

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 326

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H.P. 251

House of Representatives, January 24, 2019

### **An Act To Decriminalize Engaging in Prostitution**

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Robert B. Hunt*  
ROBERT B. HUNT  
Clerk

Presented by Representative RECKITT of South Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **PART A**

3 **Sec. A-1. 5 MRSA §3360-I, first ¶**, as amended by PL 2013, c. 607, §1, is  
4 further 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, an assessment of  
11 \$500 on any person for the first conviction and \$1,000 for each subsequent conviction of  
12 engaging a ~~prostitute~~ prostituted person as described in Title 17-A, section ~~853-B~~ 253-A  
13 and an assessment of \$500 on any person for the first conviction and \$1,000 for each  
14 subsequent conviction of patronizing prostitution of a minor or patronizing prostitution of  
15 a mentally disabled person as described in Title 17-A, section 855. Notwithstanding any  
16 other law, the court may not waive the imposition of the assessment required by this  
17 section. For purposes of collection and collection procedures, this assessment is  
18 considered part of the fine. At the time of commitment, the court shall inform the  
19 Department of Corrections or the county sheriff of any unpaid balances on assessments  
20 owed by the offender to the Victims' Compensation Fund. All funds collected as a result  
21 of these assessments accrue to the Victims' Compensation Fund.

22 **Sec. A-2. 17-A MRSA §251, sub-§1, ¶¶H and I** are enacted to read:

23 H. "Engages a prostituted person" means providing or agreeing to provide, either to  
24 the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return  
25 for a sexual act as defined in paragraph C or sexual contact as defined in paragraph  
26 D.

27 I. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in  
28 a sexual act as defined in paragraph C or sexual contact as defined in paragraph D, in  
29 return for a pecuniary benefit to be received by the person engaging in prostitution or  
30 a 3rd person.

31 **Sec. A-3. 17-A MRSA §253-A** is enacted to read:

32 **§253-A. Engaging a prostituted person**

33 1. A person is guilty of engaging a prostituted person if the person engages a  
34 prostituted person within the meaning of section 251, subsection 1, paragraph H.  
35 Violation of this subsection is a Class D crime.

36 **Sec. A-4. 17-A MRSA §851**, as amended by PL 1995, c. 638, §§1 to 3, is further  
37 amended to read:

1           **§851. Definitions**

2           As used in this chapter:

3           **1.** "Prostitution" means engaging in, or agreeing to engage in, or offering to engage  
4 in a sexual act or sexual contact, as those terms are defined in section 251, in return for a  
5 pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

6           **1-A.** "Engages a ~~prostitute~~ prostituted person" means providing or agreeing to  
7 provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary  
8 benefit in return for a sexual act or sexual contact as those terms are defined in section  
9 251;

10          **2.** "Promotes prostitution" means:

11          A. Causing or aiding another to commit or engage in prostitution, other than as a  
12 patron;

13          B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for  
14 prostitution includes, but is not limited to, an offer, made in a public place, for a  
15 prostituted person who is not the person making the offer to engage in a sexual act or  
16 sexual contact, as those terms are defined in section 251, in return for a pecuniary  
17 benefit to be received by the person making the offer or a 3rd person;

18          C. Providing persons for purposes of prostitution;

19          D. Leasing or otherwise permitting a place controlled by the defendant, alone or in  
20 association with others, to be regularly used for prostitution;

21          E. Owning, controlling, managing, supervising or otherwise operating, in association  
22 with others, a house of prostitution or a prostitution business;

23          F. Transporting a person into or within the State with the intent that such other  
24 person engage in prostitution; or

25          G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit  
26 pursuant to an agreement or understanding with any person, other than with a  
27 prostituted person or a patron, whereby the person participates or the person is to  
28 participate in the proceeds of prostitution.

29          **Sec. A-5. 17-A MRSA §853, sub-§1, ¶B**, as amended by PL 2015, c. 360, §1, is  
30 further amended to read:

31          B. The person violates paragraph A and has 2 or more prior convictions in this State  
32 for any combination of the Maine offenses listed in this paragraph or for engaging in  
33 substantially similar conduct to that of the Maine offenses listed in this paragraph in  
34 another jurisdiction. The Maine offenses are any violation of this section, section  
35 253-A or section 852, former section 853-A, former section 853-B or section 855 or  
36 attempts to commit any of these crimes. Section 9-A governs the use of prior  
37 convictions when determining a sentence. Violation of this paragraph is a Class C  
38 crime.

39          **Sec. A-6. 17-A MRSA §853-A**, as amended by PL 2013, c. 537, §5, is repealed.



1 from the Federal Bureau of Investigation's identification record and any state materials  
2 returned to the contributing agency.

3 **SUMMARY**

4 Part A decriminalizes engaging in prostitution by making the following amendments  
5 to the laws.

6 1. It changes the term "prostitute" to the term "prostituted person" in the law on  
7 funding for the Victims' Compensation Fund and in the definitions in the Maine Revised  
8 Statutes, Title 17-A, section 851.

9 2. It repeals the crime of engaging a prostitute in Title 17-A, section 853-B and  
10 places the provision in Title 17-A, chapter 11, which governs sexual assaults, in section  
11 253-A using the term "engaging a prostituted person" instead of the term "engaging a  
12 prostitute." It provides definitions in chapter 11 for "engaging a prostituted person" and  
13 "prostitution."

14 3. It repeals the crime of engaging in prostitution.

15 4. It removes from the adoption assistance program reference to prostitution in the  
16 examples of family background factors that are used to define a special needs child.

17 Part B allows a person convicted of a crime of engaging in prostitution in this State to  
18 petition the court in which the conviction was recorded to expunge the record of the  
19 conviction. It authorizes the court to order all records of the conviction expunged if the  
20 convicted person has not been convicted of a violation of Title 17-A, section 253-A, 852  
21 or 853 or former section 853-A and has no formal charging instrument pending in this  
22 State for a violation of Title 17-A, section 253-A, 852 or 853. Part B requires the  
23 Department of Public Safety, State Bureau of Identification, following receipt of a court  
24 order for expungement, to make the necessary arrangements with the identification  
25 division of the Federal Bureau of Investigation to have all references to the expunged  
26 crime deleted from the Federal Bureau of Investigation's identification record and any  
27 state materials returned to the contributing agency.