



Erotic Service Providers Legal Education and Research Project (ESPLERP) 2016 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 the erotic service providers and the larger erotic community.

ESPLERP has filed a complaint with the United States District Court (http://esplerp.org/wp-content/uploads/2015/03/001_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.

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.

Given all of the above, 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, dominatrixes, 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, including of course along with the above categories, our friends and family members who know what we do and support us (whether in the formal capacity of support staff or not).

INTRODUCTION

Under the guise of “rescuing” trafficked victims, human trafficking legislation has to date too often relied upon, or been an accomplice to, the continued criminalization of our labor as prostitutes; clearly in violation of our Constitutional Rights. Although state statutes often classify erotic service providers as victims and specifically define what constitutes victimized behavior, they 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 effectively perpetuates the state’s 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.

Ironically, *the state itself* typically 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>
- by arresting them -- prostitution arrests are the usual means by which persons are labeled sex trafficking victims
- by victimizing them during incarceration (from other inmates, guards, from losing income, from being forced to work, from being away from family)
- by forcing them into state-provided or state-funded “services”. which are mandatory conditions of the “diversion” programs which typically offer arrestees the only way to avoid further persecution (prosecution)
- by on release being fined, subjected to probation and loss of rights, saddled with a damaging criminal record, and subject to loss of housing.

Many “anti-trafficking” NGOs conflate all prostitution with trafficking, as if even consensual adult sex workers are victims - they just don’t know that they are victims. 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 left free to make their own peaceful choices about their bodies and their sexual relations.

Trafficking legislation such as California’s Proposition 35, passed in 2012, has used broad definitions of pimping and pandering statutes which brand our everyday personal and professional relationships as criminal associations in which 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 currently 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.

A major consequence of the current attacks on “sex trafficking” is that property is seized by law enforcement, without due criminal proceedings, even if the property owner is never charged with a crime - and that property seizure results in profit for law enforcement agencies and their non-profit collaborators. For example, the Department of Homeland Security seized \$1.4 million from Rentboy.com. Everybody benefits - except the sex workers on the sharp end.

PRINCIPLES TO GUIDE LEGISLATION AFFECTING OUR COMMUNITY

- 1) “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.
- 2) “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 the attitudes of “othering” us and denying our independent volition and agency must be excised from the legislative process.
- 3) “Individual Privacy, Institutional Transparency” - Any legislation that affects our community must protect our privacy and 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.

14-POINT ESPLER PROJECT 2016 POLICY AGENDA

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. Prohibit 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. End discrimination against erotic service providers 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 against erotic service providers, clients and support staff in all 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.

The jacked-up fees and fines imposed by Proposition 35 discourages reporting crimes that would otherwise be covered under California's Good Samaritan law, perversely giving cover to the relatively small number of real sex traffickers, corrupt law enforcement officers, coercive third parties, and others who prey upon erotic service providers.

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

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

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

Although AB 336 went some way toward addressing this issue, it still left the door open for prosecutors to make special motions allowing condoms to be used as evidence. Any such exemptions discourage people from practicing safe sex.

5. **Prohibit gender identity and racial profiling of women of color and transgender women as sex workers and sex trafficked victims.**

Transwomen of color such as should not have to fear being arrested for prostitution just for walking on the street wearing clothing that a law enforcement officer considers indicative of prostitution.

6. **Prohibit mandatory HIV testing and repeal laws that criminalize HIV positive status [e.g. California Penal Code 647(f)].**

With new medical advances against HIV (e.g. Truvada), the current level of state coercion employed against people with compromised immune systems is inappropriate. For example, the Williams Institute found that the vast majority (95%) of all HIV-specific criminal incidents under California penal Code 647(f) impacted people engaged in sex work or individuals suspected of engaging in sex work -

<http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-December-2015.pdf>.

7. **Implement a meaningful grievance process and expand accountability of publicly-funded anti-prostitution, anti-trafficking groups, rape crisis centers and domestic violence shelters.**

Require non-profits that receive taxpayer funds that provide services to prostitutes or trafficking victims, in particular rape crisis centers and shelters, 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 which show consistently poor user satisfaction or engage in unacceptable practices should promptly be made ineligible for public funding. This ought to apply especially to rape crisis centers and shelters.

8. **Publish publically annual audits of anti-trafficking/prostitution sting operations on a county-by-county basis.**

Include all costs including overtime pay to law enforcement, cost incurred by all participating non-profits in prostitution sting operations and anti-trafficking task forces. Regulate the anti-trafficking task forces as to make all of their meetings open to the public. Include also copies

of any Memoranda of Understanding between law enforcement agencies and nonprofits or other agencies. Publish names of the task force members as well as demographic data (gender, age, race) on those who have been arrested and/or convicted in relation to prostitution, or human/sex trafficking.

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

Require law enforcement agents who invite journalists/media or members of nonprofits to accompany them on operations targeting our community to inform such individuals that they are not allowed to film or record a person 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>).

10. Clearly define the practice of overcharging defendants as to create criminal penalties to disincentivize 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.

11. Prohibit using sexual contact as a legal means for law enforcement to entrap erotic service providers, clients, support staff, or third parties in sting operations.

All law enforcement officers and their agents must 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 can be prosecuted as criminal sexual assault offence and restitution can be sought in civil courts.

12. Institute strong public reporting requirements for all local and state law enforcement agencies that perform prostitution and human trafficking arrests, incarcerations and convictions.

Use this data to assess the cost to all cities and counties. There is a great need for transparency and accountability.

13. Institute specific public reporting requirements for all publicly-funded local and state non-profit agencies that provide services related to prostitution or human trafficking.

Regularly assess the costs of these services on a county by county basis. Include community-based organizations and non-profits who are the recipients of the new high fines levied under Prop 35 (see section 2 <http://lawfilesexxt.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/5884-S.PL.pdf>).

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

Erotic service providers should not be receiving lower quality services paid for with taxpayer dollars than what state-employed social workers are providing in other contexts. Bay Area Women Against Rape, for instance, has an older man going on anti-prostitution sting operations under the guise of rescuing trafficked victims, specifically minors, who are being arrested for

prostitution, and acting as one of their primary 'peer' counselors. This hardly meets the definition of peer-to-peer counseling. It sets up a system of self dealing and conflict of interest.

In conclusion, prostitution and trafficking laws and procedures contribute to the disenfranchisement of our community. This disenfranchisement, and 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 the opposite direction of 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.

These are foundational legislative steps toward ensuring greater safety and enfranchisement for erotic service providers.

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