

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 Provide Remedies for Survivors of Commercial Sexual Exploitation – L.D. 1436

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. 1436.

I am appearing before you in my personal capacity as a Mainer. I have had the privilege of working alongside dedicated law enforcement officers and prosecutors who have all worked to do justice. We have held the guilty accountable and sought convictions for crimes that have been committed. However, when it comes to the crime of Engaging in Prostitution, we have often used the charge as way of leveraging individuals into services. Currently, a person may not be sentenced to jail for a first-offense conviction of Engaging in Prostitution, and the Court is instructed to impose a fine. If that person has a conviction in the prior two years, the Legislature has instructed prosecutors that a deferred disposition is the preferred disposition to resolve the case.

Deferred dispositions are a very helpful tool for prosecutors that allow a defendant to avoid a conviction or have their charges or sentences reduced if they abide by a contractual agreement with the State. For charges involving Engaging in Prostitution, the goal would be for defendants to accept services. However, “services” is not a term that is easily defined in this context. What exists in Cumberland County or Androscoggin County may not exist in Penobscot County or Aroostook County. This bill will help us understand how we can help survivors of trafficking and exploitation statewide.

To go on a deferred disposition, a defendant is required to waive their trial rights and plead guilty at the onset of the deferred and have sentencing continued to a later date. If the Court finds that a violation of the deferred disposition agreement has occurred, the case usually then proceeds to sentencing on the charge. If there was a requirement for the individual to engage in services, and those services proved illusory or not compatible with the individual’s needs, the deferred disposition has set them up to fail. This bill will provide us with much-needed information about services to help these members of our communities.

Defendants are entitled to a number of defenses to prosecution. It’s a complete defense if they were compelled to engage in prostitution in a manner that would make them a victim of Aggravated Sex Trafficking. This defense also establishes a defense for the traffickers. It allows for a trafficker to claim that a victim is just saying they were being trafficked to save themselves from being prosecuted for prostitution and that they were willingly engaging in the conduct on their own. A victim of trafficking, potentially under threat of violence, will likely be hesitant to cooperate with law enforcement against their trafficker if the alternative is to simply plead guilty and pay a fine. Arresting a victim to attempt to compel them to cooperate furthers mistrust in law enforcement and the criminal justice system.

Moreover, a trafficking victim has a constitutional right under the Fifth Amendment of the United States Constitution and Article I, Section 6 of the Declaration of Rights in the Maine Constitution to remain silent and not testify that they have committed a criminal act by Engaging in Prostitution.

Presently, it’s an affirmative defense if they were doing so to prevent serious bodily injury, serious economic hardship, or another threat to themselves or someone else. To establish these defenses, they must also admit their guilt, but then provide evidence as to why. To guide them through this, they

will need to rely on a lawyer of the day at their arraignment, because they will not be eligible for court-appointed counsel after that court event, and they will need to hire their own attorney. The prosecutors will also not be able to talk to them directly unless they sign a waiver in open court.

If an individual is convicted for the offense of Engaging in Prostitution, it can carry lifelong consequences. L.D. 1436 will provide a way for the Court to allow an individual to have this conviction sealed to help them live a restored life. This bill will also call together the people fighting for justice for these victims across Maine to form a stakeholder group so we can look at what they need to do their jobs better.

For these reasons, I support L.D. 1436, and I urge you to as well.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nathan R. Walsh', written over a horizontal line.

Nathan R. Walsh
Freeport, Maine