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PROSTITUTION: A REVIEW OF LEGISLATION IN SELECTED COUNTRIES

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in Selected Countries*
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EXECUTIVE SUMMARY

Over the last 30 years, the governments of various Western democracies have made significant changes in their approach to managing prostitution. However, little consensus exists on the most appropriate legislative response. In various countries, attempts to adopt a new legislative approach (whether to enact or repeal criminal penalties) have sparked fierce controversy. Though the similarities between these legislative approaches are not always immediately apparent, all of them express the aims of both protecting the health and safety of sex workers, and preventing their exploitation by pimps or clients.

In Australia, most forms of prostitution have been decriminalized in the Australian Capital Territory, but some controls remain in place, such as registration requirements and a prohibition on street sex work. Meanwhile, a similar decriminalization approach is currently being adopted in the state of Victoria, replacing the previous regime of legalization with strict controls and regulations. A fully decriminalized regime has been in place in New Zealand since 2003. Local governments are permitted to introduce their own regulations concerning certain activities, and some have done so, most of them striving to confine sex work to specified areas of cities.

In the Netherlands in 2000, the law prohibiting prostitution was replaced by a new system of legalization that tightly regulated sex work occurring in registered businesses. However, an increasing proportion of sex work in the Netherlands occurs illegally. A similar situation prevails in some counties within the state of Nevada in the United States (U.S.), where prostitution in licensed brothels is legal but declining in proportion to the level of prostitution occurring illegally.

Sweden introduced a neo-abolitionist model in 1999, which is based on the premise that sex work is inherently exploitative, and consequently, criminalizes pimps and clients. This has become known as the “Nordic model” and has been implemented in many other countries in recent years, including Canada.

An abolitionist legislative approach in England criminalizes most of the activity related to outdoor sex work, as well as brothel-keeping and pimping, yet it does not specifically criminalize the act of prostitution itself. This exception sets it apart from prohibitionist jurisdictions that dominate in the U.S., such as in the state of California, where prostitution is illegal.

PROSTITUTION: A REVIEW OF LEGISLATION IN SELECTED COUNTRIES

1 INTRODUCTION

Over the last 30 years, the governments of various Western democracies have made significant changes in their approach to managing prostitution.¹ However, little consensus exists on the most appropriate legislative response. In various countries, attempts to adopt a new legislative approach (whether to enact or repeal criminal penalties) have sparked fierce controversy.

In Canada, the role of the *Criminal Code* in controlling and/or regulating prostitution is the subject of a long-standing debate. The divergence of opinion in this country over prostitution and street solicitation is visible in the constitutional court challenges launched and the government and parliamentary reviews undertaken in the past several decades, culminating in a 2013 Supreme Court decision in which a number of criminal law prohibitions were struck down as unconstitutional.² The federal government responded to this decision by introducing the *Protection of Communities and Exploited Persons Act*³ (the Act) which came into force at the end of 2014. The Act treats prostitution as a form of sexual exploitation that has disproportionate effects on women and girls, and it seeks to:

- protect those who sell their own sexual services;
- protect communities, and especially children, from the harms caused by prostitution; and
- reduce the demand for prostitution and its incidence.⁴

The Act came about as the result of government consultations in which several international approaches to prostitution and its associated issues were examined, many of which are discussed in this paper.

Though the similarities between them are not always immediately apparent, all of the legislative approaches express the aims of both protecting the health and safety of sex workers, and preventing their exploitation by pimps or clients. Jurisdictions have differing views of the nature of sex work and of how best to achieve the goal of protecting those who engage in it. Legislators also face increasing concerns about human trafficking and its relationship to trafficked adults and sexually exploited children, and about consenting adults who may work in the industry by choice.⁵

This paper reviews the key legislative approaches to prostitution in a number of Western jurisdictions. In particular, it examines the specific laws and/or regulations these countries and states have instituted, and it discusses how they appear to have fared in meeting their objectives.

1.1 A NOTE ON TERMINOLOGY

“Indoor” versus “outdoor” sex work refers to the place of solicitation between worker and client. Street solicitation is considered outdoor sex work, while sex work originating from online solicitation or occurring in closed spaces, such as in brothels or through escort agencies, is considered indoor sex work. An estimated 80% of sex work solicitation now takes place online.⁶ Research demonstrates that indoor work is safer than outdoor work, with significantly higher rates of reported violence against sex workers working outdoors.⁷

2 OVERVIEW OF DIFFERENT LEGISLATIVE APPROACHES

Each of the jurisdictions examined in this paper relies on a variation of one of three approaches to prostitution, which can be broadly broken down as: criminalization, legalization and decriminalization.⁸

Criminalization indicates that it is impossible, or almost impossible, to legally engage in prostitution. This approach seeks to reduce or eliminate prostitution and can be divided into three sub-categories:

- *Prohibitionism* seeks to eliminate prostitution by criminalizing all aspects of prostitution. Under this approach, prostitution is seen as a violation of human dignity. Criminal law and effective law enforcement are viewed as critical tools for reducing the number of individuals involved in prostitution.
- *Abolitionism* is often described as the middle ground between prohibitionism and legalization (see below). Advocates of this approach maintain that even though sex workers may choose to enter the trade, it is nevertheless a social problem. They believe that governments must take the necessary steps to allow prostitution to occur only as long as it does not infringe on public safety and order. Generally, abolitionists call for criminalizing public solicitation.
- *Neo-abolitionism* holds that prostitution is inherently violent – prostitution in all its forms constitutes the sale and consumption of human bodies. Neo-abolitionists call for the decriminalization of the activity of sex workers themselves, but for the criminalization of all other aspects of prostitution, including the activity of pimps and the participation of clients.

Decriminalization implies the repeal of prostitution-related criminal law, leaving in place generic criminal and other laws to address the industry. While some minimum level of prostitution-specific regulations may be put in place, the object is to treat prostitution like any other occupation.

Legalization refers to the specific regulation of prostitution through criminal law, labour law or other legislation. This approach treats prostitution as a legal occupation that is nevertheless controlled by a set of rules to govern who can work and under what

circumstances they can do so. Typically, governments that have adopted the legalization approach regulate the trade through work permits, licensing and/or tolerance zones.

3 AUSTRALIA

Responsibility for criminal legislation in Australia falls primarily on the individual states and they have taken very different approaches to managing and regulating prostitution, as seen in the Australian Capital Territory (ACT) and in the state of Victoria.

3.1 AUSTRALIAN CAPITAL TERRITORY: DECRIMINALIZATION WITH CONTROLS

In 1992, the ACT adopted the *Prostitution Act* which decriminalized indoor prostitution with the aim of managing the negative effects of the prostitution industry. In 2018, the legislation was updated and renamed the *Sex Work Act 1992*.⁹ It sets up a series of regulations designed to protect the health and safety of sex workers, minimize the links between sex work and criminality, limit the operation of brothels to particular places and eliminate the sexual exploitation of children.¹⁰

The *Sex Work Act 1992* requires commercial brothels and escort agencies to register with the government each year. Private workers who operate alone do not need to register. Registration involves presenting proof of identity, providing contact information and paying a small fee. Applicants must also agree to a criminal background check. Any individual convicted of a “disqualifying offence” is not permitted to own or operate a brothel or escort agency. The disqualifying offences listed in the schedules of the *Sex Work Act 1992* include assault, murder, sexual assault and involvement in child pornography and exploitation. Street solicitation is criminalized for workers and clients alike.

The registration system appears to have met the goal of limiting sex work to particular districts. The ACT (like most other Australian states) continues to prohibit street solicitation, which remains at a very low level. Due to the relative straightforwardness of the registration process, there appear to be very few illegal brothels and escort agencies (although many individual sex workers are not registered).¹¹ Brothels are largely confined to industrial areas because of the ACT’s zoning requirements, and criminality in the ACT does not appear to have a strong link to the sex work industry.¹²

However, the system has not been without its controversies. Prior to the 2018 amendments, sex workers employed in brothels and escort agencies were required to undergo mandatory testing for sexually transmitted infections (STIs). Infected individuals were prohibited from providing or seeking sexual services, and owners and managers of brothels and escort agencies were not allowed to let infected

employees work. However, a review of those provisions between 2010 and 2012 by the ACT Legislative Assembly's Standing Committee on Justice and Community Safety and further study by a government-established working group led to the eventual removal of these provisions. In its report, the Committee noted that on this issue, new legislation should recognize "the right of people to engage in commercial sex work in parity with other commercial activities."¹³ The new legislation states that sex workers must not mislead either an employer or a client about the results of any medical testing, and it cross-references *Public Health Regulation 2000*, which says that individuals must take reasonable precautions when engaging in sexual activity (such as using condoms or other prophylactics).¹⁴

The *Work Health and Safety (Sexual Services Industry) Code of Practice 2011* was implemented for the further protection of sex workers and their clients and operates in conjunction with the *Work Health and Safety Act 2011* and its regulations.¹⁵ Employers and/or operators of brothels and escort agencies are required to provide facilities that meet health and safety standards. The standards, which were originally developed by a collective of sex workers, police officers and health officials, include guidelines with respect to cleanliness and safety, as well as the use of personal protective equipment (such as condoms and other prophylactics). In assessing the ACT's approach, it is important to note its distinctive history with regard to this issue. Even before 1992, the ACT pursued a policy of toleration and control. Persons involved in prostitution were not charged unless a complaint had been lodged. Moreover, sex workers already enjoyed a fairly cordial relationship with the police and other community members. Thus, it is likely that this history helped to iron out issues that could have provoked much more controversy in some other parts of Australia, such as Victoria.

3.2 VICTORIA: FROM LEGALIZATION TO DECRIMINALIZATION

While some forms of prostitution have been permitted in Victoria since 1986, the sex industry is currently governed by the *Sex Work Act 1994* (formerly the *Prostitution Control Act*) which came into force in 1995, the *Sex Work Regulations 2016* and the *Public Health and Wellbeing Act 2008*.¹⁶ The resulting system of mandatory licences legalizes sex work that conforms to specific regulations, while sex workers who operate outside of these licensing requirements can be criminally prosecuted. In Victoria, individuals and businesses selling sexual services are required to be licensed.

The current licensing process is far more extensive than the registration process in the ACT is. The Business Licensing Authority requires prospective owners to submit to a police check and an assessment of their financial affairs. More generally, the *Sex Work Act 1994* requires applicants (and their associates) to be "of good repute, having regard to character, honesty and integrity."¹⁷ These requirements are designed in

part to prevent organized crime from infiltrating the sex work industry. Sole operators and two-person brothels are exempt, and thus do not have to apply for a licence. All brothels and sole operators are subject to detailed location restrictions that limit operations to zoned industrial areas located more than 200 metres from churches/places of worship, schools, hospitals or places where children regularly spend time. Sex workers must obtain both permission from their landlord and planning permits from their local council.

In recent years, the legal framework for sex work in Victoria has come under widespread criticism,¹⁸ and the current Labor government has expressed its intention to decriminalize the industry. In November 2019, it announced that Fiona Patten, Member of Parliament and sex work advocate, was appointed to lead a review of sex work regulation and determine how to decriminalize the industry.¹⁹ The review's stated aims were to increase safety, reduce stigma and improve access to government health and justice services. The six-month review, involving consultations with a range of stakeholders, was completed in late 2020. In its response of August 2021, the government explained that sex work would be decriminalized in the state; however, it has not yet begun the implementation process.²⁰ The government plans to introduce decriminalization in two stages beginning in 2022, after legislation passes in the Victorian Parliament. In the first stage, offences and criminal controls will be removed, advertising controls amended and anti-discrimination protections introduced, while in the second stage, planned for December 2023, the licensing system will be repealed and the remaining reforms implemented.²¹

Many of the submissions received as part of the review argue that the current system of regulation and enforcement is discriminatory and fails to adequately protect sex workers. Scarlet Alliance, an Australia-wide sex work advocacy organization, describes it as a “two-tiered sex industry where a small percentage of the industry can meet compliance requirements,”²² while the majority of the industry cannot and is forced to operate outside of the legal framework. Sex worker advocates also commented that for many sex workers, the options of either operating without registering or permanently registering with the government put them in a difficult place, as many choose to preserve their privacy and avoid the potential stigma associated with registration.²³

Other submissions pointed to the requirement in the *Sex Work Act 1994* that sex workers comply with mandatory testing (currently, every three months) for STIs and HIV; they are prohibited from working if positive. Critics argue that rather than protecting workers and clients, the legislation instead openly discriminates against individuals with HIV. Additionally, they claim that workers who test positive opt instead to work anyway outside of the law, only without the protections of mandatory safe-sex practices found in legal settings.²⁴

A number of organizations commented in their submissions about the restrictions on advertising by sex workers, a topic that came under scrutiny and criticism in 2016 when the government invited submissions for input into designing the *Sex Work Regulations 2016*. According to these comments in many of the submissions made in both 2016 and 2020, the existing controls on general business advertising and media communications are sufficient, and sex workers do not need to be further regulated and restricted.²⁵

The *Sex Work Act 1994* criminalizes street solicitation, something that, as noted in numerous submissions, had the effect of “forcing [street-based sex workers] into unsafe working practices and conditions,” which “diminishes their opportunities to access peer support groups and education” and “may encourage sex workers to engage in risky sexual encounters to avoid interactions with police.”²⁶ These critics also point out that street-based sex workers are already among the most vulnerable and this vulnerability is amplified by the negative impacts of criminalization.

Some stakeholders denounced the government’s review for allegedly restricting the viewpoints that were included, arguing that the government was basing its decision on whether and how to decriminalize sex work on a partial view of the situation. Several groups complained in the media that their requests to appear had been denied or ignored, while another group that did submit a statement noted that there were “several survivor groups who made requests to take part in verbal consultations with the Victorian review team, but were excluded.”²⁷

These organizations and individuals all express concern that the current *Sex Work Act 1994* and the proposed decriminalization model fail to adequately or explicitly address potential exploitation and trafficking in persons. They question the sufficiency of industry oversight by law enforcement and advocate for greater government effort to help sex workers who want to exit the sex trade do so to prevent their coercion and exploitation.²⁸

4 NEW ZEALAND: DECRIMINALIZATION

In June 2003, New Zealand undertook radical reforms of its prostitution laws, fully decriminalizing adult sex work by repealing a series of century-old laws prohibiting solicitation, operation of a brothel and living off the avails of prostitution. Before the *Prostitution Reform Act 2003*²⁹ was adopted, prostitution had not been illegal in New Zealand, but various surrounding prohibitions had made it almost impossible to sell and buy sexual services lawfully.

The aims of the *Prostitution Reform Act 2003* are made clear in section 3, which states:

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that –

- (a) safeguards the human rights of sex workers and protects them from exploitation;
- (b) promotes the welfare and occupational health and safety of sex workers;
- (c) is conducive to public health;
- (d) prohibits the use in prostitution of persons under 18 years of age;
- (e) implements certain other related reforms.³⁰

The *Prostitution Reform Act 2003* was ultimately designed to stop the sex industry from going underground. In allowing sex workers and prostitution establishments to come out into the open, the objective was to create safer and healthier environments for persons selling sexual services.

In practice, the *Prostitution Reform Act 2003* provides a framework within which outdoor sex work is permissible and allows independent sex workers to work in an unregulated environment. No so-called “red-light” districts were created. Indoors, up to four independent individuals may operate from the same location without a licence, while more than four individuals or those working for a third party are regulated and must have a licence to operate. There are no restrictions on the number of people that can work for one operator. Operator certificates are granted and held by the Registrar of the Court, which ensures that the identity of operators remains confidential.³¹

The *Prostitution Reform Act 2003* placed significant responsibility for regulating brothels, including zoning, licensing and advertising, in the hands of local governments. Local governments may regulate advertising through bylaws based on whether any signage advertising sex work is likely to cause a nuisance or serious offence to the public using the area, or whether the signage is incompatible with the character of the area. Local governments also retain the power to pass bylaws to control offensive behaviour, provided that such bylaws do not prohibit sex work altogether.

Other generic laws regulating businesses are applicable to the sex industry, with special provisions to determine issues such as age limits and constraints on who can sell sexual services or own, finance, operate or manage a sex-work business. Small owner-operated brothels are managed under local government rules for small home businesses.

Occupational health and safety codes have been expanded to include sex work, and inspectors have the authority to enter a building believed to be a sex-work business at any reasonable time to ensure compliance with the *Health and Safety in Employment Act*, and to ensure that the operation, sex workers and clients have adopted safe sex practices. As part of these safe sex practices, individuals take all reasonable steps to ensure that condoms are used, and employers make free condoms accessible. Operators must also provide health information to persons selling sexual services and their clients.³²

In seeking to combat trafficking in persons, the *Prostitution Reform Act 2003* denies immigration permits to anyone who intends to work in, invest in or operate a business of sex work in New Zealand or to anyone who does so while living in New Zealand on a temporary permit or limited purpose permit.³³ Penalties against exploitative practices, including harsh penalties for clients and operators involved in the commercial exploitation of children, were also strengthened.³⁴

Since 2003, a few attempts have been made to reverse these legislative changes. One anti-prostitution group sponsored a petition to repeal all of the *Prostitution Reform Act 2003*, but it fell short of the number of signatures needed to force a referendum on the issue in 2005.³⁵ Another petition in 2013 linked decriminalization with a host of social and criminal ills, including human trafficking, and it proposed criminalizing prostitution in response. The Justice and Electoral Committee considered the petition, and in its report, it recommended against criminalization, stating that “banning [street prostitution] may have negative consequences for the health and safety of sex workers.”³⁶

Some local governments in New Zealand have used their powers to strictly regulate the sex industry. Public pressure against allowing persons to sell sexual services out of their homes has resulted in the adoption of some regulations that make it difficult to set up small brothels in certain jurisdictions. Local councils have also come under pressure from constituents who want to avoid the nuisance aspects of sex work in their neighbourhoods. As a result, some cities have chosen to restrict the location of brothels³⁷ to certain inner-city and industrial areas, or they have implemented regulations that ban locating sex work establishments in the vicinity of schools, daycares, government buildings and places of worship, and in residential areas. This use of local regulatory power in some cities to essentially prohibit or severely limit sex work has frustrated advocates of decriminalization who see that the impact of the *Prostitution Reform Act 2003* has been seriously mitigated by such local controls.

Five years after the *Prostitution Reform Act 2003* was implemented, the Minister of Justice established a Prostitution Law Review Committee made up of individuals nominated by the pro-decriminalization NZPC – Aotearoa New Zealand Sex Workers’ Collective (NZPC) and the ministers of Justice, Women’s and Youth Affairs, Health,

Police, Commerce and Local Government. The committee's evaluation was released in May 2008³⁸ and generally agreed that the effects of decriminalization had been positive thus far. The committee examined statistics and concluded that contrary to public opinion, there had been no dramatic change in the number of people involved in the sex industry since the *Prostitution Reform Act 2003* had come into force. The committee also found that in terms of human rights and exploitation, the change had improved the ability of sex workers to refuse clients and practices, though there was still room for improvement.

For example, 60% of sex workers reported that they have more power to refuse clients under the *Prostitution Reform Act 2003* than without it. Regarding coercion, 4% said they had been pressured into the sex industry by another person. The committee found that 1.3% of persons in the sex industry were under 18 years of age. This did not represent an increase in numbers, and the committee commented that the *Prostitution Reform Act 2003* had, in fact, raised consciousness about the sexual exploitation of children.

In terms of improving the health and safety of sex workers, the committee found that sex workers continued to endure adverse incidents, including violence, and many continued not to report these incidents. The committee did not find any significant improvement in employment conditions.

Ultimately, the committee's report concluded that despite some local government frustrations with respect to outdoor sex work and the operation of small owner-operated brothels in residential neighbourhoods, decriminalization of sex work in New Zealand was working. Details were being worked out, and generally, neither sex work nor trafficking was on the rise, sex workers felt encouraged about low levels of exploitation, and awareness about the sexual exploitation of children was growing.

Since the release of the committee's report, research continues to support the ongoing trend toward better public health outcomes and better working conditions for sex workers as a result of decriminalization. However, some criticisms of the New Zealand model have emerged. Sex work advocates object to the prohibition against migrant workers operating in the industry. They argue that the benefits and protections offered to New Zealand sex workers have not been extended to migrant workers, creating an underclass of women vulnerable to exploitation.³⁹

In the U.S. Department of State's annual monitoring report on trafficking in persons for 2021, New Zealand was downgraded from a Tier-1 country to a Tier-2 country, stating that:

While the government convicted offenders in more cases of child sex trafficking than in previous years, it did not identify any victims in these cases as trafficking victims, as it did not use a system to

specifically designate individuals as trafficking victims, and many officials and service providers lacked an understanding of all forms of trafficking; this weakened victim protection and may have undermined the ability of the government to recognize current trafficking trends in the country. Furthermore, the government has never reported identifying an adult victim of sex trafficking. ... In addition, the failure to sentence the majority of traffickers to terms of imprisonment ... significantly weakened deterrence, undercut efforts to hold traffickers accountable, and did not adequately address the nature of the crime.⁴⁰

Additionally, a handful of organizations that have sprung up in New Zealand protest the decriminalization model; most of them are led by former sex workers who claim that they experienced exploitation or other harms while working in the decriminalized industry. For example, Wahine Toa Rising criticizes the lack of provisions in the *Prostitution Reform Act 2003* for helping adult women exit the industry, arguing that the well-known difficulties women face when leaving situations of domestic violence are no different from those they face when leaving violent commercial situations.⁴¹ Sabrinna Valisce, a former sex worker who once advocated for decriminalization in New Zealand and who now advocates internationally for the abolition model, states that decriminalization leads to brothel managers holding greater power over sex workers, decreasing their personal agency and making their work less safe.⁴²

While most of the responses to decriminalizing sex work that were gathered in New Zealand during the committee's review do point to its positive impacts, some voices oppose this narrative. These critics object to the heavy reliance on the NZPC throughout the consultations for the legislation and during its review process by the Prostitution Law Review Committee. The critics claim that their views have been and continue to be politically marginalized.⁴³

5 THE NETHERLANDS: LEGALIZATION

In the Netherlands, brothels were illegal for most of the 20th century. In 1911, the Dutch government criminalized brothel-keeping, even though prostitution per se remained legal. Nevertheless, although in theory brothels were banned, in practice they continued to flourish. The Dutch approach to prostitution at that time was described as one of “pragmatic tolerance” or *gedogen*.⁴⁴ Rather than turning a blind eye to the prostitution industry, *gedogen* limited prosecution under specific circumstances. Written government policies and local by-laws regulated the operation of brothels and kept them within certain areas. Organized prostitution in private premises was thus permitted, so long as it did not become a public nuisance.⁴⁵

By the 1980s and 1990s, the Dutch government had come under considerable pressure to reform the penal code. Sex worker advocacy groups were pushing for better working conditions and labour rights, and other concerns also entered the fray. By the end of

the 1990s, many Dutch sex workers had left the red-light districts for establishments that afforded them better pay and higher status. Immigrants (in particular, undocumented immigrants) took their place in the windows and cheaper brothels.⁴⁶ An estimated 50%–68% of sex workers were non-Dutch nationals by the late 1990s.⁴⁷ Government officials and communities were also concerned about the increasing presence of organized crime and its role in the sex industry.⁴⁸

Consequently, in 2000, the Netherlands repealed its long-standing criminal law banning brothels and adopted a licensing scheme to regulate the prostitution industry. For the Ministry of Justice, law reform was necessary because “that prostitution exists is a given fact, even for the government. That requires a realistic approach, without moralism.”⁴⁹ According to the Ministry of Foreign Affairs, there were approximately 25,000 sex workers in the Netherlands when the ban was lifted.⁵⁰

Article 273f of the Dutch penal code is designed to distinguish between voluntary and involuntary prostitution. Those who choose sex work as an occupation are to be given the same rights as other workers, while those individuals who coerce or exploit people through the sex industry are to be severely punished (up to 18 years of imprisonment with aggravated circumstances). The government’s objectives for the legislation were to:

- control and regulate prostitution;
- better combat the exploitation of involuntary prostitution;
- prevent the involvement of minors in prostitution and to protect them from sexual abuse;
- protect the [legal] position of sex workers;
- eliminate organized crime and other criminal activity in the sex industry; and
- reduce the involvement of foreign nationals in the sex industry.⁵¹

Legalization gave municipalities the responsibility for regulating sex work within their boundaries. For the vast majority of these communities (approximately 95%), prostitution is regulated through licences.⁵² In practice, the responsibility for inspecting establishments for underage or undocumented workers is generally left to the police. If these practices are detected, penalties for brothel owners and operators range from a warning, to a fine, to the temporary or permanent revocation of the licence. In cases found to involve sexual exploitation, the owner and/or operator can be charged under the penal code.

The Netherlands does not impose testing for sexually transmitted infections (STIs) or HIV/AIDS on persons selling sexual services. Clinics and medical outreach services are available in the red-light districts where street solicitation is permitted.

In the Netherlands, legal prostitution takes place in established sex work businesses like windows, brothels, escort agencies or massage parlours and red-light districts.⁵³ Outdoor sex work is regulated by municipal by-laws and is prohibited everywhere in the Netherlands except in three remaining “streetwalker” districts in the cities of Groningen, Arnhem and Nijmegen, after the city council in Utrecht voted to close its district as of 30 June 2021. Since 2009, proposed legislation known (in English) as the “Regulation of prostitution and combating abuses in the sex industry” has progressed through the Dutch legislature. It was amended in 2014, and since then has awaited a Royal Decree to enter into force, though many government websites refer to this event as imminent.⁵⁴ The bill proposes raising the minimum age of sex workers to 21 and will require that all businesses and individuals in the sector be licensed to operate under nationalized standards, with a national register created for this purpose.

Sex workers have reported a number of positive effects of legalization on the quality of their work and their lives. Some of the improvements include increased security in designated districts, the creation and enforcement of health and safety standards at legal establishments and free testing for diseases.⁵⁵

However, researchers from the sex work advocacy group Red Thread found in 2006 that proper work conditions in the hundreds of legal brothels that they visited were nearly non-existent and that sex workers were still very dependent on their employers.⁵⁶ New tax obligations and financial arrangements for sex businesses introduced by legalization have resulted in increased expenses for sex workers, many of whom report costs equivalent to the income they generate by having four to five clients per day, prompting many to agree to riskier, higher profit work.⁵⁷ Another research project by a coalition of sex work advocacy groups in 2018 found that in the previous 12 months, 60% of sex workers had experienced physical violence, 78% had experienced sexual violence, 58% experienced financial-economic violence and 93% had experienced social-emotional violence.⁵⁸

In addition to these criticisms, some research demonstrates that legalization has not been entirely successful at regulating the prostitution industry in the country. A government-commissioned evaluation in 2007 revealed that the majority of the industry that operated illegally or outside of legal brothels continued to operate outside of government control.⁵⁹ Sex work advocates note that while legalization brought benefits, such as eligibility for legal, health and social services, to European sex workers, undocumented immigrants and underage workers have been pushed further underground⁶⁰ and are thus even more vulnerable to violence and exploitation. Additionally, local government restrictions have made it more and more difficult for legal prostitution to take place, and by 2017, the number of legal sex-work venues had decreased by an estimated 40% in the Netherlands.⁶¹ Illegal sex work is subject to the problems that plague criminalization elsewhere: fear of reporting abuse and increased risk of violence and exploitation, among other things.⁶²

Since legalization, public concern about reports of the legislation's failure to address trafficking has increased steadily. The 2007 government review found that although awareness of exploitation within the industry had increased, pimps retained a strong presence.⁶³ In 2008, these concerns were proven valid with the very public prosecution of a Turkish–German criminal organization that had trafficked over 120 women into the Netherlands and subjected them to extremely violent treatment while they worked in the legalized sex industry.⁶⁴ A police report that followed this case estimated that between 50% and 90% of women in licensed prostitution work involuntarily.⁶⁵

The government has consequently made several efforts to address trafficking. In 2008, the Ministry of Justice established a Task Force on Human Trafficking chaired by the chief public prosecutor at the Amsterdam district court.⁶⁶ In 2012, specialized trafficking judges were appointed, and in 2013, special courts were designated to deal with complex trafficking cases.⁶⁷ Efforts have also been made to target demand, including reducing the number of licences available for legal work.

However, critics posit that this only encourages sex workers to operate illegally. Additionally, sex workers report that increasing government anti-trafficking efforts along with the simultaneous conflation of sex work and sex trafficking has resulted in stigmatizing them and their work.⁶⁸ As a consequence of this stigma, sex workers continue to experience social isolation and exclusion under legalization, and face considerable difficulty obtaining the services of accountants, banks and insurance companies.⁶⁹ Many sex workers now also find it difficult to keep their occupation a secret. Given their marginalized status, persons who sell sexual services are wary of measures that threaten their privacy, such as the proposed national registry that would be mandatory for all sex workers.⁷⁰

6 SWEDEN: NEO-ABOLITIONISM

As with the Netherlands, Sweden has received much international attention since its law on prostitution came into effect in 1999. Its neo-abolitionist approach, known colloquially as the Swedish or Nordic model, has since inspired numerous other jurisdictions to follow suit, including Norway, Iceland, Canada, Northern Ireland, Ireland, France and Israel. While sex workers in Sweden cannot be charged with soliciting or offering sex for payment, clients and procurers can be charged. Individuals who obtain or attempt to obtain sexual services in exchange for payment face fines or imprisonment for up to one year (as amended in 2011). Pimps face up to eight years in prison in circumstances of aggravated procurement. The harshest penalty in the Swedish penal code is 10 years of imprisonment. Ultimately, Sweden has criminalized the activities of customers and others involved in the sex industry rather than those of individuals selling sexual services, who are perceived as victims of exploitation.

The Act Prohibiting the Purchase of Sexual Services (1998) is part of more comprehensive government legislation on violence against women. The decision to include this particular Act in the larger law reflects the government's definition of (and position on) prostitution. According to a former Deputy Prime Minister, the Act demonstrates the government's commitment to eradicating gender inequality in all its forms. As such, Sweden defines prostitution as "a form – a serious form – of male violence against women."⁷¹ In 2005, these provisions were folded into chapter 6, section 11, of the Swedish penal code.

The Swedish government believes that criminalizing the buyer and pimp serves two key purposes. First, it targets those individuals the government deems responsible for prostitution. Second, it helps to make clear the government's position that prostitution is a commodification of human beings. The theory behind the law is that if demand is reduced, the sexual oppression of those involved in the industry will end.

Ultimately, the Swedish government subscribes to the philosophy that all persons selling sexual services are victims, exploited by both their procurers and their purchasers. Sex workers are not criminals; rather, they are trapped by particular social and economic circumstances. As a result, Sweden endeavours to provide sex workers with the support they need to leave the industry. This support takes the form of welfare services, alternative employment options and access to health care.⁷² Criminal sanctions are not seen as constructive because they are barriers that prevent sex workers from pursuing other work opportunities.

While the Act Prohibiting the Purchase of Sexual Services was accompanied by an extensive education campaign and has received much publicity, the evidence available on the state of prostitution in Sweden since the law's inception shows that the effect of the Act has been mixed.

Reviews of the legislation commissioned by the government in both 2010 and 2014 were overwhelmingly positive.⁷³ Compared to other European countries, the prostitution industry in Sweden has never been large. In 1998, Swedish social services stated that there were 730 street sex workers, and the government estimated that in 1993, the total number of women working in the sex industry was between 2,500 and 3,000. Government figures indicate that since the Act came into effect, street prostitution has been halved and other forms of prostitution have either remained stable or not increased more than in other countries – an indication that street-level sex workers are not moving into other parts of the industry. The report also indicates that the legislation has counteracted organized crime in Sweden, while violence against sex workers has not increased.⁷⁴ The Act Prohibiting the Purchase of Sexual Services enjoys support from Swedish citizens. The most recent public opinion figures from 2014 showed that 72% of citizens were in favour of it – 85% of women and 60% of men.⁷⁵

The government's 2010 evaluation of the prostitution ban indicated that despite an initial period of uncertainty, police and prosecutors now view the prohibition favourably, although clearly its effective application depends on resources and priorities within the justice system.⁷⁶ In 2015, 2016 and 2017, there were respectively 330, 334 and 222 reported instances of the purchase of sexual services, the vast majority of which were dealt with by judgments in district court or summary penalty orders. However, no one convicted of the purchase of sexual services has received a prison sentence.⁷⁷

Critics have questioned, however, whether the legislation is really achieving its stated goal of reducing the prevalence of prostitution. While it is widely agreed that the number of people involved in street prostitution has declined since 1999, many point out that even this conclusion is based on a lack of empirical evidence, and in addition, it is not necessarily linked to the overall amount of prostitution occurring in Sweden. The rise of the Internet and cell phone usage since the law was passed has led to a shift in solicitation methods that are less visible. Prostitution also appears to be taking place in hotels, restaurants and apartments rather than on the street. Critics therefore argue that the legislation has not reduced the number of sex workers in Sweden, but that rather, the industry has reorganized itself and has become less publicly detectable.⁷⁸

Other sex work advocates decry what they believe to be increased levels of violence and abuse against sex workers as a result of the legislation. It occurs on the street as a result of less time allowed for negotiating with and vetting clients, and clients being unwilling to identify themselves with any personal information for fear of arrest. As a result of decreased numbers of clients and difficulty finding secure premises in which to work, some sex workers have become reliant on third parties, like landlords and pimps.⁷⁹

The legislation has also made accessing social and health services a problem for many sex workers. These workers complain of discrimination, pressure to assume a victim status and a lack of harm reduction services, like HIV testing and condom distribution.⁸⁰ LGBT and migrant sex workers (particularly male migrant sex workers) are even more at risk of being excluded from accessing health and social services. Compounding levels of stigma affect these groups and they have largely been left out of the conversation regarding prostitution legislation and policy in Sweden.⁸¹

7 ENGLAND: ABOLITIONISM

England relies, by and large, on prostitution legislation first enacted during the 1950s. The consensual exchange of money for sexual services is not illegal in England. However, most activities surrounding the trade are illegal. Provisions in the *Sexual Offences Act 1956* and the *Street Offences Act 1959* make it an offence for sex workers to either solicit or loiter, while under the *Sexual Offences Act 1985*, clients can

be charged with kerb crawling,⁸² which consists of soliciting a sex worker from a motor vehicle or in a public place. It is also illegal to procure, pimp, operate a brothel and live off the avails of a person selling sexual services.

However, despite the prohibition on brothel-keeping in England, an adult selling sexual services alone out of his or her own home is not performing an illegal act. Such an arrangement is not considered a brothel.⁸³ There are a number of caveats to this blanket statement. First, if more than one person provides sexual services within that property, whether or not they are working at the same time, the activity becomes illegal. As well, if rooms in a particular building are rented to more than one person offering sexual services, this will be considered a brothel if it can be proven that the individuals are effectively working together. For example, a hotel in which more than one sex worker is working on a given night could be considered a brothel, if it can be proven that the sex workers are working together.

In 2003, the House of Commons Home Affairs Committee reported that the existing prostitution legislation needed modernizing to better address matters like prevention and protection, signalling a slight shift in concern, from viewing prostitution solely as a public nuisance to acknowledging the issues of exploitation and trafficking.⁸⁴ The resulting *Sexual Offences Act 2003*, which came into force in May 2004, did not radically change the government's position on prostitution. Rather, it focused on creating a new offence – the commercial sexual exploitation of adults – and making legislation more gender-neutral.⁸⁵

Under the amended Act, the offence of keeping a brothel for prostitution is linked to the control and management of a brothel, rather than to the sex work itself, and carries a penalty of up to seven years of imprisonment. Therefore, while brothels are illegal, it is not illegal to work as a sex worker in a brothel. Owners and managers of brothels are criminally liable under the provisions on the exploitation of prostitution, which also provide for penalties of up to seven years of imprisonment.

In 2004, in response to public frustration with what was perceived as an ineffective approach to the prostitution industry, the government published a consultation paper.⁸⁶ In January 2006, it followed up with a proposed new strategy aimed at reducing street prostitution, improving the quality of life of communities affected by prostitution and decreasing all forms of commercial sexual exploitation.⁸⁷ In November 2008, the Home Office conducted a review to determine what further action could be taken to reduce demand,⁸⁸ which resulted in the *Policing and Crimes Act 2009*. When it came into force in 2010, it amended the *Sexual Offences Act 2003*

- prohibiting payment for sex with a person who has been “subjected to force” even when the client did not know that the individual was subjected to force;

- making technical amendments to the offences of loitering and soliciting in public places (individuals can be prosecuted for this offence without any need to prove “persistence”); and
- permitting the court to make closure orders when premises are being used for certain prostitution-related offences.⁸⁹

Since the amended law came into effect, law enforcement officers are concerned that the strict liability “force” provision is difficult to enforce, and the legal community has expressed frustrations with the potential for unfairness.⁹⁰

Other related legislation includes the *Modern Slavery Act 2015*⁹¹ which addresses human trafficking for the purpose of sexual exploitation and the *Serious Crime Act 2015*⁹² which addresses the commercial sexual exploitation of children.

Like many countries, England has grappled with how to protect persons who sell sexual services from abuse and exploitation, while ensuring that communities are not victimized in the process. Whether enforcement strategies benefit sex workers or communities is the subject of much controversy.

The National Police Chiefs’ Council released updated national guidance in 2019 for policing sex work and prostitution to police forces in England and Wales. The guidance focuses on the growth of online-facilitated sex work and encourages officers to work toward increasing the safety of sex workers and targeting those who exploit or harm others.⁹³

Both the development of a national policing strategy and its stated emphasis on protecting sex workers is likely a response to the heavy criticism of the decentralized local enforcement of prostitution laws in England, as well as the fact that the sex workers themselves are more common targets of policing than their clients. The evidence provided to the Home Affairs Committee in its 2017 study of prostitution supported both of these positions. The committee’s report highlighted the general failure of police forces to protect sex workers and the much higher number of arrests of sex workers than sex buyers.⁹⁴

Sex workers – particularly those who work on the street – risk violence, including verbal humiliation, physical violence and sexual assault by their pimps and clients. Sex worker advocates argue that the current legislative approach augments these risks. They emphasize that the fear of arrest actually undermines street workers’ ability to protect themselves. Because most activities surrounding prostitution are illegal, sex workers must isolate themselves and/or rely on a pimp for protection. Policing strategies have also tended to target migrant sex workers and have resulted in the deportation of sex workers in the guise of anti-trafficking operations.⁹⁵

Consequently, critics argue that street workers are finding themselves increasingly vulnerable.

However, as in other jurisdictions, estimates of total prostitution in England reveal that a majority of sex work is taking place indoors and that figure has increased with rising Internet use. In fact, the online sector is the largest sector of the sex industry in the country. Though estimates of the overall number of people doing online sex work vary widely, a team of researchers concluded that during one three-month period in 2017, nearly 30,000 workers were registered on the country's leading industry platform.⁹⁶ Sex workers cite a host of advantages the Internet provides for them to do their work, such as:

- empowering them to decide their work location and hours;
- offering them more independence from third parties;
- giving them greater ability to screen clients; and
- giving them access to networks and peer support.

Although the police have largely ignored off-street prostitution historically, growing concerns about child exploitation and trafficking have put pressure on the authorities to police red-light districts more vigorously.⁹⁷ By way of example, the number of convictions for brothel-keeping rose from 55 in 2014 to 96 in 2015, and 408 suspects were detained for the same offence between 2017 and October 2020.⁹⁸ In one very large anti-trafficking operation in December 2013, police raided 18 Soho brothels in response to concerns about drugs and trafficking in persons. No trafficked persons were found.⁹⁹ Sex workers' rights advocates argue that such "crackdowns" strain relations between the police and sex workers, and that the raids have forced women out onto the street, where their safety and well-being are endangered.¹⁰⁰

Other policing practices are believed to threaten the health and safety of indoor sex workers. Research conducted in 2020 by National Ugly Mugs, an advocacy group working to end violence against sex workers, revealed that the number of indoor sex workers willing to share reports of violence with the police significantly decreased between 2012 and 2020.¹⁰¹ Police practices, such as fines, area restrictions, raids, "welfare" visits and threats to deport migrant sex workers were all cited as reasons for this declining level of trust. The result is that "most sex workers experience police as enforcers and not as public servants," particularly minority and migrant sex workers.¹⁰²

In 2018, an all-party parliamentary group studying the issue of organized sexual exploitation in England and Wales described the widespread involvement of organized crime and the presence of trafficking in the sex industry. As a solution, it recommended implementing the Nordic model of criminalizing sex buyers.¹⁰³ However, the report issued by the Home Affairs Committee in 2017 on its investigation of prostitution laws in the country stated that "[w]e are not yet convinced that the sex

buyer law would be effective in reducing demand or in improving the lives of sex workers.”¹⁰⁴ The committee recommended removing the laws that prohibit brothel-keeping and solicitation to improve safety for sex workers. To date, no changes have been made to the law.

8 UNITED STATES

The U.S. relies on prohibitionist and abolitionist policies to control prostitution.

At the federal level, the U.S. government has enacted prostitution laws in order to protect servicemen and women from the prostitution industry and to target human trafficking activities. It is an offence to engage in or solicit for prostitution within what is deemed to be a reasonable distance from a military detachment or operation. It is also illegal to transport individuals across state or international lines for the purposes of prostitution.¹⁰⁵ More recently, two new laws were passed targeting online advertising for sexual services: *Allow States and Victims to Fight Online Sex Trafficking Act of 2017*, which imposes penalties on anyone who uses online venues “to promote or facilitate the prostitution of another person,”¹⁰⁶ and *Stop Enabling Sex Traffickers Act of 2017*,¹⁰⁷ to clarify that website providers and users may be prosecuted for facilitating trafficking.

While the federal government does regulate prostitution under certain circumstances, most of the specific laws governing prostitution fall under state jurisdiction. Prostitution remains a contentious topic in the country. Although many U.S. citizens agree that eliminating prostitution (or at least visible forms of it) is a long-term goal, there is little agreement about the best way to achieve it. Legalization and decriminalization, proposed in many other countries, are rarely considered palatable options. For the most part, then, the U.S. appears to be committed to eliminating prostitution by introducing more severe sanctions and widening the net of criminal and civil prohibitions.¹⁰⁸ Legislation varies from state to state, though all states have in place some degree of prosecution for those who provide commercial sexual services.¹⁰⁹ The following sections of this paper examine prostitution laws in California and Nevada, two states with very different approaches.

8.1 CALIFORNIA: PROHIBITIONISM

In California, prostitution is illegal. According to *The Penal Code of California*, it is an offence to agree to engage in prostitution and to actually engage in prostitution.¹¹⁰ Loitering for the purposes of prostitution is prohibited, as is solicitation, whether it occurs in a public or private space. While these offences are all misdemeanours, a person can be charged with a felony if he or she has previously tested positive for HIV. *The Penal Code of California* lays out extensive provisions that criminalize pandering (which includes procuring through intimidation, physical force or persuasion) and living off the avails of prostitution.

In 2018, two changes to the law made as part of Senate Bill 233 reflected a small but growing awareness of the harms that sex workers may experience as a result of criminalization. The bill provides immunity from prosecution under prostitution laws if a person is reporting other specified serious crimes, and it prohibits using the possession of condoms as evidence for prosecuting a person for prostitution-related offences (to prevent sex workers from being afraid to carry and use condoms when they are working).¹¹¹

Individual jurisdictions within California have taken slightly different approaches in their attempts to abolish prostitution. San Francisco was among the first cities to set up a “john school,” designed to “reduce the demand for commercial sex ... by educating ‘customers’ (or ‘johns’) about the negative consequences of prostitution.”¹¹² This is part of a larger program that also includes supporting sex workers so they can exit the industry and offering sentencing alternatives like education options. The city of Los Angeles has introduced traffic measures that restrict drivers from making right turns at night in certain areas known for street prostitution. This has decreased the quantity of street prostitution in some areas, leading other neighbourhoods to consider the measure.¹¹³

There are many reasons for the criminalization of prostitution in California, and more generally, in the U.S. as a whole. While the reasons for criminalization in the 19th century largely stemmed from a fear of eroding family values, new moral and public health concerns have come to dominate the arguments for maintaining a prohibitionist regime. Supporters of prohibition have also drawn increasingly close links between trafficking and the commercial sex industry, spurring further widespread support for anti-prostitution legislation and policies.¹¹⁴ Prohibitionists, who consider prostitution to be harmful, therefore seek to limit its occurrence through legislation.¹¹⁵

However, the negative consequences of criminalization can be severe for many sex workers and tend to disproportionately impact minority street workers.¹¹⁶ Having records of arrest and convictions makes it more difficult for individuals to exit the industry and also fortifies the existing barriers sex workers face to access housing, benefits and health care. Sex workers tend to work under less safe conditions with fewer harm-reduction strategies or the ability to rely on police for protection, and they have a higher risk of exposure to HIV and other STIs.¹¹⁷

Generally, sex workers who work in escort agencies, massage parlours and brothels are much less likely to come into contact with the criminal justice system than their counterparts who work on the street.¹¹⁸ However, new federal laws passed in 2018 that restrict the advertising of sexual services online and that hold third-party hosting sites liable for such ads reflects a growing awareness and consequent targeting of indoor prostitution. Critics of the laws claim that they leave sex workers less able to vet clients, more likely to move to more dangerous street work and more vulnerable to relying on pimps for protection.¹¹⁹

Police enforcement of the *Penal Code* tends to focus on street sex workers, who are more likely to be poor and non-white.¹²⁰ Consequently, though street prostitution accounts for less than an estimated 20% of the sex work industry, street sex workers make up about 90% of those arrested in the U.S.¹²¹

Finally, many critics question the level of resources dedicated to this policing of the prostitution industry. Though there are few comprehensive assessments of these costs, the most recent estimate in 2014 of the cost of each arrest and prosecution for a prostitution-related offence is US\$4,324.¹²² In total, prosecuting prostitution offences costs the country approximately US\$270.9 million annually.¹²³ Analysts point out that a criminalized industry also fails to collect the income and business tax revenues that are generated in legalized or decriminalized regimes.¹²⁴

8.2 NEVADA: LEGALIZATION

Nevada is the only state in the U.S. to have formally legalized one type of prostitution venue. It relies on a combination of state criminal laws, administrative laws, local ordinances and informal traditions to govern the prostitution industry. In essence, prostitution is permitted only in licensed brothels. All other forms of prostitution (for example, street prostitution, escort agencies and massage parlours) are illegal. The state's laws and local ordinances aim to provide a framework for managing the medical risks associated with the trade while leaving control over decisions regarding whether and how to regulate it to individual counties.¹²⁵

Section 244.345 of the *Nevada Revised Statutes* gives individual counties with a population of fewer than 700,000 residents the authority to license brothels.¹²⁶ Prostitution and solicitation outside of these legal venues are misdemeanours.¹²⁷ Currently, seven out of 16 counties have legal venues for prostitution, and brothels remain illegal in Las Vegas and Reno.

In general, the counties that do allow brothels to operate legally impose strict conditions on their operation, owners and employees. However, these regulations vary considerably from one county to the next. Licence application requirements and fees also vary by county. In 2018, in Lyon County, brothel licence fees ranged US\$20,000 to US\$26,000 per quarter, while in Nye County, small brothels paid US\$2,300 per quarter and large ones, US\$46,900.¹²⁸

Sections 201.430 and 201.440 of the *Nevada Revised Statutes* restrict brothels' right to advertise.¹²⁹ According to state law, brothels cannot advertise on public streets and highways or in theatres. In 2010, the U.S. Court of Appeals 9th Circuit upheld Nevada's prohibition on advertising in counties where prostitution is outlawed.¹³⁰

Individual sex workers are also subjected to regulation and controls. All sex workers working in Nevada's brothels must register with the police. Work permits are issued to every person selling sexual services, conditional on passing mandatory HIV/STI screening. Sex workers must pay to undergo weekly and monthly testing for various STIs. It is a felony for an individual who is HIV-positive to engage in prostitution, and brothel owners may be liable for damages if clients become infected with HIV.¹³¹ A sex worker infected with an STI must submit to treatment. There are also strict requirements about condom use in brothels.¹³²

Working conditions for sex workers in brothels is a topic of growing controversy. Critics decry the strict controls over the lives of sex workers that the current regime requires.¹³³ Many counties and local governments have traditionally restricted sex workers' mobility, including restricting car ownership or use, requiring workers to remain at the brothel or to leave the county when not working. Sex workers are governed by rules devised by their brothels' owners and managers, including time of work, and usually pay the owners approximately 50% of earnings, as well as room and board. Sex workers' status as independent contractors means that they are not covered by the state's labour laws and do not have access to health insurance, sick leave or unemployment and retirement benefits.¹³⁴

These criticisms, in addition to the discrepancies between county regulations and the degree of oversight by state and county officials, spurred Nevada Assemblywoman Lesley Cohen to propose the creation of a legislative committee to study brothels in Nevada in 2019. She said that the committee would study four factors:

1. the extent to which the rules and working conditions provide for the health, safety and general welfare of sex workers;
2. the ways in which contracts between sex workers and brothel owners and operators protect the physical and mental health of the workers;
3. the adequacy of oversight and regulation by the state and local government with respect to the health, safety, and general welfare of sex workers; and
4. employment issues, including the classification of sex workers as employees versus independent contractors.¹³⁵

While an interim committee was formed, it has yet to meet or produce a report.

Nevertheless, while prostitution has long been an offence in the state's largest cities (Las Vegas and Reno), an underground industry continues to thrive.¹³⁶ Illegal prostitution takes a wide variety of forms, from high-end escort services to workers in massage parlours, illegal brothels and street-based workers. However, new pressures were placed on indoor sex workers across the country, including in

Nevada, after federal anti-sex trafficking laws were passed in 2018, prohibiting online advertising for sexual services, which added to the pressure caused by closures during the COVID-19 pandemic of brothels and other sex-industry businesses.¹³⁷

The rise in anti-trafficking efforts in the U.S. has resulted in some efforts to shutter legal prostitution in Nevada. These efforts have been considered to be unsuccessful, and in some cases, have revealed a high level of public support for the system of legal brothels. In 2018, in Lyon County, following the successful petitioning of an anti-sex trafficking group, an advisory question was added to the county election ballot asking whether legal brothels ought to be criminalized in the county. More than 75% of voters opposed the proposed ban.¹³⁸ A similar attempt by an anti-prostitution group in Nye County to place a question on its 2018 election ballot fell short of the required number of signatures.¹³⁹ At the state level, a 2019 bill to criminalize all prostitution in Nevada also failed.¹⁴⁰ Also in 2019, a federal case brought against the state of Nevada sought to criminalize all prostitution in the state, with the defendants claiming that they had been trafficked in the legal sex industry. The judge dismissed the case, explaining that the defendants failed to establish a strong enough link between the trafficking itself and Nevada's prostitution legislation.¹⁴¹

9 CONCLUSION

There is no consensus on how states should monitor and/or control prostitution among consenting adults. Most countries appear to be grappling with one underlying question: What role should legislation (in particular, criminal law) play in regulating adult prostitution? Legislative directions have ranged from strengthening the criminal provisions related to adult prostitution, to repealing those same types of laws. There is little evidence that any particular approach has met all of its objectives.

None of the countries and states examined in this paper have repealed all of their prostitution-related criminal laws. However, a number of governments have chosen to supplement criminal legislation with local by-laws, city ordinances and other measures, thereby suggesting that, for many of these countries, prostitution is not simply a legislative concern. It is also a social and economic issue that calls for using public policy and other social intervention measures to address the needs of individuals.

NOTES

1. The terms "sex work" and "prostitution" are used interchangeably in this paper and where possible, in accordance with the legislative language used by the jurisdiction in question. The term "sex worker" is used to refer to a person who consensually provides sexual services in exchange for money.
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8. It is important to note that no official definitions of these terms exist. The absence of agreed-upon definitions often causes confusion in discussions of law reform in this area.
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16. Australia, Victoria, [Sex Work Act 1994](#); Australia, Victoria, [Sex Work Regulations 2016](#), S.R. No. 47/2016; and Australia, Victoria, [Public Health and Wellbeing Act 2008](#), S.R. No. 46/2008.
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30. *Ibid.*, s. 3.
31. New Zealand, Local Government, *Prostitution Reform Act guidelines*, 2003.
32. New Zealand, [Health and Safety Information for Operators of Businesses of Prostitution](#), November 2004.
33. New Zealand, [Prostitution Reform Act 2003](#), Public Act 2003 No. 28, s. 19.
34. New Zealand, Local Government, *Prostitution Reform Act guidelines*, 2003.
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