

Approaches to Sex Trade and Sex Trafficking

Definitions

Sex work, sex trade, and prostitution are all terms for the same type of activity—the exchange of sexual activity for resources—but each term comes with its own connotations and stigmas.

- **Sex Work(er):** A person who engages in a “wide variety of sexual exchanges, such as sex for remuneration [including] situations in which sex is bartered for other needs (such as a place to stay for the night if the person is homeless or has insecure housing).”¹ This term was “conceived as a nonstigmatizing term, without the taint of the words ‘whore’ and ‘prostitute.’ The point of the term was to convey the professionalism of the sex worker rather than her lack of worth as seen by much of society.”²
- **Sex Trade:** Many reproductive justice organizations prefer this term³, defined as an “umbrella term that describes any way that [people] can exchange [their] sex or sexuality for money, gifts, drugs, or survival needs” such as housing, food, clothes, or immigration status and documentation.⁴
- **Prostitution/prostitute:** “A person who sells his or her body for sexual intercourse,” and mostly used within a legal or criminal context.⁵
- For the purposes of this fact sheet, the term “sex trade” will be used to refer to the collection of activities involving sex for trade; “sex worker” will refer to the individual engaged in these activities; and “prostitution” will be used in the context of the existing criminal law system.

In the context of the sex trade, **illegal** “means that the purchase and selling of sexual services, and any associated activities, are criminalized,”⁶ and **legalization** means a “system [that] permits some, but not necessarily all, types of sex work,” and “those businesses and individuals involved in sex work face regulations and licensing procedures that other businesses do not.”⁷ (Nevada is an example of this type of system.)⁸ And **decriminalization** is a system where “the same laws that regulate other businesses regulate sex work. Thus, relevant tax, zoning, and employment laws as well as occupational health and safety standards would also apply to sex workers and sex work establishments.” New Zealand, parts of Australia, the Netherlands, and Germany operated under this system.⁹ Decriminalization may also mean non-enforcement of arrests and other criminal proceedings. Sex workers themselves have a variety of opinions about which system they would prefer to work within.¹⁰

Sex trafficking differs from sex trade in several important aspects. Under U.S. criminal law, “human trafficking,” at its most basic, means “*compelling or coercing* a victim to perform labor, services, or commercial sex.”¹¹ Under the Federal Trafficking Victim’s Protection Act (TVPA), “trafficking” is defined as “the use of **coercion, deception or force** for the purpose of placing men, women or children” in oppressive conditions for continued exploitation and includes all types of labor;¹² “sex trafficking” is defined as the crime of “recruiting, harboring, transporting, providing, or obtaining a person for the purpose of a commercial sex act.”¹³ “Coercion” is defined as “[t]hreats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process;”¹⁴ and a “commercial sex act” is defined as “[a]ny sex act on account of which anything of value is given to or received by any person.”¹⁵

Statistics & Findings

Sex Trade

- Estimating the number of people in the sex trade is exceedingly difficult due to various definitions of sex for trade, issues with self-reporting, and the incompleteness of criminal

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arrest statistics. Some sources claim that national arrest figures range over 100,000 and that over one million people have worked as sex workers in the United States.¹⁶

- “Average prostitution arrests include 70% female sex workers, 20% percent male sex workers, and 10% customers. In the 1990s, some cities initiated ‘client arrest’ programs, which raised the percentage of buyer/customer arrests.”¹⁷
- Violence is one of the major problems confronting sex workers. Figures vary, with one report finding that, of the study’s participants, 32% had experienced physical assault and 29% had experienced sexual assault while engaging in sex work.¹⁸
- In a sample of sex workers from St. James Infirmery, a peer-based occupational health and safety clinic for sex workers in San Francisco, “36.3% of the women experienced sex work-related violence, and 7.9% police violence.”¹⁹
- Another study found that “female sex workers, as compared to male and transgender workers, were at higher risk of rape and arrest for prostitution related offences.”²⁰
- A common type of police abuse reported by sex workers is the demand for sex in lieu of arrest.²¹

Survival Sex and Homeless Youth

- Studies show that 15-30% of the homeless youth have experience in sex for trade, although findings vary widely due to differing definitions of the activities and levels of engagement.²²
- Once homeless, LGBTQ youth are at a greater risk of sexual exploitation than non-LGBTQ homeless youth.²³
- Violence is an everyday reality for girls engaged in the sex trade: “sexual abuse in the forms of gang rapes by johns, being raped and trafficked at a young age, being raped and exploited by pimps, and being stalked and raped by johns.” Most often, “violence goes unreported for fear of further violence and based on a belief that the police will not believe them and will, in fact, blame them for the violence they experience. The beatings they experience are also a threat to their children, further cutting off access to help.”²⁴
- While most studies focus on individual violence, girls in the sex trade also face harm from institutions, such as governmental agencies, nonprofits, social services, and medical providers, and they are often “denied access to systems due to [their] participation in the sex trade, being drug users, being lesbian, gay or transgender or being undocumented.”²⁵
- A study by the Young Women’s Empowerment Project (YWEP), an activist organization comprised of young women with lived experience with the sex trade and street economy, found an “universality to the experience of girls in the sex trade that mirror the experiences of all poor women. As young women of color involved in the sex trade, we are being oppressed on multiple levels...the limitation of choices and access, mistreatment and neglect by ‘helping systems,’ police surveillance and abuse of power, partner abuse, sexual abuse and exploitation, family violence and economic disenfranchisement.”²⁶
- YWEP also found that transgender girls in the sex trade faced unique challenges from the mainstream as well as from the gay and lesbian community.²⁷

Sex Trafficking

- Statistics regarding the trafficking of human beings within and without the United States are extremely unreliable due to a variety of issues.²⁸
- In July 2006, the U.S. Government Accountability Office found that estimates of the number of people trafficked into any kind of work, including sex work, to be problematic: “The accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies.”²⁹

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State Laws

Prostitution has never been legalized by the U.S. federal government and is illegal in all states except Nevada.³⁰ Because of its illegality, many people who engage in the sex trade do not receive the same protections as other workers, and the stigmatization of those who engage in sex trade creates harsh criminal penalties and creates barriers to seeking services, pushing it further underground and creating overall dangerous working conditions for sex workers.³¹

In the majority of states, engaging in prostitution and solicitation is a misdemeanor, with fines ranging from \$50 to \$6,000 and jail sentences from 15 days to one year. Sex workers themselves, as well as pimps and brothel operators, can be charged under these statutes. Some states charge repeat offenders more harshly by moving the original misdemeanor to a felony.³²

In **Nevada**, prostitution is legal and regulated by county.³³ In the six Nevada counties where prostitution is illegal, engaging in prostitution is a misdemeanor carrying a six month prison sentence and a \$1,000 fine.

In **Louisiana**, until its amendment in June 2011³⁴, people accused of soliciting certain kinds of sex could be charged with a felony under the Solicitation of a Crime Against Nature (SCAN) law.³⁵ The 206-year old statute prohibited “unnatural carnal copulation,” defined by Louisiana courts as “oral and anal (but not vaginal) sex – sex acts historically associated with homosexuality... [I]ndividuals convicted of a Crime Against Nature are forced to register as sex offenders for 15 years. Multiple convictions require them to register for life.”³⁶ A U.S. Department of Justice investigation called the law “a statute whose history reflects anti-LGBT sentiment,” and concluded that investigators “found reasonable cause to believe that [New Orleans Police Department] practices lead to discriminatory treatment of LGBT individuals.”³⁷ Disturbingly, 75% of the people registered as a sex offender as a result of a SCAN conviction are women, and 80% of them are African American.³⁸ The Center for Constitutional Rights is currently challenging these convictions in *Doe v. Jindal*.³⁹

In the **District of Columbia**, Prostitution Free Zone laws authorize the Chief of Police to identify areas where “the health or safety of residents is endangered by prostitution and enforce stricter anti-prostitution laws there for up to 10 days at a time.”⁴⁰ Police can “force groups of two or more people to disperse...if they are behaving in a manner raising a reasonable belief that the person is engaging or is about to engage in prostitution or prostitution-related offenses.”⁴¹ Reasonable suspicion may also be raised by a person carrying two or more condoms and acting in a way that officers deem to be suspicious.⁴² Critics have observed that while “[t]he law theoretically prohibits police from identifying prostitution-related behavior on the basis of ‘stereotypes or profiles’; [and] instead, police must rely upon ‘clearly articulated’ signs of sex work,” that nevertheless, “trans[gender] women in particular claim to have been profiled by police under these laws; [and] neighborhood objections to visible sex work often center on what women should and shouldn't be wearing outside the house.”⁴³ Community-based research about people's experiences with anti-prostitution policing in D.C. has revealed patterns of the police targeting transgender people, Latino/as, and young adults.⁴⁴

Federal Legislation and International Treaties

Trafficking Victim's Protection Act (TVPA)

Prior to the Trafficking Victim Protections Act of 2000 (TVPA)⁴⁵ and its reauthorizations in 2003, 2005, and 2008,⁴⁶ the 13th Amendment to the U.S. Constitution and various federal laws



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against slavery, codified at 18 U.S.C. §§1581-1584, served as the main protections for victims of trafficking.⁴⁷

The TVPA is the first comprehensive legislation to address human trafficking.⁴⁸ It seeks to “combat human trafficking by protecting victims...and ensuring just and effective punishment of traffickers...[and] has been codified...[in the] United States Code” under various title sections.⁴⁹ The TVPA addresses human trafficking “by supporting initiatives in ...prevention, protection and assistance, and prosecution.”⁵⁰ These initiatives echo those of the United Nation’s Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, ratified by the U.S. with reservations.⁵¹ However, some credit socially conservative organizations’ activism for the political momentum that led to the enactment of the TVPA.⁵²

In 2002, the U.S. government adopted a strong position against legalized prostitution, declaring that “prostitution is inherently harmful and dehumanizing and [] it fuels the growth of modern-day slavery by providing a façade behind which traffickers for sexual exploitation can operate.”⁵³ In furtherance of this anti-legalization policy, the 2003 reauthorization of the TVPA forbade the granting of funds to NGOs that would not “affirmatively state that they do not support ‘the legalization or the practice of prostitution.’”⁵⁴

When the TVPA was reauthorized in 2008, the sex trade community worried over the potential for law enforcement to use the TVPA to further crack-down on sex workers who are not trafficked and who rely on sex trade as a form of income.⁵⁵ Section 225 of the 2008 reauthorization of the TVPA makes clear that “no provision in the original TVPA, its subsequent reauthorizations, or in the Chapter 117 Mann Act crimes can be construed as treating prostitution as a valid form of employment.”⁵⁶

President’s Emergency Plan For AIDS Relief (PEPFAR)

Although specifically dealing with the prevention of AIDS, malaria, and tuberculosis, the President’s Emergency Plan for AIDS Relief (PEPFAR)⁵⁷ initiative is extremely contentious in the sex trade community and among human rights organizations because of its Anti-Prostitution Pledge requirement.⁵⁸ This pledge requires that “all [fund] grantees must have (1) a policy explicitly opposing prostitution and sex trafficking and (2) certification of compliance with the ‘Prohibition on the Promotion and Advocacy of the Legalization or Practice of Prostitution or Sex Trafficking,’ which applies to all organization activities, including those with funding from private grants.”⁵⁹ The result is that recipients of these funds must “censor even their privately funded speech regarding the most effective ways to engage high-risk groups in HIV prevention.”⁶⁰

The inclusion of this pledge led Brazil to refuse \$40 million in U.S. assistance in 2005.⁶¹ According to Brazil’s national AIDS commissioner, Dr. Pedro Chequer, the refusal was “an ethical issue...[because Brazil aims] to reach every segment of society, with no discrimination.”⁶² Prostitution is legal in Brazil and the Brazilian HIV prevention plan relies on sex workers—the people “most vulnerable to HIV and...the most active to combat it”⁶³—to partner with the state on HIV prevention, an approach that has been extremely successful in preventing the spread of HIV to half of the projected estimate for new HIV cases for the country.⁶⁴

Some human rights activists oppose this pledge because sex workers have an “increased risk of HIV infection... [and they believe it is] essential that organizations work with them non-judgmentally”⁶⁵ due to their already marginalized status in society, which often makes them



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targets for violence.⁶⁶ Although some NGOs and countries (like Brazil) will not sign the pledge and thus lose U.S. funding, other organizations have “eliminate[ed], scal[ed] back, or censor[ed] their prevention efforts with sex workers, undermining best practices in public health” in order to comply with the pledge.⁶⁷ Many fear that the pledge has resulted in “driving sex workers underground and away from the NGOs and health workers best poised to provide them with HIV prevention, health and alternate-livelihood services.”⁶⁸

Ongoing litigation involving Alliance for Open Society International (AOSI), the Open Society Institute, Pathfinder International, the Global Health Council and InterAction against USAID, U.S. Department of Health and Human Services and the U.S. Centers for Disease Control and Prevention,⁶⁹ involves a First Amendment challenge to the Anti-Prostitution Pledge.⁷⁰ The Center for Health and Human Services at Johns Hopkins University submitted a declaration to the court, stating that “the merging of the terms ‘prostitution’ and ‘sex trafficking’ in the Global AIDS Act is not accepted as standard language or practice by the scientific literature on HIV/AIDS or by international agencies with HIV prevention programs.”⁷¹ Instead, they argued, it was accepted that sex trafficking is a human rights violation condemned by society; Sex work, on the other hand, was an area of much debate: “Sex workers’ can include victims, but also includes people who have decided to ‘sell sex of their own volition.’”⁷² Regardless of any nation’s moral feelings about sex work, it is generally accepted that “sex workers themselves need services, protection, peer outreach, and support from health professionals.”⁷³ The Anti-Prostitution Pledge thus undercuts NGOs’ efforts to serve this often marginalized community.

In 2006, a U.S. federal district court issued a preliminary injunction against the application of the policy requirement to AOSI and Pathfinder, holding that the Anti-Prostitution Pledge unconstitutionally compelled speech, was viewpoint based, and placed an unconstitutional condition on the receipt of federal funds.⁷⁴ In 2011, the Second Circuit upheld the ruling, holding that the pledge requirement violates the First Amendment rights of the plaintiff NGOs; therefore, the government is prohibited from enforcing the pledge requirement against most U.S.-based recipients of the funds.⁷⁵ However, the ruling will *not* apply to internationally-based NGOs, which would continue to be ineligible for funding if they fail to comply with the Pledge.⁷⁶

Recent Development

On March 9, 2011, in response to the United Nation’s human rights evaluation, the U.S. “agree[d] that ‘no one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution.’”⁷⁷ This statement addressing the needs of sex workers, as separate from the needs of victims of trafficking, is a first for the U.S.⁷⁸, but it has yet to be seen how it will influence both international policy and domestic law.

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Conflating Sex Trade and Sex Trafficking

The predominantly accepted view of sex trade in the U.S., supported by some feminists and human rights activists, conflates sex trade with sex trafficking,⁷⁹ or at least views them as inextricably linked.⁸⁰ The main tenant of this view holds that all sex trade is inherently demeaning, exploitative, coerced, and cannot be a freely made choice.⁸¹ In short, this view posits that sex trade, in and of itself, is a violation of human rights⁸² and should be abolished.⁸³

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Historically, anti-sex trade sentiments⁸⁴ led to anti-sex trade reforms that ranged from the abolitionist approach to attempts to provide sex workers with aid in order to “rescue” them from the industry.⁸⁵ After sex trade was legalized in parts of Europe, “fears of ‘white slavery,’ an international slave market comprised of young, white women, kidnapped from their homes and forced into the brothels of Europe,”⁸⁶ fueled the abolitionist approach to sex trade worldwide.⁸⁷ This approach, supported by the first wave feminist movement, embraced the argument that all sex trade is a form of trafficking or “slavery,” or at the very least, fuels sex trafficking.⁸⁸

The conflation argument between sex trade and sex trafficking is circular in cause and consequence. It states: “human trafficking is primarily sex trafficking, and sex trafficking springs from prostitution, [and that] ...abolition of prostitution will solve the problem of human trafficking.”⁸⁹ This view “refuses to distinguish voluntary prostitution and immigration for sex work from forced prostitution and trafficking ...[and resists] any regulatory framework.”⁹⁰ Thus, the abolitionist approach, adopted by both U.S. and international law,⁹¹ to combat human trafficking dictates the needed abolishment of all sex trade, as it regards all sex workers as exploited slaves.⁹²

Recognition as Legitimate Wage Labor

Another approach, sometimes called the “wage labor” approach, takes the perspective that working in the sex trade and being trafficked for sexual exploitation, although they may have overlapping areas of concern, are not the same things.⁹³ This view “holds that respect for self-determination requires respect for women’s choices about sex and survival”⁹⁴ and advocates that the sex trade should be seen as a legitimate labor/job choice, guaranteed by the “rights to work and to self-determination [in] basic human rights instruments.”⁹⁵ The main tenant: a person has the right to “sell sexual access to [his/her] body for a limited period of time, as a parallel to wage labor”⁹⁶ and thus, the sex trade should be decriminalized.⁹⁷

This view believes that if the sex trade is regarded as synonymous with exploitation, it would “den[y] humanness to and [strip] dignity from the [sex worker].”⁹⁸ Instead, the wage labor approach uses the “three conventional distinctions to delineate the sale of labor from the sale of the worker”⁹⁹ espoused in Liberalism to distinguish between labor and slavery.¹⁰⁰ By adhering to the tenants of contract, service, and wage earning – a wage labor bargain—the sex trade is seen as an issue of self-determination and labor, not exploitation or sex trafficking.¹⁰¹

However, the sex trade cannot be wholly extricated from the personal life experiences and often difficult social or economic circumstances that lead some people to engage in this form of employment.¹⁰² Acknowledging that most people take up this line of work out of necessity for economic gain or for survival needs, this theory posits that these situational factors should be dealt with separately.¹⁰³ As such, the wage labor approach removes itself from moral judgments and advocates for the decriminalization or regulation of the sex trade to protect sex workers in their line of work.¹⁰⁴

The European Court of Human Rights has embraced this view, concluding that “the activity of prostitution pursued in a self-employment capacity can be regarded as a service provided for remuneration,”¹⁰⁵ provided that the sex worker’s labor met the following criteria: (1) [it is] outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration; (2) [it is] under that person's own responsibility; and (3) [it is] in return for remuneration paid to that person directly and in full.¹⁰⁶



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Toward a Reproductive Justice Approach

Whereas the conflation and wage labor approaches view the complex needs of sex workers themselves as secondary to either the need to eliminate from society the moral ills of the sex trade or to facilitate economic gains (see above sections for full discussion), the reproductive justice (RJ) approach focuses on addressing—first and foremost—the needs of sex workers’ themselves. While firmly denouncing any sex trade that is the result of violence or coercion, the RJ approach recognizes that engaging in the sex trade can be a choice and a legitimate—often necessary—form of labor, and then addresses the surface and underlying needs of the sex worker community. To achieve reproductive justice, it is imperative that sex workers themselves set the agenda and lead policy creation on this issue.¹⁰⁷

The RJ approach believes that social stigma and discrimination against those engaging in the sex trade has led to the implementation of “policies [that are] based on the assumption that sex work is inherently dehumanizing and can never recognize or improve the reality of sex workers’ lives.”¹⁰⁸ Sex workers are not always victims of circumstance or trafficking. The decision to enter into the sex trade can be based on any number of personal, economic, and social reasons.¹⁰⁹ For sex workers who take up this work based on lack of alternative options or for young people engaged in the sex trade for survival, their needs are the same as what “all people need to build better lives for themselves and their families: access to education; language and literacy programs; programs that help them build businesses and manage their money; and peer support to end their isolation.”¹¹⁰ Therefore, the focus must remain on empowerment and community organizing,¹¹¹ as well as on providing programs and services to sex workers, working to ensure their safety from state, institutional, and interpersonal violence,¹¹² and not stigmatizing, marginalizing, or criminalizing them. To that end, the RJ approach is similar to a harm reduction approach,¹¹³ but also investigates how “internalized racism, sexism and colonialism play a role” in institutions, organizations, and in sex workers’ lives.¹¹⁴

Viewing all sex workers as victims and providing “exit-only strategies...leads to increases in homophobia, transphobia, and sex worker-phobia that already exist within communities, institutions and in the anti-violence movement.”¹¹⁵ Instead, the RJ approach argues that focus must remain on strategies that look beyond the need to “rescue” sex workers and (1) help those who turn to the sex trade from lack of other options by providing programs that assist their transition to a life more suited to them; (2) address the needs of all people engaged in sex trade; and (3) supports their decisions and their ability to effectively communicate what they need to society through their leadership in shaping U.S. policy on sex trade.¹¹⁶

Reproductive Justice Organizations and Resources:

- Best Practices Policy Project: <http://www.bestpracticespolicy.org/index.html>
- Different Avenues: <http://differentavenues.org/>
- Sex Worker’s Project: <http://www.sexworkersproject.org/>
- St. James Infirmary: <http://stjamesinfirmary.org/>
- Streetwise and Safe: <http://www.streetwiseandsafe.org/>
- Urban Justice Center: <http://www.urbanjustice.org/ujc/projects/sex.html>
- Women With a Vision: <http://wwav-no.org/>
- Young Women’s Empowerment Project: <http://ywepchicago.wordpress.com/>

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¹ *Defining Terms*, BEST PRACTICES POLICY PROJECT, <http://www.bestpracticespolicy.org/faq.html> (last visited July 23, 2011).

² *What is Sex Work?*, PROCON.ORG, <http://prostitution.procon.org/view.answers.php?questionID=000849> (last visited June 15, 2011) *citing*, Encyclopedia of Prostitution and Sex Work (ed. Melissa Ditmore) (2006); *see also The Etymology of the Terms “Sex Work” and “Sex Worker*, PROSTITUTES’ EDUCATION NETWORK, <http://www.bayswan.org/sexwork-oed.html> (last visited July 25, 2011)

(citing CAROL LEIGH,, UNREPENTANT WHORE: THE COLLECTED WORK OF SCARLOT HARLOT (2003).)

³ YOUNG WOMEN’S EMPOWERMENT PROJECT (“YWEP”), GIRLS DO WHAT THEY HAVE TO DO TO SURVIVE: ILLUMINATING METHODS USED BY GIRLS IN THE SEX TRADE AND STREET ECONOMY TO FIGHT BACK AND HEAL, 7 (2009) *available at* <http://ywepchicago.files.wordpress.com/2011/06/girls-do-what-they-have-to-do-to-survive-a-study-of-resilience-and-resistance.pdf> (“[YWEP] never use the word ‘prostitute’ because we are concerned with the entire range of the sex trade (not just the illegal part) and because this word is a label that dehumanizes us and make us into ‘those other girls.’ Likewise, we don’t use the term ‘sex worker’ because it doesn’t include the experience of girls who have been forced into the sex trade and who don’t relate to the term ‘work’ to describe their experiences.”)

⁴ *Id.*

⁵ *See* NANETTE J. DAVIS, PROSTITUTION, AN INTERNATIONAL HANDBOOK 300 (1993) (stating that the definition of prostitution was “problematic.”)

⁶ Alexandra Lutnick and Deborah Cohan, *Criminalization, Legalization or Decriminalization of Sex Work: What Female Sex Workers Say in San Francisco, USA*, REPRODUCTIVE HEALTH MATTERS 38 (2009), *available at* http://stjamesinfirmary.org/wordpress/wp-content/uploads/2009/12/RHM34+-+Lutnick_2009.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*, at 39.

¹⁰ *Id.*, at 43, tbl.3.

¹¹ Mark J. Kappelhoff, *Federal Prosecutions of Human Trafficking Cases: Striking a Blow Against Modern Day Slavery*, 6 U. ST. THOMAS L. J. 9, 11 (2008-2009).

¹² INT’L HUMAN RIGHTS CLINIC AT WILLAMETTE UNIVERSITY COLLEGE OF LAW, MODERN SLAVERY IN OUR MIDST: A HUMAN RIGHTS REPORT ENDING HUMAN TRAFFICKING IN OREGON, 15 (June 2010) (citing Victims of Trafficking and Violence Protection Act of 2000 § 102(a) & (b), Pub. L. No. 106-386 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C., and 42 U.S.C.) *available at* <http://www.state.gov/g/tip/laws/61124.htm>, TVPA at § 103(2), (3), (4), (5), (8), (9), (13), (14), (defining “severe forms of trafficking in persons” under the TVPA “as follows: ...SEVERE FORMS OF TRAFFICKING IN PERSONS: Sex trafficking in which a commercial sex act is induced by force, fraud, coercion or in which the person, induced to perform such act is under the age of 18; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”, *internal citations omitted.*)

¹³ *Id.* (citing TVPA at § 103(9); 22 U.S.C. § 7102(9)).

¹⁴ *Id.* (citing TVPA at § 103(2); 22 U.S.C. § 7102(2)).

¹⁵ *Id.* (citing TVPA at § 103(3); 22 U.S.C. § 7102(3)).

¹⁶ *See, e.g., Prostitution in the United States – The Statistics*, PROSTITUTE’S EDUCATION NETWORK, <http://www.bayswan.org/stats.html> (last visited July 23, 2011).

¹⁷ *Id.*

¹⁸ Lutnick & Cohan, *supra* note 6, at 41, tbl.2.

¹⁹ *Id.*, at 44 (citing Deborah Cohen et al., *Sex Worker Health: San Francisco Style*, SEXUALLY TRANSMITTED INFECTIONS 82, 418–22 (2006).

²⁰ *Id.* (citing Hay J., *Police Abuse of Prostitutes in San Francisco*, GAUNTLET MAGAZINE (1994)).

²¹ *Id.*

²² NATIONAL ALLIANCE TO END HOMELESSNESS, HOMELESS YOUTH AND SEXUAL EXPLOITATION: RESEARCH FINDINGS AND PRACTICE IMPLICATIONS, 4-6 (2009), *available at* <http://endhomelessness.org/content/article/detail/2559>.

²³ *Id.* at 7-8.

²⁴ YWEP, *supra* note 3, at 29; *see also* NATIONAL ALLIANCE TO END HOMELESSNESS, *supra* note 22, at 2-3.

²⁵ YWEP, at 15; 30; 37.

²⁶ *Id.*, at 28.

²⁷ *Id.* at 37-38.

²⁸ *See generally* Johnny E. McGaha & Amanda Evans, *Where Are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 240-241 (2009); Nick Pinto, *Women’s Funding Network’s Sex Trafficking Study is Junk Science*, VILLAGE VOICE (March 23, 2011), *available at* <http://www.villagevoice.com/2011-03-23/news/women-s-funding-network-sex-trafficking-study-is-junk-science/>.

²⁹ URBAN JUSTICE CTR., WORKING GROUP ON SEX WORK AND HUMAN RIGHTS, SEX WORK AND HUMAN RIGHTS, *available at* http://www.soros.org/initiatives/health/focus/esharp/articles_publications/publications/toolkit_20080609/Sex%20Work%20and%20Human%20Rights%20Media%20Toolkit%20COMPLETE.pdf (last visited July 22, 2011) (internal citations omitted).

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³⁰ See *New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act*, 16 WM. & MARY J. WOMEN & L. 753, 759 (2009-10).

³¹ *Labor & Sex Work*, DIFFERENT AVENUES,

http://www.differentavenues.org/index.php?option=com_content&view=article&id=60&Itemid=69 (last updated May 7, 2011).

³² *US Federal and State Prostitution Laws and Related Punishments*, PROCON.ORG,

http://prostitution.procon.org/view_resource.php?resourceID=000119 (last updated March 15, 2010).

³³ *Id.* Prostitution is legal in 11 of Nevada's 17 counties: Churchill, Lander, Esmeralda, Lyon, Mineral, Nye, and Storey, and in Elko, Humboldt, Pershing and White Pine counties, it is only legal within some cities.

³⁴ H.R. 141, 2011 Leg., Reg. Sess. (La. 2011); see also Ed Anderson, *Gov. Bobby Jindal Signs Bill to Equalize Penalties for Soliciting Crime Against Nature With Those for Prostitution*, TIMES-PICAYUNE (June 28, 2011),

http://www.nola.com/politics/index.ssf/2011/06/gov_bobby_jindal_signs_bill_to_1.html.

³⁵ See 2010 La. Sess. Law Serv. Act 882 (West); see also WOMEN WITH A VISION, JUST A TALKING CRIME: A POLICY BRIEF IN SUPPORT OF THE REPEAL OF LOUISIANA'S SOLICITATION OF A CRIME AGAINST NATURE (SCAN) STATUTE (Feb. 2011)

available at http://wwav-no.org/wp-content/uploads/Final_PolicyBrief_TalkingCrime.pdf.

³⁶ Press Release, Center For Constitutional Rights, Groups Challenge Disparate Punishment Under Louisiana's Crime Against Nature Law: People Convicted Under Archaic Statute Forced to Register as Sex Offenders for 15 Years to Life (Feb. 16, 2011), available at <http://ccrjustice.org/newsroom/press-releases/groups-challenge-disparate-punishment-under-louisiana-crime-against-nature>.

³⁷ Jordan Flaherty, *Justice Department Report Calls Louisiana's "Crime Against Nature" Law Discriminatory*, RH REALITY CHECK (Mar. 18, 2011, 10:21 AM), <http://www.rhrealitycheck.org/blog/2011/03/18/justice-department-report-calls-louisianas-crime-against-nature-discriminatory> (citing U.S. DEPT. OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT (Mar. 16, 2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf.)

³⁸ Center For Constitutional Rights, *supra* note 36.

³⁹ See *Doe, et al. v. Jindal, et al.*, CENTER FOR CONSTITUTIONAL RIGHTS, <http://www.ccrjustice.org/crime-against-nature> (last visited July 22, 2011).

⁴⁰ See *Prostitution Free Zone*, DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT,

<http://mpdc.dc.gov/mpdc/cwp/view.a.1238.q.560843.asp> (last visited July 22, 2011).

⁴¹ *Id.*

⁴² Sommer Mathis, *More on those Prostitution Free Zone Condom Regulations*, DCIST.COM (Jan. 12, 2010), http://dcist.com/2010/01/more_on_those_prostitution_free_zon.php (quoting MPD spokesperson Gwendolyn Crump: "Although the possession of multiple condoms may be a factor that leads an officer to suspect (reasonable suspicion) that a person is engaged in prostitution, it is not enough to establish probable cause for any crime. Depending on the circumstances, factors such as this may justify an investigative stop - but not an arrest").

⁴³ Amanda Hess, *Prostitution Free Zones Target Visible Sex Workers in D.C.*, TBD.COM (March 10, 2011, 1:30 PM.), <http://www.tbd.com/blogs/amanda-hess/2011/03/prostitution-free-zones-target-sex-work-in-d-c--9366.html>.

⁴⁴ DIFFERENT AVENUES, *MOVE ALONG: POLICING PROSTITUTION IN WASHINGTON, D.C. EXECUTIVE SUMMARY* (2009), available at <http://www.differentavenues.org/images/stories/move%20along%20executive%20summary.pdf>.

⁴⁵ Victims of Trafficking and Violence Prevention Act of 2000, P.L. 106-386, 114 Stat. 1464 (2000).

⁴⁶ See Johnny E. McGaha & Amanda Evans, *Where are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 240-241 (2009).

⁴⁷ Kappelhoff, *supra* note 11 at 12; see also INT'L HUMAN RIGHTS CLINIC AT WILLAMETTE UNIVERSITY COLLEGE OF LAW, *supra* note 12 at 15 (listing "[t]he federal statutes used in prosecuting trafficking cases: 18 U.S.C. § 1581 (peonage); 18 U.S.C. § 1583 (enticement for slavery); 18 U.S.C. § 1584 (sale into involuntary servitude); 18 U.S.C. § 1589 (forced labor); 18 U.S.C. § 1590 (trafficking with respect to peonage/slavery/involuntary servitude/forced labor); 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud or coercion); 18 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of TIP); 18 U.S.C. § 1594 (general provisions); 18 U.S.C. § 2422 (coercion and enticement); 18 U.S.C. § 2423 (transporting minors with intent to engage in criminal sexual activity); and 18 U.S.C. § 2421 (transportation of persons [adults] for prostitution)").

⁴⁸ Kappelhoff, at 12.

⁴⁹ *Id.* at 15.

⁵⁰ *Id.* at 18.

⁵¹ See generally, *id.* at 12 and 33.

⁵² Susan A. Cohen, *Ominous Convergence: Sex Trafficking, Prostitution and International Family Planning*, 8 THE GUTTMACHER REPORT ON PUBLIC POLICY no. 1 (Feb. 2005), available at

<http://www.guttmacher.org/pubs/tgr/08/1/gr080112.pdf>.

⁵³ U.S. DEPT. OF STATE, *THE LINK BETWEEN PROSTITUTION AND SEX TRAFFICKING* (2004), available at

http://www.defense.gov/home/features/2008/0608_ctip/docs/Prostitution%20Fact%20Sheet.pdf.

⁵⁴ Cohen, *supra* note 52.

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- ⁵⁵ *Tension over U.S. Bill Throws Domestic Sex Trafficking Into Spotlight*, HUMAN GOODS (July 10, 2008, 2:41 AM), <http://humangoods.net/?p=590>.
- ⁵⁶ *USA - The William Wilberforce Trafficking Victims Protection Reauthorization Act of 200: 50 Key Provisions*, WOMEN'S UN REPORT NETWORK, http://www.wunrn.com/news/2008/12_08/12_15_08/121508_usa2.htm (last visited July 22, 2011).
- ⁵⁷ UNITED STATES PRESIDENT'S EMERGENCY PLAN FOR AIDS RELIEF, <http://www.pepfar.gov/about/index.htm> (last visited July 23, 2011).
- ⁵⁸ Nicole Franck Masenior and Chris Beyrer, *The US Anti-Prostitution Pledge: First Amendment Challenges and Public Health Priorities*, 4 PLoS Med no. 7 (July 24, 2007), available at <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.0040207#pmed-0040207-b001>.
- ⁵⁹ *Id.*
- ⁶⁰ *AOSI v. USAID Challenging Global AIDS Funding Restrictions*, THE BRENNAN CTR., http://www.brennancenter.org/content/resource/aosi_v_usaid/ (last visited July 22, 2011).
- ⁶¹ Esther Kaplan, *Just Say Nao*, THE NATION (May 12, 2005), available at <http://www.thenation.com/article/just-say-n%C3%A3o>.
- ⁶² *Id.*
- ⁶³ *Id.*
- ⁶⁴ *Id.*
- ⁶⁵ *Anti-Prostitution Pledge*, PEPFAR WATCH, http://www.pepfarwatch.org/the_issues/anti_prostitution_pledge/ (last visited July 22, 2011).
- ⁶⁶ *Id.*
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ THE BRENNAN CTR., *supra* note 60.
- ⁷⁰ *Id.*
- ⁷¹ Masenior, *supra* note 58.
- ⁷² *Id.*
- ⁷³ *Id.*
- ⁷⁴ *Id.*
- ⁷⁵ *Alliance for Open Soc'y Int'l v. United States Agency for Int'l Dev.*, No. 08-4917-cv, 2011 U.S. App. LEXIS 13770 (2d Cir. July 6, 2011); *see also AOSI v. USAID Challenging Global AIDS Funding Restrictions*, *supra* note 60.
- ⁷⁶ *U.S. Courts Rule Against Mandatory Antiprostitution Pledge*, GUTTMACHER INST. (May 19, 2006) <http://www.guttmacher.org/media/inthenews/2006/05/19/index.html>.
- ⁷⁷ Stacey Swimme, *Breaking: U.S. Acknowledges Human Rights Needs of Sex Workers*, BOUND, NOT GAGGED (March 14, 2011) <http://deephroated.wordpress.com/2011/03/14/breaking-u-s-acknowledges-human-rights-needs-of-sex-workers> (referencing statements made by the US at the United Nation's on Recommendation #86, part of the report of the Universal Periodic Review (UPR), which called on the US to look into the special vulnerability of sex workers to violence and human rights abuses).
- ⁷⁸ *Id.*
- ⁷⁹ *See generally*, U.S. DEPT. OF STATE, *supra* note 53.
- ⁸⁰ Berta E. Hernandez-Truyol and Jane E. Larson, *Sexual and Human Rights*, 37 COLUM. HUM. RTS. L. REV. 391, 392 (2006).
- ⁸¹ *Id.*
- ⁸² *Id.* at 399.
- ⁸³ *Id.* at 401 ("Most feminists who advocate international abolition do support partial decriminalization at the level of national law. This recognizes the burdens that criminalization places on the prostitute").
- ⁸⁴ *See generally New Paradigm*, *supra* note 30, at 759.
- ⁸⁴ *See* Hernandez-Truyol, *supra* note 80, at 422 n. 128 (citing DAVID J. PIVAR, PURITY CRUSADE: SEXUAL MORALITY AND SOCIAL CONTROL, 1868-1900 (1973), explaining that even though sex work was largely accepted as a "necessary evil," sex work became a cause of growing public censure during the industrial revolution in the 19th century. As the number of sex workers grew, so did the prevalence of sexually transmitted diseases and so did sentiment against the profession).
- ⁸⁵ *New Paradigm*, *supra* note 30 at 759 (pointing out that male reform groups portrayed prostitutes as evil women who wanted to corrupt "innocent young men," while female reform groups thought that poverty, in addition to moral ignorance or corruption, was the cause of prostitution); *see also* Hernandez-Truyol, *supra* note 80, at 396-97.
- ⁸⁶ *Id.* at 760.
- ⁸⁷ *Id.* at 760.
- ⁸⁸ *Id.* at 760, 769.
- ⁸⁹ *Id.* at 758.
- ⁹⁰ Hernandez-Truyol, *supra* note 80, at 401.

⁹¹ *New Paradigm*, *supra* note 30, at 762 n. 33 (explaining that by focusing on moral/immoral actions by sex workers, international law had created a “weak system to prohibit trafficking” by reinforcing “the conception that prostitution and human trafficking are inextricably and exclusively linked to one another;” quoting John Smith, the Director of the United States Department of State Office to Monitor and Combat Trafficking in Persons, said that “trafficking in women, the sex pillar of slavery, cannot be viewed separately from prostitution;” *see also* Hernandez-Truyol, *supra* note 80, at 395 (explaining that in 1949 International Convention for the Suppression of the White Slave Traffic codified prostitution as “incompatible with the dignity and worth of the human person.”); *see also A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, adopted Nov. 15, 2000, G.A. res. A/RES/55/25, U.N. GAOR 55th Sess., U.N. Doc. A/55/383, 2237 U.N.T.S. 319, entered into force Dec. 25, 2003), available at <http://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12-a.en>. (The Protocol has been signed by 117 countries and that 146 countries are parties to the Protocol. Countries that are not party to the Protocol include: Afghanistan, Andorra, Angola, Bangladesh, Bhutan, Brunei Darussalam, Cote D’Ivoire, Cuba, Democratic People’s Republic of Korea, Dominica, Eritrea, Ethiopia, Fiji, Ghana, Iran, Maldives, Marshall Islands, Micronesia, Nepal, Pakistan, Palau, Papua New Guinea, St. Lucia, Samoa, Singapore, Solomon Islands, Somalia, Sudan, Tonga, Tuvalu, Vanuatu, Viet Nam, Yemen and Zimbabwe).*

⁹² *See generally, id.*

⁹³ Hernandez-Truyol, *supra* note 80, at 402.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 405.

⁹⁷ *See generally, id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 419.

¹⁰⁰ *Id.* at 420 (As summarized by John Locke, “A free man becomes a worker by selling for a certain time, the Service he undertakes to do, in exchange for wages he is to receive: The Master has but a Temporary Power over him, and no greater, than what is contracted in the Contract between ‘em”).

¹⁰¹ *Id.* at 422-23.

¹⁰² *Id.* at 424.

¹⁰³ *Id.* (“The most persuasive arguments in support of the view that selling sexual service can be a form of work rest on the paired observations that women mostly take up this work out of economic need, and that it is voluntary, at least to the extent that the effort to make a livelihood is any kind of ‘choice’ for poor women anywhere...”); *see also Factbook on Global Sexual Exploitation, United States of America, COALITION AGAINST TRAFFICKING IN WOMEN, <http://www.uri.edu/artsci/wms/hughes/usa.htm> (last visited July 22, 2011). (“65 to 75 percent of street prostituted women are victims of long-term incest....75 to 90 percent of all women in prostitution were sexually abused as children. 85 percent of the prostitutes in the United States are addicted to crack, heroin, prescription drugs, or alcohol. Women who become street prostitutes do so because of a drug problem, or because the streets are a less violent home than where they come from”).*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 404 (citation omitted).

¹⁰⁶ *Id.*

¹⁰⁷ *See generally, YWEP, supra* note 3.

¹⁰⁸ URBAN JUSTICE CTR., *supra* note 30, at SEX WORK AND HUMAN RIGHTS.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at WHO ARE SEX WORKERS? (“A realistic and effective policy model on sex work would include:

- Enforcement of laws against assault, extortion and other human rights abuses committed against sex workers;
- Access to health care, job training, education, and opportunities to make a living wage for those who need them;
- Education on ways to prevent the spread of HIV/AIDS;
- Training to help sex workers identify and aid victims of human trafficking;
- Training in business and money management; and
- Reduction in social stigmas that often prohibit sex workers from moving into other forms of labor if they want to do so”).

¹¹¹ *See generally, YWEP, supra* note 3.

¹¹² *See* KATAYOON MAJ ET. AL, NATIONAL JUVENILE DEFENDER CENTER ET. AL., HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS (Fall 2009), available at http://www.equityproject.org/pdfs/hidden_injustice.pdf (documenting the systemic homophobia and transphobia that LGBTQ youth experience in courts and social services system, and how many LGBTQ homeless youth stay on the streets because they feel safer there than in institutional custody).

¹¹³ *See YWEP, supra* note 3, at 13, 31; *see also*, Nathan Riley, *The Sharp Divide Over Prostitution*, GAY CITY NEWS (April 20, 2011), http://www.gaycitynews.com/articles/2011/04/21/perspectives/readers_letters/doc4daf31f86ce8a012782382.txt.

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“Harm reduction draws its inspiration from public health efforts aimed, for example, at substituting clean syringes for dirty ones or at reducing the risk of HIV transmission among sexually active people. Advocates of the harm reduction approach point out that sex workers and their clients come from all walks of life, and argue that their interactions are not all based on a monolithic model of exploitation. Prohibition, they conclude, will simply drive the activity deeper underground, inevitably increasing its risks. Asked to point to models for success, they name Germany and Holland, where prostitution is legal”).

¹¹⁴ YWEP, *supra* note 3, at 13.

¹¹⁵ ASTRAEA LESBIAN FOUNDATION FOR JUSTICE, GENDER AND SEX WORKER ORGANIZING, *available at* http://www.astraeafoundation.org/uploads/files/Astraea_Statement_Gender_Justice_and_Sex_Worker_Organizing.pdf (last visited July 22) (explaining that the “Anti-prostitution pledge” located in PEPFAR has “prevented sex workers from...obtaining life saving services and resources”).

¹¹⁶ *See* URBAN JUSTICE CTR., *supra* note 30.