

Report of Columbia Law School Equal Rights Advocacy Project.

The Legal Status of Women under Federal Law

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of 18 U.S.C. §1153 could be effected through three changes: provision of a federal definition of rape, as proposed in S. 1400, §1631; reference to that definition in 18 U.S.C. §1153, thus avoiding reference to a state definition that may remain sex discriminatory; substitution of the word "person" for the current reference to "female".

Title 18 sections concerning prostitution include: 18 U.S.C. §1952(b) (forbidding the use of interstate commerce with intent to distribute the proceeds of any unlawful activity, includes prostitution as defined under state law or the law of the United States); 18 U.S.C. §1384 (prohibiting prostitution and the related activities of solicitation, procuring, setting up a house of ill fame, or using vehicles or buildings for prostitution near a military base); and 18 U.S.C. §§ 2421-24 (the Mann Act, prohibiting travel and transportation of women in interstate or foreign commerce for prostitution, debauchery, or other immoral purposes).^{*}

These prostitution proscriptions are subject to several constitutional and policy objections. Prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions. See Griswold v. Connecticut, 381 U.S. 479(1965); Eisenstadt v. Baird, 405 U.S. 438(1972); Roe v. Wade, 410 U.S. 113(1973). Not arguable is the sex discrimination evident on the face and in application of current anti-prostitution provisions. Sex-neutralizing the statutory language is unlikely to effect significant substantive change,

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The Mann Act also calls for registration of information about a recently entered alien woman or girl engaged in the business of prostitution; the registrant is then shielded from use of the information in a criminal prosecution.

Title 48--Territories and Insular Possessions

Sections identified by print-out: 48 U.S.C. §§ 1413,
1415, 1418, 1461*

Two unrelated areas are identified by the print-out:
rights accruing to widows of discoverers; restrictions on political
rights of persons engaging in specified sexual relationships.

I. Survivors of discoverers (48 U.S.C. §§ 1413, 1415, 1418)

A. Discussion

A discoverer is defined in 48 U.S.C. §1411 as "any citizen of the United States." Though the discoverer may be male or female, 48 U.S.C. §§ 1413, 1415, and 1418 stipulate rights for the discoverer's widow, not widower. The omission probably lacks substantive significance. Widowers are likely to be covered by one of the other enumerated relationships: heir, executor, or administrator of the discoverer.

B. Recommendation

Substitute "surviving spouse" for "widow".

II. Restrictions on political rights of persons engaging in specified sexual relationships (48 U.S.C. §1461)

A. Discussion

This section restricts certain rights, including the right to vote or hold office, of bigamists, persons "cohabiting with more than one woman," and women cohabiting with a bigamist. Apart from the male/female differentials, the provision is of questionable

* Three additional sections were identified by the print-out because they contain the word "sex": 48 U.S.C. §§ 736, 1405p, 1542. Each of these sections involves a prohibition against discrimination with regard to voting based on, inter alia, sex.

constitutionality since it appears to encroach impermissibly upon private relationships. Cf. Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 439 (1972).

B. Recommendations

If the section is retained, it should be revised to eliminate sex-based differentials and narrowed to avoid conflict with constitutionally protected privacy interests.

Title 18 -- Crimes

Sections identified by print-out: 18 U.S.C. §§ 113, 714, 1111, 1114, 1153,
1384, 1735, 1737, 1952, 2031, 2032, 2198,
2421, 2422, 2423, 2424, 3056, 3185, 3242,
3567, 3614, 4082, 4251, 4321

Some of the sections listed on the print-out are not sex discriminatory in substance and raise only terminological questions. Principal substantive differentials inconsistent with the equal rights principle appear in sections penalizing prostitution and related offenses, seduction, statutory rape and rape. To eradicate sex-based discrimination in the catalogue of crimes, prostitution should be decriminalized, i.e., laws classifying or referring to prostitution or solicitation by or on behalf of a prostitute should be repealed, and all retained sections with gender distinctions should be recast in sex-neutral form. Sections referring to the Federal Reformatory for Women and the National Training School for Boys require modification as part of an encompassing program to eliminate unwarranted sex segregation in correctional institutions.

S. 1400 (Criminal Code Reform Act of 1973), an important source for recommendations made here, would sex-neutralize the substance of several Title 18 provisions. Other principal sources considered in proposing needed change include Sex Discrimination in the Criminal Law: The Effect of the Equal Rights Amendment, 11 Am. Crim. L. Rev. 469 (1973); The Sexual Segregation of American Prisons, 82 Yale L.J. 1229 (1973).

I. Terminology: Discussion and Recommendations

18 U.S.C. §§ 1735 and 1737, in conjunction with certain Title 39 provisions, regulate the mailing of sexually-oriented advertisements. The "sex" involved in these sections is unrelated to gender-based