

Testimony Submitted 4/11/2023 to the Joint Standing Committee on Judiciary

Senator Carney, Representative Moonen, and members of the Joint Standing Committee on Judiciary

RE: An Act to Reduce Commercial Sexual Exploitation – L.D. 1435

My Name is Nate Walsh and I am a resident of Freeport. I am also an Assistant District Attorney who has worked specifically as a Human Trafficking prosecutor for about eight years. I would like to thank you for allowing me to offer my testimony in support of L.D. 1435.

I appear before you in my personal capacity as a Mainer. However, I can tell you that in my time prosecuting cases involving sex trafficking and prostitution, I have had the opportunity to meet with many people who have experienced prostitution. Early on, I used the criminal justice system as a way to divert these people into services. A criminal penalty would provide the motivation to take the necessary steps to recovery and living a restored life, I thought. I soon learned this approach was significantly flawed. I have come to see people who have experienced prostitution as victims of exploitation. I have met many people, the vast majority women, who have sold their consent to have sex because that was what they had left. I learned to tell these people when I met them that I was not in a position to judge them because I am privileged to have never been in their position, and I have not had to make the same choices they have had to make to survive. I have heard stories about abuse in their childhood, domestic abuse as adults, and how addiction consumes someone's life. When I listened to these women, I heard about trauma, desperation, and people taking advantage of them. I came to see prostitution as the commercial exploitation of some of the most vulnerable members of our communities. I realized that the market for commercial sex is fueled by demand. The demand in Maine can not be understated, as demonstrated by 14 men being arrested in South Portland during a single day sting operation last month. Buying sex is the cause of the problem, and not the people who have been caught up in the life. There are few crimes where we criminalize an individual's victimization, but engaging in prostitution is one of them.

The response to helping these people experiencing prostitution was to bring them into the criminal justice system to provide access to services. Police intervene, often through an arrest, with the goal of getting them access to these services. Although well intentioned, it comes with some harm. The charge of Engaging in Prostitution carries with it a stigma that acts as a barrier to leading a restored life even if the person engages in services. I had to ask myself "is this justice?"

As a prosecutor, I do not have services to offer directly. I partner with community organizations that do provide services regardless of an individual's involvement in the criminal justice system. When I have a defendant cross my desk who is suspected of being involved in prostitution, I reach out to our community advocates to see if I could facilitate an introduction with the hope that they would engage in services. The charge of Engaging in Prostitution currently does not allow for a jail sentence to be imposed for a first-offense conviction, and therefore defendants are not entitled to court-appointed counsel. However, I will note that many of these defendants are not coming in on the charge of Engaging in Prostitution, but for other offenses, such as drug and property crimes. I try to bring in defense counsel early and advise them of my concerns about trafficking or exploitation. I do not intend on changing this practice, regardless of the outcome of any statutory change. This bill would require that law enforcement departments across the state will have a protocol in place so all officers will know what to do when they suspect someone is being trafficked or exploited. This measure will combat human trafficking in Maine and support victims.

If some of these people are victims of trafficking, I can hope that they will be in a position where they can cooperate with law enforcement, but I know that is not always the case. Some victims do not feel safe speaking to law enforcement about their traffickers. The goal is to get them to a safe place so they can.

It should also come as no surprise to you that sometimes people are not honest with the police. People sometimes lie to the police, especially if they do not feel that it is safe for them to tell the truth about their circumstances. Trust must be earned for a trafficking victim to feel safe and supported enough to discuss what is happening to them with law enforcement. Arresting an individual with the expectation that they will cooperate with law enforcement against their trafficker is not a tactic that I support, nor have I seen it be effective in successful prosecutions.

Many of the people involved in prostitution were at some point trafficked, but sometimes they were resorting to prostitution for survival. Sometimes these people were not legally adults. Sex buyers do not discriminate when they purchase sex.

I believe that there is a better way when addressing prostitution in the criminal justice system. Through my work speaking with national survivor leaders and anti-trafficking organizations, I began to learn about the Equality Model. In short, it shifts the focus from the victims to the sex buyers. If people wouldn't buy people, people wouldn't sell people. Addressing demand holds accountable those who inflict harm and exploit vulnerable people for sex. Sex buyers are the ones in the equation who are deserving of a criminal penalty. Over the last few years, we have been working to develop a diversionary program for first-time offenders arrested for buying sex called Stopping Sexual Exploitation in Maine. It is modeled after a program started in Seattle, Washington, and has the support of survivors of trafficking and commercial sexual exploitation.

I personally believe that L.D. 1435 advances the cause of justice. This bill redirects the focus of the criminal justice system on those doing harm and it calls sex buying what it is: "commercial sexual exploitation."

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nathan R. Walsh', with a long horizontal flourish extending to the right.

Nathan R. Walsh
Freeport, Maine