



ESPLER PROJECT INC.

**Erotic Service Providers Legal
Education and Research Project
(ESPLERP)**

2022 Policy Agenda

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This [Policy Agenda](#) sets out a series of practical legislative steps that enfranchise all aspects of sex work - that address the criminalization, discrimination and stigmatization that affects our community.

It centers 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 who are free to make their own choices about their sexual behavior.

Foreword

Sex work (in all its forms) is interconnected with wider human rights, including the right to privacy and personal autonomy, the right to safety, and the right to choose our work and be paid fairly for that work.

Sex work has generally been criminalized. But criminalization does not stop sex work. It just drives sex workers and their clients underground and makes it substantially less safe for everyone.

- Criminalizing adult, voluntary, consensual sex is incompatible with the human right to personal autonomy and privacy. In short - a government should not be telling consenting adults who they can have sex with and on what terms.
- Criminalization exposes sex workers and clients to abuse and exploitation by law enforcement.
- Criminalization makes sex workers and clients more vulnerable to violence - rape, assault, and murder.
- Criminalization undermines sex workers' ability to seek justice for crimes against them.
- Criminalization has a negative effect on sex workers' right to health.
- Criminalization also has a negative effect on other human rights, in that sex workers are less able to organize as workers, less able to advocate for their rights, and less able to work together to support and protect themselves.

Decriminalization of sex work (for both sex workers and their clients) is supported by a long list of reputable international organizations including [Amnesty International](#), the [Global Alliance Against Trafficking in Women](#), the [Global Commission on HIV and the Law](#), [UNAIDS](#), [Human Rights Watch](#), and the [World Health Organization](#).

In the US, the following organizations have explicit policy positions supporting the decriminalization of sex work - the [ACLU](#), the [National LGBTQIA+ Primary Care Alliance](#), [AIDS United](#), the [Center for HIV Law and Policy](#), the [Free Speech Coalition](#), [Lambda Legal](#), the [National Center for Lesbian Rights \(NCLR\)](#), the [National Center for Transgender Equality](#), the [Transgender Law Center](#), and the [Woodhull Freedom Foundation](#).

Table Of Contents

<u>Executive Summary</u>	3
<u>ESPLERP Mission</u>	4
<u>Definitions</u>	4
<u>Background</u>	5
<u>The War On Sex</u>	7
<u>Ballot Initiatives</u>	9
<u>ESPLERP v Gascon</u>	10
<u>Legislative Progress</u>	11
<u>Policy Agenda - Legislative Steps</u>	14
<u>Conclusion</u>	19

Executive Summary

Sex workers and their clients are criminalized. As a result they are subject to significant social and economic stigma and discrimination.

Therefore, this Policy Agenda sets out the following legislative steps that enfranchise all aspects of sex work, and address the discrimination and stigmatization which affects the sex worker community.

1. [Decriminalize sex work](#)
2. [Repeal FOSTA](#)
3. [Prohibit discrimination against erotic service providers, clients and support staff](#)
4. [Grant immunity from prosecution for prostitution offences to erotic service providers and our clients and support staff when they report more serious crimes](#)
5. [Prohibit gender identity, sexual orientation and racial profiling of sex workers](#)
6. [Prohibit mandatory HIV testing and repeal laws that criminalize HIV positive status](#)
7. [Monitor peer counseling 'services' provided by publicly funded anti-trafficking and anti-prostitution non-profit groups and rape crisis centers](#)
8. [Implement a grievance process in publicly-funded anti-prostitution and anti-trafficking groups, rape crisis centers and domestic violence shelters](#)
9. [Implement public reporting requirements for law enforcement agencies that perform prostitution and human trafficking arrests, incarcerations and convictions](#)
10. [Expand Privacy Laws](#)
11. [Establish regulations restricting prosecutorial misconduct](#)
12. [Prohibit sexual contact by law enforcement during investigations](#)
13. [All legislation should include an automatic, retrospective 'Vacatur' provision to expunge convictions and arrests from criminal and public records.](#)

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 impact legislation, legal advocacy, education, and research.

In our legal advocacy we create change through impact litigation and policy statements. This involves education activities for policy makers and the public.

In our research work, [our evaluation tool](#) helps the public and academics maintain ethically and scientifically rigorous standards.

Definitions

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

Note that we do not assume the gender of any erotic service provider. They may identify as female, male, trans, or non-binary.

We use the terms erotic service provider and sex worker interchangeably in this document.

A **client** is anyone who consensually engages the services of an erotic service provider. A client is not a "trafficker", not an "exploiter", and not a "john" (a slang term that is sexist and derogatory).

Support staff are those hired by erotic service providers in capacities such as receptionists, agents, managers, drivers, warehouse workers, security, photographers, and even janitors in adult clubs.

Beyond support staff, there are also **third parties** 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 **our community** to be anyone who is an erotic service provider or who knowingly and consensually hires, pays, or provides support to an erotic service provider. This includes our friends and family members who support us (whether in a formal or informal capacity).

Prohibition seeks to substantially reduce or eradicate all forms of compensated sex through the enforcement of criminal and other laws.

Criminalization pertains to criminal laws that prohibit the selling and / or buying of sex by consensual adults. It also refers to other laws which are either applied in a discriminatory way against people involved in sex work, and/or have a disproportionate impact on sex workers (such as vagrancy or loitering laws). Similarly, immigration laws can be applied in a discriminatory way against sex workers - where any conviction is grounds for deportation.

Decriminalization is the removal of all laws targeted at sex workers, clients or associated individuals. In this approach, sex work is recognized as legitimate work, and is treated as any other service sector, with labor rights etc.

Most sex workers want full decriminalization - rather than legalization or asymmetric decriminalization (see below).

The case for decriminalization is eloquently expressed by John Oliver in an episode of [Last Week Tonight](#).

Legalization or Regulation is where sex work is controlled by the state and/or local jurisdictions under very specific and restrictive conditions. For example, sex workers are required to register, there are restrictions on the number and location of sex work premises, or artificial conditions are imposed (such as mandatory medical examinations or limited work hours).

This typically results in a two-tier system: only a fraction of sex workers have the means to comply with the restrictive regulations, and those sex workers who cannot comply remain criminalized.

For example, in the Netherlands [advocates observe that](#) "the government has created an environment that hampers those workers' ability to independently drive economic growth and development - the definition of successful business. The new legislation looks to be more of an obstacle to the legal process than it is a help."

Various forms of Legalization or Regulation are in force in Nevada (in the US), Greece, and Germany (amongst others).

Asymmetric Decriminalization (also rebranded as the "Nordic model" or "End Demand") is where selling sex is (supposedly) legal, but buying sex is not. Other activities associated with sex work are criminalized, including "promotion of prostitution" and letting premises be used for selling sex. [Research from Amnesty International](#) indicates that this approach makes it harder for sex workers to find safe places to work, unionize, work together and support and protect one another, advocate for their rights, or even open a bank account for their business. It stigmatizes and marginalizes sex workers and leaves them vulnerable to violence and abuse by law enforcement.

Asymmetric Decriminalization is the current legal framework in Canada, Ireland and Sweden (amongst others).

Background

[Sex work has a long history in the United States](#), yet laws regulating the sale of sex are relatively new. In the 18th century, prostitution was a deeply rooted part of society from Louisiana to San Francisco. But even at that point, laws against lewdness and [sodomy](#) were used in an attempt to regulate sex work, and particularly LGBTQ people, POC and the poor.

In the early 20th century, campaigners looking to abolish prostitution promoted new laws focused on businesses where prostitution took place, such as saloons and brothels. And in 1910 the [Mann Act](#), or "White Slave Traffic Act" became the first federal law making it a crime to cross state lines for prostitution.

But criminalization does not stop sex work. It just drives sex workers and their clients underground and makes everyone substantially less safe.

- Criminalizing adult, voluntary, and consensual sex – including the commercial exchange of sexual services – is incompatible with the human right to personal autonomy and privacy. In short, a government should not be telling consenting adults the manner in which and who they can have sex with and on what terms.
- Criminalization exposes sex workers to abuse and exploitation by law enforcement. In criminalized environments, law enforcement routinely harass sex workers, extort bribes, physically and verbally abuse them, and even rape or coerce sex from them.
- Criminalization makes sex workers more vulnerable to violence, including rape, assault, and murder, by attackers who see sex workers as easy targets because they are stigmatized and unlikely to receive help from law enforcement. Criminalization forces sex workers to work in unsafe locations to avoid law enforcement.
- Criminalization consistently undermines sex workers' ability to seek justice for crimes against them. Even when they report crimes, sex workers may not be willing to testify in court against their assailants and rapists for fear of facing sanctions or further abuse because of their work and status.
- [UNAIDS](#), [public health experts](#), [sex worker organizations](#), and other [human rights organizations](#) have found that criminalization of sex work also has a negative effect on sex workers' right to health. For example, sex workers are reluctant to carry condoms for fear of arrest, forcing them to engage in sex without protection and putting them at heightened risk of contracting HIV and other sexually transmitted diseases.
- Criminalization also has a negative effect on other human rights. In countries that ban sex work, sex workers are less able to organize as workers, less able to advocate for their rights, and less able to work together to support and protect themselves.

This legislative and law enforcement approach 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% had actually experienced violence at the hands of police
- arresting them – and then labelling arrested workers as sex trafficking victims
- victimizing them during incarceration (from other inmates and 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
- fining them, subjecting them to probation and loss of rights, and saddling them with a damaging criminal record
- forcing arrested workers into state-provided or state-funded “diversion services”, which offer few real services.
- forcing erotic service providers (like exotic dancers) to register and/or obtain performance IDs, opening them up to harassment and stalking.

And at times of societal dislocation, such as during the COVID-19 Pandemic, quarantine rules and other COVID-19 restrictions were especially damaging for sex workers, who were already more likely to face discrimination, police harassment, and unjust criminalization. [Amnesty International calls on governments](#) to reject using criminal sanctions to implement public health goals and "refrain from implementing repressive policies" in the name of protecting public health.

The War On Sex

Over the past few decades, we have seen an exponential increase in “anti trafficking” rhetoric, funding, and legislation - part of a decades-long anti-prostitution crusade from Christian “abolitionists” and anti-sex feminists.

Reason Magazine accurately declares that [“The War on Sex Trafficking Is the New War on Drugs”](#). In effect, the “War on Sex Trafficking” is a war on adults (sex workers and their clients) who consensually exchange sex for money.

But this whole “anti trafficking” rhetoric is manufactured. The facts paint a very different picture. For example, from the 2015 Reason article...

*“... the FBI released its first crime data on state-based trafficking investigations. In the 13 states reporting for last year, law enforcement looked into a total of 14 human trafficking incidents, ultimately **making a grand total of four arrests**. Between 2008 and 2010, federally funded task forces investigated 2,515 suspected incidents of human trafficking, according to the Bureau of Justice Statistics. An “investigation” was defined as “any effort in which the task force spent at least one hour investigating” the incident. Of these cases, only 6 percent led to arrests. From 2007 to fall 2008, federal dollars funded 38 sex-trafficking task forces, of which 15 found no confirmed victims or suspects, 14 reported between one and four cases, and nine reported more than five. Of the total 1,229 suspected incidents that year, sex cops found just 14 underage victims.”*

Clearly there are difficulties in researching any “black market”. But as sociologist Ronald Weitzer argues in a [2011 Journal of Criminal Law and Criminology paper](#) “a huge disparity between the two [sets of figures] should at least raise questions about the alleged scale of victimization.”

Despite this disconnect, there are vast Federal and State investments in grants to “anti trafficking” organizations. For example [in 2015, Truthout](#) estimated that “50 of the most prominent anti-trafficking organizations in the United States are estimated to share around \$686 million - an amount that would place them approximately 184th on the UN’s ranking of nations by GDP, right above Samoa.”

These vast sums do not benefit any victims of trafficking. In their required IRS 501(c)(3) filings, the “anti trafficking” organizations show the overwhelming majority of their funding going to executive salaries and “awareness” (essentially PR campaigns designed to whip up hysteria and obtain further funding). These are highly profitable self-sustaining scams - causing immense harm to our community.

The “anti trafficking” rhetoric also justifies high profile law enforcement prostitution sting operations masquerading as “rescue” operations. For example, during the run up to Super Bowl LVI 2022 in Los Angeles, the Los Angeles County Sheriff's Department (LASD), together with the FBI, Homeland Security, and the National Center on Sexual Exploitation (a conservative values group formerly known as Morality in Media which aims to eradicate all sex work) mounted “Operation Reclaim and Rebuild”

with its claimed mission as "combating human trafficking." After the Super Bowl, Los Angeles County Sheriff Alex Villanueva trotted out a slew of misleading claims about his department's (imagined) "success" in stopping "trafficking". But the vast majority of arrests were of sex workers and clients - misdemeanor cases of either loitering for prostitution or attempting to purchase sex, according to [data released by LASD](#) itself. At the end of the week, 214 people were arrested for allegedly selling sex and 201 people were arrested for allegedly trying to pay for sex. And they had to stretch for these numbers. Many arrests were miles away in Santa Barbara or San Bernardino, or at the other end of California in San Francisco or Fresno. Nothing to do with the Super Bowl.

Another major consequence of this approach 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 there is no record where that money went. The only people who do not benefit from such seizures are the erotic service providers at the sharp end.

The "anti trafficking crusade" has encouraged Congress and State legislatures to pass a series of "anti-trafficking" laws - which have had extremely negative impacts on erotic service providers, our clients, and our community. Current examples of this kind of legislation include the following.

- FOSTA, signed into law in April 2018, carved out an exception to the Communications Decency Act Section 230 to make internet platforms liable for "sex trafficking" content. However, FOSTA does not differentiate between consensual sex work and sex trafficking. As a result, FOSTA encouraged internet platforms to off-board us, excluding us from online spaces where we could vet clients and engage in preventive information exchanges. That forced many of us to engage in more dangerous street work - spaces where we are at risk of violence - and ironically more at risk of being trafficked.
In 2021, the [General Accounting Office \(GAO\) produced a report](#) which summarized some of the effects of FOSTA. The report is carefully written - presumably because they do not want to admit that FOSTA has been a flop. They do not try to address the harms to sex workers. But they do admit that prosecutors have only used FOSTA once, and that they've had success using pre-existing laws. For example the shutdown of Backpage.com, and the seizure of its funds, was prosecuted under pre-FOSTA legislation.
- The 2000 Trafficking Victims Protection Act (TVPA) and California's Proposition 35 contain overly broad definitions which define our everyday personal and professional relationships as criminal associations, essentially defining our spouses and partners, roommates, landlords, support staff, and others, as "sex traffickers" who may be forced to register as "sex offenders".
- "Safe Harbor Laws" are supposed 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" violates their right to due process.
- Congress is considering the [Trafficking Victims Prevention and Protection Reauthorization Act of 2022 \(TVPA\)](#). This bill is problematic for multiple reasons.
 1. It does nothing to stop trafficking (of any kind) and simply encourages law enforcement to

mount prostitution “stings” or “sweeps”. The USC Gould Human Rights Institute report, [“Over-Policing Sex Trafficking: How U.S. Law Enforcement Should Reform Operations”](#), says “Based on literature and our qualitative and quantitative research, we conclude that (anti-sex trafficking law enforcement) operations are a form of over-policing that re-traumatizes victims, perpetuates systemic racism, and undermines the aims of the TVPA.”

2. The re-authorization adds provisions that would target US citizens already living overseas, and would create a *global database of historic criminal convictions* without any rules governing its use and distribution worldwide. In this way it threatens many people around the world, and would place every American with a conviction predating *Lawrence v Texas* (2003) on a global list of dangerous 'sex tourists'.
 3. The 2003 version of the Federal Reauthorization Trafficking Victims Act expanded the narrative on “sex trafficking” to include “children” - whereby everyone under 18 who is found to be involved in prostitution is automatically defined as a “trafficked victim”.
- Congress has re-introduced the EARN IT Act, an [incredibly unpopular bill from 2020](#) that was [dropped in the face of overwhelming opposition](#). This would pave the way for a massive new surveillance system that would roll back some of the most important privacy and security features in technology used by people around the globe. This has the potential to be a FOSTA version 2 - where the platforms sex workers, our clients and our community use would quickly ban us based on our speech.

These 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.

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

Ballot Initiatives

Over the years sex worker rights advocates have tried to make progress - to advance their civil rights - via the Ballot Initiative process.

- The [2004 Berkeley Measure O](#) proposed an ordinance that would 1) make enforcement of prostitution laws the lowest priority; 2) oppose state laws making prostitution a crime; and 3) require semi-annual reporting of prostitution-related Berkeley Police Department law enforcement activities.
This qualified as a Citizen Initiative - which required a simple majority approval. But it was defeated with 18,504 / 36.5% Yes votes versus 32,208 / 63.5% No votes.
- The [2008 San Francisco Proposition K](#) was designed to
 - prohibit the San Francisco Police Department (SFPD) from using public resources to investigate and prosecute prostitution
 - prohibit the SFPD from using public resources to deprive sex workers their right to negotiate for fair wages and work conditions
 - require the SFPD and San Francisco District Attorney (DA) to enforce existing laws, including the "consistent and rigorous enforcement against coercion, extortion, battery, rape, and other violent crimes," regardless of a person's status as a sex worker

- o require the SFPD and DA to "practice full disclosure in the investigation and prosecution of charges of rape, extortion, sexual assault, and battery against sex workers, exotic dancers or erotic service providers"
- o prohibit the city's law enforcement agencies from applying for and receiving federal or state funds that institute racial profiling "as a means of targeting alleged trafficked victims under the guise of enforcing the abatement of prostitution laws".

This qualified as a Citizen Initiative - which required a simple majority approval. But it was defeated with 140,185 / 40.94% Yes votes versus 202,235 / 59.06% No votes.

- More recently, the [Oregon Decriminalization of Commercial Sexual Solicitation Initiative](#) was filed in November 2021 for the [November 2022](#) ballot. The proposed law would have decriminalized commercial sexual solicitation; enacted health and safety standards to regulate commercial sex work businesses; and protected an individual who was or is a "sex worker, client, or third-party facilitator" or an individual who has a conviction for prostitution, commercial sexual solicitation, or promoting prostitution, from future employment discrimination.

The initiative was refiled with modified language in January 2022. But in May 2022 [the initiative was withdrawn without explanation](#).

ESPLERP v Gascon

A major part of our work is impact litigation. As a prime example of that, in March 2015, ESPLERP filed a complaint in United States Federal District Court - ESPLERP v Gascon [case 16-15927] (<https://esplerp.org/case3-esplerp-vs-gascon/>), which challenged California's anti-prostitution law, Penal Code 647(b), arguing for the decriminalization of sex work.

Our case largely relied on Lawrence v Texas, the 2003 Supreme Court landmark decision that held that intimate consensual sexual conduct was protected by the privacy provisions of 14th Amendment.

Our lead lawyer was Louis Sirkin, an eminent First Amendment and criminal defense attorney.

- He achieved national prominence in 1990 when he successfully defended Dennis Barrie, the director of the Contemporary Arts Center in Cincinnati, against obscenity charges for displaying the nude artwork of Robert Mapplethorpe.
- In 2002 he successfully argued before the Supreme Court in Ashcroft v. Free Speech Coalition that the Child Pornography Prevention Act was unconstitutional.
- In 2005, in United States v. Extreme Associates, he successfully argued that the right to privacy, recently confirmed and strengthened in Lawrence v. Texas, gave individuals the constitutional right to view offending materials in private.
- And in 2008, he was the lead attorney in Reliable Consultants v Abbott, where the 5th Circuit Court of Appeals found the Texas statute prohibiting the sale and distribution of sex toys to be unconstitutional, again based on Lawrence v Texas.

One of the more memorable moments in the court briefs is when our lawyers quote George Carlin:

"I don't understand why prostitution is illegal. Selling is legal, [sex] is legal. So, why isn't it legal to sell [sex]? Why should it be illegal to sell something that's legal to give away?"

After the case was dismissed in District Court, we appealed to the Ninth Circuit. Our appeal case was 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.

Interestingly, [during oral arguments at the Ninth Circuit](#), the California State counsel, when questioned by the judges about the State's legitimate interest in criminalization, stated that it was up to the State legislature to decide what aspects of sex work should be criminalized or not - and referred to recent changes in 647(b) (the statute in question). The judges seemed inclined to agree. So the State of California (and other jurisdictions) could decriminalize sex work if they so wished - as some legislative bodies have already done (see [Legislative Progress](#) below).

In February 2018, the Ninth Circuit dismissed our case. And in May 2018 they declined to allow an "en banc" hearing (before a larger 11 judge panel). Shortly afterwards, Justice Kennedy announced his retirement - and was replaced by Brett Kavanaugh. At that point, we concluded that there was no benefit in appealing to a Supreme Court that was becoming, and has since become even more so, hostile to civil rights.

Over the course of the case, we received increasingly [positive coverage](#) in major outlets like the New York Times, CBS, Fox News, the San Francisco Chronicle, and the UK Independent. That coverage recognized that our position - that sex work should not be criminalized - is sensible and intellectually correct, and confirmed that [public opinion is shifting in our favor](#).

Our case also contributed to the public discourse about sex work and criminalization, particularly through raising the voices of our plaintiffs. And now we see many civil rights, religious, and LGBTQ groups taking a more balanced and progressive view of sex work.

Legislative Progress

Some overseas jurisdictions have decriminalized sex work.

- [New Zealand decriminalized sex work in 2003](#) - via the [Prostitution Reform Act \(PRA\)](#). In New Zealand it is legal for any citizen over 18 years old to sell sexual services. It continues to be illegal to hire anyone under 18 for sexual services. Street-based sex work is decriminalized, running a brothel is a regulated business, and sex workers' rights are guaranteed through employment and [human rights legislation](#). Opponents of the PRA had claimed its introduction would lead to an explosion of brothels and of human trafficking, and in response to this a review process was built into the legislation. Five years after its introduction the [Prostitution Law Review Committee](#) found:
The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.
The review committee also tasked the Christchurch School of Medicine with carrying out an [independent review](#). Quantitative and qualitative methods found that over 90 percent of sex workers believed the PRA gave them employment, legal and health and safety rights. In addition,

a substantial 64 percent found it easier to refuse clients. Significantly, 57 percent said police attitudes to sex workers changed for the better.

- [New South Wales](#) in Australia has passed a series of laws with some major elements of decriminalization. It is legal for any citizen over 18 years old to sell sexual services. It continues to be illegal to hire anyone under 18 for sexual services. Street-based sex work is decriminalized, running a brothel is a regulated business. Some activities are still criminalized - such as living on the earnings of a prostitute (although persons who own or manage a brothel are exempt), causing or inducing prostitution, advertising that a premise is used for prostitution, and advertising for prostitutes. But this limited decriminalization only applies to citizens - with the result that immigrants are excluded from equal protection under the law.
- In February 2022, the Australian state of Victoria passed the [Sex Work Decriminalization Act 2022](#). This law recognizes that sex work is legitimate work and is better regulated through standard business laws, like all other industries in the state. The law provides for decriminalization to occur in two stages to allow time to transition to a different model of regulation. The first stage commenced on 10 May 2022 and includes the decriminalization of street-based sex work in most locations; the repeal of offences for working with a sexually transmitted infection and requirements to undergo regular STI testing; the repeal of offences for individual sex workers not using safer sex practices; the repeal of the small owner-operator sex work service provider register; changes to advertising controls applicable to the sex work industry; and amendments to the Equal Opportunity Act 2010. The second stage is expected to commence in December 2023 and will include abolishing the sex work service provider licensing system; re-enacting offences relating to children and coercion in other legislation; changes to planning controls to treat sex service businesses like other businesses; the establishment of appropriate liquor controls for the sex work industry; the repeal of brothel and escort agency provisions in the Public Health and Wellbeing Act 2008 to remove specific sex work industry controls. Again the decriminalization process only applies to citizens - with the result that immigrants are excluded from equal protection under the law.
- [Belgium decriminalized sex work](#) in March 2022. Federal Justice Minister Vincent Van Quickenborne said in a statement "...this is a historic reform. It ensures that sex workers are no longer stigmatised, exploited and made dependent on others. Belgium is the first country in Europe to decriminalize sex work."

While not yet addressing decriminalization, some US legislatures have made progress in addressing discrimination against our community.

- Utah [House Bill 0040](#) grants immunity from criminal charges of solicitation and prostitution - generally misdemeanor offenses - for those who report crimes like rape, extortion or aggravated robbery. It was signed into law in 2019.
- In 2019 California passed [SB233](#), which protects anyone reporting a serious crime (such as sexual assault, trafficking, robbery, domestic violence) from being charged with misdemeanor prostitution, and also removes condoms as probable cause for prostitution arrests.

- Oregon [Senate Bill 596](#) provides that if a person reports a felony, then evidence of prostitution or attempted prostitution obtained as a result of making that report may not be used against them. It became law in January 2020.
- New York State has repealed their long-standing law that criminalized “loitering for the purposes of prostitution”. [SB2253](#) was signed into law in 2021.
- Colorado [HB22-1288 grants sex workers immunity from prostitution charges](#) when reporting any of about two-dozen crimes, including human trafficking, murder, manslaughter, assault, false imprisonment and stalking. It was signed into law in May 2022.
- In July 2022 California passed [Senate Bill 357](#) to repeal California Penal Code §653.22, which had criminalized loitering for the intent to engage in prostitution.

Some US legislatures have proposed bills to decriminalize sex work. As of 2022, none of these have progressed. But it does indicate that moving forward with such legislation is politically possible. For example:

- In 2017 [New Hampshire House Bill 287](#) proposed establishing a committee to study decriminalizing sex work. The bill was heard in the Criminal Justice and Public Safety committee, then shelved.
- In 2019 Washington DC’s [Community Safety and Health Amendment Act](#) would have substantially decriminalized sex work. After a contentious 14-hour hearing in the Judiciary and Public Safety Committee, the bill was never brought before the full Council.
- In 2020 Vermont introduced [H569](#) and [H568](#). H569 protects anyone reporting a serious crime (such as sexual assault, trafficking, robbery, domestic violence) from being charged with misdemeanor prostitution. H568 creates a panel to make recommendations on modernizing Vermont’s prostitution laws. Both bills were read for the first time and referred to the Committee on Judiciary, but do not appear to have progressed.
- In 2021 Louisiana [HB 67](#) proposed the decriminalization of sex work. It was eventually deferred in committee during that legislative session.
- In 2021 Oregon introduced [House Bill 3088](#) to repeal the State’s prostitution law. After being considered in committee, the bill won’t be able to be heard again until 2023, where it will have to be reintroduced - which the sponsors have vowed to do.

Currently, a number of US legislatures are considering related legislation. For example, as of June 2022:

- At the Federal level, Representative Ro Khanna’s [SAFE SEX Workers Study Act](#) has been re-introduced. The hope is that documenting the harms to people engaged in the commercial sex industry sets the stage for the [repeal of FOSTA](#).

- The New York State Stop Violence Against the Sex Trade Act ([Senate Bill 3075](#) / [Assembly Bill 849](#)) repeals statutes that criminalize sex work between consenting adults, but keep laws relating to minors or trafficking. It also provides for criminal record relief for people convicted of prostitution related crimes. Both Senate and Assembly bills are currently in committee.
- Rhode Island legislators are considering a series of bills.
 - [H5250](#) would establish a commission to study the effects of criminalization.
 - [H5467](#) grants immunity to people engaged in commercial sexual activity if they are victims or witnesses of crime.
 - [S2713](#) decriminalizes sex work and expands eligibility for expungement of related criminal records.
 - [SB2716](#) decriminalizes certain commercial sexual activity by making the buying or selling of sexual services a civil violation with a fine.
- Pennsylvania is considering [House Bill 1381](#) which would provide amnesty to sex workers, sexually exploited children, and victims of human trafficking reporting a crime of violence. The bill is currently in the Judiciary Committee.
- California [Assembly Bill 1076](#) automates the expungement of eligible criminal convictions - including convictions for sex work. The previous court process for record expungements could cost around \$3,500, whereas this law allows individuals to have their eligible record automatically expunged without the assistance of an attorney. Unfortunately, the law only applies to those with eligible convictions or arrests that occur on or after January 1st, 2021.

Policy Agenda - Legislative Steps

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 propose the following legislative steps toward ensuring greater safety and enfranchisement for erotic service providers. [Note that this has a USA focus - but many of the steps could equally be applied in other national jurisdictions.]

1. Decriminalize sex work

Decriminalization should remove criminal penalties without creating regulations. There are examples of successful legislative approaches above - in [New Zealand](#), [Victoria](#) and [Belgium](#).

Congress should immediately decriminalize sex work (and all forms of erotic service provision).

2. Repeal FOSTA

FOSTA, signed into law in April 2018, was ostensibly targeted at online “sex trafficking”, but does not differentiate between consensual adult sex work and sex trafficking. It has had zero effect on sex trafficking, but has been disastrous for the health and safety of the erotic service provider community - causing us to be arbitrarily kicked off social media, and kicked off relatively safe online platforms where clients could be vetted and preventive information exchanged.

Congress should immediately repeal FOSTA.

3. Prohibit discrimination against erotic service providers, clients and support staff

a. Repeal moral turpitude laws

Archaic moral turpitude 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 dominatrices or submissives, and webcam performers may be negatively impacted by these laws. For example, Stacie Halas, a permanent certified teacher, [was dismissed by her employer](#) when they learned of her previous employment in adult film.

b. Prohibit discrimination in access to publicly funded services

In its 2020 [Universal Periodic Review of Human Rights](#), 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 has 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 a 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](#).

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.

For example, Oakland’s 2014 “nuisance ordinance” targets prostitutes, and allows for the eviction of tenants due to their perceived status.

Similarly, an adult film performer was [discriminated against by their university](#) based on their previous employment.

Such laws place the onus on the person being discriminated against to prove that they are not, or were not, a sex worker. They also mean that low-income tenants, transgender residents, and people of color are targeted and made homeless.

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

The stigma of sex work has a significant impact on the ability of [sex workers to access basic financial services](#), which in turn impacts their ability to fully participate in society. It is vital that financial institutions end their practices of discriminating against sex workers for the sake of safety, inclusion and support.

4. Grant immunity from prosecution for prostitution offences to erotic service providers and our clients and support staff when they report serious crimes

California [SB233](#) is an example of legislation that enhances the safety of erotic service providers and our community - and indeed of society at large. SB233 protects anyone reporting a serious crime (such as sexual assault, trafficking, domestic violence) from being charged with misdemeanor prostitution, and removes condoms as probable cause for prostitution arrests.

The criminalization of prostitution discourages erotic service providers, our clients and support staff, from reporting serious crimes. This law means our community can help law enforcement investigate and prosecute the small number of actual sex traffickers, corrupt law enforcement officers, coercive third parties, and others who prey upon us, without fear of penalties.

In addition, California has a [‘Getting To Zero’ campaign](#) for HIV - so granting immunity from arrest when carrying condoms is an incentive to safe sex in line with the State’s goals.

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](#), 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 publicly funded anti-trafficking or anti-prostitution non-profit groups and rape crisis centers

Anti-trafficking groups, anti-prostitution groups and rape crisis centers are in receipt of significant public funds without any requirement for transparency and accountability as to how those funds are used, or any independent ethics oversight.

For example Sacramento's [Community Against Sexual Harm \(CASH\)](#) claims it serves women who are or have been commercially sexually exploited, sex-trafficked, or involved in prostitution. But CASH is conflating very different populations - sexual assault victims, those who have been forced into working in the sex industry, and those who have been arrested for consensual adult sex work - and effectively generating funding and profiting from the criminalization of sex work. In addition, CASH does not report details of how its funds are used and/or who the funds benefit.

Similarly, [Bay Area Women Against Rape](#) employed a male counselor, 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. An adult man counseling a minor is not a peer-to-peer counselor. And such arrangements are ripe with abuse potential for self dealing, conflicts of interest and ultimately civil rights violations of due process.

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 so 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 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 carry out 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
- 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 [UN Treaty on International Covenant on Civil and Political Rights](#), 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 sites and are then 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. Technology companies, like Palantir, Thorn, and Google (which donated [\\$11.5 million](#) to anti-trafficking organizations) are now using facial recognition technology to try and [identify "sex trafficking victims" by scanning escort online ads](#).
But in practice, what they are actually doing is building databases of adult consensual workers - where posting an ad online in order to make money to survive can lead to your face and identity being cataloged and handed to law enforcement. There is clearly a need for legislation to prevent the collection of personal data without consent.
- d. Social networks, like Facebook, Snapchat and Twitter, are using their technology to 'shadow ban' workers, and using their Terms of Service to push sex workers off the internet - which causes social and professional death. We need legislation to bring balance and reparations to this clearly unfair business practice.
- e. 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.
For example, a privacy watchdog in the Netherlands found that [compulsory registration of sex workers breached privacy rules](#).
- f. We need legislation to 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.

11. 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. States should establish strong penalties for such misconduct to deter prosecutors from abusing their power.

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 or in their custody, or anyone who is a victim or witness. Any violation should be prosecuted as a criminal sexual assault offence and restitution should be obtainable in civil courts.

Despite some advances in some states, law enforcement officers are still able to engage in sexual contact with erotic service providers. It is imperative that States specifically prohibit this behavior - and treat it as the sexual assault it is.

13. All legislation should include an automatic, retrospective 'Vacatur' provision to expunge convictions and arrests from criminal and public records

Any and all legislation passed to address items in this Policy Agenda should include a "Vacatur" provision whereby prostitution convictions and arrests are automatically and completely expunged, with retrospective effect, from criminal and public records without requiring individuals to go through a complicated, onerous and expensive legal process (such as a court based process).

Conclusion

In conclusion, the criminalization of sex workers and their clients subjects them to significant social and economic stigma and discrimination. This contributes 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, and deters reports from community members who have been actual victims of rape, robbery, theft, coercion, battery, assault, stalking, or murder.

Continuing 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. It puts members of our community at risk - and undermines public safety.