

**THINKING GLOBALLY, ACTING LOCALLY: HOW NEW JERSEY
PROSTITUTION LAW REFORM CAN REDUCE SEX
TRAFFICKING**

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I. INTRODUCTION – WHAT IS HUMAN TRAFFICKING?	557
II. TRAFFICKING PROSECUTION: FEDERAL VERSUS STATE	561
III. THE DEVELOPMENT OF STATE LAWS ON PROSTITUTION.....	564
IV. TRAFFICKING IN NEW JERSEY	568
V. PROPOSED REFORMS	572
A. Approach #1: Increase Prosecution and Penalties for Pimps	572
B. Approach #2: Follow the Swedish Model – Increase Penalties for Johns.....	577
C. Approach #3: Legalize Prostitution	583
VI. CONCLUSION.....	588

I. INTRODUCTION – WHAT IS HUMAN TRAFFICKING?

Human trafficking is a global phenomenon that has persisted for years, yet only in the past decade or so have legislators in the United States paid attention to this horrible crime. Human trafficking is often referred to as a form of slavery since the victims of trafficking are engaged in forced labor, forced sex work, or some other involuntary activity.¹ In 2000, under President Bill Clinton, the federal government passed the Trafficking Victims Protection Act of 2000 (“TVPA”).² At the time the TVPA was passed, Congress found that “[a]t least 700,000 persons annually, primarily women and

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1. *E.g.*, Ellen L. Buckwalter et al., *Modern Day Slavery in Our Own Backyard*, 12 WM. & MARY J. WOMEN & L. 403, 406 & n.11 (2006).

2. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at 22 U.S.C. §§ 7101–7112 (2006)).

children, are trafficked within or across international borders.”³ Given the prevalence of trafficking victims, the TVPA was designed to provide comprehensive federal protection to victims of trafficking.⁴

The TVPA differentiates between two forms of trafficking—sex trafficking and labor trafficking.⁵ Under the TVPA, sex trafficking occurs when “a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”⁶ In contrast, labor trafficking occurs if there has been “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.”⁷ While trafficking numbers are hard to estimate accurately, the U.S. Department of State’s trafficking report in 2010 found that there have been “more investigations and prosecutions [in the United States] . . . for sex trafficking offenses than for labor trafficking.”⁸ The passage of the federal legislation has raised awareness regarding human trafficking and created three clear goals: “prevention, criminal prosecution, and victim protection.”⁹ Despite the new law, however, the needs of many human trafficking victims are still unmet, as many victims are hidden and unable to avail themselves of legal protection. Additionally, the difficulty of obtaining the necessary resources for prosecution of traffickers has made actual implementation of the TVPA minimal.¹⁰

A main critique of the TVPA relates to the issuance of T-visas, which provide immigration benefits to those who suffer “severe forms of human trafficking.”¹¹ Though the federal government may issue up to 5,000 T-visas each year—in 2008, only 279 T-visas were approved for victims.¹² Looking at the discrepancy between the number of T-visas permitted and the number actually issued, one can see federal

3. 22 U.S.C. § 7101(b)(1) (2006).

4. *See id.* § 7105(a)(1).

5. *Id.* § 7102(8)(A)-(B).

6. *Id.* § 7102(8)(A).

7. *Id.* § 7102(8)(B).

8. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 338 (10th ed. 2010) [hereinafter 2010 TIP REPORT], available at <http://www.state.gov/documents/organization/142979.pdf>.

9. *Id.* at 5 (emphasis omitted).

10. *See* discussion *infra* Part V.A.

11. SIDDHARTH KARA, SEX TRAFFICKING: INSIDE THE BUSINESS OF MODERN SLAVERY 195 (2009); *see* LOUISE I. SHELLEY, HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE 260 (“These visas for victims of severe forms of trafficking who agree to cooperate with law enforcement have been awarded in limited numbers.”).

12. SHELLEY, *supra* note 11 (“[A]n additional 261 [T-visas were approved] for family members. Thus[,] only 2300 T-visas have been issued since 2001 to all victims of human trafficking and their relatives, far below the annual limit.”).

prosecutions are not up to par with the number of victims that actually exist and need help.¹³

Several years after the TVPA was passed, many states also began to enact their own statutes against human trafficking.¹⁴ New Jersey, which has high rates of both sex trafficking and forced labor trafficking,¹⁵ enacted its own antitrafficking law on April 26, 2005.¹⁶ Currently very few trafficking cases have been prosecuted under § 2C:13-8, though there have been recent trafficking rings discovered that brought attention to the pervasiveness of the problem.¹⁷

Trafficking is largely a gendered phenomenon and illustrates the commodification of women in stereotypically gendered roles:

[A]lmost three quarters of trafficking victims in the United States are exploited in traditionally female labor sectors: cleaning homes, caring for children, and sexually servicing men—what feminists describe as the “sexual division of labor.” As it is primarily expressed in the United States, human trafficking fits into overall patterns commodifying stereotypically gendered roles, which reaffirm women’s subordinated status within the context of women’s objectification and exploitation.¹⁸

Approximately 70 percent of female trafficking victims are forced into the sex industry, while the majority of the remaining percent of female victims are trafficked into forced labor.¹⁹

Though the TVPA makes a distinction between sex and labor trafficking, there are various similarities between the two types of trafficking. Both types of cases involve the use of physical or

13. See, e.g., *id.*; U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 49 (7th ed. 2007); see also *infra* Part V.I (discussing how the difficulties in prosecuting pimps and trafficking victims’ failure to cooperate with prosecutors explain why so few T-visas are granted).

14. See U.S. Policy Advocacy to Combat Trafficking (US PACT), *Fact Sheet on State Anti-Trafficking*, CTR. FOR WOMEN POLICY STUDIES (Feb. 2011), <http://www.centerwomenpolicy.org/documents/FactSheetonStateAntiTraffickingLawsFebruary2011.pdf>.

15. See *infra* text accompanying note 82 (discussing why trafficking is so prevalent in New Jersey).

16. N.J. STAT. ANN. § 2C:13-8 (West 2005).

17. E.g., Katherine Santiago, *Eight Charged in N.J.-Based Sex-Trafficking Ring*, NJ.COM, Aug. 10, 2009, http://www.nj.com/news/index.ssf/2009/08/head_of_jersey_citybased_sextr.html; Joe Ryan, *West African Woman Who Ran Human Trafficking Ring in Newark, East Orange to be Sentenced*, NJ.COM, Sept. 20, 2010, http://www.nj.com/news/index.ssf/2010/09/west_african_immigrant_who_ran.html.

18. Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83, 86 (2009).

19. See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 23 (4th ed. 2004) [hereinafter 2004 TIP REPORT]; DUREN BANKS & TRACEY KYCKELHAHN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 233732, *CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010* (2011), available at <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

emotional abuse to force the victim into yielding to the trafficker's demands, and the trafficker often accomplishes these goals through isolating the victim.²⁰ Attempts to differentiate the two types of trafficking often result in a perception that sex trafficking is "worse," since it "involves forced sex, i.e., rape, and thus constitutes one of the most [morally reprehensible] crimes. . . . Labor trafficking involves forced labor, i.e., someone being forced to perform work that thousands of other people legally and voluntarily perform on a daily basis."²¹ Thus, many people perceive sex trafficking to be worse morally, and "legal distinctions between them appear to reflect common sense."²²

However, attempting to classify one type of trafficking as worse than other is actually divisive and "underplays the actual harms of labor trafficking, 'marginalizes persons trafficked in non-sex related industries,' and erases the gendered nature of labor trafficking."²³ It is often challenging to classify trafficking cases as purely labor or sex, since the majority of trafficking victims are women, and they frequently are "sexually abused and forced to work" in some capacity.²⁴ Thus, though there are distinctions, it is important to realize that both forms of trafficking are typically gendered, and there is often an overlap between sexual abuse and labor exploitation.

Given the highly gendered nature of trafficking, it is not surprising that there is a large overlap between victims of sex trafficking and women in prostitution.²⁵ Unfortunately, both federal and state laws are "schizophrenic" in that they "simultaneously classif[y] prostituting persons as both potential victims and per se criminals."²⁶ The government often finds it easier to prosecute prostitutes rather than pimps or buyers.²⁷ This unequal treatment prevents those who exploit prostitutes from being held legally accountable and punishes the prostitutes, who often are actually sex trafficking victims.²⁸

Current federal and state antitrafficking laws fail to provide

20. Barnhart, *supra* note 18, at 89-90.

21. *Id.* at 90.

22. *Id.*

23. *Id.* at 94 (footnote omitted).

24. *Id.* at 91 (citation omitted).

25. SHEILA JEFFREYS, *THE INDUSTRIAL VAGINA: THE POLITICAL ECONOMY OF THE GLOBAL SEX TRADE* 160 (2009) (stating that the majority of women who are trafficking victims "are destined for prostitution").

26. Moira Heiges, Note, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 450-51 (2009).

27. See *infra* Part V.A-B.

28. See *infra* Part V.A-B.

comprehensive legal protection for victims. As the majority of human trafficking victims are trafficked for sexual services,²⁹ one way to more effectively address the needs of trafficking victims would be to reform state laws on prostitution. This Note focuses on modification of New Jersey's prostitution laws, as New Jersey has become a big center for trafficking.³⁰ Due to its easy accessibility to various modes of transportation, New Jersey has become a popular entry point for trafficking victims;³¹ however, New Jersey has rarely used the antitrafficking statute to prosecute anyone for trafficking.³²

This Note will focus on three approaches to reforming prostitution laws to help address the needs of sex trafficking victims. Part II gives an overview of prosecution of trafficking on the federal and state levels. Part III provides more background on prostitution and describes the development of state legislation. Part IV describes the prevalence of trafficking in New Jersey, discusses New Jersey's antitrafficking legislation, and highlights a few prominent trafficking cases in New Jersey. Part V describes three proposed reforms to New Jersey law targeted towards aiding victims of trafficking: (1) increase penalties for pimps, (2) increase penalties for consumers of prostitution, and (3) legalize prostitution. In conclusion, Part VI recommends that New Jersey should reformulate its laws similar to Sweden and increase penalties for consumers to best aid victims of trafficking.

II. TRAFFICKING PROSECUTION: FEDERAL VERSUS STATE

The Trafficking Victims Protection Act ("TVPA")³³ originally passed in 2000, was reauthorized in 2003, 2005, and 2008 so that the federal government could demonstrate its continued commitment to serving human trafficking victims and prosecuting traffickers.³⁴ The

29. See 2004 TIP REPORT, *supra* note 19 and accompanying text.

30. See Mary P. Gallagher, *State, County Law Enforcers Gear up for Human-Trafficking Prosecutions; Attorney General Forms Task Force as Criminal Legislation Nears Passage*, 179 N.J. L.J. 3 (2005).

31. Eileen Overbaugh, Note, *Human Trafficking: The Need for Federal Prosecution of Accused Traffickers*, 39 SETON HALL L. REV. 635, 639-40 (2009).

32. See Arlene Culpepper, *New Jersey Man Charged with Human Trafficking*, HEAT ONLINE (Dec. 29, 2011), <http://theheatmag.com/new-jersey-man-charged-with-human-trafficking/> (indicating just one example where N.J. prosecutors have utilized the antitrafficking statute).

33. 22 U.S.C. §§ 7101-7112 (2006).

34. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at 22 U.S.C. §§ 7101-7112 (2006)); Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (codified as amended at 22 U.S.C. §§ 7101-7112 (2006)); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended at 22 U.S.C. §§ 7101-7112 (2006)); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended

TVPA recognized that victims are made vulnerable and dependent on their traffickers, who use systematic isolation and violence to retain control over them.³⁵ Trafficking victims face various physical and psychological harms, particularly due to their isolation.³⁶ This isolation exposes victims to a host of terrible harms, including “systematic rape, torture, enslavement, and murder . . . whether directly through homicide or indirectly through sexually transmitted diseases and drugs. . . . [E]scape is rarely an option.”³⁷

Though the TVPA was passed over a decade ago, very few cases have been prosecuted relative to the number of trafficking victims that have been reported to exist.³⁸ Considering that there were an estimated 14,500 to 17,500³⁹ victims trafficked into the United States, from 2001 to 2005, of the 555 suspects investigated by the Department of Justice only seventy-five were convicted under federal human trafficking statutes.⁴⁰ Finding accurate statistics on prosecution of trafficking is quite difficult given the government’s failure to have a comprehensive and uniform site where all trafficking statistics can be viewed and accessed by the public.⁴¹ The Department of State’s 2010 report stated that in the 2009 fiscal year, “the Human Trafficking Prosecution Unit, a specialized anti-trafficking unit of DOJ’s Civil Rights Division, in partnership with U.S. Attorneys’ Offices, charged 114 individuals, and obtained 47

at 22 U.S.C. §§ 7101-7112 (2006)).

35. SHELLEY, *supra* note 11, at 243.

36. 22 U.S.C. § 7101(b)(5) (“Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.”). It is common for many victims to suffer from Post-Traumatic Stress Disorder: “Posttraumatic Stress Disorder (PTSD) commonly occurs among prostituted women, and is indicative of their extreme emotional distress. PTSD is characterized by anxiety, depression, insomnia, irritability, flashbacks, emotional numbing, and hyperalertness.” Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 116 (2006) [hereinafter *Sex for Sale*].

37. KARA, *supra* note 11, at 15.

38. See SHELLEY, *supra* note 11, at 133. Additionally, it is well-known that the number of trafficking victims (as well as victims of other crimes) is generally underreported since many victims are never discovered and choose not to identify themselves. See 2004 TIP REPORT, *supra* note 19, at 22-23.

39. 2004 TIP REPORT, *supra* note 19, at 23.

40. MARK MOTIVANS & TRACEY KYCKELHAHN, U.S. DEP’T OF JUSTICE, FEDERAL PROSECUTION OF HUMAN TRAFFICKING, 2001-2005, at 1-2 (2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/fpht05.pdf>.

41. Miriam Potocky, *The Travesty of Human Trafficking: A Decade of Failed U.S. Policy*, SOC. WORK, Oct. 1, 2010, available at www.faq.socwork.org/periodicals/201010/2172834611.html. Though the Department of State issues trafficking reports each fiscal year, much of the data is neither reported nor reported in a uniform manner. *Id.*

convictions in 43 human trafficking prosecutions (21 labor trafficking and 22 sex trafficking).⁴² Despite the fact that these numbers actually reflect the greatest number of defendants charged and prosecutions in a single year, looking at the number of projected victims, these numbers show prosecution of trafficking cases have been largely unsuccessful.⁴³

The low prosecution rate may be attributable to the fact that “traffickers often plead guilty to lesser charges.”⁴⁴ Thus, prosecutors rarely successfully convict traffickers for human trafficking violations. Additionally, lack of successful prosecution may be due in large part to difficulty in meeting the burden of proof and in gaining the cooperation of victims.⁴⁵

Although the federal trafficking law provides some uniformity in prosecuting traffickers and providing help to victims, states should become more involved in prosecution since “enforcement is much easier at the state and local level, where most criminal enforcement occurs.”⁴⁶ It may be easier to utilize state laws to prosecute trafficking cases because of the sheer number of local law enforcement officials that are available to become involved “in the investigation and apprehension of traffickers. Federal law enforcement simply does not have the number of officers needed to be everywhere in the country. Local and state law enforcement are everywhere.”⁴⁷

State law enforcement often may be in a better position to identify victims, especially when victims are engaging in other criminal activity, such as prostitution. For state laws to be successful in prosecuting human trafficking cases, they “must be clear that the basis for criminalization of human trafficking is exploitation—all forms of exploitation.”⁴⁸ Moreover, “[t]he most effective state laws focus on the traffickers’ behavior, specifically the methods of gaining control of the victim and means of maintaining exploitative control.”⁴⁹

However, although states should increase their involvement in protecting trafficking victims, the federal government will always have some role in prosecuting trafficking, at least for the most

42. 2010 TIP REPORT, *supra* note 8, at 339.

43. *See id.*

44. Overbaugh, *supra* note 31, at 642.

45. *See infra* Part V.A (discussing various prosecutorial challenges including a lack of physical evidence, untrained or undertrained law enforcement, and unfamiliar antitrafficking mandates).

46. Barnhart, *supra* note 18, at 87.

47. *Id.*

48. *Id.* at 130.

49. *Id.*

serious cases, since those victims may be eligible for immigration benefits, such as asylum or T-visas.⁵⁰

Ideally, there would be prosecution of trafficking on both the state and federal level. For cases where victims are trafficked from abroad and across various state lines, it makes sense for the federal government to attempt prosecution. However, for cases of domestic trafficking, local law enforcement and state prosecutors can, and should be, the primary agents in ensuring justice for those trafficking victims.

III. THE DEVELOPMENT OF STATE LAWS ON PROSTITUTION

Though prostitution is often referred to as the “oldest profession”⁵¹ in the world, surprisingly sex trafficking was not regulated or criminalized in the United States until 1875.⁵² In 1875, Congress enacted the Alien Prostitution Importation Act, which made it a felony to import a noncitizen woman into the United States for the purpose of prostitution, which was punishable by up to five years’ incarceration or \$5,000 in fines.⁵³ Though less people are aware of this law, it was Congress’ first attempt at regulating sex trafficking.⁵⁴ Initial jurisprudence reflected Congress’ belief that prostitution was immoral, and regulation was based on notions of morality, as in *United States v. Bitty*.⁵⁵

In 1910, Congress passed the White-Slave Traffic Act of 1910, better known as the Mann Act.⁵⁶ The Mann Act made it a “federal crime to transport any woman or girl in interstate commerce for the purpose of prostitution, ‘debauchery,’ or any other ‘immoral purpose.’”⁵⁷ However, only three years later, the Supreme Court held

50. See *id.* at 99 (“Victims of ‘severe forms of trafficking,’ . . . are eligible for immigration relief, and also receive federal benefits to the same extent as incoming refugees and asylees. As state legislatures have no power to extend immigration benefits, and usually little or no funding for service provisions, these federal provisions for victim witnesses ensure that even state-prosecuted trafficking cases will have some federal governmental involvement.”).

51. Christopher Ryan, *Is Prostitution Really the “Oldest Profession?”*, PSYCHOLOGY TODAY (Mar. 12, 2008), <http://www.psychologytoday.com/blog/sex-dawn/200803/is-prostitution-really-the-oldest-profession>.

52. Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 3012 (2006).

53. Alien Prostitution Importation Act, ch. 141, § 3, 18 Stat. 477 (1875) (amended 1907).

54. Chacón, *supra* note 52.

55. *United States v. Bitty*, 208 U.S. 393, 403 (1908) (holding that defendant’s importation of an English woman to live with him as a concubine violated the statute because it was deemed an “immoral purpose” sufficient to satisfy congressional intent).

56. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (2006)).

57. Heiges, *supra* note 26, at 435.

that Congress could not regulate prostitution per se, as that was within the power of the states.⁵⁸ Instead, Congress could only regulate interstate travel for purposes of prostitution or other immoral purposes.⁵⁹

Today prostitution is controlled entirely by state law.⁶⁰ Currently there is no federal law that prohibits prostitution.⁶¹ States' power to regulate prostitution derives from an 1884 proclamation by the Supreme Court in *Barbier v. Connolly*, where the Court characterized state police powers as those that "promote the health, peace, morals, education, and good order of the people."⁶²

Since each state is entitled to create its own laws and regulations on prostitution, it is not surprising that the treatment of the various parties involved differ from state to state. Punishments differ from state to state, as well as the particular prostitution-related charges.⁶³

An examination of state prostitution statutes reveals a trend that shows the majority of states impose the greatest punishments for pimps, including the degree of punishment, length of imprisonment, and monetary fines.⁶⁴ The District of Columbia and 31 states, including New Jersey, have statutes that impose the harshest penalties on pimps, while imposing lesser but equal penalties on prostitutes and johns.⁶⁵ There are six states that impose

58. See *Hoke v. United States*, 227 U.S. 308, 323-25 (1913) (holding that Congress' authority to prohibit interstate transportation of women for prostitution stemmed from its Commerce Clause powers; see also *Keller v. United States*, 213 U.S. 138, 144 (1909) (holding that the federal government did not have the power to uphold a conviction of a defendant who ran a house of prostitution where a female immigrant worked because such a power was reserved to the states).

59. *Hoke*, 227 U.S. at 323.

60. See *Legislation - Overview of Current Laws*, PAUL & LISA, <http://www.paulandlisa.org/legislation.htm> (last visited Apr. 26, 2012) ("Each state is responsible for creating its own policy regarding prostitution.").

61. See *id.*

62. *Barbier v. Connolly*, 113 U.S. 27, 31 (1884).

63. R. BARRI FLOWERS, *SEX CRIMES, PREDATORS, PERPETRATORS, PROSTITUTES, AND VICTIMS* 144 (2001).

64. See *US Federal and State Prostitution Laws and Related Punishments*, PROCON.ORG (Mar. 15, 2010, 1:33 PM), <http://prostitution.procon.org/view.resource.php?resourceID=000119> [hereinafter *State Prostitution Laws*] (surveying federal and state prostitution laws and their relative punishments).

65. The thirty other states are: Alabama, Alaska, Arkansas, California, Connecticut, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming. *Id.*; see, e.g., N.J. STAT. ANN. § 2C:34-1 (West 2005) (providing a "disorderly persons" charge for first offenses of prostitution or solicitation, but a 3rd degree crime for pimps punishable by three to five years and/or a fine); D.C. CODE §§ 22-2701, -2705 (West 2001) (mandating one to ninety days in jail

equal penalties on pimps, prostitutes, and johns.⁶⁶ There are eight states where pimps are punished the most harshly, followed by prostitutes, and then consumers.⁶⁷ Finally, there are five states where pimps are punished the most harshly, followed by consumers, and then prostitutes.⁶⁸

Despite the differences, there are many similarities between the states' legislation. First, "prostitution is legally recognized in all fifty states as a sexual offense involving female and male prostitutes, and mostly male clients."⁶⁹ Many studies have found that there is a clear gender bias against females involved in prostitution cases, particularly shown through their higher rates of arrest and incarceration.⁷⁰ Despite the fact that prostitution involves *at least* two parties (namely the prostitute and client, or john, assuming *arguendo* that the prostitute is working for herself), in the majority of cases, only the prostitute ends up involved in the criminal justice system.⁷¹

It is challenging to fully understand why, despite the fact that the majority of states impose the strictest penalties on pimps, prostitutes are usually the only parties who are subject to criminal prosecution. A likely motivation for such laws is that prostitution as a crime "has traditionally been viewed as a prostitute's offense against publicly accepted sexual and social norms."⁷² Traditional norms dictate that women are not supposed to enjoy sex or engage in sexual conduct outside of marriage, whereas men are viewed as sexual creatures that often cannot control their sexual impulses.⁷³ Such traditional gendered stereotypes may help to explain why, though (at least) two parties are involved in prostitution, only the

and \$500 fine for first offense of prostitution or solicitation, but up to five years in prison and/or \$5,000 fine for pimps).

66. These states are: Illinois, Mississippi, New Hampshire, North Carolina, Oklahoma, and South Carolina. *See State Prostitution Laws, supra* note 64.

67. These states are: Colorado, Delaware, Florida, Kansas, Louisiana, Minnesota, Nebraska, and Utah. *See id.*

68. These states are: Arizona, Montana, New York, Rhode Island, and West Virginia. *See id.*

69. FLOWERS, *supra* note 63.

70. *Id.*; *see also* Kate Millett, *Prostitution: A Quartet for Female Voices*, in *WOMEN IN SEXIST SOCIETY: STUDIES IN POWER AND POWERLESSNESS* 60, 79 (Vivian Gornick & Barbara K. Moran, eds., 1971).

71. *See* FLOWERS, *supra* note 63; Millett, *supra* note 70 ("Prostitution is really the only crime in the penal law where two people are doing a thing mutually agreed upon and yet only one, the female partner, is subject to arrest.").

72. Heiges, *supra* note 26, at 432.

73. *See generally* Yvonne Lai & Michaela Hynie, *A Tale of Two Standards: An Examination of Young Adults' Endorsement of Gendered and Ageist Sexual Double Standards*, 64 *SEX ROLES* 360, 361-62 (2011) (discussing various sexual stereotypes for men and women).

woman is viewed socially and legally as a wrongdoer.

Besides clients eluding punishment, those who facilitate prostitution also often evade criminal prosecution: “[S]tate prostitution enforcement still indiscriminately targets persons in prostitution, largely to the exclusion of those who engage in, legitimize, and finance trafficking.”⁷⁴ Though this Note argues that prostitution often masks trafficking, which is an “exploitative ‘crime[] against persons,’” typically prostitution offenses are viewed as “crimes against society.”⁷⁵ Since prostitution is “highly gendered” business, with men as the “majority of purchasers” and enablers, and women as the majority of service providers, the “disproportionate enforcement can be approximately quantified.”⁷⁶

Prostitution can be subdivided into two classes, and this separation can, and should be, taken into account when determining legal accountability. These two classes are: voluntary prostitution and forced prostitution,⁷⁷ which is a form of sex trafficking. In addition, it is essential to understand that one’s initial voluntary “consent to participate in prostitution is not legally determinative: if they are thereafter held in service through psychological manipulation or physical force, they are trafficking victims and should receive [legal protections instead of being punished].”⁷⁸

The harms that prostitutes suffer are numerous. Both voluntary and forced prostitutes are exposed to AIDS, other sexually transmitted diseases, and are at risk for “violence and victimization such as rape, sexual assault, physical attacks, and even death.”⁷⁹ The sexual and physical violence committed against female prostitutes comes from both clients and pimps, and the rates are staggering: “[A]n estimated 70 percent of all female prostitutes are raped, often repeatedly, by customers—thirty-one times a year on

74. Heiges, *supra* note 26, at 429 (citation omitted).

75. *Id.* at 444 (citation omitted).

76. *Id.* (citation omitted).

77. See FLOWERS, *supra* note 63, at 146 (“Voluntary prostitutes tend to act rationally and freely choose to enter the business. Compulsive prostitutes act under compulsion because of ‘psychoneurotic’ needs or drug addiction.”); JEFFREYS, *supra* note 25, at 9 (“The creation of distinctions legitimizes forms of prostitution by criticizing some and not others. . . . Those who seek to make distinctions generally subscribe to the notion that there is a free and respectable kind of prostitution for adults which can be seen as ordinary work and legalized, a form of prostitution for the rational, choosing individual, based upon equality and contract.”).

78. 2010 TIP REPORT, *supra* note 8, at 9.

79. FLOWERS, *supra* note 63, at 150; see also JEFFREYS, *supra* note 25, at 161 (“Studies of women in prostitution, whether they are perceived to have been ‘trafficked’ or not, show that they experience psychological and physical health problems such as symptoms of post-traumatic stress disorder, reproductive health issues, sexually transmitted diseases, marks of physical violence, including permanent disfigurements and disabilities.”).

average. . . . 65 percent of women prostitutes are regularly subjected to frequent, severe abuse by customers, johns, and pimps.”⁸⁰ Most shocking, studies have estimated that 5 percent of female prostitutes die each year due to their work.⁸¹ Given the various harms and risks that prostitutes face, it would behoove governments to identify those who are forced into that life against their will, and to punish those who have actually committed legal and social wrongs, instead of assuming that all the blame should fall on the prostitutes themselves.

IV. TRAFFICKING IN NEW JERSEY

One reason that trafficking is so prevalent in New Jersey is due to its centralized location, which facilitates the transport of people through various methods.⁸² New Jersey is also a highly-desirable location for human trafficking because “[t]he state’s dense population and ethnic diversity make it easy for traffickers and victims to blend.”⁸³

It has been estimated that nationally there are between 18,000 and 20,000 victims of human trafficking in the United States, and New Jersey is estimated to make up a large portion of those victims.⁸⁴ The Government statistics estimate that between 4,000 and 5,000 people are trafficked into New Jersey annually for either forced labor or sexual exploitation.⁸⁵

In 2005 New Jersey’s legislature responded to this growing problem in two ways: (1) amending the state prostitution law to allow trafficking as an affirmative defense to prostitution,⁸⁶ and more

80. FLOWERS, *supra* note 63, at 150 (citing Anastasia Volkonsky, *Legalizing the “Profession” Would Sanction the Abuse*, 11 INSIGHT ON THE NEWS 20 (1995)).

81. *Id.*

82. Gallagher, *supra* note 30 (“New Jersey is ripe for this kind of illegal activity because of where we’re located . . . [and the] state’s role as a transportation hub.”); Overbaugh, *supra* note 31, at 639-40 (stating that the state’s role as a transportation center helps to facilitate the movement of victims of trafficking). Additionally, New Jersey has a great “number of go-go bars and juice bars” that contribute to demand for female sex workers. Gallagher, *supra* note 30.

83. Overbaugh, *supra* note 31, at 640 (citation omitted).

84. Gallagher, *supra* note 30.

85. *See id.*; *see also* Miguel Perez, ‘Slavery’ called a growing fear for immigrants; Thousands Being Exploited, Activist Tells Paramus Panel, THE RECORD (N.J.), May 8, 2005, at L03. Of approximately 4000 victims in New Jersey, police believe that most trafficked victims end up in Northern New Jersey, including in Essex, Union, and Hudson counties. Brian Donohue, U.S. Acts Gently with Smuggled 19, THE STAR-LEDGER (N.J.), Feb. 10, 2005, at 1. While trafficking victims come from all over the world, the majority that come to New Jersey come from Asia, Eastern Europe, and Latin America. Miguel Perez, Modern ‘Slavery’ in New Jersey; Authorities Crack Down on Human Traffickers, THE RECORD (N.J.), Aug. 24, 2004, at A03.

86. N.J. STAT. ANN. § 2C:34-1(e) (West 2005).

importantly, (2) by passing its own antitrafficking law.⁸⁷ The antitrafficking law criminalizes trafficking for the purposes of forced labor and sexual exploitation.⁸⁸ New Jersey's state law was modeled after the federal TVPA,⁸⁹ which was actually sponsored and written by New Jersey Representative Christopher Smith.⁹⁰ New Jersey's law amended the racketeering statute to include human trafficking and also created "two new first-degree crimes: involuntary servitude and human trafficking."⁹¹ The new legislation had many sponsors and was unanimously approved in the New Jersey Assembly.⁹²

According to Assemblywoman Linda Stender, who introduced the legislation to the New Jersey Assembly in May 2005, the legislation was "prompted by the Jimenez-Calderon case . . . [and] her shock at learning women and children were brought from overseas and forced into the sex trade within her own county."⁹³ In *United States v. Jimenez-Calderon*, the defendants were convicted of conspiracy to promote sex trafficking and promoting sex trafficking (by force) of numerous young girls who were lured to the United States from Mexico.⁹⁴ *United States v. Jimenez-Calderon* was one of

87. N.J. STAT. ANN. § 2C:13-8 (West 2005 & Supp. 2011).

88. § 2C:13-8(a)(1); Gallagher, *supra* note 30 ("The legislation would enact a first-degree crime of human trafficking, punishable by a minimum sentence of 20 years without parole for those who recruit, induce or otherwise cause someone to engage in prostitution or who provide unlawful labor through coercion, threat of serious bodily harm or other means."). The law also punishes "those who profit from trafficking," including supervisors, organizers, managers, or financiers. Gallagher, *supra* note 30; *see* § 2C:13-8(a)(2).

89. Gallagher, *supra* note 30.

90. *Id.*; Nicholas Mantalto, *Organization Honors Smith Anti-Trafficking Work*, OCEAN COUNTY OBSERVER (N.J.), Dec. 4, 2004, at A12. Smith's great involvement in creating the TVPA helped New Jersey formulate its own antitrafficking legislation, and Smith has since been honored for his involvement on both the federal and state levels. Mantalto, *supra* note 90.

91. *Bill in New Jersey Targets Criminal Human Traffickers*, UKR. WKLY., no. 9, vol. LXXIII, Feb. 27, 2005, available at <http://www.ukrweekly.com/old/archive/2005/090521.shtml>.

92. Gallagher, *supra* note 30. The legislation "was introduced in the . . . Assembly by Assemblywoman Linda Stender (D-Union)" and "co-sponsored by Assembly Members Neil Cohen (D-Union), Upendra Chivukula (D-Somerset), Linda Greenstein (D-Middlesex) and Jerry Green (D-Middlesex)." *Bill in New Jersey Targets Criminal Human Traffickers*, *supra* note 91.

93. Gallagher, *supra* note 30. Stender also stated, "traffickers do not see their victims as human beings but as exploitable commodities. New Jersey must stand united in ensuring that those who commit this despicable crime are no longer left unchecked to rob victims of their human dignity." Linda Stender, Editorial, *A Despicable Crime*, THE STAR LEDGER (N.J.), Apr. 5, 2005, at 18.

94. 183 F. App'x 274, 276-81 (3d Cir. 2006). In this case, the defendants lured young girls from impoverished families in Mexico to work in the United States, promising marriage and a better life. *Id.* Instead, the girls were isolated, beaten, yelled at, and forced into prostitution. *Id.* at 276. The defendants were eventually

the first trafficking cases litigated in federal court in New Jersey and brought to light that trafficking exists in New Jersey, and in many egregious forms.

The shock and outrage following the case helped prompt the development of this legislation. The federal TVPA was passed not long before the case was brought to court.⁹⁵ Assemblywoman Stender, however, believed the federal law did not go far enough; additionally, she realized there was no equivalent state law in New Jersey that dealt with such crimes, which prompted her introduction of the bill in the Assembly.⁹⁶

In addition to criminalizing human trafficking, the law states that training will be provided to law enforcement.⁹⁷ Training for law enforcement is essential to successful prosecution, for without trust in law enforcement, victims are unlikely to come forward or assist in investigations.⁹⁸ Around the time the legislation was passed, former state Attorney General Peter Harvey established the Anti-Trafficking Task Force.⁹⁹ The main goal of the task force was “to teach law enforcement to distinguish criminals who should be locked up from innocent people subjected to involuntary servitude.”¹⁰⁰ Under the law, various other organizations would have to work with the police in order to assist victims.¹⁰¹

Since 2002, the U.S. Attorney’s Office in New Jersey has prosecuted less than a dozen cases involving human trafficking.¹⁰² All of these cases were tried in federal rather than state courts.¹⁰³ *United States v. Domingo Gonzalez-Garcia*,¹⁰⁴ *United States v. Trakhtenberg*,¹⁰⁵ *United States v. Tantirotjanikitkan*,¹⁰⁶ and *United*

sentenced to 210 months imprisonment. *Id.*

95. *Bill in New Jersey Targets Criminal Human Traffickers*, *supra* note 91.

96. *Id.*

97. *Id.*

98. *See infra* Part V.I.

99. Gallagher, *supra* note 30.

100. *Id.* The task force expected that after the state law was established, federal prosecutors would handle cross-border trafficking cases, whereas New Jersey prosecutors and law enforcement “might focus on ‘the nanny, the one or two workers in a restaurant, where they are not moved around so much.’” *Id.* Additionally, the Union County prosecutor’s office, which investigated the *Jimenez-Calderon* matter, had one of its prosecutors, Theodore Romankow, on the task force. *Id.*

101. *Id.* The Office of Victim-Witness Advocacy must now work with the police, the Department of Health and Human Services, and other service providers to develop protocols for providing services and information to trafficking victims. *Id.*

102. *See Overbaugh*, *supra* note 31, at 640-42.

103. *See id.*

104. U.S. DEPT OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL ALBERTO R. GONZALES ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2004, at 24 (2005) [hereinafter 2004 REPORT].

105. *Id.* at 25-26; *see also* Amy Klein, *Man Admits He Forced Women to be Strippers*;

*States v. Jimenez-Calderon*¹⁰⁷ were four highly-publicized sex trafficking cases in New Jersey that brought attention to the burgeoning problem of human trafficking. However, the majority of the defendants ended up pleading guilty to various crimes (other than trafficking) and avoided trial.¹⁰⁸

In more recent years, the media in New Jersey has paid increased attention to human trafficking cases. In 2009, Allen “Prince” Brown Jr. of Jersey City was indicted in state court for luring women into prostitution, on charges that include human trafficking, racketeering, and money laundering.¹⁰⁹ However, though the court acknowledged that Brown ran a “major human trafficking and prostitution ring” and sentenced him to eighteen years imprisonment, he actually ended up pleading guilty to “first-degree racketeering and second-degree theft by extortion,” and was not punished under New Jersey’s trafficking law.¹¹⁰ Similarly the New Jersey media spent considerable time covering a case of a West African woman who forced women to braid hair in salons in East Orange and Newark, but the woman was convicted in federal court and was not punished under the state trafficking law.¹¹¹

Smuggled Russians into U.S. to Work in N.J. Clubs, RECORD (Bergen County, N.J.), Dec. 2, 2004, at A04; Asjylyn Loder, *Promoter Pleads Guilty; Russian Forced Women to Strip in N.J. Clubs*, HERALD NEWS (Passaic County, N.J.), Dec. 2, 2004, at B06; Upendra J. Chivukula, Letter to the Editor, *Let the Punishment Fit the Heinous Crime*, HOME NEWS TRIB., Dec. 16, 2004, at A12.

106. 2004 REPORT, *supra* note 104, at 27.

107. United States v. Jimenez-Calderon, No. 05-3713 2006 WL 1582040 (3d Cir. June 9, 2006).

108. The defendants in *Domingo Gonzalez-Garcia* “[pled] guilty to smuggling an alien . . . for the purpose of engaging in prostitution.” 2004 REPORT, *supra* note 104, at 24. The principal defendant in *Trakhtenberg* pled guilty to conspiracy to defraud the United States. Judgment in a Criminal Case, United States v. Trakhtenberg, No. CR 02-638-01 (D.N.J. June 20, 2005). In *Tantirojanikitkan*, two defendants pled guilty to conspiracy charges while the third was convicted of smuggling and transporting aliens for prostitution and “attempting to hire a hit man to murder [an FBI Agent].” 2004 REPORT, *supra* note 104, at 27. In *Jimenez-Calderon*, the two ringleaders pled guilty and were sentenced to seventeen years in prison. Gallagher, *supra* note 30.

109. Santiago, *supra* note 17. Brown recruited women from Atlantic City, Camden, Elizabeth, Newark, and Philadelphia, housed them in “stables” in Jersey City, and forced them to prostitute while additionally beating them and forcing them to use drugs. *Id.*

110. Tom Hester Sr., *Allen ‘Prince’ Brown Gets up to 18 Years for Running Major Jersey City Prostitution Ring*, NEWJERSEYNEWSROOM.COM (May 19, 2010, 1:10 PM), <http://ns1.newjerseynewsroom.com/state/allen-prince-brown-gets-up-to-18-years-for-running-major-jersey-city-prostitution-ring>.

111. See generally Brian Donohue, *Human Trafficking Alleged in Hair Salons – Police: Woman from Togo Toiled in Newark, E. Orange*, STAR-LEDGER (N.J.), Sept. 7, 2007, at 1; Brian Donohue, *Officials Call it Slavery, But They Call it Salvation - 4 Women Brought to N.J. to Work Insist They Were Not Exploited*, STAR-LEDGER, May 11, 2008, at 1; Joe Ryan, *Man Who Enslaved Women to Style Hair Admits Guilt*, STAR-

To date, New Jersey's trafficking law¹¹² has rarely been utilized,¹¹³ though reasons are not clear as to why. Recently the New Jersey legislature has responded to increasing concerns about human trafficking by introducing a bill that would expand New Jersey's existing law.¹¹⁴ The bill, sponsored by Senate Republican Leader Tom Kean, mandates promotion of various human trafficking hotlines and requires police training on how to respond to victims' needs.¹¹⁵ Providing hotlines for victims and mandating law enforcement training should certainly help in identifying victims, but the laws need to be modified further to get convictions and prevent more people from being victimized.

V. PROPOSED REFORMS

A. *Approach #1: Increase Prosecution and Penalties for Pimps*

This Note's first proposed amendment to New Jersey's prostitution laws would be to increase prosecution and penalties for pimps, who are often also traffickers. Proponents of this approach argue that by increasing prosecution and penalties for pimps, the legal system could deter traffickers from forcing victims into the sex industry.¹¹⁶ By going after pimps directly through state prostitution laws, traffickers themselves will be discovered and held accountable.

Pimps are incredibly prevalent in the lives of prostitutes in the United States, especially for female juvenile prostitutes.¹¹⁷ While

LEDGER (N.J.), March 19, 2009, at 33; Joe Ryan, *W. African Admits to Human Trafficking: Man Said Ring Forced Women to Braid Hair*, STAR-LEDGER (N.J.), Aug. 27, 2009, at 32; Joe Ryan, *Woman Gets Time for Human Trafficking: W. African Girls Forced to Work in Area Salons*, STAR-LEDGER (N.J.), Sept. 21, 2010, at 13 (providing a small sample of a chronological coverage of the case of defendant, Akouavi Kpade Afolabi, who was arrested, tried, and convicted of running a human-trafficking ring in Newark and East Orange, New Jersey); Joe Ryan, *Women Guilty of Forced-labor Salons African Illegals Held in Thrall to Braid Hair in Newark, East Orange*, STAR-LEDGER (N.J.), Oct. 15, 2009, at 13; Ryan, *supra* note 17. Although Afolabi got a "staggering 27-year prison sentence," she was convicted under federal law, not New Jersey's antitrafficking law. Gerard DeMarco, *Human Trafficker Gets 27 Years in Prison for Hair-Braiding Slave Trade*, EXAMINER.COM (Sept. 20, 2010), <http://www.examiner.com/crime-in-newark/human-trafficker-gets-27-years-prison-for-hair-braiding-slave-trade>.

112. N.J. STAT. ANN. § 2C:13-8 (West 2005).

113. Overbaugh, *supra* note 31, at 656-59 (discussing state human trafficking laws generally and suggesting that prosecutors in New Jersey may choose federal law over state law because of a lack of appellate precedent and a pro-defendant supreme court).

114. S. 535, 214th Leg., 2010 Sess. (N.J. 2010); see John Gorman, *Kean's Human Trafficking Bill Clears Committee*, N.J. SENATE REPUBLICANS (Sept. 23, 2010), <http://www.senatenj.com/index.php/tomkean/keans-human-trafficking-bill-clears-committee/6743>.

115. S. 535.

116. Heiges, *supra* note 26, at 465 (advocating strict liability for pimping juveniles).

117. See SHELLEY, *supra* note 11, at 123 (arguing that the pimp model for

statistics vary, it has been suggested that up to 90 percent of juvenile female prostitutes entered the sex industry “through the influence of a pimp or later develop a working relationship with one.”¹¹⁸ Similarly for adult female prostitutes, studies show that all streetwalkers “have some contact with pimps during the course of their prostitution.”¹¹⁹ Pimps have discovered how lucrative it is to traffic American women and girls because of the support they can get from fellow pimps and the amount of profit they can earn from relatively few numbers of prostitutes.¹²⁰

Pimps use various techniques to control and trap prostitutes into the sex industry, but one common tactic is to prey upon the isolation that many prostitutes feel.¹²¹ Pimps seek out “vulnerable young women and runaway, homeless, or throwaway children in ‘a society in which children in crisis can go unnoticed.’”¹²² Pimps lure young females into prostitution by providing an avenue to escape their difficult lives.¹²³ After the initial seduction into the world of prostitution, pimps use more coercive means to control and trap prostitutes.¹²⁴

One of the main problems with prosecution of pimps is law enforcement’s denial that there is, in fact, a link between prostitution and trafficking.¹²⁵ The Fraternal Order of Police, which represents

trafficking is not only prevalent in the United States but also “operates exclusively within the United States and applies only to female sexual trafficking”).

118. JOAN J. JOHNSON, *TEEN PROSTITUTION* 75 (1992). One study indicated that virtually every young female prostitute had some type of relationship with a pimp, either directly or indirectly. *Id.*

119. FLOWERS, *supra* note 63, at 148.

120. SHELLEY, *supra* note 11, at 123 (“Pimps make significant profits by trafficking small numbers of American girls and women who remain under the control of the trafficker for extended periods. The pimps are U.S.-born traffickers, entrepreneurs operating often in loose but mutually supportive networks.”).

121. *See* FLOWERS, *supra* note 63, at 148 (arguing that many prostitutes’ “ties to a pimp are seen as a reflection of the ‘severe isolation that pre-prostitutes feel [that] predisposes them to join up with someone who ‘plugs’ them into the world, gives them a set of social relations, a place to call their own, and an ideology to make the world intelligible”).

122. SHELLEY, *supra* note 11, at 123. “The pimps find the girls at malls or bars, or find runaways on the street, who they initially manipulate by psychological means. As many of these young women have already been subjected to sexual abuse, they are recruited through offers of affection.” *Id.*

123. SHELLEY, *supra* note 11, at 123. By presenting “a vision of ostentatious living, promising fame and fortune[, p]imps perpetuated this myth with their own flamboyant dress, flashy jewelry, and exotic, expensive cars.” *Id.*

124. *See id.* “Psychological manipulation and drugs are the main tools by which the pimps keep control over their victims, forcing the women to be totally subservient and relinquish all of their earnings to their pimps.” *Id.*

125. Heiges, *supra* note 26, at 448 (“[S]ince prostitution is conceptually distinct from trafficking, it should continue to be enforced without regard to the newly adopted anti-trafficking policies.”).

“over 325,000 federal and state officers nationally, has argued that ‘simple prostitution’ enforcement is ‘unrelated’ to trafficking.”¹²⁶ This denial of a connection between prostitution and trafficking prevents law enforcement from screening prostitutes to see if they are actually victims of trafficking. This denial makes identification of trafficking victims much more challenging, and creates an attitude whereby law enforcement officials see criminals and do not even consider the possibility that the prostitutes are victims.

A multitude of factors make increased prosecution of pimps unfeasible. “[I]nsufficient law-enforcement resources, untrained or undertrained law enforcement, [and] lack of prioritization of trafficking and slavery investigations”¹²⁷ demonstrate the difficulty in identifying victims and finding the pimps and traffickers who are exploiting them. The current trend is to focus on targeting prostitutes for arrest and prosecution, while “police, prosecutors, and courts have typically viewed pimps and purchasers as trivial or derivative offenders.”¹²⁸ This biased enforcement makes the identification of victims nearly impossible.¹²⁹

Prosecution is challenging for many reasons: physical evidence is often lacking,¹³⁰ and “[t]rafficking cases tend to be complex and resource-intensive operations for law enforcement.”¹³¹ There is a high burden of proof to demonstrate human trafficking has taken place, which makes prosecuting prostitution cases a better option.¹³² While thirty-nine states have developed their own antitrafficking statutes, “[b]ecause of the time and resources required to prove force, fraud, and coercion [elements to prove trafficking], however, prosecutors rarely charge defendants under these statutes.”¹³³ It is much easier for law enforcement officials to “rely on time-tested and clear-cut prostitution routines, as opposed to unfamiliar anti-trafficking mandates that hinge upon the elusive concept of ‘coercion.’”¹³⁴ The use of coercion, as well as force and fraud, has been found to be the norm rather than the exception among pimps and traffickers.¹³⁵

Most victims that are brought into the United States forcibly are not brought in through legal means. Thus, even if victims are able to escape, they are often unable to or afraid to seek help from law

126. *Id.*

127. KARA, *supra* note 11, at 210.

128. Heiges, *supra* note 26, at 437.

129. *Id.* at 438.

130. *Id.* at 452.

131. *Id.*

132. *Id.* at 437.

133. *Id.*

134. *Id.* at 451.

135. *Id.* at 443.

enforcement because of their unlawful entry and status.¹³⁶ Their fear of deportation is well-founded, because “[t]rafficking victims often do not want to risk being returned to their home country, where they may face continued economic hardship as well as social stigmatization.”¹³⁷ In addition to fear of arrest and deportation for their unlawful status, many trafficking victims fear reporting abuse to law enforcement when they are engaged in forced sex trafficking, because prostitution is criminalized in almost every state in the country, and as was discussed, often law enforcement punishes prostitutes instead of recognizing that they are victims.¹³⁸

The power of pimps and traffickers creates fear in the minds of trafficking victims, making the victims unwilling to turn against their traffickers.¹³⁹ Fear of retribution from their pimps and traffickers can make victims reluctant to testify, unwilling to answer questions, or otherwise cooperate in the investigations of their traffickers.¹⁴⁰ Witness-protection programs are often insufficient to protect victims, which also inhibits cooperation.¹⁴¹ Victims’ reluctance to testify makes success for the prosecution increasingly difficult, since much of a successful case depends on victim testimony and credibility.¹⁴²

Additionally, sex trafficking victims that have been forced into prostitution often have a severe distrust of police, causing them to “view police as adversaries rather than rescuers.”¹⁴³ Such distrust may be warranted given that police tend to view prostitutes as criminals rather than victims of trafficking.¹⁴⁴ Pimps and traffickers have instilled in victims, especially undocumented victims, that “law enforcement is their enemy. Victims are often told by their captors that if they ask a police officer for help, they will be arrested, put in jail and deported . . . [T]he trafficker’s threats of being treated as a criminal . . . are very real.”¹⁴⁵

136. *Bill in New Jersey Targets Criminal Human Traffickers*, *supra* note 91. Many victims mistakenly believe that they will be imprisoned or deported if they reach out for help from the police. This fear, as well as language barriers, helps to discourage victims from seeking police assistance. *Id.*

137. Minn. Advocates for Human Rights, *Trafficking in Women: Explore the Issue*, STOP VIOLENCE AGAINST WOMEN, <http://www1.umn.edu/humanrts/svaw/trafficking/explore/1whatish.htm> (last visited Apr. 27, 2012).

138. *See supra* notes 63-70 and accompanying text.

139. *See Heiges, supra* note 26, at 450.

140. *Id.*; Minn. Advocates for Human Rights, *supra* note 137 (noting that traffickers will often use threats of retaliation as means to control the women that they have they have trafficked).

141. *See KARA, supra* note 11, at 210.

142. *See id.* at 212.

143. Heiges, *supra* note 26, at 450.

144. *See supra* text accompanying notes 69-73.

145. Linda Rinaldi, *A Plan to End Human Trafficking in New Jersey*, NEW JERSEY

Such distrust of law enforcement may also be warranted because police officers and other officials sometimes are perpetrators of trafficking as well.¹⁴⁶ “[S]ome persons participate in trafficking through a legitimate position of trust that provides them special access to trafficking crime (e.g., a police officer or an immigration official) or a legitimate entrepreneurial position that allows them to capitalize on trafficking business (e.g., a travel agent or a banker).”¹⁴⁷ Corruption on the part of those who are supposed to be protecting victims is rampant,¹⁴⁸ though statistics fail to reflect how frequently such situations occur.

The majority of pimps and traffickers never face criminal penalties.¹⁴⁹ “[L]axity towards investigating pimps may translate directly into laxity towards prosecuting traffickers.”¹⁵⁰ With the various obstacles to prosecuting pimps and traffickers, it would not seem feasible to rely on increasing penalties for pimps in order to protect victims of trafficking.

Difficulties in the prosecution of pimps helps to explain why the federal government grants so few T-Visas each year. Trafficking victims may be able to obtain T-Visas, which permit them to stay in the United States and eventually adjust status to become permanent residents.¹⁵¹ T-visas are available to those who “compl[y] with any reasonable request for assistance in the . . . investigation or prosecution of acts of trafficking” and can show that they would be subject to extreme hardship if required to return to their countries of origin.¹⁵² The hardship burden does not seem too difficult for most trafficking victims to meet; cooperation with prosecution is likely the requirement that most trafficking victims fail to meet.¹⁵³ As mentioned earlier in this section, there are many reasons why trafficking victims are reluctant to cooperate with law enforcement and prosecutors.¹⁵⁴ Distrust of law enforcement, law enforcement’s

STATE LEAGUE OF MUNICIPALITIES (March 2006), <http://www.njslom.org/featart0306.html>; see Jeff Diamant, *Human Trafficking Focus of Kean University Speech from Acting U.S. Attorney Marra*, STAR-LEDGER (N.J.), May 8, 2009, http://www.nj.com/news/index.ssf/2009/05/human_trafficking_focus_of_kea.html (stating that prostitutes, similar to undocumented individuals, avoid seeking help from law enforcement for fear of being arrested).

146. KATHRYN FARR, *SEX TRAFFICKING: THE GLOBAL MARKET IN WOMEN AND CHILDREN* 57 (2005).

147. *Id.*

148. *See id.*

149. *See* Heiges, *supra* note 26, at 442-43.

150. *Id.* at 443.

151. 8 U.S.C. § 1184(o)(6) (2006).

152. § 1101(a)(15)(T)(III-IV).

153. Chacón, *supra* note 52, at 3026.

154. *See supra* text accompanying notes 136-48.

failure to identify victims, and fear of retaliation from pimps all contribute to trafficking victims' reluctance to come forward and seek help.¹⁵⁵

Until trafficking victims feel that they can trust law enforcement, that they will be protected if they cooperate, and that they will not face retaliation from their pimps, it will be incredibly difficult for prosecution of pimps to be the primary mode to assist trafficking victims. New Jersey state law has comprehensive punishments listed for those who compel people into prostitution, but lack of enforcement for the various aforementioned reasons make increasing prosecution of pimps an inadequate and impractical solution.¹⁵⁶

B. Approach #2: Follow the Swedish Model – Increase Penalties for Johns

This Note's second proposed amendment to New Jersey's prostitution laws would be to increase prosecution of and penalties for consumers of prostitution, otherwise known as "johns." Sweden has adopted this approach, which recognizes that prostitution could not exist without demand for it. Although the majority of states impose the greatest penalties on pimps, only five states punish pimps most severely, followed by johns, then prostitutes.¹⁵⁷ The majority of states impose equal penalties on prostitutes and johns,¹⁵⁸ and there are eight states that impose greater penalties on prostitutes than johns.¹⁵⁹

This examination of states' prostitution laws shows a tendency against punishing consumers of prostitution, and it also demonstrates states' ignorance that demand drives prostitution and sex trafficking.¹⁶⁰ Prostitution and sex trafficking are so lucrative because of the basic economic principles of supply and demand.¹⁶¹ "Traffickers choose to trade in humans . . . because there are low start-up costs, minimal risks, high profits, and large demand. . . . human beings have one added advantage . . . they can be sold

155. *Id.*

156. *See supra* notes 86-92 and accompanying text.

157. *See supra* text accompanying notes 63-67.

158. *See supra* text accompanying note 65.

159. *See supra* text accompanying note 67.

160. GOVERNMENT OFFICES OF SWEDEN, AGAINST PROSTITUTION AND HUMAN TRAFFICKING FOR SEXUAL PURPOSES 4 (2009), *available at* <http://www.regeringen.se/content/1/c6/13/36/71/ae076495.pdf>.

161. *See generally* Andrea Di Nicola et al., *Introduction*, in PROSTITUTION AND HUMAN TRAFFICKING: FOCUS ON CLIENTS 3-6 (Andrea Di Nicola et al. eds., 2009) ("In a competitive system as soon as the salaries of working girls are increased, the supply of prostitutes diminishes. The resulting scarcity increases the effective demand . . .").

repeatedly.”¹⁶² Though it may be common sense that an economic industry could not succeed without demand, the majority of states’ legislation do not target demand.

Though penalties exist in all states to punish johns, courts often avoid giving them jail time, and instead order them to go to “Johns’ School.”¹⁶³ The curriculum made available to johns at these programs has the potential to be beneficial, but more often than not, such programs are not considered seriously and are more of a slap on the wrist than serious punishment.¹⁶⁴

Many johns who have been arrested fail to appreciate their own responsibility in the exploitation of women, even sometimes arguing that they themselves were victims—victims of entrapment by law enforcement.¹⁶⁵ Johns often deny responsibility for being part of a system that exploits women, claiming that prostitutes chose to enter the sex industry: “They deny the fact that they should be able to recognize forced prostitution . . . and they deny the fact that they are among the forces that create a demand for trafficked prostitution.”¹⁶⁶ Since johns deny responsibility, and most states have failed to adequately punish johns, demand for prostitution as well as the cycle of exploitation continue.

Sweden’s laws on prostitution may be used as a model for state legislation that targets demand. On January 1, 1999, Sweden passed a law that proscribes the purchase of sexual services.¹⁶⁷ The “[l]aw recognizes that it is the man who buys women (or men) for sexual purposes who should be criminalized, and not the woman.”¹⁶⁸ The Swedish law only punishes consumers of prostitution and

162. SHELLEY, *supra* note 11, at 3.

163. *Id.* at 308. “[I]n the United States, so-called ‘John’s Schools’ have been established in several major cities where arrested customers of prostitutes are forced to attend. Just as in programs for drunken drivers, the vivid consequences of their actions are explained. Curriculum shows the risk to men of hiring prostitutes, the health consequences, the suffering of the women, the effects on the community, and the system of control over the prostitute by the pimps.” *Id.*

164. See Aina Hunter, *School for Johns: Arrested for Soliciting Sex, Men Wind Up in a Brooklyn Classroom*, THE VILLAGE VOICE, May 3, 2005, available at <http://www.villagevoice.com/2005-05-03/news/school-for-johns/>. Johns who get arrested often just turn to other forms of sexual exploitation like Internet arrangements or escort services. *Id.* “John schools are part of an effort to address the demand side of the industry, but it’s really just a revolving door.” *Id.*

165. See *id.*

166. DI NICOLA, *supra* note 161, at 104.

167. *The 1999 Swedish Law on Prostitution*, PROSTITUTION RES. & EDUC., <http://www.prostitutionresearch.com/laws/000024.html> (last visited Apr. 26, 2012).

168. Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1191 (2004).

decriminalizes the provider of such services.¹⁶⁹ The law also provides various forms of assistance to those seeking to escape prostitution.¹⁷⁰

Sweden views prostitution as “male sexual violence against women and children. One of the cornerstones of Swedish policies against prostitution and trafficking . . . [is] the recognition that without men’s demand for and use of women and girls for sexual exploitation, the global prostitution industry would not be able [to] flourish and expand.”¹⁷¹ Women are viewed as victims of abuse in a male-dominated society,¹⁷² and as such, the Swedish law does not punish the women in prostitution.¹⁷³ The Swedish legislation analogizes prostitution to “a form of rape because the women were ‘forced’ rather than exercising free choice.”¹⁷⁴ The law reflects the idea that those in prostitution do not have a genuine choice in entering the profession because they live in a male-dominated world with various types of oppressive conditions, so while women may make decisions, they do not have true choices.¹⁷⁵ By choosing to punish consumers of prostitution rather than the women engaged in it, Sweden has rejected “the idea that women and children, mostly girls, are commodities that can be bought, sold, and sexually exploited by men. To do otherwise is to allow . . . a separate class of female human beings.”¹⁷⁶

169. *Id.* at 1192. The law provides:

A person who obtains casual sexual relations in exchange for payment shall be sentenced—unless the act is punishable under the Swedish *Penal Code*—for the purchase of sexual services to a fine or imprisonment for at most six months. Attempt to purchase sexual services is punishable under Chapter 23 of the Swedish Penal Code.
The offense comprises all forms of sexual services . . .

Id. (footnotes omitted).

170. JEFFREYS, *supra* note 25, at 203 (“The government provides funding for assistance to women to leave prostitution, including shelter provision, counseling [sic], education and job training.”).

171. Ekberg, *supra* note 168, at 1189; see also *Abolishing Prostitution: The Swedish Solution, an Interview with Gunilla Ekberg by the Rain and Thunder Collective*, 41 RAIN & THUNDER: A RADICAL FEMINIST J. OF DISCUSSION & ACTIVISM, 2008, at 4 [hereinafter *Abolishing Prostitution*]. The Swedish model proposes that women should not be criminalized “because they are victims of male violence. Rather, it is the perpetrators — the pimps, traffickers, and prostitution buyers — who should be criminalized. In Sweden, prostituted women and children are seen as victims of male violence who do not risk legal or other penalties. Instead, they have a right to assistance to escape prostitution.” *Id.*

172. Ekberg, *supra* note 168, at 1188 (“The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives.”) (citing omitted).

173. *Id.* at 1192.

174. JEFFREYS, *supra* note 25, at 171.

175. *Abolishing Prostitution*, *supra* note 171, at 4-5.

176. *Id.* at 3.

Swedish law acknowledges the indubitable connection between prostitution and trafficking, and believes such issues “cannot, and should not, be separated; both are harmful practices and intrinsically linked.”¹⁷⁷ Unlike its neighbor, the Netherlands, which has very different legislation relating to prostitution, Sweden has taken the position that legalization of prostitution will result in a normalization of sexual violence and discrimination, and will strengthen male domination over females.¹⁷⁸ “Legalization of prostitution means that the state imposes regulations with which they can control one class of women as prostituted.”¹⁷⁹

Since the law was passed, there have been mixed assessments as to its effectiveness. Approximately 400 to 600 people are trafficked into Sweden each year.¹⁸⁰ Since the law’s passage, the number of victims has been fairly constant, with no significant increase in the number of trafficking victims.¹⁸¹

Two years following the passage of the law, “a government taskforce reported that there was a fifty-percent decrease in the number of women prostituting and a seventy-five percent decrease in the number [of] men who bought sex.”¹⁸² Street prostitution has decreased throughout the country, and the majority of johns have disappeared as well.¹⁸³ Thus, while the number of people brought into the country for trafficking has remained level, there have been reported decreases in the number of people engaged in the act and purchase of prostitution.¹⁸⁴

Critics claim that since the Swedish law passed, prostitution has not decreased, but rather it has gone underground so that it has

177. Ekberg, *supra* note 168, at 1189 (“[T]he purpose of the recruitment, transport, sale, or purchase of women and girls by traffickers, pimps, and members of organized crime groups within countries or across national borders is, in the overwhelming majority of cases, to sell these female human beings into the prostitution industry.”).

178. *See id.* at 1190.

179. *Id.*

180. 2010 TIP REPORT, *supra* note 8, at 309.

181. Ekberg, *supra* note 168, at 1199. On a related note, “[t]here is also no conclusive evidence that the number of women trafficked to Sweden has decreased.” *Id.* at 1200 (citation omitted). Consider the legislation of the Philippines, which “introduces the principle of penalizing the buyers, but only those who buy women seen as fitting the UN Protocol definition of trafficking. . . . This legislation breaks new ground because it targets the prostitutes even though it makes a forced/free distinction.” JEFFREYS, *supra* note 25, at 205 (citation omitted).

182. *Sex for Sale*, *supra* note 36, at 139.

183. JEFFREYS, *supra* note 25, at 203; Ekberg, *supra* note 160, at 1209; *Abolishing Prostitution*, *supra* note 171, at 5.

184. *Myths and Facts About Nevada Legal Prostitution*, NEVADA COALITION AGAINST SEX TRAFFICKING 3 (Sept. 21, 2007), <http://www.nevadacoalition.org/factsheets/LeglznFactSheet091707c.pdf>.

become more difficult to regulate.¹⁸⁵ While it is difficult to make a finalized determination (with empirical evidence) as to whether the decrease in prostitution is real or attributable to change in form, it is important to realize that another purpose of Sweden's legislation is normative.¹⁸⁶

One of the main aims of the law is preventative—to have the police enforce the law and intervene before a john purchases someone for sexual services rather than to wait to punish them after the sexual act has occurred.¹⁸⁷ Testimonies from victims suggest that the law has had a positive impact on reduction of trafficking for two main reasons that are closely connected: (1) buyers' fear of getting arrested, and (2) increased difficulty for pimps in operating their businesses.¹⁸⁸

Since the Swedish law was passed, Swedish men who wished to purchase women for sexual services have “express[ed] serious fear of being arrested and prosecuted under the Law and hence demand absolute discretion from the pimps/traffickers.”¹⁸⁹ Research confirms that legislation penalizing the purchase of sexual services is the number one cited form of deterrence for men.¹⁹⁰ The new law makes it much “more difficult to sell women as commodities,” since the pimps must be in contact with johns, who are afraid of being arrested.¹⁹¹ Because of the fear of detection, traffickers and pimps have been forced to run brothels in multiple locations and to avoid certain locations on a regular basis.¹⁹² “[T]he mode of operation is

185. DI NICOLA, *supra* note 161, at 169 (“Prostitution has changed character, moved inside, and become more invisible. . . .”); *see also* Ekberg, *supra* note 168, at 1209 (stating that traffickers’ business-like nature has diverted their resources to trafficking women into countries with more “tolerant on legalized” prostitution laws, unlike Sweden, which has caused “[t]he number of women trafficked to Sweden” to stabilize while street prostitution and a majority of its buyers have disappeared).

186. Ekberg, *supra* note 168, at 1209.

187. *Id.* “In one trafficking-related case . . . the pimp who operated his business solely on the Internet, received approximately 25,000 e-mail inquiries about women advertised on his Web Sites from men around Sweden and elsewhere. The pimp kept a customer registry with the names of more than 1,500 buyers. In 571 cases, the men were suspected of having bought sexual services under the Law. Of these, 40 men have been prosecuted for purchasing sexual services.” *Id.* at 1195-96.

188. *See supra* notes 175-84 and accompanying text.

189. Ekberg, *supra* note 168, at 1201.

190. *See Abolishing Prostitution, supra* note 171, at 7-8 (“We know from research on the demand in Sweden, and for example in Scotland and in Chicago, that men themselves identify three measures that would make them stop buying somebody for prostitution purposes. One is having their name and photo posted on a public billboard. Another is to be placed on a sexual offenders register. But the most important deterrent, they say, is legislation that penalizes the buying of a sexual act.”).

191. *Id.* at 6.

192. *See id.*

expensive and requires that the pimp have local contacts. The necessity of several premises is confirmed in almost all preliminary investigations”¹⁹³ Furthermore, “[p]rostituted women must be escorted to the buyers, therefore giving less time to fewer buyers, and gaining less revenue for pimps.”¹⁹⁴

The inconvenience to pimps and the fear of johns have been effective barriers to traffickers in Sweden, as “Sweden is no longer an attractive market.”¹⁹⁵ Human traffickers’ goals are to make a profit, and since demand is lessened because of consumers’ fears of getting caught, traffickers have felt compelled to take their business elsewhere.¹⁹⁶ Swedish police investigations both within the country and internationally confirm that traffickers have moved to other countries.¹⁹⁷

Additionally, since Sweden’s new legislation also mandated training for police officers,¹⁹⁸ there have been improvements in law enforcement investigations.¹⁹⁹ One year after the law was passed, there was an increase in arrests of johns by 300 percent, which has been attributed to police officers’ increased understanding of the legislation’s purposes, improved investigation methods, and a better understanding of the plight of the victims of prostitution and trafficking.²⁰⁰

There have also been beneficial prosecutorial changes due to Sweden’s targeting buyers. The police and prosecution have been able to find pimps by using information from buyers.²⁰¹ Since the law’s passage, buyers are prosecuted at the same trial as the traffickers and pimps.²⁰² This procedure not only helps to alleviate some pressure off of the victim, but the prosecution is also able to cross-examine the buyers and obtain some information that the women may not have, such as the pimps’ contact information.²⁰³ Through this trial, “police and prosecutors are making it really clear

193. Ekberg, *supra* note 168, at 1201.

194. *Id.*

195. *Abolishing Prostitution*, *supra* note 171, at 6.

196. *Id.* Proclamations that traffickers and pimps are moving their business elsewhere have been confirmed by “extensive phone-tapping evidence.” *Id.*

197. *Id.*

198. Ekberg, *supra* note 168, at 1196 (“To increase the police officers’ competence and knowledge about prostitution and trafficking in human beings, the National Criminal Police in collaboration with the Division for Gender Equality, as well as several local and regional police forces, have established education programs for its personnel on this subject.”).

199. *Id.*

200. *See id.*

201. *Abolishing Prostitution*, *supra* note 171, at 6.

202. *Id.*

203. *Id.*

to the buyers that they are intimately connected with organized crime.”²⁰⁴

While numbers of victims, johns, and traffickers in Sweden are uncertain, there have been various benefits as a result of Sweden’s passage of its legislation. Furthermore, the legislation demonstrates Sweden’s firm stance that women and children are not commodities for sale, and the law rejects “men’s self-assumed right to buy women and children for prostitution purposes and questions the idea that men should be able to express their sexuality in any form and at any time.”²⁰⁵ Women who have escaped from prostitution and those attempting currently to leave prostitution support the law, claiming the law incentivizes women who want to escape by providing various forms of assistance.²⁰⁶ Prostitution impacts all women, not just those who are engaged in it; Sweden’s law is innovative in that it takes a strong stance against “the idea that men have the right to buy and sexually exploit not just a particularly marginalized subclass of women, but all of us.”²⁰⁷

C. Approach #3: Legalize Prostitution

This Note’s third proposed amendment to New Jersey’s prostitution laws would be to legalize prostitution as has been done in the Netherlands²⁰⁸ and select parts of the state of Nevada.²⁰⁹ Proponents of this approach argue that legalization of prostitution will empower prostitutes by giving them rights and obligations

204. *Id.* at 6-7.

205. Ekberg, *supra* note 168, at 1205.

206. *Id.* at 1204 (“In addition, in some cases, women themselves have brought their buyers to justice, denouncing them to the police who have been able to arrest and bring successful prosecutions against the men not only for the purchase of sexual services but also for other sexual crimes such [as] rape, battering, and child sexual exploitation.”).

207. *Abolishing Prostitution*, *supra* note 171, at 8.

208. “Prostitution . . . has never been a criminal offence in the Netherlands. . . . [b]rothels, however, were illegal until 1 October 2000, when articles 250bis and 432 were removed from the Criminal Code and the ban on brothels and pimping lifted.” *FAQ about Dutch Policy on Prostitution 2010*, DUTCH MINISTRY OF FOREIGN AFFAIRS 4 (2010) [hereinafter *2010 Dutch Policy*], available at <http://www.scribd.com/doc/61118686/Q-A-Prostitutie-2010-En>.

209. Prostitution is explicitly legal in eleven counties in Nevada: Churchill County, Elko County (only in cities granting permission), Esmeralda County, Humboldt County (only in cities granting permission), Lander County, Lyon County, Mineral County, Nye County, Pershing County (only in cities granting permission), Storey County, and White Pine County (only in cities granting permission). *U.S. Federal and State Prostitution Laws and Related Punishments: III. Prostitution Laws in Nevada by County*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000119#3> (last updated Mar. 15, 2010). Outside of these eleven counties in Nevada, prostitution is illegal. NEV. REV. STAT. §§ 201.295-201.440 (2010).

shared by other professionals.²¹⁰ As such, the law will protect those who voluntarily entered into prostitution, while those who were forced into prostitution may have an incentive to come forward and seek help.²¹¹

In 2000, the Netherlands had approximately 25,000 prostitutes in the country.²¹² Its legislation makes it legal “to run a business where men or women over the age of consent are voluntarily employed as [prostitutes]. The person running the business must satisfy certain conditions and obtain a license from the local authorities.”²¹³ Additionally, the law makes it criminal for one “to exploit another person for the purpose of prostitution and outlaws other forms of sexual exploitation.”²¹⁴ It also prohibits and criminalizes forced labor, servitude, and slavery.²¹⁵ Local authorities have the power to tailor policies in their jurisdiction, and they are also responsible for granting (or denying) licenses to brothels.²¹⁶ Brothels that do not comply with the regulations may be subject to “administrative sanctions such as a penalty payment, withdrawal of their licence and closure. They can also be prosecuted for the offences covered by article 273f of the Criminal Code in the event of prohibited forms of prostitution or sexual services.”²¹⁷ Additionally, law enforcement officials are permitted to conduct regular inspections of brothels “to ensure that brothels conform to the licensing conditions, [and] the police are in a position to pick up signs of human trafficking.”²¹⁸

Proponents of legalization believe that the main motivation for those who engage in prostitution is economic.²¹⁹ By legalizing the industry, prostitutes can take control of their business affairs and have legal protections from pimps and johns that may try to take

210. 2010 Dutch Policy, *supra* note 208, at 6.

211. *Id.*

212. *See id.* at 12. At the time the ban on brothels was lifted in 2000, the estimate was 25,000; as of 2010, no estimates were available concerning the number of prostitutes in the Netherlands. *Id.* at 13.

213. *Id.* at 4.

214. *Id.*

215. *Id.*

216. *Id.* at 5.

217. *Id.* at 8.

218. *Id.* at 15.

219. FLOWERS, *supra* note 63, at 151 (“[E]conomic motivations appear to be the most influential as it relates to a woman’s decision to enter and remain in prostitution. . . . women’s inferior power and control over societal material gains make prostitution a viable means to balance the resulting status differential.”); FARR, *supra* note 146, at 136 (“With such poor working conditions, even women who are working are vulnerable to recruitment for seemingly better jobs in a larger city or a foreign country. For young, rural women working in the informal sector, opportunities described by [trafficking] recruiters often seem too good to pass up.”).

advantage of them.²²⁰ A commonly cited reason that prostitutes do not seek help from law enforcement is that they do not want to lose their earnings.²²¹ So, legalization would give them economic control, which in turn may decrease the power of pimps or traffickers.²²² Since labor laws now protect prostitutes from coercive employment relationships, prostitutes can “decide whether they wish to work in the sex industry and, if so, how, and that they themselves can also choose to terminate the business relationship.”²²³

Those who advocate for legalization believe it would be impossible to eliminate prostitution altogether,²²⁴ and as such prostitution should be legally regulated to “decrease the undesirable consequences (harm reduction).”²²⁵ The initial supporters of legalization in the Netherlands were actually women’s organizations, medical and social workers, and organized prostitutes.²²⁶ The legalization of prostitution and ban on brothels in the Netherlands had six primary objectives:

- a) The control and regulation of the exploitation of prostitution;
- b) Improve the fight against involuntary prostitution;
- c) Protect minors against sexual assaults;
- d) Protect the prostitute’s position in terms of exploitation, violence and bad working conditions;
- e) Combat the links between crime and prostitution (drugs, firearms); and
- f) Protect foreign nationals who are illegally prostituting in the Netherlands.²²⁷

Despite these lofty objectives, the only one that *may* have been met is improved working conditions, since the legislation provides

220. See 2010 Dutch Policy, *supra* note 208, at 6, 15.

221. See JEFFREYS, *supra* note 25, at 156 (“Trafficked women who took part in the process of their own volition, as a result of wretched penury and because they were desperate to earn money for themselves and their families, may not be willing to go to the police however poor their conditions, and even though they are subject to violence. Reporting means the end of the chance of making any money.” (citation omitted)).

222. See 2010 Dutch Policy, *supra* note 208, at 6, 15.

223. *Id.* at 13.

224. See *id.* at 6 (“To end abuses in the sex industry, the Netherlands decided to change the law to reflect everyday reality. It is now legal to employ men and women who are over the age of consent, and do the work voluntarily, but stricter measures have been introduced under criminal law to prevent exploitation.”).

225. See DI NICOLA, *supra* note 161, at 82. But see Melissa Farley, *Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087, 1090 (2004) (“Support for legalized prostitution comes from many who believe that legalization will decrease the harm of prostitution, like a bandage on a wound.”).

226. DI NICOLA, *supra* note 161, at 81.

227. *Id.* at 82.

that local authorities can create policies to improve the health and safety of prostitutes.²²⁸ The other objectives of the law focused on targeting forced prostitution and trafficking of women and children in the Netherlands and from other countries,²²⁹ yet many argue that the situation has gotten much worse for trafficking victims.²³⁰

Those against legalization hope to abolish prostitution,²³¹ and they argue that legalization has simply resulted in movement towards private realms to avoid regulation.²³² Legalization has created a greater separation between legal prostitution and illegal prostitution: "Legalization creates a two-tier system of prostitution since the illegal industry in all legalized systems is hugely greater than the legal sector. The regulations . . . apply only to the small legalized sector so the vast majority of prostituted women and girls are not covered . . ."²³³ Legalization in Nevada, the Netherlands, Australia, and Germany have all "resulted in an *increase* in illegal, hidden, and street prostitution."²³⁴

Despite the legal regulations that exist, violence persists and women still feel endangered: "When rapes occur, . . . women in legal strip clubs are told to keep silen[t] or be fired. Women in prostitution speak constantly of its violence."²³⁵ Violence remains while parties'

228. 2010 Dutch Policy, *supra* note 208, at 2-3 ("[L]ocal authorities can publish by-laws governing safety, hygiene and working conditions in brothels. Brothels may be forbidden to force prostitutes to consume alcoholic drinks with clients, or engage in unsafe sex or certain sexual acts.").

229. DI NICOLA, *supra* note 161, at 84-85 (explaining that the routine controls stemming from the law are intended to obtain more information about exploitation, trafficking, and deterring involuntary prostitution).

230. See *infra* notes 231-34 and accompanying text.

231. See JO DOEZEMA, SEX SLAVES AND DISCOURSE MASTERS: THE CONSTRUCTION OF TRAFFICKING 27 (2010). "CATW is an 'abolitionist' organization . . . [that argues] that prostitution is a form of sexual violence which can never be consented to or chosen as a profession." *Id.* The director writes: "The sexual exploitation of women and children by local and global sex industries violates the human rights of all women and children whose bodies are reduced to sexual commodities in this brutal and dehumanizing marketplace." *Id.* (quotations omitted).

232. See PROSTITUTION AND HUMAN TRAFFICKING: FOCUS ON CLIENTS, *supra* note 161, at 81-82 (stating that the Netherlands allowed prostitution to reduce prostitution's harmful consequences).

233. JEFFREYS, *supra* note 25, at 177.

234. *Myths and Facts About Nevada Legal Prostitution*, *supra* note 184, at 2; see also Suzanne Daley, *New Rights for Dutch Prostitutes, but No Gain*, N.Y. TIMES, Aug. 12, 2001, at 1 (emphasis in original).

[T]he new law is simply pushing a huge number of prostitutes underground, where they are at greater risk of being taken advantage of. This group includes illegal immigrants, who fear being sent out of the country if they register, and Dutch citizens who are not ready to go public with what they do.

Id.

235. *Sex for Sale*, *supra* note 36, at 138 (footnotes omitted).

roles may change.²³⁶ “Sexual violence and physical assault are the norm for women in all types of prostitution. . . . whether it is legal or illegal.”²³⁷ While women in both legal and illegal prostitution are subject to the same type of violence, for women in legal prostitution, the violence “is viewed as sex and often tolerated as part of the so-called job.”²³⁸

In order for individual prostitutes to make money (since they must give a portion of their earnings to the brothel owners), they must see as many clients as they can each night to earn a profit.²³⁹ Teri, a prostitute from a Nevada brothel stated, “The brothel owners are worse than any pimp. They abuse and imprison women and are fully protected by the state.”²⁴⁰ The legislation seems to have the opposite effect of deterring pimps and traffickers. Moving prostitution indoors makes it more invisible so that women can be controlled in more violent ways.²⁴¹ “Indoor prostitution, above all, protects the trick. Men are physically and psychologically safer when prostitution is indoors.”²⁴²

Legalization has not resulted in a decrease of trafficked women, which was one of the law’s objectives; to the contrary, rates of trafficking have increased in places where prostitution is legal: “The European nations that have legalized, the Netherlands and Germany, have the highest numbers of trafficked women. . . . The increase in numbers of male buyers that results from legalization increases the demand for prostitution, which is met by the trafficking of women into both legal and illegal sectors”²⁴³

236. See *id.* at 137 (“In legalized prostitution, the state assumes the role of pimp, collecting taxes and regulating the practice of prostitution.”).

237. *Id.* at 113-14.

238. Janice G. Raymond, *Prostitution on Demand: Legalizing the Buyers as Sexual Consumers*, 10 VIOLENCE AGAINST WOMEN 1156, 1174 (2004).

239. Teri, *A Look Inside Nevada Brothels*, Posting to *Nevada Brothels: Terrible Situation Shows Why We Need Decriminalization with Women in Charge not Legalization and the Pimp Houses of Nevada*, SEXWORK.COM (March 26, 2004), <http://www.sexwork.com/legal/NevPimpHouses.html>.

240. *Id.*

241. See Melissa Farley, *Prostitution Harms Women Even if Indoors: Reply to Weitzer*, 11 VIOLENCE AGAINST WOMEN 950, 957 (2005) (“Women and children can be controlled in indoor prostitution in ways they cannot be controlled on the street. They can be locked in their rooms, heavily drugged, restrained, and beaten. Pimps who run indoor prostitution are no less dangerous than pimps who are visible on the street.”).

242. *Id.* at 962.

243. JEFFREYS, *supra* note 25, at 191. The increase in trafficking in the Netherlands occurred despite the government’s best efforts to include provisions in the law to aid trafficking victims. The legislation created a phone line whereby people could report suspicious activities, “prohibit[ed] exploitation of prostitutes as a form of human trafficking” in the criminal code, and allowed victims of human trafficking temporary residence (which could lead to permanent residence) during legal proceedings. NETH. MINISTRY OF FOREIGN AFFAIRS, DUTCH POLICY ON PROSTITUTION:

In addition to an increase in the number of trafficked women, rates of child prostitution and child trafficking have flourished since legalization. Interpol, the British police, and the Dutch police all agree that the Netherlands is “a prime destination and home for child sexual abusers, also known as pedophiles.”²⁴⁴ Arguments that legalization would help to “control and reduce child prostitution have not proved true, with police suspecting that child prostitute abusers choose the Netherlands because of its prostitution-promoting environment.”²⁴⁵ Similarly there are high rates of child prostitution and trafficking in Nevada, prompting various groups—including police, the FBI, juvenile court system, and advocacy groups—to unite to aid child victims.²⁴⁶ Nevada police have estimated that approximately 400 children are forced into prostitution each year, though “[f]ormer prostitutes say the number of children is much higher and pimps much [sic] are more devious.”²⁴⁷

In sum, though places with legalized prostitution have done so in an effort to decrease sexual exploitation, in reality the opposite effect has occurred. In fact, female prostitutes believe that legalized prostitution benefits the state above all.²⁴⁸ There is no evidence that legalization protects victims of trafficking and forced prostitution; the opposite has been shown to be true.²⁴⁹ In reality, “[l]egal prostitution is “state-sponsored prostitution” with “legal brothels” akin to “little prisons.”²⁵⁰

VI. CONCLUSION

After looking at the three different approaches to prostitution legislation reform, it is evident that targeting demand is an integral part of any legal solution. New Jersey’s current prostitution laws treat consumers and prostitutes equally but fail to recognize that many prostitutes are victims of trafficking.²⁵¹ Legalization of prostitution may give benefits to prostitutes who enter the profession by choice, but it will do nothing to lessen demand. In fact, legalization will provide pimps with legal avenues by which to exploit women. Sweden’s approach of penalizing consumers effectively

QUESTIONS AND ANSWERS 2005 6-7 (2005).

244. Raymond, *supra* note 238, at 1165.

245. *Id.*

246. See Report: *Las Vegas a Hub for Child Sex Trafficking*, FOXNEWS.COM (March 25, 2008), <http://www.foxnews.com/story/0,2933,341534,00.html>.

247. *New Law Expands Crackdown on Child Prostitutes*, 8NEWSNOW.COM (June 22, 2009, 9:11 PM), <http://www.8newsnow.com/story/10575169/new-law-expands-crackdown-on-child-prostitutes?redirected=true>.

248. See Farley, *supra* 225, at 1089.

249. *Id.* at 1093-94.

250. *Myths and Facts About Nevada Legal Prostitution*, *supra* note 184, at 1.

251. See N.J. STAT. ANN. § 2C:34-1 (West 2005).

attacks demand. Increasing consumer penalties makes johns afraid of criminalization, thus making the work of pimps and traffickers more difficult and making the market in New Jersey less attractive.

While it is necessary to hold pimps and traffickers accountable, Part VI illustrated the various obstacles to prosecution and how increased penalties for pimps will do little to aid trafficking victims.²⁵² New Jersey, similar to many other states, imposes the greatest penalties on pimps (compared to johns and prostitutes), yet the prosecution rate is remarkably low.

Right now, the penalty for pimps is three to five years imprisonment and/or a fine.²⁵³ The penalty for johns for their first offense is *only* imprisonment for up to six months and/or a fine.²⁵⁴ Subsequent convictions may result in imprisonment for up to eighteen months and/or a fine.²⁵⁵ In order to aid trafficking victims who masquerade as regular prostitutes, the New Jersey legislature should increase penalties for johns to be equal to that of pimps, showing that New Jersey takes prostitution and trafficking seriously and does not sanction the exploitation of women and children.

In addition to increasing criminal penalties for johns, the new trafficking bill proposed by Senator Kean that mandates trafficking training for law enforcement should help to gain victims' cooperation.²⁵⁶ The training should dedicate a significant amount of time to the intersection between prostitution and trafficking so that police are able to identify trafficking victims instead of treating them like criminals.²⁵⁷ What may appear to be a regular prostitution case may "turn out to be a human trafficking case [so] local agencies must change the way they perceive and react to prostitution cases . . . the

252. See *supra* Part VI.

253. Under New Jersey law, a "pimp" falls within the statutory definition of one engaged in "promoting prostitution." § 2C:34-1(a)(4). Promoting prostitution is a third degree offense. §§ 2C:34-1(b)(5), (c)(2). Perpetrators of third degree crimes may be imprisoned "for a specific term of years which shall be fixed by the court and shall be between three years and five years." § 2C:43-6(a)(3). They may also pay a fine up to \$15,000. § 2C:43-3(b)(1).

254. Under New Jersey law, a "john" falls within the statutory definition of one engaged in "prostitution"—the same category as a prostitute. § 2C:34-1(a)(1). Engaging in prostitution with a nonminor "constitutes a disorderly persons offense. §§ 2C:34-1(b)(1), (c)(4). The penalty for "[a] person who has been convicted of a disorderly persons offense . . . may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months." § 2C:43-8.

255. A repeat offense constitutes a fourth degree crime. § 2C:34-1(c)(4). The penalty for a fourth degree crime may be imprisonment for up to eighteen months. § 2C:43-6(a)(4). A fine of up to \$10,000 may be imposed. § 2C:43-3(b)(2).

256. S. 535, 214th Leg., 2010 Sess. (N.J. 2010).

257. See Heiges, *supra* note 26, at 449 ("[U]ntil [Law Enforcement Agents] are trained to view prostitution in light of more serious sex trafficking crimes, they will continue to misidentify trafficking victims as criminal prostitutes.").

only physical evidence of a trafficking crime is the victim herself (or himself), and unfortunately trafficking victims do not always look like 'victims.'"²⁵⁸

Though there are no completely accurate figures on the number of trafficking victims in New Jersey, the rate of prosecution for trafficking demonstrates that the majority of victims are not receiving help. Reforming New Jersey's statute on prostitution to increase penalties for consumers seems to be the best way to identify victims of trafficking and help them escape from this horrendous world of exploitation.

258. *Id.*