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Defending the Less Dead: Using the Decriminalization of Sex Work to Combat the High Incidence of Serial Homicide of Street-Based Sex Workers

Lauren E. Fernandez

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DEFENDING THE LESS DEAD: USING THE
DECRIMINALIZATION OF SEX WORK TO COMBAT
THE HIGH INCIDENCE OF SERIAL HOMICIDE OF
STREET-BASED SEX WORKERS

ABSTRACT

Sex workers have historically represented a disproportionate percentage of all victims of serial murder. Several serial murderers in the past thirty years have evaded detection for years, taking the lives of dozens of victims, by targeting sex workers, playing off the biases of society and law enforcement, and counting on the half-hearted investigation techniques that often followed missing person reports for less valued members of society, or the “less dead.” This Note argues that the decriminalization of all aspects of sex work is the surest way to improve the safety of street-based sex workers and reduce high victimization of this marginalized group in crimes of serial homicide. Based on the success of the decriminalization model in New Zealand, legalizing sex work reduces the power imbalance between law enforcement and sex workers and improves channels for sharing information, allowing the police to better investigate and protect sex workers from the risk of serial homicide, and allowing sex workers to better protect themselves.

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INTRODUCTION

With the advancement of forensic science, investigative techniques, and criminal profiling,¹ instances of serial murder² in North America and Western Europe have plummeted in the past three decades.³ In the United States, instances of serial killers have declined by eighty-five percent since 1980.⁴ However, the number of murder cases solved in the United States has also dropped from ninety-one percent in 1965 to sixty-one percent in 2017.⁵ Some experts believe that the Federal Bureau of Investigation (FBI) statistics are inaccurate, such as Thomas Hargrove, the founder of the Murder Accountability Project, a nonprofit that compiles data on homicide, who believes that based on the data available, there are currently around 2,100 unidentified serial killers.⁶ If this is the case, why are more serial murderers not being caught? Why are they getting away with their crimes?

We have seen several examples in the past half-century of killers in the Western Hemisphere who take the lives of dozens of victims,⁷ before eventually being caught by law enforcement after lengthy, botched investigations.⁸ One root of the problem lies in the pattern

1. LEONARD G. JOHNS, TIMOTHY G. KEEL, STEVEN F. MALKIEWICZ, JAMES J. MCNAMARA, KIRK R. MELLECKER, MARY ELLEN O'TOOLE, DAVID T. RESCH, MARK SAFARIK, ARMIN A. SHOWALTER & RHONDA L. TRAHERN, FED. BUREAU OF INVESTIGATION, BEHAV. ANALYSIS UNIT, *SERIAL MURDER: MULTI-DISCIPLINARY PERSPECTIVES FOR INVESTIGATORS* 29 (Robert J. Morton & Mark A. Hiltz eds., 2005).

2. The definition of "serial murder," as compiled by the Federal Bureau of Investigation's (FBI) Multidisciplinary Symposium on Serial Murder, is "[t]he unlawful killing of two or more victims by the same offender(s), in separate events." *Id.* at 9.

3. Cody Cottier, *Serial Killers Have Rapidly Declined Since The 1980s*, DISCOVER (Sept. 27, 2022, 1:00 PM), <https://www.discovermagazine.com/the-sciences/what-explains-the-decline-of-serial-killers> [<https://perma.cc/E4BY-C54D>].

4. Zachary Crockett, *What data on 3,000 murderers and 10,000 victims tells us about serial killers*, VOX (Dec. 3, 2016), <https://www.vox.com/2016/12/2/13803158/serial-killers-victims-data> [<https://perma.cc/AZ3F-RQ52>].

5. Rene Chun, *Modern Life Has Made It Easier for Serial Killers to Thrive: They get away with their crimes about 40 percent of the time*, THE ATLANTIC (Oct. 2019), <https://www.theatlantic.com/magazine/archive/2019/10/are-serial-killers-more-common-than-we-think/596647> [<https://perma.cc/G6CW-UD6D>].

6. Hargrove's calculation of 2,100 unidentified serial killers is based on the belief that at least two percent of murders are committed by serial offenders. *Id.* But see JOHNS, KEEL, MALKIEWICZ, MCNAMARA, MELLECKER, O'TOOLE, RESCH, SAFARIK, SHOWALTER & TRAHERN, *supra* note 1, at 2 ("Serial murder is a relatively rare event, estimated to comprise less than one percent of all murders committed in any given year.").

7. See, e.g., Clémence Michallon, *America's deadliest serial killer preyed on the 'less dead' for decades—a new documentary seeks answers*, THE INDEPENDENT (Apr. 19, 2021, 6:31 AM), <https://www.independent.co.uk/arts-entertainment/tv/features/samuel-little-serial-killer-documentary-b1832056.html> [<https://perma.cc/K9XG-7XWV>].

8. Joanna Jolly, *Why I failed to catch Canada's worst serial killer*, BBC NEWS (June 1, 2017), <https://www.bbc.com/news/magazine-38796464> [<https://perma.cc/9DLS-DE5Z>].

of demographics we see in the victims of these crimes.⁹ Many of these multiple murderers are able to escape detection for so long because they target the “less dead.”¹⁰ The “less dead” is a term used in criminal investigation and journalism to refer to “people whom society has deemed less important.”¹¹ “These are the marginalized groups—the people who attract less attention and whose faces networks decide are not worthy of broadcast.”¹² Throughout history, a disproportionate number of sex workers¹³ have been the victims of violent serial murderers, particularly killers who succeed in evading capture for long stretches of time.¹⁴ Serial murderers can go undetected when they play off of society and law enforcement’s inherent biases¹⁵ and specifically target street-based sex workers,¹⁶ usually

9. K. Russell, *Killing the “less dead”: Sam Little*, FEMINIST LEGAL THEORY (Jan. 29, 2019, 6:05 PM), <http://femlegaltheory.blogspot.com/2019/01/the-less-dead-part-1-sam-little.html> [<https://perma.cc/LT9J-KY6D>].

10. Michallon, *supra* note 7.

11. Russell, *supra* note 9.

12. *Id.* See also Michallon, *supra* note 7 (“[P]eople who live on the margins of society and whose murders have historically tended to be not as thoroughly investigated as those of their wealthier, whiter, and perhaps more sober counterparts Pretty, white college students are the most dead. Black [sex workers] are the least dead.”).

13. Sex work may be defined as “sexual acts (including vaginal, anal, oral and manual stimulation) done for compensation (such as money or other goods of economic value, including but not limited to food, drugs, clothing and housing).” Alexandra Lutnick & Deborah Cohan, *Criminalization, legalization or decriminalization of sex work: what female sex workers say in San Francisco, USA*, 17 REPROD. HEALTH MATTERS 38, 39 n.34 (2009).

14. See, e.g., Michallon, *supra* note 7 (“According to the FBI, Little has confessed to 93 murders, having taken place, he says, between 1970 and 2005. If 93 is indeed Little’s exact number of victims, he would have murdered on average two to three people a year for 35 years. . . . His victims, as underlined by the [FBI] . . . were mostly women of colour, some of them involved in sex work or with a history of addiction.”).

15. *Id.* (“Samuel Little bet on that bias to help him, and it did.”).

16. Street-based sex workers typically solicit their services outdoors, often in a “red light district”, as opposed to “indoor” sex workers who work in brothels. Studies suggest that although all sex workers are vulnerable to acts of violence, street sex workers are significantly more vulnerable than indoor sex workers. According to one UK study,

81 per cent of the 115 on-street sex workers surveyed had experienced violence compared with 45 per cent of 125 sex workers based in indoor venues (Church *et al.* 2001). In another study, higher fear of violence and higher incidence of violence were reported by street-based workers by comparison to indoor sex workers (Pyett and Warr 1999).

As Lynzi Armstrong observes, “[t]he existence of street-based sex work is often used to justify keeping at least parts of the sex industry criminalized and is portrayed as the particularly dark and dangerous side of prostitution (Raymond 2003).” However, street sex workers are more frequently arrested and subjected to the criminalization regimes. For example, “[i]n the United Kingdom, for example, it is legal to buy and sell sex but it is illegal to solicit for sex. Since street-based workers publicly solicit to get work, they are the most likely group to be arrested.” Lynzi Armstrong, *From Law Enforcement to Protection? Interactions between Sex Workers and Police in a Decriminalized Street-Based Sex Industry*, 57 BRIT. J. CRIMINOLOGY 3, 570–88 (2017) (“Street prostitution is

women, who are from marginalized communities, victimized under the law,¹⁷ and particularly easy to physically isolate.¹⁸

Faced with problem of the high incidences of victimization of sex workers in serial homicide crimes, the best legal response is to change the laws surrounding sex work to make the sale of sexual services legal, thereby recognizing the human rights and inherent worth of sex workers under the law, rectifying the power imbalance between law enforcement and sex workers, and enhance the capacity for information sharing to benefit the safety of the sex worker community.¹⁹

I begin my analysis in Part I with a series of case studies from the last fifty years, the first from the United Kingdom (Section A: Peter Sutcliffe, arrested in 1980), the second from Canada (Section B: Robert Pickton, arrested in 2002), and the last from the United States (Section C: Gary Ridgway, arrested in 2001). Each case highlights a different botched police investigation of multiple homicides targeting sex workers. These investigations each exhibit patterns of police indifference and community biases which resulted in catastrophic investigative mistakes and contributed to the massive and avoidable losses of undervalued women's lives.²⁰ In Part II, I explain how these indifferences and biases, and ultimately losses of life, could be predominantly prevented by legalizing the sale and purchase of street-based sexual services in these countries. Section A discusses why sex workers are a group particularly vulnerable to crimes of serial homicide. Section B explores variations of the criminalization model of regulating the sale and purchase of sexual services. This

typically defined as a problem to be solved and police are often tasked with moving sex workers and their clients out of the public space (Brooks-Gordon 2006). . . . When street sex work is criminalized, and aggressive policing strategies are in place, sex workers not only find it more difficult to report violence they experience—their ability to manage risks of violence is compromised. . . . A number of previous studies have also found that criminalization and aggressive policing strategies undermines screening (Barnard 1993; Sanders 2001; Wotton 2005; Krüsi *et al.* 2014).”).

17. Fraser Crichton, *Decriminalising sex work in New Zealand: its history and impact*, OPENDEMOCRACY (Aug. 21, 2015), <https://www.opendemocracy.net/beyondslavery/fraser-crichton/decriminalising-sex-work-in-new-zealand-its-history-and-impact> [https://perma.cc/BB2B-P4W3] (“Some of the people who are sellers are personally really vulnerable, but it is the law that can protect them. It is the law and their legal status that can uphold their rights. . . . [Their] lack of humanity is reinforced by bad law. [In these cases,] the state is actually helping the objectification, the state is helping the oppression.”).

18. James Alan Fox & Jack Levin, *Multiple Homicide: Patterns of Serial and Mass Murder*, 23 CRIME & JUST. 407, 424 (1998) (“Vulnerability is most acute in the case of prostitutes, which explains their extremely high rate of victimization by serial killers. A [sexually motivated murderer] can cruise a redlight district, trolling for [a sex worker who fits his victim profile]. . . [S]he willingly gets into the killer's car and is completely at his mercy.”).

19. Crichton, *supra* note 17.

20. Russell, *supra* note 9.

is the dominant model in North America, Europe, and Australia.²¹ Section C examines the decriminalization model adopted nationwide by New Zealand and the effects the change has had on street sex workers and their safety, specifically through the lens of improving the power imbalance between police and sex workers, empowering the women and removing the requirement for the police to control their work and environment. Section D synthesizes how adopting the decriminalization model of sex work regulation would improve the protection of the physical safety of sex workers and ultimately reduce the instances of serial homicide targeting sex workers.

I. BACKGROUND: CASE STUDIES

A. Peter Sutcliffe: United Kingdom, 1980

[The Ripper] has made it clear that he hates prostitutes. Many people do. We, as a police force, will continue to arrest prostitutes.²² But the Ripper is now killing innocent girls.

—Jim Hobson, a senior West Yorkshire detective²³

Some were prostitutes, but perhaps the saddest part of the case is that some were not. The last six attacks were on totally respectable women.

—Sir Michael Havers, U.K. Attorney General²⁴

Chapelton in Leeds—the largest city in the county of West Yorkshire—had once been an affluent district, but by the 1970s, the area was in decline and became known as Leeds’ main red-light district.²⁵ In 1977, the police and local community were horrified when

21. Ane Mathieson, Easton Branam & Anya Noble, *Prostitution Policy: Legalization, Decriminalization and the Nordic Model*, 14 SEATTLE J. SOC. JUST. 367, 378 (2015).

22. People who view sex work as inherently oppressive to women or morally wrong, and nations which prescribe to this viewpoint in their economic and legal framework, tend to use the term “prostitution” to refer to the same practice. The terminology “sex work” comes from the view that selling sexual services or sexual access to one’s body is a valid labor practice due to every individual’s right to choose what they do with their bodies. *Id.* at 368.

23. Helen Pidd & Alexandra Topping, *‘It was toxic’: how sexism threw police off the trail of the Yorkshire Ripper*, THE GUARDIAN (Nov. 13, 2020, 12:09 PM), <https://www.theguardian.com/uk-news/2020/nov/13/it-was-toxic-how-sexism-threw-police-off-the-trail-of-the-yorkshire-ripper> [<http://perma.cc/FAS2-8KV2>].

24. *Id.*

25. Grace Newton, *The Yorkshire Ripper Files: Why Chapelton in Leeds was the ‘hunting ground’ of Peter Sutcliffe*, YORKSHIRE POST (Mar. 26, 2019, 5:18 PM), <https://www.yorkshirepost.co.uk/news/2019/mar/26/the-yorkshire-ripper-files-why-chapelton-in-leeds-was-the-hunting-ground-of-peter-sutcliffe/>

a sixteen-year-old girl uninvolved in sex work was murdered by a “prostitute killer” dubbed the Yorkshire Ripper.²⁶

He’d killed his first “innocent” and this was his “first mistake.”²⁷ The serial murderer had already taken the lives of four women who were sex workers (or presumed to be), beginning with mother-of-four Wilma McCann in 1975.²⁸ But the murder of a “a perfectly innocent girl, from a very ordinary family,” outraged the nation.²⁹ What followed was “the longest murder manhunt in British history.”³⁰

Law enforcement’s investigation into the murders was delayed by pursuing false leads and discounting pertinent evidence due to assumptions rooted in “misogyny and the stigmatization of sex work.”³¹ The police theorized that the perpetrator was a man who hated sex workers and encouraged all the sex workers in the area to leave town.³² Victims who were not sex workers were presumed to have been killed by someone else or were deemed the Ripper’s “mistake[s].”³³ Sex workers who survived, some of whom could provide valuable identifying information on their attacker, were ignored in favor of anonymous tips which turned out to be false.³⁴

“[T]hat was why it took them so long to arrest him,” recalled Nina Lopez, a representative of the English Collective of Prostitutes who helped organize protests in response.³⁵ “It was as though the police considered [the killer] was doing them a favour by killing prostitutes and ‘cleaning up the streets’ It was only when some so-called respectable women got killed that they started to pay attention.”³⁶

Peter Sutcliffe was arrested in January 1981 and confessed to the murders after two days of questioning.³⁷ He had been picked up by the police after being seen with a sex worker in a car with fake license plates.³⁸ By the time he was apprehended, Sutcliffe had taken the lives of thirteen women in and around Yorkshire and

www.yorkshirepost.co.uk/news/crime/yorkshire-ripper-files-why-chapelton-leeds-was-hunting-ground-peter-sutcliffe-1757731 [<https://perma.cc/8CNZ-F6E4>].

26. *Id.*

27. Pidd & Topping, *supra* note 23.

28. Newton, *supra* note 25.

29. Ashlie D. Stevens, “*The Ripper*” is just another example of how true and scripted crime shows fail sex workers, SALON (Dec. 21, 2020, 5:18 PM), <https://www.salon.com/2020/12/21/the-ripper-sex-workers-netflix> [<https://perma.cc/C96G-4SDL>].

30. *Id.*

31. *Id.*

32. *Id.*

33. Pidd & Topping, *supra* note 23.

34. *Id.*

35. *Id.*

36. *Id.*

37. Newton, *supra* note 25.

38. *Id.*

Manchester, and had attempted to murder seven more.³⁹ Many of these women were targeted because they were sex workers, or because Sutcliffe mistakenly believed them to be.⁴⁰ “It was just a miracle they did not apprehend me earlier,” he said at his trial, “they had all the facts.”⁴¹

In Leeds today, the charity Basis Yorkshire supports sex workers.⁴² The Holbeck area of the city has established a “‘managed approach’ zone . . . where prostitutes can work without fear of prosecution.”⁴³ According to Basis Yorkshire, “[i]n Leeds, sex workers do feel like they are able to report crimes committed against them, even though stigma means that sex workers are still at greater risk of violence.”⁴⁴

B. Robert Pickton: Canada, 2002

*When a missing woman is viewed as inevitable,
where the surge of the investigation is not done at
the same level as other investigations and women
are dying, then we have to do better.*

—Carolyn Bennett, Canadian Minister for
Indigenous and Northern Affairs⁴⁵

In July 1998, the Vancouver Police Department (VPD) was trying to uncover what had happened to seventeen women missing from the city’s red-light district.⁴⁶ All of the women were sex workers and/or drug users and many were members of Canada’s Indigenous population.⁴⁷ A detective in the Missing Person’s Unit suspected a serial murderer could be responsible for the spike in the number of missing women in the area, but the officer in charge of major crimes dismissed the theory.⁴⁸ These women, he said, tended to live transient

39. Hannah Seaton, *How the Stigma of Sex Work Allowed the Yorkshire Ripper to Get Away With His Crimes for Years*, MEDIUM (Oct. 24, 2021), <https://medium.com/@hannahbseaton/how-the-stigma-of-sex-work-allowed-the-yorkshire-ripper-to-get-away-with-his-crimes-for-years-8d267ad3038a> [https://perma.cc/2J36-L3BX].

40. Newton, *supra* note 25.

41. Jessica Schladebeck, *U.K. serial killer known as ‘Yorkshire Ripper’ dies of coronavirus after refusing treatment*, N.Y. DAILY NEWS (Nov. 13, 2020, 8:42 AM), <https://www.nydailynews.com/news/world/ny-coronavirus-uk-serial-killer-yorkville-ripper-dies-20201113-rdhjz45ezdzphytnax2732zca-story.html> [https://perma.cc/2F2V-PK4T].

42. Pidd & Topping, *supra* note 23.

43. *Id.*

44. *Id.*

45. Jolly, *supra* note 8.

46. *Id.*

47. *Id.*

48. *Id.*

lives and had most likely “just drifted away.”⁴⁹ The police department assumed that because no bodies had been found, no crime had taken place because sex workers did not maintain strong ties with their community.⁵⁰ The women must have simply left town and perhaps did not want to be found.⁵¹ Looking back on the investigation, the head of the Missing Person’s Unit at the time (newly appointed in 1998), Lorimer Shenher, reflected, “[o]n a very deep level, a large segment of society and the policing community didn’t feel these women were worth searching for. . . .”⁵²

In 1997, a sex worker had been imprisoned, stabbed, and nearly killed by a pig farmer named Robert Pickton.⁵³ Police charged the man, but prosecutors subsequently dropped the charges because the victim was a “heroin addict” and “wouldn’t be a convincing witness” during a trial.⁵⁴

The next year, Robert Pickton’s name crossed VPD’s desk again.⁵⁵ An anonymous caller reported seeing “women’s handbags, identity cards and bloody clothing” on Pickton’s farm and hearing him make “disturbing jokes” about disposing of bodies.⁵⁶ The police never followed up on this tip.⁵⁷ Despite a second anonymous tip in 1999 and an invitation from Pickton during a police interview to search the farm, Pickton’s pig farm was not searched until 2002 when an officer visited the property to investigate an unrelated gun charge.⁵⁸ In the intervening years, Pickton had murdered at least another fourteen women.⁵⁹

A forensic search of the pig farm revealed the DNA of 33 women but Pickton confessed to an undercover officer that he had been “one short of hitting his target of 50 kills.”⁶⁰ He was not convicted until 2007 and then only of six counts of second-degree murder, although there was evidence enough to charge him with twenty additional murders.⁶¹ An official inquiry ruled the investigation a “blatant failure’ marked by a deep bias against the poor, often drug-addicted, victims.”⁶²

49. *Id.*

50. *Id.*

51. Jolly, *supra* note 8.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Jolly, *supra* note 8.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

C. Gary Ridgway: *United States, 2001*

[S]he can be maimed, she can be beaten up, she can be arrested, she can be photographed, she can be killed, and it will take a long time before people recognize it, before they turn their heads and realize that something very, very bad is going on.

—Dr. Debra Boyer, PhD in cultural anthropology⁶³

Between July 1982 and December 1984, forty-two women in the Seattle area were suspected to be the victims of the Green River Killer.⁶⁴ The bodies of some of the women had been discovered in or near the Green River,⁶⁵ while others had simply vanished.⁶⁶ The police struggled to identify the women whose bodies had been discovered and took months to recognize some of the women’s disappearances.⁶⁷ Many of the women used fake names, most were under the age of twenty-one, and all were street sex workers.⁶⁸

By 1983, area police had deduced that the serial murderer was posing as a potential client⁶⁹ and must have been approaching the women in his vehicle.⁷⁰ Many officers suspected the perpetrator would subsequently pose as a police officer—as if he had been undercover—to keep the women from struggling once they were isolated and restrained.⁷¹ Sex workers in the area were accustomed to entering unknown vehicles before being handcuffed, secured into a seat belt, and arrested by undercover police officers posing as clients in the city’s never-ending battle to suppress the sex trade.⁷² It was “business as usual” for both the women and the arresting officers.⁷³

Despite the police’s deduction that they should be looking for the sex workers’ male customers, until a specialized Green River

63. Tomas Guillen & Carlton Smith, *A setting made for murderer: Prostitution provided the setting for a killer*, SEATTLE TIMES (Nov. 6, 2003, 12:00 AM), <https://special.seattletimes.com/o/news/local/greenriver/1987/part2.html> [<https://perma.cc/K5VU-8U74>].

64. *Timeline of the Green River killer case*, SEATTLE TIMES (Feb. 18, 2011, 7:31 PM), <https://www.seattletimes.com/seattle-news/timeline-of-the-green-river-killer-case> [<https://perma.cc/5WJA-9VZT>].

65. *Id.*

66. Tomas Guillen & Carlton Smith, *What went wrong? Police at first failed to notice pattern*, SEATTLE TIMES (Nov. 6, 2003, 12:00 AM), <https://special.seattletimes.com/o/news/local/greenriver/1987/part1.html> [<https://perma.cc/J4MN-4ETA>].

67. *Id.*

68. *Id.*

69. The male customers of sex workers are often referred to by the slang term “johns.” See *John*, MERRIAM-WEBSTER DICTIONARY (2022); see, e.g., Guillen & Smith, *supra* note 66.

70. Guillen & Smith, *supra* note 66.

71. *Id.*

72. *Id.*

73. *Id.*

Stroke Force changed the strategy in 1984, women sex workers continued to be three times as likely to be arrested than their clients.⁷⁴ Therefore, “for almost two years following the discovery of the first body—while murders were still taking place—officers usually did not note the descriptions or license plates of vehicles driven by the johns, even while they covertly watched prostitutes for violations of county’s anti-loitering laws.”⁷⁵ When a male client *was* arrested, officers neglected to ask for permission to search their vehicles.⁷⁶ Deputy Executive Harry Thomas and Green River Task Force Commander Frank Adamson both acknowledged that “the change in emphasis to arresting customers likely led directly to the apparent halt to the murders.”⁷⁷

In the midst of the vigorous enforcement of anti-prostitution laws, homicide detectives attempted to gather information from the same sex workers who vice officers were arresting.⁷⁸ “There are several mistakes they’ve made,” Deborah Boyer, a researcher with a doctorate in cultural anthropology who specializes in prostitution issues and assisted in the case, said of the police.⁷⁹ “One is that . . . they depended on their relationships with prostitutes to get information.”⁸⁰ That approach was ineffective, according to Boyer, because sex workers “have a lot to protect, (because) they’re illegal persons. They are subject to arrest and harassment and murder and they have no protection. They’re non-persons. And they understand that. So they’re not going to give up a lot to a police officer.”⁸¹

In 2001, DNA evidence finally connected Gary Ridgway, a suspect in the original investigation, to four of the murdered women.⁸² He was arrested and charged with those four murders the same year but in 2003, he agreed to accept responsibility for the remaining forty-eight murders and assist law enforcement in locating the still-missing victims’ remains in exchange for prosecutors not pursuing the death penalty.⁸³ Investigators suspected he was responsible for at least twelve additional women’s disappearances,⁸⁴ while Ridgway

74. Guillen & Smith, *supra* note 66.

75. *Id.*

76. *Id.*

77. *Id.*

78. Tomas Guillen & Carlton Smith, *A case that kept eluding the police: Police slow to act on their suspicions*, SEATTLE TIMES (Nov. 6, 2003, 12:00 AM), <https://special.seattletimes.com/o/news/local/greenriver/1987/part3.html> [<https://perma.cc/9EB3-ND46>].

79. *Id.*

80. *Id.*

81. *Id.*

82. Norman K. Maleng, *Departments, Chair’s Report to Members Justice for All Victims of Green River Killer*, 18 CRIM. JUST. 1, 1 (2004).

83. *Id.*

84. Blaine Harden, *The Banality of Gary: A Green River Chiller*, WASH. POST (Nov. 16, 2003), <https://www.washingtonpost.com/archive/lifestyle/2003/11/16/the-banality-of-gary-a-green-river-chiller/2d9575c7-6843-4ec3-9517-72cd3ecdd9b0> [<https://perma.cc/CVL3-PFKP>].

himself claimed he had murdered around seventy women over the course of twenty years.⁸⁵

Ridgway's confession statement brings to light how his victim choice influenced his strategy, the ease with which he abducted his victims, and how he was able to evade capture for so many years.⁸⁶ "I agree that each of the murders I committed was part of a common scheme or plan," he began.⁸⁷ "The plan was, I wanted to kill as many women I thought were prostitutes as I possibly could."⁸⁸ Ridgway chose sex workers as murder victims, he stated, firstly because he "hate[d] most prostitutes."⁸⁹ He also chose to target women in that profession "because they were easy to pick up, without being noticed."⁹⁰ As the police suspected, Ridgway confessed, "I killed a lot of them in my truck, not far from where I picked them up."⁹¹ He "knew they would not be reported missing right away, and might never be reported missing."⁹² Ridgway continued: "I picked prostitutes because I thought I could kill as many of them as I wanted without getting caught."⁹³

II. DISCUSSION

A. *Serial Homicide Demographics and Sex Worker Vulnerability*

According to available data, sexually motivated serial murderers tend to target women more than men, particularly vulnerable targets: "prostitutes, drug users, hitchhikers, children, [and] elderly hospital patients."⁹⁴ Sex workers suffer an "extremely high rate of victimization by serial killers" due to several factors resulting from the conditions of their work which contribute to their vulnerability as a group.⁹⁵ In order to understand how to improve the safety of sex workers, we must first examine what about their working conditions

85. Joseph O'Sullivan, *State changes story on why Green River killer Gary Ridgway was moved*, SEATTLE TIMES (Nov. 21, 2015, 11:01 AM), <https://www.seattletimes.com/seattle-news/crime/state-corrections-chief-changes-story-on-why-killer-ridgway-moved> [<https://perma.cc/2DQU-ZSZA>].

86. Transcript of CNN Live Event/Special, Wolf Blitzer, *Gary Ridgway Pleads Guilty to Green River Murders*, CNN (Nov. 5, 2003, 12:34 PM), <http://www.cnn.com/TRANSCRIPTS/0311/05/se.04.html> [<https://perma.cc/BND9-HMRY>].

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Transcript of CNN Live Event/Special, *supra* note 86.

93. *Id.*

94. Fox & Levin, *supra* note 18, at 424.

95. *Id.*

makes them vulnerable to violent attacks (specifically in the context of serial homicide), why law enforcement has historically failed to investigate and prevent these attacks, and how the legal framework around sex work can be improved to address these failures. Upon thorough examination, the factors that make sex workers particularly vulnerable to serial murderers may be vastly improved upon, and thus their safety improved, through the decriminalization of the sale and purchase of sexual services.⁹⁶

A major component of vulnerability in a potential victim in the context of serial murder is the ease with which a person can be abducted or overpowered.⁹⁷ Vulnerability in this respect is particularly acute for street-based sex workers where the sale of sexual services is criminalized, as a person is isolated “as soon as they enter the killer’s car or van.”⁹⁸ A sexually motivated repeat offender is able to drive around an area’s “red light district” and approach a woman in his vehicle who matches his preferred victim profile.⁹⁹ Due to fear of arrest, she usually will willingly enter his car quickly, where she is then trapped and can easily be taken by the driver to an even more isolated secondary location.¹⁰⁰

Another component of vulnerability is the “ease with which the killers can avoid being detected following a murder, especially when their victims are lacking in connections with the local community and are expected to be on the move.”¹⁰¹ This aspect of sex worker victim vulnerability directly results from the major failures in how law enforcement frames its perception of sex work, in which the focus is on managing a public nuisance *en masse* and not on protecting the safety and well-being of individuals.¹⁰²

Data and history show us that a sex worker’s disappearance, once reported, “is more likely to be treated, at least initially, as a missing person rather than a victim of homicide[.]”¹⁰³ This phenomena delays the search for the body of a victim of serial murder, sometimes by weeks, months, or even years.¹⁰⁴ If remains can be located at that point, often much physical evidence has been destroyed, delaying identification of the victim and enormously complicating the task of identifying the perpetrator.¹⁰⁵ A fear of prosecution and “deep-seated

96. Crichton, *supra* note 17.

97. Fox & Levin, *supra* note 18, at 424.

98. *Id.*

99. *Id.*

100. *Id.*

101. Fox & Levin, *supra* note 18, at 424.

102. *See id.* at 424–25.

103. *Id.* at 424.

104. *Id.* *See* Jolly, *supra* note 8.

105. Fox & Levin, *supra* note 18, at 424.

distrust” in police means that potential witnesses to abductions in red-light districts, especially fellow sex workers, are hesitant to come forward with information.¹⁰⁶ Their fear, hesitation, and understandable hostility toward law enforcement causes police to often find these witnesses to be “unreliable or uncooperative sources of information” during murder investigations.¹⁰⁷

All of these factors result in the deaths of many sex workers going unsolved, enabling repeat offenders to remain repeat offenders.¹⁰⁸

B. Criminalization: The Dominant Model

Three primary approaches to sex work legislation currently exist globally—criminalization, the “sex work” model of decriminalization,¹⁰⁹ and the “Nordic model”—with each approach stemming from three differing stances on sex work.¹¹⁰ The first stance, in which prostitution is a “consequence of deficient moral character[,]” comes from “patriarchal and religious traditions that equate female sexuality with temptation and male sexuality with . . . sanctioned insatiability.”¹¹¹ The “sex work” position views the sale of sexual

106. *Id.* at 424–25.

107. *Id.*

108. *Id.* at 425.

109. Similarly, a “legalized system permits some, but not necessarily all, types of sex work.” For example, the state of Nevada permits each county with a low enough population (400,000 or fewer) to vote on whether or not to permit registered brothels to legally operate in the county. The brothels under this system are heavily regulated and the sex workers they employ are subject to a unique series of restrictive licensing and registration procedures (including registration with the police department) that employees in other industries are not subject to. Conversely, as Alexandra Lutnick and Deborah Cohan describe:

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

This model is found in New Zealand, parts of Australia, the Netherlands and Germany.

Lutnick & Cohan, *supra* note 13, at 38–39 (emphasis added). *But see* Mathieson, Branam & Noble, *supra* note 21, at 378–79 (footnotes omitted) (“Though local ordinances may place restrictions on prostitution, it is important to note that national legalization and decriminalization of prostitution activities remove the legal barriers to the growth of the ‘legal’ commercial sex industry. . . . In legalization regimes, the government takes an active role in regulating prostitution, as is the case in Victoria, Australia, the Netherlands, and Germany. After legalizing prostitution, municipal and national governments may also promote the sex industry. The City of Hamburg’s official city website advertises ‘a varied assortment of entertainment, including Reeperbahn’s famous strip clubs and brothels.’ The website also notes that ‘[j]ust around the corner from the Reeperbahn is Herbert Street, the principal red-light area. Both ends of the street are blocked by barriers and it is inaccessible to women and minors.’”).

110. Mathieson, Branam & Noble, *supra* note 21, at 368.

111. *Id.*

services as a “valid form of labor and argues that prostitution is not inherently harmful to women.”¹¹² It argues for complete female bodily autonomy, asserting that “women have a right to decide what they will do with their bodies and that sex work, though oppressive for some, is potentially both lucrative and empowering for other women.”¹¹³ The third position, adopted in the “Nordic model,” views sex work as “a consequence of social, political, and economic inequality and argues that women are predominantly conscripted into prostitution because of their social vulnerability.”¹¹⁴

Using the three lenses, nations have adopted legislative policies toward sex work based on their priorities. Under the first approach, the majority approach currently in the United States, sex workers are criminals and criminalization policies disproportionately target sex workers for arrest over those seeking sexual services.¹¹⁵ In stark contrast, the “sex work” approach frames sex work in terms of personal choice and free market contracts between “rational, consenting adults with equal power” with a distinction drawn in the framework between “sex work” (choice-based) and “sex trafficking” (forced).¹¹⁶ Proponents of this view “advocate for legalizing or decriminalizing all prostitution-related activities by asserting that prostitution, normalized like any other marketable human interaction as work, can advance the wellbeing and individual interests of women.”¹¹⁷

In contrast, the “Nordic model”¹¹⁸ criminalizes the buyers of sexual services and “third-party profiteers (pimps and brothel owners),” while decriminalizing the sellers.¹¹⁹ Under this view, adopted by such nations as Canada, Sweden, and Norway, sex work is inherently exploitative of women—a “structural barrier[] that preclude[s] women’s full economic, social, and political inclusion.”¹²⁰ This view categorizes all sex workers as victims of inequality, subjected to the profession due to their “social vulnerability.”¹²¹ The Nordic model and its outlook on sex work is supported by many radical feminists

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 369.

116. Mathieson, Branam & Noble, *supra* note 21, at 369–70.

117. *Id.* at 369.

118. The “Nordic model” is also called the “Swedish model” due to Sweden’s early adoption of legal reforms decriminalizing the sale of sexual services while criminalizing purchasing such services in 1999. Sweden is still the nation that has held these legal standards for the longest time and has received considerable international attention for the approach. May-Len Skilbrei & Charlotta Holmström, *Is There a Nordic Prostitution Regime?*, 40 CRIME & JUST. 479, 479–80 (2011).

119. Mathieson, Branam & Noble, *supra* note 21, at 371.

120. *Id.* at 371, 417, 427.

121. *Id.* at 368.

who posit that the root of violence against women is “male entitlement and objectification[,]” and that the safety of sex workers can only be ensured by ending the demand for sexual services—the ultimate goal of the Nordic model.¹²² However, many sex workers feel that the Nordic model is ineffective at defending their physical security and undermines their human rights to individual freedom over their own bodies and personal choice to contract for services in a free market “responding to a market demand for sex.”¹²³

C. Decriminalization: The New Zealand Model

New Zealand fully decriminalized sex work with the passage of the New Zealand Prostitution Reform Act (PRA) in 2003.¹²⁴ Under the PRA, “it is legal for any citizen over 18 years old to sell sexual services” in New Zealand.¹²⁵ This includes street-based sex work along with indoor sex work or running a brothel.¹²⁶ With the risk of arrest for all sex workers removed, sex workers experienced a shift in the balance of power between themselves and the police, as well as empowerment through the provision of rights.¹²⁷ By affording rights to sex workers, the legislation grants sex workers “considerable freedom to choose where they work” and enables them to “challenge exploitation[,]” thereby putting the safety and well-being of the individual first.¹²⁸

In retrospect, Catherine Healy, the national coordinator of the New Zealand Prostitutes Collective (NZPC), reflects that the PRA “protected the rights of the people it set out to protect.”¹²⁹ Prior to the PRA’s passage, “[y]ou didn’t feel that the police were there to protect you[,]” Healy remembered.¹³⁰ “After decriminalisation that dynamic shifted dramatically, and importantly the focus on the sex worker wasn’t on the sex worker as a criminal. It was on the rights, safety, health and well being of the sex worker.”¹³¹

122. Crichton, *supra* note 17.

123. *Id.*; Mathieson, Branam & Noble, *supra* note 21, at 370.

124. Crichton, *supra* note 17. “Although street work is also decriminalized in the Australian state of New South Wales, sex workers can only work on the street within specific boundaries.” Armstrong, *supra* note 16, at 572–73. Therefore, the full decriminalization of all sex work, including street-based, is a “particularly unique feature of the law in New Zealand” from a global perspective. *Id.* at 574.

125. Crichton, *supra* note 17.

126. *Id.*

127. Armstrong, *supra* note 16, at 570, 574.

128. *Id.* at 574.

129. Crichton, *supra* note 17.

130. *Id.*

131. *Id.*

Opponents of the PRA worried that the passage of the act would lead to a drastic increase in exploitative brothels and human trafficking in New Zealand.¹³² Because of this concern, a review was built into the act: the Prostitution Law Review Committee.¹³³ The Review Committee conducted in-depth interviews of sex workers, police officers, and other “key informants” during their three-year study and “explored the strategies used by street-based sex workers . . . to manage risks of violence in their work.”¹³⁴ The review also incorporated the findings of Christchurch School of Medicine’s independent review, which found that “over 90 percent of sex workers believed the PRA gave them employment, legal and health and safety rights. . . . 64 percent found it easier to refuse clients. . . . [and] 57 percent said police attitudes to sex workers changed for the better.”¹³⁵ Despite critiques and concerns regarding decriminalization of sex work, five years after the PRA’s passage, the Review Committee summarized their findings stating:

The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.¹³⁶

The Prostitution Law Review Committee’s report shows how, although progress could still be made, the decriminalization of sex work allows for “an enhanced capacity for information sharing” between sex workers and police and puts police in a position to prioritize sex workers’ safety, rather than view them as a public nuisance to be managed and kept out of sight.¹³⁷ The Review Committee interviewed a total of twenty-eight women who were either current or very recent street-based sex workers and seventeen “key informants with an interest in sex-worker safety, including four police officers.”¹³⁸

132. *Id.*

133. *Id.*

134. Armstrong, *supra* note 16, at 574.

135. Crichton, *supra* note 17.

136. *Id.*

137. Armstrong, *supra* note 16, at 578.

138. *Id.* at 574. Of the 28 women interviewed by the review committee, 13 identified as “New Zealand European,” 14 as Māori, and 1 as Cook Island Māori. *Id.* at 576. As Lynzi Armstrong explains:

The street sex-work population in New Zealand comprises primarily New Zealand-born cisgender women. However, a smaller population of New Zealand-born transgender women also work on the street. This research focuses specifically on the experiences of New Zealand-born cisgender women who work on the street. The decision to focus specifically on cisgender

The research indicates that although the criminalization of sex work represented years of distrust, stigma, and police power held over the women, most women “felt more respected by police since the law had changed” and were “more likely to report that most police cared for their safety.”¹³⁹ One woman reflected that prior to decriminalization, when her safety was threatened, “I didn’t used to call the police I would just call my friend[.]”¹⁴⁰ Another woman stated:

I think the worst thing I found was that you’d get taken in and then you’d have to go to court in the morning in your working gear . . . And it was . . . just like degrading . . . Whereas now I think we’re definitely treated better. . . . [N]ot so, um, looked down upon now with them.¹⁴¹

The police informants described the nature of their relationship with sex workers post-decriminalization as focusing on trust, support, and violence prevention: “the trust and the responsibility that falls on us with the prostitutes has been great—that’s a criteria that we now live with.”¹⁴²

The police interviewed in the study discussed relationship building between law enforcement and sex workers in New Zealand when enhanced information sharing was a matter of life and death—in the context of the investigation of the murders of three street-based sex workers in Christchurch in 2004.¹⁴³ During this investigation, “sex workers and clients played a crucial role in the collection of evidence.”¹⁴⁴ In the aftermath of the murders, said one police officer, “[w]e then recognized that we actually needed to have a closer liaison with them and help them out a bit more because they were helping us. So it sort of just built up from there.”¹⁴⁵

Sex workers described regular police efforts to inform them of potential threats of violence in the area and violent individuals who may try to approach them.¹⁴⁶ One woman explained that “[t]he police

women’s experiences was made because transgender women may experience complex forms of violence relating to broader prejudice and including these experiences was beyond the scope of the study. However, further research with transgender women who work on the street is important to better understand the nature of the violence they experience.

Armstrong, *supra* note 16, at 575.

139. *Id.* at 574, 577.

140. *Id.* at 577.

141. *Id.*

142. *Id.* at 578.

143. *Id.* at 577.

144. Armstrong, *supra* note 16, at 578.

145. *Id.* at 577.

146. *Id.* at 578–79 (“Some of them come past and they ask if we’re alright and stuff like that and we go ‘yeah’ . . . I think that they know that we’re in danger as well.

quite often come out and let us know that they won't give us the name of the girl that's gone in to make the complaint but they've come out to let us know about it."¹⁴⁷ Some sex workers expressed that the police's information-sharing with sex workers could be "overbearing" and "interfer[e] with business."¹⁴⁸ However, as Lynzi Armstrong points out, by removing the risk of arrest for sex workers and equalizing some of the stark power imbalance with the police, these women are empowered to exercise their rights when interacting with police and engage to any extent they wish to, doing with the information what they wish.¹⁴⁹ With police not required to control the business of sex workers, the women have the power to say I'm fine, now go away.¹⁵⁰

The women also described the change in their own response to violence after the PRA's passage.¹⁵¹ It is a well-documented reality that sex workers are unlikely to report violence when they risk being reported.¹⁵² One woman said that the law change "[s]ort of made each other approachable . . . If it happened now I would report it. I would definitely do that now."¹⁵³

Although there are enduring tensions, the women described how the PRA empowered them to involve the police in client disputes over payment before the situation escalated to violence or after the woman felt threatened.¹⁵⁴ Some presume that reporting a client dispute is simplified for sex workers when clients are criminalized but this is not the case.¹⁵⁵ Under the Nordic Model, a sex worker will often not receive payment when involving police in a dispute.¹⁵⁶ But when sex work is decriminalized, as in the New Zealand Model, "sex workers can talk specifically about the terms of the encounter and can name specific services and prices without fear of prosecution."¹⁵⁷ One woman interviewed in the Review Committee's study described how she would react when a client demanded a refund: "I'd tell him to drive me to the police station and we'll deal with it in front of the

Because I remember one time this girl, she got dragged around the corner and she got raped. . . . So a bunch of them came down and just said to us '[b]e aware because there's this fella walking around', and they gave us a photo.").

147. *Id.* at 578.

148. *Id.* at 579.

149. *Id.*

150. Armstrong, *supra* note 16, at 578.

151. *Id.* at 579.

152. *Id.*

153. *Id.* at 579–80.

154. *Id.* at 581–82.

155. *Id.* at 580.

156. Armstrong, *supra* note 16, at 582.

157. *Id.* at 581.

police . . . I don't want to really go to the police station but I will."¹⁵⁸ Another woman reported that if a client attempted to force her to perform a sexual service she did not agree to and became abusive when she attempted to leave, she would say "yell and abuse me all you like, I'm ringing the police."¹⁵⁹ When asked about a 2014 payment dispute where police escorted a man to an ATM in order to force him to pay a street sex worker what she was due, a police spokesperson said, "[i]t sounds remarkable but it is a routine thing. Police would help any citizen having a disagreement whether they were a sex-worker or working in a pizza shop."¹⁶⁰

Despite its far-reaching benefits in the realm of safety for sex workers, the PRA has not been a cure-all. Some women reported continued bias against them and a greater trust in detectives over beat cops.¹⁶¹ Others reported that although they felt empowered to challenge clients over payment in front of the police, they were dissatisfied how some police resolved the disputes, reaching a compromise in the payment rather than giving the sex worker what she was due: "[the client] complained about it and I end up with \$60 because a policeman says so[.]"¹⁶²

The legalization of sex work in New Zealand has not eliminated violence against sex workers—no law can.¹⁶³ Some activists and scholars draw on the three murders of sex workers in 2003 as evidence that decriminalization failed to keep sex workers safer.¹⁶⁴ Lynzi Armstrong argues that this critique is "overly simplistic[.]" as no legal framework around sex work can be expected to entirely prevent acts such as assault, rape, and murder, which are against the law regardless.¹⁶⁵ What the law has done is increase the likelihood that perpetrators will be apprehended and prosecuted.¹⁶⁶ "The murders of three street sex workers in Christchurch," reports Armstrong, "were all thoroughly investigated and the perpetrators received lengthy sentences."¹⁶⁷ This police response to the multiple homicides of sex workers in New Zealand contrasts the insufficient responses we have seen to similar acts of violence in countries that follow a criminalized model, such as Canada in its failure to investigate the

158. *Id.*

159. *Id.*

160. *Id.* at 582.

161. *Id.* at 577.

162. Armstrong, *supra* note 16, at 581.

163. *Id.* at 584.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

missing women killed by Robert Pickton.¹⁶⁸ Under the decriminalization framework, sex workers' safety vastly increases because the women are empowered to involve police in disputes with clients, more likely to report acts of violence, and more likely to receive safety information from police that they can trust and act upon.¹⁶⁹ Conversely, the criminalization of sex work reinforces the perception that all sex workers are victims, reducing their humanity, rather than upholding their rights and legal status, thus increasing the sex worker community's vulnerability to acts of violence and driving them underground.¹⁷⁰

D. Using Sex Work Decriminalization to Combat Serial Homicide of Sex Workers in the Western Hemisphere

Based on the data collected from New Zealand and illustrated by the historic case studies, it appears that one of the most important components to the protection of the physical safety of sex workers is reducing the stigma surrounding the sale and purchase of sexual services in the eyes of the police and reducing police power to arrest sex workers to a level where they are more concerned with the safety of sex workers as women than arresting them and controlling their surroundings as a public nuisance or "illegal" persons.¹⁷¹ Loss of life can be prevented when the life of the victim, even if she is a sex worker, is given the respect that it deserves from the outset of an investigation so that the expectations for the investigation into her murder are to provide the same standard of meticulous attention and forensic skill that police would grant any other victim.¹⁷² The investigative process is also greatly eased when information channels flow freely between police and the most likely

168. See Armstrong, *supra* note 16, at 584. Cf. Jolly, *supra* note 8.

169. Armstrong, *supra* note 16, at 583.

170. Tim Barnett, a former New Zealand MP and General Secretary of the Labour Party who was a proponent of the PRA, explained:

[T]he criminalisation of sex workers increases their vulnerability by reinforcing the perception that they are somehow victims. "Some of the people who are sellers are personally really vulnerable, but it is the law that can protect them. It is the law and their legal status that can uphold their rights. . . [Their] lack of humanity is reinforced by bad law. [In these cases,] the state is actually helping the objectification, the state is helping the oppression."

Crichton, *supra* note 17.

171. Armstrong, *supra* note 16, at 583.

172. See Fox & Levin, *supra* note 18, at 424 ("Because the disappearance of a prostitute is more likely to be treated, at least initially, as a missing person rather than a victim of homicide, the search for her body can be delayed weeks or months. In many cases, the discovery of mere skeletal remains makes it difficult to identify the victim, much less her killer.").

witnesses and victims of this type of serial homicide—the street-based sex workers themselves.¹⁷³

In the United States, a study in San Francisco¹⁷⁴ polling the opinions of sex workers on how they felt the legal framework around sex work should look found that the majority of women supported decriminalization,¹⁷⁵ believing that it would provide them the most support and safety while maintaining their rights.¹⁷⁶ In their interviews, which were conducted between 2004 and 2007, several women believed that if sex work was legalized, a more positive (or at least neutralized) relationship with police could be beneficial to their safety:

*Police would be there to help instead of saying
[w]ell, you should not have been out here,[] . . . [I]t's
like when you are prostituting and something hap-
pens to you, the police don't really want to help you,
because you are already committing a crime . . . So
it's like why should they help a criminal?*

—Street-based worker, age 45¹⁷⁷

173. *Id.* at 424–25 (“[P]otential witnesses to abductions in red-light districts, having a deep-seated distrust for the police, tend to be unreliable or uncooperative sources of information. These problems help to explain why prostitute slayings in many parts of the country remain unsolved.”).

174. Lutnick & Cohan, *supra* note 13, at 39 (footnote omitted) (“The Sex Worker Environmental Assessment Team study was a community-based, research partnership between the Department of Obstetrics, Gynecology and Reproductive Sciences at the University of California San Francisco (UCSF), the San Francisco Department of Public Health and the St. James Infirmary (SJI), a peer-based occupational health and safety clinic for sex workers. The research received approval from the Committee on Human Research at UCSF.”).

175. *Id.* (“Former and current sex workers were involved in all aspects of the study—study design, serving as community advisory board members, data collection and analysis, and manuscript preparation. The aim of the analysis reported here was to examine sex workers’ experiences with and perspectives on the criminal nature of sex work in San Francisco. . . . This mixed-method, dual-phase study enrolled 40 female sex workers in an initial qualitative phase and 247 others in a follow-up quantitative phase. The qualitative phase was conducted between April and December 2004 and consisted of semi-structured interviews. To be eligible, women had to be 18 years of age or older and to have engaged in some type of sex work in San Francisco within the past year.”).

176. *Id.* at 38 (“Using qualitative and quantitative data from the Sex Worker Environmental Assessment Team Study, we investigated the perspectives and experiences of a range of female sex workers regarding the legal status of sex work and the impact of criminal law on their work experiences. Forty women were enrolled in the qualitative phase in 2004 and 247 women in the quantitative phase in 2006–07. Overall, the women in this study seemed to prefer a hybrid of legalization and decriminalization. The majority voiced a preference for removing statutes that criminalize sex work in order to facilitate a social and political environment where they had legal rights and could seek help when they were victims of violence.”).

177. *Id.* at 41.

The two tensions that I have when I go on a call . . . are, am I going to get hurt, or am I going to get busted? I want the busted part of it out. So that if I do get hurt, I feel confident enough that I can get on the horn and get the authorities to jump on the tail of the person who hurt me.

—Independent out-call worker, age 35¹⁷⁸

Other women expressed in interviews the belief that their safety would improve with decriminalization of sex work by allowing for more open negotiation with potential clients before the woman finds herself alone with the person.¹⁷⁹ One woman specifically spoke to her inability to negotiate services before the client arrived “due to fear of arrest during the initial phone or e-mail exchange”¹⁸⁰:

I think it would make it easier to negotiate with clients if I could actually say what it is we are talking about. Like if I advertise online and was actually able to say what it is I offer, that would make things so much easier. . . .

—Bondage and discipline worker, age 19¹⁸¹

Several women preferred decriminalization because under that legal framework, the stigma surrounding sex work might be lessened.¹⁸² If sex work were decriminalized, sex workers would have the freedom to leave the industry and seek non-sex work employment should they wish to, without stigma and a criminal record trapping them in a job they no longer want.¹⁸³ Another woman explained the importance of society viewing the women in a different light and the improvements in public awareness of the experiences of sex workers that decriminalization would bring:

It might change the way people perceive or think about sex workers . . . because that would kind of

178. *Id.*

179. *Id.*

180. Lutnick & Cohan, *supra* note 13, at 41.

181. *Id.* (emphasis in original).

182. *Id.*

183. *Id.* (“I’m actually working on my exit plan, which is being a real estate agent. And one of my fears is that I will not get through the process of getting successful enough in real estate to be able to support myself before I get nailed for something and can’t have a license any more [sic] and then I have to start working on a different exit plan.” (Independent massage worker, age 49[.]”).

start to heighten people's awareness about how this moral stigma has affected us.

—Bondage and discipline worker, age 32¹⁸⁴

This study represents the preferences of the sex workers whose safety is affected by the current dominant criminalization framework surrounding the sale of sexual services.¹⁸⁵ A majority of the women polled and interviewed in the study were street-based sex workers and themselves predominantly expressed the desire a system that would empower themselves and other women to seek help in any situation where they were the victims of a violent crime, which they currently do not feel able to do without the risk of arrest and potential detriment to their futures.¹⁸⁶ Although some women did not desire to be regulated by the government or be required to pay taxes, others expressed a preference for zoning restrictions for street-based sex work, which might improve the women's sense of safety.¹⁸⁷ However, as Lutnick and Cohan point out, there are "other legal codes such as loitering, trespassing, public nuisance and narcotics which could be used to target sex workers."¹⁸⁸ Moreover, in many western countries, there remain "deep cultural beliefs about sex work," usually rooted in religious beliefs, which could prevent the stigma surrounding sex work from truly dissipating even if a decriminalization framework were adopted.¹⁸⁹ However, with the staggering statistics surrounding the safety risks sex workers face, their opinions on how best to protect their bodies and lives are significant, and the legal framework in countries using the criminalized model should be adapted to respond to the picture painted by data and history surrounding violence against sex workers.

CONCLUSION

The decriminalization of all aspects of the sale of sexual services is the surest way to improve the safety of street-based sex workers

184. *Id.*

185. *Id.* at 44.

186. See Lutnick & Cohan, *supra* note 13, at 43 ("In the qualitative phase, one-third of the women were street-based sex workers. . . . Over two-thirds of those in the quantitative phase reported current street-based sex work These are the workers who are likely most at risk for physical and sexual assault, as well as arrest. . . . The majority of sex workers voiced a preference for removing the statutes that criminalize sex work in order to facilitate a social and political environment where they would have legal rights and could seek help when they were victims of violence.").

187. *Id.* at 44.

188. *Id.*

189. *Id.* at 44.

from incidents of violence, particularly in the context of serial homicide.¹⁹⁰ Although such legislation is not a cure-all,¹⁹¹ success in New Zealand demonstrates that a decriminalized approach to sex work can improve the power imbalance between law enforcement and sex workers, which ultimately builds channels of information sharing.¹⁹² When sex workers are more willing to come forward with information to assist in police investigations or report crimes of violence against themselves or others, and when police can communicate warnings and instances of suspicious activity to sex workers without the threat of arrest, law enforcement can help ensure the safety of sex workers by more effectively investigating and resolving crime.¹⁹³ Further, sex workers can manage their own risks when they are fully informed and know that they have access to legal recourse.¹⁹⁴ In a legal system where individuals are no longer criminalized and overlooked, violence can be effectively prevented with thorough investigations and just sentences, stopping would-be serial murderers from evading detection for decades.¹⁹⁵

LAUREN E. FERNANDEZ*

190. See Armstrong, *supra* note 16, at 577–78.

191. Crichton, *supra* note 17.

192. Armstrong, *supra* note 16, at 583.

193. *Id.* at 584.

194. *Id.* at 573.

195. Fox & Levin, *supra* note 18, at 424.

* Lauren E. Fernandez is a 2023 JD Candidate at William & Mary Law School. She obtained her BA in Government and Hispanic Studies from the College of William & Mary in 2016. The author would like to thank her family, friends, and mentors—especially her parents and her partner, Teddy—for their unwavering support throughout her academic and professional pursuits. Their encouragement, love, and creative inspiration made this publication possible. The author hopes that this Note will motivate legislative changes that protect more women and end the stigma surrounding sex work and the mistreatment of sex workers in the United States and internationally.