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An Act To Address Human Trafficking, Sex Trafficking and Prostitution

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

Sec. 1. 5 MRSA §4701, sub-§1, ¶C, as enacted by PL 2007, c. 684, Pt. B, §1 and affected by Pt. H, §1, is repealed and the following enacted in its place:

C. "Human trafficking offense" includes:

(1) Aggravated sex trafficking and sex trafficking under Title 17-A, sections 852 and 853, respectively; and

(2) All offenses in Title 17-A, chapters 11, 12 and 13 if accompanied by the destruction, concealment, removal, confiscation or possession of any actual or purported passport or other immigration document or other actual or purported government identification document of the other person or done using any scheme, plan or pattern intended to cause the other person to believe that if that person does not perform certain labor or services, including prostitution, that the person or a 3rd person will be subject to a harm to their health, safety or immigration status.

Sec. 2. 17-A MRSA §852, as amended by PL 2011, c. 672, §1, is further amended to read:

§ 852. Aggravated sex trafficking

1. A person is guilty of aggravated ~~promotion of prostitution~~ sex trafficking if ~~he~~ the person knowingly:

A. Promotes prostitution by compelling a person to enter into, engage in; or remain in prostitution; ~~or~~

B. Promotes prostitution of a person less than 18 years old; ~~or~~

C. Promotes prostitution of a person who suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the other person substantially incapable of appraising the nature of the conduct involved.

2. As used in this section, "compelling" includes but is not limited to:

A. The use of a drug or intoxicating substance to render a person incapable of controlling that person's conduct or appreciating its nature;

B. Withholding or threatening to withhold a ~~narcotic~~ scheduled drug or ~~alcoholic liquor~~ alcohol from a drug or alcohol-dependent person. A "drug or alcohol-dependent person" is one who is using ~~narcotic~~ scheduled drugs or ~~alcoholic liquor~~ alcohol and who is in a state of psychic or physical dependence or both, arising from the use of the drug or alcohol on a continuing basis;

C. Making material false statements, misstatements or omissions;

D. Withholding, destroying or confiscating an actual or purported passport or other immigration document or other actual or purported government identification document with the intent to impair a person's freedom of movement;

E. Requiring prostitution to be performed to retire, repay or service an actual or purported debt; and

F. Using force or engaging in any scheme, plan or pattern to instill in a person a fear that, if the person does not engage or continue to engage in prostitution, the actor or another person will:

(1) Cause physical injury or death to a person;

(2) Cause damage to property, other than property of the actor;

(3) Engage in other conduct constituting a Class A, B or C crime, ~~kidnapping~~ or criminal restraint;

(4) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;

(5) Expose a secret or publicize an asserted fact, regardless of veracity, tending to subject some person, except the actor, to hatred, contempt or ridicule;

(6) Testify or provide information or withhold testimony or information regarding another person's legal claim or defense;

(7) Use a position as a public servant to perform some act related to that person's official duties or fail or refuse to perform an official duty in a manner that adversely affects some other person;
or

(8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.

3. ~~Aggravated promotion of prostitution~~ sex trafficking is a Class B crime.

Sec. 3. 17-A MRSA §853, as enacted by PL 1975, c. 499, §1, is amended to read:

§ 853. Sex Trafficking

1. A person is guilty of ~~promotion of prostitution~~sex trafficking if he knowingly promotes prostitution.:

A. The person knowingly promotes prostitution. Violation of this paragraph is a Class D crime; or

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

2. ~~Promoting prostitution is a Class D crime.~~

Sec. 4. 17-A MRSA §853-B, sub-§1, ¶A, as enacted by PL 2001, c. 383, §102 and affected by §156, is amended to read:

A. The person engages a prostitute within the meaning of section 851, subsection 1-A. Violation of this paragraph is a Class E crime, ~~except that the sentencing alternative may include only the penalties provided in section 1301; or~~

Sec. 5. 17-A MRSA §855, as repealed and replaced by PL 2005, c. 444, §1, is amended to read:

§ 855. Patronizing prostitution of minor or person with mental disability

1. A person is guilty of patronizing prostitution of a minor if:

A. The person, in return for another's prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age. Violation of this paragraph is a Class D crime; or

B. The person violates paragraph A and that person knows that the person whose prostitution is sought has not yet attained 18 years of age. Violation of this paragraph is a Class C crime.

3. A person is guilty of patronizing prostitution of a mentally disabled person if:

A. The person, in return for another's prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the other person substantially incapable of appraising the nature of the conduct or conduct involved. Violation of this paragraph is a Class C crime.

Sec. 6. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 17-A, chapter 35, in the chapter headnote, the words "prostitution and public indecency" are amended to read "sex trafficking, prostitution and public indecency" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

SUMMARY

This bill broadens the definition of "human trafficking offense" to include the Maine Criminal Code crimes of aggravated sex trafficking, sex trafficking and all other crimes in the Maine Revised Statutes, Title 17-A, chapters 11, 12 and 13 if accompanied by the withholding of government-issued immigration or identification documents or committed as part of a scheme to compel participation in prostitution or labor using specific types of threats.

The bill also makes changes in the Maine Criminal Code to address human trafficking and the subcategory of sex trafficking. Specifically it:

1. Renames the crimes of aggravated promotion of prostitution and promotion of prostitution "aggravated sex trafficking" and "sex trafficking," respectively, in order to more accurately describe the defined criminal conduct;

2. Adds a provision to the crime of aggravated sex trafficking to include a victim who suffers from a mental disability;

3. Updates language in statute concerning aggravated sex trafficking regarding the terms "narcotic" and "alcoholic liquor."

4. Amends the crime of sex trafficking to provide that a new violation after having been twice previously convicted of sex trafficking, engaging in prostitution, engaging a prostitute or patronizing prostitution of a minor, or attempts to commit those crimes or engaging in substantially similar conduct in another jurisdiction, constitutes a Class C crime;

5. Amends the crime of engaging in prostitution to permit the trial court at the time of sentencing to employ any sentence alternative authorized for a Class E crime rather than solely a fine; and

6. Amends the crime of patronizing prostitution of a minor to include the Class C crime of patronizing prostitution of a mentally disabled person.