

# The History of Sex Work Law in Rhode Island

By **Bella Robinson and Elena Shih**

In the United States, sex work was not explicitly outlawed in many areas for the first few centuries of its existence. Most states criminalized prostitution around the time of the First World War, largely as a result of the actions of the **Woman's Christian Temperance Union**, among other social reform groups. The **Mann Act of 1910** was created in order to halt the perceived growing threat of the "white slave trade," though a 1908 investigation by the **Bureau of Investigation** (now known as the **FBI**) into prostitution in **New York City** showed that most of the so-called 'white slaves in the city were, in fact, sex workers. In this way, the Mann Act created a national perception of sex workers as victims.[note]Pliley, Jessica R, Policing Sexuality. Harvard University Press, 2014.[/note] In 1913, the **United States Supreme Court** case [\*Hoke v the United States\*](#) decided that the United States federal government did not have the right to regulate the legality of sex work on a national level and that the decision was up to individual states.[note]*Hoke v United States*, 227, US, 308 (1913).[/note] Sex work remains legal in some counties in **Nevada** and indoor prostitution was decriminalized in **Rhode Island** from 1980 to 2009.

## History of Sex Work Law in Rhode Island

**COYOTE** sued the state of Rhode Island in 1976 alleging that their anti-prostitution laws were far too broad and that many sexual acts between consenting adults could be seen as prostitution under the law. Although the case was eventually dismissed as mute, in 1980 the **Rhode Island General Assembly** changed the prostitution laws in an attempt to make them more specific. In the process, they created a legislative loophole that lasted almost 30 years that outlawed street prostitution but essentially made indoor prostitution legal.[note]Arditi, Lynn. "[How RI opened the door to prostitution.](#)" Providence Journal, 14 Nov. 2014.[/note] Separately, the penalty for outdoor prostitution was reduced from a felony to a misdemeanor. In 1998, the **Rhode Island State Supreme Court** ruled in [\*State v DeMagistris\*](#) that the law criminalizing prostitution was "primarily to bar prostitutes from hawking their wares in public," and that someone who engages in sex work privately could not be prosecuted under this law. In 2003 a court case was dropped after the judge realized the loophole in the law and soon began the re-criminalization campaign in the state.[note]Charges against four women who worked at two spas in Providence were dismissed when their attorney argued that Rhode Island had decriminalized indoor sex work; he used the 1998 *State v DeMagitris* Rhode Island Supreme Court ruling to justify his argument.[/note] After many unsuccessful attempts at new legislation, beginning in 2005, successful legislation was introduced in 2009.

Rhode Island's period of decriminalizing indoor prostitution is notably different than the legalization of prostitution, the system that currently exists in Nevada. Under legalization, workers are required to live at the brothels, register, pay for licensing fees, submit weekly STD test results, and turn over earnings to brothel owners. Legalization thus creates a two-tiered system of illegal and legal workers. In Nevada brothels, sex work is legal through a highly regulated system that requires workers to register so their names and personal information can be accessed by any public records request. This information can be used to discriminate against sex workers in future employment, housing, and child custody cases, and puts them at risk from predators who might stalk them.

By contrast, in the years under decriminalization in Rhode Island, there were no regulations indoor commercial sex establishments had the same licensing regulations that all other businesses in Rhode Island. In Rhode Island, sex workers could work from home, in hotels, or for agencies, like spas and massage parlors. Decriminalization has been shown to protect the health and safety of sex workers. For instance, in 2008 after the "Craigslister killer" murdered women in Boston, he came to Rhode Island and tried to rob a local escort, but she dialed 911 because prostitution was decriminalized and the police caught the man before he could harm anyone else. These important distinctions between decriminalization and legalization frame the ongoing debate for sex worker rights globally.

In November of 2009, a new law was passed to prohibit all commercial sex in Rhode Island regardless of whether it was on the streets or indoors. The law states that if found guilty of selling or soliciting sex, an offender can be fined up to \$1,000 and incarcerated for up to six months. Further offenses could garner up to ten years of prison time in addition to a fine of up to \$10,000.[note]2009 Rhode Island Code, Title 11- Criminal Offenses, Chapter 11-34.1 – Commercial Sexual Activity §11-34.1.7, Pandering or permitting prostitution – Not allowed.[/note] A number of sex workers, women's rights groups, anti-trafficking groups, sex educators, and the **Rhode Island ACLU** vehemently opposed the passage of this bill, arguing that arrests for prostitution-related offenses are more likely to hurt rather than help sex workers and victims of trafficking, and rarely lead to support of victims. In response, the Rhode Island branch of COYOTE was established in 2009. Continuing its fixation on ridding the state of sex trafficking, Rhode Island's government created an anti-trafficking task force in 2012 and the state's first anti-trafficking shelter in 2016.

## History of anti-trafficking and conflation with sex work

Anti-trafficking activism has risen since the year 2000 following the passage of the **United Nations Palermo Protocol**. It has been characterized by a number of "strange bedfellows" coalitions encompassing radical feminists, such as the **Coalition Against Trafficking of Women**, and far-right, often evangelical Christians dedicated to ending trafficking, including

organizations such as the **International Justice Mission**.<sup>[note]</sup>Bernstein, Elizabeth. “The sexual politics of the “new abolitionism.” *differences* 18.3 (2007): 128-151.<sup>[/note]</sup> These divergent perspectives have vastly different stances on most social, economic, and political issues, yet have found common ground in their belief that all sex work is exploitative and thus a form of human trafficking, which should be made illegal. This ‘unholy alliance,’ as it is commonly known among sex workers, held significant power in the push for the **2000 Trafficking Victims and Protection Act**, the first piece of United States law to comprehensively deal with the issue of human trafficking.

These debates have become particularly fraught in Rhode Island. **Donna M Hughes**, a professor at the **University of Rhode Island**, has been the leading academic pushing for the criminalization of sex work in Rhode Island. She has published numerous articles on the ‘trafficking problem’ in Rhode Island, which address: (1) determining the existence of a large transnational criminal network that traffics women and children from various countries; (2) the conflation of labor trafficking with sex work; and (3) asserting the need for a carceral approach through the strengthening of police repression. In 2007, Hughes collaborated with **Katherine Y Chon** and **Derek P Ellerman** – co-founders of the anti-human trafficking organization the **Polaris Project**, created during their time as undergraduate students at **Brown University** – on a research study.<sup>[note]</sup>Hughes, Donna M., Katherine Y Chon, and Derek P Ellerman. “Modern-day comfort women: The US military, transnational crime, and the trafficking of women.” *Violence Against Women* 13.9 (2007): 901-922.<sup>[/note]</sup> The authors claimed that trafficking within **South Korea** was connected to the forced trafficking of South Korean women to massage parlors in the United States. They claimed that this would be the first to study the “trafficking of women” in South Korea, discounting previous documentation done by Korean and other Asian non-governmental organizations. Furthermore, for this research, the author conducted 36 interviews; more than half of the interviewees are of law enforcement, ten are social service providers, six are reporters and one is a researcher. None of these people are trafficked women or sex workers who have worked with trafficked women.

**Sealing Cheng**, a professor at the **Chinese University of Hong Kong**, authored a rebuttal piece, which argued that Hughes, Chon, and Ellerman’s work erased and erroneously portrayed the research that had been done in the anti-trafficking field by various people in South Korea with much more superior methods; conflated human trafficking with forced prostitution; and rendered invisible the general dynamics that push migrant workers into vulnerable work are due to nation-state border controls.<sup>[note]</sup>Cheng, Sealing. *On the move for love: Migrant entertainers and the US military in South Korea*. University of Pennsylvania Press, 2011.<sup>[/note]</sup>

Contemporaneously, a community of concerned academics raised concerns against the decriminalization of indoor prostitution. In 2008 and 2009, many letters were sent by

academics from around the country, to the **Rhode Island State House** in support of Rhode Island's indoor prostitution law. Academics such as sociologist and criminologist **Ronald Weitzer**, composed a few jointly signed letters noting that compared to street work, indoor sex work is generally much safer: there are lower rates of sexually transmitted infections, better working conditions, and lower rates of getting assaulted or robbed. In addition, the majority of indoor sex workers have not been trafficked against their will, instead, they have made the conscious decision to enter the trade. This academic opposition to criminalization, along with the methodological problems that come with trying to determine sex trafficking victims, was not substantively discussed or mentioned in the public campaign for the criminalization of sex work in Rhode Island.