



LIBRARY of PARLIAMENT
BIBLIOTHÈQUE du PARLEMENT

BACKGROUND PAPER



Prostitution: A Review of Legislation in Selected Countries

Publication No. 2011-115-E
3 November 2011

Laura Barnett
Lyne Casavant
Julia Nicol

Legal and Legislative Affairs Division
Parliamentary Information and Research Service

Prostitution: A Review of Legislation in Selected Countries
(Background Paper)

HTML and PDF versions of this publication are available on IntraParl (the parliamentary intranet) and on the Parliament of Canada website.

In the electronic versions, a number of the endnote entries contain hyperlinks to referenced resources.

Ce document est également publié en français.

Library of Parliament ***Background Papers*** present and analyze various aspects of current issues in an objective, impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations.

CONTENTS

1	INTRODUCTION.....	1
2	OVERVIEW OF DIFFERENT LEGISLATIVE APPROACHES	1
3	AUSTRALIA	2
3.1	Australian Capital Territory: Decriminalization with Controls.....	2
3.2	Victoria (Legalization).....	4
4	NEW ZEALAND: DECRIMINALIZATION.....	6
5	THE NETHERLANDS: LEGALIZATION	9
6	SWEDEN: NEO-ABOLITIONISM.....	12
7	ENGLAND: ABOLITIONISM	14
8	UNITED STATES	17
8.1	California: Prohibitionism	17
8.2	Nevada: Legalization.....	19
9	CONCLUSION	21

PROSTITUTION: A REVIEW OF LEGISLATION IN SELECTED COUNTRIES

1 INTRODUCTION

Over the last 30 years, the governments of various Western nations have significantly changed their approach to managing prostitution and street solicitation. Little consensus exists, however, with regard to the most appropriate legislative response; and in various countries, attempts to adopt new laws (whether to enact or dismantle criminal legislation) have met with fierce controversy.

In 2003, for instance, the New Zealand Parliament repealed a series of century-old laws prohibiting soliciting, running brothels, and living off the avails of prostitution. The private member's bill passed by a margin of only one vote. In contrast, France, which licensed brothels during the 19th and early 20th centuries, has recently begun to move towards criminalizing more aspects of prostitution.¹

In Canada, there has been long-standing debate over the role of the *Criminal Code* in controlling and/or regulating prostitution. The divergence of opinion in this country over prostitution and street solicitation is perhaps most visible through the constitutional court challenges launched and the large number of government and parliamentary review committees created over the past three decades.

On the surface, there appears to be little, if any, common ground among the legislative directions taken by the countries and states examined in this paper. Nonetheless, their governments are largely wrestling with the same set of issues and seeking to balance two often-competing sets of responsibilities. On the one hand, they attempt to prevent the exploitation of persons selling sexual services² by pimps and clients while also focussing on health and safety concerns. On the other, they aim to eliminate the increased crime (e.g., organized crime, trafficking in persons, and the drug trade) and "nuisance" (noise, traffic, etc.) that prostitution creates in communities where it takes place.³

This paper reviews the key legislative approaches to prostitution in a number of Western jurisdictions. In particular, it examines the specific laws and/or regulations these countries and states have instituted, and how they have fared in meeting their objectives.

2 OVERVIEW OF DIFFERENT LEGISLATIVE APPROACHES

Each of the countries and states examined in this paper relies on a variation of one of the following five approaches to prostitution:⁴

- *Prohibitionism* seeks to eliminate prostitution by criminalizing all aspects of the prostitution trade. Under this approach, prostitution is seen as a violation of human dignity. Criminal law and effective law enforcement are viewed as critical tools in reducing the number of individuals involved in prostitution.

- *Decriminalization* implies the repeal of prostitution-related criminal law. In Canada, decriminalization would involve repealing all criminal law relating to prostitution, including communicating for the purposes of prostitution, operating a bawdy house and/or brothel, and living off the avails of prostitution.
- *Legalization* refers to the regulation of prostitution through criminal law, labour law and other legislation. This approach treats prostitution as a legal occupation, but nevertheless controls it by a set of rules that govern who can work and under what circumstances they may do so. Typically, governments that have adopted the legalization approach regulate the trade through work permits, licensing and/or tolerance zones.
- *Abolitionism* is often described as the middle ground between prohibitionism and legalization. Advocates of this approach maintain that even though prostitutes may choose to enter the trade, it is nevertheless immoral. They believe that governments must take the necessary steps to allow prostitution to take place only as long as it does not infringe on public safety and order. Generally, abolitionists call for the criminalization of public solicitation.
- *Neo-abolitionism* holds that prostitution violates a person's human rights. Advocates maintain that there is no such thing as free choice in this matter – prostitution in all its forms constitutes the sale and consumption of human bodies. While neo-abolitionists call for the decriminalization of prostitutes themselves, they encourage governments to criminalize the activities of procurers and customers.

3 AUSTRALIA

Responsibility for criminal legislation in Australia falls primarily on individual states, which have taken very different approaches towards the management and regulation of prostitution, as exemplified by the Australian Capital Territory (ACT) and the state of Victoria.

3.1 AUSTRALIAN CAPITAL TERRITORY: DECRIMINALIZATION WITH CONTROLS

In 1992, the ACT adopted the *Prostitution Act*,⁵ aimed at managing the worst effects of the prostitution industry. While the *Prostitution Act* decriminalizes prostitution in private spaces, it nevertheless sets up a series of regulations designed to protect sex workers and the public at large. Its goals are to maintain public health; protect the health and safety of prostitutes; limit the operation of brothels to particular places; and eliminate the sexual exploitation of children.

Unlike most other Australian states (such as Victoria), the ACT does not license prostitutes, brothels, or escort agencies. Rather, it requires members of the prostitution industry to register with the Registrar of Brothels and Escort Agencies. Every year, individuals who wish to register themselves or their businesses must provide their contact information to the Registrar and pay a small fee. According to the government of the ACT, registration is preferable to licensing because of its ease and efficiency.⁶

By all accounts, the registration system appears to be meeting its goals. ACT (like most other Australian states) continues to prohibit street solicitation, which remains at very low levels, likely because other alternatives are available. Moreover, due to the relative straightforwardness of the registration process, there appear to be very few illegal brothels and escort agencies (although many individual sex workers do operate illegally).⁷ Brothels are largely confined to industrial areas, because of the ACT's zoning requirements, and criminality in the ACT does not appear to have a strong link to the prostitution industry.⁸ A collective of stakeholders in the sex industry continues to consult the government on ongoing issues.⁹

However, the system has not been without its controversies. Until 2002, the Registrar of Brothels and Escort Agencies did not have the authority to deny registration to any prospective owners of such establishments. Critics charged that the ACT allowed “undesirables” to enter the prostitution industry, particularly those who had been involved in criminal activity.¹⁰ As a result, the government introduced an amendment to the *Prostitution Act*, requiring employers and operators to submit to a criminal background check. Any individual convicted of a “disqualifying offence” is not permitted to own or operate a brothel or escort agency. The “disqualifying offences” listed in the schedules of the *Prostitution Act* include assault, murder, sexual assault and involvement in child pornography and exploitation.

One key objective of the *Prostitution Act* is to safeguard the health of persons involved in prostitution and the community at large. The Act includes several provisions designed to stem the transmission of HIV/AIDS and other sexually transmitted diseases (STDs). Prostitutes employed in brothels and escort agencies must undergo mandatory STD testing. Individuals infected with an STD are prohibited from providing or seeking sexual services, and owners and managers of brothels and escort agencies must not allow an employee to work if that person is infected. While some critics have denounced compulsory medical testing,¹¹ many have applauded the government's attempt to make all parties responsible for preventing STD transmission rather than targeting just the person selling sexual services.¹² Consequently, sex workers are believed to be in a better position to resist pressure from their clients (and/or their employers) not to use a condom.¹³

The *Work Safety (ACT Code of Practice for the Sexual Services Industry) Code of Practice* was first introduced in 1999 for the further protection of sex workers and their clients.¹⁴ Employers and/or operators of brothels and escort agencies are required to provide facilities that meet health and safety standards. The standards, which were developed by a collective of sex workers, police officers and health officials, include regulations on cleanliness and safety, as well as the purchase and disposal of “personal protective equipment” (such as condoms and other prophylactics). There remains some concern, however, that not all members of the prostitution industry are aware of their rights and responsibilities, and some have called upon the government to take “a [more] proactive role in the education of brothel owners and sex workers.”¹⁵

In late 2010 the ACT Legislative Assembly Standing Committee on Justice and Community Safety launched an inquiry into the operation of the *Prostitution Act*.¹⁶ In submissions to the committee, government representatives, police, sex worker

advocacy groups and other experts expressed general satisfaction with the status quo, the government noting that the current measures had served to improve the health and safety of sex workers and clients.¹⁷ While police organizations sought minor amendments to bolster their enforcement powers,¹⁸ sex worker advocacy groups also proposed the elimination of mandatory STD testing and suggested that individual prostitutes working privately should not be obligated to register, as many already opt to operate illegally rather than compromise their privacy.¹⁹ The committee has not yet reported its findings.

In assessing the ACT's approach, it is important to note the Territory's distinctive history with regard to this issue. Even before 1992, the ACT pursued a policy of toleration and control. Persons involved in prostitution were not charged unless a complaint had been lodged. Moreover, sex workers already enjoyed a fairly cordial relationship with the police and other community members. It is likely, therefore, that this history helped to iron out issues that could have provoked much more controversy in some other parts of Australia, such as Victoria.

3.2 VICTORIA (LEGALIZATION)

While some forms of prostitution have been permitted in Victoria since 1986, the sex industry is currently governed by the *Sex Work Act* (formerly known as the *Prostitution Control Act*), which came into force in 1995.²⁰ Some debate remains, however, over exactly what approach Victoria has chosen to take. While some commentators refer to the *Sex Work Act* as "decriminalisation with controls,"²¹ others suggest it more closely resembles legalization.²² Regardless of the definition, it is clear that the government of the state of Victoria seeks to control the sex industry through legislation.

The government sets out a number of aims in the introduction to the *Sex Work Act*. They include preventing the sexual exploitation of children; shielding communities from the negative aspects of prostitution; reducing criminal involvement in prostitution; and safeguarding the health and safety of prostitutes and their clients. Contrary to the situation in the ACT, however, questions have arisen from all sides about whether the *Sex Work Act* is actually meeting its goals. Critics have questioned the Act's ability to ensure that sex workers are provided with proper working conditions, as well as its capacity to shut down illegal brothels and escort agencies. Some of this concern is linked to the fact that too many agencies are involved in the regulation of the industry, from Consumer Affairs Victoria, to the Business Licensing Authority, to various policing agencies, local governments, and state health and safety departments.²³

In Victoria, individuals and businesses selling sexual services are required to be licensed. The licensing process is much more in-depth than registration in the ACT. The Business Licensing Authority requires prospective owners to submit to a police check and an assessment of their financial affairs. More generally, the *Sex Work Act* requires applicants (and their associates) to be "of good repute, having regard to character, honesty and integrity." These requirements are designed in part to prevent organized crime from infiltrating the prostitution industry. The government also hopes

that licensing will prevent individuals from flouting the regulations set out by the *Sex Work Act* and the state's occupational health and safety code. Sole operators and two-person brothels are exempt, and thus do not have to apply for a licence.

Some critics argue that Victoria's licensing system discourages prostitutes from setting up their own small brothels. The stringent licensing requirements are one deterrent. Another is the often-high costs of running a legal brothel or escort agency.²⁴ According to the Business Licensing Authority, the annual licensing fee for a brothel with more than two people starts at A\$2,389 (approximately C\$2,480). It costs prostitution service providers another A\$448 (C\$465) for each additional room.²⁵ All brothel owners must comply with specific regulations dealing with cleanliness and hygiene, as outlined in the *Health (Infectious Diseases) Regulations* and the *Public Health and Wellbeing Act*.

The *Sex Work Act's* ban on advertising is another deterrent, indicating the mixed messages surrounding prostitution in Victoria.²⁶ Finally, another critical factor in discouraging sex workers from starting their own businesses is the requirement for all brothels and escort agencies (whether large or small) to obtain a planning permit from their local city council, under which they must follow the strict zoning requirements outlined in the *Sex Work Act*. Prostitution establishments are prohibited from operating in any residential neighbourhood and must be located more than 200 metres away from any school, hospital or place of worship. Prostitutes who live in residential areas are thus forbidden to establish a business in their own homes. Moreover, the strict limits attached to the planning permits tend to facilitate the development of large brothels at the expense of small ones.

Consequently, critics argue, legal prostitution in Victoria tends to be monopolized by large, expensive brothels.²⁷ Currently, approximately 100 licensed brothels operate in Victoria.²⁸ Those unable or unwilling to work either in large or "exempt" legal brothels must risk significant criminal penalties by either running their own illegal brothel or engaging in street solicitation.²⁹

Critics have also questioned Victoria's approach to prostitution in light of haphazard enforcement³⁰ and the seemingly uncontrollable expansion of illegal prostitution within its borders. Estimates suggest that up to 400 illegal brothels are operating in the state.³¹ Communities across the state have called upon the government to strengthen the *Sex Work Act* in the hope of cracking down on unlawful prostitution. Street solicitation is also a major problem in Victoria.

The government of Victoria continues to grapple with how best to regulate, and ultimately control, the prostitution industry. While the *Sex Work Act* was designed to curb many of the most harmful aspects of prostitution, it is not clear that the legislation has achieved its desired effect. Neither sex workers' rights groups nor community organizations have been particularly supportive of the law since its inception. Nevertheless, it does not appear that the state is planning to revamp its overall approach to prostitution in the near future.

4 NEW ZEALAND: DECRIMINALIZATION

In June 2003, New Zealand undertook radical reforms to its prostitution laws, decriminalizing adult prostitution by repealing a series of century-old laws prohibiting solicitation, operation of a brothel, and living off the avails of prostitution. The *Prostitution Reform Act*³² was introduced as a private member's bill following many years of debate, and passed in Parliament by only one vote (60 to 59, with one abstention). Before the bill was adopted, prostitution had not been illegal in New Zealand, but because of the various prohibitions, it had been almost impossible to sell sexual services and remain within the law.

Before adoption, the Prostitution Reform Bill had been referred to the New Zealand Parliament's Justice and Electoral Committee, which held hearings in three major cities, heard evidence from relevant government ministries and police, and considered experiences from other jurisdictions, including Australia, that had decriminalized and legalized prostitution. The committee tabled a report in June 2003 recommending that the bill be passed with amendments.³³ The committee's report made it clear that the bill was "not intended to equate with the promotion of prostitution as an acceptable career option but instead to enable sex workers to have, and access, the same protections afforded to other workers."³⁴ As stated in section 3 of the *Prostitution Reform Act*:

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that –

- safeguards the human rights of sex workers and protects them from exploitation;
- promotes the welfare and occupational health and safety of sex workers;
- is conducive to public health;
- prohibits the use in prostitution of persons under 18 years of age; and
- implements certain other related reforms.

The *Prostitution Reform Act* was ultimately designed to stop the sex industry from going underground. The objective, in letting sex workers and prostitution establishments come out into the open, was to create safer and healthier environments for persons selling sexual services.

In practice, the *Prostitution Reform Act* tolerates street prostitution and allows independent sex workers to work in an unregulated environment. No "red-light" districts were created. Indoors, up to four independent individuals may operate from the same location without a licence, while more than four individuals, or those working for a third party, are regulated and must have a licence to operate. There are no restrictions on the number of people that can work for one operator. Operator certificates are granted and held by the Registrar of the Court, which ensures that the identity of operators remains confidential.³⁵

The *Prostitution Reform Act* placed significant responsibility for regulating brothels, including zoning, licensing and advertising, in the hands of local governments.³⁶ Local governments may regulate advertising through bylaws, based on considerations as to whether signage advertising prostitution is likely to cause

nuisance or serious offence to the public using the area, or whether it is incompatible with the character of the area.³⁷ Local governments also retain the power to pass bylaws to control offensive behaviour, provided that such bylaws do not prohibit prostitution altogether.

Other generic laws regulating businesses are now applicable to the sex industry, with special provisions determining issues such as age limits and constraints on who can sell sexual services or own, finance, operate or manage a prostitution business. Small owner-operator brothels are managed under local government rules for small home businesses. Occupational health and safety codes have been expanded to include prostitution, and inspectors have the authority to enter a premises believed to be a prostitution business at any reasonable time to ensure compliance with the *Health and Safety in Employment Act*, and to ensure that the operation, prostitutes and clients have adopted safe sex practices. Such safe sex practices entail individuals involved taking all reasonable steps to ensure that condoms are used, and employers making free condoms accessible. Operators must also provide health information to persons selling sexual services and their clients.³⁸

To combat exploitation, the *Prostitution Reform Act* addresses the issue of trafficking in persons by denying immigration permits to anyone who intends to work in, invest in, or operate a business of prostitution in New Zealand or who does so while living in New Zealand on a temporary permit or limited purpose permit.³⁹ Penalties against exploitative practices, including harsh penalties for clients and operators surrounding the commercial exploitation of children, were also strengthened.⁴⁰

Since 2003, there have been many attempts to reverse these legislative changes. One anti-prostitution group sponsored a petition to repeal all of the *Prostitution Reform Act*, but fell short of the signatures needed to force a referendum on this issue in 2005.⁴¹ Concern about the legislation comes primarily from groups who feel that decriminalization has led to a rise in prostitution in the country.

In an attempt to combat some of the effects of the *Prostitution Reform Act*, some local governments in New Zealand have used their powers to strictly regulate the sex industry. Public pressure against allowing persons to sell sexual services out of their homes has resulted in the adoption of some regulations that make it difficult to set up small brothels in certain jurisdictions. In Auckland, a proposed bylaw to control prostitution does not distinguish between different sizes of brothels, thus subjecting prostitutes working from their homes to the more stringent limitations that are placed on large-scale brothels. Local councils have also come under pressure from constituents who want to avoid the nuisance aspects of prostitution in their neighbourhoods. As a result, cities such as Auckland have chosen to restrict brothels to certain inner-city and industrial areas. Several cities have implemented regulations banning the location of prostitution establishments within the vicinity of schools, daycares, government buildings, and places of worship, as well as in residential areas. In some cities, these limitations have made it almost impossible to find a location where it would be legal to practise prostitution. This use of local regulatory power to essentially prohibit, or severely limit, prostitution has frustrated advocates of decriminalization, who see that the impact of the *Prostitution Reform Act* has been seriously mitigated by such local controls.

In order to assess the impact of the legislation, the Minister of Justice established a Prostitution Law Review Committee made up of individuals nominated by the New Zealand Prostitutes Collective and the ministers of Justice, Women's and Youth Affairs, Health, Police, Commerce, and Local Government. The committee's evaluation was released in May 2008⁴² and generally concluded that the effect of decriminalization had been positive thus far. The committee examined statistics, and concluded that, contrary to public opinion, there had been no dramatic change in the numbers of people involved in the sex industry since the *Prostitution Reform Act* had come into force. The committee stated that street prostitution accounted for only 11% of prostitution in New Zealand, and that the only real complaints about street prostitution since 2003 emanated from Christchurch and Manukau, cities that were also dealing with a range of other social problems. The committee felt that, in these cases, the effects of street prostitution were best dealt with by proactive measures at the local level, through the local government, police and nongovernmental organizations.

Concerning exploitation, the committee found that 60% of sex workers felt that they had more power to refuse clients under the *Prostitution Reform Act* than without it, and only 4% said they had been pressured into the sex industry by another person. The committee found that 1.3% of persons in the sex industry were under 18 years of age. This did not represent an increase in numbers, and the committee commented that the *Prostitution Reform Act* had, in fact, managed to raise consciousness about sexual exploitation of children. Sex workers also appeared somewhat more willing to report incidents of violence to police. The committee did not, however, find any significant improvement in employment conditions.

Regarding local government regulation of the sex industry, the committee noted that most local governments had not seen the need for significant regulation in their jurisdictions, and that many of those that had implemented regulations were simply being cautious, not responding to real issues. Cities that did implement severe regulations, such as Christchurch and Manukau, were most often responding to a wide range of social problems that were not necessarily related to prostitution. However, the committee expressed concern that some local governments had attempted to make single-owner-operated brothels move into the same commercial areas as larger brothels. The committee noted that such an arrangement is both impractical and even dangerous for sex workers and stated that single-owner-operated brothels should be regulated in the same way as other businesses run from the home. The committee pointed out that courts had struck down some bylaws, such as Auckland City Council's Brothels and Commercial Sex Premises Bylaw, which severely restricted locations where brothels could operate. Finally, the committee expressed concern that some onerous regulations that had been implemented at the local level, such as high licensing fees and restrictive health and safety requirements, could force brothels underground. This would be contrary to the purpose of the *Prostitution Reform Act*.

Ultimately, the committee's report concluded that despite some local frustrations with respect to street prostitution and the operation of single-owner-operated brothels in residential neighbourhoods, decriminalization of prostitution in New Zealand was

working. Kinks were being smoothed out, and generally, prostitution and trafficking were not on the rise, sex workers were positive about low levels of exploitation, and awareness was growing about the sexual exploitation of children.

5 THE NETHERLANDS: LEGALIZATION

The Netherlands is well known for its “liberal” stance on prostitution. However, it is less well known that brothels were illegal in the Netherlands for most of the 20th century. In 1911, the Dutch government criminalized brothel keeping – even though prostitution per se remained legal.

Although theoretically brothels were banned in the Netherlands, in practice they continued to flourish. The Dutch approach to prostitution at that time has been described as one of “pragmatic tolerance” or *gedogen*.⁴³ Rather than turning a blind eye to the prostitution industry, *gedogen* limited prosecution under specific circumstances. Written government policies and local by-laws regulated the operation of brothels and kept them within certain areas. Organized prostitution in private premises was thus permitted so long as it did not become a public nuisance. Brothels and other prostitution establishments were required to follow municipal by-laws, and exploitation and coercion of prostitutes continued to be prosecuted.⁴⁴

By the 1980s and 1990s, the Dutch government had come under considerable pressure to reform the Penal Code. Sex worker advocacy groups were pushing for better working conditions and labour rights, and other concerns also entered the fray. By the end of the 1990s, many Dutch sex workers had left the red-light districts for establishments that afforded them better pay and higher status. Immigrants (in particular, illegal immigrants) took their place in the windows and cheaper brothels.⁴⁵ It was estimated that only one third of sex workers in the Netherlands were Dutch nationals, and that illegal immigrants and trafficked men and women made up approximately 40% of the country’s prostitution industry during the late 1990s.⁴⁶ Government officials and communities were also keen to dismantle the “peripheral crime” that surrounds prostitution – drug abuse and dealing, street solicitation, and the spread of STDs, including HIV/AIDS.⁴⁷

Consequently, in 2000, the Netherlands repealed its long-standing criminal law banning brothels and adopted a licensing scheme to regulate the prostitution industry. For the Ministry of Justice, law reform was necessary because “prostitution exists [as] a given fact, even for the government. That requires a realistic approach, without moralism.”⁴⁸ According to the Ministry of Foreign Affairs, approximately 25,000 prostitutes were working in the Netherlands when the ban was lifted.⁴⁹

Article 250a of the Dutch Penal Code was designed to distinguish between voluntary and involuntary prostitution. Those who chose sex work as an occupation were to be given the same rights as other workers, while those individuals who coerced or exploited prostitutes were to be severely punished (up to eight years’ imprisonment). According to the Ministry of Justice, it was hoped that the new legislation would:

- protect prostitutes from commercial exploitation;
- fight involuntary prostitution and trafficking;
- combat the sexual abuse of juveniles;
- advance the position of individuals working as prostitutes;
- eliminate criminal involvement in the prostitution industry; and
- limit the number of non-European Union residents working as prostitutes in the Netherlands.⁵⁰

While the Penal Code punishes those who coerce or induce someone into prostitution, municipalities are primarily responsible for regulating sex work within their boundaries. For the vast majority of these communities (approximately 95%), prostitution is regulated through the issuing of licences.⁵¹

In order to promote consistency across the country, the Ministry of Justice developed a handbook on prostitution, meant to help municipalities to develop their own policies for dealing with the sex industry. Some of the most common local regulations include:

- restricting the number and location of brothels;
- imposing criminal background checks on prospective owners and managers;
- introducing stringent health, hygiene, and safety requirements,⁵² and
- limiting whom brothel owners can employ.

In particular, brothel owners and operators are to be held responsible for minors or illegal immigrants working in their establishments. The penalties range from a warning, to a fine, to a temporary or permanent revocation of the licence. In cases involving involuntary prostitution, the owner and/or operator can be charged under the *Penal Code*. The Association of Netherlands Municipalities has also published guidelines for the regulation of brothels, sex shops and street-level prostitution.

Contrary to other states where prostitution has been legalized, the Netherlands does not impose STD or HIV/AIDS testing on persons selling sexual services. However, clinics and medical outreach services are available in the red-light districts and “lounges” where street solicitation is permitted.

In the Netherlands, legal prostitution takes place in sex clubs and red-light districts. While many local authorities prohibit street-level prostitution, others have designated zones for such prostitution, with parking lots for sex workers and clients to meet, and lounges for sex workers to socialize, obtain health and safety information, and fresh needles and condoms. However, in 2006 Dutch authorities began tightening controls on prostitution again, and many street-level zones have since been shut down, with significant closure of red-light windows as well.⁵³ Today it is estimated that 92% of prostitution takes place indoors (compared to 75% in 2006).⁵⁴

The legalization of prostitution in the Netherlands has had its share of successes and setbacks. In particular, critics note that while legalization benefits prostitutes who are residents of the European Union – who are now able to obtain legal, health, and social services – illegal immigrants and other “undesirables” have been pushed further underground⁵⁵ and are thus even more vulnerable to violence and exploitation.

As a result of legalization, most Dutch and European Union sex workers benefit from the rights accorded to other workers. Dutch brothels must now comply with a host of occupational health and safety regulations. There is even some indication that prostitutes’ incomes have increased. Persons involved in prostitution no longer need to compete for a share of the illegal economy, nor need they pay pimps for “support” and “protection.”⁵⁶ Dutch sex workers sit on advisory boards and committees, helping to develop local policy.

Some individuals who sell sexual services have also stated that they are now more likely to approach the authorities if they are harassed, assaulted or robbed. However, it is important to note that the prostitutes’ degree of trust in dealing with police officers has been cultivated over a number of years. According to one former sex worker, even before legalization, “most of the prostitutes had quite a positive feeling about [the police] because they knew they were there to help them.”⁵⁷

Nevertheless, legal sex workers experience their share of problems. As in Victoria, the Netherlands has witnessed a concentration of prostitution in large brothels in past years. While the regulations help to ensure the health and safety of those selling sexual services, they also in effect deny them the opportunity to run their own businesses. The high costs associated with renovations and rent in red-light districts led to a “greater concentration of power and money” in the hands of a small number of people.⁵⁸ In recent years this trend may have begun to shift, however, with the number of smaller operations slowly gaining ground against larger brothels.⁵⁹

Another problem is that the legalization of prostitution has done little to combat the stigma associated with the trade. Social isolation and exclusion are real issues for sex workers in the Netherlands, who continue to experience considerable difficulty in obtaining the services of accountants, banks, and health insurance companies.⁶⁰ Many prostitutes now also find it difficult to keep their occupation a secret. Given their marginalized status, persons who sell sexual services are wary of measures that threaten their privacy, such as the requirement that they show their identity cards, if asked by authorities.⁶¹ Some sex workers have even left the business because they did not want to register with the police and tax authorities.⁶²

The reluctance of many sex workers to register with the authorities, combined with the attractiveness of the Netherlands as a destination for traffickers and illegal immigrants, has led to an explosion of the underground industry. As a result, experts estimate that only 4% of persons selling sexual services in the Netherlands are registered – the rest work underground. The majority of sex workers (60% in 2008) are still thought to be non-Dutch, with many living in the country illegally.⁶³

Nevertheless, although no recent figures are available, the Dutch Ministry of Foreign Affairs states that “the number of illegal prostitutes is assumed to have declined over the past few years as a result of frequent inspections of licensed brothels by the police and tax authorities.”⁶⁴ A 2006 government evaluation of the effects of the brothel ban and 2008 statistics released by TAMPEP (the European Network for HIV/STI Prevention and Health Promotion Amongst Sex Workers) also found a significant decrease in the number of licensed sex establishments, although this may be due in larger part to the economic situation and impact of the Internet and mobile phones than to the ban itself. TAMPEP stated that another reason the number of sex workers in the country had dropped dramatically was the increase in indoor and street-level closures and changing local policies; it estimated that by 2008, there were between 10,000 and 15,000 sex workers in the Netherlands.⁶⁵

For many years, illegal immigrants and prostitutes with substance abuse problems were able to work with relative impunity. Since the introduction of Article 250a of the Penal Code, however, the police have made particular efforts to “clean up” the industry.⁶⁶ In 2009, the Ministry of Justice even appointed a special public prosecutor to target organized crime in the sex industry.⁶⁷ Nevertheless, sex workers are still vulnerable to violence perpetrated by the organizers of the sex industry, by pimps and by clients. In addition, prostitutes without papers are generally more vulnerable than others because, in order to evade detection by the police and immigration officials, they have gone underground by working either in illegal brothels or on the street. While some window renters fear that their businesses will have to shut down due to their dependence on illegal prostitutes, advocates for the rights of sex workers worry that the illegal prostitutes will not obtain the health and social services they need. Finally, fear of deportation may discourage prostitutes from pressing charges or coming forward about trafficking activities.

Following the recent trend to further regulate the sex industry, in late 2009, a bill was introduced in the House of Representatives by the Ministers of the Interior and Kingdom Relations and Justice proposing a national register for sex workers, mandatory registration and increased supervision and enforcement. As of November 2011 this bill had yet to be passed into law.

6 SWEDEN: NEO-ABOLITIONISM

Along with the Netherlands, Sweden has received much international attention since its new law on prostitution came into effect in 1999. However, its neo-abolitionist approach is quite distinct from that of the Netherlands and has since inspired other countries such as Norway to follow suit. While prostitutes cannot be charged with soliciting or offering sex for payment, clients and procurers can be charged. In other words, Sweden has criminalized the activities of customers and other exploiters rather than those of individuals selling sexual services.⁶⁸

The Act Prohibiting the Purchase of Sexual Services (1998) is part of more comprehensive government legislation on violence against women. The decision to include this particular Act in the larger law reflects the government’s definition of (and position on) prostitution. According to the Deputy Prime Minister, the Act

demonstrates the government's commitment to eradicating gender inequality in all its forms, including prostitution. Sweden now defines "prostitution [as] a form – a serious form – of male violence against women."⁶⁹ In 2005, these provisions were folded into Chapter 6, section 11, of the Swedish Penal Code.

The Swedish government believes that criminalizing the buyer and pimp serves two key purposes. First, it targets those individuals whom the government deems responsible for prostitution. Second, it helps to make it clear that prostitution is a commodification of human beings. The theory behind the law is that if demand is reduced, the sexual oppression of prostituted persons will end.

Ultimately, the Swedish government subscribes to the philosophy that all persons selling sexual services are victims, exploited by both their procurers and purchasers. Prostitutes are not criminals; rather, they are trapped by particular social and economic circumstances. As a result, Sweden endeavours to provide sex workers with the support they need to leave the trade. This includes, but is not limited to, access to education, alternative employment and outreach programs.⁷⁰ Criminal sanctions are not seen as constructive because they are barriers that prevent prostitutes from pursuing other work opportunities.⁷¹

While the Act Prohibiting the Purchase of Sexual Services has received much publicity, and was accompanied by an extensive education campaign, the available evidence on the state of prostitution in Sweden since the law's inception shows that the effect of the Act has been mixed.

An evaluation of the prohibition by a Committee of Inquiry to Evaluate the Ban against the Purchase of Sexual Services commissioned by the Swedish government, and released in 2010, was overwhelmingly positive.⁷² Compared to other European countries, the prostitution industry in Sweden has never been large. In 1998, approximately 2,500 prostitutes were working in Sweden, with about 730 on the streets. Since the Act came into effect, street prostitution has been halved and other forms of prostitution have remained stable or have not increased more than in other countries (for example prostitution initiated over the Internet) – an indication that street-level sex workers are not moving into other parts of the industry. The report also indicates that the prohibition has counteracted organized crime in Sweden, while violence against sex workers has not increased. The Act Prohibiting the Purchase of Sexual Services enjoys support from Swedish citizens. Public opinion polls have found that 70% of the populace endorsed the legislation.⁷³

Critics have questioned, however, whether the legislation is really achieving its stated goals. Swedish police initially experienced considerable difficulty in laying charges under the Act. According to one police official, "The law is toothless. It is almost impossible to charge anyone for buying sex."⁷⁴ A government report suggested that two key factors were impeding policing efforts. First, there remained much uncertainty as to what specific activities fell under the Act. Second, courts were reluctant to convict purchasers when the client (and/or the person selling sexual services) denied that the act actually took place.

However, the government's 2010 evaluation of the prostitution ban indicated that despite this initial period of uncertainty, police and prosecutors now view the prohibition favourably, although clearly its effective application depends on resources and priorities within the justice system.⁷⁵ By 2010, reports indicated that 650 individuals had been convicted under the anti-prostitution laws. None, however, had received a prison sentence because of a Supreme Court ruling limiting prostitution-related sentences to fines.⁷⁶

Moreover, some critics point out that prostitution has not really “disappeared.” While the number of people involved in street prostitution has declined since 1999, many of them are now believed to be involved in more hidden types of prostitution. Popular solicitation methods now include the use of cellphones and the Internet. Prostitution also appears to be taking place in hotels, restaurants and apartments rather than on the street.⁷⁷ Critics therefore argue that the legislation has not reduced the number of sex workers in Sweden. It has instead “led to a reorganization of the sex industry.”⁷⁸

For social services and health outreach workers, the changes to the prostitution industry have been problematic. While such workers continue to receive funding from the Swedish government, they have not been particularly successful in maintaining contact with the prostitutes themselves since the law was introduced.⁷⁹ Some prostitutes have complained that these services continue to focus on street-level sex workers.⁸⁰

While the Swedish government and neo-abolitionists praise the successes of the “Swedish model,” which has since been exported to other countries, some question the accuracy of statistics that are said to show that the ban is working to eradicate prostitution in Sweden, and some people claim that the ban has simply pushed prostitution further into the shadows.

7 ENGLAND: ABOLITIONISM

England relies, by and large, on prostitution legislation first enacted during the 1950s. As in Canada, prostitution per se is not illegal in England. However, most activities surrounding the trade are illegal. Provisions in the *Sexual Offences Act* (1956) and the *Street Offences Act* (1959) make it an offence for sex workers to either solicit or loiter,⁸¹ while, under the *Sexual Offences Act* (1985) clients can be charged with kerb crawling, which consists of soliciting a prostitute from a motor vehicle or in a public place. It is also illegal to procure, pimp, operate a brothel, and live off the avails of a person selling sexual services.

However, despite the prohibition on brothel-keeping in England, an adult selling sexual services alone out of his or her own home is not performing an illegal act. Such an arrangement is not considered a brothel.⁸² There are a number of caveats to this blanket statement. First, if more than one person provides sexual services within that property, whether or not they are working at the same time, the activity becomes illegal. Thus, roommates who provide sexual services from their home on alternate days will be held criminally liable. As well, if rooms in a particular building are let out to more than one person offering sexual services, this will be considered a

brothel if it can be proven that the individuals are effectively working together. A hotel in which more than one prostitute is working on a given night could be considered a brothel if it can be proven that the prostitutes are working together.

Following on a Home Office commissioned report on sexual offences legislation published in 2000,⁸³ the government officially recognized, in late 2002, that the sexual offence laws needed to be revised, noting that the legislative framework was “archaic, incoherent and discriminatory.”⁸⁴ The resulting *Sexual Offences Act (2003)*, which came into force in May 2004, did not radically change the government’s position on prostitution. Rather, it focused on creating a new offence – the commercial sexual exploitation of adults – and making current legislation more gender-neutral.⁸⁵

Under the amended Act, the offence of keeping a brothel used for prostitution was bolstered. The new offence relates to the control and management of a brothel, rather than to the sex work itself, and carries a penalty of up to seven years’ imprisonment. As well, owners and managers of brothels are criminally liable under the “exploitation of prostitution” provisions, which also provide for penalties of up to seven years’ imprisonment.

It is important to note that although the owning and management of a brothel are illegal, and thus all brothels are illegal, it is not illegal to work as a prostitute in a brothel provided that the sex worker plays no role in the management of the operation. Sex workers themselves are not targeted under the brothel provisions.

Like many countries, England has grappled with how to protect persons selling sexual services from abuse and exploitation while ensuring that communities are not victimized in the process. There is much controversy over whether enforcement strategies benefit sex workers or communities.

For many critics, the key problem is the apparent absence of any sort of national prostitution law enforcement policy. It seems that, by and large, local enforcement practices are dictated by residents’ complaints (or lack thereof).⁸⁶

In some communities, residents associations and municipal governments have called upon their police forces to “crack down” on prostitution. Concerned for residents’ safety, and alarmed by the proliferation of drugs and crime in their area, these groups have been successful in pressing for more vigilant enforcement of the sexual offence laws. City councils, along with the police, have pursued various strategies in order to reduce the number of persons involved in prostitution within their boundaries, from automatic prosecution policies to “naming and shaming” kerb crawlers,⁸⁷ to using civil measures to limit the trade, including issuing compulsory purchase orders for properties being used by sex workers⁸⁸ and serving court orders on sex workers banning them from working in certain locations.⁸⁹

Other communities, however, have examined very different options to manage the prostitution industry. Some cities have turned a blind eye to certain types of off-street prostitution, while others have considered instituting tolerance zones in order to confine prostitution to certain areas.⁹⁰

The lack of coherence and consistency in England's enforcement of its prostitution laws has meant that neither sex workers' rights organizations nor residents associations are satisfied with the way that prostitution is controlled and/or regulated. Communities, for the most part, are troubled by the local noise, traffic, and crime that prostitution generates. Sex workers' rights advocates, on the other hand, worry that people selling sexual services both on and off the streets are facing serious threats to their health and safety.

Prostitutes – particularly those who work on the street – risk violence, including verbal humiliation and physical and sexual assaults from their pimps and clients. Sex workers' rights groups argue that the current legislative approach in England augments these risks. They emphasize that the fear of arrest actually undermines street prostitutes' ability to protect themselves. Because most activities surrounding prostitution are illegal, prostitutes must isolate themselves and/or rely on a pimp for protection. They may also take less time to evaluate their customers, increasing the risk of violence and exploitation – particularly since their assailants know there will be little, if any, legal recourse against them.⁹¹ Consequently, critics argue, street prostitutes are finding themselves increasingly vulnerable.

In light of these risks, some researchers have noted a movement towards indoors prostitution,⁹² with the European Network for HIV/STI Prevention and Health Promotion Among Migrant Sex Workers estimating that 77% of sex work in the United Kingdom took place indoors in 2008.⁹³ Many argue that the advantages of working off-street are significant. Prostitutes who work for escort agencies or massage parlours have the security of being able to request identification from their clients, and they may also keep their employer and/or colleagues apprised of their movements.⁹⁴ Prostitutes who work in indoor locales also tend to make more money than those who work on the street.⁹⁵

Certain police initiatives, however, have eroded some of these benefits. Although the police had historically largely ignored off-street prostitution, growing concerns about juvenile prostitution and trafficking have put pressure on the authorities to police red-light districts more vigorously. In 2001, for example, Scotland Yard raided more than 50 London brothels in a move described as “the biggest simultaneous crackdown on brothels and prostitution in [England] in recent times.”⁹⁶ Such “crackdowns” strain relations between the police and the country's prostitutes, while sex workers' rights organizations also argue that the raids have forced women out onto the street, where their safety and well-being are endangered.⁹⁷

Other policing practices are believed to threaten indoor prostitutes' health and safety. Some sex workers who participate in the off-street trade choose not to report crimes to the police for fear of identifying themselves, and others do not stockpile prophylactics because condoms continue to be used as evidence in prostitution cases.⁹⁸

Overall, frustration with what was perceived as the government's ineffective approach with the prostitution industry was mounting. In 2004, the government responded by issuing a consultation paper,⁹⁹ and in January 2006 it followed up with a proposed new strategy aimed at reducing street prostitution, improving the quality

of life of communities affected by prostitution, and decreasing all forms of commercial sexual exploitation.¹⁰⁰ Although no legislative action has been taken on those fronts, in November 2008, the Home Office took steps aimed at trafficking, announcing plans to change its laws to punish clients involved with individuals who have been forced into prostitution.¹⁰¹ The resulting *Policing and Crimes Act (2009)*, which came into force in 2010, amends the *Sexual Offences Act (2003)* in the following ways:

- to prohibit payment for sex with a person who has been “subjected to force” even when the client did not know that the individual was subjected to force;
- to make technical amendments to the offences of loitering and soliciting in public places (individuals can be prosecuted for this offence without any need to prove “persistence”);
- to permit the court to make closure orders when those premises are being used for certain prostitution-related offences; and
- to amend the *Local Government (Miscellaneous Provisions) Act (1982)* to ensure that lap/pole dancing establishments are licensed in the same way as other venues such as sex shops and cinemas.¹⁰²

8 UNITED STATES

The United States relies on prohibitionist and abolitionist policies to control the prostitution trade.

At the federal level, the United States government has enacted prostitution laws in order to protect servicemen and women from the prostitution industry, as well as to satisfy the country’s international treaty obligations.¹⁰³ It is an offence to engage in, or solicit for, prostitution within what is deemed to be a “reasonable distance” from a military detachment or operation. It is also illegal to transport individuals across state or international lines for the purposes of prostitution.¹⁰⁴

While the federal government does sanction prostitution under certain circumstances, most of the specific laws governing prostitution fall under state jurisdiction. With the exception of Nevada, every state prohibits prostitution and/or its related activities. The legislation, however, varies from state to state. For instance, only some states specifically criminalize prostitution.¹⁰⁵ The following sections of this paper examine prostitution laws in two states with very different approaches: California and Nevada.

8.1 CALIFORNIA: PROHIBITIONISM

In California, prostitution is illegal. According to the California *Penal Code*, it is an offence to agree to engage in prostitution and to actually engage in prostitution.¹⁰⁶ Loitering for the purposes of prostitution is prohibited, as is solicitation, whether it occurs in a public or private space. While these offences are all misdemeanours, a person can be charged with a felony if he or she has previously tested positive for HIV. Finally, the California *Penal Code* lays out extensive provisions criminalizing

pandering (which includes procuring through intimidation, physical force, or persuasion) and living off the avails of prostitution.

Certain jurisdictions in California have supplemented these criminal sanctions with additional civil measures to deter prostitution. For example, San Bernardino can issue restraining orders against persons selling sexual services, barring them from participating in specific activities in certain areas.¹⁰⁷ San Francisco was among the first cities to set up a “john’s school,” designed to “shame, educate, and deter” johns from seeking out the services of prostitutes.¹⁰⁸ Many cities have implemented (or are considering implementing) “drug-free,” “gang-free” and “prostitution-free” zones; persons involved in prostitution can face additional charges for being found in those neighbourhoods.¹⁰⁹ However, in 2007, the California Supreme Court ruled that cities do not have the jurisdiction to seize the vehicles of drivers allegedly soliciting sexual services. This ruling overturned the laws of more than two dozen California cities, holding that only the state has jurisdiction to create penalties for prostitution offences. Cities cannot issue seizure laws that are more severe than state or federal laws.¹¹⁰

There are many reasons for the criminalization of prostitution in California and, more generally, in the United States as a whole. While limiting the spread of disease has traditionally been an overarching goal, other justifications for prohibition include:

... suppressing the organized crime surrounding prostitution, protecting the integrity of the family, protecting non-participants from unwelcome solicitations, protecting prostitutes, and protecting minors who are coerced into a life of prostitution.¹¹¹

Prohibition ultimately begins with an important assumption – namely, that criminal sanctions are essential to reducing the number of men and women involved in prostitution.¹¹²

Very little evidence is available, however, to suggest that prohibitionist laws (such as those enacted by the California legislature) have met their objectives. As in the United Kingdom, there is little, if any, consistency in the enforcement of prostitution-related laws. Enforcement of the *Penal Code* against persons selling sexual services on the street as well as those operating indoors appears to be largely dictated by citizens’ complaints. As the most visible members of the prostitution industry, street prostitutes are more likely to be arrested than any other type of sex worker, or their clients.¹¹³ As a result, street prostitution tends to be concentrated in more isolated areas to escape the notice of police, as well as in communities that do not have the voice (or the resources) to lobby the proper authorities.¹¹⁴ “Prostitution-free zones” and the occasional police sweeps appear to do little but displace sex workers from one area to the next.¹¹⁵ Street-level sex workers are also less likely to report victimization to the authorities, for fear of being identified or charged.¹¹⁶

Generally, prostitutes who work in escort agencies, massage parlours and illegal brothels are much less likely to come into contact with the criminal justice system than their counterparts who work on the street.¹¹⁷ However, enforcement policies, at least in some cities, appear to be changing. Some police forces have begun to delegate a considerable amount of resources towards cracking down on indoor prostitution, “ostensibly to go after the ‘big fish.’” These operations have been

criticized not only for the costs involved, but also for the risk of driving indoor prostitution out onto the street.¹¹⁸

Finally, many critics question the level of resources dedicated to policing the prostitution industry. One 2000 estimate pegged the cost of prostitution law enforcement at approximately \$180 million annually.¹¹⁹ The processing costs for each individual arrest lie in the thousands of dollars.¹²⁰ There are also substantial costs associated with incarceration. Sex workers make up at least one third of all female inmates in the United States.¹²¹ Many of these women are members of visible minorities and are immigrants.¹²²

While criminal sanctions and incarceration may form important elements of the U.S. authorities' "anti-prostitution arsenal," there is little evidence to suggest that they deter individuals from selling sexual services.¹²³ A criminal record may, in fact, subvert a sex worker's attempt to leave the industry. Some may continue in the trade in order to earn money to pay their fines. For many prostitutes, being arrested is more of a "business expense and an inconvenience, [rather than] a significant deterrent."¹²⁴

Prostitution remains a contentious topic in the United States. While many Americans agree that eliminating prostitution (or at least visible forms of it) is a long-term goal, there is little agreement over the best way to achieve it. Legalization and decriminalization, proposed in many other countries, are rarely seen to be palatable options.¹²⁵ For the most part, then, the United States appears to be committed to eliminating prostitution by introducing more severe sanctions and widening the net of criminal and civil prohibitions.¹²⁶

8.2 NEVADA: LEGALIZATION

Nevada is the only state in the United States to have formally legalized one type of prostitution venue. It relies on a combination of state criminal laws, administrative laws, local ordinances and informal traditions to govern the prostitution industry. In essence, prostitution is permitted only in licensed brothels. All other forms of prostitution (for example, street prostitution, escort agencies and massage parlours) are illegal. The state's laws and local ordinances aim to provide a framework through which to manage the medical risks associated with the trade while keeping brothels relatively divorced from the day-to-day activities of their communities.¹²⁷

Section 244.345 of the *Nevada Revised Statutes* gives individual counties with a population of fewer than 400,000 residents the authority to license brothels.¹²⁸ Prostitution and solicitation outside of these legal venues are misdemeanours.¹²⁹ Prostitution is also illegal in Las Vegas, Reno and Carson City.

Not every county in Nevada licenses brothels. Moreover, those counties that do allow brothels to operate legally generally impose strict conditions on the brothels, their owners and their employees. However, these regulations vary considerably from one county to the next.¹³⁰

License application requirements are fairly extensive. Prospective brothel owners must provide information about their family, employment, military and criminal history, their financial records and their management team. The county may also request any additional information it deems necessary to determine whether the operation of a new brothel will be “contrary to the health, welfare, or safety of the City [County] or its residents.”¹³¹

Most counties have also instituted zoning provisions that limit the location and the number of brothels within their boundaries. While section 201.380 of the *Nevada Revised Statutes* prohibits the operation of brothels within 400 yards of any school or place of worship, some individual counties have imposed additional restrictions. In some counties, brothels can be operated only in specific buildings or on specific properties. Consequently, most of the existing licensed brothels began operating before legalization came into effect in the 1970s. Far from inciting massive growth, legalization has actually enabled counties to contain the size of the industry. The overall number of legal brothels has remained virtually unchanged since the 1970s (33 in 1973 and 28 in 2008), because “[i]t is virtually impossible to build a new brothel.”¹³²

Many counties also regulate the day-to-day business of their licensed brothels. While specific ordinances vary, most brothels face restrictions on their size, the number of prostitutes they employ, and their working hours.¹³³ Sections 201.430 and 440 of the *Nevada Revised Statutes* also restrict brothels’ right to advertise. According to state law, brothels cannot advertise on public streets and highways or in theatres. Most counties, moreover, place additional limits on advertising.¹³⁴ In 2010, the U.S. Court of Appeals 9th Circuit upheld Nevada’s prohibition on advertising in counties where prostitution is outlawed.¹³⁵

Individual sex workers are also subjected to regulation and controls. All prostitutes working in Nevada’s brothels must register with the police. Work permits are issued to every person selling sexual services, conditional on passing a mandatory HIV/STD screening. It is a felony for an individual who is HIV-positive to engage in prostitution, and brothel owners may be liable for damages if clients become infected with HIV.¹³⁶ A prostitute infected with an STD must submit to treatment.

Counties have traditionally restricted prostitutes’ mobility, including restricting car ownership, placing limits on when they may go into town and where they can go. Research suggests, however, that most counties no longer police the activities of persons selling sexual services. Sex workers nevertheless continue to be governed by rules devised by their brothels’ owners and managers.¹³⁷ While the specific regulations vary from one brothel to another, some examples include requiring prostitutes:

- to work three weeks, followed by one week off;
- to live on the compound or “ranch” and not leave during these shifts; and
- to pay the owners between 40% and 50% of their earnings, on top of room and board.¹³⁸

Sex workers' status as independent contractors means that they do not have access to health insurance, sick leave, or unemployment and retirement benefits. Furthermore, because they are not covered by the state's labour laws, they may be subjected to poor working conditions and/or threats to their health and safety.¹³⁹

It must also be noted that while prostitution has long been an offence in the state's largest cities (Las Vegas and Reno), an underground industry continues to thrive. In Las Vegas, street solicitation, once concentrated in the Strip, has begun to expand into other busy areas. Escort agencies advertise their services on billboards and in the *Yellow Pages*. Prostitutes also work the floor of casinos and other tourist destinations.¹⁴⁰

While the state legislature has not officially reopened the prostitution debate, there has been discussion of extending legalization to Nevada's larger counties. Spearheaded by the mayor of Las Vegas from 1999 to 2011, Oscar Goodman, this discussion has focused on whether legal brothels could revitalize a decaying downtown core. It has been proposed that legal brothels would also "provide safer, regulated and revenue-generating sex" in comparison to the current illegal sector.¹⁴¹ However, this debate is still in its infancy, making any major change to state law unlikely in the near future. Recent public opinion polls tend to show that Nevada residents support the status quo, with 56% of the population supporting legal prostitution and 32% of the opinion that prostitution should be illegal.¹⁴²

9 CONCLUSION

There is little consensus as to how the state should monitor and/or control prostitution. Most countries appear to be grappling with one underlying question: What role should legislation (in particular, criminal law) play in regulating prostitution? Legislative directions have ranged from strengthening the criminal provisions relating to prostitution to repealing those same types of laws. There is little evidence that any particular approach has met all of its objectives.

None of the countries and states examined in this paper have repealed all of their prostitution-related criminal laws. However, a number of governments have chosen to supplement criminal legislation with local by-laws, city ordinances, and other measures, thereby suggesting that, for many of these countries, prostitution is not simply a legislative concern. It is also a social and economic issue that calls for the use of public policy and other social intervention measures in order to address the needs of both individual sex workers and their communities.

NOTES

1. SOS Femmes, "[Prostitution – Le cadre juridique en France.](#)"
2. The terms "sex worker," "prostitute," "persons involved in prostitution" "persons selling sexual services" and "prostituted person" are used interchangeably in this text, reflecting the terminology used in the literature.

3. Sylvia Davis and Martha Shaffer, [*Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?*](#), Sex Workers Alliance of Vancouver, Vancouver, 1994.
4. The definitions in this section are based on material in Ginette Plamondon, [*Is Prostitution Work or Exploitation? Further Consideration is Needed*](#), Conseil du statut de la femme, City of Québec, 2002, p. 16.
5. Australia, Australian Capital Territory [ACT], [*Prostitution Act 1992*](#), A1992-64.
6. Barbara Sullivan, *The Politics of Sex: Prostitution and Pornography in Australia since 1945*, Cambridge University Press, Cambridge, U.K., 1997, p. 206.
7. [Australian Federal Police Association](#), Submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety (Re: ACT Legislative Assembly Inquiry into the operation of the *Prostitution Act 1992*), 28 February 2011.
8. Australia, [ACT Policing](#), Submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety (Re: Legislative Review of the *Prostitution Act 1992*), 4 March 2011.
9. Sullivan (1997).
10. Kelly-Anne Collins, [*The Prostitution Bill 1999*](#), Research Note no. 6/99, Research Publications and Resources Section, Queensland Parliamentary Library, Australia, December 1999, p. 3.
11. See, for example, [Scarlet Alliance Australian Sex Workers Organization](#), Submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety (Re: Inquiry into the ACT *Prostitution Act 1992*), 10 February 2011.
12. Jackie West, "[Prostitution: Collectives and the Politics of Regulation](#)," *Gender, Work and Organization*, Vol. 7, No. 2, 2000.
13. Sullivan (1997), pp. 206–207.
14. Australia, Australian Capital Territory, [*Work Safety \(ACT Code of Practice for the Sexual Services Industry\) Code of Practice 2010*](#), Disallowable instrument DI 2010-229.
15. Sera Pinwill, "[Occupational Health and Safety in the Australian Sex Industry: The ACT Experience](#)," *Social Alternatives*, Vol. 18, No. 3, July 1999, p. 24.
16. For more information, see Australia, Legislative Assembly for the ACT, Standing Committee on Justice and Community, "[Inquiry into the operation of the Prostitution Act 1992](#)," *Inquiries, papers and reports*.
17. Australia, ACT government, [Submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety](#), 22 March 2011.
18. Australian Federal Police Association (28 February 2011) and ACT Policing (4 March 2011).
19. Scarlet Alliance (10 February 2011).
20. Australia, Victoria, [*Sex Work Act 1994*](#), No. 102 of 1994, Consolidated Legislation. In November 2010 the former *Prostitution Control Act* was amended to become the *Sex Work Act*; however, this amendment merely updated the terminology used (from "prostitution" and "prostitute" to "sex work" and "sex worker"), made some adjustments with respect to enforcement documentation and called on all licensees to display signage concerning sexual slavery. Further minor changes are expected to flow from this legislation in 2011. The 2008 *Public Health and Wellbeing Act* also consolidated public health regulations concerning prostitution into a single piece of legislation, widening to escort agencies the scope of provisions that previously applied to brothel owners only.
21. Sullivan (1997), p. 186.

22. Mary Lucille Sullivan and Sheila Jeffreys, "Legalization: The Australian Experience," *Violence Against Women*, Vol. 8, No. 8, 2002.
23. Sullivan (1997), p. 213; and Sullivan and Jeffreys (2002), p. 1142; Sharon Pickering, JaneMaree Maher and Alison Gerard, *Working in Victorian Brothels*, June 2009, pp. 51–54; Australia, Parliament of Victoria, Drugs and Crime Prevention Committee, [Inquiry into People Trafficking for Sex Work](#), June 2010, pp. 130 and 134.
24. Australia, Parliament of Victoria, Drugs and Crime Prevention Committee (2010), p. 137; Pickering, Maher and Gerard (2009), p. 47.
25. Australia, Victoria, Business Licensing Authority, [A Guide for Sex Work Service Provider Applicants](#), 2010.
26. Pickering, Maher and Gerard (2009), p. 51.
27. Under the *Prostitution Control Act*, new brothels are limited in size to six rooms apiece. Previously established brothels can exceed this limit.
28. Australian Adult Entertainment Industry, [Licensed Brothels](#); Australia, Parliament of Victoria, Drugs and Crime Prevention Committee (2010), p. 130.
29. For example, some individuals selling sexual services may choose to work in the illegal sector in order to avoid registering to safeguard their anonymity. See Alison Arnot, "Legalisation of the Sex Industry in the State of Victoria: The Impact of Prostitution Law Reform on the Working and Private Lives of Women in the Legal Victorian Sex Industry," M.A. Thesis, University of Melbourne, Australia, 2001.
30. Pickering, Maher and Gerard (2009), pp. 52–53
31. Nick McKenzie and Maris Beck, "The Secret World of Melbourne's Sex Trade," *The Age*, Melbourne, Australia, 5 March 2011; Mary Sullivan, [What Happens When Prostitution Becomes Work? An Update on Legalisation of Prostitution in Australia](#), Coalition Against Trafficking in Women, North Amherst, Massachusetts, 2005; Pickering, Maher and Gerard (2009), pp. 34 and 40.
32. New Zealand, [Prostitution Reform Act 2003](#), Public Act 2003, No. 28.
33. New Zealand, Report of the Justice and Electoral Committee, *Prostitution Reform Bill*, 2003.
34. Ibid.
35. New Zealand, Local Government, *Prostitution Reform Act Guidelines*, 2003.
36. The *Prostitution Reform Act* still stipulated that advertisements "not be broadcast on radio or television; or published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical; or screened at a public cinema." See New Zealand, *Prostitution Reform Act 2003*, s. 11(1).
37. Ibid., s. 12.
38. New Zealand, Department of Labour, [A Guide to Occupational Health and Safety in the New Zealand Sex Industry](#), June 2004.
39. New Zealand, *Prostitution Reform Act 2003*, s. 19.
40. New Zealand, Local Government (2003).
41. The number of signatures required was 273,000; 200,000 were gathered.
42. New Zealand, Ministry of Justice, [Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003](#), May 2008.
43. Chrisje Brants, "The Fine Art of Regulated Tolerance: Prostitution in Amsterdam," *Journal of Law and Society*, Vol. 25, No. 4, 1998, p. 624.

44. Dan Gardner, "Coffee? Prayers? Sex?: Part One: Church and brothel make for odd bedmates in Amsterdam, but tolerance is the key in the liberated Dutch society that threw out the rule books the rest of us follow," *Ottawa Citizen*, 23 February 2003, p. C3.
45. Brants (1998), p. 627.
46. Netherlands, Ministry of Justice, "Ban on Brothels to End Officially on 1 October 2000," 28 December 1999; Netherlands, Ministry of Foreign Affairs, [FAQ about Dutch Policy on Prostitution](#), 2010.
47. Netherlands, Ministry of Justice, "Combatting Sexual Abuse in the Netherlands," December 1996. See also Brants (1998), p. 631.
48. Netherlands, Bureau Nationaal Rapporteur Mensenhandel, "[Trafficking in Human Beings: First report of the Dutch National Rapporteur](#)," The Hague, 2002, p. 15.
49. Netherlands, Ministry of Foreign Affairs (2010).
50. Netherlands, Ministry of Justice (1999).
51. Netherlands, Bureau Nationaal Rapporteur Mensenhandel (2002), p. 20.
52. A brothel owner must satisfy an extensive number of conditions in order to obtain (and keep) his/her licence. These can be typically broken down into a number of different categories: building regulations (e.g., fire safety measures), hygiene (e.g., providing hot and cold water), and safety (e.g., installing alarm buttons in the rooms). See Judith Kilvington, Sophie Day and Helen Ward, "[Prostitution Policy in Europe: A Time of Change?](#)," *Feminist Review*, No. 67, Spring 2001, p. 82.
53. Netherlands, Ministry of Foreign Affairs (2010); TAMPEP, "[Annex 4: TAMPEP National Mapping Reports](#)," in *Sex Work in Europe: A mapping of the prostitution scene in 25 European countries*, 2009, pp. 207–208.
54. TAMPEP, [Sex Work in Europe](#) (2009), p. 32; TAMPEP, "Annex 4" (2009), p. 198.
55. Kilvington, Day and Ward (2001), p. 86.
56. Celeste Perri, "Legalizing Dutch brothels brings credit cards, taxes," *The Gazette* [Montréal], 18 June 2002, p. D3.
57. Gardner (2003), p. C3.
58. Brants (1998), p. 633.
59. TAMPEP, "Annex 4" (2009), p. 199.
60. *Ibid.*, p. 201; Geraldine Coughlan, "Dutch OK sex for sale," *BBC News*, 30 September 2000.
61. Netherlands, Bureau Nationaal Rapporteur Mensenhandel (2002), p. 23.
62. Suzanne Daley, "New Rights for Prostitutes, But No Gain," *New York Times* (late edition), 12 August 2001, s. 1, p. 1.
63. Canada, House of Commons, Subcommittee on Solicitation Laws, [The Challenge of Change: A Study of Canada's Criminal Prostitution Laws](#), December 2006, p. 83; TAMPEP, *Sex Work in Europe* (2009), p. 29; Sander Flight et al., [Evaluatie Opheffing Bordeelverbod](#), 2006 [unofficial Netherlands Ministry of Security and Justice document; English summary included].
64. Netherlands, Ministry of Foreign Affairs (2010), p. 13.
65. Netherlands, Ministry of Security and Justice (2006); TAMPEP, "Annex 4" (2009), p. 197.
66. Daley (2001), s. 1, p. 1.

67. Adriana Stuijt, "[Amsterdam courts ready to clean up red light district](#)," *Digital Journal*, 19 January 2009.
68. It should be noted that, in keeping with Swedish criminal law traditions, the penalties for clients are lower than might be expected under Canadian *Criminal Code* standards. Individuals who obtain or attempt to obtain sexual services in exchange for payment face fines or imprisonment for up to a year (as amended in 2011). Pimps face up to eight years in prison in circumstances of aggravated procurement. The harshest penalty in the Swedish Penal Code is 10 years. See Canada, House of Commons, Subcommittee on Solicitation Laws (2006), pp. 72–73.
69. Margareta Winberg, Deputy Prime Minister of Sweden, "Keynote Speech," Address to the Conference on Pathbreaking Strategies in the Global Fight Against Sex Trafficking, Washington, D.C., 24 February 2003.
70. Even before the introduction of the Act Prohibiting the Purchase of Sexual Services, the Swedish government funded programs designed to counsel and retrain prostitutes. See Kilvington, Day and Ward (2001), pp. 82–83.
71. Margareta Winberg, Minister for Gender Equality Affairs [Sweden], Address at the First Joint Seminar of the Nordic and Baltic Countries Against Trafficking in Women, Tallinn, Estonia, 29 May 2002.
72. Sweden, Ministry of Justice, "[Evaluation of the ban on purchase of sexual services](#)," News release, 2 July 2010. See, in particular, the English summary of "Prohibition of the purchase of sexual services: An evaluation 1999-2008."
73. Ibid.
74. Belinda Goldsmith, "[Swedish law fails to curb prostitution](#)," Reuters, 5 July 1999.
75. Sweden, Ministry of Justice (2010).
76. Gregg Bucken-Knapp, "The Swedish Ban: The Debate Over Criminal Sentences," *Nordic Prostitution Policy Reform*, 19 May 2010; "[Sweden's prostitution law a success: report](#)," *The Local* [Stockholm], 3 July 2010.
77. Goldsmith (1999).
78. Kilvington, Day and Ward (2001), p. 84.
79. Ibid., p. 85.
80. Sweden, Socialstyrelsen [National Board of Health and Welfare], "Knowledge of Prostitution 1998–1999 Summary," 2000.
81. *Halsbury's Statutes of England and Wales – Criminal Law*, 4th ed., Butterworths, LexisNexis, London, 2002.
82. United Kingdom, Home Office, *Paying the Price: A Consultation Paper on Prostitution*, London, July 2004, p. 58. Additional information is available at SW5, [More UK Law 2004](#).
83. United Kingdom, Home Office, [Setting the Boundaries: Reforming the law on sex offences](#), Vol. I, July 2000.
84. United Kingdom, Home Office, "Protecting the Public: Strengthening the Law on Sex Offenders and Sex Offences," News release, London, 19 November 2002.
85. United Kingdom, Home Office, *Protecting the Public*, The Stationery Office, Norwich, U.K., 2002, pp. 30–31.
86. Catherine Benson and Roger Matthews, "Street Prostitution: Ten Facts in Search of a Policy," *International Journal of the Sociology of Law*, Vol. 23, No. 4, 1995, p. 407.
87. Helen Carter, "[Crackdown forces out prostitutes](#)," *The Guardian*, 29 January 2001.

88. Jon Silverman, "Sex workers say 'Let us stay,'" *BBC News*, 18 February 2003.
89. Diane Taylor, "[The A–Z of sex](#)," *The Guardian*, 20 December 2001.
90. "'Brave' debate over prostitution," *BBC News*, 10 October 2002. See also Carter (2001).
91. Some sex workers have also noted that if they do try to contact the authorities, their victimization experience is either ignored or "not taken seriously." See Maggie O'Neill, "Literature Review of Research on Offences of Sexual Exploitation," Appendix to *Setting the Boundaries*, Home Office, London, U.K., 1999, p. 181.
92. Tiggey May et al., [Street Business: The links between sex and drug markets](#), Police Research Series Paper 118, Policing and Reducing Crime Unit, Home Office, London, U.K., 2000, p. 4.
93. TAMPEP, "Annex 4" (2009), p. 291.
94. John Lowman, "Canada," in *Prostitution – An International Handbook on Trends, Problems, and Policies*, ed. Nanette J. Davis, Greenwood Press, Westport, CT, 1993, p. 75.
95. O'Neill (1999), p. 182.
96. "Police raid Soho brothels," *BBC News*, 15 February 2001.
97. Silverman (2003).
98. Hilary Kinnell, "Murderous Clients and Indifferent Justice: Violence Against Sex Workers in the UK," *Research in Sex Work*, Vol. 4, June 2001, pp. 22 and 24.
99. United Kingdom, Home Office (2004).
100. United Kingdom, Home Office, [A Coordinated Prostitution Strategy and a summary of responses to Paying the Price](#), January 2006.
101. United Kingdom, Home Office, *New Rules to Protect Exploited Women*, 19 November 2008.
102. For greater detail with respect to these changes, see [Explanatory Notes: Policing and Crime Act 2009](#), 12 November 2009.
103. Daniel Sansfaçon, *Pornography and Prostitution in the United States*, Working Papers on Pornography and Prostitution, Report #2, Department of Justice, Ottawa, 1984, p. 29.
104. Richard A. Posner and Katharine B. Silbaugh, *A Guide to America's Sex Laws*, University of Chicago Press, Chicago, 1996, p. 187. See, for example, 18 U.S.C. § 2421–2424 (The Mann Act).
105. Posner and Silbaugh (1996), p. 155.
106. United States, [California Penal Code](#).
107. Michael S. Scott and Kelly Dedel, [Street Prostitution](#), 2nd ed., Problem-Oriented Guides for Police: Problem-Specific Guides Series, No. 2, U.S. Department of Justice, Washington, D.C., 2006, pp. 28–29.
108. Ronald Weitzer, "[Prostitution control in America: Rethinking public policy](#)," *Crime, Law and Social Change*, Vol. 32, 1999, pp. 96–97.
109. Sandra L. Moser, "[Anti-Prostitution Zones: Justifications for Abolition](#)," *Journal of Criminal Law and Criminology*, Vol. 91, No. 4, 2001, p. 1101.
110. United States, *O'Connell v. City of Stockton*, 162 P 3d. 583 (2007).
111. Posner and Silbaugh (1996), p. 155.
112. Scibelli (1987), p. 117.

113. According to data collected in the late 1980s, street prostitutes, while comprising only 10%–20% of the industry, make up between 85% and 90% of those who are arrested by the police. See Eleanor Miller, Kim Romenesko and Lisa Wondolkowski, “The United States,” in *Prostitution – An International Handbook* (1993), p. 313.
114. *Ibid.*, p. 312. See also Scott and Dedel (2006), p. 9.
115. Moser (2001), p. 1117.
116. Scott and Dedel (2006), p. 6.
117. According to one report prepared for the National Institute of Justice, prostitution in cities such as San Francisco thrives in spite of the criminal prohibitions. Noted indoor venues include strip clubs, massage parlours, health clubs, nail salons, restaurants, warehouses, and even mobile trailers that enable brothel owners to move from place to place. See Janice G. Raymond and Donna Hughes, [Sex Trafficking of Women in the United States – International and Domestic Trends](#), Coalition Against Trafficking in Women, March 2001.
118. Weitzer (1999), pp. 90–91.
119. This estimate does not include the cost of arrests for loitering and disorderly conduct. See Ronald Weitzer, “The Politics of Prostitution in America,” in *Sex for Sale: Prostitution, Pornography, and the Sex Industry*, ed. Ronald Weitzer, Routledge, New York, 2000, p. 160.
120. Scott and Dedel (2006), p. 20.
121. David R. Simon, “Prostitution – Female,” in *Encyclopedia of Criminology and Deviant Behavior*, Vol. 3, ed. Clifton D. Bryant, Brunner-Routledge, Philadelphia, 2001, p. 264.
122. Barbara G. Brents and Kathryn Hausbeck, “[State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels](#),” *Sociological Perspectives*, Vol. 44, No. 3, 2001, p. 309.
123. Moser (2001), pp. 1116–1117.
124. Scott and Dedel (2006), p. 21.
125. Weitzer (1999), pp. 86–87.
126. Moser (2001), p. 1101.
127. Brents and Hausbeck (2001), p. 314.
128. United States, “[Chapter 244 – Counties: Government](#),” *Nevada Revised Statutes*, 244.345.
129. United States, “[Chapter 201 – Crimes Against Public Decency and Good Morals](#),” *Nevada Revised Statutes*, 201.354.
130. Eleanor Maticka-Tyndale and Jacqueline Lewis, *Escort Services in a Border Town: Transmission Dynamics of Sexually Transmitted Infections Within and Between Communities – Literature and Policy Summary*, Report prepared for Health Canada, 1999, p. 22.
131. Brents and Hausbeck (2001), p. 317.
132. *Ibid.*, p. 322; see also Barrie McKenna, “[Nevada brothel's 'shady' deal: Come often, get free gas](#),” *SFGate.com*, 4 July 2008.
133. Miller, Romenesko and Wondolkowski, in *Prostitution – An International Handbook* (1993), p. 309.
134. Brents and Hausbeck (2001), pp. 313 and 319.

135. United States, *Coyote Publishing, Inc. v. Miller*, No. 07-16633, US Ct of Appeals, 9th Circuit, March 2010. The U.S. Supreme Court refused to hear an appeal on this matter in 2011.
136. United States, "[Chapter 41 – Actions and Proceedings in Particular Cases Concerning Persons](#)," *Nevada Revised Statutes*, 41.1397.
137. Kathryn Hausbeck and Barbara G. Brents, "Inside Nevada's Brothel Industry," in *Sex for Sale* (2000), pp. 231–232.
138. Canada, Department of Justice, Federal/Provincial/Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, Ottawa, 1998.
139. Brents and Hausbeck (2001), p. 326. For a more general overview of the working conditions of sex workers in the United States, see Wendy Chapkis, "Power and Control in the Commercial Sex Trade," in *Sex for Sale* (2000).
140. Bob Shmeligian, "Welcome to the Jungle," *Las Vegas Mercury*, 21 August 2003; Scott and Dedel (2006), p. 39.
141. Erin Neff, "Legalized Prostitution: Vegas Brothels Suggested," *Las Vegas Review-Journal*, 24 October 2003.
142. Public Policy Polling, "[NV supports prostitution, gay marriage, but not online poker](#)," News release, 5 August 2011.