

COMMENT

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Targeting the “Tricks” of the Trade: A Comparative Analysis of Prostitution Laws in Sweden and the United States

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INTRODUCTION

Beatryce Hall spent most of the past decade satisfying a public need for retribution.¹ Arrested thirty-two times in seventeen years for solicitation, Hall demonstrates the ineffective nature of a strictly punitive response to prostitution.² Due to a Texas law that makes repeat prostitution offenses a felony, Hall was repeatedly incarcerated and punished without any offering of rehabilitative services.³ Texas has yet to imprison a single purchaser of sex.⁴ The United States faces a range of barriers in effective prostitution response: the frequent prosecution of juveniles;⁵ the lack of prosecution for purchasers of sex;⁶ the difficulty in distinguishing between prostitutes and sex trafficking victims;⁷ and the failure to recognize the inherent

¹ Mike Ward, *Texas Rethinks Law Making Repeat Prostitution a Felony*, STATESMAN (Aug. 25, 2012, 9:58 PM), <http://www.statesman.com/news/news/state-regional-govt-politics/texas-rethinks-law-making-repeat-prostitution-a-fe/nRNmt/>.

² *Id.*

³ *See id.*

⁴ Ian Millhiser, *Top State Senator Calls For Texas' Felony Prostitution Law To Be Repealed*, THINK PROGRESS (Aug. 27, 2012, 12:40 PM), <http://thinkprogress.org/justice/2012/08/27/746741/top-state-senator-calls-for-texas-felony-prostitution-law-to-be-repealed>.

⁵ Moira Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 433 (2009).

⁶ Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1732 (2006).

⁷ April Rieger, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 245–47 (2007).

victimization of prostitutes.⁸ The Swedish Model of partial decriminalization, in which only the purchasers of sex receive criminal sanctions, would help to alleviate the current problems of the American system and acknowledge the inherent victimization of prostitutes.⁹

In 1999, Sweden revolutionized the treatment of prostitutes by adopting a partial decriminalization model.¹⁰ Sweden substantially altered the landscape of legal responses to prostitution by positing a novel approach: rather than incarcerating and punishing prostitutes, Sweden, along with Norway and Iceland, only penalizes the purchasers of sex.¹¹ The United States, in contrast, almost universally criminalizes the behavior of both the prostitute and the purchaser (with the exception of parts of Nevada).¹² The Swedish Model reflects the growing understanding that the criminalization of the prostitute's actions furthers rather than remedies the victimization of prostitutes.¹³ The focus upon the behavior of the purchasers of sex allows Sweden to more effectively focus its resources; the purchasers respond more effectively to punishment as they are typically in more powerful positions and have more to lose than the prostitutes.¹⁴ The United States could benefit from a partial decriminalization scheme that would provide services to those in prostitution. The United States should follow Sweden and recognize prostitution as a victim-based crime that cannot be remedied solely through the use of punitive measures.

This Comment will focus upon the inherent victimization of prostitutes and the remedial possibilities of a partial decriminalization model that mirrors Sweden's Sex Purchase Law. Part I of this

⁸ Ronald Weitzer, *Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation*, 101 J. CRIM. L. & CRIMINOLOGY 1337, 1340–41 (2011).

⁹ Heather Monasky, *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, 2043–44 (2011).

¹⁰ Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 396 (2006).

¹¹ *Id.*

¹² Katie Beran, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 LAW & INEQ. 19, 21–22 (2012).

¹³ *Id.* at 50.

¹⁴ See Michael Shively, Sarah Jalbert & Ryan Kling, Presentation at the 2008 Annual Meeting of the American Society of Criminology (Nov. 13, 2008), available at <http://www.innovations.harvard.edu/cache/documents/1321/132181.pdf>.

Comment will examine the history, development, and efficacy of Swedish prostitution laws. The criticisms of the Swedish law will also be evaluated to provide a thorough understanding of the public response. In Part II, this Comment will subsequently address the current status of the prostitution enforcement paradigm within the United States. By providing a thorough understanding of the challenges endemic in the United States' response to prostitution, this Comment will seek to advance the possibility of implementing the Swedish Model in America. Various prostitution enforcement tactics throughout the United States will be examined to demonstrate the feasibility of partial decriminalization. This Comment will also seek to counter the position that prostitution represents a victimless crime through empirical evidence demonstrating the substantial abuse, juvenile status, compromised health, and desperate socioeconomic status of the majority of prostitutes. By shifting the view of prostitution to victim-based, this Comment will promote the enhanced criminalization of sex purchase within the United States and evaluate the effectiveness of rehabilitative-focused treatment for prostitutes in lieu of criminal punishment. This Comment will conclude with a recommendation for the implementation of the Swedish Model in the United States and suggest a workable framework for a dramatic shift in prostitution law and policy in America.

I

THE SWEDISH MODEL OF PROSTITUTION CRIMINALIZATION

Sweden enacted the Sex Purchase Law to criminalize the behavior of purchasers of sex ("johns") and focus on rehabilitative services for prostitutes.¹⁵ At the time of implementation, a partial decriminalization model of prostitution reform had never been attempted.¹⁶ However, Swedish authorities believed that redirecting the animus of the crime from the prostitute to the purchaser could alleviate the societal problems of prostitution. The Swedish legislature consequently chose to completely revolutionize traditional forms of prostitution criminalization and legalization; the Sex Purchase Law redirected the focus of police efforts away from the behavior of the providers of commercialized sex and towards the purchasers and pimps.

¹⁵ Beran, *supra* note 12, at 49–50.

¹⁶ Monasky, *supra* note 9, at 2043.

Currently, the Swedish Model seeks to de-normalize prostitution and increase the amount of resources available to prostitutes.¹⁷ Social workers are made available to prostitutes and assist them with drug treatment and career planning.¹⁸ The Swedish Model also provides rehabilitative services to the johns in the form of group counseling and treatment.¹⁹ The Swedish Model limits the role of law enforcement to the targeting of johns and pimps rather than the prostitutes, who are viewed as victims and thus ill-suited for prosecution.²⁰

A. Rationale and Effects of the Swedish Model

The Swedish Model is predicated upon the belief that prostitution victimizes women and does little to enhance their autonomy.²¹ Therefore, rather than attempting to respect the autonomous nature of the sex worker, the Swedish Model focuses on the victimization of the prostitute and attempts to remedy that societal ill accordingly. The Swedish Model is premised upon the notion that a legalized sex trade is fundamentally irreconcilable with gender equality and that legalization leads to undesirable consequences.²² Kajsa Wahlberg, a member of Sweden’s police board, succinctly explained the Swedish attitude towards prostitution as “[w]e don’t have a problem with prostitutes. We have a problem with men who buy sex.”²³

1. Implementation of the Swedish Model

The Swedish Model focuses on the de-normalization of prostitution and the belief that prostitution results from circumstance or coercion rather than a meaningful choice.²⁴ Lise Tamm, a Swedish prosecutor,

¹⁷ Beran, *supra* note 12, at 48–52.

¹⁸ KAJSA CLAUDE, TARGETING THE SEX BUYER. THE SWEDISH EXAMPLE: STOPPING PROSTITUTION AND TRAFFICKING WHERE IT ALL BEGINS 31–33 (2010).

¹⁹ Monasky, *supra* note 9, at 2035–36.

²⁰ Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729, 1730–31 (2010).

²¹ See JULIE BINDEL & LIZ KELLY, A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN 72–79 (2003).

²² Monasky, *supra* note 9, at 2015–17.

²³ Karl Ritter, *Swedish Prostitution Law Attracts World Interest*, USA TODAY (Mar. 16, 2008, 4:44 AM), http://usatoday30.usatoday.com/news/world/2008-03-16-sweden-prostitution_N.htm.

²⁴ Atika Shubert, *The Battle Against Sex Trafficking: Sweden vs. Denmark*, THE CNN FREEDOM PROJECT (Mar. 30, 2011, 1:07 PM), <http://thecnnfreedomproject.blogs.cnn.com/2011/03/30/sex-trafficking-countries-take-different-approaches-to-same-problem/>.

offers that “[w]e see it as a human right to have sexual integrity, physical integrity, and not to be forced to sell your body to strange men, 10 times a day. That’s human rights to us.”²⁵ The ingrained conviction that prostitution is a victim-based crime requires that Sweden police the purchase of sex without concerns about limiting the autonomy of prostitutes.²⁶ Rather, prostitutes are viewed as “victims of male violence who have a right of assistance to escape prostitution.”²⁷

This focus upon the presumably victim-based nature of prostitution served as the foundation for the legislative rationale of the Sex Purchase Law. An American attorney, Catharine MacKinnon, actually served as a driving force behind the law and persuasively argued that “ending prostitution by ending the demand for it is what sex equality under law would look like.”²⁸ MacKinnon formed the Swedish Organization for Women’s and Girl’s Shelters and held yearly meetings with Swedish parliament to overcome past conceptions of prostitution as an autonomous marketplace transaction rather than as a form of victimization.²⁹ MacKinnon’s organization sought to persuade legislators that “gender inequality and sexual subordination could not be fought effectively by assuming a gender symmetry that empirically does not exist.”³⁰ The continual advocacy and political pressure of MacKinnon’s organization, as well as shifting social perception regarding prostitution, eventually led to the passage of the Sex Purchase Law in 1999.³¹

2. *Rationale and Empirical Data Behind the Swedish Sex Purchase Law*

The Swedish parliament stated that “[m]en’s violence against women is not consonant with the aspirations toward a gender equal society In such a society it is also unworthy and unacceptable that men obtain casual sex with women for remuneration.”³² Prior

²⁵ *Id.*

²⁶ See Don Kulick, Professor, N.Y. Univ., Talk Delivered at Beijing Plus Ten Meetings on the “Swedish Model” (Feb. 28, 2005).

²⁷ GUNILLA EKBERG, THE SWEDISH LAW THAT PROHIBITS THE PURCHASE OF SEXUAL SERVICES: BEST PRACTICES FOR PREVENTION OF PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS, 1191 (2004).

²⁸ Max Waltman, *Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law*, 33 MICH. J. INT’L L. 133, 137–38 (2011).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* See also Halley, *supra* note 10, at 396.

³² Prop. 1997/1998:55 Kvinnofrid [Women’s Sanctuary] [government bill] 22 (Swed.).

government reports in Sweden detailed evidence supporting the notion that a law against purchasers would “improve equality between the sexes and prevent undue exploitation of socially deprived women.”³³ The reports served as the impetus behind a demand for a greater level of research regarding prostitution in Sweden. Subsequent government-funded studies of prostitution in Sweden revealed the majority of prostitutes were sexually abused as children.³⁴ Furthermore, Swedish mental health practitioners who treated prostitutes testified that they frequently witnessed “the severe posttraumatic stress reactions manifested in the forms of serious mental disorders such as severe sleep and concentration disorders, recurrent anxiety and panic attacks, grave depressions, severe anorectic reactions, self-destructive behaviors combined with extensive dissociation, problems with impulse control, and manifest or latent suicidality.”³⁵

The demonstrated mental health effects of prostitution in Sweden were unsurprising in relation to revelations that the Swedish prostitutes often underwent frequent beatings, gang rapes, and even systematic torture from both pimps and johns.³⁶ The 1995 Swedish government report stated that “[t]he purchaser thinks that he has . . . also paid for the woman’s right to a human and dignified treatment.”³⁷ Numerous first-hand accounts from Swedish prostitutes supported the government’s call for comprehensive prostitution reform. The documentation of abuse completely undermined any notion of autonomy and detailed countless forms of violent subjugation (including the commonplace practice of “seasoning” new prostitutes into the profession with a large number of clients in a consolidated

³³ Prop. 1981/1982:187 om vissa åtgärder mot prostitutionen [government bill] at 44–45 (Swed.).

³⁴ See, e.g., Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRAC. 33, 43 (2004).

³⁵ Waltman, *supra* note 28, at 140 (citing Luis Ramos-Ruggiero & Brita Hännestrand, Utlåtande: Angående unga kvinnors psykiska tillstånd och reaktioner orsakad av prostitution och trafficking [Statement: Regarding Young Women’s Mental Condition and Reactions Caused by Prostitution and Trafficking] (Kris- och Traumacentrum Sverige AB [Traumacenter Sweden], 2010) (updated Oct. 12, 2010)).

³⁶ See, e.g., EVA LUNDGREN, GUN HEIMER, JENNY WESTERSTRAND & ANNE-MARIE KALLIOKOSKI, CAPTURED QUEEN: MEN’S VIOLENCE AGAINST WOMEN IN “EQUAL” SWEDEN, A PREVALENCE STUDY (2002).

³⁷ See SOU 1995:15 *Könshandeln: Betänkande av 1993 års Prostitutionsutredning* [The Sex Trade: Final Report of the 1993 Prostitution Inquiry] [government report series] at 55–70 (Swed.).

time frame).³⁸ The Swedish government also documented sexually transmitted disease rates amongst prostitutes that substantially exceeded the rates of the general populace.³⁹ Even amongst the fortunate and rare Swedish prostitutes who had avoided disease and abuse, resentment for the inherent victimization of prostitution still surfaced. One prostitute stated that:

The problem is that I cannot enter schools, courses, or work-places. I have no papers and I cannot account for what I have done during all these years. I get anxious for the future. It is too late for me now to change my life. Nonetheless, I am afraid to get stuck in prostitution. I cannot imagine going around here until age 50-60. For me, it is now burdensome and difficult to walk the streets. It is onerous to stand here.⁴⁰

The testimonials, data, and various other reports of Swedish prostitution convinced the government that prostitution could not be viewed as autonomous or desirable but rather mirrored human trafficking due to the high levels of violence, oppression, and coercion that were endemic throughout the profession. Therefore, the Swedish government decided that it is “not reasonable also to criminalize the one who, at least in most cases, is the weaker party whom is exploited by others who want to satisfy their own sexual drive.”⁴¹

3. *Reactions to the Swedish Model*

One of the main benefits of the Swedish Model relates to the de-normalization of prostitution.⁴² Instead of viewing prostitution as an inescapable evil perpetuated by men who “need” sex,⁴³ the prevailing attitude in Sweden is contempt for the conscious choice to purchase commercialized sex.⁴⁴ Tamm relates that men who purchase sex in Sweden are pejoratively referred to as “cods” and explains that cod is “the same word as a loser, or [someone who] gets called by the police, or runs out of gas in his car. You’re a loser if you buy sex in

³⁸ *Id.*

³⁹ MINISTRY OF JUSTICE AND THE POLICE (NORWAY), LEGAL REGULATION OF THE PURCHASE OF SEXUAL SERVICES 13–14 (2004), available at http://www.regjeringen.no/upload/kilde/jd/rap/2004/0034/ddd/pdfv/232216-purchasing_sexual_services_in_sweden_and_the_nederlands.pdf.

⁴⁰ SOU 1995:15 *Könshandeln*, *supra* note 37, at 75.

⁴¹ Waltman, *supra* note 28, at 145 (quoting Prop. 1997/1998:55 *Kvinnofrid* [government bill] 104 (Swed.)).

⁴² See Monasky, *supra* note 9, at 2030–32.

⁴³ BINDEL & KELLY, *supra* note 21, at 6.

⁴⁴ Shubert, *supra* note 24.

Sweden.”⁴⁵ Eighty percent of the population in Sweden supports the legislation and believes that the law properly puts the onus of responsibility for the criminality of prostitution upon the purchaser.⁴⁶

4. *Criticism of the Swedish Model*

Critics of the Swedish Model argue that the enforcement paradigm merely forced prostitution further underground and actually increased the vulnerability of prostitutes.⁴⁷ This argument centers around the suggestion that the high punishment for purchasers of sex caused the less violent and perverse johns to discontinue engaging in prostitution; as a consequence, the remaining purchasers of sex are more likely to be far more aggressive and harmful to the health of prostitutes.⁴⁸ Several Swedish prostitutes report that their preferred customers—well-off men with families—rapidly desisted in their patronage following the implementation of the Law.⁴⁹ The Law understandably had a more immediate deterrent effect upon men who would possibly compromise their families and/or careers with a prostitution arrest. The prostitutes reported that the remaining customers were more likely to already have criminal records and treat them violently.⁵⁰ Also, prostitutes reported that they often resorted to meeting johns in less secure locations after the Law’s passage since the men demanded a less open exchange due to the harsher punishments.⁵¹ The prostitutes who opposed the Law argued that the combination of less appealing customers and less secure locations actually increased the danger of prostitution rather than mitigating the risks.⁵²

Another argument against the universal efficacy of the Swedish Model centers on the availability of legalized prostitution in neighboring countries.⁵³ Denmark, adjacent to Sweden, completely

⁴⁵ *Id.*

⁴⁶ EKBERG, *supra* note 27, at 1204-05.

⁴⁷ Halley et al., *supra* note 10, at 396.

⁴⁸ *Id.*

⁴⁹ Nicholas D. Kristof, Op-Ed., *Do As He Said*, N.Y. TIMES (Mar. 13, 2008), http://www.nytimes.com/2008/03/13/opinion/13kristof.html?_r=0.

⁵⁰ See JOHANNES ERIKSSON, ROSE ALLIANCE, WHAT’S WRONG WITH THE SWEDISH MODEL 4 (2006).

⁵¹ *Id.*

⁵² *Id.*

⁵³ See generally Olga Craig, *Sweden’s Radical Reform of the Law of Prostitution*, THE TELEGRAPH (July 5, 2008, 9:44 PM), <http://www.telegraph.co.uk/news/worldnews/europe/sweden/2254164/Swedens-radical-reform-of-the-law-on-prostitution.html>.

decriminalized prostitution and attracts a steady influx of Swedish sex purchasers.⁵⁴ One Swedish man described his late night trip to a Denmark brothel proudly and stated that “I haven’t done anything illegal. . . [t]hough I don’t see why I can’t have this sort of night out in my own country without ending up in court.”⁵⁵ The swift curtailment of prostitution in Sweden may be attributed to the fact that many Swedish sex consumers simply began to visit Denmark for legal commercialized sex. However, a strong counterargument exists to this criticism given that Sweden does criminalize the purchase of sex by Swedish citizens in any country.⁵⁶ Though challenges clearly exist in policing the purchase of sex by Swedish citizens in other jurisdictions, the Law still demonstrates Sweden’s commitment to combating prostitution as a general policy, rather than simply forcing the sex trade into neighboring countries.

The most prevalent criticism of the Swedish Model is that it unduly limits the autonomy of prostitutes and limits their ability to make a conscious choice.⁵⁷ Advocates of the sex worker industry claim that the Swedish Model infantilizes women and actually perpetuates the oppression of prostitutes.⁵⁸ Swedish sex worker Pye Jacobsen asserts that, “[t]here are a lot of occupations that we take because we need to survive” and that fact alone does not warrant labeling prostitutes as victims.⁵⁹ Jacobsen claims that we allow for people to enter inherently stigmatizing careers (i.e., janitorial services) without viewing them as victims in need of government intervention.⁶⁰ However, the Swedish legislature has rejected this argument as failing to consider societal effects of male domination of the female body.⁶¹

Though clearly other professions also disproportionately entice the socio-economically disadvantaged, they lack the sexual subjugation element that serves as the basis for designating prostitutes as

⁵⁴ *See id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Stephanie M. Berger, *No End in Sight: Why the “End Demand” Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking*, 35 HARV. J.L. & GENDER 523, 550 (2012).

⁵⁸ *Id.* See also SUSANNE DODILLET & PETRA ÖSTERGREN, THE SWEDISH SEX PURCHASE ACT: CLAIMED SUCCESS AND DOCUMENTED EFFECTS 22 (2011).

⁵⁹ Interview by Peter Sarosi with Pye Jacobsen, Sex Worker, in Stockholm, Sweden (Jan. 2009).

⁶⁰ *Id.*

⁶¹ May-Len Skilbrei & Charlotta Holmström, *Is There a Nordic Prostitution Regime?*, 40 CRIME & JUST. 479, 489–90 (2011).

victims.⁶² Although other career paths similarly place a weaker party at the subordination of a wealthier party, prostitution is unique in that it places the prostitute’s body under the complete domination of the purchaser. After the initial price negotiation, the prostitute typically sacrifices any control over the interaction and exists completely at the mercy and control of the john. The majority of Swedish prostitutes reported stories of beatings and refusals to use prophylactic measures: situations that endangered their health and safety.⁶³ Arguments that prostitution enhances female bodily and economic autonomy can be swiftly countered with empirical evidence of the consistent and inescapable abuse that permeates the industry. The Swedish Model therefore centers on the belief that even if some prostitutes enter the industry completely of their own volition and maintain control of their client interactions, the constant victimization of the majority of prostitutes (prior to and after becoming prostitutes) negates assertions of autonomy.⁶⁴ Prostitutes are not independent actors but rather victims of a society that forces women to submit their bodies to male domination under the pretense of basic economic theory.

II

THE AMERICAN MODEL OF PROSTITUTION CRIMINALIZATION

The United States lacks a standardized or cohesive national response to prostitution offenses.⁶⁵ Rather, due to the labeling of prostitution as a morality violation, states receive nearly full discretion in defining what a prostitution offense entails and what the criminal response should be.⁶⁶ However, federal law will preempt the state’s authority in cases of identified sex trafficking rather than prostitution (Section A will further examine the distinction between prostitution and trafficking laws).⁶⁷ Therefore, prostitutes receive disparate punishment throughout the United States depending on their jurisdiction and whether they are relabeled as a sex-trafficked victim under federal law.⁶⁸ Unless a prostitute is designated as a sex-trafficked victim, she will almost always receive a harsher

⁶² Beran, *supra* note 12, at 22–24.

⁶³ RUHAMA, ANALYZING THE SWEDISH MODEL ON PROSTITUTION 6 (2007).

⁶⁴ Barbara Havelková, *Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes*, 18 CARDOZO J.L. & GENDER 55, 66 (2011).

⁶⁵ Beran, *supra* note 12, at 22.

⁶⁶ Monasky, *supra* note 9, at 2020–22.

⁶⁷ Rieger, *supra* note 7, at 244–46.

⁶⁸ *Id.*

punishment than her identified purchaser.⁶⁹ The development of prostitution law in the United States frequently reflects a misplaced animus towards the prostitute for compromising the morality of society and fails to address the culpability of the purchaser.

A. Rationale and Effects of the Current Prostitution Enforcement Paradigm in the United States

1. Distinctions Between Federal and State Prostitution and Trafficking Laws

Narrow and nebulous lines are often drawn between prostitution and sex trafficking, despite increasing evidence that many prostitutes are actually victims of sex trafficking.⁷⁰ The questionable dichotomy between prostitute and trafficked victim becomes critical given that “[w]here trafficking laws presume nonconsent, prostitution laws presume prostitution acts to be voluntary and therefore criminally sanctionable.”⁷¹ United States federal law requires force, fraud, or coercion for a designation of sex trafficking instead of simply prostitution.⁷² Inevitably, many women are charged with prostitution despite clearly meeting the standard for sex trafficking.⁷³ However, due to the distinction between prostitute and trafficked victim, they do not receive assistance but rather criminal sanctions after being mislabeled.⁷⁴ Current prostitution laws do not reflect the concern that “[p]rostitution is no longer simply a morality offense perpetrated by prostitutes; it is also the primary nexus of victimization for more serious sex trafficking crimes.”⁷⁵

The conflict between state and federal law further exacerbates the continued victimization of prostitutes in the United States. State laws often “criminalize all prostitution acts without exempting juveniles, or adults who have been prostituted through force, fraud, or coercion.”⁷⁶ Due to the relative ease in proving prostitution crimes in comparison

⁶⁹ *See id.*

⁷⁰ Paula Goode, *Prostitution’s Brutality*, N.Y. TIMES MAG., Mar. 18, 2007, at 11.

⁷¹ Heiges, *supra* note 5, at 432.

⁷² 22 U.S.C. § 7102(7) (2006) (defining what constitutes trafficking in persons).

⁷³ John R. Miller, *The Justice Department, Blind to Slavery*, N.Y. TIMES, July 11, 2008, at A17.

⁷⁴ MICHAEL SHIVELY, KRISTINA KLIORYS, KRISTIN WHEELER & DANA HUNT, A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REDUCTION EFFORTS 4 (2012).

⁷⁵ Heiges, *supra* note 5, at 432.

⁷⁶ *Id.* at 431.

with trafficking crimes (which require a challenging showing of fraud, force, or coercion), prostitutes receive a disproportionate amount of the criminal sanctions directed at the commercial sex industry.⁷⁷ Only recently did state laws begin to target the purchasers of sex in any meaningful way, and the former attitudes of prostitution enforcement (treating the prostitute as a voluntary actor in need of criminal sanctions) continue to affect the current enforcement paradigm.⁷⁸

The federal response to sex trafficking in the United States already follows the premise of the Swedish Model. The focus of criminalization is appropriately directed at the johns and pimps rather than the victims.⁷⁹ However, state law does not completely comport with federal law and often fails to address the possibility of a sex-trafficked victim designation for many prostitutes. Therefore, federal laws that attempt to remedy the victimization of sex trafficked victims are thwarted by state concerns with the policing of morality. While the Swedish Model abandoned the distinction between prostitute and sex trafficked victim, the United States continues to perpetuate the outdated notion that trafficking victims and autonomous prostitutes can be readily distinguished from one another. The Swedish Model appropriately views all commercial sex providers as victims of sexual subjugation and corresponds with the notion that prostitution actually represents a form of trafficking.⁸⁰ Therefore, the Swedish Model does not require any delineation between trafficking and prostitution because trafficking encompasses prostitution and can be addressed through criminalization of sex purchasing. Conversely, prostitution criminalization in the United States faces insurmountable challenges of dissimilar responses to trafficking and prostitution.

2. Lack of Consideration for the Juvenile Status and Victimization for Prostitutes in the United States

The targeting of the prostitute, often without regard for her juvenile status or the blatant victimization and abuse she has suffered, fails to serve any meaningful purpose in the United States' criminal justice system. First, the criminalization of the behavior of juvenile

⁷⁷ *See id.*

⁷⁸ *See, e.g.,* Pantea Javidan, *Invisible Targets: Juvenile Prostitution, Crackdown Legislation, and the Example of California*, 9 *CARDOZO WOMEN'S L.J.* 237, 250 (2003).

⁷⁹ Waltman, *supra* note 28, at 145–46.

⁸⁰ *See* Heiges, *supra* note 5, at 432.

prostitutes fails to acknowledge the inherent victimization of underage prostitutes.⁸¹ Though federal law views juvenile prostitutes as trafficked victims, many states continue to treat underage prostitutes as offenders.⁸² Given that the majority of prostitutes enter the profession as juveniles, often due to extreme poverty,⁸³ state law should reflect the vulnerability of the typical prostitute. “The average age of entry into a life of prostitution is 14”⁸⁴; juveniles who cannot drive cars or drop out of school can be charged with prostitution offenses in most states.⁸⁵ In a San Francisco survey of 200 prostituted women, sixty-two percent started before age sixteen, and “a number” started “under 9, 10, 11 and 12.”⁸⁶ The average age of entry into prostitution demonstrates that it cannot reflect a cognizable choice but rather an act of desperation.

Studies also indicate that the majority of prostitutes in the United States suffered from sexual abuse prior to their typically underage entry into prostitution.⁸⁷ The youth and frequent past sexual victimization of the average prostitute should counter notions that prostitution represents an autonomous life choice that warrants reprobation. Rather, the vulnerable state at which the usual prostitute enters the trade reflects the understanding that it should not be considered a profession but a source of continued oppression.⁸⁸

Once in prostitution, the abuse continues, with the majority of prostitutes reporting physical abuse and rape.⁸⁹ Police response to the rape and physical abuse of prostitutes has historically been apathetic throughout the United States.⁹⁰ In addition, the American justice system as a whole has perpetrated numerous incidences of prejudice and contempt for prostitutes. For example, a Pasadena Superior Court judge described the rape of a prostitute as a “breach of contract

⁸¹ See Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1084–85 (2011).

⁸² *Id.* at 1068–71.

⁸³ Monasky, *supra* note 9, at 2005.

⁸⁴ Dianne Post, *Eradicate Sex Trade*, 47 ARIZ. ATT’Y 15 (2010).

⁸⁵ *Id.*

⁸⁶ Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 CHILD ABUSE & NEGLECT 407, 410 (1981).

⁸⁷ Mimi H. Silbert & Ayala M. Pines, *Victimization of Street Prostitutes*, 7 VICTIMOLOGY: AN INT’L J. 122 (1982).

⁸⁸ See Julie Bindel, *Eradicate the Oldest Oppression*, THE GUARDIAN (Jan. 17, 2006), <http://www.guardian.co.uk/uk/2006/jan/18/ukcrime.prisonsandprobation>.

⁸⁹ Monasky, *supra* note 9, at 2003-04.

⁹⁰ Melissa Farley & Vanessa Kelly, *Prostitution: A Critical Review of Medical and Social Sciences Literature*, 11 WOMEN & CRIM. JUST. 29, 30–32 (2000).

between a whore and trick.”⁹¹ The judge further expostulated that “[a] woman who goes out on the street and makes a whore out of herself opens herself up to anybody . . . she steps outside the protection of the law. That’s a basic and fundamental legal concept.”⁹² Prostitutes report being routinely dismissed by law enforcement when they come forward with complaints of abuse. The Los Angeles Police Department formerly designated crimes against prostitutes as NHI, meaning that no humans were involved, showing an endemic dismissal of prostitutes as inferior and unworthy of basic protections.⁹³

The dismissal of violence against prostitutes becomes especially problematic given its prevalence. One study reported that “eighty-four percent out of a group of fifty-five female prostitution survivors participating in a project in Portland, Oregon, had been subjected to aggravated assault an average of 103 times a year; seventy-eight percent were subject to rape forty-nine times a year; and fifty-three percent were sexually tortured more than once a week, often while being filmed or photographed for pornography.”⁹⁴ Prostitutes suffer a “‘workplace homicide rate’ [fifty-one] times higher than that of the next most dangerous occupation, working in a liquor store”.⁹⁵ Both society and the law frequently ignore the widely documented violence against prostitutes, often to the point of death; the “tacit acceptance” of violence against prostitutes further alienates them from society and reinforces the belief that they are without recourse when abused.⁹⁶

The lack of empathy from police officers perpetuates a distrust of law enforcement amongst prostitutes and makes them unlikely to cooperate.⁹⁷ Prostitutes receive constant reinforcement for the belief that the police do not care about their claims and may even continue

⁹¹ Mark Arax, *Judge Says Law Doesn’t Protect Prostitutes, Drops Rape Count*, L.A. TIMES (Apr. 26, 1986), http://articles.latimes.com/1986-04-24/local/me-1698_1_criminal-law.

⁹² *Id.*

⁹³ Al Martinez, *Women on the Avenue*, L.A. TIMES (Aug. 9, 1996), http://articles.latimes.com/1996-08-09/local/me-32713_1_decriminalize-prostitution.

⁹⁴ Waltman, *supra* note 28, at 142.

⁹⁵ Leslie Bennetts, *The John Next Door*, NEWSWEEK (July 18, 2011 1:00 AM), available at <http://www.thedailybeast.com/newsweek/2011/07/17/the-growing-demand-for-prostitution.html>.

⁹⁶ JUHU THUKRAL & MELISSA DITMORE, THE URBAN JUSTICE CENTER, *REVOLVING DOOR: AN ANALYSIS OF STREET-BASED PROSTITUTION IN NEW YORK CITY* 47 (2003).

⁹⁷ *Id.* at 42–47.

the cycle of abuse.⁹⁸ Numerous reports cite police officers for extorting sexual services from prostitutes in exchange for leniency.⁹⁹ Therefore, pursuing criminal charges for the purchasers of sexual services becomes incredibly challenging due to the resistance of the prostitute.¹⁰⁰ The Swedish Model would foster a higher level of cooperation between prostitutes and law enforcement given that the police would pursue the johns and the pimps instead of the prostitutes.

3. Health Concerns and Addiction Challenges of Prostitutes

Beyond the juvenile status and frequent physical abuse of the typical prostitute in the United States, endemic health concerns further disrupt a qualification of prostitution as an autonomous and beneficial profession. The array of health problems reported by Californian prostitutes demonstrates the perils of their occupation: fifty percent of the respondents stated that they had a physical health problem; fourteen percent reported arthritis or nonspecific joint pain; twelve percent reported cardiovascular symptoms; eleven percent reported liver disorders; ten percent reported reproductive system symptoms; nine percent reported respiratory symptoms; nine percent reported neurological symptoms, such as numbness or seizures; eight percent reported HIV infection.¹⁰¹ The rates of the above health concerns become notable given that the average age of the responding prostitutes was twenty and therefore the rates of illness in relation to age should have been negligible.¹⁰²

The health of prostitutes becomes even more precarious in the context of drug addiction and abuse. In the above survey of Californian prostitutes, seventy-five percent of the respondents reported a drug abuse problem that affected their ability to make informed decisions.¹⁰³ Even when compared to the population of female arrestees rather than the general populace, the drug use of prostitutes is notably higher.¹⁰⁴ Addiction experts attribute the high levels of drug abuse amongst prostitutes to both functional and causal reasons: prostitutes use functional drug use to cope with the acts of

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Natapoff, *supra* note 6, at 1733.

¹⁰¹ Melissa Farley & Howard Barken, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27 *WOMEN & HEALTH* 37, 41 (1998).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

prostitution, and causal drug use (engaging in prostitution to finance a drug habit) often enticed them to enter the trade.¹⁰⁵

The rampant health concerns and addiction problems of prostitutes further undermine any notions that they represent autonomous participants in a free market exchange. Prostitutes shorten their lives with every year spent in the profession and essentially receive a death sentence if they engage in long-term street-level prostitution.¹⁰⁶ The average age of death for prostitutes in the United States is thirty-four, making prostitution one of the most dangerous occupations available.¹⁰⁷ The law in the United States effectively criminalizes the behavior of women who are killing themselves to satisfy basic survival and addiction needs. Prostitution cannot be viewed as a victimless crime that deserves criminal sanctions given that the very nature of the profession sacrifices life for sexual gratification.

4. Felony Convictions and Incarceration of Prostitutes in the United States

The disenfranchisement of prostitutes from mainstream society becomes most pronounced in the ten states where prostitution can result in a felony conviction.¹⁰⁸ In Texas, for example, over 350 prostitutes were in the state prison in August 2012, at a cost of over six million dollars per year.¹⁰⁹ Texas Senator John Whitmire commented that “[i]t’s nuts that we’ve got this many prostitutes in prison, people that we’re not afraid of, but we’re just mad at,” and noted that treatment programs would present a more effective response to prostitution.¹¹⁰ The justifications that support incarceration as criminal punishment cannot support the continued incarceration of prostitutes.¹¹¹ The traditional reasons for incarceration are to remove a dangerous member of society from the general population and reduce recidivism.¹¹² The incarceration of

¹⁰⁵ CALVIN R. TRENT, STREET-LEVEL PROSTITUTION AND DRUG ABUSE IN THE CITY OF DETROIT, DETROIT DEPARTMENT OF HEALTH AND WELLNESS PROMOTION.

¹⁰⁶ *Id.*

¹⁰⁷ Bennetts, *supra* note 95.

¹⁰⁸ Arizona, Florida, Idaho, Illinois, Michigan, Texas, Indiana, Louisiana, South Carolina, and Vermont all make repeat prostitution offenses a felony. *See* ARIZ. REV. STAT. § 13-3214 (Lexis Nexis 2006); FLA. STAT. § 796.07 (2012).

¹⁰⁹ Ward, *supra* note 1.

¹¹⁰ *Id.*

¹¹¹ JAMES AUSTIN ET AL., AM. SOC’Y OF CRIMINOLOGY, THE USE OF INCARCERATION IN THE UNITED STATES i (2000).

¹¹² *Id.*

prostitutes clearly does not further the reasons for incarceration; instead it drains state and county resources to create a “revolving door” in and out of prison for prostitutes.¹¹³

Several studies in Florida demonstrate the shockingly disparate levels of punishment for prostitutes in relation to their purchasers.¹¹⁴ Arrested prostitutes received jail time while their purchasers received a nominal fine.¹¹⁵ A study sponsored by the Florida State Supreme Court quoted Justice Gerald Kogan who reported that, “[i]t is almost unheard of for a male as a customer to be sent to jail.” The study concluded that prostitution cannot be considered a victimless crime and stated that the “jailing of prostitutes is a woefully inadequate response to the problem of prostitution.” The study ultimately recommended that punishment be increased for the purchasers of sex and the behavior of the prostitutes should be addressed with rehabilitative services.¹¹⁶ However, the study took place in 1990 and Florida still makes repeat prostitution offenses a felony crime.¹¹⁷ The study shows that states recognize the victim-based nature of prostitution but have not effectively altered laws and policies related to prostitution. Despite numerous studies documenting the substantial victimization of prostitutes in the United States, (highlighting the economic vulnerability, consistent and violent sexual assault, and consequential health risks of the sex trade) state law still focuses primarily on the moral repugnancy of the prostitute’s actions.¹¹⁸ The United States must begin to address the social and economic inequalities that pervade a life of prostitution and redirect punishment against the truly autonomous actors in the crime: the johns and pimps.

5. Disproportionate Conviction Levels of Minority Prostitutes

The punitive response of the justice system also perpetuates racial inequality in the United States.¹¹⁹ Though only forty percent of prostitutes are non-white, minority prostitutes account for eighty-five percent of those jailed for prostitution.¹²⁰ The intersection of race and

¹¹³ THUKRAL & DITMORE, *supra* note 66, at 5.

¹¹⁴ Diane Mason, *Equal Justice: Women, Men & the Law of the Land*, ST. PETERSBURG TIMES, Sept. 30, 1990, at 6F.

¹¹⁵ *Id.*

¹¹⁶ FLORIDA SUPREME COURT, GENDER BIAS STUDY COMMISSION: EXECUTIVE SUMMARY at 25–27 (1990).

¹¹⁷ *Id.*; *see also* FLA. STAT. § 796.07 (2012).

¹¹⁸ *Id.*

¹¹⁹ Beran, *supra* note 12, at 25-26.

¹²⁰ *Id.* at 25.

prostitution becomes notable as racial factors relating to socioeconomics make minority women more likely to enter a life of prostitution; also, once engaged in the sex trade, minority women are more likely to be subject to punitive criminal justice measures.¹²¹ The criminalization of the behavior of prostitutes disproportionately affects minority women and further victimizes the women who are “most silenced and devoid of legal rights.”¹²²

6. Incarceration Alternatives for Prostitutes

The efficacy of lower cost alternatives to a punitive criminal response towards prostitutes should be carefully considered by the United States. Texas, the state with the harshest responses to prostitution, has experienced success with alternatives to traditional punishment that emphasize drug treatment as a response to prostitution.¹²³ One program called Success Through Addiction Recovery (STAR) helps prostitutes arrested in Harris County, Texas receive substance abuse treatment rather than traditional incarceration.¹²⁴ The program recognizes that drug use is inextricably linked to prostitution and drug-treatment thereby presents a lower-cost alternative to the “revolving door” of the imprisonment of prostitutes.¹²⁵ These programs have successfully led to lower recidivism rates for prostitution offenses and addressed the ineffective nature of criminalizing prostitution without regard to the underlying causes.

III

CURRENT DEVELOPMENTS IN PROSTITUTION LAW IN SWEDISH MODEL COUNTRIES AND THE UNITED STATES

A. Changes in State Law in the United States

In 2007, New York State law changed to reflect altered views on both prostitution and sex trafficking.¹²⁶ The current status of New

¹²¹ *Id.* at 26.

¹²² *Id.*

¹²³ Dave Fehling, *Millions of Tax Dollars Spent Yearly to Incarcerate Prostitutes*, KHOU (Jan. 28, 2011 12:04 AM), <http://www.khou.com/news/investigative/Tax-Money-for-Prostitutes-114746744.html>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 120 (2009).

York State law aligns more directly with the Swedish Model than prior New York laws or the laws of other states.¹²⁷ The alterations in New York State law reflect a structuralist feminist approach that views prostitution as a victim-based crime.¹²⁸ Structural feminist theory is predicated upon the belief that predominant structures of patriarchy and capitalism perpetuate the oppression of women.¹²⁹ Structural feminists emphasize the dominating influence of societal structures, even if doing so leads to the construal of women as passive victims. Structural feminists therefore call for resistance toward the mechanisms in families, schools, and workplaces that serve to reproduce oppressive relations of power. Therefore, based on structuralist theory, prostitution cannot be viewed as a voluntary profession but rather as a source of oppression.¹³⁰ New York imposed harsher penalties for the patronizing of prostitutes, mandated sex offender registry for patronizing a prostitute under the age of seventeen, and decriminalized the actions of juvenile prostitutes.¹³¹ The alterations to New York State law demonstrate that the rationale that underpins the Swedish Model of partial decriminalization can be readily incorporated into state law in the United States.

In addition to New York, California and Illinois also incorporate the rationale of the Swedish Model into laws regarding prostitution.¹³² Both states criminalize the behavior of the purchasers based on the rationale that prostitution is not a victimless crime and that the purchasers must be deterred through criminal sanctions.¹³³ California does not criminalize the selling of oneself into commercial sex and thereby focuses the punishment more directly on the johns than the prostitutes.¹³⁴ The California law resulted from the influence of a non-profit called Standing Against Global Exploitation (SAGE). Norma Hotaling, a former prostitute with over thirty arrests, founded SAGE to redefine prostitution as a crime of victimization instead of

¹²⁷ *See id.*

¹²⁸ *Id.* at 118–19.

¹²⁹ Halley, *supra* note 10, at 349–51.

¹³⁰ *Id.*

¹³¹ *Id.* at 121–23.

¹³² *See* 720 ILL. COMP. STAT. 5/11-15 (2010); *see* N.Y. PENAL LAW § 100.00 (McKinney 2009); *see* CAL. PENAL CODE §§ 266e, 647(b) (West 2008).

¹³³ Amanda Walker-Rodriguez, *The Crime Next Door: An Examination of the Sex Trafficking Epidemic in the United States and How Maryland is Addressing the Problem*, 41 U. BALT. L.F. 43, 54.

¹³⁴ *See* CAL. PENAL CODE §§ 266i(a)(3) & 309 (West 2008).

traditional notions of prostitution as victimless.¹³⁵ “The men who seek out prostitutes don’t like to think they’re part of exploiting someone,” Hotaling said. “They like to believe it’s a victimless crime.”¹³⁶

California’s First Offender Prostitution Program (FOPP) resulted from the efforts of SAGE and coordinates with the San Francisco Police Department and the District Attorney’s Office to allow johns that are first-time offender to attend classes rather than traditional punishment.¹³⁷ The funds for the program come from fees paid by the offenders instead of utilizing tax dollars.¹³⁸ The focus in San Francisco has shifted dramatically towards educating and punishing the johns while providing the prostitutes resources and education.¹³⁹ The program also allows for former prostitutes to regain a sense of control and autonomy over their interactions with sex purchasers by allowing them to speak about their experiences.¹⁴⁰ Former prostitutes speak at the classes and relate feelings of subjugation and helplessness during the sexual exchanges with johns.¹⁴¹ They also detail the circumstances that led them to a life of prostitution include past sexual, physical, and emotional abuse. Subsequent interviews with former johns after the completion of the program demonstrate the efficacy of the classes. The johns frequently describe how the direct knowledge of the prostitute’s vulnerability, exploitation, and abuse countered their preexisting notions about the prostitute’s autonomy and even her enjoyment.¹⁴²

B. Current Status of the Swedish Model

The Swedish Model continues to report successes in Sweden, Norway, and Iceland.¹⁴³ It has had the intended effect of reducing prostitution and properly directing law enforcement efforts at the

¹³⁵ Benjamin Wachs, *First Offender Prostitution Program Punishes Victimless Crime*, SF WEEKLY (Mar. 5, 2008), <http://www.sfweekly.com/2008-03-05/news/first-offender-prostitution-program-punishes-victimless-crime/>.

¹³⁶ Justin Berton, *John School Takes a Bite Out of Prostitution*, SF GATE (Apr. 14, 2008), <http://www.sfgate.com/bayarea/article/John-school-takes-a-bite-out-of-prostitution-3219707.php>.

¹³⁷ Wachs, *supra* note 135.

¹³⁸ *Id.*

¹³⁹ STANDING AGAINST GLOBAL EXPLOITATION, <http://sagesf.org/> (last visited Nov. 5, 2012).

¹⁴⁰ Waltman, *supra* note 28, at 146–47.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Monasky, *supra* note 9, at 2033.

purchasers of sex.¹⁴⁴ A study regarding the effects of the Swedish Model in 2008 found that only eight percent of Swedish men had paid for sex, compared to around thirteen percent before the law came into force.¹⁴⁵ The criminalization of the johns' behavior has also facilitated the prosecution of pimps and sex traffickers by enticing them to serve as witnesses.¹⁴⁶ Though the Swedish Model can hardly be heralded as a panacea, it has proven effective in de-normalizing the purchase of sex and promoting a view of prostitutes as victims rather than autonomous and willing participants.

Studies show a continuing decrease in both the amount of women engaging in prostitution as well as the number of male purchasers. Thirty to fifty percent fewer Swedish women currently work as prostitutes compared with the data before the implementation of the Sex Purchase Law.¹⁴⁷ The decrease in availability has directly correlated to a decreased demand for commercial sex, making Sweden a less desirable market for sex traffickers.¹⁴⁸ Additionally, the Law has led to a fundamental shift in the Swedish public's attitude regarding commercialized sex.¹⁴⁹

IV

IMPLICATIONS AND POSSIBLE FUTURE DEVELOPMENTS OF A PARTIAL DECRIMINALIZATION SCHEME IN THE UNITED STATES

The United States should recognize the benefits of partial decriminalization and use existing programs such as support groups, social assistance, counseling, among others, to help transition the victimization of prostitutes into a partial decriminalization scheme. The United States already recognizes the benefits of rehabilitative services for prostitutes, although these services are usually mandated at the behest of a criminal justice system that prostitutes cannot

¹⁴⁴ Julie Bindel, *Legalizing Prostitution is Not the Answer*, THE GUARDIAN (July 2, 2010 6:29 PM), <http://www.guardian.co.uk/commentisfree/2010/jul/02/prostitution-legalise-criminalise-swedish-law>.

¹⁴⁵ *Id.*

¹⁴⁶ Selam Legesse Eshete, *The Relationship Between Prostitution and Sex Trafficking: The Case of Sweden and Denmark* (Jan. 3, 2010), <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=2302008&fileId=2302017>.

¹⁴⁷ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1193–94, 1202 (2004).

¹⁴⁸ Geneva Brown, *Women and Children Last: The Prosecution of Sex Traffickers as Sex Offenders and the Need for a Sex Trafficker Registry*, 31 B.C. THIRD WORLD L.J. 1, 19 (2011).

¹⁴⁹ Waltman, *supra* note 28, at 147.

reasonably trust.¹⁵⁰ By decriminalizing the behavior of the prostitutes, crucial steps can be taken to remedy the endemic victimization of prostitutes in the United States. The United States could create alternative programs for prostitutes and offer drug treatment and career services. The treatment of prostitution as inherently victim-based would cure the troubling distinction between trafficking laws and prostitution laws; instead of labeling prostitutes as autonomous actors, the United States could offer prostitutes the same treatment as trafficked victims.

CONCLUSION

The United States needs to pursue ameliorative solutions to problems related to prostitution beyond the current approach of the criminal justice system. The current system results in the frequent criminalization of juveniles and fails to recognize the inherent victimization of the typical prostitute. In treating prostitution as a victimless crime, the United States has been accused of effectively ignoring the welfare of thousands of disenfranchised prostitutes.¹⁵¹ The focus of animus against prostitution should be shifted to the purchasers of commercialized sex in order to properly reflect the power dynamic. The United States should follow Sweden and recognize prostitution as a victim-based crime that cannot be remedied solely through the use of punitive measures. An adoption of the Swedish Model would properly redirect the focus of punishment upon the truly autonomous actors in commercialized sex transactions—the johns and the pimps—and provide the prostituted victim with necessary services and rehabilitative options.

¹⁵⁰ See, e.g., James Pitkin, *The Prostitution Report: A Sex-worker Treatment Program Fails Key Benchmarks and Raises Privacy Questions*, WILLAMETTE WEEK (July 13, 2011), http://www.wweek.com/portland/article-17725-the_prostitution_report.html.

¹⁵¹ Rieger, *supra* note 7, at 246.

