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Dirty Johns: Prosecuting Prostituted Women in Pennsylvania and the Need for Reform

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Dirty Johns: Prosecuting Prostituted Women in Pennsylvania and the Need for Reform

McKay Lewis*

ABSTRACT

Prostitution is as old as human civilization itself. Throughout history, public attitudes toward prostituted women have varied greatly. But adverse consequences of the practice—usually imposed by men purchasing sexual services—have continuously been present. Prostituted women have regularly been subject to violence, discrimination, and indifference from their clients, the general public, and even law enforcement and judicial officers.

Jurisdictions can choose to adopt one of three general approaches to prostitution regulation: (1) criminalization; (2) legalization/decriminalization; or (3) a hybrid approach known as the Nordic Model. Criminalization regimes are regularly associated with disparate treatment between prostituted women and their clients, high rates of physical and sexual violence committed against prostituted women, and a lack of meaningful exit opportunities for those engaged in prostitution. Jurisdictions that choose to implement legalization of all acts of prostitution are more likely to have larger numbers of sex trafficking and abusive pimps. In contrast, the Nordic Model, which decriminalizes the sale of sex while maintaining the criminalization of purchasing sexual acts, has been shown to decrease the rates of prostitution, provide prostituted women with greater access to social services, and reduce sex trafficking.

Pennsylvania currently employs a criminalization method of prostitution enforcement. In 2019, prostituted women in Pennsylvania were arrested and charged at three times the rate than their clients were. Prostituted women within the Commonwealth also face severe collateral consequences as a result of their line of work. Utilizing multiple case studies, this Comment examines the effectiveness and consequences of each prostitution enforce-

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ment regime in an attempt to determine what more can be done to aid women trapped in the practice of prostitution within Pennsylvania. This Comment ultimately recommends that Pennsylvania amend its prostitution laws in order to incorporate the core principles of the Nordic Model.

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I. INTRODUCTION

When she ran away from a Philadelphia youth group home in 2012, the anonymous¹ thirteen-year-old was able to live by bouncing from house to house in the summer, sometimes sleeping outside.² But with winter came a desperation for a more permanent place to live.³ That is when she contacted a pimp, and her life as a “prostitute” began.⁴ For more than six months, her pimp—then 35-year-old Jason Guerra—“threatened her, beat her, and told her to have sex with dozens of strangers in a . . . motel room without paying her.”⁵ On one occasion, Guerra beat her so badly that she miscarried in a bloody bathtub.⁶ After getting out of the bathtub alone, she simply threw the fetus away, not knowing what else to do.⁷ When she told Guerra that she wanted to stop working for

1. Because the victim was a minor at the time of the crime, her identity is concealed for her privacy.

2. See Chris Palmer, *Teen Prostitute: ‘I Felt Like a Slave’*, THE PHILA. INQUIRER (Feb. 12, 2016), <https://bit.ly/3cmPmN5>.

3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*

him, he refused to allow her to leave and beat her viciously.⁸ She eventually escaped from Guerra in 2013, though she fell in with another pimp and started posting her own ads online to make ends meet.⁹ A few months after her escape, Guerra “found her and pistol-whipped her in the head, knocking her unconscious.”¹⁰ He told her “she was lucky [he did not] kill her.”¹¹ She continued to work as a “prostitute” through 2013, until the FBI caught her in a prostitution sting and she began recounting the crimes that had been committed against her.¹² With the help of her testimony, Guerra was eventually convicted of rape, human trafficking, and promoting the prostitution of a minor.¹³ He was subsequently sentenced to 48–96 years in prison.¹⁴

The trauma that this young woman endured is, unfortunately, relatively common. Also common is that countless pimps and sex purchasers regularly face little to no ramifications for their actions, while the women they employ or purchase disproportionately face serious and deadly consequences. This discrepancy in treatment between sex sellers and sex purchasers is in part due to the fact that, in the United States, the word “prostitute” is often associated with crime, drugs, and immoral behavior, thus contributing to the false idea that sex sellers are more culpable than sex purchasers.¹⁵ For the past century, jurisdictions across the country have regularly arrested, tried, and incarcerated the women engaged in the practice of selling sexual services.¹⁶ Despite efforts to combat the practice, prostitution remains a prevalent, though illegal, transaction throughout most of the United States.¹⁷ The purpose of this Com-

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. See Palmer, *supra* note 2.

13. See Joseph A. Slobodzian, *West Oak Lane Pimp Gets 48–96 Years for Trafficking Teen Girls*, THE PHILA. INQUIRER (June 24, 2016), <https://bit.ly/3eQBcFJ>.

14. *Id.*

15. See generally Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729 (2010).

16. See Eleanor M. Miller et al., *The United States*, in PROSTITUTION: AN INTERNATIONAL HANDBOOK ON TRENDS, PROBLEMS, AND POLICIES 303, 313 (Nanette J. Davis ed., 1993). While this author recognizes that men are also often involved in the act of selling sex, this Comment will focus on prostituted women, as they make up the majority of sex sellers and have historically faced the most severe consequences of prostitution.

17. See *id.* at 304. While estimating how many sexual transactions take place in any given year is difficult, a sufficient number of individuals contract prostituted women frequently enough for there to be an estimated 290,000 to 500,000 prostituted women working in the United States. *Id.*

ment is to highlight that the majority of prostituted women¹⁸ are victims, not criminals, and that Pennsylvania should stop incarcerating these women for acts they are often forced—either by violence or coercion—to commit. Despite the vast amounts of studies that show the harmful effects of prostitution, the coercion that occurs to entrap women in the practice of selling sexual services, and the dangers that prostituted women face in their daily lives,¹⁹ Pennsylvania still criminalizes the act of prostitution and offers little, if any, social services designed to help women leave this dangerous line of work.

This Comment begins by analyzing the history of prostitution. Using different jurisdictions as case studies, it then discusses the three generally accepted models of prostitution regulation: criminalization, legalization/decriminalization, and the Nordic Model. This Comment ends with a recommendation that Pennsylvania amend its prostitution laws to prevent victims of prostitution from being treated as criminals and provide for greater social services to prostituted women.

II. BACKGROUND

A. *The History of Prostitution*

Historians often colloquially refer to prostitution as “the world’s oldest profession.”²⁰ Prostitution is also, however, often referred to as “the world’s oldest *oppression*.”²¹ Both of these expressions convey an undisputed fact: the act of selling sexual

18. See Dempsey, *supra* note 15, at n.3 (explaining that “prostituted women” is the author’s preferred term for the women that are engaged in the practice of prostitution).

19. This author acknowledges that there are women who engage in the act of prostitution of their own volition. However, as Professor Michelle Madden Dempsey states:

[t]he fact that some people do not experience harm [in prostitution] does not, of course, diminish the urgency or importance of the fact that many do. In other words, abolitionist arguments need not establish that all instances of prostitution are harmful; rather, it is sufficient to motivate these arguments that . . . prostituted people are [often] harmed in prostitution, that the harm is substantial, and that the value of prostitution is inadequate to justify that harm.

Id. at 1746. This author further recognizes that prostitution can be genuinely valuable for some people. However, “whatever value prostitution may have, it is not valuable enough to outweigh the harms experienced by many prostituted people.” *Id.*

20. See VERN BULLOUGH & BONNIE BULLOUGH, *WOMEN AND PROSTITUTION: A SOCIAL HISTORY* xv (1987).

21. See Heather Monasky, Note, *On Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, But Not the Victim—Sweden’s Sexköpslagen in America*, 37 WM. MITCHELL L. REV. 1989, 1995 (2011) (emphasis added).

services in exchange for money or other resources is as old as civilization itself.²² Indeed, some historians believe that prostitution existed in some form even before humans became the dominant species on the Earth.²³ Throughout history, public attitudes toward prostitution and the women employed in its practice have varied greatly.²⁴ Common to all accounts and treatment of prostitution, however, is the subjugation, denigration, and control of women.²⁵ Because records written by men compose the majority of what is known about the history of prostitution, “a masculine bias, conscious or unconscious, is virtually omnipresent.”²⁶ This historic unequal treatment of women—economically, socially, and politically—is the reason that the practice of prostitution has endured so persistently since the beginning of mankind.²⁷

Before the advent of Judeo-Christianity, prostituted women in certain civilizations were often at the top of the social ladder and “enjoyed a position unequaled by any other of their sex.”²⁸ With the rise of Judeo-Christian beliefs in Europe, however, the public began viewing prostitution as a scourge upon society.²⁹ During this time, prostitution was tolerated only as a necessary evil used to satisfy the sexual desires of men who were allegedly not strong enough to live by Christianity’s higher calling of celibacy.³⁰ Consequently,

22. See BULLOUGH, *supra* note 20, at 1–14.

23. See *id.* at 1 (considering whether the exchange of sexual services among higher primates in return for food or to avoid attack can be fairly classified as prostitution).

24. See generally *id.*

25. See *id.* at xiv (“In many [early] societies women were regarded as a male possession, belonging to their fathers, husbands, sons, or brothers.”). Thus, “[a]ny damage to property, including the loss of female chastity or adultery, was a punishable crime.” *Id.*

26. *Id.* at xiii.

27. See *id.* at xv (stating that, because women were historically denied the opportunity to obtain work outside of the home, “those women who were turned down for marriage because they were not virgins, or were for some other reason without homes or husbands or supporting male relatives, were often forced to turn to prostitution in order to support themselves”).

28. *Id.* at 39. Prostituted women in ancient Greece “were among the best educated of Greek women and, at least in the minds and hearts of [the] males had considerable unofficial social status” *Id.* Therefore, prostituted women clearly “impressed the Greek male and held an important place in Greek society.” *Id.* at 44.

29. See *id.* at 62–65.

30. See *id.* (discussing how the early vestiges of Christianity supported celibacy over marriage). In fact,

Christianity turned out to be a male-centered, sex-negative religion with strong misogynistic tendencies and suspicion of female sexuality. By looking with disfavor on women who expressed sexual feelings, yet tolerating sexual promiscuity in males, Christianity gave a religious and insti-

instead of banning prostitution altogether, cities turned to regulating the practice by restricting the areas of the city prostituted women could enter.³¹ But the rise of venereal diseases—and their newly-discovered link to sexual contact—caused cities to once again attempt to prohibit the practice of prostitution altogether.³² After the fear of venereal disease subsided, however, cities returned to a regulatory scheme of prostitution (as opposed to a prohibitive scheme³³), which remained in place until well into the 20th century.³⁴

In the United States, early attitudes toward prostitution and the women engaged in its practice closely resembled the attitudes that were prevalent in Europe during the 18th century.³⁵ Accordingly, prostitution became a common practice throughout the American colonies during the 18th century,³⁶ despite the practice being largely unorganized and haphazard in most cities during this time.³⁷ With the rise of the Industrial Revolution³⁸ and the boom

tutional base for prostitution; prostitution in fact became the price of social purity.

Id. at 71. Therefore, while prostitution was deemed to be a vile practice, “[it] was to be accepted until men could live up to the high ideals of Christianity.” *Id.*

31. *See id.* at 124 (“The most favored way of dealing with prostitution in the later Middle Ages was to confine prostitutes to certain districts and/or require them to dress in certain ways.”). During this time, “[p]rostitution was tolerated, even regulated in most areas of Europe, and all attempt to eliminate it had been more or less abandoned.” *Id.* at 138.

32. BULLOUGH, *supra* note 20, at 152 (“The recognition of the venereal nature of infection, and the fear of the disease, combined with the moral fervor of the various sixteenth-century Reformers, resulted in a reaction against prostitution.”).

33. *Id.* at 154–55. A regulatory approach to prostitution restricts prostituted women’s geographical presence to certain sectors of the city and requires prostituted women to seek licensure from the city in which they want to work and pass a physical examination to ensure the absence of venereal diseases. *Id.* at 222. A prohibitive approach to prostitution, in contrast, makes any act of prostitution illegal and punishable by law. *Id.* at 286.

34. *See id.* at 287 (discussing the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others). At the Convention, the United Nations adopted a resolution which prohibited regulation of prostitution by government authorities and “urged governments to cooperate to prevent prostitution and to work toward reintegrating prostitutes into society.” *Id.*

35. *See id.* at 211 (“Sex attitudes in colonial America in general were similar to those of Europe.”). “This was to be expected since Americans were only Europeans who had left Europe.” *Id.*

36. *See id.* at 214 (“As the eighteenth century progressed[,] Americans became less concerned with punishing prostitutes.”). In fact, “[i]t was not uncommon for men who could afford to have mistresses to have them, and, inevitably, those who could not turned to prostitutes or perhaps to slave women.” *Id.*

37. *See id.* at 215.

38. *See id.* at 216 (discussing how the majority of early factory workers in some of the textile industries were young, unmarried women). These women were often forced to turn to prostitution to supplement their income because, “[a]fter

of newly arriving immigrants,³⁹ prostitution inevitably became a more visible practice throughout the country.⁴⁰ But with increased visibility came increased objections to the practice⁴¹ and increased violence toward prostituted women.⁴² Thus, after the American Civil War, cities across the country “attempted to confine prostitutes to certain segregated areas of the city, to register them, and to provide for compulsory physical examinations.”⁴³ With the turn of the century, however, “the popularity of regulation proposals had diminished, but prostitution itself was flourishing . . . [and] [t]his threat to public health as well as morality became a subject of growing concern.”⁴⁴ Due to this concern and the unwavering opposition to prostitution from multiple newly organized women’s groups,⁴⁵ the United States eventually saw a trend toward the absolute prohibition of prostitution.⁴⁶

working a twelve-to-fifteen-hour day, many of the women found their wages were lower than what [were] considered starvation wages for men.” *Id.*

39. *See id.* (“In the rapidly expanding cities the prostitute found a large class of customers in the newly arrived immigrants who had left their womenfolk behind in Europe or elsewhere.”).

40. *See id.*

41. *See id.* at 217 (“Inevitably the attitudes of Americans toward prostitution became as contradictory as their European counterparts.”). “Many accepted it as inevitable, but at the same time advocated celibacy as the ideal and publicly opposed prostitution.” *Id.*

42. BULLOUGH, *supra* note 20, at 217–18. One of the more disturbing cases of violence against prostituted women was the killing of Helen Jewett, which exemplified public attitudes toward prostituted women at the time:

[V]iolent crimes [often] took place. One of the most notorious crimes was the ax killing of the prostitute Helen Jewett, allegedly by the socialite R. L. Robinson, in New York in 1836. Though the circumstantial evidence was strong, most of the testimony depended on the word of prostitutes; this was in contrast to the appearance of the defendant, the handsome, nineteen-year-old socialite who did not testify himself, and it decided the outcome. When the jury brought in the verdict of “[n]ot guilty,” the crowded courtroom cheered.

Id.

43. *Id.* at 222. *See also* BARBARA ALLEN BABCOCK ET AL., *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE, AND THEORY* 1476 (Richard A. Epstein et al. eds., 2d ed. 1996) (stating that, after the Civil War, there were multiple “proposals to control prostitutes through regulation rather than repression”). “Borrowing from European models . . . coalitions of American health specialists and public officials proposed a system of compulsory licensing and medical examinations.” *Id.*

44. BABCOCK, *supra* note 43, at 1476. Accordingly, the regulatory scheme directed toward prostitution ultimately failed, just as it had in Europe; and, by 1916, “some forty-seven areas that once had regulated districts had dropped them.” BULLOUGH, *supra* note 20, at 224.

45. BULLOUGH, *supra* note 20, at 224.

46. *See* Miller, *supra* note 16, at 303 (noting that “[b]y the early 1970s, prostitution and related crimes—with the exception of thirteen counties in the state of Nevada—were totally illegal in the United States”).

As of September 2020, every state in the country, except for certain parts of Nevada,⁴⁷ has criminalized the sale of sex.⁴⁸ Even in the parts of Nevada where prostitution is legal, the state heavily regulates brothels and the activities of prostituted women outside of their work area.⁴⁹ Most states also have accompanying “patron statutes,”⁵⁰ which make soliciting a prostituted person a punishable offense.⁵¹ Nationally, however, prostituted women themselves, not their clients, are arrested and charged in the majority of prostitution cases.⁵² Additionally, women of color are disproportionately

47. See NEV. REV. STAT. ANN. § 201.354 (West 2019) (prohibiting prostitution in Nevada unless performed in a licensed house of prostitution); see also *id.* § 244.345(8) (stating that a licensed house of prostitution can only operate in counties that have a population of 700,000 or less).

48. See BABCOCK, *supra* note 43, at 1478. The criminalization of prostitution, however, has historically not deterred men from seeking out sexual contact with prostituted women. See *id.* In fact, one study conducted in the late 1940s by sexologist Alfred Kinsey indicated that 69 percent of white males reported experience with prostitutes. *Id.* While it is difficult to estimate how many modern men have had sexual contact with prostituted women, a sufficient number of individuals contract prostituted women frequently enough for there to be an estimated 290,000 to 500,000 prostituted women working in the United States. See Miller, *supra* note 16, at 304. See also JANICE G. RAYMOND, NOT A CHOICE, NOT A JOB: EXPOSING THE MYTHS ABOUT PROSTITUTION AND THE GLOBAL SEX TRADE 43 (2013) (stating that 40% of U.S. sex buyers are married, with 38% of them reporting “very happy” marriages and another 40% reporting a “pretty happy” marriage). Internationally, the amount of men frequenting prostituted women is similarly high. *Id.* at 38–40. One study reported that “75 percent of Thai men were prostitution buyers, and almost 50 percent had their first sexual intercourse with women in prostitution.” *Id.* at 38–39. Another study found that 60 to 70 percent of Cambodian men have purchased women for sexual activities. *Id.* at 39. In the United Kingdom, it is estimated that 10 percent of London’s male population buys sexual services. *Id.* In Germany, about 18 percent of men regularly pay for sex, and 1 in 14 Spanish men bought women for prostitution at least once during 2003. *Id.*

49. See Miller, *supra* note 16, at 309. A discussion of the historical restrictions states:

Although the regulations vary, a summary of some of the mandates indicate that they determine where brothels can geographically exist, how many houses are allowed, how many hours per day or week houses are allowed to operate, the number of prostitutes the houses can have, and the size of the buildings themselves.

Id. The restrictions on prostituted women have historically ranged from restrictions on when they can go into town, which places they can visit, and with whom they can have contact. *Id.* See also BABCOCK, *supra* note 43, at 1479 (“Although the [Nevada] system effectively reduced street prostitution and incidental crime in areas surrounding brothels, it has failed to curtail illegal prostitution elsewhere in the state.”). “Licensed prostitutes account for only two to five percent of those estimated to be working in Nevada.” *Id.*

50. See 18 PA. CONS. STAT. AND CONS. STAT. ANN. § 5902(e) (West 2012) for an example of a patron statute that criminalizes the purchase of sexual services.

51. BABCOCK, *supra* note 43, at 1479.

52. *Id.* at 1480 (finding that, over a two-year period in New York, purchasers of sex accounted for only about 1% of all arrests made under the prostitution

arrested and punished for prostitution-related activities.⁵³ Despite the blatantly disproportionate treatment toward prostituted women and the lack of punishment for sex buyers, legal challenges to various state prostitution laws have largely failed.⁵⁴ Thus, despite the criminalization of both the sale and purchase of sex, prostitution is still a common practice throughout the United States and the world.⁵⁵

B. Prostitution in Pennsylvania

The history of prostitution in Pennsylvania followed the same general trend as the rest of the country.⁵⁶ Philadelphia, as one of the largest cities in the United States, has always had a large population of prostituted women and high rates of commercial sex.⁵⁷ In Pennsylvania, “[a] person is guilty of prostitution if he or she: (1) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or (2) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.”⁵⁸ A conviction for prostitution carries a punishment ranging from a third-degree misdemeanor when committed for the first or second time to a third-degree felony if the person who committed the of-

laws). See also Miller, *supra* note 16, at 313 (finding that, “despite the fact that most state laws prohibit both sides of the prostitution transaction[,]” approximately 70% of those arrested for prostitution are female, compared to only 10% of males who are arrested for purchasing sex); BULLOUGH, *supra* note 20, at 286 (suggesting that the reason for the absence of male arrests in the prostitution transaction is that the “police see nothing wrong with men wanting sex, only with women charging for it (and this is true even if the men are willing to pay)”).

53. See BABCOCK, *supra* note 43, at 1483 (discussing how “[w]omen of color account for an estimated 40 percent of street prostitutes in the United States, 55 percent of arrests, and 85 percent of those who receive jail sentences”).

54. See *Fluker v. State*, 282 S.E.2d 112, 113 (Ga. 1981) (upholding a pandering law applicable only to male pandering of females); *People v. Alameda Cty.*, 562 P.2d 1315, 1320–21 (Cal. 1977) (concluding that “concentrating . . . enforcement effort on the ‘profiteer,’ rather than the customer, of commercial vice” is a way for a police department “to efficiently utilize its limited resources”); *State v. Hicks*, 360 A.2d 150, 154 (Del. Super. Ct. 1976) (justifying the disparate treatment between prostituted women and their clients because sellers of sex constitute a “greater danger to society” than buyers).

55. See *supra* note 48 and accompanying text.

56. See generally Sarah S. Bertozzi, *Vicious Geography: The Spatial Organization of Prostitution in Twentieth Century Philadelphia*, C. UNDERGRADUATE RES. ELECTRONIC J. (2005), <https://bit.ly/353ImkZ> [<https://perma.cc/YB73-9K64>].

57. See generally *id.*; see also Alysia Castro, Note, *Better in Theory: The Road to Prostitution Reform in Pennsylvania*, 9 RUTGERS J.L. & PUB. POL’Y 37, 42 (2012) (noting that, “[i]n 1856, Philadelphia had 130 brothels, which was far more than most eastern urban centers had at the time”).

58. 18 PA. STAT. AND CONS. STAT. ANN. § 5902(a) (West 2012).

fense knew they were HIV or AIDS positive.⁵⁹ Pennsylvania also criminalizes patronizing prostitutes.⁶⁰ By law, the penalties for patronizing a prostitute use the same grading system as the penalties for engaging in conduct that constitutes prostitution.⁶¹

Consequently, prostituted women and their clients, known as “johns,”⁶² are supposed to be charged at roughly the same rate and receive the same punishment.⁶³ But this is not the case in Pennsylvania.⁶⁴ The Villanova School of Law’s Institute to Address Commercial Sexual Exploitation reports that, in 2019, prostituted women, not sex buyers, accounted for 79 percent of those charged under the Pennsylvania prostitution laws.⁶⁵ Of the 32 counties in Pennsylvania that reported their arrest rates in 2018, only 7 counties charged sex buyers at a higher rate than prostituted women.⁶⁶ Despite efforts by certain law enforcement agencies and non-profit organizations,⁶⁷ prostituted women in Pennsylvania were arrested at three times the rate as sex buyers over the last five years, “despite the fact that these two offenses are legally equivalent on their faces.”⁶⁸

Additionally, women charged under Pennsylvania’s prostitution laws face serious collateral consequences as a result of their convictions.⁶⁹ Not only are prostituted women already subject to physical violence (including murder)⁷⁰ at a higher rate than non-

59. *Id.* § 5902(a.1).

60. *Id.* § 5902(e) (“A person commits the offense of patronizing prostitutes if that person hires a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity.”).

61. *Id.* § 5902(e.1).

62. See Anita Bernstein, *Working Sex Words*, 24 MICH. J. GENDER & L. 221, 245 (2017).

63. *Supra* note 61 and accompanying text.

64. CSE INST., REPORT ON COMMERCIAL SEXUAL EXPLOITATION IN PENNSYLVANIA 13 (2019) [hereinafter REPORT ON COMMERCIAL SEXUAL EXPLOITATION].

65. *Id.*

66. *Id.* “These counties are: Adams, Beaver, Columbia, Delaware, Lancaster, Northampton, and Union.” *Id.*

67. Samantha Melamed, *Philly DA Larry Krasner Stopped Seeking Bail for Low-Level Crimes. Here’s What Happened Next.*, THE PHILA. INQUIRER (Feb. 19, 2019), <https://bit.ly/2TTKF7H>.

68. See REPORT ON COMMERCIAL SEXUAL EXPLOITATION, *supra* note 64, at 15.

69. See *infra* notes 70–77 and accompanying text.

70. See John J. Potterat et al., *Mortality in a Long-Term Open Cohort of Prostitute Women*, 159 AM. J. OF EPIDEMIOLOGY 778, 782 (2004) (showing that the mortality rate of women engaged in prostitution is 17.7% higher than the standard mortality rate for non-prostituting women). See also Kenna Quinet, *Prostitutes as Victims of Serial Homicide: Trends and Case Characteristics, 1970–2009*, 15 HOMICIDE

prostituted women, but they are subject to extreme emotional and sexual violence as well.⁷¹ Moreover, prostituted women will often lose custody of their children as a result of their convictions and have difficulty obtaining other work due to their criminal record.⁷² Criminalizing prostitution and arresting prostituted women also increases their dependency on their pimps and so-called “boyfriends” or “lover boys”⁷³ because prostituted women need to turn to these

CIDE STUD. 74, 93 (2011) (showing that serial killers often target women engaged in the work of prostitution). In fact, one such study found that 65 percent of serial murder victims are female. *Id.* at 75. Of those female victims, nearly 78 percent of them are prostituted women. *Id.* Present data further “indicates that this targeting has been increasing over time.” *Id.* at 93. Of additional concern is that prostituted women’s proportion of the total serial murder victim pool has increased over time, despite the fact that the number of women engaged in sex work is trending downward. *Id.* at 94. Moreover, 46 percent of prostitute homicides are unsolved, and the average time to arrest a perpetrator of prostitute homicide is longer than 1 year for 41 percent of all cases and longer than 5 years for 17 percent of cases. *Id.* at 94–95.

71. See generally Rachel Marshall, *Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work*, 23 WM. & MARY J. OF WOMEN & L. 47, 51 (2016); Katherine Koster, *17 Facts About Sexual Violence and Sex Work*, HUFFINGTON POST (Dec. 4, 2015, 5:15 PM), <https://bit.ly/2NZ2P3j> [<https://perma.cc/W3XS-W4MB>] (showing that, globally, prostituted people have a 45% to 75% chance of experiencing sexual violence at some point in their careers and a 32% to 55% chance of experiencing sexual violence in a given year); Hillary L. Surratt et al., *The Connections of Mental Health Problems, Violent Life Experiences, and the Social Milieu of the “Stroll” with the HIV Risk Behaviors of Female Street Workers*, 17 J. PSYCHOL. & HUM. SEXUALITY 23, 24 (2008) (showing that 52.9% of the street-based prostitutes in Miami had symptoms of moderate to severe depression); Melissa Farley, “Bad for the Body, Bad for the Heart”: Prostitution Harms Women Even if Legalized or Decriminalized, 10 VIOLENCE AGAINST WOMEN 1087, 1105 (2004) (showing that there is a PTSD prevalence of 68% among prostituted women from 9 different countries); Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27(3) WOMEN & HEALTH 37, 45 (1998) (showing that 82% of women who engaged in prostitution in San Francisco had been physically assaulted while working). Of those women, 55 percent reported being assaulted by customers, and 8 percent reported that their assaults resulted in serious physical injury. *Id.* at 40–41. In addition, 68 percent of these women reported being raped since entering into prostitution, with many reporting having been raped more than 5 times. *Id.* at 45.

72. Marshall, *supra* note 71, at 51; see also Ane Mathieson, Easton Branam, & Anya Noble, *Prostitution Policy: Legalization, Decriminalization and the Nordic Model*, 14 SEATTLE J. SOC. JUST. 367, 377 (2015) (stating that “[c]riminal records and repeated incarceration create severe economic disadvantages for women with experiences of prostitution and adds to the difficulty women have exiting prostitution”). Additionally, “[c]riminal records from prostitution-related crimes and time spent incarcerated impact a woman’s ability to access education, legal employment, and loans.” *Id.*

73. See generally Noemi Katona, *Pimps or Boyfriends? The Negotiation of Intimacy and Economic Transfer by Hungarian Sex Workers in the Kurfürstenstraße* (2012), <https://bit.ly/2EGRpwT> [<https://perma.cc/U33L-4MZF>]. Generally, pimps are individuals who control the actions of prostituted women and primarily enjoy the economic benefits derived from said prostituted women. *Id.* There is usually

individuals to make bail and arrange for childcare while they are in custody.⁷⁴ Also disconcerting is that prostituted women often do not enter into prostitution of their own volition but instead are frequently trafficked⁷⁵ or otherwise forced into prostitution due to socio-economic factors⁷⁶ or lingering trauma from severe childhood and adolescent abuse.⁷⁷ Janice G. Raymond, a leading expert in prostitution and sexual exploitation, highlights the difficult position most prostituted women find themselves in when she describes prostitution as a “choiceless choice” and nothing more than a “*strat-*

little to no intimate relationship between a pimp and a prostituted woman. *Id.* Boyfriends, or “lover boys,” on the other hand, often have intimate, romantic relationships with the prostituted women they sell to customers while still deriving economic benefit from the work of the prostituted woman. *Id.* Prostituted women who have boyfriends or “lover boys” often live in domestic unions and have children with these men while simultaneously engaging in the practice of prostitution. *Id.*

74. See Miller, *supra* note 16, at 314 (“It has also been argued that periodic enforcement of laws designed to control prostitution strengthens the dependence of prostitutes upon their pimps since the pimps sometimes are the only people available to arrange for bail, child care, and legal representation.”). Additionally, “sweeps may work as catalysts in women’s decisions to move to other cities, where their social isolation and fear for their physical well-being may compel them to work for a pimp.” *Id.* It is also worth noting that

[W]omen who are incarcerated for crimes other than prostitution or women prostitutes whose incarceration severs their ties to particular pimps often report that they were recruited to prostitution initially or came under the influence of a particular pimp as the result of contacts with other prostitutes made while in jail.

Id.

75. See Ashleigh M. Kline, Comment, *The Fallacy of Free Will in Prostitution: Encouraging Prostitution Reform to Prevent the Repeated Victimization of Vulnerable Persons*, 25 MICH. ST. INT’L L. REV. 665, 667–79 (2017).

76. *Id.*

77. See generally Mimi H. Silbert & Ayala M. Pines, *Victimization of Street Prostitutes*, 7 VICTIMOLOGY: AN INT’L J. 122, 125 (1982) (showing that, of the 200 prostituted people interviewed, 62% reported severe physical beatings in their childhood, and 45% reported being physically beaten at least once a month). This study additionally found that 70 percent of the women responded that sexual abuse influenced their entry into prostitution. *Id.* Seventy-eight percent of prostituted people enter into the practice before the age of 18. *Id.* Sixty-five percent of prostituted people report some form of physical abuse at the hands of their customers. *Id.* Seventy-five percent were raped, often violently. *Id.*; see also BABCOCK, *supra* note 43, at 1484–85 (finding that, in the United States, 60–70% of women in prostitution have histories of sexual abuse in childhood); PENNSYLVANIA COALITION AGAINST RAPE, *THE INTERSECTION BETWEEN PROSTITUTION AND SEXUAL VIOLENCE 2* (2013), <https://bit.ly/2Siucta> [<https://perma.cc/8ZWZ-Q9YF>] (stating that “[r]esearch has consistently linked childhood sexual violence with a victim’s entrance into prostitution”). “Women are more likely to work in prostitution if they were sexually victimized as children and were later victimized as adults. The majority of those involved in prostitution began as adolescents.” *Id.*

egy of survival for most prostituted women.”⁷⁸ Even those women who do “enter the industry knowing they will engage in prostitution often have no idea of the conditions that await them.”⁷⁹ Regardless of whether women experience forced or coerced entry into prostitution or “choose” to engage in the act of prostitution, they are still used by an industry that mercilessly exploits them.⁸⁰

Given that large swaths of Pennsylvania contain rural, conservative communities that often view prostitution as inherently immoral, it is unsurprising that the above-mentioned plights of prostituted women are common throughout the Commonwealth.⁸¹ Even judicial officers are often unsympathetic to the circumstances surrounding violence against prostituted women.⁸² For example, in 2007, a prostituted woman in Philadelphia consented to have sex with a client.⁸³ The client, however, then forced the prostituted woman, at gunpoint, to have sex with three other men.⁸⁴ In dismissing the sexual assault charges against the men, Judge Teresa Carr Deni stated that she considered the case to be nothing more

78. See RAYMOND, *supra* note 48, at 19. Raymond continues her discourse on “choice” within prostitution by stating:

From oral history testimony and interviews with women in prostitution, it is known that some women enter the sex industry because they have been forced, coerced, or deceived. Others enter because offenders abuse their vulnerabilities, including past and present sexual abuse, poverty and economic disadvantage, marginalization, and loss of self, and use predatory recruitment tactics that can include peer or family pressure. It is one thing to endorse a notion of personal choice as necessary to women’s freedom but quite another to claim that women can make meaningful choices within a system of prostitution that represses women’s freedom. It is one thing to argue that women need sexual freedom but quite another to claim that prostitution provides it within a global sex industry where prostituted women must service five to fifteen men a day, and most need drugs or alcohol to do the “job.”

Id. Recognizing the economic difficulties that exist for most prostituted women, Raymond observes that getting paid to have sex with someone “when your motivation is to get enough money to survive, or to buy the next bag of groceries or drugs, is not voluntary intercourse.” *Id.* at 20. Indeed, “[i]t’s a transaction based on [a prostituted woman’s] disadvantages and [the client’s] power of purchase. It’s *compliance* to the only options available.” *Id.*

79. *Id.* at 19.

80. *Id.* Discussing whether women can ever freely and voluntarily choose to enter into prostitution, Raymond poses an interesting question to ask when considering the issue: “[i]f women really choose prostitution, why is it mostly disadvantaged and marginalized women who do?” *Id.* at 21.

81. See *supra* notes 64–68 and accompanying text.

82. See The Associated Press, *Pennsylvania: Judge Criticized in Rape Case*, THE NEW YORK TIMES (Nov. 1, 2007), <https://nyti.ms/32KWZYX> [<https://perma.cc/85Z5-TFXM>].

83. *Id.*

84. *Id.*

than a “theft of services.”⁸⁵ Judge Deni later stated that, because “[the prostituted woman] consented, and she didn’t get paid[,] . . . I thought it was a robbery.”⁸⁶ Given this account and the history and treatment of prostituted women in Pennsylvania and throughout the rest of the country, legal challenges to the Commonwealth’s prostitution laws have unsurprisingly been largely unsuccessful.⁸⁷

III. ANALYSIS

Because prostituted women often do not enter into the practice of prostitution of their own volition and because they face such severe consequences as a result of the practice,⁸⁸ Pennsylvania should follow the example of other governments⁸⁹ and strive to eliminate the harmful practice of prostitution by helping prostituted women leave their line of work if they so choose and enforcing its patron laws with vigor.⁹⁰ To do so, the Commonwealth will need to embrace a new approach to prostitution regulation. Pennsylvania should also reform its laws to reflect the reality that the act of prostitution is inherently harmful to the vast majority of women engaged in its practice⁹¹ and that it is illogical to punish prostituted

85. *Id.*

86. *Id.* Fortunately, the local bar association condemned and criticized Judge Deni’s remarks. *Id.* Judge Deni resigned from her judicial position in 2016 in an unsuccessful bid to become the Philadelphia District Attorney. See Chris Brennan, *Judge Prepares to Challenge DA Seth Williams in Primary*, THE PHILA. INQUIRER (December 2, 2016, 5:12 PM), <https://bit.ly/393TbWY>.

87. See *Commonwealth v. Potts*, 460 A.2d 1127, 1135–36 (Pa. Super. Ct. 1983) (finding that the Pennsylvania statute against prostitution is neither unconstitutionally vague nor overbroad). See also *Commonwealth v. Finnegan*, 421 A.2d 1086, 1089–90 (Pa. Super. Ct. 1980) (holding that the statute proscribing prostitution and the promotion of prostitution was not unconstitutional). The *Finnegan* court additionally dismissed the concern that the Pennsylvania prostitution statute was being enforced disproportionately against the women engaged in the practice and not against their clients:

[W]e believe that the legislatively-employed method of punishing the prostitute and promoter as the providers of the sexual services to a greater extent than the client who purchases such services is rationally related to the legitimate purpose of eliminating prostitution and maintenance of the public health, safety, morals[,] and general welfare.

Id. at 1090–91.

88. See *supra* notes 70–77 and accompanying text.

89. Sweden, Canada, and France, among other countries, have all adopted the Nordic Model. See Meghan Murphy, *France Adopts the Nordic Model*, FEMINIST CURRENT (April 16, 2016), <https://bit.ly/2NtxE08> [<https://perma.cc/3LFP-7MXR>]. “In 2014, the European Parliament officially endorsed the Nordic Model as the recommended prostitution reform for all European Countries.” See Kline, *supra* note 75, at 689.

90. See *infra* Part III.C and accompanying text.

91. See Dempsey, *supra* note 15, at 1746.

women for engaging in the practice of prostitution. In considering whether to reform its own prostitution laws, Pennsylvania has three global policies from which to choose: criminalization, legalization, and a hybrid model known as the “Nordic Model.”⁹²

A. *Criminalization*

Pennsylvania, along with most of the United States, has implemented the criminalization approach to prostitution regulation.⁹³ Many countries have chosen this policy due to “a belief that prostitution is a public nuisance, a consequence of immoral decision-making requiring regulation with public order offenses.”⁹⁴ Most criminalization regimes, however, disproportionately punish prostituted women compared to sex buyers.⁹⁵ Additionally, the criminalization of prostitution has severe collateral consequences for prostituted women, the majority of whom are forced into the practice before they reach the age of 18.⁹⁶ Due to the severe consequences that criminalization policies have on prostituted women, this Comment urges Pennsylvania to reform its prostitution laws and move away from a criminalization regime.

B. *Legalization*

Many countries around the world have legalized prostitution based on the premise that “prostitution arises from personal choice, is an indication of women’s empowerment, and is a business agreement made between consenting adults with equal power.”⁹⁷ Legali-

92. See generally Mathieson, *supra* note 72 (analyzing the three different policies).

93. See *supra* notes 46–51 and accompanying text.

94. Mathieson, *supra* note 72, at 372. “In the United States, prostitution is largely treated as an issue of traditional morality.” *Id.* at 374.

95. See *id.* at 374 (stating that “the onus of criminalization laws in the United States falls largely on the sellers (predominantly women) instead of the buyers (predominantly men)”).

96. See *supra* notes 70–77 and accompanying text; see also Mathieson, *supra* note 72, at 375 (finding that laws criminalizing the selling of prostitution further exploit prostituted women). Studies have also found that criminalization regimes give law enforcement officers the unique opportunity to contribute to the exploitation of prostituted women. *Id.* at 376. One such study found that 24 percent of prostituted women who were raped “identified a police officer as the perpetrator.” *Id.* In the same study, 30 percent of exotic dancers identified police officers as their rapists. *Id.* However, “violence against women in all classes of prostitution goes far beyond police misconduct.” *Id.* “It is common for women in prostitution to be deprived of food and sleep and money, beaten, tortured, raped, and threatened with their lives, both as acts for which the pimp is paid by other men and to keep the women in line.” *Id.*

97. Mathieson, *supra* note 72, at 378.

zation policies recommend regulating, instead of criminalizing, the following activities: pimping, buying, brothel ownership, and the sale of prostitution sex.⁹⁸ After legalizing prostitution, governments promote the sex industry in order to attract “sex tourists,” who stimulate local economies.⁹⁹ Many international organizations, including Amnesty International and the World Health Organization, advocate for the complete legalization of all “sex work.”¹⁰⁰ Because the Netherlands was one of the first countries to embrace a legalization policy toward prostitution, evaluating the state of prostitution in the Netherlands and the statistical evidence of gendered violence toward prostituted women that still exists within the country lends insight into the impact of a legalization policy.¹⁰¹

1. *The Netherlands*

Before the Netherlands officially eliminated brothels and prostitution from the criminal code in 2000,¹⁰² the country had experienced 50 years of pragmatic tolerance of prostitution and the sex industry.¹⁰³ Although prostitution was technically illegal before the 2000 legislation,¹⁰⁴ “brothels were tolerated and pimps were largely

98. *See id.* “The intersection of capitalism and legalization has even produced flat rate brothels in Germany.” *Id.* at 395. For example:

When the Pussy Club opened near Stuttgart in 2009, the management advertised the club as follows: “Sex with all women as long as you want, as often as you want and the way you want. Sex. Anal sex. Oral sex without a condom. Three-ways. Group sex. Gang bangs.” The price: €70 during the day and €100 in the evening. According to the police, about 1,700 customers took advantage of the offer on the opening weekend. Buses arrived from far away and local newspapers reported that up to 700 men stood in line outside the brothel at any one time. Afterwards, customers wrote in Internet chat rooms about the supposedly unsatisfactory service, complaining that the women were no longer as fit for use after a few hours.

Id.

99. *See id.* Legalized prostitution in Germany generates an estimated €14.5 billion annually (an equivalent of \$15.9 billion). *Id.* at 395.

100. *See* AMNESTY INT’L, AMNESTY INTERNATIONAL DRAFT POLICY ON THE PROTECTION OF THE HUMAN RIGHTS OF SEX WORKERS (2015) (setting forth the official statement released by Amnesty International and calling for the complete legalization of all sex work).

101. *See* RAYMOND, *supra* note 48, at 79 (“The Netherlands has become the model country of legalized and regulated prostitution in the world.”).

102. *See id.* at 80 (“In 2000 the Dutch government officially struck brothels and profiting from prostitution from the criminal code and accepted the system of prostitution as legitimate work.”). “Together, the changes in the penal code are generally known as ‘Lifting of the general ban on brothels.’” *Id.*

103. *See id.*

104. This legislation is known as the “lifting of the general ban on the brothels.” *Id.* at 82.

left alone.”¹⁰⁵ This indifference and growing tolerance toward prostitution and those engaged in its practice were reflective of shifting attitudes in the country and throughout Europe as a whole.¹⁰⁶ After the ban on brothels and prostitution was lifted, the Dutch government passed regulations that aimed to make prostitution “healthy, safe and transparent, [and] stripped of criminal side-issues.”¹⁰⁷ To promote the new legalization of prostitution, the Dutch government soon began a marketing campaign that strove to shift public perception of prostitution from that of an illegal, yet tolerated, enterprise to that of a legitimate and respectable business practice.¹⁰⁸

In the years following the legalization of prostitution in the Netherlands, however, it has become clear that the Dutch policy has not accomplished the goals it set out to achieve.¹⁰⁹ One effect of the legalization is the normalizing of men as sexual consumers.¹¹⁰ Indeed, Amsterdam’s red-light district has become overrun with sex tourists who come to the city to indulge their sexual fantasies.¹¹¹ In fact, the red-light district is reported to draw as many visitors to

105. *Id.* at 80.

106. *See id.* Similar to other countries in Europe and select others throughout the world:

The Netherlands has experienced a legislative seesaw history of prostitution from criminalization of women, policing of brothels, and organizers of prostitution (seventeenth and eighteenth centuries); to abolition and later tolerance of prostitution (nineteenth and twentieth centuries); to regulation/legalization ([twenty-first] century).

Id.

107. *Id.* at 85.

108. *See id.* During this time, “[p]rostitution users were transformed into customers and prostituted women into providers of sexual services. Both were regarded as *equal partners* in what became a commercial sexual transaction. This false symmetry meant that prostitution users were gradually drawn into the government’s repeal campaign and treated as associates.” *Id.*

109. *See id.* at 98 (“The 2008 National Police Service report concluded that the lifting of the ban on brothels has done nothing to promote the safety or prevent exploitation of women in prostitution.”). “There appears to be an emerging national consensus that the law of 2000 has been a failure.” *Id.* at 90.

110. *See id.* at 85–86 (discussing how the Dutch prostitution policy has not controlled the demand for prostitution and has given men blanket entitlement to buy women and children for sex whenever they want). “Dutch men who are not content with the legal offerings can easily gratify their fantasies of more stimulating and exotic women and/or sexually abuse vulnerable children in both the legal and illegal prostitution venues that now flourish in the Netherlands.” *Id.* at 86.

111. *See* RAYMOND, *supra* note 48, at 86 (“The city’s 450 window brothels are the main appeal for male tourists, who not only ogle the women on display as if they are animals in a zoo but also take advantage of the easy purchasing of sexual activities with women exhibited in the windows.”).

Amsterdam as its museums, canals, and other attractions.¹¹² The legalization of prostitution has also not reduced crime and violence against women as it was designed to do.¹¹³

Due to the increase of violence in red-light districts, “[m]ost major Dutch cities have terminated their prostitution tolerance zones—restricted areas where men could buy women legally and, allegedly, where women could sell sex safely.”¹¹⁴ These zones quickly became unsafe for prostituted women, and organized crime controlled the prostitution business with impunity.¹¹⁵ Multiple political leaders within the country publicly acknowledged the difficulty of creating a safe zone for prostituted women within the new legalization regime.¹¹⁶

Despite early statements lauding the success of the new legalization regime in the Netherlands,¹¹⁷ official governmental reports painted a different picture.¹¹⁸ One such report found that “[t]he prostitutes’ emotional well-being is now lower than in 2001 on all measured aspects, and the use of sedatives has increased.”¹¹⁹ A 2008 National Police Service Report, entitled *Beneath the Surface* and commissioned by the National Prosecutor’s Office, found similar failures.¹²⁰ This report publicized the results of an investigation begun in 2006 that tracked organized crime gangs in prostitution sectors of three prominent Dutch cities.¹²¹ Importantly, this report indicated that “[c]riminal gangs working as pimps and bodyguards were found to have violently victimized dozens of women in prostitution over many years within the *licensed sector*.”¹²²

112. *See id.* It is not just men that are drawn to the red-light district. *Id.* “In 2005[,] Thomas Cook, a respected worldwide tour and travel agency founded to promote ethical and educational tourism and with the reputation of being a family company, launched a night walking tour through the red-light area.” *Id.* These tours were even free for children under the age of three. *Id.*

113. *See id.* at 87 (discussing how Amsterdam’s prostitution district is a “breeding ground of ruthless pimps and traffickers who have historically dominated the area and continued to do so particularly after legalization came into force”).

114. *Id.* at 88.

115. *See id.*

116. *See id.* For example, “[f]ormer [Amsterdam] mayor Job Cohen stated, ‘[i]t appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime.’” *Id.*

117. *See id.* at 89 (“In the years following passage of the legislation, official opinion claimed that lifting the ban on brothels was successful.”).

118. *See id.* at 89–90.

119. *See id.* at 90.

120. *See id.*

121. *See* RAYMOND, *supra* note 48, at 90.

122. *Id.*

The 2008 Report also indicated that prostituted women within the regulated, allegedly safe red-light districts of these cities were being controlled, manipulated, and frequently beaten by gangs and abusive pimps.¹²³ In fact, the “great majority” of women in the regulated prostitution sectors have “pimps or so-called boyfriends.”¹²⁴ Pimps engage in various predatory practices toward the women they employ, including seizing the passports of foreign-born prostituted women and communicating that freedom can only be bought if the prostituted women pay a large amount of money to their pimps.¹²⁵

The legalization of prostitution in the Netherlands has also caused an increase in human trafficking.¹²⁶ One governmental report found that “60 percent of the 354 women interviewed in the legal sex industry were foreign-born, and that foreign-born women constitute the majority in the non-legal venues.”¹²⁷ The 2008 National Police Service Report further found that the percentage of women working against their will in the window brothels of all three cities investigated is 50–90 percent.¹²⁸ The number of registered sex trafficking victims, including children, in the Netherlands is similarly increasing with time in order to meet the demand of the sex tourism business.¹²⁹ Instead of addressing these concerns, the sex industry has attempted to dismiss them, calling the increased

123. *See id.* “[Prostituted women] were beaten and terrorized. They had to work long hours and had to hand over all of their earnings, and some were forced to abort . . . or to have their breasts surgically enlarged.” *Id.*

124. *Id.* at 92.

125. *See id.* This sum varies from €30,000 to €240,000. *Id.* “Since the 2000 law legalized pimping, the pervasiveness of pimping is significant. So-called third-party business managers have turned out to be just regular abusive pimps.” *Id.*

126. *See id.* at 92–93; *see also* Seo-Young Cho, Axel Dreher, & Eric Neumayer, *Does Legalized Prostitution Increase Human Trafficking?*, 41 *WORLD DEV.* 67 (2013) (analyzing data from 116 countries, including the Netherlands and Sweden, and finding that countries that have legalized sex buying are associated with higher human trafficking inflows than countries where sex buying is prohibited).

127. *See* RAYMOND, *supra* note 48, at 93.

128. *See id.* (“Based on the most conservative estimate of 50 percent, this amounts to 4,000 victims of human trafficking per year in Amsterdam alone.”) *Id.*

129. *See id.* (highlighting that the number of registered sex trafficking victims in 2011 was 23% more than in 2010 (from 993 to 1,222)). Perhaps most concerning of all is the rise of child sex trafficking since the legalization of prostitution in the Netherlands. *Id.* at 115. The Dutch government reported in 2002 that at least 25 percent of all human trafficking investigations involved underage victims. *Id.* A 2001 Child Rights Information Network *Report on the Sexual Exploitation of Children* “cited Interpol and Dutch police statements that the Netherlands played a leading role in creating and sustaining pedophile networks in Europe.” *Id.* at 116–17. This is unsurprising as “[t]he Netherlands may be the only country in the world with a political party dedicated to promoting pedophilia.” *Id.* at 116. The government-tolerated Party for Brotherly Love, Freedom and Diversity advocates

number of foreign women trapped in the Dutch sex industry as nothing more than a product of sex work migration.¹³⁰

The legalization of prostitution in the Netherlands has additionally failed to achieve another one of its primary objectives: increasing the quality of life for prostituted women.¹³¹ The pro-legalization coalition believed that by legalizing and regulating prostitution, the women engaged in its practice would see a radical improvement to their health and overall well-being.¹³² The 2008 Report, however, indicated that this was not the case and that the welfare of prostituted women has declined since legalization went into effect.¹³³ The Report found that

pimps ordered their victims in the windows every day and required them to ask permission to stop being available for sex. Many women were ordered to earn €1,000 per day and were under twenty-four-hour surveillance. The few victims who made statements to the police testified that they were beaten with baseball bats or made to stand in icy water of lakes or parks during winter. Some were branded with tattoos that inscribed the names of pimps on their bodies.¹³⁴

Another aim of the legalization legislation was to regularize the status of women as workers and to provide them with benefits.¹³⁵ Since legalization, however, very few women have registered as sex workers with the government.¹³⁶ Therefore, it is clear that legalized prostitution in the Netherlands has not fulfilled its goals, and legalizing prostitution can have dire consequences.¹³⁷

for the abolishment of the minimum age of consent for sexual contact and for lifting the ban on child pornography. *Id.*

130. *Id.* at 94.

131. *See id.* at 95–98.

132. *See id.* at 96.

133. *Id.*

134. *Id.*

135. *See id.* at 97.

136. *See id.* (“The majority of women, however, do want to be regular-salaried employees for several reasons.”). “Many do not want to pay taxes, arguing that they earn very little. A large number collect social security or employee insurance and fear that these payments may be jeopardized by extra income. Some want the freedom and flexibility of being independent contractors.” *Id.* Most importantly, “the majority wants to retain anonymity because women fear the exposure of providing contact information and registering with relevant authorities.” *Id.*

137. *See* RAYMOND, *supra* note 48, at 98.

2. *Rhode Island*

Rhode Island is a domestic example of the dangers of a legalization approach to prostitution regulation. In Rhode Island, from 1980 until 2009, amendments to state law decriminalized and unregulated indoor prostitution.¹³⁸ The lack of law criminalizing or regulating indoor prostitution led to the growth of sex businesses in Rhode Island.¹³⁹ By 2002, Providence (the capital city of Rhode Island) was known as “New England’s red-light district.”¹⁴⁰ With the legalization of indoor prostitution, Rhode Island became a sex tourist destination.¹⁴¹ Brothels became numerous and commonplace and advertised themselves as “spas” and “health centers” that offered “acupressure,” “body work,” “table showers,” or “body rubs,” performed most commonly by Asian women.¹⁴² Sex establishments thrived and, with a steady flow of customers,¹⁴³ became normalized.¹⁴⁴

During the legalization period in Rhode Island, the state saw an increase in prostitution-related crime.¹⁴⁵ This increase in crime included trafficking women into the state in order to meet the high

138. Melanie Shapiro & Donna M. Hughes, *Decriminalized Prostitution: Impunity for Violence and Exploitation*, 52 WAKE FOREST L. REV. 533, 535 (2017). These amendments were the result of rising discontent with the amount of public solicitation (streetwalking) in Rhode Island. *Id.* As a result, the Rhode Island General Assembly amended the state prostitution law and decreased the penalty for soliciting from a felony to a misdemeanor. *Id.* at 536. This was done to make the court process faster and easier, which would increase the amount of street prostitutes the police could arrest and process. *Id.* Apparently without knowing, however, this new law also repealed the laws pertaining to soliciting or engaging in prostitution. *Id.* at 537. “The new prostitution law legally separated indoor and outdoor prostitution: loitering for prostitution became known as ‘outdoor prostitution,’ and prostitution off the street or inside a building became known as ‘indoor prostitution.’” *Id.* “As a result, from 1980 to 2009, indoor commercial sex acts were legal and unregulated.” *Id.*

139. *See id.* at 537.

140. *Id.* (“There were ‘strip clubs, gay bathhouses, an under-21 strip club, a private swinger’s club, massage parlors[,] sex video stores’ . . . and a club for bondage and other fetishes.”).

141. *Id.* at 538.

142. *Id.*

143. *See id.* (“A senior Providence Police officer from the Investigative Division commented on the number of men visiting the Asian spa-brothels, ‘[W]hen we sent a detective [to an Asian brothel] to go in and get propositioned, it’s eleven . . . in the morning and he’s waiting in line . . . [t]hey’re packed at 11am.’”).

144. *See id.* (“The prostitution industry became so normalized that on one occasion when Providence Police raided a Korean spa-brothel, they found an ATM inside that allowed men to get cash on site.”).

145. *See id.* at 543 (“Crimes ranging from assault, sexual slavery, and murder, to extortion and racketeering occurred in connection with the decriminalized sex business in Rhode Island.”). “The perpetrators ranged from individual criminals to regional mafia groups and international, organized crime networks.” *Id.*

demand of the thriving sex industry.¹⁴⁶ Rhode Island police soon discovered that “[s]everal Asian spa-brothels were also part of a regional, organized crime network with international connections.”¹⁴⁷ In 2006, “two spa-brothels in Rhode Island were included in a federal investigation regarding women being smuggled from Korea into the Northeast United States.”¹⁴⁸

Separate and apart from the trafficking, prostituted women in Rhode Island during the legalization regime were also frequently attacked and even murdered by their clients.¹⁴⁹ Serial Killer Jeffrey S. Mailhot operated in Rhode Island from 2003 to 2004 and murdered three prostitutes during this time.¹⁵⁰ Police quickly became aware that the burgeoning sex industry in Rhode Island and unregulated nature of indoor prostitution were attracting predators who targeted women in the sex industry.¹⁵¹ The cases of attempted robberies and attacks against prostituted women caused alarm among law enforcement officials and the general public.¹⁵² But with indoor prostitution as an unregulated practice, “police and officials had no authority to take proactive steps to stop the increase in prostitution and the violence surrounding it.”¹⁵³ In response to the increase of prostitution-related crimes and exploitation, the Rhode Island General Assembly passed several laws in 2009 aimed at ending decriminalized prostitution, sexual exploitation, and human trafficking.¹⁵⁴ Similar to the Netherlands, the 29-year period of le-

146. *See id.* During a raid on an Asian brothel disguised as a health club, the commander of the Providence Police Special Services Division commented on the conditions of the prostituted women: “[it] was like slavery . . . [The women] worked 16- to 18-hour days. They didn’t get paid. They just got the tips.” *Id.* at 544. The investigation found that the traffickers

brought victims from Southeast Asia to Flushing, New York, and then transported them to Providence. The traffickers forced the women to pay their travel and living expenses and only permitted them to keep cash tips. The police noted that one of the women had cigarette burn marks on her forearm, a possible sign of torture.

Id.

147. *Id.* at 545.

148. Shapiro, *supra* note 138, at 545.

149. *See id.* at 549–52.

150. *Id.* at 549. “[Mailhot] strangled . . . three [prostituted] women at his apartment, dismembered them with a handsaw, and disposed of their bodies in garbage bags thrown into trash bins around the city.” *Id.* During this time, “Mailhot also assaulted and choked two other prostituted women who escaped.” *Id.*

151. *Id.* at 552.

152. *Id.*

153. *Id.*

154. *See id.* at 559 (“[This legislation] included a law criminalizing prostitution, a comprehensive human trafficking law, and a law prohibiting minors from working in the adult entertainment industry.”). *Id.* “These three new laws marked the end of a legal and commercial era in which the sexual exploitation of women

galized prostitution in Rhode Island serves as a powerful example of the “lawlessness, violence, and exploitation that accompanies decriminalized prostitution.”¹⁵⁵

C. *The Nordic Model*

Criminalizing prostitution is harmful to the women engaged in its practice; it exposes them to sexual assault, substance abuse, and mental health disorders.¹⁵⁶ Prostitution laws are also disproportionately enforced against prostituted women instead of their clients.¹⁵⁷ Legalizing prostitution, on the other hand, similarly leads to an increase in violence against prostituted women¹⁵⁸ and an influx of human trafficking into areas where prostitution is legalized.¹⁵⁹ There is, however, a third approach to prostitution regulation: the Nordic Model.

The Nordic Model originated in Sweden and is premised on the idea that all prostitution is gendered violence against women and should therefore be eliminated.¹⁶⁰ To that end, the Nordic Model “asymmetrically criminalizes buyers of prostitution and third-party profiteers (pimps and brothel owners), while maintaining the decriminalization of individuals sold in prostitution.”¹⁶¹ In other words, a prostitution regulation system based on the Nordic Model punishes the sex buyer, not the sex seller.¹⁶² Additionally, a Nordic Model regime is usually accompanied by state-sponsored social services that aim to remove the prostituted woman from her work and provide her with meaningful exit opportunities.¹⁶³ These social services generally include job training, educational services, and mental health services.¹⁶⁴

and girls through prostitution was a legitimate form of economic development and a high-profit enterprise for business owners.” *Id.*

155. *Id.* at 560.

156. *See supra* notes 70–77 and accompanying text.

157. *See supra* notes 64–68 and accompanying text.

158. *See supra* Part III.B.

159. *See supra* Part III.B.

160. *See Mathieson, supra* note 72, at 396. Advocates of the Nordic Model argue that because of prostitution’s violent and harmful consequences, the practice should be eliminated altogether. *Id.* at 396–97.

161. *Id.* at 371.

162. *Id.* at 396–97 (“The Nordic model penalizes those with power who demand the prostitution transaction, the buyer with money or the pimp/brothel owner profiting.”).

163. *See id.* at 403–07.

164. *See id.*

1. Sweden

During the 1970s and 1980s, Swedish women began advocating for a change to the country's prostitution laws, arguing that men, through the exercise of power and different forms of violence, maintained women in a subordinate position.¹⁶⁵ After close to 30 years of debate concerning the proper approach to prostitution, Sweden passed a law in 1999 that prohibited the purchase of sexual services.¹⁶⁶ In 2000, Sweden officially amended its criminal code to reflect the 1999 changes to its prostitution laws and formally adopted what would later become known as the Nordic Model.¹⁶⁷

The policies underlying the Swedish system of criminalizing the purchase of sex but not the sale of sex include eliminating gender inequality and male violence,¹⁶⁸ providing victim support and protection,¹⁶⁹ reducing the demand for prostitution,¹⁷⁰ and eliminating the international expansion of the prostitution industry.¹⁷¹ It is through these objectives that Sweden is attempting to curb the

165. GUNILLA S. EKBERG, SWEDISH LAWS, POLICIES AND INTERVENTIONS ON PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS: A COMPREHENSIVE OVERVIEW 4 (2018). This advocacy led to the following language being incorporated into Sweden's policies on gender equality, prostitution, and trafficking in human beings:

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

Id.

166. *Id.* at 5.

167. *See id.*; *see also* BROTTSBALKEN [BRB] [PENAL CODE] 6:11 (Swed.) (“A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for *purchase of sexual service* to a fine or imprisonment for at most one year.”).

168. *See* EKBERG, *supra* note 165, at 8 (discussing how “[p]rostitution is understood as a serious barrier to gender equality”). “Prostitution is male sexual violence against women, especially targeting those who are economically, racially[,] or ethnically marginalized[.]” *Id.*

169. *Id.* (“Women and others in prostitution are not to be criminalized or subjected to any form of administrative punishments and have a right to live [their] lives without being subjected to violence through the harm of prostitution.”).

170. *Id.* at 9 (“Eliminating the demand as the root cause of prostitution and trafficking in human beings for sexual purposes is a cornerstone of Swedish policies.”). “It is understood that if men did not consider it their incontrovertible right to buy and sexually exploit women and children, prostitution and trafficking in human beings for sexual purposes would not occur.” *Id.* Accordingly, Swedish prostitution legislation is “primarily designed to ensure that men take criminal, ethical[,] and normative responsibility for their own . . . sexual [behavior] and . . . cease their conduct.” *Id.*

171. *Id.*

practice of prostitution and provide social services for women who were once engaged in its practice.¹⁷²

In 2008, the Swedish government ordered an investigation into the effects of the new prostitution laws.¹⁷³ In 2010, the special inquiry concluded and released a report indicating that the number of individuals exploited in street prostitution had been reduced by 50 percent since 1999.¹⁷⁴ Meanwhile, the neighboring countries of Denmark and Norway—which at the time had not adopted the Nordic Model—had three times the amount of individuals in street prostitution than Sweden did, despite having smaller populations than Sweden.¹⁷⁵ The report also indicated that the continued criminalization and punishment of sex buyers had a deterrent effect on the establishment of crime organizations and human traffickers in Sweden.¹⁷⁶

The report additionally highlighted the legislation's deterrent effect on men who purchase sexual services.¹⁷⁷ In 2008, only 7.8 percent of Swedish men had purchased sex compared to 13.6 percent of Swedish men prior to the new prostitution laws.¹⁷⁸ Finally, “[d]espite misgivings that it would be more difficult to reach out and offer support to women in prostitution, that prostitution activities would ‘go underground,’ and that the conditions of prostituted individuals would worsen, the Inquiry did not find evidence that the prohibition had negative effects for individuals exploited in prostitution.”¹⁷⁹ Given the positive results indicated in the report, the new prostitution laws have enjoyed strong public support in Sweden and have brought about significant positive changes in attitudes.¹⁸⁰

172. *See id.* at 18 (discussing how Swedish victims support services provide outreach services for prostituted women and offer counseling, access to healthcare services, and exit programs).

173. *Id.* at 35.

174. *Id.* at 36.

175. *Id.*

176. *Id.* (“As also concluded by the National Police, there is evidence that the legislation functions as a barrier against the establishment of traffickers and procurers in Sweden.”). In fact, according to one major study conducted on the rates of human trafficking, evidence indicates that the criminalization of sex buying in Sweden resulted in the shrinking of the prostitution market and a decline in human trafficking inflows. *See Cho, supra* note 126.

177. *See* EKBERG, *supra* note 165, at 36.

178. *Id.*

179. *Id.* at 36–37.

180. *See id.* at 37.

2. *Washington*

Domestically, jurisdictions throughout the country are experimenting with the Nordic Model. One such jurisdiction is Washington state, via their “Buyer Beware” program.¹⁸¹ While Washington still recognizes laws that fully criminalize all parties involved in the act of prostitution,¹⁸² law enforcement agencies are shifting their focus from arresting prostituted women to arresting the sex buyers who fund the sex industry.¹⁸³ In 2014, the King County Prosecuting Attorney’s Office charged more sex buyers than prostituted women, representing “a change from previous years in which the number of charges filed against prostituted minors was far greater than the number of charges filed against prostitution sex buyers.”¹⁸⁴ While it is still early in the Buyer Beware program, the new initiative has shown great promise as the number of johns arrested greatly outnumbers the prostituted women arrested.¹⁸⁵ Importantly, in January of 2015, “the Seattle City Council unanimously voted to revise the language in its criminal code from describing the crime of buying sex as ‘patronizing a prostitute’ to ‘sexual exploitation.’”¹⁸⁶ While Washington state is to be applauded for making these policy changes, the changes must be recognized for what they are: discretionary. Until the Nordic Model is formally adopted via state-wide legislation, prostituted women’s futures depend on the mercy and goodwill of individual law enforcement agencies.

A hallmark of any system premised on the Nordic Model is the social services that the system provides to prostituted women. In Seattle, when a prostituted woman is arrested, she is given the op-

181. See Mathieson, *supra* note 72, at 412–24. See also David Kroman, *To Reduce Prostitution Seattle Gets Experimental*, CROSSCUT (May 27, 2015), <https://bit.ly/39bThLT> [<https://perma.cc/2ZAF-9ZFP>].

182. See WASH. REV. CODE ANN. § 9A.88.030 (West 2012) (outlining Washington’s general prohibition against prostitution); see also WASH. REV. CODE ANN. § 9A.88.110 (West 2017) (outlining Washington’s patron statute).

183. See Mathieson, *supra* note 72, at 413–14. These law enforcement agencies include the King County Prosecuting Attorney’s Office and the Seattle Police Department. *Id.*

184. *Id.* at 414.

185. See Kroman, *supra* note 181 (showing that the number of men arrested for purchasing sexual services has been increasing every year since the Buyer Beware program took effect). Also worth noting is the huge decline in Seattle of prostitution prosecutions: in 2011 alone (pre-Buyer Beware), 199 cases were prosecuted. *Id.* In 2012 and 2013 combined (post-Buyer Beware), only eight cases against prostituted women were prosecuted. *Id.*

186. See Mathieson, *supra* note 72, at 414. This shift in language “represents an understanding that the narrative around prostitution must reflect an understanding that prostitution is a system in which the choice of buyers to exploit others for sexual satisfaction harms individuals.” *Id.* at 415.

tion of either going to jail or speaking to a specialized victim's advocate.¹⁸⁷ When she meets with a victim's advocate, the prostituted woman is told about shelters and services that are available to her.¹⁸⁸ While precise statistics are not available, early indicators point to an increased number of prostituted women in Seattle accepting services and leaving their line of work.¹⁸⁹

D. Recommendations for Pennsylvania

Given the apparent failures of both criminalization and legalization approaches to prostitution regulation, Pennsylvania should amend its prostitution laws and embrace the Nordic Model. Doing so would bring the Commonwealth into the company of jurisdictions such as Sweden and Washington state, which have seen great progress in the reduction of violence against prostituted women and in the general well-being of the women.¹⁹⁰

In amending its system of prostitution regulation to more closely resemble the Nordic Model, the most important change that Pennsylvania should make is ensuring that life-saving services are available to women impacted by the practice of prostitution. These services include access to shelters, affordable housing, job training, educational opportunities, and mental health services. As this Comment has demonstrated, many prostituted women face severe physical, mental, and emotional abuse in their daily lives. Amending Pennsylvania's prostitution laws to more accurately reflect that prostituted women are victims, not criminals, will provide protections to the most vulnerable among us and position the Commonwealth as a nationwide leader in criminal justice reform.

IV. CONCLUSION

This Comment has highlighted but a small part of the physical, emotional, and mental abuse that prostituted women endure. Pennsylvania's practice of arresting, trying, and incarcerating prostituted women is antiquated and misinformed. As other jurisdictions have shown, it is possible to reduce the amount of prostitution and the negative consequences that accompany the practice while preserving the integrity and safety of prostituted women. Pennsylvania should therefore incorporate the core underlying principles of the Nordic Model into its prostitution laws.

187. See Kroman, *supra* note 181.

188. See *id.* ("We'll see maybe 12 girls in a day . . . [and] [u]sually two or three actually take us up on services.").

189. See *id.*

190. See *supra* Part III.C.

Specifically, the Commonwealth's prostitution laws should decriminalize the sale of sex while simultaneously maintaining the criminalization on the purchase of sex. At the same time, the Commonwealth must provide greater social services to prostituted women who are trying to make positive changes in their lives but lack the proper resources to do so. These actions will ensure that prostituted women are not further victimized by the criminal justice system.