International Law After Dark: How Legalized Sex Work Can Comport with International and Human Rights Law

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International Law After Dark: How Legalized Sex Work Can Comport with International and Human Rights Law

Joshua A. Fox*

Abstract

Prostitution is often criminalized, but it should not be. While it is undisputed that criminalization assists in shrinking the sexual service industry and decreasing the prevalence of sex trafficking, countervailing evidence suggests that legal and regulated sex work is far safer for all involved. Indeed, the international law on the subject, which calls for an end to exploitation, violence, and trafficking, does not outlaw sex work in all of its forms. This Comment argues that legal sex work, when regulated adequately, comports with international law and promotes the human rights of sex workers that are curbed when the practice is outlawed. Drawing on recent analyses of the most common means of sex work regulation and criminalization, this Comment proposes a novel form of sex work regulation—rooted in the state of Nevada’s centuries-old brothel system—that best follows international law and promotes human rights. Using this framework, states can reconcile the often (and, at first blush, paradoxically) conflicting aims of protecting human rights and combatting human trafficking.

* BA, 2019, Washington and Lee University; J.D. Candidate, 2022, The University of Chicago Law School. I would like to thank Professor Genevieve Lakier for her advice and support. I would also like to thank the board and staff of the Chicago Journal of International Law, including Will Altabef, Steven Foster, and Casey Jedele, for their help and guidance.
Table of Contents

I. Introduction......................................................................................................................... 187
II. Sex Workers’ Rights in the Twenty-First Century ......................................................... 191
   A. Opposition to the Sex Workers’ Rights Movement ..................................................... 192
III. The International Law of Sex Work................................................................................ 193
   A. International Law Since 1949..................................................................................... 194
   B. Pertinent International Human Rights Law................................................................. 197
   C. Significant Domestic Legal Frameworks...................................................................... 198
      1. Abolitionist legal frameworks, like the one in Sweden, often take a hybrid approach in an effort to end sex work................................................................. 198
      2. Legalization regimes permit sex work in a limited manner........................................ 200
      3. Decriminalization removes almost all regulation from the sex work industry ........ 201
      4. The complete prohibition of sex work is not viable.................................................. 202
IV. Current Nevada Law....................................................................................................... 203
   A. Attempts to Outlaw Sex Work are Ineffective............................................................. 203
   B. Nevada Law Promotes Human Rights and Comports with International Law .......... 206
      1. Nevada law legalizes sex work in a limited manner .................................................. 206
      2. Nevada law promotes human rights as guaranteed by international human rights law .................................................................................................................. 208
      3. Nevada law comports with international prostitution law........................................ 212
V. A Modified Nevada System Would Best Protect Human Rights and Comply with International Law................................................................................................................. 214
   A. Modification One: Eliminate All Population-Related Requirements............... 215
   B. Modification Two: Increased Screening Before Licensing................................. 217
      1. Expanded background check procedures will not increase barriers to entry ........... 219
      2. This modification, along with broader legalization, will reduce the stigma associated with sex work................................................................................................. 220
VI. The Implementation of the Nevada Model................................................................. 220
VII. Conclusion..................................................................................................................... 221
I. INTRODUCTION

Prostitution\(^1\) is often called the “oldest profession in the world.”\(^2\) Whether or not this is actually the case, that the trade has had a long and tumultuous history is undisputed. Historians and anthropologists trace its origins at least as far back as the brothels of ancient Egypt, but it is possible they extend much further.\(^3\) Even so, since the time of the pharaohs, prostitution has been outlawed on numerous occasions.\(^4\) Indeed, as recently as July 2020, Israel became the latest state to join the ranks of those that have attempted to outlaw the profession over the millennia. In fact, Israel is the most recent state to adopt the increasingly common Nordic Model for regulating prostitution,\(^5\) a system developed in Sweden that aims to “end, rather than regulate, sex work” by criminalizing “buyers of sex.”\(^6\) While it has gained popularity in the last two decades,\(^7\) the Nordic Model is not the only means by which states regulate or outlaw prostitution. There are at least four

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1 Herein, a number of terms are used that—while superficially similar—are different. “Prostitution” and “sex work” are used interchangeably to mean the voluntary engagement in sexual acts for remuneration. The latter is the preferred term for many in the industry, but the former is frequently used by lawmakers, so they are both used in this Comment. “Forced prostitution” or the “exploitation of prostitution,” on the other hand, can be defined as any sexual act, performed for money, that is done by way of the threat or use of force, coercion, deception, fraud, abduction, and/or abuse. This definition is adapted from those of human trafficking put forth by the United Nations (U.N.) in treaties such as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, Dec. 12, 2000, 2237 U.N.T.S. 319, https://perma.cc/2UTM-X6C9.


4 See id. (“Throughout the ages, there have been plenty of folk determined to outlaw the trade.”). In this Comment, several legal schemes relevant to prostitution are discussed. Among the most pertinent are the Nordic Model (abolitionism), which criminalizes the buying of, but not the selling of, sexual services, decriminalization, which aims to fully deregulate sex work, legalization, which legalizes sex work in a limited and regulated manner, and prohibition, which fully outlaws sex work.


7 See What is the Nordic Model?, NORDIC MODEL NOW!, https://perma.cc/8CMT-MQG2 (explaining what the Nordic Model is, noting the eight states where it is the law, and outlining why other states should enact similar legislation).
“legislation typologies” present in Europe and North America alone, and within each the law varies widely.  

Much of the development in prostitution law over the past century has been shaped by—and has shaped—international law. As a result, “international law has approached prostitution inconsistently.” In the mid-twentieth century, for instance, the international community largely committed itself to prohibiting prostitution. Less than a century later, a lot has changed, and the debate over the best legal framework for addressing prostitution continues. Thus, while eight states have adopted the Nordic Model, others approach sex work much differently. Germany, for example, enacted the Law Regulating the Legal Situation of Prostitutes in 2001, which “removed the morality language” from the nation’s prostitution laws and thereby granted sex workers access to “health insurance, public benefits, and labor rights law.” Even prior to this, however, sex work was widely legal in Germany. A number of other approaches exist within the European Union (E.U.) as well. Some states therein allow both indoor and outdoor prostitution but “prohibit the existence of brothels,” while others “tolerate prostitution and [typically do] not intervene in it.” Across the Atlantic, the United States (U.S.) takes yet another approach. In the U.S., “there is no federal law banning sex work,” so laws “vary from state to state and even city to city,” with Nevada being the only state to legalize—in a limited fashion—sex work. Nevada’s model, discussed in greater detail below, takes a brothels-only approach to sex work and, as this Comment will argue, is among the best in the world in terms of promoting human rights and comporting with international prostitution law.

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12 See id.

13 See TRANSCRIME, supra note 8, at viii.

14 Anna North, The Movement to Decriminalize Sex Work, Explained, VOX (Aug. 2, 2019), https://perma.cc/772L-B5R6 (explaining that many sex workers in the U.S. want the industry to be decriminalized in order to avoid the issues and stigmatization that come with arrests and legal complications from engaging in the practice).
All of the aforementioned regulatory frameworks, from total criminalization to complete decriminalization, do not exist in a vacuum, however. The states that enact them are largely United Nations (U.N.) members that share the goal of protecting the human rights outlined in the U.N.’s Universal Declaration of Human Rights (UDHR), which is part of global customary law. Indeed, many of these nation states are party to later treaties and conventions that were inspired by the UDHR and focus explicitly on prostitution and human trafficking. These states share the international community’s aim of ensuring that all people have “the inherent dignity and . . . equal and inalienable rights” that are the “foundation of freedom, justice, and peace in the world.” They recognize that the ability to choose one’s employment and to work freely and “without any discrimination” in “favourable conditions” is fundamental to achieving these goals. Ultimately, however, the states that are party to the UDHR and its progeny address these goals quite differently, including in the realm of sex work.

On the ground, the effects of these inconsistent policies are made clear by the sex workers’ rights movement, which continues to grow globally. This movement “exists to uphold the voice of sex workers” and promote the “acceptance of sex work,” while at the same time opposing “all forms of criminalization.” While not all sex workers agree with the aims of the movement, its existence highlights the increasing pressure on governments to find balance between ending human trafficking and ensuring that the universal human rights of all citizens, including the right to work, are protected. In addition, not only must the aforementioned domestic legal frameworks promote human rights, they must also comport with the inconsistent intricacies of the many international conventions and covenants pertinent to sex work and human trafficking. Fortunately, over the last three decades the international community has—at least

15 See Marshall, supra note 6, at 56 (describing New Zealand’s novel approach to fully decriminalizing sex work).
17 See id.
18 Id. art. 23.
19 Who We Are, GLOBAL NETWORK OF SEX WORK PROJECTS (NSWP), https://perma.cc/W3N9-54LW [hereinafter NSWP] (explaining that this intercontinental group is campaigning for “[a]cceptance of sex work as work,” the end to the criminalization of sex work, and the self-determination and self-organization of sex workers).
20 See id.
21 See UDHR, supra note 16.
in part—come to view sex work as not inherently in conflict with human rights.\textsuperscript{22} As such, the earliest international conventions, which at one time called for the complete prohibition of prostitution,\textsuperscript{23} have become increasingly irrelevant.\textsuperscript{24} In the current legal landscape, then, it is possible to craft policy that protects human rights, combats human trafficking, and complies with international law by regulating prostitution rather than outlawing it.\textsuperscript{25} This piece proposes such a solution.

This Comment argues that legalization, not the extremes of full decriminalization or abolition, best comports with international law and furthers the goals of human rights law. Further, it recommends that the International Court of Justice (ICJ), upon request by an authorized agency concerned with the rights and health of sex workers, such as the World Health Organization (WHO), issue an advisory opinion advocating for the broad implementation of a legalization scheme similar to Nevada’s but with several important modifications. While the ICJ’s promotion of a modified version of Nevada’s system might confound policymakers at the outset, as the forthcoming comparative analysis reveals, the state’s method of legalization has profound benefits both in terms of human rights and international legal compliance.

This Comment proceeds in five parts. Section II introduces the current debate over the criminalization and legalization of sex work by exploring the modern sex workers’ rights movement. It notes the changing legal landscape with respect to prostitution and highlights that international and domestic prostitution law, the sex workers’ rights movement, and human rights law all aim to end exploitation and give a voice to marginalized groups. Section III delves into the current state of the law. This Section summarizes international law and human rights law as they pertain to prostitution before covering the major domestic legal frameworks that are currently in place. Section IV outlines the intricacies of

\textsuperscript{22} See Jane E. Larson, \textit{Prostitution, Labor, and Human Rights}, 37 U.C. Davis L. Rev. 673, 678 (2004) (“U.N. processes have recently accepted some distinction between voluntary and forced prostitution, at least in the case of adults, which implies that some forms of prostitution . . . may be acceptable by human rights standards.”).

\textsuperscript{23} See generally CSTPEPO, supra note 10.

\textsuperscript{24} See, e.g., G.A. Res. 48/104, Declaration on the Elimination of Violence against Women (Feb. 23, 1994) [hereinafter DEVAW] (including the word “force” in defining the type of prostitution considered to be “violence against women”); see also G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children art. 3 (Nov. 15, 2000) [hereinafter The Palermo Protocol] (considering the exploitation of prostitution part of human trafficking, but not prostitution itself).


190 Vol. 22 No. 1
Nevada’s current regulatory scheme and explains how they help it to comply with international law and promote human rights. This Section also compares Nevada’s system in those respects to systems present elsewhere in the world. Section V introduces two modifications to Nevada’s current system that, if made, would make the state’s legal framework the best at both protecting human rights and comporting with international prostitution law. Finally, Section VI proposes a potential pathway for implementing a modified Nevada Model elsewhere in the world.

II. SEX WORKERS’ RIGHTS IN THE TWENTY-FIRST CENTURY

The sex workers’ rights movement, although diverse due to its immense scale, generally advocates for “rights, not rescue.” As summarized by the Global Network of Sex Work Projects (NSWP), the “three core values” of the movement include working toward the “acceptance of sex work as work,” as well as opposing “all forms of criminalisation . . . [and] supporting [the] self-organisation and self-determination of sex workers.” Through these binding principles, sex workers pursue the freedom to safely ply their trade without interference from law enforcement.

Beyond sex workers themselves, the movement consists of a “wide array of individuals and groups,” as well as many large organizations, such as Amnesty International, the WHO, and UNAIDS. A large number of these groups, including NSWP, call for the decriminalization of sex work as a means of promoting many of the human rights outlined in the UDHR. Indeed, NSWP’s Consensus Statement on Sex Work, Human Rights, and the Law tracks the UDHR in many ways, including through its promotion of the “right to be free from discrimination,” as well as the rights to “free choice of employment” and “to move and migrate.” These can be found almost verbatim in the UDHR’s Articles Seven, Twenty-Three, and Thirteen, respectively. In addition, NSWP is not alone in calling for the decriminalization of sex work in order to promote human rights. DECRIMNOW, a Washington, D.C.-based “campaign and movement to

26 See Ine Vanwesenbeeck, Sex Work Criminalization Is Barking up the Wrong Tree, 46 ARCHIVES SEX BEHAV. 1631, 1632–36 (2017).
27 NSWP, supra note 19.
28 See Catherine Murphy, Sex Workers’ Rights are Human Rights, AMNESTY INT’L (Aug. 14, 2015), https://perma.cc/2B88S-Y6GF (“[W]e are not [the first to address this issue].”).
29 See Consensus Statement on Sex Work, Human Rights, and the Law, NSWP (2013), https://perma.cc/GP9W-UZFL [hereinafter NSWP Consensus Statement] (sharing the thoughts of the “over 160 sex worker organisations in over 60 countries” that make up NSWP with respect to eight fundamental rights sex workers should/do/must have).
30 UDHR, supra note 16 (including Article 7’s statement that “[a]ll are . . . entitled without any discrimination to equal protection of the law,” Article 13’s guarantee of the “right to work, [and] to free choice of employment,” and Article 23’s protection of “the right to freedom of movement”).
decriminalize sex work” is another example of the many groups that argue that decriminalization is necessary in order to promote “human rights, civil rights and liberties, health, [and] safety” among sex workers. The sex workers’ rights movement is therefore full of groups that demand decriminalization in the name of promoting human rights.

Similarly, those states that legalize and/or decriminalize sex work argue it is the best path forward for promoting human rights. New Zealand, which is among the first states to fully decriminalize sex work, for instance, did so “with the stated aims of [s]afeguarding human rights” and “[p]rotecting sex workers,” as well as “[c]reating an environment conducive to public health.” Interestingly, however, there are many governments and advocacy groups that argue that the abolition of sex work, rather than its decriminalization, is the best way to promote human rights.

A. Opposition to the Sex Workers’ Rights Movement

Those who support the Nordic Model, which is outlined in greater detail in Section III below, do so because they believe that “buying human beings for sex is harmful, exploitative, and can never be safe.” Many who promote the Nordic Model and similar abolition schemes argue that all “prostitution is a human rights issue.” In the same way that many in the sex workers’ rights movement allude to the UDHR in asserting that decriminalization promotes human rights, those who oppose prostitution use similar strategies to make the opposite argument. The advocacy group Nordic Model Now!, for instance, notes that there must be a “new social consensus that recognizes the harm and violence intrinsic to prostitution.” Harm and violence run directly counter to the UDHR’s assurance that all people have the right to “life, liberty, and security of person,” as well as the right not to be subjected to “torture or to cruel . . . treatment.” In addition, states that outlaw

31 See DECRIMNOW in Policy, DECRIMNOW (2018), https://perma.cc/48SH-7HWG.

32 See e.g., Melissa Gira Grant, Amnesty International Calls for an End to the ‘Nordic Model’ of Criminalizing Sex Workers, THE NATION (May 26, 2016), https://perma.cc/W9EV-KCX5 (explaining Amnesty International’s updated stance calling for an end to the Nordic Model); see also About Us, INT’L. COMM. ON THE RTS. OF SEX WORKERS IN EUR. (ICRSE), https://perma.cc/G4NW-RX7Z (“ICRSE opposes all forms of criminalisation of sex work . . . [and] seek[s] to put forward a labour rights’ perspective of sex work, whereby . . . [the] human rights of all sex workers are recognized.”).


34 See NORDIC MODEL NOW!, supra note 7.


36 About Us, NORDIC MODEL NOW!, https://perma.cc/3CP4-AWD5.

37 UDHR, supra note 16, arts. 3, 5.
sex work often do so for similar reasons. \(^{38}\) Israel’s Prohibition on Prostitution Consumption Law, for example—which instituted the Nordic Model in the Jewish state—begins by acknowledging the “harmful aspects of prostitution and the damages it involves.” \(^{39}\) Thus, it is clear that the sex workers’ rights movement and other decriminalization advocates, as well as those who promote the abolition of prostitution, frequently share the goal of safeguarding human rights.

It is notable that groups with such similar aims have come to such different conclusions. Although there is no clear reason as to why this is the case, one suggestion is that those who advocate for decriminalization see a distinction between voluntary and involuntary prostitution, while those who call for the complete prevention of the practice do not. The Swedish government has acknowledged the existence of this debate and has pushed back on the contemporary view that voluntary sex work can be safe, noting that “[t]hose who defend prostitution argue that it is possible to differentiate between voluntary and non-voluntary prostitution,” before concluding that “the distinction . . . is not [actually] relevant.” \(^{40}\) Regardless of the reason for this difference, it is important to recognize that the aim of many of those involved in the debate over sex work policy is to protect human rights. With this context in mind, it becomes possible to imagine a legal regime that takes into account the concerns of all sides—regulators, sex workers, and advocates—and ensures that human rights are protected, international law is followed, and public health is championed. In the forthcoming sections, this Comment argues in favor of one such framework, modeled after Nevada’s brothel system, that might best accomplish these goals.

### III. The International Law of Sex Work

The state of prostitution law in the world is complex. Although the primary international law on the subject can be found in documents from only a few key conventions and treaties, attempting to organize the myriad domestic legal frameworks is far more difficult. \(^{41}\) Thus, after first exploring the relevant

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40 Summary of SOU, supra note 38, at 31. It is notable that modern international law, discussed at length in Section III, distinguishes between voluntary and involuntary sex work in speaking of the risks associated with the sale of sex. Indeed, as highlighted below, international law would conflict with international human rights law, which promotes the right to free choice of employment, were it to continue to call for the prohibition of voluntary sex work as it did in the last century.

41 Compare, e.g., Marshall, supra note 6, at 52–53 (citing Chi Mgbako & Laura A. Smith, Sex Work and Human Rights in Africa, 33 FORDHAM INT’L L.J. 1178, 1205 (2010)) (“There are four types of legal regimes used to address sex work: prohibition, legalization, abolition, and decriminalization.”), with
international legal documents, this Section takes a broad approach in categorizing domestic prostitution laws in order to provide a sufficient overview of the most popular regimes and facilitate a comparison between them. In turn, Sections IV and V will propose a novel regulatory framework that both capitalizes on the successes of the systems discussed herein and attempts to mitigate their failures.

A. International Law Since 1949

As noted in Section I, international prostitution law has changed dramatically since 1949, when the first major U.N. convention on the subject took place. Although the most relevant documents are those that are most recent and reflect modern views of sex work and human trafficking, those that came earlier provide the foundation for the contemporary legal landscape, and so are worth noting.

In 1949, the U.N. General Assembly approved the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTPEPO) and, in doing so, began a new age in sex work law.42 One of the foundational documents in the modern history of prostitution law, CSTPEPO took a hardline view of the practice. The widely ratified convention, which went into force in 1951, called out the “evil of the traffic in persons for the purpose of prostitution” and required signatories to punish all people who “procure[d] another person “for [the] purposes of prostitution,” even “with the consent of that person.”44 It further made illegal the operating and financing of brothels.45 In sum, those states—notably absent from which are the U.S., United Kingdom, and Germany—“that have signed, ratified, and implemented [CSTPEPO]” aim to “prevent[] prostitution.”46

CSTPEPO has not stood the test of time, however. Many of its provisions—including those defining human trafficking and those equating all forms of sex work with trafficking—are no longer followed. Indeed, in explaining the lasting impact of CSTPEPO, the European Commission noted that “the definition of trafficking of this convention was departed from in the Trafficking protocol to the U.N. Convention against Transnational Crime,” which is outlined later in this

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43 See International Instruments Concerning Trafficking in Persons, OHCHR (Aug. 2014), https://perma.cc/9R45-XZ7J (listing CSTPEPO as one of the “main international instruments used to combat human trafficking”).

44 CSTPEPO, supra note 10, at art. 1.

45 Id. art. 2.

Section. With respect to CSTPEPO’s discussion of prostitution, many of the ideas expressed therein were also departed from later in the twentieth century as the U.N. adopted some of the views advocated for by the sex workers’ rights movement.

Among the more recent and more relaxed international documents pertaining to sex work is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW, adopted in 1979 for the purpose of eliminating “discrimination against women in all its forms and manifestations,” contains provisions concerning sex work. Unlike CSTPEPO, however, this convention features “pro-sex-worker language” that illustrates “a rising recognition that states must safeguard sex workers’ rights.” Scholars consider CEDAW representative of a small but pivotal moment in the long history of sex work, in which the international community shifted, even if only slightly, “from an abolitionist mindset to one that recognizes the human rights of sex workers.”

The text of CEDAW illuminates this change. Article 6 of the convention proclaims that “[s]tates [p]arties shall take all appropriate measures . . . to suppress all forms of traffic in women and exploitation of prostitution of women.” When compared with CSTPEPO—which called for the prohibition of sex work regardless of the consent of the sex worker—CEDAW’s Article 6 represents a major shift. Not only does Article 6 distinguish between trafficking and prostitution rather than consider sex work “the traffic in persons for the purpose of prostitution,” it refers to trafficking and prostitution as separate acts, noting that the issue is with the exploitation of prostitution and not prostitution itself. This pivot from the abolitionist thinking of CSTPEPO is further illustrated by CEDAW’s legislative history, during which “Italy and the Netherlands expressly rejected” Morocco’s attempt to include an amendment calling for the “suppression of prostitution” generally. Thus, CEDAW is the first major international document that refers to sex work but does not call for its prohibition.

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49 Id.
51 See Marshall, supra note 6, at 53.
52 CEDAW, supra note 48, art. 6 (emphasis added).
53 CSTPEPO, supra note 10, art. 1.
54 CEDAW, supra note 48, art. 6.
55 See Mgbako & Smith, supra note 50, at 1201.
This is illustrative of a changing view of sex work that emphasizes the importance of safeguarding the human rights of those involved in it.56

Just over a decade after CEDAW went into force, the U.N. General Assembly “recogniz[ed] the urgent need for the universal application to women of . . . rights and principles with regard to [the] equality, security, liberty, integrity, and dignity of all human beings” by creating the Declaration on the Elimination of Violence against Women (DEVAW).57 Although DEVAW does not address sex work at length, it does continue the U.N.’s trend—which emerged in CEDAW—of marking a “clear distinction between forced and voluntary prostitution.”58 Indeed, Article 2 of DEVAW states that “[v]iolence against women shall be understood to encompass, but not be limited to . . . trafficking in women and forced prostitution.”59 Through its use of the modifier “forced,” Article 2 is the U.N.’s “first clear departure from the abolitionist view of prostitution.”60 The “absence of a general reference to prostitution” indicates the international community’s shifting perspective on sex work.61 Today, nearly three decades after DEVAW, it is common to promote sex work as a means of safeguarding human rights and combatting trafficking.62 Such an argument was almost unheard of on the international scale at the time of CSTPEPO, however.63

Further, in 2003, ten years after DEVAW, the U.N. Convention against Transnational Organized Crime and the Protocols Thereto, which contained the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), went into force.64 The Palermo Protocol aims to “prevent and combat trafficking in persons” and to “protect and assist the victims of such trafficking, with full respect for their human rights.”65 Like DEVAW and CEDAW before it, the Palermo Protocol does not consider prostitution alone exploitation, rather it alludes to “the exploitation of [ ] prostitution” in its definition of “trafficking in persons.”66 The Palermo Protocol therefore only considers “the exploitation of [ ] prostitution,” rather than all sex

56 Id. (referring to “CEDAW general recommendation 19,” which recognizes the need to promote equal protection under the law for sex workers).
57 DEVAW, supra note 24, pmbl.
58 Marshall, supra note 6, at 53.
59 DEVAW, supra note 24, art. 2 (emphasis added).
60 Mgbako & Smith, supra note 50, at 1201.
61 Id.
62 See NSWP, supra note 19.
63 See Mgbako & Smith, supra note 50, at 1200 (acknowledging that CSTPEPO established an “antiprositution position” to safeguard human dignity and worth).
64 The Palermo Protocol, supra note 24.
65 Id. art. 2(a)–(b).
66 Id. art. 3(a) (emphasis added).
work, to be trafficking. Further, it is notable that while the Palermo Protocol states that the “consent of a victim of trafficking . . . shall be irrelevant,” such is only the case where “threat[s] or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent” are used. Therefore, where consent is freely given, it is not only relevant to whether the transaction is considered trafficking and/or exploitation, it might well be conclusive evidence that the transaction is sex work rather than trafficking or exploitation. Even under the potentially concerning language of the Palermo Protocol, then, sex work is a legal practice.

Overall, modern developments in the international law governing sex work have seemingly followed the trajectory set by CEDAW’s recognition of the human rights of sex workers. Indeed, recent legal documents such as DEVAW and the Palermo Protocol appear far more concerned with outlawing forcible and coerced sexual contact, including trafficking, than voluntary sex work. Thus, the legalization scheme proposed in Sections IV and V of this Comment, which builds upon that currently in place in Nevada in order to best protect the human rights of sex workers, fits well into the international community’s current views of the practice.

B. Pertinent International Human Rights Law

While there are a number of major human rights documents that might be useful in surveying the modern human rights landscape, the UDHR stands alone as a “milestone document in the history of human rights.” It is so significant, in fact, that it figures prominently in the International Bill of Human Rights. Further, the UDHR, because of its broad applicability and immense importance, is of great use in discussing the rights of sex workers.

Although some of the UDHR’s more philosophical portions apply to the plight of sex workers, including Article 1’s assurance that “[a]ll human beings are born free . . . and should act towards one another in a spirit of brotherhood” and Article 2’s guarantee that all of the “rights and freedoms” discussed are applicable to all people, it is the substantive portions of the UDHR’s later articles that are most relevant. Article 5, for instance, states that “[n]o one shall be subjected to

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67 Id.
68 Id. art. 3(b).
71 UDHR, supra note 16, arts. 1–2.
torture or to cruel, inhuman or degrading treatment or punishment.”\textsuperscript{72} This is germane to sex work, where abuse and violence can be commonplace.\textsuperscript{73} Perhaps even more applicable to sex workers and the laws criminalizing their behavior and the industry generally is Article 12, which declares that no one “shall be subjected to arbitrary interference with his privacy.”\textsuperscript{74} Further, Article 13 secures the “right to freedom of movement and residence within the borders of each state,” and Article 19 protects “the right to freedom of opinion and expression.”\textsuperscript{75} Finally, and perhaps most importantly for sex workers, Article 23 of the UDHR guarantees “the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,” while Article 25 supplements this by guaranteeing that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing and medical care.”\textsuperscript{76} Thus, the UDHR aims to ensure that the “inalienable rights of all members of the human family,” including sex workers, are protected and promoted.\textsuperscript{77}

C. Significant Domestic Legal Frameworks

The common systems for regulating and deregulating sex work can be grouped into four broad categories: abolition, legalization, decriminalization, and prohibition.\textsuperscript{78} While abolition and legalization are quickly becoming among the most common systems globally, perhaps due to the growing recognition that sex work is not inherently criminal, all four schemes are important because lawmakers hoping to create an optimal system might well borrow from each. Indeed, the framework proposed by this Comment in the forthcoming sections is itself rooted in analyses of the four systems outlined below.

1. Abolitionist legal frameworks, like the one in Sweden, often take a hybrid approach in an effort to end sex work

Under an abolitionist approach to sex work, “[p]arties involved in prostitution can be liable to penalties, including in some cases, the clients.”\textsuperscript{79} In fact, abolitionist countries typically “criminalize buyers of sex, but not sex workers

\textsuperscript{72} Id. art. 5.
\textsuperscript{73} See, e.g., Mgbako & Smith, supra note 50, at 1180 (discussing the “physical and sexual abuse” experienced by African sex workers).
\textsuperscript{74} UDHR, supra note 16, art. 12.
\textsuperscript{75} Id. arts. 13, 19.
\textsuperscript{76} Id. arts. 23, 25.
\textsuperscript{77} Id. pmbl.
\textsuperscript{78} See Marshall, supra note 6, at 56.
\textsuperscript{79} TRANSCRIME, supra note 8, at viii.
themselves” in what has been called a “hybrid approach.” This system targets “the demand for sexual services” in an attempt to “help fight prostitution and its harmful consequences.” Sweden, the first country to enact this sort of law, hoped it would foster a more “gender equal society,” deter “prospective purchasers of sex[,] and serve to reduce the interest” of foreign groups in creating an organized sex industry in Sweden. While there are disputes over whether Sweden’s system—dubbed the Nordic Model—is as effective as initially hoped, evidence does suggest it has had at least some impact in shrinking the state’s sex work industry.

Supporters of abolition, including the European Parliament, champion the Nordic Model and systems like it as useful in making “advances in gender equality” and as effective in combating both human trafficking and the “immense damage prostitution has on all women.” The government of Sweden, which—as noted above—set out to achieve these goals in authorizing this system, “released a report [in 2010] touting the effectiveness of the legislation.” The results contained within this report were questionable, however, and other studies suggest the criminalization of the purchase of sex has had generally negative consequences for all parties involved, in part because it “relegates sex workers to the shadows” where abuse and violence are prevalent and are exacerbated by inadequate access to medical care. Overall, it can be said that the

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80 Marshall, supra note 6, at 58.
81 Summary of SOU, supra note 38, at 29.
82 Id.
83 See, e.g., TRANSCRIME, supra note 8, at 102 (discussing some of the successes of Sweden’s approach, including an observed decline in the market for trafficking victims).
85 See Mathieson, Branam & Noble, supra note 25, at 428 (concluding that the Nordic Model is the best policy for Seattle, Washington).
86 Kline, supra note 84, at 687.
87 See Marshall, supra note 6, at 61.
88 Id. (citing Ann Jordan, The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering, 4 CTR. FOR HUM. RTS. & HUMANITARIAN L. 1, 6 (2012)) (“The report was immediately criticized upon release, with experts noting the evaluation completely lacked any scientific rigor.”).
89 See May-Len Skillbrei & Charlotta Holmström, The ‘Nordic Model’ of Prostitution Law Is a Myth, The Conversation (Dec. 16, 2013), https://perma.cc/GEX4-QGG4 (arguing that the studies depicting Sweden’s prostitution laws as a success “report on specific groups . . . not the state of prostitution more generally” and therefore are misleading because they leave out “[m]en involved in prostitution, women in indoor venues, and those selling sex outside the larger cities”); see also Vanwesenbeeck, supra note 26, at 1632–36 (arguing that the criminalization of sex work is ineffective and harmful to those involved); Mgbako & Smith, supra note 50, at 1206.
goal of the Nordic Model is to promote human rights and equality through inducing a “fear of arrest [in] and [an] increased public stigma” among, purchasers of sex.\(^90\) The successes and failures of this approach are outlined in greater detail in Section IV below.

2. Legalization regimes permit sex work in a limited manner

Legalization is perhaps the broadest category discussed herein. For instance, while the term “abolition” often applies to the hybrid approach embodied in the Nordic Model, the term “legalization” encompasses a wide swath of regulatory schemes, from that in Germany to that in Nevada and beyond. Indeed, the general term “legalization” is so sweeping that the E.U. split up its member states that have such systems into multiple groups in order to foster a clearer analysis.\(^91\) For the purposes of this Comment, however, this distinction is immaterial. What is most important is that legalization in its broadest sense be contrasted with decriminalization and abolition.

Germany is perhaps the European country most famous for its legalization of sex work. Germany allows all prostitution “if exercised according to the regulations” proscribed at the state (\(\text{Länder}\)) and national level.\(^92\) Further, as of 2002, the country began considering sex work as “work,” thereby granting sex workers access to “social security measures (unemployment, health insurance and pension schemes)” that they previously were not eligible for.\(^93\) The aim of Germany’s scheme is to ensure sex work can continue while controlling “the excesses, abuses, disorders, and other undesirable social and public health consequences associated with [it].”\(^94\) In much the same way, Nevada’s long history of legalized sex work\(^95\) has contributed to its continued embrace of the practice, particularly because the state government has found that “[l]egal sex workers report less violence and a heightened sense of security working in the brothel industry than plying their trade illegally.”\(^96\) The Nevada system, different than that in Germany in many respects, including its requirement that sex work only occur in registered brothels and its mandate that “legal prostitutes . . . undergo


\(^{91}\) See TRANSCRIME, supra note 8, at viii (explaining the difference between “new abolitionism,” “abolitionism,” and “regulationism”).

\(^{92}\) Id. at 25.

\(^{93}\) Id. at 110.

\(^{94}\) Marshall, supra note 6, at 62 (quoting Mgbako & Smith, supra note 50, at 1208).


mandatory health checks” at regular intervals, is therefore yet another “legal system of prostitution.”

Much like the Nordic Model and similar systems of abolition, legalization schemes are subject to both praise and criticism. While both responses will be addressed substantially in Sections IV and V, it is worth noting that a recent study of the legalization system in Nevada concluded that “the legalization of prostitution brings a level of public scrutiny, official regulation, and bureaucratization to brothels that decreases . . . systematic violence.” Further, there are other studies that support—at least in part—the modes of legalization present in states like Germany and Nevada, but there is no shortage of those that oppose them as well.

3. Decriminalization removes almost all regulation from the sex work industry

As of writing, New Zealand is the only state to have fully decriminalized prostitution. In doing so, New Zealand removed “all [previously enacted] laws related to sex work.” Further, through New Zealand’s Prostitution Reform Act (PRA), the country’s legislature legalized sex work “for any citizen over the age of eighteen,” and allowed brothels with fewer than four workers to operate without a license. Widely considered a success, the PRA “provides several protections for sex workers, which means that their human rights and citizenship can be safeguarded.” These protections include the ability to sue, for instance, when a client deliberately removes “his condom without [the worker’s] consent during

97 Id. at 1, 9.
100 See TRANSCRIME, supra note 8, at 110–16 (noting that “Germany is a major country of destination for human trafficking”).
101 See Marshall, supra note 6, at 56.
102 Id.
103 Id. at 59 (citing Fraser Crichton, Decriminalising Sex Work in New Zealand: Its History and Impact, OPENDEMOCRACY (Aug. 21, 2015), https://perma.cc/7DQE-QLEG).
penetrative sex.”

Thus, in its first seventeen years, New Zealand’s PRA has helped show that the decriminalization of sex work can be beneficial.

Of note, however, are the unique circumstances that may help drive the PRA’s success. Although certainly not the only reasons for the impressive track record of the PRA, New Zealand’s small size, small population, relative isolation, and strict borders likely contribute to the law’s success. Further, there have still been some issues since the PRA went into force. Sporadic difficulties with underage sex workers have arisen, for instance, as have allegations of a “major trafficking problem” stemming from the near-total lack of regulation of the industry.

Thus, while there are those who suggest that full decriminalization as New Zealand has done is the optimal method for “regulating” sex work, many of those individuals also admit that New Zealand is a test case that may not be indicative of how such a system would function in a larger, more diverse, and less isolated state like those in continental Europe or North America.

4. The complete prohibition of sex work is not viable

Although there remains skepticism by some in the general public, experts on all sides of the modern sex work debate tend to recognize that there is little

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105 Id. at 586.
106 See Marshall, supra note 6, at 59–60; see also Gillian Abel, Lisa Fitzgerald & Cheryl Brunton, The Impact of the Prostitution Reform Act on the Health and Safety of Sex Workers (2007) (finding “many positive outcomes” and “few, if any, negative consequences” from the PRA).
107 See Abel, supra note 104, at 581.
108 See, e.g., Fraser Crichton, Decriminalising Sex Work in New Zealand: Its History and Impact, OPENDEMOCRACY (Aug. 21, 2015), https://perma.cc/7DQE-QLEG (discussing certain issues with the PRA, such as “some recent controversy regarding under-age street workers in Auckland”); see also Thomas Coughlan, NZ’s Approach to Sex Work Under Fire, NEWSROOM (Nov. 22, 2017), https://perma.cc/MQB6-7PJZ (“[T]he United States State Department… report on trafficking accuses New Zealand of having a major trafficking problem, which authorities have been slow to address.”).
109 Marshall, supra note 6, at 64 (“While one country’s experience with decriminalization… is not necessarily indicative of all [such] efforts… countries considering how to address sex work under the law would benefit from studying New Zealand.”); see also Brents & Hausbeck, supra note 98, at 270 (“[P]roponents of decriminalization… [sometimes] argue that state regulation, as in the legalized brothel industry, just replace illegal pimps with legal ones.”).
110 See, e.g., Marshall, supra note 6, at 64; Giulia Magni, Full Decriminalisation Would Be Disaster for Malta—Prostitution and Sex Trafficking Survivors, THE INDEP. (Oct. 18, 2020), https://perma.cc/669F-4PZA (recognizing the characteristics of Malta, including the large size of its migrant community, that render it an unlikely candidate for success at full decriminalization).
111 For a discussion of the views of Americans on the criminalization of sex work, see, for example, Elizabeth Nolan Brown, What Americans Think About Prostitution Laws, REASON (Feb. 6, 2020), https://perma.cc/L233-Y59W (finding that 52% of Americans, including 66% of those between the ages of 33 and 44, favor the decriminalization of prostitution); Peter Moore, Significant Gender Gap on Legalizing Prostitution, YOGOV (Mar. 10, 2016), https://perma.cc/A8JQ-GW9P (“Americans narrowly say that accepting money for sex should be illegal (43%) rather than legal (40%).”).
merit to arguments in favor of complete prohibition. Indeed, one recent study ignored the subject altogether because “most human rights scholars and activists agree” that such strict policies are detrimental to human rights and, as a result, fail to meet the standards set out by international human rights law.\textsuperscript{112} Further, these policies “relegate[] sex workers to the shadows of society, where they are vulnerable to abuse and exploitation.”\textsuperscript{113} As such, they fail to promote human rights and do little to comport with international prostitution law as it pertains to protecting people from exploitation and violence.\textsuperscript{114}

IV. CURRENT NEVADA LAW

The Nevada Revised Statutes contain several provisions relevant to a discussion of sex work and human trafficking.\textsuperscript{115} This Section provides an in-depth look at Nevada prostitution law as compared to those models discussed above in order to show that—at present—the state’s system complies with existing international law and creates several positive externalities that promote human rights. There are gaps where Nevada’s legal framework could improve, however, and they are covered in Section V.

A. Attempts to Outlaw Sex Work are Ineffective

Prostitution, “whether ‘actively prohibited, tacitly condoned, [or] formally regulated’ . . . remains a thriving industry regardless of its legal status.”\textsuperscript{116} Its long history, outlined briefly in Section I, is proof of this. Yet, there are still many who argue that the most sensible way to address the practice is to continue to “develop . . . strategies to combat” it.\textsuperscript{117} In observing the repeated history of failed attempts to ‘fix’ the prostitution ‘problem’ by outlawing the practice, one is reminded of a quote long misattributed to Albert Einstein: “The definition of insanity is doing the same thing over and over again and expecting different

\textsuperscript{112} Marshall, supra note 6, at 57 n.77.


\textsuperscript{114} \textit{See}, e.g., DEVAW, supra note 24, art. 2 (defining “violence against women” as, among other things, trafficking in women and forced prostitution).

\textsuperscript{115} \textit{See generally} NRS 201.295–440.

\textsuperscript{116} Goyal & Ramanujam, supra note 2, at 1073.

results.”¹¹⁸ In fact, the results of current attempts to outlaw sex work are at best categorized as inconclusive and, at worst, are indicative of “a failed experiment in social engineering.”¹¹⁹

Turning to the Nordic Model, which is perhaps the most popular system for outlawing sex work in the West, the Swedish government frequently states that its approach to sex work “has been effective in reducing the demand for prostitution,”¹²⁰ yet there is evidence that its legislation actually “failed to accomplish a decrease in the number of sex workers.”¹²¹ Further, the Swedish government’s main study indicating the success of the Nordic Model—the Skarhed Report—contains “[n]o evidence the law reduced the number of sex buyers” or sex workers.¹²² Similarly, the “[Swedish] government does not know whether there has been any change in the number of ‘exploited sex workers,’” which includes victims of sex trafficking, in the years since the enactment of the Nordic Model.¹²³ Finally, any declines in sex work in Sweden since 1999 are difficult to attribute to the ban.¹²⁴

As this Comment aims to explore the successes and failures of Nevada sex work law as compared to its counterparts elsewhere in the world in order to promote the implementation of the former, what is most important is whether the Nordic Model comports with international law and promotes human rights. First, with respect to promoting human rights and upholding international law by ending trafficking, the impact of the Nordic Model is questionable. In the wake of the ban on the purchase of sex, for instance, the Swedish government has admitted to not having accurate data on the occurrence of human trafficking in and across the nation’s borders.¹²⁵ In addition, there is evidence that the ban on the purchase of sex work has “caused an increased risk of violence” for sex

¹¹⁹ Jordan, supra note 90, at 1.
¹²⁰ Wallström, supra note 117.
¹²¹ See Marshall, supra note 6, at 61 (explaining that the increased risk of violence stems from “greater competition among women for fewer clients”).
¹²² Jordan, supra note 90, at 6.
¹²³ Id. at 8.
¹²⁵ See Jordan, supra note 90, at 8.
workers as they compete for business.\textsuperscript{126} Research also suggests that there is “routine harassment by police” under the Swedish law.\textsuperscript{127} With respect to general international and human rights law, then, the Nordic Model has not been as successful as touted by the Swedish government.

Further, as noted in Section II, much of the specific international law pertaining to prostitution aims to end “violence against women,” including “forced prostitution.”\textsuperscript{128} Both DEVAW and CEDAW, as well as the Palermo Protocol, attempt to do so by making it a crime to subject women to violence, forced prostitution, and/or prostitution that is exploitative.\textsuperscript{129} While those who enacted the Nordic Model aimed to end all such forms of cruel treatment, it is entirely unclear whether the law has done so.\textsuperscript{130} Thus, there is no indication that the Nordic Model—at least as applied in its home country—makes strides to comport with the antitrafficking and forced prostitution provisions of international law. The same is true when the Nordic Model is assessed through a human rights lens.

Returning to a few key provisions of the UDHR, it is clear that the Nordic Model is unsuccessful in promoting the human rights of sex workers. With respect to the universal “right to work” and to “free choice of employment,”\textsuperscript{131} effectively outlawing an entire industry by criminalizing its consumers fails to protect these rights. Further, while the UDHR demands that all people have the “right to a standard of living adequate for the health and well-being of himself and his family, including . . . housing,”\textsuperscript{132} sex workers living in Nordic Model countries are “tormented by the threat of eviction” because landlords “are [often] vulnerable to pimping charges if they collect money earned from” sex work.\textsuperscript{133} Such conditions, along with “an increase in stigma,” “an increase in unprotected sexual services,”

\textsuperscript{126} See Marshall, supra note 6, at 61 (explaining that the increased risk of violence stems, in part, from “greater competition among women for fewer clients”). Both Marshall, supra note 6, and Jordan, supra note 90, acknowledge that it is probable that some buyers have changed their behavior in light of the creation of the Nordic Model but assert that how many and to what extent is unknown. Thus, the increased risk of violence cited by Marshall is likely due to a combination of factors, such as fewer clients and a less clear path for legal recourse against abusers, rather than fewer clients alone.

\textsuperscript{127} See Grant, supra note 32.

\textsuperscript{128} DEVAW, supra note 24, art. 2.

\textsuperscript{129} See, e.g., The Palermo Protocol, supra note 24, art. 3.

\textsuperscript{130} See Dodillet & Östergren, supra note 124, at 3 (“[W]hen reviewing the research and reports available, it becomes clear that the [Swedish] Sex Purchase Act cannot be said to have decreased prostitution, trafficking for sexual purposes, or had a deterrent effect on clients to the extent claimed.”); see also Jordan, supra note 90.

\textsuperscript{131} UDHR, supra note 16, art. 23.

\textsuperscript{132} Id. art. 25.

\textsuperscript{133} Goldberg, supra note 124.
and violence at the hands of police and clients, might well be considered “cruel . . . or degrading treatment” in violation of Article 5 of the UDHR as well. Thus, it is not at all clear that the Nordic Model—despite its good intentions—comports with international law or promotes human rights pursuant to the UDHR.

B. Nevada Law Promotes Human Rights and Comports with International Law

1. Nevada law legalizes sex work in a limited manner

Besides the Nordic Model, one of the other main legal frameworks for handling prostitution in the West is legalization. Thus, it is important to compare the two in order to understand which better promotes human rights and complies with international law. As the legalization schemes currently in place are diverse, this Comment explains only one—that present in Nevada. Throughout this Section, however, the Comment addresses where Nevada law diverges from other such schemes, particularly that in Germany.

Nevada’s sex work laws are statutorily defined. In general, the state makes it “unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution,” colloquially known as a brothel. While sex work is legal in such houses, there are additional restrictions on who can take part in the industry. By statute, an individual who engages in sex work in a licensed house of prostitution “after testing positive” in a state-sanctioned HIV test is guilty of a felony, for instance. This provision is particularly impactful because the state health department requires sex workers to have state health cards and undergo “weekly exams and monthly blood testing,” although these measures are at the worker’s expense. Similarly, condoms are required at all of Nevada’s houses of prostitution. Further, any individual who compels another to “reside in a house of prostitution” or engage in prostitution, a practice known as

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135 UDHR, supra note 16, at art. 5.
136 See generally NRS 201.295–440.
137 NRS 201.354(1).
138 NRS 201.358.
139 Rogers, supra note 99, at 11; see also Brents & Hausbeck, supra note 98, at 276 (noting that “each person who applies for employment as a prostitute must take a . . . test for HIV and syphilis [and] gonorrhea and chlamydia . . . [and] every week thereafter while working in a brothel” must undergo additional testing).
pandering, is guilty of a felony as well.\textsuperscript{141} Thus, while sex workers in Nevada are independent contractors\textsuperscript{142} who can purchase their own insurance policies and openly and safely negotiate their own contracts with both brothel owners and clients,\textsuperscript{143} they are protected by the law—including through the restriction of sex work to licensed houses of prostitution where “in-house and regulatory safety mechanisms,” as well as “good relations with police,” foster security.\textsuperscript{144}

Beyond regulating the activities of sex workers, Nevada places limitations on where houses of prostitution can operate. State law both criminalizes those who own or operate property on which “illegal prostitution”\textsuperscript{145}—meaning that which occurs outside of a licensed brothel and/or by an unlicensed worker—occurs and contains specific mandates on where a licensed brothel can be located.\textsuperscript{146} These location-based restrictions include requirements that houses of prostitution be kept away from schools, churches, and other locales thought important for community-building.\textsuperscript{147} In addition, no houses of prostitution can operate in counties “with populations of 700,000 or more,” and even then, it is up to each individual county to determine whether or not to license such institutions.\textsuperscript{148} Thus, it is clear that while Nevada legalizes sex work, the state’s laws are more prohibitive than those present elsewhere. In Germany, for instance, although “the regulation of prostitution is under the competences of the Länder” in practice, both indoor and outdoor prostitution are generally permitted.\textsuperscript{149} Further, until 2017, there were no permitting or medical consultation requirements for sex workers at the national level in Germany.\textsuperscript{150} On the spectrum from Sweden to

\textsuperscript{141} NRS 201.360.
\textsuperscript{142} See NRS 244.345(1)(b) (explaining the procedure to get a license).
\textsuperscript{143} Anna Turner, I Applied for a Job at Nevada’s Most Famous Brothel, THRILLIST (July 21, 2016), https://perma.cc/8YWT-CD7J (outlining the application process, including mandatory STD and HIV testing, applying for a Nevada business license, and obtaining a background check/card from the local sheriff’s office).
\textsuperscript{144} Brents & Hausbeck, supra note 98, at 277.
\textsuperscript{145} NRS. 201.395.
\textsuperscript{146} NRS 201.380–.390 (mandating that brothels can neither be located within 400 yards of a school or place of worship nor on any street “fronting the principal business street” of a town).
\textsuperscript{147} Id. While this regulation might appear to increase the stigma surrounding sex work, similar zoning laws pertaining to the location of firearms dealers, gun ranges, and adult stores in many states suggest this prohibition is not meant to target sex work or suggest that the practice is inherently immoral.
\textsuperscript{148} Rindels, supra note 95.
\textsuperscript{149} TRANSCRIME, supra note 8, at 25.
\textsuperscript{150} See Germany Introduces Unpopular Prostitution Law, DEUTSCHE WELLE (2017), https://perma.cc/48ZK-NYX7 [hereinafter DEUTSCHE WELLE] (explaining that the new law requires sex workers to register and “seek a medical consultation,” requires condoms, restricts instances in which “a sex worker must service several men concurrently,” penalizes those who
New Zealand, then, Germany falls somewhere in the middle, while Nevada—at present—sits a bit closer to Sweden in order to both preserve the “live-and-let-live” legacy of the state and protect those involved in the industry.¹⁵¹

2. Nevada law promotes human rights as guaranteed by international human rights law

While other systems for regulating and outlawing prostitution have some merit,¹⁵² Nevada’s current system—especially as modified in Section V of this Comment—strikes a better balance between protecting human rights and complying with international law.¹⁵³

To begin, Nevada law promotes the universal human right to work and to employment as protected by Article 23 of the UDHR.¹⁵⁴ While any involuntary labor, including slavery and forced prostitution, does not comport with the “free choice of employment” promoted by Article 23, the ability to voluntarily become a sex worker and otherwise freely enter the sex industry is protected therein. Indeed, the legislative history of Article 23 suggests that its purpose was to accept services from individuals forced into prostitution, and mandates that new brothels apply for permits, among other regulations).

¹⁵¹ Rindels, supra note 95. Unlike Nordic Model states, which, as explained in Section IV(A), tend to ineffectively attempt to suppress the demand for sex work, Nevada does not try to do so. Rather, the state allows demand to fluctuate naturally and instead focuses on ensuring the industry is safe for both buyers and sellers.

¹⁵² See, e.g., Kline, supra note 84, at 688–89 (citing Heather Monasky, Note, On Comprehensive Prostitution Reform: Criminalizing the Trafficker and the Trick, but Not the Victim—Sweden’s Sexkopslagen in America, 37 WM. MITCHELL L. REV. 1989, 2028 (2011)) (explaining that a 2010 study by the Swedish government indicates that Sweden has less prostitution and trafficking than neighboring countries); see also Max Waltman, Sweden’s Prohibition of Purchase of Sex: The Law’s Reasons, Impact and Potential, 34 WOMEN’S STUD. INT’L F. 449, 459–60 (stating that Sweden’s criminalization of the purchase of sex appears to have drastically cut down on the number of prostitutes in the country, as well as the number of men purchasing sex).

¹⁵³ See Skillbrei & Holmström, supra note 89 (“[T]he Swedish Sex Purchase Act is often said to be an effective tool against human trafficking. The evidence for this claim is weak.”); Daria Snadowsky, Note, The Best Little Whorehouse Is Not in Texas: How Nevada’s Prostitution Laws Serve Public Policy, and How Those Laws May Be Improved, 6 NEV. L.J. 217, 233 (2005) (describing the fear sex workers have—when prostitution is illegal—of filing complaints to report abuse).

¹⁵⁴ UDHR, supra note 16, art. 23. As noted in Section IV(B)(1), individuals who test positive for HIV are prohibited from engaging in legal sex work in Nevada. As a result, the Nevada Model is not in complete compliance with Article 23. While this is potentially problematic from a human rights perspective, it is the result of a cost-benefit analysis—like many health codes and OSHA regulations—that imposes restrictions on who can conduct work and in what manner in order to protect the health and safety of the broader public. This Comment does not attempt to discern whether or not this balancing is correct. For a discussion of why it might not be, see Carrie Weisman, Should HIV-Positive Workers Be Allowed in the Sex Industry? Some Advocates Say Yes., IN THESE TIMES (July 10, 2019), https://perma.cc/L7GW-ZJY5. For a discussion of the impact this restriction has had on the continuity of work of registered sex workers in Nevada, see Jen Lawson, Police Say HIV Growing Threat Among Call Girls, LAS VEGAS SUN (Sept. 26, 2013), https://perma.cc/ZD5V-9TJR (“[N]o licensed prostitute has tested positive for HIV.”).
promote “economic empowerment” among all individuals, with particular
targets paid to women. Article 23 does not favor some forms of employment
over others but rather aims to ensure all individuals are protected in their
employment and are paid adequately for their services, whatever they may be.
In addition, although CEDAW is not part of the UDHR and will be discussed
more below, the contention that sex work is protected by the UDHR is bolstered
by CEDAW’s acknowledgment that “[t]he right to work is an inalienable right of
all human beings.” Finally, paying particular attention to how Nevada law
functions, both Article 23 of the UDHR’s guarantee that “[e]veryone has the right
to form and to join trade unions” and Article 20’s protection of “the right to . . .
peaceful assembly and association” arguably protect the formation and existence
of brothels as well.

Beyond Article 23’s right to work, that provision also guarantees the right to
“just and favourable conditions of work.” Nevada law promotes this right at
present. With respect to favorable work conditions, for instance, there is evidence
that—when sex work is outlawed—those who engage in the practice are
marginalized and are therefore faced with inadequate work conditions. Such
conditions include “limited bargaining power when it comes to negotiating with
clients,” as well as harassment by both police and clients as “sex workers are
pushed to more dangerous working environments, such as clandestine street[s].” In contrast, in Nevada’s brothels, although there are occasional
issues, the state’s laws “were established . . . out of a concern with [ ] three
frames of violence (interpersonal violence against prostitutes, violence against
community order, and the violence of disease).” Keeping these concerns in
mind, the law was crafted to guide brothels toward valuing both their own
economic viability and the health and safety of their employees. As a result,

155 Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles- Article 23, OHCHR,
https://perma.cc/L5WL-F7SA.
156 Id.
157 CEDAW, supra note 48, art. 11 (emphasis added).
158 UDHR, supra note 16, arts. 20, 23.
159 Id. art. 23.
160 See Marshall, supra note 6, at 54–55 (explaining that the criminalization or marginalization of sex
work leads to worsening work conditions for sex workers).
the Nordic Model in Sweden in its first 20 years in force).
162 Rogers, supra note 99, at 29 (“It is inevitable that not all prostitutes and customers will follow
regulations.”); see also Brents & Hausbeck, supra note 98, at 277 (acknowledging that some “brothel
owners . . . [do not care] about safety mechanisms” as much as others).
163 Brents & Hausbeck, supra note 98, at 277.
164 Id.
Nevada brothels protect sex workers from the very start, including during the negotiation process, in which house managers are able to listen to the “private” interactions between workers and clients in order to ensure adequate payment and safe negotiations. Furthermore, sex workers typically deposit their payment with the house manager after negotiations but before engaging in any sexual activity, at which point they can bring up “any strange feelings or problems.” In addition to the safety measures that are in place during negotiation and payment, houses typically provide panic buttons for their workers and maintain good relationships with local law enforcement to deal with any issues that do arise. Thus, Nevada law does well to ensure that sex workers experience adequate work conditions. Treated as workers rather than criminals or something in between, Nevada’s sex workers experience the benefits of organization, regulation, and law enforcement.

Similarly, the UDHR’s guarantee of a “right to a standard of living adequate for the health and well-being of [oneself and one’s] . . . family, including . . . housing and medical care,” is promoted by Nevada law. In addition to the mandate that condoms be worn in brothels to prevent pregnancy, sexually transmitted infections, and other diseases, all sex workers undergo preliminary health screenings before being licensed. Further, as noted above, they must undergo additional testing on a weekly and monthly basis in order to continue selling their services. Indeed, research suggests that—because of the financial and legal liability brothel owners face in the event of a sex worker contracting or spreading an illness—Nevada’s legal system incentivizes safe behavior from the top down at these institutions. These sorts of health benefits are common in systems of legalization beyond Nevada, however, and are one factor that suggest that legalization is a healthier approach than abolition. While Germany’s medical testing requirements are more relaxed than those in Nevada, for example, sex

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165 Id. at 278 (acknowledging that, while these measures are in place to protect employees, they also help managers stop employees from stealing from the brothel).
166 Id. at 279.
167 Id. at 280–81.
168 Abel, Fitzgerald & Brunton, supra note 106, at 119 (“Street-based workers were significantly more likely than managed and private participants to report [refusal by a client to pay, theft by a client, physical abuse/violence, and/or rape by a client] in the last 12 months.”).
169 UDHR, supra note 16, art. 25.
170 Brents & Hausbeck, supra note 98, at 276.
171 Id.
172 See Snadowsky, supra note 153, at 228 (describing the liability owners face if a customer contracts an STI from a sex worker who has tested positive).
workers there “have full access to social security measures,” including health insurance.\(^{173}\) This is typically not the case in those states that outlaw the practice.

While most forms of legalization help to promote the UDHR’s right to an adequate standard of living in terms of healthcare, Nevada’s brothel system specifically helps to ensure a standard of living that includes housing. Indeed, while not all sex workers in Nevada reside in their places of work, they “usually live in the brothel[s].”\(^{174}\) While the sex workers “pay taxes, work card fees, ‘house’ fees, and room and board,” the guarantee of housing and of a “confined community space” typically leads to less violence and a more secure environment.\(^{175}\) This is quite different from countries like Sweden where, as noted above, reports indicate that sex workers struggle to find any housing at all.\(^{176}\)

Finally, Nevada law—for all of its intrusiveness with respect to licensing and health checks—promotes the right to privacy protected by the UDHR’s Article 12.\(^{177}\) The ability to work in a private business under the protection of the law rather than in fear of it ensures that sex workers can live their lives free of police violence and other abuses at the hands of the state. The ability to choose one’s profession and go about one’s business freely is fundamental to the right to privacy, and Nevada law does well to protect it.

Viewing Nevada’s prostitution law through the lens of the UDHR, it is clear that the state’s regulations are successful in protecting sex workers’ fundamental rights to housing, healthcare, safety, employment, and privacy. There are, however, places where Nevada law could do better in promoting human rights. Indeed, there remain unnecessary barriers to entry, such as the costs associated with licensing and medical examinations, that inhibit the ability of some who are interested in becoming sex workers from doing so. Further, Nevada’s limitation on which counties may license brothels limits certain universal human rights as well, including the right to “freedom of movement.”\(^{178}\) Thus, in Section V, this Comment proposes modifications that can be made to Nevada law that—if applied by other states that choose to implement such a system—will help to better promote human rights. Before explaining these proposed changes, however, it is first necessary to explore how Nevada law fares in relation to international prostitution and human trafficking law.

\(^{173}\) TRANSCRIME, supra note 8, at 110; cf. Chu & Glass, supra note 134, at 107–08 (describing the health and healthcare issues sex workers face under the Nordic Model).

\(^{174}\) Heineman, MacFarlane & Brents, supra note 96, at 9.

\(^{175}\) Id.

\(^{176}\) Goldberg, supra note 124.

\(^{177}\) UDHR, supra note 16, art. 12.

\(^{178}\) Id. art 13.
3. Nevada law comports with international prostitution law

Although Nevada law legalizes sex work in a limited fashion, it complies with current international law as set out in DEVAW and the Palermo Protocol. Article 2 of DEVAW, for instance, defines “violence against women,” in part, as “trafficking in women and forced prostitution.”\(^ {179}\) All states, including Nevada, New Zealand, Germany, and Sweden, make clear that their goal is to comport with this provision and end these harmful practices. The only difference is their methodologies for doing so.\(^ {180}\)

With respect to Nevada, the state’s mandate that sex work be confined to brothels has assisted in ending trafficking and forced prostitution. In fact, Nevada’s crime statistics indicate that those counties without legal brothels have substantially higher arrest rates for extra-legal prostitution than those with legal sex work.\(^ {181}\) As noted above, prostitution outside of regulated and monitored brothels often leads to exploitation and violence, so these statistics indicate that perhaps legalized brothel sex work helps alleviate some of the issues outlawed by Article 2 of DEVAW. Although there are salient counterarguments to relying on this data, including that arrest rates may simply be higher in counties without legal sex work because those are typically the state’s larger and more urban counties, it is notable that when those counties without legal sex work are removed from Nevada’s crime statistics, the state has among the lowest instances of prostitution arrests in the U.S., even when compared to states with similarly rural populations.\(^ {182}\) It is therefore not at all clear that it is the urban/rural divide leading to these different crime rates. Rather, legal sex work in those Nevada counties may genuinely contribute to both lower arrest rates and incidences of extra-legal sex work, as well as the adverse impacts that come along with it. Indeed, that is among the reasons that Section V of this Comment suggests eliminating the population-based restrictions on where brothels can open.

In addition, other studies suggest that Nevada’s system complies with Article 2 of DEVAW’s call to end forced prostitution and trafficking as well. A largely qualitative review of Nevada’s brothels, for instance, concluded that while “an answer to the question of whether or not violence is inherent in the sale of adult

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\(^ {179}\) DEVAW, supra note 24, art. 2.


\(^ {181}\) See Rogers, supra note 99, at 20–21 (citing Crime in the United States Table 69: Arrest Data by State, FBI (2008)) (comparing arrest rates for prostitution in Nevada counties with and without legal brothels and finding substantially higher rates in those without legalized sex work).

\(^ {182}\) See id. at 22 (explaining that “[o]nly North Dakota had a lower rate” of prostitution and criminal vice than the counties in Nevada where sex work is legal).
consensual sex remains elusive... It is strongly indicated... that legal brothels generally offer a safer working environment than their illegal counterparts.\textsuperscript{183} This study suggested that not only is this true with respect to physical safety, but also with respect to "contagion," meaning illness.\textsuperscript{184} If, as history indicates, prostitution is a constant despite what the law says, then Nevada's system for regulating it does well to comply with international law criminalizing forced prostitution, violence against women, and human trafficking. As stated above in terms of promoting human rights, however, there are areas where Nevada can improve,\textsuperscript{185} and those are discussed in Section V.

Further, the Palermo Protocol, although less explicit regarding the legality of voluntary sex work, appears to allow the sort of system present in Nevada. To begin, the Palermo Protocol outlaws the "exploitation of prostitution."\textsuperscript{186} Given the background against which this protocol was adopted, including CEDAW, which "shift[ed] from an abolitionist mindset to one that recognizes[d] the human rights of sex workers,"\textsuperscript{187} it is unlikely the Palermo Protocol intended to abolish all forms of sex work. Lending credence to this interpretation of Article 3 of the Palermo Protocol is its discussion of consent.\textsuperscript{188} Article 3 makes the consent of the "victim" irrelevant if the threat or use of force, coercion, abduction, fraud, deception, abuse of power, or payment is used to achieve it, but Article 3 does not say that freely given consent renders sex work exploitation.\textsuperscript{189} Nevada law, which allows sex work if it is voluntary and creates protocols to ensure such is the case, therefore complies with the Palermo Protocol.

In contrast to the Nevada Model, other systems in which sex work is less regulated (such as those in Sweden and Germany) tend to foster more hostile and exploitative environments than that present in Nevada's brothels. Thus, they may violate the Palermo Protocol. In fact, evidence suggests that a system such as Nevada's not only allows for safer policing,\textsuperscript{190} but perhaps even fosters increased

\textsuperscript{183} Brents & Hausbeck, supra note 98, at 293; see also Heineman, MacFarlane & Brents, supra note 96 ("Legal sex workers report less violence and a heightened sense of security working in the brothel industry than plying their trade illegally in other venues.").

\textsuperscript{184} Id.


\textsuperscript{186} The Palermo Protocol, supra note 24, art. 3.

\textsuperscript{187} Marshall, supra note 6, at 53.

\textsuperscript{188} See The Palermo Protocol, supra note 24, art. 3(a)–(b).

\textsuperscript{189} Id.

\textsuperscript{190} See Rogers, supra note 99, at 13.
policing for other illegal activity, such as trafficking.\textsuperscript{191} This is certainly in the spirit, if not the letter, of international agreements such as the Palermo Protocol and DEVAW, which indicate that women are “entitled to equal enjoyment and protection of all human rights.”\textsuperscript{192} Nevada’s sex work laws therefore both comport with international prostitution law and promote human rights. As stated above, however, there is much room for improvement. Section V suggests modifications to Nevada’s sex work law that the International Court of Justice might consider in issuing an advisory opinion pertaining to sex work and human trafficking.

V. A MODIFIED NEVADA SYSTEM WOULD BEST PROTECT HUMAN RIGHTS AND COMPLY WITH INTERNATIONAL LAW

The legalization of sex work, particularly as Nevada has approached it, has many benefits. Unfortunately, it also has several drawbacks. While there is a “substitution effect” in those states that legalize prostitution, in which the demand for illicit prostitution declines in favor of legal sex work, for instance, countervailing evidence suggests states with legal prostitution “experience a larger reported incidence of trafficking in flows.”\textsuperscript{193} Beyond this issue, there are others that need to be considered before legalizing sex work. Indeed, there are also concerns that any regulation beyond abolition might lead to police harassment, even when an individual is in full compliance with the law.\textsuperscript{194} This is exacerbated by burdensome bureaucratic policies, such as expensive licensing requirements.\textsuperscript{195} Finally, and somewhat relatedly, sex work carries a stigma, and often this leads those engaged in the practice to have difficulty “reintegrat[ing] into the

\textsuperscript{191} See Snadowsky, supra note 153, at 233–34 (citing Jeremy Hay, You’re Under Arrest, Spread Your Legs, 7 GAUNTLET MAGAZINE (1994), https://perma.cc/XXA6-PBC6 (online version printed under the title Police Abuse of Prostitutes in San Francisco)) (arguing that policing for illicit prostitution is wasteful); see also Andrew Breiner, These 3 Graphs Could Change Your Mind About Legalizing Sex Work, THINK PROGRESS (July 31, 2015), https://perma.cc/8Q32-R2YS (showing how, after decriminalization, New Zealand’s sex work industry shrank, while the willingness of sex workers to report violence to police increased).

\textsuperscript{192} DEVAW, supra note 24, arts. 1, 3.

\textsuperscript{193} See Seo-Young Cho, Axel Dreher & Eric Neumayer, Does Legalized Prostitution Increase Human Trafficking?, 41 WORLD DEV. 67, 82 (2013) (suggesting that the available data indicates that countries with legalized prostitution “experience a larger reported incidence of trafficking inflows” than those countries that criminalize sex work but also see a “substitution effect” in which the demand for illicit prostitutes declines in favor of legal sex work).

\textsuperscript{194} See Marshall, supra note 6, at 62 (arguing that Germany’s legalization system is less effective at stopping police abuse than New Zealand’s full decriminalization regime).

\textsuperscript{195} See id. at 62 (citing Molly Smith, The Problem with the “Swedish Model” for Sex Work Laws, THE NEW REPUBLIC (June 8, 2015), https://perma.cc/GPW6-P8BK) (explaining the argument that “legalized model[s] still criminalize” those sex workers who cannot or do not fulfill the requirements necessary to comply with regulation).
community on equal terms” after retirement.

In order to safely legalize sex work, these issues must be addressed. This Section proposes ways that Nevada law can be modified to do so.

A. Modification One: Eliminate All Population-Related Requirements

The Nevada Model is “not an ideal model in that many of its regulations are unofficial, outdated, and inefficient. But it succeeds because it recognizes prostitution as a reality and therefore functions to protect all the affected parties.”

Therefore, this Comment proposes two key modifications to the Nevada system to help make it more up-to-date and efficient without constraining its ability to protect those involved in the industry. The first of these proposed modifications is the elimination of population-based restrictions on legalized sex work. This change will help curb illegal prostitution and, in doing so, continue to cut down on violence and human trafficking.

Nevada outlaws sex work in counties with populations greater than 700,000. In order to lessen the adverse effects of illegal prostitution, as well as comport with international law and promote human rights, this restriction must be abolished. Indeed, it is often noted that “any public policy aimed at alleviating the worst effects of illegal prostitution in metropolitan areas with legal, regulated prostitution will have to go beyond legalizing brothels in exclusively rural” areas.

This is the case because, at least in Nevada, consumers of sex work in areas where it is illegal “are not content to drive to legal brothels in neighboring counties.” Instead, they indulge in illegal prostitution, which—as noted above—is far less safe for all parties involved. In addition, beyond the basic policy argument that legalizing brothel prostitution broadly will improve the work conditions of sex workers, this change has major human rights and legal implications as well.

With respect to human rights, legalizing brothel prostitution in all areas, regardless of population, ensures that states uphold Articles 13 and 23 of the UDHR. In terms of the former, which protects the “right to freedom of movement and residence within the borders of each state,” outlawing sex work in some regions but not others restricts sex workers’ ability to move freely while still pursuing safe and legal job opportunities. The same is true with respect to Article 23, which guarantees “the right to work, to free choice of employment . . .

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196 See Waltman, supra note 152, at 454–57 (citing concerns regarding the stigmatization and reintegration of prostitutes).
197 Bejinariu, supra note 106.
198 See Rogers, supra note 99, at 19–21 (citing Crime in the United States Table 69: Arrest Data by State, FBI (2008)).
199 Id.
200 UDHR, supra note 16, art. 13.
and to protection against unemployment.” Without universally legal sex work, a sex worker who is forced to move from one area (such as a state within a larger country, a county within a state, etc.) to another might find herself out of work and/or a criminal for continuing to pursue her career. This is in violation of UDHR Articles 13 and 23.

Further, the general guarantee that all people are entitled to a life free of “cruel, inhuman, or degrading treatment” is violated when sex workers are forced to choose between remaining in one locale (perhaps in which they face abuse, violence, or other poor conditions) in order to continue working and moving to a desired location where they face unemployment. Similarly, since sex workers who engage in the trade in areas where it is illegal often face dangerous work conditions, violence, and/or abuse, those jurisdictions that continue to outlaw prostitution based on a characteristic as arbitrary as population risk violating UDHR Article 5’s protection against cruel treatment as well. Finally, it is also noteworthy that, in states like Germany that provide access to welfare, unemployment, and health benefits to individuals engaged in legally recognized “work,” the universal legalization of sex work will provide these benefits to sex workers in a manner that promotes the right to an adequate standard of living as guaranteed by the UDHR. Thus, given these considerations and the aforementioned fact that Nevada’s counties with legal brothel prostitution report among the lowest levels of extra-legal prostitution in the U.S., it seems in the interest of human rights to eliminate the population restriction before expanding Nevada’s system to other states around the globe.

In addition, the elimination of these population-based restrictions would help a modified Nevada system better comport with international sex work law. With sex work universally legalized, those who want to take part in the industry will be able to “actively seek out work themselves” rather than be “coerced into prostitution and kept subservient by [frequently abusive] pimps.”

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201 Id. art 23.
202 This call for “universally legal sex work” is limited by the authority of local governments. As is the case in Nevada, some local governments may choose not to license brothels despite having the ability to do so. For the purposes of this Comment, however, what is envisioned is a system in which the decision to license brothels is made at purely the local level and not mandated by the state or national government.
203 UDHR, supra note 16, art. 5.
204 Rogers, supra note 99, at 22 (citing RONALD WEITZER, Sex Work: Paradigms and Policies, in SEX FOR SALE (2009)) (explaining that “opposition from the gaming industry” is the primary reason for Nevada’s prostitution population restriction).
205 See Marshall, supra note 6, at 54–55.
206 See Snadowsky, supra note 153, at 228–33 (citing HIV statistics, the ability to contract with brothel owners, age restrictions, and other regulations that ensure the safety and health of voluntary sex workers in brothels).
proliferation of regulated brothels, particularly in urban environments in which sex work tends to be relatively common, will combat this form of coercion, which itself violates international agreements such as DEVAW. More competition in the sex industry might also further improve conditions for brothel workers, including through increased bargaining power and benefits, as brothel operators are forced to compete for employees.

The general reduction in violence that accompanies legalized brothel prostitution will also assist states in complying with Article 2 of DEVAW, which outlaws “[v]iolence against women, including “violence related to exploitation” and “violence perpetrated or condoned by the State” (such as police violence). From the perspective of both human rights and international prostitution law, then, legalizing brothel prostitution in all regions regardless of population size and density will aid in both protecting those involved in the trade as required by the UDHR and in curbing all of the forms of coercion and violence specifically outlawed by documents like DEVAW. Thus, this modification builds on the sturdy foundations of Nevada’s current system and should be considered should the ICJ promulgate an advisory opinion pertaining to managing sex work.

B. Modification Two: Increased Screening Before Licensing

At present, all that is required to become a sex worker in Nevada is a general contractor’s license and a card from the local sheriff’s department following a procedure that is “basically the same as a background test,” meaning the applicant must merely have a “clean record.” While these requirements are useful in protecting the broader industry and have, in fact, been emulated elsewhere in the world, if the legal framework proposed herein is to better promote human rights and comport with international law (particularly those laws criminalizing human trafficking), it must do more to ensure those involved in sex work are doing so freely.

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207 See, e.g., DEVAW, supra note 24, art. 1; see also CEDAW, supra note 48, art. 3(a).
208 Nevada’s brothel owners are referred to as “legal pimps” by some due to the power they can wield over their employees. See, e.g., Michelle L. Price, Nevada is Weighing a Ban on Brothels as the State’s Most Famous Legal Pimp Runs for Office, BUSINESS INSIDER (June 11, 2018), https://perma.cc/63WC-SV77. An increase in work opportunities coupled with a relatively stagnant employee base, however, should foster improved working conditions and lessen this power imbalance. See Abel, Fitzgerald & Brunton, supra note 106, at 7.
209 See, e.g., Brents & Hausbeck, supra note 98, at 271.
210 DEVAW, supra note 24, art. 2.
211 Turner, supra note 143. Applicants must also undergo health screenings, but those are not at issue in this Subsection.
212 See DEUTSCHE WELLE, supra note 150 (discussing the new licensing scheme for sex workers in Germany).
In order to better combat sex trafficking, then, states that implement a system akin to Nevada’s must expand their background check procedure to include in-person interviews and a preliminary waiting period, during which local authorities allow the applicant to work—assuming he/she is healthy and has passed the normal background check—while any “red flags” are assessed. Studies suggest that such protocols will assist in fighting trafficking. Indeed, in Lyon County, Nevada, for instance, recent prostitute work card applications included “a variety of red flags in the background checks that might suggest trafficking,” but these “red flags” often went uninvestigated. Instituting mandatory interviews that assess the applicant’s situation rather than just their criminal history, along with a more thorough review process complete with “more and better equipment to handle applications” will correct the “real weaknesses and gaps in the” current review process without compromising the ability of those interested in becoming sex workers to do so. This refined review process must include sufficient equipment to verify passport authenticity and other non-local identification cards. By expanding this preliminary review process, states that adopt the modified Nevada system (Nevada Model) will ensure compliance with international law and help promote human rights.

With respect to international law, every document discussed in Section III above outlaws—in some manner—practices that harm women or deprive an individual of their liberty. Indeed, DEVAW includes the “arbitrary deprivation of liberty” in its definition of “violence against women,” while CEDAW mandates that states must combat “all forms of traffic in women,” and the Palermo Protocol states as its purpose the prevention of “trafficking in persons.” Instituting an expanded system of background checks, complete with the proposed waiting period during which an applicant can work on a temporary basis...

213 In the midst of the COVID-19 pandemic, in-person background checks are less viable than they would otherwise be. The ability to meet with the applicant one-on-one is of great importance in ensuring they are willfully applying to be a sex worker, however, so—should such meetings be at all possible using social distancing and other precautionary measures—they are still encouraged.

214 See Michelle Rindels, Lyon County: A Third of Prostitutes Registered in 2017 Had Red Flags of Possible Human Trafficking, THE NEV. INDEP. (Oct. 19, 2018), https://perma.cc/78GP-2UKM (calling for “more staff and better equipment to handle applications,” among other improved resources, after 30% of sex worker card applicants in Lyon County, Nevada had “red flags” on their applications that went uninvestigated).

215 Id.

216 Id.

217 See id.

218 DEVAW, supra note 24, art. 1.

219 CEDAW, supra note 48, art. 6.

220 The Palermo Protocol, supra note 24, art. 2.
pending full approval, will help the Nevada Model better comport with these provisions of international law.

Further, not only might these improvements assist governments in assessing “red flags” and curbing trafficking, they might have a deterrence effect as well. Indeed, the U.S. Department of Justice (DOJ) recognized that “police deter crimes when they do things that strengthen a criminal’s perception of the certainty of being caught.” Thus, an improved system of background checks that thoroughly investigates “red flags” that might indicate an applicant is being trafficked could itself deter trafficking and help the Nevada Model comport with the international law against trafficking.

The same is true with respect to the UDHR. Combatting human trafficking strongly promotes Article 5’s guarantee that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment.” In fact, increased protection against human trafficking also promotes the UDHR’s assurance that all people have a right to privacy and to be protected from “arbitrary interference” with that of their family and home. Finally, given the horrors faced by victims of trafficking, an improved system of combatting it will better ensure that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family.” Therefore, the improved background check procedure proposed herein will better help the Nevada Model comport with international law and promote human rights.

1. Expanded background check procedures will not increase barriers to entry

Additionally, it is of note that the expanded background check procedures outlined above will not raise application costs and therefore will not increase barriers to entry in violation of UDHR Article 23. Although this is more of a policy discussion that needs to be carried out on a state-by-state basis, administrative costs created by implementing the expanded background check system (as well as the cost of the current system) should adequately be offset by the reduced cost of policing (including the cost of arrests) resulting from the legalization of sex work.

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222 Id.
223 UDHR, supra note 16, art. 5.
224 Id. art. 12.
225 Id. art 23.
2. This modification, along with broader legalization, will reduce the stigma associated with sex work.

Should the ICJ issue an advisory opinion advocating for the adoption of a system that legalizes brothel prostitution, the two improvements discussed in this Section should be included so that the proposed system best complies with international law and promotes human rights. In addition, the broad legalization of sex work will help combat any stigma currently attached to the practice. In fact, despite the Nevada Model’s tendency to treat sex workers differently than other workers, including through required periodic health screenings, the broad legalization system proposed herein will help the public view sex workers as average healthy individuals employed in a legitimate line of work. Indeed, while some contend that it is only a “myth” that legalizing prostitution will reduce the stigma for those involved, others argue that it is actually “criminalization [that] fuels [the] stigma, by framing commercial sex as immoral, illicit, and unlawful, by declining sex worker’s (human and worker) rights[,] and by powering negative opinions.” This criminalization-fueled stigma leads to psychological stress on the part of sex workers, as well as to a decline in “sex workers’ social status and control over sexual and employment-related negotiations.” Thus, not only will the legalization regime proposed herein promote human rights and comport with international law to a greater extent than any other system surveyed, it will also fight the stigma that persists around sex work.

VI. The Implementation of the Nevada Model

As any reasonable shopper knows, “one size fits all” typically means a little discomfort for everyone. The same is true of legal and policy proposals. Thus, this


229 Vanwesenbeeck, supra note 26, at 1632; North, supra note 14; Ronald Weitze, Resistance to Sex Work Stigma, 21 SEXUALITIES 717, 725 (Jan. 2017) (“If the national legal context is one where prostitution is criminalized, the legal order itself compounds stigmatization and the authorities have a vested interest in treating sex work as deviant.”). These studies suggest that, even when treated differently than other workers, sex workers fare much better in the public’s opinion when their trade is legalized in even a limited manner.

230 Vanwesenbeeck, supra note 26, at 1632.

231 The history of marijuana in the U.S. provides an interesting case study on the relationship between illegality and stigmatization. For a discussion of part of the complex origins of the U.S.’ criminalization of the drug, see Becky Little, Why the US Made Marijuana Illegal, HISTORY (Aug. 31, 2018), https://perma.cc/WFG2-52DG. Despite its relatively recent outlawing, marijuana is often highly stigmatized, see, for example, Travis D. Satterlund, Juliet P. Lee & Roland S. Moore, Stigma Among California’s Medical Marijuana Patients, 47 J. PSYCHOACTIVE DRUGS 10 (2015).
Comment does not call for sweeping new international agreements or the imposition of sanctions on those states that do not undertake to implement the Nevada Model or a variation thereof. Rather, it merely encourages interested parties with the proper authorization to request an advisory opinion from the International Court of Justice pertaining to the legalization of sex work.\footnote{Organs and Agencies Authorized to Request Advisory Opinions, Int’l Ct. of Just., https://perma.cc/9STW-9L4A.} In doing so, authorized agencies in favor of the legalization and/or decriminalization of sex work, such as the WHO, can encourage the ICJ to offer its advice regarding the “legal questions” surrounding the practice’s legalization.\footnote{U.N. Charter art. 96, ¶ I–II. For more information on ICJ advisory opinions, see What Is an Advisory Opinion of the International Court of Justice (ICJ)?, Dag Hammarskjöld Library, https://perma.cc/C2XV-V473 (citing Advisory Jurisdiction, Int’l Ct. of Just., https://perma.cc/4YWG-PHHT) (“In general, advisory opinions are not binding, but may inform the development of international law.”).} In its opinion, the ICJ likely will find that, given the current legal landscape, the proposals herein, and the recent qualitative and quantitative studies pertaining to the prevalence of trafficking and the conditions faced by sex workers in Nevada, Sweden, and elsewhere, the Nevada Model is a sensible approach that promotes human rights and comports with international law better than any other system.

Further, it is clear that beyond the legal ramifications associated with changing laws pertaining to sex work, there are also moral, philosophical, and perhaps even religious implications. As a result, it is important to reiterate that this Comment opposes the placing of sanctions on those states that decline to implement the Nevada Model. The broader international community has itself only recently come to recognize voluntary sex work as a valid practice. Thus, it is wholly unreasonable to penalize those states that do not agree with this rather new sentiment. Indeed, with time, it is likely that those states that initially hold out will adopt this more modern point of view on their own. The international community can only do so much to influence the people and governments who consent to be a part of it, and there is no reason to hope for spontaneous universal agreement on any issue, especially one as contentious and personal as the sale of sex.

VII. CONCLUSION

This Comment argues that the legalization of sex work is both permitted by current international law and is the best method for ensuring those who engage in the practice are safe, healthy, and secure in their human rights. Indeed, while the Nordic Model and other criminalization schemes seem to make progress in the fight to end human trafficking, they do so in a manner that abrogates numerous human rights and limits free choice. Similarly, other systems—such as the decriminalization model employed in New Zealand—are effective in promoting
human rights but might be ineffective at combatting human trafficking, especially if attempted elsewhere in the world. The Nevada Model proposed herein, on the other hand, has the potential to be the most effective means of regulating sex work while both protecting human rights and combatting human trafficking. By upholding the UDHR while also fighting human trafficking and curbing violence, coercion, and abuse, the Nevada Model is a sort of compromise between the sex workers’ rights movement, which promotes decriminalization to protect human rights, and those who advocate for abolition in order to achieve that same goal.

As with any untested proposition, there are bound to be surprises in implementing the Nevada Model should the ICJ recommend states begin doing so. The novel solution proposed herein is reliant upon data and research that is difficult to obtain (such as rates of human trafficking and extra-legal prostitution), and so there are bound to be unexpected discoveries as states proceed in employing it. Thus, at the very least, the Nevada Model will be a framework on which states that choose to legalize prostitution can build.