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No. 1159

H.P. 824

House of Representatives, March 26, 2013

An Act To Address Human Trafficking, Sex Trafficking and Prostitution

Reported by Representative DION of Portland for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

Millicent M. MacFarland

MILLCENT M. MacFARLAND

Clerk

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

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 H, §1, is repealed and the following enacted in its place:

4 C. "Human trafficking offense" includes:

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

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

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

17 **§852. Aggravated sex trafficking**

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

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

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

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

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

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

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

34 C. Making material false statements, misstatements or omissions;

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **§853. Sex Trafficking**

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

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

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

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

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

1 A. The person engages a prostitute within the meaning of section 851, subsection
2 1-A. Violation of this paragraph is a Class E crime, ~~except that the sentencing~~
3 ~~alternative may include only the penalties provided in section 1301~~; or

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

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

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

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

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

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

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

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

27 **SUMMARY**

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

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

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

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

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

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

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

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