



Equality Not Exploitation: An overview of the global sex trade and trafficking crisis, and the case for the Equality Model

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Contributors:

Rebecca Bender, Rebecca Bender Initiative

Taina Bien-Aimé, Coalition Against Trafficking in Women

Katie Feifer, The Voices and Faces Project

Rachel Foster, World Without Exploitation

Marian Hatcher, SPACE International-USA

Lauren Hersh, World Without Exploitation

Alexi Ashe Meyers, Sanctuary for Families

Anne K. Ream, The Voices and Faces Project

Shea Rhodes, CSE Institute, Villanova University Charles Widger School of Law

Rebecca Zipkin, Sanctuary for Families

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Introduction

The sex trade – fueled in part by human trafficking – is a crisis that exists globally, including in the United States. Countries that address the issue do so through a variety of policy and legal models including full criminalization, partial decriminalization, full decriminalization, and legalization of the sex trade (definitions to follow). Data exist that show the impact of each of these models in curbing trafficking and reducing the number of people who are commercially sexually exploited. The purpose of this paper is to provide an overview of the issue of commercial sexual exploitation, explain the different policy and legal models that exist for addressing it, summarize the impact that these approaches have had in regions in the U.S. and beyond our borders, and make policy recommendations for decreasing the numbers of persons exploited in the sex trade and supporting those who are in or have exited from it.

About the Issue

Definition

The sex trade is a market for acts of prostitution in which buyers (usually men) pay for sexual access to the bodies of other persons (usually women and girls, but also boys and men) with money or other things of value, including drugs, food, or shelter. Prostitution takes place in a broad range of venues, including brothels, illicit massage

businesses, escort services, hotels, private homes, cars, on the streets, and in strip clubs. Sex trafficking occurs when someone uses means that include threats or use of force, fraud, coercion, abuse of power or position of vulnerability for purposes of commercial sexual exploitation. A person younger than 18 who is bought and sold in the sex trade, is by definition a sex trafficked victim.¹ While not every person in the sex trade is sex trafficked, the sex trade is where sex trafficking occurs. It is critically important to recognize that while sex trafficking and prostitution are not the same, they are inextricably intertwined. Without a market for prostitution, sex trafficking would not occur. The sex trade operates like any other market, following economic principles of supply, demand, and profit incentive. Sex trafficking is one way the demand for prostituted persons is met.

Scope

The sex trade exists in virtually every region across the globe. Because the sex trade is a largely clandestine global market, there are no reliable estimates of the scope and scale of the problem. Nevertheless, many governmental and non-governmental agencies and academic researchers have attempted to estimate the prevalence of sex trafficking, since those who are trafficked are universally recognized to be crime victims. The U.N. Office of Drugs and Crime (UNODC) estimates that in 2016, 72% of detected trafficking victims are women and girls and that 94% of detected sex trafficking victims globally are women and girls, making human trafficking primarily a crime of gender-

¹This is the definition of trafficking under the Palermo Protocol, the international framework to address trafficking. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, 2237 UNTS 319 (entered into force Dec. 25, 2000)[Palermo Protocol]; see also Trafficking Victim Protection Act, 22 U.S.Code § 7101, et. seq. (2000)(defining trafficking under U.S. law, mirroring the Palermo Protocol except exploitation of a “position of vulnerability” is not considered trafficking).

based violence and discrimination.² Though data are scarce, recently reported figures indicate that boys and men are also trafficked for sexual exploitation in significant numbers. For example, The Counter Trafficking Data Collective reports that in 2018, 50% of boy trafficking victims were victims of sexual exploitation.³

Reports released by the U.S. Department of Justice have established that of 241 federal trafficking cases initiated in 2016, 95% concerned sex trafficking, with 22% of those victims being under the age of 18.⁴ Human trafficking is estimated to bring in illegal global profits of about \$150 billion every year –with \$99 billion of those profits associated with sex trafficking⁵. In many regions in the United States, as well as in other countries, the sex trade has become a profitable enterprise for gangs and other organized criminal enterprises.⁶

Victim Characteristics

Research conducted in multiple countries has shown that the majority of those in the sex trade, whether they are trafficked or not, come from marginalized groups and

² United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2018*, <https://www.unodc.org/unodc/data-and-analysis/glotip.html> [hereinafter U.N. TIP Report 2018].

³ Counter Trafficking Data Collaborative, *Human Trafficking and Gender: Differences, Similarities and Trends* (2019) <https://www.ctdatacollaborative.org/story/human-trafficking-and-gender-differences-similarities-and-trends>.

⁴ Office for Victims of Crime, *2018 Human Trafficking Statistical Fact Sheet*, https://ovc.ncjrs.gov/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_Trafficking_508_QC.pdf; see also U.S. Dept. of State, *Trafficking in Persons Report* (2019), <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

⁵ Int'l Labour Office, *Profits and Poverty: The Economics of Forced Labour*, 13, 15 (2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

⁶ Ami Carpenter & Jamie Gates, *The Nature and Extent of Gang Involvement in Sex Trafficking in San Diego County*, University of San Diego and Point Loma Nazarene UNIVERSITY (Jan. 2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/249857.pdf>.

vulnerable populations. Studies all show a similar pattern: victims of prostitution tend to be women and girls who endured childhood physical or sexual abuse or neglect, are economically marginalized, have been involved in the foster care system, or who ran away as children.⁷

The Sex Trade in the United States

The United States is one of the top destinations for sex trafficking in the world. The U.S. State Department estimates that tens of thousands of people are trafficked from other countries to the U.S. annually.⁸ But the United States is not only a destination for international trafficking; it is a hotbed for domestic human trafficking and the commercial sexual exploitation of vulnerable U.S. born populations.

Who Fuels the Market

In stark contrast to the demographics common to exploited populations, studies show that those purchasing sex overwhelmingly tend to be men with disposable incomes, a large percentage of whom are white.⁹ In addition, although sex buying crosses racial, ethnic, and economic categories, the data show that sex buyers most often have relatively high incomes, are married or otherwise in partnerships, and do not have

⁷ See Jody Raphael and Katie Feifer, *What We Know About Sex Trafficking, Prostitution and Sexual Exploitation in the U.S.*, World Without Exploitation, https://endsexualexploitation.org/wp-content/uploads/Research-Summary_What-we-know-about-trafficking-prostitution-and-exploitation-in-US-.pdf; Farley, Melissa et al., *Prostitution and Trafficking in Nine Countries: An Update On Violence and Traumatic Stress*, 2 J. of Traumatic Stress 33 (2004).

⁸ Polaris Project, *The Facts*, <https://polarisproject.org/human-trafficking/facts>.

⁹ Demand Abolition, *Who Buys Sex? Understanding and Disrupting Illicit Market Demand*, Demand Abolition, <https://www.demandabolition.org/wp-content/uploads/2019/07/Demand-Buyer-Report-July-2019.pdf>.

criminal records.¹⁰ One study commissioned by the U.S. Department of Justice found that Seattle had the fastest-growing commercial sex industry in the United States, more than doubling in size between 2005 and 2012.¹¹ This rise correlated with the boom in the tech sector in Washington State, which sharply increased the number of men in the region with disposable income.¹² According to authorities, some of the men who paid for prostitution in this region spent \$30,000 to \$50,000 per year on sex buying.¹³

U.S. Sex Trade Victims

Existing data on sex trafficking victims identified in the U.S. suggest that the vast majority are U.S. citizens or permanent legal residents (83%), and are female (94%).¹⁴ In 2018, the National Center for Missing & Exploited Children (NCMEC) estimated that, of the endangered runaways reported to them, one in seven were sex trafficking victims.¹⁵ While there are fewer research studies and data on men and boys in the sex trade in the U.S., it is vital to note that they, too, are often victims,¹⁶ though the proportion of male, female, and transgender victims in the U.S. sex trade is unknown.

¹⁰ *Id.*

¹¹ Nina Burleigh, *Tech Bros Bought Sex Trafficking Victims by Using Amazon and Microsoft Work Emails*, Newsweek (Dec. 21, 2017) <https://www.newsweek.com/metoo-microsoft-amazon-trafficking-prostitution-sex-silicon-valley-755611>.

¹² *Id.*

¹³ *Id.*

¹⁴ Duren Banks and Tracey Kyckelhahn, Bureau of Justice Statistics, U.S. Dep't of Justice, *Characteristics of Suspected Human Trafficking Incidents, 2008–2010* (2011) <https://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

¹⁵ Nat'l Ctr. for Missing & Exploited Children, *Child Sex Trafficking: Overview*, (2019), <http://www.missingkids.org/theissues/trafficking>.

¹⁶ Tim Swarens, *Boys - The Silent Victims of Sex Trafficking*, USA Today (Feb. 8, 2018) <https://www.usatoday.com/story/opinion/nation-now/2018/02/08/boys-silent-victims-sex-trafficking/1073799001/>.

Victims are preyed on in urban areas, rural communities, and everywhere in between. Location alone is not an indicia of whether a vulnerable person will be sex trafficked.

Victims of the U.S. sex trade span every racial and economic background. However, certain populations are *particularly* vulnerable to exploitation in the sex trade: those with a history of childhood abuse and neglect, juveniles placed in foster care, adults and youth living in homelessness, and those who ran away from home as a child, especially those who ran away multiple times.¹⁷

Studies indicate that women and girls of color and/or of low income backgrounds are disproportionately impacted by commercial sexual exploitation in the U.S. Black women and girls currently represent about 13% of the U.S. population, yet represented about 40% of suspected human trafficking victims across the country, according to a two-year review of cases.¹⁸ The FBI reports that black children comprised 38% of all juvenile prostitution arrests in 2018.¹⁹ In South Dakota, where only 8% of the population is Native American, 40% of sex trafficking victims are Native American women.²⁰ LGBTQ youth are also particularly vulnerable. According to one study, LGBTQ youth are at a greatly increased risk of homelessness due to family rejection and thus are three to

¹⁷ Raphael, *supra* at 37-43.

¹⁸ Duren, *supra* at 1, 6; see also Office of Victims of Crime, Office of Justice Programs, U.S. Dept of Justice and the National Center for Victims of Crime, *New Challenges, New Solutions: 2013 National Crime Victims' Rights Week Resource Guide*, "Statistical Overview," 24 (2013) https://www.ncjrs.gov/ovc_archives/ncvrw/2013/pdf/2013ResourceGuide-Full.pdf.

¹⁹ FBI, *Uniform Crime Reports, Arrests by Race and Ethnicity* <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-43>; see also Malika Saada Saar et al., *The Sexual Abuse to Prison Pipeline: The Girls' Story*, 7-11, Rights4Girls (2015) https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf (discussing the relationship between out-of-home placements, juvenile detention, and prison as well as the over-representation of girls of color in residential placement).

²⁰ Danielle Ferguson, *Law Enforcement, Native Communities Focus on Sex Trafficking Prevention Training*, Argus Leader (Aug. 27, 2016) <https://www.argusleader.com/story/news/crime/2016/08/27/law-enforcement-native-communities-focus-sex-trafficking-prevention-training/89273822/>.

seven times more likely to engage in commercial sex in order to meet their basic needs, including the need for housing.²¹

While no data indicate definitively the average age of entry into the sex trade in the U.S., it is well documented that many children are trafficked for sexual exploitation in this country, and that many adults exploited in the sex trade were first targeted as children. According to the United Nations Office on Drugs and Crime, in North America, more than 70% of trafficking victims detected in 2016 were trafficked for sexual exploitation. The majority were female, with girls under 18 accounting for 25% of those who were trafficked.²² In a study conducted among a sample of Ohio children who were trafficked into the sex trade, 12% were sold before age 12.²³ Multiple studies have documented that adults were commonly sold into the sex trade well before their 18th birthdays and many remain ensnared in this industry long after they have reached adulthood.²⁴

The negative impact of the sex trade on its victims is significant and inherent to the industry. Those who are trafficked or otherwise engaged in commercial sexual exploitation, whether in brothels, fake massage parlors, strip clubs or other venues for prostitution, suffer deep and often long-lasting harms. Multiple studies in the U.S. have

²¹ Les B. Whitbeck et al., *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. of Sex Res. 329-342 (Nov. 2004), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1058&context=sociologyfacpub>; see also Bryan N. Cochran et al., *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 Am. J. of Pub. Health, 773-777 (May 2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447160/>.

²² U.N. TIP Report 2018.

²³ Raphael, *supra* at 36.

²⁴ *Id.*

documented those harms to include physical assaults, permanent physical injury, mental illness, substance addiction, post-traumatic stress disorder (PTSD), self-harming, and suicide.²⁵ One study found that 72% of women in prostitution suffered traumatic brain injuries, mostly at the hands of buyers and pimps.²⁶ Several surveys have found that between 70-80% of prostituted women have been threatened with a gun or other weapon.²⁷ One study done among prostituted women in Washington, D.C. found that 42% met the criteria for a PTSD diagnosis.²⁸

Policy and Legal Models to Address the Sex Trade

In the United States, conversations about how to address the sex trade are occurring with increasing frequency. In the past few years, several jurisdictions have considered legislation to fully or partially decriminalize the sex trade. Debate and dialogue about the most effective ways to decrease the number of persons in the sex trade and best serve those in or exiting the industry are occurring in California,²⁹ New York,³⁰ Illinois,³¹

²⁵ Melissa Farley et al., *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, William Mitchell College of Law, 3 (October 2011) <https://www.niwrc.org/sites/default/files/documents/Resources/Garden-of-Truth.pdf>; see also Raphael, *supra*.

²⁶ Farley, *Garden of Truth* at 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ S.B. 233, 2019 Leg. (Cal. 2019) (protecting individuals from being prosecuted for certain prostitution-related offense when they report to be a victim or a witness of a serious crime and banning the possession of condoms to be used as evidence of prostitution). The Senate Bill 233 was enacted in July of 2019. See Charles Gallmeyer, *California Governor Signs Legislation Protecting Rights of Sex Workers*, *Jurist* (Aug. 1, 2019), <https://www.jurist.org/news/2019/08/california-governor-signs-signs-legislation-protecting-rights-of-sex-workers/>.

³⁰ S.B. 6419, 2019 Leg. (N.Y. 2019) (attempting to decriminalize sex work).

³¹ S.B. 1693, 101st Gen. Assemb., First Reg. Sess. (Ill. 2019); H.B. 3064, 101st Gen. Assemb., First Reg. Sess. (Ill. 2019).

Washington State,³² Washington, D.C.,³³ New Hampshire,³⁴ Hawaii,³⁵ and Nevada.³⁶

The vast majority of gender justice advocates agree that the illegal sex trade is harmful to those exploited in it and damaging to society more broadly. Over the past two decades, various approaches have been taken to minimize or eliminate the harms caused by the sex trade. Many of these approaches have focused on creating a “safer” sex trade, reducing the harms caused to exploited people.³⁷

There is broad recognition in many countries, including the U.S., that those who are engaged in prostitution are not criminals and should not be treated as such. That is why so many jurisdictions are moving away from fully criminalizing the sex trade. Beyond this fundamental area of agreement, however, there are two diverging views. On one side are those who have argued for decriminalization or legalization of the entire commercial sex industry, including sex buying, brothel keeping, and pimping (this has been broadly defined as the “sex workers rights” position). On the other side is a

³² H.B. 1383, 66th Leg., Reg. Sess. (Wash. 2019).

³³ Community Safety and Health Amendment Act of 2019 (D.C. 2019) (attempting to decriminalize sex work).

³⁴ H.B. 287, 2018 Leg. (N.H. 2018) (proposing a committee to study decriminalization of sex work).

³⁵ S.B. 1039 H.D. 1, 2019 Leg. (Haw. 2019) (allowing for a motion to vacate certain prostitution offenses under certain circumstances without consideration of the defendant’s status as a victim of human trafficking). The law was enacted in July of 2019 and is the first law of its kind in the United States. See Casey Leins, *Hawaii Passes Law Protecting Sex Trafficking Victims*, U.S. News (July 3, 2019), <https://www.usnews.com/news/best-states/articles/2019-07-03/hawaii-makes-it-easier-for-sex-trafficking-victims-to-erase-prostitution-convictions>. See also H.B. 486, 30th Leg., Reg. Sess. (Haw. 2019); H.B. 1512, 30th Leg., Reg. Sess. (Haw. 2019); H.B. 1513, 30th Leg., Reg. Sess. (Haw. 2019); H.B. 233, 30th Leg., Reg. Sess. (Haw. 2019); S.B. 783, 30th Leg., Reg. Sess. (Haw. 2019); S.B. 478, 30th Leg., Reg. Sess. (Haw. 2019).

³⁶ S.B. 413, 80th Leg., Reg. Sess. (Nev. 2019); S.B. 368, 80th Leg., Reg. Sess. (Nev. 2019); S.B. 7, 80th Leg., Reg. Sess. (Nev. 2019); A.B. 120, 80th Leg., Reg. Sess. (Nev. 2019).

³⁷ Villanova University Charles Widger School of Law Institute to Address Commercial Sexual Exploitation, *Report on Commercial Sexual Exploitation in Pennsylvania Spring 2019*, at 12, 23, <https://cseinstitute.org/wp-content/uploads/2019/06/Spring-2019-Report-6.21.19-pdf.pdf> [hereinafter CSE Institute Report].

community of gender justice and human rights advocates who argue for the decriminalization of those who are bought and sold in the sex trade, full legal accountability for pimps, johns, and brothel owners, and the provision of comprehensive social services for people in or who have exited prostitution (this approach has been called the Equality Model). The Equality Model is informed – and supported – by numerous exited sex trade survivors and survivor-led organizations.

Both those who argue for full decriminalization or legalization and those who advocate for the Equality Model agree that no individual who has been sold for sex should ever be criminalized.

Examining Full Decriminalization and Legalization

Decriminalization of the sex trade and legalization of the sex trade have been implemented in several countries.³⁸ While decriminalization and legalization are not technically the same, these two models have much in common.

Decriminalization of prostitution is the removal of penalties for all activities within the sex trade. This includes decriminalizing people in prostitution, sex buyers, and also includes removing criminal accountability for exploiters. In a system of full decriminalization, there are no arrests of pimps, brothel owners, managers, escort service owners, sex buyers, or sex tourist operators. Decriminalization promotes prostitution as a legitimate income-generating activity: a “job like any other.”³⁹

Legalization of the sex trade means that specific acts within the commercial sex industry

³⁸ *Id.* at 12.

³⁹ *Id.* at 23; Ane Mathieson et al., *Prostitution Policy: Legalization, Decriminalization and the Nordic Model*, 14 Seattle J. for Social Justice 367 (2016) <http://digitalcommons.law.seattleu.edu/sjsj/vol14/iss2/10>.

are both legal and regulated. In countries that have legalized the sex trade, the buying and selling of sex are both within the bounds of the law. Brothel owning and third-party management, including some pimping, is also legally regulated. Legalization reconceptualizes prostitution as labor, normalizing prostitution and its related activities. Legalization protects sex buyers and classifies sex trade establishment owners and managers as legitimate business entrepreneurs. In countries where legalization has been implemented, the state can profit from the sale of women and girls through the tax code.

Examining the Equality Model

The Equality Model (also known as the Sex Buyer Law, Demand Reduction Model, the Swedish Model, Nordic Model, Abolitionist Model, or Partial Decriminalization) is a legal framework that decriminalizes those who are bought and sold in the sex trade, providing support services including exit strategies. Simultaneously, it holds accountable sex buyers as well as third-party exploiters including pimps and brothel owners. The Equality Model originated in Sweden in 1999, not only as a tool to combat sex trafficking and commercial sexual exploitation, but also as a way to promote gender equality.⁴⁰

The Equality Model proceeds from an understanding of prostitution as gender-based violence, which presents a very different ideological framework than prostitution as either labor or a consequence of “female immorality.”⁴¹

⁴⁰ 6 ch. 1-15 § Brottsbalken [Brb] [Penal Code] (Svensk Författnings-samling [SFS] 2018:1005) (Swed.), unofficial English translation available at: <https://www.government.se/4a95e7/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code-unofficial-translation-20181005>.

⁴¹ Mathieson, *supra* at 396.

The following table summarizes the key tenets of the major policy and legal models currently being implemented.

	Full Criminalization	Partial Decriminalization	Full Decriminalization	Legalization
Implemented in places such as:	States of the United States (except six Nevada counties), most other countries	Sweden, Norway, Iceland, Republic of Ireland, Northern Ireland, Canada, France, Israel	New Zealand	Germany, Austria, Greece, Latvia, The Netherlands, Senegal, Nevada – six rural counties, Victoria and Queensland, Australia
Treatment of those in prostitution	Arrest, prosecution, incarceration	Not criminalized		
Treatment of buyers, pimps, traffickers, brothel owners	Criminalized. Subject to arrest and prosecution	Criminalized. Subject to arrest and prosecution	Not criminalized	

Outcomes

The data clearly establish that full decriminalization or legalization of the sex trade do not achieve the desired objectives of reducing or eliminating the harms done to those who are prostituted. The data also show that sex trafficking actually *increases* in countries that fully decriminalize the sex trade.⁴² What is clear is that when a state decriminalizes or legalizes the entire sex market, it normalizes prostitution.⁴³ In so doing, it condones and promotes a policy that causes long-lasting physical and psychological harms to already marginalized persons. There is no evidence that indicates that normalizing the sex trade through full decriminalization or legalization makes those in that sex trade safer. Here is why:

1. Normalization of the sex trade leads to an increase in demand, causing the sex trade to grow.

In countries that have adopted full decriminalization or legalization policies, there is an increased demand for prostitution. The Netherlands legalized its sex trade in 2000. Germany legalized its sex trade in 2002. The result in both countries has been an expansion of the sex trade, a boom in the demand for commercial sex and an increase in sex tourism.⁴⁴ In Germany, for example, an estimated one million men buy sex every day.⁴⁵ Berlin, the capital, has over 500 brothels and over 150,000 people in

⁴² Seo-Young Cho et al., *Does Legalized Prostitution Increase Human Trafficking?* 41 *World Dev.* 67 (January 16, 2012) <https://doi.org/10.1016/j.worlddev.2012.05.023>.

⁴³ Rachel Moran and Melissa Farley, *Consent, Coercion and Culpability: Is Prostitution Stigmatized Work or an Exploitive and Violent Practice Rooted in Sex, Race, and Class Inequality?* 48 *Arch. Of Sexual Behav.* 1947 (Oct. 2019) <https://link.springer.com/article/10.1007/s10508-018-1371-8>.

⁴⁴ Cho, *supra*.

⁴⁵ Brad Tuttle, *Germany Has Become the Cut-Rate Prostitution Capital of the World*, *Time* (June 18, 2013) <http://business.time.com/2013/06/18/germany-has-become-the-cut-rate-prostitution-capital-of-the-world/>.

prostitution.⁴⁶

Research done in the United States in 2019 among a nationally representative sample of men found that over 20% of men who had never paid for sex reported that they would consider doing so if the circumstances were right, which would presumably include, if sex buying were legal.⁴⁷ Decriminalization of sex buying normalizes the practice, which leads to increased demand.

2. When the sex trade is fully decriminalized or legalized, trafficking increases to meet the demand.

When the sex trade market grows, the only way to satisfy increased demand is to traffic vulnerable women, girls, and transwomen from more disenfranchised communities or from abroad. In a 2012 study, “Does Legalized Prostitution Increase Human Trafficking,” researchers analyzed data from 116 countries to determine the effect of legalized prostitution on human trafficking.⁴⁸ They also reviewed case studies of Denmark, Germany, and Switzerland in order to examine the longitudinal effects of legalizing or criminalizing sex buying and sex selling. The study’s findings led to the conclusion that countries that have legalized sex buying are associated with higher human trafficking inflows than countries where sex buying is prohibited.⁴⁹

In the last decade, the sex industry in the Netherlands has increased by 25% and is

⁴⁶ *Id.*; Cho, *supra* at 75.

⁴⁷ Demand Abolition, *supra*.

⁴⁸ Cho, *supra*.

⁴⁹ *Id.*

estimated to be 5% of the country's GDP.⁵⁰ A 2008 Netherlands National Police Service report revealed that 50–90% of women in legal Dutch brothels are “working involuntarily.”⁵¹ Jürgen Rudloff, the owner of a major brothel chain in Germany was convicted in 2019 of abetting criminal gangs⁵² that were trafficking women into his legal brothels. Rudloff's brothels expanded under legalization.⁵³ Because there were not enough women to “work” within his brothels legally, he turned to traffickers and pimps to procure vulnerable women and girls to satisfy the increased demand.⁵⁴

3. Full decriminalization and legalization produce similar outcomes.

Germany and the Netherlands have legalized the sex trade, resulting, essentially, in state-sponsored exploitation and trafficking. Other countries and jurisdictions, including some in the U.S., seek to fully decriminalize the sex trade, leaving the state out of regulating the market entirely. They look to New Zealand, which has had a fully decriminalized sex market since 2003. While some proponents argue that full decriminalization is a better policy than legalization of the sex trade, the data indicate otherwise and the end result of these policies appears to be largely the same. The U.S.

⁵⁰ Suzanne Daley, *New Rights for Dutch Prostitutes, but No Gain*, N.Y. Times Aug. 12, 2001, at A1-A4.

⁵¹ Gunilla S. Ekberg and Kasja Wahlberg, *The Swedish Approach: A European Union Country Fights Sex Trafficking 2 Solutions* J. 2 (Mar 2, 2011)(citing *Korps landelijke politiediensten, Schone Schijn: De signalering van mensenhandel in de vergunde prostitutiesector* [*Keeping Up Appearances: The Signs of Human Trafficking in the Legalized Prostitution Sector*], KLPD (2008).

⁵² Hilke Lorenz, *Trouble in Paradise: the rise and fall of Germany's 'brothel king,'* The Guardian (Jun. 22, 2019) <https://www.theguardian.com/global-development/2019/jun/22/trouble-in-paradise-rise-and-fall-of-germany-brothel-king-jurgen-rudloff>.

⁵³ Joel Gunter & Ben Clissitt, eds. *Welcome to Paradise*, TELEGRAPH (2013), <https://s.telegraph.co.uk/graphics/projects/welcome-to-paradise/>.

⁵⁴ Lorenz, *supra*.

State Department Trafficking in Persons Report of 2019⁵⁵ found that New Zealand continues to have a significant trafficking problem. The government of New Zealand has noted that identification of child sex trafficking victims has been hampered since the policy of full decriminalization was adopted.⁵⁶ Additionally, since the New Zealand law was passed and sex buying has been largely normalized, men who buy sex from children have been treated with greater leniency, and the detection of child sex trafficking victims/rings has been hampered.⁵⁷

4. Full decriminalization does not increase the safety or well-being of prostituted people.

One of the primary arguments made by advocates for full decriminalization is that when prostituted people no longer fear arrest or incarceration, or when they can unionize and advocate for better working conditions, their physical and mental health will improve. No evidence to date lends credence to this argument. Research done by the New Zealand government has shown that the majority of those in prostitution do not feel any safer in a system of full decriminalization, and experience just as much violence in the legal sex trade.⁵⁸ Inevitably, wherever the commercial sex industry is legal and allowed to flourish, more sex trafficking –and thus more violence and abuse – will follow.

The Equality Model is the only policy/legal model proven to reduce the demand that

⁵⁵ U.S. Department of State, 2019 Trafficking in Persons Report (Jan. 2019) <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/new-zealand/>.

⁵⁶ *Id.* at 109.

⁵⁷ *Id.*

⁵⁸ *Id.* at 55-58.

drives sex trafficking and reduce the number of persons harmed by commercial sexual exploitation.

Why has the Equality Model (also known as the Sex Buyer Law, the Swedish Model, Nordic Model or partial decriminalization) proven effective? An overview of the impact that adoption of the Equality Model has had in other regions or countries can be instructive.

The conceptualization of prostitution as gender-based violence, which presents a very different ideological framework than “prostitution as either labor or a consequence of female immorality,”⁵⁹ led Sweden in 1999 to enact extensive interventions and treatment for survivors of commercial sexual exploitation, and explains why Sweden, unlike the Netherlands, does “not separate prostitution from trafficking in human beings.”⁶⁰ Sweden was the first country to stop arresting individuals exploited in prostitution while penalizing buying, pimping, and brothel keeping.⁶¹

When adopted in Sweden, the Equality Model was “a collaborative effort focused on changing the social norms that enable prostitution to flourish. Punitive measures or incarceration are not features of this model. Instead, it combines three equally important components: (1) community education, (2) social services, and (3) law enforcement.”⁶²

In the 1990s, the Swedish Parliament reached the consensus that prostitution did not belong in a society that strives toward gender equality. They found that “Swedish

⁵⁹ Mathieson, *supra* at 396.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 398.

society identified male demand for prostitution as the major contributing factor to the commercial sex industry’s growth.”⁶³ Sweden did not want to expand prostitution by normalizing it as “work” – they wished to do just the opposite. Sweden committed to ending prostitution by convincing “people to abstain from committing the crime of buying sex and to establish norms under which no woman, man, girl, or boy can be sold and no one has the right to sexually exploit another human being.”⁶⁴

A Swedish special inquiry found that the number of men purchasing sex dropped from 12.7 percent to 7.6 percent between the introduction of Equality Model legislation in 1999 and 2008.⁶⁵ Opinion polls conducted indicated that 72% of Swedes supported the law by 2014.⁶⁶ Furthermore, according to Sweden’s national rapporteur on human trafficking, Sweden has become an unattractive destination country for traffickers, pimps, and sex buyers.⁶⁷ Estimates show that in Sweden’s three largest cities, Stockholm, Gothenburg, and Malmö only 200-250 women are “involved in prostitution.”⁶⁸ In contrast, conservative estimates indicate that in the city of Amsterdam, which has legalized prostitution, more than 15 times that number of individuals are trafficked each

⁶³ *Id.* at 400.

⁶⁴ *Id.* at 401 (quoting Kajsa Claude, The Swedish Inst., *Targeting the sex buyer. The Swedish Example: Stopping Prostitution and Trafficking Where It All Begins* (2010), http://exoduscry.com/wp-content/uploads/2010/07/swedish_model.pdf).

⁶⁵ Janice Raymond, *Not a Choice, Not a Job: Exposing Myths about Prostitution and the Global Sex Trade*, 39 (1 ed., 2013).

⁶⁶ The Swedish Inst., *Prostitution Policy in Sweden—Targeting Demand*, 9 (2019) https://sharingsweden.se/app/uploads/2019/02/si_prostitution-in-sweden_a5_final_digi_.pdf.

⁶⁷ Raymond, *supra* at 72-73.

⁶⁸ The Swedish Inst., *supra* at 9.

year.⁶⁹

In the two years following its 1999 prohibition on the purchase of sex, Sweden saw a 50% decrease in street prostitution⁷⁰ and a significant decrease in the number of men purchasing sex.⁷¹ In 2011, it was estimated that the prostitution population of Sweden's neighbor Denmark, where the purchase of sex is legal, was 12 to 15 times larger than Sweden's prostitution population per capita.⁷²

And Sweden is not unique. Norway adopted the Equality Model in 2009. A study commissioned by the Norwegian government in 2014 found that the demand for and volume of prostitution was reduced since the law was enacted. The prevalence of trafficking was also lower. Street prostitution in Oslo, the largest city, declined 30-60% in five years. Indoor prostitution declined 10-20% over the same period.⁷³ Today, the Equality Model has been adopted by Sweden, Iceland, Norway, Northern Ireland, Canada, France, Ireland, and Israel.⁷⁴ Advocating for this model can be daunting: It is opposed by both those who want to legalize prostitution completely, and by those who want complete prohibition, where both buying and selling sex is illegal and prostituted

⁶⁹ Cho, *supra* at 67.

⁷⁰ The Swedish Insti., *supra* at 8..

⁷¹ Donna Hughes, *Best Practices to Address the Demand Side of Sex Trafficking*, 26 (August 2004) https://www.popcenter.org/sites/default/files/problems/trafficked_women/PDFs/Hughes_2004a.pdf; Michael Shively et al., *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, Final Report*, vi (June 2012) <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>.

⁷² Max Waltzman, *Sweden's Prohibition of the Purchase of Sex; The Law's Reasons, Impact, and Potential*, 34 *Women's Studies International Forum* 449-474 (2011),

⁷³ *Norway's Closely Watched Prostitution Ban Works, Study Finds*, REUTERS, Aug. 11, 2014, <https://www.reuters.com/article/us-norway-prostitution-idUSKBN0GB1BL20140811>.

⁷⁴ Movement for the Abolition of Prostitution, *Nordic Model Now*, <https://Nordicmodelnow.org>.

persons are penalized. The Equality Model is a more effective, humane way to address the issue of commercial sexual exploitation and respond to its victims.

Summary of Outcomes

	Equality Model	Full Decriminalization/ Legalization
Demand for prostitution	Reduced	Increased
Sex Trafficking	Reduced	Increased
Reports of incidents of violence against prostituted people	NA	Increased
Dedicated support services for survivors	Available	Not available
Societal attitudes	Increased belief in gender equality	NA

Policy Recommendation for the U.S.

Target Exploiters

Consumer demand is the lifeblood of any business, legal or illegal. The commercial sex industry is no exception. Sex buyers create the economic incentives that motivate pimps and traffickers to enter the industry and launch or expand operations. Law enforcement strategies that successfully target the demand for prostitution are the most effective tools for financially damaging those who exploit, thereby discouraging entry into and perpetuation of the industry.⁷⁵

There is considerable evidence that the demand for prostitution is highly responsive to legal sanctions. In a 2018 national study of sex buyers in the U.S., 25% of active, high frequency sex buyers reported that they would be deterred by a perceived risk of arrest.⁷⁶

Stop Arresting Exploited Individuals

The sad truth is that even today, most people arrested for prostitution-related crimes in this country are not buyers, but instead the women, transwomen, and girls who are its

⁷⁵ Leidholdt, D., “Protecting Survivors of Human Trafficking and Holding Their Exploiters Accountable: A White Paper for the NYPD” <https://www.nycourts.gov/LegacyPDFS/IP/human-trafficking/content/2.Human%20Trafficking%20White%20Paper%20for%20the%20NYPD.PDF>; Farley, *Prostitution and Trafficking in Nine Countries*, *supra*.

⁷⁶ Demand Abolition, *supra* at 28.

victims and survivors.⁷⁷ There is no evidence that arresting those who are bought or sold has an impact on the size of the sex trade or reduces the harms that it causes. Indeed, the current U.S. policy of arresting those in prostitution, which is enforced in all states but Nevada (prostitution is governed by state, not federal law) harms the very people we need to protect and support. It is critical that we recognize those in prostitution as victims, not criminals. Many of those in prostitution are trafficking victims. Many people in prostitution are first sold in their teens⁷⁸ and, thus, are *per se* trafficking victims under the Trafficking Victims Protection Act (TVPA).⁷⁹ Many adult women who appear to be voluntarily in prostitution are, in fact, minor trafficking victims, or have been under the control of traffickers and/or pimps.⁸⁰ Those in prostitution are disproportionately likely to have suffered abuse, often sexual abuse, in childhood, compared to those not in prostitution, and the prevalence of post-traumatic stress disorder among people in prostitution has been found in at least one study to be in the same range as that of combat veterans.⁸¹

⁷⁷ See CSE Institute Report, *supra* at 13-15; Jennifer McKim and Michael Bottari, *Huge Gender Divide in Prostitution-Related Arrests*, New England Center for Investigative Reporting (Oct. 5, 2014) <https://www.necir.org/2014/10/05/demand-story/>.

⁷⁸ Dorchen Leidholdt, "Protecting Survivors of Human Trafficking and Holding Their Exploiters Accountable: A White Paper for the NYPD," <https://www.nycourts.gov/LegacyPDFS/IP/human-trafficking/content/2.Human%20Trafficking%20White%20Paper%20for%20the%20NYPD.PDF>.

⁷⁹ Trafficking Victim Protection Act, 22 U.S.Code § 7101, et. seq. (2000).

⁸⁰ Roe-Sepowitz et al., *Online Advertisement Truth Set, Sex Trafficking Matrix: A Tool to Detect Minors in Online Advertisements*, Arizona University School of Social Work (Nov. 2018) https://socialwork.asu.edu/sites/default/files/stir/november_2018_sex_trafficking_matrix_report_final.pdf.

⁸¹ Farley, *Prostitution and Trafficking in Nine Countries*, *supra*.

Provide Dedicated Support Services to Survivors

Survivors of prostitution, including those in countries that have legalized prostitution, often suffer long-term mental health impacts including severe PTSD and dissociation⁸² and suicidal ideation.⁸³ In one study conducted with Native American women in prostitution, 72% suffered traumatic brain injuries, 84% had been physically assaulted, and 78% had been threatened with a gun or knife by buyers.⁸⁴

We know that arresting prostitution victims has profoundly negative consequences, including, as the U.S. Department of State’s 2013 Trafficking in Persons Report noted, “reinforc[ing] how traffickers around the world commonly threaten their victims: law enforcement will incarcerate or deport victims if they seek help.”⁸⁵ The Justice for Victims of Trafficking Act amended the TVPA by recognizing that purchasing sex is an intrinsic part of sex trafficking.⁸⁶ It also recognized the importance of targeting perpetrators rather than victims by delineating that being a victim of compelled prostitution or sex trafficking is an affirmative defense to a charge of engaging in, or loitering for the purpose of engaging in, prostitution.

⁸²Ingeborg, *supra*.

⁸³ Astrid Zweynert, *Violence, Self-Harm and Suicide Common Among Trafficked Children: Researchers*, Reuters, Sept. 8, 2015, <https://www.reuters.com/article/us-health-trafficking-children/violence-self-harm-and-suicide-common-among-trafficked-children-researchers-idUSKCN0R81WP20150908>.

⁸⁴ Farley et al., *Garden of Truth*, *supra* at 3..

⁸⁵ U.S. Department of State, *supra*.

⁸⁶ Justice for Victims of Trafficking Act, S. 178, et. seq. (2015).

Providing legal protection to victims, however, should only be a starting point. The Equality Model, as defined and implemented in Sweden,⁸⁷ calls for holistic, robust social services which provide necessary medical and psychological care as well as economic, educational, and housing assistance to survivors as they attempt to escape their exploitation.

Create a Comprehensive Public Education Campaign

The stigma and isolation felt by victims of trafficking and sexual exploitation is not only caused by their traffickers. Society more broadly tends to view women engaged in prostitution as morally inferior, and engaged in prostitution by choice.⁸⁸ To effectively combat trafficking, this message must change. Our society must come to recognize the harms inherent in prostitution and the violence inflicted on victims of trafficking, while rejecting outdated attitudes about those who have been exploited. An effective and national public education campaign will contribute to the implementation of survivor-focused policies and changed public attitudes about those in as well as those who have exited the sex trade.

This cultural shift in attitudes serves as an underpinning to the other efforts within the Equality Model.

⁸⁷ The Swedish Institute, *Prostitution Policy in Sweden – Targeting Demand*, 2019.
https://sharingsweden.se/app/uploads/2019/02/si_prostitution-in-sweden_a5_final_digi_.pdf

⁸⁸ Catherine MacKinnon, *Prostitution and Civil Rights*, 1 Mich. J. of Gender and L. 13 (1993)
<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1192&context=mjgl>.

Conclusion: Why the Equality Model is the Answer

The harms of the sex trade are clear. We also have clear evidence, collected over decades, that decriminalization or legalization are not the best way to address these harms. Emerging evidence supports that the Equality Model is the most effective way to prevent vulnerable, marginalized women and girls from being exploited and harmed in the sex trade, and support those who wish to exit it. No other policy framework is as effective, because no other model targets the demand that fuels the sex trade so effectively.

The evidence from countries that have tried to address the harms of the sex trade via full decriminalization and legalization is powerful. But nothing is as compelling as the voices and testimonies of survivors of the sex trade themselves.

Following their lead is critical. Over 340 survivors of prostitution and trafficking signed an open letter in June, 2019, opposing full decriminalization of pimping, sex buying, and brothel owning.⁸⁹ In this letter, survivors of trafficking and prostitution describe the extreme violence inherent in the sex trade, whether legal or illegal. They also describe the long-term harms that are done to those who have been bought and sold for sex.

And sex trade survivors in the U.S. have done more than speak out in favor of the Equality Model. They have developed and published an Equality Model-based policy platform that urges stakeholders and policy makers to endorse and enact comprehensive policies based on three “Pillars of Priority:” 1) Reform to our nation’s criminal justice approach to prostitution; 2) Provide fair wage employment for survivors;

⁸⁹ *Survivors Say NO to Full Decriminalization of Prostitution*, Medium.com (June 25, 2019), <https://medium.com/world-without-exploitation/survivors-say-no-full-decriminalization-of-prostitution-2272a86719c8>.

and 3) Set essential standards of care for people exiting the sex trade. As these survivors have written, “We need a survivor-centered movement that focuses on the consequences of experiencing sexual commodification and creates solutions to ending sexual exploitation. A survivor-centered approach will provide concrete solutions to the harm caused by prostitution. The core tenets of the platform we ... have identified centers on respect, dignity, and the simple fact that consensual sex is not bought, sold, or traded.”⁹⁰

Advocates for the Equality Model reject the premise that prostitution is the world’s oldest profession and that there will always be a demand for it. They instead believe that prostitution is a dangerous and damaging form of exploitation. It is time to enforce penalties and fines on sex buyers, pimps, and brothel owners while exempting from criminal liability those who are prostituted or trafficked. And it is critical that we offer prostituted people exit strategies and the support needed to live full lives in the wake of being sexually exploited. A world in which the commercial sex trade is legal is a world in which gender and racial equality are not possible. The single injustice that marginalizes, violates, and stigmatizes prostituted women is prostitution itself.

⁹⁰ Marian Hatcher et al., *Exited Prostitution Survivor Policy Platform*, 3 Dignity: A J. on Sexual Exploitation and Violence 2 (2018), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1133&context=dignity>.