



Maine Women's Lobby

April 11, 2021

Dear Senator Carney, Representative Moonen, and Honorable Members of the Joint Standing Committee on the Judiciary,

I join you today on behalf of the Maine Women's Lobby. We write today neither for nor against **LD 1435, " An Act to Reduce Commercial Sexual Exploitation."**

Many in this room today know that I previously spent 11 years at the Maine Coalition Against Sexual Assault. In that role, I worked intimately on policy related to commercial sex, commercial sexual exploitation, and human trafficking. This included staffing the Attorney General's Human Trafficking Work Group, overseeing Maine's only statewide study on human trafficking, and coordinating the statewide Sex Trafficking and Exploitation Network Provider Council. I am committed, personally and professionally, to reducing the harm of sex trafficking and exploitation.

And as the leader of an organization shaped by a belief in bodily autonomy and choice as human rights, I am committed to working for the rights and dignity of people who are engaged in consensual sex work or sexualized labor.

Sex trafficking or exploitation, and sex work or sexual labor, are not the same thing.

Sex trafficking or exploitation is the trade of sex through force, fraud, or coercion, or among people who are not capable of consenting to the activity. Sex work or sexual labor is the consensual and informed trade of sex acts for something of value. The same people may experience both at different points in their lives. For a long time, we have thought of these behaviors as either prostitution (a criminal act) or trafficking (a victimization). There is increasingly an understanding that sometimes, people who are in fact victims are treated like perpetrators by being charged with the crime of prostitution, and that is what this bill is trying to address.

What it fails to acknowledge is that there are also adults capable of making informed decisions about their own bodies and livelihoods, who are neither criminals nor victims. All these people are equally deserving of safety and dignity. Our current legal framework has not yet acknowledged this reality, and I'm afraid this bill does not either.

I want to highlight Section 4 of this bill, which amends § 259-B from "solicitation of a child to engage in prostitution" to "solicitation of a child for commercial sexual exploitation", and Section 16, which amends § 855 from "patronizing prostitution of minor or person with mental disability" to "commercial sexual exploitation of minor or person with mental disability".

Children, and certain adults with cognitive or intellectual disabilities, are not capable of informed consent to some behaviors, and that is why our laws recognize the inherent exploitation in certain activities, here as well as in Title 17-A Ch 12. **This is an important and necessary update that we support fully.**

Yet the bill also amends the crime of engaging in prostitution – when there is no force, fraud or coercion – to exploitation (Sections 9 and 15). This has the effect of creating an equivalence



between non-consensual exploitation of children and people with disabilities, and the behaviors of capable, consenting adults.

In the effort to increase safety for one group of people, this type of approach has unanticipated harmful consequences for people on all sides of the issue.

- **Conflating consensual sex work with sex trafficking makes it harder to prevent and respond to trafficking.** New Zealand decriminalized sex work in 2003 and is judged to be among those countries doing the most effective work on human trafficking¹, which shows us that we can address each issue distinctly. This also preserves and focuses scarce law enforcement resources where they are most needed.
- **'End Demand' or 'Nordic Model' policies do not decrease demand for commercial sex.** A 2014 report by the Swedish police found no reduction in trafficking in the country after 15 years of this approach.²
- **Partial criminalization, such as this bill proposes, decreases the safety of sex workers.** After Scotland instituted laws criminalizing solicitation in 2007, groups recorded a doubling in reported rapes and assaults.³ Partial criminalization "often means policing of the areas where sex workers conduct business. This forces those working into more isolated conditions and locations, increasing their physical vulnerability. It disrupts critical safety strategies and negotiations including harm-reduction techniques—such as the use of condoms—and peer networks."⁴
- **Decriminalization of sex work increases worker rights and safety, and many organizations - from local to global - agree.** Decriminalization moves the emphasis away from consenting behaviors and focuses law enforcement resources on exploitive and abusive behaviors, which we all agree must stop. This approach is supported by the World Health Organization, UNAIDS, the Global Alliance Against Traffic in Women, Human Rights Watch, Lambda Legal, the American Civil Liberties Union, and Freedom Network USA.

We all agree that trafficking is serious, that we need to have a legal framework for preventing and responding to it, and that we must work together to ensure the safety and services for our community members who are affected by it. What we don't agree on – yet! - is how to do that in a way that recognizes the autonomy of consenting adults. **We hope you will consider giving this issue the time and care it deserves by convening stakeholders who represent not only trafficking survivors and providers, but people who are engaged in consensual sexual labor, to consider this chapter holistically, with the health and safety of all in mind.**

¹ United States Department of State, Trafficking in Persons Report (2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

² Rikspolisstyrelsen, "mänskohandel för sexuella och andra ändamål," RPs Rapport, (2014): 8

³ "attacks on prostitutes soar after vice 'driven underground' by law," The Scotsman, april 16, 2008, <https://www.scotsman.com/news/attacks-prostitutes-soar-after-vice-driven-underground-law-2511658>

⁴ World Health Organization. Implementing Comprehensive HIV/STI Programmes with Sex Workers: Practical Approaches from Collaborative Interventions. Geneva, Switzerland: World Health Organization; 2013:24. http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf?ua=1.

Keeping Sex Work Safe: Reading and References

Compiled by the Maine Women's Lobby, 2023

In Maine, our long history of collaboration and partnership means that allies have been reluctant to 'choose sides' in the national debate on this issue, and have instead prioritized finding solutions we can all support. Still, there is a significant national and international debate about sex work and how to best approach it, and there are Mainers on both sides. These can be broadly summed up as:

- 'End Demand' approaches, which focus on criminalizing buyers to end or reduce sex work and trafficking, with an underlying emphasis that all sex work is inherently exploitive.
- 'Sex workers' rights' approaches, which believe that sex work can happen without exploitation or coercion, and sex workers deserve safety, rights, and dignity, and that sex trafficking and exploitation is a separate but important issue.

Glossary of Terms

- **Sex work:** Sex work is any type of labor where the explicit goal is to produce a sexual or erotic response in the client. Sex work includes prostitution, but it also includes other labor such as erotic dancing, webcam work, sensual massage, adult film, or phone sex. Sex workers are individuals who receive compensation in exchange for sexual services.
- **Sexual exploitation:** Non-consensual sex or sexual activity for someone else's gain
- **Sex trafficking:** Any exchange of money, goods, or services for sex or sex acts, through force, fraud, or coercion
- **Legalization of sex work:** Regulating and/or licensing sex work, seen in Germany, the Netherlands, and a few counties in Nevada
- **Partial criminalization, or the "Nordic Model":** This approach decriminalizes people who provide sex work or sexual services, and makes purchasing sex a crime, in order to reduce the demand for sex work and sex trafficking. Sometimes called the Equality Model, End Demand model, or Entrapment Model.
- **Decriminalization of sex work:** Removal of criminal penalties for sex work, seen in New Zealand

What Does the Research Tell Us?

Sex work is consensual (sex trafficking is not).

- Organizations such as the Sex Workers Outreach Project (swopusa.org), the Erotic Labor Alliance of New England (ELA ONE), and others are committed to the respect, safety, and autonomy of all sex workers, and recognize that sex workers come from many backgrounds, genders, and experiences.

- Numerous resources, such as the book *Revolting Prostitutes: The Fight for Sex Workers' Rights* by Molly Smith and Juno Mac, detail the perspectives, voices, and experiences of sex workers.
- Our own community members and coalition partners share that they have been engaged in commercial sex through choice or circumstance - but not coercion.

Conflating consensual sex work with sex trafficking makes it harder to prevent and respond to trafficking.

- New Zealand decriminalized sex work in 2003 and is judged to be among those countries doing the most effective work on human trafficking¹, which shows us that we can address each issue distinctly.
- Laws such as SESTA/FOSTA have actually obscured the work against sex trafficking, and anti-sex-trafficking advocates have argued that by shutting websites like BackPage down, victims of sex-trafficking are harder to find.²
- Many anti-trafficking advocates have turned to sex workers as critical allies in the fight against trafficking.³
- Our resources for investigating and responding to sexual exploitation and sex trafficking are limited. Conflating consensual sex work with sexual exploitation misdirects resources, as time, effort, and money becomes split across the issues. For example- 'john stings' - when rounding up buyers of consensual sex work, keep no one safe, but use law enforcement time.

End Demand policies do not decrease demand for commercial sex.

- Research conducted by the Northern Ireland Dept. of Justice following the introduction of their end demand laws, a 2019 report stated "A trend analysis of 173,460 advertisements indicates that the legislation has had little effect on the supply of or demand for sexual services;...based on the premise that criminalization would end demand for commercial sexual services there should have been a greater 'tailing off' of sex worker advertising during the period following the implementation of Article 64A. This has not occurred."⁴
- A 2014 report by the Swedish police found no reduction in trafficking in the country after 15 years of criminalization.⁵

¹ United States Department of State, Trafficking in Persons Report (2014), <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>

² PBS. (2020). FOSTA-SESTA was supposed to thwart sex trafficking. Instead, it's sparked a movement <https://whyy.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-its-sparked-a-movement/>

³ Global Alliance Against Trafficking in Women. (2017). Sex workers organizing for change. <https://www.gaatw.org/resources/publications/941-sex-%20workers-organising-for-change>

⁴ Northern Ireland Dept. of Justice. (2019). Assessment of Review of Operation of Article 64A. <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/assessment-of-impact-criminalisation-of-purchasing-sexual-services.pdf>

⁵ Rikspolisstyrelsen, "människohandel för sexuella och andra ändamål," RPs Rapport, (2014): 8

Partial criminalization decreases the safety of sex workers.

- As the sex workers Molly Smith and Juno Mac write in their book *Revolting Prostitutes: The Fight for Sex Workers' Rights*, "Losing advertising platforms pushes sex workers into the street, where their increased visibility makes them more vulnerable to arrest, or more likely to depend on [potentially abusive] managers."⁶
- After Scotland instituted laws criminalizing solicitation in 2007, groups recorded a doubling in reported rapes and assaults.⁷
- Partial criminalization "often means policing of the areas where sex workers conduct business. This forces those working into more isolated conditions and locations, increasing their physical vulnerability. It disrupts critical safety strategies and negotiations including harm-reduction techniques—such as the use of condoms—and peer networks."⁸
- According to a study published in the *Lancet*, partial criminalization "creates harms similar to those of full criminalisation by impeding sex workers' ability to protect their health and safety, and creating an antagonistic relationship with law enforcement resulting in a climate of impunity."⁹

Decriminalization of sex work increases worker rights and safety, and many organizations - from local to global - agree.

- In the state of New South Wales, Australia, where sex work is decriminalized, sex workers' access to and use of condoms is higher than in other Australian jurisdictions that have varying levels of criminalization.¹⁰
- A recent study published in *The Lancet* concluded that decriminalization of sex work had the single greatest potential to reduce HIV infections in female sex worker communities—even more than increasing access to antiretroviral treatment.¹¹
- After New Zealand reformed its laws in 2003, many sex workers reported that they could turn to the police and courts for help without fear of prosecution for the first time in their lives.¹²

⁶ Mac, J., & Smith, M. (2020). *Revolting prostitutes: The fight for sex workers rights*. (p.124) London, England. Verso.

⁷ "attacks on prostitutes soar after vice 'driven underground' by law," *The Scotsman*, april 16, 2008, <https://www.scotsman.com/news/attacks-prostitutes-soar-after-vice-driven-underground-law-2511658>

⁸ World Health Organization. *Implementing Comprehensive HIV/STI Programmes with Sex Workers: Practical Approaches from Collaborative Interventions*. Geneva, Switzerland: World Health Organization; 2013:24. http://apps.who.int/iris/bitstream/10665/90000/1/9789241506182_eng.pdf?ua=1.

⁹ Decker R, Crago AL, Chu SK, et al. Human rights violations against sex workers: burden and effect on HIV. *Lancet*. 2015;385(9963):192.

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60800-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60800-X/fulltext)

¹⁰ Harcourt c et al. the decriminalization of sex work is associated with better coverage of health promotion programs for sex workers. *australian and new zealand Journal of Public Health* 34(5), (2010): 482-486.

¹¹ Shannon et al., Global epidemiology of HIV among female sex workers: influence of structural determinants. *The Lancet* 385(9962), (2014): 55-71.

¹² "A decade of decriminalization: sex work 'down under' but not underground," *Criminology and Criminal Justice*, February 2014, p. 6.

- Decriminalization is the shift from “catch-all offences that criminalize most or all aspects of sex work,” including laws that target noncoercive third parties who purchase or facilitate sex work, to “laws and policies that provide protection for sex workers from acts of exploitation and abuse.”¹³
- Decriminalization has been supported by the World Health Organization, UNAIDS, the Global Alliance Against Traffic in Women (GAATW), Human Rights Watch, Lambda Legal, the American Civil Liberties Union, and Freedom Network USA.

For More Reading

Prevention and Treatment of HIV and other Sexually Transmitted Infections for Sex Workers in Low- and Middle-income Countries Recommendations for a public health approach (2012) *The World Health Organisation (WHO), United Nations Population Fund (UNFPA) and Joint United Nations Programme on HIV/AIDS (UNAIDS)*

Recommends that all countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.

The European Policy Brief: Preventing Exploitation and Trafficking in the Sex Work Sector (2017) *Addressing Demand in Anti-Trafficking Efforts and Policies (DemandAT)*

Recognizes that anti-sex work policy regimes can be identified as repressive, restrictive and integrative, or a combination of these. The main strategies for preventing exploitation are those that can reduce sex workers' vulnerability, limit opportunities for exploitation, and build alliances between sex workers, NGOs, and authorities.

Global Alliance Against Traffic in Women (GAATW) Moving Beyond ‘Supply and Demand’ Catchphrases: Assessing the uses and limitations of demand-based approaches in Anti-Trafficking (2011) *Global Alliance Against Traffic in Women (GAATW)*

Looks at the links between trafficking and the demand for commercial sex, and the demand for exploitative labor practices.

Is Sex Work Decriminalization the Answer? What the Research Tells Us (2020) *American Civil Liberties Union (ACLU)*

Reviews existing empirical research on the impacts of decriminalization — and conversely criminalization — of sex work to inform recommendations for policy and practice. Reports that full decriminalization would result in improved conditions for those who engage in sex work, particularly those most marginalized, and would help to reduce the crisis of police violence and mass incarceration in the U.S.

¹³ Amnesty International. (2016). Amnesty International publishes policy and research on protection of sex workers' rights. <https://www.amnesty.org/en/latest/news/2016/05/amnesty-international-publishes-policy-and-research-on-protection-of-sex-workers-rights/>

Why Sex Work Should be Decriminalized (2019) Humans Rights Watch

This research, including extensive consultations with sex workers and organizations that work on the issue, details why the Human Rights Watch supports the full decriminalization of consensual adult sex work.

The Movement to Decriminalize Sex Work, Explained (2019) Vox

Advocates featured in this piece detail how getting rid of the criminal penalties for selling and buying sex is the only way to keep sex workers safe and guarantee them full human rights as workers in America. Recent relevant legislation is also reviewed.

10 Reasons to Decriminalize Sex Work (2015) Open Society Foundations

This document provides ten reasons why decriminalization of sex work is the best policy for promoting the health and human rights of sex workers, their families, and communities. Removing criminal prosecution of sex work goes hand-in-hand with recognizing sex work as work and protecting the rights of sex workers through workplace health and safety standards. Decriminalization means sex workers are more likely to live without stigma, social exclusion, and fear of violence.

Assessment of Review of Operation of Article 64A of the Sexual Offences Order (Northern Ireland) 2008: Offence of Purchasing Sexual Services (2019) Northern Ireland Department of Justice

This analysis of 173,460 advertisements indicates that Northern Ireland's end demand legislation has had little effect on the supply of or demand for sexual services.

Decreasing Human Trafficking through Sex Work Decriminalization (2017) Journal of Medical Ethics

This journal article discusses how preventing trafficking in the sex trade requires addressing the different forms of marginalization that create vulnerable communities. It also explains how decriminalization allows sex workers to work more safely, destigmatizes sex work, and helps resist political, social, and cultural marginalization of sex workers.

'I've Never Been So Exploited': The Consequences of FOSTA-SESTA in Aotearoa New Zealand (2020) Anti-Trafficking Review

This paper explores the international consequences of FOSTA-SESTA, the closure of Backpage, and how a punitive approach to segments of the online sex industry has not only placed sex workers in greater financial insecurity, but has reduced their ability to control their working conditions.

Everything You Ever Wanted To Know About The Swedish Model (Aka The Nordic Model) (2020) The SWARM Collective

This piece describes the Swedish Model (also known as the Nordic Model, the Equality Model and End Demand). Sex workers across the globe have been protesting this model since its introduction and - in countries where it has been proposed or introduced - there has been huge resistance from the sex workers who are most impacted by this law.