



May 5, 2021

Dear Senator Carney, Representative Harnett, and Members of the Judiciary Committee,

I join you today on behalf of the Maine Women's Lobby. For over forty years, the Maine Women's Lobby has advocated for public policy which increases the health, wellness, safety, and economic security of Maine women and girls, with a focus on the most marginalized populations and communities.

We write today **in support of LD 1455, "An Act To Support Survivors of Sex Trafficking and Exploitation."** We thank Representative Talbot Ross for sponsoring this bill.

While I currently work for the Maine Women's Lobby, 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 for a number of years, overseeing Maine's only statewide study on human trafficking, and coordinating the statewide Sex Trafficking and Exploitation Network Provider Council.

This bill may seem straightforward, but in fact it is the result of years of work on this section of the criminal code – overwhelmingly focused on an effort to reduce the harm of criminalizing commercial sex for the individuals engaged in the service. Whatever you might think about when you hear or read the word 'prostitution' or 'prostitute', I want to take a minute to provide some context for commercial sex.

There is a clear connection between the experience of trauma or violence and commercial sex. The vast majority of people engaged in commercial sex are survivors of gender-based violence.¹ In fact, women are more likely to be engaged in commercial sex when they are abused as children.² Traffickers and exploiters often target trauma survivors, and in some cases the experience of trauma leads to mental health or substance use challenges that may connect people with commercial sex.

There is a clear connection between economic marginalization and commercial sex. Not all people engaged in commercial sex have traffickers, pimps, or exploiters, though they may have at some point. The vast majority of people engaged in commercial sex are people of color and members of the LGBTQ community, especially trans people³ – communities who also experience higher rates of poverty and unemployment. One in five trans people nationally experience homelessness at some point in their lives⁴, and our friends at Maine Trans Net report

¹ Mac, J., & Smith, M. (2020). *Revolting prostitutes: The fight for sex workers rights*. (p.121-126) London, England. Verso.

² The Intersection Between Prostitution and Sexual Violence. (2013). *Pennsylvania Coalition Against Rape*.

³ North, A. (2019, August 02). The movement to decriminalize sex work, explained.

<https://www.vox.com/2019/8/2/20692327/sex-work-decriminalization-prostitution-new-york-dc>

⁴ The National Center for Transgender Equality. Issues: Housing and Homelessness. Retrieved from <https://transequality.org/issues/housing-homelessness>



that the number in Maine is likely higher. When our economy and cultural norms exclude and ignore some populations, the street economy can be a path to survival.

The criminalization of these activities disproportionately affects the most marginalized populations. While Black Americans are only twelve percent of the United States' population, approximately forty percent of adults and sixty percent of youth arrested for prostitution in 2015 were Black.⁵ Trans women, particularly those of color, are more likely to be arrested on sex work charges than any other demographic.⁶

Criminalization results in stigmatization that makes people less safe. For example, people engaged in commercial sex often refuse to report sexual assault, burglary, and other crimes they experience for fear of facing arrest, and when they do, they are more likely to experience assault and harassment at the hands of the police they are reporting to⁷. Many of us vividly remember the recent case of Daniel Holtzclaw, the Oklahoma police officer who systematically raped Black women who were engaged in sex work because he knew he could do so without repercussions.

LD 1455 does not dramatically overhaul this system. However, it does continue the slow progress toward reducing the harm of criminalization on our most marginalized populations.

- **Section 1** shifts away from an affirmative defense for individuals engaged in commercial sex when they are trafficked or exploited. An affirmative defense requires the defendant to prove extenuating circumstances by a preponderance of the evidence; on the other hand, when a defense is raised, the State must disprove the circumstances beyond a reasonable doubt. This ensures that the State has a higher burden to reach to ensure they are not using criminal charges against people who may be victims of human trafficking.
- **Section 2** adds an additional defense to acknowledge economic hardship or other kinds of structural coercion or exploitation that so many people experience.

For a long time, people have talked about 'engaging in prostitution' as though it is one set of people – people who somehow are engaging in a crime, in nefarious behavior, and who deserve the accountability of the law. They have talked about trafficking and exploitation victims as though they are a different set of people – innocent victims who are preyed upon by criminals. The reality is that these two groups overlap significantly, and many people experience both. People who are engaged in commercial sex are often victims of trauma; economic exploitation; and racism, misogyny, homophobia, and transphobia. People who are victims of human trafficking often share these characteristics – which is why they are targeted by traffickers. All these people are equally deserving of safety and dignity. Our current legal framework has not yet acknowledged this reality.

⁵ Federal Bureau of Investigation. (2015). Uniform Crime Report. Retrieved from <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-43>

⁶ Ibid.

⁷ DC Trans Network. (2015). Access Denied. Retrieved from <https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf>



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We hope to never see another person from these marginalized populations be treated as the perpetrator of a crime. They simply are not, and it is time for our criminal code to acknowledge that. We are aware the law enforcement approach to this issue has changed radically in recent years – many, if not all, Maine prosecutors are viewing this circumstance differently than they did ten or even five years ago. Still, changing a culture and cultural perceptions takes time, and we know for a fact that there are still people in Maine engaged in commercial sex who fear law enforcement and the criminal justice response to them and to the violence they experience, simply because of the way these activities are classified. It's time to change that and create real pathways to support.

As Maine reevaluates policies surrounding commercial sex, it is critical that we take a harm reduction approach. We should be asking questions like: “What conditions lead people to sell sex, or make commercial sex their only opportunity for survival? What conditions increase the safety for people who are engaged in commercial sex through either force or hardship? In what ways can we improve our systems to better respond to those situations?” Until we address the underlying factors that make commercial sex a viable opportunity for either traffickers *or* individuals without viable alternatives, we are not likely to change the existence of commercial sex. Until then, we must work harder to ensure that they are living safe lives and reducing the harm of criminalization is a step toward that goal.

We hope you will vote ‘ought to pass’ on LD 1455.

Sincerely,

Destie Hohman Sprague, Executive Director
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