

PROSTITUTES AND POLICING – ANALYSIS OF TACTICS  
USED TO REDUCE THE DEMAND FOR SEX

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I. INTRODUCTION

Prostitution is a serious problem that affects millions of people worldwide.<sup>1</sup> It has a disproportionate impact on women,<sup>2</sup> as women constitute 80% of the population who are purchased for sex,<sup>3</sup> and it is

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<sup>1</sup> INT’L LAB. OFF. PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR 7 (2014) (“4.5 million people are trafficked for sex, generating \$99 billion a year in revenue from forced sexual exploitation.”).

<sup>2</sup> *Id.* (“Women and girls represent the greater share of the total - 11.4 million (55 percent) - compared to 9.5 million (45 percent) men and boys”); *id.* at 46.

<sup>3</sup> Gus Lubin, *There are 42 Million Prostitutes in the World, and Here’s Where they Live*, BUSINESS INSIDER (Jan. 17, 2012),

predominantly men who are the purchasers.<sup>4</sup> Prostitution is defined as commercial sex that involves adults and no third-party force, fraud, or coercion.<sup>5</sup>

However, prostitution, often presented as a victimless crime, is a form of sex trafficking. While sex trafficking comes in various forms, some use of force, fraud, or coercion is always involved.<sup>6</sup> While various advocacy groups may suggest that prostitution is not a form of exploitation<sup>7</sup> and may also suggest that the term “sex work” is the preferable term to “prostitution” or “sex trafficking,”<sup>8</sup> others, more correctly, see prostitution as an inherently exploitative system<sup>9</sup> that

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<https://www.businessinsider.com/there-are-42-million-prostitutes-in-the-world-and-heres-where-they-live-2012-1>.

<sup>4</sup> The author suggests that the small fraction of female customers deserve more research. See Ronald Weitzer, *New Directions in Research on Prostitution*, 43 CRIME, L. & SOC. CHANGE 211-235 (2005).

<sup>5</sup> MICHAEL SHIVELY ET AL., A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REDUCTION EFFORTS 4 (2012) [hereinafter A NATIONAL OVERVIEW] (“sex trafficking is used when commercial sex involving children and/or compelled by a third party using force, fraud, or coercion.”).

<sup>6</sup> *Human Trafficking*, POLARIS, <https://polarisproject.org/human-trafficking> (last visited Sept. 8, 2019) (“Sex trafficking is the crime of using force, fraud or coercion to induce another individual to sell sex.”).

<sup>7</sup> *Understanding Sex Work in an Open Society*, OPEN SOCIETY FOUNDATIONS, <https://www.opensocietyfoundations.org/explainers/understanding-sex-work-open-society> (last updated Apr. 2019) (arguing that conflating trafficking with sex work can be “harmful and counterproductive” and “sex worker organizations opposed exploitation[.]”); Stephanie M. Berger, *No End in Sight: Why The “End Demand” Movement Is The Wrong Focus For Efforts To Eliminate Human Trafficking*, 35 HARV. J.L. & GENDER 523, 535 (2012) (“[A]dvocates for sex worker rights argue that the definition [of sex trafficking] should not include prostitution that is not forced, while abolitionists claim that the definition includes all prostitution due to prostitution’s inherently coercive nature.”).

<sup>8</sup> *Sex Work: What’s in a Name*, URBAN JUSTICE CENTER, <http://sexworkersproject.org/media-toolkit/downloads/03-WhatsInAName.pdf> (last visited Oct. 27, 2019) (“The term ‘sex worker’ is neutral, descriptive and informative without being judgmental, it recognizes sex work as a reality, whatever the speaker’s opinion about the work itself. . . It allows the possibility of the worker’s dignity and ability to make decisions. Most of all, it affirms the humanity of the person.”); see *Mission and Principles*, RED UMBRELLA FUND, <https://www.redumbrellafund.org/about-us/mission-principles/> (last visited Sept. 8, 2019).

<sup>9</sup> This is based on the dominance theory. “[D]ominance theory [or radical feminism] focuses on the power relations between men and women . . . This theory says that men are privileged and women are subordinated, and this male privilege receives support from most social institutions, as well as a complex system of cultural beliefs.” See NANCY LEVIT & ROBERT R.M. VERCHICK, A PRIMER: FEMINIST LEGAL THEORY 22-6 (N.Y. Univ. Press, 2006); With this framework in mind, it is easy to argue that prostitution is exploitative as it involves a lack of consent. See CATHERINE MACKINNON, WOMEN’S LIVES MEN’S LAWS 151 (2005); see also *An Introduction to CATW: Philosophy, Coal. Against Trafficking in Women*, CATW

drives the demand for purchased sex and gives sex traffickers, such as pimps,<sup>10</sup> an incentive to sell the bodies of women to “johns.”

This Note uses the words “john” and “sex buyer” or “buyer” to refer to the purchasing party in prostitution.<sup>11</sup> “John” communicates namelessness and anonymity<sup>12</sup> and incorporates the reality that the overwhelming majority of purchasers are male.<sup>13</sup> Additionally, for purposes of this Note, prostitution will be the term used to discuss commercial sex work.

While the discussion of whether prostitution should be legalized in the United States,<sup>14</sup> and elsewhere in the world,<sup>15</sup> is much more

INTERNATIONAL, <http://www.catwinternational.org/about/index.php> (last visited Jan. 14, 2012) (“All prostitution exploits women, regardless of women’s consent.”); CATHARINE A. MACKINNON, *SEX EQUALITY* 1240 (2d ed., 2007) (citing Janice G. Raymond, *Report to the Special Rapporteur on Violence Against Women* (May 1995), <https://www.iswface.org/coalitionagainstraffick.html> (money in prostitution “merely redefines as prostitution the rape, sexual abuse and battery that [the customer] commits.”)).

<sup>10</sup> Virtually every state jurisdiction in the United States has enacted laws criminalizing some form of pimping. The conduct generally involves arranging for prostitution by causing, compelling, inducing, enticing or procuring (or attempting to do any of the former) an individual into prostitution. *See Model State Provisions on Pimping, Pandering, and Prostitution* (U.S. Dep’t of Justice June 18, 2014).

<sup>11</sup> Stella, *Language Matters: Talking About Sex Work* 3 (Apr. 2013) <https://www.nswp.org/sites/nswp.org/files/StellaInfoSheetLanguageMatters.pdf> (“The term ‘john’ is a historical term that holds meaning for sex workers but is often used pejoratively by others - it is a nameless, generic and dehumanizing word used to refer to a homogenous group of men[.]”).

<sup>12</sup> Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 282 (2011). Catharine MacKinnon notes that referring to buyers of sex as “johns” gives them a “common real man’s name,” which she believes problematically gives buyers of sex the “true privacy of anonymity.”

<sup>13</sup> *See* Weitzer, *supra* note 4.

<sup>14</sup> *See generally* Fourteenth Annual Gender And Sexuality Law: Annual Review Article: Prostitution And Sex Work, 14 GEO. J. GENDER & L. 553 (2013) (“Legal efforts to achieve decriminalization have been largely unsuccessful in the United States. . . Though there is some variation among state anti-prostitution statutes, all state courts have held that laws criminalizing prostitution are constitutional. All states, at least to some extent, view anti-prostitution statutes as desirable. Though vigorous debate in support of decriminalization of prostitution continues in many areas of the country, proposals for decriminalization continue to face public opposition.”).

<sup>15</sup> *See generally* Ronald Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* 1 (NYU Press, 2012). Several nations have recently decriminalized prostitution; the Netherlands, Belgium, and Germany are such states that serve as alternatives to the American-style criminalization of sex workers through different forms of decriminalization. There are three types of decriminalization; full decriminalization removes all criminal penalties and leaves prostitution unregulated, partial decriminalization reduces but does not entirely eliminate penalties (i.e., changed from a felony to a misdemeanor), and de facto decriminalization is when the laws

nanced than noted above, the conversation goes much further than the bounds of what is written here. For purposes of this Note, we will acknowledge the very real beliefs of many policymakers and influencers who believe that prostitution is a system that does not align with their values and who have implemented operations to stop and reduce the practice.

Some of these operations are based on the Nordic Model, which has gained popularity within the United States. The Nordic Model attempts to hold the purchasers accountable rather than punish prostitutes.<sup>16</sup> Accordingly, there have been increased efforts by governmental authorities to reduce the demand for paid sex. Practices have included: installing hidden cameras inside private businesses,<sup>17</sup> getting johns' cars towed,<sup>18</sup> live-tweeting police stings,<sup>19</sup> and requiring mandatory john school attendance.<sup>20</sup>

One of the most recent newsworthy sting operations based on Nordic Model tactics includes the arrest of Robert Kraft, the owner of the New England Patriots football team, for solicitation of prostitution.<sup>21</sup> In that case, detectives secured a warrant allowing them to secretly hide video cameras inside the lobby and massage rooms of a Florida business in which the solicitation of prostitution was

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remain, but they are not enforced. Any of these forms of decriminalization may be a precursor to government regulation through legislation.

<sup>16</sup> See discussion *infra* Part I, Section A.

<sup>17</sup> Scott Zamost et al., *Robert Kraft Case Reveals how Police can Secretly Install Cameras Inside a Private Business*, CNBC, <https://www.cnbc.com/2019/03/14/robert-kraft-case-shows-how-police-use-hidden-cameras-to-get-evidence.html> (last updated Mar. 21, 2019).

<sup>18</sup> Chris Jennewein, *'Wake Up Call' for Sex Buyers as 29 Men Arrested in San Diego Prostitution Sting*, TIMES OF SAN DIEGO, <https://timesofsandiego.com/crime/2018/01/30/wake-up-call-for-sex-buyers-as-29-men-arrested-in-san-diego-prostitution-string/> (last updated Jan. 30, 2018) ("When men showed up at a hotel for sex, they were instead surprised by being handcuffed. Their cars were towed and their phones were taken as evidence.").

<sup>19</sup> Dara Lind, *Live-tweeting a Prostitution Sting is a Terrible Idea*, VOX <https://www.vox.com/2014/5/1/5672764/livetweeting-a-prostitution-sting-is-a-terrible-idea> (last visited May 1, 2014).

<sup>20</sup> Ian R. Cook, *Making Links between Sex Work, Gender and Victimisation: The Politics and Pedagogies of John Schools*, 22 GEND., PLACE & CULTURE 817 (2015); see discussion *infra* Part I, Section A.

<sup>21</sup> Scott J. Croteau, *Robert Kraft prostitution case: A breakdown on the charges filed against the New England Patriots owner, the secret video recordings and court hearings*, MASSLIVE (May 7, 2019), <https://www.masslive.com/patriots/2019/05/robert-kraft-prostitution-case-a-breakdown-on-the-charges-filed-against-the-new-england-patriots-owner-the-secret-video-recordings-and-court-hearings.html>.

suspected.<sup>22</sup> As a result of the incident, Robert Kraft and other high profile buyers were arrested and publicly shamed for their involvement in purchasing sex at this Florida massage parlor through the common method of demand reduction, which will be discussed more in depth later on in this Note.<sup>23</sup>

This Note discusses reverse prostitution stings, which are police stings that target male customers through the use of female police officers as decoy prostitutes.<sup>24</sup> However, this Note will not debate sting operations generally, as they have been found to be useful in criminal investigations.<sup>25</sup> Rather, the focus will be on reverse sting operations, as there has been relatively little study on this type of police operation.<sup>26</sup> Part II of this Note presents background information on the development of the demand reduction model and discusses the effects of its tactics. Part III acknowledges how the demand model has been incorporated into U.S. society and highlights how these practices have been implemented. Part IV provides analysis of the topic, including suggestions for best practices to end the demand for commercial sex. Specifically, this Note argues that while reverse prostitution stings and shaming techniques are not illegal, they have grave ethical consequences and unless they are done with the intent to rehabilitate, are abuses of police discretion and power.

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<sup>22</sup> *Id.* (“A detective filed an affidavit for a ‘sneak and peek’ warrant inside the spa. The warrant, signed off by a judge, allowed for police to secretly hide cameras inside the massage rooms and lobby.”).

<sup>23</sup> *Id.*

<sup>24</sup> Mary Dodge et al., *Puttin’ on the Sting: Women Police Officers’ Perspectives on Reverse Prostitution Assignments*, 7 INT’L J. POLICE SCI. & MGMT. 71, 72 (2004) [hereinafter *Women Police Officers*] (“Reverse police prostitution stings, which target men by using female officers as decoy prostitutes, are becoming a common method in some United States cities for controlling the problem of solicitation for prostitution.”).

<sup>25</sup> Evan Haglund, *Note, Impeaching the Underworld Informant*, 63 S. CAL. L. REV. 1405, 1411 (1990) (noting that informants are usually used in “so-called ‘victimless’ crimes - narcotics, gambling, prostitution, and tax-evasion.”); *United States v. Twigg*, 588 F.2d 373, 380 (3d Cir. 1978) (“Infiltration of criminal operations by informers and undercover agents is an accepted and necessary practice.”).

<sup>26</sup> *Women Police Officers*, *supra* note 24, at 83 (“Only additional research on reverse prostitution arrest rates and recidivism will help to determine if arresting and shaming johns is effective. A limited number of studies show a reduction in recidivism for arrested johns and graduates of San Francisco’s John School.”).

## II. TACTICS USED TO REDUCE DEMAND FOR COMMERCIAL SEX

### A. Background: The Nordic Model

In 1999, Sweden criminalized pimps and buyers in what became known as the Nordic Model.<sup>27</sup> This policy has likely led to a reduction in street prostitution and trafficking of young and vulnerable girls from poor countries.<sup>28</sup> Sweden first decriminalized the sale of sex from individuals exploited by prostitution and simultaneously criminalized buying, pimping, and brothel keeping.<sup>29</sup> The theories behind the model include the social democratic theory,<sup>30</sup> radical feminism,<sup>31</sup> and Marxism.<sup>32</sup> However, Sweden's model is driven by three core components: (1) community education, (2) social services, and (3) law enforcement. Punitive measures do not drive the Nordic model, yet there it contains

<sup>27</sup> Charlotte Alter, *Catching Johns*, TIME <https://time.com/sex-buyers-why-cops-across-the-u-s-target-men-who-buy-prostitutes/> (last accessed on Sept. 8, 2019) [hereinafter *Catching Johns*]; *What is the Nordic Model?*, NORDIC MODEL NOW! <https://nordicmodelnow.org/what-is-the-nordic-model/> (last accessed on Feb. 7, 2020) (“The Nordic Model approach to prostitution decriminalizes all those who are prostituted, provides support services to help them exit, and makes buying people for sex a criminal offense, in order to reduce the demand that drives sex trafficking.”).

<sup>28</sup> *Catching Johns*, *supra* note 27 (“Government reports say this policy may have led to a reduction in street prostitution and trafficking of young and vulnerable girls from poor countries. Under the Nordic Model, which has also been adopted in Norway and Canada and endorsed by a non-binding European Parliament resolution, sex workers themselves don’t face arrest, only their clients do.”).

<sup>29</sup> Ane Mathieson, Easton Branam & Anya Noble, *A Faceless Movement: Prostitution Policy: Legalization, Decriminalization and the Nordic Model*, 14 SEATTLE J. Soc. JUST. 367, 396 (2015) [hereinafter *A Faceless Movement*] (“The Nordic model penalizes those with power who demand the prostitution transaction, the buyer with money or the pimp/ brothel owner profiting.” “Sweden sees the sex industry—thriving off the social inequality between women and men, adults and children, white people and people of color, wealthy nations and colonized nations—as an unacceptable practice rather than a market opportunity. Swedes, in viewing prostitution as a consequence of structural injustices (including sexism, racism, and heterosexism), called for the provision of social service support to survivors and for the criminalization of those abusing their greater socioeconomic power by buying prostituted women.”).

<sup>30</sup> *Id.* at 371 (“In social democracies social policies—rather than the marketplace—are used to advance egalitarianism. Sweden’s social democracy, which informed the creation of the Nordic model, uses social policy initiatives, not market incentives, to further all citizens’ societal wellbeing.”).

<sup>31</sup> *Id.* (“[T]he Nordic Model is premised on the understanding that women’s equity depends on excising structural barriers that preclude women’s full economic, social, and political inclusion.”).

<sup>32</sup> *Id.*

a punitive aspect.<sup>33</sup> The law enforcement aspect of the Nordic Model, as it currently exists in Sweden, is present in the Prostitution Unit.<sup>34</sup> The Unit's primary responsibility is to arrest buyers,<sup>35</sup> and fines are issued to buyers or attempted buyers based on their income.<sup>36</sup> Additionally, the buyer's act may be revealed to their family, the public, or their employer.<sup>37</sup> If the buyer admits to the crime however, they may escape the often well-attended trial.<sup>38</sup> In the United States, the Nordic Model has influenced such projects as "The Cities Empowered Against Sexual Exploitation Network (CEASE)"<sup>39</sup> which was implemented in Seattle, where King County law enforcement began to shift their focus from "those prostituted to those demanding sexual access."<sup>40</sup>

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<sup>33</sup> See *id.* at 398. The goal of the Nordic model in Sweden was not punitive, it was to change social norms that promoted and enabled prostitution to flourish. The model may have been successful to that end; opinion polls indicated that 70% of Swedes do not support the law criminalizing prostitution buying. Additionally, attitudes have quantifiable results as a Swedish special inquiry found that the number of men purchasing sexual services dropped from 13.6% to 7.8% after the introduction of the legislation.

<sup>34</sup> See *id.* at 407. Stockholm has the only law enforcement Prostitution Unit in Sweden; the other municipalities rely on Trafficking units.

<sup>35</sup> *A Faceless Movement*, *supra* note 29, at 407 ("In Stockholm, between 200 and 300 buyers are arrested a year.").

<sup>36</sup> *Id.* at 408 ("If a man buys or attempts to buy sexual access to an adult, he receives a minimum fine of 2,500 SEK (approximately \$350 USD). At the time of this author's interviews in Sweden, the highest fine assessed was 70,000 SEK (approximately \$10,000 USD). Fines are assessed on a sliding scale based on the buyer's income.").

<sup>37</sup> *Id.* ("Most men are less concerned with the fine and more concerned with whether prosecution will reveal their purchase of prostitution to their family, the public, or their employer.").

<sup>38</sup> *Id.* ("Trials for this crime are public and well attended, so the majority of men admit to the charged crime to avoid trial.").

<sup>39</sup> See *id.*; see also *Cities Empowered Against Sexual Exploitation*, DEMAND ABOLITION'S CEASE NETWORK, <https://www.ceasenetwork.org/> (last visited Oct. 27, 2019). The CEASE Network is a collaboration of pioneering cities committed to reducing sex buying. Each team, composed of survivor leaders, criminal justice professionals, members of the local government, and philanthropists, designs and implements its own strategies while driving toward the overall goal of demand reduction by 20% in two years.

<sup>40</sup> *A Faceless Movement*, *supra* note 29 ("The implications of law enforcement's shift in focus from those prostituted to those demanding sexual access is that more criminal charges are brought against those buying sexual access and or pimping adult women and children.").

Influenced by the Nordic Model, the demand reduction model, or the “end demand”<sup>41</sup> model, has been adopted in the United States.<sup>42</sup> The demand reduction model has likely become so pervasive because “the historic emphasis on interfering with supply and distribution systems has been ineffective at producing substantial and lasting reductions in illegal commercial sex markets.”<sup>43</sup> The demand model is also beneficial to police, prosecutors, and communities because it is a form of primary prevention, where negative events are stopped before they occur.<sup>44</sup> As there are insufficient resources for victim services providers, it is more appropriate to address the problem of prostitution head-on rather than after the fact.<sup>45</sup>

Though many have criticized the end demand model,<sup>46</sup> one criticism that is often overlooked is how it affects sex buyers. A significant tactic

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41 See Berger, *supra* note 7. Berger notes the end demand model focuses on criminalizing, punishing, and shaming men who buy sex while proposing more productive methods for addressing human trafficking in the United States. It is part of the partial decriminalization framework that intentionally focuses, in varying degrees, on shaming and punishing johns in an effort to discourage them from buying sex. “The male demand for . . . Prostitution is the most immediate cause of the expansion of the sex industry without which it would be highly unprofitable for pimps and traffickers to seek out a supply of women. It is indisputable that a prostitution market without male consumers would go broke.” These assumptions underlie end demand efforts.

42 The demand reduction model has gained much traction in the United States; many modes previously discussed have been adopted into U.S. federal law as well as in Rhode Island and Massachusetts. In June 2011, the Department of State published a “fact sheet” titled “Prevention: Fighting Sex Trafficking by Curbing Demand for Prostitution.” See *U.S. Dep’t of State, Office to Monitor and Combat Trafficking In Persons, Prevention: Fighting Sex Trafficking by Curbing Demand for Prostitution*, U.S. DEPARTMENT OF STATE (June 2011), <http://www.state.gov/g/tip/rls/fs/2011/167224.htm>.

43 A NATIONAL OVERVIEW, *supra* note 5, at iv.

44 *Id.* (“To correctly be considered preventative, it must be demonstrated that the approach reduces the prevalence and/or incidence of sex trafficking or exploitation. Approaches that simply displace crime from one street to the next, from the street to indoors, from one town to another, or from one set of victims to another, may be considered effective by people at the original locations, but not by the new hosts of sexual exploitation or by the new set of victims. . . The only methods empirically demonstrated to substantially reduce the size of commercial sex markets are those featuring a focus on (or including a component) combating demand.”).

45 *Id.*

46 See generally Alek Nielsen, Nordic Model: *The Ongoing Criminalization of Sex Workers in Northern Europe*, MEDIUM (July 1, 2018), <https://medium.com/@aleknielsen/nordic-model-the-ongoing-criminalization-of-sex-workers-in-northern-europe-c1df02ba94ae>; Melissa Gira Grant, *Amnesty International Calls for an End to the ‘Nordic Model’ of Criminalizing Sex Workers*, THE NATION (May 26, 2016), <https://www.thenation.com/article/amnesty-international-calls-for-an-end-to-the-nordic-model-of-criminalizing-sex-workers/>; see also Berger, *supra*



to reduce demand, a key element of the model and a reason it has been so successful, is the shaming of buyers. This punitive aspect, derived from Sweden's example, serves to deter future purchases. Types of shaming include: publicizing the identities of arrested johns via news outlets, police websites, and billboards, or sending "Dear John" letters to the address of a car owner and alerting the owner that their car was seen in an area known for prostitution.<sup>47</sup> The stigma of being publicly shamed and perhaps the irony of being identified—is that there exists an inherent namelessness in being a "john."<sup>48</sup> Anonymity encourages buyers to seek out commercial sex because they are not held accountable<sup>49</sup> and putting a name to and personifying a buyer is counter intuitive to the entire idea of what a "john" is.<sup>50</sup>

When asked to name tactics that would deter them from buying sex, men in a study indicated that having their identities publicly

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note 7 (the End Demand model has many issues. First, many anti-prostitution advocates rely on faulty methodology and sensationalism. For example, "anti-abolitionist advocate Ronald Weitzer . . . has called anti-prostitution activists' work "non peer-reviewed," stating that it contains "sweeping generalizations" that "tend to select or accent the most disturbing instances of abuse and present them as representative and indicative of intrinsic problems." Second, the research on demand for sex embraces an idea of johns that portrays them as abnormal where they are more likely to be criminals, commit more rapes, and use pornography. Other research identifies that men purchase sex for a variety of reasons, not simply because they suffer from psychological issues. Johns may purchase sex because they are disabled, travelers, addicted to sex, or have the "desire for a particular kind of sexual experience; the desire for particular kinds of sexual partners; the desire for control over when and how to have sex . . . [or are] in search of companionship and what they take to be intimacy." Berger notes that it is unlikely that many johns specifically seek out sex with someone who is being coerced. Finally, stating that demand is the largest factor of sex trafficking ignores the fact that prostitution is based in highly organized institutional structures that are hard to dismantle).

<sup>47</sup> A NATIONAL OVERVIEW *supra* note 5, at 44 ("Content may also include warnings about health risks, detriments of commercial sex to communities and survivors.").

<sup>48</sup> Courtney Guyton Persons, *Sex in the Sunlight: The Effectiveness, Efficiency, Constitutionality, and Advisability of Publishing Names and Pictures of Prostitutes' Patrons*, 49 VAND. L. REV. 1525, 1529 (1996) [hereinafter *Sex in the Sunlight*] ("Anonymity plays a central role in the persistence of prostitution's appeal. The very title 'john' emphasizes the temporary namelessness granted patrons in the context of prostitution. This escape from one's identity allows johns the freedom to explore desires . . . without some of the adverse consequences . . .").

<sup>49</sup> Iris Yen, *Of Vice and Men: A New Approach to Eradicating Sex Trafficking by Reducing Male Demand through Educational Programs and Abolitionist Legislation*, 98 J. CRIM. L. CRIMINOLOGY 653, 670 (2008) [hereinafter *Of Vice and Men*].

<sup>50</sup> *Sex in the Sunlight*, *supra* note 48.

circulated was the most compelling strategy.<sup>51</sup> The following strategies also received high rankings in the study: (a) “photo and or name in local paper,” (b) “jail time,” (c) “photo and/or name on billboard,” (d) “photo and/or name on the Internet,” and (e) “a letter sent to family saying you were arrested for soliciting a woman in prostitution.”<sup>52</sup> While this study does not necessarily correspond to what will actually deter men in real situations, the results suggest that shaming techniques may be effective.<sup>53</sup>

In 1979, then Mayor of New York City, Ed Koch, attempted to reduce street prostitution by ordering WNYC, a city-owned radio station, to read the names of convicted johns.<sup>54</sup> The “John Hour” only aired once due to the controversy over misuse of government power, yet former Mayor Koch outlined in an opinion piece in 2008 that we should continue to “harness the power of shame.”<sup>55</sup> Currently, “[a]ccording to the National Institute of Justice, about 60% of police departments publicize the identity of johns in some way.”<sup>56</sup> However, communities argue that police departments do not consider the ramifications of this publicity, including the effects that it has on family members, or even the johns themselves.<sup>57</sup> In one case, a phone number listed on a poster, led to a John’s wife and children receiving “dozens” of harassing phone calls.<sup>58</sup> Additionally, some argue that public shaming methods violate the right to due process<sup>59</sup> as identities are typically

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<sup>51</sup> RACHEL DURCHSLAG & SAMIR GOSWAMI, CHICAGO ALLIANCE AGAINST SEXUAL EXPLOITATION, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 3 (2008) (“87% of interviewees said some form of public exposure, such as having their name or photo in a newspaper, would deter them from buying sex.”).

<sup>52</sup> *Id.* at 24 (“When responding to how much jail time would serve as a deterrent the most frequent answers were: a day/ overnight (24%), any time at all (17%), a couple of weeks (10%), a couple of months (9%), and an hour or less (5%).”).

<sup>53</sup> *Id.*

<sup>54</sup> Edward I. Koch, *Out the Johns and Bring on the Shame*, NY DAILY NEWS, <https://www.nydailynews.com/opinion/johns-bring-shame-article-1.290056> (last accessed Mar. 16, 2008).

<sup>55</sup> *See id.* (explaining that, in 1979, there was contention over the use of shaming tactics to punish johns).

<sup>56</sup> Vera Chinese, Rocco Parascandola, & Stephen Rex Brown, *Nassau County Nabs 104 Johns who Tried to Pay Undercover Cops for Sex*, NY DAILY NEWS (Jun. 4, 2013), <https://www.nydailynews.com/new-york/104-johns-nabbed-nassau-county-pay-sex-article-1.1361717>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (“They’re humiliating [the suspects’] children, their parents, their wives. . . . [T]hink about the 13-year-old son going to school tomorrow.”).

<sup>59</sup> Abt Associates Inc., *An Overview of Shaming Applied to Sex Buyers in the United States*, NAT’L INST. OF JUSTICE 4 (2012), <http://www.demandforum.net/wp->

publicized upon the john's arrest, prior to any adjudication, and essentially serves as a pre-conviction punishment.<sup>60</sup> To resolve this, some municipalities include disclaimers that mention the presumption of the innocence of the men identified as having been arrested.<sup>61</sup>

Additional methods of shaming include, seizing the vehicle used to solicit sex,<sup>62</sup> implementing public education and awareness programs,<sup>63</sup> and "johns school" programs for the arrestees.<sup>64</sup> These particular methods involve less public shaming and are more rehabilitative in nature. For example, Seattle created an ideal "johns school" model that involves elements of education and rehabilitation. "Stopping Sexual Exploitation: A Program for Men" reframes prostitution from a "victimless crime" to a system of male violence against women, children, and sometimes other men, deconstructs male sexual identity and encourages the development of an alternative sexuality based on mutuality and consent, and promotes male accountability and

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content/uploads/2012/01/shaming-overview-from-national-assessment.pdf [hereinafter An Overview of Shaming] ("Opponents of shaming contend that its deterrence is unproven, that violates due process rights since identities are typically publicized upon arrest and prior to adjudication (American Civil Liberties Union, 2008), and that it negatively affects families of arrestees."); Michael L. Perlin & Naomi M. Weinstein, Esq., *Friend To The Martyr, A Friend To The Woman Of Shame*: *Thinking About The Law, Shame And Humiliation*, 24 S. CAL. REV. L. & SOCIAL JUSTICE 1, 1-2 (2014) ("Humiliation and shaming contravene basic fundamental human rights and raise important constitutional questions implicating the due process and equal protection clauses. . . Humiliation and shame are detrimental in ways that lead to recidivism, inhibit rehabilitation, discourage treatment, and injure victims.").

<sup>60</sup> An Overview of Shaming, *supra* note 59; see Cornell Law School, *Generally: The Principle of Fundamental Fairness*, CORNELL LAW SCHOOL, <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/procedural-due-process-criminal> (last accessed Feb. 4, 2020).

<sup>61</sup> See *id.* Additionally, some cities forgo shaming altogether because of the impact it may have on those associated with alleged offenders.

<sup>62</sup> A NATIONAL OVERVIEW, *supra* note 5, at 22.

<sup>63</sup> See *id.* at 23. As noted below, the public education and awareness programs involve less public shaming and are more rehabilitative in nature. "These initiatives are proactive efforts to educate men and boys about prostitution and sex trafficking, usually encouraging them not to contribute to sexual exploitation by purchasing sex."

<sup>64</sup> See *id.* John schools vary in their specific models, but a typical john school curriculum includes sections on health consequences, the impact on communities, the impact on survivors with presentations by survivors, crime victimization risks, and legal consequences; see Barbara C. Kryszko & Janice G. Raymond, Coalition Against Trafficking in Women, *Good Practices: Targeting the Demand for Prostitution and Trafficking* (2013), [http://www.catwlac.org/en/wp-content/uploads/2013/10/Good\\_Practices.pdf](http://www.catwlac.org/en/wp-content/uploads/2013/10/Good_Practices.pdf).

allyship consciousness.<sup>65</sup> This program is available for men arrested for buying sex, as a mandatory sentencing condition for prostitution-related charges, or for men who self-refer.<sup>66</sup> As discussed in greater depth below, these types of programs provide for public education as an alternative to retributive punishment.

### B. Entry Into the Criminal Justice System

Recidivism rates among buyers who are arrested is extremely low, regardless of whether the buyer participated in a public education program or was subject to a shaming technique.<sup>67</sup> Therefore, it is necessary to conduct a policy analysis to balance society's interest in reducing the purchase of sex against increasing an individual's contact with the criminal justice system. While the criminal justice system serves many purposes, low recidivism is one that society should prioritize.<sup>68</sup> It seems, at first glance, that arresting buyers may decrease the rate of purchased sex because the recidivism rate tends to recede.<sup>69</sup> However, it is unclear whether arrests or other shaming techniques are the true cause of the low recidivism rates.

It is also important to note that while no research has presented findings showing men of color are more likely to purchase sex,<sup>70</sup> the

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<sup>65</sup> See *A Faceless Movement*, *supra* note 29, at 420. Allyship is an "active, consistent, and arduous practice of unlearning and re-evaluating, in which a person of privilege seeks to operate in solidarity with a marginalized group of people."

<sup>66</sup> *Id.*

<sup>67</sup> Martin A. Monto, *Summary Report for National Institute of Justice Grant #97-IJ-CX-0033 "Focusing on the Clients of Street Prostitutes: A Creative Approach to Reducing Violence Against Women,"* 1, 7-8 (Oct. 30, 1999) (unpublished report), <http://www.ncjrs.gov/pdffiles1/nij/grants/182859.pdf> ("Of the first 706 men in the San Francisco program, 14 were caught re-offending, 12 in San Francisco County and 2 in other jurisdictions, for a recidivism rate of about 2%. . . . While these small recidivism rates would seem to prove the success of client intervention programs, recidivism rates for men who had not completed an intervention program were also very low.").

<sup>68</sup> *Recidivism*, NAT'L INST. JUST. <https://nij.ojp.gov/topics/corrections/recidivism> (last visited Jan. 15, 2020) ("Recidivism is one of the most fundamental concepts in criminal justice. . . . Recidivism is an important feature when considering the core criminal justice topics of incapacitation, specific deterrence and rehabilitation.").

<sup>69</sup> *Of Vice and Men*, *supra* note 49, at 684 ("Graduates of john schools typically have recidivism rates around 1% or less, which is significantly below the average recidivism rate for misdemeanors. These success rates prove that education and rehabilitation are an effective deterrent, at least for certain segments of the john population.").

<sup>70</sup> Demand Abolition, *Who Buys Sex? Understanding and Disrupting Illicit Market Demand* 18 (2018), [http://www.catwlac.org/en/wp-content/uploads/2013/10/Good\\_Practices.pdf](http://www.catwlac.org/en/wp-content/uploads/2013/10/Good_Practices.pdf) ("Race has almost no relationship with sex

criminal justice system at large has been known to be discriminatory towards men of color, specifically towards Black men.<sup>71</sup> Therefore, we must acknowledge the very realistic probability that the men who are being targeted by these stings and who are being arrested, are not necessarily the ones who are engaging in the most sex buying. It is therefore likely that police resources are being misused to focus on low-income, Black communities.<sup>72</sup>

There are serious consequences to having contact with the criminal justice system.<sup>73</sup> First, for otherwise law-abiding citizens, contact with the criminal justice system due to targeted sting operations, seems extremely unfair and only serves to further alienate communities, furthering a lack of trust in local police.<sup>74</sup> Where there is limited trust or no policing by consent of the public, “policing is likely to take

buying; however, Black men are disproportionately represented among active high-frequency buyers, though Black men still comprise less than half of this buyer type.”).

<sup>71</sup> The fear is that police will target Black men in their stings even though there is no evidence that black men disproportionately purchase sex. This is a reality in other types of police stings. See Matt Sepic, Mpls. *Police will end sting operations targeting low-level marijuana sales*, MPRNEWS (June 7, 2018, 4:03pm), <https://www.mprnews.org/story/2018/06/07/minneapolis-police-will-no-longer-arrest-people-for-small-amounts-of-marijuana>; see also Sam Levin, *San Francisco police targeted only black residents in drug arrests, lawsuit claims*, THE GUARDIAN (Oct. 4, 2018 4:05pm) <https://www.theguardian.com/us-news/2018/oct/04/san-francisco-police-black-residents-aclu-lawsuit>.

<sup>72</sup> Data compiled from 12 police departments showed that Black residents were more often subjected to police force than white residents, and that black people are also more likely to be stopped by police. See Kirsten Weir, *Policing in Black & White*, 47 MONITOR ON PSYCHOLOGY 36 (Dec. 2016), <https://www.apa.org/monitor/2016/12/cover-policing>.

<sup>73</sup> MICHAEL H. ESPOSITO ET AL., THE CONSEQUENCES OF CONTACT WITH THE CRIMINAL JUSTICE SYSTEM FOR HEALTH IN THE TRANSITION TO ADULTHOOD, 8 LONGIT LIFE COURSE STUD. 57 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5539981/> (“Experiences with incarceration during late adolescence and early adulthood appear to increase an individual’s risk of depression, and negatively impact general health status.”); Kristin Turney & Sara Wakefield, *Criminal Justice Contact and Inequality*, 5 THE RUSSELL SAGE FOUND. J. SOCIAL SCIS. 1, 1 (2019) (“[T]he confinement associated with incarceration disrupts employment and, on release, formerly incarcerated individuals face challenges to finding stable employment. Incarceration also impairs relationships with parents and romantic partners, increases physical and mental health problems, and reduces civic participation. Furthermore, perhaps unsurprisingly given the severe and often compounding difficulties encountered by individuals and their families during and after confinement, incarceration has intergenerational consequences.”).

<sup>74</sup> See Kirsten Weir, *Policing in Black & White*, supra note 72 (“[A] lack of trust could be particularly problematic when layered on top of implicit racial stereotypes. ‘Effective policing requires the cooperation of the community. If the community doesn’t trust you, they won’t give you info to help you do your job’”).

more arbitrary and violent forms.”<sup>75</sup> Considering the descriptions of police misconduct described below,<sup>76</sup> this is an issue that should be taken into consideration.

Additionally, there are other serious individual consequences of having contact with the criminal justice system. Contact with the police, whether through arrests, convictions, or incarceration—have great impacts on the health of the individual, specifically their mental health.<sup>77</sup> Other “collateral consequences”<sup>78</sup> may arise when someone has had contact with the criminal justice system which, for example, “creates an array of lifelong barriers that hamper successful reentry into society—including barriers to voting and other civic participation, education, employment, professional licensing, housing, and receipt of public benefits.”<sup>79</sup>

However, there is evidence that “john schools”<sup>80</sup> are contributing to the low recidivism rate.<sup>81</sup> If this is the case, then it is possible to implement certain policies of demand reduction, without causing contact with the criminal justice system. As aforementioned, “john schools” are designed to educate and rehabilitate those who have

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<sup>75</sup> Andrew Goldsmith, *Police reform and the problem of trust*, THEORETICAL CRIMINOLOGY 445  
<http://www.slcdocs.com/ODHR/Website/Right%20to%20Safety/Literature/PoliceReformAndTheProblemOfTrust.pdf> (last visited Feb. 8, 2021).

<sup>76</sup> See discussion *infra*, Part I, Section C.

<sup>77</sup> Naomi F. Sugie & Kristin Turney, *Beyond Incarceration: Criminal Justice Contact and Mental Health*, 82 AM. SOCIOLOGICAL REV. 719, 720 (“[W]e document that changes in arrests and incarcerations, but not convictions, are independently associated with changes in mental health problems. Arrest drives nearly half the association between incarceration and mental health, although some types of incarceration may be more salient than others.”).

<sup>78</sup> Collateral consequences include civil law sanctions, restrictions, or disqualifications that attach to a person because of their criminal history and can affect their ability to function and participate in society. See U. S. COMM’N ON CIV. RIGHTS, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, (2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf?eType=EmailBlastContent&eId=d37030a2-bfe6-4784-866a-7db61d64f357>.

<sup>79</sup> *Id.*

<sup>80</sup> See discussion *supra*, Part I.

<sup>81</sup> Martin A. Monto, Summary Report for National Institute of Justice Grant #97-IJ-CX-0033 “Focusing on the Clients of Street Prostitutes: A Creative Approach to Reducing Violence Against Women,” 7-8 (Oct. 30, 1999) (unpublished report), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/182859.pdf>; see e.g., Abt Associates Inc., NAT’L INST. OF JUSTICE, Final Report on the Evaluation of the First Offender Prostitution Program: Report Summary, at v-vi (2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf> (showing that recidivism rates in San Francisco and San Diego dropped in the decade following implementation of a first offender program, while rates in California as a whole remained stable).

offended.<sup>82</sup> The programs may often be run as diversion programs, allowing men who buy sex, to avoid an arrest record and/or criminal punishment.<sup>83</sup> Additionally, some of the programs accept self-referrals for those who wish to rehabilitate themselves.<sup>84</sup> At the completion of one john school program at the Philippines-based chapter of the Coalition Against Trafficking in Women in the early 2000s, a group of low-income, urban truck drivers, almost all of whom were male, made suggestions about how to change attitudes towards sex buying and upon completion of the program, noted that “significant learning” had occurred.<sup>85</sup> Some of the men felt that they would be able to hold themselves more accountable after attending the program and attaining a better understanding regarding the exploitation of prostitution.<sup>86</sup>

### *C. Police (Mis)Conduct: Engaging Sexually with Prostitutes or Johns*

While this Note does not argue the ethicality of traditional police prostitution stings, it is important to note the extent to which some in law enforcement may go to in order to secure an arrest. Some officers do engage in sexual contact in order to arrest prostitutes.<sup>87</sup> For

<sup>82</sup> A NATIONAL OVERVIEW, *supra* note 5, at 72 (noting that the educational component is “the backbone of the program.”).

<sup>83</sup> *Id.* (“Attendance in john schools is not at the offender’s option in one-third of U.S. john schools: courts sentence men to participate in the program in the program if they feel it is inappropriate treatment or punishment, and in which systems participation is mandatory, and charges are not dismissed for successfully completing the program. Men are sentenced to participate in nearly one-third (29%) of john schools, and another 19% are structured as options for both diversion and sentencing options. Just 52% of the john schools in the United States are structured exclusively as diversion programs.”).

<sup>84</sup> *Id.* at 73 (“A few of the john schools in the United States accept self-referrals, and it is possible that some of the men who self-refer have serious offenses in their histories.”).

<sup>85</sup> *Of Vice and Men*, *supra* note 49, at 675.

<sup>86</sup> John Schools, *A Practical, cost-effective way to reduce demand*, DEMAND ABOLITION (Oct. 5, 2016), <https://www.demandabolition.org/news/john-schools-practical-cost-effective-way-reduce-demand/> (“One of the most impressive john schools is a groundbreaking program in Seattle. . . headed by Peter Qualliotine . . . In fact, 95% his graduates say they don’t think they’ll ever buy sex again.”).

<sup>87</sup> Phillip Waters, “*Would a Cop Do This?*”: *Ending the Practice of Sexual Sampling in Prostitution Stings*, 29 LAW & INEQ. 451, 462 (2011) (“There are many examples of sexual intercourse between the women and undercover officers. Another common example of misconduct is receiving naked massages from women even though sufficient evidence has already been collected to get a conviction. One interaction did not involve sexual conduct but is still disturbing, where an arresting

example, in instances in 2006, “detectives allowed women to perform sexual acts on them on four occasions and once left a \$350 tip,”<sup>88</sup> and one in 2015 instance, police “already had their case more than 30 minutes before they burst through the door, before the undercover officer took off his clothes, before the woman disrobed and got on top of him, before he moaned and commented on her body and long before she began touching his genitals.”<sup>89</sup>

These examples raise serious ethical and legal issues; when law enforcement engages in the solicitation or engagement of prostitution, they are participating in the very activity which they are claiming to prevent.<sup>90</sup> Additionally, engaging in sexual acts with prostitutes provides increased opportunities for law enforcement to engage in unethical conduct. Since these operations are generally secretive, little is known by the public regarding any police abuse that occurs.<sup>91</sup> “American police, in contrast to those in many European countries, are permitted broad latitude in generating conditions for crime, fashioning integrity tests . . . through trickery, coercion, and seductive temptations.”<sup>92</sup> This activity, while most likely to be proof of prostitution, is not necessary to make an arrest.<sup>93</sup>

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officer walked into a hotel room and took naked photos of a sex worker while refusing to let her get dressed.”).

<sup>88</sup> Tom Jackman, *Spotsylvania Deputies Receive Sex Services in Prostitution Cases*, WASH. POST. (Feb. 13, 2006), <https://www.washingtonpost.com/archive/local/2006/02/13/spotsylvania-deputies-receive-sex-services-in-prostitution-cases/e05ebbd1-c4bc-45a2-b2ef-cebf0bad922f/>.

<sup>89</sup> Jon Tevlin, *When cops go too far in a sting, we all get stung*, STAR TRIBUNE (Aug. 22, 2015), <http://www.startribune.com/when-cops-go-too-far-in-a-sting-we-all-get-stung/322595471/?refresh=true> (“Moriarty [the undercover officer] should know. Female undercover officers arrest johns and get convictions all the time without letting the men touch them, and certainly long before any sexual contact is made. . . It’s a double standard that has gone on for a long time, and allowed male officers to get way too far into a sexual situation before they make their bust.”).

<sup>90</sup> Waters, *supra* note 87.

<sup>91</sup> Urban Justice Center, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*, SEX WORKERS PROJECT (2003) <https://sexworkersproject.org/downloads/RevolvingDoor.pdf> (“Thirty percent of sex workers interviewed told researchers that they had been threatened with violence by police officers, while 27% actually experienced violence at the hands of police.”).

<sup>92</sup> Bennett L. Gershman, *Toward a Common Law for Undercover Investigations - A Book Review of ABSCAM Ethics: Moral Issues and Deception in Law Enforcement* 52 GEO. WASH. L. REV. 166, 178 (1984), <http://digitalcommons.pace.edu/law-faculty/185/> (reviewing Gary T. Marx, *Who Really Gets Stung? Some Issues Raised by the New Police Undercover Work*, 8 URB. LIFE 399-446 (1980)).

<sup>93</sup> Sam Eifling, *Above the Law, Under the Sheets*, NEW REPUBLIC <https://newrepublic.com/article/120879/can-police-legally-have-sex-prostitutes-only-michigan> (last updated Jan. 28, 2015) (“The three basic components to make an arrest for



Additionally, it is unlikely that any party to the transaction would file a complaint with the police if misconduct were to take place.<sup>94</sup> This significantly differs from reverse prostitution stings, as it is not necessary, and indeed there are no reports of undercover female officers having sexual contact when posing as a sex worker with suspected johns to obtain evidence against them.<sup>95</sup> Thus, it is important to remember the influential power and coercive nature that the police often exercise, and consider this when giving officers more discretion in the field.

#### *D. Police (Mis)Conduct: Using Technology to Implement Tactics*

Police misconduct and overreach does not only occur in person; it also occurs online, relying on innovative technologies to target and shame buyers. The most well-known tactic is conducting online stings.<sup>96</sup> Before Backpage was shut down,<sup>97</sup> prostitution stings—both traditional and reverse—were conducted using online platforms such as this one. For example, the Seattle Police Department and other local Sheriff’s offices implemented a “Buyer Beware” initiative aimed at “reducing the local demand for prostitution by targeting those who pay for sex.”<sup>98</sup> Through this initiative, the police would post ads

prostitution are (1) Agreeing that there will be sex (2) agreeing that there will be payment and (3) making some motion toward making that happen.”).

<sup>94</sup> Waters, *supra* note 87 (noting “undercover investigation is very common in the enforcement of ‘victimless’ crimes such as prostitution, because it is unlikely that any of the parties to the transaction are going to file a complaint with the police.”).

<sup>95</sup> *See id.* at 471. However, it is noted that buyers are more appropriate targets for anti-prostitution operations.

<sup>96</sup> A NATIONAL OVERVIEW, *supra* note 5, at x (“The first web-based reverse sting we found occurred in Everett, Washington in 1995.”).

<sup>97</sup> In April of 2018, Backpage was seized and shut down as part of an enforcement action by the FBI. The website operated similarly to Craigslist, a massive ad marketplace, however it is primarily used to sell sex. The National Center for Missing and Exploited Children has told Congress that nearly three quarters of the cases submitted to the center related to ads posted on Backpage. *See* Tom Porter, *Backpage Website Shut Down, Founder Charged with 93 Counts by FBI in Sealed Indictment*, NEWSWEEK (Apr. 7, 2018), <https://www.newsweek.com/sex-ads-website-backpagecom-co-founder-charged-after-fbi-raid-876333>.

<sup>98</sup> Sara Jean Green, ‘Buyer Beware’: early success for initiative targeting johns instead of prostitutes, SEATTLE TIMES, <https://www.seattletimes.com/seattle-news/crime/buyer-beware-early-success-for-initiative-targeting-johns-instead-of-prostitutes/> (last Updated May 18, 2015, 12:40 PM).

pretending to be prostitutes and attempt to organize a meeting with the john.<sup>99</sup> Once the john agreed to an exchange for sexual services, the police would then be able to make an arrest.<sup>100</sup> Additionally, the advertisements would list a phone number to call with an undercover female police officer staffing the line.<sup>101</sup> The female officer would entertain the john for a while and then indicate to the john that their conduct was not only illegal, but that it was also far from victimless.<sup>102</sup> The initiative was incredibly successful, with twenty-three men charged with solicitation in the first quarter of 2015.<sup>103</sup> Senior Deputy Prosecutor Val Richey notes that men overwhelmingly respond to online advertisements with words like “fresh” and “young,” and “it’s not unusual for 200 or 300 men to respond in the first hour or two after an ad gets posted.”<sup>104</sup>

Alternatively, some online tactics forego the need of female police officers altogether and rely on “chatbots.”<sup>105</sup> This artificial intelligence software conducts an automated conversation with potential buyers when they contact a phone number listed in fake ads for paid sex.<sup>106</sup> The tool is not used to arrest buyers, but does send a deterrence message by “letting the person know that their information has been given to law enforcement, and including a link to a support website for men who want to stop buying sex.”<sup>107</sup> Due to the advanced

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<sup>99</sup> A NATIONAL OVERVIEW, *supra* note 5, at xii (“In web-based reverse stings, the basic model involves police posting a bogus advertisement on websites used to transact prostitution, and to place a female police decoy and support team in a hotel room or apartment for appointments with johns. This requires substantial planning, obtaining a phone for police to use that is not detectable as a police phone, constructing a realistic ad, and can pose challenges in getting hotel or apartment space. A variation that is designed to solve some of these challenges is to have police search real web ads for prostitution; they respond to the ad, remove the survivor, and install a police decoy who continues making appointments with johns on the survivor’s hotel or cell phone. A similar concept is used in storefront brothels, where the staff and survivors are removed and replaced with police officers who continue to make appointments and arrest johns.”).

<sup>100</sup> *Id.*

<sup>101</sup> A NATIONAL OVERVIEW, *supra* note 5, at 22 (“Women police decoys respond to online ads placed by johns seeking sex with prostituted persons.”).

<sup>102</sup> *Id.*

<sup>103</sup> Green, *supra* note 98.

<sup>104</sup> *Id.*

<sup>105</sup> Dave Lee, *The chatbot taking on Seattle’s sex trade*, BBC (Nov. 25, 2017), <https://www.bbc.com/news/technology-42120800>.

<sup>106</sup> Melody Hood, *New Technology Platform Addresses Supply and Demand of Sex Trafficking*, DEMAND ABOLITION (Oct. 3, 2017), <https://www.demandabolition.org/news/new-technology-platform-addresses-supply-demand-sex-trafficking/>.

<sup>107</sup> *Id.*

technology of the software, thousands of conversations can be had at once and as such, the impact can be much greater than using individual law enforcement officers.<sup>108</sup>

Additionally, police have used innovative methods to target known and potential buyers in the most private spaces they have: their social media accounts and outlets.<sup>109</sup> “The Boston Police Department (BPD) create[d] a profile of potential buyers—eighteen to sixty-four year old men within twenty-five miles of Boston browsing online between 2 and 3 p.m.—and target[ed] Facebook ads to those people.”<sup>110</sup> The advertisements differed, but one striking image featured a man in a prison cell with the text, “Think buying sex is cheap? It can cost you everything” and linked to a BPD website with information about penalties for those charged with sex trafficking crimes and with links for sexual addiction treatment.<sup>111</sup> This method was employed in an effort to use social media to “deliver targeted messages which amplify the risk to current and would-be buyers by putting them on notice that this illegal and harmful activity will not be tolerated and that law enforcement is on the lookout for offenders.”<sup>112</sup> While “likeness” profile targeting is no longer available on Facebook,<sup>113</sup> police still use targeted advertisements on other platforms such as Google, to track the searches of buyers or potential buyers and embed “cookies” into their

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<sup>108</sup> *Id.* (“The chatbot can conduct thousands of conversations at a time, and it’s available to talk 24/7, so it reduces human resources needed to deter buyers. Since it launched, it’s sent over 25,000 messages to potential buyers in three cities: Atlanta, Seattle, and Washington, D.C.”).

<sup>109</sup> Dan Atkinson, *Boston Police Put out Word: Buying Sex Can Cost You Big*, BOSTON HERALD <https://www.bostonherald.com/2017/04/27/boston-police-put-out-word-buying-sex-can-cost-you-big/> (last updated Nov. 17, 2018, 12:00 AM) (“The Boston Police Department will be stepping up its campaign targeting online sex trade customers with Facebook ads, with a new increased grand from an advocacy group. . . Using targeted internet ads as a way of curbing online sex trafficking is intended to hit potential johns with the consequences of their behavior, an advocate said, making them realize the damage they’re causing. ‘It’s been normalized and accepted through internet access, without having to leave their home, with the click of a button they can buy somebody.’”).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *See Keeping Advertising Safe and Civil*, FACEBOOK BUSINESS (Aug. 21, 2018), <https://www.facebook.com/business/news/keeping-advertising-safe-and-civil>. Facebook has removed over 5,000 targeting options on its platform in order to prevent misuse, specifically, to ensure advertisements are in line with their non-discrimination policy.

servers. This movement from physical observance to online observance is only expected to increase.<sup>114</sup>

### *E. Harm to Prostitutes*

“Advocates for sex worker rights argue that targeting buyers actually makes street workers *less* safe, since clients are jittery and the worker has less time to screen them.”<sup>115</sup> Former escort Samantha Acosta has said that the police policies make women more vulnerable as “[t]hey don’t care about saving the lives of prostitutes, they care about ending prostitution.”<sup>116</sup> A serious problem with this approach, regardless of whether it is ethical or not, is that hundreds of prostitutes are still being arrested.<sup>117</sup> For example, in Cook County, Illinois, prostituted women are charged with a misdemeanor, if charged, but are also given access to counseling and social services.<sup>118</sup> “Frequently, enforcement activities involve arresting prostitutes followed by short-term punishment and no provision of services. Thus, police departments and district attorneys’ offices process a large number of recidivist prostitutes with unaddressed service needs, but prosecute few johns.”<sup>119</sup> Additionally, arresting prostitutes places a significant burden on the criminal justice system and on various public health and social services.<sup>120</sup>

Those involved in prostitution are often in need of other public services, including refuge from abusers, childcare, and legal advocacy.<sup>121</sup> If they are not provided with these resources, the women may

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<sup>114</sup> *Atkinson, supra* note 109.

<sup>115</sup> *Catching Johns, supra* note 27.

<sup>116</sup> *See id.* Ms. Acosta also states that she feels more victimized by the current policies implemented to target demand rather than by her clients.

<sup>117</sup> *See id.* According to records from the Department of Justice, more than 43,000 women were arrested for prostitution-related offenses in 2010, compared to just over 19,000 men (this number includes johns, pimps, and male sex workers).

<sup>118</sup> *Id.*

<sup>119</sup> A NATIONAL OVERVIEW, *supra* note 5, at 17.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 14 (“[P]rostituted persons are often sexually assaulted, and victims of sexual assault may present an array of service needs ranging from the need for employment; refuge from abusers; child care; and legal advocacy to addressing psychological problems resulting from sexual violence. They are also at high risk for a host of physical and mental health problems, including drug addiction, STD infection, PTSD, and injuries from violent crimes. Those supporting themselves exclusively through commercial sex are usually uninsured, and seek costly, reactive health care services at emergency rooms and public health care providers. Since many prostituted women and girls have children, they are also high-end users of the foster care system and child protective services.”).

be at risk of reentering prostitution.<sup>122</sup> Supporters of decriminalizing prostitution, and those in favor of the demand approach, oppose punishing prostituted women.<sup>123</sup> Fortunately, the gap between the lack of services and those being arrested is closing, as more law enforcement officers and the judicial system as a whole are becoming more victim-aware and trauma-informed.<sup>124</sup>

### III. TACTICS IN ACTION

#### A. *The Massachusetts Model*

In Massachusetts, demand reduction has been a priority since 2011, from the time that Governor Patrick signed into law House Bill 3808, *An Act Relative to the Commercial Exploitation of People*.<sup>125</sup>

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<sup>122</sup> *Id.* (“Studies have found that most women engaged in prostitution want to exit “the life,” but the emotional and physical harm resulting from commercial sex, compounding pre-existing vulnerabilities, can make leaving difficult. . . Compromised health, addiction, PTSD, and a lack of employment skills can narrow options for developing financial self-sufficiency, and this creates dependency upon prostitution as a means of support, and perpetuates dependency upon pimps. . . Pimps and traffickers will use combinations of force, manipulation, and intimidation to maintain control of what, for them, is simply a financial asset. Raymond and colleagues found more than half of the women who tried to leave prostitution were threatened, stalked, abused, and/or forcibly returned.”).

<sup>123</sup> *Id.*

<sup>124</sup> Leila Ostad-Hashemi, *Preventing the Re-Traumatization of Individuals who are Arrested for Prostitution by Implementing Trauma-Informed Practices in the Criminal Justice System*, 8 COLUMBIA SOCIAL WORK REV. 1 (June 20, 2019) (“The standard procedures used in arrests of people found to be engaging in prostitution can have profoundly triggering effects on individuals with histories of abuse, trauma, and mental illness. . . These issues have implications for service providers, correctional administrators, and court staff. In an effort to reduce re-traumatization and help promote rehabilitation, it is critical to create a trauma-informed practice mandate within law enforcement and the criminal justice system to better serve individuals arrested for prostitution. According to the Substance Abuse and Mental Health Services Administration’s National Center for Trauma-Informed Care, this form of care is an approach that recognizes the presence of trauma symptoms in clients and acknowledges the role that trauma has played in their lives. Trauma-informed practice, which is a strengths-based approach, is a treatment framework that responds appropriately to the effects of all types of trauma and examines how services are delivered and the ways in which service systems are organized. Incorporating trauma-informed practice into current law enforcement systems will help clients feel safe and empowered, and doing so will prevent re-traumatization. Trauma-informed practices enable sex workers to begin to regain control of their lives and validate their experiences.”).

<sup>125</sup> *Findings and Recommendations*, MASSACHUSETTS INTERAGENCY HUMAN TRAFFICKING POLICY TASK FORCE 1, 9 (Aug. 19, 2013), <https://www.mass.gov/files/documents/2018/05/01/ihttf-findings.pdf>.

This law established the inter-agency Task Force, chaired by the Attorney General, which in 2013 published their Findings and Recommendations for effectively addressing human trafficking in the State.<sup>126</sup> The Task Force's Demand Reduction Subcommittee recommended that demand reduction be integrated in all anti-trafficking initiatives<sup>127</sup> by way of a Statewide Technical Assistance Unit and a buyer education program. The Technical Assistance Unit would assist with the technical expertise required to operate reverse sting operations.<sup>128</sup> The buyer education program would include survivor participation, legal consequences, health risks, impact on families and community, and the realities of the sex industry.<sup>129</sup> Additionally, the program would provide rehabilitative services to buyers<sup>130</sup> and ensure that they were accessible to everyone.<sup>131</sup> Massachusetts has continued to support these efforts and most recently was awarded funds to create an Anti-Trafficking Task Force dedicated to implementing these practices.<sup>132</sup>

Others in Massachusetts have been supportive of these policy initiatives. Governor Charlie Baker stated, "We must aggressively target the drivers of human trafficking to ensure this horrific practice is eliminated in the Commonwealth and our society as a whole."<sup>133</sup> Additionally, Boston Mayor Marty Walsh gave the green light to the CEASE Network, which funded the operations of the Boston Police

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 32 ("Targeting demand is a critical element to a comprehensive approach to combating sex trafficking and should target each element of the economic model: supporting those who have been exploited, and holding the perpetrators - including the buyers - accountable.").

<sup>128</sup> *Id.* at 34 ("Regarding technical expertise required to operate a reverse sting operation, a training team of law enforcement who have experience with the method could provide training to organizations across the state. Specifically to online stings, the Attorney General's Office has a cyber-crime lab that has provided extensive training to law enforcement across the nation on how to use the internet as an effective law enforcement and investigative tool.").

<sup>129</sup> *Id.* at 35.

<sup>130</sup> *Id.* ("Recommended guidelines should also provide physical and mental health resources to be offered to attendees.").

<sup>131</sup> *Findings and Recommendations*, *supra* note 125 ("The program should be offered in other languages or translators should be made available.").

<sup>132</sup> Press Release, Office of Attorney General Maura Healey, AG Healey Office Awarded \$1.7 Million in Federal Grants to Create Anti-Human Trafficking Task Force (Oct. 8, 2019), <https://www.mass.gov/news/ag-healeys-office-awarded-17-million-in-federal-grants-to-create-anti-human-trafficking-task>.

<sup>133</sup> Ziba Cranmer, *Massachusetts leaders take a stand against sex buying*, DEMAND ABOLITION (Apr. 20, 2016), <https://www.demandabolition.org/news/massachusetts-leaders-take-a-stand-against-sex-buying/>.

Department, specifically the Facebook targeting tactics.<sup>134</sup> However, Mayor Walsh noted that the City would emphasize public education and awareness in addition to providing for increased accountability measures.<sup>135</sup>

Additionally, leading anti-trafficking non-profits, such as Polaris and Thorn, are supportive of demand reduction tactics that work to deter sex buyers. Thorn uses their knowledge of technology to lead approaches in ending sex trafficking by “disrupting [the buyers’] sense of anonymity and encouraging them to seek help.”<sup>136</sup> It is important to have the support of organizations such as Thorn, with celebrity founder and spokesperson Ashton Kutcher, providing important funding and awareness for the impact that demand reduction tactics, which can have to suppress commercial sexual exploitation.<sup>137</sup>

While the State of Massachusetts and others tend to support the end to demand tactics that their police engage in, not everyone agrees. “Privacy advocates, such as Lee Rowland, the senior staff attorney with the American Civil Liberties Union’s Speech, Privacy and Technology Project, say shaming johns just leads to further misery.”<sup>138</sup> Rowland also notes that there is very little evidence as to whether using shaming as an end demand tactics works as a deterrent.<sup>139</sup> However, we must be careful to not allow the idea of “deterrence” to justify over-broad criminal penalties and policies.<sup>140</sup>

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<sup>134</sup> Hannah Sparks, *Walsh Launches Initiative to Fight Sex Trafficking*, BOSTON.COM (Mar. 7, 2015), <https://www.boston.com/news/local-news/2015/03/07/walsh-launches-initiative-to-fight-sex-trafficking> (“In Boston, we will not tolerate this illegal and exploitative industry that deprives vulnerable people of their basic human rights and funds a predatory business often tied to gangs and organized crime.”).

<sup>135</sup> *Id.*

<sup>136</sup> *Detering behavior online*, THORN, <https://www.thorn.org/deterrence-prevent-child-sexual-abuse-imagery/> (last visited Feb. 8, 2020).

<sup>137</sup> *Id.*

<sup>138</sup> Cole Kazdin, *Does Shaming Men Who Buy Sex Stop Prostitution?*, VICE (Jun. 28, 2016, 1:05 PM), [https://www.vice.com/en\\_us/article/qkg7q3/does-shaming-men-who-buy-sex-stop-prostitution](https://www.vice.com/en_us/article/qkg7q3/does-shaming-men-who-buy-sex-stop-prostitution) (“People in our system are still innocent until proven guilty in a court of law. By definition, people who are simply arrested or who have a run-in with law enforcement are legally innocent, and for police departments to take upon themselves the decision to publicize information about people who have not been convicted, they are appointing themselves judge, jury and executioner in the court of public opinion and I think we should be troubled by that.”).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

*B. Moral and Ethical Issues*

Critics argue that reverse prostitution stings are entrapment, which is a defense to criminal charges.<sup>141</sup> In some jurisdictions, it may be the case, depending on how the sting is conducted.<sup>142</sup> Entrapment is a complete defense to a criminal charge based on the theory that "Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."<sup>143</sup> Arguing that the stings are entrapment would require that there exist no predisposition to engage in the conduct, and that it was solely based on the account of the officers' inducement that the crime was committed.<sup>144</sup> It is difficult to say when an officer induces someone into committing a crime or when they simply provide an opportunity for it to occur.<sup>145</sup> It seems the entrapment defense creates a high bar, but regardless of whether reverse prostitution stings are legally entrapment because they present the opportunity to engage in illegal activity is concerning, as the purpose is to punish someone through the use of the police's coercive force.<sup>146</sup>

Additionally, reverse prostitution stings seem to cross some moral and ethical lines that society has set in place. A report for the Department of Justice's Office of Community Oriented Policing Services notes that there is a distinction between police actions and

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<sup>141</sup> Andrew Carlon, *Entrapment, Punishment, and the Sadistic State*, 93 VA. L. REV. 1081, 1123 (2007) ("Even a successful entrapment defense does not in any way diminish the defendant's criminal *mens rea* or blameworthiness or guilt. It simply estops the State from succeeding with the prosecution.").

<sup>142</sup> Michael Gorr, *Entrapment, Due Process and the Perils of "Pro-Active" Law Enforcement*, 13 PUB. AFF. Q. 1 2 (1999) ("The U.S. Supreme Court, for example, has consistently argued, in a line of cases beginning with *Sorrells v. United States* (1932), that whether or not the inducement of criminal behavior by the police is legitimate is primarily a matter of the defendant's willingness to engage in such behavior. . . Other jurisdictions have adopted an intuitively more equitable standard which places the burden on the defendant to show improper government conduct but would then leave it up to the state to establish the presence of predisposition.").

<sup>143</sup> *Jacobson v. United States*, 503 U.S. 540, 548 (1992).

<sup>144</sup> *Mathews v. United States*, 485 U.S. 58, 63 (1988).

<sup>145</sup> Carlon, *supra* note 141, at 1089 ("Since the evil in entrapment is the *manufacture* of crime by the police, the most relevant inquiry is whether the police did in fact manufacture a crime in the instant case, or simply presented an opportunity for a crime that was going to happen, one way or another, such that it could best be detected.").

<sup>146</sup> *Id.* at 1121.



policies that are legal and those that are legitimate.<sup>147</sup> Legal police actions are those that are approved by legislation, while legitimate actions are those that society would generally deem to be necessary in order to effectuate a safer society. While sting operations may be legal *per se*, they may not be fair and equitable or effectuate crime control. The Report notes that police should strive for legitimacy in their profession, rather than just legality, as it is “a key factor in determining both public cooperation with the police and a citizen’s willingness to obey the law.”<sup>148</sup> Given the tense relations between communities and the police today, it would be wise for law enforcement to take into consideration what image they are portraying by conducting sting operations, whether or not they are entrapment.

It has also been noted that using shaming techniques as a punishment can be “riddled with negative effects.”<sup>149</sup> One such effect is that it hurts the shamed buyer too much, and that he will resort to criminal behavior, thus reinforcing “the very traits for which he has been condemned by society at large.”<sup>150</sup> Shaming also seems to do more for our society by acknowledging what is morally reprehensible, rather than

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<sup>147</sup> Zoe Mentel, *Racial Reconciliation, Truth-Telling, and Police Legitimacy*, U.S. DEP’T OF JUSTICE 15 (Aug. 2012), <https://cops.usdoj.gov/RIC/Publications/cops-p241-pub.pdf> (“One shortcoming within police departments, is that they fail to recognize the differences between police actions and policies that are legal from those that are legitimate. Legitimacy is not necessarily the same as legality; police behavior can be lawful without being legitimate. The kind of things that people key in on when concluding that police conduct is legitimate often is not captured by the law. Think about the Fourth Amendment, for example, which specifies that, in order for a police officer to stop someone, he or she has to have a reasonable suspicion that the person they are stopping has committed a crime or is about to commit a crime. If there is no reasonable suspicion, then a police officer is not legally authorized to stop that person. Now, there’s nothing [in] the Fourth Amendment that says an officer should introduce himself or herself when [stopping] the person that he [or she] reasonably suspects. There is nothing in the Fourth Amendment that specifies that the officer give that person an opportunity to say what he or she is doing out there on the corner or on the median of a street in Harlem. There’s nothing [in] the Fourth Amendment that requires a police officer to treat the person stopped with dignity, respect, and politeness. But it turns out that those are the things that people pay a lot of attention to when concluding whether a particular order or request by a police officer is legitimate. And that’s true whether or not the cop’s action in the first place was lawful.”).

<sup>148</sup> *Id.* at 16.

<sup>149</sup> Cazzie Reyes, *FAQ: Does John Shaming Work?*, END SLAVERY NOW (Mar. 14, 2016), <https://www.endslaverynow.org/blog/articles/faq-does-john-shaming-work>.

<sup>150</sup> Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHICAGO L. REV. 591, 644 (1996).

for the buyers.<sup>151</sup> Shaming tends to satisfy our need for human suffering at the expense of actually seeing a change in the offenders' behavior.<sup>152</sup>

Others have noted that johns deserve the shaming they receive, as they believe they are "entitled by virtue of [their] gender and money to have sex on demand"<sup>153</sup> and this attitude needs to be remedied. Since many johns appear to be smart and rational buyers who will only purchase sex if the physical and psychological benefits outweigh the financial costs, legal risks and social stigma, they can reasonably be expected to understand the role the ramifications that shaming will play in their lives, and many will make different choices.<sup>154</sup>

#### IV. ANALYSIS OF TACTICS

Interestingly, the term "reverse sting" itself is mired in gender inequities.<sup>155</sup> Based on a "traditional sting" where a plain clothes policeman elicits offers of commercial sex from prostituted persons,<sup>156</sup> the "reverse sting," where an undercover, often female, agrees to an exchange of the sexual acts with a buyer, is seen as an atypical tactic.<sup>157</sup> This elicits an important point about the role of female police officers; the tactics in which they are most involved—the reverse stings—are not seen as the typical or default option. Additionally, the reverse sting requires them to dehumanize themselves and embody the role of the sex worker.<sup>158</sup>

After outlining the consequences of increasing an individual's contact with the criminal justice system, as compared to society's

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Of Vice and Men*, *supra* note 49.

<sup>154</sup> *Id.* ("Patronizing prostitutes can threaten and destroy the johns' own freedom, health, social standing, and perhaps even their lives – once the johns understand the sobering ramifications of their purchase decision, many will choose to make different choices.").

<sup>155</sup> A NATIONAL OVERVIEW, *supra* note 5, at 37.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Women Police Officers*, *supra* note 24, at 72. ("Reverse police sting operations have created a distinctive role for female officers. Some commentators speculate that a male police officer who puts himself in the position of a 'john' or a female officer who acts as a prostitute in sting operations is bound to feel degraded and humiliated (Kenner, 1998; Sagatun, 1988). Similarly, Nolan (2001) argues that women police officers who act as decoy prostitutes are objectified and marginalised by the sexist propensities of male colleagues and further notes that decoy stings regulate women officers to a position of powerlessness and subjugation.").

interest in reducing the purchase of sex, it is unclear what policymakers should prioritize. As seen in Massachusetts,<sup>159</sup> it will be up to the states and localities to decide what values are most important to each of them. There is the possibility, however, to both prioritize the reduction of commercial sex buying, while also taking into consideration the effects and collateral consequences of involvement with the criminal justice system. It is especially important to center this option within the larger national discussion regarding police violence and the funding of police departments. Providing police with larger budgets to enact reverse sting operations will further engrain the police within society and will in effect provide a stamp of approval for these covert undercover operations.

It is therefore preferable to have an education model<sup>160</sup> that focuses on “john schools,” yet reserves the anonymity of johns. With an education model, there will be no need for reverse prostitution stings with a possibility to shame johns and possibly put female officers in harm’s way, both physically and mentally. Additionally, while many of the tactics that the End Demand Model promotes involve the police, that need not be the case.

While the effectiveness of john schools is debatable, they have definitely been a factor in the decline of street prostitution over the years<sup>161</sup> and are therefore worth the investment.<sup>162</sup> Education has been identified by researchers as a key need in the effort to combat demand,<sup>163</sup> and john schools are an exceptional way to provide for such a need. There are several approaches that have been taken, from long to short term models, which all have the common goal of breaking down barriers between men, allowing them to discuss what healthy relationships look like, how to cope with sexual addiction, and how to

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<sup>159</sup> Press Release, Office of Attorney General Maura Healey, *supra* note 132.

<sup>160</sup> Stephen P. Garvey, *Can Shaming Punishments Educate*, 65 UNIV. CHI. L. REV. 733, 740 (1998).

<sup>161</sup> A NATIONAL OVERVIEW, *supra* note 5, at 47.

<sup>162</sup> As previously noted, sex buyers come from all backgrounds as well as all socioeconomic statuses. Due to this, john schools should be funded by the government as well as private grants and should not be funded through fines from sex buyers.

<sup>163</sup> See A NATIONAL OVERVIEW, *supra* note 5, at 80. It is noted that education is needed beyond the scope of the johns; those who are able to mobilize and combat sexual exploitation by implementing interventions such as the general public, teachers, police, businesses, the military, public health professionals, and policymakers all need to become aware of ways to reduce demand and the harms of prostitution. Additionally, john schools can only do so much; curricula must be developed to educate school-age boys on sexual exploitation and sex trafficking.

manage their anger.<sup>164</sup> A program in Salt Lake City has an excellent curriculum which consists of a ten week session covering the following: male socialization, female socialization, sexual messages, prostitute panel, communication, anger, healthy intimate relationships, HIV and Sexually Transmitted Infection Prevention, and Personal Power.<sup>165</sup> Providing for a live, multiple-session counseling model in a group format seems to be the best option.<sup>166</sup> This is preferable to a “video john school” where a DVD is presented to arrested johns as they are being processed.<sup>167</sup>

There are other ways to effectuate an education model. Take the online reverse prostitution stings or the “chatbots”<sup>168</sup> which involve sophisticated artificial technology and hours of police time; the goal of deterring buyers can still be achieved without any possible exposure to the criminal justice system and without the misuse of police resources. Tom Perez of Portland, Oregon founded the EPIK Project to do just that.<sup>169</sup> Perez touts a peer-to-peer education model as an alternative to the john school model. The EPIK Project, or Every Man Protecting Innocent Kids, connects male civilian volunteers with buyers, aiming to teach them about the realities and the harms of prostitution.<sup>170</sup> The Project works with local police by conducting a form of reverse sting operations, baiting prospective buyers to respond to online ads via phone call or text message.<sup>171</sup> However, instead of pretending to be a prostitute, a volunteer from the EPIK Project will respond and have a conversation; the conversations range from sidestepping aggression from combative buyers to myth-busting common misconceptions.<sup>172</sup>

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<sup>164</sup> John Schools, *supra* note 86 (“Qualliotine promotes self-examination and reflection so buyers can process their own emotions and motives—a tactic that has led to permanent behavior change in many other fields. And according to his students, it’s working. In post-course exit surveys, every single attendee has reported a change in how he thinks about commercial sex, including a deeper understanding that prostituted women are victims of exploitation, and a reversal of the previously held belief that men have a right to buy sex.”).

<sup>165</sup> A NATIONAL OVERVIEW, *supra* note 5, at 71.

<sup>166</sup> *Id.* at 23.

<sup>167</sup> *Id.*

<sup>168</sup> See Police (Mis)Conduct, *supra* Part I Section C.

<sup>169</sup> Shane Downing, *How to Scare a Predator: Neutering the Sex Industry One Buyer at a Time*, CHRONICLE OF SOCIAL CHANGE (Feb. 12, 2018), <https://chronicleofsocialchange.org/analysis/how-to-catch-a-predator-neutering-the-sex-industry/29426>.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

Online reverse prostitution stings run by the police should also be abandoned. Targeting johns or potential johns online is a severe overreach of police discretion and a misuse of grants and funding. While not all activity online is private and sites such as Backpage should not promote the sale of commercial sex, harassing and targeting potential buyers based on their age and gender should not be done within the intimacy of their social media pages.<sup>173</sup>

In considering the legitimacy of reverse prostitution stings as compared to their legality, the costs of implementing them does not add up. There is considerable room for police abuse and overreach, and the stings are not a necessary tool to mitigate sex buying. While not necessarily legally entrapment, reverse prostitution stings present the question of the entrapment defense. It appears that the goal is to make arrests and achieve convictions, rather than to change behavior and rehabilitate wrongdoers.<sup>174</sup> The problem presented by this suggestion, however, is that if we don't involve the police, there may be no participants in the john school programs. While some may self-refer, and ideally that would be the goal, the harms that prostitution and sex buying cause are not widely known to encourage buyers to enter these programs without some form of intervention. Unlike other programs such as Alcoholics Anonymous or Gamblers Anonymous, where there are clear and present harms to the individual, they are incentivized to stop the harm; such is not the case with john schools. With the john schools, there are two issues, namely (1) the harms are external rather than internal to the buyer; and (2) the buyer may not know about the crime even having harmful effects on victims unless there is some law enforcement intervention. There may need to be further discussion to address these issues that may best be suited for further research.

Now, more than ever, it is important to consider the implementation of demand reduction efforts. The end demand movement has been incredibly successful, with the passage of FOSTA-SESTA,<sup>175</sup> and all

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<sup>173</sup> See Police (Mis)Conduct, *supra* Part I Section C.

<sup>174</sup> Andrew Carlon, *supra* note 141, at 1081.

<sup>175</sup> See Aja Romano, *A new law intended to curb sex trafficking threatens the future of the internet as we know it*, VOX, <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom> (last updated July 2, 2018, 1:08 PM). The House bill known as FOSTA, the Fight Online Sex Trafficking Act, and the Senate bill, SESTA, the Stop Enabling Sex Traffickers Act, were signed into law by President Trump in 2018. FOSTA-SESTA created an exception to Section 230 of the 1996 Communications Decency Act, which would hold website publishers responsible for prostitution ads on their platforms. This bill was deemed very controversial before and after it was signed, as sex workers argued it would make them *less safe*, as without an online system, they would be forced onto

eyes are on the movement to show the efficacy of deterring sex buyers to disrupt the commercial sex market. While this is important, it is also relevant to note the sheer influence of the criminal justice system in our society.<sup>176</sup> Given the opportunity to replace arrests and convictions with opportunities for education and rehabilitation, efforts should be taken to do so. Not only will reducing individual contact with the criminal justice system prevent buyers from experiencing collateral consequences, but it will promote a shared ideology that sex buying is harmful and is not a victimless crime, which is the intent of the demand reduction model.

## V. CONCLUSION

By focusing on education-based approaches, rather than shaming tactics such as reverse sting operations, the purpose of demand reduction will be fulfilled, while also respecting that buyers can be rehabilitated without the need for any collateral consequences to affect their lives. While the demand reduction method introduced by the Nordic Model has achieved many successes, the shaming techniques that are promoted by the model are generally misguided. Unless techniques aimed at demand reduction are implemented with the intent of rehabilitation rather than retribution, the method will fail, as it no longer fits within its supposed radical feminist viewpoint, as it engages in a significant abuse of government and police power and provides dangerous entry points into the criminal justice system.

This Note provides many avenues for further study on the topic of reverse prostitution stings that may help guide future legislative and policy decisions. Much of the analysis here was done with research regarding sting operations generally or with respect to drug stings. As such, it would be helpful to have further insight into reverse prostitution stings more specifically. Research into the role of women police officers as decoys is also lacking,<sup>177</sup> especially given the expense of guaranteeing the safety of female police officers as decoys. It would

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the streets to find clients. Additionally, opponents of the bill argue that it conflates consensual sex work with nonconsensual sex work.

<sup>176</sup> Sugie, *supra* note 77 (“It is well known that the U.S. incarceration rate increased dramatically over the past four decades, with 2.2 million individuals currently incarcerated in jails and prisons. . . . Recent estimates suggest that 12.2 million individuals are arrested annually. By age 23, between 30 and 41 percent of individuals have been arrested, many of whom are never convicted of a crime. Although many arrests do not result in conviction, the prevalence of conviction among youth people is also quite common.”).

<sup>177</sup> Women Police Officers, *supra* note 24, at 72.

be helpful to see the health and safety impacts as well, as the impact that serving in these roles possibly has on the officers' careers. Additionally, this Note provides many opportunities for research into how the demand reduction model can work in an anti-carceral environment; is it possible to have a fully educational or a retributive justice-based model for sex abuse crimes? The research is lacking on the impact of these models, but the period after the implementation of FOSTA-SESTA should provide a comparable period to the time before Backpage was shut down. Current research also conflates the end demand model with shaming; there is room for research on models that are based solely on education and rehabilitation.

There is also more room for research into the different variations of the john school model. Currently, research only tracks whether or not the program is structured as a diversion or sentencing model, but it would be helpful to further inform policy and legislative decisions to study the success of each program based on the curriculum, length of time it runs, and whether or not the johns have interaction with survivors of sex trafficking.

There are many routes available to law enforcement, non-profits, and governments that want to continue with the end demand model. The continued development of and focus on education-based programs will further the goals of demand reduction.