

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1592

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H.P. 1181

House of Representatives, April 27, 2021

**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**

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative RECKITT of South Portland.  
Cosponsored by Senator CARNEY of Cumberland and  
Representatives: BROOKS of Lewiston, BRYANT of Windham, GRAMLICH of Old Orchard  
Beach, LOOKNER of Portland, MORALES of South Portland, PEBWORTH of Blue Hill,  
PLUECKER of Warren, WARREN of Hallowell.

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 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.

22 **Sec. A-2. 17-A MRSA §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 personally engage in a sexual act or sexual contact for pecuniary benefit.

26 **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.

34 **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 ~~854~~ 261.

40 **2.** Violation of this section is a Class ~~D~~ C crime.

41 **Sec. A-6. 17-A MRSA §262** is enacted to read:

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.

5 **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.

15 **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.

18 **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.

20 **Sec. A-10. 17-A MRSA §853-B,** as amended by PL 2013, c. 407, §4, is repealed.

21 **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 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

1 incapable of appraising the nature of the conduct or conduct involved. Violation of  
2 this paragraph is a Class C crime.

3 **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 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.

22 **Sec. A-13. 17-A MRSA §1902, sub-§6**, as corrected by RR 2019, c. 2, Pt. A, §21,  
23 is repealed.

24 **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.

29 **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

## 32 **PART B**

33 **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 of engaging  
38 in prostitution in the State may petition the court in which the conviction was recorded to

1 expunge the record of the conviction. The court shall order all records of the conviction  
2 expunged if the convicted person has not been convicted of a violation of Title 17-A,  
3 section 262, 852 or 853 or former section 853-A and has no formal charging instrument  
4 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.

## 11 **PART C**

12 **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 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.

## 32 **SUMMARY**

33 This bill does the following:

34 1. It repeals the crimes of engaging in prostitution and engaging a prostitute and  
35 replaces those provisions with the new crime of commercial sexual exploitation;

36 2. It amends the definition of "promotes prostitution" by excluding when the actor is  
37 soliciting a patron to engage in sex with the actor and defines the term "engaging a  
38 prostitute";

39 3. It allows as a defense to conspiracy to commit commercial sexual exploitation that  
40 the person's participation is to conspire to engage a patron to engage in sex with the person;

41 4. It allows as a defense to sex trafficking that the actor was soliciting a patron to  
42 engage in prostitution only with the actor;

1           5. It changes the crime of patronizing prostitution of a minor to commercial sexual  
2 exploitation of a minor;

3           6. It make the crimes of commercial sexual exploitation of a minor and solicitation of  
4 child to engage in prostitution Class C crimes.

5           7. It removes that a child's family background may involve prostitution from the  
6 definition of "special needs child" in the Department of Health and Human Services,  
7 Adoption Assistance Program;

8           8. It allows a person convicted of engaging in prostitution to petition a court to expunge  
9 the person's record of that conviction and to order the Department of Public Safety, State  
10 Bureau of Identification to make all necessary arrangements with the Federal Bureau of  
11 Investigation to have all references to the crime removed from the Federal Bureau of  
12 Investigation's identification record; and

13          9. It creates a commercial sexual exploitation survivor and human trafficking victim  
14 assistance stakeholder group made up of representatives of interested public and private  
15 agencies and organizations to design a pilot program to provide increased comprehensive  
16 services to survivors of commercial sexual exploitation and victims of human trafficking.