Governments' Role in Turning Tricks: The World's Oldest Profession in the Netherlands and the United States

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I. Introduction

Prostitution\(^1\) is "the oldest profession in the world" and one fraught with a tumultuous history. Attitudes toward prostitution have not significantly changed since Mary Magdalene walked the streets;\(^2\) it has often been documented in literature and art as a necessary evil.\(^3\) Although "actively prohibited, tacitly condoned, formally regulated, or a combination of these,"\(^4\) prostitution remains a thriving industry regardless of its legal status. Currently, countries are considering amending their legal approaches toward prostitution, not only for the health and safety of the prostitutes and those who utilize their services, but also to profit from the revenue generated by the profession.

When governments address prostitution through legislation, three systems are often utilized: criminalization, decriminalization, and legalization. The three systems are distinguishable by the amount of government control involved in prostitution. Indeed, in the United States, there is disagreement over which model should be implemented.

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1. Prostitution is generally defined as the exchange of money for sex. Eleanor M. Miller et. al., *The United States, in PROSTITUTION* 300, 303 (Nanette J. Davis ed., 1993). The subjects of forced prostitution and male prostitution are outside the scope of this Comment.
Contrary to the law in most European nations, all aspects of prostitution are illegal in the United States. This system is termed criminalization. However, current laws and law enforcement efforts have been ineffective in curtailing its existence. State governments spend millions of dollars and thousands of hours attempting to prohibit prostitution. Despite these efforts prostitution continues to thrive. The rate of crime against prostitutes remains high and sexually transmitted diseases continue to spread. These problems demonstrate that the current method of curtailing prostitution in the United States is not having the desired effect.

Alternatively, the Netherlands has accepted prostitution as a legitimate profession. The Dutch are known to be extremely tolerant of social behavior and values not traditionally condoned by other Western cultures, especially with regard to sex and drugs. Dutch laws concerning prostitution, however, are ambiguous. Prostitution is legal, but running a prostitution enterprise is not. This system is known as decriminalization. For the last ten years, a proposed amendment has been pending which would clearly define the parameters of prostitution, though to date it has not passed.

Studies have shown that decriminalizing prostitution in the Netherlands has helped lower the rates of crime and sexually

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5. In countries such as Sweden, England, France, and Belgium, prostitution is legal but there are laws against renting a premises for the purpose of prostitution. Additionally, in countries such as Austria, Greece, and parts of Germany prostitutes are required to be registered and have medical examinations. In Spain, there are no specific laws against prostitution but under the laws of "danger to society" women can be prosecuted. Id. at 3.

6. Miller, supra note 1, at 303. In Nevada, prostitution is legal in thirteen counties. Id. This regulatory scheme will be discussed in subsequent sections.


10. Id.


12. Id; Peter Conradi, Dutch Industry Prepares to Become a Red-Tape District, SUN. TIMES, Aug. 6, 1995. The proposed amendment would modify Section 250b of the Dutch Penal Code which currently prohibits brothels. The proposal would make brothel prohibition more lenient, by allowing each municipality the freedom to formulate its own policy. UITZINGER, supra note 11, at 6.
transmitted disease.\textsuperscript{13} Further, the decriminalization of prostitution has provided prostitutes guaranteed labor and social benefits such as adequate working conditions, a safer work environment, and medical care.\textsuperscript{14}

Lastly, Nevada has adopted a system of legalization. Under this scheme all aspects of prostitution, including the prostitute's lives, are regulated by the state government. While this gives prostitution legitimacy, the prostitutes enjoy little independence.

This Comment, in Part II, explains the legal scheme of prostitution utilized in the United States. This part also presents both sides of the debate over the current legal status of prostitution. Part III analyzes alternatives to the system used in the United States utilizing the Netherlands and Nevada as models. These systems are examined from their historical inception to the present. Part IV contrasts the instances of crime and the rate of disease among prostitutes between areas where prostitution is illegal and where the government has taken a role in monitoring prostitution. Part V then evaluates whether laws permitting government-regulated prostitution, such as those in the Netherlands and in Nevada, should be implemented throughout the United States. Finally, Part VI concludes that the controversy over prostitution in the United States has come to a legal impasse which requires continued attention.

II. Prostitution in the United States

Throughout history, governing entities have struggled with the question of how to handle prostitution. The United States is no exception. Prostitution, while not always illegal, has been regulated by virtue of the fact that it is regarded by many as socially unacceptable. Slowly that attitude evolved into statutes outlawing prostitution.\textsuperscript{15} However, a debate continues as to whether prostitution should retain its current legal status or whether a different approach should be adopted.

\textsuperscript{13} See Fred Haesker, Tolerance and Pragmatism Constant Themes, CALGARY HERALD, July 26, 1995, at B7 (reviewing JONATHAN BLANK SEX, DRUGS AND DEMOCRACY, movie); Renee Ordway, Councilors Appear Set to Give Spas Cold Shower, BANGOR DAILY NEWS, Sept. 8, 1995; Linda M. Rio, Psychological and Sociological Research and the Decriminalization or Legalization of Prostitution, ARCHIVES SEXUAL BEHAV., Nov. 2, 1991, 205, 207-08.

\textsuperscript{14} Sterk-Elifson & Campbell, supra note 9, at 196.

\textsuperscript{15} Robert T. Francoeur, TAKING SIDES: CLASHING VIEWS ON ISSUES IN HUMAN SEXUALITY 264 (Robert T. Francoeur ed., 1987).
A. History of Prostitution in the United States

The first laws regulating sexual intercourse were passed in 1692 in Massachusetts, making fornication a crime. Until that time, fornication was not considered a crime under American common law. After 1692, in addition to laws against fornication, single women were punished as sexual deviants under the laws of adultery or “street or night walking.” In the 1800s “bawdy houses” were closed because they were deemed to be public nuisances. Although laws regarding single women and sex were slowly being passed, prostitution was still tolerated.

Following the Civil War, laws were proposed which would have required the licensing of prostitutes and would have relegated them to work only in “red light districts.” The Women’s Suffrage Movement prevented the passage of these laws. Instead of licensing laws, some states passed laws prohibiting fornication and adultery, but not prostitution. In other states, however, prostitutes were punished under “open and gross lewdness” statutes.

In 1910, Congress passed the Mann Act in part as a response to an increase in the number of “opium dens” which were used to entice young girls into prostitution. The Mann Act prohibited any man from taking a woman across state lines for the purpose of prostitution or debauchery.

Between 1900 and 1920, criminal sanctions prohibiting prostitution were implemented at the state level throughout the United States. By 1925 every state had enacted some form of

16. Id. Fornication is voluntary sexual intercourse between an unmarried woman and a man, especially an unmarried man. WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 722 (1983).
18. Miller, supra note 1, at 301. For example, in Massachusetts, nightwalking was an offense established in 1699 and reestablished in 1787. Id.
21. Id.
22. Id. at 264-65.
23. Id.
24. Id.
25. Francoeur, supra note 15, at 265.
26. Id.
27. Miller, supra note 1, at 303. In fourteen states, prostitution was a statutory offense and in twenty-eight states prostitutes were considered vagrants. Id. at 301.
law prohibiting prostitution.\textsuperscript{28} During the 1960s and 1970s, courts struck down laws concerning sexuality, including sodomy, birth control, and abortion; however, laws prohibiting prostitution remained in effect.\textsuperscript{29} By 1971, except for thirteen counties in Nevada, prostitution was completely illegal in the United States.\textsuperscript{30}

\textbf{B. The Debate Over the Status of Prostitution in the United States}

Prostitution in the United States continues to be controversial, with strong opinions on all sides of the social and political spectrum. On both an intellectual and emotional level, views of prostitution are extremely diverse. Some view sex as “the glue that holds a marriage together and something that should be saved for just a husband and a wife.”\textsuperscript{31} Further, many feel that women sitting in store windows “with lights on like a piece of meat” is a degrading experience for women.\textsuperscript{32} Conversely, others consider that “in the face of current sexual, economic, and legal realities” women should be able to choose how they earn a living.\textsuperscript{33} The criminalization of prostitution remains heavily debated due to the controversy over its effectiveness.\textsuperscript{34}

\textit{1. Arguments Why Prostitution Should Remain Criminalized.}—Currently, in the United States, every aspect of prostitution is illegal, including soliciting a prostitute, pandering,
and loitering for the purposes of prostitution.\textsuperscript{35} This complete prohibition is known as criminalization.\textsuperscript{36}

Those in favor of keeping prostitution criminalized use immorality as a basis for their argument.\textsuperscript{37} Secondly, they argue that prostitution is inherently exploitive\textsuperscript{38} and therefore it can never be seen as a "choice."\textsuperscript{39} Lastly, proponents of keeping prostitution criminalized maintain that regardless of its legal status, a criminal element will always accompany it.\textsuperscript{40}

\textit{a. Immorality}.—Opponents of legalized prostitution have traditionally based their argument on the presumption that it is immoral and the law should not condone, either implicitly or explicitly, immoral behavior.\textsuperscript{41} Religious conservatives worry about the morality of prostitution because it necessarily entails sex outside of marriage.\textsuperscript{42}

\textit{b. Prostitution as victimization}.—Those who are in favor of eliminating prostitution argue that it is never the prostitute's choice to enter into the profession. Instead they view it as "the epitome of gender-based exploitation"\textsuperscript{43} and the trafficking of human beings.\textsuperscript{44} Anti-prostitution groups such as WHISPER (Women Hurt in Systems of Prostitution Engaged in Revolt) consider prostitution to be nothing less than rape and believe therefore that it can never be reformed.\textsuperscript{45} Sex is regarded as something that should be mutual, not coercive and exploitive.\textsuperscript{46}

The leading argument as to why women become prostitutes is economic deprivation.\textsuperscript{47} Some women feel they have few other

\begin{itemize}
  \item \textsuperscript{36} Francoeur, \textit{supra} note 15, at 264.
  \item \textsuperscript{37} Rio, \textit{supra} note 13, at 206.
  \item \textsuperscript{38} See \textit{At Issue, supra} note 34.
  \item \textsuperscript{39} Jane Anthony, \textit{Prostitution as “Choice,”} Ms. Jan/Feb. 1992, at 86.
  \item \textsuperscript{40} Charles Winick, \textit{Legalizing Prostitution Would be Extremely Foolhardy}, in \textit{TAKING SIDES: CLASHING VIEWS ON CONTROVERSIAL ISSUES IN HUMAN SEXUALITY} 264, 266 (Robert T. Francoeur ed., 1987).
  \item \textsuperscript{41} Rio, \textit{supra} note 13, at 206.
  \item \textsuperscript{42} Clark, \textit{supra} note 3, at 512; Laura Miller, \textit{Prostitution}, HARPER'S BAZAAR, Mar. 1995, at 210.
  \item \textsuperscript{43} Anthony, \textit{supra} note 39, at 86.
  \item \textsuperscript{44} Clark, \textit{supra} note 3, at 507.
  \item \textsuperscript{45} Miller, \textit{supra} note 42, at 210.
  \item \textsuperscript{46} Clark, \textit{supra} note 3, at 512.
  \item \textsuperscript{47} FLOWERS, \textit{supra} note 30, at 176.
\end{itemize}
opportunities to earn a living. Becoming a prostitute provides some women the power and status they lack because of gender inequality. However, studies have shown that a prostitute will earn about the same as a secretary and she will only keep a small percentage. Women who "[face] poverty, hunger, sexual abuse, homelessness, inaccessible education, unobtainable medical treatment, or inadequate funds for child care" and simply need to survive, have limited "choices." A woman with a true choice does not choose to become a prostitute. This "choice" of becoming or remaining a prostitute has been compared to the "choice" of staying in an abusive relationship. In both situations women are abused by men and continue to remain in the relationship because of economic survival.

The facade of the glamorous life of a prostitute perpetuates the myth that prostitution is a choice. For every one high-priced call-girl there are 1,000 prostitutes who are slaves to the streets. Prostitutes are often the victims of sexual abuse and are dependent on drugs or alcohol. Many are runaways who have been described as "the unwanted, unloved children of the last generation, who don't know how to live, how to read, how to eat properly, or how to add up figures." For many poor, uneducated women, prostitution is the only way to make money.

The mental well-being of prostitutes is often harmed by their work. Psychological studies have shown that prostitutes cope with the sex act by making it completely impersonal and by separating their bodies from their minds. Often, the women take on a new personality when "becoming" a prostitute by abandoning their beliefs, feelings, desires, and values. In addition, they may "[acquire] a new name . . . appearance . . . and past." The rate

48. Id.
49. Winick, supra note 40, at 266.
50. Anthony, supra note 39, at 86.
51. Clark, supra note 3, at 522. "You finish college, and you now have the choice to be, say, a social worker, or to submit to a lot of sex acts with hundreds of men whom you don't like and you're not attracted to and to open yourself up to the dangers of diseases and being raped or murdered." Id.
52. Anthony, supra note 39, at 86.
53. Id.
54. Clark, supra note 3, at 507.
55. Id.
56. Id.
57. Id. at 508.
58. Id. at 512.
59. Clark, supra note 3, at 512; At issue, supra note 34, at 521.
60. At Issue, supra note 34, at 521.
of attempted suicide among call girls is nearly seventy-five percent.\textsuperscript{61}

In addition to the social hardships a prostitute will have to endure, she is also at a disadvantage when she stops working. A prostitute who is no longer marketable loses the social system of pimps and other prostitutes upon which she has relied.\textsuperscript{62} Typically, pimps live off of their prostitutes' earnings; once the prostitute stops working the pimp has no use for her.\textsuperscript{63} Out of work prostitutes are left without viable job skills to employ in the conventional job market.\textsuperscript{64} They have no experience to build on, no pension benefits, no worker's compensation, and no unemployment insurance.\textsuperscript{65}

Lastly, the idea that men are "lonely and gotta have it or they will prey on good women" is rejected by those who oppose prostitution.\textsuperscript{66} This view turns prostitution into a regular sexual encounter, whereas it is argued instead that prostitution should be considered a sexual assault.\textsuperscript{67} Studies done in communities where brothels were closed showed no change in the community.\textsuperscript{68} The rate of sex crime was not increased, nor was the availability and sale of pornography.\textsuperscript{69}

c. \textit{Criminal underworld}.—Prostitution is a business that inherently includes a large cash flow.\textsuperscript{70} A "variety of elements" from the criminal underworld are therefore attracted to the business.\textsuperscript{71} Pimps exploit prostitutes and take their money.\textsuperscript{72} Prostitution is also connected to the drug trade. Many prostitutes enter the profession already addicted to drugs.\textsuperscript{73} Some prostitutes work solely to earn money for their drug habits.\textsuperscript{74} Others become addicted once they become a prostitute.\textsuperscript{75}

\begin{itemize}
  \item 61. Clark, supra note 3, at 512.
  \item 62. Winick, supra note 40, at 267.
  \item 63. Id.
  \item 64. Id.; Clark, supra note 3, at 512.
  \item 65. Winick, supra note 40, at 267.
  \item 66. Clark, supra note 3, at 512.
  \item 67. Id.
  \item 68. Winick, supra note 40, at 268.
  \item 69. Id. at 269.
  \item 70. Id. at 266.
  \item 71. Id. at 267.
  \item 72. Id.
  \item 73. FLOWERS, supra note 30, at 177.
  \item 74. Winick, supra note 40, at 267.
  \item 75. FLOWERS, supra note 30, at 177.
\end{itemize}
A variety of other crimes also accompany prostitution. The “rolling” of clients is part of the profession. This crime involves the prostitute drugging her client and then stealing from him. Additionally, illegal drinking clubs are common because they are prime places to pick up prostitutes. Lastly, prostitution “breeds corruption in police departments” as the police officers are easily bribed by the sex workers. These types of crimes occur even when prostitution is not criminalized; “there has never been any society where regulated prostitution has worked.”

These arguments demonstrate that those who are in favor of keeping prostitution criminalized are concerned about the status of women in today’s society and they worry that this profession will continue to exploit and demean women. However, these arguments are strongly criticized by the opposing side. The other side of the debate argues that keeping prostitution criminalized does not eliminate the profession, but instead they contend that efforts devoted to enforcing the laws against it are unsuccessful. This group acknowledges that prostitution is not going to disappear and therefore some type of regulation is necessary to help keep it under control. Others feel that prostitution is a worthwhile profession and women who work as prostitutes need laws and regulations only for their protection.

2. Arguments Against Decriminalization.—The other side of the prostitution controversy in the United States favors reforming the current legal status of prostitution. The arguments supporting reform are abundant and varied. First, the belief that prostitution is immoral is not as widely held as is often presented. Second, it is a widespread notion that women enter into prostitution voluntarily and under their own free will and it is therefore a choice. This argument includes ideas that prostitution is a way for many women to make good money and there are great benefits of prostitution for both men and women. Additionally,
the criminalization of prostitution requires the allocation of large sums of money and increased police hours, which could be better used for protection against other crimes. Lastly, constitutional arguments have been made to support the reform of prostitution laws.

a. *Prostitution is not believed to be immoral.*—Studies have shown that most Americans do not believe prostitution is immoral. In addition, most acknowledge that prostitution is unlikely to be reduced or eliminated. Many Americans found prostitution to be offensive only when it was in their neighborhood as it may denigrate an area economically and lower property values. Further, many believe prostitution should be legalized through a form of licensing or zoning, so that the prostitutes will work in a designated area away from families and neighborhoods.

b. *Prostitution as choice.*—Prostitution is thought by some to be the equivalent of other private acts of consensual adults: smoking, drinking, eating bad food; "they are all bad choices, but we’re free to make them and pay the natural consequences." The life of a prostitute can be as good or as bad as she chooses, and she is free to leave it at any time. Additionally, the act of prostitution has been compared to the choice of a woman to have an abortion; people have to be given a choice when it comes to their own bodies.

85. See Bovard, *supra* note 7.
86. *Rio, supra* note 13, at 206. In a study in Boston, only 14% of those surveyed believed prostitution to be immoral, 50% of Californians thought of prostitution was a good idea, and 69% of the 15,000 respondents in a survey by a California Assembly favored legalization. A national sample found that only 46% of the respondents thought that prostitutes do more harm then good. *Id.* at 206-207. Seventy-five percent of the people in San Francisco favor decriminalization. Miller, *supra* note 42, at 210.
87. HOBSON, *supra* note 29, at 225.
89. HOBSON, *supra* note 29, at 225.
90. Clark, *supra* note 3, at 520.
92. Miller, *supra* note 42, at 210. "The abortionist comes in and invades the womb in some way ... and the woman pays the abortionist. It's a commercial transaction; money has transferred hands a result of allowing this invasion to occur. ... *[T]he same can be said of prostitution; the only difference is that the commercial act is more advantageous to the woman." Kate Santich, *Right to Bear*
One of the leading reasons women enter the world of prostitution is financial gain. Even those who have little education learn to manage their own money, pay taxes, and "will make more money in six months then an average starting attorney." For those prostitutes who are considered high class, they choose prostitution because of the independence it offers. It allows them to engage in a "self-defining career," practice their own beliefs concerning correct moral behavior, and have the opportunity to meet "diverse men." Thus, those prostitutes who are considered "high class" choose the profession consciously as a seemingly promising and beneficial career. Women also find great benefits to being a prostitute.

Prostitutes define themselves as sex therapists and psychological nurturers. Many believe that they are selling their best qualities, their love and tenderness. Prostitution is also used to create feelings of trust and intimacy. Furthermore, prostitutes

93. Clark, supra note 3, at 519. Flowers has identified five aspects of our socioeconomic structure that make prostitution alluring or a viable alternative to women:

(1) There are virtually no other occupations available to unskilled or low skilled women with income comparable to prostitution.
(2) Virtually no other occupation exists for unskilled or low skilled women that provides the adventure or allows the independence of the prostitute lifestyle.
(3) The traditional "woman's role" is almost synonymous with the culturally defined female sex role, which emphasizes service, the woman's physical appearance, and her sexuality.
(4) The discrepancy between accepted male and female sex roles creates the "Madonna-whore" notion of female sexuality, such that women who are sexually active beyond the limits of their "normal" sex-role expectations are labeled deviant and lose social status.
(5) The cultural importance of wealth and material goods causes some women to desire "advantages to which [they are] not entitled by [their] position in the socioeconomic stratification."

FLOWERS, supra note 30, at 176-77.
94. Clark, supra note 3, at 519-20. The prostitutes that work in a Nevada brothel earn anywhere from $75,000 to $125,000 per year. Meanwhile, Back at the Brothel, COSMOPOLITAN, Mar. 1992, 124, 124 [hereinafter Back at the Brothel].
95. Rio, supra note 13, at 210.
96. See id.
97. Clark, supra note 3, at 510.
98. Id.
99. Id.
allow other industries, such as the beauty industry, restaurants, cab companies, health clubs, and doctors to thrive.\textsuperscript{100}

Prostitutes also believe that men benefit from prostitution. Prostitution enables men to have sex without having to get emotionally involved.\textsuperscript{101} Prostitutes find that men need companionship and comfort.\textsuperscript{102} The prostitute can confirm a man’s ego and can allow him to hear things he does not hear anywhere else.\textsuperscript{103}

c. Use of money and police hours in enforcing the laws of prostitution.—Criminalizing prostitution does little to deter prostitutes and often serves only to waste police and state vice funding. Policing prostitution requires millions of dollars to be spent annually. Furthermore, it costs the federal government roughly three billion dollars annually in uncollected tax revenue.\textsuperscript{104} One study estimates that in 1985, America’s biggest cities each spent twelve million dollars to enforce laws against prostitution; this was considered to be an underestimate.\textsuperscript{105} Half of these cities spent more money on enforcement than on education or public welfare, and five spent more than on health services and hospitals combined.\textsuperscript{106} It costs over two thousand dollars to prosecute a prostitute who will likely return to the street only to be arrested again.\textsuperscript{107}

In addition to the vast amounts of money spent, many hours are used enforcing the laws on prostitution, while other, more violent crimes, are pushed aside. In some cities, one in ten police officers is devoted exclusively to enforcing prostitution laws.\textsuperscript{108}

\begin{itemize}
\item \textsuperscript{100} Id. at 512.
\item \textsuperscript{101} Id. at 519.
\item \textsuperscript{102} Clark, supra note 3, at 519.
\item \textsuperscript{103} Id. Prostitutes will tell their clients that they are attractive. Id.
\item \textsuperscript{104} Id. at 513.
\item \textsuperscript{105} Street Cleaning, supra note 76, at 29. The studies do vary, however. In one study conducted in 1985, the estimate was that the 16 largest cities spent 7.5 million dollars each. VANWESENBEECK, supra note 4, at 3. Another study suggests that Los Angeles spends 100 million dollars per year, Street Cleaning, supra note 76, at 29; Bovard, supra note 7; and New York spends 10 million. Mike Sion, With Legal Casinos Abounding, Is Legal Prostitution Next?, GANNETT NEWS SERVICE, Jan. 16, 1995; Clark, supra note 3, at 513.
\item \textsuperscript{106} VANWESENBEECK, supra note 4, at 3. Los Angeles and San Diego spent more on enforcement than on health care for the general public of their cities. James R. Stout & Thomas S. Tanana, Esq., Could California Reduce AIDS by Modeling Nevada Prostitution Law? 2 SAN DIEGO JUSTICE J., 491, 497-98 (1994).
\item \textsuperscript{107} Rhode, supra note 8, at A22.
\item \textsuperscript{108} Street Cleaning, supra note 76, at 29.
\end{itemize}
In other cities, the policing of prostitution is dictated by “an informal policy” where arrests are made simply to appease the community; the prostitutes are warned in advance and they are given great leniency. Prostitution law enforcement is erratic “depending completely on how much the public complains and on pressure from politicians.” Also, prostitution enforcement is very time-consuming and police forces are generally short-staffed. Police in Boston, Cleveland, and Houston made twice as many arrests for prostitution than for all homicides, rapes, robberies, and assaults combined. While police are doing everything they can to prevent prostitution, in the state of Washington the murder rate ... has skyrocketed and the city's arrest and conviction rates for murders have fallen by more than fifty percent.” Police are spending too much time enforcing prostitution laws when ninety-four percent of Americans feel that the police do not respond quickly enough to calls for help for other crimes. In over thirty-five states, prisons are over-crowded and in many of these prisons, half of the female inmates are prostitutes. The courts are also filled with prostitution-related crime.

In addition to the time and money spent, the laws of prostitution “bring out the worst among the nation’s law enforcement agencies.” Throughout the country, officers are soliciting, hiring, and sleeping with prostitutes in order to arrest them. In Honolulu, police paid private citizens to pick up prostitutes, have sex with them, and drive them to the police for arrest. In Des Moines, Washington, the police hired a convicted rapist to have sex with masseuses. In Maryland, an undercover police officer had intercourse with a woman at a strip club. Across the United States there have been reports of police officers forcing prostitutes

110. Id. at 507.
111. Id.
112. Bovard, supra note 7. Cleveland officers spend eighteen hours on “prostitution duty” for every violent offense that fails to bring an arrest. Id.
113. Id.
114. Id.
115. Id.
116. Street Cleaning, supra note 76, at 29.
117. Id.
118. Bovard, supra note 7.
119. Id.
120. Id.
121. Id.
to have sex with them for free, often without using condoms, or raping them in their vans or at the precincts. These outrageous attempts to curb prostitution have found little success.

Over six million men have employed a prostitute within the last five years and somewhere between seven billion and nine billion dollars are spent annually on prostitution. The money and resources expended to prevent prostitution could be better utilized for services to help prostitutes such as education, employment, welfare, health, and drug treatment programs.

d. Constitutional arguments—Constitutional arguments have been made to support the claim that prostitution should be regulated. One argument is that the criminalization of prostitution violates the Equal Protection Clause of the Fourteenth Amendment. Various laws pertaining to the criminal offense of prostitution are gender biased; they are only enforced against women and some only apply to women. In essence, this means that male prostitutes and male customers cannot be convicted under these statutes. Even those statutes that are gender neutral are usually applied in a discriminatory fashion.

Recent surveys have found that although there are almost as many male prostitutes as female prostitutes, women account for ninety percent of prostitution arrests. Although twenty percent of the male population solicit prostitutes at some point in their life, only two customers are arrested for every eight female prostitutes arrested. When a male client is arrested he is often asked to testify against the prostitute and the charges against the customer are dropped. Additionally, penalties are vastly different between the customer and the prostitute.

In every state, the prostitute is regularly penalized with prison sentences ranging from one month to a year and fines anywhere

123. Bovard, supra note 7.
124. Rhode, supra note 8, at A22.
125. Id.
126. Rio, supra note 13, at 214.
127. Id.
128. Id.
129. FLOWERS, supra note 30, at 173.
130. Rhode, supra note 8.
131. FLOWERS, supra note 30, at 173. In New York arrests of prostitutes are 100 times greater than that of a customer. Rio, supra note 13, at 214.
132. Rio, supra note 13, at 214.
133. Genska, supra note 35, at 271.
from one hundred dollars to one thousand dollars. Conversely, not all states have laws penalizing the customer and punishment is often at the discretion of the judge. In only a few states can a customer face a penalty of five hundred to one thousand dollars or one year in jail.

The pimps and hotel managers are the ones who are profiting from prostitution and they remain virtually ignored by the criminal justice system. Even when the wording of prostitution laws was changed, the enforcement remained unchanged; women were the ones arrested.

Racism plays a role in the inequity of enforcement of prostitution laws as well. The most penalized prostitutes are poor, black women. In fact, black women are seven times more likely to be arrested for prostitution than non-black prostitutes. Most of these arrests take place in inner cities "where living standards are low, the level of desperation high, and police prejudice endemic."

A second constitutional argument centers on the Fourth Amendment right to privacy. Under the Fourth Amendment requirement of probable cause and reasonableness, courts balance the harm of the conduct against the state's intrusion into the individual's privacy. When that balance is considered, it would seem that the harm created by prostitutes' acts is minimal in relation to the intrusion on their privacy. The acts of intrusion consist of "listening at hotel room doors, . . . setting up various types of entrapment schemes, and using decoys to make contacts with prostitutes." When the sexual acts between prostitutes and their clients occur behind locked doors, the intimate activity justifies more than mere suspicion before entering and intruding on

134. Id.
135. Id.
136. Id.
137. HOBSON, supra note 29, at 213.
138. Id. When male clients were arrested, they were written about in newspapers. When mailings were sent to the homes of those who utilized prostitutes, the practice came quickly to a stop because of political protests. Id. at 213.
139. FLOWERS, supra note 30, at 173.
140. Id.
141. Id. at 173.
142. Id.
143. Rio, supra note 13, at 215.
144. Id.
145. Id.
146. Id.
their privacy. Often the police justify their searches on less information than is required to satisfy the probable cause standard.

As illustrated, criminalizing prostitution may not be the most effective means of controlling prostitution. Many argue that a different regulatory scheme should be implemented. In considering alternatives to criminalization, legislators, feminists, and prostitutes, among others, have turned to the Netherlands and Nevada.

III. Alternatives to Criminalizing Prostitution

Besides criminalizing all aspects of prostitution, two other methods exist for handling prostitution: decriminalization and legalization. Legalization and decriminalization are distinguishable by the degree of government involvement in prostitution. Under decriminalization systems the statutes prohibiting prostitution are repealed. Subsequently, the government does not interfere with the actual sex trade but instead controls crimes associated with prostitution such as living off the earnings of a prostitute and running a prostitution house. Most of the industrialized world, including the Netherlands, has decriminalized prostitution. Legalization, on the other hand, allows the government to license prostitutes, create prostitution zones, and enforce health checks. This is the system Nevada has adopted.

A. Prostitution in the Netherlands

In the Netherlands, prostitution has never been prohibited; however activities associated with it have been regulated by the government in some way. These regulations are in the form of decriminalization, where prostitutes maintain their independence and employment conditions are monitored. Any laws concerning prostitution that remain would focus on labor and

147. Id.
149. Genska, supra note 35, at 272.
150. Clark, supra note 3, at 513.
151. Id. at 513, 516.
152. Id. at 513.
153. Id.
154. Sterk-Elifson & Campbell, supra note 9, at 192.
156. Id.
occupational-safety regulations and protecting women from abuse and crime.\footnote{157}

Currently, section 250b of the Dutch Penal Code prohibits certain prostitution-related activities such as pimping, facilitating prostitutes,\footnote{158} and running prostitution enterprises.\footnote{159} While these activities are illegal, authorities usually "turn a blind eye" and allow these activities to continue.\footnote{160} However, a proposed law has been pending which would place control of prostitution in the hands of local municipalities.

1. History of Prostitution in the Netherlands.—Although prostitution has always been legal in the Netherlands,\footnote{161} many laws exist to regulate it.\footnote{162} The first regulations, taken from the French Penal Code, went into effect at the end of the 19th century.\footnote{163} These regulations required the sites used by prostitutes and the prostitutes themselves to be registered with the police.\footnote{164} In addition, it was mandatory for the prostitutes to have routine medical examinations to test for sexually transmitted diseases.\footnote{165}

At the turn of the century, two groups formed to debate whether the Dutch government should continue to intervene to regulate and control prostitution.\footnote{166} The first group, known as the "Prohibitionists," desired greater government involvement in monitoring prostitution.\footnote{167} They believed prostitution should be prohibited or at least more strictly regulated.\footnote{168} The second group, known as the "Abolitionists," believed that the government should not have any involvement in the regulation of prostitu-

\footnote{157. \textit{Id.}}\footnote{158. Sterk-Elifson \& Campbell, \textit{supra} note 9, at 192; \textit{see infra} note 172 for a definition of pimping and facilitating prostitutes.}\footnote{159. UITZINGER, \textit{supra} note 11, at 2; \textit{see infra} note 195 for a definition of window brothels.}\footnote{160. UITZINGER, \textit{supra} note 11, at 6.}\footnote{161. Sterk-Elifson \& Campbell, \textit{supra} note 9, at 192.}\footnote{162. \textit{Id.}}\footnote{163. \textit{Id.} at 193.}\footnote{164. \textit{Id.}}\footnote{165. \textit{Id.} The rate of sexually transmitted diseases among the prostitutes was never made public; however, it was rumored that the diseases were widespread among them. Sterk-Elifson \& Campbell, \textit{supra} note 9, at 193.}\footnote{166. \textit{Id.}}\footnote{167. \textit{Id.}}\footnote{168. \textit{Id.} The prohibitionists were represented by the Nederlandse Verenigin tegen Prostitute (Dutch Union against Prostitution). \textit{Id.}}
The government incorporated aspects from both schools of thought and formulated a compromise — the Dutch Public Morality Act. The Dutch Public Morality Act was passed in 1911. The Act mandated punishment of those who engaged in pimping and facilitating prostitutes. The Act was designed to criminalize "pimping," with the presumption that if pimps were arrested, prostitution would disappear since there would be no one to organize the prostitutes. At that time, police activity focused on administrative procedures only, such as registering the prostitutes and the brothels.

In the 1930s, the police took a more active role in monitoring activities related to prostitution. Throughout the 1930s and 1940s, the sex industry was largely ignored as the economic depression was the prominent issue of concern. By the late 1940s, however, the sex industry had once again become a focus of the government as the country became concerned with the morals of young Dutch girls.

In the 1960s, the sexual revolution allowed women in the Netherlands to be openly active in the sexual arena. However, this openness to sexuality did not diminish the demand for prostitutes and men continued to seek prostitution services. In the late 1960s and 1970s, the importation and trafficking of foreign women coupled with an increase of drug use among the prostitutes caused the Dutch government to take a more active role in controlling prostitution activities.

169. Sterk-Elifson & Campbell, supra note 9, at 193.
170. Id.
171. Id. The Act institutionalized prudishness. Id.
172. Id. Pimps and facilitators are those who profit from the activities of prostitutes. Sterk-Elifson & Campbell, supra note 9, at 193.
173. Id.
174. Id. A special prison for pimps was still open until the 1980s. Id.
175. Id.
176. Sterk-Elifson & Campbell, supra note 9, at 193.
177. Id. at 194.
178. Id. Dutch girls were having children out of wedlock, usually fathered by American or Canadian soldiers who served in World War II. Because of these pregnancies, the Dutch government attempted to institute "resocialization programs" to get women to leave the prostitution industry. However, the program offered no alternatives and the effect was minimal. Id.
179. Id.
180. Sterk-Elifson & Campbell, supra note 9, at 194.
181. Id. at 194-95. The women who were being brought to the Netherlands to work as prostitutes were mainly from Southeast Asia, South America, and certain
Communities began to regulate prostitution on a local level through legislation. Two types of decentralized regulatory policies emerged in the local legislation. Active regulation, which was more restrictive than the national laws, made prostitution completely illegal. Alternatively, the passive regulation approach allowed prostitution, but only in certain restricted geographic zones or in specific establishments.

The rise of a feminist movement in the 1970s coincided with a movement toward granting rights and privileges to prostitutes. Lobbying resulted in the perception that prostitution was a legitimate occupation. Like other professions, prostitution became subject to taxation and prostitutes were furnished rights such as adequate safety and working conditions and medical care.

2. The Current and Future State of Prostitution in the Netherlands.—Amsterdam and Utrecht house the majority of prostitutes and prostitution-related business in the Netherlands. In Amsterdam, prostitution is legal, but “running a prostitution enterprise” is not. In Utrecht, prostitution is restricted to a specific area, namely the “zone of tolerance.” A proposed amendment to the Dutch Penal Code would attempt to legalize and regulate brothels, by placing their control in the hands of the municipalities. Under this amendment, Amsterdam would implement a system of licenses and Utrecht would maintain a zone where prostitution is tolerated.

a. The current state of prostitution in Amsterdam.—Amsterdam has adopted a policy whereby the city
prevents new brothels from opening but, tolerates the ones already in existence. In the red-light district, prostitution is tolerated in “window districts.” Additionally, the city prohibits minors from working as prostitutes and requires routine medical check-ups.

The proposed amendment to the Dutch Penal Code would allow each municipality to determine how to regulate its own brothels. If the amendment is passed, Amsterdam will implement a licensing system for its brothels.

(1) The debate over regulation of prostitution in Amsterdam.—In the 1980s, a bill was drafted which proposed legalizing brothels. At the outset, this bill seemed to have political support. It would have required regulation of prostitution in order to help control the profession as well as to prevent abuse and exploitation of prostitutes. However, opposition to the proposal grew. The bill, which had been heavily debated for ten years, was thrown out by the Christian Democrat justice minister in 1993.

A new revised bill was proposed, following the demise of the first bill, which would have made brothel prohibitions more lenient and would have turned over the control of brothels to the municipalities. Thus, the original proposal to legalize prostitution instead became a bill to decentralize it. The revised proposal came up for a vote in November 1993, but there was not enough

194. See id.; Pilkington, supra note 2.
195. Prostitution Throughout the World, S.F. EXAMINER, Dec. 5, 1993, at A-12 [hereinafter World]. In these areas, the women rent streetside apartments and display themselves on beds in the windows for the passing customers as advertisement. When a customer enters, the curtains are closed. Id.
196. UITZINGER, supra note 11, at 6.
197. Id.
198. Id. at 7.
200. VANWESENBEECK, supra note 4, at 4.
201. Id.
202. Id.
203. Kelland, supra note 199. The original proposal would have allowed women to freely choose whether they wanted to become prostitutes and the laws prohibiting prostitution would have been taken out of the penal code. However, when the new minister came into power he refused to allow prostitution to become a common activity. VANWESENBEECK, supra note 4, at 4.
204. UITZINGER, supra note 11, at 7.
205. VANWESENBEECK, supra note 4, at 5.
support for the proposal to pass.\textsuperscript{206} As of November 1995, the bill continued to be discussed and Amsterdam was planning to implement its licensing system by 1996.\textsuperscript{207} To date, the proposed amendment has not passed.

\textit{(2) The licensing system in Amsterdam.}—The latest proposed bill would allow each municipality to devise its own system for regulating brothels.\textsuperscript{208} Additionally, the bill would impose strict punishments for those who force women into prostitution or employ minors in their brothels.\textsuperscript{209} Once a license is granted to a brothel, the brothel owner could not be punished by law.\textsuperscript{210} The licensing system would only apply to prostitution enterprises such as window brothels, closed houses and sex clubs.\textsuperscript{211} The license would not pertain to individual prostitutes or “streetwalkers.”\textsuperscript{212} This system would allow authorities to monitor brothels and clubs and shut them down if they did not meet safety, fire, and hygiene standards.\textsuperscript{213} Additionally, the brothels would be monitored to make sure that all of the prostitutes are legal residents of the Netherlands.\textsuperscript{214} A seal of quality would be awarded to those brothels which follow the requirements of mandatory condom use, routine health checks, and providing a clean work area.\textsuperscript{215} The seal would signify that the prostitutes have been checked for sexually transmitted diseases within the

\begin{thebibliography}{99}
\bibitem{206} Id. at 5.
\bibitem{207} \textit{Strike May Hit the World’s Oldest Profession}, STICHING ALGERMEEN NEDERLANDS PERSBUREAU, NOV. 16, 1995 [hereinafter \textit{Strike}].
\bibitem{208} UITZINGER, supra note 11, at 7.
\bibitem{209} Conradi, supra note 12.
\bibitem{210} UITZINGER, supra note 11, at 7.
\bibitem{211} Id. at 8. The aims of the Amsterdam licensing system are (1) to protect the prostitute and improve his or her position and (2) to minimize or prevent disturbances to the peace. \textit{Id}.
\bibitem{212} Id. Streetwalkers are those prostitutes who overtly solicit men on the streets. FLOWERS, supra note 30, at 174. They have no indoor area to “turn their tricks,” and are required to work in the cold and rain. Janine di Giovanni, \textit{Dutch Show the Way to Legal Streetwalking}, SUN. TIMES, Sept. 27, 1992.
\bibitem{213} Kelland, supra note 199. Specific fire regulations have been established for use in brothels specializing in sado-masochism. Clients must be bound and gagged in such a way so that they can get free of the restraints within thirty seconds. Conradi, supra note 12. A pamphlet has been distributed advising the quickest ways to get out of handcuffs or the easiest ways to get free from being tied up if confronted with a fire. \textit{Tied Up With Some Burning Issues on The Agenda}, THE HERALD (GLASGOW), NOV. 3, 1992.
\bibitem{214} \textit{Strike}, supra note 207.
\end{thebibliography}
previous two weeks.\textsuperscript{216} However, there would be no guarantee that the prostitutes are not H.I.V. positive.\textsuperscript{217}

This type of official licensing, according to some authorities, is the only way to curtail the spread of disease and keep the profession free from crime.\textsuperscript{218} The license would be non-transferable and the brothel owner would be liable for the health of the prostitutes.\textsuperscript{219} Further, the brothel owner would be responsible if minors or victims of international trafficking work at the brothel.\textsuperscript{220} The brothel owner would also have to permit the prostitutes to refuse customers.\textsuperscript{221} The location of the brothels would be controlled to keep them in areas away from churches, sports clubs, and residential areas.\textsuperscript{222} The brothel management would be responsible for preventing criminal activities on the premises, such as dealing hard drugs, fencing, and illegal gambling.\textsuperscript{223} The brothel owners must also make sure discrimination does not occur.\textsuperscript{224}

\textbf{b. Utrecht's zone of tolerance.—}In Utrecht, a “zone of tolerance” has been instituted in a “green-light district.”\textsuperscript{225} Nine years ago the Council of Utrecht changed the police by-laws to allow prostitution under certain conditions in the green-light district.\textsuperscript{226} This zone consists of a 12-space car park; each stall, referred to as the “finishing off area,” is separated by an eight foot fence.\textsuperscript{227} In addition to the car spaces where the women work, the zone also contains a bus where the women go when they are

\begin{footnotes}
\item[216] \textit{Id.}
\item[217] \textit{Id.} The brothel owners cannot guarantee that the prostitutes are not H.I.V. positive because the virus has an incubation period during which it does not appear through testing.
\item[219] UITZINGER, supra note 11, at 8. If a new owner takes control of the enterprise a request must be submitted for a new license. \textit{Id.}
\item[220] \textit{Id.} at 10.
\item[221] Larkin, supra note 218.
\item[222] \textit{Id.;} UITZINGER, supra note 11, at 9.
\item[223] UITZINGER, supra note 11, at 10.
\item[224] \textit{Id.}
\item[225] Pilkington, supra note 2; Kay Mellor, \textit{Time To Turn the Red Light Green; The Oldest Profession Must be Made Legal}, DAILY MIRROR, Mar. 27, 1995, at 6.
\item[227] Pilkington, supra note 2; The “zone of tolerance” is an industrial estate on a factory access road which allows soliciting. The stalls allow the cars to park between the fences and a bin for condoms is placed outside the driver's side. Chris McLaughlin, \textit{Safer Sex for Sale}, THE SCOTSMAN, Nov. 19, 1994, at 15.
\end{footnotes}
not working. 228 This zone allows prostitutes to solicit men while being protected by plainclothes police officers. 229 The women can also look out for each other. 230 When a prostitute leaves with a customer, another will take note of the license plate number; if she is gone longer than usual, an authority will be notified. 231

Before the site for the zone of tolerance was chosen, five criteria had to be met. 232 The site had to be away from a residential area, the road pattern had to be suitable for “cruising customers,” the area could not be too far from the main entertainment center of the city, and the prostitutes had to have enough space to complete the job. 233 Because the Council of Utrecht subsidizes the project, it makes and enforces the rules. 234 The prostitutes are only able to work after city hours, they can take their clients only to this specific area, and between jobs the women must meet in the bus as opposed to the street. 235

Both Amsterdam’s licensing scheme and Utrecht’s zone of tolerance are examples of systems of decriminalization. Under these systems, the government is less involved in controlling the actual trade of prostitution but instead polices other aspects of the profession. Nevada, on the other hand, adopted a system of legalization. Under this scheme, the government plays an active role in monitoring legal brothels as well as all aspects of prostitutes’ lives.

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228. Morton, supra note 226. Coffee and soup are provided in the bus. It also contains a shower, toilet, kitchen, a place to purchase condoms, and a doctor’s room. The doctor can be consulted twice a week. Id.; Mclaughlin, supra note 227. Furthermore, a full-time coordinator, a crew of drivers’ assistants, and a social worker are available. Morton, supra note 226. Pamphlets regarding birth control, AIDS, childcare, and housing are also available in the bus. In case of poor weather, umbrellas can be rented. VANWESNENBEECK, supra note 4. While the women are in the bus they watch television, read newspapers, or compare notes. di Giovanni, supra note 212.

229. Pilkington, supra note 2.

230. Id.

231. di Giovanni, supra note 212.

232. Mclaughlin, supra note 227.

233. Id.

234. Mellor, supra note 225. The Council subsidizes the project with 120,000 pounds a year and 500 pounds for repairs to the car park. di Giovanni, supra note 212.

235. Mclaughlin, supra note 227. The women work when the office workers are not present, six days a week, throughout the year, between the hours of seven P.M. and two A.M. On Thursdays, one local business is open late; therefore, the women do not begin working until 9:30 P.M., after the shop closes. di Giovanni, supra note 212.
B. Prostitution in Nevada

Historically, the state of Nevada had a large mining industry and with it came a large influx of prostitutes.\textsuperscript{226} When the mining industry declined, the political climate shifted, allowing successful lobbying to encourage laws restricting prostitution.\textsuperscript{227} One of the first laws passed in Nevada regulating prostitution required that brothels be located away from main highways and schools.\textsuperscript{228}

In the years following the enactment of this law, some counties fully prohibited prostitution while in other counties prostitution remained legal and thrived.\textsuperscript{229} During the latter part of the twentieth century, however, a fear developed that prostitution would inhibit the growth of tourism in Las Vegas.\textsuperscript{230} In response, a state statute was enacted requiring brothels to be licensed by the county. Thus the county containing Las Vegas was permitted to determine whether or not to license brothels.\textsuperscript{231}

Today, prostitution is forbidden in the four largest cities in Nevada.\textsuperscript{232} Any county with a population of more than 250,000 people may not house a brothel.\textsuperscript{233} Although prostitution is permitted in some counties, strict requirements must be followed.

\begin{itemize}
\item \textsuperscript{226} Stout, \textit{supra} note 106, at 491.
\item \textsuperscript{227} \textit{Id.} at 492.
\item \textsuperscript{228} \textit{Id.} The original statute, Nevada Revised Statute 246, now embodied by Nevada Revised Statute 201.380 says that:
\begin{enumerate}
\item It shall be unlawful for any owner, or agent of any owner, or any other person to keep any house of ill fame, or to let or rent to any person whatever, for any length of time whatever, to be kept or used as a house of ill fame, or resort for the purposes of prostitution, any house, room or structure situated within 400 yards of any schoolhouse or schoolroom used by any public or common school in the State of Nevada, or within 400 yards of any church, edifice, building or structure erected for and used for devotional services or religious worship in this state.
\end{enumerate}
\textsuperscript{239} Stout, \textit{supra} note 106, at 492.
\item \textsuperscript{230} \textit{Id.}
\item \textsuperscript{231} \textit{Id.} The statute that was passed was Nevada Revised Statute section 244.345. \textit{Id.}
\item \textsuperscript{232} \textit{Id.} Las Vegas is included as one of the four largest cities in Nevada. Stout, \textit{supra} note 106, at 492.
\item \textsuperscript{233} \textit{Id.} Section 244.345(8) of the Nevada revised statute states that “In a county having a population of 250,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.” \textsuperscript{242} \textit{Id.} at 492.
\item \textsuperscript{234} \textit{Id.} Section 244.345(8) of the Nevada revised statute states that “In a county having a population of 250,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.” \textsuperscript{243} \textit{Id.}
\end{itemize}
First, a person is not permitted to engage in pandering. A person who lives from the earnings of a prostitute shall be punished by imprisonment or by a fine. Additionally, all prostitutes are required to get weekly medical check-ups and brothels must pay business taxes. Further, while the prostitutes are closely regulated, they may receive Social Security benefits and other forms of government assistance.

The system followed in Nevada is one where the prostitution laws touch most aspects of prostitutes' lives. The prostitutes are told where to live. Their lives outside of work are extremely structured. The prostitutes are prevented from raising their own children, driving a car within the city limits, and shopping between the hours of five P.M. and eight A.M. Furthermore, the women may eat in restaurants only accompanied by the manager of the brothel, they may not dress in a way that invites speculation about their occupation, and they may not sunbathe nude or semi-nude. These conditions are far from ideal for prostitutes working in the brothels.

Although legalization appears to impose harsh restrictions on the prostitutes, the regulations provide a safe and healthy environment for the prostitutes and their customers. Both legalization and decriminalization impose regulations on the health of the recognized prostitutes and both systems help to ensure the safety of the prostitutes.

244. Pandering is generally defined as any person who "induces, persuades, encourages, inveigles, entices or compels a person to become a prostitute or to continue to engage in prostitution." NEV. REV. STAT. ANN., tit. 15, § 201.300(1)(a) (1993).
246. A person who knowingly accepts, receives, levies or appropriates any other valuable thing, without consideration is living from the earnings of a prostitute. NEV. REV. STAT. ANN., tit. 15, § 201.320 (1993).
247. If a prostitute who works in a licensed brothel receives notice of a positive result from a state approved test for H.I.V. and continues to work, the prostitute is guilty of a felony and shall be imprisoned or fined. NEV. REV. STAT. ANN., tit. 15, § 201.358.
248. World, supra note 195.
249. Id.
250. HOBSON, supra note 29, at 227.
251. Id. at 227.
252. Back at the Brothel, supra note 94, at 124; Clark, supra note 3, at 511.
254. Id.
V. The Effect of Prostitution on Disease and Crime

The debate over schemes for regulating prostitution is enhanced when the rate of disease and crime among prostitutes is analyzed. When prostitution is not criminalized, the rate of disease among prostitutes decreases. In turn, the spread of disease from prostitutes to the general population is decreased. Additionally, drug use and crimes of violence against prostitutes are greatly reduced when prostitution is not criminalized. These facts bolster the position that reform is necessary to help control the spread of disease and prevent crime against women.

A. Prostitution and Disease

Health concerns play a major role in the debate over whether prostitution should be legalized. When a new sexually transmitted disease reaches epidemic proportions, prostitutes are used as scapegoats and targeted by legislation directed at prostitution. This blame is rarely correctly placed. In studies from the Netherlands, Europe, and the United States, it has been shown that the majority of prostitutes who are H.I.V. positive are those who have used intravenous drugs. Seemingly then, the use of needles is the primary culprit in the spread of disease, not the sexual acts of prostitution. Furthermore, medical studies have shown that the H.I.V. virus is twenty times more likely to be transmitted by a man to a woman during sex. Thus, prostitutes are in greater danger of contracting the virus than their customers. In addition, there is no doubt that where prostitution is legalized or decriminalized, the rate of sexually transmitted diseases (STDs) decreases and condom use increases. According to the United States Department of Health, only five percent of STDs are the result of prostitution; these diseases are spread mostly through non-commercial sexual activity.
1. **Health Aspects in the Netherlands.**—AIDS has spread more slowly than expected in the Netherlands. In 1987, it was estimated that 3,500 new cases would emerge by 1991, yet just over 2,000 had appeared as of 1992.264 At the same time, however, between 8,000 and 12,000 citizens were estimated to already be infected with the H.I.V. virus and the number is expected to quadruple by the year 2000.265 Even though prostitution is legal, the Netherlands has the lowest rate of AIDS infection in Western Europe and the lowest rate of sexually transmitted diseases in the world.266 The prostitutes who work in brothels have lower rates of H.I.V. infection than those who work on the streets.267 Those prostitutes who work in brothels are required to be tested for sexually transmitted diseases bi-weekly and the customers are required to wear condoms.268 All of these statistics strongly indicate that the regulation of prostitution has controlled the spread of AIDS in the Netherlands.

2. **Health Aspects in Nevada.**—The rates of AIDS and STDs among legal prostitutes in Nevada is zero.269 One reason for these statistics is the mandatory condom use policy which was implemented in January 1987.270 Under Nevada law, if a client refuses to wear a condom, he will be asked to leave.271 Furthermore, because prostitutes are more adept at using and applying condoms, the condoms are less likely to break or slip off during intercourse.272 Thus, the reliability of condoms has greatly improved and condoms are more effective in preventing dis-

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265. Id.
266. See Haesker, supra note 13; Ordway, supra note 13. Since the first AIDS case was reported in the Netherlands, the country has had less AIDS victims per million people than Spain, Switzerland, France, Italy, and Denmark. Henley, supra note 264.
267. John Earls, *Lays of the Land*, THE PEOPLE, Sept. 11, 1994, at 3. Fifty percent of street prostitutes are H.I.V. infected whereas only one percent of brothel workers have tested H.I.V. positive. Id.
270. Albert, supra note 262, at 1514.
272. See generally, Albert, supra note 262.
The second reason for the low incidence of disease is the mandatory medical testing. Prostitutes who work at licensed brothels are required to receive weekly or monthly medical exams for STDs and AIDS.274

a. Acquired Immunodeficiency Syndrome (AIDS).—Since 1987, Nevada has ranked among the top ten states in the country for per capita rates of AIDS,275 however the rate of AIDS among the legal brothels is zero. In Nevada, mandatory monthly AIDS testing for prostitutes who work in brothels began nine years ago.276 Only one of the 41,000 tests of 350 legal sex workers has come back positive;277 however, the one positive result was later found to be a false positive.278 Since testing for AIDS began, nineteen women who applied to work in the brothels have been turned away due to a positive H.I.V. test.279 Because using needles for intravenous drug use is one of the easiest ways for H.I.V. transmission, a criterion for employment in a brothel is no recent intravenous drug use.280 If a prostitute at a brothel transmits AIDS to one of the customers, the brothel owner can be liable.281 Contrary to the low rate of AIDS found in legal brothels, 200 illegal prostitutes arrested tested positive for H.I.V. since 1989, and all but two of them were street workers.282

b. Sexually Transmitted Diseases (STDs).—The rate of sexually transmitted diseases among workers in brothels has declined to less than one percent of the rate of cases across the state.283 Licensed brothels are required to test prostitutes once a week for STDs such as chlamydia and gonorrhea, and monthly for syphilis.284

273. Id.
274. Id.
277. Id.
278. Sion, supra note 105.
279. Smith, supra note 269.
281. Id. at 501.
282. Bell, supra note 276.
283. Sion, supra note 105.
284. Smith, supra note 269. A study conducted in 1988 found that out of 5,000 cases of gonorrhea only nine were found in legal brothels. Albert, supra note 262, at 1514. In another test, from 1982 to 1989, out of 7,000 tests done for STDs on
It is evident that where prostitution is not criminalized, as it is in most European countries, the rate of disease decreases. The reason for this decrease is that in places where prostitution is legalized or decriminalized, mandatory health regulations are implemented and followed. When prostitution is illegal, prostitutes are fearful of reporting any diseases they have contracted for fear of arrest. Whereas voluntary reporting is encouraged when it is legal.

B. Prostitution and Crime

Prostitutes are inherently susceptible to crime and violence due to the nature of their trade. In places such as Nevada and the Netherlands, however, where prostitution can be monitored, the incidence of violent acts is significantly decreased. Yet, even in these areas, prostitutes who work in unlicensed brothels or on the streets still suffer from crime.

1. Crimes Against Prostitutes in the United States.—The assumptions about the nature of prostitution may naturally lead to the belief that prostitution is a “totally victimless crime.” Unfortunately, this belief is mistaken and the United States system does little to protect those prostitutes who are harmed. Prostitutes suffer frequent sexual assaults and rape is especially prevalent with streetwalkers because of the increased exposure and the high crime areas in which they work. Studies show that “two-thirds to three-fourths of streetwalkers are raped or beaten an average of four to fifteen times a year” and that “serial murderers kill more than 1,000 female prostitutes each year.” Furthermore, statistics show that the mortality rate among prostitutes is forty times the national average. Because clients of prostitutes are well aware that prostitutes will not report crimes committed against them, the

285. See VANWESENBEECK, supra note 4, at 3.
286. Rio, supra note 13, at 207.
287. Id.
288. Id.
289. Rhode, supra note 8.
290. FLOWERS, supra note 30, at 177.
291. Rhode, supra note 8.
292. Id.
clients often take advantage of prostitutes' legal vulnerability. One survey suggests that sixty-five percent of prostitutes have been seriously injured by a customer.293 Prostitutes commit crimes against their clients as well and the clients are just as unwilling to report this to police.294

2. Crimes Against Prostitutes in Nevada.—In Nevada, those prostitutes who work on the streets are more vulnerable to crime, especially physical assault, than those who work in brothels.295 Those who are licensed are seldom exposed to crime.296

Additionally, the licensed brothels have not been infiltrated by organized crime. This is because the brothels are under government control and all owners are subjected to a background check to guarantee that a license will not be granted to someone with a criminal record.297 Outside of the regulated environment, organized crime is rampant in the underground world of prostitution.298

3. Crimes against Prostitutes in the Netherlands.—The rate of prostitution-related crime in the Netherlands is also low.299 This tends to indicate that prostitution is not an inherently violent-related profession.300 Even in the Netherlands, prostitutes are stigmatized by people who feel prostitution is immoral.301 This stigma creates the attitude in many men that treating the prostitutes in a violent and aggressive manner is appropriate and acceptable.302 One Dutch study found that police working with a vice squad consider the rape of a prostitute the least serious kind of rape.303 Another study done among ex-prostitutes revealed that more partner violence occurs against those prostitutes who

293. Rio, supra note 13, at 212.
294. Id. at 213.
296. Id.
297. Id. at 499.
298. Id.
300. Id.
301. Vanweesbeka, supra note 4, at 45.
302. Id. at 46.
303. Id.
work "unorganized." Prostitutes working on the streets are the most susceptible to violence.

Evidence demonstrates that keeping prostitution illegal does not prevent the various crimes, including drug-related activity, that typically accompany it. Studies have shown that only four percent of prostitutes are drug addicts. Moreover, prostitutes' drug problems can usually be traced to their reliance on pimps for protection and bail money when incarcerated, in addition to the pimps' drug connection.

The violence which accompanies prostitution is often exaggerated due to a lack of reporting. As with disease, prostitutes often do not report incidents of crime against them. In addition, it is often viewed socially acceptable for a prostitute to be beaten or raped. If a prostitute decides to take legal action against an attacker, the prostitute usually finds it difficult to be taken seriously in court. However, when prostitution is legalized or decriminalized, a woman's complaint of rape or harassment is taken seriously. Additionally, crimes against prostitutes decrease when prostitutes do not work on the streets.

VI. Models for Legalized Prostitution

Different models exist to regulate prostitution. Specifically, this Comment focused on three: the Netherlands system, decriminalization; the system utilized in Nevada, legalization; and the United States system, criminalization. With the assumption that the current system in the United States has not been effective in eliminating prostitution, another viable solution is necessary.

The Nevada system appears to be a satisfactory solution; the incidents of disease among prostitutes is well-monitored, crime

304. Id. at 95. It was found that the those with less means and those who are foreign born are exposed to greater violence. Id.
305. VANWESENBEECK, supra note 4, at 95. In one brothel in the Netherlands, special alarm buttons are in every room in case of client violence. Matthew Campbell, Red Light Girls Resist Cold Smack of Legality, SUN. TIMES, Feb. 25, 1990, at 95.
306. Rio, supra note 13, at 207.
307. Id.
308. Id.
309. Id.
310. Id.
311. See FRIEDMAN, supra note 32.
312. di Giovanni, supra note 212.
313. See Stout, supra note 106, at 498.
314. See Bell, supra note 276.
rates against prostitutes are low, and the residents co-exist peacefully with the prostitutes. However, "prostitute unions, feminists, and civil libertarians have all found the Nevada system an unattractive alternative."  

First, these groups contend that prostitutes are often shunned to secluded places. Second, the prostitutes' lives outside of their working world are highly structured. Third, critics of this system of legalization claim that licensing, taxation, and medical examinations, three elements of legalization, are ineffective in application. The arguments against licensing are that once a prostitute is licensed the license can be used against her even when she retires; her past can come back to haunt her. The argument against taxation is that the government in effect would turn into a pimp who profits from prostitutes' earnings. The argument against medical examinations is that only prostitutes are examined even though the men who solicit prostitutes are often the carriers of sexually transmitted diseases. In addition, the money used to carry out these regulations would ultimately come from the taxpayers.

Yet Nevada is the only example of successful, legal prostitution in the United States. One of the reasons that the Nevada system works is that in the areas where brothels are legal, they have existed for a long time. Area residents are accustomed to the existence of brothels. When legalized prostitution is instituted abruptly, the town and the prostitutes do not integrate peacefully.

In 1977-78, an experimental zone for prostitutes was established in Boston. The site chosen was an area where prostitution was already in existence, that "was not viable for economic

315. Stout, supra note 106, at 498.
316. See Hobson, supra note 29, at 229.
317. Id. at 228.
318. Id. at 227. In Lyons County, Nevada, where prostitution is legal, the brothels must be in areas at least five miles from "a city, town, mobile home park, or where people generally reside." Id.
319. See Clark, supra note 3, at 511; Back at the Brothel, supra note 94 at 124. In one town, the government tells prostitutes when they can shop and what businesses they may visit. Id. See Hobson, supra note 29, at 228.
320. Genska, supra note 35, at 271. The American Bar Association created these three elements in a discussion about what would be necessary to make prostitution a legal activity. Id.
321. Id.
322. Id.
323. Id. at 271-72.
325. Hobson, supra note 29, at 226.
development,” and where the closest residents were Chinese who had “little political clout.”\(^{326}\) The zone was unsuccessful because prostitutes from other parts of the country were attracted to the area.\(^{327}\) In addition, crime and violence were prevalent because of the friction between the residents and the prostitutes.\(^{328}\) This exemplifies the resistance of the general public to the idea of legalizing prostitution.

Although the system in Nevada is not an ideal one for the prostitutes, due to restrictions on the location of the brothels and the activities outside the brothels, it is a viable compromise. The prostitutes have their legal working environment and the residents do not have to observe this environment unless they choose to frequent the establishments.

The system utilized in Amsterdam is a positive one for those who believe the government should not be directly involved in the personal affairs of its citizenry.\(^ {329}\) Instead of the government being involved in prostitution directly, the state intervenes indirectly for “public order and safety.”\(^ {330}\) Thus, the police are responsible for keeping the prostitutes in the proper area and for keeping account of those involved in the business.\(^ {331}\)

The Netherlands’ system, however, is not responsible for the successful integration of the residents and the prostitutes.\(^ {332}\) Instead, the Dutch “long tradition of toleration” towards sexual freedom is why the system has worked so well.\(^ {333}\)

The Amsterdam system probably would not fare very well in the United States because the political and social ideals vary greatly from those of the Netherlands. The Netherlands’ culture is highly tolerant of a variety of activities including sex and drugs. For residents of Amsterdam, seeing a window brothel next to a grocery store, for example, is common. It would be difficult for the people of the United States to grow accustomed to decriminalized prostitution.

A zone such as the “zone of tolerance” in Utrecht may be the ideal solution as it utilizes the best parts of both the Nevada system

\(^{326}\) Id. at 227.
\(^{327}\) Id.
\(^{328}\) A Harvard football star was murdered during “an incident” in the zone and a campaign to remove the zone was assembled. Id.
\(^{329}\) Id. at 226.
\(^{330}\) HOBSON, supra note 29, at 226.
\(^{331}\) Id.
\(^{332}\) Id.
\(^{333}\) Id.
and the Netherlands’ system. In Utrecht, prostitution is not legal; it is merely tolerated. The prostitutes are subject to health care check-ups similar to those in Nevada and have direct police protection to prevent the violence that often accompanies women who work on the streets. In addition, the state does not have direct control over the “zone of tolerance;” instead, the county which subsidizes the area has regulatory control. Adopting the Utrecht system would be the easiest way for Americans to become acclimated to the idea of decriminalized prostitution; prostitution would not be conspicuous and the laws would not explicitly allow prostitution.

If, however, prostitution is to remain criminalized in the United States, and citizens are determined to move it out of their neighborhoods, communities may have to begin monitoring it on their own. This is what is being done throughout the country. Recently, communities have begun to fight prostitution on their own using creative techniques to rid their neighborhoods of prostitutes and their customers. One community has created a solution where the names of those men who have been arrested for hiring a prostitute are collected every week and one name is chosen to be the “John of the Week.” This honor entails being identified on posters placed throughout the neighborhood, with slogans stating ‘Your name could be here next.’ This community also traces license plate numbers and sends letters to the owner of the vehicle stating that their car was observed soliciting a prostitute. Often the wives or girlfriends are the owners of the vehicles or they are the ones who open the mail.

In Portland, Oregon, police have begun seizing the cars of “johns.” Under this approach, first-time offenders pay towing and storage expenses and must reimburse the city for the cost of the officer’s time seizing the car. Repeat offenders lose their cars.

334. Morton, supra note 226.
335. Ted Gup, What’s New with the World’s Oldest Profession?, COSMOPOLITAN, Oct. 1995, 237, 238. These tactics are being implemented in parts of New York, Connecticut, Missouri, Oregon, and Texas. Id.
336. Id. at 239.
337. Id.
338. Id.
339. Gup, supra note 335, at 239. This tactic is also carried out by sending letters to the men’s home with the words “Patronizing a Prostitute” on the envelope. Furthermore, there are communities who communicate through telephone operations where a caller can dial a number and hear the names of men who have recently been arrested for soliciting a prostitute. Id.
340. Id.
forever.  

Although, this approach has forced some prostitutes out of Oregon, others have simply migrated north. These "home remedies" will likely become more common if the United States maintains its policy to keep prostitution criminalized. If another system is implemented, it could take years to establish and it may take even longer for the citizens and the government of the United States to become accustomed to the new role prostitution would play.

VI. Conclusion

Prostitution continues to thrive in the United States and throughout the world. Attitudes toward prostitution range from extreme tolerance, as in the Netherlands, to conservatism, as in the United States. The laws vary as well, ranging from legalization or decriminalization, to strict criminal enforcement. The United States, as a whole, is probably not prepared for decriminalization. Other viable options do exist which could assist the plight of the prostitutes while not creating complete chaos among the public.

There is no one best solution to deal with prostitution in the United States. The Netherlands system fits perfectly with its country's culture and atmosphere. Likewise, the Nevada system works well there, and it may also work in surrounding states. However, in the United States, it may be necessary for each state to structure a system unique and beneficial to that area. No matter what system is implemented there will be disagreements as to how the system should be structured and who should control it.

Police forces around the United States continue to spend millions of dollars enforcing laws against prostitution; the methods used are often more damaging than the actual crime being committed. Prostitutes who work on the streets are exposed to more crime than their counterparts who are sheltered by a brothel. Furthermore, prostitutes and those who utilize their services are exposed to far more disease because of a lack of monitoring.

341.  Id. Over the last five years more than twelve hundred vehicles have been impounded.  Id.
342.  Gup, supra note 335, at 239.
Increased rates of sexually transmitted diseases, crime directed at prostitutes, and liberal views of sexual freedom, all indicate that prostitution has arrived at a legal crossroad in the United States which requires renewed legal attention as to how it should be regulated, if at all.

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