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Decriminalization of Sex Work in the United States: Protecting the Right to Bodily Autonomy and Health

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Introduction

Everyone is entitled to human rights, without any requirements or conditions.¹ A person's profession should not deny them protections of these rights.² Yet, by criminalizing sex work, individuals engaged in the profession are denied the right of bodily autonomy and face violations of their right to health.³ Every day, individuals are allowed the right to choose who they can be sexually intimate with, however, when the intimacy comes with a financial cost, the United States punishes those working within the profession.⁴ By criminalizing sex work, workers are forced to keep their practices private.⁵ Efforts to hide their work leads them to work in unsafe environments and prevents them from seeking help in times of need, limiting their access to adequate treatments and services⁶ In order to protect the rights guaranteed, the United States must decriminalize sex work.

¹ *Human Rights*, U.N., <https://www.un.org/en/global-issues/human-rights> (last visited Feb. 20, 2024).

² *Id.*

³ *Eliminating Discrimination Against Sex Workers and Securing Their Human Rights*, 39th Sess., U.N. HUM. RTS. COUNCIL 1, 7 (Jan. 2024), <https://documents.un.org/doc/undoc/gen/g23/241/61/pdf/g2324161.pdf?token=0O9J3JaIwoRJjommOa&fe=true>.

⁴ Ine Vanwesenbeeck, *Sex Work Criminalization Is Barking Up the Wrong Tree*, 46 ARCH SEX BEHAV 1631, 1637 (2017).

⁵ *Id.*

⁶ Linda S. Anderson, *Article: Ending the War Against Sex Work: Why it's Time to Decriminalize Prostitution*, 21 RRG 72, 120-121 & 111-112 (2021).

This article will first discuss sex work in the United States, including what influences led to criminalization and how criminalization impacts sex workers. Next, the article will look at how criminalization violates the right to bodily autonomy, first discussing the right and then analyzing how criminalization takes away an individual's right to choose who to have sexual relationships with. After discussing how criminalization violates human rights, the article will look at decriminalization of sex work in New Zealand and how this has led to the preservation of sex worker's rights to bodily autonomy and health. Finally, this article will argue for decriminalization in the United States, suggesting an approach based on regulations found in New Zealand

I. Influencing Factors on Criminalization of Sex Work in the United States

Currently in the United States of America, sex work is banned in all states except Nevada.⁷ Typically, the prosecution of sex work looks at three things: (1) some type of sexual activity; (2) payment or compensation for the sexual services; and (3) intent to engage in sexual services for money.⁸

However, sex work was not always criminalized on a national scale.⁹ Over time, there were numerous influences that led to the criminalization. One major factor that contributed to criminalization is known as the "moral crusades."¹⁰ The goal of this movement was to protect moral values, fighting against certain practices that threatened more traditional lifestyles.¹¹ Crusades generally relied on the use of certain tactics to support their messages, such as inflating the severity of the problems associated

⁷*Sex Work*, 24 GEO. J. GENDER & L. 761, 765 (2023).

⁸ *Id.*

⁹ Anderson, *supra* note 6, at 82.

¹⁰ Ronald Weitzer, *The Campaign Against Sex Work in the United States: A Successful Moral Crusade*, 17 SEXUALITY RESEARCH AND SOCIAL POLICY, 399, 400 (Sept. 10, 2019).

¹¹ *Id.*

with a certain practice, denying any push back to their view, presenting worse case scenarios, portraying those involved in the practices as evil, and arguing that these practices threatened the traditional way of life.¹² This movement was heavily influenced by religious individuals who sought to promote a lifestyle of sobriety and abstinence outside of marriage.¹³ Many traditional religious beliefs are rooted in the notion that sex outside of marriage is a sin.¹⁴ However, many of these religious individuals find the additional facts of using sex as a commodity and receiving financial gain from the interaction as even more perverse.¹⁵

In addition to the moral crusades, abolitionist feminism also stood firm in fighting against sex work.¹⁶ Abolitionists try to end the oppression against women that stems from the male patriarchy.¹⁷ Abolitionists believe that systems in society allow men to maintain their power, continuing to “reinforce female inferiority.”¹⁸ Many abolitionists believe that sex work objectifies women, continuing a history of oppression.¹⁹ While there have been arguments that this work is not oppressive due to the fact that women willing choose to engage in sex work, some abolitionists believe this agreement to work is not truly consensual.²⁰ Consent requires an understanding of what they are agreeing to, and here, it is not meaningful because the women agreeing to do this work are unable to see how it is oppressive.²¹ While abolitionists and religious conservatives typically do not see eye to eye, they were united in their efforts to criminalize sex work, although they each had unique motives.²²

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 401.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Anderson, *supra* note 6, at 87.

¹⁸ *Id.*

¹⁹ *Id.* at 88.

²⁰ *Id.*

²¹ *Id.*

²² Weitzer, *supra* note 10, at 401.

Another important historical influence to note is that support of the criminalization of sex work became popular around the same time as the introduction of anti-immigration legislation.²³ Starting in 1882, numerous acts aimed at restricting immigration from China were passed.²⁴ The anti-immigration acts that were passed put restrictions on who could immigrate, intentionally seeking to prevent “immoral women from China” from entering the United States.²⁵ In addition, the Supreme Court passed the 1910 Mann Act, which made transporting white women across states for sex work or immoral purposes illegal.²⁶ For immigration purposes, Congress made it so that engaging in sex work would be cause for deportation.²⁷ These regulations basically criminalized sex work throughout the United States.²⁸

Public health concerns were another influencing factor on the push for criminalizing sex work.²⁹ Around the time of World War I, there were concerns that sex workers threatened the health of soldiers.³⁰ Because sexually transmitted diseases (STDs) were commonly associated with sex workers, the military tried to prevent soldiers from accessing sex workers, prosecuting the women who were caught doing that type of work.³¹ The men who purchased these services however were given checkups and access to medicine.³² At one point, legislation was passed that was so focused on preventing the spread of STDs, women were forced to undergo exams, and if they tested positive for any disease they

²³ Anderson, *supra* note 6, at 82.

²⁴ *Id.* at 82.

²⁵ *Id.* at 82-83.

²⁶ *Id.* at 83.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 83-84.

were institutionalized.³³ After being detained, these women were either “cured” with arsenic and mercury treatments or they died.³⁴

I. U.S. Criminalization of Sex Work Violates Human Rights

Before discussing the human rights violations that occur through the criminalization of sex work in the United States, it is necessary to discuss the impact criminalization has on sex workers specifically through stigma. The stigma regarding sex work and those who engage in the industry plays a significant role with regards to the human rights violations. Sex workers have experienced stigma even before criminalization, as demonstrated in the discussion of the historical influencing factors.³⁵ However, criminalization contributes to the stigma, as it punishes those who engage in the work.³⁶

The criminalization of sex work only supports individuals attempting to isolate and shame sex workers, as it seems to justify their own belief that engaging in this profession is wrong.³⁷ Society often views sex workers as immoral, as their practices challenge traditional roles and structures.³⁸ While stigma may stem from the views of society, it also affects how the people facing stigma view themselves.³⁹ Stigma forces sex workers to hide their actions in fear of what those around them might say or do.⁴⁰ Even after individuals stop engaging in sex work, the stigma continues

³³ *Id.* at 84.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 1289.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Cecilia Benoit, et al., *Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers*, 55 (4-5) THE JOURNAL OF SEX RESEARCH, 457, 458 (2018).

⁴⁰ Lynzi Armstrong, *Stigma, Decriminalisation, and Violence Against Street-Based Sex Workers: Changing the Narrative*, 22(7-8) SEXUALITIES, 1288, 1291 (2019).

to present issues as society still views those who have engaged in sex work in the past negatively.⁴¹

While all sex workers face stigma, those who engage in street-based sex work are regarded even more harshly.⁴² Because this work is done in public, it is viewed as even more immoral because sexual intimacy is something traditionally restricted to the confines of the home.⁴³ Additionally, the media often reports on street based sex work as dangerous and problematic, without considering what the actual workers have to say about it.⁴⁴

Due to all these stereotypes and views of sex workers, many workers face difficulties in managing their work.⁴⁵ Stigma makes it harder for workers to set demands and choose clients because there is a notion that people in this work do not have standards.⁴⁶ Stigma also causes workers stress as they often lack support when dealing with backlash from peers and violence.⁴⁷

A. The Right to Bodily Autonomy

Not only does criminalization of sex work negatively impact sex workers within their social interactions, but it also violates their rights. One human right widely discussed is the right to bodily autonomy.⁴⁸ Most discussions about the right to bodily autonomy arise under the right to privacy which is found in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.⁴⁹ The position paper written in 2017 by the Working Group on discrimination against

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Vanwesenbeeck, *supra* note 4, at 1634.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art 12, (Dec. 10, 1948).; G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art 17 (Dec.16, 1966).

⁴⁹ *Id.*

women and girls discusses how women's rights include the right to autonomy and bodily integrity, as they are fundamental aspects of the right to equality and privacy.⁵⁰ Additionally, the EU Charter of Fundamental Rights Art. 3 discusses the right to integrity, finding that there is a fundamental right to the physical and mental integrity of a person. The Convention on the Rights of Persons with Disabilities also indicates a right to individual autonomy under Article 3.⁵¹

The UN Working Group on discrimination against women and girls, established in 2010, focused on the discrimination sex workers endure.⁵² In 2023, the UN Working Group issued a guidance document discussing sex worker's rights, encouraging an end to the discrimination these workers face.⁵³ In the guidance issued, the UN Working Group indicates how in 2016, the group recognized that criminalization of how women's use their bodies was a violation of their human rights by "restricting their autonomy to make decisions about their own lives and health."⁵⁴ In order to discuss how criminalization violates this right of bodily autonomy, there has to be a deeper analysis into the right generally.

⁵⁰ *Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends*, U.N. HUM. RTS. SPECIAL PROCEDURES, 1 (Oct. 2017), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Women'sAutonomyEqualityReproductiveHealth.pdf>.

⁵¹ The Convention on the Rights of Persons with Disabilities, art. 3 (Dec. 12, 2006), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

⁵² *Working Group on Discrimination Against Women and Girls: Overview*, U.N. HUM. RTS. OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/special-procedures/wg-women-and-girls> (last visited Feb. 19, 2024).

⁵³ *Eliminating Discrimination Against Sex Workers and Securing Their Human Rights*, U.N. HUM. RTS. OFFICE OF THE HIGH COMMISSIONER <https://www.ohchr.org/en/special-procedures/wg-women-and-girls/eliminating-discrimination-against-sex-workers-and-securing-their-human-rights> (last visited Feb. 19, 2024).

⁵⁴ U.N. HUM. RTS. COUNCIL, *supra* note 3, 1.

Much research has focused on the right of bodily autonomy when it comes to reproductive rights. In 2017, the UN Working Group issued a report on reproductive rights with respect to international human rights.⁵⁵ Within this report, it states that one of women's human rights is that of autonomy, and further states that "the right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, concerning intimate matters of physical and psychological integrity."⁵⁶

When analyzing the criminalization of sex work under these descriptions, there are clear violations of sex worker's rights. First, it takes away the ability of sex workers to make decisions about their own body.⁵⁷ Similar to what is discussed in terms of reproductive rights, the acts that the government attempts to control are intimate and personal.⁵⁸ By imposing punishments on those who engage in the work as a way to uphold moral values, the government takes away the right of workers to make decisions about the use of their bodies, their work, their income, and what intimate relationships are permitted under the law.⁵⁹ However, if there were no payment for these services, the government would not involve themselves in regulating sexual relationships.⁶⁰ There are plenty of consenting adults engaging in intimate actions with strangers for one-night stands and these individuals are free to make those choices.⁶¹ The only difference is that sex workers have been able to make financial gains from these actions.⁶² By

⁵⁵ *Women's Autonomy, Equality and Reproductive Health in International Human Rights: Between Recognition, Backlash and Regressive Trends*, U.N. HUM. RTS. SPECIAL PROCEDURES, 1 (Oct. 2017), [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Women'sAutonomyEqualityReproductiveHealth.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/Women%20AutonomyEqualityReproductiveHealth.pdf).

⁵⁶ *Id.*

⁵⁷ U.N. HUM. RTS. COUNCIL, *supra* note 3, 1.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Anderson, *supra* note 6, at 74.

⁶¹ *Id.* at 74.

⁶² *Id.*

criminalizing sex workers for deciding what to do with their own bodies, the government violates the right to bodily autonomy, something recognized for all individuals who do not have fees for their participation in intimacy.

However, not all forms of sexual services provided at a cost are criminalized.⁶³ For pornography, consenting adults are allowed to film their sexual interactions for profit without facing criminal consequences.⁶⁴ Strip clubs and strippers are legal, allowing the owners of these establishments and the dancers hired to earn money from engaging in sexual activities such as lap dances.⁶⁵ So why are sex workers denied protection of their rights when individuals in other professions conducting themselves in the same manner may do so legally?

B. The Right to Health

Criminalization also violates the right to health. The Universal Declaration of Human Rights, Article 25 states that each person has a universal “right to a standard of living adequate for the health and well-being of himself.”⁶⁶ The right to health is recognized in numerous international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights, The International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination against Women, and more.⁶⁷

⁶³ *Id.* at 75

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art 25, (Dec. 10, 1948).

⁶⁷ G.A. Res. 2200A (XXI), The International Covenant on Economic, Social and Cultural Rights, art. 12 (Dec. 16, 1996); U.N. G.A. Res. 2106 (XX), The International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (Dec. 21, 1965).; U.N. G.A., The Convention on the Elimination of All Forms of Discrimination Against Women, arts. 11, 12, and 14, G.A. Res. 34/180, (Dec. 18, 1979).; The Right to Health, OFF. OF THE U.N. HIGH COMM’ R FOR HUM. RTS. AND WHO, Factsheet 31,1, 3 (Jun. 2008),

The Office of the United Nations High Commissioner for Human Rights and the World Health Organization published a work that further clarified the human right to health.⁶⁸ Within this publication, the U.N. discusses the link between human rights and efforts to prevent the spread of HIV and AIDS, specifically discussing the right to privacy and right to health.⁶⁹ This discussion by the U.N. is also relevant to the International Covenant on Economic, Social, and Cultural Rights, Article 12 that lays out how states may achieve the highest attainable standard of health, with one of these necessary steps being the “the prevention, treatment and control of epidemic, endemic, occupation and other diseases.”⁷⁰ Sex workers are one group of individuals whose spread of HIV and AIDS is disproportionately high.⁷¹ Many sex workers suffering from these infections avoid testing and treatment due to the stigma associated with their work.⁷² To mitigate the role stigma plays in the continued spread of HIV/AIDS, the U.N. argues for the enactment of policies that prohibit discrimination as well as policies that seek to allow greater access to care for populations at higher risk.⁷³ Additionally, the UN argues that to increase prevention of HIV/AIDS, there is a greater need for education regarding the diseases and greater access to condoms.⁷⁴

Another discussion under the right to health is the right to be free from mental and physical harm.⁷⁵ The Committee on the Elimination of Discrimination against Women imposes further

<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>.

⁶⁸ *The Right to Health*, OFF. OF THE U.N. HIGH COMM’ R FOR HUM. RTS. AND WHO 1, 3 (Jun. 2008), <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>.

⁶⁹ *Id.* at 20-21.

⁷⁰ *Id.* at 9.

⁷¹ *Id.* at 21.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 13.

requirements on the states to address the issue of violence by requiring that states “prevent, investigate, and prosecute,” violence against women.⁷⁶

Finally, an essential part of the right to health care is access to quality health services and treatment.⁷⁷ While access does include the number of hospitals, there are other important factors to consider whether healthcare is accessible.⁷⁸ Accessibility includes the right to receive treatment from these facilities, ensuring health care is not out of reach for portions of the population based on discrimination.⁷⁹

Analyzing the impacts of criminalization under the right to health, there are clear violations. The first violation stems from the discussion by the United Nations and The International Covenant on Economic, Social and Cultural Rights as they discuss HIV and AIDS.⁸⁰ Criminalization also affects the overall health of sex workers and the public.⁸¹ One way that criminalization creates problematic practices that threaten public health is through the use of condoms as evidence in prosecution of sex work.⁸² There were reports indicating that sex workers were being arrested for just carrying around condoms with them, leading many to forgo the protection for their work.⁸³ This stands in direct opposition to the suggestion by the U.N. to increase access to condoms. With less use of condoms within sex work, HIV, AIDS, and other diseases are able to spread more easily and quickly.⁸⁴ One study has indicated decriminalizing “sex work could avert 33-46% of new HIV/AIDS infections in the next decade.”⁸⁵ This statistic demonstrates the significant health problems, for workers and the

⁷⁶ *Id.*

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 3-4.

⁷⁹ *Id.* at 4.

⁸⁰ *Id.* at 9 and 21.

⁸¹ Anderson, *supra* note 6, at 111-112.

⁸² *Id.* at 112.

⁸³ *Id.*

⁸⁴ *Id.* at 111-112.

⁸⁵ *Id.* at 112.

public, criminalization creates.⁸⁶ While the U.S. signed the covenant, they fail to meet the duty it imposes. As the current policies in the U.S. only contribute to the spread of HIV/AIDS, the requirement of the covenant to prevent and control diseases and epidemics is not met.

Criminalization violates the human right to health as sex workers as the current system creates unsafe conditions that increase the risk of violence.⁸⁷ By engaging in a practice that, if caught, has consequences of jail time, sex workers have to try and keep their actions private.⁸⁸ To decrease the risk of facing charges, sex workers “are forced to engage in behaviors that increase their risk of harm,” such as working in remote areas and being unable to efficiently screen the clients they are accepting.⁸⁹ Additionally, in an attempt to avoid charges, sex workers are not reporting the violence they endure to the police.⁹⁰ Another problem criminalization creates is that when sex workers do go to the police for help, they may face abuse from the officers.⁹¹ Officers may use their positions of power to demand sex, with the threat of jail time if a worker refuses.⁹² This violation from officers in a position of power coupled with the already existing fears of judgment and ridicule from healthcare professionals makes it more unlikely that sex workers in need of medical care will seek help or truthfully explain what has happened to them.⁹³

Criminalization often reduces access to health care.⁹⁴ One reason for reduced access stems from the stigma criminalization promotes.⁹⁵ Many sex workers have shared concerns of disclosing their work to health care providers for fear of how they will be

⁸⁶ *Id.*

⁸⁷ Anderson, *supra* note 6, at 120.

⁸⁸ *Id.*

⁸⁹ *Id.* at 120-121.

⁹⁰ *Id.* at 110.

⁹¹ *Id.* at 127.

⁹² *Id.*

⁹³ *Id.*; Benoit, *supra* note 39, at 462.

⁹⁴ Vanwesenbeeck, *supra* note 4, at 1634.

⁹⁵ *Id.* at 1632.

treated following the disclosure.⁹⁶ It is common for sex workers to experience disrespect and discrimination after sharing their work history with medical professional.⁹⁷ Others have even had their care denied or have had medical professionals fail to keep their information confidential.⁹⁸ With all these concerns, it is common for sex workers to not share this information when receiving medical care, even when this information may be essential to adequate treatment of diseases or physical violence.⁹⁹ Because stigma and criminalization set up barriers to medical care, sex workers often lack access to condoms, counseling and STD testing and treatment.¹⁰⁰

Even when sex workers do seek medical care, the quality of that care is often diminished due to the health care provider's negative views of their occupation.¹⁰¹ Some ways quality of care is diminished is by health care providers failing to treat all diseases, denying treatment, and not providing access to condoms.¹⁰² Some studies have found that sex workers are denied adequate support unless they are viewed as victims.¹⁰³ This focus on victimhood seems to indicate that those discriminating against sex workers blame them for the troubles they endure. For example, under a Swedish act, providing social support for sex workers was conditional – requiring that sex workers leave the industry.¹⁰⁴ These requirements for help indicate a view that sex workers are only deserving of help and support after recognizing what they are doing is wrong or immoral. This view seems to completely ignore the fact that sex workers may voluntarily choose to engage in this work and enjoy it. It also seems to blame the profession for the

⁹⁶ Benoit, *supra* note 39, at 462.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Anderson, *supra* note 6, at 112.

¹⁰⁰ Vanwesenbeeck, *supra* note 4, at 1634.

¹⁰¹ *Id.* at 1635.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

violence or harm they face, rather than placing the blame with perpetrators or failures of the system. For these reasons, many sex workers have negative experiences with the health care system, resulting in reluctance to seek services in the future.¹⁰⁵

There are also mental health concerns for sex workers as criminalization and societal stigma continue to plague workers.¹⁰⁶ With the negative narrative surrounding sex work and legal consequences for the work, many sex workers begin to believe the degrading remarks that are said about them.¹⁰⁷ All of these factors may cause sex workers to believe the treatment they face, such as the negative treatment from peers, physical violence they endure, and less than adequate quality of care from medical professionals, are justified consequences of engaging in sex work.¹⁰⁸ When individuals believe they deserve the treatment they are receiving, their access to and willingness to try to receive essential services becomes less likely.¹⁰⁹

For these reasons, criminalization clearly violates the right to health. By creating practices that contribute to the spread of HIV/AIDS, increase violence against sex workers and reduce access to quality care, there are numerous violations demonstrating the need for change. The reality of harms imposed under this approach to the sex industry stand in direct opposition to one of the main justifications for criminalization - protecting women.¹¹⁰ To comply with human rights requirements and effectively protect sex workers, the approach to sex work in the United States must change.

II. Approaches to Regulating Sex Work

¹⁰⁵ Benoit, *supra* note 39, at 462.

¹⁰⁶ *Id.* at 460.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Anderson, *supra* note 6, at 88.

Criminalization violates sex workers human rights by taking away workers' bodily autonomy and negatively impacting their health. For these reasons, it is essential that the United States changes its current regulations surrounding sex work to protect these rights. Generally, there are five approaches to addressing sex work.¹¹¹ As discussed through the analysis of the current system of the United States, criminalization is one of the approaches a state may follow when regulating sex work.¹¹² Under criminalization, sex work is prohibited with criminal consequences for those who engage in such activities.¹¹³ Under this model, both the worker and the buyer face consequences.¹¹⁴ This model usually gains support from those that view sex work as immoral, but also those who claim that the government should protect women from this type of work.¹¹⁵ As discussed with respect to the challenges this model presents in the United States, sex workers who experience violence or abuse are less likely to report these incidents to police out of fear.¹¹⁶ Additionally, under this model many sex workers face more challenges when trying to seek health care and often deal with social challenges as a result of discrimination.¹¹⁷

Another approach some states have taken is partial criminalization.¹¹⁸ Under this approach, involvement of third parties is criminalized, particularly brothels or working with others.¹¹⁹ Canada, India, and most of the UK follow this model.¹²⁰

¹¹¹ *The Law & Sex Work: Four Legal Approaches to the Sex Sector*, YALE GLOBAL HEALTH JUSTICE PARTNERS 1 (April 2020), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/the_law_and_sex_work.pdf.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 2.

¹¹⁹ *Id.*

¹²⁰ Lucy Platt, et al., *Associations Between Sex Work Laws and Sex Workers' Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative*

This is sometimes connected with another model known as a “Nordic Model.”¹²¹ Some countries utilizing this approach are France and Norway.¹²² Under this model, the act of buying sex work is illegal as well third parties, however, those who are working within the profession do not face criminal repercussions.¹²³ Evidence indicates that this approach poses the same risks of violence to sex workers, as it limits the ability of workers to choose their clients.¹²⁴

Legalization, also known as regulation, is another approach that countries have taken.¹²⁵ This approach creates certain regulations and rules within sex work, such as requiring licenses, certain registration, or conditions for eligibility.¹²⁶ Individuals who engage in sex work without complying with the requirements or licensing will face criminal repercussions.¹²⁷ Examples of countries with this model are Australia, Germany, and the Netherlands.¹²⁸ This approach became popular with certain militaries and those seeking to address public health concerns.¹²⁹ Critics argue this model continues to take away the autonomy of workers and gives too much power to third parties.¹³⁰

Finally, the last approach is full decriminalization of sex work.¹³¹ Here, there are no criminal consequences for those

Studies, PLOS MEDICINE 1, 4 (Dec. 11, 2018), <https://doi.org/10.1371/journal.pmed.1002680>.

¹²¹ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111 at 2.

¹²² Platt, *supra* note 120, at 4.

¹²³ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111, at 2; Jessica McCann, et al., *Sex Worker Health Outcomes in High-Income Countries of Caried Regulatory Environments: A Systematic Review Sex Worker Health Outcomes*, 8 INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH 1, 4 (Apr. 9, 2021), <https://doi.org/10.3390/ijerph18083956>.

¹²⁴ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111 at 2.

¹²⁵ *Id.*

¹²⁶ *Id.*; Platt, *supra* note 120, at 4.

¹²⁷ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111, at 2.

¹²⁸ McCann, *supra* note 123, at 4.

¹²⁹ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111, at 2.

¹³⁰ *Id.*

¹³¹ *Id.* at 1.

engaging in sex work, whether they be a third party or directly selling sexual services.¹³² Additionally, there are no criminal consequences for those who purchase sexual services.¹³³ There is strong support for this approach among sex workers' rights groups.¹³⁴ Those supporting full decriminalization believe this approach encourages safer practices among workers and allows for workers to have greater control.¹³⁵ While sexual services are legal, there are criminal consequences for trafficking, violence, and engaging in sexual services with a minor.¹³⁶ Under this model, rates of violence against sex workers decrease and access to services increase.¹³⁷ One country that currently uses this model is New Zealand.¹³⁸

There have been studies analyzing the effects these approaches have on certain health related factors.¹³⁹ These studies have indicated that in countries that have taken a decriminalization approach, condom usage was more common.¹⁴⁰ This may also play a role in the lower rates of STIs found in areas under the decriminalization approach.¹⁴¹ In areas that do not criminalize sex work, there was also greater access to health programs and testing.¹⁴² Voluntary health checks were also more common within these jurisdictions.¹⁴³ Stigma and discrimination were found in all areas, regardless of their approaches to sex work.¹⁴⁴ However,

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Platt, *supra* note 120, at 4.

¹³⁹ McCann, *supra* note 123, at 9.

¹⁴⁰ *Id.* at 8.

¹⁴¹ *Id.*

¹⁴² *Id.* at 9.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

overall, evidence seemed to suggest decriminalization as the best model when it comes to overall safety and health of sex workers.¹⁴⁵

III. Legalization of Sex Work in New Zealand

To fully understand how a decriminalization approach functions within a government, the following portion of the article will analyze how New Zealand implemented this approach. New Zealand passed the Prostitution Reform Act (“PRA”) in 2003.¹⁴⁶ The passage of the PRA made history as it was the first time a country decriminalized sex work.¹⁴⁷

A. History of Sex Work in New Zealand

In 1796, the woman on the island, and some men, traded sex with sailors for different items.¹⁴⁸ Legislation was enacted in 1866 making it illegal for anyone to engage in sexual acts in public.¹⁴⁹ However, there was no statewide ban on brothels as the regulation of these establishments was left up to the local government.¹⁵⁰ Concerns with the morality of sex work began, with workers and brothels being labeled as evil.¹⁵¹ Due to these fears concerning the morality of sex work, the Contagious Diseases Act 1869 was passed.¹⁵² Under this act, women engaged in sex work would be forced to undergo medical exams to determine if they had diseases.¹⁵³ If the exam revealed that the individual had a

¹⁴⁵ *Id.*

¹⁴⁶ *Prostitution Law Reform in New Zealand*, NEW ZEALAND PARLIAMENT at ¶ 1, (July 2012), <https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at ¶ 2.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Jan Jordan, *The Sex Industry in New Zealand: A Literature Review*, MINISTRY OF JUSTICE 1, 24 (Mar. 2005).

¹⁵² *Id.*

¹⁵³ NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 2; Jordan, *supra* note, 151, at 24.

contagious disease, they often would be held in a reformatory.¹⁵⁴ Despite concerns of diseases from sex work, there was no similar policy for the men purchasing these services.¹⁵⁵

During World War I, concerns about sexually transmitted diseases became more prevalent, specifically regarding New Zealand's armed forces. More acts were passed with the focus of punishing those engaging in public sex acts.¹⁵⁶ Concerns about sexually transmitted diseases continued to grow through World War II, resulting in the passage of more acts aimed at discouraging individuals from engaging in sex work.¹⁵⁷ The Massage Parlours Act 1978 required operators of these parlors to have their license, with specific requirements about their past criminal history and the criminal history of the employees they hired.¹⁵⁸ The passage of this act effectively prevented those with past prostitution convictions from the industry.¹⁵⁹

In the 1970s, numerous factors, such as movements focusing on women and gay rights, brought more attention to the human rights of sex workers.¹⁶⁰ Additionally, the epidemic of HIV/AIDS caused backlash against sex workers and gay males, with public perception painting these populations as the center of the disease.¹⁶¹ Concerns regarding sexually diseases continued through the 1970s and 1980s, when HIV/AIDS began gaining more attention.¹⁶² In 1987, sex work activism gained popularity with the establishment of the New Zealand Prostitutes' Collective ("NZPC").¹⁶³ The government even provided the NZPC with

¹⁵⁴ NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 2.

¹⁵⁵ Jordan, *supra* note, 151, at 25.

¹⁵⁶ NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 3-4.

¹⁵⁷ *Id.* ¶ 4.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Jordan, *supra* note, 151, at 26.

¹⁶¹ *Id.*

¹⁶² NEW ZEALAND PARLIAMENT *supra* note 146, at ¶ 5.

¹⁶³ *Id.*

funding to address AIDS/HIV, with the group focusing on the work environment and health standards of the sex work industry.¹⁶⁴

B. The Prostitution Reform Act

Support for decriminalization of sex work grew in the 1990s as the public became more educated about the profession and through NZPC's activism.¹⁶⁵ NZPC and other organizations that supported reform, such as women's groups, some political parties, and the AIDS Foundation drafted a new bill to replace the current law, except this would have a focus on the needs of sex workers.¹⁶⁶ This bill was the Prostitution Reform Act ("PRA"), which had the purpose of decriminalizing sex work.¹⁶⁷ In 2003, the PRA was passed.¹⁶⁸

The Act included numerous changes from the past criminalization of public sex work.¹⁶⁹ One aspect of the act was that individuals could not purchase sexual services from those under the age of eighteen.¹⁷⁰ Violating this provision would result in prison.¹⁷¹ The Act also introduced health and safety regulations, such as ensuring that safe sex was practiced with fines for those who fail to comply.¹⁷² There were regulations for both the operators of brothels and the individual sex workers to ensure there were safe sex practices.¹⁷³ To determine if businesses and employees are complying with these health regulations, Medical

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at ¶ 6.

¹⁶⁶ NEW ZEALAND PARLIAMENT, *supra* note 146 at ¶ 6.; *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003*, MINISTRY OF JUSTICE 1, 22 (May 2008).

¹⁶⁷ NEW ZEALAND PARLIAMENT, *supra* note 146 at ¶ 7.

¹⁶⁸ *Id.* at ¶ 8.

¹⁶⁹ *Id.* at ¶ 9.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ MINISTRY OF JUSTICE, *supra* note 166, at 23.

Officers of Health act as inspectors.¹⁷⁴ If these officers have a warrant or obtain consent, they may enter into an establishment.¹⁷⁵ The Act required brothel operators to get a certificate, with fines for those who continued to operate without the required certification.¹⁷⁶ However, if a brothel has less than five sex workers, there is no operator, requiring no certification.¹⁷⁷ Local authorities also have the power to create bylaws that regulate aspects of brothels such as their location and advertising.¹⁷⁸ Finally, the Act also created a law review committee to determine the number of sex workers in the country once it was decriminalized and then reviewing how the Act is currently functioning, determining whether the Act is actually fulfilling the purpose for its creation. purpose.¹⁷⁹

C. Impacts Following the Enactment of the PRA

With committee reports and observations following the enactment of the PRA, there are observable impacts of decriminalization on the sex industry.¹⁸⁰ The first aspect noted in the report was the number of sex workers in New Zealand.¹⁸¹ When discussing decriminalization, critics voiced concerns that without criminalization, the population of sex workers would increase dramatically.¹⁸² But, from committee reports and group reviews, there appears to be no significant increases in the sex worker population as some suggested.¹⁸³ The Committee noted that while there is greater visibility, as workers and brothels no longer have to conduct their practices in secret, the increase in visibility

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 9.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at ¶ 10.

¹⁸¹ *Id.* ¶ 10-11.

¹⁸² *Id.* ¶ 11.

¹⁸³ *Id.*

does not necessarily mean there has been growth in the amount of sex workers and brothels.¹⁸⁴

Another impact following decriminalization of sex work in New Zealand is the working conditions.¹⁸⁵ Surveys indicate that sex workers now have more confidence, no longer fearing criminal punishments for their choice of profession.¹⁸⁶ This confidence allows them to feel better about their work and themselves.¹⁸⁷

Reports have also found high rates of condom usage within the sex work industry.¹⁸⁸ However, it is unclear whether condom usage is directly a result of decriminalization.¹⁸⁹ Many sex workers indicated that they were already engaging in safe sex practices prior to the enactment of the PRA, making it difficult to determine if there were any significant improvements in this area.¹⁹⁰ However, there have been brothels clearly inspecting the practices of their workers, reprimanding those who do not practice safe sex.¹⁹¹ While there may not have been significant changes in safe sex, surveys have found that without fear of criminalization, workers are able to negotiate safer sex practices.¹⁹² Now, workers can turn to the law for support when telling clients they will be practicing safe sex, suggesting that any efforts on the part of the client to forgo these safe practices could result in criminal punishment.¹⁹³

Since the enactment of the PRA, sex workers still experience incidents of violence.¹⁹⁴ There are differing reports from informants on the issue of violence, with some feeling that there will always be bad clients and others feeling empowered,

¹⁸⁴ MINISTRY OF JUSTICE, *supra* note 166, at 41.

¹⁸⁵ NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 14.

¹⁸⁶ MINISTRY OF JUSTICE, *supra* note 166, at 49.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 50.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² NEW ZEALAND PARLIAMENT, *supra* note 146 at ¶ 14.

¹⁹³ MINISTRY OF JUSTICE, *supra* note 166, at 50.

¹⁹⁴ *Id.* at 58.

stating they no longer have to deal with those behaviors.¹⁹⁵ Since the PRA was passed, there have been significant changes in terms of reporting these crimes.¹⁹⁶ Surveys indicated that 70% of sex workers would go to the police and report violence.¹⁹⁷ Despite more willingness to report crimes to police, going to court for these acts is less common.¹⁹⁸

Some challenges with sex work following the enactment of the PRA remain. Sex workers still face violence; however studies were unable to determine how current violence compares to that before decriminalization.¹⁹⁹ Additionally, studies found that exploitation still occurred in some incidents, with there being a variety of good and bad managers of brothels.²⁰⁰ As for the regulation prohibiting minors from sex work, surveys have shown that under-age individuals are still engaged within the industry.²⁰¹ Controversy surrounding sex work still exists as many have begun to voice concerns about the location of sex work.²⁰² Communities have spoken out against brothels opening in residential area, with some local governments attempts to restrict sex work from certain areas.²⁰³ One city council was successful in passing a bylaw that restricted sex work to certain areas.²⁰⁴

IV. Legalizing Sex Work in the United States

Having previously discussed how the current approach of criminalization in the United States violates the rights of sex workers, it is crucial to initiate efforts to decriminalize sex work. To protect the right of autonomy of sex workers, a model of

¹⁹⁵ *Id.* at 57.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 14.

²⁰⁰ *Id.*

²⁰¹ *Id.* ¶ 15

²⁰² *Id.* at ¶ 16.

²⁰³ *Id.* ¶ 16-17.

²⁰⁴ *Id.*

decriminalization, such as the one found in New Zealand would be best. Under this model, workers would have more choice in who they take on as customers, allowing them to conduct more thorough screening and evaluation. The Committee Report that analyzed the impact of PRA found that sex workers were able to have a greater amount of control in their interactions with clients, as they could now ensure safe sex practices with the support of the law.²⁰⁵ The ability to choose who to provide services to and the conditions surrounding these services would significantly improve their current position.

A decriminalization approach like that found in New Zealand would protect sex workers' right to health.²⁰⁶ First, without the fear of condoms being used against them in a criminal proceeding, workers may engage in safe sex more readily. Additionally, decriminalization allows sex workers have more control over their services, including requiring safe sex.²⁰⁷ By enacting requirements for safe sex practices and fines for those who fail to comply, the practice of using condoms will become standard.²⁰⁸ With an increase in safe sex, the spread of HIV and AIDS may decrease within the sex worker communities.²⁰⁹

By decriminalizing sex work, when workers face violence, they will be able to turn to the police to report violence without the concern that they will be prosecuted.²¹⁰ Decriminalization also provides greater protection from police abusing their power and taking advantage of sex workers, as there will no longer be a threat of charges and police would be more likely to face repercussions.

Another significant impact that decriminalization could bring is providing greater access to quality medical care.²¹¹ While stigma

²⁰⁵ MINISTRY OF JUSTICE, *supra* note 166, at 50.

²⁰⁶ McCann, *supra* note 123, at 9.

²⁰⁷ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111, at 1; MINISTRY OF JUSTICE, *supra* note 166, at 50.

²⁰⁸ *Id.* at 8.

²⁰⁹ *Id.*

²¹⁰ MINISTRY OF JUSTICE, *supra* note 166, at 57.

²¹¹ McCann, *supra* note 123, at 9.

will not go away overnight, decriminalizing sex work and recognizing the rights of these workers will make it easier for sex workers to seek medical care.²¹² There will no longer be concerns that the information they disclose to medical professionals will be used against them, and there would be repercussions for those who discriminate against sex workers. Overall, sex workers will feel more secure and safe to seek treatment in times of need. With greater access to medical care, overall health will improve, and diseases may be diagnosed and treated more quickly, limiting the spread.²¹³

V. Conclusion

The criminalization of sex work in the United States violates sex workers' human rights. Criminalization strips sex workers of bodily autonomy by taking away their right to choose who to engage in sexual services with and how to use their own bodies. The current system in the United States also violates the right to health, as it creates unsafe working conditions that negatively impact the overall health of sex workers, by creating unsafe sex practices, limiting access to quality care, and discouraging those who have experienced violence from seeking help.

While the United States currently operates under a criminalization approach, there are other models available.²¹⁴ One model recognized as best for protecting the health and safety of sex workers is the decriminalization approach. Like in New Zealand, under this model there are regulations regarding certain aspects of sex work.²¹⁵ Since enactment, there have been improvements in the rights and health of sex workers in New Zealand.²¹⁶ In order to protect the human rights of sex workers, the United States should

²¹² *Id.*

²¹³ McCann, *supra* note 123, at 9.

²¹⁴ YALE GLOBAL HEALTH JUSTICE PARTNERS, *supra* note 111, at 1.

²¹⁵ McCann, *supra* note 123, at 10; NEW ZEALAND PARLIAMENT, *supra* note 146, at ¶ 1.

²¹⁶ MINISTRY OF JUSTICE, *supra* note, at 166.

adopt a similar model. By decriminalizing sex work, the U.S. will recognize that human rights exist for everyone, including those within the sex industry. Through decriminalization in the U.S., sex workers would gain autonomy in their professional decisions. Additionally, decriminalization would allow for safer sex practices and greater access to medical care. It is essential that the United States adopt a decriminalization approach to sex work, putting an end to years of human rights violations brought on by criminalization.