

**REGULATED PROSTITUTION AS A COMPONENT IN THE  
FIGHT AGAINST HUMAN TRAFFICKING IN OREGON**

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U.S. is a party.<sup>9</sup> These international initiatives impose specific requirements on the United States, which in turn bind Oregon to the same obligations.<sup>10</sup> The obligations that derive from these instruments are separated into three categories, which are referred to as the “Three Ps: Prevent, Punish, and Protect.”<sup>11</sup>

In 2000, Congress enacted the Trafficking Victims’ Protection Act (TVPA),<sup>12</sup> which reflected the principles of the Protocol’s Three Ps. It takes a victim-centered approach that recognizes criminality should not be attached to those who are forced to participate in the commercial sex market.<sup>13</sup> Oregon also has its own state trafficking laws that make it a crime for a person to subject another to involuntary servitude and to traffic persons.<sup>14</sup>

Section II of this article will analyze the current state of prostitution legislation in Oregon, briefly discuss the history of prostitution regulation in the U.S., and compare theories of prostitution’s place in society. Additionally, it will compare regulatory models of prostitution to decipher why Oregon may benefit from a legalized commercial sex market. This section will also discuss the merits of prostitution in and of itself—the voluntary choice to provide sexual services for money—without regard to involuntary aspects, such as trafficking.

Section III will then explore what Oregon should be doing to comply with federal and international trafficking initiatives and whether those obligations and goals are commensurate with a regulated prostitution sector. Section IV, drawing upon the previous two sections, will suggest that state authorized prostitution could potentially provide a robust financial infrastructure for improved human trafficking enforcement. Aside from potential federal law barriers within the TVPA, it seems that, on at least a theoretical basis, legalizing prostitution could strengthen trafficking enforcement in Oregon in a variety of ways.

9. United Nations Convention Against Transnational Organized Crime, Jan. 8, 2001, U.N. Doc. A/RES/55/25, available at <http://www.unhcr.org/refworld/docid/3b00f55b0.html>.

10. WILLAMETTE REPORT, *supra* note 6, at 11–12; *Hauenstein*, 100 U.S. at 490.

11. *See* WILLAMETTE REPORT, *supra* note 6, at 12, 15.

12. Victims of Trafficking and Violence Protection Act of 2000 (TVPA), Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C., and 42 U.S.C.), available at

## II. PROSTITUTION IN A VACUUM: TYPES, PERSPECTIVES, AND MODELS OF REGULATION

A “prostitute” in Oregon is “a male or female person who engages in sexual conduct or sexual contact for a fee.”<sup>15</sup> “Sexual conduct” is sexual intercourse and “sexual contact” is “any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of the other party.”<sup>16</sup> Thus, a person commits the crime of prostitution in Oregon if he or she “engages in, or offers or agrees to engage in, sexual conduct or sexual contact in return for a fee.”<sup>17</sup>

Although the statute does not specify a particular mens rea, a culpable mental state of “knowingly” is implicit in the definition of the crime—one’s knowledge that his acts constitute the making of the forbidden agreement puts him squarely within the act’s prohibition.<sup>18</sup>



because prostitution was illegal, but because they were determined to be public nuisances.<sup>36</sup> Prostitutes and brothel owners faced prosecution for crimes, but only under vagrancy statutes and other misdemeanor charges.<sup>37</sup> Indeed, there was no statutory definition of prostitution in most American jurisdictions during the eighteenth and nineteenth centuries.<sup>38</sup> Thus, throughout most of the nineteenth century, prostitution continued to be legally tolerated in the United States, but some people were furious with the “unspoken tolerance by law enforcement” and began to organize a movement for the eradication of this “moral disorder.”<sup>39</sup>

Industrialization and the Gold Rush created a high demand for prostitutes, which instigated the construction of bordellos and brothels in eastern and western cities.<sup>40</sup> While these establishments also began to thrive in rural areas, they remained primarily concentrated in urban centers.<sup>41</sup> For example, in 1856, Philadelphia alone had 130 brothels.<sup>42</sup>

After the Civil War, some cities created licensing schemes and “red light districts” for regulating prostitution.<sup>43</sup> Under such a scheme, prostitutes were segregated to certain areas of a city, required to register, and subjected to compulsory physical examinations.<sup>44</sup> Most cities did not succeed with this method of regulation, and the Women’s Suffrage Movement prevented the passage of some of the red light district laws.<sup>45</sup> In the cities and states that did allow the red

Moreover, some states passed laws prohibiting only adultery (but not prostitution) and others punished prostitutes under “open and gross lewdness” statutes.<sup>48</sup> The well-known federal Mann Act, which “prohibited any man from taking a woman across states lines for the purpose of prostitution or debauchery,” was passed in 1910.<sup>49</sup> The law was “in part [a] response to an increase in the number of ‘opium dens[,]’ which were used to entice young girls into prostitution.”<sup>50</sup> The ability of the federal government to regulate prostitution was significantly reduced in 1913 when the U.S. Supreme Court held that Congress could not regulate the act of prostitution alone because it was a crime to be regulated by the states.<sup>51</sup> Rather, 4p2(e)-3.9( t)-.7he



in force.<sup>56</sup> When one considers this evolution of prostitution regulation, it sheds light on the sex industry's forced adaptation to the public's disapproval and the accompanying body of law; as a practical result, prostitutes and patrons have sought to conduct commercialized sex out of the eyes of the public.

Prostitution today is purely a state law issue. The states' power to regulate prostitution derives from the Supreme Court's statement in *Barbier v. Connolly*, where the Court characterized state plenary, or "police," powers as those that "promote the health, peace, morals, education, and good order of the people."<sup>57</sup> There is no federal law that prohibits prostitution.<sup>58</sup>

### *B. The Different Categories of Prostitution*

Before delving into any discussion of prostitution policy, it is necessary to establish some basic knowledge about the sector. Prostitutes can be divided into four categories that distinguish how each offers his or her services.<sup>59</sup> It is important to keep in mind that

massage parlors, or as independent escorts/call girls.<sup>64</sup> Nevertheless, eighty-five to ninety percent of arrested prostitutes work on the street,<sup>65</sup> although this figure may be changing because of the Internet and cyber access to sexual services. Additionally, not all prostitutes on the street have a pimp, although most probably do.<sup>66</sup> Another curious fact about street prostitutes is that they are disproportionately represented by “women of color,” which makes minority women “more susceptible to harassment and arrest by police.”<sup>67</sup>

The second category consists of indoor prostitution, which can include massage parlors, brothels,<sup>68</sup> and prostitution under the guise of legal sex industry establishments<sup>69</sup> (e.g., strip clubs or adult entertainment centers). Massage parlors, which are “often disguised as health studios” where patrons get a massage plus a sexual service, are obviously less visible to the public and tend to generate less public criticism.<sup>70</sup> As discussed, brothels have a long history in the United States, and in 2005, thirty-six brothels had licenses to operate in select counties in Nevada; however, with the proliferation of Internet sex services, in 2013, sources place the number of open brothels at approximately eighteen to twenty-three.<sup>71</sup> The Northwest in particular has experienced prostitution conducted under the guise of legitimate forms of sex industry services, such as strip clubs.<sup>72</sup> The Oregon Constitution’s free speech clause gives the state’s sex

*Prostitutes*, N.Y. TIMES, OPINIONATOR (June 29, 2013), <http://opinionator.blogs.nytimes.com/2013/06/29/the-new-prostitutes/> (quoting Scott Cunningham, Baylor University Economist, who conducted a survey of 700 sex workers in the United States and Canada) (“The Internet is augmenting the sex market by bringing in women who would not have entered the sex market without the Internet.”); Venkatesh, *supra* note 3 (“[T]oday, only a few big cities, such as Los Angeles and Miami, still have a thriving outdoor street market for sex.”).

64. Thompson, *supra* note 61, at 226.

65. *Id.*

66. *Id.* (stating that approximately 40% of street prostitutes work independently).

67. *Id.*

68. *Id.* at 226–27.

69. See WILLAMETTE REPORT, *supra* note 6, at 39.

70. Thompson, *supra* note 61, at 226.

71. David Rosenburg, *The Precious Women of Nevada’s Brothels*, SLATE (June 17, 2013), [http://www.slate.com/blogs/ behold/2013/06/17/jane\\_hilton\\_precious\\_is\\_a\\_series\\_of\\_in](http://www.slate.com/blogs/ behold/2013/06/17/jane_hilton_precious_is_a_series_of_in)

industry “significant liberty,”<sup>73</sup> which in part may be why “Portland has the highest number of sexually oriented businesses per capita of any city in the nation.”<sup>74</sup> This widespread existence of legitimate sexual services may be overshadowing the illicit sexual services occurring within.

*C. Social Perspectives of Prostitution*

Theoretical justifications for legalization or criminalization of prostitution are contained within various perspectives and philosophies, many of them based upon moral theory. Here, we briefly touch on some basic, polar perspectives. The link between sexual conduct generally and immorality is relatively clear in Judeo-Christian moral philosophy.<sup>84</sup> Under this view, the “conservative moral approach,” prostitution is seen as a “danger to the social fabric”; in other words, the laws criminalizing prostitution are designed to protect society.<sup>85</sup>

designed to protect society. 3.71 Bral 1s110 tit 9 (t)-3.732 s 9 (22.433 (Fw) 302 (7690. d19469.6366)

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204 per 100,000 from 1967 to 1999.<sup>100</sup> This figure was significantly higher than that for women and men in the standard occupations that had the highest workplace homicide rates in the United States during the 1980s.<sup>101</sup>

















Economic Offences Act and would be subject to penalty.<sup>162</sup>  
Municipalities retain significant power and authority in their decisions

efforts have made matters worse for trafficked women and children.<sup>172</sup> One criticism is that legalization has simply resulted in a movement toward private pockets of commercial sex to avoid regulation, and that legalization has somehow “created a greater separation between legal prostitution and illegal prostitution.”<sup>173</sup> The crux of the argument is that the regula

should alleviate concerns of HIV and other diseases. Regular health checks ensure that prostitutes are safe, and thus the clients are safe as well. The argument that prostitution is inherently intertwined with other crime is diminished because crime associated with its practice often exists in the first place due to prostitution's illegality.<sup>176</sup> States would no longer expend limited resources jailing individuals who freely choose to sell sex for a living, and prostitutes would be able to obtain health insurance privately or through an employer without having to worry about being denied coverage because of the illegality of their profession.<sup>177</sup>

### III. FEDERAL AND STATE TRAFFICKING LAW IN A VACUUM

Much of the trafficking data used in this article is derived from a report titled *Modern Slavery in our Midst: A Human Rights Report on Ending Human Trafficking in Oregon*, written by the International Human Rights Clinic at Willamette University College of Law in June 2010 (the Willamette Report).<sup>178</sup> Additionally, in August 2013, a Portland State University professor authored a research memorandum titled *Commercial Sexual Exploitation of Children (CSEC) in the Portland Metro Area* (the PSU Research Memorandum), which supplements some of the Willamette Report's data.<sup>179</sup> The PSU Research Memorandum quantifies and analyzes trends among child victims of trafficking and compelled prostitution in the Portland Metro area.<sup>180</sup> The authors used data the Oregon Department of Human Services CSEC Unit (DHS) and the Sexual Assault Resource Center of Portland (SARC) generated from 2009 through 2013.<sup>181</sup> Together, the Willamette Report and PSU Research Memorandum give insight into some of the human trafficking challenges that Oregon faces, and whether any progress has been made in the fight against its practice.

Trafficking in persons is a global trade with high demand; in

176. See Thompson, *supra* note 61, at 231.

177. Clements, *supra* note 122, at 67 (noting that health insurance is generally not available to cover loss resulting from illegal activity).

178. See WILLAMETTE REPORT, *supra* note 6.

179. See CHRISTOPHER CAREY & LENA TEPLITSKY, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN ON OTJ -0.AND 0 Tw 8.52 -0 0 8.52 439.44 198365(E)C





since states are obligated to adhere to its guidelines. The Willamette Report provides a succinct outline of the deficiencies regarding trafficking protection, prevention, and prosecution in Oregon. Some of these deficiencies could be alleviated, but surely not cured, with the legalization and regulation of prostitution. Yet, the implementation of these suggested reforms would face fierce political and moral opposition, as well as some potential federal law barriers.

Congress reauthorized the TVPA in 2003, 2005, and 2008 to “strengthen victim access to protection and assistance, and to increase the capacity of law enforcement to prosecute traffickers.”<sup>192</sup> Some

SEVERE FORMS OF TRAFFICKING IN PERSONS — The term “severe forms of trafficking in persons” means:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age;

(B) sex trafficking in which the person is induced to perform such act by force, fraud, or coercion, and the person has not attained 18 years of age.

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SEX TRAFFICKING — The term “sex trafficking” means the

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labor trafficking) of domestic minors.<sup>212</sup> Sufficient funding for “johns’ schools” is also a major impediment.<sup>213</sup>

Agency cooperation and communication are some of the key gateways to preventing trafficking within a state. The more a specific agency is aware of what role it is supposed to play in the prevention strategy, the more the “chances of victim identification, victim cooperation, and prosecution of traffickers increases.”<sup>214</sup> There are several agencies, such as the Oregon Task Force, that strive to coordinate the effort of prevention among “various interested stakeholders.”<sup>215</sup> “The [Oregon Task Force] is a collaboration of local, state, and federal law enforcement agencies working together with organizations providing comprehensive services to trafficking victims to identify and rescue victims of human trafficking and to proactively investigate, identify, apprehend[,] and prosecute those engaged in human trafficking.”<sup>216</sup> The director of the Oregon Task Force receives victim referrals from other agencies, nonprofit organ

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sense in light of the lack of law enforcement training for trafficking.<sup>236</sup> Effective identification requires intensive fact finding through interviewing, and it also requires law enforcement getting over its “largest obstacle” with identification: treating the potential victim as a victim, not as a criminal (prostitute).<sup>237</sup> If an adult is coerced into prostitution, but “consents” to an isolated sexual transaction, is she a victim or a prostitute? Only a thorough fact finding investigation and interview would reveal any coercive nature behind the face of the transaction.

This is especially important since a victim *over* the age of eighteen can legally consent to sex, which may put her in the category of prostitute, rather than victim.<sup>238</sup> Under the TVPA, any person under the age of eighteen who is engaged in prostitution is a victim *per se*.<sup>239</sup> By contrast, identifying adult victims is much harder. Prosecuting a victim for prostitution, whether a minor or not, reinforces the social stigma (and perhaps what her pimp has told her) that she is a criminal and is at fault.<sup>240</sup> This in turn creates distrust for authority and dilutes any effective information gathering about  
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Since 2009, Oregon state agencies have cooperated with the FBI multiple times in its trafficking/prostitution stings (titled “Operation Cross Country”) to arrest traffickers of underage sex trafficking victims.<sup>245</sup> A 2010 sting was particularly successful in that the FBI utilized the state DHS to set up a separate site for the victims to be given food, hygiene products, and an advocate, but still fell short of complete success for potential adult victims.<sup>246</sup> The potential victims that were over age eighteen were not given the same help as the minors, i.e., they were treated as criminals and were arrested.<sup>247</sup> The 2013 Operation Cross-Country had a similar outcome with adults, but the FBI states that the adult prostitutes that were arrested were “offered the opportunity to access help through victim services and the [state] social service partners.”<sup>248</sup>

These operations went well overall, but there was still a problem with ongoing case management—SARC is available for case management, but it has few staff and has a large caseload.<sup>249</sup> SARC is able to help victims in the “short term,” but it cannot give the victims the attention and detail they need in the “long term” without

traffickers. The PSU Research Memorandum specifically recommends such a residential facility in order to improve prevention and better the assistance available to victims.<sup>253</sup> Of the minor victims DHS served as of August 2013, the Memorandum states that forty were “identified by DHS case managers as likely to benefit from a six to eighteen month stay in a residential treatment facility, if one were to exist.”<sup>254</sup>

There is substantial disagreement among the sensitive factors (3.9(r) )1 (r

this leaves domestic trafficking victims alone to navigate the system and find assistance from other organizations that offer specific resources.<sup>261</sup>

The deficiencies: as was the case in 2010, the major limiting factor for service providers today is funding.<sup>262</sup> “The infrastructure is there, and while there are some targeted improvements that should be made (such as shelters and a case management system), the main functional limitation on Oregon’s ability to help trafficking victims is a lack of resources.”<sup>263</sup> Oregon is minimally meeting the legal minimums the TVPA imposes for protection and assistance, likely because most of the responsibility is placed on the federal government.<sup>264</sup> However, more is needed to allow Oregon to protect and assist victims, as well as meet its obligations to prevent and punish.<sup>265</sup>

### 3. Punishment (Prosecution)

#### a. Investigation

The main goal in prosecution should be to focus on the true criminal: the trafficker. As mentioned above, identifying adult victims is quite a challenge because of the consent versus no consent issue. In addition to a lack of an established and defined procedure for first response law enforcement to follow regarding identification of trafficking victims, there were no uniform investigatory procedures for trafficking in Oregon in June 2010, except for those the Portland Police Department (PPD) implemented.<sup>266</sup> Of course, S.B. 673 will change this once the Board on Public Safety Standards and Training follows through on its statements and requires all police officers to be trained to recognize and investigate sex trafficking.

The PPD uses its Sex Crimes Unit,<sup>267</sup> as opposed to its (and

261. *See id.* at 76.

262. *Child Trafficking Report*, OREGON PUB. BROAD. (Aug. 6, 2013), <http://www.opb.org/thinkoutloud/shows/child-trafficking-report/> (Erin Ellis, Executive Director of SARC, explains that for every one victim accepted for services, another one is denied services due to insufficient funding).

263. WILLAMETTE REPORT, *supra* note 6, at 75.

264. *See id.* at 79.

265. *See id.*

266. *See id.* at 82–83.

267.

other states')<sup>268</sup> former practice of utilizing the Vice Unit for trafficking and prostitution investigations.<sup>269</sup> This change represents a shift in law enforcement perception of prostitutes as potential victims rather than criminals because the Vice Unit is more offense oriented (thus prostitutes were offenders), whereas the Sex Crimes Unit gives a trafficking case the same priority as a sexual assault case.<sup>270</sup> ::v5(s)3.6(t)-3..2(o)10.4(n i)g9(n c)-3.9(r)t97.n0:

(and constitutional) issue of whether to require confinement in a safe place, with all the necessary services for rehabilitation, or to allow voluntary confinement.<sup>277</sup> Allowing a victim to voluntarily enter such a facility has given district attorneys much hardship. For example, according to the Portland Police Department, “every minor they have relocated to a different county or state has either returned to her pimp or found another pimp.”<sup>278</sup> The only way that a court would be able to impose state guardianship on a victim is if she has a severe drug problem or mental illness, there is a lack of parental involvement, or she engages in risky behavior.<sup>279</sup>

### c. Sentencing and Elements of the Crime

When it comes to actual prosecution of trafficking cases in Oregon, state prosecutors have tended to use the state compelled prostitution statute,<sup>280</sup> rather than the state trafficking statute,<sup>281</sup> because prior to August 2013,<sup>282</sup> the elements in the trafficking statute were harder and more time consuming to prove.<sup>283</sup> Like the TVPA, compelled prostitution in Oregon does not require proof of force or coercion for a victim under the age of eighteen.<sup>284</sup> The prosecutor

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277. As the Willamette Report points out, this is an issue in and of itself. There is much debate in regard to how rehabilitation of victims should be carried out. *See id.* at 96–98.

278. *Id.* at 94.

279. *Id.* at 95.

280. OR. REV. STAT § 167.017 (2011).

281. *Id.* § 163.266 (2011).

282. *See* S.B. 673 § 1, 77th Leg. Assemb., Reg. Sess. (Or. 2013) (amending OR. REV. STAT. § 163.266).

283. WILLAMETTE REPORT, *supra* note 6, at 89, 92.

284. *See* OR. REV. STAT. § 167.017(1)(b), (3) (2011). The statute reads in its entirety as follows:

- (1) A person commits the crime of compelling prostitution if the person knowingly:
  - (a) Uses force or intimidation to compel another to engage in prostitution or;
  - (b) Induces or causes a person under 18 years of age to engage in prostitution;
  - (c) Aids or facilitates the commission of prostitution or by a person under 18 years of age; or
  - (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.
- (2) Compelling prostitution is a Class B felony.
- (3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to prove that the defendant knew the other person was under 18 years of age and it is no defense that the defendant did not know the person’s age or that the defendant reasonably believed the person to be older than 18 years of age.

*Id.*



makes trafficking of a child victim a Class A felony<sup>289</sup> (prior to S.B. 673, trafficking for all persons was a Class B felony),<sup>290</sup> whereas compelled prostitution is a Class B felony for all victims regardless of age.<sup>291</sup> The maximum sentence of imprisonment for a Class A felony is 20 years, and the maximum for a Class B felony is 10 years.<sup>292</sup> Thus, there is now a potentially more severe sentence for an offender charged with trafficking a child instead of compelled prostitution.

Yet, one of the apparent deficiencies of S.B. 673 is that it does not go as far as the compelled prostitution statute in its protection of victims under age eighteen. As stated above, that statute does not require a showing of force or coercion for a victim under eighteen. S.B. 673 falls short of that protection because, even though it does not require a showing of force, fraud, or coercion for those under *age fifteen*, it exposes cases dealing with fifteen, sixteen and seventeen year old victims to the same challenges faced under the old trafficking statute.<sup>293</sup> For adults, both the compelled prostitution<sup>294</sup> and trafficking<sup>295</sup> statutes require a showing of force or fraud to perform a service.

Under the TVPA, traffickers can be sentenced to twenty years for each victim, or a life sentence if aggravating circumstances exist—although the national average in June 2010 was 9.3 years.<sup>296</sup> Prior to S.B. 673, the Oregon trafficking statute did not carry a specified sentence because the crime was unranked on the Oregon

of commercial sex with minors. Prior to S.B. 673, Oregon was one of only nine states in which it was not a felony to purchase sex from a minor. See Sanne Specht, *Stopping “The Kiddie Track,”* MEDFORD MAIL TRIBUNE (July 29, 2013), <http://www.opb.org/news/article/stopping-the-kiddie-track/>. Post-S.B. 673, it is now a felony to “purchase sex with a minor,” which is purchasing sex from a person under 18 years of age. Mandatory minimum fines and jail terms are imposed depending on the offender’s prior convictions. Moreover, registration as a sex offender can be required as well. See S.B. 673 § 4, 77th Leg. Assemb., Reg. Sess. (Or. 2013).

289. S.B. 673 § 1, 77th Leg. Assemb., Reg. Sess. (Or. 2013) (amending OR. REV. STAT. § 163.266).

290. OR.









*A. How Could Prostitution be Regulated in Oregon?*

It does not seem particularly wise to exclusively commit to one of the polar categorizations of a regulated prostitution arena discussed above, but the reader will see that legalization is more conducive to achieving the level of oversight necessary for effective trafficking enforcement. Legalization would give the state complete control to experiment with legislation and the proper practices to achieve the safest and most effective regulated market. The rest of this section assumes that legalization is the most fitting scheme for regulated prostitution, but it does not suggest that it is the only type of regulation that could harmonize with tulegenl Re.r eizut

provide resources and guidance to any prostitute who was interested in leaving the brothel for other work. Of course, to avoid the problems regarding trafficking into legalized prostitution identified in the Netherlands discussion in section II.D.3.b above, the advocate would be required (and trained) to ensure that all applicants are voluntarily entering the field of prostitution.

As a general matter, in order to promote the legitimacy of the individual choice to sell sex, the act of prostitution within a government-run brothel must not have a criminal sanction. The act of prostitution outside of a brothel should also remain immune from criminal sanctions, but civil penalties should be discretionarily assessed for an infraction, such as practicing prostitution without a license. The purpose for not criminalizing out-of-brothel prostitution is to avoid treatment of potential trafficked victims as criminals and to eradicate any stigma of prostitution. However, in order to avoid the spread of a black market—as much as possible—pimping,<sup>319</sup> trafficking,<sup>320</sup> and procuring nonbrothel prostitution<sup>321</sup> must remain crimes with tough consequences. In this respect, the legalization scheme would be somewhat similar to both Sweden's and the Netherlands' model.

If law enforcement finds an individual to be engaged in prostitution outside the regulated realm, a structured and uniform interview must be conducted to determine whether the individual is a trafficked victim or has truly chosen to prostitute outside of the legal arena. If she is being compelled to prostitute, then a trafficking investigation begins; if she is simply an unlicensed prostitute, she will be susceptible to a civil fine, with her economic condition taken into consideration. Other information may come to light through the victim determination analysis, such as whether she needs mental health assistance, or other DHS assistance. With this general scheme in mind, the rest of this section will address how regulated prostitution could alleviate some of the deficiencies present in Oregon's response to trafficking.

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319. See OR. REV. STAT. § 167.012 (2011) (promoting prostitution; punishable as a Class C felony).

320. See S.B. 673 § 1, 77th Leg. Assemb., Reg. Sess. (Or. 2013) (amending OR. REV. STAT. § 163.266) (trafficking in persons; punishable as a Class A or Class B felony).

321. This would remain a misdemeanor under OR. REV. STAT. § 167.007 (2011), but perhaps imposing a felony would better deter purchasing sex outside of what the law would allow.

*B. Prevention*

Men who want to pay for sex are not usually aware of sex trafficking and generally do not intentionally want to utilize the services of a trafficked individual.<sup>322</sup> Thus, “johns’ schools” would be beneficial to implement for first-time offenders of procuring prostitution outside of a brothel and could also generally educate the community about trafficking. Such education has been “effective in reducing recidivism among arrested purchasers.”<sup>323</sup> Since funding for these schools is a major issue, a designated portion of profit generated from brothels could be used to support them. If enough brothel profit is available, weekly classes held around the state informing Oregonians about the brothels, new laws, and trafficking could also be very helpful. Brothels, strip clubs, and the like should also be required to display stickers with a trafficking hotline in order to better facilitate reports of trafficking and to educate patrons of its existence.

Ideally, officers would be able to access victim information, such as prior arrests or charges, while in the field. Thus, implementing a statewide, shared law enforcement information recording system specifically dealing with trafficked victims and traffickers could alleviate Oregon’s communication and victim-identity deficiency. This system would be funded with profit from regulated prostitution as well. A uniform information recording system could also increase collaboration between law enforcement and other state agencies around the state.

In addition to uniform data compilation, mandatory uniform training of law enforcement, state agencies, and interested NGOs would surely increase the effectiveness of collaboration between these parties. Although S.B. 673’s delegation of authority to the Board on Public Safety Standards and Training, discussed above in section

trafficking prevention and work toward the elimination of treating victims as criminals.

### *C. Protection of Victims*

One of the most crucial stages in the trafficking investigation is the identification of the victim. A uniform and structured fact finding interview needs to be set up in order to determine if a person is being subjected to prostitution. Without the fear of criminal sanctions, logic suggests prostitutes may be more willing to cooperate with law enforcement in turning over her trafficker. Uniform training of law enforcement, state agencies, and NGOs would ensure this necessary fact finding interview would be a part of any seemingly run-of-the-mill prostitution offense.

If prostitution is legalized, the state will plausibly have many new allies on its side in the fight against trafficking: legalization will provide financial infrastructure for trafficking enforcement and increased training and awareness campaigns, thus bringing trafficking to the public's attention. Since most NGOs rely on reports from concerned citizens<sup>324</sup> to identify victims, increased awareness among the community may contribute to an increase in citizen reports of trafficking. Additionally, there is an argument that some patrons of brothels may know the trafficking market better than any other citizen. Posting trafficking hotline numbers in brothels and perhaps requiring prostitutes to ask clients a routine series of questions about any information regarding trafficking violations could lead to increased reports of trafficking to the in-house Bureau of Labor and Industry worker's advocate.

Once a victim is identified, Oregon currently lacks resources through its state agencies and NGOs to provide a level of rehabilitation services and case management necessary for victim recovery. The severe lack of funding is what prevents the state from having a trafficking victims' shelter that can provide individualized care, while supplying medical and general necessities. Again, brothel profits could provide the foundation for these much-needed shelters. Aside from the many policy considerations that must be considered for a shelter, the ability to empower the victims with mental and physical support would be a huge improvement in Oregon's fight against human trafficking.

324. WILLAMETTE REPORT, *supra* note 6, at 60.

*D. Prosecution*

With prostitution legalized, law enforcement resources could be dedicated specifically to trafficking. Rather than looking for instances of prostitution with a mind-set of criminality, the mind-set of law enforcement should be focused on the coerced trade of victims. The Portland Police Department sets a good example with its Sex Crimes Unit handling trafficking cases, but if brothel revenue permitted, it would be ideal to have special trafficking units throughout the state. Brothel revenue could also help bolster the current Internet investigation teams.

Witness cooperation will heavily depend on how well the identification and training schemes work, but also upon how much

time and resources are available. (w)3h

are very interrelated. However, they can be separated with legislation and policy that would likely produce a better conceptual understanding of the two. From this better understanding, the state can comprehend what should and should not be tolerated under the law. Stigma of prostitution is a big issue. As discussed in sections II and III, it can be an impediment to proper investigation of trafficking and prevents prostitutes from seeking legal recourse when they have been abused. Recognizing prostitutes as professionals, and trafficked persons as victims, is the stepping stone to societal acceptance of prostitution and a more effective interaction between law enforcement and sex workers.

Society has wrestled with issues of morality in a variety of acts such as gambling, alcohol consumption, pornography, homosexual sex, and most recently, recreational use of marijuana. These acts and others were once prohibited because it was thought they threatened the social moral fabric. Over time, the United States has come to accept these activities as simply another commodity, or has been forced to recognize them as part of fundamental human expression, and has allowed its citizens to be their own moral police. Our country has not become encrusted with sin and has not faltered (at least from any of these activities). Prostitution should not be any different,