

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

No. 1435

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H.P. 931

House of Representatives, March 30, 2023

### An Act to Reduce Commercial Sexual Exploitation

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Reference to the Committee on Judiciary 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 BEEBE-CENTER of Knox and  
Representatives: COPELAND of Saco, DODGE of Belfast, GRAMLICH of Old Orchard  
Beach, LOOKNER of Portland, SARGENT of York, SUPICA of Bangor, TERRY of Gorham,  
ZAGER of Portland.

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

2 **Sec. 1. 5 MRSA §3360-I, first ¶**, as amended by PL 2013, c. 607, §1, is further  
3 amended to read:

4 As part of the sentence or fine imposed, the court shall impose an assessment of \$35  
5 on any person convicted of murder, a Class A crime, a Class B crime or a Class C crime  
6 and \$20 on any person convicted of a Class D crime or a Class E crime, except that the  
7 court shall impose an assessment of \$1,000 on any person convicted of aggravated sex  
8 trafficking as described in Title 17-A, section 852, an assessment of \$500 on any person  
9 convicted of sex trafficking as described in Title 17-A, section 853, an assessment of \$500  
10 on any person for the first conviction and \$1,000 for each subsequent conviction of  
11 ~~engaging a prostitute~~ commercial sexual exploitation as described in Title 17-A, section  
12 853-B and an assessment of \$500 on any person for the first conviction and \$1,000 for each  
13 subsequent conviction of ~~patronizing prostitution~~ commercial sexual exploitation of a  
14 minor or ~~patronizing prostitution~~ commercial sexual exploitation of a ~~mentally disabled~~  
15 person with a mental disability as described in Title 17-A, section 855. Notwithstanding  
16 any 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 considered  
18 part of the fine. At the time of commitment, the court shall inform the Department of  
19 Corrections or the county sheriff of any unpaid balances on assessments owed by the  
20 offender to the Victims' Compensation Fund. All funds collected as a result of these  
21 assessments accrue to the Victims' Compensation Fund.

22 **Sec. 2. 17-A MRSA §18-A** is enacted to read:

23 **§18-A. Anti-sex-trafficking and commercial sexual exploitation protocol**

24 A person who a law enforcement officer has reason to believe is experiencing or has  
25 experienced human trafficking or commercial sexual exploitation must be treated in  
26 accordance with the anti-sex-trafficking and commercial sexual exploitation protocol  
27 adopted by the responding law enforcement agency under subsection 2.

28 **1. Definition of law enforcement agency.** As used in this section, unless the context  
29 otherwise indicates, "law enforcement agency" has the same meaning as in Title 25, section  
30 3701, subsection 1.

31 **2. Adoption of anti-sex-trafficking and commercial sexual exploitation protocol.**  
32 This subsection governs the adoption of anti-sex-trafficking and commercial sexual  
33 exploitation protocols by law enforcement agencies. An anti-sex-trafficking and  
34 commercial sexual exploitation protocol must include information on anti-trafficking  
35 organizations, sexual assault organizations, domestic violence advocacy organizations,  
36 crisis services, mental health and substance use disorder professionals, emergency and  
37 transitional housing and case management services.

38 A. By January 1, 2024, the Department of Public Safety shall consult with relevant  
39 stakeholders including anti-trafficking organizations, sexual assault organizations,  
40 domestic violence advocacy organizations and crisis services to adopt a model  
41 anti-sex-trafficking and commercial sexual exploitation protocol. Rules adopted  
42 pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375,  
43 subchapter 2-A.

1 B. By March 1, 2024, all law enforcement agencies shall adopt anti-sex-trafficking  
2 and commercial sexual exploitation protocols. The protocol of a law enforcement  
3 agency may, but is not required to, conform to the protocol adopted by the Department  
4 of Public Safety.

5 **3. Law enforcement response to a listed offense by a victim of human trafficking**  
6 **or commercial sexual exploitation.** A law enforcement officer who responds to a call  
7 regarding or encounters a person who the law enforcement officer has reason to believe is  
8 experiencing or has experienced human trafficking or commercial sexual exploitation shall  
9 inquire whether the person is experiencing or has experienced human trafficking or  
10 commercial sexual exploitation. If the person self-identifies as experiencing or having  
11 experienced human trafficking or commercial sexual exploitation, the law enforcement  
12 officer shall respond to the person using the anti-sex-trafficking and commercial sexual  
13 exploitation protocol adopted by the officer's law enforcement agency as required under  
14 subsection 2.

15 **Sec. 3. 17-A MRSA §151, sub-§10** is enacted to read:

16 **10.** It is a defense to prosecution under this section that the objective of the conspiracy  
17 is a violation of section 853-B and the actor's participation was engaging or agreeing to  
18 personally engage in a sexual act or sexual contact for pecuniary benefit.

19 **Sec. 4. 17-A MRSA §259-B**, as enacted by PL 2017, c. 135, §1, is amended to read:

20 **§259-B. Solicitation of a child ~~to engage in prostitution~~ for commercial sexual**  
21 **exploitation**

22 **1.** A person is guilty of soliciting a child ~~to engage in prostitution~~ for commercial  
23 sexual exploitation if the actor knowingly solicits directly or indirectly by any means a  
24 person the actor knows or believes is under 18 years of age ~~to engage in prostitution~~, for  
25 commercial sexual exploitation as defined in section 851.

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

27 **Sec. 5. 17-A MRSA c. 35, headnote** is amended to read:

28 **CHAPTER 35**

29 **SEX TRAFFICKING, ~~PROSTITUTION~~ COMMERCIAL SEXUAL**  
30 **EXPLOITATION AND PUBLIC INDECENCY**

31 **Sec. 6. 17-A MRSA §851, sub-§1**, as amended by PL 1995, c. 638, §1, is repealed.

32 **Sec. 7. 17-A MRSA §851, sub-§1-A**, as amended by PL 1995, c. 638, §2, is  
33 repealed.

34 **Sec. 8. 17-A MRSA §851, sub-§2**, as amended by PL 1995, c. 638, §3, is repealed.

35 **Sec. 9. 17-A MRSA §851, sub-§3** is enacted to read:

36 **3.** "Commercial sexual exploitation" or "engaging in commercial sexual exploitation"  
37 means providing, agreeing to provide or offering to provide a pecuniary benefit to another  
38 person to engage in a sexual act or sexual contact, as those terms are defined in section 251;

1           **Sec. 10. 17-A MRSA §851, sub-§4** is enacted to read:

2           **4.** "Promotes commercial sexual exploitation" means:

3           A. Causing or aiding another to commit or engage in sexual conduct or sexual acts in  
4           exchange for a pecuniary benefit, other than as a patron;

5           B. Publicly soliciting patrons for commercial sexual exploitation. Publicly soliciting  
6           patrons for commercial sexual exploitation includes, but is not limited to, an offer,  
7           made in a public place, to engage in a sexual act or sexual contact, as those terms are  
8           defined in section 251, in return for a pecuniary benefit to be received by the person  
9           making the offer or a 3rd person;

10          C. Providing persons for purposes of commercial sexual exploitation;

11          D. Leasing or otherwise permitting a place controlled by the defendant, alone or in  
12          association with others, to be regularly used for commercial sexual exploitation;

13          E. Owning, controlling, managing, supervising or otherwise operating, in association  
14          with others, a house or business used for commercial sexual exploitation;

15          F. Transporting a person into or within the State with the intent to require the person  
16          to engage in commercial sexual exploitation. For purposes of this paragraph, "require"  
17          means using any means, direct or indirect, to make another person engage in  
18          commercial sexual exploitation to which that person does not consent; or

19          G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit  
20          pursuant to an agreement or understanding with any person, other than with a patron,  
21          whereby the person participates or the person is to participate in the proceeds of  
22          commercial sexual exploitation.

23          **Sec. 11. 17-A MRSA §851, sub-§5** is enacted to read:

24          **5.** "Minor" means a person who has not attained 18 years of age.

25          **Sec. 12. 17-A MRSA §853, sub-§1, ¶B**, as amended by PL 2015, c. 360, §1, is  
26          further amended to read:

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

34          **Sec. 13. 17-A MRSA §853, sub-§4** is enacted to read:

35                 **4.** It is a defense to prosecution under this section that the act alleged to constitute sex  
36                 trafficking consisted of the person publicly soliciting a patron to engage in prostitution only  
37                 with the person.

38          **Sec. 14. 17-A MRSA §853-A**, as amended by PL 2021, c. 315, §§1 and 2, is  
39          repealed.

40          **Sec. 15. 17-A MRSA §853-B**, as amended by PL 2013, c. 407, §4, is further  
41          amended to read:

1 **§853-B. Engaging a prostitute Commercial sexual exploitation**

2 1. A person is guilty of ~~engaging a prostitute~~ commercial sexual exploitation if:

3 A. The person ~~engages a prostitute~~ engages in commercial sexual exploitation within  
4 the meaning of section 851, subsection ~~1-A~~ 3. Violation of this paragraph is a Class E  
5 crime; or

6 B. The person violates paragraph A and, at the time of the offense, the person has one  
7 or more prior convictions under this section or for engaging in substantially similar  
8 conduct to that contained in this section in another jurisdiction. Section 9-A governs  
9 the use of prior convictions when determining a sentence, except that, for the purposes  
10 of this paragraph, the date of the prior conviction may not precede the commission of  
11 the offense by more than 2 years. Violation of this paragraph is a Class D crime.

12 **Sec. 16. 17-A MRSA §855**, as amended by PL 2021, c. 447, §§2 and 3, is further  
13 amended to read:

14 **§855. Patronizing prostitution Commercial sexual exploitation of minor or person**  
15 **with mental disability**

16 1. A person is guilty of ~~patronizing prostitution~~ commercial sexual exploitation of a  
17 minor if:

18 A. The person, ~~in return for another's prostitution, gives or agrees to give a pecuniary~~  
19 ~~benefit either to the person whose prostitution is sought or to a 3rd person and the~~  
20 ~~person whose prostitution is sought has not in fact attained 18 years of age or~~ engages  
21 in commercial sexual exploitation with a minor or the person ~~actor~~ knows or believes  
22 that the person whose prostitution commercial sexual exploitation is sought has not  
23 attained 18 years of age is a minor. Violation of this paragraph is a Class C crime; ~~or,~~

24 3. A person is guilty of ~~patronizing prostitution~~ commercial sexual exploitation of a  
25 mentally disabled person with a mental disability if:

26 A. The person, ~~in return for another's prostitution, gives or agrees to give a pecuniary~~  
27 ~~benefit either to the person whose prostitution is sought or to a 3rd person and the~~  
28 ~~person whose prostitution is sought suffers from~~ engages in commercial sexual  
29 exploitation with a person with a mental disability that is reasonably apparent or known  
30 to the actor and that in fact renders the ~~other~~ person with a mental disability  
31 substantially incapable of appraising the nature of the conduct or conduct involved.  
32 Violation of this paragraph is a Class C crime.

33 **Sec. 17. 17-A MRSA §1111-B, sub-§1, ¶A**, as enacted by PL 2021, c. 724, §1, is  
34 amended by amending subparagraph (16) to read:

35 (16) ~~Patronizing prostitution~~ Commercial sexual exploitation of a minor or person  
36 with a mental disability as described in section 855;

37 **Sec. 18. 17-A MRSA §1604, sub-§5, ¶B**, as enacted by PL 2019, c. 113, Pt. A,  
38 §2, is amended to read:

39 B. If the State pleads and proves that, at the time any crime, excluding murder, under  
40 chapter 9, 11, 12, 13, 27 or 35, ~~excluding section 853-A~~; section 402-A, subsection 1,  
41 paragraph A; or section 752-A or 752-C was committed, or an attempt of any such  
42 crime was committed, the individual had 2 or more prior convictions under chapter 9,

1 11, 12, 13, 27 or 35, ~~excluding section 853-A~~; section 402-A, subsection 1, paragraph  
2 A; or section 752-A or 752-C, or for an attempt of any such crime, or for engaging in  
3 substantially similar conduct in another jurisdiction, the sentencing class for the crime  
4 is one class higher than it would otherwise be.

5 (1) In the case of a Class A crime, the sentencing class is not elevated, but the prior  
6 record must be assigned special weight by the court when imposing a sentence.

7 (2) Section 9-A governs the use of prior convictions when determining a sentence,  
8 except that, for the purposes of this paragraph, for violations under chapter 11, the  
9 dates of prior convictions may have occurred at any time.

10 This paragraph does not apply to section 210-A if the prior convictions have already  
11 served to elevate the sentencing class under section 210-A, subsection 1, paragraph C  
12 or E or any other offense in which prior convictions have already served to elevate the  
13 sentencing class.

14 **Sec. 19. 17-A MRSA §1902, sub-§6**, as corrected by RR 2019, c. 2, Pt. A, §21, is  
15 repealed.

16 **Sec. 20. 18-C MRSA §9-401, sub-§4, ¶F**, as amended by PL 2019, c. 417, Pt. A,  
17 §106, is further amended to read:

18 F. Has in that child's family background factors such as severe mental illness,  
19 substance use disorder, ~~prostitution~~ commercial sexual exploitation, genetic or medical  
20 conditions or illnesses that place the child at risk for future problems.

## 21 SUMMARY

22 This bill:

- 23 1. Eliminates the crime of engaging in prostitution;
- 24 2. Renames to commercial sexual exploitation the crime of engaging a prostitute or  
25 patronizing prostitution of a minor or a person with a mental disability;
- 26 3. Changes from a Class D crime to a Class C crime the crime of commercial sexual  
27 exploitation of a child and solicitation of a child for commercial sexual exploitation;
- 28 4. Replaces the terms "engage a prostitute" and "prostitution" with "commercial sexual  
29 exploitation";
- 30 5. Allows as a defense to conspiracy to commit commercial sexual exploitation that the  
31 person's participation is to conspire to engage a patron to engage in sex with the person;
- 32 6. Allows as a defense to sex trafficking that the actor was soliciting a patron to engage  
33 in sex only with the actor;
- 34 7. Replaces prostitution with commercial sexual exploitation in the list of  
35 circumstances in a child's family background that would qualify the child as a special needs  
36 child under the adoption assistance program; and
- 37 8. Directs the Department of Public Safety to adopt a protocol for law enforcement  
38 agencies to treat a person who is experiencing or has experienced human trafficking or  
39 commercial sexual exploitation.