

Sex Trafficking and Prostitution

AN OVERVIEW OF FOUR LEGAL RESPONSE MODELS

Sex trafficking has gained awareness and recognition as a human rights violation. It is commonly accepted that those who buy and sell trafficked individuals are criminals and those who are trafficked are victims, not criminals. While sex trafficking is closely linked to prostitution, often overlapping, there is less consensus on how governments should respond to prostitution that involves adults. Of the various types of responses and laws that address prostitution, four primary legal response models emerge:

- **Criminalization**
- **Partial Decriminalization**
- **Full Decriminalization**
- **Legalization**

The purpose of this handout is to provide a broad overview of these responses to prostitution, including terminology, rationale, and issues to consider with each response. It is not a complete analysis of all the issues. It provides a starting point to build our knowledge and facilitate discussions so that Minnesota can move forward in creating a response that continues to empower and protect victims, hold offenders accountable, and prevent ongoing harms against individuals and our communities.

THE FOUR MODELS

CRIMINALIZATION

Criminalization of all aspects of prostitution is by far the most common legislative approach. States vary on the degree of punishment for each individual involved and characteristics of the crime, but technically all participants are legally culpable for their actions.

PARTIAL DECRIMINALIZATION

Commonly known as the Nordic Model, partial decriminalization identifies prostituted individuals as victims and protects them from legal penalties. Buying or facilitating the sale of sexual services remain criminalized, often with increased penalties.

FULL DECRIMINALIZATION

Full decriminalization removes all laws prohibiting and regulating prostitution including those against facilitating and buying. Other laws, including those against sexual trafficking, child exploitation, and public indecency still apply.

LEGALIZATION

Legalization differs from decriminalization in that prostitution is legal but regulated and controlled by the government. These controls may include licensing, zoning, or mandatory health checks.

THE NORDIC MODEL

The Nordic Model refers to the 1999 Swedish legislative change that decriminalizes the sale of sex by prostituted individuals while increasing the penalties for other parties. Sweden, when making this change, identified the goal of abolishing prostitution by eliminating the demand for commercially exchanged sex. Since then a number of other Scandinavian states have followed suit.

The Nordic Model is based on a recognition that prostitution is inherently harmful and therefore, a human rights abuse. Furthermore, it is essential to note that the Model relies heavily on the presence of a socio-economic system that prioritizes gender equality, aspires to economic equity, and recognizes the government's responsibility to provide comprehensive services.

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IMPORTANT TERMINOLOGY

SEX TRAFFICKING

Sex trafficking involves the sale of humans for sex. In Minnesota, sex trafficking occurs when one person profits off the commercial sexual exploitation of another. Minnesota's law is very different than federal law and laws in other states, because it does not require proof of force, fraud, or coercion for victims of any age.

Specifically, Minnesota's law defines sex trafficking as "receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual or receiving profit or anything of value, knowing or having reason to know it is derived from sex trafficking." Minn.Stat. 609.321, subd.7a.

If a person being prostituted has a pimp or third party who receives profits from her prostitution, that is sex trafficking in Minnesota, regardless of whether she is 12 or 21.

PROSTITUTION

In general terms, prostitution occurs when one individual pays to have sex with another individual. Minnesota law defines prostitution as "hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact, or being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or contact." Minn. Stat. 609.321, subd. 9.

Prostitution can be understood both in relation to and separate from trafficking. Behavior that qualifies as prostitution may or may not also qualify as a trafficking. Under Minnesota law, prostitution is trafficking any time a third party is involved in or benefits from the sexual exchange.

Even if there is not a third party, the question of whether someone engages in prostitution "willingly" is at the core of much of this discussion. Poverty, race, lack of resources, and violence consistently play a coercive role in prostitution.

MINNESOTA SAFE HARBOR LAW

The Minnesota Safe Harbor law clarifies the legal status of minors engaged in the commercial sex trade as crime victims and eliminates criminal liability for prostituted minors. In Minnesota, commercially sexually exploited minors are protected from criminal charges. Youth are also eligible for comprehensive services throughout the state. The No Wrong Door Model to implement Safe Harbors is a comprehensive, multidisciplinary, and multi-state agency approach to responding to commercially sexually exploited minors.

INDIVIDUALS INVOLVED IN PROSTITUTION

For purposes of this document, we are using the following terms, for clarity and neutrality. However, we recognize that prostitution and trafficking are not neutral. By using these terms we do not mean to minimize the variance of experiences and trauma.

- **PROSTITUTED INDIVIDUAL:** person who exchanges sexual services for anything of value (may or may not have a facilitator involved)
- **TRAFFICKING VICTIM:** person who exchanges sexual services for anything of value with a facilitator involved
- **FACILITATOR:** person who is a pimp, trafficker, brothel owner, madam, promoter of prostitution
- **BUYER:** person who provides anything of value in exchange for sexual services

** For legal definitions please see: Minn.Stat. 609.321.*

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	Example Locations	Individuals Involved*	Legal Culpability	Rationale	Complicating/ Mitigating Factors
CRIMINALIZATION	All of the US, except certain counties in Nevada	Facilitators Traffickers Buyers Prostituted individuals	Laws, punishments and regulations vary. Generally, all actions and involved parties are criminalized. Prostituted individuals are often the most likely to interact with law enforcement and be charged.	Through prohibition on all behaviors involved in the sale of sex, states seek to eliminate the existence of prostitution.	Although all parties are technically breaking the law and can be prosecuted, legal consequences disproportionately fall on the prostituted individual, who is often the most vulnerable and the least likely to be exercising individual agency. This can create distrust and additional barriers to finding help and resources. Failure to impart adequate consequences to buyers and facilitators allows behavior to continue with impunity.
PARTIAL DECRIMINALIZATION	Sweden, Norway, Iceland	Facilitators Traffickers	Culpable for “procurement” or trafficking, subject to punishment.	End prostitution and trafficking by eliminating the demand that drives the market. This model is grounded in the understanding that prostitution is harmful, a form of violence, and a barrier to gender equality. Criminalizing facilitators and buyers emphasizes the need to hold offenders accountable for the harm caused. Decriminalizing prostituted individuals ensures that the burden of penalties and government intervention does not fall on prostituted individuals.	To have a positive impact on prostituted individuals, this model involves a systemic shift in attitudes and broader policy, including providing resources for medical, mental health, housing, and rehabilitation services, as well as addressing root causes. As such, examples from countries that use this model successfully are context specific and cannot be cut and pasted into other social and legal contexts. Loss of income must be acknowledged.
		Buyers	Culpable, subject to punishment.		
		Prostituted individuals	Not culpable; Protected as a victim.		
FULL DECRIMINALIZATION	Parts of Australia, New Zealand	Facilitators	Possible regulations and limitations.	Allows for free access to purchase and sell sex through voluntary prostitution. No “prostitution-specific” regulations imposed by the state. With no penalties and regulations, “sex workers” are better protected because legal operations do not need to operate underground. Prostituted individuals can organize and seek protections. This model will not likely recognize or prioritize an innate harm in prostitution, and anticipates involving prostituted individuals to help identify trafficking situations.	Without robust protections and institutional buy-in, trafficking could flourish under this system. Those seeking to exit prostitution must have clear, effective routes. It is unclear what this model does to address root causes or provide resources for medical, mental health, housing, and rehabilitation services. The model assumes a change in attitude and behavior by system actors and relies on system actors to determine when “voluntary” becomes exploitative while limiting access to investigate. Imposes government responsibility on prostituted individuals. Normalizes commercial sexual activity.
		Traffickers	Trafficking and forced prostitution remains illegal.		
		Buyers	Legal;		
		Prostituted individuals	No prostitution-specific regulations.		
LEGALIZATION	Austria, Brazil, Germany, some counties in Nevada	Facilitators	Legal but regulated. Regulations vary significantly.	Allows for free access to purchase and sell sex through voluntary prostitution, but attempts to protect the “sex worker” and limit illegal operations through “prostitution-specific” regulations.	The state is able to monitor and regulate sexual exchange, but this can lead to questions of the state profiting and taking decision-making power away from prostituted individuals. The burden of regulations often falls on the prostituted individuals. It is unclear what this model does to address root causes or provide resources for medical, mental health, housing, and rehabilitation services. Normalizes commercial sexual activity.
		Traffickers	Trafficking and forced prostitution remains illegal.		
		Buyers Prostituted individuals	Legal but with prostitution specific regulations.		

* This chart refers to prostitution involving adults.

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DESIGNING A RESPONSE MODEL

There are many important things to consider when designing a response model. One of the first steps, and a key distinction amongst the four models, is recognizing prostitution as innately harmful and, therefore, a human rights abuse. When governments fail to recognize prostitution as harmful, the human rights elements of victim safety and offender accountability are lost. When governments do recognize the harms in prostitution, it triggers the need for a victim-centered human rights based response. Furthermore, in the design of any response, it is imperative that unintended consequences are considered.

A HUMAN RIGHTS APPROACH

A human rights approach to any issue involves ensuring methods of response both protect victims and hold offenders accountable. Applying this approach creates the core principles to address trafficking:

- **Prosecution** of traffickers;
- **Punishment** with appropriate sanctions;
- **Protection** of trafficked persons from prosecution and access to legal counsel, witness protection, reparation, rehabilitation, and other protections.

ENSURE A VICTIM-CENTERED RESPONSE

“This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice.”

(Office of Justice Programs, Human Trafficking Task Force e-Guide, ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/)

CONSIDER UNINTENDED CONSEQUENCES

All policies have unintended consequences. While it is impossible to anticipate the full impact of a change in policy, it is essential to consider policy interactions, social context, and the variances in power and privilege of the target population(s). Without these considerations, a policy could negatively impact marginalized populations or create additional problems.

Any policy intervention should consider unintended consequences and prioritize victim centered interventions.

Entrance to and exit from commercial sex work occurs in a context of racial, gender, and economic oppression, unreliable access to health care and child care, limited affordable housing, and a general lack of resources, options, and opportunities, combined with often insurmountable barriers. Policy approaches must acknowledge these realities, including the loss of income as well as the real risk of violence and exploitation by buyers, facilitators and institutional authorities. Prostitution and trafficking do not occur in a vacuum, therefore, policy strategies must be comprehensive, culturally and contextually relevant, and multi-systemic.

- Think about equity and equality
- Social problems do not happen in a vacuum
- You can't punish a poverty fueled problem away
- There is no such thing as a quick fix