

# AMERICA'S "DISNEYLAND OF SEX"<sup>1</sup>: EXPLORING THE PROBLEM OF SEX TRAFFICKING IN LAS VEGAS AND NEVADA'S RESPONSE

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## LOVELY LADY 1

God, we're weary,  
Sick enough to drop!  
Belly burns like fire,  
Will the bleeding ever stop!

## PIMP

Cheer up, deary!  
Show a happy face!  
Plenty more like you here  
If you can't keep up the pace.

## LOVELY LADY 1

Only joking!  
Deary knows her place!<sup>2</sup>

In Nevada's self-proclaimed "Sin City" of vice and indulgence, an enormous criminal enterprise of illegal prostitution generates billions of dollars from the black market sale of sex.<sup>3</sup> Accompanying this enterprise is the abuse of women and children, the spread of sexually transmitted infections, and other criminal misconduct.<sup>4</sup> Tourists believe the mantra "what happens in Vegas, stays in Vegas" means prostitution is legal in the city, which results in traffick-

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<sup>1</sup> "Las Vegas has been described as America's 'Disneyland of Sex.'" See SHARED HOPE INT'L, DEMAND 96 (2012) [hereinafter DEMAND], available at <http://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf>; see also *Las Vegas Overview: Leave the Kids at Home!*, LAS VEGAS 4 NEWBIES, <http://www.lasvegas4newbies.com/chap1-6.html> (last visited Apr. 3, 2014) (Las Vegas is a "Disneyland for adults" that is "now more X-rated").

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<sup>2</sup> LES MISERABLES (Universal Pictures 2012).

<sup>3</sup> Robert J. Fisher, *There's No Getting Rid of Prostitution*, LAS VEGAS REV. J., Apr. 10, 2011, at D4; Henry Brean, *New Effort Targets Illegal Prostitution in LV*, LAS VEGAS REV. J., Apr. 25, 2009, at B2; DEMAND, *supra* note 1, at 95 (in 2006 it was estimated that the Las Vegas sex industry, both legal and illegal, generated between one billion and five billion per year).

<sup>4</sup> Fisher, *supra* note 3.

ers moving into the market to meet the high demand for sex.<sup>5</sup> As a result, Las Vegas is one of the worst cities in the nation for sex trafficking to thrive.<sup>6</sup>

The domestic trafficking of minors is particularly pervasive. The Federal Bureau of Investigation (FBI) listed Las Vegas as a top thirteen city for high intensity child prostitution.<sup>7</sup> Though Las Vegas has only a quarter of the population of New York City, it has three times the number of juvenile arrests,<sup>8</sup> with the average age of a child prostitute being age fourteen.<sup>9</sup> Many of these children "age out" and become adult women remaining under the control of a pimp.<sup>10</sup>

This Note explores the complexities Nevada faces in combating sex trafficking and proposes solutions. Part I defines sex trafficking, discusses the profiles of the sex buyers and traffickers engaging in commercial sex, and explains how individuals become victims. As legalization has been promoted as beneficial for Nevada and as a potential solution for reducing sex trafficking in Las Vegas, Part II acknowledges the proffered benefits of legal prostitution but argues that legalization is insufficient to reduce, and may even contribute to, sex trafficking. Part III analyzes Nevada's current legal response to sex trafficking through criminalization and recent legislation. While Nevada is heading in the right direction to combat trafficking, Part III also recommends further actions to provide a more holistic, functional response to the problem of sex trafficking.

This Note refers to individuals involved in prostitution as women and girls. While males and transgendered persons can engage in prostitution and be subject to sex trafficking,<sup>11</sup> prostitutes and victims of sex trafficking are

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<sup>5</sup> DEMAND, *supra* note 1, at 2 (the popular Las Vegas slogan "provides visitors with an excuse to act in ways outside the norm of their own community" and glamorizes commercial sex); J. Patrick Coolican, *One Woman's Escape from Trafficking*, LAS VEGAS SUN (Apr. 3, 2012, 2:01 AM), <http://www.lasvegassun.com/news/2012/apr/03/one-womans-escape-human-trafficking/> ("The wink and nod attitude toward prostitution here gives the wrong impression to tourists and conventioners that it's legal."); Alyson McCarthy, *Many Tourists Think Prostitution is Legal in Las Vegas*, 8 NEWS NOW, <http://www.8newsnow.com/story/7033137/many-tourists-think-prostitution-is-legal-in-las-vegas> (last updated Sept. 6, 2007, 7:34 AM); SHARED HOPE INT'L, REPORT FROM THE U.S. MID-TERM REVIEW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AMERICA 24 (2006), available at [http://sharedhope.org/wp-content/uploads/PIC/US\\_MTR\\_of\\_CSEC.pdf](http://sharedhope.org/wp-content/uploads/PIC/US_MTR_of_CSEC.pdf) ("Tourists visiting Las Vegas may believe they can engage in child sex tourism without detection or punishment because of the 'what happens in Vegas, stays in Vegas' media campaign and attitude.").

<sup>6</sup> Coolican, *supra* note 5.

<sup>7</sup> OFFICE OF INSPECTOR GEN., U.S. DEP'T OF JUSTICE, AUDIT REP. 09-08, THE FEDERAL BUREAU OF INVESTIGATION'S EFFORTS TO COMBAT CRIMES AGAINST CHILDREN 70 n.122 (2009), available at <http://www.justice.gov/oig/reports/FBI/a0908/final.pdf>.

<sup>8</sup> Coolican, *supra* note 5.

<sup>9</sup> Bob Herbert, Op-Ed., *City as Predator*, N.Y. TIMES, Sept. 4, 2007, at A19.

<sup>10</sup> Interview with Kathleen Bergquist, J.D., Ph.D., Board Member and Co-Founder, Bamboo Brides, in Las Vegas, Nev. (Jan. 2, 2012); see also *In Nevada*, SOJOURN FOUND., <http://sojournfoundation.org/our-work/in-nevada/> (last visited Apr. 3, 2014) (As a result of poor statutes and few resources, many, perhaps most, of the children picked up for solicitation continue to be prostituted even as adults).

<sup>11</sup> See RICHARD J. ESTES & NEIL ALAN WEINER, UNIV. OF PA., CTR. FOR THE STUDY OF YOUTH POLICY, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 59-60 ex.3.4 (2001).

predominantly female.<sup>12</sup> Likewise, this Note will use masculine pronouns to describe sex buyers because mostly males buy commercial sex – even male prostitutes sell sex mainly to males.<sup>13</sup> Finally, the term “voluntary prostitute” will replace the term “sex worker” to emphasize the non-coercive nature of certain prostitutes in the commercial sex industry.

## I. WHAT IS SEX TRAFFICKING?

### A. *Defining Sex Trafficking*

The Trafficking Victims Protection Act of 2000 (TVPA), a federal law, defines “sex trafficking” as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”<sup>14</sup> “Severe forms of trafficking” include those 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.”<sup>15</sup> The TVPA definition reveals three things. One, trafficking does not require movement across borders. Two, an adult must prove force to qualify as a victim of sex trafficking while minors are automatically assumed to be victims of sex trafficking. And three, if an individual initially consents to prostitution, but is later forced or manipulated to continue selling sex, this person is also considered a victim of trafficking.<sup>16</sup> Nevada did not officially deem sex trafficking a state crime until 2013. Nevada did this to bring the state definition of sex trafficking in line with the federal definition under the TVPA.<sup>17</sup>

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<sup>12</sup> The United Nations Office on Drugs and Crime estimates 98 percent of sex trafficking victims are women. See ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 8 (2013), available at <http://www.fas.org/sgp/crs/row/RL34317.pdf>; see also U.S. DEP’T OF STATE, THE FEMINIZATION OF MODERN SLAVERY (2010), available at <http://www.state.gov/documents/organization/144617.pdf>. The prominence of females in the sex trade ring true for Nevada as well. Of the 107 minors that Las Vegas Metro arrested for prostitution-related charges in 2012, only three were boys. Jackie Valley, *Summit Attendees Vow to Sustain Fight Against Sex-Trafficking Industry*, LAS VEGAS SUN (Jan. 10, 2013, 2:00 AM), [www.lasvegassun.com/news/2013/jan/10/summit-draws/](http://www.lasvegassun.com/news/2013/jan/10/summit-draws/).

<sup>13</sup> Kathleen D. Vohs & Jannine Lasaleta, *Heterosexual Sexual Behavior is Governed by Social Exchange and Basic Economic Principles: Sexual Economics Theory*, 9 MINN. J.L. SCI. & TECH. 785, 792 (2008) (noting that “even male prostitutes have mostly male clients”).

<sup>14</sup> Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1470 [hereinafter TVPA], available at <http://www.state.gov/documents/organization/10492.pdf>.

<sup>15</sup> Trafficking Victims Protection Act, 22 U.S.C. § 7102(9)(A) (2012).

<sup>16</sup> U.S. DEP’T OF STATE, WHAT IS TRAFFICKING IN PERSONS? (2012), available at <http://www.state.gov/documents/organization/194942.pdf>.

<sup>17</sup> See Assemb. Bill No. 67, 77th Reg. Sess. (Nev. 2013) (proposing the crime of pandering be changed to the crime of sex trafficking, and setting forth the actions constituting the crime of sex trafficking); *Minutes of the Joint Meeting of the Assemb. Comm. on Judiciary and the S. Comm. on Judiciary*, 2013 Leg., 77th Reg. Sess. 19–20 (Nev. 2013) (statement of Michon A. Martin, Chief Deputy Att’y Gen., Bureau of Litig., Pub. Safety Div., Office of the Att’y Gen.).

*B. The Market for Sex Trafficking in the United States and Nevada*

The sex trafficking market within the United States is almost entirely comprised of victims from the United States.<sup>18</sup> Shared Hope International works with human trafficking task forces funded by the Department of Justice.<sup>19</sup> In 2009, the organization performed a study of minors trafficked domestically within the United States.<sup>20</sup> The number of suspected domestic minors in sex trafficking in Las Vegas, Nevada was 5,122 – the highest estimate among all cities researched.<sup>21</sup> The next highest estimates were 227 minors in Kansas City, Missouri and 150 in Dallas, Texas.<sup>22</sup> Notably, between 1994 and 2007, almost 1,500 minors appeared before a Las Vegas judge for prostitution-related charges, but law enforcement only arrested 435 pimps.<sup>23</sup>

It is difficult to estimate the number of sex trafficking victims in Nevada because there is no uniform method among federal, state, and local law enforcement agencies to collect data.<sup>24</sup> The incidence of trafficking is underreported, and law enforcement's contact with trafficking victims is usually the tip of the iceberg.<sup>25</sup> However, Nevada's Uniform Crime Report reveals that 3,168 adult women were arrested on prostitution-related charges statewide in 2011,<sup>26</sup> and the Department of Justice named Las Vegas one of the nation's top seventeen destinations for traffickers to target.<sup>27</sup> Both traffickers and buyers of sex are attracted to the extremely sexualized city culture and the promoted belief that anything can happen in Vegas – including commercial sex.<sup>28</sup> Nevada is not only a sex trafficking hub, but the state is known for violence against women in general, taking the nation's number one ranking for the prevalence of women murdered by men for five of the past six years.<sup>29</sup> The prevalence of violence and the nature of a sexualized city culture make it easy for sex traffickers to blend in and profit from selling women and children.

<sup>18</sup> See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* 338 (10th ed. 2010).

<sup>19</sup> SISKIN & WYLER, *supra* note 12, at 17.

<sup>20</sup> LINDA A. SMITH ET AL., *SHARED HOPE INT'L, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN* 11 (2009).

<sup>21</sup> SISKIN & WYLER, *supra* note 12, at 18 tbl.1.

<sup>22</sup> *Id.*

<sup>23</sup> M. ALEXIS KENNEDY & NICOLE JOEY PUCCI, *SHARED HOPE INT'L, DOMESTIC MINOR SEX TRAFFICKING: LAS VEGAS, NEVADA* 2–3 (2008), available at [http://sharedhope.org/wp-content/uploads/2012/09/LasVegas\\_PrinterFriendly.pdf](http://sharedhope.org/wp-content/uploads/2012/09/LasVegas_PrinterFriendly.pdf).

<sup>24</sup> U.S. DEP'T OF STATE, *supra* note 18, at 340.

<sup>25</sup> Interview with Kathleen Bergquist, *supra* note 10.

<sup>26</sup> NEV. DEP'T OF PUB. SAFETY, *CRIME IN NEVADA* 67–68 (2011), available at <http://nvrepository.state.nv.us/UCR/annual/CrimeInNevada2011.pdf>. This number does not mean that all arrestees were sex trafficking victims; however, it does reflect that the arrest of women on illegal prostitution charges was significant, and implies that the number of sex trafficking victims is not minute.

<sup>27</sup> Sam Skolnik, *Do We Have a Human Trafficking Problem?*, *LAS VEGAS SUN* (Jan. 29, 2007, 7:25 AM), <http://www.lasvegassun.com/news/2007/jan/29/do-we-have-a-human-trafficking-problem/>.

<sup>28</sup> KENNEDY & PUCCI, *supra* note 23, at 9.

<sup>29</sup> Josh Sugarmann, *Nevada Once Again Leads Nation in Women Murdered by Men*, *HUFFINGTON POST* (Sept. 26, 2012, 12:07 PM), [http://www.huffingtonpost.com/osh-sugarmann/nevada-once-again-leads-n\\_b\\_1916165.html](http://www.huffingtonpost.com/osh-sugarmann/nevada-once-again-leads-n_b_1916165.html); VIOLENCE POLICY CTR., *WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2010 HOMICIDE DATA* 16 (2012) (noting Nevada ranks first in the United States for the homicide rate against females by males).

### C. *The Profile of Sex Buyers*

The demand for commercial sex drives the supply of sex trafficking victims.<sup>30</sup> The men who purchase sex with trafficking victims are generally faceless and nameless,<sup>31</sup> largely because buyers are almost never prosecuted.<sup>32</sup> One study sampled a group of sex buyers in Boston, and concluded that buyers come from varying occupations, ages, and nationalities.<sup>33</sup> However, the Boston study found most sex buyers are heterosexual, and more than half maintain relationships with wives or girlfriends.<sup>34</sup> One British study similarly concluded that the average buyer of sex is thirty years old and married.<sup>35</sup> Yet a 2008 study of buyers in US metropolitan areas concluded that the average sex buyer is a Black or Hispanic unmarried male with little education.<sup>36</sup> These inconsistencies reflect that there may be no single profile of a buyer.

One thing many sex buyers have in common is their belief that prostitutes are the privileged party in the transaction. Many believe that “she does it because she likes it” or that men are helping women by “giving her money so she can live.”<sup>37</sup> On a KUNR radio show debating prostitution in Nevada, one male caller expressed the common belief that, “These women are making small fortunes in prostitution . . . if I could lay on my back for three hundred an hour, you know, sign me up.”<sup>38</sup>

Despite these beliefs, many sex buyers are aware that women in prostitution may be forced to sell sex.<sup>39</sup> They may have engaged in prostitution with a woman who expressed signs of coercion or seen child prostitutes in bars or massage parlors.<sup>40</sup> Although buyers understand that women in prostitution might be subjected to violence and coerced to sell sex, this does not deter most buyers from purchasing commercial sex.<sup>41</sup> Sex buyers have varying reasons for engaging in prostitution, be it entitlement (“I have a right to have sex whenever I want to”) or low confidence (“I can improve my self-esteem by having a lot

<sup>30</sup> See Samuel Lee & Petra Persson, *Human Trafficking and Regulating Prostitution* 15–17 (N.Y.U. Law and Econ. Research Paper Series, Working Paper No. 12-08, 2012).

<sup>31</sup> DONNA M. HUGHES, *THE DEMAND FOR VICTIMS OF SEX TRAFFICKING* 7 (2005).

<sup>32</sup> Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 300 (2011).

<sup>33</sup> MELISSA FARLEY ET AL., *COMPARING SEX BUYERS WITH MEN WHO DON'T BUY SEX* 12–13 tbls.3, 4 & 5 (2011), available at <http://www.prostitutionresearch.com/pdfs/Farleyetal2011ComparingSexBuyers.pdf>.

<sup>34</sup> *Id.* at 13 tbl.6.

<sup>35</sup> Duncan Walker, *Beer, Banter . . . and a Brothel*, BBC NEWS (Oct. 3, 2006, 9:11 AM), <http://news.bbc.co.uk/1/hi/uk/5360624.stm>.

<sup>36</sup> Devon D. Brewer et al., *Demographic, Biometric, and Geographic Comparison of Clients of Prostitutes and Men in the US General Population*, ELECTRONIC J. HUM. SEXUALITY, June 2008, at 10 tbl.8, 11, available at <http://www.ejhs.org/volume11/brewer.htm>.

<sup>37</sup> MORRISON TORREY & SARA DUBIN, CONFERENCE REPORT, DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING 25 (2004) [hereinafter DEMAND DYNAMICS], available at [http://www.law.depaul.edu/centers\\_institutes/ihrli/downloads/demand\\_dynamics.pdf](http://www.law.depaul.edu/centers_institutes/ihrli/downloads/demand_dynamics.pdf).

<sup>38</sup> *Legal Prostitution and Budget Revisions*, KUNR Public Radio (Feb. 25, 2011), available at <http://www.kunr.org/news/legal-prostitution-and-budget-revisions> (caller Perry from Yerington, Nevada shares his view of prostitution in minute 37:20 – 37:50).

<sup>39</sup> FARLEY ET AL., *supra* note 33, at 22.

<sup>40</sup> *Id.* at 23–24.

<sup>41</sup> *Id.*

of sex").<sup>42</sup> Their primary interest is in satisfying a sexual need, not a concern for women in the industry.<sup>43</sup> Therefore, men who buy sex will do so whenever it is easily accessible.<sup>44</sup> Las Vegas presents such an opportunity.

#### D. *The Profile of Traffickers*

As with sex buyers, governments know little about traffickers.<sup>45</sup> This is surprising considering that knowledge of the trafficker's *modus operandi* and connections to other traffickers, as well as understanding how they come to commit the crime, can help stop and prosecute traffickers and prevent potential traffickers.<sup>46</sup> Any information about a trafficker generally comes from the victim, if the victim willingly assists in an investigation or testifies against her trafficker.<sup>47</sup> Transnational traffickers that are arrested may be low-level actors in a larger, organized criminal network,<sup>48</sup> indicating the majority of traffickers remain invisible to the criminal justice system.<sup>49</sup>

What little is known about sex traffickers reflects diversity. Traffickers operate anywhere from hotels to truck stops to the street.<sup>50</sup> Recently, law enforcement has encountered pimps in brothels run out of suburban homes in gated Las Vegas communities.<sup>51</sup> Traffickers can be US citizens or foreign nationals, male or female.<sup>52</sup> They include pimps, parents and family members,<sup>53</sup> spouses, brothel owners, massage parlor managers, small business owners, and gangs.<sup>54</sup>

Street gang involvement in sex trafficking has become more prevalent, or at least more apparent, in recent years.<sup>55</sup> Gangs engage in drug and weapon

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<sup>42</sup> DEMAND DYNAMICS, *supra* note 37.

<sup>43</sup> FARLEY ET AL., *supra* note 33, at 24.

<sup>44</sup> *Id.*

<sup>45</sup> UN GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, THE VIENNA FORUM REPORT: A WAY FORWARD TO COMBAT HUMAN TRAFFICKING 14 (2008) [hereinafter UN GIFT], available at <http://www.un.org/ga/president/62/ThematicDebates/humantrafficking/ebook.pdf>.

<sup>46</sup> *Id.*

<sup>47</sup> UN GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, 016 WORKSHOP: PROFILING THE TRAFFICKERS 2 (2008), available at <http://www.unodc.org/documents/human-trafficking/2008/BP016ProfilingtheTraffickers.pdf>.

<sup>48</sup> UN GIFT, *supra* note 45, at 15.

<sup>49</sup> *Id.* at 14.

<sup>50</sup> *Sex Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/resources/resources-by-topic/sex-trafficking> (last visited Apr. 3, 2014).

<sup>51</sup> One brothel operated out of an exclusive gated Las Vegas neighborhood, the Sienna Village Golf Course. See George Knapp, *Brothel Bust in Upscale Las Vegas Neighborhood*, 8 NEWS NOW, <http://www.8newsnow.com/story/5181605/brothel-bust-in-upscale-las-vegas-neighborhood> (last updated July 24, 2006, 8:01 AM).

<sup>52</sup> SIETSKE ALTINK, *STOLEN LIVES: TRADING WOMEN INTO SEX AND SLAVERY* 5–6 (Harrington Park Press 2007) (1995); *The Traffickers*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview/the-traffickers> (last visited Apr. 3, 2014).

<sup>53</sup> Between 2004 and 2006, 21 percent of juveniles suspected of being involved in prostitution-related offenses were victims of familial molestation. KENNEDY & PUCCI, *supra* note 23, at 37.

<sup>54</sup> *The Traffickers*, *supra* note 52.

<sup>55</sup> Thelma Guitierrez, *Gangs Join Forces to Prostitute Women*, CNN (June 24, 2011, 8:09 AM), <http://thecnnfreedomproject.blogs.cnn.com/2011/06/24/gangs-join-forces-to-prostitute-women/>; Sharie Harvin, *Metro: Gangs Getting More Involved in Sex Trafficking*,

trafficking to generate revenue, but their sales are limited.<sup>56</sup> The sale of a human being is more profitable than drugs or guns because a body can be sold again and again.<sup>57</sup> As this realization has caught on, gangs have formed for the sole purpose of gaining profits from pimping.<sup>58</sup> Not only is the profit high for gang members, but the risk of criminal punishment is low.<sup>59</sup> Nevada only established penalties for sex trafficking performed in connection with a network such as a gang in 2013.<sup>60</sup>

The largest category of traffickers in the United States is the male pimp who forces one or multiple females into prostitution.<sup>61</sup> One study proposed that pimps have psychopathic qualities.<sup>62</sup> Psychopaths possess the manipulative charm to lure victims in, as do pimps.<sup>63</sup> Psychopaths are prone to violent outbursts without feelings of empathy or guilt, and pimps often assault prostitutes as a method of coercion without regard to the woman as a human being.<sup>64</sup> *The Psychopath as Pimp* notes that “psychopathic offenders possess a unique set of interpersonal, affective, and lifestyle characteristics . . . that indicate they are especially well suited to engage in pimp activity.”<sup>65</sup> Not only does this link have implications for criminal justice investigations and mental health professionals, but it should also cause serious alarm for the individuals under a pimp’s control.<sup>66</sup>

#### E. The Process of Trafficking

Trafficked women and children may not identify themselves as victims because of fear or psychological and emotional manipulation. It is necessary to understand the method by which traffickers ensnare their victims to establish appropriate policy changes in the law regarding the women and children forced

8 News Now, <http://www.8newsnow.com/story/16059869/metro-gangs-getting-more-involved-in-sex-trade> (last updated Nov. 16, 2011, 4:26 PM); Laura J. Lederer, *Sold for Sex: The Link Between Street Gangs and Trafficking in Persons*, J. HUM. RTS. CIV. SOC’Y, Fall 2011, at 1, 1–3 (one victim shared that the gang members forced her to provide free sex to the members of the gang, but sold her to men outside the gang).

<sup>56</sup> Lederer, *supra* note 55, at 9.

<sup>57</sup> *Id.* (“So long as human trafficking remains profitable, gangs will continue to engage in it.”).

<sup>58</sup> *Id.* at 18.

<sup>59</sup> *Id.*

<sup>60</sup> Assemb. B. No. 67, 77th Reg. Sess. (Nev. 2013) (adding trafficking in persons to the list of crimes constituting racketeering activity). For gang-related legislation in Nevada, see *Gang-Related Legislation by State: Nevada*, NAT’L GANG CENTER, <http://www.nationalgangcenter.gov/Legislation/Nevada> (last visited Apr. 3, 2014).

<sup>61</sup> Valley, *supra* note 12 (“The largest category of sex trafficking — representing more than 50 percent of calls to a national hotline — is ‘domestic pimp control,’ a situation where a pimp controls one female or multiple females and plies them in the sex trade.”); NAT’L HUMAN TRAFFICKING RES. CTR., INCREASING AWARENESS AND ENGAGEMENT: STRENGTHENING THE NATIONAL RESPONSE TO HUMAN TRAFFICKING IN THE U.S. 26 (2011) (ranking domestic pimp-controlled prostitution as the number one trafficking case).

<sup>62</sup> A. Spidel et al., *The Psychopath as Pimp*, 4 CAN. J. POLICE & SECURITY SERVICES 193, 193 (2006), available at <http://www.hare.org/references/SpideletalCJPSS2006.pdf>.

<sup>63</sup> *Id.* at 194.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 193.

<sup>66</sup> *Id.* at 197.

into prostitution. Traffickers and pimps use a myriad of methods to obtain women for commercial sex, which can include kidnapping by violence or gun-point.<sup>67</sup> International traffickers may falsely promise marriages that actually end in bondage or pay money to an impoverished family abroad in exchange for a daughter.<sup>68</sup> But in the United States, the most common way that women and children become trafficking victims is by falling for the "boyfriend," or pimp.<sup>69</sup>

The relationship between a pimp and a victim is complex because the pimp rules the relationship through violence, emotional manipulation, and feigned affection.<sup>70</sup> Pimps recruit vulnerable individuals in locations like foster homes, homeless shelters, parks, bars, and schools.<sup>71</sup> During this recruiting period, pimps may lavish the victim with gifts or physical intimacy.<sup>72</sup>

After recruitment, a pimp systematically manipulates an individual to sell her body for sex in a process called "seasoning," which erases the victim's identity so that she fully submits to her pimp.<sup>73</sup> The Polaris Project, an organization dedicated to combating trafficking,<sup>74</sup> has identified several elements of seasoning, including but not limited to physically abusing the victim, sometimes with objects like bats or chains; depriving the individual of food or water; inducing the viewing of pornography to educate the individual about how to have sex; relocating to a place far from the victim's family; and sexually abusing the individual with rape or gang rape.<sup>75</sup> Once in control, the pimp may provide free drugs, which a victim often uses to numb herself to commercial sex or violence.<sup>76</sup> This addiction to drugs further ensures the victim will not leave her pimp.<sup>77</sup>

The brutality of pimping should not be underestimated. In 2012, Las Vegas Metro police responded to a 9-1-1 call from a woman screaming for help.<sup>78</sup> The pimp had ruthlessly beaten the woman under his control with a baseball bat, and she was marred with yellow and purple bruises.<sup>79</sup> He beat her

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<sup>67</sup> RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE, AN ACTIVIST FINDS HER CALLING AND HEALS HERSELF* 74 (2011).

<sup>68</sup> ALTINK, *supra* note 52, at 5; *Fact Sheet: Child Victims of Human Trafficking*, OFF. REFUGEE RESETTLEMENT (Aug. 8, 2012), <http://www.acf.hhs.gov/programs/ort/resource/fact-sheet-child-victims-of-human-trafficking>.

<sup>69</sup> LLOYD, *supra* note 67; NAT'L HUMAN TRAFFICKING RES. CTR., *supra* note 61.

<sup>70</sup> POLARIS PROJECT, *DOMESTIC SEX TRAFFICKING: THE CRIMINAL OPERATIONS OF THE AMERICAN PIMP 2* [hereinafter *OPERATIONS OF THE AMERICAN PIMP*], available at [http://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic\\_Sex\\_Trafficking\\_Guide.pdf](http://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.pdf).

<sup>71</sup> *Id.* at 3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Our Team*, POLARIS PROJECT, <http://www.polarisproject.org/component/content/article/18-general/12-our-team> (last visited Apr. 3, 2014) (the organization's motto is "for a world without slavery").

<sup>75</sup> OPERATIONS OF THE AMERICAN PIMP, *supra* note 70, at 3.

<sup>76</sup> Lederer, *supra* note 55, at 6.

<sup>77</sup> *Id.*

<sup>78</sup> J. Patrick Coolican, *The Psychology of Pimping, and How a Community Can Help*, LAS VEGAS SUN (Apr. 21, 2012, 4:07 PM) <http://www.lasvegassun.com/news/2012/apr/21/psychology-pimping-and-what-community-can-do/>.

<sup>79</sup> *Id.*

so severely that the bat was damaged from hitting human bone.<sup>80</sup> This incident demonstrates not only the need for enforcement against pimps, but also the need for increased attention toward the plight of sex trafficking victims and services for their rehabilitation.

Trafficked women and children usually will not identify themselves as victims, nor does the law treat them as victims.<sup>81</sup> They may be loyal to the pimp because of “trauma bonding,” in which the victim views the pimp as a loving boyfriend in spite of repeated abuse.<sup>82</sup> The trafficker or pimp may have conditioned the victim to fear and distrust law enforcement.<sup>83</sup> When law enforcement officials remove the victim from a lifestyle with which she is familiar – a life with her pimp where she believes she is accepted – she initially may want to return.<sup>84</sup> This makes it difficult to distinguish a trafficked victim from a prostitute engaging in commercial sex voluntarily.

#### F. *Distinguishing Voluntary Prostitution*

Voluntary prostitution is different from sex trafficking.<sup>85</sup> Women who support voluntary commercial sex consider prostitutes as skilled practitioners<sup>86</sup> in a legitimate service occupation.<sup>87</sup> They reject being called “victims”<sup>88</sup> and

<sup>80</sup> *Id.*

<sup>81</sup> HEATHER J. CLAWSON & NICOLE DUTCH, U.S. DEP’T OF HEALTH AND HUMAN SERVS., IDENTIFYING VICTIMS OF HUMAN TRAFFICKING: INHERENT CHALLENGES AND PROMISING STRATEGIES FROM THE FIELD 3 (2008), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/IdentVict/ib.pdf> (“[T]he victim not only does not see him/herself as a victim but they do not believe their trafficker has done anything wrong.”).

<sup>82</sup> *Identifying Victims of Human Trafficking: Fact Sheet*, DEP’T HEALTH & HUM. SERVICES, [http://www.acf.hhs.gov/sites/default/files/ort/fact\\_sheet\\_identifying\\_victims\\_of\\_human\\_trafficking.pdf](http://www.acf.hhs.gov/sites/default/files/ort/fact_sheet_identifying_victims_of_human_trafficking.pdf) (last visited Apr. 3, 2014).

<sup>83</sup> OPERATIONS OF THE AMERICAN PIMP, *supra* note 70, at 5. Other reasons for not leaving a pimp include physical captivity, being constantly monitored by the pimp, being unfamiliar with the environment, and a lack of knowledge about where to get help. *Id.*

<sup>84</sup> See KENNEDY & PUCCI, *supra* note 23, at 23. The emotional attachment between a pimp and his victim does not end at arrest. For example, Las Vegas teenager Lauren believed she was in a relationship with her pimp; after he was convicted, she shared, “I felt like I did something wrong to him because I told the truth, like I should be apologizing to him.” *Coolican, supra* note 5.

<sup>85</sup> The Joint United Nations Program on HIV/AIDS (UNAIDS) discourages the conflation of sex trafficking and prostitution. Laws defining all forms of prostitution as trafficking generate further stigma for voluntary prostitutes by labeling them as objects without free will. Conflation can also contribute to their vulnerability by refusing to grant them social and economic rights, and make it more difficult to provide them with adequate HIV service. JOHN GODWIN, SEX WORK AND THE LAW IN ASIA AND THE PACIFIC 3 (2012).

<sup>86</sup> DEBORAH R. BROCK, MAKING WORK, MAKING TROUBLE: THE SOCIAL REGULATION OF SEXUAL LABOUR 20 (2d ed. 2009).

<sup>87</sup> Nicole Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J.L. & FEMINISM 69, 78 (1998).

<sup>88</sup> See BROCK, *supra* note 86 (labeling women in prostitution as victims “would silence them as surely as if they were objects”); see also LISA DIANE SCHRETER ET AL., URBAN JUSTICE CTR., THE DANGER OF CONFLATING TRAFFICKING AND SEX WORK: A POSITION PAPER OF THE SEX WORKERS PROJECT AT THE URBAN JUSTICE CENTER 7 (2007) (defining the women as victims allow politicians and academics “to speak for them and to create policies . . . that they perceive to be in the best interest of ‘prostituted women.’”).

assert that prostitution is a contract between two consenting individuals.<sup>89</sup> Unlike with trafficking victims, the decision to engage in commercial sex is a conscious choice made without force.<sup>90</sup>

Generally, voluntary prostitutes do not deny that past sexual abuse may influence a woman's decision to sell sex.<sup>91</sup> They also do not dispute that commercial sex work can be violent, that the risk of contracting HIV is high,<sup>92</sup> and that some women use drugs and alcohol to cope with the oppressive or violent conditions of their work.<sup>93</sup> Women may choose to enter the life because of "forms of coercion that do not rise to the level of trafficking" but are nonetheless influential and complex, including homelessness, lack of immigration status, poverty, employment discrimination, or stigma.<sup>94</sup>

The idea that prostitution can be voluntary is highly controversial considering the oppressive factors that can influence women to choose to sell sex. Many individuals working inside and outside of the sex industry view any form of prostitution as exploitative and institutionalized sex inequality.<sup>95</sup> Under this view, a woman's decision to enter prostitution is not truly a choice because she lacks alternative options.<sup>96</sup>

While the debate surrounding voluntary prostitution is ongoing, the existence of commercial sex unions and advocates indicate that some women voluntarily consent to prostitution.<sup>97</sup> These women demand such recognition, and therefore, voluntary prostitutes and sex trafficking victims should be referred to as distinct groups. Nevertheless, it is unlikely that the value of voluntary sex work outweighs the harms experienced by the majority of women engaging in

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<sup>89</sup> Bingham, *supra* note 87; Melissa Ditmore, *Sex Work, Trafficking: Understanding the Difference*, RH REALITY CHECK (May 6, 2008, 5:35 AM), <http://www.rhrealitycheck.org/node/7280> ("They are not coerced or tricked into staying in the business but have chosen this from among the options available to them.").

<sup>90</sup> Bingham, *supra* note 87, at 79.

<sup>91</sup> Anne Seneges, *Moonlite Bunny Ranch*, REPORTAGE, [https://pressfoliosproduction.s3.amazonaws.com/uploads/story/story\\_pdf/25597/user\\_upload\\_25597.pdf](https://pressfoliosproduction.s3.amazonaws.com/uploads/story/story_pdf/25597/user_upload_25597.pdf) (last visited Apr. 3, 2014) ("Many girls at the ranch have been sexually abused. 'I have never been raped, but I was sexually abused once,' admits Brooke [a brothel prostitute], who declines to elaborate. 'The next day I went online and googled 'Bunny Ranch.' I wanted to be empowered. Now I feel like I control my sexuality.'").

<sup>92</sup> *Sex Work and The Law: The Case for Decriminalization*, WORLD AIDS CAMPAIGN 15, <http://www.desireealliance.org/conference/Sex%20Work%20and%20the%20Law%20-%20case%20for%20decrim-2.pdf> (last visited Apr. 3, 2014).

<sup>93</sup> *Id.*

<sup>94</sup> MELISSA BROUDO & SIENNA BASKIN, SEXWORKERS PROJECT: VACATING CRIMINAL CONVICTIONS FOR TRAFFICKED PERSONS 9 (2012), available at <http://sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf>.

<sup>95</sup> Bingham, *supra* note 87, at 81; MacKinnon, *supra* note 32, at 274; *About Us*, SEX-TRADE101.COM, <http://www.sextrade101.com/> (last visited Apr. 3, 2014) (a group of former prostitutes argue that everyone should be shown "a viable way out of the sex trade, not encouraged to stay in it.").

<sup>96</sup> MacKinnon, *supra* note 32, at 274.

<sup>97</sup> Sex worker outreach groups exist in the United States and abroad. See, e.g., *About Us*, SEX WORKERS OUTREACH PROJECT USA, <http://www.swopusa.org/about-us/> (last visited Apr. 3, 2014); *Home*, INT'L UNION SEX WORKERS, <http://www.iusw.org/> (last visited Apr. 3, 2014); *What is COYOTE?*, COYOTE LA, [http://www.coyotela.org/what\\_is.html](http://www.coyotela.org/what_is.html) (last visited Apr. 3, 2014); RED UMBRELLA PROJECT, <http://www.redumbrellaproject.org/> (last visited Apr. 3, 2014).

prostitution. Just because “some people do not experience harm does not, of course, diminish the urgency or importance of the fact that many do.”<sup>98</sup>

## II. CAN A LEGAL PROSTITUTION INDUSTRY DETER SEX TRAFFICKING?

Both voluntary legal prostitution and sex trafficking occur in Nevada. Nevada’s legal prostitution regime stands apart from every other American state, and indeed several other countries in the world.<sup>99</sup> The legalization of prostitution means the government can set up regulations to control when, where, and under what circumstances people can engage in commercial sex.<sup>100</sup> The sale of sex is illegal only if such regulations are violated.<sup>101</sup> Nevada permits brothels to operate in rural counties with a population of less than 700,000,<sup>102</sup> thereby excluding brothels from heavily populated Clark County, which comprises the greater Las Vegas area.<sup>103</sup>

More and more, legalizing prostitution is promoted as a solution for reducing sex trafficking.<sup>104</sup> At least one-third of Nevadans support the introduction of legal brothels to Las Vegas,<sup>105</sup> and former mayor Oscar Goodman proposed a downtown red-light district or “little Amsterdam.”<sup>106</sup> The idea is that a regulated, visible sex industry would significantly minimize the need for an under-

<sup>98</sup> Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729, 1746 (2010).

<sup>99</sup> NEV. REV. STAT. § 244.345(8) (2013) (“In a county whose population is 700,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.”); Subsection 8 of § 244.345 “manifests a statutory licensing scheme” for brothels outside of incorporated cities and towns, and repeals the common-law rule that prostitution is a nuisance per se. *See Nye County v. Plankinton*, 94 Nev. 739, 741 (1978); *See also* DEMAND, *supra* note 1, at 95 (“Nevada presents the single American case study of legalized prostitution.”); *100 Countries and Their Prostitution Policies*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000772> (last updated Dec. 23, 2013, 9:49 AM).

<sup>100</sup> HUGHES, *supra* note 31, at 37.

<sup>101</sup> *Id.*

<sup>102</sup> NEV. REV. STAT. § 244.345(8) (2013).

<sup>103</sup> In 2011, Clark County had a population of 1,966,630. This includes Boulder City, Henderson, Las Vegas, North Las Vegas, Mesquite, and a few unincorporated towns. *Population of Las Vegas*, LAS VEGAS CONVENTION & VISITORS AUTHORITY, <http://www.lvcva.com/stats-and-facts/population/> (last visited Apr. 3, 2014). Prostitution was originally excluded from Las Vegas because many felt it might be a threat to the gambling industry, or that convention attendees would diminish because “[n]othing would hurt conventions more than if women learned that their men were off to a town that had open twenty-dollar parlors.” HELEN REYNOLDS, *THE ECONOMICS OF PROSTITUTION* 99 (1986).

<sup>104</sup> MARY SULLIVAN, *WHAT HAPPENS WHEN PROSTITUTION BECOMES WORK? AN UPDATE ON LEGALISATION OF PROSTITUTION IN AUSTRALIA* 3 (2005).

<sup>105</sup> *See* RONALD WEITZER, *LEGALIZING PROSTITUTION: FROM ILLICIT VICE TO LAWFUL BUSINESS* 51 tbl.3.1, 89 (2012) (finding one-third of Nevadans support legalization). Another statewide poll shows almost two-thirds (64 percent) of Nevadans support legalization. *See* News Release, Pub. Policy Polling, *Nevadans on Adelson, Brothels, Ensign, Etc.* (June 15, 2012), available at [http://www.publicpolicypolling.com/pdf/2011/PPP\\_Release\\_NV\\_615.pdf](http://www.publicpolicypolling.com/pdf/2011/PPP_Release_NV_615.pdf).

<sup>106</sup> Erin Neff, *Legalized Prostitution: Vegas Brothels Suggested*, LAS VEGAS REV. J., Oct. 24, 2003, at 1A.

ground industry, where sex trafficking can thrive.<sup>107</sup> Prostitutes would sell sex in a controlled environment where sex trafficking would not occur.

The controversial question then is whether legal prostitution in rural Nevada counties has successfully addressed concerns of trafficking and violence, and whether such a system should be replicated in Las Vegas as a means to decrease the illegal market, and thereby reduce sex trafficking. A close analysis reveals that legalizing prostitution is not a valid solution for reducing sex trafficking because pimping and violence can continue to occur under the shield of government regulation.

#### A. *The Proffered Benefits of Legalization*

Legalization allows the government to confine the commercial sale of sex to a place outside of the public's view. In Nevada, the local governments impose licensing requirements on brothel owners and require the location of brothels to be kept off the beaten path, away from schools or churches.<sup>108</sup> To diminish prostitutes' visibility, the women are usually restricted to the brothels for the duration of their contract,<sup>109</sup> and they are forbidden from residing in the town in which they work.<sup>110</sup> Each brothel enforces its own set of rules, some permitting women to leave on designated days and times, others requiring the women to give notice of their location at all times.<sup>111</sup>

Proponents of legalization argue the risk of sexually transmitted infections (STI) decreases because legal brothels can require condom usage and medical testing.<sup>112</sup> Nevada brothels require prostitutes to submit to weekly pap smears as well as monthly blood tests, and brothel owners are liable if a sex buyer contracts HIV from a prostitute who has tested positive.<sup>113</sup> Additionally, in some brothels the prostitute can examine the buyer's genital area for anything abnormal that may indicate an STI, and may turn the buyer away if there are any signs of infection.<sup>114</sup>

Proponents of legalization assert the design of Nevada brothels makes indoor negotiations safer.<sup>115</sup> After a buyer selects a woman from a line-up, the prostitute takes the buyer to her room to begin negotiating a price for service.<sup>116</sup> The manager or madam at the brothel can monitor the conversation via an intercom,<sup>117</sup> and panic buttons are placed in the room in case immediate help is needed.<sup>118</sup>

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<sup>107</sup> SULLIVAN, *supra* note 104.

<sup>108</sup> NEV. REV. STAT. § 201.380(1) (2013) (prohibiting brothels within four hundred yards of a schoolhouse or place of religious worship).

<sup>109</sup> WEITZER, *supra* note 105, at 88.

<sup>110</sup> *Id.*

<sup>111</sup> Barbara G. Brents & Kathryn Hausbeck, *Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy*, 20 J. INTERPERSONAL VIOLENCE 270, 284–85 (2005).

<sup>112</sup> See WEITZER, *supra* note 105, at 88.

<sup>113</sup> NEV. REV. STAT. § 41.1397 (2013).

<sup>114</sup> Brents & Hausbeck, *supra* note 111, at 286.

<sup>115</sup> *Id.* at 279.

<sup>116</sup> *Id.* at 278.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 285.

Ideally, legalization should enable law enforcement to become an ally with all parties involved in a sexual transaction.<sup>119</sup> If a customer becomes violent, a brothel manager could call the police for assistance.<sup>120</sup> Likewise, prostitutes and well-behaved buyers should face less risk of arrest because they would be engaging in a lawful transaction.<sup>121</sup> As a result of fewer arrests, proponents for legalization argue costs to the criminal justice system would be reduced,<sup>122</sup> and police officers could spend time on other violent offenses.<sup>123</sup>

Finally, proponents for legal prostitution think the sale of sex should be taxed and regulated, generating significant revenue for the government.<sup>124</sup> Robert Fisher, a representative of the Chicken Ranch brothel in Pahrump, Nevada, estimated that a legal brothel system in Las Vegas would result in up to \$600 million in tax revenue.<sup>125</sup> The amount of money that cities or states will make from legal prostitution is always raised as a positive aspect of legalization.<sup>126</sup>

### B. *The Problems with Legalization in Nevada*

While the benefits of legalization in Nevada look great on paper, legalization harms both voluntary prostitutes and sex trafficking victims. Even many voluntary prostitutes refute legalization, asserting that it “institutionalizes the control of women by profiteers and police.”<sup>127</sup> Though required medical testing lowers the risk of HIV and other STIs, the prostitute bears the costly burden of prevention, furthering the perception that she alone is the source of infection.<sup>128</sup> The Joint United Nations Programme on HIV/AIDS (UNAIDS) noted in its recent report on HIV that mandatory testing requirements “violate human rights to autonomy and privacy, expose sex workers to risk of discrimination and violence, compound stigma and divert resources from effective HIV prevention and care interventions.”<sup>129</sup>

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<sup>119</sup> *Id.* at 281.

<sup>120</sup> *Id.*

<sup>121</sup> WEITZER, *supra* note 105, at 85.

<sup>122</sup> *Id.*

<sup>123</sup> James Bovard, *Safeguard Public Health: Legalize Contractual Sex*, INSIGHT NEWS, Feb. 27, 1995.

<sup>124</sup> WEITZER, *supra* note 105, at 82; Daria Snadowsky, Note, *The Best Little Whorehouse is not in Texas: How Nevada's Prostitution Laws Serve Public Policy, and How Those Laws May Be Improved*, 6 NEV. L.J. 217, 226 (2005).

<sup>125</sup> Fisher, *supra* note 3.

<sup>126</sup> HUGHES, *supra* note 31, at 56.

<sup>127</sup> BROCK, *supra* note 86, at 8. Prostitute Laura Anderson explains that “Nevada has essentially institutionalized third party management with no other options” and that “[w]hile the brothel owners love this profitable solution, it can be exploitative . . . .” Laura Anderson, *Working in Nevada*, BAYSWAN.ORG (Nov. 21, 1995), <http://bayswan.org/Laura.html>.

<sup>128</sup> BROCK, *supra* note 86, at 7–8; MacKinnon, *supra* note 32, at 286 (the purpose of HIV medical testing is to “protect the buyers from the women so they can keep using them without getting sick, rather than protecting the women from the buyers who are making them lethally ill”); Laura Anderson, a prostitute who once worked in a Nevada brothel, agrees that the state imposes “politically motivated and gender biased controls on prostitutes rather than holding customers equally accountable for their own sexual behavior.” Anderson, *supra* note 127.

<sup>129</sup> GODWIN, *supra* note 85, at 2–3.

Because Nevada brothel prostitutes do not receive health benefits, they pay the full expenses for their weekly medical tests and examinations, as well as taxes, room and board, tipping, and income splits with the brothel.<sup>130</sup> This leaves many women earning only nineteen-to-twenty-one cents per dollar.<sup>131</sup> Further, there is no overtime pay or sick pay despite requirements that brothel prostitutes must take days off if they have procured an STI from a customer.<sup>132</sup> Without health insurance and adequate savings, women are unable to get care for the injuries that often accompany commercial sex, such as repetitive stress injuries, knee and back problems, and bladder and kidney infections from repeated vaginal intercourse.<sup>133</sup> Thus, the women in prostitution are routinely disadvantaged in both legal and illegal contexts.<sup>134</sup>

What's more, the Nevada brothel system has created a cover-up system of violence, where women trapped<sup>135</sup> indoors endure abuse that is concealed by managers.<sup>136</sup> Panic buttons placed in the rooms of most brothel houses, intended to alert security that a woman is in danger, sometimes have failed to get a woman help soon enough.<sup>137</sup> As one brothel prostitute shared, "Panic buttons are a joke . . . usually they're across the room, but if you can get across the room you can get out the door."<sup>138</sup> Monitors located inside a prostitute's room provide a false sense of security, as the manager – sometimes an elderly lady – is not always listening.<sup>139</sup> The rape rate in rural counties with legal prostitution is five times higher than rural counties without legal prostitution, supporting the idea that legal prostitution may increase a woman's risk of sexual violence.<sup>140</sup>

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<sup>130</sup> Snadowsky, *supra* note 124, at 242.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Priscilla Alexander, *Prostitution: Still a Difficult Issue for Feminists*, in *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* 184, 211 (Frédérique Delacoste & Priscilla Alexander eds., 2d ed. 1998).

<sup>134</sup> MacKinnon, *supra* note 32, at 305 n.119.

<sup>135</sup> The word "trapped" is used to define conditions such as being on call 23 hours a day, 7 days a week, with only one short phone call per week. *See, e.g.*, Jayme Ryan, *Legalized Prostitution: For Whose Benefit?*, *SOJOURNER*, July 1989, at 22; Snadowsky, *supra* note 124, at 229 (prostitutes must stay physically restricted to the brothel).

<sup>136</sup> Ryan, *supra* note 135, at 22 (a Nevada brothel prostitute reported that "[t]here were many different occasions when a woman was brutally beaten or raped by a john, but as long as he paid the house, it was kept quiet.").

<sup>137</sup> Brents & Hausbeck, *supra* note 111, at 280.

<sup>138</sup> *Id.* (omission in original).

<sup>139</sup> *Id.* at 279; Interview with Joy Hoover, Founder, The Cupcake Girls, in Las Vegas, Nev. (Nov. 9, 2012) ("I know girls that have call buttons they can buzz if anything gets crazy, but that's just a call button. There's not a big huge bouncer when that buttons pushed. There's just a madam, which is an older lady that's managing the brothel.").

<sup>140</sup> CHRYSTAL RUGGIERI ET AL., *CTR. FOR THE ANALYSIS OF CRIME STATISTICS, STATE DATA BRIEF: RAPE AND OTHER SEX OFFENSES IN NEVADA, 1990–2007*, at 2 tbl.2 (2009), available at <http://cacs.unlv.edu/SDBs/Rape/Rape%20in%20Nevada%20v4.pdf> (In 2007, the rape rate in rural counties with legal brothels was 45.7 per 100,000 population as compared with 8.8 per 100,000 population in rural counties where prostitution was prohibited, and 41.5 per 100,000 population in urban counties).

Cities that receive tax revenue from the sex industry “develop a vested interest in the continuing success and profitability” of commercial sex.<sup>141</sup> This makes the state less likely to curb businesses that exploit victims of sex trafficking<sup>142</sup> and more likely to turn a blind eye. For example, several women in Nevada brothels still report back to pimps,<sup>143</sup> and managers have identified pimps as a source of danger for brothel prostitutes.<sup>144</sup> These pimps come in a variety of forms, including husbands or boyfriends, although opponents of prostitution assert that a brothel owner is another form of pimp.<sup>145</sup> One former prostitute who criticized Nevada’s brothel system stated that legalizing brothels actually helps pimps “protect their cash.”<sup>146</sup>

One significant problem with a system of legal brothels is that it excludes street prostitution. Legitimizing prostitution that is “behind doors” and delegitimizing street prostitution, which is viewed as a nuisance, makes for contradictory public policy and compromises the safety of women.<sup>147</sup> Such a system further marginalizes some of the most vulnerable women, specifically trafficking victims on the street.<sup>148</sup>

### C. *The Problems of Legalization Elsewhere*

Nevada is not alone in attempting legalization. Victoria, Australia is a state similar to Nevada in that international tourists flock toward its gaming industry.<sup>149</sup> Australian popular culture has promoted its reputation as a “nation

<sup>141</sup> HUGHES, *supra* note 31, at 57.

<sup>142</sup> *Id.*

<sup>143</sup> Brents & Hausbeck, *supra* note 111, at 291 (one manager explained, “Even though some of these girls do have pimps, they don’t come here, to beat them up . . .”). See also *Minutes of the Joint Meeting*, *supra* note 17 (statement of Aubrey Hall, private citizen) (Aubrey shared, “I am a member of Sex Workers Anonymous. I want it to be known that sex trafficking is not only on the streets, or only on the Internet. It also occurs in legal brothels. I think it is very important to realize that pimps do go into the brothels. My trafficker took me from California to work at a brothel here because he saw it on a television show.”).

<sup>144</sup> Brents & Hausbeck, *supra* note 111, at 292. In the late 1990s, northern brothels employed underage girls under the control of pimps. See *Pimps Force Underage Girls to Work in Nevada Brothels, Oregon Police Say*, LAS VEGAS SUN (Jan. 21, 1998, 4:39 AM), <http://www.lasvegassun.com/news/1998/jan/21/pimps-force-underage-girls-to-work-in-nevada-broth/>.

<sup>145</sup> Julie Bindel, ‘*It’s Like You Sign a Contract to be Raped*’, GUARDIAN (Sept. 6, 2007), <http://www.theguardian.com/world/2007/sep/07/usa.gender>. See also MELISSA FARLEY, PROSTITUTION & TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS 4 (2007).

<sup>146</sup> Stella Marr, *Nevada’s Legal Brothels are Coercive, Too*, N.Y. TIMES (Apr. 20, 2012, 9:18 AM), <http://www.nytimes.com/roomfordebate/2012/04/19/is-legalized-prostitution-safer/nevadas-legal-brothels-are-coercive-too>. Stella Marr is a former prostitute and the founder of Survivors Connect, an organization supporting women formerly in trafficking and prostitution.

<sup>147</sup> Interview with Kathleen Bergquist, *supra* note 10.

<sup>148</sup> JULIE BINDEL & LIZ KELLY, CHILD AND WOMAN ABUSE STUDIES UNIT, LONDON METRO. UNIV., A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN 15 (2003).

<sup>149</sup> ALLEN CONSULTING GRP., CASINOS AND THE AUSTRALIAN ECONOMY 18–19 (2009), available at <http://www.auscasinos.com/pdf/media/CasinosandtheAusEconomy.pdf>.

of gamblers.”<sup>150</sup> Victoria in particular has been the heartland for gambling within the racing industry since the 1800s,<sup>151</sup> but the state began to increase its profits in the casino industry in 1991.<sup>152</sup> The Victorian casino industry tends to attract young tourists between the ages of eighteen and twenty-four, usually students.<sup>153</sup>

Almost two decades ago, Victoria enacted the Prostitution Control Act of 1994 to reform and legalize adult prostitution.<sup>154</sup> Parts of the casino and prostitution industry combined efforts, with one brothel requesting customers book appointments with casino chips.<sup>155</sup> Among other goals, the Prostitution Control Act of 1994 was meant to protect prostitutes from violence and health risks and to eliminate criminals from providing prostitution services.<sup>156</sup> However, the opposite occurred.<sup>157</sup>

To meet the demand for cheap sex and limitless sexual services, 400 illegal brothels sprung up throughout the state by 2003,<sup>158</sup> as compared with 95 legal brothels.<sup>159</sup> This number does not include other unlicensed escort agencies<sup>160</sup> and the surge in street prostitution.<sup>161</sup> Additionally, within a few years after legalization, Victoria became the state with the highest number of children used in commercial sex, including children less than ten years of age.<sup>162</sup> Although Australia legalized prostitution to keep children out of the sex trade, both legal and illegal brothels engaged in the sex trafficking of minors.<sup>163</sup>

For women working in legal brothels, the rising demand for sex in Victoria increased the competition among prostitutes.<sup>164</sup> This resulted in brothels placing increased pressure on women to book a sex buyer even if the buyer was violent, drunk, or demanding.<sup>165</sup> The blurred line between what constituted

<sup>150</sup> REBEKAH DOLEY, AUSTRALASIAN CTR. FOR POLICING RESEARCH, WANT TO MAKE A BET? GAMBLING AND CRIME IN AUSTRALASIA 1 (2000), available at <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=203695>.

<sup>151</sup> See AUSTL. INST. FOR GAMBLING RESEARCH, AUSTRALIAN GAMBLING: COMPARATIVE HISTORY AND ANALYSIS 150 (1999) [hereinafter AUSTL. INST.], available at <https://assets.justice.vic.gov.au/vcglr/resources/bb81f943-d854-40de-8bab-b09d8bbd610f/australiangamblingcomparativehistory.pdf>; Philip Herring, *Thoroughbred Horse Racing in Australia: A Study of the Geographical and Social Development of Racing Communities*, THOROUGHbred HERITAGE (2006), <http://www.tbheritage.com/TurfHallmarks/Aus/AusHistHerring.html>.

<sup>152</sup> AUSTL. INST., *supra* note 151, at 152.

<sup>153</sup> *Id.* at 157.

<sup>154</sup> *Prostitution Control Act 1994* (Vict.) (Austl.), available at [http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/LTObject\\_Store/LTObjSt5.nsf/d1a8d8a9bed958efca25761600042ef5e3cb3a2edbe7cd34ca25776f007f8608/\\$FILE/94-102a068.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/d1a8d8a9bed958efca25761600042ef5e3cb3a2edbe7cd34ca25776f007f8608/$FILE/94-102a068.pdf).

<sup>155</sup> SULLIVAN, *supra* note 104, at 10.

<sup>156</sup> *Prostitution Control Act of 1994* (Vict.) (Austl.).

<sup>157</sup> SULLIVAN, *supra* note 104, at 13.

<sup>158</sup> *Id.*

<sup>159</sup> BINDEL & KELLY, *supra* note 148, at 18.

<sup>160</sup> SULLIVAN, *supra* note 104, at 13.

<sup>161</sup> BINDEL & KELLY, *supra* note 148.

<sup>162</sup> SULLIVAN, *supra* note 104, at 16.

<sup>163</sup> *Id.* at 15–16; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2012, at 73 (2012), available at <http://www.state.gov/j/tip/rls/tiprpt/2012/> (“[S]ome of these women are coerced into prostitution in both legal and illegal brothels.”).

<sup>164</sup> SULLIVAN, *supra* note 104, at 7.

<sup>165</sup> *Id.*

work and what constituted sexual assault made it exceedingly difficult for women to know when to seek help from the police.<sup>166</sup> The normalization of prostitution resulted in a lack of support services rather than a push for exit programs, such that “those involved in a cycle of drugs, prostitution, conviction and vulnerability were likely to be trapped within the industry.”<sup>167</sup>

Other promised benefits of legalization did not materialize. Tax evasion continued to occur among both legal and illegal brothels.<sup>168</sup> Women working in legal brothels were unwilling to submit tax returns because they did not want an official register of their work in prostitution.<sup>169</sup> Also, many women in the legal sex industry remained vulnerable to labor abuse because the industry often employed young workers from diverse cultural and linguistic backgrounds.<sup>170</sup> These women often worked long hours and were poorly paid, yet because of their backgrounds they remained unaware of their employment rights.<sup>171</sup>

One Australian study examined the difficulty in eliminating trafficking situations within a legal prostitution context. Victoria’s local government personnel reasoned that unlicensed brothels flourished because unlicensed brothel owners could save more money and engage in a shorter set-up process, whereas the process to start a licensed brothel in Victoria could last longer than twelve months.<sup>172</sup> Additionally, council compliance officers—who maintained the most contact with the prostitution industry—stated their primary concern was processing business permits, not investigating trafficking issues.<sup>173</sup> Council officers also shared that enforcement staff was too limited to monitor all licensed premises as the number of licensed premises increased.<sup>174</sup> Finally, the Victorian police force was not sufficiently educated as to the realities of sex trafficking. Police often assumed legal brothels were not engaging in criminal activity merely because the brothels were licensed.<sup>175</sup> This assumption caused both Victorian police and council compliance officers to overlook trafficking situations.

Victoria’s system supports the argument that legal prostitution may not replace or reduce illegal prostitution,<sup>176</sup> but instead could potentially contribute

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<sup>166</sup> *Id.* at 22; SEX WORKER OUTREACH PROJECT, 9 LIVES: SURVIVING SEXUAL ASSAULT IN THE SEX INDUSTRY 2 (rev. ed. 2011), available at <http://www.swop.org.au/sites/default/files/9livesCoverText.pdf> (“Sexual violence in the sex industry can sometimes be difficult to recognise.”).

<sup>167</sup> BINDEL & KELLY, *supra* note 148, at 16–18.

<sup>168</sup> *Id.* at 16, 52.

<sup>169</sup> *Id.* at 52.

<sup>170</sup> Stephen Drill, *Fair Pay Police in Brothel Blitz*, HERALD SUN NEWS (Austl.), Aug. 13, 2012, at 21.

<sup>171</sup> *Id.*

<sup>172</sup> Erica Kotnik et al., *Human Trafficking in Australia: The Challenge of Responding to Suspicious Activities*, 42 AUSTL. J. SOC. ISSUES 369, 377 (2007), available at <http://project.respect.org.au/system/files/human+trafficking+in+australia.pdf>.

<sup>173</sup> *Id.* at 378.

<sup>174</sup> *Id.*

<sup>175</sup> *See id.* at 379.

<sup>176</sup> REYNOLDS, *supra* note 103, at 127. While only Victoria’s legal prostitution regime is discussed in this Note, the Netherlands has also added “sex tourism” and legal prostitution to

to it. Requiring condoms or high pay<sup>177</sup> increases the demand for the illegal industry, where condom usage is generally forgone and sex is cheaper.<sup>178</sup> Women and children are then trafficked into the market to meet the demand for inexpensive, unprotected sex.<sup>179</sup> The possibility of organized crime and heightened corruption also intensifies with legalization. A legal enterprise can more easily funnel funds into an illegal project, transfer employees between such projects, and bribe public officials to keep out of its business.<sup>180</sup> Sex trafficking can greatly expand as prostitution is legalized because it is less risky for authorized sellers such as brothel owners to receive trafficked women and still continue to operate in the open.<sup>181</sup>

In both Victoria and Nevada, the systems of legal brothels are flawed. In *The Economics of Prostitution*, Helen Reynolds explained that the carefree culture in Las Vegas places the city "in a category by itself," and that "the system that exists [in Las Vegas] largely is managed by pimps, a group that will not simply go away even if there are legalized and regulated brothels."<sup>182</sup> Consequently, legalization is not the most effective solution to reduce the supply and demand for sex trafficking victims.<sup>183</sup> Nevada must instead develop better strategies to effectively crack down on sex trafficking.

### III. THE NEVADA JUSTICE SYSTEM'S RESPONSE TO SEX TRAFFICKING

The deficiencies in Nevada's legal prostitution regime indicate that the state cannot successfully prioritize both protecting voluntary prostitution and combating sex trafficking. From a policy perspective, prioritizing voluntary prostitutes' choice in occupation "complicates helping those that cannot escape prostitution."<sup>184</sup> In *Coyote Publishing, Inc. v. Miller*, the Ninth Circuit explained that while Nevada permits some legal brothels, the state has a substantial interest in limiting the commodification of sex and "protecting women from being forced into prostitution."<sup>185</sup> Thus, Nevada's system for commercial

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its main tourist attractions. As in Victoria, sex trafficking and organized crime has not been reduced. See BINDEL & KELLY, *supra* note 148, app. 4, at 60–70.

<sup>177</sup> Richard Abowitz, *The Life*, LAS VEGAS WKLY. (June 23, 2005), <http://www.lasvegas-weekly.com/news/archive/2005/jun/23/the-life> (half of the men who negotiated in legal brothels left without purchasing service because negotiations did not result in an agreed price low enough for the customer).

<sup>178</sup> MacKinnon, *supra* note 32, at 305 n.117.

<sup>179</sup> HUGHES, *supra* note 31, at 5.

<sup>180</sup> REYNOLDS, *supra* note 103, at 121.

<sup>181</sup> MacKinnon, *supra* note 32, at 304.

<sup>182</sup> REYNOLDS, *supra* note 103, at 127.

<sup>183</sup> In support of this point, Sergeant Ron Chalmers of the Reno Police Department stated that illegal street prostitution of adults and juveniles in Reno is still occurring despite a brothel being only ten minutes away. *Minutes of the Joint Meeting*, *supra* note 17 (statement of Ron Chalmers, Sergeant, Reno Police Dep't); See U.S. DEP'T OF STATE, *supra* note 18, 338–39 (indicating recommendations for the United States that do not include legalization of prostitution).

<sup>184</sup> Heather Monasky, Note, *On Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, but not the Victim—Sweden's Sexk?pslagen in America*, 37 WM. MITCHELL L. REV. 1989, 2011 (2011).

<sup>185</sup> *Coyote Publ'g, Inc. v. Miller*, 598 F.3d 592, 604 (9th Cir. 2010).

sex taking place outside of legal brothels is criminalization.<sup>186</sup> Criminalized prostitution means the sale and purchase of sex, including third-party facilitation, are offenses in the criminal code.<sup>187</sup>

Currently, a person who engages in or solicits prostitution in Nevada, unless in a licensed brothel,<sup>188</sup> is guilty of a misdemeanor.<sup>189</sup> Sex buyers are penalized, as are *all* prostitutes, minors as well as adults selling sex voluntarily or by force.<sup>190</sup> Pimps and traffickers also face criminal penalties. In 2013, new state legislation changed what was formerly called the crime of “pandering” to “sex trafficking” and increased the felony penalties for the crime by one category.<sup>191</sup> Now both pandering and sex trafficking are crimes under Nevada law. A trafficker or pimp can be convicted of pandering, which occurs when an individual – without the use or threat of force – induces, persuades, encourages, inveigles, or entices a person to become a prostitute, continue to engage in prostitution, or enter a legal place of prostitution within Nevada.<sup>192</sup> Presently, buyers of commercial sex cannot be found guilty of pandering.<sup>193</sup>

Sex trafficking is similar to pandering, but requires the use of force or threat of force when inducing a person to engage in prostitution.<sup>194</sup> A person convicted of sex trafficking an adult may face three to ten years in prison,<sup>195</sup> but sex trafficking a child is a more serious crime that can result in a life sentence.<sup>196</sup>

If a victim knows her trafficker will be in prison for a significant amount of time, she will be less fearful of cooperating with law enforcement investigations.<sup>197</sup> Additionally, increased penalties on traffickers will separate a pimp

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<sup>186</sup> NEV. REV. STAT. § 201.354 (2013).

<sup>187</sup> Monasky, *supra* note 184, at 2009.

<sup>188</sup> NEV. REV. STAT. § 201.354(1) (“It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.”).

<sup>189</sup> *Id.* § 201.354(2). However, if a customer solicits or engages in prostitution with a child, that customer is guilty of a category E felony. *See id.* § 201.354(3).

<sup>190</sup> However, a Nevada judge may permit a trafficking victim to vacate her past criminal convictions for charges of prostitution. Nevada’s vacating convictions law does not permit a prostitute who cannot prove coercion (a woman who is not considered trafficked) to clear her prior criminal record. *See* NEV. REV. STAT. § 176.515(5) (2013). To learn more about laws regarding vacating convictions, see *Human Trafficking Legislative Issue Brief: Vacating Convictions*, POLARIS PROJECT, [http://www.polarisproject.org/storage/documents/policy\\_documents/Issue\\_Briefs/vacating\\_convictions\\_issue\\_brief\\_september\\_2012.pdf](http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/vacating_convictions_issue_brief_september_2012.pdf) (last visited Apr. 3, 2014).

<sup>191</sup> NEV. REV. STAT. § 201.300 (2013) (establishing the crime of pandering); *id.* § 200.463–467 (focusing on labor trafficking); *id.* § 613.080 (involuntary servitude). Note that penalties increased in 2013 by one felony category. *See* Assemb. Bill No. 67, 77th Reg. Sess. § 42 (Nev. 2013). *See also Nevada State Facts*, PROTECTED INNOCENCE INITIATIVE, <http://www.leg.state.nv.us/Interim/76th2011/Exhibits/ChildWelfare/E011812Q.pdf> (last visited Apr. 3, 2014) (noting the absence of sex trafficking as a form of human trafficking in Nevada laws prior to 2013).

<sup>192</sup> *Id.* § 201.300(1).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* § 201.300(2).

<sup>195</sup> *Id.* § 201.300(2)(b)(1).

<sup>196</sup> *Id.* § 201.300(2)(b)(2).

<sup>197</sup> *See, e.g.*, JEREMY M. WILSON & ERIN DALTON, HUMAN TRAFFICKING IN OHIO: MARKETS, RESPONSES, AND CONSIDERATIONS 41 (2007).

from his victim and empower the victim to self-actualize.<sup>198</sup> With this in mind, the 2013 amendments to the pandering law that expressly defined the crime of "sex trafficking" and severely punished traffickers and pimps was a big step to combat sex trafficking. However, the increased penalties are merely paper tigers without proper enforcement on the ground, the development of which remains to be seen.<sup>199</sup>

Nevada's recent push for stringent penalties for sex traffickers indicates the state is mindful of the problem. These changes in the law, however, do not fully prescribe the solution that is needed. Nevada laws still treat victims of sex trafficking as criminals, and men purchasing sex with trafficking victims remain almost invisible. Social services are severely lacking<sup>200</sup> and much of the general public is unaware that sex trafficking occurs in Nevada. A more holistic approach to the problem of sex trafficking requires the justice system to improve its response in dealing with child and adult sex trafficking victims. Further, the legislature should provide appropriate funding for social services and designate a method to increase community awareness.<sup>201</sup> Finally, current laws targeting the demand for commercial sex must be enforced, and more research should be conducted regarding the supply and demand for commercial sex.

#### A. *Improving Nevada's Response to Sex Trafficking Victims*

The first step to improving Nevada's response to sex trafficking is to stop treating child and adult victims as criminals.

##### 1. *Responding to Child Sex Trafficking Victims*

Nevada needs to pass a Safe Harbor law for child sex trafficking victims. An individual under a pimp's control becomes easier to intimidate and less likely to seek help from the police when she fears being punished for a crime.<sup>202</sup> Yet Nevada's current laws treat sex trafficking victims as criminals by penalizing all adults and minors who sell commercial sex. To illustrate, domestic trafficked minors who are arrested for prostitution-related offenses are labeled juvenile delinquents.<sup>203</sup> They are often kept in juvenile detention facilities so that they can be interviewed about their involvement in prostitution

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<sup>198</sup> Michon A. Martin, Nev. Chief Deputy Att'y Gen., Remarks at the Nev. Att'y Gen.'s 2013 Sex Trafficking Summit, Las Vegas, Nev. (Jan. 9, 2013), available at <http://www.youtube.com/watch?v=oSk0g74QnmM> (at 1:43:33).

<sup>199</sup> It is also unclear whether these penalties on traffickers will endure considering arguments against AB 67, which contend that the language defining sex trafficking is overbroad and the penalties are draconian in nature. See *Minutes on the Joint Hearing*, *supra* note 17.

<sup>200</sup> *Id.* (statement of Donald Hoier, Sergeant, Las Vegas Metro. Police Dep't) ("Sadly, Clark County is also lacking in services for both adult and juvenile offenders . . . . We do not have any long-term locations for juveniles where they can be housed while they receive care.").

<sup>201</sup> *Id.* (statement of J. William Voy) ("We need more emphasis on services, intervention, prevention, and education.").

<sup>202</sup> Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 391 (2006).

<sup>203</sup> KENNEDY & PUCCI, *supra* note 23, at 8.

and testify against their traffickers and pimps.<sup>204</sup> This often results in a lengthier detention than for juveniles who have committed more serious crimes.<sup>205</sup> Sex trafficking victims do not receive appropriate trauma therapy or social services during detention, partly because there are not enough trained therapists to deal with the victims' unique needs, and partly because even detention employees stigmatize the victims for engaging in commercial sex.<sup>206</sup> Thus, if and when a trafficking victim appears as a witness at a pimp's trial, she has already gained a distrust of the legal system and experienced it as a criminal defendant.<sup>207</sup>

Under the federal TVPA, a person below age eighteen who is involved in selling commercial sex is deemed a sex trafficking victim entitled to protection.<sup>208</sup> This special protection is given on the basis that a minor cannot legally consent to commercial sex acts.<sup>209</sup> State laws like Nevada's that still criminalize minors in prostitution expressly conflict with the TVPA's goals to protect trafficked minors.<sup>210</sup> To reconcile state law with the TVPA objectives, several states have passed "Safe Harbor" laws that are specific to minors in prostitution.<sup>211</sup>

A Safe Harbor law in this context essentially decriminalizes the minor engaging in prostitution. Child prostitution still remains a crime, and pimps and sex buyers can be prosecuted.<sup>212</sup> However, the minor is diverted from juvenile delinquency proceedings toward child welfare services or a rehabilitation pro-

<sup>204</sup> *Id.* at 14. Victims are generally the only witnesses to convict a person of trafficking. As of 2005, a witness's testimony against her trafficker without corroboration is sufficient for a conviction. *Id.* at 23.

<sup>205</sup> *Id.* at 16.

<sup>206</sup> *Id.* at 16, 35.

<sup>207</sup> *Id.* at 24.

<sup>208</sup> TVPA, Pub. L. No. 106-386, 114 Stat. 1464, 1475 (2000).

<sup>209</sup> Susan Crile, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors*, 61 AM. U. L. REV. 1783, 1790 (2012) ("[E]nforcing criminal prostitution law against minors is inconsistent with statutory rape laws . . .").

<sup>210</sup> *Id.* at 1790–91. Nevada juvenile delinquents on prostitution-related charges sit in detention for an average of seventeen days. *Fighting Sex Trafficking and Child Prostitution*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/Interim/75th2009/Exhibits/AdminJustice/E060910F.pdf> (last visited Apr. 3, 2014).

<sup>211</sup> Crile, *supra* note 209, at 1791–92. Specifically, Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Tennessee, Vermont, and Washington have passed Safe Harbor Laws as of 2012. See *2012 State Ratings Map*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws/2012-state-ratings> (last visited Apr. 3, 2014) (follow "Download the full 2012 state ratings map, state ratings chart, and methodology document here" hyperlink). See also ABA COMM'N ON HOMELESSNESS AND POVERTY, *SAFE HARBOR LAWS: POLICY IN THE BEST INTEREST OF VICTIMS OF TRAFFICKING* 13 (2013) (listing the following eight Safe Harbor Laws: A.B. 5258-C, 2007 Leg., 231st Sess. (N.Y. 2007); S.B. 6476, 61st Leg., Reg. Sess. (Wash. 2010); S.B. 153, Feb. Sess. 2010 (C.T. 2010); H.B. 6462, 96th Gen. Assemb., Spring Sess. (IL 2010); S.B. 0064, 107th Leg. Sess. 2011 (T.N. 2011); S.B. 272, 2009–2010 Gen. Assemb. Sess. (Vt. 2010); S.F. 1, 87th Leg., 1st Spec. Sess. (Mn. 2011); 2011 Mass. Acts Ch. 178, 187th Leg. Sess. (2011)).

<sup>212</sup> Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL'Y BRIEF 67, 87–88 (2012), available at <http://digitalcommons.wcl.american.edu/lpb/vol14/iss2/3>.

gram.<sup>213</sup> In 2013, Nevada joined at least six other states in pushing for a Safe Harbor law.<sup>214</sup> The 2013 legislation proposed that a child in prostitution should be labeled as a "child in need of supervision" instead of as a juvenile delinquent, and should be directed toward social and mental health services.<sup>215</sup> Nevada failed to pass this law.<sup>216</sup> Meanwhile, Texas passed a Safe Harbor law;<sup>217</sup> North Carolina passed a Safe Harbor law;<sup>218</sup> New York expanded the protections of minor victims in its existing Safe Harbor law;<sup>219</sup> Nebraska passed a Safe Harbor law;<sup>220</sup> Arkansas passed a Safe Harbor law;<sup>221</sup> and Louisiana passed a Safe Harbor law.<sup>222</sup>

It is high time for Nevada to pass a Safe Harbor law. Such a law would remove the stigma of prostitution and direct the state toward the welfare of the child victim.<sup>223</sup> Nevada's failure to pass a Safe Harbor law reflects muddled legislation and enforcement—the state is quick to punish and prosecute traffickers while simultaneously punishing child victims for an act to which they cannot legally consent. Without adequate social services and a clean criminal record, child victims are likely to return to the position of sexual exploitation once again.

## 2. Responding to Adult Sex Trafficking Victims

While many Safe Harbor laws aim to protect child trafficking victims, these laws do not address the probability that many of these girls "age-out" and become adult women facing criminal penalties. To truly assist victims in trafficking, the state should make sure child *and* adult victims are supported—not

<sup>213</sup> *Id.* at 88–89.

<sup>214</sup> Kevin Robillard, *Human Trafficking: Pols' New Push to Strengthen Law*, POLITICO (Dec 5, 2012, 10:22 AM), <http://www.politico.com/story/2012/12/pols-new-push-on-human-trafficking-84624.html> (other states introducing a Safe Harbor Bill in 2013 included Texas, Nebraska, Georgia, Louisiana, Michigan, and Arkansas). *See also* Assemb. Bill No. 241, 77th Reg. Sess. (Nev. 2013), *available at* <http://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?billname=AB241>.

<sup>215</sup> Nev. Assemb. Bill 241 § 15.

<sup>216</sup> *See* Nev. Assemb. Bill 241 (the bill was introduced in the Assembly on March 13, 2013, but never formally enrolled).

<sup>217</sup> S. Bill 92, 83d Leg., Reg. Sess. (Tex. 2013), *available at* <http://legiscan.com/TX/research/SB92/2013> (designating a juvenile court and program for child human trafficking victims).

<sup>218</sup> S. Bill 683, 2013–2014 Leg., Reg. Sess. (N.C. 2013), *available at* <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=s683> (establishing impunity from prosecution for minor victims of sex trafficking).

<sup>219</sup> Assemb. Bill 2240A, 2013 Leg., Reg. Sess. (N.Y. 2013), *available at* <http://open.nysenate.gov/legislation/bill/A2240A-2013> (making various provisions relating to prostitution offenses and establishes the "trafficking victims protection and justice act").

<sup>220</sup> Legis. Bill 255, 103 Leg., 1st Sess. (Neb. 2013), *available at* <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Final/LB255.pdf> (changing "provisions and penalties relating to prostitution, solicitation of prostitution, pandering, and keeping a place or prostitution").

<sup>221</sup> S. Bill 869, 89th Gen. Assemb., Reg. Sess. (Ark. 2013), *available at* <ftp://www.arkleg.state.ar.us/Bills/2013/Public/SB869.pdf> (providing "a safe harbor for victims of certain sex trafficking and commercial sex offenses").

<sup>222</sup> S. Bill 88, 2013 Leg., Reg. Sess. (La. 2013), *available at* <http://legiscan.com/LA/text/SB88/id/869214/Louisiana-2013-SB88-Chaptered.pdf> (providing "a safe harbor program for sexually exploited children").

<sup>223</sup> *See* Bradley Myles, *Kids, Not Criminals*, LEADER (N.Y.), Jan. 30, 2013, at A4.

punished.<sup>224</sup> There are various ways to do this, two of which are discussed here: partial decriminalization, as in Sweden, or creation of a prostitution diversion program that acts as a Safe Harbor law for adults.

In 1999, Sweden was the first country to decriminalize prostitutes and eliminate their arrest, but continued to penalize sex buyers with monetary fines or jail time.<sup>225</sup> Since the law passed, the number of women in street prostitution has halved and the number of buyers has plummeted by 75 percent.<sup>226</sup> Though there is no conclusive evidence that sex trafficking has decreased, the number of victims trafficked to Sweden has remained stable while it has spiked in neighboring countries,<sup>227</sup> and criminal investigators have intercepted phone calls between traffickers which imply that Sweden is a difficult market for trafficking.<sup>228</sup>

However, Sweden's model works because law enforcement has cracked down heavily on the buyers of sex.<sup>229</sup> In a city like Las Vegas, which promotes itself as an adult playground, such a system would not work unless Las Vegas first took steps to more effectively penalize sex buyers. Further, the partial decriminalization model recognizes all prostitution as sexual exploitation,<sup>230</sup> which conflicts with Nevada's regulation of commercial sex in legal brothels.

A more realistic alternative for Nevada, at least for now, is the formation of a prostitution diversion program. Establishing such a program would not be an unfamiliar undertaking for Las Vegas. The city currently has a Women-in-Need ("WIN") Special Court in the Las Vegas Municipal Court that is available to women who already have at least three convictions for soliciting prostitution.<sup>231</sup> The WIN court program provides drug treatment and counseling, plus assistance with pursuing an education or finding employment.<sup>232</sup> However, a program should be created to address a woman's first prostitution offense, and

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<sup>224</sup> Danah Boyd, *What Anti-Trafficking Advocates Can Learn from Sex Workers: The Dynamics of Choice, Circumstance, and Coercion*, HUFFINGTON POST (Aug. 16, 2012, 7:31 PM), [http://www.huffingtonpost.com/danah-boyd/what-anti-trafficking-advocates-can-learn-from-sex-workers\\_b\\_1784382.html](http://www.huffingtonpost.com/danah-boyd/what-anti-trafficking-advocates-can-learn-from-sex-workers_b_1784382.html).

<sup>225</sup> BINDEL & KELLY, *supra* note 148, at 23–24.

<sup>226</sup> Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1193–94 (2004).

<sup>227</sup> *Id.* at 1199.

<sup>228</sup> *Id.* at 1200–01.

<sup>229</sup> *Id.* at 1195–97.

<sup>230</sup> See REGERINGSKANSLIET, MINISTRY OF INDUS., EMP'T AND COMMC'NS, FACT SHEET: PROSTITUTION AND TRAFFICKING IN HUMAN BEINGS 1 (2005), available at <http://legislation-line.org/download/action/download/id/871/file/ee4eb3cbfa0adeec87ad87067a6f.pdf> (prostitution "is officially acknowledged as a form of exploitation of women and children that constitutes a significant social problem, which is harmful not only to the individual prostituted woman or child, but also to society at large").

<sup>231</sup> See Media Release, City of Las Vegas, Las Vegas Mun. Court to Celebrate 17th WIN Court Graduation (Nov. 1, 2012), available at <http://www.lasvegasnevada.gov/Publications/27531.htm>. See also Cara McCoy, *Her Life Back in Her Hands*, LAS VEGAS SUN, Aug. 11, 2010, at 3, available at <http://www.lasvegassun.com/news/2010/aug/11/her-life-back-her-hands/> (sharing how, after almost a decade of drug addiction and street prostitution, one WIN court graduate reunited with her daughter and found stable employment).

<sup>232</sup> McCoy, *supra* note 231.

should extend services to women *before* they are convicted. This would avoid unfairly penalizing a sex trafficking victim.

Las Vegas could adopt a program similar to the Prostitution Diversion Initiative ("PDI") in Dallas, Texas.<sup>233</sup> The Dallas Police Department developed the PDI in 2007.<sup>234</sup> The PDI is a pre-booking program, meaning law enforcement offers social services before or in lieu of jail.<sup>235</sup> Several community members work together on a typical operation, including the District and City Attorney's Offices, Sheriff's Office, Dallas County Health and Human Services, a hospital, and more than thirty social service organizations.<sup>236</sup> During an operation, the PDI sets up a staging area at truck stops where prostitution rates are usually high.<sup>237</sup> Women are brought to or willingly walk to the staging area, where they are presented with an opportunity to seek resources, communicate with law enforcement and legal counsel, and receive health check-ups.<sup>238</sup> They are then offered the possibility to enter a social service program instead of going to jail. Those who decline the program will still face criminal penalties for prostitution, but women who choose the program will receive appropriate rehabilitation services.<sup>239</sup> Among the program's services are housing, child care, financial advice, career training, counseling, and healthcare.<sup>240</sup>

The PDI is beneficial because it is victim-centered and focuses on empowerment rather than punishment.<sup>241</sup> It helps women in prostitution communicate with law enforcement without fear of retribution, giving law enforcement a chance to gather intelligence on street activity.<sup>242</sup> Importantly, representatives at the staging area develop relationships with women who decline treatment, and can continue to track these individuals in case of future needs.<sup>243</sup> This has established trust between the women and law enforcement.<sup>244</sup> The PDI program in Dallas or a similar diversion program would be a good method of intervention for adult sex trafficking victims in Las Vegas.

At a hearing before the Nevada Legislature in 2013, Judge William Voy of the Eighth Judicial District argued, "I do not care what you put on paper as far

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<sup>233</sup> MARTHA FELINI ET AL., DALLAS TEX. POLICE DEP'T, ANNUAL REPORT: OCTOBER 2007 – SEPTEMBER 2008, PROSTITUTION DIVERSION INITIATIVE 1 (2009), *available at* <http://www.pdinewlife.org/wp-content/uploads/2012/05/PDI-Annual-Report-2010-2011f.pdf>.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 3; *see also* JOYCE KIM & SARA H. KATSANIS, DUKE INST. FOR GENOME SCIS. & POLICY, NONMEDICAL DNA APPLICATIONS CASE STUDY REPORT: PROSTITUTION DIVERSION INITIATIVE 11–12 (2012), *available at* <http://www.genome.duke.edu/research/society/dna-human-trafficking/documents/DPDI-DNACaseStudy21Sept12.pdf>.

<sup>236</sup> KIM & KATSANIS, *supra* note 235, at 12.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.* at 12–13.

<sup>240</sup> *Id.* at 11–12.

<sup>241</sup> *Id.* at 11.

<sup>242</sup> *Id.* at 12. Intelligence gathered on staging nights "has prompted key policy changes regarding prostitution within law enforcement, courts, and social services." *Id.* at 14.

<sup>243</sup> *Id.* at 14.

<sup>244</sup> *Dallas Prostitutes Get Option for Help, Not Jail: City Takes a New Approach to the World's Oldest Profession*, NBCNEWS.COM (Jan. 5, 2010, 2:05 PM), [http://www.nbcnews.com/id/34709336/ns/us\\_news-life/t/dallas-prostitutes-get-option-help-not-jail/#.URLhfSfCaSp](http://www.nbcnews.com/id/34709336/ns/us_news-life/t/dallas-prostitutes-get-option-help-not-jail/#.URLhfSfCaSp).

as length of sentence [for sex traffickers] . . . unless you get a successful prosecution, you will never get to that point.”<sup>245</sup> In other words, it is problematic to treat victims, who must testify as witnesses against their traffickers, as criminals. Effective prosecution of traffickers requires systemic change in how the justice system treats victims, both minors and adults.

### B. Increase Community Resources

Safe Harbor laws and diversion programs work best when safe housing and services specific to sex trafficking are readily available.<sup>246</sup> At this time, Nevada lacks safe, long-term, non-detention residential facilities for victims of trafficking, and there are insufficient psychological, health, and educational services.<sup>247</sup> One Las Vegas organization, the Sojourn Foundation,<sup>248</sup> is raising awareness and support for a “safe house” for child victims, but funding for the operations of the house is the most difficult obstacle.<sup>249</sup> A designated plan to fund a safe house must be prioritized and should accompany the passage of a Safe Harbor bill.<sup>250</sup> Appropriate housing can provide physical separation between the trafficker and the victim, as well as address immediate needs, such as detoxification and medical or psychological attention.<sup>251</sup>

The resources available to victims also must be culturally specific. African-Americans are overrepresented in the justice system and among many domestically trafficked minors.<sup>252</sup> Outreach services should consider factors such as race, age, and family background in determining the best form of treatment for victims. Bamboo Bridges, an organization based in Las Vegas, connects Asian victims with advocates who can speak the same language.<sup>253</sup> This sort of connection can build firm relationships that encourage the victim to continue seeking support.

Importantly, the provision of these social services cannot take place without the funding support of local, state, and federal governments. In 2013, Nevada passed a bill establishing a Contingency Account for Victims of Human Trafficking in the State General Fund.<sup>254</sup> However, this bill did not propose a strategy to coordinate and fund statewide programs and services; it

<sup>245</sup> *Minutes of the Joint Meeting*, *supra* note 17, at 18 (statement of J. William Voy).

<sup>246</sup> *See* Geist, *supra* note 212, at 123.

<sup>247</sup> *Minutes of the Joint Meeting*, *supra* note 17, at 16 (statements of Ron Chalmers, Sergeant, Reno Police Dep’t, and Donald Hoier, Sergeant, Las Vegas Metro. Police Dep’t). *See also* KENNEDY & PUCCI, *supra* note 23, at 50–51.

<sup>248</sup> The Sojourn Foundation is based in Las Vegas. Among its board of directors are attorneys, professors, and non-profits. *See Welcome*, SOJOURN FOUND., <http://sojournfoundation.org> (last visited Apr. 3, 2014).

<sup>249</sup> Family Court Judge Voy shared, “Today we still don’t have a safe house. Quite frankly, we’re at this point where I’m a little tired. Build me a safe house.” Valley, *supra* note 12.

<sup>250</sup> If funding is not available, or if the Safe Harbor law does not pass, at the very least it should be mandatory for detention centers to provide appropriate services for sex trafficking victims. *See* Geist, *supra* note 212, at 123–24.

<sup>251</sup> KENNEDY & PUCCI, *supra* note 23, at 51.

<sup>252</sup> *Id.* at 38.

<sup>253</sup> *What We Do*, BAMBOO BRIDGES, <http://www.bamboobridges.org/what-we-do.html> (last visited Apr. 3, 2014).

<sup>254</sup> *See* Assemb. Bill No. 311, 77th Reg. Sess. (Nev. 2013), available at [http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB311\\_EN.pdf](http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB311_EN.pdf).

merely established the account. A designated way to fund and coordinate services for child victims was proposed in a Safe Harbor law, but the Nevada legislature did not pass this law.<sup>255</sup> The state legislature must now identify permanent funding sources and establish a strategy to coordinate social services for sex trafficking victims.

### C. Improve Public Awareness

Increasing awareness in the community can help build support for funding social services, as well as engage the public in policing potential incidents of sex trafficking. Most members of the community do not understand the brutality of sex trafficking or how to identify victims. Sex trafficking awareness campaigns can educate the public and encourage the public to report suspected incidents of trafficking. One way to increase the community's response is to distribute the number of a national human trafficking hotline or post the number in major public areas.<sup>256</sup>

Nevada proposed a Human Trafficking Victim and Prevention Bill in 2013 that required the permanent posting of a national hotline in areas of public transportation and business centers. The bill also proposed the distribution of educational information about how to identify and prevent human trafficking to parents, students, and school district employees. The Nevada legislature failed to pass this law, thus securing much of the general public's *unawareness* about sex trafficking.<sup>257</sup>

The provisions presented in the 2013 Human Trafficking Victim and Prevention Bill must be reconsidered. The National Human Trafficking Resource Center (NHTRC) is a non-profit organization that runs a hotline accepting calls from around the United States seven days a week, twenty-four hours a day, and can interpret for 170 languages.<sup>258</sup> The NHTRC has an extensive contacts database to connect victims with the appropriate services and has received up to 4,000 references to trafficking cases since it began in 2007.<sup>259</sup> The neighbor state of California has extensively promoted this hotline through brochures, websites, and resource cards, which has yielded a significant number of suspected trafficking cases,<sup>260</sup> and the Polaris Project promotes posting the hotline as one of the top ten ways for a state to attack the crime of sex trafficking.<sup>261</sup> It

<sup>255</sup> See Assemb. Bill No. 241, 77th Reg. Sess. (Nev. 2013), available at <http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB241.pdf>.

<sup>256</sup> POLARIS PROJECT, HOW DOES YOUR STATE RATE ON HUMAN TRAFFICKING LAWS IN 2012? 2 (2012), available at <https://na4.salesforce.com/sfc/p/300000006E4SZ2vOAvBtmKICytWEBvS.6oLeE4k=>.

<sup>257</sup> Assemb. Bill No. 338, 77th Reg. Sess. § 2 (Nev. 2013), available at [www.leg.state.nv.us/Session/77th2013/Bills/AB/AB338\\_R1.pdf](http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB338_R1.pdf).

<sup>258</sup> *Id.*

<sup>259</sup> *Health Care and Human Trafficking*, AM. PUB. HEALTH ASS'N, <http://www.apha.org/membergroups/newsletters/sectionnewsletters/comm/spring08/Human+Trafficking.htm> (last visited Apr. 3, 2014); see also KAMALA D. HARRIS, THE STATE OF HUMAN TRAFFICKING IN CALIFORNIA 54 (2012), available at <https://oag.ca.gov/sites/all/files/pdfs/ht/human-trafficking-2012.pdf>.

<sup>260</sup> HARRIS, *supra* note 259, at 54–55.

<sup>261</sup> POLARIS PROJECT, *supra* note 256 (describing ten ways states can fight human trafficking, with "posting a human trafficking hotline" as the fifth recommendation).

follows that businesses in Las Vegas, a top destination city for sex trafficking to occur, should also be required to post this information.

It is clear that sex trafficking is not just the federal government's concern—after all, in 2011 the Las Vegas Metro Police Department reported that 74 percent of arrested minor sex trafficking victims were from Southern Nevada.<sup>262</sup> The state and local Nevadan communities have an urgent responsibility to distribute appropriate educational information about sex trafficking through an awareness campaign. This campaign should target the general public as well as specific focus groups, such as tourist groups or health professionals, and should provide the definition of human trafficking; the process by which traffickers ensnare their victims; the magnitude and location of trafficked women in Nevada; suspicious activities that indicate trafficking; and the community's responsibility to respond to potential incidents of trafficking by contacting law enforcement or by calling the national hotline. Cases of trafficking will continue undetected without a coordinated system that teaches the community to recognize and respond to suspicious activity.

#### D. *Enforce Current Laws Against Sex Buyers*

Another step that Nevada needs to take to address the problem of sex trafficking is to target the demand. While Nevada law threatens sex buyers with a misdemeanor or a five to eight hour day in "john school,"<sup>263</sup> law enforcement has not focused much on the demand for commercial sex.<sup>264</sup> For example, while almost 1,500 juveniles were arrested for soliciting prostitution between 1994 and 2007, only approximately 10 buyers were arrested for engaging in prostitution with a minor between 2000 and 2007.<sup>265</sup> Laws that criminalize the purchase of sex outside of legal brothels but do not enforce detection and arrest do not have a deterrent effect on buyers.<sup>266</sup> Failure to target the demand for commercial sex means the supply of sex trafficking victims will continue.<sup>267</sup>

Nevada and other state courts have supported the message that prostitutes merit more severe punishment than men who buy sex. For example, in *Salais-cooper v. Eighth Judicial District Court*, the Supreme Court of Nevada upheld

<sup>262</sup> Tom Ragan, *Drawing the Line on Sex Trafficking*, LAS VEGAS REV. J., May 26, 2013, at 1A, available at <http://www.reviewjournal.com/news/las-vegas/nevada-movement-draws-line-human-trafficking>.

<sup>263</sup> See Abigail Goldman, 'John School' Teaches Men the Uglier Facts of Life: Vegas Police Hope Horrors of Prostitution Will Scare Them Off, LAS VEGAS SUN, Jan. 7, 2008, at A1, available at <http://www.lasvegassun.com/news/2008/jan/06/john-school-teaches-menthe-uglier-facts-life>. See also *Prostitution Prevention Class*, CITY LAS VEGAS, <http://www.lasvegasnevada.gov/Find/21345.htm> (last visited Apr. 3, 2014).

<sup>264</sup> For a critique of Nevada's laws addressing sex buyers of minors in prostitution, see *Nevada State Facts*, PROTECTED INNOCENCE INITIATIVE (2011), <http://www.leg.state.nv.us/Interim/76th2011/Exhibits/ChildWelfare/E011812Q.pdf> (giving Nevada's trafficking laws a grade "F").

<sup>265</sup> See KENNEDY & PUCCI, *supra* note 23, at 22. The difficulty in catching sex buyers in the act of prostitution contributes to the disparity of arrests between prostitutes and buyers. *Id.* at 24.

<sup>266</sup> U.S. AGENCY FOR INT'L DEV., TACKLING THE DEMAND THAT FOSTERS HUMAN TRAFFICKING: FINAL REPORT 19 (2011), available at [http://kdid.org/sites/socialtransitions/files/resource/files/Tackling\\_the\\_Demand-Final\\_8-29-11.pdf](http://kdid.org/sites/socialtransitions/files/resource/files/Tackling_the_Demand-Final_8-29-11.pdf).

<sup>267</sup> Lee & Persson, *supra* note 30.

the District Attorney's policy to offer plea agreements to sex buyers who agreed to attend a diversion program, but not to offer plea agreements to prostitutes.<sup>268</sup> The court reasoned that a one-day educational program would effectively deter buyers but not prostitutes.<sup>269</sup> This reasoning is not sound, as the men who buy sex agree that an educational program is the least effective deterrent to buying sex in the future.<sup>270</sup>

Likewise, in *People v. Superior Court of Alameda County*, the Supreme Court of California held it was permissible to target prostitutes without also targeting buyers.<sup>271</sup> The court explained that prostitute women have more sexual contacts than sex buyers, and thus are a greater source for the spread of venereal disease.<sup>272</sup> This explanation reflects the belief that prostitutes, rather than sex buyers, are fully responsible for infection. Moreover, because prostitutes can service five or more men a night, the court believed the arrest of a prostitute would be more likely to deter prostitution than the arrest of a sex buyer.<sup>273</sup> The dissent disagreed, noting that the legislature never intended to distinguish between buyers and sellers of sex, and other jurisdictions targeting buyers saw a more drastic reduction in prostitution.<sup>274</sup> Yet the social stigma of prostitution continuously subjects them to culpability while sex buyers are let off the hook.<sup>275</sup> In reality, this penalizes sex trafficking victims without getting at the root of the problem: the demand for commercial sex.

Though prostitution is illegal, the sex industry in Las Vegas is as visible as ever. Naked women on billboards and in strip clubs,<sup>276</sup> over one hundred yellow pages advertising sexual services under the guise of "entertainment services,"<sup>277</sup> and the availability of commercial sex brothels one hour from Las

<sup>268</sup> *Salaiscooper v. Eighth Judicial Dist. Court*, 34 P.3d. 509, 512 (Nev. 2001).

<sup>269</sup> *Id.* at 517.

<sup>270</sup> FARLEY ET AL., *supra* note 33, at 37 tbl.17; U.S. AGENCY FOR INT'L DEV., *supra* note 266, at 15 tbl.2 (educational programs as a form of intervention were the least effective deterrent for sex buyers, preceded by monetary fine, an impounded vehicle, a suspended driver's license, a picture published in the newspaper, sex offender registration, and jail).

<sup>271</sup> *People v. Superior Court of Alameda Cnty.*, 562 P.2d 1315, 1317 (Cal. 1977).

<sup>272</sup> *Id.* at 1323.

<sup>273</sup> *Id.* at 1321.

<sup>274</sup> *Id.* at 1323–25 (Tobriner, J., dissenting).

<sup>275</sup> Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 CARDOZO WOMEN'S L.J. 133, 134 (1993). The social stigma of prostitutes implies that the woman alone is viewed as responsible for prostitution, not her pimp or customer, or society as a whole. See Elizabeth Dinan, *ACLU Supports Decriminalizing Prostitution*, SEACOASTONLINE (Oct. 28, 2012, 2:00 AM), [www.seacoastonline.com/articles/20121028-NEWS-210280349](http://www.seacoastonline.com/articles/20121028-NEWS-210280349) (ACLU attorney Barbara Keshen explained "the laws represent a direct form of discrimination against women"). A legal system that forgives the buyers who contribute to harming prostitutes is not unusual. In 1995 in Canada, one prostitute mother was beaten to death by two male buyers and left in a ditch. In the trial for these two buyers, the judge instructed the jury to keep in mind that the woman was "indeed a prostitute" and that the young men were very intoxicated. BROCK, *supra* note 86, at 140.

<sup>276</sup> Tao Nightclub's billboard promotes a naked woman with Asian calligraphy running vertically down her back with the motto "Always a happy ending." See this billboard and a few others at *Advertising in Las Vegas: Anything Goes*, UNLOCKLASVEGAS.COM, <http://unlocklasvegas.wordpress.com/2010/08/10/> (last visited Apr. 3, 2014).

<sup>277</sup> HUGHES, *supra* note 31, at 21 ("In Las Vegas, there are 120 pages of advertisements for sexual services under the heading of "entertainment services" in the yellow pages phone

Vegas<sup>278</sup> all reflect the city's desire for tourists to enjoy the glamour and, well, sex that come along with "Sin City." To take those same tourists and threaten them with a misdemeanor or sex offender registration is an unlikely move for law enforcement. Thus, buyers will not face consequences unless the public's attitude toward sex buyers and sex trafficking victims changes<sup>279</sup>—and this is only possible with increased education and awareness in the community and criminal justice system, as discussed above.

#### E. Conduct More Research

More research should be done within Nevada's legal brothel system to investigate the existence of outside pimps that control women working inside the brothels. Research on the percentage of brothel prostitutes with pimps will assist the state in satisfactorily assessing the effect of its legalization policy on sex trafficking. If Nevada continues to legalize brothels, measures must be in place to address the problem of pimping and provide resources for brothel workers.

Finally, the need for a federal, state, and local uniform system of data collection is critical. Data should be collected on the number of sex trafficking victims in Nevada, detailing where those victims come from and how they entered the sex industry. More information is also needed on the men who form the demand for commercial sex to evaluate the best legal and community response, whether that is increased penalties or more effective awareness programs. A consistent and uniform methodology will generate reliable data on sex trafficking and the best measures to combat it.

### CONCLUSION

Sex trafficking is flourishing globally, and Nevadan communities have not gone unscathed. The victims of this crime suffer severe physical, psychological, and emotional abuse; adults and even children are lured into the trade by false promises of a better life or by a pimp's manipulative charm. Meanwhile, the traffickers who force them into sex and the men who buy their bodies stay almost invisible to the criminal justice system. This invisibility is not removed once prostitution is legalized. A closer analysis of a legal brothel system reveals that legalization does not eradicate sex trafficking and can even contribute to it.

But Nevada has a dual regime—legalization *and* criminalization. Nevada's system of criminalization outside of legal brothels still does not provide adequate protection for sex trafficking victims. The law treats victims as

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book. (In contrast, fifteen years ago in 1989, there were 30 pages of advertisements for 'escort services.')).

<sup>278</sup> Pahrump, Nevada, is one hour from Las Vegas and is home to two brothels, Sheri's Ranch and The Chicken Ranch. *Las Vegas, NV to Pahrump, NV*, GOOGLE MAPS, [https://maps.google.com/maps?client=safari&q=Las+Vegas+to+Pahrump&oe=UTF-8&ie=UTF-8&ei=UIH1UoD6EImEygHn7oGIAw&ved=0CAkQ\\_AUoAQ](https://maps.google.com/maps?client=safari&q=Las+Vegas+to+Pahrump&oe=UTF-8&ie=UTF-8&ei=UIH1UoD6EImEygHn7oGIAw&ved=0CAkQ_AUoAQ) (last visited Apr. 3, 2014). See also Ellen Alperstein, *What Happens in Pahrump*, LA OBSERVED (Sept. 20, 2012, 4:43 PM), [http://www.laobserved.com/intell/2012/09/what\\_happens\\_in\\_pahrump.php](http://www.laobserved.com/intell/2012/09/what_happens_in_pahrump.php).

<sup>279</sup> See KENNEDY & PUCCI, *supra* note 23, at 25.

criminals while failing to sufficiently penalize sex buyers. Momentum and community awareness is increasing, but more must be done.

First, the law should recognize adults and children forced into prostitution as victims, not as criminals. Social and mental health services should be mandatorily provided to these victims, and service providers should be trained on the unique needs of sex trafficking victims. Next, comprehensive awareness campaigns should be promoted to teach the public about issues of sex trafficking and how to best respond. Lastly, the detection and arrest of sex buyers must be enforced.

These changes can truly make a difference. Lauren, a former teenage victim of sex trafficking, was sold for sex by her pimp in the Las Vegas valley.<sup>280</sup> She felt treated like "a human ATM machine" and became pregnant by her pimp at age seventeen. With the help of her youth advocate, police officers, social workers, and nonprofits, Lauren is one of the few victims who escaped her pimp and received holistic treatment. She went on to obtain her GED and hopes to one day become a lawyer who can prosecute human trafficking cases.<sup>281</sup> Lauren's story is only one example of why the changes advocated in this Note are pressing and important. The victims of sex trafficking deserve to live a life free from fear and coercion. They deserve Nevada's best response.

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<sup>280</sup> Coolican, *supra* note 5.

<sup>281</sup> *Id.*