



Erotic Service Providers Legal Education and Research Project (ESPLERP) 2017 Policy Agenda

The Erotic Service Providers Legal, Education and Research Project (ESPLERP) is a diverse community-based erotic service provider led group which seeks to empower the erotic community and advance sexual privacy rights through legal advocacy, education, and research. In our legal advocacy, we seek to create change through a combination of impact litigation, policy statements, and voicing our concerns for our community in political arenas. Through educational trainings and outreach, we will empower and capacity build to address discrimination of erotic service providers and the greater erotic community. Lastly, we strive to archive and rate much of the research which has been done by and of the sex worker community, and build on this history with research which seeks to be increasingly inclusive, respectful, and ultimately, relevant to erotic service providers and the larger erotic community.

In March 2015, ESPLERP filed a complaint with the United States District Court (http://esplerp.org/wp-content/uploads/2015/07/001_Complaint.pdf) challenging California's current anti-prostitution law, Penal Code 647(b), arguing for the decriminalization of sex work - that these laws deprive individuals of the fundamental right to engage in consensual, private sexual activity.

The case is now on Appeal in the Ninth Circuit, where it is supported by amicus briefs from over thirty civil rights and LGBTQ organizations, including the ACLU, Lambda Legal, the Free Speech Coalition, and the Transgender Law Center (<http://esplerp.org/amicus-briefs-filed-in-support-of-esplerp-v-gascon/>).

Decriminalization of sex work is supported by Amnesty International, the World Health Organization, the Lancet, Human Rights Watch, and the UN Global Commission on HIV and the Law.

As well as being criminalized, sex workers are subject to significant stigma and discrimination. Therefore, the Erotic Service Providers Legal Education and Research Project (ESPLERP) sets forth the following practical legislative steps toward enfranchising all aspects of consensual sex work.

DEFINITIONS AND COMMUNITY

We define an *erotic service provider* (aka *sex worker*) as anyone, who earns a living from their erotic labor, including prostitutes (whether working indoors in massage parlors or brothels, in their homes or on an outcall basis to homes or hotels, or outdoors on the street), exotic or burlesque dancers and strippers, adult film performers, escorts, courtesans, dominants, submissives, phone sex operators and webcam performers.

Anyone who consensually engages the services of an erotic service provider, we consider a *client* (not a "trafficker" or an "exploiter", and also not a "john" - a slang term that is sexist and derogatory).

Directly relying for their livelihood on the jobs of erotic service providers are *support staff* who act in capacities such as receptionists, agents, managers, drivers, warehouse workers, security, photographers, and even janitors in adult clubs.

Beyond these support staff, there are also *third parties* whose livelihoods rely more indirectly but often substantially upon erotic service providers, such as website owners and operators, hairdressers, makeup artists, dance club owners, gym owners and personal trainers, taxi and ride-share providers, and even hospitality industry staff who work in the hotels and other establishments used by erotic service providers and their clients.

We consider part of our community anyone who is an erotic service provider or who knowingly and consensually hires, pays, or provides support to an erotic service provider, and also our friends and family members who know what we do and support us (whether in the formal capacity of support staff or not).

BACKGROUND

Legislation to date has too often relied upon, or been an accomplice to, the criminalization of our labor as prostitutes; clearly in violation of our Constitutional Rights. Many statutes define erotic service providers as “victims”, fail to recognize the agency of erotic service providers or our clients, and fail to provide equal protection under the law for members of our community. Labeling us as victims encourages a law enforcement approach toward our community, since the presence of a “victim” implicitly assumes the existence of corresponding “perpetrators” who must be brought to justice.

State Violence

Ironically, *the state itself* commits violence against sex workers by

- harassing them - the Urban Justice Center found that 30% of street-based sex workers in New York had been threatened with violence by police officers, while 27% actually experienced violence at the hands of police - <http://sexworkersproject.org/downloads/RevolvingDoorFS.html>
- arresting them -- prostitution arrests are the usual means by which persons are labeled sex trafficking victims
- victimizing them during incarceration (from other inmates, guards, from losing income, from being forced to work, from being away from family)
- denying them access to support services, legal advocacy and safe space shelter
- forcing them into state-provided or state-funded “services”, which are mandatory requirements of the “diversion” programs which typically offer arrestees the only way to avoid further prosecution
- fining them, subjecting them to probation and loss of rights, and saddling them with a damaging criminal record.

Anti-Trafficking Legislation

Legislation like the Federal Trafficking Victims Protection Act and California’s Proposition 35, uses broad definitions which define our everyday personal and professional relationships as criminal associations, whereby our spouses, domestic partners, boyfriends and girlfriends, roommates, landlords, support staff, and others, may be prosecuted as sex traffickers and even forced to register as “sex offenders”.

There are vast Federal investments in grants to “anti-trafficking” NGOs, where in collaboration with the FBI and State agencies, they mount high profile “rescue” operations such as Operation Cross Country (http://www.huffingtonpost.com/katherine-koster/is-operation-cross-country-the-best-way-to-fight-child-sex-trafficking_b_8307634.html), which mostly fail to find “traffickers”, but do criminalize consensual sex workers, and certainly do not provide services (such as counselling, housing, education) to ensnared individuals who are just trying to make a living.

Trafficking laws that rely on prostitution arrests put the lives of both coerced victims and consenting erotic service providers in danger by maintaining a black market around the sex trade which attracts violence and real crime and creates unsafe working conditions. The cover story of the November 2015 issue of Los Angeles based Reason Magazine accurately declares that “The War on Sex Trafficking Is the New War on Drugs” (<https://reason.com/archives/2015/09/30/the-war-on-sex-trafficking-is>). Just as the multi-decade policy failure commonly called the “War on Drugs” has really been a war on people who use drugs, and primarily a war on people of color, the “War on Sex Trafficking” is a war on people who exchange sex for money, and primarily a war on women of color.

Another major consequence of the current approach to “sex trafficking” is that law enforcement is empowered to seize property, without due criminal proceedings, even if the property owner is never charged with a crime. In practice, property seizure results in untraceable profit for law enforcement agencies and their non-profit collaborators. For example, the Department of Homeland Security seized \$1.4 million from Rentboy.com, and we have no idea how that money was spent. Everybody benefits - except the sex workers on the sharp end.

PRINCIPLES

We believe the following principles should be paramount in all legislative initiatives that affect our community.

1. “Nothing About Us, Without Us”: When it comes to laws affecting people involved in the sex industry, the voices of those stakeholders themselves must be heard front and center in the debate, and attitudes that “other” us and deny our independent volition and agency must be excised from the legislative process.
2. “Our Bodies, Our Rights”: Consenting adults have the right to be free from state criminalization of their sex lives, whether or not the exchange of money or any other consideration is involved.
3. “Individual Privacy, Institutional Transparency”: Any legislation that affects our community must protect our privacy, and must guarantee that government agencies and government-funded non-profit service providers operate transparently and are held accountable for treating people humanely, non-coercively, and with integrity, dignity and respect.

ESPLERP 2017 POLICY AGENDA

We call for a new, rights-based approach which recognizes consenting adult participants in the sex industry as neither perpetrators in need of punishment nor victims in need of rescue, but individuals with rights and agency who deserve to be free to make their own peaceful choices about their bodies and their sexual relations.

We therefore propose the following foundational legislative steps toward ensuring greater safety and enfranchisement for erotic service providers.

1. End discrimination against erotic service providers, clients and support staff

The criminalization of consensual sex work has created a system with multiple levels of social and institutional discrimination. For example:

a. Repeal moral turpitude laws.

These archaic laws serve as a legal means to limit the ability of anyone to gain employment after a prostitution arrest. This prevents people who may wish to find other types of work outside the sex industry from doing so. Even non-criminalized erotic service providers such as exotic dancers, adult film performers, massage parlour staff, agency support staff, phone sex operators,

professional dominatrixes/submissives and webcam performers may be negatively impacted by these laws. An example of this type of discrimination is demonstrated in the dismissal of Stacie Halas, a permanent certified teacher by her employer, Oxnard School District - <http://crypticphilosopher.com/wp-content/uploads/2013/05/120680877-Stacie-Halas-decision.pdf>.

b. Enact legislation to prohibit discrimination in access to publicly funded services.

In its 2015 Universal Periodic Review of Human Rights (<http://www.state.gov/j/drl/upr/2015/237250.htm>), the State Department affirmed United Nations Recommendation #86, stating, "We agree that no one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution," and we call upon the States to do likewise. There are numerous instances of state laws and regulations that still discriminate against our community. For instance, the California Victims Compensation Fund maintains language banning those who have been injured in the course of a prostitution transaction from receiving benefits, so that persons who've sustained a head injury or gunshot wound are not eligible for benefits but those who have been sexually assaulted on the job are eligible. Current and former erotic service providers must not be discriminated against when applying and receiving services that are publically funded. An example of this type of state sponsored public discrimination can be found in the training materials created by groups like California Coalition Against Sexual Assault (<http://www.calcasa.org/wp-content/uploads/2011/05/Training-Standards.pdf>) that receives state funding. Their materials are the state's standard in approach to sexual assault victims who have status as part of the sex industry. Language singling out people who work or have worked in pornography and/or prostitution is another form of that victim-blaming and completely inappropriate treatment of victims of sexual assault.

c. Enact legislation to prohibit discrimination in judicial proceedings.

Notably, the practise of stripping child custody rights and/or less favorable divorce settlements because of our status. The case of Jessica Hernandez and the death of her son by his father in a custody dispute arising from her status as someone who had worked as a stripper is cause for great alarm. This case had the worst possible ending because the state allowed the court, in this case, the family judge to commit discrimination based on the legal occupation of stripping - <http://www.kcra.com/news/Mother-of-slain-child-blames-judge-for-death/19142228>

d. Prohibit the use of current or former sex worker status as grounds for discrimination by government authorities.

Persons applying to state or local government for housing, education, employment, or promotions should not be subject to discrimination. For example, the expansion of Oakland's 2014 "nuisance ordinance" targets prostitutes, under the spurious guise of fighting child trafficking. This new law allows for the removal of a tenant due to his or her perceived status as a prostitute. Such arbitrary definitions place the onus on the tenant to prove they are not a prostitute, and are new grounds for housing discrimination. This means that low-income tenants, transgender residents, and people of color are likely be targeted and made homeless.

2. Grant immunity from prosecution for prostitution or related offenses to erotic service providers and our clients and support staff when they report more serious crimes.

Current legislation discourages erotic service providers, our clients and support staff, from reporting serious crimes. For example, the excessive fines imposed by Proposition 35 discourages reporting crimes that would otherwise protect whistleblowers under California's Good Samaritan law, This legislative inhibitory effect provides cover to the relatively small number of actual sex traffickers, corrupt law enforcement officers, coercive third parties, and others who prey upon erotic service providers.

3. **Establish a ‘Vacatur Law’ to automatically remove prostitution convictions and arrests from criminal and public records.**

A ‘Vacatur Law’ should be established whereby prostitution convictions and arrests can be automatically and completely removed from criminal and public records, without requiring people with criminal records to go through a complicated, onerous and expensive legal process.

4. **Prohibit the possession of condoms as evidence of prostitution in arrests or prosecutions.**

In many jurisdictions, law enforcement and prosecutors can use possession of condoms as evidence of prosecution. In California, AB 336 went some way toward addressing this issue, but it still left the door open for prosecutors to make special motions allowing condoms to be used as evidence.

5. **Prohibit gender identity, sexual orientation and racial profiling of sex workers.**

As the ACLU argues in its supporting amicus brief

(<http://esplerp.org/wp-content/uploads/2016/10/22-Brief-of-American-Civil-Liberties-Union-Foundation1.pdf>), legislation criminalizing sex workers, their clients and support staff, is “discriminatorily enforced against women (transgender and cisgender) and people who are LGBTQ and gender non conforming”. Women of color, transgender women and LGBTQ youth should not have to fear being arrested for prostitution just because a law enforcement officer considers their appearance indicative of prostitution.

6. **Prohibit mandatory HIV testing and repeal laws that criminalize HIV positive status.**

With new medical advances against HIV (e.g. Truvada), the current level of state coercion employed against people with compromised immune systems is inappropriate. Some legislatures (cf California SB 239) are starting to recognize this

(<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Policy-Brief-Final-with-CHRP-Credit.pdf>), but similar legislation is required nationwide. We support SB239 but we need legislation to go further and decriminalize HIV status altogether.

7. **Implement a grievance process in publicly-funded anti-prostitution/anti-trafficking groups, rape crisis centers and domestic violence shelters.**

Non-profits and NGOs that provide services to prostitutes or trafficking victims, in particular rape crisis centers and domestic violence shelters, should be required to notify all service recipients of the process by which they can file complaints about the quality of the services they receive. State records of all such complaints should be maintained and available to the public, and any non-profits or NGOs that show consistently poor user satisfaction or engage in unacceptable practices should promptly be made ineligible for public funding.

8. **Implement public reporting requirements for law enforcement agencies that perform prostitution and human trafficking arrests, incarcerations and convictions.**

Currently law enforcement agencies and task forces that perform prostitution and human trafficking operations, arrests, incarcerations and convictions, operate with a near complete absence of transparency. They should be subject to Federal, State, county or city oversight, and be required to

- a. make all meetings open to the public
- b. publish names and roles of task force members
- c. publish annual audits with all costs, including overtime pay, and any costs incurred by participating non-profits

- d. publish anonymised details of arrests and convictions, together with demographic data (gender, age, race) on those who have been arrested and/or convicted
- e. publish all Memoranda of Understanding between task forces, law enforcement agencies, non-profits or other agencies.

9. Implement public reporting requirements for publicly-funded non-profits and NGOs that provide services related to prostitution or human trafficking.

Currently non-profits and NGOs that receive public funds to provide services related to prostitution and/or human trafficking operate with a near complete absence of transparency. For example in California, non-profits receive substantial fund inflows from fines levied under Prop 35 (see section 2 <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/5884-S.PL.pdf>), but there is no indication of how those funds are spent. They should be subject to Federal, State or local oversight, and be required to

- a. publish annual audits with all costs, including overtime pay, and any costs incurred by partner agencies (in much greater detail than the 501(c) reporting requirements)
- b. publish details of services provided, together with demographic data (gender, age, race) on recipients of those services
- c. publish all Memoranda of Understanding between task forces, law enforcement agencies, non-profits or other agencies.

10. Protect the privacy of erotic service providers, clients, and support staff during undercover sting or surveillance operations.

Law enforcement agencies who invite journalists/media or members of nonprofits to accompany them on operations targeting our community, should be required to inform such third parties that they are not allowed to film or record a person who is caught up in an operation, being arrested or in custody, without that individual's consent. Such filming by "embedded" journalists and others violates our right to privacy, leads to exploitation of individuals, and stigmatizes the industry as a whole (see <http://sexworkersolidarity.com/walk-a-mile-in-my-shoes/the-rescue-scam/> and Starchild's testimony about having his rights violated during a prostitution sting operation. <https://www.youtube.com/watch?v=LM4XmJuNOv4>).

11. Establish regulations restricting prosecutorial misconduct

It is unacceptable for prosecutors to coerce defendants into giving up their rights to due process and their day in court by threatening to go after them with draconian charges if they don't accept plea bargains. The State should establish strong penalties for such misconduct to deter prosecutors from abusing their power in this manner.

12. Prohibit sexual contact by law enforcement during investigations.

Law enforcement officers and their agents should be prohibited from any sexual contact, including penetration, with anyone who is under investigation and/or in their custody or who are witnesses. Any violation should be prosecuted as a criminal sexual assault offence and restitution should be obtainable in civil courts.

13. Monitor peer counseling type 'services' provided by anti-trafficking or anti-prostitution non-profit groups and rape crisis centers receiving public funding.

Anti-trafficking groups, anti-prostitution groups and rape crisis centers in receipt of public funds should be subject to independent ethics oversight. For example, Bay Area Women Against Rape, recently employed an older man as a peer counsellor, who accompanied law enforcement on anti-prostitution sting operations claiming to rescue trafficked victims, specifically minors, and then acted as a primary 'peer' counselor for the "rescued" minors. This presents a clear ethical conflict. And an older man counseling a

minor does not meet the definition of peer-to-peer counseling. Such arrangements are ripe with potential for self dealing and conflict of interest and should be subject to independent ethics oversight.

CONCLUSION

In conclusion, prostitution and trafficking laws contribute to the disenfranchisement of our community. This disenfranchisement, and a lack of public accountability in law enforcement, state agencies and nonprofits, misallocates precious taxpayer resources as well as deterring reports from community members who have been actual victims of rape, robbery, theft, coercion, battery, assault, stalking, or murder. Continuing these failed policies based on faulty definitions is going in precisely the opposite direction to the growing global consensus on the human rights of erotic service providers and clearly puts members of our community at risk while undermining public safety.

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