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At a Crossroads: Prostitution Decriminalization and Enforcement of Human Trafficking Laws

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Introduction

Over the past fifty years, there has been a movement in the United States, and all over the world, to change the way sex work is viewed and handled in the criminal justice system. There has been a move away from the previous, moral judgement justifying the criminalization of prostitution, and sex work activism has become far more mainstream.¹ Public figures from District Attorneys, to senators, to defense attorneys, and activists have made statements in support of decriminalizing sex work for a variety of reasons.² Those in support of the decriminalization of sex work point out the benefits to sex workers, including greater access to health care and a significant way to combat sexually transmitted diseases like HIV and AIDS, less exclusion from housing due to criminal convictions, and privacy and bodily autonomy concerns.³ Supporters also note that decriminalizing sex work could make it safer for sex workers, who would no longer have to work in the underground, and regulations could be put in place to better protect them from abusive clients and pimps, though this point is heavily argued.⁴ Although these benefits are compelling, the conversation surrounding decriminalization of sex work has more complex consequences than simply ridding the law books of prostitution statutes.

04.27.2021 - Multi-Day Operation by Human Trafficking Task Force Leads to the Recovery of Three Minors and Multiple Arrests

04.27.2021 - Toledo Physician Pleads Guilty to Sex Trafficking Charges

04.23.2021 - Reading, Pennsylvania Woman Sentenced to 15 Years in Prison for Sex Trafficking Children

¹ Anna North, Vox, <https://www.vox.com/2019/8/2/20692327/sex-work-decriminalization-prostitution-new-york-dc> (last updated Aug. 2, 2019)

² *Id.*

³ *Amnesty International Publishes Policy and Research on Protection of Sex Workers' Rights*, Amnesty International (May 26, 2016), <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>

⁴ *Id.*

04.20.2021 - Four Philadelphians Charged with Sex Trafficking of Minors
04.20.2021 - Oklahoma City Man Sentenced to Serve More Than 24 Years in Federal Prison for Child Sex Trafficking
04.19.2021 - Lev Tahor Leaders Charged with Child Exploitation Offenses
04.19.2021 - Suburban Chicago Woman Sentenced to Six and One Half Years in Prison on Federal Labor Trafficking Charge

These are the headlines on the Federal Bureau of Investigation's Human Trafficking page for the week of April 18th, 2021.⁵ Despite the fact that human trafficking seems like a crime that could not exist in a developed country like the United States, this is simply not true. Just by briefly examining the headlines from one week, which do not include any state level investigations, it is clear that human trafficking is a pervasive and insidious criminal enterprise that is thriving in the United States. Trafficking has been investigated by law enforcement in the United States since 1910, with the passage of the Mann Act.⁶ As our society modernizes, our human trafficking problem is only given a greater opportunity to balloon.⁷ Traffickers have often targeted runaway youth, undocumented individuals, those struggling financially, among other vulnerable populations, and now, they have greater access to these groups than ever before through social media.⁸ Traffickers can lure individuals with limited means and options into sex slavery through the building of false romantic relationships or promises of work and shelter.⁹ One of the primary ways that law enforcement seeks to identify and dismantle these operations is by using the existing

⁵ *Human Trafficking*, Federal Bureau of Investigation, <https://www.fbi.gov/investigate/violent-crime/human-trafficking> (last visited May 1, 2021)

⁶ *Mann Act*, Legal Information Institute, https://www.law.cornell.edu/wex/mann_act (last updated July 2020)

⁷ *Technology and Trafficking*, Equality Now, https://www.equalitynow.org/technology_and_trafficking_the_need_for_a_stronger_gendered_and_cooperative_response (last updated Aug. 19, 2019)

⁸ *Id.*

⁹ *Id.*

prostitution statutes to stop and further investigate activity that may appear like voluntary sex work on its face, but in reality, is forced sex trafficking.¹⁰

Consequently, there may be a dangerous, unintended effect on law enforcement's ability to counter human trafficking if sex work is decriminalized outright. In light of that potential conflict, the ability of different entities to react to these competing issues in a way that's productive and worthwhile is complicated by their own interests. This paper seeks to expose the conflicting set of interests at play within this divisive issue, and how they may or may not be reconciled.

Part I : The Sex Work Movement: Social and Legal Shifts

The movement to decriminalize sex work is complex within itself. The viewpoints on prostitution range from outright prohibition to full fledged decriminalization.

According to Merriam-Webster, prostitution is defined as “the act or practice of engaging in promiscuous sexual relations especially for money.”¹¹ This phenomenon is not new, nor is it limited to the United States. The performance of sex acts in exchange for currency dates back hundreds, if not thousands, of years, and mentions of this transactional relationship can be found in ancient records and a variety of religious texts.¹² Though seemingly accepted in antiquity, prostitution as a profession became almost universally condemned by the early 20th century. In the United States, the passage of the Mann Act in 1910 signaled a change in attitude towards sex

¹⁰ *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*, International Association of Chiefs of Police, <https://www.theiacp.org/sites/default/files/2018-07/CompleteHTGuide.pdf> (last visited May 1, 2021)

¹¹ *Merriam Webster Dictionary*, <https://www.merriam-webster.com/dictionary/prostitution> (last visited May 1, 2021)

¹² *Men of Antiquity Worshipped Aphrodite by Having Sex with Her Temple Maids at Paphos on Cyprus. Now the Site Is Receiving New Recognition*, Andrea Watson, BBC, <https://www.bbc.com/culture/article/20161017-it-was-an-ancient-form-of-sex-tourism> (last updated Oct. 18, 2016)

work.¹³ Although the Mann Act’s ostentatious purpose was to combat sex slavery and the transportation of underage girls to be used as part of such a scheme, its ambiguous, moral framework was frequently used to prosecute individuals for engaging in prostitution. Even so, according to *Hoke v. United States*, the court held that Congress did not have the right to regulate prostitution per se, as it is strictly the province of the states to make law on prostitution.¹⁴ However, the Hoke Court upheld the Mann Act, resting on its language relating to interstate travel; Congress could criminalize interstate commerce for prostitution or other “immoral purposes.”¹⁵ In 1978, Congress attempted to remedy the ambiguity caused by the vague language relating to immorality by substituting out “immoral purposes” for “any sexual activity for which any person can be charged with a criminal offense.”¹⁶ Despite the fact that prostitution is by and large considered a crime in the United States, there is still no federal law criminalizing it outside of the prohibition of interstate travel.

A. Legal Approaches to Sex Work

The debate over the idea of decriminalizing sex work has been an ongoing one, both in the United States and abroad. In the U.S., the modern movement for the decriminalization of sex work has roots in the 1970s amidst the feminism movement and others, when the actual term “sex work” was introduced as preferable terminology, over prostitution¹⁷. This diction choice is an intentional attempt to emphasize that sex work is just that – a legitimate form of work – whereas prostitution has connotations of a moral judgement passed onto the subject (though still, some prefer the term prostitute). COYOTE, a nonprofit organization dedicated to the complete decriminalization of

¹³ Mann Act of 1910, 18 U.S.C. § 2421 (1910)

¹⁴ *Hoke v. United States*, 33 S. Ct. 281 (1913).

¹⁵ *Id.* at 283

¹⁶ Mann Act, 18 U.S.C. § 2421 (1978)

¹⁷ North, *supra*. note 1

prostitution, and other affiliated groups began to organize and take their advocacy for sex workers mainstream.¹⁸ COYOTE became an influential group that advocated for the overall wellness and de-stigmatization of sex workers across the country.¹⁹

In *COYOTE v. Roberts*, COYOTE argued that the Rhode Island statute that criminalized prostitution was both overly broad such that it infringed on the privacy interests of individuals, and that it was applied in a discriminatory manner; nearly all arrested under the law were women, and the mostly male patrons were not charged.²⁰ The merits of this case were never to be decided, however. The growing pressure related to this case and other advocacy groups lead to Rhode Island's choice to decriminalize prostitution on the whole. This made Rhode Island unique, as the only state to completely decriminalize prostitution; even Nevada, wherein sex work had been legal in some counties since the mid 1800s, had not legalized sex work state wide. Rhode Island re-criminalized prostitution in 2009; in the years between decriminalization and recriminalization, Rhode Island did not have a single successful human trafficking case.²¹

Another case that advocates have attempted to rely on without success thus far is *Lawrence v. Texas*. In *Lawrence*, the Supreme Court did away with the remaining anti-sodomy laws that effectively criminalized homosexuality.²² The court did so with the reasoning that such laws violated an individual's due process right to consensual intimate sexual conduct within the privacy of their own home.²³ Sex work activists have attempted to apply the Supreme Court's protection of "intimate sexual conduct"²⁴ to sex work. In *Erotic Serv. Provider Legal Educ. & Rsch. Project*

¹⁸ COYOTE Rhode Island, <https://coyoteri.org/wp/> (last visited May 1, 2021)

¹⁹ *Id.*

²⁰ *Id.*

²¹ U.S. Customs and Border Control, Human Trafficking Symposium, Washington, D.C., September 9, 2008

²² *Lawrence v. Texas*, 539 U.S. 558, 558, (2003)

²³ *Id.*

²⁴ *Id.*

v. Gascon, a Ninth Circuit case, the court held that *Lawrence* did not in fact create a liberty interest that invalidates laws criminalizing prostitution.²⁵ Further, these matters have largely been examined under a rational basis standard of review, which has not proved to be difficult for these laws to meet.²⁶ In order to meet a rational basis standard of review, the law must be rationally related to a legitimate government interest.²⁷ In *Erotic Serv. Provider Legal Educ. & Rsch. Project*, the court found a number of rationales that were related to legitimate state interests, such as, links between prostitution and trafficking in women and children, creating climates conducive to violence against women, and limiting drug use.²⁸

B. Sex Work Advocate Arguments

Despite the lack of success in the courtroom, there are a number of reasons why advocates of decriminalization of sex work believe it would be beneficial. From a public health perspective, decriminalizing sex work would likely result in positive change in regards to sex workers' ability to access health care.

There are many internationally recognized organizations that support the movement to decriminalize sex work. World Health Organization cites a number of public health rationales for supporting the decriminalization movement. Globally, female sex workers are thirty times more likely to be living with HIV.²⁹ WHO also projects that decriminalizing sex work could lead to a 46% decrease in HIV in sex workers over a ten-year period.³⁰ This decrease can be attributed to condom programming, drug and overdose intervention, behavioral and mental health

²⁵ *Erotic Serv. Provider Legal Educ. & Rsch. Project v. Gascon*, 880 F.3d 450, 456 (9th Cir.), amended, 881 F.3d 792 (9th Cir. 2018)

²⁶ *Lawrence*, 539 U.S. at 558 (2003)

²⁷ *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, (1985)

²⁸ *Erotic Serv. Provider* 880 F.3d 450 at 457–58 (9th Cir. 2018)

²⁹ *HIV and AIDS in Sex Work*, World Health Organization, https://www.who.int/hiv/topics/sex_work/about/en/ (last visited May 1, 2021)

³⁰ *Id.*

interventions, sexually transmitted disease and infections testing, care, and counselling, reproductive health counselling and care, protections against abuse and physical violence, vaccinations and treatment for other diseases.³¹ WHO also notes that decriminalization and addressing the stigmas associated with sex work promotes public health. This is because eliminating the stigma surrounding sex work would make it easier and more likely for sex workers to seek, access, and receive health services.³² The Lancet Medical Journal also supports decriminalization for similar public health rationales. The Lancet published a series of articles that focused on HIV and sex work. The articles specifically explore the negative impacts that the criminalization of sex work has on the spread of HIV.³³

Human Rights Watch supports decriminalization from a human rights standpoint. Sex workers' access to justice, health care services, and the ability to freely report other crimes to law enforcement without fear of their own arrest are among the reasons Human Rights Watch cites as support for decriminalization.³⁴ Notably, Human Rights Watch supports full decriminalization, rather than the Nordic model in which only the buyers of sex are subject to prosecution.³⁵ This is because the Nordic model still has a negative impact on sex workers, despite the fact that the sex workers themselves are not subject to criminal prosecution.³⁶ Under the Nordic model sex as a commodity is still illegal, and consequently, sex workers still cannot unionize, or seek law enforcement protection.³⁷ Sex workers in favor of full decriminalization often point out that

³¹ *Id.*

³² *Id.*

³³ *HIV and Sex Workers*, The Lancet, <https://www.thelancet.com/series/hiv-and-sex-workers> (last updated July 23, 2014)

³⁴ *Why Sex Work Should Be Decriminalized*, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized#> (last updated Aug. 7, 2019)

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

when the buyers of sex are criminalized, sex work necessarily must occur in a covert manner.³⁸

Those opposed to the Nordic model argue that the underground nature of sex that the Nordic model imposes on sex workers creates more dangerous situations and less protections for sex workers who are victims of crime.³⁹ Further, despite the fact that sex workers themselves are not criminalized under the Nordic model, they cannot even open a bank account for their business, because their profits are the result of illegal activity.⁴⁰

Amnesty International also supports full decriminalization.⁴¹ Amnesty International echoes many of the arguments listed above, including public health concerns, sex workers' ability to unionize and report when they're victims of crimes, and the harmful social stigma attached to sex workers.⁴²

International nonprofits are not the only advocates in favor of decriminalization. Domestic organizations like the ACLU, Legal Aid Society, and Human Rights campaign all actively support the decriminalization of sex work.⁴³ These organizations enumerate many of the rationales their international peers cite as well as domestic concerns, particularly surrounding race, gender identity, and policing in the United States.⁴⁴

Further, contact with the criminal justice system has a wider impact than only criminal penalties. Consequences of a prostitution arrest can include being removed from housing by a landlord, being forced to register as a sex offender, potential child custody problems, and losing

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Amnesty International*, *supra*. note 3

⁴² *Id.*

⁴³ *It's Time to Decriminalize Sex Work*, ACLU, <https://www.aclu.org/news/topic/its-time-to-decriminalize-sex-work/>; <https://www.hrc.org/news/hrc-supports-important-washington-d-c-decriminalization-legislation> (last updated Mar. 9, 2021); Nick Morrow, *HRC Supports Important D.C. Decriminalization Legislation*, Human Rights Campaign, <https://www.hrc.org/news/hrc-supports-important-washington-d-c-decriminalization-legislation> (last updated June 4, 2019);

⁴⁴ *Id.*

other forms of employment.⁴⁵ All of these circumstances can be detrimental to a person's wellbeing, safety, and ability to live a normal life, and are not necessarily equitable outcomes.

That's not to say that all individuals involved in sex work advocacy are in agreement on this issue. The New York Times Magazine interviewed a variety of people associated with the business of commercial sex. Some advocates point out that there is a difference between those making an actual choice to sell sex and those who "sell sex to survive."⁴⁶ Deon Haywood is the director of Women With a Vision in New Orleans, which is a Black health collective that works with low-income women and trans clients.⁴⁷ Haywood notes to the New York Times Magazine that this group, who can include individuals like "a mother trying to scrape together the rent, say, or a runaway teenager" don't see themselves as part of an empowered movement and rarely refer to themselves as sex workers.⁴⁸ While some people who sell sex feel empowered by making a choice regarding their bodily autonomy, this is not the only story; for some people it can be the last remaining option, and a hardly empowering one.

Some advocates acknowledge this disjunction, and despite concerns regarding its impact, still come out in favor of decriminalization. Liesl Gerntholtz, executive director of the women's rights division at Human Rights Watch, noted that although a world in which sex work isn't a necessity for some people's survival would be the ideal, it is not our current reality.⁴⁹ She notes that if sex work is a necessity for some individuals to survive, it should occur in the safest possible form. According to Gerntholtz, decriminalization would help sex workers feel safe because they would feel more secure in the knowledge that if they are harmed in the course of their work they

⁴⁵ *Id.*

⁴⁶ Emily Bazelon, *Should Prostitution Be a Crime?*, New York Times, <https://www.nytimes.com/2016/05/08/magazine/should-prostitution-be-a-crime.html> (last updated May 5, 2016)

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

can report it and it will be investigated, and there won't be negative collateral consequences in their lives such as their landlord kicking them out, or their children being expelled from school.⁵⁰

In the ongoing story of the sex work decriminalization movement, it has become clear that sex work has become more palatable to society. Today, around half of Americans support decriminalizing prostitution.⁵¹ While sex work is becoming more and more accepted as a social and economic phenomenon by the public and various elected officials as a matter of criminal law, the more complex reality of sex work includes a wide overlap with human trafficking.

Part II: The Human Trafficking Problem in the United States

Over the past twenty years, there has been a tightening by the federal government and state legislatures to attempt to control human trafficking in the United States. Whereas trafficking was perhaps once thought of as a problem in developing countries and not a domestic issue, it has become clear that this is not the case. The International Labor Organization estimates that there are hundreds of thousands trafficking victims in the United States⁵². Two thirds of these victims are United States citizens, and the final third are people who immigrated to the United States willingly or were forced to enter the country. According to RestoreNYC, an anti-trafficking organization in New York City, there are currently four hundred and three thousand people that are being trafficked in the United States right now.⁵³

⁵⁰ *Id.*

⁵¹ *For First Time, Polls Find Majority of Country Supports Decriminalizing Sex Work, as Do 2/3 of Democrats and Voters Under 45*, Center for Constitutional Rights, <https://ccrjustice.org/home/press-center/press-releases/first-time-polls-find-majority-country-supports-decriminalizing-sex> (last modified Jan. 30, 2020)

⁵² *Forced Labour, Modern Slavery and Human Trafficking*, International Labor Organization, <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited May 1, 2021)

⁵³ *Sex Trafficking Is a Devastating, Locally Prevalent, and Under-Addressed Problem in New York City*, RestoreNYC, <https://restorenyc.org/sex-trafficking> (last visited May 1, 2021)

It is important to dispel the image of women kidnapped and transported in shipping containers as the typical image of trafficking and clarify the difference between human trafficking and human smuggling. Human smuggling involves the moving of individuals through illegal border crossings.⁵⁴ The person being “smuggled” is engaging in that activity voluntarily.⁵⁵ Human trafficking is defined as the use of force, fraud, or coercion to compel an individual to perform sexual acts in exchange for currency.⁵⁶ Sometimes, these two crimes can overlap; For example, a trafficker can recruit victims from another country, transport them to the United States, and then use force, fraud or coercion to make them engage in sex acts for money. However, it is crucial to understand that there is no element of movement whatsoever required to successfully make out a case involving human trafficking.

The prohibitions of human trafficking in our laws today have roots in the 13th Amendment, which prohibits slavery and involuntary servitude⁵⁷. One of the first of the modern federal laws aimed at combatting human trafficking is the Trafficking Victims Protection Act of 2000.⁵⁸ Congress notes that as the world modernizes, so too does the ability of people to traffic vulnerable individuals. This act was refined in 2003, which added human trafficking crimes as a Racketeer Influenced and Corrupt Organizations Act (RICO) predicate.⁵⁹ In 2005, the Trafficking Victims Protection Reauthorization Act “provided extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government” and

⁵⁴ *Human Trafficking, a White Paper for the NYPD*, Sanctuary for Families and New York State Anti-Trafficking Coalition, 100, http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/LMHT_0.pdf (last visited May 1, 2021)

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ The Justice for Victims of Trafficking Act of 2015 (JVTA), Pub. L. No. 114-22

⁵⁹ Trafficking Victims Protection Reauthorization Act of 2003 (TVPRRA 2003), Pub. L. No. 108-193

“established a grant program for state and local law enforcement agencies to combat trafficking.”⁶⁰ Later legislation continued to revise and refine the trafficking laws in the United States. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 “creat[ed] new crimes that impose appropriately serious penalties on those who obstruct or attempt to obstruct the investigation and prosecution of trafficking crimes; eliminat[ed] the requirement to prove the defendant knew a sex trafficking victim was a minor in cases where the defendant had a reasonable opportunity to observe the minor; and expand[ed] the crime of forced labor by providing that “force” includes the abuse or threatened abuse of legal process.”⁶¹ The Trafficking Victims Protection Reauthorization Act of 2013 turned its attention to elimination of human trafficking from the supply chain of goods, and ensuring the United States does not do commercial business with those whose labor force is trafficked or funded by trafficking.⁶² Most recently, the Justice for Victims of Trafficking Act of 2015 added the clarifying language of “patronizes” and “solicits” in an effort to expand the class of people who can be penalized for patronizing organizations that force victims into prostitution.⁶³

There are also laws criminalizing human trafficking at the state level. In New York, Section 230.33 of the penal code states that “a person is guilty of compelling prostitution when, being eighteen years old or more, he or she knowingly advances prostitution by compelling a person less than eighteen years old, by force or intimidation, to engage in prostitution.”⁶⁴ Section 230.34 states that a person guilty of sex trafficking if they intentionally benefits or profits from prostitution by drugging the victim and with the intent to impair their judgement or ability to stop the sexual

⁶⁰ Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005), Pub. L. No. 109-164

⁶¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457

⁶² The Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA 2013), Pub. L. No. 113-4

⁶³ Justice for Victims of Trafficking Act of 2015 (JVTA), Pub. L. No. 114-22

⁶⁴ N.Y. Penal Law § 230.34

activity, make material false statements, misstatements, or omissions to induce or maintain the person in the state of sex slavery, threaten to destroy immigration documents, require that prostitution be performed to retire, repay, or service a real or purported debt, use physical force to compel someone to perform prostitution, among many other possible means of coercion.⁶⁵

The intertwined quality of the language used in trafficking statutes and prostitution statutes may be a failing on the part of the legislature to recognize trafficking as a separate criminal issue from sex work. Alternatively, it may be the natural reality that sex work and trafficking can look dangerously similar on the surface and are inevitably related to each other.

Human trafficking is a conglomerate that occurs in the United States every day, but it does not have one set profile. Trafficking can occur in a variety of ways. In Jeffrey Epstein's case, though it is unclear how much money he made from his darkly tangled and complex web of associates and victims, it is safe to assume that this large-scale operation was a financially lucrative one.⁶⁶ Trafficking can also be perpetrated by criminal organizations, including gangs and cartels.⁶⁷ These organizations can easily build in human trafficking to existing streams of illegally trafficking firearms and drugs⁶⁸. Although these large-scale operations can be the first thing that comes to mind when discussing human trafficking, it's important to note that human trafficking also occurs every day on a smaller, though still insidious scale. The majority of trafficking victims are trafficked in their own communities, on the blocks they grew up on, by people they know. A Covenant House study found that the percentage of people trafficked by strangers is only nine

⁶⁵ *Id.*

⁶⁶ Mahita Gajanan, *Here's What to Know About the Sex Trafficking Case Against Jeffrey Epstein*, Time, <https://time.com/5621911/jeffrey-epstein-sex-trafficking-what-to-know/> (last updated July 17, 2019)

⁶⁷ *Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States 2013-2017*, United States Department of Justice, <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/FederalHumanTraffickingStrategicPlan.pdf> (last visited May 1, 2021)

⁶⁸ *Id.*

percent.⁶⁹ Conversely, most victims are taken advantage of by immediate family, extended family, friends of family, or partners, making up seventy-seven percent.⁷⁰ The final fourteen percent of victims are trafficked by employers.⁷¹ There are a variety of powerful tools traffickers use to keep these victims from seeking help. Common methods of force, fraud and coercion include shame, non-consensual recording and revenge porn, debt bondage, immigration and child custody threats, physical abuse, among many others.⁷²

Despite the fact that those in favor of the decriminalization of sex work claim that on some scale that sex work is a voluntary and acceptable form of labor wholly separate from the criminal enterprise of human trafficking, that's not always the case. In interviews with various sex workers, some unequivocally support decriminalization, and disagree with the moral judgments on what they view as a legitimate profession.⁷³ Others, who had been trafficked before, said normalizing prostitution would make it far more difficult for the police to find people being exploited thus making it impossible to obtain both justice and safety.⁷⁴ According to the a report by the Urban Institute collaborating with the Legal Aid Exploitation Intervention Project, even among those engaging in sex work voluntarily, thirty-five percent report being trafficked at least once in their lives, and sometimes more than once.⁷⁵ Further, twenty percent of Exploitation Intervention Project client reported that they are currently being trafficked.⁷⁶ Over half of the individuals

⁶⁹ *Human Trafficking*, Covenant House, <https://www.covenanthouse.org/homeless-issues/human-trafficking> (last visited May 1, 2021)

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Timothy Williams, *In Washington, a Fight to Decriminalize Prostitution Divides Allies*, New York Times, <https://www.nytimes.com/2019/10/17/us/washington-legal-prostitution.html> (last updated Oct. 18, 2019)

⁷⁴ *Id.*

⁷⁵ Meredith Dank, Jennifer Yahner, Lilly Yu, Kate Mogulescu & Katie Beth White, *Consequences of Policing Prostitution*, *The Urban Institute*, https://www.urban.org/sites/default/files/publication/89451/legal_aid_final_0.pdf (last visited May 1, 2021)

⁷⁶ *Id.*

involved in the program were involved in prostitution before they turned twenty-one, making them a high risk for trafficking, and seventy percent of Exploitation Intervention clients reported a prior physical or sexual assault.⁷⁷

Additionally, some sex workers may feel empowered by their choice to engage in sex work, some individuals are forced into sex work by circumstance and basic human survival. This cannot be equated to an empowering choice. And although supporters of decriminalization argue that the move towards legalization makes it safer for sex workers, who would be able to work out in the open and have the benefit of regulations to make them safer, it's not necessarily guaranteed. In Nevada, for example, sex work has been legal and regulated for decades in some counties.⁷⁸ Sex workers and their customers in these areas can work without the fear of arrest or other criminal consequences. Despite this, the vast majority of prostitution that occurs in the area remains illegal.⁷⁹ This seems to undermine the idea that legal prostitution confers safety to sex workers by bringing sex work out into the open; even in places in the United States where sex work can occur openly, most prostitution still occurs illegally.

One of the primary ways in which trafficking organizations are identified is through law enforcement investigations of prostitution.⁸⁰ Undercover police officers sometimes set up operations based on prostitution laws and can identify key phrases and signals indicate that what may appear as consensual prostitution, may actually be human trafficking.⁸¹

⁷⁷ *Id.*

⁷⁸ Lenore Kuo, *Prostitution Policy: Revolutionizing Practice Through a Gendered Perspective*, 80 (2002)

⁷⁹ *Id.*

⁸⁰ *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*, International Association of Chiefs of Police, 7, <https://www.theiacp.org/sites/default/files/2018-07/CompleteHTGuide.pdf> (last visited May 1, 2021)

⁸¹ *Id.*

Those that are wary of the movement to decriminalize prostitution, are concerned that this decriminalization effectively eliminates law enforcement's reasonable suspicion required to make a stop and search.

Part III: Competing Interests: The Convergence of Sex Work and Trafficking Issues

A major issue that complicates the relationship between laws related to sex work and human trafficking and the enforcement of those laws is that on a surface level, they appear overwhelmingly similar. Even in jurisdictions like Las Vegas, most of the sex work that occurs is of the unregulated, and thus illegal, variety. This means that meet ups between sex workers and those soliciting prostitution are often organized online, on websites like Backpage (before it was shut down due to its role in promoting human trafficking) and Craigslist.⁸² Even when the “dates” are secured in person, on a street or in an establishment like a bar, they can frequently appear to occur in a nearly identical manner to a voluntary sex worker.⁸³ The differences between voluntary sex work and trafficking occur primarily behind the scenes, which are inaccessible to investigators without the legal means to stop, question, and search.⁸⁴ The ability to question and search is a key factor in being able to discern whether a situation is voluntary sex work or trafficking; it allows law enforcement to look for key signs that an individual has been coerced into performing sex acts in exchange for money. In the instance of sex trafficking in workplaces like massage parlors, the ability of law enforcement to search a work location can uncover tell-tale signs of trafficking such as toothbrushes and changes of clothes, mattresses on the floor, and bars over windows.⁸⁵ One way that law enforcement can enter and subsequently search locations like this is through prostitution

⁸² Mary Mazzio, I AM JANE DOE, (Feb. 10, 2017), <https://www.iamjanedofilm.com/>

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ <https://www.nytimes.com/2019/03/02/us/massage-parlors-human-trafficking.html>

bust operations.⁸⁶ The International Association of Chiefs of Police, in collaboration with the United States Office for Victims of Crime among other agencies, notes that the proactive tactics that law enforcement can use to attempt to identify and investigate trafficking is “largely limited to the use of stings and reverse stings to target prostitution related activities.”⁸⁷

Even when a trafficked individual has unrestricted movement, legal employment, or schooling, these factors do not discredit the possibility of trafficking, because the abuse that forces and coerces a trafficked individual occurs primarily behind closed doors. This force can be physical abuse, but there are many additional means of control through which a trafficker can force someone into sex trafficking. This can be through powerful monetary coercion like debt bondage, in which the trafficker demands immediate payment for a real or fraudulent debt.⁸⁸ Because the victim is forced to turn over any currency they have as a result of the trafficking and are unable to pay for themselves independently, the trafficker can threaten them with homelessness.⁸⁹ Undocumented individuals can be coerced into trafficking through threats to turn them over to immigration, or have their children removed.⁹⁰ Additionally, courts have found links between prostitution and human trafficking, including in the Ninth Circuit. In *Coyote Pub., Inc. v. Miller*, the court referenced this link explicitly by invoking the U.S. Department of State’s report *The Link Between Prostitution and Sex Trafficking*.⁹¹ Further, some studies have shown that countries that

⁸⁶ *Multi-Disciplinary Collaborative Model for Anti Human Trafficking Task Forces*, International Association of Chiefs of Police, Bureau of Justice Assistance, Training and Technical Assistance Center, Office for Victims of Crime, 27, [https://www.theiacp.org/sites/default/files/HumanTrafficking/Road map%20for%20Multidisciplinary%20Collaborative%20Model%20Anti-Human%20Trafficking%20Task%20Forces.pdf](https://www.theiacp.org/sites/default/files/HumanTrafficking/Road%20map%20for%20Multidisciplinary%20Collaborative%20Model%20Anti-Human%20Trafficking%20Task%20Forces.pdf) (last visited May 1, 2021)

⁸⁷ *Id.* at 27

⁸⁸ *About Human Trafficking*, United States Department of State, <https://www.state.gov/humantrafficking-about-human-trafficking/> (last visited May 1, 2021)

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Coyote Pub., Inc. v. Miller*, 598 F.3d 592, 600 (9th Cir. 2010)

have legalized prostitution experience higher rates of human trafficking, particularly in developed countries.⁹²

For many police departments and law enforcement agencies, provisions that criminalize prostitution are the primary source through which they are able to make out reasonable suspicion for a stop and subsequent search.⁹³ Because it is an illegal activity, evidence of prostitution can be used to further investigate and question those involved with prostitution.⁹⁴ Human trafficking investigations are particularly difficult, and identifying victims is one of the most challenging aspects of law enforcement's duties in this area of law.⁹⁵ The first step to building a strong trafficking case is detection of the crime.⁹⁶ Funded by the United States Department of Justice, the International Association of Police Chiefs notes in a study that because of the nature of trafficking, knowledge of trafficking operations will often arise to law enforcement indirectly. International Association of Police Chiefs specifies in their report that pimping, prostitution, and domestic violence violations can lead law enforcement to discover human trafficking activities.⁹⁷ A lieutenant in the Seattle Police Department said in an interview with the United States Office of Victims of Crime that one way that the department gathers more information about a suspected trafficking ring is a "john sting," in which the buyers of sex are stopped, taken into custody, and interviewed.⁹⁸ The purpose of these operations is to find out more information from the "john,"

⁹² *Does Legalized Prostitution Increase Human Trafficking?*, Harvard Law and International Development Society (June 12, 2014), <https://orgs.law.harvard.edu/lids/2014/06/12/does-legalized-prostitution-increase-human-trafficking/>

⁹³ *Multi-Disciplinary Collaborative Model for Anti Human Trafficking Task Forces*, *supra*. note 86

⁹⁴ *Id.*

⁹⁵ *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*, *supra*. note 10

⁹⁶ *Anti-Human Trafficking Task Force Strategy and Operations e-Guide*, Office of Victims of Crime, Bureau of Justice Assistance, U.S. Department of Justice, <http://www.ovcttac.gov/TaskForceGuide/EGuide/Default.aspx>

⁹⁷ *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*, *supra*. note 10

⁹⁸ *Id.*

such as information about pimps and whether they knew of or were looking for underage victims, in order to further the investigation.⁹⁹

When activity appears to be a legal activity from the outside, it is almost impossible to probe further to uncover the underlying criminal activity. For example, labor trafficking is especially difficult to detect, often referred to as a crime hidden in plain sight.¹⁰⁰ One reason for this difficulty is that the actual work that the victims are engaging in is legal by nature.¹⁰¹ The illegality of labor trafficking comes, of course, from the trafficking aspect; that is, it is the forced nature of the work that is illegal.¹⁰² Although the Brooklyn District Attorney's Office has one of the most robust Human Trafficking Units, which includes labor trafficking, it has never had a labor trafficking case go to trial.¹⁰³ This is not because there are no individuals in Brooklyn (which is home to 2.6 million people) who are engaged in labor through force or coercion, in places such as massage parlors, house cleaning, agriculture, child care, retail services or nail salon industries.¹⁰⁴ In fact, The Human Rights Center at the University of California, Berkeley estimates that there ten thousand victims of labor trafficking at any given time in the United States.¹⁰⁵ Rather, it is because those that are labor trafficked are a vulnerable population, distrustful of police, or afraid of the consequences of reporting.¹⁰⁶ Because the work itself appears to be legal in nature, law enforcement has no justification to investigate or search further into the employment situation.¹⁰⁷

⁹⁹ *Id.*

¹⁰⁰ Leila Miller, *Why Labor Trafficking Is So Hard to Track*, Pbs (Apr. 24, 2018), <https://www.pbs.org/wgbh/frontline/article/why-labor-trafficking-is-so-hard-to-track/>

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Human Trafficking Unit*, Brooklyn District Attorney's Office, <http://www.brooklynda.org/human-trafficking/> (last visited May 1, 2021)

¹⁰⁴ *QuickFacts Kings County (Brooklyn Borough)*, New York, U.S. Census, <https://www.census.gov/quickfacts/fact/table/kingscountybrooklynboroughnewyork/PST045219> (last visited May 1, 2021)

¹⁰⁵ ARTICLE: Hidden Slaves: Forced Labor in the United States, 23 Berkeley J. Int'l L. 47

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

According to the United States Department of Health and Human Services, the hidden nature of trafficking is the greatest obstacle to combatting the trafficking problem in the United States.¹⁰⁸ Without systems in place to investigate the underbelly of this seemingly legal activity, the decriminalization of prostitution could fall into the same category of investigative difficulty. If prostitution were decriminalized without the development of new methods of investigating potential trafficking situations, victims could become even harder to find, identify, and remove from the control of the trafficker.

The United States Department of State also discusses the connection between sex work and trafficking. In the report *The Link Between Prostitution and Sex Trafficking*, the State Department takes a wary stance on decriminalization.¹⁰⁹ This report, which has been cited by U.S. Circuit Courts, states that where prostitution is legal, there is nearly always an increase in the number of trafficking victims in those areas.¹¹⁰ According to the report, this is because legalized brothels, prostitution, and related activities provide a “façade” that traffickers can exploit and operate behind, with far less fear of law enforcement discovery.¹¹¹ Legal sex work would make it easier for traffickers and organized crime networks to blend in with legal and consensual sex workers, which would make it much more difficult to identify both perpetrators and victims.¹¹² The State Department looked to Sweden as a case study for their report.¹¹³ The Swedish government found that trafficking thrives when there is a large market for prostitution.¹¹⁴

¹⁰⁸ *STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS. WHAT ARE CHALLENGES TO IDENTIFYING VICTIMS?*, United States Department of Health and Human Services (Dec. 15, 2009), <https://aspe.hhs.gov/report/study-hhs-programs-serving-human-trafficking-victims/what-are-challenges-identifying-victims>

¹⁰⁹ *The Link Between Prostitution and Sex Trafficking*, United States Department of State (Nov. 24, 2004), <https://2001-2009.state.gov/r/pa/ei/rls/38790.htm>

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

The New York State Anti-Trafficking Coalition published a white paper as a resource for the New York Police Department, as well as other law enforcement agencies.¹¹⁵ In this report, the Coalition also turned towards Sweden as an example for this analysis.¹¹⁶ The Swedish model of enforcement of prostitution laws centers around demand, by criminalizing the “johns,” or the buyers of sex.¹¹⁷ Following Sweden’s criminalization of buying sex, it saw a seventy-five percent decrease in the number of “johns.”¹¹⁸ Swedish law enforcement agencies have intercepted communications between traffickers that suggested that Sweden was a “bad market” for trafficking, because “johns” are deterred by the strict laws and penalties associated with purchasing sex.¹¹⁹

A study in World Development found that countries where prostitution was legal had higher human trafficking inflows.¹²⁰ This is because decriminalization causes an expansion for the market for commercial sex, and this expansion in demand exceeds the number of legal sex workers.¹²¹ The study notes that although there are benefits to decriminalizing prostitution, such as improving conditions for sex workers and support sex workers’ freedom to choose what they do with their bodies, these benefits generally come at the expense of human trafficking victims, who are more easily and more frequently exploited where sex work is decriminalized.¹²²

Even for the large cross section of those hesitant to endorse an outright decriminalization of sex work, most people agree that imposing criminal penalties onto the sex worker is

¹¹⁵ *Human Trafficking, a White Paper for the NYPD*, supra. note 54

¹¹⁶ *Id.* at 3

¹¹⁷ *Id.* at 4

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Seo-Young Cho, Axel Dreher, Eric Neumayer, *Does Legalized Prostitution Increase Human Trafficking?*, World Development, 2013 at 67-82

¹²¹ *Id.*

¹²² *Id.*

problematic. A conviction for prostitution could lead to a sex worker losing other employment, being removed from an apartment or dwelling by a landlord, make it more difficult to get necessary healthcare, or even result in the sex worker having to register as a sex offender. These penalties only make a vulnerable group all the more vulnerable. One approach a variety of District Attorney's Offices, including the Brooklyn District Attorney's office, is diversion or dismissal, wherein individuals can still be stopped for prostitution "offenses" because they are still codified as a crime, but that the case against the sex worker will ultimately be diverted or dismissed.¹²³ Services are also available through the District Attorney's Office for sex workers.¹²⁴ Brooklyn District Attorney Eric Gonzalez also wiped out all warrants related to prostitution offenses.¹²⁵ The Manhattan District Attorney's Office took a similar approach, announcing that it would no longer be prosecuting prostitution and related offenses, such as unlicensed massage and loitering for the purposes of prostitution, both misdemeanors.¹²⁶ The office's new policy also includes dismissing already open cases, wiping out outstanding warrants, and erasing prior convictions for these offenses.¹²⁷ In light of this policy, advocates at Sanctuary for Families praised the Manhattan District Attorney's Office, noting that often, survivors of trafficking too frequently suffer the consequences of actions their traffickers force them to do, which often results in criminal penalties.¹²⁸

¹²³ *Brooklyn District Attorney Eric Gonzalez Dismisses All Outstanding Prostitution-Related Warrants*, Brooklyn District Attorney's Office (Jan. 29, 2021), <http://www.brooklynda.org/2021/01/29/brooklyn-district-attorney-eric-gonzalez-dismisses-all-outstanding-prostitution-related-warrants/>

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *D.A. Vance Ends Prosecution of Prostitution and Unlicensed Massage, A First in New York State*, New York County District Attorney's Office (Apr. 21, 2021), <https://www.manhattanda.org/d-a-vance-ends-prosecution-of-prostitution-and-unlicensed-massage/>

¹²⁷ *Id.*

¹²⁸ *Id.*

There are benefits to this approach as opposed to complete decriminalization. Namely, the keeping of prostitution laws on the books allows law enforcement to continue to use the law as a tool to investigate human trafficking, while still eliminating the conviction problem people engaged in sex work face, that causes issues with housing, voting, securing non-sex related work, health care, etc. That said, it's not a perfect solution. Sex workers will still face the public stigmatic harm of being arrested for prostitution in the first place.¹²⁹ Additionally, for many sex workers who view their work as legitimate employment, the disruption to their work day is not only a hassle, but a financial burden; they can't work if they're stuck at a police precinct for hours, before an Assistant District Attorney has the opportunity to dismiss their case. Further, given the assertion that the prostitution busts are necessary to identify trafficking, it is assumed that at least some of the individuals criminalized and arrested by the prostitution laws will inevitably be human trafficking victims. These victims are also subjected to the public stigmatic harm of being arrested, being placed in handcuffs, walked out on the street and put in a squad car, transported to precinct, fingerprinted, held in a cell, among other indignities.¹³⁰ Additionally, for victims who are already deprived of their liberty, there is the added trauma the ordeal of being arrested and physically removed from the premises directly causes. Not only are trafficking victims forced to endure yet another affront to their personal freedom, but they must endure new and frightening forms of authority, which can be a significant trigger for trafficked individuals. Though this is a significant harm that cannot be minimized, the alternative is the long term harm that trafficking goes undiscovered. Finally, even well-meaning police officers can easily cause harm to trafficking victims due to the overwhelming lack of funding for trafficking training. The incarceration, the

¹²⁹ *It's Time to Decriminalize Sex Work, supra.*

¹³⁰ *Id.*

stigma, the imposition of authority, and the custody creates layers of harm and trauma on top of the immense trauma caused by being a trafficking survivor.

An additional approach could be a partnership approach, in which other professionals with the training and ability to treat trafficked individuals could be dispatched along with the police officers involved in and dispatched to prostitution calls. This group could include health professionals, psychologists, non-profit organizers and activists, and lawyers. In 2013, New York State Chief Justice Jonathan Lipman announced that he would be creating eight diversion courts under the Human Trafficking Intervention program.¹³¹ The Human Trafficking Intervention courts, or HTICs would be specifically for those charged with prostitution offenses to address the issue of “victim-defendants;” those charged with prostitution crimes but are victims of trafficking and other abuses.¹³² These courts, which already existed in New York City and Nassau counties, allow the attorneys and the judges to specialize in issues around prostitution, trafficking, and related offenses, allowing them to reach and advocate for more appropriate resolutions.¹³³ Although these courts hope to help identify and intervene on behalf of trafficking victims, it’s important to note that this intervention comes only after the victim has been arrested and has had charges filed against them. This adds additional trauma, and also leaves room for those who do not have training on trafficking and related issues to cause further harm, such as police officers, prosecutors assigned to intake bureaus, and court staff. It’s difficult to assess how well these courts are doing to combat trafficking and other issues that can force an individual into prostitution,

¹³¹ Dank, Yahner, Yu, Mogulescu & White, *supra*.

¹³² *Id.*

¹³³ *Id.*

because New York State does not track the data on these cases, how victims do after they leave court, or how often they return.¹³⁴

Additionally, implementing this approach broadly would certainly be a costly one, and given the lack of funding currently allocated to the human trafficking sphere, it might be unlikely. Additionally, though it may alleviate at least some of the concerns of trafficking victims, it does less to ease the concerns of voluntary sex workers whose jobs and lives are interrupted by these arrests, even if they are eventually dismissed.

Both of these discussions, while imperfect, are indicative of the growing progressive prosecution mindset. Many District Attorney's Offices are moving along a trend of being more mindful of the additional harms that come implicitly with contact with the criminal justice system. District Attorney politics also play a significant role in this discussion; the question of institutional priorities can create somewhat of a roadblock to a change in direction. District Attorneys must wrestle with the possibility of being known as a prosecutor who gets to the big fish, so to speak, and take down the actors causing the most harm, or being known as a prosecutor who does not inflict harm on the lower levels of an operation in order to get to the primary actors.

What the intersection of the movement to decriminalize prostitution uncovers is a utilitarian dilemma. As goes the classic problem in criminal law, policymakers dealing with these issues have to wrestle with questions about how much harm to one individual should be tolerated, if it means it's possible to stop severe harm from a larger group of people. Utilitarian dilemmas like this one do not often have one resolution that is satisfactory to everyone involved. Additionally, this utilitarian perspective is complicated by two other realities, namely, democratic will and institutional restraints and priorities. It may be that it is necessarily impossible to reconcile

¹³⁴ Christina Goldbaum, *Charged with Prostitution, She Went to a Special Court. Did It Help?*, New York Times (Jan. 6, 2020), <https://www.nytimes.com/2020/01/06/nyregion/ny-prostitution-courts.html>

the law enforcement interests, the interests of sex workers, the interests of trafficking victims, and the trauma suffered by these vulnerable groups, especially if prosecutors and investigators view prostitution statutes as a means to getting to the big fish. That may lead some to the conclusion that enforcement of these laws and the doubling down on the trauma of sex workers and trafficking victims should be eliminated; that the state should not be a party contributing to the harm suffered by already marginalized groups. This seems like a fair conclusion until it becomes apparent that when sex work is decriminalized, it becomes difficult to successfully investigate, arrest, and prosecute traffickers, thereby creating more harm through the creation of more victims.

And even if one side or another wins the day, there is the issue of implementation. Although every state, sans a handful of counties in Nevada, has criminalized prostitution, there is no federal law that criminalizes it outright. What we're left with is a similar debate to the issue of marijuana legalization; just because the federal government treats an activity as legalized, does not mean the states are compelled to act the same. A number of courts, such as the Ninth Circuit, have held that prostitution is not a protected constitutional right, even under Supreme Court protected "intimate conduct."¹³⁵ Unless the Supreme Court holds that laws criminalizing prostitution are unconstitutional based on due process, which no court has done as of yet, activists are left to advocate in each of the fifty states that sex work should be decriminalized by the legislature, one by one.

Conclusion

The decriminalization of prostitution movement has a plethora of benefits on its face, including individual and public health benefits, a potential safer mode by which sex workers can

¹³⁵ *Erotic Serv. Provider Legal Educ. & Rsch. Project v. Gascon*, 880 F.3d 450 at 456 (9th Cir. 2018)

do their jobs, a greater sense of bodily autonomy for the overwhelmingly female population that sex work involves. It has roots back to 1970s liberation, feminism, and public health movements.¹³⁶ However, it is important to note that how prostitution decriminalization occurs is necessarily entangled with law enforcement relating to human trafficking; these two phenomena are intrinsically linked. Human trafficking affects hundreds of thousands of individuals in the United States a year, and millions globally.¹³⁷ It affects those smuggled to the United States for the purpose of trafficking, but contrary to common belief, a majority of individuals that are trafficked in the United States every day are citizens of this country.¹³⁸ Trafficking can be as large scale as Jeffrey Epstein's private island that included human smuggling and large volumes of cash inflow in addition to human trafficking.¹³⁹ Conversely, human trafficking can be as small scale as a domestic violence relationship between two people, in which the abusive party begins to use their control over the victim to compel him or her to have sex with others for money through force, fraud, or coercion, and to turn that money back over to their abuser. Like domestic violence and other sex crimes, it affects all socio-economic classes.¹⁴⁰ And because the primary gateway that allows law enforcement to investigate, question, and stop those involved with trafficking is through prostitution laws as a justification for the initial stop, if prostitution is decriminalized, the ability to ferret out trafficking could potentially be hampered.¹⁴¹

Decriminalization of sex work and human trafficking law investigation activities create a set of interest that collide when viewed in tandem. By utilizing prostitution laws to identify and

¹³⁶ North, *supra*.

¹³⁷ *Forced Labour, Modern Slavery and Human Trafficking*, *supra*.

¹³⁸ *Human Trafficking*, *supra*.

¹³⁹ Gajanan, *supra*.

¹⁴⁰ *Id.*

¹⁴¹ *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation; Multi-Disciplinary Collaborative Model for Anti Human Trafficking Task Forces*, *supra*.

investigate human trafficking offenses, the trafficking victim becomes a simultaneous prostitution defendant. This dual position of victim-defendant subjects the individual arrested for prostitution for a number of associated short-term harms that exacerbate the trauma already experienced. This it becomes clear that there are multiple layers of harm at play within this issue. The linkage between prostitution and human trafficking becomes more complex the more one attempts to untangle it. It is especially important for lawmakers, lawyers, and advocates to not view either of these issues in a vacuum, and to consider the potential for collateral, and unintended effects caused by legislation on one of these issues or another.