
**A Modern Look at the Oldest Profession: The
Inconsistency of Prostitution, Sex Trafficking, and the
Internet**

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I. INTRODUCTION

At fifteen-years-old, Alyssa Beck became a victim of sex trafficking.¹ Alyssa grew up in a middle class home but “was searching for something,” regularly got into trouble, and was eventually sent to a juvenile treatment center where she met another young girl who convinced her to run away.²

The girl introduced Alyssa to twenty-eight-year-old Ian Sean Gordon. Within days, Gordon began to beat and rape Alyssa.³ Gordon advertised around town saying that he “ha[d] this girl here, you can come do whatever you want to her, just for twenty dollars.”⁴ Alyssa endured dozens of assaults by various men over the course of the next two weeks before she could run

¹ Michelle Miller, *Inside the World of Child Sex Trafficking and the High-Tech Approach to Saving Victims*, CBS News (Mar. 9, 2019), <https://www.cbsnews.com/news/48-hours-live-to-tell-inside-the-world-of-child-sex-trafficking-and-ashton-kutchers-high-tech-approach-to-saving-victims/>.

² *Id.*

³ *Id.*

⁴ Miller, *supra* note 1.

away.⁵ Seven people, including Gordon, were convicted for their abuses against Alyssa.⁶

Comparatively, Chelsea Lane advocates that as a prostitute she is “less isolated, better paid, in contact with ‘wonderful’ people, and ‘getting laid on the regular.’”⁷ Chelsea entered the sex industry voluntarily after her self-described “zero-trauma childhood,” and describes how her “self-esteem is soaring.”⁸ Chelsea says that while working as a prostitute, she has had two clients who “made [her] feel dirty, and that’s because it was obvious they didn’t see [her] as a person. But that was two out of hundreds.”⁹ She also compares these experiences to her personal life and has said that she “can think of personal partners who treated [her] like that.”¹⁰

The differences between Alyssa and Chelsea’s stories are quite apparent when told in a quick and condensed narrative format. If either of these women were caught soliciting in the United States,¹¹ however, they could both be criminally charged with solicitation.¹² Stories like these leave a seemingly hopeless impasse for progressive communities: how should countries construct criminal justice systems to encourage freedom of expression and speech for individuals who choose to enter the sex industry, like Chelsea Lane, while protecting people who have been forced to enter the industry against their will, like Alyssa Beck?

This issue becomes even more complex after considering how vastly differently prostitution is viewed in countries around the world.¹³ Some

⁵ *Id.*

⁶ *Id.*; *Gordon v. United States*, Nos. 3:12-cv-1265-J-34JRK, 3:10-cr-130-J-34JRK, 2015 WL 413102, at *14 (M.D. Fla. 2015) (upholding Gordon’s life sentence).

⁷ Mac McClland, *Is Prostitution Just Another Job?* CUT, <https://www.thecut.com/2016/03/sex-workers-legalization-c-v-r.html> (last visited Mar. 12, 2020).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ten of the seventeen counties in Nevada have legalized prostitution. Jenny Heineman et al., *Sex Industry and Sex Workers In Nevada*, UNLV CTR. FOR DEMOCRATIC CULTURE (2012). These ten counties are the only counties in the United States that have legalized prostitution. *Id.*

¹² As a minor, Alyssa may not have been charged with solicitation. Some states have adopted “safe harbor” laws, or laws that “are meant to ensure that (1) minors are not criminalized for prostitution and that (2) victim services are provided to all sexually exploited youth.” Sonia Lunn, *Safe Harbor: Does Your State Arrest Minors for Prostitution*, HUM. TRAFFICKING SEARCH, <http://humantraffickingsearch.org/safe-harbor-does-your-state-arrest-minors-for-prostitution/> (last visited Mar. 11, 2020). In states that have not enacted safe harbor laws, “[S]tatutory rape laws [which] criminalize adults for having sex with underage minors . . . do not always apply to adults who have purchased sex [from minors].” *Id.*

¹³ *100 Countries and Their Prostitution Policies*, PROCON (Apr. 23, 2018 10:21:03 AM), <https://prostitution.procon.org/view.resource.php?resourceID=000772>.

countries criminalize prostitution and have a prohibitory view on any kind of sex work.¹⁴ Other countries view prostitution as a choice and have decriminalized or legalized prostitution as an industry.¹⁵ Others have developed quasi-decriminalization systems that take into account the exploitative tendencies of prostitution while focusing on diminishing the demand for the industry by enacting serious punishments against pimps¹⁶ and Johns.¹⁷

The complexity deepens when considering the scale of prostitution or sex work performed online through the Internet, which is an international system.¹⁸ How can countries with vastly different prostitution models support their model of prostitution while maintaining a distinction between prostitution and sex trafficking within the international system of the Internet?

This Note considers the distinctions between prostitution and sex trafficking. Then, this Note compares how the United States, Canada, and New Zealand—three comparatively similar countries with vastly different prostitution models—address sex trafficking and prostitution. Finally, this Note suggests how the current debate about which system of prostitution should be adopted might be informed by the analysis of how different prostitution models address the similarities and differences between sex trafficking and prostitution.

A. Distinctions Between Prostitution and Sex Trafficking

Prostitution¹⁹ is “[t]he practice or an instance of engaging in sexual activity for money or its equivalent.”²⁰ Comparatively, sex trafficking occurs when “a

¹⁴ *Infra* Section III(C) (describing U.S. prostitution laws).

¹⁵ *Infra* Section IV(B) (describing New Zealand’s prostitution laws).

¹⁶ “Pimps” refers to individuals who sell sex and is often ubiquitous with pandering or procuring. Natalia Benitez et al., *Prostitution & Sex Work*, 19 GEO. J. GENDER & L. 331, 340-41 (2018). (“More specifically, pandering has been defined as ‘intentionally maintaining a place where prostitution is habitually practiced,’ ‘[receiving] the earnings of a prostitute’ . . . or ‘transporting a person from one place to another for the purpose of promoting the practice of prostitution.’” *Id.* (quoting 63C AM. JUR. 2D Prostitution § 17 (2018)).

¹⁷ “Johns” refers to individuals who purchase sex. Melanie Franco, *Human Sex Trafficking: An International Problem with an International Solution Requiring National Implementation*, 27 FLA. J. INT’L L. 421, 426 (2015); *see also infra* Section IV(A) (describing Canada’s prostitution laws).

¹⁸ *See infra* Section II(C) (describing, generally, the nexus between modern-day prostitution and the Internet).

¹⁹ There is an important distinction between “sex work” and “prostitution.” Sex work includes a myriad of sexual acts that may not include sexual intercourse (e.g., webcam models, pornography, exotic dancers). Angela Jones, *Sex Work in a Digital Era*, 9(7) SOC. COMPASS (2015). With the expansion of the Internet, sex work has increased into new areas like webcam shows. *Id.* For the purpose of brevity, this Note will only discuss prostitution and not other types of sex work. Any reference to the sex industry, for the purposes of this Note, is confined to just prostitution.

²⁰ BLACK’S L. DICTIONARY 576 (3rd Pocket ed. 2006).

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.”²¹ In other words, sex trafficking is “prostitution” when the individual engaging in the sex act is a minor or when the individual is forced into the industry.²²

Sex trafficking is considered a subset of human trafficking.²³ A 2016 study estimated that there were 40.3 million victims of human trafficking globally, which the study divided into forced labor and forced marriage.²⁴ The study divided forced labor into (1) state-imposed forced labor; (2) forced labor exploitation; and (3) forced sexual exploitation of adults and commercial sexual exploitation of children.²⁵ It estimated that there are 4.8 million global victims of the third category—sex trafficking—and that the victims are predominantly female.²⁶

Despite these statistics, prosecutions against perpetrators of human trafficking are alarmingly low, with just 14,897 prosecutions and only 9,071 convictions globally in 2016.²⁷ These prosecutions included all victims of

²¹ 22 USC § 7102 (2000).

²² See *id.* The concept of “sex trafficking” is often debated regarding whether prostitution is always a form of exploitation and cannot ever, or very rarely can ever be a choice, or whether individuals can and often do make the choice to engage in prostitution. Some advocate that all prostitution is sex trafficking, and others believe prostitution is only sex trafficking in some instances and should predominately be viewed as a means of legitimate work. Compare Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 13 (1993) (advocating that “[w]omen in prostitution are denied every imaginable civil right in every imaginable and unimaginable way, such that it makes sense to understand prostitution as consisting in the denial of women’s humanity. . . .” (footnote omitted)), with Elle Stanger, *I’m a Sex Worker Who is Sick of Female Misogyny*, HUFFINGTON POST (Apr. 12, 2017 12:19 PM), https://www.huffingtonpost.com/entry/im-a-sex-worker-who-is-sick-of-female-misogyny_us_58ee4bb3e4b0cb574bb4bc5e (proposing that prostitution is often a choice). This Note does not take a position regarding this debate, but instead will discuss how this distinction affects prostitution models, sex trafficking, and Internet regulation.

²³ INT’L LAB. ORG., GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE 39 (Sept. 19, 2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf [hereinafter INT’L LAB. ORG. REPORT 2016].

²⁴ *Id.* at 15. It is extremely difficult to quantify how many individuals are victims of human trafficking. Frequently, victims are unwilling to “give up” their pimp or abuser out of fear of retribution. *Id.*

²⁵ *Id.* at 17.

²⁶ *Id.* Men and boys can also be victims of sex trafficking and have often been overlooked as a group facing exploitation. Reports indicate that about “2 percent of victims of commercial sex exploitation” are male. Ashley Greve, *Human Trafficking: What About the Men and Boys?*, HUM. TRAFFICKING CTR. (Sept. 18, 2014), <http://humantraffickingcenter.org/men-boys/>. For the purpose of brevity, this Note will only refer to victims as “women.” This Note does not diminish the injustice thousands of men and boys face by being trafficked around the world and encourages future study about how to combat this injustice. *Id.*

²⁷ U.S. DEPT’ OF STATE, TRAFFICKING IN PERSONS REPORT 34 (June 2017) <https://www.state.gov/wp-content/uploads/2019/02/271339.pdf>.

human trafficking and were not limited to victims of sex trafficking.²⁸ This means that of the 4.8 million victims of sex trafficking, a miniscule percentage saw their persecutors prosecuted, and an even smaller percentage saw their persecutors face a conviction.²⁹

There is no specific profile for a victim of sex trafficking.³⁰ There are some characteristics, however, that enhance susceptibility, making an individual more likely to become a victim of sex trafficking in the United States.³¹ Runaway and homeless youths, like Alyssa,³² are particularly susceptible because they do not have a strong supportive network and are often in unfamiliar environments.³³ Further, vulnerable populations, such as foreign nationals and survivors of prior trauma and violence like domestic violence or sexual assault, are often targeted by traffickers.³⁴

Matthew Deiacco, a man convicted of sex trafficking, assault, and unlawful confinement and kidnapping, described how “pimps lure women into the sex trade.”³⁵ Many pimps become romantically involved with someone and then force them to engage in prostitution services.³⁶ Deiacco describes how most victims, “they’re broken. It’s not hard . . . [y]ou get in there, you find the crack; like some are drugs, some are just, they need to hear ‘I love you.’” He adds that this is insincere, however, because “there is no love in the sex trade.”³⁷

The next stage Deiacco describes is the “sale” stage where “the pimp starts to manipulate the girl into thinking prostitution is an easy way for them to

²⁸ *Id.*

²⁹ *See id.*

³⁰ The blockbuster movie *Pretty Woman* has undoubtedly painted a particular picture of prostitution. Some former prostitutes claim the movie is misleading as “there is nothing pretty about prostitution;” others say that the movie is more about “class climbing than prostitution.” Charlotte Alter, *Here’s What Former Sex Workers Think of Pretty Woman*, TIME (Mar. 24, 2015), <http://time.com/3756689/pretty-woman-prostitute-julia-roberts-richard-gere/>.

³¹ *The Victims*, POLARIS, <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims> (last visited Mar. 11, 2020).

³² Miller, *supra* note 1.

³³ *The Victims*, *supra* note 31.

³⁴ *Id.*

³⁵ Olivia Carville, *Accused Pimp Describes Ways Women Get Lured Into Human Sex Trafficking*, STAR (Dec. 18, 2015), <https://www.thestar.com/news/crime/2015/12/18/accused-pimp-describes-ways-women-get-lured-into-human-sex-trafficking.html>. The narrative that Deiacco describes is common. *See supra* Section I(A) (describing how Alyssa’s abuse began when a “boyfriend” called around town letting people know that he had someone available that they could do whatever they wanted with for twenty dollars).

³⁶ Carville, *supra* note 35.

³⁷ *Id.*

make fast money so they can start to build a future together.”³⁸ He describes how pimps will tell the girls things like “[s]ee, I’m putting my 50 in, you have to do your 50. So there’s another way, you can have sex with guys, but don’t worry, I’m going to love you . . . at the end of the night you’re home with me.”³⁹ He notes that the victims would do it, because “you just sold her a dream.”⁴⁰ Deiacco describes how commonly pimps will “cut [the victims] off from the world so that all they have is that person to rely on . . . so they’re dependent on [the pimp].”⁴¹ Sometimes that includes physical or emotional abuse, taking phones or any outside communication away from the victim, or getting the victim hooked on drugs.⁴²

In 2010, the Urban Institute Justice Policy Center was funded “to measure the size and structure of the underground commercial sex economy in eight major US cities.”⁴³ One finding of the study found that pimps became involved in the sex industry for many reasons including: “learned experiences of family members (32 percent), the impact of neighborhood environment and a perceived lack of legal employment alternatives (26 percent), pressure from a female acquaintance or significant other (25 percent), and mentorship by another individual in the underground sex economy (18 percent).”⁴⁴ The study found that the sex industry operated like many other organized crimes and was often found in “erotic Asian massage parlors, strip clubs and Latino brothels.”⁴⁵ The pimps interviewed believed that pimping was “less risky than other crimes.”⁴⁶

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Carville, *supra* note 35.

⁴¹ *Id.*

⁴² *Id.* Because Carville’s article was published before Deiacco’s criminal case was finalized, the State requested the “production of the videotape of the interview that Ms. Carville [the author of the article] conducted with Mr. Deiacco.” *Toronto Star v. The Queen*, 2017 ONSC 1190 (CanLII). The Court granted the Production Order and Deiacco pled guilty and was sentenced to serve eight years in jail. 2018 CanLII 8524 at para. 57.

⁴³ Meredith Dank et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, URB. INST. (Mar. 2014), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413047-Estimating-the-Size-and-Structure-of-the-Underground-Commercial-Sex-Economy-in-Eight-Major-US-Cities.PDF>, at 1. The focus of the study was only in the United States and did not differentiate between pimps of individuals who had entered the sex industry by choice and those who had been trafficked; however, the findings of the study shed light on general trends with pimping and gives a glimpse into a better understanding of the sex industry. *Id.*

⁴⁴ *Id.* at 282–83.

⁴⁵ *Id.* at 287.

⁴⁶ *Id.* at 285.

Sex trafficking operations are often highly organized.⁴⁷ They usually have a “bottom,” the most trusted victim, who will “collect the money from the other girls, discipline them, seduce unwitting youths into trafficking, and handle the day-to-day business for the trafficker.”⁴⁸ This hierarchy can mesh the barriers between victims and traffickers: often, individuals who begin as victims ultimately engage in behavior that leads to the trafficking of others.

B. Modern Day Prostitution: Prostitution on the Internet

Despite the idea that prostitution is synonymous with “street-walking,” modern prostitution is increasingly common on the Internet.⁴⁹ The results of studies have been mixed about whether this shift has provided more safety for prostitutes.⁵⁰ A 2018 study found that sex workers⁵¹ were able to “build their businesses independent of third parties . . . have more control over their client interactions and work patterns mean[ing] that digital technologies have somewhat improved the ability to professionalise in sex work.”⁵² Also, risks of violence from non-customers and bystanders, as well as arrest rates of prostitutes, decreased on the Internet.⁵³

Further, prostitutes who advertise and arrange for meetups online often have greater control over their working conditions as opposed to having to choose a close location or get into the car with a “John” that they do not know. Individuals who engage in prostitution services on the Internet can more effectively “screen” potential clients before agreeing to an encounter.⁵⁴ Prostitutes regularly use forums such as a “‘deadbeat registry,’ [which] allows them to report men who are abusive or fail to pay.”⁵⁵ Prostitutes can use “apps

⁴⁷ Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FBI L. ENFORCEMENT BULL., March 2011, at 1, 1–9 (2011).

⁴⁸ *Id.* at 3.

⁴⁹ *More Bang for Your Buck*, ECONOMIST (Aug. 7, 2014), <https://www.economist.com/briefing/2014/08/07/more-bang-for-your-buck>.

⁵⁰ Compare Scott Cunningham & Todd D. Kendall, *Prostitution 2.0: The Changing Face of Sex Work*, 69(3) J. URBAN ECON. 273, 273–87 (May 2011) (finding that former outdoor sex workers who engaged in risky behavior “carr[ied] their risky behaviors with them into the indoor sector”), with Teela Sanders et al., *Beyond the Gaze: Summary Briefing on Internet Sex Work*, UNIV. OF LEICESTER 2 (2017), <https://www.beyond-the-gaze.com/wp-content/uploads/2018/01/BtGbriefingsummaryoverview.pdf> (finding that the Internet improved working practices for sex workers).

⁵¹ Recall that “sex workers” include individuals engaged in a myriad of sex-related work, not just prostitution. Nonetheless, the results of the study are helpful in this context.

⁵² Stewart Cunningham et al., *Behind the Screen: Commercial Sex, Digital Spaces and Working Online*, 53 TECH. IN SOC'Y 54, 47–54 (May 2018).

⁵³ *Id.*

⁵⁴ Sanders et al., *supra* note 50.

⁵⁵ *More Bang for Your Buck*, *supra* note 49.

such as Healthvana [which] make it easy for buyer and seller to share verified results in sexual-health tests.”⁵⁶

Notably, individuals engaged in online prostitution may encounter “new risks of harm including online harassment.”⁵⁷ Also, a 2011 study found that individuals who primarily solicit prostitution services online are not displacing the off-line street-based market; the prostitution market is simply growing.⁵⁸ Experts have noted this shift and growth will create new issues in regulation, pointing out that “[B]uyers and sellers of sex who strike deals online are better hidden and more mobile than those who work in brothels, or from clubs or bars.”⁵⁹ Any modern day conversation or analysis about prostitution clearly must have a cornerstone view of the role played by the Internet.

C. Internet Regulation Generally

As has been discussed, governments must balance how to address prostitution when individuals enter the industry willingly, while at the same time protecting individuals who are victims of sex trafficking. This issue becomes even more convoluted when trying to protect against victims trafficked on the Internet.⁶⁰

The Internet Corporation for Assigned Names and Numbers (“ICANN”) is a nonprofit organization that ultimately links the Internet by “managing some Internet infrastructure at a global level.”⁶¹ It does not “police the Internet. It does not control Internet content or stop spam.”⁶² The Internet is governed by soft law, or law that is not completely binding in nature.⁶³ Thus, the Internet—

⁵⁶ *Id.*

⁵⁷ Cunningham et al., *supra* note 52. For example, in November 2018, a scheme called the #ThotAudit went viral. The main objective of the scheme was to get women involved in the sex industry to pay their “fair share of taxes,” and encouraged people to report sex workers to the IRS for failure to pay. Emily Shugerman, *Men Behind #ThotAudit Have Nothing Better to Do Than Report Sex Workers to IRS*, DAILY BEAST (Nov. 27, 2018, 5:00 AM), <https://www.thedailybeast.com/men-behind-thotaudit-have-nothing-better-to-do-than-report-sex-workers-to-irs>. In reality, many “[s]ex workers do pay their taxes and they contribute to society.” *Id.*

⁵⁸ Cunningham & Kendall, *supra* note 50 (finding that a large displacement of sex workers online only came from workers in their 30s and 40s). The effect that online sex work played on more traditional forms of sex work found converse results in the Netherlands in a 2010 study which found that “in the decade to 2010 the number of licensed sex clubs in the Netherlands fell by more than half.” *More Bang for Your Buck*, *supra* note 49.

⁵⁹ *More Bang for Your Buck*, *supra* note 49.

⁶⁰ Hunt Allcott et al., *Trends in the Diffusion of Misinformation on Social Media* (Oct. 2018), <https://web.stanford.edu/~gentzkow/research/fake-news-trends.pdf>.

⁶¹ *What ICANN Does and Doesn't Do*, THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (May 2011), <https://www.icann.org/en/system/files/files/what-icann-does-22jun12-en.pdf>.

⁶² *Id.*

⁶³ *Soft Law Law & Legal Definition*, USLEGAL, <https://definitions.uslegal.com/s/soft-law> (last visited Mar. 31, 2020).

globally—has few restrictions in place; however, countries themselves have drastically different restrictions on Internet regulation.⁶⁴

There are several international treaties and agreements regarding supervision of the Internet,⁶⁵ including the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto which was passed in 2000.⁶⁶ Although this treaty did not explicitly provide protections for victims who are trafficked on the Internet, it sought to “promote cooperation to prevent and combat transnational organized crime more effectively.”⁶⁷ There have also been treaties that explicitly attempt to “prevent and combat sexual exploitation and sexual abuse of children” by “promot[ing] national and international co-operation against sexual exploitation and sexual abuse of children.”⁶⁸

Often, there is a tension regarding regulation on the Internet: should society place greater value in protecting against abhorrent crimes like sex trafficking, or more greatly value leaving the Internet open as a marketplace for freedom of expression, thought, and entrepreneurship?⁶⁹ Understanding this tension, within the context of the overarching tension of how to protect against sex trafficking when some individuals willingly enter into the sex industry, is important for understanding why countries have decided to regulate in the way that they have.

In the following sections, this Note will address how the United States, Canada, and New Zealand have regulated the Internet in light of protecting against sex trafficking while creating a system for those who enter into prostitution by choice. The fundamental similarities and differences in how the United States, Canada, and New Zealand address this issue make them ripe for comparison. Compared to other countries in the world, these three

⁶⁴ Compare Lisa-Maria Altenberger, *Likes for the Leader: North Korea’s Use of the Internet and Social Media* 6(4) ASIAN POLITICS & POLICY (Oct. 28, 2014) (noting North Korea’s notoriously oppressive Internet restrictions), with *Iceland, Freedom on the Net 2019*, FREEDOM HOUSE, <https://freedomhouse.org/country/iceland/freedom-net/2019> (last visited Mar. 31, 2020) (noting that “[t]here are no government-imposed restrictions on connectivity in Iceland.”). See generally *Freedom on the Net 2019* for a global review of how countries restrict its citizen’s Internet access.

⁶⁵ The Georgetown Law Library has compiled a list of such applicable international treaties in “the Internet, cybercrime, privacy and ecommerce.” *International and Foreign Cyberspace Law Research Guide*, GEO. L. LIB. (last updated Aug. 30, 2019 10:54 PM), <http://guides.ll.georgetown.edu/c.php?g=363530&p=4821478>.

⁶⁶ G.A. Res. 55/25, United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000).

⁶⁷ *Id.* art. 1.

⁶⁸ Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Oct. 25, 2007).

⁶⁹ See *supra* Section I. See also William Fisher, *Freedom of Expression on the Internet*, The Berkman Center for Internet & Society at Harvard Law School (June 14, 2001), <https://cyber.harvard.edu/ilaw/Speech/>.

countries have similar opportunities for women and men.⁷⁰ The 2018 United Nations Human Development Report ranked Canada twelfth, the United States thirteenth, and New Zealand sixteenth on the Gender Inequality Index.⁷¹ As will be discussed in greater depth below, the United States, Canada, and New Zealand all have put into place different legal systems addressing prostitution: criminalization, quasi-decriminalization, and decriminalization, respectively.⁷²

III. PROSTITUTION AND SEX TRAFFICKING IN THE UNITED STATES

A thirteen-year-old girl, M.A., snuck out of her house to attend a house party elsewhere.⁷³ One of M.A.'s friends went home, and one friend got into a car with several men who M.A. did not know. M.A. did not want to get into the car with the strange men, so a woman in the group offered to help get her home.

After her daughter had been missing for over 200 days, M.A.'s mother began searching the Internet. Her searches led her to Backpage.com, and the third link down was a sex advertisement offering her teenage daughter for sale. M.A.'s mother purchased her teenage daughter and brought her home. M.A. and her mother pursued legal action against her abusers. The woman who trafficked M.A. was criminally prosecuted and sentenced to serve five years in jail.⁷⁴ But M.A. and her mother were unable to pursue successful civil legal action against Backpage.com for hosting the advertisements because Section 230 of the Communications Decency Act blocks this action.⁷⁵ This issue led Congress to provide an exception to Section 230 of the Communications Decency Act, which will be discussed below.⁷⁶

A. *The Repercussions of the Communications Decency Act*

⁷⁰ The proposition that women have similar opportunities to men is not a minimization of the continuing struggles of women, especially women of color, in the United States, Canada, and New Zealand. United Nations Development Programme Human Development Reports, *Table 5: Gender Inequality Index* (2018) <http://hdr.undp.org/en/composite/GII>.

⁷¹ *Id.*

⁷² *Infra* Sections III, IV(A), IV(B).

⁷³ I AM JANE DOE (50 Eggs 2017). The documentary *I Am Jane Doe* details the story of three young teens sold for sexual services on Backpage.com. The documentary describes the obstacles that the minors and their mothers faced when they attempted to hold Backpage.com legally liable. M.A. is one of the teens from the documentary. Her story is told within the first few minutes of the documentary. *Id.*

⁷⁴ M.A. ex rel. P.K. v. Village Voice Media Holdings, 809 F.Supp.2d 1041, 1043 (E.D. Mo. 2011) (citing *United States v. McFarland*, No. 4:10cr0266 SNLJ (E.D. Mo. May 12, 2010)).

⁷⁵ *Id.* at 1057.

⁷⁶ *Infra* Section III(B).

Congress passed Section 230 of the Communications Decency Act (“CDA”) in 1996; it has been dubbed “the law that gave us the modern internet.”⁷⁷ This law was enacted, in part, as a response to the New York Supreme Court decision *Stratton Oakmont*,⁷⁸ which held that online service providers were liable for the speech of their users.⁷⁹ Congress believed that “[H]olding websites legally responsible for user-generated content would cripple the rapidly developing online world.”⁸⁰

Section 230(c)(1) of the CDA specifically immunized online service providers whose websites publish information and material provided by third-party users from liability for the material posted on their websites.⁸¹ Congress passed the CDA to address the fears in the wake of the *Stratton Oakmont* holding that service providers would either “severely restrict the number and type of messages posted,” or they would be disincentivized from “self-regulat[ion] [of] the dissemination of offensive material over their services” for fear of liability.⁸²

Courts found that as a result of the CDA, websites such as Backpage.com, which had become an infamous host source for sexual service advertisements,⁸³ could not be held liable for hosting content published by third-party users.⁸⁴

⁷⁷ Derek Khanna, *The Law that Gave Us the Modern Internet – and the Campaign to Kill It*, ATLANTIC (Sept. 12, 2013), <https://www.theatlantic.com/business/archive/2013/09/the-law-that-gave-us-the-modern-internet-and-the-campaign-to-kill-it/279588/>.

⁷⁸ *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. 1995).

⁷⁹ *Id.*

⁸⁰ *Communications Decency Act Section 230*, ACLU, <https://www.aclu.org/issues/free-speech/internet-speech/communications-decency-act-section-230> (last visited Mar. 31, 2020).

⁸¹ Allow States and Victims to Fight Online Sex Trafficking Act of 2017, 47 U.S.C. § 230 (2018).

⁸² *Zeran v. America Online*, 129 F.3d 327, 331 (4th Cir. 1997).

⁸³ In response to the negative backlash that Backpage.com faced, Craigslist.com took down the website’s “personal section.” Merrit Kennedy, *Craigslist Shuts Down Personals Section After Congress Passes Bill on Trafficking*, NPR (Mar. 23, 2018, 3:52 PM), <https://www.npr.org/sections/thetwo-way/2018/03/23/596460672/craigslist-shuts-down-personals-section-after-congress-passes-bill-on-trafficking>. Several other websites, including rentboy.com and myredbook.com that engaged in similar advertising of third-party sexual services were also shut down. Nate Raymond, *U.S. Indicts ex-Rentboy.com CEO on Prostitution Charge*, REUTERS (Jan. 27, 2016, 12:52 PM), <https://www.reuters.com/article/us-usa-crime-rentboy-idUSKCN0V52GW>; Eric Steuer, *The Rise and Fall of Redbook, The Site that Sex Workers Couldn’t Live Without*, WIRED (Feb. 24, 2015, 8:00 PM), <https://www.wired.com/2015/02/redbook/>.

⁸⁴ The United States Senate Permanent Subcommittee on Investigations conducted an investigation into “the problem of online sex trafficking” for nearly two years with an emphasis on the actions of Backpage.com. The Subcommittee discovered that “Backpage has maintained a practice of altering ads before publication by deleting words, phrases, and images indicative of criminality, including child sex trafficking.” STAFF OF SENATE SUBCOMM. ON INVESTIGATIONS, 114TH CONG., *BACKPAGE.COM’S KNOWING FACILITATION OF ONLINE SEX TRAFFICKING* Executive Summary (2016).

This shield from liability existed even when the individual who had been advertised was a victim of sex trafficking—like M.A.⁸⁵

The CDA shield gained particular notoriety after the case *People of the State of California v. Carl Ferrer*.⁸⁶ In this case, three executives of Backpage.com were accused of “conspir[ing] to create and organize a website that allows sex trafficking to take place . . . Defendants created such a site, knowing that prostitutes and/or pimps use the site to advertise prostitution.”⁸⁷ In its decision, the Court noted the importance of combatting sexual exploitation, but stated that Backpage.com could not be held liable for the sex trafficking advertisements that the website hosted because “Congress has spoken on this matter [through the CDA] and it is for Congress, not this Court to revisit.”⁸⁸

B. Congress Takes Action—The Enactment of FOSTA-SESTA

Congress shortly thereafter enacted the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (“FOSTA—SESTA”).⁸⁹ FOSTA-SESTA holds that “websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims” will no longer be exempt from liability.⁹⁰ FOSTA-

⁸⁵ M.A. ex rel. P.K., 809 F.Supp.2d at 1057. See also *People of the State of California v. Carl Ferrer*, No. 16FE019224, WL 7884408, at *1 (Sup. Ct. of Cal. County of Sacramento, Nov. 16, 2016) (ruling granting Defendant’s demurrer).

⁸⁶ *Carl Ferrer*, No. 16FE019224, WL 7884408, at *1.

⁸⁷ *Id.* at *2.

⁸⁸ *Id.* at *1. Notably, Backpage executives have not gotten by completely unscathed. See Tom Jackson, *Backpage CEO Carl Ferrer Pleads Guilty in Three States, Agrees to Testify Against Other Website Officials*, WASH. POST (Apr. 13, 2018, 5:00 AM), https://www.washingtonpost.com/news/true-crime/wp/2018/04/13/backpage-ceo-carl-ferrer-pleads-guilty-in-three-states-agrees-to-testify-against-other-website-officials/?utm_term=.071e50d315c6 (noting that Backpage’s CEO pled guilty to charges of money laundering and conspiracy to facilitate prostitution).

⁸⁹ 47 U.S.C. § 230 (2018); Nitasha Tiku, *How a Controversial New Sex-Trafficking Law Will Change the Web*, WIRED (Mar. 22, 2018), <https://www.wired.com/story/how-a-controversial-new-sex-trafficking-law-will-change-the-web/>. Shortly after FOSTA-SESTA became law, an enforcement action enacted by the FBI, the United States Postal Inspection Service, and the Internal Revenue Service Criminal Investigations Division shut down Backpage.com. Charlie Savage & Timothy Williams, *U.S. Seizes Backpage.com, a Site Accused of Enabling Prostitution*, N.Y. TIMES (Apr. 7, 2018), <https://www.nytimes.com/2018/04/07/us/politics/backpage-prostitution-classified.html>.

⁹⁰ 47 U.S.C. § 230 (2018). This law was passed in part by the tireless lobbying efforts of the makers of the documentary *I Am Jane Doe*. See John Anderson, *A Movie About Online Sex-Trafficking Might Actually Get Laws Changed*, WASH. POST (May 19, 2017), https://www.washingtonpost.com/entertainment/a-movie-about-online-sex-trafficking-might-actually-get-laws-changed/2017/05/18/039c2824-3a50-11e7-a058-ddbb23c75d82_story.html?utm_term=.7ce9a7f175e5.

SESTA has undeniably admirable goals:⁹¹ to hold any organization, website, or individual who participates in the exploitation of victims of sex trafficking accountable.⁹² FOSTA-SESTA, however, has been widely criticized.⁹³ Some critics propose that the added restrictions inhibit entrepreneurship, ingenuity, and growth on the Internet.⁹⁴ Other critiques claim the law is redundant because “existing criminal laws already do most of what FOSTA-SESTA is designed to do.”⁹⁵ Others have come out against FOSTA-SESTA claiming that it does not get rid of sex trafficking; it simply forces the victims onto the streets where they are subject to greater risks of violence and abuse.⁹⁶ Others focus on the fact that FOSTA-SESTA may serve as an inhibitor to law enforcement efforts, as law enforcement regularly use online advertisements to find and help victims of trafficking and bring the perpetrators to justice.⁹⁷

C. The United States’ Criminalization Prostitution System

The United States, like a majority of countries in the world,⁹⁸ criminalizes prostitution.⁹⁹ The criminalization of prostitution began during the 19th

⁹¹ FOSTA-SESTA passed with a vote of 388-25, including a vote by every democratic nominee in the 2020 election. Liara Roux, *The 2020 Frontrunners Need to Answer for Their Votes on SESTA*, VICE BROADLY (Feb. 22, 2019, 1:58 PM) https://broadly.vice.com/en_us/article/xwb474/2020-presidential-candidates-sex-work-sesta-fosta.

⁹² 47 U.S.C. § 230, Summary (2018) <https://www.congress.gov/bill/115th-congress/house-bill/1865>.

⁹³ See, e.g., Aja Romano, *A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet As We Know It*, VOX (July 2, 2018, 1:08 PM EDT), <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>; Kevin Weiskirch, *The Real Impact of FOSTA/SESTA*, NYU LOCAL (Apr. 25, 2018), <https://nyulocal.com/the-real-impact-of-fosta-sesta-1298fe0d589b>; Samantha Cole, *Pimps are Preying on Sex Workers Pushed off the Web Because of FOSTA-SESTA*, MOTHERBOARD VICE (Apr. 30, 2018, 12:09 PM), https://motherboard.vice.com/en_us/article/bjppqvz/fosta-sesta-sex-work-and-trafficking; Maham Hasan, *The U.S. Congress is Set to Pass a Law Clamping Down on Internet Platforms that Facilitate Sex Trafficking, but Some Critics Say It’s the Wrong Move*, ABP NEWS, (Mar. 12, 2018), <https://abeautifulperspective.com/2018/03/will-a-law-meant-to-combat-sex-trafficking-push-it-further-underground/>.

⁹⁴ Romano, *supra* note 93.

⁹⁵ *Id.*

⁹⁶ Cole, *supra* note 93.

⁹⁷ Hasan, *supra* note 93. Actor Ashton Kutcher co-founded the organization Thorn, which is an organization that “house(s) the first engineering and data science team focused solely on developing new technologies to combat online child sexual abuse.” About Us, THORN, <https://www.thorn.org/about-our-fight-against-sexual-exploitation-of-children/> (last visited Mar. 15, 2020). In its 2018 Impact Report, Thorn’s technology helped to identify 9,380 child trafficking victims. Impact Report 2018, THORN, <https://www.thorn.org/impact-report-2018/> (last visited Mar. 17, 2020).

⁹⁸ *100 Countries and Their Prostitution Policies*, *supra* note 13.

⁹⁹ *Id.* Prostitution is criminalized everywhere in the United States except ten counties in Nevada. In those counties, prostitution is legalized, *not* decriminalized (as will be discussed in Section VI(B)). The legalization of prostitution means that there are regulations “regarding where, when,

century alongside the fear that family values were eroding and prostitution was an issue of depravity and immorality.¹⁰⁰ Now, the “[p]roponents of criminalization base their arguments on moral and public health concerns.”¹⁰¹ Aside from specific instances in which the federal government has criminalized prostitution,¹⁰² states can penalize however they deem fit, so long as it is “constitutional as well as reasonable.”¹⁰³ Punishments for prostitution range anywhere from ten days in jail or a \$2,500 fine for first offenses (Hawaii) to five years in jail and a \$10,000 fine for fourth offenses (Pennsylvania).¹⁰⁴

In the United States, prostitution and sex trafficking are considered two completely separate issues.¹⁰⁵ Congress passed the Trafficking Victims Protection Act (“TVPA”) in 2000, which was the first comprehensive federal law in the United States that addressed human trafficking, with a focus on the international scope of trafficking.¹⁰⁶ The TVPA “authorized the establishment of the State Department’s TIP Office and the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons to assist in the coordination of anti-trafficking efforts.”¹⁰⁷

and how prostitution c[an] take place.” *What is the Difference Between the Decriminalization and Legalization of Prostitution?*, PROCON (Feb. 15, 2008 8:37 AM), <https://prostitution.procon.org/view.answers.php?questionID=000114>. For instance, in Nevada, sex workers have to register with police departments and have weekly testing for STDs. Alexandra Lutnick & Deborah Cohan, *Criminalization, Legalization or Decriminalization of Sex Work: What Female Sex Workers Say in San Francisco, USA*, 17(34) REPRODUCTIVE HEALTH MATTERS 38–46 (2009). For the sake of brevity, this Note will not go into depth with the concept of legalization.

¹⁰⁰ Benitez et al., *supra* note 16 at 359.

¹⁰¹ *Id.*

¹⁰² *US Federal and State Prostitution Laws and Related Punishments*, PROCON, <https://prostitution.procon.org/view.resource.php?resourceID=000119> (last visited Mar. 22, 2019). The federal government enacted laws criminalizing prostitution in many realms in which the federal government has power (e.g., 18 U.S.C. § 1952 [interstate and foreign travel]; 10 U.S.C. § 920(c) [military law]). Another common area in which the federal government has enacted laws about prostitution is in immigration law. For instance, any noncitizen is denied admissibility if he or she “is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status.” 8 U.S.C. 1182(i).

¹⁰³ Jack L. Littwin, Annotation, *Validity and Construction of Statute or Ordinance Proscribing Solicitation for Purposes of Prostitution, Lewdness, or Assignment – Modern Cases*, 77 A.L.R.3d 519, § 2(a) (1977).

¹⁰⁴ *US Federal and State Prostitution Laws and Related Punishments*, *supra* note 102; HAW. REV. STAT. § 712-1200 (2019); PA. CONS. STAT. § 5902 (2016). These punishments are fairly consistent across the United States, with some states having more strict punishments than others. *See US Federal and State Prostitution Laws and Related Punishments*, *supra* note 102.

¹⁰⁵ *US Federal and State Prostitution Laws and Related Punishments*, *supra* note 102.

¹⁰⁶ *U.S. Laws on Trafficking in Persons*, U.S. DEP’T OF STATE, <https://www.state.gov/j/tip/laws/> (last visited Mar. 17, 2020).

¹⁰⁷ *Id.*

TVPA created a “three-pronged approach” through prevention, protection, and prosecution.¹⁰⁸ Among other things, the prevention requirement created an office within the State Department that “rank[s] countries’ efforts to combat trafficking.”¹⁰⁹ The President is then authorized to sanction countries in “[non-]compliance with minimum standards for the elimination of trafficking nor are making significant efforts to do so.”¹¹⁰ The protection prong provides for the allowance of state and federal benefits and established the “T-Visa” which gives victims of trafficking victims legal status as a temporary immigration benefit.¹¹¹ The Office on Trafficking in Persons (“OTIP”) provides funds for services for victims of trafficking,¹¹² and there are many other anti-human trafficking sources and agencies of the federal government.¹¹³

Sex trafficking is criminalized and widely condemned in the United States.¹¹⁴ The federal criminal prohibitions for human trafficking are found in Chapter 77 of the United States Code.¹¹⁵ Further, the Mann Act of 1910 “criminalizes the transportation of minors, and the coercion of adults to travel across state or to foreign countries, for the purpose of engaging commercial sex.”¹¹⁶ Either crime is “punishable up to twenty years in prison.”¹¹⁷ Laws and punishments for sex trafficking vary state-by-state.¹¹⁸ For instance in California, an individual convicted of trafficking an adult may face anywhere from three to five years in prison, and trafficking a minor carries a sentence of

¹⁰⁸ *Polaris Project – Trafficking Victim’s Protection Act (TVPA) – Fact Sheet*, POLARIS PROJECT, <https://humantrafficking.ohio.gov/links/TVPA%20Fact%20Sheet,%20Polaris%20Project.pdf> (last visited Mar. 17, 2020).

¹⁰⁹ *Id.* The prevention requirement also “create[d] a federal task force to assist in the implementation of the TVPA” and authorized the “creat[ion] [of] public awareness and information programs, and international economic development programs to assist potential victims.” *Id.*

¹¹⁰ *Id.*

¹¹¹ 8 U.S.C. § 1101(a)(15)(T).

¹¹² *Office on Trafficking in Persons*, U.S. DEP’T OF HEALTH & HUM. SERV., <https://www.acf.hhs.gov/otip> (last visited Mar. 17, 2020).

¹¹³ *See Federal Anti-Trafficking Efforts*, POLARIS, <https://humantraffickinghotline.org/what-human-trafficking/federal-anti-trafficking-efforts> (last visited Mar. 17, 2020).

¹¹⁴ Carrie N. Baker, *An Examination of Some Central Debates on Sex Trafficking in Research and Public Policy in the United States*, Study of Women & Gender: Faculty Publications (2015) https://scholarworks.smith.edu/cgi/viewcontent.cgi?article=1008&context=swg_facpubs.

¹¹⁵ 18 U.S.C. ch. 77.

¹¹⁶ 18 U.S.C. §§ 2421–2424 (1978). For a list of additional federal legislation combating sex trafficking, see *Current Federal Laws*, POLARIS PROJECT, <https://polarisproject.org/current-federal-laws> (last visited Feb. 28, 2019).

¹¹⁷ *Id.*

¹¹⁸ *See, e.g., Human Trafficking*, Nat’l Conference of State Legislatures, <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> (last visited Mar. 17, 2020).

four to eight years in prison and a \$100,000 fine.¹¹⁹ In contrast, the Iowa Penal Code punishes individuals for trafficking¹²⁰ as either a Class D felony (punishable by up to five years in prison and fine of \$750),¹²¹ or a Class C felony (punishable by up to ten years in prison and a fine of \$10,000).¹²²

IV. PROSTITUTION AND SEX TRAFFICKING BEYOND AMERICAN BORDERS

A. Canada: A Quasi-Decriminalization Approach

Canada has adopted a quasi-decriminalization model of prostitution, a model that is often colloquially referred to as “the Nordic Model.”¹²³ The quasi-decriminalization model views prostitution as inherently exploitative against vulnerable populations, and considers the root of the issue to be the demand for sexual services, which it proposes will inevitably be serviced by preying upon individuals in vulnerable situations.¹²⁴ The model focuses on providing rehabilitation services and resources to prostitutes while at the same time punishing buyers of sex (“Johns”) and sellers of sex (“pimps”) more harshly.¹²⁵ The quasi-decriminalization model proposes that sex trafficking cannot be combatted without changing the laws criminalizing prostitution.¹²⁶ The European Parliament has endorsed the adoption of the quasi-decriminalization model.¹²⁷

Canada adopted the quasi-decriminalization model of prostitution through Bill C-36 in 2014.¹²⁸ This bill was passed in response to *Bedford v. Attorney General of Canada*.¹²⁹ In *Bedford*, “[T]he Supreme Court of Canada declared unconstitutional three *Criminal Code Offenses* addressing prostitution-related conduct on the basis that they violated section 7 of the *Canadian Charter of*

¹¹⁹ CAL PENAL CODE § 236.1 (2012).

¹²⁰ IOWA CODE § 710A.2 (2013).

¹²¹ IOWA CODE § 902.9 (2014).

¹²² *Id.* These punishments are fairly consistent across America. See *US Federal and State Prostitution Laws and Related Punishments*, *supra* note 102.

¹²³ The model that has been adopted in Norway, or the true “Nordic Model,” and Canada’s prostitution model are slightly different. For the sake of accuracy, this Note will refer to Canada’s model as the quasi-decriminalization model.

¹²⁴ Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services*, 10 VIOLENCE AGAINST WOMEN 1187, 1189 (Oct. 2004).

¹²⁵ *Id.*

¹²⁶ *Id.* at 1189–90.

¹²⁷ Eur. Parl. Doc. (A7-0071/2014) (2014) (arts. 34–35, 37).

¹²⁸ Canada Criminal Code, R.S.C., 1985, c. C-36, § 279 (Can).

¹²⁹ Technical Paper: Bill C-36, Protection of Communities and Exploited Persons, DEP’T OF JUSTICE, (Mar. 8, 2017).

Rights and Freedoms."¹³⁰ The Supreme Court, in ruling that the prior prostitution laws were unconstitutional, gave the legislature twelve months to change the prostitution laws, which the court deemed "a matter of great public concern."¹³¹

Bill C-36 decriminalizes prostitution when an individual chooses to sell their own sexual services,¹³² and criminalizes institutionalized selling of sexual services through commercial enterprises like strip clubs or other agencies.¹³³ The law also criminalizes the purchase of sexual services.¹³⁴ In summation, Bill C-36 allows an individual to sell sexual services on their own, but prohibits outside institutionalized involvement—or the involvement of pimps, and continues to criminalize when a John actually purchases the sexual service.¹³⁵

Penalties for purchasing the sexual services of an adult include a maximum of five years imprisonment.¹³⁶ If the victim is under the age of eighteen, the maximum penalty is ten years imprisonment.¹³⁷ If an individual knowingly advertises to offer sexual services for someone other than themselves, then they may also be prosecuted up to five years in prison.¹³⁸

Bill C-36 "harmonizes the penalties imposed for human trafficking and prostitution-related conduct to ensure a consistent response to practices that are linked."¹³⁹ Sections 279.01 and 279.011 of the Canadian Criminal Code defines human trafficking as "recruiting, transporting, transferring, receiving, holding, concealing or harbouring a person, or exercising control direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation."¹⁴⁰

For an adult victim of human trafficking, if "kidnapping, aggravated assault, aggravated sexual assault or death results," then there is a maximum

¹³⁰ *Id.* See also *Section 7– Life, Liberty and Security of the Person*, DEPT OF JUSTICE, (June 17, 2019), <https://www.justice.gc.ca/eng/cs-j/rfc-dlc/ccrf-ccdl/check/art7.html>.

¹³¹ *Bedford v. Attorney General of Canada*, [2013] 3 S.C.R. 1101.

¹³² Canada Criminal Code, R.S.C., 1985, c. C-36, § 286.5(2) (Can).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Canada Criminal Code, R.S.C., 1985, c. C-36, § 286.1 (Can).

¹³⁷ Canada Criminal Code, R.S.C., 1985, c. C-36, § 286.1(2) (Can).

¹³⁸ Canada Criminal Code, R.S.C., 1985, c. C-36, § 286.4–5 (Can).

¹³⁹ *Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act*, CAN. DEPT OF JUSTICE, https://www.justice.gc.ca/eng/rp-pr/other-autre/c36fs_fi/ (last visited Apr. 9, 2020).

¹⁴⁰ Canada Criminal Code, R.S.C., 1985, c C-46, §§ 279.01 and 279.011 (Can).

penalty of life and minimum penalty of five years imprisonment.¹⁴¹ In all other cases with adult victims, the penalty is four to fourteen years imprisonment.¹⁴² Comparatively, if the victim is a child, and if “kidnapping, aggravated assault, aggravated sexual assault or death results,” then there is a maximum penalty of life and minimum penalty of six years imprisonment.¹⁴³ In all other cases with child victims, the penalty is five to fourteen years imprisonment.¹⁴⁴ In September of 2018, Public Safety Canada and other federal partners undertook consultations to inform the development of a “new national strategy against human trafficking.”¹⁴⁵

Canada, in an attempt to reconcile allowing individuals to engage in sexual services if they choose to while still protecting victims of sex trafficking, has adopted a quasi-decriminalization system.¹⁴⁶ The goal of this system is to prevent the exploitation of victims by stamping out the demand for sexual services by targeting pimps and Johns.¹⁴⁷ The quasi-decriminalization system is enforced by severe penalties for pimps and Johns.¹⁴⁸

B. New Zealand: A Decriminalization Approach

New Zealand has adopted a third method of prostitution: complete decriminalization for consensual sexual services.¹⁴⁹ A decriminalized system requires that:

[T]he same laws that regulate other businesses regulate sex work. Thus, relevant tax, zoning and employment laws as well as occupational health and safety standards also apply to sex workers and sex work establishments. Unlike legalization, a decriminalized system does not have special laws aimed solely at sex workers or sex work-related activity.¹⁵⁰

¹⁴¹ Canada Criminal Code, R.S.C., 1985, c C-46, § 279.01 (Can).

¹⁴² *Id.*

¹⁴³ Canada Criminal Code, R.S.C. 1985, c C-46, § 279.011 (Can).

¹⁴⁴ *Id.*

¹⁴⁵ *Human Trafficking*, PUBLIC SAFETY CAN. (Aug. 24, 2018), <https://www.publicsafety.gc.ca/cnt/cntrng-crm/hmn-trffckng/index-en.aspx>.

¹⁴⁶ *Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act*, *supra* note 139.

¹⁴⁷ Canada Criminal Code, R.S.C., 1985 c C-46, § 286.5(2) (Can).

¹⁴⁸ *Prostitution Criminal Law Reform: Bill C-36, the Protection of Communities and Exploited Persons Act*, *supra* note 139.

¹⁴⁹ *100 Countries and Their Prostitution Policies*, *supra* note 13. The two other major methods for prostitution are legalization and abolitionism. As previously mentioned, this Note will not discuss these forms of prostitution.

¹⁵⁰ Lutnick & Cohan, *supra* note 99, at 39.

In a 2009 study in which over 200 sex workers were surveyed about their preference for criminalization, legalization, or decriminalization, those who advocated for decriminalization believed that the system would increase “freedom, safety and support.”¹⁵¹ Specifically, “they discussed the benefits of having police protection, the ability to build community with other sex workers, and obtaining rights as workers” as well as the flexibility that they would have to leave the industry without the stigmatization in criminalization systems.¹⁵²

Complete decriminalization advocacy stems from the idea that individuals should be permitted to engage in the employment of sex work at their choosing without government interference.¹⁵³ Decriminalization, as opposed to legalization, imposes no additional governmental restrictions upon individuals who enter into the sex industry.¹⁵⁴ Amnesty International has endorsed the decriminalization of prostitution.¹⁵⁵

In 2003 with the passing of the Prostitution Reform Act (“PRA”),¹⁵⁶ New Zealand was the first country in the world to adopt the decriminalization model for prostitution.¹⁵⁷ The PRA repealed the Massage Parlours Act 1978, which did not per se criminalize prostitution, but did criminalize “all activities associated with sex work . . . such as soliciting, living on the earnings, operating a brothel and procurement.”¹⁵⁸ The purpose of the PRA was listed as:

[C]reat[ing] a framework that (a) safeguards the human rights of sex workers and protects them from exploitation; (b) promotes the welfare and occupational health and safety of sex workers; (c) is conducive to public health; (d) prohibits the use in prostitution of persons under 18 years of age; (e) implements certain other related reforms.¹⁵⁹

¹⁵¹ *Id.* at 41.

¹⁵² *Id.*

¹⁵³ Jerald L. Mosley, *Decriminalizing Prostitution in Recognition of Fundamental Rights*, 39 L.A. L. 36 (2016).

¹⁵⁴ Lutnick & Cohan, *supra* note 99.

¹⁵⁵ *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers*, AMNESTY INT’L (May 26, 2016), <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>. In response to Amnesty International’s “*Draft Policy on Sex Work*,” a letter was released by “a wide breadth of national and international human rights advocates, women’s rights organizations,” advancing the horrendous ramifications of decriminalization of the sex trade. *Letter with Signatories* (July 17, 2015), <http://catwinternational.org/Content/Images/Article/621/attachment.pdf>.

¹⁵⁶ Prostitution Reform Act 2003 (June 27, 2003) (N.Z.).

¹⁵⁷ Gillian M. Abel, *A Decade of Decriminalization: Sex Work ‘Down Under’ But Not Underground*, SAGE J. 580 (Feb. 14, 2014).

¹⁵⁸ *Id.* at 581.

¹⁵⁹ Prostitution Reform Act 2003, s 3 (N.Z.).

The PRA makes it an offense to compel an individual to enter or provide services in the sex trade.¹⁶⁰ It also forbids the purchase of the sexual services of anyone who is under 18 years old.¹⁶¹ Sex trafficking is outlawed in New Zealand through the PRA.¹⁶² The PRA bans temporary visa holders from performing sexual services,¹⁶³ but most of the exploitation and issues of sex trafficking come from migrant populations.¹⁶⁴ Some victims of sex trafficking have reported that their abusers would threaten to report them to Immigration New Zealand “to extort free or denied services from them.”¹⁶⁵ Historically, most anti-human trafficking efforts in New Zealand have focused on migration and immigration issues with forced labor.¹⁶⁶

V. THE FUTURE OF PROSTITUTION, SEX TRAFFICKING, AND THE INTERNET

Prostitution is no longer synonymous with street walking; prostitution has found a home on the Internet.¹⁶⁷ This shift has been met with mixed opinions. Some advocate that the shift promotes greater safety for prostitutes to “screen” buyers and allow for law enforcement to better track victims.¹⁶⁸ Others claim that buyers and sellers maintain greater anonymity behind their screens,¹⁶⁹ and that online prostitution is not displacing prostitution rates, prostitution is simply an expanding industry that has found a new market on the Internet.¹⁷⁰ One pressing issue that is apparent, however, is the reality that prostitution will not leave the international and ever-growing sphere of the Internet anytime soon.

¹⁶⁰ *Id.* subs. 16.

¹⁶¹ *Id.* subs. 20.

¹⁶² *Id.* subs. 16.

¹⁶³ *Id.* subs. 19.

¹⁶⁴ Thomas Manch, *No Trafficking in NZ Sex Industry But Migrant Abuse is Widespread, Report Finds*, NAT'L (Apr. 17, 2018, 6:29 PM), <https://www.stuff.co.nz/national/crime/103129627/no-trafficking-in-nz-sex-industry-but-migrant-abuse-is-widespread-report-finds>.

¹⁶⁵ *Id.*

¹⁶⁶ Olivia Carville, *Exposed: The Dark Underbelly of Human Trafficking in New Zealand*, NZHERALD (Sept. 22, 2016, 10:43 AM), https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11711211.

¹⁶⁷ *More Bang for Your Buck*, *supra* note 49.

¹⁶⁸ *Id.*; Sanders et al., *supra* note 50.

¹⁶⁹ *More Bang for Your Buck*, *supra* note 49.

¹⁷⁰ Cunningham & Kendall, *supra* note 50 (finding that large displacement effects of sex workers online only came from workers in their 30s and 40s). The effect that online sex work played on more traditional forms of sex work found converse results in the Netherlands in a 2010 study which found that “in the decade to 2010 the number of licensed sex clubs in the Netherlands fell by more than half.” *More Bang for Your Buck*, *supra* note 49.

The international community must begin to understand and account for how much prostitution and sex trafficking is found online.¹⁷¹ Although the international community has adopted several conventions and treaties penalizing traffickers and countries that do not do enough to stop trafficking,¹⁷² there has been limited international community involvement to ensure that international laws are actually implemented to stop trafficking on the Internet.

The lack of global action leads to laws like FOSTA-SESTA, which is actually detrimental to the overall approach and goals of global anti-sex trafficking efforts.¹⁷³ When only one country enacts legislation that holds third-party websites liable for sex trafficking, trafficking is not stopped globally. The Internet is international; shutting down websites in one country does nothing to stop trafficking globally, but instead sets up a “whack-a-mole” like system, where websites will pop up to a new country where they will not get “whacked.”

Further, FOSTA-SESTA punishes victims and forces them into more potentially violent and unsafe conditions. It also pushes them further underground where new software and law enforcement techniques are unable to find them.¹⁷⁴

When evaluating the prostitution laws of Canada and New Zealand, it is clear that the decriminalization and quasi-decriminalization methods more successfully attempt to isolate “victim from prostitute”—supporting the freedoms of individuals to make their own decisions while protecting against sex trafficking victims.¹⁷⁵ The all-or-nothing approach of criminalization that has been enacted in the United States, ultimately leads to inconsistent laws like FOSTA-SESTA.

Although prostitution laws are systematically set up differently than anti-sex trafficking efforts, the international community must amend anti-sex trafficking efforts to comport to the reality that trafficking is on the Internet. If the international community, perhaps through an international body like the International Court of Justice, were to endorse either a quasi-

¹⁷¹ Sanders et al., *supra* note 50.

¹⁷² See, e.g., Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) UN HUM. RIGHTS; Convention on the Elimination of All Forms of Discrimination Against Women (1979) UN GA; The Convention on the Rights of the Child (1989) UN GA; United Nations Convention Against Transnational Organized Crime (2000) UN GA; Protocol Against the Smuggling of Migrants by Land, Sea and Air (2000) UN GA.

¹⁷³ See *supra* Section III.

¹⁷⁴ See Tom Embury-Dennis, *Ashton Kutcher’s Organisation Identifies 2000 Victims of Trafficking in Six Months*, INDEPENDENT (Feb. 16, 2017, 19:46), <https://www.independent.co.uk/news/world/americas/ashton-kutcher-child-sex-exploitation-victims-thorn-digital-defenders-of-children-us-senate-hearing-a7583266.html>.

¹⁷⁵ See *supra* Section IV.

decriminalization or decriminalization prostitution system, there could be more consistent and effective efforts to fight against sex trafficking on the Internet.

VI. CONCLUSION

In an ideal world, there would be no need to distinguish between victims of sex trafficking and individuals who have willingly chosen to become prostitutes. There would be no victims of sex trafficking, or any victim would be obvious and distinct from individuals who chose to enter the industry willingly. That is not the world in which we live. The distinctions between a prostitute and sex trafficking victim are not noticeable prior to actually learning about the individual's situation.

This inability to succinctly categorize victim from consenting prostitute has put governments in a quandary: how to protect while giving freedom. The Internet poses even greater issues. Governments should be wary of enticing legislation like FOSTA-SESTA, where contradictory agendas put victims in the crossroads, and they are ultimately left with less safe options. Governments should instead analyze the distinctions and similarities of sex trafficking and prostitution in an attempt to truly protect victims while giving consenting adults the freedom to make their own decisions.