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RELIEF FROM COLLATERAL CONSEQUENCES OF PROSTITUTION-RELATED CONVICTIONS: A BLUEPRINT

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I. Purpose

This memorandum provides a blueprint for countries that have implemented (or are moving towards implementing) legal schemes legalizing or decriminalizing the sale of sex¹ and are searching for a mechanism to provide relief from collateral consequences for those with prostitution-related convictions.

II. Background of Research

My research began with the recent case brought forward by Fiona Broadfoot and others (hereinafter, *Broadfoot Case*), in which the Queen’s Bench Division of the High Court of England and Wales ruled that the “multiple convictions rule” is incompatible with Article 8 of the European Convention of Human Rights (“ECHR”).² While the High Court ruled that the current scheme regarding collateral consequences of prostitution-related convictions is unlawful, it recognized that “it is not for the court to devise a scheme” to replace it.³ Rather, “it should be and is possible for Parliament to devise a scheme which more fairly balances the public interest with the rights of an individual applicant for employment in relevant areas of

¹ Hereinafter, countries that have decriminalized or legalized the sale of sex through decriminalization schemes, legalization schemes, or adopting the Nordic Model, will be referred to as “no longer criminalizing the sale of sex.” See “III. Legal Schemes Addressing Prostitution.”

² *R (QSA) v. Sec’y of St. for the Home Dept.* [2018] EWHC (Admin) 407, [2018] WLR(D) 135, http://www.iclr.co.uk/document/2018000401/transcriptXml_2018000401_2018072312104923/html; Convention for the Protection of Human Rights and Fundamental Freedoms, Y.B. Eur. Conv. on H.R. art. 8, https://www.echr.coe.int/Documents/Convention_ENG.pdf; see also Eur. Conv. on H.R., *Guide on Article 8 of the European Convention on Human Rights* (Aug. 31, 2018), available at: https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf.

³ *Broadfoot Case* at ¶ 62.

work.”⁴ Given the High Court’s lack of authority to devise an alternate scheme, the next step towards alleviating collateral consequences in the United Kingdom would be for Parliament to enact a statutory remedy.

What statutory schemes alleviate collateral consequences from prostitution-related convictions exist? The easy answer seemed to be providing either expungement-type remedies on an individual basis, or better yet, blanket amnesty for prostituted-people previously convicted of prostitution-related offenses. I began researching the statutory schemes of countries that no longer criminalize the sale of sex. After identifying twenty-one countries and their respective laws, I have yet to find specific language relating to those who have been previously convicted of prostitution-related offenses and how their legal status will change – or remain unchanged – as the new legal schemes are implemented. While some jurisdictions have legal schemes in place that enable *individual* prostituted-persons to apply for expungement-type remedies, no legal mechanism provides blanket amnesty for those previously convicted of prostitution-related offenses. I then began searching for any legislative language that, when carefully written, would support this ideal mechanism. Unfortunately, many issues arose, complicating the problem. Variations existed everywhere – from the criminality of selling sex, the type of government framework, the keeping of the criminal record, the collateral consequence at issue, and the actual procedure for the expungement-type remedy. To make sense of these dissimilarities, I began categorizing each issue, hoping to provide some guidance to those attempting to implement an expungement-type mechanism in their jurisdiction. This blueprint is the product of this research.

III. Purpose of Blueprint

This blueprint explores the substantive, procedural, and strategic elements to consider when constructing an expungement-type remedy scheme that seeks to provide relief from the collateral consequences hindering those with prostitution-related convictions in jurisdictions that have (or are moving towards) no longer criminalizing the sale of sex. While this toolkit provides a general approach for the benefit of various jurisdictions, it will also be comprehensive in order to provide the reader with critical insight to the complexity of the issue. This research supports the work of Justice for Women,⁵ Nia,⁶ Stand Against Sexual Exploitation,⁷ and Villanova Law’s Institute to Address Commercial Sexual Exploitation.⁸

IV. Legal Schemes Addressing Prostitution

For this research, it is important to distinguish between: (1) the *legalization* of prostitution – legalizes the sale of sex, legalizes the purchase of sex, and creates a legal scheme to regulate the commercial sex industry; (2) the *decriminalization* of prostitution – decriminalizes the sale of sex, decriminalizes the purchase of sex, and does not impose a legal scheme to regulate the commercial sex industry; and, (3) the *Nordic Model* approach – decriminalizes the sale of sex, criminalizes the purchase of sex, and provides resources to exit the commercial sex industry.⁹

⁴ *Broadfoot Case* at ¶ 62. A narrow interpretation of the High Court suggests that the ruling is limited only to employment discrimination in the caring professions.

⁵ JUSTICE FOR WOMEN, <https://www.justiceforwomen.org.uk/> (last visited Feb. 28, 2019).

⁶ NIA, <http://www.niaendingviolence.org.uk/> (last visited Feb. 28, 2019).

⁷ STAND AGAINST SEXUAL EXPLOITATION, <http://www.sase.org.uk/> (last visited Feb. 28, 2019).

⁸ THE VILLANOVA LAW INSTITUTE TO ADDRESS COMMERCIAL SEXUAL EXPLOITATION, <https://cseinstitute.org/> (last visited Feb. 28, 2019).

⁹ See *Does Legalizing Prostitution Protect Women and Girls?* EQUALITY NOW: A JUST WORLD FOR WOMEN AND GIRLS (May 23, 2018), https://assets.nationbuilder.com/equalitynow/pages/219/attachments/original/1527091037/Legalizing_Prostitution_Fact_Sheet.pdf?1527091037; Admin, *Prostitution Police and Law: What are the Options*,

My research has identified and categorized countries and their respective laws that have legalized the sale of sex, decriminalized the sale of sex, or adopted the Nordic Model. Legalization countries include: (1) Senegal (1969);¹⁰ (2) Victoria, Australia (1994);¹¹ (3) Queensland, Australia (1999);¹² (4) The Netherlands (2000);¹³ (5) Germany (2002);¹⁴ and, (6) Nevada, U.S.¹⁵ Decriminalization countries include: (7) New South Wales, Australia (1995);¹⁶ and, (8) New Zealand (2003).¹⁷ Countries that have adopted the Nordic Model include: (9) Sweden (1999);¹⁸ (10) South Korea (2004);¹⁹ (11) Norway (2009);²⁰ (12) Iceland (2009);²¹ (13) Northern Ireland (2012);²² (14) Canada (2014);²³ (15) France (2016);²⁴ (16) the Republic of

NORDIC MODEL NOW! (July 4, 2017), <https://nordicmodelnow.org/2017/07/04/prostitution-policy-and-law-what-are-the-options/>.

¹⁰ Loi no. 66-20 of Feb. 1, 1966, Journal Officiel de la République du Sénégal [Official Gazette of Senegal], Feb. 5, 1966, government website available at: <http://www.justice.gouv.sn/>.

¹¹ *Sex Worker Act 1994* (Vict.) pt I-VII (Austl.), available at: [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/998B3217B6D8FFEFCA257810001351B3/\\$FILE/94-102aa070%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/998B3217B6D8FFEFCA257810001351B3/$FILE/94-102aa070%20authorised.pdf).

¹² *Prostitution Act 1999* (Queensl.) pt 1 dv 4 (Austl.), unofficial English translation available at: <https://www.legislation.qld.gov.au/view/pdf/2017-06-30/act-1999-073>.

¹³ Artikel 1:18 lid 273f SR (OUD), unofficial English translation available at: http://www.ejtn.eu/PageFiles/6533/2014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf.

¹⁴ STRAFGESETZBUCH [STOP] [PENAL CODE], §§ 180, 180a, 181a, 182, 183, 183a, 184e, 184f (Ger.), English translation available at: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

¹⁵ According to Nevada state law, “it is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” NEV. REV. STAT. ANN. § 201.345(1) (LexisNexis 2017). Note that brothels are not permitted in a county whose population is greater than 700,000 is legal in Nevada counties. NEV. REV. STAT. ANN. § 244.345(1)(b) (LexisNexis 2017); CHURCHILL CTY., NEV., CODE tit. 5, ch. 5.20; ELKO CTY., NEV., CODE tit. 7, ch. 1.6; Esmeralda Cty., Nev., Code Ordinance 154; HUMBOLDT CTY., NEV., CODE tit. 5, ch. 5.08; LANDER CTY., NEV., CODE tit. 5, ch. 5.16; LYON CTY., NEV., CODE tit. 5, ch. 3; MINERAL CTY., NEV., CODE Tit. 5, ch. 5; NYE CTY., NEV., CODE tit. 9, ch. 9.20; STOREY CTY., NEV., CODE tit. 5, ch. 5.16; and, WHITE PINE CTY., NEV., CODE tit. 10, ch. 10.36.

¹⁶ *Summary Offences Act 1988, Restricted Premises Act 1943* (N.S.W.) pt I-IV (Austl.), available at: <https://legislation.nsw.gov.au/#/view/act/1943/6/full>.

¹⁷ Prostitution Reform Act 2003, s 1-51 (N.Z.), available at: <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>.

¹⁸ 6 ch. 1-15 § BROTTSBALKEN [BRB] [PENAL CODE] (Svensk Författnings-sampling [SFS] 2018:1005) (Swed.), unofficial English translation available at: <https://www.government.se/4a95e7/contentassets/602a1b5a8d65426496402d99e19325d5/chapter-6-of-the-swedish-penal-code-unofficial-translation-20181005>.

¹⁹ The two laws are referred together as “성매매방지법,” which can be translated to “Anti-Prostitution Legislation.” Ji Hye Kim, *Korea’s New Prostitution Policy: Overcoming Challenges to Effectuate the Legislature’s Intent to Protect Prostitutes from Abuse*, 16 PACIFIC RIM L. & POL’Y J. 493 (2007), available at: <https://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/597/16PacRimLPolyJ493.pdf?sequence=1>.

²⁰ Lov om endringer i straffeloven 20. Mai 2005 [Act on amendments to the Criminal Code, 20 May 2005 No. 28 mv.] nr. 26, § 316 (Nor.), English translation available at: https://www.regjeringen.no/globalassets/upload/jd/vedlegg/norsk-engelsk_lovvedtak.pdf, and https://lovdata.no/dokument/NLE/lov/2005-05-20-28/KAPITTEL_2-11#%C2%A7section314.

²¹ Iceland General Penal Code [Sexual Offences] Ch. XXII. Act 40/1992, Art. 1-15, unofficial English translation available at: <https://wipolex.wipo.int/en/text/190914>.

²² Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2, available at: <http://www.legislation.gov.uk/ni/2015/2/contents/enacted>.

²³ Protection of Communities and Exploited Persons Act, S.C. 2014, c 25 (Can.), available at: https://laws-lois.justice.gc.ca/PDF/2014_25.pdf.

²⁴ Loi 2016-444 du 13 avril 2016 visant à renforcer la lutte contre le système prostitutionnel et à accompagner les personnes prostituées [Law no. 2016-444 of Apr. 13, 2016 to Strengthen the Fight Against the Prostitution System and to Support Prostituted Persons], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF

Ireland (2017),²⁵ and, (17) Israel (2019).²⁶ Note that (18) Spain (2019)²⁷ has current Nordic Model legislation pending. Additionally, I have identified countries that have attempted to implement elements of the Nordic Model, including: (19) Finland (2006, 2015);²⁸ (20) Italy (2015);²⁹ and, (21) Luxembourg (2016, 2018).³⁰ From these twenty-one countries, no legislation referenced how to relieve prior convictions of the now decriminalized/legalized sexual act. Thus, prostituted persons continue to face detrimental collateral consequences stemming from their prior prostitution-related convictions, even though the sexual act is no longer criminalized in the jurisdiction.

V. Forms of Government

After identifying which legal scheme is operating in the jurisdiction, I looked to the form of government that is controlling these schemes. While it seems obvious to understand which form of government is functioning in the jurisdiction, it is imperative in the process of understanding how to create the ideal legal mechanism for the specific jurisdiction. Forms of government by structure include: (1) unitary state; (2) federation; (3) confederation; and, (4) anarchy. Forms of government by power source include: (1)

FRANCE], Aug. 14, 2016 (Fr.), French version available at: <https://www.legifrance.gouv.fr/eli/loi/2016/4/13/FDFX1331971L/jo/texte>.

²⁵ Criminal Law (Sexual Offences) Act 2017 (Act. No. 2/2017) (Ir.), available at: <http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/pdf>.

²⁶ The bill was proposed in June 2018 by Shuli Moalem-Refaeli (Bayit Yehudi Knesset Member), Zehava Gal-On (Meretz Chairwoman), and Aliza Lavie (Yesh Atid Knesset Member). Lahav Harkov, *Hiring Prostitutes in Israel Heads Toward Criminal Offense*, JERUSALEM POST (July 16, 2018), <https://www.jpost.com/Israel-News/Hiring-prostitutes-in-Israel-heads-toward-criminal-offense-499862>. The bill passed in late December 2018. Lahav Harkov, *Israel Becomes 10th Country to Criminalize Hiring Prostitutes*, JERUSALEM POST (Dec. 31, 2018), <https://www.jpost.com/Breaking-News/Knesset-passes-law-criminalizing-the-hiring-of-prostitutes-575918>. The new law will take in effect in 18 months from date of passage. Lahav Harkov, *Israel to become 10th Country to Criminalize Hiring Prostitutes*, JERUSALEM POST (Dec. 25, 2018), <https://www.jpost.com/Israel-News/Israel-to-become-10th-country-to-criminalize-hiring-prostitutes-575393>.

²⁷ Unable to retrieve bill language from government website. SENADO DE ESPAÑA, <http://www.senado.es/web/index.html> (last visited Mar. 6, 2019); see Isabel Valdés & Pilar Álvarez, *Spain Tries 'Swedish Model' to Address Prostitution's Legal Limbo*, EL PAÍS (Susana Urra trans., Dec. 7, 2018), https://elpais.com/elpais/2018/12/07/inenglish/1544171107_204329.html.

²⁸ 384/2015 Seksuaalisen aupan uhrin väärinkäyttö [Abuse of a Victim of Sex Trade, Ch. 20 § 8 of the Finnish Penal Code], unofficial English translation available at: <https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>. For more information on human trafficking in Finland, see Minna Viuhko & Anniia Jokien, *Human Trafficking and Organised Crime: Trafficking for Sexual Exploitation and Organises Procuring in Finland*, EUROPEAN INSTITUTE FOR CRIME PREVENTION AND CONTROL, 87-92 (2009), available at: <https://issafrica.org/acpst/uploads/Human%20trafficking%20and%20organised%20crime.pdf>.

²⁹ The Spilabotte Bill attempted to overturn the Merlin Law. “Spilabotte Bill,” *Regolamentazione del fenomeno della prostituzione [Regulation of the phenomenon of prostitution] Disegno di Legge 11 dicembre 2013, n. 1201*, Italian version available at: <http://www.senato.it/service/PDF/PDFServer/DF/299276.pdf>; “Merlin Law,” *Abolizione della regolamentazione della prostituzione e lotta contro lo sfruttamento della prostituzione altrui [Abolition of the regulation of prostitution and the fight against the exploitation of others' prostitution] Legge 20 settembre 1958, n. 75*, in G.U. Sept. 21, 1958, n. 55 (It.)

³⁰ Plan d'action national Prostitution [National Action Plan for Prostitution] (2016) LE GOURVERNMENT DU GRAND-DUCHÉ DE LUXEMBOURG, French translation available at: <http://mega.public.lu/fr/publications/publications-ministere/2016/plan-daction-national-prostitution/PAN-Prostitution.pdf>; Renforçant la lutte contre l'exploitation de la prostitution, le proxénétisme et la traite des êtres humains à des fins sexuelles et modifiant [Law enforcing the fight against the exploitation of prostitution, procuring and the trafficking in human beings for sexual purposes amendments] Loi du 28 février 2018 (Lux.), French translation available at: [https://chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=3BD90EE73D408DA5A868731697670D538E9F92FFA4E311BCDF249A950A8E34F91EDEE2708D623CAD43BDB6BD1E240317\\$3BE39D5A559B4416F4B91CABA89751A0](https://chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=3BD90EE73D408DA5A868731697670D538E9F92FFA4E311BCDF249A950A8E34F91EDEE2708D623CAD43BDB6BD1E240317$3BE39D5A559B4416F4B91CABA89751A0).

democracy; (2) oligarchy; and, (3) autocracy. Forms of government by ideology include: (1) monarchy, and (2) republic.³¹ When identifying the form of government, determine the power relations between different levels and parts of the structure.

VI. Addressing Collateral Consequences

“Collateral consequences” are legal and regulatory restrictions that limit people with various opportunities post-conviction.³² People who have convictions on their criminal records are “subject to a range of legal penalty and disabilities in addition to the sentence imposed by the court.”³³ These consequences deprive a person from the tools necessary to reestablish themselves long after their sentence has been served.³⁴ While the *Broadfoot Case* concerned discrimination in employment, it is important to note that collateral consequences of convictions impact people in a myriad of ways. Typical categories of rights and privileges that are impacted by collateral consequences flowing from criminal convictions include: (1) citizenship, (2) military activity, (3) restriction on freedom/movement, (4) social benefits and welfare, (5) political participation and voting, (6) occupation and employment, and (7) property, contracts, and inheritance.³⁵ While some jurisdictions provide inconsistent relief avenues, people who have been convicted face the inevitable “invisible punishment” and “internal exile,” a nearly impossible path to regaining a respectable place in society.³⁶

VII. The Criminal Record

Understanding the history and keeping of criminal records is essential to creating a mechanism that extinguishes collateral consequences resulting from a person’s criminal history. Criminal records have always been used to tarnish the social standing of an individual in a community.³⁷ In order to fashion effective legislative remedies granting expungement-type remedies for those previously convicted of

³¹ Wikipedia, *List of Forms of Government*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_forms_of_government.

³² NATIONAL INVENTORY OF THE COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.csgjusticecenter.org/> (last visited Oct. 8, 2018); see Sarah B. Berson, *Beyond the Sentence: Understanding Collateral Consequences*, 272 NAT’L INST. OF JUST. J. 24 (2013), available at <https://www.ncjrs.gov/pdffiles1/nij/241927.pdf>.

³³ Margaret Colgate Love, RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE 6 (2006).

³⁴ Margaret Colgate Love, *Starting over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705 (2003), available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1880&context=ulj>.

³⁵ See generally, Mirjan R. Damaska, *Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study*, 59 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 347 (1968), available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5530&context=jclc>; Marjan R. Damaska, *Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study (Part 2)*, 59 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 542 (1968), available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5551&context=jclc>; Nora V. Demleitner, *Preventing Internal Exile: The Need For Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153, 156-158 (1999), available at: <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1161&context=wlufac>.

³⁶ Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in INVISIBLE PUNISHMENT: THE SOCIAL COST OF MASS IMPRISONMENT 16 (Meda Chesney-Lind & Marc Mauer eds., 2002), available at: http://webarchive.urban.org/UploadedPDF/1000557_invisible_punishment.pdf; Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153 (1999), available at: <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1161&context=wlufac>.

³⁷ Marjan R. Damaska, *Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study (Part 2)*, 59 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 542, at 545 (1968), available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5551&context=jclc>.

prostitution-related offenses, it is necessary to understand the purpose and methods of keeping of criminal records in the relevant jurisdictions at issue.³⁸ Issues to consider surrounding criminal records include: (1) the creation of the record, (2) the type of record, (3) the agencies that keep the information, (4) where the information kept, (5) who has access to the record, (6) how is the record distributed, (7) and, finally, how to amend/seal/or expunge the record.

VIII. Types of Remedies

While I have yet to find a blanket expungement-type remedy, there are several jurisdictions in the United States where victims of human trafficking have the opportunity, on an *individual* basis, to seek expungement or vacatur of their previous convictions.³⁹ Jurisdictions scattered across the U.S. have adopted different types expungement practices.⁴⁰ Using the United States as an example, I have identified five types of remedies that may be appropriate in the creation of an expungement-type remedy mechanism, including: (1) pardon;⁴¹ (2) clemency;⁴² (3) amnesty;⁴³ (4) expungement;⁴⁴ (4) sealing of records;⁴⁵ and, (5) vacatur.⁴⁶

IX. The Political Climate

Because politics penetrate every country's legal scheme, it is imperative to have a solid understanding of the jurisdiction's political climate. Advocates for expungement-type remedies should consider: (1) Who has the power to make legislation? (2) What influence/corruption is part of policy-making? (3) How influential is the media in policy-making process? (4) Which political movements are present? (5) Are there prostituted-persons willing to testify? (6) What is the history of the commercial sex trade in that area? (7) Have there been other decriminalization movements? (8) What non-profits and non-governmental

³⁸ Marjan R. Damaska, *Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study* (Part 2), 59 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 542, at 545 (1968), available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=5551&context=jclc>.

³⁹ Janelle Cammenga, *Rauner Signs Bill Removing Barriers for Human Trafficking Survivors*, ILLINOIS POLICY, Sept. 4, 2018, <https://www.illinoispolicy.org/rauner-signs-bill-removing-barriers-for-human-trafficking-survivors/>; H.B. 5494, 100th Gen. Assemb., Reg. Sess. (Ill. 2018), available at: <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=5494&GAID=14&SessionID=91&LegID=111434>; Aaron Ball, *The Battle Against Human Trafficking: Florida's New Expungement Law is a Step in the Right Direction*, NOVA L. REV. 122 (2013), available at <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1017&context=nlr>; Carrie N. Baker, *The Influence of International Human Trafficking on United States Prostitution Laws: The Ease of Expungement Laws*, 62 SYRACUSE L. REV. 171 (2012), available at: <http://lawreview.syr.edu/wp-content/uploads/2013/03/K-Baker.pdf>.

⁴⁰ For a state-by-state analysis, see Margaret Colgate Love, *RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE* (2006).

⁴¹ "Act or an instance of officially nullifying punishment or other legal consequences of a crime... The President has the sole power to issue pardons for federal offenses, and state governors have the power to issue pardons for state crimes." Pardon, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw.

⁴² "Mercy or leniency, power of the President or a governor to pardon a criminal or commute a criminal sentence." Clemency, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw.

⁴³ "A pardon extended by the government to a group or class of persons, usually for a political offense; the act of a sovereign power officially forgiving certain classes of persons who are subject to trial but have not been convicted." Amnesty, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw.

⁴⁴ "The removal of a conviction from a person's criminal record." Expungement, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw.

⁴⁵ "The act or practice of officially preventing access to particular records, in the absence of a court order." Sealing of Records, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw.

⁴⁶ "The act of annulling or setting aside." Vacatur, *Black's Law Dictionary* (10th ed. 2014), available at Westlaw. For example statutory vacatur language, see 18 Pa.C.S. §§ 3019 (2014).

organizations are already working in the commercial sex trade arena? These broad questions are merely a starting point to frame potential legislation within a jurisdiction.

X. Decriminalization Case Studies

In order to get a broader understanding of the issues of decriminalization and expungement-type remedies, I researched the law in jurisdictions where historically criminalized conduct has recently been decriminalized, in hopes of identifying case studies where decriminalization was accompanied by expungement-type remedies for those previously convicted of the (previously) criminalized conduct. For example, in jurisdictions that have recently decriminalized homosexual sodomy and recreational marijuana usage – have these jurisdictions implemented a process for granting amnesty or other expungement-type remedies to those who labor under previous convictions for what is now fully legal conduct? The answer is mixed. In the England and Wales (and Northern Ireland), those convicted of homosexual acts which are no longer illegal are entitled to have their convictions “disregarded” or pardoned upon application to the Home Office.⁴⁷

With respect to recreational marijuana, however, the answer remains “no.”⁴⁸ Canada has recently discussed a pardoning mechanism in response to the country’s recent legalization of recreational marijuana.⁴⁹ If the scheme is implemented, Canadians who were previously convicted of mere possession of small amounts of marijuana (which is now fully legal) will qualify for the pardon. However, the individual’s criminal record will not be entirely erased, but will rather “be kept separate from other criminal records.”⁵⁰ Furthermore, the person will still have to check the “convicted of a criminal offense” option on a housing or employment application.⁵¹ As such, even the proposed Canadian scheme seems to offer little relief to those with previous convictions for what is now regarded as fully legal conduct.

XI. Implementation

Finally, it is critical to consider how this expungement-type remedy will be implemented in the jurisdiction. If the proposed legislation successfully passes through the appropriate governing bodies and becomes law, how will the process be enforced? There are two separate actions the expungement-type remedy seeks to control – the amending of criminal record, and the stopping of discrimination based on the person’s criminal record. Advocates should identify each (1) individual and department that may come into contact with the prostituted-person’s criminal record, and (2) have the power to make a determination based on that record. By planning this path of control, the expungement-type remedy can include a comprehensive set of actions to cease discrimination.

⁴⁷ Protection of Freedoms Act 2012 (establishing “disregarding” scheme); Policing and Crime Act 2017, §164-172 (establishing the pardoning scheme); *Alan Turing Law’: Thousands of Gay Men to be Pardoned*, BBC NEWS, Oct. 20, 2016, <https://www.bbc.com/news/uk-37711518>.

⁴⁸ Douglas A. Berman, *Leveraging Marijuana Reform to Enhance Expungement Practices*, 30 FED. SENT’G REP. (2018); Margaret Colgate Love, *Starting over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 FORDHAM URB. L.J. 1705 (2003), available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1880&context=ulj>.

⁴⁹ Rob Gillies & Gene Johnson, *Canada to Pardon Pot Possession As It Legalizes Marijuana*, ASSOCIATED PRESS, Oct. 16, 2018, <https://apnews.com/3a31d93c09074bd69721328725befb3c>.

⁵⁰ Newsbeat, *Canabis in Canada: pardoning People for Possession Isn’t Enough*, BBC (Oct. 20, 2018), <https://www.bbc.com/news/newsbeat-45913521>.

⁵¹ CANNABIS AMNESTY, <https://www.cannabisamnesty.ca/> (last visited Nov. 7, 2018).

XII. Summary of Steps

Below is a simple summary of elements to consider when constructing an expungement-type remedy mechanism providing relief from the collateral consequences hindering those with prostitution-related convictions in countries where the sale of sex has been decriminalized or in countries looking to adopt decriminalization provisions. Note that every jurisdiction is different. This toolkit was created as a guide for various jurisdictions to thoroughly consider various elements of an expungement-type mechanism.

(1) What is the jurisdiction's legal framework addressing prostitution?

- Legalization
 - Legalizes the sale of sex;
 - Legalizes the purchase of sex; and,
 - Creates a legal scheme to regulate the commercial sex industry.
- Decriminalization
 - Decriminalizes the sale of sex
 - Decriminalizes the purchase of sex
 - Does not impose a legal scheme to regulate the commercial sex industry.
- Nordic Model
 - Decriminalizes the sale of sex;
 - Criminalizes the purchase of sex; and,
 - Provides resources to exit the commercial sex industry.
- Criminalization
 - Criminalizes the sale of sex; and
 - Criminalizes the purchase of sex.
 - Usually a disparity in sentencing patterns between prostituted-persons and sex buyers.

(2) In what form of government does the jurisdiction operate?

- Structure
 - Unitary State
 - Federation
 - Confederation
 - Anarchy
- Power
 - Democracy
 - Oligarchy
 - Autocracy
- Ideology
 - Monarchy
 - Republic

(3) What types of collateral consequences from prostitution-related convictions are at issue?

- Citizenship
- Military activity
- Restriction on freedom/movement
- Social benefits and welfare
- Political participating and voting

- Occupation and employment
- Property, contracts, and inheritance

(4) How does the jurisdiction approach criminal records?

- How is the record created?
- What kind of record?
- Which agencies keep the information?
- Where the information kept?
- Who has access to the record?
- How is the record distributed?
- How to amend/seal/or expunge the record?
- Who has authority to change the record?
- Are there any time limits for a record to expire?

(5) What types of expungement-type remedies are already used in the jurisdiction, if any?

- Pardon
- Clemency
- Amnesty
- Expungement
- Sealing of Records
- Vacatur
- Are there any legal fees or court costs attached to this mechanism?
- Are there any time limits to apply for these expungement-type remedies?

(6) What is the jurisdiction's political climate toward the commercial sex industry?

- Sex Workers Rights movement
- Abolitionist movement
- Conservative or liberal environments
- Influence of the media
- Corruption of government
- The Survivor Voice⁵²
- History of the commercial sex trade
- Previous decriminalization movements
- Non-profits and non-governmental organizations

(7) How will this legal mechanism be implemented?

- What governmental entity has the power to create laws (statute, regulation, etc.) that will require record-keepers to perform the expungement-type remedy to the criminal record?

⁵² Shea M. Rhodes, *WorldWE launch in Washington, D.C. Garner National Media Attention and Highlights Survivor Voices*, THE VILLANOVA LAW INSTITUTE TO ADDRESS COMMERCIAL SEXUAL EXPLOITATION (OCT. 18, 2016), <https://cseinstitute.org/worldwe-launch-washington-d-c-garner-national-media-attention-highlights-survivor-voices/>.

- At what level of government should this legal remedy be pursued (national/federal, state/local, territorial/provincial, etc.)
- Is it appropriate to incorporate a cause of action provision against parties who continue to discriminate against prostituted-persons' due to their criminal records even after they have been expunged, etc.?
- Identify specific individuals and departments that may come into contact with the prostituted-person's criminal record.
- Identify those who have the power to make a determination based on that record.

X. Final Thoughts

The Nordic Model successfully targets the demand that drives commercial sexual exploitation.⁵³ However, there is an unintentional blind spot in the legal framework that inadvertently disregards the experiences of those previously criminalized for their exploitation and continues to hinder survivors from reclaiming their livelihood. This neglect reflects society's unfortunate attitude towards prostituted-person – an afterthought. If the goal of decriminalizing the sale of sex is to rehabilitate those victimized in the commercial sex industry, the jurisdiction must include a carefully-crafted legal scheme that creates a systematic expungement-type remedy for those with prostitution-related convictions. Only then can we, as policymakers, further assist in the fight to dismantle injustices in our society.

⁵³ Admin, *What is the Nordic Model?*, NORDIC MODEL NOW! (July 1, 2007), <https://nordicmodelnow.org/what-is-the-nordic-model/>.