

## Civil Rights Violations in Phoenix, AZ Through Anti-Sex Work Laws and Practices

**Reporting Organizations:** Best Practices Policy Project<sup>1</sup> and Sex Workers Outreach Project, Phoenix<sup>2</sup>

### Issue Summary

Throughout the U.S., sex workers and people profiled as sex workers, face arbitrary arrest, police violence, and harassment. Anti-loitering and other “quality of life” laws, and vaguely drafted anti-prostitution statutes encourage problematic police practices such as profiling of marginalized communities and using condoms as evidence of prostitution.<sup>3</sup> A growing number of states prescribe mandatory minimum jail sentences and even felony charges for people convicted of prostitution. This submission focuses on civil rights violations in Phoenix, Arizona, where sex workers and allies are actively documenting violations of sex workers’ rights. While Phoenix’s treatment of sex work is not unique, this focus provides an in-depth overview of the blend of racism, patriarchy, transphobia, criminalization, and moral hysteria that informs U.S. laws and police practices that violate the civil rights of sex workers and those profiled as such.

### *Vague Laws And Discriminatory Police Practices*

Under the “Offenses Involving Morals” section of Phoenix’s criminal code, a person commits a crime if they are in public, within public view, or in a motor vehicle, and they “manifest an intent to commit . . . prostitution,” even if no exchange of sex for money occurs.<sup>4</sup> With its overbroad and vague description of “manifested” intent, this statute criminalizes actions like waving at cars, engaging in conversation with passersby, making any undefined “bodily gesture,” and speech that could, for example, help in an emergency—specifically, inquiring if someone is a police officer.<sup>5</sup> The highest court to hear a challenge to the statute found it dependent on “context,” meaning that police are entitled to determine for themselves when talking to passersby, for example, is related to sex work.<sup>6</sup> Police profiling can flourish where laws allow officers wide latitude in interpreting nonviolent behavior, and these laws often serve to legitimize longstanding arbitrary and discriminatory police practices.<sup>7</sup> In the U.S., police typically profile and

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<sup>1</sup> **The Best Practices Policy Project** ([www.bestpracticespolicy.org](http://www.bestpracticespolicy.org)) was founded in 2005 to provide capacity building support for organizations working with sex workers in the United States.

<sup>2</sup> **SWOP- Phoenix** (<https://www.facebook.com/SwopPhx>) is a local chapter of the national Sex Workers Outreach Project social justice network, which is dedicated to the fundamental human rights of sex workers and their communities, focusing on ending violence and stigma through education and advocacy.

<sup>3</sup> ALLIANCE FOR A SAFE AND DIVERSE DC, *MOVE ALONG: POLICING SEX WORK IN DC* 1-3, 10, 15 (2008) available at <http://dctranscoalition.files.wordpress.com/2010/05/movealongreport.pdf>; HUMAN RIGHTS WATCH, *IN HARMS WAY: STATE RESPONSE TO SEX WORKERS, DRUG USERS, AND HIV IN NEW ORLEANS* 2, 3, 40-43 (2013) available at <http://www.hrw.org/node/121178/>.

<sup>4</sup> PHX., ARIZ., CODE § 23-52(A)(3) (2013). Police can find “manifested” intent if “the person repeatedly beckons to, stops or attempts to stop or engage passersby in conversation or repeatedly, stops or attempts to stop, motor vehicle operators by hailing, waiving of arms or any other bodily gesture;” or if that person asks someone if they are a police officer or “searches for articles that would identify a police officer.”

<sup>5</sup> *Id.*

<sup>6</sup> *State v. Savio*, 924 P.2d 491, 493 (Ariz. Ct. App. 1996).

<sup>7</sup> ALLIANCE FOR A SAFE AND DIVERSE DC, *supra* note 3 at 1, 10; *ACLU Warns DC Council (Again) Against that Unconstitutional and Ineffective Prostitution Free Zones*, ACLU OF THE NATIONAL CAPITAL AREA (26

arrest members of marginalized communities as sex workers, including transgender women, people of color, immigrants, LGBT and gender-nonconforming people, and people in impoverished communities.<sup>8</sup> Police also draw on patriarchal presumptions of immorality in profiling people based on such things as the clothing they wear.<sup>9</sup> Phoenix is no exception to this pattern.

### *Due Process Violations Through “Diversion”*

Operating alongside overbroad laws and discriminatory police practices in Phoenix is the use of a program called “Project ROSE” (PR). Under the program, with an amplified force of officers, police conduct mass “sweeps,” arresting scores of sex workers and people the police profile as sex workers. Arrestees are handcuffed and transported via police car to the PR center, where they speak with police and with a prosecutor working with PR. Arrestees have no opportunity to speak to a defense attorney during this process, even if they request one.<sup>10</sup> Qualifying arrestees are told that they can either take a several-month-long diversion program offered by Catholic Charities, or they will be taken into custody and face criminal charges. The mandated PR program has about a 70% failure rate, meaning that the majority of people who do take this option eventually still face criminal charges, and will almost certainly be incarcerated under state and local mandatory minimum sentencing schemes.<sup>11</sup>

In addition to violating people’s civil rights, using police force to coerce individuals into services strips them of their autonomy, thus violating many standards of good social work practice. Programs like PR also further the mistaken idea that marginalized groups need constant surveillance by the criminal system,<sup>12</sup> which is actually often a significant source of violence and further marginalization.

### *Mandatory Minimums, Felony Charges, and Rights Violations in Prisons*

Arizona, like some other states, has mandatory minimums for selling sex with an escalation to felony conviction. The first conviction requires a minimum of 15 days in jail with no possibility of probation or parole. A fourth conviction is an automatic felony and mandates a minimum of 180 days imprisonment.<sup>13</sup> People with criminal convictions face rampant discrimination in employment and higher education, and those with felony charges are barred in many states, including Arizona, from political participation,

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Jan., 2012) available at <http://aclu-nca.org/news/aclu-warns-dc-council-again-against-unconstitutional-and-ineffective-prostitution-free-zones>.

<sup>8</sup> ALLIANCE FOR A SAFE AND DIVERSE DC, *supra* note 3 at 1-3, 10; HUMAN RIGHTS WATCH, *supra* note 3 at 3, 40-44, 53.

<sup>9</sup> Kate Briquet, *That’s a Hooker Outfit?*, N.Y. POST, (10 Nov., 2013) available at <http://nypost.com/2013/11/10/thats-a-hooker-outfit/>.

<sup>10</sup> An arrestee who asked to speak to a lawyer was told the only lawyer she could talk to was the prosecutor. Jordan Flaherty, *Arizona’s Tenacious Laws Against Sex Workers*, AL JAZEERA ENGLISH, (12 Nov., 2013) (pdf copy available on request).

<sup>11</sup> Stephanie Wahab & Meg Panichelli, *Ethical and Human Rights Issues in Coercive Interventions With Sex Workers*, 28(4) AFFILIA 344, 346 (2013), available at <http://aff.sagepub.com/content/28/4/344>.

<sup>12</sup> See generally, *id.*

<sup>13</sup> ARIZ. REV. STAT. ANN. § 13-3214 (2006) (West).

including voting, all with disproportionate impact on communities of color.<sup>14</sup> Migrants are disproportionately targeted by police and can face additional immigration consequences for arrest.<sup>15</sup> In addition, treatment of prisoners in Arizona is so deplorable that prisoners “are in grave danger of suffering serious and preventable injury, amputation, disfigurement and even death,”<sup>16</sup> according to the American Civil Liberties Union. In one notable example, Marcia Powell, who was serving a 27-month sentence for prostitution, died in 2009 after being left for hours in an outdoor cage in the desert sun by the Arizona Department of Corrections.<sup>17</sup>

### **Legal Framework—ICCPR Articles Implicated in the Above Violations:**

**Article 7:** Freedom from Torture & Cruel, Inhuman & Degrading Treatment; **Article 9(1):** Right to Liberty and Freedom from Arbitrary Arrest; **Article 10:** Right of People Deprived of Liberty to Be Treated With Humanity And Respect for Their Inherent Dignity; **Article 14(1) and (3)(b):** Right to Due Process and to Consult Criminal Defense Counsel; **Article 17(1):** Right to Privacy; **Article 19(2):** Right to Freedom of Expression, Including the Right to Seek Information; **Article 26:** Equal Protection Under the Law

### **Other UN Body Recommendations**

**Universal Periodic Review:** In March 2011, following months of advocacy by U.S. human rights and sex worker rights organizations, the U.S. adopted Uruguay’s recommendation that it “ensure access to public services, paying attention to the special vulnerability of ... sexual workers [sex workers] to violence and human rights abuses.” Specifically, the U.S. stated, “No one should face violence or discrimination in access to public services based on sexual orientation or their status as a person in prostitution.”<sup>18</sup>

### **Recommended Questions**

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<sup>14</sup> MICHELLE NATIVIDAD RODRIGUEZ & MAURICE Emsellem, THE NAT’L EMPLOYMENT LAW PROJECT, 65 MILLION “NEED NOT APPLY” 3, 4 (2011); CENTER FOR COMMUNITY ALTERNATIVES, CLOSING THE DOOR TO HIGHER EDUCATION: ANOTHER COLLATERAL CONSEQUENCE OF A CRIMINAL CONVICTION 1, 2 (2008) available at <http://www.communityalternatives.org/pdf/HigherEd.pdf>; JEAN CHUNG, SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER 1, 2 (2013) available at [http://www.sentencingproject.org/doc/publications/fd\\_Felony\\_Disenfranchisement\\_Primer.pdf](http://www.sentencingproject.org/doc/publications/fd_Felony_Disenfranchisement_Primer.pdf).

<sup>15</sup> *Phoenix Sex Worker Outreach Project Protests Expansion of Diversion Program*, NATION REPORT (16 May, 2013) available at <http://www.thenationreport.org/phoenix-sex-worker-outreach-project-protests-expansion-of-diversion-program/>.

<sup>16</sup> Press Release, American Civil Liberties Union, Lawsuit Charges Arizona Prison Officials With Failing to Provide Adequate Health Care, Inhumane Use of Solitary Confinement (6 Mar. 2012) available at <https://www.aclu.org/prisoners-rights/lawsuit-charges-arizona-prison-officials-failing-provide-adequate-health-care>. For more on deadly prison conditions in Arizona, see also *Arizona Female Prisoners Need Help*, NEL’S NEWSDAY (16 Feb., 2013) available at <http://nelsnewday.wordpress.com/2013/02/16/arizona-female-prisoners-need-help/>.

<sup>17</sup> *Disciplinary Action Taken After Inmate Marcia Powell Dies*, NY DAILY NEWS (23 Sept., 2009) available at <http://www.nydailynews.com/news/national/disciplinary-action-inmate-marcia-powell-dies-put-outdoor-cell-heat-article-1.388112>

<sup>18</sup> Report of the United States of America, Submitted to the U.N. High Commissioner for Human Rights, Response to the U.N. Human Rights Council Working Group Report 10 March, 2011, <http://www.state.gov/j/drl/upr/157986.htm>.

1. What measures will the U.S. take to ensure that the Article 9 Right to Liberty and to Freedom from Arbitrary Arrest exists for sex workers and people profiled as sex workers? What steps will the U.S. take to end police profiling and arrests under vague loitering, anti-soliciting and “quality of life” laws that criminalize expression and assembly and violate the right to privacy?
2. What steps will the U.S. take to ensure that those arrested for sex work fully enjoy their Article 14(1) and (3) due process rights and right to defense counsel, and are not brought before prosecutors and police in the context of diversion programs without first having access to a defense attorney, as occurs in Phoenix, Arizona?
3. What measures is the U.S. enacting to protect prisoners, including people arrested for sex work and sex work-related offenses from torture and cruel, inhuman and degrading treatment, such as being left in an outdoor cage in the desert?

### **Suggested Recommendations**

1. Repeal the application of criminal charges, including felony-level charges and mandatory minimum charges against people arrested for sex work and any related charges, and expunge the records of those arrested and charged under those laws.
2. Ensure that those arrested for sex work have full enjoyment of their right to defense counsel. Discontinue the practice of bringing arrestees before a prosecutor and police in the context of diversion programs without first providing access to a defense attorney.
3. Repeal laws against prostitution, soliciting, and prostitution-related offenses that undermine protection and respect for the human rights of sex workers and other marginalized communities. Take measures to end police profiling and arrest of sex workers and members of marginalized communities.
4. Ensure that all prisoners, including those arrested for sex work and sex work-related offenses, are protected from torture, and cruel, inhuman and degrading treatment, and that their rights to be treated with humanity and respect for their inherent dignity as people are upheld.