



**TESTIMONY OF MICHAEL KEBEDE, ESQ.
LDs 1805, 1871, 1856 – Ought to Pass**

**An Act to Establish a Post-conviction Review Process for Crimes
Committed by Victims of Sex Trafficking and Sexual Exploitation**

**An Act to Permit Sealing Criminal History Record Information of
Victims of Sex Trafficking or Sexual Exploitation**

**An Act Directing the Maine Commission on Public Defense Services to
Assist Persons Filing Post-judgment Motions to Seal Criminal History
Record Information**

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Joint Standing Committee on Judiciary
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Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, good afternoon. My name is Michael Kebede and I am policy director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LDs 1805, 1856, and 1871.

This is how criminal law is supposed to work: The legislature decides that something is a crime. Then it designates consequences for committing the crime. These consequences are designed to be proportional to the crime. They can include a prison sentence, rehabilitation or mental health services, community service, supervised release, and still more. Unfortunately, for as long as there have been criminal laws – but exponentially more in the digital age – a criminal record has prevented people from continuing their education, obtaining housing, a professional license, credit, investments, and other features of a stable, dignified life. In short, a criminal record has prevented millions across the country, and thousands across Maine, from moving on with their lives, pushing them into second-class status even after they have completed their sentences.¹

¹ See Alexandra Harwin, *Title VII Challenges to Employment Discrimination Against Minority Men with Criminal Records*, 14 Berkeley J. Afr.-Am. L. & Pol'y 2, 2-3 (2012) ("Criminal convictions of whatever kind and whatever vintage serve as an automatic bar to employment in professions as diverse as barbering, plumbing, bartending, and ambulance driving." Studies also suggest more than sixty percent of employers refuse to hire individuals with a criminal record.); Valerie Schneider, *The Prison to Homelessness Pipeline: Criminal Records Checks, Race, and Disparate Impact*, 93 Indiana L. J. 421, 421 (2018) ("Study after study has shown that securing housing upon release from prison is critical to reducing the likelihood of recidivism, yet those with criminal records—a population that disproportionately consists of racial minorities—are routinely denied access to housing, even if there offense was minor and was shown to have no bearing on whether the applicant would be likely to be a successful renter."); Joseph W. Frank, et al.,



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LDs 1805, 1856, and 1871 would each make important progress on this issue. LD 1805 would allow survivors of sex trafficking or sexual exploitation to file a post-judgment motion to reverse a criminal conviction if they demonstrate the conduct underlying the criminal conviction was a substantial result of sex trafficking or sexual exploitation. LD 1871 would similarly allow survivors of sex trafficking or sexual exploitation to file a motion to seal their criminal records if the person shows the commission of the crime for which the person was convicted was a substantial result of sex trafficking or sexual exploitation. This bill would also establish a civil system of penalties for business entities that share records that are sealed under Maine law. Finally, LD 1856 would direct the Maine Commission on Public Defense Services to develop a procedure for assisting persons who file post-judgment motions to seal their criminal history record information under our existing records sealing system.

The public policy reasons for supporting these bills are straightforward. LDs 1805 and 1871 would help exempt people from being punished for things they did under duress or coercion. LD 1856 would help ensure that everyone, not just those with the time and resources, can take advantage of our existing criminal records sealing system.

Some might argue that LD 1805 would allow an unconstitutional infringement upon the governor's exclusive power to pardon or commute sentences. That is not the case. LD 1805 would establish a rule that says that the conviction itself was erroneous – not that the defendant's sentence is shortened or that their conviction is pardoned.

The Law Court came closest to deciding this issue in 1985 in *Bossie v. State*.² In *Bossie*, several incarcerated people initiated a post-conviction review of the Department of Corrections' method for calculating good-time deductions of their prison terms. The Law Court ruled against the prisoners after finding the good-time statute unconstitutional because "the legislature's power could not extend to the commutation of sentences, an area explicitly and exclusively granted to the executive."³ Two years earlier, the Court had decided in *State v. Hunter* that a resentencing statute that allowed deductions of a prison sentence was an unconstitutional encroachment on the governor's commutation power.⁴

Discrimination based on criminal record and healthcare utilization among men recently released from prison: a descriptive study, 2 Health and Justice 1, 2 (2014) ("Discrimination based on one's criminal record may serve as an additional barrier to engaging in healthcare.").

² 488 A.2d 477 (Me. 1985).

³ *Id.* at 481 (citing *State v. Hunter*, 447 A.2d at 800, 803); see Me. Const. art. V, pt. 1, § 11.

⁴ 447 A.2d 797, 800 (Me. 1982).



Unlike the sentence-reduction statutes in *Bossie* and *Hunter*, LD 1805 seeks to extend the post-conviction review process to survivors of sexual assault and trafficking.⁵ Specifically, LD 1805 proposes a path to reversing convictions based on behavior elicited through a particularly acute form of duress: sexual trafficking and exploitation. For people who obtain relief through the procedure in LD 1805, no sentence would be commuted because there would be no sentence to commute. That is because to qualify for relief, the sentence would have to be rooted in a legal error – the kind of error the post-conviction review statute exists to address. For as long as Maine has existed as a state, Maine judges have reversed convictions for legal error under the post-conviction habeas corpus statute.⁶ It is past time to extend this opportunity to some of the most vulnerable members of our community.

We urge you to vote *ought to pass*.

⁵ If a court determines that post-conviction relief should be granted, the statute allows judges to, among other things, enter a “reversal of the criminal judgment.” 15 MRS §2130 (enacted in 1979).

⁶ See 15 M.R.S. 2122-2131 (Post-Conviction Review); previously codified at 14 M.R.S. 5502-5508 (Habeas Corpus). Indeed, the right to seek habeas corpus for unlawful conviction and deprivation of liberty, a right that dates back to at least the Magna Carta, is preserved by our state Constitution. Me. Const., Art. I, sec. 10 (guaranteeing that the right of habeas corpus “shall not be suspended”).