

Is Decriminalizing the Sex Trade the Answer?

Debunking the ACLU's Report

The New Yorkers for the Equality Model, a survivor-led alliance of advocates, sex trafficking and prostitution survivors, presents this critique of the American Civil Liberties Union (ACLU)'s research brief entitled "Is Sex Work Decriminalization The Answer? What The Research Tells Us."

In the brief, the ACLU argues that the decriminalization of the sex trade, including sex buyers, brothel owners and other third-party profiteers, will eliminate the violence, degradation, stigma and exploitation inherent to the system of prostitution. However, the ACLU's position legitimizing the sex trade is based on faulty research as well as misleading and manipulated data. Most crucially, the ACLU fails to cite any firsthand account from adult survivors of prostitution and sex trafficking, sex trafficking victims, and child victims of commercial sexual exploitation.

As detailed in this critique, thorough research and ongoing consultations with people in prostitution and sex trade survivors reveal the following points:

1. Decriminalizing the sex trade does **not** reduce violence against people in prostitution
2. Decriminalizing the sex trade does **not** improve the health of people in prostitution
3. Decriminalizing the sex trade does **not** improve the financial stability of people in prostitution
4. Decriminalizing the sex trade puts vulnerable populations at **greater risk** of harm
5. The sex trade is where sex trafficking happens: Decriminalizing it **increases** human trafficking



The decriminalization of the sex trade strengthens an industry that is unquestionably violent and which causes pervasive and severe physical and mental harm. Full decriminalization would further expose marginalized women and girls, trans women and youth, and gender non-conforming individuals to commercial sexual exploitation for the profit of a global multi-billion-dollar sex trade. Moreover, legitimizing the sex trade in any form is contrary to fundamental human rights principles, as well as federal and international laws.

The ACLU must examine the dangerous implications of its call to decriminalize the sex trade, beginning with engaging in meaningful consultations with survivors of the sex trade and experts in human trafficking. Instead of supporting the sex trade, the ACLU must call on legislators to enact the Equality Model in every jurisdiction in the U.S., a legal framework that holds perpetrators accountable for the harm caused and offers justice and exit strategies for people in prostitution.

Is Decriminalizing the Sex Trade the Answer? Debunking the ACLU's Report

By Meredith Kershaw¹

1

Meredith Kershaw Esq. prepared this report for the New Yorkers for the Equality Model. She graduated from the Australian National University in 2005 with a law degree (honors) and a degree in Asian Studies (Thai language major). She was a federal prosecutor in the human exploitation branch of the Commonwealth Director of Public Prosecutions (Australia's federal prosecution service) in Sydney. Meredith is an associate with boutique commercial litigation firm Wasserman, Grubin & Rogers, New York.

INTRODUCTION

On October 21, 2020, the American Civil Liberties Union (ACLU) released a research brief entitled “Is Sex Work Decriminalization The Answer? What the Research Tells Us.”² In the brief, the ACLU asks five questions³ and argues that fully decriminalizing “sex work” will produce the best outcomes for “sex workers” in terms of safety from violence, better health, and financial stability. It also contends that LGBTQ+ people, people of color, and immigrants in prostitution are better off when the sex trade is decriminalized and that decriminalization will not hinder efforts to combat human trafficking.

The ACLU’s findings are deeply flawed. As demonstrated below, the ACLU misreads evidence and ignores the troubling implications of its own policy.⁴ It also relies on the findings of “sex work” advocates but fails to cite a single piece of evidence from adult survivors of prostitution, sex trafficking victims, government reports,⁵ and child victims of commercial sexual exploitation.⁶

In reality, decriminalizing the sex trade⁷ expands a violent and dehumanizing industry, makes disenfranchised people more vulnerable to commercial sexual exploitation, and empowers sex buyers and third party exploiters by creating a legal right for men to buy, and exploiters to sell, respectively, marginalized people - who are overwhelmingly women and particularly of color - for prostitution.

This report addresses the ACLU’s erroneous assertions and consequently, conclusions, which mislead the public and contravene principles of human rights⁸ and U.S. federal and international laws.

THE ACLU’S FALSE RHETORIC

Essential to its position, the ACLU characterizes prostitution as labor and adopts the term “sex work” as a euphemism for the sex trade. Coined in the United States in the 1970s by individuals with financial interests in the sex trade and its promoters, the term “sex work” was designed to mainstream and camouflage the inherent and pervasive harms of the sex trade, including prostitution.⁹

2 Sarah Sakha, Emily Greytak, Mya Haynes, “Is Sex Work Decriminalization the Answer? What the Research Tells Us,” ACLU, (Oct. 21, 2020), https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief.pdf.

3 The five questions posed by the ACLU in its brief are “Q1. When you decriminalize sex work, how does it impact safety?; Q2. When you decriminalize sex work, how does it impact health?; Q3. When you decriminalize sex work, how does it impact financial stability?; Q4. Which populations are most impacted by the criminalization of sex work?; Q5. What is the relationship between sex work decriminalization and efforts to combat human trafficking?” pp. 5-13

4 This phrasing is taken from Darren Geist’s review of Amnesty International’s policy recommendation to decriminalize prostitution, as Amnesty’s recommendation is similar to the ACLU’s report. Darren Geist, Amnesty International’s Empty Promises: Decriminalization, Prostituted Women, and Sex Trafficking, Volume 1, Issue 1, Article 6, Dignity: A Journal on Sexual Exploitation and Violence, 2 (2016), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1012&context=dignity>.

5 Government of Sweden, “Evaluation of the prohibition of the purchase of sexual services,” (2011; updated August 2015), <https://www.government.se/articles/2011/03/evaluation-of-the-prohibition-of-the-purchase-of-sexual-services/>. (The evaluation shows that the prohibition of the purchase of sexual services has had the intended effect and is an important instrument in preventing and combating prostitution and human trafficking for sexual purposes). “Norway’s closely watched prostitution ban works, study finds,” Reuters Staff, August 11, 2014, <https://www.reuters.com/article/us-norway-prostitution/norways-closely-watched-prostitution-ban-works-study-finds-iduskbn0gb1bl20140811>; <https://www.conseil-constitutionnel.fr/en/decision/2019/2018761QPC.htm>.

6 For example, the ACLU repeatedly cites in its research brief the sex worker advocacy groups: Global Network of Sex Work Projects; Sex Workers Outreach Project (SWOP USA); COYOTE (Call Off Your Old and Tired Ethics) -Rhode Island; and the Sex Workers Project at the Urban Justice Center.

7 “Sex trade” is a broad term and used by some people to include pornography, sugar dating, and other pursuits that are closely or tangentially related to the provision of sexual services. However, this report uses the term “sex trade” interchangeably with “prostitution” to refer specifically to the system of buying and selling sexual services and to encompass the third party profiteers involved in those transactions.

8 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html>. See, for example, Articles 1, 3, 4, and 5. This report argues, amongst other things, that the system of prostitution strips vulnerable people of dignity, threatens their security, acts as a coercive force, impinges on freedom, and subjects people to cruel and degrading treatment.

9 COYOTE reportedly first coined the term “sex work.” Margo St. James, the founder of COYOTE, was arrested and convicted of running a brothel. Lachapelle,

As stated by two survivors of the commercial sex industry, “[p]retending prostitution is a job like any other job would be laughable if it weren’t so serious.”¹⁰ The reasons that prostitution cannot be considered, in law and in practice, an ordinary job are discussed below, but here it is important to note that conceptualizing prostitution as legitimate labor changes the language used in the debate over whether and how to regulate the sex trade. Labor unions have also condemned the notion that prostitution can be considered decent work, knowing that “extreme violence, sexually transmitted diseases, unwanted pregnancies and rape are common ‘workplace’ hazards.”¹¹

The ACLU and other proponents of decriminalization of the sex trade attempt to legitimize and sanitize prostitution by referring to people engaged in it as “sex workers” and sex buyers as “clients.” Instead, this report uses terms that accurately reflect both international law and U.S. laws, as well as the harsh realities of the sex trade and the pervasive harm conducted in it, including by sex buyers and third-party profiteers.

BACKGROUND: LEGAL FRAMEWORKS ADDRESSING PROSTITUTION

In the debate over the appropriate approach to prostitution, four main legal models to address the sex trade have been advanced:

- 1. Criminalization of prostitution.** Under this approach, the purchase and solicitation of sexual acts, selling sex, pimping, and brothel owning/operating are illegal. Currently all fifty U.S. states criminalize prostitution, with the exception of a few rural counties in Nevada in which registered brothels are legalized.¹²
- 2. Legalization of prostitution.** Under this approach, the purchase and solicitation of sexual acts is legal, whereby the government establishes specific bodies to regulate the conduct of participants in the sex trade. The state also profits from the sex trade through taxation. Prostitution was legalized in the states of Victoria (1994) and Queensland (1999) in Australia, the Netherlands in 2000, and Germany in 2002. A number of other countries around the world have variations of legalization and regulation of prostitution.
- 3. Decriminalization of prostitution** (also known as “full decriminalization”). Under this model, which the ACLU supports, the purchase and solicitation of sexual acts, pimping, operating brothels, and

Lily; Schneider, Clare; Shapiro, Melanie; and Hughes, Donna M. (2019) “Does the Decriminalization of Prostitution Reduce Rape and Sexually Transmitted Disease? A Review of Cunningham and Shah Findings,” *Dignity: A Journal on Sexual Exploitation and Violence*: Vol. 4: Iss. 3, Article 6. DOI: 10.23860/dignity.2019.04.03.06, Margo St. James was arrested and convicted in San Francisco in 1962 for “soliciting and keeping a disorderly house in November 1962” by her own admission (Beatty, 1996, p.9). <https://digitalcommons.uri.edu/dignity/vol4/iss3/6>.

10 Vednita Carter and Evelina Giobbe, “Duet: Prostitution, Racism and Feminist Discourse,” *10 Hastings Women’s L.J.* 37, 52 (1999), <https://repository.uchastings.edu/hwlj/vol10/iss1/4>.

11 Sue Ferns, General Council of the Trade Unions Council (TUC) at the United Kingdom TUC Women’s Conference, The Brighton Centre, September 2017. Other trade union representatives offered statements on their trade unions’ analysis of the system of prostitution and rejected the premise that prostitution is “work.” “The sale of your body is not the same as selling your labor. The commodification of women in this way is against equality, portrays us as subservient and puts us at risk of violence...The sex industry is about inequality,” Julie Philipps, United the Union; “We should as trade union movements defend workers, but our core purpose is not to enable the bosses to profit from the exploitation of workers. As education workers, we must refute the idea that prostitution is a job like any other. We cannot ignore and sanitize the violence and abuse,” Philipa Harvey, National Education Union, <http://www.cap-international.org/activity/video-in-the-uk-female-trade-unionists-against-the-system-of-prostitution-and-its-exploitation/>; Trade union leaders from Ireland, David Begg of the International Congress of Trade Unions (ICTU), and Eamon Devoy of the Technical Engineering and Electrical Union (TEEU) stated: “Having legislation in place that says we, as a society, do not believe it is acceptable for someone to buy another’s body for sexual gratification, exploiting the poverty, past history of abuse or limited life choices of the person being bought, would send a very clear message that we are a society committed to equality.” Congress supports launch of “Turn Off the Red Light: End Prostitution in Ireland” Campaign, 2 Feb 2011, https://www.nwci.ie/learn/article/turn_off_the_red_light_campaign_briefing_paper.

12 Deborah C. England, “Prostitution in Nevada: Laws and Penalties,” *Criminal Defense Lawyer*, <https://www.criminaldefenselawyer.com/resources/prostitution-pimping-and-pandering-laws-nevada.htm>.

“sex tourism” are decriminalized and subject to ordinary business regulations. For example, brothels are allowed to operate under business licenses and are taxed and regulated by local business laws. The ACLU criticizes the legalization model and favors the decriminalization model, but the two models are highly similar.¹³ Both cast the sex trade as a legitimate industry and thereby encourage its growth, by sanctioning the demand for prostitution (sex buying), and both allow the state to profit from the sex trade through taxation. New Zealand is the only country to have decriminalized its sex trade nationwide, which occurred in 2003.¹⁴ In Australia, the sex trade was decriminalized in New South Wales in 1995, and in the Northern Territory in 2019. In the United States in 2019, a bill was introduced into the New York State Assembly and the New York State Senate to fully decriminalize prostitution.¹⁵

- 4. The Equality Model** (also known as the “Nordic Model” and described by the ACLU as the “end-demand model”). Under this approach, the act of prostitution is decriminalized, meaning that people in prostitution are not subject to criminal penalties, and instead are offered comprehensive services, including exit strategies. However, other acts that perpetuate the sex trade, including patronizing (“sex buying”), pimping, and brothel owning/managing are illegal. The fundamental premise of this legal framework rests on human rights principles and international law as stated above.¹⁶ Sweden was the first country to adopt the Equality Model, in 1999. Norway and Iceland adopted the model in 2009, Canada in 2014, Northern Ireland in 2015, France in 2016, Ireland in 2017, and Israel in 2018.¹⁷

RESPONDING TO THE ACLU’S SUPPORT OF THE SEX TRADE

This report addresses each of the ACLU’s major contentions in turn, which are that decriminalization of the sex trade: (1) improves the safety of people in prostitution; (2) improves the health of people in prostitution; (3) improves the financial stability of people in prostitution; (4) improves outcomes for LGBTQ people, people of color, and immigrants in prostitution; and (5) does not hinder efforts to combat human trafficking. In each case, the opposite is true.

1. Decriminalizing the sex trade does NOT reduce violence against people in prostitution

The ACLU contends that sex buyers are more violent when sex buying and pimping are criminalized than when they are decriminalized, even in jurisdictions where engaging in prostitution by a person in prostitution is not a criminal act. This, it says, is because criminalized systems create a greater police

13 “Germany and New Zealand: A Comparison in Prostitution Laws 2002-2017,” Coalition Against Trafficking in Women, <https://catwinternational.org/wp-content/uploads/2021/06/Germany-New-Zealand-A-Comparison-in-Prostitution-Law-FINAL.pdf>.

14 New Zealand’s sex trade was decriminalized with the passage of the Prostitution Reform Act 2003 (New Zealand), New Zealand Legislation, <https://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197855.html>.

15 Assemb. A8230, Reg. Sess. (N.Y. 2019 - 2020); S. SO6419, Reg. Sess. (N.Y. 2019 - 2020), https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=SO6419&term=2019&Summary=Y&Text=Y.

16 In particular, Article 9.5 of the Palermo Protocol mandates that its signatories (which includes the United States) do the following: “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to *discourage the demand* that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.” (emphasis added), UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html>. Furthermore, Article 6 of CEDAW states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” Convention on the Elimination of All Forms of Discrimination against Women. Treaty Series, 1249, 13.

17 The G7 France “Biarritz Report,” identifies the Nordic Model as one of the most progressive laws for women’s rights globally, “Biarritz Partnership For Gender Equality: Recommendations of the Gender Equality Advisory Council for advancing gender equality and the empowerment of girls and women and Call to Action,” 2019. <https://www.elysee.fr/admin/upload/default/0001/05/cfb1e2ba2b9aa09c1660f1b6df2cabbc815eccc2.pdf>.

presence at locations where prostitution occurs, which causes rushed negotiations between people in prostitution and sex buyers — presumably because sex buyers are impatient to set the terms of a transaction before being caught by police. Under these conditions, the theory goes, people in prostitution are unable to properly screen sex buyers. The ACLU states that the “lack of time or conditions to agree upon a fee in advance can increase the risk of disagreement and violent or aggressive escalation by the client during or after the fact.”¹⁸

The ACLU’s contention that decriminalizing the sex trade reduces violence against people in prostitution is premised on two notions, the first contradicting its assumptions, namely by acknowledging that there is an inherent risk of violence in prostitution; and the second, this time a false assumption, namely that prostitution is a job like any other. First, prostitution is in fact inherently violent. The ACLU’s own report acknowledges that a transaction for prostitution risks disagreement and violent or aggressive escalation by sex buyers, during or even after the paid sexual act(s). The report states that “22 percent of the 250 female sex workers surveyed in Baltimore, Maryland reported physical or sexual violence by a client in the past three months.”¹⁹

The vast majority of studies agree that prostitution is remarkably violent and dangerous.²⁰ A study of 854 women in prostitution in nine countries found that 63 percent of the women had been raped by a sex buyer or a pimp, and 71 percent had been physically assaulted.²¹ Another study concluded that women in prostitution had a “workplace” homicide rate 51 times the next most dangerous profession.²² One study of 278 women in prostitution in Miami found that 51 percent had experienced physical abuse, 65 percent had experienced emotional abuse, and 53 percent had experienced sexual abuse.²³ A Canadian study identified that 72 percent of women in prostitution suffer traumatic brain injuries, mostly at the hands of sex buyers and pimps.²⁴ Control by a pimp increases exposure to assault, threats and other traumatic incidents. Of the 71 pimp-controlled women in a Chicago study, 21 percent were threatened with rape and more than half reported sexual assault.²⁵ Other research has shown that people in prostitution “are routinely subjected to poverty, violence, harassment, discrimination, and hazardous environments.”²⁶ The detrimental effects of prostitution can be seen in the high rates of post-traumatic stress disorder (PTSD) among survivors and victims. Symptoms include anxiety, depression, insomnia, irritability, flashbacks, emotional numbing, and hyper-alertness.²⁷ Of 475 people in prostitution interviewed across five countries (South Africa, Thailand, Turkey, the U.S. and Zambia), 67 percent met diagnostic criteria for

18 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 5.

19 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 5.

20 Darren Geist, “Amnesty International’s Empty Promises: Decriminalization, Prostituted Women, and Sex Trafficking,” Volume 1, Issue 1, Article 6, *Dignity: A Journal on Sexual Exploitation and Violence*, 10 (2016), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1012&context=dignity>.

21 Melissa Farley et al., “Prostitution in nine countries: An update on violence and posttraumatic stress disorder,” *2 Journal of Trauma Practice* 33, 34 (2003), <http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf>.

22 Melissa Farley et al., “Comparing sex buyers with men who don’t buy sex: ‘You can have a good time with the servitude’ vs. ‘You’re supporting a system of degradation.’” Paper presented at Psychologists for Social Responsibility Annual Meeting (July 15, 2011), <https://pubmed.ncbi.nlm.nih.gov/26324260/>.

23 Lara Gerassi, “From Exploitation to Industry: Definitions, Risks, and Consequences of Domestic Sexual Exploitation and Sex Work Among Women and Girls,” *25 Journal of Human Behavior In The Social Environment*, 6 (2015).

24 Melissa Farley et al., “Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota,” NATIONAL INDIGENOUS WOMEN’S RESOURCE CENTER (2011), <https://www.niwr.org/sites/default/files/images/resource/Garden-of-Truth.pdf>.

25 Gerassi, “From Exploitation to Industry: Definitions, Risks, and Consequences of Domestic Sexual Exploitation and Sex Work Among Women and Girls,” 25.

26 Cody Jorgensen, “Badges and Brothels: Police Officers’ Attitudes Toward Prostitution,” *Frontiers in Sociology*, (June 15, 2018), <https://doi.org/10.3389/fsoc.2018.00016>.

27 W.M. Konstantopoulos et al., “An Intersectional Comparative Public Health Analysis of Sex Trafficking of Women and Girls in Eight Cities: Achieving a More Effective Health Sector Response,” *90, 6 Journal of Urban Health: Bulletin of New York Academy of Medicine*, (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853176/>.

PTSD.²⁸ Yet, despite the overwhelming evidence of extreme violence and psychological harm in the sex trade, the ACLU claims that the sex trade is a legitimate industry that should be encouraged by destigmatizing and legalizing the buying and selling of people's bodies.

Second, the ACLU assumes that prostitution is a job like any other, and that "sex workers" would ordinarily, absent criminalization laws, be sufficiently empowered to screen clients and negotiate pay and working conditions with them. In reality, the system of prostitution relies on abuse of power and abuse of vulnerabilities for the profit of a global multi-billion-dollar sex trade. These vulnerabilities disproportionately affect individuals from marginalized communities that suffer from myriad inequalities, such as sex, gender, ethnic, economic, and socio-cultural inequalities. The majority of people in prostitution are women and girls, and trans women and gender non-conforming individuals, with histories of childhood sexual abuse, child sex trafficking, homelessness, displacement, foster care residencies and other negative life experiences. The system of prostitution also feeds on such vulnerable people's absence of choice.

i. The ACLU Report fails to recognize that prostitution relies on economic inequality

People in prostitution are subjugated to sex buyers, who purchase power and control, and third-party exploiters who profit from prostitution.

The most overt form of power used by johns to ensure a prostituted woman's compliance is compensatory or economic power. Because an exchange of money occurs, the john is given license to use the woman's body in whatever manner he chooses. Any refusal on her part can result in the withdrawal of compensation. His ability to do so is enforced, directly and indirectly, by pimps and owners of prostitution businesses whose sole objective is to maximize their profits, or by the economic factors that initially put the woman at his disposal.²⁹

Such economic oppression obliterates any power a person in prostitution might otherwise have to conduct effective negotiations with sex buyers. And even if negotiations occur, sex buyers retain the power during the transaction itself:

[W]hen the "job" of prostitution is exposed, any similarity to legitimate work is shattered. Put simply, whether you're a "high-class" call girl or a street walkin' ho, when you're on a "date" you gotta get on your knees or lay on your back and let that man use your body anyway he wants to. That's what he pays for.³⁰

Regardless of whether a sex buyer negotiates a transaction with a person in prostitution directly, or purchases sexual acts through a third party (pimp, escort service, strip club or illicit "massage parlor" managers, etc.) sex buyers assume it is acceptable to exploit the economic vulnerability of people in prostitution. A 2013 Chicago study of the online sex-buyers' forum "USA Sex Guide" found that many men seem to believe that they have purchased women's consent with their money and that they are

28 Konstantopoulos et al., "An Intersectional Comparative Public Health Analysis of Sex Trafficking of Women and Girls in Eight Cities."

29 Carter & Giobbe, "Duet: Prostitution, Racism and Feminist Discourse," 10.

30 Carter & Giobbe, "Duet: Prostitution, Racism and Feminist Discourse," 10.

thereby entitled to control the interaction entirely. [Professor Catharine] MacKinnon notes that, behind the fantasy shared by many men who buy sex, most johns realize prostituted women do not enjoy the sex and are there out of “economic necessity,” but it is crucial to understand that most johns still consider this consent... Some men on these forums encourage one another to compel women in prostitution to accept men’s prices, not the other way around, and to take advantage of women’s economic vulnerability.³¹

In the sex trade, men dominate vulnerable people with money.

ii. The ACLU Report fails to recognize that prostitution exploits vulnerable and marginalized people, especially of color

The lifetime experiences of the majority of people in prostitution usually include “childhood sexual assault by family and community, emotional neglect, childhood physical abuse, domestic violence, rape in prostitution, verbal abuse, and domination, all of which most frequently occur in a social context where racism and poverty increase vulnerability”.³² The ACLU Report ignores “the race/class power differential that exists between prostitutes and their customers.”³³ Yet it is well known that people of color and members of minority groups, especially women of color, are significantly over-represented in prostitution.³⁴ Historic and systemic racism and socio-economic factors are indisputably linked to this over-representation. In the *Yale Journal of Law and Feminism*, Cheryl Nelson Butler notes:

Today, racial myths fuel the racial subordination of women of color through prostitution. The modern disproportionality of women of color in American prostitution is connected to this culture of racialized sexual objectification. Recent statistics suggest that the majority of people of color in prostitution do not freely choose to be there. A disproportionate number of people of color in prostitution are trafficked.³⁵

Racist attitudes and policies have also pushed Native American women into prostitution: “Native American women and children have testified to the profound loss of self-esteem that accompanies the evisceration of their cultural traditions as a result of mandated assimilation and other U.S. governmental policies and the loss of self-esteem that results in acquiescence to prostitution.”³⁶ An investigation conducted by *The New York Times* in Oakland, California, found that there is a strong demand for sex with Asian minors within the American prostitution trade.³⁷ Based on racial stereotyping and demand, Asian American girls are targeted and groomed for prostitution.³⁸ The ACLU would have us believe that prostitution should be seen as a means of legitimate employment, in order to provide “all sex workers access to more stable, legal income, and autonomy.”³⁹ However, “[c]ontrary to [this] pervasive narrative

31 Lara Janson et al., “Our Great Hobby: An Analysis of Online Networks for Buyers of Sex in Illinois,” 46, <https://humantraffickinghotline.org/resources/our-great-hobby-analysis-online-networks-buyers-sex-illinois>, citing Catharine MacKinnon, Trafficking, prostitution, and inequality, 46 Harvard Civil Rights-Civil Liberties Law Review, 701-739 (2011).

32 Melissa Farley et al., “Attitudes and Social Characteristics of Men Who Buy Sex in Scotland, Psychological Trauma: Theory, Research, Practice and Policy,” (March 28, 2011), https://www.researchgate.net/publication/232596918_Attitudes_and_Social_Characteristics_of_Men_Who_Buy_Sex_in_Scotland.

33 Carter & Giobbe, “Duet: Prostitution, Racism and Feminist Discourse,” 10.

34 Cheryl Nelson Butler, “A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America,” 27(1) YALE J. L. and Feminism, 95, 133 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2642976.

35 Butler, “A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America,” 127.

36 Butler, “A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America,” 129.

37 Patricia Leigh Brown, “In Oakland, Redefining Sex Trade Workers as Abuse Victims,” N.Y. TIMES (May 23, 2011) <https://www.nytimes.com/2011/05/24/us/24oakland.html>, discussing an Oakland health clinic that was confronted with “an underground within an underground — the demand for Asian-American girls, with Cambodian-Americans among the most vulnerable.”

38 Brown, “In Oakland, Redefining Sex Trade Workers as Abuse Victims.”

39 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 11.

about prostitution as a form of sexual liberation and economic freedom, an alternative narrative exposes prostitution in America as a form of structural oppression in which race, gender, and class intersect."⁴⁰ Childhood is another vulnerability in prostitution. Most people are first sex trafficked into prostitution as children.⁴¹ A Chicago study found that 35 percent of people in prostitution were first sold into the sex trade before 15 and 62 percent before 18.⁴² Furthermore, an international study of nine countries found 47 percent entered prostitution before 18.⁴³ An article published in the *Stanford Journal of Civil Rights & Civil Liberties* puts the average age a child is sex trafficked at around 15 to 16.⁴⁴ The U.S. federal Trafficking Victims Protection Act (TVPA)⁴⁵ and international law⁴⁶ define people under 18 in prostitution as child trafficking victims. The evidence on children in prostitution therefore indicates that the commercial sex industry depends on the monetized rape of children.⁴⁷ That legal status does not disappear when the child turns 18 and remains in the sex trade, regardless of whether they continue to be exploited by a third-party or that the circumstances of their lives offer no other opportunities to exit at 18 years old. Yet the ACLU tries to convince us, without documented evidence, that people in prostitution over 18 are consenting adults and not exploited victims. This position:

asks us to believe that, if an underage girl has been trafficked for sex, on her eighteenth birthday she becomes a consenting adult in "sex work" — this despite the disadvantages placed on her by her years of victimization in the industry. Overnight, that child's rapists and sex traffickers become legitimate "sex work" customers and organizers of traumatized, exploited, marginalized, and disadvantaged women and children to be sold, on the cheap, to men.⁴⁸

Sexual exploitation in the sex trade is largely gender-based, as most sex buyers are male and most people purchased for prostitution are women and girls. Prostitution encourages the objectification of women. The 2013 study of the online sex buyers' forum "USA Sex Guide" found that men justified purchasing sexual acts and exerting violence against women on the basis of male entitlement and the belief that women are "meat", with sex buyers describing women as "COF - Cum on Face", "BSW - Black Street Walker", and "ROB - Rip Off Bitch".⁴⁹

Not only are vulnerable and marginalized people coerced into the sex trade, but their vulnerability and marginalization impedes their exit from it. For example, the state-sanctioned forced relocation of Native Americans has generated acute vulnerabilities, including poverty, sexual abuse, and violence against women, which make them "easy targets for sexual exploitation. Landlords in Minnesota

40 Butler, "A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America," 139 .

41 Geist, "Amnesty International's Empty Promises," 13.

42 Jody Raphael & Deborah L. Shapiro, "Sisters speak out: The lives and needs of prostituted women in Chicago," (Aug. 2002) Center for Impact Research.

43 Melissa Farley et al., "Prostitution in nine countries: An update on violence and posttraumatic stress disorder," 2 *Journal of Trauma Practice* 33, 34 (2003), [http:// www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf](http://www.prostitutionresearch.com/pdf/Prostitutionin9Countries.pdf).

44 Brendan M. Conner, "In loco aequitatis: The dangers of 'Safe Harbor' laws for youth in the sex trade," *Stanford Journal of Civil Rights & Civil Liberties*, 55 (2016), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2968&context=facpubs>.

45 22 U.S.C. § 7102(11)(A) <https://www.congress.gov/bill/115th-congress/senate-bill/1312>.

46 See, for example, Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), [https:// www.ohchr.org/ EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx](https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx).

47 Geist, "Amnesty International's Empty Promises," 13.

48 Geist, "Amnesty International's Empty Promises," 13. Geist's comments pertain to an Amnesty International recommendation in favor of decriminalization, released March 26, 2016, but are equally applicable to the ACLU's policy position.

49 Janson et al., "Our Great Hobby," 46.

coerce women and children into prostitution as a condition for keeping their housing. Impoverished Native American women and girls are recruited [for prostitution] from shelters and homeless youth centers.”⁵⁰ Survivors such as Alice Glass have highlighted the threat of homelessness as a major barrier to exiting the sex trade:

Like me, some of us end up homeless, if we left the brothel we live in, or the pimp ‘boyfriend’ or we simply lost our homes when we stop making the rent. Prostitution, if it is anything, is a choice between homelessness and having men we don’t like, do things we hate, to bodies we don’t know how to love.⁵¹

Other vulnerabilities that act as barriers to exiting the sex trade include lack of education, lack of peer and community support, and mental health challenges.⁵² A German survivor, Huschke Mau, notes that many people in prostitution are deterred from exiting the sex trade by negative experiences with government agencies when they attempt to access social services or benefits, and / or are barred from exiting because they possess criminal records for prostitution-related offenses.⁵³

Given these realities, the ACLU’s suggestion that people in prostitution can overcome the power imbalance in their interactions with sex buyers and pimps, when many first entered prostitution as trafficked children and the majority of people in prostitution are vulnerable, marginalized and trauma-bonded, is staggeringly unrealistic.

iii. The ACLU Report fails to recognize that prostitution is not defined by consent

The ACLU refers to prostitution as “consensual sex work” and “adult, consensual prostitution”,⁵⁴ spinning the false narrative that people in prostitution engage in prostitution as consenting adults without any coercive factors at play. As stated by Rachel Moran, a survivor of the sex trade:

I know there are some advocates who argue that women in prostitution sell sex as consenting adults. But those who do are a relatively privileged minority — primarily white, middle-class, Western women in escort agencies — not remotely representative of the global majority. Their right to sell doesn’t trump my right and others’ not to be sold in a trade that preys on women already marginalized by class and race.⁵⁵

As mentioned above, most people in prostitution are vulnerable, marginalized and coerced into the sex trade because of a myriad of socio-economic and cultural factors. Moran entered the sex trade as a homeless youth at age 15, having been placed in the care of the state after her father committed suicide and because her mother suffered from mental illness.⁵⁶ As we have also seen above, many people, like Moran, were sex trafficked children. Law enforcement officers with Stockholm’s Prostitution Unit

50 Butler, “A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America,” 134.

51 Alice Glass, “FACT: Women often struggle to leave prostitution,” NORDIC MODEL NOW!, <https://nordicmodelnow.org/facts-about-prostitution/fact-women-often-struggle-to-leave-prostitution/>.

52 Marianne Schnall, “The Truth About the Sex Trade: Exit Ramps from ‘the Life’,” We news, February 24, 2019, <https://womensenews.org/2019/02/the-truth-about-the-sex-trade-exit-ramps-from-the-life/>

53 Huschke Mau, “What makes exiting prostitution so hard?,” NORDIC MODEL NOW! January 20, 2020, <https://nordicmodelnow.org/2020/01/20/what-makes-exiting-prostitution-so-hard/>.

54 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 1-2.

55 Rachel Moran, “Buying Sex Should Not Be Legal,” The New York Times, Aug. 28, 2015, <https://www.nytimes.com/2015/08/29/opinion/buying-sex-should-not-be-legal.html>.

56 Moran, “Buying Sex Should Not Be Legal.”

state that, in their experience, only two or three women out of 100 who have engaged in prostitution might say, "I want to be in prostitution."⁵⁷ Most women share experiences of "childhood abuse, single motherhood, and trauma; all of which are coercive factors either facilitating their entrance into prostitution, or preventing them from leaving."⁵⁸ Yet the ACLU seeks to whitewash people's entry into prostitution and rebrand their entrapment as "consent".

The ACLU also ignores the fact that "[e]ven when a 'sex worker' consents to 'sex,' she might still be the victim of exploitation. Unfortunately, people consent to exploitation and abuse all the time."⁵⁹ "[Many prostituted women describe selling sex as, paradoxically, consenting to rape for money."⁶⁰ It is reprehensible for the ACLU to condone and promote a system of violence and exploitation on the basis that a person consents to their own abuse.

iv. The ACLU Report fails to recognize that violence is inherent to prostitution

The ACLU's contention that decriminalization reduces violence towards people in prostitution belies findings from countries where prostitution is legalized or decriminalized versus findings from countries where prostitution is partially decriminalized under the Equality Model. In Germany, where prostitution was legalized in 2002, at least 55 women were reported to have been murdered while in prostitution between 2002 and 2015.⁶¹ By contrast, no women have been murdered in prostitution in Sweden since 1999, the year the Equality Model came into effect in that country.⁶² The Netherlands legalized the sex trade in 2000 in part to protect people in prostitution; however Europol investigations in 2006 revealed that women in the commercial sex industry were subject to extreme violence and murder.⁶³ In 2008, the National Prosecutor's Office and the National Police Service investigated the status of prostitution in the Netherlands.⁶⁴ Their report found that criminal gangs, working as pimps and bodyguards, had been using extreme violence against women in the legal, licensed sector of the industry for as long as ten years despite the presence of brothel inspectors.⁶⁵ Legalization in the Netherlands has not stopped the violence women face at the hands of sex buyers, brothel owners, and pimps.⁶⁶

57 Ane Mathieson et al., "Prostitution Policy: Legalization, Decriminalization and the Nordic Model," 14(2)(10) *Seattle Journal for Social Justice*, 409, <https://digitalcommons.law.seattleu.edu/sjsj/vol14/iss2/10>.

58 Mathieson et al., "Prostitution Policy," 409.

59 Geist, "Amnesty International's Empty Promises," 9.

60 Geist, "Amnesty International's Empty Promises," 11. Citing Melissa Farley (2005). "Prostitution harms women even if indoors: A reply to Weitzer," *VIOLENCE AGAINST WOMEN*, <https://journals.sagepub.com/doiabs/10.1177/1077801205276987>; "We as survivors of the sex trade have overcome the horrors of serial rape." Hatcher, Marian; Bernard, Alisa L.; Franklin, Allison; Morrissey, Audrey; Jacobs, Beth; Jimenez, Cherie; Hardy, Kathi; Carson, Marlene; Bell, Nikki; Bender, Rebecca; Charleston, Rebekah; McKenzie, Shamere; and Carter, Vednita (2018) "Exited Prostitution Survivor Policy Platform," *Dignity: A Journal on Sexual Exploitation and Violence*: Vol. 3: Iss. 3, Article 10. DOI: 10.23860/dignity.2018.03.03.10, <https://digitalcommons.uri.edu/dignity/vol3/iss3/10>.

61 Jody Raphael, "Decriminalization of Prostitution: The Soros Effect," 3(1) *Dignity: A Journal on Sexual Exploitation and Violence*, 8 (2018), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1087&context=dignity>.

62 Raphael, "Decriminalization of Prostitution," 8.

63 National Police Service, Criminal Investigations Department (KLPD), "Beneath the Surface (Schone Schijn): The Identification of Human Trafficking in the Licensed Prostitution Sector 4," (2009).

64 National Police Service, Criminal Investigations Department (KLPD), "Beneath the Surface."

65 National Police Service, Criminal Investigations Department (KLPD), "Beneath the Surface."

66 Mathieson et al., "Prostitution Policy," 394.

Victims who made reports or submitted statements to the police tell of how they were beaten with baseball bats, and how they were made to stand outside in the cold water of lakes in holiday parks during winter. There were also reports of forced abortions, breast enlargement (forced and voluntary), and tattoos with the names of the pimps.⁶⁷

A source relied upon by the ACLU to argue that decriminalization reduces violence in prostitution states: "In New Zealand, where sex work has been decriminalized since 2003, sex workers experience opportunities to develop stable and safe work environments and enhanced capability to manage negotiations for safe sex practices with clients."⁶⁸ However, findings of the New Zealand Ministry of Justice contradict this assertion. After decriminalizing prostitution, the Ministry of Justice created an independent committee to evaluate the effects of the decriminalization legislation between 2003 and 2007.⁶⁹ The study involved surveys of 772 "sex workers" in five locations in the country, and 58 in-depth, follow-up interviews, along with information from 38 brothel owners. It found that decriminalization had not affected the level of violence in prostitution. In fact, most respondents agreed that there will always be violent clients, causing the report to conclude, "It appears that adverse incidents, including violence, continue to be experienced by those in the sex industry."⁷⁰ In Victoria, Australia, where prostitution is legalized, legalization "has been found to increase competition among brothels, legal and illegal, with demands from management that women service abusive buyers or give in to demands for unsafe sex."⁷¹

Research relied upon by the ACLU to assert that findings from Nevada's legalized brothels demonstrate that people in prostitution are safer under a legalized system actually concluded that "[t]he structure of the legal prostitution industry and the culture of work therein are not immune to violence in any of its forms".⁷² In addition, the research:

has many biases, including the fact that the researchers obtained entry to the brothels with help from the Nevada Brothel Association, and appeared to take at face value everything said by the brothel owners. Importantly, the investigators did not compare violence and fear of violence in criminalized venues with legalized venues in rural Nevada. And, based on their interviews with women in the legal brothels, the researchers found, as we have seen, violence and continual apprehension of violence.⁷³

Furthermore, in arguing that decriminalization reduces violence against people in prostitution, the ACLU cites 2018 research findings by Scott Cunningham and Manisha Shah that claim that rape and sexually transmitted diseases were reduced while prostitution in Rhode Island was decriminalized.⁷⁴ However, Lily Lachapelle et. al. revealed in 2019 that Cunningham and Shah's statistical conclusions were erroneously

67 Mathieson et al., "Prostitution Policy," 409.

68 Adina Landsberg et al., "Criminalizing Sex Work Clients and Rushed Negotiations among Sex Workers Who Use Drugs in a Canadian Setting," 94 *Journal of Urban Health*, 563-71 (2017).

69 New Zealand Government, Ministry of Justice, "Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003," <https://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>.

70 New Zealand Government, Ministry of Justice, "Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003."

71 Jody Raphael, "Decriminalization of Prostitution: The Soros Effect," 7.

72 Barbara G. Brents & Kathryn Hausbeck, "Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk and Prostitution Policy," 20(3) *Journal of Interpersonal Violence*, 270, 289, (2005), <https://esplerp.org/wp-content/uploads/2012/08/Violence-and-Legalized-Brothel-Prostitution-in-Nevada.pdf>.

73 Raphael, "Decriminalization of Prostitution: The Soros Effect," 18.

74 Scott Cunningham & Manisha Shah, "Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health," 85(3) *The Review of Economic Studies*, 1683 (2018).

based on the assumption that prostitution in Rhode Island was decriminalized in 2003, when it was actually decriminalized in 1980.⁷⁵ An analysis of data from the complete period of decriminalization shows strong trends and data outliers that contradict their findings.⁷⁶ Yet the ACLU still relies heavily on the study.

v. The ACLU Report offers misinformation and disinformation about the federal law FOSTA-SESTA

In 2018 the Fight Online Sex Trafficking Act (FOSTA)⁷⁷ and the Stop Enabling Sex Traffickers Act (SESTA),⁷⁸ collectively referred to as FOSTA-SESTA, was enacted. This U.S. federal law was passed to hold websites accountable for knowingly facilitating sex trafficking and promoting prostitution (pimping under federal law) online. The law also allows victims and survivors trafficked online to sue the websites that facilitated their sex trafficking for civil damages, both at the federal and state levels.

FOSTA-SESTA specifically amended Section 230 of the Communications Decency Act (CDA 230), which stated that websites were not liable for third party content on their platforms. CDA 230 shielded a number of internet service providers, including the classified ads website Backpage.com, from prosecution, and prevented trafficking victims, bought and sold in prostitution through online ads, from having any legal recourse against these websites.

Following an 18-month-long bipartisan investigation, the Permanent Senate Subcommittee on Investigations, led by Senators Claire McCaskill (D-MO) and Rob Portman (R-TX), published a report that found that Backpage knowingly facilitated sex trafficking and promoted the prostitution of women and girls on its site.⁷⁹ The Senate report found that Backpage actively engaged in the editing of prostitution-related ads, with knowledge of facilitating sex trafficking, and covered up evidence of these crimes to increase its own profits—calculated at \$500 million.

The ACLU report fails to accurately describe the FOSTA-SESTA law. Rather than referencing the law's requirement that a website must *knowingly* facilitate sex trafficking and promote prostitution online to be held criminally or civilly liable for such activities, it mischaracterizes the letter of the law, stating that FOSTA-SESTA is "making websites liable for postings that appear to advertise sex trafficking or even consensual prostitution."⁸⁰

The ACLU also fails to understand that FOSTA-SESTA does not target individuals who engage in prostitution online. Prostitution is governed by state law, not federal law, and is therefore outside of the reach of FOSTA-SESTA. FOSTA-SESTA only applies to websites that knowingly facilitate the crimes of sex trafficking and the promotion of prostitution (pimping at the federal level) online. A person who discusses the sex trade or exchanges information about health and safety concerns, or even solicits to engage in prostitution online on forums and websites does not fall under FOSTA-SESTA's purview.⁸¹

75 Lily Lachapelle et al., "Does the Decriminalization of Prostitution Reduce Rape and Sexually Transmitted Disease? A Review of Cunningham and Shah Findings," 4(3)(6) *Dignity: A Journal on Sexual Exploitation and Violence*, 8 (2019), <https://digitalcommons.uri.edu/dignity/vol4/iss3/6/>.

76 Lachapelle et al., "Does the Decriminalization of Prostitution Reduce Rape and Sexually Transmitted Disease?," 8.

77 Allow States and Victims to Fight Online Sex Trafficking Act, 18 U.S.C. § 2421A (2018).

78 Stop Enabling Sex Traffickers Act, 47 U.S.C. § 230 (2018).

79 "Backpage.com's Knowing Facilitation of Online Sex Trafficking," United State Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, Rob Portman, Chairman, Claire McCaskill, Ranking Member, Staff Report, 2017, <https://www.hsgac.senate.gov/imo/media/doc/Backpage%20Report%202017.01.10%20FINAL.pdf>.

80 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 1.

81 "The Truth About FOSTA-SESTA," Coalition Against Trafficking in Women, <https://catwinternational.org/wp-content/uploads/2019/09/The-Truth-About-FOSTA-SESTA-Infographic-FINAL.pdf>.

The ACLU misinterprets the effect of FOSTA-SESTA on websites. A number of sites were shut down either by state prosecutors (i.e. Backpage.com)⁸² or shut down of their own volition (e.g. Erotic Monkey, RubMaps, ECCIE, etc.) prior to the enactment of FOSTA-SESTA. The U.S. Government reported that it has only relied on the law once in a case that was ultimately dismissed.⁸³

The ACLU argues that people in prostitution have been subjected to more violence following the passage of FOSTA-SESTA because the law effectively shut down several prostitution websites. The ACLU's report states that the "levels of violent crime (physical or sexual assault) are shown to be substantially lower with online versus street-based sex work."⁸⁴ To support these claims, the ACLU relies on a 2019 study by Scott Cunningham et al.⁸⁵ which contends that people in prostitution are subjected to greater violence from sex buyers when they cannot use the internet to be matched with sex buyers. Referring to the Cunningham study, and despite noting that it has "some limitations," the ACLU states, "the ability to find and screen clients online via the Erotic Services section (ERS) of Craigslist was associated with lower rates of female homicide, and attributed to more efficient transactions and greater screening of clients."⁸⁶ However, a methodological examination of the Cunningham study revealed that it is significantly flawed.⁸⁷ The Cunningham study asserted that during the years ERS was operative, overall female homicide rates decreased, but it did not examine any data on how many women in prostitution were murdered during that time because no such data exists. Further, it did not account for other factors that may explain the decline in the general female homicide rate, including the decrease in fatal intimate partner violence during the same period (at least half of the women murdered in the U.S. are killed by intimate partners, suggesting this was a very significant factor for Cunningham et al. to overlook).⁸⁸ In addition, the Cunningham study hypothesizes that online screening and other mechanisms might explain the declining homicide rates, but presents no evidence on this. Other flaws of the Cunningham study include that it uses murder as a proxy for all violence against women, ignoring myriad other forms of violence perpetrated against women, and that it uses findings related to the period between 2002-2009 to speculate on the impact of FOSTA-SESTA, which was signed into law in 2018, without reviewing the way internet usage changed in the intervening ten-year period.⁸⁹

The ACLU relies on two other studies to demonstrate that the passage of FOSTA-SESTA has exposed people in prostitution to more violence. One study, conducted by "sex worker" advocacy group COYOTE-RI, found that of 262 people surveyed, 60 percent reported having to take on riskier clients since FOSTA-SESTA restricted their online platforms.⁹⁰ The other study was carried out by "sex worker" advocates for Hacking//Hustling, "a collective of sex workers, survivors, and accomplices working at the intersection of tech and social justice to interrupt state surveillance and violence facilitated by technology."⁹¹ It found

82 "Attorney General Becerra Announces Shutdown of World's Largest Online Sex Trafficking Website, Backpage.com," State of California Department of Justice, <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-shutdown-world%E2%80%99s-largest-online-sex>.

83 "Sex Trafficking: Online Platforms and Federal Prosecutions," U.S. Government Accountability Office, GAO-21-385, June 21, 2021, , <https://www.gao.gov/products/gao-21-385>.

84 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 6.

85 Scott Cunningham, Gregory DeAngelo and John Tripp, "Craigslist Reduced Violence against Women," 2019. https://economics.stanford.edu/sites/g/files/sbiybj9386/f/craigslist_reduced_violence_against_women_scott_cunningham.pdf.

86 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 6.

87 Katie Feifer, Jody Raphael, and Kezban Yagci Sokat (2019), "Do Prostitution Advertisements Reduce Violence Against Women? A Methodological Examination of Cunningham, DeAngelo, and Tripp Findings," Dignity: A Journal on Sexual Exploitation and Violence: Vol. 4: Iss. 3, Article 7. <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1167&context=dignity>.

88 Feifer, Raphael, Yagci Sokat, "Do Prostitution Advertisements Reduce Violence Against Women?," 7.

89 Feifer, Raphael, Yagci Sokat, "Do Prostitution Advertisements Reduce Violence Against Women?," 13.

90 COYOTE-Rhode Island (RI), Desiree Alliance, SWOP Behind Bars, and Brown University. COYOTE-RI Impact Survey Results - 2018, <http://www.swop-seattle.org/wp-content/uploads/2018/11/COYOTE-Survey-Results-2018.pdf>.

91 Hacking//Hustling website at <https://hackinghustling.org/>.

that a third of the 98 online-based self-identified “sex workers” surveyed reported an increase in violence from clients since the passage of FOSTA-SESTA.⁹² Both studies are severely limited, as they serve the interests of the “sex work” lobby, which calls for laws that legalize and decriminalize the sex trade.⁹³ These participants are not representative of the vast majority of women, girls, and marginalized people in prostitution; they certainly do not represent those who are coerced to engage in prostitution by third-party exploiters, do not self-identify as “sex workers”, and do not freely “choose” prostitution.⁹⁴ As we have seen above, the vast majority of people in prostitution are vulnerable, marginalized and exploited, many having experienced factors such as childhood sexual violence, physical abuse, intimate partner violence, rape in prostitution, etc. Many women of color, in particular, do not freely choose to be in prostitution.⁹⁵ The infinitesimal percentage of people who argue they are in prostitution by choice and therefore it must be decriminalized “doesn’t trump” the right not to be bought and sold “in a trade that preys on women already marginalized by class and race.”⁹⁶

The ACLU report falsely claims that FOSTA-SESTA jeopardizes the lives of those who promote their own sexual services. The sex trade itself and sex buyers accomplish that.⁹⁷ The ACLU mischaracterizes FOSTA-SESTA to persuade the public that prostitution is a job like any other and calls for its full decriminalization.

vi. Abuse by police against people engaged in prostitution

The ACLU rightly points out that people in prostitution suffer abuse at the hands of law enforcement officers.⁹⁸ Reports show that police “are often the perpetrators of violence against prostituted women.”⁹⁹ Police brutality against people in prostitution is unacceptable and perpetrators should be subject to criminal prosecution. Likewise, arrests and incarceration of people in prostitution must cease. Police who exhibit abusive or punitive attitudes towards people in prostitution (such as blaming people in prostitution for their victimization), must be trained and educated on the realities of human trafficking and sexual exploitation, and the factors that lead to these abuses. It is critical that legislation require such training, as does section 13 of the Sex Trade Survivors Justice and Equality Act, a bill recently introduced into the New York State Legislature to implement the Equality Model, which mandates that law enforcement personnel receive training on an annual basis.¹⁰⁰

Police have an important role to play in addressing violence against people in prostitution. If police do not apprehend pimps, sex buyers, and brothel owners, abuse against people in prostitution will go unnoticed and perpetrators will not be held accountable. The ACLU acknowledges as much. While the report criticizes law enforcement and laments abuses perpetrated by police, it also expects law enforcement to apprehend sex traffickers in a decriminalized commercial sex market and respond to incidents

- 92 Danielle Blunt and Ariel Wolf, “Erased: The Impact of FOSTA-SESTA and the Removal of Backpage,” Hacking//Hustling, 2020, <https://hackinghustling.org/erased-the-impact-of-fosta-sesta-2020/>.
- 93 I note that the Hacking//Hustling study surveyed an additional 38 participants using a street based survey; <https://hackinghustling.org/erased-the-impact-of-fosta-sesta-2020/>.
- 94 Jody Raphael and Katie Feifer, “Get the Facts, What We Know About Sex Trafficking, Prostitution, and Sexual Exploitation in the U.S.,” World Without Exploitation, 2020. https://global-uploads.webflow.com/5b7ed53e01bf9702b9df675b/5e1cd98f61c439d812b34ed3_Get_the_Facts_January_2020.pdf.
- 95 Butler, “A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America,” 127.
- 96 Moran, “Buying Sex Should Not Be Legal.”
- 97 Taina Bien-Aimé, “Why New York Should Not Decriminalize the Sex Trade,” (Apr. 9, 2019), <https://www.ipsnews.net/2019/04/new-york-not-decriminalize-sex-trade/>.
- 98 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 6-7.
- 99 Mathieson et al., “Prostitution Policy,” 376.
- 100 Assemb. A07069, Reg. Sess. (N.Y. 2020 - 2021); S. S06040, Reg. Sess. (N.Y. 2020 - 2020), <https://assembly.state.ny.us/leg/?bn=A07069>, https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=S06040.

of violence and abuse against “sex workers”.¹⁰¹ However, evidence suggests that people in prostitution in decriminalized and legalized environments have less access to police when they need protection. For example, a 2008 report from the Dutch National Police Service found that, as a general rule, law enforcement is less critical of legal industries, which enables unimpeded sex trafficking to take place in legal brothels.¹⁰² An investigation into prostitution in Germany, where it is legalized, quoted a brothel owner as saying that she “valued the prostitution law because it reduced the likelihood of raids. In fact, she said, the law was more advantageous for brothel operators than prostitutes [sic].”¹⁰³ The investigation also drew on information from Alina, a survivor of the sex trade in Germany:

The brothel specialized in flat-rate sex. For €100 (\$129), a customer could have sex for as long and as often as he wanted...

Many [sex buyers] took drugs to improve sexual performance and could last all night. A line often formed outside Alina’s room. She says that she eventually stopped counting how many men got into her bed. “I blocked it out,” she says. “There were so many, every day.”...

All she saw of Germany was the Esso gas station around the corner, where she was allowed to go to buy cigarettes and snacks, but only in the company of a guard. The rest of the time, says Alina, she was kept locked up in the club.

Prosecutors learned that the women in the club had to offer vaginal, oral and anal sex, and serve several men at the same time in so-called gangbang sessions. The men didn’t always use condoms. “I was not allowed to say no to anything,” says Alina...

The police can do little for women like Alina. The pimps were prepared for raids, says Alina, and they used to boast that they knew police officers. “They knew when a raid was about to happen,” says Alina, which is why she never dared confide in a police officer.¹⁰⁴

After analyzing New Zealand’s decriminalized system of prostitution, the U.S. State Department reported in its 2020 Trafficking in Persons Report: New Zealand, that:

Law enforcement reportedly had legal limitations on their ability to proactively screen for trafficking victims, including those who are New Zealand citizens, within the legal commercial sex industry. For example, due to regulations prohibiting police from inspecting legal brothels without a complaint, police relied on an organization that works closely with persons in commercial sex to report potential violations. Nonetheless, the government did not report providing training to the organization’s staff on definitions or indicators of sex trafficking, or

101 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 8. Amnesty International does the same thing in its calls for decriminalization of prostitution. See Darren Geist, “Amnesty International’s Empty Promises: Decriminalization, Prostituted Women, and Sex Trafficking,” Volume 1, Issue 1, Article 6, *Dignity: A Journal on Sexual Exploitation and Violence*, 8 (2016), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1012&context=dignity>.

102 National Police Service, Criminal Investigations Department (KLPD), “Beneath the Surface (Schone Schijn): The Identification of Human Trafficking in the Licensed Prostitution Sector 4” (2009).

103 Cordula Meyer et al., “How Legalizing Prostitution Has Failed,” *SPIEGEL INTERNATIONAL*, May 30, 2015, <https://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>.

104 Meyer et al., “How Legalizing Prostitution Has Failed.”

procedures for referring trafficking victims to services.¹⁰⁵

Between 2003 and 2014, a period of 12 years directly following the enactment of its decriminalization legislation, New Zealand failed to convict a single sex trafficker.¹⁰⁶ The 2020 U.S. Trafficking in Persons report also found that, based on New Zealand's own data, the government "did not initiate any prosecutions and convicted only two traffickers" within the last reporting period.¹⁰⁷ Both were labor trafficking cases, while New Zealand "did not identify or assist any victims of sex trafficking."¹⁰⁸ Additionally, the government primarily focused efforts on cases of potential forced labor, approaching sex trafficking using labor law enforcement measures rather than through criminal sex trafficking investigations.¹⁰⁹

By contrast, in Sweden, "penalizing the demand for prostitution has made conditions safer for women."¹¹⁰ "When women have a law's support, and can see law enforcement as a resource intended to ensure their safety, women are more empowered to call the police when buyers or pimps are violent or abusive."¹¹¹ According to officers, the Equality Model enables women to collaborate with the police to prevent the abuse and exploitation of individuals in prostitution.¹¹²

The ACLU's premise that prostitution is "work" flies in the face of accepted human rights norms and ratified international law, especially in examining the vulnerabilities, inequality and lack of economic power of people in prostitution. In such circumstances, any consent¹¹³ to abuse is not legitimate. Likewise, the ACLU's evidence that decriminalization reduces violence against people in prostitution is flawed. There is significant research to indicate that prostitution remains remarkably dangerous in decriminalized and legalized systems. Police abuse against people in prostitution must be urgently eradicated. Appropriate policing is needed to ensure the safety of people in prostitution and can only be effectively carried out where sex buying, pimping, and brothel owning are criminalized.

2. Decriminalizing the sex trade does NOT improve the health of people in prostitution

The ACLU states that "the literature regarding the impacts of decriminalization or criminalization on mental health is rather sparse. However, the limited research does point to some negative consequences of criminalization on the emotional and mental health of sex workers."¹¹⁴ The ACLU then tries to attribute poor mental health to the sole fact that people in prostitution feel stigmatized because the sex trade is

105 Office to Monitor and Combat Trafficking in Persons, "The 2020 Trafficking in Persons Report: New Zealand," U.S. DEPARTMENT OF STATE, <https://www.state.gov/reports/2020-trafficking-in-persons-report/new-zealand/>.

106 Office to Monitor and Combat Trafficking in Persons, "The 2020 Trafficking in Persons Report: New Zealand."

107 Office to Monitor and Combat Trafficking in Persons, "The 2020 Trafficking in Persons Report: New Zealand."

108 Office to Monitor and Combat Trafficking in Persons, "The 2020 Trafficking in Persons Report: New Zealand."

109 Office to Monitor and Combat Trafficking in Persons, "The 2020 Trafficking in Persons Report: New Zealand."

110 Mathieson et al., "Prostitution Policy, 410."

111 Mathieson et al., "Prostitution Policy, 410."

112 Mathieson et al., "Prostitution Policy, 410."

113 The international definition of human trafficking of the Palermo Protocol specifically states that consent is irrelevant to one's exploitation, including trafficking for purposes of sexual exploitation ("(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;"), Article 3(b) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

114 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 9.

criminalized. We agree with the ACLU that the negative effects of criminalizing people in prostitution, coupled with social exclusion, lack of support, and any refusal by health care providers to care for people in prostitution, must be addressed.¹¹⁵ For this reason, we support the decriminalization *solely* of prostituted individuals.

However, the ACLU's refusal to draw any connection between the horrific violence, exploitation, and oppression of the sex trade and the mental health of the victims of that exploitation is incomprehensible. Research clearly shows that the habitual sexual and physical violence suffered by people in prostitution degrades mental health. As stated above, post-traumatic stress disorder (PTSD) and dissociation are common in people in prostitution.¹¹⁶ The ACLU points to a survey of street-based people in prostitution in Baltimore, Maryland, which found that the violence they experienced caused PTSD levels consistent with those of treatment-seeking combat veterans.¹¹⁷ One study found that 68 percent of women in prostitution suffered from PTSD, a number matched only by victims of state-sponsored torture.¹¹⁸ In another study, 65 percent of people in prostitution had seriously attempted suicide, and 38 percent had attempted it more than once.¹¹⁹ Yet, as explained above, the violence that causes PTSD and other mental health conditions is not attributable to the criminalization of sex buyers, third-party exploiters, and brothel owners, but is routinely perpetrated by such actors in decriminalized contexts.

The ACLU claims that decriminalization reduces HIV infections by empowering people in prostitution to insist on condom use by clients.¹²⁰ One study the ACLU relies on to support this contention is by Shannon et. al, published in 2009.¹²¹ In the study, 205 women in prostitution on the streets of Vancouver, British Columbia (where the sex trade was criminalized at the time) were interviewed. Of the women, 25% reported having been pressured by a sex buyer into unsafe sex without a condom in the last six months. The researchers found that there was a greater likelihood that condom-free sexual encounters occurred in areas away from downtown or main streets in industrial areas. They concluded that decriminalization would increase condom use, because under decriminalization, people in prostitution could move back into more open and safe environments, where condoms are more routinely accepted and used.

There was a significant methodological problem with the research on which the ACLU relies for its opinion on condom use in prostitution. While researchers asked participants various questions, they did not inquire about whether the women had third-party exploiters, despite affirming that trafficking for sexual exploitation has consistently been linked to increased odds of HIV infection and condom non-use, citing three research articles to that effect.¹²² The assumption that moving into open environments would

115 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 9.

116 Rachel Moran, "Paid For: My Journey Through Prostitution," 138 - 150 (W.W. Norton & Company 2013).

117 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 9, Citing N. Park.

118 Melissa Farley et al., "Comparing sex buyers with men who don't buy sex."

119 Donna M. Hughes, "Best practices to address the demand side of trafficking," Women's Studies Program University of Rhode Island, (Aug. 2004), http://www.uri.edu/artsci/wms/hughes/demand_sex_trafficking.pdf. See also Darren Geist, "Amnesty International's Empty Promises: Decriminalization, Prostituted Women, and Sex Trafficking," 1(1)(6) Dignity: A Journal on Sexual Exploitation and Violence, 10 (2016), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1012&context=dignity>.

120 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 8-9.

121 Kate Shannon et al., "Structural and Environmental Barriers to Condom Use Negotiation with Clients among Female Sex Workers: Implications for HIV-Prevention Strategies and Policy," 99(4) American Journal of Public Health 659 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661482/>.

122 Raphael, "Decriminalization of Prostitution: The Soros Effect," 5 (The research articles cited by Shannon et. al. are M. R. Decker et al., (2001) "Sex trafficking, sexual risk, sexually transmitted infection and reproductive health among female sex workers in Thailand," 65 Journal of Epidemiology & Community Health 334, <http://jech.bmj.com/content/65/4/334>; <https://doi.org/10.1136/jech.2009.096834>; L. Urada et al., "Condom negotiations among female sex workers in

enable people in prostitution to negotiate condom use is also flawed.

It is probable that the prostitution venue is related to condom use because the more aggressive customer is drawn to these hidden locations where he knows the prostituted women are especially vulnerable and increased payment for unprotected sex would be attractive. For this reason, these locales might continue to prosper with buyers. If, however, all the women were to desert the industrial locations for more populated areas, would the customers automatically give up their interest in unprotected sex? With prostitution decriminalized, might they be more empowered to demand and pay extra for unsafe sex, since they could not be held to account by law enforcement? Lastly, with decriminalization one might have more individuals now eager to buy sex, some of whom do not want to use a condom, and hence more unprotected sex and more HIV cases.¹²³

Further, the researchers did not compare condom use in a decriminalized venue to the one in Vancouver. Therefore, their conclusions as to decriminalization increasing condom use are only conjecture, based on unproven assumptions as opposed to legitimate research.¹²⁴

The ACLU also relies on a review of a large number of research studies published in *The Lancet*,¹²⁵ stating that the review concluded that “decriminalization could result in the prevention of one-third (33-46 percent) of projected HIV transmissions among female sex workers between 2014-2024.”¹²⁶ However, the ACLU fails to state that the *The Lancet* review found that decriminalization alone would not be enough to effect this result. Multifactorial interventions would be necessary to reduce HIV transmission. In Vancouver, for example, the review states that full decriminalization of prostitution could avert nearly 39 percent of HIV infections, but only “through immediate and sustained effects on violence, police harassment, and safe work environments, and associated condom use. These predictions represent the maximum effect that interventions reducing violence or police harassment or legislation can have because the complete elimination of violence or stigma could be challenging.”¹²⁷

Sex buyers commonly use online review boards or “hobby boards” to review and rate women they purchase for sex. In a 2018 study, researchers examined 148 online brothel reviews and 2,424 reply posts of sex buyers who purchased women in legal brothels in Australia. The study finds that the men who purchased women in these legalized settings:

discursively construct and normalize the violation of women in the brothels... by constructing and promoting a culture of unsafe sex. Their descriptions of the normalcy of unsafe sex practices also suggest a culture where women may feel pressured to accept unsafe sex practices to earn money or not be rated badly for poor service. The language men use to frame and normalize unsafe

the Philippines: Environmental influences” (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3308968/>; N. Sagguti et al., “Motivations for entry into sex work and HIV risk among mobile female sex workers in India,” 43 *Journal of Biosocial Science* 535 (2011), <https://doi.org/10.1017/s0021932011000277>.

123 Raphael, “Decriminalization of Prostitution: The Soros Effect,” 6.

124 Raphael, “Decriminalization of Prostitution: The Soros Effect,” 6, discussing the Open Society Foundation’s reliance on The Lancet review.

125 Kate Shannon et al., “Global Epidemiology of HIV among Female Sex Workers: Influence of Structural Determinants,” 385 *The Lancet* 55 (2015), <https://pubmed.ncbi.nlm.nih.gov/25059947/>.

126 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 8-9, relying on Shannon et al., “Global Epidemiology of HIV among Female Sex Workers.”

127 Shannon et al., “Global Epidemiology of HIV among Female Sex Workers.”

sexual practices contradicts the assumed level of mutuality that underpins much of the harm-minimization literature. Moreover, the excerpts suggest the normalization of harm, rather than the minimization of harm.

One of the ways men (re)reproduce a culture of unsafe sex within the forum is through the discussion of “extras,” a term used to describe sex acts that violate the OHS [Occupational Health and Safety] regulations of decriminalized brothels or the legal requirements of safe sex in legalized brothels. These acts include penetrative vaginal, anal, or oral sex without a condom or dental dam...

[S]ex buyers position unsafe sex as an expected part of the sexual “service” and for women to acquiesce to these demands without complaint or any sign of concern for their own health and well-being. When men claim that they are reminded that women are not enjoying the experience and giving an adequate “service,” they discursively frame themselves as victims of the encounter, or as disgruntled “customers.” Despite positioning themselves as victims in these discourses, however, punters [buyers] still reveal their assumed power over women by “warning” other punters about their bad experiences and reinforcing the idea that they are entitled to unprotected sex acts.¹²⁸

Where the sex trade is legal or decriminalized, sex buyers are likely to believe that as paying “customers” they are entitled to engage in unsafe sex, including sex without the use of condoms, thereby putting the health of people in prostitution at serious risk.

The ACLU points out that in criminalized systems, policing practices have a negative effect on condom use. It states that people in prostitution are more likely to be threatened with incarceration or actually incarcerated if they have condoms in their possession, as police can use condoms to prove intent to engage in prostitution or as evidence of engaging in prostitution.¹²⁹ This is a legitimate concern, and one which is addressed by New York’s bill to implement the Equality Model, the Sex Trade Survivors Justice and Equality Act, which prohibits condoms from being used as evidence of prostitution related offenses such as sex buying and pimping.¹³⁰

In its report, the ACLU also argues that decriminalization improves the health of people in prostitution by relying on the findings of Cunningham and Shah.¹³¹ The ACLU claims that the findings indicate that “following a period of decriminalization in Rhode Island, incidences of gonorrhea decreased by over 40 percent, particularly among female sex workers.”¹³² However, Cunningham and Shah’s findings were premised on the notion that prostitution was decriminalized in Rhode Island between 2003 and 2009, when it was actually decriminalized between 1980 and 2009. While the incidence of gonorrhea did decline during the six short years of Cunningham and Shah’s analysis, a wider view of data from 1970 to 2014 shows that over a four-decade period, gonorrhea significantly increased and decreased.¹³³

128 N. Jovanovski & M. Tyler, “Bitch, You Got What You Deserved! Violation and Violence in Sex Buyer Reviews of Legal Brothels,” 24(16) *Violence Against Women* 1887 (2018), <https://pubmed.ncbi.nlm.nih.gov/29546803/>.

129 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 8.

130 Amendments to § 4519-a Civil Practice Law. See Assemb. A07069, Reg. Sess. (N.Y. 2020 - 2021); S. S06040, Reg. Sess. (N.Y. 2020 - 2021), <https://assembly.state.ny.us/leg/?bn=A07069>.

131 Scott Cunningham & Manisha Shah 85(3), “Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health,” 1683, *The Review of Economic Studies* (2018).

132 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 9.

133 Lily Lachapelle et al., “Does the Decriminalization of Prostitution Reduce Rape and Sexually Transmitted Disease?”

“Cunningham and Shah’s selective choice of 2003 to 2009 is a short time period that is out of context to the wider trends over time. This analysis of this short period of time did produce a strong result, but one that is likely an artifact.”¹³⁴ Further, if decriminalization of prostitution resulted in a decrease in gonorrhea, one would also expect a similar trend with other sexually transmitted diseases, such as chlamydia. However, chlamydia infections in Rhode Island increased between 1980 and 2010, and there was no overall reduction in the number of cases of chlamydia from 2003 to 2009.¹³⁵

The ACLU asserts that criminalization of the sex trade may reduce people in prostitution’s access to healthcare, but fails to produce evidence that decriminalization improves access to health care, stating: “Further research is needed on whether decriminalization can expand access to health care, particularly beyond HIV/STI testing and treatment, including reproductive health care and counseling/mental health resources.”¹³⁶ New Zealand’s system demonstrates that decriminalization does not improve the health of people in prostitution. One expert on the sex trade in New Zealand wrote: “Men rarely get turned away from brothels if they have STIs - the idea of a brothel owner and the Ministry of Health working together is laughable on many levels.”¹³⁷ Chelsea, a survivor of New Zealand’s sex trade, said: “No, decriminalization of johns and pimps has not improved our safety or lives. No, we are not satisfied with a Prostitutes’ Collective that merely dispenses condoms, we need real support services, we deserve more from our country.”¹³⁸

German gynecologist Dr. Liane Bissinger, who treated women in prostitution in Munich, reported a raft of health complications directly resulting from prostitution, including: gonorrhea, chlamydia, trichomonads, genital warts, syphilis, hepatitis, HIV, destroyed vaginal pH levels and vaginal fluids resulting in susceptibility to infections and cervical carcinoma, tearing of the anus and rectum, cystitis, pelvic degradation, inflammation of the abdomen, destroyed bowel movement, inflamed digestive system from the stomach to the bowels due to frequent vomiting, extremely poor nutrition, oral illness, skin eczema, sleeping disorders, excruciating pain requiring surgery, and substance abuse. While Dr. Bissinger did not treat patients after legalization, in her view legalization would not have changed any of these health outcomes, as the sex trade is built on exploitation, exertion of power by men, and maximum profits.¹³⁹ In an article published in the *AMA Journal of Ethics*, Emily F. Rothman ScD argues that U.S. physicians should not support the decriminalization of commercial sex, arguing that decriminalizing the sex trade puts vulnerable people at increased risk of harm and may increase health disparities between people in prostitution and others:

[C]ounter to expectations, the decriminalization or legalization of commercial sex in New Zealand, the Netherlands, and Germany has not resulted in uniformly safer conditions, successful seller unions, destigmatization, reduced trafficking victimization, or substantially increased seller satisfaction... An additional concern is that from a social norms perspective, it is not yet clear if decriminalization increases the public’s moral disengagement, exacerbates the sexual objectification of people, or counteracts efforts to educate the public about the importance

134 Lachapelle et al., “Does the Decriminalization of Prostitution Reduce Rape and Sexually Transmitted Disease?”

135 Lachapelle et al., “Does the Decriminalization of Prostitution Reduce Rape and Sexually Transmitted Disease?”

136 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 10.

137 Michelle Mara, “New Zealand is squandering an opportunity to help women in prostitution during COVID, thanks to decriminalization,” *Feminist Current* (June 3, 2020), <https://www.feministcurrent.com/2020/06/03/new-zealand-is-squandering-an-opportunity-to-help-women-in-prostitution-during-covid-thanks-to-decriminalization/>.

138 Janice G. Raymond, “Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes’ Collective,” 3(2)(6) *Dignity: A Journal on Sexual Exploitation and Violence* (2018), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1116&context=dignity>.

139 Dr. Liane Bissinger, “The Physical Damage in Prostitution: Report by a Gynecologist from Street Work, Prostitution Research & Education,” <https://prostitutionresearch.com/the-physical-damage-in-prostitution-report-by-a-gynaecologist-from-street-work/>.

of consent during sexual encounters. Because these effects could increase health disparities, these possibilities are important to investigate.¹⁴⁰

The “limited research,” in the words of the ACLU, on the impact of decriminalization on the health of people in prostitution does not indicate that decriminalization improves health. On the contrary, prostitution is extremely detrimental to the physical and mental health of people in the sex trade. In addition, some of the key research relied upon by the ACLU is significantly flawed.

3. Decriminalizing the sex trade does NOT improve the financial stability of people in prostitution

The ACLU asserts that the sex trade offers people in prostitution not just an income, but a way to survive.¹⁴¹ It argues that criminalization of the sex trade forces vulnerable people (those in prostitution) to the margins of society and maintains that decriminalization of the sex trade gives vulnerable people economic empowerment.¹⁴² This completely misrepresents the lived experiences of people in prostitution, for whom prostitution is not an empowering experience, or even a choice. It overstates the autonomy that people in prostitution have. “Although there are little research data available, agencies serving prostituted women observe that a majority of prostitution is pimp-controlled.”¹⁴³ Pimps use a variety of methods to coerce and control people in prostitution, including “minimization and denial of physical violence and abuse, economic exploitation, social isolation, verbal abuse, threats, intimidation, physical violence, sexual assault, and captivity.”¹⁴⁴ Pimps, traffickers, or exploiters are often family members, family friends, or intimate partners of women and girls in prostitution.¹⁴⁵ In the case of family members, exploiters may restrict the woman’s movement and contact with individuals outside the family.¹⁴⁶ Intimate partners likewise use methods of power and control over women they exploit.¹⁴⁷ In these circumstances, people in prostitution are not able to control their transactions or access the money they make. As a survivor of the sex trade explained, “In the United States, prostitution is thought to be worth at least \$14 billion a year. Most of that money doesn’t go to girls like my teenage self. Worldwide, human trafficking is the second largest enterprise of organized crime, behind drug cartels but on a par with gunrunning.”¹⁴⁸

The ACLU contends that decriminalization will give people in prostitution greater “bargaining power” to negotiate higher prices.¹⁴⁹ Yet in New Zealand, where the sex trade is decriminalized, women in brothels have reported that “men now demand more than ever for less than ever. And because the trade is socially sanctioned, there is no incentive for government to provide exit strategies for those who want to

140 Emily F. Rothman ScD, “Should US Physicians Support the Decriminalization of Commercial Sex?,” 19(1) *AMA Journal of Ethics* 110 (2017), <https://prostitutionresearch.com/second-thoughts-should-us-physicians-support-the-decriminalization-of-commercial-sex/>.

141 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 10.

142 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 10.

143 Farley, “Prostitution and Trafficking in Nine Countries.”

144 Farley, “Prostitution and Trafficking in Nine Countries.”

145 Lara Gerassi, “From Exploitation to Industry: Definitions, Risks, and Consequences of Domestic Sexual Exploitation and Sex Work Among Women and Girls,” 25 *Journal of Human Behavior In The Social Environment* 9-10 (2015). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4696486/pdf/nihms-723344.pdf>.

146 Gerassi, “From Exploitation to Industry,” 9.

147 Gerassi, “From Exploitation to Industry,” 10.

148 Moran, “Buying Sex Should Not Be Legal.”

149 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 10-11.

get out of it. These women are trapped".¹⁵⁰ Instead of encouraging the operation and growth of the sex trade, like the ACLU, we should be focused on providing services for the marginalized people who are driven into it.

[S]elling oneself to feed one's children is a desperate act, albeit a noble one. But when we see a woman enter prostitution to provide for her children, rather than citing that as a reason to encourage prostitution, we should see it as an illustration of our society's failure to provide for its most vulnerable members — and we should seek other solutions.¹⁵¹

States should refuse to accept the ACLU's contention that some women and marginalized people must succumb to being bought and sold in the sex trade in order to survive, as it violates governments' responsibilities to protect individuals from violence and discrimination.

What's more, the state, not people in prostitution, benefits economically from the sex trade under any legal framework governing prostitution, and exponentially so in legalized or decriminalized countries. Prostitution in the United States is thought to be worth at least \$14 billion a year.¹⁵² Under decriminalization, commercial sex establishments (i.e. brothels) are legitimate businesses and as such are licensed and taxed under ordinary local and municipal business regulations. In New Zealand, where prostitution is decriminalized, women in brothels are treated as "independent contractors" and brothel owners as "operators." Both are required to pay taxes like any other taxpayer or business. New Zealand brothel owner Mary Brennan states that "[t]he tax department don't really care what you do to make the money, they just want their cut of it."¹⁵³ Inland Revenue, New Zealand's equivalent of the U.S. Internal Revenue Service, confirms: "We treat brothel operators and freelance sex workers the same as any other taxpayer or business."¹⁵⁴

Legalization of the sex trade has a similar effect, as commercial sex establishments and people in prostitution are taxed. Michael Beretin, a partner in a chain of "mega-brothels" in Germany, remarked that prostitution was legalized in Germany "for the government to make a lot of money."¹⁵⁵ And the sex trade in Germany has boomed since legalization: "In Germany, where prostitution was legalized in 2002, the industry has exploded. It is estimated that one million men pay to use 450,000 girls and women every day. Sex tourists are pouring in, supporting "mega-brothels" up to 12 stories high."¹⁵⁶

Instead of empowering people in prostitution to earn a sufficient living and "survive", as the ACLU contends, the system of prostitution exploits women and vulnerable populations and forces them further into oppression. Meanwhile, the state profits from the suffering of the oppressed. It is profoundly unethical to support such a system, instead of developing solutions for those who are trapped within it.

150 Moran, "Buying Sex Should Not Be Legal."

151 Geist, "Amnesty International's Empty Promises," 12.

152 Moran, "Buying Sex Should Not Be Legal."

153 Richard Meadows, "Sex Industry doing it tough," STUFF (Oct. 27 2014), <https://www.stuff.co.nz/business/10665008/Sex-industry-doing-it-tough>.

154 Meadows, "Sex Industry doing it tough."

155 Joel Gunter & Ben Clissitt, "Welcome to Paradise," THE TELEGRAPH, <https://s.telegraph.co.uk/graphics/projects/welcome-to-paradise/>.

156 Moran, "Buying Sex Should Not Be Legal."

4. Decriminalizing the sex trade puts vulnerable populations at greater risk of harm

The ACLU report claims that lesbian, gay, bisexual, transgender, and queer (LGBTQ) people, particularly transgender women, as well as people of color and immigrants, are disproportionately harmed by criminalizing the sex trade.¹⁵⁷ It also states that LGBTQ people “make up a large portion of sex workers”,¹⁵⁸ although it provides no evidence for this assertion. LGBTQ prostituted populations, like prostituted women, are grievously harmed and exploited by the sex trade itself. The sex trade is equally and inherently dangerous for transgender and gender non-conforming people. According to the Trans Murder Monitoring Project, 62 percent of the 350 transgender people killed worldwide between October 1, 2019 and September 30, 2020 were in prostitution.¹⁵⁹ Yet in its call to decriminalize the sex trade, the ACLU seems to offer the system of prostitution as a viable solution for addressing the vulnerability of transgender people, in particular transgender women of color.

The ACLU relies on a paper published by *The Lancet* entitled “HIV risk and preventive interventions in transgender women sex workers”¹⁶⁰ to show that transgender people in prostitution have less access to the formal labor market due to stigma, discrimination, and lack of legal documentation.¹⁶¹ The paper describes the benefits of prostitution to transgender women as:

funds for livelihood and to pay for gender-affirming hormones, injections, and surgeries; and a more feminine appearance was reported to increase sex work earning power. Non-financial benefits of sex work for transgender women include a sense of community and social support from other TSW [transgender “sex workers”], and a sense of gender validation from male clients seeking their sexual services.¹⁶²

The ACLU fails to mention, however, *The Lancet* paper’s further analysis, as follows:

Despite these potential benefits, sex work, particularly street-based sex work, could increase exposure to abuse and violence. Studies have reported an association between violence, reduced rates of condom use, and increased risk of sexually transmitted infections in TSW.¹⁶³

Acknowledging the extreme violence transgender women face in prostitution while characterizing the exposure to violence, including sexual violence, as a “benefit” to provide funds to enable a person to look more feminine in order to increase “sex work” earning power is not a premise we would accept in any other

157 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 11.

158 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 11.

159 Transgender Europe (TGEU), “Trans Day of Remembrance: 350 trans and gender diverse people reported murdered in the last year,” TRANSRESPECT VS TRANSPHOBIA WORLDWIDE, (Nov. 11 2020), <https://transrespect.org/en/tmm-update-tdor-2020/>. “Due to data not being systemically collected in most countries, added to the constant misgendering by families, authorities, and media, it is not possible to estimate the number of unreported cases.”

160 Tonio Poteat et al., “HIV Risk and preventive interventions in transgender women sex workers,” 385 *Lancet* 274 (2015), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60833-3/fulltext?code=lancet-site](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60833-3/fulltext?code=lancet-site).

161 Poteat et al., “HIV Risk and preventive interventions in transgender women sex workers,” 276.

162 Poteat et al., “HIV Risk and preventive interventions in transgender women sex workers,” 276.

163 Poteat et al., “HIV Risk and preventive interventions in transgender women sex workers,” 276.

situation where vulnerabilities of individuals are matched with abuse. Instead of encouraging transgender women to risk pervasive forms of violence, even lethal, and negative health outcomes inherent to the sex trade, the ACLU should adhere to its mission by protecting the rights of individuals, especially those marginalized, and help develop viable outcomes for LGBTQ youth and adults without violence or discrimination.

The ACLU argues that some children “choose” to engage in prostitution in order to survive (spinning the sex trafficking of children as “survival sex”).¹⁶⁴ It refuses to acknowledge that any child under 18 who is in prostitution is, by definition, a victim of human trafficking under U.S. federal law and most state laws.¹⁶⁵ By law, child victims of the sex trade cannot be characterized as engaging in “survival sex”, as though subjecting children to rape and sexual abuse is necessary to ensure their “survival”. Child victims of the sex trade must be identified and protected by the state and their exploiters brought to justice. By calling for the decriminalization of the sex trade, the ACLU is advocating for a system that promotes the sale and sexual exploitation of children and in which it is harder to detect and help child victims. Decriminalization “frees johns and pimps from criminal scrutiny and regulation, and it frees law enforcement and government agencies from their obligation to help the victims of prostitution... Decriminalization of prostitution will make it harder for police to intervene to stop human trafficking and violence in the industry.”¹⁶⁶ Under decriminalization in New Zealand, “the police noted that “as a result of legislative changes, Police... [have] less contact with the sex industry, and there is no systematic intelligence gathering and collation,” making it more difficult to discover abuses and exploitation.”¹⁶⁷

The ACLU’s report is rightly concerned that people of color are disproportionately caught in the criminal justice system.¹⁶⁸ We are also concerned with the disproportionate arrests of Black, Brown, and Asian individuals for prostitution-related offenses, which is why we call for the decriminalization of people in prostitution.¹⁶⁹ However, sex buyers, pimps and traffickers also target people of color for exploitation in the sex trade. A two-year review of all suspected human trafficking incidents across the U.S. revealed that 94 percent of sex trafficking victims were female, 40 percent were Black, and 24 percent were Latinx.¹⁷⁰ In South Dakota, Native women represent 40 percent of sex trafficking victims, though Native people are only 8 percent of the population.¹⁷¹ In Hawaii, 83 percent of sex trafficking survivors are female and 64 percent are all or part Native Hawaiian,¹⁷² and in Nebraska, 50 percent of individuals sold online for sex are Black, though Black people comprise only 5 percent of the general population.¹⁷³

164 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 12.

165 The Trafficking Victims Protection Act 2000 and its subsequent reauthorizations define “severe forms of trafficking in persons” as: “sex trafficking in which 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”: 22 U.S.C. § 7102(11)(A).

166 Geist, “Amnesty International’s Empty Promises,” 17.

167 Geist, “Amnesty International’s Empty Promises,” 17.

168 Sakha, Greytak, Haynes, “Is Sex Work Decriminalization the Answer?,” 12.

169 For an example of legislation that would introduce the Equality Model, see the Sex Trade Survivors Justice and Equality Act, recently introduced into the New York State Legislature, bill number: Assemb. A07069, Reg. Sess. (N.Y. 2020 - 2021); S. S06040, Reg. Sess. (N.Y. 2020 - 2021), <https://assembly.state.ny.us/leg/?b n=A07069>.

170 Bureau of Justice Statistics, “Characteristics of Suspected Human Trafficking Incidents,” 2008-2010 (April 2011), 6, The National Center for Victims of Crime, NCVRW Resource Guide, (2013), 24. <https://bjs.ojp.gov/content/pub/pdf/cshti0810.pdf>.

171 Danielle Ferguson, “Law enforcement, Native Communities focus on sex trafficking prevention training,” (Aug. 27, 2016), Argus Leader, <https://www.argusleader.com/story/news/crime/2016/08/27/law-enforcement-native-communities-focus-sex-trafficking-prevention-training/89273822/>.

172 Dominique Roe-Sepowitz & Khara Jabola-Carolus, Arizona State University & Hawai’i State Commission on the Status of Women, Sex Trafficking in Hawai’i: Part III, Sex Trafficking Experiences Across Hawai’i (2020), <https://hoolanapua.org/wp-content/uploads/2020/06/Final-Report-Sex-Trafficking-in-Hawaii-Part-III-01092020.pdf>.

173 Women’s Fund of Omaha, “Nebraska’s Commercial Sex Market” (2017), 8, <https://www.omahawomensfund.org/wp-content/uploads/Nebraskas-Commercial-Sex-Market-Report-FINAL.pdf>.

The majority of sex buyers who purchase women and girls of color in prostitution are white. In a Boston study of 202 male sex buyers, 56 percent were white.¹⁷⁴ A study of 584 men who used the website TheEroticReview.com to buy sexual services found that 84.9 percent of users were Caucasian, with an average annual income of \$141,500.¹⁷⁵ This highlights the racial exploitation and power imbalance inherent in the sex trade.

It must also be noted that immigrants are targeted and exploited in a similar way. While the ACLU points out that immigrant people in prostitution are more vulnerable to police harassment, it fails to note that they are extremely vulnerable to sex traffickers and exploiters. Traffickers use many tactics to bring immigrants into prostitution, including by luring them to a foreign country with the false promise of ordinary employment.¹⁷⁶

The ACLU's argument that decriminalization is the solution to the disproportionate harms experienced by vulnerable populations in the sex trade ignores the reality: a decriminalized market will further isolate and marginalize vulnerable people and subject them to more exploitation and violence.

5. The sex trade is where sex trafficking happens: Decriminalizing prostitution increases human trafficking

Human trafficking is one of the fastest growing global crimes, along with arms and drugs trafficking¹⁷⁷. The ACLU's report states that "[t]here is a lack of consensus in the literature about the relationship between legalization or decriminalization of sex work and human trafficking." It claims that "research in the EU more broadly suggests that decriminalization does not necessarily increase trafficking",¹⁷⁸ citing a study conducted for the European Parliament entitled "Study on National Legislation on Prostitution and the Trafficking in Women and Children."¹⁷⁹ That study concludes:

Several intervening factors seem to influence the number of women and children trafficked for sexual exploitation beyond the legislative model of prostitution. With reference to the indexes of annual trafficked victims, there are also substantial variations among countries belonging to the same legislative model. This makes it difficult to extrapolate a unique causal relationship explaining the number of trafficking victims; Nevertheless, taking this statement with due attention, the models that seem to "produce" more victims [of human trafficking] — especially if one considers old EU Member States — are "new abolitionism" [similar to decriminalization — outdoor and indoor prostitution are not prohibited, although brothels are illegal] and "regulationism" [legalized prostitution] whilst the model that seems to "produce" less victims is

174 Farley et al., "Comparing Sex Buyers with Men Who Don't Buy Sex."

175 "Facts About Men Who Buy Sex," DEMAND ABOLITION, <https://www.demandabolition.org/research/facts-men-buy-sex/>.

176 For example, see the experience of Shandra Woworuntu, who was trafficked from Indonesia to the United States in 2001: Shandra Woworuntu, "My life as a sex-trafficking victim," BBC NEWS (Mar. 30 2016), <https://www.bbc.com/news/magazine-35846207>.

177 Global Report on Trafficking in Persons 2020, United Nations Office on Drugs and Crime, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf.

178 Sakha, Greytak, Haynes, "Is Sex Work Decriminalization the Answer?," 13.

179 Andrew Di Nicola et al., "Study on National Legislation on Prostitution and the Trafficking in Women and Children," EUROPEAN PARLIAMENT (Aug. 2005), https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_national_legislation_and_prostitution_en_6.pdf.

“prohibitionism” [which includes the Equality Model — Sweden is listed as a country with this model]. With reference to regulationism [legalization], the analysis in the country profiles has shown that sometimes ... the effect of regulation can be a massive increase in migrant prostitution and an indirect support to the spreading of the illegal market in the sex industry.¹⁸⁰

The study goes on to say that this reflection is a starting point and that further analysis is required. However it also states:

Regardless, the effect of the Swedish change in policy, from abolitionist to prohibitionist [Sweden adopted the Equality Model in 1999 and this study was published in 2005], has also been a concrete decrease in the number of victims. The Swedish expert reports that there is information from the victims of THB [trafficking in human beings] in Sweden that traffickers have had problems finding enough sex buyers in Sweden, the demand has been much lower than expected.¹⁸¹

Rather than the ACLU’s sweeping statement that “decriminalization does not necessarily increase human trafficking”, a more reasonable assessment of these findings is that European data suggests that the Equality Model reduces human trafficking, but that more data and analysis are needed.¹⁸²

On that point, there is considerable research to suggest that when the sex trade is decriminalized, it grows, and so does sex trafficking:

The market for sex trafficking and prostitution is fundamentally the same. It is a market for the sale of sex, and as a consequence, they both react to the same dynamics of supply and demand. The decriminalization or legalization of prostitution drastically increases demand for sex due to the reduced stigma of purchasing sex and the elimination of legal deterrents.¹⁸³

When the sex trade is decriminalized or legalized, the demand for commercial sex act buying far exceeds the number of individuals in the legalized jurisdiction vulnerable to being trafficked.¹⁸⁴ Vulnerable people outside the legalized or decriminalized jurisdiction are then sex trafficked into such jurisdictions. “Pimps turn to sex trafficking to meet that gap between supply and demand. Decriminalization also reduces the risk to pimps and sex traffickers, while increasing the possible rewards.”¹⁸⁵ Darren Geist points to the findings of several studies to show that decriminalizing the sex trade increases trafficking. For example:

In the Netherlands, one of the first countries to experiment with legalization and decriminalization, there has been a marked increase in sex trafficking ... According to an

180 Di Nicola et al., “Study on National Legislation on Prostitution and the Trafficking in Women and Children,” 132-133.

181 Di Nicola et al., “Study on National Legislation on Prostitution and the Trafficking in Women and Children,” 132-133.

182 Max Waltman, “Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law,” 33 Mich. J. Int’l L. 133 (2011), <https://repository.law.umich.edu/mjil/vol33/iss1/507>.

183 Geist, “Amnesty International’s Empty Promises,” 5.

184 “Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.” Directive 2011/36/Eu of The European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 5 April 2011, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>.

185 Geist, “Amnesty International’s Empty Promises,” 5.

International Labor Organization (ILO) study comparing the decriminalization model in Denmark and the Nordic model in neighboring Sweden, the number of trafficking victims in Denmark is four times that of Sweden, even though Sweden's population is about 40 percent larger than Denmark's and even though the number of legal prostitutes in Denmark is also three to four times larger than in Sweden. Germany's population is about 10 times as large as Sweden's but it has 69 times as many prostitutes and an estimated 62 times as many trafficking victims. A study in 2005 showed that trafficking in Germany declined gradually through 2001 and then started to increase after the decriminalization of prostitution in 2002... While Sweden has seen a marked decline in demand (from around 14 percent to 7.5 percent of the male population), Denmark has seen an over 40 percent increase. In Norway, demand for sex dropped 20-25 percent after the introduction of the Nordic Model.¹⁸⁶

Geist also points to three studies involving global data sets and theoretical analysis, which found that (1) "On average, countries where prostitution is legal experience larger reported human trafficking inflows";¹⁸⁷ (2) "criminalizing procuring, or going further and criminalizing buying and/or selling sex, may reduce the amount of trafficking to a country";¹⁸⁸ and (3) the Nordic model [or Equality Model] was more effective at reducing trafficking than the Dutch model of legalization.¹⁸⁹

The 2014 report of the Committee on Women's Rights and Gender Equality of the European Parliament supported and endorsed the Nordic (or Equality) Model, finding:

The evidence of the effectiveness of the Nordic Model in reducing prostitution and trafficking of women and girls and thereby promoting gender equality is growing all the time. Meanwhile those countries where procuring is legal still face problems in relation to human trafficking and organized crime as these relate to prostitution.¹⁹⁰

Contrary to the ACLU's assertions, these sources indicate that human trafficking actually increases when the sex trade is decriminalized and legalized.¹⁹¹ In addition, as stated above, it is more difficult to identify sex trafficking victims and apprehend sex traffickers in decriminalized systems.

-
- 186 Geist, "Amnesty International's Empty Promises," 6 (2016). In a 2014 mapping of prostitution study published by the County Administrative Board of Stockholm, 7.5 percent of men between 18-65 years of age had paid for sex at least once in their lifetime: Anthony Jap Olsson, "Prostitution Policy in Sweden - Targeting Demand," THE SWEDISH INSTITUTE 9 (2019), https://sharingsweden.se/app/uploads/2019/02/si_prostitution-in-sweden_a5_final_digi_.pdf.
- 187 Geist, "Amnesty International's Empty Promises," 6, citing Cho et al., "Does legalized prostitution increase human trafficking?" WORLD DEVELOPMENT 41, 67 (2013), <https://www.sciencedirect.com/science/article/pii/S0305750X12001453>.
- 188 Geist, "Amnesty International's Empty Promises," 6, citing N. Jakobsson & A. Kotsadam, "The law and economics of international sex slavery: Prostitution laws and trafficking for sexual exploitation," Working Papers in Economics, No. 458, University of Gothenburg (2013), <https://link.springer.com/article/10.1007/s10657-011-9232-0>.
- 189 Geist, "Amnesty International's Empty Promises," 6, citing S. Lee & P. Persson, "Human trafficking and regulating prostitution," New York University Law and Economics Working Papers, NYU School of Law (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2057299/.
- 190 Mary Honeyball, Committee on Women's Rights and Gender Equality, Report on Sexual Exploitation and Prostitution and its Impact on Gender Equality EUROPEAN PARLIAMENT (2014), https://www.europarl.europa.eu/doceo/document/A-7-2014-0071_EN.html.
- 191 Europol released a report on trafficking in human beings that clearly states that prostitution is a risk sector for trafficking and that countries where prostitution has been legalized face a higher grade of exploitation: Europol, (2016), Situation Report, "Trafficking in human beings in the EU," p. 12. https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/situational_report_trafficking_in_human_beings_europol.pdf.

CONCLUSION

The ACLU argues that the decriminalization of the sex trade, including sex buyers, brothel owners and other third-party profiteers will eliminate the violence, degradation, stigma and exploitation inherent to the system of prostitution. However, the ACLU's position legitimizing the sex trade is based on faulty research as well as misleading and manipulated data.

Ultimately, legitimizing the sex trade in any form is contrary to fundamental human rights principles, as well as federal and international law. To forward its position supporting the decriminalization of the sex trade, the ACLU asks us to overlook the inconsistencies and ethical dilemmas in its stance while offering what is arguable evidence from studies that purportedly bear out its position. Yet, when we examine these studies it is evident that they are significantly flawed, often incomplete or without proper context.

As detailed in this report, thorough research and ongoing discussion with people in prostitution and sex trade survivors reveals the following points:

1. Decriminalizing the sex trade does **not** reduce violence against people in prostitution
2. Decriminalizing the sex trade does **not** improve the health of people in prostitution
3. Decriminalizing the sex trade does **not** improve the financial stability of people in prostitution
4. Decriminalizing the sex trade puts vulnerable populations at greater risk of harm
5. The sex trade is where sex trafficking happens: Decriminalizing it increases human trafficking

Calling to decriminalize the sex trade is calling on the state to abandon society's most vulnerable and marginalized members, and to condemn them to those who seek to buy, sell, and profit from their bodies. The ACLU must examine the dangerous implications of its decriminalization of the sex trade policies, beginning with engaging in meaningful consultations with survivors of the sex trade. Instead of supporting the sex trade, the ACLU must call on legislators to enact the Equality Model in every jurisdiction in the U.S., which holds perpetrators accountable for the harm done and offers justice for people in prostitution.