



129th MAINE LEGISLATURE

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Legislative Document

No. 326

H.P. 251

House of Representatives, January 24, 2019

An Act To Decriminalize Engaging in Prostitution

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative RECKITT of South Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 5 MRSA §3360-I, first ¶**, as amended by PL 2013, c. 607, §1, is
4 further amended to read:

5 As part of the sentence or fine imposed, the court shall impose an assessment of \$35
6 on any person convicted of murder, a Class A crime, a Class B crime or a Class C crime
7 and \$20 on any person convicted of a Class D crime or a Class E crime, except that the
8 court shall impose an assessment of \$1,000 on any person convicted of aggravated sex
9 trafficking as described in Title 17-A, section 852, an assessment of \$500 on any person
10 convicted of sex trafficking as described in Title 17-A, section 853, an assessment of
11 \$500 on any person for the first conviction and \$1,000 for each subsequent conviction of
12 engaging a ~~prostitute~~ prostituted person as described in Title 17-A, section ~~853-B~~ 253-A
13 and an assessment of \$500 on any person for the first conviction and \$1,000 for each
14 subsequent conviction of patronizing prostitution of a minor or patronizing prostitution of
15 a mentally disabled person as described in Title 17-A, section 855. Notwithstanding any
16 other law, the court may not waive the imposition of the assessment required by this
17 section. For purposes of collection and collection procedures, this assessment is
18 considered part of the fine. At the time of commitment, the court shall inform the
19 Department of Corrections or the county sheriff of any unpaid balances on assessments
20 owed by the offender to the Victims' Compensation Fund. All funds collected as a result
21 of these assessments accrue to the Victims' Compensation Fund.

22 **Sec. A-2. 17-A MRSA §251, sub-§1, ¶¶H and I** are enacted to read:

23 H. "Engages a prostituted person" means providing or agreeing to provide, either to
24 the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return
25 for a sexual act as defined in paragraph C or sexual contact as defined in paragraph
26 D.

27 I. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in
28 a sexual act as defined in paragraph C or sexual contact as defined in paragraph D, in
29 return for a pecuniary benefit to be received by the person engaging in prostitution or
30 a 3rd person.

31 **Sec. A-3. 17-A MRSA §253-A** is enacted to read:

32 **§253-A. Engaging a prostituted person**

33 1. A person is guilty of engaging a prostituted person if the person engages a
34 prostituted person within the meaning of section 251, subsection 1, paragraph H.
35 Violation of this subsection is a Class D crime.

36 **Sec. A-4. 17-A MRSA §851**, as amended by PL 1995, c. 638, §§1 to 3, is further
37 amended to read:

1 **§851. Definitions**

2 As used in this chapter:

3 **1.** "Prostitution" means engaging in, or agreeing to engage in, or offering to engage
4 in a sexual act or sexual contact, as those terms are defined in section 251, in return for a
5 pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

6 **1-A.** "Engages a ~~prostitute~~ prostituted person" means providing or agreeing to
7 provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary
8 benefit in return for a sexual act or sexual contact as those terms are defined in section
9 251;

10 **2.** "Promotes prostitution" means:

11 A. Causing or aiding another to commit or engage in prostitution, other than as a
12 patron;

13 B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for
14 prostitution includes, but is not limited to, an offer, made in a public place, for a
15 prostituted person who is not the person making the offer to engage in a sexual act or
16 sexual contact, as those terms are defined in section 251, in return for a pecuniary
17 benefit to be received by the person making the offer or a 3rd person;

18 C. Providing persons for purposes of prostitution;

19 D. Leasing or otherwise permitting a place controlled by the defendant, alone or in
20 association with others, to be regularly used for prostitution;

21 E. Owning, controlling, managing, supervising or otherwise operating, in association
22 with others, a house of prostitution or a prostitution business;

23 F. Transporting a person into or within the State with the intent that such other
24 person engage in prostitution; or

25 G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit
26 pursuant to an agreement or understanding with any person, other than with a
27 prostituted person or a patron, whereby the person participates or the person is to
28 participate in the proceeds of prostitution.

29 **Sec. A-5. 17-A MRSA §853, sub-§1, ¶B**, as amended by PL 2015, c. 360, §1, is
30 further amended to read:

31 B. The person violates paragraph A and has 2 or more prior convictions in this State
32 for any combination of the Maine offenses listed in this paragraph or for engaging in
33 substantially similar conduct to that of the Maine offenses listed in this paragraph in
34 another jurisdiction. The Maine offenses are any violation of this section, section
35 253-A or section 852, former section 853-A, former section 853-B or section 855 or
36 attempts to commit any of these crimes. Section 9-A governs the use of prior
37 convictions when determining a sentence. Violation of this paragraph is a Class C
38 crime.

39 **Sec. A-6. 17-A MRSA §853-A**, as amended by PL 2013, c. 537, §5, is repealed.

1 from the Federal Bureau of Investigation's identification record and any state materials
2 returned to the contributing agency.

3 **SUMMARY**

4 Part A decriminalizes engaging in prostitution by making the following amendments
5 to the laws.

6 1. It changes the term "prostitute" to the term "prostituted person" in the law on
7 funding for the Victims' Compensation Fund and in the definitions in the Maine Revised
8 Statutes, Title 17-A, section 851.

9 2. It repeals the crime of engaging a prostitute in Title 17-A, section 853-B and
10 places the provision in Title 17-A, chapter 11, which governs sexual assaults, in section
11 253-A using the term "engaging a prostituted person" instead of the term "engaging a
12 prostitute." It provides definitions in chapter 11 for "engaging a prostituted person" and
13 "prostitution."

14 3. It repeals the crime of engaging in prostitution.

15 4. It removes from the adoption assistance program reference to prostitution in the
16 examples of family background factors that are used to define a special needs child.

17 Part B allows a person convicted of a crime of engaging in prostitution in this State to
18 petition the court in which the conviction was recorded to expunge the record of the
19 conviction. It authorizes the court to order all records of the conviction expunged if the
20 convicted person has not been convicted of a violation of Title 17-A, section 253-A, 852
21 or 853 or former section 853-A and has no formal charging instrument pending in this
22 State for a violation of Title 17-A, section 253-A, 852 or 853. Part B requires the
23 Department of Public Safety, State Bureau of Identification, following receipt of a court
24 order for expungement, to make the necessary arrangements with the identification
25 division of the Federal Bureau of Investigation to have all references to the expunged
26 crime deleted from the Federal Bureau of Investigation's identification record and any
27 state materials returned to the contributing agency.