

Criminal or Victim?

Ryan Goehrung

M.A. Candidate

Josef Korbel School of International Studies

Introduction

The debate over prostitution policies in the United States is highly polarizing and severely complicated by the seemingly inextricable moral, theological, and feminist ideologies that powerfully shape the rhetoric on the subject and heavily influence policy. At its heart, the primary divide within this debate is distillable to two dichotomous views on sex. One is that sex is no different than other forms of embodied labor and may be bought or sold like any other service without harm as long as the economic agreement is between consenting adults.¹ The other posits a definitive difference between sex and other kinds of labor and argues that the commodification of sex is in fact harmful to those involved, particularly the women who elect to sell it.² Though the debate is an important philosophical question, a fixation on this dichotomy has in fact proven detrimental to the formation and implementation of U.S. prostitution policies, particularly in regard to their impact on women in prostitution.

Rather than protecting the individuals they affect, the paternalistic and moralistic justifications for criminalizing prostitution deepen the stigmatization of women who sell sex and

¹ For a more thorough explication of this view, see for instance: Julia O'Connell Davidson. "The Rights and Wrongs of Prostitution." *Hypatia* 17 (2002): 85-87.

² For a representative argument on this position, see for instance: Melissa Farley. "Theory Versus Reality: Commentary on Four Articles About Trafficking for Prostitution." *Women's Studies International Forum* 32 (July 2009): 315.

further disenfranchise them socially, politically, and economically. Similarly, staunch proponents of legalization that refuse to acknowledge the potentially serious harms that could result from sex work do a disservice by flatly promoting legalization or decriminalization without fully considering the negative externalities. At present, the view that prostitution is inherently detrimental to individuals and society holds greater political sway; there is, however, little evidence that this criminalization deters prostitution rates to any appreciable degree.³ The result, therefore, of criminalization is only the penalization of those involved, particularly women selling sex.

Not only are current prostitution policies and the ideological debate detrimental to the women that willingly engage in the sale of sexual services, but they obscure a much more insidious and harmful crime – sex trafficking, which is the forced or coerced exploitation of individuals within the commercial sex industry. While prostitution and sex trafficking are frequently conflated in U.S. policy discourse⁴ as reciprocally contributory, the relationship is in fact much more complex. To date, few examinations have satisfactorily addressed the link between prostitution and sex trafficking policies. This paper attempts to fill that gap first by exploring the underlying assumptions that influence state prostitution policies and the implications thereof. Then by examining alternative policies and advocating an approach to prostitution law that will better serve to protect potential victims of sex trafficking from exploitation.

Brief History of Prostitution Policies

Attitudes towards prostitution in the United States have fluctuated throughout history, though even in periods of relative tolerance towards the institution, a general sentiment of disdain pervades American views on prostitutes as individuals.⁵ Even though some states throughout the nineteenth century began passing laws attempting to regulate or discourage prostitution and other “lewd acts,” the phenomenon was not actually criminalized until 1917

³ Lenoro Kuo. *Prostitution Policy: Revolutionizing Practice through a Gendered Perspective*. (New York: NYU Press, 2002), 125-126.

⁴ “The Link Between Prostitution and Sex Trafficking,” Department Of State. Accessed November 6, 2013. <http://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.

⁵ Liqun Cao and Edward R. Maguire. “A Test of the Temperance Hypothesis: Class, Religiosity, and Tolerance of Prostitution.” *Social Problems* 60 (May 2013), 189-90.

when Massachusetts became the first state to officially declare it illegal.⁶ All other states, Nevada being the exception, followed suit in the next few decades.⁷ From the beginning, these laws targeted women engaged in prostitution specifically and were much more lenient towards men.⁸

Despite this asymmetry in the legal treatment and social stigma of female sex sellers as compared to male sex buyers, there was little public outcry against prostitution laws for nearly half a century. Indeed, the assumption that female prostitutes were morally objectionable and deserved punishment went largely unchallenged, while men were typically excused from similar punishment on account of their presumed sexual insatiability. It was not until the 1970's that the second-wave feminist movement stirred enough interest in the subject to bring the issue back to national attention. However, these renewed discussions about prostitution did little in the way of advancing policies, as even the feminist movement itself quickly divided on the issue. In short order, feminism split into two separate and contradictory ideologies – liberal and radical. While the liberal feminists supported legalization, arguing that prostitution was a means towards women's sexual liberation and empowerment from oppression under male-dominated social power structures, radical feminists vehemently rejected the supposition and claimed that it was in fact an insidious tool of patriarchy that only perpetuated female subjugation.⁹

Despite this rift within the feminist movement, by the 1980s sex workers began to organize in an effort to advocate for their rights and to compel policy makers to move towards decriminalization or legalization. The most prominent of these groups was the San Francisco based organization known as COYOTE (Call Off Your Old Tired Ethics).¹⁰ In terms of policy initiatives, the organization's peak of influence was in 1994 when the San Francisco government formed a task force to examine the issue of prostitution and make recommendations. COYOTE members made up a significant portion of the task force and concluded that decriminalization

⁶ Howard Woolston. *Prostitution in the United States*. (NJ: Paterson Smith, 1969). 25-30. See also Kuo, *Prostitution Policy*, 73.

⁷ Dorothy McBride Stetson. "The Politics of Prostitution." In *The Politics of Prostitution*, edited by Joyce Outshoorn, (UK: Cambridge UP, 2004), 246. To this day, Nevada remains the only state allowing legalized prostitution, though this is limited to certain rural counties.

⁸ Woolston, *Prostitution in the United States*, 225-28.

⁹ Stetson, "The Politics of Prostitution," 225.

¹⁰ Valerie Jenness, "From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem," *Social Problems* 37 (1990); 403.

was the best alternative policy; however, these recommendations were essentially ignored and caused little impact.¹¹

Overall, while the feminist movement and sex worker's organizations were successful in rousing some level of public debate on the subject, they ultimately had limited influence on actually altering prostitution policies. Aside from the divide within the feminist movement that prevented a unified push for any given policy, the sex workers advocacy groups were hindered by the persistent and pervasive stigma attached to them which effectively served to undermine their political legitimacy.¹² Similarly, the criminalized status of their work and the perception of prostitutes as deviants significantly limited their institutional power and ability to organize effectively as a lobbying group.¹³ The sex worker's rights movement is still restricted by social stigma and issues of political legitimacy to this day, which is a major factor in the noticeable absence of sex worker's voices from policy discussions on prostitution.¹⁴ Although progress has been slow in policy revisions centered on prostitution, a number of related laws governing the operations of the commercial sex industry were passed in the last decade. Public interest in these laws arose from the realization that not all women are engaging in sex work willingly and that some in fact are victims of sex trafficking.¹⁵

The Link Between Sex Trafficking and Prostitution

In contrast to prostitution, the issue of sex trafficking is much less controversial in terms of legal prohibitions. As such, policy initiatives to address sex trafficking have moved through state and federal legislative processes fairly quickly.¹⁶ In 2000, the Federal Government passed the first law addressing the issue in the United States under the Trafficking Victims Protection

¹¹ Stetson, "The Politics of Prostitution," 225.

¹² Ronald Weitzer, "Prostitutes' Rights in the United States: The Failure of a Movement," *The Sociological Quarterly* 32 (1991); 29.

¹³ Noah D. Zatz, "Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution," *Signs* 22 (1997); 304.

¹⁴ Alison Murray. "Debt-Bondage and Trafficking: Don't Believe the Hype." In *Global Sex Workers: Rights, Resistance and Redefinition*, edited by Kamala Kempadoo and Jo Doexema. (New York: Taylor & Francis, 1998), 61-62.

¹⁵ Stetson, "The Politics of Prostitution," 247.

¹⁶ Alicia W. Peters, "'Things That Involve Sex Are Just Different': US Anti-Trafficking Law and Policy on the Books, in Their Minds, and in Action," *Anthropological Quarterly* 86 (2013); 226.

Act (TVPA), which the government has since re-authorized every three years.¹⁷ Every state soon followed the federal precedent and passed at least some form of anti-human trafficking laws. Notably, although the TVPA is intended to address all forms of human trafficking, sex trafficking is designated as a particular and separate form; the distinction is echoed in many state laws as well. This delineation is evidence of a clear policy line which emphasizes the importance of sex trafficking as a particularly abhorrent form of exploitation and reflects a moralizing agenda of the Christian right, which had a significant hand in drafting the legislation.¹⁸ In practice, this preoccupation with sex trafficking means that an inordinate amount of federal enforcement is directed towards sex trafficking compared with other forms of trafficking.¹⁹

This emphasis on sex trafficking, particularly the notion that sex is an important factor in exploitation, has resulted in a renewed opposition to prostitution and sex work on moral grounds.²⁰ In fact, the U.S. State Department declares an explicit link between the two, asserting that “where prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.”²¹ This policy statement clearly reflects the idea that prostitution directly contributes to sex trafficking, an assumption that clearly justifies the continued criminalization of prostitution since by the same logic, legalization or decriminalization would only increase the market for trafficking.²²

Although state laws may not articulate this relationship in the same way, the same ideology is reflected in the fact that few states have revised their prostitution laws in conjunction with the formulation of new sex trafficking laws. Prostitution therefore remains a morally reprehensible crime with serious implications for the potential exploitation of women and girls under public policy. The same moral sentiments that drove the initial formulation of the TVPA

¹⁷ “U.S. Laws on Trafficking in Persons,” Department Of State, Accessed January 3, 2006. <http://www.state.gov/j/tip/laws/>.

¹⁸ Yvonne C. Zimmerman, *Other Dreams of Freedom: Religion, Sex, and Human Trafficking*. (UK: Oxford UP, 2012), 6.

¹⁹ Peters, “‘Things That Involve Sex Are Just Different,’” 244-45.

²⁰ Ronald Weitzer, “The Movement to Criminalize Sex Work in the United States,” *Journal of Law and Society* 37 (2010); 62.

²¹ “The Link Between Prostitution and Sex Trafficking,” U.S. State Department.

²² For an overview of this theory linking prostitution rates to sex trafficking see the work of Melissa Farley, who heavily influenced the aforementioned U.S. State Department statement. Particularly, Melissa Farley, “Theory Versus Reality,” 314.

and influenced the treatment of sex under the law also pervaded state level prostitution and sex trafficking policies.²³ In order to understand the place of these moral and theological suppositions within policies relating to prostitution and sex trafficking, it is important to examine some of the ideological assumptions that influence the legal framework of the United States.

Ideological Assumptions Dictate Policy

Between philosophers, political scientists, politicians, and law makers, there is little consensus regarding the reasons when laws are justified in limiting individual liberties. For the purpose of discussing laws relating to prostitution and sex trafficking however, there are essentially three main schools of political thought that are relevant – liberalism, paternalism, and legal moralism.²⁴ Liberalism is largely credited to John Stuart Mill who championed the primacy of individual liberties and argued that government action should be limited to protecting citizens from harm – importantly understood as harm caused by another person or entity.²⁵ Murder, for instance, is the most evident crime that causes harm to another individual and the penalization of such an act is clearly justified under liberalism. Proponents for the legalization of prostitution utilizing liberal ideology therefore often present it as a “victimless crime.” The underlying assumption being that the state has no justification in intervening to limit individuals’ freedoms to sell or purchase sex if all parties freely consent to such an exchange.

In contrast, paternalism and the notion of protecting citizens from themselves has long been an equally prominent ideology, permeating American political discourse and policy. The temperance movement is one of the earliest and most well-known examples, but drug policies are another modern example of the same trend. Both hinge on the underlying assumption that in some cases the government can justifiably prevent citizens from engaging in behaviors that may be harmful to themselves.²⁶ Those that ascribe to paternalist ideology often justify the criminalization of prostitution by claiming that prostitution is harmful to the women – and to a

²³ Weitzer, “The Movement to Criminalize Sex Work,” 70.

²⁴ These three categories are significantly influenced by Lenoro Kuo’s discussion on the same subject in her aforementioned work entitled *Prostitution Policy*. See particularly p. 120.

²⁵ See John Stuart Mill, *On Liberty*.

²⁶ Kuo, *Prostitution Policy*, 120.

lesser extent sometimes the men – that engage in it due to both negative health impacts and psychological harms which necessarily result.²⁷

Similar but slightly different from paternalism is legal moralism, which presumes the government to have the moral authority and right to prevent acts that are deemed “immoral” in nature.²⁸ The puritanical roots of American society are strong and believers in this Protestant ethic often lodge the argument of prostitution’s inherent immorality as a justification for keeping prostitution illegal.²⁹ It is important to note that policies on prostitution do not necessarily follow only one of these political ideologies. Both paternalism and legal moralism, for instance, may be used in tandem as ideological justification for criminalizing prostitution. Additionally, aspects of both may be used in an argument against prostitution as a societal harm in the sense that it threatens the social institutions or is otherwise an offense to society as a whole.³⁰

While these political ideologies are used to justify a wide variety of U.S. laws, the reliance on paternalism and legal moralism is particularly strong for the formation of prostitution policies. Under liberalism, it is exceedingly difficult to justify the criminalization of prostitution unless sex is somehow removed from other forms of bodily labor and regarded as a special case necessitating regulation.³¹ Though some may argue for this very distinction regarding sex, the justification is usually a moral one and thus hearkens back to legal moralism. Although some scholars would argue that paternalism does not necessarily infringe upon the individual rights advocated by liberalism, this argument hinges on the radical feminist notion that prostitution is not really a choice for those that enter into it.³² Therefore, there is arguably no justification for criminalizing prostitution outside the ideological framework of legal moralism or a kind of paternalism that presupposes either the inherent harms of engaging in sex work for women or their lack of agency.

The fact that prostitution policies are grounded in moralism, which springs largely from a theological framework, and paternalism based on the protection of adult women, suggests a very distinct view on women and sex within the dominant American psyche. Underlying these

²⁷ Peter De Marneffe, *Liberalism and Prostitution*. (UK: Oxford UP, 2009), 13-14.

²⁸ Kuo, *Prostitution Policy*, 120.

²⁹ Woolston, *Prostitution in the United States*, 8. See also Zimmerman, *Other Dreams of Freedom*, 16-17.

³⁰ Kuo, *Prostitution Policy*, 120.

³¹ Julia O’Connell Davidson, *Children in the Global Sex Trade*. (Polity Press, 2005), 28.

³² Peter De Marneffe, “Avoiding Paternalism,” *Philosophy & Public Affairs* 34 (2006); 93.

justifications are two important assumptions. First, sex is a moral issue which should be regulated by the government. Second, women are in need of protection, even from themselves, and the government is justified in dictating certain aspects of their behavior. Tied to these two assumptions with the enforcement of prostitution policies is the tacit implication that prostitution is caused by women, which both reflects and perpetuates a stigma associating prostitutes – and by extension women in general – with sexual delinquency that must be controlled by the law in order to protect public morality.³³

State Prostitution Laws: A Comparative Analysis

With these assumptions regarding the justification for criminalizing prostitution in mind, it is important to examine the legal framework governing sex work within the United States. Any discussion of monolithic prostitution policies in the U.S. is complicated by the fact that these regulations are left to state governments and therefore vary widely state to state. Moreover, while some states differentiate between selling sex versus buying sex and maintain varied penalty structures, others make no distinction in severity of sentences. Similarly, while some states have progressive sentencing for repeat offenders, others treat first-time and repeat offenders the same under the law. Finally, while all states have laws relating to pimping and brothel owning, these crimes are not always different in terms of punishment and in fact in some states these two are uniformly penalized on the same level as buying or selling sex. Though these discrepancies make generalizations about prostitution policies in the U.S. difficult, it is still useful to compare these laws between states.

Only three states, Mississippi, North Carolina, and New Hampshire, maintain non-progressive uniform penalties across all four types of prostitution related offenses.³⁴ Though the severity varies across states, they make no differentiation in terms of sentences between sex buying, sex selling, pimping, or brothel ownership. This uniform penalization would seem to suggest that in the eyes of the state government, any given sex crime is equally as heinous as any other. Pimping, for instance, is placed on the same level of criminality as buying sex one time. Of these three states, North Carolina maintains the lightest sentencing, classifying all

³³ Joanna, Phoenix. *Making Sense of Prostitution*. (Basingstoke: Palgrave Macmillan, 1999), 56.

³⁴ See Appendix A, for a table of comparisons between state prostitution laws. Source: ProCon.org “U.S. Federal and State Prostitution Laws and Related Punishments.” Accessed on October 20, 2013. <http://prostitution.procon.org/view.resource.php?resourceID=000119#2>

prostitution-related charges as a misdemeanor with a maximum of only 45 days in prison and an unspecified fine. Notably, however, the language of North Carolina’s legal statute is significantly biased toward sex sellers, as “loitering for the purpose of engaging in prostitution” is a specific offense under which conviction is quite easy and standards of proof are very low.³⁵ Although New Hampshire has the harshest penalties – a misdemeanor with up to 1 year and \$2,000 – the law notes specifically that a person may be guilty regardless of sex and seems to make conviction equally likely for buyers, sellers, pimps, or brothel owners. The even treatment of all prostitution-related offenders is true as well for Mississippi, at least in the letter of the law, and sentencing is relatively light with only 6 months and/or \$200.

In contrast to the three states with uniform non-progressive sentencing, 24 states and the District of Columbia have at least some form of progressive sentencing, meaning successive offenses result in more severe punishments. The application and severity of these progressive sentences vary widely. Three states, Arizona, Utah and Louisiana maintain progressive sentencing only for sex sellers. This fact clearly demonstrates a bias towards prostitutes as compared to other actors, particularly since the baseline sentencing for sex buyers is of the same severity but does not become progressively more severe with repeated offenses. Only one state, West Virginia, maintains non-progressive sentencing for prostitution while increasing severity of repeat offenses for all other related offenses – i.e. sex buying, pimping, and brothel owning. Similarly, Nebraska, Montana, and Colorado maintain progressive sentencing only for sex buyers. All four examples suggest a more moderate treatment of women in prostitution as compared to sex buyers or those profiting from the sale of another person’s sexual services. The remaining 18 states maintain progressive sentencing for more than one actor, typically only for the sex buyer and sex seller, though Illinois, for instance, maintains uniform progressive sentencing for all prostitution-related offenses.

All other 23 states have non-progressive sentencing but the severity of punishments varies by actor. Most of these states, at least by the letter of the law, hold equal sentencing for sex sellers and sex buyers with more severe non-progressive punishments for pimps or brothel owners. Hawaii, for example has one of the lightest non-progressive uniform sentences for sex sellers and buyers, classifying both as petty misdemeanors meriting only 30 days and/or \$500,

³⁵ See Appendix B, for complete state law.

while the laws for pimping and brothel owning are quite severe as Class C felonies warranting 5 years and/or \$10,000. In Ohio, the discrepancy is much smaller. While a third degree misdemeanor offense of sex buying and selling may result in up to 60 days and/or a \$500 fine, the maximum sentence for brothel owning or pimping is only slightly higher at 180 days and/or \$1000, which is classified as a first degree misdemeanor. Of the states with differential non-progressive sentencing between sex buying/selling and brothel owning or pimping, almost all treat the latter category of offenses more severely, typically calling for at least double the fines and jail time.

Enforcement and Arrest Rates

However, the letter of the law is only half the story when it comes to prostitution policies. Equally important is the implementation of these laws and their effects on women in prostitution as compared to male sex buyers and those that profit from the sale of sexual services by others.³⁶ The details on implementation of prostitution policies are a bit more difficult to ascertain, though there are still some useful statistics to examine. Within the categories of laws mentioned, few significant trends seem to exist in relation to arrests. The most common legal framework used by 21 states is non-progressive sentencing that differentiates between sex buyers/sellers and pimps/brothel owners by providing relatively harsher sentences to the latter. A shared approach to sentencing of these crimes would seem to suggest a common view on these crimes and therefore a similar level of enforcement; this, however, is not the case. Among these states, there is significant variation in the number of arrests. Figures adjusted for population indicate that in 2012 the number of arrests ranged from .4 (Wyoming) to 3.7 (Tennessee) per 10,000 people in these states with an average of 1.2 across all 21 states.³⁷ With such a wide range in arrest rates, it is difficult to draw any conclusions regarding the relationship of this type of sentencing to actual implementation.

There are, however, some notable trends in the arrest data for states with various kinds of progressive sentencing. The most common form of progressive sentencing among states targets sex buyers and sex sellers equally while maintaining non-progressive sentencing for pimps and

³⁶ Kuo, *Prostitution Policy*, 66.

³⁷ See Appendix C. Note: This excludes Alabama, for which no prostitution-related arrest data is available. All arrest rates data is from the Federal Bureau of Investigation's Uniform Crime Report of 2012. Accessed on October 22, 2013. <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2012/crime-in-the-u.s.-2012/tables/69tabledatadecpdf>.

brothel owners. There are ten states with this legal framework. For this group, arrests rates varied dramatically with only .07 arrests per 10,000 people in Vermont compared to 2.8 in Texas. The average arrest rate across all ten states is .9. If Vermont, however, is removed as a clear outlier, the average increases to 1.3. In this regard, it seems that there is little difference between progressive and non-progressive sentencing which treats sex buyers/sellers equally. Despite the variation between individual states, average arrest rates are comparable.

Similarly, in all states that maintain uniform sentencing for sex buyers and sex sellers or treat sex sellers more harshly – as in the case of Utah, Louisiana and Arizona – average arrest rates across these groups range only from 1 to 1.2 arrests per 10,000 people. Among the legal framework categories, only two groups differ widely from the 1.2 average arrest rates for all other states.³⁸ The first category of note is those with legalized prostitution. Nevada is the only state in this category and despite the legal status of prostitution it has the highest arrest rates for prostitution offenses by far at 13.4 arrests per 10,000 people. The other notable category is states that treat sex buying more harshly than sex selling. These four states, Montana, Colorado, West Virginia, and Nebraska have a significantly lower average arrest rate than any other category at only .6 arrests per 10,000 people. Even if Montana is removed as an outlier with only .04 – the lowest of any state – the average arrest rate of this category is still only .8 arrests per 10,000 people.

What might account for these differences? The answer is difficult with such limited data. Unfortunately, there is no breakdown available of the specific types of offenses most frequently resulting in arrests. Moreover, the marked variation across states even in the same category of legal frameworks further complicates analysis. It may be that the legal framework of states has little impact on implementation. It may also be that variation is attributable to state demographics, concentrations of law enforcement, and the extent of rural or urban population centers, rather than state laws. It seems logical, however, that the framing of a state's laws reflect priorities within their legal system and by implication affects the ways in which those laws are enforced. The fact that states who punish sex buyers more harshly than sex sellers seems to

³⁸ A third category, those states with progressive uniform sentencing across all offenses has a significantly different average as well; however, this discrepancy is solely due to the outlier effect of Illinois, which has an arrest rate of 7.6 per 10,000 people. This is the second highest arrest rate in the nation, but the other two states in this category, Oklahoma and South Carolina have arrest rates of only 1 and 1.3 respectively.

indicate that these states are somehow more forgiving of prostitutes as compared to johns. This may in fact explain the lower arrest rates in these states. If targeting prostitutes is not a priority, then, logically, arrest rates of women in prostitution would decrease. The fact that arrest rates are relatively lower in these states despite a legal framework to treat sex buying more severely indicates something perhaps more significant and insidious in regard to implementation.

Since prostitution crimes typically require two offending individuals of the opposite sexes – except in the case of sting operations – we would expect arrest rates for men and women to be roughly equal. Both sex buying and sex selling are crimes in every state after all. This, however, is patently not the case. Women are arrested at significantly higher rates than men for prostitution-related offenses.³⁹ And although the discrepancy has narrowed over the past two decades, females account for roughly twice as many arrests as males. Despite the fact that sex buying is criminalized in all states, including many parts of Nevada, according to Lenoro Kuo, only 10% of all prostitution-related arrests are those of male customers. The lower arrest rates for states that have prioritized sex buying as a crime seems to reflect this trend. Even though the state’s laws emphasize sex buying as a crime, it does not result in the same level of enforcement, a fact which strengthens Lenoro Kuo’s claim that the majority of prostitution is highly tolerated and seldom enforced by police throughout the U.S., except for the most visible cases – i.e. street walking. According to her research, street prostitution accounts for 85 to 90 percent of arrests even though it represents only 10 to 15 percent of all prostitution.⁴⁰

Much like the aforementioned laws of North Carolina indicate, there seems to be a prejudice toward targeting women working on the street, which is the most visible form of prostitution. In those states that choose to punish sex selling less severely than other prostitution-related offenses, arrest rates are significantly lower, indicating that the same amount of enforcement is not dedicated to male sex buyers. In Colorado, for instance, despite state laws that treat sex buyers more harshly on the books, women still accounted for 61 percent of prostitution-related arrests between 2006 and 2011 and overall, were charged with significantly harsher

³⁹ See Appendix D. “National Estimate for Prostitution Related Arrest Trends by Gender, 1980 – 2013.” Data Analysis tool. Bureau of Justice Statistics. Accessed on October 29, 2013. <http://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm#>

⁴⁰ Kuo, *Prostitution Policy*, 74. See also Zatz, “Sex Work/Sex Act,” 284.

sentences than men.⁴¹ Two notable exceptions, however, are the cities of Chicago and San Francisco for which male sex buyers reportedly account for as much as 72 and 75 percent of prostitution-related arrests respectively.⁴² Despite these anomalies, the national data shows a clear discrepancy in arrest rates based on gender.⁴³

Discrepancies in Enforcement: Sexism and Stigma

In order to understand the reasons behind this systemic prejudice towards women in prostitution as compared to other actors, it is important to revisit the ideological frameworks used to justify the criminalization of prostitution in the first place. As previously mentioned, the legal frameworks used to justify prostitution policies are based on paternalistic and moralist assumptions, asserting the right of government control over women in prostitution for the protection of themselves or of society. If the moralist argument was truly dependent on the notion of commoditized sex itself as sinful, it would be reasonable to expect similar enforcement levels for sex buyers as well as sex sellers, as both would be equally guilty.

While the visibility of those selling sex on the streets may be a significant factor in making these individuals more prominent targets for arrests, this alone does not seem to account for such marked disparity in arrest rates between male and female perpetrators. Only seven states have laws specifically criminalizing the act of loitering with the intent to engage in prostitution. Unless enforcement relies heavily on sting operations, these are the only sets of laws that would make it possible to arrest women without the presence of a sex buyer as a potential or actual customer. Of these states – Hawaii, Kentucky, Minnesota, New Jersey, North Carolina, Ohio, and Rhode Island – none have notably higher arrest rates than the average and range only from .6 to 1.1 arrests per 10,000 people. These loitering laws make street level prostitutes specifically more vulnerable since the burden of proof is low and they do not require the presence of a male sex buyer. The fact that they do not result in comparatively higher arrest rates suggests that this

⁴¹ Meagan Morris, et. al. “Prostitution and Denver Criminal Justice System: Who Pays?” Report by The Laboratory to Combat Human Trafficking. (February 2012), 48. Notably, this study concluded that perceptions of prostitution from law enforcement and related stigma was a significant factor in the disproportionate arrest rates and sentencing severity for women in prostitution as compared to male sex buyers.

⁴² Ronald Weitzer. “Sex Work: Paradigms and Policies.” *In Sex For Sale: Prostitution, Pornography, and the Sex Industry*. Edited by Ronald Weitzer (New York: Routledge, 2010), 30. Note: this data is from 2002.

⁴³ See Appendix D.

difference in laws alone is not enough to account for the discrepancy in arrest rates between sex buyers and sellers.

If arrest rates of men and women differ so markedly in a crime that typically involves members of both gender and the difference cannot be attributed to the legal framework alone, there must be a discrepancy in enforcement. If it is assumed that enforcement reflects societal priorities and we understand the criminalization of commercial sex to be based on a moralism that does not appear to hold men and women equally accountable, then there must be a moral asymmetry based on the gender of offenders. Why then in a mutual act should women be considered more at fault, more criminal, than men?

Most moralist condemnations of women in prostitution are based in religious ethics or biological and sociological anxiety over the institution of marriage and control over reproduction. The promiscuity of women is a cause of male anxiety that reaches back to the Victorian Era and beyond and dictates cultural conceptions of femininity and female sexuality.⁴⁴ Therefore, deviation from this ideal, as in a woman who elects to engage in sex with many partners, may result in censure. And enforcement of prostitution policies against women in particular may in fact be a legally sanctioned manifestation of efforts to control women's sexuality generally.⁴⁵ Similarly, other women may view commercial sex to be a threat to the institution of marriage. Considering the economic/sexual aspects of marriage, some scholars suggest that prostitutes are literally in competition with married women and prospective brides since both agree in essence to trade sexual acts for economic compensation.⁴⁶ Women with competing interests may then ascribe undue blame to women in prostitution as compared to men. Additionally, strong religious ethics in American society help explain the condemnation of women in prostitution not only on the grounds of extramarital sex as sin but also on the destabilizing effect of marriage as a sacred institution.⁴⁷ The emphasis of blame upon women in particular may result from longstanding archetypes in religious conceptions of women as sources of temptation and sin – i.e. Eve in the Garden of Eden.

⁴⁴ See for instance: Trevor Fisher. *Prostitution and the Victorians*. (New York: St. Martin's Press, 1997).

⁴⁵ Helga Kristín Hallgrímsdóttir, et al. "Sporting Girls, Streetwalkers, and Inmates of Houses of Ill Repute: Media Narratives and the Historical Mutability of Prostitution Stigmas." *Sociological Perspectives* 51 (March 2008): 134-35.

⁴⁶ Lena Edlund and Evelyn Korn. "A Theory of Prostitution." *Journal of Political Economy* 110 (February 2002): 208.

⁴⁷ Cao, "A Test of Temperance Hypothesis," 193.

While the reasons behind these moral condemnations are important to examine, it must be admitted that to a certain extent any analysis of them becomes as subjective as the moral beliefs themselves. The same level of subjectivity must also be admitted for radical feminist claims that women in prostitution lack the cognitive ability or will to freely choose prostitution as a profession.⁴⁸ While in some cases there may be merit to such claims, the general tendency of radical feminist theorists is to pathologize women in prostitution and deny their objectivity in assessing their own situations, beliefs, and choices.⁴⁹ Both of these ideological conceptions separate women in prostitution from other individuals in society either as moral deviants or as emotional and psychological cripples. This identification of women in prostitution as a social “other” helps to explain their differential treatment in regard to legal enforcement. Rather, than serving to protect female sex workers from harm, the laws actually institutionalize sexism in practice and perpetuate the negative stigmas assigned to women in prostitution.⁵⁰

Therefore, if women in prostitution are pathologized or morally condemned to a degree that men who, under the law commit the same offense are not held similarly accountable, then it is fair to conclude that women face an undue stigma and bear a higher burden of punishment under the law. Rather than the being an instrument to enforce justice, prostitution policies in practice have become a means of enforcing social stigma and gender-based moralism. Women in prostitution are therefore at a clear disadvantage under current systems of enforcement and face legal discrimination that only further disadvantages them within an already patriarchal societal framework.

Possible Policy Revisions

If under current state laws, which for the most part are relatively equal in their treatment of men and women engaging in commercial sex, women are still bearing a disproportionate amount of the punishments, then it seems logical to suggest a change in the policies to counterbalance this asymmetry. If women are unduly stigmatized as compared to men and enforcement only institutionalizes this gender-based discrimination then a re-alignment of laws may help to balance the treatment of men and women involved in commercial sex. This

⁴⁸ Christine, Overall. “What’s Wrong with Prostitution? Evaluating Sex Work.” *Signs* 17 (1992), 707-08.

⁴⁹ Melissa Farley. *Prostitution and Trafficking in Nevada: Making the Connections*. (San Francisco: Prostitution Research & Education, 2007), 31-33.

⁵⁰ Phoenix, *Making Sense of Prostitution*, 56.

equalization is particularly important when considering the reasons women disproportionately enter into the commercial sex industry in the first place. In some economic models, it is assumed that the decision to enter prostitution is a trade-off informed by the potential income in legal markets and perhaps less risky occupations. Therefore, since women on average earn significantly lower wages and have more limited employment opportunities, a higher proportion of women as compared to men are expected to enter prostitution due to the lower forgone opportunity costs.⁵¹ In practice as well, a number of studies show that the majority of women who enter prostitution report economic incentive and lack of alternatives as their primary motivation.⁵² As such, if women are at an economic disadvantage in society and therefore more likely to sell commercial sex based on circumstance and lack of alternative opportunity, their disproportionate engagement in prostitution is a reflection of a systemic discrimination rather than higher moral deviance.

If women are targeted at a higher proportion than men in the enforcement of prostitution laws and are also more prone to enter the commercial sex trade as a result of economic hindrances inherent in a capitalist system with deeply embedded sexism, then they bear a dual disadvantage.⁵³ One possible remedy to this unbalanced treatment of women under current prostitution laws is legalization. If prostitution were legalized, the legal burden would at least be removed from the equation and women would not be punished for electing to sell sex. There are a number of utilitarian arguments in favor of legalization such as potentially enhancing the health, safety, and even job satisfaction of sex workers by allowing for regulation and monitoring.⁵⁴ Similarly, legalization would increase sex worker's access to government and social services, institutional power, and improve their ability to unionize or organize in order to gain better rights and conditions.⁵⁵ Additionally, some also argue that the normalization of sex work through legalization would remove some of the social stigma attached to it.

Support for legalization, however, is limited at best and there are a number of reasons to think it may cause more harm than good. Rather than normalizing sex work for the better, some

⁵¹ Marina Della Giusta, et al. "Who Is Watching? The Market for Prostitution Services." *Journal of Population Economics* 22 (April 2009): 515.

⁵² Kuo, *Prostitution Policy*, 69.

⁵³ Phoenix, *Making Sense of Prostitution*, 54-55.

⁵⁴ Weitzer, "The Movement," 77.

⁵⁵ Zatz, "Sex Work/Sex Act," 304.

scholars assert that legalization would only result in further commodification of women and their bodies, thereby further disempowering women socially.⁵⁶ Indeed, some studies suggest that despite legalization, women in prostitution are still stigmatized and only men benefit from further normalization of purchasing sex.⁵⁷ Additionally, in many cases of legalization, including Nevada, regulations may in fact be so stringent as to limit individual freedoms, requiring sex worker registration and controlling their movements, time, living conditions, and health to an unprecedented degree.⁵⁸ As such, some sex workers themselves may not support legalization or may continue to illegally sell unregulated sex in order to escape such strict rules. The exceptionally high rates of prostitution related arrests in Nevada, despite legalization, seem to support this theory. Moreover a number of negative externalities may result from the normalization of sex as indistinct from other forms of bodily labor.⁵⁹ If legalization does not seem to remove the social burdens for women associated with prostitution and creates the added disadvantage of strict regulations that limit the autonomy of sex workers, it does not seem that legalization is a particularly desirable solution.

An alternative to legalization is decriminalization, which can happen in many different forms. This can range from de facto decriminalization, in which laws against prostitution remain in place but are not enforced to partial or full decriminalization in which criminal penalties are reduced or removed respectively.⁶⁰ Decriminalization therefore does not result in the same strict state regulations that may further disempower sex workers. Importantly, it also does not result in the same level of state sanctioned legitimacy that legalization might imply. Moreover, partial or selective decriminalization is a viable means of enforcing a greater degree of equality in the legal treatment of female sex sellers and male sex buyers. In order to ensure the just treatment of women under the law given the asymmetries of social stigma and economic disadvantage of women as compared to men, it is reasonable to suggest harsher penalties for men. The

⁵⁶ Sheila Jeffreys. "Prostitution, Trafficking and Feminism: An Update on the Debate." *Women's Studies International Forum* 32 (July 2009): 316.

⁵⁷ Kathryn Hausbeck and Barbara G. Brents. "Nevada's Legal Brothels." In *Sex For Sale: Prostitution, Pornography, and the Sex*. Edited by Ronald Weitzer. (New York: Routledge, 2010): 270-271

⁵⁸ Kuo, *Prostitution Policy*, 82 and 133.

⁵⁹ For a thoughtful and expansive examination of such negative externalities, see: Scott A. Anderson. "Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution." *Ethics* 112 (July 2002): 761-63.

⁶⁰ Weitzer, "Sex Work," 21-22.

buyer/seller dynamic is necessarily one of power imbalance based on the economic exchange; the buyer as the more empowered party is arguably more culpable.⁶¹

Considering this uneven power dynamic between sex buyers and sellers as well as the social and economic disadvantages which women – who make up a large proportion of sex sellers – face, the most just solution is the decriminalization of sex selling while maintaining punishments for sex buyers. This approach is based upon the Nordic Model of prostitution policies pioneered in Sweden and has several advantages. First, by discouraging the purchasing of sex, the state would not be implicitly condoning prostitution or potentially creating greater demand by fully removing penalties as some radical feminists fear.⁶² Second, while discouraging prostitution as a social norm, the decriminalization only of selling sex may help to reduce some of the social stigma attached to women engaging in prostitution. Third, by removing the legal burdens and associated financial harms of fines or criminal status, which negatively impact the chances of obtaining other kinds of work, decriminalization offers better prospects for women’s economic empowerment.⁶³

More significantly, the decriminalization of selling sex would allow for more effective enforcement of sex trafficking laws. Moral condemnation of prostitution has only resulted in the increased marginalization and criminalization of sex workers and though space is made in that indictment to excuse innocent victims of sex trafficking, rigid moralist views on prostitution allow for only limited protection of sex trafficking victims.⁶⁴ Sex trafficking, however, is a spectrum of exploitation which can occur at many different intersections within a woman’s otherwise willing participation in commercial sex.⁶⁵ This complicates the notion of a “pure victim” of trafficking and problematizes enforcement, particularly when many U.S. laws, including the TVPA, were formed from a moral standpoint that distinguishes between clear “victims” without culpability and those who perhaps willingly entered the sex industry but at

⁶¹ Della Giusta, “Who Is Watching?” 503.

⁶² See for instance: Janice G. Raymond. “Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution.” In *Prostitution, Trafficking and Traumatic Stress*, edited by Melissa Farley. (Haworth Maltreatment & Trauma Press, 2003), 318-19.

⁶³ Kuo, *Prostitution Policy*, 135.

⁶⁴ Weitzer, “The Movement to Criminalize Sex Work,” 62.

⁶⁵ Stephanie A. Limoncelli. “The Trouble with Trafficking: Conceptualizing Women’s Sexual Labor and Economic Human Rights.” *Women’s Studies International Forum* 32 (July 2009): 262.

some point crossed into exploitative trafficking situations.⁶⁶ The moralistic criminalization of prostitution in this sense conflicts with the idea that trafficking survivors merit protection and services unless they fit the neat image of a wholly innocent victim.⁶⁷

Decriminalization of prostitution will therefore help to remove some of the moral stigma attached to selling sex and increase the possibility that victims/survivors of trafficking are identified as such rather than being condemned or punished outright as amoral. To this end, decriminalization should be matched with social services for sex workers and enforcement efforts to target sex buying, particularly of minors and of sex trafficking. Social service provisions would help reduce the harms of sex work and help increase the identification of sex trafficking victims. Similarly, enforcement efforts against buying and trafficking would continue to discourage the proliferation of prostitution and exploitation feared by many radical feminists.

Conclusion

No legal remedy will address all of the problems associated with prostitution or eliminate sex trafficking entirely. The proposed framework will at the very least help to reduce some of the negative externalities borne by women engaging in prostitution while reducing social stigma to a degree that may make law enforcement more sympathetic and thus more likely to successfully identify victims of trafficking. In addition, decriminalization will help remove the largely subjective divide in current U.S. sex trafficking law between “innocent victims” and “guilty sex workers.”⁶⁸ By removing the criminality of sex work from considerations of what constitutes a victim of trafficking, exploitation or abuse would be established as the most important factors rather than the extent to which a woman was complicit in selling sex or not. It is only by removing this stipulation and the associated moral judgments that we can ever hope to truly serve victims/survivors of human trafficking and not risk casting them aside as criminals or deviants.

⁶⁶ Peters, “‘Things That Involve Sex Are Just Different,’” 242-245.

⁶⁷ Wendy Chapkis. “Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants.” *Gender and Society* 17 (December 2003): 927.

⁶⁸ *Ibid*, 929.

Appendix A:
Prostitution Laws by State

State	Penalty for Prostitutes (Crime Classification)	Penalty for Customers (Crime Classification)	Penalty for Pimps (Crime Classification)	Penalty for Brothel Owners (Crime Classification)
Alabama	Up to 1 yr and/or \$6,000 (Class A misdemeanor)	Up to 1 yr and/or \$6,000 (Class A misdemeanor)	1-10 yrs and/or \$15,000 (Class C felony)	1-10 yrs and/or \$15,000 (Class C felony)
Alaska	Up to 90 days and/or \$2,000 (Class B misdemeanor)	Up to 90 days and/or \$2,000 (Class B misdemeanor)	Up to 5 yrs and/or \$50,000 (Class C felony)	Up to 5 yrs and/or \$50,000 (Class C felony)
Arizona	1st offense 15 days, 2nd 30 days, 3rd 60 days, 4+ offenses 180 days-1.5 yrs (First offense class 1 misdemeanor, 4 or more offenses are a class 5 felony)	Up to 30 days and/or \$500 (Class 3 misdemeanor)	18 months and/or \$150,000 (Class 5 felony)	18 months and/or \$150,000 (Class 5 felony)
Arkansas	Up to 90 days and/or \$500, then up to 1 yr and/or \$1,000 (First offense class B misdemeanor, subsequent offense class A misdemeanor)	Up to 90 days and/or \$500, then up to 1 yr and/or \$1,000 (First offense class B misdemeanor, subsequent offense class A misdemeanor)	Up to 1 yr and/or \$1,000 (Class A misdemeanor)	Up to 1 yr and/or \$1,000 (Class A misdemeanor)
California	Up to 1 yr and/or \$1,000 (Misdemeanor)	Up to 1 yr and/or \$1,000 (Misdemeanor)	3-6 yrs in a state prison (Felony)	3-6 yrs in a state prison (Felony)
Colorado	Up to 6 months and/or \$50-\$750 (Class 3 misdemeanor)	Up 6 months and/or \$500, then 6-18 months and/or \$500-\$5,000 (First offense class 1 petty offense, 3+ offenses class 1 misdemeanor)	4-12 yrs and/or \$3,000-\$750,000 (Class 3 felony)	3 months-1 yr and/or \$250-\$1,000 (Class 2 misdemeanor)
Connecticut	Up to 1 yr and/or \$2,000 (Class A misdemeanor)	Up to 1 yr and/or \$2,000 (Class A misdemeanor)	1-10 yrs and/or \$10,000 (Class C felony)	1-10 yrs and/or \$10,000 (Class C felony)
Delaware	Up to 6 months and/or \$1,150 (Class B misdemeanor)	Up to 30 days and a minimum mandatory fine of \$500 (Misdemeanor)	Up to 5 yrs and/or a fine (Class E felony)	Up to 5 yrs and/or a fine (Class E felony)
District of Columbia	First offense 1-90 days and \$500, 2nd 1-135 days and \$750, 3+ 1-180 days and \$1,000	First offense 1-90 days and \$500, 2nd 1-135 days and \$750, 3+ 1-180 days and \$1,000	Up to 5 yrs and/or \$5,000 (Felony)	Up to 5 yrs and/or \$5,000 (Felony)
Florida	First offense 2nd degree misdemeanor, 2nd offense 1 misdemeanor,	2nd degree misdemeanor-3 felony \$500 fine	3rd degree felony	First offense 2nd degree misdemeanor, subsequent offenses

	3+ offenses 3 felony			1 misdemeanor
Georgia	Up to 1 yr and/or \$1,000 (Misdemeanor)	Up to 1 yr and/or \$1,000 (Misdemeanor)	Up to 1 yr and/or \$5,000 (Misdemeanor of a high and aggravated nature)	Up to 1 yr and/or \$5,000 (Misdemeanor of a high and aggravated nature)
Hawaii	30 days and/or \$500 (Petty misdemeanor)	30 days and/or \$500 (Petty misdemeanor)	Up to 5 yrs and/or \$10,000 (Class C felony)	Up to 5 yrs and/or \$10,000 (Class C felony)
Idaho	1-6 months and/or \$500, then 1-5 yrs (First offense misdemeanor, 3+ offenses are a felony)	1-6 months and/or \$500, then 1-5 yrs (First offense misdemeanor, 3+ offenses are a felony)	2-20 yrs and/or a fine of \$1,000-\$50,000 (Felony)	2-20 yrs and/or a fine of \$1,000-\$50,000 (Felony)
Illinois	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000 (First offense class A misdemeanor, subsequent convictions are a 4 felony)	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000 (First offense class A misdemeanor, subsequent convictions are a 4 felony)	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000 (First offense class A misdemeanor, subsequent convictions are a 4 felony)	Up to 1 yr and/or \$2,500 then 1-3 yrs and/or \$25,000 (First offense class A misdemeanor, subsequent convictions are a 4 felony)
Indiana	Up to 1 yr and/or \$5,000, then 6 months-3 yrs and/or \$10,000 (First offense class A misdemeanor, 3+ convictions are a D felony)	Up to 1 yr and/or \$5,000, then 6 months-3 yrs and/or \$10,000 (First offense class A misdemeanor, 3+ convictions are a D felony)	2-8 yrs and/or \$10,000 (Class C felony)	2-8 yrs and/or \$10,000 (Class C felony)
Iowa	Up to 2 yrs and/or \$500- \$5,000 (Aggravated misdemeanor)	Up to 2 yrs and/or \$500- \$5,000 (Aggravated misdemeanor)	Up to 5 yrs and/or \$750-\$7,500 (Class D felony)	Up to 5 yrs and/or \$750-\$7,500 (Class D felony)
Kansas	Up to 6 months and/or \$1,000 (Class B nonperson misdemeanor)	Up to 1 month and/or \$500 (Class C misdemeanor)	Up to 1 yr and/or \$2,500 then 1-5 yr and/or \$100,000 (First offense class A person misdemeanor then subsequent convictions are severity level 7)	Up to 1 yr and/or \$2,500 then 1-5 yr and/or \$100,000 (First offense class A person misdemeanor then subsequent convictions are severity level 7)
Kentucky	Up to 90 days and/or \$250 (Class B misdemeanor)	Up to 90 days and/or \$250 (Class B misdemeanor)	1-5 yrs and/or \$1,000- \$10,000 (Class D felony)	1-5 yrs and/or \$1,000-\$10,000 (Class D felony)
Louisiana	First offense up to 6 months and/or \$500, 2nd offense up to 2 yrs and/or \$250-\$2,000, 3+ convictions 2-4 yrs and \$500-\$4,000	Up to 6 months and/or \$500	5 yrs and/or \$5,000	5 yrs and/or \$5,000
Maine	Up to 6 months and/or \$1,000 then up to 1 yr and/or \$2,000 (First offense Class E crime, then consequent offenses class D crime)	Up to 6 months and/or \$1,000 then up to 1 yr and/or \$2,000 (First offense Class E crime, then consequent offenses class D crime)	Up to 1 yr and/or \$2,000 (Class D crime)	Up to 1 yr and/or \$2,000 (Class D crime)
Maryland	Up to 1 yr and/or \$500	Up to 1 yr and/or \$500	Up to 10 yrs and/or	Up to 1 yr and/or

	(Misdemeanor)	(Misdemeanor)	\$10,000 (Misdemeanor)	\$500 (Misdemeanor)
Massachusetts	Up to 1 yr and/or \$500	Up to 1 yr and/or \$500	5 yrs and \$5,000	5 yrs and \$5,000
Michigan	First offense up to 93 days and/or \$500, 2nd offense up to 1 yr and/or \$1,000, 3+ convictions up to 2 yrs and/or \$2,000 (1-2 offense misdemeanor, 3rd offense felony)	First offense up to 93 days and/or \$500, 2nd offense up to 1 yr and/or \$1,000, 3+ convictions up to 2 yrs and/or \$2,000 (1-2 offense misdemeanor, 3rd offense felony)	Up to 20 yrs (Felony)	5 yrs or \$2,500 (Felony)
Minnesota	First offense is up to 90 days and/or \$1,000, consequence offense is up to 1 yr and/or \$3,000	First offense is up to 90 days and/or \$500-\$1,000, consequence offense is up to 1 yr and/or \$1,500-\$3,000	Up to 15 yrs and/or \$30,000	Up to 15 yrs and/or \$30,000
Mississippi	6 months and/or \$200	6 months and/or \$200	6 months and/or \$200	6 months and/or \$200
Missouri	30 days-6 months and/or \$500 (Class B misdemeanor)	30 days-6 months and/or \$500 (Class B misdemeanor)	Up to 10 yrs and/or \$5,000 (Class C felony)	Up to 10 yrs and/or \$5,000 (Class C felony)
Montana	6 months and/or \$500	First offense up to 1 yr and/or \$1,000, consequence offense up to 5 yr and/or \$10,000	10 yr and/or \$50,000	10 yr and/or \$50,000
Nebraska	Up to 1 yr and/or \$1,000 (Class I misdemeanor)	First offense at least \$200, consequent convictions at least \$500 (First offense class I misdemeanor, subsequent offenses class IV felony)	Up to 5 yrs and/or \$10,000 (Class IV felony)	Up to 1 yr and/or \$1,000 (Class I misdemeanor)
Nevada	Up to 6 months and/or \$1,000 (Misdemeanor)	Up to 6 months and/or \$1,000 (Misdemeanor)	1-4 yrs and/or \$5,000 (Category D felony)	Up to 6 months and/or \$1,000 (Misdemeanor)
New Hampshire	Up to 1 yr and \$2,000 (Misdemeanor)	Up to 1 yr and \$2,000 (Misdemeanor)	Up to 1 yr and \$2,000 (Misdemeanor)	Up to 1 yr and \$2,000 (Misdemeanor)
New Jersey	First offense up to 6 months and/or fine, consequent convictions up to 18 months and/or fine (First disorderly persons offense, subsequent offenses crime of the fourth degree)	First offense up to 6 months and/or fine, consequent convictions up to 18 months and/or fine (First disorderly persons offense, subsequent offenses crime of the fourth degree)	3-5 yrs and/or fine (Crime of the third degree)	3-5 yrs and/or fine (Crime of the third degree)
New Mexico	First offense up to 6 months in a county jail and/or \$500, subsequent	First offense up to 6 months in a county jail and/or \$500, subsequent	Up to 18 months and/or \$5,000 (Fourth degree felony)	Up to 18 months and/or \$5,000 (Fourth degree felony)

	offenses up to 1 yr in a county jail and/or \$1,000 (First offense petty misdemeanor, subsequent offenses misdemeanor)	offenses up to 1 yr in a county jail and/or \$1,000 (First offense petty misdemeanor, subsequent offenses misdemeanor)		
New York	Up to 3 months and/or \$500 (Class B misdemeanor)	Up to 1 yr and/or \$1,000 (Class A misdemeanor)	Up to 7 yrs and/or \$5,000 (Class D felony)	Up to 7 yrs and/or \$5,000 (Class D felony)
North Carolina	Up to 45 days and a fine (Class 1 misdemeanor)	Up to 45 days and a fine (Class 1 misdemeanor)	Up to 45 days and a fine (Class 1 misdemeanor)	Up to 45 days and a fine (Class 1 misdemeanor)
North Dakota	Up to 30 days and/or \$1,000 (Class B misdemeanor)	Up to 30 days and/or \$1,000 (Class B misdemeanor)	Up to 5 yrs and/or \$5,000 (Class C felony)	Up to 5 yrs and/or \$5,000 (Class C felony)
Ohio	Up to 60 days and/or \$500 (Third degree misdemeanor)	Up to 60 days and/or \$500 (Third degree misdemeanor)	Up to 180 days and/or \$1,000 (First degree misdemeanor)	Up to 180 days and/or \$1,000 (First degree misdemeanor)
Oklahoma	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500 (Misdemeanor)	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500 (Misdemeanor)	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500 (Misdemeanor)	First offense 30 days-1 yr or up to \$2,500, 2nd offense 30 days-1 yr or up to \$5,000, consequent offenses 30 days-1 yr or up to \$7,500 (Misdemeanor)
Oregon	Up to 1 yr and/or \$6,250 (Class A misdemeanor)	Up to 1 yr and/or \$6,250 (Class A misdemeanor)	Up to 5 yrs and/or \$125,000 (Class C felony)	Up to 5 yrs and/or \$125,000 (Class C felony)
Pennsylvania	First two offenses up to 1 yr, 3rd offense up to 2 yrs, and subsequent offenses up to 5 yr (1st and 2nd offense a 3rd deg. misdemeanor, 3rd offense a 2nd deg. misdemeanor, 4+ offenses 1st deg. misdemeanor)	First two offenses up to 1 yr, 3rd offense up to 2 yrs, and subsequent offenses up to 5 yr (1st and 2nd offense a 3rd deg. misdemeanor, 3rd offense a 2nd deg. misdemeanor, 4+ offenses 1st deg. misdemeanor)	Up to 7 yrs (3rd deg. felony)	Up to 7 yrs (3rd deg. felony)
Rhode Island [Note: Due to an unintended loophole, a 1980 law made indoor prostitution legal. The state passed new legislation to close the	Up to 6 months and/or \$250-\$1,000, subsequent convictions up to 1 yr and/or \$500-\$1,000 (Misdemeanor)	Up to 1 yr and/or \$250-\$1,000, subsequent convictions up to 1 yr and/or \$500-\$1,000 (Misdemeanor) Up to 6 months and/or \$500-\$1,000, subsequent convictions up to 1 yr and/or \$750-\$1,000 (Only applies to soliciting from motor vehicles)	First offense 1-5 yrs and \$2,000-\$5,000, subsequent convictions 3-10 yrs and \$5,000-\$10,000 (Pandering)	First offense 1-5 yrs and \$2,000-\$5,000, subsequent convictions 3-10 yrs and \$5,000-\$10,000 (Pandering)

loophole in 2009.]				
South Carolina	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000	First offense up to 30 days or \$200, 2nd offense up to 6 months and \$1,000, 3+ at least 1 yr and/or up to \$3,000
South Dakota	Up to 1 yr in county jail and/or \$2,000 (Class 1 misdemeanor)	Up to 1 yr in county jail and/or \$2,000 (Class 1 misdemeanor)	Up to 2 yrs and/or \$4,000 (Class 6 felony)	Up to 2 yrs and/or \$4,000 (Class 6 felony)
Tennessee	Up to 6 months and/or \$500 (Class B misdemeanor)	Up to 6 months and/or \$500 (Class B misdemeanor)	1-6 yrs and/or up to \$3,000 (Class E felony)	1-6 yrs and/or up to \$3,000 (Class E felony)
Texas	First offense up to 180 days and/or \$2,000, 2nd up to 1 yr and/or \$4,000, 3+ 180 days-2 yrs and/or \$10,000 (First offense is a class B misdemeanor, 2nd A misdemeanor, 3+ is a state jail felony)	First offense up to 180 days and/or \$2,000, 2nd up to 1 yr and/or \$4,000, 3+ 180 days-2 yrs and/or \$10,000 (First offense is a class B misdemeanor, 2nd A misdemeanor, 3+ is a state jail felony)	2-10 yrs and up to \$10,000 (3rd degree felony)	2-10 yrs and up to \$10,000 (3rd degree felony)
Utah	First offense up to 6 months and/or \$1,000, subsequent offenses up to 1 yr and/or \$2,500 (First offense class B misdemeanor, subsequent offenses are class A misdemeanors)	Up to 6 months and/or \$1,000 (Class B misdemeanor)	Up to 5 yrs and/or \$5,000 (3rd degree felony)	Up to 5 yrs and/or \$5,000 (3rd degree felony)
Vermont	First offense up to 1 yr or \$100, second offense up to 3 yrs	First offense up to 1 yr or \$100, second offense up to 3 yrs	1-10 yrs and/or \$200-\$2,000	1-10 yrs and/or \$200-\$2,000
Virginia	Up to 1 yr and/or \$2,500 (Class 1 misdemeanor)	Up to 1 yr and/or \$2,500 (Class 1 misdemeanor)	2-10 yrs and up to \$100,000 (Class 4 felony)	2-10 yrs and up to \$100,000 (Class 4 felony)
Washington	Up to 90 days and/or \$1,000 (Misdemeanor)	Up to 90 days and/or \$1,000 (Misdemeanor)	Up to 5 yrs and/or \$5,000 (Class C felony)	Up to 5 yrs and/or \$5,000 (Class C felony)
West Virginia	60 days-6 months and \$50-\$100	First offense 60 days-6 months and \$50-\$100, 2nd offense 6 months-1 yr and \$100-\$200, consequent offenses 1-3 yrs	First offense 6 months-1 yr and \$100-\$500, subsequent offenses 1-3 yrs	First offense 6 months-1 yr and \$100-\$250, subsequent offenses 1-5 yrs
Wisconsin	Up to 9 months and/or \$10,000 (Class A misdemeanor)	Up to 9 months and/or \$10,000 (Class A misdemeanor)	Up to 12.5 yrs and/or \$25,000 (Class F felony)	Up to 6 yrs and/or \$10,000 (Class H felony)
Wyoming	Up to 6 months and/or	Up to 6 months and/or	Up to 3 yrs and/or	Up to 3 yrs and/or

	\$750 (Misdemeanor)	\$750 (Misdemeanor)	\$3,000 (Felony)	\$3,000 (Felony)
State	Penalty for Prostitutes (Crime Classification)	Penalty for Customers (Crime Classification)	Penalty for Pimps (Crime Classification)	Penalty for Brothel Owners (Crime Classification)

Source: ProCon.org “U.S. Federal and State Prostitution Laws and Related Punishments.” Accessed on October 20, 2013. <http://prostitution.procon.org/view.resource.php?resourceID=000119#2>

Appendix B

Expanded State Laws Referenced

1.) Prostitution Laws of New Hampshire

645:2: Prostitution and Related Offenses

I. A person is guilty of a misdemeanor if the person:

(a) Solicits, agrees to perform, or engages in sexual contact as defined in RSA 632-A:1, IV or sexual penetration as defined in RSA 632-A:1, V, in return for consideration; or

(b) Induces or otherwise purposely causes another to violate subparagraph (a); or

(c) Transports another into or within this state with the purpose of promoting or facilitating such other in engaging in conduct in violation of subparagraph (a); or

(d) Not being a legal dependent incapable of self support, knowingly is supported in whole or in part by the proceeds of violation of subparagraph (a); or

(e) Knowingly permits a place under such person's control to be used for violation of subparagraph (a); or

(f) Pays, agrees to pay, or offers to pay another person to engage in sexual contact as defined in RSA 632-A:1, IV or sexual penetration as defined in RSA 632-A:1, V, with the payor or with another person.

II. A person is guilty of a class B felony if such person violates the provisions of subparagraphs (b), (c), (d), or (e) of paragraph I and the violation:

(a) Involves another person who is under the age of 18; or

(b) Involved compelling another person by force or intimidation.

III. A person is guilty under this section regardless of the sex of the persons involved.

Source: General State Court of New Hampshire. "Title LXII: Criminal Code." Accessed on November 1, 2013. <http://www.gencourt.state.nh.us/rsa/html/LXII/645/645-2.htm>

Appendix C

Prostitution Related Arrest Rates by State, 2012

Table 69, FBI Uniform Crime Report				
Arrests by State, 2012				
State		Prostitution and commercialized vice	2012 estimated population	Arrest rates per 10,000 people
ALABAMA	Under 18	0	82,332	
	Total all ages	0		n/a
ALASKA	Under 18	0	464,937	
	Total all ages	38		0.8
ARIZONA	Under 18	7	5,945,274	
	Total all ages	679		1.2
ARKANSAS	Under 18	3	2,510,046	
	Total all ages	255		1.0
CALIFORNIA	Under 18	229	37,416,909	
	Total all ages	10,484		2.9
COLORADO	Under 18	6	4,700,965	
	Total all ages	307		0.7
CONNECTICUT	Under 18	1	3,388,202	
	Total all ages	371		1.1
DELAWARE	Under 18	1	916,825	
	Total all ages	39		0.4
FLORIDA	Under 18	41	19,290,951	
	Total all ages	4,753		2.5
GEORGIA	Under 18	28	8,827,198	
	Total all ages	1,614		1.9
HAWAII	Under 18	0	158,760	
	Total all ages	15		0.9
IDAHO	Under 18	0	1,582,856	
	Total all ages	27		0.2
ILLINOIS	Under 18	10	2,860,675	
	Total all ages	2,154		7.6
INDIANA	Under 18	2	4,176,156	
	Total all ages	828		2.0

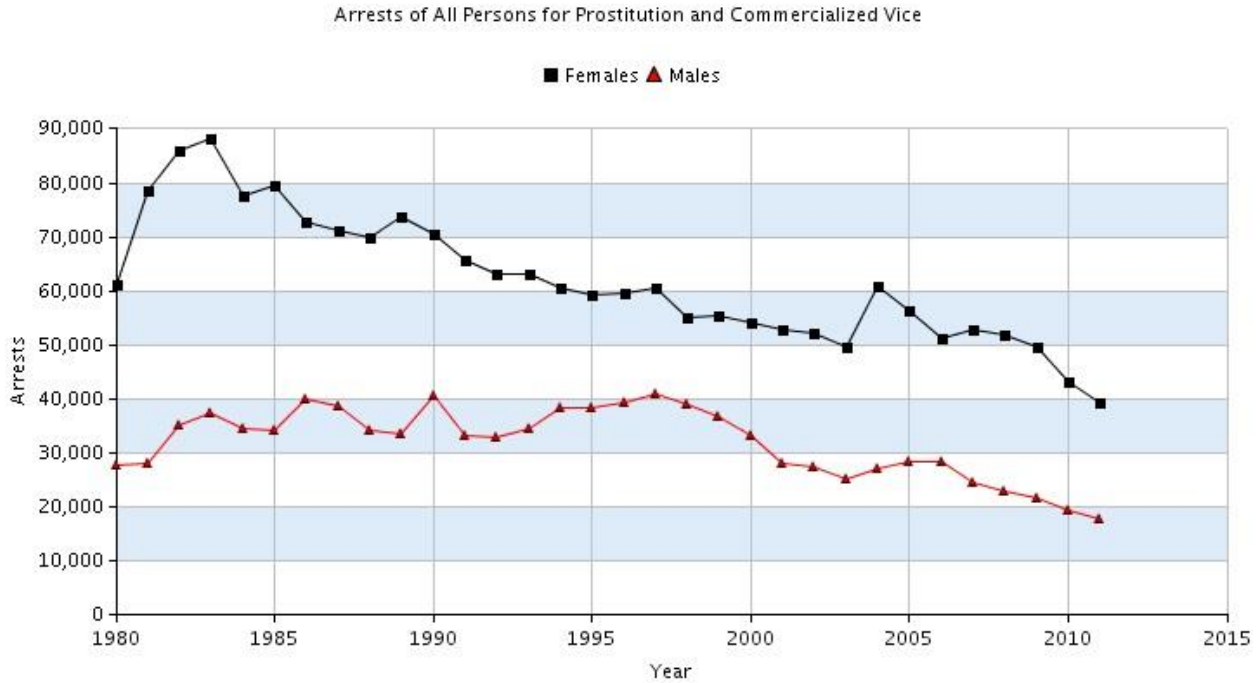
IOWA	Under 18	3	2,706,862	
	Total all ages	189		0.7
KANSAS	Under 18	1	2,066,137	
	Total all ages	154		0.8
KENTUCKY	Under 18	0	4,192,532	
	Total all ages	270		0.6
LOUISIANA	Under 18	5	2,304,044	
	Total all ages	447		2.0
MAINE	Under 18	2	1,325,207	
	Total all ages	56		0.4
MARYLAND	Under 18	15	5,351,617	
	Total all ages	1,116		2.1
MASSACHUSETTS	Under 18	5	6,123,817	
	Total all ages	941		1.5
MICHIGAN	Under 18	10	9,159,042	
	Total all ages	386		0.4
MINNESOTA	Under 18	1	4,698,199	
	Total all ages	297		0.6
MISSISSIPPI	Under 18	3	1,535,347	
	Total all ages	193		1.3
MISSOURI	Under 18	2	5,612,383	
	Total all ages	381		0.7
MONTANA	Under 18	0	949,729	
	Total all ages	4		0.04
NEBRASKA	Under 18	0	1,691,152	
	Total all ages	198		1.2
NEVADA	Under 18	56	2,749,103	
	Total all ages	3,620		13.4
NEW HAMPSHIRE	Under 18	1	1,167,974	
	Total all ages	103		0.9
NEW JERSEY	Under 18	15	8,637,883	
	Total all ages	892		1.1
NEW MEXICO	Under 18	0	1,767,251	
	Total all ages	289		1.6
NEW YORK	Under 18	20	10,798,302	
	Total all ages	802		0.8
NORTH CAROLINA	Under 18	10	8,780,316	
	Total all ages	808		0.9

NORTH DAKOTA	Under 18	1	685,149	
	Total all ages	34		0.5
OHIO	Under 18	3	7,192,479	
	Total all ages	794		1.1
OKLAHOMA	Under 18	8	3,589,287	
	Total all ages	364		1.0
OREGON	Under 18	2	3,610,267	
	Total all ages	431		1.2
PENNSYLVANIA	Under 18	13	12,251,464	
	Total all ages	2,139		1.8
RHODE ISLAND	Under 18	0	1,044,186	
	Total all ages	74		0.7
SOUTH CAROLINA	Under 18	13	4,112,716	
	Total all ages	528		1.3
SOUTH DAKOTA	Under 18	2	747,870	
	Total all ages	49		0.7
TENNESSEE	Under 18	5	5,863,606	
	Total all ages	2,174		3.7
TEXAS	Under 18	78	25,224,224	
	Total all ages	7,009		2.8
UTAH	Under 18	10	2,794,195	
	Total all ages	104		0.4
VERMONT	Under 18	1	557,989	
	Total all ages	3		0.07
VIRGINIA	Under 18	1	8,178,905	
	Total all ages	829		1.0
WASHINGTON	Under 18	20	5,173,068	
	Total all ages	432		0.9
WEST VIRGINIA	Under 18	1	1,357,601	
	Total all ages	73		0.5
WISCONSIN	Under 18	20	5,373,766	
	Total all ages	383		0.8
WYOMING	Under 18	2	520,353	
	Total all ages	18		0.4

Source: Federal Bureau of Investigations. "Table 69." FBI Uniform Crime Report, 2012. Accessed November 1, 2013. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/69tabledatadecpdf/table_69_arrest_by_state_2012.xls. Note: Arrest rates adjusted for population were added to this table.

Appendix D

Prostitution Related Arrest Rates by Gender, 1980 - 2013



Source: Bureau of Justice Statistics. "National Estimates Trend Graph by Sex for Prostitution and Commercialized Vice Arrests." Arrest Data Analysis Tool, BJS. Accessed on October 29, 2013. <http://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm#>

Bibliography

- Anderson, by Scott A. "Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution." *Ethics* 112, no. 4 (July 1, 2002): 748–780.
- Cao, Liqun, and Edward R. Maguire. "A Test of the Temperance Hypothesis: Class, Religiosity, and Tolerance of Prostitution." *Social Problems* 60, no. 2 (May 1, 2013): 188–205.
- Chapkis, Wendy. "Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants." *Gender and Society* 17, no. 6 (December 2003): 923–937.
- De Marneffe, Peter. "Avoiding Paternalism." *Philosophy & Public Affairs* 34, no. 1 (January 1, 2006): 68–94. <http://www.jstor.org/stable/3557975>.
- Liberalism and Prostitution*. Oxford University Press, 2009.
- Della Giusta, Marina, Maria Laura di Tommaso, and Steiner Strom. "Who Is Watching? The Market for Prostitution Services." *Journal of Population Economics* 22, no. 2 (April 2009): 501–516.
- Department Of State. The Office of Electronic Information, Bureau of Public Affairs. "The Link Between Prostitution and Sex Trafficking." Accessed November 6, 2013. <http://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.
- Department Of State. The Office of Website Management, Bureau of Public Affairs. "U.S. Laws on Trafficking in Persons," January 3, 2006. <http://www.state.gov/j/tip/laws/>.
- Edlund, Lena, and Evelyn Korn. "A Theory of Prostitution." *Journal of Political Economy* 110, no. 1 (February 2002): 181–214.
- Farley, Melissa, and Prostitution Research & Education (Organization). *Prostitution and Trafficking in Nevada: Making the Connections*. San Francisco, Calif.: Prostitution Research & Education, 2007.
- Farley, Melissa. "Theory Versus Reality: Commentary on Four Articles About Trafficking for Prostitution." *Women's Studies International Forum* 32, no. 4 (July 2009): 311–315.
- Fisher, Trevor. *Prostitution and the Victorians*. New York: St. Martin's Press, 1997.
- Hallgrímsdóttir, Helga Kristín, Rachel Phillips, Cecilia Benoit, and Kevin Walby. "Sporting Girls, Streetwalkers, and Inmates of Houses of Ill Repute: Media Narratives and the Historical Mutability of Prostitution Stigmas." *Sociological Perspectives* 51, no. 1 (March 1, 2008): 119–138.
- Hausbeck, Kathryn, and Barbara G. Brents. "Nevada's Legal Brothels." In *Sex For Sale: Prostitution, Pornography, and the Sex*, edited by Ronald Weitzer, 255–281. Second. New York: Routledge, 2010.

- Jeffreys, Sheila. "Prostitution, Trafficking and Feminism: An Update on the Debate." *Women's Studies International Forum* 32, no. 4 (July 2009): 316–320.
- Jenness, Valerie. "From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem." *Social Problems* 37, no. 3 (August 1990): 403–420.
- Kuo, Lenore, and ebrary, Inc. *Prostitution Policy: Revolutionizing Practice through a Gendered Perspective*. New York ; London: New York University Press, 2002. <http://0-site.ebrary.com.bianca.penlib.du.edu/lib/udenver/Doc?id=10137190>.
- Limoncelli, Stephanie A. "The Trouble with Trafficking: Conceptualizing Women's Sexual Labor and Economic Human Rights." *Women's Studies International Forum* 32, no. 4 (July 2009): 261–269. doi:10.1016/j.wsif.2009.05.002.
- Mill, John Stuart, and ebrary, Inc. *On Liberty*. Luton, Bedfordshire: Andrews U.K. Ltd, 2011. <http://0-site.ebrary.com.bianca.penlib.du.edu/lib/udenver/Doc?id=10517722>.
- Morris, Meagan, et. al. "Prostitution and Denver Criminal Justice System: Who Pays?" Report by The Laboratory to Combat Human Trafficking. Prepared for the Women's Foundation of Colorado, February, 2012.
- Murray, Alison. "Debt-Bondage and Trafficking: Don't Believe the Hype." In *Global Sex Workers: Rights, Resistance and Redefinition*, edited by Kamala Kempadoo and Jo Doexema, 51–64. New York: Taylor & Francis, Inc., 1998.
- Overall, Christine. "What's Wrong with Prostitution? Evaluating Sex Work." *Signs* 17, no. 4 (July 1, 1992): 705–724. <http://www.jstor.org/stable/3174532>.
- O'Connell Davidson, Julia. *Children in the Global Sex Trade*. Polity Press, 2005.
- "The Rights and Wrongs of Prostitution." *Hypatia* 17, no. 2 (Spring 2002): 84–98. <http://jstor.reed.edu/stable/i290899>.
- Peters, Alicia W. "'Things That Involve Sex Are Just Different': US Anti-Trafficking Law and Policy on the Books, in Their Minds, and in Action." *Anthropological Quarterly* 86, no. 1 (2013): 221–255. doi:[10.1353/anq.2013.0007](https://doi.org/10.1353/anq.2013.0007).
- Phoenix, Joanna. *Making Sense of Prostitution*. Basingstoke: Palgrave Macmillan, 1999. <http://0-www.palgraveconnect.com.bianca.penlib.du.edu/pc/doi/finder/10.1057/9780333985472>.
- Raymond, Janice G. "Ten Reasons for Not Legalizing Prostitution and a Legal Response to the Demand for Prostitution." In *Prostitution, Trafficking and Traumatic Stress*, edited by Melissa Farley. Haworth Maltreatment & Trauma Press, 2003.

Stetson, Dorothy McBride. "The Politics of Prostitution." In *The Politics of Prostitution*, edited by Joyce Outshoorn, 245–264. United Kingdom: Cambridge University Press, 2004.

Weitzer, Ronald. "Prostitutes' Rights in the United States: The Failure of a Movement." *The Sociological Quarterly* 32, no. 1 (April 1, 1991): 23–41. <http://www.jstor.org/stable/4121439>.

"Sex Work: Paradigms and Policies." In *Sex For Sale: Prostitution, Pornography, and the Sex Industry*, edited by Ronald Weitzer, 1–43. Second. New York: Routledge, 2010.

"The Movement to Criminalize Sex Work in the United States." *Journal of Law and Society* 37, no. 1 (2010): 61–84.

Woolston, Howard Brown. *Prostitution in the United States*. Patterson Smith Reprint Series in Criminology, Law Enforcement, and Social Problems. Publication No. 29. Montclair, N.J.: Patterson Smith, 1969.

Zatz, Noah D. "Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution." *Signs* 22, no. 2 (Winter 1997): 277–308.

Zimmerman, Yvonne C. *Other Dreams of Freedom: Religion, Sex, and Human Trafficking*. Oxford University Press, 2012.