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*Testimony of Representative Lois Galgay Reckitt introducing*  
**LD 1592, An Act to Decriminalize Engaging in Prostitution, Strengthen the  
Laws against Commercial Sexual Exploitation and Allow a Person Convicted  
of Engaging in Prostitution To Petition the Court to Expunge the Record of  
Conviction**

*Before the Joint Standing Committee on Criminal Justice and Public Safety*

Senator Deschambault, Representative Warren, my fellow members of the Criminal Justice and Public Safety Committee. My Name is Lois Galgay Reckitt and I am the Representative from District 31 in South Portland.

Before I begin my presentation on the substance of my proposed bill, I want to tell you why I submitted such a bill. Early in the 1980's my local NOW chapter (National Organization for Women) held a series of internal small group discussions about difficult topics that had surfaced in the women's movement at the time. We chose to verbally struggle together on the topics of power, pornography and prostitution. One of the leaders of the chapter at that time was a good friend – and we trusted each other – enough for me to risk saying to her – about her previous struggle to survive and raise her children – as what I then called a prostitute. I understand that you sold your body to survive – but what I don't understand is how could you do it?

In the mid 1980's I was elected to the post of Executive Vice President of the National Organization for Women. As a result, I spent 6 years in Washington DC. As part of my policy work, I volunteered to travel the breadth of the United States to hold hearings on the issue of pornography. That trip changed my perspective and drove me to activism on both the issue of pornography and the damage it causes to women, both physically and culturally – and the entanglement of the issue with the plight of what I now call “prostituted persons”.

After I was elected to this Legislature and had served a term, I realized it was possible I might be in a position to make a difference on the issue of prostitution. At the time I was also close friends with a patrol officer in the Portland Police Department. At the time, his beat was “the track” in Portland. And we talked a lot about the realities on the street. In fact, it was that young officer that began the research that brought the Equality Model for dealing with prostitution to me. And together with him and a young ADA of his acquaintance – and subsequently mine – who have worked with me on the issue before you for several years.

As a result of that research and outreach we have connected with many regional and national groups, led in large part by survivors of prostitution. A number of those groups will appear here today in support of LD 1592.

This bill before you does not come without a lengthy struggle to “get it right”. The first draft just plain missed the boat – I presume because we were perhaps not clear of our intentions. The second draft got the “innocent” and “guilty” backwards. Even though the draft has finally worked out most of the kinks – there are a couple of substantive changes yet to be made – and one clarifying “word”.

Now I want to walk you through what I call an English translation of the “lawyer” document that is the bill. Others who follow me can explain in more minute detail – but here goes –

Section A-1 amends the Victim Compensation Fund to clarify by new placement that victims of “Commercial Sexual Exploitation” are compensable. And the fines assessed on those who buy sex are directed to that fund.

Section A-2 ensures sex sellers can’t be charged with criminal conspiracy including by clarifying that to engage in or agreeing to personally engage in a sexual act or sexual contact in return for pecuniary benefit. Note: “in return” should be added for language review.

There is a relatively lengthy list of explanations, section by section that I will include at the end of my testimony, but in the interests of time, I will note one other critical section...

The last printing of the proposed bill still refers to the “expungement of records”. In the proposed amendment sent to the committee and analysts this week, I have shifted that to the “sealing of records” with drafting help from the state bureau that holds such records (SBI) and out of a desire to not interfere with the chief executive’s exclusive pardon power.

In summary, the bill keeps prostitution on the books but creates defenses for the seller, while increasing penalties for the buyer. Prostitution therefore is redefined as a buyer problem and a demand issue. The prostituted person is a victim if a patron attempted to buy her/him.

Add the end of this testimony I will be appending the detailed analysis of LD 1592 – as well as attaching the links to a relatively brief description of the Equality Model which was the philosophical basis for the bill before you and a survey report of the actions and attitudes of a survey of 8201 adult males in the other Portland – Oregon. I found reading it both fascinating and instructive.

I am hopeful that this Legislature will see fit to enact the substance of LD1592 – whether or not you choose to request funding this year of an exit ramp for survivors – for I truly believe if we get the laws right, we will be able to find a way to fund the needed services.

I thank you for your careful consideration of this critical legislation.

**Detailed Analysis of LD1592**

<b>BILL LANGUAGE</b>	<b>DESCRIPTION</b>
<p>Sec. A-1. 5 MRS §3360-I, first ¶, as amended by PL 2013, c. 607, §1, is further 4 amended to read:            5 As part of the sentence or fine imposed, the court shall impose an assessment of \$35 6 on any person convicted of murder, a Class A crime, a Class B crime or a Class C crime 7 and \$20 on any person convicted of a Class D crime or a Class E crime, except that the 8 court shall impose an assessment of \$1,000 on any person convicted of aggravated sex 9 trafficking as described in Title 17-A, section 852, an assessment of \$500 on any person 10 convicted of sex trafficking as described in Title 17-A, section 853 262, an assessment of 11 \$500 on any person for the first conviction and \$1,000 for each subsequent conviction of 12 engaging a prostitute as described in Title 17-A, section 853-B and an assessment of \$500 13 on any person for the first conviction and \$1,000 for each subsequent conviction of 14 patronizing prostitution of a minor or patronizing prostitution of a mentally disabled person 15 as described in Title 17-A, section 855. Notwithstanding any other law, the court may not 16 waive the imposition of the assessment required by this section. For purposes of collection 17 and collection procedures, this assessment is considered part of the fine. At the time of 18 commitment, the court shall inform the Department of Corrections or the county sheriff of 19 any unpaid balances on assessments owed by the offender to the Victims' Compensation 20 Fund. All funds collected as a result of these assessments accrue to the Victims' 21 Compensation Fund</p>	<p>This section amends the Victims' Compensation Fund assessment to include the new location of the sex buying statute (§262) "Commercial Sexual Exploitation." It removes the old statute location.</p>
<p>Sec. A-2. 17-A MRS §151, sub-§10 is enacted to read: 23 10. It is a defense to prosecution under this section that the objective of the conspiracy 24 is a violation of section 262 and the actor's participation was engaging or agreeing to 25</p>	<p>This section makes it so sex sellers can't be charged with criminal conspiracy. Arguably, it would have been illegal to sell sex since the seller would necessarily "conspire" with the sex buyer</p>

<p>personally engage in a sexual act or sexual contact for pecuniary benefit.</p>	<p>for the sex buyer to commit a crime. This removes that. <i>See AAG Laura Yustak’s proposed amendment to make the intent clearer</i></p>
<p>Sec. A-3. 17-A MRSA §251, sub-§1, ¶H is enacted to read: 27 H. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage 28 in a sexual act or sexual contact in return for a pecuniary benefit to be received by the 29 person engaging in prostitution or a 3rd person. 30 Sec. A-4. 17-A MRSA §251, sub-§1, ¶I is enacted to read: 31 I. "Engaging a prostitute" means providing or agreeing to provide, either to the person 32 whose prostitution is sought or to a 3rd person, pecuniary benefit in return for a sexual 33 act or sexual contact.</p>	<p>These two sections move the definitions, which are unchanged, to the chapter for sexual assaults instead of the chapter for prostitution/sex trafficking/public indecency. This is so it tracks with the new location of the Commercial Sexual Exploitation (sex buying) statute.</p>
<p>Sec. A-5. 17-A MRSA §259-B, as enacted by PL 2017, c. 135, §1, is amended to 35 read: 36 §259-B. Solicitation of a child to engage in prostitution 37 1. A person is guilty of soliciting a child to engage in prostitution if the actor 38 knowingly solicits directly or indirectly by any means a person the actor knows or believes 39 is under 18 years of age to engage in prostitution, as defined in section 851 261. 40 2. Violation of this section is a Class D C crime.</p>	<p>This would make soliciting a child to engage in prostitution a felony instead of a misdemeanor. This is in keeping with the goal of enhancing penalties for sex buying. Also, Aggravated Sex Trafficking, which is a Class B felony, can be completed by promoting the prostitution of anyone under the age of 18. Soliciting someone under the age of 18 to engage in prostitution is currently only a Class D misdemeanor. If a prosecutor were to charge someone with criminal attempt for taking a substantial step toward the commission of a crime, but the crime was not completed, it would be one criminal classification lower than the completed crime. Arguably, attempting to promote the prostitution of a child under 18 could be soliciting them to engage in prostitution. Bumping this statute up to a Class C would make it one class lower and cleaner. I don’t think it will be controversial to enhance the penalties for someone who solicits children.</p>
<p>Sec. A-6. 17-A MRSA §262 is enacted to read: Page 2 - 130LR0915(01) 1 §262. Commercial sexual exploitation 2 1. A person is guilty of commercial sexual exploitation if the person engages a 3 prostitute. 4 2. A violation of this section is a Class D crime.</p>	<p>This is the statute that criminalizes sex buying. We’re changing the name from “engaging a prostitute” to “commercial sexual exploitation,” which is more fitting, and moving the statute to the chapter with sexual assaults. We are also making it so a first offense is a Class D misdemeanor, whereas it is currently only a class E misdemeanor for a first offense. This is in</p>

	keeping with the goal of enhancing the penalties for sex buying.
Sec. A-7. 17-A MRSA §853, sub-§1, ¶B, as amended by PL 2015, c. 360, §1, is 6 further amended to read: 7 B. The person violates paragraph A and has 2 or more prior convictions in this State 8 for any combination of the Maine offenses listed in this paragraph or for engaging in 9 substantially similar conduct to that of the Maine offenses listed in this paragraph in 10 another jurisdiction. The Maine offenses are any violation of this section or section 11 262, section 852, former section 853-A, former section 853-B or section 855 or 12 attempts to commit any of these crimes. Section 9-A governs the use of prior 13 convictions when determining a sentence. Violation of this paragraph is a Class C 14 crime.	This is the three strikes statute that elevates a misdemeanor sex trafficking charge to a felony. This language would use the new statute for sex buying (262) and say “former” for referencing the old sex buying statute. It’s really just straightening out a reference to the old statute.
Sec. A-8. 17-A MRSA §853, sub-§4 is enacted to read: 16 4. It is a defense to prosecution under this section that the person publicly solicited a 17 patron to engage in prostitution only with the person.	Someone can be convicted of Class D sex trafficking for “promoting prostitution.” In the definitions of promoting prostitution is a section that includes publicly soliciting patrons. Currently, it can be read that a person who posts an online ad for their own prostitution could be convicted of sex trafficking because it doesn’t differentiate whether the ad was intended to advertise someone else’s prostitution services or their own. This would close a loophole where someone could be prosecuted for sex trafficking for their own sex selling. <i>Note: I have received feedback from two prosecutors on this language and they think it is confusing so it may need to be made clearer</i>
Sec. A-9. 17-A MRSA §853-A, as amended by PL 2019, c. 113, Pt. C, §64; c. 131, 19 §1; and c. 316, §1, is repealed	<b>*the big one*</b> This repeals the sex-selling statute, and thereby decriminalizes prostitution to enact the Equality Model by keeping sex buying a crime.
Sec. A-10. 17-A MRSA §853-B, as amended by PL 2013, c. 407, §4, is repealed	This repeals “engages a prostitute” because “commercial sexual exploitation” will take its place criminalizing sex buying in the chapter with sex assaults (section 262)
Sec. A-11. 17-A MRSA §855, as amended by PL 2013, c. 407, §5, is further 22 amended to read: 23 §855. Patronizing prostitution Commercial sexual exploitation of minor or; 24 patronizing	This is the section that is similar to the bill that Rep. MacDonald is proposing. This section will make it so law enforcement can conduct undercover sting operations posing as children.

<p>prostitution of person with mental disability 25 1. A person is guilty of patronizing prostitution commercial sexual exploitation of a 26 minor if: 27 A. The person, in return for another's prostitution, gives or agrees to give a pecuniary 28 benefit either to the person whose prostitution is sought or to a 3rd person and the 29 person whose prostitution is sought has not in fact attained 18 years of age or the person 30 believes the person whose prostitution is sought is under 18 years of age. Violation of 31 this paragraph is a Class D C crime; or. 32 B. The person violates paragraph A and that person knows that the person whose 33 prostitution is sought has not yet attained 18 years of age. Violation of this paragraph 34 is a Class C crime. 35 3. A person is guilty of patronizing prostitution of a mentally disabled person with a 36 mental disability if: 37 A. The person, in return for another's prostitution, gives or agrees to give a pecuniary 38 benefit either to the person whose prostitution is sought or to a 3rd person and the 39 person whose prostitution is sought suffers from a mental disability that is reasonably 40 apparent or known to the actor and that in fact renders the other person substantially Page 3 - 130LR0915(01) 41 incapable of appraising the nature of the conduct or conduct involved. Violation of 42 this paragraph is a Class C crime.</p>	<p>This version would make it a Class C felony to solicit a child under 18 for prostitution, and it also uses the term "commercial sexual exploitation" because there are no patrons of child prostitutes. There are only child victims that are being exploited, and the penalty should be enhanced. It also changes the term "mentally disabled person" to "person with a mental disability."</p>
<p>Sec. A-12. 17-A MRSA §1604, sub-§5, ¶B, as enacted by PL 2019, c. 113, Pt. A, 4 §2, is amended to read: 5 B. If the State pleads and proves that, at the time any crime, excluding murder, under 6 chapter 9, 11, 12, 13, 27 or 35, excluding former section 853-A; section 402-A, 7 subsection 1, paragraph A; or section 752-A or 752-C was committed, or an attempt of 8 any such crime was committed, the individual had 2 or more prior convictions under 9 chapter 9, 11, 12, 13, 27 or 35, excluding former section 853-A; section 402-A, 10 subsection 1, paragraph A; or section 752-A or 752-C, or for an attempt of any such 11 crime, or for engaging in substantially similar conduct in another jurisdiction, the 12 sentencing class for the crime is one class higher</p>	<p>This section cleans up the sentencing statute that referenced the old prostitution statutes that we're getting rid of.</p>

<p>than it would otherwise be. 13 (1) In the case of a Class A crime, the sentencing class is not elevated, but the prior 14 record must be assigned special weight by the court when imposing a sentence. 15 (2) Section 9-A governs the use of prior convictions when determining a sentence, 16 except that, for the purposes of this paragraph, for violations under chapter 11, the 17 dates of prior convictions may have occurred at any time. 18 This paragraph does not apply to section 210-A if the prior convictions have already 19 served to elevate the sentencing class under section 210-A, subsection 1, paragraph C 20 or E or any other offense in which prior convictions have already served to elevate the 21 sentencing class.</p>	
<p>Sec. A-13. 17-A MRSA §1902, sub-§6, as corrected by RR 2019, c. 2, Pt. A, §21, 23 is repealed.</p>	<p>This section gets rid of the deferred disposition compromise that we got when we last tried to decriminalize prostitution. It would repeal the statute that tells prosecutors that deferred dispositions are the preferred way to resolve sex-selling prostitution charges, which will now be unnecessary.</p>
<p>Sec. A-14. 18-C MRSA §9-401, sub-§4, ¶F, as amended by PL 2019, c. 417, Pt. 25 A, §106, is further amended to read: 26 F. Has in that child's family background factors such as severe mental illness, 27 substance use disorder, prostitution, genetic or medical conditions or illnesses that 28 place the child at risk for future problems.</p>	<p>This removes prostitution in the definitions of a "special needs child."</p>
<p>Sec. A-15. 34-A MRSA §11273, sub-§15, ¶C, as enacted by PL 2011, c. 663, §3, 30 is amended to read: 31 C. Title 17-A, section 855, subsection 1, paragraph B; and</p>	<p>This section is for sex offender registration requirements for someone convicted of the current "patronizing the prostitution of a minor or person with mental disability" statute referenced in A-11. It makes it so that anyone convicted of this has to register as a sex offender. Currently, a defendant does not have to register as a sex offender unless the prosecutor can prove beyond a reasonable doubt that the defendant knew the victim was under 18.</p>
<p>Sec. B-1. 15 MRSA c. 313 is enacted to read: 34 CHAPTER 313 35 EXPUNGEMENT OF RECORDS 36 §2331. Expungement of records of crime of engaging in prostitution 37 1. Engaging in crime of prostitution. A person convicted of the crime</p>	<p>This is the sealing/expungement section for prior convictions</p>

<p>of engaging 38 in prostitution in the State may petition the court in which the conviction was recorded to 1 2 Page 4 - 130LR0915(01) 39 expunge the record of the conviction. The court shall order all records of the conviction 40 expunged if the convicted person has not been convicted of a violation of Title 17-A, 41 section 262, 852 or 853 or former section 853-A and has no formal charging instrument 42 pending in the State for a violation of Title 17-A, section 262, 852 or 853. 5 2. State Bureau of Identification. Following receipt of a court order for expungement 6 under subsection 1, the Department of Public Safety, State Bureau of Identification shall 7 make the necessary arrangements with the identification division of the Federal Bureau of 8 Investigation to have all references to the expunged crime deleted from the Federal Bureau 9 of Investigation's identification record and any state materials returned to the contributing 10 agency.</p>	
<p>Sec. C-1. Commercial sexual exploitation survivor and human trafficking 13 victim assistance stakeholder group; pilot program. The Commissioner of Health 14 and Human Services shall convene a stakeholder group composed of representatives of 15 public and private agencies and organizations that provide direct support and services to 16 survivors of commercial sexual exploitation and victims of human trafficking in 17 Androscoggin County. The stakeholder group shall design a pilot program to provide 18 increased comprehensive services to survivors of commercial sexual exploitation and 19 victims of human trafficking. The pilot program must include collaboration agreements 20 among the participating agencies and organizations and mechanisms for evaluating 21 program success. The department shall act as the program and fiscal oversight agent and 22 make funds available for the pilot program. The department shall seek available funds 23 whenever possible, including from public and private sources and funds available under 24 the federal Victims of Trafficking and Violence Protection Act of 2000</p>	<p>This is the section that creates the pilot program in Androscoggin County. Since we are removing the police as the gatekeepers of access to services for victims of commercial sexual exploitation and survivors of human trafficking, we need something to fill the void that the criminal justice system is currently filling. This section would have the state coordinate the current network of trafficking resources in Androscoggin County. It also directs the department to utilize existing trafficking funds that are available to victims and survivors. We should want to avoid the different agencies having to compete for the funds, and for victims in need of services falling through the cracks because they don't meet criteria for access to these funds from one agency with money where they might qualify for services from an agency without money.</p>



<p>and from the 25 Victims' Compensation Fund under the Maine Revised Statutes, Title 5, chapter 316-A. 26 Sec. C-2. Report. By January 1, 2023, the Department of Health and Human 27 Services shall report to the joint standing committee of the Legislature having jurisdiction 28 over criminal justice and public safety matters concerning the activities and an evaluation 29 of the pilot program under section 1 of this Part. The joint standing committee of the 30 Legislature having jurisdiction over criminal justice and public safety matters may report 31 out legislation based upon the report to the First Regular Session of the 131st Legislature.</p>	
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**Link to Equality Model Explanation and Link to Demand Side Survey**

*What is the Equality Model? And Why Is Its Adoption in the United States So Vital?*

By: Equal Not Exploited

<https://www.equalitymodelus.org/why-the-equality-model/>

*Who Buys Sex?: Understanding and Disrupting Illicit Market Demand*

By: Demand Abolition

<https://www.demandabolition.org/wp-content/uploads/2019/07/Demand-Buyer-Report-July-2019.pdf>