



Maine Women's Lobby

THE VOICE OF MAINE WOMEN

May 11, 2021

Dear Senator Deschambault, Representative Warren, and Members of the Joint Standing Committee on Criminal Justice and Public Safety,

I join you today on behalf of the Maine Women's Lobby. For over forty years, the Maine Women's Lobby has advocated for public policy which increases the health, wellness, safety, and economic security of Maine women and girls, with a focus on the most marginalized populations and communities.

We write today **neither for nor against 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."**

While I currently work for the Maine Women's Lobby, I previously spent 11 years at the Maine Coalition Against Sexual Assault. In that role, I worked intimately on policy related to commercial sex, commercial sexual exploitation, and human trafficking. This included staffing the Attorney General's Human Trafficking Work Group for several years, overseeing Maine's only statewide study on human trafficking, and coordinating the statewide Sex Trafficking and Exploitation Network Provider Council.

This bill has several aims. In short, it:

1. Strikes the crime of 'engaging in prostitution' and attendant language (Sec. A-9.; 17-A MRSA §853-A).
2. Renames the crime of 'engaging a prostitute' to 'commercial sexual exploitation'; moves it to Title 17-A Chapter 11, Sexual Assaults (Sec A-6), and then aligns definitions and fines accordingly.
3. Creates a path to expunge or seal the crime of 'engaging in prostitution'.
4. Addresses several corrections or fixes on this topic.

We are in full support of:

1. Sec. A-8 (creating a defense for people who 'promote prostitution' only of their own selves) as we believe people engaged in commercial sex – for whatever reason – should not be subject to criminalization related to that activity.
2. Sec. A-11 (changing 'patronizing the prostitution of a minor' to 'commercial sexual exploitation of a minor') though the Committee might consider moving this to Title 17-A Chapter 12, Sexual Exploitation of Minors. We would support the update of language related to 'persons with mental disabilities' (Sec. A-11 subsection 3).
3. Sec. A-14, removing 'prostitution' from the definition of 'children with special needs' with regard to adoption supports.

With regard to the more substantive portions of the bill:



I will remain silent on the renaming and rearranging the crime of ‘engaging a prostitute’ as I expect others will have a more informed view on the topic. I will note that the premise is based on the idea that the purchase of commercial sex is inherently exploitation, and I think that bears a longer conversation, and calls into question whether other sexualized labor, such as erotic dance or film is also exploitive labor.

Regarding Part B., addressing expungement or sealing, it is our understanding that bills of this nature are being gathered by the Joint Standing Committee on the Judiciary to address this issue across multiple crime types. We certainly support it in concept and expect that the multidisciplinary, comprehensive approach to expungement or sealing of nonviolent crimes will create a proposal that will work for many interests in Maine.

With regard to the decriminalization of ‘engaging in prostitution,’ the situation is more complicated. We know that there is a clear connection between trauma, violence, and commercial sex; we know that people who are economically marginalized often are in commercial sex either through force, manipulation, or circumstance; that criminalization disproportionately harms those who are most marginalized and can make communities less safe and more at risk from violence from community members and bad actors in law enforcement (more detail follows).

Still: the data is not clear that decriminalizing only portions of this transaction (such as the seller and not the buyer), or criminalizing portions (such as online transactions) makes individuals in commercial sex safer.

- **Laws like SESTA-FOSTA¹**, which pushed commercial sex off the internet, are an example of what happens when buyers are specifically targeted. These laws **made it harder to review clients in advance (which is far less safe) and increased the amount of street-based commercial sex and associated risk and criminalization².**
- **Making the buyer more criminally liable can force the seller to ‘protect’ the buyer,** which can push commercial sex to more isolated areas to assure clients they won’t be arrested, making it more difficult to reach out to others if a situation becomes unsafe; can lead to rushed negotiations; and result in similar or increased risks of violence.³ In fact, the Norwegian Ministry of Justice found after the Nordic Model was put into place in Sweden and the Netherlands “more abuse took place than previously, when the women could afford to say ‘no’ to the clients they had their doubts about.”⁴
- From one large-scale literature review of the effect of laws on the health of people engaged in commercial sex: “The quantitative evidence clearly shows the association between repressive policing within frameworks of full or partial sex work criminalization—including the criminalization of clients and the organization of sex

¹ Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA)

² See [here about San Francisco, New York City, and San Antonio, Phoenix, and Sacramento.](#)

³ The Lancet. (2015). Human rights violations against sex workers: burden and effect on HIV. 385:18699. [http://dx.doi.org/10.1016/S0140-6736\(14\)60800-X](http://dx.doi.org/10.1016/S0140-6736(14)60800-X)

⁴ Mac, J., & Smith, M. (2020). *Revolting prostitutes: The fight for sex workers rights.* (p.144) London, England. Verso.



work—and adverse health outcomes. **Qualitative evidence demonstrates how repressive policing of sex workers, their clients, and/or sex work venues deprioritizes sex workers' safety, health, and rights and hinders access to due process of law.**⁵

Regardless of how people come to be engaged in commercial sex – through trafficking, exploitation, trauma, economic marginalization, choice, or circumstance – they are deserving of safety and the protection of our laws. We agree with the sponsor that we hope to never see another person from this group be treated as the perpetrator of a crime. They are not, and it is time for our criminal code to acknowledge that. To that end, [LD 1455](#) **seeks to create a defense against prosecution for people who are engaged in commercial sex either through economic hardship or trafficking.** In last week's hearing it was supported by a dozen organizations including the Maine Prosecutor's Association. It does not solve the underlying concern, however, of local law enforcement using arrest or the threat of arrest to harm or harass people engaged in commercial sex.

As Maine reevaluates policies surrounding commercial sex, it is critical that we work with Mainers in our communities who have lived experience related to this issue and work together to develop a harm reduction approach. We should be asking questions like: "What conditions lead people to sell sex, or make commercial sex their only opportunity for survival? What conditions increase the safety for people who are engaged in commercial sex through either force or hardship? In what ways can we improve our systems to better respond to those situations?" Until we address the underlying factors that make commercial sex an opportunity for either traffickers *or* individuals without viable alternatives, we are not likely to change the existence of commercial sex. Until then, we must work harder to ensure that they are living safe lives and reducing the harm of criminalization is a step toward that goal.

We hope that the committee can work with Maine community members and to connect to legislation currently pending in the Joint Standing Committee on the Judiciary, to find a path to reducing the harm of criminalization of commercial sex. We would be honored to be included in these discussions.

Sincerely,

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⁵ Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, et al. (2018) Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLoS Med* 15(12):e1002680. <https://doi.org/10.1371/journal.pmed.1002680>



Context for Commercial Sex and Criminalization

There is a clear connection between the experience of trauma or violence and commercial sex. The vast majority of people engaged in commercial sex are survivors of gender-based violence.⁶ In fact, women are more likely to be engaged in commercial sex when they are abused as children.⁷ Traffickers and exploiters often target trauma survivors, and in some cases the experience of trauma leads to mental health or substance use challenges that may connect people with commercial sex.

There is a clear connection between economic marginalization and commercial sex. Not all people engaged in commercial sex have traffickers, pimps, or exploiters, though they may have at some point. The vast majority of people engaged in commercial sex are people of color and members of the LGBTQ community, especially trans people⁸ – communities who also experience higher rates of poverty and unemployment. One in five trans people nationally experience homelessness at some point in their lives⁹, and our friends at Maine Trans Net report that the number in Maine is likely higher. When our economy and cultural norms exclude and ignore some populations, the street economy can be a path to survival.

The criminalization of these activities disproportionately affects the most marginalized populations. While Black Americans are only twelve percent of the United States' population, approximately forty percent of adults and sixty percent of youth arrested for prostitution in 2015 were Black.¹⁰ Trans women, particularly those of color, are more likely to be arrested on sex work charges than any other demographic.¹¹

Criminalization results in stigmatization that makes people less safe. For example, people engaged in commercial sex often refuse to report sexual assault, burglary, and other crimes they experience for fear of facing arrest, and when they do, they are more likely to experience assault and harassment at the hands of the police they are reporting to¹². Many of us vividly remember the recent case of Daniel Holtzclaw, the Oklahoma police officer who systematically raped Black women who were engaged in sex work because he knew he could do so without repercussions.

⁶ Mac, J., & Smith, M. (2020). *Revolted prostitutes: The fight for sex workers rights*. (p.121-126) London, England. Verso.

⁷ The Intersection Between Prostitution and Sexual Violence. (2013). *Pennsylvania Coalition Against Rape*.

⁸ North, A. (2019, August 02). The movement to decriminalize sex work, explained.

<https://www.vox.com/2019/8/2/20692327/sex-work-decriminalization-prostitution-new-york-dc>

⁹ The National Center for Transgender Equality. Issues: Housing and Homelessness. Retrieved from

<https://transequality.org/issues/housing-homelessness>

¹⁰ Federal Bureau of Investigation. (2015). Uniform Crime Report. Retrieved from <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-43>

¹¹ Ibid.

¹² DC Trans Network. (2015). Access Denied. Retrieved from

<https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf>