

Sex Work is Real Work: Why Decriminalization Protects Every Body

Gabrielle Ramos*

Sex work has a long and tumultuous history in the United States. Despite societal opposition and legislation expressly prohibiting sex work, it still remains a thriving industry despite its legal status. However, new legislation has made it difficult for sex workers to not only make a living, but also to protect themselves against abuse from clients or even law enforcement officers. The sex work industry is complex and largely intersectional, expanding to include issues such as human rights, workers' rights, criminal justice reform, public health, race relations, class, sex, gender identity, and sexual orientation. Moreover, the effect of sex work within the LGBTQ+ community presents its own unique set of obstacles. This Comment explores the history of sex work in the United States and examines the currently enacted legislation that affects the day-to-day life of a sex worker. This Comment also expresses how sex work disproportionately affects members of the LGBTQ+ community, how another country regulates sex work in their country, and how decriminalization is the only solution to ensuring the protection of every body involved.

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* © 2023 Gabrielle Ramos. Senior Comments Editor, Volume 32, *Tulane Journal of Law & Sexuality*. J.D. 2023, Tulane University Law School; B.A. 2017, English Literature, State University of New York at Albany. The author would like to thank all the journal members for their hard work, patience, and dedication.

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I. INTRODUCTION

Prostitution, or to use the more preferable term, “sex work,”¹ has a long and torrid history in the United States. Today, the commercial sex industry includes a variety of sexual services—some legal and some not—which include pornography, stripping, phone and internet sex, and sexual intercourse obtained through brothels, massage parlors, escort services, or on the street.² Despite its legal status, sex work remains a thriving industry. Sex work is criminalized in nearly every state, but that has not detracted from its prevalence or visibility. Nevertheless, attitudes towards sex work still remain largely negative and critical.

Sex workers often sell sex because they have to. In order to function and participate in regular society, one must earn a livelihood. The majority of sex workers turn to sex work because it is the best option that they have.³ Sex work often serves as a lifeline for those who are marginalized.⁴ There are no special skills or qualifications needed to become a sex worker, which makes it a viable job option for many. Some find that sex work offers better pay, better opportunities, and more flexibility with the use of their own time.⁵ As a society, however, the notion of sex work often has a negative connotation. Some simply become sex workers because they enjoy the work.⁶ Those individuals pursue sex work in an effort to explore and embrace their sexuality.⁷ Sex work often provides many

1. See Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523, 525 (2000) (“Sex work” is preferable to the term “prostitution,” which both “describes and condemns.”).

2. See generally RONALD WEITZER, *SEX FOR SALE: PROSTITUTION, PORNOGRAPHY, AND THE SEX INDUSTRY* (2d ed. 2010) (providing an overview of the sex industry including chapters dedicated to pornography, stripping, strip clubs, telephone sex work, legal prostitution, customers of prostitutes, sex tourism, and sex trafficking).

3. Survivors Against SESTA, *Sex Work is an LGBTQ Issue*, <https://survivorsagainstsesta.org/lgbtq/>.

4. *Id.*

5. Jessica N. Drexler, *Governments’ Role in Turning Tricks: The World’s Oldest Profession in the Netherlands and the United States*, 15 PENN. ST. INT’L. L. REV. 201, 211 (1996).

6. *Id.*

7. *Id.* at 211.

desirable attributes such as flexible work schedules, the opportunity for financial gain, and independence.⁸

Sex work is an intersectional issue. It explores issues of police brutality, LGBTQ+ rights, healthcare, and incarceration that affect a very vulnerable population, especially trans women of color. Individuals who identify as LGTBQ+ are generally already marginalized because of their sexual orientation or gender identity. As sex workers, they are further exposed and marginalized. However, sex workers deserve the same rights and protections as anyone else. Criminalization forces the industry underground where it cannot be regulated, leaving sex workers vulnerable and unprotected.⁹ Sex workers face a higher rate of violence because clients often assume that, because they are sex workers, clients can get away with assault and other violent acts.¹⁰ Unfortunately, sex workers usually do not report the violence because they fear being arrested for selling sex or worse, facing further abuse at the hands of police.¹¹

Decriminalization would help to reduce police violence against sex workers, make sex workers less vulnerable to violence from their clients, allow sex workers to better protect their own health, promote equality for the LGBTQ+ community, and help reduce mass incarceration. Decriminalization would also empower sex workers to better protect themselves and be able to seek justice for themselves. The need to decriminalize sex work is becoming increasingly necessary because sex work is real work.

In Part I, this Comment discusses the history of sex work in the United States and the definition of sex work under the law. Part II examines the legislation currently enacted which directly impacts the lives of sex workers in this country. Part III looks at how sex work disproportionately affects members of the LGBTQ+ community and the risks they face participating in the profession. Finally, Part IV is a call to arms as to why sex work should be decriminalized in the United States and looks to constitutional challenges to statutes that criminalize sex work, or “prostitution” as statutes still refer to it and explores how the Netherlands has addressed this issue.

8. *Id.*

9. Kaniya Walker, *To Protect Black Trans Lives, Decriminalize Sex Work*, ACLU, (Nov. 20, 2020), <https://www.aclu.org/news/lgbtq-rights/to-protect-black-trans-lives-decriminalize-sex-work>.

10. *Id.*

11. *Id.*

II. HISTORY OF SEX WORK IN THE UNITED STATES

The first laws to regulate sexual intercourse in what is today the United States were passed in 1692 in Massachusetts, which made fornication, or sexual intercourse between unmarried people, illegal.¹² After 1692, further laws were passed that not only made fornication illegal, but also punished single women and labeled them as sexual deviants under crimes of adultery or “street walking” laws.¹³ In the 1800s, brothels began to close down because they were seen as public nuisances.¹⁴ Laws regulating sex and single women continued to be passed over time, but prostitution was still largely accepted, or at the very least tolerated.¹⁵

Until the nineteenth century, prostitution flourished in the United States.¹⁶ There was a shift in the late nineteenth century when certain groups, both religious and women’s societies, grew concerned over social morality and began a crusade against prostitution.¹⁷ Their efforts eventually led to some states either regulating prostitution or out-right banning it.¹⁸ In 1910, Congress passed the Mann Act, which sought to prohibit the transportation of individuals across state lines for the purpose of prostitution, and also ordered the deportation of undocumented immigrants involved in sex work.¹⁹ After various attempts to regulate sex work, the federal government prohibited the buying and selling of sexual acts with the enactment of the Standard Vice Repression Act of 1919.²⁰ By 1925, every state in America had enacted some form of prohibition against prostitution.²¹ Between 1960 and 1970, courts began striking down laws concerning sexuality, including sodomy, access to birth

12. ROBERT T. FRANCOEUR, *TAKING SIDES: CLASHING VIEWS ON ISSUES IN HUMAN SEXUALITY*, 264 (Robert T. Francoeur ed., 1987) (Fornication is voluntary sexual intercourse between an unmarried woman and a man, especially an unmarried man. Webster’s New Universal Unabridged Dictionary 722 (1983)).

13. Eleanor M. Miller et al., *The United States, PROSTITUTION: AN INTERNATIONAL HANDBOOK ON TRENDS, PROBLEMS, AND POLICIES*, 300, 301 (Nanette J. Davis ed., 1993) (For example, in Massachusetts, nightwalking was an offense established in 1699 and reestablished in 1787.)

14. FRANCOEUR, *supra* note 12, at 264.

15. *Id.*

16. Timothy J. Gilfoyle, *Prostitution*, in *THE READER’S COMPANION TO AMERICAN HISTORY* 875 (Eric Foner & John A. Garraty eds., 1991).

17. *Id.* at 876.

18. *Id.*

19. 18 U.S.C.A. § 2421 (West, Westlaw through Pub. L. No. 115-90).

20. Nicole A. Hough, *Sodomy and Prostitution: Laws Protecting the “Fabric of Society,”* 3 *PIERCE L. REV.* 101, 113 (2004).

21. FRANCOEUR, *supra* note 12, at 264-65.

control, and abortion, but laws concerning prostitution remained intact.²² By 1971, prostitution was completely illegal in the United States with the exception of thirteen counties in the state of Nevada.²³

A. Recent History

Despite its high visibility, sex work remains criminalized in nearly every state. Within the last twenty-five years, this country has experienced a dramatic growth within the commercial sex industry.²⁴ The rise of technology is the primary catalyst for this growth and has made purchasing and viewing pornography or sexual acts more accessible, while being able to do such in the comfort and privacy of one's home or location of choice.²⁵ Just because sex work has shifted to a digital platform, however, does not mean it has become any safer for sex workers.²⁶ Police do not often enforce prostitution laws except against the most visible sex workers: street sex workers, women of color, transgender workers, and immigrants.²⁷ "Sex workers who solicit customers from the street . . . typically have the lowest social status; are disproportionately low-income; and are among the most vulnerable in the sex industry to robbery, rape, murder, arrest, criminal prosecution, and police harassment and brutality."²⁸ Sex work is a "human rights, workers' rights, criminal justice issues, public health priorities, and oppression related to race, class, sex, gender identity, and sexual orientation" issue.²⁹ The sex work industry is complex and diverse and presents matters of intersectionality, which underscores the heightened vulnerability of many sex workers with intersectional identities.

B. Definition of Prostitution Under State Law

The sex industry includes both legal and illegal activity. In most states, certain forms of sex work—such as child pornography, pimping,

22. BARBARA MEIL HOBSON, *UNEASY VIRTUE: THE POLITICS OF PROSTITUTION AND THE AMERICAN REFORM TRADITION*, 210 (1987) (citing *Griswold v. Connecticut*, 382 U.S. 479 (1965); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Roe v. Wade*, 410 U.S. 113 (1973)).

23. Miller, *supra* note 14 at 303.

24. WEITZER, *supra* note 2, at 1.

25. *Id.* See also *Stanley v. Georgia*, 394 U.S. 557 (1969).

26. Natalia Benitez et al., *Prostitution and Sex Work*, 19 GEO. J. GENDER & L. 331, 333 (2018).

27. *Id.*

28. *Id.*

29. *Id.*

pandering, and the exchange of sexual acts for payment—are prohibited.³⁰ Other forms of sex work—including phone sex, stripping and erotic dancing, and adult pornography—are simply regulated.³¹ For definitional purposes, “prostitution” is generally understood to be the exchange of sexual activity, including but not limited to sexual intercourse, oral sex, anal sex, or assisted masturbation, for money or other financial compensation.³² However, there is no uniformity among state statutes.

Typically, the crime of prostitution involves three elements: “(1) some degree of sexual activity or conduct, (2) compensation, and (3) intent to commit prostitution.”³³ State statutes typically require “that an individual perform, offer to perform, or agree to perform a sexual act in order for that individual to be charged with prostitution.”³⁴ While a few states require some form of sexual contact or performance to occur, the majority of states consider a mere offer of performance to be sufficient for criminal liability.³⁵ Furthermore, “some states criminalize the mere solicitation or negotiation of prospective prostitution,” while some states require compensation to qualify as prostitution.³⁶ However, compensation does not need to be monetary.³⁷ There is no consensus among states of whether a finding of specific or general intent is required for conviction.³⁸ Many courts have recognized that there are two valid defenses to prostitution charges: marriage and entrapment.³⁹ However, consent is not a legitimate defense against prostitution.⁴⁰

30. *Id. See, e.g.*, GA. CODE ANN. § 16-6-13 (West, Westlaw through 2022 Reg. Sess. Ga. Gen. Assemb.); LA. STAT. ANN. § 14:84 (West, Westlaw through 2022 1st Extraordinary, Veto, Reg. & 2d Extraordinary Sess.); MINN. STAT. ANN. § 617.247 (West, Westlaw through 2022 Reg. Sess.).

31. Benitez et al., *supra* note 27, at 333-34 (Courts generally defer to county zoning regulations for sexually explicit materials, despite claims of free speech violations.); *see, e.g.*, City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) (upholding ordinance that confined adult theatres to certain locations in the city); *see also* Young v. American Mini Theatres, 427 U.S. 50 (1976) (upholding Detroit “Anti-Skid Row Ordinance” that limited the number of displays of sexually explicit materials in an area, thus dispersing adult theatres).

32. *Id.* at 336.

33. *Id.*

34. *Id.*

35. *Id. See, e.g.*, Files v. Bernal, 22 P.3d 57, 59 (Ariz. Ct. App. 2001); *see also* People v. DeBartolo, 610 N.E.2d 131, 138 (Ill. App. Ct. 1993); State v. Kittilstad, 231 Wis. 2d 245, 259 (Wis. 1999).

36. Benitez et al., *supra* note 27, at 338.

37. *Id.*

38. *Id.*

39. *Id.* at 343.

40. *See* Dornbusch v. State, 156 S.W.3d 859, 871 (Tex. App. 2005) (“A prostitute’s consent to sex in exchange for money does not make the conduct legal.”).

III. LEGISLATION REGARDING SEX WORK IN THE UNITED STATES

Prostitution is often regarded as the oldest profession in the world.⁴¹ Although policing sexual misconduct typically falls to the states,⁴² the federal government has regulated sex work through legislation, often under the guise of sex trafficking.⁴³ With the rise of technology and use of the internet, sex work and trafficking has primarily shifted from the streets to the world wide web.⁴⁴ Sex traffickers use the internet to search for a market for sex trafficking victims through the use of online advertisements.⁴⁵ Under Section 230 of the Communications Decency Act of 1996,⁴⁶ internet service providers were exempted from liability against claims of sex trafficking activity on their websites through use of advertisements.⁴⁷ The reason courts found for this exemption was because the internet service providers were not creating the illegal content.⁴⁸ However, Congress began to pass legislation that held internet service providers liable and accountable for fostering illegal sex trafficking activity.⁴⁹ Because of the harm felt by victims and their communities due to sex trafficking, Congress passed new legislation in an effort to end the spread of sex trafficking through use of the internet.⁵⁰ Recent examples of such legislation include the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)⁵¹ and the Stop Enabling Sex Trafficking Act (SESTA),⁵² both passed in 2018.

41. Drexler, *supra* note 6, at 201.

42. See *United States v. Wolf*, 787 F.2d 1094, 1097 (7th Cir. 1986).

43. See *The Mann Act*, 18 U.S.C. § 2421 (2017).

44. Heidi Tripp, *All Sex Workers Deserve Protection: How FOSTA/SESTA Overlooks Consensual Sex Workers in an Attempt to Protect Sex Trafficking Victims*, 124 PA. ST. L. REV. 219, 220-21 (2019).

45. See Marguerite A. O'Brien, *Free Speech or Slavery Profiteering?: Solutions for Policing Online Sex-Trafficking Advertisement*, 20 VAND. J. ENT. & TECH. L. 289, 295 (2017).

46. See Communications Decency Act of 1996 (CDA), 47 U.S.C. § 230 (1996), amended by 47 U.S.C. § 230 (2018).

47. See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

48. *Id.*

49. Tripp, *supra* note 45, at 222.

50. *Id.*

51. See Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-64 (Apr. 11, 2018) (amending the Communications Decency Act to no longer grant immunity to internet service providers for content posted by third parties that promotes or facilitates prostitution and sex trafficking or the advertising of sex trafficking).

52. See Stop Enabling Sex Trafficking Act, S. 1693, 115th Cong. (2018) (amending 18 U.S.C. § 1591, the sex trafficking provision of the federal criminal code).

A. *The Effect FOSTA/SESTA Has on the Sex Work Industry*

In their attempt to protect sex trafficking victims, legislators overlooked the negative effects that FOSTA and SESTA would have on sex workers.⁵³ With the rise of technology and the vast accessibility of the internet, sex workers have avoided some dangers by taking their work from the streets to using the internet to promote their work.⁵⁴ Some research shows that the internet actually helps sex workers by allowing them to effectively screen their potential clients, share information with other sex workers, and advertise their services off the streets.⁵⁵ Moving sex work to the internet also helps to secure payments and create a sense of legitimacy that the profession historically lacks.⁵⁶ The internet provides a sort of safe haven for sex workers—it promotes safety and job security, mitigates the risk of violence against them, and creates a community and support system of sex workers.⁵⁷ Unfortunately, anti-sex trafficking legislation such as FOSTA/SESTA has caused that sense of security to vanish and resulted in negative consequences for sex workers in the United States.

Congress became hyper-focused on diminishing the prevalence of sex trafficking through the use of the internet by holding internet service providers accountable for the illegal activity of sex traffickers, which resulted in the ratification of FOSTA and SESTA.⁵⁸ However, targeting internet service providers raises some First Amendment issues. FOSTA and SESTA's weak and misguided attempts to reduce or end online sex trafficking strips away freedom of speech for people who fall outside of FOSTA/SESTA intended scope.⁵⁹ Thus, FOSTA/SESTA have forced sex workers to return to the streets.

Conflicts regarding the scope of FOSTA/SESTA revolve around “the lack of a definition for ‘prostitution’ within the amendment, resulting in an aggressive limitation of consensual sex worker’s free speech on the internet.”⁶⁰ FOSTA/SESTA’s neglect in defining “prostitution” equates the distinctly different groups of sex trafficking victims and consensual

53. Tripp, *supra* note 45, at 222.

54. *Id.* at 223.

55. See Emily McCombs, ‘This Bill Is Killing Us’: 9 Sex Workers on Their Lives in the Wake of FOSTA, HUFF. POST (May 17, 2018), https://www.huffpost.com/entry/sex-workers-sesta-fosta_n_5ad0d7d0e4b0edca2cb964d9.

56. Tripp, *supra* note 45, at 229.

57. *Id.* at 230.

58. *Id.* at 233.

59. *Id.* at 234.

60. *Id.* at 236-37.

sex workers under the legislation.⁶¹ The legislation also gives a dangerously broad definition of “promotion of prostitution,” which is not limited to just sex trafficking, but sweeps in any trading of sex for money or other goods.⁶² Moreover, the acts create a new and vaguely defined federal crime for the facilitation of prostitution, which carries a ten-year prison sentence. FOSTA/SESTA’s definition of “facilitation” is so vague and open to interpretation that it could potentially prohibit critical harm reduction and anti-violence tactics that sex workers depend on to survive.⁶³ Because of the vagueness in these definitions, FOSTA/SESTA threaten the lives and safety of sex workers.

Another unforeseen consequence of FOSTA/SESTA legislation is the burden it has placed on law enforcement.⁶⁴ Advertisements found online were used by law enforcement to find victims of sex trafficking. Also, the same websites previously used by law enforcement to locate victims and interfere with sex trafficking networks are now being attacked by FOSTA/SESTA.⁶⁵

Ultimately, FOSTA/SESTA failed in its intended purpose. FOSTA/SESTA blatantly ignores the needs of sex workers. By lumping together sex workers and sex trafficking victims, sex workers became even more marginalized and endangered without access to client screening tools or to other members of their community. It made it even harder to locate victims of sex trafficking. FOSTA/SESTA also limited everyone’s freedom of speech with regards to the use of the internet. This legislation failed to take into consideration that internet service providers would respond by removing all posting capabilities on their websites, thus creating an overly censored use of the internet and limiting everyone’s free speech rights on the internet in the process.⁶⁶ The passing of FOSTA/SESTA harms the very people it intended to protect. Eliminating sex trafficking and protecting potential victims is certainly a cause Congress should focus on; however, it should not be at the expense of making sex workers more vulnerable. Continued support for this overly broad piece of legislation would only increase mass incarceration rates,

61. *Id.* at 237.

62. Ian S. Thompson, *Congress Proposes to Fight Online Sex Trafficking by Harming Sex Workers*, ACLU, (Mar. 16, 2018), <https://www.aclu.org/blog/criminal-law-reform/congress-proposes-fight-online-trafficking-harming-sex-workers>.

63. *Id.*

64. Tripp, *supra* note 45, at 238.

65. *Id.* at 238-39.

66. *Id.* at 245.

harm sex workers and victims of sex trafficking, and further marginalize members of the LGBTQ+ community.⁶⁷

B. Other Laws

Criminalization of sex work and prostitution goes beyond simply the exchange. Proxy laws such as soliciting, pandering, or promoting could also criminalize other sex workers, peers, family members and community support.⁶⁸ These laws are often overbroad and require no victim at all.⁶⁹ Simple, nonsexual acts such as sharing information, driving someone to an appointment, or receiving rent money can lead to charges.⁷⁰ Harm reduction techniques like peer support, referrals for potential clients to one another, and being bodyguards for one another also run the risk of becoming misdemeanors or, in the case of a youth, felonies.⁷¹ Laws, such as those against promoting prostitution, can be used against one person who helps another person by posting an advertisement or acting as a booker to interface with clients.⁷² Pandering for the purposes of prostitution can criminalize information sharing about how to find clients between peers within the sex work community.⁷³ For a community that relies on information from one another, these networks are put in jeopardy through third-party laws.⁷⁴ Despite what legislators might think, removing these support systems does not disincentivize someone from engaging in sex work, but instead forces many to go underground.⁷⁵

IV. HOW SEX WORK DISPROPORTIONATELY AFFECTS MEMBERS OF THE LGBTQ+ COMMUNITY

One cannot examine sex work without examining its role within the LGBTQ+ community. A transgender person is twice as likely to be

67. Thompson, *supra* note 63.

68. Survivors Against SESTA, *Sex Work is an LGBTQ Issue*, Survivors Against SESTA (2018), https://survivorsagainstsesta.org/lgbtq/#_edn7 (Laws such as promoting prostitution can be used against one person who helps another by posting an advertisement or acting as a booker to interface with clients. Pandering for the purposes of prostitution can, for example, criminalize information sharing about how to find clients between peers in similarly precarious life situations.)

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

unemployed than someone who is cisgender.⁷⁶ Homelessness and housing stability are also serious issues. Some cities report that at least forty to fifty percent of their homeless youth report to identify as members of the LGBTQ+ community.⁷⁷ Discrimination in traditional employment and in seeking social services benefits only exacerbates the problem. It has been reported that about ninety percent of the transgender community has reported some form of harassment, mistreatment, and discrimination while in the workplace.⁷⁸ As a result of being pushed out of these areas due to their identity, many members of the LGBTQ+ community have turned to sex work as a means to survive.

Transgender people often choose sex work because homophobia and transphobia exile them from their communities.⁷⁹ A recent transgender discrimination survey conducted by *Meaningful Work: Transgender Experiences in the Sex Trade* found that eleven percent of respondents reported they participated in sex work.⁸⁰ Homeless youth members of the LGBTQ+ community are seven times more likely than heterosexual peers to trade sex for a place to stay.⁸¹ This results in limited economic advancement opportunities. In an effort to further marginalize transgender women, “police profiling and institutional discrimination leads to high rates of incarceration for prostitution-related offenses.”⁸² This exposes transgender women to higher rates of violence by law enforcement officers.⁸³ LGBTQ+ youths are especially vulnerable, as “they have a highly disproportionate rate of contact with law enforcement in comparison to their heterosexual peers.”⁸⁴ The disparity is historically

76. JAIME M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 55 (Nat’l Ctr. for Transgender Equal. & Nat’l Gay & Lesbian Task Force, 2011).

77. LAURA E. DURSO & GARY J. GATES, SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICE PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS 3 (UCLA Sch. of L. Williams Inst. et al. 2012).

78. Grant, *supra* note 77.

79. See *Underserved. Overpoliced. Invisibilised. LGBT Sex Workers Do Matter*, INT’L COMM. ON THE RTS. OF SEX WORKERS IN EUR. 1, 4 (Oct. 2015), <https://www.nswp.org/sites/default/files/Underserved.%20Overpoliced.%20Invisibilised.%20LGBT%20Sex%20Workers%20Do%20Matter%2C%20ICRSE%20-%202015.pdf>.

80. ERIN FITZGERALD ET AL., MEANINGFUL WORK: TRANSGENDER EXPERIENCES IN THE SEX TRADE 13 (Nat’l Ctr. for Transgender Equal., 2015).

81. MEREDITH DANK ET AL., SURVIVING THE STREETS OF NEW YORK: EXPERIENCES OF LGBTQ YOUTH, YMSM, AND YWSW ENGAGED IN SURVIVAL SEX 5-6 (Urb. Inst. 2015).

82. Benitez, *supra* note 27, at 364.

83. *Id.*

84. *Id.*

caused by the police equating “homosexuality with deviancy.”⁸⁵ Law enforcement use of profiling and abuse encourages increased violence against transgender people, but those that engage in sex work are left even more vulnerable.⁸⁶ Because transgender women are more likely to engage in sex work, they are more likely to be incarcerated. Jails and prisons often misgender them, though, and they are forced to go to male facilities where they are subjected to higher risks of violence.⁸⁷ The conviction haunts them even out of jail or prison, preventing people from getting jobs, housing, and even healthcare.

High levels of criminalization of certain activities and discrimination against certain groups makes members of the LGBTQ+ community more susceptible to violence.⁸⁸ Violence towards queer individuals does not just come from public entities like law enforcement, but also from private persons, hate groups, family members, and intimate partners.⁸⁹ Members of the LGBTQ+ community who are also sex workers are especially affected by the criminalization of sex work because of the increased level of scrutiny towards their sexual behavior and gender identity, which further keeps them on the outskirts of society.⁹⁰ The residual stigma results in higher rates of poverty, homelessness, inadequate access to necessary medical care, and substantial mental and emotional trauma.⁹¹

The collateral consequences of a prostitution arrest can also make access to resources and economic stability challenging. A prostitution conviction can result in disqualification from public housing,⁹² deportation or the inability to adjust immigration status, expulsion from a higher education institution, refusal of student financial aid,⁹³ eviction or removal of children from the home, and many other collateral consequences. Caring about the wellbeing of the LGBTQ+ community means caring about the health and safety of sex workers.

85. Brief of American Civil Liberties Union Foundation of Southern California, et al. as Amici Curiae Supporting Plaintiffs-Appellants at *23, *Erotic Serv. Provider Legal Educ. & Research Project v. Gascon*, No. C15-01007 JSW (2016) WL 1258638 (N.D. Cal. 2016).

86. *Id.* at *13.

87. Walker, *supra* note 10.

88. Benitez, *supra* note 27, at 364.

89. *Id.*

90. *Id.* at 364-65.

91. *Id.* at 365.

92. Marah A. Curtis et al., *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, 15 CITYSCAPE: A J. OF POL’Y DEV. AND RSCH., 37, 44-45 (2013).

93. *Id.*

V. WHY DECRIMINALIZING SEX WORK WOULD PROTECT EVERYBODY

When governments discuss the regulation of sex work, three systems are mentioned: (1) criminalization, (2) decriminalization, and (3) legalization.⁹⁴ The amount of government control within each system is what distinguishes the three. Criminalization is the predominant legal framework which states that engaging in acts of prostitution is illegal and punishable by criminal sanctions.⁹⁵ Decriminalization seeks to eliminate criminal penalties and take prostitution out of the hands of the state, leaving it unregulated.⁹⁶ Legalization, the framework applied to legal brothels in parts of Nevada, would make prostitution a regulated industry in which the state would provide licenses, require medical examinations, and collect taxes.⁹⁷ In the United States, there is much debate over which system should be implemented.

A. *The Great Debate*

Sex work in the United States is very controversial. Views on the subject are extremely diverse and vary greatly. On one side of the debate are those who view sex as “the glue that holds a marriage together and something that should be saved for just a husband and a wife.”⁹⁸ Others say that sex work is degrading.⁹⁹ On the other side, some believe, in the face of modern reality, people should be able to choose how they earn a living.¹⁰⁰

In the United States, sex work is criminalized nearly everywhere. Those in favor of keeping things the way they are often use morality as an anchor.¹⁰¹ They believe that prostitution is presumptively and inherently immoral and the law should not condone or encourage immoral behavior.¹⁰² To these opponents, prostitution is sinful because it undermines the ideal that sex is reserved for those who are married.¹⁰³ People in favor of criminalizing prostitution also tend to argue that entering into prostitution is never the person’s own choice or made from

94. Drexler, *supra* note 6, at 201.

95. Benitez, *supra* note 27, at 358.

96. *Id.*

97. *Id.*

98. Drexler, *supra* note 6, at 205.

99. *Id.*

100. *Id.*

101. *Id.* at 206.

102. *Id.*

103. *Id.*

their own free will.¹⁰⁴ Sex is regarded as something that is mutual and never coercive or exploitative.¹⁰⁵ They cannot fathom that prostitution is any different from sex trafficking or that it is not gender-based exploitation.¹⁰⁶ In fact, one anti-prostitution organization, Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER), believe that prostitution is based on male domination and deny that women choose prostitution freely and that it is a valid career.¹⁰⁷ Their leading argument as to why people go into sex work is economic desperation, because a person with a true choice does not become a prostitute.¹⁰⁸ Those who believe in criminalization also tend to believe that prostitution perpetuates a criminal underworld.¹⁰⁹ There is a belief that prostitution is connected to the drug trade and that prostitution breeds corruption.¹¹⁰ These arguments demonstrate that those who support criminalization are concerned about the status and exploitation of women within the profession.¹¹¹ Still, this group concedes that prostitution is not going anywhere and therefore some form of regulation is necessary to help keep it under control.¹¹²

The other side of the controversy in the United States argues in favor of reforming the current legal status of prostitution. They argue that prostitution is not immoral, and it is a choice. Prostitution is thought by some to be the equivalent of other private “bad” acts made by adults, such as smoking, drinking, or eating unhealthy food.¹¹³ The life of a sex worker can be as good or bad as they choose. Of course, that is not the case for some, but most are free to leave the profession on their own terms. One reason people choose to enter into sex work is for economic and financial gain. It is a profession that does not require a formal education or prior experience, and it offers substantial flexibility and independence. Some sex workers define themselves as sex therapists and psychological nurturers.¹¹⁴ Many believe that they are selling their best qualities, their love and tenderness, and they create feelings of trust and intimacy.¹¹⁵

104. *Id.*

105. *Id.*

106. *Id.*

107. Miller, *supra* note 14, at 324-25.

108. Drexler, *supra* note 6, at 206-07.

109. *Id.* at 208.

110. *Id.* at 208-09.

111. *Id.* at 209.

112. *Id.*

113. *Id.* at 210.

114. Charles Clark, *Prostitution*, CQ RESEARCHER, June 11, 1993, at 1, 5.

115. *Id.*

Some sex workers also argue that prostitution is good for men because it allows them to have sex without getting emotionally involved and creates feelings of comfort and companionship.¹¹⁶ Criminalization of prostitution does little to deter it, and the time, money, and energy used to police it could be spent elsewhere.

B. Constitutional Issues

Legal scholars as well as sex workers themselves have made constitutional arguments to support the claim that prostitution should be regulated instead of criminalized. One argument is that the criminalization of prostitution violates the Equal Protection Clause of the Fourteenth Amendment. Various laws pertaining to the criminalization of prostitution are gender biased. A second constitutional argument centers on the Fourth Amendment right to privacy.

Prostitution statutes and their enforcement have been challenged on several constitutional grounds, including freedom of speech, due process, and equal protection. Regarding freedom of speech, a conviction based solely on an offer to sell sex is said to trigger First Amendment concerns. Prostitution has also been challenged on due process grounds on the basis of overbreadth, vagueness, and infringement on the right to privacy. Because prostitution statutes and convictions disproportionately affect a specific class of people more so than other classes, equal protection violations have also been raised.

Under some state statutes, individuals can be arrested for merely offering to perform a sexual act in exchange for compensation.¹¹⁷ Sex workers have challenged these statutes, claiming that an arrest based on mere words violates their freedom of speech protected under the First Amendment.¹¹⁸ However, courts have upheld that speech is not protected where it is a vital part of a criminal act.¹¹⁹ Criminal sexual activity is not considered a protected expression under the First Amendment.¹²⁰ Courts have continuously rejected the argument that prohibiting prostitution

116. *Id.* at 519.

117. *See State v. Pegouskie*, 113 P.3d 811, 820 (Haw. Ct. App. 2005).

118. *See Vivid Ent., LLC v. Fielding*, 774 F.3d 566, 579 (9th Cir. 2014) (holding that conduct only raises First Amendment concerns when a particular message is intended and likely to be understood).

119. *See, e.g., State v. Pegouskie*, 113 P.3d 811, 820 (Haw. Ct. App. 2005); *see also People v. Braddock*, 809 N.E.2d 712, 717 (Ill. App. Ct. 2004).

120. *See Bushco v. Shurtleff*, 729 F.3d 1294, 1303 (10th Cir. 2013) (upholding a statute that criminalized certain touching or exposure when done with requisite criminal intent).

unduly burdens other activities protected by the First Amendment.¹²¹ Courts have also rejected arguments calling for sex work falling under freedom of expression.¹²² In Arizona, plaintiffs argued that sex work allowed them to send a message of “social and sexual liberation.”¹²³ However, the court disagreed with that notion, finding that sexual acts convey no such message and were therefore not protected under freedom of expression grounds.¹²⁴

Prostitution statutes have been challenged under the Fourteenth Amendment’s Due Process Clause because they often unfairly discriminate against certain persons or unfairly penalize certain actions.¹²⁵ Plaintiffs have claimed that prostitution statutes are too vague, overbroad, or intrusive on the privacy rights of consenting adults.¹²⁶ Generally, courts have held that prostitution statutes are not unconstitutionally vague or overbroad.¹²⁷ This is because the general public knows what prostitution is, what is meant by sexual activity and compensation, and the law does not discourage individuals from performing permitted acts.¹²⁸ Some challengers of prostitution statutes have tried to argue that these statutes interfere with an individual’s right to privacy under the Due Process Clause.¹²⁹ These individuals charge their argument with the notion that prostitution is generally a consensual act between willing adults.¹³⁰ In 2003, the United States Supreme Court in *Lawrence v. Texas* held that the Fourteenth Amendment protects consensual sex relations, but refused to extend that protection to other issues including prostitution.¹³¹ Additionally, the Supreme Court has refused to equate the privacy rights afforded to people in their homes with privacy outside the home.¹³² There is no “zone of privacy” allowed for the consumer of a criminal sexual

121. *Id.* at 1303-06.

122. *Recreational Devs. of Phx., Inc. v. City of Phx.*, 83 F. Supp. 2d 1072, 1094-95 (D. Ariz. 1999), *aff’d sub nom. Recreational Dev. of Phx., Inc. v. City of Phx.*, 238 F.3d 430 (9th Cir. 2000).

123. *Id.* at 1089.

124. *Id.* at 1092.

125. *Id.* at 1081-82.

126. *Id.* at 1081-89.

127. *Id.*

128. *Id.* at 1087-88.

129. *See generally* Belkys Garcia, *Reimagining the Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161 (2005).

130. *Id.*

131. 539 U.S. 558, 578 (2003).

132. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 66(1973).

activity.¹³³ Therefore, prostitution is not protected by the Due Process Clause.

Petitioners have also argued that prostitution statutes violate the Equal Protection Clause because these statutes often discriminate based on sex and gender. Where prostitution is illegal, both men and women are prohibited from exchanging sex for money. Female sex workers are four times more likely to be arrested than male sex workers and are more likely to face prosecution, even though there are roughly the same amount of female and male sex workers, and despite that prostitution statutes generally are written in gender-neutral language.¹³⁴ However, because the statutes are facially neutral and do not refer to a specific gender, courts have generally upheld prostitution statutes.¹³⁵ Another discrimination claim made by sex workers is that prostitution statutes violate due process by permitting married individuals to exchange sexual acts for compensation within the marriage,¹³⁶ but unmarried individuals are not allowed to do the same.¹³⁷ Courts have distinguished the issue by claiming that marital exchanges lack the commercial aspect essential to prostitution.¹³⁸ Nevertheless, courts across the country have failed to recognize the legitimacy of sex work.

C. Prostitution Models in the United States as Compared to the Netherlands

As of 2009, Nevada is the only state in the nation that does not entirely outlaw prostitution.¹³⁹ In November 2009, a bill closed a loophole that permitted indoor prostitution in Rhode Island, which ultimately shut down Rhode Island's potential model for decriminalization of prostitution.¹⁴⁰ Rhode Island's laws prior to the November 2009 bill and Nevada's current laws provided models for regulation and decriminalization in the United States.

Today, prostitution is a regulated profession in some parts of Nevada. Prostitution is allowed only in licensed brothels and only in

133. *Id.*

134. Hough, *supra* note 21, at 118.

135. See *Roe v. Butterworth*, 958 F. Supp. 1569, 1581 (S.D. Fla. 1997).

136. *People v. Medina*, 685 N.Y.S.2d 599, 600 (N.Y. Crim. Ct. 1999).

137. *Id.*

138. *Cherry v. Koch*, 491 N.Y.S.2d 934, 945-46 (N.Y. Sup. Ct. 1985).

139. NEV. REV. STAT. ANN. § 201.354(1) (West, Westlaw through 2021 33rd Spec.Sess.).

140. See Simmi Aujla & Jennifer Levitz, *Legal Prostitution Under Pressure in Rhode Island*, WALL ST. J. (Sept. 5, 2009), <https://www.wsj.com/articles/SB125210953971287935>.

counties with a population of less than 700,000.¹⁴¹ Each eligible county gets to decide whether prostitution should be legal, and the decision can be made by either official policy or by general public vote.¹⁴² The most regulated aspect of prostitution in Nevada is the health of sex workers, as Nevada law requires sex workers to use condoms for every sexual encounter and to submit to weekly sexually transmitted infections (STI) testing and monthly HIV testing.¹⁴³ Under this system, all aspects of prostitution—including the sex worker's life—are regulated by the state government.¹⁴⁴ Sex workers are told where to live and their lives outside of their work are highly structured.¹⁴⁵ Sex workers are prevented from raising their own children, driving a car within the city limits, shopping between the hours of 5 p.m. and 8 a.m., and dressing in a way that suggests their occupation.¹⁴⁶ While legalization gives prostitution legitimacy, sex workers enjoy little independence.¹⁴⁷ These regulations do serve to create a safe and healthy environment for both sex workers and their clients, however.¹⁴⁸

Prostitution was once a felony in Rhode Island, but the state's prostitution statutes were rewritten in 1980 after a lawsuit in which a group of female sex workers challenged the statutes' constitutionality by arguing that the Providence Police Department enforced the law disproportionately against women.¹⁴⁹ The lack of a clear statutory prohibition against prostitution resulted in a Rhode Island district court to drop prostitution charges against women accused of committing prostitution indoors.¹⁵⁰ This model of decriminalization began to break down, however, as it was publicly opposed. The state subsequently began to criminalize aspects of prostitution until it outright prohibited prostitution in 2009.¹⁵¹

While the United States heavily regulates sex work, other countries do things differently. In the Netherlands, prostitution is validated and

141. NEV. REV. STAT. ANN. § 201.354(1) (Westlaw); NEV. REV. STAT. ANN. § 244.345(8) (West, Westlaw through 2021 33rd Spec. Sess.).

142. *Kuban v. McGimsey*, 605 P.2d 623, 625-26 (Nev. 1980).

143. NEV. ADMIN. CODE § 441A.805 (2017).

144. Drexler, *supra* note 6, at 203.

145. *Id.* at 225.

146. *Id.*

147. *Id.* at 203.

148. *Id.* at 225.

149. *Coyote v. Roberts*, 502 F. Supp. 1342, 1352-53 (D.R.I. 1980), opinion supplemented by *Coyote v. Roberts*, 523 F. Supp. 352 (D.R.I. 1981).

150. See Aujla & Levitz, *supra* note 141.

151. Benitez, *supra* note 27, at 348.

accepted as a legitimate profession.¹⁵² Prostitution has never been prohibited, however, activities associated with prostitution have been regulated by the government in some way or form.¹⁵³ These regulations still allow sex workers to maintain their independence.¹⁵⁴ In the Netherlands, the laws concerning prostitution focus primarily on labor and occupational safety regulations and protecting sex workers from abuse and crime.¹⁵⁵ The country maintains a decriminalized system. The Netherlands maintains a unique system of laws that regulate prostitution. For example, prostitution is legal but running a prostitution enterprise is not.¹⁵⁶ This system works well for the country. Studies have shown that decriminalization in the Netherlands has helped lower rates of sexually transmitted diseases as well as crime rates.¹⁵⁷ Decriminalization has also provided sex workers with guaranteed labor and societal benefits such as safer working conditions and medical care.¹⁵⁸ Both legalization and decriminalization impose regulations on the health and safety of sex workers.¹⁵⁹ However, the Netherlands model shows that decriminalization is beneficial and can work in regular society.

152. Claire Sterk-Elifson & Carole A. Campbell, *The Netherlands*, in PROSTITUTION: AN INTERNATIONAL HANDBOOK ON TRENDS, PROBLEMS, AND POLICIES, 191, 191 (Nanette J. Davis ed., 1993).

153. *Id.* at 192.

154. Joshua Cruz and Swaan van Iterson, *The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam's Red Light District*, HUMANITY IN ACTION NEDERLAND, (2023), https://humanityinaction.org/knowledge_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district/.

155. See also Joyce Outshoorn, *Policy Change in Prostitution in the Netherlands: from Legalization to Strict Control*, SEXUALITY RSCH. AND SOC. POL'Y (2012). <https://nswp.org/sites/default/files/fulltext1%20%282%29.pdf>. (Describes how the aims of legislation were to control and regulate prostitution, to protect minors from sexual abuse and protect the position of prostitutes. Legislation also aspired to clean up the sex business and rid it of criminal elements by introducing licensing of sex clubs and brothels. Forcing a person into prostitution, which includes the use of deceit, coercion, or abuse of authority, remained a criminal offense).

156. Marjolijn Uitziinger, *The Amsterdam Policy on Prostitution*, 6 (Sheila Gogol trans., 1992).

157. See Paul Bisschop et al., *Street Prostitution Zones and Crime*, 9 AM. ECON. J.: ECON. POL'Y, 28, 30, (2017). (Between 1994-2011 legalized prostitution zones in the Netherlands see 30-40% decrease in rape and drug related crime within two years of becoming a legalized prostitution zone); Maud M.A. Verscheijden et al., *Sexually Transmitted Infections Among Female Sex Workers Tested at STI Clinics in the Netherlands, 2006-2013*. EMERGING THEMES IN EPIDEMIOLOGY, (Aug. 28, 2015) (Study shows that there was a decrease in STIs from 2006-2013 among female sex workers).

158. Sterk-Elifson & Campbell, *supra* note 153, at 196.

159. Drexler, *supra* note 6, at 225.

D. A Plea for Decriminalization

Decriminalization protects everybody. If we lived in a world that did not criminalize sex work, sex workers could better protect themselves and seek justice when they are harmed. However, there are still widespread misconceptions that decriminalization would actually harm sex workers. But that simply is not true. There are five main reasons to decriminalize sex work. Decriminalization would (1) reduce police violence against sex workers, (2) make sex workers less vulnerable to violence from clients, (3) allow sex workers to better manage their own health, (4) advance equality for members of the LGBTQ+ community, and (5) help combat mass incarceration.¹⁶⁰

First, decriminalization would reduce the amount of police violence against sex workers. Police abuse against sex workers is very common, but police officers rarely face any punishment or consequences from it.¹⁶¹ This is because sex workers are often afraid to come forward and report the abuse, knowing it was predicated in unlawful behavior, coupled with an unbalanced power dynamic that law enforcement officers take advantage of.¹⁶² Police officers often take advantage of that fear. They often take advantage of criminalization. There have even been cases of police officers extorting or coercing sex workers into sexual acts and threatening arrest if sex workers do not comply.¹⁶³ Criminalization only serves to allow police officers to continue to abuse their power and not face any repercussions from doing so.¹⁶⁴ Decriminalization would help keep police officers accountable, allow sex workers to live without fear of arrest or abuse from law enforcement, and enable sex workers to seek justice if they are harmed or abused.

Second, decriminalization would make sex workers less vulnerable to violence and abuse from clients. In addition to law enforcement officers, sex workers are also taken advantage of by their clients through the criminalized system.¹⁶⁵ Sex workers often risk their own safety to avoid arrest. Clients know they can rob, assault, or even murder sex workers and avoid consequences because sex workers do not have access

160. LaLa B. Holston-Zannell, *Sex Work is Real Work, and it's Time to Treat it That Way*, ACLU (June 10, 2020), <https://www.aclu.org/news/lgbtq-rights/sex-work-is-real-work-and-its-time-to-treat-it-that-way>.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

to the same protections under the law as non-sex workers.¹⁶⁶ The passage of FOSTA/SESTA simply exacerbated this vulnerability. Bills like these push more sex workers offline and onto the streets, where they must work in isolated areas to avoid arrest, and are unable to screen clients before meeting them.¹⁶⁷ FOSTA/SESTA banned online platforms sex workers used to screen clients and to communicate with one another to help build a community to protect each other. Without that community, sex workers are left even more alone and vulnerable.

Third, decriminalization would allow sex workers to protect, prioritize, and manage their own health. Sex workers often go without medical care out of fear of arrest or poor treatment by medical staff.¹⁶⁸ Because the law does not recognize sex work as a real job, sex workers do not have access to employer-based health insurance. This also means that many likely cannot afford proper medical care.¹⁶⁹ In some jurisdictions, police attempt to present evidence that the use of condoms—or even the mere possession of them—imply an individual’s intent to engage in sex work.¹⁷⁰ As a result, some sex workers, and people who are profiled as sex workers, may not carry condoms or other forms of protection out of fear of having it used against them in the event of an arrest.¹⁷¹ This puts sex workers at risk of contracting HIV and other sexually transmitted diseases.

Fourth, decriminalization would help advance equality for members of the LGBTQ+ community. Prostitution statutes disproportionately impact the whole LGBTQ+ community because members of the community—particularly queer people of color, immigrants, and transgender people—are more likely to be and become sex workers.¹⁷² The passage of FOSTA/SESTA further marginalizes the community by decreasing incomes and increasing exposure by forcing sex workers onto the streets where they are more visible and at higher risk for abuse or arrest.¹⁷³ Trans women of color are the most vulnerable and the most impacted.¹⁷⁴ Trans women of color are often profiled by law enforcement and are charged with prostitution because of clothing or by simply

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

carrying condoms.¹⁷⁵ If sex work is decriminalized, police would not as easily be able to harass or marginalize trans women of color.¹⁷⁶ Sex workers, and especially trans women, would be more able to govern their own bodies and livelihoods, on their own terms.

Lastly, decriminalization would also reduce mass incarceration rates and racial disparities in the criminal justice system. The criminalization of sex work adds to the mass incarceration system by unnecessarily placing more people in jail.¹⁷⁷ Sex workers who are incarcerated tend to be transgender and/or people of color.¹⁷⁸ Incarcerated trans people are often misgendered, denied health care, punished for expressing their gender identity, and targeted for sexual violence.¹⁷⁹ An arrest because of sex work has life-changing consequences. Criminal records keep people from obtaining accurate identifications, jobs, healthcare, housing, and other services. A criminal record is just one collateral consequence of criminalization of prostitution that further marginalizes sex workers and keeps them trapped in a cycle of participating in sex work with no sense of agency or choice. Decriminalization would help relieve mass incarceration rates and reduce racial disparities in the criminal justice system. It would also help keep sex workers from being harmed by the collateral consequences of an arrest because of prostitution.

VI. CONCLUSION

Sex work continues to thrive and be highly visible in the United States and throughout the world. Attitudes toward sex work range from extreme tolerance, as in the Netherlands, to conservative views, as in the United States. The laws vary as well, ranging from legalization or decriminalization to strict criminal enforcement. Moreover, if models like the Netherlands show us anything, it is that regulation and decriminalization are both possible and effective. The United States, however, has yet to go that far, given that nearly every state prohibits sex work in some form. Many prostitution statutes have a disproportionate impact on the most vulnerable populations, particularly LGBTQ+ people of color whose intersectional identities amplify these impacts. Law enforcement's bias and profiling towards the LGBTQ+ community in general influences its enforcement of anti-prostitution statutes and leads

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

to increased violence towards a particular community in the sex-work industry.

Decriminalization is a massively intersectional issue. Decriminalization would act as a shining light for sex workers as they would be better able to seek justice, healthcare, avoid arrest, fight inequality, and maintain their well-being and livelihoods through their own free will. Despite numerous voices in favor of decriminalization, sex work still faces aggressive opposition. *Lawrence v. Texas* is the closest this country has come to protect the rights of adults to have consensual, private sex but it still fails to create a privacy right to engage in sex work.

No one solution is best for dealing with sex work in the United States. The system to be implemented is very much dependent on culture and atmosphere. What works for one state might not work for another, and it might be necessary for each state to come up with its own unique regulation system. However, the need to decriminalize sex work is becoming increasingly necessary. Protecting the health and safety of sex workers, crimes against sex workers, and the proliferation of liberal views of sexual freedom all suggest that sex work is at a crossroads in the United States and requires legal attention as to how it should be regulated. We must protect every *body*, because sex work is real work.