

129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document INO. 520	Legislative Document N	0.326
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H.P. 251

House of Representatives, January 24, 2019

An Act To Decriminalize Engaging in Prostitution

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

R(+ B. Hunt

ROBERT B. HUNT Clerk

Presented by Representative RECKITT of South Portland.

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

PART A

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

5 As part of the sentence or fine imposed, the court shall impose an assessment of \$35 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 8 court shall impose an assessment of \$1,000 on any person convicted of aggravated sex 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 10 \$500 on any person for the first conviction and \$1,000 for each subsequent conviction of 11 engaging a prostitute prostituted person as described in Title 17-A, section 853-B 253-A 12 and an assessment of \$500 on any person for the first conviction and \$1,000 for each 13 14 subsequent conviction of patronizing prostitution of a minor or patronizing prostitution of a mentally disabled person as described in Title 17-A, section 855. Notwithstanding any 15 16 other law, the court may not waive the imposition of the assessment required by this For purposes of collection and collection procedures, this assessment is 17 section. considered part of the fine. At the time of commitment, the court shall inform the 18 19 Department of Corrections or the county sheriff of any unpaid balances on assessments owed by the offender to the Victims' Compensation Fund. All funds collected as a result 20 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:
- H. "Engages a prostituted person" means providing or agreeing to provide, either to
 the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return
 for a sexual act as defined in paragraph C or sexual contact as defined in paragraph
 D.
- I. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in
 a sexual act as defined in paragraph C or sexual contact as defined in paragraph D, in
 return for a pecuniary benefit to be received by the person engaging in prostitution or
 a 3rd person.
- 31 Sec. A-3. 17-A MRSA §253-A is enacted to read:
- 32 §253-A. Engaging a prostituted person
- <u>1. A person is guilty of engaging a prostituted person if the person engages a</u>
 prostituted person within the meaning of section 251, subsection 1, paragraph H.
 <u>Violation of this subsection is a Class D crime.</u>
- 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:

Prostitution" means engaging in, or agreeing to engage in, or offering to engage
 in a sexual act or sexual contact, as those terms are defined in section 251, in return for a
 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;

B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution includes, but is not limited to, an offer, made in a public place, for a prostituted person who is not the person making the offer to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary 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;

- E. Owning, controlling, managing, supervising or otherwise operating, in association
 with others, a house of prostitution or a prostitution business;
- F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or
- G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with <u>a</u> <u>prostituted person or</u> a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.
- Sec. A-5. 17-A MRSA §853, sub-§1, ¶B, as amended by PL 2015, c. 360, §1, is
 further amended to read:

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

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

1	Sec. A-7. 17-A MRSA §853-B, as amended by PL 2013, c. 407, §4, is repealed.
2 3	Sec. A-8. 17-A MRSA §1252, sub-§4-A, as amended by PL 2017, c. 336, §1, is further amended to read:
4 5 6 7 8 9 10	4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 12, 13, 27 or 35, excluding <u>former</u> section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, or an attempt of any such crime was committed, the defendant had 2 or more prior convictions under chapter 9, 11, 12, 13, 27 or 35, excluding <u>former</u> section 853-A; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C, or for an attempt of any such crime, or for engaging in substantially similar conduct in another jurisdiction, the
11 12	sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be
12	given serious consideration by the court when imposing a sentence. Section 9-A governs
14	the use of prior convictions when determining a sentence, except that, for the purposes of
15	this subsection, for violations under chapter 11, the dates of prior convictions may have
16	occurred at any time. This subsection does not apply to section 210-A if the prior
17	convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C or any other offense in which prior convictions have already
18 19	served to enhance the sentencing class.
17	served to emilance the senteneing class.
20 21	Sec. A-9. 18-C MRSA §9-401, sub-§4, ¶ F , as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1, is amended to read:
22 23 24	F. Has in that child's family background factors such as severe mental illness, substance abuse, prostitution, genetic or medical conditions or illnesses that place the child at risk for future problems.
25	PART B
26	Sec. B-1. 15 MRSA c. 313 is enacted to read:
27	CHAPTER 313
28	EXPUNGEMENT OF RECORDS
29	§2321. Expungement of records of the crime of engaging in prostitution
30	1. Engaging in the crime of prostitution. A person convicted of a crime of
31	engaging in prostitution in this State may petition the court in which the conviction was
32	recorded to expunge the record of the conviction. The court shall order all records of the
33	conviction expunged if the convicted person has not been convicted of a violation of Title
34	<u>17-A, section 253-A, 852 or 853 or former section 853-A and has no formal charging</u>
35	instrument pending in this State for a violation of Title 17-A, section 253-A, 852 or 853.
36	2. State Bureau of Identification. Following receipt of a court order for
37	expungement under subsection 1, the Department of Public Safety, State Bureau of
20	Identification shall make the necessary arrangements with the identification division of

Identification shall make the necessary arrangements with the identification division of the Federal Bureau of Investigation to have all references to the expunged crime deleted 38 39

- from the Federal Bureau of Investigation's identification record and any state materials
 returned to the contributing agency.
 - SUMMARY
- Part A decriminalizes engaging in prostitution by making the following amendments
 to the laws.
- It changes the term "prostitute" to the term "prostituted person" in the law on
 funding for the Victims' Compensation Fund and in the definitions in the Maine Revised
 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.

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

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