

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Create a Post-judgment Mechanism To Provide Relief to Victims of Sexual Exploitation and Sex Trafficking**

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

**Sec. 1. 15 MRSA c. 308-A** is enacted to read:

### **CHAPTER 308-A**

#### **POST-JUDGMENT MOTION WHEN PERSON HAS BEEN VICTIM OF SEXUAL EXPLOITATION OR SEX TRAFFICKING**

##### **§ 2191. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Compelling.** "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 scheduled drug or alcohol from a drug-dependent or alcohol-dependent person. "Drug-dependent or alcohol-dependent person" means a person who is using scheduled drugs or alcohol and who is in a state of psychic or physical dependence, or both, arising from the use of the drugs 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 the sexual exploitation of a person 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 sexual exploitation, 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, Class B or Class C crime 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.

**2. Sex trafficking.** "Sex trafficking" means promoting sexual exploitation by compelling a person to enter into, engage in or remain in sexual exploitation, promoting the sexual exploitation of a person less than 18 years of age or promoting the sexual exploitation 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.

**3. Sexual exploitation.** "Sexual exploitation" means engaging in the exchange of sex for money or resources because of a person's history of trauma, adverse childhood experiences, substance use disorder or other circumstances of victimhood, exploitation or oppression.

## **§ 2192. Post-judgment motion for vacating and correcting record**

**1. Motion; persons who may file.** A person for whom one or more criminal convictions in which a final judgment has been entered were the result of the person's sexual exploitation or being subjected to sex trafficking may file a written motion in the underlying criminal proceeding seeking to vacate the conviction and to correct the court records and related criminal justice agency records. The same motion may also be filed on behalf of such a person by an attorney for the State or by the court.

**2. Timing for filing.** A motion under this section to vacate and correct the record must be filed with due diligence, after the person moving for relief has ceased to be a victim of sexual exploitation or sex trafficking or has sought services for victims of sexual exploitation or sex trafficking, subject to

reasonable concerns for the safety of the person moving for relief, family members of the person or other victims of sexual exploitation or sex trafficking who may be jeopardized by the bringing of such a motion or for other reasons consistent with the purpose of this subsection.

### **§ 2193. Motion and hearing; process**

**1. Filing motion.** A motion filed under section 2192 must be filed in the underlying criminal proceeding. The appropriate chief judge or justice shall specially assign the motion. The judge or justice to whom the motion is assigned shall determine upon whom and how service of the motion is to be made and enter an order in this regard.

**2. Counsel.** If the court finds that the person who files the motion under section 2192 or on whose behalf the motion is filed is indigent, the court may appoint counsel for the person at any time during the proceedings.

**3. Representation of the State.** The prosecutorial office that represented the State in the underlying criminal proceeding shall represent the State for purposes of this chapter.

**4. Evidence.** The Maine Rules of Evidence do not apply to the hearing on the motion filed under section 2192, and evidence presented at the hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the court. Official documentation of a person's status as a victim of sexual exploitation or sex trafficking creates a presumption that the person's participation in an offense was a result of the person's having been a victim of sexual exploitation or sex trafficking but is not required for granting a petition.

**5. Hearing; certification of results.** The judge or justice to whom the motion is assigned pursuant to subsection 1 shall hold a hearing on the motion. At the conclusion of the hearing, if the court finds that the person who filed the motion has established by a preponderance of the evidence that the person has experienced sexual exploitation and that the sexual exploitation resulted in the commission of the criminal act the conviction for which the person seeks to vacate, the court shall issue a written order vacating the conviction and may take such additional action as the court determines appropriate in the circumstances. A copy of the court's written order granting or denying the motion must be provided to the person.

**6. Correction of the record.** If the court grants the motion following the hearing in subsection 5, it shall additionally determine what court records and related criminal justice records require correction and shall enter a written order specifying the corrections to be made in the court records and the records of each of the appropriate criminal justice agencies.

### **§ 2194. Review of order on motion to vacate**

A final judgment entered under section 2193 may be reviewed by the Supreme Judicial Court sitting as the Law Court.

A person aggrieved by the final judgment under section 2193 may appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

## **SUMMARY**

This bill provides for a comprehensive post-judgment method of relief for a person for whom one or more criminal convictions in which a final judgment has been entered were the result of the person's sexual exploitation or being subjected to sex trafficking. This method of relief is similar to that provided in law to a person whose identity has been stolen and falsely used by another person in a criminal, civil violation or traffic infraction proceeding. The relief offered is the court's vacating the conviction and the correction of the court records and related criminal justice agency records.