

MAINE STATE LEGISLATURE

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Date: 6/8/07

L.D. 461
(Filing No. H-488)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 360, L.D. 461, Bill, "An Act To Implement the Recommendations of the Human Trafficking Task Force"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

PART A

Sec. A-1. 17-A MRSA c. 10 is enacted to read:

CHAPTER 10

INVOLUNTARY SERVITUDE AND HUMAN TRAFFICKING OFFENSES

§221. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. "Commercial sexual activity" means a sexual act, sexual contact or sexual touching as defined in section 251; sexually explicit conduct as defined in section 281; or sexual exploitation of a minor as described in section 282, for which anything of value is given to, promised to or received by a person, or prostitution or promotion of prostitution as defined in section 851.

2. "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of the debtor's personal services or those of a person under the debtor's control as security for debt if the value of those services as reasonably assessed is not applied toward the payment of the debt or the length and nature of the services are not limited and defined.

3. "Force, fraud or coercion" means:

A. Causing or threatening to cause bodily injury to a person;

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1 B. Restraining or threatening to restrain a person as defined in section 301,
2 subsection 2;

3 C. Abusing or threatening to abuse the law or legal process;

4 D. Destroying, concealing, removing, confiscating or possessing any actual or
5 purported passport or other immigration document, or other actual or purported
6 government identification document of another person, without the legal right to do
7 so;

8 E. Using extortion, as described in section 355, subsection 2;

9 F. Causing or threatening to cause financial harm, including, but not limited to,
10 through credit extortion, an intentional or knowing violation of the Maine Consumer
11 Credit Code or an unfair employment agreement as described in Title 26, section 629;

12 G. Causing or threatening to cause serious harm to a person; or

13 H. Using any scheme, plan or pattern intended to cause a person to believe that if the
14 person does not perform certain labor or services that person or another person will
15 suffer serious harm or restraint.

16 4. "Forced labor or services" means labor or services that are performed or provided
17 by another person and are obtained or maintained through an actor by the use of force,
18 fraud or coercion. "Forced labor or services" includes, but is not limited to, debt
19 bondage.

20 5. "Human trafficking offense" means an offense under sections 222 to 224.

21 6. "Labor" means work of economic or financial value.

22 7. "Services" means an ongoing relationship between a person and the actor in which
23 the person performs activities under the supervision of or for the benefit of the actor or a
24 3rd party. "Services" includes commercial sexual activity.

25 8. "Sexual exploitation of a minor" has the same meaning as described in section
26 282.

27 9. "Victim" means a person subjected to involuntary servitude or human trafficking
28 as described in sections 222 to 224.

29 **§222. Causing involuntary servitude**

30 1. A person is guilty of causing involuntary servitude if the person:

31 A. Intentionally or knowingly subjects another person to forced labor or services; or

32 B. Intentionally or knowingly benefits financially from or receives anything of value
33 from any person's conduct described in paragraph A.

34 2. Causing involuntary servitude is a Class B crime.

35 **§223. Human trafficking**

36 1. A person is guilty of human trafficking if the person:

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1 A. Intentionally or knowingly recruits, entices, harbors, transports, provides or
2 obtains by any means another person, intending or knowing that that person will be
3 subjected to forced labor or services;

4 B. Intentionally or knowingly recruits, entices, harbors, transports, provides or
5 obtains by any means a person, intending or knowing that that person will be
6 subjected to commercial sexual activity through force, fraud or coercion; or

7 C. Intentionally or knowingly benefits financially or receives anything of value from
8 any person's conduct described in paragraph A or B or section 224.

9 2. Human trafficking is a Class B crime.

10 **§224. Aggravated human trafficking**

11 1. A person is guilty of aggravated human trafficking if the person:

12 A. Commits human trafficking and the person subjected to the human trafficking
13 dies in the course or as a result of the human trafficking; or

14 B. Commits human trafficking and the person subjected to the human trafficking is
15 in fact a minor.

16 2. Aggravated human trafficking is a Class A crime.

17 **§225. Inapplicable defenses**

18 The following are not defenses to a prosecution under sections 222 to 224:

19 1. That the victim is or was related by blood or marriage to the defendant or to
20 anyone else involved in the involuntary servitude or human trafficking;

21 2. That the victim or another person on behalf of the victim consented to commercial
22 sexual activity;

23 3. The age of consent to sex or legal age for marriage; or

24 4. Any mistake as to the age of the victim.

25 **PART B**

26 **Sec. B-1. 5 MRSA c. 337-C is enacted to read:**

27 **CHAPTER 337-C**

28 **CIVIL REMEDIES FOR HUMAN TRAFFICKING**

29 **§4701. Remedies for human trafficking**

30 1. Definitions. As used in this chapter, unless the context otherwise indicates, the
31 following terms have the following meanings.

32 A. "Trafficked person" means a victim of a human trafficking offense under Title 17-
33 A, chapter 10.

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1 B. "Criminal proceeding" includes the investigation and prosecution of criminal
2 charges. A criminal proceeding remains pending until final adjudication in the trial
3 court.

4 2. Civil action for damages, relief. A trafficked person may bring a civil action for
5 actual damages, compensatory damages, punitive damages, injunctive relief, any
6 combination of those or any other appropriate relief. A prevailing plaintiff is entitled to
7 an award of attorney's fees and costs.

8 3. Statute of limitations. An action brought pursuant to this section must be
9 commenced within 10 years of the date on which the trafficked person was freed from the
10 trafficking situation.

11 A. If a person entitled to bring an action under this section is under disability when
12 the cause of action accrues so that it is impossible or impracticable for the person to
13 bring an action, the time during which the person is under disability tolls the running
14 of the time limit for the commencement of the action. For the purposes of this
15 paragraph, a person is under disability if the person is a minor or is mentally ill,
16 imprisoned, outside the United States or otherwise incapacitated or incompetent.

17 B. The statute of limitations is tolled for an incompetent or minor plaintiff even if a
18 guardian ad litem has been appointed.

19 C. A defendant is estopped from asserting a defense of the statute of limitations if the
20 trafficked person did not file before the expiration of the statute of limitations due to:

21 (1) Conduct by the defendant inducing the plaintiff to delay the filing of the
22 action or preventing the plaintiff from filing the action; or

23 (2) Threats made by the defendant that caused duress to the plaintiff.

24 D. The statute of limitations is tolled during the pendency of any criminal
25 proceedings against the trafficked person.

26 4. Cause of action on trafficked person's behalf. A legal guardian, family
27 member, representative of the trafficked person or court appointee may represent the
28 trafficked person or the trafficked person's estate if deceased.

PART C

30 Sec. C-1. 15 MRSA §5821, sub-§8, as enacted by PL 1989, c. 302, §3, is
31 repealed.

32 Sec. C-2. 15 MRSA §5821, sub-§9 is enacted to read:

33 9. Assets in human trafficking offenses. All assets, including money instruments,
34 personal property and real property, used or intended for use in or traceable to a human
35 trafficking offense under Title 17-A, chapter 10.

36 Sec. C-3. 15 MRSA §5821, as amended by PL 2003, c. 688, Pt. B, §2, is further
37 amended by adding at the end a new paragraph to read:

38 A forfeiture under this section of property encumbered by a perfected bona fide
39 security interest is subject to the interest of the secured party if the party neither had

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1 knowledge of nor consented to the act or omission upon which the right of forfeiture is
2 based.

3 **PART D**

4 **Sec. D-1. 17-A MRSA §1322, sub-§3, ¶F**, as repealed and replaced by PL 1993,
5 c. 305, §1, is amended to read:

6 F. "Work loss" means loss of income from work the injured person would have
7 performed if the injured person had not been injured and expenses reasonably
8 incurred by the injured person in obtaining services in lieu of those the injured person
9 would have performed for income, reduced by any income for substitute work
10 actually performed by the injured person or by income the injured person would have
11 earned in available appropriate substitute work the injured person was capable of
12 performing but unreasonably failed to undertake. For a victim of a human trafficking
13 offense under chapter 10, "work loss" includes pay or benefits unfairly or illegally
14 withheld from the victim by the offender or any unfair labor agreement under Title
15 26, section 629, as defined by rules adopted by the Department of Labor.

16 **Sec. D-2. Rulemaking.** By October 1, 2007, the Department of Labor shall adopt
17 rules to define "work loss" under the Maine Revised Statutes, Title 17-A, section 1322,
18 subsection 3, paragraph F for victims of human trafficking offenses under Title 17-A,
19 chapter 10 who are eligible for restitution. Rules adopted pursuant to this section are
20 routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

21 **Sec. D-3. Effective date.** This Part takes effect 90 days after the adjournment of
22 the First Regular Session of the 123rd Legislature.

23 **PART E**

24 **Sec. E-1. 5 MRSA §3360, sub-§3, ¶G**, as amended by PL 2005, c. 22, §2, is
25 further amended to read:

26 G. Leaving the scene of a motor vehicle accident involving personal injury or death,
27 in violation of Title 29-A, section 2252; ~~or~~

28 **Sec. E-2. 5 MRSA §3360, sub-§3, ¶H**, as enacted by PL 2005, c. 22, §3, is
29 amended to read:

30 H. Sexual exploitation of a minor as described in Title 17-A, chapter 12; or

31 **Sec. E-3. 5 MRSA §3360, sub-§3, ¶I** is enacted to read:

32 I. Causing a human trafficking offense as described in Title 17-A, chapter 10.

33 **PART F**

34 **Sec. F-1. Attorney General's working group on human trafficking;**
35 **report.** The Attorney General shall convene a working group on human trafficking
36 consisting of representatives of the following: the Department of Health and Human
37 Services, the Department of Labor, the Department of Public Safety, the Maine Institute

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1 for Public Safety Innovation, law enforcement, immigrant legal services, interested
2 parties, other state agencies and service providers, including, but not limited to, health
3 care, domestic violence and sexual assault victim advocates and other social service
4 providers. The working group shall:

- 5 1. Develop training for law enforcement and community organizations;
- 6 2. Develop outreach and public awareness campaigns;
- 7 3. Work on options and initiatives for data collection;
- 8 4. Determine the need for victim and witness laws, victims' services and obtaining
9 special visa status for victims who are undocumented immigrants, the coordination of
10 services and the coordination of state and federal victim services programs for benefits,
11 programs and licenses;
- 12 5. Monitor the actions of international matchmaking organizations to determine if
13 state intervention or regulation is necessary; and
- 14 6. Determine whether a special tolling statute based on cultural and linguistic
15 isolation would be appropriate for pursuing civil remedies under the Maine Revised
16 Statutes, Title 5, chapter 337-C.

17 The working group shall report to the First Regular Session of the 124th Legislature
18 by January 15, 2009.

19 **Sec. F-2. Effective date.** This Part takes effect 90 days after the adjournment of
20 the First Regular Session of the 123rd Legislature.

21 **PART G**

22 **Sec. G-1. Effective date.** Except as otherwise indicated, this Act takes effect
23 January 1, 2008.'

24 **SUMMARY**

25 This amendment replaces the bill. Like the bill, it is based on the work of the Human
26 Trafficking Task Force and establishes the crimes of causing involuntary servitude,
27 human trafficking and aggravated human trafficking. It also provides that certain
28 circumstances cannot be used as defenses to prosecutions.

29 This amendment creates a new chapter that provides for civil remedies for human
30 trafficking. It allows a trafficked person to bring a civil action for actual damages,
31 compensatory damages, punitive damages, injunctive relief, any combination of those
32 remedies and any other appropriate relief. A prevailing plaintiff is entitled to attorney's
33 fees and costs. The statute of limitations for bringing the action is 10 years from the
34 trafficking act, although the time limitation does not run while the trafficked person is
35 under the age of 18, mentally ill, imprisoned, outside the United States or otherwise
36 incapacitated or incompetent when the cause of action accrues. This is similar to the
37 tolling statute of the Maine Revised Statutes, Title 14, section 853. The amendment also
38 provides that the defendant cannot assert the defense of expiration of the statute of
39 limitations if the running of the time is due to conduct by the defendant's inducing the

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1 due to conduct by the defendant's inducing the plaintiff to delay the filing of the action or
2 preventing the plaintiff from filing the action, or because of threats made by the
3 defendant.

4 This amendment provides for the civil forfeiture of property used in involuntary
5 servitude and human trafficking offenses. It also corrects a formatting error in the current
6 law.

7 Like the bill, this amendment gives the human trafficking victim the right to collect
8 damages and compensation through criminal restitution law and the Victims'
9 Compensation Fund. It requires rulemaking by the Department of Labor for the purposes
10 of victim restitution.

11 This amendment directs the Attorney General to convene a broad working group to
12 address human trafficking issues. Monitoring international matchmaking organizations is
13 added to the list of tasks, as is whether a special statute of limitations tolling provision is
14 appropriate because of victims' cultural and linguistic isolation. The working group will
15 report to the Legislature by January 15, 2009.

16 This amendment provides an effective date of January 1, 2008, except that the
17 provisions establishing the Attorney General's working group on human trafficking and
18 the definition of "work loss" and rulemaking in the Department of Labor regarding work
19 loss take effect 90 days after adjournment of the First Regular Session of the 123rd
20 Legislature.

21 **FISCAL NOTE REQUIRED**
22 **(See attached)**

COMMITTEE AMENDMENT



123rd MAINE LEGISLATURE

LD 461

LR 476(02)

An Act To Implement the Recommendations of the Human Trafficking Task Force

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class B crimes and increases certain offenses to Class A offenses; increases correctional and judicial costs. The average cost to the state for each new Class B sentence is \$98,327 based on an average length of stay of 3 years and 7 months. The average cost to the state for increasing a Class B crime to a Class A is \$152,073 based on an average incremental difference of 4 years between the classes. This bill may increase the number of civil suits filed in the court system. The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The additional costs to convene a working group to address human trafficking issues can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

Additional costs to the Department of Labor associated with rulemaking and with participating in the working group can be absorbed within existing budgeted resources.