

TESTIMONY OF MEAGAN SWAY, ESQ.

LD 1435

An Act to Reduce Commercial Sexual Exploitation

Joint Standing Committee on Judiciary

April 11, 2023

Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Meagan Sway, and I am the policy director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions.

The American Civil Liberties Union advocates for the full decriminalization of sex work, including both the buying and selling of sex. This position is rooted in the rights to equal protection, privacy, and free speech. For this reason, we have been gratified that the bill sponsor has worked tirelessly over her time in the legislature to remove the crime of prostitution from our statutes.

Decriminalizing sex work is a matter of equal protection: laws against selling sex have been historically vastly disproportionately enforced against women. As early as 1975, the ACLU of Maine recognized the criminalization of people who sell sex as one of the more pernicious forms of sex discrimination in our laws.

Decriminalizing sex work is also consistent with recognizing the right each of us has to privacy, and that what consenting adults do in private is their business.

Finally, decriminalizing buying sex is a matter of First Amendment principles, and should follow from the decriminalization of selling sex, because the government does not have a compelling interest to criminalize the buying of something, the selling of which is legal.

In October 2020, the ACLU released an Issue Brief, *Is Sex Work Decriminalization the Answer? What The Research Tells Us*.¹ This Brief reviewed 83 empirical research pieces across the globe to analyze the impacts of decriminalization or legalization of consensual sex work among adults. A review of the literature found,

¹ Available at <https://www.aclu.org/report/sex-work-decriminalization-answer-what-research-tells-us>.

among other things, that (1) criminalization of sex work, including criminalization of buying but not of selling sex, increases the risk of violence and threatens the safety of sex workers; (2) decriminalizing sex work, combined with more targeted interventions, can lead to greater access to health care and improved health outcomes for sex workers; (3) LGBTQIA people, particularly transgender women, people of color, people with disabilities and immigrants are most endangered by the criminalization of sex work; and (4) there is a lack of consensus about the relationship between legalization or decriminalization of sex work and human trafficking.

This bill has portions that we unequivocally support: removing prostitution from our statutes in Section 14, and changing some of the language in our criminal statutes that refers to victims to be person-first language, in Sections 1, 16, and 17. However, the bill also has two sections that give us serious pause, and that we ask you to think carefully about before voting.

Renaming “prostitution” uniformly throughout our laws as “commercial sexual exploitation,” regardless of whether the behavior involves an adult or child, is not a change that the ACLU of Maine can support. Making this change would deny people—primarily women—their inherent sexual autonomy, freedom and privacy. Of course, not all acts that are captured by the prostitution statute are voluntary. For non-consensual acts, the legislature has created the crimes of sex trafficking and aggravated sex trafficking,² as well as gross sexual assault, unlawful sexual assault and various sexual crimes against children,³ among others. But many acts that are defined by statute as prostitution are voluntary acts, and renaming prostitution as commercial sexual exploitation suggests that adult women can never have the ability to consent to exchange sex for money.

Finally, as we always do when legislation proposes increasing the severity of a criminal punishment, we note our opposition to Section 4 of the bill. Increasing criminal penalties does not deter abhorrent behavior, but instead swells our already full prisons and jails. We encourage the legislature to look into preventative measures, such as investing in housing, health care and other areas that create robust families and communities, and to leave failed methods of addressing social problems behind.

Thank you for your time and attention.

² See 17-A M.R.S. §§853, 852

³ *Id.* §§253, 255-A, 259-A, 259-B