



Erotic Service Providers Legal Education and Research Project (ESPLERP) 2018 Policy Agenda (Draft)

This Policy Agenda promotes a rights-based approach, whereby consenting adults in the sex industry are neither perpetrators in need of punishment nor victims in need of rescue, but rather individuals with rights and agency who deserve to be recognized as free to make their own choices about their bodies and sexual behavior.

Some legislatures are already making progress in this area. For example in 2017:

- the District of Columbia moved to decriminalize sex work to promote public safety and health - <https://www.scribd.com/document/360715820/Promoting-Public-Safety-and-Health-DRAFT>
- New Hampshire established a committee to study decriminalizing sex work - <https://legiscan.com/NH/text/HB287/id/1446786>.

We are hopeful that this Policy Agenda serves as a roadmap both for legislators and organizations, to help them adopt internal and public policies as well as advance incremental legislation to address the discrimination and stigmatization that affects the sex worker community in general as a result of criminalization of prostitution in specific.

ESPLERP Mission

The Erotic Service Providers Legal, Education and Research Project (ESPLERP) is a diverse community-based erotic service provider led group which seeks to advance sexual privacy rights through legal advocacy, education, and research. In our legal advocacy, we create change through impact litigation and policy statements. This often involves education activities for policy makers and the public. And in our research work, our evaluation tool (<https://esplerp.org/esplerp-research-evaluation-tool-3/>) helps the public and academics maintain ethically and scientifically rigorous standards.

As a prime example of impact litigation, in March 2015, ESPLERP filed a complaint with the United States Federal District Court (http://esplerp.org/wp-content/uploads/2015/07/001_Complaint.pdf), known as ESPLERP v Gascon [case 16-15027], which challenged California's 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.

We have some heavy hitters on our side. 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. And our case 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/>.

In October 2017, ESPLERP v Gascon was heard before a three judge panel at the Ninth Circuit Court of Appeals in San Francisco - see <https://www.youtube.com/watch?v=gA8W1-yHcO4>. But in February 2018, the panel dismissed our case. So we are now in the process of asking for an “en banc” hearing before the wider Ninth Circuit asking the court to resolve the conflicting case law it sighted - see <https://esplerp.org/esplerp-files-for-a-rehearing-before-full-ninth-circuit-to-continue-fight-for-sexual-privacy/>

The legal process is slow and long-winded, but it is an important strand in our fight for sexual privacy. But equally, as well as being criminalized, sex workers are subject to significant social and economic 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 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 rideshare 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 support us (whether in a formal or informal capacity).

Background

Legislation has too often relied upon, or been an accomplice to, the criminalization of our labor as prostitutes / sex workers. We believe that, as argued in ESPLERP v Gascon [case 16-15027], this is clearly in violation of our constitutional right to sexual privacy.

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.

The state 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 “diversion services”, which typically offer arrested sex workers 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

Laws like the Federal Trafficking Victims Protection Act and California’s Proposition 35, use overly broad definitions which define our everyday personal and professional relationships as criminal associations, essentially defining 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 Federal and State agencies, they mount high profile prostitution sting operations under the guise of “rescue” 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 typically fail to find “traffickers”, but do criminalize consensual sex workers and their clients, and certainly do not provide services (such as counselling, housing, education) to ensnared individuals who are just trying to make a living.

This slew of trafficking laws put the lives of both coerced victims and consenting erotic service providers in danger by maintaining a black market which attracts violence and creates unsafe working conditions. The cover story of the November 2015 issue of 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>). In effect, 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 process, 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. The only people who do not benefit from such seizures are the sex workers on the sharp end.

The narrative on sex trafficking has now expanded to include “children” - whereby everyone under 18 who is found to be involved in prostitution is automatically defined as a “trafficked victim” - per the 2003 Federal Reauthorization Trafficking Victims Act. And in addition, at the State level, “Safe Harbor Laws” are being touted as a means to recognize youth as “victims” - which implies that no charges of prostitution should result. However, both the Federal and State approaches remand underaged people into “protective custody”, where they are often held in “witness protection” until they testify against someone. Therefore laws like California SB1322 that mandates law enforcement to transfer such youth to “welfare services” actually violates youth right to due process.

(https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1322).

In contrast to this law enforcement focus, research shows that funding long term necessities for youth (safe housing, employment, education, food, and money) is a far better approach -

https://www.courtinnovation.org/sites/default/files/documents/Youth%20Involvement%20in%20the%20Sex%20Trade_3.pdf

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 must be heard front and center, and attitudes that “other” us and deny our 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 money is exchanged 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 service providers operate are held accountable for treating people humanely, non-coercively, and with integrity, dignity and respect.

Policy Agenda

The criminalization of consensual sex creates a system with multiple levels of social and institutional discrimination. We therefore call for a rights-based approach which recognizes consenting adults in the sex industry as neither perpetrators in need of punishment nor victims in need of rescue, but rather individuals with rights and agency who deserve to be free to make their own choices about their bodies and their sexual relations.

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

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

a. Repeal moral turpitude laws

These archaic laws limit the ability of people to gain employment after a prostitution arrest. 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. For example, Stacie Halas, a permanent certified teacher, was dismissed by her employer, Oxnard School District, when they learned of her previous employment in adult film - <http://crypticphilosopher.com/wp-content/uploads/2013/05/120680877-Stacie-Halas-decision.pdf>.

b. 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”. But 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. Language singling out people who work or have worked in pornography and/or prostitution is another form of victim-blaming and is completely inappropriate treatment of victims of sexual assault.

c. Prohibit discrimination in judicial proceedings

Very often, erotic service providers are treated unfavourably in family court hearings (for example, covering child custody and/or divorce settlements). For example, Jessica Hernandez lost custody to an abusive partner, who subsequently killed the child, because the judge discriminated against her based on her legal occupation as a stripper – <http://www.kcra.com/news/Mother-of-slain-child-blames-judge-for-death/19142228>.

d. Prohibit the use of sex worker status as grounds for discrimination

People applying to State or local government for housing, education, or employment, should not be subject to discrimination based on their occupation. But, for example, Oakland’s 2014 “nuisance ordinance” targets prostitutes, and allows for the removal of tenants due to their perceived status. Such laws place the onus on the person being discriminated against to prove that they are not a prostitute. And mean that low-income tenants, transgender residents, and people of color are targeted and made homeless.

2. Grant immunity from prosecution for prostitution offences 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 California Proposition 35 discourages reporting crimes. This provides cover to the small number of actual sex traffickers, corrupt law enforcement officers, coercive third parties, and others who prey upon erotic service providers while leaving victims and witnesses of crime exposed to penalties.

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 for *ESPLERP v Gascon* (<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 (such as Truvada), the current level of state coercion employed against people with compromised immune systems is inappropriate. In California, with the passing of SB 239 in 2017, knowingly exposing a sexual partner to HIV without disclosing the infection, is now a misdemeanor, which is the same status as other STDs. We supported SB 239, but we need legislation to go further and decriminalize HIV status altogether.

7. Monitor peer counseling ‘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, employed in the past an older man as a peer counsellor, who in addition to providing ‘counseling to adult women, as 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 let alone women in general. Such arrangements are ripe with potential for self dealing and conflict of interest and should be subject to independent ethics oversight.

8. 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.

9. 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. For example those that are listed here in the recent new report. <https://www.dailynews.com/2018/01/30/more-than-500-arrested-dozens-saved-in-statewide-crackdown-on-human-trafficking/> 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
- f. implement public reporting requirements for publicly-funded non-profits and NGOs that provide services related to prostitution or human trafficking.

10. Expand Privacy Laws

We require laws that protect the digital privacy of erotic service providers. The USA has signed on to the the UN Treaty on International Covenant on Civil and Political Rights (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>), but there are many ways in which developments in surveillance have preemptively violated our privacy.

- a. Stingray devices (also known as [International Mobile Subscriber Identity](#) (IMSI)-catchers) were initially developed for the military and intelligence community, but are now in widespread use by local and State law enforcement agencies, who use them to violate the privacy of erotic service providers. There is clearly a need for laws banning the use of these devices without a warrant to ensure that constitutional rights are protected.
- b. Our images are routinely scraped from public online ads sites and are published onto other online sites without our permission. This activity should be made criminally illegal, as erotic service providers have limited access to civil courts to pursue justice.

- c. We oppose license schemes that would expose erotic service providers to harassment and discrimination - such as requiring our legal names, date of birth, and social security numbers, and requiring us to submit to criminal background checks (<http://america.aljazeera.com/articles/2014/11/23/do-licensing-rulesputadultentertainersatrisk.html>). For example, a privacy watchdog in the Netherlands found that compulsory registration of sex workers breached privacy rules (<http://www.dutchnews.nl/news/archives/2017/08/registration-of-sex-workers-breaches-right-to-privacy-says-court/>)

11. 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 the erotic service provider 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 [walk-a-mile-in-my-shoes/the-rescue-scam](#) and Starchild's testimony about having his rights violated during a prostitution sting operation. [Starchild testimony](#)).

12. Establish regulations restricting prosecutorial misconduct

It is unacceptable for prosecutors to coerce defendants in sex trafficking and prostitution cases 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. There is a growing movement calling for limitations on prosecutors' ability to force defendants to plea to charges they may not have committed. The State should establish strong penalties for such misconduct to deter prosecutors from abusing their power.

13. 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 victims and/or . /,witnesses. Any violation should be prosecuted as a criminal sexual assault offence and restitution should be obtainable in civil courts. For example, Michigan Governor signed into law House Bill 4355 and Senate Bill 275 in 2017 outlawing police having sex with prostitutes on duty by removing an exemption that previously blocked their prosecution. Alaska State bills HB112 and SB73 propose to take legislation one step further and make it felony criminal acts for officers to have sexual contact and penetration with those they are investigating for prostitution.

Conclusion

In conclusion, anti prostitution and anti 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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