, and discouraging organized criminal activity, namely sex trafficking. Finally, this Note will propose legislative solutions for the United States consisting of the state-level criminalization of the purchase, but not selling, of sex, increased funding for victims services and law enforcement training, and stronger penalties for convicted johns (sex buyers). Additionally, stricter pimping prohibitions and a federal criminal statute aimed at deterring participation in the commercial sex industry will further facilitate efforts to combat sex trafficking.

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II. BACKGROUND

A. The Legal History Behind Prostitution & Sex Trafficking

1. The Relationship Between Prostitution and Sex Trafficking

How a country fights sex trafficking directly relates to prostitution because of the relationship between prostitution and trafficking.\(^{10}\) Although many academics, and people generally, view prostitution as inherently harmful,\(^{11}\) the relationship between prostitution and sex trafficking remains highly debated.\(^{12}\) One proposed link stems from basic economic principles: the supply of people for commercial sex directly relates to the demand for commercial sex, and if exploiters can make a lucrative living off these kinds of transactions, they are incentivized to use whatever means necessary to meet demand, including force, fraud, or coercion.\(^{13}\) Since the prostitution industry includes both those who may be deemed willing participants and involuntary victims, the expansion of prostitution increases the rates of trafficking.\(^{14}\)

Additionally, the relationship between prostitution and sex trafficking is further defined by the prevalence of controversy surrounding the identification of trafficking victims and whether anyone in the prostitution industry participates voluntarily.\(^{15}\) Sweden's Nordic Model, which criminalizes the purchase but not the sale of a commercial sex act, is based on "a recognition that prostitution is inherently harmful and therefore, a human rights abuse."\(^{16}\) By

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12. See id. at 339–43 (discussing how “the link between prostitution and trafficking has been debated for decades without nearing anything resembling consensus”).
13. See id.
14. See id.
15. See generally Lara Gerassi, A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work, 42 J. SOC. & SOC. WELFARE, Dec. 2015, at 79, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4730391/ [https://perma.cc/7FEG-8MED] (archived Sept. 9, 2020) (discussing two camps of thought: (1) “neo-abolitionists,” who “postulate that prostitution is never entirely consensual and cannot be regarded as such; and (2) “sex positivists,” who argue “that a woman has a right to choose prostitution and other forms of sex work as a form of employment or even a career”).
contrast, Amnesty International, a large human rights organization, recently published its opinion that all forms of commercial sex should be decriminalized to protect sex workers' rights, implying that some engaged in prostitution choose to participate without coercion.\textsuperscript{17} The various countries analyzed in this Note implemented policies with differing views on the relationship between prostitution and sex trafficking, which paved the way for different normative policy goals. Additionally, various terms are used throughout these countries' regulations with intentional meanings. "Those engaged in prostitution" is used in place of "prostitutes" where possible to encompass all viewpoints on those who perform commercial sex acts, whether viewed as voluntary participants or exploited victims of sex trafficking. "Vulnerable victims" identifies individuals "particularly susceptible to . . . criminal conduct,"\textsuperscript{18} and includes those engaged in prostitution who possess certain characteristics, namely poverty, addiction, and histories of trauma or abuse.\textsuperscript{19} Finally, "johns" refers to individuals who purchase sex in a commercial transaction, or sex buyers.\textsuperscript{20}

2. The Netherlands, Sweden, and the United States: A Varying Global Perspective

The Netherlands, Sweden, and the United States provide helpful comparison points on different systems because they represent various stances on prostitution regulation and normative policy goals. Each country possesses unique catalysts for their particular prostitution and trafficking laws, policy reasons undergirding those laws, and enforcement of the laws, whose effects vary greatly. This Part will outline the major prostitution and sex trafficking statutes for each country, providing a basis for further discussion of the laws' effects.

\textsuperscript{17} Amnesty International Publishes Policy and Research on Protection of Sex Workers' Rights, supra note 6.


\textsuperscript{20} See Trafficking Terms, Shared Hope Int'l, https://sharedhope.org/the-problem/trafficking-terms/ (last visited Sept. 9, 2020) [https://perma.cc/Q67E-3G8Q] (archived Sept. 9, 2020) (defining "john" as "an individual who pays for or trades something of value for sexual acts").
B. The Netherlands

The Netherlands has historically served as a leader in the decriminalization of the commercial sex industry, despite recent proposals to ban prostitution in its major cities. The Netherlands lifted its ban on brothels in 2000, which made the operation of a prostitution business legal unless otherwise restricted by municipal rules through a General Municipal By-law. Additionally, the Netherlands passed legislative Article 250a, which "makes all forms of exploitation in prostitution punishable." Although municipalities can pursue localized licensing policies for sex businesses, municipalities cannot outright ban prostitution in their jurisdictions. As a result of the legalization of brothels, various municipalities, including Amsterdam, saw entire parts of cities inundated with sex solicitation, ushering in a wave of criticism and proposed policy reform. The election of Amsterdam's first female mayor encouraged new policy proposals related to prostitution, including the deconstruction of the Red Light District, to address the problems of increased trafficking and exploitation by tourists. In creating its current prostitution laws—which decriminalize all consensual commercial sex between adults—the Netherlands aimed to promote prostitution as legitimate sex work through decriminalization and government regulation, while also cracking down on deceptive, victim-fostering practices, such as coercive

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23. Id.

24. See id. ("[M]unicipalities are able to adopt a regulation which prescribes criteria for the commercial arrangement of the opportunity to perform sexual acts with or for a third person against payment, and can thereby pursue a local licensing policy with respect to sex businesses.").

25. See Joyce Outshoorn, Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control, 9 SEXUALITY RES. & SOC. POLY. 233, 235–36 (2012) (discussing how the Netherlands' prostitution act gave limited authority to municipalities to tailor its provisions to localized areas).


sex trafficking. The "decriminalization" of prostitution refers to the removal of criminal sanctions for participation in commercial sex, whereas the "regulation" of prostitution encompasses civil legal efforts to exercise government oversight of the commercial sex industry.

Both the regulatory and criminal components resulting from decriminalization work against punishment of participants in commercial sex transactions, but they also promote government oversight through zoning laws, licensing, and access to healthcare.

The Dutch government's webpage dedicated to prostitution, which answers questions about the legal requirements of sex workers in the Netherlands, clearly evidences the nuance and depth of the complications related to prostitution. Three out of four of the related links on the government's page directly address human trafficking and smuggling, demonstrating the interrelatedness between prostitution and sex trafficking. A forefront issue, addressed uniquely by the Netherlands, is promoting individual liberties while protecting potential victims and balancing social welfare in the pursuit of those interests. The Netherlands deliberately chose to recognize sex work as legitimate, making it unique among nations globally.

Although prostitution itself has never been formally criminalized in the Netherlands, in October 2000, the Dutch Penal Code lifted the ban on running brothels as businesses, making it "legal to operate a brothel or to organize the prostitution of others, when it takes place on a consensual basis and involves adult persons." In one sense,

32. See id.
33. See Amnesty International Publishes Policy and Research on Protection of Sex Workers' Rights, supra note 6 ("We want laws to be refocused on making sex worker[s]' lives safer and improving the relationship they have with the police while addressing the very real issue of exploitation.").
34. See Prostitution Policies in the Netherlands, supra note 28, at 2.
35. Id. See generally Jessica N. Drexler, Governments' Role in Turning Tricks: The World's Oldest Profession in the Netherlands and the United States, 15 DICK. J. INT'L L.
permitting brothel ownership legitimized commercial sex work as a viable employment option. Further, lifting the ban on brothels fostered heightened protections against pimping, which effectively serve as anti-trafficking laws, criminalizing conduct similar to that prohibited in America’s federal criminal law. Moving prostitution to legal brothels takes power away from pimps, who would otherwise conduct illicit prostitution rings, and instead provides protections through the regulation of brothels. Additionally, the refined prostitution law punishes commercial sex acts performed with women aged seventeen and younger, which protects a broader age range of minors than previously specified.

In addition to changes to its criminal code, the Netherlands adopted other civil laws to create a robust regulatory scheme for prostitution, including a licensing system for sex workers, regulation of commercial sex working conditions, and healthcare accessibility. For example, two agencies, the Inspectorate SZW and Community Health Services (GGD), are tasked with addressing complaints or questions about prostitution working conditions. Further, Dutch law prohibits brothel owners and Johns from forcing unprotected sex in an effort to prevent pregnancy and the spread of sexually transmitted diseases (STDs). The Netherlands’ licensing system and requirements for working conditions promote the goal of protecting those working in the commercial sex industry by making it safer and providing opportunities for coercive activity to be revealed. Additionally, accessibility to healthcare serves as a means to meet the physical needs of those engaged in prostitution while decreasing the healthcare costs associated with commercial sex transactions.

The Netherlands, through full decriminalization of consensual commercial sex, has utilized its civil and criminal laws to legitimize commercial sex as “work.” In addition, the Netherlands strives to protect the health of participants and combats coercive conduct committed in trafficking contexts. As a leader in decriminalized prostitution, the Netherlands has nearly twenty years of operating its regulatory and criminal systems, which are further evaluated and analyzed in Part III of this Note.

201 (1996) (describing the history of prostitution in the Netherlands, noting that prostitution has always been legal).
37. Art. 245, 248B, SR (Neth.) (previously prohibiting commercial sex with those sixteen and under).
40. See id.
42. Id.
C. Sweden

Sweden has long been a pioneer in policy proposals and decisions affecting the commercial sex industry, namely with its invention of the Nordic Model, which criminalizes the purchase, but not the sale, of sex. The Sexköpslagen (Swedish law), enacted in 1999 and recodified in 2005, makes it illegal to pay for “casual sexual relations” in Sweden, while also criminalizing those who benefit from the payments, including pimps and brothel owners. The most notable feature of this Swedish law is its purposeful avoidance of criminalizing the selling of sex, which protects those engaged in prostitution, either voluntarily or involuntarily. This feature reflects the overarching purpose of the Nordic Model, which is not to separate sex trafficking and prostitution, but to create a vulnerability identification system within prostitution. Sweden’s law acknowledges the possibility of prostitution fostering vulnerability for sex trafficking by “penaliz[ing] those with power who demand the prostitution transaction, the buyer with money or the pimp/brothel owner profiting.” Sweden’s view of the sex industry as exploitative further illustrates its policy goal of eliminating coercive commercial sex, which Swedish policymakers see as a profit scheme victimizing those in positions of inequality, including women, children, and minorities. Under this rationale, Sweden discredits the idea of prostitution as a “market opportunity” for the Swedish economy, instead adopting the idea that prostitution is inherently exploitative.

Moreover, the primary goal of Sweden’s legislative change was not punitive, but rather to

45. BROTTSBALKEN 6:11.
46. Mathieson, Branam & Noble, supra note 29, at 396.
47. Id. at 397.
48. See id.
49. See id.
encourage broader social change, with the hope of decreasing demand for commercial sex and therefore disrupting the industry.\footnote{51}{Mathieson, Branam & Noble, \textit{supra} note 29, at 400–01.}

There are two overarching aspects to the Nordic Model: social services and law enforcement.\footnote{52}{Id. at 403–11.} Within social services, two separate groups are provided services, those working in the sex industry and those aiming to discontinue purchasing sex.\footnote{53}{Id. at 403–07.} For those working in the commercial sex industry, Sweden provides various social services, including therapy, access to medical clinics, and training for professions with special proximity to those involved in the sex industry, such as law enforcement and medical personnel.\footnote{54}{See \textit{U.S. DEPT OF STATE, TRAFFICKING IN PERSONS REPORT} 439 (2019) (placing Sweden as a Tier One country for combatting human trafficking, describing its increased funding of victims services and education on trafficking issues); Mathieson, Branam & Noble, \textit{supra} note 29, at 403–06.}

For buyers, government-subsidized organizations offer voluntary counseling services for those who want to stop purchasing sex.\footnote{55}{Mathieson, Branam & Noble, \textit{supra} note 29, at 407.} These services extended to buyers highlight Sweden’s broader policy goal of changing social norms rather than just punishing participation by buyers, pimps, and brothel owners. Counseling services do not jeopardize buyers’ criminal records because johns can use these services anonymously, immunizing them from exposure to legal culpability.\footnote{56}{See \textit{id.}.}

In terms of law enforcement, Stockholm has a unique Prostitution Unit, which primarily works to arrest johns.\footnote{57}{Id. (citing Interview with Zanna Tvilling and Simon-Häggström, Law Enforcement Officers, Stockholm Prostitution Unit, in Stockholm, Swed. (Jan. 29, 2013)).} The unit operates on a city-wide level, and arrests two-to-three hundred johns annually.\footnote{58}{Id.} Moreover, there are additional Swedish laws that prohibit the purchase of sex with children and a separate provision proscribing the purchase of sex from a child between fifteen and eighteen, punishable by up to two years in prison.\footnote{59}{BROTTSBALKEN [BRB] [PENAL CODE] 6:11 (Swed.). \textit{See generally} \textit{Executive Summary: Sweden, END CHILD PROSTITUTION AND SEX TRAFFICKING} (ECPAT) 4 (2016), https://www.ecpat.org/wp-content/uploads/2016/04/EXSUM_A4A_EU_SWEDE.pdf [https://perma.cc/6CL9-5G4X] (archived Sept. 16, 2020) (discussing UN efforts to end child prostitution and sex trafficking, evaluating Sweden’s efforts); Mathieson, Branam & Noble, \textit{supra} note 29, at 407–08.}

One of the most important advancements of the Nordic Model exemplified in Sweden is the shifting of the discussion to the exploitative role of johns and pimps and away from whether those engaged in prostitution “choose” to be there.\footnote{60}{Mathieson, Branam & Noble, \textit{supra} note 29, at 425.} Governments tend to
underemphasize the demand side of the commercial sex economy, instead focusing on whether participation in prostitution should be considered "voluntary" or "exploitative." Sweden's shift to buyers highlights the difficulty in differentiating voluntary participants and sex trafficking victims, while also prioritizing the protection of those most vulnerable to exploitation in the commercial sex industry.

D. The United States

Although prostitution was a global practice at the time of America's founding, the United States did not formally criminalize sex trafficking or prostitution until 1875 with the Alien Prostitution Importation Act. The Act made the importation of women who were noncitizens for the purpose of prostitution a felony, addressing concerns related to influxes of immigration for illicit purposes. A few decades later, Congress criminalized the transportation of any woman or girl in interstate commerce for any "immoral purpose," including prostitution, with the passage of the Mann Act in 1910. The Mann Act proscribed the import of women to the United States for commercial sexual purposes, but also prohibited transporting minors for commercial sexual activity, protecting victims under the age of eighteen. However, in Hoke v. United States, the Supreme Court limited Congress's constitutional authority to only the regulation of the transportation of women in interstate commerce for commercial sexual purposes. Since Congress could not regulate prostitution itself, the Court's holding in Hoke rendered determinations about the criminality of prostitution exclusively within the states' domains.

Following the Supreme Court's holding in Hoke, criminal statutes relating to prostitution fell to states, with states passing legislation criminalizing pimps, consumers of commercial sex, and those engaged in soliciting sex acts. Although every state addressed prostitution, each one addressed its criminal sanctions differently, prioritizing the punishment of various actors in the commercial sex industry to different degrees. Pimps and sex purchasers are often eligible for

61. See id. at 383.
63. Id.
64. 18 U.S.C. § 2421 (2018); Curva, supra note 62, at 565.
67. Id.; Curva, supra note 62, at 564–65.
69. See, e.g., D.C. CODE ANN. §§ 22-2701, 2705 (West 2001) (punishing prostitution, but providing for more prison time and a higher fine for pimps); Curva, supra note 45, at 565–67.
heightened punishment under state laws, but those engaged in prostitution come into contact with the criminal justice system more frequently.\textsuperscript{70} One set of arrest data showed that between seventy-to-eighty thousand people are arrested annually for prostitution-related crimes in the United States, 70 percent of which are women in prostitution, 20 percent of which are males engaged in prostitution and pimps, and 10 percent of which are johns.\textsuperscript{71} This disparity between the heightened criminalization of pimps, but higher realized punishment rates of those actually engaging in commercial sex acts,\textsuperscript{72} likely stems from prostitution itself being more evident to law enforcement, while the facilitation of sex transactions occurs more discretely.\textsuperscript{73} As a "highly gendered" enterprise, prostitution naturally sorts participants along gender lines, with women most likely to be engaged in prostitution and men performing roles as transaction coordinators in the background.\textsuperscript{74} Law enforcement is more likely to see and criminalize acts of prostitution, whereas the behind-the-scenes facilitation is less visible and therefore less prosecuted.\textsuperscript{75} Although all states address prostitution in their criminal codes to some degree, the state of Nevada is unique in that it is the only state that permits prostitution in limited counties and circumstances.\textsuperscript{76} Although this type of statute is unique to Nevada, it could serve as a basis for the discussion of prostitution decriminalization within other states.

Although the federal government does not regulate prostitution per se, reserving this issue to the states, Congress passed related legislation with the TVPA of 2000, re-codified in 2005, which criminalizes sex trafficking and coercive acts amounting to sex trafficking.\textsuperscript{77} Though the TVPA does not directly touch prostitution, it does highlight and contribute to law enforcement's prosecution of sex trafficking, which is heavily linked to conduct occurring within prostitution.

\textsuperscript{70} Curva, \textit{supra} note 62, at 566–67.
\textsuperscript{72} \textit{Id.}
\textsuperscript{73} Curva, \textit{supra} note 62, at 566.
\textsuperscript{74} \textit{Id.} at 567.
\textsuperscript{75} \textit{Id.}
\textsuperscript{76} See \textit{NEV. REV. STAT. ANN.} § 201.354(1) (West 2019) (criminalizing the unlawful facilitation or engagement in prostitution, except in a "licensed house of prostitution," of which operation is limited to a handful of Nevada counties with populations of 700,000 or less).
Congress passed the TVPA in response to an ineffective legal framework for prostitution and the prosecution of traffickers in modern-day trafficking scenarios. Legal limitations flowed from United States v. Kozminski, where the Supreme Court held that “involuntary servitude” under 18 U.S.C. § 1584 (2018) only applied to physical and overt forms of coercion, not to subtler methods, such as fraud, that are often employed by sex traffickers. Additionally, the Mann Act, largely limited in scope, focused heavily on the “transportation” element of exploiting women and children without anticipation of the breadth of modern-day fraud and coercion techniques.

The combined effects of ineffective existing legislation and growing anti-trafficking movements globally led to the passage of the TVPA in 2000, making it the first federal law to criminalize various forms of human trafficking, including sex trafficking. The federal statute covers forced labor, involuntary servitude, and commercial sexual exploitation. The sex trafficking provision of the TVPA criminalizes those involved in the forceful, fraudulent, or coercive engagement of others in commercial sex acts or, in the case of minors, engagement in sex acts at all, regardless of use of force, fraud, or coercion. The TVPA broadly defines “commercial sex act” to include “any sex act, on account of which anything of value is given to or received by any person.” A notable feature of the TVPA that was absent in previous involuntary servitude legislation is the inclusion of punishment for “coercion.” “Coercion” as defined in the statute includes threats of harm, “any scheme, plan, or pattern” causing an individual to believe serious harm could result, and “the abuse or threatened abuse of law or the legal process.”


79. See United States v. Kozminski, 487 U.S. 931, 948 (1988) (holding the language and legislative history of § 1584 (involuntary servitude) indicates it should apply only in situations of “use or threatened use of physical or legal coercion”); Sheldon-Sherman, supra note 78, at 451.


81. Sheldon-Sherman, supra note 78, at 452.


86. Id.
physical types of "serious harm" and threatened abuses of the law capture the less obvious, more subtle forms of coercion that are effectively used on trafficking victims and were previously excluded from federal prohibition.\(^\text{87}\)

In addition to criminalizing modern means used in the trafficking of persons, the TVPA provides for heavy punishments following the commission of these crimes. If one of the prohibited means of force, fraud, or coercion is used, or the victim is less than fourteen years old, defendants face a minimum of fifteen years' imprisonment and the possibility of life imprisonment.\(^\text{88}\) If prohibited means were not employed but the victim is between the ages of fourteen and eighteen, a defendant receives between ten years and life in prison.\(^\text{89}\) In terms of sentencing, various enhancements can increase a trafficker's prison sentence, including enhancements for vulnerable victims, use of a dangerous weapon, and infliction of serious bodily injury.\(^\text{90}\) Federal sentencing guidelines provide the opportunity to enhance sentencing of sex traffickers, but federal prosecutors must use the guidelines to properly calculate severe sentences in order to maximize the guidelines' effectiveness.\(^\text{91}\) For example, prosecutors can take advantage of vulnerable victim sentencing enhancements by highlighting a victim's drug addiction and that the pimp leveraged that addiction to coerce the victim into performing commercial sex acts.\(^\text{92}\) A vulnerable victim sentencing enhancement increases a trafficker's sentence by two levels, making the punishment for trafficking significantly higher.\(^\text{93}\) The proper use of these guidelines can make penalties for trafficking conduct more severe, which makes the criminal enterprise more risky and less attractive, despite its profitability.

The new criminalization of specific conduct, coupled with heightened penalties for convicted traffickers, has made the TVPA an important enforcement mechanism in the fight against sex

\(^{87}\) Id.; Sheldon-Sherman, supra note 78, at 451 ("serious harm" now includes "more subtle means of coercion, such as psychological coercion, trickery, and other activities that were difficult to prosecute under preexisting involuntary servitude statutes"); Hilary Axam & Jennifer Toritto Leonardo, Human Trafficking: The Fundamentals, 65 U.S. ATT'YS' BULL., Nov. 2017, at 3, 11 (examples of "threatened abuses of legal processes" include "threatening to report conduct to child protective services").


\(^{91}\) Id. at 105.

\(^{92}\) See Lindsey Roberson & Shan Patel, Prosecuting Sex Trafficking Cases Using a Drug-Based Theory of Coercion, 65 U.S. ATT'YS' BULL., Nov. 2017, at 175, 182–83 ("[W]e recommend that prosecutors highlight this vulnerability [drug addiction] . . . by seeking both an appropriate 'vulnerability' jury instruction and sentencing enhancement.").

\(^{93}\) Id. at 183.
trafficking.\textsuperscript{94} Aside from its criminalization aspects, the TVPA provides important rehabilitative and protective services to victims, including access to social services, special immigration status for victims brought into the United States, and a private right of action for trafficking victims.\textsuperscript{95} These provisions more closely mirror legislation in other countries, such as the Nordic Model, in providing more penalties to those facilitating involuntary commercial sex transactions while providing much-needed victim resources.\textsuperscript{96}

However, despite the advancements of the TVPA, including the identification of victims in the commercial sex industry, the TVPA is not without critique, namely in its enforceability.\textsuperscript{97} The difficulty of proving sex trafficking through demonstration of the use of force, fraud, or coercion has made it challenging for federal prosecutors to successfully prosecute these crimes.\textsuperscript{98} The struggle to gain evidence to prove each element of a sex trafficking offense resulted in historically low numbers of prosecuted sex trafficking cases, indicating that the law makes these crimes difficult to prove.\textsuperscript{99} From 2001-2005, although the Department of Justice increased the number of filed trafficking cases by 405 percent, with ninety-one cases filed, filed cases only amounted to a small fraction of the seventeen thousand estimated instances of trafficking.\textsuperscript{100} Part of the challenges on the federal level stem from weaknesses in state laws addressing trafficking,\textsuperscript{101} since

\begin{itemize}
\item \textsuperscript{95} 22 U.S.C. § 7105(b)(1)(A) (2018); see Sheldon-Sherman, supra note 78, at 455–57 (describing TVPA provisions directed at victim protection).
\item \textsuperscript{96} See Mathieson, Branam & Noble, supra note 29, at 396–97.
\item \textsuperscript{98} Sheldon-Sherman, supra note 78, at 458–59.
\item \textsuperscript{99} Id. at 458 (citing Kevin Shawn Hsu, Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude, 14 GEO. J. ON POVERTY L. & POL'Y 489, 501 (2007)).
\item \textsuperscript{100} Kevin Shawn Hsu, Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude, 14 GEO. J. ON POVERTY L. & POL'Y 489, 501 (2007).
state involvement is helpful in creating record evidence and providing cases for the federal government to prosecute. One way the Department of Justice has filled some of these gaps is through DOJ-funded Human Trafficking Task Forces, which help identify trafficking victims and foster proactive investigation of sex trafficking crimes. Difficulties in proving sex trafficking prevent the effective prosecution of facilitators of commercial sex transactions—pimps—who do not quite meet the required elements of a trafficking offense. This leaves room for legislation that requires less evidence, but the potential for some form of criminal liability. Furthermore, local and state law enforcement serve important roles in identifying sex trafficking victims, and the TVPA does not create a strong framework for state-federal collaboration. The need for training on the local law enforcement level, in addition to heightened trafficking attention and laws on the state level, provides room for legislative amendments that would fill some of these holes.

Although the United States has come a long way in its anti-trafficking efforts and addressing problems with the commercial sex industry, there are still areas in the law and overall US policy that permit victimization and foster difficulty in identifying trafficking victims in the commercial sex industry.

III. ANALYSIS

A. How Effective is Each Country's Legal Scheme?

The legal schemes in the Netherlands, Sweden, and the United States each purport to promote policy goals related to commercial sex, but have serious gaps and weaknesses that leave trafficking victims vulnerable to continued exploitation. Although the Netherlands succeeded in eliminating arrests of those engaged in prostitution, organized crime runs rampant, and the Netherlands struggles to effectively regulate the sex industry. Sweden's sex purchase law protects those selling sex from being arrested and encourages law enforcement to target johns, but the relatively small fines and

103. *Id.* at 5.
104. *See* Elrod, *supra* note 10, at 979 ("[I]ndividuals who cause an adult individual to engage in a commercial sex act by means less than force, fraud, or coercion, including by exploiting any of the vulnerabilities often found in prostitutes, are considered common pimps, left to be dealt with at the discretion of state or local law enforcement.").
106. *Id.* at 460 (discussing the need for state and local law enforcement training in identifying trafficking victims and investigating trafficking crimes).
punishments for convicted johns limit the law's deterrence value. Finally, the United States succeeded in making sex trafficking illegal at the federal and state levels, but would greatly benefit from tighter laws that facilitate the prosecution of pimps who engage in a range of exploitative activity that may not currently rise to the level of criminal offenses.

B. The Netherlands: The Results of Full Decriminalization

The central goals of the Netherlands' decriminalization and regulation of prostitution include control over organized crime, protection against involuntary engagement in prostitution, and better health and oversight of voluntary participants in prostitution. The major issues with the Netherlands' strategy are the prevalence of organized crime, tax fraud, and the loss of sex-purchase stigma that may deter sex buying.

One of the problems the Netherlands continues to face from its lenient, progressive prostitution laws is organized crime's control over the commercial sex industry, namely by sex traffickers. The former mayor of Amsterdam, Job Cohen, argued that it was near impossible to create safe areas for sex activity that were not controlled by organized crime, leading some Dutch cities to shut down legal prostitution zones. This difficulty stems from the challenge of determining who is soliciting sex as a result of force, fraud, or coercion, and who is engaged voluntarily. Despite the decriminalization and legalization of prostitution, law enforcement trends show a thriving sex trafficking operation hiding behind the veil of legal prostitution. The exploitative relationship between pimps and those engaged in prostitution, which can be marred by layers of abuse, economic

107. See Prostitution Policies in the Netherlands, supra note 28, at 2 (describing the law's underlying principles as including an approach favoring workers, decreasing criminalization of sex workers, and regulating health).


dependency, and coercion, continues to flourish, even in a society where prostitution is legal.112 This relationship is exemplified in the windows that proliferate the Red Light District, where women are placed on display to solicit customers.113 In a study where law enforcement, social workers, and those engaged in prostitution were interviewed, interviewees observed that nearly every single woman on display in Amsterdam worked at the mercy of a pimp.114 The continued presence of the pimp–prostitute relationship fosters the potential for exploitative relationships to flourish in a completely regulated and decriminalized environment, even when the regulations are aimed at promoting the health and rights of sex workers.

Another weakness is the Netherlands' failure to capitalize on the economic benefits it sought to reap from decriminalizing the commercial sex industry through collecting taxes from sex workers. Although the Netherlands sought to have more regulatory control over the commercial sex industry though legalization, there appears to be continued issues with taxation, namely improper employee reporting.115 A survey of those engaged in prostitution found that 70 percent of women engaged in prostitution did not pay taxes, demonstrating weaknesses in the Netherlands' prostitution tax scheme.116 Dutch officials began approaching sex workers in the Red Light District to educate them about which tax forms need to be filed, since many engaged in prostitution do not understand their taxation obligations.117 Ultimately, the Dutch government struggles to collect the proper level of taxes due to many sex workers having pimps controlling the enterprise, even though each individual engaged in prostitution must register as a sex worker.118

Another potential issue fostered from the decriminalization and legalization of prostitution is the effect on the stigma surrounding commercial sex.119 Legalization could very well increase demand from two sources: the lack of criminal punishment and the governmental removal of stigma.120 Without punishment, the purchase of sex loses deterrence value, and with it the stigma surrounding an illicit enterprise.121 This in turn has the potential to make the commercial sex industry even more profitable from an economic and behavioral

112. Id.
113. Id. at 218.
114. Id.
115. See id. at 217.
116. Id. at 218.
118. Id.
119. Hedlin, supra note 110.
120. Id.
121. See id.
science standpoint, encouraging continued involvement, largely at the expense of those involved.\textsuperscript{122} If it is less taboo to purchase sex, borderline Johns will have even more reason to buy sexual acts, thus increasing demand and increasing the potential for victimization.\textsuperscript{123}

Despite the negative consequences of the decriminalization and legalization of prostitution, the Netherlands has experienced some positive results from implementing its progressive regulations. Municipalities in the Netherlands issued licenses to brothel owners and found that most brothels followed statutory and city licensing requirements, suggesting some success in conformance with the laws.\textsuperscript{124} Further, Dutch cities saw a decrease in the number of those working in prostitution who were not properly registered, one metric demonstrating the ability of the government to exercise regulatory oversight.\textsuperscript{125} Overall, the Netherlands’ progressive prostitution regulatory scheme has realized some benefits with health and city regulations, but continues to be a breeding ground for organized criminal activity.


In 2010, the Swedish government published an evaluation of the sex purchase law, or “sexköpslagen,” and its effects during its first nine years of implementation.\textsuperscript{126} Although the Swedish government ultimately recommended that the law remain in place as an effective scheme, various problems with the law’s enforcement and burdensome evidentiary requirements undermined some of the Nordic Model’s successes.\textsuperscript{127} Although the law boasts improvements in the areas of sex trafficking and the prominence of commercial sexual activity, some of the law’s weaknesses render it an incomplete solution to the legal issues undergirding the commercial sex industry.

Two of the central triumphs of Sweden’s sex purchase law are the protection of those engaged in prostitution from criminal sanctions and law enforcement’s focus-shift to sex purchasers.\textsuperscript{128} At least in terms of commercial sexual activity itself, law enforcement has ceased

\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} See id.
\textsuperscript{127} Id. at 2028–29.
interfering with sex workers, since they are no longer the individuals targeted by the law.\textsuperscript{129} However, despite the fact that Sweden’s criminal law now targets sex purchasers rather than sex solicitors, other enforcement policies, such as immigration and eviction enforcement, continue to target those working in prostitution.\textsuperscript{130} The negative impacts of other legal schemes on those working in prostitution continue to diminish some of the positive effects of Sweden’s Nordic Model.

Rooted in Sweden’s long-held belief that sex work is illegitimate, one of the main goals of criminalizing the purchase of sex was to decrease prostitution activity altogether.\textsuperscript{131} Although the law succeeded in making the purchase of sex more socially unacceptable,\textsuperscript{132} there has been no strong indication that prostitution activity levels have decreased in Sweden following implementation of the Nordic Model.\textsuperscript{133} Further, enforcement of prohibitions against sex purchasing fueled the growth of less overt prostitution activity, including “indoor” prostitution, which encompasses prostitution occurring off the streets.\textsuperscript{134} Even though this kind of activity displacement is expected with a shift in the criminal law, which naturally causes changes in behavior and conduct, the shift also makes it easier for traffickers to exploit involuntary sex workers more discretely, making it difficult for law enforcement to discover these actions.\textsuperscript{135} This is explained by the fact that sex purchasers, who are now legally prohibited from purchasing sex, are unwilling to publicly purchase sex for fear of getting caught, which requires the supply to move “indoors” in relation to demand.\textsuperscript{136} This displacement increases vulnerability to exploitation and trafficking of those engaged in prostitution because of a more severe disparity in the power dynamic between a john and the individual in prostitution.\textsuperscript{137} For example, in these isolated environments, those engaged in prostitution have less negotiating power because of the increased risk born by johns, and the lack of negotiating ability coupled with the hidden nature of prostitution puts

\begin{itemize}
\item \textsuperscript{129} Id. at 602–03.
\item \textsuperscript{130} Id. at 603.
\item \textsuperscript{131} Id. at 597.
\item \textsuperscript{132} See Monasky, supra note 126, at 2030.
\item \textsuperscript{133} See Charlotta Holmström & May-Len Skilbrei, The Swedish Sex Purchase Act: Where Does it Stand?, 4 \textit{OSLO L. REV.} 82, 89 (2017) (National Police Board found that demand for commercial sex continues despite its criminalization, and that now johns just do more to protect their identities to prevent arrest); Levy & Jakobsson, supra note 128, at 597.
\item \textsuperscript{134} Levy & Jakobsson, supra note 128, at 597.
\item \textsuperscript{135} See id. (discussing how criminal legislation like Sweden’s Nordic model often results in the relocating of targeted activities).
\item \textsuperscript{136} See id.
\item \textsuperscript{137} Sarah Kingston & Terry Thomas, No Model in Practice: A ‘Nordic Model’ to Respond to Prostitution, 71 \textit{CRIME L. & SOC. CHANGE} 423, 429 (2018).
\end{itemize}
sex workers at increased risk of harm. Although demand for commercial sex has decreased, vulnerable individuals engaged in prostitution have "fewer johns, greater rivalry, and a greater exposure to sexually transmitted diseases (STDs)" because of the decrease in individuals demanding commercial sex. Further, Sweden's Nordic Model deters clients from reporting suspected sex trafficking out of fear of criminal prosecution. In a country such as Sweden, where a central goal is to decrease commercial sexual exploitation, disincentives to report suspicious activity undermine the system designed to protect victims and decrease trafficking rates. By prohibiting the purchase of sex but permitting sex solicitation, Sweden may be hurting victims more than helping by shifting commercial sexual activity out of the public eye. Some additional protections for johns who report abuse or suspected trafficking activity could mitigate this reporting problem resulting from the Nordic Model.

Despite the fact that Sweden criminally penalizes the purchase of sex, the Swedish law's deterrence value may be overstated. The actual punishment for being convicted of purchasing commercial sex services is equal to that received for a petty shoplifting offense in Sweden, resulting in the law's insignificant deterrent effect. If the goal is to delegitimize commercial sex and lessen participation in the sex industry, the current Nordic Model may not be the most effective means at decreasing demand because of the relatively insignificant legal consequences. However, as evidenced by the displacement of prostitution activity to more hidden environments, the law arguably has a cognizable effect of discouraging purchases of commercial sex acts, at least publicly. Further, some of Sweden's issues with enforcing the law stem from its low penalty implications, as law enforcement chooses to prioritize more egregious criminal law violations. However, following Sweden's passage of sex trafficking

138. See Levy & Jakobsson, supra note 128, at 599 (describing reports of increased risk of harm from interviewees engaged in prostitution).
139. Monasky, supra note 126, at 2031.
140. Kingston & Thomas, supra note 137, at 429.
142. See Holmström & Skilbrei, supra note 133, at 89 (one statistic measured that street prostitution decreased by 50% following Sweden's sex purchase law, with data observed by social work organizations).
143. Monasky, supra note 126, at 2029.
legislation in 2002, Sweden emphasized the prosecution of johns due to prosecutors’ view of sex purchasers as valuable sources of information in sex trafficking investigations. In 2019 alone, approximately fifty men in Stockholm County were convicted of buying or attempting to buy commercial sex services.

Although Sweden chose not to criminalize selling sex to protect those engaged in prostitution, that population continues to face various legal hardships outside the criminalization of sex solicitation. Some reported problems include eviction from housing, challenges with immigration agencies, child custody issues, and problems with tax regulators. People engaged in prostitution continue to be stigmatized throughout those various legal schemes outside of the criminal justice system, making daily life more challenging and exposing a vulnerable population to additional risk. Especially in the context of migrants engaged in the commercial sex industry, issues with immigration authorities and threats of deportation can make circumstances even more dangerous, as immigration threats can be used against vulnerable victims to keep them in the sex trade. When migrants involved in prostitution are reported to the police by hotels, their dislocation makes them increasingly vulnerable to the threats and dangers experienced in hidden areas of commercial sexual activity.

Overall, Sweden’s innovative sex purchase law has helped to target sex purchasers and likely exploiters of those in prostitution through criminal sanctions. The law has had some success, but fails to protect sex workers from other detrimental enforcement initiatives, perpetuating the stigma associated with involvement in prostitution. Further, although street prostitution has declined following the enactment of the sex purchase law, that drop seems to be accounted for in displaced commercial sex activity via indoor prostitution and online transactions. Though Sweden has advanced a progressive view of

144. Id. at 2030.
146. Levy & Jakobsson, supra note 128, at 603.
147. See id. (detailing the particular issues sex workers face in the context of immigration and child custody).
148. See id. (describing the deportation of migrants engaged in commercial sexual activity due to reports from hotels as “a far cry from legislation that purports to protect sex workers from police disturbance”).
149. See Holmström & Skillbrei, supra note 133, at 90 (a study by the County Administrative Board of Stockholm concluded that there was “a marked increase in the number of escort ads aimed at men who buy sexual services from women in the period 2006-2014”); Michelle Goldberg, In Sweden, Prostitution is Nearly Invisible, PULITZER CTR. (July 14, 2014), https://pulitzercenter.org/reporting/sweden-prostitution-nearly-invisible [https://perma.cc/FXW7-JSRH] (archived Sept. 18, 2020) (describing how Sweden still has internet prostitution via online escort services).
ohns as fuelers of supply and the realities of exploitation in the commercial sex industry, changes to the Nordic Model could further protect those engaged in prostitution while reinforcing the Model's benefits.

D. The United States: Problems with the TVPA and Holding Traffickers Accountable

The United States' sex trafficking problems center around challenges with victim identification and the prosecution of traffickers and johns with current state and federal legislation. The Trafficking Victim Protection Act (TVPA)'s passage led to increased trafficking prosecutions and the protection of victims. However, the continued criminalization of participants in the commercial sex industry poses challenges for sex trafficking victim identification. Prostitution arrests continue to outnumber sex purchase arrests, with Massachusetts state police data showing 70 percent of prostitution-related arrests were of women engaged in soliciting sex, not johns.\(^{150}\) By continuing to arrest those selling sex rather than those buying sex, and with persistent failure to identify victims rather than voluntary participants, the United States perpetuates the view that those engaged in involuntary prostitution are criminals.\(^{151}\) The abuse that runs rampant in the commercial sex industry, including rape, coercion, isolation, and various types of psychological damage, is underemphasized compared to prostitution crimes, and current US laws do not sufficiently address the various issues implicated in the commercial sex trade.\(^{152}\) Given the weaknesses in the TVPA's enforceability and structure, increased state buy-in, including state-level anti-trafficking legislation, can aid in the TVPA's effectiveness.

The TVPA faces three main criticisms: low prosecution levels, inadequate state participation, and limited resources for victims.\(^{153}\)


\(^{151}\) See Kali Roundy, Note, Did Anyone Get It "Right?" A Comparison of the Netherlands' and the United States' Prostitution-Schemes on Human Trafficking, 10 CREIGHTON INT'L & COMP. L.J. 102, 113 (2019).

\(^{152}\) Id.

\(^{153}\) Sheldon-Sherman, supra note 78, at 457.
Lower levels of prosecution for sex trafficking offenses are largely linked to time and resource constraints and the difficulty of proving the elements of a sex trafficking offense.\textsuperscript{154} Prosecutors have to demonstrate that “the defendant acted with knowledge or reckless disregard of the fact that ‘means of force, threats of force, fraud, coercion . . . or any combination of such means will be used to cause the person to engage in a commercial sex act.”\textsuperscript{155} It is difficult to prove the required force, fraud, or coercion because the prosecutor has to prove the victim’s mindset, which is a high burden of proof because of the need for strong evidence to convince a jury.\textsuperscript{156} Since proving force, fraud, or coercion for adult sex trafficking victims constitutes a high evidentiary burden, this part of the law provides room for amendments that would broaden the federal government’s ability to successfully prosecute sex trafficking crimes. Additionally, state participation in the enforcement of trafficking laws is a major hurdle to effective law enforcement across the United States. One way state participation in anti-trafficking can increase is through state-passed anti-trafficking legislation, which New Jersey accomplished shortly after the TVPA’s enactment.\textsuperscript{157} New Jersey’s anti-trafficking statute closely tracks the TVPA and also includes training for law enforcement, which importantly aids in victim identification and addresses the issues with low prosecutions stemming from the TVPA.\textsuperscript{158} However, state anti-trafficking laws like New Jersey’s have proven to be underenforced and underutilized, with a prosecutorial preference for federal jurisdiction over trafficking cases.\textsuperscript{159} This trend has a multitude of explanations, including the time intensiveness sex trafficking cases require, local prosecutors’ limited resources, immigration policy issues, and the lack of appellate precedent to aid in the predictability of success on appeal.\textsuperscript{160}

An additional area where states have been moving to conform with federal trafficking law is the gradual elimination of charging minors

\begin{footnotes}
\footnote{154. \textit{Id.} at 458.}
\footnote{155. See \textit{Axam & Leonardo, supra} note 87, at 10 (citing 18 U.S.C. § 1591 (2012)).}
\footnote{157. \textit{See Curva, supra} note 62, at 569.}
\footnote{158. See \textit{id.} at 570 (describing New Jersey’s training and enforcement initiatives, including establishing New Jersey’s Anti-Trafficking Task Force).}
\footnote{159. See \textit{Clawson, Dutch, Lopez & Tiapula, supra} note 97, at 23–24 (in a surveyed group of state prosecutors, only 7% had prosecuted a trafficking case since the TVPA’s enactment in 2000, mostly referring suspected cases to federal prosecutors); \textit{Eileen Overbaugh, Human Trafficking: The Need for Federal Prosecution of Accused Traffickers}, 39 \textit{SETON HALL L. REV.} 635, 656–57 (2009).}
\footnote{160. \textit{Overbaugh, supra} note 159, at 658–59.}
\end{footnotes}
with prostitution crimes. Many states now have minimum age requirements for individuals to be charged with prostitution, reflecting the notion that, since minors cannot legally consent to sex, they should not be criminally liable for engagement in commercial sex.161 This concept is rooted in the TVPA, which identifies minors involved in the commercial sex industry as trafficking victims, whether or not means of force, fraud, or coercion are utilized.162 As of 2018, eleven states did not have any laws protecting minors from being criminalized for prostitution (often referred to as “safe harbor laws”).163 Seeing as there are many states with no safe harbor laws for minors or relatively noninclusive safe harbor laws for minors,164 charging minors with prostitution is an important area requiring state-level policy change that could aid in victim identification and further support state partnerships enabling the TVPA’s successful enforcement.

For purposes of evaluating innovative prostitution and sex trafficking policies in the United States, Nevada serves as a strong case study for the results of limited legalization of brothels—an alternative to criminalization.165 Nevada legalized prostitution in brothels in ten out of its seventeen counties.166 Nevada continues to be the only state that regulates prostitution at any level, with the stated goals of promoting public health and safety.167 To supplement the legalization of brothels in certain counties, Nevada also imposes weekly STD screenings on those working in prostitution and holds brothels liable if

161. See Tom DeFranco & Rebecca Stellato, Prostitution and Sex Work, 14 GEO. J. GENDER & L. 553, 570 (2013) (describing how legal activists are calling states to conform with the federal law, which prohibits minors from being charged with prostitution crimes).
164. See id. (seventeen states have laws that protect “commercially sexually exploited children,” but do not automatically categorize all prostituted minors as trafficking victims, leaving room for minors to be charged with prostitution crimes).
a customer contracts HIV from an individual engaged in prostitution who previously tested positive.\textsuperscript{168} Further, standard brothel rules require individuals working in prostitution to remain within the brothel's confines during employment to mitigate risks of disease spread from unprotected sex.\textsuperscript{169} In addition to its health-related effects, "the insulated nature of the brothels offers prostitutes near foolproof protection from theft, fraud, or crime."\textsuperscript{170} In these ways, Nevada's regulated brothel system for counties where brothels are legal ensures safer premises for commercial sex operations, eliminating some of the issues with the unregulated, criminal sex trade.

Additionally, Nevada has addressed prostitution's shaky public perception with strict limitations on brothel advertising, demonstrating how moral objections to prostitution persist, even if it is regulated and taxed.\textsuperscript{171} Additionally, when the United Nations passed a convention stating that prostitution is "incompatible with the dignity and worth of the human person," the United States did not participate in the negotiations and did not sign the convention, leaving room for a system like Nevada's to be implemented across the United States.\textsuperscript{172} Though Nevada's brothel system provides certain protections and regulations for those engaged in prostitution, criminalized prostitution continues to be in effect in the majority of Nevada counties, creating an inconsistent hybrid of regulation and criminalization.

Although Nevada successfully minimized health issues and somewhat protected the safety of those engaged in prostitution in brothels, its prostitution laws are inconsistent across the state, making room for exploiters to take advantage of the favorable laws and fostering hidden exploitation and possibilities for sex trafficking.\textsuperscript{173} Uniform regulations regarding prostitution would solve some of the loophole discrepancies in the law,\textsuperscript{174} but the isolation of those working in brothels poses serious concerns for abuse and exploitation from

\textsuperscript{168} See id. at 227–28 (Nevada law requires that prostitutes who test positive for HIV are reported to the State Health Board and face felony charges if they ever work in prostitution again. Additionally, Nevada holds brothels liable for HIV transmission).

\textsuperscript{169} Id. at 228–29.

\textsuperscript{170} Id. at 229.

\textsuperscript{171} See id. at 230 (brothel advertisements are prohibited in Nevada counties where prostitution is illegal, and prohibited in specified public areas even in counties where prostitution is legal).

\textsuperscript{172} See generally G.A. Res. 317 (IV), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Dec. 2, 1949); Snadowsky, supra note 167, at 236.

\textsuperscript{173} See Snadowsky, supra note 167, at 238–39 (discussing the enforcement challenges that come with "patchwork" prostitution laws and advocating for uniform Nevada regulations regarding prostitution).

\textsuperscript{174} Id.
brothel owners, weakening Nevada’s prostitution scheme as it currently exists. These highly-secluded brothels have the potential to become trafficking havens, making regulations like Nevada’s problematic if the goal is to minimize exploitation. The restrictive conditions of Nevada’s brothel system, although arguably safer and easier to control, can quickly become “like prisons where you have to turn tricks.” The Nevada brothel system may “amplify prostitutes’ rights,” but the potential for victimization continues to exist and the victories for individual rights may not outweigh the probability of harm to victims.

Alternatively, the city of Seattle’s law enforcement unsuccessfully attempted the Nordic Model as a local policy in 2012 by targeting johns rather than those engaged in prostitution in an effort to challenge the prostitution equation’s demand side. Law enforcement largely stopped arresting those engaged in prostitution, instead directing them to victim and social services. However, when Backpage.com, an online advertising platform that facilitated commercial sex transactions, was shut down by law enforcement efforts to curb trafficking and child exploitation, street prostitution increased. Increased street prostitution and pressure from local residents resulted in sting operations and arrests of mostly sex sellers, not sex buyers, which is the opposite result of that aimed for by the Nordic Model. Although the police department views arrest as one way to get commercial sex workers off the streets and out of prostitution, those

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175. See Bree Zender, Sex Trafficking Victim Wants to Ban Brothels in Nevada, NPR (July 6, 2019), https://www.npr.org/2019/07/06/739154455/sex-trafficking-victim-wants-to-ban-brothels-in-nevada#:~:text=Brothels%20have%20been%20a%20part,through%20the%20legal%20brothel%20system [https://perma.cc/N38P-PA7W] (archived Sept. 26, 2020) (discussing how one victim of trafficking was exploited through Nevada’s legal brothel system).


177. See Snadowsky, supra note 167, at 247.


180. Kroman, supra note 178 (discussing community pressure to increase prostitution arrests came from “citizens, business groups, [and] individual business owners” sharing “concern as well as anger because of how visible and high profile it’s been” in Seattle).
arrested will still garner criminal records, constituting a step back from what law enforcement called their “victim-first, trauma-informed type of approach” to prostitution arrests. The arrests also partially stemmed from victim services organizations reaching their maximum capacity—the only feasible way to get victims off the streets, if not through service organizations, is by arresting them. The resulting arrests signaled a need for elevated community aid and engagement with those being prostituted.

Overall, the US federal system largely empowers individual states to create prostitution policy and address sex trafficking through the police power of the states to promote social welfare. Within this, states and local governments operate much like legal laboratories, ranging from limited decriminalization in Nevada to attempts at the Nordic Model in Seattle. The alternative prostitution regulation schemes discussed above provide frameworks for exploring possible regulatory systems in the United States. If the goal is enhancing law enforcement’s ability to identify sex trafficking victims, the Nordic Model is the strongest scheme currently in place for properly criminalizing exploiters rather than victims. However, the holes in the Nordic Model’s implementation include rather insignificant penalties for johns that do not fully deter behavior and the displacement of prostitution that makes participants even more vulnerable to coercive conduct. These gaps in the legal scheme provide room for improvement if a similar system were implemented in the United States. Further, since prostitution and sex trafficking are almost entirely dictated by criminal law, the most effective approach in the United States will be at the state level, which will further enhance state participation at the federal level in tandem with the TVPA.

IV. Solution

A. Proposed Changes to US Sex Trafficking Policy

Changes to the United States’ current prostitution and sex trafficking legal schemes are necessary to ensure greater protection for those vulnerable to commercial sexual exploitation and also to properly criminalize and deter the behavior of those in the most exploitative positions: johns and pimps. Although the various aforementioned legal regimes possess different strengths, Sweden’s Nordic Model is the most
victim-informed solution to prostitution and sex trafficking. The structure of criminalizing the purchase of sex, not the selling of sex, is the strongest starting point for decriminalizing victims and molding public perception surrounding the commercial sex industry. In the United States, states have greater jurisdiction over criminal law through the police power, so the most effective way to implement a Nordic-type model will be on the state level. For states to effectively implement a Swedish-inspired model, their laws must include the sex purchase law itself, penalty provisions, funding for victim services, and funding for law enforcement training. Overall, an American spin on Sweden's promising, but incomplete, model for prostitution reform will greater protect vulnerable individuals while properly criminalizing exploiters.

B. States Should Adopt the Nordic Model to Protect Victims ofTrafficking and Decrease Demand for Commercial Sex

An American version of the Nordic Model will require full state buy-in and participation to effectively address US prostitution and sex trafficking schemes. To implement a Nordic-inspired model in the United States, each state should pass a sex purchase law criminalizing the purchase, but not the sale, of sex, criminalizing sex purchasers rather than solicitors. This arrangement will properly place risk of criminalization on johns, who help fuel demand for commercial sex. As demonstrated by the Nordic Model's effects in Sweden, sex purchase laws in the United States would most clearly decrease demand for commercial sex acts because of the increased liability of harm borne by...
As demand for commercial sex decreases, the commercial sex supply would also decrease, eliminating a large source of victimization through sex trafficking.190 However, to address concerns about displacing prostitution activity to underground operations and dangers stemming from decreased incentives to report exploitation,191 the state laws should provide some sort of protection for johns who report suspected cases of sex trafficking. This would hopefully decrease the likelihood of johns looking the other way when they suspect someone engaged in prostitution of being a trafficking victim. Although there are still dangers flowing from the displacement of commercial sex activity, including shortened negotiation times and increased power in the hands of buyers because of decreased demand, some of the dangers would be offset with a provision protecting johns acting in good faith by reporting suspected trafficking cases.192 The incentives for johns who report trafficking should include immunity from criminal prosecution or arrest for the purchase of sex when reports are made in good faith.

C. States Should Legislate Stricter Penalties for Pimps and Sex Purchasers

Prostitution and sex trafficking laws should provide explicit exceptions to the decriminalization of selling sex for pimps facilitating sex acts for others.193 Although the statistics on pimp arrests compared to arrests of those engaged in prostitution are weak, from 1990–2010, women were arrested for prostitution and commercialized vice crimes more than twice as often as men, including both pimps and johns.194

189. See Monasky, supra note 126, at 2030.
191 See Kingston & Thomas, supra note 137, at 429 (incentives to report suspected sex trafficking decrease when johns face criminal punishment for engaging in commercial sexual activity).
192. See Levy & Jakobsson, supra note 128, at 598 (describing risks from the Nordic Model's displacement of prostitution activity).
Stronger statutes and enforcement against pimping will place a greater risk of criminalization on pimps, who are generally arrested and punished at lower rates than those engaged in prostitution.\textsuperscript{195} Although all states criminalize pimping in some form,\textsuperscript{196} stricter penalties and stronger enforcement are required to effectively deter pimping conduct.\textsuperscript{197} Stricter pimping prohibitions would deter pimps from engaging in the commercial sex industry, which decreases a common source of exploitation and an aggravating factor of sex trafficking.\textsuperscript{198} More specifically, amended state laws need to include pimping conduct that does not meet the muster of “force, fraud, or coercion” mandated by the TVPA to capture conduct that can be exploitative, but not legally sufficient to prosecute.\textsuperscript{199} Although pimps acting as traffickers face heavy penalties under federal law,\textsuperscript{200} heavier state law punishments can further increase the risk pimps take on in soliciting individuals for sex. Since the draw of trafficking enterprises is the lucrative nature of the commercial sex industry,\textsuperscript{201} imposing risks on profits through fines and prison sentences are strong ways to discourage trafficking altogether. One important TVPA provision that should be included in all state legislation is the mandatory restitution provision, requiring convicted pimps to pay victims monetary damages resulting from their exploitation.\textsuperscript{202} Mandatory restitution under state law will place further financial risk on pimps, directly mitigating the attractiveness of the commercial sex industry’s financial reward.\textsuperscript{203}

However, if mandatory restitution provisions are implemented at the state level, prosecutor education is vital to ensure that restitution

\textsuperscript{195} Id.


\textsuperscript{197} See Elrod, supra note 10, at 979 (describing the low rates of pimp arrests).

\textsuperscript{198} See id. at 986–87 (discussing the exploitative nature of pimps and pimps’ linkage to sex trafficking).

\textsuperscript{199} See id at 985–87.

\textsuperscript{200} See 18 U.S.C. § 1591(b) (2018) (those convicted of trafficking via one of the prohibited means [force, fraud, coercion] can receive fines and imprisonment up to 15 years).


\textsuperscript{203} See Shannon Lack, Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy, 26 J.L. & COMM. 151, 162 (2006-2007) (civil litigation under the TVPRA allows for greater restitution awards for trafficking victims, which poses a greater financial burden on traffickers than under the criminal provisions of the TVPA).
is sought and that it is maximized.\textsuperscript{204} As a starting place for state legislation, the federal government promulgated model pimping statutes, which include suggestions of significant fines and imprisonment for up to twenty years.\textsuperscript{205} Destabilizing pimps’ roles in the commercial sexual exploitation of others is essential to protecting vulnerable victims and decreasing sex trafficking rates.

A related problem with Sweden’s sex purchase law is its relatively inconsequential penalties for prosecuted johns.\textsuperscript{206} One way to increase the deterrence value of a state-level sex purchase law is to increase the criminal penalties for purchasing sex in tandem with penalties for pimps. As demonstrated by Sweden’s experiences, a simple “slap-on-the-hand”-level provision will not significantly decrease demand for commercial sex.\textsuperscript{207} Although the demand for street prostitution decreased with Sweden’s law, demand could be further reduced, and thus the law more effective, if penalties faced by johns were more severe.\textsuperscript{208} In the United States, the cost of getting caught needs to outweigh the benefit of engaging in a commercial sex act because of the startling demand numbers for commercial sex.\textsuperscript{209} Since the commercial sex industry is highly lucrative and founded on financial grounds, john fines can work to decrease demand, which would then decrease commercial sex’s profitability.\textsuperscript{210} If a fine is implemented, it should be sizeable, such as the twenty thousand-dollar fine maximum recommended in the Department of Justice’s model pimping statute.\textsuperscript{211}

\textsuperscript{204} See id. at 160 (describing how “a victim’s access to restitution is contingent upon the prosecutor’s willingness to investigate and charge traffickers, despite the mandatory restitution provision of the TVPA”).


\textsuperscript{206} See Kline, supra note 141, at 695 (citing Monasky, supra note 126, at 2016 (evaluating the low-level punishment doled out to sex purchasers under the Nordic Model in Sweden)).


\textsuperscript{209} See id. (data findings show that 7,200 men commit 8,700 commercial sex acts with minor females each month in the state of Georgia).


\textsuperscript{211} Model State Provisions on Pimping, Pandering, and Prostitution, supra note 205.
With a nod to the TVPA provisions addressing pimps, state criminal laws addressing sex purchasing could include an additional mandatory restitution provision for sex purchasers, requiring those convicted under the statute to pay victims monetary damages. Additionally, if a criminal statute includes a minimum sentence, it should be a long enough period that it would effectively deter sex buying. Finally, the prison time for johns should map that of pimps, emphasizing the exploitative nature of both types of actors in the commercial sex industry. If sex purchasers receive tougher prison sentences, such as the fifteen year maximum pimps face under the federal trafficking statute, deterrence would increase.

In addition to deterring sex purchases altogether, stronger punishments for johns would signal the gravity of the issues posed by the commercial sex industry, including prostitution’s interwovenness with sex trafficking. This emphasis, bolstered by more severe criminal laws, would further promote an important change in societal awareness of prostitution and trafficking issues, namely the prominence of trafficking and the special vulnerabilities of those engaged in prostitution. Although the Nordic Model has seen success in making commercial sexual activity less socially acceptable, stronger criminal punishments for johns would further enhance this success, decreasing commercial sex demand and, with it, the potential for victimization.

D. State Laws Should Appropriate Increased Funds for Victim Services and Law Enforcement Education

Law enforcement’s ability to identify trafficking victims, coupled with robust victims’ resources to address the welfare of those engaged in prostitution, will be essential to a successful legal scheme for prostitution in the United States. Without alternatives to arrest, victims will continue to interact with the criminal justice system, lengthening criminal records and perpetuating cycles of victimization and abuse. As experienced by Seattle, maxed-out victims’ resources leads to the undesirable arresting of those engaged in prostitution out

214. See Elrod, supra note 10, at 975 (describing the direct relationship between prostitution and sex trafficking, evidenced by rates of sex trafficking increasing when prostitution levels increase).
215. Monasky, supra note 126, at 2030.
216. See Kate Mogulescu, The Public Defender As Anti-Trafficking Advocate, an Unlikely Role: How Current New York City Arrest and Prosecution Policies Systematically Criminalize Victims of Sex Trafficking, 15 CUNY L. REV. 471, 474 (2012) (“[A]s victims cycle in and out of the criminal justice system, the devastating impact is a re-victimization, which only exacerbates the danger, isolation, and marginalization of the victims’ experiences.”).
of resource desperation.\footnote{See Kroman, supra note 178.} Although arresting individuals engaged in selling sex would stop with a sex purchase law, the same concerns with ensuring victim safety and ending the cycle of victimization exist, which require extensive community resources.\footnote{See generally id.} State legislatures would need to ensure that a significant budget could be directed toward different services engaged in rehabilitation efforts, including shelters, counselors, and medical services. If significant state funding was set aside for beneficial nonprofit and diversion programs,\footnote{See, e.g., THISTLE FARMS, https://thistlefarms.org/pages/our-mission?gclid=CjwKCAiAg9rxBRADEiwAxDx5aUKRQrTr6hCJwUOFdKqM1ka6-sg9InYcdPPHvyyh5v2YF8xoC51qQAvD_BwE (last visited Sept. 28, 2020) [https://perma.cc/DRU8-E3T4] (archived Sept. 28, 2020) (Nashville-based social enterprise that provides a residential program and jobs to women with a history of trafficking, prostitution, and/or drug addiction); PROSTITUTION DIVERSION PROGRAM, LA, http://lajohnschool.com/ (last visited Sept. 28, 2020) [https://perma.cc/6P8A-K4LZ] (archived Sept. 28, 2020) (day-long Los Angeles-based diversion program for johns and those engaged in prostitution to educate charged individuals about the dangerousness of the commercial sex industry).} community engagement would enable rehabilitation efforts and decrease the number of victims processed through the criminal justice system. Additionally, state funding should finance state “john schools,” which are sex trafficking education programs designed to inform johns about the exploitative nature of the commercial sex industry.\footnote{See "John School", supra note 220 (finding recidivism rates dropped after implementing a john school in San Francisco).} Similar to defensive driving courses, these types of education programs can divert activity away from commercial sex and decrease reoffending rates among johns.\footnote{See "John School", supra note 220 (finding recidivism rates dropped after implementing a john school in San Francisco).}

In addition to funding victims’ services, state legislation should allocate extensive funds for local law enforcement training in victim identification, trauma-informed victim interviewing, and collecting evidence for trafficking cases. More resources and education programs will prevent those engaged in prostitution from obtaining extensive criminal records, while also aiding in protecting victims of trafficking. In terms of the education programs themselves, trafficking education for law enforcement should include, at a minimum, strategizing techniques for identifying trafficking victims, identifying pimps and johns, informing law enforcement of what victims’ services are available, and reinforcing the criminalization of the exploiters, rather than the exploited.
The largest obstacle to increasing state funding of victims' services related to prostitution and sex trafficking is the actual aggregation of additional funds. However, twenty-two states have special funds dedicated to trafficking victims' services, providing a strong foundation for financing anti-trafficking efforts.\textsuperscript{222} One way in which states can expand rehabilitative funds is by creating funds financed by convicted johns, who are fined as part of their punishment.\textsuperscript{223} This would mitigate political challenges from those opposed to other forms of fundraising, including taxation.

E. Congress Should Criminalize Extraterritorial Sexual Exploitation of Adults

Although the United States already criminalizes extraterritorial sexual exploitation of children,\textsuperscript{224} a law addressing sex tourism with adult victims could prevent collateral effects of enforcement against johns in the United States. The child sex tourism law enables the United States to prosecute individuals who travel from the United States to a foreign country and while there “[rape] or sexually [molest] a child or [pay] a child for sex.”\textsuperscript{225} This statute aims to prevent the displacement of child sexual exploitation abroad by criminalizing that conduct in the United States and would be similarly effective in addressing adult sex tourism. The effect of displacing sex purchase activity following its criminalization is an important collateral effect of implementing a Nordic-type model on the state level. If sex buying is outlawed in one area, the demand will move to find the supply where the conduct is legal. Norway addressed this form of displacement by enacting a sex tourism law prohibiting the purchase of sex abroad.\textsuperscript{226} This type of legislation could be enacted at the federal level in the United States through Congress's foreign commerce clause authority.\textsuperscript{227} Congress possessing the authority to pass a law like the


\textsuperscript{223} See id. (though some states have funds that are supposed to be directly funded through traffickers' fines, it is often difficult to track where the money goes and what services it actually provides).

\textsuperscript{224} See 18 U.S.C. \textsection 2423(c)-(d) (2018) (statute prohibiting the extraterritorial sex exploitation of children).


\textsuperscript{226} Claude, supra note 50, at 11.

\textsuperscript{227} See U.S. CONST. art. I, \textsection 8, cl. 3 (authorizing Congress "[t]o regulate Commerce with foreign Nations... ").
one suggested is also extremely important for deterring the fueling of the commercial sex industry abroad and further victimizing individuals, which includes a vast vulnerable population outside of the United States.

F. A New American Model: Strengths and Weaknesses

If states adopt the various aforementioned measures, the American legal system that criminalizes sex trafficking can pioneer victim-centered approaches to criminal justice. It is important that each state participate in enacting sex purchase laws and heightened penalty provisions for perpetrators in order to unify nationwide policy regarding prostitution and sex trafficking. Unity would eliminate inconsistencies in regulation, such as those experienced by Nevada. In addition, uniform state policies would further bolster the federal TVPA’s effectiveness, providing another layer of enforcement opportunity in combatting sex trafficking.

One central strength of these proposed policy measures is the appeal to both anti-trafficking groups and individual and sex workers’ rights advocates. By decriminalizing the sale of sex, different groups advocating for victim and individual rights will be vindicated, both in their abilities to identify victims and in the freedom of voluntary participants to engage in the commercial sex industry without accumulating extensive criminal records. For anti-trafficking groups, a state-level sex purchase law would protect trafficking victims from criminalization while also decreasing demand for the sex trade, a win for those who view prostitution as inherently exploitative.

228. See generally Nicole Bingham, Nevada Sex Trade: A Gamble for the Workers, 10 YALE J.L. & FEMINISM 69 (1998) (discussing why Nevada’s regulatory system addressing prostitution is not the most effective under the “prostitution is work” perspective and the “prostitution is exploitative” perspective).
229. See April Riegler, Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States, 30 HARV. J.L. & GENDER 231, 246 (2007) (the lack of training programs for state and local law enforcement officials contributes to the ineffectiveness of the TVPA).
232. See generally Claude, supra note 50 (advocating for implementation of the Nordic Model as an effective mechanism for addressing the demand side of the commercial sex industry).
Under an opposing ideology, sex workers’ rights advocates and international human rights organizations can find victories for individual rights, consensual adult commercial sex, and a stigma change for individuals choosing to be involved in the commercial sex trade through an American version of the Nordic Model. Although a sex purchase law does not completely decriminalize all facets of prostitution, decriminalizing those working in prostitution is the strongest way to balance the interests of different advocates while maintaining a focus on protecting sex trafficking victims trapped in prostitution. In this way, the decriminalization of selling sex is a viable solution that would serve as a strong compromise among different camps of advocacy.

Although state-level measures would foster a cohesive, effective, and largely attractive legal scheme for addressing prostitution and sex trafficking, the political feasibility of getting all fifty states on the same page is relatively low. It is a sizeable jump to go from criminalizing prostitution to making those engaged in prostitution legal actors, but there has been some recent push in state legislatures to fully decriminalize prostitution. New York and Washington, D.C. legislatures have both proposed complete decriminalization of commercial sex. These proposed reforms demonstrate that there is a political environment where conversations occur about the nature of the commercial sex industry in the United States and how it needs to be revised. Although decriminalization of all prostitution-related activities is receiving attention, lawmakers need to be educated on the various competing values undergirding the commercial sex industry

233. See Amnesty International Publishes Policy and Research on Protection of Sex Workers’ Rights, supra note 6 (discussing how prostitution and sex trafficking laws should focus on protecting vulnerable individuals from exploitation instead of penalizing sex workers, though Amnesty goes further by advocating for complete decriminalization of all facets of prostitution, including purchasing).


236. McKinley, supra note 235; Williams, supra note 235.

237. See McKinley, supra note 235; Williams, supra note 235.
and how laws place risks on certain actors. Any advancement in convincing states to adopt versions of the Nordic Model would require extensive education of lawmakers and lobbying on behalf of victim-centered legislation. Since cities and states are already discussing these issues, advocacy and education are even more pressing to ensure effective legislative and criminal justice reform.

Another potential problem would be some states adopting a sex purchase law, while others either completely decriminalize commercial sex or maintain the status quo of criminalizing all aspects of the commercial sex trade. If some, but not all, states adopt new policies, some states may become destinations for commercial sex enthusiasts. Further, widely different policies across different states could undermine federal law enforcement’s ability to get record evidence or trafficking cases if states adopt complete decriminalization regimes. Although some may view different states enacting different policies within states’ rights based on different local needs and views, those considerations may be outweighed by the potential for continued victimization and exploitation.

Finally, these proposed policy measures require significant funding, which is always a politically divisive issue. Since a large part of the effectiveness of state-wide Nordic Models heavily depends on financing victims’ services and law enforcement education, this would be a significant hurdle to implementing a Nordic Model-type scheme. The struggles with financing services required by the Nordic Model stem from the available options, which include diverting government funds from other programs to victims’ services or proposing tax measures to finance these initiatives directly from state citizenries. However, the possibility of having funds established by fines from pimps and johns offers an alternative route for financing expensive services and education programs related to trafficking.

Despite the challenges that would need to be overcome to implement each of these measures at the state level, these policy proposals launch a framework for victim-centered criminal laws that properly distribute the greatest risk to those possessing the greatest exploiting capacity.


V. CONCLUSION

America's existing legal scheme addressing prostitution and sex trafficking fails to entirely account for the realities of the commercial sex industry, including the rampant victimization of those being sex trafficked and their extensive criminal records. Through state-level implementations of an American spin on Sweden’s Nordic Model, the United States can build a victim-centered legal approach to an industry exploiting hundreds of thousands of victims each year. Collective state effort can transform the United States from being a country that perpetuates the falsities of “the world’s oldest profession” and the criminality of victims into a forefront innovator of protections for trafficked individuals.

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