

86638

Oregon Legislature Research

CR-Sent
3-16-83

RESEARCH MONOGRAPH

PROSTITUTION: ALTERNATIVES TO PROHIBITION



legislative research
s-420 state capitol/salem, oregon 97310
phone (503) 378-8871

Prepared by:

Fred Leonhardt
Research Analyst

November 25, 1981

81:284

PROSTITUTION: ALTERNATIVES TO PROHIBITION

81:284

Legislative Research was asked to provide background information on legalized female prostitution in cities, states, and countries. This monograph examines several countries' policies and procedures for zoning, licensing, taxing, certifying, or allowing only certain kinds of prostitutes. Alternatives to prohibition in the United States are also discussed.

Introduction

Prostitution is prohibited in every state in the United States, except Nevada. Critics of this policy argue that criminal law is an ineffective and improper means to control prostitution. They believe that prostitution is private sexual conduct between consenting adults and should not be proscribed by the state. It is argued that criminalizing prostitution fosters disrespect for the law by discriminating against women and by requiring the police to engage in entrapment in order to make arrests. Enforcing laws against prostitution also can be a drain on time and money for police, courts, and correction agencies.¹

Yet public opinion holds that the law should regulate prostitution-related activities that are harmful or offensive to

¹Ken Bode, "New Life for the Oldest Profession," New Republic, July 8, 1978, p. 23.

the public. Such activities include public solicitation, juvenile prostitution, and associated crime (e.g. drugs, assault, theft).

The American policy of prohibiting prostitution is the exception rather than the rule worldwide. Most nations have attempted to control prostitution-related activities while legalizing the act itself. Despite these attempts, sources in this monograph indicate a lack of data on the effectiveness of any attempt to regulate prostitution or its related activities.²

West Germany

According to a Policy Analysis study, West German federal law says the following about prostitution and related activities:

- (1) Prostitution may not be banned in towns of over 20,000 inhabitants. Each city may, however, regulate the practice of prostitution by local ordinance.
- (2) Pimping and procuring are illegal.
- (3) Prostitution is not allowed in schools, churches, cemeteries, or houses where people are under 18 years of age.
- (4) Prostitutes must be age 18 years or older and must be citizens of West Germany.
- (5) Boys between the ages of 14 and 18 may purchase the services of a prostitute only with parental permission.

²Jacqueline Boles and Charlotte Tatro, "Legal and Extra-Legal Methods of Controlling Female Prostitution: A Cross-Cultural Comparison," International Journal of Comparative and Applied Criminal Justice 2 (Spring 1978): 71-72.

the public. Such activities include public solicitation, juvenile prostitution, and associated crime (e.g. drugs, assault, theft).

The American policy of prohibiting prostitution is the exception rather than the rule worldwide. Most nations have attempted to control prostitution-related activities while legalizing the act itself. Despite these attempts, sources in this monograph indicate a lack of data on the effectiveness of any attempt to regulate prostitution or its related activities.²

West Germany

According to a Policy Analysis study, West German federal law says the following about prostitution and related activities:

- (1) Prostitution may not be banned in towns of over 20,000 inhabitants. Each city may, however, regulate the practice of prostitution by local ordinance.
- (2) Pimping and procuring are illegal.
- (3) Prostitution is not allowed in schools, churches, cemeteries, or houses where people are under 18 years of age.
- (4) Prostitutes must be age 18 years or older and must be citizens of West Germany.
- (5) Boys between the ages of 14 and 18 may purchase the services of a prostitute only with parental permission.

²Jacqueline Boles and Charlotte Tatro, "Legal and Extra-Legal Methods of Controlling Female Prostitution: A Cross-Cultural Comparison," International Journal of Comparative and Applied Criminal Justice 2 (Spring 1978): 71-72.

- (6) Each of the 11 states that comprise the Federal Republic of West Germany is responsible for public health control, including VD control. The West German health department has interpreted this to mean that the states are responsible for doing regular VD checks on prostitutes.

- (7) Income from prostitution is subject to taxation. Unlike other employed, tax-paying West German citizens, however, prostitutes are not eligible for unemployment compensation or for social security benefits, nor are they covered by the country's national health insurance program.³

Prostitutes must register with the local health department and must be checked for VD at regular intervals, at government expense. And they must carry special health cards which indicate the date of their last health check. No other licensing, registration, or certification is required of prostitutes or brothels.

Zoning. Each city is allowed to regulate prostitution by local ordinance. Munich, for example, has adopted a multiple-zone policy that restricts streetwalking to nine designated areas of the city. Streetwalkers may work two of these areas at any time of day, but are restricted to the hours between 8 p.m. and 6 a.m. in the other seven.⁴

According to one observer, the multiple-zone policy keeps prostitution from concentrating in any one area of the city and has thereby reduced associated crime.⁵ It also enables health authorities to more easily keep track of prostitutes. A

³Barbara Yondorf, "Prostitution as a Legal Activity: The West German Experience," Policy Analysis 5 (Fall 1979): 420-421.

⁴Off-street solicitation is allowed at any time of the day in any part of Munich, except in the city center and cemeteries.

⁵Ibid., p. 430.

disadvantage to zoning is that police must spend time ensuring that prostitutes stay within the designated boundaries. But because most customers frequent the zoned areas, there is little incentive for prostitutes to stray.

Other cities, including West Berlin, have adopted a no-zone policy that allows prostitution in any part of the city. This policy has not created major problems in residential neighborhoods because West Berlin prostitutes gravitate toward adult entertainment districts. Although registering and checking prostitutes is more difficult under this system, police time is not spent keeping them inside a boundary.

Under a single-zone policy, all types of prostitution are limited to a single area, such as Hamburg's St. Pauli district, an adult entertainment zone that measures about a half a square kilometer. Women are restricted to sitting in lighted windows to attract customers, or to walking designated streets between certain hours. Minors are prohibited from entering the area.

One advantage of the single zone system is that police and health authorities can easily keep track of prostitutes. In addition, prostitution is removed from the city's business, residential, and family entertainment districts. On the other hand, some argue that the single-zone approach increases prostitution-related crime. One source, however, claims that Hamburg police are satisfied that current laws and regulations work well.⁶

⁶Elizabeth and James Vorenberg, "The Biggest Pimp of All," Atlantic, January 1977, p. 31.

Associated crime. According to Policy Analysis, prostitution-related crime is not a serious problem in West Germany, although there are no studies that compare the incidence of crime in prostitute and nonprostitute areas of a city. Prostitution-related crimes are mostly minor, with streetwalkers and their customers being the most likely victims.⁷

Public solicitation. Problems associated with prostitution, such as unwanted soliciting, noise, litter, or interference with other businesses, are not significant in West Germany, according to the study. Prostitutes' times and places of business are usually regulated and limited to adult entertainment areas. In addition, regulations on advertising, laws against disturbing the peace, and the restriction of street prostitution to after shop hours aid in controlling the public nuisance aspect of prostitution.

Juvenile prostitution. As is the case in the United States, the majority of West Germany's juvenile prostitutes are runaways. Most are streetwalkers because prostitution establishments avoid hiring under-age girls. Health clinic staffs in Munich and West Berlin give juvenile prostitutes health and birth control counseling and often try to find them other types of employment.

Prevalence of pimps. Legalized prostitution has apparently not lowered the number of prostitutes having pimps. While German

⁷In Hamburg the most common prostitution-related crime is cheating a customer; second-most common are stealing and robbery.

law forbids pimping, conviction is difficult unless a prostitute registers a strong complaint against him.

Incidence of venereal disease. West German prostitutes found to have VD are referred to a private doctor for treatment and their health cards are confiscated by the health authorities until treatment is concluded. Health authorities told Policy Analysis that the only way to handle the VD problem is to legalize prostitution and require regular, government paid health checks.

Great Britain

Prostitution has always been legal in Britain. But during the 1950s the British became concerned over the harassment and annoyance of public solicitation, especially as it affected their tourist business. In 1954 the British Government appointed a committee, named for its chairman, Sir John Wolfenden, to re-examine the country's laws relating to prostitution.

The Wolfenden Committee proposed that public solicitation be dealt with more severely and that those living on the earnings of prostitution be criminally punished.⁸ The committee did not recommend changing the noncriminal status of prostitution, nor did it recommend that prostitutes' customers be punished. It observed that "what the law can and should do is to ensure that the

⁸Quoted in Gilbert Geis, Not the Law's Business?, (Rockville, MD: National Institute of Mental Health, 1972), p. 182.

streets...should be freed from what is offensive or injurious and made tolerable for the ordinary citizen who lives in them or passes through them."⁹

The 1959 Street Offenses Act enacted the committee's recommendations into law. Under the act, soliciting on the streets became punishable by a fine, and pimps, madams, and others living off the earnings of prostitution can be given heavy fines and long jail sentences. Brothel landlords can be arrested, but not prostitutes. The act does not require venereal disease examinations because they are regarded as a violation of civil rights.

Critics note that the law has failed to lessen prostitution activity. They claim that certain areas of London have become unofficially sanctioned for on-the-street solicitation, similar to West German prostitution zones. The law is also criticized for not addressing the problem of men openly soliciting women in public places.

France

Before World War II, brothels were legal in France and prostitutes were required to register, have medical inspections, and were forbidden to pick up customers either by speaking or by gesture. But in 1946, brothels were banned. Prostitution itself remained legal, but living off the earnings of prostitution was forbidden. The government believed this approach would help

⁹Ibid., p. 183.

eliminate prostitution. It did not; in fact, prostitution increased.¹⁰

In 1975 the government sought to increase the penalties for pimping and for owners of hotels or rooming houses where prostitutes worked. Prostitutes claimed that police harassment combined with the closing of hotels and rooming houses deprived them of their legitimate means of earning a living. Like aggrieved workers in other occupations, the prostitutes went on strike. Thousands of women occupied churches throughout France to call attention to their grievances. The strike was apparently successful as large numbers of prostitutes are available in several unofficial red light districts in Paris.¹¹

The Netherlands

In Amsterdam prostitution is technically forbidden. Nevertheless, prostitution flourishes in certain unofficial red light districts as government officials have chosen to control it by confining it to these tolerated areas.¹²

While active solicitation is prohibited, neither registration nor medical inspection is required by law. Other controls tend to limit the number of working prostitutes. For example, prostitutes must be 21 or married; foreign women are forbidden.

¹⁰Vorenberg, "The Biggest Pimp of All," p. 35.

¹¹Ibid., p. 36.

¹²Ibid., p. 30-31.

Also, existing residences in the tolerated areas cannot convert to business use.

Denmark

Prostitution is tolerated in Denmark and there are no official brothels or licensing. In Copenhagen prostitutes work out of certain restaurants and massage parlors. Streetwalkers are not prosecuted. According to one source, prostitution does not concern police or prosecutors and one official has said: "we think we can keep prostitution at a stable level simply by letting it be there."¹³

Sweden

In Sweden, neither prostitution nor solicitation is a crime. However, prostitution is almost nonexistent, apparently due to the lack of poverty and relaxed sexual attitudes.

Soviet Union

The Soviet Union's approach to prostitution is governed by the Marxist belief that it is the foremost example of the enslavement and exploitation of women and therefore must be eliminated.¹⁴ However, only the activities of pimps and brothel-keepers are illegal. Prostitution itself is not a criminal

¹³Quoted in ibid., p. 31.

¹⁴Mary Costello, "Legalization of Prostitution," Editorial Research Reports 2 (1971): 667-668.

offense. To discourage prostitution, one source reports that authorities place photographs of men who frequent prostitutes on factory walls where they are employed.

There are no statistics on the incidence of prostitution in the Soviet Union, but foreign visitors have reported that prostitutes in most Soviet cities are hard to find. In other communist countries prostitution is unofficially permitted but not in hotels frequented by foreigners.¹⁵

United States

Prostitution was widely tolerated in America until the early 1950s when most jurisdictions adopted the prohibitionist view that effective law enforcement can reduce prostitution. Thus, stricter laws were enacted and larger cities established vice or morals squads to control prostitution.

Although prostitution is officially a crime, more than half a million women work as prostitutes in America.¹⁶ Each year there are nearly 100,000 arrests for prostitution and related crimes. One source estimates that prostitutes make up at least 30 percent of the population of most women's jails; in New York they exceed 50 percent.¹⁷

¹⁵Charles Winick and Paul M. Kinsie, The Lively Commerce, (Chicago: Quadrangle Books, 1971), p. 280.

¹⁶Vorenberg, "The Biggest Pimp of All," p. 31-32.

¹⁷Quoted in *ibid.*

While anti-prostitution laws have become stricter and more rigidly enforced, it is usually the woman and not the customer or pimp who is arrested. And most of the women who are arrested, fined, or convicted return to prostitution.¹⁸ When asked to comment on anti-prostitution laws, Margaret Mead said:

Our laws about prostitution are cruel and barbarous and definitely discriminatory against the women involved. The laws are such that prostitutes are punished, exploited and blackmailed, while those who make their activities pay are permitted to go free or are subject only to minor penalties. For every bad law there are those who benefit from it--in graft, in the gratification of their savage desire to punish those whom they connect with their own moral failures or in the corruption of some of those who are expected to enforce the law, as vice squads are assigned to do.¹⁹

Legalization. The failure of prohibitionist policies to control prostitution in many American communities has led some to argue for legalization. Proponents of legalization claim that it would bring about close medical supervision and thus lessen venereal disease and drug addiction. They also argue that it would restrict prostitution to certain segregated districts, eliminate pimps and those who live off the earnings of prostitutes, and save the police considerable time and money.²⁰

¹⁸Costello, "Legalization of Prostitution," p. 665.

¹⁹Margaret Mead, "Margaret Mead Answers," Redbook, April 1971, p. 50, 53.

²⁰Costello, "Legalization of Prostitution," p. 653.

Legalized prostitution and its effect on American communities can be studied only in Nevada, where regulation is left up to the counties.²¹

In Lyon County prostitution is allowed but strictly controlled. Each prostitute is fingerprinted, photographed, questioned about her age (she must be 18) and any past criminal record, and issued a work permit. Weekly VD examinations are required. To lessen prostitutes' visibility, other counties restrict the hours that women can be outside the brothel and the buildings in which they are permitted. For example, bars, gaming houses, and residential areas are usually off limits. Prostitutes in one town are not allowed to have friends within the town, including pimps, boyfriends, or husbands.²²

Under state law, houses of prostitution are prohibited within 400 yards of schools and churches and on principal business streets. Brothels must not disturb "the peace, comfort, or decency of the immediate neighborhood."²³ According to one observer, brothel owners accept these restrictions, despite their questionable legality, because to challenge them would jeopardize the brothels' existence.²⁴

²¹See generally Nev. Rev. Stat. 201.295-201.440. Prostitution is prohibited in counties with a population of more than 200,000. This prohibits prostitution in the largest city in the state, Las Vegas.

²²Vorenberg, "The Biggest Pimp of All," p. 30.

²³Nev. Rev. Stat. 201.420.

²⁴Richard Symanski, "Prostitution in Nevada," Annals of the Association of American Geographers 64 (September 1974): 362.

A study by the Association of American Geographers found that the numerous restrictions placed on prostitutes and brothels are the main reason "an overwhelming majority of those who live with open or legalized prostitution in Nevada favor its presence."²⁵ The study found strong support for restricting prostitution to one area of town rather than having it everywhere. Under this system prostitutes are kept off the streets and out of the casinos, and the visible effect of brothels is small.

A perceived, but unproven, benefit is that controlled prostitution is responsible for lowering the rape and violent crime rate in Nevada. Also, the study found that some parents believe prostitution keeps their sons from being forced into an early marriage and that it keeps their daughters "out of trouble." Control of VD is also seen as an advantage to regulated prostitution.

Another important factor in the state's acceptance of prostitution is "the significance of a century or more of amicable relations between prostitutes and their neighbors in rural Nevada."²⁶ Some houses have been in existence for as long as anyone can remember. According to the Geographers Association study, Nevada residents may defend controlled prostitution simply because it has been present for so long.

²⁵Ibid., p. 375-377.

²⁶Vorenberg, "The Biggest Pimp of All," p. 38.

The brothels' image also contributes to the popular support of prostitution. Brothel owners are aware that their continued existence depends on the attitudes of the community. Many owners place additional restrictions on their prostitutes' activities to avoid problems with townspeople, and they donate money to community activities. The sheriff of Lyon County is quoted as saying that "some of the mothers around here would be surprised to learn who's paying for their sons to play Little League."²⁷

The Nevada system is defended by some as the most reasonable way to regulate sex as commerce. Others oppose the system on the grounds that it institutionalizes the abusive pimp-prostitute relationship.²⁸ Prostitutes are confined to controlled houses under the supervision of a madam or foreman, and have little control over working conditions, fees, or choice of customer. It is further claimed that licensing labels prostitutes for life and lessens their chances of finding other jobs.

Some see potential problems in the application of Nevada's system to more populous areas.²⁹ As previously noted, Nevada has a long history of tolerating prostitution. American communities without such a history may not accept a policy of licensing prostitutes and brothels. Urban areas would also require a large

²⁷Quoted in *ibid.*, p. 29.

²⁸Quoted in Bode, "New Life for the Oldest Profession," p. 24.

²⁹*Ibid.*, p. 38.

bureaucracy to administer such a system. Further, the Nevada rules that exclude minors and those with felony arrests and drug records, if applied to big cities, would exclude most street-walkers from licensed houses. Thus, the Nevada system would probably leave many prostitutes on the street.

Decriminalization. Many opponents of legalized prostitution favor a different alternative, which is generally called decriminalization. This system minimizes regulation by removing prostitution from the criminal code. It makes prostitution "merely a commercial form of sexual behavior between consenting adults, a private act properly conducted outside the purview of the law."³⁰

Places of prostitution, age, hygiene, and taxation could still be controlled, proponents claim. One authority on decriminalization explains:

The least abusive to the individual woman would be a small business license with a health card requirement. A prostitute would obtain a license much as a masseuse does; her place of business would have to conform with zoning requirements; she would be required to report her income, be of age, and keep her health card current. Violations would mean revoking her license and would be handled by a nonpolice administrative agency. Advertisements would be limited to discreet classifieds.³¹

No American community has decriminalized prostitution, although several attempts have been made.³² One former Massachusetts state

³⁰*Ibid.*, p. 25.

³¹Quoted in *ibid.*

³²In Oregon, 1977 HB 2213 would have removed prostitution laws from the state statutes. It was in committee upon adjournment.

legislator periodically introduced a proposal that would give communities the option to suspend pornography and prostitution laws in certain areas. These areas would be similar to Boston's special zoning category called the Adult Entertainment District or, as it is known locally, the "Combat Zone."

The zone was created to halt the spread of pornography by confining it in one area. Prostitution remained illegal but flourished because of alleged police tolerance.³³ Crime statistics and the rate of street solicitation rose alarmingly, however, leading to a police crackdown.

A similar local option decriminalization bill was defeated in the New York State Assembly. The bill's sponsor conceded that finding the appropriate zones would be difficult.

Most authorities on prostitution believe that the majority of Americans reject both legalization and decriminalization. According to this viewpoint, the absence of any legal provision against prostitution may be interpreted as tacit government approval of commercialized vice. And many believe that it is the responsibility of government to regulate public morals in the interest of public good by declaring prostitution a punishable offense.

³³"Unhappy Over Hookers," Time, October 2, 1978, p. 48.

END