

GLOBAL TOOLKIT

ERADICATING CRIMINAL RECORDS

**How to promote reform and
good practice in relation to
historic prostitution
convictions**

**CREATING MORE CHOICE,
FREEDOM, AND RESPECT**

**FINDING CONTEXT
SPECIFIC SOLUTIONS**

Stand Against Sexual Exploitation, UK

The CSE Institute, Villanova University,
Philadelphia, US

2019



Contents

Who and what is this toolkit for

p3

Context

p4

Solutions

p6

Purpose of the toolkit

p7

Legal Schemes Addressing Prostitution

p8

Types of Remedies

p10

Key Considerations: a map for change

p11

What Else is Needed?

p13

Final Thoughts

p15

THE TOOLKIT

p16

Resources

p22

Appendix 1: The UK Legal Case

p24

Appendix 2: Legal Provisions in Each Country

p28

Who and what is this toolkit for?

The toolkit explores and offers mechanisms to provide relief from the consequences of holding a criminal conviction for those with historic prostitution-related convictions.

This is relevant to countries that either currently or historically have criminalised the sale of sex. In these countries there are women who hold criminal records related to prostitution. These women suffer “collateral” (negative) consequences as a result.

This briefing is particularly relevant to countries where the law has changed and the sale of sex is now legalised or decriminalised but historic criminal records still affect people’s lives.

This toolkit can be used regardless of whether the purchase of sex is criminalised, although the impact of particular mechanisms may vary depending on the legal position towards prostitution as a whole and the country’s ethos towards these issues.

Context

In England and Wales, a recent case was brought forward by Fiona Broadfoot and others ('the Broadfoot Case') to address the issue of holding historic prostitution offences that, because of current laws relating to the disclosure of criminal records, are still being forced to disclose their record to would-be employers (and others, such as for volunteering positions). Their evidence set out the human rights abuses that had led to their convictions and the continued detrimental impact that these convictions had on their life. Not only is there the issue of stigma and violation of privacy, but it also means that they are unnecessarily disadvantaged and far less likely to be offered opportunities that they are suitable for.

"Collateral consequences" are actually a deliberate consequence of holding a criminal record, creating consequences for people who have been convicted of a crime beyond the length of their sentence and effectively reducing their standing in society. However, they often deprive a person of the tools necessary to reestablish themselves long after their sentence has been served. While the Broadfoot Case concerned discrimination in employment, the collateral consequences of convictions impact people in a myriad of ways. Some jurisdictions do offer limited forms of relief, however, in general it creates a climate of "invisible punishment" that presents a barrier to reintegrating into society.

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.

The key reason for pursuing the Broadfoot case was to establish that these consequences should not be imposed in relation to prostitution-related convictions. The case is ongoing because of the appeals process. However, as it stands, the Court ruled that the current scheme regarding collateral consequences of prostitution-related convictions is unlawful and violates human rights laws. In the court's opinion, they stressed that these convictions had little to no relevance to safeguarding or other concerns with respect to employment and other opportunities.

The court also recognized that it is not for the court to devise a scheme to replace the unfair system and that it is up to Parliament to devise a scheme that balances the public interest with the rights of the individual. Therefore, the next step would be for the UK to develop such a scheme.

The outcome of this case calls for an exploration of the options that may be available to the UK in relation to addressing these collateral consequences through law, policy, and practice. However, it also paves the way for other countries to consider related issues in their own jurisdiction and to create solutions that can be adopted in other contexts.

The case sheds a light on the devastating impact that prostitution-related convictions has on the lives of women, even years after they have moved on and recovered from their experiences, and highlights the need for particular provisions that address this not just in the UK but globally.

Solutions

WHAT SCHEMES MAY ALLEVIATE THE IMPACT OF HOLDING PROSTITUTION-RELATED CONVICTIONS?

The two main approaches that effectively extinguish these collateral consequences are:

1. expungement-type remedies on an individual basis
2. blanket amnesty for people previously convicted of prostitution-related offenses

The second option - blanket amnesty - is more desirable because it removes the burden of a) people having to be aware of this form of relief, b) finding out how to access this relief, and c) applying for the relief themselves or supported by a third party. Of twenty-one countries who previously but no longer criminalise the sale of sex, none have blanket expungement, although some have legal schemes in place that enable individuals to apply for expungement-type remedies. Overall, there is rarely any language that addresses how the legal status of those with previous convictions will change – or remain unchanged – as the new legal schemes are implemented. This represents a blind spot on the part of legislators who are not considering the ongoing and unfair impact of criminalisation.

In the context of prostitution-related offences, society's attitude towards the sale of sex has largely changed. There is increasing acknowledgement of the exploitation and violence against women that occurs, as well as the economic inequalities that leave women with little choice. Many officials are recognizing that law and policy must not only address the future but also the continued impact of holding criminal records and the historic unfair penalising of women (as well as many disadvantaged men and also exploited children who were criminalised upon reaching the legal age of adulthood).

Purpose of the Toolkit

This toolkit addresses the legislative language that would support the ideal mechanism for expungement as well as other recommendations for policy and practice that would address the impact of holding a criminal record.

The issue depends on a wide variation of factors depending on the jurisdiction: the criminality of the sale and purchase of sex, the type of government framework, the manner of keeping the criminal record, the collateral consequence at issue, and the actual procedure for the expungement-type remedy. The toolkit seeks to make sense of and navigate these variations where possible so that the ideas can be adopted in different contexts. The form of government in the jurisdiction will impact on the possibilities relating to law and policy and this should be taken into account when forming strategies.

This research supports the work of Justice for Women, Nia, Stand Against Sexual Exploitation, and Villanova Law's Institute to Address Commercial Sexual Exploitation.

Legal Schemes Addressing Prostitution

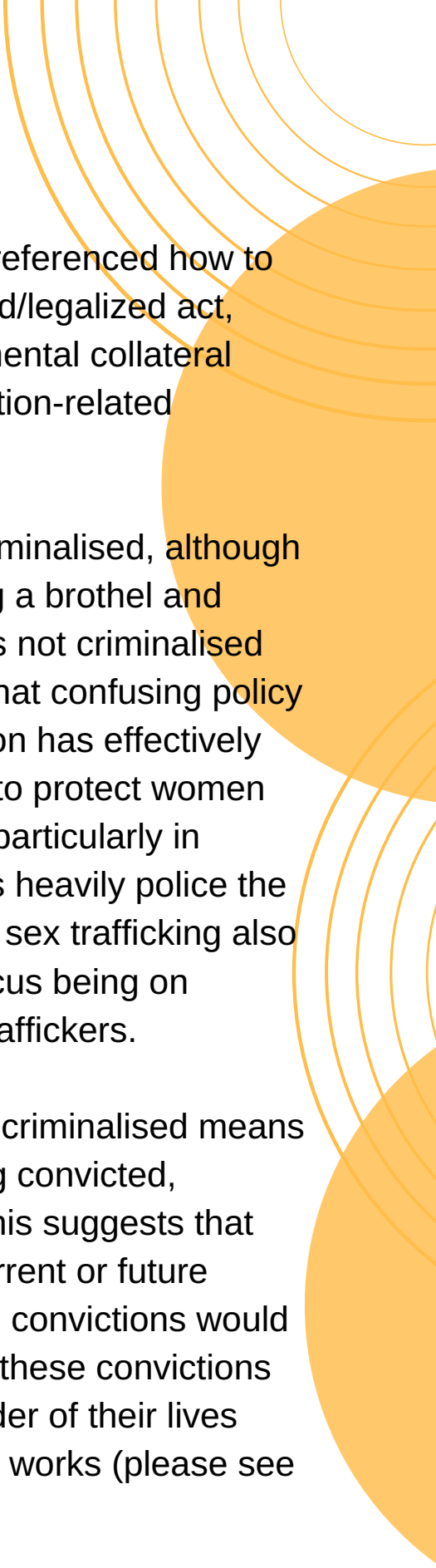
There are three distinct systems that do not criminalise the sale of sex. These are:

(1) the legalisation of prostitution – legalises the sale of sex, legalizes the purchase of sex, and creates a legal scheme to regulate the commercial sex industry

(2) the decriminalisation of prostitution – decriminalises the sale of sex, decriminalises the purchase of sex, and does not impose a legal scheme to regulate the commercial sex industry

(3) the Nordic Model approach – decriminalises the sale of sex, criminalises the purchase of sex, and provides resources to exit the commercial sex industry

- Legalization countries include: (1) Senegal (1969); (2) Victoria, Australia (1994); (3) Queensland, Australia (1999); (4) The Netherlands (2000); (5) Germany (2002); and, (6) Nevada, U.S.
- Decriminalization countries include: (7) New South Wales, Australia (1995); and, (8) New Zealand (2003).
- Countries that have adopted the Nordic Model include: (9) Sweden (1999); (10) South Korea (2004); (11) Norway (2009); (12) Iceland (2009); (13) Northern Ireland (2012); (14) Canada (2014); (15) France (2016), (16) the Republic of Ireland (2017) and, (17) Israel (2019). Note that (18) Spain (2019) has current Nordic Model legislation pending.
- Countries that have implemented elements of the Nordic Model include: (19) Finland (2006, 2015); (20) Italy (2015); and, (21) Luxembourg (2016, 2018).



From these twenty-one countries, no legislation referenced how to relieve prior convictions of the now decriminalized/legalized act, meaning that people may continue to face detrimental collateral consequences stemming from their prior prostitution-related convictions.

In the UK, certain elements of prostitution are criminalised, although the sale of sex itself is not – for example, running a brothel and soliciting are criminalised. The purchase of sex is not criminalised although kerb crawling is. This creates a somewhat confusing policy environment. In some areas of the UK, prostitution has effectively been decriminalised through policing that seeks to protect women and avoids penalising them. On the other hand, particularly in relation to visible (street) prostitution, other areas heavily police the issue as a public nuisance. Strategies relating to sex trafficking also impact on how prostitution is policed, with the focus being on identifying victims and attempting to prosecute traffickers.

The fact that prostitution-related activity remains criminalised means that women in the UK are still vulnerable to being convicted, resulting in a detrimental impact on their lives. This suggests that reform is needed. However, regardless of the current or future status of criminalisation, the problem of historical convictions would remain. The issue in hand is that people holding these convictions are being forced to disclose them for the remainder of their lives because of the way the law relating to disclosure works (please see Appendix 1 for a full legal explanation).

Types of Remedies

Although no blanket expungement-type remedy has been identified, 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. Jurisdictions scattered across the U.S. have adopted different expungement practices.

In addition to expungement, there is the possibility of sealing records, which prevents access to them, pardons/clemency, which effectively means the crime is forgiven, and amnesty, which means certain groups are protected from consequences of a crime (usually for political reasons).

Despite the lack of examples relating to prostitution-related offences, some lessons can be drawn from other examples of decriminalization in the case of homosexuality and marijuana usage:

- In 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
- Canada has recently discussed a pardoning mechanism in response to the country’s recent legalization of recreational marijuana. However, the individual’s criminal record will not be entirely erased, but will rather “be kept separate from other criminal records.” and the person will still have to check the “convicted of a criminal offense” option on a housing or employment application. In effect, this offers little relief even though the conduct is now regarded as fully legal

Key considerations: a map for change

THE CRIMINAL RECORD

In order to fashion effective legislative remedies, it is necessary to understand the purpose and methods of keeping of criminal records in the relevant jurisdictions at issue. The key factors that must be addressed are:

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. How to amend/seal/or expunge the record.

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 women who have been involved in prostitution 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 organizations are already working in the commercial sex trade arena?

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:

1. Each individual and department that may come into contact with a person’s criminal record, and
2. Who has the power to make a determination based on that record

Mapping out these key individuals and departments amounts to a ‘path of control’, which can be used to develop a comprehensive set of actions to influence decision-making and put expungement mechanisms into place.

What else is needed?

Although expungement is the fastest way to eradicate the collateral consequences, there are a range of activities that would compliment such a scheme. These would also help to mitigate against the impact of holding a criminal record whilst waiting for legal changes to take effect.

The additional mechanisms developed would depend on the particular issues within each jurisdiction, taking into consideration the above listed areas of consideration: citizenship; military activity; restriction on freedom/movement; social benefits and welfare; political participating and voting; occupation and employment; property, contracts, and inheritance.

A number of key areas to be addressed can be identified:

MECHANISMS OF EMPLOYMENT SUPPORT SPECIFICALLY TARGETED AT THIS GROUP

Many women who have left prostitution face the barrier of being unable to find employment. Holding a criminal record is one element of this, although other factors are also relevant, such as gaps in their CV and lack of self-confidence. Generic employment support is often ill-equipped to support women because of the range of needs that may come into play, not least the need for anonymity in relation to their past experiences. There is a huge gap in provision for this group in the UK and across other countries, making it an urgent area for consideration within the third sector, with great potential for innovation.

AWARENESS RAISING AMONGST ORGANISATIONS SEEKING DISCLOSURE

In some instances, ignorance about the realities of circumstances surrounding prostitution-related convictions (as well as ignorance of the resourceful and skills offered by survivors) can mean that where organisations have discretion to disregard such offences they do not. One example is the fact that many schools are very concerned about safeguarding and so reject women for roles such as being a governor or volunteer in a school. The third sector has a role to play in advocating and educating organisations on the realities so that they feel confident in disregarding these offences.

ADVOCACY GROUPS AND THIRD SECTOR ORGANISATIONS

The impact of holding a criminal record in relation to prostitution can be wide reaching and varied, therefore, it is imperative that organisations have resources dedicated to understanding and monitoring this issue so that they are able to respond to need and develop innovative solutions.

COMPREHENSIVE EXITING SUPPORT

The impact of holding a criminal record is one of a range of barriers that people face in relation to moving on after prostitution. The totality of people's experiences should be considered and holistic responses developed so that moving on becomes easier. As this is achieved, the impact of holding a criminal record will lessen because other factors will support and sustain women. This holistic approach, however, should not be seen as a substitute for eradicating this particular barrier.

SPECIALIST MENTAL HEALTH SUPPORT

The psychological strain of holding a criminal record has been described in detail by survivors. Support must be in place to not only address the practical barriers but also these emotional barriers. It has been shown that emotional recovery is an essential step in ensuring that people are able to move forward and thrive.

Final Thoughts

The Nordic Model successfully targets the demand that drives commercial sexual exploitation.

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 reflects society's unfortunate attitude towards people involved in prostitution – that they are 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, practitioners, and researchers, further assist in the fight to dismantle injustices in our society.

The Toolkit

BELOW IS A SIMPLE SUMMARY OF ELEMENTS TO CONSIDER WHEN CONSTRUCTING AN EXPUNGEMENT-TYPE REMEDY

(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 Voice
- 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?
- 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.

- 
- **(8) What can be achieved outside of expungement to mitigate against the collateral consequences?**
 - What can be achieved in relation to:
 - Citizenship
 - Military activity
 - Restriction on freedom/movement
 - Social benefits and welfare
 - Political participating and voting
 - Occupation and employment
 - Property, contracts, and inheritance
 - Specifically, consider the feasibility of implementing or strengthening the following:
 - Mechanisms of employment support specifically targeted at this group
 - Awareness raising amongst organisations seeking disclosure
 - Advocacy groups and third sector organisations addressing the issues
 - Comprehensive exiting support that helps women to navigate a range of barriers
 - Specialist mental health support

Resources

Organisations

- Justice for Women <https://www.justiceforwomen.org.uk/>
- NIA <http://www.niaendingviolence.org.uk/>
- Stand Against Sexual Exploitation <http://www.sase.org.uk/>
- The Villanova Law Institute to Address Commercial Sexual Exploitation <https://cseinstitute.org/>

Law

- Black's Law Dictionary (10th ed. 2014), available at Westlaw
- 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
- Eur. Conv. on H.R., Guide on Article 8 of the European Convention on Human Rights (Aug. 31, 2018)
https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf
- H.B. 5494 100th Gen. Assemb., Reg. Sess. (Ill. 2018). <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=5494&GAID=14&SessionID=91&LegID=111434>
- UK Protection of Freedoms Act 2012 (establishing “disregarding” scheme)
- UK Policing and Crime Act 2017, 164-172 (establishing pardoning scheme)
- 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
- Cannabis Amnesty. <https://www.cannabisamnesty.ca/>

Literature

- Ball, A. 2013. The Battle Against Human Trafficking: Florida’s New Expungement Law is a Step in the Right Direction, Nova L.122. <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1017&context=nlr>
- Baker, Carrie N. 2012. The Influence of International Human Trafficking on United States Prostitution Laws: The Ease of Expungement Laws, 62 Syracuse L. Rev. 171. <http://lawreview.syr.edu/wp-content/uploads/2013/03/K-Baker.pdf>.

- BBC. 2016. "Alan Turing Law: Thousands of Gay Men to be Pardoned". BBC News, Oct. 20, 2016. <https://www.bbc.com/news/uk-37711518>.
- BBC. 2018. Cannabis in Canada: pardoning People for Possession Isn't Enough, Newsbeat Oct. 20, 2018. <https://www.bbc.com/news/newsbeat-45913521>
- Berson, Sarah B. 2013. *Beyond the Sentence: Understanding Collateral Consequences*, 272 Nat'l. Inst. Of Just. J. 24. <https://www.ncjrs.gov/pdffiles1/nij/241927.pdf>.
- Berman, Douglas A. 2018. "Leveraging Marijuana Reform to Enhance Expungement Practices." *Federal Sentencing Reporter*, Vol. 30.
- Equality Now. 2018. *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
- Gillies, Rob and Gene Johnson. 2018. *Canada to Pardon Pot Possession As It Legalizes Marijuana*. Associated Press. Oct. 16, 2018. <https://apnews.com/3a31d93c09074bd69721328725befb3c>
- Nordic Model Now. *Prostitution, Police and Law: What are the Options* (July 4, 2017), <https://nordicmodelnow.org/2017/07/04/prostitution-policy-and-law-what-are-the-options/>.
- Love, Margaret, C. 2006. *Relief from the Collateral Consequences of a Criminal Conviction: A state-by-state Resource Guide* 6.
- Love, Margaret, C. 2003. *Starting over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 *Fordham Urb., L.J.* 1705. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1880&context=ulj>.
- Matthews, Roger. 2008. *Prostitution, politics & policy*. Routledge-Cavendish.
- Matthews, R. and Johnson, H. (2016) *Addressing Prostitution: The Nordic Model and Beyond*. In: Matthews R (ed) *What is to be Done About Crime and Punishment*. London: Palgrave Macmillan.
- Shea, M. 2016. *WorldWE launch in Washington, D.C. Garner national Media Attention and Highlights Survivor Voices*. The Villanova Law Institute to Address Commercial Sexual Exploitation. Oct 18th 2016. <https://cseinstitute.org/worldwe-launch-washington-d-c-garners-national-media-attention-highlights-survivor-voices/>
- Travis, J. *Invisible Punishment: An Instrument of Social Exclusion*, in 'Invisible Punishment: the Social Cost of Mass Imprisonment 15 (Meda Chesney-Lind & Marc Mauer eds., 2002). http://webarchive.urban.org/UploadedPDF/1000557_invisible_punishment.pdf

Appendix 1: The UK Legal Case

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”).^[1] The “multiple convictions rule” is part of a legal scheme of collateral consequences that attach to some criminal convictions in England and Wales, according to which, some applicants for employment are required to disclose their convictions to their potential future employers.

As the High Court explained, the duty of applicants to disclose previous criminal convictions or suffer discrimination is, as a matter of practicality, long-established:

At common law, an employer could ask an applicant for employment whether he or she had been convicted of a criminal offence. The applicant could choose not to answer such a question, but would no doubt be at risk of an adverse inference being drawn from that failure to answer. If the applicant chose to answer the question, he or she was under a duty to answer it honestly, and therefore to disclose any convictions.^[2]

The Rehabilitation of Offenders Act 1974 sought to ameliorate some of the harsh collateral consequences of conviction when it came to employment, by creating a scheme according to which employers were no longer entitled to discriminate against (some) applicants with previous convictions. Specifically, the Act exempted applicants from any duty to disclose “spent” conviction(s), and prohibited employers from discriminating against applicants who failed to disclose their “spent” conviction(s). So, the key issue became: which convictions are considered “spent”? Without recounting all of the legislative maneuvers in this short memo, it will suffice to say the following:

- The conviction that impacts prostituted-people most often is soliciting;^[3]
- A single conviction for soliciting can, with the passage of time, be considered a “spent”;
- However, multiple convictions for soliciting cannot be considered “spent”; ^[4]
- Thus, upon request by potential future employers, applicants with multiple convictions for soliciting must disclose these convictions, and employers are entitled to discriminate against these applicants on the basis of these convictions

As noted above, the High Court ruled that “the multiple conviction rule operates in the indiscriminate, and hence arbitrary, manner” – and is thus unlawful. The key rationales articulated by the High Court are summarized herein as follows:

1. Requiring applicants to disclose solicitation convictions when applying for employment in caring professions (and permitting discrimination by employers based on these convictions) is “arbitrary in the sense that [these laws] bear no, or very little, relationship to the aim of safeguarding children and vulnerable adults.”[5]
2. Requiring applicants to disclose solicitation convictions when applying for employment in caring professions “without reference to their personal circumstances or their present situation... would exclude some applicants whose ability to empathise with and assist those for whom they seek to care has in fact been enhanced by their experience of having graduated from a school of very hard knocks.”[6]
3. Requiring applicants to disclose solicitation convictions when applying for employment in caring professions “without reference to their personal circumstances or their present situation... would... [make] it harder for [such] persons...to obtain employment, [and thus might cause] some to remain in prostitution when they wish to leave it.” [7]
4. The “mere fact of disclosure of past convictions for soliciting carries with it embarrassment and stigma which cannot be undone, whatever the outcome of the job application. Even if the job application is successful, the person concerned will be working in the knowledge that one or more persons in her employer’s organisation is aware of highly personal details about her which have been no impediment to her employment.”[8]

While the High Court did find the multiple convictions rule unlawful, it recognized that “it is not for the court to devise a scheme” to replace it.[9] Rather, as the Court observed, “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 work.”

In sum, while the High Court in the Broadfoot Case ruled that the current scheme regarding collateral consequences of conviction for prostitution-related offenses is unlawful, the ruling is narrow and the remedy Court provided no remedy. The ruling is narrow insofar as it concerns only those collateral consequences that involve discrimination in employment. (Indeed, one plausible reading suggests that the ruling is limited only to employment discrimination in the caring professions.) Given the Court’s lack of authority to devise an alternate scheme, the next step toward alleviating these collateral consequences in the United Kingdom would be for Parliament to enact a statutory remedy.

References

[1] *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. [2] *Broadfoot Case* at ¶ 18. [3] *Section 1 of the Street Offences Act 1959.*

[4] This is the practical impact of the “multiple convictions rule,” as enacted in Section 2A(3)(c) of the “Exceptions” Order. Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 No. 1198, <http://www.legislation.gov.uk/uksi/2013/1198/contents/made>. See also, The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendments) (England and Wales) Order 2013, <https://www.legislation.gov.uk/ukdsi/2013/9780111537749/article/3>

[5] Broadfoot Case at ¶ 58.

[6] Broadfoot Case at ¶ 59.

[7] Broadfoot Case at ¶ 59. The High Court further noted the overbreadth of the multiple convictions rule, insofar as it “require[es] disclosure in circumstances where no reasonable employer could possibly regard the previous convictions collectively, or the previous conviction(s) for soliciting in particular, as having any relevance at all to the assessment of present risk in the employment concerned,” and undermines subsections 1(2A) and 1(2B) of the Sexual Offences Act 1959, which aims to “support[] those who wish to leave prostitution.” Broadfoot Case at ¶ 60.

[8] Broadfoot Case at ¶ 61.

[9] Broadfoot Case at ¶ 62.

Appendix 2: Legislative Provisions in each Country

- 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/>.
- Sex Worker Act 1994 (Vict.) pt I-VII (Austl.), available at: [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LT_Object_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/998B3217B6D8FFEFCA257810001351B3/\\$FILE/94-102aa070%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LT_Object_Store/LTObjSt5.nsf/DDE300B846EED9C7CA257616000A3571/998B3217B6D8FFEFCA257810001351B3/$FILE/94-102aa070%20authorised.pdf).
- 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.Artikel 1:18 lid 273f Sr \(oud\)](https://www.legislation.qld.gov.au/view/pdf/2017-06-30/act-1999-073.Artikel%201:18%20lid%20273f%20Sr%20(oud)), unofficial English translation available at: http://www.ejtn.eu/PageFiles/65332014%20seminars/Omsenie/WetboekvanStrafrecht_ENG_PV.pdf.
- 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.
- 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)
- 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>.

- [Prostitution Reform Act 2003, s 1-51 (N.Z.), available at: <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>.
- 6 ch. 1-15 § Brottsbalken [Brb] [Penal Code](Svensk Författningssamling [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>.
- 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>.
- 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.
- 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>. [1] 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>.
- 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.

- 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 France], Aug. 14, 2016 (Fr.), French version available at: <https://www.legifrance.gouv.fr/eli/loi/2016/4/13/FDFX1331971L/jo/texte>.
- Criminal Law (Sexual Offences) Act 2017 (Act. No. 2/2017) (Ir.), available at: <http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/pdf>
- 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>.
- Unable to retrieve bill language from government website. Senado De España, <http://www.senado.es/web/index.html> (last visited Mar. 6, 2019); seelsabel 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.